

## **Annex A**

### **(Revised February 2015) INDEPENDENT PARALLEL BID EVALUATION**

#### **TERMS OF REFERENCE**

## **1 BACKGROUND**

### **1.1 Institutional Reform**

The Government of Uganda (GoU) has been reforming the road sector since 1996 in order to bring about economic change and poverty reduction. Institutional strengthening has been identified as a critical component of the reform process. One of the objectives of the institutional strengthening and reform process was the establishment of a robust administration for effective and efficient management of Uganda's national roads network. To achieve this objective GoU committed itself to reform the management of the national road network through the establishment of an autonomous performance based Road Authority to manage road administration and execution functions together with the restructuring of the Ministry of Works and Transport (MOWT) to focus on policy, setting of standards, regulation and monitoring and evaluation.

As a transition strategy of the reform process, in 1998, the Road Agency Formulation unit (RAFU) was created as a semi autonomous agency within the MOWT to manage and develop the national road network. The Uganda National Roads Authority (UNRA) was subsequently established, replacing RAFU to effectively manage Uganda's National Classified road network, by an Act of Parliament; the Uganda National Roads Authority Act, No 15 of 2006. UNRA became fully operational on the 1<sup>st</sup> July 2008.

### **1.2 Institutional and Organisational Management**

Public procurement and disposal of public assets in Uganda is governed by the basic principles of public procurement, i.e. value for money, accountability, fairness and transparency. The following provides the legal framework and guidance of public procurement and disposal of public assets in Uganda:

- The Public Procurement and Disposal of Public Assets Act (2003) (issued by Parliament)
- The Public Procurement and Disposal of Public Assets Regulations (issued by the Minister of Finance, Planning and Economic Development)
- The Guidelines (issued by the Public Procurement and Disposal of Public Assets Authority (PPDA)) and
- Standard Bidding Documents (issued by PPDA)

The PPDA is the regulating authority of GoU which regulates and oversees the procurement and disposal of public assets in Uganda.

## **Annex A**

The PPDA Act (2003) accommodates the procurement policies and procedures of the multilateral and bilateral Development Partners (DPs) by stipulating the following:

*“Where this act is in conflict with an obligation of the Republic of Uganda arising out of an agreement with one or more states, or with an international organization, the provision of the agreement shall prevail over the act” (Section 4(1) of the Act)*

UNRA's procurement and disposal function organisation includes the Accounting Officer, the Procurement and Disposal Unit (PDU), a Contracts Committee (CC), User Departments (UDs) and ad hoc Evaluation Committees (ECs) as required by the PPDA Act and Regulations. The UD in UNRA include the Executive Director's Office, the Directorate of Operations, the Directorate of Projects, the Directorate of Planning, the Directorate of Internal Audit and the Directorate of Finance and Administration. The roles and responsibilities of all parties in the procurement and disposal function are governed by the PPDA Act and Regulations.

### **1.3 Rationale for the Services**

During recent years the GoU and its Development Partners (DPs) have made a major commitment and increased their budgets in order to strengthen and support the development of the road sector. As a result the workload and diversity of UNRA's procurement and disposal function has increased significantly for works, services, goods and supplies. UNRA is presently managing financial resources provided by both GoU and its development partners including the WB, EU, African Development Bank, DFID, Japan and Denmark, among others, and is required to use the procurement policies and guidelines of the DPs to disburse their respective financial resources.

Adequate knowledge of these procurement policies and guidelines together with the PPDA Act and Regulations is a fundamental requirement in order to ensure value for money, accountability, transparency and fairness. However the implementation capacity of UNRA has not been compatible with the increasing workload and diversity of its procurement and disposal function. As a result there have been cases of complaint and dissatisfaction from bidders and stakeholders with respect to how UNRA is carrying out its procurement and disposal function. The GoU and its DPs deem it necessary therefore to put into place appropriate measures in order to reduce the number of complaints and level of dissatisfaction in UNRA's implementation of its procurement and disposal function, associated with its under capacity.

In order to increase public confidence, validate and improve the quality of the decision making process and to ensure integrity in UNRA's procurement and disposal function there is an immediate requirement to put into place parallel independent evaluation of bids for works and services. Parallel independent evaluation of bids will serve as a benchmark for UNRA's own evaluation and support the CC in the decision making process.

## Annex A

In addition and in order to enhance transparency and accountability the GoU intends to increase public disclosure and access to information through UNRA's website and publications and through participation in the global Construction Sector Transparency Initiative (CoST); which was piloted in Ethiopia, Malawi, Zambia and Tanzania and sponsored by DFID and the World Bank.

