

REQUEST FOR EXPRESSIONS OF INTEREST CONSULTING SERVICES

Selection # as assigned by e-Tool: [RG-T2998-P002](#)

Selection Method: [Full Competitive Selection](#)

Country: [Regional](#)

Sector: [PPP](#)

Funding – TC #: [ATN/OC-16388-RG, ATC/OC-16389-RG](#)

Project #: [RG-T2998](#)

TC name: [Facility to Support Public-Private Partnerships in Infrastructure](#)

Description of Services: [Legal consultancy for Public-Private Partnership \(PPP\) related activities](#)

Link to TC document: <https://www.iadb.org/en/project/RG-T2998>

The Inter-American Development Bank (IDB) is executing the above mentioned operation. For this operation, the IDB intends to contract consulting services described in this Request for Expressions of Interest. Expressions of interest must be delivered using the IDB Portal for Bank Executed Operations (<http://beo-procurement.iadb.org/home>) by: June 25, 2018, 5:00 P.M. (Washington D.C. Time).

The consulting services (“the Services”) include provide legal advice to the IDB and its clients in Latin America and the Caribbean (including national and sub-national governments) in a range of activities (i) required to support PPP legal, regulatory, institutional and policy reform; and (ii) related to PPP project development, including project preparation, structuring, contracting and management activities. Timelines will be determined through specific work orders and associated bids, which will provide a proposed work plan and total costs for that work order.

Eligible consulting firms will be selected in accordance with the procedures set out in the Inter-American Development Bank: [Policy for the Selection and Contracting of Consulting firms for Bank-executed Operational Work](#) - GN-2765-1. All eligible consulting firms, as defined in the Policy may express an interest. If the Consulting Firm is presented in a Consortium, it will designate one of them as a representative, and the latter will be responsible for the communications, the registration in the portal and for submitting the corresponding documents.

The IDB now invites eligible consulting firms to indicate their interest in providing the services described below in the [draft summary](#) of the intended Terms of Reference for a Framework Agreement. Interested consulting firms must provide information establishing that they are qualified to perform the Services (brochures, description of similar assignments, experience in similar conditions, availability of appropriate skills among staff, etc.). Eligible consulting firms may associate in a form of a Joint Venture or a sub-consultancy agreement to enhance their qualifications. Such association or Joint Venture shall appoint one of the firms as the representative.

Interested eligible consulting firms may obtain further information during office hours, 09:00 AM to 05:00 PM, (Washington D.C. Time) by sending an email to: Daniel Cabrera (danielca@iadb.org)

Inter-American Development Bank

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Program to Support Public-Private Partnerships in Infrastructure
RG-T2998 ATC/OC-16389-RG and ATN/OC-16388-RG
TERMS OF REFERENCE

Legal Consultancy for Public-Private Partnership (PPP) related activities

1. Background Information

Established in 1959, the Inter-American Development Bank (“IDB” or “Bank”) is the main source of financing for economic, social and institutional development in Latin America and the Caribbean. It provides loans, grants, guarantees, policy advice and technical assistance to the public and private sectors of its borrowing countries.

The Public-Private Partnership Team (VPC/PPP) at the IDB, is primarily dedicated to assisting public entities in Latin America and the Caribbean with upstream activities (regulatory and institutional framework strengthening); enhancing technical capacities by providing PPP knowledge dissemination (workshops, training and publications), PPP project preparation (identifying, selecting and evaluating) and structuring (risk analysis to determine appropriate PPP structure), PPP contracting (preparation/assistance with bidding process and evaluation of proposals) and management of socially feasible and bankable infrastructure projects that have the potential of reaching financial closure.

These Terms of Reference outline the activities and responsibilities of a law firm (herein referred to as “firm”) that will provide legal advice and legal support for upstreaming PPP regulatory framework and PPP project preparation, structuring, contracting and management activities related to the Program to Support Public-Private Partnerships in Infrastructure (RG-T2998). The Program’s objective includes supporting the IDB’s borrowing member countries in Latin America and the Caribbean with the implementation of PPPs in infrastructure through (i) development and strengthening of regulatory frameworks and institutional capacity for PPPs; (ii) supporting the identification, evaluation and preparation of infrastructure projects to be implemented via PPPs; and (iii) generation, systematization and dissemination of knowledge, and PPPs best practices in infrastructure.

Due to the broad scale and timeline of potential deliverables, this document outlines the ability to work with one or several firms contracted under a "Framework Agreement" based on a firm(s) respective Proposal(s). A Framework Agreement allows for an indefinite quantity, which is neither promised nor limited, of services within a general scope of work during a fixed term period at predetermined rates pursuant to agreed contract terms and conditions. Different requirements and requests will each have their own work order. The contract will be for a defined time period (two years) and work will be based on agreed rates for each work order and resulting type of expert that the firm will propose.

