REQUEST FOR PROPOSAL

(Bidding Terms & Scope of Work)

FOR

Selection of Law Firm for Legal Opinion on Income tax and GST

Dated: 13th January 2022

Invest India

Invest India is the National Investment Promotion and Facilitation Agency of India and acts as the first point of reference for investors in India.
LETTER OF INVITATION

Dear Sir/Madam,


2. The firms are requested under this Request for Proposal to carefully study the Scope of Work and requirements attached below.

3. Please inform us within one (1) day of issue of RFP at the below mentioned address (email), upon receipt:
   
   3.1 that you will submit the proposal and share the and password protected bid by 17th January 2022 5:00 PM

4. The information may be submitted at the following address via email to:

   Akshay Hariharan
   Invest India
   Vigyan Bhawan Annexe
   Maulana Azad Road | New Delhi 110011
   M: +91 9811144250
   E: procurement@investindia.org.in
   [Cc to akshay.hariharan@investindia.org.in]
   W: www.investindia.gov.in

Yours faithfully,

Deepak Bagla

MD & CEO
IMPORTANT DATES:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Issue Date</td>
<td>13&lt;sup&gt;th&lt;/sup&gt; January 2022</td>
</tr>
<tr>
<td>Last Date for Bid Submission</td>
<td>17&lt;sup&gt;th&lt;/sup&gt; January 2022 05:00 AM</td>
</tr>
<tr>
<td>Financial Bid Opening</td>
<td>18&lt;sup&gt;th&lt;/sup&gt; January 2022</td>
</tr>
<tr>
<td>Declaration of Results</td>
<td>19&lt;sup&gt;th&lt;/sup&gt; January 2022</td>
</tr>
</tbody>
</table>

Submission and Evaluation of Proposal:

- The original proposals needs to be submitted via email to procurement@investindia.org.in [Cc to akshay.hariharan@investindia.org.in] and must be addressed to:
  
  Akshay Hariharan  
  Invest India  
  Vigyan Bhawan Annexe  
  Maulana Azad Road | New Delhi 110011  
  M: +91 9811144250

The e-mail must clearly indicate the name “Selection of Law Firm for Legal Opinion”

The Evaluation Committee shall evaluate the Technical and Financial Proposal for bidders based on their technical, CV and financial proposal in the ratio of 70:30.

Pre-Qualification Criteria:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Pre-qualification Criteria</th>
<th>Supporting Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The firm should have been incorporated and registered as Sole Proprietorship/Partnership/limited Liability Partnership under The Indian Partnership Act, 1932 or Limited Liability Partnership Act, 2008 for a minimum period of 10 years as on 01&lt;sup&gt;st&lt;/sup&gt; January 2022.</td>
<td>Incorporation certificate</td>
</tr>
<tr>
<td>2</td>
<td>The firm should have a registered office in atleast 5 Cities in India as on 01&lt;sup&gt;st&lt;/sup&gt; January 2022.</td>
<td>Details of the offices on Company’s letterhead signed by authorized representative</td>
</tr>
<tr>
<td>3</td>
<td>The firm should have advised any central, state government ministry, PSU and autonomous body on taxation matters in the past 2 years as on 01&lt;sup&gt;st&lt;/sup&gt; January 2022.</td>
<td>Copy of Workorder/Contract/Completion Certificate/Approved invoice/Appreciation Letter</td>
</tr>
<tr>
<td>4</td>
<td>The firm must give an undertaking that it has not been blacklisted on grounds of moral turpitude.</td>
<td>An undertaking on the company’s letterhead</td>
</tr>
</tbody>
</table>
The firm must give an undertaking that it is solvent

An undertaking on the company’s letterhead that it has not been declared as insolvent

Evaluation Process:

- The firms are hereby invited to bid based on the Scope of Work, Financial Proposal and evaluation process laid down below.
- The firms will be requested to send in their proposal along with proposed team based for proposed project.
- The technical proposal of those firms will be evaluated for those who qualify the pre-qualification criteria.
- The Financial Proposals need to be submitted in a password protected file. Passwords shall be sought during the opening of financial bids.
- The Evaluation shall be done out of 100 marks.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Testing Criteria</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>a) Avg Turnover of the firm in last five year (20 Marks)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- More than 30 cr – 6 marks</td>
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<tr>
<td></td>
<td>- More than 60 cr – 12 marks</td>
<td></td>
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<tr>
<td></td>
<td>- More than 100 cr – 20 marks</td>
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<tr>
<td></td>
<td>b) Firm’s prior experience in similar assignments in last 5 years – Please list prior assignments (20 Marks)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- No. of Assignments executed of similar nature if are up to 3: 10 marks</td>
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</tr>
<tr>
<td></td>
<td>- No. of Assignments if are 3 to 5: 15 marks</td>
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<tr>
<td></td>
<td>- No. of assignment if more than 6 and above 20 marks</td>
<td></td>
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<td></td>
<td>c) Firm’s employee strength as on 01st January 2022 (15 Marks)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- 75 – 99 Employees: 5 marks</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- 100 – 149 Employees: 10 marks</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- More than 150 Employees: 15 marks</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d) Reportable cases AIR (SC/HC/ NCLT/NCLAT/DRT/ITAT/SAT/GSTAT) (15 Marks)</td>
<td></td>
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<tr>
<td></td>
<td>- Upto 2 cases: 5 marks</td>
<td></td>
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<tr>
<td></td>
<td>- 3 – 5 cases: 10 marks</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- More than 5 cases: 15 marks</td>
<td></td>
</tr>
</tbody>
</table>
(a) Understanding and adherence of TOR: (05 Marks)
Demonstrated level of understanding of the project, its purpose, scope, and firm’s plan for performing the required services as detailed in scope of work, technical and functional requirements in the bid, during the entire lifecycle of the project.

(b) Approach and Methodology: (10 Marks)
Comprehensiveness and robustness of Project Plan (level of detail of activities, risk mitigation and practicality). This criterion will be evaluated based on the following parameters:
- Comprehensiveness of plan with respect to all activities that need to be undertaken to meets the requirements specified in the scope of work.
- Resource planning and allocation

(c) Work Plan and Schedule: (05 Marks)
Appropriateness of prescribed time frames.

(d) Profile of team proposed to be Deployed: (10 Marks)
Experience of team members in similar projects in the past.
BID PROPOSAL SHEETS

Quotes submitted towards providing legal solutions to **Invest India**, the national investment promotion and facilitation agency for India, promoted by Department for Promotion of Industry and Internal Trade (DPIIT) **Ministry of Commerce and Industry, Government of India**, in accordance with the scope of work and terms & conditions mentioned hereunder.

Financial Bid

<table>
<thead>
<tr>
<th>S.no.</th>
<th>Scope of work</th>
<th>Amount in INR</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Project Cost</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Miscellaneous Cost</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total Cost (Inclusive of all applicable taxes)</td>
<td></td>
</tr>
</tbody>
</table>

**Note:**

- The Financial bids must be (inclusive of taxes) (if any).
- The prices stated in the bid shall be deemed to include all amounts payable for overhead expenses, stationary cost, printing charges etc.
- For the purpose of evaluation for Selection of Bidder, the total cost inclusive of taxes of all the above will be considered.
- In case of any other overhead charges which are not part of the proposal the same shall be incurred only after seeking prior written approval of Invest India.

Signature of the Authorized Signatory

Place:               Name:
Scope of Work

Introduction:

Invest India, the National Investment promotion agency of India is a Section – 8 company incorporated in 2009. Invest India is a joint venture of the Department of Industrial Policy and Promotion of the Ministry of Commerce and Industry, Government of India, State Governments of the Republic of India and industry associations of India.

The shareholding pattern is as mentioned below:

37.5% - DPIIT
11.5% - State governments each having 0.5%
17% each – FICCI, NASSCOM, CII

CORE MANDATE as per MOA:

Invest India’s core mandate is to promote and support investments in India, supplement and support the activities of Department of Industrial Policy & Promotion (Hereinafter referred to as DIPP) which is now known as DPIIT, Ministry of Commerce and Industry, Government of India and all other sectorial ministries involved in the business of investment promotion.

