Tibar Bay Port PPP Project

Data Room Rules and Procedures

Introduction

To enable Prequalified Bidders to familiarise themselves with the Tibar Bay Port PPP project (the “Project”), the Ministry of Finance and the Ministry of Transport and Communications (who together with their officials, employees, representatives and advisors constitute the “Authorities”) have established a password-protected data room website (the “Data Room”) at the address specified in paragraph 3. The Data Room houses relevant information in electronic form about the Project such as a Legal Memorandum, Technical Due Diligence reports and other data relevant to the prospective Bidders. The Data Room will also be the mechanism by which the Bidding Documents (the Request for Proposals, the Concession Agreement and other relevant documents) will be provided to interested parties.

This document, including its schedules, sets out the rules and procedures (the “Rules”) which govern access to and use of the Data Room.

The Data Room opens on March 26th, 2014 and remains open until the bid submission date.

1. INVITATION TO ACCESS THE DATA ROOM

1.1. Prequalified Bidders who meet the conditions set out in Section 2 will receive by e-mail to the Prequalified Bidder E-Mail Address set out in the Prequalified Bidder Contact Details (Appendix 2) an invitation, including their password, to access the Data Room.

1.2. Only one user access will be provided for each Prequalified Bidder, such user access can then be shared between each Prequalified Bidder’s interested staff.

2. CONDITIONS FOR ACCESS TO THE DATA ROOM

In order to gain access to the Data Room, Prequalified Bidders must fulfill the following conditions:

2.1. Sign and return to the contact persons indicated in Section 4:

2.1.1. the Confidentiality Undertaking in the form set out in Appendix 1, and;

2.1.2. a written power of attorney, duly notarized, confirming that the person(s) signing the Confidentiality Undertaking has(ve) the authority to sign the Confidentiality Undertaking and the other documents required to be submitted as part of these Rules, and;

2.1.3. the Prequalified Bidder Contact Details in the form set out in Appendix 2, and;

2.1.4. a written acknowledgement confirming to the Authorities the Prequalified Bidder’s consent to the Rules in the form set out in Appendix 4 signed by the person(s) authorised under the power of attorney delivered in accordance with Section 2.1.2.

2.2. Provide a non-refundable Bid Fee of US$1,000 (one thousand US Dollars) payable by wire transfer to the following bank account:
2.2.1. If payment is made in Timor Leste

NAME OF BANK: CENTRAL BANK of TIMOR LESTE

SWIFT CODE: BCTLTLDI

ACCOUNT NO:  2-3711

ACCOUNT NAME: CFET – CONSOLIDATED FUND of TIMOR LESTE

ADDRESS: CENTRAL BANK OF TIMOR-LESTE
          Avenida Bispo Medeiros
          P.O.BOX 59 - DILI
          TIMOR-LESTE

REFERENCE: BID FEE – TIBAR BAY PORT PPP PROJECT

If payment is made outside Timor Leste the payment must be made via the Federal Reserve Bank of New York for account of Central Bank of Timor Leste as follows:

NAME OF BANK: FEDERAL RESERVE BANK OF NEW YORK

33 LIBERTY STREET

NEW YORK, NEW YORK

UNITED STATES of AMERICA

SWIFT CODE: FRNYUS33

BENEFICIARY: CENTRAL BANK of TIMOR LESTE

SWIFT CODE OF BENEFICIARY: BCTLTLDI

ACCOUNT NO of BENEFICIARY/ ABA :  021080740

MUST MENTION IN DETAIL: FOR CREDIT OF CFET A/C # 2-3711 - BID FEE TIBAR BAY PORT PPP PROJECT

2.2.2. A copy of the transfer confirmation should be sent by e-mail to the contact persons indicated in Section 4.

The Bid Fee is intended to cover administrative costs related to the preparation of the Bidding Documents and due diligence reports.

3. INSTRUCTIONS FOR ACCESSING THE DATA ROOM:

3.1. Access the following URL: https://www.mof.gov.tl/tibar-bay-project-project-data-room/
3.2. The following message will appear “You do not have the appropriate group permissions to access this page. Please try logging in or contact an administrator for assistance.”

