

Annex 1 : Terms of Reference (TOR)

For

Consultant Services for the preparation of Free, Prior, Informed Consultation (FPIC) process

Introduction

1. Nepal Electricity Authority ("NEA" or the "Developer"), the largest corporate body fully owned by the Government of Nepal and responsible for electric power planning, construction, generation, transmission and distribution in the country, is implementing the Tamakoshi-V 99.8 MW hydropower project (the "Project"). The ESIA of the proposed project was prepared and got approval from the Ministry of Population and Environment (MoPE) in May 2016. An update of the ESIA is under preparation.
2. The Ministry of Finance under the Government of Nepal has requested the Asian Infrastructure Investment Bank (the "AIIB") to consider financing the Project.
3. Based on a site visit and a review of the Project documentation, the AIIB has identified three workstreams to be undertaken to ensure the Project meets the requirements of the Environmental and Social Policy (ESP) of the AIIB. These are:
 - Supplemental Environmental and Social (E&S) Documentation (SESD)
 - Biodiversity Action Planning
 - Free, Prior and Informed Consultation (FPIC) Process for Indigenous Peoples
4. Given the specialized expertise required, the latter two workstreams are being contracted independently with stand-alone deliverables. However, given the interlinkages, the three workstreams will be expected to coordinate closely when necessary.
5. The present terms of reference describe the scope of the FPIC process¹ to be undertaken by a qualified consultant (the "Consultant") before the AIIB can submit the Project to its Board approval.

¹According to AIIB's Environmental and Social Framework (ESF), for the purpose of this ESP and ESS 3, FPIC is established as follows: (a) the scope of FPIC applies to Project design, implementation arrangements and expected outcomes related to risks to, and impacts on, the affected Indigenous Peoples; (b) FPIC builds on the process of meaningful consultation and requires good faith negotiation between the Client and these affected Indigenous Peoples; (c) the Client documents: (i) the mutually accepted process of consultation between the Client and these Indigenous Peoples; and (ii) evidence of broad community support of these Indigenous Peoples on the outcome of the negotiations; and (d) FPIC does not require unanimity and may be achieved even when individuals or groups within or among these affected Indigenous Peoples explicitly disagree with support for the Project. When the Bank is unable to ascertain that such broad community support has been obtained from the affected Indigenous Peoples, it excludes from the Project those activities that would affect those Indigenous Peoples. In such cases, the Bank requires the Client to ensure that the Project, as redesigned, will not have adverse impacts on such Indigenous Peoples. If the laws of the country in which the Project is located mandate free, prior and informed consent (FPIC), the Bank may, in accordance with paragraph 9 of this ESP, and provided that in its view, such application is consistent with the



6. The expert is expected have a social sciences background and to have worked on FPICon-related matters internationally. (S)he is also expected to have at least 15 years of work experience in relevant fields, including project work in Nepal, and would need to be available to focus on this during the period Apr/May – Sep 2019.

Project description

7. The Project is located in Dolakha District and covers seven villages (or Village Development Committees (VDCs)). These are Lamabagar, Orang, Bulung, Laduk, Khare, Suri and Gaurishankar. Based on interviews with affected people throughout the Project Area of Influence, a recent mission by AIIB indicated that people are aware of the project and have a positive impression of the benefits the project will bring to the communities. The project area is accessible from Kathmandu and Charikot to the interconnection point (Tailrace of UTHEP) by car.
8. The Project is conceptualized to be developed in tandem with Upper Tamakoshi HEP ("UTHEP"). It has an installed capacity of 99.8 MW generated through a gross head of 173.45 m and a design discharge of 66 m³/s using tailrace water of UTHEP. Its estimated construction period is four years. The estimated number of required unskilled, semi-skilled and skilled human resource is 800 persons for construction of the project.
9. The Project will operate in peak production mode (99.8 MW or 66 m³/s during 6 hours per day and 5 MW or 3.4 m³/s the rest of the time, during the dry season).

