**Request for Proposals**

**for**

**Legal Advisory (Loan Documentation)**

**prepared by Darco Ba Lai Water Supply Company Limited**

# Introduction and Background

Darco Ba Lai Water Supply Company Limited (“**DBL**”, the **Client**) is developing, constructing and will operate a water supply treatment and distribution network in Ba Tri District, Ben Tre Province, Vietnam (“**Ba Lai Project**”). The Ba Lai Project commenced construction in February 2021 and is expected to commence operations in June 2022.

DBL is currently in negotiations with a Vietnamese based bank (“**Lender**”) for the provision of a senior bank facility to fund part of the construction cost of the Ba Lai Project (“**Ba Lai Loan Facility**”). The Lender has issued a credit term sheet to DBL following the in-principle approval from the Lender’s Credit Committee. The proposed facility will be a project finance loan that will be securitized by the Ba Lai Project’s assets, rights and interest. An offshore corporate guarantee will also be extended by one of DBL’s sponsors to the Lender. The facility amount is currently sufficient to cover the Project’s debt requirement.

# Scope of Work

DBL is seeking a legal advisor to support DBL in the review, execution and/or implementation of the agreements and documents as contemplated or required all for the Ba Lai Loan Facility (“**Transaction Documents**”).

The legal advisor will be required to:

1. Review the term sheet and provide legal advice to safeguard DBL’s interests;
2. Review and amend the draft facility agreement from a Vietnamese law perspective, and to safeguard DBL’s interests;
3. Review and amend the draft security agreement governed by Vietnamese laws;
4. Review and amend a cross-border guarantee agreement governed by Vietnamese laws;
5. Review and/or amend any other definitive agreements related to the Ba Lai Loan Facility, other than the documents already mentioned above, that may be required;
6. Support DBL in negotiation with the Lender on the Transaction Documents (if required);
7. Provide legal opinion on the transaction and the enforceability of the Transaction Documents based on the agreed and signed terms;
8. Assist with the registration of the facility agreement and security agreements with the relevant government authorities in Vietnam (if required);
9. Manage Condition Precedents (“**CP**”) and Conditions Subsequent (“**CS**”) including preparing a document to track CP and CS for a period of 6 months from the date of signing the Transaction Documents; and/or
10. Any other scope of services that the legal advisor deems necessary for the transaction.

Assumptions the legal advisor may take include:

1. There is only 1 lender in the transaction;
2. The draft Transaction Documents will be prepared by the Lender;
3. DBL’s assets to be secured are based in Vietnam, accordingly the security documents will be governed by Vietnamese law;
4. Legal due diligence will not be required; and
5. International Travel will not be required.

All deliverables are to be submitted directly to DBL.

# General Instructions in Relation to the preparation of Tenders

## Costs of preparation

Proposers shall bear all their costs associated with the preparation and submission of their proposals.

## Right to Cancel, Clarify or Vary the Procurement Process

The Client is not committed to any course of action as a result of:

* issuing this RFP;
* communicating with a proposer or its representatives in respect of the RFP; or
* any other communication between DBL and any other party.

By taking part in this RFP process, proposers accept that DBL is not bound to accept any proposal and that DBL reserve the right not to proceed with the RFP or conclude a contract for some or all of the Services.

DBL reserve the right to waive, amend, add to or withdraw all or any part of the RFP at any time during the procurement exercise.

## Proposer Contact Person

Proposers must provide a single point of contact in their organisation for all correspondence relating to this RFP. DBL shall not be responsible for contacting proposers through any route other than their nominated person. Proposers accept that it is their responsibility to notify any changes relating to their contact person promptly.

## DBL Contact Person

|  |
| --- |
| Howard To On Ho  Project Manager  [howard.to@darcowater.com](mailto:raghav.koshik@infracoasia.com)  and  Chun Sem Teh  **Darco Group Financial Controller**  [semteh@darcowater.com](mailto:semteh@darcowater.com) |

All contact by any interested parties with the Client relating to this RFP must be addressed to the DBL Contact Person named above.

## Clarifications about the Procurement Process

Should any interested person require any clarification, please contact the DBL Contact Person. Requests for clarification must be in writing and will be accepted up to **17.00 SGT (GMT +8)** on 20 October 2021 **(Wednesday)**. Save to the extent that a request is expressly stated in writing by a proposer to be made on a ‘commercially in confidence’ basis requests for clarifications and their respective responses will be distributed to all persons who have requested a copy of the RFP, without information about the source of the request. If there is any doubt as to whether a request concerns confidential information, then DBL Contact Person will advise the person concerned who may either give written permission for distribution of the response (which shall be in advance of the preparation of the response) or withdraw the request.

