

Notification of the Office of the Eastern Economic Corridor Policy Committee

Re: Invitation to Tender, Methods of Invitation to Tender, Selection Procedures of the Selection Committee, Criteria for Selecting Private Partnership, Details of Request for Proposal Document and Standard Requirements of a Draft of Joint Investment Contract
(No. 2) B.E. 2562

With reference to the Notification of the Office for the Development of the Eastern Economic Corridor Re: Invitation to Tender, Methods of Invitation to Tender, Selection Procedures of the Selection Committee, Criteria for Selecting Private Partnership, Details of Request for Proposal Document and Standard Requirements of a Draft of Joint Investment Contract dated 9 October 2017, prescribing the invitation to tender, methods of invitation to tender, selection procedures of the Selection Committee, criteria for selecting private partnership, details of request for proposal document, and standard requirements of a draft of joint investment contract for public-private partnership or investment by private entities projects in the Eastern Economic Corridor.

Whereas it is expedient to improve the criteria for the invitation to tender, methods of the invitation to tender, selection procedures of the Selection Committee, criteria for selecting private partnership, details of request for proposal document, and standard requirements of a draft of joint investment contract, which will enhance the development of the Eastern Economic Corridor, by virtue of the provision of Clause 15 of the Eastern Special Development Zone Act B.E. 2561 (2018) and Clause 10 of the Notification of the Eastern Economic Corridor Policy Committee Re: Criteria, Methods, Conditions and Procedures for Public-Private Partnership or Investment by Private Entities B.E. 2560 dated 8 September 2017, the Office for the Development of the Eastern Economic Corridor hereby issues the Notification and the practical guidelines as follows:

Clause 1 The provision in Clause 2 of the Notification of the Office for the Development of the Eastern Economic Corridor Re: Invitation to Tender, Methods of Invitation to Tender, Selection Procedures of the Selection Committee, Criteria for Selecting Private Partnership, Details of Request for Proposal Document and Standard Requirements of a Draft of Joint Investment Contract dated 9 October 2017 shall be repealed and the following provision shall be applied instead.

“Clause 2 In this Notification:

“Policy Committee” means the Eastern Economic Corridor Policy Committee.

“Notification of the Policy Committee” means the Notification of the Eastern Economic Corridor Policy Committee Re: Criteria, Methods, Conditions and Procedures for Public-Private Partnership or Investment by Private Entities B.E. 2560, and the additional amendment.

“Tenderer” means a private entity who is a juristic person submitting a tender. It shall include all juristic persons who have submitted a tender as a group of juristic person.

Such group of juristic person shall have invested in the project exceeding fifty-one percent of the total investment.

Clause 2 The provision in Clause 6 (3) of the Notification of the Office for the Development of the Eastern Economic Corridor Re: Invitation to Tender, Methods of Invitation to Tender, Selection Procedures of the Selection Committee, Criteria for Selecting Private Partnership, Details of Request for Proposal Document and Standard Requirements of a Draft of Joint Investment Contract dated 9 October 2017 shall be repealed and the following provision shall be applied instead:

“(3) Experience of the Tenderer, the Tenderer’s corporate network, and personnel involved in the project. It may specify the field of expertise and experience, e.g. project development, construction contractor, or project operation, number of years, number of projects, and financial amount of completed projects. In the case of determining various fields the Tenderer’s expertise and experience and allowing a group of juristic person as the Tenderer, there shall be a method for evaluating experiences of individual Tenderer. At least each Tenderer shall have complete experience in such field by not combining the same aspects of experience of other Tenderers.”

Clause 3 The provision in Clause 7 (4) of the Notification of the Office for the Development of the Eastern Economic Corridor Re: Invitation to Tender, Methods of Invitation to Tender, Selection Procedures of the Selection Committee, Criteria for Selecting Private Partnership, Details of Request for Proposal Document and Standard Requirements of a Draft of Joint Investment Contract dated 9 October 2017 shall be repealed, and the provision in Clause 13/1 (2) of the Notification of the Policy Committee shall be applied to enforce the Tenderer to certify that the guarantee will be made or to ensure the project operation of the private entity party.

Clause 4 The provision in Clause 18 of the Notification of the Office for the Development of the Eastern Economic Corridor Re: Invitation to Tender, Methods of Invitation to Tender, Selection Procedures of the Selection Committee, Criteria for Selecting Private Partnership, Details of Request for Proposal Document and Standard Requirements of a Draft of Joint Investment Contract dated 9 October 2017 shall be repealed and the following provision shall be applied instead:

“Under the criteria prescribed in Paragraph Two, in the case that there is no Tenderer submitting the proposal or no Tenderer passing the evaluation, the Project Owner Agency shall arrange the market sounding again, along with reviewing the request for proposal documents by taking into account the results of market sounding. The Selection Committee shall discuss with the Office concerning the subsequent procedures and undertake as commented by the Office.

