**NRW Reduction Incentivized Program Manager Contract**

**Terms of Reference: Explanatory Note**

This TOR is one of four designed to produce innovative types of NRW Reduction Contracts. The TORs are designed to be used as part of an NRW-reduction project being implemented in accordance with the NRW Manual.[[1]](#footnote-2) It is assumed that the consultant will be engaged after completion of an Initial Assessment, and if needed, a Field Assessment (see Section 5 of the Manual). That assessment will have gathered information on the Water Balance, assessed whether NRW control is needed, whether a contract-based approach is appropriate, and what the goal of the contract should be.

Various types of contracts could be developed. Four are listed in Appendix B of the Manual and are described briefly below. Terms of Reference for development of each type of contract have been developed.

1. **DBOM (Physical Loss Reduction) Contract**—these contracts are focused on reducing physical losses. They provide high levels of incentive and risk transfer by making the contractor responsible for all costs, with payment dependent on the volume of loss reduction achieved. They also require construction of DMAs and other physical infrastructure. They can be considered the NRW-reduction equivalent of a Design-Build-Operate-Maintain contract for water production and treatment. This contract type has several variants. The differences between the variants mostly concern the degree of risk transfer to the contractor, and the specificity with which network rehabilitation and remodeling requirements.
2. **24/7 Self-Optimizing Contract (SO24/7)**—this innovative model provides the contractor with incentives based on the value to the utility of key outputs—including customers moved to 24/7 supply, and revenue collected—as well as inputs, such as bulk water used. This design provides for considerable flexibility, and reduces the amount of upfront engineering work required in contract preparation. So long as the utility is able to value the outputs it wants to achieve, the design of the works adapted by the contractor as it gains more information.
3. **Cost-Plus (for use in Competitive Discovery) Distribution Improvement Contract—**this contract type simply pays the contractor for work done on NRW-reduction at actual cost plus a margin. Actual costs are disclosed though an agreed ‘open book’ process that allows the utility to see the costs the contractor incurred. The ‘plus’ component would be a standard profit element on top of costs, typically less than 10 percent. Modest incentive payments for improvement in specified key performance indicators can also be included. The cost-plus contract is quick to implement, but typically does not maximize good value for money.
4. **NRW-Reduction Incentivized Program Management Contract**—Program management contracts separate the ‘brains’ of the operation (planning interventions such as DMAs and action leak control) from the ‘brawn’ of implementing the works. A program management contract is a professional services contract, in which the utility is paying for a team of experts to design, procure, and supervise NRW-reduction works. Actual implementation is done by third-party works contractors. The program manager is paid a program management fee—typically around 10 percent of the value of the works—and is also incentivized with performance pay for improvements on specified key performance indicators.

Reasons to use the NRW-Reduction Incentivized Program Manager Contract TOR

This TOR should be used for engaging a consultant to develop the contract type known as the NRW-Reduction Incentivized Program Manager Contract (Incentivized Program Manager Contract).

The essence of an incentivized program manager contract is to separate the ‘brains’ or professional services part of an NRW reduction program from the ‘brawn’ of construction, leak-repair, and the like. The program manager brings the skills to design, and progressively adapt, a smart program to reduce NRW. The program manager must also be able to draw up the documents needed to procure the works and services that comprise the program, manage the procurement, supervise the works, and certify when payment is due to the contractors. The program manager’s contract must give the manager an incentive to maximize the results achieved for any given budget.

Compared to an all-inclusive contract, the incentive program manager contract loosely integrates of ‘designing’ with ‘doing’, and less risk transfer. The situation dictates whether these factors are advantages or disadvantages.

The incentivized program manager contract would be selected in conditions where it desired to get the program underway quickly, but there is:

* A lack of information to design a complete NRW contract
* A lack of the information which contractors could use to estimate the costs of delivering under an all-inclusive contract; or
* High levels of risk that means that contractors are not willing to pay most of their payments to results achieved.

Compared to the ‘cost-plus’ contract, the incentivized program manager incorporates incentives for performance from the start. It also provides for competitive pressure on the cost of construction and equipment because these are procured competitively by the program manager.

