

PART II

PRIVATE SECTOR INFRASTRUCTURE PROJECTS

CHAPTER XIV

BOO/BOT/BOOT PROJECTS*

225. Introduction:

Infrastructure projects which are not identified to be financed under the Consolidated Fund, may be identified to be financed/developed by private investors. Projects financed by the private sector will be considered on a Build, Own and Operate, Build, Own and Transfer, Build, Own, Operate and Transfer (BOO/BOT/BOOT)* and other variants would be built, owned and operated by the investor or transferred or leased to the public sector after a concession period.

226. Co-ordination:

The Bureau of Infrastructure Investment (BII) of the Board of Investment of Sri Lanka (BOI) will function as the promoting, facilitating and co-ordinating agency for servicing the Line Ministries/Line Agencies in this regard under the overall supervision of the Ministry of Finance. However, the final responsibility and authority of selection and approval will lie with the relevant line Ministry and the Cabinet of Ministers respectively.

227. Preliminary Screening:

All priority projects identified by the respective line Ministries should be discussed informally with the BII and a financial and technical viability report to screen such projects need to be prepared jointly by the proposing agency and vetted by the BII for clearance by the Ministry of Finance and Planning. Once the clearance from the Ministry of Finance and Planning is obtained the line Ministry should present a Cabinet Memorandum including formal Project Proposal seeking approval of the Cabinet to proceed with the Project.

228. The procedure laid down in this Part should be adopted in processing BOO/BOT/BOOT* and similar proposals. In the following sections, the reference to BOO/BOT* Projects should be interpreted as a reference to all variants of private sector funded Infrastructure Development Projects.

229. **Infrastructure Projects**

Infrastructure Development Projects managed by the Private Sector on Build-Own-Operate (BOO), Build-Own-Transfer (BOT) or other variant basis, which will be wholly or partly implemented by the private sector include, but are not limited to:

- power plants
- highways
- ports
- airports
- telecommunications
- railways
- transport systems
- industrial parks
- solid waste management
- water supply and drainage
- warehouses, housing, markets etc.
- Land reclamation
- Other economic infrastructure

230. **Steering The Project Proposals**

All matters pertaining to BOO/BOT Projects should be channeled through a Cabinet Appointed Negotiating Committee (CANC) assisted by a Project Committee (PC). The approving authority for award of a BOO/BOT project is the Cabinet. Therefore, final recommendation of CANC on the award as well as recommendations at various important stages should also be submitted to the Cabinet for approval. i.e. pre-qualified list, issue of LOI, etc.

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- * - **Build Own and Operate**
 - * - **Build Own and Transfer**
 - * - **Build Own/Operate and Transfer**
- Note: Project Company denotes Bidder/Sponsor/Proponent**

CHAPTER XV

PROCEDURE FOR PROCESSING OF PROPOSALS

231. **Formal approval for the Project:**

Priority projects considered by the Government of Sri Lanka (GOSL) for development through the private sector, once identified and screened by the relevant line Ministry with the assistance of the BII (in regard to the economic and financial viability of the project), should be submitted to the Ministry of Finance and Planning for preliminary clearance. On the determination of the Ministry of Finance and Planning that the project should be proceeded with, the relevant line Ministry should submit a Cabinet Memorandum including the outline of the project proposal seeking:

- (a) The formal approval for the project in principle.
- (b) The appointment of a Negotiating Committee by the Cabinet with authority to develop the proposal.

The relevant line Ministry should thereafter, request the Ministry of Finance and Planning to appoint a Project Committee.

232. **Cabinet Appointed Negotiating Committee**

The Cabinet will appoint a Negotiating Committee to handle all matters pertaining to BOO/BOT projects and make recommendations on the selection of a proponent.

The composition of CANC shall be determined by the Cabinet. Generally the Chairman of CANC may be Secretary to the Treasury or Deputy Secretary to the Treasury. The Secretary of the relevant line Ministry/Ministries and Chairman/BOI may be the other members.

