

REQUEST FOR EXPRESSIONS OF INTEREST

AFRICAN LEGAL SUPPORT FACILITY (ALSF)

In-house Legal Consultant for The Namibia PPP Project

The African Legal Support Facility (“ALSF” or the “Facility”) hereby invites individual consultants to indicate their interest in the following assignment: **In-house Legal Consultant for The Namibia PPP Project**.

1. Introduction

a. Presentation of the ALSF

The African Legal Support Facility (the “ALSF” or the “Facility”) is an international organization hosted by the African Development Bank in Abidjan, Côte d’Ivoire. The ALSF’s main objectives include: (i) assisting African Governments in defending against litigation brought against them by vulture funds (and other such entities); (ii) providing legal advisory services to African Governments in the structuring and negotiation of complex commercial transactions relating to extractives and natural resources, infrastructure, PPPs, sovereign debt, and related commercial agreements; (iii) capacity building for lawyers and government professionals related to the above; and (iv) development of knowledge products.

b. Reference on request

The Republic of Namibia approached the ALSF to obtain support for an evaluation of the context for an affordable housing project under a PPP model in Namibia.

c. Invitation to express interest and request for proposal

The ALSF invites you to submit a technical and financial proposal for the provision of capacity building services to The Republic of Namibia in respect of the Project. The services entail; 1) reviewing the legal and institutional framework applicable to both the affordable housing sector and Public-Private Partnerships (“PPP”s) in Namibia; 2) preparing a housing delivery memorandum: i) assessing the factors for successful housing delivery through Public Private Partnerships (“PPP”s), ii) providing recommendations of suitable models/approaches for implementation; and iii) providing country-specific recommendations for Namibia to deliver successful affordable housing PPP projects; and 3) providing a virtual capacity building training session for government officials on structuring PPPs in the housing sector (the “Project”).

All proposals must be submitted to the ALSF at alsf@afdb.org with copies to the ALSF task managers listed in these Terms of Reference (s.salman@afdb.org) on or before 15 October 2021 at 18h00 GMT.

The technical offer must include comprehensive answers to questions raised in these terms of reference, as well as all additional information deemed useful and relevant. The Consultant will be

selected after an in-depth analysis of the proposals, based on the criteria defined to respond to the needs and requirements of the Government and the ALSF.

The ALSF expects the selected Consultant to provide high-quality services, reflecting good international practices, as well as the ALSF's objectives and mission.

Incomplete proposals, late proposals, or proposals that do not fulfil the criteria established in these terms of reference shall not be considered.

d. Project description

Assistance proposed by the Facility consists in the procurement of an individual consultant (the "Consultant") to provide capacity building to the Republic of Namibia (the "GoN" or the "Government"). The services entail; 1) reviewing the legal and institutional framework applicable to both the affordable housing sector and Public-Private Partnerships ("PPP"s) in Namibia; 2) preparing a housing delivery memorandum: i) assessing the factors for successful housing delivery through Public Private Partnerships ("PPP"s), ii) providing recommendations of suitable models/approaches for implementation; and iii) providing country-specific recommendations for Namibia to deliver successful affordable housing PPP projects; and 3) providing a virtual capacity building training session for government officials on structuring PPPs in the housing sector (the "Project").

The Consultant will be hired and remunerated by the ALSF.

2. Project Context

Sector Overview

i. Sector concerned: Infrastructure

a. Legal and Institutional Framework

The legal and institutional framework of Namibia includes, but is not limited to, the following legislation and policies:

➤ Legislation

- Public Private Partnerships Act (No 4 of 2017)
- Namibia PPP Policy (2013)
- Land and Housing Ordinance (1963)
- National Housing Development Act (2000)
- Public Enterprises Governance (2006)
- Sectional Titles Act (2009)
- Regional Council's Act (1992)
- Flexible Land Tenure Act (2012)

- *Key policy and strategy documents*
 - National Development Plan 5
 - Harambee Prosperity Plan

b. Description of the underlying transaction

The Namibian Government plans to leverage private investments through PPPs to supplement public and multilateral resources in the delivery of infrastructure. Namibia's PPP legal and institutional framework is well-developed and has been operational since December 2018. The country's PPP program aims to promote the emergence of PPP projects in Namibia in sectors such as energy, water, transport, urban infrastructure, and housing. Through strengthening institutional and technical capacity in both the public and private sectors, the Republic of Namibia has made considerable efforts to deliver housing to various segments of the population.

