



STRATEGIC DIVESTITURE OF SRI LANKA TELECOM PLC

BID BULLETIN NO. 2

December 4, 2023

TO ALL PROSPECTIVE BIDDERS:

This Bid Bulletin No. 2 is issued by the Government of Sri Lanka through the Ministry of Finance, Economic Stabilization and National Policies, State Owned Enterprises Restructuring Unit in relation to the Request for Qualification (“RFQ”) dated November 10, 2023, to provide clarifications to the queries raised by Prospective Bidders in relation to the RFQ prior to and during the virtual Prequalification Conference held on November 30, 2023. The Clarifications are set out in Annex A to this Bid Bulletin.

All other terms and conditions set out in the RFQ shall remain unchanged and unaffected.

ANNEX A

The following clarifications are being issued in response to the queries sought by the Prospective Bidders. All capitalised terms used below shall have the same meaning as ascribed to them in the RFQ.

S. No.	Queries	Clarification
1.	Can a Bidder who is successful at the RFQ stage withdraw from the bidding / RFP process without incurring any liability or loss after the qualification round and before the deadline for final submission of the bid as part of the RFP?	Yes. Prospective Bidders who are ‘qualified’ are not obliged to submit a response to the RFP.
2.	At what stage of the RFP process will the draft “ <i>Definitive Agreements</i> ” be shared with the Bidders for review clarifications and feedback by all the Bidders who are selected in the qualification stage?	Prospective Bidders will be given access to draft Definitive Agreements during the Due Diligence process of the RFP. This will be made available subject to execution of NDA. Further details of this process will be provided in the RFP.
3.	We understand that the financial bid which will be submitted in the RFP stage will be subject to approval from regulators and other relevant statutory bodies and execution of the Definitive Documents and is not binding in nature. We recognize that the successful Bidder will be given the opportunity to comment and negotiate on the Definitive Documents. It will be very helpful if more clarity is provided on this aspect of the process.	Further details of the process relating to the Definitive Agreements (including any conditionality contained in the Definitive Agreements) will be provided in the RFP.

<p>4.</p>	<p>We would suggest to allow pre-qualified bidder post RFQ stage to submit the final financial bid in the RFP stage through its subsidiary or fellow subsidiary (direct / indirect subsidiary of same holding company/ ultimate parent company) company. Please confirm this understanding is appropriate.</p>	<p>A Prospective Bidder may satisfy the Prequalification Criteria through itself or its parent entity. If it is proposed that the Prospective Bidder be the subsidiary, the identity of the applicable ‘Parent Bidder’ should be made clear in the Prequalification Application.</p> <p>Please see paragraphs 4.2 and 6.3 of the RFQ.</p> <p>Further details will be provided at RfP stage of the process.</p>
<p>5. (similar to 4)</p>	<p>Ref Annex 3, Prequalification Criteria and Evidence 1(a)</p> <p>Can the criteria for owning and operating a telecom company be met by a successful bidder if its ultimate parent entity owns and operates a telecom service providing business either directly or indirectly (through a step down subsidiary)?</p>	<p>Please also refer to the definition of Telecommunication Company in the RFQ, namely “Telecommunications Company” means any undertaking which owns and operates at least (i) one fixed access and/or (ii) one mobile access telecommunications network based on which it derives not less than 50% of its revenues (as set out in its latest financial statements) from the provision of fixed telecommunications (including fixed broadband) and/ or mobile services.</p>
<p>6.</p>	<p>Please clarify whether a Bidder post qualification in the RFQ stage (qualified Bidder) will be entitled to get any other new entity as a partner in the RFP stage and jointly submit the final financial bid.</p> <p>If yes, request your guidance and clarification to the process and criteria (if any) that needs to be adhered to.</p> <p>i The partner can indirectly participate in the process by owning equity shareholding in a holding company through which the successful Bidder will ultimately purchase the equity shares of SLT; and / or</p> <p>ii Partner can directly participate in the process by jointly along with successful Bidder purchase equity shares of SLT.</p>	<p>Please refer to the RFQ regarding forming a Consortium during the Bidding Process, in particular paragraph 4.3(c) which addresses this point.</p> <p>Also, note that Consortia must satisfy the qualification requirements in accordance with paragraph 4.3(b) and Annex 3 of the RFQ.</p> <p>A Prospective Bidder, which is a Consortium should have a single SPV which (if it is the Successful Bidder) should execute the Definitive Agreements and acquire the shares in one indivisible block.</p> <p>The SPV does not need to be incorporated at this stage, but rather before signing the Definitive Agreements.</p> <p style="text-align: right;"><i>(answer continues on next page)</i></p>

