



KINGDOM OF CAMBODIA

Nation Religion King

Royal Government of Cambodia

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

**VOLUME III
PROCUREMENT MANUAL**



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។

**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 TECHO HUN SEN

Have submitted to SAMDECH AKKA MOHA SENA PADEI TECHO 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

BEC	Bid Evaluation Committee
BOT	Build Operate Transfer
CEC	Consultant Evaluation Committee
CV	Curriculum Vitae
DED	Detailed Engineering Design
EOI	Expression of Interest
FA	Framework Agreement
FBER	Final Bid Evaluation Report
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

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

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SECTION I
INTRODUCTION

1. INTRODUCTION

- 1.1. The Government of the Kingdom of Cambodia (GKC - hereafter referred as the Government) has enacted the Law on Public-Private Partnerships (Law on PPPs) under which a Project Development Facility (PDF) for PPPs has been established to finance the project preparation and other transaction services of Priority PPP Projects. The project preparation and other transaction services are carried out by consulting firms which are termed as consultants. Article 11 of the Law on PPPs stipulates that the procedures for the selection of consultants will be determined by the Government and set forth in a relevant Sub-Decree.
- 1.2. The Law on PPPs also, under Articles 18 and 23, stipulates that the Selection of the Private Partner will be set forth in a relevant Sub Decree.
- 1.3. The Sub Decree No. 174 ANK.BK promulgated on 31 August 2022 on the Standard Operating Procedures (SOP) for PPP Projects under Volume III sets out the procedures for the Selection of Consultants and the Selection of Private Partner in conformity with the relevant provisions of the Law on PPPs. This volume of the SOP is called the **SOP for PPP Projects, Volume III: Procurement Manual**.

2. SCOPE AND APPLICATION OF THE PROCUREMENT MANUAL

- 2.1. This Procurement Manual for PPP Projects (the Manual) has been formulated for the purpose of prescribing necessary policies, practices, procedures and templates applicable for the selection of Consultants namely the Transaction Advisors (TA) for preparation and other transaction services of PPP projects; the Independent Consultants (IC) to independently oversee the implementation, operations and maintenance of the project facilities; the Owner's Engineer (OE) that will provide technical support to the IA from pre-construction to the completion of the construction stage, and commencement of operations and maintenance of the project facilities and may extend the contract of the OE to provide intermittent inputs as and when required; other consultants/advisors for undertaking due diligence; and the selection of Private Partner that will implement and operate the project in accordance with the PPP Contract. The Manual comprises of three Sections as follows:

SECTION I INTRODUCTION

SECTION II SELECTION OF CONSULTANTS

SECTION III SELECTION OF PRIVATE PARTNER

- 2.2. The policies, practices and the procedures prescribed in this Manual shall be read in conjunction with the standard documents and other documents/templates prescribed. Where there is any inconsistency between the policies, practices and the procedures prescribed in the Manual and the standard documents/templates, the policies, practices and the procedures prescribed in the Manual shall prevail.
- 2.3. The provisions in this Manual shall be adhered to by all stakeholders for the selection of the Consultants and the Private Partner. The General Department of Public-Private Partnerships (GDPPP) of the Ministry of Economy and Finance (MEF) is responsible for providing guidance and interpretation of the provisions under the Manual. In case of any deviation from the provisions, explicit prior approval of the Minister of the MEF must be obtained.
- 2.4. In case of funding from the Development Partners (DP), the Financing Agreement or other legally binding documents entered between the Kingdom of Cambodia and the

DP will stipulate the applicable guidelines on procurement. In the event that there are any conflicting provisions, the provision under the guidelines of the DP will prevail.

3. INSTITUTIONAL ARRANGEMENTS

- 3.1. The primary responsibility for the selection of the TA and the selection of the Private Partner rests with the Implementing Agency (IA). The evaluation of the proposals for the selection of the TA is undertaken by a Consultant Evaluation Committee (CEC) and for the selection of Private Partner by a Bid Evaluation Committee (BEC). The recommendation for the award of the contracts for the TA and the Private Partner is carried out by a Procurement Review Committee (PRC). The roles and responsibilities of these Committees are prescribed in Section II and III of the Manual.
- 3.2. The GDPPP is responsible for the selection of the Indefinite Delivery Contracts (IDC) Panel of Consulting Firms from which the TA are selected. The procedures for the selection of the IDC Panel are prescribed in Section II of the Manual.
- 3.3. The selection of the IC is carried out jointly by the IA and the winning Private Partner following the procedures prescribed in Section II of the Manual unless an alternative selection arrangement has been agreed and specified in the PPP Contract. The selection of the OE is carried out by the IA following the procedures prescribed in Section II of the Manual.
- 3.4. The Manual prescribes standard documents and templates for the selection of Consultants and Private Partner which have been developed based on international best practices. These shall be largely followed by all stakeholders.
- 3.5. It is recognized that there may be special circumstances where these standard documents and templates may need to be modified depending on the nature of the procurement, in particular for the selection of Private Partner. For the selection of Private Partner, the use of these documents and their modification, where necessary, will be determined during the Transaction Advisory Services (TAS) based on the findings and recommendation of the TA. In the case of the selection of consultants, the services are standard and the need for modification is less likely. However, where modifications become necessary, these will require prior approval of the GDPPP.

4. GOVERNANCE CONSIDERATIONS

4.1. Good Governance and Accountability Policies

- 4.1.1. The Government has made Good Governance, which includes fighting corruption, the core of its Rectangular Strategy. The Law on Anti-Corruption, No. NS/RKM/0410/004 was enacted on 19 April 2010, which also provides for the applicable regulations and an Anti-Corruption Unit (ACU) to enforce the Law. The Law and regulations apply to all procurement activities undertaken for PPP Projects.

4.2. Prohibited Practices

- 4.2.1. It is the Government's policy to require that the implementing agencies and oversight agencies, as well as bidders and consultants, observe the highest standard of ethics during the selection and execution of contracts for PPP Projects. Pursuant to this policy, the Government:
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "Corrupt Practices" means the offering, giving, receiving, or soliciting directly or indirectly of anything of value to influence improperly the actions of another party;

- (ii) “Fraudulent Practices” 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;
 - (iii) “Collusive Practices” is an arrangement between two or more parties, designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - (iv) “Coercive Practices” 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;
 - (v) “Obstructive Practices” means 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; 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 acts intended to materially impede the exercise of the Government’s inspection and audit rights provided for under sub-clause (d) below.
- (b) will reject a proposal for award if it determines that the bidder/consultant recommended for the award, or any of its personnel, or its agents, or its sub-contractors, service providers, suppliers and/or their employees has directly or indirectly engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
 - (c) will declare a bidder or a consultant or firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract, if it at any time determines that the bidder/consultant has engaged in corrupt, fraudulent, coercive, collusive or obstructive practices in competing for, or in executing a contract; and
 - (d) will have the right to require that, in contracts a provision be included requiring bidders/consultants to permit the Government to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Government.
- 4.2.2. All staff involved in the procurement process has a duty to report to the MEF, the PRC or any other agency that they feel appropriate including the ACU all suspected instances of fraud, corruption and collusive or coercive practices when identified.
- 4.2.3. In the case of collusive behavior, if the evidence suggests that all or some of the bidders/consultants are involved, the evidence should be reviewed by the PRC concerned and if necessary, the procurement process cancelled, and all of the involved firms or individuals disbarred. If the evidence, after the review by the PRC, shows that only some of the firms or individuals are implicated, only those implicated will be disbarred, and the procurement will continue with those that are not implicated.

4.3. Law on Anti-Corruption

- 4.3.1. Cambodia’s Law on Anti-Corruption No. NS/RKM/0410/004, enacted on 19 April 2010, establishes an ACU to implement the Law. The stated purpose of the Law on Anti-Corruption is “to combat corruption through measures to educate, prevent, and

implement to combat corruption offenses including public participation and international cooperation”. The stated extent of the Law on Anti-Corruption is to combat all forms, natures and levels of corrupt practices in the Kingdom of Cambodia that have occurred after the law was promulgated. The Law on Anti-Corruption applies to every person, whether engaged in public procurement or not, and carries severe penalties, both criminally and civilly, for violations of its provisions.

- 4.3.2. Everyone is subject to the Law on Anti-Corruption. Public procurement officials should become very familiar with its provisions and avoid even the appearance of a violation. Any Government official who receives, or learns of, a communication alleging that a person or persons attempted to commit or committed any act defined in the articles related to public procurement (which included procurement of PPP Projects) shall:
- (a) Promptly report, in writing, the substance of the communication, and provide complete documentary evidence to the ACU;
 - (b) Maintain a copy of all of any and all information provided to the ACU;
 - (c) Cooperate fully with the ACU.
- 4.3.3. Allegations of criminal corruption are distinct from the improprieties addressed in the Complaints Handling Mechanisms (CHM) of the Manual.

4.4. Public Sector Auditing and Accountability Arrangements

- 4.4.1. For the Government to achieve its good governance and accountability objectives, it is important that all procurement activities would be undertaken in cooperation with, and an understanding of, public sector audit roles and responsibilities. The policies, guidelines and procedures of the Government for audits will apply and will need to be followed. In case of any financing of the consulting services or the PPP Contract by a DP, the audits must follow the provisions stipulated in the SOP for Financial Management Manual (FMM) for Externally Financed Projects, December 2020 or as and when updated.

4.5. Complaint Handling Mechanisms (CHM)

- 4.5.1. There are three distinct types of complaints that are typically found in a Project; i.e., (a) complaints concerning bid protest from aggrieved bidders/consultants, (b) performance disputes, which are governed by the General Conditions of Contract (GCC), and (c) non-procurement related complaints from any parties.
- 4.5.2. A complaint is any notification regarding an alleged illegal or improper procurement action and/or conduct of procurement officials, bidders, consultants, and/or sub-contractors directly or indirectly supporting a project or associated with its implementation, which the complainant believes is wrong, either under laws of the Kingdom of Cambodia and applicable regulations.
- 4.5.3. The Government shall ensure the confidentiality of any complainant and shall hold harmless any person reporting a complaint, oftentimes referred to as a “whistleblower”, with provisions to shield complainant(s) or public official(s) from retaliation when they provide information that they reasonably believe to be a violation of laws of the Kingdom of Cambodia or applicable regulations, including the Sub Decree under which the Manual has been promulgated. Any complainant facing retaliation can lodge a complaint with the Minister of the MEF.
- 4.5.4. Concerning protests, from time to time, with and without justification, bidders/consultants may choose to lodge a complaint concerning some aspect of the

contract award process. In the event the contract has been awarded and a contractual relationship exists between the parties, there are established dispute mechanisms in the GCC that shall be followed, up to and including judicial review. A formal mechanism to satisfactorily respond to such protest complaints must be followed, consistent with the Manual and the steps to be followed by aggrieved bidders/consultants in the complaints procedure will be specified in the Bidding Documents/Request for Proposal documents.

- 4.5.5. The procedures for lodging a complaint will be stipulated in the Bidding Documents/Request for Proposal documents and the following standard language is used:

“Any bidder or consultant has the right to submit a written and signed complaint at any stage in the procurement process. The complaint will be addressed to the following:

Name of Designated Head: (as applicable)

Title: (insert)

Public-Private Partnerships Unit (PPP Unit)/Public-Private Partnerships Cell (PPP Cell)/Project Management Unit (PMU): (as applicable)

Address: (insert)

Email Address: (insert)

- 4.5.6. The Head of the PPP Unit/PPP Cell/PMU will, firstly, acknowledge the receipt of the complaint by the complainant within five (5) working days of receipt of the complaint and, secondly, chronologically log, by date, the complaint, together with other complaints received.
- 4.5.7. The Head of the PPP Unit/PPP Cell/PMU will review the complaint within fifteen (15) working days from the date of receipt of the complaint and provide a written response to the complainant.
- 4.5.8. If the complaint is submitted during proposal PPP Unit/PPP Cell/PMU will only acknowledge receipt and take the merits of the complaint into consideration in the evaluation process. In such cases, the PPP Unit/PPP Cell/PMU will respond to the complaint immediately after the notification of contract award.
- 4.5.9. If the complainant is not satisfied with the response received from the PPP Unit/PPP Cell/PMU, the complainant has the right to lodge a written appeal within a further ten (10) working days, commencing from the date of the receipt of the response, to have the decision reviewed by the General Department of Public Procurement (GDPP) of the MEF.
- 4.5.10. The GDPP will, firstly, acknowledge the receipt of the complaint by the complainant and, secondly, chronologically log, by date, the complaint, together with other complaints received.
- 4.5.11. The GDPP will review the complaint within twenty (20) working days and render a written decision to the complainant.
- 4.5.12. The findings of the GDPP with regard to the complaint shall be final but without prejudice to any other recourse or remedies available under the laws of the Kingdom of Cambodia.

4.6. **Conflicts of Interest**

- 4.6.1. The Government considers a conflict of interest to be a 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. A conflict of interest may not, in all cases, in and of, itself constitute a violation of the Government's public procurement law and regulations.

- 4.6.2. The Government requires all bidders/consultants to disclose all conflicts of interest during the bid/proposal submission. The Government will take appropriate actions to manage such conflicts of interest or may reject a proposal of award if it determines that a conflict of interest has flawed the integrity of any selection process.
- 4.6.3. The Government requires that all those involved in the selection process (i) do not have a conflict of interest with regard to the selection process concerned and are required to remain professional, objective, and impartial; and (ii) are required to always hold the Government's interest paramount, without any consideration of future work, and to avoid conflicts with other assignments and their own corporate and personal interests.
- 4.6.4. The PRC will review all cases of possible conflicts of interest and report the findings to the Minister of the MEF. The Minister of the MEF will determine and decide on all cases of conflicts of interest and this decision will be final and binding.

4.7. Ethical Standards and Good Governance Declarations

- 4.7.1. To promote the practice of ethical standards and accountability, each member of the Consultant Evaluation Committee (CEC), Bid Evaluation Committee (BEC) and the Procurement Review Committee (PRC) shall be required to sign a copy of a declaration which will be attached to each evaluation report in the case of CEC/BEC and Minutes of Meeting/Report in the case of PRC. In the event that it is found that a member has made a false declaration, he/she will be immediately and temporarily suspended from any role in the Project and the matter referred to the respective Head of concerned ministries/institutions for appropriate actions.
- 4.7.2. All bidders/consultants, including their agents, if any, are also required to adhere to the ethical standards and the Government's policies set out in the Manual. In support of this, the bidders/consultants are required to complete and sign a declaration provided in the proposal and bid documents and submit it with their proposal.
- 4.7.3. All involved in procurement activities covered by the Manual must comply with the following Code of Business Ethics.
- 4.7.4. No individual shall use his/her authority or office for personal gain. Personal gain includes accepting or requesting anything of material value from prospective bidders/consultants for the individual, his or her spouse, parents, children or other close relatives, or for other persons from whom the individual might gain direct or indirect benefit of the gift.
- 4.7.5. An individual shall seek to maintain and enhance the reputation of the Government by:
 - (a) Maintaining the highest standards of honesty and integrity in all relationships both inside and outside the entity in which he works;
 - (b) Developing the highest standards of professional competence;
 - (c) Using funds and other resources for which he/she is responsible to provide the maximum benefit to the Government; and
 - (d) Complying with the letter and the spirit of:
 - (i) The laws and regulations of the Kingdom of Cambodia;

- (ii) Accepted professional ethics; and
 - (iii) Contractual obligations.
- 4.7.6. Disclosure of close relatives - An individual shall declare any relationship with a bidder/consultant and shall take no part in either the decision-making process or the implementation of any contract where such a relationship exists. The definition of close relatives is provided in Section II.
- 4.7.7. Confidentiality and accuracy of information - An individual shall respect the confidentiality of information gained in the course of duty and shall not use such information for personal gain or for the unfair benefit of any consultant.
- 4.7.8. Information given by an individual in the course of duty shall be true, fair and not designed to mislead.
- 4.7.9. Competition - All bidders/consultants shall be treated with fairness and impartiality, and avoid any business arrangement that might prevent the effective operation of fair competition.
- 4.7.10. Business gifts - No business gifts will be accepted from current or potential Government suppliers unless such gifts are of very small intrinsic value such as a calendar or business diary.
- 4.7.11. Hospitality - An individual shall avoid any business hospitality that would be viewed by others as having an influence in making a Government business decision as a result of accepting that hospitality.
- 4.7.12. Reporting - All individuals have a moral and ethical responsibility to report any unethical conduct by a colleague, a bidder or a consultant to their superiors, oversight agencies, or to the auditors.
- 4.7.13. Examples of Unethical Conduct - The following are examples of the type of conduct prohibited by this Code of Ethics:
- (a) Revealing confidential or "inside information" either directly or indirectly to any bidder, consultant or prospective bidder or consultant;
 - (b) Discussing a procurement with any bidder or consultant or prospective bidder or consultant outside the official rules and procedures for conducting procurement;
 - (c) Favoring or discriminating against any bidder or consultant or prospective bidder or consultant in preparing of technical specifications, terms of reference or standards or the evaluation of bids and proposals;
 - (d) Destroying, damaging, hiding, removing, or improperly changing any formal procurement document;
 - (e) Accepting or requesting money, travel, meals, entertainment, gifts, favors, discounts or anything of material value from bidders or consultants or prospective bidders or consultants;
 - (f) Discussing or accepting future employment with a bidder/consultant or bidders/consultants;
 - (g) Requesting any other person to violate the public procurement rules or procedures;
 - (h) Ignoring evidence that the Code of Ethics has been violated; and

- (i) Ignoring illegal or unethical activity by bidder or consultant or bidder or prospective consultants, including any offer of personal inducements or rewards or otherwise.

4.7.14. Any private sector executive, or consultant proven to have violated any provision of the Code of Business Ethics shall be sanctioned by the MEF and the IA in accordance with the sanction policy of the Government. They may also be investigated and sanctioned by the ACU in accordance with its procedures.

4.8. Unfair Competitive Advantage

4.8.1. The GDPPP and the concerned IA shall ensure that a bidder/consultant competing for a contract/assignment shall not derive an unfair competitive advantage in any manner, whatsoever. To this end, the GDPPP and the concerned IA shall ensure fairness and transparency in the selection process by providing all the bidders/short-listed consultants with the same information as part of the proposal/bid documents or through clarifications or amendments.

4.9. Confidentiality

4.9.1. Any information relating to the evaluation of the bids or proposals and recommendations of the CEC/BEC shall not be disclosed to any person not officially concerned with the process or to any bidder or consulting firm who submitted the bid/proposal which can provide unfair competitive advantage to such firm. The use of the confidential information relating to the bid/consultant evaluation by any bidder/consultant or by any person not officially concerned shall be reviewed by the GDPPP and reported to the Minister of the MEF for disciplinary or administrative action against the erring staff. The Minister of the MEF may also reject the bid/proposal of the offending bidder/consultant depending on whether the confidential information obtained by the bidder/consultant has provided an advantage over the other competing bidders/consultants.

4.9.2. However, there are no restrictions on rights of the CEC or BEC to seek clarification of historic information (information and data on status as of date prior to deadline for submission of proposals) from the firms to ensure all relevant information is considered in the evaluation process. The Chair of the CEC or BEC is authorized to seek such information in writing.

SECTION II
SELECTION OF CONSULTANTS
PART A

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	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.

1. INTRODUCTION

- 1.1. Section II of the SOP for PPP Projects, Volume III: Procurement Manual provides the rules, regulations and procedures associated with the selection of consultants for the Public-Private Partnerships Projects. These consultants comprise of:
- (i) Transaction Advisors (TA) for preparation and other transaction services of PPP projects;
 - (ii) Independent Consultants (IC) to independently oversee the implementation, operations and maintenance of the project facilities/assets;
 - (iii) Owner's Engineers (OE) that will provide technical support to the IA during construction, operations and maintenance of the project facilities/assets; and
 - (iv) Other consultants/advisors for undertaking due diligence studies.

2. ROLES AND RESPONSIBILITIES

- 2.1. The roles and responsibilities of the IA and MEF in the financing of transaction advisory services and selection of consultants are described below:
- 2.1.1. **Ministry of Economy and Finance (MEF).** The MEF shall be responsible for the establishment, funding, management and operations of the Project Development Facility (PDF) for PPPs and the approval of financing of Transaction Advisory Services (TAS) from the PDF for PPPs. It is responsible for both direct and oversight roles in the selection of consultants as described below. These roles are undertaken by the General Department of Public-Private Partnerships (GDPPP) of the MEF.
- 2.1.1.1. The GDPPP is fully responsible for the selection of the Indefinite Delivery Contracts (IDC) Panel of TA and for recommending the short-list of the TA from the IDC Panel to IA for the selection of the TA for undertaking TAS of a PPP Project. It also participates in the selection of the TA undertaken by the IA as a member of the Consultant Evaluation Committee (CEC) and Procurement Review Committee (PRC).
- 2.1.1.2. The GDPPP is also responsible for the selection of consultants/advisors to undertake due diligence of legal, financial and commercial aspects of Feasibility Studies prepared by the Private Sponsor/Proponent of Unsolicited Proposals (USP). It may also recruit consultants/advisors in case of specific due diligence of these aspects in solicited proposal, where deemed necessary.
- 2.1.1.3. The GDPPP is responsible for the management and operations of the PDF for PPP Projects and the release of payments to the TA and relevant consultants on the certification of the IA.
- 2.1.2. **Implementing Agencies (IA).** The line ministries, as the implementing agencies (IA) for the PPP projects, shall be responsible for developing and soliciting new PPP projects; selecting and managing the activities of the TA; and selecting and supervising the independent consultants (IC), the owner's engineers (OE), and individual consultants.
- 2.1.3. **The IA** is responsible for the preparation of the proposal documents for the Selection of Consultants. The proposals of the Consultants are evaluated by the CEC. The CEC is established for each PPP Project under a *Prakas/Decision* of the IA.
- 2.1.3.1 **PMU/PPP Unit of IA.** On a project-to-project basis, the IA shall establish a PMU or PPP Unit with the delegated authority to prepare and implement the PPP project in an

efficient and effective manner. In case where a permanent Department or Unit or PMU is incorporated into the institutional arrangement of the IA, the responsibility for the preparation and implementation of the PPP project will be delegated to such a structure. For ease of reference, all of these arrangements are referred to as the PMU. The PMU will be responsible for the selection of the TA, independent consultants (IC) the owner's engineers (OE) and individual consultants, as required. The establishment of the PMU, its delegated authority, and the detailed terms of reference of each position in the PMU will be issued under a *Prakas/Decision* of the IA.

- 2.2. **Consultant Evaluation Committee for IDC Panel (CEC-IDC Panel).** The Minister of the MEF shall establish a CEC-IDC Panel for the evaluation of the Expressions of Interest (EOI). The CEC-IDC Panel shall be responsible for the preparation of the Request for Expressions of Interest (REOI) and evaluation of EOI received. The CEC-IDC Panel shall comprise of the following:
 - Director of Project Development Department as the Chair
 - Chief of Office of Project Development as a Member
 - Chief of Office of Project Development Facility as a Member.
- 2.3. **Procurement Review Committee for Selection of IDC Panel (PRC-IDC Panel).** The Minister of the MEF shall establish the PRC-IDC Panel for the review of the evaluation report of EOI prepared by the CEC-IDC Panel and recommend the selection of the IDC Panel of TA for approval by the Minister of the MEF:
 - Deputy Director General of the GDPPP as the Chair
 - Director of Project Delivery and Portfolio Management as a Member
 - Representative of the Public Investment Committee (PIC) Secretariat as a Member.
- 2.4. **Consultant Evaluation Committee of IA (IA-CEC or CEC).** The Head of IA shall establish the CEC for the selection of the TA, IC, OE and individual consultants under a *Prakas/Decision*. The CEC shall be responsible for the preparation of the Request for Expressions of Interest (REOI), Request for Proposals (RFP) and the evaluation of technical and financial proposals and the recommendations for selection of the TA/IC/OE and individual consultants. The members of the CEC shall include the following:
 - Project Manager of PMU as the Chair
 - Technical Officer of PMU as a Member
 - GDPPP Representative as a Member
- 2.5. **Procurement Review Committee of IA (IA-PRC or PRC).** The Head of the IA shall appoint the Procurement Review Committee (PRC) under a *Prakas/Decision*. It shall be responsible for review and approval of the Requests for Proposals (RFPs), cost estimates, and consultant proposal evaluation reports. The decisions of the PRC shall be unanimous. The PRC may call on any resources, such as experts, for advice. If the PRC cannot reach a unanimous decision, then the matter shall be referred to the Minister of the MEF for a decision. The PRC is also responsible for the review and approval of contract variations in the case of consultant contracts. The PRC shall comprise of the following:
 - Project Director/Head of PMU as the Chair
 - Representative of IA at Deputy Director General Level as a Member

- Deputy Director General of GDPPP as a Member.
- 2.6. **Transaction Advisor (TA).** The Transaction Advisor shall prepare the pre-feasibility study, where necessary and the feasibility study for the assigned project; assess PPP options; carry out financial analysis and project structuring; manage the PPP bidding process; and provide assistance till financial close. It will be responsible for undertaking complete due diligence of all aspects of the assigned PPP project.
- 2.7. **Independent Consultant (IC).** 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. The IC will undertake the tasks as specified in the Terms of Reference under the contract signed with the IA and where required, jointly with the Private Partner.
- 2.8. **Owner's Engineer (OE).** The OE shall be retained by the IA to provide technical service. The OE shall professionally and diligently assist the IA in the management of the project as well as review and prepare responses to the approvals required to be provided by the IA like detailed engineering designs; comment on reports submitted by the IC; and assist the IA in dispute resolution, where required. The OE will undertake the tasks as specified in the Terms of Reference under the contract signed with the IA.
- 2.9. **Individual consultants/advisors.** The Individual consultants/advisors are required to assist the PMU or GDPPP to carry out due diligence of the specific areas (technical, legal, financial or commercial) of the Feasibility Studies/Technical Proposal/Financial Proposal submitted by the Proponent/Private Sponsor of USP.

