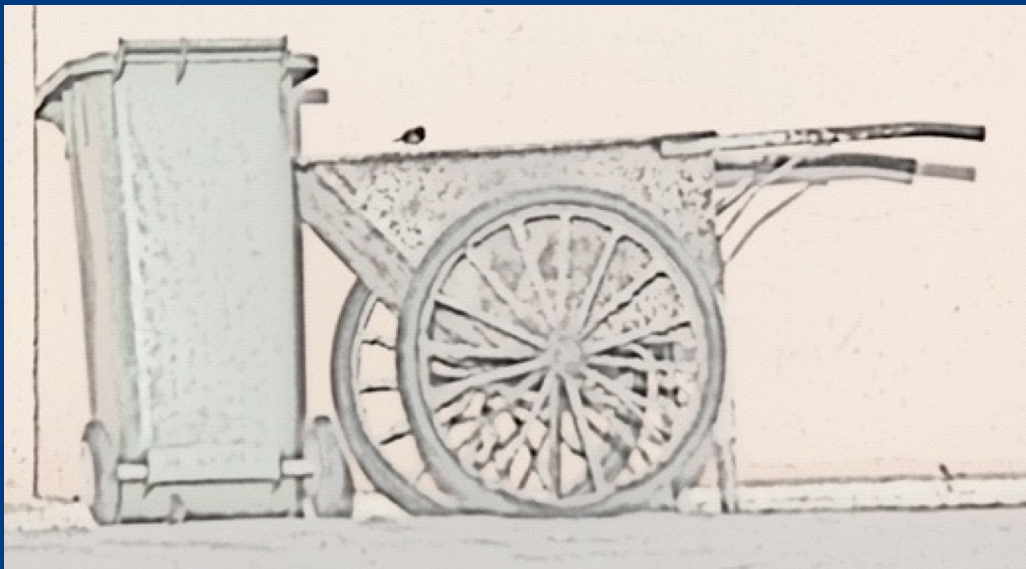


**TA-8566 REG: Mainstreaming Integrated Solid Waste Management in Asia -  
Solid Waste Management Team (46248-001)**

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# Solid Waste Action Plan (Terms Sheet and Bid Parameters) **Mandalay**

**December 2016**

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## List of Abbreviations

<b>ADB.</b>	Asian Development Bank
<b>GFM.</b>	Governmental Force Majeure
<b>MCDC.</b>	Mandalay City Development Committee
<b>NGFM.</b>	Non-Governmental Force Majeure
<b>PFS.</b>	Prefeasibility Study
<b>PPP.</b>	Public Private Partnership
<b>SPV.</b>	Special Purpose Vehicle
<b>TOR.</b>	Terms of Reference

# 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 Integrated Solid Waste Management Plan presents a broad series of proposed Mandalay City actions for the solid waste sector as a whole in its conclusions.

The plan nominates a proposed Chan Aye Thar Zan Township Waste Collection and Street Cleaning Concession as the specific project of focus that could be financed by ADB and 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 Myanmar 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”. Mandalay city 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

Combining both the Terms Sheet with Bid Parameters alone would represent a major reform in the way that both Mandalay and Yangon conduct tenders for Solid Waste PPP projects. Previous tenders have used an open ended general scope of services and project description. This practice left much latitude for bidders to define a considerable portion of the contract terms themselves. The approach herein advocates that instead the City develop a much more detailed project description and scope of services and that this would ultimately lead to a draft detailed contract form being included in the bidding documents.

- c. In the case of Mandalay, preparation of the Solid Waste Action Plan is running in tandem with the Integrated Solid Waste Management Plan, 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 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 the consultant's views on likely terms needed to reach financial close and operational start-up for a project of this type. Although some of the material in the report reflects feedback from Mandalay city officials, no Mandalay agreement to any terms sheet component is assumed as the report is advisory in nature.

## **1.3. Market Precedents**

Market Precedents for waste collection and street cleaning concession history inside Myanmar and in Asia are discussed in the Prefeasibility Study (PFS).

## **1.4. 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.

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

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

## **1.6. City Revenues to pay monthly Concession Fees**

In the medium to long term, it is expected that Mandalay will have to convince its citizens that collection fee “user charges” are the best means of ensuring funding for improved services.

However, as present, solid waste activities are paid for out of a dedicated allocation of city property taxes and therefore the City will pay the private concessionaire directly from general revenues.

## **1.7. Mandalay City Contract Payment Credit**

Mandalay City Development Committee is currently part of the Central Government, and therefore, does not have the status of an independent city government.

Usually, private contractors would conduct due diligence on the city's ability to pay the fees. In this case, the analysis should focus on the insertion of the fee as a line item in the MCDC Cleansing Department budget and on the liquidity of the cleansing department and the City finance department to make payment on time.

Over the medium term, and especially if the City Government becomes more independent, its financial situation would be best communicated through retention of a reputable international or domestic accounting firm for annual financial reporting.

