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# Procurement Guidelines for PPP Projects

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## Infrastructure Project Development Facility

### PROCUREMENT GUIDELINES FOR PPP PROJECTS

Only once a project has been approved based on a feasibility study developed in accordance with the Feasibility Guidelines, should it move into the tendering phase. This phase involves preparing the bidding documents, short listing potential bidders, asking them to present proposals, evaluating proposals and selecting a preferred bidder.

#### 1. Pre-qualification

It is best practice to limit the number of private parties eligible to participate further in the PPP procurement, by carrying out a pre-qualification exercise. This part of the procurement process is known as Pre-qualification.

##### 1.1 Objectives of Pre-qualification

Usually the private party or “bidder” is not a single commercial entity. Instead bidding consortia are formed that combine a variety of entities contributing expertise, resources (including funding), and socio economic components.

The objectives of Pre-qualification are to:

- i. Select a limited number of the bidding consortia or companies that are qualified, both technically and financially to prepare proposals and execute the project; that have sufficient experience and commitment to prepare proposals and execute the project;
- ii. Set out the rules of participation in the procurement process clearly and unequivocally;
- iii. Disseminate clear information on the project; iv. Give clear guidance on the expected participants in the bidding consortia; and
- v. Gather information from bidding consortia that is verifiable and can be evaluated.

This ensures that the eventual successful bidder will not only have technical and financial qualifications to undertake the project, but will also possess the capacity to enable them to execute the project in a timely manner.

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### **1.2 Number of pre-qualified bidders**

As a rough guideline, the pre-qualified bidders should be kept to a minimum of three and a maximum of four. Given the high cost to the private sector of submitting proposals, this will provide pre-qualified bidders a reasonable chance of success. In order to reduce the risk of pre-qualified bidders dropping out of the process, a bid bond should be required from bidders selected for pre-qualification. Formal appointment as pre-qualified bidders should be contingent on the provision of such bid bonds in the approved format. The size of such bonds should be set at levels appropriate to the project. A suitable size would be the cost to the Institution (Government entity undertaking the project) of restarting the Pre-qualification process. In cases where only two or even in a worst case only one bidder pre-qualifies, the project is placed at a great disadvantage. This is because competitive bidding is essential to deriving best value for the Government.

### **1.3 If there are too few pre-qualifying bidders**

If there are too few pre-qualifying bidders, the Institution should determine the likely reasons for the limited interest and revisit the terms of the Prequalification documentation and the feasibility study to determine what assumptions could be revised in order to increase market interest. Any changes in the feasibility study must obviously be evaluated for changes in affordability, value for money and risk transfer.

### **1.4 Parties eligible to participate in bidding consortia**

All forms of credible, privately owned companies which have not been found guilty in a court of law of fraud or corruption-related crimes should be eligible for participation.

### **1.5 Conflict of Interest**

In order to avoid any potential conflict of interest, no party to any consortium should be a member of, or in any way participate or be involved, whether directly or indirectly, in another consortium at any stage of the procurement process. This restriction can be lifted for:

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- i. Any specialist supplier if the restriction leads to a severely limited number of consortia. (Note that this obviously does not apply to general suppliers who are not consortium members);
- ii. Any non-core service provider (for instance, someone installing electric cables); and
- iii. Any commercial entity whose role is limited purely to lending money or advancing credit to the bidding consortium.

## **1.6 Advisors and Lenders**

In order to prevent the conflict or potential conflict of interests between lenders and sponsors of projects, no advisors or consultant to any consortium or member of a consortium should be allowed to fulfil the role of arranger, underwriter and/or lead bank to a bidding consortium. This is because they could be financing more than one bidder and also because their advice may be biased toward a particular mode of financing that they promote that may not necessarily provide value for money.

## **1.7 Other**

It is obvious that no member of the Institution's project team or any Government employee may participate in or have any interest (via contract or otherwise) in any bidding consortium.

## **2.The Pre-qualification Process**

### **2.1 Contents**

The Pre-qualification document must set out:

- i. The proposed procurement process;
- ii. An overview of the project (with more detailed technical and financial information provided in annexure where appropriate);
- iii. The manner in which the procurement process is intended to be managed; and
- iv. The timetable.

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### **2.2 Format**

The format of the Pre-qualification document must enable bidders to present appropriate information about themselves. It must also clearly set out the evaluation criteria and processes applicable to the Pre-qualification. Special requirements of the Institution must be clearly stated and particular Prequalification provisions must be developed for each PPP project. Outlined below is the suggested format:

#### **2.2.1 Terms and Conditions of Issuance of the Pre-qualification**

#### **2.2.2 Purpose of issuing the Pre-qualification**

#### **2.2.3 Outline of the contents of the Pre-qualification**

#### **2.2.4 Information about the project**

- Project description, background and overview.
- Institution's view of the PPP.
- Land issues, where relevant.
- Defined performance parameters.
- Defined legal requirements and statutory regulations related to the PPP project.
- Identified financing requirements/issues.
- Identified revenues.
- Summary of the envisaged risk transfer.

