



REPUBLIC OF KENYA

**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND
URBAN DEVELOPMENT**

STATE DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

TERMS OF REFERENCE

FOR

PROVISION OF TRANSACTION ADVISORY SERVICES

FOR

**PROPOSED DEVELOPMENT OF CIVIL SERVANTS HOUSING PROJECTS IN
PARK ROAD, SHAURI MOYO AND STAREHE IN NAIROBI AND MIXED USE
DEVELOPMENT PROJECTS IN MUGUGA GREEN WESTLANDS NAIROBI AND
HOBLEY IN MOMBASA THROUGH PUBLIC PRIVATE PARTNERSHIP (PPP)
INITIATIVE OF THE GOVERNMENT OF KENYA**

TENDER NO: MTIHU/HUD/CSHS/33/2017-2018

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ABBREVIATIONS

BOT	Build-Operate-Transfer
BT	Build and Operate
BTO	Build-Transfer-Operate
CA	Contracting Authority
CGU	County Government Units
CSHSF	Civil Servants Housing Scheme Fund
ECC	Environmental Compliance Certificate
EIA	Environmental Impact Assessment
GoK	Government of Kenya
ICT	Information Communication Technology
IT	Information Technology
MIS	Management Information System
Ministry	Ministry of Transport, Infrastructure, Housing and urban Development
MPSS	Minimum Performance Specifications
NEMA	National Environment Management Authority
NT	National treasury
PP	Private Party
PPP	Public-Private Partnership
PPPU	Public-Private Partnership Unit
PSHP	Public Social Housing Project
RFQ	Request for Qualification
RFP	Request for Proposal
TA	Transaction Advisor
VFM	Value for Money

1.0 INTRODUCTION

- 1.1. In its endeavor to attract private investment in housing through Public Private Partnership (PPP) initiative, The Government of Kenya through the Ministry of Transport, Infrastructure, Housing & Urban Development (MTIHUD), in accordance with Public Private Partnership Act 2013 (the Act), wishes to procure the Services of a Transaction Advisor (TA) for the development of Civil Servants housing projects in Shauri Moyo, Park Road and Starehe in Nairobi and Mixed use development in Muguga Green in Westland's, Nairobi and Hobley in Mombasa through Public Private Partnerships contractual arrangement.
- 1.2. The housing shortage in Kenya remains a key challenge that requires innovative mechanism to address it. The demand far outstrips supply especially in urban areas where the demand stands at about 250,000 housing units while the supply is about 50,000 leaving a deficit of about 200,000 housing units annually. This is particularly pronounced in low cost housing resulting in proliferation of slums and informal settlements.
- 1.3. The Government has instituted various measures to facilitate housing delivery particularly low-cost housing. This includes infrastructure development, slum upgrading programmes, Civil Servants Housing programme and recently approved Public-Private-Partnerships (PPP) to mobilize financial resources and transfer of technology to hasten delivery of decent housing to Kenyans.
- 1.4. The Government of Kenya through the Ministry of Transport, Infrastructure, Housing & Urban Development under National Housing Programme seeks to facilitate, through multiple strategies, development of 1,000,000 housing units across the country over the next five years. Most of the housing development will be done through PPP contractual arrangements. The civil servants scheme fund intends to contribute to this process by commencing with development of 10,000 housing units within Nairobi and Mombasa.
- 1.5. The projects are proposed to entail Design, Build, Finance and operate & maintain where the private party constructs the facility and assumes the costs and risks associated with the construction of the buildings and its related infrastructure and upon completion, transfers the ownership of the facility to the contracting authority and continues to maintain the facility on behalf of the contracting authority. It is expected that the PPP arrangement will take a period of 15 years, from commencement, through construction to operation and maintenance.
- 1.6. The approximate housing units and amenities areas indicated below:

Table I: Approx. Number of Units

No.	Proposed Project	Acreage	No. of Units (Approx.)
1.	Park Road Housing Project	9.0	1,600
2.	Shauri Moyo Housing Project	11.5	1,800
3.	Starehe Housing Project	22.0	5,000
4	Muguga Green	7.5	750
5	Hobley	6.0	750
Total No. of Housing Units			10,000 Units

- 1.7. The projects are to be structured in accordance with the PPP Act 2013, which provides for the participation of the private sector in the financing, developing, maintaining and transferring to the Government/beneficiaries on completion of service availability payment by the Contracting Authority. A PPP Contractual arrangement will be in place to regulate, monitor and supervise the implementation of the projects. The Ministry has constituted the Ministerial Node and the Project Appraisal Team in accordance with the PPP Act 2013 and PPP regulations 2014 for the purposes of procuring these projects. Further, the Ministry intends to procure a Transaction Advisor (TA) for the same purpose of facilitating procurement of these projects.
- 1.8. The Transaction advisor (TA) will be engaged for the development of the projects to structure and ensure that the projects to be undertaken through the recommended procurement PPP model are bankable and ensure value for money to the Contracting Authority. The services depending upon the requirement of each project shall generally include:-
- (i) Pre-feasibility studies;
 - (ii) Project feasibility studies, including assessing PPP options, environmental, and social and gender safeguards considerations, financial analysis and modeling, and project structuring;
 - (iii) Preparation of bidding documents and draft contracts; and
 - (iv) Provision of support during the bidding process until financial close or a period of 180 calendar days from the effective date of the contractual agreement signed by and between the Contracting Authority (CA) and the Private Party, whichever is earlier.
- 1.9. The Transaction Advisor is expected to work closely with the Contracting Authority, the PPP Unit (PPPU) and other government agencies as may be required during the assignment. The PPPU shall have an oversight role during the project development stage.

2.0 BACKGROUND

2.1 Background documentation and preparatory work

The TA is expected to become familiar with all background documentation and preparatory work conducted to date and shall be responsible for carrying out initial technical, financial and legal framework reviews that are deemed necessary for the successful completion of the transactions in the project including and not limited to:

- (i) Relevant existing reports, studies, audits etc;
- (ii) All information pertaining market structure;
- (iii) Existing financial forecasts, historical financial performance and technical operating history;
- (iv) Existing laws & regulatory functions

2.2 Implementing agency/Contracting Authority

The Contracting Authority (CA) for the projects in accordance with the PPP Act 2013 shall be the State Department of Housing & Urban Development in the Ministry of Transport, Infrastructure, Housing & Urban Development (The Ministry). The CA responsibility shall be as prescribed in the PPP Act 2013 and regulations thereof.

2.3 The objective of State Department of Housing & Urban Development

The State department for housing and urban development is mandated to facilitate provision of affordable and decent housing, ensuring that Kenyan citizen live in a clean, healthy and safe environment.

3.0 DESCRIPTION OF WORK

3.1 The broad goal of the government is to develop and facilitate implementation of an effective housing delivery system that maintains balance in the economic, social, political and environmental sustainability. For strategic purposes, the government wants to facilitate delivery of 1,000,000 housing units within the next five years. In this view the State Department of Housing & Urban Development therefore wishes to develop housing units in the above five sites to start with using the PPP Model where applicable.

3.2 The proposed housing project(s) will broadly comprise of:-

- (i) Construction of one, Two and Three bedroom units with a minimum of 35,65 and 85 SQM per flat respectively in the ratios of 3:5:2 respectively. Each unit should include the necessary functional spaces; lounge, Dining, kitchen, pantry, kitchen yard and shower / WC.
- (ii) Provision of commercial, employment centres as well as social amenities.
- (iii) Plan and design development of infrastructural facilities in such a manner that ensures efficiency, affordability, sustainability, and user friendliness.
- (iv) Provide adequate fresh water supply for the development.
- (v) Provide adequate liquid and solid waste disposal system that incorporated the principle of reduces, reuse and recycle.
- (vi) Provide adequate parking facilities; 1:1 for all units.

- (vii) Provide open play and recreational areas.
- (viii) Mainstream the concept of “Green Building” in design and construction.
- (ix) Ensure compliance with relevant physical planning, environmental and building regulations.
- (x) The use of innovative technologies will be preferred.
- (xi) Develop a suitable brief for the implementation of mixed-use development projects in Muguga Green Nairobi and Hobley in Mombasa.

3.3 The precise scope of the Project will be refined in consultation with TA, CA, PPPU, private party and any other relevant stakeholders.

