

**Government of India
Ministry of Finance
Department of Investment & Public Asset Management**

GUIDANCE NOTE-1 ON STRATEGIC DISINVESTMENT

Strategic disinvestment implies sale of substantial portion of the Government shareholding of a Central Public Sector Enterprise (CPSE) of up to 50%, or such higher percentage as the competent authority may determine, along with transfer of management control.

1. Process

Typically a three-stage strategic disinvestment process is as follows:

Stage I: Inviting Expression of Interest and Qualification of Potential Bidders

Stage II: Request for Proposal (RFP) and Submission of Bids

Stage III: Completion

Prior to the above stages, the process involves selection of Transaction Advisors, Legal Advisors and Asset Valuers.

2. Stage I: Inviting Expression of Interest and Qualification of Potential Bidders

The invitation of Expression of Interest includes the following:

- (a) Preliminary Information Memorandum (PIM) indicating the broad information about the CPSE, and
- (b) Criteria for Qualification of Potential Bidders.

The EoI forms the basis of short listing the potential bidders for participating in Stage II.

2.1 Issue of Advertisement inviting Expression of Interest (EoI)

2.1.1 A public announcement of disinvestment through strategic sale assures wider participation and transparency of the transaction. A typical advertisement provides a short profile of the CPSE being disinvested, the broad outline for submission of EoI, deadline for submission of the Expression of Interest, websites where the Preliminary Information Memorandum will be available for download (i.e. the website of the (i) Transaction Advisor, (ii) Department of Investment & Public Asset Management

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

(DIPAM), (iii) the Administrative Ministry, and (iv) the CPSE, and the address for communication for further information/correspondence.

2.1.2 Advertisement is normally given in three major national newspapers (including Business Newspapers), and one regional newspaper where registered office of the CPSE is located. If considered necessary by the Administrative Department/Ministry, the advertisement may also be given in one international newspaper besides an industry/trade journal to which the CPSE being disinvested belongs. A copy of the advertisement along with details of EOI and PIM are placed on the websites of the CPSE, the Administrative Ministry and Department of Disinvestment and Public Asset Management (DIPAM) and Transaction Advisor. Administrative Ministry/ Department may coordinate and bear associated costs in respect of advertisement.

2.2 Preparation of Preliminary Information Memorandum (PIM)

2.2.1 While submitting their Expression of Interest, the prospective bidders would be interested in knowing details about the CPSE. The Preliminary Information Memorandum generally contains factual information pertaining to certain aspects of the CPSE including the financial information which is not confidential in nature. It, therefore, assists the prospective bidders in evaluation of the CPSE for their decision as regards their participation in the bidding process.

2.2.2 A Preliminary Information Memorandum is drawn up by the Transaction Advisor after confirming the relevant facts of CPSE in consultation with the CPSE and the Administrative Ministry/ Department.

2.3 Structure of PIM: PIM includes the following information

2.3.1 Introduction

2.3.1.1 This gives a brief of the Government decision regarding disinvestment in the CPSE, the extent of equity held by the Government, the extent of equity to be disinvested, the extent of any outstanding convertible instruments including ESOPs & its impact on the total equity and the government shareholding. The PIM may also contain

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

information about the assets including immovable properties. It also broadly outlines the decision of hiving off of the surplus land or any asset.

2.3.2 Information about the CPSE

2.3.2.1 This part broadly contains information about the CPSE, its history, activities, the location of offices & undertakings, management, human resources, subsidiaries, quality control, markets and marketing arrangements, capital structure, various assets and other details about the company. It also gives the strengths and opportunities of the company. The details of the company (other than the financial statement), to be disclosed may not be older than 3 months from the date of the PIM.

Note: Decision as regards the hiving off of surplus land or any other asset or decision pertaining to change in the share capital of the CPSEs and any other such crucial decisions ought to be taken prior to finalization of the PIM and suitably disclosed in the PIM to the extent feasible at that stage.

2.3.3 Financial Information

2.3.3.1 The Preliminary Information Memorandum provides financial figures as per audited Profit and Loss Account and Balance Sheet of the company for the last five years. In case of unlisted CPSEs, if the audited financial statements are not available for the immediately preceding financial year, the latest available unaudited/provisional numbers shall be given as certified by the statutory auditors. For the listed CPSEs, in case the audited financial statements are not available for the immediately preceding year, information contained in the latest Quarterly Limited Review Report be given, as disclosed to the stock exchanges.

2.3.4 Qualification of Potential Bidders

2.3.4.1 The Preliminary Information Memorandum also contains detailed conditions for Qualification of Potential Bidders (refer **Annexure-I** of this compilation)-Page 35-38

3. Detailed contents of Expression of Interests (EOIs) (to be submitted by potential bidders)

3.1 The EoI seeks basic information about the potential bidders, their experience and profile. The information ought to be such that it facilitates ascertaining the antecedents

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

of the potential bidders. The relevant information may also be required to be further made available to appropriate regulatory agencies at appropriate stage for their verification. EOIs generally seek the following information:

(i) Executive Summary

This section provides a brief description of the potential bidders and (where appropriate) of each member in the consortium, containing details like ownership structure, the identity of the natural persons, who are the beneficial owners and effectively control the potential bidder and each member of the consortium, the Effective Place of Management of business of the potential bidder and each member of the consortium. It includes a brief commentary on the capability of the company/consortium, as demonstrated, in its past track record, to run its own business, independently or as a member of the consortium.

(ii) Background Information

(a) The Potential Bidder: The Section seeks details including full Name, Address, Telephone and Facsimile numbers, E-mail address of the potential bidder and of each member of the consortium and the names and the titles of the persons, who are the principal points of contact for each member and identifies lead member of the consortium. Details of the websites, if maintained, by the potential bidder, including different members in case of consortium are also provided.

