

# Guidelines for Qualification of Bidders

## PREFACE

Qualification for Bidders for strategic sale is an important aspect of privatisation. The broad guidelines for qualification of bidders had been spelt out in the Manual: **DISINVESTMENT POLICY & PROCEDURES** published by the Ministry of Disinvestment in 2001. In its 30<sup>th</sup> Report presented to the Lok Sabha/ Rajya Sabha on 23.4.2002, the Standing Committee on Finance (13<sup>th</sup> Lok Sabha), inter alia, recommended that more comprehensive guidelines be framed regarding qualification/disqualification of bidders seeking to acquire stake in PSUs through the process of disinvestment. The full text of the recommendations of the Committee in this regard is at Annexure V. The guidelines on qualification of bidders have been compiled keeping the recommendations of the Parliamentary Committee in view. It is hoped that this publication would be useful not only to the bidders but also to all those who are interested in understanding the disinvestment process.

## TABLE OF CONTENTS

<u>S.No</u>	<u>Content</u>
1.	Qualification for Bidders
2.	Frequently Asked Questions
3.	Annexure-I:-OM dated 13 <sup>th</sup> July, 2001
4.	Annexure-II:- Expression of Interest Format
5.	Annexure-III:- Statement of Legal Capacity Format
6.	Annexure-IV:- Request for Qualification

	Format
7	Annexure:- V:- Recommendations of Parliamentary Standing Committee on Finance

## **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 buyer should be able to bring in more capital and improved technology, wherever needed, introduce better management practices 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 In order to achieve this objective, it is important that the Government evolves a selection procedure that ensures that only those entities get selected as strategic partners who possess:
- The requisite managerial and financial strength.
  - A proven track record of following good corporate practices.

- A good reputation as regards integrity.

- 1.3 To address these considerations and to ensure greater transparency of the process, the Ministry has taken the step to publish these “Guidelines on qualifications for Bidders” to enable the bidders to understand the requirements expected of them.
- 1.4 While any company, domestic or foreign, in private or public sector, can take part in a strategic sale 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 interest.
- 1.5 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 are: -
- Financial capabilities of the bidder
  - Technical and Legal capacity of the bidder
  - FDI restrictions
  - Integrity of the bidder
  - Security considerations
- 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. **Financial Capacity**

- 2.1 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 CPSUs being disinvested, are only allowed to bid. The ‘open offer’ requirement of SEBI and ‘Put/Call’ option add further to the financial strength/capacity required. Therefore, while issuing an advertisement in the newspaper and website for inviting bidders to take part in the disinvestment process through submission of EOI (financial bids come much later at the end of the process) the qualifying minimum networth criteria and/or minimum turnover required of the bidding company is specified. This gives a fair idea of the size and financial strength of the bidding company. Besides, relevant financial and performance details are also sought for. For example, while seeking EOI from bidders in MECON Ltd., the minimum annual turnover stipulation was Rs. 150 crore and networth Rs. 50 crore, whereas in VSNL minimum networth was specified as Rs. 2500 crore as VSNL was a much bigger company. In case of consortium bids, Government may insist on each consortium member satisfying individually a minimum networth/turnover criteria to be included as a member of the consortium. 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. For example, in the case of Shipping Corporation of India, the networth criteria is Rs. 800 crore but it has been specified that the lead member of the consortium must have a networth of at least Rs. 408 crore (i.e. 51%). At this stage, those of the bidders who satisfy these criteria, get shortlisted and get on to the next stage.
- 2.2 At the stage of submission of the financial bids, the prospective bidders are required to furnish a bank guarantee which is retained only in the case of the highest bidder. This is meant to bind him to fulfil his commitments till the successful closing of the transaction.
- 2.3 Before accepting the financial bid of any party, a certificate is required either from the banker or from an independent Chartered Accountant that the bidder has got enough funds to complete the transaction. In addition to that the bidder gives an undertaking that he has not been prohibited by any agreements with others from acquiring the equity stake from government.
- 2.4 These prerequisites 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.

