

Request for Empanelment (RFE) of Legal Advisors for Sagarmala Development Company Ltd.

SDC/24/2017
7th Nov 2017



Sagarmala Development Company Limited

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Disclaimer

1. This RFE document is neither an agreement nor an offer by the Sagarmala Development Company Limited (SDCL) to the prospective Applicants or any other person. The purpose of this Request for Empanelment (RFE) is to provide information to interested parties that may be useful to them in the formulation of their proposal pursuant to this RFE.
2. SDCL does not make any representation or warranty as to the accuracy, reliability or completeness of the information in this RFE document and it is not possible for SDCL to consider particular needs of each party who reads or uses this RFE document. This RFE includes statements which reflect various assumptions and assessments arrived at by SDCL in relation to the consultancy. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. Each prospective applicant should conduct its own investigations and analyses and check the accuracy, reliability and completeness of the information provided in this RFE document and obtain independent advice from appropriate sources.
3. SDCL will not have any liability to any prospective Applicant/Consultancy Company/ Firm or any other person under any laws (including without limitation the law of contract, tort), the principles of equity, restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFE document, any matter deemed to form part of this RFE document, the award of the Assignment, the information and any other information supplied by or on behalf of SDCL or their employees, any consultants or otherwise arising in any way from the selection process for the Assignment. SDCL will also not be liable in any manner whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon any statements contained in this RFE.
4. SDCL will not be responsible for any delay in receiving the proposals. The issue of this RFE does not imply that SDCL is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, for the consultancy and SDCL reserves the right to accept/reject any or all of proposals submitted in response to this RFE document at any stage without assigning any reasons whatsoever. SDCL also reserves the right to withhold or withdraw the process at any stage with intimation to all who submitted the RFE Application.
5. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. SDCL accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.
6. SDCL reserves the right to change/ modify/ amend any or all provisions of this RFE document. Such revisions to the RFE/ amended RFE will be made available on the website.

1. Letter of Invitation

1.1 Introduction

- 1.1.1 The Sagarmala Programme is an initiative by the Government of India under the Ministry of Shipping to address the challenges and leverage the potential of India's extensive coastline through port-led development. The Sagarmala Programme was approved by the Union Cabinet in March 2015 and the National Perspective Plan for Sagarmala was released in April 2016. The vision of Sagarmala Programme is to reduce the logistics cost for both domestic and EXIM cargo.
- 1.1.2 The Sagarmala Programme will focus on four pillars of development, namely:
- a. **Port Modernization & New Port Development:** Transforming existing ports into world class ports through capacity augmentation, modernization of port infrastructure and improving operational efficiency of existing ports. Development of new ports is also envisaged as part of the Programme.
 - b. **Enhancing port connectivity for efficient evacuation:** Improving port evacuation and connectivity to the hinterland and developing optimal multi-modal logistics solutions for efficient, cost effective movement of cargo and to harness the potential of inland waterways / coastal shipping.
 - c. **Port-led Industrialization:** Undertaking development of Coastal Economic Zones and aligning with the 'Make in India' initiative is another important objective of the Sagarmala programme. Port based industrialization will include development of port-based industrial parks, promoting captive industries and ancillary facilities and other related industries.
 - d. **Coastal Community Development:** This aims to promote sustainable development of coastal communities through skill training programs, development of coastal tourism, fisheries and other activities.
- 1.1.3 The National Perspective Plan outlines the comprehensive development of India's coastline and maritime sector and includes more than 400 projects across the areas of Port Modernization & New Port Development, Port Connectivity Enhancement, Port-led Industrial Development and Coastal Community Development.
- 1.1.4 Implementation of the projects identified under National Perspective Plan, was started in FY 16-17, by the respective Ports, State Governments / Maritime Boards, Central Ministries and other project proponents, mainly through private or PPP mode. The **Sagarmala Development Company Limited** (hereinafter referred to as "SDCL" or "Authority") has been set up by Ministry of Shipping to provide equity support to the project SPVs and funding for residual projects.
- 1.1.5 SDCL now seeks to create a panel of consultants as per the details mentioned in the Data Sheet in Section 2 of this document. The panel of consultants will be prepared through assessment of technical capacity for various disciplines of consultancy services that may be required by SDCL. The number of years for which this panel will be valid is provided the Data Sheet. However, additions to the empaneled list may be done based on fresh RFQs / RFEs published in leading newspapers / websites once every six months. In case of deletion from

the list of empaneled consultants, the same would be owing to unsatisfactory performance as per contract with individual empaneled consultants.