(b) Basic Information: This Section seeks details of the Place of Incorporation, Registered Office, Current Directors, Key Management Personnel and principal shareholders of the company/companies (in case of consortium). It also contains a copy of its current Memorandum and Articles of Association and copies of audited accounts for the last three years of the company/companies (in case of consortium). In case, some members of the consortium were incorporated less than 3 years ago (or the bid is being made through a recently incorporated SPV), then 3 years financial statement of the leading member of the consortium (or holding/ largest shareholder of the SPV) may be obtained. In case there are unlisted company/companies of members of the consortium and if audited financial statements are not available for the immediately

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

preceding financial year, the latest available unaudited/provisional numbers may be obtained as certified by the statutory auditors. For listed companies, in case the audited financial statements are not available for the immediately preceding financial year, the information contained in Quarterly Limited Review report is to be given. However, if the company/ companies in the consortium submits unaudited financials at the time of submission of EoI, in such a scenario, the audited financials, as and when it is prepared as per the statutory requirements & timelines of the relevant countries (where the potential bidder company is incorporated) have to be provided.

(iii) Management Organization: This Section seeks the following information:

- (a) An overview of the potential bidder's senior management and organization structure and in the case of a consortium, that of each member; and
- (b) Effective Place of Management of business of the potential bidder and each member of the consortium.

(iv) International Operations/Joint Ventures/Alliances: This Section seeks brief write up of the potential bidder's international operations, its joint ventures & alliances, including incorporation details, registered office, effective management and control or, in the case of a consortium, of its members, of their international operations, joint ventures / alliances (whether international or domestic), nature and size of such operations, equity ownership, if applicable, and copies of the audited financial statements of immediately preceding financial year as per the definition of financial year in the jurisdiction, where potential bidder is incorporated.

(v) Professional Advisors: This Section seeks names and addresses of those companies and professional firms, if any, who are (or will be) advising the applicant/consortium for this transaction, together with the names of the principal individual advisors in those companies and firms.

Note: The information can be provided at a subsequent/later stage, if not available at this stage.

(vi) Legal Capacity of the Company/Accuracy of Information: Every company and each member of a consortium must provide with the EOI a representation, duly

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

executed by its authorised official/representative, that it has the requisite corporate authorisation to submit the EOI and that all information provided in the EOI is complete and accurate in all material respects to the best of their knowledge. If, at a subsequent date, it is found that the company or any consortium member did not either possess requisite authorisation or that any part of the information provided in the EOI was not complete or accurate in any respect, the Government reserves the right to disqualify such company or consortium or member of the consortium from the process of disinvestment, under consideration at any stage.

(vii) Outstanding Litigation: Each company, and each member of a consortium, (including the beneficial owner, promoters, persons in control, thereof) must provide with the EOI, a statement of those pending litigations that, if decided against the bidder/consortium, shall disqualify the bidder in terms of the prescribed eligibility criteria and extant Government instructions on disinvestment.

(viii) Foreign Direct Investment (FDI) Restrictions: In case of foreign bidders, the prospective buyer has to comply with the sectoral Foreign Direct Investment (FDI) caps determined by Government of India as revised from time to time. In some cases of disinvestment, the FDI restrictions on the bidder are more onerous than the sectoral restrictions. These could be typically those CPSEs, which are into businesses that are sensitive to national security. The bidder is expected to undertake due diligence to ensure that it meets extant FDI norms/ regulations and related guidelines. The bidder shall be required to take appropriate approvals from relevant Government agencies before completion of the disinvestment process.

(ix) Validity and Documents: The potential Bidder and each member of the consortium shall provide necessary documents evidencing the disclosure and information made available by them. The Transaction Advisor may seek appropriate clarifications, if required, from the potential bidders while examining the EOI.

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

Note: All information and documents to be provided by the potential bidder shall be true, correct and complete as on the date of submission of EOI. The potential bidder shall certify the correctness of the documents through an affidavit.

4. Submission of Expression of Interest by Potential Bidders

4.1 Any company/consortium, participating in the proposed strategic disinvestment has to submit an Expression of Interest as per formats indicated below.

S. No.	Items	Format
(i)	Expression of Interest	Annexure-II
(ii)	Statement of Legal Capacity	Annexure-III
(iii)	Request for Qualifications	Annexure- IV
(iv)	Information to be sought for Employee Bids	Annexure-V

4.2 It is the responsibility of the potential bidder to ensure that EOI is delivered at the prescribed address by the stated deadline. The covering envelope of all EOIs submitted should be sealed and be clearly marked "**Private and Confidential - Expression of Interest for the Strategic Sale of the CPSE (Mention name of the CPSE)**". Responses received after the deadline or not accompanied by the required documentation shall not be considered. A company /consortium may be disqualified for any misrepresentation, failure to provide the required information or if any of the members has already submitted a separate EoI for the same CPSE. In case, the mechanism for electronic submission of EOI is setup, the procedural and associated security aspects shall be notified separately.

4.3 Non-refundable fee: The EoI should be accompanied with a non-refundable fee of appropriate amount, to be decided by the Administrative Ministry/Department on a case to case basis. To maintain secrecy about the bidders, the fee will be received in the name of the Transaction Advisor and the Transaction Advisor will remit the same to DIPAM through a Bank Draft in favour of 'Pay & Accounts Officer, Ministry of Finance, DIPAM, New Delhi' within two working days from the last date of submission of EOI.

4.4 Guidelines for Qualification of Bidders:

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

- (i) Any company, in private or public sector, can take part in a competitive bidding process for acquiring stakes in the CPSE identified for strategic disinvestment, subject to meeting the eligibility criteria notified for the qualification of bidders. However, depending on the unique features of a case, and taking into consideration all relevant factors, Government can always impose reasonable restrictions in specific cases, in public interest, in the interest of privatization of the CPSE national security or in addition to the eligibility criteria notified.
- (ii) The erstwhile Ministry of Disinvestment had laid down specific guidelines vide letter No.6/4/2001/DD-II dated 13th July 2001 for qualification of bidders, seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment. The guidelines have been modified as per **Annexure-VI** and shall be operational.

4.5 Guidelines on Qualification for Bidders are enclosed as **Annexure-I** of this compilation.

5.1 Evaluation of EoIs: Based on the information submitted in the EoI, the Transaction Advisors will carry out evaluation of the qualifications of the potential bidders/ consortia (as per the criteria specified in the EoI) and subsequently submit codified names (in writing) of the potential bidders/consortium that qualify to participate in the next stage of the process along with those who do not qualify stating specific reasons for the same to CPSE/Administrative Department. The Administrative Ministry/CPSE shall present the same to EC with their views. The report of the Transaction Advisor (as above) along with comments of Administrative Ministry and Evaluation Committee should be considered by the Competent Authority through DIPAM.

