



Template for ToR for Transaction Advisory Services

Addendum 1

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PPP TRANSACTION ADVISOR

TERMS OF REFERENCE

Terms of reference for transaction advisor services to the Government of [Insert country name] for the [insert description of project] (the "Project").

1. Introduction

The [Insert Institution's name] has identified the need to [Insert description of project] to [Insert desired objectives of project]. This project is also in line with the Institution's strategic vision of [Insert description of strategic vision].

The Institution wishes to explore the feasibility of this project as a public-private partnership (PPP) in terms of [Insert relevant legislation]. The Institution thus intends to procure the services of a consortium of experienced transaction advisors to assist it through the phases of the PPP project cycle. These terms of reference invite proposals from a transaction advisor representing a team of suitably qualified and experienced financial, technical and legal advisors to help the Institution:

Phase 1: Undertake a comprehensive feasibility study for the Project.

Phase 2: If required afterwards, provide advisory services for the procurement of the project.

The scope of work is divided into these two parts. The transaction advisor needs to submit a single bid, in the formats prescribed in these terms of reference. (Reference to 'the transaction advisor' includes the entire advisory team, or relevant members, under the management of a single lead advisor who shall contract with the Institution.)

2. Scope of work

2.1 Part 1: Feasibility study

The transaction advisor will be required to produce a comprehensive feasibility study for the Project using a public sector comparator and PPP reference models. This must enable the Institution to determine:

- full project cycle costs
- affordability limits
- risks and their costs
- optimal value-for-money methods of delivery.

Section 4 below sets out the deliverables required of the transaction advisor for the feasibility study.

2.2 Part 2: PPP procurement

If, on the basis of the feasibility study, a PPP solution is decided on, and if the Institution requires it, the transaction advisor will provide the necessary technical, legal and financial advisory support for the procurement of a private partner. This must be in compliance with all elements of [Insert relevant legislation] and all implementing regulations.

The procurement deliverables are set out in Section 5.

3. Background

3.1 Mandate

The Institution's mandate is [Insert description of Institution's mandate].

3.2 Objectives

The objectives for this project are [Insert description of project objectives].

3.3 Background documentation and preparatory work

The transaction advisor will have to become familiar with all background documentation and preparatory work conducted to date and shall be responsible for carrying out initial technical, financial and legal framework reviews that are deemed necessary for successful completion of the transactions, including, but not limited to:

- Relevant existing reports, studies, audits, etc. necessary to become familiar with the [Insert relevant sector] in [Insert name of country].
- All information pertaining to [Insert relevant market e.g. electricity] market structure. {Delete if not applicable}
- Existing financial forecasts, historical financial performance and technical operating history for the Project infrastructure {Delete if not applicable}
- Responsibilities and relationships of Institution with other government entities at different levels.
- The reports annexed to this ToR.

A preliminary needs analysis (pre-feasibility study) has been undertaken, establishing [Insert a description of what the needs analysis has established, including any initial costings]. The Institution has identified the following challenges which it faces in pursuing the project:

[Insert list of challenges]

The legal and policy framework for the project is

[Insert description of legal and policy framework]

3.4 Project budget

The base-line budget currently available for operating expenditure for the project has been identified as [Insert amount] in the [Insert year] financial year, escalating by [Insert relevant price index]. In addition, a capital budget of [Insert amount] for expenditure over the [Insert number] years has been secured.

4. PPP feasibility study deliverables

The transaction advisor is required to produce, in close liaison with the Institution, a comprehensive feasibility study for Project. The feasibility study needs to clearly demonstrate affordability for the full project cycle and propose the optimal value-for-money solution for the Institution to achieve its desired outcomes.

The feasibility study is to be conducted in compliance with [Insert applicable standards].

