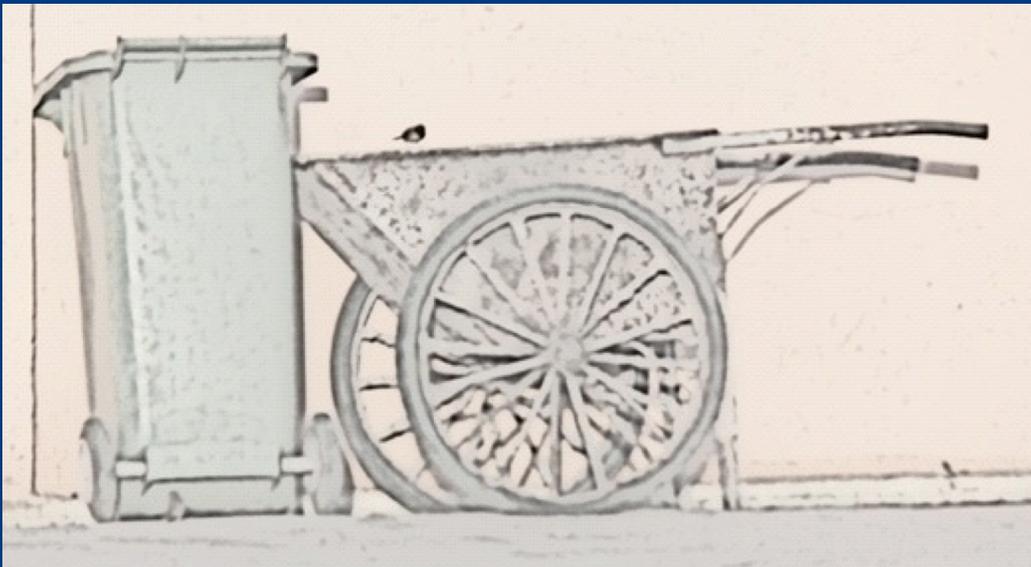


**TA-8566 REG: Mainstreaming Integrated Solid Waste Management in Asia -  
Solid Waste Management Team (46248-001)**

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# Solid Waste Action Plan (Terms Sheet and Bid Parameters) Mahasarakham, Thailand

**November 2016**

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# 1. Scope of Action Plan

This section provides some introductory remarks to the Terms Sheet and Bid Parameters which form Sections 2 and 3 respectively

## 1.1. Terms of Reference

- a. The Terms of Reference for RETA 8566 require the submission of several reports that outline strategic objectives and milestones. The completed Integrated Solid Waste Management Plan presents a broad series of proposed Mahasarakham municipal actions for the solid waste sector as a whole in its conclusions.

The plan nominates a Design-Build-Operate contract for the upgrading of Mahasarakham Landfill as the specific project of focus that could be financed by ADB, which is therefore the subject of this Action Plan and a Prefeasibility Study to be developed separately. Given the relatively modest amount of investment needed for a concession of this type, an ADB limited recourse loan would not be viable. Instead, ADB finance might be via a Thailand financial intermediary or part of broader multi-purpose corporate loan to an infrastructure company.

- b. This report follows the definition of a detailed action plan under Output 3(i) of the RETA 8566 Terms of Reference (TOR) for a project that takes a PPP form. In the case of a PPP, the TOR states that the action plan shall include a term-sheet describing the key parties, respective rights and obligations, commercial terms, and risk allocation in sufficient details to form the basis for the actual project contracts.

The TOR further states that “if the award of the concession will be through a competitive process, the Action Plan will include broad parameters of the bidding process, including the basic qualification of bidders and activities to be completed before award of concession”. Mahasarakham municipality has indicated that it would expect to run a competitive selection process for contracting a Concessionaire for this project and, as such, bid parameters are included in the Action Plan.

The approach herein provides the Municipality with a detailed project description and scope of services under the presumption that this could ultimately lead to a draft detailed contract form being included the bidding documents.