## Conflicts of Interest

Proposers must disclose in their proposals (or at any later stage if becoming aware after submission of tenders) any circumstances, including personal, financial and business activities that will, or might, give rise to a conflict of interest as a result of taking part in this competition or in the performing the Services under a contract. Conflict(s) include potential, actual and perceived conflicts. This also applies to any sub-contractors proposed by proposers. Any proposer who fails to comply with this requirement may be excluded from this procurement process.

Where proposers identify any potential conflicts in their tenders (or later stage), they should state how they intend to avoid or mitigate such conflicts. The Client reserves the sole and absolute discretion to exclude any tender which, in its opinion, gives rise to, or could potentially give rise to, a material conflict of interest.

If, following submission of a proposal, a proposer becomes aware of any circumstances that could give rise to an undisclosed conflict the proposer must advise the DBL Contact Person as soon as possible and propose measures that may be taken to eliminate or mitigate such conflict. Failure to comply with this obligation could lead to the disqualification of the proposer in question from the procurement process.

## Change of Control

The DBL Contact Person must be informed immediately in writing of any change in the structure, control, composition or membership of a proposer which takes place at any time prior to execution of the contract. A change deemed material by the Client may lead to the proposer’s exclusion from the procurement process.

## Warnings and disclaimers

All information provided to interested persons in relation to this procurement process is provided in good faith and is believed to be correct at the time of issue. However, the Client and its advisors exclude all liability for any inaccuracy or inadequacy and no express or implied warranty is given in relation to accuracy or adequacy of the information provided. This exclusion extends to liability in relation to any statement, opinion or conclusion contained in, or any omission from information in this RFP including its annexures and in respect of any other written or oral communication to any interested person. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the Client or its advisers.

Neither the issue of this RFP, nor any of the information provided in relation to it, should be regarded as a commitment or representation on the part of the Client (or any other person) to enter into any contractual arrangement.

## Instructions for Completion of Tenders

Completed proposals must be sent via e-mail to the DBL Contact Person **by 17.00 SGT (GMT +8) on 27 October 2021 (Wednesday)** and an acknowledgement receipt will be sent in return to confirm receipt. A proposal sent by any other method may be viewed as non-compliant and rejected.

Completed proposals should include:

* Cover page
* Understanding of the scope (1 page maximum)
* Approach and methodology (2 pages maximum)
* Timeline and Deliverables
* Assumptions
* Confirmation and acceptance of all of the sections and each of the Annexures to this RFP
* Fee in the format as per **Annexure 1 and Annexure 2**.
* Project team structure with clear identification of roles and responsibilities of all team members
* Team member Curriculum Vitae (CVs) with each CV not being more than 3 pages in the format attached in **Annexure 3**
* Firm Credentials (3 pages maximum in the format attached in **Annexure 4**)

# Budget and Terms of Payment

Proposers are to provide a lump-sum price for the Services including fees and all expenses (including all taxes, transfer, remittance fees and all out of pocket expenses). Please provide the proposed fee as per the format in **Annexure 1** of this document.

# Scoring Matrix

|  |  |
| --- | --- |
| Element | Weighting |
| **Conform to Specifications**  Demonstration of an understanding of the requirements; specifically, the ability to meet the RFP requirements | **50%** |
| **CV Quality**  Qualified and experienced staff with CVs demonstrating the provision of this type of service. Demonstrate the quality and technical skills of the team members including managerial staff who you propose to undertake this contract if successful and explain how those members will have the skills and availability to provide the service to a high standard. | **30%** |
| **References/ Case Study**  When possible, the Client will contact references and review case studies to assess the quality of work. | **10%** |
| **Pricing**  Clear, concise and transparent pricing schedules as requested in this RFP. In particular best overall price. | **10%** |

|  |  |
| --- | --- |
| Points | Interpretation |
| **5** | **Excellent** –Overall the response demonstrates that the bidder meets all areas of the requirement and provides all of the areas evidence requested in the level of detail requested. This, therefore, is a detailed excellent response that meets all aspects of the requirement leaving no ambiguity as to whether the bidder can meet the requirement. |
| **4** | **Good** – Overall the response demonstrates that the bidder meets all areas of the requirement and provides all of the areas of evidence requested but contains some trivial omissions in relation to the level of detail requested in terms of either the response or the evidence. This, therefore, is a good response that meets all aspects of the requirement with only a trivial level ambiguity due the bidder’s failure to provide all information at the level of detail requested. |
| **3** | **Adequate** – Overall the response demonstrates that the bidder meets all areas of the requirement, but not all of the areas of evidence requested have been provided. This, therefore, is an adequate response, but with some limited ambiguity as to whether the bidder can meet the requirement due to the bidder’s failure to provide all of the evidence requested. |
| **2** | **Minimal** – The response demonstrates that the bidder meets the requirement in a majority of areas. There is ambiguity as to whether the bidder can meet all of the requirements due to the failure by the bidder to show that it meets one or more areas of the requirement. |
| **1** | **Poor** – The response does not demonstrate that the bidder meets the requirement in one or more areas. This, therefore, is a poor response with significant ambiguity as to whether the bidder can meet the requirement due to the failure by the bidder to show that it meets one or more areas of the requirement. |
| **0** | **Unacceptable** – The response is non-compliant with the requirements of the RFP and/or no response has been provided. |