Environmental and Social Assessment

10. The Project was initially assessed in accordance with Government of Nepal requirements in the "Regulatory" Environmental Impact Assessment (EIA) prepared by NEA. The fieldwork was conducted in August-September 2014, and additional field work was conducted by the team of experts in June 2015 to assess the field situation after the earthquake and document changes. From 2013 onward, Lahmeyer International, together with a local consulting firm, was hired to prepare social assessment documents as part of the Detailed Engineering Design and Tender package. These documents include Social Impact Assessment (SIA), Resettlement Action Plan (RAP), Affected Areas Development Plan (AADP), Vulnerable Communities Development Plan (VCDP), and Environmental Management Action Plan (EMAP).
11. During the recent mission, AIIB's social specialist interviewed 25 people throughout the Project Area of Influence, and the majority identified themselves as Tamang, a nationally recognized Indigenous Peoples (IP) group.

requirements of FPICon as set out in paragraphs 60 and 61 in ESF, determine that the Client is required to apply FPIC as defined in those laws.



12. Ultimately, nine different ethnic groups participated in Participatory Rural Appraisals (PRA) during the EIA process, and Janjati, Tamang (28.3%) and Newar (28.3%) were identified as the dominant ethnicities followed by Sherpa (7.5%), Magar and Gurung.

Key Social Impacts

13. **Recent Economic and Physical Displacement:** Acquisition of three hectares of land has already impacted 21 households (127 individuals) in Suritar(VDC). One of these households (Mr. Jagat Bdr. Khatri) was physically displaced. Unfortunately, during the detailed project study, the location was found to be unsafe for project facilities because of flood and landslide vulnerability.
14. **Future Economic and Physical Displacement:** An additional 25.5 hectares of land will need to be acquired, which will impact 10 households (44 individuals) in Bulung VDC. One of these households will be physically displaced.
15. An additional 4 households (6 individuals) will be impacted by land acquisition but have migrated and have not been included in the RAP. The status of consultations with these absentee Project Affected People will need to be confirmed with the Project Sponsor and included in an updated RAP (most likely to be undertaken by Lahmeyer, who prepared the original document).
16. **Community Forest User Groups:** Additionally, the Project will require the acquisition of 4.95 ha forest area belonging to three community forest sub-committees: SindurpaSisneri, EaineDhungaandGiddeSalleri community forests under Lamabagar, Bulung and Laduk Conservation Management Committees (CMC).
17. **Ecosystem Services:** There will also be a reduction in flow for an 8.2 km stretch of river formerly accessed by these communities for minor recreational fishing and water supply purposes, and project construction will involve construction nuisance (blasting, heavy construction works, traffic) as well as an influx of construction workers into the area, all of which could further impact the affected communities.

Free, Prior and Informed Consultation (FPICon) Requirement

Applicability of FPICon

18. Under AIIB's Environmental and Social Standard 3: Indigenous Peoples, FPICon and broad support of the affected Indigenous Peoples is required if activities under the Project would: (a) have impacts on land and natural resources subject to traditional ownership or under customary occupation or use; (b) cause relocation of Indigenous Peoples from land and limitations on access to natural resources subject to traditional ownership or under customary

occupation or use; or (c) have significant impacts on Indigenous Peoples' cultural heritage.

19. For all practical purposes, ESS-3 should be applied to Lamabagar, Bulung and Laduk VDCs given the land acquisition affecting Tamang households in Laduk and Bulung (criterion b above) and the Community Forest User Groups that are affected in all three VDCs (criterion a).

Key Tasks

20. Review and provide feedback to draft E&S documentation, including amongst others an Environmental Impact Assessment (EIA), Social Impact Assessment (SIA), Resettlement Action Plan (RAP), Affected Areas Development Plan (AADP), and Vulnerable Communities Development Plan (VCDP). Verify the degree of involvement/input to date of affected communities in the identification of impacts and development of mitigation and benefit plans and propose ways to ensure that the FPICon process can be used to further this objective.
21. Review and further develop the draft FPICon approach outlined in Annex 1 in consultation with TKJVC, AIIB, consultants Lahmeyer, IP representatives and other stakeholders.
22. Scope/map key advocacy groups /NGO / CSOs and possible facilitator options to determine how they can play a role in the process – who / what / how.
23. Provide guidance to Tamakoshi-V and AIIB on the most appropriate sequencing of next steps vis-à-vis the FPICon process, e.g. agreement and verification of legitimate IP representatives to represent affected communities in FPICon negotiations; identification of third-party advisor(s), such as an IP umbrella organization, acceptable to affected IP communities to advise them on their rights and responsibilities and provide support, capacity building and/or independent advice in the FPICon process; agreement with IPs and their representatives on the FPICon engagement process and next steps including, disclosure and consultation of draft updated project impact / mitigation / benefits package documentation (to be prepared and translated into Nepali by project E&S consultants Lahmeyer), etc.
24. Review records of consultation over the Project development period and determine how / where / if this previous consultation fits into the overall FPICon framework. Based on this, further advise on design, suitability and cultural appropriateness of informational materials to be developed and disseminated to affected communities with low literacy levels in support of the local consultation and FPICon process.
25. Advise on broader stakeholder analysis and engagement strategy to build support for the FPICon approach and implementation of the project and participate in agreed outreach to influential local and international stakeholders and/or additional sources of advice/input.
26. Participate in and offer expert support to key FPICon-related meetings involving affected IP representatives, relevant authorities, IP support group(s), Tamakoshi-V and Lahmeyer during the FPICon process. It is anticipated that at least two 7-day missions will be required in Nepal as part of this process.