5.2 Advice to Administrative Ministries/CPSE(s): To provide clarity to the potential Bidders, to avoid future litigation & potential Post- Adjustment Claims, the Administrative Ministries/ CPSEs are advised to ensure the following:

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

- 1) Title to Land:** To facilitate proper asset valuation/ business valuations for fixing 'Reserve Price' by the Government (seller) and bid price by the bidders (buyer), the CPSEs should provide clarity on the title to the land owned/leased/possessed. Any encumbrance/restriction associated with any asset ought to be specified unambiguously. It is advisable that to the extent feasible, the CPSE and the Administrative Ministry must ensure that nature of rights of company on land is clearly expressed in the EOI. The details of assets/land will be available in the data room.
- 2) Surplus Land:** To provide clarity on the extent of assets involved in the process of Strategic Disinvestment, the CPSE should identify surplus land and any other asset in consultation with the Administrative Ministries before EoI. Adequate disclosure ought to be made in the PIM/ CIM with regard to the 'Surplus Land'. CPSE ought to, complete necessary formalities as per extant regulations/ obligations for the purpose of hiving off such 'Surplus Land' prior to EoI.
- 3) Shareholding Related:** Clarity on issues involving the extent of Government shareholding, at the time of issuance of the EoI, is the backbone of the strategic disinvestment that involves sale of shares along with management control. Changes in shareholding of the Government, once the EoI has been made public, should not to be made.
- 4) Legal Proceedings and Other Impediments:** Any litigation proceedings in relation to disinvestment including filing of petitions in Court, Court Orders, stand of the Government/ CPSE in the Court, etc. at any stage of the disinvestment process should be communicated to the Transaction & Legal Advisors, Administrative Ministry and DIPAM on real time basis by CPSE and/or the Administrative Ministry.
- 5) Contingent Liabilities:** To provide clarity on the extant of contingent liabilities involved, the CPSE should identify clearly such contingent liabilities which can be resolved at the level of the CPSE and/or the Administrative Ministry. As far as possible such contingent liabilities should be resolved before the issue of EoI.

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

6) Indicative Do's and Don'ts:

- i. The Administrative Department/ CPSE ought to inform the Transaction Advisor about critical Policy, Operational & Financial decisions taken after the release of EoI & that may potentially have an impact on the Financial Structure, Business Plan, Employee Engagement, Scale of Business Operation and/or Business Projections of the CPSE.
- ii. The Administrative Department/CPSE should regularly update the Transaction Advisor about any other decision that may be considered relevant for proper valuation of the CPSE.
- iii. The data room shall normally contain information/documents reflecting financial position of the company and other associated issues relating to the transaction, taking due consideration of national security & sensitivity.
- iv. The CPSE should, in parallel, appropriately update information in the Data Rooms. The Transaction Advisor should ensure that appropriate logs as regards updation are maintained and should advise the potential bidders about such updation.
- v. Clarifications sought/questions by bidders may be received by the Transaction Advisors by way of e-mail communications. Instructions in this regard may be provided in the invitation of EOI/ RFP.
- vi. The Transaction Advisor should maintain appropriate logs of communication, meetings, documents uploaded, site visits & other issues associated with disinvestment along with status of Resolution/ pendency, etc. It is, inter alia, expected that the Transaction Advisor/ Legal Advisor timely notify the stakeholders about pending issues & their implications of the transaction.

5.3 Confidentiality about the Identity of Potential Bidders

- (i) The Transaction Advisers should strictly maintain the confidentiality of the potential bidders from all persons including persons in Government including

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

the CPSE and non-Government. However, if required, information may be shared with specified agencies in National interest upon an advice by the Administrative Ministry in writing.

- (ii) Each of the potential bidders shall be assigned a 'Code' by the Transaction Advisor. All the activities including due diligence, site visits, bidding etc. shall be performed using the 'Code' only;
- (iii) The 'Code' should be allotted in a manner that masks information about the identity, profile & the number of potential bidders/bidders, during the entire process of disinvestment.
- (iv) The Transaction Adviser shall issue an authorization to the potential bidder for the diligence mentioning only the 'Code' as 'Identity'.
- (v) A Non-Disclosure Undertaking should be signed by the potential bidder, inter alia, undertaking that the entity and its employees shall not reveal their identity and/or contact any member of the CPSE or the Administrative Ministry/DIPAM and also keep the data/ information of CPSE (shared as part of transaction) strictly confidential.

QUALIFICATION FOR BIDDERS

1. Introduction

1.1 In a strategic sale, apart from Government's interest in receiving a good return or price for its companies, the Government is also concerned that the company, which is taken over, should function well after disinvestment. The 'Strategic Partner' should be able to bring in more capital and improved technology introduce better management practices, wherever needed, and should be in a position to take proper care of the work force. In short, the Strategic Partner is expected to have a good track record of performance so that the Government can be satisfied that its assets are being passed on to capable hands.

1.2 While any company, domestic or foreign, in private or public sector, can take part in a Strategic Disinvestment process, depending on the unique features of a case, and taking into consideration all relevant factors including monopoly issues, Government can always impose reasonable restrictions, in specific cases, in public & national interest.

1.3 In order to achieve this objective, it is important that the Government evolves a selection procedure in public interest that ensures that only those entities get selected as Strategic Partners, who are eligible as per extant regulations & possess technical and financial strength and a good reputation as regards integrity.

1.4 Though the bidders are selected through a competitive bidding process but for Government companies to pass into private hands, there are some critical areas which government has to ensure that the bidder is capable of complying with. These critical areas include: -

- Financial capabilities of the bidder
- Technical and Legal capacity of the bidder
- FDI restrictions

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

- Integrity of the bidder
- Security considerations

1.5 To address these considerations and to ensure greater transparency in the process of disinvestment, 'Guidelines on qualifications for Bidders' are being notified to enable the bidders to understand the requirements expected of them.