3. ELIGIBILITY OF CONSULTANTS

- 3.1. Subject to the conditions prescribed hereunder, all consulting firms and individuals shall be eligible for the selection of consultants to offer consulting services for the TAS under PPP projects; selection of IC and OE; and other due diligence services:
 - i. A consulting firm or an individual who is blacklisted/sanctioned or barred from bidding or participation in any procurement activity by the Government, or any of its agencies, offices, corporations, local Government units, as well as the foreign Government/foreign or international financial institution providing any funding for the project, shall be ineligible to be awarded a contract.
 - ii. Consultants shall be ineligible if, 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, the Government prohibits any payments to any country, person, or entity.
 - iii. The Government's corporate entities shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the concerned IA.
 - iv. Government officials and civil servants may only be hired under consulting contracts, either as individuals or as members of a team of a consulting firm, if they
 - (a) have been granted leave of absence by their parent ministry/agency;
 - (b) are not being hired by their parent ministry/agency; and
 - (c) their hiring will not create a conflict of interest.

- v. Only persons, of Cambodian citizenship or permanently residing in Cambodia, shall be considered for a position requiring national expertise.

4. ASSOCIATION ARRANGEMENTS AND JOINT VENTURES

- 4.1. Consultants may associate with each other in the form of a joint venture or consortium to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals, and make available larger pools of experts, provide better approaches and methodologies, and, in some cases, offer services at competitive prices. Such an association may be for the long term (independent of any assignment) or for a specific assignment. In the case of a joint venture, a lead partner shall be nominated to represent the joint venture to interact with the recruiting IA. All the members of the joint venture shall sign the contract and shall be jointly and severally liable under the contract.
- 4.2. In the case of a consortium, the same provisions as in the case of the joint venture will apply. The IA shall not require consultants to form associations with any specific firm or group of firms but may encourage association with qualified national firms. The detailed requirements for the association arrangements and joint venture shall be prescribed in the proposal documents.
- 4.3. While submitting the Expression of Interest (EOI) for an assignment, none of the firms of the joint venture or consortium can be a member of another consortium or joint venture. However, there are no restrictions in participation of a firm in more than one consortium or joint venture in the case it is acting in the capacity as a sub consultant to the joint venture or consortium.

5. METHODS OF SELECTION FOR TA, IC, AND OE

- 5.1. The selection methods and arrangements used for recruitment of the TA, IC and OE for PPP Projects includes the following methods:
 1. Quality-Based Selection (QBS)
 2. Quality- and Cost-Based Selection (QCBS)
 3. Fixed-Budget Selection (FBS)
 4. Consultants' Qualifications Selection (CQS)
 5. Least Cost Selection (LCS)
 6. Single Source Selection (SSS)
- 5.2. **The participation in the selection of the TA** is restricted to the firms/consortia that have been pre-qualified for inclusion and becomes members of the IDC Panel. In such a case, the CQS is not a suitable selection method. In addition, the LCS method is rarely used given that the quality of TAS is paramount for undertaking the preparation of a quality and bankable PPP Project. The SSS is used only in very exceptional cases with the prior approval of the Minister of the MEF where the IA and GDPPP can justify the urgency in the recruitment of the TA.
- 5.3. **In the case of the selection of the IC and OE**, any of the above methods can be used. The QCBS is the default selection method. However, the CQS, FBS or LCS method may be used in case of where the services are standard or of low value with the prior approval of the MEF. In exceptional case where there is a constraint in time, the SSS method may be used. In the case of the selection of the OE, the method of selection will be proposed by the IA for approval by the GDPPP except for SSS where the approval of the Minister

of the MEF will be required. In the case of the selection of the IC, the method will be agreed between the IA and the Private Partner as part of the negotiations of the PPP Contract and as stipulated in the PPP Contract.

- 5.4. The method of selection, except for the case of SSS for the recruitment of the TA, will be approved by the PIC at the time of submission of request for budget allocation from the PDF by the IA as described in the section: **Recruitment of TA in the Guidelines on PDF of the SOP for PPP Projects, Volume II: Guidelines.**
- 5.5. **Quality-Based Selection (QBS)** is appropriate when quality is the most important consideration in the selection process. It is used only for very complex or highly specialized TAS for which it is difficult to define the precise TOR and the input required from the firms/consortia, and for which the PPP project expects them to demonstrate innovation in its proposals. This method is used in very exceptional case with the prior approval of the Minister of the MEF. The method is not suitable for selection of the IC and the OE.
- 5.6. Under QBS, the shortlisted members from the IDC Panel are invited to submit a technical proposal, or both technical and financial proposals at the same time, but in different envelopes. The CEC will evaluate the submitted technical proposals, applying the relevant technical proposal evaluation criteria, and ranked in terms of its technical score against a set of criteria included in the RFP document. After the review and approval of the evaluation report by the PRC, the shortlisted member that receives the highest technical score (1st ranked) is selected and its financial proposal is opened and evaluated by the CEC. It is then invited for negotiations of the contract by the IA and the negotiations are undertaken by the PRC. If the negotiation is successful, the award of the contract is made. If the negotiations fail, the financial proposal of the next ranked shortlisted member is opened, evaluated and invited for negotiations. This process is repeated until the contract is successfully negotiated.
- 5.7. **Quality- and Cost-Based Selection (QCBS)** is appropriate when the scope of work, terms of reference, timing, and other inputs are clearly defined and is the default method of selection for the recruitment of the TA, IC and OE. Under this method, the quality and the costs of the proposals are balanced to achieve the best outcome without compromising the quality of the services. The Quality (Technical) and Cost (Financial) weightings are chosen based on complexity and impact of the assignment and typically range from 90% to 60% for quality and 10% to 40% for costs depending on the nature and complexity of the services. The most common split that is used in the selection of the TA, IC or OE is either 80/20 or 70/30 respectively for technical and financial weighting. The 90/10 split is only used in the case of TAS where these services are very highly complex and for high quality PPP projects where innovation is critical. The weightage will be agreed by the PIC at the time when the IA submits the application and the Project Information Sheet and Services Requirements for the allocation of the budget under the PDF as described in section: **Assessment of Application in the Guidelines on PDF of the SOP for PPP Projects, Volume II: Guidelines.**
- 5.8. Under the QCBS, the shortlisted members are invited to submit technical and financial proposals at the same time but in separate sealed envelopes. The technical proposals are opened first at the time, date and venue stipulated in the RFP and evaluated by the CEC. Technical proposals that score the minimum qualifying requirement, which is set at 750 points out of the maximum 1000 points, are qualified and those below 750 rejected. After the PRC reviews and approves the technical evaluation report, the financial proposals of the shortlisted members in which their submitted qualifying

technical proposals are opened at the time, date and venue stipulated in the RFP. The financial proposals are evaluated by the CEC and points calculated based on the percentage weighting assigned to the costs. The scores of the technical proposals are also apportioned based on the percentage weighting assigned to the quality. The combined score is then calculated and the shortlisted member that scores the highest is selected for contract award after the review and approval of the PRC.

- 5.9. **Fixed-Budget Selection (FBS)** is suitable for very well defined, straight-forward and standard TA, IC or OE. The procedures for the FBS selection are the same as for the QCBS. The RFP will disclose the budget available and shortlisted members will be invited to submit their best technical proposal within that budget. The technical proposals are then evaluated by the CEC. After the technical evaluation is completed and approved by the PRC, there is a public opening of the financial proposals only of those shortlisted members that received the minimum required score of 750 out of 1000 points for the technical proposal. The financial proposals that exceed the fixed budget are rejected and the shortlisted member with the highest technical score and within budget is invited to negotiate a contract.
- 5.10. **Consultants' Qualifications Selection (CQS)** is suitable for the recruitment of IC or OE where the services required are standard. The CQS does not focus on cost as part of the evaluation process, but on quality as reflected in the submission of EOI. The REOI with the detailed TOR is advertised nationally or internationally. **The shortlisted members of the IDC Panel that participated in the selection of the TA are not eligible for submission of EOI as this poses a conflict of interest situation.** The EOI submissions normally cover qualifications, experience, geographical exposure and other relevant factors and are evaluated and ranked by the CEC. After the PRC reviews and approves the evaluation of the EOI, the first ranked firm is invited to submit a technical and financial proposal. Both the technical and the financial proposals are reviewed by the CEC and negotiated by the PRC. The use of the CQS will require the endorsement of the GDPPP before seeking approval by the PIC.
- 5.11. **Least-Cost Selection (LCS)** is suitable for very well defined and standard services where well-established standards already exist. It is not suitable for selection of TA for most PPP Projects and is used only in exceptional basis when the PPP Project is small and the TAS is simple. The IA will need to provide a solid justification for its use and must be endorsed by the GDPPP before seeking approval by the PIC.
- 5.12. The above method in 5.11 may be used for the selection of the IC or OE where the services are well defined and standard. Under LCS, the procedures are the same as described above for QCBS except for the evaluation of the financial proposals. The financial proposals of all the shortlisted members are open and the lowest priced proposal is selected for award. The contract is negotiated with the shortlisted bidder that submitted the lowest priced proposal.
- 5.13. **Single Source Selection (SSS)**, also referred to as Direct Selection, is appropriate when there is only one uniquely qualified firm or individual with exceptional worth for an assignment or when time is of essence. SSS is only used in very exceptional case and its use must be approved by the Minister of the MEF. When the IA requests for the use of SSS, the GDPPP will review the circumstances and justifications provided by the PMU. The GDPPP will make the appropriate recommendation for the consideration of the Minister of the MEF.
- 5.14. The circumstances where SSS may be appropriate are:

- (a) for tasks that represent a natural continuation of previous work carried out by the Consultant within the last twelve (12) months;
 - (b) in emergency situations when the services of the Consultant are urgently required; and
 - (c) when only one firm is qualified or has experience of exceptional worth for the assignment.
- 5.15. The SSS method may be used for selection of IC or OE. Under the SSS, the technical and financial proposals are requested from a single firm/consortium. The technical proposal will be evaluated by the CEC to check completeness of the proposal and acceptability of the proposed personnel/experts. The PRC will then conduct negotiations of the technical as well as the financial proposals. The firm/consortium will be first asked to make good the deficiencies found in the technical proposal. The financial proposal will then be negotiated and the financial as well as conditions of contract will be agreed between the PRC and the firm/consortium.

6. METHOD OF SELECTION FOR INDIVIDUAL CONSULTANTS/ADVISORS FOR DUE DILIGENCE

- 6.1. Individual consultants/advisors are required to assist the PMU or the GDPPP to carry out due diligence of the specific areas (technical, legal, financial or commercial) of the Feasibility Study/Technical Proposal/Financial Proposals submitted by Private Proponent/Proposer of USP. Such consultants/advisors are recruited under the Individual Consultant Selection method.
- 6.2. The individual consultants/advisors may be freelancing or self-employed consultants or come from a firm. The REOI for the due diligence services is advertised in a national newspaper. This method does not require the submission of a technical and financial proposals. The individual consultant is requested to submit the EOI with a CV, which is used to carry out the evaluation of the individual. The evaluation is based on the assessment of the individual's capability, judged on the basis of academic background, relevant experience, expertise and, as appropriate, knowledge of the local conditions, such as culture, administrative system, and organizational structure of the government. The evaluation is carried out by the CEC if the PMU is recruiting the consultant or a CEC-IDC Panel where services are required by the GDPPP and all the individuals are ranked according to their scores. The report on the ranking prepared by the CEC or the CEC-IDC Panel is reviewed and if found in order, approved by the PRC or the PRC-IDC Panel as appropriate. The 1st ranked individual is asked to submit his/her financial terms by email which are negotiated by the Chair of the relevant PRC based on the samples of Individual Consultants Contract Forms shown at **Annexure 10 to the SOP for PPP Projects, Vol. III: Procurement Manual - Selection of Consultants.**
- 6.3. The GDPPP may recruit the individual consultant/advisor under the Single Source Selection or direct selection method where the consultant/advisor has provided services in the past and the performance was found to be very good. The SSS for such cases provides the advantage that the consultant/advisor is very familiar with the policies and procedures related to PPP Projects; the organizational structure for PPPs; and knowledge gained from undertaking past contracts. In addition, the selection process is fast tracked without compromising quality of the consultant/advisor as these have been proven when he/she first went through the competitive selection process. The remuneration rate and out of pocket expenses have been established and therefore financial negotiations is simple with only the adjustment for Consumer Price Index (CPI) required. The Director

General of the GDPPP shall be required to seek the approval of the Minister of the MEF for SSS or direct selection.

- 6.4. The GDPPP is tasked with the responsibility for undertaking due diligence of financial, commercial and legal aspects of all Feasibility Studies/Technical Proposals/Financial Proposals submitted by the Proponent/Private Sponsor of USP. Since such due diligence is repeated for each USP, in the interest of efficiency and effectiveness, the GDPPP may recruit a firm/consortium to provide such services. The firm/consortium is selected using the CQS method and a framework contract is signed with the selected firm/consortium under which the list of experts, their remunerations rates and out of pocket expenses are agreed.
- 6.5. The procedures described for the CQS selection method in Paragraph 5.10 above will be followed by the GDPPP except that the evaluation is carried out by the CEC-IDC Panel of the GDPPP, and the evaluation reviewed and approved by the PRC-IDC Panel of the GDPPP. The validity of the framework contract is normally for a period of three (3) years and the financial terms are subject to adjustment by the CPI in Cambodia from the beginning of the 2nd year of the contract period. The contract validity period may be extended for another year with the approval of the Minister of the MEF.
- 6.6. As and when the due diligence services are required by the GDPPP, the firm/consortium will be requested to submit a proposal in response to the TOR sent by the GDPPP. The proposal will spell out the expertise that will be required, the proposed staffing from the list of approved experts, the inputs of each of the experts, the deliverables, the timeframe and the costs. The Director of the Department of Project Development/or the Director of the Department of Project Delivery and Portfolio Management of the GDPPP will review the proposal and conduct negotiations by email. The negotiated terms will be submitted to the Director General of the GDPPP for approval. The approval will be transmitted to the firm/consortium with a notice to proceed. There will be no need for signing another contract as the terms and conditions of the framework contract will apply.

7. PROCUREMENT PLANNING

- 7.1. After the MEF notification to the IA of the inclusion of the project in the Priority PPP Project List and the in-principle PIC approval of the funding from the PDF for PPP Projects by the GDPPP, the PMU of the IA will prepare and submit to GDPPP an annual Procurement Plan for all consultant services to be financed under the PDF for PPP Projects in the format shown in **Annexure 1**. The GDPPP will review and approve the annual Procurement Plan to ensure it is consistent with the in-principle approval of the funding from the PDF for PPP Projects.
- 7.2. The IA will prepare and submit a Specific Procurement Plan for each of the consultant services for TAS for review and endorsement of the GDPPP. The format is shown in **Annexure 2**. The GDPPP will submit a copy to the PIC for information.
- 7.3. The IA shall separately prepare the procurement plan in respect to the selection of IC and OE after the approval of the project. In case of USP, the procurement plan for the selection of the OE shall be prepared by the IA after the signing of the Framework Agreement. All of these Procurement Plans will be reviewed and approved by the GDPPP.
- 7.4. The IA will monitor the progress in the selection of the consultants against the timeframe stipulated in the approved Specific Procurement Plans and prepare quarterly progress reports for submission to the GDPPP. In the event that the selection is delayed, the IA will provide the justifications for the delay in the quarterly progress report and at the

same time submit the revised Specific Procurement Plans and the annual Procurement Plan. No prior approval of the GDPPP is necessary for the revised Specific Procurement Plans and the annual Procurement Plan.

8. DISCLOSURE PROVISIONS

- 8.1. After the selection of firms for the Panel of TA (IDC Panel) and the signing of the IDC Contracts, the list of these firms, including all members of the Joint Venture or Consortium shall be published on the GDPPP/MEF website within ten (10) days of the signing of the IDC Contracts.
- 8.2. In the case of consulting contracts for TAS, no information relating to the evaluation of the proposals and recommendations of the relevant CEC shall be disclosed prior to the approval of the consulting contract by the relevant PRC. The GDPPP shall disclose the following information on the GDPPP/MEF website within ten (10) days after the approval of the contract award by the PRC:
 - i. Names of all the firms that submitted Proposals;
 - ii. Names of the all the firms whose Technical Proposals secured the minimum technical score;
 - iii. Name of the winning firm;
 - iv. Date of award of the contract; and
 - v. Contract Value.

9. SELECTION OF CONSULTANTS - PROJECT PREPARATION AND TRANSACTION ADVISORY CONSULTANTS

- 9.1. The selection of consultants shall be made in the following two stages:

Stage 1 – Selection of Panel under Indefinite Delivery Contracts (IDC Panel): The GDPPP shall be responsible for the selection of consulting firms for the IDC Panel. The selection of the consulting firms will be undertaken under a pre-qualification exercise based on the modified Quality Based Selection (QBS)¹ method. The consulting firms in the IDC Panel shall be retained under Indefinite Delivery Contracts (IDCs) without any commitment by the GDPPP/MEF. The IDC Panel may be updated on a periodical basis to include more consulting firms as well as exclude current consulting firms. **No retainer fees or any other amount shall be payable to the consulting firms under the IDCs.** The detailed procedures for the selection of the consulting firms for the IDC panel and periodic update of the IDC Panel are provided in **Sections 10 and 11** below.

Stage 2 – Selection of Transaction Advisors (TA): The IA is responsible for the selection of the consulting firms for undertaking TAS to develop well-structured bankable PPP projects. The TA is selected from the IDC panel through a competitive process using the most suitable selection method on the basis of a specific TOR. After the selection of the TA is completed, a lump sum Assignment Contract is signed by the IA with the selected firm for a specific assignment. The detailed procedures for the selection of the TA are provided in **Section 14** below.

¹ Under the Modified QBS procedures, the Panel will be selected only on the basis of the EOIs submitted. Thereafter, during call down assignments, the firms selected from the Panel will be required to submit technical and financial proposals

10. STAGE 1- SELECTION OF PANEL UNDER INDEFINITE DELIVERY CONTRACTS

- 10.1. The selection of the IDC Panel of consulting firms for TAS will be undertaken through an open international competitive process. The GDPPP shall prepare the Request for Expressions of Interest (REOI) for empanelment of consultants in the IDC Panel using the standard forms and templates prescribed in Annexures of this Manual on the Selection of Consultants. These shall include the following:
- i. Request for Expressions of Interest (REOI)
 - ii. Template for the Expressions of Interest (EOI)
 - iii. Template for the Indefinite Delivery Contracts (IDC)
- 10.2. The selection of consulting firms for the IDC Panel is based on the capability of the firms to provide financial, technical, legal and expert services necessary to develop well-structured bankable PPP projects. The GDPPP shall invite EOI from the eligible national and international consulting firms. The sample REOI (in the **Annexure 3**) shall be based on the generic scope of work and expertise required, without reference to any specific PPP project, and shall generally contain the information related to the objectives of the consulting services, consultant selection method, indicative scope of work, duration of services, requirement of various expertise, general terms of payment, evaluation criteria and deadline for submission.
- 10.3. The criteria for evaluation of EOI shall be prescribed in the REOI which shall normally include the following, among others:
- (i) Country of Incorporation;
 - (ii) Similar experience of the firm/consortium as TA on its own or in partnership with another firm(s);
 - (iii) Experience in the region;
 - (iv) Nature and size of the firm/organization and key-personnel, size of permanent staff, in house Legal, Project Finance and Technical Expertise;
 - (v) Average annual turnover over the last three years;
 - (vi) Others as approved by the Director General of the GDPPP.
- 10.4. The detailed evaluation criteria will be developed and approved by the GDPPP prior to the issuance of the REOI.
- 10.5. The Department of Project Development of the GDPPP shall be responsible for undertaking the selection of the IDC Panel. It will prepare the draft REOI and submit to the Director General of the GDPPP for approval. After the approval, the REOI shall be:
- (a) Advertised at least once in one (1) daily English 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 finance newspaper/journal such as the Financial Times or the Economist; and
 - (b) Published on the website of the GDPPP/MEF for a continuous period until the deadline for submission of EOI.
- 10.6. While the above advertisement requirements are mandatory, the GDPPP will also use all its best efforts to disseminate the REOI through other mediums that may be available.

For example, it can request a list of Consultants that are active in providing TAS for PPP Projects from the Asian Development Bank (ADB), World Bank (WB) and International Finance Corporation (IFC) and send out the REOI to them. The objective is to reach as many Consultants as possible within a reasonable time before the closing date of the submission.

- 10.7. Interested Consultants shall be required to submit the EOI in the prescribed template within the deadline specified in the REOI. The submissions can be in hard copies or submitted electronically, if stipulated in the REOI. The deadline should normally be thirty (30) days from the date of advertisement of the REOI in the international finance newspaper with the closing date being a weekday (Monday to Friday). Requests for clarification(s) on any part of the REOI shall be considered by the GDPPP if they have been received in writing not later than fifteen (15) days before the deadline for submission of EOI. All such clarifications shall be issued after approval by the Director General of the GDPPP.
- 10.8. In case there is a need to amend the REOI, such amendments shall be approved by the Director General of the GDPPP and issued by way of amendment/s that shall be posted on the website of the GDPPP/MEF. To give the consultants adequate time to prepare the EOI as result of an amendment to the REOI, the GDPPP may consider extending the deadline for submission of the EOI if the amendment is substantial or issued close to the original closing date. The deadline shall, however, be extended with the approval of the Director General of the GDPPP and for a period not exceeding fifteen (15) days.
- 10.9. The deadline may be extended by the Director General of GDPPP in case there are insufficient numbers of EOI received by the deadline. There should be at least ten (10) EOI received by the deadline. In case the number is lower, the deadline for the submission will be extended for fifteen (15) days and all those firms/consortia that had submitted the EOI will be informed. If there are no additional EOI by the extended deadline, the GDPPP will proceed with the EOI that had been received by the earlier deadline.
- 10.10. All the EOI received by the GDPPP before the prescribed deadline (date and time) shall be accepted. No EOI shall be rejected at the time of EOI opening. A list of firms/consortia that submitted the EOI shall be prepared by the GDPPP. In case of receipt of multiple submissions of EOI by a firm/consortium, only the latest received before the deadline shall be considered.
- 10.11. The EOIs shall be opened at the time prescribed for the opening in the presence of those firms/consortia who wish to attend the opening meeting at the time prescribed for the opening meeting by an EOI Opening Committee comprising of:
 - Director of the Department of Project Development/Department of Project Delivery and Portfolio Management, as relevant, as the Chair,
 - Chief of Office of Project Development/Office of Project Delivery, as relevant, as a Member,
 - Chief of Office of PDF as a Member.
- 10.12. Each EOI will be opened and recorded by the Opening Committee. The Chair and the members of the EOI Opening Committee and the representatives of Consultants presenting at the opening meeting shall sign the Minutes of EOI Opening for Selection of the IDC Panel.

- 10.13. After the EOI Opening, the EOI are submitted by the Chair of the EOI Opening Committee to the Consultant Evaluation Committee for the selection of the IDC Panel (CEC-IDC Panel) which has been established by the Minister of the MEF. The CEC-IDC Panel shall be responsible for the evaluation of the EOI in accordance with pre-approved evaluation criteria and for recommending the selection of the firms/consortia for the IDC Panel for the approval of the Procurement Review Committee (PRC-IDC Panel) which has been established by the Minister of the MEF. All members of the CEC-IDC Panel and PRC-IDC Panel shall sign the Code of Ethical Conduct and Fraud and Corruption provided in the **Annexure 3**.
- 10.14. The CEC-IDC Panel will evaluate the EOI using the pre-approved evaluation criteria. An officer in the GDPPP will be designated as the Procurement Officer or Officer in Charge of Procurement for the selection of IDC-Panel who will provide administrative support to the Chair in undertaking the evaluation. The Chair of the CEC-IDC Panel will call for a meeting and provide the overall guidance on the methodology for evaluation and a scoring sheet to all the members. Each member will then carry out independent evaluation for which a period of five (5) days will be provided. In case there are a very large number of EOI, the Chair may extend the period for evaluation as deemed appropriate. The Chair or any member through the Chair may request for clarifications or additional information from firms/consortia submitting EOI. The purpose is to ensure that all the relevant information is available to the CEC-IDC Panel to make an informed decision in the evaluation process. The Chair will direct the Procurement Officer to seek the necessary clarifications/additional information and firms/consortia will be provided five (5) days from the date of request to respond.
- 10.15. After the deadline for evaluation, the CEC-IDC Panel will meet a second time to discuss and agree on the scoring of the firms/consortia that submitted the EOI. When there is a variance with high and low scores, each member will clarify and justify the high or low score. The Chair will use the best effort to try and resolve such variances and agree on a score that reflects an agreement among all the members. However, no member will be forced to alter his/her assigned scores but the Chair will have the right to refer unusually high or low scores to the Director General of GDPPP for a resolution. The scores of all the members will be added and averaged to arrive at the final score. Firms which score at least 75% of the overall score will qualify for consideration to be included in the IDC panel. The evaluation of the EOI shall be completed within forty-five (45) days from the date of receipt of all the EOI from the Chair of the EOI Opening Committee.
- 10.16. The CEC-IDC Panel shall rank the EOI of those firms/consortia that met the minimum score for qualification with the highest score ranked number 1, next highest as number 2 and so on in this order. The number of firms/consortia in the IDC Panel will preferably be ten (10) but the final decision regarding the number to be empaneled will depend upon the number and quality of EOI received and the number of PPP projects for which the TAS are required. However, the total shall not exceed twelve (12). In the event that the number of firms/consortia meeting the minimum overall score is less than 10, the CEC-IDC Panel will still proceed with the selection of IDC Panel. In the event that there are more than twelve (12) firms/consortia that have met the minimum qualifying overall score, these firms/consortia in their order of ranking will be kept on the reserve list for consideration in case any firms/consortia has been removed for the IDC Panel on account of lack of performance or for other reasons described in Paragraph 11.3 below.
- 10.17. The CEC-IDC Panel will prepare an evaluation report with the ranking of all the firms/consortia that score at least 75% of the maximum total score and recommend the

number of firms/consortia to be included in the IDC Panel submitted to the PRC-IDC Panel for review. The PRC-IDC Panel will review and make the final recommendation of the firms/consortia for inclusion in the IDC Panel for the approval of the Minister of the MEF. The MEF will notify the firms/consortia of their selection and disclose the IDC Panel on the GDPPP/MEF website. The firms/consortia in the IDC Panel shall be retained under IDC for a period of three (3) years from the date of execution of the IDC is with all the selected firms/consortia by the MEF without any commitment on the part of the MEF of awarding a contract for TAS. No retainer fee or other amount shall be payable to the firms/consortia with whom IDCs have been signed.

