



REPUBLIC OF KENYA

**THE NATIONAL TREASURY
STATE DEPARTMENT FOR PUBLIC INVESTMENTS AND ASSETS
MANAGEMENT**

PUBLIC PRIVATE PARTNERSHIPS DIRECTORATE (PPP)

TERMS OF REFERENCE

FOR

**TRANSACTION ADVISORY SERVICES FOR THE KIBUKA (HIGH GRAND)
FALLS HYDROPOWER AND IRRIGATION DAM PROJECT**

MARCH 2026

TABLE OF CONTENTS

1. INTRODUCTION.....	4
2. DESCRIPTION AND SCOPE OF THE PROJECT	4
Project Description.....	4
Contracting Authorities	4
3. OBJECTIVE OF THE TRANSACTION ADVISORY SERVICES.....	5
Domestic Capital Mobilization	5
4. ROLE OF THE TRANSACTION ADVISOR AND TRANSACTION ADVISOR TEAM.....	6
5. SCOPE OF THE TRANSACTION ADVISORY WORK	7
PHASE I: FEASIBILITY STUDY AND PROJECT IMPLEMENTATION SCHEDULE.....	7
Task 1: Project Feasibility Assessment.....	8
Task 1.0: Provide Approach, Methodology, Work Plan and Timeline.....	8
Task 1.1: Technical and Commercial Options Analysis.....	8
A. Power Component.....	9
B. Irrigation Component.....	9
C. Lifecycle Costing and Commercial Viability	10
D. Ancillary and Auxiliary Revenue Assessment.....	11
Task 1.2: Project Due Diligence	11
Task 1.2.1 Economic and Social Cost Benefit Analysis (ECSBA)	12
Task 1.2.2 Financial Viability Assessment	12
Task 1.2.3 Legal Due Diligence.....	12
Task 1.2.4 Site Due Diligence.....	14
Task 1.2.5 Environmental and Social Safeguards Sustainability.....	14
Task 2: Procurement Options and PPP Structure Analysis.....	16
Task 2.1: Options Development, Evaluation and Selection.....	16
Task 2.2: Financial Modeling	17
Task 2.3: Market Sounding	18
Task 2.4: Summary Recommendations, Project Implementation Plan and Feasibility Study Report.....	19
Task 3: Support to KenGen and NIA on Securing PPP Committee Approval and All Other Government Approvals	20
PHASE 2: PPP PROCUREMENT	21
Task 1: Approval and administration of the bidding process	21
Task 1.1: Detailed Procurement Plan.....	21
Task 1.2: Pre-qualification	22
Task 1.3: Bid Evaluation Criteria and Tender Process Design.....	23

Task 1.4: Request for Proposals (RFP).....	23
Task 1.5: Draft PPP Project Agreements	24
Task 1.6: Necessary Approvals.....	24
Task 1.7: Administration of the Bidding Process	24
Task 1.8: Evaluation of Bids, updating of Value for Money and Fiscal Commitment/ Contingent Liability Evaluation.....	24
Task 1.9: PPP agreement, Power Purchase Agreement (PPA) negotiations, PPP agreement management plan.....	25
Task 1.10: PPP agreement signature, financial closure, and close-out report and case study	27
PHASE 3: PROJECT BASED LEARNING (To run concurrently with Phases 1 and 2).....	27
6. TRANSACTION ADVISOR SKILLS AND EXPERIENCE	28
Qualification Requirements of the firm	28
Qualifications Requirements of Key Personnel	29
7. DURATION OF THE ASSIGNMENT	39
8. DELIVERABLES OF THE ASSIGNMENT	39
9. REMUNERATION SCHEDULE AND DISBURSEMENT ARRANGEMENTS.41	
Remuneration schedule	41
10. INSTITUTIONAL ARRANGEMENTS AND COUNTERPART ASSISTANCE .42	
11. BID EVALUATION CRITERIA	42
ANNEX 1: ENVIRONMENTAL, SOCIAL AND LAND ACQUISITION STUDIES 43	
1. Purpose and Legal Basis	43
2. Environmental and Social Safeguards Strategy	43
2.1. Government-Led Safeguards at Feasibility Stage (<i>This will be undertaken by the Transaction Advisor</i>).	43
2.2. Private Partner-Led Full Statutory ESIA. (<i>This will be undertaken by the Concessionaire or Private Party and not the Transaction Advisor</i>)......	43
3. Government-Led Safeguards	44
3.1. Objective	44
3.2. Scope of the Government-Led preliminary PPP ESIA	44
3.3. Full Resettlement Action Plan (RAP).....	45
3.4. Stakeholder Engagement.....	45
4. Private Partner-Led Full Statutory ESIA	45
5. Integration with PPP Procurement	46

1. INTRODUCTION

The Public Private Partnerships Directorate (PPPD) at the National Treasury on behalf of and in consultation with the Contracting Authorities (CAs) namely Kenya Electricity Generating Company PLC (KenGen) of the State Department for Energy(SoE) and National Irrigation Authority (NIA) of the State Department for Irrigation, seeks to engage a Transaction Advisor (TA) to assist in carrying out detailed feasibility studies and the procurement of a Private Party for the Kibuka (High Grand) Falls Hydropower and Irrigation Dam project through a PPP arrangement (the Project).