1.6 The qualification/eligibility criteria for the bidders arise at two stages of the bidding process:

- At the time of submission of Expression of Interest (EoI).
- At the time of submission of the financial bid which comes much later and at the end of the process.

2. Recommendation and objective of Strategic Disinvestment: The 'Eligibility Criteria' ought to be aligned with the broad objectives of Strategic Disinvestment & recommendations of NITI Aayog that are specific to the CPSE.

3. Incorporation Requirements

3.1 The GoI may seek bids from bidders being resident of India and from non-residents. Where the bidder is other than a Company or an incorporated entity, the shares of the CPSE shall be held through an incorporated investment vehicle (Special Purpose Vehicle) within stipulated time after being declared successful.

3.2 Employees are allowed to bid as per guidelines contained in OM No.4/38/2002/DD-II dated 25.04.2003, the requirement of 'Incorporation' will apply in their case also. Clarifications and information/documents required to be submitted by the interested buyers is at Annexure-V.

4. Financial Capacity

4.1 Since the bidder has to buy a block of shares typically involving a substantial financial outlay, it has to be ensured that companies which are financially sound and capable vis-à-vis the size and business of the CPSEs, being disinvested, are only allowed to bid.

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

4.2 In this regard, quantifiable parameters that measure financial strength of the prospective bidder and its potential for-

- (i) Consummating the transaction; and
- (ii) Expansion, growth and continuation of the business, including Capex requirements should be considered.

4.2.1 The 'Open Offer' requirement of SEBI and 'Put/Call' options add further to the requirement of financial strength/capacity. Therefore, while issuing an advertisement in the newspaper and website for inviting potential bidders to take part in the disinvestment process through submission of EOI (financial bids come much later at the end of the process), the quantifiable parameters that measure the financial strength of the bidding company should be specified. This gives a fair idea of the size and financial strength of the bidding company. Besides above, relevant financial and performance details may also be sought at the EoI stage. For example, while seeking EOI from bidders in MECON Ltd., the minimum annual turnover stipulation was Rs. 150 crore and net worth Rs. 50 crore, whereas in VSNL minimum net worth was specified as Rs. 2500 crore as VSNL was a much bigger company.

4.3 In case of consortium bids, Government may insist on each consortium member satisfying such criteria individually to be included as a member of the consortium. Example in the case of VSNL, each consortium member had to satisfy the minimum networth criteria of 10% i.e. Rs. 250 crore. In some cases, in addition to this or in lieu thereof, Government may require majority networth contribution from the lead bidder. In case of a Fund, the eligibility conditions will be finalized by the Administrative Ministry/Evaluation Committee in consultation with the Transaction Advisor on case to case basis.

4.4 At the stage of submission of the financial bids, the prospective bidders are required to furnish a bank guarantee in an envelope which is retained only in the case

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

of the highest bidder. This is meant to bind him to fulfill his commitments till the successful closure of the transaction.

4.5 Before accepting the Financial bid of any party, a certificate is required either from the banker or from Statutory Auditors that the bidder has got enough funds to complete the transaction. In addition, the bidder should give an undertaking that he has not been prohibited by any agreement(s) with others from acquiring the equity stake from Government.

4.6 These pre-requisites are also a deterrent to bidders who may be having unhealthy Balance Sheets. The bank guarantee is a further proof of their financial standing and reputation in the financial world.

5. Technical and Legal capacity

5.1 Every bidder must provide, along with the EOI, a representation, duly executed by its authorized official/ representative that it has the requisite corporate authorization to submit the EOI and that all information provided in the EOI is complete and accurate in all material respects to the best of their knowledge. If, at a subsequent date, it is found that the company or any consortium member did not either possess the requisite authorization or that any part of the information provided in the EOI was not complete or accurate in any material respect, the Government reserves the right to disqualify such company or consortium or member of the consortium from the process of disinvestment at any stage.

5.2 The bidder is required to submit enough information in the EOI for Government to assess the bidding entity's financial and technical capability. In certain cases, Government may even require the bidders to satisfy criteria of minimum experience in a particular business/sector.

6. Key Components of EoI

The EoI besides defining eligibility criteria, also contains basic information about the potential bidders, their experience and profile. The information ought to be such that it

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

facilitates ascertaining the antecedents of the potential bidders and when required. The relevant information may also be made available to appropriate regulatory agencies at appropriate stage for their verification.

Typically, the EOI would contain the following details:

1. Executive Summary

This- section provides a brief description of the potential bidders and (where appropriate) of each member in the consortium, containing details like ownership structure, the identity of the natural persons who are the beneficial owners and effectively control the potential bidder and each member of the consortium, the Effective Place of Management of business of the potential bidder and each member of the consortium, etc., It includes a brief commentary on the capability of the company / consortium, as demonstrated, inter alia, in its past track record, to run its own business, independently or as a member of the consortium

2. Background Information

a) The Potential Bidder

This Section seeks details of the potential bidder including full Name, Address, Telephone and Facsimile numbers, E-mail address of the potential bidder and of each member of the consortium and the names and the titles of the persons who are the principal points of contact for each member and identifies lead member of the consortium. Details of the website, if maintained by the potential bidder including different members, in case of a consortium, are also provided.

b) Basic Information

This Section seeks details of the Place of Incorporation, Registered Office, Current Directors, Key Management Personnel and principal shareholders of the company / companies (in case of consortium). It also contains a copy of its current Memorandum and Articles of Association and copies of audited accounts for the last three years of the company/ companies (in case of consortium). In case, some members of the consortium were incorporated less than 3 years ago (or the bid is being made through a SPV recently incorporated), then 3 year financial statement of leading member of the

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

consortium (or holding/largest shareholding in the SPV) may be obtained. In case there are unlisted company/companies members in the consortium, if audited financial statements are not available for the immediately preceding financial year, the latest available unaudited/provisional numbers may be obtained as certified by the statutory auditors. For listed companies, in case the audited financial statements are not available for the immediately preceding financial year, the information contained in Quarterly Limited Review report is to be given. However, if the company/ companies in the consortium submits unaudited financials at the time of submission of EoI, in such a scenario the audited financials, as and when it is prepared as per the statutory requirements & timelines of the relevant countries (where the potential bidder is incorporated) have to be provided.