27. Help document the FPICon process and provide an opinion about the process and outcome vis-à-vis ESS-3.

Deliverables

- Comments on draft E&S documentation and draft FPICon consultation summaries.
- Proposed revisions to the FPICon approach in Annex A (including where / how / if previous consultation fits within the FPICon framework).
- Memorandum summarizing review of potential NGO / CSO partners, which will include: names of NGOs / CSOs considered; SWOT (or similar) analysis of each organization considered; identification of preferred organization and 'Terms of Reference' for the role of the NGO / CSO in the FPIC process.
- Draft and Final Report on FPICon process. Report will include (but not be limited to): identification of IPs, IP representatives and decision-making authorities; assessment of capacity of IPs / IP representatives to undertake good faith negotiations; summary of any capacity building undertaken; agreed engagement and negotiation framework (including the process undertaken to agree upon the framework); detailed summary of consultations / meetings / engagement undertaken as part of the FPICon process; and expert opinion on the process and outcomes.

Deliverables should be written in a careful and factual language that allows their possible disclosure. Deliverables will be provided in English and will be subject to AIIB review before finalization. Upon finalization, key documents will be translated into Nepali.

Selection Criteria

[International Indigenous Peoples Expert (FPICon Specialist)]

- Masters Degree or a discipline relevant to the assignment such as Anthropology, Sociology and relevant Subject
- Minimum of 15 years of experience working on matters related to Indigenous Peoples, including project work in South Asia and (preferably) in Nepal.
- Knowledge and experience in the design and/or implementation of FPICon processes and/or multi-party consultative negotiations internationally.
- Experience working on large infrastructure projects, and preferably, hydropower.
- Knowledge of and work experience with Multilateral Development Bank standards.
- Excellent oral and written communications skills in English. Knowledge of Nepali and/or Tamang would be a plus but is not required. **Please indicate if local translation services need to be arranged and/or if the consultant is able to organize such arrangements under the scope of the overall contract.**

SELECTION PROCESS

The selection of International Indigenous Peoples Expert (FPICon Specialist) will be carried out as per AIIB's Procurement Policy and its associated Interim Operational Directive on Procurement Instructions for Recipients. AIIB's Policy on Prohibited Practices will apply to all contracts.

TKJVC/NEA shall invite the International Indigenous Peoples Expert (FPICon Specialist) on an individual basis. The selection will be based on the requirements, qualification and capability of the individual to carry out the assignment. International Indigenous Peoples Expert (FPICon Specialist) will be finalized with *no objection* from AIIB/ TKJVC/NEA.

SUPPORT SERVICES

The Tamakoshi Jalvidhyut Company Limited (TKJVC) /Nepal Electricity Authority (NEA) shall make available all the documents submitted by the consultant, other relevant available documents prepared for the project and available documents of Upper Tamakoshi HEP

If required, discussion/meeting with the Consultant or any stakeholders shall be carried out either in person or using video conference. The need for the meeting/discussion need to be preinformed to the client (at least 3 days before) so that the necessary arrangement shall be made.

Following are reimbursable items.