4.1 Components of the feasibility study

The feasibility study, in accordance with SADC 3P Network's Reference Guide to PPPs, must include the following:

- Introduction
 - Covering letter from the accounting officer/authority
 - Executive summary
 - Introduction
 - Project background
 - Approach and methodology to the feasibility study
- Section 1 – Needs Analysis
 - Institution's Strategic Objectives
 - Institutional Capacity and Deliverability including:
 - Project Team and Advisors
 - Organisational Factors
 - Stakeholder Interests
 - Budget Availability
 - Output Specifications
 - Scope of the Project
- Section 2 - Options Analysis
 - Option Identification
 - Option Evaluation
 - Recommendation of a preferred option
- Section 3 - Project Due Diligence
 - Legal Aspects including:
 - Land use rights;
 - Tax legislation
 - Labour legislation
 - Environmental and heritage legislation
 - Foreign exchange legislation
 - Competition legislation

- Legislation governing the use of certain financial instruments
 - Sector specific regulations
- Technical Aspects including:
 - Field surveys of the selected project site which may include, depending on the project, mapping, topographical and geotechnical surveys
 - Consideration of zoning rights, town planning requirements and heritage matters.
 - Consideration of environmental conditions that will impact the technical design; and
 - A preliminary technical design of the facilities required to provide the project outputs. Alternative design options should also be developed in order to take into account certain site-related uncertainties and the variation in demand projections.
 - Based on the technology solution and preliminary design a detailed estimate of the project cost should be developed.
- Social and Environmental Aspects including
 - Determining the quantifiable direct and indirect social and environmental costs and benefits;
 - Identifying the non-quantifiable direct and indirect social and environmental costs and benefits;
 - Characterizing options for mitigating adverse impacts and estimating the cost of mitigations;
 - Identification of permits/licenses needed and any further social and environmental impact studies that will need to be conducted; and
 - Provide information regarding health and safety and other environmental/ social standards that will inform the final output specifications to be included in tender documents
- Section 4 – Financial Feasibility
 - The PPP Reference Model
 - Refining the PPP model (proposed project structure and sources of funding)
 - Cost and Revenue Assessment
 - Determination of Project Costs
 - Determination of Project Revenues and the payment mechanism
 - Risk Assessment – an independent risk assessment should be conducted with regards to the PPP reference model. The risk assessment should be undertaken by the project transaction advisor and all material risks must be identified, evaluated and consequently allocated to either the private sector or the Institution. The various risks identified should be presented in a

comprehensive risk matrix to allow for the tracking of risk allocation. The risks should be incorporated into the financial model below.

- Financial Model (risk adjusted)
 - Assumptions of the model
 - Preparation of the financial model
- Assessment of Financial Feasibility & Summary of Key Project Indicators
- Sensitivity Analysis
- Section 5 – Affordability
 - Budget availability
 - Comparison with PPP Reference Model
- Section 6 – Preliminary Value for Money Assessment
- Section 7 - Economic Valuation
 - Assessment of Economic Costs and Benefits
 - Comparison with a “No Project” Scenario
 - Comparison with next best alternative investment option
 - Stakeholder Analysis
 - Valuation Results and Recommendation
- Section 8 – preferred procurement mode. This section will synthesize the qualitative and quantitative case for proceeding with the PPP procurement route. .
- Section 9 - Procurement Plan
- Annexure 1: Statements for information verification and sign off from each advisor to the project
- Annexure 2: PSC model (where applicable)
- Annexure 3: PPP reference model
- Annexure 4: Risk assessment and comprehensive risk matrix
- Annexure 5: Document list (list of all documents related to the project, where they are kept, and who is responsible for ensuring that they are updated)
- Annexure 6: Attach as annexure all other documents that have informed the feasibility study and that are of decision-making relevance to the project.

4.2 Presentation of the feasibility study

The feasibility study, comprising all the above deliverables, must be compiled in a single report in Word format (with relevant annexures), and delivered as both electronic and hard copy documents. All financial models must be in Excel format, and must clearly set out all assumptions

made, sensitivity analyses carried out, and model outputs. The financial models must be sufficiently adaptable for use by others at later stages. The feasibility study must be presented with a thorough executive summary and must be accompanied by a PowerPoint presentation that encapsulates all the key features of the study. The executive summary and PowerPoint presentation must be compiled in such a manner that they can be used by the Institution's management for decision-making purposes.