3. Management Organization

This Section provides following information:

- a) An overview of the potential bidder's senior management and organisation structure and in the case of a consortium, that of each member;
- b) Effective Place of Management of business of the potential bidder and each member of the consortium.

4. International Operations/Joint Ventures/Alliances

This Section seeks brief write up of the potential bidder's international operations, its joint ventures & alliances, including incorporation details, registered, effective management and control or, in the case of a consortium, of its members, of their international operations, joint ventures / alliances (whether international or domestic), nature and size of such operations, equity ownership, if applicable, & copies of the audited financial statements of immediately preceding financial year of as per the definition of financial year in the jurisdiction, where potential bidder is incorporated.

5. Professional Advisors

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

The Section seeks names and addresses of those companies and professional firms, if any, who are (or will be) advising the applicant/consortium, together with the names of the principal individual advisors is those companies and firms.

Note: The information may be provided at subsequent/later stage at the option of potential bidder.

6. Legal Capacity of the Company / Accuracy of Information

Every company and each member of a consortium must provide with the EOI a representation, duly executed by its authorized official/ representative, that it has the requisite corporate authorization to submit the EOI and that all information provided in the EOI is complete and accurate in all material respects to the best of their knowledge. If, at a subsequent date, it is found that the company or any consortium member did not either possess requisite authorizations or that any part of the information provided in the EOI was not complete or accurate in any respect, the Government reserves the right to disqualify such company or consortium or member of the consortium from the process of disinvestment, under consideration at any stage.

7. Outstanding Litigation

Each company, and each member of a consortium, (including the beneficial owner, promoters, persons in control, thereof) must provide with the EOI a statement of those pending litigations that, if decided against the bidder/ consortium shall disqualify the bidder in terms of the prescribed eligibility criteria and extract Government instructions on disinvestment.

8. Foreign Direct Investment (FDI) Restrictions

In case of foreign bidders, the prospective buyer has to comply with the sectoral Foreign Direct Investment (FDI) caps determined by Government of India as revised from time to time. In some cases of disinvestment, the FDI restrictions on the bidder are more onerous than the sectoral restrictions. These could be typically those CPSEs, which are into businesses, which are sensitive to national security. The bidder is expected to undertake due diligence to ensure that it meets extant FDI norms/

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

regulations. The bidder shall be required to take appropriate approvals from relevant Government agencies before completing the disinvestment process.

9. Integrity of the bidder

The erstwhile Ministry of Disinvestment had laid down specific guidelines vide letter No.6/4/2001/DD-II dated 13th July 2001 for qualification of bidders, seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment. The guidelines have been modified as per **Annexure-VI** and shall be operational. The prospective bidders have to give an undertaking at the stage of submission of Expression of Interest (EOI) that they are eligible as per the criteria fixed by the said guidelines and the bidders also have to make disclosures regarding pending proceedings/investigations as per para (g) of these guidelines.

10. Security Considerations

10.1 As CPSEs, are wholly or substantially owned by the Government and are operated and managed by the Board of the company under the administrative control of the Ministry concerned, security consideration, if any, are taken care of at the time of strategic disinvestment. At the time of transfer of these companies to private players, the Government has to ensure that the security of the country is not compromised through sale of such companies.

10.2 The SOP (No.1/8/2016-FC-I dated 29.6.2017) for processing FDI proposal issued by Department of Industrial Policy & Promotion provides for the security clearance from Ministry of Home Affairs in respect of certain sectors/countries. In this context, the Government may require a separate security clearance for the bidder before short listing or before final selection or at any other stage of the disinvestment process and in any case before consummating the disinvestment. Having regard to the sector and specific nature of business of the company, the stage at which security clearance is required has to be decided by the Administrative Ministry/Department. In addition, to protect the national security interests, provisions may be made in the transaction documents to deter the purchaser from misuse of the company. Further, there may be covenants in the Agreements that may oblige the new management to provide

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

emergency services to the Government in times of need. If needed, restrictions in foreign shareholding may also be imposed. These restrictions and conditions will have an impact on the assessment of value by the bidder. Hence, due care should be taken in deciding these restrictions.

10.3 Further, the companies/promoters of bidder/group companies/any member of the consortium/promoter group members, that have been charge-sheeted or convicted on matters relating to “national security or integrity” under the provision of the Indian Penal Code or Official Secrets Act or other relevant legislation, are disqualified from the bidding process (see para (b) Annexure VI).

11. Confidentiality Undertaking

11.1 On being found suitable after submitting the EOI, the ‘Qualified Interested Parties’ are required to enter into a Confidentiality Undertaking with the Government in order to be allowed to participate in subsequent stages of the disinvestment process.

11.2 Typically, this undertaking requires that the ‘Qualified Interested Parties’ do not misuse this wealth of information. It is not uncommon for competitors to send a bogus team to discover the trade secrets of the other parties. The undertaking is made by the bidder in favour of President of India (acting through Joint Secretary of the Administrative Ministry), the CPSE and Advisors to treat all the information confidential and not to disclose to any person, the fact that he has been provided ‘Confidential Information’ or has inspected any confidential documents or had discussion/negotiation regarding the transaction.

11.3 ‘Confidential Information’ means all information, concerning the business, operations, prospects, finances, or other affairs of the company. It includes, but is not limited to, documents delivered in connection with a due diligence investigation, information concerning business activities, products, specifications, data, know-how, compositions, designs, sketches, photographs, graphs, drawings, research and development, marketing or distribution methods and processes, customer lists,

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

customer requirements, price lists, market studies, computer software and programs, database technologies, systems structures and architectures, historical financial projects and budgets, historical and projected sales, capital spending budgets and plans, current or prospective financing sources, the names and background of personnel, personnel training techniques and materials.

11.4 Confidentiality undertaking also provides that the bidder shall not deal with any officer, Director or employee of the Govt. or CPSE, regarding the business, operations, and prospects or financing of the company without Transaction Advisor's express written consent.

