



Date: 27 August 2010 Pages: 10 (plus attachments)

Subject: Addendum 3 to the Australia Indonesia Partnership for Justice (AIPJ) –
Implementation Service Provider (ISP) RFT released 31 July 2010

Tenderers are advised of the following:

Clarifications to the RFT:

1. Delete the section titled “Contact Person” of Clause 1 *Tender Particulars* of Part 1 (p. 3) and replace with the new section as follows:

“Contact Person:
(Clause 2.1, Part 5)

Byron Singline
Fax: +61 (2) 6206 4885
Email address: AIPJtender@ausaid.gov.au

Probity Adviser:

Ben Stephens
Stantons International Pty Ltd
Level 1, 1 Havelock Street
West Perth WA, Australia
Email: bstephens@stantons.com.au
Phone: +61 8 9481 3188
Fax: +61 8 9321 1204
Mobile: +61 (0) 403 247 810

Prospective Tenderers may contact Mr Stephens at any point throughout the tender process to discuss any issues or concerns relating to the probity of the procurement process.”

2. Delete existing Clause 3.6 of Part 4 *Draft Basis of Payment* (p. 68) and replace with new Clause 3.6 as follows:

“3.6 The Daily Professional Fees for Technical Support Pool Personnel is to be inclusive of:

- (a) salary at actual cost to the Contractor; and
- (b) all other inclusions and allowances/costs, as needed, but not limited to:
 - (i) all personnel-related taxes, levies and insurances incurred in Indonesia and Australia, with the exception of GST for Services performed in Australia [refer to **Clause 21** (Goods and Services Tax) of **Part B** of the Contract];

- (ii) any relevant Indonesian employment conditions;
 - (iii) superannuation levy, if any, as appropriate; and
 - (iv) recruitment costs.”
- 3. Insert new Clause 7.12 of Part 3 *Draft Scope of Services* (p. 48), and replace with new Clause 7.12 as follows:

“7.12 A **Mobilisation Plan** (including a Quality Management Plan) is to be prepared by the Contractor and submitted 28 days following the Project Start Date, for approval by AusAID, in accordance with **Clause 6.2 of Part A**, Project Specific Contract Conditions.”
- 4. Delete existing Clause 7.12 of Part 3 *Draft Scope of Services* (p. 48), and replace with new, renumbered Clause 7.13 as follows:

7.13 An **Inception Report** is to be prepared by the Contractor and submitted three (3) months after the Project Start Date for approval by AusAID. The Inception Report will report on the inception phase and include a draft of the first Annual Plan. When AIPJ is mobilised the Program Director in consultation with the Contractor, having regard to GoI planning processes, will determine the period of the first Annual Plan that should align with GoI planning processes. The Inception Report will be accompanied by the following:

 - (a) an Operations Handbook that will outline the management, financial management, procurement, quality management and other processes and issues required for AIPJ operations. Selection criteria and assessment guidelines for activities will be included as part of the Operations Handbook;
 - (b) an evaluability assessment, in accordance with **Clause 7.7 above**; and
 - (c) revised Contractor Performance Assessment Criteria (see **Clause 9.2 below**).
- 5. Clause 7.13 of Part 3 *Draft Scope of Services* (p. 49) is renumbered as Clause 7.14.
- 6. Clause 7.14 of Part 3 *Draft Scope of Services* (p. 49) is renumbered as Clause 7.15.
- 7. Delete existing Clause 9 of Part 3 (p.54-55), and replace with new Clause 9 of Part 3 as follows:

“9. **CONTRACTOR PERFORMANCE ASSESSMENT**

9.1 The assessment of the Contractor’s performance will be on a six (6) monthly basis with the first assessment being held six (6) months after the Contract start date. The performance assessment process will be managed by AusAID Jakarta with input from the Program Director. Other parties that may be consulted regarding the performance of the Contractor may include local stakeholders, relevant counterparts and representatives of the Government of Indonesia.