#### **2.2.5 Institution's requirements for members of the consortium**

#### **2.2.6 Procurement process**

- Stages and timelines.
- Clarification processes and briefing notes.
- Changes to the composition of the consortium.
- Participation in more than one consortium.
- Bid Bond.

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### **2.2.7 Instructions to respondents**

- Format of submissions including compulsory forms of response as an aid to evaluation.
- Late submissions.
- Status and composition of respondents.
- Further information.
- Disclosure of legal processes under way that affect the bidding consortium.
- Grounds for disqualification.
- Contact details.

### **2.2.8 Information required about bidders**

- Current workload of consortium members.
- Consortium capability and strength.
- Proposed consortium composition and structure with roles of the parties clearly spelt out.
- Skill and experience of relevant organizations and sub contractors in projects of a similar nature.
- Strength of covenant between consortium members, sub - contractors and lenders (if applicable).
- Financial and market standing.
- Ability to fulfill government's socio-economic and developmental objectives.
  - Equity, ownership and directorship.
- Ability to facilitate job creation, skills transfer and training and development.
- Historical and current approach to social responsibility.
- Capacity to deliver.
- Commitment /capacity to meet project timetable.
- Ability to raise debt and equity and to provide security.
- Project management capability.
- Risk management capability.
- Demonstration of understanding key project demands/complexities.
- General issues raised by bidders.
- Previous relationship(s) with government.
- Quality assurance systems.
- Approach to the PPP and integration of deliverables.

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### 2.2.9 The evaluation process

- Methodology.
- Evaluation criteria.

## 3. Pre-qualification Evaluation

The evaluation criteria must be based on the information requested from the bidder and must be included in the Pre-qualification to focus responses and eliminate unnecessary information from responses.

An example of evaluation criteria is set out below. Obviously these will vary from project to project. In the example each subcategory is allocated a response of “good”, “adequate” or “poor”. Responses judged to be “poor” are flagged so that a response can be rejected notwithstanding the overall score meeting any set threshold.

The process of evaluation will include the establishment of evaluation teams concentrating on financial, technical and legal and socio capacity of bidders. Example of evaluation criteria:

### 3.1 Bidders Capability and Strength

- Composition and Structure of Bidder
- Skill and experience of Relevant Organizations and Key Contractors
  - Construction
  - Operations
  - Advisors
  - Suppliers
- Strength of covenant by Relevant Organizations and Key Contractors to Bidder
- Financial and Market Standing
- Ability to raise debt and equity and to provide security

### 3.2 Deliverability



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- Commitment /Capacity to meet Project Timetable
- Project Management capability
- Current workload of consortium members
- Quality assurance systems
- Risk management capability

### **3.3 Project Awareness**

- Demonstration of understanding key Project demands/complexities

Upon selection of the pre-qualified bidders, communication with both unsuccessful and pre-qualified bidders should take place as soon as possible. The focus on the unsuccessful bidders is on communicating an appropriate level of detail on the decision and on complying with the legal requirements. Pre-qualified bidders should be called to a bidder's conference where information on the RFP procurement processes and timelines are communicated.

## **4.Preparing the Request for Proposals (RFP)**

The RFP document must be drafted by the Institution and be based on its feasibility study and must include a draft PPP Contract. The RFP needs to be an effective two-way communication tool between the Institution and bidders. The RFP must communicate to bidders the project data and Institution's requirements, and set out the basis on which bidders must communicate their proposals to the Institution. The essential components of the RFP, outlined below, are based on the necessary communication function of the RFP.

### ***General Information to bidders***

#### **4.1 Explanation of project**

The project will have been defined during the feasibility study. The RFP must communicate the background to the project, the Institution's desired outcomes for the project and its envisaged outcomes.

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### **4.2 External framework**

An explanation of the environment in which the project takes place is required. This includes the regulatory, physical, political and social environment.

### **4.3 Project framework and project specifics**

This is where the RFP sets out the Institution's view of what the PPP is and how it may be structured. (Note that the PPP is more than just the project in that it includes relationships between parties). Without being prescriptive, this should set out the Institution's view of the envisaged contracting parties, which will differ according to the type of PPP. All mechanisms and requirements for communication between Institution, third parties and bidders must be spelt out.

### **4.4 Project assets**

Core project assets must remain unencumbered for the term of the project. Where there are certain project assets that may be utilised by the private party for security, these must be specifically listed as such in the RFP.