11.5 The confidentiality undertaking contains an indemnity clause, whereby the bidder agrees to indemnify the Advisor, the Govt. and the CPSE against any damages, loss, cost or liability arising out of any unauthorized use or disclosure by the bidder.

11.6 The undertaking stipulates that the 'Qualified Interested Party' (QIP) will use the Confidential Information only to assist the QIP in the evaluation of the Transaction and determine whether or not to proceed with the Transaction and that the QIP will not use the Confidential Information for any purpose other than the Transaction or in any other manner whatsoever and shall particularly ensure that the interests of the CPSE/Advisors/Government are not adversely affected in any manner whatsoever.

11.7 The undertaking stipulates that in case the QIP or any Consortium Member decides not to proceed with the Transaction or if the Advisors or the Government notifies the QIP or any Consortium Member that the Government does not wish the QIP or any such Consortium Member to consider the Transaction any further, the terms of the Undertaking shall survive on even subsequent to the date of receipt of notification of such decision by the relevant party.

11.8 The QIP agrees through the undertaking that after termination of access of the QIP by the Government, all documents or other materials furnished by such Company/Advisors/Government to the QIP, including those constituting Confidential

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

Information, together with all copies and summaries thereof in the possession or under the control of the QIP, will be destroyed.

11.9 The language of the Undertakings may vary depending on the case, based on legal advice.

12. Qualification of Companies/Consortium

12.1 The advertisement for the transaction indicates on broad qualifications of the prospective bidders. Based on the information submitted in EOIs, the Transaction Advisors will carry out an evaluation of the qualifications of the potential bidders / consortia and subsequently notify in writing those potential bidders/ consortium that qualify to participate in the next stage of the process.

12.2 Where a Consortium has submitted the EOI, it is generally expected that there shall not be any changes in the Members of the Consortium consequent to the submission of EOI. The change if any, prior to the due date of submission of the EOI is permissible by withdrawing the EoI and submitting a fresh EoI before the due date of submission of EoI. However, no change in composition of consortium will be permitted after last date of submission of EOI till short listing of Bidders.

12.3 If after short listing of Bidders, a Consortium bidder desires a change in the Consortium by inclusion/exclusion of members or if a non-Consortium bidder desires to form a Consortium by inducting new Member(s), it shall have to apply for such change to the Transaction Advisor. The TA in writing shall apprise the AM/AD about such change and the basis of qualifying/ disqualifying such a change, with due consideration to the identity being concealed. Only after approval by AM/AD/ TA shall qualify/ disqualify such a consortium subject to:

- (i) The change shall be permitted only once per Consortium.
- (ii) No change in lead member shall be allowed.
- (iii) Jumping from one consortium to another shall not be permitted.

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

12.3.1 The timeline up to which such modification/ withdrawal/ substitution shall be allowed, may be specified, since processing the change shall require time. However, such requests would be entertained only before the financial bids are received by Government.

12.4 Where the Bidder is a Consortium or a person other than an incorporated entity, the stake in the ordinary share capital of the company shall be acquired and held through an incorporated investment vehicle ("Special Purpose Vehicle") within the stipulated timeline after being declared success

13. Additional Information

Government reserves the right to seek any additional indemnities, warranties, representations or performance obligations from the bidders or any of their group companies to Government's sole satisfaction.

14. Reasons for Disqualification

14.1 Notwithstanding anything to the contrary contained in the Request for Proposal document and without prejudice to any of the rights or remedies of Government, the Government shall be entitled in its sole discretion to determine that a Bidder is to be disqualified at any stage of the process and its participation in the Strategic Sale process and/or its Technical Proposal and/or Financial Bid dropped from further consideration for any of the reasons including without limitation those listed below:

- (i) if a misrepresentation/false statement is made by the bidder/Member, at any stage in the Strategic Sale process, whether in the Technical Proposal, the Financial Bid, supporting documentation or otherwise and whether written or oral;
- (ii) if the Technical Proposal submitted by the bidder is in any respect inconsistent with, or demonstrates any failure to comply with, the provisions of the Request for Proposal ;
- (iii) if the Financial Bids submitted by the bidder is inconsistent with the requirements of the Request for Proposal in any respect, including not being accompanied by

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

- an Earnest Money Guarantee of the specified amount or the Financial Bid being conditional in any respect;
- (iv) failure to comply with any other requirement of this Request for Proposal;
 - (v) In the interest of national integrity, security or otherwise, as may be determined by the Government,
 - (vi) Government is not satisfied with sources of funds/ownership structure of the bidder.
 - (vii) failure to comply with the reasonable requests of Government in relation to the Strategic Sale process.
 - (viii) Breach of Confidentiality Undertaking executed by the bidder.
 - (ix) if it is discovered at any time that a bidder is subject matter of winding up/insolvency or other proceedings of a similar nature;
 - (x) any information regarding the bidder which becomes known to Government/Company/Advisor and which is detrimental to Strategic Sale process and/or the interests of the Company.
 - (xi) initiation or existence of any legal proceedings, by or against the bidder in respect of Company, which proceeding may be prejudiced by the participation of the bidder in the selection process or the transaction, e.g. inspection by a bidder of case files of the Company of matters filed against that bidder; and
 - (xii) the bidder, or if the bidder is a Consortium then any member of such Consortium, not being qualified to participate in the process pursuant to the Government of India office memorandum No. 6/4/2001-DDII dated July 13, 2001 as amended from time to time.

14.2 If the default, as above, becomes known after the bidder has been qualified or at any stage of the Strategic Sale process, and which would have entitled Government to reject or disqualify the relevant bidder/Consortium, Government reserves the right to reject or disqualify the relevant bidder/Consortium at the time, or at any time, such information becomes known to Government. Where such bidder is a Consortium, Government may disqualify the entire consortium, even if the

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

Disqualification applies to only one member of the Consortium.

14.3. The Government determination that one or more of the events specified under paragraph 14.1 have occurred shall be final and conclusive.

15. Continuing Requirements

15.1 The Bidders shall not only meet with the eligibility criteria at the time of submission of the EoI but shall continue to be eligible throughout the process until the completion of the transaction process. Bidder shall have the obligation to immediately notify the Transaction Advisor on its becoming ineligible any time during the process. In the event of any bidder or member of the consortium getting disqualified or not meeting the eligibility criteria, such bidder shall not be permitted to continue with the bidding.

