



KINGDOM OF CAMBODIA

Nation Religion King

Royal Government of Cambodia

**STANDARD OPERATING PROCEDURES**  
**FOR**  
**PUBLIC-PRIVATE PARTNERSHIPS PROJECTS**

**Volume III**

**PROCUREMENT MANUAL ANNEXURES**



August 2022



**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**



**រាជរដ្ឋាភិបាលកម្ពុជា**

**លេខ : ១៣៧៤ អនក្រ.បក**

**អនុក្រឹត្យ**

**ស្តីពី**

**ការដាក់ឱ្យប្រើនីតិវិធីគ្រប់គ្រងប្រតិបត្តិការរួម  
សម្រាប់គម្រោងភាពជាដៃគូរវាងរដ្ឋ និងឯកជន**

**រាជរដ្ឋាភិបាល**

- បានឃើញរដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា
- បានឃើញព្រះរាជក្រឹត្យលេខ នស/រកត/០៩១៨/៩២៥ ចុះថ្ងៃទី០៦ ខែកញ្ញា ឆ្នាំ២០១៨ ស្តីពីការតែងតាំងរាជរដ្ឋាភិបាល នៃព្រះរាជាណាចក្រកម្ពុជា
- បានឃើញព្រះរាជក្រឹត្យលេខ នស/រកត/០៣២០/៤២១ ចុះថ្ងៃទី៣០ ខែមីនា ឆ្នាំ២០២០ ស្តីពីការតែងតាំងនិងកែសម្រួលសមាសភាពរាជរដ្ឋាភិបាល
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០៦១៨/០១២ ចុះថ្ងៃទី២៨ ខែមិថុនា ឆ្នាំ២០១៨ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការរៀបចំនិងការប្រព្រឹត្តទៅនៃគណៈរដ្ឋមន្ត្រី
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០១៩៦/១៨ ចុះថ្ងៃទី២៤ ខែមករា ឆ្នាំ១៩៩៦ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការបង្កើតក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០៥០៨/០១៦ ចុះថ្ងៃទី១៣ ខែឧសភា ឆ្នាំ២០០៨ ដែលត្រូវបានប្រកាសឱ្យប្រើដោយច្បាប់ស្តីពីប្រព័ន្ធហិរញ្ញវត្ថុសាធារណៈ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០១១២/០០៤ ចុះថ្ងៃទី១៤ ខែមករា ឆ្នាំ២០១២ ដែលត្រូវបានប្រកាសឱ្យប្រើដោយច្បាប់ស្តីពីលទ្ធកម្មសាធារណៈ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/១១២១/០១៨ ចុះថ្ងៃទី១៨ ខែវិច្ឆិកា ឆ្នាំ២០២១ ដែលត្រូវបានប្រកាសឱ្យប្រើដោយច្បាប់ស្តីពីភាពជាដៃគូរវាងរដ្ឋនិងឯកជន
- បានឃើញអនុក្រឹត្យលេខ ៤៣ អនក្រ.បក ចុះថ្ងៃទី២៨ ខែកុម្ភៈ ឆ្នាំ២០២២ ស្តីពីការរៀបចំនិងការប្រព្រឹត្តទៅនៃក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ
- បានឃើញអនុក្រឹត្យលេខ ៤១ អនក្រ.បក ចុះថ្ងៃទី២៥ ខែមីនា ឆ្នាំ២០២០ ស្តីពីការគ្រប់គ្រងការវិនិយោគសាធារណៈ
- យោងតាមសំណើរបស់រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ

**សម្រេច**

**មាត្រា ១ .-**

ដាក់ឱ្យប្រើនីតិវិធីគ្រប់គ្រងប្រតិបត្តិការរួមសម្រាប់គម្រោងភាពជាដៃគូរវាងរដ្ឋ និងឯកជន (ភ.វ.ជ.) ដូចមានខ្លឹមសារភ្ជាប់មកជាមួយអនុក្រឹត្យនេះ។



**មាត្រា ២ .-**

នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការរួមសម្រាប់គម្រោង ភ.រ.ជ. ដែលត្រូវបានដាក់ឱ្យប្រើ ក្រោមអនុក្រឹត្យនេះ រួមមាន៖

- ១- នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការគម្រោង ភ.រ.ជ. ភាគ១ ស្តីពីគោលនយោបាយ និងនីតិវិធី
- ២- នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការគម្រោង ភ.រ.ជ. ភាគ២ ស្តីពីគោលការណ៍ណែនាំ រួមមាន៖
  - គោលការណ៍ណែនាំស្តីពីការធ្វើអត្តសញ្ញាណកម្ម និងការជ្រើសរើសគម្រោង ភ.រ.ជ.
  - គោលការណ៍ណែនាំស្តីពីមូលនិធិអភិវឌ្ឍន៍គម្រោង ភ.រ.ជ.
  - គោលការណ៍ណែនាំស្តីពីការគាំទ្រពីរដ្ឋសម្រាប់គម្រោង ភ.រ.ជ.
  - គោលការណ៍ណែនាំស្តីពីការគ្រប់គ្រងកិច្ចសន្យា ភ.រ.ជ.

៣- នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការគម្រោង ភ.រ.ជ. ភាគ៣ ស្តីពីនីតិវិធីគ្រប់គ្រងលទ្ធកម្មគម្រោង។

**មាត្រា ៣ .-**

នីតិវិធី និងគោលការណ៍ណែនាំផ្សេងទៀតពាក់ព័ន្ធនឹងគម្រោង ភ.រ.ជ. ត្រូវកំណត់ដោយប្រកាសរដ្ឋមន្ត្រី ក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ។

**មាត្រា ៤ .-**

រដ្ឋមន្ត្រីទទួលបន្ទុកទីស្តីការគណៈរដ្ឋមន្ត្រី រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ រដ្ឋមន្ត្រីនៃគ្រប់ក្រសួង និងប្រធានគ្រប់ស្ថាប័នដែលពាក់ព័ន្ធ ត្រូវទទួលបន្ទុកអនុវត្តអនុក្រឹត្យនេះឱ្យមានប្រសិទ្ធភាពខ្ពស់ ចាប់ពីថ្ងៃចុះហត្ថលេខានេះតទៅ។

ថ្ងៃ ពុធ ៥ កើត ខែ ឆ្នាំ ឆ្នាំខាល ចត្វាស័ក ព.ស. ២៥៦៦  
ធ្វើនៅរាជធានីភ្នំពេញ ថ្ងៃទី ៣១ ខែ វិច្ឆិកា ឆ្នាំ២០២២



**សម្តេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន**

បានយកសេចក្តីគោរពជម្រាបជូន  
សម្តេចអគ្គមហាសេនាបតីតេជោ នាយករដ្ឋមន្ត្រី សូមហត្ថលេខា

**ឧបនាយករដ្ឋមន្ត្រី  
រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ**

**អគ្គបណ្ឌិតសភាចារ្យ អូន ព័ន្ធមុនីរ័ត្ន**

- កន្លែងទទួល៖**
- ក្រសួងព្រះបរមរាជវាំង
  - អគ្គលេខាធិការដ្ឋានក្រុមប្រឹក្សាធម្មនុញ្ញ
  - អគ្គលេខាធិការដ្ឋានព្រឹទ្ធសភា
  - អគ្គលេខាធិការដ្ឋានរដ្ឋសភា
  - ខុទ្ទកាល័យសម្តេចអគ្គមហាសេនាបតីតេជោ នាយករដ្ឋមន្ត្រី
  - ខុទ្ទកាល័យ សម្តេច ឯកឧត្តម លោកជំទាវឧបនាយករដ្ឋមន្ត្រី
  - ដូចមាត្រា ៤
  - រាជកិច្ច
  - ឯកសារ-កាលប្បវត្តិ

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**Government of the Kingdom of Cambodia**

**No: 174 ANK.BK**

**Sub-Decree  
On  
Promulgating the Standard Operating Procedures  
for the Public-Private Partnerships Projects**

**The Government of the Kingdom of Cambodia**

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Royal Decree No. NS/RKT/0918/925, dated September 6, 2018, on the Formation of the Government of the Kingdom of Cambodia;
- Having seen the Royal Decree No. NS/RKT/0320/421, dated March 30, 2020, on the Formation and the Amendment of the Members of the Government of the Kingdom of Cambodia;
- Having seen the Royal Kram No. NS/RKM/0618/012, dated June 28, 2018, on Promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen the Royal Kram No. NS/RKM/0196/18, dated January 24, 1996, on Promulgating the Law on the Establishment of the Ministry of Economy and Finance;
- Having seen the Royal Kram No. NS/RKM/0508/016, dated May 13, 2008, on Promulgating the Law on the Public Finance System;
- Having seen the Royal Kram No. NS/RKM/0112/004, dated January 14, 2012, on Promulgating the Law on the Public Procurement;
- Having seen the Royal Kram No. NS/RKM/1121/018, dated November 18, 2021, on Promulgating the Law on the Public-Private Partnerships;
- Having seen the Sub-Decree No. 43/ANK/BK, dated February 28, 2022, on the Organization and Functioning of the Ministry of Economy and Finance;
- Having seen the Sub-Decree No. 41/ANK/BK, dated March 25, 2020, on the Management of Public Investments;
- Pursuant to the Request of the Minister of Economy and Finance;

**Hereby Decides**

**Article 1 .-**

Promulgate the Standard Operating Procedures for the Public-Private Partnerships (PPP) Projects as attached to this Sub-Decree.



## **Article 2 .-**

The Standard Operating Procedures for PPP Projects promulgated under this Sub-Decree consists of:

- 1- Standard Operating Procedures for PPP Projects, Volume I: Policies and Procedures;
- 2- Standard Operating Procedures for PPP Projects, Volume II: Guidelines including:
  - Guidelines on Project Identification and Selection of PPP Projects;
  - Guidelines on Project Development Facility for PPPs;
  - Guidelines on Government Support Measures;
  - Guidelines on Contract Management; and
- 3- Standard Operating Procedures for PPP Projects, Volume III: Procurement Manual.

## **Article 3 .-**

Other PPP-related procedures and guidelines shall be determined by Prakas of the Minister of Economy and Finance.

## **Article 4 .-**

Minister in charge of the Council of Ministers, Minister of Economy and Finance, Ministers of all Ministries and Heads of relevant Institutions shall effectively implement this Sub-Decree from the date of signature.

**Phnom Penh, 31 August 2022**

**Prime Minister**

Signature and Seal

**SAMDECH AKKA MOHA SENA PADEI TECO HUN SEN**

**Have submitted to SAMDECH AKKA MOHA SENA PADEI TECO HUN SEN for signature**

**Deputy Prime Minister**

**Minister of Economy and Finance**

Signature

**AKKA PUNDIT SAPHEACHA AUN PORNMONIROTH**

### **Receiving Places:**

- Ministry of the Royal Palace
- General Secretariat of the Constitutional Council of Cambodia
- General Secretariat of the Senate
- General Secretariat of the National Assembly
- Cabinet of Samdech Akka Moha Sena Padei Techo HUN SEN, Prime Minister
- Cabinet of Deputy Prime Ministers
- As Article 4
- Royal Gazette
- Archives-Chronicle

## ABBREVIATIONS

CEC	Consultant Evaluation Committee
CV	Curriculum Vitae
DBFOM	Design Build Finance Operate Maintain
DED	Detailed Engineering Design
EOI	Expression of Interest
FA	Framework Agreement
FBS	Fixed Budget Selection
FP	Financial Proposal
FS	Feasibility Study
GCC	General Conditions of Contract
GDPPP	General Department of Public-Private Partnerships
GDR	General Department of Resettlement
GDT	General Department of Taxation
GFP	Gross Financial Proposal
GKC	The Government of the Kingdom of Cambodia
IA	Implementing Agency
IC	Independent Consultant
IDC	Indefinite Delivery Contracts
ISO	International Standards Organization
JV	Joint Venture
MEF	Ministry of Economy and Finance
MIS	Management Information System
MOE	Ministry of Environment
MPSS	Minimum Performance Standards and Specifications
NAA	National Audit Authority
NGO	Non-Government Organization
NTP	Notice to Proceed
OE	Owner's Engineer
PDF	Project Development Facility
PER	Performance Evaluation Report
PIC	Public Investment Committee
PMU	Project Management Unit
PPP	Public-Private Partnerships
PRC	Procurement Review Committee
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
REOI	Request for Expressions of Interest
RFP	Requests for Proposals
STP	Simplified Technical Proposals
TA	Transaction Advisors
TAS	Transaction Advisory Services
TOR	Terms of Reference
TP	Technical Proposal
UN	United Nations
VfM	Value for Money



## TABLE OF CONTENTS

<b>ABBREVIATIONS</b> .....	iii
<b>DEFINITIONS</b> .....	v
<b>SECTION II: ANNEXURES TO THE SELECTION OF CONSULTANTS</b> .....	1
ANNEXURE 1: PROCUREMENT PLAN FORMAT .....	3
ANNEXURE 2: SPECIFIC PROCUREMENT PLAN-INDICATIVE TIMELINE .....	4
ANNEXURE 3: REQUEST FOR EXPRESSIONS OF INTEREST TEMPLATE .....	5
ANNEXURE 4: MONTHLY PROGRESS REPORT TEMPLATE .....	38
ANNEXURE 5: QUARTERLY PROGRESS REPORT TEMPLATE .....	39
ANNEXURE 6: PERFORMACE EVALUATION GUIDELINES .....	41
ANNEXURE 7: QUALITY-AND COST-BASED SELECTION(QCBS)PROCEDURES .....	51
ANNEXURE 8: REQUEST FOR EXPRESSIONS OF INTEREST FOR IC/OE TEMPLATE .....	60
ANNEXURE 9: STANDARD REQUEST FOR PROPOSALS .....	79
ANNEXURE 10: SAMPLE CONTRACT FOR INDIVIDUAL CONSULTING SERVICES .....	160
<b>SECTION III: ANNEXURES TO THE SELECTION OF PRIVATE PARTNER</b> .....	169
ANNEXURE 1: TEMPLATE OF THE INVITATION TO PREQUALIFICATION AND BID..	171
ANNEXURE 2: TEMPLATE OF THE PROJECT INFORMATION MEMORANDUM .....	173
ANNEXURE 3: TEMPLATE OF THE INSTRUCTIONS TO PROSPECTIVE BIDDERS ...	174
ANNEXURE 4: TEMPLATE OF EVALUATION OF PROPOSALS .....	218
ANNEXURE 5: TEMPLATE OF BIDDING DOCUMENTS FOR DBFOM .....	233
ANNEXURE 6: STATEMENT OF ETHICAL CONDUCT AND FRAUD AND CORRUPTION .....	301

## DEFINITIONS

Assignment	The consulting services required for a specific PPP project.
Assignment Contract	The form of contract prescribed under the Manual to engage a consultant from the panel of firms retained under Indefinite Delivery Contracts (IDC) to provide transaction advisory services for a specific assignment or other due diligence services.
Close Relatives	Shall include Mother, Father, Daughter, Son, Brother, Sister, Niece, Nephew, Grandmother, Grandfather, Granddaughter, Grandson, Aunt, Uncle, Cousin, Stepmother, Stepfather, Stepsister, Stepbrother, Mother-in-Law, Father-in-law, Sister-in-law, Brother-in-law, Daughter-in-law, and Son-in-law.
Conflict of Interest	Situations in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations. A conflict of interest may not, in all cases, in and of, itself constitute a violation of the Government's anti-corruption guidelines.
Consultant	For the purpose of the Manual, a firm/individual providing transaction advisory services of potential PPP projects, independent review of project implementation, operations and maintenance of such projects; or individual experts providing due diligence services. The term consultant shall include a wide variety of private and public entities, including international and national consultants or consulting firms, engineering firms, management firms, procurement agents, United Nations (UN) agencies and other multinational organizations, universities or academic institutions, research institutions, Government companies or agencies authorized to do business on commercial principles, non-government organizations (NGOs), and individuals who are capable of providing any of the services described above. The term consultant shall also include a consortium in which a consulting firm is a joint-venture partner or an associated firm.
Consultant Evaluation Committee (CEC)	The Committee established for carrying out the evaluation of Proposals submitted by consultants for the selection of the IDC Panel, the Transaction Advisor for each PPP project under the concerned IA, the Independent Consultants (IC), the Owner's Engineers (OE), or individual experts. The establishment of CEC shall be made under a <i>Prakas/Decision</i> .
Consultants' Qualification Selection (CQS)	The selection method in which specialized experience is required.
Day	Calendar day, unless specified otherwise.
Empanelment	The process of pre-qualification and selection of a panel of consulting firms (including associations, joint ventures, and consortia) and retaining them under IDCs on non-committal basis for a specified period to facilitate engagement of firms in the future,



	from the panel, under separate contracts for specific assignments. This is called the IDC Panel.
Fixed-Budget Selection	A selection method in which the consultant that submitted the highest ranked technical proposal within the budget is selected for the assignment.
Government	The Government of the Kingdom of Cambodia.
Implementing Agency	Public entities with the rights to enter the PPP Contract, acting as the Implementing Agency, includes line ministries, equivalent public entities, public administration establishments, public enterprises, and sub-national administrations. These public entities are authorized to enter into PPP Contracts that fall within their respective areas of competences in accordance with applicable laws and regulations. In the context of this Manual, the IA refers to the implementing agency which is responsible for undertaking the PPP project.
Indefinite Delivery Contract	The form of contract prescribed under the Manual to retain a panel of consultants on non-committal basis for a specified period and to engage them as Transaction Adviser for a specific assignment under a separate Assignment Contract, as and when their services are required.
Independent Consultant	Known as the “Independent Engineer” refers to the consulting firm that will be engaged by the Implementing Agency and normally financed by the Private Partner to provide independent review, monitoring, approval and reporting of project implementation, operations, and maintenance of the infrastructure facilities in accordance with the PPP Contract.
International Consultant	Any consulting firm or consortium of consulting firms established or incorporated in any country, including Cambodia, or an individual consultant who is a citizen of any country including Cambodia having international experience i.e., experience of working outside the country of incorporation or working overseas.
Law on Public-Private Partnerships	Law of Kingdom of Cambodia promulgated under the Royal Kram No. NS/RKM/1121/018 on 18 November 2021. Procurement of PPP projects and this Manual are governed by this Law.
Least Cost Selection	A selection method in which the contract is granted to firm with the responsive and lowest financial bid.
Lump Sum Contract	A form of contract prescribed under this Manual which operates on the principle of fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones (deliverables) completed to the satisfaction of the IA or GDPPP, such as reports, bidding documents, and advisory services.
National Consultant	An individual consultant who is a Cambodian national, or a permanent resident of Cambodia, or a consulting firm or consortium of joint venture of consulting firms established or incorporated under the laws of the Kingdom of Cambodia and maintaining its principal office in Cambodia.

Owner's Engineer	Known as "Contract Engineer" refers to the consulting firm engaged by the Implementing Agency to provide technical support in the management and supervision of the PPP project.
PDF Guidelines	The set of policies and implementation guidelines adopted by the Government for the management and operations of the PDF for PPPs.
Pre-investment Activities of potential PPP projects	Several activities consisting of preparation of pre-feasibility on exceptional basis, feasibility study, development of various PPP options and project structuring, management of the PPP bidding process, preparation of contractual documentation, assistance during negotiations and signing of the PPP Contract with the winning Private Partner and providing transaction advisory services until the financial close of the PPP Project.
Private Partner	The entity which has signed the PPP Contract with the Implementing Agency. In case a Special Purpose Company is established in accordance with Article 22 of the Law on PPPs, the Private Partner is referred to as that Special Purpose Company.
Procurement Plan	A document that is prepared in advance to list the projects approved for PPP.
Procurement Review Committee	The Committee formed to review and approve the selection of the Transaction Adviser, Independent Consultant, Owner's Engineer and Private Partner for each PPP project, or individual experts. The establishment of PRC shall be made under a <i>Prakas/Decision</i> .
Project Development Facility (PDF)	The revolving fund created by the Government to fund the preparation of pre-investment studies and documents related to procurement and to assist in the bidding process of PPP projects.
Project Management Unit/Public-Private Partnerships Unit (PMU/PPP Unit)	The unit established under each Implementing Agency for the implementation of PPP projects. This could be a Unit established for the sole purpose of implementing a specific PPP project or a Unit to implement all PPP projects in the Implementing Agency.
Proposal Documents	The standard documents for selection of consultants, which includes Request for Expressions of Interest (REOI), IDC document, and the Request for Proposals (RFP).
Quality and Cost-Based Selection (QCBS)	A selection method where both the technical and prices aspects are considered for evaluation.
Quality-Based Selection (QBS)	A selection method in which only the quality of the expressions of interest or the technical proposals is considered while ranking the firms.
Terms of Reference	The assignment objectives, description of the project, scope of work for the consultants and the experts, type and number of experts required, qualification requirements, outputs of the services, deliverables, time schedule, terms of payment, counterpart facilities, etc., and provides background information to assist the consultants in preparing their proposals.
Time-based Contracts	Consulting contracts in which fees are paid and expenses reimbursed based on actual time spent by the firm.



Transaction Advisor	Consultants experienced in advising on project development and in supporting the procurement of PPP projects, and generally providing services as a team of consultants comprising expertise mainly in financial, legal and technical aspects.
Transaction Advisory Services	The services for carrying out activities of potential Public-Private Partnership (PPP) projects, including pre-feasibility study, feasibility study, and selection of the Private Partner up to financial close.

**SECTION II  
ANNEXURES TO THE  
SELECTION OF CONSULTANTS**

**PART B**





## ANNEXURE 1: PROCUREMENT PLAN FORMAT

### PROCUREMENT PLAN TRANSACTION ADVISORY SERVICES

No.	Project Name	Date of Approval (PIC)	Est. Cost (USD Mil)	Selection Method	Date of Short-List	Date of Issue of RFP	Date of Contract Award
1							
2							
3							
4							
5							
6							

## ANNEXURE 2: SPECIFIC PROCUREMENT PLAN-INDICATIVE TIMELINE

### SPECIFIC PROCUREMENT PLAN - INDICATIVE TIMELINE

Name of Project: XXXX	NORM	PLANNED		
		No. of Days	Start Date	Completion Date
Date of PIC Approval				
Preparation and Finalization of TOR and RFP	15			
Shortlist from IDC Panel	7			
Issuance of RFP	1			
Preparation, Receipt and Opening of Proposals	30			
Evaluation of Technical Proposals	10			
Approval of Technical Evaluation Report	5			
Opening of Financial Proposals	5			
Evaluation of Financial Proposals	5			
Approval of Final Evaluation Report	5			
Contract Negotiations	5			
Contract Signing	10			
NTP	7			
<b>TOTAL</b>	<b>105</b>			

## **ANNEXURE 3**

### **Selection of Consultants under Indefinite Delivery Contracts for the Panel of Transaction Advisory Services Consultants (IDC-Panel)**

### **Request for Expressions of Interest**

**(Date)**

## ABBREVIATIONS

BOT	Build-Operate-Transfer
DSCR	Debt Service Coverage Ratio
EOI	Expression of Interest
FA	Framework Agreement
FBS	Fixed Budget Selection
FIRR	Financial Internal Rate of Return
FS	Feasibility Study
GDPPP	General Department of Public-Private Partnerships
IA	Implementing Agency
IDC	Indefinite Delivery Contract
IFI	International Financial Institutions
JV	Joint Venture
PDF	Project Development Facility
PMU	Project Management Unit
PPP	Public-Private Partnership
QBS	Quality-Based Selection
REOI	Request for Expressions of Interest
RFP	Request for Proposal
SOP, Vol. III	Standard Operating Procedures for PPP Projects, Vol. III: Procurement Manual
TOR	Terms of Reference
VfM	Value for Money

## List of Appendices

Appendix 1	Consultant Selection Process
Appendix 2	Sample Terms of Reference
Appendix 3	Expression of Interest (EOI) Template
Appendix 4	Sample Terms of Reference for Stage 2
Appendix 5	Sector Experience



## Request for Expressions of Interest for the Selection of Consulting Firms under Indefinite Delivery Contracts for the Panel of Transaction Advisory Services Consultants

1. The Government of the Kingdom of Cambodia has established the Project Development Facility (PDF) to finance the cost of TA for Public Private Partnership Projects.
2. The General Department of Public-Private Partnerships (GDPPP) of the Ministry of Economy and Finance (MEF), as the management agency for the PDF, intends to establish a Panel of Transaction Advisory Services Consultants (the “IDC-Panel”) to have access to a large pool of experts from highly reputable consulting firms. Attached is the detailed process for consultant selection (Appendix 1).
3. The scope of services of the Consultants in the IDC-Panel involves the provision of project preparation and transaction support services for PPP projects. The detailed scope of work is outlined in the Terms of Reference (TOR) as attached hereto (Appendix 2).
4. The GDPPP invites eligible national and international consulting firms to submit expressions of interest (EOI) to be part of the IDC-Panel. The IDC Panel will be retained for a period of three (3) years from the date of approval of the selection of the Consultants by the MEF.
5. The Consultants selected to be part of the IDC-Panel will be retained under an Indefinite Delivery Contract without any commitment on the part of the MEF. Only those Consultants selected for the IDC-Panel will be eligible to participate in the selection of the TA for PPP Projects.
6. Interested firms are requested to submit EOIs, in the prescribed template available at **Appendix 3** and provide the following information demonstrating their capabilities and availability of technical expertise:
  - a. Summary statement indicating the core competence of the firm/consortium/joint venture;
  - b. Nature and size of firm/consortium/joint venture including number of permanent staff and associates;
  - c. List of similar assignments successfully completed in the last ten (10) years including provision of commercial/financial and legal advice on PPP projects (provide details of the Employer, country, sector, estimated cost of the project, achievement of financial close, duration of services, fees for the assignment, and description of services rendered, among others);<sup>1</sup>
  - d. Preferred experiences in developing PPP projects in Southeast Asian and/or South Asian Countries;
  - e. Names and addresses of at least three (3) Employers in respect of similar projects in the last ten (10) years for reference checking purposes;

---

<sup>1</sup> Similar assignments shall refer to assignments completed in the last ten (10) years, where the Consultant has acted as an advisor to government procuring agencies, bidders or lenders, in relation to the preparation and/or transaction of PPP projects. For the purpose of evaluation rating, only similar assignments shall be considered. However, for the purpose of assessing if the firm or technical member-firm (in case the association/consortium/JV includes one) also possesses technical/engineering experience, as reference for validating the condition in Footnote 11 of the REOI during the call-down assignment, the concerned firms are also required to list down relevant assignments or projects providing technical/engineering advice on PPP in the Project References of the EOI.

- f. Average annual Turnover during the previous three (3) years; and
  - g. Any other details which will enable the Employer to assess the relevant experience of the firm/consortium/joint venture.
7. The deadline for the submission of EOIs and other pertinent documents is \_\_\_\_\_. EOIs shall be submitted using the prescribed template. Additional information/documents (e.g., details of the projects successfully completed beyond the provision in the template, details of at least three (3) Employers on similar projects successfully completed in the last ten (10) years for reference checking purposes, etc.) can be attached to the EOI.
  8. Interested firms/consortia/joint ventures should submit their EOIs and additional information/documents directly to the GDPPP by email or through courier at the address given below before the deadline indicated.

**GENERAL DEPARTMENT OF PUBLIC-PRIVATE PARTNERSHIPS**

Ministry of Economy and Finance

Government of the Kingdom of Cambodia

XXXXXXXXXXXXXXXXXXXX

Phnom Penh

Cambodia

Attention: \_\_\_\_\_

Email: \_\_\_\_\_

9. The GDPPP reserves the right to shortlist or not to shortlist any or all of the applicant(s) without assigning any reason whatsoever

## Appendix 1 Consultant Selection Process

The selection process for the engagement of the transaction advisory services consultants shall be made in accordance with applicable procedures and shall follow a two (2)-stage process:

### ***Stage 1: Selection of the Panel under Indefinite Delivery Contracts***

The firms/consortium/JVs are selected for the IDC-Panel following the principles of modified Quality-Based Selection (QBS)<sup>2</sup> method. Subsequently, an Indefinite Delivery Contract (IDC)<sup>3</sup> based on the template at **Attachment 1** shall be signed by and between the selected firms/consortium/JVs and the MEF, and no retainer fees or any other amount shall be payable to the firms/consortium/JVs. The GDPPP, at its discretion, may regularly update the IDC-Panel.

### ***Stage 2: Selection of TA***

From the IDC-Panel, a firm/consortium/JV is selected for PPP project preparation and transaction support under a call-down assignment. Selection is made on a competitive basis, using appropriate method based on evaluation of simplified technical proposals on the basis of a project specific TOR. The concerned Implementing Agency (IA) then signs a call-down assignment contract (lump-sum) with the selected firm/consortium/JV for a specific assignment. The payment of the fees is released by the GDPPP to firm/consortium/JV based on the recommendation of the concerned IA, as applicable, of the outputs delivered by the firm/consortium/JV. The fees are paid based on various milestones achieved.

---

<sup>2</sup> In this case, the Quality-Based Selection (QBS) under which the firms/consortia/JVs will be selected using only the technical parameters such as experience in similar assignments, CVs of key-personnel and experience in country/region based on the EOI submission. Submission of financial proposals will not be required.

<sup>3</sup> Indefinite Delivery Contracts (IDC) are used when the client needs to have quick and continuing access to “on call” specialized advisory services for a particular activity, the extent and timing of which cannot be defined in advance. The consulting firms/consortia/JVs shall be selected and retained under indefinite delivery contracts for three (3) years without any commitment. As and when the services of the are required for PPP project preparation and transaction support, a firm/consortium/JV will be selected from the IDC Panel and a call-down assignment contract shall be signed.

**Attachment 1 of Appendix 1 of Annexure 3**  
**Form of Contract**  
**INDEFINITE DELIVERY CONTRACT (IDC)**

This CONTRACT (hereinafter called the “Contract”) is made this \_\_\_\_\_ day of the month of \_\_\_\_\_ by and between:

The General Department of Public-Private Partnerships, on behalf of the Ministry of Economy and Finance, Government of the Kingdom of Cambodia with principal office at Street No.92, Sangkat Wat Phnom, Khan Daun Penh, Phnom Penh, Cambodia, represented herein by its Authorized Person (hereinafter called the “Employer”)

and

\_\_\_\_\_, with principal office at \_\_\_\_\_, representing the \_\_\_\_\_, (hereinafter collectively called the “Consultant”)

The foregoing entities are hereinafter collectively referred to as the “Parties”.

**WHEREAS**

- (a) The Government of the Kingdom of Cambodia (hereinafter called the “Government”) has initiated a program to strengthen the enabling environment for public-private partnerships (hereinafter called “PPP”), establish a long-term financing and state support mechanism, and help develop a robust pipeline of bankable PPP projects in Cambodia;
- (b) The Project Development Facility for PPPs (hereinafter called “PDF for PPPs”) has been established to be used mainly for the engagement of consulting firms/consortia/JVs as TA for the development of well-structured bankable PPP projects in Cambodia.
- (c) the Employer shall select consulting firms/consortia/JVs by following the procedures specified in the Standard Operating Procedures for PPP Projects, Vol. III, Section II: Selection of Consultants using a two-stage procedure. Stage 1 involves prequalification and retention of a panel of firms/consortia/JVs (referred as the IDC-Panel) under indefinite delivery contracts (hereinafter called the “Contract” or “IDC”), without any commitment whatsoever on the part of the Employer. On the other hand, Stage 2 involves selection of a firm/consortium/JV from of the IDC-Panel to work on a particular assignment, and signing of an Assignment Contract with such firm/consortium/JV;
- (d) in response to the request for Expressions of Interest by the Employer for prequalification of the firms/consortia/JVs to be retained under IDC, to provide certain consulting services as defined in Appendix 1-D of this Contract (hereinafter called the “Services”), the Consultant having represented to the Employer that it has the required professional skills, and personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;
- (e) the Employer has selected the Consultant for inclusion in the IDC-Panel to be retained under this Contract for a period as set forth in this Contract, without any commitment whatsoever on the part of the Employer.
- (f) no legal or financial claim can be made by the Consultant for this IDC

NOW THEREFORE, for and in consideration of these premises, the Parties have agreed as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

The Offer Letter

Appendix 1-A: Definitions

Appendix 1-B: The General Conditions of Contract

Appendix 1-C: The Special Conditions of Contract

Appendix 1-D: The Sample Terms of Reference

Appendix 1-E: Template for the Assignment Contract

2. Nothing contained in the Offer Letter and the IDC shall constitute an obligation on the part of the GDPPP to guarantee work or payment to the Consultant.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed on the date first stated above.

For and on behalf of the Ministry of Economy and Finance

---

**Name:**

**Position:**

For and on behalf of the Consultant

---

**Name:**

**Position:**



## Appendix 1- A Definitions

- D-1 **Assignment Contract** means a contract signed with a firm/consortium/JV retained under the IDC during the IDC Period for carrying out a specific assignment.
- D-2 **Employer** means the Ministry of Economy and Finance, the Government of the Kingdom of Cambodia, represented by the General Department of Public-Private Partnerships with which the firm/consortium/JV signs the IDC.
- D-3 **Consultancy inputs** mean the amount of the time consultant's services can be required during the IDC period. One **person-month** is equivalent to thirty (30) **days Field Work** or twenty-two (22) **working days Home Office Work**. **Home Office Work** means consultant's work at own office or residence; **Field Work** means consultant's work at an **Assignment Location** other than the consultant's Place of Residence and the work-days shall begin on the date of departure for the **Assignment Location**.
- D-4 **D** for Definitions; **S** for Special Conditions and **G** for General Conditions.
- D-5 **Firm** means the company or organization or consortium or the joint venture that is signatory to the IDC.
- D-6 **IDC** means indefinite delivery contract.
- D-7 **IDC Consultant (or Consultant)** means the Firm/Consortium/JV, which has been selected to be in the IDC Panel, from which consultants will be selected for a specific assignment to provide services for the development of PPP projects.
- D-8 **IDC Consultant's Place of Residence** is the city or province where the IDC Consultant holds permanent residence or office.
- D-9 **IDC Period** means a period starting on the date of signing of the IDC.
- D-10 **Services** means the scope of the services defined in the TOR contained in Appendix 1-D.
- D-11 **Terms of Reference or TOR** means the Sample Terms of Reference in Appendix 1-D.

## Appendix 1-B

### The General Conditions of Contract

- G-1 **Term of Engagement** – The Employer has selected the Consultant for inclusion in the panel of consulting firms/consortia/JVs to be retained under IDC-Panel for a period as set forth in this Contract. The IDC Consultant shall make itself available for Services during the IDC Period, from time to time and if called upon to do so by the Employer. Where the Employer selects the IDC Consultant to provide any services for any specific assignment during the IDC Period, the Employer shall sign an Assignment Contract with the IDC Consultant.
- G-2 **Payment under the IDC** - The IDC Consultant will not be paid any remuneration nor guaranteed any assigned works under the IDC during the IDC Period. If an IDC Consultant is invited to undertake a specific assignment during the IDC Period, then a separate Assignment Contract for carrying out such specific assignment shall be signed by the Employer with the IDC Consultant and payment of any remuneration shall be guided in accordance with such Assignment Contract. No legal or financial claim can be made by the Consultant under this IDC.
- G-3 **Authority of Lead Partner** - In case the Consultant consists of Consortium or Joint Venture (JV) Partner/s or Sub-Consultant/s, the Consortium Partners of the JV Partner/s or the Sub-Consultant/s hereby authorize the Lead Partner or Lead Firm specified in the Special Conditions Clause 3 to act on their behalf in exercising all the IDC Consultant's rights and obligations towards the Employer under the IDC, including without limitation the receiving of instructions from the Employer. All members of the Consortium or the JV shall be jointly and severally liable for the entire IDC Period.
- G-4 **Authorized Party** - Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Employer or the Consultant may be taken or executed by the authorized parties. The authorized party under this IDC for the Employer shall be the Director General of the General Department of Public- Private Partnerships (name and address are in Special Conditions Clause 2) or any other officer as duly authorized in this regard and the authorized party for the IDC Consultant is the person who signs the IDC contract (name and address are in Special Conditions Clause 3), unless otherwise notified by the IDC Consultant.
- G-5 **Contractual Ethic** – The Government requires that IDC Consultants observe high ethic. Consultants shall also act in accordance with the Government's policy on sexual harassment. No fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in his IDC have been given or received in connection with the selection process or in the IDC's execution. All Consultants shall have to sign the Statement of Ethical Conduct and Fraud and Corruption (Attachment to Appendix 2 of Annexure 3).
- G-6 **Language** - All reports, unless otherwise specified in the TOR, and all communication related to the execution of this IDC shall be in English language.
- G-7 **Public Statement and Commitment** - The IDC Consultant shall act discreetly and refrain from making public statements about the Services or any projects of the Employer without the Employer's prior written approval. The IDC Consultant has no authority to commit the Employer in any capacity and shall make this clear as circumstances warrant. The IDC Consultant shall refrain from any political activity involving the assignment or in the country where the project takes place during the Term of Engagement. The IDC Consultant shall not take any action, such as using business cards or stationery carrying the name of the Employer, which may imply that the IDC Consultant is a staff member of the Employer.

- G-8 **Disclosure of Information** - The IDC Consultant shall not disclose any information about the assignment to any party without the explicit permission of the Employer.
- G-9 **Relationship of the Parties** - Nothing contained in this IDC shall be construed as establishing any relationship other than that of independent contractor between the Employer and the IDC Consultant.
- G-10 **Disability or Incompetence of the IDC Consultant** - The Employer's engagement of the IDC Consultant is conditional upon the IDC Consultant's confirmation to the Employer that the Experts required to perform the Services are healthy and without physical or mental disability that may interfere with performing the Services. The IDC Consultant shall, if called upon to do so, give the Employer any medical or other evidence as the Employer may reasonably require. If at any time in the Employer's opinion, whether for reasons of health or otherwise, the IDC Consultant may not be able to perform the required Services adequately, the Employer may terminate this IDC.
- G-11 **Unusual Incidence** - The IDC Consultant shall report immediately to the Employer any circumstances which might hinder or prejudice performance of the Services in respect of this IDC.
- G-12 **Entire Agreement and IDC Amendment** - The IDC as amended from time to time under the foregoing provisions supersedes all prior arrangements whether written or oral, expressed or implied. The amendment, whether partly or wholly, of any of the IDC's terms or conditions shall be valid only if in writing and signed by both the parties to the contract.
- G-13 **Notices and Requests** - Any notice or request required or permitted under this IDC shall be in writing. Such notice or request shall be deemed to be fully given or made when it is delivered by hand, mail, or fax to the intended party.
- G-14 **Delays** - No failure or delay on the part of the Employer in exercising any power or right under this IDC shall operate as a waiver of that power or right, nor shall any single or partial exercise of such power or right preclude any other or further exercise or any other power or right under this IDC.

## Appendix 1-C The Special Conditions of Contract

S-1 **Consultancy Inputs:** As required by the Sample Terms of Reference in Appendix 1-D and in subsequent Assignment Contract in Appendix 1-E.

S-2 **Details of the Employer:**

---

---

---

---

S-3 **IDC Consultant's Information:**

---

---

---

---

**Appendix 1-D**  
**The Sample Terms of Reference**



## Appendix 1-E

### Template for the Assignment Contract

*The Assignment Contract shall be signed between the Employer and the IDC Consultant selected to carry out a specific assignment during the IDC Period as per the Government's standard template for lump sum contracts (as amended from time to time). In exceptional case, time-based contracts may be used. The Form of Contract for both lump sum and time-based contracts can be found in the Annexure 9.*

## Appendix 2

### Sample Terms of Reference

#### I. Background

1. The Royal Government of the Kingdom of Cambodia (the Government) is committed to implement public-private partnerships (PPP) in Cambodia for attracting private investment in public infrastructure and public services projects.
2. The Government has established a financing facility called the Project Development Facility for PPPs (PDF for PPPs). The PDF for PPPs is a specific window, which is established as a revolving fund and used to fund pre-investment activities of potential PPP projects of the Implementing Agencies (IA) and ensure effective monitoring of PPP project implementation. The PDF for PPPs will be used mainly to engage project preparation and transaction support consultants for PPP project preparation and transaction in infrastructure sectors including transportation systems such as roads, bridges, railroads, seaports, airports, electricity (production, transmission and distribution), clean water (production, supply and distribution), market development and modernization, public car parks or public commercial centers, waste collection and management services, waste water treatment and sewage systems, vocational skills development, social housing infrastructure, and tourism infrastructure.
3. The PDF for PPPs Window is managed by its Public Investment Committee (PIC) on behalf of the MEF and the General Department of Public-Private Partnerships (GDPPP) of the MEF is responsible for its operations. The management and operations of the PDF for PPPs Window is set out in the **Guidelines on Project Development Facility (PDF) of the SOP for PPP Projects, Vol. II: Guidelines**.
4. The IA will be seeking funding from the PDF for PPPs Window for project preparation and transaction advisory services for Priority PPP Projects which have been approved by the MEF after a structured prioritization exercise undertaken by the GDPPP. Once the funding is approved by the PIC of the MEF, the IA will submit a request to the MEF seeking funding from the PDF for PPPs Window. The IA will proceed with the recruitment of project preparation and transaction advisory consultants (TA) among the firms/consortia/JVs in the IDC-Panel.

#### II. Objective

1. On the basis of the Expressions of Interest (EOI) to be submitted by the firms/consortia/JVs in response to this Request for Expression of Interest (REOI), the GDPPP will establish a Panel of Firms/ Consortia/JVs for inclusion in the IDC Panel. This pre-qualification exercise is intended to enable the IA to have access to a large pool of experts from highly reputable consulting firms/consortia/JVs for undertaking transaction advisory services for PPP projects.

#### III. Minimum Requirements for Stage 1

1. The Consortium/JV during the pre-qualification stage must be composed of at least two (2) firms: one having the required experience providing PPP legal advice, and another firm having the required experience providing project finance (financial modeling, analysis, structuring, risk assessment, and other relevant tasks) advice<sup>4</sup>. However, if a single firm possesses both the necessary legal and project finance expertise, then such firm may

---

<sup>4</sup> Association with a Cambodian partner or registered office in the Cambodia is not required at Stage 1 but is highly encouraged considering the requirements during the call-down assignment stage.

submit an EOI. Only legal and project finance firms of the association will be evaluated for pre-qualification purposes and inclusion in the IDC-Panel.

2. Each association shall: (i) have the flexibility to nominate a lead firm from firms with legal or project finance expertise, (ii) nominate legal and project finance personnel/experts with the required expertise to deliver the desired services, and (iii) submit only one EOI<sup>5</sup>. Individual experts may, however, be nominated by more than one firm or association.
3. Once prequalified, the IDC-Panel is constituted, and an IDC shall be signed by and between the each of the firms/consortia/JV through its lead firm and the MEF and no retainer fees or any other amount shall be payable to the firms/associations under the IDCs.

#### IV. General Requirements for Stage 2

1. Each prequalified firm/consortium/JV must associate with an appropriate engineering/technical firm during the 2<sup>nd</sup> stage<sup>6</sup>. For instance, if the call-down assignment is for preparation of a project in an urban light rail sector, a transport engineering firm with proven expertise in urban light rail field must be proposed as part of the association during the 2<sup>nd</sup> stage. Said engineering/technical firm will sign off on all technical-related deliverables of the association.
2. Generally, the international and national sector experts should have ten (10) and five (5) years of demonstrated experiences, respectively, in the preparation, development (design and construction), and/or operations and maintenance of three (3) projects in the relevant (sub) sector. Specific qualification requirements for each call-down assignment will be provided in the relevant Request for Proposal (RFP).
3. The legal specialists and project finance specialists nominated during the call-down stage must be among the firms/consortia/JVs list of experts/personnel submitted/named during the pre-qualification stage. However, for reasons beyond the control of the association, nomination of other experts outside the association may be allowed provided that said experts have equal or better qualifications than the original experts included in the list during the 1<sup>st</sup> stage. The replacement will be subject to the prior approval of the GDPPP and sought before the submission of the RFP.
4. During the 2<sup>nd</sup> stage (call-down assignment), a pre-qualified firm/consortium/JV may only modify/re-organize its composition for a specific assignment (if permitted in the RFP) through association with additional firms by way of forming an association or sub-consultancy, after obtaining the GDPPP's written approval for such association or sub-consultancy prior to proposal submission<sup>7</sup>. A firm or consortium member, from which no expert is nominated for an assignment, shall not be automatically removed from consortium/JV unless the lead firm informs the GDPPP about such non-participation. The reason for a member's non-participation in a specific assignment must be justifiable (e.g. conflict of interest, the firm's experts are not available or do not meet the TOR's requirements and the replacement experts have better qualifications, etc.).
5. IDC-Panel firms/consortia/JVs are advised to conduct a comprehensive conflict of interest review to ensure that no actual or potential conflict of interest shall exist.

---

<sup>5</sup> Please refer to Section 2 of the Standard Request for Proposals which will be used in call-down assignments at the 2<sup>nd</sup> stage.

<sup>6</sup> This requirement does not apply if the consulting firm or association prequalified for the panel already possesses the required technical/engineering expertise for the pertinent call-down assignment.

<sup>7</sup> A Panel member may associate or form a joint venture with other firms (not with another Panel member) for a specific assignment at Stage 2 in accordance with the Instructions to Consultants available in the Standard RFP.

6. For the guidance of interested firms on the typical scope of services and terms of a specific assignment during the call-down stage, the Sample Terms of Reference for Stage 2 is attached hereto as **Appendix 4 of Annexure 3**.
7. Statement on Ethical Conduct and Fraud and Corruption is attached below (**Attachment to Appendix 2**). All applicants shall submit the following along with the EOI duly signed by the authorized signatory of the firm and all members of the **Joint Venture or Consortium and/or Sub Consultants** separately.

## **Attachment to Appendix 2**

### **Statement of Ethical Conduct and Fraud and Corruption**

We, the employees, associates, agents, shareholders, consultants, the undersigned confirm that in the preparation of our EOI:

1. We do not have any relationship that could be regarded as a conflict of interest as set out in the REOI.
2. Should we become aware of the potential of such a conflict, we will report it immediately to the IA and GDPPP.
3. We have not entered into any corrupt, fraudulent, coercive or collusive practice in respect of our EOI.
4. We understand our obligation to allow the Government to inspect all records relating to the preparation of our EOI and any contract that may result from such irrespective of if we are awarded the contract or not.
5. That no payments in connection with this procurement exercise have been made by us to anyone who are involved with the procurement process on behalf of the IA and the GDPPP.

Name of Firm:

Name of Authorized Representative:

Signature:

Date:

Seal:

## Appendix 3 Expression of Interest (EOI) Template Consulting Firms for IDC Panel

<b>Title</b>	Selection of Consulting Firms under Indefinite Delivery Contracts for the Panel of Transaction Advisory Services Consultants
<b>REOI Reference No.</b>	
<b>Date of REOI</b>	
<b>Closing Date of Submission</b>	

### I. Consulting Firm Information

Consultant Name:	Country of Incorporation <sup>8</sup> :
EOI Submission Authorized by:	Position

#### Association or Joint Venture

Serial No.	Consultant	Acronym	Country of Incorporation	Nature	EOI Submission Authorized By	Position
1				Lead Partner		
2						
3						

Present the rationale for and benefits of working in association/JV or sub consultant with others rather than undertaking the assignment independently (as appropriate). Describe the proposed management and coordination approach of the association and the role of each firm.

<sup>8</sup> The lead consultant must submit a copy of the Certificate of Incorporation of itself and of each Consortium Member of JV member or sub-consultant through part IV. EOI Attachments below.



I confirm that:

- Documentation regarding our corporate structure including beneficial ownership has been attached.
- Documentation regarding our Board of Directors has been attached.
- A written agreement to associate for the purpose of this Expression of Interest has been signed between the consortium partners and has been attached.

Once your team is shortlisted and invited for submission of the Proposal, it is not permissible to transfer the invitation to any other firm, such as Consultant's parent companies, subsidiaries, and affiliates. The Employer will reject a Proposal if the Consultant drops a JV member or consortium partner without the Employer's prior consent, which is given only in exceptional circumstances, such as debarment of such partners or occurrence of Force Majeure<sup>9</sup>.

## II. Assignment Specific Qualifications and Experience

Your EOI shall demonstrate technical competence and geographical experience.

### A. Technical Competence

---

Cross-referencing from your profile projects in Section E. Project References, highlight the technical qualifications of your entity/consortium in undertaking similar assignments. Provide details of past experiences working with similar project authorities.

### B. Geographical Experience

---

Cross-referencing from your profile projects in Section E. Project References, present experiences in similar geographic areas.

---

<sup>9</sup> Paragraph 3, Section 1 – Letter of Invitation of the Standard Request for Proposal of Annexure 9.

**C. Management Competence (Please answer each question in one paragraph of 3-5 sentences)**

---

1. Describe standard policies, procedures, and practices that your entity has to assure quality interaction with Employers and outputs. Please state if your company is ISO certified.

2. How will your firm/consortium handle complaints concerning the performance of experts or quality of the reports submitted for this assignment? What internal controls are in place to address and resolve complaints?

3. How will you ensure the quality of your firm's/consortium's performance over the life of this assignment?

4. Describe standard policies, procedures and practices that your firm has put in place to avoid changes/replacements of personnel and to ensure the continuity of professional services once contracted.

5. Describe what social protection practices you have in place to safeguard the well-being of your proposed experts? Specifically describe arrangements you have in place for medical, accident, and life insurance coverage during the assignment.

**D. Other Information (maximum of 500 words)**

---

### E. Project References

Please select most relevant projects to demonstrate the firm's technical qualifications and geographical experience (minimum 3 and maximum 10 projects).

SN	Project	Period	Employer	Country	Firm
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

### F. Project Summary

SN 1	
Project Title	
Country / Region	
Start Date	
Completion Date	
Continuous / Intermittent	
Employer	
Funding Source	
Description	(indicate your role and input in person-months)
SN 2	
Project Title	
Country / Region	
Start Date	
Completion Date	
Continuous / Intermittent	
Employer	
Funding Source	
Description	(indicate your role and input in person-months)

(Please insert more tables as necessary)

### III. Key Experts

List of experts is only required for Consultants' Qualifications Selection (CQS). Attach CV of each expert.

SN	Name	Email	Position/Title	Nationality
1				
2				
3				
4				
5				

(Please insert more rows as necessary)

### IV. EOI Attachments<sup>10</sup>

SN	Description
1	Certificate of Incorporation of the lead member
2	Certificate of Incorporation of the JV /Consortium/Association member (for each member)
3	Certificate of Incorporation of the Sub-Consultant (for each sub-consultant)
4	Letter of Association/JV
5	Description of Completed Projects beyond the provision in Part II. E
6	Details of at least 3 Employers listed in Part II. F
7	Summary statement indicating the core competence of the firm/association (see Appendix 5 of Annexure 3) <sup>11</sup>
8	Lead firm's audited financial statements for the last three (3) years showing positive net worth and no qualified opinion by an independent auditor <sup>12</sup>
9	ISO 9000 (Quality Management) certification of the lead firm, if available
10	Information regarding experts/personnel available with the firm (including access to pool of expertise) highlighting the key qualifications and details of similar experience of each expert (tabular form)

<sup>10</sup> There are no prescribed forms or formal requirements for the certifications mentioned in this section, as well as for association documents or agreements among firms and association members. The firms may use the legal/formal requirements applicable in the country/place of execution. It should be noted, however, that the association agreements are not yet required during the EOI submission and evaluation. If a firm/association is pre-qualified, the GDPPP will require submission of these agreements along with other relevant documents, prior to signing or amendment of the IDC.

<sup>11</sup> Refers to the sector experience of the firm.

<sup>12</sup> If not required by the law of the lead firm's country, other financial statements acceptable to the GDPPP.

11	Curricula vitae (CVs) (in any template or format) of finance and legal experts indicating sufficient information on the experts' qualifications and experience <sup>13</sup>
12	Certification indicating that the legal specialists and project finance specialists to be nominated during the 2 <sup>nd</sup> stage/call-down assignment stage shall be among its list of experts submitted during the 1 <sup>st</sup> stage/pre-qualification, should the firm be prequalified during the pre-qualification stage <sup>14</sup>
13	Copy of Professional Liability Insurance
14	Authority to sign and submit the EOI on behalf of the applicant, consortium or JV

(Please insert more rows as necessary)

## V. Eligibility Declaration

We, the undersigned, certify to the best of our knowledge and belief:

- We have read the advertisement, including the terms of reference (TOR), for this assignment.
- Neither the consulting firm nor its JV member or consortium member or sub-consultant or any of its experts prepared the TOR for this activity.
- We confirm that the project references submitted as part of this EOI accurately reflect the experience of the specified firm/consortium.
- We further confirm that, if any of our experts is engaged to prepare the TOR for any ensuing assignment resulting from our work product under this assignment, our firm, JV member or consortium member sub-consultant, and the expert(s) will be disqualified from short-listing and participation in the assignment.
- All consulting entities and experts proposed in this EOI are eligible to participate in Cambodia's projects
- The lead entity and JV or Consortium member or sub-consultant are NOT currently sanctioned by the Government of the Kingdom of Cambodia or has ever been convicted of an integrity-related offense or crime related to theft, corruption, fraud, collusion or coercion.
- We understand that it is our obligation to notify the GDPPP should any member of the consortium become ineligible to work with the Government of the Kingdom of Cambodia or be convicted of an integrity-related offense or crime as described above.
- JV or Consortium member or sub-consultant, including all proposed experts named in this EOI, confirmed their interest in this activity in writing.
- JV or Consortium member or sub-consultant, including all proposed experts named in this EOI, authorized us in writing to represent them in expressing interest in this activity.
- None of the proposed consortia are subsidiaries of and/or dependent on the Implementing Agency or individuals related to them.
- We understand that any misrepresentations that knowingly or recklessly mislead, or attempt to mislead may lead to the automatic rejection of the proposal or cancellation of the contract, if awarded, and may result in further remedial action, in accordance with the relevant laws of Cambodia.

<sup>13</sup> Submission of CVs of technical experts is not required during Stage 1 (IDC-Panel Selection Stage)

<sup>14</sup> If the association includes a technical/engineering firm, no similar certification is required for the technical specialist listed in the EOI.

## Appendix 4

### Sample Terms of Reference for Stage 2

#### A. Scope of Assignment

1. The IA requires the services of a Transaction Advisor (TA) to undertake the project preparation and transaction advisory services for **[insert name of project]**
2. The TA is expected to work closely with the concerned IA and the GDPPP during the assignment. The TA shall ensure capacity building of the Government staff and knowledge transfer with respect to the entire PPP project development cycle.
3. The detailed scope of work for each assignment shall be prescribed at the call-down assignment stage depending upon the project specific requirements, which shall cover different stages of project preparation and transaction including pre-feasibility studies (in exceptional cases where the PIC has agreed to finance this from the PDF for PPPs), feasibility studies, bidding document preparation, and transaction advisory services. Where a feasibility study (FS) has been conducted for a project, the scope of work for the TA shall cover validation/and or updating of the FS, in addition to carrying out financial modeling, managing the PPP bidding process, including bid document preparation, assisting in contract award and providing advisory services until the financial close of the project. Broadly, the services of the TA shall cover technical, financial, and legal services including management of the bidding process. In carrying out these services, the TA shall be guided by the Government's **SOP for PPP Projects, Vol. I: Policies and Procedures, Vol. II: Guidelines, and Vol III: Procurement Manual**. The scope of the specific services<sup>15</sup> would generally include, but not be limited to, any or a combination of the following:

**Preparation of a pre-feasibility study [where agreed by the PIC to use PDF funds for this].** Preparation of a project pre-feasibility study, which could include, among others, the following: (i) project rationale and legal basis; (ii) technical description of the project; (iii) initial financial and economic analysis and proposed cost-recovery mechanism; (iv) initial environmental and social/gender assessment; (v) preliminary risk analysis and required government support, if any; (vi) proposed PPP modality, and (vii) tentative implementation plan.

The TA shall undertake an informal market sounding exercise with select private sector stakeholders to determine the initial acceptability of the project as a PPP. This will include assessing and, where possible, resolving issues raised by the private sector for the project to proceed to the next stage as well as matters raised that will require detailed evaluation during the feasibility assessment stage. The feedback received from the private sector stakeholders will form an integral part of the reporting for the pre-feasibility assessment undertaken by the TA.

The TA shall carry out further studies after the approval of the pre-feasibility study report by the IA.