### **4.5 Instructions to bidders**

This is a formal list of items which all bidders must comply with. Noncompliance should have implications in respect of acceptability of the bid. The Institution must instruct the bidders on:

- 4.5.1 Any limitations to or specifications about the make-up of the bid consortium.
- 4.5.2 Consortium status requirements: that it must be an incorporated entity when the proposal is submitted.
- 4.5.3 Consortium change requirements (A notice of any change is required and the Institution usually reserves the right to re- value the consortium's prequalification).
- 4.5.4 Requirements relating to submission of proposals.

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4.5.5 Formal communication requirements.

4.5.6 Who bears the costs of submissions.

4.5.7 Confidentiality issues.

4.5.8 Any bidder responsibilities for bid security in the form of bid bonds and bidder warranties. Bid bonds are typically required where the Institution stands to lose when a bidder either withdraws or does not comply with bid security requirements. The amount should be estimated as the costs of re-running a prequalification exercise for the project. Bidder warranties relate to misrepresentation of any kind: warranties typically cover consortium members' tax clearance and state of solvency; and guarantee that no consortium members are undergoing corruption or criminal-related investigations or have had any past convictions.

4.5.9 Grounds for disqualification: defining non-compliant behavior (these should allow for discretion on the part of the Institution).

4.5.10 Submission requirements (time, date, manner and place of submission).

4.5.11 Other project-specific requirements.

## 4.6 Requirements related to third parties

It is very likely that the PPP will involve third parties, be it a municipality or utility provider or some other party. Third party relationships need to be managed in two ways - communication during bidding (especially with multiple bidders), and the resultant third party agreement. Both elements must be clearly spelt out, preferably with draft third party agreements.

## 4.7 5 Data room

Each project should have a so-called "data room" where all the information that bidders need is made available to them. The concept here is to make available as much information as possible to facilitate the bid process, whilst not warranting the information on the grounds that all information should be verified by the bidders. This "no-warranty" is a crucial element of risk transfer and has implications for the PPP as a whole. RFP provisions about the data room must be carefully drafted to ensure no warranties, and to set out rules of access.

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## 4.8 Environmental and Social Safeguard Data and Processes

Each project will have its own environmental and social safeguard processes, all of which must have been developed in the feasibility study. The RFP should list all processes carried out to that point by the Institution and these must be provided as data for bidders to use, with appropriate indemnities, as well as requirements for work to be carried out by bidders or the private party to the PPP.

## 4.9 Due diligence

The importance of the bidder due diligence before submission cannot be overstated. Any unverified assumptions by the bidder at submission stage will delay financial close and may well jeopardize the whole procurement process. (These assumptions may then become negotiating tools, or levers for raising unitary charges or decreasing service levels.) Since very little, if any, Institution<sup>1</sup> information is warranted by the Institution<sup>1</sup>, the due diligence must be thorough and must include a host of technical, financial and legal due diligence. On project finance-type PPPs, lenders will duplicate the due diligence. The time required for this must be included in the procurement plan.

## 4.10 Quality Management System

In any PPP, all stakeholders have a vital interest in the quality of the service to be provided. Specifically, the Institution retains overall responsibility for the services delivered through the PPP, the private party relies on the quality of products and services provided by consortium members, personnel, subcontractors and suppliers in order to meet the specifications, lenders need assurance that the service will be sufficient to continuously earn the Unitary Charge payment (and by so doing to service debt) and the users of the service must be provided a quality that meets their requirements.

In the procurement process the Institution must clearly state the service level requirements. In addition it must require the bidders to propose a quality management system that includes compliance reporting during both the development phase and the operations phase of the PPP.

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<sup>1</sup> Where the Institution does warrant information, it must only do so where the Institution is the only source of information and that information cannot be independently verified by the private party bidders

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The Institution should also reserve the right to audit or check the private party's compliance with its own quality assurance and control systems. Mechanisms for such audits or checks should be established prior to the signing of the PPP Contract and included in the Contract Management Plan.

### **4.11 Important definitions**

The RFP must clearly list all the definitions used throughout the documents. This is to ensure clarity and to set clearly defined benchmarks, such as "Best Industry Practice". The definitions must obviously be the same as those used in the draft PPP Contract.

### **4.12 Essential minimum requirements from a bid**

The minimum requirements will establish what constitutes a compliant bid. These are very important in the evaluation of bids, and proposals which do not meet them should be rejected. However, they must not stifle innovation or be so onerous that otherwise solid bids are knocked out unnecessarily early. There should be minimum requirements for at least the following components:

#### **4.12.1 Financial**

- Demonstration of affordability.
- Risk assumption.
- Funding by private party and term sheets.
- Minimum insurance requirements.

#### **4.12.2 Legal**

- Any Institution requirements for the types of participants in the consortium.
- Bidder details.
- Term sheets or draft first tier sub-contracts.
- Mark up of PPP Contract.

