

REQUEST FOR EMPANELMENT (RFE)
OF ADVISORS FOR M&A OPPORTUNITIES



PROPOSAL REF. NO. AA/M&A/RFE/2013

Issued by

Corporate Mergers & Acquisitions Department
5th Floor, AB Wing,
Bharat Heavy Electricals Limited
BHEL House, Siri Fort, New Delhi -110049
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Important Timelines

S. No	PARTICULARS	DATE	TIME
1	ISSUE OF NOTICE INVITING TENDER FOR RFE	11 TH DEC 2013	1000 HRS
2	LAST DATE FOR SENDING QUERIES TO BHEL	20 TH DEC 2013	1700 HRS
3	LAST DATE FOR SUBMISSION OF PROPOSALS	13 TH JAN 2014	1400 HRS
4	OPENING OF PROPOSALS	13 TH JAN 2014	1400 HRS

Documents to be Submitted

S. No	PARTICULARS	REFER
1	SIGNED & STAMPED RFE	CLAUSE 11.g OF SECTION II
2	COVERING LETTER & NO DEVIATION CERTIFICATE	FORMAT A OF SECTION VI
3	CHOICE OF ADVISORY SERVICES	FORMAT B OF SECTION VI
4	LETTER OF UNDERTAKING	FORMAT C OF SECTION VI
5	SUCCESSFUL TRANSACTIONS	FORMAT D OF SECTION VI
6	PRESENCE IN INDIA - INCORPORATION CERTIFICATE	FORMAT E OF SECTION VI
7	GLOBAL PRESENCE - INCORPORATION CERTIFICATE	FORMAT F OF SECTION VI



SECTION I: INVITATION FOR PROPOSALS (IFP)

Bharat Heavy Electricals Limited (BHEL) invites Proposals for empanelment of advisors for Mergers & Acquisitions for the scope detailed at Section V "Indicative Scope of Work (SOW)" of this RFE Document. The thrust shall be primarily on Overseas Mergers & Acquisitions. There will be three separate panels one each for Financial Advisors, Accounting & Tax Due Diligence Advisors and Legal Due Diligence Advisors. Advisors will be appointed by BHEL as and when required for a particular opportunity. Responsibility of co-ordination and rendering a comprehensive service/solution for a target acquisition will be with the Financial Advisor.

The advisors will be empanelled initially for a period of three years, with an option to extend it further by two years.

The RFE includes the following documents:

- Section I: Invitation for Proposals (IFP)
 - Section II: Instructions to Bidders (ITB)
 - Section III: Terms & Conditions of Contract (T&C)
 - Section IV: Obligations of the Advisors at RFP Stage
 - Section V : Indicative Scope of Work (SOW)
 - Section VI: Formats A to F
1. The "Request for Empanelment" document is available on the website <http://www.bhel.com> for free download.
 2. As per the Government of India guidelines, the RFE has also been published on the Central Public Procurement Portal (CPPP) at www.eprocure.gov.in.
 3. General Manager (M&A) BHEL Corporate Office, New Delhi reserves the right to accept or reject any or all the proposals in whole or part without assigning any reasons.
 4. Address for Communication:

J Govindaswamy, General Manager (M&A)
Bharat Heavy Electricals Limited,
Corporate Mergers & Acquisitions,
5th Floor, AB Wing,
BHEL House, Siri Fort,
New Delhi - 110 049, INDIA
Tel. +91 11 66337218, + 91 11 66337011, FAX: + 91 11 66337313
Email: mergers@bhel.in



SECTION II: INSTRUCTIONS TO BIDDERS (ITB)

1. Definitions

Unless the context otherwise requires, the following terms whenever used in this RFE and Contract have the following meanings:

- a) “Applicable Law” shall mean the Indian Law both substantive and procedural.
- b) “Seller” means the company/owners divesting the Target.
- c) “Target” means the company being divested by the Seller.
- d) “Process” shall mean the Seller’s disinvestment of the Target and BHEL’s participation in the same. The “Process” shall include all activities as detailed out in ‘Indicative Scope of work’ in Section V.
- e) “Party” means BHEL or the advisors, as the case may be, and “Parties” means both of them.
- f) “Personnel” means persons employed by the advisors as employees and assigned to the performance of the Services or any part thereof.
- g) “Services” means the work to be performed by the advisors pursuant to empanelment and appointment, as described in the detailed Indicative Scope of work (Section V).
- h) “Interested third party (ies)” means other firms and all others interested in the Process.
- i) “Group Company” means “two or more enterprises, which directly or indirectly are in a position to exercise 26 per cent or more voting rights in the other enterprise, and/or can appoint members of the board of directors in the other enterprise, or enterprise which are being held by same holding company or promoter”.
- j) “Transaction Size” means Value of stake bought in the target by the acquiring company

2. Introduction

BHEL is the largest engineering and manufacturing enterprise in India in the energy-related/infrastructure sector, today. BHEL was established 50 years ago, ushering in the indigenous Heavy Electrical Equipment industry in India - a dream that has been more than realized with a well-recognized track record of performance. The company has been earning profits continuously since 1971-72 and paying dividends since 1976-77.

