



REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

**INFRASTRUCTURE FINANCE AND PUBLIC PRIVATE PARTNERSHIPS
ADDITIONAL FINANCING (IFPPP-AF)**

COMPONENT 1A – SUPPORT TO INSTITUTIONAL STRENGTHENING

TERMS OF REFERENCE

**RECRUITMENT OF A DIRECTOR, LEGAL SERVICES
FOR THE PUBLIC PRIVATE PARTNERSHIP DIRECTORATE (PPPD)
IN KENYA**

DECEMBER 2023

1. DESCRIPTION

- 1.1. The Public Private Partnerships Directorate (PPP Directorate) of the National Treasury & Economic Planning is Kenya's lead institution in the origination, structuring, procurement, development and implementation of public-private partnership projects in the country. It does so, by advising and guiding Contracting Authorities in the identification, selection, appraisal, procurement, approval, negotiation and monitoring of PPP projects throughout their lifecycle. The PPP Directorate also acts as the national resource centre for best practice in public private partnerships, providing capacity and skills development, as the custodian of the integrity of PPP processes. For more information visit www.pppunit.go.ke.
- 1.2. The Government of Kenya (GoK) in conjunction with the World Bank (International Development Association - IDA) is implementing an Infrastructure Finance and Public Private Partnerships Project (IFPPP) whose overall development objective is to increase private investment in the Kenyan infrastructure market by improving the enabling environment to generate a pipeline of bankable PPP projects. This objective is being achieved by providing technical expertise and building the capacity of the Public Private Partnerships Directorate to implement the program.
- 1.3. In this regard, the National Treasury is seeking an experienced individual to fill the position of Director, Legal Services at the PPP Directorate. The duration of the contract is three (3) years, on full time basis, renewable based on performance. The Director Legal Services will report to the Director General Public Private Partnerships.

2. OBJECTIVES OF THE ASSIGNMENT

The primary objective of the assignment is to strengthen the legal services function at the PPP Directorate and augment the capacity of the PPP Directorate in carrying out its mandate under the PPP Act 2021 to assist Contracting Authorities across various sectors and county governments, to identify, select, appraise, approve, procure, negotiate and monitor PPP projects throughout their cycle, as well as supporting the Government in entrenchment of its PPP policy, legal and regulatory framework. A secondary objective is to support the capacity building initiatives of the PPP Directorate and sensitize Contracting Authorities and stakeholders on Kenya's PPP legal framework.

3. DUTIES AND RESPONSIBILITIES

The Director, Legal Services is expected to meet the above objective by performing, without limitation, the following tasks:

- Lead a team of senior lawyers to deliver the legal mandate of the Directorate to effectively implement the PPP program in Kenya.
- Overseeing regulatory compliance, legal compliance and regulatory affairs.
- Providing advice/counsel across multiple areas of PPP (contract law, land law, litigation,

transactions compliance, labour, corporate governance, ethics, etc).

- Support Director General in the secretariat duties to the PPP Committee.
- Coordinating assistance for the recruitment of Transaction Advisors (TA), including preparation or review of TORs, drafting of TA contracts and advice on bid evaluation and TA selection, including how any dispute on TA selection can be resolved.
- Coordinating in the legal review of feasibility study reports to ensure conformity with the PPP Act, the Government Contracts Act, Cap 23 Laws of Kenya and other legal requirements.
- Coordinating assessment of chosen approach to PPP transactions and whether any aspect of that approach abides with the available laws, mainly PPP, PFM, Constitution etc.
- Coordinating attainment of necessary approvals and permissions for PPP processes before commencement of the tender process.
- Coordinating support consistent with the PPP Act and supporting regulations throughout the PPP process including review of PQ notice, RFQ, PIM, RFP and Project Agreement and other transaction documents for PPP projects.
- Lead legal input in PPP procurement processes, reviewing and drafting of transaction documents and related legal documents for proposed PPP projects.
- Providing legal guidance to contracting authorities, during all PPP stages.
- Supporting contracting authorities in preparation and management of the PPP negotiations to commercial close.
- Providing solutions in unlocking transaction processes towards the achievement of financial close.
- Liaison with the Office of the Attorney General to obtain various clearances and legal instruments required for PPP transactions.
- Preparation of post-contract negotiation documents or other requisite approvals.
- Identification of risks and potential litigation arising from bidding process, contract variations and other related operational policy concerns and provide legal advice on the mitigations, and ensure timely escalations and adherence to the law.
- Coordinating legal research and studies on various laws, administrative issues, court decisions and other legal issues related to PPPs, and ensure the Directorate is leading on global practices.
- Coordinating the formulation of guidelines and standard documentation required under the PPP Act and other relevant statutes.
- Perform any other ancillary and associated tasks, including administrative tasks, as may be required.
- Capacity building for the various arms of Government on the PPP framework.

4. SELECTION CRITERIA

- Bachelor's degree in laws (L.L.B) from a recognized institution.

- Postgraduate Diploma in Legal Studies from the Council of Legal Education.
- Master's degree in law or a Social Science from a recognized institution as an added advantage.
- Track record of resolving complex legal transaction with a solution-oriented mindset.
- At least ten (10) years of post-qualification experience.
- 5 years of experience at Senior Management level.
- Experience in PPP's, Project Finance and/or Project Management.
- Good understanding of Government of Kenya procedures and operations.
- Ability to apply good legal judgment in the context of assignments and to present results/recommendations clearly and concisely.
- Excellent interpersonal skills, with a passionate, positive attitude.
- Excellent communications skills in English, ability to present both written and oral ideas clearly, concisely, and persuasively.
- Excellent legal research skills with significant experience in the use of varied legal research sources.
- Excellent problem solving and analytical skills, and attention to detail, and the willingness to assume multiple roles and tasks to meet changing business needs.
- Excellent process and project management skills, with the ability to work independently, seeking guidance on complex issues from senior staff.
- Ability to work well as a team member and lead diverse teams.
- Ability to work under time pressure and to juggle multiple tasks within tight deadlines.
- Fully proficient in computer skills, particularly in using word processing software, information databases, intranet and internet services and resources.
- Demonstrated commitment to core values, including excellence, mutual respect, collegiality, teamwork, diversity and inclusiveness, integrity, innovation, transparency and accountability.
- Ability to drive transactions from start to finish, with the ability to work with cross functional teams.
- Ability to understand complex legal issues in project finance and Government transactions and able to articulate arguments and rationale for the same.

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

The PPP Directorate of the National Treasury, Kenya will provide full office accommodation in Nairobi, Kenya.