

F.No.3/24/2017-DIPAM-II B (Pt II)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF INVESTMENT & PUBLIC ASSET MANAGEMENT

Dated 14th September, 2017

ENGAGEMENT OF LEGAL ADVISERS FOR STRATEGIC DISINVESTMENT OF AIR INDIA LIMITED AND ITS SUBSIDIARIES/JOINT VENTURE

1. Introduction:

1.1 Air India (AI) and its subsidiaries are Central Public Sector Enterprises (CPSEs) under the administrative control of the Ministry of Civil Aviation.

1.2 AI is a wholly owned Government of India Company engaged in the activity of Air Transport Operations and allied activities operating both domestically and internationally.

1.3 In the year 2007, the Government of India established National Aviation Company India Limited (NACIL) to facilitate the merger of two state owned airlines in India, viz. Air India and Indian Airlines. After completion of the legal merger in August 2007 (appointed date of merger-April 01, 2007), NACIL was renamed as Air India Limited in November, 2010.

1.4 The airline has five subsidiaries and a joint venture (JV) company as under:

- Air India Express Limited (AIEL) – the low cost subsidiary which operates to various stations in the Gulf, Middle East, South East Asia from various points in India but predominantly from the Kerala.
- Air India Air Transport Service Limited (AIATSL) - the Ground handling subsidiary of Air India which was hived off from the main airline and operationalised in 2014 under a Cabinet Approval
- Air India Engineering Services Limited (AIESL) - the MRO subsidiary of Air India which is primarily involved in the maintenance, repair and overhaul of engines and airframe. This was also operationalised in Jan 2015 under a Cabinet approval
- Airline Allied Service Ltd (AASL) – Provides Regional connectivity and operates to NE region and to Tier II and Tier III cities sometimes under a Viability Gap Funding program
- Hotel Corporation of India (HCI) - which has two Hotels viz., in Delhi and Srinagar and Chefair Flight kitchen units in Mumbai and Delhi
- JV with AI/Singapore Air Transport Services (SATS) for ground handling activities at Delhi, Mumbai, Bengaluru, Trivandrum and Mangalore. Equity is held in the ratio of 50:50

1.5 AI its subsidiaries, Joint venture, Special Purpose Vehicle (SPV) or any entity created during the process of strategic disinvestment, herein are referred to as "AI group"

1.6 AI group operates to 42 international destinations and over 70 domestic stations. It has an operating fleet of 142 aircraft comprising 65 A-320 aircraft, 15 B777 aircraft, 24 787 aircraft, 23 737-800 and 11 ATRs and 4 B747 aircraft.

1.7 The Headquarters of AI is located at 113, Gurudwara Rakabganj Road, Parliament Street, New Delhi and a Corporate Office in Air India Building, Nariman Point, Mumbai. The subsidiaries, viz. AIESL and AIATSL also have their Headquarters in the same building at New Delhi. AASL has its Headquarters in Alliance Bhawan, New Delhi near the Airport and HCI has its headquarters at Centaur Hotel, New Delhi. AIEL has its headquarters in Cochin.

1.8 AI is 100% owned by the Government of India. Its share capital as on 31st March, 2017 is Rs. 24,425 crore and its authorized capital is Rs. 30,000 crore. Except for Hotel Corporation of India, all the other subsidiaries are wholly owned subsidiaries of Air India.

19 The shares of AI group are not listed and these are unlisted companies.

2. **Proposal:**

2.1 The Government of India (GoI) has 'in-principle' decided to consider the disinvestment of the AI group as a whole or its constituents fully or part thereof through strategic sale with transfer of management control. The Government of India (GoI) requires the services of reputed Law Firms with experience and expertise in Mergers & Acquisitions/takeovers/strategic disinvestment to act as Legal Adviser and assist Government in the process.

2.2 The eligible domestic Law Firm, as per eligibility conditions prescribed in 'Eligibility Criteria' may submit proposals as per the guidelines mentioned hereunder for selection of the Law Firm(s).

