

**DRAFT TERMS OF REFERENCE**

**CONSULTANCY SERVICES**

**FOR**

**LEGAL EXPERT TO PERFORM DUE DILIGENCE ON REGIONAL ENERGY PROJECTS**

**Date: 10/03/2022**

# Introduction and Background

The SADC Secretariat in consultation with the World Bank (WB) developed a concept on enhancing SADC priority areas for sustainable regional power sector development and scaling up of cross-cutting technical assistance (TA) to the Secretariat and SADC Regional Organizations namely Southern Africa Power Pool (SAPP), Regional Energy Regulators Association (RERA) and SADC Centre for Renewable Energy and Energy Efficiency (SACREEE) to enhance their capacity. As part of implementation of the concept especially on the component of cross-cutting technical assistance, the SADC Secretariat and SAPP signed an Agreement for Co-operation on the SAPP Programme for Accelerating Regional Energy (Transformational) Projects (AREP) to address the issue of provision of technical assistance to the SADC Secretariat outlining the roles and responsibilities and reporting arrangements. The signed Agreement led to recruitment of the Coordinator/Transaction Advisor and the Project Administration Officer in September 2020 as part of the technical assistance on enhancing the capacity of SADC Secretariat on energy infrastructure projects.

The SADC SAPP-AREP technical support, now operational at the SADC Secretariat, since September 2020, in delegated cooperation with the WB is mandated to provide technical assistance to establish a sustainable framework of preparing and financing regional energy infrastructure projects from preparation stages of project cycle to construction phase with targeted commissioning dates.

The SADC Secretariat, is the beneficiary of the Work Plan activities to be funded from the SAPP-AREP Programme proceeds. To give effect to the successful delivery of the Programme four (4) Workstreams and ten (10) Initiatives were identified.

# Purpose and Scope of the Assignment

## Purpose of the Assignment

The main purpose of the Assignment is to give effect to outcomes from the 1st SADC Electricity Working Group (EWG) held, in November 2021, that led to several initiatives placed before the Ministers of Energy meetings held in November-December 2021. These have now become a record and will need to be implemented.

* 1. **Main Objective**

The main objective is to recruit a Legal Consultant to:

1. develop a Model Intergovernmental Memorandum of Understanding (IGMOU) for regional transmission interconnector projects covering all the sections and articles that will enable timely preparations and implementation of regional energy projects;
2. analyse and evaluate the effectiveness and efficiency of the prescribed governance structures as covered in the IGMOU’s and produce recommendations thereof; and
3. present the developed model IGMOU and the recommendation of the governance structure to SADC structures through workshops and/or meetings.

The Roadmap of the Initiatives is in **Annexure 1.**

* 1. **Tasks**

The Consultant will undertake the following tasks:

* + 1. Analyse and evaluate the effectiveness and efficiency of the prescribed governance structures as covered in the IGMOU’s and produce recommendations thereof. From this the following are to be provided:
* Due Diligence on 17 Regional Energy projects, working closely with the SAPP Project Advisory unit (PAU) and the SADC Energy team).
* Advise on projects that have valid IGMOU’s (Executed by all parties and still within the timeframes) and those IGMOU’s that are coming close to expiration;
* Projects that have no IGMOU’s and require immediate IGMOU’s;
* Review the IGMOU’s and establish what prescribes Governance (Joint Commission and Ministerial Committee, etc.) structures are required to be established and implemented;
* Develop a repository of all IGMOU’s; and
* work closely with the SAPP PAU team and the SADC Energy team, to establish which projects they would like the prescribed Governance structures to be established immediately;

* + 1. Revise the current draft IGMOU on Inga Transmission project. The Inga 3 project spanning between Botswana, DRC, South Africa, Zambia and Zimbabwe, has been in discussions for the past 10 years.
    2. Develop a checklist accompanying all IGMOU’s covering the general structure and framework of all SADC IGMOU’s and to highlight issues
* on tax exemption for grant funded projects,
* validity of the IGMOU for the purposes of negotiation between SADC Member States;
* Member State commitment to Regional Energy project and associated punitive costs such as repayment of grants in the event of withdrawal of the project, during development, from the Member State and utility;
* Sponsors/utilities lack of equity contribution;
* Allocation of the Project Co-Ordinator administration cost; and
* Other elements to be discussed and agreed.

