



**REPUBLIC OF KENYA**

**THE NATIONAL TREASURY AND PLANNING**

**PUBLIC PRIVATE PARTNERSHIPS (PPP) UNIT**

**TERMS OF REFERENCE**

**FOR**

**TRANSACTION ADVISORY SERVICES FOR THE PROPOSED MALINDI -  
GALANA AND RONGAI - KERINGET - CHEMOSIT POWER TRANSMISSION  
LINES PPP PROJECTS**

**MAY 2020**

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## **1. INTRODUCTION**

Vision 2030, Kenya's national long-term development strategy covering the period 2008 to 2030, places great emphasis on rebuilding and creating a productive infrastructure in the country's journey towards poverty reduction as well as social, political and economic transformation. However, in a time of constrained public budgets with competing development pressures especially in the social sectors (particularly health and education), high sovereign debt, and rising public expenditure demands from the current and new devolved structures, the Government of Kenya (GOK) is facing great challenges. As at 2010, Kenya's infrastructure funding gap is estimated at approx. KES.178.5 Billion (\$2.1 billion) per year.

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

With a growing number of project proposals approved by the PPP Committee, and across various sectors and county governments, the PPP programme in Kenya is gathering pace and can be considered to be taking shape. As of today, there is a substantial pipeline of projects just entering the feasibility stage, and in accordance with section 36(2) of the PPP Act, the PPP Unit encourages the appointment of Transaction Advisors (TA) with the qualifications and experience necessary to assist contracting authorities with the preparation of Feasibility Studies and the implementation of PPP transactions.

In this regard, KETRACO seeks to engage a TA to assist in the preparation of the transmission grid expansion programme through a PPP arrangement.

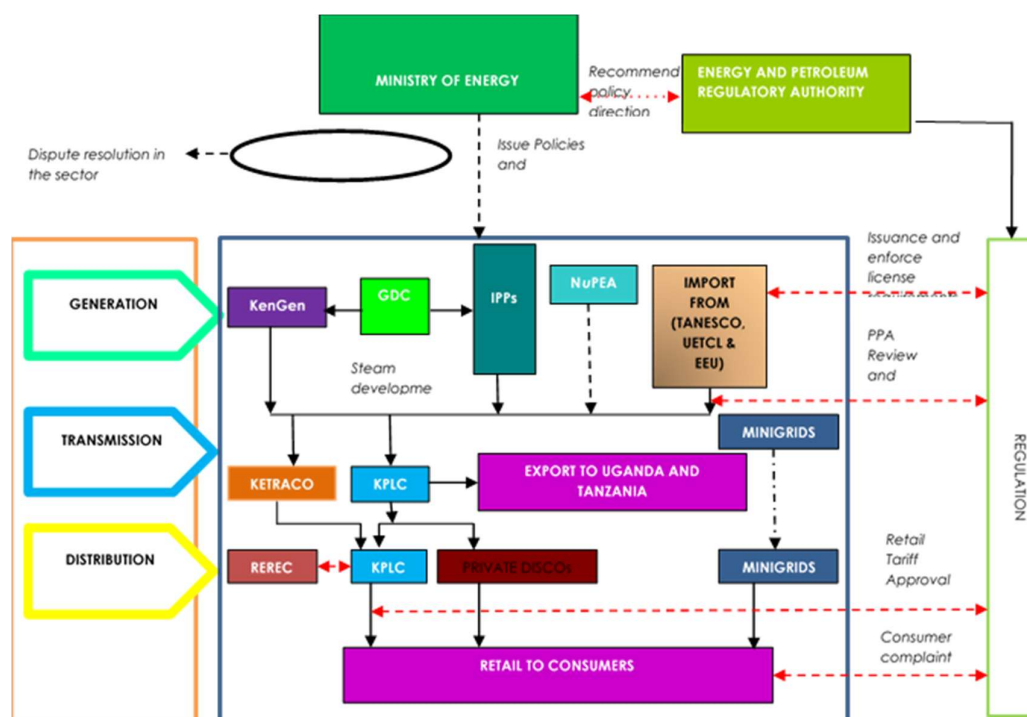
## **2. DESCRIPTION AND SCOPE OF THE PROJECT**

### **Sector Background**

The interconnected system in Kenya had a total installed generation capacity of 2,679MW as at February 2019 comprising 826 MW (30.5%) of hydroelectric power generators, 776MW (28.6%) of thermal, 663MW (24.4%) of geothermal, 335 MW of wind (12.4%), 50MW of solar (1.9%), and 28MW from Biomass (1%) power generators. There is also 33MW in isolated mini grids. The total effective capacity was 2638MW during normal hydrology. The peak demand is 1,882MW as recorded in February 2019. The installed capacity is expected to grow to 5,221MW by 2022 with geothermal, hydro and wind contributing most to this installed capacity.

The Country's electricity supply industry structure is of a single buyer model with all generators selling power in bulk to KPLC in long-term contracts. KPLC currently undertakes dispatch, transmission and distribution to consumers. 60% of the installed capacity is held by Kenya Electricity Generating Company Limited (KenGen) and the rest by Independent Power Producers. The total transmission network (220kV and 132kV) is approximately 6,294km of which 2,364km belongs to KETRACO and the rest to KPLC.

Figure 1: KETRACO's relationship with other Electricity sub-sector players in Kenya



### KETRACO Company Profile

Sessional Paper no. 4 of energy (2004) laid down the framework upon which cost-effective, affordable, adequate and quality energy services will be made available to the domestic economy on a sustainable basis over the period 2004-2023. The challenges facing the energy sector as enumerated in the sessional paper included a weak power transmission and distribution network due to limited investments in power system upgrading. The policy proposed transformation of the transmission network into an open access system, the restructuring of the Kenya Power and Lighting Company Limited (KPLC) and the creation Kenya Electricity Transmission Company Limited, (KETRACO) as a state-owned transmission company.

KETRACO was incorporated on 2<sup>nd</sup> December 2008 under the Companies Act with a mandate to plan, design, construct, own, operate and maintain high-voltage (132kV and above) electricity transmission infrastructure that form the backbone of the national transmission grid and regional interconnections. KETRACO is currently licensed by the Energy Regulatory Commission to transmit electrical energy in bulk over the 132 kV, 220 kV, 400kV AC and 500kV HVDC network in Kenya and interconnections with all neighboring countries.

As at June 2018, KETRACO had successfully completed (and put into operation) high voltage electricity transmission lines totaling to 2,364km and 30 substations with transformation capacity of 814MVA. The Company is also constructing 2,499km of high priority projects. It is expected that by the year 2038 KETRACO will construct additional transmission lines totaling to about 5,939 km.

### The Proposed PPP Projects

On 11<sup>th</sup> May 2017, the PPP Committee, acting under section 7(d) and in accordance with section 31(3) of the PPP Act 2013, approved the proposal for the transmission grid expansion programme through PPP.

The programme will involve an initial construction of a total of 448km of lines under the PPP pilot programme, and if the model is successful, additional lines will be built over the next phase. This transaction advisory focuses on two lines to be subjected to the market. Table 1 provides a brief description of the 2 projects that have initially been identified for PPP piloting.

Table 1: Priority Projects

Project name	Length (km)	Voltage (kV)	Brief Description
Malindi (Weru) – Galana	51	220	220 kV double circuit line from Weru to Galana and establishment of new 220kV substation at Weru and 220/33 kV substation at Galana.
Rongai – Keringet – Chemosit	95	220	220 kV double circuit line with; 400kV bay extensions at Rongai, new 220kV Switchyard at Rongai (incl. 2x400/220kV Transformer), new 220/33kV substation at Keringet, new 220/132kV substation at Chemosit, 132kV bay extension at existing Chemosit, 132kV inter tie between new 220/132kV at Chemosit and existing 132/33kV Chemosit.
<b>Total</b>	<b>146</b>		

## Projects Objectives

### Malindi - Galana

This line will lead to improved adequacy and reliability of power supply to the Galana Irrigation scheme. Currently the scheme is on diesel generators as there is no grid power supply in the scheme. Grid power supply will support the expansion of the scheme in line with the Vision 2030 and Big Four Agenda initiatives. The line will also facilitate effective evacuation of renewable energy from several wind and solar Feed- in Tariff (FIT) projects between Malindi and Galana.

### Rongai – Keringet -Chemosit

The line will strengthen the grid and improve reliability of power supply to the tea factories in Olenguruone area. At present Olenguruone area is supplied via 33kV feeders that are prone to breakdown during rainy periods, leading to unreliable supply.

## 3. OBJECTIVE OF THE TRANSACTION ADVISORY SERVICES

KETRACO, under provisions of the PPP Act of 2013, wishes to engage a Transaction Advisor (TA) to assist with all the phases of the project preparation including detailed feasibility study of the projects and the competitive procurement of a Project Sponsor/Developer for the 2 transmission lines and substations described above through a PPP arrangement.

The TA to be engaged will:

- Prepare feasibility studies, consistent with the Kenya PPP Act, including environmental and social safeguards studies, surveys and plans for the projects.
- Recommend the best PPP model for the procurement of the projects based on an analysis of several alternative technical and PPP models.
- Advise KETRACO on the optimum risk allocation and the resultant contract structure including preparation of all necessary documentation and requisite approvals.
- Develop transaction documents for the procurement.
- Provide transaction advisory support through to financial close of the project.

#### **4. ROLE OF THE TRANSACTION ADVISOR & TRANSACTION ADVISOR TEAM**

The TA will be a firm or consortium of firms, collectively covering the range of technical, environmental & social, financial, legal and other expertise required to procure the Project through a PPP transaction. As a minimum, the TA's team will include the following experts:

1. PPP Expert/Team Leader
2. Technical Experts:
  - i. Transmission Line/Power System Engineer
  - ii. Energy Sector Specialist
  - iii. Power Economist
  - iv. Civil Engineer
  - v. Geotechnical Engineer
  - vi. Land Surveyor
3. Team Leader Environmental & Social (E&S) Safeguards
4. Environmental Safeguards Specialist
5. Social Safeguards Experts:
  - i. Resettlement Specialist
  - ii. Gender/Gender-Based Violence (GBV) Expert
  - iii. Social Assessment (SA) and Vulnerable and Marginalized Groups Plan (VMGP) Expert
  - iv. Land Valuer/Valuation Expert
6. PPP Financial Expert
7. PPP Legal Expert (International law)
8. Kenya Legal Expert
9. Communications Specialist/Expert

The TA will provide all needed support, inputs, documentation, services and content for the Project as set out in these terms of reference to achieve successful financial close, including the following key stages:

- Completion of the Feasibility Study to a standard that complies with the PPP Act; including assessing PPP options; technical due diligence; demand/market projections; social safeguards considerations including cadastral surveys, aerial mapping, resettlement action plan, vulnerable and marginalized groups plan and environmental & socio impact assessment; financial and economic analysis and modeling; value for money and public sector comparator analysis; affordability and fiscal impact assessment and overall transaction structuring;
- Project marketing, including information memorandum preparation and road show presentations as recommended;
- Data room design and documentation;
- Bid documentation including; project information memorandum, RFQ, RFPs, and suite of draft PPP contractual documentation relevant to the selected PPP structure;
- Bid process implementation and support for bidders' consultations, clarification requests, bid evaluation and compiling the bid evaluation report, negotiation of contract terms and amendment of the contracts through to commercial and financial close, including any further documentation or analysis required;
- RFQ and RFP evaluation support, including supporting KETRACO in preparation of evaluation reports, in any regulatory processes attaching to evaluation reports;
- Assisting KETRACO in preparation of defense positions on any procurement-related litigation, or in responding to any oversight reviews (e.g. Parliament) related to the project's preparation or procurement;

- Support with getting PPP Committee approvals at all stages of the project;
- Supporting KETRACO during contract negotiations with the Preferred Bidder;
- Supporting KETRACO and the preferred bidder through the phase between commercial and financial closes on the project, including in drafting work on the project agreements, or negotiations with lenders, Government Support Measure, as well as in resolution of any KETRACO-related conditions precedent to financial close;
- Assisting KETRACO on all other matters incidental to or connected with the preparation of the projects.

Through all the stages the TA will support, as appropriate, in securing the necessary approvals for the project. As an integral part of the scope of works, the TA will advise on the institutional and organizational framework and capacity building requirements for transaction implementation, PPP contract management, and knowledge transfer and capacity building of the KETRACO team, to ensure capacity is developed on project PPP transaction implementation and PPP contract management.

## **5. SCOPE OF THE TRANSACTION ADVISORY WORK**

The scope of work is divided into the following key phases:

**Phase I:** Undertaking of the PPP Feasibility Study including the Project Implementation Schedule; project marketing and all the PPP approvals

**Phase II:** Development of the transaction documents, tender process organization, and support on transaction implementation through to Financial Close. This includes; data room design and documentation; Bid documentation including; Bid process implementation and support for bidders' consultations, RFQ and RFP evaluation support, including preparation of evaluation reports; Assisting in preparation of defense positions on any procurement-related litigation; Supporting with PPP Committee approvals; Supporting contract negotiations post award with the Preferred Bidder; Supporting the phase between commercial and financial closes. The development of the Resettlement Action Plan shall also be done at Phase II.

**Phase III:** Project Based Learning. This entails capacity building for KETRACO, including knowledge and skills transfer to KETRACO. The TA will be required to provide classroom-based and on-the-job capacity building to a cohort of at least 10No. Public officials within the CA at critical points of the project preparation process. All bidders are therefore expected to enumerate a clear and deliberate approach, as to how knowledge and skills will be transferred to Project Appraisal Team and any other Project Teams that would be tasked to carry out various roles in the course of the preparation and implementation of the project to effectively manage the PPP contract and supervise the Project Company post Financial Close. This phase shall be implemented simultaneously with phases I and II.

### **PHASE I: Feasibility Study and Project Implementation Schedule**

The PPP Feasibility Study is intended to examine the Project's technical, legal, social, environmental, economic and financial feasibility and the feasibility of implementing the Project as a PPP. The Study is intended to answer the following questions:

1. Needs Analysis and Project Objectives - What need is the project trying to address, what demand is it trying to satisfy, what problems is it trying to solve, what are the project's objectives?

2. What is the preferred (based on financial, economic, technical, social environmental etc. evaluation) technical and commercial solution to achieving the Project's objectives vs. other options which will need to be considered?
3. 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 public sector, including an assessment of the fiscal impact and contingent liability, value for money and risk transfer.
4. What is the best way to procure the project – through traditional public sector procurement, e.g. a Build or Design and Build contract, or through some form of PPP?
5. If 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.

The specific tasks are detailed in Task 1 and 2 below. A template for the Feasibility Study Report is attached as Annex 6 to this document.

## **TASK 1: Project Feasibility Assessment**

### *Task 1.1: Technical and Commercial Options Analysis*

The Technical and Commercial Feasibility will analyze the alternative technical configurations and commercial set up for the project drawing on the feasibility work that has already been conducted, it will evaluate projected market demand for the type of project and give recommendations.

In detail, the Technical and Commercial Feasibility will undertake, but shall not be limited to:

- Review existing feasibility studies (see section 3.3. of this document on the proposed project details) and assessments.
- Evaluate alternative technical configurations for the project and advise on the most suitable when evaluated against appropriate evaluation criteria
- Evaluate and estimate ancillary infrastructure investments necessary for the Project
- Consider alternative commercial structures for the project
- Estimate the full life cycle costs of the Project based on:
  - Estimated construction and supply costs
  - Proposed phasing of capex
  - Maintenance, management and operating costs taking into account current maintenance practices, as well as regulatory requirements
  - Asset replacement and major maintenance schedules
  - Economic life of the facilities
- Examine funding options for the transmission grid expansion programme and evaluate the impact on consumer electricity tariff and GOK obligations, including contingent liabilities.
- Identify ancillary revenues or commercial development potential of the Project, if any.
- Conclude on the preferred configuration of the Project from a Technical and Commercial point of view.

### *Task 1.2: Technical, legal, social, environmental and financial assessment*

The feasibility of the Project will be based on the preferred Technical and Commercial configuration determined above. This will cover:

- Economic and Social Cost Benefit Analysis
- Financial Viability
- Legal due diligence
- Transmission Infrastructure design and Site due diligence
- Environmental and Disaster Risk Assessment

### Task 1.2.1 Economic and Social Cost Benefit Analysis (ECSBA)

The ECSBA will comprise both a qualitative and quantitative assessment of the economic and social costs and benefits of the proposed project, including a determination of the Economic Internal Rate of Return and the Benefit-Cost Ratio (BCR) for the project.

### Task 1.2.2 Financial Viability Assessment

The TA will develop a Project Financial Model which will be used to evaluate:

- The Financial Viability of the Project including determination of Project and Equity IRRs
- Project Financing Needs – up front and recurring as driven by Capex requirements
- 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 – necessary tariff levels required to support various levels of IRR, the potential need for public sector funding support for the Project – quantum, form, timing, delivery
- The Affordability of the Project for consumers and the public sector

In accordance with GOK's PPP Fiscal Commitment and Contingent Liability (FCCL) Management Framework, the TA will also analyze the potential fiscal risk and contingent liabilities of the Project. The TA will quantify the liabilities associated with the recommended project configuration and propose how the same shall be managed and the funding requirements. FCCL work shall also include updating of the Feasibility Study, FCCL quantitative and qualitative assessments and other documentation throughout the TA contract period; updating of costing and all other related numbers in the financial model and in the report through the period prior to final RFP issuance (i.e. the final RFP prior to receipt of bids following competitive dialogue), negotiations and financial close stages. The TA should discuss and bring to the notice of the PPP Unit and the CA all changes, whether minor or major, immediately, on the need for such change being noticed as well as during the process of making the change and following the change. The FCCL assessments should be done using the formats recommended by the Government of Kenya (GOK) and should adhere to the FCCL guidelines/ technical guidance and latest excel model in use for such assessments. The advisor will be expected to propose how the FCCL assessments shall be managed.

### Task 1.2.3 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 which will be considered in Task 2 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. This will include a high-level analysis of principles paramount to those PPP options from both the viewpoint of a potential investor as well as the public party, indicating the legal implications of the identified and preferred PPP models. Parallel to that, the existing regulatory and institutional framework will be assessed so as to identify any legal impediments arising from the proposed PPP option. The TA will identify the necessary amendments to make the proposed PPP modality workable.

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



- Assess current national and county laws, acts, regulations, administrative issuances, policies and institutional arrangements to ascertain first any constraints to Project implementation, and second the validity and viability of the alternative PPP structures for the project, including KETRACO's capacity to manage and monitor the implementation of the project once operational, while identifying the gaps in the legal and regulatory framework as it applies to the management of the project, and recommend required changes to improve the governance, institutional or regulatory regime.
- Develop appropriate institutional arrangements for the Project taking into consideration the roles and responsibilities of KETRACO, other Government agencies & entities, private sector, and other stakeholders, including consumers and public at large.
- Provide advice on appropriate Institutional and Organizational Framework and Capacity Building needs for project procurement and subsequent contract management – including advice on:
  - public sector side procurement management and procurement steering arrangements
  - resourcing, training and capacity building needs for the public sector side
  - operational arrangements between public sector side and advisers during procurement
  - contract management arrangements
  - resourcing, training and capacity building needs for contract management function
  - prepare terms of reference and procurement strategy for Independent Engineer/Consultant
- Assist in resolving legal issues associated with procurement disputes and management of the social, economic and environmental impacts of the project in a manner consistent with the Constitution of Kenya (2010) and other relevant national and county legislation, taking into consideration international best practices.