4.0 OBJECTIVE OF THE TA SERVICES

4.1 The primary objective of the Transaction Advisor is to develop a well- structured and bankable PPP projects, which shall form the basis for tendering the project through PPP as stipulated by the PPP Act 2013 and its related implementation regulations and the legal framework. In doing this, the TA shall show that the structure of the PPP projects shall ensure:

- (i) The projects provide Value for Money to the Contracting Authority
- (ii) The projects are affordable to CA and final end users
- (iii) The projects are commercially viable
- (iv) The projects are acceptable to the stakeholders
- (v) The projects are manageable by both the Contracting Authority and the private party

4.2 The TA shall be expected to develop and present a well-defined shadow financial model comprising of sourcing, pricing and repayment modes. The project financing shall include government equity in terms of land.

4.3 These are the first PPP housing projects to be implemented in the Republic of Kenya under the PPP Act 2013. It is intended to be a pilot project for establishment of the development of PPP housing systems. Therefore, in performing the following scope of work to develop the model documents, the TA shall take into account international best practices.

4.4 These pilot projects are intended to benefit Civil Servants through rental and tenant purchase schemes and may be extended in social housing projects where possible.

5.0 SCOPE OF WORK

5.1 The scope of work shall be divided into two phases with different activities as follows:

Table I: Activity Schedule

	PHASE	ACTIVITIES	OUTCOME EXPECTED
A	PHASE I	i. Pre-feasibility study (where necessary) ii. Project Information Memorandum iii. Market sounding iv. Detailed Feasibility Report (Where necessary)	<ul style="list-style-type: none"> • Pre-Feasibility Report • PIM industry briefing document • Market sounding report • Feasibility Report
B	PHASE II FINAL PHASE	i. Documentation & Procurement ii. Preparation of shadow designs, drawings, and cost estimates to assist in project funding, and preparation of bid documents. iii. Request for Qualification iv. Request for Proposal v. Draft Contract Document vi. Evaluation of RFQ & RFP vii. Negotiations with successful bidders	<ul style="list-style-type: none"> • Shadow designs, & Cost estimates • Final RFQ document • Final RFP Document • Draft Contract document • RFQ final evaluation report- List of Pre-qualified bidders • RFP final evaluation report to get successful bidder (s) • Negotiations Report • Final negotiated contract
		TA Advisory services Provision of advisory services to the CA including support on transaction implementation through to Financial close	Financial close report

5.2 The TA shall be expected to carry out these tasks including, but not limited to assessment of technical, financial, economic, legal, institutional, safeguards (social, environmental, gender, etc.) and other aspects of the project to successfully develop a well-structured bankable PPP project. The TA shall also be responsible to submit all reports and documents as may be required by the CA and by the PPPU to successfully develop the PPP projects.

5.3 The TA is expected to be familiar with all background documentation deemed necessary to facilitate financial close. The TA shall take into consideration related studies being undertaken and completed by CA.

5.4 The TA will look into the following;

- (i) Technical requirements and design including performance specifications and standards.
- (ii) Financial and economic aspect (financial and economic models will be prepared).
- (iii) Environmental, gender and social safeguards.
- (iv) Legal and institutional aspect.
- (v) PPP structuring, among others.

5.5 The scope of work is divided into four (4) phases with four (4) major activities. Specific tasks and activities include, but are not limited to the following:

6.0 SCOPE OF WORKS: PHASE I

6.1 Preliminary feasibility & Market sounding

6.1.1 Undertaking a Pre-feasibility study

The objective of the preliminary study is to assess the viability of the project(s) prior to conducting detailed feasibility studies. The TA shall be expected to:

- (i) Propose an appropriate and workable implementation plan for the execution of the project.
- (ii) Review and assess the recommendations indicated on the concept proposal and determine the adequacy of available data and information in relation to the requirements of the study, and if found inadequate, provide the required data through research from other sources, preferably a similar project in a developing economy.
- (iii) Conduct a review of global best practice on social housing project management in the housing sector and apply global best practice into the project.
- (iv) Carry out a preliminary assessment of the current housing needs, practices and requirements of existing social housing facilities and related projects/business/services. Particular emphasis should be on the regulatory requirements for the construction and operations of social housing facilities.
- (v) Carry out a legal review of the project (s) based on all relevant and applicable international and national laws and regulations. The TA shall identify legal processes and concerns as well as impediments/ requirements and the legal strategy/ies to undertake the implementation of the proposed project under a PPP arrangement.
- (vi) Develop the technical description of the project in consultation with the CA including technical parameters/ standards/ specifications based on best practices.
- (vii) Carry out a preliminary market research and demand estimation/analysis with details on the methods and parameters to be used in the projection and the need for the project.
- (viii) Carry out preliminary financial and economic analysis, including value for money (VFM)/ value engineering, based on preliminary cost estimates and proposed cost-recovery mechanism. These should include an assessment of the acceptable pricing of the housing units to be made available by the project and the possibility of cross subsidy. The study will also assess the merits of other sources of financing that may be conducive for project implementation.
- (ix) Conduct initial environmental and social/resettlement/gender assessment and associated risk factors.

- (x) Carry out a preliminary financial, political and legal risk analysis including institutional issues that may impede the implementation of the Project and the required government support, if any.
- (xi) Carry out a preliminary information management system, needs assessment for the proposed project .
- (xii) Assess the different PPP modalities for the Project, and determine the PPP modality that will provide the best value for money to the Contracting Authority.
- (xiii) Assess the existing structures and recommend the institutional set up around which the project will be implemented, including the appropriate agency to enter into a PPP contract.
- (xiv) The TA shall conduct regular consultations with the CA and the PPPU in the course of preparing and finalizing the pre-feasibility study.
- (xv) If at the pre-feasibility stage, it is determined that the project is not viable or would not be implemented under PPP, the CA shall in consultation with the PPPU determine the way forward in implementation of these projects.
- (xvi) On the other hand, should the pre-feasibility study establish that the project is viable for PPP implementation, the TA will provide all necessary technical, legal and financial advisory support including all necessary approvals in compliance with all elements of the PPP Act and its implementing regulations, and all other applicable laws and regulations.

6.1.2 Conducting Market sounding

The TA shall conduct a market sounding in consultation with the CA to determine the need for the Project and the private sector interest for undertaking such project on PPP principles. This exercise will help to determine the market appetite for the projects as well as ensure that the PPP projects attract quality bids by responding to the market needs.

To further, enable the preparation of a responsive Feasibility Study Report, the Market Sounding exercise that shall include the following tasks:

- (i) Organize a meeting with the Contracting Authority and the PPPU to provide an overview of the approach to market sounding;
- (ii) Prepare a Market Sounding document that will include a Projects information memorandum (which will cover the objectives of projects, an overview of the Project, the process and timetable for procurement, outline Risk Allocation), as well as a summary of the key issues to be discussed with and questions to be asked of the market, i.e. equity investors, debt financiers, contractors and operators, the process of how the market sounding will be conducted, the proposed list of parties to be approached.
- (iii) Provide the Project information Memorandum(PIM) to the identified private parties and holding one-on-one discussions with them, either telephonically, or if practical and cost effective, face to face.

- (iv) Organize and participate in workshops with Contracting Authority and other stakeholders to review findings of the market sounding and determine key areas that will need consideration in preparing the Feasibility Report;
- (v) Prepare a Market Sounding Report (which will form an appendix to the feasibility Study) that will summarize the findings from the exercise and will consist of, but is not limited to, the following information:
 - a) Market sounding objective;
 - b) Key issues that needed to be considered;
 - c) List of reputable firms, financiers, PPP arrangers etc consulted both locally and internationally with experience in undertaking PPP's or major housing/ infrastructure projects;
 - d) List of questions with answers from the one-on-one sessions;
 - e) Summary findings and matters to be considered in the detailed Feasibility stage.
- (vi) The TA will organize and ensure consultation and discussions are held with potential market participants including, but not limited to, potential developers, operators, equity partners, investors, lenders and guarantors to fulfill the market sounding requirements. The conclusions drawn from these consultation meetings shall be taken into account in the preparation of the detailed feasibility report and in designing the PPP transaction structure.

