

**The Hashemite Kingdom of Jordan**  
**MINISTRY OF WATER AND IRRIGATION**  
**WATER AUTHORITY OF JORDAN**

MANAGEMENT CONTRACT  
FOR THE  
NORTHERN GOVERNORATES  
WATER ADMINISTRATION (NGWA)

**CONSULTING SERVICES**  
**“TRANSACTION ADVISOR”**

**Terms of Reference**

FEBRUARY 2010

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## **LIST OF ANNEXES**

- Annex 1 Commercialization and Management Contract for NGWA – Draft Question and Answer Sheet
- Annex 2 List of draft M.C bidding documents available (Available for read only on PMU/Ministry of Water and Irrigation website [www.pmu.gov.jo](http://www.pmu.gov.jo))

# **1. INTRODUCTION**

## **1.1 GENERAL**

To achieve more effective, efficient and sustainable water and wastewater services in the Northern Governorates, WAJ proposes to award a fixed term Management Contract (MC) to an Internationally Qualified Water Services Operator. The Operator will be selected following an international competitive bidding process.

WAJ is therefore seeking to appoint a **Transaction Advisor** (TA) (Alternatively the Consultant) to assist in the development of all relevant tendering and contract documentation for the appointment of an Operator.

The objective of these Terms of Reference (ToR) is to provide background information on the MC, to define the scope of work and the services to be rendered by the TA and to stipulate the tender and contract conditions for the services.

The TA's tasks have been described as detailed as possible. However, the list of tasks and activities can by no means be considered as complete. It is the Consultant's responsibility to critically verify the scope of services indicated and to extend, reduce or amend it wherever he deems necessary according to his own professional judgement and the knowledge he will acquire during the preparation of his proposal.

All described services shall be performed in close co-operation with the Project Management Unit (PMU) in the Water Authority of Jordan (WAJ), the client for these services, and the Northern Governorates Water Administration (NGWA).

The project background is described in more detail in the Questions and Answer Sheet in the Annex.

## **1.2 DURATION AND PHASES OF ASSIGNMENT**

The Consultancy Services will be in two stages. Stage I comprises the establishment of contract documents for the MC, Stage II comprises the tendering and contracting of the MC-Operator. The time duration during which the services should be delivered is estimated to be 12 months.

## **1.3 FINANCING OF SERVICES**

The services of the Transaction Advisor will be financed by the German Financial Co-operation funds (grant) especially earmarked for consulting services (Study and Consultation Fund).

## **1.4 STRUCTURE OF TRANSACTION ADVISOR AND ASSOCIATION WITH JORDANIAN PARTNER**

The Transaction Advisor team shall be led by an internationally well experienced and reputed Consultant with long-term experience in PSP (Private Sector

Participation) tenders of similar kind in water and sanitation, capable to oversee all technical, financial and institutional needs of the transaction. The Terms of Reference provide the outputs to be achieved, but do not cover in detail the means to achieve them. The team leader thus shall be free to subcontract (locally or internationally) the services he sees fit to fulfil the scope of services.

However, the team shall include, at a minimum, consultants that together have the following expertise:

- (1) Legal expertise with a sound knowledge of the Jordanian legislation, especially the legislation relevant for the management of water and sanitation utilities, with good language capabilities in "legal English", and relevant experiences with transactions respectively procurement processes for public services in Jordan, and
- (2) Engineering expertise with in-depth local knowledge to identify, analyse, evaluate and utilise technical information, data, reports, materials in Arabic as well as in English language for the draft of information sheets, digests etc., as required especially for the Appendices to the Management Contract.
- (3) Financial expertise to review, update and improve the existing financial models

## **2. SCOPE OF SERVICES**

### **2.1 GENERAL**

The transaction advisor shall complete all contract and tender documents for the Management Contract. He will also provide legal, technical, financial commercial and operational advice to WAJ during the tender evaluation and award process, assist in the transitional arrangements as required and thereby ensure a smooth and transparent transaction.

It is foreseen that the Consultant's activities will be executed in two phases.

#### **Phase 1 – Due Diligence Assessment**

Phase 1's overall objective is to assess the Due Diligence of the Project, which will form the basis for Phase 2. The Consultant will provide his Due Diligence Assessment after:

##### **a. Technical and operational review**

*Asset Condition Surveys Review* – The Consultant will collect and assess existing data, reports, like asset condition surveys including the civil, electrical and mechanical assets. A summary paper will be prepared, describing the probable current condition of the infrastructure and operational assets. The deliverable of this task will be in the form of assets register appendix to the contract documents.

