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**COMMON MARKET FOR EASTERN AND**

**SOUTHERN AFRICA**

**TERMS OF REFERENCE (TORs) TO DEVELOP A MODEL PPP FRAMEWORK AND PROVIDE TECHNICAL SUPPORT IN THE COMESA REGION**

**THE REGIONAL INFRASTRUCTURE FINANCE FACILITY (RIFF) PROJECT**

**NOVEMBER 2021**

1. **BACKGROUND**

The Common Market for Eastern and Southern Africa, COMESA is a regional economic body comprising 21 Member Countries. With a population of over 540 million and global trade in goods worth more than US$ 235 billion, COMESA forms a major marketplace for both internal and external trading. COMESA recognizes the strategic importance of the infrastructure sector in its regional integration agenda. Infrastructure is an enabler that supports all the sectors of the economy, inter alia agriculture, industry, mining, health, education and trade. If ever COMESA wants to be competitive and reduce the cost of doing business, investment in infrastructure must be scaled up.

COMESA is a diverse region, and much of it suffers from an ailing or non-existent infrastructural base - a key factor that affects the region’s ability to realize its full potential for economic growth, international trade, and poverty reduction. On top of this, the limited existing infrastructure is severely impacted by extreme events associated with climate change. Statistics reveal that COMESA’s infrastructure financing gap has been widening over time.

Private sector financing in the form of PPPs is key to bridging this gap but private investment into COMESA’s infrastructure remains low. Mobilizing the necessary private sector funds to satisfy the growing demand for infrastructure investment will require new sources of long-term finance and alternative ways of deploying it, while also improving the efficiency with which existing resources are used. Having COMESA Secretariat develop a PPP framework and leveraging on the Secretariat’s mandate given to it by its member countries to develop priority regional physical infrastructure, policy and regulatory harmonization and facilitation can lead to the regional adoption of PPPs as a way of bridging infrastructure financing gap using private sector finance.

To support the development of infrastructure in the region, and particularly the participation of the private sector in infrastructure finance, COMESA has partnered with the World Bank to implement a project called **Regional Infrastructure Finance Facility (RIFF)** whose objective is to promote access to long-term finance and improve the enabling environment for investment in infrastructure.

Increasing private sector investment in infrastructure requires COMESA Member States to implement various strategies that promote an environment conducive for private investment which include among others developing their own PPP frameworks. In this regard, COMESA Secretariat under the RIFF seeks to develop a PPP Model Framework that can be adopted and adapted by COMESA/TDB Member States to suit their specific circumstances.

In this regard, COMESA is seeking the services of a consultancy firm to conduct an assessment in each of member countries/target region’s existing PPP frameworks. The studies will characterize the use of PPPs in the financing of infrastructure in the COMESA region. Based on these assessments the consultant will identify good practices to adopt and gaps to fill and develop a PPP framework to act as a reference guide to provide advice on what PPP practitioners should know and to guide them on what they should do when implementing infrastructure projects as PPPs.

1. **OBJECTIVES OF THE CONSULTANCY ASSIGNMENT** 
   1. **General Objective**

The assignment is aimed at undertaking an assessment of the existence and use of PPP frameworks in the COMESA region. Based on these assessments the consultant will identify good practices to adopt and gaps to fill and develop a PPP framework to act as a reference guide to provide advice on what PPP practitioners should know and to guide them on what they should do when implementing infrastructure projects as PPPs. The general objective is to develop a Model PPP framework that when adopted and adapted by COMESA/TDB Member States will:

* Enable more private investment in infrastructure by increasing project financing options;
* Harnessing private sector innovation and efficiency in the delivery and provision of infrastructure;
* Achieve Value for Money in the provision of infrastructure and public services;
* Improve accountability in the provision of infrastructure and public services;
* Ensure that the long-term delivery and management of PPPs is sustainable, especially when stakeholders change over time (political actors, champions, representatives in ministries or PPP units); and
* Stimulate growth and development in the COMESA region.
  1. **Specific Objectives**

The specific objectives are:

* To carry out an assessment of the current situation on the application and use of PPP Frameworks in identification, selection, appraisal, structuring, tendering and contract management of PPP projects in COMESA Member States and define the gaps that can be improved;
* Develop a PPP Model Framework such that if adopted and adapted by COMESA/TDB Member States it will:
  + close the identified gaps and help foster PPP best practices in policy, regulatory, and institutional frameworks in the COMESA region;
  + signal a stable and consistent way of PPP projects delivery based on a fair, transparent and competitive process that is intended to gain the confidence of the private infrastructure investors;
  + define sustainable Government PPP project funding support schemes through core financing and risk mitigation while transparently accounting for and managing the resultant Government direct and contingent liabilities;
  + build the foundation for a robust monitoring and evaluation of the PPP programme in a way that fosters knowledge capture and sharing of lessons learnt;
* During the process of developing the PPP Model Framework, identifying typical PPP projects in the Member States and provide Technical Support to 5 Member States to guide them in the preparation of the identified potential PPP projects;
* Provide Capacity Building through workshops to help Member States in domesticating the PPP Framework;

1. **SCOPE OF WORK**

The consultant is expected to undertake the following tasks:

**Task 1: To carry out an assessment of the current situation on the application and use of PPP Frameworks in identification, selection, appraisal, structuring, tendering and contract management of PPP projects in COMESA Member States and define the gaps that can be improved.**

**Task 2: Define the purpose and advantages of having a PPP framework and the influence that a jurisdiction’s legal and administrative traditions has on the PPP framework development. This task include:**

* Definition of the objectives and scope (jurisdiction, sector and size) of the framework; and
* Elaboration on how the legal and administrative traditions of a jurisdiction will influence how the framework is constructed.

**Task 3: Define the process of PPP project identification and screening elaborating on the following sub processes;**

1. The framework should define how to screen PPP projects to ensure that only projects that meet criteria which include the aspects highlighted below proceed.

* The project fits in with a broader plan for the sector. The projects that are most likely to demonstrate Value for Money are those that align with this sector plan;
* The project meets PPP program objectives;
* The project is economically viable and fiscally responsible.

1. The framework should define project identification and screening procedures and institutional responsibility including:

* Who proposes the projects? Can only public entities propose PPP projects? On the other hand, is it possible for private sector to propose PPP project?
* Who approves further development of the PPP project? and
* What project documentation is required for approval?

**Task 4: Define the process of PPP project appraisal elaborating on the following sub processes;**

1. The framework should define how to appraise PPP projects to ensure that only projects that meet the following criteria proceed:

* Potential PPP projects are commercially viable and bankable;
* A potential PPP project exhibit Value for Money;
* Potential PPP projects can be project financed and can be being ring-fenced;
* Potential PPP projects have clear, specific and measurable outputs; and
* Potential PPP projects have enough information to enable cost and risk assessment;

1. The framework should define project appraisal procedures and institutional responsibility including:

* The required content of the PPP appraisal including the studies that need to be done and the questions that need to be answered to determine if a project is economically, financially, technically, environmentally, and legally feasible; and
* Who approves the PPP appraisal?

**Task 5: Define the PPP project Structuring, Procurement Process and Contract design elaborating on the following sub processes;**

1. The framework should define how to Structure PPP projects and design the Procurement Process and Contract to ensure that only projects that meet the following criteria proceed as PPPs:

* All or most of the project’s risks should be identifiable and it should be possible to allocate them to party most positioned to manage and control them;
* The project should be such that appropriate risk management plans can be developed;

1. The framework should define project Structuring, Procurement Process and Contract design procedures and institutional responsibility including:

* Define procedures for risk allocation, risk management plans development and contract drafting;
* Giving guidelines for procurementclearly indicating to line agencies and the private sector what the standard PPP procurement process will be;
* Clear guideline as to which entity approves the project for tender?

**Task 6: Define the PPP project Tender and Award Process elaborating on the following sub processes;**

1. The framework should define how to design the Tender Process to ensure that the Tender process meet the following criteria:

* Has there been enough competition leading to efficient price discovery and has the process been able to attract high quality bidders?;
* Has the process been transparent and conducted with integrity and fairness?

