**TERMS OF REFERENCE FOR AN ANNUAL ENVIRONMENTAL AND SOCIAL PERFORMANCE AUDIT**

**(INDIVIDUAL CONSULTANT)**

**SADC SUB-REGIONAL TRANSPORT AND TRADE FACILITATION PROJECT**

Transport Sector

Financing Agreement reference: 2100150043246

Project ID No.: P-Z1-DB0-253

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# 1.0 Background and Justification of the Audit

The Government of Malawi (GoM), through Roads Authority (RA) is implementing a number of road projects in the country. The RA’s mandate is to ensure that public roads are constructed, maintained, and rehabilitated at all the times. The RA implements this mandate through delegated authority from the Ministry of Transport and Public Works (MoTPW) that provides policy direction and oversees RA ‘s conformity with policy mandate.

The Roads Authority (RA) was established by an Act of Parliament No. 3 of 2006 as a semi-autonomous agency under the MoTWP. Apart from the Act, the RA is also guided in its operations by other legislations governing organizations it interacts with in its operations which include the Environment Management Act (2017). In response to this, the Roads Authority established the Environmental and Social Management Unit (ESMU). The ESMU role is to provide overall policy and strategic guidance in environmentally and socially sound road sector planning and management, and to supervise, coordinate, and monitor the implementation of environmental legislation in the road sector. The Unit serves as the road sector environment section in compliance with the prescriptions in the EMA, 2017 and its functions. The Government of Malawi is implementing the Multinational SADC Sub Regional Transport and Trade Facilitation Project with funding from the African Development Bank (AfDB) and the OPEC Fund. The project will involve Reconstruction of a 135 km road between Kaphatenga and Dwangwa. The project shall be implemented over a period of 5 years starting in April 2023 and ending in February 2028.

The development objectives of the project are defined at the regional and national level. At regional level, the objective is to improve SADC sub-region transportation and trade facilitation along the North-South Corridor in Malawi, through Mozambique to the Port of Mtwara. At national level in the objective of the operation is to contribute to improving transport services and in particular trade facilitation in the project area which in turn is expected to support local economic activities which include agriculture, fisheries, and tourism. The project benefits include: (i) reducing travel time and maintenance costs; (ii) improving economic potential of the project area; (iii) improving road safety as most of the accidents occur on narrow bridges and sharp curves on the road in Malawi (iv) providing employment during construction works; and (v) reducing flooding of the road as the road is characterized by flooding at some sections.

The main Project components, to meet the above objectives, are:

**Component** **1:** Infrastructure Investments; Reconstruction of Kaphatenga-Nkhotakota- Dwangwa Road (135km).

**Component 2:** Trade and Transport Facilitation; Simplification and harmonization of ICT and Data exchange for the Songwe One Stop Border Post

**Component** **3:** Environmental, Gender and Social Inclusiveness: Tree Planting; construction of boreholes and rehabilitation of health centres and schools along the road, construction of roadside markets, training of women and youth and transport facilitation for women.

**Component** **4:** Institutional Support and Project Management; Technical support to PIU, pipeline project feasibility studies and engineering designs for Chileka International Airport; Support to the project monitoring and management in the form of: (i) financial audit services, (ii) technical audit services where necessary, (iii) monitoring and evaluation, (iv) procurement audit services, and (v) Environment and Social Audit Services.

**Component 5:** Compensation and resettlement; land and property acquisition, detailed compensation, and livelihood restoration plans.

The project will be managed by a Program Management Unit (PMU) under the Roads Authority (RA) that will be responsible for the implementation of all non-infrastructure investment components. The PMU structure will include a multisector technical team that will be supported by staff from various ministries and departments attached to the project as well as a team of fiduciary consultant staff recruited to support the implementation of the Project.

