

Scope of Work for Short-Term Technical Assistance (STTA) for Review of the Current Private Public Partnership (PPP) Law Bottlenecks for Private Sector Investment in the WASH Sector and Preparation of the Respective Regulation

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| Project Name: | USAID Transform WASH Activity |
| Task Order No.: | TBD |
| Consultant Name: | TBD |
| Consultant Title: | Transactional Advisor |

1.0 Introduction

1.1 Project summary

The USAID Transform WASH Activity aims to support the development of the Mozambican water, sanitation, and hygiene (WASH) sector at national and sub-national levels by supporting the Government of the Republic of Mozambique (GRM) with improved WASH governance, access to WASH services, behavior change and gender equality in small towns, rural growth centers and peri-urban settlements. The program supports USAID/Mozambique’s WASH Project Appraisal Document (M-WASH PAD) main goal of achieving “improved well-being of communities, especially women and girls” through:

- Strengthening policy implementation and institutional capacity to deliver WASH services.
- Increasing and sustaining availability of water infrastructure and services.
- Improving access to financing and business environments for the private sector in the WASH service delivery chain.
- Accelerating the uptake and maintenance of key water and hygiene behaviors among households and institutions; and
- Increasing women’s leadership within the sector, and enhanced decision-making power within the household, for WASH products and services.

The above results will be accomplished through the activity’s four main components: 1) Policy implementation and institutional capacity of the GRM to deliver WASH services strengthened; 2) Government and private water providers technical, financial, and management capacity strengthened; 3) Access to water and sanitation financing and business environment for the private sector improved; and 4) Uptake and maintenance of key water and hygiene behaviors among households and institutions accelerated. USAID Transform WASH will geographically cover three provinces, Cabo Delgado, Nampula, and Zambézia, and will also provide capacity building to key subsector central level institutions.

1.2 Background

As part of the expansion of the delegated management framework of the urban water supply, the GRM created, via the Decree 19/2009 of May 13, the *Administração de Infra-estruturas de Água e Saneamento* (Water Supply and Sanitation Infrastructure Administration [AIAS]), whose mandate was reviewed by Decree 112/2020 of December 29, which aims to promote the autonomous, efficient, and financially sustainable management of public water supply and sanitation systems. AIAS holds the legal status of *pessoa colectiva* of public rights of national scope, with legal status and administrative and financial autonomy. AIAS is responsible for the management of the public assets of secondary water supply systems (130 small towns) and others allocated by the government to its management, and public assets of wastewater drainage systems (151 cities and small towns). The management of assets is delegated to private operators, public autonomous entities, or community organizations.

A key component of its role is to promote investment for the improvement of water supply and sanitation services. AIAS has accomplished its mandate to date by 1) directly developing new water supply and sanitation systems or rehabilitating systems using public funds and support provided by development partners, 2) ensuring their efficient operation by delegating operational responsibility to local private operators through a delegated management framework via lease contracts, or *contratos de cessão de exploração*, and 3) by executing effective oversight over this private service provision.

Given the continued shortage of public funds allocations and donor financial resources available to fund the development or rehabilitation of water supply and sanitation systems under its mandate, AIAS has been exploring the potential for the private sector to provide much needed investment for the development of these systems. To that end, the following actions have been developed to date by AIAS with USAID support through the Water, Sanitation, and Hygiene Finance (WASH-FIN) activity: (i) development of the public private partnership (PPP) structure, which defines the type of PPP recommended for AIAS piped water systems and provides the respective implementation procedures through a respective manual; (ii) direct negotiation of a concession contract with an international investor for design, construction, and operation of eight piped schemes (Chimbunila, Nipepe, Gúruè, Morrumbala, Marromeu, Machanga, Macia, and Limpopo) through a concession contract; and (iii) development of a blended financing mechanism concept (small towns water fund concept) aimed at capitalizing public and donor grant financing to leverage private investment in AIAS piped water systems. The eight piped water systems concession contract was signed in April of 2021 and is still waiting for financial mobilization by the private partner.

During the implementation of the activities supported by USAID WASH-FIN, it was found that implementation of PPP contracts in water supply projects under the current Mozambique PPP law can be challenging mainly because it appears that it was drafted considering the underlining conditions applicable to highly profitable sectors such as mining, gas, and oil industries without specific provisions for potential social projects, such as water supply and sanitation, with low profitability rate, some of them requiring government contribution in the form of blended finance. A quick assessment made in 2021 found that among others, the current PPP law defines a maximum government contribution of up to 20%, well below an estimated average of up to 65% required to make private investment viable as determined by estimates based on past feasibility studies, infrastructure development projects already implemented, and the approved water tariffs under implementation in small towns. It was also found that the PPP law establishes fees and taxes without providing flexibility for the implementing department to adjust them, which can make investment in water supply projects of the size of small town piped systems unattractive to private investors.