- 10.18. The GDPPP shall issue offer letters to the selected firms/consortia along with the draft IDC for their review and signatures. The firms/consortia shall be given a time of thirty (30) days to sign the IDC and return it in hard copy with the joint venture agreement, the letters of association, or the association agreements, as applicable and the power of attorney of the authorized representative. In exceptional cases and with the prior approval of the Director General, the period may be extended in the event that the selected firms/consortia are required to complete legal process, for example, in the case of constituting the Joint Venture or Association or Consortium.
- 10.19. Before signing the IDC, the selected firms/consortia shall be required to conduct a comprehensive conflict of interest review to ensure that no actual or potential conflict of interest shall exist for the firms/consortia due to any reason whatsoever, including any possible cooperation with any of the firms/consortia in the IDC Panel. In this regard, the firms/consortia shall also consult within the network of member firms/consortia to avoid any actual or potential conflict of interest at a later stage.
- 10.20. The IDC shall be signed by the Director General of the GDPPP on behalf of the MEF and the authorized representative of the firms/consortia, or the authorized representative of the lead firm in the case of an association of firms, or with the authorized representatives of all the joint-venture partners in the case of a joint venture.
- 10.21. After the IDC have been executed by the GDPPP with all the firms/consortia, the IDC Panel is considered as formally established and these firms/consortia will be called members of the IDC Panel. The details of the members, including contact details, and names of the contact persons shall be published on the website of the GDPPP/MEF.
- 10.22. The GDPPP through its Department of Project Development shall issue periodical bulletins to the IDC Panel members, including posting on the website, information on the list of Priority PPP Projects for which TAS are planned, the type of expertise that will be required, and the timelines for consultant selection process.

11. UPDATING OF THE IDC PANEL

- 11.1. The GDPPP may call for REOI after six (6) months from the date of notification of the establishment of the IDC Panel when the number of members selected is less than ten (10). Under such round of fresh REOI, additional firms/consortia can be selected to reach a total number of twelve (12) members in the IDC Panel. These additional firms/consortia will remain in the IDC Panel for a period of three (3) years from the date of notification of their inclusion in the IDC Panel. The procedures specified for Paragraph 10.2 to 10.22 will be followed for the selection process for these additional firms/consortia.
- 11.2. The IDC Panel will be updated once every three (3) years from the date of execution of the IDC is completed with all the selected firms/consortia as prescribed in Paragraph

10.21. The members in the existing IDC Panel will be eligible to reapply. The GDPPP shall follow all the procedures prescribed in Paragraph 10.1 to 10.22 above for the update of the IDC Panel. The selection criteria shall be based on at least the same provisions adopted initially while selecting the first IDC Panel. If appropriate and considered necessary, additional evaluation criteria can be adopted while updating the IDC Panel with the prior approval of the Director General of the GDPPP.

- 11.3. However, either during the updating exercise or at any time during the validity of the IDC, the MEF may, at its discretion, consider the removal of any member from the IDC Panel and termination of the IDC without consideration of any compensation by giving a written notice of not less than fifteen (15) days of its intention to terminate the same:
- (a) in case, based on the performance assessment under the ongoing contract(s), it is determined by the IA and confirmed by the GDPPP that the member may not be able to perform the required services satisfactorily in the future; or
 - (b) in case the member has not submitted any proposal in response to the invitation of technical and financial proposals by the IA for two (2) consecutive assignments; or
 - (c) if constitution of the consortium (association or joint venture) has been changed without prior approval of the GDPPP; or
 - (d) in case the member and in the case of a consortia, any party in the consortia is blacklisted or barred from bidding or participation in any procurement activity by the Government, or any of its agencies, offices, corporations, sub-national administrations, or the DPs in case they are funding the PDF; or
 - (e) if the MEF determines that the member has engaged in unethical behavior, or corrupt or fraudulent practices as defined in the Manual;
 - (f) if a member has submitted proposals that fail to secure the minimum qualifying score on two occasions during the validity period of the IDC Panel; or
 - (g) for any reason whatsoever, as deemed fit, without the need to provide justification by the MEF.
- 11.4. In the event of removal of any member from the IDC Panel, it will be replaced by the highest ranked firm/consortium in the reserve list as prescribed in Paragraph 10.16 above. In such cases, after the IDC have been executed with the reserved firms/consortia, the IDC Panel will be updated. The details of the updated IDC Panel members, including contact details and names of the contact persons shall be published on the GDPPP/MEF website.

12. SHORTLISTING OF FIRMS/CONSORTIA FOR TAS

- 12.1. The GDPPP will manage the IDC Panel and recommend the shortlist of panel members which will be invited to submit proposals for TAS after funding for the preparation and development of a Priority PPP Project has been approved by the PIC. The shortlist will be provided to the IA which will issue the RFP to these members. The shortlisting of the members from the IDC Panel is done on rotation basis so that all members get a chance to submit RFPs. The Department of Project Development under the overall supervision of its Director will undertake the selection of shortlist.
- 12.2. The GDPPP will review the members in the IDC Panel for relevant experience in the sector of the PPP Projects for which TAS are required. The sector experience is the main criteria for the selection. Other factors such as country of incorporation, response in the past to the invitations, number of contracts already awarded, experience in the region,

and the performance in the ongoing assignments may also be considered. Further, no more than **two members from any one country** shall be included in the shortlist.

- 12.3. The GDPPP will shortlist five (5) members for issuing of the RFP. If there are more than five (5) members with required sector experience and meet other factors, it will select the five (5) members based on the ranking that they achieve during the evaluation process. If there are less than five (5) members with the relevant sector experience, the shortlist may be reduced but there must be at least three (3) shortlisted members.
- 12.4. The members with the relevant sector experience that are not shortlisted in the first PPP Project will be shortlisted for the second PPP Project. The members which were shortlisted in the first PPP Project will not be normally shortlisted for the second PPP Project. However, if there are insufficient numbers of members in the IDC Panel to make up the shortlist of five (5), the gap will be filled in by members from the shortlist of the first PPP Project which were unsuccessful in the selection for award of contract, on the basis of their ranking. Notwithstanding this, the shortlist can be reduced to at least three (3) when there are insufficient number of members with the required sector experience in the IDC Panel with the approval of the Director General of the GDPPP.
- 12.5. The above cycle of shortlisting will continue to provide all the members in the IDC Panel the opportunity to participate in the selection of TA. There may be a situation where the TAS are required for more than one PPP Project in the same sector at the same time and there may be less than ten (10) members in the IDC Panel with the sector experience to make up a shortlist of five (5) for two (2) PPP Projects. In such cases, the shortlist can be reduced to meet the minimum requirements of three (3) and the members will be split for the two (2) PPP Projects by the drawing of lots by the Director General of the GDPPP.
- 12.6. There could also be a situation that there are insufficient number of members with the relevant sector experience in the IDC Panel to make up the shortlist of minimum number of three (3) due to more than one PPP Project for which TAS are required. In such situations, a member may be shortlisted for more than one PPP Project at the same based on the order of ranking. In all other cases, the Director General of the GDPPP will have the authority to decide on the shortlisting of the members.
- 12.7. The Department of Project Development will submit the shortlist to the PMU of the IA for any comments, if any and provide seven (7) days for this purpose. No change in the shortlist will be considered unless there is an exceptional justification for example, the member has been committed or is being investigated for fraud and corruption in a project which the IA is implementing. Any change in the shortlist will require the approval of the Minister of the MEF. The GDPPP will seek confirmation of availability for the assignment from the proposed shortlist of members before finalizing the final shortlist and notifying the IA. There must be valid reason for non-availability to avoid a pick and choose situation. Where there is insufficient justification for a member, it will be ineligible for the next two cycles of selection of the shortlist.
- 12.8. The shortlisting of the members is subjected to the condition that **no member can be assigned more than two (2) contracts for TAS** at the same time. In such cases, when a member has been successful in award of two (2) contracts, it will no longer be shortlisted for a new PPP Project until it has completed one of the two (2) contracts assigned to it.
- 12.9. Any shortlisted member that does not submit RFP for two (2) consecutive PPP Projects will be removed from the IDC Panel and not considered for selection in the IDC Panel for the next cycle of update of the IDC Panel.

13. RECORDS MAINTENANCE FOR IDC PANEL AND SHORTLISTING

- 13.1. The GDPPP through its Department of Project Development shall maintain all records of the selection process of the IDC Panel and the shortlisting process. These records shall be maintained for a period until twelve (12) months after the end of the validity of the IDC Panel. At a minimum, the documents should include, among others, the REOI, the EOI received, Minutes of EOI Opening, EOI evaluation reports of the CEC-IDC Panel, and the Minutes of PRC-IDC Panel meetings, the original IDC contracts signed with the firms/consortia in the IDC Panel and all correspondence with the IDC Panel members.
- 13.2. It will maintain records of shortlisting of the members by PPP Project wise, and by member to enable to check the number of PPP Projects for which a member was shortlisted. All communication with the members in the IDC Panel must also be filed and maintained in accordance with the records management procedures of the MEF.

14. STAGE 2- SELECTION OF TRANSACTION ADVISORS (TA)

- 14.1. **Project Management.** The PMU of the IA, established under the *Prakas/Decision* issued by the Head of the IA, will undertake the process for the selection of the TA once financing of TAS for a PPP Project from the PDF or any other sources is approved-in-principle by the PIC. In addition to the establishment of the PMU, the Head of the IA will also officially establish the **CEC** and **PRC**.
- 14.2. Prior to selection of the TA for any PPP Project, the staff of the PMU shall disclose any potential conflict of interest to the Head of the PMU and shall not participate in or associate with any of the procurement activities. To avoid this, the staff shall be required to declare in writing, before taking up any task in the selection process, that he/she does not have any direct or indirect interest with any of the consulting firms or individuals for a specific PPP Project. If at a later stage, staff learns about any potential conflict, he/she shall immediately inform the Head of the PMU and abstain from any further activities in the selection process. Failure to make such disclosure shall result in removal of the staff from the PMU and administrative action by the Head of the IA in accordance with the existing laws and regulations of the Government of the Kingdom of Cambodia (GKC).
- 14.3. **On receipt of the in-principle approval**, the PMU will submit the TOR, the expertise and inputs required, the estimated costs and other relevant information for the TAS to the GDPPP for review and approval of the budget for the TAS as stipulated in the **Guidelines on PDF of the SOP for PPP Projects, Volume II: Guidelines**.
- 14.4. At the same time, the GDPPP will undertake the shortlisting of the members of the IDC Panel for participating in the selection of the TA for the PPP Project for which the budget has been approved.
- 14.5. On completion of the shortlisting, the GDPPP will notify the PMU of the IA on the list of members that have been shortlisted.
- 14.6. **Preparation of Request for Proposals (RFP).** The PMU shall draft the RFP for invitation of Technical and Financial Proposals following the sample template shown in **Annexure 9**. The RFP shall contain, among others, the following:
- (a) Letter of Invitation
 - (b) Instructions to Consultants
 - (c) Data Sheet

- (d) Evaluation Criteria and Evaluation Sheets
 - (e) Technical Proposal Submission Forms
 - (f) Financial Proposal Submission Forms
 - (g) Terms of Reference
 - (h) Statement of Ethical Conduct and Fraud and Corruption
 - (i) Form of Contract, General Conditions and Special Conditions
- 14.7. The detailed TOR shall be finalized based on specific scope of work and expertise required for a particular assignment and shall contain the requirements of consultants with national and international expertise, qualification requirements, specific TOR of individual experts, and terms of payment. The draft RFP will be submitted to the PRC for review and approval before issuance to the shortlisted members of the IDC Panel.
- 14.8. **Issuance of RFP.** The RFPs shall be issued to the shortlisted members from the IDC Panel as notified to the PMU by the GDPPP. The shortlist will comprise of at least three (3) members of the IDC Panel. The shortlisted members shall be allowed a time period of not less than thirty (30) days to prepare and submit the Proposals. The period may be extended by the Head of the PMU where there are valid justifications for example in case of large or complex PPP Projects which will require more time to prepare the proposals.
- 14.9. **Responding to Queries and Issuance of Addenda.** There is no requirement for a pre-proposal conference unless the Head of the PMU deems one necessary when the PPP Project is complex in nature. However, the shortlisted members may seek clarifications on the RFPs in writing. All such requests shall be considered by the PMU if they have been received not later than ten (10) days before the deadline for submission of proposals. The PMU shall examine all such queries carefully and shall immediately inform all the shortlisted members about the queries raised and the response of the PMU without identifying the source of the inquiry. All such clarifications shall be issued after approval by the Head of the PMU. If the clarification is related to the Form of Contract, General Conditions or Special Conditions and requires any revisions, the PMU will seek the prior approval of the PRC before the Head of the PMU issues the response.
- 14.10. Where it is necessary to amend any section of the RFP either at the discretion of the PMU with the approval from PRC, or in response to any query raised by a shortlisted member, such amendment shall be issued to all the shortlisted members who were issued the RFP. The amendment(s) shall be binding on all the shortlisted members.
- 14.11. To give the shortlisted members adequate time to incorporate any amendment or major clarifications to incorporate into their proposals, the deadline for submission of the proposals may be extended, if requested by any of the shortlisted members. The deadline may be extended up to a maximum period of ten (10) days with the prior approval of the Head of the PMU.
- 14.12. **Employer Clarification of Proposals.** From the time the RFPs are received until the time the contracts are awarded for a particular PPP Project, the PMU shall neither seek any clarification from the shortlisted members nor entertain any additional submissions or inputs on any matter after the respective deadlines. However, clarifications on historical nature, defined as information or data pertaining to the shortlisted members **as of before the deadline for submission** may be sought by the PMU.
- 14.13. **Receipt of Proposals and Opening and Evaluation of Technical Proposals.** Immediately after the deadline for submission of the proposals, the Proposal Opening

Committee shall open only the Technical Proposals, in accordance with the procedures prescribed in the RFP, in the presence of the authorized representatives of the shortlisted members who choose to attend. The Financial Proposals shall remain sealed and kept in safe custody of the Procurement Officer. The proposal opening meeting will be chaired by the Head of the PMU or his/her designated representative with the Procurement Officer and one representative of the GDPPP as members. Only those proposals which have been received in the manner prescribed in the RFP and before the submission deadline shall be accepted by the PMU. Proposals submitted in any other manner shall not be accepted by the PMU. However, due to unforeseen circumstances, proposals received after the deadline for submission but prior to the opening meeting and/or in substantially complying form may be accepted if the acceptance of such proposal do not compromise the integrity of the selection process. The decision in such matters will be taken jointly by the Head of the PMU and the Director General of the GDPPP.

- 14.14. After opening of the Technical Proposals, the Proposal Opening Committee will prepare a Minutes of Opening of Technical Proposals in the specified format, indicating the names of the Proposal Opening Committee and the shortlisted members that submitted the proposals. The Minutes shall be signed by the Chair of the Proposal Opening Committee and representatives of the shortlisted members that attended the proposal opening. Copies of the Minutes shall be provided to all the shortlisted members and the GDPPP.
- 14.15. In the case no proposal is received in response to the invitation to submit RFP, the PMU will advise the GDPPP which will seek clarifications from the shortlisted members on the reasons for non-submission. Since the GDPPP had already sought the confirmation from the members before shortlisting, the GDPPP will take the necessary actions on removal of these members from the IDC Panel unless it can be established by the shortlisted members that they had advised the PMU in advance that they will not be able to submit proposals due to any substantive provision in the RFP that they found unacceptable to them.
- 14.16. The decision to remove members will be taken by the Director General of the GDPPP. The GDPPP will prepare another shortlist and submit to the PMU which will seek submission of proposals from the new shortlisted members. Before re-inviting the proposals, the PMU should review and update, among others, the TOR and the estimated budget for the assignment, if considered appropriate.
- 14.17. The Head of the PMU will forward the Technical Proposals received to the CEC which shall undertake the evaluation. The Procurement Officer shall ensure that a copy of all the Technical Proposals is provided to each member of the CEC. The Chair of the CEC will call for a meeting of all the members within three (3) days from the date of receipt and discuss the general approach and methodology for undertaking the evaluation and a detailed explanation of the scoring system. Each member will be provided with the personnel evaluation sheet and the summary evaluation sheet and advised on how to fill in the scores.
- 14.18. Each member of CEC will independently carry out the evaluation in strict accordance with the criteria prescribed in the RFP, which shall include an assessment of the quality of approach and methodology, work plan, personnel schedule and qualification of national and international experts proposed to be assigned for the assignment. The detailed evaluation criteria approved by the Head of the PMU prior to the deadline of submission of the Proposals will be used for the scoring. A period of ten (10) days will be provided to the members to complete their evaluation. Where members require clarifications from any of the shortlisted members, these will be approved by the Chair of the CEC. The

Procurement Officer will seek the necessary clarifications and provide five (5) days for the date of request for the response. The Chair of the CEC may extend the time for completion of the evaluation by the members up to ten (10) days.

- 14.19. After the evaluation by individual members is complete, a formal meeting of CEC shall be held to discuss and finalize the technical evaluation. Using the personnel evaluation sheet and the summary evaluation sheet, the overall scores of the firms shall be computed by the CEC based on the ratings indicated in the scoring table. Where there is high or low score given by a member compared to scores of other members, the Chair will seek reasons for the variance and attempt to rectify where the high or low score is not justified. The scores of each firm shall be finalized based on consensus and a final ranking of the proposals shall be prepared.
- 14.20. In the event that consensus cannot be reached, the scores will be added up and the average calculated provided the high or low score by any member is corrected to level acceptable by the other members. If the differences still persist, the matter will be referred to the Head of the PMU and the Director General of the GDPPP for a resolution. The issue may be referred by them to an expert in procurement for an opinion.
- 14.21. All the Technical Proposals that achieved the minimum qualifying technical score, as specified in the RFP, shall be considered as technically qualified. The proposals that fail to achieve the minimum qualifying score shall be rejected. The CEC shall prepare and finalize a report on the technical evaluation. The Procurement Officer will forward the report on the technical evaluation to the PRC for review and approval. The Minutes of the Opening of the Technical Proposals will be attached to the report on the technical evaluation.
- 14.22. The PRC will review the evaluation report and examine if the Proposal Opening followed the procedures specified in the RFP and whether the technical evaluation was carried out in accordance with the approved detailed evaluation criteria. The PRC will not replace the scoring with its own evaluation but will examine any unusual situation like when there is a wide variance in the total score. In such cases, the Chair of the PRC shall seek clarifications from the Chair of the CEC where the PRC finds lack of justification for the variance. The PRC will also review the evaluation and scoring to ensure there is no collusion in the technical evaluation.
- 14.23. The PRC will approve the report on technical evaluation and the total score of the shortlisted members if it finds everything is in order. In case where it cannot agree, it will request the CEC to undertake a re-evaluation based on the areas of deficiencies that it found during its review or it may seek the advice from an expert in procurement. The PRC shall have the authority to make the final decision. The decision of the PRC must be unanimous. The Procurement Officer who will act as the non-voting Secretary of the PRC will record the deliberations of the PRC and prepare the Minutes of the PRC Meeting. The Minutes will be signed by all the members of the PRC. If there is any disagreement between the members of the PRC, the matter will be referred to the Minister of the MEF for resolution. The decision of the Minister of the MEF shall be final and binding.
- 14.24. After a decision on the technical evaluation has been made, all the shortlisted members whose Technical Proposals did not achieve the minimum qualifying score or were considered non-responsive, shall be notified by the Procurement Officer in writing that their Technical Proposals failed to achieve the minimum qualifying score and that their Financial Proposals will be returned unopened after the selection process is over. Simultaneously, all the shortlisted members whose Technical Proposals secured the minimum qualifying mark and above shall be notified in writing, informing them of the

technical scores obtained, and indicating the date, time and location for public opening of their Financial Proposals.

- 14.25. **Opening and Evaluation of Financial Proposals.** On the notified date and time, the Proposal Opening Committee shall open the Financial Proposals in the presence of the authorized representatives of the shortlisted members who choose to attend. The detailed procedure for opening of the financial proposals shall be prescribed in the RFP. In addition to the members of the Proposal Opening Committee, other staff from GDPPP and PMU may attend as observers.
- 14.26. The Procurement Officer will bring the unopened Financial Proposals kept in safe custody to the venue of the Meeting. The Procurement Officer will announce the list of the shortlisted members who submitted Financial Proposals and all the Financial Proposals will be shown one by one to all present to verify that they are sealed and unopened. Next, the Financial Proposals submitted by the unqualified shortlisted member(s) will be set aside and remain unopen and kept in safe custody.
- 14.27. The Financial Proposals of the qualifying shortlisted members will be opened one by one and the price announced and recorded on a presentation screen. When all the financial proposals have been opened and prices recorded, the Procurement Officer will prepare a Minutes of Opening of Financial Proposals in the specified format, indicating the names of the Proposal Opening Committee and names of the qualifying shortlisted members who choose to attend and their representatives. The Minutes shall be signed by the Proposal Opening Committee and these representatives. Copies of the Minutes shall be provided to all the qualifying shortlisted members including those who chose not to attend, the Head of the PMU and the Director General of the GDPPP.
- 14.28. The Procurement Officer will provide a copy of all Financial Proposals opened during the Proposal Opening Meeting to the Chair and each member of the CEC who shall evaluate the Financial Proposals in accordance with the procedures prescribed in the RFP. The financial evaluation shall exclude provisional sums and contingencies, if any, and all local taxes payable in Cambodia.
- 14.29. In case the selection is based on **QCBS**, the CEC shall calculate the combined scores of the technical and financial proposals using the methodology as stipulated in the RFP. The methodology as shown in **Annexure 7** shall be followed. The highest ranked shortlisted member shall be recommended for selection as the TA for the assignment.
- 14.30. If the selection is based on **Fixed Budget Selection (FBS)**, the Financial Proposals which exceed the fixed budget stipulated in the RFP will be rejected. The shortlisted member that submitted the highest ranked Technical Proposal within the budget will be recommended for the selection as the TA for the assignment.
- 14.31. In the case of **Quality Based Selection (QBS)**, the shortlisted member that submitted the highest ranked Technical Proposal will be recommended for selection as the TA for the assignment.
- 14.32. The CEC shall prepare and finalize the financial evaluation report/combined evaluation in case of **QCBS** and submit its recommendation for the selection of the TA for the review and approval of the PRC.
- 14.33. All the members of the CEC and PRC are required to sign the Statement of Ethical Conduct and Fraud and Corruption.
- 14.34. In case the cost of the financial proposal of the successful shortlisted member exceeds the budget allocated from the PDF, the Head of the PMU will seek the approval of the

GDPPP prior to the commencement of the negotiations. The GDPPP will submit the request to the PIC for the increase in the budget allocation and seek its endorsement.

- 14.35. In the case when the increased cost is not acceptable and the additional budget is not approved, the GDPPP will advise the PRC to invite the next ranked shortlisted member for negotiations in case of **QCBS** and **QBS**. This process is repeated until the contract negotiations are concluded within the budget.
- 14.36. In the case of **FBS**, if there is no financial proposal that is within the fixed budget and additional budget is not approved, the highest ranked shortlisted member will be invited to negotiate for a reduction in the proposed price to bring this within the budget. If the negotiations with the highest ranked shortlisted member fail, then the next ranked will be invited to negotiate and the process repeated until the contract negotiations are concluded within the budget.
- 14.37. **Contract Negotiations.** The selected TA shall be invited for contract negotiations by the Head of the PMU. The PRC shall be the negotiating team with the Chair as the Chief Negotiator from the IA side which shall conduct the negotiations. The selected TA shall nominate its Chief Negotiator and team. Negotiations shall cover, among others, the following:
- (a) Discussions and clarifications on the TOR and scope of services and finalization of the scope of the services;
 - (b) Discussions and finalization of the methodology, work program and personnel mobilization schedule;
 - (c) Adjustments in the Financial Proposal, if any or in case of inadequate budget and a discussion on the liability of the consultants in respect of local taxes; and
 - (d) Discussion on the counterpart facilities required by the selected TA; and
 - (e) Review of draft contract.
- 14.38. The Minutes of the Negotiations will be prepared by the selected TA and presented for review by the IA's Negotiating Team. The financial terms and conditions negotiated between the two parties must be agreed between the Chair of the PRC representing the IA and the member in the PRC representing the GDPPP before approval of the Minutes of Negotiations can be granted. In the event that there is any disagreement, the matter will be referred to the Director General of the GDPPP for resolution whose decision will be final. Negotiations will conclude with the finalization of the draft contract. Once the Minutes of Negotiations are agreed, the agreed draft contract will be initiated by the Chief Negotiators from both Parties. A draft template of the IDC/form of contract is included in **Annexure 3** and **Annexure 9**.
- 14.39. No provisions in the Minutes of Negotiations can override the conditions of the draft initialed contract and in case of any conflicting provisions, the draft initialed contract will prevail.
- 14.40. **Failure of Contract Negotiations.** If negotiations cannot be concluded with the selected TA due to any reason, the Chair of the PRC shall seek the endorsement of the Director General of the GDPPP for declaring the failure of the negotiations and proceeding to invite the 2nd ranked shortlisted member. The Director General of the GDPPP will review the justifications and if found valid, will endorse the cancelation, and advise the Minister of the MEF for information. The Head of the PMU will then invite the 2nd ranked shortlisted member to negotiate the contract.