Firms are invited to submit proposals to be contracted under a Framework Agreement, and one or several firms will be selected based on their technical and price proposals. It is estimated that two or three firms be selected. A firm that wins a bid and signs a Framework Agreement with the IDB is not yet assigned a quantity of work. Instead, it is “pre-approved” during the two (2) year term of the Framework Agreement to bid on work orders for specific services (further definition and examples below). The VPC/PPP, will select work order bids based on factors such as price, knowledge and experience of the team to be provided by the firm, and proposed timeline. At the time of specific work orders, a firm will be requested to price their offers.

2. Services to be Performed

The main objective of this consultancy is to provide legal advice to the IDB and its clients in Latin America and the Caribbean (including national and sub-national governments) in a range of activities (i) required to support PPP legal, regulatory, institutional and policy reform; and (ii) related to PPP project development, including project preparation, structuring, contracting and management activities.

To meet this end, a firm or firms, with a strong presence in Latin America and the Caribbean, is desired to carry out demand-driven advisory services assignments. An assignment may include support for:

- Advising government officials on an effective legal, regulatory, policy and institutional environment conducive for PPPs;
- Providing targeted support for the legal structuring of PPP transactions;
- Advising national and subnational governments on the appropriate management of PPP contracts and, as appropriate, contract renegotiation.

3. Reports / Outputs:

This section includes detailed descriptions of activities that could be included under this consultancy:

A. Support for PPP Legal, Regulatory, Institutional and Policy Reform

This set of activities could involve:

- Developing presentations and briefings for countries and/or States and/or Municipalities' stakeholders on key issues concerning PPP laws, regulations and policy in the respective country, State or Municipality, or even metropolitan areas in which consultancies are undertaken;
- Assessing the feasibility and conduciveness of a country's legal, regulatory, institutional and/or policy frameworks for developing a pipeline of PPP projects or a government PPP program at the national and/or subnational level;
- Proposing changes to a country's legal and regulatory framework in order to strengthen capacity to implement PPP arrangements in a climate of certainty and confidence for the private sector, at the national and/or subnational level;
- Developing recommendations and advisory reports on adapting a country's or states or municipalities legal, regulatory, institutional and/or policy frameworks to establish a more conducive enabling environment for developing a pipeline of PPP projects or a government PPP program;
- In coordination with government officials, writing or supporting the writing of draft PPP bills, regulations and policies;
- Advising government officials on the implementation of approved PPP laws, regulations and policies;
- Developing procurement templates for PPPs that could then be modified and applied to different projects and across countries. This could include contractual clauses and model contract;
- Provide training on legal aspects of the bidding documents and the bidding procedure, in order to prepare for the process and ensure its rapidity and solidity.

B. Targeted Legal Support for PPP Project Development

This set of activities could support the selection, feasibility studies, preparation, structuring, contracting and management of PPP projects. Support could be provided through the following activities:

- Attendance at coordination meetings with the IDB PPP Team; and/or with the entities responsible for carrying out the development of PPP projects;
- Definition of the applicable legal framework;
- Contributing to legal aspects of the "strategic business case" or pre-feasibility reports for potential PPP projects. In this case, strategic business case refers to a type of analysis used in PPPs to determine whether a project is a good project that could be feasible as a PPP. The activities will involve preliminary legal assessments of risks and relevant issues of the project;