BHEL manufactures over 180 products under 30 major product groups and caters to core sectors of the Indian Economy viz., Power Generation & Transmission, Industry, Transportation, Defense, Renewable Energy, etc. BHEL has 17 manufacturing divisions, two repair units, four regional offices, eight service centers, eight overseas offices and 15 regional centers and currently operate at more than 150 project sites across India and abroad, enabling the Company to promptly serve its customers and provide them



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with suitable products, systems and services efficiently and at competitive prices. The high level of quality & reliability of its products is due to the emphasis on design, engineering and manufacturing to international standards by acquiring and adapting some of the best technologies from leading companies in the world, together with technologies developed in its own R&D centers. BHEL's operations are organized around three business sectors, namely Power, Industry (including Transmission, Transportation, Defence and Renewable Energy) and Overseas Business. This enables BHEL to have a strong customer orientation, to be sensitive to their needs and respond quickly to the changes in the market.

BHEL's vision is to become a global engineering enterprise, providing solutions for better tomorrow. The company is striving to give shape to its aspirations and fulfill the expectations of the country to become a global player. In line with above, BHEL is actively pursuing Mergers & Acquisitions route for inorganic growth of the company.

In this context, BHEL intends to empanel Advisors through issue of Request for Empanelment. The Bidder shall be invited to submit a Proposal. The Proposal will be the basis for empanelment of advisors. The advisors will be empanelled initially for a period of three years, with an option to extend it further by two years.

3. Right to accept Proposal

BHEL reserves the right to accept or reject any Proposal, and to annul the Empanelment process and reject all Proposals at any time prior to empanelment of advisors, without thereby incurring any liability to the affected Bidder(s) or BHEL or any obligation to inform the affected Bidder(s) of the grounds for such decision.

4. Amendments in RFE

At any time prior to deadline for submission of proposal, BHEL may for any reason, modify the RFE. The modifications will be notified on BHEL's website and such amendments shall be binding on bidder(s).

5. Pre-Proposal Queries

The prospective bidder, requiring any clarification on RFE may notify the same in the form of query to BHEL latest by 1700 Hrs of 20th December 2013. Queries can be sent to mergers@bhel.in. BHEL would respond to the queries at the earliest.

6. Fraud and Corruption

BHEL requires that the Advisors empanelled through this RFE must observe the highest standards of ethics during the performance and execution of such contract. In pursuance of this policy, BHEL:

- a. Defines, for the purpose of this provision, the terms set forth as follows:
 - (i) "Corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of BHEL or any of its personnel or Consultant(s) in connection with the empanelment or procurement process or contract execution.
 - (ii) "Fraudulent practice" means a misrepresentation of facts, in order to influence the empanelment or procurement process or the execution of a contract, to BHEL, and includes collusive practice among Bidders (prior to or after Proposal submission) designed to establish Proposal prices at artificially high or non-competitive levels and to deprive BHEL of the benefits of free and open

competition;

- (iii) "Unfair trade practices" means supply of services different from what is ordered on, or change in the Indicative Scope of Work which was given by the BHEL in Section V.
 - (iv) "Coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the execution of contract.
- b. will reject a proposal for empanelment , if the Bidder recommended for empanelment , has been determined by BHEL to having been engaged in corrupt, fraudulent, unfair trade practices or coercive practices.
 - c. will declare an advisor ineligible, either indefinitely or for a stated period of time, for the contract, if it at any time determines that the Advisor has engaged in corrupt, fraudulent and unfair trade practice in competing for, or in executing, the contract.
 - d. Will reject the offers of the bidders who are on the banned list and also the offer of the bidders, who engage the services of the banned firms. The list of banned firms is available on BHEL website www.bhel.com.

7. Clarifications on RFE proposals

During pre qualification and evaluation of the Proposals, BHEL may, at its discretion, ask Bidders for clarifications on their proposal. The Bidders are required to respond within the time frame prescribed by BHEL.

8. Process for Empanelment & Awarding subsequent project specific work

BHEL intends to empanel Advisors for M&A. The indicative scope of engagement is explained in Section V (SOW).

This enquiry is in the nature of Request for Empanelment (RFE) intended to result in the selection of three panels of Advisors (one each for Financial Advisors, Accounting & Tax Due Diligence Advisors and Legal Due Diligence Advisors). The responses received pursuant to this RFE will be evaluated as per the criteria specified in this document.

The empanelled Advisors will be invited to bid through a limited tender at sole discretion of BHEL as and when projects arise, through a request for proposal (RFP) on a project-to-project basis. The Advisors will be selected after an evaluation of their proposals received pursuant to the RFP issued on a project specific basis.

