

January 17<sup>th</sup>, 2010

**REQUEST FOR PROPOSALS**

**FOR**

**TRANSACTION ADVISORY SERVICES**

**FOR**

**DEVELOPMENT OF FLYOVER / RAILWAY OVERHEAD BRIDGE  
AT HABIBABAD (WANRADHA RAM AT KM 1168-1169 OF THE  
NATIONAL HIGHWAY N-5)**

**UNDER**

**PUBLIC PRIVATE PARTNERSHIP MODALITY**

**JANUARY, 2010**

## Letter of Invitation

Dear Sir/Madam,

### **1. Introduction**

1.1 The Infrastructure Project Development Facility (“IPDF”), a company established under section 42 of the Companies Ordinance, 1984 and National Highway Authority (“NHA”), hereby invite submission of proposals for development of Flyover/Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) under the Public Private Partnership (“PPP”) modality. Your proposal will form the basis for negotiations and ultimately an agreement between IPDF and the successful bidder.

1.2 The qualified Transaction Advisors (firms), having credible professional experience in providing transaction advisory services for the Public Private Projects (PPP) through Build Own Operate (BOO)/Build Operate Transfer (BOT) modality will be required to structure this Project as well as assist in procuring the qualified investor(s) for the above (hereinafter referred to as “the Transaction Advisory Assignment”).

1.3 A brief description of the Services (Hereinafter referred to as “Services”) is set out in the Terms of Reference (“TOR”) attached as Annex-1.

1.4 The Services shall be carried out in accordance with the enclosed Terms of Reference (TORs). The continuation of Services shall be subject to satisfactory performance of the Transaction Advisor, as determined by IPDF (“Client”) on behalf of the Steering Committee comprising of one member each from all the stakeholders.

1.5 Reference to ‘the Transaction Advisor’ includes the entire Transaction Advisory team, or relevant members, under management of a single lead Transaction Advisor who shall contract with IPDF.

1.6 Please note that (i) the costs of preparing the proposal/offer as well as of negotiating the contract, including any visits, are not reimbursable; and (ii) IPDF reserves the right to reject any or all the proposals or offers submitted.

### **2. Technical & Financial Proposals**

**Technical Proposal**

In order to achieve the objectives of the Assignment, the Transaction Advisor will be expected to take complete responsibility for all the activities identified in the attached TOR. Transaction Advisor will *inter-alia*, conduct review of the existing legal, organizational, technical and financial system, need & option analysis of PPP, and prepare a feasibility study/report and contractual documents which advances the best mode of implementing the Project under PPP modality and shall be expected to assist in all other activities considered ancillary and incidental leading to the closure of the Project.

The technical proposal should contain *inter-alia*; a complete description and explanation of the proposed methodology for the Assignment (work plan), timelines, staffing, names and qualifications of allocated personnel and any other resources that the Transaction Advisor will make available to execute the Assignment and achieve its objective. The technical proposal should be prepared using the format attached in Annex-3 and submitted as per procedure described in Annex-2. The Transaction Advisor must submit comprehensive information and data in support of the criteria defined in Annex-2.

### **Financial Proposal**

The Financial Proposal should stipulate the fees for the Assignment and be prepared using the format attached as Annex-3, and submitted as per the procedure described in Annex-2.

The Client will not be responsible for any tax or insurance liability arising out of the performance of the Services for the Assignment.

All fees and costs are to be expressed in Pakistan Rupees only.

The technical and Financial Proposals shall be evaluated by IPDF in terms of the criteria described in Annex-2. Any Financial or Technical Proposal not in strict conformity with the format attached in Annex-3 will be disqualified.

Interested parties are requested to submit their proposals within four weeks from the date of publication of the advertisement.

### **3. Negotiations**

Contract negotiations shall be carried out in terms of the criteria given in Annex-2 and based on the Draft Transaction Advisory Services Agreement (“ASA”) attached as Annex-4.

**4. Clarifications**

In addition to pre-bid meeting, should you require further clarification on any of the terms contained in this RFP or the Annexes attached hereto, please contact Mr. Adil Anwar, IPDF (Email: [adil.anwar@ipdf.gov.pk](mailto:adil.anwar@ipdf.gov.pk)). In the interest of fairness, any clarifications issued would be posted on IPDF's website ([www.ipdf.gov.pk](http://www.ipdf.gov.pk)).

**5. Other Terms**

This RFP and the Attachments hereto are subject to the overriding conditions set out in Annex-5.

**6. PPP Framework**

The PPP policy highlighting the salient features of the PPP framework under which the Project is to be implemented is available on the IPDF website ([www.ipdf.gov.pk](http://www.ipdf.gov.pk)).

Yours sincerely,

ADIL ANWAR  
Chief Executive Officer

**Attachments:**

- Annex-1: Terms of Reference
- Annex-2: Procedures for Submission & Evaluation of Proposals
- Annex-3: Format for Submission of Proposals
- Annex-4: Draft Transaction Advisory Services Agreement
- Annex-5: Conditions

**Annex -1:**

**TERMS OF REFERENCE  
FOR PROVIDING TRANSACTION ADVISORY SERVICES**

**FOR**

**DEVELOPMENT OF FLYOVER / RAILWAY OVERHEAD BRIDGE  
AT HABIBABAD (WANRADHA RAM AT KM 1168-1169 OF THE  
NATIONAL HIGHWAY N-5)**

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## TERMS OF REFERENCE

### 1. Introduction

The rapid growth of population in Pakistan and the rising trend of migration from rural to urban areas of the country have posed additional demands on the existing infrastructure of the country. Not only is infrastructure critical for economic growth, it is equally important for connecting the poor from backward areas of the country to developed cities; thereby creating opportunities for them to participate in progressive income-generating activities. A road network of superior quality and one that fulfills the requirements of passenger and freight transit is essential for a country to realize its true geo-economic potential. It also promotes cooperation and business between different regions, providing impetus for the economic growth. Precisely, roads provide better access to business opportunities, educational and health facilities. Moreover, an adequate road network promotes tourism and trade with landlocked areas, facilitates government's administrative tasks and integrates farfetched areas of the country. Moreover, the characteristics of road transport make it a preferred option among alternatives. In comparison with other modes of transport, the roads are cheaper to construct and maintain as well as are more reliable and ensure high speed and door-to-door service delivery. Low vehicle costs also make it comparatively easy for users from low-income brackets to gain entry to the system.

National Highway Authority (NHA) recognizes the need for the development of six (6) Lane Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) along new alignment under Public Private Partnership Modality. The proposed Flyover/Railway Overhead Bridge is part of National Highway N-5, which is the main artery of Pakistan road network and connects seaports with other parts of the country to enhance the potential for increased international trade traffic.

The major socio-economic benefits of the project include:

- Improved productivity
- Decrease in travel time and traffic congestion
- Increase in capacity to accommodate new users
- Increase in service continuity and reliability
- Reduced strain on accident and emergency response system
- Reduced vehicle operation and maintenance costs borne by road users
- Improved educational and work opportunities for the locals
- Additional revenue for the NHA via toll collection

The project envisages the construction of a 6 lane dual carriageway flyover / railway overhead bridge across the railway track at Habibabad (Wan Radha Ram), in the stretch of the National Highway N-5 between Km 1168 & Km 1169. The scope of work includes the re-alignment / improvement of approximately 1 Km stretch of the existing road at either end of the bridge, followed by a ramp laid out on a fill retained by reinforced earth abutments, & leading up to the level of the bridge deck. The approaches to the bridge over this stretch will be improved geometrically & structurally

## 2. Rationale of the Assignment

Infrastructure Project Development Facility (IPDF) is assisting the NHA in structuring and procurement of Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) project as a Public Private Partnership (PPP). IPDF is seeking advisory services from qualified firms / advisors / consortium of consultants for development of Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) - under PPP modality. Salient features of Pakistan's PPP program are available on IPDF's official website at [www.ipdf.gov.pk](http://www.ipdf.gov.pk).

