

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF DISINVESTMENT**

**ENGAGEMENT OF MERCHANT BANKER(S) & SELLING BROKERS FOR
DISINVESTMENT IN NEYVELI LIGNITE CORPORATION LIMITED (NLC) THROUGH
“OFFER FOR SALE BY PROMOTERS THROUGH THE STOCK EXCHANGES” (OFS)
IN THE DOMESTIC MARKET – REQUEST FOR PROPOSALS**

1. Introduction

1.1 **A brief about the company:** Neyveli Lignite Corporation Limited hereinafter referred to as 'Company' or 'NLC' was incorporated in the year 1956 under the Companies Act, 1956 with the objective of meeting the electricity demand of southern states of India by excavating lignite for generation of power. NLC is a Schedule 'A' Central Public Sector Enterprise (CPSE) under the administrative control of the Ministry of Coal. It is one of the pioneering enterprises in the excavation of lignite and generation/sale of power. The company has three lignite mines and three thermal power stations in Neyveli, Tamil Nadu and one lignite mine and one thermal power station in Barsingsar, Rajasthan. In Joint-venture with TANGEDCO, a coal based Thermal Power Station (1000 MW) is also under construction at Tuticorin. The company has been granted Navratna status on 11th April 2011. NLC, as on date, is the only listed Navratna Company which does not meet the regulatory requirement of a minimum of 10% public shareholding as is required under Securities Contracts (Regulation) Rules, 1957. The shares of the Company are listed on the stock exchanges in India. At the end of June 2012 the Company has employee strength of 17,643.

1.2 The paid-up capital of the Company as on 31st March, 2012 is Rs.1677.71 crore divided into **1,677,709,600** shares of Rs.10/- each. Presently the Government of India holds 93.56% of the paid-up equity capital of the Company and balance is held by the public.

1.3 The Government has decided to disinvest 5% paid-up equity capital of the Company through **Offer for Sale of Shares by Promoters through the Stock Exchanges [OFS]**.

2. Proposal

2.1 The Government has decided to disinvest 5% paid-up equity share capital of NLC comprising of **83,885,500** shares of face value of Rs.10 each, out of its shareholding of 93.56% in the domestic market through OFS.

2.2 The Government is also considering allotment of 200 shares each to eligible and willing employees at a discount of 5% to the Issue/discovered (lowest cut off) price up to a maximum of 0.25% of the paid up equity capital, subsequent to completion of the transaction under OFS. The method and procedure of allotment of shares to the employees will be worked out in consultation with Merchant Bankers/Selling Brokers to the Issue.

2.3 Proposals under the guidelines at para 5 hereunder are invited from reputed **Category I Merchant Bankers** registered as such with SEBI and **having valid license as stock broker** in their name or in the name of their associate; either singly or as a consortium; with experience and expertise in public offerings in the capital market; to act as Merchant Banker and to assist & advise the Government in the process. The broking license is required to be valid till the completion of all activities relating to **OFS. Additionally, the Merchant Banker(s) or their associates would be required to act as 'Selling Brokers' for the proposed OFS.**

3. Responsibilities of the "Merchant Banker"

3.1 The Merchant Banker will be required, inter alia, to undertake tasks related to all aspects of the OFS including but not restricted to, as mentioned below: -

- (i) Advise the Government of India on the timing and the modalities of the "OFS".
- (ii) Structure the "OFS" in conformity with the prevailing framework and Regulations/ Guidelines of SEBI, the Stock Exchanges and Securities Contract (Regulations) Act, 1956; Securities Contracts (Regulation) Rules, 1957; and Companies Act, 1956, etc.
- (iii) Prepare the notice to be filed with the Stock Exchange(s) and complete all requirements & formalities of regulatory/statutory authorities.
- (iv) Undertake filing of the notice with the Stock Exchange(s)