<p>7. (similar to 6.)</p>	<p>Can the bidding entity change its shareholding pattern during the process?</p> <p>If it is a single bidder, can they bring in another shareholder?</p>	<p>Note also the amendments as per Bid Bulletin 1 published on the Official Website, that has clarified that the 4.3 c i) 1-2 are valid, “unless the new Consortium Member is a Telecommunication Company in which case, the Telecommunication Company shall own 30% or more of the overall equity interest in the Consortium”.</p>
<p>8. (similar to 6.)</p>	<p>Can be the bidding entity be changed in between because the qualification criteria are met by the parent bidder?</p>	<p>Any modification of the identity of a Prospective Bidder shall be approved by the GoSL in accordance with 4.1 c).</p>
<p>9.</p>	<p>Is apostille / consulate authentication is mandatory for all documents submitted by a bidder who is a foreign entity or will self-certification of all the pre-qualification documents suffice.</p>	<p>There are no requirements in the RFQ for apostille/ consulate authentication of documents.</p>
<p>10.</p>	<p>Whether Sri Lanka has any additional compliance requirements from prospective bidders from the neighboring countries in Asia or any foreign countries vis a vis bidder who are domicile in Sri Lanka.</p>	<p>There are no such requirements which are relevant to the RFQ.</p>
<p>11.</p>	<p>Kindly share the copy of the non-disclosure agreement (NDA) for our review. We presume the scope and applicability of NDA will be restricted only to the documents made available in the data room and nothing beyond that. Kindly confirm.</p>	<p>This will be shared with Qualified Bidders as part of the RFP process. The NDA will cover all information, including the draft Definitive Agreements, made available to Prospective Bidders during any and all phases of the process (subject to customary exclusions).</p>

12.	<p>Since the response to clarification may be required to be submitted by the prospective bidder within 24 hours, we request that the 24 hours' time duration to be a working day and to exclude scheduled holidays, Saturdays and Sundays from the time limits required for responding to the clarifications.</p>	<p>As provided for in paragraph 8.4 (b) of the RFQ the response is to be provided within 24 hours or <u>by such other date as specified by SPC and SpCANC</u>. When sending requests for clarification, the SPC and SpCANC will take into account the nature of the request, working days and scheduled holidays to the extent possible.</p>
13.	<p>Reference: In keeping with section 6(k) of the Divestiture Guidelines approved by the Cabinet of Ministers on 14th August 2023, if an expression of interest / request for qualification is received from an applicant, any person who is:</p> <p>(a) operating in the same sector as the entity being divested, or</p> <p>(b) a connected party to an entity operating in the same sector as the entity being divested, and where the combined post divestiture market share of the divested entity and the applicant would be 50% or more in such sector, such expression of interest/request for qualification shall be rejected.</p> <p>Question: We believe the relevant market as referred to in the said clause under consideration is Sri Lanka. Kindly clarify whether '<i>Operating in the same sector</i>' refers to operating in the same sector in Sri Lanka. Request to modify the clause accordingly.</p>	<p>Yes, "operating in the same sector" refers to operating in the same sector in Sri Lanka.</p> <p>Reference is made to the Divestiture Guidelines approved by the Cabinet of Ministers on 14th August 2023 section 6k, where further clarity could be obtained.</p>
14.	<p>Kindly confirm whether registration of power of attorney by a foreign entity for the purpose of participation in the bid is mandatory or whether a power attorney duly notarised in the country of a foreign prospective bidder where it is issued and authenticated / attested by the respective consulate of Sri Lanka suffice as prequalification requirement.</p>	<p>A foreign Power of Attorney has to be registered with the Department of Registrar General in Sri Lanka to be effective. The applicable law provides for a period of 3 (three) months from the date of execution for such registration to be completed.</p> <p>Submission of letter of authority:</p>

