

NIELIT
(An Autonomous Scientific Society of Department of Information Technology
Ministry of Communications and Information Technology, Govt. of India)

NIELIT – Legal Assistance/2013

No.NIELIT/CCU/TECH/166/10-Vol.XIX

Dated: 17.12.2013

Subject: Hiring of Advocates and Law Firms for legal assistance to NIELIT

Introduction:

NIELIT is an Autonomous Scientific Society under the administrative control of the Department of Electronics and Information Technology (DeitY), Ministry of Communications and Information Technology, Government of India, set up to carry out Human Resource Development and related activities in the area of Information & Communication Technology. The Society has Centres at 28 locations throughout the country. NIELIT is also well networked throughout India with the presence of its 900 Accredited Institutes.

The main objective of the Society is to carry out Human Resource Development and related activities in the area of Information, Electronics & Communication Technology (IECT). NIELIT implements the DOEACC Scheme, under which examinations are conducted in respect of four levels of long term courses in the area of Information Technology, namely, 'O', 'A', 'B', and 'C' Level besides conducting two IT mass literacy programmes viz.. Course on Computer Concepts (CCC) and Basic Computer Course (BCC). NIELIT is a National Examination Body, which also accredits courses in institutes/ organizations in the non-formal sector of IT Education & Training.

NIELIT has implemented a project for Data Digitisation for creation of National Population Register (NPR). The work was executed through Managed Service Providers (MSPs) by entering into contract agreements based on RFQ. A brief on the project and the issue in which legal opinion is required is as per **Appendix**.

1. Scope of work

Legal opinion is to be provided on the following issues:

"After executing a project through Managed Service Providers(MSP) who have been selected through tender process based on the RFQ and work order issued after entering into an agreement where the penalty clause was mentioned but maximum limit of penalty amount was not mentioned. Under such circumstances, whether

- (a) *Can we now prescribe a maximum limit of leviable penalty imposable against the MSPs by changing / modifying the above said existing clauses of the contract agreements keeping in view the CVC guidelines & GFR etc ? If so, to what extent and under which particular law / rule?*
- (b) *What will be the possible repercussion of such changes / modifications in the existing agreements and how can those be covered up& settled specially taking into account CVC guidelines and GFR? "*

2. **Eligibility:**

Essential:

- i. The service provider should be minimum a Senior Counsel with a High Court and preference will be given to retired judge of High Court or above.
- ii. The service provider should have an experience in handling cases related contract management, agreements based on RFQs taking into account CVC guidelines & General Financial Rules (GFR) etc.
- iii. The service provider shouldn't have been black listed/debarred by any institution of the Central or State Government. A self certificate in this regard may please be attached.

Note: Documentary proof to substantiate above claim may kindly be attached.

3. **Selection Criteria**

The selection of the advocate / legal firm will be based on the following criteria:

- a) Qualifications
- b) Experience in dealing with cases in the area of contract management taking into account CVC guidelines and GFR,
- c) Number of cases fought & won
- d) Consultation fee.

4. **Closing date of Application**

Application along with all the documents should reach the office of NIELIT **on or before 24.12.2013, 15.30 hours.**

5. **Submission of Application**

The response to the bid should be submitted in a sealed envelope superscripted with "Hiring of Services of Legal Expert" containing sealed envelopes separately **for Annexure-A & Annexure-B each (Two sealed envelopes inside another envelope) .**

- a. Technical Bid with supporting documents. **(Annexure-A)**

b. Financial Bid. **(Annexure-B)**

c. The bids complete in all respects may be addressed to the Registrar, NIELIT and submitted **on or before 24.12.2013, 15.30 hrs** at the following address:

**Registrar
NIELIT Headquarters
Electronics Niketan, Lodhi Road,
6, CGO Complex, New Delhi – 110 003**

d. Bids would be received by the above date and time, beyond which the bids will not be considered/honoured. However, in case the said date is declared a holiday, the last date for receipt of bids shall stand shifted to the next working day by the time mentioned above.