- (v) Advise on the regulatory norms and assist in securing approval and exemptions, wherever necessary, from regulatory agencies such as SEBI, Stock Exchanges, RBI, etc., if required.
- (vi) Ensure best return to the Government.
- (vii) To conduct market survey, domestic and international road shows to generate interest amongst prospective investors. Arrange meetings with the key investors, facilitate communication about the growth potential of the Company and articulate the key marketing themes & positioning of the Company. All expenses in this regard will be borne by the Merchant Banker(s) except the tour expenses of Government and company officials.
- (viii) Undertake market research, assist in the pricing of the Issue, allocation of shares and provide after sale support, etc.
- (ix) Perform all other responsibilities connected with the "OFS".
- (x) Assist in selection of intermediaries, if any, to be appointed by Government and coordinate their work of all intermediaries.
- (xi) Prepare and approve the statutory advertisements for publication. The cost of the preparation will be borne by the Merchant Banker(s) and the cost of publication will be borne by the Government.
- (xii) The appointed Merchant Banker(s) will also make the following payments:
 - i. NSE/BSE charges for use of software for the OFS;
 - ii. NSE/BSE transaction charges.
 - iii. SEBI fee.
- (xiii) Shall enter into the requisite agreements.
- (xiv) Ensure completion of all post issue related activities as laid down in the SEBI Regulations/NSE and/or BSE rules.
- (xv) Rendering such other assistance as may be required in connection with the OFS.
- (xvi) To act as Seller Broker(s).
- (xvii) Transfer of shares on offer to the designated stock exchange or the clearing corporation.
- (xviii) Transfer of funds and/or the unsold shares to Government account on completion of the transaction.

- (xix) After completion of OFS transaction, advise the Government on the method & modalities of allotment of shares to employees and render such assistance as may be required in connection therewith.

3.2 The Government will select and appoint up to **three (3)** Merchant Banker(s) with requisite experience in Public Offerings, who together will form a team and would be called Merchant Banker(s).

4. Eligibility

4.1 Bidders should have handled at least one domestic equity issue (Initial Public Offering or Further Public Offering or OFS) of the **size of Rs.200 crore or more during the period from 1st April, 2009 to 30.06. 2012**. For the purpose the completed (listed/traded) Issues up to 30th June, 2012 will be taken into consideration.

4.2 The Government has prescribed guidelines for qualifications for Merchant Bankers for disinvestment process, enclosed at **Annexure-II**. The interested Bidders fulfilling eligibility criteria mentioned in paragraph 4.1 above are advised to go through the guidelines and if eligible, furnish the following certificate as a part of the Proposal:

“We certify that there has been no conviction by a Court of Law or indictment/adverse order by a regulatory authority for a grave offence against us or any of our sister concern(s). It is further certified that there is no investigation pending against us or our sister concern(s) or the CEO, Directors/Managers/Employees of our concern or of our sister concern(s). It is certified that no conflict of interest as defined in O.M. No. 5/3/2011-Policy dated 8th June, 2011 exists as on date and if in future such a conflict of interest arises, we will intimate the same to the Government of India/ Company.

Further, we certify that as on the date we are not advising or acting on behalf of or associated with any other person or entity (including any company, partnership, proprietary concern or individual or an HUF or association of persons or body of individuals) which is engaged in the same line of business as that of the Company (being disinvested), in respect of any transaction of same nature as the transaction for which the Government and/or the Company (being disinvested) is proposing to select the Merchant Banker(s), except for the list of the mandates, duly signed by us, in the same line of business and for the same type of transaction, as enclosed.

Further, we certify and undertake that for a period commencing from the date of our appointment (if so appointed) as the Merchant Banker(s) till the completion of the transaction, we shall keep the Government/CPSE informed of any mandate/contracts entered into, to advise or act on behalf of or associate ourselves with, any other person or entity (including any company, partnership, proprietary concern or individual or an HUF or association of persons or body of

individuals) which is engaged in the same line of business as that of the Company being disinvested , in respect of any transaction of same nature as the transaction in respect of which we have been appointed as the Merchant Banker(s).”

(The certificate should be signed by the authorized signatory of the Bidder.)

Note: The content of the certificate must not be changed. Clarification, if any, may be provided separately.