233. **Project Committee (PC)**

The Project Committee will be constituted once the Cabinet in principle approves the project. The Project Committee will be appointed by the Secretary to the Treasury at the request of the Secretary of the line Ministry in liaison with BII. Its membership will include representatives of the following Ministries/Departments:

- I. Line Ministry
- II. Ministry of Finance & Planning
- III. BOI/BII

- IV. Relevant State Agency/ies
- V. Attorney-General's Department
- VI. Any other Ministry/Department/Agency as appropriate:
- VII. Central Environmental Authority

The PC may co-opt consultants/experts from time to time to obtain expert advise.

A representative of BII will function as the Secretary/Convener to the Project Committee. The Committee will service project development and will also be responsible for guiding the project through its various stages of implementation.

234. Terms of Reference of Project Committee (TOR of PC):

The Project Committee will be mainly responsible for steering the preparation of the Request for Proposal (RFP) documents and submit them for the approval of the CANC. The RFP would include the following:

- (i) Criteria of assessment of technical and financial viability of the project.
- (ii) Details of specifications
- (iii) Models of relevant Agreements as decided on a case by case basis.
- (iv) Environmental data and information.
- (v) Any other relevant information.

The other responsibilities of the PC are as follows:

- (i) Schedule bids and evaluate same for consideration of the CANC.
- (ii) Monitor the progress during project development phase and report to CANC periodically.
- (iii) Co-ordinate all activities including scheduling meetings, correspondence, etc., relating to the project.

235. Legal Obligations

Since negotiations on project proposals may result in legal obligations on the part of the Government, recommendation for any contractual commitments and Government guarantees, if any should be made by the relevant line Ministry/BII in consultation with the Treasury and Attorney-General and be approved by the Cabinet prior to entering into any formal contractual commitment.

236. Time Frame:

The period of time from invitation to conclusion viz. The issue of a Request for Proposals (RFP) to signing of an Implementation Agreement) (IA) should be

limited to one year (12 months). However, the time frame may be extended with Cabinet approval depending on the complexities of the project proposal on a case by case basis.

237. Unsolicited Proposals:

- (a) Line Ministries, Agencies and BOI/BII receiving unsolicited proposals should have them processed according to the procedures applicable to solicited proposals.
- (b) An unsolicited proposal may contain all basic information required by the GOSL/Line Ministry/BII to ascertain the economic and financial viability of the project, including the following:
 - (i) Outline technical details of the project.
 - (ii) Financial details to demonstrate the justification of the total cost/premium requested.
 - (iii) Letters from financial institutions and consortium members agreeing to commit funds if the project is accepted by GOSL and to proceed with construction.

Once the need is determined the relevant line Ministry should, by advertisement, call for proposals on the same generalised lines, incorporating the actual goals sought to be achieved as per Guidelines stated in Chapter XV. The party which made the original offer should be given a chance to improve on it in the invitation for bids/offers where the proposal has been significantly changed to suit the needs and objectives of the agency involved. This would apply in the case of all BOO/BOT proposals, sale of public assets or for the grant of exclusive rights for any State sponsored venture. No decision should be taken solely on the basis of unsolicited offers without inviting proposals/bids through public advertisement.

When owing to urgent and exceptional circumstances, it becomes necessary to deviate from the above-prescribed procedure, specific Cabinet approval should be obtained for such deviation.

CHAPTER XVI

PROCEDURES FOR ISSUING REQUEST FOR PROPOSALS (RFP) AND ASSISTING BIDDERS

238. Request For Proposals (RFP):

Once the approval of the Cabinet of the Ministers is obtained to proceed with the project as per Guide line 231, the Line Ministry will solicit proposals from the private sector on the basis of International Competitive Bidding (ICB) for the award of the project through a Request For Proposals.

239. Method for calling of Proposals:

The CANC should ensure that the **RFP** carries sufficient information to solicit a complete proposal from potential bidders. The method for issuing of **RFP** shall be by advertisement and solicitation of responses from interested bidders on the basis of International Competitive Bidding.