		As per paragraph 1(c) of Annex 4 of the RFQ, a Prospective Bidder may submit a Letter of Authority in the format set out in Schedule A(2) (Letter of Authority in favour of Authorized Representative) of the RFQ. However, as per paragraph 1(c) of Annex 4 of the RFQ if such Prospective Bidder is subsequently designated as a Prequalified Bidder in accordance with the RFQ, then the Prequalified Bidder shall be required to submit a duly registered POA.
15.	Kindly clarify on the details of Relevant Authorities specified in Clause Prequalification Letter b) Annex 5. “.... agrees to comply with all the bid rules, laws and regulations governing the Bidding Process as issued by the relevant authorities from time to time”	This is not intended to be limited to specific entities, but to any applicable regulatory or government entity having authority over the Bidding Process from time to time.
16.	We understand that SOERU, Ministry of Finance, Economic Stabilization and national Policies will consolidate and share the bid rules and regulations related thereto in advance with the prospective bidders before the commencement of the bidding process. Kindly confirm.	Details of the rules and processes for submitting proposals will be included in the RFP to be shared with Qualified Bidders.
17.	Does a consortium need to be via an SPV or can the consortium members individually purchase shares in SLT which are listed on the CSE?	The Identified Shares are sold in an indivisible single block. A Prospective Bidder which is a Consortium should have a single SPV which (if it is the Successful Bidder) should execute the Definitive Agreements and acquire the shares as a single block and not individually nor in sub-blocks.
18.	Does the lead member in a consortium need to hold a minimum %? Hypothetically, can there be 2 members where the lead has a 10% and other member has a 90% stake?	There is no minimum stake requirement for the Lead Member. However, the Lead Member must have the authority to bind the Consortium Members (see paragraph 4.3(a) of the RFQ) and also 4.3(c) on Composition.

19.	Further clarity on Clause 4.3 c) on the composition of a consortium. Please confirm that a prospective bidder who bids by themselves at RFQ stage can later bring in others to form a consortium provided it holds at least 51% of the consortium?	This is correct.
20. (similar to 19)	Please confirm that an existing consortium can add additional members as long as the original members own 51% of the consortium and the number of members in the consortium do not exceed 3?	Note that, per Bid Bulletin 1 published on the Official Website, “unless the new Consortium Member is a Telecommunication Company in which case, the Telecommunication Company shall own 30% or more of the overall equity interest in the Consortium”.
21.	Would an email by the prospective bidder nominating a third party to submit the application on its behalf and attend the post-submission meeting be adequate?	<p>A Prospective Bidder must submit its own application in line with the requirements of the RFQ.</p> <p>The actual act of submitting the application can be undertaken by a duly authorized party (e.g. a financial or legal advisor) of the Prospective Bidder.</p> <p>Email notification will be acceptable to notify who will be submitting on behalf of the Prospective Bidder.</p> <p>The process set out in paragraph 7.1 of the RFQ should be followed. The Prospective Bidder can nominate two representatives to attend the post-submission meeting.</p> <p>Please refer to paragraph 8.1, which stipulates that: “Each Prospective Bidder may nominate in writing two authorized representatives to attend such meeting when submitting its Prequalification Application.”</p>

<p>22.</p>	<p>Please confirm that all members of the consortium do not need to fulfill both technical/financial qualification criteria, and that the permutation for fulfilling the same would be at the option of the bidder.</p> <p>For example if there is a consortium with 2 members, and the lead member holds a 20% stake with the other member owning a 80% stake, can the member that holds the 80% stake fulfill the technical/financial qualification criteria?</p>	<p>In case the Prospective Bidder is a Consortium:</p> <p>(i) the Technical Qualification Criteria may be met by any or all Consortium Members (see paragraph 4 of Annex 3 of the RFQ); and</p> <p>(ii) the Financial Qualification Criteria is measured by the sum of each Consortium Member's Net Worth in proportion to their shareholding in the Consortium (see paragraph 2 of Annex 3 of the RFQ).</p>
<p>23. (similar to 22)</p>	<p>Also for example if there is a consortium with 2 members, and the lead member holds a 51% stake with the other member owning a 49% stake, can the member that holds the 49% stake fulfill the technical/financial qualification criteria?</p>	
<p>24.</p>	<p>Is there envisaged to be a restructuring of SLT whereby non telco related assets/liabilities will be carved out prior to divestiture or will the sale happen as is?</p>	<p>Refer to clause 2.1 : Secretary to the Treasury of the GoSL (the "Selling Shareholder") intends to sell its 50.23% (Fifty point twenty-three percent) shareholding (the "Identified Shares") in Sri Lanka Telecom PLC (the "Company")</p> <p>No restructuring is anticipated at this point in time.</p>

