

Terms of reference (ToRs) for the procurement of services below the EU threshold

Study Hindering Factors on Implementation of FPIC Principles and Impacts around Agricultural Investments	Project number/ cost centre: 15.0124.6-308.00
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0. List of abbreviations

AVB	General Terms and Conditions of Contract (AVB) for supplying services and work 2018
CSOs	Civil Society Organizations
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
FPIC	Free and Prior Informed Consent
ToRs	Terms of reference

1. Context

Free and Prior Informed Consent/FPIC has emerged as an international human rights standard that derives from the collective rights of indigenous peoples to self-determination and to their lands, territories and other properties. For the purposes of this guide it should be considered as a collective right of indigenous peoples to make decisions through their own freely chosen representatives and customary or other institutions and to give or withhold their consent prior to the approval by government, industry or other outside party of any project that may affect the lands, territories and resources that they customarily own, occupy or otherwise use. It is thus not a stand-alone right but an expression of a wider set of human rights protections that secure indigenous peoples' rights to control their lives, livelihoods, lands and other rights and freedoms. FPIC has been described as a standard that supplements and is a means of effectuating these substantive rights.¹ It thus needs to be respected alongside other rights, including rights relating to self-governance, participation, representation, culture, identity, property and, crucially, lands and territories. Not only should FPIC be respected, but in addition, no measure should undermine indigenous peoples' enjoyment of human rights, even in instances where their FPIC has been obtained.

The concept of FPIC is widely seen as the most appropriate approach for seeking the views of indigenous peoples on activities that affect them and their land and for ensuring that their rights are respected. Although the concept of FPIC originally evolved in relation to indigenous peoples, in principle it is a social safeguard that respects the rights of any community whose livelihoods, access or rights to land will be affected by an external initiative or interest. FPIC consultations allow for an exchange of views and a mutually satisfactory agreement to be reached. That said, FPIC is not a one-off event, nor is it a procedural checklist, but a process wherein affected people are given full information prior to actions being taken, which may or may not lead to consent.

FPIC is based on the following principles:

- **Free:** there is no coercion, intimidation or manipulation
- **Prior:** must happen sufficiently in advance of any official approval or action
- **Informed:** affected peoples should receive clear and enough information—in a way they can understand—about the proposed action to make an informed decision
- **Consent:** an agreement of affected people to go ahead with the proposed action based on a documented process of consultation and participation.

FPIC thus requires the state, companies or local authorities to negotiate in good faith with legitimate representatives of local communities to obtain their uncoerced agreement made with full understanding of what is being proposed, before any actions are taken that affect their land, livelihoods or wellbeing. It also implies that affected people are compensated for the impacts of these decisions.

From global experiences the term "FPIC" is often avoided in government policy documents and talking about FPIC in some national contexts might be sensitive. However, in all countries there are policies and practices that require investors and government institutions to engage with communities, inform them, discuss projects and seek some form of agreement. These are the basic elements of FPIC, even if not referred to by name.

In most cases, globally government agencies sometimes view FPIC as costly and time-consuming and are reluctant to embrace it. The fact that local people are asked for their consent is sometimes perceived as challenging state authority or the higher interests of the nation. It requires authorities to listen, take account of and respond to the concerns of

communities affected by any development project. An approach that government officials are often not comfortable with.

For some private investors, FPIC is seen as a major challenge as it can lead to serious modifications to the project, additional costs and delays in implementation. Many companies are uneasy to engage directly with communities and especially large numbers of individual farmers, as it is difficult to bring them together and respond to the diversity of their perspectives. Often, they ask local authorities to mediate the relationship, which also presents challenges.

In countries that have already put FPIC procedures into law and practice, FPIC has not stopped development from occurring and has been beneficial for both companies and communities. For investors and governments, FPIC makes good business sense:

- Achieving consent can benefit both the community and the project.
- Going forward with a large-scale project without its acceptance by communities can threaten economic viability of the project – projects that have been consulted with local communities are more successful in implementation.
- Dealing with conflicts can be costly and it makes economic sense to invest and work in peace with neighbours. Addressing issues of community concern before the project begins is likely to make the project more successful and cost-effective.
- Consultations with local communities can lead to revision of the project design based on local knowledge and reduce overall costs through compromises and alternatives.
- Public relations and reputational aspects play an increasingly important role in international business. Therefore, applying safeguards and standards, and adhering to corporate social responsibilities, will be beneficial for any company.
- Finally, adherence to business standards can help host countries to promote an image of supporting sustainable investments and development which will attract more responsible investors.

In this regard the perception of different Ethiopian responsible agencies and government officials is not well known, CSOs involvement, community's awareness level is not monitored and overall implementation status of FPIC is not documented yet.

