



# CARIBBEAN TELECOMMUNICATIONS UNION



Caribbean Regional Communications Infrastructure Project (CARCIP)

Caribbean Telecommunications Union Grant No.: H772-6R

Assignment Title: Public Private-Partnership (PPP) Transaction Advisor to Support the Implementation of Broadband Backbone Networks in three countries, Grenada, Saint Lucia and St. Vincent and the Grenadines

Reference No.: CTU-CARCIP-C-QCBS-3

TERMS OF REFERENCE

## 1. INTRODUCTION

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The ICT Sector in the Caribbean region faces a number of challenges, including, the geopolitical and economic constraints that act as impediments towards Private-Public Partnerships (PPP) on communications infrastructure investments. Recognising these challenges, the International Development Association of the World Bank, the Caribbean Telecommunications Union (CTU) (the “Client”), and the beneficiary countries of St Lucia, St Vincent and the Grenadines and Grenada (the CARCIP “participating member states”), designed the Caribbean Regional Communications Infrastructure Program (CARCIP) (the “Project”). CARCIP was therefore borne out of the need to (i) support a regional approach in addressing these challenges through a holistic ICT development framework; (ii) to bridge the remaining gaps in regional broadband communications infrastructure; and (iii) to advance the development of an ICT-enabled services industry across the Caribbean Region.

At present, the CARCIP participating member states are preparing to contract the services of a private contractor through a public-private partnership for the implementation and management of critical communications infrastructure. The Governments of the participating member states have designated the relevant Ministries as the implementing agency for the procurement, which is being structured as a public-private partnership. For each of the participating member states, the CARCIP focal points are the Ministry of Communications, Works and ICT (Grenada), the Ministry of Public Service, Information and Broadcasting (Saint Lucia) and the Ministry of Foreign Affairs, Foreign Trade, Commerce and Information Technology (St. Vincent and the Grenadines) (the “Ministries”). The Ministries are third-party beneficiaries under the PPP Contract to be implemented and will serve as the designated coordinator for receipt and use of the Services being provided by the Service Provider under the PPP Contracts. The CTU therefore intends to engage the services of an experienced transaction advisory firm (the “Consultant”) to assist the CARCIP participating member states through the contract negotiation and implementation phase of the PPP project cycle.

CARCIP is considered to be the first of its kind in the Caribbean and is therefore, intended to be used as a model for future PPP project development initiatives in the ICT sector.

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## 2. OBJECTIVE

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The objective of the consultancy is to:

- Provide advisory services including advice on the legal, technical and financial aspects of the **PPP contract negotiations** for the Project; and
- Undertake the supervision of the **implementation of the PPP contract** under the project.

## 3. SCOPE OF SERVICES

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The Consultant is required to work with the **Ministries** to manage the contract negotiation and implementation stages will be paired with local counterparts, to ensure hands-on knowledge transfer on all subject matters. The Consultant must also give the participating member states all the necessary legal, technical and financial support, in accordance with the Bank's procurement guidelines and the relevant PPP laws, regulations, systems and standards of the participating member states.

### a) SUPERVISE THE IMPLEMENTATION OF THE PPP CONTRACT AND FINANCIAL CLOSE (TASK 1)

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The transaction advisor will have to undertake the following:

- i) Outline the PPP contract (including all annexes) that implements the chosen PPP approach
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The transaction advisor shall:

- apply the risk matrix developed during the feasibility study, but updated to address all project issues and market context;
- propose contractual provisions and/or clauses dealing with the design and construction process, service specifications, information reporting, output requirements and performance measurement;
- propose contractual provisions regarding the payment mechanism, the funding/financial features, reporting of key financial and accounting information, the

- financial consequences of an early termination of the contract, accounting and tax obligations, insurance requirements;
- develop and implement a detailed financial model and develop the contract to fit the requirements of the model;
  - explain to the Ministries whether and to what extent certain provisions of the contract could be amended without disturbing the key risk allocation goals of the Project;
  - advise on options for obtaining debt or loan equity to the Project or to provide some other financial instrument (e.g. guarantee or subsidy) to make the PPP project financially viable or more cost effective. In this regard, the transaction adviser will provide advice on structuring of such instruments, their drafting, negotiation and implementation (e.g. setting up trusts and escrow accounts, arrangements with security sharing and management and other aspects of financial management and ensuring compliance with financial covenants); and
  - review the PPP contract and propose a final outline/draft to be proposed to the preferred bidder.

