



To: Offerors

Date: August 13, 2018

From: Procurement and Partnerships Team, INVEST Project; Implemented by DAI Global LLC

Subject: Request for Proposals (RFP) INVEST-006 Mobilizing Private Investment for Development: USAID Haiti PPP Legal Counsel to the Government of Haiti

DUE: 1:00PM EDT on **August 24, 2018**

Dear Offerors:

Enclosed is a Request for Proposals (RFP) to support the implementation of DAI's INVEST project funded by the United States Agency for International Development (USAID). DAI invites firms to submit a proposal for work to be funded by USAID under the USAID Haiti Buy-in Contract for legal counsel to the Government of Haiti in the implementation of a Public-Private Partnership ("PPP") for the operation and management of the Caracol Power Utility via a long-term concession agreement.

- I. RFP Process and deadlines:** This solicitation is anticipated to result in a Fixed Price Purchase Order. We anticipate issuing a single subcontract award resulting from the implementation of this agreement.
- a. Submission of Questions – Questions must be submitted no later than 5:00 pm EDT on August 17, 2018 via email at INVEST_Procurement@dai.com. DAI will respond to these questions in approximately three (3) business days.
 - b. Submission of Proposals – Proposals must be submitted no later than **1:00 pm EDT on August 24, 2018** via email at INVEST_Procurement@dai.com, copying matthew_farrell@dai.com and talin_baghdadlian@dai.com. The subject line of the email should be your organization name, followed by "Submission under RFP INVEST-006: USAID Haiti" Please certify in your submission email a validity period of 60 days for the price(s) provided and include your organization's DUNS number. Please limit file submissions to 10 megabytes or less.
- II. Composition of Proposal:** Your organization's proposal should comprise the following submission documents. The Technical Proposal and Cost Proposal should be prepared as separate files for independent evaluation, as follows below. Technical proposals should be submitted as a presentation no longer than 10 slides. Submissions in PowerPoint or in PDF are acceptable, although PDF is preferred along with an accompanying PowerPoint document. Please provide a copy of your cost proposal in Excel format.

Part 1 – Technical Proposal

Please limit your technical proposal to no more than ten (10) slides. The technical proposal is composed of the following three (3) sections:

1. **Technical Approach** – Offerors will detail their approach to fulfilling the accompanying Statement of Objectives (SOO). The approach will clearly indicate how the proposed activities will result in the successful completion of all milestones. Offerors should include a list of any local organizations (donors, investors, NGOs, etc.) in Haiti it plans to engage with as part of its assessment.
2. **Institutional Capacity** – Offerors should provide details about the experience, expertise, or capacity of their firm to recommend the proposed approach and complete the work as described. This should also include past performance information for Haiti and/or similar jurisdictions.
3. **Management Plan/Staffing Structure** – Offerors should include details of personnel who might be assigned to the activities described in the technical approach, as well as a clear management plan for the development, review, and submission of all associated deliverables, including a milestone schedule. Offerors are permitted to engage in partnering arrangements that will aid in providing best value to USAID, including with local law firms in Haiti. If a partnering arrangement is being proposed, please describe the nature of the arrangement and the appropriate management controls to ensure successful delivery.

In addition to the above, please include the following. These inputs will not be counted as part of the 10-slide limit and the format may be PDF or Word:

- One (1) to two (2) case study examples or qualifications statements of past performance relevant to this activity (limited to two (2) pages per case study)
- CV(s) of any individuals proposed in the staffing plan to conduct this activity (limited to two (2) pages per individual)

A cover slide will be considered a non-counting slide, should offerors choose to include one. No additional annexes or documentation are requested at this time.

Part 2 – Cost Proposal

The contract type for the presumptive task order will be Fixed Price, awarded as a subcontract by DAI Global, LLC. Please include the total proposed fixed price along with details for specific deliverable pricing. Offerors should also include a cost breakdown of the hourly rates for proposed personnel, if applicable, with a build-up to their total proposed price or include substantiating price reasonableness documentation/justification. Offerors are expected to use their own cost/budget template(s); please limit file submissions to 10 megabytes or less.

III. Evaluation of Proposal: DAI will use best value determination for the award of this Request for Proposals. A best value determination means that, in DAI’s estimation, the selected offer will provide the greatest overall benefit to USAID Haiti in response to the requirements stated in this RFP. Proposals will be evaluated against a stated number of factors, including the overall proposed approach, past performance, specific qualifications in the identified sectors and other evidence substantiating the bidder’s ability to deliver, and budget and time frame considerations.