4.3 Submission requirements for the feasibility study report

If the Institution decides to pursue a PPP solution for the Project, the feasibility study must be of a standard that will be accepted by relevant authorities for the purposes of the Institution obtaining approval. The transaction advisor is therefore advised to be fully familiar with the requirements of the relevant authorities.

5. PPP procurement deliverables (if applicable)

If the Institution decides on a PPP procurement solution, the transaction advisor is required to work with the Institution to manage the procurement process for securing contracts with a private party. All this needs to be in accordance with the systems and standards set out for PPPs in relevant laws and regulations.

The transaction advisor will then have to deliver the following:

5.1 Approval and administration of the bidding process

The transaction advisor must prepare a complete set of procurement documents, complying with public sector procurement law, policies and guidelines, and in accordance with the tendering systems of the Institution. The documentation must be consistent with the results of the feasibility study and enable the Institution to obtain relevant approvals.

The transaction advisor must also give the Institution all the necessary drafting, bidder communication and administrative support necessary for the entire procurement process to be conducted in accordance with law and policy, and to the highest standards of efficiency, quality and integrity.

(a) Detailed procurement plan

The transaction adviser will design a complete procurement plan and process, in accordance with SADC 3P Network's Reference Guide to PPPs and based on applicable procurement requirements, including

- Advice on mechanisms to maximize competition while avoiding unrealistic bids and project vulnerability from overly aggressive bidding.
- Reviewing information to be provided by the Government to bidders to manage liabilities.
- Technical review, including
 - review of general functional/technical solutions,
 - assessment of the estimated capital and operating costs
 - review of the proposals and comparing them with current best practice, highlighting areas where the proposed solutions will increase risk (and therefore price) and making suggestions for changes in current proposals.
 - capacity of the site, and appropriateness for the technology and performance required of the Project,

- weather conditions, status of land availability, status of permissions and permits, traffic {amend as required for Project}
- management and construction management constraints etc.
- service levels and operating costs
- preparation of all alignment drawings and specifications (to the extent not provided in the feasibility study)
- review of project data, including ground conditions and geotechnics {amend as required for Project}
- review of capital cost estimates from feasibility study, benchmarking against out turn costs /published cost estimate data on other projects.
- review of operability of scheme in relation to technical specification, infrastructure, off-take demand and required levels of output, availability and safety.
- commentary on integration with - and linkages to network
- environmental impact assessments and proposed mitigation measures.
- Designing pre-qualification and bidding procedures (in accordance with SADC 3P Network's Reference Guide to PPPs)
- Designing key aspects of the tender procedure (in accordance with SADC 3P Network's Reference Guide for PPPs), for example deciding whether and to what extent to accept variant and non-conforming bids, how many bidders must bid before the process is valid, what rules to set in relation to the assessment of bids (scoring regimes, timing of bids and rejecting of excessively low bids) and how to maximize competition without sacrificing quality of bids.
- Outlining tender documentation
- Outlining the PPP contract (including all annexes) that implements the chosen PPP approach (in accordance with SADC 3P Network's Reference Guide to PPPs):
 - applying the risk matrix developed during the feasibility study, but updated to address all project issues and market context,
 - developing and implementing a detailed financial model and developing the contract to fit the requirements of the model,
 - explaining to the Government whether and to what extent certain provisions could be amended without disturbing the key risk allocation goals of the Government,
 - The Government may need to obtain debt or provide a loan to the project company or to provide some other financial instrument (e.g. guarantee or subsidy) to make the PPP project financial viable or more cost effective. The transaction adviser will provide advice on structuring of such instruments, their drafting, negotiation and implementation (e.g. setting up trusts and escrow accounts, arrangements with security sharing and management and other aspects of financial management and ensuring compliance with financial covenants).
- All advice should be compliant with applicable law and consider any constraints or opportunities associated with applicable law.
- A [Insert number of days] 'workshop' with Government and Institution officials to discuss policy decisions and risk transfer issues, followed by 1 further more extensive 'workshop' to agree final project design. {Amend as required for the Project}