The Detailed Scope of work for specific projects will be stated in RFP specific to the project. RFP may contain a specific Qualification Criteria (e.g. experience in particular geography and/or experience in particular industry). Technical bids may also be called along with the financial bids, after the empanelment, in the RFP.

9. Qualification Criteria:

- 9.1. Bidders to satisfy following qualification criteria as per the service they intend to provide, to apply for empanelment.
 - 9.1.1. Financial Advisor
 - A. The company should have minimum experience of advising corporates in India as Financial Advisor on M & A for preceding three Financial Years i.e. 2012-13, 2011-12, 2010-11; and,

- B. The Indian arm of the company should have successfully completed at least three cross border M & A deals in the preceding three financial years as Financial Advisor, satisfying all the criteria below:
- a) Either the target or the seller is in India,
 - b) Transaction size of each deal is worth at least USD 100 Mn,
 - c) At least one deal should be as an advisor to Indian entity in an outbound M&A deal from India.
 - d) The deals should exclude all deals wherein the Financial Advisor is an advisor to a group company; and
- C. The Company should have an independent presence in India, Europe and North America.

9.1.2. Accounting & Tax Due Diligence Advisor

- A. The company should have Minimum experience of advising corporates in India as Accounting and Tax Due Diligence Advisor on M & A for preceding three Financial Years i.e., 2012-13, 2011-12, 2010-11; and
- B. The Indian arm of the company should have successfully completed Due Diligence for at least three successful cross border M & A deals of at least USD 50 Mn each (transaction size) in the preceding three financial years as Accounting Due Diligence advisor such that at least one deal should be as an advisor to Indian entity in an outbound M&A deal from India; and,
- C. The company should have independent presence in India, Europe and North America.

9.1.3. Legal Due Diligence Advisor

- A. The firm should have minimum experience of advising corporates in India as Legal Due Diligence Advisor on M & A for preceding three Financial Years i.e., 2012-13, 2011-12, 2010-11; and,
- B. The firm should have successfully completed Due Diligence for at least three successful cross border M & A deals of at least USD 50 Mn each (transaction size) as Legal Due Diligence Advisor such that at least one deal should be as an advisor to Indian entity in an outbound M&A deal from India; and,
- C. The firm should have a presence with established office(s) in India.

9.2. Documentary evidence from Merger Market or Thomson Financial or Dealogic is to be submitted by all above bidders to substantiate the experience specified above.

9.3. All the advisors will be empanelled initially for a period of three years, with an option to extend it further by two years.

9.4. RFP for specific projects

- A. As per the location and nature of business of target, the specific requirement regarding experience of advisory in a particular geography and/or specific business may be asked at RFP stage as per the requirement.
- B. The legal advisor will have to perform the due diligence and other services specified in Section V (SoW) themselves for which adequate familiarity of local laws will be required in the target country or through a suitable tie up with legal firm in the target country as per criteria defined in respective RFPs . In case of later, bidder shall tie-up with a law firm of repute with adequate experience and expertise of M&A deals and such law firm shall meet the requirements set out in relevant RFP document to be issued for a particular project to the satisfaction of BHEL. If BHEL is not satisfied with the performance of local law firm or such firm does not otherwise fulfil the criteria set out in the relevant RFP document as determined by BHEL, then advisor shall promptly replace such law firm with another law firm to the satisfaction of BHEL.

10. Request for Empanelment

The Bidder is expected to examine all the instructions, guidelines, terms & conditions, and formats in the RFE. Proposals with incomplete formats will be treated as non responsive and are liable for rejection. The entire set of RFE is available for a free download at: <http://www.bhel.com> or from the Central Public Procurement Portal (CPPP) at www.eprocure.gov.in

11. Preparation of Proposal

The Bidders shall comply with the following during preparation of the Proposal:

- a. The Proposal and all associated correspondence shall be written in English and shall conform to prescribed formats. Any interlineations, erasures or over writings shall be valid only if they are initialed by the authorized person signing the Proposal.
- b. The Proposal shall be typed or written in indelible ink (if required) and shall be signed by the Bidder or duly authorized person(s) to bind the Bidder to empanelment when required.
- c. In addition to the identification, the covering letter shall indicate the name and address of the Bidder to enable the proposal to be returned in the case it is declared late pursuant, and for matching purposes.
- d. Proposals received by facsimile shall be treated as defective, invalid and rejected. Only detailed complete proposals received in hard copy shall be taken as valid. However in extreme cases, facsimile and email may be accepted after due approval from the competent authority.
- e. Bidders are not permitted to modify, substitute, or withdraw Proposals after its submission.
- f. The responsibility for depositing the proposals within the stipulated time/date rests with the advisors. Proposals received after the stipulated date / time will not be accepted. BHEL will not be responsible for any postal delay.
- g. Acceptance of the 'Instructions to Bidders', 'Terms & Conditions', Obligations of the

Advisors at RFP Stage', 'Indicative Scope of Work' and completed Formats A to F shall be indicated by return of signed copy of the same (on each page) by an authorised representative along with the seal of the company/ firm. Firms not complying with the above shall invite disqualification.