**Preparation of project feasibility study and development of PPP options:** Preparation of a project feasibility study or validity assessment/updating of existing

---

<sup>15</sup> Specific scope of services will be determined by the different stages of development of the proposed project. In some cases, a feasibility study (FS) may already be available, and therefore the scope of work under Stage 2 would require "validating" or "updating" the FS. In other cases, a pre-FS, FS and bid documents may already be available; therefore, the needed services would be purely transaction services to bring the project into the bidding, negotiation and award stage, etc.

feasibility study and overall assessment of PPP options depending on the results of the following in-depth research: (i) economic analysis, (ii) project rationale, (iii) project cost estimates, (iv) technical design, (v) institutional analysis, (vi) value for money (VfM) analysis from the project viability point of view that shall include determination of financial internal rate of return (FIRR), traffic validation, debt service coverage ratio (DSCR) and other applicable financial ratios (vii) preliminary financial model and financing plan, (viii) evaluation of PPP options including a recommendation on the PPP modality to be followed, (ix) risk allocation matrix with clear risk management tools, and assessment of contingent liabilities arising from the project; and (x) any other related tasks as proposed by the TA and agreed upon by the IA.

To facilitate conduct of all the aforementioned tasks and to enable preparation of the Final Feasibility Report, the TA shall undertake a formal market sounding exercise<sup>16</sup>.

**Carrying out financial analysis and project structuring:** On the basis of information and analysis in the task above and for the selected option, the TA will need to finalize (i) technical design and related cost estimates (capital expenditure and operations & maintenance costs, interest costs, and other costs, warranties, etc., and stability of future revenues assessment); (ii) financial modeling and sustainability analysis; (iii) institutional aspects, legal issues, and contract structure; (iv) right of way and other related issues; (v) financing plan (including options for attracting financing and/or guarantees from domestic and international financial institutions - IFIs); (v) project risk analysis; (vi) social/gender and environmental impacts; (vii) project implementation schedule; (viii) stakeholder consultations, particularly with potential private sector bidders; and (ix) detailed timelines for the bid process. If the project is determined to be financially and commercially viable for procurement under the PPP modality and approved by the IA and MEF, the TA will proceed with the next task on the management of the bidding process. If it is found to be not feasible and not approved by the IA and MEF, the contract for the TAS will be terminated at this point and the TA will not be required to provide any further services.

**Management of the PPP bidding process and transaction, as well as preparation of contractual documentation:** The TA will undertake preparation and finalization of (i) bidding documents (request for qualification and request for proposal), contractual agreements; (ii) project pre-bid consultations; (iii) bidder qualification and bid evaluation criteria; (iv) monitoring and evaluation frameworks; (v) required due diligence documents for potential debt providers and guarantors (if IFI financing or guarantee is involved, then compliance with IFI policies and procedures, including on safeguards); (vi) institutional arrangements and (vii) assistance with the bidding process (e.g. setting up of data room for prospective bidders, issuance of all bidding-related notices/requests, conduct of pre-bid conferences, conduct of bidding, responding to queries, pre-qualification of bidders), bid evaluations, and contract negotiations, expected to lead to the award of the proposed project to a bidder. The TA shall also assist in drafting of the TOR for procurement of an independent consultant (IC) who will be engaged by the IA for supervision during project implementation and/or operation.

---

<sup>16</sup> The consultant shall organize consultation meetings with concerned stakeholders, including, but not limited to, potential equity partners, investors, lenders and guarantors to fulfill the market sounding requirements. Main outputs of the consultants include the market sounding document for distribution to the market, and market sounding report summarizing the findings from the exercise. The conclusions drawn from said consultation meetings shall be taken into account in the preparation of the feasibility report and project structuring.

**Assistance until financial close:** The TA shall provide all the required assistance until the financial close of the Project (or for a period of 180 days from the effective date of the contractual agreements signed with the Private Partner or the Proponent/Private Sponsor, whichever is earlier).

## **B. Indicative Duration of Assignment**

4. Considering that many activities will be undertaken concurrently, it is estimated that the above services would be required over a period of around twenty (20) calendar months from the date of commencement of the services (depending on the complexity and stage of development of the project) until the financial close of the project. The actual time schedule for the services will be indicated for each assignment in the Request for Proposal (RFP) documents at Stage 2. The detailed work plan submitted as part of the technical proposal for the assignment shall be discussed and agreed with the respective IA and the GDPPP before signing the call-down assignment contract.

## **C. Terms of Payment**

5. The TA will be paid on a lump sum basis. The total fees shall be paid based on various milestones achieved. The payment shall be released by the GDPPP based on the approval by the IA/PMU of the outputs delivered by the TA. The IA shall accord this approval after ensuring that the outputs delivered by the TA conform to the requirements of the TOR. The detailed structure of the payment milestones, including the maximum timeframe for such release by the Employer, shall be prescribed in the RFP documents for Stage 2. The indicative milestones for payment are shown below.
  - (i) Submission of inception report;
  - (ii) Approval of the pre-feasibility study (where this is included in the scope);
  - (iii) Approval of the final feasibility study;
  - (iv) Approval of the financial model;
  - (v) Approval of the tender documents and draft Contract;
  - (vi) Completion of bid evaluation and determination of winning private partner;
  - (vii) Signing of PPP contract or other agreement with the private partner;
  - (viii) Financial close of the project.

## **D. Requirement of Key Personnel**

6. The team of the TA will include qualified personnel including experts from specific sectors, public-private partnerships, project preparation and appraisal, project implementation, financial modeling/structuring, investment promotion, economic and financial analysis, risk analysis, procurement, policy and legal issues. The TA will be required to be available at short notice as and when their services are needed by the IA. The TA shall have sufficient qualified personnel and resources to provide all necessary professional, technical, and expert services as required to accomplish all the services described hereinabove within the prescribed time. Consulting firms are encouraged to form joint ventures or associations with other consulting firms to enhance their capabilities and the value and quality of their services for the proposed assignment, before submitting the proposals, if allowed in the RFP.



7. The Team shall be composed of consultants, who shall have extensive technical and country-specific experience that would include extensive knowledge of the sector, regulatory issues involved and the initiatives taken by the Government for the successful implementation of PPP projects, the project's taxation framework, including tax exemption regime, the country's accounting systems, domestic insurance sector and its products, special privileges and incentives available to the PPP projects, concessional financing options available for PPP projects from the public sector and other country-specific knowledge.
8. The team shall be responsible to carry out the specific tasks relevant to various stages like pre-feasibility, feasibility, validating/updating of existing feasibility study, financial analysis and project structuring, management of bidding process, etc.
9. Depending upon the project and the scope of services required, the requirement of various national and international consultants<sup>17</sup> will be prescribed in the RFP for the Stage 2: call-down assignments. The team composition and indicative scope of work and deliverables from each specialist area are as indicated below:

**Group A (Specialization areas common for all projects)**

**(i) Team Leadership**

The Team Leader will generally be responsible for coordinating all inputs of the team; submission of all reports; facilitation of meetings and stakeholder consultations, as required; and liaison with the relevant IA and GDPPP, as required. Specific tasks would include, among others, the following:

- a) liaise with concerned IA and keep all stakeholders apprised of any issues or concerns that could impact project performance and/or completion of the consulting assignment;
- b) be responsible for drafting inception report, progress reports, updating the agreed work program, and provision of timely information to the concerned IA on contract administration issues;
- c) manage the team of experts to ensure integrated monitoring of the agreed work program;
- d) coordinate the inputs of team members as per the agreed work plan, advise team members of changes to the work plan, and monitor team members' activities other project commitments to ensure appropriate priority attention is given to the assigned task;
- e) ensure that the outputs of team members are in accordance with the contractual Terms of Reference and the Employer's quality expectations;
- f) ensure smooth implementation of the internal quality assurance mechanism and be ultimately responsible for output quality by reviewing, commenting upon and approving all such outputs;
- g) ensure all contracted deliverables are prepared in a timely manner and manage project scheduling; and

---

<sup>17</sup> "International Consultant" means any consulting firm established or incorporated in any country, or a person who is a citizen of any country and "National Consultant" means any consulting firm or individual from Cambodia that is established or incorporated and has a registered office in Cambodia, or a person who is a citizen of Cambodia

- h) brief and supervise team members on (i) quality management, and (ii) integrity and professional conduct as well as keep the team updated on changes in the operating environment or procedures.

**(ii) Deal/Bid Management**

The consultants shall have proven work experience in deal/bid management. They shall prepare bid implementation plan, conduct market sounding, manage bidding process, and prepare bid process report. In doing so, the consultants will, among others, carry out the following tasks:

- a) Administer and manage the virtual data room;
- b) Conduct market sounding, pre-bid conference, and one-on-one sessions with the bidders;
- c) Produce and manage all project and bidding process documentation and post-bid monitoring frameworks in coordination with the legal specialist;
- d) Manage the bidding process, including marketing, pre-bid meetings, identification of potential bidders, bidder query responses, bidder qualification and evaluation criteria development;
- e) Assist in the preparation of the bid process report; and
- f) Act as primary point of contact for the IA during the bid process.

**(iii) Project Finance Expertise**

The consultants shall have proven work experience in financial modeling and project structuring of PPP projects. They shall develop a financial model, incorporating an appropriate PPP modality and manage the bidding process according to the provisions of the Law on PPPs and its SOP for PPP Projects, based on the technical (engineering) evaluation, assess expenditures (capital, operations, provisions) and projected revenues for reasonableness, completeness with project objectives, and accuracy. In doing so, the consultants will, among others, carry out the following tasks:

- a) develop an appropriate base case financial model with suitable assumptions, resulting in a set of projected financial statements (balance sheet, cash flow, income statement, key ratio analysis) and sensitivity scenarios;
- b) recommend a suitable PPP modality for the project after assessment of alternative choices including the commercial, legal, and institutional impacts of this suggested modality such as the required contracts (e.g., PPP contracts) and institutional structures (e.g., special purpose company);
- c) ascertain the potential acceptability of the recommended PPP structure by the investors and potential lenders;
- d) in consultation with the economic specialist, ensure that the project provides desired and equitable benefits to end users, with a satisfactory project rationale;
- e) recommend a suitable bankable financing plan for the recommended PPP structure, including appropriate debt equity ratios, loan tenures and rates for project viability, and required government grant support;
- f) identify appropriate funding sources, including (i) government grant funds, (ii) commercial debt and equity funds, (iii) financing, credit enhancement, or

guarantee products of the International Financial Institutions (IFIs), and (iv) private sector financing; and identify their likely terms and conditions, incorporating them in the base case financial model;

- g) develop all required due diligence documents for potential lenders;
- h) test all key assumptions against financial model outputs, including the financial internal rate of return and debt service coverage ratio, identifying any required policy revisions for project sustainability, including on the revenue model;
- i) provide project risk analysis with suitable mitigation strategies;
- j) assess contingent liabilities arising from the project;
- k) assess project financial management capacity;
- l) provide all required support until the financial close of the project; and
- m) provide inputs related to the Cambodian taxation system, tax exemptions and tax incentives, financial accounting systems and the domestic insurance market and its products.

**(iv) Economic Analysis Expertise**

The consultants will undertake project economic analysis to provide an economic cost–benefit analysis and project rationale on the proposed project. The analysis should, among other issues, include the following:

- a) sector assessments, demand-supply for public services, opportunity cost implications, projected project benefits and impacts;
- b) project economic rationale in comparison with alternative options, and develop indicators for project performance monitoring;
- c) realistic economic rates of return for the project under various scenarios.

They shall also assist in developing appropriate bidder qualification and evaluation criteria.

**(v) Legal Expertise**

The consultants will develop a policy and institutional analysis to take into account the requirements of the selected PPP modality, and assist in the bidding process, project documentation, and evaluation procedures. Specifically, this analysis will include, but not be limited to:

- a) conducting a policy and institutional assessment to ascertain the validity and viability of the proposed PPP structure for the project;
- b) assessing the IA's capacity to manage the project once operational, and recommend required changes and capacity improvement measures as appropriate;
- c) recommending institutional measures to improve the governance of the IA with the purpose of ensuring efficient management of project assets after PPP project completion;
- d) developing “bankability” measures for the proposed PPP project structure, such as fee payment mechanisms, preconditions for a private operator to fulfill in meeting service obligations, default and risk clauses, and step-in rights of government;

- e) assisting in the bidding process management through documentation preparation, including request for qualification, request for proposal, contractual agreements between project sponsor and winning bidder, as well as in developing bidder instructions, bid qualification parameters and bid evaluation criteria, bidding process schedules, and undertake stakeholder consultations in accordance with the Law on PPPs and its SOP for PPP Projects;
- f) providing advice on country-specific legal experience of PPP projects in the sector, judiciary-related, legal and regulatory issues pertaining to the project, legal perspective on special privileges and incentives available for PPP projects, and on accessing concessional financing options available for PPP projects from the public sector, and other country-specific legal knowledge; and
- g) providing all required support until the financial close of the project.

**(vi) Social Sector Expertise**

The consultants will ensure adequate due diligence on project social impacts consistent with the country's social/gender and safeguard policies. To fulfill this, the consultants will, among others, do the following:

- a) undertake an initial poverty and social analysis in accordance with country requirements;
- b) based on the initial poverty and social analysis, conduct a comprehensive analysis of likely social/gender impacts, design measures, and implementation arrangements for maximizing project social/gender benefits and minimizing/avoiding social/gender risks;
- c) prepare a poverty reduction and social strategy (with, e.g., gender action plans, resettlement plans, indigenous peoples development plan) with recommendations for involuntary resettlement, indigenous peoples, and gender safeguards;
- d) assess IA's capacity and commitment to undertake social impact due diligence, impact monitoring, and mitigation measures implementation (e.g., resettlement implementation);
- e) ensure adequate investigations and consultations with affected persons, beneficiaries, and government institutions; and
- f) ensure overall project compliance with the Cambodian involuntary resettlement and indigenous peoples regulatory framework.

**(vii) Environmental Sustainability Expertise**

The consultants will ensure that the project environmental impact assessment is adequate and compliant with the Cambodian requirements. This will be done through implementation, among others, of the following activities:

- a) carry out a comprehensive environmental assessment and ensure consistency and compliance with the Government's environmental requirements;
- b) conduct public consultation requirements, including informing the affected persons and local non-government organizations, and information disclosure of project-specific and quantitative information on potential environmental impacts (both positive and negative) and proposed mitigation measures;

- c) estimate the cost of an environmental management plan and funding sources, ensuring that these are included in the total project cost;
- d) assist the IA in securing government environmental clearance, required permits, and approvals;
- e) evaluate IA's capacities to implement mitigation measures, and where necessary recommend capacity improvement training programs and measures; and
- f) include environmental management plan in the bidding documents, along with the requirement to comply with mitigation measures therein.

**Group B (Sector-specific Specialization)**

**(viii) Sector Specific Expertise**

The consultants will need to complete the sector-specific technical validation of project design and cost estimates through, but not limited to, implementation of the following tasks:

- a) update the pre-feasibility studies' technical analysis to confirm the technical validity/viability of the project, including verifying assumptions such as population coverage, loss levels, national policy guidelines, current and projected demand levels for project outputs, design criteria and standards, capacity, and prevailing topographical and other conditions;
- b) verify quantities and rates for major civil works, equipment, construction and supervision consulting, and other input items;
- c) verify and develop projected operations and maintenance costs for the project on a whole of life basis;
- d) review and quantify costs and benefits from the project, and confirm the project design on a least-cost basis in financial and economic terms;
- e) assist in the project's financial and economic analysis with inputs on project rationale, project costs (capital expenditures, operations, maintenance), required contingency levels, and any other information as requested; and
- f) provide all required support until the financial close of the project.

10. Depending on the type of the project and the extent of coverage required, the estimated total man-month requirements shall be indicated in the RFP documents for Stage 2.

## Appendix 5 Sector Experience<sup>18</sup>

Sector	Experience (Check the Box if Yes)
Agriculture	<input type="checkbox"/>
Airports	<input type="checkbox"/>
Education	<input type="checkbox"/>
Health Facilities	<input type="checkbox"/>
Highways and Expressways	<input type="checkbox"/>
Housing and Urban Development	<input type="checkbox"/>
IT/MIS Facilities	<input type="checkbox"/>
Ports	<input type="checkbox"/>
Power	<input type="checkbox"/>
Railways	<input type="checkbox"/>
Others (Please specify)	<input type="checkbox"/>

<sup>18</sup> This form should be completed by each consulting firm or association/JV/Consortium partner submitting EOI for prequalification.

**ANNEXURE 4**  
**TRANSACTION ADVISORY SERVICES**  
**SAMPLE MONTHLY PROGRESS REPORT TEMPLATE**

Cover Sheet (Letter Head of TA; Name of Project; Contract No and Title; and Reporting Period)

Table of Contents

List of Abbreviations

1. Progress Report

1.1. Introduction

1.2. Progress till date

1.2.1. Key Interactions and Events

1.2.2. Work Plan (Planned vs Actual)

1.2.3. Key Accomplishments and Ongoing Activities-Tabular Form-Sample Format is shown below:

Tasks/Sub Tasks	Key Accomplishments
Task 1.1	
Task 1.2	

1.2.4. Key Issues/Problems/Concerns and Suggested Measures-Tabular Form-Sample Format is shown below:

Key Issues	Suggested Measures

2. Recommendations/ Actions Need

List of Attachments

- Minutes of Meetings, Survey Details etc.
- Detailed Personnel Schedule
- Photographs
- Other, if relevant

## ANNEXURE 5

<b>THE GOVERNMENT OF THE KINGDOM OF CAMBODIA</b> <b>MINISTRY OF xxxxxx</b> <b>PPP- PROJECT MANAGEMENT UNIT</b> <b>SAMPLE QUARTERLY PROGRESS REPORT TEMPLATE</b>	
<b>PROJECT NAME:</b> <b>CONTRACT: XXXXXX/001: Transaction Advisory Services</b>	
<b>Implementing Agency: Ministry of XXXXXX</b> <b>Commencement Date: XXXXXXXXXX</b> <b>Contract Value: \$XXXXXX</b>	<b>Transaction Advisor: XXXXXX</b> <b>Completion Date: XXXXXXXXXX</b>

### 1. Status of Deliverables

Activity No.	Deliverable	Due Date	Submission Date	Remarks
1	Draft Inception Report			
2	Draft Pre-feasibility Study Report (if applicable)			
3	Draft Detailed Feasibility Report			
4	Draft RFQ Documents (if prequalification is required)			
5	Draft PPP Contract			
6	Draft RFP Documents			
7	Evaluation of RFQ Documents			
8	Issuance of RFP Documents			
9	Replies to pre-bid queries			
10	Evaluation of RFPs/Winning Bidder			
11	Negotiations of the draft PPP Contract			
12	Signing of PPP Contract			
13	Financial Closure			

### 2. Issues



**3. Comments of Implementing Agency**

**4. Next Steps**

**ANNEXURE 6**  
**THE GOVERNMENT OF THE KINGDOM OF CAMBODIA**  
**MINISTRY OF ECONOMY AND FINANCE**  
**GENERAL DEPARTMENT OF PUBLIC-PRIVATE PARTNERSHIPS**  
**Sample Guidelines**  
**Performance Evaluation of TA**

**A. Introduction**

1. The GDPPP will monitor the performance of TA which will include the firm as a whole as well as its individual key experts.
2. The purpose of the performance evaluation is to provide feedback to the TA on any areas and personnel lacking satisfactory performance so that the TA can take corrective actions. Where the performance is unsatisfactory and showed major shortcomings, the TA shall be removed from the IDC Panel. The decision on removal shall be made by the Minister of the MEF.

**B. Consulting Firms**

**(a) Policy**

3. After the TA completes an assignment (upon submission of the final report as defined in the contract), the PMU/IA and the GDPPP will undertake the evaluation jointly. The PMU/IA and the GDPPP may be assisted by a consultant, where required.

**(b) Preparatory Actions**

4. During contract negotiations with the TA, the GDPPP and the concerned IA will provide the TA with a copy of the Performance Evaluation Report (PER) Forms and the Narrative Descriptions of the Criteria (**Attachments 1-4**) for reference. The GDPPP will inform the TA about the purpose of the performance evaluation.

**(c) Procedures for Evaluation**

5. The PMU/IA and the GDPPP will nominate/assign one staff each (evaluators) to undertake the evaluation exercise who shall complete the evaluation within three months from (i) the date on which the TA submits the final report; or (iii) on termination of the TA's contract by the IA. PERs not evaluated at the end of the three-month period will be automatically classified as "Not Rated". Once a PER is classified as "Not Rated", the PER rating cannot be changed.
6. Two weeks prior to the date of submission of the final report, the GDPPP will send an email to the PMU/IA advising it to appoint an evaluator. The email will include the guidelines for completing the evaluation and the name of the evaluator from the GDPPP. The evaluators, in preparing the report, will seek feedback and comments from the PMU and GDPPP staff who were involved in the implementation of the services of the TA.
7. The evaluator will first evaluate the overall performance in the PER Form 1 Part A (**Attachment 1**). All the factors that affected the overall performance, including the extent to which the TA achieved the assignment's objectives, completed the terms of reference,

and complied with its other contractual obligations; the experts' field performance and behavior; and the amount of assistance the IA provided are to be considered.

8. The evaluators will complete the evaluation by choosing one of the five ratings i.e., excellent, satisfactory, generally satisfactory, unsatisfactory, or not applicable for each performance criterion. In doing so, the evaluators will refer to the narrative descriptions of the performance criteria shown in **Attachment 2**. If some criteria do not apply accurately to the assignment, a 'not applicable' rating may be given.
9. Next, the evaluator will explain his/ her ratings in the "Comments" column for each criterion of the form, particularly any ratings that are less than satisfactory, such as generally satisfactory, or unsatisfactory or for a "Not Applicable" rating. The weaknesses must be clearly spelled out. The explanations are mandatory before the evaluators can proceed to the next step of the process.
10. Third, the evaluator will evaluate each individual expert, international and national, in the PER Form 1 Part B (**Attachment 1**). The evaluator has to evaluate the team leader and the team members who made significant contributions. Any expert with unsatisfactory rating will require detailed evaluation using PER Form 2 (**Attachment 3**). The evaluator will refer to the narrative description of the performance criteria presented in **Attachment 4**.
11. After the evaluator completes the PER, it should be forwarded to the Head of the PMU the concerned IA for endorsement. In cases where the PMU fails to endorse the PER rating given by the evaluators within the specified period, such rating will be deemed final and included for PER purposes. The GDPPP will record cases where the Head of the PMU failed to endorse or have objected to the PER ratings. Completed PERs will be forwarded to the GDPPP.
12. The Director General of the GDPPP will review the PER and decide whether follow-up action with the TA is needed. Follow-up action is always required when the overall performance and/or any expert is rated unsatisfactory. The GDPPP will notify and provide an opportunity to the TA to respond to the areas where an unsatisfactory rating is given. When the TA disagrees with any unsatisfactory rating, it can request for a meeting with the GDPPP within seven (7) days from the receipt of the notification of the unsatisfactory rating. The Director General of the GDPPP or his/her representative will chair the meeting in the presence of the two evaluators and the TA representative (one representative). If satisfactory resolution is not reached, the TA will be given seven (7) days from the date of the meeting to respond in writing to the GDPPP.
13. Depending on the circumstances, the Director General of the GDPPP may decide if the overall performance rating will stand or be modified. If the overall performance rating of "unsatisfactory" is maintained, the Director General of the GDPPP will either seek a corrective action plan by the TA to resolve the weaknesses for future assignment; or recommend either the removable of the TA from the IDC-Panel or the suspension of the TA from being considered for shortlisting for the next two assignments for the consideration of the Minister of the MEF. In the case of unsatisfactory performance of individual experts, the Director General of the GDPPP will recommend the sanction of the individual expert from participating in any future assignments and the removal of the expert from the team of the TA for the consideration of the Minister of the MEF. The sanction period shall be 3 years.
14. The GDPPP will maintain the files on the TA's and its experts' performance evaluation as well as the list of the TA and individual experts who have been sanction or suspended. The GDPPP shall be responsible for ensuring that no sanctioned or suspended TA and individual experts are allowed to participate in future assignments until the suspension or sanction is lifted by the MEF.

## Attachment 1

### PERFORMANCE EVALUATION REPORT FORM 1

<b>Date of evaluation:</b>
----------------------------

<b>Name of TA (Firm/Consortium/JV):</b>	
---	--

<b>Project Name:</b>			
<b>Contract No.</b>			
<b>Commencement Date:</b>		<b>Completion Date:</b>	

<b>Part A. Firm</b>		
<b>CRITERIA</b>	<b>RATING</b>	<b>COMMENT</b>
<b>I. Technical</b>		
1. Analysis of Background Data		
2. Appropriateness of Methodology		
3. Initiative, Flexibility, Innovation		
4. Design Solutions		
5. Presentation of Results		
<b>II. Economic and Financial</b>		
1. Cost Estimates Reliability		
2. Economic Analysis		
3. Financial Analysis		

<b>Part A. Firm</b>		
<b>CRITERIA</b>	<b>RATING</b>	<b>COMMENT</b>
<b>III. Project Specific</b>		
1. Technology Transfer		
2. Training Functions		
3. Advisory Functions		
4. Institutional/Management Analysis		
<b>IV. Project Management</b>		
1. Understanding Procedures		
2. Adherence to Terms of Reference		
3. Compliance with Work Program		
4. Quality of Reports		
5. Personnel Stability		
6. Team Leadership		
7. Competence/Conduct of Experts		
8. Relations with GDPPP and PMU/IA		
9. Contract Administration		
<b>OVERALL PERFORMANCE</b>		

**Part B. Individual Experts**

NAME and POSITION	RATING	COMMENT
1.		
2.		
3.		
4.		
5.		
6.		
7.		

Other comments:

Evaluated by:	Date:
Name and Signature	

-----**To be filled-up by Head of the PMU/IA**-----

Action recommended by the PMU/IA:

Endorsed by:	Date:
Name and Signature	

## Attachment 2

### NARRATIVE DESCRIPTIONS OF THE PERFORMANCE EVALUATION CRITERIA PERFORMANCE EVALUATION REPORT FORM 1

#### A. Technical

##### 1. Analysis of Background Data

Did the TA collect all the relevant background data, organize them properly, and analyze them with sufficient depth? Did the TA consider all available data, or did it omit or overlook some? Did the TA competently investigate all the necessary issues and produce usable results? Did the TA establish the integrity of the data it assembled? Were the TA's assumptions realistic and satisfactory?

##### 2. Appropriateness of Methodology

Was the TA's methodology or proposed methodology appropriate or too sophisticated? Did the methodology recognize local people's abilities and standards?

##### 3. Initiative, Flexibility, Innovation

Did the TA demonstrate initiative when dealing with problems and flexible methods of obtaining data and analyzing incomplete data? Give a higher rating if the TA showed innovation in carrying out the assignment, analyzing data that were not readily available, simplifying the design, increasing the project's benefits, or reducing the costs.

##### 4. Design Solutions

Did the TA's design solutions show a proper appreciation of the methods, materials, and equipment available to, and used by local contractors?

##### 5. Performance on Procurement

Were all the TA's tender documents simple and comprehensive? Were the specifications adequate and fair to all the prospective bidders? Were the evaluation criteria appropriate for thorough and equitable bid evaluations?

#### B. Economic and Financial

##### 1. Cost Estimates Reliability

Were the TA's cost data accurate and comprehensive and was the standard satisfactory? Were the costs estimated or actual? Did the TA state the sources and dates of the data?

##### 2. Economic Analysis

Was the TA's economic analysis comprehensive and was the standard satisfactory? Did the TA properly assess all the benefit and cost streams and include the relevant items?

##### 3. Financial Analysis

Assess the quality and completeness of the TA's analysis. Did the TA include all the investment and operating charges? Did the financial analysis develop any questions for the economic analysis? If the TA studied tariffs and prepared recommendations, were they soundly based?

#### C. Project Specific

##### 1. Technology Transfer

Did the TA effectively transfer all the required technology, including any required manuals, hardware and software to the counterpart staff? Did the TA fully explain all the methodologies, and was the transfer untied?

## **2. Training functions**

Did the TA fully train the counterpart staff as required in the terms of reference? Did the TA assess and evaluate the training to gauge its success? Were the counterpart staff fully competent and capable of operating any system or program the TA transferred?

## **3. Advisory Functions**

Was the TA's advice practical, appropriate and effective? Did the IA accept it?

## **4. Institutional/ Management Analysis**

Did the TA adequately consider all the relevant factors, including local protocols and sensitivities, and develop practical solutions to problems? Give a lower rating if the TA only adapted practices from elsewhere.

# **D. Project Management**

## **1. Understanding of Procedures**

Did the TA adequately understand the IA's procedures? Did it handle all correspondence, reports, claims and other procedural matters in a timely manner?

## **2. Adherence to Terms of Reference**

Did the TA fully comply with all of the terms of reference or only with some of them?

## **3. Compliance with Work Program**

Did the TA complete all the tasks and achieve all the deadlines in the work program? Did the TA give reasons for any deviations? Give a lower rating for erratic programming.

## **4. Presentation of Results**

Were the TA's reports written in clear, succinct English and free of jargon? Were they grammatically and mathematically correct? Were they adequately organized and properly indexed?

## **5. Quality of Reports**

Were the TA's reports comprehensive, logical and persuasive? Were the reports useful?

## **6. Personnel Stability**

Did the TA give adequate reasons for personnel changes, such as long-term illness or death?

## **7. Team Leadership**

Was the team leader's leadership effective? Was the team cohesive, cooperative and productive?

## **8. Competence/ Conduct of Experts**

Summarize your evaluations of the experts in Part B of the form. You may omit less important team members if you are not familiar with them.

## **9. Relations with the Implementing Agency**

Were the TA's relations with the IA cordial and cooperative, resulting in good working arrangements and supply of data, frank exchanges of views, and open discussions of sensitive issues?

## **10. Contract Administration**

Did the TA ask for too many variations or variations that were too expensive? Did the TA justify its requests for contract variations? Give a lower rating if the TA, rather than the IA proposed to vary the work plan.



## Attachment 3 PERFORMANCE EVALUATION REPORT FORM 2

<b>Project Name</b>		
<b>Commencement Date:</b>		<b>End Date:</b>
<b>Date of Evaluation</b>		
<b>Name of Expert:</b>		
<b>Position:</b>		
<b>Name of TA</b>		

Criteria	Rating	COMMENT
1. Practical knowledge and experience in the field concerned		
2. Ability to adapt knowledge and experience to assigned tasks		
3. Initiative		
4. Productivity		
5. Ability to work with others		
6. Adherence to GDPPP and PMU/IA's working regulations		
7. Quality of work completed		
8. Others		
<b>OVERALL PERFORMANCE</b>		

Other comments:
-----------------

Evaluated by:	Date:
Name and Signature	

-----**To be filled-up by the Head of PMU/IA**-----

Action recommended by the PMU/IA
----------------------------------

Endorsed by:	Date:
Name and Signature	

## Attachment 4

### NARRATIVE DESCRIPTIONS OF THE PERFORMANCE EVALUATION CRITERIA

#### PERFORMANCE EVALUATION REPORT FORM 2

##### 1. Practical Knowledge of and Experience in the Field Concerned

Did the expert demonstrate practical knowledge and experience in the claimed areas of expertise? Were gaps apparent in the expert's knowledge, or did the expert lack experience in one or more areas? Did the expert demonstrate a professional appreciation of the problems that arose?

##### 2. Ability to Adapt Knowledge and Experience to Assigned Tasks

Did the expert thoroughly investigate, understand, analyze, and report on all the aspects of the assignment? Was the counterpart staff involved confident that the expert would competently complete the assignment?

##### 3. Initiative

Did the expert propose any sound innovations? Was the expert's method of searching for data practical? Did the expert need more or less assistance than usual with the arrangements?

##### 4. Productivity

Did the expert complete all tasks in the terms of reference? Were the expert's tables, calculations, and other written outputs complete?

##### 5. Ability to Work with Others

Did the expert maintain cordial relations with the IA staff and counterpart officials? While on mission, did the expert work cooperatively with the group? Did the expert respect the local culture?

##### 6. Adherence to the GDPPP and PMU/IA Working Regulations

Did the expert work within the implementing agency's normal procedures and regulations?

##### 7. Quality of Work Completed

Assess whether the quality of the outputs was fully satisfactory. Was the expert's report or contribution to the team's report well organized, clearly and simply written, without jargon? Did the expert present his/ her conclusions logically and convincingly, with adequate references? Were the expert's inputs and outputs complete, covering all the requirements in the terms of reference? Did the expert's report or contribution to the report cover all the issues raised?

## ANNEXURE 7

# QUALITY- AND COST-BASED SELECTION (QCBS) PROCEDURES

## QUALITY- AND COST-BASED SELECTION PROCEDURES

### SELECTION OF INDEPENDENT CONSULTANT (IC)/OWNER’S ENGINEER (OE)

#### I. Introduction

1. The most critical activity in the consultant selection process is preparing a consulting services package with properly identified staffing, budget and clear terms of reference (TOR). The first activity is to prepare an output statement for the IC/OE as applicable. For example, in case of Independent Consultants (IC), is as follows:

*Check and verify the designs and construction implementation undertaken by the Private Partner for a specific PPP project to ensure that the works are being constructed and maintained fully in accordance with the relevant specifications and requirements of the Project.*

2. The next steps are to carefully define the scope, prepare the implementing schedule, identify the expertise required for each activity, and prepare the staffing schedule, terms of reference and basic qualification requirements of each expert. Once these basic details are ready, the next activity is to prepare the budget. This will require estimating the remuneration and per diem expenses for the international and national consultants, travel costs, office maintenance costs as well a provision for contingencies.
3. While a number of selection procedures are available, the most appropriate one for selection of IC is the Quality and Cost-Based Selection (QCBS) procedure. This procedure allows for both efficiency and economy. It allows a weighting system for technical quality and cost. The consultants submit both the technical and financial proposals at the same time. The Technical Proposals (TP) are opened first and evaluated against a maximum of 1000 points.
4. The Transaction Advisor will prepare the TOR for the IC services. For USP, the Owner’s Engineer shall prepare the TOR. Thereafter, the PMU with the consultation with the GPPPP will prepare the budget and the REOI. The number of person-months for each expert will be shown in the staffing schedule. A typical cost estimate is at Table 1.

<b>Table 1: Cost Estimate</b>	
<b>Item</b>	<b>Total Cost</b>
1. Consultants <ul style="list-style-type: none"> <li>a. Remuneration                             <ul style="list-style-type: none"> <li>(i) International</li> <li>(ii) National</li> </ul> </li> <li>b. Per Diem                             <ul style="list-style-type: none"> <li>(i) International</li> <li>(ii) National</li> </ul> </li> </ul>	
2. International Travel	
3. Local Travel	
4. Report Preparation	
5. Communication	
6. Miscellaneous Administration and Support Costs	
7. Contingencies (include Local Taxes)	
<b>Total</b>	

(Note: The rates adopted should be realistic and reflect market prices.)

## II. Preparation of the Request for Expressions of Interest (REOI)/ Request for Proposals (RFP)

5. The PMU shall be responsible for the preparation of the REOI and the RFP. A sample REOI and associated templates are at **Annexure 8** and that of the RFP at **Annexure 9**. The REOI shall be
  - (a) Advertised at least once in one (1) daily newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issuance of the advertisement, and one international newspaper/ journal/website and
  - (b) Published continuously on the websites of the Implementing Agency (IA) and MEF until the deadline for submission of EOIs.
6. Generally, prospective firms should be allowed at least thirty (30) days to prepare and submit EOIs. Those EOIs received before the deadline shall be evaluated by the CEC and a short-list of at least three but no more than six firms prepared based on the number of EOIs received. The sample evaluation criteria can be found in **Annexure 8**. In parallel, the PMU shall prepare the RFP (**Annexure 9**). Thereafter, the short-list, the RFP and evaluation criteria shall be approved by the PRC.
7. The RFPs shall be issued to the short-listed firms allowing them not less than thirty (30) days to submit their proposals after the issuance of RFP. Both the Technical Proposal (TP) and Financial Proposal (FP) shall be submitted at the same time in separate sealed envelopes. In case the FP is not sealed or included in the same envelope as the TP the proposal shall be rejected.

## III. Evaluating Proposals

8. This process is undertaken through three steps:
  - evaluating the technical proposals
  - evaluating the financial proposals; and
  - ranking the firms
9. **Evaluating Technical Proposals:** The received TPs shall be evaluated against a range of criteria. The TPs are evaluated based on
  - (a) a brief 10-page approach and methodology, and
  - (b) personnel.

These criteria are to be further broken down into sub-criteria and weights are applied to them as shown in Table 2.

<b>Table 2: Sample Standard Evaluation Criteria for a Simplified Technical Proposal</b>	
<b>Item</b>	<b>Weight Given (normally fixed)</b>
<b>I. Approach and Methodology</b>	<b>300</b>
(a) Approach and Work Program	100-200
(b) Personnel Schedule	50
(c) Presentation	50
<b>II. Personnel</b>	<b>700</b>
(a) International Consultants	
(each evaluated separately)	

(b) National Consultants	
(each evaluated separately)	
<b>Total</b>	<b>1000</b>

10. *Evaluating Personnel:* Separate evaluation criteria for personnel are to be prepared by dividing the rating of each expert into three parts, namely, (i) general qualifications, (ii) experience related to the project, and (iii) overseas/country experience. These are in turn assigned a percentage weight to signify their relative importance for evaluation. The percentage weights applied to these factors should be within the percentage ranges shown in Table 3. Should a position being evaluated be that of team leader, the proposed candidate will be evaluated twice, that is, once for the technical position and once for the team leader position.

<b>Table 3: Normal Percentage Weights for Evaluation Criteria</b>		
<b>Factor</b>	<b>Weight (range in %)</b>	<b>Example</b>
General Qualification	10-20	15
Project-related Experience	60-70	70
Overseas/Country Experience	10-20	15
<b>Total</b>		<b>100</b>

11. Since personnel account for a significant portion of the total points, it is advisable to evaluate the personnel first. The quality of personnel will give a good idea of the strengths and weaknesses of the various proposals. The other factors, such as qualifications of the firm, approach and methodology can be used to distinguish between firms that are close in terms of personnel quality. Each expert must be evaluated separately using the three factors in the personnel evaluation sheet and rating levels in the scoring table. The basis for assessing the experts' ratings is the biodata of individual experts contained in the curriculum vitae (CV) form which is a part of each proposal. An example of the CV form is in the RFP at **Annexure 9**.

12. The CEC will evaluate each proposal separately. The following scoring table should be used to ensure consistency in evaluation. This table also indicates the definition of the ratings.

<b>Table 4: Scoring Table and Rating Definitions</b>		
Excellent	100%	The proposal substantially exceeds the sub-criteria requirements
Very Good	90%	The proposal exceeds the sub-criteria requirements
Above Average	80%	The proposal fully meets the sub-criteria requirements
Average	70%	The proposal adequately meets the sub-criteria requirements, but there are minor deficiencies
Below Average	50%	The proposal has significant deficiencies against the sub-criteria requirements that will probably impact negatively on the implementation of the assignment

Noncomplying	0%	The proposal either does not comply with the sub-criteria requirements or does not provide enough information to allow a higher rating.
--------------	----	---

13. After an expert is rated for each of the above factors within the range from excellent to non-complying from the scoring table), the appropriate percentage should be placed in the rating category of the personnel evaluation sheet. This is then multiplied by the weight given for each factor at the time the evaluation criteria were formulated. The result is the weighted rating. The weighted ratings for each sub criterion are then totaled, resulting in an overall rating for each expert. An example of such rating is shown at Table 5. This value should be placed in the summary evaluation sheet provided in the RFP

<b>Factor</b>	<b>General Qualifications (A)</b>	<b>Project-Related Experience (B)</b>	<b>Overseas/ Country Experience (C)</b>
Weight (decided at the time of short-listing)	20	65	15
Rating (decided by the Evaluator in %)	Excellent=100	Above average=80	Very good=90
Weighted Rating (Weight X Rating/100)	20.0	52.5	13.5
<b>Overall Individual rating (A+B+C) = 20.0+52.5+13.5 = 85.5</b>			

14. *Evaluating Other Factors:* Other factors that are to be evaluated are the approach, methodology and work program, personnel schedule and presentation.
15. In terms of approach, methodology and work program, the evaluators need to note whether the consultant's proposal responds to all the objectives indicated in the TOR or does it fail to address some requirements? Does the work plan adequately describe all the important activities? Is the timing of the activities appropriate and is the sequence logical?
16. Is the Personnel Schedule in accordance with the RFP format showing the inputs of all nominated? Are the timing and duration of experts' inputs appropriate with the proposed methodology? Are the interrelationships among the various activities appropriate and consistent with the proposed methodology and the activities shown in the work plan? Is the balance between the time allocations in the field and home office appropriate? How many trips to Cambodia are scheduled for each expert and is this number appropriate in terms of economy and efficiency?
17. Finally, there is a need to assess whether the proposal is intellectually sound, technically sound and logical. Is it easy to read, well written, well referenced, well organized, complete and convincing?
18. Each of these factors needs to be assessed versus the scoring criteria, and a rating (0 to 100 based on the scoring sheet) placed in the summary evaluation sheet.



## Technical Ranking of Firms

19. The final ranking of the firms is achieved by

- applying the weights of the evaluation criteria to the individual ratings to achieve a final score for each criterion,
- totaling the final score for each criterion to get a final score for the proposal as a whole, and
- ranking the proposals in terms of the highest score to lowest score.

The results of the scoring will look like Table 6.

Table 6: Summary Evaluation Sheet for Simplified Technical Proposals							
Evaluation Criteria	Maximum Weight (set at the time of short-listing)	Firm No.1		Firm No. 2		Firm No.3	
<b>I. Approach and Methodology</b>	300						
a. Approach and Work Program	200	100	200	90	180	80	160
b. Personnel Schedule	50	90	45	80	40	80	40
c. Presentation	50	90	45	80	40	70	28
<b>II. Personnel</b>	700						
<b>International Consultants/ Key Experts</b>							
a. Team Leadership	200	90	180	90	180	80	160
b. Road Engineer/ Team Leader	150	100	150	90	135	80	120
c. Transport Economist	100	90	90	80	80	80	80
d. Environment Specialist	100	90	90	90	90	80	80
<b>National Consultants/ Non-Key Experts</b>							
a. Road Engineer	50	80	40	80	40	80	40
b. Transport Economist	50	80	40	80	40	70	28
c. Social Specialist	50	80	40	70	35	70	35
<b>TOTAL</b>	1000		920		850		771
<b>Ranking</b>			1		2		3

20. *Reaching a Consensus at the CEC Meeting:* The process indicated above illustrates how an individual evaluator would undertake the evaluation process. Prior to the CEC meeting, each evaluator should follow this process. At the CEC meeting, the scoring and ranking of all the evaluators should be consolidated. This is achieved through a process on consultation and consensus. Each evaluator will explain the reasons for assigning the rating and based on further discussions, a consensus is reached. The final agreed values are placed in the master personnel evaluation and summary evaluation sheet. The CEC shall maintain minutes of the meeting for future reference. At the end of this evaluation process, the results of the evaluation and the names of the firms scoring more than 750 points are submitted to the PRC for its consideration.

21. *Public Opening of Financial Proposals:* On approval from the PRC, the financial proposals that score 750 points and above in the technical evaluation are opened publicly. Those attending should sign an attendance form. The following procedure should be followed:

- The score of each technical proposal that met the minimum score of 750 is announced;
  - Each financial proposal should be inspected to confirm that it has remained sealed and unopened;
  - Open each financial proposal, announce the name of each qualified firm along with the total price shown in the financial proposal;
  - Inform the firms the likely schedule for contract negotiations and commencement of the assignment; and
  - Maintain a written record of the financial proposal opening.
22. After the opening, all other information in the financial proposals should be kept confidential. Finally, all qualified firms, whether they have attended the opening or not, should be sent letter informing them of their technical scores and total prices proposed by each qualified firm.
23. **Evaluating Financial Proposals:** The following process should be followed in sequence:

**(a) Verification of the Financial Proposals.**

- The FP is checked first for compliance with the data sheet;
  - ensure that the FP includes provisional sums and contingencies in the amounts specified on the data sheet; and
  - the validity period of the proposals is in compliance with that indicated in the data sheet.
- Figures provided in the FP should match the staffing schedule in the technical proposal (e.g. staffing schedule inputs, number and duration of field trips, applicable per diems, etc.);
- If the inputs shown in the FP of any expert do not match those shown on the staffing schedule in the technical proposal, the staffing schedule inputs in the technical proposal shall prevail and adjustments will be made to the financial proposal accordingly;
- If an expert included in the technical proposal is omitted from the FP, then the firm's FP is adjusted upwards by the cost of that expert at the **highest rate** for that position from among all the other FPs;
- If the total international and/or national inputs shown on the staffing schedule are below those indicated in the data sheet, an adjustment will be made for the missing person-months using the remuneration rate shown in the FP for individual international and/or national experts;
- If any of the essential out-of-pocket expense items are not priced in the FP, the firm will be expected to bear this cost at its own expense during implementation of the contract;
- If the number of international trips and per diems calculated from the staffing schedule does not match the quantities for these items shown in the FP, no adjustments will be made to the FP inputs for the purpose of evaluation. However, no additional costs will be permitted for such omissions during contract negotiations;
- Review the computation to ensure that there are no such errors;

- Convert the proposal amounts into US dollars using the exchange rate as prescribed in the RFP/Data Sheet; and
- The final amount is considered as the “gross evaluated financial proposal (GEFP)”.

**(b) Determining the Financial Score for QCBS**

24. Generally, the data sheet should indicate an Estimated Budget for the assignment. In case, **the data sheet indicates maximum budget, then if the GEFP of any firm exceeds the budget, the FP will be considered financially non-responsive.** In case the data sheet indicates firms will not be penalized for exceeding it, then their FPs will be considered. Once any nonresponsive FP have been identified, the remaining GEFPs will be converted into Net Evaluated Financial Proposals (NEFP). Such NEFPs include only variable cost items such as remuneration and out of pocket expenditures. **Fixed cost items such as provisional sums and contingencies are not included in the calculation.** The NEFPs are calculated by subtracting the provisional sums and contingencies (noncompetitive components) shown in the data sheet, from the GEFPs.
25. The lowest NEFP is then given a maximum score of 1,000 points and is used as a basis to calculate the financial scores of the other NEFPs as follows:

Financial Score= NEFP of the lowest priced proposal divided by the NEFP of the proposal under consideration, multiplied by 1,000.

An example is shown below:

Lowest NEFP = \$800,000

NEFP of the second lowest priced proposal=\$900,000

Financial score of lowest NEFP=\$800,000/\$800,000 X 1,000=1,000

Financial score of next lowest priced proposal=\$800,000/\$900,000 X 1,000=

Using this methodology, all proposals are given a financial score.

**(c) Ranking Proposals**

26. This is done by applying a weight to the technical score and a weight to the financial score, which together will add up to 100% and adding them together to achieve a final score. The normal weight used for the technical component is 60-80% and that for the financial component is 40%-20%<sup>19</sup>. A typical calculation for a proposal in which the technical score is 800 points and the financial score is 900 points is as follows:

Technical Score: 800 x 60% or 70% or 80% = 480 or 560 or 640

Financial Score: 900 x 40% or 30% or 20% = 360 or 270 or 180

Final Score= 840 or 830 or 820

27. Once the final scores are computed for each firm, they can be ranked from highest to lowest. In the event two or more firms achieve the same total score, the firm with higher technical score will be ranked higher and so on. The final ranking will be approved by the PRC.

**(d) Contract negotiations**

28. After the final ranking, the first ranked firm will be invited for contract negotiations. There is a need to prepare for the contract negotiations and a number of steps will be required for such preparation. The next step is for the PMU to issue Invitation letter to the highest

---

<sup>19</sup> Appropriate weights may be adopted but must be stated in the RFP. The default weights will be 70/30.

ranked firm. The letter informs the firm that it has been first ranked and invites the firm to send an authorized representative to negotiate and finalize the contract on behalf of the firm. The letter should include a proposed schedule and agenda. The firm should also be asked to confirm availability of the team members nominated in its proposal. In addition, the letter should summarize any issues identified during that require clarification, any deficiencies that need to be corrected, any team members that should be replaced and why, and any other corrective action to be taken. Such clarity in the invitation letter will result in efficient contract negotiations. The negotiations will be conducted by the PRC.

In case of non-availability of any of the nominated experts, the letter must make it clear that replacement will not be permitted unless there is strong justification based on the stipulation in the RFP which is normally in the event of death or serious illness. If the PRC is satisfied with the justification, the PMU will inform the firm to submit the CVs of the replacement (s). The CVs will be evaluated to compare the is the qualifications and overall score is equal or better than the original candidate(s). If found to be lower, the firm will be informed that its proposal is rejected and the next ranked firm will be invited for negotiations.

29. A letter of authority should be submitted at the start of the negotiations. Negotiations are normally initiated by a formal presentation by both sides. The Chief Negotiator of the firm shall submit the firm's response to the initial points raised in the invitation letter. All issues, such as personnel, work plan scheduling of personnel inputs, out of pocket expenses, counterpart support, provisional sums, miscellaneous items, and financial arrangements. Once these issues are resolved and agreed by both parties, the draft contract is discussed and finalized. This will also include an agreement on the General Conditions of Contract and Special Conditions of Contract. The Appendixes to the Contract are as follows:

- Description of Services
- Reporting Requirements
- Personnel Schedule
- Cost Estimates in Foreign Currency
- Cost Estimates in Local Currency
- Summary of Cost Estimates
- Services, Facilities and Equipment to be provided by the IA
- Standard Form of Advance Payment Security
- Standard Dispute Notification Form

**(e) Notice to Proceed**

30. Once the contract is signed by the authorized representatives, the PMU shall issue a Notice to Proceed.

**(f) Failure of Contract Negotiations**

31. Should the negotiations be unsuccessful at any point, they may be terminated. If this happens, the second-ranked firm will be invited to negotiate with the approval of the PRC.

**ANNEXURE 8**

**Selection of Consultants**

**Part A. Selection of Consultants**

**Part B. Annexures**

**Shortlisting of Consulting Firms**

**for**

**Selection of Independent Consultants (IC)/Owner's  
Engineer (OE)**

**Request for Expressions of Interest**

Project Title:

Date

**Request for Expressions of Interest**  
**for**  
**Selection of Independent Consultants (IC)/Owner's Engineer (OE)**  
**Project Title:**

1. The Project Management Unit, on behalf of (*insert name of IA*), the implementing agency for the (*Project Title*) (**Project**) intends to engage reputed and experienced consulting firms (**Consultant**) to operate as Independent Consultants (IC) during the implementation and operations and maintenance of **the Project** to be constructed and operated by a selected Private Partner.
2. The scope of services of the IC involves independent review, monitoring, evaluation, approval, and reporting of activities related to the design, construction, and/or operations and maintenance of the Project. The Consultant will carry out the activities in accordance with the detailed terms of reference which will be issued with the Request for Proposals (RFP). Sample terms of reference is at **Appendix 1**. The Contract will be signed by the (*insert name of IA*), the selected Private Partner and the Consultant. In case of OE, the sample terms of reference is at **Appendix 2** and the Contract shall be signed between the (*insert the name of IA*) and the Consultant.
3. The PMU invites eligible national and international consulting firms to submit expressions of interest (EOI) to be considered for this assignment.
4. Interested firms are requested to submit EOIs, in the prescribed template shown at **Appendix 3** and provide the following information demonstrating their capabilities and availability of technical expertise:
  - a) Firm/JV/Association Information;
  - b) Qualifications and Experience (Technical, Geographic; Management; Similar Projects, and other relevant information);
  - c) Comments on Terms of Reference;
  - d) Summary Approach and Methodology;
  - e) Organization Structure and Key Staff;
  - f) Proposed Key Experts; and
  - g) Any other details which will enable the Employer to assess the relevant experience of the consulting firm or association.
5. The deadline for the submission of EOIs and other pertinent documents is \_\_\_\_\_. EOIs shall be submitted using the prescribed template. Additional information/documents (e.g., details of the projects successfully completed beyond the provision in the template, details of at least three (3) Employers on similar projects successfully completed in the last ten (10) years for reference checking purposes, etc.) can be attached to the EOI.
6. Interested firms should submit their EOIs and additional information/documents directly to the Project Management Unit by email or through courier at the address given below before the deadline indicated.
7. The details as follows:

**PROJECT MANAGEMENT UNIT**

**PUBLIC-PRIVATE PARTNERSHIPS PROJECTS**

Ministry of \_\_\_\_\_  
Government of the Kingdom of Cambodia  
XXXXXXXXXXXXXXXXXX  
Phnom Penh  
Cambodia  
Attention: (Name of Contact Person)  
Email:

8. The PMU reserves the right to shortlist or not to any or all of the applicant(s) without assigning any reason whatsoever.

## TERMS OF REFERENCE

*(The text in brackets is simply guidance for the preparation of the Request for Proposal and shall be deleted after the Request for Proposal is fully completed and before it is referred to the short-listed Consultant firms).*

*(The Terms of Reference normally consist of the following: (a) Background, (b) Objectives, (c) Scope of the Services, (d) Education (if necessary), (e) Reports and work schedule, and (f) Data, Local Services, supporting staff and facilities provided by the Employer).*



## Appendix 1

### SAMPLE TERMS OF REFERENCE FOR INDEPENDENT CONSULTANT (IC)

#### I. INTRODUCTION

1. The Project Management Unit for PPP Projects under the (*insert name of IA*) has been tasked with ensuring that the (*name of the Project*) is implemented, operated, maintained and handed over by the (*name of Private Partner*) in accordance with the specifications, performance standards and other requirements specified in the PPP Contract signed between the (*name of IA*) and (*name of Private Partner*). The PPP Contract provides for an Independent Consultant (IC) to provide independent consulting services for the implementation of the PPP Contract.

#### II. OBJECTIVE OF THE ASSIGNMENT

2. The IC shall provide independent review, monitoring, evaluation, approval, and reporting of activities related to the design, construction, and/or operations and maintenance and hand over of a PPP project. The IC shall carry out the activities and complete the services, in accordance with a detailed term of reference (TOR) to be issued with the Request for Proposals.