- 9.2 The indicative criteria to be used to assess the Contractor’s performance in delivering the required services and the results table are provided at **Annex 2** to this Schedule 1. In consultation with relevant stakeholders and as agreed by AusAID the Contractor will modify and/or confirm the suggested Contractor Performance Assessment Criteria within three (3) months of the Contract start date, for inclusion in the Inception Report.
- 9.3 These criteria may be reviewed and revised as appropriate at AusAID’s discretion, in consultation with the Contractor and the AIPJ Working Committee. Performance ratings will not be averaged.
- 9.4 At the end of the 6 month period AusAID will notify the Contractor as to performance assessment outcomes.
- 9.5 Where the Contractor receives an “Unsatisfactory” performance assessment on three (3) or more criterion, AusAID may conduct an additional performance assessment three (3) months later. If the additional assessment determines that the Contractor’s performance is still unsatisfactory on three (3) or more criterion AusAID may seek further remedy in accordance with the Terms and Conditions of this contract.”
8. Delete existing Tables 7A and 7B of Part 4 *Draft Basis of Payment* (p. 78), and replace with new Tables 7A and 7B as follows:

Table 7A: Performance Payment Base Rate

Base Rate	Year 1 (AUD)	Year 2 (AUD)	Year 3 (AUD)	Years 1 – 3	
				Total (AUD)	Maximum Amount Payable (i.e. 120% on all payments) (AUD)
Six (6) monthly Rate (40% of FMF)				-	-
Total				XXX	XXX

Table 7B: Performance Payment Base Rate – Option Period*

Base Rate	Year 4 (AUD)	Year 5 (AUD)	Years 1 – 5	
			Total (AUD)	Maximum Amount Payable (i.e. 120% on all payments) (AUD)
Six (6) monthly Rate (40% of FMF)			-	-
Total			XXX	XXX

*Note: Years 4 and 5 apply only in the event that AusAID exercises the option to extend under **Clause 2 of Part 2** (Project Specific Contract Conditions).

9. Delete existing Table 8 of Part 4 *Draft Basis of Payment* (p. 79), and replace with new Table 8 as follows:

Table 8: Performance Payments

Rating		Percentage of Base Rate Payable	Six (6) monthly Performance Payments (AUD)				
			Year 1	Year 2	Year 3	Year 4*	Year 5*
Best Practice (B)		120%					
Effective Performance (E)		100%	(Base Rate)	(Base Rate)	(Base Rate)	(Base Rate)	(Base Rate)
Unsatisfactory Performance (U)	1 criterion	90%					
	2 criteria	80%					
	3 criteria	70%					
	4 criteria	60%					
	5 criteria	50%					
	6 criteria	40%					
	7 criteria	20%					
	8 criteria	0	0	0	0	0	0

*Note: Years 4 and 5 apply only in the event that AusAID exercises the option to extend under **Clause 2 of Part 2** (Project Specific Contract Conditions).

Questions raised by interested parties at the Pre-Tender Briefing and via email:

AIPJ Design and Background

1. In reference to the Pre-Tender Briefing presentation by Ibu Prahesti Pandonwangi from Bappenas, Government of Indonesia (GoI) (see Attachment 1 to this Addendum 3), does National Reform Number 1 (NR 1) – Bureaucratic and Governance reform also include the legal sector?

Answer: Yes, National Reform Number 1 includes the bureaucratic reform of law and justice institutions, and there is interaction between National Reform Number 1 and National Reform Number 12.

2. Is there a system of monitoring and evaluation used by the GoI in assessing progress against the Medium Term Development Plan (MTDP) and the National Development Priorities?

Answer: Law 39 of 2006 has been enacted to ensure this is done; however it is recognised that further development is necessary to ensure the improved effectiveness of this monitoring and evaluation.

3. There is a requirement that monies provided to GoI Departments and Agencies be recognised in the agencies budget. How is this possible, particularly in the first year of the AIPJ?

Answer: This is the responsibility of GoI agencies and will depend on whether the moneies are ‘on-treasury’ or ‘off-treasury’. It is up to the GoI to determine as appropriate.

4. Is there a conflict of interest between a Civil Society Organisation (CSO) being available for funding and being on the AIPJ Partnership Board?

Answer: No, the AIPJ Partnership Board does not directly approve funding; it provides broad strategic direction for the development of work plans and makes recommendations. The AIPJ Working

Committee makes the decisions, which the Program Director (PD) then ensures are carried out by the Implementation Service Provider (ISP).

5. Why is there no logframe in the AIPJ Design?

Answer: There is no requirement for logframes to form part of AusAID designs. The Justice Partnership sets a broad framework under which activities and monitoring and evaluation will be developed. AIPJ-ISP was designed so the Monitoring and Learning (M&L) Framework and logframe (if necessary) would be developed jointly with the ISP, AusAID and the Program Director by the third month of the inception phase. This will enable input from the relevant stakeholders, a shared understanding of principles behind the M&L Framework, and shared expectations for its implementation and review. The M&L Framework will then be finalised by the end of month 5.