There, however, remains an acute demand for housing in Namibia. One of the major reasons for this is the supply and demand dynamics in the economy. On the demand side: growth in the local economy, rural-urban migration, increased employment, and a rapidly growing middle-class has driven strong, but ultimately foreseeable, increases in demand for formal housing, particularly in urban centres. On the supply side, however, land supply remains fixed thus driving up the cost of housing.

With the support of the ALSF, the Ministry of Finance ("MoF") seeks to procure the services of an individual consultant to conduct a rapid assessment of the housing delivery framework in Namibia, including private sector participation in the delivery of housing and how PPP arrangements can be leveraged in the delivery of housing. The outcome of this assignment is expected to support the work of the MoF in encouraging the application of PPPs in the housing sector, where feasible.

c. Designated Government Interface

The GoN has designated the Public Private Partnerships Directorate of the Ministry of Finance to ensure the overall coordination of the Project ("Implementing Agency").

The ALSF and the Consultant within the framework of the Project shall communicate directly with the Implementing Agency.

The Consultant will also be expected to advise any ministries working in conjunction with the Implementing Agency to implement the Project.

3. scope of services

a. Project workstreams

The scope of the Consultant's services shall include, without limitation, the following:

Provision of capacity building services to the GoN in the infrastructure sector through the preparation of a housing delivery framework using the PPP model. The Project will consist in reviewing the legal and institutional framework applicable to both the affordable housing sector and PPPs: and the preparation of a housing delivery memorandum and the provision of a capacity-building workshop.

Assistance requested by the Government shall be subdivided into three workstreams described below. The workstreams may overlap, depending on the methodology proposed by the Consultant. The Consultant will specifically undertake the activities and produce the outputs described hereafter.

I. *Specific Activities*

Workstream 1: Review of the legal and institutional framework applicable to both the affordable housing sector and Public Private Partnerships.

Objective: The Consultant will analyse the existing legal and institutional framework related to the housing sector, more specifically, affordable housing, as well as PPPs—identifying any potential areas of collaboration between the two sectors as well as outlining any lacunae that may need to be addressed to deliver an affordable housing framework using PPPs.

Activities

The Consultant's activities under this workstream shall include:

- Conducting a desk review of key relevant documents in the housing and PPP sectors including the Housing Policy, the National Development Plan 5, Harambee Prosperity Plan, PPP Framework, and any relevant legal frameworks governing housing delivery in Namibia - including assessment of potential infringement of other policies or laws in the application of PPP projects in the housing sector; and
- Preparation of a memorandum reflecting the procedure for delivery of an affordable housing framework using the PPP model, highlighting lacunae in current laws, and making recommendations of any required changes to ease the delivery of an affordable housing framework.

Workstream 2: Preparation of a housing delivery memorandum.

Objective: The Consultant will prepare a housing delivery memorandum that can be used by the GoN to decide whether the PPP model is the best route for the delivery of affordable housing in Namibia.

Activities

The Consultant's activities under this workstream shall include:

- Conducting multi-level stakeholder consultations on the housing delivery framework including with public entities, and potentially with private sector actors including financiers and industry sector players to allow the consultant to deliver a country-specific memorandum.
- Preparation of a memorandum:
 - Assessing the factors for successful affordable housing delivery through PPP's; and
 - Providing recommendations of suitable models/approaches for implementation; and
 - Providing country-specific recommendations for Namibia to deliver successful affordable housing PPP projects.

Workstream 3: Implementation of a virtual capacity building training session

Objective: To provide capacity-building assistance to the GoN to strengthen the capacity of government officials in structuring PPPs in the housing sector.

Activities

The Consultant's activities under this workstream shall include:

- Conducting a training needs assessment to ascertain the GoN's training needs;
- Developing a summary of the proposed training content and a course curriculum in the housing and PPP sectors to be agreed upon by the Implementing Agency and the ALSF;
- Developing practical exercises for the training workshop; and
- Delivering a virtual workshop on structuring PPPs in the housing sector which must include a discussion of the findings of both Workstreams 1 and 2.

In all this, the Consultant must work in close collaboration with members of the Implementing Agency and the Government with which they shall be in contact to facilitate an exchange of know-how and knowledge for capacity building in Namibia.