## Program Manager Approach

The essential elements of the program manager contract are as follows:

* **Design and manage, not do.** The contract will engage a program manager whose role will be to: design the NRW reduction program; procure equipment, construction and maintenance services; supervise the works; and periodically adapt the program as new information emerges. (If in a particular case the consultant thinks the Program Manager should ‘do’ things, those things should be defined, along with an approach for reaching agreement on a reasonable payment for those tasks)
* **Incentivized on KPIs**. Key Performance Indicators (KPIs) will be specified. These may be hours of service, or physical losses, or total losses, or cash collected, as examples. The program manager will be financially incentivized to maximize improvements in the KPIs for a given budget.
* **Professional services contract**. The program manager will be a provider of professional services, not a construction contractor or a financier. Therefore, payment will be made largely based on actual or expected costs of providing the experts needed, combined with a performance incentive for achievements on KPIs.
* **Delegation of authority**. The program manager is a manager of the program, not a consultant. For the manager to be able to manage, the utility must grant to the manager considerable authority over design, procurement, certification and even payment for the works and services. This delegation of authority, the limits of authority, and approvals required must be thoughtfully crafted.
* **Budget**. The client will set a not-to-exceed budget for the contract.
* **Relationship to the works contractors**. Two variants of the contract may be possible.
  + In the lower risk variant, the utility contracts with the works contractors (following a procurement process run by the program manager) and the utility pays the contractors (following certification of the work by the program manager)
  + In the higher risk variant, the contractors are engaged by the program manager itself, and paid by the program manager. In this variant, the utility pays the program manager both for the professional services and for the work done by the contractors, adjusted for the KPI-linked performance incentive.

## Process for Using This TOR

This TOR is designed to be used by a TTL at Phase 6 of the Manual. It covers the work of both Phase 6 and Phase 7.

**NRW Reduction Incentivized Program Manager Contract**

**Terms of Reference DRAFT**

**Project/Assignment Title: Country Support: Preparation of ‘NRW Reduction Incentivized Program Manager Contract’ for [utility/town]**

**Task Team Leader: <XXXX>**

**Manager: <XXXX>**

**Department/Division: GWADR (Water Global Practice)**

**Location: Washington DC**

**Appointment Type: Firm**

**Date of Assignment: <XXXX>**

**International Recruitment: x yes 🞏 no**

**A. Background and Objectives**

**Country, Municipality, Utility**

*[In this section a description on country, municipality and utility background should be described by the TTL]*

**Objective of this Assignment**

The objective of this assignment is to develop an NRW Reduction Contract of the type that the Manual[[2]](#footnote-3) describes as a NRW Reduction Incentivized Program Manager Contract.

The aim of this contract will be to engage a specialized firm, on contract, to design and manage the implementation of a program to improve the utility’s performance by controlling non-revenue water.

**Previous work**

This assignment builds on work already done to investigate the suitability of a contract for NRW reduction as a way to achieve the goals of the utility. In particular, *[describe here the findings of the Initial Assessment and (if one was done) the Field Assessment. These reports will be provided to the shortlisted consultants. Describe any other preparatory work done.]*

**Related work**

*[If the NRW PBC is part of a larger investment or reform project, describe here the other components of the project. Mention useful reports and other documents, and say that they will be made available to the shortlisted consultants.]*

**Supported by a Global Program**

This project supported by a World Bank Program designed to catalyze better Performance Based Contracts (PBCs) for NRW Management. Better practices are identified in the short term as faster and more cost-effective preparation of PBC transactions and increased number of market participants (suppliers and seekers) active in the market, and in the medium-to-long term by improved efficiency of NRW-Reduction Programs supported by donors (including better value-for-money of PBC activities in NRW management and better sustainability of NRW performance improvements in participating utilities after a PBC has been completed. [For more information on the global program, go to *insert reference to website or resource link if applicable*]

**Relationship between NRW-reduction and other performance improvements**

The contract designed under this TOR may be focused on reducing total NRW, or one component of NRW. Alternatively, the performance sought may be increasing hours of supply by reducing NRW per hour of pressurization of the network, and thus allowing longer hours of supply for any given distribution input volume.

# B. SCOPE OF WORK

# Phase 1: Confirm Situation and Approach

The idea here is to record all relevant information in one place and ensure it is all agreed. Only limited research should be required. Phase 1 is expected to take about one week.