The SADC Sub Regional Transport and Trade Facilitation Project Financial Agreement details conditions precedent to Disbursements for Works involving Resettlement which include

1. Submission of Evidence of Approval of the Environmental and Social Impact Assessment (“ESIA”) and the Environmental and Social Management Plan (“ESMP”) by the Applicable National Authorities;
2. Submission of a works and compensation schedule prepared in accordance with the Full Resettlement Action Plan (‘FRAP”) and the Fund’s Safeguards Policies, in form and substance satisfactory to the Fund, detailing: (i) each lot of civil works under the Project, and (ii) the time frame for compensation and/or resettlement of all Project Affected Persons (‘PAPs”) in respect of each affected lot;
3. Submission of satisfactory evidence that all PAPs, in respect of works in affected lots have been compensated and/or resettled in accordance with the ESMP, and the FRAP, and/or the agreed works and compensation schedule and the Fund’s Safeguards Policies, prior to the commencement of works in the affected sections of such lots and in any case before the PAPs actual move and/or taking of their land and related assets; or
4. In lieu of paragraph (c) above, submission of satisfactory evidence indicating that the resources allocated for the compensation and/or resettlement of PAPs have been deposited in a dedicated account in a bank acceptable to the Fund or remitted to a trusted third party acceptable to the Fund where the borrower can prove, to the satisfactory of the Fund that compensation and/or resettlement of PAPs in accordance with paragraph (b) above could not be undertaken fully or partially, because of the following reasons: (i) the identification of the PAPs by the borrower is not feasible or possible; (ii) ongoing litigation involving the PAPs and/or affecting the compensation and/or resettlement exercise; or (iii) any other reason beyond the control of the Borrower, as discussed and agreed with the Fund; and
5. Submission of evidence confirming that the Borrower has acquired all land and/or rights with respect to the land, required for carrying out the works.

The Environment Management Act No. 19 of 2017 states that’s the Malawi’s Environmental Protection Authority shall, in consultation with lead agency in Projects, as it may consider appropriate, carry out or cause to be carried out periodic environmental audits of any project for purposes of enforcing the provisions of this Act as cited under section 32 (1).

According to the act, an environmental audit” means the systematic documentation

and periodic and objective evaluation of the protection and management of the environment and the conservation and sustainable utilization of natural resources

As part of fulfilling this mandate, the RA is calling for services of an Individual Consultant, to conduct an Annual Environmental and Social Performance Audit (ESPA) on the SADC Sub Region Transport and Trade Facilitation Project.

African Development Bank (AfDB) Environmental Policy requires that the environmental and social risks/impacts of the Bank’s activities are considered from the early stages of planning and decision-making and that are properly reflected in the preparation, approval, implementation, and evaluation of all types of financing by the Bank Group. The policy further advocates that environmental management tools, like environmental assessments, shall systematically be used to ensure that economic activities are environmentally sustainable, and to systematically monitor their environmental performance. In consideration to the requirements of the AfDB policy, this environmental and social compliance audit has been sanctioned by the bank with the main objective of assessing the level of compliance of the project with the applicable environmental and social requirements during the project implementation.

# 2.0 Objectives

The objective of the Annual Environmental and Social Performance Audit (ESPA) is to assess the level of compliance of the project with the applicable Environmental & Social (E&S) requirements. The audit will focus specifically on assessing the extent of compliance with the Project’s Financial Agreement provisions, including national legislations, norms, regulations and procedures, the Bank’s environmental and social requirements, and Good International Industrial Practices (GIIP) of the road sector. The audit will also identify non-compliance and shortcomings, and the direct and root-causes of such non-performance, and then recommend corrective actions. It shall be an independent evaluation of both the Borrower/Client and the Bank performances through the overall project E&S performance.

# 3.0 Audit Requirements

The Consultant shall, but not limited to, consider the following key criteria in conducting the audit:

* The E&S requirements of the loan/grant agreements;
* The applicable national E&S legislations, regulations, norms, standards, and procedures;
* The requirements of the Bank's ISS;
* Approved and/or published project environmental and social documents, including aide-memoires and project progress reports, etc.;
* The Good International Industrial Practices (GIIP) of the Project’s sector, if any

