



Mekong River Commission

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TERM OF REFERENCE

1. Consultancy Summary:

Consultancy Title:	Regional Water Policy Consultant to support the implementation of (1) the 1995 Mekong Agreement, the MRC Procedures and Joint Platform, (2) the Joint Action Plans for Hydropower Projects, and (3) the Prior Consultation Process of newly submitted Project(s) under the Procedures for Notification, Prior Consultation, and Agreement (PNPCA)
Consultancy type:	Service Contract (SC)
Duration (# of days):	May 2020 to April 2021
Division/OC:	MRC Planning Division
Working station:	MRC Secretariat, Vientiane, Lao PDR

2. General background:

2.1. 1995 Mekong Agreement, MRC Procedures and Joint Platform

Cambodia, Lao PDR, Thailand and Viet Nam signed the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin on 5 April 1995 (the 1995 Mekong Agreement). The 1995 Mekong Agreement reaffirmed and expanded the globally known "Spirit of the Mekong Cooperation" nurtured since 1957 by setting forth the framework for cooperation in a constructive and mutually beneficial manner for the sustainable development, utilization, conservation and management of the Mekong River Basin (MRB) water and related resources.

The 1995 Mekong Agreement rests largely on the implementation of the MRC's five Procedures, namely (1) Procedures for Data, Information Exchange and Sharing (PDIES); (2) Procedures for Water Use Monitoring (PWUM); (3) Procedures for Notification, Prior Consultation and Agreement (PNPCA); (4) Procedures for the Maintenance of Flows on the Mainstream (PMFM); and (5) Procedures for Water Quality (PWQ). All procedures have been approved by the Member Countries and are being implemented.

Further, the MRC Joint Committee (JC) agreed to establish the Joint Platform to support the implementation of the MRC Procedures at its 36th Meeting in October 2012. Its original Term of Reference (ToR) was approved by the JC via written communication in December 2013. The TOR was further revised and approved by the JC at its 48th meeting on 24-25 April 2019. The purpose of the MRC Joint Platform is to serve as a forum where many expert groups, working groups and relevant NMCs and MRC staff can come together to find a better way to improve the MRC Procedures implementation and to share experiences and lessons learnt from the implementation of the MRC Procedures and Technical Guidelines. One way to improve the MRC implementation is to produce a convincing report with meaningful information on the implementation of the Procedures to the JC on which they can make recommendations and request to the Member Countries. The Meeting of Joint Platform is conducted twice a year, normally in March and September, prior the Meeting of the JC.

Currently, there are a number of remaining issues have been identified and will be further discussed within the Joint Platform including: 1) reasonable and equitable use as stipulated in the 1995 Mekong Agreement; 2) process or guideline to implement the Article 7 (Prevention and cessation of harmful effects), Article 8 (State responsibility for damages), and Article 10 (Emergency situations) of the 1995 Mekong Agreement; 3) Issue of internalizing the external costs of the development and use of the Mekong River System including possibility to establish the Mekong Fund; 4) finalization of the new format for reporting to the Joint Committee on the implementation of the MRC Procedures; 5) issue on management and operation of the cascade dams, 6) review the implementation of the Guidelines of the Procedures on the Maintenance of Flow on the Mainstream, and 7/ establishment of tools to support the implementation of the Procedures for Water Use Monitoring (PWUM).

2.2. Implementation of Joint Action Plans for hydropower projects

For the PNPCA, four Prior Consultation (PC) processes have been conducted for mainstream dams. These include Xayaburi, Don Sahong, Pak Beng, Pak Lay Hydropower Projects (HPPs) in Lao PDR. Currently, the fifth PC process is being carried out for Luang Prabang Hydropower Project which is tentatively to be concluded during April 2020.

As an outcome of the last two PC processes for Pak Beng and Pak Lay Hydropower Projects (PBHPP & PLHPP), the JC endorsed “the Statement” on the Conclusion of the PC processes for both projects at its Special Sessions on 19 June 2017 and on 4 April 2019, respectively.

Both Statements included a request to the MRCS to support the preparation of a Joint Action Plan (JAP) that outlines a process for implementing the Statements. The JC at its Special Session on 4 April 2019, agreed the JAPs for both PBHPP and PLHPP projects. The JAP will be undertaken in a phased manner, with reviews after each phase. The detailed implementation of these JAPs (Tracking Matrix) are being formulated. The JAP will be carried out in four phases based on project development stages. These are as follows.