25.	Does the 2nd largest shareholder currently have any rights attached to their shares via an agreement that is currently in force? Eg. Right of first refusal, Right of first Offer, Right to nominate directors to the board etc.	<p>The present Q&A process is to address questions relating to the RFQ only. Information and documents regarding SLT will be provided to Qualified Bidders subject to signing the NDA.</p> <p>Prospective Bidders may refer to the Articles of Association of SLT and the Annual Reports of SLT, available on the Colombo Stock Exchange website and the SLT website.</p>
26.	Has the 2nd largest shareholder indicated willingness to exit via the mandatory offer?	GoSL cannot answer questions on behalf of third parties.
27.	In the event the acceptance levels of the mandatory offer are high and the bidder ends up with a stake close to 100% in SLT, whereby SLT will not be in compliance of the minimum public float criteria, is it possible for the criteria to be waived off as a special case since this occurred due to the transaction?	Prospective Bidders should perform their own due diligence and inform themselves in respect of the applicable regulatory environment in Sri Lanka and determine their own strategy to be executed post completion of the transaction.
28.	In the event acceptance levels of the mandatory offer are high, would a “take private” of SLT be possible from a regulatory point of view? i.e. would it be required that SLT remain listed as it is a telco?	The present Q&A process is to address questions relating to the RFQ only, for the sale of shares by the GoSL. Information regarding transaction structure will be provided to Qualified Bidders following the signing of NDA.
29. (similar to 28)	Will the current transaction cost structure published on the CSE (brokerage and other fees) be applicable for the transaction and required to be borne by the buyer or would this cost structure be revised as a special case for this transaction?	Prospective Bidders should perform their own due diligence and inform themselves in respect of the applicable regulatory environment in Sri Lanka and determine their own strategy to be executed post completion of the transaction.
30. (similar to 28)	Are there any court cases/other legal impediments that could prevent this transaction from taking place?	

<p>31.</p>	<p>Ref Annex 3, Clause 3 Can the Prospective Bidder take benefit of the technical and financial qualification criteria of its Related Parties or Group companies for qualification?</p>	<p>The Technical and Financial Qualification Criteria can be met by either the Prospective Bidder itself or through its Parent Bidder, not by related parties or group companies.</p> <p>A 'Parent Bidder' is any party which directly or indirectly controls the Prospective Bidder (or, where the Prospective Bidder is a Consortium, the relevant Consortium Member).</p>
<p>32.</p>	<p>Ref Annex 3, Prequalification Criteria and Evidence 1(a) The clause refers to experience in owning and operating one telecommunication company with fixed and mobile access subscribers, in the above backdrop, kindly clarify whether as per the technical qualification criteria a telecom service provider meeting the mentioned criteria including subscriber base and tenure of experience / operation referred in the clause will be eligible to participate in the bid?</p>	<p>Annex 3, Section A, 1 a) requires experience in owning and operating at least one Telecommunication Company with fixed access subscribers and/ or mobile access subscribers of at least 10 (ten) million, for a period of at least 4 (four) consecutive years in the past 10 (ten) years prior to the Prequalification Application Submission Deadline.</p>
<p>33.</p>	<p>Ref Annex 3, Section A Does the technical qualification criteria under Annex 3, Section A, need to be fulfilled by the lead member of a consortium?</p>	<p>In case of a Consortium, the Technical Qualification Criteria may be met by any or all Consortium Members as set in paragraph 4 of Annex 3 of the RFQ.</p>