- 1.1.6 The purpose of this RFE is to create a panel of Legal Advisors / Consultants to assist the Sagarmala Development Company Limited (SDCL) in various activities pertaining to investment of funds into infrastructure projects by SDCL. The selected Legal Advisors shall be required to provide legal services pertaining, but not limited to, drafting and / or reviewing investment agreements, shareholder agreements and providing legal advice as and when required.
- 1.1.7 After creation of such a panel of consultants, SDCL shall then invite competitive price offers from the empaneled Legal Advisors for the respective activities/projects and at that time shall also prescribe the team of consultants required for the project, Terms of Reference and Terms of Payment for the specific project. While submitting their respective price bids, each empaneled Legal Advisor must ensure the CVs of its proposed key personnel submitted to SDCL meet the qualification criteria for such projects, failing which the Advisor's bid shall not be considered for evaluation.

1.2 Contents of this RFE

This RFE includes the following documents:

- Section 1: Letter of Invitation
- Section 2: Instructions to Applicants
- Section 3: Data Sheet
- Section 4: Guidance note at schedule
- Section 5: Technical Proposal Forms

All clarifications/ corrigenda will only be published on the Central Public Procurement Portal (CPPP), websites of the Ministry of Shipping, Indian Ports Association and Sagarmala Programme.

The official websites for accessing the information related to this RFP are:

- a) Central Public Procurement Portal (CPPP) - <https://eprocure.gov.in/cppp/>
- b) Ministry of Shipping - <http://shipping.nic.in/>
- c) Sagarmala Programme - <http://www.sagarmala.gov.in/>
- d) Indian Ports Association (IPA) - <http://www.ipa.nic.in/>

Note: From the "Home" page access the "Tenders" section to access all the uploaded documents related to this RFP.

Yours sincerely

Managing Director
Sagarmala Development Company Limited

2. Instruction to Applicants

2.1 General instructions

- 2.1.1 This Request for Empanelment (RFE) is for the Empanelment of Legal Advisors on SDCL's panel for undertaking projects under the Sagarmala Programme (hereinafter referred as the "Project"). A "Single Stage" bidding and evaluation process is being followed for determining the successful Legal Advisors to be empanelled, wherein the applicants would submit their Proposals on/before the Proposal Due Date as mentioned in Section 3: Data Sheet of this RFE document. The applicants shall submit the detailed Technical Proposals for the Empanelment on the Client's panel as per instructions and templates provided in this RFE document.
- 2.1.2 Invitation of applications for empanelment as Consultants for various project activities will have a stage of pre-bid conference before submission of final application for evaluation. The date and timing of pre-bid conference are mentioned in Section 2: Data Sheet.
- 2.1.3 All pre-bid queries must be submitted up-to one day before the pre-bid meeting. SDCL shall endeavor to issue clarifications as early as possible so as allow the bidders reasonable time for submitting the bids.
- 2.1.4 Each applicant has to submit, along with the bid documents, a non-refundable application fee and Earnest Money Deposit (EMD) as mentioned in the Data Sheet. This fee and EMD shall be deposited by way of Demand Draft drawn in favor of **Sagarmala Development Company Limited, New Delhi**.
- 2.1.5 The complete Proposals should be submitted on or before the Proposal Due Date as specified in Section 3: Data Sheet, in the manner specified in the RFE document. The Client shall not be responsible for any delay in receiving the Proposal and reserves the right to reject any or all Proposals without assigning any reason thereof.
- 2.1.6 The empanelment of applicants will be valid for the empanelment period specified in Section 3: Data Sheet or extended period as may be arrived at mutual consent from the date of original empanelment or any date stated in the empanelment letter.
- 2.1.7 Pursuant to empanelment, the services of the Legal Advisors may be availed by SDCL by issuing project specific Terms of References (ToR) and requesting project specific financial bids from the empanelled Legal Advisors. The ToR can include project specific requirements of Legal professionals.
- 2.1.8 The empanelled applicants will be required to submit their financial offers strictly on the basis of Terms of Reference provided by SDCL without attaching any counter conditions and a certificate to this effect has to be furnished by the applicant. SDCL reserves the right to reject conditional offers.
- 2.1.9 On selection of an applicant for a specific project, SDCL will enter into agreement in the form prescribed. The format of agreement will be enclosed by SDCL while seeking financial offers from empaneled applicants.
- 2.1.10 In case of any dispute arising out of empanelment process, the decision of SDCL will be final & binding.
- 2.1.11 For applicants which are subsidiaries of foreign companies (i.e. equity of foreign entity is more than 50%) and if turnover of foreign parent company is claimed, SDCL shall insist on

submission of a letter from the parent company to make its services available to the Applicant as required and demanded by SDCL without any extra financial liabilities on SDCL.

