

2020

REQUEST FOR PROPOSAL

**Hiring TRANSACTION ADVISOR FOR
Commercial Utilization of Real-Estate
Property on Public Private Partnership Basis**

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Letter of Invitation

Dear Sir/Madam,

1. INTRODUCTION

Ministry of Information and Broadcasting (MOI&B), pursuant to the decision of Government of Pakistan (GoP) is mandated to commercially develop its unutilized properties through private sector investment across the country.

Traditionally, such public infrastructure development is carried out through PSDP (Public Sector Development Program) funding however, after PSDP Plus initiative, government entities are strongly encouraged to utilize their real-estate properties on commercial terms through private sector participation.

Among others, the prime objectives of PSDP plus initiative are; revitalization of the economy, mobilization of private capital for the development of public infrastructure and creation of fiscal space for the public exchequer. Subsequently, MOI&B approached Public Private Partnership Authority (P3A) to seek its assistance and facilitation for commercial development of its real estate properties in Islamabad and Karachi on Public Private Partnership (P3) basis.

Public Private Partnership Authority (P3A), is an autonomous statutory corporate body established under the provisions of Public Private Partnership Authority Act, 2017, having mandate to advise and facilitate federal Implementing Agencies (IA's) in developing, structuring and procuring their infrastructure project on P3 basis, and the Board of P3A is empowered to approve such 'Qualified' project which provide value for money (VFM) solution to the government while retaining bankable financial structure for the private sector.

1.1. MINISTRY OF INFORMATION & BROADCASTING (MOI&B)

Ministry of Information & Broadcasting (MOI&B) is entrusted with the function of dealing with the government's information issues and matters and responsibility to assist the government in building and maintaining relations with media through its allied organizations and associated departments.

MOI&B also devises, executes and reviews the media policies in accordance with the changing scenarios and facilitates media for informed and tolerant society development.

In addition, Mol&B aids other government departments to obtain and utilize the projections and publicity machinery for highlighting their endeavors for public service through its various wings and departments including Internal Publicity wing, External Publicity Wing, Cyber Wing, press Register, Audit Bureau of Circulation, Press Information Department, Directorate of Electronic Media & Publication, Information Service Academy, Pakistan Television Corporation, Pakistan Broadcasting Corporation, Associated Press of Pakistan, Pakistan Electronic Media Regularity Authority, Shalimar Recording Company, Press Council of Pakistan and Institute of Regional Studies.

Currently Mol&B is housed at 4th Floor, Cabinet Block, whereas various aforesaid wings and departments of Mol&B are housed in rented buildings for which Mol&B is paying huge rental amounts annually.

1.2. Major Tasks

- a. Carryout Commercial Feasibility Study (CFS) for the Project and devise transaction structure that should create win-win solution for both the public and the private sectors, through offering VFM solution to the government and bankable capital/financial structure to the private sector;
- b. Assist MOI&Bin carrying out efficient, transparent and competitive bidding process, through preparation of required bidding documentation package, to solicit technically qualified and financially sound private party;
- c. Assist MOI&B in selection of the Private Party investor for implementation of the Project;
- d. Assist MOI&Bin effectively negotiating the Concession Agreement with the successful bidder, and
- e. Assist MOI&B to facilitate private party in achieving timely financial close for the Project.

The successful TA (with responsive proposal and securing the highest marks as per this Request for Proposal (the, "RFP") shall complete the Assignment in accordance with the terms of the RFP and Transaction Advisory Agreement (TAA) to be entered into between the TA and the MOI&B. Reference to 'the Transaction Advisor or TA' includes the entire Transaction Advisor (TA)'steam, or relevant members, under management of a single lead TA who shall enter into TAA with MOI&B.

Please note that:

- a. The costs of preparing the proposals and negotiating the TAA, including any site visits, are to borne by the TA and shall not be reimbursable, and

B. MOI&B reserves the right to reject any or all the proposals submitted.

2. TECHNICAL & FINANCIAL PROPOSALS

The Technical and Financial Proposals shall be prepared and submitted in accordance with the instructions given in the RFP. The bidders are encouraged to clearly mention as to how the proposals submitted by bidders are 'responsive' and stand against technical and financial criteria given in the RFP.

2.1. TECHNICAL PROPOSAL

The Technical Proposal shall contain *inter-alia*:

- a. A complete description and explanation of the proposed methodology to be adopted by the bidder to perform the Assignment;
- b. Timelines, staffing, names and qualifications of the personnel to be allocated/ attached to each phase of the Assignment; and
- c. Any other resources that TA will make available to perform and complete the Assignment in accordance with the terms of the RFP and the TAA.

The Technical Proposal shall be prepared using the format attached in Annex-3 and shall be submitted in the manner prescribed in Annex-2. The TA must submit comprehensive information and data in support of the criteria defined in Annex-2.

2.2. FINANCIAL PROPOSAL

The Financial Proposal shall stipulate the total fee for all the phases of the Assignment (including of all the applicable taxes) and shall be prepared using the format attached as Annex-3, and shall be submitted as per procedure described in Annex-2. MOI&B will not be responsible for any tax or insurance liability arising out of the performance of the services for the Assignment, and all fee and costs are to be expressed in Pakistan Rupees only.

The Technical and Financial Proposals shall be evaluated by MOI&B in terms of the criteria described in Annex-2. Any Technical or Financial proposal which is not in strict conformity with the format attached in Annex-3 will be disqualified.

Interested parties are requested to submit their proposals within **21 days** from the date of publication of the advertisement.

3.NEGOTIATIONS

The TAA negotiations shall be carried out in accordance with TORs in Annex-1 and draft TAA attached as Annex-4.

4.CLARIFICATIONS

In addition to pre-bid meeting, should any party require any clarification on any term(s) contained in this RFP or the Annexes attached hereto, please contact Mr. Muhammad Usman, Assistant Chief, MOI&B (Email: Usmanibnh@gmail.com, Contact No.051-9208682.For the purposes of fairness, any clarifications issued would be posted on P3A's website (www.pppa.gov.pk) and MOI&B official website simultaneously.

5.OTHER TERMS

This RFP and the annexes attached hereto are subject to the overriding conditions set out in Annex-5.

6.PPP FRAMEWORK

The P3A Act, 2017 and P3A (Amendment) Ordinance, 2020 available on P3A's website (www.pppa.gov.pk) highlight the salient features of the P3 framework under which the Project is proposed to be implemented.

Yours sincerely,

[Muhammad Usman]
Assistant Chief
Ph: 051-9208682

Attachments:

- Annex-1: Terms of Reference
- Annex-2: Procedures for Submission & Evaluation of Proposals
- Annex-3: Format for Submission of Proposals

Annex-4: Draft Transaction Advisory Agreement

Annex-5: General Conditions

ANNEX-1: TERMS OF REFERENCE

TERMS OF REFERENCE (TORS)

FOR HIRING

TRANSACTION ADVISOR

FOR

**COMMERCIAL UTILIZATION OF REAL-ESTATE
PROPERTY**

ON PUBLIC PRIVATE PARTNERSHIP BASIS

1. OBJECTIVE OF THE ASSIGNMENTS

Considering increasing rental amounts and demand for accommodation, Mol&B intends to build multi-story buildings on its below plots for commercial use after ensuring space availability requirements for office.