#### Task 1.2.4 Transmission Infrastructure Design and Site Due Diligence

##### **Aerial Survey & Mapping**

The TA will be expected to undertake aerial survey and mapping for the defined line route for the projects. The activities will include:

- a. Establish Vertical and Horizontal Primary Survey controls along the specified transmission line route and aerial survey and mapping of the Transmission Lines
- b. Generate detailed Topographical Map and Colour Orthographical Maps of the mapped corridor as well as Longitudinal Profiles for the Centre Line of the corridor.

##### **Transmission Infrastructure Design**

The TA will be expected to undertake engineering design for substation and transmission lines to enable specifications to be developed and accurate cost estimates known. The activities will include:

- a. Carrying out sample geotechnical investigation on-line route and substation locations, and thereafter design the foundations
- b. Design of substation layout and transmission line towers and alignment/profile

##### **Cadastral Survey**

The TA will undertake cadastral survey of the projects as per guidelines outlined in the survey act cap 299 (Kenya). The activities in the cadastral survey shall include:

- Establish Horizontal Controls along the corridor of the Transmission Line and source for Base data (Survey Maps and plans) from government and other relevant bodies to be used for the survey.
- Develop and prepare cadastral trace along the identified Transmission Line Corridor and superimpose the cadastral information onto the georeferenced aerial photographs
- Carry out official searches for all parcels affected by wayleave corridor and prepare an excel file of the attribute information for all parcels within the wayleave corridor. The Terms of Reference of Cadastral Survey are detailed under Annex 1 of this TOR.

### **Site Due Diligence**

The TA will then carry out a due diligence of the project sites, that is the line route and substation site, with a view to identifying any impediments to project implementation and advising on how such impediments should be addressed, covering inter alia;

- Land requirements and availability
- Title, rights of way, easements, encumbrances
- Access
- Resettlement
- Land acquisition process and costing

Task 1.2.5 Preparation of an Environmental and Social Impact Assessment (ESIA) and Social Safeguards Studies (Resettlement Action Plan [RAP], Social Assessment [SA] and a Vulnerable and Marginalized Groups Plan [VMGP])

Given the involvement of the private sector, the GOK and the WB have agreed on the use of Environmental Impact Assessment and Audit Regulations 2003 established under the Environmental Management and Coordination Act (EMCA), 1999 (amendment) 2015 of Kenya and WB Safeguard Policies to address the environmental and social impacts of the proposed Project, including using WB Operational Policy 4.12, Involuntary Resettlement, to address direct physical economic and displacement issues that are expected to result from the Project. Similarly, the WB's Operational Policy 4.10 (Indigenous peoples - IPs known in Kenya as Vulnerable and Marginalized Groups – VMGs) will be used to assess potential impacts on the two lines on VMGs should such people be present or attached to the projects areas of influence, and to recommend mitigation measures for any adverse impacts on such groups.

The TA is, accordingly, expected to prepare an ESIA for approval by NEMA after clearance by the Bank, and subsequent issuance of the license against the reference conceptual design, and a Resettlement Action Plan (including detailed land acquisition plan: entitlement matrix, compensation, livelihood restoration and resettlement assistance plans as appropriate) and VMG Plan (if applicable) for implementation by KETRACO.

#### **(a) Environmental and Social Impact Assessment (ESIA):**

The environmental and social due diligence component of the assignment will take the form of an ESIA study. The main objective of this ESIA study is to identify and assess Environmental and Social (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), Cap 387 (amendment) 2015 of Kenya and the World Bank Safeguards Policies and the World Bank

Directive and Good Practice Note on Gender Based Violence (GBV). The detailed scope of the ESIA work is set out under Annex 2 of this ToR. The TA is expected to prepare the full ESIA based on the preliminary/reference/concept project design. The ESIA shall be done under Phase I of this assignment.

**(b) Resettlement Action Plan (RAP):**

The objective of the Resettlement Action Plan (RAP) study is to: (i) conduct a baseline socioeconomic survey of the projects' area of influence to establish the current socioeconomic situation of the PAPs; (ii) undertake an assessment of the potential positive and adverse, direct and cumulative impacts of the project on the project-affected persons (PAPs); (iii) carry out a PAPs and assets census and categorize the PAPs according to their rights and entitlements under the project; (iv) prepare an entitlement matrix, and a livelihood restoration plan (if relevant); (v) establish the cut-off date to prevent rent seeking; (vi) Sensitize PAPs on the cutoff date and its implications; and, (vii) organize the information from (i-v) into a RAP report based on the current socio-economic situation of the PAPs and all the other relevant social factors. The detailed scope of work required to undertake the RAP is set out in Annex 3 of this ToR. The RAP shall be done under Phase II of this assignment.

**(c) Social Assessment (SA)**

The objective of the Social Assessment to ensure that the project's negative social impacts are avoided, minimized or mitigated, and that the VMGs affected by the project realize economic benefits in a culturally appropriate and in gender and intergenerationally inclusive manner.

If, based on the screening, it is concluded that IPs/VMGs are present in, or have collective attachment to the project site, the TA will undertake a SA to evaluate the project's potential positive and adverse effects on the IPs/VMGs, and examine project alternatives where adverse effects may be significant. The breadth, depth, and type of analysis required for the SA will be proportional to the nature and scale of the proposed project's potential effects on the IPs/VMGs present. The TA in consultation with KETRACO, will prepare detailed ToRs for the SA once it is determined that IPs/VMGs are present in the project area. The VMGs will be consulted based on the free, prior and informed consultations principles, which refers to a process whereby affected vulnerable and marginalized communities freely have the choice, based on sufficient information concerning the benefits and disadvantages of the project and its potential impacts on them, and where and how these activities occur.

The project affecting the VMGs that meet the OP 4.10 criteria, whether negatively or positively, will be prepared in consultation with the affected VMGs. The policy requires that the implementing agencies engage in free, prior and informed consultations with the affected vulnerable and marginalized communities at every stage of the project to fully identify their views concerning the potential impacts of the project on them and to obtain broad community support for the project and to enable them access project benefits. Similarly, the development of project-specific measures to avoid adverse impacts and enhance culturally appropriate benefits should be drawn in consultation with the VMGs.

The project will put the following measures in place:

- i. Ensure that project design frameworks and the attendant processes and activities are disclosed in culturally appropriate and accessible manner;
- ii. Ensure that IPs/VMGs and their organizations are fully incorporated in the selection, design, and implementation processes through the free, prior and informed consultations;

- iii. Ensure coordinated efforts to equitably distribute project services through the implementation of a stakeholder engagement plan (SEP);
- iv. Undertake specific impact assessments of proposed projects on the economic, and social and cultural development of IPs/VMGs and dominant communities;
- v. In collaboration with the identified VMGs, screen all projects for potential impacts; and
- vi. Implement outreach activities to VMGs to raise awareness on the importance of the transmission projects.

Social Assessment will provide the VMGs with the opportunity to participate in the design of the project. It is anticipated that during the Social Assessment, the VMGs will be sensitized to ensure that places of cultural importance, community conservancies if any, and other critical habitats are not negatively impacted by the project. The monitoring of project activities will start at the social assessment stage. The SA shall be done under Phase II of this assignment.

**(d) Vulnerable and Marginalized Groups Plan (VMGP)**

The objective of the VMGP is to ensure that VMGs receive social and economic benefits under the project that are culturally appropriate, and, that measures are put in place for avoiding, minimizing, mitigating, or compensating any adverse effects on the VMGs that may have been identified in the SA.

The VMGP preparation and justification will be based on the findings and recommendations of the SA, which will have to be referenced in the VMGP. The VMGP will consist of the summary of the findings of the SA including the project impacts, proposed mitigation measures, proposed benefits to VMGs, proposed consultations plan with VMGs during VMGP implementation and a Grievance Redress Mechanism during VMGP implementation. In addition, it will provide detailed budget for VMGP implementation (including budget for the consultation process and GRM) and a framework for monitoring the VMGP implementation.

The need for VMGPs will depend on:

- a) The presence of IPs/VMGs; and
- b) The nature and scale of the project impact on groups that meet the OP 4.10 criteria.

The VMGPs will capture the nature and scale of the project impacts and vulnerability of IPs/VMGs, including:

- a) Adverse impacts on customary rights of use and access to land and natural resources;
- b) Negative effects on the socio-economic and cultural integrity;
- c) Effects on health, education, livelihood, access to the project benefits, and social security status; and
- d) Other impacts that may alter or undermine indigenous knowledge and customary institutions. It will also identify ways in which to bring benefits of the project to IP/VMG communities if technically feasible.

Based on the above, the TA will consult with IPs/VMGs and ensure that the PAPs receive culturally appropriate social and economic benefits. It will also establish measures to avert the identified potential adverse impacts on IPs/VMGs. Where this avoidance is proven to be impossible, VMGPs will outline measures to minimize, mitigate, and compensate for the adverse impacts.

The level of detail and comprehensiveness of the VMGPs will vary depending on the specific project and the nature of impacts to be addressed. If the impacts are limited to acquisition of customary land, the elements of the VMGP will be combined in the RAP. If IPs/VMGs are the sole or overwhelming majority of the project beneficiaries, the elements of the VMGP could be integrated into the project design or documents such as community development program

to ensure that all IPs/VMGs participate in and receive culturally appropriate benefits from the project.

The detailed scope of work for the Social Safeguards Studies is set out under Annex 3 of this TOR. Note that these studies shall be done at Phase II of this assignment.

The ESIA and Social Safeguards studies will be carried out to deliver on the following broad objectives:

- To identify and map out the various stakeholders, including groups of project affected persons (PAPs) who are directly affected by the project and other stakeholders, and to disseminate information on the project to them and the general public;
- To identify and assess all potential significant environmental and social risks and impacts of the project (including risks and impacts related to labour influx, gender-based violence (GBV) and location of material sites and workers camps where appropriate) and recommend appropriate mitigation and management measures;
- To evaluate potential impacts of engineering and design activities during site preparation, construction and operational phases of the project;
- Prepare a comprehensive Environmental and Social Impact Assessment Study Report for submission to NEMA for review and approval (after clearance by the Bank) and subsequent issuance of license to KETRACO for the project; and
- Prepare a Resettlement Action Plan for implementation by KETRACO.
- RAP preparation will be based on the findings of the ESIA study.

The TA's team will identify, assess and quantify the specific environmental and social risks and impacts associated with Transmission grid expansion programme. It will ensure all environmental and social aspects of the Project comply with Kenyan laws and regulations as well as World Bank Environmental and Social policies and directives as necessary.

Specific tasks entail, but are not limited to:

- Prepare/review and/or update, as necessary, the Environmental and Social Risk Assessment and Analysis. The Experts(s) will ensure that all aspects related to social safeguards including GBV and labor influx have been considered, and necessary mitigation measures have been taken, adequate for purposes of securing approvals in accordance with the existing legislation and for effective implementation.
- Conduct a climate and disaster risk vulnerability assessment, identifying potential threats and risks due to climate and geo-hazard situations/conditions in the covered/service areas.
- Identify key risk areas and threats to the existing or new facility; identify technical, administrative, institutional, infrastructure, and social/environmental mitigating measures and recommendations for integration into the over-all project design, financial and implementation proposal.
- Conduct gender analysis and identification of gender issues and gender gaps that the project must address using available legislated guidelines.
- Develop an Environmental and Social Impact Assessment (ESIA) report with detailed ESMP that clearly identifies the social and environmental risks and mitigation measures, to be discussed in a stakeholder consultation process, and for purposes of assessing the social and environmental impact of the project.
- Conduct a RAP study for the line which will include: -

- (i) Identification of project social impacts and affected populations including vulnerable households and individuals among the affected people - detailed socio-economic survey will be conducted in order to identify entitlements of each category of PAPs, key issues faced in terms of land acquisition and compensation, and options and strategies for minimizing impacts on current land use activities or cultural heritage;
- (ii) An inventory and valuation of assets;
- (iii) A legal framework for land acquisition and compensation;
- (iv) A compensation framework that will outline the land acquisition/encumbrance and compensation processes, options available, eligibility criteria and entitlements;
- (v) A description of resettlement assistance and restoration of livelihood activities where PAPs are affected appreciably;
- (vi) A detailed budget providing costs for each of the RAP activities including resettlement assistance and livelihood restoration where applicable, and resources as well as specific rates for compensation of loss of assets and the methodology of how these values were derived;
- (vii) A detailed implementation schedule including public consultation program, valuation and socio-economic surveys, cut-off date, group compensation options, disclosure, individual delivery of the entitlement compensation package, offer notice period and agreement finalization date, etc.;
- (viii) A description of organizational roles and responsibilities;
- (ix) A framework for public consultation, participation, and development planning including community engagement strategy during implementation;
- (x) A description of provisions for redress of grievances that has been derived from Consultations with the potential PAPs; and
- (xi) A framework for M&E and reporting.

The VMGP shall be done under Phase II of this assignment.

### Task 1.3 Communications on the Project

In consultation with the CA, the TA shall assist the CA develop a comprehensive project-specific communications strategy and a stakeholder management plan and provide technical support to the implementation of the strategy and plan. The Communications Plan will include:

- stakeholder identification and mapping for each T-Line
- stakeholder communication needs analysis for the project
- communication strategies across multiple stakeholders to address the identified communications needs
- means to seek feedback from stakeholders on critical aspects of the project and to find mutually acceptable solutions for potentially conflict issues
- a comprehensive communication plan for the implementation phase of the project (key messages on issues anticipated to arise such as economic and financial aspects, the environment, gender, labor influx, GBV, and social risks associated with project implementation, including implementation of proposed mitigation measures, among others; communication activities and tools; communication implementation plan; processes for engaging stakeholders; required resources and costs of implementing the communication plan).

The Transaction Adviser will be expected to provide technical support to the implementation of the Communications Plan and the stakeholder management plan which will be led by the

Contracting Authority. The communication strategy and plan should target project beneficiaries, general public, media, members of Parliament, among others.

## **TASK 2: Procurement Options and PPP Options and Structure Analysis**

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.

In their analysis the TA must consider all infrastructures which need to be developed for the Project – including generation assets if any, ancillary, access and supporting infrastructure, recognizing that different procurement and PPP options may be appropriate for different types of infrastructure.

### *Task 2.1: Options Development, Evaluation and Selection*

The TA will:

- Assess a range of credible alternative procurement and PPP options including justification for their selection. Options must include traditional public sector procurement. For each option the TA will set out:
  - The key roles and responsibilities of the private sector and of the public sector
  - The 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:
  - 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, populated with data and the assumptions considered.
  - Affordability for users and the public sector
  - Assessment of Fiscal impact including any contingent liabilities for the public sector
  - Risk allocation
  - Public service delivery
  - Private sector feedback on attractiveness, bankability and risk allocation, based on a Preliminary Market Sounding amongst potential operators, developers, investors and financiers
- Present the results of the Evaluation 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 of which PPP option in its professional judgment is the most viable and bankable.
- Carry out Market Sounding of the Project and of alternative risk allocations/ PPP structures
- Provide a detailed description of the preferred Procurement Option and PPP Structure, including:
  - Risk Allocation
  - Outline of Payment Mechanism/ Tariff arrangements
  - Indicative Financing Structure and sources – private sector bank debt, multilateral debt, public sector debt, project bonds, grants (indicate source), developer equity, other (specify)
  - Heads of Terms for the proposed PPP Structure

### *Task 2.2: Financial Modeling*

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

- Support the Economic Viability Analysis of the Project and Alternative Technical Solutions (Task 1.2.1)
- Support the Financial Viability Analysis, the determination of revenue requirements to meet Project Funding and operation 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 (Task 1.2.2)
- Support in determining the Project's Financing requirements and the evaluation of alternative financing structures and sources (Task 2.1)
- Support in the evaluation of alternative procurement options and PPP options, including Value for Money analysis (Task 2.1)

And in the implementation phase of the Project:

- Support in the detailed design of the Payment Mechanism/ Tariff arrangements
- The financial model will act as a shadow Bid Model and assist in evaluating bids and their robustness

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.

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).

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. The Financial Model should allow the conduct of sensitivity analysis for the purpose of quantifying the financial impacts of different structuring options.

In detail, the TA will undertake the following comparative financial analyses of the Project:

- Review and discuss applicable approaches for enhancing the project's attractiveness to both investors and their lenders/financing institutions, such as Viability Gap Funding (VGF) and/or operational subsidies, payment mechanisms, performance guarantees, pre-conditions of a private operator for meeting debt service obligations, as well as specific default and risk clauses, and step-in rights of lenders and the KETRACO.
- 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.
- Based on the risk analysis, and in accordance with GOK's FCCL Framework for PPP projects, prepare a Project Risk Matrix for use by KETRACO and ultimately the Debt Management Office.
- The project's risk matrix shall be presented to representatives of KETRACO and the PPP Unit soon after the submission of the Feasibility Study.



In their proposals, Bidders should describe in detail the structure and functionality of the Financial Models they would develop and also the methodologies, assumptions and tools they would employ in carrying out the necessary financial analysis.

The TA shall update the Feasibility study financial model and FCCL assessments for changes in the project structure during competitive dialogue/ RFP discussions and for efflux of time till the final bid documents are issued to the bidders.

### *Task 2.3: Market Sounding*

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

- Propose, discuss and agree with KETRACO an approach to market sounding on the project;
- Prepare a Market Sounding document that will include a Project information memorandum (which will cover the objectives of KETRACO, 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;
- Provide the Project Profile to the identified private parties and holding one-on-one discussions with them, either telephonically, or if practical and cost effective, face to face;
- Organize and participate in workshops with KETRACO and other stakeholders to review findings of the market sounding and determine key areas that will need consideration in preparing the Feasibility Report. This shall include two investor conferences in jurisdictions that have successfully implemented PPPs in Transmission Lines;
- 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:
  - Market sounding objective;
  - Key issues that needed to be considered;
  - List of companies consulted;
  - List of questions and answers;
  - Summary findings and matters considered in the Feasibility Report.

In summary, the TA will organize consultation discussions 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 feasibility report and in designing the PPP transaction structure.

### *Task 2.4: Summary Recommendations, Project Implementation Plan and Feasibility Study Report*

The TA will prepare a comprehensive Feasibility Study Report in accordance with the requirements of the PPP Act, and the template provided in Annex 5. This Report will present the analysis carried out, the conclusions reached and the recommendations made concerning the Project Feasibility and the preferred method of procurement including recommended PPP structure, as well as legal, regulatory, institutional, financial, economic, funding, tariff

structure, environmental, social and risk allocation recommendations necessary for the successful implementation of the Project.