12. Submission of Proposal

The complete proposals are to be submitted latest by 1400 Hrs on 13th January 2014 in one (1) signed set with company seal. A soft copy of the complete proposal in PDF format may also be submitted in a CD along with the application. The proposal should be submitted in a sealed cover super-scribing thereon "Empanelment of Advisors for M&A opportunities - Panel Name" , "Panel Name" can be substituted by a. Financial Advisory b. Accounting and Taxation Due Diligence Advisory c. Legal Due Diligence Advisory depending upon the services intending to offer. Advisors intending to apply for multiple panels have to submit separate applications in separate envelopes. The submitted proposals will be opened on 13th January 2014 at 1400 Hrs in Corporate Office, BHEL, Siri Fort, New Delhi-110049 in presence of parties who choose to be present during the RFE Opening. No details will be read out during the opening.

However, during the course of evaluation of Proposal, as well as during the period of empanelment, BHEL has the right to carry out a due diligence in a manner relevant to understand the facts.

13. Evaluation Criteria and Evaluation of Proposals

BHEL will evaluate the proposals submitted by Bidders for a detailed scrutiny. During evaluation of Proposals, BHEL, may, at its discretion, ask the Bidders for clarification of their Proposals.

14. Qualified Bidders

The final list of advisors chosen for empanelment will be made after due verification of submittals to the satisfaction of BHEL. The decisions in this regard by BHEL will be final. On acceptance of Proposal for empanelment, BHEL will notify the successful Bidders in writing that their proposals have been accepted. Any bidder not accepting empanelment after having submitted proposal against RFE may not be considered for any M&A advisory subsequently.

15. Confidentiality

Information relating to the examination, clarification and comparison of the Proposals shall not be disclosed to any Bidders or any other persons not concerned with such process, until the empanelment process is over. The undue use by any Bidder of confidential information related to the process may result in rejection of its Proposal.

During the execution of a specific project except with the prior written consent of BHEL, the Advisor and its personnel shall not at any time communicate to any person or entity any information acquired or made available in the course of the said project.

Notwithstanding anything contained in this contract, the provisions of this clause shall survive for a period of two (2) years from the date of termination of this contract.

SECTION III: TERMS & CONDITIONS OF CONTRACT (T&C)

1. Application for interpretation

Application for interpretation of any clause in the RFE, the interpretation of BHEL shall be final and binding on the Advisors.

2. Relationship between the Parties

Nothing mentioned herein shall be construed as relationship of master and servant or of principal and agent as between the 'BHEL' and 'the Advisor' for any purpose nor shall the advisor have the right or authority to assume, create or incur any liability or any obligation of any kind or nature, expressed or implied against or in the name of or on behalf of BHEL. This contract shall not constitute the advisor as the legal representative of BHEL for any purpose whatsoever. The Advisor subject to this empanelment has complete charge of its personnel in performing the services under the Project executed with BHEL from time to time. The Advisors shall be fully responsible for the services performed by them or on their behalf hereunder.

3. Applicable Law

The Contract shall be interpreted and governed in accordance with the laws of India.

4. Intellectual Property Rights

No services covered under the Contract shall be sold or disposed by the Advisor in violation of any right whatsoever of third party, and in particular, but without prejudice to the generality of the foregoing, of any patent right, trademark or similar right, or any charge, mortgage or lien. The Advisor shall indemnify BHEL from all actions, costs, claims, demands, expenses (including attorneys fees and disbursements) and liabilities, whatsoever, resulting from any infringement as aforesaid and at the expenses of the Advisor, BHEL shall be defended in any proceedings which may be brought in that connection.

5. Governing Language

The Contract shall be written in English Language. English version of the Contract shall govern its interpretation. All correspondences and other documents pertaining to the empanelment, which are exchanged between the parties, shall be written in the English Language.

6. Termination

BHEL may choose to terminate the contract with respect to empanelment, subject to the provisions of the clauses mentioned below at 6.1.1 to 6.1.6. The term of contract would be three years from date of agreement unless BHEL decides to extend the term of the panel.

Contract shall stand automatically terminated after the term of the empanelment and the parties to the contract shall have no liability of any nature whatsoever on each other.

6.1. Termination by BHEL:

6.1.1 In event of any non-clearance/ order/ notification/ regulations by any competent authority either in India or abroad or by seller.

6.1.2 If the Advisor becomes insolvent or bankrupt or winding up proceedings are initiated against it or it enters into any agreement(s) for relief of debt or takes advantage of any law for the benefit of debtors or goes into liquidation, receivership or restructuring, whether compulsory or voluntary.

6.1.3 If the Advisor submits false and/ or incorrect statement to BHEL which has a material effect on the rights, obligations or interests of BHEL;

6.1.4 Advisor has committed any breach of any material provision herein contained and failed to rectify such breach within seven days or such period as BHEL may consider reasonable.

