Tanzania PER
March 2014

TERMS OF REFERENCE FOR CONSULTANCY ON PUBLIC PRIVATE PARTNERSHIPS WITH CASE STUDY OF THE TRANSPORT SECTOR

I. BACKGROUND

Public Private Partnership (PPP) is an important instrument for the Government to attract private investment with a view to provide better public services. The PPP Policy was issued in 2009; PPP Act enacted in 2010 and the PPP Regulations were issued in 2011. The Public Procurement Act (PPA 2011) provides for PPP procurement for both solicited and unsolicited proposals. While this legal framework includes gaps and areas that need to be improved, it is a solid basis on which the PPP program can be launched and demonstration projects developed.

Further to the PPP Act (2010), a Finance Unit (FU) has been established within the Ministry of Finance (MoF) to assess, manage and monitor fiscal risk, to assess affordability of projects, and to appraise value for money from PPPs with a view to recommend suitable PPP projects for approval by Minister for Finance. The FU has commenced preparation of PPP Finance Regulations.

Similarly, a Coordination Unit (CU) has been established within the Tanzania Investment Centre (TIC), which reports to the Prime Minister’s Office (PMO). The CU’s role is to promote and coordinate the PPP projects including all matters relating to public private partnerships.

Under the Big Results Now (BRN) initiative, two key decisions were made. 1) to combine the two PPP units into one unit under the MoF, and 2) to create the PPP Facilitation Fund under the MoF to provide funding for technical assistance to PPP nodes, capacity building, project preparation, viability gap funding, and other costs necessary for the government to provide support to a PPP project. The first step in the BRN reforms is to amend the PPP Law. Proposals to amend the law have been submitted to the Attorney General for submission to Parliament. Once the PPP law is amended, new regulations will be required which will include a road map for managing unsolicited proposals.

These Terms of Reference (ToR) have been approved by the Public Expenditure Review (PER) Champions Group to provide a basis for a study on how PPPs can augment the meagre public resources to construct and/or rehabilitate public infrastructures necessary for the provision of the much needed public services.
II. OBJECTIVES AND PURPOSE OF THE STUDY

The PER champions have chosen four key areas to focus on during the 2014 Public Expenditure Review. PPP is one of these areas and this is closely linked to Public Investment Management (PIM) study which is ongoing under the PER 2013 pipeline and will be completed by early 2014. The study on how PPPs in Tanzania can operate as an effective instrument to supplement the government development budget resources aims at achieving the following objectives:

(a) to provide operational guidance on how to select pipeline projects that may be implemented through PPP;
(b) to provide support to key players – PPP Units, MoF, PMO, Ministry of Works, (MOW), Ministry of Transport (MOT) and POPC in prioritization of projects including linkages to the government budget regime;
(c) to provide guidance on the effective use of PPP public resources and leverage with PPP private investment with a view to provide value for money in PPP projects; and
(d) to address the challenges of procuring solicited and unsolicited PPP projects with a particular focus on government participation.

The study is expected to make recommendations and advises on the following specific matters:

(i) how to make effective use of public resources in supporting PPP projects and transactions: Public resources are always scarce and are competing for many priorities. The study is expected to give guidance as to how and to what extent public resources should be committed to PPP projects and opportunities taking into account affordability and value for money concerns.

(ii) how should the public sector make prudent choice of projects suitable for PPP financing to leverage private sector investment: Private sector investment is undoubtedly expensive, and therefore the choice of projects needs to be made prudently to avoid unnecessary obligations on the part of the government. On the other hand, it is important for the Contracting authority to make a good choice of bankable projects that will attract private sector interest.

(iii) how can the government avoid unnecessary bureaucracy and fast-track PPPs within the realm of public finance requirements: according to the legislation PPP procurement is done using the PPA. This poses a serious threat to the successful procurement of private partners due to the time it takes.
At the same time, PPP procurement needs to comply with public finance legislation and government budget regime to ensure competition. This challenge needs to be addressed critically.

(iv) **how should the two PPP units practically work together to effectively and efficiently deliver their respective responsibilities.** At present, there are multiple approval processes and the two PPP units are answerable to different authorities. Contracting authorities have cited this as a cumbersome and unnecessary bureaucracy. In addition, the study should recommend on how other key players can work together with the PPP units in achieving the overall aims of the PPP program in the country.