# 4.0 Scope of Services/Tasks

In conducting the Audit, the Consultant shall undertake the following: -

1. Identify Bank ISS requirements relevant to the project, including social risks (GBV/SEAH, Forced Labour, Child Labour, Modern Slavery, etc.), vulnerability/adaptation to climate change.
2. Identify the applicable national legislations, regulations, norms, standards and procedures, including national legal Authorizations, Permits and Certificates required prior to actions.
3. Analyse available reports on the project including the project appraisal report, the Loan/grant agreements, the project periodic implementation reports, the aide-memoires, any relevant documentation and records available and necessary for the assessment of the project E&S performance.
4. Organize an opening meeting with the project team (borrower/client) and, if applicable, representatives of the project executing agency, contractors, supervising engineers, third-party monitoring actors, etc.
5. Organize an opening meeting with the Bank's project team.
6. Determine and agree on the scope, methodology and specific set of criteria for the compliance audit with the Project Implementation Entity.
7. Update/analyse the actual/effective capacity of the project team (borrower/client) in relation to the management and monitoring of the implementation of agreed mitigation measures and related E&S documents applicable to the project.
8. Hold consultation(s) with the relevant regulatory agencies and stakeholders (including but not limited to the project implementation unit (PIU), local beneficiaries, project affected persons, civil society, government ministries, and contractors, etc.), on the status of the project with respect to identified E&S risks and impacts as well as planned and implemented mitigation measures and legal permits.
9. Carry out project site visits to evidence the implementation of the environmental and social risks and impacts management activities, including the performance of the contractors and supervising engineers, and the residual/unforeseen environmental and social risk and impacts.
10. Evaluate the overall performance of the borrower and that of the project coordination unit
11. To assess the Bank's performance in terms of the effectiveness and quality of the assistance it has provided to the borrower, whenever necessary.
12. Prepare comprehensive a report. The report should present a cogent analysis on findings and causes as related to the predetermined performance audit scope and criteria. It should present a logical (qualitative and quantitative) examination of the effectiveness of mitigation measures, residual risks, environment-health and safety (EHS) issues, etc. The report will also include a Corrective Action Plan (CAP) summarizing the concrete recommendations for follow-up actions on findings and remedial measures including clearly estimated costs, specific roles and responsibilities.
13. Organize a closing meeting with the borrower/client and its contractors and those responsible for the functions audited (including the Bank). The purpose of this meeting is to present the audit findings to ensure that they are clearly understood and acknowledged by the borrower/client. Any outstanding disagreements between the audit team and the auditees should be discussed and recorded.

# 5.0 Qualifications of the Consultant

The selected Consultant should meet the following minimum requirements:

* At least a master’s degree in environmental and social management disciplines, with, additional training or solid experience in environmental and social assessment.
* Conversant and demonstrated experience with National legislative and regulations, and African Development Bank’s or other DFIs’ Environmental and Social Safeguard Policies with not less than 10 years’ experience in preparation of environmental and social impact assessments in Sub-Saharan region.
* Experience in preparing and/or managing the implementation of ESIAs, RAPs of AfDB funded or by other DFIs.
* Experience in the project host country would be an added advantage.

# 6.0 Timing

The services are expected to be undertaken during the whole project period which runs up to February 2028, but the Consultant is expected to undertake an Annual Audit in the first quarter of every year. The contract will be renewable on annual basis depending on performance. The timing presented in the following schedule is to be used as a guide:

|  |  |
| --- | --- |
| **Activity**  | **Timing**  |
| Inception report | 2 weeks from effective date |
| Draft Annual ESPA | 8 weeks from effective date |
| Final Annual ESPA | 12 weeks from effective date |

The consultant shall commence the services within Fourteen (14) calendar days after the effective date of the contract.

# 7.0 Reporting Requirements

The consultant shall prepare and submit the following reports, in English, in an approved format, refer to the attached Audit report Format. The comments from the Client shall be incorporated in the final version of the reports.

