Municipal Development and Lending Fund

Municipal Development Program-Phase III
(MDPIII)

Terms of Reference
Develop the Policy and Regulatory Framework for the PPP at the LGU level

Ref. 3.1.2
1. Introduction

The Palestine Liberation Organization (PLO), for the benefit of the Palestinian National Authority (PNA), has received financing of 130 Million Euros from the World Bank (WB)-International Development Association (IDA), KFW, Denmark, SDC, VNG, GIZ, AFD and the EU towards the cost of the 3rd phase of the Municipal Development Program (MDP3).

The MDP 3 is aligned with the Palestinian Authority’s (PA) long-term strategy to consolidate and strengthen service delivery in the Local Government (LG) sector towards financially sustainable Local Government Units (LGUs), as specified in the Ministry of Local Government (MoLG)'s Sector Strategy 2017-2022.

MDP 3 is at the center of a series of interlocking interventions by the multi donors in collaboration with the central government to strengthen the institutional development, accountability and financial sustainability of local governance and service delivery in Palestine. The MDP 3 will consolidate and scale up past gains under MDP 1 and MDP 2 in municipal performance and accountability enhancement and will start enabling the environment at the central level and municipal partnerships with the private sector to improve the efficiency and sustainability of municipal services.

MDP III Project Components

Component 1: Municipal performance and Service Delivery. MDP 3 is the third municipal development project to support and incentivize improvements in the development of municipal management capacity. Previous MDPs financed municipal infrastructure and service delivery through the provision of basic block and performance-based grants, and provided demand-driven capacity development support for municipalities. This approach was very innovative at design and has shown to be highly effective. MDP 3 builds on this overall approach while focusing more on improving financial sustainability and accountability in municipal service provision. Like MDP 1 and MDP 2, municipal performance will be measured through Key Performance Indicators (KPIs), yet these have been substantially revised to reflect a greater focus on the sustainability of municipal services. Performance measurements will encompass three main areas for reform: i) Financial Performance and Sustainability, ii) Institutional Performance, and iii) Transparency, Accountability and Participation.

Component 2: Capacity Development. This component of the project would continue to strengthen municipal capacity in the project’s three performance areas: (i) financial sustainability, ii) institutional performance and iii) transparency, accountability and participation. In addition, specific attention will be paid to higher order needs of municipalities that will enable them to improve their financial sustainability and credit worthiness, strengthening other core municipal functions as well as strengthen their social accountability to their citizens and stakeholders.

Municipal capacity development activities will continue to be identified by municipalities and MDLF to enable municipalities to achieve results and improve their performance. The performance measuring system will be applied to identify relevant capacity building activities to the municipality, which will be delivered to improve capacity and sustain results achieved.

Component 3: Municipal Partnership Projects. This component will provide technical assistance and project financing to municipalities to: a) engage more effectively with the private sector, and b) work across administrative boundaries to develop joint and/or innovative investments for municipal service delivery and local economic development. The Bank will finance only the technical assistance portion under Sub-component A.
• **Sub-Component A: Private Sector Partnership Support.** In order to better leverage private sector engagement, this component will support municipalities to identify, develop, and structure opportunities for private sector participation in municipal service delivery and local economic development on a demand-driven basis.

• **Sub-Component B.** This sub-component will finance top-up payments complementary to the grant allocations under component 1 to incentivize municipal joint and/or innovative investments based on municipal demands to leverage economies of scale for municipal investments and facilitate financially sustainable municipal investments.

**Component 4: Project Implementation Support and Management.** This component will finance goods and consultant services for monitoring and evaluation, outreach and communication and local technical consultants for the engineering supervision of Component 1 and the MDLF management fee.

2. **Background and Context**

In the West Bank and Gaza, municipalities face two key challenges: (i) a crippling financial crisis that is preventing them from covering their operating costs or making necessary capital investments in new projects and (ii) redefining their role in light of the consolidation of key services (water, sewage, electricity, solid waste, roads, and public facilities) and increasing need for demand-driven service provision.

Municipal Financial Management practices continue to be weak, and administrative fragmentation prevents economies of scale in service delivery. Despite significant achievements over the years, most municipalities require further improvements in financial management practices to effectively facilitate decision-making and performance monitoring for municipal service. To achieve economies of scale, some municipalities and village councils have formed Joint Service Councils (JSC) to jointly provide services, planning and development functions. However, utility service consolidation remains slow, as evidenced by the 226 small-scale water service providers.

Nevertheless, municipalities are in a dilemma: they have to improve services, invest in new infrastructure projects and increase revenues but they do not have the capital or finance needed to achieve these objectives. Municipalities have therefore to find alternative sources of capital and finance. The private sector is an important source in this regard. The relationship between the public sector and the private sector is foreseen necessary to finance new projects using the PPP models for economic development and fiscal autonomy.

In its National Development Plans, the Palestinian National Authority recognized the need for significant improvements to the quality and affordability of infrastructure services in accordance to the LGUs functions and mandate as specified in the LGUs law 1997, and acknowledged that its fiscal situation would require private sector participation to provide the necessary expertise and investment to supplement its public infrastructure budget. This policy agenda is clearly stated in the priorities matrix (2017-2021) (Promoting Public Private Partnership approach (PPP’s) at the local government level to contribute in efforts of achieving sustainable local development).