5. Submission of Proposal:

5.1 Proposals have to be submitted as per the following directions:

- (i) **Envelope 1 (unsealed)** containing the following:
 - (a) **Non-refundable fee of Rs.1,00,000** (Rupees One lakh only) by way of a demand draft drawn in favor of 'Pay and Accounts Officer, Ministry of Finance, Department of Disinvestment, New Delhi' payable at Delhi (Enclosure-1);
 - (b) Certificate, duly signed by the authorized signatory of the bidder as per para 4.2 (Enclosure-2);
 - (c) Certificate in format at **Annexure-III** (Enclosure 3);
 - (d) Authority letter authorizing the person of the bidder to sign the proposal and other documents (Enclosure 4);
 - (e) Copy of the valid certificate of Category I Merchant Banker issued by SEBI (Enclosure 5); and
 - (f) Copy of valid broking licence issued by SEBI. (Enclosure 6).
 - (g) Willingness of the Broker to act as Selling Broker for the OFS (Enclosure 7)
- (ii) **Envelope 2 (Sealed)** containing the technical bid as per format in para 5.4, to be opened in the presence of the bidders on **11th September, 2012 at 11.00 hrs.** in the Committee Room No. 515, Department of Disinvestment, Block 14, CGO Complex, New Delhi
- (iii) **Envelope 3 (Sealed)** containing the Financial Bid, to be opened only after the presentations and of only those parties who qualify in the technical bid. The bids will be opened in the presence of the bidders (who are technically qualified based on presentations) immediately after the presentations. Bids with conditionality will be summarily rejected.

5.2 The proposal (all three envelopes) can be submitted **by 1700 hours on 10th September, 2012** to Shri V. N. Gaba, Deputy Secretary, Department of Disinvestment, Room No. 208, 2nd Floor, Block No. 11/14, CGO Complex, Lodhi Road, New Delhi-110003 in hard copies in original, duly signed by the authorized officer of the Merchant Banker. No proposal will be entertained after the appointed time and date. The Government will not be responsible for any postal/courier delay. The proposals received after the appointed time and date will be summarily rejected.

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

5.4 **Proposal Format:**

The Proposals are to be submitted in detail as indicated in the following Sections. The weightage for evaluation of the Merchant Banker in respect of each criterion has been indicated against each Section.

Section (A):

Experience and Capabilities in handling transactions as Merchant Banker(s)/Global Coordinators - (Weightage for evaluation 15/100)
(for three full financial years + last completed quarter when the RFP is invited i.e. 1.4.2009 to 30.06. 2012)

- (i) Profile of the organization with full particulars of the constitution, ownership and business activities of the prospective Merchant Banker(s) (Bidder).

In case of consortium bids, the particulars of the coordinating firm having the principal responsibility for the mandate (Consortium Leader) as well as those of other partners may be furnished along with letters of acceptance from each partner. The responsibility of the consortium bidders shall be 'joint' and 'several'.

Note: 1. Consortium will be treated as one party and in case of selection, only consortium leader's name will appear in the documents like the Notice to the Stock Exchanges.

2. The partners of one consortium are precluded from participating in the bid, as a partner to another consortium.

- (ii) Unabridged Annual Reports or audited financial accounts for the last three years of the firm submitting the Proposal and of each consortium partner, if applicable.

- (iii) Details of all pending litigation and contingent liabilities, if any should be indicated. Details of past conviction and pending litigation against sponsors/partners, Directors etc., if any, and areas of possible conflicts of interest may also be indicated.

Note: In case of consortia, similar details of each proposed partner will be required.

- (iv) Details of Domestic and International Equity Offerings managed as Book Running Lead Managers/Merchant Bankers, in respect of **issue size of Rs.200 crore or more**, to be furnished in the format given in **Annexure-I**.
- (v) Equity sales and distribution capacity with demonstrable capability of selling Indian Issues in particular, Asian equity and global equity; along with distribution network and broking capability may be furnished.

Section (B):

Past Performance with Department of Disinvestment (In offer for sale or fresh issue in conjunction with offer for sale and/or IPO/FPO with effect from 1st April, 2009) – (Weightage for evaluation 10/100)

- (i) The Merchant Bankers would be evaluated on the number of applications and the Issue amount procured by them for various Issues in which Department of Disinvestment also divested Government of India shareholding.
- (ii) The quality of deal team and its ability to handle the issues that had arisen during the transactions.
- (iii) Understanding of the regulatory framework by the deal team and the time frame and quality of response to the queries of the Department/Company.