AIAS is currently moving toward the implementation of the small towns water fund which is intended to attract private investment to its piped water systems to accelerate infrastructure development and is still working with its private partners for financial closure of the eight piped systems. These efforts and other efforts in the Mozambique water sector may not yield the desired results if the bottlenecks in the PPP law are not addressed.

The Mozambique water sector is at later stage of the drafting of a new water supply and sanitation law, which includes for its implementation, the need to establish a sector fund and promote private investment in water supply projects.

In light of the above, Tetra Tech, as a USAID Transform WASH implementing agency, would like to engage the services of an individual transaction advisory consultant to conduct the review of the bottlenecks of the Mozambique PPP law and prepare the regulation of the law which enables private sector participation in water sector projects. The transactional advisor is expected to deliver this assignment in closely collaboration with legal advisor engaged in a separate contract.

I.3 Objective of the assignment

The main objective of the assignment is to support a detailed review of the potential bottlenecks of the current Mozambique PPP law for private investment in water supply and sanitation projects, support the preparation of the water supply and sanitation law regulation which enables private sector participation in water sector projects, provide transactional advisory services to AIAS on an ongoing basis, and develop potential new PPP provisions for piped water supply systems investments, as required.

COMPONENT A: REVIEW OF THE PPP LAW BOTTLENECKS

The overall objective of this component of the assignment is to review the current Mozambique PPP law with regard to potential bottlenecks for private investment in water sector and develop a proposal of provisions to make viable private investments in the sector. The specific objectives of the assignment are as follows:

- Review the current Mozambique PPP law to identify potential bottlenecks for private sector investment in the sector;
- Develop a proposal of specific provisions to be considered for the water sector, aimed at making private investment viable in the sector;
- Develop a proposal to align the implementation of PPP projects in the water sector with the public contracting procurement procedures;
- Prepare the regulation which provides the enabling environment for private sector investment in PPP water projects; and
- Recommend alternative approaches for approval of the proposed improvements to the law, considering regulation of the water supply and sanitation law or a specific regulation of the PPP law applicable to the water sector.

2.0 Specific Tasks

The services required are anticipated to include the following:

Task 1 – Internal and external kick off (Week 1 and 2)

- Support the legal advisor in preparation for the kick-off meeting designed to ensure the consultants' understanding of the scope of work and alignment of expectations with the client (Transform WASH activity) and hold this meeting with the Transform WASH team and USAID. A PowerPoint (PPT) presentation shall be prepared in advance, which shall provide the proposed timeframe and with the quality satisfactory to the client. The proposed approach shall include, but will not be limited to: sample tools, matrices, criteria, and others, that will guide the consultants' work under the different tasks.
- Provide the legal advisor with transactional inputs on the list of assumptions to be validated during this meeting in advance of the meeting. Participate in discussions related to contract management concerns, including communications protocols, required authorizations, USAID branding requirements, and other items (points to be covered by Transform WASH activity team).
- Coordinate with legal advisor (providing necessary inputs) in the preparation of the draft inception report (ten-page maximum) with an updated methodology, work plan, assignment focal points, agreed communication protocols, required authorizations, and strategy to deliver the assignment, including all tasks and consultations expected to be carried out. The inception report will be subject to review and approval by the client, the Transform WASH activity.

- Support, with inputs, in the preparation of the draft two-page minutes of the internal kick-off meeting highlighting recommendations and guidance provided by the client and agreed actions.
- Support, with inputs, in the preparation of the draft PPT presentation to be used for the external kick-off meeting (or an updated version of the PPT used for the internal kick-off meeting). The review, comments, suggestions, and recommendations from the internal kick-off meeting will inform the finalization of the PPT for the external kick-off meeting.
- Support the legal advisor in holding an external kick-off meeting with Transform WASH activity staff, AIAS, and USAID. The consultants shall collect comments and recommendations from this meeting to inform the finalization of the proposed methodology and work schedule. This meeting is also aimed at identifying assignment focal points at AIAS and other relevant government counterpart institutions at all levels. The subcontractor shall consider that an additional external kick-off meeting might be required with provincial level institutions relevant to *Programa Nacional de Água e Saneamento Rural* (National Rural Water and Sanitation Program [PRONASAR]) small towns piped water systems. In this case, this meeting will be held using an online platform (MS Teams).
- Support, with inputs, the legal advisor in drafting two to three-page minutes of the external kick-off meeting highlighting recommendations and guidance provided by the client and AIAS and agreed actions.