6.1.5 For a specific project, if the established team of specialists is changed by whatsoever reason and the Advisor fails to replace the similar suitable qualified persons of equivalent expertise, experience and specialty.

6.1.6 Non-performance during the execution of specific projects/cases as mentioned below but not limited to:

- a. Performance is below expected level or
- b. Non adherence to the timelines of the Project or
- c. Quality of work is not satisfactory

The decisions of BHEL in above regard shall be final and binding.

Upon termination of this Contract, all the data, information, material, records, documents, copies of opinions and advices, maps, etc available, received or generated by the Advisor in connection with the discharge of its obligations under this contract shall become the sole and absolute property of BHEL and shall be returned by the Advisor to BHEL within fifteen days (15) from the date of the termination thereof. However, Advisor may retain the copy of the reports for legal, regulatory, internal audit and policy reasons. Further, the advisor would still be subject to Confidentiality Terms as per clause 15 of Section II of this RFE document.

7. Resolution of Disputes:

- a) "Any disputes or differences which may arise between BHEL and Advisor in connection with this contract shall be to the extent possible settled amicably between the parties.
- b) In case such differences cannot be settled amicably, the parties may take recourse to arbitration to resolve such differences/ disputes. Any dispute, controversy or claim arising out of or in any way relating to this Agreement, including without limitation arising out of or in any way relating to the formation, breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Indian Arbitration & Conciliation Act, 1996 as



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amended/re-enacted from time to time. Seat of arbitration shall be Delhi and the language to be used in the arbitral proceedings shall be English.

- c) The number of arbitrators shall be three. BHEL shall nominate one arbitrator and Advisor shall nominate one arbitrator. The two arbitrators so appointed would nominate the third arbitrator of the tribunal, who shall be the presiding arbitrator of the tribunal.
- d) No Party or person involved in any way in the creation, coordination or operation of the arbitration of any dispute shall disclose the existence, content or results of the dispute or any arbitration conducted under this Agreement.
- e) Notwithstanding the existence of any dispute or differences and/or reference for the arbitration, the Advisor shall proceed with and continue without hindrance the performance of the work under the contract with due diligence and expedition in a professional manner.”

8. Legal Jurisdiction:

Subject to the clause 7 above, all legal disputes between the parties shall be subject to the exclusive jurisdiction of the Courts situated in New Delhi, India.

SECTION IV: Obligations of the Advisors at RFP Stage

1. General

The advisor shall perform the services and carry out their obligations with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advance technology and safe methods. The advisor shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisors to BHEL and shall at all times support and safeguard BHEL's legitimate interests in any dealings with third parties. Further advisor has to perform all the services within its scope of work in a comprehensive manner and within stipulated time.

2. Conflict of interest

BHEL requires that the Advisors, while working on BHEL's assignment, should provide professional, objective, and impartial advice and at all times hold BHEL's interests paramount, strictly avoid conflicts with other assignments/jobs or their own corporate interests and act without any consideration for future work.

3. Advisor not to benefit from commissions, etc

The remuneration of the advisor shall constitute the advisor's sole remuneration in connection with this Contract or the Services, advisor shall not accept for their own benefit any trade commissions, discount, or similar payment in connection with activities pursuant to this contract or to the Services or in the discharge of their obligations under the Contract, except as permitted by BHEL.

4. Advisor and Subsidiaries not to be otherwise interested.

The successful bidder is required to give an undertaking to BHEL to the effect that they shall under no circumstances whatsoever, represent any other party (ies) interested in the current process. Advisor and their subsidiaries shall not render the same or related services to other interested third party (ies) or the Seller or the Target & their Representatives.

5. Confidentiality

The advisor shall execute a 'Deed of confidentiality Undertaking', as per the format & contents specified by BHEL/Seller/Target, if any.

6. Indemnity

"Advisor agrees to indemnify and keep BHEL indemnified at all times from and against all actions, claims, demands, proceedings, liabilities or judgments (Collectively "Claim") and any and all losses, damages, in or in relation to the Agreement.

Notwithstanding any other provisions in the Agreement, except in cases of willful misconduct, gross negligence and/or criminal acts by Advisor:

- a) Advisor shall not be liable for any indirect or consequential losses which the



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BHEL may suffer or incur.

- b) The aggregate liability of the Advisor in respect of indemnity defined in this clause under the contract, in total or otherwise shall not exceed 100% of the fee received by the respective Advisor.”

7. Deployment of personnel

The advisor shall employ suitable qualified personnel. The professional qualifications of key personnel proposed to be deployed on various assignments are to be furnished to BHEL, and no changes shall be made, except with prior approval of BHEL.