The Transaction Advisory team (consisting of financial, legal and technical expertise) will help the NHA in structuring the project that provides 'value for money' solution to the NHA in terms of development of Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5). TA will also suggest necessary measures / options which may reduce any negative externalities that may arise as a result of the project. This project will serve as a pilot for other similar NHA infrastructure projects to be executed under the PPP modality in Pakistan.

The project will be conceived in a manner whereby the private sector will be responsible for Designing, Financing, Constructing, Operating and Maintaining of the Flyover/Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) and toll plazas on it. The private party will recover their investment over the concession period via toll collection. At the end of the concession period (that will be long enough for the private party to recover costs), the entire system would revert to the NHA. The ownership of the Flyover/Railway Overhead Bridge and toll plazas will always remain with the NHA; however its development and operational rights will be given to the private party for the prescribed concession period.

IPDF aims to hire a qualified consortium of consultants having work experience in PPP/BOT/BOO projects pertaining to toll road construction, operation and maintenance, to act as the Transaction Advisor to structure the Project and procure a qualified investor/operator. The following range of skills is required of the Transaction Advisor:

- Technical skills in the form of Civil Engineering expertise in toll roads
- Legal expertise for drafting the Concession Agreement and ensuring compliance with the regulatory framework, PPP guidelines and best practices;
- Financial expertise to determine project financial feasibility, appropriate cost recovery mechanisms, tariff structures and cost recovery targets;
- Procurement expertise;
- Project management expertise;
- Administrative support.

The transaction advisory services would need to comply with and project preparation would follow NHA PPP Policy and regulatory framework and (1) IPDF Guidelines on project inception (2) IPDF Guidelines on Conduct of Feasibility Studies (3) IPDF Guidelines on Procurement and (4) Standardized Contractual Provisions. The above documents are available on IPDF's and NHA's official website at [www.ipdf.gov.pk](http://www.ipdf.gov.pk) and [www.nha.gov.pk](http://www.nha.gov.pk). Any available information / studies relevant to the above project will be made available to the selected Transaction Advisors by NHA.

The steps in the process require that a feasibility study for the development of Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) is conducted and a procurement process implemented, based on the outcome of the analysis. The purpose of this invitation to submit a Proposal is to recruit a Transaction Advisor to assist the NHA in these two steps.

The following section identifies the principal activities that need to be carried out, but it should not be construed as the total set of activities required for the successful completion of tasks specified in the present TOR.

### **3. Objectives of the Assignment**

The main objective of this assignment is that the Transaction Advisory team (consisting of financial, legal and technical expertise) will help the NHA in structuring the project that provides 'value for money' to the NHA and risks to be shared by the private party, is affordable to the users, and can be implemented with ease. The project will be conceived in a manner whereby the private sector will be responsible for Designing, Financing, Building, Operating, and Maintaining the Flyover/Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) for the period to be determined by the Transaction Advisor (that will be long enough for the private party to recover costs). At the end of the concession period the Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) would revert back to the NHA. The ownership of project will always remain with the NHA; however its development and operational & management rights will be given to the private party for a prescribed period.

In order to meet the above mentioned objectives, the Transaction Advisor will be required to render following services, which are briefly described hereunder, whereas details are mentioned under the title; “Scope of the Assignment”:

- Review the PC-I of the project and existing surveys/studies/reports already carried out by NHA, and if necessary conduct physical survey(s), traffic surveys/initial field investigations/studies of the project/, composition and volume of traffic on the road and update the reported findings in line with the current environment;
- Feasibility study of the project be started by conducting an extensive financial evaluation of project and developing proposals for its financial feasibility and viability as a PPP.
- Conducting Socio-Economic Assessment & Analysis, Environmental Assessment of the project as well as formulating a social development Plan to address and mitigate the potential negative social and environmental impacts of the project;
- Determining output specifications based on quality of service and performance standards for engineering works to be met by the private party and to be formalized as a Service Level Agreement. This will be formulated in the context of Highway safety measures specific to the project such as speed limits, weight and length restrictions, limits on traction capacities of vehicles, and other preventive measures;
- Determining the appropriate institutional, commercialization or corporatization strategy in the project area, including the definition of appropriate roles and responsibilities for the participating entities, organizational structure and staffing;
- Examine the legal framework governing relationships among the local, provincial and central levels of government as well as potential private sector partners;
- Conducting a brief review of national legislation, including but not limited to federal competition, procurement and transport legislations in light of the project at hand;
- Performing the identification, quantification, mitigation and allocation the risks associated with the project throughout its project life;
- Conducting benchmark financial analysis of the system taking into account operation and maintenance costs in the target areas (It should also include reviewing the reliability of the estimates of capital costs that may have been developed for similar projects in the past);
- Determining appropriate methods of involving the private sector in order to improve efficiency, and reduce cost and capital investment in Flyover/Overhead Bridge development and toll collection;
- Analyzing the feasibility of alternatives for full cost recovery or partial cost recovery and propose financial plans, pricing/rate structures, and charge collection mechanisms;
- Designing structures for the implementation of the project segments including appropriate legal, capital and corporate structures; the proposed corporate set-up for the project could be formation of private limited companies, the shareholding level for which needs to be determined in the Feasibility study;

- Develop an Excel based financial model, representing the full costs of delivering the project, as well as risks associated with the project according to the specified output via the Feasibility study. The Financial Model must be robust and flexible enough to test feasibility of the project. The model must instill integrity in the financial robustness of the Project by clearly demonstrating viability and affordability under the recommended transaction structure.
- Design and draft bidding documents including Pre-qualification document, Request for Proposal (RFP) and develop procurement process for selection of prospective investor/operator and prequalify the potential prospective investor/operator subsequently. (RFP to be issued to the prequalified investors/operators.)
- Draft Concession Agreement for operation and maintenance over the concession period. This should be a bankable, standard form agreement for use in toll road transactions; and
- Formulate a Monitoring and Reporting mechanism to ensure compliance of private party actions with the Service Level agreement and also payment and penalty mechanism. This mechanism should be simple, effective and practical to expedite the achievement of Financial Closure of the project.

#### 4). Scope of Assignment

These Terms of Reference invite proposals from a team of suitably qualified and experienced financial, technical, and legal advisors. The scope of work is divided in the following two phases:

**Phase I (Transaction Structuring):** Review of the existing work including the PC-1 prepared by NHA and any studies conducted earlier by NHA for the project; conduct a feasibility study; which builds on the preparatory work / due-diligence conducted on the Project to date; and recommend optimal feasible structures for the Project after careful review and in-depth investigation with respect to the public and private sector cooperation. For this purpose TA may take into consideration the dynamics, costs and resource requirements of the development of Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5). The TA will provide the most optimal/best-suited PPP models alongwith a financial model and most feasible structure.

**Phase II (Transaction Implementation):** Transaction Advisor will prepare competitive bidding documents, evaluate the criteria and finalize the documents for the procurement of teh qualified investor(s)/operator (s), reflective of the recommended structure and financial closing of the project.

**Time Frame for Phase-I & II = 32 weeks after signing the agreement with Transaction Advisor**

The first phase will essentially consist of transaction structuring. In this phase, Feasibility study with respect to the public and private sector co-operation will be investigated taking into consideration the views of the various stakeholders and the particular dynamics and resource requirements of Flyover/Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5). At the end of this phase, the Advisor will provide the Financial Models along with a Feasibility Study setting out the rationale and details on feasible structure of the project.

The second phase will start after assessment of the report and the approval of the final transaction structure by the stakeholders and especially the NHA. After requisite approvals are in place, the Advisor will assist IPDF/NHA in marketing of the Project, and interfacing and coordinating with the potential investors. The second phase will also entail assisting IPDF and the NHA in preparing documentation for competitive bidding, arranging pre-bid meetings, finalization of documentation, bidding and closing of the Project. The Scope of Work includes:

### **Phase 1 - Transaction Structuring: (Activities and Deliverables)**

#### **Task 1: Kick-off Meeting**

Within two weeks of the award of the Assignment, the Transaction Advisor will conduct a kick-off meeting with the IPDF and NHA representatives. The objective of this meeting will be to discuss and finalize the detailed plan of activities proposed by the Transaction Advisor. The meeting will cover the following:

1. Review of the NHA design concepts and requirement for the project.
2. Proposed methodology and requirements to complete the assignment within specified time frame.
3. Review of timetable of activities / milestones going forward
4. Review of the team organization and detailed functions of the team members.
5. Discussion and finalization of a communication strategy whereby all stakeholders will be regularly involved and consulted throughout the assignment.
6. Any specific issue requiring immediate attention of the Client.

