

and other liabilities incurred by the SOE during the lease period include salaries, pension expense, other operating operating costs, and environmental liabilities.

- Should the lessor conclude that the lessee business plan is not being adhered to which would include but not be limited to:
 - Failure to maintain Property Plant and Equipment
 - Misappropriation of assets or income
 - Abandonment of business plan
 - Other purposeful action by management that is counter to the interests of the SOE

The lessor has the right to terminate the lease and the lessee's deposit will be forfeited

- Lease payments will be made no less than on a quarterly basis
- The lessee will not withdraw funds including compensation and other payments to owners, or otherwise reduce, its net investment below 25% of the SOE valuation during the lease period. However, lease payments may be made from SOE profits.
- If lessee fails to make two lease payments, the lessor can either implement a penalty clause equal to one lease payment or to terminate the lease.
- If the lease is terminated due to the failure of the lessee to make lease payments, all previous payments are forfeited by the lessee
- Any individual who owns 10% or more, or a group of individuals who together will own 50% or more, of the ultimate ownership of the lease must provide guarantees of the unmade lease payments proportional to their ownership interest in the SOE upon transfer of ownership
- A dispute resolution mechanism, preferably arbitration, will be part of the agreement
- Standard affirmative and negative covenants typical of a senior asset-based loan agreement will be included in the agreement and will include but not be limited to:
 - No liens, transfer or abandonment of SOE assets
 - All Iraqi laws will be adhered to including labor and environmental laws
 - Standard anti conflict provisions
 - The company can't make loans
- The lessee will maintain proper insurance during the lease period
- No single customer credit (or aggregate of affiliates) can exceed 10% of the appraised value of the business
- The lease is not assignable without the approval of the lessor



The principles of lease contract agreement shown above relate to standard procedure. If the SOE is relatively large, complex and operational these principles are appropriate as a framework for working out the contract agreement. If the SOE is partly destroyed, looted, non or only partly operational, some requirements, especially concerning detailed business plan should be soften.

The content of the binding offer

Below there is a standard version of the content of the binding offer to lease the Company. Further on we will point out how this version might be squeezed in case of SOEs suited for limited procedure:

A. Content of the substantive binding offer

Formal Section

Basic information concerning the Potential Lessee

The formal part of the Offer should contain basic information concerning the Potential Lessee, i.e.:

- a) information about the Potential Lessee: company name, seat, address, telephone, fax number, e-mail (as well as of the directly and indirectly dominant entity in relation to the Potential Lessee);
- b) Current excerpt from the appropriate register of the Potential Lessee. A current excerpt will be regarded as a document dated not more than 3 months before the deadline for submission of offers;
- c) A list persons duly authorised to act on behalf of the Potential Lessee, together with a document confirming powers of those persons to represent the Potential Lessee or powers of attorney to act on behalf of the Potential Lessee;
- d) List of financial, legal and/or other advisors working on the submission of the Binding Offer;
- e) The last audited balance sheet and profit/loss account of the Potential Lessee for the full financial year, together with the auditor's report;
- f) Declaration concerning a lack of tax arrears issued in accordance with the laws of the Lessee's country of origin.

In the event of the offering parties being foreign entities, documents presented and compiled in a foreign language should be translated into Arabic by a sworn translator.

The above documents which have already been included in the initial offer do not have to be submitted again, but should be cited in the Binding Offer. In cases where documents submitted in the Initial Offer were issued more than 3 months from the date of submitting Initial Offers, current documents should be submitted or a declaration provided by duly authorised persons, stating that the actual state presented in the previously submitted specified documents has not changed.

Substantive section

The substantive section of the Binding Offer should contain a description of the activities conducted by the Potential Lessee, including:

- a) a description of the ownership structure of the Potential Lessee (and its parent company) and the characteristics of its main shareholders/stakeholders;
- b) a description of the structure and area of activities of the Potential Lessee with particular attention to its capabilities and experience relevant to the scope of activities of the Company;
- c) a description of the structure and area of activities of the Potential Lessee's parent companies and companies within the same capital group as the Potential Lessee;
- d) financial information concerning the Potential Lessee (or other entities) for the period of the last 3 years (balance sheets, profit & loss account, and cash flow reports);
- e) the development strategy of the Potential Lessee in Iraq in the industry where The Company operates within that strategy (including the strategy of the capital group, of which the Potential Lessee is a member or the dominant entity)

The above documents which have already been included in the initial offer do not have to be submitted again, but should be cited in the Binding Offer and a declaration of duly authorised persons should be provided, stating that the actual state presented in the previously submitted documents and presented information has not changed.

- f) assumptions of the proposed development strategy of the Company and envisaged investment programme.