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

- A summary of how the proposed PPP project addresses KETRACO's strategic objectives and its consistency with the sector's master plans
- A summary of the output specifications for the Project
- Other potential commercial activities that the PPP Company may undertake to augment revenues and lessen the fees charged to the offtaker
- A list of significant Government assets which will be used for the Project (such as land and existing structures, access roads, etc.)
- A summary of the fiscal implications and potential contingent liabilities for the public sector
- A detailed description of the type of PPP project proposed and its envisaged payment mechanism/ tariff regime
- A detailed description of the proposed Key Risk Allocation
- Draft Heads of Terms which will form the basis for the PPP agreements to be developed in Phase 2

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

- Tasks
- Timing
- Responsibilities for each task
- Key approval/ decision points and milestones

### **TASK 3: Support to KETRACO on Securing PPP Committee Approval and All Other Government Approvals**

The Feasibility Study Report will be submitted in the first instance to KETRACO and the PPP Unit, and subsequently to the PPP Committee and the Debt Management Office for approval.

The TA shall complete all required documents to be submitted to the PPP Committee, and assist KETRACO address all concerns until the approval is accorded by the PPP Committee and other related parties. These documents shall include the following:

- i. Electronic and hard copies (number to be agreed on during negotiations), in MS Word format, of the Feasibility Report;
- ii. Electronic copy, in MS Excel format, of the financial analysis/financial model in traceable formula format;
- iii. The Environmental and Social Impact Assessment (ESIA) report in electronic & hard copies (Ms word file);
- iv. Land acquisition plan and social strategy frameworks (i.e. resettlement and gender action plan);
- v. Location map (with electronic copy); and
- vi. Other documents that may be required by the GOK (PPP Unit and KETRACO).

The TA will also provide assistance in securing approval of the estimated FCCL by the Debt Management Office (DMO) including preparation of documentation required under the FCCL Framework for PPP projects in Kenya. Also, if necessary, the Transaction Advisor shall assist KETRACO 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 KETRACO in securing the opinion of the Attorney General's Office on the draft PPP contract (during Phase II).

## **CONTRACT BREAK BETWEEN PHASE I AND PHASE II**

If it is determined at the feasibility study stage that the project is not suitable for implementation under PPP arrangements, the consultancy services shall be deemed to have been completed under the contract and the TA shall be paid for the milestone(s) completed.

## **PHASE 2: PPP Procurement**

The TA will work with KETRACO and the PPP Unit to implement the PPP procurement process in accordance with the PPP Act. The TA is expected to provide complete project management of the entire procurement process, including identifying and managing, together with KETRACO, the tasks of all parties required for successful procurement implementation. The work of the TA will include, inter alia, the tasks described below:

### **Task 1: Approval and administration of the bidding process**

The TA must 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.

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

#### *Task 1.1: Detailed Procurement Plan*

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

- Advice on optimum bid strategy
- Advice on mechanisms to maximize competition while avoiding unrealistic bids and project vulnerability from overly aggressive bidding.
- Review of information to be provided by KETRACO to bidders to manage third party liabilities.
- 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, least viability gap funding, lowest average tariff, shortest concession period, lowest operating subsidy, highest concession fees, etc.
- Design of key aspects of the tender procedure, for example the number of stages in the process, use of competitive dialogue (if necessary), 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.
- 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. The Data room shall be proprietary to this project and the CA, but which will be managed throughout the procurement process by the TA.

- Information Memorandum and other marketing materials,
- Tender documentation.
- The PPP Project Agreements (including all annexes) that implement the chosen PPP approach:
  - applying the risk matrix and heads of terms developed during the Feasibility Study, updated, if needed, to address all project issues and market context,
  - incorporating, as appropriate, the outputs from the financial model,
  - explaining to KETRACO whether and to what extent certain provisions could be amended (e.g. in the process of negotiations) without disturbing the key risk allocation goals of KETRACO
- All advice shall be compliant with applicable law (and considering any constraints or opportunities associated with applicable law), international best practice and market feedback.

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

#### *Task 1.2: Pre-qualification*

The TA will, on behalf of KETRACO, design and administer a pre-qualification (request for qualification (RFQ) process with the intention of:

- ensuring that KETRACO's objectives and requirements are communicated clearly to the market
- determining the extent and nature of interest from the private sector
- pre-qualifying a competitive number of competent bidders in an equitable and transparent way

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:

- prepare all the necessary RFQ documentation, including advertising and marketing material;
- set up and administer the process by which KETRACO can pre-qualify the parties, including responding to questions and interfacing with bidders; and
- help KETRACO evaluate and pre-qualify bidders

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.

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

#### *Task 1.3: Bid Evaluation Criteria and Tender Process Design*

The TA will:

- design a suitable bid evaluation process and criteria. This criteria will be included in the tender document;

- 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

#### *Task 1.4: 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:

- design criteria
- the output and performance specifications
- requirements for compliant bids
- a risk profile as established in the feasibility study
- the payment mechanism
- tariff arrangements
- a draft PPP/concession agreement
- the bid process
- evaluation criteria
- bidder communication systems and procedures
- bid forms – technical and financial bid submission forms, bid letter, statement of compliance etc.
- all other information necessary to ensure compliant, high quality and comparable bids

#### *Task 1.5: Draft PPP Project Agreements*

The TA will prepare a draft PPP agreement, related agreements, and ToR for Independent Engineer/ Expert), in close liaison with KETRACO, implementing the risk allocation regime and using best practice. The agreement will include all necessary annexes and subsidiary documentation, such as performance specification, project scope, KETRACO requirements, technical specification, Project performance monitoring regime, code of construction practice, requirements for network integration, reporting.

#### *Task 1.6: Necessary Approvals*

The TA will compile all the documentation necessary for KETRACO to obtain the necessary approvals to enable the procurement process to begin.

#### *Task 1.7: Administration of the Bidding Process*

The TA will provide all necessary support to KETRACO for the efficient and professional management of the bidding process. This includes and is not limited to creating & managing a data room, facilitating structured engagement between the TA, KETRACO and bidders, helping KETRACO 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 and compilation of the evaluation report.

#### *Task 1.8 Development of Contract Management Framework for the Project*

During the bidding process, the TA in close liaison with KETRACO, shall design a project – specific contract management framework in accordance to the provisions of the Project Agreement (PA) and the project’s risk allocation structure. This will include a clear, complete

and easy to follow guide for KETRACO on the implementation of the PPP, with mapping of the different rights and obligations of all parties, including the role of the Independent Engineer and guidance to KETRACO on processes, remedies and mechanisms set out in the PPP contract, all other project agreements and at law, and will be in accordance with the provisions of the PPP agreement. Institutional roles, actors, monitoring & evaluation methodologies and project reporting protocols and tools should also be included. These should be packaged into a manual, guidelines, norms and practices that are project specific.

The TA will be required to carry out training workshops, as required, with KETRACO and other government stakeholders including those who will form a part of the contract management team.

#### *Task 1.9: Evaluation of bids*

Bids will be evaluated with the support of the TAs in accordance with the tender documents and within the framework for bid evaluation developed earlier.

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 bidders have satisfied the evaluation and ranking criteria, and how the preferred bidder satisfied such requirements. 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 bidder and substantiate on how all bids are evaluated.

#### *Task 1.10: PPP agreement negotiations, PPP agreement management plan*

The TA will assist KETRACO in final negotiations of the project documents (for example PA, Direct Agreement, EPC Contract, O&M Contract, PA Schedules, Government support measures etc.); attend and support in all negotiation meetings; and advise KETRACO in preparing the Project Report, FCCL Report and any report as required. This tasks will also involve:

- recommend the make-up of the negotiation team,
- categorizing issues appropriately, developing timelines for completion
- planning negotiation tactics
- reviewing proposed sub-contracts, in particular with construction contractors and operators, to the extent forms of these contracts have not been included in the PPP contract or the tender documents
- updating of costing and all other related numbers in the financial model and in the report through the period negotiations and financial close stages
- advising on proposed changes to the agreed PPP contract and/or form of sub-contracts
- advice on public and private sector satisfaction of the conditions precedent to the PPP contract, often including the validity of licenses and permissions obtained by the preferred bidder, formation of corporate vehicles in the form required, financial close of the project financing, and implementation of the commercial requirements for performance of the project
- managing relationship with second bidder, including managing bid bonds and on-going discussions to prepare in case of withdrawal of the preferred bidder
- assisting with processes for reaching agreement
- Managing and assisting with additional sets of negotiations with lenders. This may involve extended discussions of Government financial participation to protect the lenders from specific risks

- review and negotiation of the financial documentation (which will often have a direct effect on the rights and obligations of the Government)
- Providing legal opinions as required e.g. that transaction is binding on its terms, on security and financial management structure, on revenue structure and current regulatory mechanism. The TA will ensure that all agreements reached are incorporated into all the financial, commercial and legal documentation, and will assist with drafting the necessary and related correspondence

The final terms of the agreement, each as negotiated with the preferred bidder must be approved in accordance with the PPP Act and Energy Act. The TA will be responsible for compiling the necessary submissions for KETRACO to secure this approval.

#### *Task 1.11: PPP contract signature and case study report*

The TA will provide all necessary help to KETRACO with all functions and activities related to signing the final PPP contract (Commercial Close). The TA must also compile a case study covering experience and lessons learnt up to commercial close. The case study report will be a confidential document of KETRACO and the PPP Unit.

#### *Task 1.12: Financial closure, close-out report and case study*

The TA will support KETRACO throughout the process of finance raising for the Project, up until Financial Close. The TA will be expected to update the financial model through the period of financial close, covering the period between commercial close and financial close, and must incorporate any additional factors that may be required by KETRACO. This case study shall then be consolidated with the earlier one and packaged as the final case study for the project. The TA will also prepare a close out report at financial close. The close-out report will be a confidential document of KETRACO and the PPP Unit.

#### *Task 1.13: Disclosure of information*

The TA will be expected to assist KETRACO and the PPP Unit in providing the requisite disclosure of basic project and procurement information which will be based on the proposed disclosure framework as contained in the report on improving transparency and accountability in PPP: disclosure diagnostic report for Kenya (2018) including the Annexes.

### **Phase III: Project Based Learning (to run concurrently with phases I and II)**

To ensure knowledge and skills transfer by the TA to KETRACO, the TA will be required to provide classroom-based and on-the-job capacity building to a cohort of at least 10 No. Public officials within the CA at critical points of the project preparation process. All bidders are therefore expected to enumerate a clear and deliberate approach, as to how knowledge and skills will be transferred to Project Appraisal Team and any other Project Teams that would be tasked to carry out various roles in the course of the preparation and implementation of the project to effectively manage the PPP contract and supervise the Project Company post Financial Close. In particular, training to the CA's selected cohort of officials will shadow the respective TA expert teams 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 updated Study, prepare a document on lessons learnt during the feasibility study process. At the pre-tender stage, the TA will sensitize the CA on critical tender documents and processes, including the rationale for content in the tender documents. After

commercial close but before financial close, the TA shall build capacity of the CA on implementation of the contract management framework.

The appointed Transaction Advisor will assess the capacity of the Contracting Authority including the various teams tasked to carry out the said roles and advise on an appropriate contract management structure and resourcing – including structure and resourcing for the supervision of E&S activities that are the responsibility of the Project Company, and develop a suitable capacity building programme for implementation.

Based on this capacity assessment of the Contracting Authority, the Transaction Advisor will design a PPP Contract Management Framework, including advice on CA contract management responsibilities, resources, skills and experience needed, in-house vs outsourcing resourcing strategy, training and capacity building needs and, in close liaison with the Contracting Authority, draft a comprehensive PPP contract management plan, consistent with the provisions of the PPP agreement and the PPP Act, to help the Contracting Authority in the management of the Project and its risks, rights and obligations after financial close and supervision of the PPP Company in meeting its obligations under the PPP contract. 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. The TA may also undertake any other project-based capacity building that may be relevant and suitable for the project.

The Transaction Adviser is also expected to provide classroom-based training by organizing workshops for each of the assignment deliverables and contract management training for the CA's PPP contract management team. An outline of such a Training Programme should be included in the TA's Technical Proposal

The TA will make all arrangements for these trainings in consultation with KETRACO. The TA will meet its personnel costs associated with facilitation of the trainings while GOK shall meet costs associated with the training venue and logistics for the GOK staff that shall participate at these training workshops. In addition, the TA shall recommend relevant specialized trainings on PPPs with reputable training institutions globally. The trainings should be for at least 2 weeks.

## **6. TRANSACTION ADVISOR SKILLS AND EXPERIENCE**

### **6.1 Experience Requirements**

The Transaction Advisor (TA) will be comprise of a single organization or consortium of firms led by either the Financial or Technical Advisor. 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 TA will collectively cover the range of technical (including environmental and social), financial (including economic), legal and other expertise required to procure the Project through a PPP transaction. The Lead Advisor shall enter into contract with the Client (National Treasury and KETRACO).

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 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 entire team. Team members may not be changed or removed without the prior written approval of KETRACO and the PPP Unit, and replacement with someone at least as qualified and capable.

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



- Financial advisory, analysis and modeling experience, with a transmission project and project finance experience in the energy sector through to financial close
- PPP procurement and structuring
- Kenyan commercial and contract law
- Relevant international and regional experience in the legal frameworks for PPP and in the drafting and negotiating of PPP agreements
- Project planning, design, construction and procurement for power transmission lines
- Management maintenance, and operation of power transmission project

## 6.2 Key Personnel and Time Input

Bidders are free to propose their own team structure and Key Personnel, however they are advised that KETRACO expects, as a minimum, to see the following Specified Key Personnel in Table 1 below.

Bidders may propose the same individual and CV for more than one position if that individual is qualified for more than one position, but they must make it explicitly clear that this is what they are doing in order to ensure that the individual is evaluated against each position. Bidders may also propose two complementary (not alternative) CVs for one position if they do not have personnel with the full range of expertise required for such position. Again, Bidders must indicate clearly that this is what they are doing.

The Bidder’s proposed Specified Key Personnel will be evaluated against the Expertise Expectations set out in the table below. Bidder’s proposed Key Personnel outside of the below Specified Key Personnel will be evaluated on their individual merits, as will Bidder’s proposed non-key personnel. It is expected that a substantial majority of the proposed Specified Key Personnel will be full time employees of the Bidder, and credit will be given in the evaluation for this. Bidders are also required to state the proposed person month input of each member of their team (Key and non-Key personnel). The amount of input stated for Specified Key Personnel both within and outside of Kenya will be evaluated as a part of the Technical Proposal evaluation.

**Table 1 Specified Key Personnel Expertise Expectations**

Bidders are free to propose their own team structure and Key Personnel, to match the Expertise Requirements indicated in the table below.

No.	Position	Expertise Expectations
1.	PPP Expert/ Team Leader	<ul style="list-style-type: none"> <li>▪ A university degree in Finance, Management, Economics, Engineering, Law or any other relevant field.</li> <li>▪ A minimum of 15 years’ demonstrated experience in project management, with at least 5 years 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.</li> <li>▪ Successful preparation of PPP projects with at least three (3) financially closed projects, of which two (2) should be transmission projects.</li> <li>▪ Relevant qualifications and experience in power infrastructure development, operation &amp; maintenance projects in general, and in developing countries in particular.</li> <li>▪ Experience in power transmission company will be an additional merit.</li> <li>▪ Good English communication and writing skills, especially in report writing, are essential.</li> </ul>

No.	Position	Expertise Expectations
2.	Transmission Line/Power System Engineer	<ul style="list-style-type: none"> <li>▪ A post graduate university degree in electrical engineering.</li> <li>▪ A minimum of 12 years' demonstrated experience in design engineering of power transmission and distribution systems, substations, environment.</li> <li>▪ The expert must demonstrate expertise and experience in undertaking technical feasibility studies, conventional power system analysis studies such as generation and transmission planning studies, transmission master plans, transmission expansion studies, power system fault condition modelling and dispatch modelling.</li> <li>▪ Experience of providing engineering related advisory service on transmission concessions to government or government institutions and/or multilateral agencies will be required.</li> <li>▪ Relevant qualifications and experience in power infrastructure development, operation &amp; maintenance projects in general, and in developing countries in particular.</li> <li>▪ Successfully designed and/ or construction management of transmission line projects and substations for at least 2 such similar projects.</li> <li>▪ Good English communication and writing skills, especially in report writing, are essential.</li> </ul>
3.	Energy Sector Specialist	<ul style="list-style-type: none"> <li>▪ A university degree in Management, Engineering, Economics or related field with, optionally, relevant post-graduate qualification in energy sector planning.</li> <li>▪ 10 years' demonstrated experience in energy sector planning, transmission lines planning, management, and grid stability studies. Relevant qualifications and experience in transmission planning and power plant planning/engineering in general, and in developing countries in particular.</li> <li>▪ Good English communication and writing skills, especially in report writing, are essential</li> </ul>
4.	Power Economist	<ul style="list-style-type: none"> <li>▪ A university degree in Economics or related field, preferably with a relevant post-graduate qualification.</li> <li>▪ 10 years' demonstrated experience in power sector economics and power sector feasibility studies in both developed and emerging market environments. Demonstrated experience of energy markets. Demonstrated experience of power sector tariff setting and regulation.</li> <li>▪ Good English communication and writing skills, especially in report writing, are essential</li> </ul>
5.	Civil Engineer	<ul style="list-style-type: none"> <li>▪ A university degree in civil or structural engineering.</li> <li>▪ A minimum of 10 years' demonstrated experience in the design and construction of transmission lines.</li> <li>▪ The expert must also demonstrate expertise and experience in undertaking technical feasibility. Transmission lines experience will be an added advantage.</li> <li>▪ Good English communication and writing skills, especially in report writing, are essential.</li> </ul>
6.	Geotechnical Engineer	<ul style="list-style-type: none"> <li>▪ A university degree in geotechnical/geospatial engineering or any other relevant field.</li> <li>▪ A minimum of 10 years' demonstrated experience in material testing and geotechnical investigation for transmission lines.</li> <li>▪ The expert must also demonstrate expertise and experience in undertaking technical feasibility studies. Transmission lines experience will be an added advantage.</li> <li>▪ Good English communication and writing skills, especially in report writing, are essential.</li> </ul>