240. Pre-qualification of Proponents:

The CANC may decide to whether the pre-qualification of proponents should be done. However all large scale projects (estimated cost US\$ 100 Mn. Or more), and/or in the case of technically complex projects, the solicitation of bids should be preceded by a pre-qualification of proponents.

241. Invitation for Expression Of Interest (EOI)

If CANC decides to follow the process of pre-qualification of proponents, it should be initiated by the issue of an invitation for Expression Of Interest (EOI). This invitation of EOI should be given the widest publicity in the international media.

242. Evaluation of EOI:

The EOI will be evaluated by the Project Committee and will make its recommendations to the CANC for approval. Only the pre-qualified firms will be eligible for the issuance of the RFP.

243. Publication of RFP:

The RFP will be given wide publicity, through foreign and local news papers and electronic media and through Sri Lanka missions abroad in accordance with Guide line 249.

244. **Contents of RFP:**

The RFP will contain:

- (i) all relevant information on the Project;
- (ii) specific information required from the bidders to evaluate the proposal;
- (iii) a defined format for the bidders to follow in submitting their proposals.

Accordingly the RFP shall consist of the following components:

(i) **Introduction:**

This part will outline the Government's policy on private sector investment in infrastructure projects.

(ii) **Summary of the Project:**

This part will provide a summary of the project and the main responsibilities of the project bidders during the construction and operation phases.

(iii) **Technical and Financial proposals:**

This part will provide information for the bidders on preparation of technical and financial proposals.

(iv) **Evaluation and Selection Process:**

This part will provide the main information required from the bidders, including the technical parameters of the project, the basis for screening and scheme of evaluation of the proposals, and subsequent steps.

The information provided in this section must be set out in sufficient detail so that the selection is unambiguous and process is clearly understood by the potential investors or bidders.

(v) **Contractual, Financial and Legal Framework:**

This part will describe;

- (a) drafts of the contracts and agreements which will need to be entered into between the private and public sector agencies involved;
- (b) financial requirements;
- (c) fiscal and regulatory issues and the relevant laws; and

(d) The Bid/Performance Bonds required to be entered into.

(vi) **Private Sector Infrastructure Development Company (PSIDC):**

It should be noted that financing could be obtained from the PSIDC. This organization has been set up with the support from the World Bank (WB) and other multilateral Agencies for the purpose of disbursing long term subordinated debt to qualifying Private Sector Infrastructure Projects. If these funds are to be used for projects, WB procurement regulations for the portion of the procurement to be financed by the Fund have to be followed.

245. **Schedules and Appendices:**

In addition to the above components, the RFP will be supported by “Schedules and Appendices” containing supplementary descriptive information relating to the project and the procedures and formats for the submission of proposals, as stated below:

Schedule 1 – Further Information for Bidders:

This schedule will give detailed supporting information on aspects of the project which are not fully covered by the RFP as stated in Guideline 244.

Schedule 2 – Proposal Contents:

This schedule will provide detailed formats and structures for the submission of proposals by the bidders. The structures will be designed to meet the particular needs of the various parties involved in the screening and evaluation of the proposals. The information to be provided by bidders should be made to cover:

- (a) general information on the consortium of parties to the proposal;
- (b) technical and environmental information;
- (c) implementation schedule;
- (d) cost and pricing structure;
- (e) financing the project and related issues.

246. **Responsibility for Preparation of the RFP:**

The Project Committee, which includes representatives from the relevant Ministry or Agency, supported by technical consultants, if necessary, will bear the responsibility for the preparation of the RFP documents.

247. Clarifications:

The RFP will have instructions inviting bidders to seek clarifications or supplementary information in writing, within the time stipulated but not exceeding two months following the date of issue of the RFP. The Project Committee in consultation with the relevant Ministry, will supply written answers to all questions, and send copies of these to all parties which have purchased the RFP, provided such answers will not amend or add to the RFP in any way. If the answer will materially affect the RFP then the Project Committee should obtain approval from the CANC. CANC may convene a bidder's conference on their own or if requested by at least two bidders within a specified period of time not exceeding two months from the date of publication of the RFP.