6.2 Detailed Feasibility Study and PPP Structuring

6.2.1 Develop the detailed Feasibility Study

The TAIs required to prepare, in close liaison with the CA and PPP Unit, a comprehensive feasibility study for the Project. The feasibility study needs to clearly demonstrate affordability for the full project cycle and propose the optimal value for money solution for the CA to achieve the desired outcomes.

The Study is intended to answer the following four key questions:

- (i) Is the project viable – from a technical, economic, social, environmental and financial perspective? This should include an assessment of affordability – for the end user and the Government, including an assessment of the fiscal impact and contingent liability, value for money and risk transfer.
- (ii) What is the preferred technical solution to achieving the Project's objectives vs. other options which will need to be considered?
- (iii) Which is the best and effective procurement method for each project and why? i.e. through traditional delivery method, through some form of PPP, through an alliance or a combination of the above?

- (iv) If delivery is through PPP, then what is the most appropriate form of PPP for the project as defined by the proposed responsibilities of the private sector, and the key risk allocation.

After the approval of the pre-feasibility study, the TA shall prepare a detailed project feasibility study and carry out overall assessment of PPP options and determine the best PPP option including and **not limited to**, the following:

1) Project Development and Market Research

- a) Prepare a design and monitoring framework (DMF) for the proposed project, which will include, among others, the monitoring requirements for the CA in terms of contract implementation and management.
- b) Prepare the project implementation schedule which will define and set timelines of the major phases of project work to fulfill the desired objectives and achieve the expected deliverables from time of award to completion. The project implementation schedule should include the deliverables being set, major activities for each deliverable, and key milestones, among others.
- c) Prepare a detailed project rationale, including job creation projections.
- d) Conduct a comparative analysis of the housing units expected purchase prices including all fees, facilitation expenses and any other charges.
- e) Prepare financial model showing the impact of the cost of project, either by project components or as a whole package to the future housing units selling prices including all fees and any other charges to be charged to the buyers.
- f) Conduct a thorough market research and demand estimation/analysis covering, among others, the details on the methods and parameters used in the projection, the need for the project and the private sector appetite for undertaking such projects on PPP.
- g) Identify and document a list of likely private sector investors interested in the project (s) obtained during market sounding exercise. The TA will liaise with the CA to incorporate interested investors who have expressed interest in such projects in the past.
- h) Review the experience in other countries in PPP arrangements for the financing, construction, operations and maintenance of social housing facilities and recommend arrangements appropriate for the Project.

2) Design, Technical Requirements and Minimum Performance Specifications (MPSS)

- a) Conduct a technical assessment together with the CA for the project requirements and recommend optimal design, sizing and capacity, land use, environmental impact and performance standards.
- b) Recommend the specific best procurement model for each site including the status of the land ownership.

- c) Identify optimum timing and phasing of the construction of the housing units and facilities taking into account the relevant technical, economic and financial factors.
- d) Carry out a preliminary design of all structures and layouts of the facilities that are cost-efficient and climate change-resilient, among others.
- e) Prepare the construction, supply, installation and operation and maintenance performance standards of all facilities taking into consideration global best practices and finalize the technical specifications for each proposed Project.
- f) Estimate the full life cycle costs of the Project based on:
 - (i) Preliminary outline engineering designs and estimated construction and operation and maintenance costs
 - (ii) Proposed phasing of capex
 - (iii) Maintenance, management and operating costs taking into account current acceptable maintenance practices and requirements of residential buildings and associated social amenities, as well as regulatory requirements
 - (iv) Asset replacement and major maintenance schedules
 - (v) Economic life of the facilities
- g) Examine the expected revenues to be generated from the sale or rental of the housing units and evaluate whether it is capable of supporting investment in this project in particular taking into account the life cycle cost analysis above.
- h) Identify ancillary revenues from commercial development potential of the Project, if any e.g. shopping centers and schools and any other facility in the project
- i) Conclude on the preferred configuration of the Project from a Technical and Commercial point of view.
- j) Carry out preliminary geotechnical investigations of the site to enable the developers to accurately cost the project
- k) Carry out topographical survey of the site.

3) Project due diligence

The Project Due Diligence will evaluate the feasibility of the Project, based on the preferred Technical and Commercial configuration determined above. This due diligence will cover:

- a) Legal due diligence
- b) Economic and Social Cost Benefit Analysis
- c) Financial Viability
- d) Site due diligence
- e) Environmental and Disaster Risk Assessment

4) Legal due diligence

The Legal Due Diligence will examine the complete applicable legal, regulatory and institutional framework within which the Project will be implemented in order to identify any impediments to Project implementation and advise how any such impediments should be addressed.

The legal due diligence will examine also the implications of alternative forms of procurement and alternative PPP structures and will identify a legally sound approach for the establishment of the preferred PPP approach.

A general outline of parameters governing suitable PPP models shall be presented, based on international best practice and specific local circumstances.

The TA will, inter alia, carry out the following tasks:

- a) Assess current laws, policies and institutional assessment to ascertain the validity and viability of the proposed PPP structure for the Project, including CA's capacity to manage and monitor implementation of the Project once operational and recommend required changes to improve the governance of the same.
- b) Develop measures for the proposed PPP project structure, such as purchase mechanisms, performance guarantees, preconditions for a private operator to fulfill in meeting service obligations, default and risk clauses, and step-in rights of the Government.
- c) Formulate the appropriate institutional arrangement for the project, taking into consideration the roles and responsibilities of all stakeholders such as CA, PPPU, NT, and County Government (CG).
- d) Assess Government's role in the proposed PPP project, whether that role corresponds with the Government's legal obligations, and maintains sufficient power to protect the Government's interests.
- e) Develop and provide details to the legal structure and design of the transaction, identifying the type of PPP contract to be used. These may include and not limited to; Build and Transfer (BT), Build, Operate and Transfer (BOT), Build, Transfer and Operate (BTO). Investment commitments, requirements, their nature and management should also be developed.
- f) Review and assess legal issues associated with the management of the social, economic and environmental impacts of the project in a manner consistent with international best practices, including among others issues on resettlement, and environmental consequences of the project.

5) Environment Sustainability, Gender and Social Safeguards

The TA's team will encompass Environmental and Social Impact. Experts who will identify, assess and quantify the specific environmental and social risks and impacts associated with the housing project(s). It will ensure all environmental and social aspects of

the Project comply with Kenyan laws and regulations as well as international development partner's directives.

Specific tasks entail, but are not limited to:

- a) Prepare/review and/or update, as necessary, the Environmental and Social Risk Assessment and Analysis. The TA will ensure that all aspects related to social safeguards have been considered, and necessary mitigation measures have been taken, adequate for purposes of securing approvals in accordance with the existing laws & legislation.
- b) Conduct comprehensive environmental impact assessment and social risk/resettlement assessment and analysis. The TA will make sure that all aspects related to environmental and social safeguards and necessary mitigation measures are integrated into the Project's design and cost.
- c) Prepare an appropriate resettlement plans where necessary in accordance with the relevant laws.
- d) Identify key risk areas and threats to the existing or new facilities; identify technical, administrative, institutional, infrastructure, and social/environmental mitigating measures and recommendations for integration into the over-all project design, financial and implementation proposal.
- e) Conduct gender analysis and identification of gender issues and gender gaps that the project must address using available legislated guidelines.
- f) Develop an Environmental and Social Impact Assessment (ESIA) report, in accordance with EMCA 1999 to be discussed in a stakeholder consultation process and for purposes of obtaining NEMA approval and NEMA license for the housing projects.

6) Procurement and PPP Options Analysis, Risk Allocation and Heads of Terms

- a) Having established the Project Feasibility, the TA will determine the optimum way of procuring the Project – through traditional procurement or through a PPP, and if a PPP, which form of PPP is the most appropriate.
- b) In their analysis the TA must consider all infrastructures which need to be developed for the Project – including generation assets, transmission assets, ancillary, access and supporting infrastructure, recognizing that different procurement and PPP options may be appropriate for different types of infrastructure.