The Consultant should review the work done in the Assessment phase, and discuss with the client and the World Bank to ensure that there is consensus on the objectives of the contract, and the current situation. Among the things to discuss the following:

* **Stakeholders**. Listing the key stakeholders in the project, and consulting with all of them.
* **Reason for using Incentivized Program Manager Contract**. Documenting the reasons that an Incentivized Program Manager Contract is desired, and how it fits into an overall strategy for improving utility performance.
* **Objectives of the contract**. Documenting the performance improvements that the contract is intended to achieve, as well as any other objectives.
* **Information availability**.Documenting what is known about the water balance, service levels, network configuration and management. Estimating the degree of accuracy with which with information is known, and highlight major gaps or possible biases in the estimates. Documenting the extent to which systems exist to measure changes in Key Performance Indicators which might be suitable for inclusion in the contract.
* **Budget**. Determine how much the client can spend on works and services provided under the contract.
* **Client capacity**. Assess and describe the extent to which the client will be able to monitor and verify the program manager’s work, its cost reports, and its improvements in performance.

**Output:** Situation Report covering the above items.

# Phase 2: Develop Contract and Procurement Strategy

The Consultant is to design and draft a suitable Incentivized Program Manager contract and procurement strategy, and sound out market interest.

## Contract Design and Drafting

The Consultant should design and draft the contract. The contract must:

* Specify the improvements sought, and provide a way in which those improvements can be measured (for example, through KPIs)
* Define the program manager’s scope of work
* Confer on the contractor considerable autonomy to design and manage a program to achieve those improvements, through improving the condition, configuration and management of the distribution network in an area (as well as improving other parts of the utility if appropriate)
* Specify in detail the approval, reporting, and payment procedures that apply to the program. This will require consideration of issues such as:
  + Should the program manager have to develop a program plan and get it approved by the utility? What level of detail in the plan is needed? On what grounds would the program plan be approved, or changes requested?
  + Should the program manager then be enabled to develop the procurement packages and specifications, and run the procurement? What rules will the program manager have to comply with? What standard form documents and processes will have to be used and followed? How will the contracts with the contractors who do the work be agreed? What principles need to be followed when the program manager designs those contracts? What obligations, rights and liabilities will the contracts confer on the contractors, the utilities and the program manager?
  + Will the utility automatically contract with the contractors selected by the program manager? Of will the utility apply additional scrutiny? Alternatively, will the program manager itself contract with the contractors?
  + Supervision of works, certification of works for completion, and management of change-orders—should these be delegated completely to the program manager? Or should the utility have additional steps that it goes through before approval?
  + Will payment to the contractors be made directly by the program manager? Or will the utility pay automatically once the program manager has certified payment? Or will the utility have to go through its own checks before paying?
* What duty of care will the program manager owe to the utility in procuring and managing the contractors to do the work.
* Does the program manager need an avenue of redress if the utility makes poor decisions that could affect the manager?
* Incentivize the program manager. This can be done by setting performance payments for achievement of improvements on KPIs that are on or above what was thought to be possible for the budget available. In setting the incentive arrangements, the following factors should be considered:
  + The value to the utility of improvements on specified KPIs
  + The practical motivational effect of any given level of payment
  + The level of improvement that could reasonably be expected for any given level of budget
  + The budget available
  + The reasons that a program manager contract was chosen, which may include the desire to go quickly in a situation of limited information.

In many cases these factors may suggest that a KPI which will be motivational for a program manager will be relatively insignificant in the total cost of the NRW reduction program, and that given the uncertainty around what is achievable for any given level of budget, it will be justified to err on the side of modest, rather than aggressive, targets to be achieved for the performance payments start.

* Require the program manager to report on improvements in a verifiable way
* Require the program manager to ensure that the contractor reports on costs in a verifiable way, and invoice appropriately
* Provide for the program managers costs to be covered with a profit margin
* Ensure the that contract is commercially attractive to skilled program managers, while not being more costly than necessary for the utility.

The consultant must include all necessary commercial, technical and legal parts of the contract, including those set out below.

Objective. The objectives for the contract must be specified, including:

* The Key Performance Indicators (KPIs) on which improvement is sought
* Any other objectives.

Contract area. This should define the area of the network on which the program manager is to work.

**Authority.** The authority the contractor will have on questions such as designing work packages, procuring contract**o**rs, certifying the works, managing change order, and approving or making payment.

**Communications and documentation.** What protocols should govern communication and record-keeping among and between the utility, the program manager, and the contractors who implement the program?

Approval arrangements. The things on which the program manager needs approval, and how that approval is to be obtained.

