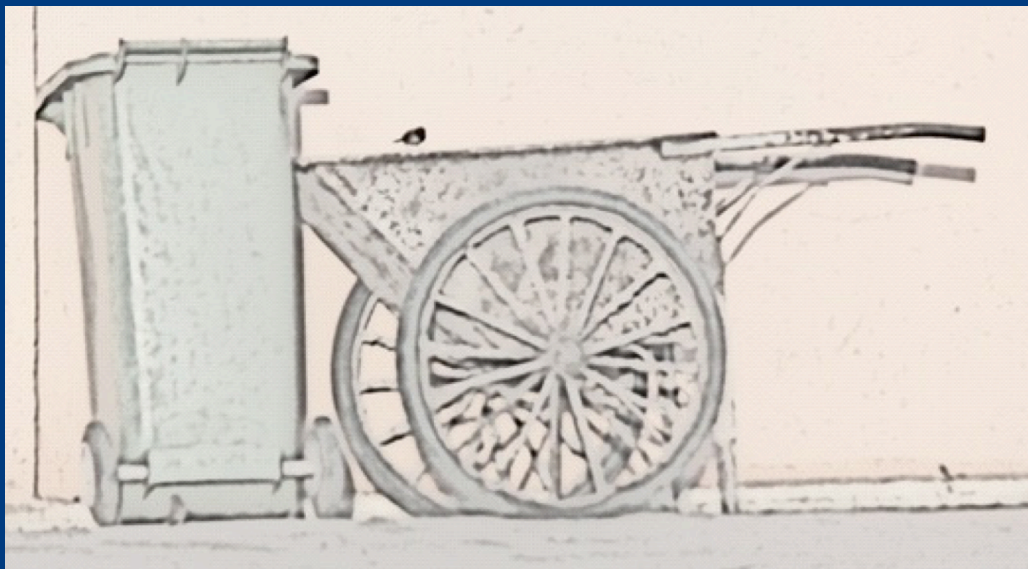


**TA-8566 REG: Mainstreaming Integrated Solid Waste Management in Asia -
Solid Waste Management Team (46248-001)**

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**Solid Waste Action Plan
(Terms Sheet and Bid Parameters)
Sorsogon, Philippines**



December 2016

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List of Abbreviations

ADB.	Asian Development Bank
CAPEX	Capital Expenditure
DENR	Dept. of Environment and Natural Resources
GFM	Governmental Force Majeure
OPEX	Operational Expenditure
SC	Sorsorgon City
TOR	Terms of Reference
UNEP	United Nations Environment Programme

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 Sorsogon City actions for the solid waste sector as a whole in its conclusions.

The plan nominates a Design-Build-Operate contract for the proposed new Buenavista Landfill 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 Philippine 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”. Sorsogon 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.

Well run tenders can be undertaken within the Philippines even at the Local Government level when there is political will to do so and demonstrated interest from qualified parties to participate. The approach herein provides the City 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 Sorsogon, preparation of the Solid Waste Action Plan is running 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 consultant 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 Sorsogon city officials, no City of Sorsogon 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. City Revenues to pay monthly Operation and Maintenance Fees

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

However, at 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. Sorsogon City Contract Payment Credit

Usually, private contractors would conduct due diligence on the city’s ability to pay the fees. In the case, the analysis should focus on the insertion of the fee as a line item in the Sorsogon City budget.

Sorsogon City is a periodic long term borrower from Landbank of the Philippines and can presently be regarded to have a bankable credit status. As with any Local Government Unit, there is no assurance that the City would have future access to bank credit.

2. Terms Sheet

This terms sheet sets out the key terms and principles governing the proposed Design-Build-Operate contract for upgrading the existing landfill in Sorsogon City, Philippines. More detailed and definitive terms would need to be set out in the Project Documents.

	Principles/Terms
Procurement	<ul style="list-style-type: none"> Project shall be procured on a PPP basis via competitive tender process. Pre-qualification of bidders.
Parties	<ul style="list-style-type: none"> Sorsogon City (SC) and Concessionaire.
Project Key Features	<ul style="list-style-type: none"> Concessionaire shall be responsible for the design, construction and operation of a new Buenavista landfill to be located one (1) kilometre from the National Road/Maharlika Highway junction in Barangay Rizal. Concessionaire shall be responsible for the remediation (shape, compact and cover) of existing but closed Buenavista dumpsite located at about 14 kilometers from the city proper, around 300 metres from the Maharlika Highway Concessionaire shall be responsible for the remediation (shape, compact and cover) of the existing but operating Bato dumpsite. SC shall pay for the design, construction and operation of the new landfill and remediation of the existing and closed dumpsites.
Contract Term	<ul style="list-style-type: none"> 10 years Parties may mutually agree to extend Term.
Project Requirements	<ul style="list-style-type: none"> Concessionaire shall design, construct and operate the new landfill for the entire Term. Concessionaire shall design, construct and operate the new landfill in accordance with the Performance and Service Standards, good industry practice and applicable laws. Remediation of the old Buenavista dumpsite as well as the current dumpsite at Bato shall be completed no later than 6 months from commercial operation of new landfill. Concessionaire to provide its own equipment for construction, remediation and operation of new and existing dumpsites and landfills.
Minimum Technical Requirements	<ul style="list-style-type: none"> Landfill shall be a controlled landfill (as defined by UNEP) and any additional requirements imposed by DENR under RA9003.
Environmental	<ul style="list-style-type: none"> Concessionaire shall perform the services in