1. To promote and support investments in India.
2. To supplement and support the activities of Department of Industrial Policy & Promotion (Hereinafter referred to as DIPP), Ministry of Commerce and Industry, Government of India and all other sectorial ministries involved in the business of investment promotion.
3. To assist DIPP in its promotional efforts abroad with structured programmes, business meeting and sectorial information.
4. To provide handholding services and assist in preparation of sector specific investment reports to interested parties.
5. To sponsor and support specific studies which would target identified sectors and technologies relevant for investment in India.
6. To follow up with and provide feedback to the State government, Central Ministries and DIPP for policy initiatives required to facilitate further investment in India.
7. No object of the company will be carried out without obtaining prior approval/no objection certificate from the concerned authority wherever required.
8. None of object of the company shall be carried out on commercial basic.

For further clarity on the proposed scope of work, existing and proposed policy kindly refer to the note attached in Annexure – 1.

Scope of Work for GST & Income Tax:

The broad overview on the scope of work which relates to the legal opinion on the applicability of Income Tax and GST basis the present practice being carried out by Invest India.

It is to be noted the below mentioned scope of work is not exhaustive by any means and if required the same maybe modified to achieve the desired results due to change in policy.
**Income Tax**

- Taxability of grant/fund received from relevant Ministry and surplus (if any) arising out of such grant;
- Treatment of grant / funds received in the books of accounts;
- Implications of the change in policy to charge fixed percentage towards as administrative / management fees instead of charging the same based on apportionment of administrative cost.
- Tax and accounting treatment of surplus from projects (if any).
- The proposed suggestions and the way forward on direct tax planning measures

**GST**

- To determine if GST is applicable on Invest India basis the current projects/activities carried out by Invest India.
- Applicability of GST on projects executed by Invest India.
- Applicability of GST on administrative / management fees charged by the Invest India, including determination of tax base,
- Applicability of GST on bid processing fees, honorarium received by the Invest India.
- Applicability of GST on honorarium received by Invest India.
- Applicability of GST under RCM in case of legal service are received from advocate (taking turnover into consideration)
- GST applicability on receipt of OIDAR services by Invest India.
- Availment of ITC for GST paid under RCM
- The proposed suggestions and the way forward on tax planning measures

➢ In case of any representations, additional notes which need to be prepared for various departments/ministries the firm is required to provide their support for the same during the course of the engagement.
➢ Further, in case any change in existing sanction orders, MoUs, Request letters is required then the same must be proposed by the firm.
➢ If any changes in the MoA and AoA, sanction orders, MOU, request letters, proposals amongst others for better tax planning are required the same must be communicated by the firm to Invest India.

**Timelines:**

<table>
<thead>
<tr>
<th>S.No</th>
<th>Deliverable</th>
<th>Timelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Issuance of work order</td>
<td>T</td>
</tr>
<tr>
<td>2.</td>
<td>First round of discussion after review of documents</td>
<td>T + 2 days</td>
</tr>
<tr>
<td>3.</td>
<td>First draft of policy after due diligence and analysis of MOU’s, Work Orders, Sanction letters</td>
<td>T + 6 days</td>
</tr>
<tr>
<td>4.</td>
<td>Final Draft of the revised policy including suggestions and policy modifications</td>
<td>T + 10 days</td>
</tr>
</tbody>
</table>
Annexure - 1

INVEST INDIA

BACKGROUND

Invest India, the National Investment promotion agency of India is a Section – 8 company incorporated in 2009. Invest India is a joint venture of the Department of Industrial Policy and Promotion of the Ministry of Commerce and Industry, Government of India, State Governments of the Republic of India and industry associations of India.

The shareholding pattern is as mentioned below:

37.5% - DPIIT

11.5% - State governments each having 0.5%

17% each – FICCI, NASSCOM, CII

CORE MANDATE as per MOA:

Invest India’s core mandate is to promote and support investments in India, supplement and support the activities of DPIIT, Ministry of Commerce and Industry, Government of India and all other sectorial ministries involved in the business of investment promotion.

9. To promote and support investments in India.

10. To supplement and support the activities of Department of Industrial Policy & Promotion (Hereinafter referred to as DIPP), Ministry of Commerce and Industry, Government of India and all other sectorial ministries involved in the business of investment promotion.