- (a) Round trip Air ticket to Nepal,
- (b) Hotel Accommodation in Kathmandu
- (c) Per Diem (Fooding, and Local Transports etc) for actual working days in Kathmandu and Project Site
- (d) Office rent and Operation

PAYMENTS

- Air fare will be reimbursed after submission of boarding pass and actual bill not exceeding allocated amount
- Hotel bill in Kathmandu will be reimbursed as per actual but not exceeding to allocated amount
- Daily allowance will be provided on the actual working days in Kathmandu and project site in Dolakha



- Transportation to Project site at Dolakha and return shall be arranged by the consultant and payment will be as per actual bill but not exceeding to allocated amount. The client shall assist to arrange the vehicle.
- Remuneration will be paid after the submission of actual working time sheet
- One day will be calculated as 8 working hours excluding lunch hours
- Remuneration rate should cover the travel days from home country to Kathmandu and return
- All Reimbursable should be on actual costs with supporting documents/ receipts
- All necessary insurances including Professional Liability Insurance (if required) should be covered by the Consultant's own cost.



ANNEX 2 – PROPOSED FPICon APPROACH (subject to expert/authority/IP feedback):

Scope: ‘Affected communities of IPs’ shall include the communities² losing land, structures and/or access to trees / forest products to project development (i.e. those located in the footprint pre-earthquake), as well as any of their traditional representatives from outside the footprint.

Approach: The following key steps are proposed for this project:

- i. Identification of affected IP individuals and communities [and representatives] as well as project impacts, mitigation measures and potential benefits related to them. *Near complete –draft under review, including EIA, SIA, RAP, AADP, and VCDP.*
- ii. Engage a credible IP support organization and an international social expert with FPICon experience to support the FPICon process. Consider a role for a mediation expert to facilitate discussion between the company and the affected communities during the process.
- iii. Verify and engage with local IP community decision-making authorities/representatives (and taking into account gender) to discuss the FPICon process, with input from the support organization and social expert mentioned above. Develop a mutually acceptable engagement and negotiation framework for the FPICon process, based on the principles of Good Faith Negotiations³.
- iv. Share accurate and up to date information on project impacts, proposed mitigation measures and proposed benefit streams in a culturally appropriate manner - i.e. in Nepali and Tamang languages (as appropriate following discussion with IP representatives), in written and oral format, and provide sufficient time for capacity building and support to affected communities to understand these matters and their rights.
- v. Enter into negotiations on the package of materials presented and adjust as needed in response to input. Use mediation if needed to resolve disagreements.
- vi. Present updated materials and seek broad community support⁴ from affected IP communities and their leaders. Document evidence of broad community support on the outcome of the negotiations in a mutually agreed written format, including an agreed mechanism for monitoring of key commitments in future and grievance redress.

The FPICon process described above should include differentiated measures to allow the effective participation of those identified as particularly disadvantaged or vulnerable,

²All of which fall with a three Village Development Committees (Lamabagar, Bulung and Laduk VDCs)

³All parties demonstrate a willingness to engage in a process and availability to meet at reasonable times and frequency; Provisions have been made for the dissemination of information necessary for informed negotiation; Engagement process addresses key issues of importance; Engagement process involves mutually acceptable procedures for negotiation; Client demonstrates a willingness to change initial position and modify offers where possible; and sufficient time has been provided for communities to engage in their preferred methods of decision making.

⁴FPICon does not require unanimity and may be achieved even when individuals or groups within or among these affected Indigenous Peoples explicitly disagree with support for the Project.

including; analysis of the legitimacy and representativeness of IP leaders, and the role, responsibilities and participation of external stakeholders with vested interests in the outcome.



ANNEX 3 : (i) Salient features of the Tamakoshi VHydropower Project, as derived from the Detailed Design study.

Salient Features of the Project

Location

Type of project	Cascade development of UpperTamakoshi HEP
Zone	Janakpur
District	Dolkha
Village Development Committee	Khare, Orang and LamabagarVDCs
Province (New provision)	Province No. 3
Village council (New provision)	Gaurishankar and Bigu village councils
Headworks site	Between PuranoJagat and Gongor village
Powerhouse site	Jamune and Suri Dovan. Approx. 7.0 Km upstream from the present road head at Singate Bazar
Name of the River	Tamakoshi River

Hydrology

Design Discharge	66 m ³ /sec
Annualaverage flow	69.51m ³ /sec
Glof Flood(Headpond site)	5765 m ³ /sec (100 year return period)

Access Road	Access Road isavailable on both Powerhouse and Headwork interconnection area
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Interconnectionwith UTHEP