- **Phase 1: Initiation** - This phase starts immediately after approval of the JAP and will focus on informing stakeholders of the content and intention of the JAP;
- **Phase 2: Final Design and development of Operating Rules** – This will start after informing stakeholders, and will aim at working with relevant Line Agencies in the GoL and the developer and the LNMC to explore measures that may further improve the design and operations of the PBHPP, and more completely address the concerns raised by stakeholders;
- **Phase 3: Construction** – This will start once construction on the PBHPP and PLHPP starts, and will aim at appraising the MRC of progress with construction, monitoring of impacts during construction and having input into any ‘as built’ design changes; and
- **Phase 4: Operations** – This will include agreement by the Joint Committee on a set of monitoring and reporting parameters for the operational phase of the PBHPP and PLHPP, and will be completed as operations commence. The GoL will be urged to implement any monitoring agreed by the JC.

Likewise, it is expected that a Special Session of the MRC JC will be convened in April 2020 to discuss the conclusion of the Luang Prabang HPP (LPHPP) PC process and endorse a similar Statement and JAP for the LPHPP.

2.3. Implementation of the Prior Consultation Process of newly submitted project(s) under the Procedures for Notification, Prior Consultation, and Agreement (PNPCA)

By March 2020, there are 53 projects which were submitted under PNPCA including 5 hydropower projects on mainstreams for Prior Consultation process. A number of lessons learnt has been identified from these implementations. A Working Paper on Lessons Learnt from PNPCA implementation is being updated regularly following implementation of each PC process.

For Xayaburi and Don Sahong Hydropower Projects, the Joint Environmental Monitoring Programme has been established and is being implemented to monitor the effectiveness of designs and mitigation measures of the projects.

An inventory list of projects submitted by each MRC Member Country under the PNPCA has been established and needs further updated regularly. A web-based interactive map which was operated will need to also regularly updated.

As part of MRC Annual Work Plan for 2020-2021, the MRC Secretariat will continue to support Member Countries to undertake Prior Consultation process for the newly submitted project(s). As in previous processes, the MRC Secretariat will mainly support the PNPCA Joint Committee Working Group (JCWG) to review the submitted documents, especially in formulating the Technical Review Report (TRR) in which the MRCS will review the developer's impact assessments and the likely effectiveness of the proposed mitigation measures. This may lead to additional recommendations with a view to further avoiding, minimizing and mitigating transboundary environmental and social impacts. The TRR will be submitted to the Joint Committee through the JCWG for consideration and arriving at a conclusion. As part of the process, the Statement and JAP will be negotiated and endorsed by the JC.

3. Objectives

The specific objectives of this consultancy are to support the MRCS Planning Division in:

- (1) assisting in the overall implementation of the 1995 Mekong Agreement and the MRC Procedures through working with concerned MRCS staff, other international consultants, National Mekong Committees, and the Joint Platform;
- (2) implementing the JAPs for PBHPP, PLHPP, and possibly approved LPHPP; and
- (3) improving and implementation of the PNPCA PC process of newly submitted project(s) including collecting lessons learnt on PNPCA implementation, updating PNPCA database/inventory lists, supporting the implementation of the Joint Environmental Monitoring (JEM), and coordinating and implementing all of its PC process

4. Responsibilities and tasks

The consultant will undertake the following tasks:

I. Implementation of the 1995 Mekong Agreement, and the MRC Procedures and Joint Platform

- Assist the Planning Division in organising, preparing and coordinating the supporting documents for the MRC Joint Platform biannual meetings to be organised 2 times per year (September, March);
- Assist in preparing the Annual Procedures Implementation Reports including progress of all Procedures and elaboration of recommendations for improvement, including how they can be implemented in a linked and operational-use manner to the JC, so that they can base to make decision/request to Member Countries;
- Work with relevant Division and OCEO to improve the MRC websites related to the MRC Procedures;