8. Removal and/or replacement of personnel

- a) If BHEL finds that any of the Personnel have
- i. Committed serious misconduct or have been charged with having committed a criminal action; or
 - ii. Been removed as an advisor or consultant or counsel involving any issue arising out of either moral probity or incompetence; or
 - iii. Any criminal investigation or enquiry in any form is pending against him;

Or if BHEL has reasonable cause to be dissatisfied with the performance of any of the Personnel,

then the advisor shall, at BHEL's written request specifying the grounds thereof, promptly within a period of two working days provide as a replacement a person with qualifications and experience acceptable to BHEL.

- b) The advisor shall have no claim in any manner whatsoever for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

9. Assignment

The advisor/consultant shall not make any assignment of its rights or obligations to a third party without prior written approval of BHEL.

10. Notice

Any urgent notice, request, or any document to be given under this contract shall be delivered to the communication address mentioned earlier. Such notice, request or other document may be given either by hand, e-mail, fax or through registered/speed post/courier mail.



SECTION V: SCOPE OF WORK (SOW)

1. The empanelled Advisors will be invited, as and when projects arise, to submit their proposals based on Request for proposal (RFP) issued selectively at sole discretion of BHEL to empanelled advisors on a project-to-project basis. RFP may contain specific Qualification Criteria such as the size of the deal, type of deal etc. (e.g. experience in particular geography and/or experience in particular industry). Technical bids may be called along with the financial bids after the empanelment.
2. Response time for Request for Proposal (RFP) will be on a case to case basis for specific project depending on the exigencies of work. Minimum response time may be as less as one day. Empanelled advisors, not responding to the RFP despite repeated requests may invite de empanelment with immediate effect.
3. The broad project specific scope of the Advisor is to assist BHEL in acquiring the Target proposed to be disinvested by the Seller. The activities of the Advisor shall encompass, but not be restricted to, the activities listed in 4 below. The intent of the scope of work is indicative only and the advisor is expected to provide complete services as generally prevalent in the industry.
4. There will be three separate panels one each for Financial Advisors, Accounting & Tax Due Diligence Advisors and Legal Due Diligence Advisors. Advisors will be appointed by BHEL as and when required for a particular opportunity. Responsibility of overall co-ordination and rendering a comprehensive service/solution for a target acquisition will be with the Financial Advisor.

The detailed Scope of Work for the three advisors is provided below:

I. Financial Advisory

- Conduct financial analysis of the Target & its subsidiaries on behalf of BHEL incorporating due diligence finding of various advisors, through access to information, site visits, discussions etc. with the Seller, the Target and their representatives / advisors, etc.
- Analyze the various risks associated with the deal, including but not limited to economic risk, political risk, country risk, acquisition risks and suggest risk mitigation mechanisms.
- Prepare valuation report comprising detailed financial model to determine the transaction value for preliminary indicative non-binding and binding bid. The model shall generate various projected cash flows for the projects (standalone & integrated) including financial & operative sensitivities to various parameters such as revenues, operating costs, cost of capital, and estimated liabilities, etc. This model should be able to generate such cash flow scenarios to determine projected returns to BHEL. This model may form the basis for the valuation except in case of a pure asset purchase deal.
- The Financial Advisor would provide following documents to BHEL
 - Financial model in excel with all the formulas and assumptions clearly mentioned.
 - Valuation report in excel format with all the formulas.

- Cash flow projections in excel with all the assumptions.
- Comprehensive Report in word format.
- Range of valuations arrived at, with a write-up on the models on which the valuations are based and any assumptions made. The cautions / lacunae / limitations attached with each model would form an essential part.
- Based on the analysis, a market value of the target would be determined keeping in mind the various risk factors and terms and conditions of acquisition. The Advisor shall suggest the transaction value including financial / sensitivity analysis along with comparable companies' analysis, premium paid in comparable transactions if any, etc.
- Explore and suggest options available for the financial structuring and financing of the deal inter-alia security requirements, regulatory guidelines, etc.
- Analyze merger consequences of the deal including accretion / dilution and pro-forma analysis.
- Assist BHEL in determining the percentage of shareholding to be acquired based on the conclusions from the analysis and internal guidelines of BHEL.
- Coordinate Confirmatory Due Diligence (if required).

a) Negotiations

The Financial Advisor shall act as an inter-face between other advisors for discussions between BHEL and the target company's management and advisors (if any) and shall provide necessary assistance during negotiations including but not limited to:

- Advising BHEL in respect of bid strategies and tactics.
- The Advisor shall prepare all offers, to be submitted by BHEL, including price, commercial terms and shall work with BHEL's legal advisors to assist BHEL in, including but not limited to, protective clauses like representations / warranties, caveats etc.
- Discussions / negotiations with the seller after bid submission.
- Revision of key bid assumptions and parameters, if required, and preparation of revised bid.

b) Deal Structure and Closure

- The Financial Advisor shall structure the acquisition transaction.
- The Financial Advisor shall work with BHEL's legal advisor who shall advise BHEL in any proceedings relating to regulatory and shareholder approvals and in managing the tender offer process (if any).
- The Financial Advisor shall work with BHEL's other advisors to together assist in closing the transaction upon successful negotiations including transfer of shareholding in BHEL's favor.
- The Financial Advisor shall assist in negotiation and finalization of the definitive

agreements.

