



**Namibia IPP and Investment
Market Framework Technical Assistance
USTDA Grant Number: GH051130313**

**Volume II: Annex 2
TERMS OF REFERENCE FOR THE TECHNICAL ASSISTANCE**



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ANNEX II: TERMS OF REFERENCE FOR THE TECHNICAL ASSISTANCE

NAMIBIA IPP AND INVESTMENT MARKET FRAMEWORK TECHNICAL ASSISTANCE

Note: The Terms of Reference provided below are reproduced from the Grant signed between the U.S. Trade and Development Agency, Washington, D.C., U.S.A. and the Electricity Control Board, Windhoek, Namibia.

BACKGROUND

In November 2000, the Government of Namibia ("Host Country Government") approved a model for restructuring the Host Country's energy sector based on a single buyer market framework. The key elements of this market framework are:

1. All distributors and large users buy from a single buyer.
2. Independent Power Producers ("IPP"s) and the Namibian Power Company ("NamPower") generators can sell power to local and foreign markets through the single buyer using NamPower's transmission system.
3. Large power users have the right to choose between the single buyer or a local distributor.
4. The Grantee may waive the single buyer's right to supply in favor of the IPP and/or imported electricity.
5. Embedded generation need not sell to the single buyer.

Initial work on the design of the electricity market in 2002/03 resulted in a draft design report, however the design was not completed. Given the need for new investments in the energy sector, the debate regarding the need for a "market mechanism" to attract new entrants has emerged again. The Grantee hosted a workshop that included senior representatives of the Ministry of Mines and Energy ("MME") and NamPower in September 2004, which concluded that the choice of a specific model is premature. The workshop participants decided that a collective effort to determine a path forward was needed to attract international players into its electricity sector and energy sector at large. The workshop participants also formed a small committee ("Workshop Committee") to develop a proposed IPP framework as a first step towards the formulation of the final energy market framework for the Host Country.

OBJECTIVES

The purpose of the TA will be to develop a formalized energy market model with a focus on how to facilitate investments by IPPs and/or Independent Transmission Companies ("ITCs") in the Host Country. The focus of the model will be on addressing the current capacity deficit and security of supply situation with allowing flexibility for a future move towards wholesale or retail competition in the market.

The Contractor will recommend one or more options for private sector participation in the Namibian energy sector and provide the Grantee with framework strategy documents to implement the recommended private sector promotion model. Issues to be considered under the TA will be the previous work done by MME, the Grantee and NamPower as a

starting point, integration with grid code developments, implications for the ongoing new Electricity Bill process, and consideration of issues that are crucial to IPP investors.

The Contractor will work in cooperation with and under the guidance of the Working Committee chaired by the Grantee, but will report to the Grantee directly. The Contractor will also ensure, through the guidance of the Grantee, that all outcomes of the Project are suitable to the local conditions and are in harmony with Host Country Government policy directives and objectives as contained in the National Development Plan 2 ("NDP 2") and Vision 2030.

SCOPE OF WORK

Task 1: Investment Opportunity Analysis

NamPower has already compiled a list of potential investments and conducted a preliminary review of these opportunities that the Contractor may utilize. The Contractor will work with the Grantee and NamPower to see what types of projects are being planned and to understand how the formulation of an IPP market strategy can support the development of these projects. Specifically:

- a. Review the analysis conducted by NamPower on new power (defined as generation and transmission) project opportunities and determine which would be most appropriate to the IPP model and possibly international investment.
- b. Characterize the current barriers to the successful promotion of international investment in the Namibian energy supply industry (and specifically for IPP investments). Develop a gap analysis presenting the identified barriers and current programs. This analysis will specifically identify the key factors impacting the successful implementation of the identified investments.

The Contractor will provide a report to the Grantee that characterizes the investment environment based upon the Contractor's findings in this Task 1.

Task 2: Develop an IPP Framework Model to encourage the private sector to invest and participate in the Host Country's power sector.

The Contractor will consult with key organizations including MME, NamPower, and the Grantee to conduct, at a minimum, the following analyses. The Contractor will present the Contractor's findings to the Grantee in a policy-oriented report that will provide guidance to the Grantee for choosing a suitable model.

- a. Review of the work completed to date that will support the introduction of IPPs in the Host Country.
- b. Based on the gap analysis conducted in Task 1, present a strategy to successfully realize the identified investments and remove identified barriers (based on comparative international experiences). Provide recommendations for the appropriate IPP market framework that will result in the removal of barriers to entry for IPPs.
- c. Prepare a guidance document outlining the policy roles, functions, responsibilities, and procedures of each of the key Host Country Government organizations with respect to the private power sector based on the Electricity

Act of 2000, also taking into account the Electricity Amendment Bill as well as the Administrative Electricity Act of 2000. This will include:

- 1) *The role of the Grantee as a market enabler and regulator of the power sector.* The Contractor will identify the roles and responsibilities of key Host Country Government ministries, including the MME and agencies, including the Grantee, in providing approval for private power projects. The Contractor will consider whether there is a need to set up a special unit within the Grantee's organization to promote private investment in the power sector or in other areas of the Host Country Government to assist investors. It should be assumed that the Grantee has the authority to approve proposed tariffs and a draft PPA before a private developer receives final approval for the development of a project.
- 2) *The role of the Grantee in the regulation of private power.* The Contractor shall document the role of the Grantee in regulating private power, and include the steps for obtaining a license and the terms and conditions for issuing licenses. This will include an overview of the steps to be taken by the private sector to obtain approvals, and outline which Host Country Government agency or entity that would coordinate and grant approvals. Likewise, the Contractor will draft a list of potential mechanisms by which prices for private power will be determined.
- 3) *The role of NamPower in project development.* The Contractor should assume that NamPower will operate for the time being as a "single buyer" and will not be restructured or privatized in the short-term. NamPower is likely to continue to acquire or establish joint-ownerships for new power generation in the Host Country. NamPower should, in the long-term, be assumed to have transmission as their core business, giving up distribution to regional electricity distributors ("RED"s). Consequently, it will also be assumed, in the long-term, that the role of NamPower in power generation will diminish with the opening up of the market for competition for other parties. The Contractor shall take these assumptions into consideration when defining NamPower's future role in project development.
- 4) *The role of the private sector.* The Contractor shall define the roles and responsibilities of private sector sponsors and project developers.
- 5) *The role of REDs.* The Contractor shall evaluate the likelihood and ability of REDs to purchase directly from IPPs.
- 6) *The role of local authorities.* In the absence of REDs, distribution at the local level is managed by the municipal or local government. The Contractor shall evaluate the possibility of these entities purchasing power from an IPP directly.
- 7) *The role and use of financial institutions.* Local investors need access to longer-term financing from the Host Country financial

market. The Contractor shall recommend what the Host Country Government should do to support the financial sector and encourage the provision of longer-term financing for private power projects.

- 8) *The role and use of advisors.* The Contractor shall outline the relevance, importance, and benefits of engaging advisors for assisting the Host Country Government and the power purchaser in resolving the legal, technical and financial issues that will arise during the preparation of IPP agreements. The Contractor shall also explain the roles that advisors should be expected to take and how their services might be financed for each project.
 - 9) *Key principles for selection and evaluation of IPPs.* Overall principles are already considered in the existing guidelines, procedures and model documents issued by the MME and the Grantee for IPPs and small power projects. The Contractor shall review and revise these documents accordingly.
- d. The Contractor shall recommend changes (if any) to the institutional structure of the power sector to encourage private investment in power in both urban and rural areas of the Host Country only if such changes would provide a substantial efficiency gain for both the Host Country Government and the private sector.
 - e. The Contractor shall recommend how a “level playing field” between private power investors and NamPower projects can be created to provide an investor-friendly environment. This will also include an assessment of NamPower’s role in grid extension in rural areas and the REDs in providing electricity services to the rural areas.
 - f. The Contractor shall recommend risk mitigation measures for commercial, country, force majeure and sovereign risks. The Contractor shall recommend how each risk should be managed in private power projects in the Host Country without Host Country Government guarantees. The Contractor should endeavor to frame the recommendations so as to minimize the risks to be assumed by the Host Country Government.

Task 3: Develop guidelines, procedures and model documents for IPP projects.

The Contractor must review existing regulations and produce supporting guidelines, procedures and documents which are needed to promote the implementation of the IPP Framework. It is envisioned that this component will consist of two activities:

- 1) The Contractor will develop guidelines and procedures, which will be followed for the selection and evaluation of solicited IPP projects (over 5 MW installed capacity). These could include, for example, the adoption of a two-stage competitive bidding process for each request for IPPs. The procedures could include:
 - Bidding vs. negotiated contracts;
 - Details on the exact process and timing;
 - Reporting requirements;
 - Selection Process; and/or

- Requirements related to the environmental impact and the social consequences of proposed project.

These guidelines and procedures will be conducted in a three stage process: (1) the Contractor will develop preliminary procedures and guidelines for submission to the Grantee, (2) these preliminary procedures and guidelines will be presented at one of the working sessions with the Working Committee and the Grantee, and (3) based on the feedback of the group and the Grantee, a final version will be presented.

It will be preferable for the Contractor to deliver 'final' versions of these documents upon agreement by the Host Country Government (through the Working Committee) and NamPower to provide comments and agree upon the proposed guidelines and procedures within the expected term of the TA. A maximum of twelve (12) months will be allowed for the approval process. In the case of disagreement and subsequent delays referred to above, the Contractor shall provide final drafts of the documents and include such documents in the Final Report. In addition, the Contractor may be asked to proceed with the finalization of the documents earlier than the maximum time of twelve (12) months per the instruction of the Grantee upon consultation and consent of the Host Country Government through the Ministry of Mines and Energy.

- 2) The Contractor shall prepare a series of key model agreements for IPPs based on existing documents in use in other countries including:
 - Power Purchase Agreement
 - Fuel Supply Agreement
 - Construction Agreement
 - Implementation Agreement
 - Operation and Maintenance Agreement
 - Land Conveyance Agreement

The Contractor will not be expected to deliver 'final' versions of these documents, but only tailored examples appropriate for use as a template for the development of project-specific agreements in the Host Country.