Contributions provided by the Utility. All contributions from the utility, for example of information, staff, materials, or anything else, should be spelled out.

**Other Public Sector Obligations.** Any obligations of government to support the program manager or contractors in acquiring necessary permits, site access, permission to break roads, and the like.

Measurement and report on improvements. How KPIs are to be specified, reported on and measured.

The KPIs may include:

* **Service Levels,** such as:
  + Continuity of supply
  + Reliability of supply
  + Pressure at customer premises
  + Chemical and bacteriological parameters of water being received by customers, and comparison with drinking water standards; as well as
  + Description of the systems and methods used to assess Service Levels.
* **System Input Volumes** to the Contract Area
* **Financial performance indicators,** such as:
  + Revenue (which may be the total from the contract area, or per unit of input volume)
  + Costs (such as pumping costs or electricity consumption in the contract area); and
  + Collections.

The contract may require that the program manager prioritize the putting in of certain systems to measure the KPIs specified, and provide for reporting formats, procedures, and independent audit.

Mandated works. While the contract should give the program manager freedom to develop a plan best suited to improving the KPIs, some works may be mandated. Any mandated works should be specified in the contract.

**Payment for works and services.** The contract must specify how contractors will be reimbursed for costs incurred. This should include:

* The total limit on payments under the contract
* Any limits on which costs may be reimbursed
* Whether payment for works and services will be made by the utility or the program manager
* Any pre-approvals of costs that are required
* How costs are to be reported and invoiced
* How reported costs and invoices are to be validated and audited
* How the cost reporting system can best allow the utility to link costs incurred to improvements made, and so learn the costs of making improvements on its system.

**Performance payment.** The contract may include a performance payment for improvements on the KPIs, or a deduction for use of distribution input[[3]](#footnote-4) above a certain volume, constituent with the concept of a program manager contract.

**Funding sources.** The financial arrangements should be specified, including the sources of funds which will be used to pay the manager and contractors.

Constraints. Any constraint within which the contractor must operate. These may include things such as: maximum financing available; maximum budget available for payment to the contractor; maximum system input volume that may be used; or minimum service levels that must be sustained to various customer groups during the improvement works.

**Consultation and information sharing.** Any requirements for consultation and information sharing beyond reporting on results and costs should be specified.

**Follow on work.** The contract shall specify how, and on what terms, the manager may participate in a second phase of the program, including a competitively bid incentivized contract, or other follow on work that is envisaged.

**Output:**

* A Contract Design Report setting out the design principles and choices and giving reasons for them (this may be delivered and consulted on before the contract is drafted) and;
* A Draft Incentivized Program Manager Contract that is complete and addresses all the points mentioned above.

## Market Sounding

The Consultant will sound out suitable potential program managers to see if there is sufficient interest in the transaction to create competitive tension. The results of the market sounding shall be presented to the client in a market-sounding report, and considered in the design.

**Output:** A Market Sounding Report summarizing the level of market interest, and detailing any changes proposed to the Draft Contract as a result of the Market Sounding, with reasons.

## Environment, Safety and Social Due Diligence

Note: this may only be needed for a standalone project. If the NRW PBC is part of a larger project, the ESIA work may be bundled into that done for the larger project.

The Consultant will assess the extent to which the work done under the program will have environmental, safety or social implications, and recommend what needs to be done to ensure compliance with local and national standards, and World Bank Group requirements, in these areas. Cost implications must also be identified. The output from this task will be an Environment, Safety and Social Due Diligence Report, summarizing the above items.

## Procurement Strategy

The Consultant shall develop and apply an appropriate set of qualification criteria, and a recommendation for how bids will be evaluated and the winning bidder selected. This shall include:

* Recommending a qualification strategy, including qualification criteria and whether to do prequalification
* Setting out a proposed transaction timeline and workplan
* Recommending a selection method. Note that program manager contract is intended to be low risk for the manager, quick to prepare, and to deliver a high-quality result. Since the program manager is small cost of the total program, it may not be appropriate to base selection on cost, or on output to be achieved for a fixed budget.

The consultant should assess the advantages and disadvantages of several methods of selection, and recommend one that is consistent with the philosophy and objectives of the contract. Methods to consider include: quality based selection; selection based on lowest mark-up on costs offered; or on cap on total mark-up.