- Advise on monitoring of implementation results of the five procedures to ensure that monitoring work is well coordinated, practical, and aligned with the overall implementation of the Procedures;
- Assist and coordinate discussion on issues related to:
 - 1) Reasonable and equitable use as stipulated in the 1995 Mekong Agreement;
 - 2) Process or guideline to implement the Article 7 (Prevention and cessation of harmful effects), Article 8 (State responsibility for damages), and Article 10 (Emergency situations) of the 1995 Mekong Agreement;
 - 3) Internalizing the external costs of the development and use of the Mekong River System including possibility to establish the Mekong Fund;
 - 4) Finalization of the new format for reporting to the Joint Committee on the implementation of the MRC Procedures;
 - 5) Management and operation of the cascade dams;
 - 6) Review the implementation of the Guidelines of the Procedures on the Maintenance of Flow on the Mainstream; and
 - 7) Establishment of tools to support the implementation of the Procedures for Water Use Monitoring (PWUM).

ii. Implementation of Joint Action Plans for hydropower projects

- Provide technical and coordination support to the PD for the implementation of the JAP for PBHPP, PLHPP and possibly LPHPP;
- Assist in the development of tracking matrices for the JAP implementations for all approved JAPs to be implemented and monitored by the MRCS so that the JC can exercise effective oversight over the implementation of the JAPs;
- Support the technical dialogues process with the notifying country and its line agencies and consultations with notified countries and relevant stakeholders, including organising meetings, workshops or stakeholder forum;
- If submitted, coordinate the input of technical review of the progress report on design and operating rules to be prepared by experts in order to ensure that they are in line with the recommendations described in the Technical Review Report (TRR) of the PBHPP, PLHPP, and LPHPP;
- Assist in preparing annual progress report on the implementation of the JAPs.

III. Implementation of the Prior Consultation Process of newly submitted project(s) under the Procedures for Notification, Prior Consultation, and Agreement (PNPCA)

- Review and provide inputs in the update of Working Paper on Lessons Learnt from implementation of the PNPCA incorporated the recent lessons learnt from the LPHPP;
- Provide overall coordination support to the PNPCA 6-month Prior Consultation process of newly submitted project(s);
- Provide overall support to post Prior Consultation process of the newly submitted project(s), including development the JAP to be approved by the JC for subsequent implementation through the development of tracking matrix;
- Improve and update the already established database/inventory lists of the projects submitted including operationalizing it online; and
- Work with relevant Division in supporting the implementation of the Joint Environmental Monitoring (JEM) for the Xayaburi and Don Sahong Hydropower Projects.

The Consultant would expect to undertake some other relevant tasks to be assigned by the PD Director or Chief River Basin Planner.

5. Deliverables and timelines

The consultant will produce the following outputs/deliverables:

No.	Deliverables	Period	Note
I. Implementation of the 1995 Mekong Agreement, MRC Procedures and Joint Platform			
1	All required documents for the MRC Joint Platform biannual meeting to be organised 2 times per year (May, September, March)	May - Sep 20 Jan - Mar 21	
2	Annual Procedures Implementation Reports including progress of all Procedures and elaboration of recommendations for improvement	Sep 20 Feb 21	
3	Improved MRC websites related to the MRC Procedures	May 19 – April 21	
4	Advices on monitoring of implementation results of the five procedures to ensure that monitoring work is well coordinated, practical, and aligned with the overall implementation of the Procedures	May 20 – April 21	
5	Coordinated inputs to various Working Papers on: <ul style="list-style-type: none"> Reasonable and equitable use as stipulated in the 1995 Mekong Agreement; Process or guideline to implement the Article 7 (Prevention and cessation of harmful effects), Article 8 (State responsibility for damages), and Article 10 (Emergency situations) of the 1995 Mekong Agreement; Internalizing the external costs of the development and use of the Mekong River System including possibility to establish the Mekong Fund; Final format for reporting to the Joint Committee on the implementation of the MRC Procedures; Management and operation of the cascade dams; Review the implementation of the Guidelines of the Procedures on the Maintenance of Flow on the Mainstream; and Establishment of tools to support the implementation of the Procedures for Water Use Monitoring (PWUM) 	May 20 – April 21	