Task 4: The Contractor shall report on the potential Development Impact of the proposed framework and resulting IPP projects.

The Contractor shall report on the potential development impact of the Project in the Region. The Contractor will focus on what the economic development outcomes will be if the Project is implemented according to the recommendations of the TA. While specific focus should be paid to the immediate impact of the Project, the Contractor will include, where appropriate, any additional developmental benefits to the Project, including spin-off and demonstration effects. The Contractor's analysis of potential benefits should be as concrete and detailed as possible. The development impact factors are intended to provide the Project's decision-makers and interested parties with a broader view of the Project's potential effects on the Region. The Contractor will provide estimates of the Project's potential benefits in the following areas:

(a) Infrastructure / Industry. The Contractor will provide a statement on the infrastructure impact giving a brief synopsis.

(b) Market-Oriented Reforms. The Contractor will provide a description of any regulation, laws, or institutional changes that are recommended and the effect they would have if implemented.

(c) Human Capacity Building. The Contractor will address the number and type of positions that would be needed to construct and operate the proposed Project as well as the number of people who will receive training and a brief description of the training program.

(d) Technology Transfer and Productivity Enhancement. The Contractor will provide a description of any advanced technologies that will be implemented as a result of the Project. A quantitative description of any efficiency that will be gained.

(e) Other. The Contractor will identify any other developmental benefits of the Project, including any spin-off or demonstration effects.

Task 5: Conduct a workshop, working sessions, and a final seminar to convey results.

The Contractor shall organize working sessions during the preparation of the IPP Framework Model (Task 2) and the various regulatory documents to fully understand the local requirements and discuss the international best-practices with key stakeholders. The specific objectives and timing of workshops are to be determined before the beginning of Task 1, in the Inception Report, in order for the Contractor to fully appreciate the needs of the stakeholders. At a minimum, the Contractor must arrange (i) an Initial Workshop for all stakeholders to discuss and determine the methodology the Contractor will use to complete the TA and current status of the sector; (ii) on-going working sessions, which must be documented in the Final Report, to enable the Grantee and Host Country Government to implement the policy framework; and (iii) a final seminar to present results of the TA.

After the IPP Framework Model developed in Task 2 and all documents have been drafted, the Contractor shall conduct a seminar (point (iii) above) on an agreed upon date for officials of MME, NamPower, the Grantee, and private sector stakeholders to present and explain the Contractor's findings. The purpose of the seminar will be to solicit views of participants before finalizing the various procedures. The seminar will also include a discussion of the adaptability of the procedures to other infrastructure in the Host Country, especially water supply projects.

Task 6. Final IPP Market Framework Report and Review of TA Interim Deliverables.

The Contractor shall provide a report that outlines the Contractor's final recommendation for the development of an IPP Market Framework in the Host Country that will be a document the Grantee can utilize to advance the Project.

Throughout the course of the TA, the Contractor shall prepare and provide the following deliverables in English to the Grantee (some reiterated from previous Tasks):

- a. Inception Report
- b. Initial “Kick-off” Workshop with the Grantee and key stakeholders
- c. Investment Opportunity Assessment Report (and Investment Pipeline Document)
- d. Working Sessions with key stakeholders discussing the initial assessment of power sector (at least two in-country meetings)
- e. Draft IPP Market Framework including issues included in the relevant Tasks and providing a detailed plan showing what needs to be done by when and by whom to implement the Framework, taking into account the outcomes of the workshop.
- f. Draft Guidelines, Procedures and Model Documents for IPP Projects, including the following model agreements:
 - o Power Purchase Agreement
 - o Fuel Supply Agreement
 - o Construction Agreement
 - o Implementation Agreement
 - o Operation and Maintenance Agreement
 - o Land Conveyance Agreement
- g. Final National Seminar presenting results of the TA and soliciting final input from all stakeholders
- h. Final IPP Market Framework Report

The Contractor shall provide a copy of, or evidence of completion of, each of these deliverables in the Final Report.

Task 6. Final Report.

The Contractor shall ensure that a Final Report is submitted in accordance with Clause I of Annex II of the Grant Agreement. The Final Report shall be a substantive and comprehensive report of work performed to carry out all of the tasks set forth in the Terms of Reference and shall include, among other things, an Executive Summary and all deliverables. Each task of the Terms of Reference shall form a separate chapter of the Final Report.

The Final Report shall also include a comprehensive list of suppliers, including potential sources of U.S. equipment and services, relevant to the implementation of each component of the Project as outlined in the Study.

The Contractor shall submit the Final Report in English. The Contractor shall provide five (5) hard copies and one (1) electronic version of both the confidential and public versions of the Final Report to the Grantee and shall provide copies to USTDA in accordance with Clause I of Annex II of the Grant Agreement.

- (1) The Contractor is responsible for compliance with U.S. export licensing requirements, if applicable, in the performance of the Terms of Reference.**
- (2) The Contractor and the Grantee shall be careful to ensure that the public version of the Final Report contains no security or confidential information.**