As it is shown by different assessments and reports there were serious grievances and conflicts between investors and local communities which show that there was no clear consent from the community about the investment and investors and government officials were not either aware of the importance or disregard the importance of FPIC principles. Or there may be hindering factors which affect the implementation of these principles.

So, knowing the level of awareness created, extent of implementation of FPIC principle and identifying hindering factors is of paramount importance to land governance improvement and creating a responsible agricultural investment system.

2. Tasks to be performed by the contractor

- Identify and document awareness level on FPIC at different responsible government bodies, investors and community level
- Identify core institution in implementing FPIC and their roles in promoting agricultural investment

- Identify and document the implementation level of FPIC and the successes and challenges/hindering factors while implementing
- Propose possible implementable recommendations to smoothen the implementation of FPIC

Certain milestones, as laid out in the table below, are to be achieved by certain dates during the contract term, and at particular locations:

Milestone	Deadline/place/person responsible
Contract signed	September 15/2021
Inception report submitted	September 16- 08/2021
Inception report reviewed and endorsed	September 25 -15/2021
Field assessment	September 30 - October 09/2021
Report Writing	October 10 - November10/2021
Report Review and validation	November 11 - November 25/2021
Update the report	Nov 26 - 29/2021
Submit the report	Nov 30/2021

Period of assignment: From Sept. 15/2021 until Nov. 30/2021.

3. Key Activities of the consultant

The national consultant will oversee the following tasks and produce the assessment report:

- Review National and Regional assessment reports on the involvement of local communities and giving their consent on agricultural investment projects
- Conduct interviews and discussions with stakeholders to know the awareness, identify gaps and collect views
- Critically assess factors hindering FPIC principles implementation
- Assess how and why grievances happen and result in conflict and how these conflicts are handled
- Critically identify and define policy and legal gaps based on the analysis to implement FPIC
- The assessment has to be gender sensitive, focus on youth and other vulnerable groups
- Develop and submit assessment report with conclusion and recommendations based on prior reviews and analysis
- Present the result to a wider audience for further consideration

4. Concept

In the bid, the bidder is required to show how the objectives defined in Chapter 2 are to be achieved, if applicable under consideration of further specific method-related requirements (technical-methodological concept). In addition, the bidder must describe the project management system for service provision.

Technical-methodological concept

Strategy: The bidder is required to consider the tasks to be performed with reference to the objectives of the services put out to tender (see Chapter 1). Following this, the bidder presents and justifies the strategy with which it intends to provide the services for which it is responsible (see Chapter 2).

The bidder is required to present the actors relevant for the services for which it is responsible and describe the **cooperation** with them.

The bidder is required to present and explain its approach to **steering** the measures with the project partners and its contribution to the results-based monitoring system.

The bidder is required to describe the key **processes** for the services for which it is responsible and create a schedule that describes how the services according to Chapter 2 are to be provided. In particular, the bidder is required to describe the necessary work steps and, if applicable, take account of the milestones and contributions of other actors in accordance with Chapter 2.

The bidder is required to describe its contribution to knowledge management for the partner and GIZ and promote scaling-up effects (**learning and innovation**).

Project management of the contractor

The bidder is required to explain its approach for coordination with the GIZ project.

- The contractor is responsible for selecting, preparing, training and steering the experts (international and national, short and long term) assigned to perform the advisory tasks.
- The contractor makes available equipment and supplies (consumables) and assumes the associated operating and administrative costs.
- The contractor manages costs and expenditures, accounting processes and invoicing in line with the requirements of GIZ.
The contractor reports regularly to GIZ in accordance with the AVB of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH from 2018

The bidder is required to draw up a **personnel assignment plan** with explanatory notes that lists all the experts proposed in the bid; the plan includes information on assignment dates (duration and expert days) and locations of the individual members of the team complete with the allocation of work steps as set out in the schedule.

The bidder is required to describe its backstopping concept. The following services are part of the standard backstopping package, which (like ancillary personnel costs) must be factored into the fee schedules of the staff listed in the bid in accordance with section 5.4 of the AVB:

- Service-delivery control
- Managing adaptations to changing conditions
- Ensuring the flow of information between GIZ and field staff
- Contractor's responsibility for seconded personnel
- Process-oriented technical-conceptual steering of the consultancy inputs
- Securing the administrative conclusion of the project
- Ensuring compliance with reporting requirements
- Providing specialist support for the on-site team by staff at company headquarters

- Sharing the lessons learned by the contractor and leveraging the value of lessons learned on site

5. Personnel concept

The bidder is required to provide personnel who are suited to filling the positions described, on the basis of their CVs (see Chapter 8), the range of tasks involved and the required qualifications.

The below specified qualifications represent the requirements to reach the maximum number of points.