No.	Position	Expertise Expectations
7.	Land Surveyor	<ul style="list-style-type: none"> <li>▪ A university degree in Land Surveying and be registered to a recognized professional body with a valid annual practicing license</li> <li>▪ Should have working knowledge in Remote Sensing and Geographic Information Systems (GIS).</li> <li>▪ A minimum of 8 years' demonstrated experience in carrying out preliminary and detailed surveys for design and construction of power infrastructure projects and in survey related to wayleave acquisition.</li> <li>▪ Transmission lines experience will be an added advantage.</li> <li>▪ Experience in the World Bank's OP 4.12 is an added advantage.</li> <li>▪ The survey expert will work closely with the RAP team to guide on the extent of the wayleave corridor and determine the assets within the corridor for valuation purposes.</li> </ul>
8.	PPP Financial Expert	<ul style="list-style-type: none"> <li>▪ A relevant university degree preferably with a relevant post graduate qualification in Finance.</li> <li>▪ At least 12 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, economic viability assessments, etc.</li> <li>▪ Demonstrated experience in dealing with project finance structures and products and experience in financially closing at least two PPP projects.</li> <li>▪ Experience in Transmission power projects will be an additional merit</li> <li>▪ Good English communication and writing skills, especially in report writing, are essential.</li> </ul>
9.	PPP Legal Expert	<ul style="list-style-type: none"> <li>▪ A university degree in Law preferably with a relevant post graduate qualification.</li> <li>▪ A minimum of 10 years' demonstrated experience in international law, Commercial Law, Contract Law, 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.</li> <li>▪ Expertise in public law/ administrative and policy framework.</li> <li>▪ Experience in Transmission power projects will be an additional merit.</li> <li>▪ Good English communication and writing skills, especially in report writing, are essential.</li> </ul>
10.	Kenya Legal Expert	<ul style="list-style-type: none"> <li>▪ A university degree in Law preferably with a relevant post graduate qualification.</li> <li>▪ Must be an Advocate of the High Court of Kenya of not less than ten (10) years post admission experience.</li> <li>▪ A minimum of 10 years' demonstrated experience in drafting commercial agreements in Kenya, with additional merit for PPP-type agreements, demonstrable knowledge and experience of the legal, regulatory and institutional framework for PPPs in Kenya and of the power sector, relevant experience of public procurement/ transaction management.</li> <li>▪ Must demonstrate expertise and experience in drafting Project Agreements comprising of the Power Purchase Agreements, Lease Agreements, Steam Supply Agreements, Energy Conversion Agreements, Joint Venture Agreements, Joint Development Agreements, PPP Concession Agreements and Shareholders Agreements.</li> <li>▪ Expertise in public law/ administrative and policy framework.</li> <li>▪ Experience of working in the power sector will be an additional merit.</li> <li>▪ Good English communication and writing skills, especially in report writing, are essential.</li> </ul>

No.	Position	Expertise Expectations
11.	Communications Expert	<ul style="list-style-type: none"> <li>▪ University degree in Communication/Public Relations/ Mass Media.</li> <li>▪ Minimum 7 years demonstrated experience in public relations, and in the preparation and implementation of public/ stakeholder communications plans for infrastructure development projects. Experience of working with public sector organizations. Experience working in PPP projects will be an additional merit.</li> <li>▪ Communication skills both in written and spoken medium with a strong command of English. A strong command of spoken and written Kiswahili language will be an added advantage.</li> </ul>
<b>Personnel for the Environmental and Social Impact Assessment (ESIA), Resettlement Action Plan (RAP), Social Assessment and VMGP Preparation</b>		
12.	Team Leader Environmental & Social (E&S) Safeguards	<ul style="list-style-type: none"> <li>▪ An advanced degree in environmental studies, social sciences or any related field from a recognized university</li> <li>▪ 10 years' experience in similar assignment with specific focus on ESIA, RAP and SA preparation</li> <li>▪ 10 years in inter-disciplinary team management</li> <li>▪ Participation in ESIA, RAP, SA and VMGP preparation for a power line that met the requirements of an International Financial Institution, such as the World Bank, IFC or an Equator bank, AfDB, or EIB</li> <li>▪ Experience of at least three projects of similar scope and nature</li> <li>▪ Experience in WB's environmental and social safeguard policies is an added advantage</li> <li>▪ The E&amp;S Team Leader will be stationed in Nairobi, Kenya, for the duration of the assignment and will be required to coordinate the efforts of the Environmental and Social Safeguards teams.</li> </ul>
13.	Environmental Safeguards Specialist	<ul style="list-style-type: none"> <li>▪ A Degree in Environmental Sciences or Environmental Engineering from a recognized University.</li> <li>▪ NEMA registration</li> <li>▪ Minimum overall experience of 10 years, with at least 5 years' international experience on similar projects in sub-Saharan Africa</li> <li>▪ Participation in an ESIA for a power/transmission line that met the requirements of an International Financial Institution, such as the World Bank, IFC or an Equator bank, AfDB, or EIB</li> <li>▪ Experience of working in a private sector participation project will be an additional merit</li> <li>▪ Good English communication and writing skills, especially in report writing, are essential</li> </ul>
14.	Resettlement Specialist	<ul style="list-style-type: none"> <li>▪ A degree in Sociology/Anthropology/Community/Rural Development or any social science discipline from a recognized university</li> <li>▪ Ten years' experience in socio-economic surveys</li> <li>▪ Experience of at least three projects of similar scope and nature</li> <li>▪ Experience in the World Bank's social safeguard policies is an added advantage</li> <li>▪ The Social and Resettlement Specialist will be required to spend at least 75% of their time in the sub project sites to ensure the right level of supervision for the various succeeding social aspects of the various studies – ESIA, RAP, Social Assessment and VMGP.</li> </ul>

No.	Position	Expertise Expectations
15.	Gender/Gender-Based Violence (GBV) Expert	<ul style="list-style-type: none"> <li>▪ A Bachelor's degree in social sciences, law, project management, or any other similar discipline;</li> <li>▪ At least 8 years of overall professional experience;</li> <li>▪ At least 5 years of experience in supervising GBV prevention and response activities;</li> <li>▪ At least 5 years' experience in conducting awareness campaigns on women's rights, gender equality, GBV, and/or reproductive health considered an asset;</li> <li>▪ Excellent knowledge of the guiding and ethical principles that govern work with survivors of GBV and good practices in the implementation of activities to prevent and address GBV;</li> <li>▪ Good experience in data collection and analysis on GBV;</li> <li>▪ Good knowledge of the WB's environmental and social safeguard policies;</li> <li>▪ Good knowledge of Kenya legislation in the area of GBV;</li> <li>▪ Excellent command of English and good ability to write reports;</li> </ul>
16.	Social Assessment (SA) and Vulnerable and Marginalized Groups Plan (VMGP) Expert	<ul style="list-style-type: none"> <li>▪ An advanced degree in Sociology, Anthropology or other social sciences from a recognized university</li> <li>▪ Proof of leadership in carrying out five (5No.) SA studies and preparation of five (5No.) VMGPs/Community Development Plans with at least two (2No.) of SAs and at least two (2No.) VMGP being for Power Transmission Line projects and the SAs and VMGPs must be in line with the requirements of International Financial Institutions (IFIs) such as the World Bank, IFC, AfDB, EIB or equivalent institution</li> </ul>
17.	Land Valuer / Valuation Expert	<p>The valuation expert to carry out valuation of structures and land shall be a registered and licensed Valuer with the following minimum qualifications:</p> <ul style="list-style-type: none"> <li>▪ Degree in land economics/valuation/real Estate, from a recognized University</li> <li>▪ Certificate of registration/professional certificate</li> <li>▪ Valid annual operating license</li> <li>▪ 10 years' experience in valuation</li> <li>▪ 5 years' experience in valuation for wayleave compensation</li> <li>▪ Experience in the World Bank's OP 4.12 is an added advantage</li> </ul>

The preceding description of the team composition is however not intended to be prescriptive. Individual members of the team must be personally available to do the work as and when required. The TA will be invited to propose for the CA's approval their preferred staffing complement by way of professional discipline and headcount.

## 7. Qualification Criteria

The Transaction Adviser is expected to comprise of a firm or a consortium of firms/ individuals providing the requisite technical (including environmental/ social), financial, legal expertise.

Qualification submissions will be evaluated against the following criteria:

- a) Acted as Transaction Adviser and successfully completed the full scope of work, including taking Energy sector PPPs to financial close in Sub-Saharan Africa, other emerging markets and mature PPP markets.
- b) Experience in power transmission infrastructure design and associated feasibility investigations of comparable projects in Sub-Saharan Africa, other emerging markets and mature energy infrastructure markets.
- c) Experience in conducting Environmental and Social Impact assessments of large-scale infrastructure projects in accordance with international best practice including in accordance with World Bank/ IFC guidelines, and guidelines in Kenya and elsewhere in Sub-Saharan Africa.

Under each of the three criteria, firms are expected to clearly state relevant projects or transactions for the experience required, country where the project was done and stage in the PPP project cycle where the firm reached with project.

## 8. DURATION OF THE ASSIGNMENT

Considering that many activities will be undertaken concurrently, it is estimated that the above services would require a period of about 22 Calendar Months (plus the time, approximately a cumulative of 2 months, needed to secure the PPP Committee approvals) from the date of commencement of the services until the financial close of the project.

The Transaction Advisor will be expected to take into cognizance the COVID-19 and provide a mechanism of handling the assignment. This shall include but may not be limited to the management of field work activities such as survey, ESIA, social safeguard studies, investor conference and stakeholder consultations.

## 9. DELIVERABLES OF THE ASSIGNMENT

The general deliverables<sup>1</sup> of the project are as represented in the table below.

No.	Deliverable	Target Timeline (After contract signing)
<b>Phase I</b>		
1	Inception Report	3 weeks
2	Feasibility Study Phase Deliverables including Feasibility Study Report, ESIA report and the Communication Strategy and Plan	6 months
<b>Phase II</b>		
3	RFQ stage procurement documentation and completion of the RFQ process	9 months

<sup>1</sup> Completion of approved capacity building workshop(s) shall be part of the package of a listed deliverable where the workshop's completion timelines fall within the completion timeline for any of the listed deliverables.

No.	Deliverable	Target Timeline (After contract signing)
4	RFP bidding stage documents, including RFP, draft PPP project agreements, Design Criteria and Performance Specifications, evaluation criteria, including any other relevant bid documents	10 months
5	Completion of the RFP bidding process and evaluation of bids, and delivery of the evaluation report	14 months
6	Completion of Resettlement Action Plan, Social Audit and Vulnerable and Marginalized Group Plan (VMGP)	14 months
7	Commercial Close, Project's contract management framework and case study	16 months
8	Financial close and delivery of the close-out report and final case study.	22 months

Bidders are expected to include, as a part of their proposal, anticipated dates of delivery. 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 following tasks. This detailed plan will be discussed and agreed with KETRACO and PPP Unit before signing the contract.

The TA shall submit an Inception Report including an updated detailed work plan for project implementation, covering tasks and responsibilities of all parties involved not just the TA's personnel. Every two weeks thereafter and every week during Phase 2, the TA will hold progress meetings with KETRACO to discuss any key constraints encountered by the TA, work planned for the subsequent period, inputs and support needed from KETRACO and other parties and will update the work plan accordingly.

All reports shall be submitted to KETRACO and PPP Unit 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 KETRACO, shall conduct quality reviews to obtain feedback on all draft versions of deliverables as appropriate. The TA shall make presentations to KETRACO on each deliverable (e.g. draft Feasibility Study), with the team's key experts present.

## **10. 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 calendar months. The appointed TA is expected to sign a contract for 24 months, extendable at no extra cost for a further one year in the event that Financial Close has not been reached within 24 months. An extension at extra cost would however be considered for inflation adjustments where delays have not arisen as a result of the performance of the TA.

The remuneration schedule is as set out below: Bidders must submit bids in the formats prescribed in the RFP. Bidders should specify a fixed amount for each of:

- Phase 1 (the "Phase 1 Amount")
- Phase 2 (the "Phase 2 Amount")

Phase 1 Amount will not be expected to exceed 50% of the total fees. After Phase 1, KETRACO will decide whether to proceed with Phase 2. If KETRACO decides not to proceed with Phase 2, the contract with the TA will be terminated. There shall be proportional reduction of payments in case one project is taken up from the two projects and/ or if one of the project fails during the transaction process

The following disbursement schedule is set for each phase of the contract. Bidders should keep these in mind in writing their proposals.

For Phase 1:

- 10% of the Phase 1 Amount upon delivery of the inception report;
- 35% of the Phase 1 Amount upon delivery of the draft Feasibility Study Phase Deliverables including Feasibility Study Report, ESIA report. The Communication Strategy and Plan should also be delivered at this point.
- 25% of the Phase 1 Amount upon delivery of the Feasibility Study Phase Deliverables including Feasibility Study Report, ESIA report. This shall also include presentation of the findings and recommendations.
- 30% of the Phase 1 Amount upon acceptance of the final feasibility study by KETRACO and the PPP Committee.

If KETRACO elects to proceed to Phase 2:

- 15% of the Phase 2 Amount upon delivery of the RFQ stage procurement documentation and completion of the RFQ process;
- 20% of the Phase 2 Amount upon delivery of the RFP bidding stage documentation, including RFP, draft PPP project agreements, Design Criteria and Performance Specifications, evaluation criteria, including any other relevant bid documents;
- 15% of the Phase 2 Amount upon completion of the RFP bidding process and evaluation of bids, and delivery of the evaluation report;
- 10% of Phase 2 Amount upon delivery of Resettlement Action Plan, Social Audit and Vulnerable and Marginalized Group Plan (VMGP)
- 20% of the Phase 2 Amount upon execution of the PPP agreements, delivery of Project's contract management framework and case study; and
- 20% of the Phase 2 Amount upon financial close and delivery of the close-out report and final case study.

The bidders should include in their Financial Proposals a fixed lump sum item of up to US\$10,000 for the cost of procuring the Virtual Data Room.

## **11. INSTITUTIONAL ARRANGEMENTS AND COUNTERPART ASSISTANCE**

The Transaction Advisor shall then work closely with KETRACO and other government agencies as may be required during the assignment.

A Project Appraisal Team (PAT), composed of representatives from KETRACO and the PPP Unit, will be established to review and assess the acceptability of project deliverables. During the tender stage, KETRACO shall also create a Prequalification Committee, Proposal Evaluation Team, (Contract) Negotiation Committee, and other bodies specified in the PPP Act, 2013.

KETRACO shall provide the Transaction Advisor with all available pertinent data and previous studies, if any, useful to the Project. KETRACO will liaise with other agencies to ensure that the TA has access to all information required as may be allowed under Kenyan laws.



The TA will be responsible 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.

## **ANNEX 1: Terms of Reference for Aerial mapping and Cadastral Survey for Malindi-Galana and Rongai – Keringet -Chemosit Transmission Lines PPP Projects**

### **1.1 Justification for the aerial mapping and cadastral survey**

In order to effectively and efficiently achieve the desired results in the detail design, environmental and social studies both Aerial Mapping and Cadastral surveying works for the transmission lines corridors shall require to be done. Also, the output from surveying works shall guide land valuation and compensation exercises. Aerial mapping and cadastral survey will only be done in phase II, if the project is found viable and would be subsequently updated during the procurement phase of the project and implemented just after commercial close.

### **1.2 Objectives of the surveying assignments – (mapping and cadastral surveys).**

- a. Carry out aerial mapping of 2Km wide corridors for the two transmission lines
- b. Carry out Cadastral Surveys for the two Transmission Lines in which property boundaries for both registered and unregistered properties falling within the way leave of TL will surveyed
- c. Generate an excel database for all Project Affected Persons (PAPs) with all the relevant information on land parcels and ownership for compensation purposes
- d. Develop a GIS Database that will serve as source for all spatial / statistical data or information to be used in the life of the project and after by KETRACO.
- e. Carry out cadastral survey for all new substations that are connected with the proposed two transmission lines.

### **1.3 Recommended organisation of contracts for surveying works**

The surveying contracts shall be organized into two (2) Major Activities:

- a) Activity 1 (Aerial Mapping)**
- b) Activity 2 (Cadastral Survey)**

### **1.4 Deliverables and general specification**

#### **Activity 1: Aerial Mapping;**

- Digital full colour aerial photograph for 2Km TL corridors with at least 30cm Ground Sample Distance (GSD) precision.
- Camera used in aerial mapping must have a calibration certificate not exceeding 12 calendar months.
- Aerial photography to be done in conducive weather conditions to ensure clarity of features.
- Lidar data to meet international standards with at least 2cm precision
- All survey works to be done in accordance with survey regulations of Act Cap 299 and Energy Act, 2006.
- Topographical maps to be printed at a scale of 1:2500 and contours plotted at 2.0m intervals.
- Topographical maps to capture all physical and man-made features relevant to the application areas / users.
- Control survey to meet minimum of 1; 10,000 accuracies.
- A detailed Report of the Work carried out by the consultant with emphasis on processes and final products of the contract.

#### **Specific deliverables;**

The following are the key deliverables from the aerial mapping exercise;

- a) Lidar data sets for two (2) Transmission Lines in digital formats
- b) Orthophoto for two (2) Transmission Lines in both Digital and hand-copy formats

- c) Topographical maps for two (2) Transmission Lines in both Digital (Shape files & AutoCAD files), and Hand-copy formats
- d) Line profiles (in AutoCAD and Hand-Copy Formats).
- e) GIS Database (MXD file) for the main datasets for TLs and main features of (c) above. The GIS file should be developed using ESRI Software.
- f) Coordinate list of all primary Control points

### **Activity 2: cadastral survey**

- Survey shall be carried out for both registered and unregistered properties.
- Current Status / information for all surveyed properties shall be sourced and provided.
- Cadastral maps shall be developed for all parcels falling in the Transmission Line corridor.
- A cadastral database (in excel format) shall be generated as per guidelines to be provided in RFP.

### **Specific deliverables;**

- a. Cadastral **Wayleave Trace / Map** in both in softcopies (AutoCAD format) and Print copies for every transmission line.
- b. ArcGIS File (MXD Format) for the route corridor.
- c. **Official searches** from government offices on **Land Ownership** of affected land parcels.
- d. Land information Schedule (in excel format) with all cadastral information of the affected land schedule.

### **1.5 Target Users of Survey Data**

The application of survey data in the proposed projects is critical. Majority of the professionals to be involved in the pre-construction activities and during construction stage will require survey data in their works. Surveying activities will therefore precede every other professional input in the projects.

The following is a brief description of the application areas of survey data by the professionals in the projects.

- a. Socio – Economist: The socio – economist will require both way-leave maps and land ownership information for identification of PAPs and in their development of RAP.
- b. Land Economist: The land economist will require way-leave maps and ownership schedule to carry out valuations of land parcels and structures.
- c. Environmentalist: The environmentalist will depend on the survey maps and orthophotos to effectively carry out various studies in ESIA and ESMP.
- d. Engineering: Survey data (Lidar, orthophotos and topographical maps) provide basis for route selection and structural designs in the engineering works.

## **ANNEX 2: Preparation of Environmental and Social Impact Assessment (ESIA) for the Malindi-Galana and Rongai – Keringet -Chemosit Transmission Lines PPP Projects**

Given the involvement of the private sector, the GOK and the World Bank have agreed on the use of Environmental Impact Assessment and Audit Regulations 2003 established under the Environmental Management and Coordination Act (EMCA), 1999 (amendment) 2015 of Kenya and World Bank Safeguard Policies to address the environmental and social impacts of the proposed Project, including using World Bank Operational Policy 4.12, Involuntary Resettlement, to address direct physical economic and displacement issues that are expected to result from the Project.