Type	Tailrace tunnel of UTHEP is interconnected with the headrace tunnel of Tamakoshi-V
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The interconnection system isbeingconstructed

Interconnection Tunnel 103.20m length;invert level of start of horizontal bend= EL 1155.02masl ;invert level at entrance to head pond =1154.89 masl

Head Pond width = 6.80m to 12.77m, length = 74.01m,

Spillway

Type Free overflow concrete weir

Length of the crest 55.50 m

Crest Level El. 1158.20 masl

Outlet of Spillway Tunnel El.1150.21masl

Headrace Tunnel

Type Circular type,

Length 8.13 Km

FinishedDiameter 5.60 m

Surge Tank

Type Circularshaft surge tank

Effective Size 15.0 m internaldiameter

ConnectingShaft diameter = 2.5 m

Pressure Shaft

InternalDiameter 4.2 m

Thickness of Shaft Steel Lining 10 mm to 38 mm

Powerhouse

Type Underground Cavern

Dimension L=69.00m, W=18.0m, H=33.14m.

GeneratorFloorLevel El. 978.51masl

Turbine Setting Level El. 975.15masl

Type of Turbine Francis (3*Vertical Axis & 1*horizontal axis)




No. of unit	4 units (3 units of 31.6 MW & 1 unit of 5 MW)
Capacity of each unit	3 x 31.6 MW +1 x 5MW = (99.8 MW)

Switchyard

Type	Cavern Type
Dimensions	L=47.6m, W=13.0m, H=17.95m

TailraceTunnel

Type	Circular type
Length Tunnel	404.36 m
FinishedDiameter	5.60m

Transmission Line

Voltage of Transmission Line	220 KV double circuit
Length of Transmission line	2*1.7 Km upto nearest point of Tamakoshi-Khimti <u>TRL</u>

Power and Energy Generation

Gross Head	173.45m
Net Head	162.35 m
Installed Capacity	99.8 MW
Annual Energy	512.33 GWh (Withoutages of 5%)
Dry Season Energy	63.45 GWh (Withoutages of 5%)
WetSeason Energy	448.88 GWh (Withoutages of 5%)

Annex 4: EOI Form

Expression of Interest (EOI) by Individual Consultant Applicant
An independent study and carry out the Free, Prior and Informed Consultation
(FPICon) for Tamakoshi V Hydroelectric Project

International Indigenous Peoples Expert (FPICon Specialist) for the Tamakoshi V
Hydroelectric Project

Ref:

Date: *[dd/mm/yyyy]*

Attn: Chief Executive Officer

Tamakoshi Jalvidyut Company Limited

Tamakoshi V Hydroelectric Project

Dear,

I have read carefully your Invitation for Expression of Interest for the captioned assignment/project and find the Terms of References (TOR) match my skill mix and experiences for providing the services required in the TOR. I would like to express my interest for being considered for the Shortlist. I understand that TKJVC/NEA does not have an obligation to shortlist me.

I have attached to this EOI my Curriculum Vitae (CV) for your consideration. Some of the key information is highlighted below:

Personal Profile

Nationality:
Date of Birth:
Permanent Address: (Street name, City, State/Province, Country, ZIP code)
Phone No.:
Email:



Past Consultancy Assignment References

[Notes to consultant: Please select most relevant consultancy assignments you have recently completed to demonstrate your technical qualifications and experience.]

Period	Client	Project	Country	Your role	Value of the Contract

III. Availability

1. I shall be available for the services (on an as need basis)**days from my effective contract date.**

IV. Eligibility Declaration

I, the undersigned, certify to the best of our knowledge and belief:

- I have read the advertisement, including the terms of reference (TOR), for this assignment.
- I confirm that the project references submitted as part of this EOI accurately reflect the experience of myself.
- I confirm that I have never been convicted of any prohibited practice(s) in accordance with the AIIB’s [Policy on Prohibited Practice](#) and that I have read and understand AIIB’s [Policy on Prohibited Practice](#).
- I understand that any mis representations that knowingly or recklessly mislead, or attempt to mislead may lead to the automatic rejection of the proposal or cancellation of the contract, if awarded, and may result in further remedial action, in accordance with AIIB’s **Policy on Prohibited Practice**.

[Signature: Name of the Applicant]