#### **4.12.3 Technical**

- Essential components making up the life cycle of the service.

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- Additional operational minimum requirements.

#### **4.13 Service specifications**

These specifications are a further refinement of the services determined during the feasibility study stage. All the outputs required to provide the service must be specified.

These service specifications will form the basis of the Service Level Agreement (SLA). The SLA will take the form of Schedules to the PPP Contract and will specify the services to be performed by the private party (or in particular circumstances by the Institution).

At RFP stage there should be draft SLA's for all service elements. Some will be blank in that the bidders are required to fill the SLA in accordance with the service specifications and the remainder will be set out by the Institution in the RFP. The latter category will typically allow bidder variation unless that particular requirement is set as a Minimum Essential Requirement. Service specifications subject to bidder input are often contained in square brackets.

#### **4.14 Standard specifications**

Extensive use should be made of specifications applicable to all standard components of the project. These could be construction specifications and standard operational requirements. (ISO is a prime example). The RFP thus applies objective standards that are measurable and consistent with best practice.

Care must go into selecting appropriate standards: how applicable they are to the project, how they are used in the industry and their appropriateness must all be considered.

#### **4.15 Payment mechanism and penalty regime**

In most cases, a PPP project will require a payment and penalty mechanism to be specified as part of the bid. A payment mechanism might include at least the following:

- i. A single, indivisible unitary charge for full availability and performance of the services.

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- ii. An appropriate indexation (consumer price index unless demonstrated otherwise in the feasibility study as providing VFM).
- iii. A mechanism for penalizing partial or complete failure of the availability and performance of the service by means of penalty deductions.
- iv. No limit to deductions for non-availability.
- v. A mechanism for dealing with changes to service requirements.
- vi. Tariff regime (for projects with revenues coming from user fee).
- vii. Tariff adjustment regime.

### **4.16 Evaluation criteria**

The broad categories of evaluation must be given in the RFP. Detailed scoring methodologies and point allocations should not be given as this leads to proposals being tailored to the evaluation and not to the best value for the project. The evaluation process is described in greater detail later.

### **4.17 Commitments required from bidders**

This is the crux of the RFP and sets out what information is required from bidders. Bidders must be required to provide information on all aspects of their bid including legal, technical and financial aspects.

The RFP must clearly ask for the following information:

4.17.1 All technical aspects including all relevant service details, as determined during the Feasibility Study.

4.17.2 Legal requirements and draft PPP Contract

These are all the key commercial and performance requirements necessary to sign off that the consortium has the legal status and capacity to fulfill the requirements of the PPP Contract.

These include shareholding agreements and full disclosure of the consortium makeup, including lenders, sponsors, and parent companies. The RFP must include a draft PPP Contract that allows for very structured bidder input into the PPP Contract.

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- 4.17.3 As part of this information bidders should be required to prepare the components of the Service Level Agreement (SLA) that will be part of the PPP Contract. Where the Institution has not specified these as essential minimum requirements they must respond to the service and standard specifications in the RFP.
- 4.17.4 In order to simplify the process of preparation, the SLAs should be in prescribed schedules to the draft PPP Contract as well as in the main body of the bidder's proposals.
- 4.17.5 The form and substance of the SLA's will obviously vary from project to project but great care must be taken by the Institution and the Transaction Advisor in their development from service specifications to their final form in the PPP Contract.
- 4.17.6 Bidder amendments and additions to the payment mechanism must also be required in a structured format in the RFP.
- 4.17.7 The response from bidders will depend on the nature of their approach to funding the project. Corporate finance will be provided from the balance sheet of a private company while project finance involves limited recourse debt funding to a Special Purpose Vehicle. Regardless of the differences the Institution needs enough information to be able to analyse the funding structure and to determine whether or not it can be provided and sustained through the project.
- 4.17.8 The project participants, including all forms of funding and the terms and conditions of funding are crucial. Often important information is contained in the bidder's financial model. It is this important to specify the format of such models.

### 4.18 Financial models (from bidders) must include:

- 4.18.1 The bidding consortium structure or corporate project structure in detail.
- 4.18.2 The funding structure of the project, including types and proposed levels of debt and equity.
- 4.18.3 The likely equity input of each member of the consortium, showing the percentage of total equity of sub-debt to be provided by each member. Equity and shareholders' loan details must include the source of funds, amount of funds that



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each shareholder is prepared to commit, and the timing of their contribution. Alternatively, in a corporate finance structure, a full set of financial statements for the companies providing funding must be provided.

4.18.4 The cost of debt in a project finance structure or a ring-fenced corporate finance structure, clearly detailing the level of fees and margin; and full details on the basis for and factors comprising these fees and what the margins are based on and what went into them.