(b) Pre-qualification

The transaction advisor must design and administer a pre-qualification (request for qualification (RFQ)) process, in accordance with SADC 3P Network's Reference Guide to PPPs, with the intention of:

- ensuring that the Institution 's exact interest is communicated clearly to the market
- determining the extent and nature of interest in the private sector
- pre-qualifying a competitive number of competent consortia in an equitable and transparent way.

The desired result is that every pre-qualified bidder is capable of providing the facilities and services required by the Institution. The transaction advisor must:

- prepare all the necessary RFQ documentation, including advertising material, in accordance with SADC 3P Network's Reference Guide to PPPs.
- set up and administer the process by which the Institution can pre-qualify the parties, including responding to questions and interfacing with bidders, in accordance with SADC 3P Network's Reference Guide to PPPs; and
- help the Institution evaluate and pre-qualify bidders.

As part of this process, the transaction advisor shall develop a tightly focused promotional campaign for the Project, including short press briefings, advertisement inserts to be published in relevant international publications and business newspapers, followed up by the targeted marketing of the selected companies through organizing Road Shows and Seminars for potential investors as well as initiating direct communications with them.

(c) Bid evaluation criteria and bid process design

The transaction advisor must, in accordance with SADC 3P Network's Reference Guide to PPPs:

- set up a bid evaluation system and criteria;
- design a suitable bid process that will ensure comparable bids;
- devise effective systems for communicating with bidders; and
- inspire market confidence.

If appropriate, a system that allows for variant bids may be designed.

(d) Request for proposals (RFP)

The transaction advisor must prepare an RFP document in accordance with best industry practice, SADC 3P Network's Reference Guide to PPPs and applicable laws and regulations, consistent with the results of the feasibility study. The RFP must concisely set out:

- the output specifications of the Institution
- requirements for compliant bids
- a risk profile as established in the feasibility study
- the payment mechanism
- the bid process
- evaluation criteria
- bidder communication systems.

(e) A draft PPP agreement

The transaction advisor must prepare a draft PPP agreement, in close liaison with the Institution management and in accordance with SADC 3P Network's Reference Guide to PPPs, implementing the risk allocation regime and using best practice to maximize competition and keep pricing low, while protecting the Institution's interests with a view to project implementation and manageability over the term of the project. The agreement will include all necessary annexes and subsidiary documentation, e.g. performance specification, project scope, technical specification, Project performance monitoring regimes, etc.

(f) Institution {and/or [Insert other Government department] (if applicable)} approval(s)

The transaction advisor must compile all the documentation necessary for the Institution to obtain necessary approvals to enable the procurement process to begin.

(g) Administration of the bidding process

The transaction advisor is to provide all necessary administrative support to the Institution for the efficient and professional management of the bidding process. This includes managing a data room and other dissemination of project data to bidders, facilitating structured engagement between the Institution and bidders, helping the Institution communicate effectively with bidders, including responding to bidder queries, managing bidder conferences and responding to communications with bidders to manage Government liabilities, and receiving bids.

5.2 Evaluation of bids, demonstrating Value for Money [WHERE POSSIBLE UNDER PROCUREMENT RULES]

(a) Evaluation of bids

The authorized staff of the Institution, helped by the transaction advisor, must evaluate bids.

A best and final offer (BAFO) process may be required. When costing this phase of work the transaction advisor must allow for the possibility of administering BAFO processes. If there is no BAFO process, the transaction advisor's remuneration will be adjusted accordingly.

(b) The value-for-money report and approval

Value for money must be demonstrated by comparing the net present value (NPV) of the bids received with the NPV of the PSC or PPP Reference Model (as the case may be) for [Insert description of project]], with a suitable adjustment for risk assumed.