	Principles/Terms
Requirements	accordance with applicable environmental laws including RA9003 and relevant Implementing Rules and Regulations.
Target Commercial Operation Date	<ul style="list-style-type: none"> • 2 years from date of Contract.
Construction Delay, Extension of Time and Liquidated Damages	<ul style="list-style-type: none"> • If delay is attributable to SC or Government Force Majeure, Concessionaire is entitled to extension of time at reasonable costs. • If delay is attributable to Non-Governmental Force Majeure, Concessionaire is entitled to extension of time. • If delay attributable to Concessionaire, liquidated damages will be imposed on a “per day” basis, subject to a maximum cap, payable by Concessionaire.
Performance and Service Standards	<ul style="list-style-type: none"> • Performance and service standards shall be specified for landfill. • Deduction/penalty regime for failure to meet such standards.
Site and Access	<ul style="list-style-type: none"> • New Buenavista landfill Closed Buenavista and existing Bato dumpsites • SC owns or leases the new landfill and existing and closed dumpsites and shall provide Concessionaire access to Sites.
Waste Acceptance	<ul style="list-style-type: none"> • Concessionaire is entitled to reject non-approved waste delivered to landfill, as defined in the relevant legislation including RA9003 and the operations manual for the landfill.
Title and Risk	<ul style="list-style-type: none"> • Title and risk remains with SC in respect of the waste delivered and disposed at landfill. • Concessionaire accepts waste on a “as is where is” basis.

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

	Principles/Terms
	<ul style="list-style-type: none"> Force Majeure that continues for 120 days will be deemed Pro-longed Force Majeure. If GFM, SC pays full tariff subject to existing performance deductions. If Non-GFM, SC pays 50% tariff, subject to existing performance deductions.
Change in Law	<ul style="list-style-type: none"> Equitable adjustment to the Tariff if there is a Change in Law that prevents performance of Contract or results in net costs or savings. Change in Law amounting to a Force Majeure will be deemed a Governmental Force Majeure.
Events of Default	<ul style="list-style-type: none"> Concessionaire's default events include: <ul style="list-style-type: none"> failure to achieve Commencement Operation Date within 180 days from Target Commercial Operation Date abandonment of the Project repeated performance failures e.g. 5 per quarter material breach of the Contract Concessionaire's insolvency non-compliance/breach of law SC's default events include: <ul style="list-style-type: none"> Material breach of the Contract Non-payment of Tariff Expropriation or nationalization of the Project Usual notice and cure provisions
Termination Compensation	<ul style="list-style-type: none"> 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. In the case of pro-longed Force Majeure, either party may terminate the Contract by giving 30 days written notice to the other party. Upon termination of the Contract: <ul style="list-style-type: none"> If due to SC's default or GFM, Termination Fee shall be capex incurred and not yet paid, plus market value of purchased equipment, plus equity return for remaining Term. If due to Concessionaire's default, no Termination Fee shall be payable, and SC

	Principles/Terms
	<p>entitled to claim against Concessionaire for losses.</p> <ul style="list-style-type: none"> ○ If due to Non-GFM, no termination fee payable.
Expiry of Term	<ul style="list-style-type: none"> • SC shall require Concessionaire to remediate landfill or transfer control, possession and operation of landfill to SC or its designated party.
SC Step-in Rights	<ul style="list-style-type: none"> • SC entitled to exercise Step-in Rights to perform the services upon: <ul style="list-style-type: none"> ○ insolvency of the Concessionaire ○ 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 ○ public emergency, national security or public interest • Provisions to address extent of Step-in Rights, obligations and Tariff payable under different Step-in scenarios. • SC Step-in Rights has priority over and can be exercised in parallel with lenders' step-in rights.
Governing law	<ul style="list-style-type: none"> • The governing law of the Contract shall be the laws of the Republic of the Philippines.
Dispute Resolution	<ul style="list-style-type: none"> • Refer to Third Party Expert for resolution of disputes involving certain technical and specified matters. • Arbitration in the Philippines.
Key Project Documents	<ul style="list-style-type: none"> • Landfill Design-Build-Operate and Remediation Contract (SC and Concessionaire)

3. Bid Parameters

Set out below are the key bid parameters governing the tender for the proposed Design Build Operate contract for remediating the existing and closed dumpsites and developing a new controlled landfill in Sorsogon City, Philippines. These are effective guideposts for the drafting to prequalification and tender documents.

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

Action Plan – Terms Sheet

Bid Evaluation Criteria	<ul style="list-style-type: none"> • Bidder that submitted the most “value for money” proposition will be awarded the tender. • Value for money is determined both qualitatively and quantitatively. • Recommended criteria and weightage: <ul style="list-style-type: none"> ○ Project Value/Price Proposition - 60% ○ Technical & Operational Proposition - 20% ○ Commercial and Legal Proposition (i.e. commercial terms and risk allocation deviations from draft DBO Contract) - 10% ○ Financial Strength of Bidder - 10%
Bid Security/Bonds	<ul style="list-style-type: none"> • Higher of 1% Project Cost or PhP 150 million, if Project Cost is PhP 10 billion or more • Higher of 1.5% Project Cost or PhP 100 million, if Project Cost is PhP 5 billion to PhP10 billion • 2% Project Cost, if Project Cost is less than PhP 5 billion • Issued by recognised bank or insurer domiciled or licensed in Philippines.
Governing Law/Disputes	<ul style="list-style-type: none"> • Governing law of tender process will be the laws of the Republic of the Philippines. • Disputes will be resolved via Philippines courts.