Ten (10) hard copies and one (1) soft copy of each of the reports listed below shall be sent to the client.

a) Inception Report

b) Draft Annual Environmental and Social Performance Audit Report

c) Annual Environmental and Social Performance Audit Report

The main deliverable from this exercise will be annual E&S performance audit report, including a Corrective Action Plan (CAP). The audit report should provide information that will enable the Borrower (Government, Private Entity), Bank and clients to identify and prevent environmental and social risks that are not sufficiently considered, with a view to their correction and the prevention of reputational risk. Clear recommendations (executable, measurable, cost, timelines, responsibilities) should be formulated to prioritize and develop the action plan for its efficient implementation.

The reports should be submitted to the:

**The Chief Executive Officer,**

**Roads Authority,**

**Private Bag B346,**

**Lilongwe 3.**

# 8.0 Payment Structure

The services will be executed on a Lump sum Contract basis and the payment schedule shall be annually as follows:

1. 20% of the contract price shall be paid on submission and acceptance by the client of Inception Report.
2. 40% of the contract price shall be paid on submission and acceptance by the client of the draft Annual Environmental and Social Performance Audit Report.
3. 40% of the contract price shall be paid on submission and acceptance by the client of the Annual Environmental and Social Performance Audit Report.

# 9.0 Evaluation and Selection Criteria

The service provider will be selected based on qualifications and experience for the assignment. Eligibility criteria under the selection procedure shall be in accordance with the African Development Bank’s ***“Procurement Framework dated October 2015, ”*** which is available on the Bank’s website at <https://www.afdb.org/en/projects-and-operations/procurement/new-procurement-policy>.

# 10.0 Data, Services and Facilities to be provided by the Client.

The Client shall provide the consultant with all requested and available data. The Client will also assist in the facilitation of the co-operation of other government ministries and agencies, departments and other agencies as required, for carrying out the services and in liaison as necessary for the same purpose. The Client will give the consultant assistance to gain access to all information required for the proper conduct and completion of the services.

# 11.0 Obligations of the Consultant

The consultant’s obligations shall include, but not be limited to the following:

* + - 1. The Consultant shall make his own arrangements for all necessary office and living accommodation, local transportation, office and other supplies, computers, computer software, survey equipment etc. in connection with the services to be provided.
			2. Prior to commencement of the actual services, the Consultant shall formulate a quality management system and procedures for implementation of these services in accordance with these Terms of Reference and accepted professional practice.

# APPENDIX

##  **E&S Performance Audit Report**

i. Name of Client

 Signatures of the audit team members and the representative of the auditee

ii. Audit Team

iii. Executive Summary

 A concise summary of all significant environmental and social areas of non-conformance and issues of concern and a brief summary of the conclusions and recommendations.

iv. Contents

 The contents of the report should include the following sections:

1. **Introduction**

 *Client and auditee*

1. **Project Description**

Concise description of the project, the project organisation, the area **/** location and past and current operations. The description should focus on project components, activities and processes that are sources of environmental and social aspects/risks.

1. **Audit Objective, Scope and Criteria**

 *Audit objective, Scope and Criteria*

1. **Audit Process and Methodologies**

 *Audit Plan*: The date of the audit and brief description of the process e.g. pre audit activities, on site audit activities including site inspection, interviews and document reviews and post audit activities. Exceptions and deviations from the audit plan.

1. **Findings**

 *List of Findings*: This chapter contains the individual findings of the audit subdivided in:

* *Non-compliance*
* *Issues of concern*

The above sections (non-compliance, issues of concern) may be subdivided with headings based on the type of issues (environmental and social) or the type of criteria applied.

1. **Corrective Action Plan (CAP)**

A comprehensive matrix, including the cost and deadline of each action.

1. **Conclusions**

Contains conclusions based on aggregated level, criticality or significance of the individual findings in relation to the audit objectives, scope or criteria.

1. **Recommendations**

Contains (a set of) recommendations supplemental to the Corrective Action Plan.

1. **Annexes**
2. Project organisation chart (auditee)
3. Area, location chart
4. *Criteria (detailed list of the criteria)*
5. *Register of documents*
6. *Register of interviews*
7. *Register of observations*
8. Any other key documents, photo’s, notes e.g. that support the findings (evidence)
9. References (papers, standards, etc.)
10. List of interviewees