

FOR USE WITH PPP PROJECTS¹

SAMPLE GUIDELINES FOR PRE-QUALIFICATION AND COMPETITIVE BIDDING PROCESS²

1. PRE-QUALIFICATION

- 1.1 The requirements for pre-qualifications will be reasonable and efficient and must not unnecessarily create constraints that limit the number of bids or the possibility of maximising competition.
- 1.2 The request for pre-qualification shall be announced and publicised well in advance of the date for bid submission, in two or more national and international newspapers, on the website of [relevant Ministry] and any website available to the Procuring Entity.
- 1.3 The Procuring Entity will publish the intention to award a [Project], describing clearly the characteristics of the project and the minimum technical, financial and operational qualifications and requirements for participation.
- 1.4 The notice of request for qualifications shall include:
 - (a) name and address of the Procuring Entity;
 - (b) description of the project;
 - (c) desired or required time for performing the procurement and implementation of the project;
 - (d) pre-qualification evaluation criteria;
 - (e) instructions for obtaining the request for qualifications; and
 - (f) place and deadline for submitting applications.
- 1.5 The request for qualifications shall also include the following data:
 - (a) detailed instructions for preparing and submitting applications;
 - (b) a description of criteria and methods of evaluation of the fulfilment of conditions required from interested participants;
 - (c) information about documents which must be submitted by bidders to confirm that they satisfy the required conditions; and

¹ adapted from Guidelines prepared for proposed power generation projects in a country in South Asia

² assumes partly negotiated procedure and possibility for third bidding stage

(d) the names, positions and means of communicating with the employees of the Procuring Entity who are authorized to communicate directly with bidders.

- 1.6 Any private sector firm or consortium fulfilling the technical, financial and operational expertise requirements will have the right to present an expression of interest to qualify.
- 1.7 The Procuring Entity will evaluate the expressions of interest and verify that the interested firms comply with the pre-qualification requirements on operational and technical expertise, and financial capability. The Procuring Entity shall inform [Responsible Ministry] of the list of firms that submitted expressions of interest and were rejected, explaining for each one the technical, operational or financial requirements that were not fulfilled. The [Responsible Ministry] will review the proposed rejections and may require the Procuring Entity to clarify or review the rejections of one or more firms that the Procuring Entity considered should be rejected if the reasons for such rejection were not consistent with the requirements established in the conditions of the request for qualifications.
- 1.8 Once the [Responsible Ministry] has reviewed and has issued a letter of no objection to the pre qualification process, the Procuring Entity will provide details of the pre-qualified bidders to the interested bidders. The Procuring Entity will also publish the list of pre-qualified bidders on its website.
- 1.9 Pre-qualified bidders shall not be permitted to join with any other pre-qualified bidder to submit a proposal.

2. REQUESTS FOR PROPOSALS

- 2.1 The Procuring Entity will send to each pre-qualified firm the request for proposals (RFP) for the project and will be entitled to charge a reasonable fee for the RFP and the procurement documents, such fee to be approved by [Responsible Ministry].
- 2.2 The RFP will be based on standard documents drafted by independent experts. The RFP will clearly define:
- 2.2.1 all the information and documents that must be provided by each bidder;
 - 2.2.2 the terms and conditions of the proposed Project Agreements, including duration, penalties that may apply as a result of delays or failure to achieve design/ performance specifications;
 - 2.2.3 procedures for requesting clarification before the proposal date and to receive notification on questions;
 - 2.2.4 circumstances in which the procurement process will be considered unsuccessful and cancelled (no Project Agreement awarded).

2.3 The notice for request for proposals shall include:

- (a) name and address of Procuring Entity;
- (b) description of the project;
- (c) desired or required time for performing the procurement and implementation of the project;
- (d) information required from bidders;
- (e) technical and financial bid evaluation criteria;
- (f) instructions for obtaining the RFP; and
- (g) place and deadline for submitting proposals.

2.4 Additionally, the request for proposals shall include the following data:

- (a) detailed instructions for preparing proposals;
- (b) detailed instructions on the content and format of the technical proposal and financial proposal to be submitted;
- (c) the terms and conditions of the proposed main Project Documents and their duration;
- (d) specific data on the project including, among other things, the characteristics and location of the project, point of delivery, connection point, minimum functional specification, operating characteristics, penalties that may apply as a result of delays or failure to achieve design/ performance specifications, financial conditions to be satisfied by the bidder and any technology requirement that bidders need to take into account;
- (e) procedures for the initial meeting and visits to the project site;
- (f) procedures for requesting clarification before the proposal date and to receive notification on questions;
- (g) the required bid bonds and other security to be provided by bidders;
- (h) procedures for changes to the RFP after it has been issued;
- (i) a description of criteria and evaluation methods of the technical proposal and financial proposals;
- (j) circumstances in which the procurement process will be considered unsuccessful and cancelled; and

- (k) the name, positions and means of communicating with the employees of the Procuring Entity who are authorized to communicate directly with bidders.