## 2. Terms Sheet

This terms sheet sets out the key terms and principles governing the proposed Waste Collection PPP project in Mandalay City, Republic Union of Myanmar. 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>Mandalay City Development Committee (MCDC) and Concessionaire (SPV).</li> </ul>
<b>Project Features</b> <b>Key</b>	<ul style="list-style-type: none"> <li>Concessionaire shall be responsible for:                             <ul style="list-style-type: none"> <li>residential and commercial waste collection and street cleaning; and</li> <li>no collection of industrial, construction, hazardous and medical waste.</li> </ul> </li> <li>Concessionaire shall use its own equipment and labour to perform its obligations.</li> <li>MCDC equipment shall not be utilized.</li> <li>Concession is for the Chan Aye Thar Zan Township only.</li> </ul>
<b>Contract Term</b>	<ul style="list-style-type: none"> <li>7 years</li> </ul>
<b>Project Requirements</b>	<ul style="list-style-type: none"> <li>Concessionaire shall acquire and utilize its own equipment and labour in the performance of its services.</li> <li>Concessionaire shall perform its services in accordance with the Performance and Service Standards, good industry practice and applicable laws.</li> <li>Concessionaire not required but encouraged to employ existing MCDC Cleansing Department staff.</li> </ul>
<b>Minimum Equipment Requirements</b>	<ul style="list-style-type: none"> <li>Collection equipment shall include compactors.</li> <li>Sufficient bins to be provided at all primary dumping areas so waste is not placed on the ground.</li> </ul>
<b>Environmental Requirements</b>	<ul style="list-style-type: none"> <li>Concessionaire shall perform the services in accordance with applicable environmental laws.</li> </ul>
<b>Target Start Date</b>	<ul style="list-style-type: none"> <li>60 days from date of Contract.</li> </ul>
<b>Start Date Delay, Extension of Time and Liquidated Damages</b>	<ul style="list-style-type: none"> <li>If delay attributable to MCDC or Government Force Majeure, Concessionaire entitled to extension of time and reasonable costs.</li> <li>If delay is attributable to Non-Governmental Force Majeure, Concessionaire is entitled to extension of time.</li> <li>If delay is attributable to Concessionaire, liquidated damages will be imposed on a “per day” basis, subject to a maximum cap, payable by Concessionaire.</li> </ul>



	Principles/Terms
<b>Performance and Service Standards</b>	<ul style="list-style-type: none"> <li>Performance and service standards need to be specified for waste collection and street cleaning.</li> <li>Deduction/penalty regime for failure to meet such standards.</li> </ul>
<b>Concession Area and Access</b>	<ul style="list-style-type: none"> <li>Concession area is the Chan Aye Thar Zan Township only.</li> <li>MCDC to provide Concessionaire access to Concession Area and to Kyar Ni Kan dumpsite (north dumpsite).</li> </ul>
<b>Waste Collection, Acceptance and Disposal</b>	<ul style="list-style-type: none"> <li>Concessionaire shall, at its costs, be responsible for collecting, transporting and delivering waste to Kyar Ni Kan dumpsite (north dumpsite).</li> <li>Concessionaire is entitled to reject collection of industrial, construction, hazardous and medical waste.</li> </ul>
<b>Title and Risk</b>	<ul style="list-style-type: none"> <li>Title and risk transfer in respect of the waste passes to the Concessionaire upon collection.</li> <li>Concessionaire collects waste on a “as is where is” basis.</li> </ul>
<b>Tariff</b>	<ul style="list-style-type: none"> <li>Flat tariff with guaranteed minimum quantity (“tonnage”) take or pay.</li> <li>Tariff to increase with mass increase in waste exceeding minimum guaranteed quantity.</li> <li>Tariff to allow for inflation indexation.</li> <li>Weighing of collected waste at landfill weighbridge.</li> </ul>
<b>Performance Security</b>	<ul style="list-style-type: none"> <li>Concessionaire shall provide performance bond/security of 30% of Project cost 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>MCDC have 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 Start Date plus 1 year without MCDC’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 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>



	Principles/Terms
<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 90 days will be deemed Pro-longed Force Majeure.</li> <li>If GFM, MCDC pays full tariff subject to existing performance deductions.</li> <li>If Non-GFM, MCDC 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 Start Date within 90 days from Target Start 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>MCDC'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>

	Principles/Terms
<b>Termination/Buy-Out 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>• MCDC shall pay the Termination Fee to Concessionaire. <ul style="list-style-type: none"> <li>○ In the event of MCDC's default or GFM, Termination Fee shall be remaining amount of total Contract Value.</li> <li>○ In the event of Concessionaire's default, no Termination Fee shall be payable.</li> <li>○ In the event of Non-GFM, Termination Fee shall be 50% of the remaining amount of total Contract Value.</li> </ul> </li> </ul>
<b>Expiry of Term</b>	<ul style="list-style-type: none"> <li>• MCDC shall have option to renew Term for another 3 years.</li> </ul>
<b>MCDC Step-in Rights</b>	<ul style="list-style-type: none"> <li>• MCDC 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>• MCDC 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 the Union of Myanmar.</li> </ul>
<b>Dispute Resolution</b>	<ul style="list-style-type: none"> <li>• Dispute to be resolved via courts in Myanmar.</li> <li>• [Arbitration in Singapore pursuant to the SIAC Rules, if there is foreign Concessionaire]</li> </ul>
<b>Key Project Documents</b>	<ul style="list-style-type: none"> <li>• Waste Collection Services Contract (MCDC and Concessionaire).</li> </ul>

### 3. Bid Parameters

Set out below are the key bid parameters governing the tender for the proposed Waste Collection PPP project in Mandalay City, Republic Union of Myanmar. These are effective guideposts for the drafting to 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> </ul> <p>Consistent with international procurement standards.</p>
<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 PPP experience</li> <li>Technical and operational experience</li> <li>Implementation approach and plan</li> </ul> </li> </ul> <p>Most local bidders may not have relevant experience and hence it is important to not limit pre-qualification to bidders in the solid waste industry only, but to broaden the field of potential bidders by allowing bidders with comparable infrastructure development and/or haulage operation experience to participate.</p>
<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 MCDC.</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 and Bid Parameters

	Parameters
<b>Bid Security/Bonds</b>	<ul style="list-style-type: none"> <li>• 10,000,000 Kyats.</li> <li>• Issued by recognised bank or insurer domiciled or licensed in Myanmar.</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 the Union of Myanmar.</li> <li>• Disputes will be resolved via Myanmar courts.</li> </ul>