16. Formats for submitting EOIs by interested parties

16.1 The formats for submitting Expression of Interest, statement of Legal Capacity and Request for Qualification (RFQ) are enclosed as **Annexure II, III, and IV**.

**Government of India
Ministry of Finance
Department of Investment & Public Asset Management**

Annexure-II

EXPRESSION OF INTEREST

(To be forwarded on the letterhead of the interested party/lead bidder/member of the consortium submitting the EOI)

Reference No. _____

Date _____

To,

ADVISOR NAME

**Sub: GLOBAL INVITATION OF EXPRESSIONS OF INTEREST
FOR DISINVESTMENT OF _____ % STAKE IN (CO. NAME)**

Sir,

This is with reference to the advertisement dated _____ inviting Expression of Interest for (CO. NAME)

As specified in the advertisement, we have read and understood the contents of the Preliminary Information Memorandum (PIM) and are desirous of participating in the above disinvestment process, and for this purpose.

We propose to submit our EOI in individual capacity as _____ (insert name of party)

OR

We have formed/propose to form a consortium comprising of _____ members as follows:

1. _____ (Insert name)
2. _____ (Insert name)
3. _____ (Insert name)

We understand that _____% equity stake of (CO. NAME) is proposed to be divested and we are interested in bidding for the same. We believe that we/our consortium/proposed consortium satisfies the eligibility criteria set out in relevant sections of the PIM including the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the Government of India vide **DIPAM OM No.-----dated**. We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to manage the public sector unit

Government of India
Ministry of Finance
Department of Investment & Public Asset Management

when it is disinvested or which relates to a grave offence that outrages the moral sense of the community.

We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our sister concerns.

We further certify that no investigation by a regulatory authority is pending either against us or against our sister concerns or against our CEO or any of our Directors/Managers/ employees.

We undertake that in case due to any change in facts or circumstances during the pendency of the disinvestment process, we are attracted by the provisions of disqualification in terms of the subject guidelines, we would intimate the GOI of the same immediately.

The Statement of Legal Capacity and Request for Qualification as per formats indicated hereinafter, duly signed by us/respective members, who jointly satisfy the eligibility criteria, are enclosed.

We shall be glad to receive further communication on the subject.

Yours faithfully,

Authorised Signatory For and on behalf of the party/consortium

Enclosure:

- 1. Statement of Legal Capacity*
- 2. Request for Qualification*

**Government of India
Ministry of Finance
Department of Investment & Public Asset Management**

Annexure-III

Statement of Legal Capacity

(To be forwarded on the letterhead of the interested party / each member of the consortium submitting the EOI).

Reference No. _____

Date _____

To,

Senior Vice President & Head Regional Office
ADVISOR NAME

**Sub: GLOBAL INVITATION OF EXPRESSIONS OF INTEREST FOR
DISINVESTMENT OF_% STAKE IN(CO. NAME)**

Sir,

This is with reference to the advertisement dated _____ inviting Expression of Interest for (CO. NAME) We have read and understood the contents of the PIM and the advertisement and pursuant to this hereby confirm that:

We satisfy the eligibility criteria laid out in the PIM and the advertisement.

We are a member of the consortium (constitution of which has been described in the Expression of Interest), which jointly satisfies the eligibility criteria as detailed in the PIM.*

We have agreed that _____(insert member's name) will act as the lead member of our consortium.*

We have agreed that _____(insert individual's name) will act as our representative on our behalf and has been duly authorized to submit the EOI. Further, the authorized signatory is vested with requisite powers to furnish such letter and Request for Qualification and authenticate the same.*

We have agreed that (insert the name of the individual) chosen as representative of our consortium and on our behalf and has been duly authorized to submit the EOI. Further, the authorized signatory is vested with requisite powers to furnish such letter and Request for Qualification and authenticate the same.*

Yours faithfully,

Authorized Signatory For and on behalf
of (party/member)

*Strike off whichever clause is not applicable

**Government of India
Ministry of Finance
Department of Investment and Public Asset Management**

Annexure- IV

Request For Qualification

(To be submitted in respect of interested party/each member of the consortium)

Name of the Interested Party(ies)/Member(s)_____

1. Constitution (Tick, wherever applicable)

i) Public Limited Company

ii) Private Limited Company

iii) Others, if any (Please specify)

If the interested party is a foreign company/OCB, specify list of statutory approvals from GoI/RFI/FIPB applied for/obtained/awaiting:

2. Sector (Tick, wherever applicable)

i) Public Sector

ii) Joint Sector

iii) Others, If any (Please specify)

3. Details of Shareholding

4. Role/Interest of each Member in the Consortium (if applicable)

5. Nature of business/products dealt with

6. Date & Place of incorporation

7. Date of commencement of business

8. Full address including phone No/fax No

i) Registered Office

ii) Head Office

9. Address for correspondence

10. Salient features of financial performance for the last years

11. Basis of eligibility for participation in the process (Please mention details of your eligibility) as under:

Government of India
Ministry of Finance
Department of Investment and Public Asset Management

Please attach most recent Audited Statement of Accounts/Annual Report. Additionally, please provide a chartered account/auditor certificate certifying the Turnover and New Worth as defined in the Eligibility criteria.

12. Please provide details of all contingent liabilities that, if materialized, that have or would reasonably be expected to have a material adverse affect on the business, operations (or results of operations), assets, liabilities and/or financial condition of the Company, or other similar business combination or transaction.