II. *Outputs*

The Consultant will be responsible for advising the Government on the Workstreams described above. The services include the following outputs:

- A preliminary report identifying all documentation needs, any planned consultations, work plan, and strategy; and
- A memorandum in respect of Workstream 1 reflecting an analysis of the legal and institutional framework for the delivery of affordable housing using the PPP model including any lacunae in the current laws and making recommendations of any required changes to ease the delivery of an affordable housing framework; and
- A memorandum; i) assessing other factors for successful affordable housing delivery through PPP's, ii) providing recommendations of suitable models/approaches for implementation; and iii) providing country-specific recommendations for Namibia to deliver successful affordable housing PPP projects.
- Deliverables in respect of the virtual capacity building training including:
 - a summary of the proposed teaching content; and
 - the programme in respect of the virtual training; and
 - documents (PowerPoint presentations, Excel models, or others) for reprography and to be used by the participants.

The ALSF shall closely monitor the relationship between Government and the selected Consultant to ensure that the Project's forecast results have been well and truly attained.

The provisional schedule of the Consultant's mission is indicated in the following table:

Actions	Proposed date and duration
Invitation for expression of interest and request for proposal	September 2021
Deadline for expression of interest	1 October 2021
Deadline for the submission of questions on the request for proposal	8 October 2021
Deadline for submitting the technical and financial proposals	15 October 2021
Recruitment of the Consultant	October 2021
Workstream 1	30 Days
Workstream 2	30 Days
Workstream 3	3 Days
End of mission	30 January 2021

4. Monitoring and Evaluation

At the end of the project, the Consultant recruited shall send to the ALSF a final mission report which will include the results achieved. This report will summarize the conclusions of the mission, the specific legal challenges, and the different solutions that were proposed throughout the Project. This report will also highlight the outputs achieved such as activities carried out in the context of the capacity building workstream, the main discussions with participants reflecting their concerns, questions, misunderstandings, the number of lawyers trained, the amount of savings to government, the amount of time discounted/written off, and any lessons to be shared for future transactions.

5. Working method

The selected Consultant shall apply internationally recognised working methods and standards for the realisation of this type of State advisory and institutional support mission. He/she must offer the Government a suitable methodology.

The selected Consultant must work together with in-house legal counsel.

6. Duration

The duties will be carried out for two and a half (2 ½) months. The Consultant shall be expected to start on 1 November 2021.

7. Content of Specific Technical and Financial Proposal

The proposals must be sent to ALSF at the latest on 15 October 2021 at 18h00 GMT and must include a technical proposal and a financial proposal.

i. Technical Proposal

The Technical Proposal must include the following:

- a. Legal expertise and reputation, including with regard to the public sector and handling matters on behalf of governments and international institutions. The applicant shall hold at least a Master's degree or equivalent in law, be admitted to the Bar, or hold a diploma to practice law, in an AfDB member country. Alternatively, a first university degree plus a relevant combination of academic qualification in law (e.g. Juris Doctor (JD) plus admission to the Bar, or diploma to practice law in an AfDB country. The Consultant shall have previous experience working in an established international law firm, or an international financial institution with proven technical competence and experience in development law. Experience with a Development Bank and knowledge of Multilateral Finance Institutions is highly desirable;

- b. Experience and knowledge of The Republic of Namibia or the relevant sub-region, as well as the legal, economic and socio-political situation;
- c. Commitment to capacity building, particularly in Africa as well as an emphasis on methodologies and strategies to transfer skills to national relevant counterparts;
- d. Demonstrated excellent technical skills, excellent communication and interpersonal skills, good writing and analytical skills;
- e. Proposed methodology including:
 - o Understanding of the ALSF and Government expectations (including appreciation of issues at stake in the project).
 - o Overview of the proposed methodology for approaching each of the Workstreams (scenarios, strategy, action plan, and proposed stages); and
 - o Implementation schedule of the entire mission and each phase.
- f. Current or past activities with the ALSF;
- g. Potential conflicts of interest; and
- h. Adequacy for the assignment: must have 3 to 5 recent and relevant case studies concerning the performance of this type of mission and experience in similar conditions mentioning the following data.