All advice shall be compliant with applicable laws and consider any constraints or opportunities associated with applicable laws.

## ii) PPP Contract Negotiations, PPP Contract Management Plan

The transaction advisor shall assist the participating member states in final negotiations with the preferred bidder. This will involve,

- preparing suitable negotiation teams;
- categorizing issues appropriately and developing timelines for completion;
- planning negotiation tactics;
- reviewing and advising on proposed sub-contracts, in particular with the construction contractor and operator, to the extent forms of these contracts have not been included in the PPP contract or the tender documents;
- reviewing of preferred bidder satisfaction of the conditions precedent to the PPP contract, often including the validity of licenses and permissions obtained by the preferred bidder, formation of Special Purpose Vehicles (SPV) in the form required, financial close of the project financing, and implementation of the commercial requirements for performance of the project;
- managing relationships with second and third place bidders, including managing bid bonds and on-going discussions, in the case of a withdrawal of the preferred bidder;
- managing processes for reaching agreement, (the above will normally involve a second set of negotiations with the lenders arguing similar points as those raised by the preferred bidder during the tender process and new issues often focused on financial covenants and protections). This may involve extended discussions of Government financial participation to protect the lenders from specific risks. The

- legal service providers should be involved in these discussions;
- reviewing and negotiating of the financial documentation which will often have a direct effect on the rights and obligations of the Governments of the participating member states; and
  - preparing a legal opinion that the transaction is binding on its terms, the security and financial management structure, and a legal opinion on the revenue structure and current regulatory mechanism.

The Consultant shall ensure that all agreements reached are incorporated into all the financial, commercial and legal documentation, and shall assist with drafting the necessary and related correspondence.

The final terms of the PPP contract, as negotiated with the preferred bidder, shall be submitted, along with the PPP contract management plan for the Project, for approval by the respective Cabinets of the participating member states. The Consultant shall be responsible for compiling the necessary submissions for the Ministries to obtain Cabinet approval, including comprehensive legal due diligence of the accounting officer / public authority. This will relate to legal compliance, competence and capacity to enter into the PPP contract.

### iii) PPP Contract Signature, Close-Out Report, Case Study, and Financial Closure

The Consultant shall also compile a comprehensive close-out report and case study, and must incorporate any additional factors that may be required by the participating member states. The close-out report will be a confidential document owned by the participating member states. The case study shall become a public document, and shall be made available on the relevant government website of the participating member states.

The Consultant shall, in close liaison with the participating member states, draft a comprehensive PPP management plan, in accordance with the provisions of the PPP contract, to help in the management of the Project and its risks, rights and obligations after financial close. The management plan will be delivered no later than 20 days before financial closure. Financial closure signifies that all the related contract negotiation deliverables have been successfully completed, and that the transaction advisor's work is finished, if applicable.

## b) CONTRACT MANAGEMENT

Contract management activities depend significantly on the project characteristics and events arising during its project life. Involvement of transaction advisers at this stage may be much less standardized than for the pre-financial close stages.

**The Consultant shall therefore ensure that, at a minimum, the following management responsibilities have been allocated:**

- i) Proposed organization structure for contract management, including: staffing, governance and decision-making chain, reporting, timetable, risk monitoring, budget supervision, etc;
- ii) The Consultant shall also lead the drafting of a user-friendly contract management manual (this document shall provide a roadmap on how to manage the contract efficiently for all those at the Ministries who will be involved in that process, either directly or indirectly).