II. Implementation of Joint Action Plans for hydropower projects			
6	Technical and coordination supports to the PD for the implementation of the JAPs for PBHPP, PLHPP, and possibly approved LPHPP	May 20 – April 21	
7	Finalised/approved Tracking Matrices for the JAP implementations of the PBHPP, PLHPP, and possibly approved LPHPP to be implemented and maintained by the MRCS so that the JC can exercise effective oversight over the implementation of the JAPs	May 20 – April 21	
8	Technical dialogues and meetings coordinated and conducted with the notifying country and its line agencies and consultations with notified countries and relevant stakeholders, including organising meetings, workshops or stakeholder forum	May 20 – April 21	
9	Coordinated inputs of technical review of the progress report on design changes and operating rules to be submitted by notifying country and to be reviewed by experts and MRCS technical specialists in order to ensure that they are in line with the recommendations described in the Technical Review Report (TRR) of the PBHPP, PLHPP and LPHPP	May 20 – April 21	If there is any submitted reports or updated design
II. Implementation of the Prior Consultation Process of newly submitted project(s) under the Procedures for Notification, Prior Consultation, and Agreement (PNPCA)			
10	Updated Working Paper on Lessons Learnt from implementation of the PNPCA incorporated lessons learnt from the LPHPP	Aug – Sept 20	
11	successful implementation of the PNPCA 6-month Prior Consultation process of newly submitted project(s)	May – Apr 21	
12	Smooth implementation of post Prior Consultation process of newly submitted project(s), including development the JAP to be approved by the JC for subsequent implementation through the development of tracking matrix	Nov 20 – April 21	If there is a new submission.
13	Up-to-date database/inventory lists of the projects submitted including operationalizing it online	May 20 – April 21	
14	Inputs to the implementation of the Joint Environmental Monitoring (JEM) for the Xayaburi and Don Sahong Hydropower Projects	May 20 – April 21	
15	Up-to-date web-based interactive map of the PNPCA-submitted projects	May 20 – April 21	
16	Other assigned tasks by supervisors	May 20 – April 21	
Total working months		12 months	

6. Working arrangements

- **Reporting line:** Director of Planning Division
- **Communication line:** The Consultant will work closely with the Chief River Basin Planner and under the direct guidance and supervision of the Director of the Planning Division. Furthermore, the consultant will work in close collaboration with other technical specialists, national and international experts, and the support staff of the MRCS.
- **Working station:** MRC Secretariat, Vientiane Lao PDR, with travels to the MRC member countries.

7. Qualifications and requirements

The regional water policy consultant should have the following qualifications and requirements:

- Master's degree or higher education in international relations, water laws, public communication, natural water resources management, or related fields;
- At least 10 years of experience in IWRM and natural resource management;
- Understanding and knowledge of, and working experience with the implementation the 1995 Mekong Agreement and the MRC Procedures;
- In-depth understanding and practical experience in transboundary water governance and the water diplomacy instruments/tools have been used by the MRC, as well as the diverse economic and political interests and concern of the MRC Member Countries;
- Demonstrated extensive experience in coordinating and facilitating water diplomacy dialogues on sensitive water management, and water diplomacy technical training sessions;
- Understanding of and working experience with the implementation of the prior consultation processes undertaken by the MRC to date;
- Demonstrated ability to write technical reports which can be readily understood by decision makers and the public;
- Excellent communication skills both verbal and in writing with a wide range of people; and
- Excellent written and oral communication skills in English;

8. Condition of payment

Monthly payment will be made based on the submission of monthly timesheet and all deliverables must be satisfactorily accepted by the MRCS Planning Division.

9. Intellectual property rights

Intellectual property rights - IPR: Information, data, database, knowledge resources in the forms of briefings, reports, proceedings, articles, essays, etc. issued by and for the MRCS will be the MRCS property. Any utility, announcement and disclosure that are without MRCS highest levels of authority' permission is considered illegal and will be charged by relevant local and international legal procedures.

10. Confidentiality

Due to the nature of the prior consultation process, the consultant shall not communicate or provide any documents/results to third parties before they are made officially available within the MRC framework through the MRCS and/or the MRC Member Countries.

11. Signature block

MRC Secretariat Division: Planning Division Name of Director: Bountieng Sanaxonh Signature: -----	 Date: -----
Consultant Name of consultant: ----- Signature: -----	 Date: -----