4.18.5 The model must:

- Have a Base Date<sup>2</sup> as specified in the RFP
- Be presented in electronic (computer disk) and hard copy formats
- Be compatible with a specified software programme
- Disclose clearly all macro, micro and general assumptions
- Usually be presented on a monthly basis for the development period and thereafter on a semi-annual basis. Annual summaries are to be provided for each year through to the period of the PPP Contract...
- Present all required data in nominal, real and net present value ("NPV") terms (using the discount rate required in the RFP)

4.18.6 The model must provide:

- a thorough and detailed explanation of the model and how to operate the model
- basis and costs of proposed hedging arrangements, if any
- inflation assumptions (since inflation risk is shared it may be appropriate to set inflation rates in the RFP as common to all bidders so as to make comparison easier) ○ capitalization of interest
- a comprehensive and detailed explanation of all tax treatments assumed in the model
- all the key output ratios and return categories;
- detailed source and application of funds table for the project

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<sup>2</sup> As the value of money changes, the RFP must set a specific point in time which is common to all bids. This is the base date.

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### Infrastructure Project Development Facility

- capital expenditure according to the component category breakdown set out in the RFP
- project start-up costs
- Funding Plan and funding assumptions schedule identifying all sources, amounts and application of finance, conditions, terms, base costs, margins and fees
- Debt schedule for each credit facility including drawdown schedule, interest paid, fees and repayment schedules
- Total equity (including standby and subordinated facilities);
- Balances of all reserve accounts and insurance structures;
- Total operating cost and maintenance assumptions including replacement schedules;
- Forecast Balance Sheets, Profit and Loss, and Cash flow statements
- Identification of any foreign denominated goods or services
- Details of all taxation assumptions and treatment and the ability to enable and/or disable any or all such assumptions or treatments in the model
- Forecast Balance Sheets, Profit and Loss and Cash flow statements
- NPV (see Section II for definition) of real revenues using discount rate required in RFP
- Projected internal rate of return (IRR) before financing and tax in both real and nominal terms (see Section II for definition)
- real and nominal return on equity
- Sensitivity analysis of Capex
- Sensitivity analysis Opex
- Sensitivity analysis Interest rates
- Sensitivity analysis: Grace periods of principal repayment
- Sensitivity analysis: Inflation
- Assumptions on penalty deductions

4.18.7 For project finance PPPs, the model should set out:

- debt to equity ratio (see Section II for definition)
- annual debt service cover ratios (see Section II for definition)

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### Infrastructure Project Development Facility

- project life cover ratio (see Section II for definition)
- any other ratios required by fenders

## 4.19 Bid formalities

All bid formalities must be clearly spelt out in the RFP. These include:

4.19.1 Time, place and manner of bid submission. (It must be noted that proposals on large projects may take up substantial space and separate secure facilities may be required for submitting bids.

4.19.2 Manner of opening of proposals.

4.19.3 Bid Security. (Bank guarantees in an approved form that are callable upon bidder withdrawal from the process. As a principle, the bid bond should be of an amount that is sufficient to compensate the Institution for re-tendering the Prequalification but this should be also linked to what the market could support.). Requests for proposals shall set forth the nature, form, amount and other main terms of the bid security to be submitted during the selection phase. Bid security, usually, may not be called by Institution except in cases where the bidder:

- i. Withdraws or modifies of a proposal after the deadline for submission of proposals;
- ii. Fails to enter into final negotiations with the Institution;
- iii. Fails to submit its best and final offer (discussed later) within the time limit prescribed by the Institution;
- iv. Fails to sign the PPP Contract, if required by the Institution to do so, after the proposal has been accepted; or
- v. Fails to provide required security for the fulfillment of the PPP Contract after the proposal has been accepted or to comply with any other condition prior to signing the PPP Contract specified in the request for proposals.

4.19.4 Formal requirements for filling out bid forms.

4.19.5 Formal processes for communication with bidders.

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### Infrastructure Project Development Facility

4.19.6 The Institution's reservation of rights to terminate the process. This includes the right to terminate negotiation with the preferred bidder if it is unlikely that an agreement will be concluded. In such a case, negotiations with other bidders may begin. In addition the Institution should state that it is not bound to enter into a contract with any bidder.

4.19.7 Discretion to be exercised by the bid evaluation panel in the event of noncompliance in any of the bids.

## 4.20 Evaluation criteria

The evaluation criteria must be set out in the proposal in sufficient detail to focus bidders' attention on the "value for money" areas of the RFP. Minimum evaluation categories are set out with ideas for further sub categories.