#### III. SCOPE OF ASSIGNMENT

3. The IC shall act professionally and independently of the parties to the PPP Contract and shall exercise the standard of care, skill, and diligence expected of an expert professional service provider.
4. The scope of work shall include, but not necessarily be limited to, the following:
  - (a) review and certify the detailed engineering design (DED) and operations and maintenance manual and determine whether it complies with the requirements of the PPP Contract including the Minimum Performance Specification and Standards (MPSS) and the Conceptual Engineering Design;
  - (b) undertake independent inspections, checking to monitor compliance of the construction with the certified DED and the MPSS;
  - (c) attend and witness all test required during and after construction and provide report on the result; and
  - (d) in accordance with the PPP Contract, submit all required reports, certifications and notices.
5. The Consultant shall develop tasks for providing Services which shall include, but is not limited to, the following:
  - (a) perform review functions which are conferred on the IC pursuant to the PPP Contract, including the functions referred to in the specific TOR;
  - (b) perform tasks that are necessary for the IC to comply with obligations on monitoring functions conferred on it pursuant to the PPP Contract;
  - (c) review the terms of the PPP Contract for the design and construction works of the infrastructure asset and associated facilities, and make recommendations to the IA and the Private Partner on key areas of evaluation and supervision that will be undertaken during the monitoring phase;
  - (d) review the preliminary design and project master plan submitted by the Private Partner and assess whether it substantially follows the Conceptual Design submitted as a part

of technical proposal submitted for the Project, while incorporating the changes following discussions with users and stakeholders;

- (e) review and approve the Detailed Design submitted by Private Partner as contemplated in the PPP Contract and any amendments thereto for compliance with all the standards specified in the MPSS applicable, and make recommendations to the IA and the Private Partner for any modifications that may be required to be made within a specified period;
- (f) determine any extension of time, monetary compensation or relief from penalties to which the IA and/or Private Partner is entitled to on suspension or variation of any Construction Works by the IA and/or Private Partner pursuant to the PPP Contract;
- (g) review the implementation program schedule for completion of the Detailed Engineering Design as it relates to the obligations of the IA, and inform the IA of those obligations; monitor the Private Partner's plans and programs for the development and construction of the Project prior to their implementation, to ensure conformity with the approved final drawings and/or architectural and engineering plans, specifications and procedures;
- (h) monitor, obtain information from Contractors and report to the IA and Private Partner on the status and progress of right of way, land acquisition by the IA for the purpose of the Project and the status of any licenses / permits applied for in relation to the Project;
- (i) monitor and report to the IA and Private Partner on the compliance of the temporary arrangements to be implemented while Construction Works are being undertaken for compliance with the IA's requirements specified in the PPP Contract, and report to the IA and the Private Partner (and the Contractor, if advised to do so) on any matter which may obstruct access to the site and/or commencement of construction of the Construction Works;
- (j) monitor and report to the IA and Private Partner on progress of removal of existing facilities, diversion of existing services and any other work which is necessary to enable construction on the Construction Works to proceed;
- (k) advise the IA and Private Partner (and the Contractor, if advised to do so) of action required to avoid any delays to the commencement of any Construction Works;
- (l) audit the Initial Construction Program and any additional Construction Works Program (as and when it is prepared in accordance with the PPP Agreement) for compliance with the completion requirements specified in the IA's requirements and the relevant Construction Agreement and, if necessary, recommend to the IA and Private Partner any amendments to the programs which may be necessary to achieve the construction completion requirements;
- (m) monitor the progress of the Construction Works against the Initial Construction Program and any Additional Construction Works Program (as relevant) and report to the IA and Private Partner any variance from the relevant program, promptly give written notice of the variance to the IA and Private Partner;
- (n) review the Quality Assurance System and report to the IA and the Private Partner (and the Contractor, if directed to do so) as to whether the Quality Assurance System complies with the requirements as outlined in the PPP Contract or any other standard agreed by the parties to the PPP Contract and, if not, provide the Implementation Agency and the Private Partner (and the Contractor, if directed to do so) with details of the non-compliance as soon as practicable;

- (o) audit performance of the Private Partner against the Quality Assurance System by, amongst other things, auditing test results and, where the IC considers reasonably appropriate, by a system of verification involving inspections and periodic checking;
- (p) make a determination for the extension of any date or period, any monetary compensation or relief from penalties as provided for in the PPP Contract;
- (q) review the Report on Works submitted by the Private Partner on a monthly basis, from the Construction Start Date to the issuance of the Final Acceptance Certificates
- (r) review variation proposal (either for a variation initiated by the IA or the Private Partner) to certify compliance due to a revised design with the MPSS and in accordance with the provisions of the PPP Contract;
- (s) be present while the commissioning and acceptance tests are being carried out by the Private Partner including determining and notifying the stakeholders to the PPP Contract through a Commissioning and Acceptance Notice whether it believes that the Commissioning and Acceptance Tests:
  - (i) have been carried out in accordance with the Commissioning and acceptance
  - (ii) are sufficient in scope and detail to meet its intended purposes;
  - (iii) indicate that the Tested Works fully meet the requirements of the Commissioning and Acceptance Standards;
  - (iv) indicate that the Tested Works substantially meet the requirements of the Commissioning and Acceptance Standards; and/or
  - (v) indicate that the Tested Works fail to meet the requirements of the Commissioning and Acceptance Standards.
- (t) recommend issuance of a Performance Certificate by the IA as required and in accordance with the PPP Contract for a particular package of Construction Works or on being satisfied that the Contractor has completed all rectification items (or any phrase as defined in the PPP Contract);
- (u) inspect the infrastructure and associated facility during the time period; and recommend issuance of Taking Over Certificate in respect of any Construction Works as required and in accordance with the PPP Contract or give notice to the IA and the Private Partner as required under the PPP Contract, as to the Infrastructure and Associated Facility not being ready for Taking Over;
- (v) certify the operational readiness and successful testing of the PPP asset for initiating the operations and maintenance stage of project implementation;
- (w) review the as built drawings, other technical and design information and completion records that are required to be provided to the IA in respect of completed Construction Works and review such drawings, information and records and instruct any necessary clarification of, or modification to such drawings, information and records;
- (x) manage the following financial aspects during the construction phase:
  - (i) monitor activities relating to reaching timely financial close and bring to the attention of the IA and Private Partner deviations from the PPP Contract;
  - (ii) review the proposed Payment Schedules (as defined in the Construction Agreement) in conjunction with the Construction Program and Construction Schedule;

- (iii) report on the Contractor's control of progress of Works and risks to completion within the time established in accordance with the relevant Construction Agreement;
  - (iv) receive the Contractor's application for progress payments for Construction Works and certify amounts due for payment under the Construction Agreement;
  - (v) adjudicate claims for additional payment and extensions of time in terms of the PPP Contract;
  - (vi) certify final amounts due under the Construction Agreement;
  - (vii) review the updated information supplied by the Lenders and the Private Partner pertaining to the Financial Model and report the same to the IA; and
  - (viii) submit brief monthly and more detailed quarterly status reports covering all aspects of the activities under the Independent Consultancy Agreement to the IA and the Private Partner with a copy to the General Department of Public Privat Partnership of the Ministry of Economy and Finance.
6. Additional Function and Services: The IC shall perform additional Functions/services in relation to its delivery of required outputs, which may include the following relation to its delivery of required outputs, which may include the following:
- (a) certify the construction cost and notify the IA and the Private Partner in writing;
  - (b) observe and inspect the materials and equipment provided for in the construction, including the results of tests carried out on site;
  - (c) consolidate the Environmental Compliance Report based on Monitoring Team Report and submit to the IA and the Private Partner;
  - (d) review the proposed Traffic Management Plan for affected areas during construction, as relevant;
  - (e) inform the IA and the Private Partner of problems and/or potential problems that may arise and recommend possible solutions;
  - (f) convene regular/periodic meetings with the IA and the Private Partner to discuss and examine particular issues and difficulties related to any aspect of the construction works and to prepare and submit to all concerned the minutes of meetings; and
  - (g) undertake other functions as may become necessary or apparent under the PPP Contract, during the implementation of the design and construction phases of the Project.

#### **IV. QUALIFICATION REQUIREMENTS**

7. The IC should have relevant and proven work experience in construction supervision, monitoring, and evaluation of PPP Projects in the infrastructure including understanding of local implementation issues and knowledge of local construction and labor laws for successful implementation of the PPP projects, as well as local construction supervision experience in PPP projects and other country - specific knowledge, as relevant.

8. A prospective firm/association of firms may associate with other firms of the same areas through joint venture (JV) to enhance their qualifications. The association may also include additional firms having legal and finance expertise. Only the technical/engineering competencies will be evaluated for pre-qualification purposes. Association of firms submitting expressions of interest (EOIs) must nominate a technical/engineering firm as the lead firm of the association.
9. A consulting firms/association of firms should have undertaken a minimum of three (3) eligible assignments as IC, within the last ten (10) years.
10. A prospective firm/association of firms (applicable only to the lead firm, in case of association of firms) must demonstrate its financial capability to undertake the consulting assignment. For purposes of determining eligibility and evaluating the EOIs under this pre-qualification process, financial capability shall refer to having positive net worth for the past three (3) years preceding the EOI submission date as evidenced by the firm's audited financial statements.
11. A prospective firm/association of firms should have proven track record in the field and/or region including details of ISO Certification, if available, and adherence to ethic code.
12. The team composition that will provide the required IC services is likely to be as follows:

**1) Team Leader**

The Team Leader should have a degree in Civil Engineering/Architecture with Master's Degree in Engineering Management or any other relevant MS degree, with fifteen (15) years of professional experience, and should have worked as Civil/Structural Engineer on at least three (3) eligible assignments.

**2) Civil/Structural Engineer**

The Civil/Structural Engineer should have a degree in Civil Engineering/Structural Engineering, with ten (10) years of professional experience, and should have worked as Civil/Structural Engineer on at least three (3) eligible assignments.

**3) Specify Other Engineers depending on type of Projects**

The Engineer should have a degree in (*insert type*) Engineering, with ten (10) years of professional experience, and must have designed a similar Project Facility for at least three (3) eligible assignments.

**4) Safety Expert**

The Safety Expert should have a degree in Safety Engineering and or any other Engineering course, with ten (10) years of professional experience, and should have worked as Safety Expert on at least three (3) eligible assignments.

**5) Quantity Surveyor/Cost Engineer**

The Quantity Surveyor/Cost Engineer should have a degree in any other Engineering course, with ten (10) years of professional experience, and should have worked as Quantity Surveyor/Cost Engineer on at least three (3) eligible assignments.

**6) IT/MIS Expert**

The IT/MIS Expert should have a degree in IT Engineering, with ten (10) years of professional experience, and should have demonstrated experience in the design/development/implementation/maintenance of IT/MIS systems.

**7) Sector Planner (Multi-Sector)**

The Sector Planner should have a degree in any Engineering or Architectural courses, with Master's Degree in Planning, with ten (10) years of professional experience, and should have demonstrated experience in sector planning, including but not limited to forecasting facility requirements based on projected demand and setting out operational requirements and minimum performance standards and specifications.

#### **8) Financial Specialist**

The Financial Specialist should have a degree in Accountancy/Finance, or any other equivalent course, with ten (10) years of professional experience, and should have demonstrated experience in building financial models, analyzing infrastructure projects, and monitoring PPP financial structures for public facilities and their operations, and have worked on at least three (3) eligible assignments.

#### **9) Legal Specialist**

The Legal Specialist should have a degree in Law, or any other equivalent course, with ten (10) years of professional experience, and should have demonstrated experience in procurement and contract drafting, and must have successfully negotiated and/or managed on at least three (3) PPP contracts.

#### **10) Materials/Quality Control Engineer**

The Materials/Quality Control Engineer should have a degree in Civil Engineering; preferably an accredited Materials Engineer, with ten (10) years of professional experience, and should have demonstrated experience in procurement as Materials Engineer in the construction of similar projects.

#### **11) Safeguards Specialist**

The safeguards specialist will have a suitable environmental and resettlement expert, qualification with ten (10) years' experience, have experience on in large infrastructure projects and demonstrate significant experience on environmentally sensitive areas and issues in Cambodia or countries within similar geographical areas in the region.

### **V. DELIVERABLES**

The IC shall prepare and submit to the IA, the Private Partner and the GDPPP copies of the following reports:

- (a) Brief Monthly Progress Report;
- (b) Quarterly Inspection Report covering all aspects such as Progress Monitoring, and Quality Assurance/Quality Control, among others; and
- (c) Other certifications, reports, and notices as provided in the PPP Contract.
- (d) Final Report at the end of the assignment.

## Appendix 2

### SAMPLE TERMS OF REFERENCE FOR OWNER'S ENGINEER

#### I. INTRODUCTION

1. The Project Management Unit for PPP Projects (PMU) under the (*insert name of IA*) has been tasked with ensuring that the (*name of the Project*) is implemented, operated, maintained and handed over by the (*name of Private Partner*) in accordance with the specifications, performance standards and other requirements specified in the PPP Contract signed between the (*name of IA*) and (*name of Private Partner*). The (*name of the IA*) requires the services of an Owner's Engineer to provide technical and engineering advice to support all the functions required to be undertaken by (*name of IA*) under the PPP (*Contract/Framework Agreement-select one*) signed between the (*name of IA*) and the Private Partner (*replace with Private Sponsor in case of Framework Agreement*).

#### II. OBJECTIVE OF THE ASSIGNMENT

2. The Owner's Engineer (OE) acts as the technical and engineering advisor to the (*name of the IA*) and shall provide technical support in the review, monitoring, evaluation, approval, and reporting of activities related to the design, construction, and/or operations and maintenance of a PPP project. The OE shall carry out the activities and complete the services, in accordance with a detailed term of reference (TOR) to be issued with the Request for Proposals.

#### III. SCOPE OF ASSIGNMENT

3. The OE shall act professionally and diligently assist the IA and shall exercise the standard of care and skill expected of an expert professional service provider.
4. The scope of work shall include, but not necessarily be limited to, the following:
  - (a) Review the Technical Proposal submitted by the Private Sponsor in case of Unsolicited Proposals and advise the IA on its approval;
  - (b) Review and certify the detailed engineering design (DED) and determine whether it complies with the requirements of the design standards specified in the PPP Contract Agreement including the Minimum Performance Specification and Standards (MPSS) and the Conceptual Engineering Design that have been certified by the Independent Consultant (IC);
  - (c) Review all the technical documents submitted by the Private Partner pursuant to the PPP Contract;
  - (d) Perform all review functions on behalf of the IA pursuant to the PPP Contract
  - (e) Assist the PMU in undertaking inspections, checking to monitoring compliance of the construction with the certified DED and the MPSS;
  - (f) Review all test reports and quality assurance reports during and after construction and provide report on the result; and
  - (g) Review all progress reports submitted by the Private Partner for comments of the IA in accordance with the PPP Contract;
  - (h) Review all decisions of the IC and advise the IA on its responses;
  - (i) Review progress reports and quality assurance reports; and
  - (j) Assist the IA in undertaking all the contract administration functions pursuant to the PPP Contract.

#### IV. QUALIFICATION REQUIREMENTS

1. The OE should have relevant and proven work experience in construction supervision, monitoring of PPP Projects in the infrastructure including understanding of local implementation issues and knowledge of local construction.
2. The firm should have undertaken a minimum of at least three (3) assignments as similar nature within the last ten (10) years. Similar nature *means engineering-related consultancy assignments involving monitoring, evaluation and supervision of construction of infrastructure projects in the same sector/sub sector.*
3. The firm must demonstrate its financial capability to undertake the consulting assignment. For purposes of determining eligibility and evaluating the EOIs under this pre-qualification process, financial capability shall refer to having positive net worth for the past three (3) years preceding the EOI submission date as evidenced by the firm's audited financial statements.
4. The firm should have an ISO Certification and adherence to ethic code in relation to governance, sexual harassment, and gender representation which should be demonstrated by the submission of the firms SOP governing these matters.
5. The team composition that will provide the required OE services is likely to be as follows:

(a) **Team Leader**

The Team Leader should have a degree in Civil Engineering/Architecture with Master's Degree in Engineering Management or any other relevant MS degree, with fifteen (15) years of professional experience, and should have worked as Team Leader in at least two (2) similar assignments.

(b) **Civil/Structural Engineer**

The Civil/Structural Engineer should have a degree in Civil Engineering/Structural Engineering, with ten (10) years of professional experience, and should have worked as Civil/Structural Engineer on at least three (3) eligible assignments.

(c) **Materials/Quality Control Engineer**

The Materials/Quality Control Engineer should have a degree in Civil Engineering; preferably an accredited Materials Engineer, with ten (10) years of professional experience, and should have demonstrated experience in procurement as Materials Engineer in the construction of similar projects.

(d) **Add Other Engineers depending on the nature of the Project- for example Bridge Engineer**

The Engineer should have a degree in Engineering (*specific type*) with ten (10) years of professional experience, and should have demonstrated experience in at least three (3) similar projects.

(e) **Safeguards Specialist**

The safeguards specialist will have a suitable environmental and resettlement expert, qualification with 10 years' experience, and demonstrate significant experience on environmentally sensitive areas and issues in Cambodia or countries within similar geographical areas in the region.

#### V. DELIVERABLES

The OE shall prepare and submit to the IA the following reports:

- (a) Brief Monthly Progress Reports;



- (b) Quarterly Progress Report covering all aspects such as Progress Monitoring, and Quality Assurance/Quality Control, among others;
- (c) Other certifications, reports, and notices as provided in the OE Contract; and
- (d) Final Report on the completion of the assignment

## **Appendix 3**

### **Expression of Interest (EOI) Template Consulting Firms for IC/OE**

**Expression of Interest (EOI) Template  
Consulting Firms for IC/OE**

<b>Project Number</b>	
<b>Project Name</b>	
<b>Contract Ref No.</b>	

**I. Consulting Firm Information**

Consultant Name:	Country of Incorporation:
EOI Submission Authorized by:	Position:

**Associations (Joint Venture or Sub-consultancy)**

Serial No.	Consultant	Country of Incorporation	Joint Venture (JV) or Sub-consultant	EOI Submission Authorized By	Position
1					
2					
3					

Present the rationale for and benefits of working in association (JV or Sub-consultant) with others rather than undertaking the assignment independently (as appropriate). Describe the proposed management and coordination approach of the association and the role of each firm.

I confirm that:

- Documentation regarding our corporate structure including beneficial ownership has been attached.
- Documentation regarding our Board of Directors has been attached.
- A written agreement to associate for the purpose of this Expression of Interest (EOI) has been signed between the consortium partners and has been attached.

If your team is shortlisted and invited for submission of the Proposal, it is not permissible to transfer the invitation to any other firm, such as Consultant's parent companies, subsidiaries and affiliates. The Client will reject a Proposal if the Consultant drops a JV member without the Client's prior consent, which is given only in exceptional circumstances, such as debarment of the JV partner or occurrence of Force Majeure.

**II. Assignment Specific Qualifications and Experience**

Please provide relevant project information in Section E below.

**A. Technical Competence**

---

Cross-referencing from your profile projects in Section E. Project References, highlight the technical qualifications of your entity/consortium in undertaking similar assignments. Provide details of past experiences working with similar project authorities.

**B. Geographical Experience (South East and South Asian Countries)**

---

Cross-referencing from your profile projects in Section E. Project References, present experiences in similar geographic areas.

**C. Management Competence (Please answer each question in one paragraph of 3-5 sentences)**

---

1. Describe standard policies, procedures, and practices that your entity has to assure quality interaction with clients and outputs. Please state if your company is ISO certified.

2. How will your firm/consortium handle complaints concerning the performance of experts or quality of the reports submitted for this assignment? What internal controls are in place to address and resolve complaints?

3. How will you ensure the quality of your firm's/consortium's performance over the life of this assignment?

4. Describe standard policies, procedures and practices that your firm has put in place to avoid changes/replacements of personnel and to ensure the continuity of professional services once contracted.

5. Describe what social protection practices you have in place to safeguard the well-being of your proposed experts? Specifically describe arrangements you have in place for medical, accident, and life insurance coverage during the assignment.

**D. Other Relevant Information**

**E. Project References**

Please select most relevant projects to demonstrate the firm’s technical qualifications and geographical experience (maximum 5 projects).

SN	Project	Period	Client	Country	Firm
1					
2					
3					
4					
5					

**F. Project Summary**

SN 1	
Project Title	
Country / Region	
Start Date	
Completion Date	
Continuous / Intermittent	
Client	
Funding Source	
Description	(indicate your role and input in person-months)

SN 2	
Project Title	
Country / Region	
Start Date	
Completion Date	
Continuous / Intermittent	
Client	
Funding Source	
Description	(indicate your role and input in person-months)

(Please insert more tables as necessary)

### III. Comments on Terms of Reference

--

### IV. Key Considerations in approaching this assignment summarizing approach and methodology

--

### V. Provide Organization Structure of the Firm and Key Staff resources.

--

### VI. List of your proposed key experts to undertake the assignment. Attach CVs.

SN	Name	Position/Title	Nationality
1			
2			
3			
4			
5			

(Please insert more rows as necessary)

**VII. EOI Attachments**

SN	Description
1	Certificate of Incorporation of the lead member
2	Certificate of Incorporation of the JV member (for each member)
3	Certificate of Incorporation of the Sub-Consultant (for each sub-consultant)
4	Letter of Association
5	

(Please insert more rows as necessary)

**VIII. Eligibility Declaration**

We, the undersigned, certify to the best of our knowledge and belief:

- We have read the advertisement, including the terms of reference (TOR), for this assignment.
- Neither the consulting firm nor its JV member or sub-consultant or any of its experts prepared the TOR for this activity.
- We confirm that the project references submitted as part of this EOI accurately reflect the experience of the specified firm/consortium.
- We further confirm that, if any of our experts is engaged to prepare the TOR for any ensuing assignment resulting from our work product under this assignment, our firm, JV member or sub-consultant, and the expert(s) will be disqualified from short-listing and participation in the assignment.
- The lead entity and JV member or sub-consultant are NOT currently sanctioned by Government of the Kingdom of Cambodia; ADB or other MDBs or under any UN sanctions. Neither the consulting firm nor the JV member or sub-consultant has ever been convicted of an integrity-related offense or crime related to theft, corruption, fraud, collusion or coercion.
- JV member or sub-consultant, including all proposed experts named in this EOI, confirmed their interest in this activity in writing.
- JV member or sub-consultant, including all proposed experts named in this EOI, authorized us in writing to represent them in expressing interest in this activity.
- None of the proposed consortiums are subsidiaries of and/or dependent on the Implementing Agency or individuals related to them.
- We understand that any misrepresentations that knowingly or recklessly mislead or attempt to mislead may lead to the automatic rejection of the proposal or cancellation of the contract, if awarded, and may result in further remedial action.

Signature:

Name of Authorized Representative (Lead Partner):

Position:

Date:

Seal/Stamp:

*[Please note that the EOI shall be submitted under a cover letterhead of the Lead Firm]*

**ANNEXURE 9**

**STANDARD REQUEST FOR PROPOSALS FOR THE  
SELECTION  
OF  
TRANSACTION ADVISOR/INDEPENDENT  
CONSULTANT/OWNER'S ENGINEER**

**Project Title:**

**Contract Reference No:**

**Date:**



## **TABLE OF CONTENTS**

<b>INTRODUCTION .....</b>	<b>81</b>
<b>SECTION 1 - LETTER OF INVITATION .....</b>	<b>82</b>
<b>SECTION 2 - INSTRUCTIONS TO CONSULTANTS (ITC).....</b>	<b>84</b>
1.General.....	84
2.Conflicts of Interest.....	85
3.Commissions and Gratuities.....	85
4.Proposal Validity .....	85
5.Clarification and Modifications of the Request for Proposal .....	85
6.Preparation of Proposals .....	86
7.Preparation of Technical Proposal Forms (TPF) .....	86
8.Preparation of Financial Proposal Forms (FPF) .....	88
9.Submission, Receipt and Opening of Technical Proposals.....	89
10.Evaluation of Technical Proposals .....	89
11.Opening and Evaluation of Financial Proposals, QBS, QCBS, FBS and LCBS .....	90
12.Opening and Evaluation of Financial Proposals: Quality Based Selection (QBS), Consultants' Qualifications Selection (CQS) and Single Source Selection (SSS).....	91
13.Contract Negotiation.....	91
14.Commencement of Services .....	92
15.Check-up inquiry.....	92
16.Complaints.....	92
<b>SECTION 3 - PROPOSAL DATA SHEET .....</b>	<b>93</b>
<b>SECTION 4 - STANDARD FORM OF CONTRACT .....</b>	<b>95</b>
<b>SECTION 5 - TERMS OF REFERENCE.....</b>	<b>145</b>
<b>SECTION 6 - TECHNICAL PROPOSAL FROMS.....</b>	<b>146</b>
<b>SECTION 7 - FINANCIAL PROPOSAL FROMS .....</b>	<b>153</b>

## INTRODUCTION

- i. This standard request for proposals can be used for all of the following selection of consultant's services methods (except for the selection of individual consultant's services):
  1. Quality Based Selection (QBS)
  2. Quality- and Cost-Based Selection (QCBS)
  3. Fixed Budget Selection (FBS)
  4. Least Cost Selection (LCS)
  5. Consultants' Qualifications Selection (CQS)
  6. Single Source Selection (SSS)
- ii. The Instructions to Consultants and the General Conditions of Contract should be used in accordance with their respective meaning without any modifications thereof, whereas for specific information, additions can be entered only in the Proposal Data Sheet, Special Conditions of Contract, and the Terms of Reference.
- iii. Consultants are required to complete and submit all of standard bid proposal forms with respect to the first four selection methods mentioned above. With respect to the fifth selection method (CQS), it is not necessary to complete all of standard proposal forms when the work schedules and the way by which the works are performed are not required. In the case of the sixth selection method (SSS), the standard proposal forms are sent to the single selected firm for submission of the technical and financial proposals but modified to reflect that there is only one firm that is invited to submit the proposals. The forms that must be completed for the different types of selection methods must be indicated in the Proposal Data Sheet.
- iv. The contract form is attached to the Request for Proposal and can be used both for time-based works and lump sum-based works and these can be stipulated through adjustment of the Special Conditions of Contract and completion of the schedule of activities during contract negotiation.

## SECTION 1 - LETTER OF INVITATION

1. The Project Management Unit (PMU) on behalf of the (*insert name of IA*) as stated in the Special Conditions of Contract has been tasked to undertake the Project as described in **Section 3 - Proposal Data Sheet**, and is inviting your firm to submit a Proposal for the provision of consulting services as described in Section 5 - Terms of Reference (hereinafter referred to as "The Services").
2. The selection of the firm will be based on Fixed Budget Selection Method as described in the GKC's *Standard Operating Procedures for PPP Projects, Vol. III: Procurement Manual, Section II: Selection of Consultants*. The Proposal must be submitted in the format as described in this Request for Proposal RFP). Proposals exceeding the total available budget will be rejected.
3. It is not permissible to transfer this invitation to any other firm or to modify the JV/ Association arrangements without PMU's prior consent which shall not be unreasonably withheld in case of debarring of one of the JV/Association partner or other force majeure circumstances.
4. The RFP has been addressed to short-listed consulting firms whose names are as follows:

No.	Name of the Firm/Association	Name of the Lead Firm	Nationality
1			
2			
3			
4			
5			

5. The RFP includes the following documents:
  - ❖ Section 1: Letter of Invitation
  - ❖ Section 2: Instructions to Consultants
  - ❖ Section 3: Proposal Data Sheet
  - ❖ Section 4: Standard Form of Contract for Consulting Services
  - ❖ Section 5: Terms of Reference
  - ❖ Section 6: Technical Proposal Forms
  - ❖ Section 7: Financial Proposal Forms
6. The firms may acknowledge receiving the invitation and agree to submit the proposal within five days of receipt of the invitation in writing or by Email: \_\_\_\_\_ (*insert address*) confirming that the Proposal will be submitted.

Yours sincerely,

**Name:** \_\_\_\_\_

**Designation:** \_\_\_\_\_

Project Management Unit

The Ministry of \_\_\_\_\_

Address: \_\_\_\_\_ Phnom Penh Cambodia,

CC:

## ATTACHMENT Checklist

	Requirements	Remarks	
1	Submission as stipulated in the RFP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2	Submission of the technical and financial proposals indicated in the RFP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3	Submission of the technical and financial proposals before the deadline	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4	Submission of technical and financial proposals by the authorized representative of the firm	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5	Submission of the technical proposal in PDF format	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6	Submission of the financial proposal in PDF format	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7	Submission of Technical Proposal in SIMPLIFIED TECHNICAL PROPOSAL (STP) format.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8	Conduct of a comprehensive review of actual or potential conflict of interest prior to the submission of the technical and financial proposals	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9	Conduct of a comprehensive review on the grounds for disqualification as stipulated in the RFP	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10	Nomination of an expert in all required positions	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11	Submission or participation in one proposal, except as Sub-consultant, Key Experts or Non-Key experts.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
12	Compliance with addendum/addenda issued by the PMU, if applicable	<input type="checkbox"/> Yes	<input type="checkbox"/> No
13	Compliance on seeking prior approval for associating with non-shortlisted firms in the form of a joint venture or a sub-consultancy	<input type="checkbox"/> Yes	<input type="checkbox"/> No
14	Compliance with the requirements for association arrangements/joint venture	<input type="checkbox"/> Yes	<input type="checkbox"/> No
15	Compliance with the minimum number of person-months for international and national expertise	<input type="checkbox"/> Yes	<input type="checkbox"/> No
16	Submission of the Expanded Team Composition, Assignment, and Key Experts' Inputs (Form TPF-6)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
17	Submission of the financial proposal within the maximum budget	<input type="checkbox"/> Yes	<input type="checkbox"/> No

## SECTION 2 - INSTRUCTIONS TO CONSULTANTS (ITC)

### 1. General

- 1.1 The Employer whose name is on the Proposal Data Sheet will select a firm (Consultant) among the short-listed firms in accordance with the Letter of Invitation and based on the selection methods specified in the Proposal Data Sheet, for consulting services required for the assignment named in the Data Sheet. The proposal will be the basis for negotiating and ultimately signing the Contract with the Consultants and their sub-consultants shall be subject to a declaration of being free
- 1.2 The allocated budget for such consultant's services or the Employer's monthly estimated amounts shall be fulfilled as indicated in the Proposal Data Sheet [*use when proposals exceeding budget will be rejected*]
- 1.3 Consultants shall be accustomed to local conditions. In order to obtain preliminary information on the Project and local conditions, Consultants are encouraged to visit and meet the Employer before the delivery of proposals and to attend at least one pre-proposal conference as indicated in the Proposal Data Sheet.
- 1.4 Consultants shall bear all costs associated with the preparation and delivery of their respective proposal.
- 1.5 In preparing the proposal, the Consultants shall examine in detail all of the documents constituting the proposal. The provision of insufficient information may give rise to a Fraud and Corruption.
- 1.6 The Consultants shall comply with the highest standard of ethic during the selection process and in executing the contract, if selected, and the fulfillment of duty. In conformity with GKC's policy:
  - a) The technical terms below are defined as follows:
    1. "Corruption practice" means an act of offering, giving, receiving or soliciting for any valuable thing in order to influence the action of a public official in the selection process, contract award or in the execution of contract.
    2. "Fraudulent practice" means a material misrepresentation of facts in order to have an influence over the evaluation process, contract award or the execution of contract, including a collusion among the consultants and Employer (before or after the delivery of Proposals) which make the Government lose benefit.
    3. "Collusion practice" means a plot or an arrangement between two or more Consultants in order to create an artificial price, a non-competitive nature, or to have an influence over the activities of any party in the selection process or in the execution of contract.
    4. "Coercive practice" means an act of causing harm or a threat to cause harm directly or indirectly to the persons or property in order to influence their participation in the selection process or in the execution of contract.
  - b) Will deny award of the contract if the Consultant is found involved directly or indirectly in any acts of corruption, fraud, collusion and duress in the competition for contract award.
  - c) Will disclose publicly that the Consultant or associated Consultant no longer has the right to participate in the competition for any unlimited or specific time for any contract funded by the GKC if the Consultant or associated Consultant is found involved in any acts of corruption, fraud, collusion and duress in the competition for contract award.

- 1.7 The Employer reserves the right to inspect and audit all records of the Consultants involved in the selection process or the execution of contract, in case of the selected Consultant. This stipulation is also applied to sub-consultants. The Consultant shall take notice of the provisions of the General Conditions of Contract.
- 1.8 All Consultants are required to comply with the Statements of Ethical Conduct and Fraud and Corruption and attach with the financial proposal.

## **2. Conflicts of Interest**

- 2.1. Any Consultant that concludes the contract as a result of this RFP shall provide objective and impartial professionalism and advice at all times for the benefit of the Employer. The Consultant shall not perform other works that might have a conflict with the Employer or other institutions or render oneself unable to perform works with satisfactory results for the Employer.
- 2.2. A Consultant shall not have a conflict of interest. When a consultant is found to have a conflict of interest, it will lose the assignment. A Consultant is regarded as having a conflict of interest if the Consultant:
  - a) Involved in the past directly or indirectly with the Employer or with other institutions that assisted in drafting the selection conditions,
  - b) Participated in preparing the plan, technical specifications, and other documents for the Project or the proposed works,
  - c) Holds shares jointly with the relatives working on the Project,
  - d) Gets a direct or indirect support from the Employer,
  - e) Participated in submitting more than one Proposal as a consultant or sub- consultant,
  - f) Have a direct or indirect relationship with each other through a third party that might help them obtain information or influence over the delivery of the proposal,
  - g) Higher echelon or shareholders have a blood relationship with the Employer's officials who are involved in the selection process.
- 2.3. A Conflict of interest during proposal submission and selection process caused by defaults of the consultant firms shall lead to disqualification of the consultant firm from the selectin process.

## **3. Commissions and Gratuities**

- 3.1. Consultants shall furnish information as described in Financial Proposal Form (FPF1) on a commission and gratuity, if any, paid or delivered to any agent involved in the selection process and in the execution of works if the Consultant is awarded the contract.

## **4. Proposal Validity**

- 4.1. The Proposal Data Sheet indicates how long the proposals must remain valid after the submission date. During this period of time, the Consultants are expected to keep in place the staff proposed in their Proposals for accomplishing the services. The Employer will make effort to complete the negotiation within this time period.

## **5. Clarification and Modifications of the Request for Proposal**

- 5.1. Consultants may request for a clarification of any provisions relating to the RFP prior to seven (7) days before the deadline for proposal submission. Any request for clarification must be made in writing and sent to the Employer's address as indicated in the Proposal

Data Sheet. The Employer will respond in writing to such request and send the copy of the enquiry and response to all consultants invited to submit proposals.

- 5.2. The Employer may, if necessary, modify the RFP at any time before the submission deadline by issuing addenda. Any addenda that have been issued shall be part of the RFP and shall be sent to all Consultants issued with the RFP. The Employer may extend the deadline for submission of proposals in order to give appropriate time to Consultants in re-preparing their proposals by taking into account the addenda.

## 6. Preparation of Proposals

- 6.1. The Proposal as well as all communications between the Consultants and the Employer shall be made in English language. All reports prepared by the Consultants under the contract shall also be made in English.
- 6.2. Consultant's Proposal is divided into two parts:
  - The Technical Proposal, and
  - The Financial Proposal.

## 7. Preparation of Technical Proposal Forms (TPF)

- 7.1. Except as otherwise stated in the Proposal Data Sheet, the following summarizes the forms and the maximum number of pages permitted for a Technical Proposal. A page is considered to be one printed side of A4, or Letter sized paper:
  - a) TPF 1: The Technical Proposal Form shall consist of two (2) pages,
  - b) TPF 2: Consultant's Experience shall not exceed twenty (20) pages. It describes the Consultant firm in brief, its organization and outlines recent experience of the firm in similar assignments. For each assignment completed in the past, illustration shall focus on the main and precise importance of the assignment, the contract value and the extent of the involvement by the firm. The works achieved by each expert individually or through other consultant firms shall not be taken into account as a consultant's experience but can be written down in the work background of each individual expert proposed for the assignment. Consultants may be required to provide further information on their experience when requested by the Employer.
  - c) TPF 3: Description of Approach, Methodology and Workplan for Performing the Assignment describes methods for implementation (methodology) and action plan for achieving the objective and scope of the assignment and shall not exceed ten (10) pages. The ways by which teamwork will be achieved and how the team will deliver the requirements set forth in the Term of Reference (TOR) must be expressed precisely and clearly. It also provides an opportunity to the Consultant to offer its opinion, comments and any requests regarding the Term of Reference, data and services, facilities to be provided by the Employer, and shall not exceed five (5) pages.
  - d) TPF 4: Work Schedule and Planning for Deliverables is a work schedule for each proposed expert, and shall not exceed five (5) pages It should precisely state when the assigned tasks (by differentiating clearly between the works to be performed at the office and those actually performed at the work site) and the proposed duration of time inputs in terms of months for each nominated expert, including local experts (if any) by using the format as indicated. The work schedule shall also indicate when experts are working in the Project office and outside of the Project office.

- e) TPF 5: Team Composition, Assignment and Key Experts' Input describes the minimum number of both international and local experts required to perform the assignment.
  - f) TPF 6: Format of Curriculum Vitae (CV) is the CV for each proposed expert and shall not exceed three (3) pages for each expert.
- 7.2. While preparing the Technical Proposal, the Consultant shall consider the following:
- a) The number of professional staff- months is estimated as indicated in the Proposal Data Sheet. However, the proposal shall be based on the number of professional staff-months estimated by the Consultant.
  - b) The proposed professional staff shall have a minimum experience as indicated in the Proposal Data Sheet, working under similar conditions as prevailing in Cambodia.
  - c) Alternative professional staff shall not be proposed for any position. In such cases, the position will be scored zero.
  - d) The name, age, nationality, employment background records, and professional experience of each nominated expert, including ongoing projects with particular reference to the type of experience as required in the project, should be presented in the TPF-6 format, which is the Curriculum Vitae (CV) of each professional staff.
  - e) All nominated experts must be a national of an eligible country as defined in the General Conditions of Contract. Where ineligible expert is nominated, the position will be scored zero and the Consultant shall replace the ineligible expert with an eligible expert meeting with the specified minimum qualifications in case the Consultant is selected for the assignment.
  - f) Only one expert and his/her CV shall be nominated for each position. Where more than one is nominated, the score for such a position will be assigned zero.
  - g) Higher rating shall be given to the nominate experts who are or have been a full-time employee or contracted staff of the Consultant. The Employer regards a full-time employee or a contracted staff as a person who has been employed continuously by the consulting firm or by one of its affiliated companies for a total duration of time of more than eighteen months in the running period of three years prior to the date of submission of Proposals. Experts who are full time employees or contracted staff will be rated on the basis of 100% of the rating score for the position. Experts who are not full-time employees will be rated on the basis of 90% of the rating score for the position.
  - h) The experts are required by the Employer to ensure the accuracy of their CVs and they should sign on the CVs by themselves. However, in a particular case, the Employer may accept their CVs signed by the Senior Officer of the Consultant. If the expert cannot sign on his/her CV and the Proposal of the Consultant is evaluated as the first rank, the copy of the Expert's CV must be signed by the Expert and submitted to the Employer before the Consultant is invited for contract negotiation. Failure to do this will lead to rejection of the Proposal and the next ranked Consultant invited for negotiations. Any false or misrepresentation of the facts in the CV will lead to rejection of the Proposal
  - i) A zero rating shall be given to a nominated expert if the expert
    - is not a national (as indicated in the passport the expert holds or in other equivalent legal document) of an eligible member country as defined in paragraph (e) above;
    - if an alternative position is proposed as stated in para (c) above.



- Where more than one expert is nominated for the same position as stated in paragraph (f) above.
  - fails to state his nationality on the CV;
  - The CV is not signed as stated in paragraph (h) above.
- 7.3. The nomination of civil servants of the GKC is not encouraged. When a Consultant nominates an expert who is a Government employee, such expert shall get prior authorization from the GKC, proving that the expert has been granted leave from work without being paid by the GKC provided further that such experts are employees of the IA. Such experts shall work on a full-time basis on the assignment or for the Consultant for the duration of the assignment.
- 7.4. A Technical Proposal shall not include any financial information and any Technical Proposal that includes any financial information shall be regarded as a non-responsive one.
- 7.5. If a Consultant considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so with either (a) non-shortlisted Consultant(s), or (b) shortlisted Consultants if permitted in the **Data Sheet**. In all such cases the Consultant must obtain the written approval of the Employer prior to the submission of the Proposal. When associating with non-shortlisted firms in the form of a joint venture or a sub-consultancy, the shortlisted Consultant shall be a lead member. If shortlisted Consultants associate with each other, any of them can be a lead member.

## 8. Preparation of Financial Proposal Forms (FPF)

- 8.1. Except as otherwise stated in the Proposal Data Sheet, the Financial Proposal requires the completion of seven forms as follows:
- a) FPF 1: The Financial Proposal shall constitute a cover letter of the Financial Proposal and recognize the General Conditions of Contract regarding access to audit and inspection of Consultant's documents and accounts relating to the preparation of Proposal and the execution of contract.
  - b) FPF 2: A brief description of costs, summary of costs and other Tables attached to the Proposal that shall be read out when opening the Financial Proposal.
  - c) FPF 3: Breakdown of cost per each activity,
  - d) FPF 4: Breakdown of Remuneration per activity,
  - e) FPF 5: Reimbursable Expenses per activity,
  - f) FPF 6: Miscellaneous Expenses,
  - g) FPF 7: Statements of the Ethical Conduct and Fraud and Corruption shall be completed and signed by each Consultant and shall be submitted with the Financial Proposal.
- 8.2. Remuneration rates shall be divided into payment rate estimated for local consultant and that for foreign consultants. Service expenses shall be divided into per diem rates for international and local consultants and other service expenses required for the accomplishment of the services.
- 8.3. The Financial Proposal shall be clearly shown the price inclusive of taxes (including social security expense) customs duties, other payable charges under the Cambodian law in effect for which the Consultant, the sub-consultant and their staff are charged (unless the Proposal Data Sheet specifies otherwise).

## 9. Submission, Receipt and Opening of Technical Proposals

- 9.1. The original copy of Proposal (both Technical and Financial Proposals) shall not contain any trace of alteration or overwriting, except as necessary to correct errors by the Consultants themselves. Such corrections, alterations, or overwriting must be made by the person who signed the Proposal.
- 9.2. An authorized representative of the Consultant shall initial all the pages and sign the Proposal. The assignment of right to such representative shall be made in writing through a power of attorney or resolution of the Board and shall be attached to the Proposal.
- 9.3. The Technical Proposal shall be identified as "original copy" or "photocopy". Three photocopies shall be made from the original copy. In the event of any difference between the original copy and photocopy of the Technical Proposal, the original copy shall supersede.
- 9.4. Both the original copy and the photocopy of the Technical Proposal shall be placed in a sealed envelope by writing down clearly "the Technical Proposal", and the "original copy" and "photocopy of the Financial Proposal" shall be placed in a sealed envelope by writing down clearly "the Financial Proposal" with some prohibition not to open. The two envelopes mentioned above shall be placed in another sealed envelope. The address to which the proposal is delivered and other information as indicated in the Proposal Data Sheet, as well as the prohibition not to open except in public opening on the date and place indicated in the Data Sheet, shall be written down on the outer envelope.
- 9.5. The Technical and Financial Proposals must be delivered to the address as stated in the Proposal Data Sheet, on or prior to the deadline of submission. Any proposal received as of the deadline for the submission of proposals shall be returned to the sender without being opened.
- 9.6. After the immediate expiration of the deadline for the submission of proposals, the Technical Proposal shall be opened on the date and time indicated in the Proposal Data Sheet in the presence of the Consultants' representatives who have been assigned to attend and the Proposal Opening Committee of the IA. The Committee will announce the name of each of the Consultant whose Proposal has been received on or before the submission deadline.

## 10. Evaluation of Technical Proposals

- 10.1. The Financial Proposals shall remain unopened until the Technical Proposals are opened and evaluated in accordance with the procedures outlined in the Sections below. The Evaluators of the Technical Proposals shall not have access or see any information on the Financial Proposals until the Technical Proposal are technically evaluated and approved.
- 10.2. From the time the proposals are opened to the time the contract is awarded, if any consultant wished to communicate with the Employer regarding any matter with its proposals, it should do so in writing to the address as indicated in the Proposal Data Sheet. Any effort by the Consultant to have an influence over the evaluation of the proposals and contract award by the Employer shall result in the rejection of that Consultant's proposal.
- 10.3. Each of the responsive Technical Proposal will be given a technical score based on the evaluation criteria as described in the Proposal Data Sheet. A proposal might be rejected at this stage if it does not meet any important aspects of the Terms of Reference (TOR) or if it fails to obtain a minimum technical score of 75% of the total marks.

- 10.4. After the Technical Proposals have been fully evaluated, the Employer shall notify those Consultants whose Technical Proposals do not reach the minimum qualifying score and have been considered as non-responsive to the Request for Proposal and Terms of Reference. The notification shall also state their Financial Proposals will not be opened and returned after the selection process is fully completed.

## 11. Opening and Evaluation of Financial Proposals, QBS, QCBS, FBS and LCBS

- 11.1. When the selection process is Quality- and Cost-Based Selection (QCBS), Fixed Budget Selection (FBS) or Least Cost Selection (LCS), the Employer shall notify those Consultants that have obtained the minimum qualifying technical rating score about the date and time for opening their Financial Proposals. The date of opening the Financial Proposals shall be set at five (5) working days after the date of issuance of the notification. Such notification may be sent by facsimile or electronic mail.
- 11.2. The Financial Proposals shall be opened publicly in the presence of the Consultants who choose to attend. The name of each qualifying Consultant, its technical scores, and its stated prices, shall be read out and recorded during the opening of the Financial Proposals. The Employer shall prepare the minutes of Financial Proposal Opening.
- 11.3. The Financial Proposals shall be reviewed to ensure that the figures in it match with those in the Technical Proposal (For instance, staff schedule, number and duration of field trips, and other allowances etc.). In case of any discrepancies, the figures will be adjusted on the basis of the Technical Proposal and Financial Proposals will be adjusted to align fully with the figures specified in the Technical Proposals.
- 11.4. The Financial Proposals will be checked for errors in computation and the prices shall be adjusted if necessary. In the case that some activities or items are not priced, the price of the concerned financial proposal will be increased by the highest unit rate and quantities quoted among the other Financial Proposals. In the case that important items or activities are not priced, such Financial Proposal will be rejected. *Where the Proposal Data Sheet specifies a Budget for the assignment and states that the Budget shall not be exceeded, the Financial Proposals which exceed the Budget shall be rejected as non-responsive.*
- 11.5. When the Quality- and Cost-Based Selection (QCBS) is used, the lowest evaluated Financial Proposal, represented by (Fm), will be given a financial score (Sf) of 1000 marks. The financial score (Sf) of the other Financial Proposals will be computed as indicated in the Proposal Data Sheet. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal;  $T + P = 1$ ) as indicated in the Proposal Data Sheet:
- $$S = St \times T\% + Sf \times P\%$$
- The Consultant that has obtained the highest combined technical and financial scores will be invited for negotiation.
- 11.6. When the Fixed-Budget Selection (FBS) is used, the Consultant with a highest qualifying technical rating score among all the all the Consultants who submitted the Financial Proposals not exceeding the Fixed Budget will be selected by the Employer for contract negotiation. The Proposals whose stated price exceeds the fixed budget will be rejected as non-responsive.
- 11.7. When the Least Cost Selection (LCS) is used, the Consultant whose price is the lowest evaluated price among all the Consultants who submitted qualifying Technical Proposals will be selected and invited to negotiate the contract.

## **12. Opening and Evaluation of Financial Proposals: Quality Based Selection (QBS), Consultants' Qualifications Selection (CQS) and Single Source Selection (SSS)**

- 12.1. When the Quality-Based Selection (QBS) and Consultants' Qualifications Selection (CQS) are used, only the first ranked firm will be invited in writing by the Employer indicating the time and date for Financial Proposal opening. The opening shall be conducted in the presence of firm's representatives who choose to attend. The date of the opening shall be set at five working days after the notification. The invitation shall be sent by letter, fax or e-mail.
- 12.2. The first ranked Consultant will be invited to negotiate its technical and financial proposal.
- 12.3. In the case of Single Source Selection Method, the Financial Proposal is opened by the CEC and evaluated within five working days from the date of the opening. The Consultant will be invited to negotiate the financial proposal by the PRC.

## **13. Contract Negotiation**

- 13.1. The negotiations will be held at the address as indicated in the Proposal Data Sheet or in the response as indicated in the Proposal Data Sheet. The purpose of negotiation is to reach an agreement on all aspects and to sign the contract.
- 13.2. The technique of negotiation covers review of the Consultant's Technical Proposal, including the proposed technical approach and methodology, work schedule, staff, organizational arrangements, and suggestions made by the Consultant or the Employer to improve the achievement of the outputs of the services. However, negotiations should not be intended to make any substantial modifications to the terms of reference or the Consultant's Technical Proposal.
- 13.3. Negotiation on the financial aspect of the Proposal does not relate to the staff remuneration rates (service prices). The rates of the proposed stated price cannot be negotiated when the Quality- and Cost-Based Selection (QCBS), the Fixed Budget Selection (FBS) and the Least Cost Selection (LCS) are used. When other methods are used, the Consultant will need to provide supporting documents like pay slip to substantiate the unit rate as well other documents to substantiate other expenses as included in section on the Financial Proposal. The treatment on the payment of all applicable taxes will need to be agreed.
- 13.4. The negotiation will also include a review of the draft contract agreement. To complete negotiation the Employer and the Consultant must agree on the terms and conditions specified in the draft contract agreement. All the information that are required to be inserted in the Special Conditions of Contract shall be accomplished during the negotiations. If the negotiation fails, the Employer will invite the second ranked Consultant to negotiate a Contract.
- 13.5. Information on the evaluation of proposals and recommendations made regarding the contract award will not be disclosed to any of the Consultants that have submitted the proposals or to persons who are not officially involved in the selection process until the award of the contract is notified by the Employer.
- 13.6. On the completion of the negotiations, the minutes of negotiations will be prepared and signed by the Consultant and the Chairperson of the PRC together with the draft negotiated contract. After the PRC has obtained the necessary approval for the

negotiated contract, where required, the final contract agreement will be signed between the Consultant and the Employer.

- 13.7. Promptly after the Employer has notified the award of contract, it shall notify the unsuccessful Consultants of the result and their failure to be selected. In the cases where the Financial Proposals were not opened, these will be returned together with such notification.

## **14. Commencement of Services**

- 14.1. The Consultant is expected to start the works on the date and at the place as stated in the Proposal Data Sheet and agreed in the General/Special Conditions of Contract.

## **15. Check-up inquiry**

- 15.1. After the contract award has been announced, any unsuccessful Consultants may request for an explanation of the reason why its Proposal was not successful in writing. The Employer has an obligation to provide such explanation. No other commercial secrecy and detailed information concerning Proposals of other Consultants shall be disclosed other than the information already read out at the opening of the proposals.
- 15.2. The Employer shall respond to such requests within ten (10) days of the receipt of the request or at his discretion, opt to hold a meeting. If a meeting is held, the minutes on such meeting must be prepared and signed by the two parties.

## **16. Complaints**

- 16.1. A complaint may be raised by any Consultant during the selection process. However, no response shall be provided during the phase in which the proposals are being evaluated. Any complaints made received during the evaluation process will be responded by the Employer only after completion of the evaluation process.
- 16.2. A complaint shall be made in writing to the Head of the PMU as indicated in the Proposal Data Sheet. The Head of the PMU will investigate the grounds for the complaint except those complaints received during the evaluation process as mentioned above, and the provide a response within 10 days of the receipt of such complaints.
- 16.3. If the response from the Head of the PMU does not satisfy the complainant or if there is no response, the complainant may choose to be refer the complaint to General Department of Public Procurement of the Ministry of Economy and Finance which will respond within ten (10) days in case it finds merits in the complaint. Any nuisance or grossly unfounded complaint or submitted to thwart the selection process may attract punitive actions in accordance with the Law on Public Procurement.

## SECTION 3 - PROPOSAL DATA SHEET

ITC 1.1	The Employer is ( <i>insert name of IA</i> )
	The selection method used is (Select one of the following methods) <ul style="list-style-type: none"> <li>• <i>State the Selection Method</i></li> </ul>
	The name of assignment/consulting services is: Project Preparation and Transaction Advisory Support Services for ( <i>insert name of Project</i> ) or Services of <i>IC</i> or Services of <i>OE</i> [ <i>Choose one</i> ]
ITC 1.2	The allocated budget is USD _____ (In word _____) <i>insert when financial proposal which exceed the budget will be declared nonresponsive [not applicable for IC or OE]</i>
ITC 1.3	A pre-proposal conference will be held: No
ITC 1.6	The Employer shall provide the Consultant with all available data and previous documents/reports, if any, that may be useful for the Services and shall facilitate liaison with other line ministries to ensure that Consultant has access to all required information.
ITC 4	The Proposal must be valid for ninety (90) days of the date of the submission of Proposal.
ITC 5.1	The address for seeking clarifications is: Project Management Unit The Ministry of _____. _____, Phnom Penh Cambodia, Email Address: _____
ITC 6, 7.1, 8.1	The Technical and Financial Proposal require the Consultant to complete and deliver all the following forms:  TECHNICAL PROPOSAL FORM (TPF) <ul style="list-style-type: none"> <li>(i) Power of Attorney to sign the Proposal</li> <li>(ii) Proof of Legal Status and Eligibility</li> <li>(iii) TPF1: Technical Proposal Form</li> <li>(iv) TPF2: Consultant’s Experience</li> <li>(v) TPF3: Description of Approach, Methodology, and Workplan for Performing the Assignment</li> <li>(vi) TPF4: Wok Schedule and Planning for Deliverables</li> <li>(vii) TPF5: Team Composition, Assignment, and Key Experts’ Input</li> <li>(viii) TPF6: Format of Curriculum Vitae (CV) for Proposed Skilled Staff</li> </ul> And  FINANCIAL PROPOSAL FORM (FPF): FPF1: Financial Proposal Form FPF2: Summary of Costs

	<p>FPF3: Breakdown of Cost for each activity</p> <p>FPF4: Breakdown of Remuneration per activity</p> <p>FPF5: Reimbursable Expenses per activity</p> <p>FPF6: Miscellaneous Expenses</p> <p>FPF7: Statements of the Ethical Conduct and Fraud and Corruption</p>
ITC 8.3	All the services and the Consultant Firm subject to payment of local taxes in accordance with the laws and regulations of the Kingdom of Cambodia
ITC 9.5	<p>The address for the submission of Proposals is:</p> <p>The Proposals must be submitted not later than the following date and time: dd/mm/yyyy, at 10:00 hour (Local time)</p>
ITC 9.6	<p>The place, date, and time for opening the Technical Proposals are:</p> <p>(Write down the place, date, and time. The date and time shall match with those set forth in paragraph 9.5)</p>
ITC10.3	<p>Criteria, sub-criteria, and point system for the evaluation of Technical Proposals are as follows:</p> <p>(State the criteria and sub criteria and points allocated to each) The minimum technical score required for the firm to pass is: 750 out of maximum score of 1000.</p>
ITC 13.1	<p>The negotiations will be held at</p> <p>Date: dd/mm/yyyy</p> <p>Project Management Unit</p> <p>The Ministry of _____;</p> <p>_____, Phnom Penh Cambodia,</p>
ITC 14.1	<p>Expected date for the Commencement of the Services:</p> <p>Date: dd/mm/yyyy, Time: _____ at: Project Management Unit, the Ministry of _____</p>

## **Section 4: Standard Form of Contract**



**Standard Form of Contract**  
**for Consulting Services**  
(Lump Sum)

## TABLE OF CONTENTS

I. FORM OF CONTRACT - LUMP SUM.....	99
II. GENERAL CONDITIONS OF CONTRACT .....	101
III. SPECIAL CONDITIONS OF CONTRACT .....	117
IV. APPENDICES.....	121

# **SAMPLE CONTRACT**

**FOR**

## **CONSULTING SERVICES**

**between**

---

**[Name of the Employer]**

**and**

---

**[Name of the Consultant]**

**Project Name:**

**Contract No:**

**Date:**

## I. FORM OF CONTRACT - LUMP SUM

This CONTRACT (hereinafter called the “Contract”) is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of the Employer]* (hereinafter called the “**Employer**”) and, on the other hand, *[name of the Consultant]* (hereinafter called the “**Consultant**”).

*[In case the Consultant is a JV/Association, then replace “Consultant” with the following: “a Joint Venture/Association *[name of the JV/Association]* consisting of the following firms, each member of which will be jointly and severally liable to the Employer for all the Consultant’s obligations under this Contract, namely, *[names of all the member]* (hereinafter called the “Consultant”).”]*

### WHEREAS

- (a) the Employer has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the “Services”);
- (b) the Consultant, having represented to the Employer that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

### NOW THEREFORE the parties hereto hereby agree as follows:

- 1. The following documents attached hereto shall be deemed to form an integral part of this Contract:
  - (a) The General Conditions of Contract (including Attachment 1 “Government Policy – Corrupt and Fraudulent Practices);
  - (b) The Special Conditions of Contract;
  - (c) Appendices:
    - Appendix A: Terms of Reference
    - Appendix B: Key Experts
    - Appendix C: Breakdown of Contract Price
    - Appendix D: Form of Advance Payments Guarantee.

In the event of any inconsistency between the documents, the following order of precedence shall prevail: the Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A; Appendix B; Appendix C; and Appendix D. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

- 2. The mutual rights and obligations of the Employer and the Consultant shall be as set forth in the Contract, in particular:
  - (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
  - (b) the Employer shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

**For the Employer** [*insert name of the Employer*]

Signature:

Name:

Designation:

Seal:

**For and on behalf of** [*Name of the Consultant or Name of a Joint Venture/Association*]

Signature:

Name:

Designation:

Seal:

*[For a joint venture/association, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]*

**For and on behalf of each of the members of** [*insert the Name of the Joint Venture/Association*]

Signature of Authorized Representative:

Name:

Name of the Lead Member:

Designation:

Seal of Lead Member:

## II. GENERAL CONDITIONS OF CONTRACT

### A. GENERAL PROVISIONS

#### 1. Definitions

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

- (a) “Applicable Guidelines” means the Standard Operating Procedures (SOPs) for PPP Projects, Volume III: Procurement Manual - Section II: Selection of Consultants promulgated under the Sub-decree.....[insert date]
- (b) “Applicable Law” means the laws and any other instruments having the force of law in the Kingdom of Cambodia as they may be issued and in force from time to time.
- (c) “Employer” means the implementing agency that signs the Contract for the Services with the selected Consultant.
- (d) “Consultant” means a legally established professional consulting firm or entity selected by the Employer to provide the Services under the signed Contract.
- (e) “Contract” means the legally binding written agreement signed between the Employer and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions of Contract (**GCC**), the Special Conditions of Contract (**SCC**), and the Appendices).
- (f) “Day” means a working day unless indicated otherwise.
- (g) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- (h) “Experts” means, collectively, Key Experts, Non- Key Experts, or any other personnel of the Consultant, Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- (i) “Foreign Currency” means any currency other than the currency of the Employer’s country.
- (k) “GCC” means these General Conditions of Contract.
- (l) “Government” means the Government of the Kingdom of Cambodia.
- (m) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Employer for the performance of the Contract.
- (n) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant’s proposal.
- (o) “Local Currency” means the Cambodian Riel (KHR).
- (p) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof

under the Contract.

- (q) "Party" means the Employer or the Consultant, as the case may be, and "Parties" means both of them.
- (r) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- (s) "Services" means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- (t) "Sub-consultants" means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (u) "Third Party" means any person or entity other than the Government, the Employer, the Consultant or a Sub-consultant.