Present the developed model IGMOU and the recommendation of the governance structure to SADC structures through workshops and/or meetings

1. **Deliverables**

The following deliverables are expected from the Consultant:

1. Inception Report;
2. Draft Final Report; and
3. Final Report.
4. **Consultants Skills and qualifications**

An experienced energy legal expert, with regional and or international knowledge and experience in the fields of energy (Regional Transmission projects, hydropower, natural gas, hydrocarbons, renewable energies) is required. The legal expert can be part of a larger transaction advisory firm. The legal expert should have the following attributes:

1. At least twelve (12) years of relevant professional expertise, either at a recognised Legal Firm or part of a larger Energy Transaction Advisory firm;
2. Legal Expertise in the area of energy, engineering and or economics;
3. Familiarity with working in the SADC regional institutions;
4. Familiarity with the main policy and strategy instruments of SADC, especially those that govern the operations of the Energy sectors;
5. Excellent communication and report writing skills;
6. Being a citizen of any SADC Member State and knowledge of Portuguese or French will be an added advantage; and
7. Understanding of regional integration and implications thereof to SADC and Member States
8. **Conclusion and Time Frame**

In this context, the SADC Secretariat wishes to invite qualified Legal Consultants and companies to express interest in providing ***Short Term*** legal consultancy support.

Time Frame: Three (3) Months

Expected Start Date:1st June 2022

**Submissions**

Applications must be submitted electronically to email address below by the **28th April 2022 at 15:00 hours,** African Central time and mention, “**Application for Short Term Legal Expert consultant to perform due diligence on Regional Energy Projects”.**

**Address and Contact:** **Southern African Power Pool**

**Attention: Thembekani Luthuli,**

**SAPP-PAU Procurement Specialist**

**Tel: +27 10 446 9600/+27 72 709 7252**

**Email Address:** [**thembekani.luthuli@sapp.co.zw**](mailto:thembekani.luthuli@sapp.co.zw)**;**

Annexure 1

The timelines below display the Roadmap of the Initiatives that need to be implemented from above, and prioritized according to the SADC Annual Operating Plan (AOP). The objectives of the Legal Consultant are to:

* 1. **Initiative 6** – review all 17 Regional Energy projects. Perform a Due Diligence (**a**. collate all IGMOU’s (both executed, unexecuted, valid and invalid from a period point of view, **b.** present the status of all IGMOU’s after working closely with SAPP and SADC Secretariat, **c.** Present which projects have the prescribed governance structures as (Joint Commission and Ministerial Committee, etc.) covered in the IGMOU, working closely with SADC Secretariat and SAPP PAU, **d.** After working closely with SAPP and SADC Secretariat on the priority projects requiring imminent governance structure implementation). The SADC Secretariat will then ensure the establishment and operationalization of dedicated project implementation units and project steering committees at Member States level for the identified priority projects. Second outcome from the 1st SADC EWG falling within Initiative 6. Due by **end May 2022**.
  2. **Initiative 5** – Attend a technical Workshop with Member States (Botswana, Democratic Republic of Congo (DRC), South Africa (SA), Zambia and Zimbabwe) on the Inga 3 IGMOU. Specifically, from the session held in December 2021, the interest in the project, technology being proposed through the IGMOU and updated with current figures. Technical experts from the utilities to be present. Revise the Inter-Governmental Memorandum of Understanding (IGMOU) accordingly and take note of the training dates, when arranging this session. The revised Inga 3 IGMOU will be shared with the SADC Legal team for legal guidance. The revised Inga 3 IGMOU with feedback received from the Member States will be due by end **June 2022**.
  3. **Initiative 5** - develop a checklist accompanying all IGMOU’s covering the general structure and framework of all SADC IGMOU’s and to highlight issues on tax exemption for grant funded projects, validity of the IGMOU for the purposes of negotiation between SADC Member States. First outcome from the 1st EWG falling within Initiative 5. Due by **July 2022**.