Performance period	Country (including party represented, the contact information of a person who may be contacted (name, position, telephone number, email))	Description of the mission and tasks performed (nature of the intervention, the role played by each member of the proposed team, issues dealt with in the project, etc.)

ii. Financial proposal

The Financial Proposal will include:

- a. Proposal of fees, expressed in United States Dollars (USD).

- b. Assumptions (to be clearly defined).
- c. Payment schedule proposed for the deliverables for each workstream.
- d. Mechanism proposed to minimize expenses and cost monitoring method.
- e. Fee Quotation.

Description	Amount (USD)	Assumptions
Legal fees for each Workstream		
Expenses for each Workstream		
Additional Work: Hourly Rates applicable		
Travel Time: Rates (if any)		
Phone Calls: Rates (if any)		
Photocopies (Rates (if any)		
Any other expenses rates (if any)		
Total (a fixed amount corresponding to a non-revisable flat rate, which is not subject to increase, is preferred)		

The ALSF will cover travel and field mission costs (if any) as per African Development Bank rules in this regard.

iii. Annexes

- i. Professional liability insurance
- ii. CV of the Consultant (including contact details, language capabilities and citizenship of each team member, registration/certificates of good standing).
- iii. Certification that Consultant is currently in good standing.

8. Selection Criteria

The proposals submitted shall be evaluated based on the following criteria:

- a) **Technical expertise (20%):** General qualifications and suitability for the mission to be carried out, in particular, legal capabilities and reputation relating to the specific project, including capabilities and reputation in the field of the project, and experience in providing services and institutional support for governments and public authorities.
- b) **Technical proposal (20%):** Similar experience in the area of expertise of the mission to be undertaken, understanding of the mission, and proposed methodology for the project.
- c) **Regional experience (10%):** Knowledge of the region, including regional experience, experience in Namibia, in Africa, in developing countries, and in emerging countries).
- d) **Commitment to capacity building (10%):** Illustration of any efforts to develop legal capacity in Africa and training for African governments as well as a willingness and track record of transferring skills and knowledge to local lawyers, track record in this field.
- e) **Experience with the ALSF and other development partners (10%):** based on experience with projects for the ALSF and/or other development partners and multilateral institutions.

Financial criteria (30%): Preference shall be given to financial proposals based on a fixed fee arrangement corresponding to a non-revisable flat rate that cannot be increased.

Please note preference is given to discounted and fixed fee arrangements. The Consultant will have to adhere to the ALSF's Travel Policy to be provided as an annex to the Consultant's contract.

9. Conflicts of interest, Confidentiality, and Legal value

a. Conflicts of interest

Your client in this matter will be the Government of Namibia. In your proposal, please state any necessary information related to potential and/or real conflicts of interest related to this project.

In the situation where a conflict of interests arises, we invite the Consultant to propose measures to minimize potential conflicts of interests.

Any legal counsel who would like to submit an offer in the context of these terms of reference should carry out all the necessary investigations and formally confirm that there is no existing or potential, real, or apparent conflict of interest for the realisation of the mission.

b. Confidentiality

The information contained in these terms of reference has been provided to you solely to ensure you have sufficient information to be able to draw up your proposal. This information is strictly confidential and may in no way be disclosed in any manner whatsoever to a third party without the prior written authorisation of the Republic of Namibia and the ALSF. Consequently, the Consultant shall expressly undertake to ensure that he/she (i) keeps confidential all information obtained within the framework of the mission, as well as the reports established on behalf of the Republic of Namibia and ALSF in the context of the mission; and (ii) does not advertise, nor makes any declarations in the press concerning the mission without the consent of the Government and the ALSF.

c. Legal Value

These terms of reference and any support letter or email are of no contractual value.

10. Receipt of Proposals, Adjudication, and Schedule

Interested individual consultants may obtain further information by email to Ms. Shaina Salman, Legal Counsel at ALSF (s.salman@afdb.org).

The technical and financial proposals must be received jointly by email to s.salman@afdb.org with alsf@afdb.org in copy not later than 15 October 2021 at 18h00 GMT.

On receipt of the proposals, the ALSF shall analyse and select the Consultant to whom this project will be awarded.

Any proposal may be rejected in the event of illegal practices or corruption which have taken place in the awarding or the performance of this contract.

The ALSF reserves the right to accept, reject, and/or to change any of the proposals submitted prior to its approval. The ALSF shall not be responsible for any transmission errors. All submissions must be in pdf format.