Section (C):

Sector Expertise, Experience and Understanding of Neyveli Lignite Corporation Ltd. (NLC) - (Weightage for evaluation 20/100)

- (i) Indicate work done in the areas of Lignite/Coal Mining &/or Power Generation/Sale sector, including NLC- like studies or research undertaken.
- (ii) Exhibit strength/expertise in the areas of Lignite/Coal Mining &/or Power Generation/Sale, including NLC, if any.
- (iii) The Public Offerings handled during the period from 1.4.2009 to 30.06. 2012 in the area of Lignite/Coal Mining &/or Power Generation/Sale, including NLC.

- (iv) Research Reports done on the companies operating in areas of Lignite/Coal Mining &/or Power Generation/Sale, including NLC.
- (v) SWOT analysis of the NLC.

Section (D):

Deal Team Qualification & Manpower Commitment to the Deal - (Weightage for evaluation 10/100)

Details of core team that will be handling the proposed issue, their status in the organization, their background, qualification, experience and present addresses, telephone numbers – office, residence, mobile, e-mail etc. – hands-on experience should be furnished. Separately, similar details in respect of the supervisory team may be indicated.

Details of other professionals who would provide back-up support may also be indicated separately.

An undertaking is also to be given that if during the process, any of the core team members is not available due to resignation etc. another person of the similar qualification and experience would be made available with concurrence of the Government.

Section (E):

Marketing strategy & Post Issue Market Support - (Weightage for evaluation 15/100)

- (i) Strategy for marketing shares and identification of target investor groups.
- (ii) Proposed Road Show venues and reasons for suggesting the same and the level of Merchant Banker representatives who will travel on the domestic and international road shows.
- (iii) Demand analysis and aspects influencing demand.
- (iv) Commitment(s) which may act either as a constraint, or as a conflicting interest, to your involvement in the proposed “Offer for Sale”.
- (v) Strength in lending after market support, with specific reference to Indian issues managed in the past.
- (vi) Identification of key selling points for marketing the Offering.
- (vii) Details of the valuation methodology to be followed in determining the price of the “OFS”.

(viii) Indicate realistic time schedule for launching the proposed “OFS” with break up of all activities to be undertaken by various agencies involved in the process.

Section (F):

Local presence and commitment to India and strength in drawing Retail Investor participation - (weightage for evaluation 15/100)

A brief note evidencing the Bidders presence in India in both qualitative and quantifiable terms with specific reference to research teams and details of available infrastructure may be furnished. The details shall include manpower deployed in the investment banking (equity segment), offices in India and other relevant information. The distribution network strength to elicit maximum retail participation should be indicated.

Section (G):

Global Presence and Distribution Capabilities - (Weightage for evaluation 10/100)

- (i) Indicate global network and distribution strength.
- (ii) The funds mobilized from international investors for Equity Public Offerings in India during the period from 1.04. 2009 to 30.06. 2012.
- (iii) The understanding and relationship with international institutional investors.

Section (H):

Research Capability - (Weightage for evaluation 5/100)

Research strength in the country, sector, region and world, based on rating as established by independent global surveys. Details should be given relating to research capabilities, experience and background of the research team.

NOTE (refer to Section B):

The Merchant Bankers who have not worked on any assignment in the past with the Department of Disinvestment would be evaluated on all parameters except Section B above and would be awarded marks out of 90 instead of 100 and then proportionately increased to a scale of 100 so that they are neither at an advantage nor at a disadvantage.

5.5 The complete information sought above with any additional information considered necessary by the Bidder as a part of the Proposal, should be sent (maximum of 10 pages in font size 12) to the officer mentioned in para 5.2.