3. **Scope of Work**

- (i) Review and advise on all legal contracts, titles of property assets/real estate, intellectual property rights, bilateral rights, slots, leases, intangible assets, loan agreements, and contracts with employees, etc.;
- (ii) Review of Preliminary Information Memorandum (PIM) and Confidential Information Memorandum (CIM) specifically with respect to disclosures relating to titles, land and property, intellectual property rights, litigations

and any other disclosures in the information memoranda which may needed to be vetted legally;

- (iii) Review of RFP document(s);
- (iv) Drafting of transaction related documents including:
 - Confidentiality Agreement(s)/share purchase agreement(s)/shareholders agreement(s)/ Non-compete Agreement(s), etc.
 - Any other ancillary agreement(s) as may be required to assist in the closure of the transaction(s);
- (v) Advise and assist in arrangements for the due-diligence exercise and data room (e-data and/or physical) preparation;
- (vi) Advise on the structure of the transaction(s) including, as may be required, compliance with SEBI guidelines, Stock Exchange Listing guidelines, Companies Act, Income Tax Act and any other relevant laws;
- (vii) Review of necessary corporate resolutions including, if required, for formation of subsidiaries/transfer of business to subsidiary(ies) or a shell company(ies), etc.
- (viii) Assistance as may be required, in negotiations with the potential Strategic Partner(s), including advising in legal matters during and on the disinvestment process;
- (ix) Assistance in drafting and implementation of an ESOP or any other scheme for employees that is compliant with the laws;
- (x) Facilitate closure of the transaction;
- (xi) Assist in any issues that may arise in connection with the transaction;
- (xii) Law Firm would have to work in close coordination with the Transaction Advisor(s) and other intermediaries appointed for the transaction by DIPAM/AM/AD/AI Group.

The Scope of Work mentioned above are indicative and non-restrictive in nature. There may be some services relevant but not expressly captured in the aforesaid Scope of Work, which upon being brought to the notice of the Legal Advisor by GoI will also form an integral and mandatory part of the Scope of Work.

4. **Eligibility Criteria:**

4.1 The domestic law firm should be a reputed professional firm having experience of at least 5 years for providing similar advisory services for disinvestment, strategic sale, M&A activities, private equity transaction, etc.

4.2 Bidders should have advised, handled and successfully completed at least one transaction of merger/acquisition/takeover/strategic disinvestment/private equity transaction of similar nature of the size of Rs. 4,000 crore or more between the period 1.4.2012 to 30.6.2017

5. **PRE-BID MEETING**

The interested parties are required to send in their queries by email before pre-bid meeting to the officer authorized to receive the bid as given in Para 7 below. A pre bid meeting will be held on 25.9.2017 at 1700 hrs in the Conference Hall of Department of Investment and Public Asset Management (DIPAM) Room number 515, Block 14, CGO Complex, New Delhi. Interested parties may attend the pre-bid meeting, if they so desire.

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

6.1 Interested Law Firm may submit their Proposal in the following format.

6.1.1 **Merger/Acquisition/Takeover/Strategic disinvestment/Private Equity Experience:** (Weightage for evaluation 25/100)

- (i) Profile of the organization
- (ii) Capability, capacity and previous experience of the Firm and expertise in handling such assignments
- (iii) Demonstrate ability to work with Government and in coordination with Transaction Advisors and other intermediaries as a part of team

6.1.2 Infrastructure & Manpower: (Weightage for evaluation 25/100)

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

6.1.3 Understanding of the Regulatory framework: (Weightage for evaluation 15/100)

- (i) Demonstrate understanding of the legal, policy & regulatory issues in Mergers & Acquisitions/takeovers/strategic disinvestment/Private Equity transaction, i.e. SEBI, Companies Act, FDI etc.
- (ii) Indicate the expertise in handling the regulatory requirements and securing the required approvals from the concerned authorities.
- (iii) Demonstrate understanding of the legal, policy & regulatory issues in aviation including Aircraft Act, Aircraft Rules, aircraft leasing agreements, etc.

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

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

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

- (i) Indicate intended approach to the proposed transactions including the sequencing of the activities involved in the transaction.
- (ii) Demonstrate capability of preparing quality document to be filed with Stock Exchanges and other regulatory authorities or the agreements that are required to be entered into in the course of the transaction.