### 4.20.1 Technical

#### The Development Period

- Extent, quality, safety, cost effectiveness functionality and innovation of designs.
- Level of design and robustness of cost estimates.
- Impact on social and biophysical environment.
- Deliverability and time schedules.
- Integration of design, development and operations with a clear commissioning programme
- The quality management systems proposed by the bidders

#### The Operating Period

- Extent to which proposed performance targets and measurement systems exceed minimum specifications.
- Operating methodology
- Quality and type of proposed services to end users

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## Infrastructure Project Development Facility

- Extent to which asset management and maintenance philosophy supports the Project objectives and maximizes value for money.
- Quality of proposed management structure, staffing, systems and practices.
- Quality and extent of proposals with regard to promotion and public relations.
- Quality of safety plans
- Integration of PPP with existing services.
- Integration of PPP information into existing Information Systems
- The quality management system proposed by the bidders
- Compliance with Institution's monitoring and reporting requirements

### 4.20.2 Legal

- Bidder 'corporate' structure.
- Robustness of the bidder structure. Whether the bidder's responses or representations in the proposal are in fact reflected in its structure and shareholders' agreement. The assessment would include the level of commitment and undertakings of each consortium member to the consortium, and equity participation of each member.
- Mark up of the draft PPP Contract and its risk impact.

### 4.20.3 Financial

- Total project cost in relation to the affordability constraints of the PPP.
- Realism of operating and capital expenditure including an assessment that the quality management systems have been costed in the financial model.
- Robustness of the financial proposals. Including their sensitivity to changes in operating and maintenance costs, currency fluctuations, inflation and interest rates, and changes in the cash flow profiles.
- Level and nature of equity in the funding structure.
- Robustness of the funding structure.
- Level of commitment demonstrated by the debt and equity providers and the terms and conditions linked to the provision of this funding.
- Level of risk assumed and deviation from the terms of the tender documentation.

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### **Infrastructure Project Development Facility**

- Cost, level and nature of insurance cover proposed
- Risk allocation. Testing and evaluating the risk profile proposed by the bidder in its proposal with regard to:
  - Nature and extent of the Risk;
  - Likelihood of risk; and
  - Passing down of the risk and obligations assumed by the private party in the PPP Contract to the other Key Contractors.
- Consistency between the Financing arrangement and the draft PPP Contract, as well as the extent of acceptance by the Financiers of the draft PPP Contract terms.

## **5. Managing the bid process**

Both the bidders and the Institution require experienced and committed bid managers. In the case of the Institution, this should be the Project Team Leader. These parties should be formally identified and contact details provided. On larger projects these will be full time positions.

### ***Key factors***

#### **5.1 Code of Conduct**

All pre-qualified bidders, Institution project team members and evaluation committee members should sign a code of conduct that requires compliance with a range of ethical requirements in the best interests of the project.

#### **5.2 Structured oversight**

All documents prepared, all communication with bidders and all evaluations carried out should be reviewed by a person other than the one who prepared or carried out the task. In addition, a project review committee, appointed by the Institution, should sign off on all processes and documentation.

#### **5.3 Internal and external audit**

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### **Infrastructure Project Development Facility**

The bid process should provide for an internal and external audit of the process. This is particularly relevant for when proposals are being evaluated.

## **5.4 Clarification meetings**

As part of the bid process, during the preparation of proposals, it is advisable to hold bidder clarification meetings. These will allow bidders to get clarity on issues in the RFP and for the Institution to gauge bidder participation and commitment to the bids.

These meetings should be scheduled well in advance, should allow for separate participation by all bidders and must have a communication process for confirming points made during the meetings (see bidder's notes below).

## **5.5 Bidders' notes**

The formal correspondence between bidders and the Institution must always be in writing. Questions from bidders should indicate how confidential the response needs to be. Confidential answers only go to the relevant consortium; others are issued) to all bidders together with the question.

Bidders' notes are also used to communicate decisions or confirmed points from clarification meetings. They are also used to communicate amendments to the RFP to bidders.

The Institution and bidders must keep a register of bidders' notes to ensure a complete record of information and formal correspondence. Consecutive numbering should be used. The bidder must submit the register with its proposal.

## **5.6 Changes to consortia during bidding**

In many instances consortia formed in response to a Pre-qualification change during the RFP bid stage. This is more acceptable to the Institution than a complete withdrawal of a consortium, provided that the consortium maintains its strength at least to the same level as before the change.

In no circumstances should a consortium change be allowed without written consent from the Institution. The process should be set out in the RFP as follows:

- Consortium advises Institution of proposed change, in writing, with full details of the reason for the change, the parties involved and the impact on the consortium.

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### **Infrastructure Project Development Facility**

- The Institution applies the same evaluation criteria used in the Prequalification evaluation to re-assess the consortium, using where possible the same evaluation processes. The required standard is that the changed consortium should score at least the same number of points scored during pre-qualification.
- If satisfactory, the Institution advises the Consortium of the acceptance in writing.
- If not satisfactory the Institution advises the Consortium of the no acceptance in writing and is given certain amount of time to propose an alternative. Failing this, the Consortium is disqualified.