### **1.1 ESIA Objectives**

The objectives of the ESIA and ESMP are to ensure that all environmental and social consequences due to the development of the proposed transmission lines, are evaluated and addressed as part of the mitigation measures incorporated into the transmission lines final design. Further, the impacts of possible stand alone or supplementary technical solutions, if these are selected shall be assessed. The ESIA will initially be based on the preliminary transmission line design, then proposed mitigation measures shall be incorporated into the final design. The ToRs are for a bidding stage ESIA. The ESIA (and ESMP) will be bidding stage documents. The ESIA so prepared shall be submitted to NEMA for review and approval (after clearance by GOK {KETRACO & PPP Unit} and the Bank) and subsequent issuance of licence to KETRACO for the project.

The responsibility for carrying out the ESIA based on the final design and seeking either re-approval by NEMA or transfer of the license from KETRACO to the Project Company/Concessionaire will rest with the Project Company who in their full/comprehensive ESIA will provide a reassessment of impacts based on the final design.

The ESIA will seek to comply with the Environmental Impact Assessment and Audit Regulations 2003 established under the Environmental Management and Coordination Act (EMCA), Cap 387 (amendment) 2015 of Kenya.

Further, because of the World Bank's support for the preparation of the Project, the ESIA and ESMP must meet the requirements of the World Bank Safeguard Policies, as indicated in the Environmental and Social Management Framework for IFPPP, including the Environment, Health and Safety Guidelines as well as the potential for land acquisition, involuntary resettlement, and impacts on VMGs. This means undertaking the ESIA study from the point of view of each of the applicable social and environmental policies. For the effective assessment of social risks and impacts of the proposed project, Operational Policy (OP) no 4.10 (Indigenous Peoples) and OP 4.12 (Involuntary Resettlement) will be particularly important for the study as well as the Bank's Directive and the Good Practice Note on GBV. The ESIA study will also assess the likelihood of labor influx into to the project area as a result of the project as well as potential risks related to Gender Based Violence (GBV) and Sexual Exploitation and Abuse (SEA). The ESIA will clearly define responsibilities for the mitigation of social risks and impacts, and, the proposed social risks and impacts mitigation measures that are the responsibility of the concessionaire will be included in the ESMP.

The bidding stage ESIA and ESMP will provide a starting point and define criteria for the bidders to indicate in their bids how they will address environmental and social risks and impacts in the full ESIA and Concessionaire ESMP (C-ESMP) that the winning bidder will

prepare. The contracting authority will then submit the full ESIA and C-ESMP to NEMA, and to the eventual lenders for prior review, before the start of works.

Specific standards to be considered at a minimum are “transmission line route selection criteria, project design guidelines, noise standards and occupational health and safety requirements.”

The Specific objectives are as follows:

- a) Identify significant and secondary environmental and social issues associated with project design, construction and operation;
- b) Identify measures needed to ensure compliance with above-mentioned standards and benchmarks;
- c) Identify relevant stakeholders and describing requirements for the integration of stakeholder engagement (public participation) during the ESIA process, with special consideration of local conditions and transboundary issues.
- d) Provide guidance on Stakeholder Mapping including the development of an outline for Stakeholder Engagement Management Plan (SEMP) and Grievance Redress Mechanism (GRM);
- e) Identify the range of project siting, design and operational alternatives that need to be considered;
- f) Identify the environmental and social impacts and risks pertaining to the Malindi-Galana and Rongai – Keringet - Chemosit Transmission Lines;
- g) Identify the social risks related to labour influx and labour conditions including child labour and labour-induced-risks such as GBV/SEA, insecurity, risks of STDs, risks of Covid-19, occupational health and safety
- h) Identify and describe an institutional framework relevant to project implementation;
- i) Define the environmental and social baseline needed to better assess the magnitude, significance and temporality of the potential impacts and risks;
- j) Identify relevant prevention, mitigation, management and monitoring measures and arrangements that need to be considered;
- k) Provide an indicative outline of the contents of:
  - a comprehensive ESIA, including the content of each section with a focus on major environmental and social impacts and proposed mitigation measures;
  - Environmental and Social Management Plan (ESMP)

## **1.2 Scope of Work**

The ESIA and ESMP will be distinct documents that will be undertaken under requirements of EMCA, 1999 (amendment 2015) schedule II as stipulated by the National Environment Management Authority (NEMA) that requires all development projects to undergo ESIA in order to avert the potential adverse impacts by developing appropriate mitigation measures.

The ESIA shall evaluate the project activities, predict impacts and device appropriate mitigation measures during the projects design, construction, operation and decommissioning phases.

The ESIA and ESMP studies will have two main objectives:

- Ensuring sustainable development and good environmental and social practice by wise use of natural resources to ensure inter- and intra-generational equity.
- Identification, prevention, mitigation, avoidance or offset any negative impacts that may result from the project thus preventing losses or any disadvantages to any stakeholders.

The ESIA and ESMP 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 the applicable World Bank World Bank Safeguards Policies for ESIA (OP 4.01) and for Involuntary Resettlement (OP 4.12)
- (iii) Follow the WBG Environment, Health and Safety (EHS) Guidelines, particularly:
  - o Environmental, Health, and Safety General Guidelines (2007)
  - o Environmental, Health, and Safety Guidelines for Waste Management (2007)
  - o Environmental, Health, and Safety Guidelines for Construction Materials Extraction (2007)
- (iv) Provide inputs, as necessary, into the Resettlement Action Plan (RAP) to meet the requirements of World Bank's Operational Policy 4.12 on Involuntary Resettlement. The RAP is part of Phase II deliverables
- (v) Provide sufficient detail to clearly identify the Environmental and Social Management Programs to be implemented by KETRACO 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 KETRACO, 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 landfill, 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.

The scope of the ESIA should include the following:

- Predict and analyze the anticipated environmental and social impacts.
- Analyze the alternatives to the proposed projects
- Recommend feasible and cost-effective measures to prevent, reduce or mitigate negative impacts and enhance positive impacts of the project.
- Estimate the impacts and costs of mitigating those measures, and of the institutional and training requirements to implement them.
- Prepare an environmental and social impact assessment report to include an Environmental and Social Management Plan (ESMP) including proposed work programs, budget estimates, schedules, staffing and training requirements, and other necessary support services to implement the monitoring and mitigation measures.
- Explain how the project would comply with the requirements (including consultation) of the OP 4.01 and the environmental and social requirements of other applicable Safeguard policies (e.g., Involuntary Resettlement (OP 4.12)).
- Explain how the project will deal with labour influx and related management issues including child labour and labour-induced-risks such as GBV/SEA, insecurity, risks of STDs
- Identify the possible environmental and social impacts of Covid-19 on the project and develop appropriate mitigation measures under the ESMP

The ESIA report should be informed by the opinions collected during Public Consultations. Such public consultations should be conducted twice – at the project report stage of the ESIA and during the full ESIA stage where the findings will be shared with project stakeholders. In particular, besides the detailed list of environmental and social risk mitigation measures in the Environment and Social Management Programs, the deliverable of the TA must summarize these Programs in an Environmental and Social Action Plan (ESAP)<sup>2</sup> highlighting the required additional studies, mitigation plans, policies, actions, tools etc. together with milestones/timelines for achievement of certain outcomes, and clearly indicate main responsible party (GOK/KETRACO, the Concessionaire, contractors / sub-contractors, supply chain actors).

The purpose of the consultancy is to produce an ESIA report consisting of sections (tasks) below. Safe for Tasks 10 and 11 designated sections of the ESIA, the different sections of the ESIA and ESMP are linked and must form a coherent narrative.

### **Task 1. Executive Summary**

This section should concisely summarize key findings and recommended actions.

### **Task 2. Description of the Proposed Projects**

The ESIA and ESMP studies shall relate to two distinct projects, that is, Malindi – Galana and Rongai – Keringet -Chemosit transmission lines.

Both projects will be subjected to ESIA and ESMP to ensure that all environmental and social consequences due to the development of the proposed projects, are evaluated and addressed as part of the mitigation measures incorporated into the transmission lines final design.

It is estimated that the effort per line will require not more than 15 man-months, the final reports for each line is expected 12 weeks after contract award.

The ESIA and ESMP studies will give an indication if a Resettlement Action Plan (RAP) and Vulnerable and Marginalized Group Plan (VMGP) will be prepared.

The section should:

- Define the study area for both projects
- Include essential maps describing the following:
  - 1:10,000 (printed) alignment sheets
  - 1:50,000 (when printed) for the area of influence of each line, including associated facilities such as quarries and waste disposal sites
  - 1:1,000,000 (when printed) map showing the overall location, the areas of traverse, the interconnections of the transmission lines, as well as major cities.
- Include essential maps showing the transmission line route and areas of influence
- 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 a cumulative impact
- Describe the location and design and technologies (pylons, substation and related equipment, conductors, etc.).
- Provide layouts, cross-sections, and construction details for the transmission line and substations, tower configurations, conductors and other substation equipment;
- Describe construction and operation schedules, including scheduling of site (transmission line corridor and substation) preparation.
- Describe of the responsible parties, including organization structure and staffing for

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<sup>2</sup> Examples of ESAPs can be found at [www.ifc.org/disclosure](http://www.ifc.org/disclosure)

- the transmission line development;
- Describe expected activities during pre-construction, construction, and operation (to the extent known).
- Include an indicative schedule for pre-construction and construction (to the extent known).
- Indicate the number of construction workers are likely to be involved at each location.
- Offsite facilities that may be required (access roads, quarries, worker camps, and raw material or product storage facilities)

### **Task 3: Review of Relevant Institution and Legal Framework**

The section will:

- 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
- Summarize the requirements and features of World Bank Safeguard Policies
- 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 Electric Power Transmission and Distribution
- Present the environmental and social requirements of potential financiers of the Concessionaire, if known at the time of ESIA completion.
- Identify and describe the relevant World Bank Safeguards Policies triggered under these projects
- Identify relevant international environmental and social agreements and treaties – including labor-related such as ILO conventions - to which the country is a party. Review Government of Kenya requirements and procedures for the management of environmental and social issues, including labor, health and safety requirements as well as the management of social risks related to land take, involuntary resettlement, inclusion of vulnerable and marginalized groups and GBV and SEA. (For issues related to GBV and SEA, please refer to the World Bank Directive and Good Practice Note on GBV).
- Review the environmental, social and safety procedures of KETRACO
- Analyze the gap between the triggered World Bank Safeguards Policies and Kenyans laws

This section will further describe the roles and responsibilities of the key players, most particularly KETRACO, the PPPU at the National Treasury, the Transaction Advisor, the future Concessionaire, the relationship between KETRACO and National Environment Management Authority (NEMA) and any other institutions relevant to the Project, such as Kenya Wildlife Service, Kenya Forest Service, among others.

### **Task 4. Description of the Environment and Social Baseline**

The Consultant will collect, collate and present baseline information on the existing environmental and socioeconomic characteristics of, within and around the subproject sites/area of influence, that is directly relevant to understand the Project design and operation, and to assess its risks and impacts, and to define mitigation measures

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 shall 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 consultant 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:

- Identify and describe the project area of influence.
- Illustrate baseline data with maps according to the two scales mentioned above.
- Include essential photos, plans, diagrams and maps at two scales showing:
  - biophysical and socio-economic features along the transmission line route
  - sensitive ecosystems (wetlands, forests, wildlife sanctuaries, any other areas of ecological sensitivity)
- Provide baseline for ecological/environmental sensitivities- Provide information on Environment, Health, and Safety (both occupational and community) performance in the building construction sector and identify potential challenges and weaknesses.
- Present data directly relevant to decisions about project location, design, operation, or mitigatory measures, including physical aspects (such as topography, landforms, rivers and lakes, geology, soils, climate, air quality, noise, odour, seismic condition and hydrology / hydrogeology), 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, sensitive locations, 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.
- Include data directly provided and confirmed by relevant data sources, such as Kenya Wildlife Service (KWS), Kenya Forest Service (KFS), Kenya Civil Aviation Authority (KCAA), National Museums of Kenya (NMK) county authorities, and international organizations.
- Review and summarize relevant studies and available data, identify gaps and areas not covered by appropriate studies, and if necessary, 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, landfill soil cover, field permeability tests, geotechnical surveys etc. are important engineering considerations for design of structures.
- Noise pollution up to 1 km or nearest residential areas, as per the NEMA regulations.
- Ground water characteristics and aquifers that would be potentially polluted by project

activities especially where campsites (if any) will be built

#### *Biological Environment*

- Aquatic flora and fauna in the area, including marshes / wetlands 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.
- A description of pathways or migratory routes for birds at risk of electrocution and their status according to IUCN rating

#### *Socio-Economic and Occupational Health Environments*

- Briefly describe the social and economic aspects of the service area (number of inhabitants, residential areas including the type of structures involved, land use, including previous use over the last 20-50 years, industrial areas, transfer stations, current land-based livelihood strategies if any);
- 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's location;
- Describe the surrounding topography and land use characteristics and proximity to residential neighbourhoods from the proposed transmission lines, including current and past land use patterns, whether agriculture, forestry etc.;
- Identify sensitive receptors and institutions such as schools and places of learning, dispensaries, hospitals, libraries, places of worships, etc.;
- 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 transmission lines, including perception to increased traffic, noise, dust, and aesthetic appearance, and potential mitigation measures for such concerns;
- 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;
- Describe traffic conditions along the major access routes to transmission lines at present and after implementation of the proposed projects. The existing traffic conditions must be based on field survey; and proposed traffic patterns should be examined as well;
- Provide information on waste disposal sites and quarries that might be used by the Project during construction, on the roads where traffic and safety might be affected by construction activities, as well as information on potential sources of workers during construction of the two transmission lines.

#### *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 5. Determination of Potential Risks and Impacts of the Proposed Project**

This section should:

- Assess the potential positive and negative, direct and indirect, permanent and

temporary environmental and social impacts of the Project, as measured in comparison with baseline conditions, during construction and operation of the transmission lines and associated facilities. These should include socio-economic impacts on people who may currently be depending on the project area for their livelihood's strategies

- Assess the risks and impacts that are the direct responsibility of contractors, such as all aspects of construction site management
- Assess the risks that are out of the control of contractors and are instead the responsibility of public authorities, such as the Project's design, the granting of permits, and monitoring of the environmental and social performance of contractors
- Assess any potential for physical and/or economic displacement of households or individuals and state whether the displacement will be temporary or permanent
- Identify significant and secondary social risks, concerns, perceptions and impacts associated with the design, construction and operation of the project
- 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
- During construction phase; Identify and determine the efficacy of the construction site management plan including air quality, management of hazardous and toxic waste (if any), borrow pits and quarries, lavatories and showers, emergency preparedness, first aid, chance find procedures, among others.
- 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.
- Assess the health, safety and security of the workers
- Distinguish the risks and impacts for construction workers (occupational health and safety), from the risk and impacts for other neighboring communities (community health and safety).
- Analyze 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.

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

- Impacts affecting air quality by dust emissions of construction Works
- Noise impacts
- 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 on neighborhoods including sensitive receptors along direct haul routes from increased traffic (primarily accidents and road safety, 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 transmission lines
- Analyze the potential for labor influx as a direct result of the project;
- Impacts from operation

## **Task 6. Analysis of Alternatives to the Proposed Project**

This section will:

- Analyze alternatives to the proposed transmission lines and associated substations, 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. The “*without project*” alternative does not mean that there will be no action, but rather that other means of funding the transport of electricity would be found, for example through public funding.
- 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
- Describe alternatives that were examined in the course of screening sites and conducting preliminary design and assessment of the proposed transmission lines.
- Describe alternative designs for construction and operation which were examined, including tower and substation design technologies, construction processes and technologies
- 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.
- To the extent possible, quantify costs and benefits of each alternative.
- Summarize all interconnection alternatives considered and explain why the selected option is least-cost and most efficient.

## **Task 7. Development of Environmental and Social Management Plan (ESMP)**

The consultant shall develop a separate (standalone) report that shall include the following sections:

- Mitigation plan, including Contractor Clauses
- Monitoring Plan
- Institutional Arrangements
- Stakeholder Engagement Plan, including a Grievance Redress Mechanism
- Implementation Schedule and Cost Estimates

The ESMP shall include 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. This section will include a budget estimate, staffing requirements and other necessary support, such as training, to implement the mitigation measures.

- ❖ In addition, there will be sub plans addressing a list of issues. Specifically, the sub plans should include:
  - Construction management, including contractors, sub-contractors and primary supply chains
  - Traffic and access to construction site
  - Labour camps
  - Labour influx and labour rights
  - Occupational Health and Safety, including accidents and the prevention and management of infectious diseases such as STDs and HIV, and Covid-19
  - Storage and disposal of nonhazardous waste, including construction debris
  - Soil contamination

- Surface and ground water contamination
  - Spill response
  - Blasting
  - Potential for fire and emergency response
  - Air emissions
  - Noise from equipment, operations (blasting and drilling), and traffic
  - Landslide prevention and slope stabilization
  - Clean and contaminated storm water management
  - Emergency Response Plan, particularly during operations
  - Gender equity and sexual harassment
  - Biodiversity protection and conservation
  - Cultural heritage
  - Management of scavengers and recyclers
  - Traffic management and road safety
  - Site closure and restoration
- ❖ Include the following mitigation measures
- Develop alternative livelihood strategies for the affected individuals and communities and indicate the type of livelihood restoration measures that may be required. These should be proportional to the impacts, but designed as sustainable strategies that would improve the livelihoods of the affected groups or individuals;
  - Identify and summarize all anticipated significant adverse environmental impacts (including those involving indigenous people or involuntary resettlement) and define both generic and site specific environmental and social mitigation measures during construction and operation.
  - Include measures to minimize migratory bird collisions with transmission lines.
  - Include emergency/disaster preparedness plans.
  - Describe with details other plans that will be required during the construction and operation phases (e.g. Contractor ESMP, Occupational Health and Safety plans and labour influx plan).
  - Estimate any potential environmental impacts of these measures.
  - Provide linkage with any other mitigation plans (e.g., for involuntary resettlement, indigenous peoples, or cultural property) required for the subproject.
  - Identify additional data collection required to fill identified data gaps.
  - The mitigation measures for which contractors will be directly responsible will be managed through a set of Environmental and Social Clauses, including a Code of Conduct, worker Grievance Redress Mechanisms, and monitoring requirements. Please consider making reference to the example of such clauses (Minimum Environmental and Social Criteria) included in Annex 4.
  - The Consultant shall take into account that Bidders should submit a Preliminary Plan as part of their tenders, outlining the principles and the methodology that they will use to address environmental, social, health and safety issues under the contract, and should also include all related costs in their tenders. The selected contractors should each prepare a Contractor-ESMP before the start of works, detailing how the Minimum Environmental and Social Criteria will be operationalized, including procedures and staffing. KETRACO and the Concessionaire will monitor the environmental and social performance of contractors against the commitments made in their respective Contractor-ESMP.
- ❖ The transmission component of the project will have ancillary facilities like worker camps and waste disposal pits during construction. The findings of the ESIA report will be summarized in the ESMP describing the mitigation measures of the impacts from ancillary facilities

- ❖ The ESMP will also contain environmental and social clauses for contractors, including a Code of Conduct.
- ❖ The ESIA study will advise on the need for a full RAP study or an abbreviated RAP study
- ❖ The study will screen for VMGs in the project area and advise on the need for a VMGP

### **Task 8. Stakeholder Engagement**

- The TA shall carry out a verification of social due diligence measures, which involves describing the social, economic and cultural status of the project area.
- Identify and map relevant stakeholders and describe requirements for the integration of stakeholder engagement and consultations (public participation) during the ESIA, RAP, SA and VMGP processes<sup>3</sup> and during project implementation, with special consideration of local conditions, including preparation of a stakeholder engagement and communication plan, and a schedule of consultations, and a disclosure plan. Activities under this task include:
  - 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;
  - 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.
- 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 Safeguards Policies. 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. Similarly, a comprehensive and participatory stakeholder engagement will be undertaken as part of the RAP update in accordance with the provisions of OP 4.12.
- The TA to organize forums for public participation to enable interested & affected parties to present their concerns and opinions regarding the proposed project, the stakeholders should include County officials, relevant Government agencies, community groups, and NGOs. The views of the public will be solicited and incorporated in the ESIA report. A record of public consultations and other records that will indicate participation of interested and affected parties throughout the ESIA study process, including: surveys used to seek views of affected stakeholders; date and location of consultation meetings; a list of attendees, their affiliation, contact addresses and a summary. This section needs to present an approach to ongoing stakeholder engagement. In addition, a grievance redress mechanism should be described in this section.
- The TA should keep a record of consultation meetings, including consultations for RAP update, 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 RAP, ESIA and the design of the project. The record should also indicate any surveys used to seek views of affected stakeholders. A record of information disclosure, including disclosure of entitlements to the PAPs as outlined in OP 4.12, public consultations and surveys should be summarized in the ESIA/RAP 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

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<sup>3</sup> The RAP will be updated during the procurement stage of phase 2 and implemented just after commercial close.

to ongoing stakeholder engagement. In addition, a grievance redress mechanism should be described in this section.