3. BIDDERS

- 3.1 In order to avoid any conflict of interests, a Procuring Entity will not be allowed to bid or participate in a bidding proposal or bidding consortium.
- 3.2 A bidder may participate in the procurement process if it pre-qualifies and is prepared to commit to the terms and conditions defined in the RFP, the procurement documents and PPA. The bidder may not modify the minimum functional specification of the generation project.
- 3.3 All bidders shall be given equal and non-discriminatory treatment during the solicitation and evaluation process for the selection of the winner and the final negotiation of the PPA.
- 3.4 The bids will be presented in two parts: a technical proposal and a financial proposal. The technical proposal shall include the relevant technical and operational data of the generating unit(s) proposed, as well as the offered target availability. The financial bid will include [the fixed charge detailing all of the annual fixed costs charge in [CURRENCY AND AMOUNT] that corresponds to the financing and fixed costs plus the rate of return] and the components of the [variable charge price detailing all the variable costs].

4. INSUFFICIENT COMPETITION

- 4.1 A procurement process will be considered competitive if more than two bids pass the technical evaluation and the process and the proposals comply with the Sub-Decree and these Guidelines as supervised by [Responsible Ministry]. The RFP document may contain further information as to the conditions that must be met in order for the process to qualify as a competitive process.
- 4.2 [To protect end consumers from insufficient competition, [Responsible Ministry] has the right to establish maximum fixed and variable charges for a project of this nature. These maximum charges shall be presented by [Responsible Ministry] in a sealed envelope on the date of presentation of proposals, prior to the opening of proposals. These maximum charges will only apply if the procurement does not qualify as competitive in accordance with Section 4.1.]
- 4.3 If only two or fewer bids pass the technical evaluation, the sealed envelope containing the maximum charge will be opened at the end of the opening of the bidders' financial proposals. If none of the bid prices is less than the maximum price, the Procuring Entity shall not accept the bid prices but may negotiate changes to the terms and duration of the Project Agreement in order to achieve agreement with a bidder on fixed and variable charges that do not exceed the maximum charges stipulated by [Responsible Ministry].

5. AUCTION MECHANISM: EVALUATION AND AWARD CRITERIA

5.1 The award criteria will be exclusively price based among proposals that pass the evaluation against technical criteria, to verify that the proposal complies or exceeds the technical requirements established in the procurement documents and the PPA.

5.2 The evaluation will be in two stages or three stages, depending on the number of bidders that pass the technical criteria. If four or more firms pre-qualify, the evaluation and award process may include three stages. However, if three or less firms pre-qualify, the process will include two stages.

5.3 *First Stage:*

5.3.1 The evaluation process will be initiated by the opening and evaluation of the technical proposals, with the purpose of verifying that the proposal complies with all the technical requirements. All bidders may be present when the technical proposals are opened.

5.3.2 The RFP and procurement documents will require bidders to submit in the technical proposal their comments on the PPA and their willingness to sign a Project Agreement substantially in the form presented in the RFP. Whilst the request for proposals will permit bidders to submit comments on the Project Agreement and to list exceptions to it, lack of willingness to sign a Project Agreement substantially in the form presented in the RFP may result in failure to pass the technical evaluation.

5.3.3 The Procuring Entity will prepare a written report containing a summary of the technical evaluation, which describes the number of bidders, the compliance of each bidder with the requested requirements and reasons for the rejection of any proposals.

5.3.4 The Procuring Entity will provide a copy of the technical evaluation summary to [Responsible Ministry] to enable it to review the following:

- (a) Proposals that have been qualified to be in compliance with the conditions and requirements defined in the procurement documents. [Responsible Ministry] may require the Procuring Entity to review a proposal that has been considered technically qualified if the [Responsible Ministry] considers that it does not comply with all the necessary requirements and has identified those requirements that have not been fulfilled.
- (b) The reasons for rejection of proposals to establish that they are justified in the light of the conditions and requirements defined in the procurement documents. The [Responsible Ministry] may require that the Procuring Entity reviews or clarifies a rejection, if the justification does not seem valid or consistent with the RFP and the procurement documents or the legal or regulatory requirements.

- 5.3.5 Once [Responsible Ministry] has reviewed and has no objection to the summary of the technical evaluation, the Procuring Entity will provide a copy of the technical evaluation summary to each bidder.
- 5.3.6 A proposal that fulfils the technical conditions will qualify as eligible and will pass to the financial evaluation in the next stages.

5.4 ***Second Stage:***

- 5.4.1 The second stage in the evaluation process will involve the opening and evaluation of the financial proposals of the bidders that have passed the technical evaluation in the First Stage and, therefore, qualify as being eligible.
- 5.4.2 The cost of each proposal will be calculated using the bid costs, prices and offered availability.
- 5.4.3 The total cost and evaluated price of each bid will be calculated using the net present value of all the expected payments under the Project Agreement, as follows:

[]

All bidders will have access to the calculations of the evaluated bid prices.