7) Risk Assessment/allocation framework & head of terms

The TA will:

- a) Present the results of the above Evaluation through a report and slides presentation, defining the different PPP options studied, presenting for each the structure of relationships, contractual undertakings, risk profile, and major pre-requisites. The TA

- will make a recommendation which PPP option in his professional judgment is the most viable and bankable.
- b) Provide a detailed description of the preferred Procurement Option and PPP Structure, including:
 - (i) Key Risk Allocation
 - (ii) Outline Payment Mechanism of the project
 - (iii) Indicative Financing Structure and sources – private sector bank debt, multilateral debt, public sector debt, project bonds, grants (indicate source), developer equity, other (specify)
 - (iv) Key Heads of Terms for the proposed PPP Structure
 - c) Conduct a project risk analysis to determine, assess, allocate and manage risks (such as, but not limited to project, commercial/market risk, environmental, financial, political, economic, force majeure and legal risks) during all project stages. The risk analysis should cover valuation, allocation and mitigation measures. In doing so, assessment and applicability of various risk mitigation mechanisms should be carried out, including review of the extent to which the risks of the project can be underwritten by commercial insurance cover and the likely cost of such cover.
 - d) Based on the risk analysis, prepare a contingent liability model for CA that quantifies the contingent liabilities, how the same shall be managed and the funding requirements as per Debt Management Office FCCL framework for PPP projects. Prepare a Project Risk Matrix for use by Contracting Authority and ultimately the Debt Management Office.
 - e) The TA shall recommend mitigation mechanisms that may be adopted by the party identified to bear each of the identified risks. In doing so, assessment and applicability of various risk mitigation mechanisms should be carried out, including review of the extent to which the risks of the project can be underwritten by commercial insurance cover and the likely cost of such cover.
 - f) The project's risk matrix shall be presented to CA and the PPP Unit soon after the submission of the Feasibility Study.
 - g) Undertake value engineering for the project to ascertain the viability of the project.
 - 8) Funding options analysis/Options development**
 - a) Prepare the base case project cost estimates covering capital expenditures, operations and maintenance, land costs, taxes and the required contingencies and prepare a preliminary bill of quantities for each of the project components as well as the project's financing and procurement plans.
 - b) Develop cost recovery options and alternative revenue generation, to ensure that the project is sustainable.
 - c) Review the independent market assessment (EOI Report) of potential local and foreign investors.
 - d) Conduct an economic analysis that is estimation of the economic costs and benefits of the Project; and calculation of the economic internal rate of return, including sensitivity

analysis as required for obtaining PPPU, Debt Management Office and Cabinet approval.

- e) Conduct a financial analysis which is determination of financial internal rate of return, net present value, debt service coverage ratio and other ratios. The financial analysis model should have capabilities to perform sensitivity analysis for the purpose of quantifying the financial and economic impacts of different structuring options.

9) Financial Modeling

- a) The TA shall develop a full financial model and financing plan including timelines for implementation and funds flow requirements. The financial model should include but not limited to a shadow bid and bid pricing analysis models as well as estimated selling prices of housing units. Further consideration shall be made to financial models for achieving financial closure, financial model for implementation based on the project capital structure, project implementation schedule and funding structure.
- b) Formulate an appropriate parametric housing unit selling price adjustment formula considering the impact of the said adjustment to all stakeholders.
- c) The Feasibility Study is expected to be supported by detailed and comprehensive Financial Modeling. In particular financial modeling is expected to:
 - i. Support the Economic Viability Analysis of the Project and Alternative Technical Solutions
 - ii. Support the Financial Viability Analysis, the determination of revenue requirements to meet Project Funding needs, the determination of necessary tariff levels, the evaluation of affordability for both user pays and public sector pays models including fiscal and public sector borrowing impact
 - iii. Support in determining the Project's Financing requirements and the evaluation of alternative financing structures and sources
 - iv. Support in the evaluation of alternative procurement options and PPP options, including Value for Money analysis and in the implementation phase of the Project:
 - i. Support in the detailed design of the Payment Mechanism
 - ii. Act as a shadow Bid Model and assist in evaluating bids and their robustness
- d) The Financial Model will be used to analyze the market potential for private sector investors and lenders, assess the financial risks involved for both the public and the private parties, assess the impact of various project inputs on the earnings and net cash flow potential and compute the refinancing mechanisms of capital expenditure costs.
- e) The Financial Model will be used to compare alternative Project procurement and PPP options, and at optimizing the transaction structure from the financial point of view by comparing the performances of various PPP models (with different risk allocation features).

- f) The Financial Model should be designed to provide for analysis of project structuring options including the imposition of appropriate project financing constraints including, but not limited to, Debt Service Coverage Ratio (DSCR) caps, which optimize scenarios for the disbursement of available projected cash flows to potential project creditors and other ratios.
- g) The Financial Model should allow the conduct of sensitivity analysis for quantifying the financial impacts of different structuring options.
- h) The Financial Model should also support the review of applicable approaches for enhancing the project's attractiveness to both investors and their lenders/financing institutions, such as Viability Gap Funding (VGF).
- i) In their proposals, Bidders should describe in detail the structure and functionality of the Financial Model(s) they would develop and also the methodologies and tools they would employ in carrying out the necessary financial analysis.

6.2.2 PPP Options Development, evaluation & selection

- (i) The TA shall evaluate various PPP options where funding sources and mix, cost recovery mechanisms, among others, should be considered. Options will be ranked based on pre-determined criteria with the end in view of recommending the optimal PPP modality to be followed. The TA will provide clear details of the proposed PPP structure/(s) along with a risk assessment matrix and likely impacts to CA, the private investors and the main stakeholders of the CA. The TA shall identify necessary risks (i.e. licensing, permitting and other legal risks etc) that need to be addressed and allocated for each PPP option.
- (ii) To facilitate the conduct of all aforementioned tasks, the TA, in consultation with CA and PPP Unit, shall organize, if necessary a one day international conference in Nairobi on the development of the projects on Public-Private Partnerships in the Republic of Kenya with specific reference to the housing projects. The conference participants will be government agencies in Kenya, the financial national and international institutions, and prospective private sector entrepreneurs. The conclusions drawn at the conference would be taken into account for the preparation of the feasibility report and project structuring.
- (iii) The TA will:
 - Describe a range of credible alternative procurement and PPP options including justification for their selection. The options must include traditional public-sector procurement. For each option the TA will set out:
 - a) The key roles and responsibilities of the private sector and of the public sector
 - b) The key risk allocation under each option
 - Develop, describe and justify a set of evaluation criteria to be used in evaluating alternative procurement and PPP options to include, inter alia:

- a) Value for Money assessment. The Value for Money assessment is expected to examine both the choice between traditional public sector and PPP procurement, as well as alternative risk allocations between the alternative PPP options. The report should present clearly how the Public Sector Comparator Model, the Risk Adjusted Public Sector Comparator Model, the PPP Reference Model and the Risk Adjusted PPP Reference Model have been developed and populated with data
- b) Affordability for users and the public sector
- c) Assessment of Fiscal Impact including any contingent liabilities for the public sector
- d) Private sector feedback on attractiveness, bankability and risk allocation, based on a Preliminary Market Sounding amongst potential operators, developers, investors and financiers

In support of the Options Analysis, the TA will:

- Develop a detailed and comprehensive Financial Model
- Carry out Market Sounding of the Project and of alternative risk allocations/ PPP structure

6.2.3 Summary-Financial Analysis and Project Structuring

The TA shall prepare and finalize reports which include and not limited to the following:

- (i) Cost estimates.
- (ii) Financial model and sensitivity analysis.
- (iii) Legal and institutional requirements and processes, contract structure and monitoring and management systems. This should include a report on identified project actors and their specific terms of reference.
- (iv) Financing plan, risk allocation and mitigation measures.
- (v) Default mechanisms and arbitration procedures.
- (vi) Social, resettlement, gender and environmental impacts and mitigation measures.
- (vii) Project implementation schedule.
- (viii) Stakeholder consultations, particularly with potential private sector investors, target beneficiaries and involved local communities.
- (ix) Development of the final PPP structure.
- (x) Detailed timelines for the bid process until contract award.

- (xi) Post-bid and contract management frameworks.

The TA shall conduct regular consultations with the CA & PPPU and in the course of preparing and finalizing the feasibility study. The results of the feasibility study should be presented to the CA and PPPU for approval.

