



**ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)
Economic Cooperation Support Programme (AECSP)**

Request for Proposal

**Facilitating Regional Forum on Investment Disputes, Resolution and
Prevention [AANZ-0075-INV-16]**

**PROPOSAL MUST BE RECEIVED BY
19 June 2018**

EMAIL PROPOSAL TO:

AANZFTA Support Unit
External Economic Relations Division
ASEAN Economic Community Department
The ASEAN Secretariat
Jakarta 12110, Indonesia
Email: ecwp@asean.org

Prepared by: AANZFTA Support Unit / EERD / MID
Date: June, 2018

1 EXECUTIVE SUMMARY

The Project on Regional Forum on Investment Disputes, Resolution and Prevention [AANZ-0075-INV-16] is part of the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Economic Cooperation Work Programme (ECWP), specifically under ECWP's component on Services.

The Project aims to ensure that relevant government officials from the Parties are abreast with the latest developments on investor-state dispute settlement (ISDS) to further enhance their capacity on dispute prevention and resolution.

With the increasing number of investment disputes arising from various international investment agreements (IIAs) and the evolving developments in the resolution of such, this Project will assist governments in properly handling any disputes, if not averting them, thereby improving investor's confidence in the AANZFTA investment environment, as well as increasing governments' confidence in investment policy making.

A two-day regional forum is envisaged to cover the developments on ISDS including stakeholder views, decisions arising from recent arbitration cases, latest IIAs, and new investor-handling practices. The forum will also cover, among others, updates on policy areas and treaty obligations from where the majority of disputes arise; mechanisms to prevent disputes occurring, steps to be taken during the process of dispute resolution; difficulties faced by government agencies in dispute settlement; possible solution for such difficulties and practical advice with a view to prevent and settle investment disputes in the most amicable, cost-effective and sustainable way.

A lawyer specialized in investor-state dispute settlement or legal expert experienced in dispute settlement process will be engaged as facilitator/convenor of the workshop to design the programme, provide overall monitoring of the Forum and to the extent possible, deliver an overview presentation on investment dispute settlement and prevention, as well as to prepare the outcomes report and the roundtable discussions.

2 SCOPE OF WORK

2.1 PROJECT OVERVIEW

I. BACKGROUND

There is a continued rise in investment disputes and arbitration cases. As of 31 December 2015, ICSID had registered a total of 549 cases under the ICSID Convention and Additional Facility Rules. There were 38 cases in 2014 and 52 cases in 2015.

At the same time, there is a steady increase in the number of IIAs in the form of bilateral investment agreements or chapters in free trade agreements or economic partnership agreements entered into by countries including those by the AANZFTA Parties such as the ASEAN-India Investment Agreement (2014), Japan-Australia Free Trade Agreement (2014), Korea-New Zealand Free Trade Agreement (2015), Viet Nam-EU Free Trade Agreement (2015) and most recently the Trans-Pacific Partnership Agreement (2016), in addition to the ongoing negotiations of other IIAs such as the Regional Comprehensive Economic Partnership.

In view of all of these, it is important to be well informed of the developments on decisions in latest arbitration cases and how countries deal with the aftermath thereof (e.g., case-by-case adoption of ISDS by Australia) and practices incorporated in new IIAs to settle disputes (e.g., single ISDS tribunal per the Viet Nam-EU FTA) as this will help countries in resolving or even preventing disputes considering the cost and impact of dealing with investment disputes.

II. PURPOSE OF THE ASSIGNMENT

A facilitator/convenor will be engaged to design the programme, provide overall monitoring of the Forum and to the extent possible, deliver an overview presentation on investment dispute settlement and prevention, as well as to prepare the outcomes report and the roundtable discussions.

III. CONSULTANT'S SCOPE OF WORK AND ACTIVITIES

The Facilitator/Convenor is expected to:

- 1) Design the programme of the regional forum;
- 2) Facilitate and moderate the two-day regional forum;
- 3) Develop and deliver presentation in the session assigned;
- 4) Serving as discussant in some of the sessions;
- 5) Coordinate with the speakers to align their presentations to the forum objectives and flow of the programme, if necessary;
- 6) Provide suggestions to the speakers and/or discussants, to develop their presentations and/or interventions, if necessary; and
- 7) Gather/compile relevant information for the outcomes report at the Forum and roundtable discussions
- 8) Prepare (i) the roundtable discussions wrap-up; and (ii) Forum Outcomes report.

IV. EXPECTED DELIVERABLES

The list of expected deliverables would be, as follows:

Deliverable 1: Programme of the Regional Forum and relevant presentation materials

Deliverable 2: Press Release of the Regional Forum

Deliverable 3: The roundtable discussions wrap-up

Deliverable 4: Forum Outcomes report, that should include (i) introduction; (ii) summary of presentations and discussions in each session; and (iii) recommendations on how to move forward after convening the Forum

2.2 PROJECT REQUIREMENTS

CONSULTANT'S QUALIFICATIONS

A lawyer specialized in investor-state dispute settlement or legal expert experienced in dispute settlement process.