- c. In the case of Mahasarakham, preparation of the Solid Waste Action Plan is running concurrently with the Policy and Regulatory Reform Paper and the Technical and Commercial Prefeasibility study under RETA 8566, so these other reports are cross-referenced when necessary.
- d. The subject Action Plan is intended to be short and focused -- not only to meet the objectives of the Terms of Reference and ensure it can easily be read, but also to avoid persistent replication of information between different reports in the assignment. It will be the function of the Final Report to bring important conclusions of the different reports for this assignment together.

## **1.2. Consultant Perspective for the Assignment**

This report is provided as a submission of consultant views on likely terms needed to reach financial close and operational start-up for a project of this type. No Municipality of Mahasarakham agreement to any terms sheet component is assumed as the report is advisory in nature.

## **1.3. Performance Targets**

Under the Terms Sheet, the private concessionaire must meet detailed performance targets as contractual commitments and would be subject to penalties for failure to meet these.

Since the equipment and operating cost preliminary estimates in the Prefeasibility Study would be geared to address specific performance targets, this topic will be a focus in that report rather than of the Terms Sheet in this action plan.

## **1.4. Corporate not Limited Recourse Project Financing**

The report assumes that given the modest nature of project investment requirements, prospective investors would raise debt finance to pay for equipment on a corporate rather than project basis. So lenders would have no direct stake in the terms sheet provisions.

## **1.5. Funding to Pay for New Construction and Remediation Costs**

This issue is discussed in the Prefeasibility Report.

## **1.6. Municipal Revenues to pay monthly Operation and Maintenance Fees**

However, at present, solid waste activities are paid for out of user charges and other general revenues, and therefore, the Municipality will pay the private concessionaire directly from these revenues sources.

## 2. Terms Sheet

This terms sheet sets out the key terms and principles governing the proposed Design, Build, Remediate & Operate contract for the upgrading of the existing landfill/dumpsite in Mahasarakham Municipality, Thailand. More detailed and definitive terms would need to be set out in the Project Documents.

	Principles/Terms
<b>Procurement</b>	<ul style="list-style-type: none"> <li>Project shall be procured on a PPP basis via competitive tender process.</li> <li>Pre-qualification of bidders.</li> </ul>
<b>Parties</b>	<ul style="list-style-type: none"> <li>Mahasarakham Municipality (MM) and Concessionaire.</li> </ul>
<b>Project Features</b> <b>Key</b>	<ul style="list-style-type: none"> <li>Upgrading of the existing landfill/dumpsite located about 12 km from the city centre in Nongping District, Muang, Mahasarakham Municipality.</li> <li>Concessionaire shall be responsible for the design and construction of a new landfill on the same site.</li> <li>Concessionaire shall be responsible for the remediation (shape, compact and cover) and closure of the existing dumpsite on the same site.</li> <li>Concessionaire shall continue to operate the existing landfill and combined new landfill (when completed).</li> <li>MM shall pay for the design and construction of the new landfill, and remediation and closure of the existing dumpsite.</li> <li>MM shall pay for the operation of the existing landfill/dumpsite and combined new landfill.</li> </ul>
<b>Contract Term</b>	<ul style="list-style-type: none"> <li>10 years</li> <li>Parties may mutually agree to extend Term.</li> </ul>
<b>Project Requirements</b>	<ul style="list-style-type: none"> <li>Concessionaire shall design, construct and operate a new landfill on the same site for the entire Term.</li> <li>Concessionaire shall operate the existing and new landfill in accordance with the Performance and Service Standards, good industry practice and applicable laws and standards.</li> <li>Concessionaire shall remediate the existing dumpsite areas in accordance with good industry practice, applicable laws and standards, noting that these remediated areas will eventually be incorporated into the overall landfill footprint.</li> <li>Concessionaire to provide its own equipment for the design, construction and operation of the new landfill, and remediation of the existing dumpsite areas.</li> </ul>
<b>Minimum Technical Requirements</b>	<ul style="list-style-type: none"> <li>New landfill shall be a controlled landfill (as defined by UNEP).</li> <li>Remediation and closure of the existing dumpsite shall be in accordance with UNEP landfill operational</li> </ul>