6. Opening of Bids

The bids will be opened on **24.12.2013 at 16.30 Hrs.** in the office of NIELIT. The Service providers may depute their representative (one per service provider) for bid opening event.

7. Notes

NIELIT HQ shall not be responsible for any postal delays. NIELIT reserves the right to modify, expand, restrict, scrap and refloat the bid without assigning any reasons, whatsoever.

Registrar

PROFORMA FOR TECHNICAL BID FOR HIRING THE SERVICES OF LEGAL EXPERT FOR NIELIT

REF. NOTIFICATION NO. _____ DT _____

1. NAME OF ADVOCATE/LAW FIRM:

2. ADDRESS FOR CORRESPONDENCE:

MOBILE: _____ **TEL (OFF):** _____ **TEL (RES):** _____

FAX : _____

E-MAIL: _____

3. NAME/DESIGNATION AND CONTACT DETAILS OF TOP EXECUTIVE IN CASE OF LAW FIRM:

4. LOCATION AND COURT OF PRACTICE ALONG WITH REGISTRATION NUMBER AND NAME OF BAR COUNCIL:

5. DETAILS PERTAINING TO NUMBER OF CASES FOUGHT AND WON:

I) TOTAL CASES

SL.NO.	YEAR	FOR	AGAINST	WON (YES/ NO)	ELAPSED TIME IN YEARS

II) TOTAL CASES IN THE AREA OF CONTRACT MANAGEMENT

SL.NO.	YEAR	FOR	AGAINST	WON (YES/ NO)	ELAPSED TIME IN YEARS

6. YEAR OF PASSING L.L.B & LL.M ETC (PLEASE ENCLOSE COPY OF CERTIFICATE, IN CASE OF INDIVIDUAL, IN CASE OF LAW FIRM, SIMILAR DETAILS OF TOP EXECUTIVES & DEALING ADVOCATES MAY BE PROVIDED)

7. DATE OF ENROLMENT AS ADVOCATE (PLEASE ATTACH COPY OF ENROLMENT CERTIFICATE): _____

8. YEARS OF RELEVANT EXPERIENCE AT:

- a. HIGH COURT
- b. JUDGE AT HIGH COURT
- c. SESSION COURT
- d. DISTRICT CONSUMER COURT
- e. OTHER. IF ANY

9. ANY OTHER INFORMATION YOU MAY LIKE TO GIVE:

10. LIST OF ENCLOSURES:

A) _____

B) _____

C) _____

D) _____

DECLARATION:

**I/WE HEREBY UNDERTAKE THAT THE INFORMATION GIVEN ABOVE ARE TRUE AND CORRECT. I/WE
AGREE TO THE TERMS AND CONDITIONS FOR ENGAGEMENT AND PLACEMENT ON PANEL.**

DATE: _____

SIGNATURE: _____

PLACE: _____

NAME: _____

SEAL

ANNEXURE –B

Financial Bid

Sl.No	Item of work	Proposed rates
1.	Professional Fee including Secretarial support, consultancy, Service Charge etc.	

Payment Terms: Payment shall be released on completion of the work

APPENDIX

National Institute of Electronics and Information Technology (“NIELIT”), an Autonomous body of the Department of Electronics and Information Technology (DeitY), Ministry of Communications & Information Technology, Govt. of India had invited Request for Quotations (“RFQs”) on behalf of Department of Electronics and Information Technology (“DeitY”), for providing services for Demographic Data Digitization for creation of National Population Register (“NPR”) in 17 States and 1 UT. Pre Bid conference was also conducted and the queries raised during the pre bid conference were duly replied. The replies were uploaded on the website before the bid submission. The bidders submitted their bids after giving an undertaking that they agree to all terms and conditions of the RFQs. On selection of the Managed Service Providers (“MSPs”), NIELIT had issued work orders and executed contract agreements which were signed by NIELIT centres and selected MSPs. As per the contract agreements, the work of data digitization was to be completed within 180 days from the 31st day of the issue of work order. The work has been completed and digitized data has been handed over to Registrar of General and Census Commissioner, Govt. of India.