*Scope for Efficiency Gains Review* – The Consultant will review operations and operating costs (in terms of staffing, energy, chemical and maintenance costs) and the scope for capital investment to achieve efficiency gains, with focus on the Incentive Performance Indicators (IPI). Discussions will take place to establish any limits on the operator management's freedom to change working practices and staffing levels.

*Capital Expenditure Programme* - The Consultant shall comment on capital expenditure programmes for the period of the Management Contract.

*Operational Staff Appendix*- The TA shall prepare the needed appendix regarding NGWA existing staff with their details like age, qualifications, experience, title, and existing salaries, etc.

### b. Financial Review and Forecasts

The Consultant will review the audited accounts of the existing utility company and provide financial forecasts for the Management Contractor. Based on these forecasts the Consultant will develop service improvements necessary to bring benefits to the customer and ensure that the Management Contract driven improvements are sustainable. The Consultant will update and verify the *financial model for NGWA* that fully incorporates the findings of the technical and operational reviews. The model will allow for full sensitivity analysis of:

- a) Demand forecasts;
- b) Capital expenditure programmes;
- c) Operation, maintenance and management costs;
- d) Tariff structure, level and rate of increase (current tariffs, required tariffs, affordable tariffs, and willingness-to-pay).
- e) Alternative efficiency forecasts (variation of Incentive Performance Indicators)
- f) Operational initiatives and restructuring.

### c. Legal Constructability Review

The Consultant will undertake an updated review of local ordinances and local regulations that may affect the procurement process and the Project and suggest any clarifications or changes of these that may be necessary and of support to the beneficiary institutions in promoting and implementing such change insofar as it affects the Project.

The Consultant will discuss possible guarantee structures for Management Contractors, which may be necessary to attract commercial operators and will make recommendations on how such can be substantially achieved within local legislation.

#### In General:

The Consultant will work closely with the Clients institutions, WAJ, PMU, NGWA and other key stakeholders, consulting on a regular basis throughout the entire duration of the project to ensure that the model developed reflects its priorities.

## **Phase 2 – Tender Documents and Process**

During Phase 2, the Consultant shall mainly ensure embodying the requirements of NGWA in a sound and complete contract document, Data Room, advice on tendering, negotiations and contract award. However, the consultant will not be involved in evaluating the proposals. Specifically, the Consultant is expected to provide the following services:

### **a. Advice and assistance in building the transaction documents**

Using the existing Management Contract documents for which all updates, completions etc. have to be made (see I., Deliveries), the Consultant shall compile all the documents required for the transaction.

### **b. Assist in Negotiations**

The Consultant will provide advice to the beneficiary institutions related to the transaction documentation during the negotiations with the preferred bidder until contract agreement signature or tender process cancellation.

## **2.3 DELIVERABLES**

### **1. Tender Announcement**

Text for the publication of the tender, ready for use by the Client to be published in Jordanian and international print media (Instruction to Bidders-Conditions of Tender, Invitation to Bidders)

### **2. Project Memorandum**

A comprehensive description about the Project (i.e. the Management Contract for NGWA Company to be tendered, without including any confidential information or sensitive data), which can be distributed by e-mail to potential bidders, who have requested such information mentioned in the Tender Announcement.

The Project Memorandum shall include (among others)

- Country information
- State of affairs regarding NGWA-management
- Related programmes by MWI, WAJ, KfW and others
- Objectives of the Management Contract
- Character of the Management Contract  
(performance based, targeting professional service providers, not consultants)
- Project stakeholders, target groups, partners etc.
- Procurement policies, regulations and organisation  
(especially the eligibility criteria, the bid evaluation methods and selection process)

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- Confidentiality agreement to be signed prior to the submission of the tender docs
- Questions and Answers Sheets for various audiences, including prospective bidders, decision-makers, employees and the general public

3- Verified, updated and Completed Management Contract Documents with all the Appendices to the Management Contract, in close co-operation with NGWA, PMU, especially

- Legal review of the prepared documents
- Appendix 04 (Facilities)
- Appendix 05 (Service Area)  
with clearly determined pressure monitoring zones, supply/non-supply threshold values, pressure measuring method and instrumentation (according to the requirements of Incentive Performance Indicator 02)
- Appendix 07 (Operational Staff)
- Appendix 10 (Water Loss Reduction Programme)  
(as a digest of rules, budgets, activities already carried out by NGWA and activities foreseen to be carried out by NGWA Company)
- Appendix 11 (Reconstruction and Rehabilitation Fund)  
(similar like for Appendix 10)
- Appendix 14 (Important Project Information)  
(which will include the last reports of NGWA, and the financial model describing the current status as well as a realistic forecast - to be elaborated by the Consultant in close co-operation and consent with PMU, NGWA, basing on the existing version).
- Baseline and target figures in the Performance Appendix