The Project will be implemented in a phased approach and the TA is expected to advise on the appropriate packages after carrying out technical and commercial due diligence, as well as appropriate grid stability and capacity studies for additional hydro power.

The Transaction Advisor is to conduct a comprehensive viability assessment of the Project in accordance with the PPP Act to identify the optimal project structure that will attract private sector participation under a PPP framework.

2. DESCRIPTION AND SCOPE OF THE PROJECT

Project Description

The Project is a transformative infrastructure initiative centered on the construction of a large-scale multipurpose hydropower dam, associated reservoir, irrigation infrastructure, and domestic water supply. The project envisions a hydropower plant with an estimated installed capacity of 700 MW, complemented by an extensive irrigation network capable of supporting around 500,000 acres of farmland. Beyond these core physical outputs, the project is expected to enhance regional socio-economic development, create new livelihood opportunities and catalyze agro-industrial investments across the surrounding region. The envisioned water storage capacity is approximately 5.6 billion cubic metres, regulating the Tana's all year hydrology. The overarching goal of the project is to develop a multi-purpose dam and hydropower facility that enhances water security, enhances flood control and drought resilience, providing stable dispatchable hydropower essential for grid reliability, generates clean energy, supports large-scale commercial irrigated agriculture and promotes sustainable socio-economic development.

Contracting Authorities

The project contracting authorities shall be Kenya Electricity Generating Company PLC, (KenGen) and National Irrigation Authority (NIA) jointly herein after referred to as **Contracting Authorities**. KenGen shall be the lead contracting authority.

3. OBJECTIVE OF THE TRANSACTION ADVISORY SERVICES

The Contracting Authorities (CAs), with technical assistance from the PPPD wishes to procure the Kibuka Falls Hydropower and Irrigation Dam Project through a competitive bidding process pursuant to Section 46 of the PPP Act, 2021. The main features of this project are a reservoir with a capacity to store 5,600 million cubic metres of water, 700MW Hydropower plant and Irrigation infrastructure for 500,000 acres of agricultural land.

The CAs seek the services of a Transaction Advisor (TA) to undertake feasibility studies of the Project to determine the viability in line with Section 32 of the PPP Act, 2021, recommend the best PPP model for the procurement of the Project based on an analysis of several alternative technical and PPP models, develop transaction documents for the procurement and provide transaction advisory support through to financial close of the first phase of the project. The TA will advise on the appropriate implementation phases based on technical and commercial assessment including appropriate grid stability studies and grid capacity for additional wind power.

The TA will provide advice on the project, including support to the Contracting Authorities to prepare all the detailed financial, technical and legal documentation required to implement the proposed Project from Inception to Financial Close.

In the process, the TA will prepare a feasibility study consistent with the PPP Act to a standard that will enable the Contracting Authorities to establish the technical configuration, commercial viability and bankability of the Project.

The TA will also advise KenGen and NIA on the optimum risk allocation and the resultant project structure including preparation of all necessary documentation and requisite approvals, and will provide all necessary support through to Financial Close.

Domestic Capital Mobilization

Kenya's local financial markets - local capital markets, pension funds, local banks and insurance sector - collectively represent a reliable and critical source of long-term capital for financing infrastructure development. The size, stability, and growth of these sectors position them as essential partners in providing the patient capital necessary for large-scale, transformative infrastructure PPP projects that align with Kenya's Vision 2030 goals. The pension industry has an accumulated asset base of approximately KES 2 trillion while the insurance sector has an asset base of KES 1 trillion. The pension sector has previously invested in PPPs and the Government of Kenya is keen on increasing mobilization of local institutional capital into PPP projects. Leveraging local financial markets is essential as it reduces reliance on external debt, mitigates forex risks, increases project acceptability thus mitigating political risk and strengthens the capacity of domestic institutions.

This policy direction has since been affirmed by Government, following its decision to establish the National Infrastructure Fund as a vehicle for mobilizing blended public and private financing for strategic national infrastructure projects. This underscores the Government's commitment to unlocking domestic capital markets and strengthening Kenya's financial sovereignty in the delivery of infrastructure.

Consequently, in structuring the Hydropower and Irrigation Dam Projects, the Transaction Advisor is expected to explore means of mobilizing local capital to contribute to the sources of capital where possible.