1. **Technical Proposal:** The Technical Proposal will be scored and evaluated separately from the cost proposal. Technical panel reviewers will evaluate offerors on the following factors, consistent with the offerors’ technical proposal.

- a. **Technical Approach (40 points)** - Points for this section will be awarded based on the information presented in the technical approach. Points will be awarded to firms describing their thoughtful approach to addressing the statement of objectives. The offeror will be scored based on its presentation of a clear approach which reflects the requirements of this specific activity but also incorporates the offeror's unique competencies.
- b. **Institutional Capacity (40 points)** - Points for this section will be based on information presented in the corresponding section. Preference will be given to firms that have past performance in timely and successful delivery of similar services and/or relevant experience in Haiti and/or similar jurisdictions.
- c. **Management Plan/Staffing Structure (20 points)** – Points for this section will be based on the qualifications of proposed staff and the demonstrated efficacy of the management plan.

2. **Cost Proposal:** Cost will be evaluated separately from the technical approach, with due consideration for price reasonableness and allowability consistent with US government cost principles. Evaluation for this section will be dependent upon all information presented by the Offeror in their deliverable table and supporting cost information, as well as its alignment with the proposed technical approach.

IV. Offeror's Agreement with Terms and Conditions: The completion of all RFP requirements in accordance with the instructions in this RFP and submission to DAI of the technical and price proposals will constitute an offer and indicate the Offeror's agreement to the terms and conditions in this RFP and any attachments hereto. DAI is not required to accept and/or evaluate proposals that do not conform to the instructions of the RFP, and additionally, DAI may reject all proposals and not award a subcontract for this RFP. DAI reserves the right to award a subcontract without discussion and/or negotiation; however, DAI also reserves the right to conduct discussions and/or negotiations, which among other things may require an Offeror(s) to revise its proposal (technical and/or price). Issuance of this RFP in no way obligates DAI to award a subcontract, nor does it commit DAI to pay any costs incurred by the Offeror in preparing and submitting the proposal. DAI reserves the right to award a subcontract to one organization or to issue multiple awards to different organizations based on the results of our evaluation.

Thank you,

DAI INVEST Procurement and Partnerships Team

INVEST_Procurement@dai.com

The INVEST Project: Mobilizing Private Investment for Development
Statement of Objectives for USAID Haiti PPP Legal Counsel to the Government of Haiti
August 13, 2018

Introduction

Through the INVEST project, implemented by DAI, the United States Agency for International Development (“USAID”) seeks to unlock the potential of private capital to drive inclusive growth in countries around the world. Increasingly, private investors and businesses are looking to emerging markets for better returns and new market opportunities. Encouraging investment in these markets in high-impact areas important to USAID such as agriculture, financial services, infrastructure, energy, clean water, health, and education, however, requires new forms of collaboration between USAID and the investment community.

INVEST deploys USAID resources globally, including grants, guarantees, technical expertise, networks, and convening power, to enhance access to viable investment opportunities, lower transaction costs, and mitigate investment risk. INVEST also provides access to a network of individuals and firms with the specialized expertise across industries and geographies needed to identify, develop, and execute on investments for development impact. Using a lean approach tailored to high potential opportunities, relevant parts of the network will come together to research, develop, and build specific solutions that align private capital with development needs.

INVEST is a flexible, rapid buy-in mechanism that allows USAID missions and operating units to quickly and efficiently access the specialized expertise required across industries and geographies to identify, develop, and execute on blended finance solutions. INVEST bolsters the ability of USAID missions and operating units to attract and leverage local and international capital to address development challenges at scale. This strategic engagement with private capital fosters a shift towards enterprise-led development that enhances the efficiency and sustainability of USAID programs.

The Caracol Power Utility (“CPU”) is located in Northern Haiti and began operating in 2012. The initial objective of the power plant was to provide power to the Caracol Industrial Park (“CIP”) which is a mixed-use manufacturing facility, located in the Commune of Caracol in the Northeastern Administrative Department of Haiti. The Government of Haiti established CIP with financial and technical support from the Inter-American Development Bank (“IDB”) and the US Government (“USG”). CIP is owned by the Government of Haiti and is managed by the National Society of Industrial Parks (“SONAPI” as per the French acronym), which is a part of Haiti’s Ministry of Commerce and Industry (“MCI” as per the French acronym). At the end of 2015, CIP had 12 industrial/commercial/administrative tenants, including Haitian and international manufacturers of apparel, perfume, and home furnishings.

