

**Terms of Reference
Technical and Legal Advisory Services
Relating to Water and Sanitation Reform and
Possibility of Introducing PPP**

Introduction

On [], [MUNICIPALITY] resolved that Water, Sewerage, and Wastewater Treatment Services be investigated for possible private sector participation in accordance with the precepts announced in the Government's Growth Policy [] and in fulfillment of [MUNICIPALITY]'s Constitutional duties to ensure provision of such services to its constituents in a sustainable manner.

This resolution of [MUNICIPALITY] was based upon an initial investigation conducted at [MUNICIPALITY] expense by [], which concluded that such further investigation into the possibility of private sector participation in water supply and sanitation services was warranted.

[MUNICIPALITY] also authorised an agreement with [UNIT] established by Government to provide financial assistance to local authorities, for this further investigation. The agreement commits a certain amount of [UNIT] grant funding in support of this investigation.

This procurement is being conducted in accordance with the terms and conditions contained in the Agreement between the [UNIT] and [MUNICIPALITY], the ordinances, regulations and policy of [MUNICIPALITY], and the laws of the Government of [COUNTRY].

Terms of Reference

The work to be performed under these Terms of Reference will be divided into two phases, Phase I and Phase II. At the conclusion of Phase I, [MUNICIPALITY] will determine whether to proceed with Phase II. **Note: that should the [MUNICIPALITY] decide not to proceed with Phase II, the Feasibility Study will be ended at that point, and the contract will be terminated without advance notice.**

Phase I

The purpose of Phase I is to perform an assessment of the current condition of the water supply and sanitation assets, the current status of service delivery, and to perform an analysis of the possible alternatives in the delivery of these services. Phase I concludes with a general public hearing where the general public and key stakeholders, including the [MUNICIPALITY], will provide input and comment on the applicable alternatives. Based on the results of Phase I and stakeholder input, the consultant will recommend one or more options for [MUNICIPALITY] consideration. Phase II will include a more detailed financial analysis of the preferred option or options and related implementation issues. The Phase II evaluations should be sufficient for [MUNICIPALITY] to make a decision to proceed with a Request for Tenders for the procurement of the selected service delivery option.

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Technical Assessment

1. Current Conditions

1.1 Stakeholder Identification

The Consultant shall identify all stakeholders who will be impacted by the PPP evaluation and implementation of alternate service delivery options. These shall include but not necessarily limited to the following:

- a) The [MUNICIPALITY]
- b) All Water Authorities and Water Boards having jurisdiction
- c) DWAF
- d) Local and National NGO's
- e) Labour Unions
- f) The general public
- g) Others

1.2 Current Condition of Assets

A list of assets will be provided by the [MUNICIPALITY]. The Consultant shall assess these assets by the following.

- a) Present day value.
- b) Estimated remaining life.
- c) Condition and need for rehabilitation.
- d) Estimated cost of rehabilitation.

Assets to be assessed shall include:

- a) Water supply facilities.
- b) Water and wastewater treatment facilities.
- c) Water distribution systems, including storage facilities
- d) Sewerage collection systems including pump stations
- e) Administration and maintenance facilities
- f) Repair and maintenance vehicles and equipment
- g) Associated real estate, aquifer protection areas, etc.
- h) Other assets related to the above.

1.3 Water Balance

For the water supply and sanitation system, perform a water balance, to include the following:

- a) Water supplied
- b) Water distributed and metered
- c) Water used for fire protection
- d) Unaccounted for water
- e) Wastewater collected and treated
- f) Wastewater reused (if applicable)
- g) Wastewater discharged

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To the extent that data exists, the determination of current water balance shall be compared to historical records to assess any deterioration of service provision where applicable.

1.4 Compliance with Standards

Assess compliance of the water supply and sanitation systems with existing and proposed standards, including:

- a) Quality of supply
- b) Chemical and bacteriological standards
- c) Laboratory services.
- d) System maintenance.
- e) Safety standards
- f) Environmental compliance
- g) System future planning.