4. Bidding Documents including “Request for Proposals”, letter of invitation. Accompanied by the full Management Contract and all Appendices, to be sent out to all bidders who have signed the Confidentiality Agreement and paid for the Tender Documents.
5. Bid Submission Support  
General client support, especially to structure, prepare, organise and document the Bid Submission Event
6. Draft of the Rejection Notification Letter

(informing those bidders, who did not pass the eligibility criteria, or whose proposals were obviously, at the first glance, not fulfilling the minimum requirements)

7- Data Room Opening: the consultant is required to organize the data room and manage it.

8- Replying for the bidders questions and prepare the amendments needed to the documents.

9- Organizing the site visit and the needed meetings with the bidders.

10- Advise on evaluation of the bids .

11- Negotiation with the selected bidder

12- Contract Agreement and protocols.

13- Reporting

- Inception Note to confirm the Client of commencement of the Consulting services
- Mission Reports and
- Final Report,

all short and comprehensive, outlining the Consultant's work progress respectively results, and ready to be used as final documentation of the tender process and its compliance with Jordanian procurement legislation and international good practice.

### **3. INSTRUCTIONS TO TENDERERS**

#### **3.1 ELIGIBILITY OF CONSULTANTS**

Submissions from consultants will only be accepted if the team leader fulfils the following eligibility criteria:

- Having worked as a transaction advisor for at least three Public-Private Partnerships;
- A minimum experience of five years in the water and sanitation sector.

There will be no short listing. Bidders will be post-qualified. Financial proposals of bidders that do not fulfil the eligibility criteria or that do not reach the technical minimum score will be returned unopened.

**3.2. Requests for Clarification:** Prospective Consultants may request a clarification of the TOR up to six days before the deadline for submission of responses.

#### **3.3 SUBMISSION OF OFFERS**

The Consultant shall submit Technical and Financial Proposals in clearly marked separate envelopes.

- Envelope 1: Technical Proposal
- Envelope 2: Financial Proposal

The offer for services under the present ToR shall be presented in English language. The Financial Proposal shall be sealed and no financial information shall be contained in the Technical Proposal. Only the Technical Proposals will be opened on submission date. Financial Proposals remain sealed until the technical evaluation is completed. Opening of Financial Proposals is governed by KfW's "Guidelines for the Assignment of Consultants in Financial Cooperation with Developing Countries". All correspondence regarding this invitation and proposals shall be addressed to:

**Water Authority of Jordan (WAJ)**  
(Sultat al Miah) Shmeisani, near Marriot Hotel  
**Eng. Munir Oweis**  
**Secretary General**  
**Box 24 12**  
**Amman 11183, Jordan**  
**Fax. No. (+) 962 6 56 79 143**  
**Tel. No. (+) 962 6 56 80 100**

The Technical and Financial Proposals shall be submitted to WAJ on the date indicated in the invitation for tenders.

The Technical and Financial Proposals must be submitted in separate sealed envelopes, clearly marked on the outside as either **TECHNICAL PROPOSAL** or **FINANCIAL PROPOSAL**, as appropriate.

Each envelop shall include two copies ,one marked "original " and must be signed by the authorised representatives of the tenderer and one copy .

In case of any differences between original and copies of the documents, only the original shall be considered.

Late proposals, whether delayed in the mail or for other reasons, will **NOT** be considered.

The Proposals shall remain valid and open for acceptance for a period of 120 days after the date of opening.

Only the Technical Proposals will be opened on submission date. Financial Proposals remain sealed until the technical evaluation is completed.

Opening of Financial Proposals is governed by KfW's "Guidelines for the Assignment of Consultants in Financial Cooperation with Developing Countries", as published under

(<http://www.kfw.de/EN/Entwicklungszusammenarbeit/Verfahrenu50/Consulting.jsp>)

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WAJ expressly reserves the right to accept or reject any bid without being obliged for any further explanation of such action.

### **3.4 TECHNICAL PROPOSAL**

The Technical Proposal shall contain, but not necessarily be limited to, the following information:

- Critical Analysis of the Objectives of the Project and the Terms of Reference;
- Proposed Concept and Method, with the programme of work, the staffing schedule and monitoring and coordination mechanisms, (Project Implementation Schedule, General and Individual Work Plans, Personnel Assignment Schedules, etc.)
- Details on the composition, experience and organization of the project team.
- Curricula vitae of the proposed personnel showing the specific experience in the respective fields
- A statement of the Consultant that he strictly abides to the stipulations of the Terms of Reference without any reservations or exceptions, unless otherwise clarified by explanations under above critical analysis of ToR.