There is significant commitment to establish long-term and sustainable PPP programs, but there is recognition that they are only at the start of the process. Due to the lack of significant PPP experience, capacity building and training to build institutional and individual capacity will be required to enable the identification, development and implementation of PPP projects.
Despite the challenging environments, there is strong government commitment to improving the delivery of infrastructure services by leveraging the private sector. Municipalities have been practicing PPP for a long time. However, the majority of these partnerships are simple small-scale projects. Most partnerships are in the form of management contracts whereby the private sector manages municipal assets and facilities for an agreed upon fee. Contracts duration ranges from one up to three years. In some cases, the contracts can be seasonal.

Under MDP 3, a sub-component 3.A was agreed upon to better leverage of private sector engagement in municipal services delivery and local economic development. This sub-component will support municipalities to identify the potential modalities for private sector engagement, select the most relevant or appropriate modality based on feasibility, and design the implementation of the agreed modality. Specific areas for support would range from permitting and other processes to structuring private sector participation in infrastructure and service delivery (contracting out, joint ventures, special purpose vehicles and build-operate-transfer agreements), as well as strategic land use planning and associated infrastructure development related to economic growth priorities. This sub-component will be particularly important in terms of enabling the environment for better leverage of PPP in municipal services.

3. Summary of the PPP diagnostic study
Over the last few months, a diagnostic study for the PPP in municipal services was conducted. The Diagnostic Study unveiled weaknesses and gaps in the PPP enabling environment at the local government level including but not limited to:

Policy Framework
- Despite the strong commitment to establish long-term and sustainable PPP programs which was clearly stipulated in the PPP Policy paper of 2013, it seems that these developments did not make much deference in engaging the private sector to deliver municipal services regarding the PPP scope or scale.
- The Municipalities Survey of October 2018 indicated lack of consensus among stakeholders in supporting PPP approach at the policy level.

Legal Framework
- Analysis of the Palestinian PPP legal framework revealed that the PNA lacks the appropriate PPP legal framework that allows for smooth and efficient implementation of PPP projects, neither at the central nor at the local government levels.
- There is no legislation regulating all matters related to PPP in one single legislation system, nor does the Palestinian legal system have major laws that can support and complement the partnership process, such as the two laws of concession and competitiveness (anti-monopoly law).
- The legal framework for government contracts is general and may not be appropriate in terms of basic rules allowing the administration to terminate the contract.
- The PNA has not adopted polices and guidance within the public sector to simplify and clarify the roles and institutional engagements in PPP.
- Based on the results of the Municipalities Survey, only 2.9% of the municipalities strongly agree, and 29.4% agree that the Palestinian legal and regulatory framework is appropriate for PPP processes.
Institutional Framework
- There is a lack of a specialized dynamic institutional setup in the form of a “PPP Unit” which is essential to overcome the lack of sufficient knowledge and skills in the public sector.
- Some amendments in the rules and regulations which were implemented in the past years weakened the decentralization process at the LGU level.
- Lack of clarity in the relationship between the MoLG and the LGUs, which creates conflicts of functions and powers, legal and financial problems, and problems in the management of service delivery, projects implementation, and supervision.
- Some persistent internal bureaucracies and unnecessary approvals usually lead to very slow decision-making process;
- The most pressing gaps are: budgeting process, decentralization, fiscal and organizational capacity, and transparency at all levels in municipalities;
- There is a gap in the ability of municipalities to monitor the performance of the private sector, this must be proven in order to demonstrate value for money and ensure that profits earned by the private sector are proportionate to the risk assumed.
- There is a negative perception of private sector regarding the implementation of public services contracts.

Skills and Competencies
- PPP partners skills and competencies are insufficient, which negatively affect all PPP processes. Less than half of the surveyed municipalities (16 out of 34) declared that few of their staff members attended some sessions in PPP training, while more than half declared that their staff never attended PPP training.
- Municipalities and private sector companies informed that their staff members need a comprehensive PPP training along all PPP processes. Other PPP stakeholders lack sufficient Knowledge about PPP concept, types, procedures, and legal framework;

The (MDLF), as the delegated implementation agency, intends to use part of the (WB) Fund under sub-component 3.A entitled “Municipal Partnership Project”, to contract a consultancy firm to develop the policy and regulatory framework for PPP at the LGU level, meaning that the 1st two pillars will be tackled by this consultancy assignment.

4. Objective and Scope of the Assignment
This assignment aims at developing the policy framework for PPP in municipal services, through updating the policy paper and establishing a good awareness for the PPP among stakeholders. It also aims at developing the regulatory framework for leverage of PPP in municipal services.