1.5 Depth of Investigation

The consultant shall conduct the forgoing assessments to the extent necessary for general planning and decision making purposes, using existing drawings, maps, service records, meter records or other pre-existing data. Detailed assessments are not required at this time.

2. Organisational Structure

2.1 Structure

Review the organisational structure of the [MUNICIPALITY] water supply, sewerage, and wastewater treatment service delivery organisation(s), including identification of non-organisational support staff provided by [MUNICIPALITY].

2.2 Employees

Assess the number of employees, including managers, administrators, and part time employees for each service.

2.3 Personal Service Contracts

Determine all outstanding personal service contracts directly related to the delivery of water supply and sanitation services.

2.4 Union Issues

Identify all union organisations having bargaining agreements with [MUNICIPALITY], and determine the expiration date of the current bargaining agreement.

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3. Service Coverage and Demographic Assessment

3.1 Coverage Assessment

Perform a service coverage assessment for both water supply and sanitation services, including:

- a) The number of households currently receiving water supply services, noting the percentage receiving metered services.
- b) An estimation of households in the service delivery area not currently receiving water supply.
- c) The current number of commercial, industrial, and publicly-owned water service recipients, noting the percentage receiving metered services.
- d) An estimation of the commercial, industrial, and publicly-owned establishments, if any, not currently receiving water supply.
- e) The number of households currently receiving sewerage services.
- f) An estimation of the number of households in the service delivery area not currently receiving sewerage services.
- g) The current number of commercial, industrial, and publicly-owned sewerage service recipients.
- h) An estimation of the current number of commercial, industrial, and publicly owned establishments not receiving sewerage services.
- i) Income distribution of households receiving and not receiving water and sanitation services.

3.2. Systems Coverage Map

Perform a demographic assessment of the household recipients of water supply and sanitation services, and prepare a systems coverage Map to include the following:

- a) Geographic distribution within [MUNICIPALITY] of residential areas receiving and not receiving water and sanitation services
- b) Income distribution, or other household economic indicators to the extent readily known.

4. Cost of Services Assessment

4.1 Operating Costs of Services

Review and update as necessary the last full cost of services assessment prepared by [MUNICIPALITY], for both water service and sanitation, including:

- a) Direct labour costs.
- b) Indirect labour costs
- c) Direct and indirect administrative staff costs.
- d) All shared staff costs.
- e) Overhead expenses related to the enterprise.
- f) Vehicles

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- g) Plant, facility, and system maintenance and operating costs, excluding labour and indirect costs.
- h) Chemicals, supplies, fuels, and other consumable items.
- i) Existing supplier and service contracts.

4.2 Debt Service

Review and update as necessary, the latest debt service assessment prepared by [MUNICIPALITY] relating to previous capital expenditures for these services, including:

- a) Current debt service requirements.
- b) Estimated debt retirement date(s) for each capital expenditure loan.

4.3 Tariffs

Review and update as necessary, the total costs computation from the above, including:

- a) Tariffs in place for each service, per unit.
- b) Tariff subsidies or cross subsidies where applicable.
- c) Discontinuation policies.
- d) The total amount billed in the last fiscal year for each service.
- e) The total amount actually collected in the last fiscal year for each service.
- e) The source(s), if any, to cover any differences between amounts billed and amounts collected.

4.4 Cost Summary

The Consultant shall summarise the above costs for services in a summary table, showing total costs per unit of service (litres of water delivered or treated) per service recipient.

5. Future Investment Needs

5.1. Future Needs

Review and update, as necessary the estimated future capital investment needs to redress current backlogs.

5.2. Priorities

Review and comment upon the approved priorities for such capital investments over the next five (5) years.

5.3 Capital Resources

Review and comment upon all sources of capital identified by [MUNICIPALITY] as sources by which the capital requirements will be met, including grants, loans from all sources, transfer payments from any source, and subsidies received from other [MUNICIPALITY] activities.