- 2.1.12 Even though applicants may satisfy the necessary requirements they are subject to disqualification if they have:
- i. Made untrue or false representation in the form, statements required in the application document.
 - ii. Records of poor performance such as abandoning work, not properly completing contract, financial failures or delayed completion.
 - iii. Submit fake, fictitious or fabricated documents in support of their work experience, eligibility criteria etc.
- 2.1.13 It may be noted that after empanelment, SDCL shall have sole right and discretion to allot the work to consultant(s) commensurate to their capabilities and capacities. No complaint /representation/ grievance shall be entertained by SDCL in this regard.
- 2.1.14 For the purpose of empanelment, applications received will be evaluated based on the details furnished and minimum criteria specified by SDCL in the Data Sheet.
- 2.1.15 Applicant has to furnish, on its company letter head, the following undertaking along with its bid.

“I certify that in the last three years, I have neither failed to perform on any contract, as evidenced by imposition of Penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part”.

2.2 Processing fee and Earnest Money Deposit (EMD)

- 2.2.1 Processing Fee in the form of Demand Draft (DD) issued by a Nationalized Bank / Scheduled Bank drawn on New Delhi Branch of the Bank in favor of Sagarmala Development Company Limited payable at New Delhi is to be submitted along with the bid. Proposals received without processing fee shall be summarily rejected.
- 2.2.2 The Earnest Money shall be paid in the form of Demand Draft (DD) issued by a Nationalized Bank / Scheduled Bank drawn on New Delhi Branch of the Bank in favor of Sagarmala Development Company Limited, New Delhi. In case, EMD is not received as stated above, the tender will be liable to be rejected. No cash remittance along with the tender will be accepted. The amount of earnest money will be refunded to dis-qualified applicants /un-shortlisted applicants as soon as possible by SDCL. No interest will be paid by SDCL on the earnest money from the date of receipt until it is refunded. EMD of successful bidders/empaneled bidders will be retained for entire period of empanelment or such extended period by SDCL.
- 2.2.3 The processing fee and earnest money is to be submitted in accordance with clause 3.2 of the Data Sheet in this RFE document.

2.3 Evaluation of bids

- 2.3.1 SDCL has adopted a One Stage selection process (collectively the “Selection Process”) for evaluating the Proposals. A technical evaluation will be carried out as per the eligibility criteria specified in Clause 3.7 of this RFE document. Based on this technical evaluation, the

applicants meeting the eligibility criteria would be shortlisted and a panel shall be prepared. SDCL reserves the right to reduce or increase the number of Legal Advisors to be empanelled at a later stage.

- 2.3.2 The Client shall open the Proposals at a time and date specified in the Data Sheet.
- 2.3.3 Prior to evaluation of Proposals, the Client will determine whether each Proposal is responsive to the requirements of the RFE. The Client reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Client in respect of such Proposals.
- 2.3.4 The Client would subsequently examine and evaluate Proposals in accordance with the Selection Process specified in this RFE and the criteria set out in this RFE. After the technical evaluation, the Client would prepare a list of shortlisted applicants. The list of Shortlisted applicants shall be uploaded on CPP portal and other websites mentioned in clause 1.2 of this RFE document.
- 2.3.5 Applicants are advised that selection will be entirely at the discretion of SDCL. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given by SDCL.
- 2.3.6 Any information contained in the Proposal shall not in any way be construed as binding on the Client, its agents, successors or assigns, but shall be binding against the Legal Advisors if the Consultancy is subsequently awarded to it.

2.4 Clarifications

- 2.4.1 To facilitate evaluation of Proposals, SDCL may, at its sole discretion, seek clarifications from any applicant(s) regarding their proposal. Such clarification(s) shall be provided within the time specified by SDCL for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 2.4.2 If an applicant does not provide clarifications sought under Sub-Clause 2.4.1 above within the specified time, their proposal shall be liable to be rejected. In case the proposal is not rejected, SDCL may proceed to evaluate the proposal by construing the particulars requiring clarification to the best of its understanding, and the applicant shall be barred from subsequently questioning such interpretation of SDCL.