- The TA will ensure that IPs/VMGs are informed, consulted, and mobilized to participate in the relevant projects. The TA will conduct Free Prior and Informed Consent (FPIC) with any likely impacted IPs/VMGs and those who work with and/or are knowledgeable of IPs/VMGs development issues and concerns. To facilitate effective participation, the VMGPs developed for the projects will propose a timetable to be followed to consult IPs/VMGs at different stages of the project cycle, especially during preparation of the civil works program. A grievance redress mechanism will be developed specific to the IP/VMGs.

#### **Task 9: Public Consultations and Disclosure**

- The consultant is expected undertake minimum of two public consultations for each hospital site, during the preparation and finalization of the ToRs and when the draft ESIA reports is ready.
- The public consultations should be documented, including both the positive and negative concerns of the Project Affected Persons (PAPs) and how their views are incorporated into the design of the project.
- Disclosure of the report shall be done in a manner, form and language that are understandable, accessible which enable the public full participation.

#### **Task 10. 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 transmission lines.
- Recommend, if necessary, institutional strengthening at all levels.
- Assess KETRACO's current systems and its capacity to meet the requirements of World Bank Safeguard Policies.
- The capacity of KETRACO to manage the Concession should be assessed in detail with a view to recommend measures to close the gaps.
- Detail measures required to ensure that KETRACO has the capacity to meet the requirements of the EMCA Act and World Bank Safeguards Policies. These measures will be summarized in an action plan, including a timeline and itemized costs for capacity strengthening measures.
- Describe institutional arrangements, responsibilities and procedures within the PPP Unit, the implementing partner, and the concessionaire and its contractors to carry out each of the mitigatory and monitoring measures (e.g., for operation, supervision, enforcement, monitoring of implementation, remedial action, financing, reporting, and staff training).
- Include training of contractors regarding the E&S clauses that apply to them.
- Estimate the resources required by the concessionaire to implement and monitor the ESMP, such as level of effort (LOE), and equipment.
- As necessary, proposes capacity building, additional technical support or organizational changes, to ensure the timely and effective implementation of the ESMP.

#### **Task 10. Development of Monitoring Plans**

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

- Clearly define responsibilities for RAP implementation between the KETRACO and the concessionaire,
- Detail NC'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 KETRACO's procedures to monitor the performance of the Concessionaire
- Define a set of indicators that will be used by KETRACO to report on the implementation of risk mitigation measures to GOK and will also be used by the Concessionaire to report

to KETRACO

- Detail how the Concessionaire will report to KETRACO regarding E&S issues
- 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 KETRACO (as relevant) and the Concessionaire that KETRACO 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
- Furnish information on the progress and results of mitigation.

### **Task 11. 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

### **Facilities to be provided by client**

The client will provide the following subject to availability

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

### **Appendices**

- List of Environmental Assessment Parameters
- Preliminary Design Report
- Records of Inter-Agency and public/NGO Consultations and meetings, including consultations for obtaining the informed views of affected people, disaggregated by gender, age and if possible social status
- List of ESIA team--individuals and organizations.
- Terms of Reference
- References. Document all sources of written information, both published and unpublished, used in the ESIA.
- Records of public participation and consultations for obtaining the informed views of the affected and interested parties, as well as local NGOs, on the positive and negative impacts of the proposed subproject. The records will summarize concerns and opinions presented during the consultations. The record will also specify any means other than consultations (e.g., surveys) used to obtain the views of affected groups and local NGOs.
- Records of interagency consultation meetings with institutional stakeholders such as: Kenya Wildlife Service (KWS), National Museums of Kenya (NMK), Kenya Forest Service



(KFS), Kenya Civil Aviation Authority (KCAA; for civil aviation security), Department of Physical Planning, and local/impacted communities.

- Tables presenting the relevant data referred to or summarized in the main text.
- List of associated reports (e.g., resettlement plan or indigenous peoples' development plan).

### **ANNEX 3: TOR FOR SOCIAL SAFEGUARD STUDIES FOR MALINDI-KILIFI AND RONGAI-KERINGET -CHEMOSIT TRANSMISSION LINES PPP PROJECTS**

The objectives of the assignment will include:

- a) To screen the projects for potential socio-economic impacts and risks; and presence in the project area of Indigenous Peoples (IPs), also referred to as Vulnerable and marginalized Groups (VMGs) who meet the World Bank's OP 4.10 and the Article 260 of the Constitution of Kenya, 2010, criteria;
- b) To provide baseline information about the social, economic and cultural conditions in the project area.
- c) To identify, analyze and evaluate the type and extent of likely potential social impacts and risks as well as the significance, magnitude and distribution of beneficial or adverse effects of the proposed projects on the existing biophysical, socioeconomic and cultural components, including risks to, and impacts on the VMGs; and assess the capacity of the institution (Client) to manage the identified impacts and risks.

In line with the objectives outlined above, the assignment includes the following main activities:

- i. Prepare a detailed Resettlement Action Plan (RAP) study for each of the proposed lines following the principles of the ESIA.
- ii. Undertake a SA of each T-Line that has been confirmed by the ESIA to have impacts on VMGs
- iii. Based on the findings of the SA, prepare a Vulnerable and Marginalized Groups Plan (VMGP) for each T-Line that has been found to have impacts on the VMGs.

#### **3.1 Justification for the RAP**

- Involuntary resettlement if unmitigated, often gives rise to severe economic, social and environmental risks. It may lead to production systems being dismantled, people being impoverished when their productive assets or income sources are lost, people being relocated to environments where productive skills may be less applicable and the competition for resources greater, weakened community institutions and social networks, kin groups dispersed, and diminished or lost cultural identity, traditional authority and the potential for mutual help.
- This RAP will be prepared to ensure safeguards are in place to address and mitigate the impoverishment risks identified above. The scope and level of detail of the RAP (i.e. whether detailed or abbreviated) will be dependent on the magnitude of displacement and the complexity of the measures required in mitigating adverse social and economic impacts.
- The RAP study will be guided by the Constitution of Kenya (CoK) 2010 and requisite laws of the land, and also take cognizance of OP 4.12
- The RAP will only be done in Phase II, if the project is found viable and would be subsequently updated during the procurement phase of the project and implemented just after commercial close.

#### **3.2 Objectives of the RAP Study**

The purpose of consultancy is to prepare a Resettlement Action Plan (RAP) and Livelihood Restoration Plan (if found to be necessary) for each of the two T-Lines in line with the relevant laws of Kenya and the WB's Policy on Involuntary Resettlement (OP 4.12).

The objectives of OP 4.12 are:

- a) To prevent or minimize involuntary displacement whenever possible;
- b) To design and implement resettlement as a sustainable development program;
- c) To pay for lost assets at replacement cost;

- d) To restore peoples' capacity to earn a living and their community ties;
- e) Components necessary to realize project objectives are covered regardless of the source of financing;
- f) Resettlement costs are considered part of project costs.

### **3.2.1 Scope of the RAP Consultancy**

In line with the objectives of OP 4.12 the RAP consultancy will include baseline socio economic data on the project affected persons (PAPs), actual census of the PAPs, nature of impacts on PAPs, categorization of PAPs based impacts on them, eligibility criteria for compensation, valuation of structures, crops/trees (where applicable) and total land affected, Entitlement Matrix, grievance redress mechanism (GRM) and a report detailing all these variables as well as a determination of the cut-off date.

Note: Should the consultant encounter groups that meet the criteria of OP 4.10 during the RAP preparation process, the OP 4.10 will apply in addition to OP 4.12.

### **3.2.2 Specific Tasks under the RAP consultancy**

- a) Provide the project description and location
- b) Undertake Socioeconomic and cultural assessment/Baseline survey of the of affected population including:
  - A description of the pre-project situation of the project affected persons (PAPs);
  - Detailed household survey;
  - Size and characteristics of affected population, social and economic patterns; property held and legal basis of ownership;
  - A detailed description of the income streams of the PAPs that define their livelihood strategies;
- c) Carry out an Analysis of the Applicable Policy, Legal and Institutional Frameworks, including:
  - Identification and analysis of relevant national and international policies, legislation and regulations applicable to resettlement;
  - Analysis of the differences between the Kenyan laws and the WB's OP 4.12 in relation to resettlement;
  - Analysis of the Kenyan institutional frameworks for resettlement;
  - Analysis of the country's property assessment/valuation methods.
  - Explore, in consultations with project affected communities, possibilities for voluntary land donations and the process to be followed for such donations, in case a project was to be located on community land.
  - Describe, in consultations with project affected communities, the nature/type of compensation for community owned land and the process to be followed to ensure the entire community benefits from such compensation
- d) Identify and evaluate potential impacts of the project including:
  - Components that cause displacement;
  - The zone of impact of the components or activities
  - Potential positive and adverse impacts;
  - Alternatives to prevent or minimize displacement, and/or restriction of access;
- e) Carry out a detailed socio-economic and census of the project affected persons – by location - on the entire trace of the line. The PAPs census should clearly identify:
  - All PAPs who may be physically displaced by the project, also referred to as project displaced persons (PDPs), including their details e.g. names, original National Identity card number, phone and physical contacts (street/estate, village, sub-location, location, District and County) and photograph;
  - Vulnerable PAPs by gender and age, who may need special targeting for livelihood

restoration or other forms of assistance including their details as well as explanation or description of their vulnerability and the kind of support that might be accorded to them.

- Standard characteristics of displaced households, including a description of production systems, labor, and household organization; and baseline information on livelihoods (including, as relevant, production levels/income streams and income derived from both formal and informal economic activities) and standards of living, including education levels and health status of the displaced population

The detailed census will include the following information as appropriate:

1. Where physical displacement/relocation is anticipated:
  - Number of owner households to be affected;
  - Number of renter households to be affected;
  - Number of informal occupant households to be affected.
2. Where land acquisition is anticipated:
  - Number of affected households with titles;
  - Number of affected households without titles;
  - Number of affected households losing more than 50% of their land;
  - Number of affected households less than 30% of their land.
3. Where non-land economic displacement is anticipated:
  - Number of households to be affected;
  - Number of individuals to be affected by non-land economic displacement.

In all three cases above, and as appropriate:

- Total number of VMG households affected by the proposed project
- Total Estimated population of the VMGs present in the project area.

f) Carry out a detailed Census and valuation of PAPs Assets including farm/commercial land, structures, crops, and trees.

g) Census and valuation of land

- For each PAP, whose land is affected, provide (i) actual acreage of land to be taken by the transmission line way leave; (ii) total acreage of the PAP's land; (iii) a description of the nature of impact on the land and structures, i.e. whether whole or partial; (iv) details of the land affected in terms of type of tenure and land use patterns
- For each PAP, whose land is affected: (i) conduct valuation of the affected strip and compute compensation values; (ii) provide type and methodology of compensation; (iii) preferred method of valuation with justification; and,
- For each PAP, whose land is affected, provide the following information on the status of land ownership documents (i) information on whether the current land occupant is the registered land owner (ii) placed caveats (if any); (iii) disputes involving the land parcel if any, and their status (i.e. whether they are in court or not).
- Provide actual values of the percentage parts of the parcels affected basing the values on 30 – 70% of the total market value of land where 30% is for the parcels with very minimal effect while up to 70% being for the parcels that are severely or totally affected.

Note: (i) The valuation estimates should be based on locational registration areas. (ii) eligibility of affected land must be confirmed by legal documents of ownership (squatters may be compensated for structures not for land).

- h) Census and valuation of structures
  - A detailed census and valuation of all affected structures, by type and nature, e.g. residential, institutional, communal or business structures, and whether made of permanent, semi-permanent or temporary materials, and the plinth area.
- i) Census and valuation of crops and trees
  - A detailed census and valuation of affected crops and trees by type and level of maturity.

Note: (i) For each affected asset provide details of the true owner, including names, gender and ID as a caption of the picture of the affected assets; (ii) For each of the affected assets, provide type and methodology of compensation preferred with justification.

- j) Prepare the PAPs Categorization/Classification and Compensation Entitlements due to each category of PAPs.
  - Classification should be in the form of, e.g. Land, structures, Crops and Trees affected, Permanently Displaced Persons (PDPs) and PDPs with structures.
  - Provide a description of the eligibility criteria for each entitlement.
  - Prepare a livelihoods restoration plan (where appropriate) for each category of vulnerable PAPs.
- k) If necessary, prepare a Livelihood Restoration Plan
- l) Provide a cutoff date to prevent "rent seeking".
- m) Propose the institutional arrangements for the implementation of the RAP. This should clearly identify all stakeholder institutions at all levels that are responsible RAP implementation as well as assign implementation roles and responsibilities to each.
- n) Prepare a Grievance Redress Mechanisms (GRM), developed in consultation with the PAPs and other project stakeholders.
- o) Propose a capacity building strategy ensuring effective and smooth implementation of the RAP
- p) Prepare a detailed budget estimate for the whole resettlement action plan inclusive of costs of structures, land, livelihoods restoration, capacity building and monitoring of the project.
- q) Prepare the RAP Implementation timetable (linked to the underlying project
- r) Propose a follow-up or monitoring system
- s) Propose the RAP evaluation system
- t) Clearly document the consultation that occurred during RAP preparation including:
  - a summary of the views expressed by PAPs and other stakeholders;
  - how the views were taken into account in the RAP;
  - the alternatives presented to PAPs and their views on the same.
- u) Propose a consultation strategy to be employed during the RAP implementation to ensure the active involvement and participation of PAPs and a process for the engagement of other stakeholders.
- v) *Resettlement Measures:* These include:
  - An Entitlement Matrix prepared in line with both the GOK laws and regulations, and the WB's OP 4.12. The entitlement Matrix should clearly present the categorization/classification of affected assets and eligibility and compensation entitlements, that will assist each category of eligible PAPs to achieve the RAP objectives. Classification should be in the form of, e.g., land only affected; structure only affected; land and structure affected, crops only affected and trees only affected. Permanently displaced persons PDPs and PDPs with structures, etc. For PAPs whose livelihoods are land-based, preference should be given to land-based resettlement strategies. Such strategies may include resettlement on public land, or on private land acquired or purchased for resettlement. Note that:
    - Whenever replacement land is offered, PAPs are provided with land for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken. If land is not the

- preferred option of the displaced persons, or the provision of land would adversely affect the sustainability of a park or protected area, or sufficient land is not available at a reasonable price, then non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost. The lack of adequate land must be demonstrated and documented to the satisfaction of the Bank.
- Payment of cash compensation for lost assets may be appropriate where: (a) livelihoods are land-based, but the land taken for the project is a small fraction of the affected asset and the residual is economically viable; or, (b) active markets for land, housing, and labor exist, displaced persons use such markets, and there is sufficient supply of land and housing; or, (c) livelihoods are not land-based. In any of these cases, cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.
  - Should the study affirm that there will be involuntary taking of land resulting in: (a) relocation or loss of shelter; (b) loss of assets or access to assets; or (c) loss of income sources or means of livelihood, whether or not the affected persons must move to another location, then in line with the World Bank's policy on involuntary resettlement, OP 4.12, the RAP consultant will:
    - Ensure that the displaced persons and their communities, and any host communities receiving them, are provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement.
    - Ensure that appropriate and accessible grievance mechanisms are established for these groups in consultation with them. [SEP]
    - Propose measures to ensure that, in new resettlement sites or host communities, infrastructure and public services are provided as necessary to improve, restore, or maintain accessibility and levels of service for the displaced persons and host communities.
    - Propose measures to ensure that alternatives or similar resources are provided to compensate for the loss of access to community resources (such as fishing areas, grazing areas, fuel, or fodder).
  - Propose measures to ensure that patterns of community organization appropriate to the new circumstances are based on choices made by the displaced persons. To the extent possible, the existing social and cultural institutions of PAPs and any host communities are preserved and PAPs preferences with respect to relocating in pre-existing communities and groups are honoured. [SEP]
  - For each of the affected assets, provide type and methodology of compensation preferred, with justification.

### **3.2.3 Methodology for RAP Preparation**

The TA shall propose a detailed methodology that clearly articulates the participatory and consultative methodologies to be used in the preparation of the RAP, including survey/census instruments. These will include but not be limited to:

- Literature review, including among others, the review of the feasibility study reports; the Kenyan policies, legislations regulations governing resettlement, the WB's OP 4.12
- Free prior and informed consultations with the PAPs;
- Focused Group Discussions that are gender and intergenerationally inclusive;
- Proof of the consultation process (including consultation dates, venues, list and signatures of attendees and photos of consultation sessions).

### ***3.3 Social Assessment in relation to Vulnerable and Marginalized Groups***

#### **3.3.1 Background and Objectives of OP 4.10**

The project has triggered the WB's Operational Policy (OP 4.10) on Indigenous Peoples, this policy is triggered when it is known that VMGs are present or are likely to be present in the project area. The term VMG refers exclusively to a distinct social and cultural group possessing the following characteristics in varying degrees:

- Self-identification as members of a distinct indigenous social and cultural group and recognition of this identity by others; and
- Collective attachment to geographically distinct habitats, ancestral territories, or areas of seasonal use or occupation, as well as to the natural resources in these areas; and
- Customary cultural, economic, social, or political institutions that are distinct or separate from those of the mainstream society or culture; and
- A distinct language or dialect, often different from the official language or languages of the country or region in which they reside.