6. Will AusAID be releasing the analytical work being undertaken by the Australia Indonesia Partnership for Justice Transition Program (AIPJt)?

Answer: If such analytical work is completed during the tender period and is considered relevant to Tenderers, this information will be released.

7. Will the Independent Completion Report (ICR) be released for the Indonesia Australia Legal Development Facility (IALDF)?

Answer: Yes, the IALDF ICR is attached to this Addendum 3 for the information of Tenderers (see Attachment 2 to this Addendum 3).

8. When will the AIPJ Program Director be engaged?

Answer: The AIPJ Program Director will be engaged as soon as possible following the lifting of the caretaker period by the Australian Government.

9. What is the total budget for the AIPJ? AusAID's Annual Procurement Plan (APP) noted it would be AUD30,000,000 over 5 years, is this the case or has it changed?

Answer: The estimated procurement value provided on AusAID's APP is indicative only. The budget allocated for AIPJ activities over the three (3) year term of the contract is AUD18,600,000, as specified in Clause 6 of Part 4 *Draft Basis of Payment* of the RFT. The overall approved allocation for this contract has not been disclosed.

10. Can associates, in accordance with Clause 9.1 of Part 5 (p. 88), also be sub-contractors in AIPJ-ISP?

Answer: In accordance with Clause 5.5 of Part 3 of the RFT (p. 44) AIPJ activities will generally not be carried out by the Contractor, including Associates, unless otherwise approved by AusAID.

Scope of Services

11. Clause 6 of Part 2 of the RFT advises that both a Mobilisation Plan and a Quality Management Plan are required within 28 days of the Project Start Date. What is the difference between the Quality Management Plan and the Operations Handbook due at the end of month three (Clause 7.12 of Part 3, p. 48)?

Answer: The Quality Management Plan is required as part of the Mobilisation Plan which covers the first six (6) months of the program. The Operations Handbook will contain more detailed information regarding the management of AIPJ operations for the term of the Contract. (See Clarification to the RFT numbers 3 and 4 of this Addendum 3).

12. Can AusAID clarify what is required regarding reporting in the mobilisation period (first 28 days) and the inception period (first 3 months) and then what is due after the initial 5 month period from the Project Start Date? Specifically clarification would be appreciated with regard to: the Quality Management Plan mentioned in Clause 6 of Part 2 (p. 22), the evaluability assessment mentioned in Clause 7.7 of Part 3 (p. 47); and the Inception Report mentioned in Clause 7.12 of Part 3 (p. 48).

Answer: See Clarification to the RFT numbers 3 and 4 of this Addendum 3.

13. Does AusAID have a preference as to where the AIPJ-ISP head office is located in Jakarta?

Answer: In accordance with Clause 6.2 of Part 3 of the RFT (p. 45) it is expected that the AIPJ office will be located in a central area of Jakarta. It is up to the Contractor to source a suitable location.

Personnel

14. Clause 8.7 of Part 1 seems to suggest the requirement for a set of 'technical skills' on the part of Long Term Personnel that are nominated by Tenderers as part of their bid. However this seems to be at odds with the AIPJ Design Document which advises that the ISP personnel should have skills mainly in management and administration and that all short-term technical expertise should be sourced solely through the Technical Support Pool (TSP). Can AusAID comment on this and advise if technical skills are required by nominated ISP personnel, or if all short term technical skills should be funded through the TSP during the term of the contract with bidders concentrating on management and leadership skills for running the program to support the Program Director (PD) instead?

Answer: The list of skill sets provided in Clause 8.7 of Part 1 of the RFT is indicative only. In accordance with Selection Criteria B – Personnel as specified in Clause 7.2 of Part 1, Tenderers are required to propose a suitable team with the necessary skills to deliver the Services as identified in Part 3 Draft Scope of Services which will be assessed by the Technical Assessment Panel.

In accordance with section 4.1.5 of the AIPJ Design Document (p. 40) the ISP is facilitative in nature, as such it is anticipated that the ISP will largely consist of Personnel necessary to provide administrative, management and logistical support to the Program Director on a day to day basis. Depending on their chosen approach Tenderers may choose to include an understanding of technical areas or general technical skills if it is considered that this will support the effective operation of the ISP.

In accordance with Clauses 8.26 to 8.30 TSP of Part 3 (Draft Scope of Services) all short term technical expertise required under the AIPJ will be sourced through the TSP. The purpose of the TSP is to ensure a pool of technical experts is available to all parties, rather than being tied up in restrictive agreements with individual companies.