- 14.41. The same procedures for contract negotiations described above will be repeated until the negotiations are successfully completed. All the procedures prescribed above shall be followed for the contract negotiations. In case negotiations fail with all the technically qualified shortlisted members, the PMU shall re-invite the proposals from the same shortlisted members after revising and updating, among others, the TOR and the RFP to address the major reasons for the failure of the negotiations. The revised RFP and TOR will need to be reviewed and approved by the PRC before re-inviting the proposals.
- 14.42. **Award of Contract.** The draft negotiated contract shall be approved by the Head of the IA and submitted to the GDPPP for the endorsement of the Director General of the GDPPP and approval of the Minister of the MEF. After the approval of the Minister of the MEF, the contract shall be signed by the authorized representatives of the concerned IA and the authorized representative(s) of the selected TA holding the power of attorney to sign on its behalf. A copy of the signed contract will be submitted by the IA to the GDPPP and the PIC which will be used as the basis for authorizing payments for eligible services from the PDF. The Form of Contract is provided in **Annexure 9**.
- 14.43. After the award of the contract, the PMU shall notify the unsuccessful shortlisted members that their proposals are not successful, and that the selection process has been completed. The PMU shall also return the unopened Financial Proposals of the shortlisted members that does not meet the minimum qualifying score in case of QCBS and QBS. For FBS, there is no need for informing the shortlisted members who submitted financial proposal exceeding the fixed budget.
- 14.44. Any other information relating to the evaluation of the proposals and recommendations of the CEC shall not be disclosed to any person not officially concerned with the process or the shortlisted members that submit the proposals. The use of the confidential information relating to the consultant recruitment by any consultant or by any person not officially concerned shall call for initiating disciplinary actions by the Government.
- 14.45. **Debriefing.** The decision of the concerned IA with respect to the selection of the TA shall be final and binding on all firms/consortia which participated in the selection process. However, after the award of the contract, the unsuccessful firms/consortia may request the PMU for a debriefing in writing. The PMU with the participation of the GDPPP shall provide a debriefing which must be confined to the proposal submitted by the firm/consortium requesting for the debriefing and shall focus on the areas of its weaknesses or shortfalls. The debriefing shall not, under any circumstances, divulge any information relating to the evaluation including technical scores obtained by the other firms/consortia under various criteria and/or sub-criteria, which is confidential and not required to be shared. The purpose of the debriefing is to allow unsuccessful firms/consortia to improve their future proposals.
- 14.46. Notwithstanding the above, in the event that any of the firms/consortium in the IDC Panel which had submitted proposals that did not meet the minimum qualifying score shall be subjected to a review process by the GDPPP to determine if the member should be removed from the IDC Panel. The GDPPP will request the firm/consortium to provide the reasons for not submitting qualifying proposals. If the firm/consortium is unable to provide a very strong justification, the GDPPP will put the firm/consortium on notice. If the same firm/consortium fails to meet the minimum qualifying score a second time, it will be automatically removed from the IDC Panel. The matter will be referred by the Director General of the GDPPP for the endorsement of the Minister of the MEF.
- 14.47. **Time Involved in Consultant Selection.** The shortlisted members shall be given a minimum of four (4) weeks to prepare the Proposals. The evaluation of the Technical

Proposals should be completed within ten (10) working days after the opening of the Technical Proposals. The review and approval by the PRC of the technical evaluation and ranking of the submissions should be completed within five (5) working days from the date of submission of the evaluation reports. The Financial Proposals should be opened within five (5) working days after the approval by the PRC of the recommendation of the ranking of the proposals. The Combined Technical-Financial evaluation in the case of QCBS and the Financial Proposals in the case of QBS and FBS should be completed within five (5) working days from the date of the opening of Financial Proposals.

- 14.48. Thereafter, the PRC should approve the Combined Technical-Financial evaluation in the case of QCBS and the Financial Proposals in the case of QBS and FBS within five (5) working days from the date of submission of these evaluation reports. The contract negotiations should be completed within five (5) working days and the contract signed within ten (10) days after the date of conclusion of the contract negotiations.
- 14.49. The GDPPP, PMU, CEC and PRC must exert their best efforts to complete their assigned responsibilities within the standard time limits indicated above. The schedule for each stage of the selection process using the standard times will be submitted by the IA as part of the procurement plan and endorsed by the GDPPP. Any deviation from the standard times will need to be justified by the PMU and approved by the GDPPP. The GDPPP will monitor the time taken for each stage, measure the performance at each stage and prepare a report for submission to the Head of the IA and Minister of the MEF within four (4) weeks after the completion of the selection process.
- 14.50. **Effectiveness of Contract.** Generally, the date of signing of the contract shall be the date on which the contract shall come into force and become effective. However, where certain conditions of effectiveness have been included in the contract, the PMU shall issue a notice confirming that the effectiveness conditions listed in the contract have been met. In such case, the date of notice shall be the Effective Date.
- 14.51. **Notice to Proceed and Commencement of Services.** Immediately after the effectiveness of the contract, the PMU shall issue a 'Notice to Proceed' (NTP) to the TA to commence the services on a date indicated therein, which shall not be later than seven (7) days from the Effective Date. Within ten (10) days from commencement of services, a 'kick-off' meeting shall be organized by the PMU which shall be attended by the TA, the representatives of the GDPPP, the PMU and other stakeholders as decided by the PMU. The purpose of this meeting shall be to discuss the project requirements, work plan and the schedule of deliverables, counterpart support required by the TA from the PMU and the TA's key strategies to handle this assignment. The TA will make a presentation on these matters and any other matter that it deems necessary. The TA will prepare a Minutes of the Kick-Off meeting which shall be signed by the Head of the PMU, the representative of the GDPPP and the Team Leader at the end of the meeting. The Minutes shall serve as a guidance for the undertaking of the TAS by the TA and shall not override any provisions of the signed contract which shall prevail.
- 14.52. **Inception Phase.** The TA shall prepare and submit an Inception Report within thirty (30) days from date of commencement of the TAS or as specified in the signed contract. Generally, the following issues shall be covered during the inception phase which may require the attention of the PMU:
- (i) **Scope of Work, Implementation Schedule and Deliverables.** The Inception Report will provide the outline of the scope of TAS, the proposed approach and schedule of deliverables and other relevant details. The reporting requirements

are also firmed up and agreed during this inception Phase. The PMU and the TA shall finalize the agreed scope of work, implementation schedule and deliverables; and review the scope of work of individual experts to ensure all aspects of the TOR are addressed based on the current project requirements. The TA may propose changes to the TOR based on its findings which will be subject to the approval of the PMU and GDPPP. No major changes or deployment of additional experts or other resources will be allowed. The Inception Report will be reviewed and discussed with the TA by the PMU Counterpart Team.

- (ii) **Counterpart Team.** The PMU will set up a Counterpart Team which will be responsible for providing all the required support to the TA provided this is reasonable and within its ability. The GDPPP will nominate its staff for inclusion in the Counterpart Team. Measures shall be taken to maintain good liaison and communication between the two parties.
- (iii) **Availability of Information and Employer Support.** The TA would need to access all the required information and logistics support (e.g., reports of previous studies, Government's decisions/strategies, various inputs required to prepare the financial model, and requirements of the various Government departments) immediately after the commencement of the TAS. The Counterpart Team shall provide all such information and reasonable support to the TA. All such information will be stated in the RFP and the signed contract. Access to any information outside the scope stated in the RFP and the signed contract will be the responsibility of the TA. In terms of information on financial, commercial and legal aspects, these will be provided by the GDPPP. The TA will also be required to consult with the central agencies like the Council for the Development of Cambodia (CDC), Ministry of Environment (MOE), General Department of Taxation (GDT), General Department of Resettlement (GDR) and others. For this, the GDPPP will serve as the liaison center and facilitate the consultation process and flow of information.

14.53. **Monitoring Deliverables of the TA.** The PMU and GDPPP, where applicable, shall closely monitor the TA's deliverables and shall promptly notify the TA in case where the reports/outputs are not submitted by the due dates or any activities which remain incomplete. The contract will specify the requirements for the submission of progress reports by the TA. TA will normally be required to submit brief **Monthly Progress Reports** and a more detailed **Quarterly Progress Report**. The draft templates for Monthly Progress Reports are shown in **Annexure 4** and for the Quarterly Progress Report in **Annexure 5**. The GDPPP and PMU will jointly conduct a meeting with the TA every quarter to monitor the progress of the TAS.

14.54. The TA will provide a briefing on its findings as reported in these reports to the PMU Counterpart Team and where relevant to the GDPPP and solicit their feedback. In the briefings, the TA will focus on areas where it has encountered obstacles or issues that need urgent attention of the PMU and GDPPP. It will also explain any slippage in the deadline for deliverables and how it proposed to make up for the delays. In case where the PMU and the GDPPP are required to provide comments in writing, these shall be provided within ten (10) working days from the date of submission of the reports. The TA shall ensure that such comments are duly incorporated in the study/reports.

14.55. While the monthly and quarterly progress reports will document the progress and highlight key issues needing urgent attention, these will not prevent more regular meetings and briefings between the TA and PMU/GDPPP when matters pop up during the various studies which need to be addressed urgently or where issues that are critical

for the success of the PPP Project need to be resolved. There will therefore be a need for regular interaction between all the parties. However, such collaboration will not exempt the TA for its contractual obligations under the contract.

- 14.56. The PMU shall ensure that all the approvals, wherever required, are communicated to the TA promptly to enable the TA to effectively complete the TAS.
- 14.57. The experts named in the contract for various national and international positions shall perform their respective tasks in accordance with the work plan agreed between the PMU/GDPPP and the TA. The TA may supplement the work of the team by assigning additional personnel as and when required, subject to the conditions that (i) no additional payments, whatsoever, shall be made to the TA other than the amount indicated in the contract; and (ii) such action will not cause any delay in accomplishment of various milestones/overall completion of the TAS.
- 14.58. The Team Leader named as designated by the TA in the contract shall lead all the meetings, missions, and shall not delegate his/her tasks to others. The Team Leader may be assisted by team members when the briefing is related to outputs in their area of specific expertise.
- 14.59. **PPP Project Unviable.** During the feasibility study period or after its completion, if it is determined that the PPP Project is likely to be unviable and confirmed by the PMU and GDPPP, the TA will not undertake any further TAS and the contract will be terminated. The contract will have a specific provision for termination on this account without any liability to the IA. The TA will be paid for the services provided during the period prior to the date of notification of the termination by the IA. Such a termination will have no bearing on the performance of the TA.
- 14.60. **Contract Variations.** Contract variations shall be avoided except in very exceptional circumstances when it is found that an additional deliverable will be necessary or a situation when the PMU or GDPPP require an additional study/task outside the scope of the TOR specified in the contract. Since the contract signed with the TA is a lump sum contract, the price of any proposed contract variation will need very careful evaluation. The TA will submit the proposal which shall include the proposed experts, the duration of their inputs and the proposed remuneration rates. These shall be reviewed by both the PMU and the GDPPP. The TA will also be required to submit supporting documents to substantiate the proposed remuneration rates of the experts to determine the price of the proposed variation. The rates for remuneration and the unit costs for out-of-pocket expenses already existing in the original contract shall be considered while computing the cost implications of the contract variation. The recommendation for the variation proposal shall be submitted for endorsement of the Director General of the GDPPP before approval by the Head of the PMU except in the case for the replacement of an expert.
- 14.61. The accumulated sum of all the contract variations shall not exceed the contingency amount specified in the original contract. When a variation order leads to exceeding the contingency amount, the approval of additional budget will need to be sought from the PIC. In such cases, the proposed variation shall be first submitted to the PRC for its review and endorsement. If endorsed by the PRC, the PMU shall submit a request for additional budget to finance the gap to GDPPP. The GDPPP will seek the approval of the additional budget from the PIC. The variation order will be only signed if the request for the additional budget is approved by the PIC. The PIC may delegate the authority to approve additional budget within a limited ceiling to the Director General of the GDPPP in which case submission to the PIC will not be necessary.

14.62. A Contract Variation shall be issued and signed by the IA for each approved variation and countersigned by the TA before any payment can be made against such variation orders. The changes that may require contract variations are:

- (i) **Change in Scope of Work.** An increase in the scope of work may arise due to specific requirements of the PMU/GDPPP or explicitly missed out in the TOR under the contract. The TA has taken into consideration all the tasks that will need to be undertaken during the TAS and agreed to an all-inclusive lump sum contract price. Hence, normally all tasks are covered under the TOR. However, the PMU may require the TA to undertake a specific task which can be demonstrated as additional work and not included in the TOR. The TA may also propose the need for an additional and specific study/task which was not envisaged at the time of the signing of the contract. In all cases, proposals for additional study/task shall be submitted by the PMU to the GDPPP for review and endorsement before processing of the variation request.
- (ii) **Extension of Time or Change in Timelines for Deliverables.** Extension of contract period (i.e., the duration of the contract) may be required to enable the TA to complete all the tasks covered in the contract. Such variation does not involve any additional costs and no change in the contract price will be permitted on any grounds.
- (iii) **Replacement of Experts.** Any request for replacement of an expert shall be considered by the PMU only in the event of resignation, illness or inability of such personnel to continue, or due to any other reason prescribed in the contract. Similarly, the PMU may require replacement of an expert if the performance of such expert is deemed not satisfactory. In all such cases, the PMU shall accept as a replacement an expert of equivalent or better qualifications and experience. The replacement CVs shall be evaluated by the CEC using the personnel evaluation sheet of the original candidate to determine if the proposed replacement candidate scores the same or better points. The remuneration rate will need to be substantiated with documentary evidence such as payroll slip or a recent contract within last 6 months. The remuneration rate of the replacement expert shall not exceed the rate of the original expert. If the substantiated rate is lower, then the lower rate is agreed and if it exceeds the rate of the original expert, the rate of the original expert will prevail. Other out-of-pocket expenses shall remain unchanged. All the expenses for the demobilization of the outgoing expert and the mobilization of the replacement expert shall be borne by the TA. The contract price adjusted to a lower amount if the remuneration rate of the replacement expert is lower than that of the original expert. **Such variation shall be approved by the Head of the PMU with the consultation with the GDPPP and does not require prior approval of the PRC.**
- (iv) **Payment Schedule.** No adjustments in payment schedule will be allowed as a result of a variation.

14.63. **Approval and Issuance of Contract Variations.** All contract variations shall be endorsed by the Director General of the GDPPP before the approval by the Head of the PMU except for those which increases the contract price. The variation proposals which lead to an increase in the contract price will need to be endorsed by the PRC and the additional budget approved by the PIC before the PMU can issue the variation orders. Variations shall be in writing and shall be issued by the IA and signed by both parties. A copy of the signed variation shall be sent to the GDPPP.

- 14.64. **Payments to Consultants.** All payments shall be made in accordance with the terms and conditions prescribed in the contract. The contract signed between the TA and the IA will be on a lump sum basis and hence the payments shall be linked to the completion of outputs/milestones which shall be specified in the contract. The TA shall be required to submit an invoice on completion of each milestone, which shall be processed promptly by the PMU for payment. The PMU will review the request for payment and validate if the stipulated output/milestone has been completed to its satisfaction. After the validation, the Head of the PMU will certify the payment and send a request to the GDPPP for the release of the certified amount. The request will be accompanied by all relevant supporting documents to establish that the output/milestone has been achieved. Payment shall be made only if the said milestone has been completed. Partial payment linked to a milestone (or payment in installment) shall not be allowed.
- 14.65. The claim for payment by the TA shall be net of all applicable **local taxes** payable in Cambodia in accordance with the conditions of the contract related to payment of taxes. The invoice must show the local taxes that are required to be withheld. Normally, in the case of foreign consulting firms, the applicable local taxes are borne by the Government and any such taxes will not be deducted from the payments to the TA. In case of national consultants and sub-consultants, all local taxes are payable and must be deducted from the payments. The treatment of taxes, as specified in the conditions of contract, will be clarified during the negotiations of the contract with the TA and recorded in the minutes of the negotiations. The payments of local taxes specified in the conditions of contract which will prevail in all cases. The PMU will ensure that the invoice submitted by the TA complies with the conditions of contract related to treatment of taxes.
- 14.66. The PMU shall normally complete the review, validation and certification of the claim within five (5) working days but no later than ten (10) working days from the date of receipt of the claim.
- 14.67. All payments shall be released by the GDPPP from the designated PDF for PPP Projects Account maintained in the National Bank of Cambodia and in accordance with the payment procedures prescribed in the **Guidelines on PDF of the SOP for PPP Projects, Volume II: Guidelines**. The GDPPP will review the request and certification for payment to verify if the claim for the payment is in accordance with the schedule of payment stipulated in the contract. It will also verify whether the payment of local taxes, where applicable, has been correctly shown and complies with the conditions of the contract. After the verification is completed, the release of payment will be submitted to the Director General of the GDPPP for approval. All payments shall be by check to bank transfer. In case of bank transfer, all bank charges and fees will be on account of the TA and such charges and fees shall be deducted from the certified amount.
- 14.68. The complete cycle from the submission of the invoice/claim to the release of the payment for the certified amount must be completed within the time period specified in the conditions of the contract.
- 14.69. In case of the claim for the final payment, the PMU and the GDPPP must ensure the following prior to the release of the payment:
- All the milestones stipulated in the contract have been completed to the satisfaction of the PMU and the GDPPP;
 - All the documents, reports, files or data, etc., have been provided by the TA in the required number of hard and electronic copies;

- All the equipment purchased under the contract (or supplied by the IA or the GDPPP) have been returned in good working condition; and
 - All outstanding local taxes, as applicable, have been paid.
- 14.70. **Settlement of Disputes.** If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with the implementation of the contract, the Parties shall make every effort to amicably resolve such dispute or difference by mutual consultation. The TA can refer any unresolved disputes to the National Commercial Arbitration Center of Cambodia established under *The Commercial Arbitration Law of the Kingdom of Cambodia* or to the Singapore International Arbitration Center for resolution provided that the nationality of the TA is not Singaporean. The provisions for the settlement of disputes will be stipulated in the contract which will prevail in all cases.
- 14.71. **Termination of Contract.** Care shall be taken to avoid any circumstances leading to the termination of the contract with the TA. The PMU, the GDPPP and the TA shall make their best efforts jointly to discuss and resolve any issues that can lead to the contract being terminated or rescinded. However, if the issue is of a substantial nature and cannot be resolved, the termination of the contract may be made in accordance with the conditions and the procedures prescribed in the conditions of the contract.
- 14.72. In the event where the PMU is seeking the termination, the matter will be first submitted to the PRC for review and recommendation. The Minutes of the PRC meeting must be prepared and signed by all the members of the PRC. If the PRC does not endorse the termination, it will recommend a course of action which the PMU must follow to address the matter. If the termination is endorsed, the PMU will submit the recommendation of the PRC, together with the signed Minutes, through the GDPPP to the Minister of the MEF for a decision. The decision of the Minister of the MEF shall be final.
- 14.73. The above does not apply in case where the contract is terminated on account the PPP Project found to be unviable as explained in the Paragraph 14.59 above. In such cases the termination can be approved by the Head of the PMU after the endorsement of the Director General of the GDPPP.
- 14.74. In case the decision to rescind or terminate a contract is taken soon after the commencement of services, the PMU may, with the prior approval of the PRC, negotiate the contract with the next ranked shortlisted member, provided that the member agrees to extend the validity of its proposals. The scope of work, cost estimates, requirements of personnel and inputs in terms of person-months shall be revised keeping in view the tasks already completed by the previous TA. In case the negotiations fail, the next-ranked shortlisted member shall be invited, provided that the member extends the validity of its proposals.
- 14.75. If the negotiations fail or there is no other shortlisted member which has met the minimum qualifying score, the PMU shall re-invite new proposals from a new shortlist of members from the IDC Panel. Before re-inviting the new proposals, PMU shall update, among others, the TOR and the estimated budget for the assignment keeping in view the tasks already conducted by the previous TA.
- 14.76. The procedures for shortlisting and the selection of the consultant described in **Section 12 Shortlisting of Firms/Consortia for TAS** above shall be followed.
- 14.77. **Performance Evaluation.** The GDPPP and the PMU shall jointly assess the performance of the TA at the end of the assignment. The GDPPP shall be the lead agency for conducting the performance evaluation. The evaluation shall cover the TA as a whole and not individual

member of a consortium, and the key individual experts deployed for the assignment. The general principles governing the performance evaluation shall include, but not limited to, the following:

- (i) The detailed procedures for performance evaluation and the Performance Evaluation Report (PER) Forms, as shown in **Annexure 6** shall be followed;
- (ii) The performance evaluation shall be conducted no later than sixty (60) days from the date of completion of the TAS. The GDPPP will inform the TA on its overall performance rating;
- (iii) The TA shall have the right to appeal if the performance rating is ‘unsatisfactory’. The appeal will be considered by the GDPPP and the decision of the GDPPP will be final; and
- (iv) If the rating of the TA is unsatisfactory, the GDPPP shall, at its discretion, take a considered decision on whether the TA shall be removed from the IDC Panel. The TA will not be permitted to reapply for inclusion in the IDC Panel for a period of three (3) years from the date of decision of the GDPPP for removal of the existing IDC Panel. In the case of unsatisfactory rating of an individual expert, the GDPPP may allow the TA to retain its membership in the IDC Panel on the condition that such individual experts are not included while participating in future proposals; and
- (v) All individual experts rated as unsatisfactory shall be excluded from participating in any future proposals submitted by any member of the IDC Panel.

15. RECORDS MAINTENANCE FOR THE SELECTION OF TA AND PERFORMANCE EVALUATION

15.1. The PMU shall maintain all records of the selection process of the TA. At a minimum, the documents should include, among others, the RFP, the technical and financial proposals, the minutes of the opening of proposals, evaluation reports of the CEC, the minutes of PRC meetings, the minutes of negotiations, draft contract and the original contracts signed with the TA, and all associated correspondence. It will also maintain records on contract administration which shall include notice to proceed, all reports submitted by the TA and the comments provided on them, the minutes of all meetings between the TA and the PMU, all financial records, performance evaluation report and all the associated correspondence. The GDPPP will also record and maintain a copy of these documents for its reference. These records shall be maintained for a period of 12 months after the end of the TAS by the TA.

15.2. The GDPPP shall maintain and update all the records relating to the performance evaluation of the TA, and a list of firms/consortia and individual experts that are barred from participating in future proposals.

16. SELECTION OF INDEPENDENT CONSULTANT (IC) AND OWNER’S ENGINEER (OE)

16.1. **Independent Consultant.** IC is engaged in a PPP Project to provide independent review, monitoring, approval and reporting of the project implementation and/or operations and maintenance of the facilities that will be carried out by the Private Partner. It will ensure that these are carried out in accordance with the terms and conditions of the PPP Contract. Since these services will require a team of experts, the IC is normally a consulting firm, a consortium of consulting firms, or a joint venture.

- 16.2. The TOR of the IC will be specified in the PPP Contract which will provide the specific tasks that will need to be carried out by the IC. The TA will prepare the TOR for the IC assignment during the preparation of the PPP Project when it prepares the draft PPP Contract. The TOR will be agreed between the IA and the Private Partner at the time of the negotiations of the PPP Contract. The selection of the IC is carried out by the IA in consultation with the Private Partner according to the agreed laid down procedures set out in the PPP Contract, and shall be completed, signed, and made effective within thirty (30) days of the Financial Closure.
- 16.3. In the case of USP, the selection of the IC is carried out jointly by the IA and the Proponent/Private Sponsor. The selection method and procedures will be stipulated in the PPP Contract which shall be followed.
- 16.4. The selection of the IC shall be undertaken in parallel with the negotiations of the PPP Contract and completed no later than the Effective Date of the PPP Contract. Under any circumstances, the Contract with the IC shall not be signed before the signing of the PPP Contract.
- 16.5. The IC shall act professionally and independently of the Parties to the PPP Contract, namely the IA and the Private Partner. Sample TOR are attached to **Annexure 8**.
- 16.6. **Owner's Engineer.** The OE is engaged in a PPP Project to provide support to the IA with technical advice during the construction and operations and maintenance phases of the PPP Project, ***as and when needed***. The OE is justified when the IA does not have adequate in-house technical capacity to undertake review of the detailed engineering designs during the pre-construction phase and the decisions of the IC during the construction and operations and maintenance phased of the PPP Contract. Its main task is to review all technical matters, where the PPP Contract requires the IA comments or approvals, and the decisions of the IC. Since these services will require a team of experts, the OE is normally a consulting firm, a consortium of consulting firms, or joint venture.
- 16.7. In the case of a solicited proposal, the selection and signing of the OE is undertaken independently by the IA and shall generally commence prior to the Financial Closure, or during other instances required by the Government. The OE team will be available on call basis, as and when its services are required, throughout the project implementation and/or operations and maintenance periods. Sample TOR is attached to **Annexure 8**.
- 16.8. In the case of USP, the OE may be justified for *additionally* undertaking the review of the FS where the IA does not have the services of a TA and does not have adequate in-house technical capacity to undertake the review. For USP, the selection of the OE is undertaken independently by the IA and shall be generally completed after the Framework Agreement has been signed but prior to the completion of the FS Report by the Proponent/Private Sponsor.

17. CONSULTANT SELECTION PROCESS FOR IC AND OE

- 17.1. The selection of the IC and the OE will generally follow competitive procedures. ***The contracts will be time-based and not lump sum as is in the case for contracts for TA.*** The selection process of the IC and the OE will be the responsibility of the PMU of the concerned IA except in the case of IC under USP where the Proponent/Private Sponsor will be involved in the selection process. The involvement of the Proponent/Private Sponsor will confine to the review of the evaluation reports, endorsement of the selected IC and participation in the negotiations process.
- 17.2. The selection can be based on any of the methods described under **Section 5: Method of Selection for TA, IC and OE** above. The Quality- and Cost-Based Selection (QCBS)

procedure as prescribed in **Annexure 7** is the default method of selection. However, the Least Cost Selection (LCS) or the Consultants' Qualification Selection (CQS) or Fixed-Budget Selection (FBS) can also be adopted when the IA can provide strong justification and with the prior approval of the MEF. The Single Source Selection (SSS) method may be used in special circumstances with the prior approval of the Minister of the MEF.

17.3. The procedures for the selection of the IC and OE are the same. The PMU shall be responsible for preparing the Request for Expressions of Interest (REOI) and for short-listing of consultants using the standard forms and templates as shown in **Annexure 8**. These shall include the following:

- i. Request for Expression of Interest (REOI)
- ii. Template for the Expression of Interest (EOI)

17.4. The PMU shall invite EOI from eligible national and international consulting firms. The firms/consortia in the IDC Panel are eligible to participate unless there is a conflict of interest where the firms/consortia have provided TAS for the PPP Project under which the selection of IC or OE is being sought. In such cases, the firm/consortia from the IDC Panel shall be ineligible.

17.5. The REOI shall be based on generic scope of work and expertise required, details of the project, and shall generally contain the information relative to the objectives of the consulting services, consultant selection method, indicative scope of work, duration of services, requirement of various expertise, broad terms of payment, evaluation criteria, and deadline for submission.