7. **Submission of Proposal**

7.1 The proposals are required to be submitted in two envelopes as per the following:

(i) **Envelope 1** (Containing):

- (i) The bank draft/pay order/digital payment (to be credited directly to Govt. Account No. 34663044146, IFS code:SBIN0000625, SBI, Central Sectt. Branch, New Delhi by using Inter Bank RTGS Code R-42) of Rs. one lakh payable at New Delhi in favour of Pay & Accounts Officer, DIPAM, as non-refundable fee. In case of digital payment a proof of the same may be attached
- (ii) the technical bid as per format in paragraph 6;
- (iii) Authority letter relating the authorized signatory;
- (iii) Furnish an Affidavit-cum-Undertaking as per **Annexure-1** relating to 'no conviction' and 'no conflict', duly signed by the authorized signatory;
- (iv) Confidentiality Undertaking in the Format at **Annexure-II**;
- (v) Certificate on unconditional bid in the format at **Annexure-III**. Please note that bids with conditionality shall be summarily rejected;
- (vi) Certificate that in case of selection and appointment, a Performance guarantee of Rs. 20 lakh would be given in the form of bank guarantee, valid till the completion of the assignment.

(ii) **Envelope 2 (Sealed)**: The Financial Bid in the format as per **Annexure-IV**.

7.2 The proposal (both envelopes) can be submitted latest by 1530 **hrs. on 12.10.2017** to M M Dawla, Under Secretary, DIPAM, Room No. 209, Second Floor, Block No. 14, CGO Complex, Lodhi Road, New Delhi- 110003, in hard copies in original, duly signed by the authorized officer of the Legal Advisor. No proposal will be entertained after the appointed time and date. The Government will not be responsible for any postal/ courier delay. The proposals received after the appointed time and date will be rejected.

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

7.4 Financial Bid, to be opened only after the presentations of only those parties who qualify in the technical evaluation. Please note that bids with any conditionality shall be summarily rejected

8. **Procedure for selection:**

8.1 Qualified interested Law Firms (applicants) will be required to make a presentation in respect of their Proposal before Inter Ministerial Group (IMG).

8.2 The schedule of presentation will be posted on the website of DIPAM (www.divest.nic.in) in due course.

8.3 The IMG would evaluate the Bidders on the criteria mentioned in paragraph 6 of RFP based on their presentation and Proposals received and shortlist them for the purpose of opening of their Financial Bids. Only the parties scoring pre-determined marks/score out of 100, which will be announced before presentation, will be technically short-listed.

8.4 After the short-listing of Bidders based on their presentations, the IMG would open the Financial Bids of only the short-listed Bidders. The short-listed bidders, if so desire, may remain present at the time of opening of the financial bids. The marks scored by the short-listed bidders will be announced before opening of the financial bids. The date and time of opening of the financial bids would be announced at the time of the presentations.

8.5 The marks scored by the short-listed bidders in the technical evaluation will be given a weightage of 80. Similarly, the financial bids of the short listed bidders will be given a weightage of 20. The combined score based on Quality-cum-Cost-Based System (QCCBS) of technical and financial bids will determine the H1, H2, H3 and so on.

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

8.7 In case of a tie in the H1, H2, H3 positions, the bidder who has a higher technical score, will be selected.

9. **Requirements for Financial Bids**

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

d. The fee quoted should be unconditional and inclusive of all expenditure. It may be noted that the Law Firm cannot prescribe any time limit for validity of the financial bid.

e. The Bidder will be liable to pay taxes applicable as per law.

10. **Drop Dead Fee**

A drop-dead fee of Rs.20,00,000 (Rupees twenty lakh only) would be payable to the appointed Legal Advisor in case the transaction is called off. The payment of the drop-dead fee would be made as under:

- i) 10% if the transaction is called off before issue of RFP for inviting EOIs from the prospective buyers.
- ii) 50% if the transaction is called off after the data room has been set up and the due diligence by the prospective buyers completed.
- iii) 100% if the transaction is called off after the documents based on which the financial bids are to be invited have been frozen by the Government.

11 **Terms of Payment:**

The fee to the selected Bidder shall be paid in Indian Rupees after successful completion of the aforesaid transaction.

12. For any further clarification, please contact Shri M M Dawla, Under Secretary, DIPAM, Room No. 209, CGO Complex, Block No.14, 2nd Floor, New Delhi-110 003. (Tel.011-24368039, Fax: 011-24368502, E-Mail: mm.dawla@nic.in

AFFIDAVIT CUM UNDERTAKING

(To be executed in a non judicial stamp paper of Rs 500)