In order to address these issues DFID on behalf of UNRA is to procure the services of a specialist Service Provide (SP) to carry out the scope of works as included in these TOR.

## 2 OBJECTIVE OF THE SERVICES

The main objective of the services is to carry out independent evaluation of bids for works and services in parallel with UNRA's bid evaluations in order to serve as a benchmark for UNRA's own evaluations and to support and enhance the CCs decision making process for awarding of contracts.

The SP shall carry out an Independent Parallel Bid Evaluation (IPBE) for all bids submitted for **works contracts** having an estimated value equal or greater than \$10 million, for at least 30% of those bids for works contracts with an estimated value between \$1 million and \$10 million and on a random sample of at least 10% of bids received for works contracts with an estimated value of less than \$1 million. The SP will be provided with UNRA's works and services procurement programme and will independently select those bids for which an IPBE will be completed. Those bids whose values are equal or greater than \$10 million will all be subject to IPBE. Where ad hoc works and services are required to be procured, that fall outside UNRA's procurement programme, these will also be subject to IPBE, in line with the above criteria. In cases where prequalification is conducted prior to the bidding process the SP shall follow the same criteria for carrying out prequalification evaluation. This means all contracts equal to or in excess of (an estimated) \$10 million will be evaluated

The SP shall carry out an Independent Parallel Bid Evaluation (IPBE) for all bids submitted for **consultancy contracts** having an estimated value of \$2 million and for at least 50% of those bids for consultancy contracts with an estimated value of between \$1 million and \$2 million. Likewise with prequalification of works contracts the SP shall undertake evaluations of Expressions of Interest submitted for services contracts.

Under a separate contract revised evaluation guidelines will be prepared during the same period that the SP undertakes parallel evaluations. The IPBE SP will be asked to comment on the revised guidelines and if they have received accreditation by PPDA, prior to the end of the IPBE contract the SP will be required to use the new procedures for IPBE purposes.

For the purpose of planning resource inputs it is anticipated that the number of pre-qualification and bids that will be subject to IPBE, within the first year of

## **Annex A**

the Services, will be 10 of pre-qualifications/ bids for works contracts having an estimated value equal or greater than \$10 million, 12 of pre-qualifications/ bids for works contracts with an estimated value between \$1 million and \$10 million and 10 of pre-qualifications/bids for works contracts with an estimated value less than \$1 million. It is anticipated that the number of consultancy short listings and bids for service contracts having an estimated value of greater than \$2 million will be 10, and between \$1 million and \$2 million will be 20 subject to IPBE annually.

### **3 RECIPIENT**

The recipient of the services is the Government of Uganda.

### **4 SCOPE OF SERVICES**

The activities of the SP shall include but not be limited to the following:

#### **WORKS CONTRACTS**

- Undertake independent pre-qualification of bidders or post qualification of bidders in the event that prequalification was not undertaken and submit pre/post qualification report to the CC.
- Carry out independent evaluation of bids for works in accordance with PPDA Regulations, DPs' procurement requirements and UNRA's procedures in parallel with UNRA's EC and in the same time frame as required by the CC and prepare and submit an Independent Bid Evaluation Report (IBER) to the CC for their use in their decision making process for awarding the works contract.
- Prepare confidential responses to requests from the CC for clarifications and explanations in order to address particular findings with respect to the evaluation of tenders.
- In the event that a bidder lodges a complaint with respect to the award of a works contract the SP may be required to answer questions put to him by the Executive Director of UNRA who is responsible for investigating any bidder complaints received.

#### **SERVICE CONTRACTS**

- Undertake independent evaluations of Expressions of Interest for consultancy services and prepare an Independent Evaluation Report (IER) which shall include recommendations with respect to the composition of the shortlisted consultants and submit EOI Evaluation report to CC.
- Undertake independent technical and financial evaluation of consultants' submitted proposals in accordance with UNRA's

## **Annex A**

evaluation criteria and procedures, DP's procurement requirements and PPDA Regulations in parallel with and within the time frame stipulated by the CC and prepare and submit an IBER to CC for their use in their decision making process for awarding the consultancy .

- Prepare confidential responses to CC requests for clarification and explanations in order to address their particular findings with respect to the evaluation of the technical proposals.
- In the event that bidder lodges a complaint with respect to the award of a services contract the SP may be asked to answer questions put raised by the Executive Director of UNRA who is responsible for investigating any bidder complaints received.