Team leader

Tasks of the team leader

- Overall responsibility for the advisory packages of the contractor (quality and deadlines)
- Coordinating and ensuring communication with GIZ, partners and others involved in the project
- Regular reporting in accordance with deadlines
- Will cover all legal issues and human rights issues of the assignment

Qualifications of the team leader

- Education/training (2.1.1): MSc/Phd degree in land administration, land law and related fields
- General professional experience (2.1.3): 10 years of professional experience in land administration and governance.
- Specific professional experience (2.1.4): 5 years in Ethiopian Land Administration sector legal establishments and implementation.
- Leadership/management experience (2.1.5): 6 years of management/leadership experience as project team leader or manager in a land governance project, institution,
- Regional experience (2.1.6): 3 years of experience in projects in regional and global institutions
- Development Cooperation (DC) experience (2.1.7): 6 years of experience in DC projects
- Other (2.1.8): experience in Ethiopian Agricultural investment land administration and land acquisition processes with community participation and involvement.

Land Administration Expert

Tasks of Land Administration Expert

- Responsible for systemic issues of land administration- land identification, verification, transfer, FPIC, and tenure security
- Gender balances, youth participation and vulnerable groups on process of land transactions- land identification, verification, transfer

Qualifications of the Land Administration Expert

- Education/training (2.2.1): MSc/Phd degree land administration/governance
- General professional experience (2.2.3): 8 years of professional experience in studying, researching, monitoring and evaluation of impact of large scale agricultural investments on tenure security
- Specific professional experience (2.2.4): 5 years proven experience in developing strategic guidelines and conducting scientific surveys in agricultural investment related areas.
- Regional experience (2.2.6): experience in the Ethiopian agricultural investment land administration and governance system
- Development Cooperation (DC) experience (2.2.7): years of experience in DC projects
- Other (2.2.8): experience in grievance handling and conflict management

Socio economist

Tasks of Socio economist

- Responsible for all tasks related to social and economic aspects of the land governance system
- Considers community, Civil society, youth and women engagement in every steps of agricultural investment land transactions.

Qualifications of Socioeconomist

- Education/training (2.2.1): Msc in agricultural economics/economics social anthropology and related fields
- General professional experience (2.2.3): 8 years' experience in large scale agricultural investment land administration and governance
- Specific professional experience (2.2.4): 5 years proven experience in conducting similar surveys and studies
- Regional experience (2.2.6): experience in the Ethiopian agricultural investment land administration system
- Development Cooperation (DC) experience (2.2.7): working with GIZ and other development agencies/organizations.
- Other (2.2.8): Experience in social anthropology and commercial farm management

Soft skills of team members

In addition to their specialist qualifications, the following qualifications are required of team members:

- Team skills
- Initiative
- Communication skills
- Sociocultural competence
- Efficient, partner- and client-focused working methods
- Interdisciplinary thinking

6. Costing requirements

Assignment of personnel

Team leader: On-site assignment for 45 expert days

Expert 1: Assignment in country of assignment for 45 expert days

Expert 2: Assignment in country of assignment for 45 expert days

Travel

The bidder is required to calculate the travel by the specified experts and the experts it has proposed based on the places of performance stipulated in Chapter 2 and list the expenses separately by daily allowance, accommodation expenses and flight costs. Travel costs with in regions for field surveys the contractor has to arrange by itself and submit legal receipts

7. Inputs of GIZ or other actors

GIZ and/or other actors are expected to make the following available:

- Workshops logistics

8. Requirements on the format of the bid

The structure of the bid must correspond to the structure of the ToRs. In particular, the detailed structure of the concept (Chapter 3) is to be organised in accordance with the positively weighted criteria in the assessment grid (not with zero). It must be legible (font size 11 or larger) and clearly formulated. The bid is drawn up in English (language).

The complete bid shall not exceed 10 pages (excluding CVs).

The CVs of the personnel proposed in accordance with Chapter 5 of the ToRs must be submitted using the format specified in the terms and conditions for application. The CVs shall not exceed 4 pages. The CVs must clearly show the position and job the proposed person held in the reference project and for how long. The CVs can also be submitted in English (language).

If one of the maximum page lengths is exceeded, the content appearing after the cut-off point will not be included in the assessment.

Please calculate your price bid based exactly on the aforementioned costing requirements. In the contract the contractor has no claim to fully exhaust the days/travel/workshops/ budgets. The number of days/travel/workshops and the budget amount shall be agreed in the contract as 'up to' amounts. The specifications for pricing are defined in the price schedule.

9. Annexes

Optional (if necessary)

Module proposal
Results model
Capacity development (CD) strategy
Analysis of actors
Process map
Programme
Country strategy
Priority area strategy paper
Other relevant documents