



Democratic Socialist Republic of Sri Lanka

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To the

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DEPARTMENT OF PUBLIC FINANCE

PROCUREMENT GUIDELINE PART II REFERENCE: 2:3:7

Guidelines to be used by line Ministries or Government Agencies when dealing with unsolicited/ stand-alone development proposals

1. Preamble;

- 1.1 The Cabinet of Ministers at its Meeting held on 23rd June 2010, appointed a Standing Cabinet Appointed Review Committee (SCARC) to make assessments of unsolicited or stand alone development proposals and decide the manner in which such proposals could be proceeded with, and advise the relevant line Ministries or the Government agencies on matters relating to such proposals.
- 1.2 Further, the Cabinet of Ministers at its Meeting held on 20th October 2010 gave approval to strengthen the mandate of the SCARC by approving to have in place, one or more supporting committees with relevant expertise to assist towards expeditious evaluations so that recommendations of SCARC can be made to the Cabinet of Ministers without delay.
- 1.3 Since raising of funds at concessionary or low interest rates through conventional lending sources is no longer easy, bilateral lending arrangements have expanded through export credit agencies of emerging economies where each lender has its own procurement systems and where such lending Governments or agencies, nominate their contractors. In this backdrop, considering the fact that development projects need to be expedited in the national interest, it is deemed prudent to consider alternative funding where appropriate, through a mechanism that will take care of acceptable project financing arrangements.

The following Guidelines that have been prepared by SCARC in consultation with relevant stakeholders should be followed when dealing with unsolicited/stand alone development proposals, further to the broad outline given in “Guidelines on Government Tender Procedure Part II” issued in 1998.

Please note that Projects which are generally not of a strategic nature and can be managed through the normal procedure as well as procurement of a general nature should not be processed in terms of these Guidelines. It is the duty of Secretaries to the line Ministries or Heads of Government agencies to make an assessment and ensure that only proposals which are covered in terms of the guidelines given herein are submitted to the SCARC.

2. Classification;

The following classification of project proposals is adopted to facilitate effective processing;

2.1 Category I

Public Sector Development Project Proposals to be financed on credit terms pertaining to which the lender nominates the contractor.

2.2 Category II

Development Project Proposals to be undertaken by Private Investors in the form of Private Public Partnership (PPP), Build Own Operate (BOO), Build Own Transfer (BOT) and other partnership arrangements with line ministries or other Government agencies.

2.3 Category III

Private investment initiatives which involve having to dispose either by sale, grant or otherwise – any state land or land owned by a state entity.

3. Process to be followed in relation to Category I and II;

3.1 Justification

To proceed with such an unsolicited/stand alone proposal, the Secretary to the relevant line ministry or the Head of a Government Agency must initially be satisfied that such proposal appears to be exceptionally beneficial to the country in terms of funding or otherwise, and it is desirable to proceed with such proposal on an urgent basis without going through the normal procurement procedure. In deciding so the following as appropriate should be considered by the head of the Department.

- a. the proposal and the associated funding offer being important and relevant to the Public Investment Plan of the relevant line Ministry or the Government Agency, within the Government's overall policy strategies and compared to available funding arrangements ; and /or
- b. the proposed investor commands reputation and the knowhow that is otherwise scarcely available in the field related to the Project and hence it is desirable to proceed with the Project with such investor in comparison to pursuing the open competitive bidding process.

Such proposal may be submitted to the Chairman of the SCARC, along with the observations of the National Planning Department and the External Resources Department, requesting advice of the SCARC on the way forward.

3.2 Decision to Proceed or Refrain;

Thereafter, the SCARC having made an assessment either by itself or with the assistance of a Technical Evaluation Committee/

Project Committee where deemed appropriate after having discussions with the proposed investor or other relevant officials, inform the Secretary to the relevant line ministry or the Head of the relevant Government Agency through the Secretary to the relevant line Ministry, that such proposal;

- i. does not contain merit for further consideration and hence should refrain from proceeding; or
- ii. deserves consideration to proceed with, due to one or more of the following reasons, on the basis that it is consistent with the content of the Cabinet decision on preserving the National Interest’;
 - a. the strategic importance of the proposed project which would ultimately be of benefit to the economic development of the country;
 - b. the implementation of the project is well within the planned development programs of the Government in view of the technical details provided;
 - c. the expected transformation of superior knowledge/ know-how through the proposed Project , that is otherwise not available through alternative arrangements;
 - d. the substantial inflow / savings of foreign exchange to the country;
 - e. overall conditions attached to the financing and Project implementation being acceptable/ attractive and there is evidence of firm commitments on the part of financiers;
 - f. Deviations from the competitive bidding procedure stipulated in the Guidelines on Government Tender Procedure is justifiable,

And proceed to obtain the approval of the Cabinet of Ministers to go ahead with the Project.