6. Procedure for Selection of the Merchant Banker(s)

6.1 Qualified interested Bidders would be required to make a presentation of their credentials, in the format prescribed in paragraph 5.4 above, for the proposed transaction, before an Inter-Ministerial Group (IMG) at New Delhi in the Committee Room of Department of Disinvestment, Room No.515, Block No.14, CGO Complex, New Delhi-110003. The presentations will be held on **12th September, 2012 and if required on 13th September, 2012 also**. The time of the presentation will be posted on the website of Department of Disinvestment 'www.divest.nic.in' **on 11th September, 2012 after 17.00 hrs**. Only the Team Leader of the Core Team shall make the presentation.

6.2 The IMG would evaluate the Bidders on the criteria mentioned in paragraph 5.4 above based on their presentation and Proposals received and shortlist them for the purpose of opening of their Financial Bids. Only the parties scoring predetermined marks/score out of 100, which will be announced before presentation, will be technically short listed.

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

6.4 The marks scored by the short listed bidders in the technical evaluation will then be given a weightage of 70. Similarly the financial bids of the short listed bidders will be given a weightage of 30. The combined score of technical and financial bids will determine the H1, H2, H3 and so on.

6.5 The party scoring the highest points/marks (H1) based on the above principles would be appointed for the transaction. The other technically qualified Merchant Bankers ranked as H2, H3 and so on in that order would be asked to accept the fees quoted by H1 and the parties who so accept the fees quoted by H1 will also be appointed till the required number of Merchant Bankers are filled up. Government may consider selecting lesser number of Bidders for appointment as Merchant Bankers.

6.6 The fee quoted by H1 would be shared equally by all the appointed Merchant Bankers. However, if any Merchant Banker selected on this basis has quoted a lower fee than that quoted by H1 that Merchant Banker will get a fee equal to the fee quoted by him divided by the number of Merchant Bankers appointed for the transaction. However, the expenses to be incurred by the appointed Merchant Bankers on items as mentioned in para 3.1 above would be shared equally by all the Merchant Bankers.

6.7 The selected Bidders will work as a team and be called Merchant Bankers.

7. Requirements for Financial Bids

7.1 The Bidder is required to quote a fee in INR (in a sealed envelope) for the transaction. The fee quoted by the Bidder should be inclusive of all the applicable taxes, cess, duties etc. The fee quoted should be minimum Re.1.00 (Rupee one) or in multiples of Re.1.00 (Rupee one), failing which the financial bid would be rejected. The different taxes should be indicated separately while raising the bills for payment of fee. All bills are to be raised in INR and will be payable in INR only after successful and satisfactory closure of the transaction.

7.2 The fee quoted should be unconditional and inclusive of the expenditure to be incurred on the work mentioned in paragraph 3.1 above.

7.3 The Bidders may quote a drop dead fee, if any, payable by Government in case of calling off of the transaction by the Government after initiation of the process by the Bidder. The lowest drop dead fee quoted by any of the finally selected Bidders would be treated as drop dead fee payable by Government and be shared equally by all the Bidders. Drop dead fee will not be a criterion in determining the H1 Bidder.

7.4 The Bidders will be liable to pay taxes applicable as per law.

8. For any further clarification, contact Shri V.N. Gaba, Deputy Secretary, Department of Disinvestment, Ministry of Finance, Room No. 208, 2nd Floor, Block No.11/14, CGO Complex, New Delhi - 110 003, Tel. 011-2436 8523 , Fax 011-2436 6524, e-mail: vn.gaba@nic.in.

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DETAILS OF DOMESTIC/INTERNATIONAL EQUITY OFFERINGS

Parameters	01.04.2009- 31.03.2010		01.04.2010- 31.03.2011		01.04.2011-----	
	Mandate	Value (Rs. Cr)	Mandate	Value (Rs. Cr)	Mandate	Value (Rs. Cr)
DOMESTIC EQUITY PUBLIC OFFERINGS	1		1		1	
	2		2		2	
	3		3		3	
TOTAL						
INTERNATIONAL EQUITY PUBLIC OFFERINGS	1		1		1	
	2		2		2	
	3		3		3	
TOTAL						
PUBLIC OFFERINGS PULLED OUT/WITHDRAW N PRE OR POST ROADSHOW	1		1		1	
	2		2		2	
	3		3		3	
TOTAL						

Note: 1. Please indicate whether you were engaged by Government of India for any Equity Public Offering, other than those mentioned above and if so, furnish details.