(v) **how should the PPP Facilitation Fund (PPPFF) be administered to achieve its establishing objectives.** The study should recommend criteria for use of the funds, modality of accessing the funds, approval for withdrawals and the sources of seed money and subsequent replenishments.

(vi) **how the findings of the study can be applied into the Transport sector.** The Transport sector is one of the front-runners of potential PPP opportunities in the country. At present, the sector has got opportunities in port, airport, railway, and road sub-sectors. Suitable example(s) of live projects from this sector which will be subjected to the recommendations of the study should lead into acceptable PPP projects and therefore serve as learning examples.

(vii) **To what extent should the above processes and procedures be reflected and linked to the Public Investment Manual (PIM) concepts so that the PPP proceedings do not conflict with the overall public investment policy.** Much as the PPP processes are essentially public finance, there has to be linkage with the national development and investment program under the POPC.

(viii) **The support needed by the key players in the PPP program:** The PPP program in Tanzania is currently implemented by several key players including PMO, POPC, MOF, the two PPP Units and the Contracting Authorities (CAs). The study should come up with areas of support to these players and suggest suitable approaches for the players to act with minimum bureaucracy.

(ix) **Other matters of interest to the development and implementation of Tanzania PPP program.** PPPs are not a new phenomenon in Tanzania. Tanzania is not an island and there is reason to learn from other experiences. International practices in PPP operations and examples of similar projects
elsewhere in the world should help provide justification for the recommendations made in the study.

III. SCOPE OF THE STUDY

In order for the proposed study to achieve the stated objectives and purpose an effective planning of the PPP resource envelope for project preparation, viability gaps, and transaction costs is critical. PIM is fundamental to the decision to finance investments either through PPP or purely public sources. Due to this, the consultant on the PPP study is expected to work closely together with the PIM study under the guidance of University of Dar es Salaam.

Public funding for PPP transactions includes pre-feasibility studies, feasibility studies, transaction advisory services, other marketing and expenditure on transaction preparation and procurement, capital grants during construction, operational grants and other contributions. Hence the study is expected to examine and consider public funding in the various phases of the project lifecycle to ensure successful PPP projects.

Institutions responsible for monitoring and driving public expenditure issues associated with PPPs include POPC, PMO, MOF, CU, and in particular FU. In order to support this task in the Government, MoF is creating a PPP Facilitation Fund. These ToRs will therefore support specifically the PPPFF, the FU, the CU, PMO, POPC, MOF and the PPP nodes within line ministries and public agencies and in particular the Transport sector.

The demand for PPP interventions in Tanzania far exceed the scope of the study, and for this reason additional phases of work are anticipated to support different sectors to implement PPP interventions across the different key players, with a view to helping the key players to generate robust, fiscally responsible and commercially viable projects that will deliver value for money to the Tanzanian people. As mentioned above, this particular study will focus on the transport sector including sea ports, ferry terminals, airports, railways, roads, and bridges.

The Consultant will build on the various work that has been done in the development of the PPP program in the country, specifically the PPP Operational guidelines and manuals developed, and the PPP pipeline analyses, pre-feasibility and feasibility studies that have been prepared for PPP projects in the Transport sector.

The ultimate objective of the study is to inform decision makers on potential pipeline projects and the effective use of public funds to support PPP and how the scarce resources can be used most effectively to leverage private investment and provide
value for money infrastructure projects. The study should point out best practices and tools which can be adopted to prioritize the PPP projects.

Specifically, the study will examine and report on the following matters:

1. **How a project should be selected for implementation through PPP and budget allocation:** The process of selecting projects to be implemented through PPP including the prioritization of projects involves extensive data gathering and filtering using pre-determined criteria. As part of the prioritization amongst the projects, the Government needs to understand how to allocate scarce resources to achieve greatest efficiency: maximizing the benefits available from PPP, maximizing leverage and increased private investment, and obtaining additional public services and improved quality of public services. The consultant will advise how the selection of prioritized PPP projects will be addressed in the budgeting process including the allocation of funding for preparation and government contribution.