248. Amendments to the RFP:

If necessary and up to thirty days before the date of submission of proposals, the Project Committee may, with the approval of the CANC amend or add to the RFP through issuing formal addenda to all who have purchased copies of the RFP. If a major change is made, the time given for submission of proposals should be extended accordingly.

249. Announcement of Proposal:

The Secretary, Ministry of Finance and Planning will invite proposals in the international and national press and give publicity through local diplomatic representatives as well as through Sri Lankan Missions abroad and the electronic media. The press notice may also be sent to all potentially interested firms that have been in contact with the line Ministry/line Agency/BO/BII or otherwise expressed an interest.

The announcement will provide a brief description of the project, and indicate:

- (a) the Company profile and experience of the bidders, if required.
- (b) the address at which the RFP can be obtained.
- (c) Any payment required for purchasing the documents.
- (d) Closing date for collection of documents.

250. Issuing of RFP:

The RFP should be issued by the Executing Agency or by the relevant Line Ministry after collecting the required non refundable form fee.

251. Proposal Guarantee:

The proposal should be accompanied by a Proposal Guarantee for a sum as requested in the RFP. Guarantees issued by the following institutions are acceptable guarantees:

- I. A bank operating in Sri Lanka approved by the Central Bank of Sri Lanka;
- II. A bank based in another country but the security or guarantee “confirmed” by a bank operating in Sri Lanka
- III. A reputed Insurance Company operating in Sri Lanka accepted by the Treasury for acceptance of guarantees.
- IV. A letter of credit issued by a foreign bank, but “confirmed” by a bank operating in Sri Lanka.
- V. A fixed deposit or a pass book of a bank operating in Sri Lanka, deposits made in the name of the executing agency.
- VI. Any other Agency approved by the Treasury from time to time.

252. Time for submission of proposals:

The period for submitting proposals will normally be three months. This may be increased to six months depending on the nature of the project. Proposals received after the stipulated closing date and time or due to the reasons of critically non-conformity with the RFP, (e.g. non submission of a proposal guarantee) should be rejected by the CANC.

253. Opening of Proposals:

The proposals received including Technical and Financial Proposals should be opened by the CANC or Proposal Opening Committee (POC) authorized by the CANC, immediately after the closing of bids. All project proponents are eligible to be present at the opening of proposals. The membership of the POC shall include representatives nominated by the following Ministries/Departments/Agencies.

- (i.) Line Ministry/Ministries
- (ii.) Ministry of Finance & Planning
- (iii.) BOI/BII
- (iv.) Relevant State Agency/ies

254. Announcement at the Proposal Opening:

The following details should be recorded in a book meant for the purpose and announced immediately after the opening of proposals.

- (a) the names of the proponents.
- (b) Value of the proposal guarantee and the name of the issuing agency.
- (c) Whether both technical and financial proposals are submitted.

255. Revival of Project:

If any proposal for which RFP has been issued previously is revived after the lapse of one year from the closing date for proposals, the RFP should be revised accordingly and new approvals should be obtained from the Cabinet before proceeding with the proposal.

CHAPTER XVII

PRELIMINARY EVALUATION OF PROPOSALS

256. **The Responsibilities of PC in relation to Evaluation of Proposals:**

The proposals received by the deadline specified in the RFP will be evaluated by the PC in three stages:

- (i) Assessment of the adequacy of the proposal – whether all the identified key requirements, such as the bid bond etc., have been met in the stipulated.
- (ii) Assessment of the responsiveness to the requirements of the RFP and disqualification of non-responsive RFP documents;
- (iii) Evaluation of proposals in order to rank the competing bids, on a clear and objectively verifiable criterion and in all cases where possible based on the tariff structure adjusted for any costs to be borne by the Government.

The members of the Project Committee (PC) should, where possible, be assigned the evaluation responsibility on a full time basis.

The PC will assign Sectoral and Sectional responsibilities to the experienced members for evaluating the various components of the proposal with reference to the feasibility studies, where available.

During the evaluation process extreme confidentiality shall be maintained.