### **3. Technical and Legal capacity**

- 3.1 Every company must provide along with the EOI a representation, duly executed by its authorised 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 discovered 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.

3.2 To access the technical capabilities of the prospective bidder, the Government may ask them to provide a business plan so that the Government is assured of continued services to the satisfaction of the user. In case of Air India, the business plan was sought in advance. In certain cases, Government may even require the bidders to satisfy a criteria of minimum experience in a particular business/sector, say manufacturing.

3.3 The bidder is required to submit enough information in the EOI for Government to assess the bidding entity's managerial, financial and technical capability. Typically, the EOI would contain the following details:

(i) Executive Summary: This provides a brief description of the bidding company and (where appropriate) of each member in the consortium, containing details like ownership structure, write up on business history and growth, business areas / activities, respective revenue details, 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.

(ii) The Applicant: The full name, address, telephone and facsimile numbers, e-mail address of the company or of each member of the consortium and the names and the titles of the persons who are the principal points of contact.

(iii) Basic Information: This contains the details of the place of incorporation, registered office, current directors, key management personnel and principal shareholders of the company/companies in the 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 the consortium. (The latter details help in evaluating financial capabilities as well).

(iv) Management Organization: An overview of the applicant's senior management and organization structure and in the case of a consortium, that of each member; summaries of the roles and responsibilities of the directors, key management personnel of the applicant and, in case of a consortium, those of each member.

(v) International Operations / Joint Ventures / Alliances: Brief write up of the company's or, in the case of a consortium, of the

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 accounts for the last one year of such companies.

(vi) Professional Advisors: The names and addresses of those companies and the professional firms, if any, who are (or will be) advising the applicant/consortium, together with the names of the principal individual advisors at those companies and firms.

(vii) Outstanding Litigation: Each company, and each member of a consortium must provide with the EOI a statement of pending litigation.

#### **4. Foreign Direct Investment (FDI) Restrictions**

4.1 In case of foreign bidders, the prospective buyer has to comply with the sectoral Foreign Direct Investment (FDI) caps determined by Government of India and 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 PSUs, which are into businesses, which are sensitive to national security. For example, in the case of Air India, Government decision is to sell 40% stake but a restriction of maximum 26% foreign holding was incorporated. In the case of Shipping Corporation of India, foreign holding has been restricted to 25% though there is no FDI restriction for the shipping sector.

#### **5. Integrity of the bidder**

5.1 The Ministry of Disinvestment has laid down specific guidelines vide letter no.6/4/2001/DD-II dated 13<sup>th</sup> July 2001 (Annexure – I) for qualification in terms of integrity of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment. 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.

#### **6. Security Considerations**

6.1 As PSUs, the companies were wholly or substantially owned by the Government and were operated and managed by the Board of the company under the administrative control of the Ministry concerned. In this arrangement, security consideration, if any, were taken

care of. At the time of transfer of these companies to private players, the Government has to ensure that the security of the country is not jeopardized through use / abuse of these companies.

6.2 Government has excluded the “strategic areas” from disinvestment, (strategic areas being defence related, atomic energy with few exceptions and railway transport). However, sectors like Airlines, Telecommunication etc. could also be called upon to provide strategic services in times of war or otherwise. In such cases, Government may require a separate security clearance for each bidder. In addition, to protect the security of the country, provisions are made in the transaction documents to deter the purchaser from misuse of the company. In addition, there are covenants in the Agreements, which oblige the new management to provide emergency services to the Government in times of need. In such cases the strategic partner may be asked to disclose his source of funds and give an undertaking that he would ensure that no prohibited person (‘prohibited person’ being a person who constitutes a threat to the security requirements of the nation) gets control of the company. If needed, restrictions in foreign shareholding can also be imposed. For example, as referred to earlier, in the disinvestment of Shipping Corporation of India, bidders are allowed to form Joint Venture Companies along with a foreign partner but with a cap of 25% of foreign partners’ holding.