Task 2 – Review of existing secondary data (Week 3 and 10)

Under this task, the Consultant is expected to:

- Conduct a detailed review of the sector legal framework, existing legislation, strategic plans, and other relevant documents to understand the need and the potential limitations to mobilize private investment for water supply infrastructure development. This review shall include the sector specific regulatory framework, main actors, and trends.
- Review the draft of the water supply and sanitation law, under preparation, specifically in aspects related to implementation of PPP and private investment in water sector.
- In coordination with legal advisor, conduct discussions with sector key stakeholders, namely AIAS, *Direcção Nacional de Abastecimento de Água e Saneamento* (National Directorate of Water and Sanitation [DNAAS]), *Autoridade Reguladora de Águas* (Water Regulatory Authority [AURA]), and *Fundo de Investimento e Património de Abastecimento de Água* (Water Supply Asset and Investment Fund [FIPAG]) to understand existing different approaches for private sector investment, current trends elaborated through the preparation of the water supply and sanitation law, the new FIPAG regional water utilities strategy, the AIAS small towns water fund, and AURA's new strategic plan.
- In coordination with the legal advisor, conduct discussions with other stakeholders, namely active key donors in the water sector; private sector actors including current AIAS piped systems operators, private water providers and potential investors and developers; and the financial sector, including local commercial banks and potential international financiers, to understand their approaches,

preferences, and concerns regarding legal and financial implications of the PPP legislations in general and the Mozambique law and other regulatory arrangements.

- In coordination with legal advisor, conduct discussions with the technical team tasked with the finalization of the water supply and sanitation law to better understand the intended strategic and legal approaches for implementation of PPP in the water sector.
- Support the legal advisor in drafting the findings report which provides: (i) the specifics of the water sector for private sector participation in general and in Mozambique, specifically; (ii) the key provisions enabling or hampering private sector participation in water projects, in general and in Mozambique, specifically; (iii) a comparative analysis of other enabling environment aspects conducive for private participation in social projects and specifically water projects, including the macro-economic aspects and existing financial sector regulations; (iv) a comparative analysis of existing and potential actors that can enable private participation elsewhere in comparison to the Mozambique context; (v) the opportunity that the future water supply and sanitation law can provide to address current challenges in attracting private investment to the water sector under the current PPP law; and (vi) a recommended path for regulation approval by the government. The transactional advisor is expected to draft the transactional related sections of the report.
- Support the legal advisor in organizing a half-day workshop to present and discuss the findings with key water sector stakeholders and gather comments and recommendations to inform the design of the proposal for required improvements. Key stakeholders will include central level institutions and potential provincial level representatives, key sector donors, and the private sector actors, including the financial sector.

Task 3 – Develop recommendations to improve the existing PPP law and draft the respective regulation (Week 11 and 24)

Under this task, the subcontractor is expected to:

- In collaboration with the legal advisor, develop a set of financial and/or transactional set of recommendations which combined with the legal related aspects can help achieving the same objective; while ensuring desirable results for the sector (expansion of infrastructure, increased service coverage, increased service quality, and affordable cost-recovery tariffs for the consumers).
- Support the development of a set of other enabling environment recommendations which may not be related to the PPP law and its regulations, but with impact in private sector participation in water projects.
- Develop other recommendations which may indirectly contribute to the successful implementation of water projects in Mozambique, including the type of existing and potential actors, required capacity, and other aspects.
- In close collaboration with the legal advisor, draft a report which provides annexes, the regulation provisions to incentivize the private sector to invest in water sector projects. According to the results of the assessment made in Task 2, this could be either a PPP law regulation or water supply and sanitation law regulation.
- Support the legal advisor in organizing a half-day workshop to present and discuss the recommendations with the key sector stakeholders and gather comments and recommendations from the participants. Key stakeholders will include central level institutions and potential provincial level representatives, key sector donors, and the private sector, including the financial sector.

- Draft, in collaboration with the legal advisor, the final report with the respective regulation in annex.

Deliverables: (i) Draft report for recommendations to improve PPP law; (ii) PPT for stakeholder workshop; (iii) minutes of the workshop; and (iv) final report.

Task 4 – Support the water sector in approval of the regulation

Under this task, the consultants are expected to provide legal and transactional assistance to AIAS and other sector institutions in finalization of the regulation, which will undergo multiple review stages within the GRM approval process towards its publication on the national gazette. This task is subject to the advances in approval of the water supply and sanitation law or/and advances in the review of the PPP law; otherwise, may not be required to be performed by the Consultants.

Deliverables: (i) approved regulation.

B: TRANSACTIONAL ADVICE

The overall objective of this component is to provide AIAS with legal advisory services, as required, towards the financial closure of the concession contract with Operation Water for eight piped water supply systems (Chimbonila, Nipepe, Gurué, Morrumbala, Marromeu, Machanga, Macia, and Nuvunguene) and in other investment projects which may arise. The services required are anticipated to include the following:

- Provide transaction advisory services as support as requested by AIAS and approved by Tetra Tech, to ensure the financial and transactional protection to AIAS and the GRM as they advance towards the implementation of the concession contract with Operation Water for eight piped water systems, signed in 2021.
- Provide transaction advisory services as requested by AIAS and approved by Tetra Tech to ensure the financial protection of AIAS and the GRM as they advance with discussions with new prospective investors for investment in piped water systems, including through concession or through improved lease contracts.
- Provide financial advisory services related to the development and implementation of improved performance of its selected private partners incentivized within the contractual structure to provide the required services by AIAS.