## **2. Relationship between the Parties**

- 2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Employer and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

## **3. Law Governing Contract**

- 3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law of the Kingdom of Cambodia.

## **4. Language**

- 4.1. This Contract has been executed in the English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

## **5. Headings**

- 5.1. The headings shall not limit, alter or affect the meaning of this Contract.

## **6. Communications**

- 6.1. Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the language specified in Clause GCC 4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the **SCC**.
- 6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the **SCC**.

## **7. Location**

- 7.1. The Services shall be performed at such locations as are specified in **Appendix A** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Employer may approve.

## **8. Authority of Member in Charge**

8.1. In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the **SCC** to act on their behalf in exercising all the Consultant's rights and obligations towards the Employer under this Contract, including without limitation the receiving of instructions and payments from the Employer.

## **9. Authorized Representative**

9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Employer or the Consultant may be taken or executed by the officials specified in the **SCC**.

## **10. Corrupt and Fraudulent Practices**

10.1. The Government *requires* compliance with the Laws and Regulations on Corruption and its prevailing sanction policies and procedures in regard to corrupt and fraudulent practices as set forth in Attachment 1 to the GCC.

10.2. The Employer requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity, or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract and/or sanctions.

## **B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

### **11. Effectiveness of Contract**

11.1 This Contract shall come into force and effect on the date (the "Effective Date") of the Employer's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

### **12. Termination of Contract for Failure to Become Effective**

12.1 If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, by not less than twenty two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

### **13. Commencement of Services**

13.1 The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC.

### **14. Expiration of Contract**

14.1 Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

### **15. Entire Agreement**



15.1 This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

## **16. Modifications or Variations**

16.1 Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

## **17. Force Majeure**

### **a. Definition**

17.1 For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.

17.2 Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

17.3 Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

### **b. No Breach of Contract**

17.4 The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

### **c. Measures to be Taken**

17.5 A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than seven (7) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

- 17.7 Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 17.8 During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Employer, shall either:
- (a) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Employer, in reactivating the Services; or
  - (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
- 17.9 In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 44 & 45.

## **18. Suspension**

- 18.1 The Employer may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

## **19. Termination**

- 19.1 This Contract may be terminated by either Party as per provisions set up below:

### **a. By the Employer**

- 19.1.1 The Employer may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence the Employer shall give at least thirty (30) days' written notice of termination to the Consultant in case of the events referred to in (a) through (e); at least sixty (60) days' written notice in case of the event referred to in (e); and at least five (5) days' written notice in case of the event referred to in (f):
- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;
  - (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
  - (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;

- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days;
- (e) If the Employer, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- (f) If the Consultant fails to confirm availability of Key Experts as required in Clause GCC 13.

19.1.2 Furthermore, if the Employer determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving seven (7) days written notice to the Consultant, terminate the Consultant's employment under the Contract.

**b. By the Consultant**

19.1.3 The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to the Employer, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.

- (a) If the Employer fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 45.1 within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than thirty (30) days.
- (c) If the Employer fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 45.1.
- (d) If the Employer is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Employer of the Consultant's notice specifying such breach.

**c. Cessation of Rights and Obligations**

19.1.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 25, and (iv) any right which a Party may have under the Applicable Law.

**d. Cessation of Services**

19.1.5 Upon termination of this Contract by notice of either Party to the other

pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Employer, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.

**e. Payment upon Termination**

19.1.6 Upon termination of this Contract, the Employer shall make the following payments to the Consultant:

- (a) payment for Services satisfactorily performed prior to the effective date of termination; and
- (b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract and the cost of the return travel of the Experts.

**C. OBLIGATIONS OF THE CONSULTANT**

**20. General**

**a. Standard of Performance**

20.1. The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with the third parties.

20.2. The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.

20.3. The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Employer. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

**b. Law Applicable to Services**

20.4. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.

20.5. Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in the Employer's country when

- (a) as a matter of law or official regulations, Cambodia prohibits commercial relations with that country; or

- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Cambodia prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

## **21. Conflict of Interests**

21.1. The Consultant shall hold the Employer's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

### **a. Consultant Not to Benefit from Commissions, Discounts, etc.**

21.1.1. The payment of the Consultant pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

### **b. Consultant and Affiliates Not to Engage in Certain Activities**

21.1.2. The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the **SCC**.

### **c. Prohibition of Conflicting Activities**

21.1.3. The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

### **d. Strict Duty to Disclose Conflicting Activities**

21.1.4. The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Employer, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.

## **22. Confidentiality**

22.1. Except with the prior written consent of the Employer, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in

the course of, or as a result of, the Services.

### **23. Liability of the Consultant**

23.1. Subject to additional provisions, if any, set forth in the **SCC**, the Consultant's liability under this Contract shall be provided by the Applicable Law.

### **24. Insurance to be Taken out by the Consultant**

24.1. The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Employer, insurance against the risks, and for the coverage specified in the **SCC**, and (ii) at the Employer's request, shall provide evidence to the Employer showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.

### **25. Accounting, Inspection and Auditing**

25.1. The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.

25.2. The Consultant shall permit and shall cause its Sub-consultants to permit, the Government or persons appointed by the Government to inspect all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by them if requested by them. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to materially impede the exercise of the Government inspection and audit rights provided for under this Clause GCC 25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under the Government prevailing sanctions procedures).

### **26. Reporting Obligations**

26.1. The Consultant shall submit to the Employer the reports and documents specified in Appendix A, in the form, in the numbers and within the time periods set forth in the said Appendix.

### **27. Proprietary Rights of the Employer in Reports and Records**

27.1. Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Employer in the course of the Services shall be confidential and become and remain the absolute property of the Employer. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Employer, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Employer.

27.2. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Employer's prior written approval to such agreements, and the Employer shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the **SCC**.

## **28. Equipment, Vehicles and Materials**

28.1. Equipment, vehicles and materials made available to the Consultant by the Employer, or purchased by the Consultant wholly or partly with funds provided by the Employer, shall be the property of the Employer and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Employer an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Employer's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Employer in writing, shall insure them at the expense of the Employer in an amount equal to their full replacement value.

28.2. Any equipment or materials brought by the Consultant or its Experts into the Employer's country for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

## **D. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS**

### **29. Description of Key Experts**

29.1. The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each of the Consultant's Key Experts are described in **Appendix B**.

### **30. Replacement of Key Experts**

30.1. Except as the Employer may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2. Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant like in the event of death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

### **31. Removal of Experts or Sub-consultants**

31.1. If the Employer finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Employer determine that Consultant's Expert or Sub-consultant have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice while performing the Services, the Consultant shall, at the Employer's written request, provide a replacement.

31.2. In the event that any of Key Experts, Non-Key Experts or Sub-consultants is

found by the Employer to be incompetent or incapable in discharging assigned duties, the Employer, specifying the grounds therefore, may request the Consultant to provide a replacement.

31.3. Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Employer.

31.4. The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

## **E. OBLIGATIONS OF THE EMPLOYER**

### **32. Assistance and Exemptions**

32.1. Unless otherwise specified in the **SCC**, the Employer shall use its best efforts to:

- (a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
- (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Employer's country while carrying out the Services under the Contract.
- (c) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
- (d) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

### **33. Access to Project Site**

33.1. The Employer warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services.

### **34. Change in the Applicable Law Related to Taxes and Duties**

34.1. If, after the date of this Contract, there is any change in the applicable law in the Employer's country with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the Contract price amount specified in Clause GCC 38.1.

### **35. Services, Facilities and Property of the Employer**

35.1. The Employer shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Appendix A**) at the times and in the manner specified in said **Appendix A**.

### **36. Counterpart Personnel**



- 36.1. The Employer shall make available to the Consultant such professional and support counterpart personnel, to be nominated by the Employer with the Consultant's advice, if specified in **Appendix A**. The Employer and Consultant shall agree on any allowances to be provided to meet their incidental and other assignment related expenditures and such amounts shall be included in the Contract for payment by the Consultant to them.
- 36.2. Professional and support counterpart personnel, excluding Employer's liaison personnel, shall work under the supervision of the Consultant.
- 36.3. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Employer shall not unreasonably refuse to act upon such request.

### **37. Payment Obligation**

- 37.1. In consideration of the Services performed by the Consultant under this Contract, the Employer shall make such payments to the Consultant for the deliverables specified in **Appendix A** and in such manner as is provided by GCC F below.

## **F. PAYMENTS TO THE CONSULTANT**

### **38. Contract Price**

- 38.1. The Contract price is fixed and is set forth in the **SCC**. The Contract price breakdown is provided in **Appendix C**.
- 38.2. Any change to the Contract price specified in Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in **Appendix A**.

### **39. Taxes and Duties**

- 39.1. The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the **SCC**.

### **40. Currency of Payment**

- 40.1. Any payment under this Contract shall be made in the currency(ies) of the Contract.

### **41. Mode of Billing and Payment**

- 41.1. The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.
- 41.2. The payments under this Contract shall be made in lump-sum installments against deliverables specified in **Appendix A**. The payments will be made according to the payment schedule stated in the **SCC**.
- 41.2.1. Advance payment: Unless otherwise indicated in the **SCC**, an advance payment shall be made against an advance payment bank guarantee, issued by a bank in Cambodia, acceptable to the Employer in an amount (or amounts) and in a currency (or

currencies) specified in the **SCC**. Such guarantee is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in **Appendix D**, or in such other form as the Employer shall have approved in writing. The advance payments will be set off by the Employer in equal portions against the lump-sum installments specified in the **SCC** until said advance payments have been fully set off.

41.2.2. The Lump-Sum Installment Payments. The Employer shall pay the Consultant within sixty (60) days after the receipt by the Employer of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Employer does not approve the submitted deliverable(s) as satisfactory in which case the Employer shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated.

41.2.3. The Final Payment. The final payment under this Clause shall be made only after the final report has been submitted by the Consultant and approved as satisfactory by the Employer. The Services shall then be deemed completed and finally accepted by the Employer. The last lump-sum installment shall be deemed approved for payment by the Employer within ninety (90) days after receipt of the final report by the Employer unless the Employer, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated.

41.2.4. All payments under this Contract shall be made to the accounts of the Consultant specified in the **SCC**.

41.2.5. With the exception of the final payment under above, payments do not constitute acceptance of the whole Services nor relieve the Consultant of any obligations hereunder.

## **42. Interest on Delayed Payments**

42.1. If the Employer had delayed payments beyond thirty (30) days after the due date stated in Clause GCC 41.2.2, interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the **SCC**.

## **G. FAIRNESS AND GOOD FAITH**

### **43. Good Faith**

43.1. The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

## **H. SETTLEMENT OF DISPUTES**

### **44. Amicable Settlement**

44.1. The Parties shall seek to resolve any dispute amicably by mutual

consultation.

44.2. If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 45.1 shall apply.

#### **45. Dispute Resolution**

45.1. Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication in accordance with the provisions specified in the **SCC**.

## ATTACHMENT 1

### Government Policy - Corrupt and Fraudulent Practices

#### 1. Requirements

1.1 The Government requires bidders (applicants/proposers), consultants, contractors and suppliers; any sub-contractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any personnel thereof, adhere to the highest standards of ethics during the procurement process, selection and execution of contracts, and refrain from Fraud and Corruption.

1.2 In pursuance of this policy, the Government:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “Corrupt Practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party<sup>20</sup>;
- (ii) “Fraudulent Practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit, or to avoid an obligation<sup>21</sup>;
- (iii) “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party<sup>22</sup>;
- (iv) “Collusive Practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party<sup>23</sup>;
- (v) “Abuse” means theft, waste, or improper use of assets related to project activity, either committed intentionally or through reckless disregard;
- (vi) “Conflict of Interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;

---

<sup>20</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the selection process or contract execution. In this context “public official” includes Government staff, and employees of other organizations taking or reviewing selection decisions.

<sup>21</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.

<sup>22</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the selection process or contract execution.

<sup>23</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

(vii) "Obstructive Practice" is:

- (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice by the competent Government authority; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- (bb) acts intended to materially impede the exercise of the Government inspection and audit rights;
- (b) will reject a recommendation for award of the contract if it is determined that the consultant recommended for the award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, services providers, suppliers, and/or their employees have directly or indirectly engaged in corrupt, fraudulent, coercive, collusive or obstructive practices, or other integrity violations in competing for the contract in question;
- (c) will sanction a firm or individual at any time, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of three years: (i) to be awarded or otherwise benefit from a Government-financed contract, financially or in any other manner; and (ii) to be a nominated sub-consultant under a Government financed contract.

### III.SPECIAL CONDITIONS OF CONTRACT

Number of GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1.(b) and 3.1.	The Contract shall be construed in accordance with the Laws of the Kingdom of Cambodia.
6.1. and 6.2.	<p><b>The addresses are:</b>  <b>Employer:</b> _____            _____</p> <p>Attention: _____            Facsimile: _____            E-mail: _____</p> <p><b>Consultant:</b> _____            _____</p> <p>Attention: _____            Facsimile: _____            E-mail: _____</p>
8.1.	<p><i>[ If the Consultant consists only of one entity, state "N/A"]</i>  <b>OR</b>  <i>[If the Consultant is a Joint Venture consisting of more than one entity, the name of the lead member whose address is specified in Clause <b>SCC</b> 6.1. should be inserted here.]</i>            The Lead Member on behalf of the JV is _____            _____ <i>[insert name of the member].</i></p>
9.1.	<p>The Authorized Representatives are:</p> <p><b>For the Employer:</b>            Name: _____            Designation: _____            Email: _____</p> <p><b>For the Consultant:</b>            Name: _____            Designation: _____            Email: _____</p>
11.1.	<p>The conditions of effectiveness are as follows:</p> <p>(a) Confirmation of availability of Key Experts.            Confirmation of the availability of Key Experts to start the assignment shall be submitted to the Employer in writing with a written statement signed by each Key Expert.</p> <p><i>[List here any conditions of effectiveness of the Contract.]</i>  <i>[if there are no conditions, state N/A]</i></p>

12.1.	Termination of Contract for Failure to Become Effective: The time period shall be sixty (60) days
13.1.	<b>Commencement of Services:</b> The number of days shall be ten (10) days.
14.1.	<b>Expiration of Contract:</b> The time period shall be <u>[insert the duration of the Contract]</u> .
21.1.3.	The Employer reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3.
23.1.	<p>The following limitation of the Consultant's Liability towards the Employer can be subject to the Contract's negotiations:</p> <p><b>"Limitation of the Consultant's Liability towards the Employer:</b></p> <p>(a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Employer's property, shall not be liable to the Employer:</p> <p>(i) for any indirect or consequential loss or damage; and</p> <p>(ii) for any direct loss or damage that exceeds the Contract Value.</p> <p>(b) This limitation of liability shall not</p> <p>(i) affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services;</p> <p>(ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the applicable law in the Kingdom of Cambodia."</p>
24.1.	<p>The insurance coverage against the risks shall be as follows:</p> <p>(a) Professional liability insurance, with a minimum coverage of USD <u>[insert 1.5 times the contract value]</u></p> <p>Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Cambodia by the Consultant or its Experts or Sub-consultants, with a minimum coverage in accordance with the applicable law in the Cambodia;</p> <p>(c) Third Party liability insurance, with a minimum coverage of in accordance with the applicable law in Cambodia;</p> <p>(d) Employer's liability and workers' compensation insurance in respect of the experts and Sub-consultants in accordance with the relevant provisions of the applicable law in Cambodia, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and</p> <p>(e) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the</p>

	Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.																											
27.1.	No Exceptions.																											
27.2.	The Consultant shall not use any <i>documents or software</i> for purposes unrelated to this Contract without the prior written approval of the Employer.																											
32.1.(d)	Not Applicable.																											
38.1.	The Contract Price: USD _____ inclusive of all taxes and duties including local indirect taxes.																											
41.2.	<p>The payment schedule:  <i>[Payment of installments shall be linked to the deliverables specified in the Terms of Reference in Appendix A.]</i></p> <p><b>1<sup>st</sup> Payment: Not exceed 15%. Insert the amount of the installment, percentage of the total Contract Price, and the currency. If the first payment is an advance payment, it shall be made against the bank guarantee for the same amount as per GCC 41.2.1.</b></p> <table border="1"> <thead> <tr> <th>No.</th> <th>% of Contract Price</th> <th>Output/Milestone</th> </tr> </thead> <tbody> <tr> <td>1<sup>st</sup></td> <td>10%</td> <td>Contract Signing</td> </tr> <tr> <td>2<sup>nd</sup></td> <td>10%</td> <td>Approval of Inception Report</td> </tr> <tr> <td>3<sup>rd</sup></td> <td>20%</td> <td>Submission of Feasibility Report</td> </tr> <tr> <td>4<sup>th</sup></td> <td>(Balance)  Note: <b>The Total 1 to 4<sup>th</sup> payments but not exceed contract price for tasks up to the completion of FS</b></td> <td>Approval of Feasibility Study  <i>[in case project is not financially viable, no further inputs will be required, and the Contract shall be terminated]</i></td> </tr> <tr> <td>5<sup>th</sup></td> <td>15%</td> <td>Submission of Procurement Documents</td> </tr> <tr> <td>6<sup>th</sup></td> <td>15%</td> <td>Signing of PPP Contract</td> </tr> <tr> <td>7<sup>th</sup></td> <td>15%</td> <td>Financial Closure</td> </tr> <tr> <td>Final</td> <td>5%</td> <td>Submission of Final Report</td> </tr> </tbody> </table> <p><b>Note: Adjust 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Payment % based on Contract Price remaining after total of 1<sup>st</sup> to 4<sup>th</sup> Payments.</b></p>	No.	% of Contract Price	Output/Milestone	1 <sup>st</sup>	10%	Contract Signing	2 <sup>nd</sup>	10%	Approval of Inception Report	3 <sup>rd</sup>	20%	Submission of Feasibility Report	4 <sup>th</sup>	(Balance)  Note: <b>The Total 1 to 4<sup>th</sup> payments but not exceed contract price for tasks up to the completion of FS</b>	Approval of Feasibility Study  <i>[in case project is not financially viable, no further inputs will be required, and the Contract shall be terminated]</i>	5 <sup>th</sup>	15%	Submission of Procurement Documents	6 <sup>th</sup>	15%	Signing of PPP Contract	7 <sup>th</sup>	15%	Financial Closure	Final	5%	Submission of Final Report
No.	% of Contract Price	Output/Milestone																										
1 <sup>st</sup>	10%	Contract Signing																										
2 <sup>nd</sup>	10%	Approval of Inception Report																										
3 <sup>rd</sup>	20%	Submission of Feasibility Report																										
4 <sup>th</sup>	(Balance)  Note: <b>The Total 1 to 4<sup>th</sup> payments but not exceed contract price for tasks up to the completion of FS</b>	Approval of Feasibility Study  <i>[in case project is not financially viable, no further inputs will be required, and the Contract shall be terminated]</i>																										
5 <sup>th</sup>	15%	Submission of Procurement Documents																										
6 <sup>th</sup>	15%	Signing of PPP Contract																										
7 <sup>th</sup>	15%	Financial Closure																										
Final	5%	Submission of Final Report																										
41.2.1.	<p>The following provisions shall apply to the advance payment and the advance bank payment guarantee:</p> <ol style="list-style-type: none"> <li>(1) An advance payment of [insert amount - maximum of 15% of Contract Price] in foreign currency shall be made within thirty (30) days after the receipt of an advance bank payment guarantee, issued by a bank in Cambodia, by the Employer. The advance payment will be set off by the Employer in equal portions against the 2<sup>nd</sup> and 3<sup>rd</sup> payments.</li> <li>(2) The advance bank payment guarantee shall be in the amount and in the currency of the advance payment.</li> <li>(3) The bank guarantee will be released when the advance payment has been fully set off.</li> </ol> <p><i>[if no advance is provided and 1<sup>st</sup> payment is on signing of Contract, delete above and state N/A]</i></p>																											



<b>41.2.4.</b>	<p>The Account Details are as follows:</p> <p><i>[insert all the details at the time of contract negotiations]</i></p>
<b>42.1.</b>	<p>The interest rate is: <i>[insert rate based on inter-bank lending date as provided by NBC].</i></p>
<b>45.1.</b>	<p>Disputes shall be settled by adjudication as follows:</p> <p>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole adjudicator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the Arbitration Council of Cambodia for a list of not fewer than two (2) nominees and, on receipt of such list, the Parties shall agree on one name who shall be the sole adjudicator for the matter in dispute.</p> <p>If a Party does not agree with the decision of the adjudicator, that Party may file a lawsuit in the relevant courts in Cambodia at its own costs.</p> <p>(b) Where the Parties agree that the dispute concerns a legal matter, the aggrieved Party may fill seek a resolution through the judicial system in Cambodia. The aggrieved Party will bear the cost of such actions.</p> <p>(c) The decision of the courts under (a) or (b) shall be enforced by the courts and both Parties must abide by its decision.</p>

## IV. APPENDICES

### APPENDIX A – TERMS OF REFERENCE

*[This Appendix shall include the final Terms of Reference (TORs) worked out by the Employer and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements and list of deliverables against which the payments to the Consultant will be made; Employer's input, including counterpart personnel assigned by the Employer to work on the Consultant's team; specific tasks or actions that require prior approval by the Employer.]*

*[Insert the text based on the Section 6 (Terms of Reference) of the ITC in the RFP and modified based on the Forms TPF-1 through TPF-4 of the Consultant's Proposal. Highlight the changes to Section 7 of the RFP.]*

.....  
.....

### APPENDIX B - KEY EXPERTS

*[Insert a table based on Form TPF-5 of the Consultant's Technical Proposal and finalized at the Contract's negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]*

.....  
.....

### APPENDIX C – BREAKDOWN OF CONTRACT PRICE

*[Insert the table with the unit rates to arrive at the breakdown of the lump-sum price. The table shall be based on Form FPF-3 and FPF-4 of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to Form FPF-3 and FPF-4 at the negotiations or state that none has been made.]*

*Note during contract negotiations the lump sum quoted in the Financial Proposal will be further broken down as follows:*

- 1. Total Costs for Tasks up to the Preparation of the Feasibility Study and the breakdown of these costs*
- 2. Total Costs for Tasks after the completion of the Feasibility Study up to until Financial Closure and the breakdown of these costs.*

*The above breakdown will be needed for determining the payment schedule particularly the 4<sup>th</sup> Payment based on the Payment Schedule prescribed under **SCC 41.2***

## APPENDIX D - FORM OF ADVANCE PAYMENTS GUARANTEE

[See Clause GCC 41.2.1. and SCC 41.2.1.]

{Guarantor letterhead or SWIFT identifier code}

### Bank Guarantee for Advance Payment

**Guarantor:** \_\_\_\_\_

[Insert commercial Bank's name, and address of Issuing Branch or Office.]

**Beneficiary:** \_\_\_\_\_ [insert name and address of the Employer]

**Date:** \_\_\_\_\_ [insert date]

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_ [insert number].

We have been informed that \_\_\_\_\_ [name of the Consultant or a name of the Joint Venture, same as appears on the signed Contract] (hereinafter called "the Consultant") has entered into Contract No. \_\_\_\_\_ [reference number of the contract] dated \_\_\_\_\_ [insert date] with the Beneficiary, for the provision of \_\_\_\_\_ [brief description of Services] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of \_\_\_\_\_ [insert amount in figures] (\_\_\_\_\_) [amount in words] is to be made against an advance payment guarantee.

At the request of the Consultant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ [amount in figures] (\_\_\_\_\_) [amount in words]<sup>24</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's a written statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Consultant is in breach of their obligation under the Contract because the Consultant:

- (a) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Consultant has failed to repay;
- (b) has used the advance payment for purposes other than toward providing the Services under the Contract.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultant on their account number \_\_\_\_\_ at \_\_\_\_\_ [name and address of the Bank].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in certified statements or invoices marked as "paid" by the Employer which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the payment certificate or paid invoice indicating that the Consultant has made full repayment of the amount of the advance payment, or on the \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_ [month] \_\_\_\_\_ [year]<sup>25</sup>, whichever is earlier.

<sup>24</sup> The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Client.

<sup>25</sup> Insert the expected expiration date. In the event of an extension of the time for completion of the Contract, the Client would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be

Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC Publication No. 758.

---

*[Signature(s)]*

*[Note: All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.]*

---

made prior to the expiration date established in the guarantee. In preparing this guarantee, the Client might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Client's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

**STANDARD FORM OF CONTRACT**  
**FOR CONSULTING SERVICES**  
(Time-Based)

## Table of Contents

1. Form of Contract .....	127
2. General Conditions of Contract .....	129
3. Special Conditions of Contract .....	138
4. Appendices .....	140

# **SAMPLE CONTRACT**

**FOR**

## **CONSULTING SERVICES**

**between**

---

**[Name of the Employer]**

**and**

---

**[Name of the Consultant]**

**Project Name:**

**Contract No:**

**Date:**

# 1-FORM OF CONTRACT FOR CONSULTING FIRMS

## CONTRACT FOR COUNSULTING SERVICES

### (Time-Based Remuneration)

#### Between

(Insert the name of the Employer) and

(Insert the Consultant's name)

This Contract (hereinafter referred to as the "Contract") is made between.....(Insert the name of the Employer) (hereinafter referred to as the "Employer") and the other party (Insert the consultant's name) (hereinafter referred to as the Consultant") \_\_\_\_\_

*[Note: When the Consultant consists of many firms the above sentence must be written to read as follows: (Hereinafter referred to as the "Employer") and the other party is an Association of Firms in which each firm and individual will be jointly and severally liable to the Employer with respect to all consultant's obligations under the contract, and the name of each consultant firm is as follows (Insert the name of the counseling firm) and (Insert the name of the counseling firm) (hereinafter referred to as the "Consultant").*

The terms and conditions of the Contract are as follows:

- a) The Employer offers the Consultant to provide specific consulting services as stated in the Contract (hereinafter referred to as the "Services").
- b) The Consultant expresses vis-a-vis the Employer that it has had vocational skills and technical and human resources and undertakes to provide services under the terms and conditions specified in the Contract.

Now, therefore, the two parties to the Contract hereby agree as follows:

1. The documents listed below are regarded as a part of the Contract:
  - a. The General Conditions of Contract;
  - b. The Special Conditions of Contract;
  - c. The following Appendices:
    - Appendix A. Description of Services
    - Appendix B: The Delivery of Reports
    - Appendix C. Key Staff
    - Appendix D. Staff Schedule
    - Appendix E. Cost Appraisal
    - Appendix F. Duties of the Employer
    - Appendix G: Advance Payments Security Form.
2. The obligations and rights of the Employer and Consultant are set forth separately in this Contract.
  - a. The Consultant will provide services in accordance with the terms and conditions of the Contract, and
  - b. The Employer will make payments in accordance with the terms and conditions of the Contract.



In Witness Whereof, the parties hereto agree to sign the Contract as of the date mentioned above.

**For the Employer**

**For the Private Partner** *(use in case of IC only)*

Signature:

Signature:

Name:

Name:

Position:

Position:

Seal:

Seal:

**The Consultant**

Signature:

Name:

Position:

Seal:

## 2- GENERAL CONDITIONS OF CONTRACT

*The General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.*

*The form of General Conditions of Contract that follows has been developed on the basis of considerable international experience in the drafting and management of contracts.*

## General Conditions of Contract

### B. GENERAL PROVISIONS

#### 1. Relationship between the parties

The relationship between the Employer (add Private Partner in case of IC) and the Consultant is the partner in implementing the contract.

#### 2. Applicable law

The meaning, interpretation, and the relation between the Parties to the Contract shall be governed by the laws of the Kingdom of Cambodia.

#### 3. Language

The contract shall be in English language.

#### 4. Location

The Services shall be performed at such locations as are specified in the Special Conditions of Contract.

#### 5. Authorized representatives

Any decision that must be made or permitted to be made, and any document that must be signed or permitted to be signed under this Contract by the Employer or by the Consultants may be made or signed by the officers as indicated in the Special Conditions of Contract.

#### 6. Notices

- 6.1. Any notice, request or approval that are required or permitted to be made pursuant to this Contract shall be made in writing. Any such notice, request or approval shall be deemed to have been delivered or received by the authorized representative of each Party whom such notice has specifically indicated.
- 6.2. Notice will be deemed effective upon the date of receipt or upon the date specified in the notice, whichever is later

#### 7. Taxes and customs duties

- 7.1. Except as otherwise specified in the Special Conditions of Contract, the Consultant, Sub-Consultant and working staff shall pay all such taxes, customs duties, fees and other charges imposed by the law of the Kingdom of Cambodia.

#### 8. Contract operations

- 8.1. Each Party recognizes that it is impossible for this Contract to anticipate for all contingency expenses arising out during the course of the Contract and each Party intends to execute this Contract between the Parties in good faith without an infringement of the interests of one another.

#### 9. Sub-consulting

- 9.1. The Consultant shall not sub-contract to other consultant unless agreement from the Employer and approval from the Ministry of Economy and Finance are granted. If the sub-contracting is allowed, the Consultant firm is still fully responsible for the works of the sub-consultant and the Consultant cannot be relieved from any liability and obligation under the contract.
- 9.2. When the sub-consultant is found by the Employer to be incompetent or incapable of discharging duties assigned, the Consultant shall replace with a new one with sufficient qualification and experience and acceptable by the Employer or shall perform such work by itself with no claims for additional expenses from the Employer.

## **10. Waiver of Activities**

10.1. The Consultant agrees that, during the execution of this Contract and after its termination, the Consultant and its affiliated firm, as well as the sub-consultant or any affiliated firm with such sub-consultant shall give up the consulting services (other than the services and sub-consulting services under this Contract) for any Project resulting from or having a close relationship with services under this contract.

## **C. COMMENCEMENT, TERMINATION AND MODIFICATIONS OF THE CONTRACT**

### **11. Contract effectiveness**

11.1. The Consultant shall start the Services as indicated in “Terms of Reference”, which is the Annex A of the Contract, as of the date specified in the Special Conditions of Contract. If such date is not specified in Special Conditions of Contract, the Consultant shall start the works seven (7) days of the receipt of the advance payment requested by the Consultant. If there is no provision for advance payment in the Contract or is not requested by the Consultant, the Consultant must start the services within fourteen (14) days of the signature of the Contract.

### **12. Modifications of Contract**

12.1. The Contract may be modified by agreement between both parties and where required, approved by the Ministry of Economy and Finance. Such modifications shall be made in writing and signed by the authorized representative of each party.

12.2. Subject to prior approval by the Employer, the Consultant may adjust the time period as indicated in the Staff Time schedule to ensure effectiveness of the services.

### **13. Force majeure**

13.1. For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, making it impossible for that party to control such event or to perform its obligations when the party reasonably considers that the impossibility of performance is caused by such event or circumstances.

13.2. The failure of the affected Party to fulfill its obligations under such circumstances shall not be deemed as a breach of or inability to perform the Contract because of such force majeure insofar as the affected party has taken proper precaution and due diligence, and reasonable alternative measures to comply with the terms and conditions of the Contract.

13.3. Neither party shall be liable for the losses or damages incurred by the other party because of the occurrence of such event or the delay in contract performance because of such event.

13.4. The Parties to the Contract shall take all reasonable measures to minimize impacts caused by a force majeure.

13.5. All activities and works shall be delayed for a duration of time equal to that in which the affected party is unable to perform such activities or works because of a force majeure.

13.6. During the impossibility of performance because of a force majeure, the Consultant shall be eligible for payments if such payments are prescribed under the terms and conditions of this Contract.

13.7. In the event of a disagreement between the parties as to any matters arising out of such a force majeure, such matters shall be settled in accordance with the General and Special Conditions of Contract.

13.8. A force majeure shall not include fund insufficiency or failure to make any payment under the terms and conditions of the Contract.

#### **14. Suspension of Works by the Employer**

14.1. The Employer may notify in writing to suspend the works performed by the Consultant and related payments if the Consultant committed a flaw with regards to the contract performance, including the provision of services. The Employer shall show the reasons for such suspension by:

- i. Specifying the nature of the flaw, and
- ii. Requesting the Consultant to cure such flaw within a period not longer than thirty (30) days of such notification.

#### **15. Suspension of Works by the Consultant**

15.1. In accordance with the General Conditions of Contract, the Consultant may at any time notify the Employer in writing that it would suspend its works if the Employer failed to make payment for any period of time or if the Employer has been notified by the Consultant that such payment is made beyond the due date.

#### **16. Rescission of Contract by the Employer**

16.1. The Employer may, in a period not longer than thirty (30) days, notify the Consultant in writing, that it will rescind the Contract (except as specified in paragraph (e) below for which the time period shall be no longer than thirty (30) days) in the following cases:

- a) If the Consultant failed to remedy its contract performance, as specified in paragraph 14 above regarding the suspension of works within thirty (30) days of notification, or within any additional time of the notification of rescission of contract by the Employer.
- b) If the Consultant becomes (or, if any member of the consultant firm becomes) insolvent or bankrupt or incurred debts or concluded a contract with its creditors to pay its debts, or if its gains are absorbed in a lawful manner for its benefits, or if its property is liquidated or placed under a bankrupt receivership whether voluntary or compulsory.
- c) If the Consultant failed to comply with any final decision made under the arbitration proceedings pursuant to General Conditions of Contract.
- d) If the Consultant submitted a Works Progress Report to the Employer, which has a material effect on the rights, obligations and interests of the Employer.
- e) If because of a force majeure, the Consultant is unable to perform a material portion of the Services for a period not less than sixty (60) days;
- f) If the Consultant is deemed by the Employer to be involved in corrupt or fraudulent practices in the competition or performance of Contract.
- g) By discretion and other reasons.

#### **17. Rescission of Contract by the Consultant**

17.1. The Consultant may, in a period not longer than thirty (30) days, notify the Employer in writing, that it will rescind the Contract by stating any of the related matters as follows:

- a. If the Employer failed to pay the Consultant under this Contract within sixty days (60) days of the receipt of the payment request.
- b. The Employer was in a material breach of its obligations pursuant to this Contract and failed to cure the same within sixty (60) days (or within any longer period as the

Consultant may have approved in writing) of the notification by the Consultant of such breach.

- c. Because of a force majeure, the Consultant is unable to perform the Services for a period not less than sixty (60) days;
- d. The Employer failed to comply with any final decision made under the arbitration.

## **D. OBLIGATIONS OF THE CONSULTANT**

### **18. Standards of Performance**

- 18.1. The Consultant shall provide the Services with due diligence and efficiency and exercise such skills and care in fulfilling the Services in accordance with acceptable vocational standards.
- 18.2. The Consultant shall take all necessary actions to protect the interest of the Employer and be responsible for keeping expenses at minimum level in accordance with a sound professionalism.
- 18.3. The Consultant shall provide the Employer with any information on the Services as the Employer may need it.

### **19. Responsibility and Insurance**

- 19.1. The responsibility of the Consultant under this Contract shall be carried out as provided for by the laws of the Kingdom of Cambodia.
- 19.2. Notwithstanding the General Conditions of Contract, the Consultant shall be responsible for the losses and damages of all facilities provided by the Government or by the Employer by paying money for insurance premium and for maintenance, or by purchasing in part or in whole of any materials funded by the Employer and entrusted to its care.
- 19.3. Except as otherwise specified by the Special Conditions of Contract, the Consultant shall maintain adequate insurance against losses of or damages to such materials and equipment. The insurance premium shall be paid in cash for maintenance of such facilities or buy a new one.
- 19.4. Except as otherwise specified by the Special Conditions of Contract, the Consultant shall maintain adequate insurance against damages and third party's complaint as a result of contract implementation.

### **20. Reports**

- 20.1. The Consultant will provide the Employer every report and document as specified in Appendix B: Delivery of Reports.

### **21. Works Secrecy**

- 21.1. The Consultant, its sub-consultant and staff shall not disclose any confidential information relating to the Services, such as this Contract or the business or transactions of the Employer without the latter's prior consent in writing.

### **22. Fees and Gratuities**

- 22.1. The Consultant and the Employer and the Private Partner shall ensure that there exist no other unofficial fees, gratuities, gift given in consideration of something or any other expenses besides those anticipated in the proposal or in the contract that must be given or received by the Consultant or by the Employer in connection with the selection process or the execution of contract.

## **23. Accounts and audit**

23.1. The Consultant shall keep accurate records and use proper accounting system with reference to incomes/expenses incurred, in accordance with the General Conditions of Contract.

23.2. The Consultant must:

- (a) Allow the Employer or its designated representative to inspect all records as of one year of the expiration or rescission of this Contract, as well as to audit the same by an auditor chosen by the Employer.

## **24. Drawings, Technical Specifications and Software**

24.1. All plans, drawings, technical specifications, reports, other documents and software prepared by the Consultant for the Employer under this Contract shall become the property of the Employer. Upon the expiration or rescission of the Contract, the Consultant shall deliver all documents to the Employer with a detailed inventory list.

## **25. Property of the Employer**

25.1. All facilities used by the Consultant, whether provided by the Employer or purchased by the Consultant by using funds provided by the Employer shall be the property of the Employer. Upon the termination of or at the expiration of a term under this Contract, the Consultant shall make an inventory list of such facilities and shall deliver it to the Employer as the latter might direct.

# **E. STAFF AND SUB-CONSULTANT OF THE CONSULTANT FIRM**

## **26. General Importance**

26.1. The Consultant shall indicate in the list by name and describe the duties and the number of work hours. Any additional work required beyond the illustrated scope of services cannot be achieved unless it is approved in writing by the Employer and the Consultant.

26.2. During the provision of services, the Consultant shall be an independent contractor by retaining complete control over its staff in accordance with the Labor Law of Cambodia and by providing employees with proper benefits.

## **27. Replacement of staff**

27.1. If the Employer does not agree, the replacement of key staff cannot be made. If it is necessary to replace staff, the substitute must be a sufficiently qualified one, and the Employer needs not to pay more for such substitute.

27.2. If any staff is found by the Employer to be incompetent, guilty or unable to assume responsibility over the work assigned, the Employer may instruct the Consultant to replace a new one with qualifications and experience acceptable by the Employer. In this regard the Consultant shall bear all expenses incurred for such replacement.

## **28. Nationality of staff**

28.1. If stated by the Special Conditions of Contract, the Consultant shall represent and ensure that its staff and sub-consultants employed for the provision of services are citizens of the countries as stated in the Special Conditions of Contract.

## **29. Work hours**

29.1. The work hours of key staff shall be consistent with those of the Employer. The key staff shall be eligible for all official holidays as available in the Kingdom of Cambodia, but they are not paid for overtime work, sick leave and vacation leave.

29.2. The payment for traveling expenses for foreign staff shall be computed as of the date of his arrival in Cambodia and a day after his completion of the Services and departure from Cambodia.

## **F. OBLIGATIONS OF EMPLOYER**

### **30. Assistance and exemptions**

30.1. The Employer shall make every effort to ensure that the Employer will:

- a. Facilitate the Consultant, Sub-Consultants and staff with necessities such as entry and exit visas, residence permit, exchange of permit and any other documents required for their stay in Cambodia.
- b. Facilitate for customs clearance of all equipment used for the Services goods and their personal belongings.
- c. Inform Government officials, agents and the government representatives (if necessary) all such instructions in the provision of Services.
- d. Assist in the registration and provision of permit to all foreign consultants and Sub-Consultants for practicing their profession according to the law of Cambodia.
- e. Provide data and facilities as described in Appendix F: Consultant's Duties".

### **31. Access to the territory**

31.1. The Employer shall ensure that the Consultant has free access to the territory and to the work site for the provision of services as required free of all charges and encumbrances.

### **32. Work Counterparts**

32.1. The Employer will provide an adequate number of local counterparts to cooperate with and assist the Consultant's staff in carrying out the Services

## **G. PAYMENTS TO THE CONSULTANTS**

### **33. Contract Price**

33.1. Except as otherwise agreed under the General Conditions of Contract, all payments made under this Contract shall not exceed the amounts described in Appendix E "Cost Appraisal".

33.2. The Consultant shall notify the Employer as soon as the said payment for the Services has accrued to 80% of the amount of such payment.

33.3. All payments under this Contract shall be transferred to the Consultant's bank account as specified in the Special Conditions of Contract. The bank charges for the transactions shall be at the cost of the Consultant.

### **34. Advance payment**

34.1. The Consultant may request for an advance if specified in the Special Conditions of Contract. Such payment shall be made in a Form as indicated in Appendix G on "Advance Payment Security".

### **35. Monthly payments**

35.1. The Employer shall pay Consultant for the Services such as the remunerations, allowances and out-of-pocket expenses as set forth in Appendix E on "Cost Appraisal" on a monthly basis. The remuneration rates or total amount is stated in Appendix E on "Cost Appraisal" that cannot be modified during the execution of Contract. All payments made shall not exceed the amounts specified in the General Conditions of Contract.



- 35.2. The monthly remunerations and allowances shall be determined based on the total amount of works achieved or on the duration of time spent on works by the Consultant as specified in Appendix D on "Staff Schedule".
- 35.3. The monthly remuneration based on the duration of time spent on works by the Consultant, when the duration of time is less than one month, shall be computed based on the hourly rate (at 176 hours per month as a threshold for office works) and the number of days for out-of-office works is computed based on the calendar month (with one day equal to 1/30 of the month).
- 35.4. All reimbursable expenses, being actually incurred by the Consultant and reasonable for the provisions of services, shall be evidenced by receipts for such expenses.
- 35.5. As soon as practicable and not later than fifteen (15) days of the end of each calendar month, while providing services the Consultant shall refer submit an invoices with the all the supporting documents and other evidences to substantiate the amount of the claim. The invoice shall make a clear distinction between the remuneration for staff, amount of allowance and reimbursable expenses. The invoice must be accompanied by a monthly report detailing all the tasks and activities carried out during the month.
- 35.6. Any amount of money paid to the Consultant by the Employer under this paragraph in excess of the actual amount due to the Consultant under this contract shall be returned to the Employer not later than 30 days of the notification. The request by the Employer for such refunding shall be made within 12 calendar months after the Employer has received and approved the final report and statement in accordance with the above paragraph 35.5.
- 35.7. The Employer will make payments in accordance with the Consultant's monthly payment report within thirty (30) days after the Employer received receipts of the list of items and other supporting evidence.
- 35.8. Any portion of the monthly payment report that is not sufficiently supported by evidence shall be severed from the payment. Should a discrepancy exist between the actual price and the stated price submitted by the Consultant, the Employer can adjust it by adding to or subtracting from such difference.
- 35.9. The above Payment for the service does not constitute acceptance of the whole service and it does not release the Consultant from its obligations under the Contract.

### **36. Final Payment**

- 36.1. The final payment under this Contract shall be made only after the final report have been submitted by the Consultant and recognized and approved by the Employer. The services shall be deemed completed and recognized by the Employer only if the final report will be approved by the Employer within a period of ninety (90) days of the receipt of the final report. Within a period of sixty (60) days the Employer shall notify the Consultant in writing of any the deficiencies in the provision of services and the Consultant must correct such deficiencies as necessary and shall resume all of such activities.

### **37. Payment based on the Rescission of Contract**

- 37.1. Based on the rescission of contract and in accordance with the above Clauses 16 and 17, the Employer will make the following payments to the Consultant:
  - a. The monthly remunerations and allowances in accordance with the above Clause 35 for any services properly served during the time before the date of the rescission of contract.

- b. Reasonable expenses in accordance with the above Clause 35 for actual expenses incurred by the Consultant during the time before the date of the rescission of contract, and
- c. Except in the case of rescission of contract as stated from paragraphs a) to d) and f) of the above Clause 16.1, all expenses incurred reasonably, and the rescission of contract by an order, additional payment shall be made, including travel expenses to their homeland.

## **H. DISPUTE SETTLEMENT**

### **38. Adjudication**

- 38.1. Any dispute shall arise between the Employer and the Consultant on the conditions specified in the contract or related to contract non-compliance shall be first settled by negotiation between both parties.
- 38.2. If the negotiation failed, then both parties shall solve the dispute through an adjudicator. In such case, the adjudicator will be nominated with agreement from both sides. If both parties do not agree on the nomination of the adjudicator or the adjudicator cannot solve the dispute, the dispute shall be resolved through Cambodian Court.

### **39. Expense on Lawsuit**

- 39.1. In the case that a lawsuit has been filed as a result of any party is in breach of conditions of contract, that party shall be responsible for expense related to the lawsuit. Payment on damage and other expense, if any, under the lawsuit will be enforced by the law.

### 3- SPECIAL CONDITIONS OF CONTRACT

GCC 4	State location of the services:
GCC 5	<p>The Authorized Representative is:</p> <p><b>For the Employer:</b>  Project Management Unit, the Ministry of _____  Designation: _____  Address: _____  The Ministry of _____  _____, Phnom Penh Cambodia,  Email Address: _____</p> <p><b>For the Private Partner:</b>  Name: _____  Designation: _____  Address: _____</p> <p><b>For the Consultant:</b>  Name: _____  Designation: _____  Address: _____</p>
GCC 7	<p>The Consultant, sub-consultants and staff are subject to the taxes, customs duties and taxes on other charges under the law of the Kingdom of Cambodia. The Consultant, sub-consultants and staff are subject to taxes and customs duties under the law of the Kingdom of Cambodia except for the following:</p> <ol style="list-style-type: none"> <li>1. any equipment imported for the provision of services and paid by the Employer and shall be treated as the Employer's property.</li> </ol> <p><i>[in the case that exemption will be provided for payment of local taxes, insert the following:]</i></p> <ol style="list-style-type: none"> <li>2. any indirect local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall be reimbursed by the Employer to the Consultant based on the actual taxes paid to the General Department of Taxation, Ministry of Economy and Finance, Cambodia.</li> </ol> <p>The contingent amount of such taxes is _____ <i>[insert the amount as finalized at the Contract Negotiation based on estimated amount of applicable taxes].</i></p> <p>Unless tax exemption is legally permitted, the Employer shall reimburse the Consultant, the Sub-consultants and the Experts any indirect taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Employer's country, on the Consultant, the Sub-consultants and the Experts in respect of:</p> <ol style="list-style-type: none"> <li>(a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of the Employer's country), in connection with the carrying out of the Services.</li> </ol>

	<p>(b) any equipment, materials and supplies brought into the Employer's country by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them.</p> <p>(c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Employer and which is treated as property of the Employer.</p> <p>All Consultants, Sub-Consultants and Experts who are nationals or permanent residents of Cambodia are required to pay all applicable taxes and these will not be exempted or reimbursed by the Employer.</p>
GCC 11	Date of Commencement of Services:
GCC 19.2. 19.3 and 19.4	<p>The insurance coverage against the risks shall be as follows:</p> <p>(a) Professional liability insurance, with a minimum coverage of USD <i>[insert 1.5 times the contract value]</i></p> <p>(b) Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Cambodia by the Consultant or its Experts or Sub-consultants, with a minimum coverage in accordance with the applicable law in Cambodia;</p> <p>(c) Third Party liability insurance, with a minimum coverage of in accordance with the applicable law in Cambodia;</p> <p>(d) Employer's liability and workers' compensation insurance in respect of the experts and Sub-consultants in accordance with the relevant provisions of the applicable laws in Cambodia, as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and</p> <p>(e) Insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.</p>
GCC 33.1	The Contract Price shall not exceed: USD..... <i>(insert Contract Price)</i>
GCC 33.3	<i>Insert Consultant's bank account number, the name of the bank, its address, and other code numbers. (To be Inserted after contract awarded)</i>
GCC 34.1	<p>The Consultant is entitled to request for an advance payment of <i>[insert such amount that shall not exceed the amount of reimbursable expenses of the first two months]</i> against the guarantee for an advance payment, described in Appendix G.</p> <p><i>If the Consultant is an individual and not a firm, state no advance payment will be provided.</i></p>

## 4-Appendices

Appendix A	Description of Services
Appendix B	Delivery of Reports
Appendix C	Key Staff
Appendix D	Staff Schedule
Appendix E	Cost Appraisal
Appendix F	Duties of the Employer
Appendix G	Advance Payments Security Form

## Appendix A: Description of Services

Note: This Appendix includes:

- the final Terms of Reference approved by the Employer and the Consultant during the negotiation of the technical aspect of the Proposal,
- the date of completion for each work,
- the place where each service is served,
- the actual works that require approval from the Employer etc.

.....  
.....

## Appendix B: Delivery of Reports

Note: List sample format, report contents; the persons to whom the reports are delivered; dates of delivery, etc. If no reports delivered, write down "Not applicable."

.....  
.....

## Appendix C: Key Staff

Note: Write down below:

*Titles [and names if already specified]: Write down detailed description of the Works and acceptable qualifications of key staff to which the works are assigned in the country in which the Services are to be provided, and the number of months for each staff.*

.....  
.....



## Appendix E: Cost Appraisal

Note: Provide breakdown of Cost Estimates

.....  
.....

## Appendix F: Duties of the Employer

Note: Write down below:

*F-1 The services, necessities, and property made available for the Consultant by the Employer.*

*F-2 Counterpart vocational and supporting staff made available for the Consultant by the Employer.*



## Appendix G: Form of Advance Payments Guarantee

**Note:** See Clause 34 of GCC

### Bank Guarantee for Advance Payment

\_\_\_\_\_ [Bank's Name and Address of Issuing Branch or Office]

**Beneficiary:** \_\_\_\_\_ [Name and Address of Employer]

**Date:** \_\_\_\_\_

### ADVANCE PAYMENT GUARANTEE No.:

\_\_\_\_\_ [Bank's Name, and Address of Issuing Branch or Office]

**Beneficiary:** \_\_\_\_\_ [Name and Address of Employer]

**Date:** \_\_\_\_\_

### ADVANCE PAYMENT GUARANTEE No.:

We have been informed that \_\_\_\_\_ [name of Consulting Firm] (hereinafter called "the Consultants") has entered into Contract No. \_\_\_\_\_ [reference number of the contract] dated \_\_\_\_\_ with you, for the provision of \_\_\_\_\_ [brief description of Services] (hereinafter called "the Contract"). Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of \_\_\_\_\_ [amount in figures] ( ) [amount in words] is to be made against an advance payment guarantee.

At the request of the Consultants, we \_\_\_\_\_ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of \_\_\_\_\_ [amount in figures] ( \_\_\_\_\_) [amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Consultants are in breach of their obligation under the Contract because the Consultants have used the advance payment for purposes other than toward providing the Services under the Contract. We will postpone the advance payment to the Consultant. It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultants on their account number \_\_\_\_\_ at \_\_\_\_\_ [name and address of Bank].

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultants as indicated in copies of certified monthly statements which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the monthly payment certificate indicating that the Consultants have made full repayment of the amount of the advance payment, or on the \_\_\_ day of \_\_\_\_\_. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

\_\_\_\_\_  
[Signature (s)] As

**Note:** All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.

## **SECTION 5 - TERMS OF REFERENCE**

# SECTION 6 - TECHNICAL PROPOSAL FORMS (TPF)

## TPF-1: Technical Proposal Form

(Location, Date)

To: \_\_\_\_\_ [Name and address of the Employer]

We would like to offer the consulting services for \_\_\_\_\_ (Title of the consulting service) in accordance with the Request for Proposal dated \_\_\_\_\_ (Insert date). On this occasion, we hereby submit our Proposal, including a Technical Proposal and a Financial Proposal, placed in two separated sealed envelopes.

If negotiation is held during the period in which the Proposal is valid, that is before \_\_\_\_\_ (Insert date) we undertake to negotiate on the basis of the staff proposed in this Proposal. Our Proposal is subject to modifications as agreed during the contract negotiations.

Based on the Instructions to the General Conditions of Contract, we recognize access by the Employer and any Funding Agency, if applicable, to inspect and audit our records in relation to this Proposal, whether or not we are awarded the Contract.

We do hope that our Proposal will be accepted.

Yours sincerely,

Signature

Name and Designation of Signatory

Name of the Consulting Firm/ Association

Seal

## TPF-2: Consultant's Experience

### Relevant Services performed in the last ten years with best results

Using the form below to complete it with information on each Services assignment achieved by your firm, the nature of the firm, whether an entity or by a person as a part of the firm, or a key component of an association of firms to which the contract was lawfully awarded.

The Name of Services assigned		Country:
Location within the Country:		Skilled Staff provided by the Firm: (Brief background)
Name of Employer/Employer:		Number of Staff provided:
Address:		Number of Months, Expertise, and Duration of Services:
Start Date (Month/Year):	Completion Date (Month/Year):	Approximate Service Costs (in US\$):
Name of Affiliated Consultant firm, if any:		Number of months for Skilled staff provided by the Affiliated Consultant firm:
Name of Senior staff (Project Director or Coordinator, Team Leader) involved in carrying out the works:		
Brief description of the Project:		
Description of actual services provided by the staff of your firm:		

## FORM TPF-3 (FOR SIMPLIFIED TECHNICAL PROPOSAL ONLY)

### DESCRIPTION OF APPROACH, METHODOLOGY, AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

---

Form TPF-3: a description of the approach, methodology, and work plan for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

{Suggested structure of your Technical Proposal}

- a) **Technical Approach, Methodology, and Organization of the Consultant's team.** {Please explain your understanding of the objectives of the assignment as outlined in the Terms of Reference (TOR), the technical approach, and the methodology you would adopt for implementing the tasks to deliver the expected output(s); the degree of detail of such output; and describe the structure and composition of your team. Please do not repeat/copy the TORs in here.}
- b) **Work Schedule and Planning for Deliverables.** {Please outline the plan for the implementation of the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Employer), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan and work schedule showing the assigned tasks for each expert. A list of the final documents (including reports) to be delivered as final output(s) should be included here. The work plan should be consistent with the Work Schedule Form.}
- c) **Comments (on the TOR and on counterpart staff and facilities)**  
{Your suggestions should be concise and to the point, and incorporated in your Proposal. Please also include comments, if any, on counterpart staff and facilities to be provided by the Employer. For example, administrative support, office space, local transportation, equipment, data, background reports, etc.}

If applicable, comments and Suggestions by the Consultant on the Terms of Reference and Data, Services and Facilities to be offered by the Employer:

On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

On the data, services and facilities provided by the Employer:

- 1.
- 2.
- 3.
- 4.
- 5.

### TPF-4: Work Schedule and Planning for Deliverables

No.	Deliverables	Months												Total			
		1	2	3	4	5	6	7	8	9	10	11	12				
D-1	{e.g., Deliverable #1: Report																
	1. Data gathering																
	2. Drafting																
	3. Inception report																
	4. Incorporating comments																
	5. Delivery of final report to Employer																
	6. ....other tasks																

1. List the deliverable with the breakdown for activities requested to produce them and other benchmarks such as such as the Employer approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phased
2. Duration of activities shall be indicated in a form of a bar chart.
3. Include a legend, if necessary, to help read the chart.

### TPF-5: Team Composition, Assignment, and Key Expert's Input

No	Expert's input (in person/month) per each Deliverable 9 Listed in TPF-5)										Total time –input (in Month)		
	Name, National and DOB	Position	D-1	D-2	D-3	.....	.....	D-....	Home	Field	Total		
<b>Key Expert</b>													
<b>International</b>													
K-1	{e.g Mr.Annn Pak, 12 .6. 1958	Team Leader	2 months 0.5m	1 2.5	1.0 0								
K-2	e.g Mr. YYY GRB 20.4.1965												
K-3													
<b>National</b>													
N-1													
N-2													
N-9													
<b>Non-Key Expert</b>													
N-1													
N-2													
N-9													

### TPF-5: Expanded Team Composition, Assignment and Key Experts' Input

N	Deliverable/Task/Activity	Responsible Expert	Month															
			1	2	3	4	5	6	7	8	9	10	11	12				
	[ e.g Bid implementation Plan		Duration															
<b>D1</b>	Activity 1	K1[eg team leader																
	Activity																	
	Activity																	
<b>D-2</b>	[ e.g Bidding document																	
	Task 1																	
	Activity 1	K1																
	Activity 2	K2																
	Task n																	
	Activity 1	K1																
Activity	K2																	

Line Up of Expert													
Duration	1	2	3	4	5	6	7	8	9	10	11	12	Total Person-months
K1 (eg. Team Leader/Deal/Bid Manager													
K2													
K3													
Kn													
<b>Total Person-months</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>



## TPF-6: Format of Curriculum Vitae (CV) for Proposed Skilled Staff

Proposed Position: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Name of Staff: \_\_\_\_\_ Nationality: \_\_\_\_\_

Profession: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Years with the Firm/Entity: \_\_\_\_\_ Nationality: \_\_\_\_\_

Membership in Vocational Association: \_\_\_\_\_

Detailed Work in Assignment: \_\_\_\_\_

Key Qualifications:

*(Outline staff's experience and education relevant to the works. Describe level of responsibility born by the staff in relation to previous works and indicate relevant date and location (approximately half page)).*

Education:

*[Brief description of study at college, university and other vocational training undertaken by the staff, the name of schools, date of attendance, degree obtained (approximately one fourth of a page)]*

Employment Record:

*[State present job or jobs held from the time being to the past. State all jobs held since graduation, relevant dates, the entities served, designations and locations. With respect to experience within the last ten years, state all activities achieved and references made by the Employer (approximately two pages)].*

Languages:

*[For each language, state the level of fluency in speaking, reading and writing: outstanding, good, fair, or weak]*

Certification:

Thereby, in witness thereof, I hereby sign and certify that my Curriculum Vitae are accurate as to the qualifications and experience without any misrepresentation.