2. **Methods to fast track procurement of PPP and manage unsolicited proposals:** Different mechanisms to select private partners for PPP projects will be assessed, including the relative efficiency levels of the different PPP procurement methods internationally and in Tanzania based on past performance. The result of this assessment will serve to inform government on how to procure PPP partners; how to manage the risks inherent in the different procurement methods; and what characteristics of different projects would inform the choice of procurement methods. Specifically the consultant will advise on legal and regulatory amendments required on PPP procurement process in line with international best practices. This will be linked to the choices to be made during the PIM process and PER to use the procurement method most appropriate to the projects in question. Consideration will be given to the institutional system to determine whether the current system is optimal or if changes need to be made.

3. **The allocation of public funding during the PPP transaction cycle:** The Government needs to understand how to allocate scarce resources to individual PPP projects as they move through the PPP transaction cycle to achieve greatest efficiency: maximizing the benefits available from PPP, maximizing leverage and increased private investment, and obtaining additional public services and
improved quality of public services. The process of choosing which project should receive Government resources and how much they should receive is not performed in a vacuum; it must be fitted into the overall PPP cycle, for each transaction but also on a portfolio basis. This process needs to support that cycle, enable it, not impede it, not add layers of approvals and formality. This needs to be a dynamic process, which fits together well and iteratively. Key functions in this process will be implemented through the PPPFF resource. The consultant will advise on the administration of the PPPFF to support and implement this process.

4. **Review of transport sector investments to apply the criteria set out above:** The above findings and recommendations are to be developed in their application to the Transport sector with a view to bring theory to practice. This will involve developing at least 10 transactions using the above developed criteria. The consultant will work with the FU, POPC, Sector Ministries, and the relevant CAs to identify all projects and apply the above criteria accordingly. Out of the 10 transactions, a pre-feasibility study of 15-20 pages will be developed for each of a maximum of three prioritized projects, using criteria set under Regulation (5) of the PPP Regulations, 2011. In doing so, strong collaboration and buy-in with the management of the particular CA is extremely important. Each pre-feasibility study should estimate public resources needed for undertaking the feasibility study and bringing the project to the market.

More specifically, for the short list of the most “promising” three transactions in the Transport sector, identification of how much public funding is needed, and the timing of commitment of that funding should be done in the public institution’s budget. To feed into the budget function, and give clear examples of public funding in action in PPP, a series of the three most promising PPP transactions in the targeted Transport sector will be identified and analyzed, to provide a very specific agenda of activities to be performed to bring those projects to market and to implementation, the amount of public funding needed to invest in those activities and the timing of the associated public expenditures.

**IV. DELIVERABLES**

The Consultant undertakes to produce output that is practical in the different phases and processes, designed to support the key players in particular the FU (with a focus on the PPPFF and managing government participation in PPP transactions), CU, PMO,
POPC, MoT PPP node, Ministry of Works (MoW) PPP node, TANROADS, Tanzania Ports Authority (TPA), Tanzania Airports Authority (TAA), and Rail Company (RAHCO) PPP nodes. The consultants will need to work closely with the relevant government agencies to ensure government ownership. The consultant shall deliver the following outputs:

1. An **Inception Report** which sets out among other things, the key findings from previous studies on PPPs in Tanzania. This should include the mapping of existing PPP arrangements at all levels of the government.

2. A proposed **Government strategy and operational guidance** on how to select transactions that should be implemented through PPP. The strategy will be a high level document setting out the principles of PIM and how they apply to the PPP processes, developed in collaboration with the POPC and MOF and in consultation with key line ministries. This strategy will then be expanded in detail, providing specific operating guidance to the different entities involved in the PIM and PPP processes of implementation, and how that process fits with other Government processes. These guidelines will form an addition of the PIM manual that is to be developed under PER 2014, with practical, step-by-step and easy to digest instructions on tasks, deliverables, time-lines and coordination needs amongst the different stakeholders. This work will be closely coordinated with the consultant preparing the PIM Manual. A workshop will be held with key stakeholders to review the draft strategy and operational guidance.