The participation of local personnel is expressly encouraged and should be treated in the Technical Proposal. If local key personnel are proposed to participate, full details related to their assignments and qualification shall be provided.

### **3.5 FINANCIAL PROPOSAL**

The Financial Proposal shall include a single fixed fee. The fee shall be quoted in Euros.. Taxes, duties, levies etc. are not to be included in the financial proposal (cf. para 3.9).

The Financial Proposal shall state clearly an overall quotation and shall comprise:

- Fixed fees and reimbursable
- Personnel costs (shown separately according to expert personnel months<sup>1</sup>, foreign allowance and accommodation costs in place of service)
- Transport costs between the home country and the country of service
- Local transport costs
- Office costs in the country of service
- Acquisitions
- Drawing up reports
- Other costs (these can only be reimbursed in case of costs for sub-contracting, leasing equipment, laboratory tests etc); reasons must be given for any other costs
- Cost proposals for provisional services.

The prices offered shall include manpower for the local and home offices as well as all commodities and supplies required for the above mentioned services. The price schedules for professional services shall be worked out according to the expert-month schedule presented in the Technical Proposal.

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<sup>1</sup> For example, the rate for a skilled staff member in the home office shall include: basic salary, social insurance, general costs, personnel administration, holidays and sick leave, office services, communications costs for commission, back-up services and monitoring, data processing, insurance taken out by the firm, profit and loss. This covers the general back-up and monitoring by management staff in the home office. The services of management staff from the home office can be charged separately only if they are performing tasks that are distinguished by subject area and in time from the agreed list of individual services.

Home office support or back stopping services are regarded as genuine activities of qualified consultants. Respective costs are hence to be included in the overhead costs and will not be remunerated separately.

International Transport contains air fares (business class) as reimbursable item upon presentation of original ticket and complementary travel cost (includes transfers, excess baggage, medical expenses, visas etc.) as a lump sum item per travel.

Cost items for Local Transport are determined by the Consultant's logistical approach to the Project as presented in his Technical Proposal and include:

- Acquisition, lease or rent of vehicles, as reimbursable expenditure upon presentation of documentary evidence,
- Running cost of vehicles (includes all risks insurance, fuel and lubricants, maintenance and repair, driver) as a lump sum item<sup>2</sup>,
- Cost of local air, rail and road transport as a lump sum item.

Production of Reports as lump sum item includes cost for report production (including freight and local distribution) as required by these Instructions or as specified in the Technical Proposal and cost for the preparation of additional copies for all types of reports.

### 3.6 EVALUATION OF OFFERS

The offers received will be evaluated according to para 2.4 of the KfW Guidelines for the Assignment of Consultants

(<http://www.kfw.de/EN/Entwicklungszusammenarbeit/Verfahrenu50/Consulting.jsp>)

Within the evaluation, the technical proposal will get scores in line with the following structure of items, whereas the maximum scores to be awarded are listed thereafter:

<b>CRITERIA</b>	<b>POINTS</b>
<b>Concept and Method</b>	<b>40</b>
Clarity and completeness of the bid	5
Critical Analysis of the Objectives of the Project and the Terms of Reference	10

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<sup>2</sup>Private use of the official vehicles during off-duty time (if allowed) has to be specified in the Financial Proposal and a deduction of 20% on the running cost has to be accounted for.

Proposed Concept and Method, with the programme of work, the staffing schedule and monitoring and coordination mechanisms, (Project Implementation Schedule, General and Individual Work Plans, Personnel Assignment Schedules, etc.)	25
<b>Qualification of key personnel</b>	<b>60</b>
Team Leader	30
Procurement Lawyer	10
Financial Analyst	5
Engineers and technical experts	15
<b>Maximum Total</b>	<b>100</b>

Only the applicants who receive not less than the minimum score of 75% of the points to be awarded for the quality of the bid for services (technical proposal) can be considered in the assessment of the price quotations (financial proposal). Customs and excise duties, taxes and levies in Jordan are not to be included in the assessment of price quotations. Concerning the tender evaluation it is intended to give the financial proposal a weight of 30% of the overall score.

**Total Score = Technical evaluation score X 70% + Financial evaluation score X 30%**

The bidder with the highest overall score will be invited for contract negotiations. Contract negotiations are only for the purpose of clarifying unclear items.