3.0 Deliverables and Due Dates

The consultant will complete the following deliverables, within the deadlines and estimated allocated Level of Effort (LOE) as assigned below.

| No. | Anticipated Deliverables | LOE Allocation (days) | Deadline |
|---|---|-----------------------|--------------------------------------|
| A: REVIEW OF THE PPP LAW BOTTLENECKS | | | |
| Deliverable I | Participation in internal kick-off meeting, PPT for the internal kick-off meeting, and minutes of the meeting | 0.75 | 2 weeks from assignment commencement |
| | Participation in external kick-off meeting, PPT for the external kick-off meeting, and minutes of the meeting | 0.5 | 3 weeks from assignment commencement |

| No. | Anticipated Deliverables | LOE Allocation (days) | Deadline |
|------------------------------------|--|-----------------------|--|
| Sub-total LOE deliverable 1 | | 1.25 | 3 weeks from assignment commencement |
| Deliverable 2 | Draft findings report | 5.0 | 8 weeks from the assignment commencement |
| | PPT on assignment draft findings | 0.5 | 9 weeks from the assignment commencement |
| | Participation in half-day workshop for presentation of initial findings and workshop minutes | 1.0 | 10 weeks from assignment commencement |
| | Final findings report | 0.5 | 12 weeks from the assignment commencement |
| Sub-total LOE deliverable 2 | | 7 | 12 weeks from the assignment commencement |
| Deliverable 3 | Draft recommendations report | 4.0 | 18 weeks from the assignment commencement |
| | PPT on assignment PPP review recommendations | 0.5 | 19 weeks from the assignment commencement |
| | Participation in half-day workshop for presentation of recommendations and workshop minutes | 0.75 | 20 weeks from assignment commencement |
| | Final recommendations report | 0.5 | 24 weeks from the assignment commencement |
| Sub-total LOE deliverable 3 | | 5.75 | 24 weeks from the assignment commencement |
| Deliverable 4 | Draft regulation | 3.0 | 28 weeks from the assignment commencement |
| Deliverable 5 | Approved regulation | 3.0 | TBD |
| TOTAL | | 20 | Approx. 29 Weeks |

For the transactional advice services under Component B, the bidders will be required to provide their hourly rates which will be the basis for the negotiations of the fee during the execution of this component. An estimated ceiling of 30 days level of effort the consultant is established for this assignment. A modification to the agreement will include this additional LOE.

| Deliverable | Payment |
|--|-----------|
| Deliverable 1: Approved meeting summaries for internal and external kick-off meetings | 1.25 days |
| Deliverable 2: Transactional sections of final findings report approved by Transform WASH | 7 days |
| Deliverable 3: Transactional sections of final recommendations report approved by Transform WASH | 5.75 days |
| Deliverable 4: Draft regulation approved by Transform WASH | 3 days |

| Deliverable | Payment |
|--|---------|
| Deliverable 5: Final regulation published in gazette | 3 days |

4.0 Consultant qualifications

- Bachelor degree in finance or accounting, or there related training fields, with strong finance and accounting skills;
- At least 3 years in transactional advisory services for PPP and lease contracts. At least three concession contracts supported;
- Ability to listen, capture contributions, and obtain key consensus between different stakeholders with potential competition and sometimes conflicting interests;
- Experience in supporting similar initiatives such as donors’ mobilization, financial resources mobilization, and/or related experience;
- Fluent in Microsoft desktop software knowledge (Word, Excel, and PowerPoint); and
- Fluent in English and Portuguese (written and spoken at professional level).

5.0 Schedule

The assignment will be undertaken between January 14, 2024, and August 3, 2024.

6.0 Coordination

The Transactional Advisor Consultant will report to the Transform Chief of Party who will coordinate the delivery of this SOW and approve defined deliverables prior to full payment.

7.0 Application

Applications must be sent via email: transformwash.recruitment@tetrattech.com with a cover letter and curriculum vitae (CV) updated in reverse chronological order in Portuguese and English. Please refer the title of the consultancy in the subject line of the email as indicated below:

“TRANSFORM WASH_ASSESSMENT OF THE CHALLENGES OF PPP LAW AND REGULATION – TRANSACTIONAL.

Only shortlisted candidates will be contacted for an interview. Phone calls regarding this consultancy will not be accepted. The deadline for submitting applications is **December 15, 2023**, until **5:00 pm**.