3.3. Click on the “logging in” link


3.5. Login using the following details:

- **Username**: the Prequalified Bidder E-Mail Address provided in the Prequalified Bidder Contact Details (Appendix 2).
- **Password**: the password that was sent to the Prequalified Bidder E-Mail Address in the Data Room invitation mentioned in paragraph 1.

3.6. Once logged into the Data Room, the available information and links to such information are listed in the left side column.

4. **CONTACTS**

All correspondence in relation to the Data Room (including in relation to documents required under paragraph 2, or any other issue with the website, but excluding any questions on the information in the Data Room which is dealt with under paragraph 7 should be addressed to:

Vitor Paiva  
Major Projects and PPP Unit Advisor, Ministry of Finance, Government of Timor Leste  
E-mail: vpaiva@mof.gov.tl

With copy to:

Clemence Huguet  
International Finance Corporation  
E-mail: chuguet@ifc.org

5. **USE OF THE DATA ROOM**

5.1. Use of any information in the Data Room by a Prequalified Bidder and any person accessing the Data Room ("Data Room User") is subject to the terms of the Confidentiality Undertaking.

5.2. It is intended that the Data Room will be available for access 24 hours a day, seven days a week, subject to periods of interruption caused by matters outside the control of the Authorities and to the Authorities temporarily suspending its service for technical or maintenance reasons or to update the information in the Data Room.

5.3. No assurance is given by the Authorities that the Data Room will be available at any particular time or that any information can be accessed in any particular format, at any download rate or at all.
5.4. Data Room Users who experience technical difficulties in accessing or using the Data Room should contact by e-mail the contact persons mentioned in Section 4.

5.5. Updated or further information may be uploaded to the Data Room or information may be removed from the Data Room at any time. It is the Prequalified Bidder’s responsibility to check whether the Data Room has been amended.

5.6. A number of the documents in the Data Room are not in English. Where a translation is provided, no warranty is given and no responsibility or liability is accepted for its accuracy.

5.7. Data Room Users will be permitted to print information in respect of which the print function has been enabled and download information from the Data Room.

5.8. Any breach of these Rules by a Prequalified Bidder or any of its Data Room Users may result in that Prequalified Bidder and its Data Room Users’ access to the Data Room being cancelled, withdrawn or restricted.

6. NO LIABILITY OF THE AUTHORITIES

The Authorities shall have no responsibility for the contents of the Data Room or any omissions from it. The information in the Data Room may not be complete, nor may it represent a complete description of any matters set out described in such information. Neither the Ministry of Finance nor the Ministry of Transport and Communications nor any of their officials, employees, representatives or advisors:

6.1. makes any representation, statement, warranty or assurance (express or implied) in relation to the accuracy or completeness or fitness for any particular purposes of any of the information or as to its reasonableness;

6.2. accepts any responsibility for any losses, costs, damages or expenses incurred or suffered from time to time by any Prequalified Bidder or any Data Room User arising from or out of their use of the information in the Data Room;

6.3. accepts any responsibility or liability for any losses incurred or suffered from time to time by any Prequalified Bidder or any Data Room User (or any other person) as a result of loss of, or interruption to, access to the Data Room (or any folder, sub-folder or document in it).

7. QUESTIONS AND ANSWERS

7.1. A Prequalified Bidder requiring any clarification on the information available in the Data Room or the Project may send a written request (by e-mail) on a Q&A document in the form set out in Appendix 3 or in any other form approved by or on behalf of the Authorities ("Q&A Form") to the following contacts:
Greesh Sharma, Procurement Advisor, National Procurement Commission (the “Q&A Coordinator”), as a representative of the Authorities, will supervise the questions and the answers and will be the main point of contact in respect of any further information regarding the Project.

His contact details are as follows:

T: +670 73620359  
E-mail: gsharma@npc.gov.tl  
Address: National Procurement Commission, Dili, Timor-Leste

With copy to:

Vitor Paiva  
Major Projects and PPP Unit Advisor, Ministry of Finance, Government of Timor Leste  
E-mail: vpaiva@mof.gov.tl

Christopher Bleakley, IFC Coordinator, International Finance Corporation  
T: +61 2 9235 6513  
E-mail: cbleakley@ifc.org

7.2. All questions submitted by a Prequalified Bidder must be submitted by one of the Prequalified Bidder’s Main Contact Persons indicated in the Prequalified Bidder Contact Details (Appendix 2).