3. A **Communications strategy** to inform the public about PPP, the Government’s program and the impact of PPP on their lives and quality of life. This strategy will be detailed and practical, with a specific, costed action plan for the next three years (2015/16 – 2017/18). A workshop will be held with key stakeholders to review the draft strategy and action plan.

4. **Review of PPP procurement processes** with a view to recommend mechanisms to facilitate fast tracking of PPP procurement and management of unsolicited proposals, including:

   • International experience of PPP procurement methods - In order to provide a baseline of international experience and received knowledge on PPP procurement, a desk study will be done on the relative efficiency of different PPP procurement methods such as open, competitive bidding, direct negotiations and unsolicited bids. The desk study will compare the efficiency of these different procurement methods in relation to time and cost of
construction, delivery of services (quality and cost), time and cost of preparation, and specific risks associated with each type of procurement.

- Generally make comparison between Tanzania’s experience with conventional procurement and the more recent PPP procurement methods - An analysis will be made of Tanzania’s experiences, a comparison between traditional public procurement and PPP procurement, and a comparison in the respective efficiencies of these different procurement methods in relation to time and cost of construction, delivery of services (quality and cost), time and cost of preparation, and specific risks associated with each type of procurement.

- Tanzania’s past experience of procurement of PPP projects - An analysis will be made of Tanzania’s experience with PPP procurement and the relative efficiency of different PPP procurement methods if any, such as open, competitive bidding, direct negotiations and unsolicited bids. The study will compare the efficiency of these different procurement methods in relation to time and cost of construction, delivery of services (quality and cost), time and cost of preparation, and specific risks associated with each type of procurement.

5. **Review of Transport sector potential PPP transactions** through the application of the criteria discussed above. The study will assess level of preparedness of each such project, considering compliance with the PPP Law and PPP Regulations, and provide guidance to the CA on what is required to bring the project up to compliance with the criteria and legal requirements, and to take the project forward through to financial close, including a detailed action plan identifying all key stakeholders and what needs to be done and when. The consultant will prepare guiding points on preparation of ToRs for the work to be done on the various phases of project transactions, including feasibility study, project procurement and negotiation, project development, and project operation so as to bring the project to compliance with the law. As part of this assessment, the Consultants will identify transactions that would use public funds most efficiently. The results of this review will be delivered and debated through a workshop with the MoT, MoW, CU, FU, and relevant agency (TPA, TAA, RaCo, and TANROADS) staff and other key stakeholders. Through this discussion, a short list of 10 priority projects will be agreed with the FU.

6. In relation to this short list of transactions, as part of the pre-feasibility studies for each project, the Consultant will **recommend basic financial model** for
each of the (3) shortlisted projects in order to identify the public financial 
injectons needed, assess preliminary financial viability and bankability and to 
help the central PPP agencies (PPPFU, PPPCU, PMO and POPC) to understand the 
assumptions that go into the calculations and analyses for future projects. This 
analysis of public funding requirements will help inform the budgeting process 
for the public infrastructure assets.

7. **Design a Government/Development Partner PPP support program** for 
the different aspects of the PPP agenda. This will include an action plan and 
specific terms of reference for each task including:

(a) nature of support for the central PPP agencies, including technical support 
for project review and preparation for the various stages of a project 
lifecycle, operation of the PPPFF, communications, and monitoring and 
evaluation;

(b) nature of support for the PPP nodes created in different line ministries, 
including technical support for project preparation, communications, and 
project implementation; and

(c) Capacity building across Government and the private sector.

8. The Consultant will present **draft reports to stakeholders’ workshops**, to 
facilitate discussion of the issues raised, and deliver the final reports. The 
purpose of the workshops is to communicate the results of the draft reports, 
obtain input and advice from stakeholders to improve the reports and help to 
start the dialogue to inform the policy process. The workshops will be organized 
to gather wide range of key stakeholders, obtain relevant inputs and ensure buy-in 
for the proposals being made.

All deliverables shall be in the English language.