11. To assist DIPP in its promotional efforts abroad with structured programmes, business meeting and sectorial information.

12. To provide handholding services and assist in preparation of sector specific investment reports to interested parties.

13. To sponsor and support specific studies which would target identified sectors and technologies relevant for investment in India.

14. To follow up with and provide feedback to the State government, Central Ministries and DIPP for policy initiatives required to facilitate further investment in India.

15. No object of the company will be carried out without obtaining prior approval/no objection certificate from the concerned authority wherever required.

16. None of object of the company shall be carried out on commercial basic.

POLICY:

Invest India is a not-for-profit section 8 company (as per Companies Act, 2013) incorporated in 2009 and formulated as per vide cabinet note no. 11/4/2008-IP&IC -IV issued on 28th August 2009 in which Clause 3.4 states – “DIPP (Now Known as DPIIT) will provide event/project-based support to the company out of the plan schemes operated for the purpose, the company could also seek funding support for activities/ projects undertaken on behalf of or for other Ministries/Departments of Government of India and State governments.”
**Existing:**

As per existing policy, Invest India on all the projects executed on behalf of Government of India has been authorised to charge upto 15% admin/management fee (basis actual expenditure). Invest India is currently executing all the projects on actual cost basis including its cost of the core operation, establishment, and other administrative cost (For e.g. If actual expenditure towards cost of the core operation, establishment, and other administrative costs is 11%, Invest India has been charging 11% instead of 15%). Please find below example with detail.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Particulars</th>
<th>Budget (Amount in INR)</th>
<th>Actual as per existing policy (Amount in INR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Human Resource Cost</td>
<td>100</td>
<td>50</td>
</tr>
<tr>
<td>2</td>
<td>Subject Matter Expert Cost</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>115</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Administration Cost@15%</td>
<td>17.25</td>
<td>Upto 9 (charged as per actual) (60*15%)</td>
</tr>
</tbody>
</table>

Invest India provides Utilization Certificates (UC) to partner Ministry/ Department and does not raise invoices for the work carried out.

The Utilization Certificates (UC) are provided for the work carried out. Surplus funds from Year 1 are either returned or carried forward to Year 2. The budget is exclusively be used for Lok Sabha Secretariat, Parliament of India activities only.

**Proposed change:**

Management is evaluating a proposal if Invest India can charge fixed 15% as administrative and management charges on projects executed by Invest India for different ministries (For e.g. If actual expenditure towards cost of the core operation, establishment, and other administrative costs is 11%, Invest India will charge flat 15% where 4% will be surplus). The objective is to create a corpus out of surplus funds available. Refer above table for example.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Particulars</th>
<th>Budget (Amount in INR)</th>
<th>Actual as per proposed change in policy (Amount in INR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Human Resource Cost</td>
<td>100</td>
<td>50</td>
</tr>
<tr>
<td>2</td>
<td>Subject Matter Expert Cost</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>115</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Administration Cost@15%</td>
<td>17.25</td>
<td>Flat 9 (60*15%) (charged fully)</td>
</tr>
</tbody>
</table>

**QUERY**

With respect to change in above policy we have below list of questions from statutory compliance perspective:
A. Income Tax and GST:

On existing policy:

(i) As per existing policy we are treating whole amount (including admin/mgt fee) received as grant/fund and is not subjecting it to any tax including GST. Is the treatment correct?

On proposed change in policy:

(ii) Would surplus arising as per above example be a part of corpus or it would be treated as gain and hence be taxable. (For e.g. If actual expenditure towards cost of the core operation, establishment, and other administrative costs is 11%, Invest India will charge flat 15% where 4% will be surplus).

(iii) What should be the treatment of the grant/fund received from different ministries in books of accounts of Invest India.

(iv) What would be Tax implications of policy change from existing to revised.

(v) Would 15% admin be treated as surplus or the whole amount received be taxed accordingly.

(vi) Since Invest India would charge flat 15% on actual expenditure there would be surplus amount left over after actual expense charged. Would this be treated as surplus in books of accounts? Also please suggest accounting treatment.

(vii) What would be the tax treatment of surplus from income tax and GST perspective.

(viii) Whether GST is applicable on 15% admin/management fee on total fund received.