- i. Plot number 58, F6/G6, Islamabad measuring 2844.84 square Yards
 - ii. Street 44, Block 15, Scheme 36 Gulistan-e-Jauhar, Karachi measuring 2844.84 square yards
1. Construction of its own building will result into annual savings of approximately PKR 245 million (FY 2019-20) which Mol&B pays out as rental expense
 2. Construction of new buildings will generate revenue as well as remove space constraints and will allow necessary expansion of services and facilities various departments to cater for the exponential growth of print and electronic media.

2. TENTATIVE STRUCTURE OF THE PROJECT

Though the TA, based upon the results of the separate full scope Commercial Feasibility Studies (CFS) for both the aforesaid properties “the Project”, will finalize the transaction structure of the Project, MOI&B expects the tentative Project structure to be:

- a. Private party will Design, Build and Finance the construction of the Project from its own resources through prescribed debt and equity sources, on the land to be provided by MOI&B;
- b. Operate the Project for a defined concession period to cover its life-cycle costs and earn reasonable rate of return on its investment; and Transfer the Project back to MOI&B, at no cost, at the end of concession period;
- c. The Project are expected to be implemented through Project Finance structure whereby the land will be provided only as a concession to the private party and cannot be used as collateral to raise project finances. Ownership of the land shall remain in the MOI&B’s name at all the times; and
- d. The Project, when implemented through Build-Operate-Transfer (BOT) basis or any model prescribed by TA through CFS, will involve significant risk transfer to the private party associated with the Project and related services.

3. SCOPE OF THE ASSIGNMENT

The TA shall be required to carry-out the following tasks in the four phases of the Assignment:

S. No.	Phase	Tentative time (weeks)	Activity	Deliverables
Phase1	Feasibility Study	12 extendable to 16 with mutual consent	<p>Carryout CFS of the Project to implement and execute the Project through private sector participation/public private partnership basis participation, while addressing all the relevant technical, legal and financial aspects of the Project.</p> <p>Structure the transaction, to create win-win solution for both the public and private sectors while ensuring value for money proposition is offered to the public sector and bankable financial structure is retained for the private sector</p>	<ol style="list-style-type: none"> 1. Inception Report 2. Option Analysis 3. CFS 4. Transaction Structure 5. Project Qualification Proposal*
Phase2	Procurement process	16	<p>Preparation of bidding documents including Request for Qualification (RFQ), if so required; Request for Proposal (RFP); Project Information Memorandum (PIM)/Market Sounding Document, draft Concession Agreement</p> <p>Assist MOI&B in carrying-out competitive, efficient and transparent bidding process for the Project to solicit technically qualified and financially sound private party</p>	<ol style="list-style-type: none"> 1. Marketing plan for the Project to generate adequate investor interest 2. Project Information Memorandum/ Marketing Material 3. Investor Presentation 4. Request for Qualification, if required 5. Request for Proposal 6. Draft Concession Agreement 7. Selection of Private Party & Bid Report 8. Project Proposal*

S. No.	Phase	Tentative time (weeks)	Activity	Deliverables
Phase3	Negotiations on the Concession Agreement	6	Assist MOI&B in effectively negotiating the Concession Agreement with the successful bidder; and other subordinate/ancillary agreements to the Concession Agreement	1. Final Concession Agreement 2. Other subsidiary agreements 3. Project Proposals*
Total		34	Signing of the Concession Agreement	Deliverables
Phase4	Assistance in Finance Close	24	Assist MOI&B to facilitate private party in achieving timely financial close for the Project. The activities under this phase may include negotiating Concession Direct Agreement with the Concessionaire and the Lenders, reviewing entire security documentation package and assisting MOI&B in fulfilling conditions precedent related to achievement of timely financial close for the Project.	1. Review Report on design provided by the Concessionaire 2. Confirmation that the Concessionaire has met all the conditions precedent for declaring its financial close

* In the light of P3A (Amendment) Ordinance, 2020

To complete the aforesaid tasks, the TA will need to perform the following set of activities, including:

3.1. TECHNICAL

- a. Technical definition of the Project;
- b. Establish social and commercial demand of the Project through exploring various commercial utilization options for the land/property (which is subject of the Project) including

Project: Build multi-story buildings on its plots in Islamabad and Karachi measuring 2844.84 square yards and 2199.98 square yards respectively for office accommodation purposes.

- c. Recommendation of the most optimum commercial and financial structure of the Project;
- d. Preliminary design for each social and commercial infrastructure identified above and finalizing adequate scope of work for the Project;
- e. Determine demand for each infrastructure identified above including determining the type and size of the facility required to be constructed/developed;
- f. Estimate life-cycle costs for each infrastructure proposed (keeping in view the fact that private party will construct/develop and operate the Project for a defined time-period) including estimating its capital costs, operating costs (including operational, routine maintenance and periodic maintenance costs) etc.;
- g. Compile all the technical parameters of the Project and address them appropriately in the CFS, bidding documents (such as RFQ, RFP, draft Concession Agreement);
- h. Devise and provide output specifications and service level agreements for the private party to comply to make the Project a successful P3 model;
- i. Assist MOI&B in carrying out Technical Bid and Financial Bid evaluation for selection of the private party;
- j. Assist MOI&B in addressing all the technical aspects while issuing Letter of Intent & Letter of Support for the Project;
- k. Formulate and propose complete set of activities required to adequately operate and manage the Project throughout the life of concession period in CFS;
- l. Take into account/address all the technical aspects in the Concession Agreement (including the schedules attached thereto);
- m. Carryout Environmental Impact Assessment (EIA) and Social Impact Assessment for the Project in accordance with applicable laws.
- n. Devise mechanisms to ensure the environmental and social risks associated with the Project are mitigated and material adverse environmental or social consequences of the Project are addressed adequately; and
- o. Assist MOI&B in facilitating private party in securing EPA's approval for the Project.

3.2. LEGAL

Address all the legal aspects attached to the Project in all of the aforesaid phases, through performing the following set of activities:

- a. Ascertain whether the land available for the Project is free from all encumbrances and whether it can be given as a concession to the private party to construct the Project thereon;
- b. Ascertain legal and regulatory requirements attached to provisioning of land to the private sector as a concession;
- c. Prepare complete bidding documentation package including PIM; Pre-qualification document/Request for Qualification (RFQ), if so required; RFP, draft Concession Agreement and any other related agreements required to be executed within the ambit of the Concession Agreement;
- d. Ascertain any approvals, consents and authorizations required by MOI&B/private party from any government agencies, under their respective applicable laws, to successfully implement the Project;
- e. Assist MOI&B in carrying-out transparent, efficient and competitive bidding process for the Project in accordance with the applicable laws and rules;
- f. Negotiate Concession Agreement and other subsidiary/additional agreements to the Concession Agreement, if any, with the successful bidder;
- g. Formulate a Monitoring and Reporting mechanism to ensure compliance of private party actions as prescribed in the Concession Agreement and devising adequate payment and penalty mechanism. This mechanism should be simple, effective and practical to expedite the achievement of financial close for the Project;
- h. Identification, allocation and mitigation of the Project risks;
- i. Negotiate Concession Direct Agreement and other allied agreements with the successful bidder and its lenders;
- j. Assist MOI&B in reviewing relevant documentation package for the financial close; and
- k. Assist MOI&B in fulfilling the conditions precedent related to achievement of financial close.