Under no circumstances will the objective be to re-define the scope of work committed in the Advisory Services Agreement.

In this meeting, the TA will present a brief report, containing information about the key issues; mainly relevant to the investor's perspective, which might affect investor interest in the Project. The report will also contain recommendations with respect to mitigation of investor concerns on such issues.

#### **Deliverables:**

- a. Detailed methodology and time schedule for the assignment.

- b. A communication strategy.
- c. Progress report to date.
- d. A brief report on the Identification of key issues relevant from the investor's perspective and/or issues that might affect investor interest in the Project, which will also contain recommendations with respect to mitigation of investor concerns on such issues.

Timeframe: **2 weeks** from signing of Transaction Advisory Services Agreement

### **Task 2: Review of Relevant Information**

This stage is required for the Transaction Advisor to become familiar with all the previous work that has been done on the subject, in particular studies already conducted by NHA. Transaction Advisor will be expected to liaise closely with the NHA and visit the site. The Transaction Advisor will conduct due diligence and collect information regarding the site and the project. The Transaction Advisor will also research and summarize the overall global experience in similar projects and lessons learnt for Pakistan.

Transaction Advisor shall study the legal, organizational, technical, social, environmental and financial aspects of the existing National Highway network of Pakistan.

### **Task 3: Review of Existing Systems**

Transaction Advisor shall study the legal, organizational, technical and financial aspects of the existing system in place for toll collection in the Project area.

#### **Deliverable of Task 2 & 3:**

- a) Summarizing findings from Task-2 & 3
- b) Review of the existing studies and identification of gaps keeping in view the current environment.

Timeframe for Task 2 & 3: **6 weeks** from signing of Transaction Advisory Services Agreement

### **Task 4: Preparation of Feasibility Study**

The Transaction Advisor shall study and propose various alternative models of PPP to carry out the subject assignment, covering all the legal, organizational, technical, environmental, social and financial implications. The advisor will examine/analyze the commercial viability of the project considered for the project.

Transaction Advisor will be required to produce a comprehensive feasibility study to incorporate any recent changes in data, which thoroughly investigates the preferred implementation options and finalizes the transaction structure covering but not

limited to, legal & regulatory, organizational structure, technical and financial details and supported by Excel-based financial model reflecting optimal design parameters, risks & costs, and the service levels.

Also the Feasibility Study must enable the NHA / IPDF to determine:

- a. Full project cycle costs
- b. Affordability in terms of budgetary provisions and user charges
- c. Outputs required in terms of service delivery (Service levels standards, performance indicators and etc)
- d. Risks identified, quantified and its sharing between Public and private party
- e. Payment and Penalty mechanisms
- f. Value for money for the Project

Feasibility Study clearly needs to demonstrate affordability for the full project life cycle, and propose the feasible solution for NHA to achieve its desired outcomes.

The feasible recommended structure must be genuinely reflective of the constraints and concerns of all the key stake holders. The revised feasibility report should take cognizance of IPDF project preparation/feasibility guidelines for PPP projects.

**Deliverables:**

Feasibility Report including:

- a. A detailed assessment of the recommended structure keeping in view the critical mass to make these projects financially viable according to clustering approach / geographical segmentations.
- b. An extensive financial evaluation of each sub-project, taking account of its financial feasibility and viability as a PPP
- c. A robust business and corresponding financial model (for the proposed structures), recommending the most optimal option. The Excel-based financial model should represent the full costs of delivering the project, as well as risks associated with the project according to the specified output via the preferred feasible structure. Model must be flexible enough to assess the viability and efficiency of the various proposed structures. (Refer to IPDF project preparation/feasibility guidelines for PPP projects as well as section 5 of Appendix-B for the format.)
- d. Design structures for the implementation of the project segments including appropriate legal, capital and corporate structures. (The proposed corporate set-up for these projects could be formation of private limited companies, the shareholding level for which needs to be determined in the study.).
- e. Presentation to IPDF and NHA on the report, and assistance in the selection and approval of appropriate transaction structure.

Timeframe: **12 weeks** from signing of Transaction Advisory Services Agreement.

## **Phase 2 - Transaction Implementation (Activities and Deliverables)**

### **Task 1 Development of the Draft Concession Agreement**

The advisor will develop a draft Concession Agreement for the implementation of the project based on the PPP framework and concession agreements; already available for similar projects. In this regard the standardized contractual provisions devised by IPDF need to be conformed to the extent possible and also review the already done PPP agreements by NHA. If advisor proposes a deviation from the standardized contractual provisions then a full justification needs to be provided. PPP agreement should include outputs required in terms of service delivery related to managing and operating the Project; i.e. service level standards, performance indicators, payment and penalty mechanisms etc. These defined outputs would enable the institution to measure and monitor the operator's as well as the project's performance.

#### **Deliverables:**

- a) Draft Concession Agreement including:
- Draft Output specifications and service level
  - Draft of monitoring mechanisms
  - Draft payment and penalty mechanism
  - Draft schedules of concession agreement

Timeframe: **4 weeks** after approval and finalization of transaction structure including all related documentation.

### **Task 2 Marketing and Preparation of Information Memorandum (IM) / Project Prospectus (PP)**

The advisor will be responsible for marketing of the project to a wide universe of investors. Costs related to marketing exercise including advertisements and travel costs other than advisory consortium member will be borne by IPDF/NHA. All such costs would require prior approval. The IM/PP will be a comprehensive marketing document, intended to assist pre-qualified potential bidders in evaluating the investment opportunity and risks.

The IM/PP will contain concise information on the Project and the envisaged timeline for the Project. It will highlight the opportunity and salient features of the Project as well as the broad terms and conditions and draft transaction documents for the execution of the Project.

#### **Deliverables:**

- a. Information Memorandum/Project Prospectus
- b. Marketing strategy, advertising and implementation plan for soliciting investor interest.

Timeframe: **8 weeks** after approval and finalization of transaction structure

### **Task 3 Procurement Process**

Based on the chosen structure, competitive tendering process will have to be initiated to select the most appropriate private party, which could most effectively implement the Project, with least assistance from the NHA. The process to be adopted will be transparent with clearly defined evaluation criteria and devised to encourage participation by the private sector. Advisor will assist IPDF/NHA in management of the bidding process including, but not limited to the conduct of the bidding process bid opening and evaluation, recommendations on award, presentation to IPDF and NHA for seeking approval of said recommendations, preparation and issuance of LOI to the prospective investor/operator, negotiations with successful bidder(s) and closing of the project. (Please refer to IPDF Procurement Guidelines on its website at [www.ipdf.gov.pk](http://www.ipdf.gov.pk).) The procurement process should be in conformity with procurement guidelines issued by IPDF and NHA requirements in terms of NHA Act and/or relevant Government Statutory Orders.

#### **Deliverables:**

- a) Complete RSOQ Package
- b) Pre-qualification Report of Potential Bidders including evaluation of RSOQs furnished by investors/operators and short-listing of investors/operators, recommendations for pre-qualification of investors/operators and presentation to IPDF and NHA for seeking approval of said recommendations.
- c) Complete RFP Package
- d) Pre-bid conference after issuance of the RFP to pre-qualified investors/operators
- e) Bids evaluation and selection and appraisal/approval of Successful Bidder
- f) Consolidated report which includes Bids evaluation, selection/appraisal of Successful Bidder, final agreement and the process of selection
- g) LOI

Timeframe: **16 weeks** after approval and finalization of transaction structure

### **Task 4 Deal Closure and Signing of the Concession Agreement**

After selection and approval of successful bidder, negotiations will be entered into if required. The Transaction Advisor will:

- Assist NHA/IPDF in its negotiation with preferred bidders
- Update/Amend the PPP Agreement to reflect negotiated terms

On completion of the negotiations with top ranked party, all terms relating to the project having been agreed upon between the NHA and selected party and formal

procedure for deal closure will be initiated leading to the signing of the concession agreement with the selected party.