(ix) Please suggest on which amount ideally admin fee of 15% should be charged.

(x) What will be the proposed taxation in case of projects.

(xi) Please suggest how Invest India can do better tax planning with respect to future projects/activities.

B. GST specific query:

(i) Whether GST is applicable on Invest India? If no, what should be the correct reason for GST non-applicability?

(ii) Is grant received part of turnover in GST?

(iii) Definition of turnover as per GST.

(iv) Whether to mention the amount of Grant received in GSTR-1 in the head of Nil/Zero rated, Non-GST & exempted supply?

(v) Is section of annual return and audit applicable on Invest India and Whether to mention the amount of Grant received in GSTR-9/9C in the head value of exempted, nil/zero rated, Non-GST supplies & No-supply turnover?

(vi) Is there any other concern Invest India is missing out?

C. Bid Processing Fees (Non-Refundable)

Facts - Invest India receives in the bank account/or through Demand Draft “Non-refundable Bid processing fees” from the bidders against the tenders issued.

Practice - Invest India raises Tax Invoice for the bid processing fees received from the bidders. Accordingly, the same is shown in GSTR-1 and GSTR-3B. (Attaching the same for your reference)

Query - Whether GST is applicable on bid processing fees received and practice followed by Invest India is correct or not?
D. Honorarium

**Facts:** Employees of Invest India attend seminars/events organised by different institutions for which Invest India receives honorarium.

**Practice:** Honorarium is treated as an outward supply and Invest India raises Tax Invoice for the amount so received. Accordingly, the same is shown in GSTR-1 and GSTR-3B. (Invoice and document related to Honorarium is attached for your reference).

**Query:** Whether GST is applicable on amount received as honorarium to Invest India.

E. INWARD SUPPLY

(Applicability of RCM)

a. Domestic vendors

**Facts:**
Invest India is a section 8 company under companies Act 2013 and its source of receipts is by the way of Grants from Govt of India.

**Practice:**

i. RCM in case of domestic vendors is only applicable to Invest India till date in case of legal service from an advocate.

ii. RCM in case of purchase from unregistered vendors was applicable from 1st July 2017 to 13th Oct 2017 in 17-18, it is no more applicable.

**Query:**

i. To confirm whether GST under RCM should be applicable in case of legal service from advocate considering its turnover.

b. International vendors

**Facts:**
Invest India is a section 8 company under companies Act 2013 and an entity registered under section 12AA of Income-tax Act, 1961.

**Practice:**

iii. Currently RCM is paid in case of import of service which majorly covers subscription and advertisement cases (OIDAR).

iv. Subscriptions are paid in 3 ways- directly to vendor, credit card statements and reimbursements and GST is applicable in all the cases.

**Query:**

i. Are activities of Invest India’s are not covered under charitable activities of GST?

ii. Confirmation of whether GST is applicable on all cases of import of service complying with place of supply rules and liability is of Invest India.
iii. Will it be applicable in case of all three payment modes at the time of payment or 60 days from Invoice date-whichever is earlier.
iv. Is Invest India a non-taxable online supplier for OIDAR?

INPUT TAX CREDIT AVAILMENT AND UTILISATION

Facts:

i. No input credit (on service received or GST paid under RCM) has been availed & utilized by Invest India in past (i.e. prior to FY 20-21) due to no applicability of GST on output service.
ii. W.e.f from FY 20-21, output tax liability arises on the following services.
iii. Non-refundable bid processing fees received from bidders submitting bids against the Tenders
iv. Input tax credit has been availed in FY 20-21 on the GST paid under RCM
v. GST paid under RCM is w.r.t import of service (LinkedIn, Twitter, OIDAR). Sample Invoices attached for your reference.

Query: Whether we can avail the ITC for GST paid under RCM considering the following:

i. Input service on which RCM is charged is not directly related to the output service (Airport Authority) and might not be directly related to the other output service (bid processing fees).
ii. Input service on which RCM is charged might be related to projects for which Grants is received and there is no current practice to charge GST on the grant amount.

Note: Above questions are limited to background provided, there can be more query basis our in-person discussion. We will not be able to share documents over email due to confidentiality issues hence would appreciate if in person meeting can be planned.