The results of the bidding and evaluation of bids must be presented in a single value-for-money report (with relevant annexes) that demonstrates clearly how value for money will be achieved with the preferred bidder. The report must clearly indicate the preferred and second-ranked bidders and provide motivations.

The value-for-money report must be in a suitable format and of a suitable standard for the Institution to get necessary approvals.

5.3 PPP Agreement Negotiations, PPP Agreement Management Plan

The transaction advisor must assist the Institution in final negotiations with the preferred bidder. This will involve

- preparing suitable negotiations teams,
- categorizing issues appropriately,

- developing timelines for completion,
- planning negotiation tactics,
- reviewing proposed sub-contracts, in particular with the construction contractor and operator, to the extent forms of these contracts have not been included in the PPP contract or the tender documents,
- advising on proposed changes to the agreed form sub-contracts,
- review of preferred bidder satisfaction of the conditions precedent to the PPP contract, often including the validity of licenses and permissions obtained by the preferred bidder, formation of corporate vehicles in the form required, financial close of the project financing, and implementation of the commercial requirements for performance of the project,
- relationship with second and third place bidders, including managing bid bonds and on-going discussions to prepare for the eventual withdrawal of the preferred bidder,
- processes for reaching agreement,
- the above will normally involve a second set of negotiations with the lenders arguing similar points as those raised by the preferred bidder during the tender process and new issues often focused on financial covenants and protections. This may involve extended discussions of Government financial participation to protect the lenders from specific risks. The legal service providers should be involved in these discussions,
- review and negotiation of the financial documentation which will often have a direct effect on the rights and obligations of the Government,
- legal opinion that transaction is binding on its terms,
- legal opinion on security and financial management structure, and
- legal opinion on revenue structure and current regulatory mechanism.

The transaction advisor must ensure that all agreements reached are incorporated into all the financial, commercial and legal documentation, and must assist with drafting the necessary and related correspondence.

The final terms of the agreement, each as negotiated with the preferred bidder, must be submitted by the Institution, along with the PPP agreement management plan for the Project, for approval. The transaction advisor is responsible for compiling the necessary submissions for the Institution to obtain this approval, including a comprehensive legal due diligence of the accounting officer/authority has been completed. This will relate to legal compliance, competence and capacity to enter into the PPP agreement.

5.4 PPP Agreement Signature, Close-out Report and Case Study, and Financial Closure

The transaction advisor must help the Institution with all functions related to signing the final agreement through to financial close. The transaction advisor must also compile a comprehensive close-out report and case study, and must incorporate any additional factors that may be required by the Institution. The close-out report will be a confidential document of the Institution. The case study will become a public document, made available on various government websites.

The transaction advisor must, in close liaison with the Institution, draft a comprehensive PPP management plan for the Institution, in accordance with the provisions of the PPP agreement, to help the Institution in the management of the Project and its risks, rights and obligations after financial close. The management plan will be delivered no later than [Insert number] days before financial close. This will be followed by a [Insert number] day 'workshop' with the Institution

project team to discuss project implementation and management of Institution rights and obligations over the term of the Project, followed by 1 further 'workshop' as follow-up.

Financial closure signifies that all the procurement deliverables have been successfully completed, and that the transaction advisor's work is finished, if applicable.

6. Transaction advisor skill, experience, remuneration and management by the Institution

6.1 Necessary transaction advisor skills and experience

The transaction advisor will comprise a team, managed by a single lead advisor. The members of the team will have the skill and experience necessary to undertake the range of tasks set out in this terms of reference. Each individual on the team must be personally available to do the work as and when required. The lead advisor will be held accountable, in terms of the transaction advisor contract, for ensuring project deliverables and for the professional conduct and integrity of the team.