## Action Plan – Terms Sheet

	Principles/Terms
	descriptions and local approvals and permits.
<b>Environmental Requirements</b>	<ul style="list-style-type: none"> <li>Concessionaire shall undertake the Project in accordance with applicable laws including environmental laws and standards.</li> </ul>
<b>Target Commercial Operation Date</b>	<ul style="list-style-type: none"> <li>New landfill - 2 years from date of Contract.</li> <li>Remediation of existing dumpsite areas - 6 months from commercial operation of new landfill.</li> </ul>
<b>Construction Delay, Extension of Time and Liquidated Damages</b>	<ul style="list-style-type: none"> <li>If delay attributable to MM or Government Force Majeure, Concessionaire is entitled to extension of time at reasonable costs.</li> <li>If delay attributable to Non-Governmental Force Majeure, Concessionaire is entitled to extension of time.</li> <li>If delay attributable to Concessionaire, liquidated damages will be imposed on a “per day” basis, subject to a maximum cap, payable by Concessionaire.</li> </ul>
<b>Performance and Service Standards</b>	<ul style="list-style-type: none"> <li>Performance and service standards shall be specified for landfill.</li> <li>Deduction/penalty regime for failure to meet such standards.</li> </ul>
<b>Equipment</b>	<ul style="list-style-type: none"> <li>Concessionaire to provide its own equipment to operate the existing areas and new landfill.</li> </ul>
<b>Site and Access</b>	<ul style="list-style-type: none"> <li>Landfill site is about 12 km away from the city located in Nongping District, Muang, Mahasarakham Municipality.</li> <li>MM owns or leases the common new and existing landfill/dumping site and shall provide Concessionaire access to Site.</li> </ul>
<b>Waste Acceptance</b>	<ul style="list-style-type: none"> <li>Concessionaire is entitled to reject non-approved waste delivered to landfill, as defined in the relevant legislation and the operations manual to be developed by the Concessionaire and approved by the Municipality and permitting agencies as appropriate.</li> </ul>
<b>Title and Risk</b>	<ul style="list-style-type: none"> <li>Title and risk remains with MM in respect of the waste delivered and disposed at landfill.</li> <li>Concessionaire accepts waste on a “as is where is” basis.</li> </ul>
<b>Tariff</b>	<ul style="list-style-type: none"> <li>For design and construction of new landfill – fixed price with milestones payment.</li> <li>For remediation of the existing dumpsite areas – fixed</li> </ul>

## Action Plan – Terms Sheet

	Principles/Terms
	<p>price.</p> <ul style="list-style-type: none"> <li>• For operation of existing and new landfill, flat tariff with guaranteed minimum quantity (“tonnage”) “put or pay”.</li> <li>• Tariff to increase with mass increase in waste exceeding minimum guaranteed quantity and allow for inflation indexation.</li> <li>• Weighing of delivered waste at landfill weighbridge station.</li> </ul>
<b>Performance Security</b>	<ul style="list-style-type: none"> <li>• Concessionaire shall provide performance bond / security of 30% of Project cost (new landfill construction plus remediation of existing dumpsite) upon Contract signing.</li> </ul>
<b>Monitoring, Reporting and Records</b>	<ul style="list-style-type: none"> <li>• Concessionaire shall conduct regular monitoring, reporting and keep proper books and records.</li> <li>• MM has monitoring and inspection rights.</li> </ul>
<b>No Assignment or Transfer</b>	<ul style="list-style-type: none"> <li>• No sale, assignment or transfer of rights and interest in the Contract without prior written consent of the other party, except where required for the financing of the Project.</li> </ul>
<b>Restrictions against Transfer of Equity</b>	<ul style="list-style-type: none"> <li>• No sale or transfer of equity by Concessionaire’s significant shareholder(s) before Commencement Operation Date plus 2 years without MM’s prior written consent.</li> </ul>
<b>Limits of Liability</b>	<ul style="list-style-type: none"> <li>• Total limit of liability shall be 100% of entire/aggregate Contract Value</li> <li>• Exceptions to liability limit include fraud, wilful misconduct, gross negligence and insurance loss proceeds.</li> <li>• No party is liable for special, consequential, or punitive damages or indirect losses.</li> </ul>
<b>Indemnification</b>	<ul style="list-style-type: none"> <li>• Usual indemnification provisions including environmental indemnification.</li> </ul>
<b>Insurance</b>	<ul style="list-style-type: none"> <li>• Concessionaire shall, at its cost, obtain and maintain minimum insurance policies and coverage as is required by law and financing documents.</li> <li>• Usual provisions dealing with application of loss proceeds.</li> </ul>
<b>Force Majeure</b>	<ul style="list-style-type: none"> <li>• Usual definitions and exclusions of Force Majeure (including Governmental and Non-Governmental Force Majeure).</li> <li>• Force Majeure that continues for 120 days will be deemed Pro-longed Force Majeure</li> </ul>