1. The framework should define and give guidance on the following procedures and institutional responsibilities:

* The framework should not be overly prescriptive but rather give guidelines on PPP marketing, RfQ (EoI) and RfP evaluation criteria;
* The framework should also give guidance as to the extent of negotiations that will occur to reach commercial close;
* After commercial close lenders need to agree to funding the project. The framework should address the risk of lenders wanting to change the terms reached at commercial close. The framework should also make it clear who is responsible (on the government side) for this process, and what approvals are needed if it seems necessary to agree to changes to the contract in order to reach financial close.

**Task 7: Define the PPP Contract Management Process: Construction Phase, Service Delivery and Hand Back, elaborating on the following sub processes;**

1. The framework should define how to design Contract Management Process: Construction Phase, Service Delivery and Hand Back to ensure that the phases meet the following criteria:

* The PPP contract management framework should be robust enough and must be supported by a properly configured governance and contract management team for it to be able to withstand and resolve unexpected events after contract execution to avoid renegotiations and contract termination; and
* Roles and responsibilities of the private partner and the government within the contract management framework must be clarified and administrative process must be properly planned and implemented.

1. The framework should define and give guidance on the following procedures and institutional responsibilities:

* The framework must clearly define the contract renegotiation and contract termination processes; and
* The framework should specify the government line agency responsible for contract management and the how issues are escalated to the government central agency.

**Task 8: Define procedures to handle privately-initiated (unsolicited) PPP projects:**

* The framework should define clear processes for handling unsolicited proposals to ensure transparency and to achieve Value for Money. Clarity of processes will assist the government in managing unsolicited proposals, and will also help incentivize private developers to invest resources in developing good quality project proposals, and encourage potential competitors to engage in the subsequent bidding process.

**Task 9: Define the typical PPP institutions and their responsibilities, that is, which entity will play what role(s) at each step of the process. This includes:**

* Identifying existing institutional responsibilities and processes and then consider adding PPP responsibilities and process onto them;
* Assigning responsibilities to agencies that have the incentives, information, and competence to discharge the responsibilities and clearly define any institutional relationships while avoiding creating overlaps and additional coordination needs;
* **Specialized PPP Units**: Make appropriate recommendations on the possibility of setting up PPP units to act as repository of skill and experience in developing PPPs. Define the PPP’s roles and responsibilities, its location, resourcing and funding mechanism;
* **External PPP transaction advisors :** Make appropriate recommendations of the recruitment of external transaction advisors and define their role;
* **Ministry of Finance:** Define the possible role of the Ministry of Finance in ensuring that PPP projects achieve Value for Money and management of fiscal risks;

**Task 10: Define the PPP Public Financial Management, that is, how fiscal commitments under PPPs are controlled, reported, and budgeted. This includes:**

* Description of common types of PPP fiscal commitments and how to quantify them;
* Description of how to budget for PPP commitments; and
* Description of how to account for PPP commitments and how to control them.

**Task 11: Define the Oversight of PPP Programs and Projects: that is the broader governance of the PPP program regarding how other entities and the general public participate in the PPP process, and how they hold the executive accountable for its decisions and actions on PPPs. Entities and groups outside the executive with a role to play in ensuring good governance of the PPP program can include but not limited to:**

* **The legislature:** Define the oversight roles of the legislature including but not limited to passing PPP legislations;
* **Auditing entities:** Define the possible oversight roles of the auditing entities through auditing of government financial statements, review of PPP projects performance and assessment of PPP Value for Money; and
* **The public:** Define the form of feedback channels and consultation processes that can enable the public to participate in PPP project design and monitoring of service quality so that they are empowered to exercise their oversight role during elections.