- Developing or coordinating targeted project appraisal exercises in terms of its legal feasibility and the main legal risks to the targeted project implementation. The feasibility studies can include activities such as:
 - Identifying the main legal risks to the Project or any factor that might jeopardize the process and recommend how some of those issues can be satisfactorily avoided or mitigated, in order to enhance the legal certainty and solidity of the bidding procedure, including key steps for implementation. Such works must also include the identification of any existing or potential liabilities
 - Assessing the legal feasibility of key financial aspects of the project, such as the revenue model.
 - Assessing the legal obstacles for the assumptions regarding risk allocation that are considered relevant to commercial viability, including the bankability of the project.
 - Analysis of the status of the use of land and existing assets
 - Consideration of Potential alternative ownership claims on the land
 - Assessment of the legal aspects of rights of others (such as utilities relocation)
 - Employment issues, particularly of brownfield projects.
 - Legal assessment of the tax and accounting assumptions considered in the financial model developed by the multidisciplinary team.
- Developing the targeted project legal structure and preparation activities, delivering part or the totality of the documentation required to conduct the formal procurement process and the commercial close of the project. The legal structuring of the project can include activities such as:
 - The legal aspects of a detailed risk allocation matrix, which should identify enforceable contractual mechanisms to allocate specific project risks, including the conditions of the risk allocation structure;
 - Producing or commenting on the draft of the request for proposals and request for qualifications, in line with domestic regulations of the targeted project, which should contain the best international practices of tender design and present the detailed set of rules regarding the procurement process including the qualification criteria, the proposal evaluation criteria, and other aspects of the procurement process;
 - Producing or commenting on the draft of the final PPP agreement with all its annexes reflecting the payment mechanism, the performance indicators the output specification and all other risk allocation mechanism proposed;
 - Assist in preparing any legal documents previous to the bidding process, with the purpose of offering legal consistency and certainty to the bidding procedure and all the players involved;
 - Drafting master trust agreements and other financial agreements required for the commercial feasibility of the targeted project
- Supporting the contracting agency to obtain the necessary approvals, considering the specific country legal requirement, to issue the request for proposals.
- Supporting the contracting agency to conduct the procurement process in terms of the interaction with potential bidders, formal questions, potential negotiations and formalization of the PPP agreements and financial close of the project.
- Prepare memos addressing legal topics and questions raised by the Bank and by the public entities involved.

C. Contract Management and Renegotiation

To support the effective management of PPP contracts and appropriate approaches to contract renegotiation, when necessary, the following activities could be developed under this consultancy:

- Advising government officials on compliance with PPP contracts, including performance standards;
- Advising governments on whether contract renegotiations should take place and supporting governments during the renegotiation process;
- Advising governments on the drafting of contractual amendments and the implications of specific contractual terms and conditions;
- Advising governments on the development of new contractual requirements related to performance standards.

4. Project Schedule and Timeline

Timelines will be determined through specific work orders and associated bids, which will provide a proposed work plan and total costs for that work order. Over the Framework Agreement term, it is expected that there will be approximately six to twelve orders a year. Where shorter timelines are required, the winning firm will be able to put multiple consultants and/or experts on the project task.

Additional Expectations are that:

- The winning firm(s) identifies a range of cost depending on the type and number of experts assigned to meet work order objectives and timelines;
- The winning firm must have the ability to provide local expertise to fulfill the work order objectives, either through separate contracting of local experts, local partnerships, or other mechanisms to obtain local access;
- The winning firm will provide reports in the native language of a country and must demonstrate an ability to work fluently in both Spanish and English, being Portuguese and French strongly desired.
- Where travel is involved, indicative travel costs should be submitted with the Proposals to work orders. Specific travel costs and services costs will be submitted for each Work Order within the limits agreed with the firm. The IDB only recognizes economy class airfare costs.

5. Expected Deliverables

Different deliverables will be requested and processed through a work order that may include but is not limited to: reports and presentations. With each work order, the firm(s) will be expected to create a work plan that includes a start and an end date, outline key processes needed to complete the work, and identify stakeholders, especially government counterparts, that will be contacted to complete the work. All government counterparts must be approved and cleared by the project team beforehand, along with a final detailed estimate of costs associated with the work order.

6. Professional profiles of the consulting firm

It will be expected that winning consulting firms will have the following:

- Demonstrated expertise on the policies, laws and regulations governing PPPs.
- Demonstrated expertise across a wide range of sectors, like water and sanitation, health, education, waste management, transport, energy, all in pre-feasibility, feasibility and structuring phases.
- Demonstrated extensive experience providing high-level legal advice to national and subnational governments and private sector clients.
- Demonstrated PPP legal project structuring experience in Latin America and the Caribbean.
- Personnel resources with fluency in Spanish and English, with Portuguese and French desirable.

- Expertise with multilateral development organizations, such as the Inter-American Development Bank or the World Bank.
- The firm must have the capacity and human resources designated to this assignment to carry out at least two advisory assignments at the same time and will have experts available within three weeks after receiving a specific Work Order from the IDB PPP Team. As such, the firm should demonstrate its capacity to readily mobilize these resources, identifying in its proposal potential permanent team members.
- In a Proposal, firms must demonstrate experience with the type of services requested and identify countries in the Latin America and the Caribbean region where this experience has taken place.

7. Designated representative:

Unless otherwise notified by the Bank, Gaston Astesiano (gastona@iadb.org), from the IDB PPP Team, shall act as the IDB's designated representative regarding this Framework Agreement.

The Consultant shall give written notice of their respective representatives authorized to act pursuant to this Agreement. Such notice shall be given upon execution of the Agreement and from time to time thereafter upon each party's designation of other designated representatives