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

- (1) Details of the Bidder as disclosed in **Appendix-A** enclosed herewith are true and correct as on date.
- (2) There has been no conviction by any court of law or indictment/adverse order by any statutory or regulatory authority for a Grave Offence against us or any of our Indian Sister Concern(s) or any of our promoters or directors or that of our Indian Sister Concern(s) during the last ten years.
- (3) No enquiry/investigations for any Grave Offence is pending against us or any of our Indian Sister Concern(s) or any of our or our Indian Sister Concern's directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or government agency.
- (4) The details of enquiry/investigations for non-Grave Offenses pending against us/our Indian Sister Concern(s)/ our or our Indian Sister Concern's directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or government agency are disclosed in **Appendix-B** enclosed herewith.
- (5) There are no Conflict of Interest with respect to the Proposed Transaction as on date.
- (6) During the tenure of our engagement for the Proposed Transaction, we shall keep the Government/Company informed, without delay, of any situations, circumstances, relationships, possible source or potential areas of Conflict of Interest in the format enclosed as **Appendix-C** herewith and we shall not take up work in relation to any such assignment without obtaining prior approval of the Government/Company and granting of such approval shall be the sole discretion of Government/Company and shall be binding on us.
- (7) We ourselves and/or for/with or in association with or on behalf of or through any other Entity, shall not take up any advisory or consulting assignment or render any services on a similar transaction or any other transaction which could have a direct Conflict of Interest, in any manner or capacity to a Competitor of the Company during the term of our engagement in respect of the Proposed Transaction without prior written approval of the Government/Company and granting of such approval shall be the sole discretion of Government/Company and shall be binding on us.

- (8) We have put in place a robust mechanism to resolve any Conflict of Interest situations and circumstances that may arise or result while conducting our business or rendering of services and where-so-ever any Conflict of Interest or potential for Conflict of Interest may arise, we shall take reasonable steps to resolve the same forthwith in a fair and equitable manner. During the term of our engagement we shall ensure to and continue to exercise adequate due diligence for identifying and removing any areas, source, situations and circumstances of conflict and mitigating the effects of such conflicts to the satisfaction of the Government/Company, in case any such Conflict of interest (or apparent conflict of interest) arises or results in relation to the Proposed Transaction.
- (9) We have laid down an internal code of conduct for governing our internal procedures and operations and have prescribed the standards of appropriate conduct for our employees and officers for carrying out their duties and responsibilities with a view to appropriately ensuring proper maintenance of professional excellence and standards with integrity, confidentiality, objectivity and have made provisions for identification, avoidance and resolution of conflict of interests and for disclosure of shareholdings and interests, etc., in terms of applicable laws.
- (10) We understand that:
- (i) in cases where existing Conflict of Interest (or apparent conflict of interest) is disclosed by us, the Government/Company would be entitled to initiate appropriate actions to eliminate or address or mitigate or neutralize the conflict through or by restricting or modifying the work to be performed by us in respect of the Proposed Transaction. Government may also terminate our engagement for the Proposed Transaction, in whole or in part, if such termination is absolutely necessary in view of the Government/Company to avoid the appearance of a Conflict of Interest.
 - (ii) The Government would be entitled to terminate our appointment if any of the affirmation/declaration/undertaking given by us is found to be false or misleading in any manner or not adhered or fulfilled or complied by us.
 - (iii) if at any time after our appointment as an Advisor, either we or any of our Indian Sister Concern(s) or the respective promoters/directors is convicted by a court of law in India or any indictment/adverse order is passed by a regulatory authority in India for a Grave Offence, we shall stand disqualified from continuing as Advisor to the Government/Company and shall be bound to inform them without any delay and shall voluntarily withdraw from the Proposed Transaction failing which the Government/Company may terminate our appointment after giving an opportunity of being heard.

Definitions

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

1. **Advisor** means the Bidder and includes bidder(s) who have been selected for the Proposed Transaction by the Government of India/Company in terms of the Bid.
2. **Conflict of Interest:** Conflict of interest in relation to the Proposed Transaction shall without limitation is deemed to exist or have arisen if:
 - (i) The Advisor whether itself and/or for/with or in association with/or on behalf of or through any other Entity is engaged in any activity or business which would or may be reasonably expected to directly or indirectly, materially adversely affect the interest of the Government/Company or any such activity/association would or may impair his ability to render fair, impartial, technically sound and objective assistance or advice, or unbiased services or may result in it giving an unfair competitive advantage to any other person.
 - (ii) The Advisor whether itself and/or for/with or in association with/or on behalf of or through any other Entity is engaged in advising and/or have taken up engagement for advising/consulting any other Entity whether under a formal engagement or otherwise in relation to any transaction/matter ("**Third Party Transaction**") which would or may be reasonably expected to directly or indirectly, materially adversely affect the interest of the Government/Company.
 - (iii) The Advisor has any business or financial interests in any other Entity that would impair, or give the appearance of impairing, impartial decisions in relation to Proposed Transaction, in offering any advice recommendations or in providing technical assistance or other services to the Government/Company as part of Advisor's engagement obligations/duties.
 - (iv) In relation to a strategic sale by the Government of India/Company, the Advisors has taken up engagement with buyer/potential buyer of such current strategic sale or their Sister Concerns.
 - (v) Any other situation, possible source or potential areas of interests which may impair Advisor's ability to render fair, impartial, technically sound, and objective assistance or advice, or unbiased services on in conflict of their professional duties towards Government/Company in respect of the Proposed Transaction or result in it being given an unfair competitive advantage to any other person.
3. **Company** means Air India and its Subsidiaries/Joint venture, Special Purpose Vehicle (SPV) or any other entity created during the process of strategic disinvestment,