**Task 12: Member States will be at different levels and stages in their development and implementation of PPP frameworks. Using the developed PPP framework, the consultant shall offer technical assistance to the Member States to assist them to move and complete development and also implement their PPP programmes using the developed framework: This shall include but not limited to:**

* Capacity building to domesticate the developed PPP Framework through 5 training workshops;

**Depending on demand from Member States and the Consultant’s findings on the Member States’ level in the development of their PPP Frameworks, offer targeted Technical Assistance and capacity building to 5 Member States on the following:**

* Establishing / Strengthening PPP frameworks
* Capacity building on project identification, appraisal, structuring, tendering and implementation project contract management including PPP suitability criteria definition and allocation of responsibilities at each stage;
* Capacity building on how to handle unsolicited proposals, the pitfalls of poorly handling unsolicited proposals and how to bring them to the competitive platform without compromising Value for Money;
* Capacity building on designing PPP institutional frameworks including:
* PPP units their roles and responsibilities and their position in the government structure;
* The roles and responsibilities of the Ministries responsible for PPPs and those responsible for PPP budget like the Ministry of Finance;
* Capacity building on identification of public institutions that can play an oversight role on the implementation of the PPP programme including the legislature and the public; and
* Capacity building on how to identify, manage and account for PPP direct and contingent liabilities.

1. **DELIVERABLES (REQUIRED OUTPUTS)**

The outputs and deliverables of the consultancy shall be:

1. Inception Report
2. Consultation Workshop
3. Draft Final PPP Framework and Draft Capacity Building plan
4. Validation Workshop
5. Final PPP framework and Capacity Building plan; and
6. Offer TA to 5 Member States as stated in Task 12
   1. **Inception Report**

On the basis of reviewed documents, the Consultant shall prepare an Inception Report outlining the methodology and detailed work plan for fulfilling the Terms of Reference for the Study. This shall include a comprehensive list of key documents for review, list of stakeholders to consult and a proposed schedule for stakeholder consultations. The Inception Report shall be discussed and approved by the COMESA.

An electronic version of the Inception Report shall be submitted to COMESA two (2) weeks after commencement of the assignment. The Inception report shall include how the consultant will undertake this work, its proposed activities, and how to fulfil the Scope of Work.

* 1. **Consultation Workshop – Draft preliminary PPP Framework**

The consultant will present a **Draft preliminary PPP Framework** at a consultation workshop attended by the COMESA Secretariat and delegates from Member States (both Government and Private Sector) and other invited stakeholders to present preliminary findings. Participants will be drawn from institutions and businesses involved in the promotion development and implementation of infrastructure. This workshop will allow other Member States not visited by the consultant to provide their inputs. The consultation workshop is expected to take place seven (7) weeks after commencement of the assignment.

* 1. **Draft Final PPP Framework**

The Draft Final PPP framework shall be submitted in two (2) weeks after consultation workshop summarising the main PPP guidelines and recommendations. The Draft Final PPP framework shall fully address all tasks as set out in the Terms of Reference including an Executive Summary.

* 1. **Validation Workshop**

The consultant will present the Draft Final PPP Framework to a validation workshop attended by the COMESA Secretariat and delegates from Member States and other invited stakeholders.

* 1. **Final PPP Framework**

The Consultant shall submit a final PPP Framework two (2) weeks after the validation workshop. The PPP Framework shall provide detailed guidelines on the identification and implementation of PPP programmes and projects, including decision criteria and institutional arrangements and responsibilities, public financial management of PPPs and PPP oversight. An electronic version of the framework shall be submitted to the Manager of the Project Implementation Unit (PIU) with copy to the COMESA Director Infrastructure and Logistics.

1. **MANAGEMENT**
   1. **Contracting**

The Contract for the Assignment shall be signed between COMESA Secretariat and the Consultant.

* 1. **Language**

All documents shall be in English language.

* 1. **Supervision**

The work of the Consultant shall be supervised by the Project Manager of the PIU and COMESA Director Infrastructure Development and Logistics Division through regular meetings and communication to monitor progress of the study and provide general and specific guidance.

* 1. **Reporting**

All reports shall be in English submitted in both electronic and printed format on A4 paper. The Final Report including all background documents will be submitted in in electronic format to the COMESA Secretariat.