2.5 Right to accept or reject any or all proposals

- 2.5.1 Notwithstanding anything contained in this document, SDCL reserves the right to accept or reject any proposal and to annul the selection process and reject all proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.
- 2.5.2 SDCL reserves the right to reject any proposal if: (a) at any time, a material misrepresentation is made or discovered, or (b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Proposal. Misrepresentation/ improper response by the Applicant may lead to disqualification of the Applicant. If such disqualification/ rejections occurs after the proposals have been opened or during any stage of the bidding process, and the highest ranking Applicant gets disqualified / rejected, then the Authority reserves the right to consider the next best Applicant, or take any other measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Selection Process.

2.6 Language

- 2.6.1 The Proposal with all accompanying documents and all communications in relation to or concerning the selection process shall be in English language and strictly on the forms provided in this document. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for by SDCL.

2.7 Correspondence with Applicant

- 2.7.1 Given and except as provided in RFE document, SDCL shall not entertain any correspondence with any applicant in relation to acceptance or rejection of any application.
- 2.7.2 SDCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time to:
- a) Suspend and/or cancel the bidding process and/or amend and/or supplement the Bidding process or modify the dates or other terms & conditions relating there-to
 - b) Consult with any applicant in order to receive clarification or further information.
 - c) Empanel or not to empanel any applicant and/or to consult with any applicant in order to receive clarification or further information.
 - d) Retain any information and / or evidence submitted to SDCL by, on behalf of, and/or in relation to any applicant and/or.
 - e) Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any applicant.

2.8 Award of Empanelment

- 2.8.1 After selection, an Award Letter /Letter of Empanelment shall be issued, in duplicate, by SDCL to the Selected Applicants and the Selected Applicants shall, within 15 (fifteen) days of the receipt of the Award Letter, sign and return the duplicate copy of the Award Letter in acknowledgement thereof. In the event the duplicate copy of the Award Letter duly signed by the any of the Selected Applicant is not received by the stipulated date, SDCL may, unless it consents to extension of time for submission thereof, cancel the Award Letter/ /Letter of Empanelment issued to it.

2.9 Fraud and corrupt practices

- 2.9.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this document, the Authority shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices") in the Selection Process. In such an event, the Authority shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as 'mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority, in regard to this document, including consideration and evaluation of such Applicant's Proposal.
- 2.9.2 Without prejudice to the rights of the. Authority herein above and the rights and remedies which the Authority may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive

practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by the Authority during a period of three years from the date such Applicant or Consultant, as the case may be, is found by the Authority to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

- 2.9.3 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them: (a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a financial, financial or technical consultant of the Authority in relation to any matter concerning the Project; (b) "fraudulent practice" means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process; "coercive practice" means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person's participation or action in the Selection Process; (d) "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and (e) "restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

2.10 Conflict of Interest

- 2.10.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy (the "Conflict of Interest"). Any Applicant found to have a Conflict of Interest shall be disqualified.
- 2.10.2 It is necessary that the selected applicant provides professional, objective, and impartial advice and at all times hold the interests of SDCL as paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The selected applicant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of SDCL.
- 2.10.3 A Guidance Note has been enclosed in Section 4 for purpose of addressing Conflicts of Interest. Without limiting the generality of the above, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:

the Applicant or Associate (or any constituent thereof) and any other Applicant or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder thereof having a shareholding of more than 5 per cent of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 4A of the Companies Act, 1956. For the purposes of this, indirect shareholding held through one or more intermediate persons shall be computed as follows:

(aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and

(bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this "sub-clause' (bb) if the shareholding of such-person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity share holding of such intermediary; (b) a constituent of such Applicant is also a constituent of another Applicant; or (c) such Applicant or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant or its Associate; or (d) such Applicant has the same legal representative for purposes of this Application as any other Applicant; or (e) such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Application of either or each of the other Applicant; or (f) there is a conflict among this and other consulting assignments of the Applicant and any subsidiaries or entities controlled by such Applicant or having common controlling shareholders.

The duties of the selected applicant will depend on the circumstances of each case. While providing consultancy services to the Authority for a particular assignment, the selected applicant shall not take up any assignment that by its nature will result in conflict with the present assignment; or (g) a firm which has been engaged by the Authority to provide goods or works or services for a project, and its Associates, will be disqualified from providing consulting services for the same project, a firm hired to provide consulting services for the preparation or implementation of a project, and its Members or Associates, will be disqualified from subsequently providing goods or works or services related to the same project; or (h) the Applicant, its Member or Associate (or any constituent thereof), and the bidder or Concessionaire, if any, for the Project, its contractors or sub-contractor(s) (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its Member or Associate (or any shareholder hereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be.) in the bidder or Concessionaire, if any, or its contractor(s) or sub-contractor'(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such Concessionaire or its

contractor(s) or sub-contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in section 4A of the Companies Act, 1956. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.

