

Renewable Energy Sector Development Project
Terms of Reference
Consultant Services
Preparation of Drafting Instructions
to
Update a draft Geothermal Resource Development Bill (2012) and Regulations to
support the Bill

1. Background

The Government of Saint Lucia (GOSL) is undertaking a series of initiatives with the intention of creating an enabling framework to reflect current international standards, as part of its reform agenda for the energy sector. The role of energy underpins every aspect of development, particularly as most energy resources are imported at a high cost to fuel all the sectors of the economy. The high cost of energy caused by over-dependence on expensive imported petroleum products, also has a serious negative impact on the island's competitiveness and growth as it contributes to the high cost of doing business and deepens the country's financial vulnerability. The current energy crisis, coupled with the mounting pressures of climate change, will only further exacerbate existing fragilities and fiscal burdens. Fortunately, Saint Lucia has significant geothermal potential that can be exploited and can likely allow for self-sufficiency in electric power generation.

Against this background, the GOSL continues to pursue the development of renewable energy infrastructure, policy and legislation. Saint Lucia has significant indigenous renewable energy resources, including the potential for geothermal, solar and wind energy. The National Energy Transition Strategy (NETS), endorsed by Cabinet, concluded that geothermal energy development along with wind, solar and storage has the potential to play an important role in reducing electricity costs, increasing resilience, maintaining reliability and increasing energy security. The NETS also concluded that Saint Lucia can achieve more than 75% renewable energy penetration with this mix of renewables.

The GOSL has secured funding through the support of the World Bank to pursue the Renewable Energy Sector Development Project (RESDP). The development objective of the RESDP is to inform the GOSL on the viability of its geothermal energy resource for electricity generation. RESDP aims to strengthen the enabling environment for scaling up clean energy investments with the private sector and to decrease the country's dependence on imported fossil fuels. The financing package (US\$21.862 million) under the RESDP is highly concessional and includes a combination of grants and an International Development Association (IDA) line of credit, via a multi-partner financing arrangement.

The RESDP will fund a public sector managed initiative to complete an exploratory geothermal drilling program. If a viable geothermal resource of suitable quality and quantity is verified, the next phase of exploration drilling (to secure an adequate volume flow of the geothermal

resource for power generation) and subsequent development of a geothermal power generation project will be initiated, with the involvement of a qualified private geothermal developer.

The RESDP has two components. Component 1 comprises all activities related to the geothermal exploration drilling to assess and confirm the suitability for development of a geothermal power plant. Component 2 includes a Technical Assistance (TA) program aimed at (i) increasing the GOSL's capacity to implement the geothermal development program and (ii) strengthening Saint Lucia's legislative and regulatory framework for Renewable Energy integration. While Component 1 is focused solely on investments in geothermal energy exploration, the scope of the TA work under Component 2 is broader, covering not only the legislative and regulatory framework for geothermal energy, but also for all other forms of Renewable Energy integration. Further investments in all Renewable Energy technologies, up to grid interconnection, assume a stable legislative and regulatory framework. Consequently, this consultancy TOR will support the GOSL's objectives under Component 2 of the RESDP.

1.1 Existing Legislative and Regulatory Framework (Relevant Interventions)

The GOSL considers as a matter of policy, the need to address the legislative and regulatory framework for geothermal resource development. Some progress has been made with the passage/approval of the legislative and policy instruments described below.

In 1989, the Minerals (Vesting) Act was amended by Act 7 of 1989, in force from 28 October 1989. This Act vests in the Crown, all minerals in the island and was amended as a stop gap until the passage of geothermal resource development legislation. With the amendment, (Minerals Vesting Act 5.08), geothermal energy is considered a Crown mineral.

In 2010, the National Energy Policy (NEP) was approved by GOSL and is being updated. The updated NEP will present the policy direction for Saint Lucia for the years 2022-2032. The NEP establishes the Government's expectations towards the development of a greener and more resilient energy sector over the next decade. It also establishes that Energy is an essential resource for the operations and advancement of society. The NEP acknowledges that guaranteeing access to a reliable and affordable energy supply is a key mission of any government to ensure proper delivery of basic services such as health, education, water, food and communication, inter alia. The updated NEP is complemented by an Implementation Plan which details over 140 actions that are identified as necessary to fulfil the objectives and goals of the policy.

