



Democratic Socialist Republic of Sri Lanka

Supplement - 30

To the

Guidelines on Government Tender Procedure - Part II  
(Private Sector Infrastructure Projects)

**Reference 237 – Dealing with Unsolicited Project Proposals**

**Introduction of “Swiss Challenge” Procedure**

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**DEPARTMENT OF PUBLIC FINANCE**

# **GUIDELINES ON SWISS CHALLENGE PROCEDURE**

## **1. Introduction**

Since funding available from the Consolidated Fund and the capacity of the public sector to implement the increasing number of infrastructure projects is limited, the Government of Sri Lanka is considering obtaining of funds from alternative sources while ensuring an efficient infrastructure service delivery and maximizing value for money.

At its meeting held on 09.08.2016, the Cabinet of ministers has recommended and the Department of Public Finance in consultation with the National Procurement Commission of Sri Lanka, has decided that when dealing with unsolicited proposals presented by private proponents on their own initiative without tenders being called by the Government (“Unsolicited Proposals”), such Unsolicited Proposals should be dealt in accordance with the “Swiss Challenge” procurement method which requires the Government agency to publish a Request for Proposals (“RFP”) and invite counter proposals from interested parties on development projects or services.

The “Swiss Challenge” Procurement Method shall be used in Sri Lanka by all Ministries, Government Departments, Public Corporations, Local Authorities, any business or other undertakings vested in the Government and Companies registered or deemed to be registered under the Companies Act No. 7 of 2007 in which the Government, a public corporation or any local authority holds more than fifty percent (50%) of the shares (“Government Institutions”) in accordance with these “Swiss Challenge Procedure Guidelines” (the “Guidelines”).

## **2. Applicability**

These Guidelines shall apply to all government institutions in reviewing and evaluating development proposals presented by the private investors which are of strategic nature from an economic development view point and need to be expedited in the national interest.

Projects which are generally not of a strategic nature and can be managed through the conventional procurement procedure as well as procurement of a general nature goods and services should not be considered under these Guidelines. These Guidelines also do not apply to proposals which have been already agreed and are at various stages of implementation by the Government prior to the introduction of Swiss Challenge Procedure.

## **3. Process to be followed**

In order to encouraging private companies to submit innovative project ideas without compromising transparency and efficiency gained through a competitive tender process, the following Guidelines shall be followed by Government Institutions when dealing with Unsolicited Proposals.

### **3.1 Proposal Submission**

In the event that a private sector participant (“Original Bidder”) wishes to submit an unsolicited proposal to a Government Institution, the Original Bidder shall submit a proposal containing the following:

- An articulation and justification of the Project from national interest view point;
  - a. Feasibility study including market analysis, technical and financial analysis, economic analysis and operational/institutional aspects;
  - b. Basic contractual terms and conditions;
  - c. Pre-qualification requirements, experience or track record and financial capability to undertake the Project;
  - d. Preliminary financing plan which describes how the Project will be financed and the draft financing agreements for the Project;
  - e. Project implementation plan which would show the timeframe of construction and implementation and the expected outcome(for example, elevated MRT, highways, electrified trains, recycling plant etc); and
  - f. The cost incurred by the Original Bidder in developing the Proposal together with the relevant evidence to substantiate such cost.

### **3.2 Justification and Proposals screening**

The Secretary to the line Ministry and the Head of the relevant Government Institution (collectively the “Designated Authority”) must evaluate such Unsolicited Proposals and satisfy whether such proposals are beneficial to the country in terms of socio-economic development, employment generation, technological transfer or capacity development and similar factors; and that such proposals are in conformity with the existing legal, regulatory and environmental policy of the country. The Designated Authority may request the Department of Public Finance to appoint a Project Committee comprising expertise from relevant government institutions to provide assistance to the Designated Authority in relation to the evaluation of the Unsolicited Proposals.

In evaluating the Unsolicited Proposal, the Designated Authority shall give due consideration to the following:

- a. Significance and relevance of the proposal in terms of sectoral priority within government overall policy priorities;
- b. Alternative delivery options and their implications so as to determine if there is any exceptional benefit to the country in terms of funding, technology or otherwise from the Unsolicited Proposal;
- c. Merits of the proposed Project and its conformity with the existing legal, regulatory and environmental policy of the country;
- d. Reputation, know-how and experience possessed by the Original Bidder in the sector, industry and/or field of the proposed Project;
- e. Experience and/or proven track record and financial capability of the Original Bidder to undertake the proposed Project;
- f. Acceptability and feasibility of the implementation plan; and

- g. The cost incurred by the Original Bidder in developing the Unsolicited Proposal, as supported by relevant evidence.