The Report will include a complete description of the Project as structured, based on the recommendations contained in the Report, covering:

- (i) A summary of how the proposed PPP project addresses the CA's strategic objectives and its consistency with the sector's needs
- (ii) A summary of the output specifications for the Project
- (iii) Other potential commercial activities that the PPP Company may undertake to augment revenues and lessen the fees charged to the off-taker
- (iv) A list of significant Government assets which will be used for the Project (such as land and existing structures, access roads, sewer networks, power connections, etc.)
- (v) A summary of the fiscal implications and potential contingent liabilities for the public sector;
- (vi) A detailed description of the type of PPP project proposed and its envisaged payment mechanism/ tariff regime
- (vii) A detailed description of the proposed Key Risk Allocation
- (viii) Draft Heads of Terms which will form the basis for the bid documents and PPP agreements.

The Report will also include a detailed **Project Implementation Plan** which will set out a clear timetable for the Project Implementation and will cover all the tasks required of all parties to procure the Project, identifying:

- (i) Tasks
- (ii) Timing
- (iii) Responsibilities for each task
- (iv) Key approval/ decision points and milestones

6.2.4: Support to the CA on Securing PPP Unit Approval and all relevant Approvals

- i) The TA shall complete all the documentary requirements to be submitted to the PPP, Debt Management Office Unit and assist the CA in addressing all PPPU concerns until the approval is accorded by the PPP unit and Debt Management Office (DMO). These documents shall include and not limited to the following:

- a) Electronic copies in MS Word format and six (6) hard copies of the Project Feasibility Study report.
 - b) Completed checklist for feasibility studies of PPP projects;
 - c) Electronic copy, in MS Excel format of the financial analysis/financial model in traceable formula format and 3 legible hardcopies of the same;
 - d) The Environmental and Social Impact Assessment(ESIA) report and/or National Environmental Management Authority Compliance (NEMA) license in electronic (Ms word file) and three hard copies;
 - e) Location maps (with electronic copies) and three (3) sets of hard copies.
 - f) Land utilization plan and social strategy frameworks (i.e. resettlement and gender action plan) both electronic and 3 hard copies;
 - g) Any Other documents that may be required by the PPP Unit.
- ii) The TA shall ensure that all necessary approvals and permits are obtained before commencing the tender process.
 - iii) The TA will also provide assistance in securing approval of the estimated Fiscal Commitments and Contingent Liability (FCCL) funding by the Debt Management Office (DMO) including preparation of documentation required under the FCCL Framework for PPP projects in Kenya. And if necessary, the Transaction Advisor shall assist the CA in obtaining PPP Committee approval for public sector support to the Project (financial, guarantee, legal etc.) as recommended by the Feasibility Study. The Transaction Advisor shall also assist the CA in securing the opinion of the Attorney General's Office on the draft PPP contract (during Phase 2).
 - iv) If it is determined at the feasibility study stage that the project will not be implemented under PPP arrangements, the consultancy services shall be deemed to have been completed under the contract and the Transaction Advisor shall be paid for the milestone(s) completed. The PPP Unit shall not be liable for any further payment and the contract shall terminate.

7.0 SCOPE OF WORKS PHASE II

7.1 Management of the PPP Bidding Process

The TA in consultation with the CA shall prepare all the necessary documents to undertake a competitive transparent bidding process. Specifically the TA shall prepare bid documents; Request for Qualification (RFQ), Request for Proposal (RFP), Draft Contract and other related documents in accordance with the PPP Act 2013 and its implementation rules and regulations and provide support during the entire PPP bidding process until the award of the contract to the successful bidders. The responsibility of the TA shall include the following:

- (i) Preparation of Bid Process, Design and Bid Documents:

The TA will prepare a complete set of procurement documents, complying with applicable law and other relevant policies and guidelines. The following steps and deliverables are envisioned, subject to the TA's recommendations in the Feasibility Study and the requirements of applicable law and related regulations.

Bidders may suggest possible modifications to this procurement plan in their proposals if they wish, together with clear arguments and available evidence for any such modifications.

The TA must also provide CA with all the necessary drafting, bidder communication and administrative support necessary for the entire procurement process through to financial close and be conducted in accordance with law and policy, and to the highest standards of efficiency, quality and integrity.

(ii) Detailed procurement plan

The TA will design a complete procurement plan and process based on applicable procurement laws including:

- a) Recommend & advise the appropriate bid strategy in accordance with the PPP Act 2013;
- b) Prepare all necessary bid/tender documents, including the draft contractual agreements, Project Information Memorandum, Request For Proposals (RFP), bid bulletins, qualification and evaluation criteria, invitation to bid, including all appropriate Bid Forms such as Bid Letter, Statement of Bid, Technical Bid Proposal, Financial Bid Proposal, PPP Agreement etc...
- c) The TA shall prepare a draft PPP agreement in close coordination with the CA and PPPU. The said draft PPP agreement must take into account the agreed risk allocation regime and use best practice to maximize competition and pricing low while protecting CA's interests with a view to facilitate project implementation and manageability over the project period.
- d) Advice on mechanisms to maximize competition while avoiding unrealistic bids and project vulnerability from overly aggressive bidding.
- e) Review of information to be provided by CA to bidders to manage third party liabilities.
- f) Design of pre-qualification and bidding procedures and evaluation criteria including advice and justification on the best-value bidding parameter, including, but not limited to least cost/NPV and least viability gap funding.
- g) Design of key aspects of the tender procedure, for example the number of stages in the process, use of competitive dialogue, deciding whether and to what extent to accept variant bids and non-conforming bids, how many bidders must bid before the process is valid, what rules to set in relation to the assessment of bids (scoring regimes, timing of bids and rejecting of excessively low bids) and how to maximize competition without sacrificing quality of bids.
- h) Design of the bidder communication strategy, including marketing, road shows, bidder conferences, data room creation and management (actual and virtual), dialogue meetings, and mechanisms to gather bidder comments and concerns and resolving them.
- i) Preparation of Information Memorandum and other marketing materials
- j) Tender documentation, including evaluation criteria and guidelines.
- k) All advice shall be compliant with applicable law (and considering any constraints or opportunities associated with applicable law), international best practice and market feedback.

- 1) The TA will prepare and deliver a draft procurement plan to CA, and subsequently a final procurement plan. The TA will conduct workshops with CA and other key stakeholders to explain risk assessment and allocation, the procurement plan and the roles and responsibilities of all parties.

(iii) Pre-qualification of bidders

- i. The TA in liaison with the CA will guide in the design and administration of a pre-qualification (request for qualification (RFQ)) process with the intention of:
 - a) ensuring that the CA'S objectives and requirements are communicated clearly to the market
 - b) determining the extent and nature of interest from the private sector
 - c) pre-qualifying a competitive number of competent bidders in an equitable and transparent way
- ii. The desired result is that every pre-qualified bidder is capable of implementing the Project to the standards required and considering the risk allocation established in the Feasibility Study. The TA will:
 - a) prepare all the necessary RFQ documentation, including advertising and marketing material;
 - b) set up and administer the process by which the CA can pre-qualify the parties, including responding to questions and interfacing with bidders; and
 - c) help the CA to evaluate and pre-qualify bidders based on pre-agreed criteria

As part of this process, the TA shall develop a tightly focused promotional campaign for the Project, which may include (based on the advice of the TA) short press briefings, advertisement inserts to be published in international trade publications and business newspapers, followed up by the targeted marketing of identified companies.

- iii. Prequalification of submissions will be evaluated in accordance with the Act, and the TA will prepare a Prequalification Evaluation Report for approval.

(iv) Bid Evaluation Criteria and Tender Process Design

The TA will:

- design a suitable bid evaluation process and criteria, including a scoring methodology and evaluation forms to be provided to the evaluation committee.;
- design a suitable tender process that will help ensure compliant, high quality and comparable bids;
- devise effective systems for communicating with bidders during the tender process; and
- inspire market confidence

If appropriate, a system that allows for variant bids and a best and final offer (BAFO) may be designed.