15. Do all long term personnel need to be included in Tender Schedule B – Specified Personnel, or should only the key team members be included here?

Answer: The nominated Specified Personnel required to be included in Table 1 of Part 1 (p. 11) should consist of those key positions that the Tenderer considers essential to delivering the Services as

identified in Part 3 *Draft Scope of Services* in accordance with the Tenderers chosen approach to the Program.

Any other administrative or support positions are not required to be named in Table 1 however these positions must be costed in the Tenderer's Financial Proposal and included in Tables 4A, 4B and 5 of Part 1 (p. 16).

16. Do bidders need to provide Curriculum Vitae and Terms of Reference (Annex 2 of Part 1) for all Long Term Personnel?

Answer: No. Curriculum Vitae and Terms of Reference need only be provided for each Specified Personnel as nominated by the Tenderer in Table 1 of Part 1 (p. 11). See question 15 above.

17. Can you clarify what is required for the Terms of Reference to be provided in accordance with Clause 7.3 (b) of Part 1 (p. 7)?

Answer: Bidders are required to provide Terms of Reference outlining the skill and experience requirements for each position nominated in Table 1 of Part 1 (p. 11) in accordance with the Tenderer's chosen approach. Terms of Reference should not be specifically drafted to suit the person nominated in that role. The Terms of Reference of the Preferred Tenderer will be finalised and approved by AusAID and attached to the contract in Annex 1 to the Scope of Services.

18. Can Tender Schedule B – Specified Personnel include short term advisers?

Answer: No, there is no provision for short term advisers to be listed as Specified Personnel under the AIPJ.

19. Please explain the intended subject content to be covered in the 5th column "Leave Allowance (e) & (f)" in Table 5 of Part 1 (p. 16)?

Answer: The 'Leave Allowance' column of Table 5 of Part 1 must include any costs for Long Term Personnel associated with Clauses 2.3 (e) and 2.3 (f) of Part 4 *Draft Basis of Payment* (p. 67).

20. Is there a standard position that AusAID has with regard to Long Term Personnel leave entitlements they will approve in the Contract?

Answer: The standard allowance for Long Term Personnel is up to four (4) weeks paid annual leave in accordance with Clause 2.3 (e) of Part 4 *Draft Basis of Payment* (p. 67). However Tenderers may propose alternative leave entitlements in Table 1: Specified Personnel of Part 1 in accordance with Clause 8.8 (inserted in Addendum 2 to the RFT released 13 August 2010) of Part 1 (p. 11) for AusAID's consideration.

21. There was an understanding on reading the AIPJ Design Document that the program would be about cooperation between Australian and Indonesian Civil Society Organisations (CSOs), however the structure of the RFT and selection criteria seems to be based mainly on personnel. This may not be good for Indonesian civil society if this means bidders try to engage the expertise of key individuals from the CSOs they work for, as this would lessen the capacity development within those CSOs which appears to go against the intention of the design. Can AusAID comment on this?

Answer: In accordance with Outcome 5 (p. 25) and Annex 5.9 (p. 88) of the AIPJ Design Document, an underlying principle of the AIPJ is to build organisational and/or institutional capacity of CSOs and other partners as a whole, not just individuals. The ISP Personnel will be largely focused on management and administration in order to support the AIPJ Program Director to deliver the AIPJ activities. Short term technical expertise will be sourced as required through the TSP.

Basis of Payment

22. Why is there no Imprest Account mechanism in the draft Basis of Payment for this AIPJ-ISP, with such a large activity budget?

Answer: An Imprest Account was not considered necessary by AusAID for the running of this program. In accordance with Clause 6.3 of Part 4 *Draft Basis of Payment* (p. 70) Activity Costs will be reimbursed either upon completion or regularly throughout the activity as appropriate and as indicated in the approved Activity Proposal. To assist the Contractor AusAID has structured the draft Basis of Payment with monthly reimbursements for all payments required through contract, along with the provision of an up front payment for Mobilisation Costs (Clause 5 of Part 4 *Draft Basis of Payment*) to aid initial office setup costs.

23. Due to the financing costs involved in forward-funding the Activity Costs of up to AUD\$18,600,000, would AusAID consider replacing Clause 6 of Part 4 (p. 70) with the Pre-Payments approach contained in the recently-tendered RFT for the Australia-Africa Partnership Facility (Clause 15 of Part 4 of the AAPF RFT p. 84), or adding in the provision to the draft Basis of Payments for pre-payments?