3.3. FINANCIAL

1. Establish commercial demand for each infrastructure proposed to be established/developed under the Project;
2. Identify and quantify potential direct and indirect revenue sources and revenue drivers pertaining to each revenue source, and make adequate revenue forecasts over the life of the Project;

3. Carryout option analysis, benefit to cost analysis and value for money analysis for implementing the Project through various private sector participation modalities, including but not limited to, the following:
 - i. Build-Operate-Transfer (BOT) - with and without Viability Gap Funding (VGF)
 - ii. BOT - annuity based
 - iii. Build-Transfer/ Deferred payments
4. Other revenue sharing/ (high and medium) risk-sharing model such as Joint Venture structure;
5. Identification and proposing of other commercial usages of the infrastructure for increased revenues that can be generated from the Project for improved financial viability;
6. Carry-out risk assessment for various options and suggest adequate risk-sharing and risk-mitigation mechanism keeping in view various P3 modalities;
7. Prepare robust financial model (addressing base-case and risk-adjusted scenarios for various P3 modalities, including but not limited to Design-Build-Finance-Operate-Transfer, Deferred/Annuity Payments, and Hybrid Structures etc.) specifically addressing the following aspects over the entire Project concession period:
 - i. Assumptions, clearly categorized as general, revenues & costs, macro-economic and financial markets,
 - ii. Income statements, statements of cash flows, balance sheets and fixed assets' schedules,
 - iii. Debt schedules and funding sheets highlighting sources and uses of funds,
 - iv. Valuations showing Project Internal Rate of Return (IRR), Equity IRR, Project Net Present Value (NPV), Equity NPV, Payback Periods (Simple and Discounted),
 - v. Ratio analysis such as Debt Service, Interest Cover, Project Life Cover, Loan Life Cover and other prominent ratios,
 - vi. Sensitivity analysis for critical variables of the Project,
 - vii. Financial implications for the public sector accounting for GoP/MOI&B revenue share from the Project, corporate taxes etc.,
 - viii. Financial results for various P3 modalities identified above, and
 - ix. Benefit to cost and value for money analysis for both the public and the private sector.

ANNEX-2: PROCEDURE FOR SUBMISSION AND EVALUATION OF PROPOSALS

PROCEDURE FOR SUBMISSION AND EVALUATION OF PROPOSALS

FOR HIRING

TRANSACTION ADVISOR

FOR

**COMMERCIAL UTILIZATION OF REAL-ESTATE
PROPERTY**

ON PUBLIC PRIVATE PARTNERSHIP BASIS

1. SUBMISSION OF PROPOSALS

The Technical Proposal shall be submitted in triplicate (One original and two copies) and placed in a sealed envelope clearly marked as “Technical Proposal for hiring of Transaction Advisor for Commercial Utilization of MOI&B’s Real-Estate Property on P3 basis”.

The Financial Proposal (one original) shall be submitted in a separate sealed envelope clearly marked “Financial Proposal for hiring of Transaction Advisor for Commercial Utilization of MOI&B’s Real-Estate Property on P3 basis”.

The bidders are requested to submit their Technical and Financial Proposals in separate sealed envelopes, enclosed in one larger sealed envelope addressed correctly and legibly, to Mr. [MOI&B contact name], [Designation and Address of MOI&B contact name].

The Proposals shall be signed by a duly authorized representative and in case of firm/consortium the Proposals should include a power of attorney/ letter of authority authorizing such representative to sign and submit the Technical and Financial Proposals.

2. EVALUATION OF THE PROPOSALS

On expiry of the date for submission of the Proposals, the evaluation process will begin. The bidders shall be evaluated using ‘Quality and Cost Based Selection’ method, as envisaged under the Procurement of Consultancy Services Regulations, 2010, whereby the bidder securing the maximum weighted average marks and if its proposal be responsive shall be declared as the successful bidder and the others bidders shall follow accordingly. Technical Proposal marks shall be given 75% weightage and Financial Proposal marks shall be given 25% weightage. However, the bidder needs to secure at least 70 marks in the Technical Proposal to be eligible for the opening of its Financial Proposal.

2.1. RESPONSIVENESS CONDITIONS

The bidder’s proposal shall be considered responsive only if it meets all of the following conditions and wherever possible they will be supported by the documentary evidence:

- a. It must be an artificial person (a registered firm or a company registered with Securities & Exchange Commission of Pakistan);
- b. It must be on the Active Taxpayer List of Federal Board of Revenue;
- c. It must have cumulative 5 years hands-on experience of working on at least 3 (including at least two real-estate transactions) P3 assignments involving the carrying-out of commercial feasibility study plus structuring, developing and/or procuring such transactions through private sector investment on P3 basis;

- d. The single bidder or the consortium shall have adequate technical, financial and legal expertise to complete the Assignment within the prescribed time-limits; and
- e. It must not have been black-listed by any government body or public agency. This needs to be provided on the affidavit.

2.2. TECHNICAL CRITERIA

Following table compiles the technical criteria for the bidders:

Technical Proposal		
Criteria	Sub-criteria	Marks
No. of similar assignments*	At least 3	20
	< 3	0
Relevant experience years**	More than 7	20
	6to 7 years	15
	4to 5 years	10
	Minimum 3	5
Value of the project undertaken under similar assignments	> PKR 10billion	10
	> PKR 5billion and up to PKR 10billion	7
	> PKR 3billion and up to PKR 5billion	5
	< PKR minimum 3 billion	2
Financial team	Financial Expert Lead	
	Qualification: CA/CFA/ICMA/ACCA or equivalent/MBA	3
	Experience: Overall Experience of 10 years with minimum experience of 5 years in the relevant field (Project Finance/P3)	3
	Project Team - minimum 2 members	3

Technical Proposal		
Criteria	Sub-criteria	Marks
	Qualifications: CA/CFA/ICMA/ACCA/MBA Experience: Overall Experience of 8years with minimum experience of 5years in the relevant field	3
Legal team	Legal Team Lead: Qualification: LL.M/Bar at Law Experience : Legal advisory on the transactions which have achieved commercial close/ financial close and demonstrable experience of legal structuring, drafting of PPP Agreements and other related agreements pertaining to PPP modality	8
	More than 4 similar projects with minimum size of Rs. 0.5 billion each	
	More than 3 similar projects with minimum size of Rs. 0.5 billion each	5
	More than 2 similar project with minimum size of Rs. 0.5 billion each	3

Technical Proposal		
Criteria	Sub-criteria	Marks
Construction, design and engineering	Team Lead Construction & Engineering: Qualification: BE in Civil Engineering Experience Minimum of 10 years with at least 2 similar construction projects each more than Rs 0.5 Billion	 3 3
	Team Lead Marketing: Qualification: Masters in Marketing Experience Minimum of 10 years with at least 2 projects each more than Rs 0.5 Billion	 4
	Team Lead Media and broadcasting: Qualification: Masters in Mass communications Experience	 4

Technical Proposal		
Criteria	Sub-criteria	Marks
	Minimum of 10 years with at least 1 construction project each more than Rs 0.5 Billion	
	<p>Infrastructure Project Management Expert:</p> <p>Qualification: Graduation in Project Management /BE in Civil//IT Engineering</p> <p>Experience: Minimum of 10 years With at least 2 projects each more than Rs 0.5 Billion as project/construction manager</p>	<p>3</p> <p>3</p>
Work Plan & Methodology	Bidder's understanding of the Assignment; approach towards undertaking the Assignment; step-by-step procedures/activities for completing the tasks in a phase-wise manner; deploying the resources to complete the tasks	10
Total		100

*Similar assignments mean similar P3 assignments (real-estate and/or physical infrastructure) undertaken by the bidder involving the carrying-out of commercial feasibility study plus structuring and developing; and/or procuring such transactions through private sector investment on P3 basis

**Relevant experience means the hands-on experience on the similar P3 assignments undertaken through private sector investment

2.3. FINANCIAL CRITERIA

The bidder quoting the minimum total fees for all the phases of the Assignment shall be given the maximum marks (100) and other bidders shall follow in accordance with the following formula:

Financial marks (Fm) for a particular bidder = $(100 / \text{financial quote for a particular bidder}) \times \text{Lowest quote}$

As aforesaid the successful bidder shall be the one securing the maximum weighted average marks as below:

Weighted average marks = $75\% \times \text{Technical Proposal marks} + 25\% \times \text{Fm}$

3. TA PROFILE

The TA is expected to possess the following skills, competencies and expertise:

- a. Technical (design, EPC [engineering, procurement, construction] environment) expertise including establishment of museums, art galleries, expo centers etc;
- b. Real-estate (including high-end hotel) development, operations and management expertise;
- c. Media understanding, marketing/mass communication;
- d. P3/Project Finance;
- e. Financial;
- f. Legal and Regulatory;
- g. Procurement expertise; and
- h. Expertise in marketing P3 project and soliciting technically qualified and financially sound private parties.