In the case that there is no Tenderer offering the benefits as expected by the public sector and specified in the principle of the project or there is no Tenderer requesting for supporting measures less than or equal to the amount expected and specified by the public sector in the principles of the project, the Selection Committee shall negotiate with the Tenderer. If the results of negotiation show that the benefits offered to the public sectors are not as expected and specified in the principle of the project or the request for supporting measures is more than as

expects and specified in the principles of the project, the Project Owner Agency shall present the results of negotiations of the Selection Committee to the Office, and cooperate with the Office to examine the facts, prepare comments as supporting information for the results of negotiation, and present to the policy committee for consideration.”

Clause 5 The following provision shall be added as Clause 18/1 of the Notification of the Office for the Development of the Eastern Economic Corridor Re: Invitation to Tender, Methods of Invitation to Tender, Selection Procedures of the Selection Committee, Criteria for Selecting Private Partnership, Details of Request for Proposal Document and Standard Requirements of a Draft of Joint Investment Contract dated 9 October 2017:

“Clause 18/1 When the policy committee has approved the results of tender selection, the negotiation, and the draft of joint investment contract; in the case that the successful Tenderer is a juristic person, the Tenderer shall establish a special purpose Vehicle newly registered in Thailand within the time specified by the Selection Committee to sign as the private entity party in the joint investment contract. The objectives of the new special purpose vehicle shall at least cover the business operations according to the obligations and responsibilities of the private entity party specified in the draft of joint investment contract, and the aforesaid special purpose vehicle shall sign the joint investment contract with the Project Owner Agency.”

Clause 6 The provision in Clause 20 of the Notification of the Office for the Development of the Eastern Economic Corridor Re: Invitation to Tender, Methods of Invitation to Tender, Selection Procedures of the Selection Committee, Criteria for Selecting Private Partnership, Details of Request for Proposal Document and Standard Requirements of a Draft of Joint Investment Contract dated 9 October 2017 shall be repealed and the following provision shall be applied instead:

“Clause 20 In the case that the Policy Committee approves the private entity selection without auction procedures, the Project Owner Agency shall notify the following details:

- (1) The private entity selection procedure used in the project;
- (2) Essential principles and rationales for applying the private entity section procedure under (1);
- (3) The List of prospective private entities that will participate in a joint investment by the private entity selection procedures under (1) (if any).

The Project Owner Agency shall notify the details under (1), (2), and (3) openly and publicly according to the time approved by the Selection Committee.”

Clause 7 The provision in Clause 21 of the Notification of the Office for the Development of the Eastern Economic Corridor Re: Invitation to Tender, Methods of Invitation to Tender, Selection Procedures of the Selection Committee, Criteria for Selecting Private Partnership, Details of Request for Proposal Document and Standard Requirements of a Draft of Joint Investment Contract dated 9 October 2017 shall be repealed and the following provision shall be applied instead:

“Clause 21 The Project Owner Agency shall prepare the drafts of invitation to tender, the request for proposal document, and the joint investment contract following the details specified under Section 1 Invitation to Tender Drafting, Section 2 Request for Proposal Drafting, Section 4 Tender Evaluation Procedures and Section 7 Standard Requirements of the Draft of Joint

Investment Contract, as well as the guidelines for private entity selection prescribed by the Office. It is except the case of necessity of the state to complete the project by applying the private entity selection without auction procedures, or the characteristics and types of business of the project or the characteristics of private entity selection without auction procedures consented by the Policy Committee and approved by the Cabinet (if any) under Clause 15 of the Notification of the Policy Committee, the Selection Committee may not apply one or more requirements in that section to the drafting of such documents. In order to qualify such exemption, the purposes of the Notification of the Policy Committee, the principles of public-private partnership, and the project operation to achieve the project's objectives shall be prioritised.

In the case that the Selection Committee is unable to approve any requirement in the draft of the document under the First Paragraph because the office representative has different agreements with the other representatives, the Selection Committee shall discuss with the Office and proceed as suggested by the Office.

When the Selection Committee has approved the drafts of the invitation to tender, the request for proposal document, and the joint investment contract; the Project Owner Agency shall send the invitation notice to the prospective private entity participating in the joint investment without auction procedures not less than forty-five days before to the commencement of negotiations for the draft of joint investment contract.”

Clause 8 This Notification shall come into force on the day of notification onwards.

Issued on the 15th day of February B.E. 2562 (2019)

Kanit Sangsubhan

Secretary-General of

the Eastern Economic Corridor Policy Committee