No. 5/3/2011-Policy
Government of India
Ministry of Finance
Department of Disinvestment

Block 14, CGO Complex,
Lodhi Road, New Delhi- 110003

Dated the 8th June, 2011

OFFICE MEMORANDUM

Subject: Guidelines for qualification of Merchant Banker(s) for disinvestment process.

In order to inspire public confidence in the selection of Merchant Banker(s) through competitive bidding, the Government had framed comprehensive and transparent guidelines defining the criteria for their selection. In addition to using a set of criteria like sector experience, knowledge, commitment etc., additional criteria for qualification/disqualification of the parties to act as Merchant Banker(s) to the Government for disinvestment transactions were prescribed by the Department of Disinvestment vide its O.M. No. 5/3/2011 – Policy dated 2.5.2011.

2. In supersession of the above-mentioned O.M. of this Department, the revised criteria for qualification/disqualification of the parties to act as Merchant Banker(s) for disinvestment transactions would be as under:

- (a) Any conviction by a Court of Law or indictment/adverse order by a regulatory authority for a grave offence against the Merchant Banker concern or its sister concern would constitute a disqualification. Grave offence would be defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of offence would be taken on a case-to-case basis after considering the facts of the case and relevant legal principles by the Government. Similarly, the decision in regard to the relationship between the sister concerns would be taken based on relevant facts and after examining whether the two concerns are substantially controlled by the same person/persons.
- (b) In case such a disqualification takes place, after the entity has already been appointed as Merchant Banker, the party would be under an obligation to withdraw voluntarily from the disinvestment process, failing which the Government would have the liberty to terminate the appointment/contract.
- (c) Disqualification shall continue for a period that Government deems appropriate.

- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all the Merchant Bankers already appointed by the Government for various disinvestment transactions, which have not yet been completed.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expressions of Interest (EOI) from the interested parties to act as Merchant Banker. Further, the interested parties shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against the CEO or any of its Directors/Managers/Employees, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, similar undertaking will be obtained along with EOI. They would also have to give an undertaking that if they are disqualified as per the prescribed criteria, at any time before the transaction is completed, they would be required to inform the Government of the same and voluntarily withdraw from the assignment.
- (h) The interested parties would also be required to submit a list of or disclose any mandated transactions which are in the same line of business as that of the company (being disinvested) in respect of any transaction of same nature as the transaction for which the Government and/or the Company (being disinvested) is proposing to select or have appointed the Merchant Bankers and confirm in writing that there exists no conflict of interest as on the date of submitting their proposal for appointment/ their appointment as Merchant Bankers in handling of the transaction and that, in future, if such a conflict of interest arises, the Merchant Banker would immediately intimate the Government/Company (being disinvested) of the same.

The Government/Company (being disinvested) shall at its sole discretion after providing due and reasonable opportunity decide whether such future conflict of interest shall materially adversely affect the interest of the Government and the Company (being disinvested) in relation to the transaction and shall be entitled to grant the consent to the Merchant Banker to continue as Merchant Banker or terminate the appointment of the Merchant Banker. For disinvestment purposes, conflict of interest is defined to include engaging in any activity or business by the Merchant Banker in association with any third Party, during the engagement, which would or may be reasonably expected to, directly or indirectly, materially

adversely affect the interest of Government of India and/ or the Company (being disinvested) in relation to the transaction, and in respect of which the Merchant Banker has or may obtain any proprietary or confidential information during the engagement, that, if known to any other client of the Merchant Banker, could be used in any manner by such client to the material disadvantage of Government of India and/ or the Company (being disinvested) in the transaction.