4. CONTRACT NEGOTIATIONS

The Contract negotiations for the Assignment shall be conducted with the authorized representatives of the successful bidder only and shall primarily focus on issues related to the work plan, deliverables and mechanism for payment and disbursements. The Assignment duration shall remain the same as specified in Annex-1. A copy of the document conferring authority in this regard shall be made available prior to commencing the Assignment negotiations. In case the negotiations with the successful bidder are unsuccessful, negotiations

with the authorized representatives of second successful bidder may be carried out, and so on and so forth.

MOI&B shall be under no obligation to select any of the firm/ consortium submitting the proposal, and have the right to cancel the procurement process at any time, without assigning any reason.

5. ADDRESS AND DATE OF SUBMISSION

The Proposals should be delivered to “Mr. [Name of MOI&B contact], [Designation and Address of MOI&B contact]”, by [Date of Proposal submission]. Failure to deliver the Proposals as aforesaid shall mean immediate disqualification.

6. EXCLUSION AND PROHIBITIONS

The TA shall be prohibited from using any of the proprietary information/confidential information without the express approval of MOI&B for a period of two (2) years after the completion of the Assignment.

**ANNEX-3: FORMAT FOR TECHNICAL & FINANCIAL
PROPOSALS**

**FORMAT FOR TECHNICAL & FINANCIAL PROPOSALS
FOR HIRING
TRANSACTION ADVISOR**

FOR

**COMMERCIAL UTILIZATION OF REAL-ESTATE
PROPERTY**

ON PUBLIC PRIVATE PARTNERSHIP BASIS

FROM:

TO:

[Muhammad Usman]
[Assistant Chief, Ph: 9208682]
MOI&B
Islamabad

Sir/Madam:

Subject: **Technical Proposal for hiring of Transaction Advisor for Commercial Utilization of MOI&B's Real-Estate Property on P3 basis (the Assignment)**

I/We [The Bidder] herewith enclose the sealed Technical Proposal (1 original and 2 copies) and sealed Financial Proposal (1 original) of my/our firm(s)/organization(s) as the Transaction Advisor for the Assignment

Yours faithfully,

Signature1 _____

(Authorized Representative)

Full Name _____

Designation _____

Address _____

1. CONTENTS OF THE TECHNICAL PROPOSAL

The Technical Proposal shall provide information regarding how the bidder is technically qualified to undertake and complete the Assignment as per the TORs mentioned in Annex-1 in a cost-effective and timely manner. The bidder shall be required to demonstrate the following:

1.1. RELEVANT EXPERIENCE AND SIMILAR ASSIGNMENTS/PROJECTS

The bidder shall give comprehensive explanation of its experience of undertaking similar assignments/projects (jointly or severally) and their respective values; the nature of the work performed and the propositions which turned into success stories.

1.2. COMPETENCE AND QUALIFICATION OF TEAM

The bidder shall showcase its team of experts capable of undertaking and completing the Assignment as per its TOR and shall briefly mention their roles, responsibilities and qualifications. The bidder should attach Resumes of its team members along with an undertaking that they shall be available for the Assignment, as and when required, during the currency of the Assignment.

1.3. WORK PLAN AND METHODOLOGY

The bidder shall present its tentative work approach towards the Assignments separately determining the number of staff to be deployed; explaining their respective roles & responsibilities; and assigning time-slots to each of the activity mentioned in the TOR.

The Technical Proposal shall, at minimum, contain the following information:

- a. Bidder's and its non-lead associates' complete profile, contact details and other relevant information;
- b. Demonstration of the bidder's capability and experience to effectively undertake the Assignment in accordance with the TORs;
- c. Complete description of the work-methodology to undertake each task specified in the TORs;
- d. Time-line for undertaking and completing each activity relating to every phase of the Assignment;
- e. Qualification and experience of the staff proposed to be deployed for the Assignment;

- f. Timeframe for submission of deliverables; first draft for discussion, second draft for review; and final submission for each deliverable mentioned above.

2. FORMAT FOR FINANCIAL PROPOSAL

In addition to the Technical Proposal, the bidders will be required to submit in a separately sealed envelope a Financial Proposal mentioning the total amount of fee to be charged for all the phases of the Assignment in PKR and inclusive of all the duties and taxes:

Total Bid Amount for all the four phases of the Assignment	Amount in PKR

Notes:

- a. Fees shall be paid as a % of the work completed on the Assignment as indicated in **Appendix-A** of TAA.
- b. For avoidance of doubt, the MOI&B shall not be responsible for any taxes, charges, levies etc. arising from payments to the TA.

ANNEX-4: DRAFT TRANSACTION ADVISORY AGREEMENT

DRAFT TRANSACTION ADVISORY AGREEMENT
FOR HIRING
TRANSACTION ADVISOR

FOR

**COMMERCIAL UTILIZATION OF REAL-ESTATE
PROPERTY**

ON PUBLIC PRIVATE PARTNERSHIP BASIS

DRAFT TRANSACTION ADVISORY AGREEMENT

THIS AGREEMENT (hereinafter together with the recitals and the appendices attached hereto called this “Agreement”), is made on the ___ day of ___ 2020, between **Ministry of Information and Broadcasting (MOI&B)** and Government of Pakistan (hereinafter called the “MOI&B”), which expression shall mean and include its successors, administrators and legal representatives, and _____, (hereinafter called the “Transaction Advisor”, which expression shall mean and include its successors, administrators and legal representatives, and together with MOI&B hereinafter called the “Parties”).

WHEREAS

- (a) MOI&B wishes to appoint a specialized firm/team of specialists to act as the Transaction Advisor to the MOI&B to carry out the Services.
- (b) The Transaction Advisor, represents and covenants to the MOI&B that they have the required professional skills; personnel and technical resources; and have agreed to provide, on the terms set out in the Request for Proposal issued to hire ‘Transaction Advisor for Commercial Utilization of MOI&B’s Real-Estate Property on P3 basis’ (the RFP); the Terms of Reference appended as Appendix-B, which will also form an integral part and parcel of this Agreement; and this Agreement, the services which are essential in respect of the Services in terms of this Agreement.

