



TERMS OF REFERENCE FOR THE ENGAGEMENT OF AN INDEPENDENT ENGINEER FOR SUPERVISION OF WORKS DURING DESIGN AND CONSTRUCTION PHASE OF PUBLIC PRIVATE PARTNERSHIP PROJECTS

1 INTRODUCTION

The Public Private Partnership Commission (PPPC) was initially set up in 2011 by the Public- Private Partnership Act, Cap. 46:07, Laws of Malawi (PPP Act), to facilitate private sector participation in infrastructure development in Malawi through public- private partnership (PPP) arrangements. The PPPC is also mandated to facilitate divestiture of state-owned enterprises through various divestiture modes as stipulated in the PPP Act. The PPP Act of 2011 was repealed in 2022 through the passing, assenting and gazetting of the PPP Act of 2022.

The Public Private Partnership Programme

The PPPC is working on a number of transactions which are in the Contract Negotiations phase and shall commence construction in the foreseeable future. In addition, the PPPC has completed transactions on students' accommodation, office accommodation, and tourism facilities, among others. In all these transactions, there is a need for an Independent Engineer to oversee and supervise the Projects on behalf of the Contracting Authority and to ensure that the Private Party delivers the Project as per design and within agreed timelines.

The PPPC would, therefore, like to engage a Consulting firm to nominate an Independent Engineer to supervise the design and construction phase of the implementation of the projects by the successful private investors.

2 OBJECTIVES

The objectives of the consulting service are to assist the PPPC as follows:

- a) To ensure high standards of quality assurance in the execution of work and completion of work within stipulated time period;
- b) Comprehensive supervision of project implementation activities carried out by the private investor to ensure complete compliance with the drawings, technical specifications and various stipulations contained in the Agreement
- c) Act independently and, on behalf of the PPPC and the Contracting Authority, to review all activities associated with Construction to ensure compliance of requirements of Contract Agreement in order to have a sound Project.
- d) Report to PPPC and the Contracting Authority on the progress of implementation of the project.

3 SCOPE OF WORK

The Scope of the Consulting services includes but is not limited to the following activities:

3.1 Scope of the Basic work

(a) The basic services shall comprise:

- (i) all the functions which are conferred on the Independent Engineer under or pursuant to the Agreement and any other relevant agreement signed for the purposes of executing the PPP Agreements (Project Contracts)

- (ii) all other things or tasks that are reasonably necessary for the Independent Engineer to do to comply with its obligations under this Schedule.
- (b) For the avoidance of doubt, nothing in this Schedule shall limit the Independent Engineer's functions, duties, responsibilities and obligations conferred on the Independent Engineer under or pursuant to the Agreements and the Project Contracts.

3.2 Scope of Work under the Agreement

Without limiting the Independent Engineer's obligations under the Agreements, the Scope of Work shall be as follows:-

3.2.1 Review of Design Documentation

- (i) Review the design documents of the Works and make recommendations to the Contracting Authority and the Project Company for amendments which, in his/her opinion, should be made to the Design Documents for compliance with the bid documents and construction requirement
- (ii) Review the Project Contracts and make recommendations to the Contracting Authority and the Project Company for amendments which in his/her opinion are necessary to avoid conflicts between those contracts and the Agreement.
- (iii) Receive from the designers and Contractors certificates confirming that due care was exercised by them in carrying out the Designs.

3.2.2 Monitoring of Land Availability and Permits

- (i) Monitor, obtain information from the Contracting Authority and report to the Project Company on the availability and sufficiency of the Project Land provided by the Contracting Authority for the purpose of the Project and confirm availability of relevant statutory permits.
- (ii) Monitor and report to the Contracting Authority and the Project Company on progress of removal of existing facilities, diversion of existing services and any other work which is necessary to enable construction on the Works to proceed. Advise the Contracting Authority, the Project Company and the Contractors of action required to avoid any delays to the commencement and completion of the Works.