In certain cases where the MSPs could not complete the work within the stipulated period, the leviable penalty, as per contract agreement, is now exceeding the work order value as no maximum limit of penalty has been prescribed in the agreement. Thus against work orders of a total value of about Rs.300 Crores the penalty is working out to the tune of about Rs.600 Crores. In some of the individual cases the penalty is working out to be 5 – 6 times of the work order value.

The penalty clause of the contract agreement reads as under:

Penalty

S. No.	Performance Indicator	Service Level Metric	Penalty on breach of service level
1	Data Entry Completeness	All fields completely filled for each resident – in English and Local Language of the state	25% of the cost ordered per data digitization record multiplied by the number of incomplete records PLUS 5% of the cost ordered per data digitization record each day from the day of completeness check till all the incomplete records are completed correctly and accurately.

2	Digitization target for the first day till 45th day	25% of the total volume of data digitization records in a zone	<p>Penalty= 5% x C x D1</p> <p>Where, C is the cost ordered per data digitization record and D1 is the number of records not digitized at the end of the target period (45 days).</p>
3	Digitization target for the 46th day till 90th day	50% of the total volume of data digitization records in a zone	<p>Penalty= 10% x C x D2</p> <p>Where, C is the cost ordered per data digitization record and D2 is the cumulative total number of records not digitized as per the cumulative target at the end of 90 days</p>
4	Digitization target for the 91 st day till 135 th day	75% of the total volume of data digitization records in a zone	<p>Penalty= 15% x C x D3</p> <p>Where, C is the cost ordered per data digitization record and D3 is the cumulative total number of records not digitized as per the cumulative target at the end of 135 days</p>
5	Digitization target for the 135 th day till 180 th day	100% of the total volume of data digitization records in a zone	<p>Penalty= 20% x C x D4</p> <p>Where, C is the cost ordered per data digitization record and D4 is the cumulative total number of records not digitized as per the cumulative target at the end of 180 days.</p> <p>An additional penalty shall be levied for delay in completing 100% of the data digitization target beyond the overall cumulative target period of 180 days as follows:</p> <p>Additional Penalty= X% x C x D4 x DAYS</p> <p>Where, C is the cost ordered per data digitization record and D4 is the cumulative total number of records not digitized as per the cumulative target at the end of 180 days and DAYS is the number of calendar days taken to complete 100% of the data digitization target beyond 180 days. X is defined as</p>

			<p>follows:</p> <ul style="list-style-type: none"> • Nil for 1-14 days • 2% for 15 to 22 days • 4% for 23 to 30 days • 10% for 31 days or above
6	Quality of digitized data	100% accurate entry of demographic data as per the scanned NPR schedule without any mistakes in any of the fields	<p>25% of the cost ordered per data digitization record multiplied by the number of incomplete records</p> <p>PLUS</p> <p>5% of the cost ordered per data digitization record each day from the day of completeness check till work is complete.</p> <p>While performing sample quality check, if errors are found more than 3% of the digitized data, the complete data need to be rechecked and corrected.</p>
7	Trained and Certified Staff	100% trained and certified data entry staff as per the specifications of RGI and any additional instructions of the Purchaser.	100% of the cost ordered per data digitization record for 100 records, for each instance of records digitized by untrained and uncertified staff.
8	Quality of LRUR Correction	100% accurate corrections of all demographic records as per the LRUR correction data provided to the MSP	<p>25% of the cost ordered per data digitization record multiplied by the number of incomplete records</p> <p>PLUS</p> <p>5% of the cost ordered per data digitization record for each day from the day of completeness check till work is completed.</p>
9	Safe and secure custody of data	100% encrypted data with physical security to ensure zero unauthorized access	100% of the cost ordered per data digitization record multiplied by the total number of records found in unencrypted manner or without physical security. In addition, further