**Deliverables:**

a) Deal closure and Signing of the Concession Agreement.

Timeframe: **4 weeks** after the selection of the Successful Bidder

**Note:** This is to clarify that Financial Closure is separate from the deliverable of Task 4: (a) Deal Closure and Signing of Concession Agreement. Therefore, Financial Closure must be treated as a separate task to be undertaken after completion of Task 4.

Reference “Procurement Guidelines for Public Private Partnership Projects.” Once the deal is closed and the agreement is signed between the Institution and Private Party, the Transaction Advisor must ensure that loan and other financing agreements are signed between the Private Party and financiers. Upon completion of this task, the project will achieve financial closure.

#### **4. Transaction Advisor Profile**

The Transaction Advisory team is expected to include the following skills and competencies:

- Technical expertise
- Financial expertise
- Legal and Regulatory expertise
- Procurement expertise
- Expertise on Marketing of PPP Projects
- Project management expertise

Selection will be based on verifiable demonstration of experience (same sector / similar projects) and qualification (firm as well as assigned staff).

#### **5. General Conditions**

1. A steering committee comprising of representatives of the NHA and IPDF to oversee the project. Payments against the deliverables shall be made by the client on the satisfactory completion of that deliverable. The steering committee shall meet at designated place to review each and every deliverable. The proceedings of the Committee shall not be affected by lack of quorum. Failure on part of any of the member of the steering committee to submit the comments in prescribed time period shall be assumed to be in concurrence with the contents of the deliverables.

2. The Advisor shall be responsible for assisting in all activities leading to and including successful closure of the Project and the competitive bidding process for the Project. While a detailed scope of work has been spelled out in the present TOR, the Advisor shall also be responsible for providing assistance in activities, not specifically mentioned in the TOR, that are necessary for successfully concluding the Assignment. Advisor will appoint a Team Leader to assume overall responsibility of the Project and to interface with IPDF and NHA. The Advisor will maintain all records of the Project for a period of one year from the termination of activities under the ASA. During this period, the Advisor will assist IPDF in dealing with queries/issues related to the Project.
3. Transaction Advisor will use the available IPDF formats while preparing required documents/reports mentioned under deliverable. (Please see the IPDF website [www.ipdf.gov.pk](http://www.ipdf.gov.pk) or Appendix-B for additional information.)
4. Five hard copies and one soft copy of each draft document mentioned under deliverable will be submitted to the Client. The Client will share the documents with the Steering Committee which will offer its comments and recommendations. These shall be incorporated to the draft final documents by the Transaction Advisor. After incorporation of The Client comments, the Transaction Advisor shall submit 15 hard copies and one soft copy of each of the final documents to the Client.
5. All documents shall be prepared in English and submitted on electronic media along with required number of hard-copies.
6. All the data, documents and reports produced by the Transaction Advisor for the said services shall be the property of the Client .The Transaction Advisor shall not share and use any data, document and reports for any other purpose / job without the explicit written approval of the Client.
7. NHA will nominate one Project Manager to liaise with the Advisor and IPDF on all activities pertaining to this assignment. The Manager will be responsible for providing technical inputs and information to the Advisor and IPDF on the project.
8. Time available for achieving financial closure is tentatively set at **thirty six (36) weeks**. The Transaction Advisor shall begin this assignment as soon as the contract agreement is signed. Indicative deadline and payment schedule is given in Appendix-A.

ANNEX-2

**PROCEDURE FOR SUBMISSION AND EVALUATION OF  
PROPOSALS**

**FOR**

**DEVELOPMENT OF FLYOVER / RAILWAY OVERHEAD BRIDGE  
AT HABIBABAD (WANRADHA RAM AT KM 1168-1169 OF THE  
NATIONAL HIGHWAY N-5)**

**UNDER**

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## PROCEDURE FOR SUBMISSION & EVALUATION OF PROPOSALS

### 1. Submission of Proposals

The Technical Proposal shall be submitted in triplicate (one original and two copies) and placed in a sealed envelope clearly marked “Technical Proposal - Transaction Advisory Services for Development of Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5).

The Financial Proposal (one original) shall be submitted in a separate sealed envelope clearly marked “Financial Proposal - Transaction Advisory Services for Development of Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5).

Bidders are requested to submit their Technical and Financial Proposals in separate sealed envelopes enclosed in one larger sealed envelope addressed correctly and legibly to CEO, IPDF (refer to section 8 below, for precise address and date of submission).

The Financial Proposal shall be signed by a duly authorized representative. The Proposals should include a power of attorney / letter of authority authorizing such representative to sign and submit the Technical and Financial Proposals to IPDF (in case of firm/consortium).

### 2. Evaluating the Proposals

On expiry of the date for submission of Proposals, the evaluation process will begin. The Project Manager will circulate the Technical Proposals to the Transaction Structuring Committee, while the sealed Financial Proposals will remain with IPDF.

A single stage two-envelope procedure shall be adopted in evaluating the Proposals. The technical evaluation shall be carried out first, followed by the financial evaluation. The Evaluation Committee shall carry out its evaluation, applying the evaluation criteria and point system specified below. Each responsive proposal shall be attributed a technical score (Str). Firms scoring less than 70 points shall be rejected and their Financial Proposals returned unopened.

#### **Technical Proposal**

Each Technical Proposal shall be evaluated using the following categories and weights:

<u>Category</u>	<u>Weight</u>
Specific firm/consortium experience related to the Assignment	30%
Competence and qualifications of team	35%
Work plan and methodology	35%

### **Financial Proposal**

Short-listed Transaction Advisors that receive a raw technical score (Str) of 70 points or higher (Technically qualified Transaction Advisors) will be informed that they are technically qualified. All other Transaction Advisors will stand disqualified and their sealed Financial Proposals will be returned to them unopened. The Client shall open the sealed Financial Proposals of the Technically qualified parties on a pre-determined date which will be intimated in advance.

Remuneration of Transaction Advisor will be milestone based.

### **Advisory Fee**

Advisory fee will be paid as per the Payment Schedule attached as Appendix A.

### **Success Fee**

This portion of the compensation is contingent on the success (financial closure with all formalities completed) of the project. The successful bidder must make this payment as the fulfillment of a condition precedent of the final contract. The Transaction Advisor may include a form of surety in the Request for Proposals to be submitted by the bidders as a guarantee of payment upon fulfillment of all other conditions precedent to the contract signing.

### **3. Scoring of Technical and Financial Proposals**

The Technical Proposal shall be assigned a raw score (Str), which shall be scaled up to constitute a final technical score (St) as follows:

$$St = Str \times 100 / St_{max}$$

where  $St_{max}$  = Raw score of the highest ranked Advisor on technical criteria.

The financial score (Sf) will be calculated as follows:

$$Sf = 100 \times (F_{min}/F_f)$$

where  $F_{min}$  = Lowest Total Fee bid, and  
 $F_f$  = Total Fee bid by the Advisor under consideration.

The combined score of the Technical and Financial proposals ( $S_c$ ) shall be calculated as follows:

$$S_c = 0.80 \times S_t + 0.20 S_f$$

(Technical Proposal will have 80% weightage, while Financial Proposal will have a 20% weightage.)

#### **4. Finalizing the Technical Scores**

A meeting of the Evaluation Committee to finalize the technical scores will be called. The final individual technical scores of the Evaluation Committee members will be tabulated by the Project Manager on a top sheet, which will be signed by all the members of the Evaluation Committee.