Signature:

Name:

Date:

Or

Signature of Authorized Representative of the Firm

Name:

Date:

*[if the authorized representative signs on behalf of the staff, it must have a certification that the information provided is true and correct]*

# SECTION 7 - FINANCIAL PROPOSAL FORMS

## FPF1- Financial Proposal Form

Location, Date: dd./mm/yyyy

To: \_\_\_\_\_ {Name and address of the Employer}

We would like to offer the consulting services (*Title of the consulting service*) in accordance with the Request for Proposal dated \_\_\_\_\_ together with our Proposal (Technical and Financial Proposals). Our Financial Proposal hereby enclosed contains a total estimated cost of \_\_\_\_\_ (in numbers and in words). This cost does not include the amount of local taxes which is approximately about \_\_\_\_\_ (*In numbers and in words*).

This Financial Proposal is subject to any modifications as agreed during the contract negotiations in the period before the expiration of the Proposal validity on \_\_\_\_\_.

If we are awarded the contract, brokerage commissions and gratuities, if any, are to be paid by us to any of the following agents involved in this Proposal and the execution of Contract:

Name and Address of Agents

Amount and Currency Purpose of Commission

or Gratuity \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

In accordance with the Instructions to Consultants, the Consultants for this contract are required to observe the highest standard of the Code of Ethic during the selection process and the implementation of the Contract. Under this policy we recognize access by the Government and any Funding Agency, if any, to inspect and audit our records in relation to this Proposal, whether or not we are awarded this Contract.

We assert that we have read, understood and accepted the contents of the Instructions to Consultants, the Proposal Data Sheet, General Conditions of Contract, Special Conditions of Contract, Terms of Reference, the provisions on the eligibility of consultants, and the guidelines and procurement rules of the Government and Funding Agency, if any, and any or all of the proposal documents referred to us in the Request for Proposal.

We hope that you will accept our proposal

\_\_\_\_\_

Yours sincerely,

Signature

Name and Designation:

Name of the Firm:

Seal

## FPF-2: Summary of Costs

Item	Amount(s) (USD)
<b>Competitive Component</b>	
Remuneration Key Experts	
Remuneration Non-Key Experts	
Other Expenditures	
Sub-Total	
<b>Non-Competitive Component</b>	
Provisional Sump	
Contingency	
Sub Total	
Total Costs of the Financial Proposal <sup>26</sup>	
Indirect Local Tax Estimates <sup>27</sup>	
(i) {Insert type of Taxes}	
(ii) {Insert type of Taxes}	
(iii) {Insert type Taxes}	
Total Estimate for Indirect Local Tax	

<sup>26</sup> Should match the amount in FPF 1

<sup>27</sup> To be discussed and finalized at the negotiation if the contract is awarded

### FPF-3: Breakdown of Cost for each Activity

Activity Number. _____	Description: _____
Cost for each part	(Amount)
Service Remuneration	
Reimbursable expenses	
Miscellaneous expenses:	
Subtotal:	

### FPF-4: Breakdown of Remuneration Per Activity

No.	Names	Nationality	Currency	Person-Month Remuneration Rate	Time Input in Person/Month	Amount
				(Home)	(Form TECH-6) (Home)	
	Position (as in TECH-6)	Firm		Person-Month Remuneration Rate	Time Input in Person/Month	
	Key Experts (International)			(Field)	(Form TECH-6) (Home)	
1						
2						
	Sub - Total					
	Key Experts (National)					
1						
2						
	Sub - Total					
	Total Costs: Key Experts (International and National)					
	Non-Key Experts					
1						
2						
	Total Costs: Non-Key Expert					
	Total Costs: Key and Non-Key Experts					

## FPF-5: Reimbursable Expenses per Activity

Activity Number: _____ Name: _____					
No.	Description	Unit	Quantity	Unit Price	Total Amount
1	Flights: _____	Trip			
2	Other travel expenses	Trip			
3	Per diem Allowance	Day			
4	Local travel costs	Day			
5	Office rent, lodging, clerical	Month			
6	Assistance	Person- Month			
	<b>Sub-Total other Expense</b>				
	Provisional Sums (if applicable)	LS			
	Contingency (if applicable)	LS			
	<b>Total: Other Expenses + Provisional Sum + Contingency</b>				

## FPF-6: Miscellaneous Expenses

Activity Number: _____ Name: _____					
No.	Description	Unit	Quantity	Unit Price	Total Amount
1	.....				
2	.....				
3	.....				
	Total:				

*All consultant firms are required to sign this form and attach it to their Financial Proposal*

## **FPF 7: Statement on Ethical Conduct and Fraud and Corruption**

We are the employees, associates, agents, shareholders, consultants, the undersigned, confirm in the preparation of our bid that:

1. We do not have any relationship that could be regarded as a conflict of interest as set out in the proposal document.
2. Should we become aware of the potential for such a conflict will report it immediately to the Employer
3. We have not entered into corrupt, fraudulent, coercive or collusive practices in respect of our proposal.
4. We understand our obligation to allow the Government or the Funding Agency, if any, to inspect all records relating to the preparation of our Proposal and any contract that may result from such irrespective of if we are awarded a contract or not.
5. We have made no payments in connection with this selection exercise to any person who are involved with the selection process on behalf of the Employer

Signature

Name

Designation

Seal

Date



## **ANNEXURE 10**

# **Sample Contracts For Individual Consulting Services**

# Government of the Kingdom of Cambodia

[Insert name of the Project]: \_\_\_\_\_

[Insert name of the Assignment]: \_\_\_\_\_

## Contract for Individual Consulting Services

\_\_\_\_\_  
**Contract No.....**

THIS CONTRACT ("Contract") is entered into this \_\_\_\_\_ day of \_\_\_ [insert date of signing of contract], by and between \_\_\_\_\_ [insert name of the Employer] ("**the Employer**") having its principal place of business at \_\_\_\_\_ [insert the Employer's address], and \_\_\_\_\_ [insert name of the Consultant] ("**the Consultant**") having its principal office located at \_\_\_\_\_ [insert full address of the Consultant];

WHEREAS, the Employer wishes to have the Consultant perform the Services hereinafter referred to, and

WHEREAS, the Consultant is willing to perform these Services, NOW THEREFORE THE PARTIES hereby agree as follows:

### 1. Services

1.1. The Consultant shall perform the Services specified in Annex A, "Terms of Reference and Scope of Services," which is made an integral part of this Contract ("the Services").

### 2. Term

2.1. The Consultant shall perform the Services during the period of \_\_\_\_\_ [insert period of the assignment] commencing from \_\_\_\_\_ [insert start date of the assignment] or any other period as may be subsequently agreed by the parties in writing.

### 3. Payment

#### A. Ceiling:

3.1. For Services rendered pursuant to Annex A, the Employer shall pay the Consultant an amount not to exceed \_\_\_\_\_ [insert ceiling amount and currency]. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits but excludes any local tax obligation that may be imposed on the Consultant.

3.2. Government warrants that, under this contract, the Consultant shall be exempt from any local taxes, duties imposed on the Consultant under the laws of Cambodia. Should this not be the case, the Government shall pay on behalf of the Consultant such taxes.

#### B. Schedule of Payments for Remuneration and Per-diem:

3.3. The schedule of payments is specified below: [Insert here the payments schedule, which will normally be percentage amounts on a lump sum basis. For lump sum contract, payment must be linked to deliverables defined in order to ensure the achievement of required deliveries.]

[or]

3.4. [For **time-based contract**, payment will be made on monthly basis. and some outputs can also be expected and defined in the TOR. State the monthly rate of remuneration and per diem.]

Remuneration Rate: USD.... per month

Per Diem: USD .... per calendar day.

**Total:** \_\_\_\_\_ [calculate these two items for the complete duration of the Services and insert the total amount].

C. The reimbursable items:

3.5. Transportation in country:

- A flat daily or monthly allowance for transportation within Phnom Penh.

3.6. Air travel:

- Normal and customary expenditures for official travel will be reimbursed at the cost of economy class travel and will need to be authorized by the Employer’s Coordinator.

3.7. List other expenditure, if applicable.

3.8. The above reimbursable items should not exceed the agreed amount below:

- Airfares \_\_\_ [insert lump sum amount or on actual basis];
- Transportation:
- Other Expenditures:
- **Contingencies** \_\_\_ [insert amount, not normally more than 5% of the total remuneration plus per diems].

3.9. The total of remuneration and reimbursable should not exceed the sum of \_\_\_\_\_ [insert total amount of remuneration plus reimbursables plus contingencies, which should be the same as the ceiling contract amount in Section A above].

D. Payment Conditions:

3.10. Payment shall be made in USD currency, no later than 30 days following submission by the Consultant of invoices in duplicate to the Coordinator designated in paragraph 5 below.

E. Bank Account:

3.11. Account Name \_\_\_\_\_ [insert name] Name of Bank: \_\_\_\_\_ [insert full name and address of the Consultant’s bank] Account Number: \_\_\_\_\_ [insert the Consultant’s bank account number]

3.12. The Consultant shall bear the bank charges for making payments through telegraphic transfer to the Consultant’s bank account outside of Cambodia.

#### **4. Leave (Only Applicable for assignment of one year and above)**

- 4.1. The Consultant shall be entitled to annual leave at the rate of eighteen (18) working days per year.
- 4.2. The Consultant is entitled to sick leave at the rate of no more than 4 working days for every full period of 3 months of services performed. The Consultant shall furnish the Employer with a medical or other evidence that the Consultant is unable to perform the Services. When sick leave is not used within each 3 months period of Service, the accumulation of unused sick leave days will not be allowed. *[Delete in case of a lump sum contract where payments are all inclusive and made for specific outputs/ deliverables.]*

#### **5. Project Administration**

##### **a. Coordinator:**

- 5.1. The Employer designates \_\_\_\_\_ *[insert the name of the Employer's coordinator]* as the Employer's Coordinator; the Coordinator will be responsible for the coordination of activities under this Contract, for acceptance and approval of the reports and of other deliverables and for receiving and approving invoices for payments.

##### **b. Time Sheet:**

- 5.2. During the course of the Services, the Consultant shall prepare and submit signed timesheets showing the specific services provided on a daily basis. *[Remove in case of a lump sum contract.]*

##### **c. Government Contribution:**

- 5.3. The Employer shall provide office space with air conditioning, internet, printing and photocopying services and office supplies.

#### **6. Termination**

- 6.1. The Employer may terminate the Contract by giving the Consultant not less than thirty (30) days written notice after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause:
  - (a) If the Consultant not remedy a failure in the performance of its obligations under the Contract within seven (7) days after being notified verbally or in writing, or within any further period as the Employer may have subsequently approved in writing;
  - (b) If the Consultant, in the judgment of the Employer has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for or in performing the Contract.
  - (c) If the Employer, its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- 6.2. The Consultant may terminate the Contract by giving the Employer not less than thirty (30) days written notice if there are circumstances beyond the Consultant's reasonable control which makes it impossible for the Consultant to carry out the obligations under the Contract. Such reasons must be substantiated by the Consultant. Upon the Employer's confirmation in writing or failure of the Employer to respond to such notice within 30 days from receipt of the Consultant's written notice, the Consultant shall be released from the obligations under the Contract.

- 6.3. Upon termination of the Contract or giving notice thereof, the Consultant shall take immediate steps to bring the Services to a close in a prompt and orderly manner and to reduce expenditures to a minimum.
- 6.4. In case of termination by the Employer, the Consultant shall be paid for the Services provided prior to the date of the expiry of the notice period and the cost of air fares back to the home country.
- 6.5. In case of termination by the Consultant, the Consultant shall be paid for the Services provided prior to the date of the expiry of the notice period. The Consultant shall bear the cost of demobilization.

## **7. Performance Standards**

- 7.1. The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity.
- 7.2. The Consultant has understood and signed the Statement on Ethical Conduct and Fraud and Corruption which is attached as Annex B.

## **8. Confidentiality**

- 8.1. The Consultants shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the Employer's business or operations without the prior written consent of the Employer.

## **9. Ownership of Material**

- 9.1. Any studies reports or other material, graphic, software or otherwise, prepared by the Consultant for the Employer under the Contract shall belong to and remain the property of the Employer. The Consultant may retain a copy of such documents and software.

## **10. Consultant Not to be Engaged in Certain Activities**

- 10.1. The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or related to the Services.

## **11. Insurance**

- 11.1. The Consultant will be responsible for taking out any appropriate insurance coverage at own costs.

## **12. Assignment**

- 12.1. The Consultant shall not assign this Contract or sub-contract any portion of it.

## **13. Law Governing Contract and Language**

- 13.1. The Contract shall be governed by the laws of the Kingdom of Cambodia, and the language of the Contract shall be English.

## **14. Dispute Resolution**

- 14.1. Any dispute arising out of the Contract, which cannot be amicably settled between the parties, shall be referred to adjudication/arbitration in accordance with the laws of the Kingdom of Cambodia.

**FOR THE EMPLOYER**

**FOR THE CONSULTANT**

---

*[Name and Title of the Employer's Representative]*

---

*[Name and Title of the Consultant]*

# **Annex A:**

## **Terms of Reference and Scope of Services**

## Annex B:

### Statement on Ethical Conduct and Fraud and Corruption

**I, the undersigned confirm that in the preparation of this Contract:**

1. I do not have any relationship with any person involved in the selection process that could be regarded as a conflict of interest.
2. Should I become aware of the potential for such a conflict, I will report it immediately to the Employer.
3. I have not entered into corrupt, fraudulent, coercive or collusive practices in respect of my proposal for this assignment.
4. I understand my obligation to allow the Government to inspect all records relating to the preparation of my proposal irrespective of if I am awarded a contract or not.
5. That no payments in connection with this assignment have been made by me, to any of the staff, associates, consultants, employees or relatives of such who are involved with the procurement process on behalf of the Employer.
6. I understand that if I am found to be in breach of this declaration, I will be ineligible to be considered for any assignments funded by the Government [in case of DP financing insert (or Development Partner)] for a period of three years.

Signature:

Name:

Date:





**SECTION II  
ANNEXURES TO THE  
SELECTION OF PRIVATE PARTNER**

**PART B**



# ANNEXURE 1

NAME OF IA

## INVITATION TO PREQUALIFICATION AND BID

Date:

Name of Project:

Contract Ref No:

Deadline for Submission of Application: *Time and Date*

### **Technical Information and Terms**

Project Description/Objective:

1. The project entails the \_\_\_\_\_
2. The objective of project is \_\_\_\_\_

### **Commercial Terms and Conditions**

3. The Project shall adopt a Two-Stage Bidding Process as follows:
  - (i) Stage 1: Prequalification/Shortlisting Process and
  - (ii) Stage 2: Request for Bids Submission and Opening.
4. Prequalification will be conducted through the procedures as specified in the Section III: Selection of Private Partner of the Government's Standard Operating Procedures for PPP Projects, Volume III: Procurement Manual, \_\_\_\_\_ [insert date] and open to all eligible entities as defined therein.
5. Prequalification Conference: The [insert name of the IA] shall hold a Prequalification Conference on [insert date dd/mm/yyyy], starting at [insert time...] at [insert address of venue].
6. Interested eligible entities may obtain further information, and inspect the prequalification documents, at the address below during office hours from 9:00 to 16:30 hours (local time). A complete set of prequalification documents in English may be purchased on the submission of a written application to office and address provided below and upon payment of a non-refundable fee of USD \_\_\_\_\_. The method of payment shall be Banker's Check. Other than the payment of the non-refundable fee specified above, there shall be no other conditions for the purchase of the prequalification documents. The prequalification documents shall be collected in person at the discretion of the respondent.
7. The schedule for the prequalification process is provided below. In case any of the dates below shall fall on a non-working day or public holiday, the activity schedule thereon shall be automatically held on the next working day. The same rule shall apply if, for any reason, work in government office is suspended on any of the above date.

SCHEDULE OF BIDDING ACTIVITIES	DATES
1 <sup>st</sup> Publication of Invitation to Pre-Qualify	Insert date dd/mm/yyyy
Requests for Clarifications	Insert date dd/mm/yyyy (No later than 15 days before deadline for submission)
Prequalification Conference	Insert date dd/mm/yyyy (No later than 50 days after 1 <sup>st</sup> Publication of Invitation to Prequalify)
Deadline for Submission of Prequalification Applications	Insert date dd/mm/yyyy (No more than 90 days after 1 <sup>st</sup> Publication of Invitation to Prequalify)

8. Application for prequalification should be submitted in clearly marked and sealed envelopes and delivered to the address below by [insert time] on [insert date] dd/mm/yyyy
9. The address referred to above is:

Name of IA: \_\_\_\_\_

Name of Project Manager: \_\_\_\_\_

Attention: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Tel: \_\_\_\_\_

**ANNEXURE 2**  
**PROJECT INFORMATION MEMORANDUM**  
**(Sample Template)**

1. Executive Summary
2. Project Background
3. Project Description
  - Technical Information
  - Project Cost Estimate
  - Traffic Projection
4. Key PPP Contract Features
5. Legal Framework for the PPP Project
  - Implementing Agency
  - PPP Contract Period
  - PPP Project Timeline
  - PPP Contract Obligations
  - PPP Project Revenues
  - Tariff Structure
  - Risk Allocation Framework
6. Bidding Process
  - Bidding Process
  - Indicative Timeline for the Bidding Process

**ANNEXURE 3**  
**INSTRUCTIONS TO PROSPECTIVE BIDDERS**  
**(Sample Template)**

**DISCLAIMER**

The information contained in these Instructions to Prospective Bidders and other Invitation Documents subsequently provided to Prospective Bidders, whether verbally or in documentary or any other form, by or on behalf of the [\_\_\_\_\_ Insert the name of the IA] (hereinafter referred to as the IA) or any of its employees or advisors, is provided to the Prospective Bidders on the terms and conditions set out in the Invitation Documents and such other terms and conditions subject to which such information is provided.

The Invitation Documents are not agreements or offers by the IA to the Prospective Bidders or any other person. The purpose of the Invitation Documents is to provide interested bidders with information that may be useful to them for the purpose of pre-qualifying for the [\_\_\_\_\_ name of Project] (hereinafter referred to as the Project) pursuant to the Invitation Documents. The Invitation Documents include statements that reflect various assumptions and assessments arrived at by the IA in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Prospective Bidder may require. The Invitation Documents may not be appropriate for all bidders, and it is not possible for the IA and its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses the Invitation Documents. The assumptions, assessments, statements and information contained in the Invitation Documents and associated documents may not be complete, accurate, adequate or correct. Each Prospective Bidder shall therefore conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the of the assumption, assessments, statements and information contained in the Invitation Documents and obtain independent advice from appropriate sources.

Information provided in the Invitation Documents to the Prospective Bidders is on a wide range of matters, some of which may depend upon the interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as complete or authoritative statement of law. The IA accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The IA, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Prospective Bidder, under any law, statute, rules or regulations, principles of restitution or unjust enrichment or otherwise, for any loss, damages, cost or expense that may arise from or be incurred or suffered on account of anything contained in the Invitation Documents or other information provided to Prospective Bidders, including the accuracy, adequacy, correctness, completeness or reliability of the Invitation Documents and any assessment, assumption, statement or information contained therein or deemed to form part of the Invitation Documents or arising in any way from participation in the Bidding Process.

The IA also accepts no liability of any nature, whether resulting from negligence or otherwise howsoever caused, arising from reliance of any Prospective Bidder upon the statements contained in the Invitation Documents.

The IA may, in its discretion, but without being under obligation to do so, update, amend or supplement the information, assessments or assumptions contained in the Invitation Documents.

The issuance of the Invitation Documents does not imply that the IA is bound to select a Pre-qualified Bidder or to appoint the Winning Bidder, as the case may be, for the Project, and the IA reserves the right to reject all or any of the Prospective Bidders or Bids without assigning any reason whatsoever.

Each interested party and the Prospective Bidder shall bear all costs associated with or relating to the preparation and submission of its Prequalification Application or Bids including but not limited to preparation, copying, postage, delivery fees and expenses associated with any demonstration or presentations which may be required by the IA or any other costs incurred in connection with or relating to its Prequalification Application or Bids. All such costs and expenses shall be for the account of the Prospective Bidder and the IA, its advisors, consultants, or other persons acting on its behalf shall not be liable in any manner whatsoever for the same or for any other direct or indirect costs or expenses incurred by a Prospective Bidder in the preparation or submission of the Prequalification Application or Bids, regardless of the conduct or outcome of the Bidding Process.



## TABLE OF CONTENTS

SECTION 1: INTRODUCTION.....	177
SECTION 2: GENERAL CONDITIONS.....	177
SECTION 3: THE BIDDING PROCESS.....	178
SECTION 4: PREQUALIFICATION REQUIREMENTS .....	182
SECTION 5: PREQUALIFICATION DOCUMENTS.....	183
SECTION 6: ONE PROSPECTIVE BIDDER ONE SUBMISSION .....	185
SECTION 7: SUBMISSION OF PREQUALIFICATION DOCUMENTS.....	185
SECTION 8: OPENING OF PREQUALIFICATION DOCUMENTS.....	186
SECTION 9: CORRUPT, FRAUDULENT, COLLUSIVE, COERCIVE, UNDESIRABLE AND RESTRICTIVE PRACTICES .....	187
SECTION 10: CONFLICT OF INTEREST .....	188
SECTION 11: LOCK – UP RULES.....	189
SECTION 12: NOTIFICATION OF RESULTS OF EVALUATION OF PREQUALIFICATION DOCUMENTS.....	190
SECTION 13: RIGHT TO REJECT PREQUALIFICATION DOCUMENTS, WAIVE MINOR DEFECTS AND NOT PROCEED WITH THE BIDDING AND INTERPRETATION OF BIDDING RULES .....	191

## SECTION 1: INTRODUCTION

- 1.1. The [\_\_\_\_\_name of the IA] invites eligible firms/consortiums to apply to Pre-Qualify to design, finance, build, operate and maintain the [\_\_\_\_\_name of Project] (the Project). The Project comprises of:
- (a) \_\_\_\_\_
  - (b) \_\_\_\_\_
- 1.2. The documents which govern the process to be followed for Prequalification are:
- i. the Invitation to Pre-Qualify
  - ii. the Instructions to Prospective Bidders and its Annexes (ITPB) and
  - iii. the Project Information Memorandum.
- 1.3. The Invitation Documents provided by the [\_\_\_\_\_name of IA] are being made available to Prospective Bidders only in connection with the Project and may not be disclosed or used for any other purposes.

## SECTION 2: GENERAL CONDITIONS

### 2.1. General Conditions

- 2.1.1. By submitting Prequalification Documents and participating in the Prequalification process, the Prospective Bidder acknowledges and agrees that:
- (a) It, including all its Consortium Members, their Affiliates, Contractors and their respective officers, employees, agent and advisors, shall observe the highest standard of ethics during the Bidding Process.
  - (b) It, including all its Consortium Members, their Affiliates, Contractors and their respective officers, employees, agent and advisors, shall not commit any Corrupt, Fraudulent, Coercive, Undesirable and Restrictive Practices.
  - (c) It, including all its Consortium Members, their Affiliates, Contractors and their respective officers, employees, agent and advisors, will not engage in any form of lobbying with respect to the Project or attempt to influence the outcome of the Bidding Process.
  - (d) It accepts all the terms and conditions of the Invitation Documents.
  - (e) The [name of the IA] has the right to modify any of the Invitation Documents at any time.
  - (f) The interpretation and construction of the Invitation Documents shall rest solely with the [name of the IA]. [Name of IA] shall not assume any responsibility for any erroneous interpretation or conclusions made by the Prospective Bidders from the data furnished or indicated in the Invitation Documents.

### 2.2. Governing Laws and Rules

- 2.2.1. The provisions of the Law on Public-Private Partnerships and its associated Sub-Decree No. 174 ANK.BK, dated 31 August 2022 on Promulgating the Standard Operating Procedures for PPP Project and other relevant Cambodian laws shall govern all matters not specifically covered by this ITPB and the other Invitation Documents.

### 2.3. Definitions

- 2.3.1. [IA to insert essential definitions]

## SECTION 3: THE BIDDING PROCESS

### 3.1. Government’s Procurement Review Committee (PRC), Bid Evaluation Committee (BEC) and Transaction Advisors:

- 3.1.1. **Role of the PRC:** the PRC is responsible for endorsing and approving the prequalification and bidding documents; the prequalification and bid evaluation reports, and the recommendation of the list of prequalified bidders and award of contract to the selected Winning Bidder.
- 3.1.2. **Role of the BEC:** the BEC is responsible for evaluating, with the support of the Transaction Advisor, the Prequalification Applications in accordance with the provisions specified in the Prequalification Documents, where a Prequalification has been agreed by the IA and MEF and submitting the Prequalification Evaluation Report (PER) and shortlist of Bidders to the PRC. The BEC shall also be responsible for evaluating the Bids that will be received from the Bidders in accordance with the criteria specified in the Bidding Documents and submitting the Bid Evaluation Report along with the name of the recommended bidder for award of the PPP Contract to the PRC.
- 3.1.3. **Role of the Transaction Advisor:** the Transaction Advisor is appointed by the IA to act as its Transaction Advisor (hereafter referred as the TA) for the international competitive bidding. The TA will assist the IA in undertaking a fair, transparent and competitive selection process that will mobilize private sector participation in the implementation of the project. The assistance of TA covers all pre-bidding and bidding related activities including due diligence review, transaction structuring, marketing and promotion, contract preparation; and support to the IA in the development of the bidding documents, conduct of the bidding, evaluation of the bids; and provide clarifications on the bid evaluation report to the PRC, when requested.

### 3.2. Outline of the Bidding Process

- 3.2.1. Open Competitive Bidding for the Project shall be conducted in accordance with the rules and procedures prescribed in the Section III: Selection of Private Partner of the Government’s Standard Operating Procedures for Public-Private Partnership Projects, Volume III: Procurement Manual.
- 3.2.2. The table below contains the indicative schedule of Bidding Process:

Milestone	Indicative Date, Time, Venues
Release of Invitation to Pre-qualify	
Release of Project Information Memorandum and Instructions to Prospective Bidders	
Prequalification Conference	
Qualification Documents Submission Date	
Notice to Pre-Qualified Bidders	
Release of Bidding Documents and Draft PPP Contract to Pre-Qualified Bidders	

Pre-bid conference	
Bid Submission Date	
Issuance of Notice of Award	

3.2.3. The actual schedule may be changed by the IA at any time without incurring any liability to prospective bidders or prequalified bidders. Prospective bidders and Pre-Qualified Bidders shall be notified by the IA of any changes in the indicative milestone dates through issuance of bulletins that will be published in the IA's and MEF's websites [insert website addresses] and by email to those prospective bidders that have purchased the prequalification documents.

3.2.4. The general procedure for the bidding will be as follows:

- (a) The IA will conduct a Prequalification Conference for prospective bidders to clarify any part of the Invitation Documents and answer any relevant questions. The Prequalification Conference will be held at a location to be advised by the IA in a subsequent bid bulletin on the date indicated in the table above. Additional details of the Prequalification Conference, if any, will be provided for in a bulletin to be issued by the IA.
- (b) The IA will conduct the Prequalification of Prospective Bidders who submit their Prequalification Documents prior to the prescribed Prequalification Documents Submission Date. The IA will undertake the evaluation in accordance with the criteria specified in the Prequalification Documents and issue a Notice of Prequalification to all the Prospective Bidders who have met the qualification requirements. Disqualified Bidders shall likewise be informed in writing stating therein the grounds for their disqualification. Only Pre-Qualified bidders will be invited and allowed to bid for the Project.
- (c) In the second stage, the IA will issue the Request for Bid (RFB) and draft PPP Contract to all the Pre-qualified Bidders. The ITB will provide in detail the form and required contents of the Bids and detailed instructions and procedures to be followed for bid submission and evaluation. The Prequalified Bidders will have an opportunity to comment on the draft PPP Contract. The IA may, consider these comments and refine the draft PPP Contract, if necessary, and in such cases the final draft PPP Contract will be provided to all the Pre-qualified Bidders which shall be the basis for their Bids.
- (d) The Pre-qualified Bidders will be invited to raise any questions and issues regarding the Project and the Bidding Process during the Pre-Bid Conference. In addition, the IA will make arrangements for Pre-qualified Bidders who wish to have one-on-one discussions regarding the Project.
- (e) After submission of the Bids, the IA will first open and review the Pre-qualified Bidders' Technical Proposals and evaluate them in accordance with the evaluation criteria prescribed in the ITB section of the Bidding Documents. The Pre-qualified Bidders will be informed as to whether their Technical Proposals were rated "pass". The IA will return the unopened Financial Proposals and Bid Securities of the Prequalified Bidders whose Technical Proposals were rated as "fail".

- (f) Financial Proposals of the Pre-Qualified Bidders whose Technical Proposals were rated “pass” will be opened on the time and date which will be informed to all these Prequalified Bidders by the IA. The evaluation of the Financial Proposals will be based on the financial bid parameters and evaluation criteria specified by in the ITB section of the Bidding Documents. A Combined Evaluation taking into consideration the rated score for the Technical and Financial Proposals based on the weights assigned to them will be undertaken in accordance with the criteria specified in the Bidding Documents. The Pre-qualified Bidder whose Proposals were rated as the highest for the Combined Evaluation will be considered for award of the PPP Contract. The IA will issue the Notice of Award (NOA) to the Winning Bidder after obtaining all the necessary governmental approvals.
- (g) The Winning Bidder shall be invited for negotiation on the draft PPP Contract. The negotiation will be led by an inter-ministerial working group of the Government. On successful completion of the negotiation and after the Winning Bidder has satisfied the pre-conditions, if any, the PPP Contract shall be signed by the IA, the selected private partner, and counter-signed by the MEF.

### **3.3. Responsibilities of Prospective Bidders**

- 3.3.1. Notwithstanding any information given in the Invitation Documents and any additional communication from the IA including any notice and bid bulletins, it is the sole responsibility of the Prospective Bidder to:
  - (i) be fully acquainted with the legal requirements and conditions of the prequalification process.
  - (ii) examine all the Invitation Documents, including all instructions, annexes, forms, schedules, terms, specifications and drawings and verify the correctness, accuracy, completeness, and reliability of the information contained in these documents.
  - (iii) familiarize itself with all existing laws and regulations of Cambodia, whether national or local, that may affect the prequalification process and the Project.
  - (iv) determine and satisfy itself, at its own cost and risk, and by such means as it considers, necessary and desirable, as to matters pertaining to the execution of the Project and any risks and contingencies that may affect the Project.
- 3.3.2. The Prospective Bidders including any Consortium Members or Affiliates, shall not be entitled to and shall not make any claim against the IA or any other associated party whether on the basis of contract, quasi-delict, delict, or any other reasons, for damages, extensions of time or payments on the grounds:
  - (i) of any misunderstanding or misapprehension in respect of the Invitation Documents and the Project; or
  - (ii) that incorrect or insufficient information relating to the Invitation Documents and the Project was given by the IA.
- 3.3.3. By submitting the Prequalification Documents, a Prospective Bidder shall be presumed to have fully examined and accepted all the Invitations Documents.

**3.4. Costs and Expenses of Participation**

3.4.1. The Prospective Bidders shall bear all costs associated with or resulting from their participation in the Bidding Process including the preparation and submission of their Prequalification Documents. The IA, or other persons acting on its behalf, shall not be held responsible or liable in any way for such costs, losses or damages incurred by the Prospective Bidders whether incurred by it directly or indirectly, or by its advisors, contractors, affiliates, or other persons, regardless of the conduct or outcome of the Bidding Process.

**3.5. Queries and Supplemental Notices**

3.5.1. All parties who obtain the Prequalification Documents may send any queries on any aspect on such documents in writing, by personal delivery or email to the following:

Head of PMU: \_\_\_\_\_

Attention: \_\_\_\_\_

[Name of Project]: \_\_\_\_\_

[Name of IA]: \_\_\_\_\_

Government of the Kingdom of Cambodia

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

3.5.2. Prospective Bidders must use the template below for their queries/comments:

Date			
Prospective Bidder Name			
Topic	Name of Document & Section No. of the Document	Query/Comment	Proposal (if, any)

3.5.3. Although the IA will attempt to respond to all reasonable queries received before the Prequalification Documents Submission Date, it is under no obligation to do so. Responses to queries and any modifications to the ITPB will be made on a non-attributable basis, and shall be in writing and provided to all Prospective Bidders through supplemental notices or bid bulletins issued by the IA. All supplemental notices and bid bulletins issued by the IA shall be deemed to be incorporated in and made an integral part of the ITPB or the relevant Bidding Documents or both as applicable. Such supplemental bulletins shall also be published on the websites of the IA and the MEF.

**3.6. Ownership of the Documents**

3.6.1. Except for the Financial Proposals and the Bid Security that shall be returned to the Prospective Bidders whose Technical Proposals were deemed failed, all documents, including the Prequalification documents and their attachments, submitted by the Prospective Bidders in response to the Invitation Documents shall become the property of the IA and any information

obtained by the IA from such documents may be reasonably used by the IA subject to the confidentiality clause below.

### **3.7. Language and Foreign Documents**

3.7.1. The Prequalification Documents and all correspondence and documents relating to the Invitation Documents and the Bid shall be prepared and written in the English Language. Any printed literature or document furnished by the Prospective Bidders written in another language shall be accompanied by an English translation. In case of conflict, the English Language translation shall prevail.

### **3.8. Confidentiality**

3.8.1. The Invitation Documents provided by the IA are being made available to Prospective Bidders only in connection with the Project and may not be disclosed or used further than for purposes of bidding. Information relating to the examination, clarification, evaluation and comparison of the Prequalification Documents shall not be disclosed to any of the Prospective Bidders or other person not officially involved in the bidding process, provided that the IA shall not have the obligation to keep any information submitted by the Prospective Bidders confidential after award of the PPP Contract.

## **SECTION 4: PREQUALIFICATION REQUIREMENTS**

4.1. Prospective Bidders must fulfill all the legal, technical and financial capability qualification requirement listed below:

### **4.2. Legal Qualification Requirements**

4.2.1. The Prospective Bidder must be either:

- an individual, partnership, corporation or any other juridical entity and must be registered with the appropriate government agency in the country where the entity was registered for recognition or creation of its juridical person or capacity, or
- a Consortium whose members are individuals, partnership(s), corporation(s) or any other juridical entity(ies) and must be registered with the appropriate government agency in the country where the entity was registered for recognition or creation of its juridical person or capacity.

### **4.3. Technical Qualification Requirements**

4.3.1. The Prospective Bidder must meet all the Technical Requirements through nominated entity(ies) of up to two as provided below:

- the Prospective Bidders itself.
- a Consortium Member or
- a Contractor

### **4.4. Design and Construction (DC) Experience**

4.4.1. The Prospective Bidder must, within the past fifteen (15) years from the year of the Prequalification Documents Submission Date, have experience in all the following:

[LIST OUT ALL THE EXPERIENCE IN DESIGN, CONSTRUCTION AND OTHER AREAS]

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

4.4.2. The Prospective Bidder must nominate a Lead DC Member that satisfies at least one of the DC Experience criteria listed above. For the other criteria not satisfied by the Lead DC Member, the Prospective Bidder may nominate up to two entities to satisfy the remaining DC Experience criteria.

4.4.3. The entity(ies) whose completed projects are being submitted to fulfill the DC Experience requirements must certify that they have the following:

- (a) No unsatisfactory performance record
- (b) Valid ISO 9001/ISO 14001 certification or its equivalent
- (c) Valid license issued by an accreditation institution in the entity's country of origin
- (d) Operations and maintenance experience
- (e) Qualified Key Personnel
- (f) Financial Capability Qualification Requirements.

## SECTION 5: PREQUALIFICATION DOCUMENTS

5.1. The Application to Pre-Qualify consists of the following documents using the forms provided in the **List of Forms** attached to this **Annexure 3**:

5.2. Application to Pre-Qualify using **Form 1**

5.3. Authority to Apply to Pre-Qualify and Designation of the Authorized Representative.

- If the Prospective Bidder is a partnership or a corporation, it must submit an Authority to Apply to Pre-Qualify and Designation of Authorized Representative using **Form 2**.
- If the Prospective Bidder is a Consortium, each Consortium Member must submit an Authority to Participate in the Consortium and Authority to Apply to Pre-qualify and designation of the Authorized Representative of the Consortium using **Form 3**.

5.4. Business Structure, using **Form 4** for partnerships or corporations, or **Form 5** for Consortium

- For any Consortium, this document must show the Lead Member and all Consortium Members and the proposed equity interest of each Consortium with all Consortium Members holding collectively one hundred (100) percent of the equity interest in the Consortium.
- The Business Structure must also indicate the entities which fulfill the Technical and Financial Qualifications Requirements in Section 4, and any Affiliates of these entities whose projects, experience, or financial capability are being submitted to comply with the Qualification Requirements.
- If an Affiliate will be used to comply with the Financial Capability Qualification Requirements, evidence of the Affiliate.

5.5. Basic Information Sheet (BIS), using **Form 6**.

5.6. The BIS must be submitted by all entities identified in the Business Structure

- Required attachments for each entity in the Business Structure.
- Certified true copy of its incorporation/registration with the appropriate authority of the entity's country.



- Certified true copy of its Articles of Incorporation or Articles of Partnership and
  - Certified true copy of the By-Laws
- 5.7. Certificate of Absence of Unsatisfactory Performance Record using **Form 7**.
- 5.8. Design and Construction Experience using **Form 8**.
- 5.9. This must be submitted by the entity or entities proposed to meet the DC Experience, as identified in the Business Structure.
- 5.10. For each entity required to submit this document, the following attachments must also be submitted:
- Certificate of project completion from the project's owner or the original certificate of project completion or a copy thereof accompanied by a certification issued by an officer of entity proposed to meet the DC experience that such copy is a true and faithful representative of the original certificate.
  - Certified true copy of a valid ISO 9001/ISO 14001 certification or its equivalent.
  - Statement of Willingness to participate in and capacity to undertake the construction requirements of the Project, and commitment to enter into an agreement with the Private Partner to undertake the construction of the project using **Form 9**.
- 5.11. Operations and Maintenance Experience, using **Form 10**.
- 5.12. This must be submitted by the entity proposed to meet the O&M Experience, as identified in the Business Structure.
- 5.13. The entity required to submit this document must also submit certification from the project owner that the installation has been operated and maintained by the entity for at least three consecutive years within the last seven years, or, in the case of a PPP Contract, or a similar contract, a certificate issued by the project owner stating that (i) that the installation has been operated and maintained by the entity for at least three consecutive years within the last seven years and (ii) the duration of the PPP Contract.
- 5.14. The entity required to submit this document must attach the following:
- Operation Reports issued by the entity. These reports should be certified by the project owner as being accurate records of the operations stated.
  - Certified true copy of a valid ISO 9001/ISO14001 certification or its equivalent.
  - Statement of Willingness to participate in, and capacity to undertake the O&M Requirements of the Project and commitment to enter into an O&M agreement/contract of the project using **Form 11**.
  - Key Personnel, using **Form 12**. This is a list of the key personnel who will fulfill the requirements of Section 4 of this ITPB. More than one name may be submitted for each position.
- 5.15. Statement of Financial Capability, using **Form 13**.
- 5.16. This must be submitted by the Prospective Bidder or its affiliate which fulfills the Financial Capability Qualification Requirements in Section 4 of this ITPB as identified in the Business Structure. If the prospective Bidder is a Consortium, this must be submitted by each financial member of the Consortium.
- 5.17. This document must be submitted together with the following required attachments:
- Certified true copy of audited financial statements which must be for immediate past three years. The certification may be issued by the auditor engaged by the entity proposed to meet the Financial Capability Qualification Requirements and

- A testimonial letter from a reputable commercial bank that the Prospective Bidder or any of its Affiliates or the financial member (s) in case of a Consortium, is banking with them and that it has good financial standing and qualified to obtain credit facilities from such bank using **Form 14**.

## SECTION 6: ONE PROSPECTIVE BIDDER ONE SUBMISSION

- 6.1. A Prospective Bidder must submit only one application to pre-qualify and bid. A Prospective Bidder or consortium member may not be a member of another Consortium, nor have an affiliate which is a member of another Consortium. A Prospective Bidder or Consortium Member, Lead DC Member or Lead O&M Member may not be proposed as a Contractor, Lead DC Member, or Lead O&M Member of another Prospective Bidder. Contractors may be nominated by more than one Prospective Bidder unless such Contractors are a Prospective Bidder, Consortium Member, Lead DC Member or Lead O&M Member. Any Prospective Bidder found to have violated these restrictions shall be disqualified.
- 6.2. In addition, there are restrictions on the extent of affiliation and ownership between Prospective Bidders and Members of different Consortia. These are provided in greater detailed in Section 11 of this ITPB.

## SECTION 7: SUBMISSION OF PREQUALIFICATION DOCUMENTS

### 7.1. **Format for Submission of Prequalification Documents**

- (i) Each page of each Prequalification Documents, including any required attachment shall be initialed on the right margin by the Prospective Bidders' authorized representative as identified in **Form 2 or Form 3**.
- (ii) Prequalification Documents must be printed in standard A4 or letter size and bound together in ring binder or folder of appropriate size. Each page must be continuously numbered in sequence and the text must be of at least 12 font sizes, where possible.
- (iii) Prospective Bidders shall submit the Prequalification Documents in the following form:
  - One (1) complete original set, initialed on the right margin of every page by the Prospective Bidder's authorized representative as identified in **Form 2 or Form 3**, clearly marked on each page as "ORIGINAL"
  - Five (5) photocopies clearly marked on each page as "COPY No. \_" and at least five (5) readable compact discs or external drive, each containing electronic files of all the Prequalification Documents in Portable Document Format (pdf) and electronic file of all the attachments of each Prequalification Document also in pdf format.
  - Each set of the Prequalification Documents should contain a table of contents. Each set of the Prequalification Documents must be placed in separate envelopes. The five CD-Rs or external drives should also be placed in a separate envelope. Each of the five envelopes containing the Prequalification Documents and the envelope containing the five CD-Rs or external drives must be sealed and appropriately addressed and marked as follows:

GOVERNMENT OF THE KINGDOM OF CAMBODIA

NAME OF IA

PROJECT NAME

PREQUALIFICATION DOCUMENT – {ORIGINAL / COPY ( ) /CD-Rs

NAME AND ADDRESS OF THE BIDDER

DO NOT OPEN UNTIL (Prequalification Document Submission Date)

- 7.1.1. All six (6) sets of the Prequalification Documents and the envelope containing the CD-Rs or external drives shall be placed in one or, if necessary, more sealed outer envelope(s) or box.
- 7.1.2. If any of the envelopes are not properly sealed and marked as instructed above, the IA shall not assume any responsibility for the loss of the Qualification Documents.

## **7.2. Procedures for Submission of Prequalification Documents**

- 7.2.1. The Prospective Bidders are required to submit their Prequalification Documents to:  
Head:  
Project Management Unit:  
[insert the name of the Project]:  
[insert name of IA]:  
[insert IA's Address]:
- 7.2.2. The Prequalification Documents must be submitted no later than [insert submission deadline Date and Time]. The Prequalification Documents submitted by the Prospective Bidders shall be numbered in the order received and stamped with time of receipt. In addition, the receipt of the Prequalification Documents will be recorded in a register in the order of receipt specifying the date, time and name of the Prospective Bidder.

## **SECTION 8: OPENING OF PREQUALIFICATION DOCUMENTS**

### **8.1. Opening of Envelopes**

- 8.1.1. Immediately after the deadline on the Prequalification Document Submission Date, the IA will proceed with the opening the submission of each Prospective Bidder, one at a time, in the order in which the same were received. The duly authorized representative for each Prospective Bidder who attends the opening proceeding shall sign the register confirming attendance. There will be no discussions on the submissions except to confirm that they have been received.

### **8.2. Evaluation of Documents**

- 8.2.1. The IA will examine the Qualification Documents submitted by the Prospective Bidders for compliance with the Legal, Technical and Financial Capability Qualification Requirements for the Project solely based upon criteria provided in the Prequalification Documents. The IA reserves the right to seek clarifications from Prospective Bidders on the form and contents of their Qualification Documents.
- 8.2.2. The IA also reserves the right to make enquiries with any person, government authority, client, and organization, Consortium Member, officer, director or other agent of any Prospective Bidder for the purpose of clarifying any matter included in its Prequalification Documents.
- 8.2.3. All submitted information and any clarification requested by the IA shall be assessed against the criteria for qualification as set out in Section 4 of the ITPB and the documents required in Section 5 of the ITPB and rated on a "pass or fail" basis. The overall rating for the evaluation will be qualified if each criterion is rated "pass" and all the required Prequalification Documents

and attachments are submitted in full and the form prescribed. A Prospective Bidder will be disqualified if any criterion is rated “fail “or if any required Prequalification Document or attachment is missing without prejudice to the right of the IA to waive minor defects under Section 13 of the ITPB hereof.

### 8.3. Other Grounds for Disqualification

- (a) In addition to the grounds described in Section 9 of the ITPB, a Prospective Bidder may also be disqualified from participation in the Bidding for any of the following reasons.
- (i) Late submission of Prequalification Documents
  - (ii) Material or willful misrepresentation in the prequalification process
  - (iii) Any corrupt, fraudulent, collusive, coercive, undesirable or restrictive practices in the prequalification process
  - (iv) Any form of lobbying with respect to the prequalification process
  - (v) Illegal conduct or attempt to influence the IA’s evaluation of the Qualification Documents or the prequalification process
  - (vi) Any conflict of interest that would give it any unfair advantage in the prequalification process, as defined in Section 10 of this document
  - (vii) Failure to comply with any of the terms, conditions and instructions prescribed in the Invitation Documents
  - (viii) Any outstanding dispute which may pose a substantial risk to the completion of Project
  - (ix) Other grounds for rejection or disqualification of Prospective Bidders under Cambodia Laws or Regulations.
- (b) The grounds for disqualification in this Section 8.3 shall also apply to all Consortium Members (in case the Prospective Bidder is a Consortium), and any Affiliates or Contractors proposed by the Prospective Bidder to fulfill any of the Prequalification Requirements.

## SECTION 9: CORRUPT, FRAUDULENT, COLLUSIVE, COERCIVE, UNDESIRABLE AND RESTRICTIVE PRACTICES

9.1. For purposes of the Invitation Documents, the following terms shall have the meanings as follows:

- **Coercive Practice** means impairing or harming or threatening to impair or harm, directly or indirectly, or exercising undue influence upon any person or property in order to influence any person’s participation in the Bidding Process or affect the execution of the PPP Contract.
- **Collusive Practice** means a scheme or arrangement between two (2) or more Prospective Bidders, with or without the knowledge of the government, designed to restrict competition or establish financial offers or price at artificial, non-competitive levels.
- **Corrupt Practice** means any of the prohibited act and omissions punishable under the Cambodian laws, by which a person improperly and unlawfully enriches or benefits himself or others, or induce others to do so, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any person connected with the Bidding Process.
- **Fraudulent Practice** means any act, scheme, plan, or agreement such as forming a group, clique, cartel trust, syndicate, combine pool and the like or arriving at any

understanding or arrangement among Prospective Bidders, Consortium members, or their Affiliates of any of these entities, with the objective of restricting, subverting, or manipulating a full and fair competition in the Bidding Process.

- **Undesirable Practice** mean (i) establishing contract with any person connected with or employed or engaged by the IA with the objective of canvassing or lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process.
- 9.2. Aside from being disqualified from the Bidding, any person found to be engaging in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable or Restrictive Practices shall incur civil and criminal liability under the Applicable Laws and shall be prohibited from participating in any future bidding conducted by the Government of the Kingdom of Cambodia for a period to be determined by the Government.

## SECTION 10: CONFLICT OF INTEREST

- 10.1. Prospective Bidders and Consortium Member (if the Prospective Bidder is a Consortium) including their Affiliates, must not have any Conflict of Interest. The Assessment of the existence of a Conflict of Interest shall be based on the specific facts of each case.
- 10.2. Without limiting the generality of what would constitute a Conflict of Interest, any of the following shall be considered a Conflict of Interest because they constitute overt acts or situations which indicate collusion between two (2) or more Prospective Bidders.
- 10.3. A Prospective Bidder or any Consortium Member, or any of their Affiliates (of either a Prospective Bidder or of the Consortium) or an Affiliate is a Member of another Consortium.
- 10.4. A Prospective Bidder or any Consortium Member has ownership interest in any other Prospective Bidder, or Consortium Member of any other Prospective Bidder.
- 10.5. A member of the Board of Directors, partner, officer, employee, professional advisor or agent of a Prospective Bidder, any Consortium Member, or any of their Affiliates (of either the Prospective Bidder or any of its Consortium Members) and who is directly involved in any capacity related to the Bidding Process for the Project is also involved in directly with any other Prospective Bidder, any other Consortium Member of any Prospective Bidder or any of Affiliates (of either the Prospective Bidder or any of its Consortium Members), during the course of the Bidding Process, provided, however, that in relation to professional advisors, there shall be no Conflict of Interest if prior written disclosure is submitted by such professional advisor to its client, the Prospective Bidders and the IA, together with a Conflict of Interest management plan which must be approved by the IA.
- 10.6. For purposes of this section and without limiting the discretion of the IA to determine what constitutes Conflict of Interest, “direct involvement” shall mean actual participation in the deliberation and decision making for the Bidding Process that would give the director, partner, officer, employee knowledge/information regarding the Bids of the Prospective Bidders and that will allow such director, partner officer, employee to influence the Bids.
- 10.7. Without limiting the generality of what constitutes a Conflict of Interest, any of the following shall be considered a conflict of interest because of the engagement by the IA of a Prospective Bidder in the following circumstances:
- 10.8. A Prospective Bidder, any of its Consortium Members, any of its proposed Contractors, or any Affiliate of any of these entities, has been directly engaged as a consultant by the IA in the preparation of the Bidding Documents or the design or technical specifications of the Project; or

- 10.9. A Prospective Bidder, any of its Consortium Members, or any Affiliate of any of these entities engages any legal, financial or technical advisor that the IA engaged in relation to the Project or anyone who was an employee of the IA less than one (1) year before his or her engagement by the Prospective Bidder, any of its Consortium Member, any of the proposed Contractors or any Affiliate of any of these entities, with respect to the Bidding of the Project.
- 10.10. If at any time prior to the signing of the PPP Contract, any Prospective Bidder, Consortium Member, or any of these entities, is found to have a Conflict of Interest as defined in Section 10 (Conflict of Interest) of the ITPB, it shall be disqualified from further participation in the Bidding process. If the Conflict of Interest involves another Prospective Bidder, then both Prospective Bidders shall be disqualified.
- 10.11. Unless the Invitation Documents specify otherwise, the same Contractor may be proposed by more than one Prospective Bidder provided that such Contractor is not a Prospective Bidder, Consortium Member or Affiliate of the Prospective Bidder or Consortium Member, or designated as the DC Member or the Lead O&M Member.

## SECTION 11: LOCK – UP RULES

11.1. The following rules shall (Lock-up Rule) apply from the Prequalification Documents Submission Date to the Bid Submission Date (lock-up period):

### 11.2. Corporation and Partnership

- (a) For a Pre-qualified Bidder which is a corporation or partnership, no restrictions shall be imposed on the ownership structure of such a Pre-qualified Bidder, subject to existing Laws.
- (b) However, if a Pre-qualified Bidder which is a corporation or partnership, proposes an Affiliate to meet any of the Prequalification Requirements, the proposed Affiliate cannot be replaced.

### 11.3. Consortium

- (a) A Consortium Member may leave the Consortium but may not be replaced by any other entity (Withdrawal/Withdraw) unless otherwise permitted in this Section 12 of the ITPB and subject to the following conditions.
- (b) A Consortium Member may be replaced by another entity not previously identified in the Consortium Business Structure (Form 5) (Substitution) subject to the following conditions:
  - (1) If the Consortium Member leaving the Consortium is a Financial Member, then either (i) the substitute Consortium Member must become a Financial Member and met the Financial, Capability Qualification Requirements previously satisfied by the withdrawing Consortium Member and satisfy the Legal Qualification Requirements, or (ii) the remaining Financial Member(s) of the Consortium must meet the Financial Capability Qualification Requirements, provided that the Consortium must have one Financial Member with an equity interest in the Prospective Bidder of at least thirty four (34) percent.
  - (2) If the Consortium Member leaving the Consortium is the only entity which was proposed to meet the Technical Qualification Requirements, then the substitute Consortium Member must meet all Technical Qualification Requirement previously satisfied by the withdrawing Consortium Member and satisfy the Legal Requirements.
  - (3) The substitute Consortium Member must not be another Prospective Bidder, Consortium Member or Affiliate of any other prospective Bidder or Consortium Member; and



- (4) Any Consortium Member other than the Lead Member can be substituted by another entity except where there are two (2) Lead Members in which case one Lead Member is allowed to leave. The substitute Lead Member must have the same or better qualifications in all respects as those of the Lead Member it is replacing.
  - (c) Any Consortium Member, whether proposed or not to meet the Technical or Financial Qualification Requirements, can increase or reduce its committed percentage equity in the Prospective Bidder as specified in the Business Structure (Form 5).
- 11.4. In the event of a withdrawal, submission, or change in equity interest in the Private Partner, the following requirements must be met:
- (a) A Pre-qualified Bidder may only submit a single application with the IA during the Lock-up Period for all changes in the composition of the Consortium or in the proposed equity structure of the Private Partner. The application must be submitted to the IA within sixty (60) days from the date of the Pre-qualified Bidder's receipt of the Notice of Prequalification. Together with its application, the Pre-qualified Bidder shall submit the relevant Prequalification Documents which must be revised to reflect the changes.
  - (b) If the proposed change is not approved by the IA, the applying Pre-qualified Bidder may revert to the original Consortium composition or the proposed shareholding structure, as provided in its Qualification Documents.
- 11.5. Any violation of the Lock-up Rule may be a ground for disqualification from the Bidding process.
- 11.6. For avoidance of doubt, the entity proposed to meet the Technical Qualification Requirements under Section 4 of a Consortium or Prospective Bidder which did not pre-qualify is allowed to participate, can join as a substitute for any other Pre-qualified Bidder provided that such entity did not cause the disqualification of the Consortium or Prospective Bidder.

**12. SECTION 12: NOTIFICATION OF RESULTS OF EVALUATION OF PREQUALIFICATION DOCUMENTS**

- 12.1. On completion of the evaluation of the Prequalification Documents, the IA will notify all Prospective Bidders whether they have passed the Prequalification stage. All Prospective Bidders which passed the Prequalification stage shall be known as Pre-qualified Bidders.
- 12.2. Only Pre-qualified Bidders will be allowed to access the following Bidding Documents:
- Instruction to Bidders, which will give detailed information about the requirements for the preparation of Bids
  - The draft PPP Contract
  - Business Case/Feasibility Study
  - The Minimum Performance Standards and Specifications (MPSS), which will set out the technical requirements for the commissioning/construction, operations and maintenance of the Project throughout the PPP Contract Period
  - Other technical documents prepared by on behalf of the IA.

**SECTION 13: RIGHT TO REJECT PREQUALIFICATION DOCUMENTS,  
WAIVE MINOR DEFECTS AND NOT PROCEED WITH THE BIDDING AND  
INTERPRETATION OF BIDDING RULES**

13.1 The IA reserves the right to accept or reject all or any Application to Pre-Qualify without assigning any reason whatsoever. The IA reserves the right to waive any minor defects in the Applications to Pre-qualify or Bids. At any time, the IA reserves the right not to proceed with the Bidding Process and the execution of the PPP Contract without prior notice or liability and without any obligation to give any reason not to proceed.