- (i) The conflict of interest would be deemed to have arisen if any Merchant Banker in respect of the transaction is appointed by a third party for advising or acting on behalf of or associated with any other person or entity (including any company, partnership, proprietary concern or individual or an HUF or association of persons or body of individuals) which is engaged in the same line of business as that of the Company (being disinvested), in respect of any transaction of same nature as the transaction for which the Government and/or the Company (being disinvested) is proposing to select or have appointed the Merchant Banker. Further, the decision of the Government/Company (being divested) as to whether such other person or entity is engaged in the same line of business as that of the Company being disinvested, shall be final and binding on the Merchant Banker.
- (j) The conflict of interest would also be deemed to have arisen if any Merchant Banker firm/ concern has any professional or commercial relationship with any bidding firm/ concern for the same disinvestment transaction during the pendency of such transaction. In this context, both Merchant Banker firm and bidding firm would mean the distinct and separate legal entities and would not include their sister concern, group concern or affiliates etc. The professional or commercial relationship is defined to include acting on behalf of the bidder or undertaking any assignment for the bidder of any nature, whether or not directly related to disinvestment transaction. (This clause is applicable in strategic sale only).
- (k) The interested parties would also be required to give information and disclose that as on the date of submitting their proposal for appointment/ their appointment as Merchant Bankers in respect of the transaction, they are advising or acting on behalf of or associated with any other person or entity (including any company, partnership, proprietary concern or individual or an HUF or association of persons or body of individuals) which is engaged in the same line of business as that of the Company (being disinvested), in respect of any transaction of same nature as the transaction for which the Government and/or the Company (being disinvested) is proposing to select or have appointed the Merchant Banker.

- In the event the Merchant Banker fails to disclose that it is advising or acting on behalf of or associated with any other person or entity which is engaged in the same line of business as that of the Company (being disinvested), in respect of any transaction of same nature as the transaction for which the Government and/ or the Company (being disinvested) is proposing to select or have appointed the Merchant Banker, at the time of giving the afore-mentioned undertaking, the Government/Company (being disinvested) shall be entitled to terminate their appointment. Before terminating the appointment, a show cause notice stating

why its appointment should not be terminated would be issued giving it an opportunity to explain its position.

- (l) For a period commencing from the date of appointment of the Merchant Banker till the completion of the transaction, the Merchant Banker shall keep the Company/ Government informed of any mandate/contract entered into to advise or act on behalf of or associate itself with, any other person or entity (including any company, partnership, proprietary concern or individual or an HUF or association of persons or body of individuals) which is engaged in the same line of business as that of the Company being disinvested, in respect of any transaction of same nature as the transaction in respect of which the Merchant Banker has been appointed as the Merchant Banker. Provided that, if six months or more have elapsed from the date of appointment as Merchant Banker to the government disinvestment transaction, the Merchant Banker would normally be permitted by the Government/Company (being disinvested), save for exigent circumstances. The decision of the Government/Company (being disinvested) in this regard shall be final and binding on the Merchant Banker. Further, the decision of the Government/Company (being divested) as to whether such other person or entity is engaged in the same line of business as that of the Company being disinvested, shall be final and binding on the Merchant Banker.
- (m) For the purpose of clauses (k) and (l) above, the 'nature' of transaction may include, but not be limited to, a capital market transaction which in turn could include, but not be limited to, a domestic offering of shares or any other security, whether by way of initial public offer or further public offer or qualified institutions placement or issue of IDRs or by any other manner, as well as the international offering of securities, whether by way of issue of ADRs, GDRs or FCCBs or by any other manner.
- (n) In the event the Merchant Banker fails to obtain the prior written consent of the Government/Company (being disinvested) as aforesaid, the Government/ Company (being disinvested) shall be entitled to terminate the appointment of the Merchant Banker. Before terminating the appointment, a show cause notice stating why its appointment should not be terminated would be issued to the Merchant Banker giving it an opportunity to explain its position.

Sd/-
(V.P. Gupta)
Deputy Secretary to the Government of India
Tel: 2436 8036

To,

All Ministries/ Departments of the Government of India

FORMAT OF UNCONDITIONAL BID ON THE LETTERHEAD OF THE BIDDER

This is to certify that the fee quoted by us for engagement as Merchant Banker for disinvestment in [name of the company] through “OFS” is in accordance with the terms and conditions laid down in the Request for Proposals displayed on the website of the Department of Disinvestment and is unconditional.

Seal with signatures of authorized signatory of the Merchant Banker