

REPUBLIC OF KENYA



THE NATIONAL TREASURY

**INFRASTRUCTURE FINANCE AND PUBLIC PRIVATE PARTNERSHIPS
PROJECT (IFPPP)**

PROJECT IMPLEMENTATION UNIT

COMPONENT 1A – PPP INSTITUTIONAL SUPPORT

TERMS OF REFERENCE

**RECRUITMENT OF A PPP ADVISOR TO PROVIDE TECHNICAL SUPPORT
TO THE PPP UNIT IN KENYA**

August, 2015

1. INTRODUCTION

Vision 2030, Kenya's national long-term development strategy covering the period 2008 to 2030, places great emphasis on rebuilding and creating a productive infrastructure in the country's journey towards poverty reduction as well as social, political and economic transformation. However, in a time of constrained public budgets with competing development pressures especially in the social sectors (particularly health and education), high sovereign debt, and rising public expenditure demands from the current and new devolved structures, the Government of Kenya (GOK) is facing great challenges. In particular, Kenya's infrastructure funding gap is estimated at approx. KES.178.5 Billion (\$2.1 billion) per year.

Responding to this challenge, the GOK, through the National Treasury, has made infrastructure development and public service provision through Public Private Partnerships (PPP) a priority mechanism that can help it address this major infrastructure funding gap and achieve the benefits of successful PPP investments including: substantial private investment; transfer of significant risk to the private sector; improving access to infrastructure; creating higher quality assets with better operation and maintenance; and helping achieve better value for money.

With a growing number of project proposals approved by the PPP Committee, currently standing at seventy-one (71) across various sectors and county governments, the PPP programme in Kenya is gathering pace and can be considered to be taking shape. Because of the growing number of PPP projects in the pipeline, and in accordance with the PPP Unit's mandate to provide technical, financial and legal expertise to the all contracting authorities, the Unit engages experts to support the implementation of the GOK PPP Programme. For this purpose, the Kenyan government has received a WB credit under the *Infrastructure Finance and Public Private Partnership (IFPPP)* Project that seeks to increase private investment in the Kenyan infrastructure market and to improve the enabling environment to generate a pipeline of bankable PPP projects.

As of today, there is a substantial increase in appetite for PPPs in the country with many of the growing number of projects having engaged several Transaction Advisors, thus require increased support for management of their PPP programme. In this regard, the PPP Unit is seeking to strengthen its technical and institutional capacity for the management of their PPP programme.

These Terms of Reference (ToR) are for the recruitment of services of the PPP Advisor to support the PPP Unit (the "Advisor") in Kenya.

2. BACKGROUND OF PPP IN KENYA

Established initially under the Public Procurement and Disposal (PPP) Regulations, 2009, the Kenyan government has in the recent past been committed to improving and strengthening the PPP framework for private sector participation in the country. Several accomplishments are notable:

- a) the adoption of a PPP Policy in 2011 to articulate the government's commitment to PPPs and to provide a basis for the enactment of a PPP Law;

- b) the enactment of the PPP Act on 8th February 2013;
- c) the gazettelement of the National PPP Regulations on 19th December 2014; and
- d) the development of draft PPP Regulations for the County Governments

To support the delivery of the country's PPP agenda, a number of institutions have been created under the PPP Act of 2013. They include:

- i. PPP Committee;
- ii. PPP Petition Committee;
- iii. PPP Unit; and
- iv. PPP Nodes within the Ministries, Government Agencies and County Governments.

2.1. PPP Committee

The PPP Committee, assisted by its Secretariat (PPPU) has the responsibility to:

- Develop and implement PPP policy initiatives;
- Champion the PPP Agenda;
- Ensure compliance with the PPP Act 2013;
- Approve/recommend PPP projects to the Cabinet;
- Ensure efficient execution of the PPP Agreements;
- Ensure PPPs are consistent with national priorities;
- Authorize allocations of the Project Facilitation Fund; and
- Issue PPP standards, guidelines & procedures, & bid documents.

2.2. PPP Petition Committee

The PPP Petition Committee, established under section 67 of the PPP Act 2013, is set up as a tribunal to adjudicate on all petitions and complaints submitted by a private party during the process of tendering and entering into a PPP project agreement. To effectively discharge its mandate to function as a dispute settlement body, the day to day administrative aspects of the Petition are administrated through a Secretariat.

2.3. PPP Unit

The PPP Unit, as the resource center for best practice and guardian of the integrity of the PPP process, has a large role to play in identifying problems, and making recommendations to the PPP Committee regarding potential solutions. In addition, it will be the specific responsibility of the PPP Unit to assist each Contracting Authority to identify, select, appraise, approve, negotiate and monitor PPP projects throughout their life cycle. Moreover, the PPP Unit is also tasked to improve capacity and skills in the public sector and to manage PPP projects more effectively.

2.4. Contracting Authorities

The PPP Act of 2013 recognizes Contracting Authorities (CA) as Ministries/Government Departments, County Governments and Statutory Corporations. The CAs main responsibilities with respect to PPP are to identify, develop, implement and monitor projects. To discharge their responsibilities, procuring entities are required to conduct feasibility studies, prepare bidding documents and seek necessary approvals.

Each CA undertaking a PPP project is required to establish a PPP Node, staffed with officers with the ability to spearhead the day-to-day management of a PPP project.

2.5 Scope and Application of the PPP Program

The scope of the Government's PPP program is the creation of new infrastructure, and the expansion and refurbishment of existing assets such as:

- power generation plants and transmission/distribution networks;
- roads and bridges;
- ports;
- airports;
- railways;
- inland container depots and logistics hubs;
- petroleum infrastructure, such as storage depots and distribution pipelines etc.;
- water supply, treatment and distribution systems;
- solid waste management;
- social infrastructure for health care, prisons, education;
- county/municipal services;
- ICT and telecoms

3. OBJECTIVES OF THE ADVISOR TO THE PPP UNIT ASSIGNMENT

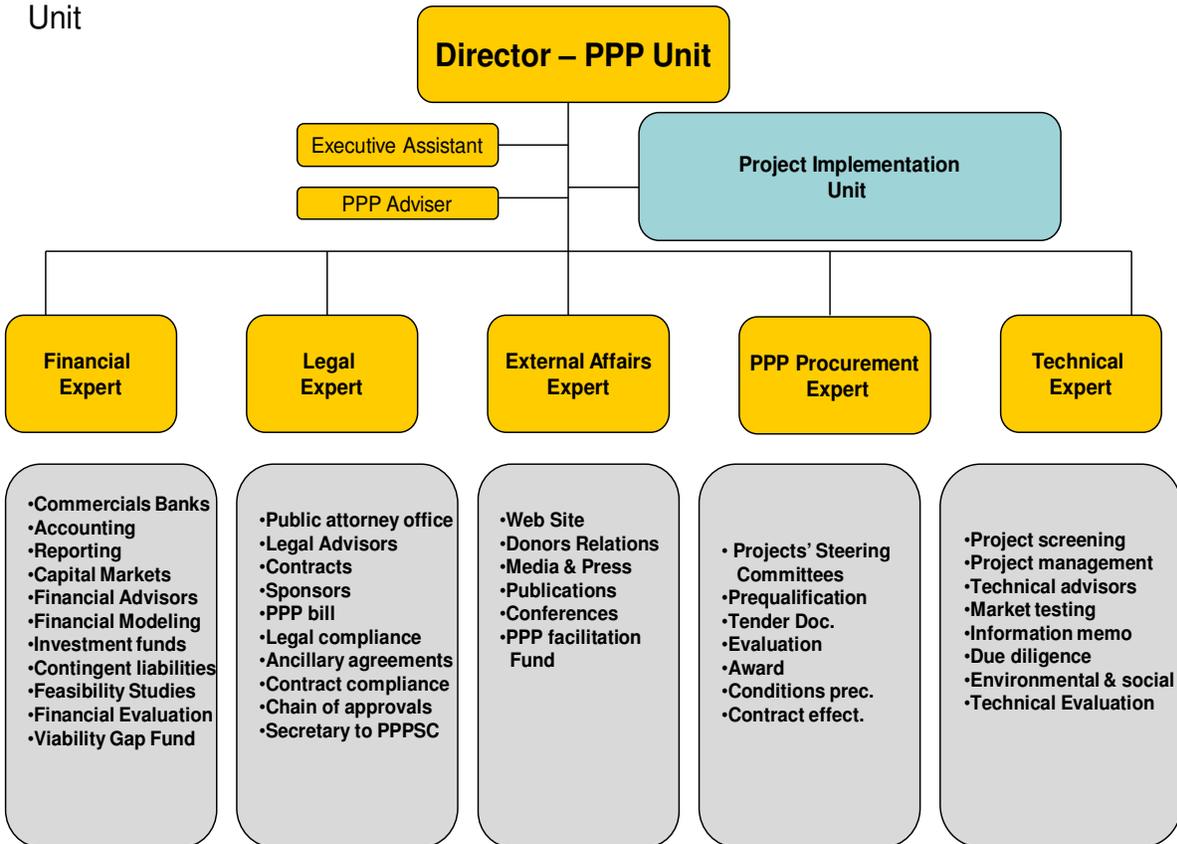
The main objectives of the Advisor's assignment are to:

- Provide the requisite specialist technical advice and support to the PPP Unit to carry out its mandate to assist CAs, across various sectors and county governments, to identify, select, appraise, approve, negotiate and monitor PPP projects throughout their life cycle
- Assist the PPP Unit in establishing and operationalising systems and frameworks to ensure compliance with the PPP Act, as well as the regulations thereto
- Provide advice on the PPP capacity building requirements of the Unit and its contracting authorities, and assist in the enhancement efforts
- Assist the PPP Unit Director in coordinating sector advisors activities
- Provide expert PPP input into all aspects of the Unit activities

4. ORGANIZATION CHART

The Advisor will be part of the Unit staff reporting to the Director – PPP Unit. The Diagram below sets out the organization chart:

Organization Chart – PPP Unit



5. TASKS TO BE PERFORMED

The Advisor to the PPP Unit is expected to perform the following tasks:

- a) Provide specialist technical support and advise to the Unit on PPP projects, including review and comment on Project proposals, Terms of Reference for Transaction Advisors, Feasibility Study reports, Tender Evaluation reports, and draft PPP contracts as submitted by contracting authorities, and other PPP-related matters as they emerge
- b) Assist the PPP Unit in establishing and operationalising systems and frameworks to ensure compliance with the PPP Act, as well as the regulations thereto, including but not limited to:
 - Assist the PPP Unit as it operationalises the PPP Manual which is set to act as a detailed guide for contracting authorities, on both National and County Level

- Provide specialist technical support to the PPP Unit in its efforts to operationalize the PPP Project Facilitation Fund (PFF)
 - On behalf of the Unit, work closely with the Advisor to Public Debt Management Office hired to operationalize the PPP Fiscal Commitment and Contingent Liability (FCCL) Management Framework
- c) Provide advice on the PPP capacity building requirements of the Unit and its contracting authorities, and assist in the enhancement efforts:**
- Provide advice to the Director - PPP Unit on the building of PPP expertise within the Unit and across the various contracting authorities
 - Assist the Unit in its efforts to disseminate and sensitize its contracting authorities on the PPP Manual
 - Prepare and make presentations at stakeholder sensitization workshops for the identified PPP projects
- d) Engage with stakeholders in both the private and public sectors to determine varying needs and perspectives with regards to PPP projects in the country targeting the full spectrum of opportunities**
- e) Provide expert PPP input into all aspects of the PPP Unit activities, in particular:**
- Support the Unit in providing the requisite PPP advice to the State Department of Infrastructure and the Road authorities, as well as county governments, to identify, select, appraise, approve, negotiate and monitor PPP road projects throughout their life cycle, i.e.:
 - Project Identification and Selection:
 - Provide guidance to the PPP Nodes within the State Department of Infrastructure and its road authorities on the preparation of Project Proposals
 - Review Project Proposals provided by the Road authorities and advise whether they should be approved or not by the PPP Committee
 - Project Preparation and Appraisal:
 - Assist the Road authorities with the recruitment of Transaction Advisors (TA), including, as required, preparation of Terms of Reference (ToR), Request for Proposals (RFP) and advice on bid evaluation and TA selection
 - Provide guidance to the Road authorities on the content and preparation of Feasibility Studies, subsequent review of the report and advise whether or not they should be approved by the PPP Committee
 - Support the Road authorities in the management of their selected TAs
 - Selection of Private Party:

- Provide support, consistent with the PPP Act and supporting regulations, to the Road authorities throughout the PPP procurement process including review of RFQ and RFP documents for proposed PPP projects
 - Provide guidance to the Road authorities on the development of draft PPP agreement and related agreements (e.g. direct agreement, shareholders agreement, ToR for Independent Expert etc.)
 - Assist the PPP Unit in the review of submitted PPP contracts, including all annexes and subsidiary documentation, such as performance specification, technical specification, payment mechanism/tariff arrangements, project performance monitoring regime etc.
 - Advise the PPP Unit whether particular PPP contracts should be approved for execution by the Road authorities
- Support the PPP Unit in coordinating the efforts of the consultant hired by the State Department of Infrastructure to develop a national tolling policy, by providing technical input and assisting in the operationalization of the strategies to-be adopted
- f) Assist the Director – PPP Unit in the recruitment of local staff to fill out the interim organization of the PPP Unit**

6. DELIVERABLES

The Advisor is expected to perform the above mentioned tasks on an ongoing basis during the term of his assignment, to the satisfaction of the Unit's Director and within the guidelines set out herein.

7. PROFILE OF PPP ADVISOR

In order to be eligible for the assignment, the PPP Advisor to the Unit should have:

(a) Qualification

Advanced university degree in Finance, Management, Economics, Law, Engineering or any other relevant field. Professional certification will be an added advantage.

(b) Experience

A minimum of 15 years' demonstrated experience in supporting the implementation of PPP project procurements and transactions across various sectors, including extensive experience in project structuring and risk analysis, allocation and management; project agreements; and private financing of infrastructure.

Fluency in spoken and written English is essential, as are strong strategic thinking and leadership skills.

CVs will be evaluated taking into account the following criteria:

- Academic and professional qualifications
- Relevant experience as per the ToR needs

- Language skills
- Breadth of sectoral experience with a focus on Road PPPs
- Hands-on experience in training and capacity building of government personnel in PPP Units and implementing agencies
- Geographical extent of PPP experience – credit will be given to experience of working with successful PPP programmes, both internationally and in markets similar to Kenya’s

8. REPORTING MECHANISM

The PPP Advisor will enter into a contract with the National Treasury – Kenya and will report to the Director, PPP Unit for day-to-day activities.

9. DURATION OF CONTRACT

The level of effort for this assignment is estimated at 150-person days over a period of 1 year, and renewable for an additional year subject to performance. Anticipated date for commencement of the assignment is November, 2015.

10. DATA, LOCAL SERVICES AND FACILITIES TO BE PROVIDED BY CLIENT

The National Treasury, Kenya will provide full office accommodation in Nairobi, Kenya.