#### **5. Opening of Financial Proposals**

Short-listed parties that receive a raw technical score ( $S_t$ ) of 70 points or higher (Technically qualified parties) will be invited to attend the opening of the sealed financial bids. All other parties will stand disqualified and their sealed Financial Proposals will be returned to them unopened. The sealed Financial Proposals shall be opened by the Chief Executive Officer of IPDF or his nominee.

#### **6. Ranking the Proponents**

Project Manager will submit to the Evaluation Committee the cumulative marks (technical plus financial) of the proponents based on the calculations set out above. The submission will identify the proponent scoring the highest cumulative scores (the "top-ranked party"). Upon endorsement by the Evaluation Committee, the Project Manager will submit the rankings of the proponents to the management of IPDF for approval. The top-ranked party will then be invited for contract negotiations.

#### **7. Contract Negotiations**

Contract negotiations will be conducted with the authorized representatives of the highest ranked party and will primarily focus on issues related to the work plan, deliverables, contract duration and procedure for disbursements. A copy of the document conferring authority in this regard will be made available prior to commencing contract negotiations. In case the negotiations with the highest ranked party are unsuccessful, negotiations with the authorized representatives of second-highest ranked party may be carried out, and so on and so forth.

IPDF is under no obligation to select any of the firm / consortium submitting the proposal, and has the right to cancel their Request for Proposal (RFP) at any time, without assigning any reason.

**8. Address and Date of Submission**

The Project Proposals should be delivered to the “CEO, Infrastructure Project Development Facility, #2, Street 59, Sector F-7/4, Islamabad, Pakistan” by **February 7<sup>th</sup>, 2010 latest by 1200 hours**. Failure to deliver the Proposals as aforesaid shall mean immediate disqualification.

**9. Exclusion and Prohibitions**

The Transaction Advisor will be prohibited from using any of the proprietary information without the express approval of IPDF, for a period of two (2) years after the completion of the Assignment.

IPDF is under no obligation to select any of the firms submitting the proposal and has the right to cancel the Assignment without cause.

**FORMAT FOR TECHNICAL PROPOSAL AND FINANCIAL  
PROPOSAL FOR  
PROVIDING TRANSACTION ADVISORY SERVICES FOR  
DEVELOPMENT OF FLYOVER / RAILWAY OVERHEAD BRIDGE  
AT HABIBABAD (WANRADHA RAM AT KM 1168-1169 OF THE  
NATIONAL HIGHWAY N-5)  
  
UNDER  
  
PUBLIC PRIVATE PARTNERSHIP MODALITY**

**FORMAT FOR TECHNICAL PROPOSAL AND FINANCIAL PROPOSAL**

FROM:

TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sir/Madam:

Subject: Transaction Advisory Services for Development of Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5)

I/We \_Transaction Advisor firm(s) herewith enclose the Technical Proposal (3 copies) and Financial Proposal (1 original) of my/our firm(s)/organization(s) as Transaction Advisor for the Development of Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5).

Yours faithfully,

Signature \_\_\_\_\_  
(Authorized Representative)

Full Name \_\_\_\_\_  
Designation \_\_\_\_\_  
Address \_\_\_\_\_

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## FORMAT FOR TECHNICAL PROPOSAL

The Technical Proposal will provide information on how the Transaction Advisor would approach the transaction and why it is qualified to undertake the Assignment. Technical Proposal should include the following:

- a) Specific firm / consortium experience
- b) Competence and qualification of team
- c) Work Plan and methodology

a) Specific firm / consortium experience

The Transaction Advisor should give a comprehensive explanation of the team's relevant experience and capability to undertake the assignment and provide the services envisaged under the TOR. For each relevant experience cited, outline the precise role of the Transaction Advisor, contract duration, contract outcomes, and contract value

b) Competence and qualification of team

The bidder should propose the structure and composition of his team. The bidder should list the main disciplines of the assignment, the key experts responsible, and the respective qualifications and credentials along with those of the proposed technical and support staff.

c) Work Plan and Methodology

The Transaction Advisor should explain the understanding of the objectives of the Assignment, approach to the Services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. The Transaction Advisor should highlight the problems being addressed and their importance, and explain the approach he would adopt to address them. The Transaction Advisor should also explain the methodologies proposed to adopt and highlight the compatibility of those methodologies with the proposed approach.

The Transaction Advisor should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included.

**FORMAT FOR FINANCIAL PROPOSAL**

In addition to the Technical Proposal, the parties will be required to submit in a separately sealed envelope a Financial Proposal describing the amount of their fee in accordance with the requirements of this RFP Package.

	Currency (Pakistan Rupees)	Amount
Total Bid Amount =		
a) Advisory Fee		
b) Success Fee		

**Notes:**

- Advisory Fee: To be paid on the basis of identified deliverables and stages (Indicative schedule in Appendix A).
- Success Fee: 30% of the Bid Amount to be paid by successful bidder at the time of Financial Closure of the project.
- For avoidance of doubt, the Client shall not be responsible for any taxes, charges, levies etc. arising from payments to the Advisor.

**DRAFT TRANSACTION ADVISORY SERVICES AGREEMENT**

**FOR**

**DEVELOPMENT OF FLYOVER / RAILWAY OVERHEAD BRIDGE  
AT HABIBABAD (WANRADHA RAM AT KM 1168-1169 OF THE  
NATIONAL HIGHWAY N-5)**

**UNDER**

**PUBLIC PRIVATE PARTNERSHIP**

## DRAFT ADVISORY SERVICES AGREEMENT

THIS AGREEMENT (hereinafter together with the recitals and the appendices attached hereto called this “Agreement”), is made on the \_\_\_ day of \_\_\_ 2010, between Infrastructure Project Development Facility (“IPDF”), a body corporate, (hereinafter called the “IPDF”), which expression shall mean and include its successors, administrators and legal representatives, and \_\_\_\_\_, (hereinafter called the “Transaction Advisor”, which expression shall mean and include its successors, administrators and legal representatives, and together with IPDF hereinafter called the “parties”).

### WHEREAS

- (a) IPDF wishes to appoint a specialized firm/team of specialists to act as the Transaction Advisor to the IPDF to carry out the Services.
- (b) The Transaction Advisor, represents and covenants to the IPDF that they have the required professional skills, personnel and technical resources, and have agreed to provide on the terms set out in this Agreement of Services together with the Terms of Reference and Letter of Appointment, which would also form an integral part and parcel of this Agreement, in particular, to provide the services which are essential in respect of the Services in terms of this Agreement, and which the Transaction Advisor recommends from similar experiences in the field.

### NOW THIS AGREEMENT WITNESSETH

#### 1.1. GENERAL PROVISIONS

##### 1.1.1 Definitions

Unless the context otherwise requires, the following terms, wherever used in this Agreement, shall have the following meanings:

- (a) “Transaction Advisor” is defined in the Preamble.
- (b) “Agreement” means this Agreement between the IPDF and the Transaction Advisor.
- (c) “Applicable Law” means the laws of Islamic Republic of Pakistan.
- (d) “Effective Date” means the date on which this Agreement is signed between the Parties.
- (e) “End Date” means the\_\_\_\_\_, unless agreed in writing by the Parties.

- 
- (f) “Force Majeure” for the purpose of this Agreement means [this definition is subject to review by IPDF’s legal counsel]
- I. an event or circumstance which is beyond the reasonable control of a Party, and which makes a Party’s performance of its obligations under this Agreement impossible, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts, other industrial action or any sanction or restriction imposed by any governmental authority or body within or outside Pakistan; which has a material adverse affect on the ability of the Transaction Advisor to carry out the Services.
  - II. Force Majeure shall not include: (i) any action or failure to take action by a Party; (ii) any event which is caused by the negligence or willful act or omission of a Party or that Party’s Subcontractors or Personnel or agents or employees; and (iii) any event which a diligent Party could reasonably have been expected both: (a) to have taken into account at the time of the Effective Date of this Agreement; and (b) to have avoided or overcome in the course of carrying out its obligations under this Agreement
- (g) “NHA” means National Highway Authority
- (h) “Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) Project” means the whole mechanism for construction, operation and maintenance of Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) project including all ancillary components
- (i) “IPDF” is defined in the preamble.
- (j) “Party” means the IPDF or the Transaction Advisor, as the case may be, and the IPDF and the Transaction Advisor shall collectively mean the “Parties”.
- (k) “Personnel” means persons hired/employed by the Transaction Advisor or by any of its Subcontractors and assigned to the performance of the Services or any part of the Services.
- (l) “Project” means the Financing, Construction Operation and Maintenance of Flyover/Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) project for NHA through the Public Private Partnership modality and requisite post-transaction activities as identified in the attached TOR.
- (m) “Advisory Fee” means the total amount to be paid against deliverables as specified in Appendix \_\_\_\_\_, by IPDF to the Transaction Advisor under this

agreement.