NOW THIS AGREEMENT WITNESSETH

1.1. GENERAL PROVISIONS

1.1.1 Definitions

Unless the context otherwise requires, the following terms, wherever used in this Agreement, shall have the following meanings:

- (c) “Transaction Advisor” is defined in the Preamble.
- (d) “Agreement” means this Agreement between the MOI&B and the Transaction Advisor.
- (e) “Applicable Law” means the laws of Islamic Republic of Pakistan, including but not limited to, the rules, regulations and other statutory or non-statutory guidelines and instruments governing the Project, Bidding Documents and procurement process.
- (f) “Effective Date” means the date on which this Agreement is signed between the Parties.
- (g) “End Date” means the date at which the Services under this Agreement, as defined in the Scope of Work, are completed to the satisfaction of the MOI&B within the agreed time-period of [insert no. of weeks] weeks from the date of signing of this Agreement or the early termination of this Agreement by the mutual consent of the Parties in writing.

- (h) "Force Majeure" for the purpose of this Agreement means:
- I. An event or circumstance which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations under this Agreement impossible, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts, other industrial action or any sanction or restriction imposed by any governmental authority or body within or outside Pakistan; which has a material adverse affect on the ability of the Transaction Advisor to carry out the Services,
 - II. Force Majeure shall not include: (i) any action or failure to take action by a Party; (ii) any event which is caused by the negligence or willful act or omission of a Party or that Party's Subcontractors or personnel or agents or employees; and (iii) any event which a diligent Party could reasonably have been expected both: (a) to have taken into account at the time of the Effective Date of this Agreement; and (b) to have avoided or overcome in the course of carrying out its obligations under this Agreement,
- (i) "MOI&B" is defined in the preamble.
- (j) "Commercial Utilization of MOI&B's Real-Estate Property on P3 basis" means the carrying out of detailed Feasibility Study for the Project as defined in the detailed scope of works attached hereto as envisaged under this RFP;
- (k) "Party" means the MOI&B or the Transaction Advisor, as the case may be, and the MOI&B and the Transaction Advisor shall collectively mean the "Parties".
- (l) "Personnel" means persons hired/employed by the Transaction Advisor or by any of its Subcontractors and assigned to the performance of the Services or any part of the Services.
- (m) "Project" means the provision of consultancy services for both the properties located at (a) Plot number 58, F6/G6, Islamabad and (b) Street 44, Block 15, Scheme 36, Gulistan-e-Jauhar, Karachi as per TOR's attached hereto in accordance with the provisions of RFP and this Agreement.
- (n) "Advisory Fee" means the total amount to be paid against deliverables as specified in Appendix-A, by MOI&B to the Transaction Advisor under this Agreement.
- (o) "Services" means the work to be performed by the Transaction Advisor as per the terms of the RFP; Terms of Reference (TORs) appended as Appendix-B to this Agreement; and this Agreement for the purposes of the Project, or any other service(s) mutually agreed upon by the Parties from time to time in writing during the currency of this Agreement.
- (p) "Starting Date" means the date referred to in Clause 2.2.

- (q) “Sub-contractor” means any person or entity to be appointed by the Transaction Advisor including but not limited to accounting, legal, technical and financial consultants whether located within or outside Pakistan, to which the Transaction Advisor sub-contracts directly or indirectly any part of the Services in accordance with the provisions of this Agreement.
- (r) “Third Party” means any person or entity other than the MOI&B, the Transaction Advisor or a Subcontractor.

1.2 Relation between the Parties

- (a) The Transaction Advisor shall act as advisor to the MOI&B for all Services; shall manage and be responsible for the work carried out by the Sub-contractors (whether local or foreign); shall be solely responsible for any payments due to Sub-contractors and/or Personnel hired by the Transaction Advisor; shall have complete charge of all Personnel performing the Services; and shall be fully responsible for the Services performed by them or on their behalf under this Agreement.
- (b) The Transaction Advisor shall not assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the MOI&B.

1.3 Law Governing Agreement

This Agreement, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law. The Transaction Advisor undertakes to comply with the Applicable Law during the performance of the Services under the Agreement.

1.4 Headings

The headings shall not limit, alter or affect the meaning of this Agreement.

1.5 Notices

- 1.5.1** Any notice, request or consent required or permitted to be given or made pursuant to this Agreement shall be in writing and shall be deemed to have been given or made when delivered in person to any authorised representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the following address:

For the Transaction Advisor:

For MOI&B:

1.5.2 Notice shall be deemed to be effective as follows:

In case of personal delivery or registered mail, on delivery; and in the case of facsimiles, four (4) hours following confirmed transmission, only if confirmation is during business hours otherwise notice will be deemed effective as of the next working day, disregarding weekends and national holidays in the country to which the facsimile is transmitted. Facsimile notices shall not require confirmation by hard copies.

1.5.3 A Party may change its address for notice under this Agreement by giving the other Party notice pursuant to this Clause.

1.6 Authorized Representatives

Any action required and permitted to be taken, and any document required or permitted to be executed under this Agreement, may be taken or executed:

- (a) on behalf of the MOI&B, by [Authorized representative of MOI&B]; and
- (b) on behalf of the Transaction Advisor, by [Authorized representative of the Transaction Advisor]

2. COMMENCEMENT, COMPLETION, SUSPENSION, MODIFICATION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

This Agreement shall come into force from the Effective Date.

2.2 Commencement of Services

The Transaction Advisor shall commence carrying out the Services not later than 3 (three) days (“Starting Date”) after the Effective Date, or on any other date the Parties agree in writing. The Services shall be performed and completed by the Transaction Advisor before the End Date or as mutually agreed in writing by the Parties.

2.3 Expiration of Agreement

Unless terminated pursuant to Clause 2.7, this Agreement shall expire when the Services have been completed.

2.4 Entire Agreement

This Agreement constitutes the final expression and exclusive and entire agreement and understanding between the Parties in relation to the Services and contains all covenants, stipulations and provisions agreed by the Parties as at the date hereof. The Terms of Reference appended as Appendix-B shall also form an integral part of this Agreement. This Agreement together with the Terms of Reference appended thereto shall override and supersede all previous or concurrent communications or documents or agreements exchanged on the subject matter of the Agreement and the Transaction Advisor shall not for any or all purposes place reliance on any other document/agreement except for this Agreement.

2.5 Modification

Modification of the terms of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Each Party shall give due consideration, and not unreasonably delay or withhold a considered response to any proposals for modification made by the other Party.

2.6 Suspension of Services

The MOI&B may, by written notice of suspension to the Transaction Advisor, suspend the Services under this Agreement for a cumulative period not exceeding 15 (fifteen) days.

2.7 Termination

2.7.1 Termination by MOI&B

The MOI&B may terminate this Agreement if the Transaction Advisor:

- (a) is in breach of its obligations under this Agreement and has not remedied the same within fifteen (15) days (or such longer period as the MOI&B may have subsequently approved in writing) of being called to do so by the MOI&B; OR
- (b) becomes insolvent or bankrupt or enters into any arrangements with its creditors for relief of debt or takes advantage of any Applicable Law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary; OR
- (c) Is unable as a result of force majeure to perform a material portion of the Services for a continuous period of thirty (30) days unless services are suspended under 2.6.

In any event, the MOI&B may terminate this Agreement at its sole discretion without assigning any reason without liability or continuing obligation except as set forth in this Agreement. In the event of such termination (where termination is without default of the Transaction Advisor), the MOI&B shall be required to make payment to the Transaction Advisor in relation to fees which have been duly accrued or billed by the Transaction Advisor against the actual services performed in accordance with this Agreement.

2.7.2 Termination by the Transaction Advisor

In the event the Services are not completed by the Transaction Advisor, due to no fault on the part of the Transaction Advisor, its Sub-contractors or Personnel, the Transaction Advisor shall have the right to terminate this Agreement after expiry of twelve (12) months from the Start Date.