* 1. **Location**

It is envisaged that the Consultant will primarily work from his/her country. However, missions may be undertaken to five agreed Member States and COMESA Secretariat for information and data collection.

1. **TIMEFRAME**

The Consultant will be expected to put in a combined effort not exceeding 500-person (working) days. The assignment will be undertaken within a period of **24 months** with the following activities and outputs expected;

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| --- | --- | --- |
| **S/N** | **Activity** | **Time** |
| 1 | Kick-off meeting | 0 |
| 2 | Submission of draft Inception Report | 0 + 4 weeks |
| 3 | Submission of revised inception report incorporating stakeholders’ comments | 0 + 6 weeks |
| 4 | Organize regional consultative workshop on the study | 0 + 12 weeks |
| 5 | submit Draft Model PPP Framework and PPP regional assessment report | 0 + 20 weeks |
|  | Validation workshop | 0+22 weeks |
|  | Submission of Final Report Model PPP Framework and PPP Regional Assessment Report | 0+24 weeks |
| 6 | TA Support and Capacity Building | 0 + 94 weeks |

1. **PROFILE OF THE CONSULTANT**

The Consultant shall determine the number and nature of experts they will require to achieve the objectives of the assignment, in accordance with their proposed approach and methodology. Nonetheless, the Consultant’s team shall be composed of at least 4 experts with extensive demonstrable experience/knowledge as follows:

* 1. **Team Leader**

|  |  |
| --- | --- |
| Education:  Bsc in Engineering, Energy, Economics or related discipline  Master’s degree in engineering, economics, business or energy related discipline.  - Other skills: Proven communication skills (oral and written). | Minimum requirement: At least 10 years of experience in the infrastructure sector including Energy, Transport, ICT and Water.  Specific experience in PPPs including project identification, appraisal, structuring and contract management;  Specific experience with drafting PPP policies and frameworks;  Specific experience with setting up of PPP institutions, resourcing them including recruitment of external transaction advisors;  Specific experience in implementing PPP policies and frameworks including selection of pilot PPP projects used to fine tune the PPP framework |

* 1. **PPP Expert**

|  |  |
| --- | --- |
| Education:  Bsc in Engineering, Energy, Transport, ICT, Water, Economics or related discipline  Master’s degree in Engineering, Energy, Transport, ICT, Water, Economics or related discipline.  - Other skills: Proven communication skills (oral and written). | Minimum requirement: At least 10 years of experience in the infrastructure sector including Energy, Transport, ICT and Water.  Certified PPP professional;  Specific experience in PPPs including project identification, appraisal, structuring and contract management;  Specific experience with drafting PPP policies and frameworks;  Specific experience with setting up of PPP institutions, resourcing them including recruitment of external transaction advisors;  Specific experience in implementing PPP policies and frameworks including selection of pilot PPP projects used to fine tune the PPP framework |

* 1. **Legal, Institutional Frameworks, Regulations Expert**

|  |  |
| --- | --- |
| * **Education**: Bsc in Law or related discipline * Master’s degree in Law or related discipline * **Other skills:** Proven communication skills (oral and written) | Minimum requirement: At least 10 years of experience in the infrastructure sector including Energy, Transport, ICT and Water.  Certified PPP professional;  Specific experience in PPPs including project identification, appraisal, structuring and contract management;  Specific experience with drafting PPP policies and frameworks;  Specific experience with setting up of PPP institutions, resourcing them including recruitment of external transaction advisors; |

* 1. **Project Finance Expert**

|  |  |
| --- | --- |
| * **Education**: Bsc in Business or related discipline or related discipline * Master’s degree in Business, Finance or related discipline * **Other skills:** Proven communication skills (oral and written)   . | Minimum requirement: At least 10 years of experience in the infrastructure sector including Energy, Transport, ICT and Water.  Certified PPP Project Finance professional;  Specific experience in PPPs including project identification, appraisal, structuring and contract management;  Specific experience with PPP transaction advisory;  Specific experience with PPP financial Modelling; |