13. Contact Person(s)

- i) Name
- ii) Designation
- iii) Phone No
- iv) Mobile No
- v) Fax No
- vi) Email

Yours faithfully,

Authorised Signatory
For and on behalf of the consortium

Authorised Signatory for and on behalf of the (party/member)

Place:

Date:

Note: *Please follow the order adopted in the Format provided. If the interested party is unable to respond to a particular question/ request, the relevant number must be nonetheless be set out with the words "No response given" against it.*

PARAGRAPH IN RELATION TO EMPLOYEE PARTICIPATION

As per the Circular No. 4/38/2002/DD-II dated April 25, 2003 ("**Employee Guidelines**") which is annexed as Annexure [●], employees of [*insert name of Company*] ("**Employees**") are permitted to participate in the Transaction as Interested Bidders either (a) directly and independently ("**Direct Employee Participation**") or (b) by forming of a consortium ("**Employee Consortium**") and subject to the following:

1. Employees participating either through Direct Employee Participation or by forming an Employee Consortium shall necessarily comply with each of the applicable conditions and provisions of the Employee Guidelines.
2. Employees participating either through Direct Employee Participation or by forming an Employee Consortium shall be subject to the same terms and conditions, process, instructions, criteria's, disqualifications, etc. which are applicable to other Interested Bidders in this PIM/EOI and shall ensure compliance of the same. In case of any conflict between the terms and conditions, process, instructions, criteria's, disqualifications, etc and the Employee Guidelines, the Employee Guidelines shall apply.
3. Employees participating either through Direct Employee Participation or by forming an Employee Consortium shall be required to provide such additional documents, confirmation, undertakings and information as the TA may require so as to evaluate the EOI (including eligibility criteria) submitted by such Employees or Employee Consortium.
4. The GOI and TA may provide for such further clarifications, conditions, criteria's as it may deem necessary for the purposes of Employees to participate.
5. Subject to paragraph 7, the forms and format to be submitted by the Employees, in case in of Direct Employee Participation shall be the same as that of a sole/individual bidder mentioned in this document.
6. Subject to paragraph 7, the forms and format to be submitted by the Employees and consortium members of Employee Consortium, in case of employees participating through an Employee Consortium, shall be the same as that of a consortium bidder.
7. In the forms and format, the details of the interested bidder shall be provided in the following format :

Government of India
Ministry of Finance
Department of Investment and Public Asset Management

S. No.	Name of the Employee	Designation	Employee Code, if any	Residential Address	Identity proof (Adhaar No/ Passport No)	PAN and TAN

8. Each form and EoI submitted by Employees (whether as Direct Employee Participation or Employee Consortium) shall be accompanied by a duly executed Power of Attorney where a Employees forming part of such participation shall appoint one participating Employee to be their lawful attorney for submission of EOI and connected documents and be the lawful attorney of the other participating Employee. The format of the Power of Attorney is annexed as Annexure [●].

**Government of India
Ministry of Finance
Department of Investment and Public Asset Management**

[TO BE STAMPED ON Rs. 1000 STAMP PAPER AND NOTARIZED]

Special Power of Attorney

To all to whom these presents shall come, I son/daughter/wife of and presently residing at being an presently employed with [●], having employee code [●] do hereby exclusively, unconditionally and irrevocably constitute, nominate, appoint and authorize Mr./Ms. (name),.....son/daughter/wife of and presently residing at - _____, who is presently employed with [●]

NOW KNOW YE MEN ALL AND THESE PRESENTS WITNESSETH I, [●], do hereby irrevocably nominate, constitute and appoint ----- as my true and lawful attorney (hereinafter referred to as the "Attorney") to do in my name and on my behalf, to do, execute, and perform all such acts, agreements, deeds, matters and things as are necessary or required in connection with or incidental to submission of our application for qualification for the proposed Strategic Disinvestment of shares held by the Government of India in [●] including but not limited to signing and submission of all applications, participate in conferences, if any and providing information/ responses to GoI/Advisor and generally dealing with GoI/Advisor/Company in all matters in connection with or relating to or arising out of our application for qualification for the Transaction (as defined in the Preliminary Information Memorandum dated [●] issued by the Transaction Advisor.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by the Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by the Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us concerning or touching these presents as fully and effectually as if we were present and had done, performed or executed the same itself.

All the terms used herein but defined shall have the meaning ascribed to such terms in the EoI.

IN WITNESS WHEREOF WE, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF

.....
(Signature, name, designation and address)

Government of India
Ministry of Finance
Department of Investment and Public Asset Management

In the presence of:

- 1.
- 2.

Accepted

Name, Title and Address of the Attorney)

(To be duly notarized)

Notes: The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure. The power of attorney shall be appropriately stamped and notarized.

§ Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder. § For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostle certificate.

Government of India
Ministry of Finance
Department of Investment and Public Asset Management

Annexure-VI

No. 3/9/2016-DoD-II-B
Government of India
Department of Investment & Public Asset Management

Block 14, CGO Complex
New Delhi.

dated 28th September, 2017

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification / disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment / adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. 'Grave Offence' is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case-to-case basis after considering the facts of the case and relevant legal principles, by the Government. 'Grave Offence' would include the below noted cases:

Government of India
Ministry of Finance
Department of Investment and Public Asset Management

- a) Only those orders of SEBI are to be treated as coming under the category of 'Grave Offences' which directly relate to 'Fraud' as defined in the SEBI Act and / or regulations.
 - b) Only those orders of SEBI that cast a doubt on the ability of the bidder to manage the public-sector unit, when it is disinvested, are to be treated as adverse.
 - c) Any conviction by Court of Law.
 - d) In cases in which SEBI also passes a prosecution order, disqualification of the bidder should arise only on conviction by the Court of Law.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government / conviction by a Court of Law for an offence committed by the bidding party or its Associate Company as defined in Companies Act, 2013 would result in disqualification. The decision in regard to the relationship interse between the concerns, would be taken based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any bidder, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order, based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.

Government of India
Ministry of Finance
Department of Investment and Public Asset Management

- (f) Before disqualifying a bidder, a Show Cause Notice as to why it should not be disqualified, would be issued to it and it would be given an opportunity to explain its position.
- (g) These criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority, which if decided against the bidder, may disqualify the bidder in terms of (a) & (b) above or the eligibility criteria prescribed in the EoI, is pending against them. In case any investigation is pending in case which if decided against the bidder, may disqualify the bidder in terms of (a) & (b) above on the eligibility criteria prescribed in EoI against the bidder or the concern in which the bidder has substantial interest or against its CEO or any of its Directors/Managers, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be filed along with EOI.

(SD/-)

(Aseem Kumar Jha)
Under Secretary to the Government of India