17.6. The criteria for evaluation of EOI shall be prescribed in the REOI which shall include the following, among others:

- i. Eligibility (in the case of IC, the nationality shall be different from the nationality of the Private Partner).
- ii. Similar experience of the firm/consortium and number of contracts as IC or OE, as applicable.
- iii. Experience in the region.
- iv. Nature and size of the firm/organization and key personnel, size of permanent staff.
- v. Average annual turnover over the last three (3) years.

17.7. The REOI shall be approved by the Head of the PMU before the REOI is advertised.

17.8. The REOI shall be:

- (a) Advertised at least once in one (1) daily English language 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 widely used for advertising consulting opportunities; and
- (b) Published continuously on the website of the concerned IA and the MEF until the deadline for submission of EOI.

17.9. The prospective firms/consortia shall be required to submit the EOI in the prescribed template within the deadline specified in the REOI. The time allowed for submission of EOI shall be thirty (30) days from the date of the REOI in the daily newspaper. Requests for clarification(s) on any part of the REOI shall be considered by the PMU if the request has been received in writing no later than ten (10) days before the deadline for

submission of EOI. All such clarifications shall be issued after approval of the Head of the PMU.

- 17.10. In case there is a need to amend the REOI, such amendments shall be approved by the Head of the PMU and issued by way of addendum/addenda . To give the prospective firms/consortia adequate time to prepare the EOI, the PMU may also consider extending the deadline for submission of the EOIs, if the amendment is substantial or has been issued within a period of five working days before the original deadline for submission of the EOIs. In such cases, the deadline shall be extended by five (5) working days with the approval of the Head of the PMU.
- 17.11. All the EOI submitted to the PMU before the prescribed deadline (date and time) shall be accepted. No EOI shall be rejected at the time of EOI opening. A list of the firms/consortia that submitted the EOI shall be prepared. In case of receipt of multiple submissions of EOI by a firm/consortium, only the latest received before the deadline shall be considered. EOIs shall be opened by the IA's EOI Opening Committee which will be the same team as the Proposal Opening Committee as in case of TAS, and at the designated venue, date and time in the presence of representatives of firms/consortia who choose to be present.
- 17.12. After opening of the EOI, the Opening Committee will prepare a Minutes of Opening of EOI in the specified format, indicating the name of the Chair of the EOI Opening Committee and the names of the firms/consortia that submitted the EOI. The Minutes shall be signed by the Chair of the EOI Opening Committee.
- 17.13. The CEC for the selection of the IC/OE shall be the same as that established for the selection of TA. The CEC shall be responsible for the evaluation of the EOI in accordance with pre-approved evaluation criteria and rank the firms/consortia in their order of their score. The CEC shall recommend a shortlist of six (6) firms/consortia which were ranked first to sixth subject to not more than two (2) firms/consortia with the same nationality. No firms/consortia scoring below 75% of the maximum score shall be considered for the shortlist. When there are three (3) or more firms/consortia with the same nationality among the top 6th ranked firms/consortia, only the top two shall be recommended for the shortlist and the remaining number in excess of two (2) shall be replaced by the firms/consortia from the 7th ranked and onwards provided that they are of different nationality.
- 17.14. The objective is to have a shortlist of six (6) firms/consortia in their order of ranking with no more than two firms/consortia with the same nationality. The recommendations for the shortlist shall be reviewed and approved by the PRC. In case where the number of EOI submitted or the number of firms/consortia meeting the qualifying score is less than six (6), the shortlisting can proceed if there are at least three (3) firms/consortia that are qualified subject to not more than two (2) with the same nationality. If the result is less than three (3) firms/consortia, the REOI will be re-advertised to fill in the gap to make up a shortlist of at least three (3) firms/consortia. Those firms/consortia that were qualified under the original REOI shall be automatically included in the shortlist and will not be required to resubmit the REOI. Those which failed to qualify in the original REOI shall not be eligible for the repeat REOI.
- 17.15. In very exceptional cases where the repeat of REOI will delay the selection process to the extent that it will not be possible for the signing of the contract with the IC or OE by the Effective Date of the PPP Contract, the selection process can proceed with less than three (3) shortlisted firms with the prior approval of the MEF. The PMU will submit the matter to the GDPPP for review and its endorsement before seeking the approval

by the Director General of the GDPPP. In such cases where there is only one firm/consortium meeting the qualifying score, the selection method will be converted to SSS in which case the Director General of the GDPPP shall seek the approval of the Minister of the MEF.

- 17.16. **Preparation of RFP.** The same format and contents as prescribed for the preparation of the RFP for the selection of TA shall be followed as prescribed in Paragraph 14.6 to 14.7. The PMU will prepare the RFP and invite the shortlisted firms to submit their Technical and Financial Proposals.
- 17.17. The TOR for the IC and the OE shall be based on specific scope of work and expertise required for a particular assignment and shall contain the requirements of experts with national and international expertise, the qualification requirements, the specific TOR of individual experts, and the terms of payment.
- 17.18. An indicative budget for the assignment shall be finalized depending upon the scope of the services required, the types of expertise required, and the estimated minimum number of person-months required to accomplish the tasks. The indicative budget for each assignment shall be agreed between the PMU and the GDPPP. The indicated budget will be included in the RFP except in the case of SSS method.
- 17.19. The RFP for the selection of the OE shall be approved by the Head of the PMU before they are issued to the shortlisted firms/consortia. In the case of selection of the IC, the RFP shall be endorsed by the GDPPP before the approval of the Head of the PMU and issuance to the shortlisted firms/consortia.
- 17.20. **Issuance of RFP.** The RFP shall be issued to the shortlisted firms/consortia who shall be allowed a time period of not less than thirty (30) days to prepare and submit the proposals.
- 17.21. **Responding to Queries and Issuance of Addenda.** No pre-proposal conference is required. The procedures for the receipt and response to queries and the issuance of any addendum/addenda are the same as that in the case of the selection of the TA in Paragraphs 14.9 to 14.11 above.
- 17.22. **Employer Clarification of Proposals.** From the time the RFP are received until the time the contracts are awarded to the OE or the IC, the PMU shall neither seek any clarification from the firms/consortia nor entertain any additional submissions or inputs on any matter after the deadline for submission. However, clarifications on historical information or data/information which existed before the date of the deadline for submission may be sought by the PMU from the shortlisted firms/consortia who had submitted proposals.
- 17.23. **Receipt of Proposals and Opening and Evaluation of Technical Proposals.** The procedures for the receipt, opening, recording and the evaluation of technical proposals for OE or IC shall follow the same procedures as those in the case for the selection of TA in Paragraphs 14.13 to 14.24 above.
- 17.24. However, where all the proposals submitted are rejected or in case no proposal is received for a specific assignment in response to the RFP, the PMU shall re-invite the proposals, with the approval of the Head of the PMU and the Director General of the GDPPP. However, prior to the re-invitation, the PMU will seek the reasons for non-participation from the shortlisted firms/consortia or review the RFP, the TOR and/or the evaluation criteria in the case where all proposals are rejected. The PMU shall modify the RFP or the evaluation criteria or indicative budget based on the feedback from the

shortlisted firms/consortia or based on its own review. The updated RFP shall be approved by the Head of the PMU and re-issued to the shortlisted firms/consortia in the case of the selection of the OE. In the case of the selection of the IC, the updated RFP shall be submitted to the GDPPP for review and endorsement before re-issuing the RFP to the shortlisted firms/consortia. For the re-invitation, the shortlisted firms/consortia shall be permitted fifteen (15) days to submit their revised proposals.

17.25. The evaluation of the Technical Proposals and the preparation of the evaluation report shall be undertaken by the CEC in the same manner as in the case of the selection of TA as prescribed in Paragraphs 14.17 to 14.24 above. Similarly, the review of the evaluation report and approval of the selection of the OE or the IC shall be undertaken by the PRC and the notification of the results and the invitation for the opening of the Financial Proposals shall all follow the same procedures as in the case of the selection of the TA as prescribed in Paragraph 14.24 above.

17.26. **Opening and Evaluation of Financial Proposals.** The opening, recording, and the evaluation of the Financial Proposals for the OE or the IC shall follow the same procedures as that in the case of the selection of the TA as prescribed in Paragraphs 14.25 to 14.36 above.

17.27. **Contract Negotiations.** The contract shall be negotiated with the 1st ranked firm/consortium by the PRC in the same manner as in the case of the selection of the TA as prescribed in Paragraphs 14.37 to 14.39 above. The Chair of the PRC shall lead the Negotiating Team and the negotiations shall cover, among others, the following:

- (a) Discussions and clarifications of the TOR and scope and finalization of the Services;
- (b) Discussions on the methodology on how the on-call system, likely schedule for on-call services, work program and deployment of personnel;
- (c) Adjustments in the Financial Proposal including rates and a discussion on the liability of the consultants in respect of local taxes; and
- (d) Discussions on the counterpart facilities to be provided by the IA; and Review and initial of negotiated contract.

17.28. **Failure of Contract Negotiations.** If negotiations cannot be concluded with the selected OE or IC due to any reason, the Chair of the PRC shall inform the Head of the IA that the negotiations have failed providing the reasons for the same. The Chair of the PRC in the capacity as the Head of the PMU shall then invite the 2nd ranked firm/consortium for negotiations. In the case of the IC, the Head of the PMU shall seek the endorsement of the Director General of the GDPPP before inviting the 2nd ranked firm/consortium. The Director General of the GDPPP shall review the reasons for the failure and if found valid, shall endorse the request, and advise the Minister of the MEF for information.

17.29. The same procedures for contract negotiations as described above will be repeated until the negotiations are successfully completed. In case negotiations fail with all the technically qualified firm/consortia, the PMU shall re-invite the proposals from the same shortlisted members after revising and updating, among others, the TOR and the RFP to address the major reasons for the failure of the negotiations. The revised RFP and TOR shall be reviewed and approved by the PRC before re-inviting the proposals.

17.30. **Award of Contract.** The draft negotiated contract shall be submitted for the approval of the Head of the IA. In the case of the IC, the negotiated contract shall be submitted

to the Director General of the GDPPP for endorsement who will seek the approval of the Minister of the MEF. After all the necessary approvals have been obtained, the contract shall be signed by the authorized representative of the concerned IA and the authorized representative(s) of the selected firm/consortium holding the power of attorney to sign on its behalf.

- 17.31. The PMU shall notify the unsuccessful firms/consortia that their proposals were not successful and that the selection process has been completed. The PMU shall also return the unopened Financial Proposals of the firms/consortia who did not achieve the minimum score.
- 17.32. Any other information relating to the evaluation of the proposals and recommendations shall not be disclosed to any person not officially concerned with the process of the selection of the OE or the IC. Any staff involved in breaking the confidentiality of the evaluation process shall be subject to administrative disciplinary action in accordance with the relevant regulations of the Government. Such staff shall be dismissed from the PMU and shall not be involved in any procurement process for PPP Projects.
- 17.33. **Debriefing.** The decision of the concerned IA with respect to the selection of the OE or the IC shall be final and binding on all firms/consortia which participated in the selection process. However, after the award of the contract, the unsuccessful firms/consortia may request the PMU for a debriefing in writing. The PMU shall provide a debriefing which must be confined to the proposal submitted by the firm/consortium requesting for the debriefing and shall focus on the areas of its weaknesses or shortfalls. The debriefing shall not, under any circumstances, divulge any information relating to the evaluation including technical scores obtained by the other firms/consortia under various criteria and/or sub-criteria, which is confidential and not required to be shared. The purpose of the debriefing is to allow unsuccessful firms/consortia to improve their future submissions.
- 17.34. **Time Involved in Consultant Selection.** The firms/consortia shall be provided thirty (30) days from the date of the advertisement of the REOI to prepare and submit their EOI. In exceptional cases and strong justification, the time can be reduced but shall be no less than twenty-one (21) days. The evaluation of the EOI shall be completed within ten (10) days from date of receipt and the shortlist approved within five (5) working days.
- 17.35. The shortlisted members shall be given a minimum of four (4) weeks to prepare the Proposals. The evaluation of the Technical Proposals should be completed within ten (10) working days after the opening of the Technical Proposals. The review and approval by the PRC of the technical evaluation and ranking of the submissions should be completed within five (5) working days from the date of submission of the evaluation reports. The Financial Proposals should be opened within five (5) working days after the approval by the PRC of the recommendation of the ranking of the proposals. The Combined Technical Financial Evaluation in the case of QCBS shall be completed within five (5) working days from the date of the opening of Financial Proposals.
- 17.36. Thereafter, the PRC shall approve the Combined Technical-Financial evaluation in the case of QCBS and shall approve the Financial Proposals in the case of QBS and FBS within five (5) working days from the date of submission of these evaluation reports. The contract negotiations should be completed within five (5) working days and the contract signed within ten (10) days after the date of conclusion of the contract negotiations.
- 17.37. **Effectiveness of Contract.** The date of effectiveness is same as the date of signing unless the contract required the OE, the IC or the IA to fulfill certain conditions within a specified time period. When the Parties face delay in meeting the conditions, the

scheduled date of effectiveness can be extended by no more than five (5) working days to allow for the Parties to meet all the conditions. The IA may also choose to waive any of the conditions and require the OE or the IC to meet them at a later date. The date of effectiveness is when the conditions have been met by the signing parties.

- 17.38. **Notice to Proceed and Commencement of Services.** Immediately after the effectiveness of the contract, the PMU shall issue a 'Notice to Proceed' (NTP) to the Consultant to commence the services on a date indicated therein, which shall not be later than seven (7) days from the Effective Date. Within ten (10) days from commencement of services, a Kick-Off meeting shall be organized by the PMU with the OE and in case of the IC, the Private Partner and the GDPPP to introduce the teams from the PMU, OE or IC, and the Private Partner. The main purpose of the Kick-Off meeting is for the OE or IC to establish contact with the teams of the other parties. This is important for the OE or IC to undertake the inception and produce the inception report.
- 17.39. **Inception Phase.** The contract will normally prescribe the requirements for the OE or the IC to submit an Inception Report after one month of commencement of the services. The Inception Report based on the finding of the OE or the IC will provide the scope of the services that will be necessary and point out needs for any revisions/modifications to the TOR; propose the work plan and mobilization schedule of its experts; schedule of deliverables; identify any bottlenecks; assess the adequacy of the counterpart support; and any other issues that may affect the timely delivery of the services.
- 17.40. **Monitoring OE and IC Services.** The PMU will closely monitor the services of the OE and the IC to ensure that deliverables are delivered in time and with quality. The OE and IC will be required to submit Progress Reports every quarter or as stipulated in the contracts. The structure and the content of the progress reports will be stipulated in the contract and further agreed during the inception phase. The PMU and the Private Partner (in case of the IC) shall review the reports/outputs submitted by the OE/IC and shall provide the comments within ten (10) working days. In some cases, the PMU and the Private Partner (in case of the IC) may request the OE/IC to make a presentation of the progress in the key activities and issues affecting the delivery of the services. In such cases, a presentation shall be carried out and matters arising discussed between all the parties.
- 17.41. The OE/IC shall prepare minutes of the discussions and use this as the basis of the feedback from the PMU or/and the Private Partner. The OE/IC shall ensure all relevant comments are duly incorporated in the reports. The PMU shall ensure that all the approvals, wherever required, are communicated to the OE/IC promptly.
- 17.42. The experts named in the contract for various national and international positions shall perform their respective tasks in accordance with agreed work plan. In the event that the PMU finds the performance of any expert lacking or any negligence, the PMU will put the non-performing expert on notice and instruct the OE/IC to take the necessary actions to bring the expert's performance to a level satisfactory to the PMU. If the performance is not rectified within one month from the date when the PMU notified the OE/IC either orally or in writing, the PMU will notify the OE/IC in writing to replace such an expert. The OE/IC shall promptly withdraw such an expert and replace with another expert with the same or better qualifications and experience with thirty (30) days.
- 17.43. **Contract Variations.** As a general rule, contract variations shall be avoided. However, during the implementation of the services, situations may require change in the agreed scope or conditions. It shall be the responsibility of the PMU and the Private Partner (in

case of the IC) to carefully evaluate such proposal before considering issuance of contract variations.

The changes that may require contract variations are:

- (a) **Change in Scope of Work.** An increase in the scope of work may arise due to additional requirements of the PMU or where a required output was not included in the original TOR. When such a situation arises, the PMU and the OE/IC will discuss and agree that the output required is additional and was not reflected or anticipated in the original TOR. Where this is agreed, the OE/IC will be required to submit a proposal for the variation. The implication of the proposed variation on the contract price shall be examined considering the requirement of additional inputs (either of the existing experts or due to addition of new experts) and the related costs. The rates for remuneration and the unit costs for out-of-pocket expenses already existing in the contract shall be considered while computing the cost implications of the contract variation. For any new expert, the OE/IC shall submit supporting documents to substantiate the remuneration rates sought for such experts.
- (b) **Extension of Time or Change in Timelines for Deliverables.** Extension of contract period (i.e., the duration of the contract) may be required to enable the OE to complete all the tasks covered in the contract, which shall not involve any additional cost. In case of the IC, the time period is fixed for the duration of the PPP Contract. The contract of the IC may only be extended in the event of an extension of the duration of the PPP Contract.
- (c) **Replacement of Experts.** Any request for replacement of an expert shall be considered by the PMU only in the event of resignation, illness or inability of such personnel to continue, or due to any other reasons prescribed in the contract. Similarly, the PMU may require replacement of an expert if the performance of such expert is not satisfactory as explained in Paragraph 14.62 above. In all such cases, the PMU shall accept as a replacement a person of equivalent or better qualifications. The replacement CVs shall be evaluated by the CEC using the personnel evaluation sheet of the original candidate to determine if the proposed replacement candidate scores the same or better score. The remuneration rate will need to be substantiated with documentary evidence such as pay slips but it shall not exceed the original rate. Other out-of-pocket expenses shall remain unchanged except for airfares which will not exceed the original amount for air travel. All the expenses for the demobilization of outgoing expert and the mobilization of replacement expert shall be borne by the OE/IC.
- (d) **Payment Schedule.** No changes in payment schedule will be allowed.

17.44. All contract variations can be approved by the Head of the PMU except for those which increases the original contract price in which cases approval of the PRC shall be required. Variations shall be in writing and shall be issued by the Head of the PMU and signed by both Parties and confirmed by the Private Partner in case of the IC.

17.45. **Financing of Arrangements.** In most cases, the costs of the IC and the OE is included in the Project Cost by the Private Partner. The cost is taken into consideration in the financial model and the rate of return in the financial proposal of the Private Partner. Hence, the costs for OE and the IC are budgeted by the Private Partner and are specified in the PPP Contract. The costs of the OE and IC are therefore advanced by the Private Partner into an account managed by the GDPPP of the MEF. The advance may be in one lump sum or annually which will be stipulated in the PPP Contract. In

the case of USP, the cost of the OE and the disbursement schedule of the advance shall be stipulated in the Framework Agreement.

17.46. The GDPPP will open a designated account in the National Bank of Cambodia or any commercial bank in Cambodia within thirty (30) days of the signing of the PPP Contract or the Framework Agreement in the case of OE for USP. The Private Partner will deposit the advance costs of the IC in accordance with the specified disbursement schedule within thirty (30) days of the notification of the establishment of the account by the GDPPP. After the review and verification of the PMU, payments to the IC and the OE will be processed and released by the GDPPP. Copies of the claims and payments made will be provided to the Private Partner. In case there is an increase in the IC or the OE contract price beyond the amount budgeted in the PPP Contract due to the issuance of variation order(s), the IA and the GDPPP and the Private Partner shall discuss and share the excess costs in equal share and deposit their share into the designated account with thirty (30) days of the issuance of the variation order that increases the costs beyond the budgeted amount.

17.47. **Payments to Consultants.** All payments shall be made in accordance with the terms and conditions prescribed in the signed contract. The OE and the IC shall be required to submit monthly invoices at the end of each month or otherwise to the PMU for review and verification and the GDPPP for review and payment in accordance with the financial management procedures. The payment shall be made as soon as possible but not later than the time period specified in the contract to avoid payment of any interest as a result of overdue payments.

17.48. The treatment on the payment of local taxes shall follow the same process as in the case of payments to TA and described in Paragraph 14.65 above.

17.49. **Settlement of Disputes.** If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with the implementation of any contract, the Parties shall make every effort to resolve amicably such dispute or difference by mutual consultation. The OE or the IC shall refer any unresolved disputes to the National Commercial Arbitration Center of Cambodia established under *The Commercial Arbitration Law of the Kingdom of Cambodia*. In some cases, the dispute may be referred to Singapore International Arbitration Center for resolution provided that the nationality of the OE or the IC is not Singaporean. The provisions for the settlement of disputes will be stipulated in the contract which will prevail in all cases.

17.50. **Termination of Contract.** Care shall be taken to avoid any circumstances leading to the termination of the contract with the OE and the IC. The IA, the PMU and the Private Partner (in case of the IC) shall use all their best efforts and act in good faith to resolve the issues before considering any termination. If, however, the Parties are left with no option but to terminate the contract, the termination of the contract shall strictly be made in accordance with conditions of the contract related to termination and follow the procedures prescribed therein.

In case the PMU decides to terminate the contract of the OE or the IC, the same process and requirements as in the case of the termination of the contract for TA described in Paragraphs 14.71 to 14.76 above shall be followed. However, in the case of termination of the IC contract, the agreement of the Private Partners shall be obtained which shall not be unreasonably withheld.

17.51. **Performance Evaluation.** The PMU shall assess the performance of the OE and the IC after the completion of the assignment which shall cover the firm as a whole as well

as the individual experts. The same general principles as in the case of performance evaluation of the TA described in Paragraph 14.77 above shall be followed.

17.52. **Record Maintenance for Selection of the OE and the IC and Performance Evaluation.** The PMU shall maintain all records on the selection of the OE and the IC and their performance evaluation in the same contents and manner as in the case of record maintenance for selection of the TA and their performance evaluation described in Paragraphs 15.1 to 15.2 above.

PART B: ANNEXURES TO THE SELECTION OF CONSULTANTS

(REFER TO VOLUME III: PROCUREMENT MANUAL ANNEXURES)

SECTION III
SELECTION OF PRIVATE PARTNER
PART A

1. INTRODUCTION

- 1.1. Section III of Volume III of this Procurement Manual provides the implementing rules, regulations and procedures associated with the selection of the Private Partner and the award of PPP contract for the Public-Private Partnerships projects.

2. INSTITUTIONAL FRAMEWORK

- 2.1. The IA has the primary responsibility for carrying out the procurement activities for the selection of the Private Partner, including the award and signing of the PPP contract. These activities include the preparation and advertising of prequalification documents, the prequalification of prospective bidders, the preparation of bidding documents, the issuance of bidding documents, the evaluation of bids, the selection of the Private Partner, and the award and signing of the PPP contract.

3. ROLES AND RESPONSIBILITIES

- 3.1. The roles and responsibilities of each agency, committee and consultants are shown below:
 - 3.1.1. **Ministry of Economy and Finance (MEF).** The MEF shall be responsible for the establishment, funding, management and operations of the Project Development Facility (PDF) for PPPs and the approval of financing of transactions advisory services from the PDF for PPPs. It is responsible for both direct as well as oversight roles in the selection of the Private Partner through the participation in the Procurement Review Committee (PRC). These roles are undertaken by the General Department of Public-Private Partnerships (GDPPP) of the MEF. The GDPPP shall also be responsible for the review of the terms and conditions related to the fiscal commitments in the draft bidding documents as well as the Final Bid Evaluation and seeking the endorsement or approval of the Minister of the MEF.
 - 3.1.2. **Implementing Agencies (IA).** The line ministries, as the implementing agencies (IA) for the PPP projects, shall have the primary responsibility for carrying out the procurement activities for the selection of the Private Partner, including the award and signing of the PPP contract. These activities include the preparation and advertising of prequalification documents, the prequalification of prospective bidders, the preparation of bidding documents, the issuance of bidding documents, the evaluation of bids, the selection of the Private Partner, and the award and signing of the PPP contract. The IA shall largely undertake these procurement activities through the dedicated Project Management Unit (PMU), or a similar institutional arrangement established by the IA for the management and implementation of the PPP projects.
 - 3.1.3. **Bid Evaluation Committee (BEC).** The BEC shall be 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.
 - 3.1.4. The Head of the IA shall establish the BEC under a *Prakas/Decision*. A member of the BEC shall not be a member of the PRC. The BEC shall comprise of:
 - Deputy Head of PMU as the Chair

- Officer of PMU in charge of Procurement as a Member
 - Representative of GDPPP at Director Level as a Member
- 3.1.5. **Procurement Review Committee (PRC).** The PRC will be responsible for the review and approval of the Prequalification and the Prequalification Evaluation Reports, where applicable and for the review and endorsement of the Bidding Documents and the Bid Evaluation Reports. In addition, the PRC will review any major contract variation proposal before the same are submitted to the Head of the IA and MEF for approval. The IA-PRC shall comprise of the following:
- Project Director/Head of PMU as the Chair
 - Representative of the IA at the Deputy Director General Level as a Member
 - Deputy Director General of the GDPPP as a Member
- 3.1.6. The Head of the IA shall appoint the Procurement Review Committee (IA-PRC or PRC) under a *Prakas/Decision*. The decisions of the IA-PRC on the evaluation shall be unanimous. The IA-PRC may call on any resources, such as experts, for advice. If the IA-PRC cannot reach a unanimous decision, then the matter shall be referred to Minister of the MEF for a decision. The IA-PRC is also responsible for the review and approval of contract variations in the case of consultant contracts.
- 3.1.7. **Transaction Advisor (TA).** The Transaction Advisor shall provide the transaction advisory services (TAS) to the IA and the MEF which will be provided in two phases. The 1st phase will include the preparation of the pre-investment studies, assessing PPP options, carrying out financial analysis, project structuring and related services until project approval. The 2nd phase will start after project approval and include the preparation of the terms of reference of the Independent Consultant, preparing the Prequalification and bidding documents including the draft PPP Contract, managing the PPP bidding process, and providing assistance in the evaluation of bids and award of the PPP Contract till financial close.
- 3.1.8. **Independent Consultant (IC).** 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. The IC will be responsible for providing independent review, monitoring, approval and reporting of the project implementation and operations and maintenance of the facilities in accordance with the terms of reference specified in the PPP Contract.
- 3.1.9. **Owner’s Engineer (OE).** The OE shall be retained by the IA for technical support. The OE shall professionally and diligently assist the IA in the management of the project and to review and prepare responses to the approvals, comments and reports submitted by the IC in a timely manner during contract implementation.
- 3.1.10. **Individual consultants/advisors.** The Individual consultants/advisors are required to assist the PMU or the GDPPP to carry out due diligence of the specific areas (technical, legal, financial or commercial) of the Feasibility Study/Technical Proposal/Financial Proposals submitted by the Proponent/Private Sponsor of USPs.