257. **Screening of Proposals:**

All proposals received by the closing date will be included in the screening process and the final evaluation will be confined to the proposals, which pass the screening tests.

The PC should ensure that all proposals selected for consideration are:

- (i) technically sound in terms of meeting the functional requirements of the project within the necessary time scale,
- (ii) environmentally acceptable, subject to Environmental Impact Assessment (EIA) clearance, and
- (iii) financially viable.

Evaluation of the proposals will strictly adhere to the criteria specified in the RFP. The evaluation will be completed within three months from the date of receipt of proposals.

258. Information Screening:

When copies of the proposals are provided to the PC, it will assess whether the information provided is sufficient to enable them to complete the evaluation. Bidders shall be notified of all cases of inadequate, unclear or inconsistent information within a specified period following closing of the proposals and clarifications should be obtained in writing.

259. Report of Responsiveness:

The Project Committee will assess the general qualifications and experience of the bidders, contractors and suppliers if they have been nominated. If they have not been nominated, the successful bidders should be required to submit the names of the associated companies to the PC for submission to the CANC.

260. Non-responsive proposals to be rejected by the CANC:

Following receipt of all the requested additional information from the bidders, the PC will prepare a report on the completeness of the information supplied for each proposal. This report will include recommendations on any proposal which should be rejected for being incomplete or unresponsive. The decision to reject on the basis of non-responsiveness should be made by the CANC.

261. Technical Screening

Only the proposals determined to be responsive as above should be examined through a Technical Screening to ensure whether the given proposals:

- (i) are capable of meeting the key technical performance criteria as required in the RFP.
- (ii) will perform within the key environmental standards set out in the RFP.
- (iii) Complies with health and safety standards in force in Sri Lanka;

262. Financial Screening:

Financial Screening should establish that:

- (i) the proposal is financially acceptable;
- (ii) the bidders and their financial partners have a high financial standing and reputation and are capable of raising the required financial resources; and,
- (iii) the outline of the Financing Plan prepared in response to the RFP is fundamentally sound and meets the requirements of project investments bridging any period of negative cash flow.

The financial screening carried out by the PC will assess whether the financing plan is realistic, focussing on the credit-worthiness and the financial strength of the bidders and also their bankers' and financial managers' experience.

263. Cost Screening:

Cost Screening should be carried out by the PC to ensure that:

- (i) the bidders have included in their estimates all relevant capital and operating costs of the project;
- (ii) the cost estimates have been clearly set out on the basis of current prices of equipment and other inputs;
- (iii) the cost estimates which form the basis for the tariff, are reasonable.

264. Basis for Cost Screening:

In preparation for the cost screening, the Project Committee shall develop their own capital and operating Cost Estimates for the Project, drawing on the experience gained elsewhere in Government for like projects, with possible inputs from the World Bank and Asian Development Bank. These estimates should have been prepared before the bidders finalized their proposals, so that they are available when proposals are opened. The Estimates should be produced on a basis comparable with the Cost Estimate Structure specified in the RFP. The Project Committee will identify relevant capital or operating costs which have been omitted or cost estimates which are significantly out of line with what the Committee considers to be reasonable estimates.

265. Clarifications and Modifications to Cost Structure:

All apparent discrepancies in relation to cost structure, should be raised with the bidders during the clarification process and explanations obtained. However during this process, no modifications that will alter the amounts of the estimate so as to materially affect the outcome of the evaluation should be introduced.

Cost Estimates, which are considered to be completed and clearly set out, should be screened for their reasonableness and judged against the estimate of the costs compiled by the Project Committee. For this comparison, suitable adjustments will be made to place all competing cost estimates on a uniform basis.

All the estimates should be exclusive of financing costs.

The original estimates of the Project Committee may be suitably adjusted if so indicated by the clarification process with the bidders, where all bidders had

adopted costing patterns significantly similar and deviating from the estimate of the PC.