3.2.3 Review of Construction Programmes

- (i) Monitor the Construction Programme (as and when it is prepared in accordance with the Agreement) for compliance with the completion requirements specified in the Agreement and, if necessary, recommend to the Contracting Authority and the Project Company any amendments to the programmes which may be necessary to achieve the construction completion requirements.
- (ii) Monitor the progress of the Works against the Construction Programme and report to the Contracting Authority and the Project Company any variance from the programme, promptly give written notice of the variance to the Contracting Authority and the Project Company.

3.2.4 Control of Construction Quality

- (i) Ensure that the Project Company has put in place a quality assurance system. Review the system and report to the Project Company and the Contractor as to whether the system complies with the requirements of the Agreement; applicable law and Good Industry Practice. If not, provide the Project Company and the Contractor with details of the non-compliance as soon as reasonably practicable.
- (ii) Monitor the Works against the quality assurance system by, a system of verification involving, inter alia inspections and periodic checking.
- (iii) Monitor compliance of the completed Works with the Contracting Authority's requirements.

3.2.5 Extensions of Time/Compensation/Relief from Penalties

Make a determination as to an extension of any date or period, any compensation, penalties or relief from penalties as provided for in the Agreement.

3.2.6 Completion Certificates and Requirements

Inspect the Project Facility in the time period and as required by the Agreement and issue notices and/or certificates to the Contracting Authority and the Project

Company, as the case maybe in respect of the Works as required and in accordance with the Agreement, Applicable Law or Good Industry Practice.

3.2.7 Environmental Requirements

Monitor compliance by the Project Company and contractors with Applicable Laws, the Agreement and Good Industry Practice with respect to environmental management requirements.

3.3 Duty of Care and Exercise of Authority

- (a) The Independent Engineer warrants to the Contracting Authority and the Project company that in respect of the services he/she shall exercise all reasonable skill, care and diligence to be expected of a properly qualified professional engineer who has held himself or herself out as suitable and competent to perform the services and who is experienced in providing services similar to the Services in relation to projects of a similar size, scope, nature and complexity to the Project.
- (b) Where the services include the exercise of powers or discretion or the performance of duties authorised or required by the terms of any of the Project Contracts, the Independent Engineer shall:
 - (i) act in accordance with such Project Contract and comply with its relevant requirements
 - (ii) when exercising its functions under the Project Contracts act fairly, honestly, professionally and independently; and
 - (iii) in respect of exercising its functions under the Agreement on the one hand and the other Project Contracts on the other on the same facts and circumstances, act consistently between the relevant Contracts.
- (c) The Independent Engineer shall at all times when exercising authority or otherwise discharging its professional duties, act fairly, impartially and independently and as a skilled professional, not as an arbitrator.
- (d) The Independent Engineer shall at its own cost keep all records for inspection by the Contracting Authority and the Project Company during the period of the Independent Engineer's contract shall deliver all such

records and results to the Contracting Authority, with copies to the Project Company, on expiration or earlier termination of Independent Engineer's Contract.

- (e) The Independent Engineer shall co-operate with and provide all reasonable assistance to any contractors or other consultants or other service providers who are or may be engaged by the Contracting Authority and the Project Company in connection with the Project and shall not interfere with or affect the work being performed by such other contractors, consultants or service providers.
- (f) The Independent Engineer shall, in the performance of the Services, comply with all applicable law, regulations, codes of practice and relevant national and international standards and shall, at its own cost, ensure that it holds and shall continue to hold all such licenses and approvals as may be required for the performance of the services.
- (g) No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time given by or on behalf of the Contracting Authority or the Project Company shall operate to exclude or limit the Independent Engineer's obligation to exercise all the skill, care and diligence.
- (h) The Independent Engineer shall provide and allocate suitable, properly trained and adequate resources in order to duly and properly perform timeously all his/her obligations.
- (i) The Independent Engineer shall:
 - (i) keep the Contracting Authority and the Project Company informed on all matters of interest which relate or pertain to the Project; and
 - (ii) send to the Contracting Authority a copy of all communications sent to, or received from, any other party in connection with the Project.
 - (iii) The Independent Engineer shall provide the Services so as not to delay or disrupt the Works and the Independent Engineer undertakes to perform the Services so that the Project Company, acting reasonably diligently in accordance with the instruction of the Independent Engineer, shall not be in breach of any of its obligations under the Agreement and the Project Contracts and the risk of claims for additional payments or extensions of time by sub-

contractors against the Project Company under any Construction Contract is minimised.