GOSL also enacted the Electricity Supply (Amendment) Act – also known as Act No. 2 of 2016 – which amended the Electricity Supply Act to provide for the regulation of electricity supply. It includes a provision that the license granted to the Power Company, LUCELEC, under the Electricity Supply Act No. 27 of 1964 shall continue in force in accordance with the terms and conditions of that license, except that the exclusive license to generate electricity shall be for the generation of electricity from fossil fuels only.

In 2016, GOSL enacted legislation (Act No. 3 of 2016) which established a new National Utilities Regulatory Commission (NURC), an independent multi-sectoral regulator for water and electricity. Once adequate enabling regulations have been finalized and adopted for its new mandate in the electricity sector, the NURC will have the authority for the provision of licenses and permits, tariff setting and will also have responsibility to monitor quality and service standards, as well as consumer affairs. The NURC currently receives a subvention from the

Government which is supplemented by a levy and license fees collected from the water utility and consumers. Under the NURC Act, the NURC reports to the Minister with responsibility for Public Utilities.

2. Objectives of the Assignment

2.1 General Objective

The general objective of this consultancy is to support the GOSL in its efforts to overcome legal obstacles to geothermal resource development, and facilitate the use of geothermal energy in the power sector, should a viable resource be proven to exist. This is to be achieved by reviewing the current legislative and regulatory framework, in the context of international best practices and preparing a report with recommended options for amendments and final drafting instructions, to legitimize the exploration and development of the resource, for electricity generation as well as direct use.

2.2 Specific Objectives

More specifically, the objectives of this consultancy include: (i) review of the existing and draft legislative framework documents and instruments (ii) review best international practices in at least three countries, including in the region, and (iii) prepare drafting instructions to facilitate the drafting of the relevant legislation, regulations, statutes and geothermal licenses by the Legislative Drafting Unit of the Attorney General's Chambers, for all geothermal development activities.

3. Scope of Services (Geothermal Exploration and Development)

3.1 General Scope Services

The Consultant shall:

- Define the essential roles and responsibilities of the agencies necessary for successful oversight and development of the geothermal industry (both for electric power generation and direct use e.g., heat);
- Review all relevant laws and policies against international best practice from at least three countries, inclusive of countries in the region, that will form the basis of the drafting instructions. Consult with the public and private stakeholders (face-to-face and virtually) and analyze issues that need to be dealt with by changes to the draft Geothermal Resource Development Bill 2012 and regulations;
- Provide the final drafting instructions for the services.

The approved drafting instructions will be sent by the Department of Infrastructure, Ports and Transport to the Legislative Drafting Unit of the Attorney General's Chambers for drafting of the updates to the draft Bill and the geothermal regulations.

3.2 Specific Scope of Services

The Consultant shall propose amendments to the draft Geothermal Resource Development Bill 2012. The proposed amendments will form the basis of drafting instructions for the proposed regulations. The Scope of Services shall include but is not limited to:

- Review and assess the existing draft Geothermal Resource Development Bill 2012 to determine adequacy and completeness to satisfy the local context. A comparison shall be provided to at least three other countries which present international best practice;
- Review other related draft legislation on geothermal development, e.g., the draft Geothermal Energy Bill (1988) and the Regional Draft Geothermal Resource Development Bill (2004), to determine relevant clauses (if any), for enhancement of the draft Geothermal Resource Development Bill 2012;
- Review other relevant legislation, Acts, Policy Documents, etc., that may have an impact on the geothermal energy development Bill and regulations. The Documents subject to review include but are not limited to the following:
 - The Minerals (Vesting) Act 5.08;
 - The Electricity Supply Act Cap 9.02;
 - The Electricity Supply (Amendment) Act No. 2 of 2016;
 - The Draft Geothermal Resource Development Bill (2012);
 - The Draft Geothermal Energy Bill (1988);
 - The Regional Draft Geothermal Resource Development Bill (2004);
 - The draft Electricity Supply Services Bill and Regulations;
 - Relevant geothermal legislative framework models in the Commonwealth and CARICOM jurisdictions;
 - The revised National Energy Policy, 2022-2032;
 - The draft Physical Planning and Development (Environmental Impact Assessment) Regulations, Statutory Instrument, 2011;
 - The Land Acquisition Act.
- Review existing and draft E(S)IA requirements, and recommend amendments for different phases of development (exploration, production and exploitation of the geothermal resource), that could give rise to surface disturbances, thermal, chemical and other forms of pollution, for inclusion in the regulations;
- Recommend regulations to consider climate change mitigation and adaptation, resilience, in relation to geothermal resource development and geothermal infrastructure;
- Prescribe regulations for environmental and social mitigation from possible negative consequences of geothermal power production, in the Pitons Management Area (PMA) Green Buffer Zone (GBZ), which is adjacent to the PMA. The GBZ does not form part of the PMA;
- Ensure that the drafting instructions for regulations for the exploration, development and exploitation of the geothermal resource are consistent with the procedures for monitoring the implementation and management of an ESIA by the Development Control Authority;
- Outline template provisions of an operating license and concession agreement for any concessionaire for geothermal development, taking into consideration the projected costs and risks associated with the development;
- Ensure that the drafting instructions are developed, consistent with the guide from the Legislative Drafting Unit of the AG's Chambers, on Public Policy Development for Effective Legislation, to facilitate generation of regulations for geothermal resource use;
- Propose recommendations, including clear operational instructions and roadmap, on how the Implementing Agency should implement the proposed changes to the legislation, taking into consideration the existing arrangements;

- Identify requirements for the following: (i) procedures for different phases of geothermal exploration and development including exploration drilling, production drilling and geothermal facilities including steamfield above ground system (SAGS) and power plant, (ii) requirements for granting of geothermal permits, geothermal licenses, concessions and exemptions, applicable fees and royalty payments for both power generation and direct use of geothermal resources;
- Identify requirements, processes and procedures for (i) the maintenance of geothermal wells and boreholes, (ii) the de-commissioning of geothermal wells and boreholes, that are no longer needed, or have reached the end of their serviceable life;
- Identify specific and/or special requirements for damaged and/or lost geothermal wells;
- Propose recommendations and drafting instructions that consider the World Bank's Environmental and Social Framework (ESF), as a benchmark for international best practice, and other relevant environment, social, health and safety (ESHS) requirements, covering the overall biodiversity of areas that could be impacted, based upon existing information specific to the country;
- Prescribe regulations to ensure applicable safeguards policies for risk mitigation and best practices for project affected persons, including loss of land through eminent domain, to avoid, reduce, or mitigate adverse impacts and to enhance potential benefits;
- Propose recommendations to amend the Land Acquisition Act, with a view to ensuring an efficient and timely land acquisition process, while respecting landowner's rights. In consideration of the foregoing, the Consultant should consider mutual land settlement arrangements/negotiations/leasing arrangements between the Geothermal Developer and private landowners, and consider that government agencies and project developers would need to comply with environmental and social policies of International Financial Institutions (IFIs) that are providing project and/or contract support, as applicable;
- Prepare and present an Issues Paper reflecting all findings and recommended drafting instructions;
- Prepare detailed explanatory notes to the drafting instructions for the draft Geothermal Resource Development Bill and the drafting instructions for the geothermal regulations to advise the Legislative Drafting Unit of the Attorney General's Chambers.

The Consultant will be expected to organize two (2) rounds of consultations/workshops to include Government and non-governmental organizations, using a hybrid approach (face-to-face and virtual). The Consultant shall utilize various forms of technology and modalities suitable for delivering the contents to and receiving feedback from the various stakeholders.

The hybrid consultative approach may, in addition to group sessions, include but not be limited to the use of Webex, Zoom, Teams and Skype, as well as social media (Facebook, WhatsApp, YouTube), and traditional channels of communication (TV, radio, surveys and e-mail). As an integral part of disclosure requirements, the documents should be disclosed online or otherwise for comments over a two-week period prior to consultations. In addition, the consultant shall:

- Conduct one round of public consultations, at the beginning of the consultancy service to present and obtain feedback on the recommended updates to the Geothermal Resource Development Bill and supporting Regulations at two locations, (i) Castries and (ii) Soufriere;
- Undertake the public consultations to target identified stakeholders, interested persons, community leaders, civil society organizations and the general public;
- Deliver the contents of the proposed changes to the Bill and draft drafting instructions to reach the targeted and differentiated audience/stakeholders as necessary;
- Utilise the feedback obtained to revise the recommended updates to the Geothermal Resource Development Bill and supporting Regulations;
- Conduct a second round of public consultations to present the revised updates to the Geothermal Resource Development Bill and supporting Regulations, at each of the two locations identified above;
- Prepare a first version of the drafting instructions for the amendments to the Draft Geothermal Resource Development Bill (2012) and the proposed regulations to support the said Bill, based on all feedback received;
- Present the first version of the drafting instructions, obtain feedback and prepare the final drafting instructions for the amendments to the Draft Geothermal Resource Development Bill (2012) and the supporting regulations based on feedback received;
- Review the drafting instructions to amend the ESIA regulations under the Physical Planning & Development Act to ensure consistency with the proposed regulations for the exploration, development and exploitation of the geothermal resource. These drafting instructions are being prepared under a separate consultancy.