- 2.10.4 For purposes of this bid, Associate means, in relation to the Applicant, a person/company/entity who/which controls, is controlled by, or is under the common control with such Applicant (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.
- 2.10.5 An applicant eventually appointed to provide consultancy services for any specific project and its associate, shall be disqualified from subsequently providing goods or works or services related to the construction and operation of the same project and any breach of this obligation shall be construed as Conflict of Interest; provided that the restriction herein shall not apply after a period of 5 (five) years from the completion of the original assignment; provided further that this restriction shall not apply to consultancy / advisory services performed for SDCL in continuation of a specific consultancy or to any subsequent consultancy/ advisory services performed for SDCL in accordance with the rules of SDCL. For the avoidance of doubt, an entity affiliated with the applicant shall include a Partner in the selected applicant's firm or a person who holds more than 5% (five percent) of the subscribed and paid up share capital of the applicant's company, as the case may be, and any Associate thereof.

2.11 Payment

- 2.11.1 All payments to the Legal Advisor(s) shall be made in INR in accordance with the fee quoted by them and agreed upon between SDCL and the Legal Advisor(s), during the currency of the empanelment. The Legal Advisor(s) may convert Rupees into any foreign currency as per applicable laws and the exchange risk, if any, shall be borne by the Legal Advisor.

2.12 Number of Proposals

- 2.12.1 An applicant is eligible to submit only one Proposal. An applicant applying individually shall not be entitled to submit another proposal either individually.

2.13 Cost of Proposal

- 2.13.1 The applicants shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process. SDCL will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

2.14 Acknowledgement by applicants

- 2.14.1 It shall be deemed that by submitting the Proposal, the applicant has: (a) made a complete and careful examination of the RFE document; (b) received all relevant information requested from SDCL; (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFE document or furnished by or on behalf of SDCL or relating to any of the matters referred above; (d) satisfied itself about all matters, things and information, including matters referred herein above, necessary and required for

submitting an informed Application and performance of all of its obligations thereunder; (e) acknowledged that it does not have a Conflict of Interest; and (f) agreed to be bound by the undertaking provided by it under and in terms hereof. SDCL shall not be liable for any omission, mistake or error on the part of the applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFE document or the Selection Process, including any error or mistake therein or in any information or data given by SDCL.

2.15 Confidentiality

- 2.15.1 Information relating to the examination, clarification, evaluation and recommendation for the short-listed Bidders shall not be disclosed to any person not officially concerned with the process. SDCL will treat all information submitted as part of all Proposals in confidence and will insist that all who have access to such material treat it in confidence. SDCL will not divulge any such information unless it is ordered to do so by any Government authority that has the power under law to require its disclosure or due to statutory compliances.

2.16 Miscellaneous

- 2.16.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 2.16.2 SDCL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to: (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto; (b) consult with any applicant in order to receive clarification or further information; (c) retain any information and/or evidence submitted to SDCL by, on behalf of and/or in relation to any applicant; and/or (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any applicant.
- 2.16.3 It shall be deemed that by submitting the Proposal, the Legal Advisor agrees and releases the Client, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

2.17 Dispute Resolution

- 2.17.1 In all matters of disputes or grievances arising out of the empanelment process or during the course of any assignment awarded to the empanelled applicants, the decision by the Board of Directors of SDCL will be final and binding on all parties.

3. Data Sheet

3.1 Objective:

The purpose of this RFE is to create a panel of Legal Advisors / Consultants to assist the Sagarmala Development Company Limited (SDCL) in various activities pertaining to specific legal opinion, drafting and vetting legal and contractual documents and agreements, settlement of litigation etc. The range of skills required by such Legal Advisors / Legal Firms as knowledge of inter-alia civil, commercial, environmental and corporate laws followed within the Indian jurisdiction. Bidders must also possess arbitration experience to settle disputes with third parties. For Legal Firms knowledge and practice of International laws and arbitration would be useful for legal due diligence of Feasibility Reports / Detailed Project Reports, review of prepared for infrastructure projects identified by SDCL.

After creation of such a panel of consultants, SDCL shall then invite competitive price offers from the empaneled Legal Advisors for the respective activities/projects and at that time shall also prescribe the Terms of Reference and Terms of Payment for the specific project.