- 5.4.4 The Procuring Entity shall prepare a written report containing a summary of the financial evaluation that describes: the number of bidders, the prices offered by each bidder and the evaluated bid prices, the rejected bids and the reason(s) justifying the rejection, and the selection order (the ranking of bids). Each bidder will receive a copy of this summary at the end of the ***Second Stage***. The Procuring Entity will also submit a copy to [Responsible Ministry].
- 5.4.5 If three or fewer bidders pre-qualified or if four or more bidders pre-qualified but the proposals of only three or fewer bidders passed the technical requirements and qualified as eligible, the Project Agreement will be negotiated with the bidder that proposed the lowest evaluated bid price (the first bidder in the ranking). In any other case, the bidders that presented the four proposals with lowest evaluated bid prices will qualify and will pass to the ***Third Stage***.

5.5 ***Third Stage:***

- 5.5.1 Bidders that qualified in the ***Second Stage*** to pass to the Third Stage will go through a second round of price bids. Each bidder that qualified as eligible in the ***Second Stage*** will be asked to present new price bids in the form required by the RFP, or to maintain their bid prices.

- 5.5.2 The process will evaluate the new bid prices using the same methodology to calculate the average energy bid price as in the *Second Stage*.
- 5.5.3 The Procuring Entity will prepare a report containing a summary that describes the number of bidders, the prices offered by each bidder, the calculated evaluated bid price of each bidder, and the selection order (the ranking of bids). Copies of the summary will be provided to each bidder that participated in the second round of price bids and to [Responsible Ministry].
- 5.5.4 The Project Agreement will be negotiated with the bidder with the lowest evaluated bid price calculated using the bids made or maintained in the *Third Stage* (the bidder that is first in the ranking list).

6. FINAL NEGOTIATION OF THE PROJECT AGREEMENT

- 6.1 Bidders shall maintain the validity of their bids until negotiations are finalised and a Project Agreement awarded, or until the end of negotiations where no Project Agreement is awarded.
- 6.2 As a result of a successful competitive procurement process, a Project Agreement will be negotiated with the winning bidder with the lowest evaluated bid price that commits to finance, construct, maintain and operate the generation project under the conditions of the proposed Project Agreement and, if the procurement does not qualify as competitive under Section 18.1 and [Responsible Ministry] defined maximum charges because of insufficient competition, the evaluated price is not higher than the maximum price defined by [Responsible Ministry]. The prices presented in the bidders' proposals cannot be increased after the end of the auction mechanism.
- 6.3 Post-award negotiations shall be limited to terms and conditions that do not significantly affect for either of parties the risks, benefits and costs under the model Project Agreement included in the RFP documents but relate to ensuring that the Project Agreement accurately reflects the details of the project and the winning financial proposal in accordance with these Guidelines or, in case of insufficient competition as defined in Section 4.1, to improve financing conditions and reduce prices (such as increasing the duration of the Project Agreement). If during the negotiation the bidder requests changes that alter the project or the Project Agreement conditions significantly or that increase significantly the risks of the Procuring Entity under the Project Agreement, the Procuring Entity will have the right to terminate negotiations and negotiate the Project Agreement with the next bidder in the ranking, if any.
- 6.4 If the negotiation of the Project Agreement results in agreement between the Procuring Entity and the winning bidder, [Responsible Ministry] will issue a no objection certificate following its review of the [Project Agreement] and the competitive procurement process to the successful bidder after the Project Agreement has been signed. The no objection certificate by [Responsible Ministry]

will identify that the Project Agreement and the generation project will be considered as prudent procurement of generating capacity by the Procuring Entity and, therefore, there will be no objection by [Responsible Ministry] to the pass-through of the costs of the [Project Agreement] in tariffs regulated and approved by [Responsible Ministry].

- 6.5 Any later modification of the conditions or prices in a Project Agreement will result in a loss of the no objection certificate, unless such modification is presented to [Responsible Ministry] for review with its justification and is approved by [Responsible Ministry]. When a modification is presented for review, [Responsible Ministry] will verify that the proposed modification does not substantially change the Project Agreement and is consistent with these Guidelines, or, if it does, the change produces better prices and quality of service for end consumers and better efficiency incentives for the Operator. Subject to this review, the [Responsible Ministry] will issue a no objection certificate to the modification.

7. SPECIAL CONDITIONS

- 7.1 If no Project Agreement is awarded following a competitive procurement process for a large scale project, the Procuring Entity may request comments from bidders or potential bidders, and analyse terms and conditions that can be improved in relation to the project, the Project Agreement and the procurement documents to initiate a new competitive procedure.
- 7.2 If no Project Agreement is signed in respect of a large scale project following a competitive procurement process because of lack of response or excessively high prices, [relevant authority] may decide to eliminate the project from the System Expansion Plan or may obtain a special funding for the project.

8. DEFINITIONS

In these Guidelines the following expressions will have the following meanings:

“Responsible Ministry” means [relevant authority with responsibility for service being procured].

“Operator” means a person, entity or company that is to provide the service under the Project Agreement.

“Government” means the Government of [country].

“Procuring Entity” means [].

“RFP” means the request for proposals for the addition of new generating capacity issued by a Procuring Entity.