## **5.7 Bidder due diligence**

Bidder due diligence requires time, and access to the project site and existing facilities as well as the products of the Institution's own due diligence (given without any warranty). Communication protocols for the due diligence must be defined in the RFP. These must specify how and when communication and access occurs. Where access is restricted this must clearly be stated.

## **6. Evaluation processes**

The Institution should ensure that the evaluation criteria and processes are established before Bidders submit proposal and should also ensure that the evaluation teams and committees are appointed in writing and that all declarations and codes of conduct are signed.

### **Three levels of evaluation are suggested**

- Technical evaluation teams
- Evaluation Coordination Committee (ECC)
- Project Evaluation Committee (PEC)

Each level has its own built-in checks and balances.

### **6.1 Technical evaluation teams**



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## Infrastructure Project Development Facility

The first evaluation level is a technical evaluation team structure. Here sub teams analyse at least the four streams of evaluation criteria set out in the section on criteria above. There is no prescribed sequence of evaluation as almost all elements of proposals are interdependent. Communication between evaluation teams and between evaluation levels is of great importance.

Where bids are not complete this is recorded and bidders are not invited to supplement their bids (this is different from requesting clarifications, see below).

## 6.2 Detailed analysis by separate sub-teams

These teams have to perform technical, legal, financial and socio-economic tasks.

### 6.2.1 Technical

- Is the project deliverable?
- Will the required outputs be delivered?
- A solution due-diligence must be carried out by this team on whether or not the solution proposed can become a reality.
- Evaluation against System Service Specification The detailed analysis involves assessing each element of the System service specification from design, development and operational perspectives. More than merely evaluating the bids, the objective here is:
  - To confirm that the system service specification is, in fact, given bidder responses, an accurate reflection of the Institution's needs,
  - To capture the particular perspective of the proposal,
  - to capture the deficiencies / added benefits
  - to evaluate the response on a simple scale of inadequate/ adequate/ good to carry through to scoring
  - To compile a list of questions that need answering before the bid is awarded
  - To assess a value for money cost/ premium

Checking against requirements of standard specifications This check is required to ensure that bidders commit to meeting applicable standard specifications.

### Scoring

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This Guideline does not suggest or prescribe a scoring methodology other than that the ratings established for all the criteria should be applied to the functional weightings established. This means that each technical evaluation will generate:

- A weighted score (important factors are given more weight/ points)
- A report on the number of “inadequate” ratings. This means that a weighted score that has some overall respectability does not disguise a number of inadequacies
- Notes requiring resolution

### 6.2.2 Legal

The legal evaluation is twofold. The first task is a legal due diligence on the bidding consortium, its structure, legal status, the status of individual companies (including any record of insolvency or crime).

The primary task that follows is the evaluation of the marked up draft PPP Contract. This takes the form of:

- Capturing all marked up amendments to the PPP Contract
- Assessing the mark up against the risk matrix prepared at feasibility study stage
- Capturing the value for money implications where these were determined at feasibility study stage and commenting on them
- Working with the financial evaluation team in assessing VFM on issues not identified in the feasibility study

In neither task is the output necessarily a score. In fact it can be highly misleading to calculate a score for legal compliance or PPP Contract mark-up. It is suggested that the legal evaluation instead be focused on presenting notes

requiring resolution and updating the risk matrix for each bidder, in conjunction with the financial evaluation team.

### 6.2.3 Financial

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### **Infrastructure Project Development Facility**

The financial evaluation of a bid is complex. It requires a complete understanding of the project costs over its whole life cycle, the structure of the bidding consortium and its funding, and most importantly the key value for money deficiencies/additions in each bid.

The financial team thus requires inputs from the technical and legal teams in assessing the following:

- Affordability
- Certainty of project costs (development and operational)
- Certainty, nature and costs of funding
- Project participants and overall structure
- an assessment of project value for money
- Identification of all items omitted by bidders from the financial models
- An assessment of the project bank ability. This is a function of the composition of the consortium, its structure, risk distribution within the consortium, and funding plan.
- A score for financial assessment which is a composite score for all the above assessments
- A series of notes showing matters that need resolution

## **6.3 Evaluation Coordination Committee**

The work of the technical evaluation teams will be disjointed and of little value without a very hands-on role by the Evaluation Coordination Committee.

**The role of this committee is:**

- To coordinate the technical teams during their analysis, through regular meetings with team leaders
- To approve all correspondence and direct communication with bidders on clarification matters
- To receive and pass through to the Project Evaluation committee (PEC) the technical team reports on completeness and compliance. This will include a recommendation on which bidders to take to further analysis as compliant bids.