## **5 DATA AND LOCAL SERVICES TO BE PROVIDED BY UNRA**

### **5.1 Documents and Support**

UNRA shall provide the SP with copies of all available documents, reports and information considered relevant for execution of the SP's work in undertaking all the activities to be addressed in these ToR.

All documents, reports and information provided by UNRA to the SP must be treated by the SP with full confidentiality.

### **5.2 Taxes, Duties, Immunity and Privileges**

The SP shall comply with the Labour, Immigration, Civil and Taxation laws and other regulations of the Government of Uganda.

## **6 SPECIFIC RESPONSIBILITIES OF THE SERVICE PROVIDER**

### **6.1 Data, Documents, Reports and Information**

All data, documents, reports and information received from UNRA or other GoU agencies during the execution of the services shall be properly reviewed, evaluated and analysed by the SP. The responsibility for the correctness and usage of such data shall rest with the SP. All such information shall be treated as confidential and shall remain the property of the GoU.

The SP shall make arrangements for collection, preservation and security of all data, documents, reports and information collected, ensuring secure, speedy and cost effective transmission of bids from UNRA to the SP's HQ. Such collection, preservation and security will be in line with the data handling and information security clauses provided in Section 2 of the overarching Framework Agreement.

## **Annex A**

### **6.2 Accommodation and Transport**

The SP shall be responsible for providing accommodation and transport for personnel visiting Uganda in order to familiarize themselves with the modalities and arrangements for undertaking work associated with the services.

## **7 DURATION OF THE SERVICES**

The services are expected to be delivered starting in February 2012 and ending February 2016. There will be an annual review at the end of Year One, and a mid-term review after 18 months.

It is estimated that the input required will be 50 person months. Payment for the services will be at a fixed rate per evaluation undertaken, subject to the satisfactory delivery of the services in undertaking that evaluation, and the satisfactory delivery of all reports required during that evaluation period. Payment for evaluations undertaken during the final three months of the contract will not be made until satisfactory acceptance of the final report.

In order to ensure that the IPBE is totally independent it is required for the duration of the services, that all IPBEs are carried out at the SP's head/home office by a team with the necessary expertise as outlined in Section 9 and in line with the Scope of Services for Works Contracts and Services Contracts as defined in Section 3.

In order for the SP's IPBE team to effectively carry out the IPBE it will be necessary for them to familiarise themselves with the bid evaluation process presently used by UNRA. It will be necessary therefore for members of the team to visit Uganda for a short period prior to carrying out any IPBEs. During this visit the team shall have access to all necessary documentation, related to the procurement process, to enable them to be able to carry out future IPBEs. The team will also be required to meet with the Contracts Committee in order to establish the protocol and modalities of the IPBE and how the SP will receive information from and report to the CC.

During the period of the contract the SP shall receive copies of all Expressions of Interest, Pre-qualification Documents, Bid Documents for both Works and Services received by UNRA. IPBE shall be carried out in accordance with Sections 2 and 3 of these ToR. For those bids where only sample IPBEs are to be undertaken the SP shall independently select at random those that will be subject to the IPBE. Following the submittal of the BER by the EC to the CC the Chairman of the CC will request the SP to submit his IBER. The SP will either submit his IBER or advise the Chairman of the CC that no IPBE was carried out on that particular bid submission.

Only on receipt of both the evaluation committee's BER and that of the IPBE should the contracts committee open the evaluation committee's BER and use the reports for making its award decision.

## **Annex A**

The bidders will be required in their proposed Methodology, Work Plan and Resourcing to demonstrate clearly how they intend to deal with the above requirements. In doing so they are free to propose their own resourcing schedule and inputs within the allocated person months but must as a minimum include the level of expertise as required by Section 9.

### **8 REPORTS AND DELIVERABLES**

The SP shall prepare and submit the following reports:

#### **8.1 Inception Report**

The SP shall submit an Inception Report four weeks after commencement of the services, which shall include the SP's initial findings, and in light of these findings confirm or update the proposed methodology and work plan.

#### **8.2 Independent Bid Evaluation Reports (IBER)**

The SP shall prepare and submit an IBER in accordance with the provision of the bidding documents or RFP, agreed templates and specific requirements of the procurement guidelines and procedures set down by the agency financing the project.

The IBER shall follow the format(s) provided in the PPDA Regulations, the DP's requirements (if the project is funded by a DP) and international best practice.