3.3 Suitable Terms Relating to Financing;

It must be ensured that related project financing is extended through a reputed banking/ financial institution acceptable to the Government and the project financing terms should extend at least with a 15 year repayment period including at least a 3 year grace period. The relevant line ministry when submitting such a proposal to the SCARC should submit a report setting out possible repayments through funds generated from the Project or out of funds within the control of the relevant line ministry or the Government Agency. There should be a “no objection” obtained from the Central Bank of Sri Lanka regarding the external financing terms.

- 3.4 Once the project is endorsed by the SCARC the line ministry shall proceed with negotiations in relation to the project with the proposed investor on technical matters, project cost, contract conditions etc., in consultation with the SCARC.

4. Process to be followed in relation to Category III;

4.1 Justification

If any stand alone or unsolicited proposal is received by a Secretary to a line Ministry or a Head of a Government Agency, with regard to a proposal coming under Category III, where the proposal is for a private investment which involves having to dispose either by sale, grant or otherwise – any state land or land owned by a state entity, and where the Secretary to the relevant line Ministry or the Head of the Government Agency deems it appropriate to proceed with such proposal since it is likely to bring substantial economic

or social benefits to the country or will change the landscape of the country, the Secretary to the relevant line Ministry or the Head of the Government agency through the Secretary to the relevant line Ministry, may submit such a proposal to the Chairman of the SCARC, requesting advice of the SCARC on the way forward.

4.2 Decision to Proceed or to refrain

Thereafter, the SCARC having made an assessment if deemed appropriate after having discussions with the proposed investor or other relevant officials, inform the Secretary to the relevant line ministry or the Head of the Government agency through the Secretary to the relevant line Ministry that such proposal;

- i. does not contain merit for further consideration and hence should refrain from proceeding; or
- ii. deserves consideration and advise on the way forward *inter alia* to obtain Cabinet approval to the Project and a Direction from the Cabinet of Ministers to seek relevant approvals from the local authority, environmental authority and other regulatory and provincial authorities.

4.3 Valuation by the Chief Valuer

The Secretary to the line Ministry or the Head of the relevant Government Agency shall ensure that a valuation from the Chief Valuer must be obtained towards determining the price of land.

The relevant agency must disclose all the Survey Plans, details of the land, any restrictions attached and the development plan of the area around the land etc., to get the best valuation assessment.

4.4 Funds Realized to be credited to the DST's Account

The Secretary to the line Ministry shall ensure that all funds realized consequent to implementation of such proposals shall be credited to the account of the Deputy Secretary to the Treasury or transferred to appropriate accounts with the approval of a Deputy Secretary to the Treasury, to maintain accountability and proper recording. Proceeds of such investments should be utilized only for specific capital investments within the agency as approved by the National Budget Department.

5. General Provisions;

The following be noted with regard to all categories, as may be relevant;

5.1 Obtaining the Approval of the Cabinet of Ministers

The Secretary to the line ministry as advised by the SCARC, should obtain the approval of the Cabinet of Ministers, prior to executing of the final contract/agreement and making a commitment on behalf of the Government or a Government agency.

5.2 Entering into a Memorandum of Understanding (MOU)

SCARC will advise as to whether a MOU needs to be signed, taking into consideration *inter alia* the nature of the project, level of commitments required to be made by the Government or a Government Agency.

If a MOU is to be signed, the following should form part of such MOU as appropriate;

- a. the parties and the validity period of the MOU,

- b. that if conditions stipulated in the MOU are not met within the agreed timelines, the MOU shall cease to be operative and that it will not give rise to any legally enforceable obligations,
- c. that negotiations will not be held with third parties during the pendency of the MOU,
- d. a payment timeline and payment modalities, after having consulted the Treasury in that regard.
- e. other appropriate terms and conditions.

5.3 Application of Generally Accepted Procedures in Project Implementation

The project should then be proceeded with subject to generally applicable procedures through the relevant agencies as approved by the Cabinet of Ministers.