4. ELIGIBILITY

- 4.1. Subject to the conditions prescribed hereunder, all legally registered entities in Cambodia including public enterprises that are not the IA, and entities registered in a

foreign jurisdiction shall be eligible for participating in the selection of the Private Partner under this Manual.

- 4.2. A firm which is blacklisted or barred from bidding or participating in any procurement activity by the Government or any of its agencies as well as by international financial institutions where such institutions are providing funding for the PPP project, shall be ineligible to be awarded a contract.
- 4.3. Firms shall be ineligible if, 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, the Government prohibits any payments to any country, person, or entity in respect of goods, works and services originating from that country.

5. ASSOCIATION ARRANGEMENTS AND JOINT VENTURES

- 5.1. Firms may associate with each other in the form of a joint venture or consortium to complement their respective areas of expertise, strengthen the technical and financial responsiveness of their bids. In such cases, a lead partner shall be nominated to represent the joint venture to interact with the IA. All the members of the joint venture or consortium shall sign the PPP contract in case it is awarded the PPP contract and shall be jointly and severally liable under the PPP contract. The detailed requirements for the association arrangements and joint venture shall be prescribed in the bidding documents.

6. DISCLOSURE PROVISIONS

- 6.1. Further, in case of all PPP contracts, no information relating to the evaluation of the bids and recommendations of the BEC or PRC shall be published on any website or other mediums. After the Private Partner is awarded the PPP contract, the IA shall publish the following information on its website and that of the MEF maintained and operated by the GDPPP for disclosure to the public:
 - i. names of the firms that submitted bids.
 - ii. name of the winning firm/consortium/joint venture.
 - iii. date of award of the contract.

7. RECORD MAINTENANCE

- 7.1. The IA shall maintain all records of the selection process of the Private Partner. These documents must be retained for at least three (3) years after financial close of the PPP contract has been achieved. At a minimum, the documents should include the necessary approvals, copies of invitation notices, Bids, Bid Opening Statement, Prequalification Evaluation Reports and Bid Evaluation Reports and minutes of their approval by the PRC, other approval documents and all correspondence with the bidders. The signed copies of the PPP contracts shall be retained for at least three (3) years after the completion of the PPP contract.

8. PPP MODELS

- 8.1. The Law on PPPs provides the following models that may be adopted by the IA in selecting the Private Partner for a PPP project:
 - Build, Operate and Transfer (BOT)
 - Build, Lease and Transfer (BLT)
 - Build, Transfer and Operate (BTO)

- Build, Own, Operate and Transfer (BOOT)
- Build, Own and Operate (BOO)
- Rehabilitate, Own and Operate (ROO)
- Modernize, Own and Operate (MOO)
- Management Agreement/Operations and Maintenance Agreement (O&M)
- Design, Build, Finance, Operate and Maintain (DBFOM)
- Design, Build and Lease (DBL)
- Other PPP Models.

9. SELECTION METHODS

- 9.1. This Manual covers the selection methods for both solicited and unsolicited projects. The Law on PPPs stipulates that the selection of the Private Partner for solicited projects shall be through a competitive bidding methodology or direct negotiation methodology.
- 9.2. The selection of Private Partner for a PPP Project shall be in-principle and normally carried out through a competitive bidding methodology to ensure fairness, transparency and achieve higher value for money (VfM) for the State. The IA may decide to pursue a direct negotiation with a potential Private Partner for the Project that they can demonstrate would more efficiently be implemented through a direct negotiation methodology or involve a new concept or technology, as determined by the IA in discussion with the MEF, who shall jointly seek the in-principle approval from the Head of the Government.
- 9.3. The IA may decide to pursue the direct negotiation methodology for the selection of the Private Partner under any of the following circumstances:
 - the IA has issued the request for bids from the potential bidders, but and only one qualifying bidder has submitted a compliant and responsive bid;
 - the Project is funded through a bilateral agreement where the terms and conditions of such agreement has stipulated the potential candidacy for the selection of Private Partner;
 - the Project shall be urgently implemented as a matter of strategic importance or national security, or in response to an emergency, as determined by the Government;
 - the Project is not a component of a project from the list of priority infrastructure projects, which is currently under a procurement plan for that solicited project;
 - the Project does not require a direct guarantee or financial support from the Government; or
 - in the case of an Unsolicited Proposal where an in-principle approval from the Government to pursue a direct negotiation with the Proponent/Private Sponsor is granted through a joint request by the IA and MEF.
- 9.4. In case of unsolicited proposals, the Law on PPPs stipulates that after completing the due diligence of the Feasibility Study, the IA and the MEF may request the Government for the selection of the Private Partner through an open competitive bidding or direct negotiation methodology.
- 9.5. The detailed procedures for these selection methods for solicited projects as well as unsolicited proposals are provided in this Manual.

10. TYPES OF BIDDING PROCEDURES

- 10.1. There are two types of bidding procedures that are used in the selection of the Private Partner namely:
- (i) the Single-Stage: Two-Envelope without Prequalification Bidding Procedure
 - (ii) the Two-Stage: Two-Envelope with Prequalification Bidding Procedure.
- 10.2. Under the **Single-Stage: Two-Envelope without Prequalification Procedure**, a Request for Bid (RFB) is advertised inviting prospective bidders to participate in the bidding process and purchase the Bidding Documents. The prospective bidders are required to submit their Technical Bids (or Technical Proposals) and Price Bids (or Financial Bids/Financial Proposals) in two separate sealed envelopes and enclose them together in an outer single envelope, or as prescribed in the bidding document. The Technical Bids are opened first and evaluated in accordance with the criteria specified in the Bidding Documents. The criteria shall include qualification requirements in addition to the other technical factors. The Price Bids of only those bidders whose Technical Bids are compliant and conform to the specified requirements under the technical evaluation are opened. The Price Bids are evaluated in accordance with the evaluation criteria stipulated in the Bidding Documents. The Bidder who offers the best price bid is selected for the award of the PPP Contract. Where the Bidding Documents stipulate a combined technical and financial evaluation under a scoring system, the Bidder submitting the Bid with the highest combined score (top ranked) is selected for the award of the PPP Contract.
- 10.3. Under the **Two-Stage: Two-Envelope with Prequalification Procedure**, a **Prequalification** exercise is undertaken first to shortlist the prospective bidders before the RFB is issued. The Invitation to Prequalify (ITP) is advertised and prospective bidders are invited to purchase the Prequalification Documents and submit their applications to pre-qualify. The submitted applications are evaluated in accordance with the qualification criteria stipulated in the Prequalification Documents and a Shortlist of Bidders is prepared. Normally, the minimum number in the Shortlist of Bidders shall be three (3) and the maximum number shall be five (5).
- 10.4. In the second stage, the RFB and the Bidding Documents are issued to the shortlisted bidders to submit their Technical Bids and Price Bids in separate sealed envelopes in the same manner as in the single stage bidding procedure. The Technical Bids are opened first and evaluated based on the evaluation criteria stipulated in the Bidding Documents. The Price Bids of the Bidders whose Technical Bids meet with the requirements of the evaluation criteria are opened and evaluated in accordance with the evaluation criteria stipulated in the Bidding Documents. The Bidder who offers the best evaluated Price Bid is selected for award of the PPP Contract. Where the Bidding Documents stipulate a combined technical and financial evaluation under a scoring system, the Bidder submitting the Bid with highest combined score (top ranked) is selected for the award of the PPP Contract.
- 10.5. **The Two-Stage: Two-Envelope with Prequalification Bidding Procedure** is the default procedure for the use in the selection of the Private Partner. However, for comparatively smaller and less complex projects the Single-Stage: Two-Envelope without Prequalification Bidding Procedure may be adopted.
- 10.6. For projects with a cost of USD 50 million or less, the Head of the IA shall approve the use of the Single-Stage: Two-Envelope without Prequalification Bidding Procedure if recommended by the TA. For projects exceeding USD 50 million, the prior approval of

the MEF shall be obtained for the Single-Stage. The IA with the assistance of the TA shall prepare a report providing the justification for the use of the procedure and submit to the MEF for its consideration. The GDPPP will review the justification and submit to the Minister of the MEF for approval.

11. INSTITUTIONAL ARRANGEMENT

- 11.1. The IA will either appoint a dedicated PMU or establish a permanent institutional arrangement for managing PPP Projects. Both of these arrangements will be referred as the PMU for the purposes of this Manual. The PMU will be responsible for carrying out the day-to-day procurement activities for the selection of the Private Partner, the signing of the PPP Contract and Financial Closure. The PMU will commence with the bidding process with the support of the TA soon after the approval of the PPP Project by the IA and the MEF.
- 11.2. The PMU shall have a dedicated and full-time team which will be assigned with the tasks of managing the procurement process under the overall supervision of the Head of the PMU. The team must comprise of staff with a high degree of technical expertise and be fully conversant with the procurement process for the selection of the Private Partner and the procedures prescribed in this Manual.
- 11.3. All staff of the PMU and the IA shall disclose any potential conflict of interest for any particular project and shall not participate in or associate with any of the procurement activities under that project. Failure to make such disclosure shall invite disciplinary actions in accordance with the existing laws and regulations by the Government. To avoid this, all staff shall be required to declare in writing by signing the Statement of Ethical Conduct and Fraud and Corruption provided in **Annexure 6**, before taking up any task, that he/she does not have any direct or indirect interest in the selection of the Private Partner for a specific project. If at a later stage, if staff learns about any potential conflict, he/she shall declare the conflict and withdraw from participating in any further procurement activities. The above shall apply to members of the BEC and PRC who will also be required to sign the Statement of Ethical Conduct and Fraud and Corruption.

12. VIRTUAL DATA ROOM

- 12.1. The IA may establish and use a Virtual Data Room (VDR) to share procurement documents and information and communicate with prospective bidders. All interested bidders shall be required to register in order to get access to procurement documents and other relevant information. The website shall provide clear instructions for online registration and the charges/fees to be paid for downloading the documentation from the VDR.
- 12.2. The ITP, the Prequalification Documents, the RFB, the Bidding Documents, Notices for Prequalification and Pre-Bid meetings, all amendments/addenda and other relevant information on the bidding process shall be uploaded in the VDR. It will also provide information on the project after all these documents have received the necessary approvals.
- 12.3. Where a VDR has been established, only the registered entities shall be allowed to submit a prequalification application or a bid.
- 12.4. In the case of the Two-Stage: Two-Envelope with Prequalification Bidding Procedure, the access to the VDR shall be terminated for all the prospective bidders who failed to be pre-qualified. After the end of the prequalification stage, only the pre-qualified bidders shall have access to the VDR.

- 12.5. During the RFB stage, the VDR shall contain the Bidding Documents, notice of invitation to pre-bid conference, any amendments/addenda and other relevant information on the bidding process. Any updates or additional information on the project shall also be uploaded.
- 12.6. The establishment and use of the VDR shall become mandatory when sufficient progress has been made on e-Government under the Public Financial Management Reform Program of the Government. The mandatory requirements for establishment and use of the VDR shall be prescribed by a *Prakas* of the MEF.

13. TWO-STAGE: TWO-ENVELOPE WITH PREQUALIFICATION BIDDING PROCEDURE

- 13.1. The detailed step by step procedures for the selection of the Private Partner under the Two-Stage: Two-Envelope with Prequalification Bidding Procedure is provided below:

Stage 1 – Prequalification

- 13.2. The Prequalification of prospective bidders is undertaken in the first stage and the PMU is required to undertake the following activities:

A. Preparation of Prequalification Documents

- 13.3. **Step 1:** Prepare the Invitation to Prequalify (ITP), the Project Information Memorandum (PIM), and the Instructions to Prospective Bidders (ITPB), which will be issued as part of the invitation to solicit initial Expressions of Interest from Companies/Consortia interested to tender for the Projects. The TA will prepare these documents.

B. Advertisement of ITP

- 13.4. **Step 2:** The ITP should be disseminated widely to attract large number of prospective and capable bidders to compete for PPP projects. At the minimum, the PMU shall disseminate the ITP notice through:
- i. Advertising on the website of the IA and the MEF on a continuous basis; and advertising in a nationwide circulated Cambodian and English language newspaper for at least three (3) days;
 - ii. Trade publications and periodicals, such as the Financial Times and The Economist for at least one time; and
 - iii. Global and Regional Websites like Development Gateway Market (dgMarket), where available.

- 13.5. The advertised ITP shall contain, as a minimum, a brief description of the project; the name and address of the IA conducting the bidding; where and when the Prequalification documents can be obtained and the mode of payment if a purchase price is specified; the venue, date, and time for the submission of Prequalification Applications; and a schedule for bidding. The Sample Template for ITP is shown in **Annexure 1**.

- 13.6. In order to generate more market interest in participating in the bidding for the project, the PMU/IA and/or the TA may carry out the project promotion activities at any time prior to the closing date of the submission of applications.

C. Prequalification Documents

- 13.7. The prequalification documents comprise of the PIM and the ITPB. The PIM shall include, at a minimum, the project background, project description, with technical and estimated cost information, the key PPP Project features including the legal framework, the IA, the PPP Contract period, and the PPP project timelines, obligations of the Private

Partner and the IA, revenue stream, tariff structure and the risk allocation framework. In addition, details of the bidding process and the indicative bidding timeline should also be indicated. Sample Template for PIM is shown in **Annexure 2**.

13.8. The Prequalification shall be carried out on the basis of technical and financial capability of the prospective bidders. The ITP shall clearly stipulate the evaluation criteria. All the mandatory requirements, non-compliance with which will lead to non-responsive applications, must also be clearly stipulated.

13.9. The ITPB shall include, at a minimum, the following information:

- (i) Brief description of the project
- (ii) Instructions for preparing and submitting applications for Prequalification
- (iii) Submission and opening details and deadline
- (iv) General terms and conditions of the ITPB
- (v) Location/link for accessing additional details of the project
- (vi) Bidding process schedule
- (vii) Prequalification evaluation criteria and procedures for evaluation
- (viii) Details of the documentary evidence or other information that bidders are required to submit to demonstrate their qualifications
- (ix) Organization of Pre-Application Submission Conference and Field Visit
- (x) Implementing Agency and contact person details
- (xi) Procedures for seeking clarifications
- (xii) Conflict of Interest and Code of Ethical Conduct and Fraud and Corruption
- (xiii) Any other requirements that may be established by the IA in conformity with Cambodian laws and regulations relating to the preparation and submission of applications to prequalify and to the prequalification proceedings.

13.10. The Sample Template for ITPB is shown in **Annexure 3**.

13.11. The PMU will submit the draft Prequalification Documents for the review and approval of the PRC prior to the advertisement of the ITP. The review by the PRC will be confined to the ITPB. Since the ITPB will be a standard document, the PRC review will focus on the prequalification criteria to determine if these are reasonable and not restrictive. The PMU and TA will participate in the PRC meeting to explain and provide the rationale for the prequalification criteria and any proposed deviations from the standard conditions of the ITPB. However, they will not play a role in the decision-making by the PRC.

13.12. The request for the Prequalification Documents by prospective bidders should be in the form of an official letter. The PMU shall provide a set of prequalification documents to each firm that requests them and has made the required payment, if this is prescribed in the ITP. The price, if prescribed, shall reflect only the cost of printing the Prequalification Documents and a sum for transmission (an average air courier cost). The PMU will keep a record of the names of the prospective bidder, name of representative, date of request, amount and date of payment; and the method and date of collection/dispached for each prospective bidder.

13.13. Prospective Bidders must submit their Prequalification Application by completing the Prequalification Application Forms provided in the ITPB and prior to the deadline for the

submission. The Prequalification Application Forms will assist prospective bidders to summarize relevant information and enable the BEC to determine if they are qualified to undertake the Project. The Prequalification Application Forms provide the basis for the BEC to determine if the prospective bidders possess the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, and reputation, and the personnel, to finance, develop and operate the Project. In case of a consortium, all members of the consortium must confirm its legal capacity to enter into a binding contractual agreement, if it wants for the qualifications of the members to be considered in the evaluation process.

- 13.14. The prospective bidders may seek clarifications on the ITPB in writing. All such requests shall be considered by the PMU if they have been received no later than fifteen (15) days before the deadline for the submission of applications. The PMU, with the assistance of the TA, shall examine all such queries carefully and shall immediately inform all the firms about the queries raised and the response of the PMU without identifying the source of the inquiry. All such clarifications shall be issued after approval by the Head of the PMU. The PMU shall respond within five (5) days from the date of receipt of the request for clarification.
- 13.15. Where it is necessary to amend any section of the ITPB either at the discretion of the PMU or in response to any query raised by a prospective bidder, such amendment(s) shall be issued to all the prospective bidders with the prior approval by the Head of the PMU. The amendment(s) shall be binding on all the prospective bidders.
- 13.16. To give the prospective bidders adequate time to consider the amendment or to incorporate the responses into their applications, the PMU, with the approval of the Head of the PMU, may extend the deadline for submission of the Prequalification Application if the amendment is substantial; or the amendment or the clarifications were issued five (5) days before the original deadline for submission of the applications.

D. Application Preparation Period

- 13.17. A minimum period of sixty (60) days and maximum period of ninety (90) days from the starting date of the advertisement shall be allowed for prospective bidders to respond to the ITP. All prospective bidders can participate in the Prequalification and bidding process subject to **the eligibility requirement** stipulated in **Section 4** above. The Prequalification Documents must clearly stipulate the eligibility condition.

E. Prequalification Conference

- 13.18. **Step 3:** A prequalification conference shall be normally organized for the prospective bidders and held about fifty (50) days after the advertisement of the ITP. The PMU with the assistance of the TA shall make a presentation of the ITPB to give the prospective bidders an opportunity to understand the requirements and raise any queries. The GDPPP shall participate in this conference. Such a conference not only increases the prospective bidders' understandings of all the conditions and requirements but also helps in the identification of any gaps or ambiguities requiring any rectification. The PMU shall prepare the minutes of the meeting showing all the queries raised and responses provided and shall be signed by all the prospective bidders who attended the conference. A copy shall be provided to them.
- 13.19. In the event any amendments or improvement of the quality of the ITPB become necessary, the PMU shall update and revise the ITPB. The revised ITPB shall be submitted to the PRC for final approval in the case where the amendment is related to

a change in the prequalification qualification criteria. In all other cases, the amendments shall be approved by the Head of the PMU.

F. Opening of Prequalification Applications and Evaluation

- 13.20. **Step 4:** The Prequalification Applications Opening Committee chaired by Head of the PMU shall open all accepted Applications on the date and time prescribed in the ITPB in the presence of the authorized representatives of the prospective bidders who choose to attend. The Opening Committee shall comprise of the Head of the PMU as the Chair and the members of the BEC. The representative from the GDP PPP will serve as a member. The TA shall provide the technical support for the opening of the Applications.
- 13.21. Only those Applications which have been received in the manner prescribed in the ITPB shall be accepted and opened. Any Application submitted in any other manner shall not be accepted unless it does not compromise the integrity of the selection process. Since the Prequalification does not involve any technical or price bids, there is flexibility in accepting Applications. The Head of the PMU as the Chair will have the authority to decide on the matter after seeking the advice of the TA.
- 13.22. The Applications shall be opened one at a time and the sealed envelopes opened by a member of the Opening Committee or the TA. The TA will examine the submitted documents to determine if the following Forms have been submitted and duly signed:
- Application to Pre-qualify Form
 - the Authority to Apply to Pre-qualify and Designation of Authorized Representative Form
 - in the case of a consortium, the 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 Form
- 13.23. In the event any of these Forms are not duly signed, the Applications shall be deemed as non-responsive and shall be recorded in the Minutes of the Opening of Prequalification Applications.
- 13.24. After the opening of all the Applications, the PMU will prepare a Minutes of Opening of Prequalification Applications in the specified format, indicating the names of the Prequalification Applications Opening Committee and names of the prospective bidders that submitted the Applications. The Minutes will include those Applications that are deemed non-responsive. The Minutes shall be signed by the Prequalification Applications Opening Committee and representatives of the prospective bidders who are present in the Opening Meeting. Copies of the Minutes shall be provided to all these prospective bidders at the end of the Opening Meeting. In case of prospective bidders who submitted their Applications but did not participate in the Opening Meeting, a copy will be sent within seven (7) days after the date of the Opening Meeting.
- 13.25. In case all the Applications received are deemed as non-responsive, the Chair shall adjourn the Meeting and provide the prospective bidders with the opportunity to rectify the non-compliance in the signing of any or all the three Forms listed in Paragraph 13.22. above and submit the corrected Forms within the next five (5) days. If after this period and if at least three (3) responsive Applications have been received, the Chair will prepare the Minutes and circulate the Minutes to all the prospective bidders.

- 13.26. In the case where no or less than three (3) responsive Applications received, the Chair will declare the failure of the Prequalification and close the Opening Meeting. The PMU with the assistance of the TA and the GDPPT will carry out a detailed examination of the Prequalification Documents to determine the reasons for the failure. The PMU shall call for a second Prequalification Conference of all the prospective bidders who purchased the Prequalification Documents to seek their feedback and reasons for their non-participation and ascertain if there is any market interest for the project. The PMU will propose the next steps based on the results of the second conference which may be repeating the Prequalification after modifying the project details or conditions of ITPB or the prequalification criteria or any combination of these and issuing a new ITP or discontinuation of the Prequalification. The decision shall be taken by the Head of the IA.
- 13.27. In case the decision is for repeating the Prequalification, the revised Prequalification Documents shall be submitted to the PRC for review and approval before making them available to prospective bidders. The Prequalification Documents shall be sent to all those prospective bidders who had purchased them under the first ITP free of charge. The Prequalification Applications Opening is repeated following the procedures prescribed under **Step 4** above.
- 13.28. The PMU shall deliver all the Applications received and opened at the Opening Meeting to the Chair of the BEC within two (2) days after the day of the Opening Meeting. The TA shall check and ensure that all the Applications have been delivered to the Chair.
- 13.29. In case there is no market interest, the Head of the IA will report to the Minister of the MEF for a reconsideration of the structuring of the project.
- 13.30. **Step 5: Evaluation of the Applications.** The BEC, with the assistance of the TA shall undertake the evaluation of all the responsive Applications.
- 13.31. When considering the qualifications of a consortium, the BEC shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members fit together as a whole and meet the specified qualification requirements. The BEC shall undertake the evaluation of the Applications with the assistance of the TA strictly in compliance with the criteria prescribed in the ITPB.
- 13.32. The TA shall undertake a preliminary examination of all the information provided in the Prequalification Forms and ascertain if there are gaps or clarifications that are required. The TA will inform the Chair of the BEC and list out the clarifications that are required to be sought, if any. The clarification requests will be sent by email to the prospective bidders under the name of the Chair and a period of five (5) working days for a response. After the receipt of the responses or expiry of the deadline, the TA will undertake the evaluation and submit draft report to the Chair of the BEC who will forward to each member of the BEC. Each member shall be provided five (5) days to the draft report. The BEC member may also carry out his/her own evaluation and seek an extension of time from the Chair for undertaking the review which shall not exceed an additional five (5) days.
- 13.33. The Chair of the BEC shall convene a meeting on the day after the expiry of the deadline for the review. The TA shall present the evaluation of each of the Application for discussion with the members of the BEC to reach a consensus on the result. The TA shall prepare a draft Prequalification Evaluation Report (PER) with the recommended list of prequalified applicants/bidders. In the event there are any differences or disagreements on the evaluation between the BEC and the TA, these shall be recorded

in the PER. The evaluation and preparation of the PER shall be normally completed within thirty (30) days of receipt of the Applications by the Chair of the BEC.

- 13.34. **Step 6: Approval of List of Prequalified Bidders.** The BEC, with the assistance of the TA, shall identify bidders that are qualified and recommend their selection in the PER. The approval of the list of prequalified bidders will be provided by the PRC.
- 13.35. The Chair of the BEC shall submit the PER to the Head of the PMU for onward transmission to the Chair of the PRC for review and approval. The Chair will forward a copy of the PER to each member of the PRC for their review and call for a meeting no later than five (5) days after providing the PER to the members. The PRC shall meet to review the PER and, if merited, approve the list of pre-qualified bidders. The Chair may invite the TA to provide any clarifications, if needed. The decision of the PRC shall be unanimous. In the event of any disagreement, the matter will be referred to the Head of the IA and the Minister of the MEF for a resolution. The PMU will assist the PRC in the preparation of the Minutes of the PRC meeting which shall be signed by all the members.
- 13.36. The IA through the PMU shall promptly notify all the prospective bidders who submitted Application to pre-qualify of the result of the Prequalification within five (5) days after the PRC has signed the Minutes of the PRC Meeting. The list of prequalified bidders shall be posted on the website of the IA and the MEF and published in the national newspaper.

Stage 2 – Bidding Process

G. Preparation and Approval of Bidding Documents

13.37. Step 7: Preparation Bidding Documents

- 13.38. The PMU with the assistance of the TA shall develop the Bidding Documents based on the outcome of the Feasibility Study and market feedback, where provided. The PMU or the TA may discuss with the prequalified bidders about market conditions to seek feedback after the completion of the prequalification but prior to the issuance of the RFB. The purpose of such discussions is to ensure that the Bidding Documents and the draft PPP Contract do not contain provisions that may lead to lack of competition.
- 13.39. The Bidding Documents shall comprise of five (5) parts, namely, (i) Request for Bids (RFB), (ii) Instructions to Bidders (ITB) which will provide all the instructions to the bidders for the preparation and submission of their bids (technical bid and financial bid) and stipulate the technical and the financial bid evaluation criteria, and the combined bid evaluation criteria, (iii) the Minimum Performance Standards and Specifications (MPSS), (iv) the draft PPP Contract, and (v) other data and information on the project.
- 13.40. The Bidding Documents shall be well prepared in advance of the completion of the Prequalification preferably before the deadline for submission of the Prequalification Applications. The TA shall commence the preparation of the draft Bidding Documents including the draft PPP Contract soon after the project has been approved under Project Approval Phase of the PPP Project Cycle in parallel with the preparation of the draft Prequalification Documents.
- 13.41. The Bidding Documents shall be prepared in close collaboration with the PMU and the GDPPP. All matters related to technical aspects shall be prepared in consultation with the PMU and the IA, while the GDPPP will ensure that the provisions relating to government support measures and other fiscal aspects in the draft PPP Contract are fully in compliance with the package approved by the Head of the Government at the

project approval stage. The draft PPP Contract will also contain provisions on subject matters that falls under the mandate of other agencies of the Government and the TA shall prepare these provisions in consultation with the relevant agencies.