In addition, the SP shall include in the IBER a list of those clarifications of the bid that would have been requested had they been able to do so.

#### **8.3 Quarterly Progress Reports**

The SP, at the end of each quarter following commencement of the services, shall submit a quarterly report that records the summary of the type and number of independent parallel bid evaluations carried out, value of each procurement and the selection procedure used, name and origin of awarded bidder. The report shall also document any problems encountered and actions taken or proposed to be taken.

#### **8.4 Services Completion Report**

The SP shall submit a Services Completion Report one month before the end of the services which shall be a comprehensive report documenting all activities undertaken during the period of service and shall include milestones achieved, reasons for any activities in the TOR not being accomplished and any recommendations with respect to any outstanding issues that may need to be addressed following the completion of the services.

## **Annex A**

All reports up to 19 February 2015 shall first be submitted in draft (5 copies) and following comments by the Contracts Committee 6 copies of final reports shall be submitted to the client with a soft copy being provided on a CD.

### **8.5 Quarterly Reporting for 12 month extension from 20 February 2015**

Going forward, quarterly reports should be limited to a final version of the report only. This will be submitted in electronic (PDF) format. Should any comments be required following submission of the electronic report, the supplier will action these and re-issue the report within 10 days.

The cost of delivering reports is to be built in to the fixed rate per evaluation undertaken.

## **9 EXPERTISE REQUIRED**

In order to carry out the services in the scope of the works in these ToR, the SP shall provide a team with the necessary expertise to ensure that the services are performed to the highest standards.

It is envisaged that the following key personnel will be required for the execution of the services together with ancillary staff necessary to deliver the full requirements of these ToR.

### **Procurement Specialist**

The Procurement Specialist will ideally hold, as a minimum, a B.Sc degree or equivalent in Civil or Highway Engineering with substantial experience in the planning, procurement, design, preparation of contract documents, construction supervision, maintenance and contract management of roads and bridges contracts. Strong candidates with at least 10 years' experience are preferred, of which 5 years will ideally have been on procurement of works and service contracts for a public sector organisation funded by governments and by multilateral and bilateral development partners. The Procurement Specialist must have extensive experience in the evaluation of bids for roads and bridge works and services and in the evaluation of prequalification documents submitted by contractors and Expressions of Interest submitted by consultants. Experience of working in Uganda or East Africa would be an advantage.



## **Annex A**

### **Financial Specialist**

The Financial Specialist shall hold an appropriate degree in finance and be registered with a recognised financial association and ideally have substantial experience in the review of financial matters related to major engineering works contracts such as vetting the financial status of bidders, adequacy of surety and performance bonds, company registration and other contractual compliance issues as required by governments and by multilateral and bilateral development partners, ideally with particular relevance to major road and bridge works contracts. In addition he/she ideally will have experience of reviewing professional indemnity insurance cover for design consultants to ensure adequacy of cover. Experience of working in Uganda or East Africa would be an advantage. Strong candidates with at least 8 years' experience are preferred.

Note: It is important that the SP only includes well tried and tested team members who have demonstrated high level of integrity, honesty, probity and cultural sensitivity on previous assignments. If any of the proposed team has not been previously directly engaged by the SP on similar assignments, the SP must demonstrate why they believe the nominee to have the appropriate level of professional integrity, etc, required.

### **10 SUPERVISION & REPORTING**

Due to the confidential and sensitive nature of these services and in order for the SP to maintain independence throughout the period that the IPBE process is in progress the SP shall be required to report to and receive instruction from the Chairman of the Contracts Committee, copied to the Project Manager at DFID Uganda.

December 2014

## **Annex A**

### **ABBREVIATIONS AND ACRONYMS**

BER	Bid Evaluation Report
CC	Contracts Committee
CoST	Construction Sector Transparency Initiative
DFID	Department for International Development
DP	Development Partner
EC	UNRA's in house Evaluation Committee
ED	Executive Director
EU	European Union
GoU	Government of Uganda
IBER	Independent Bid Evaluation Report
IER	Independent Evaluation Report
IPBE	Independent Parallel Bid Evaluation
MOWT	Ministry of Works and Transport
PDU	Procurement and Disposal Unit
PPDA Authority	Public Procurement and Disposal of Public Assets Authority
RAFU	Road Agency Formation Unit
RFP	Request for Proposals
TOR	Terms of Reference
UNRA	Uganda National Roads Authority
WB	World Bank