### **3.3 Approval of Preliminary Proposal**

Considering the criteria stated above at clause 3.2, if the Designated Authority determines that;

- i. The proposal and the associated funding offer being acceptable and meeting the sectoral priorities in the Public Investment Plan within the Government's overall policy strategies
- ii. The project proponent possesses reputation and the knowhow in the given sector/industry or field

Then the Designated Authority shall submit the Unsolicited Proposal, together with a detailed written recommendation, to the Special Committee functioning under the Cabinet Committee on Economic Management ("CCEM Special Committee") which is empowered to endorse the Unsolicited Proposal and to make recommendations on the way forward in relation to the said proposal.

The CCEM Special Committee shall ascertain the suitability of Unsolicited Proposal received and merits of the Project, considering the following aspects:

- a. Economic, Social and Environmental viability of the Project;
- b. Contribution to the economic development of the country;
- c. Employment generation and technology transfer;
- d. Proposed technology;
- e. Acceptability of the method of financing;
- f. Relevancy and the compatibility with existing facilities;
- g. Risk and Rewards and the proposed mechanism for sharing the same with the relevant Government Entity;
- h. Responsibilities and obligations of the Government or the relevant Government Entity in connection with the project;
- i. Compliance with applicable laws and national policies; and
- j. Expected income/yield or final outcome and impacts of the Project.

### **3.4 Negotiation**

The CCEM Special Committee is empowered to negotiate with the original proponent to agree upon on the terms of the proposal giving due consideration on the matters stated in 3.3 above. At the negotiation, proposal development cost of the originator should be determined and agreed upon. In the case of original proponent and the Special Committee do not mutually agree on the terms of the original bid for the project, the Line Ministry will be advised to reject the proposal.

### **3.5 Bidding, Count Proposals and Proposal Evaluation**

In the event that the Special Committee endorses the proposal and advises to invite competitive counter proposals to benchmark with the original proposal, the line ministry shall invite counter proposals from prospective bidders giving wide publicity, nationally and internationally.

In this process;

- a. At the request of the Designated Authority, the Department of Public Finance shall appoint an appropriate Project Committee (“PC”) with relevant expertise for evaluation of the Counter Proposals. The most responsive Counter Proposal shall be selected to be benchmarked with the original proposal.
- b. All potential counter-bidders should be given adequate time to submit Counter proposals as many potential challengers may be unwilling to compete for complex technologically and financially high risk projects without sufficient time to prepare. Further, time constraints on counter proposals may give an undue competitive advantage to the Original Bidder. For the avoidance of doubt, the time given to submit counter proposals shall not be less than 30 days avoiding Sundays and public holidays in Sri Lanka.
- c. The CCEM Special Committee shall then request the Original Bidder to match the selected counter proposal if CCEM Special Committee is of the view that the selected Counter Proposal is more competitive than the unsolicited proposal in terms of financing, and technology.
- d. If the Original Bidder matches or submits an improved proposal in terms of financing, and technology when invited to match the selected counter proposal (the “Second Proposal of the Original Bidder”), the CCEM Special Committee shall recommend the acceptance of the second proposal of the original bidder to the Designated Authority. Upon the receipt of such recommendation, subject to applicable law and guidelines, the Designated Authority shall take necessary steps towards the award of a contract to the original bidder for development of the Project based on the Second Proposal of the original bidder.
- e. In the event that the Original Bidder fails to match the selected Counter Proposal or to submit a better proposal in terms of financing, and technology, the CCEM Special Committee will have the authority to recommend the acceptance of the selected Counter Proposal to the Designated Authority. Upon the receipt of such recommendation, subject to applicable law and guidelines, the Designated Authority shall take necessary steps concerning the award of a Contract to the party who submitted the selected Counter Proposal for development of the project.
- f. If the selected Counter Proposal is recommended to the Designated Authority under clause 3.5.f above, the party who submitted the selected Counter Proposal shall be requested to reimburse a part or the whole of the development cost of the original proposal to the Original Bidder as determined by the Designated Authority. The cost to be so reimbursed shall be stated in the RFP.
- g. The Designated Authority shall within one (1) week of being notified of the recommendation of the CCEM Special Committee, inform the Original Bidder and all parties which have submitted Counter Proposals of the said recommendation and the intention to award the contract to such bidder.

### **3.6 Appeals**

If the Original Bidder or the party submitting the counter proposal is not satisfied with the recommendation of the CCEM Special Committee (the “Aggrieved Party”), such Aggrieved Party may make representations to the Procurement Appeals Board (PAB) established in terms of the Procurement Guidelines (Revised) within one (1) week of being informed of the recommendation of the CCEM Special Committee by the Designated Authority. The provisions set out in sections 8.3 and 8.4 of the Procurement Guidelines (Revised) in relation to the PAB shall apply.

### **3.7. Approval**

Accordingly, The Minister of the portfolio concerned should submit a Cabinet Memorandum for approval prior to entering into the final contract/agreement and making commitments.