## Action Plan – Terms Sheet

	Principles/Terms
	<ul style="list-style-type: none"> <li>• If GFM, MM pays full tariff subject to existing performance deductions.</li> <li>• If Non-GFM, MM pays 50% tariff, subject to existing performance deductions.</li> </ul>
<b>Change in Law</b>	<ul style="list-style-type: none"> <li>• Equitable adjustment to the Tariff if there is a Change in Law that prevents performance of Contract or results in net costs or savings.</li> <li>• Change in Law amounting to a Force Majeure will be deemed a Governmental Force Majeure.</li> </ul>
<b>Events of Default</b>	<ul style="list-style-type: none"> <li>• Concessionaire's default events include: <ul style="list-style-type: none"> <li>○ failure to achieve Commencement Operation Date within 180 days from Target Commercial Operation Date</li> <li>○ abandonment of the Project</li> <li>○ repeated performance failures e.g. 5 per quarter</li> <li>○ material breach of the Contract</li> <li>○ Concessionaire's insolvency</li> <li>○ non-compliance/breach of law</li> </ul> </li> <li>• MM's default events include: <ul style="list-style-type: none"> <li>○ Material breach of the Contract</li> <li>○ Non-payment of Tariff</li> <li>○ Expropriation or nationalization of the Project</li> <li>○ Usual notice and cure provisions</li> </ul> </li> </ul>
<b>Termination Compensation</b>	<ul style="list-style-type: none"> <li>• If default not remedied within cure period, non-defaulting party shall be entitled to terminate the Contract by giving 30 days written notice to the other party.</li> <li>• In the case of pro-longed Force Majeure, either party may terminate the Contract by giving 30 days written notice to the other party.</li> <li>• Upon termination of the Contract: <ul style="list-style-type: none"> <li>○ If due to MM's default or GFM, Termination Fee shall be balance of fixed price contract, plus market value of purchased equipment, plus equity return for remaining Term.</li> <li>○ If due to Concessionaire's default, no Termination Fee shall be payable, and MM entitled to claim against Concessionaire for losses.</li> </ul> </li> <li>• If due to Non-GFM, no Termination Fee payable.</li> </ul>
<b>Expiry of Term</b>	<ul style="list-style-type: none"> <li>• MM shall require Concessionaire to remediate landfill or transfer control, possession and operation of landfill to MM or its designated party.</li> </ul>