266. Financial Evaluation of Competing Proposals:

The RFP would include a financial template or a 'critical factor test' (100 or more in number) which the project proponent is expected to meet on a self-assessment basis. The table will enable the proponent to assess himself by answering "Yes/No". He should be able to answer up to a minimum of 80% "Yes" to qualify for the final round, i.e. the Financial Evaluation. At this stage the price per unit will be determined.

Please refer Appendix IX for a specimen point system.

After all proposals have been screened fully, the proposals should be ranked on the basis of points system specified in the RFP. The weightage should be higher for principal considerations relevant to the project.

CHAPTER XVIII

EVALUATION CRITERIA

267. **Key Factors of Evaluation**

The key factor in the comparative evaluation of different proposals will be;

- (i) the price offered, eg. The cost per KWh for power, the proposed toll for a toll road, the rent for a facility, sale price per unit etc. The “base price” includes the fixed and variable components of the unit costs to the public sector entity purchasing the product on the basic assumptions stated in the RFP with regard to inflation, exchange rate, fuel prices for power, etc. Where the project envisages Government participation, the relative costs of such participation shall be factored into the evaluation.
- (ii) Duration of operation period.
- (iii) The tariff structure – the most favourable tariff structure adjusted for any costs to be borne by the Government.

The Project Committee would have prepared a financial model of the project, which will enable the necessary comparisons and analyses to be made. The evaluation will also have to allow for differences between proposals such as type and size of equipment, construction period and operating life of the project. The calculations should initially be based on the general assumptions in the RFP. This is the base price component of the price evaluation.

268. **Indexation Risk:**

Indexation risk should be assessed using the criteria in the RFP by testing each proposal by the sensitivity assumptions. The sensitivity of the bidder’s prices to the changes in the basic assumptions, given the individual profiles of cost and indexation arrangements, should be analysed. The Indexation risk will vary from one proposal to another due to different financing plans, cost structures or price profiles over the time.

269. **Evaluation of Price Escalations: (Escalation Formula)**

The RFP will have an indication of the cost items for price negotiation which might be considered reasonable, but bidders will probably have some of their own cost items, which will have to be recognized. The factors taken into account

in assessing price negotiation risk and allocating points will be noted in the evaluation report. If possible, the assessment of the risk will be combined with the comparison of the base prices to yield the expected base prices after the price negotiations have been closed.

270. Evaluation of Technical Aspects

The main criteria applied to the technical evaluation are:

- (i) the technical capability and organisation of the sponsor, and their experience with similar projects in similar environments;
- (ii) for power plants, an assessment of operational flexibility and the reliability of plant performance;
- (iii) the sponsor's implementation plan, including the length of the construction period and the planned commissioning/opening date,
- (iv) the extent to which the proposal gives regard to the environmental impact of the project;
- (v) the procedures to be adopted for matters such as quality assurance, testing, commissioning and training of personnel.

The relative importance of these factors should be identified at the time of the preparation of documents.

271. Evaluation of Financing Plan

This is the primary responsibility of the financial experts. The main criteria are:

- (i) the financial standing and resources of the sponsor and its bankers in relation to the size of the project;
- (ii) the soundness and flexibility of the financing plan in terms of the Project Company's liquidity position throughout the life of the project, and its ability to survive adverse events which could result in a loss or reduction of cash flow;
- (iii) the quality and clarity of the financial model.

272. General Responsiveness

The Project Committee will point out any major deviations from RFP and the overall obligations of Government in supporting the project and any legal, financial and fiscal implications.

CHAPTER XIX

FINAL REPORT OF THE PROJECT COMMITTEE

273. **The Project Committee's Final Report:**

The Project Committee will issue a final report to the CANC, which will consist of the interim reports issued during the evaluation phase (Pricing, Technical, Financing Plan and General). A comprehensive executive summary will be prepared to include the following:

1. **Introduction:** Summary of the process from the issuance of the RFP to the selection of Finalists and clarifications with Finalists;
2. **Technical:** Summary of the technical review compared to the RFP requirements and comparing each proposal;
3. **Commercial:** Summary of Bid Bond and proposed Letters of Association from prospective project company members;
4. **Financial:** Summary of capital cost and price of product (power, water, tolls, etc.) presented in detail comparing each proposal;
5. **Price Negotiations:** Summary of each sponsor's price negotiations and an evaluation of the impact of each price negotiation on the cost of the product;
6. **Conclusions:** Summary of PC's overall ranking and recommendations.