- (n) “Services” means the work to be performed by the Transaction Advisor as and when required, pursuant to this Agreement for the purpose of the Project, or any other service mutually agreed upon by the Parties from time to time in writing during the Agreement.
- (o) “Starting Date” means the date referred to in Clause 2.2.
- (p) “Sub-contractor” means any person or entity to be appointed by the Transaction Advisor including but not limited to accounting, legal, and technical, consultants whether located in Pakistan or abroad, to which the Transaction Advisor sub-contracts directly or indirectly any part of the Services in accordance with the provisions of this Agreement.
- (q) “Third Party” means any person or entity other than the IPDF, the Transaction Advisor or a Subcontractor.

## **1.2 Relation between the Parties**

- (a) The Transaction Advisor shall act as Advisor to the IPDF for all Services; shall manage, and be responsible for the work carried out by the Sub-contractors (whether local or foreign); shall be solely responsible for any payments due to Sub-contractors and/or Personnel hired by the Advisor; shall have complete charge of all Personnel performing the Services; and shall be fully responsible for the Services performed by them or on their behalf under this Agreement.
- (b) The Advisor shall not assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the IPDF.

## **1.3 Law Governing Agreement**

This Agreement, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law. The Transaction Advisor undertakes to comply with the Applicable Law during the performance of the Services and completion of the Project.

## **1.4 Headings**

The headings shall not limit, alter or affect the meaning of this Agreement.

## **1.5 Notices**

**1.5.1** Any notice, request or consent required or permitted to be given or made pursuant to this Agreement shall be in writing and shall be deemed to have been given or made when delivered in person to any authorised representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such Party at the following address:

For the Transaction Advisor:

For IPDF:

**1.5.2** Notice will be deemed to be effective as follows:

In case of personal delivery or registered mail, on delivery; and in the case of facsimiles, four (4) hours following confirmed transmission, only if confirmation is during business hours otherwise notice will be deemed effective as of the next working day, disregarding weekends and national holidays in the country to which the facsimile is transmitted. Facsimile notices shall not require confirmation by hard copies.

**1.5.3** A Party may change its address for notice under this Agreement by giving the other Party notice pursuant to this Clause.

## **1.6 Authorized Representatives**

Any action required and permitted to be taken, and any document required or permitted to be executed under this Agreement, may be taken or executed:

- (a) on behalf of the IPDF, by Chief Executive Officer; and
- (b) on behalf of the Transaction Advisor, by.

## **2. COMMENCEMENT, COMPLETION, SUSPENSION, MODIFICATION AND TERMINATION OF AGREEMENT**

### **2.1 Effectiveness of Agreement**

This Agreement shall come into force from the Effective Date.

## **2.2 Commencement of Services**

The Transaction Advisor shall commence carrying out the Services not later than 7 (seven) days (“Starting Date”) after the Effective Date, or on any other date the Parties agree in writing. The Services shall be performed and completed by the Transaction Advisor before the End DateOr, as mutually agreed in writing by the Parties.

## **2.3 Expiration of Agreement**

Unless terminated pursuant to Clause 2.7, this Agreement shall expire when the Services have been completed.

## **2.4 Entire Agreement**

This Agreement constitutes the final expression and exclusive and entire agreement and understanding between the Parties in relation to the Services and contains all covenants, stipulations and provisions agreed by the Parties as at the date hereof. The Terms of Reference and the Letter of Appointment shall also form an integral part of this Agreement. This Agreement together with the Terms of Reference and Letter of Appointment shall override and supersede all previous or concurrent communications or documents or agreements exchanged on the subject matter of the Agreement and the Transaction Advisor shall not for any or all purposes place reliance on any other document/agreement except this Agreement.

## **2.5 Modification**

Modification of the terms of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Each Party shall give due consideration, and not unreasonably delay or withhold a considered response to any proposals for modification made by the other Party.

## **2.6 Suspension of Services**

The IPDF may, by written notice of suspension to the Transaction Advisor, suspend the Services under this Agreement for a cumulative period not exceeding 60 (sixty) days.

## **2.7 Termination**

### **2.7.1 Termination by IPDF**

The IPDF may terminate this Agreement if the Transaction Advisor:

- (a) is in breach of its obligations under this Agreement and has not remedied the same within thirty (30) days (or such longer period as the IPDF may have subsequently approved in writing) of being called to do so by the IPDF; OR
- (b) becomes insolvent or bankrupt or enters into any arrangements with its creditors for relief of debt or takes advantage of any Applicable Law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary; OR
- (c) is unable as a result of force majeure to perform a material portion of the Services for a continuous period of thirty (30) days unless services are suspended under 2.6.

In any event, the IPDF may terminate this Agreement at its sole discretion without assigning any reason without liability or continuing obligation except as set forth in this Agreement. In the event of such termination (where termination is without default of the Transaction Advisor), the IPDF shall be required to make payment to the Transaction Advisor in relation to fees which have been duly accrued or billed by the Transaction Advisor in accordance with this Agreement.

#### **2.7.2 Termination by Transaction Advisor**

In the event the Services are not completed by the Transaction Advisor, due to no fault on the part of the Transaction Advisor, its Sub-contractors or Personnel, the Transaction Advisor shall have the right to terminate this Agreement after expiry of twelve (12) months from the Start Date.

#### **2.7.3 Cessation of Rights and Obligations**

On termination of this Agreement pursuant to any part of Clause 2.7, or upon expiration of this Agreement pursuant to Clause 2.3, all rights and obligations of the Parties shall cease, except (i) rights and obligations that have accrued as of the date of termination or expiration, (ii) any right which a Party may have under the Applicable Law (iii) the indemnification obligations in Clauses 3.4 and 3.5 hereof.

#### **2.7.4 Cessation of Services**

On termination of this Agreement pursuant to Clause 2.7, the Transaction Advisor shall, immediately on receipt/issue of notice to that effect, take all necessary steps to bring the Services to a close within seven (7) days of the receipt/issue of the notice in an orderly manner. Upon cessation of Services

hereunder, the Transaction Advisor shall hand over to the IPDF all documents prepared directly by the Transaction Advisor or by any of its Subcontractors, whether in final or in draft form, for submission to third parties in connection with the Project on paper and electronic format, which for the avoidance of doubt, do not include research reports or other private material produced by the Transaction Advisor.

### **3. OBLIGATIONS OF THE TRANSACTION ADVISOR**

#### **3.1 General**

##### **3.1.1 Scope of Work**

The Transaction Advisor shall perform the Services in accordance with the terms and conditions of this Agreement.

##### **3.1.2 Standard of Performance**

The Transaction Advisor shall perform the Services and carry out their obligations under this Agreement with all reasonable due diligence, efficiency and economy, in accordance with generally accepted techniques and practices and shall observe sound management practices. The Transaction Advisor shall be under a duty of care and always act in good faith/respect of any matter relating to this Agreement or to the Services, and shall at all times support and safeguard the IPDF's legitimate and proper interests in any dealings with Subcontractors, Personnel or Third Parties. The Transaction Advisor shall use its best efforts to ensure that any Subcontractors and Personnel shall be skilled and experienced and competent in their respective trades and professions and that their work shall conform with the standards applicable to the Transaction Advisor.