## Action Plan – Terms Sheet

	Principles/Terms
<b>MM Step-in Rights</b>	<ul style="list-style-type: none"> <li>• MM entitled to exercise Step-in Rights to perform the services upon:               <ul style="list-style-type: none"> <li>○ insolvency of the Concessionaire</li> <li>○ Concessionaire’s default/failure to perform the services in accordance with the Contract resulting in a real and immediate risk to the environment, public health and safety</li> <li>○ public emergency, national security or public interest</li> <li>○ Provisions to address extent of Step-in Rights, obligations and Tariff payable under different Step-in scenarios.</li> </ul> </li> <li>• MM Step-in Rights has priority over and can be exercised in parallel with lenders’ step-in rights.</li> </ul>
<b>Governing law</b>	<ul style="list-style-type: none"> <li>• The governing law of the Contract shall be the laws of the Republic of Thailand.</li> </ul>
<b>Dispute Resolution</b>	<ul style="list-style-type: none"> <li>• Refer to Third Party Expert for resolution of disputes involving certain technical and specified matters.</li> <li>• Arbitration in Thailand.</li> </ul>
<b>Key Project Documents</b>	<ul style="list-style-type: none"> <li>• Landfill Design Build Operate and Remediation Contract (MM and Concessionaire)</li> </ul>

### 3. Bid Parameters

Set out below are the key bid parameters governing the tender for the proposed Design, Build, Remediate & Operate contract for the upgrading of the existing landfill in Mahasarakham Municipality, Thailand. These are effective guideposts for the drafting of prequalification and tender documents.

	Parameters
<b>Tender Process</b>	<ul style="list-style-type: none"> <li>• Two-stage process:                             <ul style="list-style-type: none"> <li>○ Pre-qualification of bidders; and</li> <li>○ Request for Proposals from pre-qualified bidders</li> </ul> </li> <li>• Consistent with international procurement standards</li> </ul>
<b>Pre-qualification of Bidders</b>	<ul style="list-style-type: none"> <li>• Objective is to ensure a more efficient tender process as only pre-qualified bidders can bid.</li> <li>• Need to set appropriate pre-qualification process and criteria.</li> <li>• Pre-qualification period – 1 month</li> <li>• Evaluation and Shortlist – 1 month</li> </ul>
<b>Pre-qualification Criteria</b>	<ul style="list-style-type: none"> <li>• Pre-qualification criteria typically based on a bidder’s:                             <ul style="list-style-type: none"> <li>○ Organizational structure</li> <li>○ Financial strength</li> <li>○ Relevant Design Build Operate experience</li> <li>○ Technical and operational experience</li> <li>○ Implementation approach and plan</li> </ul> </li> </ul>
<b>Request for Proposal</b>	<ul style="list-style-type: none"> <li>• Single parties/entities or consortia may bid.</li> <li>• 90 days validity of bids, extendable upon request by MM</li> <li>• Alternative bids may be considered provided base bids must first be tender compliant</li> <li>• Collusion amongst bidders will lead to disqualification</li> <li>• Corruption will lead to disqualification and possible criminal liability.</li> <li>• Bid period – 4 months</li> <li>• Evaluation – 3 months</li> <li>• Contract finalization with preferred bidder and Award – 2 months</li> <li>• Financial Close – 6 months</li> </ul>

## Action Plan – Terms Sheet

	Parameters
<b>Bid Evaluation Criteria</b>	<ul style="list-style-type: none"> <li>• Bidder that submitted the most “value for money” proposition will be awarded the tender.</li> <li>• Value for money is determined both qualitatively and quantitatively.</li> <li>• Recommended criteria and weightage:               <ul style="list-style-type: none"> <li>○ Project Value/Price Proposition - 60%</li> <li>○ Technical &amp; Operational Proposition - 20%</li> <li>○ Commercial and Legal Proposition (i.e. commercial terms and risk allocation deviations from draft DBO Contract) - 10%</li> <li>○ Financial Strength of Bidder - 10%</li> </ul> </li> </ul>
<b>Bid Security/Bonds</b>	<ul style="list-style-type: none"> <li>• Concessionaire to provide bid security, amount to be specified.</li> <li>• Issued by recognised bank or insurer domiciled or licensed in Thailand.</li> </ul>
<b>Governing Law/Disputes</b>	<ul style="list-style-type: none"> <li>• Governing law of tender process will be the laws of the Republic of Thailand.</li> <li>• Disputes will be resolved via Thailand courts.</li> </ul>