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5.4 Public Borrowing Capacity

Assess the borrowing capacity of [MUNICIPALITY], in light of the foregoing, to obtain needed capital investment loans for the prioritised investments within the [] year time frame.

6. Comments

The Consultant shall provide comments on the following, regarding the current situation:

- a) The technical quality of service delivery.
- b) Adequacy of maintenance programmes.
- c) Capacity of staff.
- d) Adequacy of facilities and equipment.
- e) Constraints on the foregoing.
- f) Sustainability of service delivery under existing tariffs.
- g) Appropriateness of service delivery levels.
- h) Other suggestions regarding technical matters.

Alternatives Assessment

1. Pro Forma Financial Model

Prepare a *pro forma* financial model, using the existing cost and revenue information, as well as the five (5) year capital investment requirements, obtained during the Technical Assessment which will reflect the results of the Alternatives Assessment. The model shall be utilised in the assessment of potential service options listed in Section 2 below.

2. Service Delivery Alternatives to be Assessed

2.1 Alternatives

The consultant shall assess all potential alternatives for future service delivery including PPP options as listed below.

Public-Public Partnership: A municipality enters into an agreement with another public entity for municipal service provision. A variety of contracting forms and compensation schemes are possible.

Corporatisation: A municipality forms a separate legal corporate entity to manage municipal service provision. The municipality continues to own the enterprise, but it operates with more of the freedom and flexibility generally associated with a private sector business.

Service Contract: A municipality pays a fee to a private firm to provide specific operational services such as meter reading, billing and collection, and operating facilities. Typical duration : 1 – 3 years.

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Management Contract: A municipality pays a fee to a private firm to assume overall responsibility for operation and maintenance of a service delivery system, with the freedom to make day-to-day management decisions. Typical duration : 5 years.

Lease Contract: A private firm rents facilities from a municipality and assumes responsibility for operation and maintenance. The lessee finances working capital and replacement of capital components with limited economic life, but not fixed assets, which remain the responsibility of the municipality. Typical duration: 10 years.

Concession: A private firm handles operations and maintenance and finances investments (fixed assets) in addition to working capital. Assets can be owned by the firm or the municipality for the period of the concession and where owned by the firm are transferred back to the municipality at the end of this period. The project is designed to generate sufficient revenues to cover the private firm's investment and operating costs, plus an acceptable rate of return. The municipality exercises a regulatory and oversight role and receives a concession fee for this arrangement, which typically focuses on operating and financing the expansion of existing system components. Typical duration : 15+ years.

Build-Operate-Transfer (BOT): A form of concession, with an emphasis on construction of new, stand-alone systems. The municipality may or may not receive a fee or share of profits. Typical duration : 15+ years.

Municipal Debt Issuance: The municipality issues bonds to raise capital directly from private investors to finance the capital costs of building or expanding an infrastructure system. The municipality maintains total control of the project, and bears all associated risks. The issuance process is usually facilitated by underwriting firms (usually public or private banks) and may also involve financial advisory service providers. Typical maturity of debt : 10 – 20 years.

2.2 Assessment Criteria

The purpose of the assessment will be to determine those service delivery alternatives which will enable [MUNICIPALITY] to meet its capital expenditure priorities, reduce or eliminate its service backlogs, and ensure sustainable delivery of water and sanitation services to all constituents. Among the factors to be determined with each assessment are:

- a) The ability of the [MUNICIPALITY] to obtain the capital required for investment given its current obligations and anticipated sources of revenues.
- b) The ability of potential private sector participants to economically provide the required capital, effect service delivery within standards to all eligible recipients and receive a reasonable return on its investment, within the range of potential tariff(s) which may be levied.
- c) The effect on the technical quality of the service delivery.
- d) The likely response from all stakeholders, including unions.

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- e) The potential effectiveness of cost-recovery initiatives to an expanded universe of service recipients.
- f) The service delivery efficiency of each alternative.
- g) Risk sharing between public and private sectors
- h) Cost recovery efficiency.