The primary USG contribution to CIP was the construction and initial management of the CPU. The CPU is an on-site 10 megawatt diesel/heavy fuel oil dual-fired power plant, funded by the US Government. The revenue forecast for the CPU is \$1.1 million/quarter. The CPU provides 24-hour electricity to the CIP tenants, as well as to more than 11,000 residential and commercial customers within the neighboring Communes of Caracol. Residential customers include the USAID supported EKAM housing settlement, Limonade, Terrier-Rouge, Trou-du-Nord, and Sainte Suzanne. Prior to the CPU, neighborhoods in these areas had either limited or no access to grid-connected electricity. At full capacity, with expanded distribution systems installed, it is expected that the CPU will be able to serve twice as many customers in the region, and/or at the CIP.

This scope of work seeks to assist USAID and the Government of Haiti in the implementation of a Public-Private Partnership (“PPP”) for the operation and management of CPU via a long-term concession agreement (the “Transaction”). The concession agreement will cover the long-term lease of the existing operations of CPU; the long-term maintenance and management of the utility together with an expansion within the existing and surrounding communes as contemplated by the Transaction. The Transaction Advisors will assist in tendering the opportunity through an open, transparent, and competitive process. The Transaction Financial Advisor will have essential responsibility for presenting the Government of Haiti and USAID with options and recommendations throughout the process and will be supported by the Transaction Legal Advisor(s), Energy Technical Advisor, Junior Financial Analyst, and the DAI INVEST core team.

Implementation Objectives

The Transaction Legal Advisor(s) shall work directly with the Public-Private-Partnership unit of the Ministry of Finance of Haiti; the DAI INVEST Team assigned to the Transaction and USAID. The primary objective behind this support will be to assist USAID and the Government of Haiti in their efforts to, in an open, transparent, and competitive manner, privatize the ongoing operations, maintenance, management and potential expansion (energy mix, additional industrial, commercial and residential customers and service area) of the CPU while protecting the interests of CPU’s current consumers for reliable, affordable electricity supply. The ultimate arrangement for the CPU’s operations and management may take the form of a PPP or other structured partnership arrangement. The challenges of investment and operations in Haiti will require that the legal advisor(s) are experienced in financial transactions in fragile states including in Haiti, and have a record of both innovative and thorough transaction facilitation services.

Considering the complexity of the Transaction and its importance to the economic and political plan of the country, INVEST is soliciting the assistance of Transaction Legal Advisory Services to support the legal understanding of the envisioned partnership for the Government of Haiti’s team responsible for the implementation of the Transaction and to work together with both the Technical and Financial Advisors in closing the Transaction.

The expected work performed by the Transaction Legal Advisor will include the following:

- Advise the Government of Haiti on legal and/or policy changes which may be needed to allow for closing of the transaction prior to the tender.
- Review all pertinent government support agreements including all existing and future agreements and/or implementation letters between the Government of Haiti and USAID concerning their impact on the Transaction.
- Assist the Government of Haiti, in coordination with the Transaction Financial Advisor and USAID, in the drafting of all required International Tender Documentation required to implement the Transaction including but not limited to a concession agreement.
- Advise the Government of Haiti with respect to legal issues concerning project contracts and agreements including but not limited to terms related to force majeure, termination rights, arbitration provisions, property rights/ownership, tax liability, and standards of acceptable performance.
- Review required licenses and leases and ensure compliance in documentation.
- Review and assist with ownership title and transfer of assets of CPU.
- Coordinate legal due diligence between GoH and bidders, in addition to reviewing legal credentials of bidding companies or consortia.
- Lead negotiations with preferred bidder with respect to finalizing the concession agreement and any and all closing related documentation.

- Provide opinion letters where required.
- Review financing documents if applicable.

Activity Structure

Phase 1 – Due Diligence and Structuring the Transaction Structure Report (TSR)

Tasks include:

- Review of preparatory documentation shared by USAID to inform Phase I.
- Confer with Transaction Financial Advisor on options and recommendations of structuring bids.