Answer: No, pre-payments will not be considered for Activity Costs under the AIPJ.

24. Whilst we appreciate the “120%” incentive for best-practice in the performance payment equation, due to the likely time involved in undertaking the annual performance assessment and the consequent financial imposition placed on the Contractor’s Fixed Management Fee (FMF) cash flow while waiting for the Performance Payments could AusAID consider reducing the proportion of the FMF to be withheld for the performance payment from 40% to 20%? Additionally to facilitate the Contractors FMF cash flow, could the performance assessments and payments occur every 6 months instead of annually?

Answer: The amount of the FMF being held for this performance mechanism will remain at 40% as specified in Clause 7.1 (b) of Part 4 *Draft Basis of Payment* (p. 70). However, AusAID sees benefit in a more regular performance feedback mechanism and as such the Contractor Performance Assessments conducted in accordance with Clause 9 of Part 3 *Draft Scope of Services* will be conducted on a six (6) monthly basis. (See Clarification to the RFT numbers 7, 8 and 9 of this Addendum 3).

25. Can Tenderers include a profit element in the Technical Support Pool Personnel Daily Fee Rates in accordance with Clause 3.6 (b) (vi)?

Answer: No, no profit element is to be included in the Daily Fee Rates fee rates for Technical Support Pool Personnel. This sub-clause has been deleted. See Clarification to the RFT number 2 of this Addendum 3.

Draft Contract

26. If AusAID requires the Contractor to enter into an agreement with a particular sub-contractor in accordance with Clause 9.1 (b) of Part 2, who will set performance standards in these instances?

Answer: If AusAID requires the Contractor to enter into an agreement with a particular sub-contractor in accordance with Clause 9.1 (b) of Part 2, the management of that sub-contractor is the responsibility of the Contractor, along with performance management.

Tender Assessment

27. Are the bids assessed by the Technical Assessment Panel (TAP) only on responses to the selection criteria or does the TAP also take into account other information such as performance information held by AusAID, Letters of Association and other Annexes provided in accordance with Schedule A of Part 1 of the RFT?

Answer: Bids are assessed by the TAP based on responses to the Selection Criteria, including supporting information provided in the Annexes required under Tender Schedule A. The TAP Chair may also introduce other information as deemed relevant and necessary to the TAP process such as performance information, referee reports and other relevant factors in accordance with Clause 7.8 of Part 5 (p. 85). Following the technical assessment the Financial Proposals provided in accordance with Tender Schedule C of Part 1 of the RFT is also considered by AusAID and assessed in accordance with Clause 6 of Part 1 (p. 5).

28. Can you explain how this will be a like-for-like assessment process when the proposed team structures will be different for each bidder based on their individual approach?

Answer: The nominated Team Leaders for all bids will be compared and assessed in accordance with Selection Criteria B – Personnel of Part 1 (p. 6). The Specified Personnel nominated by each bidder will then be looked at in the context of the team as a whole as well as the Tenderer's chosen approach to the program and assessed against Selection Criteria B. A like-for-like price assessment will be undertaken by AusAID following the TAP's assessment of technical merit. The total cost of the Tenderer's proposed Long Term Personnel (including both Specified Personnel and administrative and support staff) will be taken into considered by AusAID

29. Where should bidders explain if they are providing Letters of Association in accordance with Clause 7.3 (g) of Part 1 or not? In the selection criteria or within Annex 7 of the Technical Proposal (Tender Schedule A)?

Answer: It is up to Tenderers to determine what to include in their response to the Selection Criteria within the specified page limits. Annex 7 of the Technical Proposal (Tender Schedule A) may contain Letters of Association or letters of support from proposed sub-contractors only, there is no provision for additional text.

30. Should Tenderers provide Letters of Association from proposed members of the Technical Support Pool (TSP)?

Answer: No. Letters of Association should be obtained from Associates and proposed sub-contractors who are willing to be involved with the delivery of the Services as required of the ISP. All technical expertise required for the Technical Support Pool (TSP) will be sourced when and as needed throughout the term of the Contract and will not be assessed as part of this Tender process.

Attachments to Addendum 3:

1. Briefing Presentation Slides from Pre-Tender Briefing held in Jakarta, 19 August 2010
2. IALDF Independent Completion Report (ICR), 30 May 2010

All other information as set out in the RFT dated 31 July 2010, Addendum 1 dated 10 August 2010 and Addendum 2 dated 13 August 2010 remains unchanged.