#### **3.2 Conflict of Interests**

##### **3.2.1 Transaction Advisor not to Benefit from Commissions or Discounts**

The Transaction Advisor, as consideration for its work under this Agreement or the Services, will only be entitled to receive payments from IPDF as per Clause 6 hereunder, and neither the Transaction Advisor nor any person (natural or legal) associated with it shall accept for its benefit or otherwise any remuneration/consideration in the forms including but not limited to trade commission, discount, gifts, payments in kind or financial inducements whatsoever or similar payment in connection with activities pursuant to this Agreement or to the Services or the discharge of its obligations under this Agreement, and the Transaction Advisor shall use its reasonable efforts to ensure that any Sub-contractors, as well as the Personnel and agents of either of them shall neither for itself nor for the benefit of the Transaction Advisor receive any such additional remuneration.

### **3.2.2 Prohibition of Conflicting Activities**

Subject to clause 3.2.3 below, during the subsistence of this Agreement, neither the Transaction Advisor nor its Subcontractors nor the Personnel of either of them shall engage, either directly or indirectly, in any business or professional activities in and with respect to and IPDF which would conflict with the activities assigned to them under this Agreement.

### **3.2.3 Transaction Advisor not to provide other Services**

During the term of this Agreement, the Transaction Advisor, Sub-contractors, and the Personnel shall not provide similar/related services to NHA

### **3.3 Confidentiality**

The Transaction Advisor shall not, during the term of this Agreement, disclose any proprietary or confidential information relating to the Project, the Services, this Agreement, or the IPDF's or NHA business or operations (other than for the purposes of the Services) without the prior written consent of the IPDF and NHA, unless such disclosure is required by Applicable Law or regulation or such information is required for research purposes or has entered the public domain other than by a breach of this Agreement, or was already in public domain, or was already lawfully in the possession of the Transaction Advisor at the time of such disclosure to them.

### **3.4 Indemnification of the IPDF, PHDEB by the Transaction Advisor**

The Transaction Advisor shall indemnify and hold harmless the IPDF and NHA against all losses, claims, damages or liabilities to which the IPDF and NHA may become liable only to the extent, that such losses, claims, damages or liabilities arise out of any act or omission by the Transaction Advisor relating to the Services, provided that the Transaction Advisor shall not be liable for indirect or consequential losses or damages.

### **3.5 Indemnification of the Transaction Advisor by the IPDF**

IPDF shall indemnify the Transaction Advisor and hold it harmless against all losses, claims, damages or liabilities to which Transaction Advisor may become liable only to the extent that such losses, claims, damages or liabilities arise out of any act or omission of the IPDF and/or NHA relating to this Agreement and the information to be provided to the Transaction Advisor in terms of this Agreement, provided that IPDF shall not be liable for indirect or consequential losses or damages.

### **3.6 Insurance**

In the event the Transaction Advisor receives any claim for

damages/compensation in respect of the services for which it seeks indemnification from IPDF in terms of Clause 3.5 herein then the Transaction Advisor shall first seek settlement from its insurers, if any, for satisfaction of such claims before resorting to the IPDF for purposes of indemnification.

### **3.7 Transaction Advisor Actions requiring IPDF's prior Approval**

The Transaction Advisor shall obtain the IPDF's prior approval in writing before:

- (i) Entering into a subcontract for the performance of any part of the Services.
- (ii) Termination of a subcontract for the non-performance of any part of the Services.

provided that approval by the IPDF hereunder shall not relieve the Transaction Advisor of their obligations under this Agreement.

### **3.8 Accounting, Inspection and Auditing**

The Transaction Advisor shall keep accurate and systematic accounts and records regarding the Services and the Project, which records a duly authorized representative of the IPDF shall be entitled to inspect and make copies thereof, as and when required during the pendency of this Agreement and for the one year from the expiry or termination of this Agreement, provided that the modalities of conducting such audit/inspection are agreed in advance with the Transaction Advisor.

## **4. TRANSACTION ADVISOR'S AND SUBCONTRACTORS' PERSONNEL**

### **4.1 General**

The Transaction Advisor shall employ and provide qualified and experienced Personnel to carry out the Services. The IPDF and the Transaction Advisor have agreed that the following senior Personnel shall form the core team:

The Project Team Leader, Mr./Ms. \_\_\_\_\_, shall be on first call to the IPDF throughout the period of the Project, subject only to personal holidays and personal emergencies, when Mr./Ms. \_\_\_\_\_ shall be available in his/her place.

### **4.2 Approval of Personnel**

All Personnel of the Transaction Advisor and the Subcontractors and any other personnel that may be employed during the course of the project will be subject to normal security clearances where so required by IPDF.

### **4.3 Removal and Replacement of Personnel**

- (a) If, for any reason, it becomes necessary to replace any of the senior Personnel or any Subcontractor after the Effective Date, the Transaction

Advisor shall forthwith provide as a replacement a person or Subcontractor of equivalent qualifications, whose curriculum vitae or resume the Transaction Advisor shall submit to the IPDF for review and approval and whom the IPDF may if it so desires call for an interview at the cost and expense of the Transaction Advisor. If the IPDF does not object in writing within seven (7) days from the date of receipt of the curriculum vitae or interview, that person or subcontractor shall be deemed to have been approved by the IPDF.

- (b) If the IPDF (i) finds that any of the Personnel or Subcontractors has committed misconduct as ascertained by the IPDF in its discretion or has been charged with having committed an offence or a wrong or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel or Subcontractors, or (iii) finds that any of the Personnel or Subcontractors has misrepresented with respect to its qualifications, expertise and resources then the Transaction Advisor shall, at the IPDF's written request, immediately remove the respective Personnel or Subcontractors from this Agreement and provide a replacement with qualifications and experience reasonably acceptable to the IPDF subject to the same terms and conditions specified in Clause 4.3 (a).

## **5. OBLIGATIONS OF THE IPDF**

### **5.1 Assistance and Exemptions**

The IPDF shall use its best efforts, where such efforts are specifically requested stating the reasons for IPDF assistance, to ensure that the IPDF issues to its officials, agents and representatives all such instructions as may be specified by the Transaction Advisor as being necessary or appropriate for the prompt and effective implementation of the Services.

### **5.2 Access to Information and Decisions**

- (a) The IPDF will co-operate with the Transaction Advisor and will endeavor to furnish the Transaction Advisor with all such information and data concerning "Flyover/Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) Project" which the Transaction Advisor may require in connection with the performance of the Services. The IPDF will provide the Transaction Advisor with access to NHA's officers and employees and to such other information and reports as the Transaction Advisor may reasonably require. The IPDF will use its best efforts to ensure that all such information (including expressions of opinions) or documentation as is provided to the Transaction Advisor is complete, true, fair, accurate and not misleading and that there are no omissions which could be material. If during the course of the Transaction

Advisor's engagement under this Agreement, the IPDF subsequently discovers something which renders any such information untrue, unfair, inaccurate or misleading, it will notify the Transaction Advisor at once.

- (b) The IPDF shall use its best efforts to ensure that, where co-operation is required from, or decisions need to be taken or approvals given by the IPDF or NHA in the course of the Project, that co-operation will be promptly given and these decisions or approvals will not be unreasonably withheld or delayed.
- (c) The IPDF acknowledges and agrees that, in rendering the Services hereunder, the Transaction Advisor will be using and relying on the information supplied to them by the IPDF and/or NHA in addition to other information which the Transaction Advisor shall be responsible for gathering for effective design of system.

### **5.3 Road shows**

The IPDF shall ensure that the road shows, marketing, fact finding and other related activities are attended by the IPDF representative and NHA employees of an appropriately senior position to be agreed with the Transaction Advisor prior to the start of the road shows, marketing, fact finding and other related activities.

## **6. PAYMENTS TO THE TRANSACTION ADVISOR**

### **6.1 Currency of Payment**

IPDF shall pay a total of Pak Rupees \_\_\_\_\_ to the transaction advisor for the performance of services under this agreement.

All payments to the Transaction Advisor for the Services shall be in Pak Rupees and shall be subject to deduction of applicable taxes, if any.