**The Consultant shall provide technical support to monitor and manage project delivery and service outputs as follows:**

- 2) Supervise design activities together with the Ministries;
  - 3) Monitor and report on the implementation of works by taking part in site meetings, reviewing reports produced by the private partner and investigating issues that may arise;
  - 4) At project completion, supervise the acceptance procedure (e.g. tests, inspections, notifications);
  - 5) Advise on the implementation of the tools for monitoring the performance of the private partner;
  - 6) Assess the quality of, analyze and report on the performance data provided by the private partner;
  - 7) Follow-up the utilization of the financing, by the private partner;
  - 8) Support the adaptation of the financial model to meet the requirements of the operational phase;
  - 9) Support the Ministries in managing the payment mechanism;
  - 10) Support the Ministries in the accounting/budgeting aspects from the project;
  - 11) Review and analyze the accounting and financial data regularly provided by the private partner;
  - 12) Support the Ministries in carrying out any performance reviews and in depth financial health-checks analysis;
- Support the Ministries in resolving contract interpretation issues and disagreements with the private partner;
  - Explain/clarify dispute resolution provisions and processes and advise the Ministries on the issue being disputed.

#### iv) PPP Contract Termination or Expiry

**In case of likely termination of expiry, the Consultant shall:**

- Advise on a crisis management strategy;
- Plan the retendering of the contract or transfer of the assets back to the Ministries to ensure service continuity;
- Review state of the assets and required rectification works (this may also be needed at the beginning of the process if there is a transfer of existing assets to the private partner);

- Assist the Ministries in the calculation of termination payments;
- Assist the Ministries in clearing final payments owed to/by the private partner and closing the accounts;
- Advise on how to protect the Ministries interests;
- Advise on the legal process and issues related to the termination or expiry of the PPP contract.

#### v) Ex-post Evaluation

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- Develop an evaluation process to support the institutional framework
- Develop the analytical framework to support the auditing of technical, legal and financial aspects of the project and propose improvements

### 4. REMUNERATION, SCHEDULE AND DELIVERABLES

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Deliverable	Timeframe (working days of the signing of the contract)	Percentage Payment
Draft Inception Report giving a detailed work plan and assignments for each individual included in the transaction advisors' team	15	5
<b>Supervise the implementation of the PPP contract and financial close (Task 1) – including:</b>		
(i) Outline the PPP contract that implements the chosen PPP approach;	30	15
(ii) Support PPP Contract Negotiations, Draft PPP Agreement and Contract Management Plan;	50	15
(iii) PPP Agreement Close-Out Report and Case Study, and Financial Closure.	70	15
<b>Contract Management (Task 2) – including:</b>		
(i) Propose an organization structure for contract management, including: staffing, governance and decision-making chain, reporting, timetable, risk monitoring, budget supervision, etc;	90	20
(ii) Draft a user-friendly contract management manual (this document shall provide a roadmap on how to manage the contract efficiently for all those at the Ministries who will be involved in that process, either directly or indirectly);	110	20
(iii) Establish Ex-post Evaluation Process.	132	10

## 5. MANAGEMENT OF TRANSACTION ADVISOR BY THE PARTICIPATING MEMBER STATES

A project coordinator shall be appointed by the Ministries of the participating member states to take full responsibility for managing the transaction advisor's work and for ensuring delivery on the project.

The project coordinator shall establish a project team to engage regularly with the transaction advisor for efficient completion of the various delivery items. The project team will meet at least monthly and the transaction advisor will report progress at these meetings, as instructed by the project coordinator.

The project coordinator shall confirm that the transaction advisor has satisfactorily completed each deliverable before invoices can be submitted to the CTU for payment.

The activities will be carried out in the participating member states. It is anticipated that the team leader of the transaction advisors' team will be located on site for the vast majority of the duration of the contract.

The transaction advisor shall submit interim reports every two weeks describing progress of work, updated work schedule, and any key constraints encountered by the transaction advisor in the performance of the activities.