3. Phase I Report

3.1 Preliminary Phase I Report

At the conclusion of the alternatives assessment, the Contractor shall prepare a Preliminary Phase I Report to [MUNICIPALITY] Summarising the current conditions and all applicable service alternatives as set forth in Section 2.1 above, which may provide cost-efficient, sustainable means of delivering water supply and sanitation services.

3.2 Preliminary Phase I Report Contents

The Preliminary Phase I report shall consist of the following:

- a) Executive summary.
- b) Technical Assessment Summary.
- c) Alternatives assessments of each applicable service delivery option.

3.3 Phase I Public Hearing

The Preliminary Phase I report shall be copied and distributed to the major stakeholders identified in Section 1.1 of the Technical Assessment. The Consultant and the [MUNICIPALITY] shall hold a public hearing to present the Preliminary Phase I report and obtain comments from the major stakeholders and the general public. Copies of the Preliminary Phase I report shall be made available to the general public for review at the [MUNICIPALITY] offices at least [15] days prior to the date of the public hearing. The date, time and place of the public hearing shall be advertised at least [15] days prior to the hearing date.

3.4 Final Phase I Report

The consultant shall summarise the comments received during the Phase I public hearing and address all comments relative to specific service provision alternatives. After consideration of the assessments and evaluations of the Phase I tasks, and input from the major stakeholders and general public, the consultant shall finalise the Phase I report by “Shortlisting” the three service provision alternatives which best meet the assessment criteria listed in Section 2.2 above. Five copies of the Final Phase I report shall be filed with the [MUNICIPALITY] for their review and consideration.

3.5 Time for Completion

The forgoing Phase I investigation shall be accomplished within sixty (60) days of the receipt of a notice to proceed from the [MUNICIPALITY].

[MUNICIPALITY] Review of Phase I

The [MUNICIPALITY] shall review the Phase I report and consider the three service delivery recommendations made by the Consultant. The [MUNICIPALITY] shall select one preferred service delivery option to proceed to Phase II assessment and may also select an alternate option. Upon reaching a decision regarding the preferred option and an alternate option, the [MUNICIPALITY] shall send a notice to proceed to the Consultant authorising him to begin the Phase II work. The [MUNICIPALITY] may also decide, after reviewing the Phase I report, to maintain the Status Quo and not proceed with a PPP option. In that case the work will not proceed to Phase II and the Consultant's contract will terminate.

Phase II

The Phase II evaluation will consist of a more detailed financial assessment of the selected service provision option and an alternate option if directed to do so by the [MUNICIPALITY] in the Phase II notice to proceed. The Phase II evaluation will also include other implementation issues that the [MUNICIPALITY] will have to address in proceeding with an alternate service provision. The overall goal of Phase II is to prepare the project for the RFP Phase, and provide the [MUNICIPALITY] with the appropriate tools to evaluate proposals and proceed to implementation.

For the purposes of preparing a financial proposal for Phase II, the Feasibility Study consultant shall assume that only one primary option is recommended for Phase II evaluation. If the [MUNICIPALITY] decides to proceed with Phase II with an alternate option as well as a primary option, the budget to prepare Phase II will be negotiated.

1. Detailed Financial Modelling.

1.1 Notice to Proceed

Upon receipt of a Notice to Proceed With Phase II, Contractor shall develop a financial model with economic, legal, and technical inputs to assess the financial viability of the preferred, and any alternative service delivery options set forth in the Notice to Proceed With Phase II.

1.2 Model Contents

The 5-year financial model shall include the following:

- a) Estimated Growth in water demand of + ___% per annum.
- b) Existing and proposed tariff structure(s).
- c) Capital structure; debt and equity; sources of funds.
- d) Potential Government support.
- e) Potential donor or other funding which may be provided.
- f) Tax consequences and tax avoidance options.
- g) Financial basis of contract award, future cost of each service,

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- and rate of return to the service provider.
- h) Sensitivity analyses: change of demand, drought, interest rate fluctuations.
- i) Existing facility debt.