In Kenya, the groups of people who meet the above criteria are referred to as Vulnerable and Marginalized Groups (VMGs) and include the hunter/gatherer and pastoralist communities in accordance with the World Bank's OP 4.10 and Article 260 of the Constitution of Kenya, 2010.

The objective of OP 4.10<sup>1</sup> is to ensure that:

- The development process fully respects the dignity, human rights, economies, cultures and natural resource-based livelihoods of **Indigenous Peoples/VMGs**.
- To avoid adverse impacts of projects, or, when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts.
- To promote sustainable development benefits and opportunities in a manner that is accessible, culturally appropriate and inclusive.
- To improve project design and promote local support by establishing and maintaining an ongoing relationship based on meaningful consultations with affected communities throughout the project's life-cycle

#### **3.3.2 Objectives of the Social Assessment (SA)**

In line with the objectives of OP 4.10, the project will prepare site specific Social Assessments (SA) to evaluate the project's potential positive and adverse effects of the project on the VMGs, in the project areas of each T-Line – where VMGs are present – and to examine project alternatives where adverse effects may be significant. The findings of the SA will inform project design and the preparation of Vulnerable and marginalized Groups Plans (VMGPs).

The SA will be conducted through free, prior and informed consultations (See Note at the end of this ToR) with the affected VMGs – leading to their broad support for proposed project. The specific tasks of the SA will include:

1. Identifying the Project's potential positive and adverse effects on VMGs. Critical to the determination of potential adverse impacts is an analysis of the relative vulnerability of, and risks to, the affected VMGs, given their distinct circumstances and close ties to land and natural resources, as well as their lack of access to opportunities relative to other social groups in the communities, in which they live.
2. Gathering and analyzing baseline information including social, cultural, economic and legal contexts of the project in relation to VMGs:
  - i. Social: Are VMGs integrated into the larger society? Are they separate? If separate, is it voluntary or involuntary isolation? How are they vulnerable or marginalized? Do they have access to social services?)
  - ii. Cultural: Do VMGs maintain own cultural practices? Is there any conflict with the Government about cultural heritage/practices? Is their culture/language at risk of

- dying out due to assimilation? Is assimilation acceptable to them?) Do VMGs in the T-Line have any tangible and/or intangible cultural heritage (structures, historical sites, sacred sites, artifacts, music, storytelling, poetry) that may be affected (positively or negatively) by the project?
- iii. Economic: population/demographic statics of the VMGs in each site; education levels of the VMGs; the VMGs livelihood strategies? Whether their livelihoods are dependent on land and or other natural resources, and if so, which ones? Whether their livelihoods are changing, and if so, how? Are they moving from rural areas to urban areas? Are they economically vulnerable? What are the practical implications of their vulnerability? Formal and informal employment sectors for the VMGs; Opportunities for improved sustainable livelihoods?)
  - iv. Legal: What are the international agreements that Kenya has signed and ratified that relate to VMGs? What does the Constitution of Kenya, 2010, say about VMGs? What are the national laws and regulations that are applicable to VMGs, e.g. do they have any special rights or protections in law? Are the natural resources on which they depend as well as their language and cultures recognized and protected by law?
  - v. Institutional: What kind of institutions do the IPs have that are distinct from those of the government? Do they have rights to govern certain institutions, such as a local council, school, hospital, economic development entity? Do they have special control of natural resources, such as forests, fisheries, water or land areas? How is the government/VMGs relations?
3. Based on item 2 above, identifying key project stakeholders and analyze their roles in the project.
  4. Based on 1-3 above, making recommendations to inform the project design
  5. Make recommendations to inform the preparation of Vulnerable and marginalized Groups Plans, including the following as appropriate:
    - i. Site specific culturally appropriate development measures, and,
    - ii. Measures to minimize, mitigate, or compensate the adverse effects, and to ensure that the VMGs receive culturally appropriate benefits under the project.
  6. Clearly document the consultation process with VMGs during the SA, including positive and negative views as well as the outcomes from the consultations leading to their broad support for the project
  7. In consultation with the VMGs, elaborating a culturally appropriate process for free, prior and informed consultations with them at each stage of the project preparation and implementation. (See Note below).
  8. Arrangements for the disclosure of the SA.

**Note:** Meaningful, free, prior and informed consultations with VMGs during the social assessment and at every stage of project preparation and implementation should be:

- In an appropriate language
- Culturally appropriate,
- Gender and inter-generationally inclusive,
- Conducted in good faith,
- Voluntary, free of interference and non-manipulative,
- Involve advance information to VMGs about the activity at hand and provide sufficient time for them to make informed decisions.

### 3.3.3 Methodology for undertaking the SA

The consultant shall propose a detailed methodology that clearly articulates the participatory and consultative methodologies – in line with the free, prior and informed consultations process requirements – to be used in undertaking the SA, including study instruments. These will include but not be limited to:



- Literature review, including among others, the review of the World Bank's Operational Policy (OP 4.10) on indigenous Peoples/VMGs, the Kenyan policies, legislations and regulations on marginalized and minority groups, in particular, the Constitution of Kenya, 2010;
- Focused Group Discussions that are gender and intergenerationally inclusive;
- Proof of the consultation process with VMGs, (including consultation dates, venues, list and signatures of attendees and photos of consultation sessions).

### **3.4 Vulnerable and marginalized Groups Plan (VMGP)**

The objective of OP 4.10 is to contribute to the World Bank's mission of poverty reduction and sustainable development by ensuring that:

- The development process fully respects the dignity, human rights, economies, cultures and natural resource-based livelihoods of VMGs.
- To avoid adverse impacts of projects, or, when avoidance is not possible, to minimize, mitigate and/or compensate for such impacts.
- To promote sustainable development benefits and opportunities in a manner that is accessible, culturally appropriate and inclusive.
- To improve project design and promote local support by establishing and maintaining an ongoing relationship based on meaningful consultations with affected communities throughout the project's lifecycle.

**Note:** The VMGP will be based on the outcomes of the SA and will therefore be prepared after the conclusion of the SA for each site/T-Line where VMGs are present.

#### **3.4.1 Purpose of the Vulnerable and marginalized Groups Plan (VMGP)**

To enable KETRACO comply with the objectives of OP 4.10, the consultant will prepare a Vulnerable and marginalized Groups Plan (VMGP) for each of the T-Lines where VMGs are present, in accordance with the findings and recommendations of the Social Assessment. The purpose of the VMGP is to ensure that VMGs receive social and economic benefits under the project, that are culturally appropriate, and, that measures are put in place for avoiding, minimizing, mitigating, or compensating any adverse effects on the VMGs that may have been found by the SA.

The specific tasks in the preparation of VMGPs will include a summary of the findings of the SA, including:

1. Summary of the legal and institutional framework applicable to VMGs;
2. Summary of the baseline information on VMGs;
3. Summary results of the free, prior and informed consultation and broad community support during the SA and a framework for such consultations during project implementation;
4. A time bound and achievable Action Plan of measures for to ensuring culturally appropriate social and economic benefits for VMGs, and/or for avoiding, minimizing, mitigating or compensating them for adverse effects. The Plan should be proportional to the specific context of proposed project, its benefits, social impacts and risks, and the circumstances of affected VMGs as identified by the SA;
5. An accessible and robust grievance redress mechanism (GRM) to be applied during the project implementation. The GRM should take into account the availability of customary dispute settlement mechanisms among the VMGs as well as the Kenyan judicial recourses for dispute resolution;
6. Cost estimates for the action plans) and a financing plan;
7. Arrangements for the disclosure of the VMGP;

8. An appropriate plan for monitoring, evaluating, and reporting on the implementation of the VMGP. The monitoring and evaluation plan should include arrangements for the free, prior, and informed consultation with the VMGs at every stage of the VMGP implementation

### 3.4.2 Methodology for preparing the VMGP

The VMGP will be prepared through meaningful consultation with VMGs in line with the free prior and consultation process requirements. In this regard, the consultant will ensure that the VMGs are actively and meaningfully involved in the identification of sustainable social and economic development measures that are culturally appropriate to them and/or for avoiding, minimizing, mitigating or compensating them for adverse effects (where applicable). In this regard, the consultant shall propose a detailed methodology that clearly articulates the participatory and consultative methodologies – in line with the free, prior and informed – to be used in the preparation of the VMGP. These will include but not be limited to:

- Literature review, including among others, the review of the WB’s Operational Policy (OP 4.10) on indigenous Peoples/VMGs and its related Annex, Annex B (see Appendix 7, OP 4.10, Annex B); the Kenyan policies, legislations and regulations on treatment of marginalized and minority groups, in particular, the Constitution of Kenya, 2010;
- Focused Group Discussions that are gender and intergenerationally inclusive;

Proof of the consultation process with VMGs, (including consultation dates, venues, list and signatures of attendees and photos of consultation sessions) as well as a clear documentation a presentation of any positive and negative views that may have been expressed and how these have been taken into consideration in the VMGP.

### REPORTS

The Consultant will prepare the following reports in English language and provide two hard and soft copies of the key reports to the Client. Additional, reports may have to be prepared as required by the Client.

No	Output
1.	An Inception Report that presents a clear description of the understanding of the assignment, methodology to be used in undertaking the assignment, and, a detailed work plan for undertaking the assignment
2.	A Draft RAP report A Draft SA VMGF report that clearly outlines: a) The steps followed by the consultant in the preparation of the VMGP; b) Detailed information on each of the items in section III above; c) A summary of the key outcomes of consultations with VMGs;
3.	a) A final RAP report that has incorporated comments from the client b) SA and VMGP report that has incorporated comments from the Client.
4.	Annexes will be included as appropriate, including but not limited to the following: For RAP: i. Minutes of consultation meetings ii. Detailed outcome of the consultation process iii. Photo gallery for the consultation process iv. Land values per location along the transmission lines v. GPS coordinated of each land parcel and structure within the wayleave corridor  For SA and VMGP i. Detailed outcomes of the consultation process with VMGs along the relevant

	<ul style="list-style-type: none"> <li>ii. T-Lines or their representative organisations;</li> <li>iii. Photo gallery of the consultation process with VMGs or their representative organisations;</li> <li>iv. List of participants consulted for the preparation of the VMGP (with signatures);</li> <li>v. VMG/Stakeholders Consultation Plan</li> <li>vi. Social screening form;</li> <li>vii. Social Assessment ToR;</li> <li>viii. ToR for preparation of VMGPs (inclusive of the content of VMGP)</li> </ul>
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### **Format and outline of Resettlement Action Plan**

The TA should revise the RAP to confirm to the format prescribed by the World Bank OP4.12 as follows:

1. Executive Summary
2. Introduction
3. Project Description
4. Minimizing Resettlement
5. Legal Framework
6. Participation and Consultation
7. Census and Socioeconomic Surveys
8. Vulnerable Groups or Persons
9. Eligibility Criteria and Cut-off date
10. Project Impacts and Entitlement Matrix
11. Valuation Criteria
12. Livelihoods Restoration
13. Resettlement Sites
14. Host Communities
15. Grievance Redress Mechanism
16. Organization and Institutional Arrangements for RAP implementation
17. Monitoring and Evaluation of RAP implementation
18. Implementation Schedule
19. Cost and Budgets
20. References
21. Annexes

### **Facilities to be provided by client**

The client will provide the following subject to availability

- Access to other relevant information to the extent of its availability
- Access to the project site and other site belonging to the client
- Feasibility Study Report
- IFPPP Resettlement Policy Framework
- The current RAP report, if any

## **ANNEX 4: Minimum Environmental and Social Criteria**

The purpose of this Appendix is to provide minimum criteria regarding environmental and social risk mitigation measures that contractors shall consider when preparing their C-ESMP.

### ***EHS Training***

The Contractors shall:

- Determine its EHS training needs in collaboration with the Contracting Authority or its representative.
- Maintain records of all EHS training, orientation, and induction.
- Ensure, through appropriate contract specifications and monitoring that service providers, as well as contracted and subcontracted labour, are trained adequately before assignments begin.
- Demonstrate to the Contracting Authority or its designated representative that its employees are competent to carry out their activities and duties safely. For this purpose, the Contractors shall issue a Competence Certificate for every person working on site (relative to trade and aspect of work assignment) that specifies which tasks can be undertaken by which key personnel.

Basic Training:

- The Contractors will ensure that all employees, including management, supervisors, and workers, as well as to subcontractors, have received occupational health and safety training and information, prior to commencement of new assignments. The training should enable them to understand work hazards and to protect their health from hazardous ambient factors that may be present. It should adequately cover the step-by-step processes that are needed for construction to be undertaken safely.
- Training should include of basic hazard awareness, site-specific hazards, safe work practices, hygiene requirements; wearing and use of protective equipment and clothing, and emergency procedures for fire, evacuation, and natural disaster, as appropriate. Any site-specific hazard or colour coding in use should be thoroughly reviewed as part of orientation training.
- Visitor Orientation
- Contractors will establish visitor orientation and control program, if visitors to the construction site, including vendors, can gain access to areas where hazardous conditions or substances may be present.
- Visitors will always be accompanied by an authorized member of the Contractors or the Contracting Authority's representative who has successfully fulfilled the EHS orientation training, and who is familiar with the project site construction hazards, layout, and restricted working areas.

### ***Construction Site Management***

The Contractors shall transport labour and equipment within the right of way and over routes provided for access to the construction site in a manner to avoid as much as possible damage to property.

### ***Waste from Excavation and Earthworks***

The Contractors shall:

- Collect and properly manage all solid wastes from the construction activities.
- Carefully select waste disposal sites, to be approved by the relevant authorities.
- Remove unneeded excavation material from the construction sites as soon as possible;

### Air Quality

The most common pollutant involved in fugitive emissions is dust or particulate matter (PM) that is released during the transport and open storage of solid materials, and from exposed soil surfaces, including unpaved roads. Accordingly, the Contractors shall:

- Use dust control methods, such as covers, water suppression, or increased moisture content for open materials storage piles, or controls, including air extraction and treatment through a baghouse or cyclone for material handling sources, such as conveyors and bins;
- Use water suppression for control of loose materials on paved or unpaved road surfaces. Oil and oil by-products should not be used.
- Use wheel washes at quarries, ready-mix plants, construction sites, and other facilities to prevent track-out of mud, dust and dirt on to public road.
- Regularly clean road surfaces within the construction sites to remove accumulated fine material, and regularly clean transportation vehicles.
- Cover open bodied trucks handling sand, gravel or earth.
- Minimize smoke from diesel engines by regular and proper maintenance, in particular by ensuring that the engine, injection system and air cleaners are in good condition.

### Hazardous and Toxic Waste

Toxic and deleterious wastes resulting from the Contractors' activities require special attention in order to forestall their introduction into the natural environment which could result in harm to people, aquatic life or natural growth of the area. The Contractors shall take precautions relative to the conditions specified herein.

- Providing adequate secondary containment for fuel storage tanks and for the temporary storage of other fluids such as lubricating oils and hydraulic fluids,
- Using impervious surfaces for refuelling areas and other fluid transfer areas
- Training workers on the correct transfer and handling of fuels and chemicals and the response to spills
- Providing portable spill containment and clean up equipment on site and training in the equipment deployment
- Depositing or discharging toxic liquids, chemicals, fuels, lubricants and bitumen into containers for salvage or subsequent removal to off-site locations.
- Avoiding the storage or handling of toxic liquid adjacent to or draining into drainage facilities.
- Keeping absorbent materials or compounds on Site in sufficient quantities corresponding to the extent of possible spills.
- Locating landfill pits for the disposal of solid waste at least 100 m from water courses and fencing them off from local populations.
- Ensuring adequate primary treatment of sanitation effluents and installing septic tanks away from village watering points.

### Area Signage

- Hazardous areas should be marked appropriately.
- Signage should be in accordance with international standards and be well known to, and easily understood by workers, visitors and the general public, as appropriate.
- Work sites should be demarcated

### Labelling of Equipment

- All vessels that may contain substances that are hazardous as a result of chemical or toxicological properties, or temperature or pressure, should be labelled as to the contents and hazard, or appropriately colour coded.

### Borrow Pits and Quarries

Materials required for site fill, backfill or the construction of permanent works that are not available from the surface will be obtained from borrow areas and quarries that the Contractors will identify, subject to approval by the Contracting Authority or its representative<sup>4</sup>.

The Contractors will adhere to the following standards when siting, developing, operating, and reinstating borrow pits and quarries:

- Obtain all necessary permits for borrow pits and quarry operations.
- Locate quarry sites as far away from settlements as possible. Quarry operations will produce noise and dust that will impact on nearby inhabitants even if controls are imposed.
- Fence and secure quarry sites. Steep quarry faces are a hazard to people and livestock.
- Locate borrow pits and quarries at least 100 m from watercourses or human habitations.
- Conducting a pre-blasting inspection/survey, in consultation with residents/property owners, prior to operating a quarry, to document the existing condition of buildings and identify any sensitive structures, building components or contents. The site conditions and the inspection information should be used to design the blasting operation to avoid any effects to property.
- Locating, to the extent possible, borrow pits on land that is not used for cultivation and is not wooded.
- Areas of local historical or cultural interest should be avoided and pits should not be located within 25 m of grave sites.
- Hiding, to the extent possible, pits from the road. Quarries and borrow pits should be designed to minimize visible scarring of the landscape.
- Developing a borrow pits and quarry management plan, including a plan to reinstate borrow pits and quarry sites as closely as possible to their original state

### Decommissioning of Worksites

The contractor shall:

- Clear construction sites of any equipment or waste and ensure that the sites are free from contamination.
- Disposing or recycling any equipment or waste in an appropriate and environmentally sound manner.
- Hand sites over to the Contracting Authority upon completion.

### Occupational Health and Safety (OHS)

#### Severe Weather and Facility Shutdown

- Workplace structures should be designed and constructed to withstand the expected elements for the region and have an area designated for safe refuge, if appropriate.
- Standard Operating Procedures (SOPs) should be developed for site shut down, including an evacuation plan.

#### Lavatories and Showers

- Adequate lavatory facilities (toilets and washing areas) should be provided for the number of people expected to work at the construction site and allowances made for segregated facilities, or for indicating whether the toilet facility is "In Use" or "Vacant". Toilet facilities should also be provided with adequate supplies of hot and cold running water, soap, and hand drying devices.

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<sup>4</sup> ESIA prepared by the government has identified following quarries for exploitation: XXXX

- Where workers may be exposed to substances poisonous by ingestion and skin contamination may occur, facilities for showering and changing into and out of street and work clothes should be provided.