The skills and experience required in the transaction advisory team are as follows:

- Financial analysis, with relevant PPP and project finance experience through to financial close
- PPP procurement and structuring
- Legal, with relevant law and experience in the drafting and negotiating of PPP agreements
- Technical due diligence and advice on PPP structuring and contracts
- Project planning management
- Project facilities management
- Relevant expertise in [Insert description of relevant required expertise]
- Negotiations
- Contract management
- Project management

6.2 Remuneration schedule and disbursement arrangements

The total sum budgeted by the Institution for remuneration of professional services under these terms of reference is [Insert amount]. Bidders are advised to bid within this figure, and to allocate resources according to the remuneration schedule below. Remuneration of the transaction advisor will be payable in [Insert relevant currency], on a fixed price for each of 2.1 and 2.2 above (corresponding to PPP Feasibility Study and Procurement of the project cycle). The procurement portion of the work may or may not transpire at the end of the feasibility study, and should be costed accordingly.

(a) Remuneration schedule

The following remuneration schedule is set for each part of the contract. Bidders should adhere to these in their proposals, within the total budget given. Deliverables completed per the remuneration schedule will be approved by the project officer, after which invoices may be submitted for payment as per the remuneration schedule. The Institution will pay within [Insert number] days of receiving the approved invoice.

Task	Date	Fee
Feasibility study, draft delivered to Institution		
Feasibility study, final version delivered to Institution		
Commence pre-qualification		
Pre-qualification announced		
Bidding commenced		
Bid submitted		
Preferred bidders selected		
BAFO submission		
Award		
Financial close		

{Amend table as required and complete Date and Fee columns}

(b) Disbursement arrangements

Out-of-pocket expenses will be paid by the Institution at cost within an agreed ceiling. All claims for travel and other legitimate disbursement expenditure must be pre-approved by the project officer before they are incurred. An email system for these approvals will be set up when the transaction advisor contract is signed. Pre-approved project expenditure on international travel, related reasonable accommodation costs, expenditure on document reproduction, translation and interpreter services or any other legitimate pre-approved project disbursement expenditure will be reimbursed at cost. Other legitimate Project costs such as telephone, fax, photocopies and internet access will be reimbursed at cost. Payment will be made within [Insert number] days of the Institution receiving approved and substantiated invoices, and does not form part of the remuneration schedule. Bidders are required to propose a ceiling for such disbursements. This ceiling will not be evaluated as part of the price proposal.

6.3 Management of transaction advisor by the Institution

The transaction advisor will be appointed by the Institution. A project officer has been appointed by the Institution to take full responsibility for managing the transaction advisor's work and for ensuring delivery on the project. The project officer is [Insert name of project officer], and can be contacted at [Insert contact details].

The project officer has established a project team to engage regularly with the transaction advisor for efficiently completing the various delivery items. The project team will meet at least monthly and the transaction advisor will report progress at these meetings, as instructed by the project officer.

The project officer will confirm that the transaction advisor has satisfactorily completed each deliverable before invoices can be submitted to the Institution for payment.

The Activities are anticipated to take place between [Insert date – month and year is acceptable] and [Insert date – month and year is acceptable]. The Activities will be carried out in [Insert location]. It is anticipated that the team-leader and co-team leader of the Consultant's team will be located in [Insert location] for the vast majority of the duration of the contract.

Within [Insert working days of the signing of the contract, the transaction advisor shall submit an Inception Report giving a detailed work plan and assignments for each individual in the team.

The transaction advisor shall submit Interim Reports each two weeks describing progress of work, updated work schedule, and any key constraints encountered by the transaction advisor in the performance of the activities.

Proposed Implementation Schedule

Task	Date
Feasibility study, draft delivered to Institution	
Feasibility study, final version delivered to Institution	
Commence pre-qualification	
Pre-qualification announced	
Bidding commenced	
Bid submitted	
Preferred bidders selected	
BAFO submission	
Award	
Financial close	

{Amend table as required and complete Date column}

Appendix A: Background and supporting documentation

{An appendix should be included here with background information and supporting documentation}