3.2 Cost of RFE document and Earnest Money Deposit

- a. The cost of the RFE document is INR 10,000 (Indian Rupee Ten Thousand) only
- b. The amount to be submitted as Earnest Money Deposit along with tender is INR 1,00,000 (Indian Rupee One Lac) only

The cost of RFE and Earnest Money are to be submitted in the form of Demand Draft (DD) issued by a Nationalized Bank / Scheduled Bank drawn on New Delhi Branch of the Bank in favor of 'Sagarmala Development Company Limited' payable at New Delhi. The DDs are to be enclosed in a sealed envelope and submitted at the address mentioned in clause 3.5.2 on or before the Proposal Due Date mentioned in clause 3.4 along with the following inscription on the envelope:

"RFE for Empanelment of Legal Advisors for Sagarmala Development Company Limited – RFE Fee and EMD"

3.3 Terms of Reference

The broad scope of work for the Legal Advisor shall include, but not limited to the following:

- (i) Legal due diligence: Review of all legal contracts, titles of property assets/real estate, intellectual property rights and contracts with employees broadly with a view to ascertain whether the target SPV complies with the overall framework of the Sagarmala Project.
- (ii) Drafting of transaction related documents including, inter-alia:
 - Confidentiality Agreement/ share purchase agreement/ shareholders agreement/ Non-compete Agreement.
 - Any other ancillary agreement as may be required to assist in the closure of the transaction.
- (iii) Review of necessary corporate resolution(s) for equity infusions.
- (iv) Assistance as may be required, in negotiations on the contracts, with the target SPV(s).

3.4 Application Schedule:

The schedule for receipt of applications for empanelment is as follows:

Event/ Description	Date	Time
Last date/time for submitting queries/ request for clarifications	14 th Nov 2017	1800 Hrs
Pre-Proposal Conference	15 th Nov 2017	1500 Hrs

Proposal Due Date	29 th Nov 2017	1500 Hrs
Proposal Opening	30 th Nov 2017	1500 Hrs
Validity of Proposal	90 days	

3.5 Contact Details:

3.5.1 Reputed and interested Legal Advisors may download the RFE from the following sources:

- Central Public Procurement Portal (<https://eprocure.gov.in/cppp/>)
- IPA (<http://www.ipa.nic.in/>)
- Ministry of Shipping (<http://shipping.gov.in/>)
- Sagarmala Programme (<http://sagarmala.gov.in/>)

3.5.2 Any communication related to the empanelment as well as pre-bid queries may be addressed to:

**The Managing Director,
Sagarmala Development Company Limited,
1st Floor, PTI Building,
Parliament Street,
New Delhi – 110001.**

The communication / queries should be submitted in standard electronic format (MS Word and PDF files) at the following email address: **sagar.mala@gov.in**

3.6 Other key details

- 3.6.1 The empanelment will be valid for a period of 2 years after which the empanelment may be renewed at the sole discretion of SDCL.
- 3.6.2 The panel will be used by SDCL for inviting bids as and when required for consultancy assignments.
- 3.6.3 The requisite Document Fee and Earnest Money Deposit as mentioned in Section 3.2 in the form of Demand Draft, in favor of Sagarmala Development Company Limited payable at New Delhi shall be submitted along with bid.

3.7 Submission of Proposals

- 3.7.1 The Technical proposal should be submitted (uploaded) as a scanned copy along with the signature of the Authorised Signatory for the Applicant on the cover page of the proposal on the Central Public Procurement Portal (<https://eprocure.gov.in/cppp/>) on or before the Proposal Due Date and time mentioned in clause 3.4 of this Data Sheet.

3.8 Qualification and Experience criteria for empanelment of consultants as Legal Advisors:

The Applicant for participation in the empanelment process would be a single entity for the purpose of empanelment.

An Applicant may either be a sole proprietorship firm / a partnership firm / a limited liability partnership / a company incorporated under the Companies Act 1956/2013 or a body corporate incorporated under the applicable laws of its country of origin.

Stage-I: Minimum Eligibility Criteria

The applicant shall meet the following qualifying criteria:

- a) **Financial Capacity:** Average annual turnover during the last 3 financial years ending with 31st March (2014-15, 2015-16 and 2016-17) should be not less than INR 5 Crore from consultancy services undertaken by the applicant in the past 3 years. The applicant shall be required to submit a certificate from its Statutory Auditors as proof of such turnover.
- b) **Applicant:** The applicant should have been in providing consultancy services for at least 3 years in India. The applicant shall be required to submit a copy of its incorporation certificate for proof.

