

Terms of Reference for the Legal Advisor

1. Background:

The Bangladesh Public-Private Partnership Act, 2015 (“PPP Act”) was enacted and gazetted on 16 September, 2015. Under this act, the PPP Authority was established in September 2015 as a separate, autonomous Authority under the Prime Minister’s Office to act as a catalyst to proactively identify, realize, screen, develop and provide support for PPP projects.

The PPP Authority supports line Ministries to facilitate identification, development and tendering of PPP projects to international standards. For interested investors and lenders, the PPP Authority provides a professional, transparent, centralized portal to high quality PPP Projects. The PPP Authority helps to augment government sector line ministry project development efforts with world-class external PPP resources, with the goal of increasing the quality, attractiveness, and sustainability of PPP projects while realizing them in an efficient and cost-effective manner.

Bangladesh is one of world’s fastest growing economies, with an average growth rate of around 7% per year. In its 45-year history as an independent state, Bangladesh has never built a new port. While US\$60 billion of annual trade currently pours through the country’s two existing seaports, Chittagong Port and Mongla Port, while Chittagong Port alone handles more than 90% of total sea-borne trades of the country. This has resulted huge congestions of ships and has impacted the performance of the Chittagong Port significantly. For this pupose Chittagong Port Authority (CPA) intends to build another terminal at Laldia Char through PPP arrangement.

Laldia will be developed as a multipurpose facility consisting two berths handling containers from geared ships and two berths handling dry bulk and break bulk general cargo. The Proposed Laldia Bulk Terminal site is located less than 10 Km from the upper Chittagong Port facilities near the Shah Amanat International Airport in Chittagong.

CPA has requested PPP Authority to provide Legal and Transaction Advisory support services for this project. PPP Authority is now in the process to appoint Legal Advisor for the project.

2. Objectives:

The purpose of appointing a Legal Advisor is to support the PPP Authority in delivering bid documents for project titled “Development of a Laldia Terminal (Terminal 1) under PPP Modality”.

3. Scope of Services:

The Legal Advisor will be responsible for the tasks:

A. Legal Review

1. Review and provide opinion on all relevant laws, policies, statutes, regulations, and licenses related to the development of the terminal in the proposed site. Highlight restrictions / limitations under any law, regulation or policies.
2. Supporting development of PPP transaction documents for the project.

B. Provide Support during Transaction stage

1. Providing support for the development of standardized and transparent procurement documents, including IFB/RFP, PPP contracts etc.
2. Bid evaluation criteria, evaluation methodology for various bidding scenario.
3. Standardized heads of terms for PPP contracts.
4. Develop principles for creating special purpose vehicle to hold development rights to PPP projects.
5. Support in discussions with bidders, provision of legal clarifications to bidders during promotion of the transaction.
6. Track amendments to any tender documents (including RFQ, RFP, CA etc.) and incorporate the amendments into legislative text;
7. Support during the evaluation process and in any negotiations that may be required in connection with the signing of the PPP Agreement and financial documents where relevant.
8. Other relevant support as required by PPP Authority.

C. Provide Support for PPP Model Documentations and Templates:

1. Enhancing or developing legal aspects of PPP model documents, standardised templates, guidance manuals and PPP Contracts (as may be required)
2. providing legal support for the development of standardized Project information Memorandum, Request for Qualification, Request for Proposals and other documents
3. Review Model tender documents (including RFQ, RFP, CA etc.) and suggest changes as required
4. Incorporate lessons learnt in to different PPP project document

4. Conditions

The Legal Advisor will be expected to work together in partnership with other consultants and advisors that are appointed by the PPP Authority and co-ordinate their activities in a positive manner to ensure successful delivery of the overall PPP Program.

The Legal Advisor must respond positively to the need for complementary analysis that the PPP Authority may request in order to deliver its PPP program objectives.

The Legal Advisor once appointed will be ineligible to bid for providing advice to any PPP projects for the private sector, that are enlisted with the PPP Authority.

The total services will need to be delivered over a contract period of 6 man-months (6X 22= 132 man-days) spread over 12 calendar months, but may be extended on mutual agreement. The payment to the Advisor would be made on man-days basis depending on actual works carried out.