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### **Infrastructure Project Development Facility**

- To receive the analysis reports from the teams, to interrogate these until satisfied that each report fully supports the overall evaluation
- To prepare its own recommendation on further processes such as Best And Final Offer (discussed later)
- To evaluate the overall integrated solution for the project taking into account all team reports, to score this and provide notes to be resolved before entering into a PPP Contract
- To compile the total project evaluation notes and reports into a single recommendation on process and outcome (preferred and reserve bidders) to pass through to the PEC. It is recommended that final scoring not be done by this committee.

## **6.4 Project Evaluation Committee**

This is the Head of the Institution who should be supported by committee members appointed by him.

The role of the committee is:

- To accept bids as complete and compliant
- To receive and evaluate the report and recommendations from the Coordination committee
- To score the bids
- To decide on a BAFO process
- To select a preferred and reserve bidders

## **6.5 Clarification**

The PPP procurement process allows for clarification during evaluation so that the evaluation reflects a full understanding of each proposal. The requirement of fairness and transparency means that any form of bid amendment or negotiation with individual bidders during the evaluation process is prohibited. The line between the two is easily crossed if the term clarification is not defined and the process for clarification not clearly set out.

Clarification must involve written questions and answers; the question must refer to a specific part of the proposal and must not solicit any amendment to the proposal.

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The answer or response must be vetted before being accepted as a clarification. If the response sets out an amendment to the proposal it must be set aside and its contents ignored. In such a case or if the response does not resolve the matter on which clarity was sought, then the interpretation that results in the lowest score or the raising of a note for that element of the evaluation should be used.

## 6.6 Preferred and reserve bidders

The evaluation should generally result in the appointment of one preferred bidder and one or more reserve bidders. Both should be required to accept the appointment and lodge bidder security bonds as a commitment to the process. The bonds are released when the PPP Contract has been successfully closed. The role of the reserve bidder is crucial: the Institution may require the preferred bidder to be replaced if the bidder withdraws or if negotiations compromise value for money.

## 6.7 Legal Requirements and the Terms of the PPP Contract

6.7.1 Legal requirements and draft PPP Contract must include the following:

- shareholding agreements
- corporate governance requirements,
- full disclosure of the consortium make-up, including lenders, sponsors, parent companies,

6.7.2 The RFP must include a draft PPP Contract that allows for very structured bidder input into the PPP Contract covering the following areas:

- *Principles of risk allocation*; between the public and private sectors
- *Allocation of responsibilities*; between the public and private sectors
- *Remuneration based on no-service no compensation basis/ tariff/*
- *pricing/ subsidies/ profit sharing and adjustments*. This clause is especially important in cases where there is no independent economic regulator in place.
- *Specific performance targets* in terms of outputs and outcomes and linked to compensation and penalties;
- *Penalties and bonuses* to incentivize performance;

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### Infrastructure Project Development Facility

- *Securities/ performance bonds/ step-in rights/ insurance* that can help mitigate risk;
- *Duration (termination and early termination), compensation on*
- *termination* by default from either party;
- *Force majeure* events outside the control of both the parties and which prevent one or both parties from performing their contractual obligations;
- *Dispute settlement amendments and variations* post signing of the
- contract; *and*
- *Relief* events that affect private sector performance, but are outside their control for which they get extra time, *and compensation events* are due to public sector non performance and result in monetary compensation.

## 7. Negotiation, Contract Signing and Financial Close

Negotiation is an integral part of the procurement phase. It is a process, not an event. Successful negotiation culminates in contract award, concluding the procurement phase, and starting implementation. The Institution and the Private Party have different perspectives of the negotiation phase; the Private Party wants to reduce risk and increase its margins, while the Institution wants to reduce its costs and maximise the value of the services provided through the PPP. There will be certain provisions that will always be nonnegotiable. The output of the negotiation must be a PPP contract with all ancillary agreements containing the Service Level Agreements and Payment Mechanism

### 7.1 Assigning a Negotiating Team

The Institution must assign a qualified and experienced negotiating team. It must be led by a senior ministry official who is able to communicate the ministry's position on key issues and is empowered to take decisions on most issues. The team leader would be assisted by the project team and the TA and anyone else that could add value to the process. Negotiation can easily turn into a full time assignment, thus the Institution should be prepared to make the assigned staff available.

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### **Infrastructure Project Development Facility**

## **7.2 Final Draft Negotiated Contract**

This section will be finalized once the approval regime is determined in the draft PPP law. It would then deal with how the Agreement, its contingent fiscal obligations and any other aspects would be approved.

## **7.3 Financial closing**

Once the contract is approved by the competent authority, it is signed between the Institution and the Private Party. Based on a bankable signed contract, the financiers sign loan and other financing agreements with the Private Party and the project reaches financial closure.

The total time required for financial closure from start of procurement is between 12 and 24 months depending on size and complexity of the PPP