6.3 Further, the companies which 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 I)

## **7. Confidentiality Undertaking**

7.1 On being found suitable after submitting the EOI, the Qualified Interested Parties are required to enter into a Confidentiality Undertaking with the Government. Only then are they allowed to participate in the disinvestment process.

7.2 Typically, this undertaking requires that the potential bidders 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 company and advisors to treat all the confidential information in confidence and not to disclose to any person, the fact that he has been provided the ‘Confidential Information’ or has inspected any confidential documents or the discussion/negotiation regarding the transaction.

7.3 ‘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, 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.

- 7.4 Confidentiality undertaking also provides that the bidder shall not deal with any officer, Director or employee of the Govt. or Company, regarding the business, operations, and prospects or financing of the company without advisor's express written consent.
- 7.5 The confidentiality undertaking contains an indemnity clause, whereby the bidder agrees to indemnify the advisor, the Govt. and the company against any damages, loss, cost or liability arising out of any unauthorized use or disclosure by the bidder.
- 7.6 The undertaking stipulates that the Strategic Partner will use the Confidential Information only to assist the Strategic Partner in the evaluation of the Transaction and determine whether or not to proceed with the Transaction and the Strategic Partner 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 Company/Advisors/Government are not adversely affected in any manner whatsoever.
- 7.7 The undertaking stipulates that in case the Bidder or any Consortium Member decides not to proceed with the Transaction or if the Advisors or the Government notifies the Bidder or any Consortium Member that the Government does not wish the Bidder or any such Consortium Member to consider the Transaction any further, the terms of the Undertaking survive the date of receipt of notification of such decision by the relevant party.
- 7.8 The Bidder agrees through the undertaking that after termination of access of the bidder by the Government, all documents or other materials furnished by such Company/Advisors/Government to the Strategic Partner, including those constituting Confidential Information, together with all copies and summaries thereof in the possession or under the control of the Strategic Partner, will be destroyed.
- 7.9 The language of the Undertakings may vary depending on the case, based on legal advice.

## **8. Qualification of Companies/Consortia**

- 8.1 The advertisement for the transaction indicates the broad qualifications of the prospective bidders. Based on the information submitted in EOIs, the Ministry and the advisors carry out an evaluation of the qualifications of the companies/consortia and subsequently notify in writing those companies / consortia which qualify to participate in the next stage of the process.
- 8.2 However, 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.
- 8.3 If a Consortium bidder desire 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 seek an approval from GoI for such change. Such requests would be entertained only before the financial bids are received by Government.
- 8.4 Where the Bidder is a Consortium, the stake in the ordinary share capital of the company can be acquired and held either through an investment vehicle ("Special Purpose Vehicle") or through direct holding in the company by each Member or through any Group Company (ies).

## **9. Additional Information**

- 9.1 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.

## **10. Reasons for Disqualification**

- 10.1 Notwithstanding anything to the contrary contained in the Request for Proposal document and without prejudice to any of the rights or remedies of Government, 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 demonstrate any failure to comply with, the provisions of the Request for Proposal ;
- (ii) 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 an Earnest Money Guarantee of the specified amount or the Financial Bid being conditional in any respect;
- (iv) failure to comply with any other material requirement of this Request for Proposal;
- (v) Government is not satisfied with sources of funds/ownership structure of the bidder.
- (vi) failure to comply with the reasonable requests of Government in relation of the Strategic Sale process.
- (vii) Breach of Confidentiality Undertaking executed by the bidder.
- (viii) if it is discovered at any time that a bidder is subject matter of winding up/insolvency or other proceedings of a similar nature;
- (ix) 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.
- (x) 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
- (xi) 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.

10.2 If information becomes known after the bidder has been qualified, at any stage, to proceed with the Strategic Sale process, 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 party is a Consortium, Government may disqualify the entire consortium, even if it applied to only one member of the Consortium.

10.3. Government determination that one or more of the events specified under paragraph 10 has occurred shall be final and conclusive.

## **11. Formats for submitting EOIs by interested parties**

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

### **Frequently Asked Questions**

Question: Does default in payment by the bidder to a financial institution automatically disqualify the bidder?