5. Required Qualification and Experience

The consultant is desired to fulfill the following requirements:

1. At least a LL B degree from an accredited college or university in law or any other relevant equivalent degree.
2. At least 20 years of experience of working in the legal field for relevant project, procurement or commercial discipline in a relevant enterprise (for e.g. legal institution, project based firm, consultancy firm);
3. 15 years of international experience is required, experience in multiple countries including Bangladesh or similar operating environment will bring added value.
4. The Consultant should demonstrate experience in advising and structuring PPP transactions, drafting and negotiating relevant contractual documentation. Experience in corporate law is preferred.
5. Experience with Private Finance Initiative (PFI) structure is required.
6. Experience in preparing legal documentations for Roads and Highways, Port, Power, Civil Accommodation and Tourism sector is required. Experience on legal aspects of project financing will bring added value.
7. Must have strong and proven written and oral communication and presentation skills;

6. Application Procedure

An application should be submitted along with a detailed CV and a recent photograph. A financial proposal also needs to be submitted along with the application but in a separate sealed envelope. Preferred applicant may be interviewed. The template for the CV and financial proposal is provided in the annexure to this document.

A Quality and Cost Based Selection (QCBS) method (75, Technical: 25, Financial) would be followed for the evaluation purpose.

Annex 1: CV Template

| | | | | | | | | | | | |
|---------------------|--|---|------------------|----------------------------------|---------------------------------|----------------|---------------------|---------------|------------------|------------------|-----|
| 1 | PROPOSED POSITION FOR THIS PROJECT : | <i>[From the Terms of Reference, state the position for which the Consultant will be engaged.]</i> | | | | | | | | | |
| 2 | NAME OF PERSON : | <i>[state full name]</i> | | | | | | | | | |
| 3 | DATE OF BIRTH : | <i>[dd/mm/yy]</i> | | | | | | | | | |
| 4 | NATIONALITY : | | | | | | | | | | |
| 5 | MEMBERSHIP IN PROFESSIONAL SOCIETIES | <i>[state rank and name of society and year of attaining that rank].</i> | | | | | | | | | |
| 6 | EDUCATION | <i>[list all the colleges/universities which the Applicant attended, stating degrees obtained, and dates, and list any other specialised education of the Applicant].</i> | | | | | | | | | |
| 7 | OTHER TRAINING | <i>[indicate significant training since degrees under EDUCATION were obtained, which is pertinent to the proposed tasks of the Consultant].</i> | | | | | | | | | |
| 8 | LANGUAGES & DEGREE OF PROFICIENCY | <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;"><u>Language</u></td> <td style="text-align: center;"><u>Speaking</u></td> <td style="text-align: center;"><u>Reading</u></td> <td style="text-align: center;"><u>Writing</u></td> </tr> <tr> <td style="text-align: center;"><i>e.g. English</i></td> <td style="text-align: center;"><i>Fluent</i></td> <td style="text-align: center;"><i>Excellent</i></td> <td style="text-align: center;"><i>Excellent</i></td> </tr> </table> | <u>Language</u> | <u>Speaking</u> | <u>Reading</u> | <u>Writing</u> | <i>e.g. English</i> | <i>Fluent</i> | <i>Excellent</i> | <i>Excellent</i> | |
| <u>Language</u> | <u>Speaking</u> | <u>Reading</u> | <u>Writing</u> | | | | | | | | |
| <i>e.g. English</i> | <i>Fluent</i> | <i>Excellent</i> | <i>Excellent</i> | | | | | | | | |
| 9 | COUNTRIES OF WORK EXPERIENCE | | | | | | | | | | |
| 10 | EMPLOYMENT RECORD <i>[starting with present position list in reverse order every employment held and state the start and end dates of each employment]</i> | <p><i>[The Applicant should clearly distinguish whether as an “employee” of the firm or as a “Consultant” or “Advisor” of the firm].</i></p> <p><i>[The Applicant should clearly indicate the Position held and give a brief description of the duties in which the Applicant was involved].</i></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;">EMPLOYER 1</td> <td style="width: 30%;">FROM: <i>[e.g. January 1999]</i></td> <td style="width: 30%;">TO: <i>[e.g. December 2001]</i></td> </tr> <tr> <td>EMPLOYER 2</td> <td>FROM:</td> <td>TO:</td> </tr> <tr> <td>EMPLOYER 3</td> <td>FROM:</td> <td>TO:</td> </tr> </table> | EMPLOYER 1 | FROM: <i>[e.g. January 1999]</i> | TO: <i>[e.g. December 2001]</i> | EMPLOYER 2 | FROM: | TO: | EMPLOYER 3 | FROM: | TO: |
| EMPLOYER 1 | FROM: <i>[e.g. January 1999]</i> | TO: <i>[e.g. December 2001]</i> | | | | | | | | | |
| EMPLOYER 2 | FROM: | TO: | | | | | | | | | |
| EMPLOYER 3 | FROM: | TO: | | | | | | | | | |