CHAPTER XX

NEGOTIATIONS AND AWARD OF CONTRACT

274. **Negotiations**

The CANC will conduct the final negotiations with the selected bidder. If necessary, the assistance of PC may be obtained for negotiations. In BOO/BOT projects price negotiation and risk-allocation are the crucial factors.

275. **Letter of Intent (LOI):**

After the negotiations are successfully completed, the PC with the relevant Line Ministry will prepare a draft Letter of Intent (LOI) for approval by the CANC and finally by the Cabinet. Attorney-General's concurrence for draft Letter of Intent (LOI) should be obtained before the approval by the CANC and the Cabinet.

276. The purpose of the LOI is to grant to the bidder exclusivity in relation to the project for an agreed period to enable the sponsor to complete all activities and preparations leading up to signing of the final contracts and agreements. The LOI is signed by the Secretary of the line Ministry and the Head of the Line Agency involved and is countersigned by the bidder accepting the LOI.

277. The LOI will typically be a letter with necessary annexes and will contain the following information:

- (i) a statement of the period for which project exclusivity is conferred;
- (ii) a summary of the sponsor's Bank Guarantee as required on acceptance of the LOI;
- (iii) a completion of all amendments to the proposal as agreed with the PC/CANC;
- (iv) a statement setting out all the price negotiations agreed upon;
- (v) a statement of the project sponsor's obligations during the period of exclusivity;
- (vi) a summary of the relevant guaranteed technical performance criteria upon which the LOI is based.
- (vii) Requirements of the EIA
- (viii) Any extensions to the LOI may be granted only after receipt of approval from CANC.

278. Sponsor's Obligations:

The project sponsor will:

- (i) conduct detailed investigations sufficient to confirm the accuracy of the RFPs information, and undertake other studies necessary to close the price negotiations set out in the LOI;
- (ii) Agree to negotiate with PC and the line Ministry on any adjustment in tariff permitted by the price negotiations;
- (iii) Establish the project company;
- (iv) Apply for and obtain all required permissions and consents;
- (v) Conclude negotiations on all relevant contracts and agreements including financing.

279. Performance Guarantee:

Within two weeks of the receipt of the LOI the sponsor shall furnish a Performance Guarantee for fulfilling his obligations, valid for an agreed period and encashable without recourse to the sponsor in the form of an irrevocable Bank Guarantee to the value of 5% of the project cost. If the Guarantee is not furnished within six weeks, the LOI will automatically lapse and neither the sponsor nor the Project Company shall have any claim for compensation or damages against the Government of Sri Lanka or any other Governmental agency on any grounds. The period of six weeks may be extended under exceptional circumstances by the CANC upon a maximum period of eight weeks.

280. The Period of Exclusivity:

The period of exclusivity granted in the LOI should be sufficient to allow the sponsor to complete the tasks required by the LOI. The period should not usually extend beyond six months, but a longer period may be allowed for complicated projects by the CANC on the recommendation of the PC.

281. Extension to Exclusivity:

The agreed extensions to the proposal's exclusivity not exceeding one year may be authorised by the CANC. Extensions for longer periods than one year, where absolutely necessary should be granted with the approval of the Cabinet.

282. Price Negotiations Leading to a Final Fixing of Prices:

Major subject for final negotiations should be the price. Price negotiations should:

- (I) take into account the allocation of risks between GOSL and the Bidder;
- (II) be restricted to a minimum in terms of both number and cost;
- (III) give the reasons for the particular costs clearly;
- (iv) establish clearly the relationships between the results of further investigations and the consequent price changes;
- (v) define the limits on the price changes which will be permitted.