# Phase 3: Manage Competitive Selection Process for Contractor

The program manager shall run a competitive process to select a suitable contractor, in accordance with the Procurement Strategy agreed to in Phase 1. To do this, the program manager shall perform the following tasks.

* Market the transaction
* Develop and implement qualification criteria and a system for qualifying bidders
* Prepare the Request for Proposals, including:
  + Instructions to Bidders
  + Evaluation criteria
  + Information Memorandum
  + Any other legal documents required for the conclusion of an effective transaction
* Manage the bidding process for the client, including a bidders’ conference (if appropriate) dealing with requests for clarification, and receiving bids and keeping them confidential.
* Assist the client in evaluating the bids
* Assist the client in any negotiations needed to reach commercial close
* Assist the client in managing the relationship with the contractor for the first three months after the client team starts work
* Assist the client in managing stakeholder relationships and communication throughout this phase

**Outputs** from this phase will be:

* Qualification Report
* Request for Proposal
* Evaluation Report
* Wrap-up Report at the completion of the assignment. This shall describe the development and implementation of the contract, describe strengths and weaknesses of the approach, offer lesson for similar initiatives in the future, and suggest next steps for the client.

**C. SPECIFIC INPUTS TO BE PROVIDED BY THE CLIENT**

The World Bank will make available all relevant documents provided by its Client and other organizations. All information and background documents provided as part of this RFP are for the sole purpose of preparing the Technical and Financial proposal for this assignment. All information should be treated as confidential and not used for any other purpose.

**D. SPECIAL TERMS & CONDITIONS / SPECIFIC CRITERIA**

**Language**

All reports should be prepared in English, unless otherwise specified, and delivered in Word format. The financial model shall be delivered in Excel format.

An executive summary of the various documents may be provided in the primary language of the client.

**Timing/Assignment Duration**

The Consultancy will start on <XXXX>. The assignment is expected to be completed in <XX> months.

**Reporting**

The Consultants will report to TTL based in <XXXX> who will coordinate with the other members of the World Bank Task Team.

**Payment Schedule**

<XXXX> To be included by the TTL / procurement advisor

Required Qualifications and Experience

The Core Team will have the following qualifications:

* **Team Leader** – Must have:
  + Led the design and implementation of at least 3 successful projects involving distribution system improvements
  + Worked on at least 3 projects involving non-revenue water control.
  + At least 10 years’ experience working with water utilities
  + Worked on at least 2 utility improvement projects in developing countries and at least 1 utility improvement project in developed countries
  + A degree in engineering, economics, finance or law.
* **Distribution Network Improvement Engineer** – Must be a qualified engineer, and have:
  + Worked on least 5 projects to help water utilities control Non-Revenue Water
  + At least 5 years of experience working with water utilities.
* **Lawyer** – Must have:
  + A degree in law
  + At least 5 years’ experience advising on commercial contracts related to infrastructure
  + Knowledge of the laws of the country concerned with utilities and contracting

**Additional points about the team**

* The Team Leader may also fill the position of either Distribution Engineer or Lawyer, provided he or she meets the criteria for both positions for which he or she is proposed
* It is acceptable to propose additional team members in addition to the core positions listed.

Potential Downstream Work

Downstream work is possible following this assignment for the repetition or scale-up of the approach, further assistance to the client with management of the contract, or development of a second stage such as one or more competitively bid incentivized contracts.

1. “Operational Manual: Global Program on Developing Good PBC Practices for Managing NRW,” The World Bank, December 2016. The Operational Manual describes the process for planning and implementing non-revenue water (NRW)-reduction projects, specifically through Performance-Based Contracts (PBCs). It focuses on the process and key decisions to be made. It outlines how the national government, the water utility, the World Bank, and the consultant should work together to improve water service quality and sustainability by correctly assessing when NRW PBCs will be useful, and implementing them well. [↑](#footnote-ref-2)
2. “Operational Manual: Global Program on Developing Good PBC Practices for Managing NRW,” The World Bank, December 2016. The Operational Manual describes the process for planning and implementing non-revenue water (NRW)-reduction projects, specifically through Performance-Based Contracts (PBCs). It focuses on the process and key decisions to be made. It outlines how the national government, the water utility, the World Bank, and the consultant should work together to improve water service quality and sustainability by correctly assessing when NRW PBCs will be useful, and implementing them well. [↑](#footnote-ref-3)
3. As defined on the IWA Water Balance. [↑](#footnote-ref-4)