Answer: It is clarified that Ministry of Disinvestment is guided by its guidelines dated 13.7.2001 as mentioned earlier. It would be seen from these guidelines that if the bidding party or its consortium members are defaulting in payment of dues to financial institutions, they are not automatically disqualified. This is mainly because if the bidding parties have more than one business, there may be cases where some of the businesses may be incurring losses due to which it may not be possible for the bidding party to honour the commitment with regard to payment of interest/repayment of principal in that particular unit. So, any default on account of poor performance of a unit cannot ipso facto mean that the party who is controlling the business is incapable of running any other business.

What would be relevant here is whether there has been a willful default on the part of the bidding party, which could happen due to diversion of funds from one unit to another. However, it may be difficult in such cases for Ministry of Disinvestment to determine whether default by a particular party is a willful one. Since the institutions, which have lent may claim the bidder as a willful defaulter, while the bidder may say that he is not a willful defaulter and that his default is due to reasons beyond his control. This is really the task of a regulator i.e. RBI/SEBI to adjudicate on such matters who can decide whether the default was willful or whether the practice adopted by the bidder is unhealthy, unethical or unscrupulous. MODI guidelines do cover such adverse orders by regulators.

*Question: In case of a consortium bid, if a consortium member is disqualified, does the whole consortium get disqualified?*

Answer: Even on default by a member of the consortium the Government reserves the right to disqualify all members of the consortium. The other option that would be considered is that the bidder removes the defaulting member from the consortium.

*Question: In case there are no cases pending at the stage of EOI against any bidder but this comes up later on, what is the bidder supposed to do?*

Answer: The bidder is supposed to disclose all relevant material envisaged in the Guidelines dated 13/7/2002 to the Government whenever it occurs or it comes to his notice and Government reserves the right to disqualify the bidder on receipt of such information at any stage of the process.

*Question: Does a charge-sheet by an agency such as the CBI automatically disqualify a bidder?*

Answer: No. The charge-sheet by an agency like CBI would result in disqualification if the matter relates to the security and integrity of the country. In other cases, there has to be a conviction by a court of law.

*Question: Will any indictment/adverse order by a regulatory authority disqualify a bidder?*

Answer: An indictment /adverse order by a regulatory authority will disqualify either:-

- (a) If such order casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested or

(b) If such an order relates to a grave offence where grave offence is defined to be an offence of such a nature that outrage the moral sense of the community e.g. fraud. It is clarified that the decision in regard to the nature of the offence would be taken on a case to case basis after considering the facts of the case and relevant legal principles by the Government.

*Question: In case an order disqualifying a bidder is passed by Government, does the bidder remain disqualified for all times to come?*

Answer: Not necessarily. Government may decide on the period for which such disqualification shall continue.

*Question: Why is there a minimum net worth requirement- is it linked to reserves/size of the disinvesting company? Has not been seen to be linked in the past?*

Answer: The minimum net worth criteria is to ensure that the bidder has enough financial muscle to run the PSU effectively post-disinvestment and to also be in a position to raise enough resources in the future to enhance capacity, other capex requirements etc. Though there is no direct proportionality between the minimum net worth criteria fixed and the net worth of the company being disinvested, Government does keep in mind the net worth/turnover/business potential/resource requirements of the company getting disinvested while fixing the net worth criteria.

*Question: Government of India asks bidders to submit a Technical Proposal. Is this proposal on bidders' plans for the company etc. given any weightage in the process? Seems not, as all that matters is the price finally.*

Answer: It is a fact that selection of the successful bidder is purely on the basis of the price bid. Normally, the bidder who bids the highest would be selected. However, as clarified in every advertisement soliciting EOIs, Government reserves the right always to make any changes in the procedure as laid down in the Request for Proposal. Moreover, the Government would like to be satisfied that the bidder has a well thought out plan on the future

of the company once he takes over. Though this plan is not legally binding on him after take over, it is expected that, since the bidders are very carefully chosen and would be companies of repute, they would honour the commitment made by them in their Technical Proposal.