(j) The Independent Engineer shall have no authority or power to:

- (i) amend the terms of the Project Contract;
- (ii) relieve a contractor from any of its obligations under a Project Contract;
- (iii) grant any contractor under any such Administered Contract an extension of time to perform its obligations thereunder;
- (iv) in the absence of instruction, issue any instruction relating to any matter which, in his/her opinion, is the responsibility of a party under the Agreement or a Project Contract.

4 EXPECTED DELIVERABLES

The scheduling of work within each contract will be subject to agreements between the PPPC and the Consultant through issuance of task orders whenever the consultant's services are required. For each PPP Agreement, the client will issue task orders requiring the Consultant to assist in carrying out various tasks under the scope of work and as will be outlined in each task order. Payment will be based upon delivered outputs of the tasks outlined and pre-agreed in each task order.

The following table presents the expected deliverables under the assignment:

DELIVERABLE	TIMELINE
Inception Report	Within 10 working days of signing the contract
Audit strategy	Within 10 working days of signing the contract as part of Inception Report.
Non compliance event report/Critical issue reports	Immediate
Monthly progress report	Within seven days of the end of a reporting month
Quarterly Summary Report	Within 15 days from end of a quarter
Annual Review Report	Within 15 days from end of a financial year
Final Review Report	Three months prior to completion of the Consultant's contract

5 QUALIFICATION REQUIREMENTS

The Independent Engineer shall be an experienced individual with relevant qualifications and experience. The minimum requirements shall be:

- a. A minimum of a Bachelor of Science degree in Civil or Structural or Architectural Engineering or in any other related field. Those with Project Management experience will have an added advantage
- b. A minimum of seven (7) years of working experience in complex environments and large infrastructure and / or civil works assignments particularly in the field of construction
- c. A minimum of five (5) years of experience in managing and supervising medium to large scale construction works in public sector
- d. Be a duly registered member of the Board of Engineers in Malawi.
- e. Excellent command of English
- f. Excellent interpersonal and cross-cultural communication skills

6 OBLIGATION OF THE CONSULTANT

The consultant is expected to be fully self-sufficient in terms of office space, supplies, communications, computers and transport during the course of the assignment. The consultant is expected to be readily available throughout the period of the review and shall discharge his/her responsibilities with diligence and to the expected professional standards, skills and integrity.

7 OBLIGATIONS OF THE CLIENT

The PPPC shall provide access to reference materials including Agreements and any relevant existing reports, data and information that may be required by the successful bidder. The PPPC shall facilitate access by the consultant to the relevant project site. The PPPC shall also facilitate access to other Government offices, private and public enterprises.

8 ESTIMATED LEVEL OF EFFORT

The expected level of effort for the services is 250 effort days. The PPPC may use the services of the Consultant for this level of effort or less depending on

prevailing conditions. The Contract is expected to subsist for a duration of three (3) years

9 REPORTING

The Consultant will work under the supervision of The Chief Executive Officer of the Public Private Partnership Commission. Consultancy reports shall be submitted in the official Standard English Language. The reports shall be submitted electronically in both Microsoft Word and PDF formats to the following address:

The Chief Executive Officer
The Public Private Partnership Commission
P.O. Box 937
Blantyre.
Malawi.

Telephone: +265 (0) 1 823 655

Fax: +265 (0) 1 821 248

Email: info@pppc.mw