**Appendix to the Annexure 3  
List of Forms**

(Sample Forms)

<b>1</b>	Application to Prequalify
<b>2</b>	Authority to Apply to Pre-Qualify and Designation of Authorized Representative
<b>3</b>	Consortium Member's Authority to Participate in Consortium and Apply to Pre-qualify, and Designation of Financial Member/s, Lead Member and Authorized Representative of Consortium
<b>4</b>	Business Structure (for a Prospective Bidder which is a Partnership or Corporation)
<b>5</b>	Business Structure (for a Prospective Bidder which is a Consortium)
<b>6</b>	Basic Information Sheet
<b>7</b>	Certification of Absence of Unsatisfactory Performance Record
<b>8</b>	Design and Construction Experience
<b>9</b>	Statement of Willingness to Participate in, and Capacity to Undertake the Construction Requirements of the Project, and Commitment to Enter into an Agreement with Private Partner to the Undertake the Construction of _____Project
<b>10</b>	Operation and Maintenance Experience
<b>11</b>	Statement of Willingness to participate in, and Capacity to Undertake the O&M Requirements of the Project, and Commitment to enter into an O & M Agreement with Private Partner to the Undertake the O & M of _____Project
<b>12</b>	Key Personnel
<b>13</b>	Notarized Statement of Financial Capability
<b>14</b>	Form of Bank Testimonial

Letterhead

**FORM 1**

**APPLICATION TO PREQUALIFY**

**Name of Project/Bid Reference Number:**

Name: [Head of PMU]

Name of IA:

Address:

I (name) (citizenship), of legal age, with an office address at (address), as the authorized representative of name (name of Prospective Bidder) a [(corporation/partnership or Consortium) (organized and existing under and by virtue of the laws of (place of incorporation/registration)], or organized by agreement among its Consortium Members), as indicated by the authorization certificate attached as **Form 2** (for a partnership or corporation): Authority to Apply to Pre-Qualify and Designation of Authorized Representative and **Form 3** (for a Consortium Prospective Bidder, to be submitted by each Consortium Member): Consortium Member's Authority to Participate in Consortium and Apply to Pre-Qualify and Designation of Lead Member, Financial Member/s and Authorized Representative of Consortium], after having been duly sworn according to law, hereby certify for and on behalf of (name of Prospective Bidder) that:

1. In accordance with the Qualification Documents for \_\_\_\_\_ Project (hereinafter referred to as the "Project", the (name of Prospective Bidder), a (partnership/corporation/Consortium) with business address at (business address), is applying to pre-qualify and bid for the Project and submits its Qualification Documents.
2. (Name of Prospective Bidder) confirms that all statements made and the information and documents provided in its Qualification Documents, including statements made by all consortium Members and their Affiliates in an any of the Qualification Documents, are true and correct, and any misrepresentation or false statement made therein shall be a ground for its disqualification.
3. (Name of prospective Bidder) authorizes the (name of IA) to conduct any inquiries or investigations to verify the statements, documents, and information submitted in its Qualification Documents, and information submitted in its Qualification Documents, and seek clarification from the Prospective Bidder and, as applicable, any of its board of directors, partners, Consortium Members, Affiliates, Contractors, advisors, clients or bankers regarding any legal, technical and financial aspects. (name of Prospective Bidder) also permits third parties to supply information required to verify statements and information submitted in its Qualification Documents.
4. (Name of Prospective Bidder) acknowledges the right of (name of IA) to reject its Qualification Documents without assigning any reason and to cancel the Bidding Process at any time, without incurring any liability, and accepts all the terms and conditions of the Invitation Documents.
5. (Name of Prospective Bidder), including the entities it has identified to comply with the Qualification Requirements under the Invitation Documents, have not at any time engaged in any Corrupt, Fraudulent, Coercive, Undesirable, or Restrictive Practices, nor have Conflict of Interest.
6. (Name of Prospective Bidder) waives any right to and shall not seek or obtain any restraining order, writ of injunction or prohibition or any other form of coercive judicial, quasi-judicial or administrative writ, process or issuance against to restrain, prevent,

suspend, or in any manner forestall, hinder or render inconvenient the Bidding Process. (name of Prospective Bidder) acknowledges that the (name of IA) is conducting this Bidding Process in the performance of its functions to ensure the provision of critical basic necessity and that, therefore, the Project is of paramount public interest and importance and that the (name of IA) will suffer serious and irreparable damage on account of any breach of these undertakings which shall result in (name of Prospective Bidder)'s automatic disqualification from the Bidding.

*Capitalized term used herein but not defined herein will have the meaning assigned to such term in the relevant Invitation Document.*

Date and Place of Execution:

For and on behalf of (Name of Prospective Bidder):

Name of Consortium/List of Consortium Members:

(Signature of Authorized Representative) and Seal/Stamp  
\_\_\_\_\_

Name:

Designation:

Date:

Letterhead

FORM 2

**AUTHORITY TO APPLY TO PRE-QUALIFY AND DESIGNATION OF  
AUTHORIZED REPRESENTATIVE**

(To be submitted by a Prospective Bidder which is a partnership or corporation)

I, (name of corporate secretary or equivalent officer), after having been duly sworn according to law, hereby depose and state that:

1. I am (state nationality) citizen, of legal age and a resident of \_\_\_\_\_
2. I am the duly elected (corporate secretary or equivalent officer) of (name of respective Bidder) (the "**Prospective Bidder**"), a (corporation/partnership) organized and existing under and by virtue of the laws of (the place of incorporation);
3. At a (regular/special) meeting the (board of directors/partners) of the Prospective Bidder, held on (date) at (place), in which meeting a quorum was present and acting throughout, the following Resolution were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that (name of Prospective Bidder) be, and is, authorized to participate in the Bidding Process for the \_\_\_\_\_ Project ("Project") and to apply for Prequalification as a Pre-Qualified Bidder for the Project.

RESOLVED FURTHER, that (name of representative) is hereby appointed as the authorized representative of the Prospective Bidder during Prequalification, authorized to execute, sign, submit and receive documents for, and otherwise act in the name of the Prospective Bidder.

RESOLVED, FINALLY, that any and all acts done or performed by (name of representative) under and by virtue of this Resolution be, as they are hereby, confirmed and ratified.

4. These Resolutions have not been revoked, amended or modified and remain valid and binding on the Prospective Bidder and
5. The above Resolutions are in accordance with the records of the Prospective Bidder.

(Signature of Corporate Secretary or  
Equivalent Officer)  
\_\_\_\_\_

Name:

Designation: Corporative Secretary or Equivalent Officer

Date of Execution:

Place of Execution:

Letterhead

**FORM 3**

**CONSORTIUM MEMBER'S AUTHORITY TO PARTICIPATE IN CONSORTIUM AND APPLY TO PRE-QUALIFY, AND DESIGNATION OF FINANCIAL MEMBER/S, LEAD MEMBER AND AUTHORIZED REPRESENTATIVE OF CONSORTIUM**

(For a Prospective Bidder which is a Consortium, to submitted by each Consortium Member)

Each Consortium Member must submit Form 3.

I, (corporate secretary or equivalent officer), after having been duly sworn according to law, hereby depose and state that:

1. I am a (state nationality) citizen, of legal age and a resident of \_\_\_\_\_
2. I am the duly elected (corporate secretary or equivalent officer) of (Consortium Member, a (corporative/partnership) at (place), in which meeting a quorum was present and acting throughout, the following Resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that the (Consortium Member) be, and is, authorized to participate, through a Consortium consisting of the following Members and their respective nationalities and percentage interests in the Consortium, in the Bidding Process for the \_\_\_\_\_Project ("Project") and to apply for Prequalification of Prospective Bidders for the Project:

Name of Consortium Member	Nationality	% Interest

RESOLVED FURTHER, that the (Consortium Member) in the exercise of its interest in the Consortium hereby:

- (a) Designates (name of Lead Member of Consortium) as Lead Member of the Consortium with the authority to represent the Consortium during the Prequalification of Prospective Bidders for Project.
- (b) Designates (each of name of Financial Member/s of Consortium) as a Financial Member of the Consortium.
- (c) Authorizes (name of authorized representative) of (name of Lead Member of Consortium) as representative of the Consortium during the Prequalification of Prospective Bidders for the Project, and for such purpose shall have the authority to execute, sign, submit and receive documents for, and otherwise act in the name of the Consortium.

RESOLVED, FURTHER, that any and all acts done or performed by (name of Lead Member of Consortium) and (name of authorized representative) under and by virtue of this Resolution be, as they are hereby, confirmed and ratified.

RESOLVED, FURTHER, that in the event the Consortium is declared as the Winning Bidder, the (Consortium Member) will cooperate with the other Consortium Members to register a domestic corporation in accordance with the relevant laws of the Kingdom of Cambodia and

such corporation shall undertake to bind itself to be liable for the obligations of the Private Partner under the PPP Contract.

RESOLVED, FINALLY, that until the PPP Contract has been awarded and the domestic corporation has been formed, the (Consortium Member) binds itself jointly and severally for all the under the Instructions to Prospective Bidder and the obligations of the Pre-Qualified Bidder under the Instructions to Bidders, and those of the Private Partner under the PPP Contract, as may be applicable.

4. These Resolutions have not been revoked, amended or modified and remain valid and binding on the (Consortium Member); and
5. The above Resolutions are in accordance with the records of the (Consortium Member).

*Capitalized terms used herein but not defined herein will have the meaning assigned to such term in the relevant Invitation Document.*

(Signature of Corporative Secretary or Equivalent Officer)

---

Name:

Designation: (Corporative Secretary or Equivalent Officer)

Date of Execution:

Place of Execution:

**FORM 4**

**BUSINESS STRUCTURE (FOR A PROSPECTIVE BIDDER WHICH IS A PARTNERSHIP OR CORPORATION)**

**1. Name of Prospective Bidder:**

**2. Contact Information of Prospective Bidder:**

a. Address	
b. Website	
c. Name of Contract Person	
i. Telephone	
ii. Fax	
iii. E-mail	

**3. Entity/Entities which fulfills the Design and Construction (DC) Experience**

<b>Lead DC Member</b>	
a. Name of Entity	
b. DC Experience	
c. Relationship to the Prospective Bidder	
d. Net worth	
e. Address	
f. Website	
g. Name of Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

**Other DC Experience**

a. Name of Entity	
b. Relationship to the Prospective Bidder	
c. DC Experience	
d. Net worth	
e. Address	
f. Website	
g. Name of Contact Person	

i. Telephone	
ii. Fax	
iii. E-mail	

**4. Entity/Entities which fulfills the O&M Experience**

a. Name of Entity	
b. Relationship to the Prospective Bidder	
c. O & M Experience	
d. Net worth	
e. Address	
f. Website	
g. Name of Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

**5. Entity/Entities which fulfills the Financial Capability Qualification Requirements**

a. Name of Entity	
b. Relationship to the Prospective Bidder	
c. Net worth	
d. Address	
e. Website	
f. Name of Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

**Affiliate/s, if any, of the entity nominated by the Prospective Bidder to satisfy the Financial Capability Qualification Requirements.**

a. Name of Affiliate	
b. Net worth	
c. Address	
d. Website	



e. Name of Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

(Signature of Corporative Secretary or Equivalent Officer)

\_\_\_\_\_

Name:

Designation: (Corporative Secretary or Equivalent Officer)

Date of Execution:

Place of Execution:

**FORM 5**

**BUSINESS STRUCTURE (FOR A PROSPECTIVE BIDDER WHICH IS A CONSORTIUM)**

**1. Consortium Members**

	Lead Member	Lead Member/Other Member	Other Member	Other Member
Name				
Percentage Interest in the Consortium				
Type of Legal Entity (corporation)				
Role in Consortium				

**2. Contact Information of Consortium Members**

a. Lead Member	
b. Address	
c. Website	
d. Name of Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

a. Lead Member	
b. Address	
c. Website	
d. Name of Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

a. Member	
b. Address	
c. Website	
d. Name of Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

[Note: If there are more Consortium Members, replicate table above.]

**3. Entity which fulfills the DC Experience**

<b>Leader DC Member</b>	
a. Name of Entity	
b. Relationship to Prospective Bidder	
c. DC Experience	
d. If Contractor, Consortium Member to which it is related	
e. Net worth	
f. Equity interest in the Consortium	
g. Address	
h. Website	
i. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

**Nominated Entity or Entities for other DC Experience**

a. Name of Entity	
b. Relationship to Prospective Bidder	
c. DC Experience	
d. If Contractor, Consortium Member to which it is related	
e. Net worth	
f. Equity interest in the Consortium	
g. Address	
h. Website	
i. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

a. Name of Entity	
b. Relationship to Prospective Bidder	
c. DC Experience	
d. If Contractor, Consortium Member to which it is related	
e. Net worth	
f. Equity interest in the Consortium	
g. Address	
h. Website	
i. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

**4. Entity which fulfills the O&M Experience**

<b>Leader O&amp;M Member</b>	
a. Name of Entity	
b. Relationship to Prospective Bidder	

c.	If Contractor, Consortium Member to which it is related	
d.	Address	
e.	Website	
f.	Contact Person	
	i. Telephone	
	ii. Fax	
	iii. E-mail	

**Nominated Entity/ies for Long-Haul O&M Experience**

a.	Name of Entity	
b.	Relationship to Prospective Bidder	
c.	If Contractor, Consortium Member to which it is related	
d.	Address	
e.	Website	
f.	Contact Person	
	i. Telephone	
	ii. Fax	
	iii. E-mail	

a.	Name of Entity	
b.	Relationship to Prospective Bidder	
c.	If Contractor, Consortium Member to which it is related	
d.	Address	
e.	Website	
f.	Contact Person	
	i. Telephone	
	ii. Fax	
	iii. E-mail	

**5. Consortium Member/s which fulfill/s the Financial Capability Qualification**

a.	Name of Entity	
b.	Relationship to Prospective Bidder	
c.	If Contractor, Consortium Member to which it is related	
d.	Address	
e.	Website	
f.	Contact Person	
	i. Telephone	
	ii. Fax	
	iii. E-mail	

a.	Name of Entity	
b.	Relationship to Prospective Bidder	
c.	If Contractor, Consortium Member to which it is related	
d.	Address	
e.	Website	

f. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

**6. Affiliate/s, if any of a Consortium Member which fulfill/s the Financial Capability**

a. Name of Entity	
b. Relationship to Prospective Bidder	
c. If Contractor, Consortium Member to which it is related	
d. Address	
e. Website	
f. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

(Signature of Corporative Secretary or Equivalent Officer)

\_\_\_\_\_

Name:

Designation: (Corporative Secretary or Equivalent Officer)

Date of Execution:

Place of Execution:

## FORM 6

### BASIC INFORMATION SHEET

- a. To be submitted by all entities listed in all selection of the Business Structure (Form 4 or 5)
- b. Required attachments for all entities submitting this form:
1. Certified true copy of its latest General Information Sheet, Stamped “received” was registered for recognition or creation of its juridical personality or capacity. If it comes from the entity’s corporate secretary, the certification must be under oath and notarized. Further, if the foreign country does not require an equivalent document of the General Information Sheet, a notarized certification setting out the same or similar information executing by the corporate secretary of the foreign entity will suffice.
  2. Certified true copy of the Certificate of Incorporation submitted to and acknowledged by the appropriate Government Agency where the foreign entity was registered for recognition or creation of its juridical personality or capacity. The Certificate of Incorporation must be certified by government agency.
  3. Certified true copy of the latest Articles of Incorporation. The articles of Information may be certified either by the Government Agency or its equivalent in a foreign country, or by the entity’s corporate secretary. All certifications by the entity’s corporate secretary must be under oath and notarized.
  4. Certified true copy of the latest By-Laws or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate Government Agency where the foreign entity was registered for recognition or creation of its juridical personality or capacity, or by the entity’s corporate secretary. All certification by the entity’s corporate secretary must be under oath and notarized.

For the foreign documents, if the appropriate Government Agency equivalent to the Securities Exchange Commission Cambodia, in the foreign country does not stamp “received “or acknowledge the said document the entity’s corporate secretary may attest to such fact in a notarized certification.

1. Name of Entity	
2. Type of entity (please check one)	<input type="checkbox"/> Partnership <input type="checkbox"/> Corporation
3. Consortium Member or not? (please check one)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Affiliate of an entity listed in Form 4 or 5?	<input type="checkbox"/> Yes Affiliate of _____ <input type="checkbox"/> No
5. Place of Incorporation or Registration	
6. Year of Incorporation or Registration	
7. Principle Purposes or Business	

**5. Shareholder or Partner Information**

Name of Shareholder or Partner	Nationality	Percentage Total of Shareholding or Partnership Interest

(Insert rows as necessary)

**6. Information on beneficial owners who own more than five percentage (5%) beneficial interest:**

Name of Beneficial Owner	Nationality	Percentage Total of Beneficial Ownership

(Insert rows as necessary)

For and on behalf of (Name of Entity)

For and on behalf of (Name of Prospective Bidder/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)

(Signature of Authorized Representative)

\_\_\_\_\_

\_\_\_\_\_

(Name, Title, and date)

(Name, Title, and date)

**FORM 7**

**CERTIFICATION OF ABSENCE OF UNSATISFACTORY PERFORMANCE RECORD**

To be submitted by all entities listed in all sections of the Business Structure (Form 4 or Form 5)

Prospective Bidder	
Entity which fulfills a Qualification Requirement	
Qualification Requirement	
Relationship to Prospective Bidder	

**Certification of Absence of Unsatisfactory Performance Record**

I, (name), (citizenship), of legal age, with an office address at (address), as the (position/designation) of (name of company represented), a (corporation/partnership) organized and existing under and by virtue of the laws of (place of incorporation/registration) hereby certify, for and on behalf of (name of company represented), that (name of company represented) does not have any record of Unsatisfactory Performance in any of its projects and contractors.

For and on behalf of (name of entity)

Signature of Authorized Representative

Name:

Designation:

Date of Execution:

Place of Execution:



## FORM 8

### DESIGN AND CONSTRUCTION EXPERIENCE

To be submitted by each this fulfills the DC Experience requirement, as required attachments:

1. Secretary's Certificate stating that the authorized representative has been duly appointed by its board of directors.
2. Notarized certification of project completion from the project's owner or the original certification of project completion or a copy thereof accompanied by a notarized certificate issue by an officer of the entity which fulfills the DC Experience requirement that such copy is a true and faithful reproduction of the original certificate.
3. Only with respect to the entity or entities nominated to satisfy the DC Experience, such entity's certified true copy of a valid license issued by an accreditation institute in the Contractor's country of origin, in the case of a foreign Contractor, provided that such foreign Contractor must secure a license and accreditation from the appropriate institution after the Prospective Bidder is awarded the Project.
4. Certified true copy of valid ISO 9001/ISO 14001 certification or its equivalent, or in lieu therefore, a copy of the ISO 9001/ISO 14001 certification or its equivalent accompanied by a notarized certification issued by an officer of the entity required to submit this document that such copy is a true and faithful reproduction of the original ISO 9001/ISO 14001 certification or its equivalent.
5. Only with respect to the entity or entities nominated to satisfy DC Experience, such entity's certified true copy of a valid ISO 14001 certification or its equivalent, or in lieu thereof, copy of the ISO 14001 certification or its equivalent accompanied by a notarized certification issued by an officer of the entity required to submit this document that such copy is a true and faithful reproduction of the original ISO 14001 certification or its equivalent.

**Entity which fulfills the DC Experience requirement, as identified in the Business Structure (Form 4 or Form 5)**

DC Experience Enumerate	
Entity which fulfills DC Experience	
Relationship to Prospective Bidder	(Prospective Bidder/Consortium/Contractor)

**Description of Project**

Name of Project	
Location	
Description	
Date of Contract	
Nature of Involvement	
Client	
Cost of Contract	

Value of work completed and indicate percentage to total contract project cost	
Name of Entity which Completed the Project	

[Note; If more than one project is submitted, replicated table above]

For and on behalf of (name of entity)

For and on behalf of (Name of Prospective Bidder/if consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)

(Signature of Authorized Representative)

\_\_\_\_\_  
(Name, Title, and date)

\_\_\_\_\_  
(Name, Title, and date)

**FORM 9**

**STATEMENT OF WILLINGNESS TO PARTICIPATE IN, AND CAPACITY TO UNDERTAKE THE CONSTRUCTION REQUIREMENTS OF THE PROJECT, AND COMMITMENT TO ENTER INTO AN AGREEMENT WITH PRIVATE PARTNER TO THE UNDERTAKE THE CONSTRUCTION OF \_\_\_\_\_ PROJECT**

Note: To be submitted by each entity proposed by the Prospective Bidder to meet the DC Experience, as identified in the Business Structure (Form 4 or 5).

Prospective Bidder	
Entity which fulfills the requirement	
DC Experience	
Relationship to Prospective Bidder	

I, (name), (citizenship), of legal with an office address at (address), as the (position/designation) of (name of Consortium Member/Contractor), a (corporation/partnership) organized and existing under and by virtue of the laws of (place of incorporation/registration) hereby declare for and on behalf of (name of Consortium Member/Consortium) that:

1. Name of Consortium Member/Contractor) is willing to participate, through the (name of Prospect Bidder) in the bidding for the Project (hereinafter referred to as the "Project") in accordance with the Instruction to Prospective Bidders.
2. (Name of Consortium Member/Contractor) has the required experience and capacity to undertake the development requirements for the Project in accordance with the terms and condition of the Invitation Documents.
3. The information provided in Form 8 are true and correct.
4. If selected by (name of the IA), (name of consortium Member/Contractor) shall formally enter into a contract with (name of prospective Bidder) to undertake the construction of the Project in accordance with the terms and conditions of the PPP Contract.

For and on behalf of (Name of Entity)

(Signature of Authorized Representative)

\_\_\_\_\_

Name:

Designation:

Date of Execution:

Place of Execution:

**FORM 10**

**OPERATIONS AND MAINTENANCE EXPERIENCE**

**Required Attachments:**

1. Secretary’s Certificate stating that the authorized representative has been duly appointed by its Board of Directors.
2. Certification from the project owner that project has been operated and maintained by the entity for at least three (3) consecutive years within the last seven (7) years, reckoned from the Prequalification Documents Submission Date, or in the case of a PPP Contract or a similar contract, a certificate issued by the project owner stating (i) that the project has been operated and maintained by the entity for at least three (3) consecutive years within the last seven (7) years, reckoned from the qualification Documents Submission Date; and (ii) the duration of the PPP Contract.
3. Operations Report issued by the entity stating passenger volumes or other appropriate data for the relevant period. These reports should be certified by the project owner as being accurate records of the operations as stated.
4. Certified true copy of a valid ISO 9001/ISO 14001 certification, or in lieu thereof, a copy of the ISO 9001/ISO 14001 certification or its equivalent accompanied by a notarized certification issued by an officer of the entity required to submit this document that such copy is a true and faithful reproduction of the original ISO 9001/ISO 14001 certification or its equivalent.

---

**Entity which fulfills the O&M Experience requirement, as identified in the Business Structure (Form 4 or 5)**

1. Prospective Bidder	
2. Entity which fulfills the O&M Experience	
3. O&M Experience	
4. Relationship to Prospective Bidder	(Prospective Bidder / Consortium Member/ O&M Contractor)

For and on behalf of (Name of Prospective Bidder/if consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)

(Signature of Authorized Representative)

---

(Name, Title, and Date)

---

(Name, Title, and Date)

**FORM 11**

**STATEMENT OF WILLINGNESS TO PARTICIPATE IN, AND CAPACITY TO UNDERTAKE THE O&M REQUIREMENTS OF THE PROJECT, AND COMMITMENT TO ENTER INTO AN O&M CONTRACT WITH PRIVATE PARTNER TO THE UNDERTAKE THE O & M OF \_\_\_\_\_PROJECT**

Note: To be submitted by each entity proposed by the Prospective Bidder to meet the O&M Requirement, as identified in the Business Structure (Form 4 or Form 5). Form 10 shall be supported by notarized Secretary’s Certification stating that the authorized representative has been duly appointed by the Board of Directors.

Prospective Bidder	
Entity which fulfills the requirement	
O&M Experience	
Relationship to Prospective Bidder	

I, (name), (citizenship), of legal with an office address at (address), as the (position/designation) of (name of Consortium Member/Contractor), a (corporation/partnership) organized and existing under and by virtue of the laws of (place of incorporation/registration) hereby declare for and on behalf of (name of Consortium Member/Consortium) that:

1. (Name of Consortium Member/O&M Contractor) is willing to participate, through the (name of Prospect Bidder) in the bidding for the \_\_\_\_\_Project (hereinafter referred to as the “Project”) in accordance with the Instructions to Prospective Bidders.
2. (Name of consortium Member/O&M Contractor) has the required experience and capacity to undertake the development requirements for the Project in accordance with the terms and condition of Invitation Documents.
3. The information provided in Form 10 are true and correct.
4. If selected by (Name of the IA), (name of Consortium Member/O&M Contractor) shall formally enter into a contract with (Name of the Prospective Bidder) to undertake the operation and maintenance of the Project in accordance with the terms and condition of the PPP Contract.

For and on behalf of (Name of Entity)

(Signature of Authorized Representative)

\_\_\_\_\_

Name:

Designation:

Date of Execution:

Place of Execution:

**FORM 12**

**KEY PERSONNEL**

**Name of Prospective Bidder:**

Project Design/Construction Specialist: Must have minimum ten (10) years local or international experience in successfully completing the design or implementing the design, construction installation and commissioning.

Name	
Entity by whom this person is engaged or employed	
Relationship of this entity to the Prospective Bidder	

**Key Experience (add columns as necessary)**

Employer			
Position			
Start Date			
End Date			
Description of Project Undertaken			

**Education Background**

College Degree(s)	School:	Year Graduated:
Professional License	Year:	

Operations and Maintenance Specialist: Must have at least ten (10) years experience in the operations and maintenance of \_\_\_\_\_(Name of Project) System. Must have a relevant degree and recognized professional qualification in \_\_\_\_\_ Operations and Maintenance.

Name	
Entity by whom this person is engaged or employed	
Relationship of this entity to the Prospective Bidder	

**Key Experience (add columns as necessary)**

Employer			
Position			
Start Date			
End Date			
Description of Project Undertaken			

**Education Background**

College Degree(s)	School:	Year Graduated:
Professional License	Year:	

For and on behalf of (Name of Prospective Bidder/ if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)

---

Name:

Designation:

Date of Execution:

Place of Execution:

## FORM 13

### NOTARIZED STATEMENT OF FINANCIAL CAPABILITY

- a. To be submitted by the Prospective Bidder or an Affiliate, including any entity nominated by a Prospective Bidder to satisfy either the Experience, which fulfills the Financial Capability Qualification Requirements in **Section 4 of the ITPB in Annexure 3**, as identified in the Business Structure (Form 4 or Form 5) or by each Financial Member of a Consortium.
- b. Required Attachments:
  1. Certified true copy of audited financial statements for the years ending not earlier than 31 December xxxx for the past three years stamped “received” by the appropriate government agency in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity. The certification may be issued by an officer of the entity proposed to meet the Financial Capability Qualification Requirements, in which case the certification must be under oath and notarized.
  2. If the Prospective Bidder will use an Affiliate or as Affiliate of the Lead Member to comply with the Financial Capability Qualification Requirements in **Section 4 of the ITPB in Annexure 3**, attach evidence of such affiliation.
  3. For the Prospective Bidder or an Affiliate or by each Financial member of a Consortium, a testimonial letter/s from a reputed bank attesting that the Prospective Bidder or the Lead Member in case of a Consortium, or any of their Affiliate, is banking with them and that it is in good financial standing and qualified to obtain credit facilities from such bank/s of at least \_\_\_\_\_ Riel or USD. This amount may be reduced by the excess of the Prospective Bidder’s, or the Lead Member’s (in case of a consortium), or any of their Affiliates’ (as the case may be) unrestricted net worth over.

Prospective Bidder	
Entity which fulfills the requirement	
Relationship to Prospective Bidder	

#### Statement of Financial Capability

I (name) citizenship), of legal age, with an office address at (address), as the (position/designation) of (name of entity), a (corporation/partnership) organized and existing under and by virtue of the laws of (place of incorporation/registration), after having been duly sworn according to law, hereby certify for and on behalf of (name of entity) that the information stated in this Statement of Financial Capability is true and that the attached documents are genuine and true copies of the original.

1. The (name of entity) has a minimum unrestricted net worth equivalent to at least (amount) \_\_\_\_\_ Riels (KHR) or USD or its equivalent as of its audited financial statements for the year ending not earlier than 31 December XXXX, a certified true copy of which is attached to this certificate.
2. The financial summary of (name of entity) from is as follows:

Financial Information	(Most recent Fiscal Year in Riels or USD)
(indicate last day of accounting year)	
1. Total Assets (TA)	
2. Total Liabilities (TL)	
3. Net Worth = TA – TL	



3. List of Bank Letter/Testimonials addressed to (Name of the Entity) as bellows:

Name of Bank	Amount (Credit Facility)	Amount (Cash Balance)
1		
2		
3		
Total Amount:		
Grand Total:		

(Signature of Authorized Representative)

For and on Behalf of \_\_\_\_\_

Name:

Designation:

Date of Execution:

Place of Execution:

**FORM 14**

**FORM OF BANK TESTIMONIAL**

**Bank Letter Head**

In connection with the participation of (Name of Bidder) in the Bidding Process for the \_\_\_\_\_Project (the "Project"), we certify that [name of entity which fulfills the Financial Capability Qualification Requirements] (the "Company") is banking with us, and is a client in good financial standing. We also certify, subject to conduct of our internal due to diligence processes, that the Company is qualified to obtain credit facilities of at least (amount in word)\_\_\_\_\_Riels (KHR) or USD [( Figure)\_\_\_\_\_].

This certification is being issued upon the request of the company for whatever purpose it may serve.

Sincerely yours,

By:

Full Name of duly authorized officer/s

Designation:

Date of Execution:

Place of Execution:

## ANNEXURE 4

### SAMPLE EVALUATION OF PROPOSALS Agreed Evaluation Criteria

#### *Summary of Technical Criteria and Assigned Weight of Each Criterion*

Criterion	Evaluation Weight
Proposed work plan for the Design-Build Services	30
Proposed work plan for the Operations Services	30
Additional Facilities and Equipment needed during the Contract period	10
Staffing Plan of Key and Support Staff	25
Local Development Statement	5
<b>Total</b>	<b>100</b>
<b>Maximum Allocated Score</b>	<b>500</b>

#### *Summary of Financial Criteria and Assigned Weight for Each Criterion*

Criterion	Evaluation Weight
Price Proposal for Parameter 1 (e.g. user fee, availability payment)	75
Price Proposal for Parameter 2 (e.g. viability gap funding requirement, upfront fee payment)	15
Price Proposal for Parameter 3 (e.g. revenue sharing during operations)	10
<b>Total</b>	<b>100</b>
<b>Maximum Allocated Score</b>	<b>500</b>

*Final ranking shall be determined by combining the Technical and Price scores, applying a Technical: Price Ratio of 30:70 (as an example)*

Name of Bidder	Technical Score	Weightage	Weighted Technical Score	Price Score	Weightage	Weighted Price Score	Combined Score	Ranking
1	A	B	C=(AXB)	D	E	F=(DXE)	G	Ranking based on Highest Combined Score
2								
3								
4								
5								

**TECHNICAL EVALUATION**

The maximum score for the Technical Proposal is say, **500**. The maximum score for each criterion would have a limit based on the Evaluation Weight given to that Criteria and Sub-Criteria. In the example, 100% of the weight is distributed over Criteria A (30%), B (30%), C (10%), D (25%) and E (5%). The maximum score is allocated to each Criteria is calculated based on these weights.

For example, the weight allocated to Criteria A is **30%** and hence, the maximum score for this Criteria is 30% of 500 (A to F) which is **150**. The 30% weight is distributed to all the Sub-Criteria based on which the maximum score for each Sub-Criterion is calculated. For example, for the Sub-Criterion for Narrative the weight given is **8%** (out of total of 30% weight) and hence the maximum score for Narrative will be 8% of 500=40. In this way, all the Sub- Criteria is allocated the weight and when these are all added up, it will be 30%. And all the added maximum score will be 150.

The maximum score for the rest of the Criteria and for each Sub-Criterion are allocated in the same way.

Criteria	Sub-Criteria	Technical Proposal Submission Requirement	Evaluation Weight	Max Score	Proposal Score				
					B1	B2	B3	B4	B5
A.	Proposed work plan for the Design-Build Services:	The proposed work plan for Design-Build Services shall provide a detailed narrative setting out the manner in which the Bidder proposes to carry out the Design-Build- Services and meet the Design-Build technical standards in accordance with the Technical Specifications. The work plan for Design-Build Services shall be divided into the following sections:  The Bidder shall submit a detailed narrative in support of the Concept Design drawings setting out the Bidder's plan for compliance with the Design-Build Services Schedule and the technical. The narrative shall describe each of the principal components of the engineering and site infrastructure works proposed by the Bidder.	30	150					
	Narrative		8	40					
	Design Drawings	The Bidder shall submit design drawings that illustrate the Bidder's proposed method and intent to complete the Design-Build Services in conformity with the Contract. In particular, the Bidder shall document.	5	25					

Criteria	Sub-Criteria	Technical Proposal Submission Requirement	Evaluation Weight	Max Score	Proposal Score					
					B1	B2	B3	B4	B5	
		any component that it proposes to vary the design consistent with any concerns and observations raised during the Bid process.								
	Schedule	The Bidder shall submit a detailed program and schedule setting out the proposed sequence of works to be undertaken, including estimated start date, finish date and time allocations for individual components of the works, proposed resources to be allocated and the identification of all major milestones. completion, including commissioning, of individual components of the infrastructure facility.	6	30						
	Site Investigations	The Bidder shall set out its proposals for site investigations that the Bidder considers may be required for undertaking the Design of the infrastructure facility, including the overall scope, extent and timing of any such surveys.	4	20						
	Sampling and Monitoring Program	The Bidder shall describe its plans and methodologies to ensure that the requirements of the applicable Environmental Management Plan for the proposed infrastructure facility and the Site will be implemented and monitored. The Bidder shall describe the proposed sampling regime, sampling locations and monitoring protocols.	2	10						
	Codes and Standards	The Bidder shall provide an itemized list of the principal codes of practice and standards proposed to be used for the Design-Build Services.	2	10						
	List of Proposed Suppliers	The Bidder shall submit a list of proposed suppliers of, and key technical specifications for, major items of plant, equipment and materials to be procured by the Bidder comprising relevant information.	3	15						
	<b>B. Proposed work plan for the Operations Services:</b>	The proposed work plan for Operations Services shall set out the manner in which the Bidder proposes to carry out the Operations Services and meet the operating technical standards and specifications The work plan for Operations Services shall be divided into the following sections:	<b>30</b>	<b>150</b>						

Criteria	Sub-Criteria	Technical Proposal Submission Requirement	Evaluation Weight	Max Score	Proposal Score				
					B1	B2	B3	B4	B5
	Standard Operating Procedures	The Bidder shall provide a description and overview of the Bidder's proposed plans and programs for Existing Operations Services (as relevant) and New Operations Services.	9	45					
	Occupational Health and Safety Program	The Bidder shall submit a draft Occupational Health and Safety Program that outlines, <i>inter alia</i> , the proposed screening regime and inoculations for the monitoring and protection of the health of the operatives, the safety protocols to be adopted during site operations.	5	25					
	Environmental Management and Mitigation Plan	The Bidder shall describe the measures it intends to adopt to mitigate potential environmental impacts from operations, including the procedures and measures by which it will manage any emissions. The Plan shall follow relevant aspects of the Environmental, Health and Safety (EHS) Guidelines of Cambodia, as well as prescribed by WHO.	5	25					
	Maintenance Management Program	The Bidder shall provide an overview of maintenance protocols to be adopted for ongoing maintenance and repair of the Equipment, including, <i>inter alia</i> , a maintenance management program, maintenance protocols, outline schedule of envisaged service requirements, spare part and consumable stock control and routine checks to be performed on the Equipment.	5	25					
	Contract Administration	The Bidder shall describe proposed processes and procedures for database management, inventory and asset management, filing and record keeping, financial management, customer services and reporting lines.	6	30					
	<b>C. Additional Facilities and Equipment needed during the Contract period:</b>	The Bidder shall list and describe in detail any additional facilities and equipment that is proposed to be procured during the Contract period beyond the initial investment in Assets and Equipment.	<b>10</b>	<b>50</b>					

Criteria	Sub-Criteria	Technical Proposal Submission Requirement	Evaluation Weight	Max Score	Proposal Score				
					B1	B2	B3	B4	B5
<b>D. Staffing Plan of Key and Support Staff:</b>		The Bidder shall prepare a detailed Staffing plan setting out the Bidder's proposed staffing arrangements for undertaking both the Design-Build Services and the Operations Services. The Staffing	25	125					
	Design-Build Services Staffing Chart	The Bidder shall provide a chart setting out a list of all proposed Contractor's Personnel positions, the role of each position, the duration of existence of the position, and the location of the staff	8	40					
	Operations Services Staffing Chart	The Bidder shall provide a chart setting out a list of all proposed Contractor's Personnel positions, the role of each position, the duration of existence of the position, and the location of the staff person filling the position during the periods of assignment to carry out the Operations Services.	8	40					
	Key Staff Qualifications	The Bidder shall provide a summary table for the Key Personnel positions, including the names of the Bidder's employees who will occupy the Key Staff positions, the qualifications, years of experience and areas of expertise, including a clear indication of the expertise that the staff will provide consistent with the requirements set out in the Bidding Documents.	3	15					
	Curriculum Vitae of Key Staff	The Bidder shall submit signed curriculum vitae for each of the Key Personnel stipulated in the Bidding Documents.	6	30					
<b>E. Local Development Statement:</b>		Bidder shall submit a Local Development Statement clearly stating the Contractor's commitment to create local jobs (i.e. skilled and unskilled personnel and maximize the use of local materials).	5	25					
<b>F. Total</b>		A+B+C+D+E (30+30+10+25+5)	100	500					



The sample scoring criteria

		Scoring Criteria					
Technical Proposal	Score	5	4	3	2	1	0
<b>Proposed Work Plan for the Design-Build Services:</b>							
Narrative		Detailed narrative fully responsive and addresses all technical requirements of the Bidding Documents. Provides additional details of major construction works and key design elements. Full CQA plan submitted.	Detailed narrative fully responsive and addresses all technical requirements of the Bidding Documents. Partial CQA plan submitted, tailored to the project requirements.	Narrative addresses all key elements of the proposed works and meets > 90% technical requirements of the Bidding Documents. Generic CQA plan submitted.	Narrative is partially responsive and meets > 50% but < 90% technical requirements of the Bidding Documents. Technical Proposal is moderate based on the requirements. Outline description of CQA contents and protocols.	Partially responsive and meets > 35% but < 50% technical requirements of the Bidding Documents. Technical Proposal is poor based on the requirements. Outline description of CQA contents and protocols.	Not responsive and meets < 35% technical requirements of the Bidding Documents. No CQA plan documented.
Design Drawings		Full set of drawings that illustrate all aspects of site development, including construction details and process flows.	> 85% of drawings submitted, as per the Bidder's design proposals.	> 65% but < 85% of additional drawings submitted, as per the Bidder's design proposals.	> 35% but < 65% of additional drawings submitted, as per the Bidder's design proposals.	< 35% of additional drawings submitted, as per the Bidder's design proposals.	No drawings submitted that illustrate the Design for the works.
Schedule		Full, complete and logical schedule with all key activities identified and broken down and scheduled in sequence. Fully resourced and planned. With appropriate timings including contingencies.	Full, complete and logical schedule with all key activities identified and broken down and scheduled in sequence. Incomplete resourcing. With appropriate timings but without contingencies.	Full and complete schedule with all key activities identified and broken down but with errors and inconsistencies in sequencing. Incomplete resourcing.	Schedule limited to key activities and milestones, with breakdown of activities. Inconsistencies in sequencing. Lack of resource information.	Minimal set of key activities identified. No detailed breakdown of key activities. Scheduling consistent but incomplete.	Minimal set of key activities identified. No detailed breakdown of key activities. Scheduling not well-thought and full of errors and inconsistencies.

Technical Proposal		Scoring Criteria					
Part	Score	5	4	3	2	1	0
<b>Proposed Work Plan for the Design-Build Services:</b>							
Site Investigations		Proposed site investigations described in full, including objectives, scope, and methodology. Plan of proposed sampling/testing locations, where applicable.	Proposed site investigations described in full, including objectives, scope, and methodology.	Summary details only provided for proposed site investigations, including objectives, scope, and methodology.	Summary details only provided for proposed site investigations, including objectives and scope.	Basic overview only of proposed site investigations, lacking detail regarding scope, objectives and methodology.	No information provided or statement that site surveys and investigations are not required.
Sampling and Monitoring Program		Proposed sampling and monitoring programs described in full, including objectives, scope, and methodology. Plan of proposed sampling/testing locations, where applicable. Statement of ambient quality standards applicable.	Proposed sampling and monitoring programs described in full, including objectives, scope, and methodology. Statement of ambient quality standards applicable.	Summary details only provided for proposed sampling and monitoring programs described in full, including objectives, scope, and methodology. Statement of ambient quality standards applicable.	Summary details only provided for proposed sampling and monitoring programs described in full, including objectives and scope.	Basic overview only of proposed sampling and monitoring programs including objectives, scope, and methodology.	Few details provided for proposed sampling and monitoring programs and without full overview of objectives, scope, and methodology.
Codes and Standards		Complete list of all proposed codes and standards for all aspects of site development.	Partial list of proposed codes and standards covering all major works, site utilities, environmental sampling and monitoring.	Partial list of proposed codes and standards restricted to major construction elements and building works.	Incomplete list of codes and standards, restricted to engineering works.	Incomplete list of codes and standards. Proposed use of national rather than international standards.	Non-responsive. No list.
List of Proposed Suppliers		Full and complete list of all proposed suppliers with details of equipment and	Full and complete list of all proposed suppliers, but lacking full of equipment and	Partial list of proposed suppliers, with summary details equipment and	Partial list of proposed suppliers, but lacking details of equipment and	Incomplete list of proposed suppliers lacking all key information.	Non-responsive. No list or description.

Technical Proposal		Scoring Criteria					
		5	4	3	2	1	0
<b>Part</b>	<b>Score</b>	materials to be procured.	materials to be procured.	materials to be procured.	materials to be procured.		
<b>Proposed Work Plan for the Operations Services:</b>							
Standard Operating Procedures	Detailed narrative fully responsive and addresses all requirements of the Bidding Documents Provides additional details of key work activities and operational procedures. Illustrates process flows of all key activities. Supervisory control documented and described.	Detailed narrative fully responsive and addresses all requirements of the Bidding Documents Provides additional details of key work activities and operational procedures. Illustrates process flows of all key activities.	Detailed narrative addresses all key elements of the proposed works and meets > 90% requirements of the Bidding Documents Illustrates process flows of all key activities.	Narrative is partially responsive and meets > 50% but < 90% requirements of the Bidding Documents. Lacks some details of process flow and supervisory controls.	Partially responsive and meets > 35% but < 50% requirements of the Bidding Documents. Absence of details on process flows and supervisory controls.	Not responsive and meets < 35% requirements of the Bidding Documents.	
Occupational Health and Safety Program	Proposed Occupational Health and Safety program described in full, including objectives, scope, medical screening, health and safety protocols. Full Program tailored specifically to the Contract requirements.	Proposed Occupational Health and Safety program described, including objectives, scope, medical screening, health and safety protocols, but missing some key details. Full Program tailored specifically to the Contract requirements.	Proposed Occupational Health and Safety program described, including objectives, scope, medical screening, health and safety protocols, but missing some key details. Generic Program provided and not tailored specifically to the Contract requirements.	Proposed Occupational Health and Safety program described in outline only, including key objectives and scope, with indicative contents of the full program. Meets > 80% of the Contract requirements.	Proposed Occupational Health and Safety program described in outline only, including key objectives and scope, with indicative contents of the full program. Meets > 50% of the Contract requirements.	Proposed Occupational Health and Safety program described in outline only, including objectives and scope, with indicative contents of the full program. Meets < 50% of the Contract requirements.	

Technical Proposal		Scoring Criteria					
Part	Score	5	4	3	2	1	0
Environmental Management and Mitigation Plan	5	Proposed Environmental Management and Mitigation plan described in full, including objectives, scope, and measures to address all environmental issues of concern. Full detailed plan tailored specifically to the Contract requirements.	Proposed Environmental Management and Mitigation plan described in detail, including objectives, scope, and measures but missing some key measures and/or failing to address all environmental issues of concern. Meets > 90% of the Contract requirements. Detailed plan tailored specifically to the Contract requirements.	Proposed Environmental Management and Mitigation plan described in detail, including objectives, scope, and measures but missing some key measures and/or failing to address all environmental issues of concern. Meets > 75% of the Contract requirements. Generic plan not tailored specifically to the Contract requirements.	Proposed Environmental Management and Mitigation plan described in detail, including objectives, scope, and measures but missing some key measures and/or failing to address all environmental issues of concern. Meets > 60% of the Contract requirements. Generic plan not tailored specifically to the Contract requirements.	Proposed Environmental Management and Mitigation plan described in outline only, including key objectives and scope, with indicative contents of the full plan. Meets > 40% of the Contract requirements.	Proposed Environmental Management and Mitigation plan described in outline only, including key objectives and scope, with indicative contents of the full plan. Meets < 40% of the Contract requirements.
	4	Proposed Environmental Management and Mitigation plan described in detail, including objectives, scope, and measures but missing some key measures and/or failing to address all environmental issues of concern. Meets > 90% of the Contract requirements. Detailed plan tailored specifically to the Contract requirements.	Proposed Environmental Management and Mitigation plan described in detail, including objectives, scope, and measures but missing some key measures and/or failing to address all environmental issues of concern. Meets > 75% of the Contract requirements. Generic plan not tailored specifically to the Contract requirements.	Proposed Environmental Management and Mitigation plan described in detail, including objectives, scope, and measures but missing some key measures and/or failing to address all environmental issues of concern. Meets > 60% of the Contract requirements. Generic plan not tailored specifically to the Contract requirements.	Proposed Environmental Management and Mitigation plan described in outline only, including key objectives and scope, with indicative contents of the full plan. Meets > 40% of the Contract requirements.	Proposed Environmental Management and Mitigation plan described in outline only, including key objectives and scope, with indicative contents of the full plan. Meets < 40% of the Contract requirements.	
Maintenance Management Program	5	Proposed Maintenance Management Program described in full, including objectives, scope, methodology, procedures, checks and checklists, schedules, stock control and software to be employed. Program tailored specifically to the Contract requirements.	Proposed Maintenance Management Program described in detail including objectives, scope, methodology, procedures, checks and checklists, schedules, stock control and software to be employed. Meets > 90% of the Contract requirements. Detailed program tailored specifically to	Proposed Maintenance Management Program described in detail including objectives, scope, methodology, procedures and, checks, but missing some key elements. Meets > 80% of the Contract requirements. Generic program not tailored specifically to the Contract requirements.	Proposed Maintenance Management Program described in detail including objectives, scope, methodology, procedures and, checks, but missing some key elements. Meets > 60% of the Contract requirements. Generic program not tailored specifically to the Contract requirements.	Proposed Maintenance Management Program described in outline including objectives, scope, methodology, procedures and, checks, but missing many key elements. Meets > 40% of the Contract requirements. Generic program not tailored specifically to the Contract requirements.	Proposed Maintenance Management Program described in outline including objectives, scope, methodology, procedures and, checks, but missing many key elements. Meets < 40% of the Contract requirements. Generic program not tailored specifically to the Contract requirements.

Technical Proposal		Scoring Criteria					
Part	Score	5	4	3	2	1	0
Contract Administration		Proposed Contract Administration described in full, including objectives, scope, methodology, control systems and procedures, and software to be employed, with examples of standard forms and protocols. Full detailed plan tailored specifically to the Contract requirements.	Proposed Contract Administration described in detail, including objectives, scope, methodology, control systems and procedures, and software to be employed, with examples of standard forms and protocols. Meets > 90% of the Contract requirements. Full detailed plan tailored specifically to the Contract requirements.	Proposed Contract Administration described in detail, including objectives, scope, methodology, control systems and procedures, and software to be employed, but missing some key elements. Meets > 75% of the Contract requirements. Generic plan not tailored specifically to the Contract requirements.	Proposed Contract Administration described in detail, including objectives, scope, methodology, control systems and procedures, and software to be employed, but missing some key elements. Meets > 60% of the Contract requirements. Generic plan not tailored specifically to the Contract requirements.	Proposed Contract Administration described in detail, including objectives, scope, methodology, control systems and procedures, and software to be employed, but missing some key elements. Meets > 40% of the Contract requirements. Generic plan not tailored specifically to the Contract requirements.	Proposed Contract Administration described in detail, including objectives, scope, methodology, control systems and procedures, and software to be employed, but missing some key elements. Meets <40% of the Contract requirements. Generic plan not tailored specifically to the Contract requirements.
<b>Additional Facilities and Equipment needed during the Contract period:</b>							
Additional Facilities and Equipment needed during the Contract period		Full and complete list of all additional facilities and equipment, including full specification and justification.	Full and complete list of all additional facilities and equipment but lacking full specification and justification.	Partial list of additional facilities and equipment, with summary details and justification.	Partial list of additional facilities and equipment, with summary details only.	Partial list of additional facilities and equipment, but without summary details and/or justification.	Non-responsive. No list or description.
<b>Staffing Plan of Key and Support Staff:</b>							
Design-Build Services Staffing Chart		Comprehensive chart showing <u>all</u> staff positions, roles and durations.	Chart shows all staff positions, but information on roles and durations is not complete.	Incomplete chart showing most staff positions and roles, with durations.	Incomplete chart showing most staff positions and roles.	Incomplete chart showing only key staff positions and roles.	Non-responsive, no chart.

Technical Proposal		Scoring Criteria					
		5	4	3	2	1	0
Part	Score						
Operations Services Staffing Chart	Comprehensive chart showing <u>all</u> staff positions, roles and durations.	Chart shows all staff positions, but information on roles and durations is not complete.	Incomplete chart showing most staff positions and roles, with durations.	Incomplete chart showing most staff positions and roles.	Incomplete chart showing only key staff positions and roles.	Non-responsive, no chart.	
Key Staff Qualifications	Summary table provided for the Key Personnel positions, with names of Key Staff, qualifications, experience and areas of expertise to be brought in by the staff.	Summary table provided for the Key Personnel positions, with names of Key Staff, qualifications, experience but areas of expertise to be brought in by the staff not provided.	Incomplete summary table provided for the Key Personnel positions, with names of Key Staff, qualifications, experience but areas of expertise and brought in by the staff not provided.	Incomplete summary table provided for the Key Personnel positions, with names of Key Staff, qualifications, experience, areas of expertise and brought in by the staff not provided.	Incomplete summary table provided for the Key Personnel positions, with some names of Key Staff and qualifications, experience provided.	Non-responsive, no summary table.	
Curriculum Vitae of Key Staff	> 10 years experience in similar capacity. Involved in > 5 similar projects.	> 8 years experience in similar capacity. Involved in > 4 similar projects.	> 6 years experience in similar capacity. Involved in > 3 similar projects.	> 4 years experience in similar capacity. Involved in > 2 similar projects.	> 2 years experience in similar capacity. Involved in > 1 similar project.	< 2 years' experience in similar capacity. No prior experience of similar project.	
<b>Local Development Statement:</b>							
	> 70% local content. Maximize use of local materials.	> 50% and < 70% local content. Maximize use of local materials.	> 30% and < 50% local content. Maximize use of local materials.	> 20% and < 30% local content. Minimal use of local materials.	< 20% and > 10% local content. Minimal use of local materials.	< 10% local content. Minimal use of local materials.	

The weighted score for each of the Sub-Criteria will be the rating (0 to 5) multiple by the assigned weight.

For example, if for the Narrative Sub-Criterion is rated as 5, the score is 5 X Weight= 5 X 8 =40 which is the maximum score the Sub-Criterion.

If it is 4, then score is 4 X 8 = 32

**PRICE EVALUATION OF BIDS**

The maximum score for the price bid is say, **500**. To determine the “Price Score” for the price evaluation, the lowest evaluated **bid price X** for each criterion included in the table below will score **500 multiplied by the Evaluation Weight divided by 100**.

Other bidders with bid price **Y** will be assigned a Price Score = **500 x [Evaluation Weight / 100] x [X / Y]**.

The **Total Price Score** will be calculated by adding up the individual price score for each item as shown in the table below.

Criteria	Evaluation Weight
Price Proposal for Parameter 1 (e.g. user fee, availability payment)	75
Price Proposal for Parameter 2 (e.g. viability gap funding requirement, upfront fee payment)	15
Price Proposal for Parameter 3 (e.g. revenue sharing during operations)	10
<b>Total</b>	<b>100</b>

**COMBINED EVALUATION**

Final ranking shall be determined by combining the Technical and Price scores, applying a **Technical: Price Ratio of 30:70** (as an example). In such case, B =70% and E=30%.

Name of Bidder	Technical Score	Weightage	Weighted Technical Score	Price Score	Weightage	Weighted Price Score	Combined Score	Ranking
1	A	B	C=(AXB)	D	E	F=(DXE)	G	Ranking based on Highest Combined Score
2								
3								
4								
5								

## APPENDIX TO THE ANNEXURE 4

### ILLUSTRATIVE EXAMPLE

Assume there are 3 Prequalified Bidders who submitted Technical and Price Bids.

Their **Technical Bids** were evaluated and were scored as follows:

Name	A (150)	B (150)	C (50)	D (125)	E (25)	Total (500)
B1	130	135	35	100	20	420
B2	140	140	40	94	16	430
B3	126	135	30	90	18	399

The **Price Bids** quoted were as follows:

Financial Parameter	Evaluation Weight	B1	B2	B3
User Fee (Per Km)	75	\$1.60	\$1.70	\$1.50
Viability Gap	15	\$ 70 million	\$ 75 million	\$ 80 million
Revenue Sharing (Average Estimated annually)	10	\$ 6 million	\$ 8 million	\$ 5.8 million

#### Price Score Calculations

Formula: **Lowest Evaluated Price Bidder** (say X) score= 500 X Weight divided by 100

**Other Bidder Y** = 500 X Weight/100 X [X/Y]

Note: Where X is the lowest evaluated price bidder and Y is the price for individual bidders.

#### 1. User Fee Score

- Bidder 3 is lowest evaluated (charges the lowest User Fee) =  $500 \times 75/100[1.50/1.50] = 375$
- Bidder 1 =  $500 \times 75/100 \times [1.50/1.60] = 375 \times 1.50/1.60 = 351.56$
- Bidder 2 =  $500 \times 75/100 \times [1.50/1.70] = 330.88$

#### 2. Viability Gap Score

- Bidder 1 is lowest evaluated price =  $500 \times 15/100 [70/70] = 75$
- Bidder 2 =  $500 \times 15/100 \times [70/75] = 70$
- Bidder 3 =  $500 \times 15/100 \times [70/80] = 65.625$

#### 3. Revenue Sharing Score

The Bidder giving the highest share of the revenue of \$ 8 million to the IA is the lowest evaluated Bidder. The average revenue over the O & M period was calculated.

- Bidder 2 has offered the highest average annual revenue =  $500 \times 10/100[8/8] = 50$
- Bidder 1 =  $500 \times 10/100 \times [6/8] = 37.5$
- Bidder 3 =  $500 \times 10 \times [5.8/8] = 36.25$

#### Total Price Score

Financial Parameter	B1	B2	B3
User Fee	351.56	330.88	375
Viability Gap	75	70	65.625
Revenue Sharing	37.5	50	36.25
<b>Total Score</b>	<b>464.06</b>	<b>450.88</b>	<b>476.875</b>

#### Combined Score Calculations



**Technical Weighted Score**

Bidder	Technical Score	Weight (30%)	Weighted Score
<b>B1</b>	420	0.3	<b>126</b>
<b>B2</b>	430	0.3	<b>129</b>
<b>B3</b>	399	0.3	<b>119.7</b>

**Price Weighted Score**

Bidder	Price Score	Weight (70%)	Weighted Score
<b>B1</b>	464.06	0.7	<b>324.8</b>
<b>B2</b>	450.88	0.7	<b>315.6</b>
<b>B3</b>	476.875	0.7	<b>333.8</b>

**Combined Score**

Bidder	Technical Weighted Score	Price Weighted Score	Total Combined Score	Ranking
<b>B1</b>	126	324.8	450.8	<b>2</b>
<b>B2</b>	129	315.6	444.6	<b>3</b>
<b>B3</b>	119.7	333.8	453.5	<b>1</b>

**Result: Winning Bidder**

Bidder 3 with the combined score of 453.5 is the highest ranked bidder and is therefore the Winning Bidder.

## **ANNEXURE 5**

*[Letterhead of IA]*

**SAMPLE TEMPLATE**

**BIDDING DOCUMENTS**

**FOR**

**THE DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN**

**OF**

***[INSERT NAME OF THE PROJECT]***

***[DATE]***

## PREFACE

The bidding documents will differ for different models of PPP Procurement. The scope under a BOT Project will include design, build, finance, operate and maintain, and Pre-Qualified Bidders will need to provide its Technical and Price Bids to cover all these aspects and base their bid prices accordingly. For an O&M Model, the scope will be less and the basis of the Technical and Price Bids and the bid price will be different.

The sample template of the Bidding Documents is for a typical BOT model. This may also vary depending on the nature and type of the BOT Project. For example, the Bidding Documents for an Expressway Project and a Water Supply System. The purpose of the template is therefore only for providing guidance on the typical format and content of a bidding document.