EMPLOYER 4 (etc)

FROM:

TO:

11 WORK UNDERTAKEN THAT BEST ILLUSTRATES THE CAPABILITY TO HANDLE THIS ASSIGNMENT

[give an outline of experience and training most pertinent to tasks on this assignment, with degree of responsibility held. [Use maximum 2 page].

12 EXPERIENCE OF RELEVANT COMPUTER, COMMUNICATION, WRITING AND PRESENTATION SKILL

CERTIFICATION

[Do not amend this Certification].

I, the undersigned, certify that (i) I was not a former employee of the Client immediately before the submission of this proposal, and (ii) to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Signature

Print name

Date of Signing

dd / mm / yyyy

| | | |
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Annex 2: Financial Proposal Template

The Consultant should provide an indication of the remuneration as per the format shown below. This will not be used for evaluation of the Consultant's Application but solely for the purposes of Application Negotiations to be held as stated in **Clause 9.1** .

(1) Remuneration

| | | |
|------------------------------------|------------------------|-------------|
| Rate (per working day / in USD) | Staff Time 132 days | Total (USD) |
| | | |

Note: A month consists of 22 working days.

(2) Reimbursable (as applicable)

| | Rate per unit | Total unit | Total Amount (Tk) |
|--|---------------|------------|-------------------|
| (a) Per Diem Allowance | | | |
| (b) Air Travel Costs | | | |
| (c) Other Travel Costs (state mode of travel) | | | |
| (d) Communication charges | | | |
| (e) Reproduction of Reports | | | |
| (f) Other Expenses (<i>to be listed</i>) | | | |
| | | | |
| | | Sub-total | |

| | |
|----------------------------|--|
| CONTRACT CEILING (1) + (2) | |
|----------------------------|--|

Annex 3: Evaluation Criteria

Evaluation Sheet for Individual Consultant (Legal Advisor)

“Development of Laldia Terminal for under PPP Modality”

Applicant Name:

| Criteria | Minimum Requirement | Applicant's Credentials | Total Marks Assigned | Pass Marks (meeting Minimum Req.) | Marks Obtained |
|----------------------------------|---|-------------------------|----------------------|-----------------------------------|----------------|
| Education | LL B Degree | | 10 | 10 | |
| | Name of the Institution | | | | |
| Total Years of Experience | 20 Years | | 15 | 10 | |
| International Experience | 15 Years | | 15 | 10 | |
| Sectoral Experience | 5 Sectors | | 15 | 10 | |
| Experience in PPP Project | 5 Projects | | 15 | 12 | |
| Communication and Computer Skill | Ability to use MS Office applications, structural software and classic typing quality | | 5 | 3 | |
| Total | | | 75 | 55 | |

Evaluation Note:

- Education (total assigned marks 10):
(LLB will bring 10 marks)
- Total Years of Experience (total assigned marks 15):
(10-15 years will bring 10 marks, 16-19 years will bring 14 marks, 20 years or more will bring 15 marks)
- International Experience (total assigned marks 15):
(10 Years will bring 10 marks, 11-14 years will bring 12 marks, 15 years or more will bring 15 marks)
- Sectoral Experience (total assigned marks 15):
(3 Sectors will bring 10 marks, 4 Sectors will bring 12 marks, 5 or more sectors will bring 15 marks)
- Experience in PPP Project (total assigned marks 15):
(3 Project will bring 12 marks, 5 Projects will bring 15 marks)
- Communication and Computer Skill (total assigned marks 5):
(Experience of using communication software/tools and project management softwares/tools will bring higher marks. At least 2 software/tools used will bring 3 marks, 3 tools will bring 4 marks, 5 or more will bring 5 marks)