Any Applicant which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of the Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.

Stage-II: Qualification for Empanelment

Technical Capacity of the Applicant: The Applicant shall have, over the past 10 (ten) years preceding the proposal due date, completed a minimum of 10 (Ten) Assignments/ Consultancy services relating to the following areas in the eligible sectors outlined below:

Relevant areas in which assignments / consultancy services should have been completed include:

- i. **Legal due diligence** involving review of all legal contracts, titles of property assets/real estate, intellectual property rights, open litigations, etc.
- ii. Experience in legal documentation, contract conditions, regulatory and policy framework;
- iii. Experience in contract documentation, tender evaluation and contract negotiations;
- iv. Drafting/review of bidding document(s) and project agreement(s) such as; Request or Proposal, Request for Qualification, Concession Agreement/Off-take Agreement

Eligible sectors include the following:

- i. Roads and Highways
- ii. Railways
- iii. Ports and Maritime
- iv. Logistics including multi-modal logistics hubs / Inland Container Depot / Dry Port / CFS / FTWZ etc.
- v. Pipelines
- vi. Inland waterways/irrigation/water supply system including multi-modal terminals
- vii. Industrial clusters, Special Economic Zones, Industrial Parks, Economic / Industrial Corridors etc.
- viii. Airports
- ix. Urban Infrastructure
- x. Real Estate

4. Guidance Note at Schedule (Conflict of Interest)

SCHEDULE

(See Clause 2.10.3)

- 4.1 This Note further explains and illustrates the provisions of Clause 13.3 of the RFQ and shall be read together therewith in dealing with specific cases.
- 4.2 Legal Advisors should be deemed to be in a conflict of interest situation it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of Legal Advisors should avoid both actual and perceived conflict of interest.
- 4.3 Conflict of interest may arise between the SDCL and a Legal Advisor or between Legal Advisors and present or future concessionaries/ contractors. Some of the situations that would involve conflict of interest are identified below:
- (a) SDCL and Legal Advisors:
 - (i) Potential Legal Advisor should not be privy to information from / SDCL which is not available to others; or
 - (ii) Potential Legal Advisor should not have defined the project when earlier working for the SDCL
 - (b) Legal Advisors and concessionaires/contractors:
 - (i) No Legal Advisor should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire/ contractor save and except relationships restricted to project-specific and short-term assignments; or
 - (ii) No Legal Advisor should be involved in owing or operating entities resulting from the project; or
 - (iii) No Legal Advisor should bid for works arising from the project.

5. Technical Proposal Forms

Form TP-1: Letter of Proposal Submission

TO: <Name and address of client>

Dear Sirs,

We, the undersigned, offer to provide the consulting Assignment/job for <Empanelment of Legal Advisors > in accordance with your Request for Proposal dated <insert date> and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal sealed under a separate envelope and requisite EMD.

We are submitting our Proposal in association with [Insert a list with full name and address of each Applicant]

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

If negotiations are held during the period of validity of the Proposal, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Contract negotiations.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely

Authorized Signature [in full and initials]:

Name and Title of Signatory:

Name of Firm:

Address:

Form TP-2: Applicant's Organization and Experience**A - Applicant's Organization**

[Provide here a brief description of the background and organization of your firm/entity and each associate for this Assignment/job. The brief description should include ownership details, date and place of incorporation of the firm, objectives of the firm etc.]

B - Applicant's Experience

[Using the format below, provide information on each Assignment/job for which your firm was legally contracted either individually as a corporate entity or as one of the major partners within an association, for carrying out consulting Assignment/job similar to the ones requested under this Assignment/Job (if possible, the employer shall specify exact assignment/job for which experience details may be submitted).]

1. Organizational Experience

Sr. No	Name of Entity with complete communication address	Order No. and Date	Scope of Consultancy work	Date of award of contract & Contract Period	Value of Contract	Actual Date of Completion	Person/ Project authority who could be contracted for further information	Supporting Document

2. Gross Annual Revenue (in INR)

Financial year	Gross Annual revenue/Turnover	Revenue/Turnover from consultancy business	Remarks
2014-15			
2015-16			
2016-17			

(Seal & Signature of Bidder)

Note: Please provide documentary evidence from the client i.e., completion certificate for each of above mentioned assignments. The Competent Authority of the consulting firm shall self-certify if the firm has non-disclosure agreements with its clients. The experience shall not be considered for evaluation if such requisite support documents are not provided with the proposal. In case of

selection, the details of work order, contract and completion certificate which have non-disclosure agreements shall be submitted for verification.