2.7.3 Cessation of Rights and Obligations

On termination of this Agreement pursuant to any part of Clause 2.7, or upon expiration of this Agreement pursuant to Clause 2.3, all rights and obligations of the Parties shall cease, except (i) rights and obligations that have accrued as of the date of termination or expiration, (ii) any right which a Party may have under the Applicable Law (iii) the indemnification obligations in Clauses 3.4 and 3.5 hereof.

2.7.4 Cessation of Services

On termination of this Agreement pursuant to Clause 2.7, the Transaction Advisor shall, immediately on receipt/issue of notice to that effect, take all necessary steps to bring the Services to a close within seven (7) days of the receipt/issue of the notice in an orderly manner. Upon cessation of Services hereunder, the Transaction Advisor shall hand over to the MOI&B all documents prepared directly by the Transaction Advisor or by any of its Subcontractors, whether in final or in draft form, for submission to third parties in connection with the Project on paper and electronic format, which for the avoidance of doubt, do not include research reports or other private material produced by the Transaction Advisor.

3. OBLIGATIONS OF THE TRANSACTION ADVISOR

3.1 General

3.1.1 Scope of Work

The Transaction Advisor shall perform and complete the Services in accordance with detailed ToR's and furnish deliverables against the same as mentioned in the RFP, in accordance with the terms and conditions of this Agreement, as per the following timelines:

- (i) Services pertaining to Phase-I of the RFP within 12 weeks (extendable to 16 weeks with mutual consent of the parties) from the date of signing of this Agreement
- (ii) Services pertaining to Phase-II of the RFP within 16 weeks from the date of completion of Phase-I
- (iii) Services pertaining to Phase-III of the RFP within 6 weeks from the date of Phase-II, and
- (iv) Services pertaining to Phase-IV may expand over 24 weeks (6 months) or the other time period allowed to the private party to achieve financial close for the Project

3.1.2 Standard of Performance

The Transaction Advisor shall perform the Services and carry out their obligations under this Agreement with all reasonable due diligence, efficiency and economy, in accordance with generally accepted techniques and practices and shall observe sound management practices. The Transaction Advisor shall be under a duty of care and always act in good faith/respect of any matter relating to this Agreement or to the Services, and shall at all

times support and safeguard the MOI&B's legitimate and proper interests in any dealings with Subcontractors, Personnel or Third Parties. The Transaction Advisor shall use its best efforts to ensure that any Subcontractors and Personnel shall be skilled and experienced and competent in their respective trades and professions and that their work shall conform with the standards applicable to the Transaction Advisor.

3.2 Conflict of Interests

3.2.1 Transaction Advisor not to Benefit from Commissions or Discounts

The Transaction Advisor, as consideration for its work under this Agreement or the Services, will only be entitled to receive payments from P3A as per Clause 6 hereunder, and neither the Transaction Advisor nor any person (natural or legal) associated with it shall accept for its benefit or otherwise any remuneration/consideration in the forms including but not limited to trade commission, discount, gifts, payments in kind or financial inducements whatsoever or similar payment in connection with activities pursuant to this Agreement or to the Services or the discharge of its obligations under this Agreement, and the Transaction Advisor shall use its reasonable efforts to ensure that any Sub-contractors, as well as the Personnel and agents of either of them shall neither for itself nor for the benefit of the Transaction Advisor receive any such additional remuneration.

3.2.2 Prohibition of Conflicting Activities

Subject to clause 3.2.3 below, during the subsistence of this Agreement, neither the Transaction Advisor nor its Subcontractors or the Personnel of either of them shall engage, either directly or indirectly, in any business or professional activities with respect to MOI&B which would conflict with the activities assigned to them under this Agreement.

3.2.3 Transaction Advisor not to provide other Services

During the term of this Agreement, the Transaction Advisor, Sub-contractors, and the Personnel shall not provide similar/related services to any other entity directly or indirectly interested in the Project for which the Transaction Advisor is engaged by MOI&B.

3.3 Confidentiality

The Transaction Advisor shall not, during the term of this Agreement, disclose any proprietary or confidential information relating to the Project, the Services, this Agreement, or the MOI&B's or P3A business or operations (other than for the purposes of the Services) without the prior written consent of the MOI&B and/or P3A, unless such disclosure is required by Applicable Law or regulation or such information is required for research purposes or has entered the public domain other than by a breach of this Agreement, or was already in public domain, or was already lawfully in the possession of the Transaction Advisor at the time of such disclosure to them.

3.4 Indemnification of the MOI&B and P3A by the Transaction Advisor

The Transaction Advisor shall indemnify and hold harmless the MOI&B and P3A against all losses, claims, damages or liabilities to which the MOI&B or P3A may become liable only to the extent, that such losses, claims, damages or liabilities arise out of any act or omission by the Transaction Advisor relating to the Services, provided that the Transaction Advisor shall not be liable for indirect or consequential losses or damages.

3.5 Indemnification of the Transaction Advisor by the MOI&B

MOI&B shall indemnify the Transaction Advisor and hold it harmless against all losses, claims, damages or liabilities to which Transaction Advisor may become liable only to the extent that such losses, claims, damages or liabilities arise out of any act or omission of the MOI&B relating to this Agreement and the information to be provided to the Transaction Advisor in terms of this Agreement, provided that MOI&B shall not be liable for indirect or consequential losses or damages.

3.6 Insurance

In the event the Transaction Advisor receives any claim for damages/compensation in respect of the services for which it seeks indemnification from MOI&B in terms of Clause 3.5 herein then the Transaction Advisor shall first seek settlement from its insurers, if any, for satisfaction of such claims before resorting to the MOI&B for purposes of indemnification.

3.7 Transaction Advisor Actions requiring MOI&B's prior Approval

The Transaction Advisor shall obtain the MOI&B's prior approval in writing before:

- (i) Entering into a subcontract for the performance of any part of the Services.
- (ii) Termination of a subcontract for the non-performance of any part of the Services.

Provided approval by the MOI&B hereunder shall not relieve the Transaction Advisor of its obligations under this Agreement.

3.8 Accounting, Inspection and Auditing

The Transaction Advisor shall keep accurate and systematic accounts and records regarding the Services and the Project, which records a duly authorized representative of the MOI&B shall be entitled to inspect and make copies thereof, as and when required during the pendency of this Agreement and for the one year from the expiry or termination of this Agreement, provided that the modalities of conducting such audit/inspection are agreed in advance with the Transaction Advisor.

4. TRANSACTION ADVISOR'S AND SUBCONTRACTORS' PERSONNEL

4.1 General

The Transaction Advisor shall employ and provide qualified and experienced Personnel to carry out the Services. The MOI&B and the Transaction Advisor have agreed that the following senior Personnel shall form the core team:

The Project Team Leader, Mr./Ms....., shall be on first call to the MOI&B throughout the period of the Project, subject only to personal holidays and personal emergencies, when Mr./Ms.....shall be available in his/her place.

4.2 Approval of Personnel

All Personnel of the Transaction Advisor and the Subcontractors and any other personnel that may be employed during the course of the Project will be subject to normal security clearances where so required by MOI&B.