7.3. Only questions submitted by one of the Prequalified Bidder’s Main Contact Persons electronically on a Q&A Form will be considered. Questions must be referenced to the relevant document reference or folder in the Data Room (where applicable) and must be submitted in English. Questions which do not identify the issue or query clearly or, where applicable, do not have a correct reference, may not be answered.

7.4. Questions may be submitted on a weekly basis.

7.5. The Authority will post electronic copies of the responses to the Prequalified Bidders’ queries, including an explanation of the query but not identification of its source on the Data Room on a best efforts basis once a week. If similar or repeated queries are made by Prequalified Bidders, those queries may be listed as one query and the Authority may respond to such query only once.

7.6. No liability is or will be accepted by the Authorities for any delay in responding or failure to respond to any of the questions raised by the times specified in this Section 7.

8. APPLICABLE LAW

8.1. The Rules and any dispute or claim arising out of in connections with them, their subject matter or formation (including any non-contractual dispute or claim), are governed by and shall be construed in accordance with the laws of the Democratic Republic of Timor-Leste.
8.2. These Rules are issued by and on behalf of the Ministry of Finance and the Ministry of Transport and Communications as part of the Request For Proposals issued or to be issued to Prequalified Bidders only.

18 March 2014
APPENDIX 1

CONFIDENTIALITY UNDERTAKING RELATING TO THE TIBAR BAY PORT PPP PROJECT, TIMOR-LESTE

WHEREAS:

• On 20 February 2014, the Government of Timor-Leste, represented by the Ministry of Transport and Communications and the Ministry of Finance (the "Authority") requested the Prequalified Bidders to participate in the bid stage with the objective of submitting bids in respect of the Tibar Bay Port PPP Project, Timor-Leste (the "Project").

• The Authority may disclose (whether in writing or orally or by any other means and whether directly or indirectly) to [insert details of the Bidder] (the "Bidder") information relating to the Project, including, but not limited to, material of a technical, financial, technological, geological, surveying, operational, administrative, economic, planning, business, financial or legal nature or in the nature of intellectual property of any kind or relating to the property, assets, business, plans or proposals of the Authority that is commercially sensitive or of a confidential nature or which the Authority regards as its property (all such information being referred to as "Confidential Information").

• In consideration of the provision of Confidential Information by the Authority, the Bidder undertakes to keep it strictly confidential.

NOW, THEREFORE, THIS CONFIDENTIALITY UNDERTAKING WITNESSES AS FOLLOWS:

• In this Confidentiality Undertaking, where the context permits, a reference to a "person" includes a reference to a body corporate, association, partnership or individual.

• The Bidder hereby agrees and warrants that, as from the date of this Confidentiality Undertaking until its third (3rd) anniversary, to the extent it receives Confidential Information, the Bidder shall, and will procure that its affiliates, controlling and related persons and agents (collectively, the "Representatives") shall: (a) keep and maintain all Confidential Information strictly confidential; (b) protect all Confidential Information against theft, damage, loss and unauthorised access (including access by electronic means); (c) disclose such Confidential Information (if at all) only to its controlling persons, its attorneys and professional advisors, and to such employees who have a reasonable need to know such Confidential Information (subject in each case to such person's agreement to make no further disclosure), or as may be required by law; (d) use such Confidential Information solely for the purpose of determining whether to enter into a contract for the implementation of the Project; and (e) in case of abandonment of the Project, whether by the Bidder or the Authority, promptly upon request of the Authority return such Confidential Information (and all copies thereof) to the Authority or destroy it (if expressly requested), provided that such returning or destroying of the Confidential Information shall not relieve the Bidder from its duties, obligations or responsibilities under this Confidentiality Undertaking.

