# How government entities and counties in Kenya can use Public Private Partnerships to raise finances


The Public Private Partnership Act No. 15 of 2013 provides legislative guidance to govern instances where a government entity wishes to partner with a private sector entity in infrastructure and development projects. The statute establishes a Public Private Partnership unit which is responsible for among other things the making of recommendations on whether to approve or reject public private partnership projects.

In order to successfully enter into a public private partnership agreement a government entity will need to fulfil the following obligations: -

1. **Submission of a list of representatives to oversee the Public Private Partnership**

   The statute requires a government entity that wishes to take advantage of a public private partnership arrangement to start by identifying a public private partnership node within its organizational structure. A public private partnership node is a group of persons from within the government entity that will be responsible for the overall oversight of matters relating to all public private partnership projects. Section 16 of the Public Private Partnership Act sets out the cadre of persons within a government entity that are to be in the node. Prior to the commencement of any public private partnership arrangement it is mandatory that a list detailing the names of persons chosen to be in the node together with their respective competencies is submitted to the public private partnership unit.

2. **Preparation of a sector diagnostic study assessment**

   A sector diagnostic study assessment serves to analyze and present the sectoral context in which a public private partnership project is to be implemented. Aspects of a government entity's strategic plan will usually be helpful in coming up with the sector diagnostic study assessment since projects that can be conducted by a public private partnership arrangement will be identifiable from projects that are proposed within the strategic plan. A strategic plan is therefore useful in helping to conceptualize, identify and prioritize projects that you can conduct by a public private partnership arrangement.

   The sector diagnostic study assessment document is submitted to the Public Private Partnership unit together with an excerpt of your corporate strategic plan.

3. **Preparation of a project proposal**

   A project proposal also requires to be submitted making out a case for the project to the end user. Any commercial objective that a project chosen by a contracting government entity seeks to achieve must be shown to be ancillary to the overall statutory public function of the government entity. This is because an important criteria used by the Public Private Partnership unit in approving projects is whether the project achieves the primary function or statutory mandate of the contracting government entity. In the case of a County it is important to clearly show how the project fits into the county plans or priorities.

Project proposals submitted to the Public Private Partnership unit also need to set out an estimate of the capital expenditure together with the average annual operating expenses relating to the project and how the project is to be funded over the course of its life cycle. In instances where the project is expected to rely on revenue streams from user fees there will be need for the entity making the proposal to describe the general state of user willingness and ability to pay, together with any surveys that have been conducted so as to establish this status. The proposal must also describe how the local communities are likely to be affected by the project together with how any adverse impacts of the project will be managed.

## 4. Constitution of a Project Appraisal Team

Once a public private partnership project proposal is approved the government entity constitutes a project appraisal team for the purpose of overseeing the preparation phase of the project. This team will serve to liaise with the transaction adviser appointed for the project during the feasibility stage of the project.

## 5. Conduct of a Feasibility study

Once a public private partnership project proposal is approved in addition to constituting a project appraisal team a government entity should come up with the Terms of Reference to be used to invite the project Transaction Advisers. The Terms of References will also be used to evaluate the project Transaction Advisers' Request for Proposals. Following invitation of the project Transaction Advisers the bids are considered by the contracting authority and from the process a Transaction Adviser is chosen to come up with a feasibility study on the project. The Public Private Partnership unit has a prequalified list of Transaction Advisers from whom contracting authorities are required to invite bids.

The Transaction adviser works with the Project Appraisal Team and comes up with a feasibility study report which is submitted to the Public Private Partnership committee for approval. The feasibility study report considers technical, legal project requirements; social economic and environmental impact of a project. Once complete the feasibility study is submitted to the Public Private Partnership committee for approval.

Approval of the Feasibility report by the Public Private Partnership Committee enables tabling of the proposal before the cabinet for approval.

## 6. Start of Procurement for a Private Entity with whom to enter into the Public Private Partnership

Thereafter the contracting authority releases a Request for Proposals to the private parties that have been shortlisted after the Request for Qualifications. This second part of the procurement process could take 45-90 days after which the contracting authority selects the preferred bidder. An evaluation report must be given to the Public Private Partnership committee which is subject to approval by the committee. Execution of a final agreement with the successful bidder is subject to cabinet approval.

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