(v) Request for Proposals (RFP)

The TA will prepare an RFP document in accordance with best industry practice and applicable laws and regulations, consistent with the results of the Feasibility Study. The RFP must concisely set out:

- i. design criteria
- ii. the output and performance specifications
- iii. requirements for compliant bids
- iv. a risk profile as established in the feasibility study
- v. the payment mechanism
- vi. the bid process
- vii. evaluation criteria
- viii. bidder communication systems and procedures
- ix. bid forms – technical and financial bid submission forms, bid letter, statement of compliance etc.
- x. all other information necessary to ensure compliant, high quality and comparable bids

(vi) Draft PPP Project Agreements

The TA will prepare a draft PPP agreement and related agreements & ToR's for Independent Engineer/ Expert), in close liaison with the CA, implementing the risk allocation regime and using best practice to maximize competition and minimize project costs, while protecting CA's interests, particularly regarding project implementation and manageability over the lifecycle of the project. The agreement will include all necessary annexes and subsidiary documentation, such as performance specification, project scope, CA's requirements, technical specification, Project performance monitoring regime, code of construction practice etc.

(vii) Necessary Approvals

The TA will compile all the documentation necessary for the CA to obtain the necessary approvals to enable the procurement process to begin, including the Attorney General's office and the DMO in the event that estimated fiscal commitment and contingent liabilities have altered materially from the Feasibility stage.

The TA will provide a list of all necessary approvals needed for procurement and implementation of the project, with a time schedule for obtaining the approvals given the time needed to obtain each and their position on the project critical path.

(viii) Administration of the Bidding Process

The TA will provide all necessary support to CA for the efficient and professional management of the bidding process. This includes creating & managing a data room, facilitating structured engagement between the TA, CA and bidders, helping CA communicate effectively with bidders (including responding to bidder queries, managing bidder conferences and one on one/ dialogue meetings), amending documents further to bidder comments, receiving bids, helping in bid evaluation processes, etc.

- (ix) Evaluation of bids, Demonstrating value for money and fiscal commitment/contingent liability evaluation
 - a) The TA will provide all the necessary support to the CA in evaluation of submitted bids in accordance with the PPP Act and with the framework for bid evaluation criteria developed earlier.
 - b) Value for money, affordability, fiscal impact and potential contingent liabilities must be re-assessed for the bids received.
 - c) The TA will provide to the bid evaluation committee a framework for evaluation with a scoring regime and guidelines consistent with the RFP, to facilitate the evaluation committee's tasks.
 - d) The results of the bidding and evaluation of bids must be presented in a single bid evaluation report (with relevant annexures) that demonstrates clearly how value for money will be achieved with the preferred bidder and the implications of the preferred bid on affordability, and the fiscal risk to the government. The CA with the support of the TA will provide this report and any other documents required by law, in the form and content sufficient to secure the approval of the recommended preferred bidder. The report must clearly indicate the preferred and second-ranked bidders and provide motivations.

(x) Support during Bidding Process and Evaluation

The TA shall assist the CA in the following activities:

- i) Issuance of all bidding notices/request and supplemental notices, conduct of the pre-bid conference/s,
- ii) Conduct of bidding,
- iii) Responding to queries upon proper consultation with the CA and the PPPU,
- iv) Evaluation of bids and award,
- v) Contract finalization.

7.2 Assistance towards Financial Closure of the Project

- i) The TA shall provide all the required assistance and advisory support until the financial closure of the Project or a period of 180 days from the effective date of the contractual agreements signed with the Private Party (PP) whichever is earlier.
- ii) The TA shall assist the CA with all functions relating to grant of approval on any issue to the PPP or signing any agreement or any other document with the PP or assisting in providing interpretations relating to any matter until financial closure.
- iii) The TA shall also compile a comprehensive close-out report and case study, and must incorporate any additional factors that may be required by the CA. The close-out report

will be a confidential document of the CA. The case study will become a public document, made available on various government websites.

- iv) The TA shall, in close liaison with the CA, draft a comprehensive PPP management plan for the CA, in accordance with the provisions of the PPP agreement, to help the CA in the management of the Project and its risks, rights and obligations after financial close.
- v) While carrying out the specific tasks, the TA shall build capacities of the CA and PPPU staff through technology and knowledge transfer during the entire duration of the assignment.
- vi) The scope of the works shall be read in conjunction with the specific terms of reference prescribed for each team member in Section 5 below.

8.0 TRANSACTION ADVISORY TEAM COMPOSITION

8.1 The TA will comprise a single organization or a consortium, led by a single lead advisory organization. The members of the advisory team will have both the skill and experience necessary to undertake the range of tasks set out in these terms of reference. Each individual on the team must be personally available to do the work as and when required. The lead team member/Consortium will be held accountable, in terms of the transaction advisor contract, for ensuring project deliverables and for the professional conduct and integrity of the entire team. Team members may not be changed or removed without the prior written approval of the CA and the PPP Unit, and replacement with someone at least as qualified and capable.

The skills and experience required as a minimum of the Transaction advisory team are as follows:

- i. PPP procurement and structuring
- ii. Financial advisory, analysis and modeling experience in housing & social infrastructure PPPs.
- iii. Technical due diligence and advice on PPP structuring and contracts
- iv. Project finance experience through to financial close
- v. Relevant international and regional experience in the legal frameworks for PPP and in the drafting and negotiating of PPP agreements
- vi. Technical expertise and experience in design, management & implementation of major housing, social infrastructure projects.
- vii. Project planning management
- viii. Project facilities management
- ix. contract management
- x. project management.

8.2 The TA shall include qualified personnel with extensive experience in the field of construction with emphasis on housing development, project preparation and appraisal, project management, financial modelling and structuring, investment promotion,

economic and financial analysis, risk analysis, procurement, policy and legal, among others.

- 8.3** The TA shall have sufficient qualified personnel and resources, including technical expertise and advisors, to provide all necessary professional, technical, and expert services, as required to accomplish all the services described herein above within the prescribed time.
- 8.4** The TA shall have sufficient qualified experience & expertise in the field of built environment, which shall include and not limited to professionals listed in table II.
- 8.5** The TA shall provide a legal and binding document showing the composition of the consortium and the members provided therein shall be available during the period of the assignment.
- 8.6** The TA should also have knowledge of the project's taxation framework, including exemptions and tax exemption regime, the country's accounting systems, domestic and global insurance and guarantee sector and their products, special privileges and incentives available to the PPP projects, concessional financing options available for PPP projects from the public sector and other country-specific knowledge.
- 8.7** The list of experts provided in table II is indicative and the TA may request for additional experts that may be required to successfully complete the assignment

Table II: Expertise Required

#	Position	Expertise Qualification Required
1	PPP lead Expert/ Team leader	<ul style="list-style-type: none"> • A university degree in Finance, Management, Economics, Engineering, Architecture or any other relevant field. • A minimum of 7 years’ demonstrated experience in providing PPP transaction advisory services/development of large housing/ social infrastructure projects including extensive experience in project structuring and risk analysis, allocation and management; project agreements; bid process management including preparation of bidding process documentation and post-bid process monitoring. • Successful structuring of PPP projects with at least one successfully financially closed project as team leader in housingand/or social infrastructure project. It will be an added advantage for a team leader to have successfully completed atleast one project that has been implemented. • Relevant qualifications and experience in housing and social infrastructure development, operation & maintenance projects Experience in developing countries will be an added advantage. • Experience in development of large infrastructure projects preferably in housing, project structuring, risk analysis, allocation and management, project agreements, bid process management, including preparation of bidding process documentation and post-bid process monitoring. • Good English communication and writing skills, especially in report writing, are essential. • The PPP lead expert shall be responsible in leading the team in providing transaction advisory services in all the relevant fields.
2	Transaction Manager	<ul style="list-style-type: none"> • A university degree in Finance, Management, Economics, Engineering or any other relevant field. • A minimum of 7 years’ demonstrated experience in providing PPP transaction advisory services/development of large infrastructure projects on PPP basis including extensive experience in project structuring and risk analysis, allocation and management; project agreements; bid process management including preparation of bidding process documentation and post-bid process monitoring. Successful preparation of PPP projects with at least one financially closed project. • Relevant qualifications and experience in housing development, operation & maintenance projects in general, and in developing countries in particular. • Experience in infrastructure or housing development will be an additional merit. • Good English communication and writing skills, especially in report writing, are essential.