**Question: Why does every consortium change require GOI approval?**

Answer: In every case of disinvestment, there are some prequalifying criteria stipulated as explained in the text. Therefore, Government has to be certain that the consortium which finally gets selected satisfy these eligibility criteria. Otherwise Bidder A, having satisfied the net worth criteria set by Government, may get shortlisted. Thereafter, he may form a consortium with Bidder B, where Bidder B may not be independently satisfying the net worth criteria. Bidder A+B will obviously satisfy the criteria. Later, Bidder A may exit from this consortium and Bidder B would be left in the fray, though originally it did not satisfy the eligibility criteria. Secondly, since there are specific guidelines on integrity of bidders, it is necessary that at each stage of addition of consortium members, Government satisfy itself that the new entity also satisfies the eligibility criteria.

**Question: *Till what time in the process is a request for change in consortium entertained?***

Answer: Normally, a request for a change in consortium is entertained by Government before financial bids are received. No request is entertained once the financial bids have been received. In certain specific cases, however, Government may require a request for such change to be filed on a date earlier than the date financial bids are received.

**Question: *If a bidder wants to change the consortium, then is he permitted to add to the consortium an entity which has not filed an EOI or a change in the consortium can be made only by addition of bidders who have filed an EOI?***

Answer: Government would entertain a request even for inclusion of a new entity as a member of the consortium by the bidder (who was not

one out of the entities who had filed EOIs) provided all the eligibility criteria and qualification/disqualification criteria are satisfied. Of course, the decision of whether or not to permit a change in the consortium would finally rest with the Government

ANNEXURE- I

No. 6/4/2001-DD-II

Government of India

Ministry of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13<sup>th</sup> July, 2001.

### **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.
- (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 by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister 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 entity, 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.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, 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 is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/Managers/employees, 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 obtained along with EOI.

-sd/-

(A.K. Tewari)

Under Secretary to the Government of India

**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,

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)

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 Department of Disinvestment OM No.6/4/2001-DD-II dated 13<sup>th</sup> July 2001 and subsequent amendments/clarifications thereto.

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 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**

Enclosure:

1. Statement of Legal Capacity
2. Request for Qualification

**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,

Authorised Signatory

For and on behalf of (party/member)

\*Strike off whichever clause is not applicable

## 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/ RBI/ 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 :  
three years

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

Please attach most recent Audited Statement of Accounts/Annual Report. Additionally, please provide a chartered account/auditor certificate certifying the Turnover and Net 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

Authorised Signatory

For and on behalf of the consortium

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.

**Annexure V**

**Text of the Recommendations on Qualification for Bidders, as contained in the 30<sup>th</sup> Report of the Parliamentary Standing Committee on Finance**

“The Committee find that though the disinvestment process in our country is continuing for more than a decade yet no guidelines regarding qualification/disqualification of bidders seeking to acquire the stake in PSUs through the process of disinvestment were formulated initially. It was only in July 2001, when a circular was issued detailing some guidelines for disqualifications for bidders. The committee notes that it debars only those bidders who have been actually convicted for an offence or have been charge sheeted for an offence against national security and those who have been either indicted by SEBI or RBI. The Committee feel that these guidelines are not sufficient and do not cover the offences committed under the Official Secrets Act and cases pertaining to willful default of public money. The Committee are of the opinion that these offences are in no way less serious than those included in the guidelines.

Hence, the committee feels that weak, inadequate and porous guidelines are being used to qualify and disqualify bidders. The committee strongly recommends that comprehensive guidelines for qualification/disqualification of bidders seeking to acquire stakes in the PSUs through the process of disinvestment may be drawn and included in the Disinvestment Policy. The Committee further desires that the scope of guidelines may also be broadened which may include the business activities of unhealthy, unethical and unscrupulous nature in its ambit. They also desire that it should also cover the offences under the Official Secrets Act and those pertaining to willful default of public money etc. in its purview.”