V. **REPORTING**

The consultant will report to the Permanent Secretary Ministry of Finance and work 
closely with PMO, POPC, MOT and Ministry of Works (MOW). On Daily basis the 
consultant will work under PPP Finance and Coordination Units.
VI. Consultant qualification

The proposed team should collectively have the following qualifications:

- Team Leader: Senior level international expertise (at least 15 years) of Transport PPP project implementation across the sector. The team leader shall have led similar teams on similar assignments, and shall demonstrate experience advising Governments on institutional, legal and project level PPP implementation. Experience in Africa is required, and experience in Tanzania a plus.

- Senior level expertise (at least 10 years) in public investment management with a focus on leveraging and mobilizing private capital through PPP.

- Senior level expertise (at least 10 years) in PPP procurement, setting up procurement systems and implementing procurement of PPP transactions.

- Financial modeling of PPP transactions (at least 5 years), in particular in the transport sector.

- Local knowledge of government of Tanzania operations and processes, knowledge of relevant local data. Fluency in Kiswahili will be an added advantage.

Furthermore, the team should have proven experience in carrying out similar analyses.

VII. TIME FRAME

The procurement of consultants will commence immediately after approval of the ToRs. The task should be completed no later than November 2014. The Consultant may occasionally be required to present findings at specified PER workshops for sharing of updates and discussion. In case of international consultants, at least three field visits to Tanzania of at least two weeks each is envisaged. Key milestones for these ToRs are set out below, assuming these activities commence immediately and are implemented efficiently.

<table>
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<tr>
<th>Task</th>
<th>Timing</th>
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<tr>
<td>1 Allocation of funding</td>
<td>March 2014</td>
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<tr>
<td>2 Procurement of Consultant</td>
<td>May 2014</td>
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<tr>
<td>3 Inception report on all components of the Assignment</td>
<td>June 2014</td>
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<tr>
<td>4 Draft operational guidance on how to select which projects to be implemented through PPP, as part of PIM.</td>
<td>Mid-July 2014</td>
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<tr>
<td>5 Draft operational guidance on fast-tracking PPP procurement and management of unsolicited proposals</td>
<td>Mid-July 2014</td>
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<td>6 Draft Communications strategy</td>
<td>Mid-July 2014</td>
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<tr>
<td>7 Draft Report on Operations and Criteria for accessing PPPFF</td>
<td>Mid-July 2014</td>
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<td>Task</td>
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<td>8</td>
<td>Draft report of Transport sector potential transactions resulting in a short list of priority projects</td>
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<td>9</td>
<td>Workshops on draft reports/documents for activity 4, 5, 6, 7 &amp; 8</td>
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<td>10</td>
<td>Communication strategy disseminated</td>
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<td>11</td>
<td>Final report on fast-tracking PPP procurement and management of unsolicited proposals disseminated</td>
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<td>12</td>
<td>Final Report on Operations and Criteria for Accessing PPPFF</td>
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<td>13</td>
<td>Final Report on the review of Transport sector potential transactions of a short list of priority projects disseminated</td>
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<td>14</td>
<td>Operational guidance for POPC and MoF on how to select PPP transactions to be implemented through PPP linked with PIM.</td>
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<td>15</td>
<td>Draft time table of public expenditure requirements for short list of Transport transactions and ToRs for project implementation</td>
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<td>16</td>
<td>Workshop on public expenditure requirements for short list of Transport transactions and ToRs for project implementation</td>
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<td>17</td>
<td>Draft Report on Government/Development Partner PPP Financing Guide support of the different aspects of the PPP agenda in a holistic manner</td>
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<td>18</td>
<td>Workshop on Government/Development Partner PPP Financing Guide</td>
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<td>19</td>
<td>Presentation of Final Documents to the GBS/PER Annual Meeting</td>
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<td>20</td>
<td>Submission of Final Reports and Documents on the study</td>
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VIII. FINANCIAL PROPOSAL

The study is a fixed budget assignment. All consultant’s costs including remuneration, costs of air travel to and from Dar es Salaam Tanzania, all local costs while in Dar es Salaam including upkeep, local transport, stationery and all other costs throughout the course of the assignment, shall not exceed USD307,500 (US Dollars Three hundred and seven thousand five hundred only) all inclusive.

Payment of remuneration and other benefits tied to the assignment shall follow the laws of Tanzania. The Consultant shall be obliged to comply with local taxation where applicable.

Foreign consultants are strongly advised to team up with local partners.