During the evaluation process, the Evaluation Panel has the right to ask the bidder for clarifying and/or submitting supplementary information and documents to verify the stated information in the proposal.

No Consultant shall contact the Employer on any matter relating to its proposal, from the time of the bid opening to the time the contract is awarded.

Any effort by a Consultant to influence the Employer's bid evaluation, bid comparison or contract award decision may result in the rejection of the Consultant's proposal.

### **3.7 SUPPORT BY WAJ**

WAJ will provide free of charge all existing information, data, reports and maps as far as available and will assist the Consultant in obtaining other relevant information and materials from governmental institutions and state authorities as far as possible. However, it is the duty of the Consultant to check availability, quality and suitability of this information. The information, data, reports etc. as mentioned above will be available for the Consultant's unlimited use during execution of the proposed services. Due provision shall be made in the proposal in case the Consultant has to

procure maps, aerial photographs, meteorological hydrological and geological data necessary to carry out the services at his own cost.

WAJ will support the Consultant in obtaining all staff permits, authorisations and licenses required for performance of the Consultant's services in Jordan. It will also assist the consultant in clearing through customs of all equipment, materials and personal effects to be imported (and re-exported upon completion of his assignment) for the purpose of the services.

Transport facilities will not be made available by WAJ. The PMU will provide the Consultant with a room at its headquarter which will serve for coordination and regular contacts with the PMU. The Consultant has to arrange at his own cost for additional necessary office space, office equipment, communication and transport facilities.

The PMU has nominated for this project a Project Manager (Mrs. Raja Ammari). KfW has also nominated a Project Officer (Mr. Manuel Schiffler). The consultant will report to the Project Manager while keeping the Project Officer at KfW closely informed of the project's progress.

### **3.8 PROPOSED CONTRACT**

Basis for the consultancy contract is this ToR and the Model Contract published on (<http://kfw.de/EN/Entwicklungszusammenarbeit/Verfahren50/Consulting.jsp>)

The contract shall be construed as an agreement made and to be performed in Jordan, according to the Jordanian law and regulations in force. The ToR with all annexes and memoranda in addition to the Proposals of the selected firm will form integral parts of the contract.

### **3.9 BUDGET, REMUNERATION AND PAYMENT**

The budget available for the assignment is Euro 200,000. The estimated total amount payable to the Consultant for the services to be provided under this Contract as set out in this ToR shall be a lump sum quoted in Euro.

The payment schedule for will be as follows:

- 20 percent advance payment 10 days after signing the agreement by both the Employer and the Consultant against presentation of an Advance Payment guarantee.
- 20 percent upon submission of the complete set of Draft Tender and Contract Documents for the Management Contract, incl. Cost Estimates
- 10 percent on submission of the Final Tender Documents.
- 20 percent upon MC bid submission
- 30 percent on the submission of the final report after MC signature or failure.

Payments shall be made in Euros or Jordanian Dinars based on the exchange rate on the due date.

### **3.10 TAXES**

The Consultant and his foreign staff shall be exempted from all taxes, duties, levies, and other charges required by law in Jordan in connection with:

- Payments to the Consultant or to his foreign staff in connection with the performance of the services;
- Services performed by the Consultant or his staff in connection with the fulfilment of their tasks;
- Equipment, materials, and supplies necessary for the performance of the services, including motor vehicles and personal belongings of the foreign staff that are brought into the country of the Employer and shipped out after completion of the services or that have been destroyed in the course of the performance of the services.

If the execution of the above provision is prohibited by Jordanian law, all taxes, duties, levies, and other charges as specified above shall be directly incurred by the Employer. Where that proves not to be feasible for technical reasons, the Employer shall refund to the Consultant all amounts paid.

## **Tentative Schedule:**

### Selection of transaction advisor

Advertisement	February 28
Deadline for the purchase of bidding documents	March 7
Clarification requests	April 15
Receipt of offers	April 21
Evaluation committee nominated	April 21
Evaluation report	April 30
No objection to the evaluation report	May 4
Steering committee endorsement	May 7
Negotiations completed	May 10
Signing	May 14
Commencement	May 21

### Selection of management contractor

Note: this schedule will be amended during the implementation of the Transaction Advisor Contract

Finalization of Bidding Documents and Annexes	July 1
Advertisement	July 1
Deadline for the purchase of bidding documents	July 15
Pre-bid meeting	August 15
Evaluation committee nominated	August 15
Receipt of offers	October 1
Evaluation report	November 10
No objection to the evaluation report	November 25
Negotiations completed	December 20
Signing	December 20
Inception	January 1, 2011