#### Potable Water Supply

- Adequate supplies of potable drinking water should be provided from a fountain with an upward jet or with a sanitary means of collecting the water for the purposes of drinking
- Water supplied to areas of food preparation or for the purpose of personal hygiene (washing or bathing) should meet drinking water quality standards

#### Clean Eating Area

Suitable arrangements are to be made for provision of clean eating areas where workers are not exposed to the hazardous or noxious substances

#### Personal Protective Equipment (PPE)

The Contractors shall:

- identify and provide appropriate PPE at no cost to its workers and to visitors, and ensure that this obligation is passed on to any subcontractors
- ensure that the use of PPE is compulsory
- provide sufficient training in the use, storage and maintenance of PPE to its employees
- properly maintain PPE, including cleaning when dirty and replacing when damaged or worn out
- determine requirements for standard and/or task-specific PPE based on a Job specific Safety Analysis (JSA)
- consider the use of PPE as a last resort when it comes to hazard control and prevention, and always refer to the hierarchy of hazard controls when planning a safety process

#### Noise

The Contractors shall institute appropriate measures to mitigate the impact of construction noise to an acceptable level. Precautions to reduce the exposure of workers to noise should include but not be limited to:

- No employee should be exposed to a noise level greater than 85 dB(A) for a duration of more than 8 hours per day without hearing protection. In addition, no unprotected ear should be exposed to a peak sound pressure level (instantaneous) of more than 140 dB(C).
- Actively enforcing the use of hearing protection when the equivalent sound level over 8 hours reaches 85 dB(A), the peak sound levels reach 140 dB(C), or the average maximum sound level reaches 110 dB(A). Hearing protective devices provided should be capable of reducing sound levels at the ear to at least 85 dB(A).
- Although hearing protection is preferred for any period of noise exposure in excess of 85 dB(A), an equivalent level of protection can be obtained, but less easily managed, by limiting the duration of noise exposure. For every 3 dB(A) increase in sound levels, the 'allowed' exposure period or duration should be reduced by 50 percent.
- Performing periodic medical hearing checks on workers exposed to high noise levels.
- Rotating staff to limit individual exposure to high levels.
- Installing practical acoustical attenuation on construction equipment, such as mufflers. Silenced air compressors and power generators should be used, and all machinery should be kept in good condition. Exhaust silencing equipment should be installed on bulldozers, compactors, cranes, dump trucks, excavators, graders, loaders, scrapers and shovels.
- Posting signs in all area where the sound pressure level exceeds 85 dB(A).

- Providing advance notice to occupants should be given if an activity involving high level impact noise is in close proximity to buildings.

#### First Aid and Accidents

The Contractors shall:

- Ensure that qualified first aid by qualified personnel is always available. Appropriately equipped first-aid stations should be easily accessible throughout the place of work.
- Provide workers with rescue and first-aid duties with dedicated training so as not to inadvertently aggravate exposures and health hazards to themselves or their co-workers. Training should include the risks of becoming infected with blood-borne pathogens through contact with bodily fluids and tissue.
- Providing eyewash stations and/or emergency showers close to all workstations where immediate flushing with water is the recommended first-aid response.
- Making widely available written emergency procedures for dealing with cases of trauma or serious illness, including procedures for transferring patient care to an appropriate medical facility.
- Immediately reporting of all accidental occurrences with serious accident potential such as major equipment failures, contact with high-voltage lines, exposure to hazardous materials, slides, or cave-ins to the Independent Engineer and the Contracting Authority or designated representative.
- Immediately investigating any serious or fatal injury or disease caused by the progress of work by the Contractors and submitting a comprehensive report to the Independent Engineer and the Contracting Authority or its designated representative.

#### Vector-Borne Diseases

Reducing the impact of vector-borne diseases on the long-term health of construction workers and neighbouring communities is best accomplished by eliminating the factors that lead to disease. The contractor, in close collaboration with community health authorities, shall implement an integrated control strategy for mosquito and other arthropod-borne diseases that might involve:

- Prevention of larval and adult propagation through sanitary improvements and elimination of breeding habitats close to human settlements
- Elimination of unusable impounded water
- Implementation of integrated vector control programs
- Promoting use of repellents, clothing, netting, and other barriers to prevent insect bites
- Educating project personnel on risks, prevention, and available treatment
- Distributing appropriate education materials
- Following safety guidelines for the storage, transport, and distribution of pesticides to minimize the potential for misuse, spills, and accidental human exposure

#### ***Road safety and Traffic Safety***

Where the project may contribute to a significant increase in traffic along existing roads, the contractor shall:

- Minimize pedestrian interaction with construction vehicles, particularly at crossing points to schools and markets, through appropriate signage, engineered footpaths or traffic slowing devices.
- Collaborate with neighbouring communities and responsible authorities to improve signage, visibility and overall safety of access roads, particularly along stretches located near schools or other locations where children may be present.
- Employ safe traffic control measures, including road signs and flag persons to warn of dangerous conditions.



## Chance Find Procedures

The Contractor shall develop a chance find procedure that outlines the actions to be taken if previously unknown cultural heritage is encountered during construction. The chance find procedures will include:

- determination of whether cultural heritage is expected to be found, either during construction or operations
- record keeping and expert verification procedures
- chain of custody instructions for movable finds
- notification of national heritage institutions
- clear criteria for potential temporary work stoppages that could be required for rapid disposition of issues related to the finds.

## Emergency Preparedness and Response

The Contractor will establish and maintain an emergency preparedness and response system, in collaboration with appropriate and relevant third parties.

The emergency response plan should cover: (i) the contingencies that could affect the construction personnel and facilities, (ii) the need to protect the health and safety of project workers, and (iii) the need to protect the health and safety of the neighbouring communities. More specifically it should include:

- Identification of the emergency scenarios
- Specific emergency response procedures
- Trained emergency response teams
- Emergency contacts and communication systems/protocols (including communication with neighboring communities when necessary)
- Procedures for interaction with government authorities (emergency, health, environmental authorities)
- Clear identification of evacuation routes and muster points
- Emergency drills and their periodicity based on assigned emergency levels or tiers
- Decontamination procedures and means to proceed with urgent remedial measures to contain, limit and reduce pollution within the physical boundaries of the construction site to the extent possible.

## ***Stakeholder Engagement***

The Contractors will prepare a Stakeholder Engagement Plan with representative persons and communities bordering the construction site and will give these communities prior notice of plans and schedules that might affect them.

## ***Labour Force Management***

### *Grievance Mechanism for Workers*

The Contractor will put in place a Grievance Mechanism for their workers and the workers of their subcontractors that is proportionate to their workforce, according to the following principles<sup>5</sup>. This GRM will be distinct from the Project level Grievance Mechanism, and shall adhere to the following principles:

- ***Provision of information.*** All workers should be informed about the grievance mechanism at the time they are hired, and details about how it operates should be easily available, for example, included in worker documentation or on notice boards.

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<sup>5</sup> Based on Annex D of the Guidance Note for IFC's Performance Standard 2.

- **Transparency of the process.** Workers must know to whom they can turn in the event of a grievance and the support and sources of advice that are available to them. All line and senior managers must be familiar with their organization's grievance procedure.
- **Keeping it up to date.** The process should be regularly reviewed and kept up to date, for example, by referencing any new statutory guidelines, changes in contracts or representation.
- **Confidentiality.** The process should ensure that a complaint is dealt with confidentially. While procedures may specify that complaints should first be made to the workers' line manager, there should also be the option of raising a grievance first with an alternative manager, for example, a human resource (personnel) manager.
- **Non-retribution.** Procedures should guarantee that any worker raising a complaint will not be subject to any reprisal.
- **Reasonable timescales.** Procedures should allow for time to investigate grievances fully but should aim for swift resolutions. The longer a grievance is allowed to continue, the harder it can be for both sides to get back to normal afterwards. Time limits should be set for each stage of the process, for example, a maximum time between a grievance being raised and the setting up of a meeting to investigate it.
- **Right of appeal.** A worker should have the right to appeal to the World Bank or national courts if he or she is not happy with the initial finding.
- **Right to be accompanied.** In any meetings or hearings, the worker should have the right to be accompanied by a colleague, friend or union representative.
- **Keeping records.** Written records should be kept at all stages. The initial complaint should be in writing if possible, along with the response, notes of any meetings and the findings and the reasons for the findings. Any records on SEA shall be registered separately and under the strictest confidentiality.
- **Relationship with collective agreements.** Grievance procedures should be consistent with any collective agreements.
- **Relationship with regulation.** Grievance processes should be compliant with the national employment code.

### **Code of Conduct**

The contractor shall develop and implement a Code of Conduct to deal with the environmental and social risks related to construction. The Code of Conduct will apply to all staff, laborers and other employees at the construction site or any other places where construction related activities are being carried out. It also applies to the personnel of each subcontractor and any other personnel assisting us in the execution of the Works.

The purpose of the Code of Conduct is to ensure an environment where unsafe, offensive, abusive or violent behaviour will not be tolerated and where all persons should feel comfortable raising issues or concerns without fear of retaliation.

More specifically, the Code of Conduct will include the following core requirements applicable to the contractor's personnel, including the personnel of subcontractors:

- carrying out his/her duties competently and diligently;
- complying with this Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other contractor's personnel and any other person;
- maintaining a safe working environment including by:
  - ensuring that workplaces, machinery, equipment and processes under each person's control are safe and without risk to health;
  - wearing required personal protective equipment;
  - using appropriate measures relating to chemical, physical and biological

- substances and agents; and
  - following applicable emergency operating procedures.
- reporting work situations that he/she believes are not safe or healthy and remove himself/herself from a work situation which he/she reasonably believes presents an imminent and serious danger to his/her life or health;
- treating other people with respect, and not discriminate against specific groups such as women, people with disabilities, migrant workers or children;
- not engaging in any form of sexual harassment including unwelcome sexual advances, requests for sexual favours, and other unwanted verbal or physical conduct of a sexual nature with other Contractor's or Employer's Personnel;
- not engaging in Sexual Exploitation, which means any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Sexual exploitation occurs when access to or benefit from Goods, Works, Consulting or Non-consulting services is used to extract sexual gain;
- not engaging in Sexual Assault, which means sexual activity with another person who does not consent. It is a violation of bodily integrity and sexual autonomy and is broader than narrower conceptions of "rape", especially because (a) it may be committed by other means than force or violence, and (b) it does not necessarily entail penetration.
- not engaging in any form of sexual activity with individuals under the age of 18, except in case of a pre-existing marriage;
- completing relevant training courses that will be provided related to the environmental and social aspects of the Contract, including on health and safety matters, and Sexual Exploitation and Assault (SEA);
- reporting violations of this Code of Conduct

The contractor will not retaliate against any person who raises a concern in good faith about any behaviour prohibited by the Code of Conduct, or who makes use of the Workers Grievance Mechanism or the Project Grievance Mechanism. Such retaliation in itself would be a violation of the Code of Conduct.

Any violation of this Code of Conduct by contractor's personnel may result in serious consequences, up to and including termination and possible referral to legal authorities.

The contractor will require all employees and the employees of subcontractors to individually sign the Code of Conduct and will proactively address any breach to the Code of Conduct.

A copy of the Code of Conduct in Turkish shall be displayed in a location easily accessible to neighbouring communities.

### ***Security Management***

Malindi – Galana transmission line may experience security challenges due to proximity to Tana River County classified as a security hotspot in Kenya.

Tana River County occasionally experiences terrorist attacks, community feuds/conflicts for grazing land and water resources which at times turn out fatal. This situation may therefore potentially spill over to the neighbouring Kilifi County during inter-community interactions in search of pasture and water.

To mitigate against security threat, the Consultant staff and his agents should adhere to the

following measures:

- It is mandatory that consultant staff going for fieldwork in this area be given provisions of armed security throughout the assignment.
- All vehicles transporting staff to the field must be given armed escort from Malindi all the way to Galana.
- The consultant (in liaison with KETRACO) should create a network of informers from the community to assist in providing information on the security situation on the ground
- Continuous liaison with the local administration and also national administration on matters security and the project in its entirety
- Collaborate with other sector players like Kenya Power who already have foothold in the area
- Create a rapport and sensitise the communities living in the project area on the importance of the project.
- Ensure that the vehicles to be used are of good condition due to poor road network between Malindi and Galana. Some sections of the road are highly potholed and vehicles are at times forced to use diversions through thickets.

#### Environmental and Social Monitoring by Contractors

The Contractor shall monitor, keep records and report on the following issues:

- *Availability of Key Personnel:* EHS Manager, Environmental Management specialist; Social Management Specialist; Health and Safety Specialist; Community Relations Manager.
- *Safety:* hours worked, recordable incidents and corresponding Root Cause Analysis (lost time incidents, medical treatment cases), first aid cases, high potential near misses, and remedial and preventive activities required (for example, revised job safety analysis, new or different equipment, skills training, and so forth).
- *Environmental incidents and near misses:* environmental incidents and high potential near misses (dust, erosion, spills, habitat degradation) and how they have been addressed, what is outstanding, and lessons learned.
- *Traffic accidents (project vehicles and non-project vehicles):* provide date, location, damage, cause, follow-up;
- *Status of permits and agreements:* areas/facilities with permits required (quarries, asphalt & batch plants), areas with landowner agreements required (borrow and spoil areas, camp sites).
- *Major works:* those undertaken and completed, progress against project schedule, and key work fronts (work areas).
- *EHS requirements:* noncompliance incidents with permits and national law (legal noncompliance), project commitments, or other EHS requirements.
- *EHS inspections and audits:* by Contractors, Independent Engineer, Contracting Authority, or others—to include date, inspector or auditor name, sites visited, and records reviewed, major findings, and actions taken<sup>6</sup>.
- *Workers:* number of workers, indication of origin (expatriate, local, nonlocal nationals), gender, age with evidence that no child labour is involved, and skill level (unskilled, skilled, supervisory, professional, management).

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<sup>6</sup> Data on the prevalence of SEA/SH shall not be collected directly and audits shall focus on making sure that the mitigation and response measures are in place and working accordingly

- *Accommodations*: status of accommodations' compliance with national and local law and good practice; actions taken to recommend/require improved conditions, or to improve conditions.
- *EHS Training, including SEA/SH*: dates, number of trainees, and topics.
- *Footprint management*: details of any work outside site boundaries or major off-site impacts caused by ongoing construction - to include date, location, impacts, and actions taken.
- *External stakeholder engagement*: highlights, including formal and informal meetings, and information disclosure and dissemination, including a breakdown of women and men consulted.
- *Details of any security risks*: details of risks the Contractors may be exposed to while performing its work—the threats may come from third parties external to the project.
- *Worker grievances*: details including occurrence date, grievance, and date submitted; actions taken and dates; resolution (if any) and date; and follow-up yet to be taken. Grievances listed should include those received since the preceding report and those that were unresolved at the time of that report.
- *External stakeholder grievances*: grievance and date submitted, action(s) taken and date(s), resolution (if any) and date, and follow-up yet to be taken. Grievances listed should include those received since the preceding report and those that were unresolved at the time of that report. Grievance data should be gender disaggregated.
- *GBV incidence*: Availability of GBV Focal Point; reporting incident, date reported and management (e.g. through the pre - identified referral pathway)
- *Major changes to Contractors environmental and social practices*.
- *Deficiency and performance management*: actions taken in response to previous notices of deficiency or observations regarding EHS performance and/or plans for actions to be taken should continue to be reported to the Contracting Authority until it determines the issue is resolved satisfactorily.

## **ANNEX 5: 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 8<sup>th</sup> February 2013;
- c) The gazettment of the National PPP Regulations on 19<sup>th</sup> December 2014;
- d) The development of draft PPP Regulations for the County Governments;
- e) The gazettment of the Roads Annuity Fund Regulations, 2015;
- f) The gazettment 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**

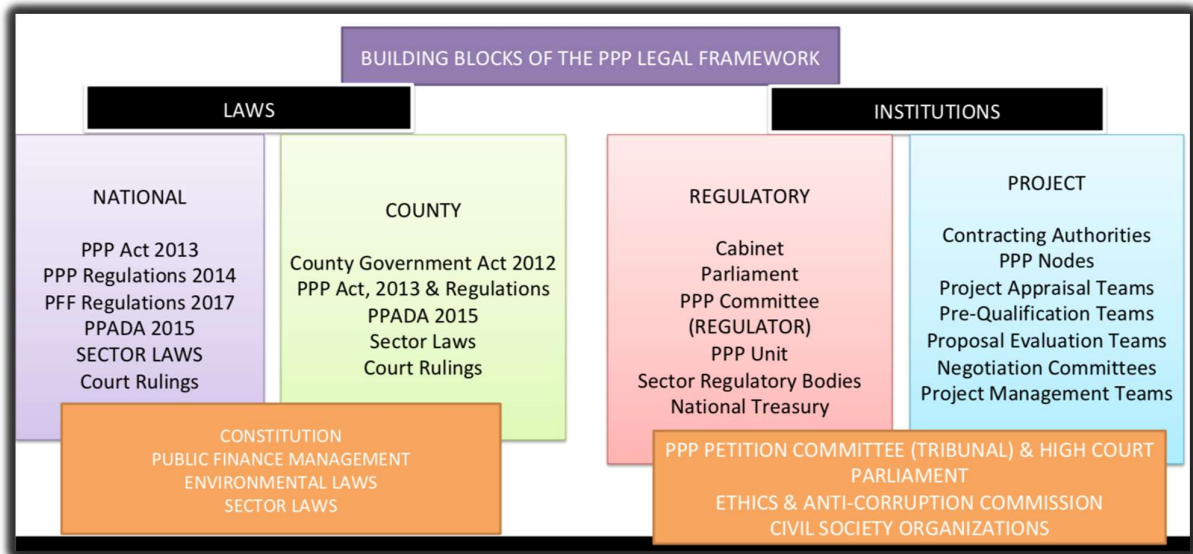
Since 1996, Kenya has attracted private investments into the country's economic and social infrastructure sectors including telecommunications, energy, transport, water and sewerage. These investments have demonstrated both the commitments of Government of Kenya (GOK) to PPPs and the interest by private 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 2: 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.

## **b) 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.

## **c) 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.

## **d) 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



## **5. PPP Project Facilitation Fund**

The Project Facilitation Fund (PFF) 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. Materializes 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.

## **ANNEX 6: 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 details:

#### **INTRODUCTION**

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

#### **NEEDS ANALYSIS**

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

#### **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

#### **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
- Cadastral Route maps
- Aerial maps
- 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
- Environmental and Disaster Risk Analysis
  - Environmental Impact Assessment (EIA) and Social Risk Assessment
  - Climate and Disaster Risk Vulnerability Assessment
  - Environmental & Social Impact Assessment (ESIA) report
  - Resettlement action plan
  - Vulnerable marginalized groups plan
  - Social Safeguards Sustainability plan
- 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 pay, evaluate ability and willingness to pay of users

## **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:

- Description of alternative procurement and PPP options considered and justification therefor. Options must include traditional public sector procurement. For each option set out:
  - The anticipated key roles and responsibilities of the private sector
  - The key risk allocation under each option
- Description of and justification for the evaluation criteria used in evaluating alternative procurement options to include, inter alia:
  - 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 on:
  - Affordability
  - Assessment of Fiscal Impact
  - Assessment of impact on Public Sector Borrowing including any contingent liabilities

- Private sector feedback based on a Market Sounding amongst potential operators, developers and financiers
- Presentation of the results of the Evaluation
- Detailed description of the preferred Procurement Option and PPP Structure, including:
  - Risk Allocation
  - Outline Payment Mechanism
  - Indicative Financing Structure

### **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.

### **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

### **PPP PROJCT AGREEMENTS TERMS SHEETS**

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

### **PROJECT IMPLEMENTATION SCHEDULE**