Information is expected concerning the material scope of the investment programme covering among other procurements and modernisation of fixed assets, transfer of technologies and know-how, introduction of information systems, etc.

Potential Lessees should take into account that the Ministry places significant weight on the degree of engagement of the Lessee in the future of the Company, which should be mirrored in the investment programme.

- g) scope, level and method of realising (time schedule, sources and form of finance) investment commitments in Iraqi Dinars;
- h) declaration that the Potential Lessee intends to maintain ownership of shares in Company over the longer term;
- i) justification of the lease transaction of the Company specifying the future degree of engagement of the entity submitting the Binding Offer. It is expected that entities submitting Binding Offers present arguments in favour of them being entrusted with the role of Lessee in the Company.
- j) validity of the offer (not less than 90 days);
- k) proposed solutions in the area of social packages for employees of the Company (length of employment guarantees, redundancies, severage payment scheme, wage and bonus system, social benefits, training);
- l) undertaking of the Potential Lessee to maintain the Company's identity;

- m) Information concerning permissions and approvals that the entity submitting the Binding Offer must obtain for the purpose of concluding the transaction with the Ministry; the Binding Offer should contain details about any internal and external approvals that the Lessee must gain for the purpose of concluding the lease transaction of the Company. It is expected that the Lessee will present the course and time schedule for obtaining such approvals;

Lessees should also include a statement in the Binding Offer that they are not aware of any other barriers of a legal or other nature apart from those specified above, which could constitute an obstacle to concluding a transaction.

- n) A list of other significant issues, which the Lessee would like to include in possible additional investigation at the negotiation stage. An Lessee submitting a Binding Offer may specify a list of the most significant issues, which he would like to explain and in addition analyse during negotiations;
- o) Declaration concerning the validity of provisions in the Initial Offer. The Binding Offer should contain the statement that those provisions of the Initial Offer which have not been changed or supplemented in the Binding Offer become part of the Binding Offer;
- p) Other data, which in the opinion of the Potential Lessee could be of significance when assessing the offer;
- q) Name, father's name and surname and contact details of the Project Manager on the part of the Potential Lessee or persons duly authorised by the Potential Lessee, to whom questions should be directed regarding the Binding Offer.

The Ministry reserves the right to demand submission of additional explanations, documents and information by entities that have submitted a Binding Offer.

B. Content of the Final Price Offer (separate document)

The final proposal to lease the Company, should contain:

- a) The value of the Company the Potential Lessee is willing to accept as the basis to calculate the payments scheme
- b) The period of lease
- c) The payments time schedule
- d) The interest
- e) sources of finance for the acquisition of shares;
- f) documented ability of the Potential Lessee to fulfil the financial obligations undertaken in the agreement- the offer should contain appropriate guarantees/warranties from entities (companies/banks/other financial institutions) on the basis of which the the Ministry will be convinced of there is no risk of the Potential Lessee not fulfilling the undertaken obligations.

The binding offer should be of a binding and unconditional nature.

The binding offer should contain a completed version of an Agreement to purchase shares in the Company prepared by the Lessee, based on the draft share sale Agreement supplied by The Advisor S.A. which fully complies with the offer of the Potential Lessee. The agreement should be initialled by persons duly authorised to act on behalf of the Potential Lessee on each page and should be enclosed with a covering letter.

All documents relating to the procedure, which are aimed at the sale of shares in the Company should be submitted in Iraqi and English



Standard procedure and standard content. In case of simplified track, with binding offer only the Ministry should consider combining some of the elements of initial offer presented earlier with some elements shown above.

The procedure of submission of binding offers and further steps

The Potential Lessees that have by decision of the Ministry qualified to the next stage of the transaction process of the lease of the Company ending with the submission of Binding Offers, and which continue to be interested in lease transaction of the Company should be informed not only how the binding offer must look like but also about the procedure of its submission.

The deadline for submitting, binding offers must be given to the Potential Lessees stating day, hour and exact place where to place the offers. The binding offers should be prepared in Iraqi and English on A-4 paper, signed by a person duly authorised to represent the Potential Lessee. To enable to read the offers by more people and keeping in secret the most sensitive information – financial offer, the whole binding offer may be submitted in sealed envelopes in two parts:

- I. Substantive offer- in five counterparts (one original and four copies);
- II. Price Offer – in one original copy.

The price offer may be submitted in a separate, stamped and sealed envelope with the inscription – “**Binding financial offer for the lease of the Company X - do not open**”. The substantive offer (five copies) should be submitted in a sealed envelope marked- **Binding substantive offer for the lease of the Company X - do not open**”

The Potential Lessees should also obtain very clear message the binding offers submitted after the deadline specified in the special letter describing the required content of the binding offer and procedure of submitting it will be returned unopened.

The Ministry should also inform that it reserves the right to:

