



**REPUBLIC OF KENYA
THE NATIONAL TREASURY**

PUBLIC PRIVATE PARTNERSHIPS (PPP)

TERMS OF REFERENCE

FOR

**TRANSACTION ADVISORY SERVICES FOR THE PROPOSED PWANI UNIVESRITY TEACHING
AND REFERRAL HOSPITAL PPP PROJECT**

February 2019

Terms of Reference (ToRs) for the Pwani University Teaching and Referral Hospital

1. Introduction

- 1.1. Vision 2030, Kenya's national long-term development strategy covering the period 2008 to 2030, places emphasis on rebuilding and creating the much-needed 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, all competing with development pressures especially in the social sectors (particularly in health and education), and rising public expenditure demands from the current and new devolved structures, the Government of Kenya (GOK) is facing fiscal challenges
- 1.2. Responding to this challenge, GOK, through its National Treasury, has made infrastructure development and public service provision through Public Private Partnerships (PPP) a priority mechanism that can help it address 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 efficiency.
- 1.3. As part of its overall PPP Program, GOK has identified the health sector as one of the priority infrastructure sectors for PPP investment for which a number of prospective Projects have been identified and considered, including the Pwani University Teaching and Referral Hospital (PUTRH). PUTRH was selected because teaching hospitals train future healthcare professionals; conduct medical research and fulfill a distinct and vital role in the delivery of patient care. Moreover, beyond combining clinical, research and educational mandates, teaching hospitals are ordinarily expected to have additional capabilities to deliver sophisticated diagnostic and treatment services, which is why the proposed PUTRH is envisaged to merge the functions of both a referral and a teaching hospital. As with most teaching hospitals, the expectation is that PUTRH will also become part of the social safety net that typically delivers uncompensated healthcare to those sections of the population that can least afford it.
- 1.4. In as far as demand forecasts for the proposed PURTH are concerned, student enrollment at the Pwani University (PU) is projected to increase between 2016 and 2019, growing from 6,000 students to more than 8000 students. PU expects to enroll an additional 7,200 students by 2024, at an average of 1,200 students per academic year. The student population is expected to increase in undergraduate clinical degree enrollment from a first batch of 50 students in September 2018-2019 academic year to nearly 1170 by the 2022-2023 academic. With the growing student enrollment, PU has been also expanding learning facilities. In 2015, PU Council and the PU Management Board decided to establish PUTRH and the School of Health and Human Sciences

(SHHS). In tandem, PU has inaugurated new degree programs focused on clinical disciplines, including the Bachelor of Medicine and Bachelor of Surgery degrees. As PU has launched clinical degree programs with anticipation of operationalization of PUTRH, the number of lecturers is expected to grow from the current 25 professionals to 274 by the end of the 2022-2023 academic year (not including the Graduate Clinical-discipline students expected at 120 per academic year). PU expects that these professionals will contribute up to 50 percent of the clinical staff in the PUTRH. In addition to the student population, the proposed PUTRH is well-placed to serve not only the over 3.5 million people in the Coastal Region but also in the expanded catchment area of more than 20 million people in its proximity.

- 1.5. It is against the background of the envisaged growth in undergraduate enrollment and general demand in healthcare as described in Para 1.4 that the proposed PUTRH was conceived. The project is expected to bring on stream a facility comprised of 2,000 beds adjacent to the Pwani University on a 60-acre project site next to Pwani University, along the Mombasa-Malindi Road. The envisaged project components include a Centre of Excellence in Health Management and Research; a Tropical Medicine Centre; a Centre for Telemedicine and Informatics Unit; Cafeteria and Eateries; Student hostels; Doctors' plaza; Staff housing; Administrative block; Gymnasium and recreation court and Transport center. From a clinical services perspective, the hospital is expected to have the full range of diagnostic and patient care facilities consistent with the mandates of teaching and referral hospitals. The proposed PUTRH is expected to be delivered and operated as a PPP project under contract formats and terms consistent with the provisions of the PPP Act (2013). An overview of the PPP Framework in Kenya is provided in Annex 1.

Transaction Advisor (TA)

- 1.6. As a first step in getting the Project underway, PU seeks the services of an experienced Transaction Advisor (TA) to assist it with the regulated phases of the PPP project cycle. The Terms of Reference invite proposal from a Transaction Advisor representing a team of suitably qualified and experienced financial, technical and legal advisors to help PU to:
- Undertake a comprehensive Feasibility Study for setting up Pwani University Teaching and Referral Hospital (PURTH); and
 - If necessary afterwards, provide advisory services for the procurement of the project
- (Please note that reference to the Transaction Advisor includes the entire advisory team or relevant members, under the management of a single lead advisor, who shall contract with the PU.)
- 1.7. The TA will principally be tasked with undertaking a Feasibility Study (FS) of the proposed Project and if confirmed as feasible for delivery through the PPP mode, advance it to procurement stage through provision of the necessary support to the Contracting Authority (CA).

- 1.8. As indicated in Para 1.6 above and to avoid any doubt, a decision to proceed to the procurement phase will be made on the basis of the findings of the Feasibility Study and the subsequent decision by the CA and approval by the PPP Committee.

2. **Scope of the Assignment**

Feasibility Study

Feasibility Study will be undertaken to help PU determine whether PPP is the best choice for the Proposed Project. It covers needs analysis, options analysis, Project due diligence, value assessment, economic valuation and procurement plan. The FS should clearly demonstrate affordability for the full project cycle costs; transfer of appropriate technical, operational and financial risks to the private party and propose the optimal value for money solution for PU to achieve the desired outcomes. The FS should provide information about explicit and hidden costs; whether costs can be met from within institutional budgets without disruptions to other activities; identify, quantify, mitigate and allocate risks; assist PU to consider how the Project may be structured; identify constraints which may cause the Project to be delayed or halted; and ensure that the Project is developed based on a sound business plan.

- 2.1. ***Needs Assessment:*** As part of the FS, the TA is expected to undertake a full actual and projected demand study that will provide the basis for a conceptual design and estimates of the capital investment required as well as Project revenues for the proposed Project. The FS will demonstrate that the Project aligns with PU's strategic objectives, how PU functions and delivers services in the public interest, contribution of the Project to the implementation of government and institutional policies, the capability and capacity of PU to provide the services, the size of the Project in terms of capital expenditure, potential cost savings for PU, public's expectation in relation to medical services, the capacity of the private sector to provide the services, the complexity of the Project, the Project's ability to meet PU's needs over the time frame, bench marking of PUTRH and so on.

Unlike regular hospitals, the proposed Pwani University Teaching and Referral Hospital (PUTRH) plans to train future health care professionals, conduct medical research and deliver cutting edge technology medical services to its patients. The TA will therefore need to carry out a much broader market based study covering the Project area to identify the needs and demand for trained health care professionals in all medical disciplines, competition from similar entities, supply constraints, and operational issues. The current health care requirements and future demands study of the catchment areas will be crucial in understanding the local hospital services environment and the future requirements of the public health care system. This will enable the Project to identify and analyze the current market and gain insights in the PPP Project's competitive advantage.

In addition, the TA will undertake a willingness to pay investigation on the basis of which they will offer an assessment of what PU can charge or mandate to be charged as a fee for the provision of services to be offered by the Project. This study should be undertaken across all economic and social segments of potential users and influencers. The report should highlight the rationale for why a certain level of fees is economically justified and likely to face least resistance from users.

Economic Analysis: Lastly, the TA is to undertake an economic review to assess the value of the Project on the economy of both the host counties and the nation. The analysis will establish economic rationale for the Project. An economic and social cost benefit analysis will assess both qualitative and quantitative economic and social costs and benefits of the proposed Project including determination of the Economic Internal Rate of Return and the Cost-Benefit Ratio for the Project. The viability study should also include range of estimates on key health outcomes such as reduction of patient waiting times; bed turnover rate, discharges per bed, annual spending per bed, increased clinical application of specific technology; access to treatment, mortality rates, cost savings, etc. On the teaching and research aspects, the TA should examine the type, quality and funding of research which could be undertaken, the publications of research in top scientific journals, the citations of research in other journals, etc.

2.2. **Project Due Diligence:** The TA is expected to undertake Project due diligence to cover technical, legal, financial social and environmental aspects of the proposed Project. The due diligence will assess all budgetary, institutional, legal, regulatory, site and other socio-economic factors that may constrain or enable the Project.

2.2.1. The technical due diligence will, amongst other things, address the following:

- Evaluate alternative technical configurations capable of delivering the full suite of services necessary to deliver a fully-fledged teaching and referral hospital at the designated project site, including the staffing complement and skills mix necessary to most efficiently maximize the use of facilities and equipment for the convenience of patients, undergraduates, residents and researchers; capacity building and skills transfer plans;
- Identify challenges in research support, in higher education governance, in research funding, in getting adequate faculty staff, in attaining quality, in curriculum reform, in university – industry linkage, etc.
- Set out a detailed operating and maintenance plan for the project facilities;
- Assess ancillary infrastructure requirements of the proposed Project including accessibility by public transport;
- Prepare outline designs of the physical facilities (architectural and structural considerations, including possible renovation of the existing PU facilities to complement and better align the

facilities with the goals of PUTRH) and the equipment lists including information technology necessary to deliver the proposed technical solution;

- Estimate the required capital expenditure to deliver the proposed technical solution;
- Estimate the full life cycle costs of the outline design and the proposed technical solution; and
- Set out the implementation schedule for the proposed Project.

2.2.2. The legal due diligence component of the assignment is expected to cover a range of areas, including:

- Whether the applicable legal, regulatory and institutional framework permits PU to implement the proposed Project and the extent to which PU's functions or use of State property can legally be performed by a private party in a possible PPP;
- Make recommendations on the mandatory approvals and consents from education and health regulatory bodies such as the Radiation Protection Board, Pharmacy and Poisons Board, Kenya Medical Practitioners and Dentists Board; etc.
- Ascertain that the existing regulatory and institutional framework sanctions the proposed PPP option;
- Investigate any regulatory matter such as tax, labour, environmental, foreign exchange, competition, health sector, etc. legislations that may impact or impede private party's ability to deliver the Project as expected;
- Propose appropriate institutional arrangements for the Project taking into consideration the roles and responsibilities of PU and other government agencies and entities, private sector, other stakeholders, including users and public at large; and
- Consider and advise on matters relating to land use and planning consents specific to the proposed Project. For the proposed site, the coverage may include but is not restricted to land availability, land ownership, title deed endorsements, land claim or lease interest, zoning rights and town planning requirements, Municipal Development Plan, etc. The TA should also identify environmental and socio-economic factors in the Project location that will need to be directly addressed in the Project design.
- Stakeholder consultations is seen as critical aspect of preparation for FS. The TA should carryout stakeholder consultations involving broadly the political decision makers, PU faculty, staff and students, other similar teaching hospitals, consumers, investors, NGOs, patients, media and others.

2.2.3. The financial modelling will entail the construction of a financial model, which will be used as a standard financial model for the Project, based on the same output specifications assumed in the proposed PPP structure. The Transaction Advisor, through a combination of its experience and econometric modelling, is expected to determine the rate of return expectations of potential private

sector bidders. The model should, therefore, cover the same categories of whole life-cycle costs as the proposed technical solution and be within comparable contract period(s). The financial modelling should consider the following: -

- Economic cost benefit analysis of the Project and alternative technical solutions;
- Determination of revenue requirements to meet Project funding needs;
- Identify current higher education financing including direct local and national government funding, grants, fees, donations, businesses, industries, fund raising campaigns, alumni, etc.
- Determination of necessary fee levels for user pay options; alternatively, given the assessed market demand (volumes) and the recommended user charges, determine the 'viability gap funding' required to attract private sector investment to the Project;
- Assessment of the viability gap funding requirements, with particular attention to the estimation of the unlikely uncompensated medical care associated with a public healthcare facility of this nature in combination with the efficiency losses attendant to teaching and research medical facilities;
- Evaluation of economic justification for implementing the Project through a PPP model, at different levels of 'viability grant funding' from the PU or the national government ;
- Evaluation of affordability for user pays and/or public sector pays models including fiscal and public sector borrowing impact;
- Determination of the Project's financing requirements and the evaluation of alternative financing structures and sources;
- Evaluation of alternative procurement options and PPP options, including value for money analysis;
- Sensitivity analysis to test resilience of the models to changes in assumptions and risks over the Project term. It will determine the impact of changes in some key variables on the Project performance and critical output parameters such as cost overruns and delays in Project completion and implementation; and
- Render key financial viability metrics for ease of analysis such as Annual Debt Service Cover Ratio (ADSCR), Loan Life Coverage Ratio (LLCR) and Financial Net Present Value (FNPV). It should also provide proposals on how to mitigate against any risks arising from cover ratios which are below the minimum thresholds that may be requested by the lenders. The Transaction Advisor should carry out sensitivity tests of the key Project variables and trace their impacts on the Project's financial NPV, financial IRR, the Project's ADSCR and Project's LLCR

2.2.4. **Environmental and Social (E&S) Due Diligence:** The environmental and social due diligence component of the assignment will take the form of an ESIA. The main objective of this ESIA study is to identify and assess E&S risks and impacts resulting from the proposed project to the biophysical, social and economic environment. Anticipated positive and negative impacts from the proposed project will be assessed in accordance with the Environmental Impact Assessment and Audit Regulations 2003 established under the Environmental Management and Coordination Act (EMCA), 1999 (amendment) 2015 of Kenya and the World Bank Safeguards Policies. The scope of the E&S work is set out in detail under section 3 of this TOR.

2.3. **Risk Allocation.** The Transaction Advisor will identify all possible risks in the construction and operation of the Project, the probability of each risk arising, the value of each risk and the strategies and cost of mitigating the risks. In doing so, the TA is expected to set out risk allocation matrix that quantifies the liabilities associated with the recommended Project configuration, and propose how each of the risks should be anticipated, methods for mitigating the risk and recommendations on the proper allocation of the risk. This information shall be of interest to PU in its review of the fiscal risk commitments and contingent liabilities assumed in the proposed Project structure. The risk matrix shall contain the following information:

- Risk and its description;
- Expert's estimate of the probability that the risk will be realized, together with the rationale/assumption;
- Expert's estimate of the impact of the risk as a percentage of the base;
- The base or amount;
- Most likely timing of the risk event;
- Cost of the risk in NPV terms;
- Risk distribution between public and private parties in terms of percentage of costs borne;
- Distribution of cost of the risk between parties in terms of NPV amount; and
- Mitigation of risk.

2.4. **PPP Structure Options Analysis.** The Transaction Advisor will be expected to formulate a suitable PPP Project structure providing the following:

- Detailed description of the type of PPP Project option proposed and the rationale for its selection, including feedback from the investor sounding exercise;
- Anticipated key roles and responsibilities of the private sector and PU;
- A summary assessment of the proposed Project fiscal impact on public finances;
- Construction and operational efficiencies that may realistically be expected of the private sector;

- A summary of the output specifications for the Project;
- Other potential services that may be provided or commercial activities that may be undertaken by the private partner and not included in the initial Project description;
- Key risk allocation;
- Outline of payment mechanism;
- Indicative financing structure (appropriate equity returns, debt service cover ratios and costs of debt etc. and
- Envisaged PPP Project procurement process map.

2.5. **Project Agreement Head of Terms:** Based on the proposed risk allocation and PPP Project structure in Paras 2.3 and 2.4 above, the Transaction Advisor will be expected to set out the heads of terms for the Project Agreement whose conclusion would mark the culmination of the PPP Project procurement process. The Project Agreement heads of terms will set out key contract provisions.

2.6. **Support to the CA:** The Feasibility Study Report will be submitted in the first instance to PU and the PPP Unit, and subsequently to the PPP Committee for approval. The consultants shall complete all required documents--basically the FS and the FCCL estimates--to be submitted to the CA Node, the PPP Unit and PPP Committee, and assist PU (including the conduct of Project briefings). The Consultant shall address all of the PU's PPP Node, Project Appraisal Team (PAT) and PPP Unit concerns until the approval is accorded by the PU Node and PPP Committee. The Consultant will also provide assistance in securing approval of the estimated Fiscal Commitments and Contingent Liability (FCCL) funding by the Public Debt Management Office (PDMO) through the preparation of the FCCL estimates required under the FCCL Framework for PPP projects in Kenya. If necessary, the TA shall assist the CA in obtaining PPP Committee approval for public sector support to the Project (financial, guarantee, legal etc.) as recommended in the Feasibility Study. The Consultant will assist the CA in securing the necessary NEMA approvals on the ESIA.

2.7. **Procurement of the PPP Project.**

The Consultant shall only proceed with this stage of the assignment if the Project were to be found technically, economically, financially and environmentally viable during the previous stages and once the PPP Committee approves the FS. This stage of the assignment will entail several components, which are outlined below:

- **Project Information Memorandum ("PIM").** The transaction Advisor will be expected to prepare a PIM for issue to interested parties that may wish to participate in or learn more about the proposed project. The information contained in the PIM should be of a non-confidential nature. The PIM will include (but is not limited to) the following information: background and rationale for the proposed project including country context; statement from the appropriate

Minister/ Governor in support of the proposed project; a summary of the key business case issues; project scope; regulatory issues; project term; other unique project matters; key project participants and timetable for implementation

- **Request for Qualification Documentation ("RFQ").** The Transaction Advisor will propose and agree on the contents of the RFQ document with PU and other specialist advisers; recommend technical and financial pre-qualification criteria for the prequalification of bidders, in line with market practice and comparable transactions (where possible); based on selection criteria agreed by PU, coordinate and lead the development of an evaluation framework for pre-qualification of bidders with relevant input from PU and other advisers as appropriate and take a leading role in the development of the RFQ, ensuring input from the CA and any specialist advisers.
- **Prequalification:** The TA will provide advice and support to the Prequalification Committee in the evaluation of the technical, financial and legal responses received in the RFQ submissions from Prospective Bidders. In addition, they will provide input to, and support the production of the evaluation report on the RFQ submissions for approval by assisting the CA in non-logistical preparations for a bidder conference and support such conference as required.
- **Request for Proposals ("RFP") Documentation.** The TA will take the leading role in the production of the RFP documentation, including but not limited to: production of the "Instructions to Bidders" section of RFP ensuring key input from PU and other specialist advisers; setting the detailed deliverables list; develop the PA for issue to Bidders with the input of other specialist advisers; develop the payment mechanism and performance standards; setting up and managing the content, and access to the project data room; support PU in obtaining approval to issue the RFP; production of evaluation criteria for approval by PU and other specialist advisers for inclusion in the RFP; assist PU to obtain all required statutory approvals; draft appropriate statutory notices for publication and obtain approval to publish same through PU.
- **Bid Period.** The TA will receive Pre-Qualified Bidder queries and co-ordinate response to same in a timely manner, ensuring input from PU and other specialist advisers as required; advise PU on the implications of Pre-Qualified Bidder queries having consulted with other specialist advisers as required; support PU in all bid processes including (without limitation) preliminary bidder meetings, competitive dialogue meetings and any other meetings as requested by PU ensuring accurate minutes are taken and distributed; attend meetings with PU and other specialist advisers; ensure the Data Room is always available and up to date acting as joint administrator with PU; update the RFP if required in response to Pre-Qualified Bidder queries; ensure compliance by PU and other specialist advisers with the requirements of the RFP and report formally and informally to PU as required. The TA will also be required to develop the

project's contract management framework (guidelines and manual) in accordance to the provisions of the PPP agreement.

- **Tender Evaluation.** The TA will advise and support the Evaluation Committee in the evaluation of Pre-Qualified Bidder RFP response ensuring compliance with the evaluation criteria specified in the RFP; produce and populate the evaluation matrix with the input of the members of the Evaluation Committee; advise and assist the Evaluation Committee in raising and obtaining response from Pre-Qualified Bidder to clarifications as required and assist the Evaluation Committee in the production and approval of the Evaluation Report
- **Bidder Negotiations and Financial Closure.** The TA shall update the PSC, VFM and affordability model using updated costs based on Pre-Qualified Bidder prices and revenue information from the CA; coordinate the conduct of all negotiations, supporting PU and other advisers on all aspects of any negotiations of terms with the preferred bidder; support PU and other specialist advisers throughout the process of finance raising for the Project, up until Financial Close, by providing oversight of the financing process; support PU and specialist advisers in reviewing, commenting and negotiating the project documents (for example PA, Direct Agreement, EPC Contract, O&M Contract, PA Schedules, Government support measures etc.); attend and support and specialist advisers in all negotiation meetings; assist and advise PU in preparing the Project Report, FCCL Report and any report as required.

3. Preparation of Environmental and Social Impact Assessment (ESIA)

3.1 Background

Given the involvement of the private sector, the GoK and the World Bank have agreed on the use of World Bank Operational Policy 4.03, *Performance Standards for Private Sector Activities*, to address the environmental and social impacts of the proposed Project. The PUTRH project is classified as a Category A project requiring full Environmental and Social Impact Assessment (ESIA).

As part of the technical requirements under OP/BP4.03 the eight IFC Performance Standards – adopted by the World Bank in 2013 as the “World Bank Performance Standards”– are applicable to Bank support for projects (or components thereof) that are designed, owned, constructed and/or operated by a Private Entity, in lieu of the World Bank’s safeguard policies. The eight World Bank Performance Standards are:

- PS 1** Assessment and Management of Environmental and Social Risks and Impacts
- PS 2** Labor and Working Conditions
- PS 3** Resource Efficiency and Pollution Prevention
- PS 4** Community Health, Safety, and Security
- PS 5** Land Acquisition and Involuntary Resettlement
- PS 6** Biodiversity Conservation and Sustainable Management of Living Natural Resources
- PS 7** Indigenous Peoples
- PS 8** Cultural Heritage

World Bank Group Environment, Health, and Safety Guidelines are also applicable under OP4.03.

3.2 ESIA Objectives

This Terms of Reference (TOR) cover the preparation of a project-specific Environmental and Social Impact Assessment (ESIA), for the construction of PUTRH. This ESIA shall be prepared in a manner consistent with World Bank Operational Policy 4.03, *Performance Standards for Private Sector Activities*, and with the laws and regulations of the Government of Kenya, to the extent appropriate and specifically Environmental Impact Assessment and Audit Regulations 2003 established under the Environmental Management and Coordination Act (EMCA), 1999 (amendment) 2015 of Kenya. The objective of EMCA 1999 is to ensure that projects financed by Kenya Government funds are environmentally and socially sustainable without adverse impacts to the environment. The objective of OP/BP4.03 is to ensure that Bank-financed projects are environmentally and socially sound and sustainable, and that decision-making is improved through appropriate analysis of actions and their likely impacts on the environment and social issues. Adverse impacts are addressed by inclusion of appropriate measures in the design, construction and operation of the Project to eliminate, minimize or mitigate the adverse impacts. OP/BP4.03 is triggered if a project is likely to have potential (adverse) environmental risks and impacts on its area of influence.

The full environmental and social impact assessment and public participation activities will provide input to the final design, as part of an iterative process of design and environmental / social assessment which is required in order to obtain an optimally environmentally acceptable and cost effective design. The final design will incorporate mitigation measures to address potential adverse impacts and significant public concerns. The mitigation measures will be supplemented by construction details and contract clauses and operational guidance.

3.3 Scope of Work

The ESIA shall be prepared in a manner that will:

- (i) Comply with the Environmental Impact Assessment and Audit Regulations 2003 established under the Environmental Management and Coordination Act (EMCA), 1999 (amendment) 2015 of Kenya.
- (ii) Meet the requirements of World Bank Operational Policy 4.03, *Performance Standards for Private Sector Activities*.
- (iii) Follow the World Bank Group Environment, Health and Safety (EHS) Guidelines, particularly:
 - Environmental, Health, and Safety General Guidelines (2007)
 - Environmental, Health, and Safety Guidelines for Health Care Facilities (2007)
 - Environmental, Health, and Safety Guidelines for Waste Management (2007)
 - Environmental, Health, and Safety Guidelines for Construction Materials Extraction (2007)
- (iv) Provide sufficient detail to clearly identify the Environmental and Social Management Programs to be implemented by PUTRH and the Concessionaire.

The Project ESIA and the Environment and Social Management Programs, including the identification of any risk management measures (supplementary studies, plans, policies, actions, mechanisms, and tools) to be developed and implemented during pre-construction, construction, and operation phases, should be organized to reflect the roles and responsibilities of two key actors:

- (i) GOK, and in particular PUTRH, the implementing agency, who will manage risks and impacts under its control (unless some of such risks and impacts are clearly made a contractual responsibility of the Concessionaire and can be effectively managed by them) as well as oversee the performance of the Concessionaire;
- (ii) the Concessionaire who will design, build and operate the PUTRH, and must thus prepare and carry out actions necessary to comply with the environmental and social requirements included in its contractual obligations, including the preparation of further studies or risk management plans once the road design has been finalized.

In particular, besides the detailed list of environmental and social risk mitigation measures in the Environment and Social Management Programs, the deliverable of the consultants must summarize these

Programs in an Environmental and Social Action Plan (ESAP)¹ highlighting the required additional studies, mitigation plans, policies, actions, tools etc. together with milestones/ timelines for achievement of certain outcomes, and clearly indicated main responsible party (GoK/PUTRH, the Concessionaire, contractors/sub-contractors, supply chain actors).

To enable it to comply with such requirements, PUTRH and the concessionaire will have to establish an ESMS, as required under Performance Standard 1. The ESMS will incorporate the following elements: (i) policy; (ii) identification of risks and impacts; (iii) management programs; (iv) organizational capacity and competency; (v) emergency preparedness and response; (vi) stakeholder engagement (including a project-level grievance mechanism for affected communities); and (vii) monitoring and review.

3.4 The ESIA will be prepared according to the following outline:

Executive Summary

This section should concisely summarize the key elements of the Project, its environmental and social impacts, alternatives considered, outcome of the stakeholder consultations and recommended actions.

Task 1. Description of the Proposed Project

Based on the latest feasibility study, the information should include project location; general layout; size, capacity, etc.; information on the existing PU campus and its facilities, pre-construction activities; phasing of project/construction, construction activities and schedule, staffing and support; proposed facilities and services; operations; required off-site investments; life span, etc. For the existing PU campus and facilities, review relevant information and documents and summarize the information dealing with environmental and social aspects of the existing campus (institutional responsibility, regulatory requirements and compliance, monitoring, etc.), which may be relevant to the proposed PUTRH Project and which may require integration with the new Project.

For the proposed new facility, the information should:

- Summarize the history, purpose, context and expected economic benefits (local and national) of the proposed Project, including any proposed or ongoing development that might have cumulative impacts.
- Describe the design, location, footprint, layout and size of the project including possible integration with the existing PU campus. Discuss project masterplan with possible phasing of the development.
- Identify and describe the project area of influence.
- Identify and describe each of its associated facility (with adequate justification) such as dedicated access roads, construction and worker camps, raw material and product storage facilities, water supply, sanitation, domestic and medical waste disposal, parking, etc.
- All associated infrastructure (construction and operation workforce, housing, water supply, gravel sources, batching plants, machine and maintenance yards, borrow pits, building materials deposits, etc.);
- Description of the construction and operation activities (phased construction activities, associated manpower size and skill levels necessary, opportunities for local labor, size and skill of local workforce as per Feasibility Study assessment); hazardous waste use, handling, and storage; worker health and safety, emergency preparation and response (including community response and notification); temporary construction areas; site location alternatives considered; staffing and support, and worker facilities and services.
- Identify potential for cumulative impacts that result from the incremental impact, on areas or resources used or directly impacted by the project, from other existing, planned or reasonably defined developments at the time the risks and impacts identification process is conducted.
- Consideration of risks and impacts associated with primary supply chains, as defined in Performance Standard 2 (paragraphs 27–29) and Performance Standard 6 (paragraph 30).

¹ Examples of ESAPs can be found at www.ifc.org/disclosure

- Describe expected activities during pre-construction, construction, and operation (to the extent known).
- Include indicative phasing and schedule for pre-construction and construction (to the extent known).
- Indicate the expected lifespan of the project.

More specifically, the Project description should include maps, plans and photos such as:

- Maps (in a common GIS format) are required at appropriate scales to show project related development sites, pre-construction and construction activities as well as surrounding areas likely to be impacted. These maps should include locations of major surface waters, roads, railways, villages and communities, administrative boundaries, existing land use and all critical habitats including parks and recreation areas, and historical and cultural resources

Task 2. Description of the Environment and Social Baseline

The Consultant shall assemble, evaluate and present baseline data on relevant environmental characteristics of the study area as it relates to the Project. The environmental and social description should be concise and focused on the potential impacts of the Project, clearly defining the area of influence. Detailed baseline data should be presented when it is relevant to corresponding mitigation measures. When extensive background information is required for documentation purposes, and/or for project files, this information should be provided in appendices. In addition, the Consultants will carry out any field surveys, interviews, and consultations needed to fill information gaps critical to the potential impacts and to development of mitigation measures. Such information should be assimilated in illustrative maps at an appropriate scale. The baseline should provide data required to assess potential impacts, design appropriate and sufficient mitigation measures, and monitor actual impacts during construction and operation.

More specifically, the section should:

- Present data directly relevant to decisions about project location, design, operation, or mitigatory measures, including physical aspects (such as topography, landforms, geology, soils, climate, air quality, and hydrology), biological aspects (including biodiversity, fauna, flora, animal migration, endangered species, critical natural habitats, forests, protected and sensitive areas), and socio-economic conditions (such as demography, settlements, community structures, vulnerable and marginalized groups, sources and distribution of income, employment and labour markets, land use, and cultural heritage).
- Identify any changes anticipated before the project commences, taking into account ongoing trends, as well as current and proposed development activities within the area but not directly connected to the project.
- Review and summarize relevant studies and available data, identify gaps and areas not covered by appropriate studies, and if possible collect original data to fill these gaps; if not possible specify topics that require further attention, including costs and time estimates.
- Assess the extent, quality, accuracy and reliability of available data, and uncertainties due to data gaps.
- Confirm the accuracy of available data by "walking the site", including photographic illustration of all key points/ findings.

More specifically the baseline should cover the following components of the environment:

Physical Environment

- Rock types, regional tectonic setting (reported fractures/faulting, folding, warping), and history of any volcanic activity, seismicity and associated hazards; geology and geomorphology, information on quarry yields, strength of rock, should be provided.
- Description of the existing topography and the proposed and areas which will be affected by any aesthetic impact;

- Soil type, classification, characteristics, soil properties, soil cover, field permeability tests, geotechnical surveys etc. are important engineering considerations for design of structures.
- Meteorological data for 10-year period from the nearest weather station: (i) wind speed and direction: (ii) rainfall; (iii) relative humidity; (iv) temperature, and; (v) barometric pressure
- Ambient air parameters, such as RSPM, nitrogen dioxide, sulphur dioxide, carbon monoxide, heavy metals and other harmful air pollutants should be collected.
- Noise pollution up to 1 km or nearest residential areas, as per the NEMA regulations
- Groundwater including data on pH, dissolved solids, suspended solids, BOD, DO, coli-form bacteria, oil and heavy metals, aquifer lithology, aquifer hydraulic properties, ground water level, abstraction and demand, ground water quality and vulnerability to pollution is to be collected at least for one season; usage purpose of the groundwater, if any, is to be indicated.
- Location of surface water, such as lakes, streams, rivers
- Determine and describe the overall direction of groundwater flow, drinking water recharge areas downstream of the location, and receiving waters into which groundwater;

Biological Environment

- Aquatic flora and fauna in the area, including marshes and other vegetation
- Confirmation of secondary data on flora and fauna in the area, as well as that within area of influence, should be carried, and should include a statement specifying whether the study area is part of an ecologically sensitive area or migratory corridor of any endangered fauna, and the extent of habitat fragmentation by the project.

Socio-Economic and Occupational Health Environment

- Provide the socio-economic baseline needed to better understand the magnitude, significance and temporality of the potential social impacts and risks;
- Demographic data, particularly on human settlements; health status of the communities; existing infrastructure and service facilities in the area; livelihoods, employment and education
- Determine and describe the demographic setting of the project location;
- Describe the surrounding topography and land use characteristics and proximity to residential neighbourhoods from the proposed project, including current and past land use patterns, whether agriculture, forestry etc;
- Identify significant and secondary social risks, concerns, perceptions and impacts associated with the design, construction and operation of the project
- Describe past and present use of the location and surrounding land and any historical, religious or cultural significance of the area;
- Determine the demographic character of the surrounding neighbourhoods, the sensitivity of the public to the proposed project, including perception to increased traffic, noise, dust, odour, and aesthetic appearance, and potential mitigative measures for such concerns;
- Analyze the level of poverty and vulnerability including social risks such as prevalence of sexual and gender based violence (SGBV), high-risk behaviors among youth, child and forced labor in the construction sector, community cohesiveness etc.
- Describe the gender dimensions of the project including any underlying Gender Based Violence (GBV) risks as a direct result of the project; Other planned development activities on the location and in the nearby surroundings;
- Cultural, archaeological, spiritual structures, and historic resources: identify all cultural, archaeological, ceremonial and historic resources in the impact zone/within the area of influence;
- Vulnerable or disadvantaged groups (if any) and if relevant, social data should be disaggregated accordingly to the extent it is technically and financially feasible. To the extent possible demographic data should report on HHs with members with disabilities legacy issues on land take for the project and associated facilities.

Public Utilities

- Existing public utility infrastructure shall be ascertained and reported to assess the impacts of the project on these public utilities in order to incorporate desired methods in the ESMP and the same shall be monitored during the construction as well as operational phases of the project.

Task 3. Review of Relevant Institution and Legal Framework

The section will:

- (i) Present the laws and regulations of the Government of Kenya that are relevant to the project, most particularly the requirements and procedures of the National Environmental Management Agency, including reporting requirements
- (ii) Summarize the requirements and features of World Bank Operational Policy 4.03, Performance Standards for Private Sector Activities, most particularly the requirement for PUTRH and its Concessionaire to "establish and maintain an ESMS appropriate to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts. The ESMS will incorporate the following elements: (i) policy; (ii) identification of risks and impacts; (iii) management programs; (iv) organizational capacity and competency; (v) emergency preparedness and response; (vi) stakeholder engagement; and (vii) monitoring and review." (Paragraph 5 of PS 1).
- (iii) Summarize the specifications of the World Bank Group Environment, Health and Safety (EHS) Guidelines, particularly:
 - Environmental, Health, and Safety General Guidelines (2007)
 - Environmental, Health, and Safety Guidelines for Health Care Facilities (2007)
 - Environmental, Health, and Safety Guidelines for Waste Management (2007)
 - Environmental, Health, and Safety Guidelines for Construction Materials Extraction (2007)
- (iv) Present the environmental and social requirements potential financiers of the Concessionaire, if known at the time of ESIA completion.
- (v) Identify relevant international environmental and social agreements and treaties – including labor-related such as ILO conventions - to which the country is a party.
- (vi) Highlight any differences between the Performance Standards and national laws and regulations that must be taken into account. Include applicable regulatory standards for air, water, noise, incinerator, quarries, borrow areas, disposal sites, medical wastes, etc.

This section will further describe the roles and responsibilities of the key players, most particularly PUTRH, the PPPU at the National Treasury, the Transaction Advisor, the future Concessionaire, the relationship between PUTRH and National Environmental Management Authority (NEMA) and any other institutions relevant to the Project.

Task 4. Determination of Potential Impacts of the Proposed Project

The Consultant shall determine all the potential environmental and social impacts attributed to the proposed Project. These would encompass environmental, ecological and social impacts, both positive and negative, as a result of interaction between the proposed project and the environment that are likely to bring about changes in the baseline environmental and social conditions.

The Consultant shall present a risk/impact assessment methodology that will help identify and assess the Project's likely environmental impacts and social influences (including cumulative impacts), both positive and negative, based on changes brought about by all the project components to the baseline conditions described above in the area of influence. They shall quantify these impacts to the extent possible, in terms of costs and benefits and distinguish between positive and negative impacts, direct and indirect impacts, and immediate and long-term impacts. The consultants shall present the scale of impacts, whether the

identified impacts are irreversible or reversible, permanent or temporary, direct or indirect, large scale or local to the Project. The report should also identify residual impacts, which cannot be avoided or mitigated, due to the implementation of the Project.

This section should:

- Assess the potential positive and negative direct and indirect environmental and social impacts of the Project, as measured in comparison with baseline conditions, during construction and operation of the PUTRH
- Assess Project impacts that might be cumulative to ongoing or planned activities, and indicate if any tipping points might be reached
- Identify the receptors that may be affected, indicating their sensitivity and significance
- Describe how impacts should be assessed, such as model studies, empirical observation, reference to similar situations, or reference to existing studies
- Quantify impacts to the extent possible, in terms of their magnitude, duration and consequences, including in terms of environmental costs and benefits
- Distinguish impacts of pre-construction, construction and operation
- Determine if the potential impacts are: (i) avoidable; (ii) temporary and reversible; (iii) permanent and irreversible; (iv) short-term or long-term, and; (vi) large scale or local
- Highlight when the consequence of impacts cannot be determined.

Identify and describe all potential major social and environmental impacts from the project development which will be significant over the long-term. Describe as a minimum, the environmental and social consequences from construction activities:

- Impacts affecting air quality by dust emissions of construction works
- Noise impacts
- Impacts on flora and fauna
- Impacts on hydrology
- Impacts on geology
- Impacts affecting air quality by equipment and vehicles exhaust
- Impacts of construction waste other than excavated soil
- Risk of damaging Chance-Find antiquity objects
- Impact to neighborhoods along direct haul routes from increased traffic (primarily noise, dust, litter, odor, and vibrations), and including economic development due to improvements in roadways and trade from refuse haulage personnel;
- Analyze and describe potential sources of conflict, disputes or grievances during construction and operation of the PU
- Based on the identification and mapping of stakeholders, provide an outline for the development of a Stakeholder Engagement Management Plan (SEP) and Grievance Mechanism (GM) to be put in place that is accessible to project stakeholders, especially the PAPs.
- Analyze the potential for labor influx as a direct result of the project;

Operation Impacts

- Identify operation impacts from health care waste including a clear description of the different types of health care wastes from all the departments (sources) including an estimation of the quantities of HCWs.
- Specifically describe among others the quantities and impacts associated with the following waste categories namely cytotoxic/genotoxic wastes; pathological wastes; infectious wastes; radio-active wastes; pharmaceutical wastes; chemical waste: waste with high content of heavy metals; general health care waste

- Describe the toxicity of the different types of wastes based on their hazard nature (waste classification)
- Describe the waste characteristics e.g. those with a high content of heavy metals (e.g. cadmium, thallium, arsenic, lead)
- Describe the impacts from exhaust air equipment (e.g. from medical technology areas [MTAs], including isolation wards, laboratories, and waste storage and treatment facilities)
- Describe impacts from pollutants potentially emitted from hospital waste incinerator (HWI) that will be installed for waste management e.g. Heavy metals; Organics in the flue gas, Various organic compounds
- Describe sources of air emissions at HCFs may include exhaust air from heating, ventilation, and air conditioning (HVAC) systems, ventilation of medical gases and fugitive emissions released from sources such as medical waste storage areas, medical technology areas, and isolation wards. Emissions may include exhaust from medical waste incineration if this waste management option is selected by the facility¹³. In addition, air emissions may result from combustion related to power generation.
- Describe impacts from process wastewater from HCFs. Contaminated wastewater may result from discharges from medical wards and operating theaters (e.g. body fluids and excreta, anatomical waste), laboratories (e.g. microbiological cultures, stocks of infectious agents), pharmaceutical and chemical stores; cleaning activities (e.g. waste storage rooms), and x-ray development facilities. Wastewater may also result from treatment disposal technologies and techniques, including autoclaving, microwave irradiation, chemical disinfection, and incineration (e.g. treatment of flue gas using wet scrubbers which may contain suspended solids, mercury, other heavy metals, chlorides, and sulfates).
- Identify and describe waste disposal measures of all types and categories of wastes and related impacts
- Identify and describe waste storage measures (temporary and permanent) of all types and categories of wastes and related impacts
- Identify and describe waste transportation measures (within the facility and outside of the facility) of all types and categories of wastes and related impacts
- Risks to Occupational Health and Hygiene- HCF health and safety hazards may affect health care providers, cleaning and maintenance personnel, and workers involved in waste management handling, treatment, and disposal. Identify and describe specific hazards and impacts associated with:-
 - Exposure to infections and diseases
 - Exposure to hazardous materials / waste
 - Exposure to radiation
 - Fire safety
- Identify impacts associated with community health and safety particularly related to transport, storage and disposal of hazardous health care waste and at associated waste disposal sites (e.g. landfills).

Task 5. Development of Management Plan to Mitigate Negative Impacts

Recommended feasible and cost-effective measures to prevent, reduce or mitigate significant negative impacts. Indicate the impacts and costs of those measures, and of the institutional and training requirements to implement them. Specifically, the plans should include among others mitigation measures associated with:-

Construction Phase:-

- Construction management mitigation measures, including contractors, sub-contractors and primary supply chains
- Identify and describe mitigation measures and plans on soil contamination
- Identify and describe mitigation measures and plans on surface and ground water contamination

- Identify and describe mitigation measures and plans on spills
- Identify and describe mitigation measures and plans on air emissions
- Identify and describe mitigation measures and plans on noise from equipment, operations (blasting and drilling), and traffic
- Identify and describe mitigation measures and plans on gender equity and sexual harassment
- Identify and describe mitigation measures and plans on biodiversity protection and conservation
- Identify and describe mitigation measures and plans on cultural heritage
- Identify and describe mitigation measures and plans on traffic management and road safety
- Identify and describe mitigation measures and plans on storm water management
- Identify and describe mitigation measures and plans on traffic and access to construction site
- Identify and describe mitigation measures and plans on labour camps
- Identify and describe mitigation measures and plans on labour influx and labour rights
- Identify and describe mitigation measures and plans on Occupational Health and Safety, including accidents and the prevention and management of infectious diseases such as STDs and HIV

Operation Phase

- Identify and describe mitigation measures and plans on storage and disposal of hazardous and non-hazardous waste including waste segregation plans; waste minimization strategies; waste re-use and recycling; waste toxicity reduction measures; efficient stock management measures to reduce wastes;
- Identify and describe mitigation measures and plans associated with on-site handling, collection, transport and storage
- Identify and describe mitigation measures and plans associated with transport to external facilities (specifically identify existing waste disposal facilities in the region and determine adequacy for handling health care wastes)
- Identify and describe mitigation measures and plans on surface and ground water contamination
- Identify and describe spill response measures and plans
- Identify and describe mitigation measures and plans on air emissions
- Identify and describe mitigation measures and plans on storm water management
- Develop Emergency Response Plan
- Identify and describe mitigation measures and plans on traffic management and road safety

Task 6. Analysis of Alternatives to the Proposed Project

This section will:

- Analyse alternatives to the proposed project, including the "without project" alternative, in terms of their potential environmental and social impacts, feasibility of mitigating these impacts, and their capital and recurrent costs. Include the "no action" alternative of the project not being constructed but continuing with the PU.
- Describe alternatives that were examined in the course of screening sites and conducting preliminary design and assessment of the proposed site.
- Describe the alternative waste treatment and disposal options including among others incineration; chemical disinfection; wet thermal treatment; microwave irradiation; inertization; land disposal
- Discuss potential for waste minimization.
- Compare the alternatives in terms of potential environmental and social impacts (which are irreversible, unavoidable and which can be mitigated); capital and operation costs; sustainability under local conditions; and institutional, training and monitoring requirements.
- For each of the alternatives, quantify the environmental and social impacts to the extent possible, and estimate economic benefits where feasible, including the estimated costs of mitigating measures
- To the extent possible, quantify costs and benefits of each alternative

Task 7. Public participation and consultations:

Undertake public and stakeholder consultations as described in Part II section 17 of the Environmental (Impact assessment and Audit) Regulations, 2003 and the World Bank OP 4.03, *Performance Standards for private sector activities*. Stakeholder and public consultations should be transparent, accessible to stakeholders involved and conducted in consideration of socially acceptable means in relation to the project area.

Identify and map relevant stakeholders and describe requirements for the integration of stakeholder engagement and consultations (public participation) during the ESIA process, with special consideration of local conditions;

Consultant should keep a record of consultation meetings, including date and location, a list of attendees, their affiliation and contact addresses, voiced concerns or opinions, and how these concerns were incorporated into the design of the project. The record should also indicate any surveys used to seek views of affected stakeholders. A record of information disclosure, **public consultations** and surveys should be summarized in the ESIA and the records preserved to indicate participation of interested and affected parties throughout the ESIA study process. Such records may include: surveys used to seek views of affected stakeholders; date and location of consultation meetings; a list of attendees, their affiliation, contact addresses and summaries of the outcome of the meetings. This section needs to present an approach to ongoing stakeholder engagement. In addition, a grievance redress mechanism should be described in this section.

Task 8. Identification of Institutional Needs to Implement ESMP

Review the institutional capacity to implement, manage and monitor (in the short term as well as in the long-term) the proposed construction of PUTRH. Recommend, if necessary, institutional strengthening at all levels. The section should assess PU's current systems and its capacity to meet the requirements of OP 4.03, particularly the requirement to manage both environmental and social aspects of the tendering processes, and to monitor and oversee the environmental and social performance of the private Concessionaire.

The capacity of PU to manage the Concession should be assessed in detail with a view to recommend measures to close the gaps. The section will, as necessary, detail measures required to ensure that PU has the capacity to meet the requirements of OP4.03, such as staff recruitment, staff training, the development of procedures, and the use of contractors to supplement PU's capacity. These measures will be summarized in an action plan, including a timeline and itemized costs for capacity strengthening measures.

Task 9. Development of Monitoring Plans

Set up a monitoring plan for the construction, operation and decommissioning of PUTRH. The monitoring plan shall:

- Detail PU's procedures to monitor the implementation of the E&S risk management measures under its control and responsibility, as identified in the Environmental and Social Management Programs,
- Detail PU's procedures to monitor the performance of the Concessionaire
- Define a set of indicators that will be used by PU to report on the implementation of risk mitigation measures to GoK and the World Bank, and will also be used by the Concessionaire to report to PU
- Specify parameters to be measured, methods to be used, sampling locations, frequency of measurements, detection limits (where appropriate), and thresholds that will signal the need for corrective actions
- Define the types of reports, roles and accountability (who reports - who gets the reports), when and how frequently reports are prepared
- Provide an outline of the report on implementation of E&S risk mitigation measures by PU (as relevant) and the Concessionaire that PU will prepare ahead of regular World Bank implementation support missions

- Define procedures to trigger change management and the management of corrective actions
- List mandatory government clearance requirements, most particularly NEMA's certification of compliance and annual environmental audits during operation

Task 10. Implementation Schedule and Cost Estimates

This section will:

- Provide a clear statement of financial responsibilities
- Identify summary of costs for implementation of the proposed mitigation measures
- Provide detailed estimated budget for all phases of the project including planning, implementation, monitoring and evaluation, with contingencies
- Include an implementation schedule for mitigation measures that must be carried out as part of the project, showing phasing and coordination with overall project implementation plans;
- Estimate the capital and recurrent cost estimates and sources of funds for implementing the Environmental and Social Management Programs

3.5. Facilities to be provided by client

The client will provide the following subject to availability

- Project preliminary documents including Feasibility Studies
- Access to other relevant information to the extent of its availability
- Access to the project site and other site belonging to the client
- ESMF for IFPPP

4. Transaction Advisor Skills and Experience

The Transaction Advisor will comprise of a team managed by a lead advisor. The lead advisor should be either the Financial or Technical Advisor. The requirements for the Firm's experience are; a) Minimum of ten (10) years' experience advising on PPPs (b) Specific experience gained in the last 10 years in the setup and management of health facilities of comparable scale as that envisaged by the proposed project (c) Experience in developing countries or similar jurisdiction (d) Firms that have successfully taken comparable projects to financial close over the last 10 years will have an added advantage. The members of the team will have skill and experience necessary to undertake the range of tasks set out in this Terms of Reference. Each individual on the team must be personally available to do the work as and when required. The lead advisor will be held accountable in terms of the Transaction Advisor contract for ensuring Project deliverables and for the professional conduct and integrity of the team. The proposed project will require a combination of typical PPP, legal and project finance structuring skills. It will require specialist skills in Hospital design and healthcare delivery in a university / research establishment setting. The standard PPP project skills required include PPP structuring; financial modelling; legal and environmental and social impact assessment skills. The technical skillset required will draw on specialists with hospital design, hospital facilities management, clinical operations, biomedical engineering, teaching and research, as well as services engineering. The TA will be invited to propose for PU's approval their preferred staffing complement by way of professional discipline and headcount. It is envisaged that the assignment will require effort of a total of seventy (70) person-months over a period of 20 calendar months.

No.	Position	Qualifications and Experience
1	Project Lead/PPP expert	<p>University degree in Law, Finance, Management, Economics, Engineering or any other relevant field. A minimum of 15 years' demonstrated experience in providing PPP transaction advisory services/development of medium to large infrastructure projects on PPP basis including extensive experience in:</p> <ul style="list-style-type: none"> ▪ project structuring; ▪ risk analysis, allocation and management; ▪ project agreements; ▪ bid process management, including preparation of bidding process documentation and post-bid process monitoring and ▪ Successful preparation of PPP projects with at least two financially closed projects, one of which as the lead advisor in the healthcare infrastructure field. <p>Relevant qualifications and experience in the development and operation of healthcare infrastructure such as referral or teaching hospitals in developing countries in particular and knowledge of national and international best practice would be an added advantage.</p> <p>Good English communication and writing skills are essential.</p>
2	Health/Hospital Systems Expert	<p>University degree qualification in Medicine, Engineering, Finance, Information Technology or any other relevant field. Post graduate qualification in health systems is an added advantage. At least 10 years' experience in the setup and operation of hospital systems in the order of magnitude of 2,000 bed capacity. Specific experience in the setup of systems for referral and teaching hospitals providing a wide ranging of patient care, research and diagnostic services will be an added advantage. Post graduate qualifications in relevant field.</p>
3	Architect	<p>University degree qualification in Architecture. Fifteen (15) years architectural practice experience including several health facility designs and large buildings with at least one hospital with a bed capacity in the order of at least 2,000 beds in the last 10 years.</p>
4	Biomedical/Hospital Services Engineer	<p>University degree qualification in Electrical or Mechanical, Engineering. Minimum of 10 years' experience in the design and setup of services to operate and maintain equipment including linear accelerators; CT and MRI scanners; air handling units; medical gas points; X-rays; boilers, chillers, etc. In addition, experience in the design of biohazardous waste management systems is required.</p>
5	Services Engineer	<p>University degree qualification in Electrical or Mechanical, Engineering. Fifteen (15) years' experience in HVAC, fire-</p>

No.	Position	Qualifications and Experience
		fighting/suppression, plumbing and waste water treatment designs on commercial and public buildings, with at least one health facility > 10,000m ² . In addition, experience in electrical and building communications designs in commercial and public buildings, with at least one health facility.
6	Quantity Surveyor	University degree in Quantity Survey or Building Economics. Minimum of 10 years' experience in the preparation of preparation of Bills and Schedules of Quantities of materials, labor and services required in the construction and equipment of building, or engineering works of a scope similar to the proposed project. In addition, equivalent experience in the provision of post-occupancy advice with respect to facilities management services and life cycle costing. Exposure to health infrastructure projects will be an added advantage.
7	PPP Legal Expert	University degree in Law and postgraduate qualification in Law. A minimum of 10 years' demonstrated experience in drafting PPP contractual agreements and other related documents/agreements; PPP procurement, managing bidding process, and resolving legal issues, policy and institutional assessment; and, successful preparation of PPP projects with at least two financially closed PPP projects. Experience in healthcare facility projects and familiarity with PPP process in Kenya will be a definite asset.
8	Financial Expert	<p>University degree in Finance, Accounting, Economics or any other relevant professional qualification. At least 8 years of professional experience in PPPs and project finance, with a proven track record in financial evaluation and financial modelling of PPP projects including value for money, Public Sector Comparator analysis, affordability and fiscal impact assessment.</p> <p>Demonstrated experience in dealing with project finance structures and products and experience in capital raising having financially closed two project finance deals of at least US\$ 10 Million each. Experience in the health sector and familiarity with local financing and tax laws will be additional merit.</p>
Personnel for the Environmental and Social Impact Assessment (ESIA)		
9	Environmental Specialist/Team Leader for ESIA	Advanced degree in environmental studies or related field and must be a NEMA registered lead expert. The specialist should have over 10 yrs experience and must have served similar position in at least 4 assignments of similar nature. The specialist should be familiar with existing Kenyan

No.	Position	Qualifications and Experience
		<p>environmental laws and World Bank Environmental and Social safeguards policies and IFC Performance Standards.</p> <p>Good English communication and writing skills, especially in report writing, are essential</p>
10	Social Development Expert	<p>Advanced university degree in social studies or related field with over 10 yrs. experience and must have served in similar capacity in at least 4 assignments of similar nature. She/he will establish the socio-economic environment of the proposed project area, including land use; assess likely impact of the project and proposed mitigation measures. The expert will ensure that consultations with interested and affected parties are conducted in accordance with procedures and regulations of Kenya and the World Bank safeguards and Standards for stakeholder consultations.</p> <p>Good English communication and writing skills, especially in report writing, are essential</p>
11	Hydrologist / Water Resources Management Expert	<p>Advanced university degree in water resources management with over 10 yrs. experience. The expert must have served in similar capacity in at least 4 assignments of similar nature. The expert will evaluate the impacts of the project on hydrology and water resources including water resources use and conflict.</p> <p>Good English communication and writing skills, especially in report writing, are essential</p>
12	Health Waste Management Expert	<p>Advanced university degree in public health with 10 years' experience in healthcare waste management or infection prevention at large public or private health care facilities. The expert must have served in similar capacity in at least 4 assignments of similar nature. He/she will be responsible for assessing the health care impacts of the facility on the environment and in developing mitigation measures.</p> <p>Good English communication and writing skills, especially in report writing, are essential</p>

The preceding description of the team composition is however not intended to be prescriptive.

5. Remuneration Schedule and Disbursement Arrangements

The Transaction Advisor contract will be a lump Sum contract and will be paid on the basis of timely and acceptable deliverables over an envisaged contract period of 20 months. The remuneration schedule is as set out below:

No	Deliverable	Payment Amount
1	Inception report	15%
2	Completion of Feasibility Study Phase Deliverables including ESIA report	30%
3	Completion of RFQ and PIM	5%
4	Completion of ALL Bidding documentation in the RFP deliverables phase	10%
5	Completion of Tender Evaluation phase deliverables	10%
5	Commercial close	10%
6	Financial Close, approval of project closeout report and case study	20%

Payments will only be made once deliverables have been submitted to the client and subsequently deemed acceptable.

Bidders are expected to provide a comprehensive and detailed Project Implementation Plan, preferably using Microsoft Project, or equivalent software, indicating all the key tasks, deliverables, milestones, responsibilities, timetables and critical path for successful project implementation, capturing as a bare minimum the outlined tasks above.

6. Project-based Learning

To ensure knowledge and skills transfer by the TA to Pwani University's project implementation team, the TA will be required to provide structured and on-the-job capacity building to a cohort of at least 10No. public officials within Contracting Authority (CA) at critical points of the project preparation process. In particular, training to the CA selected cohort will shadow the respective TAs at every stage of the PPP project preparation and structuring i.e. inception stage; feasibility

study stage; pre-tender stage, tender and at project closeout stage. At the inception stage, CA will be appraised on the approach and methodology proposed by the TA so as to gain a deeper understanding of the process of project development and structuring. At feasibility study stage, the TA will, beyond presenting the findings and recommendations of the FS, appraise the CA on lessons learnt from the application/deviation of the process as laid out at inception of the assignment. At the pre-tender stage, the TA will sensitize the CA on critical tender documents and processes, including the rationale for the content of tender documents. After commercial close but before financial close, the TA shall build capacity of the CA on implementation of the contract management framework. Lastly, at the project closeout stage, the TA, in collaboration with the CA, will be expected to prepare a case study synthesizing the process, timelines, outcomes, and lessons learned and recommendations for improvements in the substance and process of each stage. Reports on capacity building sessions/workshops shall be prepared in a form to be provided by the National Treasury. All bidders are therefore expected to present a clear and deliberate approach as to how the project based learning will be delivered to the cohort of at least 10 public officials within the CA.

Annex 1

Overview of the PPP Framework in Kenya

1. Background of PPPs in Kenya

Established initially under the Public Procurement and Disposal (Public Private Partnership) 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;
- d. The development of draft PPP Regulations for the County Governments;
- e. The gazettelement of the Roads Annuity Fund Regulations, 2015;
- f. The gazettelement of the Public Private Partnership (Project Facilitation Fund) Regulations, 2017;
- g. The development of the PPP Disclosure Framework;
- h. The development of a PPP Screening Tool, to assess a projects PPP readiness/suitability;
- i. The development of a Fiscal Commitment and Contingent Liability (FCCL) Framework for PPP Projects;
- j. The development of draft National Toll Fund Regulations;
- k. The development of a Governance and Operational Manual for the Project Facilitation Fund; and
- l. The development of a PPP Manual is at an advanced stage

2. Legal and Regulatory Framework

Since 1996, Kenya has attracted private investments into the country's economic and social infrastructure sectors including telecommunications, energy, transport, water and sewerage. These investments have demonstrated both the commitments of Government of Kenya (GOK) to PPPs and the interest by private investors, lenders and operators in these sectors. However, these infrastructure investments occurred without a specific policy, legal and regulatory framework for PPPs.

Therefore, the GoK's first step was to strengthen the legal and regulatory framework for carrying out PPPs in Kenya, as part of a wider agenda of increasing private sector investments in infrastructure development. Presently, the legal and regulatory framework for PPPs in Kenya comprises of: the Constitution, legislation (such as the PPP Act, 2013, the Public Procurement and Assets Disposal Act, 2015 and various sector specific legislation), court rulings, regulations, guidelines and tribunal determinations. The extent of the PPP legal and regulatory framework is further broken down in table 1 below.

Overall, Kenya has a stable PPP legal and regulatory framework that:

- a. Defines the PPP ideology (a long term arrangement, between a public and a private entity to undertake a public function, for which compensation will be paid from a Public Fund, user fees or a combination of both; PPPs are usually output-based and performance-linked);
- b. Provides a substantive and procedural law to govern the undertaking of PPPs – and governs both levels of government;
- c. Sequences the PPP process, that is, how to initiate, prepare, procure, contract, manage PPP projects;
- d. Prescribes regulatory compliance requirements;

- e. Establishes WHO does what, when, why;
- f. Prescribes HOW projects are to be managed, reported on, and contracts varied; and
- g. Establishes a transparent predictable process which drives stability