3	Financial Expert	<ul style="list-style-type: none"> • A relevant university degree preferably with a relevant post graduate qualification. • At least 7 years of professional experience in PPPs and project finance, with a proven record of accomplishment in financial evaluation and financial modeling of PPP projects including value for money, Public Sector Comparator analysis, affordability and fiscal impact assessment. • 3years' experience in financial modeling, structuring of large infrastructure projects on CPM, value for money analysis, project costing and revenue forecast, development of financing plans, global insurance and guarantee products, etc., with relevant PPP and project finance experience until financial close and successful contract award of 1 similar project. • Demonstrated experience in dealing with project finance structures and products and experience in capital rising having financially closed at least one PPP project of at least US\$ 50 Million. Experience in the housing/social infrastructure will be additional merit. • Good English communication and writing skills, especially in report writing, are essential.
4	Economist	<ul style="list-style-type: none"> • A university degree in Economics or related field preferably with a relevant post-graduate qualification. • 10 years experience in financial modeling, structuring and tendering arrangements of a similar scope project and economic analysis of investment projects. • Experience in housing or infrastructure development projects. • Good English communication and writing skills, especially in report writing, are essential
5	Legal Expert	<ul style="list-style-type: none"> • A university degree in Law preferably with a relevant postgraduate qualification. • A minimum of 10 years' demonstrated experience in drafting contractual agreements and other legal instruments on similar scope procurement; managing bidding process, and resolving legal issues, policy and institutional assessment; and, successful preparation of similar projects. • Experience in housing or social infrastructure project will be an added advantage. • Experience in Alternative dispute resolution in the construction sector is added advantage. • Good English communication and writing skills, especially in report writing, are essential
6	Architect	<ul style="list-style-type: none"> • A qualified Architect with 10 years post registration experience in detailed design and construction of large housing projects. • Provide valid practicing license in Kenya
7	Landscape Architect	<ul style="list-style-type: none"> • A qualified Landscape Architect with 10 years post graduation experience in detailed design and construction of large complexes.
8	Civil / structural Engineer	<ul style="list-style-type: none"> • A qualified Civil/Structural Engineer with 10 years post registration experience in detailed design and construction of large complexes.

		<ul style="list-style-type: none"> • Provide valid practicing license in Kenya
9	Mechanical Engineer	<ul style="list-style-type: none"> • A qualified Mechanical Engineer with 10 years post registration experience in detailed design and construction of large complexes. • Provide valid practicing license in Kenya
10	Electrical Engineer	<ul style="list-style-type: none"> • A qualified Electrical Engineer with 10 years post registration experience in detailed design and construction of large complexes. • Provide valid practicing license in Kenya
11	Quantity Surveyor	<ul style="list-style-type: none"> • A qualified Quantity Surveyor with 10years post registration experience in quantity surveying services in a similar project. • Provide valid practicing license in Kenya
12	Physical Planner	<ul style="list-style-type: none"> • A qualified Physical Planner with 10years post registration experience in physical planning services in a similar project. • Provide valid practicing license in Kenya
13	Valuer/ Estate Manager	<ul style="list-style-type: none"> • A qualified Valuer with 10years post registration experience in valuation services in a similar project. • Experience in handling sectional properties and Estate welfare associations will be an added advantage. • Provide valid practicing license in Kenya
14	Land Surveyor	<ul style="list-style-type: none"> • A qualified Land Surveyor in relevant discipline with 10 years post registration / license experience in land surveying services in similar project. • Provide valid practicing license in Kenya
15	IT & MIS	<ul style="list-style-type: none"> • 5 years post graduate experience in IT and information systems design, development and implementation of integrated computerized systems. • Knowledge of housing development projects will be an additional merit.
16	Social scientist	<ul style="list-style-type: none"> • 10 years post-graduate experience in assessment of social impacts, gender analysis and mitigation measures for at least 2 investment projects (public and private funded) in accordance with the specific requirements in the Republic of Kenya. • Should have thorough knowledge of the Kenyan Labour Laws and other related laws provisions.
17	Environmental Specialist	<ul style="list-style-type: none"> • 5 years post graduate experience as lead expert in environmental impact assessment and mitigation measures for at least 2 infrastructure projects in accordance with the specific environmental and safeguard requirements of existing NEMA Laws. • Knowledge and understanding of NEMA's Safeguards Policy Statement will be an added advantage.

9.0 DELIVERABLES OF THE ASSIGNMENT

The general deliverables of the project are as represented in the table below. Bidders are expected to include, as a part of their proposal, anticipated dates of delivery

It is estimated that the above services would require a period of about Eighteen (18) months from the date of commencement of the services until the financial close of the project or a period of Sixty (60) days from the effective date of the contractual agreements signed with the Private Party (**Service Provider**), whichever is earlier. The detailed workplan submitted as

part of the technical proposal for the housing projects shall be discussed and agreed with the PPP Unit and CA before signing the housing projects contract.

Table III: Estimated time schedule

No.	Deliverable	Date of completion (After contract signing)
1	Pre-feasibility report & Market sounding
2	Feasibility Study Report including PPP Implementation Plan
3	Pre-qualification Document (RFQ) preparation, issuance and Evaluation Reports
4	Bidding documents, including RFP, draft PPP project agreements, Design Criteria and Performance Specifications, evaluation criteria, including any other relevant bid documents
5	Complete Tender Evaluation Reports
6	Negotiations and Financial close
7	Close-out Report and Case Study

(NB: Bidders to fill this table on estimated timelines for undertaking the assignment)

All reports shall be submitted to CA and PPPU in electronic format as MS Word document (latest version) and printed in 6 copies. Models and workflow, process and data diagrams shall be submitted electronically in their appropriate dynamic application files.

The TA, in close coordination with CA, shall conduct quality reviews to obtain feedback on all draft versions of deliverables as appropriate. The TA shall make presentations to CA on each deliverable (e.g. draft Feasibility Study), with the team's key experts present.

10.0 EVALUATION CRITERIA

The evaluation committee appointed by the CA shall evaluate the proposal on the basis of their legal standing and responsiveness to TOR's as outlined in table 4 below:

Table IV: Evaluation criteria

No	EVALUATION CRITERIA FOR TECHNICAL PROPOSAL	SCORING CRITERIA	
		YES	NO
A	Preliminary screening (Mandatory requirements)		
A1	Legal status of the lead consultant/consortium member and any firm engaged including practicing licenses		
A2	If a consortium, Signed Joint Consortium Agreement by all consortium members to be provided		
<i>NB</i>	<i>A bidder who scores NO in the mandatory criteria shall be considered shall not proceed to the technical evaluation stage</i>		
B	Technical Evaluation	POINTS	
B1	Specific experience of the consultant/consortia related to the assignment	10	
B2	Adequacy of the proposed work plan and Methodology in responding to the terms of reference	30	
B3	Qualifications and competence of the key staff for the assignment (Relevant education, training, experience in the sector/similar assignments)	40	
B4	Suitability to the transfer of Technology Programme (Training)-Relevance of approach and methodology	5	
B5	Proof of involvement of local staff in the assignment	15	
	TOTAL	100	
<i>NB</i>	<i>A firm/consortium that attains a PASSMARK of St 70 Points and above shall proceed to the last stage of Financial evaluation.</i>		

11.0 REMUNERATION SCHEDULE AND DISBURSEMENT ARRANGEMENTS

The Transaction Advisor will be paid on output basis in the currency or currencies of the contract. Bidders will be remunerated for the 2 Phases as follows:

Phase 1 – 40% of contract sum

Phase 2 - 60% of contract sum

Phase II assignment will only commence upon the determination that the project is viable under a PPP arrangement and upon the issuance by CA of a notice for commencement of services.

If CA decides not to proceed with Phase 2, the contract with the TA will be terminated.

Remuneration schedule

The following remuneration schedule is set for each part of the contract. Bidders should adhere to these in their proposals.

Table V: Remuneration schedule

No	Assignment outcome	Proposed remuneration schedule	Proposed dates
PHASE I			
1	Advance payment	10%	
2	Completion of draft feasibility study report	10%	
3	Final feasibility report & presentation of findings and recommendations	15%	
4	Acceptance & approval by PPP unit	5%	
	Sub-Total 1	40%	
PHASE II			
1	Completion of RFQ documents and prequalification report	5%	
2	Completion of RFP documentation and evaluation	15%	
3	Negotiations & execution of commercial close	20%	
4	Financial close and contract signing	20%	
	Sub- Total 2	60%	
	TOTAL	100%	

NB: Financial close to be defined as the date of execution of the loan agreement between the lenders and the concessionaire/successful bidder and the fulfillment of the consultants obligations under phase II of the scope of works.