The use of this template is not mandatory. The Transaction Advisors will prepare the bidding documents based on the PPP model selected by the Government and stipulated in the final Feasibility Report. The bidding document will be custom fit for each PPP Project to address the requirements identified in the final Feasibility Study.

**TABLE OF CONTENTS**

PART I: REQUEST FOR BIDS ..... 236

PART II: INSTRUCTIONS TO BIDDERS..... 237

PART III: MINIMUM PERFORMANCE STANDARDS AND SPECIFICATIONS ..... 283

PART IV: DRAFT PPP CONTRACT ..... 284

*[Letterhead of IA]*

## **Part I: Request for Bids (RFB)**

# Part II: Instructions to Bidders

## 1. GENERAL PROVISIONS

These Instructions to Bidders provide the procedure for the second stage of the Bidding Process which include the submission of Bids by Pre-Qualified Bidders and the selection by the \_\_\_\_\_ [insert name of IA] of a Winning Bidder to undertake the [title of the Project] (“**Project**”). The selection of the Winning bidder shall be made pursuant to a two-stage public bidding in accordance with the Law on PPPs, the applicable provisions under the **SOP for PPP Projects, Volume III: Procurement Manual - Section III: Selection of Private Partner** which are deemed incorporated by reference into these Instructions to Bidders.

Unless otherwise specified in these Instructions to Bidders, all the terms and conditions in the Instructions to Prospective Bidders still apply. In case of conflict between the Instructions to Prospective Bidders and these Instructions to Bidders, these Instructions to Bidders shall prevail.

### 1.1. Bidding Documents

- a. The Bidding Documents for the Project shall govern the preparation, submission, and evaluation of Bids and the selection and award of the Project to the Winning Bidder. They consist of the following documents:
  - (i) these Instructions to Bidders, which include special bid bulletins issued by the \_\_\_\_\_ [insert name of IA] and documents incorporated by reference; and
  - (ii) the PPP Contract and its schedules.
- b. The PPP Contract and its schedules shall be the principal document governing the contractual relationship between the winning Private Partner and the \_\_\_\_\_ [insert the name of IA] in the implementation of the Project, including its termination and the effects thereof.
- c. In addition to the Bidding Documents, the documents listed in Table 1 below will be made available to Bidders solely to provide background information on the Project (“**Background Information Documents**”). These documents will be located in the **Data Room**. Neither the \_\_\_\_\_ [insert name of IA] nor any other associated party provides any warranty or assurance of the accuracy or reliability of the information contained in these documents.
- d. Neither the \_\_\_\_\_ [insert name of IA] nor any other associated party is bound by any of the contents of these documents.

**Table 1: Background Information Documents**

Project	<ol style="list-style-type: none"> <li>1. Status reports on Right of Way (ROW)</li> <li>2. _____ [Insert the project] Alignment</li> <li>3. Land Acquisition and Resettlement Plan</li> <li>4. _____</li> </ol> <p style="margin-left: 20px;"><i>List Others</i></p>
Technical	<ol style="list-style-type: none"> <li>1. Feasibility Study Report</li> <li>2. _____</li> <li>3. _____</li> <li>4. _____</li> </ol> <p style="margin-left: 20px;"><i>List all the Relevant Technical Documents</i></p>

- e. The Bidder is obliged to verify the correctness, completeness, accuracy, and reliability of the information contained in the Background Information Documents. The \_\_\_\_\_ [insert name of IA] or any other associated party does not provide any warranty or assurance of the correctness, completeness, accuracy or reliability of the information contained in the Background Information Documents. The \_\_\_\_\_ [insert name of IA] or any other associated party shall not be liable to any Bidder, the Winning Bidder or any other person for damages caused by that party's reliance on the Background Information Documents regardless of any erroneous, absent, incomplete, inaccurate or unreliable information or documentation provided by the \_\_\_\_\_ [name of IA], even if attended by gross negligence, nor shall such be a ground for the refusal to enter into or rescission of the PPP Contract by the Special Purpose Corporation/Company (SPC) to be formed by the Winning Bidder.

## 1.2. Indicative Milestone Dates

Table 2 below provides an indicative schedule for the Bidding Process, as follows:

**Table 2. Indicative Milestones**

Milestone	Responsibility	Target Date
Site Visit	IA	
Pre-Bid Conference	IA	
Submission of 1 <sup>st</sup> batch of queries/comments	Bidders	
First Round of One-On-One Meetings with Bidders	IA	
Release of Revised PPP Contract	IA	
Submission of 2nd batch of queries/comments	Bidders	
Second Round of One-On-One Meetings with Bidders	IA	
Release of Final Draft of the PPP Contract	IA	
Bids Submission Date	Bidders	
Bid Evaluation	IA	
Issuance of Notice of Award	IA	
Submission of Post-Award Requirements	Winning Bidder	Within 30 days after issuance of Notice of Award
Signing of PPP Contract	IA and Winning Bidder	Not later than 7 days after notification of compliance with Post- Award Requirements (Estimated:____)

The actual schedule may be changed by the \_\_\_\_\_ [insert name of IA] at any time. Bidders shall be notified of the changes in the indicative milestone dates, if any, through supplemental bid bulletins.

## 1.3. Pre-Qualified Bidders

Only Pre-Qualified Bidders shall be allowed to submit Bids at this second stage of the Bidding Process.

## 1.4. Responsibility of Bidders

- a. Notwithstanding any information given in the Bidding Documents, Background Information Documents and any additional communications from the \_\_\_\_\_ [insert name of IA], including supplemental notices and bid

bulletins, it is the sole responsibility of all Bidders to:

- (i) be fully acquainted with the applicable laws and regulations of the Kingdom of Cambodia and its regulations, and the rules, requirements, terms, and conditions of this Bidding;
  - (ii) examine all of the Bidding Documents and related documents and verify the correctness, completeness, accuracy, completeness and reliability of the information contained in these documents.
  - (iii) familiarize itself with all the existing laws and regulations of the Kingdom of Cambodia whether national or local, which may affect the Project; and
  - (iv) determine and satisfy itself, at its own cost and risk, and by such means as it considers necessary and desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain, geological, meteorological, and hydrological conditions; existing works and plans for future works in the area; existing and planned above ground and sub-level utilities; easements; existing or threatened legal disputes or issues; environmental and social concerns and issues; the requirement and availability of labor, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; and risks and contingencies that may affect the cost, duration, execution and completion of the Project.
- b. The Bidder including any Consortium Member, proposed Construction Contractors, O&M Contractors or Affiliates, and the Winning Bidder (and the SPC that it shall form) shall not be entitled to any claim against the \_\_\_\_\_ *[insert name of IA]*, or any other associated party, whether on the basis of contract, quasi-delict or delict, for damages, extensions of time or payments on the grounds:
- (i) of any misunderstanding or misapprehension in respect of the Invitation Documents, Bidding Documents and/or Background Information Documents; or
  - (ii) that incorrect or insufficient information relating to the Invitation Documents, Bidding Documents and/or Background Information Documents was given to them by the \_\_\_\_\_ *[insert name of IA]* or any other associated party.
- c. By submitting its Bids, a Bidder shall be presumed to have fully examined and accepted all of the terms and conditions in all of the Invitation Documents and Bidding Documents.

### **1.5. Costs and Expenses of Participation**

Bidders shall bear all costs associated with their participation in the Bidding Process including the preparation and submission of their Bids, and all possible losses or damages resulting from their participation in the Bidding Process. The \_\_\_\_\_ *[insert name of IA]* shall not be held responsible or liable in any way for any such costs or damages incurred by a Bidder (whether incurred by them directly or by their advisers, contractors, Affiliates or other persons) regardless of the results of the Bidding Process.

The \_\_\_\_\_ *[state the amount for the purchase of the Bidding Documents]* payment made by all Bidders for the Bidding Documents shall be non-refundable. The person authorized by a Bidder to purchase the Bidding Documents must present to the \_\_\_\_\_ *[insert name of IA]* his authority from the Bidder and the Notice of Pre-Qualification issued by the \_\_\_\_\_ *[insert name of IA]* to such Bidder.

### **1.6. Queries and Comments on Bidding Documents**



- a. A Bidder may send queries or comments on the Bidding Documents in the following manner and to the following persons: (1) by personal service and fax of the queries/comments to the Project Management Unit (PMU) and (2) e-mail of a scanned signed copy in Portable Document Format to all addressees below, at the following addresses, emails and fax numbers:

**PPP Project Management Unit**

Attention: *Name*

Director, PPP PMU

Address:

E-mail:

Telephone:

Fax:

**General Department of Public-Private Partnerships, Ministry of Economy and Finance**

Attention: *Name*

*Designation*

Address:

E-mail:

Telephone:

Fax:

**[Name of IA]**

Attention: *Name*

*Designation*

Address:

E-mail:

Telephone:

Fax:

- b. Bidders must submit their queries and/or comments in sets on the dates indicated in Table 3 below.

**Table 3. Schedule for Submitting Queries/Comments**

<b>Set</b>	<b>Queries/Comments from Bidders</b>
1	Submission by Bidders of their first set of queries from <i>[insert dates]</i>
2	Submission by Bidders of their second set of queries from <i>[insert dates]</i>

- c. Bidders must use the template below for all of its queries/comments:

<b>Date:</b>	<i>[Insert Date of Submission]</i>
<b>Bidder Name:</b>	<i>[Insert Name of Bidder]</i>

Topic	[Name of Document] & Section # of Document	Query/Comment	Proposed Redraft (if any)

- d. The Bidders are requested to separate their queries/comments on the PPP Contract from their queries/comments on the Instructions to Bidders. Queries on the Bidding Documents must be concrete or clarificatory, and not purely hypothetical in nature.
- e. While the \_\_\_\_\_ [insert name of IA] will attempt to respond to all reasonable queries received on the dates specified above, it is under no obligation to do so. Responses to queries and any modifications to the Bidding Documents will be made on a non-attributable basis and shall be in writing and provided to Bidders through supplemental notices or bid bulletins issued by the \_\_\_\_\_ [insert name of IA]. All supplemental notices and bid bulletins issued by the \_\_\_\_\_ [name of IA] shall be deemed to be incorporated in and made an integral part of these Instructions to Bidders and/or the relevant Bidding Documents.

**1.7. Ownership of Documents**

All documents submitted by a Bidder to the \_\_\_\_\_ [name of IA] pursuant to these Instructions to Bidders shall become the property of the \_\_\_\_\_ [name of IA] and any information obtained by the \_\_\_\_\_ [name of IA] from such documents may be reasonably used by it subject to the confidentiality clause in **Section 7.4** of these Instructions to Bidders.

**1.8. Language and Foreign Documents**

- a. The Bids, and all correspondence and documents relating to the Bidding Documents and the Bidding Process, shall be prepared, and written in the English language.
- b. All documents issued or executed in a foreign country must be authenticated before a Cambodian consular official at the relevant Cambodia Consulate.
- c. If the document was issued by a foreign authority, the Bidder should also submit a certified true copy of such document issued by such foreign authority, in addition to the authentication by the Cambodian consular official referred to in paragraph (b).
- d. If the document is a foreign law or regulation, the Bidder need only submit a copy of the applicable excerpt of such law with a citation of its source, without need of submitting a copy of the entire law or its translation unless subsequently required by the \_\_\_\_\_ [name of IA].
- e. If the document is written in a foreign language, the Bidder should also submit an accurate English translation of such document, accompanied by a notarized certification by the Bidder that such translation is accurate, in addition to the authentication by the Cambodian consular official referred to in paragraph (b).

**1.9. Bid Amount for Financial Proposal**

The Bid Amount that a Bidder may submit shall be:

*This will differ and depend on whether the basis is user fees, availability payments, viability gap financing requirements, upfront fee and revenue sharing during operations or any combination of these. The final Feasibility Report prepared by the Transaction Advisors and approved by the Government.*

## 2. SITE VISITS

The PMU will conduct a group site visit for all Bidders. The schedule for this visit will be provided to Bidders through a special bid bulletin. A Bidder may conduct its own site visit, which will be without assistance from the PMU.

## 3. PRE-BID CONFERENCE

The PMU will conduct a Pre-Bid Conference on \_\_\_\_\_ *[insert date]* to clarify any part of the Bidding Documents and to answer any relevant questions from Bidders. No provision, term, or condition in the Bidding Documents shall be modified by statements made at the Pre-Bid Conference unless these are stated in writing in a supplemental notice or bid bulletin issued by the PMU.

## 4. MEETINGS WITH THE PMU

The PMU will hold two sets of one-on-one meetings with requesting Bidders \_\_\_\_\_ *[insert dates]* and on \_\_\_\_\_ *[insert dates]*. Bidders who wish to schedule such a meeting may contact representatives of the PMU listed in **Section 1.6** at the address, e-mails, or fax numbers provided in that section. A Bidder scheduled for a one-on-one meeting is requested to submit in writing, three (3) days prior to such meeting, its questions, using the following template:

<b>Date:</b>	[Insert Date of Submission]
<b>Bidder Name:</b>	[Insert Name of Bidder]

Topic	[Name of Document [ & Section # of Document	Query/Comment	Proposed Redraft (if any)

Bidders may submit marked/tracked sections of the Bidding Documents in case they have any proposed drafting modifications.

## 5. BIDS

On the Bids Submission Date, Bidders shall submit the documents provided in this **Section 5** as part of their Bids.

### 5.1. Envelope 1 - Bid Letter, Authorization & Designation of Representatives, Bid Security, and Additional Requirements for Consortiums

Envelope 1 should contain the following documents:

- a. Bid Letter, using the form in Annex BL-1
- b. Authority to Submit Bids and Designation of Authorized Representative
  - (i) for Bidders that are partnerships or corporations: Authority to Submit Bids and Designation of Authorized Representative, using the form in Annex BL-2A and
  - (ii) for Bidders that are Consortiums: Consortium Member's Authority to Participate in the Consortium and Submit a Bids and Designation of Lead Member and Authorized Representative of Consortium, using the form in

Annex BL-2B, to be submitted by each Consortium Member.

- c. Bid Security, as described in **Section 6**, using the form in Annex BL-3 without modification. Bids without the prescribed Bid Security shall be automatically rejected.
- d. For Bidders that are Consortiums, an updated Business Plan using the form in Annex BL-4, providing information on the final composition of the Consortium and the percentage interests of each Consortium Member; the information in this updated Business Plan shall supersede any information previously provided in Annex ....., and must be submitted even if there are no changes in the composition of the Consortium or the percentage interests of each Consortium Member since the Qualification Documents Submission Date, together with -
  - (i) required attachments to Annex BL-4 for any new Consortium Members substituted for a Consortium Member that has withdrawn from the Consortium:
    - 1. Basic Information Sheet, using the form of Annex.... of the Instructions to Prospective Bidders, including the accompanying attachments as required under **Section .....** of the Instructions to Prospective Bidders.
    - 2. Notarized Certification of Absence of Unsatisfactory Performance Record, using the form in Annex..... of the Instructions to Prospective Bidders, without modification; and
    - 3. Annexes ....., ....., ..... or ....., as may be relevant, if the new Consortium Member is replacing a Consortium Member which was proposed to meet any of the Technical Qualification Requirements.
- e. for Bidders that proposed Construction Contractors to fulfill the Construction Experience Qualification Requirements described in **Sections.....and .....** of the Instructions to Prospective Bidders: for every Construction Contractor that was prequalified, a Construction Contractor's Notarized Statement of Willingness to Participate In and Capacity to Undertake the Requirements of the Project (as described in the final draft of the PPP Contract and its schedules), in the form of Annex BL-5;
- f. for Bidders that proposed O&M Contractors to fulfill the Operation and Maintenance Experience Qualification Requirement described in **Section.....** of the Instructions to Prospective Bidders: the O&M Contractor's Notarized Statement of Willingness to Participate In and Capacity to Undertake the Requirements of the Project (as described in the final version of the PPP Contract and its schedules) in the form of Annex BL-6; and
- g. any Qualification Document, which Bidders are required to submit on the Bids Submission Date, pursuant to the Instructions to Prospective Bidders and the notices of pre-qualification sent by the \_\_\_\_\_ [name of IA] to Bidders.

## 5.2. Envelope 2 - Technical Proposal (or Technical Bid)

Envelope 2 should contain the Bidder's Technical Proposal (or Technical Bid) which should include the following documents:

- a. Conceptual Engineering Design - Annex TP-1. This shall include the following elements of the Conceptual Engineering Design for Phase II of the Project, which shall conform to the **Minimum Performance Standards and Specifications**, presented in the prescribed scales, and provide a level of detail that will enable quantities to be estimated:
  - (i) conceptual engineering design for Phase II (A3 size copy) of the Project, properly

labeled, including the following:

1. layout plan of the \_\_\_\_\_ *[insert the project]*, including major structures, at any convenient scale.
  2. plan and profile for the \_\_\_\_\_ *[insert the project]* in relation to the existing ground and structures, at a scale of Horizontal-1:1000 and Vertical-1:100.
  3. cross-sections of the \_\_\_\_\_ *[insert the project]* at a scale of 1:100, at intervals of 20 meters, and at intermediate breaks involving major changes in sectional areas.
  4. plans, elevations and typical cross-sections of drainage and other structures at a scale of 1:1000, 1:100 and 1:100 respectively.
  5. preliminary design analyses and computations for the \_\_\_\_\_ *[insert the project]* and structures and
  6. quantity estimates for the \_\_\_\_\_ *[insert the project]* and structures.
- (ii) conceptual design of the toll facilities:
1. layout plan, at a scale of 1:1000, showing the location of the toll facilities, including the toll plaza and traffic safety devices;
  2. conceptual design of the toll plaza:
    - (a) layout plan indicating the elements of the toll plaza, including carriageway tapers, platform, lighting, inspection tunnel, control building and parking areas, longitudinal section on the corner line of the plaza.
    - (b) toll platform indicating the layout of the lane area.
    - (c) toll islands indicating the toll booths and protection structures.
    - (d) toll lanes, both entry and exit.
    - (e) canopy showing the minimum clearance, shape, form, material and signs.
    - (f) toll plaza building, indicating the layout with approximate areas of each room and elevations of at least two sides.
    - (g) technical gallery for power and data cables.
    - (h) road signs.
    - (i) overhead sign and lighting.
    - (j) drainage.
    - (k) water supply.
    - (l) fences.
    - (m) Power and
    - (n) Lighting.
- (iii) conceptual design of \_\_\_\_\_ *[insert the project]* (i.e., traffic safety devices), including
1. pavement markings.
  2. traffic signs, including regulatory signs, warning signs, guide or informative signs,

and signs for road works and

3. crash cushions.

- b. Construction Plan - Annex TP-2. This shall include the following elements consistent with the prescribed **Minimum Performance Standards and Specifications** for Construction:
- (i) construction organization for the Project, identifying key personnel and positions.
  - (ii) construction methodology and procedures.
  - (iii) quality control system.
  - (iv) construction schedule, milestones, and S-curve.
  - (v) traffic management plan during Construction and
  - (vi) health, safety, and security program for Construction.
- c. Operations and Maintenance Plan – Annex TP-3. This shall include the plan for the partial and full operation and maintenance of the Project, containing the key performance requirements under the **Minimum Performance Standards and Specifications**, including a plan for the interconnectivity and interoperability of the Project with *[insert if connectivity with other national roads, expressway. Logistics center or others are required]*
- d. Any comments on the Findings on the Review and Verification of At-Grade Works Detailed Engineering Design – Annex TP-4.

The Technical Bid of the Winning Bidder shall be incorporated into the PPP Contract.

### **5.3. Envelope 3 – Financial Proposal (or Price Bid/Financial Bid)**

Envelope 3 should contain the Bidder's Financial Proposal (or Price Bid/Financial Bid) which should include the following documents:

- (a) the Bid Amount, as described in Section 1.9, using the form in Annex FP-1, expressed in *[either Riel or USD]*, stated in both words and figures, which shall be indicated up to two (2) decimal points; if there is a discrepancy between the words and figures, the amount in words will prevail.
- (b) supporting **financial model**, using the format in Annex FP-2, to be submitted only in electronic form in a CD, in Microsoft Excel format, showing all relevant formulas; and
- (c) project financing plan, using the format in Annex FP-3, which must show that the proposed financing plan can adequately meet the construction cost as well as the operation and maintenance costs required for the Project and still enable the winning Private Partner to service its debt obligations and fulfill its covenants with its lenders, and realize a reasonable return on equity.

All amounts must be stated in *[state currency]* and should be in *[indicate year]* prices.

### **5.4. Validity of Bids**

The Bids shall be valid for a period of not less than one hundred and eighty (180) days from the Bids Submission Date.

### **5.5. Rejection of Bids and Right Not to Proceed**

At any time prior to the Winning Bidder's compliance with the Post-Award Requirements as described in Section 8.1, the \_\_\_\_\_ *[name of IA]* reserves the right not to proceed with

the Bidding Process and the execution of the PPP Contract, without prior notice or incurring liability, and without any obligation to give any reason not to proceed.

The \_\_\_\_\_ [name of IA] reserves the right to accept or reject any or all of the Bids without giving any reason. The \_\_\_\_\_ [name of IA] is not obliged to accept any Bids or to give any reason for its decision.

## 6. BID SECURITY

### 6.1. Form of Bid Security

The Bid Security required to be submitted as part of the Bids must be an irrevocable standby letter of credit or bank guarantee of [state currency and amount] and in the form of Annex BL-3 without modification. The letter of credit or bank guarantee must be issued by a universal bank or commercial bank licensed by the National Bank of Cambodia, a list of which can be found in Schedule 1.

### 6.2. Validity and Purpose

The Bid Security shall be valid for one hundred and eighty (180) days from the Bids Submission Date. The Bid Security shall guarantee that a Bidder complies with certain conditions for its participation in this Bidding Process as provided in Section 6.3.

### 6.3. Forfeiture of Bid Security

The Bid Security shall be subject to forfeiture in its entirety in favor of the \_\_\_\_\_ [name of IA] upon the occurrence of any of the following events:

- a. the Bidder withdraws its Bids at any time after the Bids Submission Date.
- b. the Bidder, any Consortium Member, any proposed Construction Contractor, any proposed O&M Contractor, or any Affiliate of any of these entities, or any of their respective officers, employees, agents, and advisers (i) commits any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice, (ii) has a Conflict of Interest or (iii) violates the Lock-Up Rules, regardless of the stage of the Bidding Process when the violation existed or was committed, and regardless of whether the Bidder has already been designated as the Winning Bidder, in which latter case the Construction Performance Security in place at the time of discovery shall be subject to forfeiture.
- c. the Bidder is disqualified or fails to post-qualify due to a material misrepresentation in any statement made or document submitted as part of its Qualification Documents or Bids.
- d. the Winning Bidder fails to comply with the Post-Award Requirements within thirty (30) days from receipt by the Winning Bidder of the Notice of Award, or within any extension period granted by the \_\_\_\_\_ [name of IA].
- e. the SPC formed by the Winning Bidder fails to sign the PPP Contract within [inert number] days from receipt by the Winning Bidder of notice from the \_\_\_\_\_ [name of IA] that all of the Post-Award Requirements have been complied with or
- f. other events as described in these Instructions to Bidders and the Law on PPP that are causes for forfeiture of the Bid Security.

### 6.4. Return of Bid Security

Bidders that do not withdraw their Bids prior to one hundred and eighty (180) days after the Bids Submission Date, but who are unsuccessful in the bidding, are disqualified or fail to post-qualify for reasons other than those that result in the forfeiture of the Bid Security as provided in Section 6.3, will have their Bid Security returned to them without interest within ten (10) days from receipt of written notice of their disqualification. Within ten (10) days after the signing of the PPP Contract by the Winning Bidder, or one hundred and eighty (180)

days after the Bids Submission Date, whichever comes earlier, the Bid Securities of all Bidders whose Bid Securities have not been forfeited or previously returned will be returned without any interest, except for that of the Winning Bidder whose deadline for complying with the Post-Award Requirements has not yet expired. Any Bidder that has not been disqualified may extend the validity of its Bid Security.

## 7. SUBMISSION AND EVALUATION OF BIDS

### 7.1. Form of Submissions

The Bidder shall prepare and submit its Bids in the following manner:

- a. For the documents comprising Envelope 1, as described in Section 5.1, the Bidder shall prepare and submit one (1) set of the original documents (the “**Original set**”) and nine (9) sets of clear photocopies (“**photocopies**”) (in color if any of the documents in the original set are in color). The original set shall be placed in a sealed envelope marked with the Bidder’s name, the name of the Project, and “Envelope 1 - Original.” The original set shall be initialed by the Bidder’s authorized representative on each page. Each of the nine sets of photocopies shall be placed in a sealed envelope marked with the Bidder’s name, the name of the Project, and “Envelope 1 - Copy 2... 10,” respectively.
- b. The documents comprising Envelope 2, as described in Section 5.2, shall be prepared in the same way as the documents comprising Envelope 1.
- c. For the documents comprising Envelope 3, as described in Section 5.3, the Bidder shall prepare one (1) set of the original documents. Envelope 3 shall be marked “Envelope 3.” The Bid Amount shall be placed in a sealed envelope marked “Envelope 3 – Bid Amount” and the supporting financial model together with the project financing plan must be placed in another sealed envelope marked “Envelope 3 – Supporting Financial Model & Project Financing Plan.”
- d. Together with Envelopes 1 and 2, the Bidder shall also include five (5) clear electronic copies of their contents which shall be contained in Compact Discs or DVD format (CD). The electronic copy of the documents comprising Envelopes 1 and 2 must each be in one Portable Document Format file, with the pages arranged in exactly the same sequence as those of the original set. Each CD and its container (if any) must be indelibly marked “E-Copy of Envelope 1, CD No. 1 ... 5”, and E-Copy of Envelope 2, CD No. 1 ... 5, as the case may be.
- e. In case of any conflict between the paper copies and the electronic copies, the paper copy shall prevail.
- f. Each of the original sets placed in envelopes marked as “Envelope 1- Original”, “Envelope 2 – Original”, “Envelope 3 – Bid Amount,” and “Envelope 3 – Supporting Financial Model & Project Financing Plan” shall be placed in one (1) outer sealed envelope marked as follows:

<p><b><i>[Name of IA]</i></b></p> <p><b><i>[Name of Project]</i></b></p> <p><b>BID DOCUMENT- ORIGINAL</b></p> <p><i>[ NAME AND ADDRESS OF BIDDER]</i></p>
---



- g. For each of the nine (9) sets of photocopies, it shall place the envelopes marked “Envelope 1 - Copy 2” and “Envelope 2 - Copy 2” in one (1) outer sealed envelope marked as follows:

***[Name of IA]***  
***[Name of Project]***  
**BID DOCUMENT- COPY [2.10]**  
  
*[ NAME AND ADDRESS OF BIDDER]*

- h. All ten (10) outer envelopes containing the original set and the nine (9) sets of photocopies described above, shall be placed in one (1) sealed outer envelope or box, or otherwise packed together and sealed, and labeled as follows:

### **7.2. Deadline and Place of Submission of Bids**

Bidders shall submit their Bids to:

*[Insert Name and Address of Head of PMU]*

Bids must be submitted from 8:30 a.m. until 2:00 p.m. Cambodia Time on the Bids Submission Date, outside of which time the Bids shall not be accepted by the \_\_\_\_\_ *[Name of IA]* Bidders that fail to submit their Bids within the prescribed time on the Bids Submission Date shall be disqualified.

**[ Name of IA]**  
***[Name of Project]***  
**BID DOCUMENT**  
  
*[ NAME AND ADDRESS OF BIDDER]*

Bids submitted shall be numbered in the order received, stamped with the time of receipt, and recorded in a register specifying the date, time and name of the Bidder.

### **7.3. Submission, Opening and Examination of Bids**

- a. Immediately after 2:00 p.m. on the Bids Submission Date, the Opening Committee as established by the \_\_\_\_\_ *[name of the IA]* will begin the opening proceedings by announcing the names of the Bidders that have submitted Bids and other matters as the Opening Committee may consider appropriate.
- b. Bidders who do not send a representative to witness the opening of Envelope 1 and Envelope 2 shall be deemed to have waived the opportunity to witness the opening of these envelopes.
- c. The Opening Committee shall then open Envelope 1 of each Bidder, one at a time, in the order in which the Bids were received, in a public session and in view of all attending Bidders. The Opening Committee shall examine the contents of Envelope 1 to determine the completeness of the documents and whether they are substantially responsive to the

requirements prescribed in Section 5.1. If Envelope 1 is found to be incomplete in any material aspect or non-responsive, the Opening Committee shall automatically disqualify the entire Bid and immediately return the unopened Envelopes 2 and 3 to the Bidder concerned.

- d. The Opening Committee shall then open Envelope 2 of the Bidders whose Bids were not rejected, one at a time, in the order in which the Bids were received, in a public session and in view of all attending Bidders. The PMU shall conduct a preliminary examination of the Technical Proposal to determine the completeness of the documents. If the Envelope 2 is found to be incomplete in any material aspect, the Opening Committee shall record them for the consideration of the Bid Evaluation Committee (BEC)
- e. The BEC shall conduct a detailed evaluation of the Technical Bids of all the Bidders whose Bids were not rejected, over a period of no longer than thirty (30) days after the opening of Envelope 2, in order to determine whether the Bidders have submitted Technical Bids which are responsive, focusing particularly on the following:
  - (i) Conceptual Engineering Design – Annex TP-1. The BEC shall verify whether all of the required elements of the Conceptual Engineering Design, as provided in Section 5.2(a), were submitted and conform to the Minimum Performance Standards and Specifications.
  - (ii) Construction Plan – Annex TP-2. The BEC shall verify whether all of the required elements of the Construction Plan, as provided in Section 5.2(b), were submitted and conform to the Minimum Performance Standards and Specifications.
  - (iii) Operations and Maintenance Plan – Annex TP-3. The BEC shall verify whether all of the required elements of the Operations and Maintenance Plan, as provided in Section 5.2(c), were submitted and conform to the Minimum Performance Standards and Specifications.
  - (iv) At-Grade Works Detailed Engineering Design – Annex TP-4. The BEC shall verify the Bidder has accepted the At-Grade Works Detailed Engineering Design and note any comments thereon.
- f. During the examination and evaluation of the contents of each Bidder's Envelopes 1 and 2, the PMU may, at its discretion:
  - (i) request Bidders to submit clarifications to their Bids.
  - (ii) invite Bidders to a meeting(s) to provide clarifications and/or confirmations or
  - (iii) request Bidders to verify the submitted documents.

The PMU shall make all requests for clarifications, meetings, confirmations, or verifications in writing. Clarifications by a Bidder shall be limited to providing explanations and/or supporting documents for information already included as part of its Bids but shall not add elements to or modify any aspect of its Bids. Responses received from the relevant Bidder shall be included as part of its Bids with a clear reference to the section of the Bids for which the clarification/verification is provided.

- g. The BEC shall undertake the evaluation of the Technical Bids. After the Procurement Review Committee has approved the evaluation undertaken by the BEC, PMU shall inform the Bidders that pass the technical evaluation. The PMU shall return to any disqualified Bidders their unopened Envelope 3 and Bid Security, unless the reason for the disqualification constitutes a ground for forfeiture of the Bid Security as provided in Section 6.3, in which case Envelope 3 shall be retained and the Bid Security shall be forfeited.
- h. The PMU shall inform the Bidders that passed the technical evaluation of the date, time,

and venue for the opening of Envelope 3 and invite them to witness the same. All Bidders that pass the technical evaluation may send a representative to observe the opening of Envelope 3. Bidders that do not send a representative are deemed to have waived the opportunity to witness the opening of Envelope 3.

- i. The Opening Committee shall then open Envelope 3-Bid Amount of each Bidder that passed the technical evaluation in a public session. The Opening Committee shall check that the Bid Amount is responsive to the requirements prescribed in Section 5.3. Thereafter, Envelope 3-Supporting Financial Model & Project Financing Plan shall be opened and check if the documents are responsive to the requirements prescribed in Section 5.3.
- j. The BEC shall rank the Financial Proposals and determine the Bidder with the best complying Bid. *[In case of viability gap funding- the Bidder with the lowest required amount shall be considered as the best bid]. [If one or more Bidders submit a Bid Amount consisting of an up-front lump sum payment to the [insert name of IA], the Bidder that offers the highest up-front lump-sum payment shall be considered the best bid]. In the event of a tie, the top-ranked Bidders shall be requested to resubmit their Financial Bids within [inset time period] The revised Financial Bids shall be opened and ranked by the BEC, and the top-ranked Bidder shall be considered the best bid. The same procedure shall be followed until the tie is broken.*
- k. The PMU shall conduct a post-qualification of the Bidder with the best complying Bid. The post-qualification involves a verification of the information, representations and statements made by such Bidder in its Qualification Documents, Bid Letter, Technical Bid and Price Bid, and will be conducted over a period not exceeding seven (7) working days. If the Bidder passes the post-qualification, the PMU shall inform the Procurement Review Committee that the Bid shall be declared the best complying post-qualified Bid and recommend the approval for the award of contract to the Bidder. The *[name of IA]* will issue a Notification of Award of Contract after all the necessary approvals have been obtained from the Government.

#### **7.4. Confidentiality**

- a. Information relating to the examination, evaluation, clarification, and comparison of Bids and recommendations concerning the award of the Project shall not be disclosed to any of the Bidders or other persons not officially concerned with the Bidding Process; provided, that the BEC, Procurement Review Committee and the PMU shall not have the obligation to keep any information submitted by a Bidder confidential after the signing of the PPP Contract by the SPC formed by the Winning Bidder or the lapse of one hundred and eighty (180) days after the Bids Submission Date, whichever comes earlier.
- b. The PMU will not return either the original or the copies of any Bid submitted by a Bidder, other than as specified in this Section 7.

## **8. NOTICE OF AWARD, POST-AWARD REQUIREMENTS & EXECUTION OF PPP CONTRACT**

### **8.1. Notice of Award and Post-Award Requirements**

- a. Immediately upon approval of the award by the Government, the \_\_\_\_\_ *[name of IA]* shall issue the Notice of Award to the Bidder with the best complying post-qualified Bid. The Notice of Award shall prescribe that, within thirty (30) days from the Winning Bidder's receipt of the Notice of Award, it shall submit the following documents to the PMU as conditions precedent for the execution and signing of the PPP Contract:
  1. Notice of Award signed by the authorized representative of the Winning Bidder.
  2. Construction Performance Security, to replace the Bid Security.

3. Proof of payment of the transaction advisory fee in the amount of \_\_\_\_\_ *[insert amount]* by manager's check or by wire transfer to the account indicated below:

[Insert account details]

4. Evidence of the formation of SPC *[list the documents required like certificate of incorporation, articles of incorporation and by-laws of the Private Partner, shareholders showing their respective percentage shareholding, etc.]*
  5. If the Winning Bidder is a Consortium, compliance with the Equity Requirements, as evidenced by an original copy of each of the Equity Documents, which have been duly authorized and validly executed and which is in full force and effect and delivered by the parties to them, and in respect of which all conditions required under them have been fully satisfied; however, in all cases, the SPC is allowed to issue one nominal share to each member of the board of directors of the SPC, transferrable back to the SPC or to the latter's nominee at the end of the term of such director.
  6. Letters of intent and term sheets from reputable financial institutions that they will provide sufficient credit facilities as required in the Winning Bidder's Financial Proposal; and
  7. Payment of any upfront bid amount to \_\_\_\_\_ *[inset name of IA]*.
- b. Failure to comply with the requirements described in the Notice of Award within the prescribed thirty (30)-day period, or within any extensions granted by the \_\_\_\_\_ *[name of IA]* without reasonable justification acceptable to the *[name of IA]*, shall result in the forfeiture of the Winning Bidder's Bid Security and the withdrawal of the Notice of Award.
  - c. Within seven (7) days from the \_\_\_\_\_ *[Name of IA]* receipt of the requirements in the Notice of Award, the *[name of IA]* shall determine and notify the Winning Bidder of its compliance with all of the requirements stated in the Notice of Award.

## 8.2. Execution of PPP Contract

Within \_\_\_\_\_ *[insert time period]* from its receipt of notification of compliance with the Post-Award Requirements, the Winning Bidder, through its SPC, shall execute the PPP Contract with the Government. The failure by the Winning Bidder to execute the PPP Contract within the prescribed period shall be a ground for the forfeiture of the Winning Bidder's Bid Security and the withdrawal of the Notice of Award.

## 9. NEXT BEST COMPLYING BIDS

- a. In the event that the Winning Bidder does not comply with the Post-Award Requirements within the timeframe specified in Section 8, is not post-qualified or for any reason the Notice of Award is withdrawn due to the fault of the Winning Bidder, then the next best complying Bid as ranked in Section 7.3(j) shall be treated as the Winning Bidder, shall undergo post-qualification, shall be issued a Notice of Award, and shall comply with the Post-Award Requirements. If the next best complying Bid fails in any of the requirements, the process may again be repeated with the third best complying Bid and so on. This process will be repeated every time a Winning Bidder is unable to fulfill the requirements of Section 8, until one hundred and eighty (180) days after the Bids Submission Date.
- b. The \_\_\_\_\_ *[name of IA]* reserves the right, at its sole discretion, to cancel the Bidding, reject any or all Bids or not to award the PPP Contract to any Bidder.

## 10. PROCESS TO BE FOLLOWED IF ONLY ONE BIDDER SUBMITS A BID, PASSES THE TECHNICAL EVALUATION, OR SUBMITS A COMPLYING BID AMOUNT

- a. If after Pre-Qualification only one Bidder submitted a Bids, the \_\_\_\_\_ [Name of IA] shall proceed to open and evaluate the same in accordance with the procedure in Section 7.3. If the sole Bidder passes the evaluation of its Technical Proposal and its Financial Proposal is found to be complying, the [Name of IA] shall conduct post-qualification of the Bidder and award the Project in accordance with the procedure in Sections 7.3(k) and 8.
- b. If, after the submission of the Bidders' Bids, only one of the Technical Proposals is passed, the \_\_\_\_\_ [Name of IA] shall proceed to open the remaining Bidder's Financial Proposal in accordance with the procedure in Section 7.3(i). If the remaining Bidder's Financial Proposal is found to be complying, the \_\_\_\_\_ [Name of IA] shall conduct post-qualification of the Bidder and award the Project in accordance with the procedure in Sections 7.3(k) and 8.

## 11. GENERAL CONDITIONS AND PROHIBITIONS

By submitting Bids, the Bidder acknowledges and agrees that:

- a. it, including all Consortium Members, proposed Construction and O&M Contractors, their Affiliates, and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process.
- b. it, including all Consortium Members, proposed Construction and O&M Contractors, their Affiliates, and their respective officers, employees, agents and advisers shall not commit any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice.
- c. it, including all Consortium Members, proposed Construction and O&M Contractors, their Affiliates, and their respective officers, employees, agents and advisers, shall not engage in any form of political or other lobbying with respect to the Project or attempt to influence the outcome of the Bidding Process and
- d. it accepts all the terms and conditions of the Invitation Documents and Bidding Documents.

## 12. CORRUPT, FRAUDULENT, COLLUSIVE, COERCIVE, UNDESIRABLE, AND RESTRICTIVE PRACTICES

If a Bidder, any Consortium Member, any proposed Construction Contractors, any proposed O&M Contractors, or any Affiliate of any of these entities, or the SPC, as the case may be, is found to have, directly or indirectly or through an agent, engaged in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, or Restrictive Practice during the Bidding Process, or after the issuance of the Notice of Award or the execution of the PPP Contract, the Government shall:

- a. reject or disqualify the Bids of or withdraw the Notice of Award to such Bidder, without being liable in any manner whatsoever to the Bidder.
- b. forfeit and appropriate the Bid Security of such Bidder, without prejudice to any other right or remedy that may be available to the \_\_\_\_\_ [Name of IA]
- c. seek to impose the maximum penalties for civil and criminal liability available under the applicable law on individuals and/or entities involved in such practices and
- d. prohibit or disqualify individuals and/or entities involved in such practices from participating, [insert indefinitely or a prescribed time], in any bidding of the Government

from the date that they are found to have directly or indirectly engaged in any such practices.

### 13. CONFLICT OF INTEREST

Bidders, Consortium Members, proposed contractors, and the Affiliates of any of these entities must not have any Conflicts of Interest.

If at any time prior to the signing of the PPP Contract, any Bidder, Consortium Member, proposed Construction Contractors, proposed O&M Contractors, or Affiliates of any of these entities, is found to have a Conflict of Interest, it shall be disqualified from further participating in the Bidding Process. If the Conflict of Interest involves another Bidder, then both Bidders shall be disqualified.

### 14. LOCK-UP RULES

#### 14.1 Lock-Up Rules During Qualification Period

From the Qualification Documents Submission Date to the Bids Submission Date (“**Qualification Period**”), the following rules shall apply:

- a. Corporation & Partnership
  - (i) For a Bidder that is a corporation or partnership, no restrictions shall be imposed on the ownership structure of such a Bidder.
  - (ii) However, if a Bidder that is a corporation or a partnership proposes an Affiliate to meet any of the Qualification Requirements, the proposed Affiliate must remain as such in accordance with the criteria for Affiliates as provided in Section.... of the Instructions to Prospective Bidders.
- b. Consortium
  - (i) A Consortium Member, except for the entity that meets the Financial Qualification Requirement, may leave the Consortium, and not be replaced by any other entity (“**Withdrawal**”), subject to the following conditions:
    1. A Consortium Member proposed to meet the Technical Qualification Requirements cannot withdraw from the Consortium, except in the event of a Substitution as provided in paragraph (b)(ii).
    2. Any Consortium Member not proposed to meet the Technical or Financial Qualification Requirements may withdraw from the Consortium.
    3. Withdrawing Consortium Members cannot join any other Bidder that has been pre-qualified to bid for the Project.
  - (ii) A Consortium Member may be replaced by another entity not previously identified in the Consortium’s Business Plan (Annex .....) (“**Substitution**”), subject to the following conditions:
    1. Any Consortium Member, except for the entity that meets the Financial Qualification Requirement, can be substituted by another entity.
    2. If the Consortium Member leaving the Consortium is the only entity in the Consortium that meets a particular Technical Qualification Requirement, then the substitute should also meet that Technical Qualification Requirement.
    3. The substitute should not be any of the entities identified in Annex..... (Business Plan) of another Bidder. For the avoidance of doubt, the term “Bidders” shall include those Bidders that failed to pre-qualify to bid for the Project.

4. Notwithstanding a Substitution, the Consortium Members originally identified in Annex....(Business Plan) should continue to commit to own not less than eighty percent (80%) of the outstanding shares of the SPC.
- (iii) A Consortium Member may increase or reduce its committed percentage equity interest in the SPC, subject to the following conditions:

Any Consortium Member, whether it is proposed to meet the Technical or Financial Qualification Requirements, can increase or reduce its committed percentage equity interest in the SPC as specified in Annex....(Business Plan).

- (iv) In the event of a withdrawal, Substitution or change in the committed percentage equity interest in the SPC, the following requirements must be met:
1. The Lead Member must:
    - a. maintain its commitment to own at least thirty-three percent (33%) of the outstanding voting shares of the SPC; and
    - b. always own the highest percentage of outstanding voting shares of the SPC
  2. No Consortium Member, on its own or together with its Affiliates, shall own a greater percentage of outstanding voting shares in the SPC than the Lead Member, on its own or together with its Affiliates.
  3. The Consortium Member proposed to meet any of the Technical Qualification Requirements must always commit to own at least ten percent (10%) of the outstanding shares of the SPC.
  4. Any change in the composition of the Consortium or the shareholding structure of the SPC must be submitted to the \_\_\_\_\_ [Name of IA] on the Bids Submission Date as part of Envelope 1, pursuant to Section 5.1(d). Bidders should ensure that any changes made should not prevent it from complying with all of the terms and conditions in the Instruction to Prospective Bidders, including the Qualification Requirements therein, and these Instructions to Bidders. If the proposed changes cause the Bidder to be non-compliant with any of the terms and conditions of the Instructions to Prospective Bidders or the Instructions to Bidders, such Bidder shall be disqualified from the Bidding.

#### **14.2 Lock-Up Rules During Bidding Period**

From the Bids Submission Date until the execution of the PPP Contract (“**Bidding Period**”), the following rules shall apply:

a. Corporation & Partnership

For a Bidder that is a corporation or a partnership, no changes shall be made in the equity or ownership structure of such Bidder, as provided in the Bidder’s original or revised Business Plan (Annex....) submitted to and approved by the \_\_\_\_\_ [Name of IA].

b. Consortium

For a Bidder that is a Consortium, from the Bids Submission Date until the execution of the PPP Contract, no changes shall be made in the composition of the Consortium and in the committed percentage equity interest of each Consortium Member in the special purpose corporation which it shall be required to incorporate if it wins the Bid, as provided in the Bidder’s updated Business Plan (Annex BL-4) submitted to the PMU on the Bids Submission Date.



### 14.3 Consequences of Violation of Lock-Up Rules

Any violation of the Lock-Up Rules shall be a ground for disqualification from the Bidding.

## 15. GOVERNING LAW AND RULES

The provisions of the Law on PPPs and other applicable Cambodian laws shall govern all matters not specifically covered by the Instructions to Bidders and other Bidding Documents.

### DEFINITIONS

Unless otherwise provided, the following terms used in these Instructions to Bidders shall have the following meanings:

- a. **“Affiliate”** is defined in Section.... of these Instructions to Prospective Bidders.
- b. **“Annex ....” or “.....” along with the relevant number** refers to the relevant Qualification Document submitted by the Bidder as part of its Qualification Documents, and as numbered in the Instructions to Prospective Bidders.
- c. **“Background Information Documents”** is defined in Section 1.1(c) of the Instructions to Bidders.
- d. **“Bidder”** means any partnership, corporation or Consortium that is a Pre- Qualified Bidder and participates in this second stage of the Bidding Process.
- e. **“Bid Amount”** is defined in Section 1.9 of these Instructions to Bidders.
- f. **“Bid Letter”** is defined in Section 5.1 of these Instructions to Bidders.
- g. **“Bidding Process”** is defined in Section..... of the Instructions to Prospective Bidders. As the context may require in these Instructions to Bidders, this term may also be used to refer to this second stage of the Bidding Process.
- h. **“Bids” or “Bid”** means the Bid Letter, Bid Security, Additional Requirements for Consortiums with New Members, Technical Proposal and Financial Proposal required to be submitted by the Bidders, as described in Section 5.
- i. **“Bids Submission Date”** means the date when Bidders will submit to the PMU their Bids for the Project.
- j. **“Bid Security”** means the instrument to be provided by the Bidder as part of its Bids in accordance with Section 6 of these Instructions to Bidders.
- k. **“Bidding Documents”** means the documents issued to Bidders, as enumerated in Section 1.1 of these Instructions to Bidders.
- l. **“Law on PPPs”** is defined in Section.....of the Instructions to Prospective Bidders.
- m. **“Coercion”** is defined in Section .....of the Instructions to Prospective Bidders.
- n. **“Collusion”** is defined in Section ..... of the Instructions to Prospective Bidders.
- o. **“SPC”** means the private sector counterparty of the\_\_\_\_\_/[Name of IA] under the PPP Contract, which shall have contractual responsibility for the Project. Also, the Project Proponent contemplated under the Law on PPPs. Shall also be referred to as the Winning Bidder during the bidding process.
- p. **“SPC Constitutional Documents”** is defined in Section .....of these Instructions to Bidders and in Section 1.1 of the PPP Contract.
- q. **“SPC Resolution”** is defined in Section....of these Instructions to Bidders and in Section 1.1. of the PPP Contract.
- r. **“PPP Contract”** means the contract to be executed between the\_\_\_\_\_/[Name



of IA] and the Winning Bidder, through the SPC that it shall form upon fulfillment of the Post-Award Requirements. A copy of the draft PPP Contract is included as part of the Bidding Documents.

- s. **“PPP Contract Period”** is defined in Section 1.1 of the PPP Contract.
- t. **“Conflict of Interest”** is defined in Section 16.3 of the Instructions to Prospective Bidders.
- u. **“Consortium”** is defined in Section 22 of the Instructions to Prospective Bidders, as amended by .....
- v. **“Construction Contractor”** is defined in Section..... of the Instructions to Prospective Bidders.
- w. **“Construction Experience Qualification Requirement”** is defined in Sections .....and ..... of the Instructions to Prospective Bidders.
- x. **“Consortium Member”** is defined in Section..... of the Instruction to Prospective Bidders.
- y. **“Corrupt Practice”** is defined in Section.....of the Instructions to Prospective Bidders.
- z. **“Construction Performance Security”** is defined in Section..... of the PPP Contract.
- aa. **“Detailed Engineering Design or DED for Phase II”** means the Detailed Engineering Design for Phase II comprising Phase II(a) and Phase II(b) works, which shall be prepared by the SPC pursuant to the PPP Contract and the Minimum Performance Standards and Specifications.
- bb. **“IA”** means the government implementing agency for the Project and a party to the PPP Contract.
- cc. **“Equity Documents”** is defined in Section..... of the PPP Contract.
- dd. **“Equity Requirements”** is defined in Section..... of the PPP Contract.
- ee. **“Facility Operator”** is defined in Section..... of the PPP Contract.
- ff. **“Financial Proposal”** is defined in Section..... of these Instructions to Bidders.
- gg. **“Fraud”** is defined in Section..... of the Instructions to Prospective Bidders.
- hh. **“Instructions to Prospective Bidders”** means the Instructions to Prospective Bidders issued by the\_\_\_\_\_ [Name of IA] in [insert date of issues]
- ii. **“Invitation Documents”** is defined in Section..... of the Instructions to Prospective Bidders.
- jj. **“Minimum Performance Standards and Specifications”** means the set of minimum performance or functional standards and specifications that they must comply with in undertaking the design, construction, operations and maintenance of the Project, as set forth in the Bidding Documents.
- kk. **“..... \_\_\_\_\_ [insert the project]”** is defined in Section..... of the PPP Contract.
- ll. **“Notice of Award”** is defined in Section..... of these Instructions to Bidder.
- mm. **“Lock-Up Rules”** is defined in Section..... of these Instructions to Bidders.
- nn. **“O&M Experience Qualification Requirement”** is defined in Section..... of the Instructions to Prospective Bidders.
- oo. **“Post-Award Requirements”** means the requirements that must be complied with by the Winning Bidder as a pre-condition to the execution of the PPP Contract, as described in Section 8.1 of these Instructions to Bidders.

- pp. **“Pre-Bid Conference”** is defined in Section ..... of these Instructions to Bidders.
- qq. **“Pre-Qualified Bidder”** is defined in Section..... of the Instructions to Prospective Bidders.
- rr. **“Project”** is defined in Section.... of the Instructions to Prospective Bidders.
- ss. **“Qualification Documents Submission Date”** is defined in Section..... of the Instructions to Prospective Bidders.
- tt. **“PMU”** means the Project Management Unit established by the \_\_\_\_\_ [name of IA] for the implementation of the Project.
- uu. **“Required Effective Date”** is defined in Section.....of the PPP Contract.
- vv. **“Restrictive Practice”** is defined in Section..... of the Instructions to Prospective Bidders.
- ww. **“Services”** is defined in Section..... of the PPP Contract
- xx. **“Signing Date”** is defined in Section.....of the PPP Contract.
- yy. **“Technical Proposal”** is defined in Section.....of these Instructions to Bidders.
- zz. **“Undesirable Practice”** is defined in Section.....of the Instructions to Prospective Bidders.
- aaa. **“Winning Bidder”** means the Bidder determined by the [name of IA] as having the best post-qualified Bid and issued a Notice of Award.
- bbb. **“Works”** is defined in Section..... of the PPP Contract.

[Note: In notarized documents in these annexes, the information on the notary public stamped or written in the original document must be readable.]

**ANNEX BL-1**  
**Form of Bid Letter**

[Letterhead]

[Name and Address of IA]

I, (name), (citizenship), of legal age, with office address at (address), as the authorized representative of (name of Bidder), a (corporation/partnership/Consortium), organized ( if a corporation state “and existing under and by virtue of the laws of [place of incorporation/registration] and if a consortium state “under the [caption, date and other details to make clear reference to the consortium agreement] among its Consortium Members”), after having been duly sworn according to law, hereby declare for and on behalf of (name of Bidder) that:

1. In accordance with the Bidding Documents for the \_\_\_\_\_ [Name of Project] (hereinafter referred to as the “Project”), (Name of Bidder), a (partnership/corporation/Consortium) with business address at [address of Bidder], hereinafter referred to as the Bidder, submits its Bids to finance, design, construct, operate and maintain the Project in accordance with the Instructions to Bidders.
2. Bidder’s Bids consists of the following components:
  - a. Envelope No. 1 - This Bid Letter and its required attachments, as listed below
  - b. Envelope No. 2 - Technical Proposal and
  - c. Envelope No. 3 - Financial Proposal.
3. As attachments to this Bid Letter, the Bidder submits the following:
  - a. [Annex BL-2A (for a partnership or corporation): Authority to Submit Bids and Designation of Authorized Representative] or [Annex BL-2B (for a Consortium, to be submitted by each Consortium Member): Consortium Member’s Authority to Participate in the Consortium and Submit a Bids and Designation of Lead Member and Authorized Representative of Consortium]
  - b. Annex BL-3: Bid Security
  - c. Annex BL-4: Updated Business Plan
  - d. Annex BL-5: Construction Contractor’s Notarized Statement of Willingness to Participate in and Capacity to Undertake the Requirements of the Project and
  - e. Annex BL-6: O&M Contractor’s Notarized Statement of Willingness to Participate in and Capacity to Undertake the Requirements of the Project.
4. (Name of Bidder) declares that all statements made, and the information and documents submitted in its Bids are true and correct as of the date of this statement, and any misrepresentation or false statement made therein shall be a ground for its disqualification.
5. (Name of Bidder) authorizes the \_\_\_\_\_ [Name of IA] to conduct any inquiries or investigations to verify the statements, documents, and information submitted in its Bids, and to seek clarification from any person regarding any technical and financial aspects. (Name of Bidder) also permits third parties to supply information required to verify statements and information submitted in its Bids.
6. (Name of Bidder)’s Bids is unconditional and unqualified. We understand and accept all the terms, conditions and other provisions of the Invitation Documents and Bidding Documents.
7. (Name of Bidder) acknowledges the right of the \_\_\_\_\_ [Name of IA] to reject its Bids

without assigning any reason and to cancel the Bidding process at any time prior to the signing of the PPP Contract, without incurring any liability to the *(name of Bidder)*.

8. *(Name of Bidder)*, including all its Consortium Members, and all of the entities it has proposed to comply with the Qualification Requirements under the Instructions to Prospective Bidders (i) has not engaged in any Corrupt, Fraudulent, Collusive, Coercive, Undesirable, or Restrictive Practices, (ii) has no Conflict of Interest; (iii) will comply with the Lock-Up rules under Section 14 of the Instructions to Bidders; and (iv) has no Unsatisfactory Performance record.
9. *(Name of Bidder)* waives any right to and shall not seek or obtain any restraining order, writ of injunction or prohibition or any other form of coercive judicial, quasi- judicial or administrative writ, process or issuance against the \_\_\_\_\_ *[Name of IA]* to restrain, prevent, suspend, or in any manner forestall, hinder or render inconvenient the Bidding Process, the award of the contract to the Winning Bidder, and the implementation of the PPP Contract. *(Name of Bidder)* acknowledges that the \_\_\_\_\_ *[name of IA]* is undertaking this Bidding in the performance of its functions to ensure the provision of a critical basic necessity and that, therefore, the Project is of paramount public interest and importance and that the \_\_\_\_\_ *[name of IA]* will suffer serious and irreparable damage on account of any breach by *(name of Bidder)* of these undertakings, and agree that the breach of these undertakings shall result in *(name of Bidder)*'s automatic disqualification to bid for the Project.
10. *(Name of Bidder)* agrees to keep its Bids valid for one hundred and eighty (180) days from the Bids Submission Date.
11. If *(Name of Bidder)* is declared as the Winning Bidder, *(Name of Bidder)* agrees to comply with the requirements of Section 8 of the Instructions to Bidders and execute the final PPP Contract with the *[name of IA]* within the deadlines set in the Instructions to Bidders.

*(Date and Place of Execution)*

For and on behalf of *(Name of Bidder/Name of Consortium and List of Consortium Members)*

By: *(Name, Designation and Signature of Authorized Representative)*

SUBSCRIBED AND SWORN TO before me this [ \_\_\_\_\_ ] day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Cambodia notarial regulations)* issued at *(city)* on *(date)*.