4.3 Removal and Replacement of Personnel

- (a) If, for any reason, it becomes necessary to replace any of the senior Personnel or any Subcontractor after the Effective Date, the Transaction Advisor shall forthwith provide as a replacement a person or Subcontractor of equivalent qualifications, whose curriculum vitae or resume the Transaction Advisor shall submit to the MOI&B for review and approval and whom the MOI&B may if it so desires call for an interview at the cost and expense of the Transaction Advisor. If the MOI&B does not object in writing within seven (7) days from the date of receipt of the curriculum vitae or interview, that person or subcontractor shall be deemed to have been approved by the MOI&B.
- (b) If the MOI&B (i) finds that any of the Personnel or Subcontractors has committed misconduct as ascertained by the MOI&B in its discretion or has been charged with having committed an offence or a wrong or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel or Subcontractors, or (iii) finds that any of the Personnel or Subcontractors has misrepresented with respect to its qualifications, expertise and resources then the Transaction Advisor shall, at the MOI&B's written request, immediately remove the respective Personnel or Subcontractors from this Agreement and provide a replacement with qualifications and experience reasonably acceptable to the MOI&B subject to the same terms and conditions specified in Clause 4.3 (a).

5. OBLIGATIONS OF THE MOI&B

5.1 Assistance and Exemptions

The MOI&B shall use its best efforts, where such efforts are specifically requested stating

the reasons for MOI&B assistance, to ensure that the MOI&B issues to its officials, agents and representatives all such instructions as may be specified by the Transaction Advisor as being necessary or appropriate for the prompt and effective implementation of the Services.

5.2 Access to Information and Decisions

- (a) The MOI&B will co-operate with the Transaction Advisor and will endeavor to furnish the Transaction Advisor with all such information and data concerning the Project which the Transaction Advisor may require in connection with the performance of the Services. The MOI&B will provide the Transaction Advisor with access to its own officers and employees and to such other information and reports as the Transaction Advisor may reasonably require. The MOI&B will use its best efforts to ensure that all such information (including expressions of opinions) or documentation as is provided to the Transaction Advisor is complete, true, fair, accurate and not misleading and that there are no omissions which could be material. If during the course of the Transaction Advisor's engagement under this Agreement, the MOI&B subsequently discovers something which renders any such information untrue, unfair, inaccurate or misleading, it will notify the Transaction Advisor at once.
- (b) The MOI&B shall use its best efforts to ensure that, where co-operation is required from, or decisions need to be taken or approvals given by the MOI&B in the course of the Project, that co-operation will be promptly given and these decisions or approvals will not be unreasonably withheld or delayed.
- (c) The MOI&B acknowledges and agrees that, in rendering the Services here-under, the Transaction Advisor will be using and relying on the information supplied to them by the MOI&B a in addition to other information which the Transaction Advisor shall be responsible for gathering for effective performance of the Services.

5.3 Road shows

The MOI&B shall ensure that the road shows, marketing, fact finding and other related activities, are attended by the MOI&B, P3A and the Transaction Advisor's representative and employees of an appropriately senior position to be agreed with the Transaction Advisor prior to the start of such activities.

6. PAYMENTS TO THE TRANSACTION ADVISOR

6.1 Currency of Payment

P3A shall pay a total of Pak Rupees to the Transaction Advisor for the performance of services under this Agreement as per the schedule of payments annexed as Appendix-A.

All payments to the Transaction Advisor for the Services shall be in Pak Rupees and shall be subject to deduction of applicable taxes, if any.

6.2 Mode of Billing and Payment

Payments in respect of the Services shall be made within 14 days of receipt of original invoices as follows:

- (a) The Advisory Fee shall be paid on milestone basis as identified in Appendix-A based on the submission of deliverables by the Transaction Advisor as required in the RFP and the Terms of Reference, and following acceptance of the same by the MOI&B.
- (b) All payments under this Agreement shall be made to the account of the Transaction Advisor as follows:

[Bank account details of TA]

7. FAIRNESS AND GOOD FAITH

7.1 Good Faith

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

7.2 Operation of the Agreement

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties agree that it is their intention that this Agreement shall operate fairly between them, and without detriment to the interest of either of them and that if, during the term of this Agreement, either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 8.

8. SETTLEMENT OF DISPUTES

8.1 Arbitration

The Parties agree that in the event of any dispute between them arising out of this Agreement or any matter related thereto or connected herewith, they shall endeavor to settle the same in an amicable manner. Should they fail to arrive at an amicable settlement, they shall refer the matter to arbitration at Islamabad in accordance with the

Arbitration Act, 1940, or any amendment or enactment hereof. Arbitration as aforesaid shall be condition precedent to any other action under law.

8.2 Courts having jurisdiction

The Parties agree that the Courts at Islamabad and Lahore shall have jurisdiction with respect to any litigation arising out of this Agreement.

9. ADDITIONAL COVENANTS

9.1 Publicity

The Transaction Advisor shall ensure that any publicity, press releases, advertisements and publications and public statements concerning the Services, the Project and the Agreement shall be in consultation with and approved in writing in advance by the MOI&B before release by the Transaction Advisor, its Subcontractors and Personnel.

9.2 Waivers

Time shall be of the essence of the Agreement. No failure or delay of either Party hereto in exercising any right or remedy hereunder shall operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise of any right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

9.3 Severability

Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

9.4 Originals

This Agreement is being executed in two originals, one each to be retained by the Transaction Advisor and the MOI&B.

IN WITNESS OF WHICH the Parties have caused this Agreement to be signed as of the day and year first above written.

FOR AND ON BEHALF OF THE MOI&B

FOR AND ON BEHALF OF THE TRANSACTION ADVISOR

APPENDIX-A: INDICATIVE PAYMENT SCHEDULE

Payment will be subject to the completion of all deliverables in a particular task. The fee shall be paid in the following manner:

Indicative milestones	% of Advisory Fee
Phase-I	
Signing of the Transaction Advisory Agreement	05
At submission of the draft feasibility study report Project	10
At submission of final deliverables Project	10
Phase-II	
Completion of Phase-II (issuance of Letter of Support to the successful bidder) Project	25
Phase-III	
Completion of Phase-III (signing of Concession Agreement) Project 1	25
Phase-IV	
Completion of Phase-IV (achievement of financial close by the private party) Project 1	25
Total	100%

APPENDIX-B: TERMS OF REFERENCE

[may be seen at Annex-A of the RFP]