The assignment should help clarify the objective of promoting PPP in LGU investments and infrastructure programs: Is it to mobilize private capital to augment or substitute public sector financing? Is it meant to ensure more efficient implementation (construction, therefore use of build, operate, transfer scheme or its variants) or operation and maintenance (management contracts, output-based contracts, etc.)? Or to bring new technology (e.g., in case of IT-based projects).
The scope of work can be illustrated as follows:

A: Policy framework

- The consultant is requested to review the PPP policy paper, and all related literature including but not limited to:
  - Diagnostic of PPP which was done in 2014 (funded by the Islamic Development Bank and reviewed by the World Bank) as well as the updated diagnostic study of 2018.
  - MOLG’s Policy Paper (Partnership between Local Government Units and the Private Sector), April 2013.
  - MOLG’s Draft Policy Paper (Support Local Economic Development through Local Government Units)
  - MDLF study on Local Economic Development: MDP 2 lessons learnt and recommendations for MDP 3.
  - MDLF study on public private partnership 2010.
- The consultant is requested to make an assessment of the following:
  - private sector interest in LGU business;
  - capacity of the local private sector to provide finance for LGU activities;
  - nature of LGU enterprises or infrastructure that can lend themselves to viable PPP arrangements.

A robust market and stakeholder analysis should be added to provide better context to the policy paper.

- The consultant is requested to make stakeholder analysis to reflect the collected views and feedback of MOLG and other important decision-makers (key stakeholders) who should be engaged in developing the policy paper, as some policies may require reforms in tax incentives, business registration requirements, etc. These can be under the jurisdiction of other agencies. The results of the collected feedback include those acquired through conducted workshops, focus groups, round tables...etc. A robust stakeholder analysis should be added to provide better context to the policy paper.

- The consultant will be required to conduct awareness campaign of the developed policy paper including printed brochure on PPP (1000 copy) for PPP promotion.

B: Legal and regulatory framework

- The consultant is requested to conduct a desk review for the regulations related to PPP, including but not limited to:
  - Law no. (1) for the year 1997 regarding Palestinian Local Authorities
  - Companies Law no. (12) for the year 1964
  - Law No. (1) for the year 1998 regarding Investment Promotion in Palestine as amended in 2014.

- The consultant is requested to communicate with key stakeholders to draft guidelines for PPP at the LGU level (example: focus group, interviews.....etc.)
- In full-coordination with the MOLG and other key stakeholders, the consultant shall prepare guidelines for the PPP at the LGU level to be endorsed by the MOLG minister.

The consultant will be responsible for the cost of the workshops, focus group meetings, as well as production of printing materials. (printouts, hospitality, venues, launch...etc.)

5. Deliverables
The Consultant shall provide -for MDLF’s review and approval- the following reports and deliverables:

- **Inception Report**
  Within two weeks of signing the contract, the consultant shall prepare an Inception Report, including an action plan outlining his/her understanding of the assignment, scope of responsibilities, proposed approach and methodology, timetable showing key stages and milestones, alongside a detailed communication plan between all stakeholders. This report shall be in English.

- **Well-developed policy paper**
  No later than 6 weeks from the commencement date, the consultant shall submit a well developed policy paper for PPP to be endorsed by the MOLG minister. The policy paper has to be in (Arabic and English).

- **Well-drafted guidelines for PPP**
  No later than 8 weeks from the commencement date, the consultant shall submit a well drafted PPP guidelines to be endorsed by the MOLG minister. (Arabic and English).

- **Final Report**
  Two weeks prior to the end of the contract, the consultant shall prepare a Final Report, to include detailed description of the assignment, the progress, time-line of the project, weaknesses and strengths, and recommendations. The Final report must include the full documentation of the project implementation phase, including workshop attendance sheets, photographs, the final policy paper as well as the final PPP guidelines that have been submitted for endorsement by the minister of local government.

6. Team Composition and Qualifications
The consultancy firm shall have:

- **Team Leader** -PPP expert with proven successful experience in the field of PPP, ideally working directly with public entities, and proven track-record. The role of the team leader is to lead the work process, and drafting the final PPP policy.
Legal Expert. Must have a proven experience in drafting laws and public legislations in the field of local government. The expert will work in close-proximity with the team-leader and the PPP expert throughout the process of the drafting of the PPP guidelines.

- Both experts must provide detailed and substantial track record in conducting similar assignments.
- The firm shall have previous experience in local governance sector.

7. Consultant Selection Method
The consultancy firm will be selected in accordance with procedures set in the MDLF procurement manual - Selection based on Consultants Qualification (CQS).

8. Timeframe and Duration
The total duration of this assignment should be completed within a period of 3 months from the date of signing the contract.

9. Contract Type and Payment Schedule
This is a lump-sum contract. Payments will be arranged according to the following:

- Payment #1: 10% of total contract upon the submission of Inception Report, acceptable to the client.
- Payment # 2: 35% of total contract upon the submission of the updated PPP policy, acceptable to MDLF.
- Payment # 3: 35% of total contract upon the submission PPP guidelines, acceptable to MDLF.
- Payment # 4: 20% of the total contract upon the submission of the final report, acceptable to MDLF.

10. Project Administration
The Municipal Development and Lending Fund (MDLF) will be responsible for coordination of all activities with the consultant, receiving and approving invoices for payments, and acceptance of all deliverables.