- The Financial Advisor may, from time to time, be asked to make presentations to the Indian Government Authorities/BHEL Board of Directors and its Sub-Committees. The Advisor shall also assist BHEL and shall coordinate with Legal advisor in preparation of documentation for obtaining various approvals from Government and other agencies including Reserve Bank of India.
- The Financial Advisor shall prepare and submit various reports and make presentations to the BHEL Management as required by BHEL.

II. Accounting & Tax Due Diligence Advisory

- Establishing the appropriateness and reasonableness of accounting policies.
- Establishing the authenticity of disclosed/audited financial figures.
- Identification of off-balance-sheet items e.g. Exposure in derivatives, guarantees etc.
- Determination of compliance with the necessary statutes and other contracts together with an assessment of the possible liabilities in the event of non-compliance.
- Review of Direct/Indirect Tax assessment orders and related documents.
- Review/assessment of internal organization including internal control system and quality of MIS.
- Analysis of working capital requirement in order to identify the structural level of working capital.
- Examination & review of financial position of the Target for last 3 years.
- Review of the forecast information (assumptions) based on result analysis of last 3 years.
- Review of audit file of internal auditors, statutory financial/cost auditors report and any other audit conducted for 3 to 4 years.
- Review of Capital expenditure incurred during last three years identifying maintenance, growth and compliance capabilities
- Review of consolidated cash flows, long term liabilities including banks and leasing agreements.
- Review of sources and utilization of funds during the year.
- Ratio analysis for three years to know the financial health of the target.
- Review of company's policy on code of corporate governance and auditor's certificate on the subject.
- Assessment of the quality of earnings (EBIT/EBITDA) for the last three years and upto the latest available quarter for the current financial year.
- Analysis of sales, margins, utilization and operating and overhead costs.

- Review of personnel related issues such as management contracts, pensions and wage/bonus arrangements.
- Comparison of budget versus actual performance on a consolidated level for the last three years and up to the latest available quarter for the current financial year focusing on restructuring and cost saving measures.
- Identifying & estimating contingent liabilities.
- Review of MIS in place and brief comment on the forecasting systems and cash flow monitoring systems.
- Analysis of capital expenditure budgeting system.
- Review of high level risks related to corporate direct and indirect taxation.
- Conduct Confirmatory Due Diligence (if required).

III. Legal Due Diligence Advisory

- Examination & review of Memorandum & Articles of Association, as well as track record of the Target.
- Enquire about the back ground of the promoters/owners of the target.
- Legal documentation underlying the corporate structure of the Target.
- Statutory and regulatory clearances from the relevant authorities for the existing business.
- Examination & review of all statutory registers maintained by the company.
- Legal aspects of all material contracts entered/ proposed to be entered & documents pertaining to the Target including minutes of meeting of shareholders, directors, committees of directors, annual reports, loan agreements, guarantee(s), any material contract entered into with the directors, employees, suppliers, contractors, consultants, bankers, financiers, creditors, etc.
- Review all litigation pertaining to cases before judicial as well as quasi-judicial proceedings including arbitration, conciliation proceedings, etc by and against the company and report on the legal and financial implications thereof.
- Details of share capital: equity, preference shares, options/rights/conversion and any special clauses on these instruments.
- Title investigation of land and other fixed assets, charges created against them, non-encumbrance certificates, statutory approvals / permissions, etc.
- Contracts / agreements, licenses, patents and other intellectual rights, payment of royalties, etc, entered into/proposed to be entered into by the Company.
- Outcome of contingent liabilities and their monetary implication.
- The effect of the extant business contracts i.e. benefits and liabilities arising from such contract, post disinvestment, on BHEL & the Target.
- HR policies of the company, agreements with trade unions and others bodies of

officers and employees, representations of trade unions, etc.

- Assessment of the extent of management control proposed to be transferred to the bidder.
- Analysis of legal risks and liabilities which BHEL may assume pursuant to BHEL emerging as the acquirer and suggest risk mitigation strategies for minimizing the impact of such risks.
- Analysis / review of Joint venture, MOUs, technology licensing agreements (both past and current), and other agreements entered into by the Company.
- Review of current contracts under process as well as committed.
- Compliance with statutory & environmental requirements and estimating the liability in case of non-compliance thereof.
- Assistance in preparation of necessary documents as required by the Seller like Bank Guarantee, Power of Attorney for the financial bid, board resolutions and any other activity associated with the bidding process, including compilation and submission of the bid.
- The Legal Advisor shall assist Financial advisor to prepare all offers, to be submitted by BHEL, including but not limited to commercial terms of deal, protective clauses like representations / warranties, caveats etc.
- The Advisor shall also assist BHEL and shall assist financial advisor in preparation of documentation for obtaining various approvals from Government and other agencies including Reserve Bank of India.
- The Advisor shall also assist BHEL and shall assist financial advisor in preparation of documentation for obtaining various approvals from Government and other agencies including Reserve Bank of India.
- Conduct Confirmatory Due Diligence (if required).