• Confidential Information does not include, however, information which (a) is in the public domain at the time of disclosure to the Bidder or any of its Representatives or which comes into the public domain after disclosure to the Bidder or any of its Representatives other than by reason of any breach of the terms of this Confidentiality Undertaking by the Bidder or any of its
Representatives; or (b) the Bidder can show by written evidence to the reasonable satisfaction of the Authority that the information has been lawfully disclosed to it or any of its Representatives on a non-confidential basis by a third party who is not otherwise bound by a confidentiality agreement with the Authority, or is not otherwise prohibited from transmitting the information in question.

- The Authority makes no representations or warranties, express nor implied, as to the Confidential Information, including, without limitation, any representation or warranty relating to its accuracy, completeness or reasonableness, and shall have no liability for any direct, indirect or consequential loss or damage to any person resulting from the use of any Confidential Information by the Bidder or any of its Representatives. This Confidentiality Undertaking does not obligate the Bidder to enter into any contract to implement the Project.

- Without prejudice to any other rights or remedies that the Authority may have, the Bidder acknowledges and agrees that the Authority might be irreparably and continually harmed by a breach of the provisions of this Confidentiality Undertaking and that damages alone may not be an adequate remedy for any breach of the provisions of this Confidentiality Undertaking. The Bidder agrees to indemnify and hold harmless the Authority from and against any losses, claims, damages or liabilities incurred by it as a result of, or arising out of, any such breach. In addition, if the Bidder becomes aware of any such breach (whether by the Bidder of any of its Representatives) the Bidder will promptly notify the Authority in writing.

- No failure or delay by the Authority in exercising any right, power or privilege under this Confidentiality Undertaking will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any further exercise of any right, power or privilege hereunder or otherwise.

- This Confidentiality Undertaking shall be binding upon the Bidder, its Representatives, successors and assigns, and shall inure to the benefit of and be enforceable by the Authority and its representatives, successors and assigns.

- The provisions of this letter will be severable in the event that any of the provisions in this Confidentiality Undertaking are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions will remain enforceable to the full extent permitted by law.

- This Confidentiality Undertaking shall be governed by and construed in accordance with the laws of Timor-Leste and the courts of Dili shall have the exclusive jurisdiction with respect of this Confidentiality Undertaking.

IN WITNESS WHEREOF, the Bidder has caused this Confidentiality Undertaking to be executed by its duly authorised representative as of [insert date].

THE BIDDER, represented by:

[insert name and title of representative]
APPENDIX 2

PREQUALIFIED BIDDER CONTACT DETAILS

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<thead>
<tr>
<th>Prequalified Bidder’s Name</th>
<th>Prequalified Bidder’s Main Contact Person(s)</th>
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Prequalified Bidder E-Mail Address

Please indicate here the e-mail address that you wish to be used as Username for access to the Data Room. The invitation, including a password, to access the Data Room will be sent to this e-mail address.
APPENDIX 3

DATA ROOM QUESTION & ANSWER FORM (“Q&A FORM”)

Prequalified Bidder’s Name: ________________________________

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APPENDIX 4
FORM OF ACCEPTANCE OF THE RULES

Port Tibar PPP Project - Acceptance of the Data Room Rules and Procedures

We write in connection with the Data Room Rules and Procedures issued by the Ministry of Finance and the Ministry of Transport and Communications of Timor-Leste. Terms used in this acceptance letter shall have the same meaning as that set out in the Data Room Rules and Procedures.

We confirm to the Ministry of Finance and the Ministry of Transport and Communications of the Democratic Republic of Timor-Leste that:

- we have read, understood and we agree to comply with, and be bound by, the Rules;
- we consider the Rules to be reasonable;
- we understand that the information in the Data Room is subject to the Confidentiality Undertaking, which we have duly executed;
- we will procure that each of our Data Room Users reads and complies with the Rules and the obligations of the Confidentiality Undertaking;
- we agree that we are responsible for any breach of the Rules by any of our Data Room Users; and
- we understand that any breach of the Rules by us or any of our Data Room Users may result in our access or that of any of our Data Room Users’ access to the Data Room being cancelled, withdrawn or restricted without prior notice.

Signed for and on behalf of:

[insert the name of the Prequalified Bidder], represented by:

[insert name and title of representative]

[insert signature date]