12.0 INSTITUTIONAL ARRANGEMENT

- 12.1** The TA shall be responsible to the CA in providing the transaction advisory services. The Contracting Authority after obtaining approval from the PPP Unit will sign the contract (lump sum) with the selected firm for providing transaction advisory services
- 12.2** The PAT appointed by the CA shall take full responsibility for managing the TA's work and for ensuring delivery on the project.
- 12.3** The Project Appraisal Team (PAT) shall be composed of representatives from CA and the PPPU, will review and assess the acceptability of project deliverables. During the tender stage, CA shall also create a Pre-qualification Committee, Proposal Evaluation Team, (Contract) Negotiating Committee, and other bodies specified in the PPP Act, 2013.
- 12.4** The CA shall provide the Transaction Advisor with all available pertinent data and previous studies, if any, useful to the Project. The CA will liaise with other agencies to ensure that the TA has access to all information required as may be allowed under Kenyan laws.
- 12.5** The TA will be responsible to the CA for providing all necessary facilities and logistical support for its staff, including office space, vehicles, miscellaneous transportation, office equipment (computers, printers, telephone, and internet services), survey and investigation equipment, communications, utilities, office supplies and other miscellaneous costs for carrying out the services as per the requirements of the TOR. Further, the TA will need to provide all the administrative, technical professional, and support staff needed to carry out their services including market/demand survey teams, social surveys teams, etc. as deemed necessary.

13.0 PROJECT BASED LEARNING

- 13.1** To ensure knowledge and skills transfer by the TA to the Contracting Authority project implementation team, the TA will be expected to incorporate a project based learning approach.
- 13.2** All bidders are therefore expected to enumerate a clear and deliberate approach as to how knowledge and skills will be transferred to the CA project implementation team.

APPENDIX 1: FEASIBILITY REPORT TEMPLATE

Minimum Parameters to be covered in the Feasibility Study Report

The Transaction Advisor shall ensure that the Feasibility Study Report shall, as a minimum, conform to the following outline:

1.0 INTRODUCTION

- Project Background: Rationale and Genesis
- Project Objectives
- Approach and Methodology of the Feasibility Study

2.0 NEEDS ANALYSIS

- Project's Conformance to Sector Diagnostics and Master Plans
- Demand Forecasting and User Projections
- Institutional Settings
- Scope of the Project

3.0 TECHNICAL AND COMMERCIAL SOLUTION OPTIONS ANALYSIS

This section needs to describe:

- Alternative Technical Solutions which have been considered to achieve the Project Objectives. Alternative Technical Solutions may be alternative engineering options
- The evaluation of the Alternative Technical Solutions. This section needs to describe the technical, economic, financial, legal, social, environmental and other criteria which have been used to evaluate the alternative options, and to present the results of the evaluation, including an Economic Cost-Benefit Analysis. It is expected that the evaluation be carried out on the basis of high level capex and operating cost estimates
- Recommended Technical Solution. The Recommended Technical Solution should be described in more detail and an Outline Design provided. The description should include:
 - Proposed Output Specifications
 - Estimated CAPEX and OPEX Costs

4.0 PROJECT DUE DILIGENCE

The Study is expected to include a detailed Project Due Diligence on the basis of the Recommended Technical Solution covering the following:

- Legal Aspects
 - Use and User Rights
 - Relevant Financial Laws and Regulations
 - Relevant Environmental and Heritage Laws, if applicable
 - Tax Legislations
 - Labour Legislations

- Foreign Exchange Legislations
- Competition Legislation
- Building and Fire Codes, as applicable
- Zoning Rights and Land Use Regulations
- List of likely Project Agreements
- Dispute settlement mechanism and legal jurisdiction
- Site Enablement
 - Land Requirements
 - Land Valuation
 - Land Availability and Title Deed Endorsements
 - Resettlement Needs, if applicable
 - Relocation of Utilities
- Site investigations
 - Carryout geotechnical investigations; and
 - Topographical surveys
- Economic and Social Cost Benefit Analysis (ESCBA)
 - Identified Economic Benefits
 - Identified Economic Costs
 - Economic Evaluation and Sensitivity Analysis
 - Assessment of Social Benefits and Costs
 - Gender, Youth and other Social Concerns
- Identified Environmental and Disaster Risk Concerns
 - Environmental Impact Assessment (EIA) and Social Risk Assessment
 - Climate and Disaster Risk Vulnerability Assessment
 - Environmental & Social Impact Assessment (ESIA) report
- Financing, Funding and Revenue Implications
 - Project Financing Needs – up front and recurring as driven by Capex requirements
 - Project Financing Sources – indication of Financing Sources (private sector bank debt, multilateral debt, public sector debt, project bonds, grants (indicate source), developer equity, other (specify))
 - Project Funding Needs – assessment of annual funding requirements to cover O&M, debt service and other recurring costs
 - Revenue requirements – assessment of revenue requirements to cover the Project’s Funding Needs
 - Revenue Sources – identified revenue sources – users, public sector service payments, combination, other
 - Affordability Analysis:
 - For public sector service payments compare against budget allocation and evaluate availability. Determine need for Viability Gap Funding and quantify. For user pays evaluate ability and willingness to pay of users

5.0 PROCUREMENT OPTIONS AND PPP STRUCTURE ANALYSIS

This section should present an evaluation of the alternative options for procuring the project, including the preferred PPP option. The section should cover:

- ii. Description of alternative procurement and PPP options considered and justification therefor. Options must include traditional public sector procurement. For each option set out:
 - a) The anticipated key roles and responsibilities of the private sector
 - b) The key risk allocation under each option
- iii. Description of and justification for the evaluation criteria used in evaluating alternative procurement options to include, inter alia:
 - a) Value for Money assessment. The Value for Money assessment is expected to examine both the choice between traditional public sector and PPP procurement, as well as alternative risk allocations between the alternative PPP options. The report should present clearly how the Public Sector Comparator Model, the Risk Adjusted Public Sector Comparator Model, the PPP Reference Model and the Risk Adjusted PPP Reference Model have been developed and populated with data
 - b) Affordability
 - c) Assessment of Fiscal Impact
 - d) Assessment of impact on Public Sector Borrowing including any contingent liabilities
 - e) Private sector feedback based on a Preliminary Market Sounding amongst potential operators, developers and financiers
- iv. Presentation of the results of the Evaluation
- v. Detailed description of the preferred Procurement Option and PPP Structure, including:
 - a) Key Risk Allocation
 - b) Outline Payment Mechanism
 - c) Indicative Financing Structure

6.0 FINANCIAL MODELING

The Feasibility Study is expected to be supported by detailed and comprehensive Financial Modeling. In particular, the financial model is expected to:

- Support the Economic Cost Benefit Analysis of the Project and Alternative Technical Solutions
- Support the determination of revenue requirements to meet Project Funding needs
- Support the determination of necessary tariff levels for user pays projects
- Support the evaluation of affordability for both user pays and public sector pays models including fiscal and public sector borrowing impact

- Support in determining the Project's Financing requirements and the evaluation of alternative financing structures and sources
- Support in the evaluation of alternative procurement options and PPP options, including Value for Money analysis

And in the implementation phase of the Project:

- Support in the detailed design of the Payment Mechanism
- Act as a shadow Bid Model and assist in evaluating bids and their robustness

The Report should include a description of the Financial Model and key outputs in support of the various analyses and conclusions throughout the Report.

7.0 PROJECT RISK MATRIX

The report shall include a Project Risk Matrix (PRM) that quantifies the liabilities associated with the recommended project configuration, and proposes how the same shall be managed and the funding requirements. This information shall be of interest to the DMO in their review of the FCCL assumed in the proposed project structure. On a minimum, the PRM 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
- Mitigation of risk

8.0 PPP PROJECT AGREEMENTS TERMS SHEETS

Include here the Key Heads of Terms which will form the basis for a PPP contractual structure in due course.

9.0 PROJECT IMPLEMENTATION SCHEDULE

A chart indicating key tasks, deliverables, milestones, responsibilities, timetables and critical path for successful project implementation.