			action may be taken by the Purchaser against the MSP in accordance with law and as per conditions of the contract. In the event of a security breach, Purchaser reserves the right to take necessary civil/criminal actions, claim and recover such other costs and damages as may be appropriate.
10	Data transfer after the data entry operation to the Purchaser/any agency designated by the Purchaser	Zero delay in transferring digitized data to the Purchaser/any agency designated by the Purchaser from the target date	Rs X/- per day of delay in transferring the digitized data to the Purchaser/ any agency designated by the Purchaser from the target date, where X is as follows: <ul style="list-style-type: none"> 1. Rs 1000 per day or part thereof for 1-7 days 2. Rs 2000 per day or part thereof for 8-14 days 3. Rs 5000 per day or part thereof for 15 days or greater
11	Presence of a representative of the data digitization MSP capable of data handling at the biometric camp	100% presence for the entire duration of the camp	Rs 2000/- per day or part thereof of absence
12	Collection of completed data for carrying out corrections, if any from the Purchaser/any agency designated by the Purchaser	Zero delay in physical collection of the completed data from the Purchaser/any agency designated by the Purchaser from the target date	Rs X/- per day of delay in collecting the completed data from the Purchaser/ any agency designated by the Purchaser from the target date, where X is as follows: <ul style="list-style-type: none"> 1. Rs 1000 per day or part thereof for 1-7 days 2. Rs 2000 per day or part thereof for 8-14 days 3. Rs 5000 per day or part thereof for 15 days or greater
13	Data Transfer to the Purchaser/ any agency nominated by	Zero delay from the target date in transferring the completed data safely and securely	Rs X/- per day of delay in transferring of the data to the the Purchaser/ any agency designated by the Purchaser from the target date, where X is as

	the Purchaser		follows: <ol style="list-style-type: none"> 1. Rs 1000 per day or part thereof for 1-7 days 2. Rs 2000 per day or part thereof for 8-14 days 3. Rs 5000 per day or part thereof for 15 days or greater
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However, there is a separate Liability Clause of the contract agreement that reads as under:

Liabilities

- (a) The MSP shall indemnify the Purchaser against all third party claims arising out of a court order or arbitration award for infringement of any of the intellectual property rights (e.g. patent, trademark/copy right /breach of confidentiality etc..) arising from the use of the supplied services or any part thereof or arising out of or incidental to the contract/workorder placed on MSP or for breach of security in relation to the data entrusted to or used by or provided by the MSP or for breach of clause 10 below.*
- (b) Either party will accept liability without limit (1) for death or personal injury caused to the other party by its negligence or the negligence of its employees acting in the course of their employment; (2) any other liability which by law either party cannot exclude. This does not in any way confer greater rights than what either party would otherwise have at law.*
- (c) The Work Order does not contemplate any consequential, indirect, lost profit, claim for tort or similar damages of any form to be paid by the MSP to the Purchaser or any other organizations.*
- (d) Except for the indemnification provisions ;Notwithstanding anything to the contrary contained in the Work Order, in no event will the MSP be liable to the Purchaser, (a) for any amount in excess of 100% of the total professional fees payable for the respective Project. This limit of liability is not applicable to clause 'a' above.*
- (e) No action regardless of form, arising out of this Contract, may be brought by either party more than one year after the cause of action has accrued.*

With no maximum limit of penalty amount in the agreements, NIELIT intends to seek your expert legal opinion on the following points:

- (c) Can we now prescribe a maximum limit of leviable penalty imposable against the MSPs by changing / modifying the above said existing clauses of the contract agreements? If so, to what extent and under which particular law / rule?*
- (d) What will be the possible repercussion of such changes / modifications in the existing agreements and how can those be covered up?*

The copies of the RFQs, Work Orders, Contract Agreements and other related documents would be provided upon your acceptance for providing your services.