<p>34.</p>	<p>Under Annex 3, Section A, 5 (ii) – are all the criteria (a., b. and c.) required to evidence fulfillment of 1. (b)?</p> <p>For example criteria a. is not practical in all markets and obtaining the same will depend on the flexibility of the prospective bidder’s auditors? In the case of criteria b. would it be the prospective bidder writing the description?</p>	<p>Yes, all evidence 5 (ii) a., b. and c. must be provided to prove that Criterion 1 b. is satisfied.</p> <p>5 (ii) a. is to be evidenced by the auditor.</p> <p>5 (ii) b. is to be provided by the Prospective Bidder.</p>
<p>35.</p>	<p>Section C – Legal Qualification Criteria (d) & (e)</p> <p>“(d)any person who is (or any of whose Related Parties or its or their directors or employees is) designated under any sanctions or restricting measure managed by the United Nation (UN Convention against Corruption – UNCAC; resolution 58/4 dated 31 October 2003) (“Sanctions”).</p> <p>(e) any person whose activities are not carried out in compliance with all rules and procedures applicable in relation to Sanctions (or who has any entity within its group whose activities are not carried out in compliance with all rules and procedures applicable in relation to Sanctions) or if any of its directors or employees (or any director or employee of any entity within its Group) does not comply with all rules and procedures applicable in relation to Sanctions. “</p> <p>We request to modify the legal qualification criteria in the said clauses to restrict it to the laws as applicable to the Bidding entity and ultimate parent of the Bidding entity only and their directors and key employees who are involved in the transaction.</p>	<p>The request is noted, however this requirement will not be modified.</p>

<p>36.</p>	<p>Please clarify whether the word “owning” in the below means that only parent telecommunication companies can prequalify?</p> <p>Annex 3, Section A Technical Qualification Criteria and Evidence” 1 (a) experience in “owning and operating”</p>	<p>The Technical Qualification Criteria can be satisfied by either a Telecommunication Company itself or its Parent.</p>
<p>37.</p>	<p>Can we request the RFQ submission deadline till mid February?</p>	<p>The Prequalification Application Submission Deadline will not be extended further than the current submission date – 14.00 on January 12, 2024.</p>
<p>38.</p>	<p>If a financial institution does not have experience in operating telecom before, does it put the financial institution in significant disadvantage per RFQ?</p>	<p>As provided in 4.2 A Prospective Bidder must satisfy all Prequalification Criteria. These criteria and respective evidence required are included in Annex 3.</p>
<p>39.</p>	<p>Is it a must for a bidder/consortium to have MNO experience? Would adjacent experience, such as MVNO experience or supplementary services in the MNO space, be enough?</p>	<p>A Prospective Bidder must satisfy the requirements in Annex 3, Section A 1. a) or 1. b).</p> <p>Please also note the definition of Telecommunication Company, namely “Telecommunications Company” means any undertaking which owns and operates at least (i) one fixed access and/or (ii) one mobile access telecommunications network based on which it derives not less than 50% of its revenues (as set out in its latest financial statements) from the provision of fixed telecommunications (including fixed broadband) and/or mobile services.</p>

<p>40.</p>	<p>The RFQ doesn't specifically ask for the profile of the bidding entity although KYC requirements have been requested for. Would our understanding be correct if we assumed that no profile or explanation of the bidding entity is required other than explanation given in the technical criteria</p>	<p>No separate profile/ explanation is needed, as long as the Prequalification Application contains all requested documents, forms and supporting materials evidencing the technical experience, financial capability and legal compliance with the RFQ requirements.</p>
<p>41.</p>	<p>If a single bidder were to form a consortium later on in the process this would invariably lead to creation of an SPV. If so would GoSL approval still be required?</p>	<p>Changes in the Bidder are subject to the conditions of section 4.3. of the RFQ. GoSL approval will not be required for the SPV formed by the successful Bidder to execute the transaction.</p>
<p>42.</p>	<p>Does a consortium need to be via an SPV or can the consortium members individually purchase shares in SLT?</p> <p>Refer to definition of Consortium - "means a Prospective Bidder formed by way of a joint venture or other unincorporated group between two but not more than three Consortium Members". As per our understanding this definition would not preclude for example, consortium member 1 purchasing 900,000,000 listed shares and consortium member 2 purchasing 6,564,409 listed shares of SLT directly. Of course both parties would be parties to the SPA/other definitive agreements, whereby both parties i.e. the Consortium agrees to purchase the full stake on offer (906,564,409 shares) by GoSL.</p> <p>Could you please clarify this and whether it could be looked at on this basis? Given the shares are listed it has been indicated that there is a preference for members of the consortium to directly own shares in the underlying asset instead of via an SPV.</p>	<p>Please refer again to Answer 6 above.</p> <p>The Definition of a Consortium outlines that the SPV does not need to be incorporated at the Prequalification stage. Still an SPV must be formed before signing the Definitive Agreements.</p> <p>A Prospective Bidder, which is a Consortium must have a single SPV which (if it is the Successful Bidder) should execute the Definitive Agreements and acquire the shares in one indivisible block.</p>