Form TP-3: Information Regarding Any Conflicting Activities and Declaration Thereof

Are there any activities carried out by your firm or group company which are of conflicting nature as mentioned in RFE, If yes, please furnish details of any such activities.

If no, please certify:

“We hereby declare that our firm our associate/group firm have not indulged in any such activities which can be termed as the conflicting activities at this present moment. Further, we hereby agree to disclose any further conflicting activities, in case they occur, till the finalization of the bid. We also acknowledge that in case of misrepresentation of the information, our proposals/contract shall be rejected/terminated by the employer which shall be binding on us.”

Authorized Signature [in full and Initials]:

Name and title of Signatory:

Name of Firm:

Address:

Form TP-4: Power of Attorney for Authorised Signatory

POWER OF ATTORNEY

Know all men by these presents, we _____ (name and address of the registered office) do hereby constitute, appoint and authorize Mr. /Ms. _____ (name and address of residence) who is presently employed with us and holding the position of _____ as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our Proposal for the Project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

Executant

Signature of Attorney

(Name, Title and Address of the Attorney)

Attested

Executant

Notes:

1. To be executed by the sole Bidder.
2. 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 executants (s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.
3. Also, where required, the executants(s) should submit for verification the extract of the charter documents and documents such as a resolution / power of attorney in favor of the Person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

Form TP-5: Letter of undertaking

Date:

To,

The Managing Director,
Sagarmala Development Company Limited,
1st Floor, PTI Building,
Parliament Street,
New Delhi – 110001

Subject: Selection of Legal Advisors for empanelment

We hereby agree and undertake as under:

1. That, notwithstanding any conditions, whether implied or mentioned in our Technical Proposal, we agree to the terms and conditions as contained in the RFE document provided to us.
2. That if empanelled and for the specific project (s) mandated to us, we/our affiliates/ will not bid for the same project(s) and / or rate the proposed project(s).

We hereby represent and confirm that our proposal is unconditional.

Dated this..... Day of..... 2017

Name of the Applicant

Signature of the Authorized Person

Name of the Authorized Person

Form TP-6: General Information of the Bidder(s)

1.	Details of the Company / Firm (applicant)		
	(a)	Name:	
	(b)	Country of incorporation:	
	(c)	Address of the corporate headquarters and its branch office(s), if any, in India:	
2.	Details of individual(s) who will serve as the point of contact / communication for SDCL within the Company (applicant):		
	(a)	Name:	
	(b)	Designation:	
	(c)	Company:	
	(d)	Address:	
	(e)	Telephone Address:	
	(f)	Fax Number:	
	(g)	Email Address:	

Signed:

(Name of the Authorised Signatory)

For and on behalf of

(Name of the Applicant)

Designation:

Place:

Date:

To be enclosed:

1. Documents certifying applicant's legal status i.e. Certificate of incorporation / registration.
2. Latest brochures/ organization profiles, etc.

Form TP-7: Format for Responsiveness of Proposal – Project Specific Experience

[Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually as a corporate entity for carrying out consulting services similar to the ones requested under this assignment.]

- Use projects with copy of proof of experience as required for meeting the minimum qualification criteria prescribed.
- Exhibit only those projects undertaken in the last ten (10) years preceding the PDD.
- Projects without the proof of experience from respective client will not be considered

Assignment Name and project cost:	Approx. value of the Contract (in INR in Crore)
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total No. of staff-months of the assignment:
Address:	Approx. value of the services provided by your firm under the contract (in INR in Crore)
Start Date (Month/Year): Completion Date (Month/Year):	No. of professional staff months provided by associated Consultants:
Name of Lead Partner: Name of Associated Consultants, If any	Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director / Coordinator, Team Leader):
Narrative Description of Project:	
Description of actual services provided by your staff within the assignment:	

Firm's Name:

Authorized Signature:

Note:

For the purpose of evaluation of applicants INR 65.0 (INR Sixty Five only) per USD shall be considered as the applicable currency conversion rate. In case of any other currency the same shall first be converted to USD as on the date 60 (Sixty) days prior to the proposal due date and the amount so derived in USD shall be converted in to INR at the aforesaid rate. The conversion rate of such currency shall be the daily representative exchange rates published by the IMF for the relevant date. Please limit the description of each project in two A4 size sheet of paper. Descriptions exceeding two A4 size sheet of paper shall not be considered for evaluation