2. Tariff Structure Review

- 2.1 Review the current tariff structure and government policies including rate setting, and cross subsidies as they relate to the PPP options.
- 2.2 Recommend contractual provisions relating to tariff-setting, including tariff escalation formulae, as appropriate.

3. Capital Expenditure update.

- 3.1 Review the future investments needs analysis in Section 5 of Phase I to reflect current information.
- 3.2 Reassess the funding ability of the [MUNICIPALITY] including its ability to provide guarantees or other forms of credit enhancement.

4. Revenue Collection

- 4.1 Assess the revenue collection performance for each service, including any policy of discontinuation of service, and suggest any new or modified processes which may be adopted by a private service provider, under the selected options.

Suggest cost recovery mechanisms and innovative programs for revenue collection in expanded or newly-included disadvantaged communities within [MUNICIPALITY].

5. Confidentiality

Some aspects of the above financial modelling and evaluation may contain information regarding estimated PPP costs, to be used during the RFP process for evaluating the appropriateness of proposals. Therefore, the general release of this information may compromise the proposal process. The Consultant shall meet with the [MUNICIPALITY] and discuss confidentiality issues and establish a procedure for keeping this data confidential. It is suggested that all confidential financial information be included in a separate sealed appendix, for distribution only to select individuals.

6. Stakeholder Participation and Information

- 6.1 Stakeholder Input on Selected Options

Within four weeks of the notice to proceed, the Consultants shall meet with representatives of key stakeholder groups to obtain specific input and comments regarding the selected options. The main goal of this task is to identify specific issues

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and concerns that should be considered in the RFP process and implementation of the alternate service delivery. As a minimum, the following groups shall be included.

- a) Union Labour Representatives.
- b) Non-Union Labour Representatives.
- c) NGO, Environmental, and Civic Groups.

At the conclusion of the above stakeholder meetings, the Consultant shall meet with the [MUNICIPALITY] and discuss any issues or concerns raised, and make recommendations for addressing these issues in the implementation stage of the project.

6.2 Phase II Public Hearing

After meeting with the [MUNICIPALITY] and addressing all significant stakeholder issues, the Consultant and the [MUNICIPALITY] shall hold the Phase II public hearing to present the selection of the primary service delivery option and obtain final comments from all stakeholders and the general public.

7. Implementation Issues

7.1 Legal

Consultant will review existing [Federal], [State], and Local laws and policies affecting implementation of the preferred option and any alternative being investigated, including affect on existing [MUNICIPALITY] staff, and will recommend any necessary actions consistent with the best interests of project implementation and existing staff rights and benefits.

Consultant will identify the effect of implementation on existing liabilities, and suggest appropriate actions.

7.2 Regulatory and Institutional

Contractor will review existing agreements with other local authorities and governmental entities which may be impacted by project implementation, and will suggest appropriate actions in regard thereto.

Contractor will recommend the appropriate [MUNICIPALITY] staffing structure to implement the preferred option or alternative, including establishing any regulatory processes deemed necessary. Contractor will estimate the cost thereof.

7.3 Financial Impacts

Contractor will approximate the future financial effect on [MUNICIPALITY] if the preferred option or alternative is implemented.

7.4 Risk Allocation

Contractor shall recommend the apportionment of risk between [MUNICIPALITY] and

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the private-sector service provider, reflecting international best practices for similar activities.

8. Phase II Report

Five copies of the Phase II report shall be filed with [MUNICIPALITY], which shall review the report and set a public hearing of adopting the recommendations thereof within fifteen (15) working days of receipt thereof.

The Phase II Report shall be filed no later than sixty (60) days from receiving the Notice to Proceed with Phase II.

[MUNICIPALITY] Review

[MUNICIPALITY] shall review the report and if the report recommends proceeding to the procurement of the preferred service delivery option, set a public hearing for a determination on whether to so proceed with the implementation stage of the project which begins with the preparation of the RFP documentation and selection process.

[MUNICIPALITY] may (1) approve the recommendation to proceed with the preferred option; (2) determine not to proceed.