**All reports and documents shall be submitted in English. Reports and documents relevant to the Consultant's services, evaluation notes etc. shall become the property of the CTU and participating member states.**

## 6. BUDGET

The budget is estimated at roughly 6 person months.

## 7. EXPERIENCE, QUALIFICATIONS AND SKILLS

The Consultant should be a qualified firm or consortium of firms that have demonstrated experience advising on PPP transactions and advisory services in broadband infrastructure projects. The firm must propose a team capable of successfully carrying out all aspects of the

Terms of Reference (ToR). The Consultant should collectively have experience executing at least 2 similar consultancies within the past five years.

### a) Transaction Advisor Skills and Experience

The transaction advisor will comprise a team of key experts, managed by a single lead advisor, although transaction advisors may take the lead on specific activities from time-to-time. The members of the team must possess the skill and experience necessary to undertake the range of tasks set out under the section on Scope of Services.

The skills and experience required in the transaction advisory team are as follows:

### b) Key Staff Required

The list of key experts whose CVs and experience will be evaluated include the following positions.

No. Staff	Key Expert Position	Area of specific expertise required	Minimum qualification and professional experience required
1	PPP Financial Advisor	Experience and knowledge of the process of introducing the private sector, the sale or lease of infrastructure assets and the impact of reform decisions on the ability to attract private finance. Financial analysis, with relevant PPP and project finance experience through to financial close. Experience with PPP procurement and structuring.	Master's degree in Finance or a related policy field, and a minimum of 7 years' experience as a regulator or consultant for the regulation of broadband infrastructure.
1	Telecommunications Lawyer and PPP Legal Expert	Experience structuring PPPs for broadband or other telecommunications projects, drafting tender documents, and negotiating financial close. Knowledge of both the local legal framework and best international practice in the drafting of legislation and contracts. Relevant experience in the drafting and negotiating of PPP contracts and communicating with bidders.	Practicing lawyer with a minimum of 5 years' experience as a transaction advisor on telecommunications projects and a minimum of 10 years' experience as an advisor in the development of national-level PPP programs and institutions.
1	ICT Technical Expert	Experience in the operation of broadband networks and knowledge of the engineering, operational and other technical aspects of the infrastructure sector. Can also advise on the condition of existing assets, rehabilitation needs and new investment requirements.	Master's degree in ICT engineering or other relevant field of engineering, and a minimum of 10 years' in consulting or operations of broadband networks, including

		Technical due diligence and advice on PPP structuring and contracts.	specific experience with undersea cables and government networks.
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## 8. EVALUATION OF TECHNICAL PROPOSALS

The following provides further detail on the criteria, sub-criteria and point system for the evaluation of the technical proposals:

Criteria	Points
1. Specific experience of the Consultant (as a firm) relevant to the assignment	20
2. Adequacy and quality of the proposed methodology, and work plan in responding to the ToRs  <i>Notes to the Consultant: the Client will assess whether the proposed methodology is clear, responds to the ToR, work plan is realistic and implementable, overall team composition is balanced and has an appropriate skills mix; and the work plan has the right input of Experts.</i>	30
3. Key Experts' qualifications and competence for the assignment <ul style="list-style-type: none"> <li>• PPP Financial Advisor</li> <li>• Telecommunications Lawyer and PPP Legal Expert</li> <li>• ICT Technical Expert</li> </ul> <p><i>Sub-criteria and weightage: The number and points to be assigned to each of the above positions shall be determined considering the following three sub-criteria and relevant percentage weights:</i></p> <p><i>a) General qualifications (general education, training, and experience).....20%</i></p> <p><i>b) Adequacy for the assignment (relevant education, training, experience in the sector/ similar assignments).....70%</i></p> <p><i>c) Relevant experience in the region (working level fluency in local language(s)/ knowledge of local culture or administrative system, government organization, etc.....10%</i></p>	50
<b>TOTAL</b>	<b>100</b>