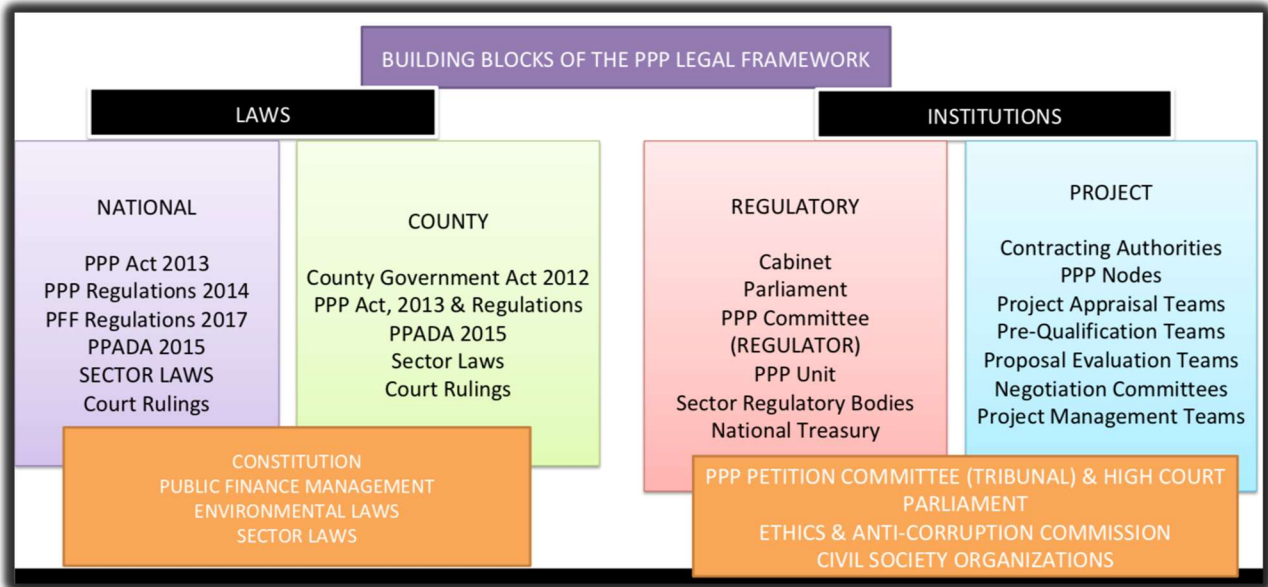


Figure 1: PPP Legal and Regulatory Framework

The PPP Act, 2013 is a law under chapter 12 of the Constitution, as it deals with Public Finance. As a result, substantial fiduciary obligations are placed on the PPP Committee in the discharge of its oversight mandate with a view of ensuring that the principles and values of Articles 10, 201 and 227 of the Constitution, among others are upheld – being PPP fidelity to national values, responsible and fiscally sustainable public finance and a public procurement system that is transparent, competitive, cost effective and affords and equal opportunity to all.

3. Institutional Framework

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

- a. PPP Committee;
- b. PPP Petition Committee;
- c. PPP Unit; and
- d. PPP Nodes within the Ministries, Government Agencies and County Governments.

a) PPP Committee

The PPP Committee is established under section 7 of the Act. It is assisted by its Secretariat (PPPU) and has the responsibility to:

- a. Develop and implement PPP policy initiatives;
- b. Champion the PPP Agenda;
- c. Ensure compliance with the PPP Act 2013;

- d. Approve/recommend PPP projects to the Cabinet;
- e. Ensure efficient execution of the PPP Agreements;
- f. Ensure PPPs are consistent with national priorities;
- g. Authorize allocations of the Project Facilitation Fund; and
- h. Issue PPP standards, guidelines & procedures, & bid documents.

a) 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 resolution body, the day-to-day administrative aspects of the Petition are administrated through a Secretariat.

b) 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 has the specific responsibility of assisting each Contracting Authority to identify, select, appraise, procure, 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.

c) Contracting Authorities

The PPP Act of 2013 recognizes Contracting Authorities (CA) as Ministries/Government Departments, County Governments and Statutory Corporations. Their main responsibilities with respect to PPP are to identify, develop, procure, 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 carry out day-to-day management of a PPP project (section 16 and 17 of the PPP Act, 2013). Given that Contracting Authorities presently lack the requisite in-house expertise on PPPs, they may have to appoint Transaction Advisors (TA) to assist them in the development of projects. The Unit is also on hand to support CAs in the identification and development of their priority PPP projects.

4. Scope and Application of the PPP Program

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

- a. Roads and bridges;
- b. Ports;
- c. Airports;
- d. Railways;
- e. Power generation plants and transmission/distribution networks;
- f. Oil and gas i.e. petroleum infrastructure, such as storage depots and distribution pipelines etc.;
- g. Inland container depots and logistics hubs;

- h. Municipal services;
- i. Mining;
- j. Water supply, treatment and distribution systems;
- k. Solid waste management;
- l. Social infrastructure for health care, prisons, education, housing;
- m. Telecoms/ICT

Attached is the PPP Unit Score Card, which outlines the achievements of the PPP Unit to date, as well as the PPP Project pipeline list.

5. PPP Project Facilitation Fund

The project Facilitation Fund is a Fund established under section 68 of the PPP Act and has 4 windows:

a. Window 1: Support to Contracting Authorities for project preparation

The object of this window is to provide support to contracting authorities during the preparation stage of a project. Funds may be applied for by the contracting authority to meet the costs of:

- i. Land acquisition, compensation, resettlement and environmental remediation.
- ii. Consultancy services related to the public private partnership programme, including undertaking feasibility studies
- iii. Conducting the tender process, including project advertisements, marketing and communications, tender documentation and due diligence.
- iv. Undertaking transaction and associated advisory services
- v. Undertaking other project preparation activities approved by the PPP Committee

Any support provided to a contracting authority for land acquisition costs shall be recoverable and should be refunded by the contracting authority to the Fund within the immediate next budgeting cycle. This includes the cost of land acquisition, compensation, resettlement and environmental remediation. Support provided for the items listed in point (iii) and (iv) may be recoverable, based on guidelines issued and the terms of engagement set out in the Funding Agreement that is entered into between the contracting authority and the Fund.

b. Window 2: Support to the PPP Unit

The Fund will also have a window dedicated towards supporting the project related activities for the PPP Unit, who has the mandate under the Act *inter alia* of providing technical, financial and legal expertise to the PPP Committee and Nodes established under the Act, serving as a resource centre on PPP matters, conducting civic education and promoting awareness of PPPs.

This window is therefore available to the Unit to support the following key functions, which are instrumental in helping it fulfil its mandate:

- i. Costs relating to consultancy services
- ii. Undertaking of capacity building programmes
- iii. Purchase of office equipment, systems and associated software
- iv. Undertaking research activities
- v. Establishment of knowledge management systems and frameworks; and
- vi. Meeting recurrent operational and maintenance costs for the Fund Secretariat that is responsible for assisting the Officer Administering the Fund (who is the Director of the PPP Unit) manage the day-to-day operations of the Fund.

c. Window 3: Viability Gap Funding

The next option for financial support is the viability gap funding window. Viability Gap Funding refers to money that is provided to infrastructure projects that are economical viable, but fall short of being financially viable. Support under this window may be made by way of loan, grant, equity, or any other financial instrument required to improve the financial viability of a project. Support under this window may be applied to fund:

- i. Capital grants made to a project during construction
- ii. Recoverable advances made to a contracting authority
- iii. Any other permitted recoverable advances; and
- iv. Loans, equity or other financial arrangements as may be made available to a project in accordance with the provisions of the PPP project agreement and guidelines governing the operation of the Fund

This window shall only be available to support project capital costs and recoverable land acquisition costs.

d. Window 4: Contingent Liability Support

The Fourth window provides a liquid source to meet short-term liquidity gaps in relation to contingent liabilities arising from the implementation of a PPP project agreement. To operationalize this window, the Officer Administering the Fund shall open a dedicated sub- account within the Fund, known as the Contingent Liability Reserve Account, whose sole purpose will be to ensure/provide ready liquidity to meet contingent liability disbursement requirements of the Fund.

Each contracting authority will be required to pay into the sub account annually estimates of contingent liability funding requirements in accordance with guidelines issued. This window/sub account will only be available to support projects where the contingent liability;

- i. Cannot be handled by the National Treasury under alternative frameworks
- ii. Cannot be handled by the National Treasury under the National Government Contingency Fund;
- iii. Does not arise from a contracted obligation of a contracting authority under a project agreement for which a budgetary allocation has been made to the contracting authority; and
- iv. Materialises out of a national government default, which is not recoverable from a contracting authority, under a project agreement

Contingent liabilities arising out of a contracting authority default under a project agreement shall remain the responsibility of the contracting authority to settle. As a last resort however, the contracting authority, in exceptional circumstances, may apply to the Fund for a recoverable advance in settling such liabilities. Contingent liabilities, which are neither the responsibility of the contracting authority or the private party, and which arise from the implementation of a project agreement, shall be eligible for settlement under the Fund, subject to any guidelines issued.

Contracting authorities, in conjunction with the Debt Management Office, shall be required to submit annually to the Officer Administering the Fund estimates of contingent liabilities arising from their eligible projects and any short term liquidity gaps. Where payments are made to meet materialized contingent liabilities under a project upon the request of a contracting authority, the contracting authority shall refund the monies paid in its immediate subsequent budget cycle.

Section 68 of the Act prescribes the sources of revenue for the Fund as:

- i. grants and donations;
- ii. levies or tariffs imposed on a project;
- iii. Success fees paid by a project company;
- iv. Appropriations-in-aid; and
- v. Any other source prescribed by the Cabinet Secretary, National Treasury

The monies paid into the Fund shall be used to meet the objectives of the four (4) windows outlined above.