- 13.42. The form of the draft PPP Contract will depend on the type of the PPP Model selected for the project at the time of its approval. A sample template for draft PPP Contract is provided in **Annexure 5**. The TA shall ensure that the draft PPP Contract is complete in all aspects.
- 13.43. During the preparation of the draft Bidding Documents, the TA shall make detailed presentations to the PMU and the GDPPP in one or more meetings to explain the main provisions in the Bidding Documents. In respect of the draft PPP Contract, the TA will need to show that the provisions relating to government support measures and other fiscal aspects comply with the package approved at the time of the project approval. After the draft Bidding Documents are completed, the GDPPP and the PMU will send the draft Bidding Documents to all the relevant agencies to seek their review and comments. The TA shall consider all the comments and finalize the final draft Bidding Documents.
- 13.44. The Bidding Documents shall require the bidders to provide validity period of their bids which shall be stipulated in the ITB. The validity period shall be based on the nature and complexity of the project. At the minimum, the bid validity period shall be one hundred and twenty (120) days.
- 13.45. The ITB shall stipulate the requirements for the submission of a bid security and the form of guarantee along with the Technical Bid by the bidders. The amount of the bid security shall depend on the size of the project and must be reasonable so as not to discourage the bidders from the submission of bids. The amount shall be proposed by the TA based on best market practice for similar transactions and approved by the Head of the IA. The amount shall normally not exceed USD 1 million. The validity of the bid security shall be at least sixty (60) days after the expiry of the bid validity period.
- 13.46. Non submission or deviation from the stipulated requirements for bid validity and bid security shall lead to the rejection of the bids. Bidders may be requested to extend the validity of their bid without modification to the bid. Bidders who do not wish to comply with this may have their bids and bid security returned.
- 13.47. The ITB shall stipulate the requirement for a Pre-Bid Conference and Site Visit which shall be held not less than fourteen (14) days and not more than forty-five (45) days after the issuance of the Bidding Document to all shortlisted bidders. The ITB shall stipulate the date, time and venue of the Conference and the condition that the participation of the bidders shall be at their own cost.
- 13.48. The ITB shall clearly stipulate that each bidder is solely responsible for carefully examining and fully acquainting itself with the requirements and terms and conditions of the Bidding Documents and other documents forming part of the Bidding Documents. The IA shall not assume any responsibility or liability for any errors or misunderstandings on the part of the Bidders arising out of any information contained in the Bidding Documents,
- 13.49. Bidders must submit their bids at the time, date, and place for delivery of bids stipulated in the ITB. Any late bids submission shall be rejected and returned unopened.
- 13.50. The PMU shall submit the final draft of the Bidding Documents to the PRC for its review and endorsement. The PMU, the GDPPP and the TA will participate in the PRC meeting for the purpose of disseminating the key provisions and providing any clarifications,

where requested by the PRC members. The endorsement of the PRC shall be unanimous. In the event that there is any disagreement among the PRC members, the matter shall be referred to the Minister of the MEF for a final decision.

- 13.51. After the endorsement of the PRC, the GDPPP shall prepare a memorandum to seek a reconfirmation of the provisions related to government support measures from the Minister of the MEF. The GDPPP shall inform the IA and PMU of the final approval of the Bidding Documents if the Minister of the MEF has provided a reconfirmation. In the case where the Minister of the MEF does not provide an approval, the matter shall be reported to the PRC for making the necessary adjustments to address the comments of the Minister of the MEF and revising the Bidding Documents accordingly. The GDPPP shall ensure that the revised Bidding Documents have satisfactorily addressed the comments before informing the PMU of the final approval.
- 13.52. The RFB together with the complete set of Bidding Documents shall be sent to all the pre-qualified bidders. Unless otherwise specified in the ITB, the prequalified bidders shall be allowed a period of one hundred and twenty (120) days to prepare and submit their bids. The 120-day period begins from the date of issuing the bidding documents to the prequalified firms and concludes at 5 P.M. Cambodian time on the 120th day.

H. Pre-Bid Conference and Site Visit

- 13.53. **Step 8:** Organize a Pre-Bid Conference and Site Visit.
- 13.54. The PMU shall schedule and hold a Pre-Bid Conference on the date, time and venue stipulated in the Bidding Documents. The notice for the Conference shall be sent at least five (5) days before the scheduled date. In the event that there is any amendment to the timing and location of the Pre-Bid Conference, the PMU must inform each prequalified bidder allowing sufficient time for them to confirm their attendance on the rescheduled date. The prequalified bidders are encouraged, but are not required, to attend the Pre-Bid Conference, and the PMU shall not disqualify a prequalified bidder who does not attend. The GDPPP shall participate in the Conference.
- 13.55. The PMU may not, during the Pre-Bid Conference, modify, in any material respect, any provision or term of the Bidding Documents. During the Pre-Bid Conference, the TA shall explain key provisions of the ITB and requirements stipulated in the Bidding Documents and further information on the Project to all participants. The main purpose is to ensure that the prequalified bidders have a clear understanding of the requirements and submit responsive bids.
- 13.56. The prequalified bidders may seek clarifications during Conference or submit a written request prior to the Conference to the PMU on any part of the Bidding Documents, or any other data or information on the Project. The PMU may respond to the clarifications during the Conference or inform the prequalified bidders that a written response will be provided after the end of the Conference, and normally would not exceed five (5) days. The TA shall prepare the Minutes of Clarification of Pre-Bid Conference listing all the clarifications raised and the response to each one for the review and endorsement of the PMU and the GDPPP. After the endorsement, the Minutes shall be sent by the PMU to all the prequalified bidders who were issued with the RFB. The Minutes shall become an inseparable part of the Bidding Documents.
- 13.57. In the event the clarifications lead to the need for making any significant changes to the scope of work or other material matters in the Bidding Documents, the TA shall prepare an Addendum of the Bidding Documents, including a revised draft PPP contract, if required. The Head of the IA shall approve the Addendum except where there is an

amendment to the draft PPP Contract in which case the Addendum will be submitted to the PRC for review and approval. However, if the Addendum involves any change to fiscal commitments or risk allocation, the approval of the Minister of the MEF shall be required. The PMU shall notify all the prequalified bidders of any amendment to the Bidding Documents in writing. In such cases, the PMU may provide additional time, where necessary, to all prequalified bidders for the preparation of their Bids and extend the deadline for the submission of Bids. Normally additional time is not necessary when the Conference is held early, and the addendum is not substantial. Each case will be reviewed by the TA to determine if the addendum will add more time for the preparation of the bids. The additional time for the preparation of the bids and the extension of the deadline for submission of the bids shall not exceed thirty (30) days.

13.58. A site visit will be organized for all Bidders after the Conference and Bidders shall make their own arrangements for transportation. Site visit is encouraged but not mandatory for the Bidders to attend. No minutes shall be prepared for the site visit.

I. Preparation and Submission of Bids.

13.59. The prequalified bidders shall bear all costs associated with the preparation and submission of their bids, and the IA shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. The bid shall comprise of two envelopes submitted simultaneously, one containing the Technical Bid and the other, the Price Bid, enclosed together in an outer single envelope, or as prescribed in the bidding documents. Details regarding the contents of the Technical and Price Bids will be stipulated in the Bidding Documents.

13.60. The Bidder shall prepare one original of the Technical Bid and one original of the Price Bid as described in ITB and clearly mark each "ORIGINAL - TECHNICAL BID" and "ORIGINAL - PRICE BID". In addition, the Bidder shall submit copies of the Technical Bid and the Price Bid, in the number specified in the Bid Data Sheet (BDS) and clearly mark them "COPY NO... - TECHNICAL BID" and "COPY NO.... - PRICE BID". In the event of any discrepancy between the original and the copies, the original shall prevail.

J. Opening of Bids

13.61. **Step 9:** Opening of the Technical Bids

13.62. The IA shall receive and keep secure all bids submitted before the date and time specified in the bidding document for bid closing. The IA shall keep, secure and unopened, all the bids until the date and time announced for bid opening. Any and all bids received by the IA after the stipulated date and time for bid closing shall be rejected and returned unopened.

13.63. Immediately after the deadline for the submission of the Bids, the Bid Opening Committee shall open the bids at the venue, date and time and in the manner prescribed in the bidding document, in the presence of the authorized representatives of the prequalified bidders who choose to attend. The Bid Opening Committee shall comprise of the Head of the PMU as the Chair and the BEC and the representative of the GDPPP as a member. The TA shall provide the technical support for the opening of the bids in efficient and effective manner.

13.64. Only those bids which have been received in the manner prescribed in the ITB in the bidding documents and before the deadline for the submission of Bids shall be opened.

13.65. Initially, only the Technical Bids shall be opened at the venue, date and time specified in ITB. The Price Bids shall remain sealed and kept in safe custody by the PMU. No

amendments or changes to the Technical Bids are permitted after the deadline for submission of bids. Bids which do not conform to the specified requirements will be rejected as deficient bids.

- 13.66. The Technical Bids shall be opened one at a time and the sealed envelopes opened by a member of the Bid Opening Committee or the TA. The TA will examine the submitted documents to determine all the mandatory forms have been submitted and duly signed including the bid security. This status will be announced, recorded electronically and displayed on a screen. *No bid shall be rejected the bid opening meeting.* The table for recording on the status of the submission of the mandatory documents shall be prepared prior to the bid opening meeting. After a Technical Bid is opened and announced, the Chair and the BEC and a representative of the GDPPP as members in the Bid Opening Committee shall initial each page of the Technical Bid.
- 13.67. After all the Technical Bids have been opened, the PMU with the assistance of the TA shall prepare the Minutes of Technical Bid Opening. The Minutes shall include the names of the Chair and members of the Bid Opening Committee; the venue, time and date of the opening; and the names the prequalified bidders who submitted bids, their representative attending the opening and contact details. The table recording the status of the submission of the mandatory Forms shall be signed by the Chair and attached to the Minutes. Copies of the Minutes shall be provided to all the participants after the closing of the opening meeting. The Minutes shall be sent to all the prequalified bidders who did not participate in the opening meeting by the PMU within five (5) days from date of the opening meeting.
- 13.68. The unopened Price Bids shall be kept in a safe and secured place. After the closing of the opening meeting, the Head of the PMU together with the representative of the GDPPP will place all the unopened Price Bids in a safe or locker. The safe or locker shall be sealed and not opened until the time for the opening of the Price Bids. Only the Head of the PMU shall have access to the safe or locker.
- 13.69. The Head of the PMU with the assistance of the TA shall secure all the opened Technical Bids. The Head of the PMU shall retain a copy of all the Technical Bids opened. The original and other copies shall be submitted to the Chair of the BEC under a letter signed by the Head of the PMU no later than the date of the opening meeting. The Chair of the BEC shall acknowledge receipt of the same.

K. Evaluation Criteria and Method for Technical and Price Bids

- 13.70. The evaluation method for bids for PPP projects normally take both quality and cost into consideration which is generally referred to as *the Quality- and Cost-Based Selection (QCBS)* method. The bidding documents will stipulate the technical criteria for the evaluation of the Technical Bid and the financial criteria for the Price Bid, both of which will be taken into account in the selection of the winning bidder. A **scoring system** will be used to score the Technical Bid and the Price Bid and the bid with the highest combined score shall be selected as the winning bidder. The QCBS is ***normally the default*** method for undertaking the evaluation of the bids under *the Two-Stage: Two-Envelope with Prequalification Bidding Procedure*.
- 13.71. The **scoring system** assigns the maximum score for each of the criterion/factor specified in the technical evaluation criteria for the Technical Bid and in the financial evaluation criteria for the Price Bid. The Technical Bid is evaluated against each of the criterion/factor and a given score based on rating system. Similarly, Price Bid is evaluated and assigned a score. The system also assigns different **weightage** for the

technical aspects and financial aspects based on the degree of their importance in determining the most advantageous bid. The scores achieved for the Technical Bid and the Price Bid are then adjusted for the assigned weights and an **overall combined score** is calculated to rank the bids. The Bid that scores the highest overall combined score is selected as the winning bidder.

13.72. The distribution of the **weights** for the technical and price bids shall normally be as follows:

- i. Technical Bid: 30% of the Total Score
- ii. Price Bid: 70% of the Total Score

13.73. Under exceptional case where the project involves the application and use of very advanced and complex technology, the IA may propose a higher weight for the Technical Bid for the consideration and approval of the Minister of the MEF. The maximum weight for the Technical Bid shall not exceed 40% of the total score.

13.74. The evaluation of the technical bid is based on the bidder's design concept and its operational aspects which include the layout and phasing plans, and other design elements identified in the design standards section of the bidding documents. The evaluation uses both *quantitative criteria* and *qualitative criteria*. The evaluation is based on a system where each factor is rated and assigned a score which is then adjusted by weight (express as%) based on the value of importance of that factor. The scores attained for the qualitative and quantitative factors are then combined to determine the overall score for the Technical Bid and the Technical Bid that meets *the minimum qualifying score* is passed for the next stage of the bidding process which is the opening of the Price Bids. The minimum qualifying score is normally 60% to 70% of the total score assigned in the evaluation criteria.

13.75. The technical evaluation criteria, *the detailed methodology* for undertaking the qualitative and quantitative evaluation, and *the minimum qualifying score* for the Technical Bids shall be prescribed in the Bidding Documents. The TA will develop the evaluation criteria at the time of the preparation of the Bidding Documents in close consultation with the PMU and the GDPPP and approved by the PRC at the time of its review and approval of the Bidding Documents. **Annexure 4** provides a sample format with a list of the qualitative and quantitative factors used in the evaluation criteria for technical bids.

13.76. The quantitative and qualitative are briefly explained below:

- Qualitative Criteria. These are factors that cannot be physically measured, and a value assigned but are critical for determining the best concept proposed in the Bids such as *convenience, flexibility and expandability*. Since these factors cannot be quantified, a degree of subjectivity will need to be used in this process. The methodology for the evaluation of these factors shall minimize subjectivity as much as possible.
- Quantitative Criteria. These are factors that can be measured and assigned a value which are used to determine *the design efficiency* of each bidder's project concept.

13.77. A second method, referred as the **Cost-Based Selection (CBS)** method, is also used where the selection of the winning bidder is based on cost in the Price Bid. The Technical Bid is evaluated on a pass/fail basis and/or scoring basis. Only those Technical Bids which have passed the pass/fail criteria will progress to the next stage and their Price Bids are opened. If a scoring system is used, the Technical Bids are ranked on the basis of the scores attained and the bidding documents will stipulate the

maximum number of bids that shall be considered for financial evaluation. The top ranked Technical Bids corresponding to the specified number of bids will progress to the next stage of opening of their Price Bids. The Price Bids are evaluated based on the stipulated financial criteria and bidder submitting the highest score Price Bid is selected as the winning bidder. The CBS is **normally the default** method for undertaking the evaluation of the bids under **the Single-Stage: Two-Envelope without Prequalification Bidding Procedure**.

13.78. The choice of the method of selection shall be determined during the preparation of the Bidding Documents and will depend on the nature and complexity of the project. Where the market can offer different technical solutions and innovation, the QCBS is preferred as it will result in giving additional weight to the Bid that offers the best technical solution. The TA will recommend and provide justification for the use of the selection method, and this shall be reviewed by the PRC at the time of the review and endorsement of the Bidding Documents.

13.79. Prior to undertaking the evaluation of the bids, the Head of the PMU shall require all members of the BEC and the TA to sign the Statement on Ethical Conduct and Fraud and Corruption. The BEC, with the assistance of the TA shall evaluate all bids opened during the opening meeting and transmitted to the Chair of the BEC by the Head of the PMU strictly in accordance with the evaluation criteria stipulated in the bidding documents. Full confidentiality shall be maintained by the BEC and the TA during the bid evaluation process.

13.80. However, this will not preclude the BEC from seeking the assistance of others where the subject matter for evaluation falls in their official mandate. For example, if the evaluation involves legal issues, tax issues or other similar areas, the relevant competent authorities may have a role in the evaluation process. The Chair of the BEC with the concurrence of the Head of the PMU shall decide on such matters. Where this is necessary, they shall also be required to sign the Statement of Ethical Conduct and Fraud and Corruption.

13.81. **Step 10: Evaluation of the Technical Bids**

13.82. As a first step, a preliminary examination is carried out by the BEC to determine the responsiveness of the prequalified bidders and the submission requirements stipulated in the bidding documents:

- (i) The "responsiveness" of the prequalified bidder is determined during the time of the evaluation of the prequalification applications. Any prequalified bidder is, by definition, "responsive." Normally, this is not required. However, if there has been **a significant time lag between the time of prequalification and issuance of the bidding documents**, the prequalified bidders may be requested to submit any changes in the prequalification information with the submission of their bids. The changes are evaluated to determine if the prequalified bidder remains qualified.
- (ii) A "responsive bid" is one that complies with all terms and conditions of the bidding document without material modification. A material modification is one which affects the price, quality, scope, or completion date of the PPP project requirement or which limits in any significant way, the responsibilities, duties, or liabilities of the bidder or any rights of the IA as specified in the bidding document. For example, a bidder failed to submit the required bid security or has not submitted the power of attorney to represent and legally bind all the member of the consortium or JV and similar mandatory requirements stipulated in the Technical Bid. Another example is the

failure to meet the eligibility requirement. Such Bids shall be declared as non-responsive and rejected.

- 13.83. After the responsiveness is determined, the Technical Bids will undergo a detailed evaluation which shall be carried out according to the evaluation criteria and the detailed methodology specified in the Bidding Document. The BEC, with the assistance of the TA, shall be responsible for undertaking the evaluation. There will be complex technical aspects which will need to be evaluated with the qualitative factors involving some degree of subjectivity. The evaluation of the qualitative factors will therefore be undertaken by the TA who will have a very high degree of expertise in undertaking such evaluations.
- 13.84. There is normally a need for seeking technical clarifications from the bidders during the evaluation of the Technical Bids. In such cases, a separate meeting will be conducted for each bidder to seek clarifications. The TA will prepare a list of clarifications in advance and the PMU will send a notice for holding the meeting with the bidder together with the list of clarifications sought. The meeting shall be held at least five (5) days after the date of issuance of the notice to provide sufficient time for the bidder to prepare the responses. The PMU shall maintain a written "Minutes of Clarification" which shall be signed by the PMU and the bidder.
- 13.85. After all the clarifications have been received, the TA shall undertake the evaluation in close consultation with the BEC. The TA shall prepare a schedule for the evaluation and undertake them on a full-time basis. The TA will make a detailed presentation of the evaluation and provide the justification for the rating a scoring to the BEC. Special emphasis shall be placed on the Technical Bid, if any, that does not meet the minimum qualifying score and the BEC must satisfy itself that there are solid grounds and justification for its rejection. Depending on the number of bids received, the TA shall schedule 2 or 3 meetings to present the evaluation results with each meeting being held for the whole day and no more than evaluation of 2 bids considered in one meeting.
- 13.86. The final rating and scoring shall be made by the BEC. In the event there is any disagreement on the rating and scoring for any factor, the Chair of the BEC shall make the final decision. Once the BEC endorses the evaluation results, the TA shall prepare a Technical Bid Evaluation Report (TBER) which shall provide the rating and scores of each of the Technical Bids and the list of qualifying Technical Bids. The TBER shall provide the justification for the Technical Bids, if any, that have been rated as unqualified. The TBER shall be signed by each member of the BEC.
- 13.87. Step 11: Approval of the Technical Evaluation**
- 13.88. The Chair of the BEC shall submit the TBER to the Head of the PMU who shall schedule a PRC meeting as the Chair of the PRC for the review and approval of the TBER. The TBER shall be sent in sealed envelopes or delivered to each member of the PRC and an acknowledgement obtained. Prior to undertaking the review of the TBER, the Head of the PMU shall require all members of the PRC to sign the Statement on Ethical Conduct and Fraud and Corruption.
- 13.89. Each member of the PRC will carry out an initial review of the TBER within five (5) days from the date of receipt of the TBER. The PMU will schedule a meeting on the sixth day which shall be a working day for the presentation of the TBER by the TA. The evaluation of each Technical Bid will be explained to the PRC and each member of the PRC may seek clarifications. There shall be additional focus on unqualified Technical Bids. The purpose of the meeting is for the PRC to satisfy itself that the evaluation has been carried out in accordance with the technical bid evaluation criteria prescribed in

the Bidding Documents and the PRC shall not undertake its own evaluation. Where the evaluation deviates from the prescribed criteria, the PRC has the discretion to accept or reject the deviation based on the justification provided in the TBER.

13.90. The PRC will decide on the approval or rejection of the TBER after the presentation and all the clarifications have been provided. The decision of the PRC shall be unanimous. In the event of any disagreement, the matter will be referred to the Head of the IA and the Minister of the MEF for a decision. The TA shall draft the Minutes of the PRC Meeting which shall be signed by all members of the PRC. The PMU shall keep the original signed TBER and the signed Minutes of the PRC in the project files which shall become part of the official records of the IA.

13.91. In case none of the Technical Bids have met the minimum qualifying score, the PRC will refer the matter to the Head of the IA and the Minister of the MEF. A two-step process shall be followed to decide on the next course of action. In the 1st step, the technical evaluation criteria prescribed in the Bidding Documents will be revisited to determine if the weight assigned to each factor were unduly stringent and need adjustments. This review shall be undertaken jointly by the Head of the PMU and the Director General of the GDPPP and their recommendation submitted to the Head of the IA and the Minister of the MEF for endorsement. In case where it has been agreed to revise and/or adjust the weightage, the TA shall re-evaluate and make the necessary revisions to the TBER for signature of the BEC. The revised TBER shall be submitted to the PRC for review and approval following the procedures described in Paragraphs 13.89 to 13.91 above.

13.92. In case the review by the Head of the PMU and the Director General of the GDPPP find that the prescribed technical bid evaluation criteria are appropriate and no revision or adjustment is necessary, the 2nd step shall be followed under which the Head of the PMU and the Director General of the GDPPP shall conclude a failure of the bidding and recommend invitation for new bids. Before issuing the invitations, the PMU and the GDPPP will conduct a conference with the prequalified bidders who submitted the bids to discuss the possibility of any changes to the technical aspects of the project requirements and the Bidding Documents. The proposed changes shall be reviewed by the TA and if found to be reasonable and could be accommodated, the matter will be submitted to the PRC for endorsement and re-issue of RFB to the prequalified bidders for the submission of new Technical and Price Bids. For such cases, there shall be no need to carry out a new prequalification exercise. The previous Price Bids shall be returned unopened.

13.93. In the event that the proposed changes are not reasonable and will reduce the quality-of-service delivery or transfer a substantial risk to the Government, the PMU will proceed with undertaking a new Prequalification of Bidders with the issuance of ITP. However, prior to issuing of the ITP, the TA will update the project details and procurement documents and the IA and the GDPPP jointly conduct a new Prequalification Conference to ascertain the market interest. The bidding process as described in the paragraphs above shall be followed for the ITP and the RFB.

13.94. Step 12: Opening of the Price Bids

13.95. After the approval of the TBER by the PRC, the PMU shall inform the bidders whose technical bids have been evaluated as responsive and meeting the minimum qualifying score and also indicate the date, time and location for the opening of their Price Bids. On the notified date and time, the Bid Opening Committee shall open the Price Bids in the presence of the authorized representatives of the bidders who choose to attend.

The Bid Opening Committee shall comprise of the Head of the PMU, as the Chair, and the members of the BEC.

- 13.96. The TA shall assist the Committee in the opening of the Price Bids. All the unopened Price Bids which have been kept in the safe custody shall be brought by the Head of the PMU in person to the venue of the meeting before the commencement of the opening. At the commencement of the opening, all the bidders shall be invited by the Chair of the Meeting to inspect their Price Bids and confirm that their respective Price Bids remained sealed, and no tampering is evident.
- 13.97. The Price Bids shall be opened one at a time by the TA who shall announce and record the relevant financial aspects. The details shall be shown on a screen. After each Price Bid is opened, the Chair and members of the Committee shall initial all the pages of the Price Bid except for any document that could be deemed invalid as a result of initialing. The TA will show the pages that need to be initialed.
- 13.98. After all the Price Bids have been opened, announced and recorded, the PMU with the assistance of the TA shall prepare a Minutes of Opening of Price Bids in the specified format, indicating the names of the Committee Chair and members and names of the bidders whose Price Bids have been opened. The Minutes shall be signed by the Chair and members of the Committee and representatives of the bidders who attended the opening meeting. Copies of the Minutes shall be provided to all the bidders in attendance after the meeting. For those bidders whose Technical Bids were evaluated as not meeting the minimum qualifying score, the Minutes shall be sent within fourteen (14) days after the date of the opening of the Price Bids.
- 13.99. The Head of the PMU shall hand over the opened Price Bids to the Chair of the BEC after the closing of the Meeting and retain one copy which shall be kept secured by the PMU.
- 13.100. **Step 13: Evaluation of Price Bids**
- 13.101. The Price Bid evaluation is conducted using an analytical methodology to evaluate the financial characteristics of the bid which only uses the quantitative criteria.
- 13.102. The IA with the assistance of the TA will identify a list of factors that are of critical importance to the selection of the best financial proposal and develop the criteria for the evaluation of these factors at the time of the preparation of the Bidding Documents. Only those factors that can be quantified are selected. Some of the key factors include total capital cost, total operating cost, maintenance cost, cost per user, percent non-project revenue, percent equity invested, rate of return on equity, and cost of capital. A scoring system under which a score is assigned to each of the factor based on the importance (weight) of the factor. The more weight the factor carries, the larger the percentage of the total score of the Price Bid is assigned. Each factor is scored and the total score for the Price Bid will be calculated.
- 13.103. The evaluation factors, the score assigned to each of these factors and the evaluation criteria shall be agreed between the IA and the GDPPP at the time of the preparation of the Bidding Documents.
- 13.104. The Bidding Documents shall prescribe the evaluation criteria and the methodology for undertaking the evaluation. All the Price Bid opened shall undergo a detailed evaluation which shall be carried according to the evaluation criteria and the detailed methodology prescribed in the Bidding Document.