3 RFP REQUIREMENTS PROCESS

3.1 PROPOSAL SUBMISSION INSTRUCTIONS

- a. All proposals must be submitted in English.
- b. Consultant should indicate the Title of the Tender at the subject of the email.
- c. The Technical and Finance Proposals must be submitted in two separate documents.
- d. Consultant must not include any financial/cost data in the Technical Proposal, but only in the Financial Proposal.
- e. The proposal should be concisely presented and structured, and should explain in detail the Consultant's availability, experience and resources to provide the requested services.
- f. Proposals must be submitted by the Closing Date and Time, as indicated in the RFP.
- g. Proposals that are incomplete or do not address the required criteria may not be considered in the review process.
- h. All communications with regard to this RFP shall be in writing and submitted to:

AANZFTA Support Unit
External Economic Relations Division
ASEAN Economic Community Department
The ASEAN Secretariat
Jakarta 12110, Indonesia
Email: ecwp@asean.org

3.2 RFP RELATED QUESTIONS / CLARIFICATIONS / SUBMISSION

All questions related to this RFP should be directed to: AANZFTA Support Unit, at ecwp@asean.org

Consultant must ensure that both Technical & Financial Proposals are received via email at the following address before **19 June 2018**.

AANZFTA Support Unit
External Economic Relations Division
ASEAN Economic Community Department
The ASEAN Secretariat
Jakarta 12110, Indonesia
Email: ecwp@asean.org

3.3 RFP TERMS & CONDITIONS

3.3.1 Implementation/Delivery Schedule

CONSULTANT APPOINTMENT AND TIMETABLE

1. Appointment and contract of the consultant will be negotiated by the ASEAN Secretariat in consultation with AANZFTA Committee on Investment (AANZFTA COI) Co-Chairs.
2. The COI Co-Chairs and ASEAN secretariat will select the expert.
3. The timeline for hiring and initial activities of the consultant will be as follows:

| Action | Deliverables | Indicative Timeline |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|---------------------|
| Engagement of Consultant | Agreed Special Service Agreement (SSA) by the selected Consultant | July 2018 |
| Submission of Programme of the Regional Forum | Programme of the Regional Forum submitted to ASEAN Secretariat for further approval by the COI | August 2018 |
| Submission of relevant presentation materials | Relevant presentation materials submitted to ASEAN Secretariat for further approval by the COI | August 2018 |
| Submission of the Press Release of the Regional Forum | Press Release of the Regional Forum submitted to ASEAN Secretariat | September 2018 |
| Wrapping-up the roundtable discussions | The roundtable discussions completed | September 2018 |
| Submission of the Forum Outcomes Report, that should include (i) introduction; (ii) summary of presentations and discussions in each session; and (iii) recommendations on how to move forward after convening the Forum | Forum Outcomes Report, submitted to ASEAN Secretariat for further approval by the COI | October 2018 |

4 RESPONSE FORMAT (PROPOSAL FORMAT)

4.1 PROPOSAL CONTENT / FORMAT

In conformance to the ASEAN Secretariat's Financial Rules and Administrative Procedures (AFARP), the Consultant shall submit the applications in **two** separate documents, i.e., technical and financial components.

The technical component should contain the following information:

- a. A brief summary of the prospective Consultant's expertise and knowledge in dispute settlement process
- b. A brief discussion indicating the prospective Consultant's understanding of the project's purpose.
- c. A discussion of how the prospective Consultant proposes to approach the project including but not limited to methodology to undertake the assignment, list of possible reference materials and a work plan specifying the activities to be undertaken (including draft agenda or focused topics for workshop), an outline of the reports to be delivered, and schedule of activities, taking into account the targets to complete the undertaking
- d. Evidence of Consultant's qualifications and expertise including related projects handled (e.g., curriculum vitae) and proposed rate for the consultancy assignment; and
- e. Names and curriculum vitae of associates, subcontractors, personnel or employees who will be engaged in the performance of services.

4.2 FINANCIAL PROPOSAL

The Financial Proposal should specify the professional fees for undertaking the project. Please complete **Annex 1**.

Reimbursable expenses

Air transportation, hotel accommodation and allowances for missions will be covered by the AECSP

Other indirect costs including communication/coordination, logistics/office supplies will be borne by the Consultant as part of the Financial Proposal.

All documents have to be submitted in English and price quoted in United States or Australian Dollar.

ANNEX 1

Financial Proposal

Unit: USD or AUD

| No. | Description | Unit | Price (Total estimated cost) |
|--------------|--------------------------------------------------------------------------------------------------|-------------|------------------------------------------------------------------------------------------------|
| 1 | Professional Services | | |
| | - Input days for each expected output | (# of days) | |
| 2 | Other reimbursable expenses | | |
| | - Item 1 | | |
| | - Item 2 | | |
| TOTAL | | | |
| 3 | Official travels | | |
| | - Proposed missions (Detail trip information: itinerary, length of mission and purpose) | | <i>(Not required. Trips if incurred will be administered by ASEAN Secretariat)</i> |