### **6.2 Mode of Billing and Payment**

Payments in respect of the Services shall be made within 14 days of receipt of original invoices as follows:

- (a) The Advisory Fee shall be paid on milestone basis as identified in Appendix A based on the submission of deliverables by the Transaction Advisor as required in the Terms of Reference and following acceptance of the same by the Client.
- (b) All payments under this Agreement shall be made to the account of the Transaction Advisor as follows:

[Bank account details]

- (c) Success fee portion of the compensation is contingent on the success (financial closure with all formalities completed) of the project. The successful bidder must make this payment as the fulfillment of a condition precedent of the final contract.

## **7. FAIRNESS AND GOOD FAITH**

### **7.1 Good Faith**

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

### **7.2 Operation of the Agreement**

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties agree that it is their intention that this Agreement shall operate fairly between them, and without detriment to the interest of either of them and that if, during the term of this Agreement, either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause 9.

## **8. SETTLEMENT OF DISPUTES**

### **8.1 Arbitration**

The Parties agree that in the event of any dispute between them arising out of this Agreement or any matter related thereto or connected herewith, they shall endeavor to settle the same in an amicable manner. Should they fail to arrive at an amicable settlement, they shall refer the matter to arbitration at Islamabad in accordance with the Arbitration Act, 1940, or any amendment or enactment hereof. Arbitration as aforesaid shall be condition precedent to any other action under law.

### **8.2 Courts having jurisdiction**

The Parties agree that the Courts at Islamabad and Lahore shall have jurisdiction with respect to any litigation arising out of this Agreement.

## **9. ADDITIONAL COVENANTS**

### **9.1 Publicity**

The Transaction Advisor shall ensure that any publicity, press releases, advertisements and publications and public statements concerning the Services, the Project and the Agreement shall be in consultation with and approved in writing in advance by the IPDF and NHA before release by the Transaction Advisor, its Subcontractors and Personnel.

### **9.2 Waivers**

Time shall be of the essence of the Agreement. No failure or delay of either Party hereto in exercising any right or remedy hereunder shall operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise of any right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

### **9.3 Severability**

Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

### **9.4 Originals**

This Agreement is being executed in three originals, one each to be retained by the Transaction Advisor and the IPDF.

IN WITNESS OF WHICH the Parties have caused this Agreement to be signed as of the day and year first above written.

**FOR AND ON BEHALF OF THE IPDF**

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**FOR AND ON BEHALF OF THE TRANSACTION ADVISOR**

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**CONDITIONS  
FOR REQUEST FOR PROPOSALS FOR ADVISORY SERVICES  
FOR  
DEVELOPMENT OF FLYOVER / RAILWAY OVERHEAD  
BRIDGE AT HABIBABAD (WANRADHA RAM AT KM 1168-  
1169 OF THE NATIONAL HIGHWAY N-5)  
UNDER  
PUBLIC PRIVATE PARTNERSHIP MODALITY**

## CONDITIONS

1. IPDF shall have the right at all times to:
  - Cancel the process for selection of Transaction Advisor
  - Vary any of the terms set out in the RFP or any of the Annexes and Appendices thereto
  - Reject any Proposal not delivered in the prescribed format and at the prescribed venue at the prescribed time
  
2. The Transaction Advisor shall protect and defend unconditionally as well as indemnify and hold IPDF and NHA, or any other relevant government body/agency, its employees, directors, officers and agents free and harmless from and against any and all liability, losses, claims, liens, demands, damages against any and all causes of action of every kind and character, including without limitation any judgments, penalties, interest, court costs and any legal fees incurred in enforcing this indemnity, arising under this Agreement. IPDF makes no representation, covenants, warrants or guarantees, express or implied, other than those expressly set forth in this Agreement. In no case shall IPDF be liable for contingent or consequential, special or indirect damages.
  
3. Any addendum issued by IPDF subsequent to this RFP but prior to the submission of the proposals will become part and parcel of the RFP document.

All such addenda and clarifications relating to the RFP will be posted on the IPDF's website. It is the responsibility of the potential bidders to ensure a review of any such addenda / clarifications prior to the submission of their respective proposals.

## APPENDIX A

Indicative Payment Schedule

Payment is subject to the completion of all deliverables in a particular task. The Indicative Advisory Fee Payment Schedule is as follows (Payment to be made in Pak. Rupees):

Indicative deliverables	Percentage age of Advisory Fee
<b>Phase 1</b>	
Signing of the Agreement for Transaction Advisory Services	05
Deliverables pertaining to task 2&3	05
Deliverables pertaining to task 4	30
<b>Phase 2</b>	
Deliverables pertaining to task 1	15
Deliverables pertaining to task 2	10
Deliverables pertaining to task 2	20
Deliverables pertaining to task 3	15
<b>Total =</b>	<b>100%</b>

## APPENDIX B

### Indicative Feasibility Study

Please refer to the Project Preparation/Feasibility Guidelines devised by IPDF available on its website at [www.ipdf.gov.pk](http://www.ipdf.gov.pk).

#### Section 1: Introduction

- Executive summary
- Introduction
- Project background
- Approach and methodology to the feasibility study

#### Section 2: Needs Analysis

- NHA strategic objectives
- Budget
- Institutional analysis and Strategic Issues related to cool chain system.
- Output specifications in terms of service level
- Scope of the project
- Design parameters for the Flyover /Railway Overhead Bridge at Habibabad (Wanradha Ram at Km 1168-1169 of the National Highway N-5) Project.

#### Section 3: Solution Options Analysis

- Options considered
- Evaluation and assessment of each option
- Summary of evaluation and assessment of all options considered
- Recommendation of a preferred option

#### Section 4: Project Due Diligence

- Legal aspects
- Technical issues including its design
- Environmental and socio-economic issues
- Mitigation and Its cost

#### Section 5: Financial Assessment

- Financial model (Base Model and PPP Model)
  - Technical definition of project
  - Discussion on costs (direct and indirect) and assumptions made on costs estimates
  - Discussion on revenue and assumptions made on revenue estimates

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- Discussion on all model assumptions made in the construction of the model, including inflation rate, discount rate, depreciation, budgets etc.
  - Summary of results from the base model: NPV, Key indicators
  - Risk assessment
    - Identify all risks pertaining to the project. At a minimum, the following risks will be examined and probability of risk and its quantification as potential analysed:
      - Availability risk
      - Completion risk
      - Cost overrun risk
      - Design risk
      - Environmental risk
      - Exchange rate risk
      - Force majeure risk
      - Inflation risk
      - Insolvency risk
      - Insurance risk
      - Interest rate risk
      - Latent defect risk
      - Maintenance risk
      - Market demand or volume risk
      - Operating risk
      - Planning risk
      - Political risk
      - Regulatory risk
      - Residual value risk
      - Resource or input risk
      - Subcontractor risk
      - Tax rate change risk
      - Technology risk
      - Utilities risk
    - Evaluate impact of each risk
    - Estimate likelihood of each risk occurring
    - Estimate the cost of each risk
    - Identify strategies for mitigating the risks
    - Allocation of risks
  - Risk-adjusted financial model (Base Model and PPP Model)
    - Risks incorporated into project cost as specific line items
    - Summary of results from the risk adjusted financial model: NPV, Key indicators
    - Sensitivity analysis
    - Affordability and value for money test

- Recommended solution
- Summary of results

**Section 6: Value Assessment**

- Quantitative assessment
- Qualitative assessment

**Section 7: Economic Assessment/Valuation**

- Introduction and valuation approach
- Economic benefits & costs
- Assumptions
- Valuation results

**Section 9: Demonstrate Project Viability**

- Is it technically deliverable, affordable to users, economically viable, financially viable and socially/environmentally sustainable?
- Identify appropriate comprehensive collateral security arrangements required for making the project bankable

**Section 10: Procurement Plan**

- Project time line for implementation
- Approvals required for implementation
- Discussion on any issues and challenges in implementation
- Best Procurement practices/procedures suited to the project type
- Bid evaluation process and teams