**ANNEXURE 1 – PAYMENT SCHEDULE FORMAT**

| Payment Schedule | | |  |
| --- | --- | --- | --- |
| Ref. | Milestone | % | Amount |
|  |  |  | (VND) |
|  | Upon receiving of Transaction Documents from DBL | 15% |  |
|  | Issuance of Opinion Letter | 30% |  |
|  | Signing of Transaction Documents | 35% |  |
|  | Submission of CP/CS tracker | 10% |  |
|  | Completion of CS monitoring 6-months post signing of Transaction Documents | 10% |  |
|  |  |  |  |
|  |  | **100%** | **$ 0.00** |

**ANNEXURE 2 – SCHEDULE OF RATES**

**Schedule of Rates**

1. **Remuneration of Resources**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Name | Position | Rate Type (Home/Site) | Currency | Rates per Hour | Rates per Day | Comments |
| i.e. Jane Dole | Project Manager | Home | USD | $XXXX | $XX,XXXX |  |
|  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |

Note:

* The above table indicates the minimum requirement to be included in the proposal.
* Tenderer may include additional information to aid the Client in the tender evaluation process.

**ANNEXURE 3 – STANDARD FORM OF CVS**

# Curriculum Vitae (CV) for Proposed International or National Experts

1. **Proposed Position** [*only one candidate shall be nominated for each position*]:

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

1. **Name of Firm** [*Insert name of firm proposing the expert*]:

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

1. **Name of Expert** [*Insert full name*]:

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

## Date of Birth:

## Citizenship:

1. **Contact details** [*Include complete address and telephone number/ email address*]:

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

1. **Education** [Indicate college/university and other specialized education of expert, giving names of institutions, degrees obtained, and dates of obtainment]:

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

1. **Membership in Professional Associations**

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

1. **Other Training** [*Indicate significant training since degrees under 7 - Education were obtained*]:

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

1. **Countries of Work Experience:** [*List countries where expert has worked in the last ten years*]:

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

1. **Languages** [*For each language indicate proficiency*]:

|  |  |  |  |
| --- | --- | --- | --- |
| **Language** | **Level of Proficiency (Mother Tongue, Excellent, Good, Fair, Poor)** | | |
| **Speaking** | **Reading** | **Writing** |
|  |  |  |  |
|  |  |  |  |

1. **Employment Record** [*Starting with present position, list in reverse order every employment held by expert since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.*]:

From [*Year*]: To [*Year*]: Employer:

Positions held:

|  |  |
| --- | --- |
| Detailed Tasks Assigned [*List all tasks to be performed under this assignment*] | Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned[Among assignments involving the expert, indicate the following information for those that best illustrate the expert's capability to handle the tasks listed in 13.]Name of assignment or project:Year:Location:Client:Main project features:Positions held:Activities performed: |

## Certification:

|  |  |  |
| --- | --- | --- |
| I, the undersigned, certify to the best of my knowledge and belief | **Yes** | **No** |
| 1. this CV correctly describes my qualifications and my experience |  |  |
| 1. I am employed by the Executing or the Implementing Agency |  |  |
| 1. I was part of the team who wrote the terms of reference for this assignment. |  |  |
| 1. I am sanctioned (ineligible for any IFI engagement, i.e. WB, ADB). |  |  |

[*If CV is signed by the individual*]

I certify that I have been informed by the firm that it is including my CV in the proposal for the [name of project]. I confirm that that I will be available to carry out the assignment for which my CV has been submitted, in accordance with the implementation arrangements and schedule set out in the proposal.

[*If CV is signed by the firm's authorized representative and the written agreement attached*]

I, as the authorized representative of the firm submitting this proposal for the [name of the project] certify that I have obtained the consent of the named expert to submit his/her CV, and that I have obtained a written representation from the expert that s/he will be available to carry out the assignment in accordance with the implementation arrangements and schedule set out in the proposal.

I understand that any willful misstatement may lead to disqualification or dismissal, and any other disciplinary action.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

*Signature of expert or authorized representative of the firm*

**ANNEXURE 4 – STANDARD FORM FOR FIRM CREDENTIALS**

|  |  |
| --- | --- |
| Assignment name: | Country:  Location within country: |
| Name of Client: | Duration of assignment (months): |
| Start date (month/year):  Completion date (month/year): |  |
| Name of associated firm, Joint venture partner or Sub-Consultant, if any: | Name of senior regular full-time employees of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader): |
| Narrative description of Project: | |
| Description of actual services provided in the assignment, including the role of each party/ sub contractor: | |