ANNEX-5: CONDITIONS FOR REQUEST FOR PROPOSALS

CONDITIONS FOR REQUEST FOR PROPOSALS
FOR HIRING
TRANSACTION ADVISOR

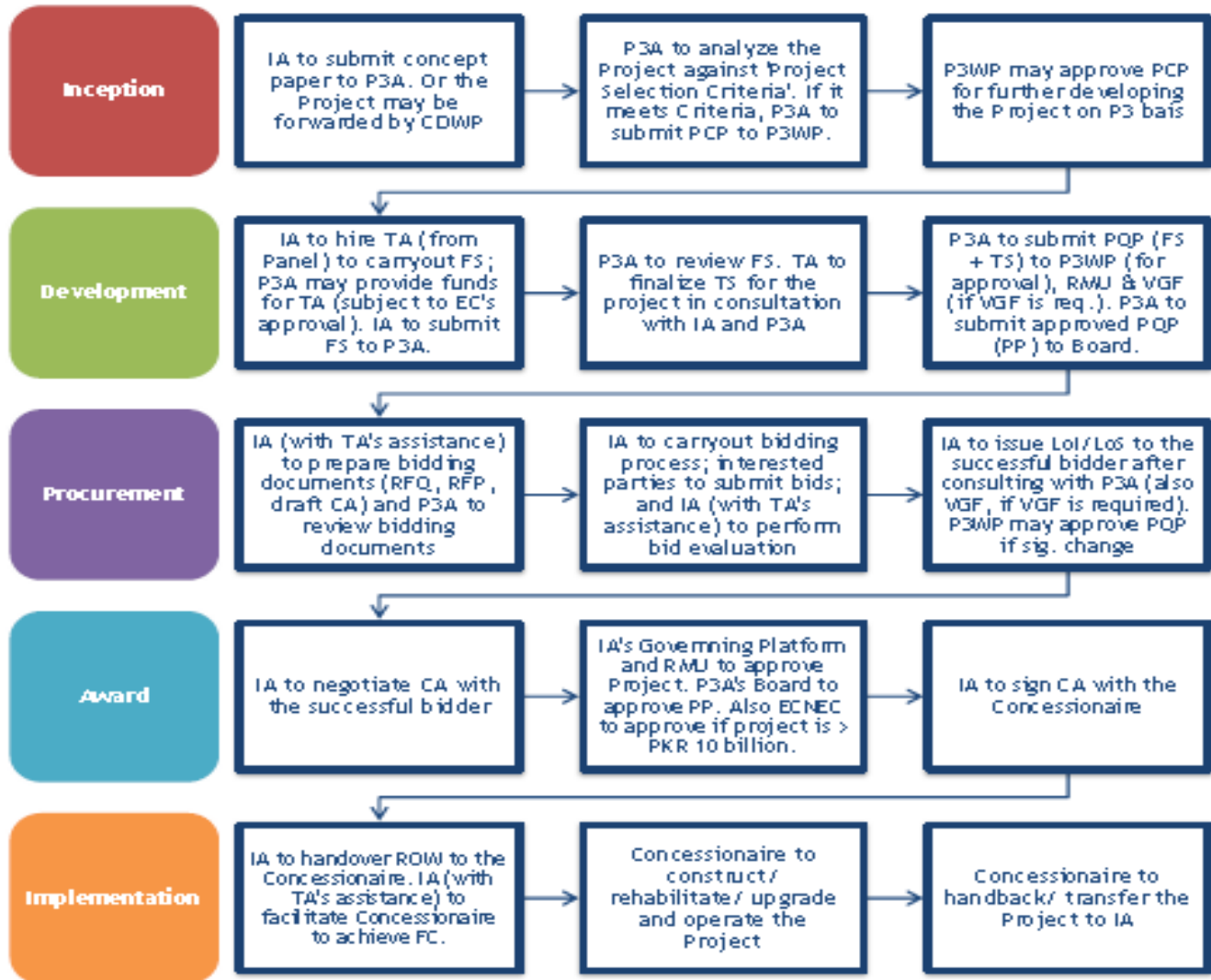
FOR

**COMMERCIAL UTILIZATION OF REAL-ESTATE
PROPERTY**

ON PUBLIC PRIVATE PARTNERSHIP BASIS

- a. As P3A is providing Project Development Fund (PDF) to the Project; therefore it is a 'Qualified' project in terms of P3A (Amendment) Ordinance, 2020 (the Ordinance) meaning by the Project will have go through various approvals as envisaged under the Ordinance. Following table illustrates the tentative project flow process as envisaged under the Ordinance:

Illustrative P3A's CDWP and IA Project Process Flow under the P3A (Amendment) Ordinance, 2020



IA = Implementing Agency
 P3A = Public Private Partnership Authority
 TA = Transaction Advisor
 P3WP = P3 Working Party

CDWP = Capital Development Working Party
 EC = Executive Committee
 FS = Feasibility Study
 PP = Project Proposal

TS = Transaction Structure
 CA = Concession Agreement
 FC = Financial Close

- b. A Steering Committee shall be formed comprising representatives of MOI&B, and at the decision of the MOI&B and subject to the approval of the management of P3A, the representative(s) from P3A only for advisory purposes to oversee procurement of TA and monitor overall performance and quality of deliverables provided by TA. Any decisions taken shall be the decisions which are approved and agreed upon by the representatives of MOI&B.
- c. The Steering Committee shall meet at designated place(s) to review each and every deliverable. Each deliverable shall be considered satisfactory if it duly incorporates the feedback received from MOI&B/P3A. The proceedings of the Committee shall not be affected by lack of quorum.
- d. All payments due against the deliverables shall be made directly by P3A to Transaction Advisor, subject to satisfactory completion of the deliverable and approval of invoice by MOI&B.
- e. The TA shall be responsible for assisting MOI&B in carrying out all activities incidental to successful closure of the Project. While a detailed scope of work has been spelled out in **Annex-1**, the TA shall also be responsible for providing assistance in activities, not specifically mentioned in this Annex, that are necessary for successfully concluding the Assignment. The TA shall appoint a Team Leader to assume overall responsibility for the Assignment and to interface with MOI&B/P3A. The TA will maintain all records for the Project for a period of one year from the termination of activities under the TAA. During this period, the TA will assist MOI&B/P3A in dealing with queries/issues related to the Project.
- f. Three hard copies and one soft (unlocked and editable) copy of each deliverable shall be submitted to the MOI&B. The MOI&B will share the documents with the Steering Committee which will offer its comments and recommendations. These shall be incorporated in the final deliverables by the TA. After incorporation of the comments/feedback, the Transaction Advisor shall submit three hard copies and one soft copy (unlocked and editable) of each of the final documents to MOI&B.
- g. All documents shall be prepared in English and submitted on electronic media along with required number of hard-copies.
- h. While delivering the Assignment, the TA shall ensure that all the applicable laws, rules and regulations related to the Assignment are properly adhered to by the TA.
- i. All the data, documents and reports produced by the TA for the said services shall be the property of MOI&B. The TA shall not share and use any data, document and reports for any other purpose and all the data prepared, shared by MOI&B and any other information shall be strictly treated as confidential information. The TA shall not engage in advising or in any other way or means share explicitly or impliedly any information or data to any of the third parties in respect of the Project.
- j. MOI&B will be nominating one Project Manager to liaise with the TA and P3A on all activities pertaining to the Assignment. The Manager will be responsible for providing technical inputs and information to the TA and P3A on the Assignment/ Project.
- k. The TA shall begin this assignment immediately after the TAA is signed. Indicative deadline and payment schedule are given in **Appendix-A** to the TAA.
- l. MOI&B shall have the right at all times to:
 - a. Cancel the process for selection of TA.
 - b. Vary any of the terms set out in the RFP or any of the Annexes and Appendices thereto.

- c. Reject any Proposal not delivered in the prescribed format and at the prescribed venue in the prescribed time.
- m. TA shall protect and defend unconditionally as well as indemnify and hold MOI&B, or any other relevant government body/agency, its employees, directors, officers and agents free and harmless from and against any and all liability, losses, claims, liens, demands, damages against any and all causes of action of every kind and character, including without limitation any judgments, penalties, interest, court costs and any legal fees incurred in enforcing this indemnity, arising under this Agreement. MOI&B makes no representation, covenants, warrants or guarantees, express or implied, other than those expressly set forth in this Agreement. In no case shall MOI&B be liable for contingent or consequential, special or indirect damages.
- n. Any addendum issued by MOI&B subsequent to this RFP but prior to the submission of the proposals will become part and parcel of the RFP document. All such addenda and clarifications relating to the RFP will be posted on the P3A/MOI&B's website. It is the responsibility of the potential bidders to ensure a review of any such addenda / clarifications prior to the submission of their respective proposals.