Phase 2 - Transaction Implementation

Tasks include:

- Assist the Government of Haiti to finalize the Request for Pre-qualification of investors for the project in coordination with USAID and the Transaction Financial Advisor.
- Assist the Government of Haiti, in consultation with USAID, in the drafting, preparation and distribution of the tender document that shall outline the bidding process, which shall be based on the existing draft provided to DAI.
- Assist the Government of Haiti, in co-ordination with the Transaction Financial Advisor and in consultation with USAID, with the provision of advisory services to the Government of Haiti's legal team in the review, amendment, and preparation of the tender documents, associated bidding rules, and contracts as allowed by the Ministère de l'Economie et des Finance procurement policy. To limit unnecessary back and forth, the Transaction Legal Advisors will review the Government of Haiti's documentation associated with the PPP for quality control and to ensure compliance, prior to delivering the documentation to USAID. These are likely to include:
 - The bidding rules, timetable, and procedures clarifying instructions to bidders related to the format of bid submissions, criteria for evaluation, and bid bonds.
 - The PPP contract, setting inter alia, the scope of the private operator's responsibilities, performance and service obligations, fee structure and adjustment procedures, risk sharing provisions between the private operator and the recipient, shareholders' agreement characteristics to be specified in the PPP contract and the Concessioner's obligations and termination provisions, force majeure provisions, and dispute resolution.
 - With the Transaction Financial Advisor, support the concessioner during the interest firms/bidders' information conference to answer questions about the draft tender documents.
 - With the Transaction Financial Advisor, recommend revisions that should be included in the final tender documents and, if necessary, make the revisions.

Phase 3 - The Bidding Phase

Tasks include:

- Review of first round of questions from investors and assist the Financial Transaction Advisor and Government of Haiti with responses.
- Prepare a presentation for and answer questions during an information conference for pre-qualified investors once the tender has been launched.
- Review of second round of questions from investors and assist the Financial Transaction Advisor and Government of Haiti with responses.
- Review the legal credentials of the bidding companies or consortia and other documentation as required under the supervision of the Transaction Financial Advisor.

Timeframe:

Activity	Deliverables and Timeframe
Phase 1	Documentation of recommendations for options and structuring of bids (end of August 2018).
Phase 2	Final tender documents, associated bidding rules, and contracts. These shall include but not be limited to the concession agreement and other legal documents (early November 2018). Meeting notes as appropriate (ongoing).
Phase 3	Presentation for firms/bidders' information conference (end of January 2019).

General Implementation Structure*Onboarding and Work-Planning*

- Transaction Legal Advisory Services Provider Onboarding: DAI will work closely with USAID staff and associated stakeholders to provide the selected partner(s) with all necessary context, and work with USAID staff and the selected partner(s) to develop work plan(s).

Implementation and Evaluation

- Project Implementation: The selected Transaction Legal Advisory Services Provider will implement the work as prescribed by the work plan(s) in cooperation with the Transaction Financial Advisor. DAI will provide management support and ensure periodic (e.g. monthly and quarterly) check-ins/reporting. The DAI team and USAID shall be copied on all correspondence between the Government of Haiti. DAI and USAID shall review all documentation prepared by the Transaction Legal Advisor from a commercial perspective and provide comments and feedback to both the Transaction Legal Advisor and the Government of Haiti.
- Ongoing Evaluation: DAI will define indicators in subcontract and collect and review M&E data from subcontractors for requisite reporting to USAID. DAI will conduct data quality assessments as necessary.

General Implementation Timeframe

This activity is intended to last for approximately 11 months with variable labor intensity needs depending on key milestones and phase of the Transaction. The Transaction Legal Advisor should anticipate between [3 and 4] in-country visits. Note, the Transaction could also include “pauses” when USAID and other stakeholders will need to seek internal reviews, approvals and engagement. The Transaction Legal Advisor shall adapt its availability to assure the completion of its services in accordance with the terms of the Transaction.

Activity	Timeframe
Onboarding & Workplanning	1-2 weeks
Implementation and Evaluation	10-11 months

Contract Type and Budget Ceiling

As noted above, although the legal services will primarily be provided to the Government of Haiti, they will be funded by INVEST.

DAI contemplates a total maximum budget for this assignment of USD250,000, expenses and taxes included. Competitive offerors will propose an approach that will credibly manage technical needs to deliver all required inputs while not exceeding this total ceiling, and highly competitive proposals will propose discounts from this budget ceiling. In the event that an Offeror submits a bid in excess of the indicative maximum fee, it shall justify this choice and demonstrate that the indicative price is insufficient to provide the required assistance in order reach financial closing of the Transaction.

The final contract will be a fixed price contract and it is expected that the Offeror selected will complete all advisory services in support of the Transaction within the time frame contemplated by the parties at the price fixed.