The consultation/workshop participants are to include but not be limited to:

- Private sector companies in the energy sector such as LUCELEC;
- The Department in charge of Energy;
- The Department of Sustainable Development, including officials of the PMA;
- The Department of Physical Development and Urban Renewal;
- Stakeholders, including NGOs/CBOs, with an interest in the direct use of geothermal energy, such as the Soufriere Regional Development Foundation.
- The Attorney General's Chambers.

Two of the drilling sites are outside, but adjacent to the PMA, i.e. in the GBZ. The PMA was designated as a UNESCO World Heritage Site for its outstanding universal value and its geological uniqueness. The International Union for the Conservation of Nature (IUCN) is responsible for advising the World Heritage Committee on the State of Conservation of the PMA. Due to the sensitivity of the PMA, the consultation process should include key stakeholders including UNESCO, the IUCN and other international NGOs.

4. Working Arrangements

The Department of Infrastructure, Ports and Transport will monitor and supervise the Consultant's work including assessment of overall quality. The Client will designate a Project

Management Team (PMT) to oversee the work of the Consultant. The Team members identified below, will assist in their areas of expertise in the execution of the assignment.

- A Legal Officer from the AG's Chambers;
- The Chief Energy Officer;
- The RESDP Project Manager;
- A representative of Invest St. Lucia;
- A representative from LUCELEC;
- The Chief Physical Planning Officer;
- A representative from NURC.

The Project Management Team (PMT) will provide technical guidance to the Consultant. The Consultant shall report directly to the Permanent Secretary, Department of Infrastructure, Ports and Transport.

5. Consultant's Responsibilities

The Consultant will work closely with Legal Counsel at the Attorney General's Chambers, as well as the PMT. The Consultant shall be responsible for:

- Submitting the expected outputs, as well as ensuring the timely submission of the draft documents for review;
- Presenting the findings at the specified consultations/workshops and incorporate feedback throughout the consultation process;
- Executing the assignment in accordance with the laws, customs and practices in Saint Lucia and use the appropriate international standards for the preparation of the drafting instructions.

6. Level of Effort and Duration

The level of effort for the consulting services is estimated to be 100 person-days, spread over a period of nine (9) calendar months.

7. Deliverables and Timeframe

The Consultant shall meet with the PMT for an Inception Meeting to initiate the consultancy.

The Consultant will be expected to submit the following deliverables within the timeframe specified in Table 1 - Time Schedule. All Deliverables shall be reviewed by the PMT and the Consultant shall allow for at least 2 weeks for this review and the submission of their revisions based on comments provided.

Deliverable #1 –Inception Report. Following a review of all documents provided, the Consultant will submit a Draft Inception Report outlining the work plan, method for stakeholder consultations and a timeframe for execution of the consultancy.

The Inception Report shall be presented to the PMT.

Deliverable #2 – Issues Paper and Recommended Amendment(s) to the draft Bill and proposed geothermal regulations. The first draft of the recommended amendment(s) to the

draft Bill and the proposed geothermal regulations will be submitted to the PMT for review and comments.

Deliverable #3 – Results of First Round of Public Consultations and Presentation of Revised Amendments to the draft geothermal bill and proposed geothermal Regulations.

During the first round of consultations, the Consultant shall present the proposed content of the Bill and regulations. Comments/suggestions will be gathered by the Consultant and will be incorporated into revising the documents. A Presentation will be made to the PMT outlining the findings based on the first round of public consultations and the recommended revised amendments based on the consultation findings.

Deliverable #4 – Results of Second Round of Public Consultations and Presentation of Drafting Instructions for amendments to the draft Bill and geothermal Regulations.

Undertake a second round of consultations to present the revised recommendations for the draft Bill and the proposed geothermal regulations. After the second round of consultations, the first version of the Drafting Instructions for the geothermal Bill and Regulations will be prepared. The drafting instructions to amend the draft ESIA regulations under the Physical Planning & Development Act will also be reviewed for consistency with the proposed geothermal drafting instructions. All revised drafting instructions will be presented to the PMT and the Drafting Unit of the AG's Chambers. Feedback will be collected and used to revise the drafting instructions and Regulations. A draft report will be produced documenting all activities for submission to the PMT.