- 13.105. The BEC shall be responsible for undertaking the evaluation of the Price Bids with the assistance of the TA. The Chair of the BEC shall provide a copy of the Price Bids to each member of the BEC and the TA after the close of the Price Bid Opening Meeting.
- 13.106. The Chair of BEC shall schedule a pre-evaluation meeting on the first working day after the date of the Price Bid Opening Meeting. The purpose of this meeting is for the TA to provide a detailed briefing to all the members of the BEC on the evaluation criteria and the methodology and how to use the scoring system.
- 13.107. The BEC and TA shall undertake a preliminary examination of the Price Bids to determine if any clarifications from the bidders are required. No change in the substance in the bid, including changes in price shall be sought, offered or permitted. If there is an arithmetical error, this shall be corrected by the BEC during the detailed evaluation of the bids and does not require any clarification. A list of the required clarifications shall be compiled by the TA and sent out to the bidders by the Head of the PMU. The bidders shall be provided five (5) days to submit the response to the clarifications sought. The PMU shall prepare and maintain a written "Minutes of Clarification" report.
- 13.108. The clarifications, if any, and the responses received shall be provided to Chair and members of the BEC. Each member of the BEC shall carry out the evaluation independently and may seek the assistance of guidance from the TA. They shall gather at a location or meeting room designated by the Chair of the BEC and undertake the evaluation on a full-time basis. The TA shall also evaluate the Price Bids and provide the results to the Chair of the BEC for guidance and reference.
- 13.109. The Chair of the BEC shall schedule a meeting of the BEC normally no later than five (5) working days from the date when all the clarifications were provided. The meeting shall discuss and consider the results of the evaluation of the Price Bids carried out by the members of the BEC and to undertake the Final Combined (Technical and Price) Evaluation of the Bids. For the Price Bids, since a quantifiable criterion is used for the evaluation of each factor, there cannot be any difference in the scores given by the members of the BEC. In case of any errors, the Chair of the BEC will decide on the correction. The meeting shall agree on the total score of each Price Bid. The BEC shall then undertake the Final Combined Evaluation with the assistance of the TA.
- 13.110. **Step 14: Results of Final Combined Evaluation**
- 13.111. The Final Combined Evaluation shall consider the score attained for the Technical Bid and the score for the Price Bid in calculating the Total Combined Score for the Bid. The Bidding Documents shall prescribe the weight assigned to the Technical Bid and the Price Bid as explained in Paragraph 13.73 above which is normally 30% for Technical Bid and 70% for Price Bid. The maximum Total Score is normally 1000 which will result in the allocation of maximum total score for Technical Bid as 300 and the maximum total score for Price Bid as 700. The evaluated score for the Technical Bid and the Price Bid is adjusted based on this ratio and the Final Combined Score calculated.
- 13.112. The TA shall calculate the Total Combined Score bid by bid and show the calculations on a screen. The BEC will review the calculation shown on the screen for correctness. After the Final Combined Scores are confirmed by the BEC, the TA shall prepare a table which shall show in separate column:
- Name of the Bidder

- Technical Bid Score
- Price Bid Score
- Weighted Max Score for Technical Bid
- Weighted Max Score for Price Bid
- Adjusted Score for Technical Bid
- Adjusted Score for Price Bid
- Final Combined Score
- Ranking

13.113. The Table shall be signed by the Chair and the members of the BEC.

13.114. When there has been a significant lapse of time of two (2) years or more from the date of submission of the application for prequalification or the recommended winning Bidder has encountered a situation that may significantly change its prequalification data, the BEC may require the Bidder to submit a certification signed by its authorized representative that its prequalification data have not significantly changed since its submission of the prequalification application.

13.115. In exceptional case where there is evidence that the Bidder is facing a situation which may impact its qualification to undertake the Project, the BEC with the prior endorsement of the Head of the IA and the GDPPP, asked the Bidder to submit updated prequalification data to demonstrate that it continues to meet the prequalification criteria. Such situations relate to the Bidder facing litigation or is having severe financial difficulties or approaching bankruptcy. The re-evaluation of the prequalification of the Bidder shall use the same criteria and follow the same procedures as undertaken during the initial Prequalification criteria.

13.116. The above process and the re-evaluation of the qualification of the Bidder shall be included in the FBER prior to the paragraph on Recommendations for Selection of the Winning Bidder. In the event re-evaluation shows that the Bidder does not meet the prequalification criteria, the next ranked bidder shall be recommended as the winning bidder.

13.117. An illustrative example of the technical bid evaluation, the financial bid evaluation and the combined bid evaluation is provided in Annexure 4. The methodology and system for the evaluation of technical, financial and combined bids will differ based on the nature of the project and the PPP modality. The TA shall develop custom or fit for purpose methodology during the preparation of the Bidding Documents which shall be reviewed and approved by the PRC prior to the RFB.

13.118. Step 15: Preparation of the Final Bid Evaluation Report (FBER) and Selection Memorandum.

13.119. On completion of the Final Combined Evaluation, the TA shall prepare the FBER for the review and signing by the Chair and members of the BEC. The FBER shall provide but not limited to the following:

- (i) List of Bidders and Price Bids as opened
- (ii) List of Clarifications and Responses
- (iii) The Price Bid Evaluation Criteria as prescribed in the Bidding Documents

- (iv) Narrative of the Price Bid Evaluation process, including the method of assessment, formulas used and related analytical data
- (v) Results of Price Bid Evaluation
- (vi) Combined Bid Evaluation Criteria as prescribed in the Bidding Documents
- (vii) Narrative of the Combined Bid Evaluation process, including the method of assessment, formulas used and related analytical data
- (viii) Results of the Combined Bid Evaluation and Ranking of Bids
- (ix) Recommendations for Selection of the Winning Bidder
- (x) List of deviations to the government support package and/or significant changes to the terms and conditions prescribed in the draft PPP Contract, if any
- (xi) List of issues, if any, for negotiations

13.120. The FBER shall be accompanied by all the relevant Minutes and Tables as appendices. The Chair of the BEC shall submit the FBER to the Chair of the PRC for review and endorsement. If the recommended Winning Bidder is proposing any deviations to the government support package and/or seeking significant changes to the terms and conditions prescribed in the draft PPP Contract, the FBER is also submitted to the GDPPP.

13.121. The GDPPP shall refer the deviations and/or any significant changes to the relevant competent agencies for review and comments on their acceptability. The GDPPP will convene an inter-ministerial meeting or a MEF inter-departmental meeting, as relevant, to consider the deviations and changes. The GDPPP will prepare the Minutes of Discussions and submit to the Minister of the MEF for consideration and approval. The specific approval of the Minister of the MEF is required for any changes in the terms and conditions related to fiscal commitments. Any changes to the following shall require prior endorsement and approval of the Minister of the MEF:

- Risk Structure and Risk Allocation
- State Support comprising of Viability Gap Financing, Availability Payment, Government Contingency Liabilities (types of guarantee), Asset Contribution and Investment Incentives as stipulated in Article 13 of the Law on PPPs, where these are applicable.
- Government Obligations/Undertakings as stipulated in Article 34 of the Law on PPPs.

13.122. The GDPPP will inform the PRC on the decision of the Minister of the MEF on the deviations and/or changes in the terms and conditions related to fiscal commitments. The decision will clearly state which deviations/changes are non-negotiable and which shall be subjected to negotiations.

L. Approval, Negotiations and Contract Signing

13.123. **Step 16: Approval of the FBER.**

13.124. The PRC will review the FBER to determine that the Price Evaluation and the Combined Bid Evaluation have been carried out in accordance with the evaluation criteria prescribed in the Bidding Documents. The Chair shall call for a meeting and seek the assistance of the TA to make a presentation on the Price Bid Evaluation and Combined Bid Evaluation and explained the scoring system used in the process. The PRC shall ensure that any decision of the Minister of the MEF on matters related to

fiscal commitments conveyed to it by the GDPPP are incorporated in the FBER. The PRC will closely review the recommendations in the FBER relating to proposed negotiations with the recommended Winning Bidder.

- 13.125. If any recommendation of the FBER conflicts with the decision of the Minister of the MEF or the PRC finds an error in the evaluation or disagrees with any other recommendations in the FBER, the FBER shall be returned to the BEC for revision and resubmission for endorsement. The PRC may also require the BEC to include additional areas where negotiations with the recommended Winning Bidder must be held. The Minutes of the PRC Meeting shall be prepared and signed by each member of the PRC.
- 13.126. The PRC shall submit its decision together with the final FBER and the Minutes of the PRC Meeting to the Head of the IA for endorsement before submitting to the Minister of the MEF for approval. The Head of the IA shall ensure that the decision of the Minister of the MEF on matters related to fiscal commitments have been addressed and incorporated in the final FBER before submitting to the Minister of the MEF.
- 13.127. The GDPPP shall review the final FBER and the Minutes of the PRC Meeting to validate if the decision of the Minister of the MEF has been addressed and incorporated. The GDPPP shall prepare a confirmation memorandum for the approval of the Minister of the MEF before the Minister of the MEF grants an approval of the recommendation of the final FBER on the selection of the Winning Bidder and the areas for negotiations.
- 13.128. After the approval of the Minister of the MEF, the TA shall prepare a Strategy for Negotiation based on the areas/terms/conditions in the draft PPP Contract which have been recommended in the FBER and approved by the Head of the IA and the Minister of the MEF. The Strategy must be comprehensive and address all the key terms and conditions of the draft PPP Contract. The term sheet and the Strategy for Negotiation shall be used to guide the government in the negotiation stage. These shall be endorsed by the PMU and the GDPPP and completed at least ten (10) days before the start of the negotiation of the draft PPP Contract. The TA shall also finalize the draft Contract Management Plan (CMP) which will guide the PMU, the GDPPP and the Contract Management Committee (CMC) in the management, monitoring and reporting of the implementation of the PPP Contract prior to the negotiations.
- 13.129. The Head of the PMU shall issue a Notice of Award to the selected Private Partner within ten (10) days from the date of approval by the Minister of the MEF. The Notice shall contain the list of all deviations/changes to the draft PPP Contract proposed by the Private Partner, those rejected and those which will be subjected to negotiation. The Private Partner shall be provided with ten (10) days to confirm acceptance before it is invited for negotiations. In case the selected Private Partner does not confirm, procedures prescribed under Step 17 shall be repeated for the next ranked bidder. This process is repeated until a Private Partner has confirmed acceptance of the award. The bidder(s) who refuse to accept the award shall forfeit the bid security and subjected to a sanction for a period of five (5) years from participating in any PPP projects.
- 13.130. **Step 17: Negotiations**
- 13.131. Following the selection of the candidates of the Private Partner, IA shall lead the Government of the Kingdom of Cambodia Inter-ministerial Working Group to negotiate terms and conditions of the draft PPP Contract. The Government's Inter-

ministerial Working Group shall be led normally by the Chair of the PRC with a representative from the MEF as the Vice Chair. Members of the Government's Inter-ministerial Working Group shall comprise of the members of the PRC; other representatives of the IA nominated by the Head of the IA; representatives from the GDPPP; and representatives from other relevant General Departments of the MEF including the Legal Council. The Head of the IA and the Minister of the MEF may decide to include other members representing agencies that may have a role to play in the negotiations.

- 13.132. In the case of very large projects, the Government's Inter-ministerial Working Group may be jointly led by the Head or a very senior management official from the IA and a very senior management official of the MEF. The Government's Inter-ministerial Working Group shall be constituted within ten (10) to fifteen (15) days of the approval of the FBER by the Minister of the MEF. In the case a similar institutional arrangement is available, which is also mandated for the negotiation with the selected candidate of the Private Partner, that institutional arrangement shall be used.
- 13.133. The negotiation will require a multi-disciplinary team to negotiate the technical, financial, commercial, risk allocations, land acquisition and legal terms and conditions. The TA shall assist in the negotiation and provide expert advice as all the expertise may not be available within the government. The services of a highly qualified legal expert with extensive experience in negotiating PPP Contract will be essential.
- 13.134. The PMU and the GDPPP shall arrange a pre-negotiation briefing for the Government's Inter-ministerial Working Group at least seven (7) days before the commencement date of the negotiation with the preferred bidder. The TA shall make a presentation on the Strategy for Negotiation and explain in detail the term sheet and guidance on the negotiation position in the key terms and conditions of the draft PPP Contract. The Chair of the Government's Inter-ministerial Working Group may revise the Strategy except for the terms and conditions related to the fiscal commitments and as listed in Paragraph 13.122 above which shall be subject to the prior approval of the Minister of the MEF. Issues on land acquisition and resettlement shall be endorsed by the General Department of Resettlement (GDR) of the MEF.
- 13.135. The negotiation will normally require a number of meetings spread over a few months as the key terms and conditions are negotiated. In most cases, both the parties need more time to analyze critical terms in more depth and seek approval of higher authorities. At the end of each negotiating meeting, a Minutes of Negotiation shall be prepared jointly by the two parties detailing at the minimum the agreements reached: matters which will need further consideration by higher authorities and the timeframe for their responses; and schedule for next meeting. The Minutes shall be signed by the Heads of the Government's Inter-ministerial Working Groups from both the Parties which shall form part of the PPP Contract documentation.
- 13.136. The negotiation shall be concluded within six (6) months from the date of commencement as stipulated in the invitation for negotiation sent to the selected Private Partner. If the negotiation are not concluded within this period, the Government's Inter-ministerial Working Group, with the assistance of the TA, shall prepare a Memorandum detailing the reasons for the failure with the recommendation to terminate the negotiation and invite the next ranked bidder.
- 13.137. The memorandum shall be submitted to the Head of the IA and the Minister of the MEF for their review and consideration. The Head of the IA and the Minister of the MEF may approve the recommendation for termination in which case the

Government's Inter-ministerial Working Group shall issue a notice of termination of negotiation and proceed to invite the next ranked bidder for negotiation. **Steps 17 and 18** shall be repeated for the next ranked bidder. The Head of the IA and the Minister of the MEF may decide to offer a resolution to any deal breaker in the interest of the Project in which case the Government's Inter-ministerial Working Group shall make a final attempt to conclude the negotiation based on the proposed resolution.

13.138. If there are any changes to the fiscal commitments or other government support measures and agreed by the Head of the Government during the preparation of the draft PPP Contract, the Minister of the MEF shall seek the approval of the Head of the Government prior to concluding the negotiations.

13.139. **Step 18: Signing of PPP Contract**

13.140. After the successful negotiation, a draft negotiated PPP Contract is prepared and initialed by the selected Private Partner and Head of the IA. The draft negotiated PPP Contract shall be submitted by the Head of the IA to the MEF for the final review of financial terms and obligations of the government. The GDPPP will conduct the review and due diligence with the assistance of the TA to confirm their acceptance based on the decision of the Minister of the MEF. The GDPPP will prepare a confirmation memorandum and submit it with the negotiated draft PPP Contract to the Minister of the MEF for approval.

13.141. The TA shall finalize the CMP in consultation with the PMU and the GDPPP within ten (10) days after the completion of the negotiations. The CMP shall be prepared in accordance with the **Guidelines on Contract Management of the SOP for PPP Projects, Volume II: Guidelines**. The GDPPP shall endorse the CMP before it is approved by the Head of the IA.

13.142. The IA and the GDPPP shall monitor the Conditions Precedent to Contract Signing stipulated in the negotiated draft PPP Contract. When all these conditions have been accomplished by the Parties, the Head of the PMU in consultation with the GDPPP shall arrange for the signing of the PPP Contract by the Head of the IA and the Minister of the MEF on behalf of the Government with the authorized representative of the Private Partner.

13.143. In case, the Private Partner is not able to comply with the Conditions Precedent within the stipulated time or in an extended period as approved by the Head of the IA, the matter shall be referred by the PMU to the Head of the IA and the Minister of the MEF for a decision for termination of negotiated PPP Contract. The next ranked bidder shall be invited for negotiations and the process repeated.

13.144. After a PPP Contract has been signed, both the Private Partner and the IA on behalf of the Government will be required to fulfill specified conditions precedent before the PPP project will commence. The following provides examples of negotiated conditions precedent, as well as an estimate of how long these tasks may require completing. Below is a summary of the major steps in the process leading to financial closure.

13.145. **Step 19: Financial Closure of the Project, Formation of the Special Purpose Company (SPC), and the Preparation of the Final Document**

13.146. The Private Partner has to take actions to achieve Financial Closure within the time stipulated in the PPP Contract. The IA shall monitor the progress in the achievement of the Conditions Precedent and the Financial Closure with the assistance of the TA.

- 13.147. In case the PPP Contract requires the formation of the SPC as a commercial entity legally registered in the Kingdom of Cambodia, the selected Private Partner shall form the SPC accordingly. The establishment shall be completed within a maximum of sixty (60) working days after the date of signing of the PPP Contract. A second requirement is for the Private Partner and the SPC to sign a Novation Agreement for transferring all the rights and contractual obligations of the Private Partner under the PPP Contract to the SPC within fourteen (14) working days after the establishment of the SPC.
- 13.148. The TA shall prepare a monitoring plan showing each of the Conditions Precedent, the actions required to be taken, responsibility for the actions, the deadline and the monitoring required by the IA. The table will also list the actions required for Financial Closure in the monitoring plan. The PMU and the GDPPP shall use the monitoring plan to track the progress on the actions and update every month. If there are any red flags that are hampering the accomplishment of Conditions Precedent by the IA, these shall be reported to their management. Where the Private Partner is lagging in talking actions to accomplish Conditions Precedent required on its part, the PMU shall inform the Private Partner in writing and seek remedial actions.
- 13.149. One month prior to the deadline for the accomplishment of the actions required for Financial Closure, the PMU and the GDPPP with the assistance of the TA shall jointly prepare a status report and proposed actions, where required, for submission to the Head of the IA and the Minister of the MEF.
- 13.150. **Step 20: Selection of the Independent Consultant (IC) and Owner’s Engineer (OE)**
- 13.151. In case the IC and the OE are required based on the nature of the PPP Project and by the PPP Contract, the selection of the IC and the OE shall be completed no later than the Financial Closure of the Project and the assignment contracts signed immediately upon Financial Closure in the case of solicited proposals. The PMU shall ensure that the contract for IC between the IA, the Private Partner and the IC; and the contract for OE between the IA and the OE are signed and made effective within thirty (30) days of the Financial Closure. In the case of USPs, the OE recruitment, signing of the contract and its effectiveness shall be accomplished prior to the completion of the feasibility study by the Proponent/Private Sponsor.
- 13.152. **Step 21: Notice to Proceed**
- 13.153. The Head of the IA shall issue a Notice to Proceed with the Project to the Private Partner in writing within ten (10) days after the fulfillment of all Conditions Precedent and Financial Closure.

14. SINGLE-STAGE: TWO-ENVELOPE WITHOUT PREQUALIFICATION BIDDING PROCEDURE

- 14.1. Under this bidding procedure, no prequalification is undertaken and hence **Stage 1 and Steps 1 to 6 as explained above are not followed.**
- 14.2. Under **Stage 2** the following steps shall be followed with the modifications as shown:
- **Step 7: Preparation of Bidding Documents.** After the preparation of the Bidding Documents, an Invitation for Bids shall be advertised along the same procedures as for ITP under Step 2. The preparation and submission of bids follow procedures under Paragraphs 13.60 to 13.61 except that bidding is open to all bidders and there are no prequalified bidders. The Bidding Documents are purchased by interested bidders who wish to participate in the bidding process.

- **Step 8: Pre-Bid Conference and Site Visit.**
- **Step 9: Opening of Technical Bids**
- **Step 10: Evaluation of Technical Bids**
- **Step 11: Approval of Technical Bids.** Only the technical bids that meet the minimum qualifying score are passed.
- **Step 12: Opening of Price Bids**
- **Step 13: Evaluation of Price Bids**
- **Step 14: Combined Evaluation.** There is normally no combined evaluation and the bidder submitting the best Price Bid is selected as the winning bidder. However, in some cases where the IA and the GDPPP propose to use combined evaluation for this bidding procedure and endorsed by the PRC, then the Bidding Documents must clearly stipulate this in the evaluation criteria. Step 14 will apply for such cases.
- **Steps 15 to 21** will all apply.

15. ALTERNATIVE PROCEDURES

- 15.1. There are two other procurement approaches, namely the **Competitive Dialogue** and **Competitive Procedure with Negotiation (using Best and Final Binding Offer)** procedures which are used in the procurement of PPP projects in some jurisdictions like the European Union. They follow the Two-Stage: Two-Envelope with Prequalification Bidding Procedures with some variations.
- 15.2. Their use is not recommended unless there are very exceptional justification and approved by the Minister of the MEF. If either of these approaches is recommended by the TA during the preparation of the PPP Project, the TA shall show the cost-benefit analysis to justify the use and prepare detailed step by step procedures of the procurement process. The cost-benefit analysis and the detailed procedures shall be reviewed by the GDPPP and reported to the Minister of the MEF for consideration.

16. UNSOLICITED BIDS

- 16.1. While the open competitive bidding procedures apply to PPP projects developed by the government with the assistance of the TA, another option is to allow private investors to approach the government with unsolicited proposals (USP). Accepting such proposals allows the government to benefit from the introduction of new concept, technology or innovation in infrastructure development and provision of public services which could be provided by the private sector.
- 16.2. For USP, the Direct Negotiation Method is used under which negotiations are carried out with the Proponent/Private Sponsor of the USP. The draft PPP Contract shall be prepared by the Proponent/Private Sponsor using the template PPP Contract as shown in **Annexure 5**. All the provisions in the draft PPP Contract are subject to negotiations. The IA and the MEF will normally recruit TA or due diligence international consultants to assist the government in the negotiation process. **Steps 17 to 21** as explained above shall be followed for the Direct Negotiation Method.
- 16.3. In addition to the Direct Negotiation Method, USP can be subjected to (i) Open Competitive Procurement Procedure and (ii) Open Competitive Procurement Procedure-Swiss Challenge under very special circumstances. These two Procurement Procedures may be used on the following conditions:

- The Head of the Government has approved either one of the Procurement Procedures and included in the Framework Agreement signed between the IA and the Proponent/Private Sponsor;
- The Negotiation under the Direct Negotiation Method could not be concluded and have failed. This shall be reported to the Head of the Government and the approval sought for use of either of the two Procurement Procedures.

16.4. **Open Competitive Procurement Procedure:** After, the Feasibility Study prepared by the Proponent/Private Sponsor is reviewed and evaluated in detail by the IA and the MEF, the IA with the support of transaction advisors or individual experts shall prepare the Bidding Documents and advertise the Invitation for Bids following the same procedures under the Single Stage: Two-Envelope without Prequalification Bidding Procedure. The Bidding Documents shall be uploaded in the **Virtual Data Room**. The Original Proponent/Private Sponsor may participate in the procurement. The Bidding Documents shall stipulate that (i) the Feasibility Report has been prepared by a Proponent/Private Sponsor under the USP; (ii) name of the Original Proponent/Private Sponsor; (iii) preference shall be provided to the Original Proponent/Private Sponsor; (iv) the quantum and methodology to calculate the preference stipulated in the evaluation criteria; and (v) in the case the original Proponent/Private Sponsor is not selected as the successful Private Partner for the Project, the winning bidder shall reimburse the costs of preparation of the Feasibility Studies and the amount specified. The reimbursement for the cost of the Feasibility Study shall be in addition to the costs of the transaction advisory services and other related costs incurred by the government and any success fees, if applicable.

16.5. After the evaluation of the Technical and Price Bids has been completed and if the Original Proponent/Private Sponsor is not the highest ranked bidder, it shall be given an opportunity to match the Price Proposal of the winning bidder. If it is able to match the Price Bid, it shall be selected for the award of the PPP Contract. If it fails to match the Price Bid of the highest ranked bidder, the highest ranked bidder shall be selected for the award of the PPP Contract.

16.6. **Open Competitive Procurement Procedure-Swiss Challenge:** Under this procedure, the Technical and Financial Proposals for the Original Proponent/Private Sponsor are evaluated by the IA and the MEF with the assistance of the TA or individual experts. Prior to conducting any negotiations of the draft PPP Contract with the Original Proponent/Private Sponsor, the IA shall advertise and invite interested bidders to submit comparative bids within a stipulated deadline. The IA and the MEF with the assistance of the TA or individual experts shall prepare the Bidding Documents which shall include the details relating to Financial Proposal proposed by the Original Proponent/Private Sponsor. There shall be no preference provided to the Original Proponent/Private Sponsor. However, the Bidding Documents shall stipulate that the winning comparative bidder shall reimburse the costs of project development incurred by the Original Proponent/Private Sponsor and the amount specified. The Bidding Documents shall be uploaded in the **Virtual Data Room**.

16.7. If within the deadline no comparative or competing bids are received, the IA shall proceed with the negotiations with the Original Proponent/Private Sponsor and conclude the PPP Contract. In the case any comparative or competing bid is received within the deadline and the priced bid is better than the Original Proponent/Private Sponsor, the Original Proponent/Private Sponsor shall be given the right to match the comparative or competing price bid within a stipulated deadline. If the Original Proponent/Private

Sponsor fails to match the comparative price bid within the stipulated deadline, the bidder submitting the comparative price bid shall be selected as the Private Partner and the PPP Contract negotiated. The bidder shall reimburse the project development costs incurred by the Original Proponent/Private Sponsor in the amount specified prior to the signing of the PPP Contract. The amount shall be paid to the Government in accordance with the financial management procedures which shall then make the payments to the Original Proponent/Private Sponsor. If the Original Proponent/Private Sponsor agrees to meet the comparative priced bid, it shall be selected as the Private Partner and a PPP Contract negotiated on the basis of the revised price bid.

- 16.8. When the use of either of the above two procurement procedures has been agreed by the Head of the Government, the Framework Agreement signed between the IA and the Proponent/Private Sponsor of the unsolicited proposal shall include a provision for its use and an appendix providing the detailed procurement procedures that will be followed.

PART B: ANNEXURES TO THE SELECTION OF PRIVATE PARTNER

(REFER TO VOLUME III: PROCUREMENT MANUAL ANNEXURES)

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