Public Announcements

- Any of the advisors or his representative or any of his employees shall not directly or indirectly issue or make any public announcement or statement regarding the engagement and/or transaction without BHEL's explicit written consent.



SECTION VI: FORMATS (A to F)

FORMAT: A (Covering Letter & No Deviation Certificate)

The bidders are required to submit the covering letter in Format A. This Form should be in the letter head of the bidders, who are submitting the proposal.

Date: _____

Proposal Ref. No. AA/M&A/RFE/2013

To,
General Manager, Mergers & Acquisitions
5th Floor, AB Wing,
Bharat Heavy Electricals Limited,
BHEL House, Siri Fort,
New Delhi -110 049

Dear Sir,

Sub: Proposal for Empanelment of Advisors for M&A opportunities

With reference to RFE document Ref. No. AA/M&A/RFE/2013 dated 11th December 2013 of BHEL and having examined it, we, the undersigned, offer to propose our services as <Financial/Accounting & Tax Due Diligence/Legal Due Diligence> (Select one) Advisor for the Empanelment of Advisors with BHEL, in full conformity with the said RFE.

We have read the provisions of RFE and confirm that these are acceptable to us. We further declare that additional conditions, variations, deviations, if any, found in our proposal shall not be given effect to.

We agree to abide by this Proposal, consisting of this letter and the Formats A to F.

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

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

Signature.....

In the capacity of.....

Duly authorized to sign Proposal for

And on behalf of.....

Date.....

Place.....



Request for Empanelment of Advisors for M&A

FORMAT: B (Choice of Advisory services)

**Bidders to indicate option chosen for
providing advisory services**

Financial Advisory	Accounting Taxation Diligence	& Due	Legal Due Diligence

Put a tick mark (√)

(Separate applications required if applying for multiple panels)

Signature.....

Name.....

Designation

Firm's Name & Address.....

Place.....

Contact No.....

Email.....



Request for Empanelment of Advisors for M&A

FORMAT: C (LETTER of UNDERTAKING ON BIDDERS LETTER HEAD)

The bidders are required to submit the Undertaking in Format B. This Form should be on the letter head of the bidders, who are submitting the proposal.

Date: _____

To,
General Manager (M&A),
Bharat Heavy Electricals Limited,
5th Floor, AB Wing,
BHEL House, Siri Fort,
New Delhi -110 049

Dear Sir,

Sub: Letter of Undertaking

With reference to RFE Ref. No. AA/M&A/RFE/2013 dated 11th December 2013 of BHEL for appointment of M&A Advisors, we declare that (“Name of the Firm along with Address”) is not involved in any financial irregularity, disciplinary action, scam during last 3 financial years.

We hereby agree that any misinterpretation or concealment of facts in this Undertaking may lead to our disqualification from the panel of Advisors

Signature.....

Name.....

Designation

Firm's Name & Address.....

Place.....

Contact No.....

Email.....



Request for Empanelment of Advisors for M&A

FORMAT: D (Successful Transactions)

List of successful cross border M&A transactions by Indian arm of the bidder in last 3 Financial Years

S. No.	Target		Acquirer		Name of Co./ Client (indicating target / acquirer)	Brief description of the job/ project	Time taken For transaction			Role of the bidder (FA/ ACCTG. & TAX /LEGAL/)	Transaction Size (in USD Mn)
	Company Name	Country	Company Name	Country			Start date	Scheduled completion date	Actual date of completion		
1.											
2.											
3.											

Signature.....

Name.....

Designation

Firm's Name & Address.....

Place.....

Contact No.....

Email.....

<Deal Sheet from Mergermarket and/or Thomson Reuter and/or Dealogic database to be provided>



FORMAT: E (Presence in India)

Present in India since:

<Incorporation certificate to be provided>

Details of Offices in India (as on date):-

- a. Complete Address
- b. Phone No.
- c. Fax No.
- d. Email
- e. Contact Person

Signature.....

Name.....

Designation

Firm's Name & Address.....

Place.....

Contact No.....

Email.....



Request for Empanelment of Advisors for M&A

FORMAT: F (Global Presence)

	List the countries	No. of offices
North America	1.X Country 2.Y Country 3.	1. in X 2. in Y 3.
Europe	1.X Country 2.Y Country 3.	1. in X 2. in Y 3.
Other Continents	1.X Country 2.Y Country 3.	1. in X 2. in Y 3.

<Incorporation certificate to be provided for at least one country each in North America, Europe and Other Continents>

Signature.....

Name.....

Designation

Firm's Name & Address.....

Place.....

Contact No.....

Email.....