Deliverable #5 –Final Drafting Instructions for the draft Bill, the geothermal Regulations and Final Report

The revised drafting instructions for amendments to the ESIA regulations, draft geothermal Bill and geothermal Regulations shall be submitted to the PMT. The revised drafts are to incorporate all recommendations and comments from the two National Stakeholder Consultations and all presentations. Comments on the draft report will be reviewed and a final report shall be presented containing a summary of all activities undertaken in developing the final drafting instructions.

The Consultant shall allow 10 business days for the review and comments on all submitted reports. Of these 10 business days, the Client shall review and comment on the submitted report within 5 business days of its receipt and the consultant shall revise and resubmit the report consistent with the provided comments to coincide with the end of the 10 business days allocated for review and comments.

Table 1. Time Schedule

Deliverables	Copies	Deadline
<i>Deliverable #1 – Inception Report</i>	Electronic	Contract Effectiveness + 15 working days
<i>Deliverable #2 –Issues Paper and Recommended Amendments Report</i>	Electronic	Contract Effectiveness + 50 working days
<i>Deliverable #3 – Public Consultations and Revised Recommended Amendments Report</i>	Electronic	Contract Effectiveness + 100 working days

<i>Deliverable #4 –First Version of Recommended Drafting Instructions for amendments to the geothermal Bill and regulations; Draft Report for Presentation to the PMT and Drafting Unit</i>	Electronic	Contract Effectiveness + 130 working days
<i>Deliverable Package #5 – Final Drafting Instructions and Final Report</i>	Electronic	Contract Effectiveness + 170 working days

All documents are to be delivered via email or electronic transfer to the Department of Infrastructure, Ports and Transport, in both MS Word and Adobe PDF formats.

8. Qualification Requirements and Evaluation Criteria

Firms will be selected according to their knowledge and expertise in development of regulatory frameworks in the energy sector, in particular for geothermal resource and other renewable energy technologies. Firms must provide references for all past projects listed in the statement of the qualifications, with a particular focus on Small Island Developing States. The Firms should have sound and qualified experience advising Renewable Energy developers and Government agencies on legal due diligence in the renewable energy sector.

The minimum required qualifications and experience of the consulting firm are:

- At least ten years experience providing advice in the legal and regulatory aspects of the power sector;
- At least five years experience drafting or reviewing legislation relating to geothermal energy;
- Experience in the Caribbean or similar Small Island Developing States working on similar assignments;
- Local knowledge of the principles applicable to the drafting of legal and regulatory instruments.

The following key Experts are required for the assignment:

- Senior legal counsel, as Lead Consultant, with expertise in legal and regulatory frameworks for the power sector;
- A senior regulatory analyst, with practical experience in resource regulations, concessions, licensing and concession agreements;
- A technical expert, with practical experience in exploration, development and utilization of low to high enthalpy geothermal resources;
- An environmental assessment specialist with practical experience in the assessment of the environmental impacts of geothermal projects;
- A social assessment specialist with practical experience in social impact assessments/review of infrastructure projects.

The CVs of the key Experts will not be evaluated at the shortlisting stage.

Work Team Minimum Requirements		
Positions	Qualifications	Specific Experience
Team Leader/Lead Consultant	Advanced University (Masters) Degree in Law;	Minimum of fifteen (15) years' experience in legislative drafting; At least ten (10) years' experience in drafting renewable energy regulations; Experience in Environmental Law or Natural Resources Law; Experience working in a CARICOM member state would be an asset
Senior Regulatory Analyst	Advanced University (Masters) Degree in Economics or Finance;	Minimum fifteen (15) years professional experience in designing Energy sector regulations. Experience in renewable energy, energy storage and grid modernization. Experience working with regulations relating to geothermal energy would be an asset.
Senior Technical Expert	Advanced University degree geoscience or engineering.	Minimum ten (10) years experience in exploration, development and utilization of low to high enthalpy geothermal resources. Experience working with regulations relating to geothermal energy would be an asset.
Environmental Assessment Specialist	MSc Environmental Mgt, or Environmental Impact Assessment or Environmental Eng.	Minimum ten (10) years project management experience in the assessment of the environmental impacts of geothermal projects.
Social Assessment Specialist	MSc Social Sciences, or Social Anthropology, or equivalent discipline	Minimum ten (10) years practical experience in social impact assessments / review of infrastructural projects.

9.