4. **Competitor** of the Company means an Entity that is engaged in the business substantially similar to the business of the Company. Business of an Entity shall be deemed to be substantially similar to the business of the Company if turnover or profit of such Entity from the business activity(ies) in which the Company is engaged, exceeds 33% of the its total turnover or profit (in any of the last three years).
5. **Consortium of Bidders** means a group of bidders bidding together. In case of consortium, the lead member of the consortium needs to be specified. The responsibility and liability of successful discharge of the obligations will be jointly and severally applicable on all members.
6. **Entity** shall mean and include an individual, proprietorship, HUF, an association of person/body of Individuals, a partnership firm, limited liability partnership, company or any other persons.
7. **Grave Offence** means offences of such nature that it materially affects the reputation, business or operations adversely oroutrages the moral sense of the community and such other offences which may be considered by the Government/Company as grave on case to case basis after considering the facts and relevant legal principles.
8. **Proposed Transaction** means the transaction to be undertaken by the Government/Company as described in bid no [●], issued by the Government.
9. **Senior Managerial Personnel** means managing director, company secretary, chief executive officer, chief financial officer or persons having equivalent positions and all such other employees of the Entity who are members of its core management team and comprising all members of management one level below the executive directors and include the functional heads but excluding Board of Directors.
10. **Sister Concern** in relation to the Advisor, means any Entity in which the Advisor has a significant influence or which has "significant influence" over the Advisor and includes a group and a joint venture company. Significant influence" means holding of at least twenty percent or more of total voting rights or the power to participate in and influence the management, financial or operating policy decisions of that Entity, or of business decisions under an agreement or has twenty percent profit sharing in such Entity.

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

Appendix-A
BIDDER DETAILS

Name of the Bidder:	
Addresses of Bidder: Registered Office: Corporate Office: Tel/Email:	
Constitution of the Bidder	Company/Partnership/LLP/Others (If selected others, please provide the nature of constitution)
SEBI registration no, if registered with SEBI	
Details of registration with other professional statutory bodies	

Appendix-B

DETAILS OF PENDING ENQUIRY/INVESTIGATIONS

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

Appendix-C

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

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

Confidentiality Undertaking

It is certified that the documents/data/information pertaining to Air India Limited and its subsidiaries/joint venture, which will be provided to [Name of the bidder] for counsel or otherwise related to it shall be treated as strictly confidential and will not be disclosed or handed over by [Name of the bidder] to any outside agency/person without prior written permission of the Company.

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

Seal with Signature of the authorized signatory of the bidder

FORMAT OF UNCONDITIONAL BID ON THE LETTERHEAD OF THE BIDDER

To,

Dear Sir,

This is to certify that the fee quoted by us for engagement as Legal Advisor for valuation of the assets of Air India Limited and its subsidiaries/joint venture is in accordance with the terms and conditions laid down in the RFP displayed on the website of the DIPAM, Ministry of Finance, Government of India and is unconditional.

Seal with signatures of authorized signatory of the Bidder

Format of Price Bid on the Letterhead of the Bidder

Sl. No.	Description of work	Fee (all inclusive) in INR in Figures To be entered by the Bidder
		Figures
1.00	Fixed Lump-Sum Fee in Indian Rupees inclusive of all applicable taxes. All other expenses will be borne by ----- -[name of the bidder]	
		In words (Rupees only)

Note: In case of mismatch in number and the figures quoted; the figures will be taken as correct for all purposes.

Seal with signatures of authorized signatory of the Bidder