CHAPTER XXI

FINALISING THE PROJECT (SOLICITED & UNSOLICITED)

283. Period covered:

At the finalization stage common procedures should be adopted for both solicited and unsolicited proposals. This covers the period from the issuance and acceptance of the LOI for solicited proposals and approval of pre-feasibility and feasibility studies for unsolicited proposals, up to the signing of agreements and the contracts. Unsolicited proposals will have to follow from the stage of the approval of feasibility studies the same procedure as solicited proposals.

284. Major Activities:

The Major activities, which will take place during the finalization stage, include:

- (i) the establishment of a Project Company;
- (ii) preparation of an implementation plan by the project bidders (or GOSL appointed consultants) and its appraisal by the Project Committee;
- (iii) finalization of the price negotiations,
- (iv) application for, and where possible, obtaining of consents and approval by the project sponsor;
- (v) negotiation and completion of all other agreements and contracts,
- (vi) finalization of the financing plan (which may include funds from the PSIDC);

285. Agreements:

A typical list of agreements is given below:

- (i) the Implementation Agreement between the Government and the Project Company;
- (ii) the Service or Product Purchase Agreement authorizing the sponsor to charge and collect reasonable tolls, fees and rentals for use of the project facility. These will not exceed those incorporated in the relevant contracts based on a pre-determined formula using official price indices and as agreed by contract for unsolicited proposals;
- (iii) for thermal power plants or similar projects, a Fuel Supply, Sale/Purchase Agreement with price;

- (iv) if applicable, a Turnkey Contract;
- (v) an Operation and Maintenance Contract;
- (vi) the Shareholders Agreement or Joint Venture Agreement between project Bidders;
- (vii) Loan Agreement and other documents necessary for the financial obligations of the Project Company;
- (viii) Escrow Agreements;
- (ix) Land Lease or Purchase Agreements;
- (x) Insurance policies;
- (xi) Trust Deeds;
- (xii) All approvals and licenses required.

286. The Product Purchase Agreement (PPA):

The RFP and the LOI will include a draft PPA which will include:

- (i) the date of commencement and duration of the PPA;
- (ii) the obligations of the Project Company to design, construct, operate and maintain the project;
- (iii) the arrangement for commissioning and testing the project at completion;
- (iv) the target performance levels and the procedure for meeting them during the life of the project;
- (v) payment obligations to the project company by the Government or other Agency purchasing the product, including all details of charges and arrangements for indexation;
- (vi) the respective obligations of the Government entity and the Project Company to install any facilities required to put the project into operation, i.e. interconnection facilities for power, feeder roads for highways etc.;
- (vii) The Project Company's obligations to operate the project to meet minimum accepted international standards,
- (viii) The Project Company's obligations to maintain the project and the arrangements for advance scheduling of planned maintenance;
- (ix) The arrangements for establishing an Operating Committee to deal with technical and operational issues;
- (x) The arrangement for dealing with disputes, arbitration and force majeure events;
- (xi) Bonus and penalty clauses.

287. Fuel Supply Agreement (FSA):

In the case of projects such as gas-fired and oil-fired power plants there may be usually a FSA between the Project Company and a public sector body such as the Ceylon Petroleum Corporation. This is a straightforward document, which sets forth the fuel supplier's obligations to supply and the Project Company's obligation to receive fuel over the life of the project or any other specified period.

288. The Implementation Agreement (IA):

The contents of the IA will be negotiated by the BII, the line Ministry or Agency involved and the Project Company who may be assisted by their legal advisors and will be submitted to the CANC for approval.

289. Cabinet Approval:

Before signature of the IA, the final proposal with the agreed draft agreements should be submitted to the Cabinet for approval. The line Ministry shall submit the Cabinet Memorandum and the CANC recommendations along with a report compiled by the BII, which will include:

- (i) the results of the appraisal of the PC summarized by BII, its consultants and the relevant State Agency involved;
- (ii) the final price and other major features negotiated;
- (iii) the major features of the negotiated IA.

290. Signing of Agreement:

After approval is granted by the Cabinet of Ministers and when all agreements and contracts have been finalized, the Ministry of Finance and Planning, Line Ministry and the Project Company should sign the IA. All agreements should be signed at the same time.