(NOTARY PUBLIC)

Doc. No.: \_\_\_\_\_ Page No.: \_\_\_\_\_ Ref No.: \_\_\_\_\_

**ANNEX BL-2A**

**Authority to Submit Bids and Designation of Authorized Representative (for Bidders that are partnerships or corporations)**

(To be submitted by all Bidders that are partnerships or corporations)

[Letterhead]

I, (*corporate secretary or equivalent officer*), after having been duly sworn according to law, hereby depose and state that:

1. I am a (*citizenship*) citizen, of legal age and a resident of [\_\_\_\_\_];
2. I am the duly elected (*corporate secretary or equivalent officer*) of (*Name of Bidder*) (the "Bidder"), a (*corporation/partnership*) organized and existing under and by virtue of the laws of (*country of incorporation/registration*);
3. At a regular/special meeting of the (*authorized body*) of the Bidder, held on (*date*) at (*place*), in which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:
  - (i) RESOLVED, AS IT IS HEREBY RESOLVED, that (*Name of Bidder*) (the "Bidder") be, and is, authorized to submit its Bids for the [*name of Project*] (hereinafter called the "Project");
  - (ii) RESOLVED FURTHER, that in the event the Bidder is declared as the Winning Bidder, it commits to fulfill all the requirements in the Instructions to Bidders, including the submission and completion of the Post-Award Requirements within [*insert time period*] from its receipt of the Notice of Award, and the signing of the PPP Contract with the [*name of IA*] within [*insert time period*] of being notified by the \_\_\_\_\_ [*Name of IA*] that it has complied with the Post-Award Requirements;
  - (iii) RESOLVED FURTHER, that (*name of Bidder's representative[s], in case of more than one (1) representative, each must be authorized to act alone*) be and is hereby appointed as the authorized representative(s) of the Bidder effective throughout the Bidding Process and its incidents until the signing of the PPP Contract, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Bidder.
  - (iv) RESOLVED, FINALLY, that any and all acts done and/or performed by (*name of Bidder's representative*) under and by virtue of this resolution be, as they are hereby, confirmed and ratified.
4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Bidder
5. That the above resolutions are in accordance with the records of the Bidder.

(Place, Date of Execution): \_\_\_\_\_

[Corporate Secretary or Equivalent Officer]: \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of (*month and year*) at (*place*), affiant exhibiting to me his/her (*proof of identity acceptable under Cambodia notarial regulations*) issued at (*city*) on (*date*).

NOTARY PUBLIC

Doc. No.: \_\_\_\_\_

Page No.: \_\_\_\_\_

Ref No.: \_\_\_\_\_

**ANNEX BL-2B**

**Consortium Member’s Authority to Participate in the Consortium and Submit a Bid and Designation of Lead Member and Authorized Representative of Consortium (for Bidders that are Consortiums)**

(To be submitted by each Consortium Member)

*[Letterhead]*

**SWORN CERTIFICATION OF RESOLUTIONS**

I, (*corporate secretary or equivalent officer*), after having been duly sworn according to law, hereby depose and state that:

1. I am a (*citizenship*) citizen, of legal age and a resident of [\_\_\_\_\_];
2. I am the duly elected (*corporate secretary or equivalent officer*) of (*Consortium Member*) (the “Firm”), a (*corporation/partnership or equivalent entity*) organized and existing under and by virtue of the laws of (*country of incorporation*);
3. At a regular/special meeting of the authorized body of the Firm, held on (*date*) at (*place*), in which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:
  - (i) RESOLVED, AS IT IS HEREBY RESOLVED, that the Firm be, and is, authorized to participate, through a Consortium consisting of the following Members and their respective nationalities and percentage interests in the Consortium, in the Bidding Process for the financing, design, construction, operation and maintenance of the [*Name of Project*] (hereinafter called the “Project”):

Name of Consortium Member	Nationality	% Interest

- (ii) RESOLVED FURTHER, that the Firm authorizes the Consortium described above to submit a Bids for the Project.
- (iii) RESOLVED FURTHER, that the Firm shall maintain its percentage interest in the Consortium until the signing of the PPP Contract, and thereafter shall comply with the requirements and restrictions on changes in ownership of the SPC as stated in the PPP Contract.
- (iv) RESOLVED FURTHER, that in the event that the Consortium is declared as Winning Bidder, the Firm shall cooperate with the other Consortium Members to register a domestic SPC and comply with all of the other requirements specified in the Instructions to Bidders and the PPP Contract.
- (v) RESOLVED FURTHER, that the Firm jointly and severally to the extent of the Bid Security binds itself with the Consortium Members listed above in undertaking the obligations of the Consortium in the Bid for the Project until, if the Consortium is selected as the Winning Bidder, the corporation formed by the Consortium signs the PPP Contract, or if the Consortium is not declared as the Winning Bidder until one hundred and eighty (180) days after the Bids Submission Date.
- (vi) RESOLVED FURTHER, that (*Name of Firm’s representative[s] in case of more than*

one (1) representative, each must be authorized to act alone) be and is hereby appointed as the authorized representative of the Firm throughout the Bidding Process and its incidents, until the signing of the PPP Contract), authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Firm.

(vii) RESOLVED FURTHER, that the Firm in the exercise of its interest in the Consortium hereby:

(a) designates (*Name of Lead Member of Consortium*) as Lead Member of the Consortium with the authority to represent Consortium during the second stage of the Bidding Process for the Project.

(b) authorizes (*Name of authorized representative[s] of the Consortium in case of more than one (1) representative, each must be authorized to act alone*) as representative of the Consortium in relation to the second stage of the Bidding Process for the Project, and for such purpose shall have the authority to execute, sign and receive documents for, and otherwise act in the name of the Consortium.

(viii) RESOLVED, FINALLY, that any and all acts done and/or performed by (*Name of Lead Member of Consortium*) and (*Name of authorized representative[s] of the Consortium*) under and by virtue of this resolution be, as they are hereby, confirmed, and ratified.

4. These resolutions have not been revoked, amended, or modified and remain valid and binding on the Firm; and

5. That the above resolutions are in accordance with the records of the Firm.

(Place, Date of Execution): \_\_\_\_\_

[Corporate Secretary or Equivalent Officer]: \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of (*month and year*) at (*place*), affiant exhibiting to me his/her (*proof of identity acceptable under Cambodia notarial regulations*) issued at (*city*) on (*date*).

NOTARY PUBLIC

Doc. No.: \_\_\_\_\_

Page No.: \_\_\_\_\_

Ref No.: \_\_\_\_\_

## ANNEX BL-3

### Form of Bid Security

*[Letterhead of Issuing Bank]*

[Name and Address of the IA]

Guarantee//Standby Letter of  
Credit No.

Date:

Dear Sir/Madam:

We, [\_\_\_\_\_], a corporation organized and existing under the laws of the Kingdom of Cambodia (the “*Issuer*”), hereby establish our Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “*Letter of Credit*”) in your favor and for the account of [*Name of Bidder or Consortium’s Lead Member*] (the “*Bidder*”) relating to the obligations of the Bidder under the Instructions to Bidders of the [*name of Project*], which shall be valid and effective for a period of at least ONE HUNDRED AND EIGHTY [180] DAYS from [insert *date: Bids Submission Date*]. Capitalized terms used in this Letter of Credit shall have the meanings given to them in the Instructions to Bidders except as otherwise expressly defined herein.

1. The amount available under this Letter of Credit is [*insert amount and currency*] (the “*Stated Amount*”).
2. Subject to the other provisions of this Letter of Credit, [*Name of IA*] is hereby irrevocably authorized to make one drawing under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment from [*Name of IA*] in substantially the form attached as Annex A, herein duly completed, and that is in the form of a letter on \_\_\_\_\_ [*Name of IA*] letterhead signed by any of its authorized signatories.
3. The Issuer shall be deemed to have honored a drawing hereunder if the Issuer deposits the amount of such drawing in the account (the “*Designated Account*”) designated by \_\_\_\_\_ [*Name of IA*] in accordance with Annex A herein. Forthwith upon any such drawing being honored as aforesaid, this Letter of Credit shall be deemed to be amended to effect a reduction in the Stated Amount hereunder equal to the amount of such drawing. Any such drawing made hereunder shall be free and clear of all interest and charges and any sums due to the Issuer.
4. We hereby agree to honor drawing hereunder made in compliance with this Letter of Credit notwithstanding any objection that the Bidder might raise against \_\_\_\_\_ [*Name of IA*] entitlement to payment, by transferring in immediately available funds to the Designated Account the amount specified in a demand for payment at the opening of business on the first or second Business Day succeeding the date of such demand. As used herein, the term “*Business Day*” means any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions in Phnom Penh, Cambodia are authorized or obligated by law or regulations to remain closed.
5. If a demand for payment hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such demand) to \_\_\_\_\_ [*Name of IA*] that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we shall upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that a demand for payment was not effected in conformity with this Letter of Credit, \_\_\_\_\_ [*Name of IA*] may attempt to correct any such non-conforming demand and re-submit such demand in accordance with the



terms and conditions hereof.

6. This Letter of Credit shall expire, unless otherwise extended in accordance with the provisions hereof, on the earliest of (i) 5 p.m. at the place of presentation on [ *date: Bids Submission Date + One Hundred and Eighty (180) days*], (ii) the date on which we receive confirmation from \_\_\_\_\_ *name of IA* that the Stated Amount has been reduced to zero, (iii) the date on which we have honored a drawing in an amount equal to the Stated Amount, or (iv) the date when we receive a written notice from \_\_\_\_\_ *[Name of IA]* that a replacement letter of credit, which is in full force and effect, has been substituted for this Letter of Credit (the "Expiration Date").
7. All documents presented to the Issuer in connection with any drawing hereunder, as well as all notices and other communications to the Issuer in respect of this Letter of Credit, shall be in writing and addressed and presented to the Issuer at its address set forth above. Such documents, notices, and communications shall make specific reference to this Letter of Credit by number. Such documents, notices, and other communications may be delivered or sent by courier to the Issuer at its address set forth above, or at such other address as the Issuer shall have specified in writing to \_\_\_\_\_ *[Name of IA]*, or sent to the Issuer by fax or email or registered mail to the following number:  

Fax No. [ \_\_\_\_\_ ]  
Email: \_\_\_\_\_
8. This Letter of Credit may not be cancelled or amended without the prior written consent of the Issuer and \_\_\_\_\_ *[Name of IA]*
9. This Letter of Credit sets forth our undertaking and our agreement with \_\_\_\_\_ *[Name of IA]* and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein.
10. The Issuer hereby agrees that it shall have no recourse to \_\_\_\_\_ *[Name of IA]* if the Bidder fails at any time to pay any amounts which may from time to time be due and payable by it to the Issuer in relation to this Letter of Credit.
11. References in this Letter of Credit to the Instructions to Bidders or any other document or instrument, except to the Annex A hereto are for identification purposes only. The Instructions to Bidders and such other documents and instruments are not incorporated herein, nor are they made a part of this Letter of Credit.
12. This Letter of Credit is issued subject to the Uniform Customs and Practice for Documentary Credits, 2007 revision, International Chamber of Commerce Publication No. 600 ("UCP 600"), the provisions of which are incorporated into this Letter of Credit, except to the extent superseded by the express terms and conditions of this Letter of Credit. If this Letter of Credit should expire during an interruption of our business as described in Article 17, the Issuer hereby agrees to honor any demand presented in accordance with this Letter of Credit within thirty (30) days after the resumption of our business.
13. To the extent that the provisions of this Letter of Credit are not governed by UCP 600 this Letter of Credit shall be governed by the laws of the Kingdom of Cambodia and construed in accordance with said laws, without regard to principles of conflicts of law.

IN WITNESS WHEREOF, we have caused these presents to be executed in our name and our corporate seal to be affixed by our attorney-in-fact on this [ \_\_\_\_\_ ] day of [ \_\_\_\_\_ ] 20....

[Issuing Bank]

By: \_\_\_\_\_

**Annex A to Annex BL-3**  
**Demand For Sight Payment**

To: [Name of Issuer]

[Address]

Attn: [\_\_\_\_\_]

Re: Irrevocable Standby Letter of Credit No. [\_\_\_\_\_]

The undersigned, a duly authorized officer of the \_\_\_\_\_ [name of IA], make reference to the Instructions to Bidders of the [name of Project] ("Project").

1. \_\_\_\_\_ [Name of IA] hereby demands payment (the "Drawing") under the Letter of Credit in the amount of [state amount demanded] in order to satisfy liabilities of the Bidder under the Instructions to Bidders.
2. The amount of the Drawing does not exceed the Stated Amount made under the Letter of Credit and honored by Issuer.

Please wire transfer the amount of the Drawing to [account details] of the "Designated Account").

IN WITNESS WHEREOF, [Name of IA] has executed and delivered this certificate as of the [\_\_\_\_\_] day of [\_\_\_\_\_],

[signature of authorized representative of IA]

Name:

Title:

Seal:

Date:

**ANNEX BL-4**

**Updated Business Plan**

(Required if Bidder is a Consortium)

**Name of Consortium:**

*Required Attachments: for each new Consortium Member:*

- a. *Basic Information Sheet using the form in Annex ..... of the Instructions to Prospective Bidders, including the required attachments to Annex .....; and*
- b. *Notarized Certification of Absence of Unsatisfactory Performance record, using the form in Annex .....of the Instructions to Prospective Bidders.*

**1. Consortium Members**

	Lead Member	Other Member	Other Member	Other Member
Name				
Percentage Interest in the Consortium				
Type of Legal Entity (corporation / partnership)				

**2. Contact Information of Consortium Members not included in Annex....**

a. Consortium Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. Fax	
iii. E-mail	

a. Consortium Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. Fax	
iii. Email	

**ANNEX BL-5**

**Construction Contractor’s Notarized Statement of Willingness to Participate in and Capacity to Undertake the Requirements of the Project**

(To be submitted by each pre-qualified Construction Contractor)

(Letterhead)

**Notarized Statement of Willingness to Participate in and Capacity to Undertake the Requirements of the Project**

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, *(position/designation)* and authorized representative of *(name of Construction Contractor)*, a *(corporation/partnership)* organized and existing under and by virtue of the laws of *(place of incorporation/registration)* hereby declare for and on behalf of *(Name of Construction Contractor)* that:

1. *(Name of Construction Contractor)* is willing to participate, through the *(Name of Bidder)*, in the Bid for the *[Name of Project]* (“Project”) in accordance with the Instructions to Bidders.
2. *(Name of Construction Contractor)* has the required experience and capacity to undertake the requirements for its services in the Project in accordance with the provisions of the Bidding Documents.
3. If selected by *(Name of Prospective Bidder)*, *(Name of Construction Contractor)* shall formally enter into a contract with the SPC to perform the obligations and assume the attendant liabilities as Construction Contractor for the Project.

*Date and Place of Execution.*

For and on behalf of *(Name of Entity)*

*(Signature of Authorized Representative)*

\_\_\_\_\_  
(Name)

(Designation)

SUBSCRIBED AND SWORN TO before me this (\_\_\_\_\_) day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Cambodia notarial regulations)*, issued at *(city)* on *(date)*.

Notary Public

Doc. No.: \_\_\_\_\_  
Page No.: \_\_\_\_\_  
Ref No.: \_\_\_\_\_

**ANNEX BL-6**

**O&M Contractor’s Notarized Statement of Willingness to Participate in and Capacity to Undertake the Requirements of the Project**

(To be submitted by the pre-qualified O&M Contractor)

Prospective Bidder:	
Entity which fulfills the requirement:	
Relationship to Prospective Bidder:	

**Notarized Statement of Willingness to Participate in and Capacity to Undertake the Requirements of the Project**

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of O&M Contractor)*, a *(corporation/partnership)* organized and existing under and by virtue of the laws of *(place of incorporation/registration)*, after having been duly sworn according to law, hereby declare for and on behalf of *(name of O&M Contractor)*, that:

1. *(Name of O&M Contractor)* is willing to participate, through the *(Name of Bidder)*, in the Bid for the *[Name of Project]* (“Project”) in accordance with the Instructions to Bidders.
2. *(Name of O&M Contractor)* has the required experience and capacity to participate as (proposed Facility Operator/third party with O&M Qualification Requirements) in the Project in accordance with the provisions of the Bidding Documents.
3. If selected by *(Name of Bidder)*, *(Name of O&M Contractor)* shall formally enter into the required contracts with the SPC as the Facility Operator for the Project and shall own at least twenty percent (20%) of the Facility Operator until at least two (2) years after the issuance of the Operation Certificate for the Project.

*Date and Place of Execution.*

For and on behalf of *(Name of O&M Contractor)*

(Signature of Authorized Representative)

\_\_\_\_\_

(Name)

(Designation)

SUBSCRIBED AND SWORN TO before me this ( \_\_\_\_\_ ) day of *(month and year)* at

*(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Cambodia notarial regulations)*, issued at *(city)* on *(date)*.

Notary Public

Doc. No.: \_\_\_\_\_

Page No.: \_\_\_\_\_

Ref No.: \_\_\_\_\_

**ANNEX TP-1**

**ANNEX TP-1: Conceptual Engineering Design**

**Name of Project:**

**Name of Bidder:**

---

1. Conceptual engineering design for Phase II(a) and Phase II(b) (A3 size copy) of the \_\_\_\_\_ *[Insert the project]* and appurtenant structures, including the following:

*[Insert all the requirements]*

For and on behalf of (*Bidder/Lead Member*)

(*Signature of Authorized Representative*)

---

(*Name*)

(*Designation*)

**ANNEX TP-2**

**ANNEX TP-2: Construction Plan For At-Grade Works, Phase II(a) And Phase II(b)**

**Name of Project:** \_\_\_\_\_

**Project Name of Bidder:** \_\_\_\_\_

---

1. Construction organization for the Project, identifying key personnel and positions, and subcontractors.
2. Construction methodology and procedures.
3. Quality control system.
4. Construction schedule, milestones, and S-curve.
5. Major construction equipment to be used.
6. Traffic management plan during Construction.
7. Health, safety and security program for Construction.

For and on behalf of (Bidder/Lead Member)

(Signature of Authorized Representative)

---

(Name)

(Designation)



## ANNEX TP-3

### ANNEX TP-3: Operations and Maintenance Plan For \_\_\_\_\_

#### I. Project Description

#### II. \_\_\_\_\_ Operations (Partial Operations and Maintenance for Phase II(a) and Entire Project)

- a) Toll collection system.
- b) Traffic safety and control system.
- c) Power and Other Utilities.

#### III. \_\_\_\_\_ Maintenance (Partial Operations and Maintenance for Phase II(a) and Entire Project)

- a) Maintenance of \_\_\_\_\_ *[Insert the project]* structures.
- b) Maintenance of toll plazas and buildings.
- c) Maintenance of operating equipment and utilities.

#### IV. Others

- a) Coordination, Interconnection, and Interoperation with Other Toll Facilities.
- b) Uninterrupted Operations
- c) Customer Service and Satisfaction
- d) Environmental Compliance Program
- e) Aesthetics
- f) Operations and Maintenance Manuals
- g) Asset Register
- h) To meet Key Performance Indicators for Operations
- i) To meet Key Performance Indicators for Maintenance

**Note:** Annex TP-3 is only a guide. Bidders may adopt their own format for the Operations and Maintenance Plan, provided it contains all the requirements of the Minimum Performance and Standards and Specifications.

**ANNEX TP-4**

**ANNEX TP-4: Findings on Review and Verification of At-Grade Works DED**

**Name of Project:** \_\_\_\_\_

**Project Name of Bidder:** \_\_\_\_\_

Description	Issues/Concerns	Recommendation

For and on behalf of (Bidder/Lead Member)

(Signature of Authorized Representative)

\_\_\_\_\_

(Name)

(Designation)

## ANNEX FP-1

### Annex FP-1: Statement of Bidder On Bid Amount

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the authorized representative of *(Bidder)*, a *(corporation/partnership or Consortium)* *(organized and existing under and by virtue of the laws of [place of incorporation/registration] or organized by agreement among its Consortium Members)*, hereby declare for and on behalf of *(Name of Bidder)* that:

1. In accordance with the Bidding Documents for the \_\_\_\_\_ *[Name of the Project]* (hereinafter referred to as the "Project"), *(Name of Bidder)*, a *(partnership/ corporation/ Consortium)* with business address at \_\_\_\_\_, hereinafter referred to as the Bidder, submits the Bid Amount.
2. Bidder's Bid Amount is *(insert either "A VIABILITY GAP FINANCING" or "AN UP-FRONT LUMP-SUM PAYMENT TO \_\_\_\_\_ [Name of IA]"*, depending on the Bid Parameter that the Bidder selects) of:
3. Bid Amount in words (Select appropriate clause)

["The Bidder shall execute a Viability Gap Financing Agreement with the Government"

or

"The UP-FRONT LUMP-SUM PAYMENT TO *[Name of IA]* shall be paid"

within *[Insert time period- normally 30 calendar days]* from the Notice of Award or such additional time as *[Name of IA]* may allow, as a condition to the signing of the PPP Contract.

For and on behalf of *(Name of Bidder/Name of Consortium / List of Consortium Members)*

By:

*(Name and Signature of Authorized Representative)*

Date: \_\_\_\_\_

## ANNEX FP-2

### FINANCIAL MODEL

Name of Project: \_\_\_\_\_ Project

Name of Bidder: \_\_\_\_\_

*[Note: All amounts in [state currency] and in [state year] prices.]*

**Electronic copy in Microsoft Excel format of the Bidder's Financial Model with the following minimum information per year from yyyy-yyyy:**

#### A. Project Costs

- Engineering Design
- Civil Works
- Toll Collection System
- Insurance Costs
- Others

#### B. Key Operating Assumptions (see segments in Annex.....of \_\_\_\_\_)

- Toll rate for Class I
- Toll rate for Class II
- Toll rate for Class III
- Domestic Inflation
- Average vehicles per day, Class I
- Average vehicles per day, Class II
- Average vehicles per day, Class III

#### C. Projected Income and Expenses

- Toll Revenues
- Other revenues
- Total Revenues
- Operating expenses
- Routine maintenance expenses
- Periodic maintenance expenses
- Insurance expenses
- Others
- Depreciation and amortization
- Total expenses
- Operating income
- Interest expenses
- Other expense
- Net income before tax

- Taxes
- Net income after tax

#### **D. Projected Balance Sheet Assets**

- Current Assets
- Long-Term Assets
- Other Assets
- Total Assets
- Liabilities and Stockholder's Equity
- Short-term Debt
- Current Portion of Long-Term Debt
- Other current liabilities
- Long-term debt
- Other long-term liabilities
- Total Liabilities
- Total Stockholder's Equity
- Total Liabilities and Stockholder's Equity
- Debt / Total Capital Ratio

#### **E. Projected Cashflow Statement**

- Cashflow from Operations
- Cash inflows from toll revenues
- Changes in working capital Adjustments for Non-cash items
- Other operating cash inflows
- Cash operating and maintenance costs
- Net Cashflow from Operations
- Cashflow from Investing
- Cash inflows from investing activities
- Capital expenditure
- Other cash outflows from investing activities
- Net Cashflow from Investing Activities
- Cashflow from Financing
- Interest Income
- Interest Expense
- Gross Borrowing
- Gross Debt Repayment
- Equity contributions
- Payments to Shareholders
- Net Cashflow from Financing Activities
- Net Cashflow
- Cash at beginning
- Cash at end

#### **F. Rates of Return and Cost of Capital**

- Project IRR and Weighted Average Cost of Capital  
*(Please show calculations to derive the project IRR and breakdown of WACC in each year)*
- Equity IRR  
*(Please show calculations to derive the equity IRR and compare with cost of equity)*

For and on behalf of (Bidder/Lead Member)

(Signature of Authorized Representative)

---

(Name)

(Designation)

## ANNEX FP-3: PROJECT FINANCE PLAN

### 1. PROJECT FINANCE PLAN

The financial plan provided by the Bidder will describe the sources of funds and the terms of financing for both debt and equity as applicable for implementing the Project. For the avoidance of doubt, shareholder loans will be treated as equity provided that they are subordinated to all other debt. The Bidder will provide details on the financing sources as outlined in the below Table 1. The financing should be in an amount sufficient to cover all estimated Project costs.

Financing will be in the form of equity and debt. At least thirty percent (30%) of the total financing, inclusive of contingencies, will be in the form of equity and the remainder in debt or subordinated debt.

**Table 1: Financing Sources**

<b>SOURCES OF FUNDS</b>					
Items / Sources	USD	+	Local Currency (KHR)	=	Equivalent Total in US Dollar (USD)
1.1 Total Project Costs (Excluding stand-by credit facility)					
1.2 Equity					
<ul style="list-style-type: none"> <li>• Lead Member Name: _____</li> </ul>					
<ul style="list-style-type: none"> <li>• (Member of Consortium) Name: _____</li> </ul>					
<ul style="list-style-type: none"> <li>• (Member of Consortium) Name: _____</li> </ul>					
<ul style="list-style-type: none"> <li>• Contractor/Supplier Name: _____</li> </ul>					
<ul style="list-style-type: none"> <li>• Contractor/Supplier Name: _____</li> </ul>					
<ul style="list-style-type: none"> <li>• Cambodia sources Name: _____</li> </ul>					
<ul style="list-style-type: none"> <li>• Other sources (specify) Name: _____</li> </ul>					
<b>SOURCES OF FUNDS</b>					

Items / Sources	USD	+	Local Currency (KHR)	=	Equivalent Total in US Dollar (USD)
-----------------	-----	---	----------------------------	---	---

**Total Equity:**

1.3 Debt Financing

<input type="checkbox"/> Export Credit Agencies (List individually)					
- Export Credit Agency Name: _____					
- Export Credit Agency Name: _____					
- Export Credit Agency Name: _____					
- Export Credit Agency Name: _____					
<input type="checkbox"/> Commercial Sources (List individually)					
- Commercial Source Name: _____					
- Commercial Source Name: _____					
- Commercial Source Name: _____					
<input type="checkbox"/> Multilateral Sources (List individually)					
- Multilateral Source Name: _____					
- Multilateral Source Name: _____					
<input type="checkbox"/> Other Sources (List individually)					
- Other Source Name: _____					

**Total Debt:**



## 2. DOCUMENTATION

In support of the financing plan provided above, the following documentation is to be provided.

- 2.1. Financial Plan certified by the Chief Executive Officer or Treasurer /Controller of each of the companies verifying that the company will provide the amount of equity stated in Section 1.2 of Table 1 at the relevant time.
- 2.2. Letters of interest or willingness to lend, with term sheets, from financial institutions verifying the amount of debt financing stated in Section 1.3 of Table 1. The document should also indicate the repayment period and interest rates (fixed or variable) applicable to the commitment. The letter of interest or willingness to lend, must substantially conform to the format attached as Annex A to the ANNEX FP-3 (Form of Willingness to Lend).
- 2.3. If the Bidder has obtained an underwriting for all or part of the amount, a letter from the financing institution of such undertaking shall be provided.
- 2.4. If the Bidder has appointed a financial advisor/arranger for the Project, Bidder shall provide the name of the organization, the lead person who will perform the services from the organization, and the qualification statement for the organization and the lead person.
- 2.5. Should the Bidder plan to have financing for the Project at a later date, [e.g. After completion of At-Grade; after Phase 2-A; after Effective Date etc.], details of financing arrangements prior to the long-term financing being effective shall be provided.

Note: If necessary, Bidders may provide for a separate document or annexes for their financial model and project finance plan.

**ANNEX A to ANNEX FP-3 (Form of Willingness to Lend)**

(Name of Institution)

(Date)

*[NAME AND ADDRESS OF IA]*

Dear Sirs/Madams:

In connection with the participation of (Bidder) in the Bidding Process for the \_\_\_\_\_ *[Name of Project]*, we wish to indicate our interest and willingness to provide or arrange the following credit facility for the SPC that the Bidder will incorporate, if and when it is declared the Winning Bidder, as follows:

(Term sheet of credit facility, amount, interest, period and other terms)

Very truly yours,

(Signature of Authorized Representative)

\_\_\_\_\_

(Name):

(Designation):

## **Schedule 1**

List of Universal and Commercial Banks Licensed by the National Bank of Cambodia  
(List the Banks)

### **UNIVERSAL BANKS**

- DOMESTIC UNIVERSAL BANKS
- SPECIALIZED GOVERNMENT BANKS
- FOREIGN BANK BRANCHES

### **COMMERCIAL BANKS**

- DOMESTIC COMMERCIAL BANKS
- FOREIGN BANK BRANCHES
- FOREIGN BANK SUBSIDIARIES

----- END OF INSTRUCTIONS TO BIDDERS -----

## **Part III: Minimum Performance Standards and Specifications**

*[Insert- TA will prepare these]*

## **Part IV: Draft PPP Contract**

*[Insert draft PPP Contract prepared by the TA and approved by the PRC/MEF]*

# **Sample Template for the PPP Contract**

## PREFACE

*The following table of contents is for the typical PPP Contract which can be used and modified accordingly to prepare a draft PPP Contract with the features of specific PPP Projects.*

*The content of a PPP Contract will differ for different models of PPP Procurement. The PPP Contract for a BOT model, for example will have provisions related to design and construction of a facility which may not be required for a PPP Contract for O & M model. The terms and conditions agreed between the IA and the Private Partner may also differ. For example, the Government may or may not agree to any form of government support measures. The contents included in the typical PPP Contract will therefore need to be modified to suit the specific model used for PPP Procurement.*

*The table of contents excludes references to schedules and attachments that are commonly annexed to the PPP Contract. Such schedules and attachments are used to define additional information specific to certain concepts (e.g., payments), tailored to the project structure, and supplement the information included within the PPP Contract. These are generally highly specific to each project.*

*The template of the typical PPP Contract is therefore only for guidance purposes. The Transaction Advisors will prepare the draft PPP Contract for each specific PPP Contract for review and approval of the IA and MEF. The IA will ensure that the approved draft PPP Contract shall be used for the Bidding Documents.*

## TABLE OF CONTENTS

<b>Part A – Interpretation</b>	
1	Definitions
2	General rules of interpretation
<b>Part B – Project arrangement</b>	
3	Implementing Body
4	Transfer of Rights and Obligations (Novation Agreement)
<b>Part C – Project commencement and term</b>	
5	Conditions precedent
6	Term of PPP contract period
<b>Part D – General obligations</b>	
7	General obligations of the Private Partner
8	General obligations of the Implementing Agency
9	Approvals
10	Parties and personnel
11	Independent Consultant/Engineer
12	Subcontracting and third-party arrangements
<b>Part E – Rights of the parties</b>	
13	Rights of the Private Party and the Government of the Kingdom of Cambodia (GKC)
<b>Part F – Site</b>	
14	Project and site information
15	The site
16	Utility services
17	Land acquisition
18	Road and rail disruptions
19	Implementing Agency access and Project monitoring
20	Work health and safety and quality assurance system
21	Project plans, reports and certificates
22	Title and ownership
23	Interface requirements
<b>Part G – Development phase obligations</b>	
24	Development phase obligations
25	Development phase private financing
26	Development phase milestones and commissioning
27	Time and delay
28	Defects
<b>Part H – Operations and maintenance phase obligations</b>	
29	Operations and maintenance phase obligations
30	Relief events, Force Majeure events and compensation events
<b>Part I – Payment</b>	
31	Implementing Agency contribution amount
32	Financial Benefits to the GKC
33	Payments and penalties
34	Liquidated damages
<b>Part J – Change in circumstances</b>	
35	Modifications to the works or services



36	Change in law or policy
37	Refinancing
38	Equity Transfer
39	Suspension and step-in by the Implementing Agency
40	Step-in by the lenders
41	Probity investigations and probity events
42	Commercial opportunities
43	Structured financing
<b>Part K – Risk, indemnities and insurance</b>	
44	Damage
45	Indemnities and limits of liabilities
46	Insurance
<b>Part L – Default, termination and end of term obligation</b>	
47	Default
48	Force Majeure Events
49	Termination, including compensation on termination
50	Obligations on expiry
<b>Part M – Dispute resolution</b>	
51	Dispute resolution procedure
52	Expert determination
53	Arbitration
<b>Part N – Corporate obligations</b>	
54	Corporate representations, warranties and obligations
55	Assignment, grant of security interests, and rights to acquire the Project and other assets of the Private Partner
56	Financial model
57	Reporting requirements
58	Confidential information and privacy
59	Intellectual property
60	Government social requirements
61	Taxes and charges
62	Notices and bar to claims
63	Miscellaneous

*[This section sets out a brief summary of each concept typically included in PPP contracts. The summaries are aligned to the template table of contents set out and are not intended to replace any form of legal drafting.]*

## **1. DEFINITION**

Sets out the meaning of the defined terms used within the PPP Contract.

## **2. GENERAL RULES OF INTERPRETATION**

Sets out principles for interpreting the terms and language used within the PPP Contract. These typically include:

- The clauses, schedules and attachments which collectively form the PPP Contract;
- The order of precedence and approaches to addressing any inconsistency, ambiguity, or discrepancy within or between the PPP Contract and other Project documents;
- The other Project documents, in addition to the PPP Contract, the Sponsors and Private Partner must comply with; and
- The IA's rights, duties and functions when exercising its rights or carrying out its obligations under the Project documents.

## **3. IMPLEMENTING BODY**

Sets out the project arrangements:

- States the Implementing Body (IA) which represent the Government of the Kingdom of Cambodia (GKC).

## **4. TRANSFER OF RIGHTS AND OBLIGATIONS (NOVATION AGREEMENT)**

Sets out the project arrangements:

- Transfer of PPP Contract Rights and Obligations of the Wining Private Partner to Special Purpose Company (SPC) through a Novation Agreement. The Law on PPP requires the establishment of the SPC within ninety (90) days from the date of signing of the PPP Contract.

## **5. CONDITIONS PRECEDENT**

Sets out certain defined activities, tasks, or approvals (i.e., 'conditions') that must be completed by one or more parties to the PPP Contract before the PPP Contract becomes effective, usually with specific deadlines.

Typically includes processes for situations where the condition is not satisfied or is waived by the party not responsible for the obligation. The specific conditions themselves are usually set out in a schedule annexed to the PPP Contract, and are the subject to negotiations by various stakeholders, including the lenders.

## **6. TERM OF PPP CONTRACT PERIOD**

Sets out the commencement date and intended expiry date of the PPP Contract (which will apply unless the PPP Contract is subject to earlier termination). It typically also sets out any provisions for extending the contract after the completion of the initial contract term and cross-refers to the provisions dealing with early termination.

## **7. GENERAL OBLIGATIONS OF THE PRIVATE PARTNER**

Sets out the general obligations of the Private Partner under the PPP Contract. These typically include:

- Design, finance, build, operate, maintain and transfer (as applicable) the Project

- Carrying out Project activities in accordance with the PPP Contract, all applicable laws and standards and best practices
- Complying with the reasonable directions of the IA which are in accordance with the PPP Contract and other Project documents
- Maintaining the ability of the Project to provide services per the requirements of the PPP Contract
- Ensuring the relevant Project assets are fit for purpose
- The obligations around handing back the Project assets at the completion of the Project term

## **8. GENERAL OBLIGATIONS OF THE IMPLEMENTING AGENCY**

Sets out the key obligations of the IA under the PPP Contract. These typically include:

- Handover of the Project site to the Private Partner at Project commencement or as per agreed schedule
- The Private Partner's entitlement to payment for the Project works and services
- Providing the Private Partner access to any relevant studies and site information to enable the Private Partner to carry out its obligations
- Assisting the Private Partner in obtaining, from the government, local governments or other statutory bodies, necessary consents, permits and authorizations as required by applicable law
- Monitoring of the compliance of the Private Partner with the provisions of the PPP Contract
- Establishing the bodies, mechanisms and procedures for regular performance management and reviewing of the PPP Contract

## **9. APPROVALS**

Sets out the requirements and conditions for the approvals which must be obtained by the IA and the Private Partner under the PPP Contract. The specific approvals referred to by this section could be further listed out in an attachment to the PPP Contract. For example, the required planning and environmental approvals under the relevant legislation.

## **10. PARTIES AND PERSONNEL**

Sets out the identities of the Project participants, i.e., the IA and the Private Partner nominated representatives. Also sets out the establishment, processes and functions of the various Project working groups.

It generally also includes details of the Sponsors who would be shareholders in the Private Partner and other contractually relevant parties like major subcontractors or key government agencies with significant involvement in the Project.

## **11. INDEPENDENT CONSULTANT/ENGINEER**

Sets out the process for appointment of the Independent Consultant or the Independent Engineer, the Independent Engineer's role, and the relevant payment arrangements. Typically, also sets out the process of replacing the Independent Engineer.

An Independent Engineer offers a non-biased assessment on the Project's technical, contractual, and financial aspects. The specific responsibilities of an Independent Engineer can include:

- Ensuring value for money

- Tracking Project success, including quality of the works related to financial, construction, health and safety
- Independently assessing of Project performance-related metrics (i.e., key performance indicators).

## **12. SUBCONTRACTING AND THIRD-PARTY ARRANGEMENTS**

Sets out the Private Partner's responsibilities regarding subcontracting. Typically includes obligations in relation to:

- Notifying the IA before engaging any subcontractor
- Ensuring the competence of all subcontractors (i.e., subcontractors to hold relevant qualifications and have received appropriate training for their intended duties)
- Due process;
- Requirements for minority participation; and
- Subcontractor claims and disputes.

The provisions may also provide for the IA's right to monitor and supervise subcontractors and allow the IA to intervene at the subcontractor level to protect its interests if a subcontractor is underperforming. There could be include provision for the IA to have visibility over the project's supply chain (e.g., plant, materials and labor).

## **13. RIGHTS OF THE PRIVATE PARTY AND GOVERNMENT OF THE KINGDOM OF CAMBODIA (GKC)**

Sets out the rights of the Parties under the PPP Contract - the rights granted by the GKC to Private Partner and the rights granted by the Private Partner to the GKC. For example, the GKC grants the land use rights, rights to charge tolls and engage third parties to earn non-toll revenues in case of an Expressway Project. Similarly, the Private Partner will grant certain rights to the GKC.

## **14. PROJECT AND SITE INFORMATION**

Sets out conditions and limitations under which the IA has provided the Private Partner with information regarding the Project and site.

The provisions usually set out a description of the condition of the site as well as key details from any previous site investigation studies.

## **15. THE SITE**

Sets out the responsibilities of the IA and the Private Partner in respect of environmental issues, indigenous ownership title and heritage claims, contamination, and traffic management. When the IA provides the site, its obligations typically include ensuring that the necessary land acquisition procedures and compensation activities are completed before the effective date of the PPP Contract and ensuring that access to the site is free of any encumbrances. The Private Partner is generally responsible for obtaining all the necessary planning, permitting and environmental consents related to the Project.

## **16. UTILITY SERVICES**

Sets out the obligation of the IA and Private Partner regarding the management and risk of works relating to utilities (i.e., water, electricity, gas, communications, and data services).

## **17. LAND ACQUISITION**

Sets out the responsibilities of the IA and the Private Partner in respect of land acquisition. These typically include:

- Scope of land required (this is detailed in a schedule/annex) and arrangements if additional land is required by the Private Partner
- Land acquisition in accordance with the 2010 Expropriation Law and undertaken by the Inter-Ministerial Resettlement Committee of the GKC
- Financing arrangement for acquisition of land and resettlement. Which party pays or any cost sharing?
- The availability and adjustment of land plans
- The schedule of land acquisition and the procedures for handover of the possession to the Private Partner

## **18. ROAD AND RAIL DISRUPTIONS**

Sets out the responsibilities of the IA and the Private Partner in respect of road and rail disruption (i.e., closures of roads or railways to undertake works that could not be completed in a live road or rail environment).

## **19. IMPLEMENTING AGENCY ACCESS AND PROJECT MONITORING**

Sets out the IA's and Independent Engineer's right to enter, inspect and test any part of the Project activities. Typically, it also includes the process of the IA's audit of the Project assets and the self-auditing process of the Private Partner.

## **20. WORK HEALTH AND SAFETY AND QUALITY ASSURANCE SYSTEM**

Sets out the Private Partner's work health and safety and quality assurance obligations.

## **21. PROJECT PLANS, REPORTS, AND CERTIFICATES**

Sets out the requirements of the Private Partner to submit project schedules, implementation plans, reports and certificates to the IA and Independent Engineer, usually within specific deadlines.

## **22. TITLE AND OWNERSHIP**

Sets out the title and ownership rights of Project fixtures (i.e., items attached to the Project area) and movable assets (i.e., those assets used by the Private Partner during the operations of the Project). Where the Project includes the operation and maintenance of existing assets, the title and ownership of such assets are also included.

## **23. INTERFACE REQUIREMENTS**

Sets out the general obligation of the Private Partner to co-operate and co-ordinate with any party with whom there is an interface (e.g., with a contractor undertaking construction on a neighboring site), and the general obligations of the IA to ensure any interfacing party complies with the relevant site access and interfacing protocols.

## **24. DEVELOPMENT PHASE OBLIGATIONS**

Sets out the obligations of the IA, Private Partner and Independent Engineer during the Project's development phase and the terms and conditions under which the obligations must be met. These typically include:

- The IA granting the Private Partner a non-exclusive license to occupy and develop the Project site
- The Private Partner designing the Project assets and developing the design documentation, digitally or otherwise
- The Private Partner constructing the Project assets
- Circumstances under which the IA can call on any performance bond (i.e., bank guarantee) provided by the Contractor to the Private Partner; and

- The review of the works undertaken by the Private Partner by the Independent Engineer.

## **25. DEVELOPMENT PHASE PRIVATE FINANCING**

Sets out the sources and amounts of private finance (i.e., debt and equity) used to finance the Private Partner during the Project's development phase.

## **26. DEVELOPMENT PHASE MILESTONES AND COMMISSIONING**

Sets out the acceptance regime for the Project's development phase milestones and the obligations of the IA and Private Partner in achieving these milestones. These typically include:

- Technical acceptance milestone
- Commissioning period.
- Commercial acceptance milestone.
- Final acceptance milestone.

## **27. TIME AND DELAY**

Sets out the rights and obligations of the IA, Private Partner, and Independent Engineer in respect of the timing of the Project's delivery. These typically include:

- The Private Partner's obligation to update and provide the IA with a development phase program and to notify the IA and Independent Engineer in the event of delay
- The Independent Engineer's right to review the progress of the Project delivery to identify delays and/or discrepancies with the development phase program
- The conditions that must be completed by one or more of the parties to the PPP Contract before an extension of time can be granted
- The financial entitlements of the IA and Private Partner under a delay or extension of time
- The conditions and obligations of the IA and Private Partner in a case where the Project delivery is accelerated.

## **28. DEFECTS**

Sets out the rights and obligations of the IA, Private Partner, and Independent Engineer in respect of the defects. These typically include:

- Requirements to notify the IA, Private Partner, and Independent Engineer if a defect or possible defect is identified
- The obligation of the Private Partner to prepare, maintain and update a register of defects
- The obligation of the Private Partner to review and analyse the causes of all defects and develop a plan of corrective action to minimise the likelihood of recurrence of each defect
- The rectification process for defects identified during the development phase, operational phase and defects liability period
- The process by which the Independent Engineer manages and resolves disputed defects.

The provisions usually link to other relevant parts of the PPP Contract to deal with termination events arising for repeated instances of defects, sustained failure to remedy a defect or failure to report defects over a specified threshold etc.

## **29. OPERATIONS AND MAINTENANCE PHASE OBLIGATIONS**

Defines the responsibilities of the IA, Private Partner and Independent Engineer during the operational and maintenance phase. These typically include:

- The license to occupy the Project site (for a limited term) typically granted by the IA to the Private Partner to deliver the operational and/or maintenance services, and complete any outstanding works
- The obligations of the Private Partner in delivering the services (i.e., minimizing disruption, maintaining the availability of the Project assets for users, and ensuring the Project assets satisfy their fit for purpose warranty)
- The obligations of the Private Partner in delivering services above the minimum services specification specified under the PPP Contract.
- The process to ensure the services and Project assets provide a suitable and cost-effective solution for the IA
- Provisions for permitting the deferral of lifecycle works (e.g., periodic capital works such as road resurfacing)
- Provisions relating to agreed future upgrades the Concessionaire is required to undertake
- Any indemnities and/or warranties granted by the Private Partner to the IA.

## **30. RELIEF EVENTS, FORCE MAJEURE EVENTS AND COMPENSATION EVENTS**

Sets out the obligations, rights and compensation entitlements of the parties to the PPP Contract should certain events occur during the operations and maintenance phase (including force majeure events) which prevent the Private Partner from performing the services or other obligations under the PPP Contract.

Sets out the relief events and the entitlement to compensation where applicable

The compensation entitlements are often set out in a schedule annexed to the PPP Contract.

## **31. IMPLEMENTING AGENCY CONTRIBUTION AMOUNT**

Sets out the terms and conditions under which the IA will pay the Private Partner its contribution amount where any government support measures have been agreed. The amount contributed to the Project by the IA is typically pre-determined during the Project's procurement, and its payment is subject to certain defined conditions regarding the utilization of private financing amounts. This section is only included where financial benefits are provided to the Private Partner by the GKC.

## **32. FINANCIAL BENEFITS TO THE GKC**

Sets out the payments that the Private Partner will make to the GKC under the PPP Contract which can typically include upfront signing fee, annual fee and revenue sharing when revenues exceed a prescribed level.

Will set out the method of payment and account details for the deposit of fees and share of revenue

## **33. PAYMENTS AND PENALTIES**

Sets out the terms of payments under the PPP Contract between the IA and the Private Partner for the delivery of the Project services. These typically include:

- Details of the payments made by the IA to the Private Partner for performing the Project services (i.e., 'service payments') and the process for making these payments (i.e., payment claims, invoicing, timing etc.); and



- Details of service payments reductions (i.e., 'penalties') for the quantum, quality and availability of services which do not satisfy the minimum service requirements under the PPP Contract.

The payment and penalty mechanisms are often set out in a schedule annexed to the PPP Contract.

#### **34. LIQUIDATED DAMAGES**

Sets out circumstances when liquidated damages (LDs) may be payable (generally for delays in meeting obligations and non-compliance with government policy and social requirements), the rate of applicable LDs and the maximum cap on LDs, the breach of which could potentially trigger the calling of the Project's performance bonds and/or result in termination.

#### **35. MODIFICATIONS TO THE WORKS OR SERVICES**

Sets out conditions, processes and obligations of the IA and Private Partner regarding a change (including any addition, decrease, omission, deletion, demolition or removal) to the works or services performed by the Private Partner (i.e., a 'modification'). These typically include:

- The approval and payment process for a modification requested by the IA
- The approval and payment process for a modification proposed by the Private Partner
- Extension of time entitlements should a modification delay the achievement of a Project milestone.

Provisions for calculating the compensation due to the parties for different types of modification.

#### **36. CHANGES IN LAW OR POLICY**

Sets out the notification and compliance process should the IA become aware of a change in law or policy that could impact the Project, the Project activities or the Project documents.

Any entitlement to compensation for changes in law or policy are often set out in a schedule annexed to the PPP Contract.

#### **37. REFINANCING**

Sets out the requirements for the Private Partner to notify and seek consent from the IA before any form of refinancing, the calculation and distribution (between the Private Partner and IA) of any gains from refinancing, and the reimbursement of any costs reasonably incurred by the IA in relation to refinancing.

#### **38. EQUITY TRANSFER**

Sets out any restrictions on transfer of equity interest in the Private Partner typically the following:

- A time within which each of the equity ownership in the holding company shall not transfer any of its equity ownership interest
- Restrictions on the Private Partner (winning company) on reducing its shareholding below 50%
- Issuance of new shares.

#### **39. SUSPENSION AND STEP-IN BY THE IMPLEMENTING AGENCY**

Sets out the IA's rights to suspend the Private Partner's rights and obligations under the Project documents and the IA's right to step-in and assume total or partial management



and control of some or all of the Project assets and Project activities. Also sets out the consequences of suspension and step-in by the IA, and the obligation of the Private Partner to assist the IA via access rights, resourcing and not hindering.

#### **40. STEP-IN BY THE LENDERS**

Sets out the terms and conditions under which the lenders can 'step-in' and take over the project where the Private Partner has failed to fulfil its obligations under the PPP Contract. This can include circumstances of insolvency as well as other serious breaches of the PPP Contract.

Lenders' rights are usually governed by a direct three-way agreement between the IA, the Private Partner and the Lenders, which is usually included as a schedule to the PPP Contract.

#### **41. PROBITY INVESTIGATIONS AND PROBITY EVENTS**

Sets out the processes for the investigation of a Project participant's character, integrity or honesty, which may be subject to an actual or perceived conflict of interest (a 'probity investigation') and the process of managing a Project participant's conflict of interest (a 'probity event').

#### **42. COMMERCIAL OPPORTUNITIES**

Sets out the allowable and restricted sources of revenue for the Private Partner under the PPP Contract.

#### **43. STRUCTURED FINANCING**

Sets out the terms and conditions of any securitized license structure or other financing structure under the PPP Contract.

#### **44. DAMAGE**

Sets out processes in relation to damage to the Project assets. These typically include:

- The notification requirements for the Private Partner when damage has been identified.
- The response requirements for the IA if damage should be repaired.
- The damage repair process which the Private Partner and IA must abide by.
- The allocation of costs and risks and the consequences if damage is not repaired.

#### **45. INDEMNITIES AND LIMITS OF LIABILITIES**

Sets out indemnities (e.g., protection against a loss or other financial burden) that may be required from the Private Partner by the IA. The indemnities typically address:

- Property damage, injury, illness or death in connection with an act or omission of the Private Partner
- A breach of the Project documents by the Private Partner
- Utility infrastructure disruption or damage which is caused or contributed to by the Private Partner
- Contamination which is caused or contributed to by the Private Partner
- Violation of intellectual property rights or moral rights which is caused or contributed to by the Private Partner.

Also sets out limits on the Private Partner's liability for certain indemnified events, and limits on the IA's liability for events which may give rise to a claim by the Private Partner against the IA.

## 46. INSURANCE

Sets out the insurance requirements throughout the Project's term. These typically include:

- The insurances which must be procured and maintained by the Private Partner during the development phase and operational phase;
- The general requirements and terms of the insurances;
- The notification process should the Private Partner seek to claim an insurance policy;
- The process for providing evidence and confirming that necessary insurances have been obtained;
- The IA's right to procure and maintain the necessary insurances should the Private Partner fail to do so, and the reimbursement of costs associated with these insurances; and
- The process of managing uninsurable risks.

The key terms of each insurance policy are often set out in a schedule annexed to the PPP Contract.

## 47. DEFAULT

Sets out the rights and obligations of the IA and Private Partner should a default or major default occur under the terms and conditions of the PPP Contract. These typically include:

- The notification requirements of the IA and Private Partner should it consider that a default or major default has occurred under the PPP Contract
- The processes by which a default becomes a major default
- The requirement for a program of actions to be undertaken by the Private Partner to rectify (i.e., 'cure') the default
- The maximum cure period and the process of extending this period should the Private Partner be prevented from carrying out its obligations in accordance with a cure program.

## 48. FORCE MAJEURE EVENTS

Sets out the meaning of Force Majeure, the events leading of Force Majeure (Non-Political Force Majeure and Cambodia Political Force Majeure), exceptions to Force Majeure and the how these events will be handled.

## 49. TERMINATION, INCLUDING COMPENSATION ON TERMINATION

Sets out the rights and processes of the IA and Private Partner to terminate the PPP Contract. Forms of termination typically contained in the PPP Contract include:

- Termination for convenience / voluntary termination by the IA
- Termination for force majeure by either the IA or Private Partner
- Termination for a default termination event by the Private Partner
- Termination for a default termination event (e.g., due to an unremedied major default or insolvency of a Private Partner member) by the IA.

The default termination events by the IA and the Private Partner will be specified in the PPP Contract.

Payment terms and conditions, including the methodology to compute the applicable compensation on termination, are often set out in a schedule annexed to the PPP Contract.

## **50. OBLIGATIONS ON EXPIRY**

Sets out the processes and respective obligations by which the Private Partner hands back the Project assets to the IA or to a party selected by the IA to perform the services after the expiry date of the PPP Contract.

## **51. DISPUTE RESOLUTION PROCEDURE**

Sets out the procedure for resolving disputes between the IA and the Private Partner regarding the Project or regarding decisions made by the Independent Engineer.

## **52. EXPERT DETERMINATION**

Sets out the process for settling unresolved disputes between the IA and the Private Partner through the appointment of an independent decision maker (i.e., an 'expert').

## **53. ARBITRATION**

Sets out the process for settling unresolved disputes between the IA and the Private Partner via arbitration, should there be no expert determination or there is dissatisfaction with the outcomes of the expert's determination.

## **54. CORPORATE REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS**

Sets out the conditions under which the IA and Private Partner agree to enter into the PPP Contract. These typically include:

- That each party has the power to execute, deliver and perform its obligations under the Project documents
- That the parties' obligations under the Project documents are valid and legally binding
- That the execution, delivery, and performing of either party's obligations under the Project documents does not violate any laws
- That the Private Partner is duly registered, properly constituted and remains in existence.

Also sets out restrictions on the Private Partner undertaking any business other than the performance of its obligations under the PPP Contract without the consent of the IA.

The IA also typically requires the Private Partner to indemnify it against certain losses that it may incur due to the Private Partner's performance or non-performance of the Project deliverables. These typically these include:

- Property damage
- Breach of statutory duty
- Death and personal injury
- Other third-party claims
- Breach of a warranty given by the Private Partner.

## **55. ASSIGNMENT, GRANT OF SECURITY INTERESTS, AND RIGHTS TO ACQUIRE THE PROJECT AND OTHER ASSETS OF THE PRIVATE PARTNER**

Sets out the restrictions and conditions for transfer and assignment of the Project or Assets under the Project

## **56. FINANCIAL MODEL**

Sets out the purpose of the financial model and the processes for varying and auditing the financial model. After financial close, the financial close financial model is typically permitted to be updated upon the occurrence of:

- A refinancing
- Any adjustment to the service payments (e.g., to reflect a permanent defect in the quality of the works)
- Other events if agreed upon between the IA and the Private Partner.

## **57. REPORTING REQUIREMENTS**

Sets out the recording and reporting obligations of the Private Partner. These typically include:

- Accounting and audit records
- Financial statements
- Monthly performance reports
- Information regarding the cost to complete the Project.

The Private Partner is usually also required to maintain an information management system for all Private Partner material and Project related information.

## **58. CONFIDENTIAL INFORMATION AND PRIVACY**

Sets out the conditions under which the IA is obliged to disclose information in connection with the Project, the obligation of the Private Partner to treat all information in connection with the Project as confidential and the requirement of the Private Partner to comply with all relevant laws and standards in relation to privacy and the collection of personal information.

## **59. INTELLECTUAL PROPERTY**

Sets out the rights and obligations of the parties to the PPP Contract in relation to intellectual property. The detailed forms of intellectual property relevant to the Project are typically set out in a schedule annexed to the PPP Contract.

## **60. GOVERNMENT SOCIAL REQUIREMENTS**

Sets out any obligations the government may place on the Private Partner to abide by wider policy or social requirements, such as:

- Building and engineering standards
- Minimum labor standards
- Environmental standards
- Law and Order
- Health standards.

## **61. TAXES AND CHARGES**

Sets out the taxation requirements and processes which all parties to the PPP Contract must comply with. General liability for taxes and charges in relation to the Project are typically passed on to the Private Partner.

This will also set out the tax exemptions provided to the Qualified Investment Projects under the Law on Investments of the Kingdom of Cambodia.

## **62. NOTICES AND BAR TO CLAIMS**

Sets out the general process by which notices (i.e., approvals, consents, directions, determinations, requests and claims in connection with the Project) must be dealt with by the parties to the PPP Contract.

### 63. MISCELLANEOUS

Sets out other miscellaneous items in respect of the Project and the Project documents. These typically include:

- The law and jurisdiction under which the PPP Contract is governed (Laws of Kingdom of Cambodia)
- Conditions of severance (i.e., how the Project documents are to be enforced should a provision of the Project documents become illegal, invalid or unenforceable in any respect under the law)
- The survival of certain clauses and provisions beyond the expiry of the PPP Contract, such as confidentiality and privacy.

## ANNEXURE 6

### Statement of Ethical Conduct and Fraud and Corruption

The undersigned confirm that:

1. We do not have any relationship that could be regarded as a conflict of interest as set out in the bidding document;
2. Neither I, nor any of my relatives or associates have any relationship that could be regarded as a conflict of interest in respect of the selection of the Private Partner;
3. Should we become aware of the potential for such a conflict will report it immediately to the responsible person(s);
4. That neither I, nor any of my relatives or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of the selection of the Private Partner;
5. That no payments in connection with the award of the selection of the Private Partner have been made by me, my relatives or associates; and
6. We understand our obligation to allow the Government or the Funding Agency, if any, to inspect all records relating to the procurement activities for the selection of Private Partner;

Signature:

Name:

Designation:

Date:

Address:

Street 92, Sangkat Wat Phnom, Khan Daun Penh, Phnom Penh

Tel: (+855) 23 890 666



[gdppp@mef.gov.kh](mailto:gdppp@mef.gov.kh)



[www.ppp.mef.gov.kh](http://www.ppp.mef.gov.kh)



[www.facebook.com/gdppp.mef.gov](https://www.facebook.com/gdppp.mef.gov)