4. ROLE OF THE TRANSACTION ADVISOR AND TRANSACTION ADVISOR TEAM

The Transaction Advisor (TA) will be a firm or consortium of firms, collectively covering the range of financial, technical, environmental, legal and other expertise required to procure the Project through a PPP transaction.

The TA will provide all needed support, inputs, documentation, services and content for the first phase of the Project to achieve successful financial close, including the following key stages:

- i. Update of existing feasibility study and completion of the feasibility study to comply with the PPP Act, including assessing PPP options, , structuring the appropriate Special Purpose Vehicle (SPV) for project implementation and the shareholding arrangement, technical due diligence, grid stability studies, proposed evacuation plans, grid connection studies, demand/market projections, social and gender safeguards considerations including environmental concerns, if any, financial analysis and modeling, Value for Money and Public Sector Comparator analysis, affordability and fiscal impact assessment, and overall transaction structuring;
- ii. The project will include significant land acquisition and resettlement of the Project Affected Persons and it is expected that the successful firm shall be adequately resourced with the requisite skills and experience in this area.
- iii. project marketing, including information memorandum preparation and road show presentations as recommended.
- iv. pre-qualification documentation and processes;
- v. data room design and documentation, if needed;
- vi. bid documentation including RFQ, RFP and all the associated and required PPP draft agreements; and
- vii. 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

- viii. throughout all 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 and subsequent PPP contract management and will ensure knowledge transfer and capacity building of the Contracting Authorities team, to ensure capacity is developed on power project PPP transaction implementation and PPP contract management.

5. SCOPE OF THE TRANSACTION ADVISORY WORK

This section describes the minimum required tasks to be performed by the TA, as an example, without in any way limiting the scope of activities the TA may need to fulfill in order to achieve financial close.

The scope of work is divided into three phases, namely:

Phase I: Update and completion of the PPP Feasibility Study including land acquisition and resettlement strategy, the Project Implementation Schedule for the various phases; 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..

Phase III: Project Based Learning. This entails capacity building for the Project Implementation Team (Contracting Authorities & PPP Directorate), including knowledge and skills transfer. This phase shall be implemented simultaneously with phases I and II.

PHASE I: FEASIBILITY STUDY AND PROJECT IMPLEMENTATION SCHEDULE

The Transaction Advisor is expected to update an existing feasibility study (to be provided to the selected bidder) and complete the feasibility study to comply with the PPP Act. The feasibility study is intended to answer the following four key questions:

1. 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.
2. What is the preferred technical solution to achieving the Project’s objectives vs. other options which will need to be considered?
3. What is the best way to procure the project – through traditional public sector procurement, for example a Build or Design and Build contract, or through some form of PPP?

4. 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.

Task 1: Project Feasibility Assessment

The Transaction Advisor shall be provided with the existing feasibility that was previously conducted by GOK for the Kibuka (High Grand Falls) Dam project. The Transaction Advisor shall be required to build upon the existing feasibility work by undertaking the following tasks:

Task 1.0: Provide Approach, Methodology, Work Plan and Timeline

The Consultant shall develop an integrated implementation plan for the Assignment and coordinate its implementation. This will entail, but not be limited to, the following:

- Developing a detailed approach, methodology, work plan and timeline for implementing the Assignment that is consistent with the approach and methodology.
- Presenting an integrated approach to the Government.
- Preparing a list of documents and key meetings with stakeholders required for implementing the Assignment.

The TA shall capture all the above activities in an **Inception Report**.

Task 1.1: Technical and Commercial Options Analysis

The Technical and Commercial Feasibility Study shall assess technical configurations and commercial structuring options for the Project, building upon the existing feasibility work undertaken. The Study shall evaluate projected market demand for the power to be generated, including demand forecasts and revenue implications. It shall further undertake a grid stability assessment and examine the implications for the transmission network, including integration requirements and system reinforcement needs. The Study shall culminate in recommendations on the optimal technical configuration, commercial set-up, and appropriate project phasing strategy.

The Study shall also assess water resource availability and sustainable allocation for irrigation purposes, including reservoir operations, seasonal variability, and long-term climate resilience considerations. It shall evaluate the hydraulic design and irrigation system requirements, including water conveyance, distribution infrastructure requirements, command area development, and drainage systems. The Consultant shall analyze projected irrigation demand, cropping patterns, farm uptake potential, and economic viability, including tariff frameworks, cost recovery mechanisms, and alternative service delivery models. The Study shall also examine land use implications, water rights considerations, and institutional arrangements for irrigation management. It shall culminate in recommendations on the optimal technical configuration, commercial structuring approach, and phased implementation strategy for the irrigation component.

In detail, the TA will undertake the following:

A. Power Component

- Review and update the existing Feasibility Study to a standard that provides a sound basis for determining Project Feasibility and satisfies the requirements of the PPP Act.
- Review existing power demand studies, current and projected power generation mix and assessments of future energy requirements, including justification for development of 700MW hydropower capacity.
- Assess the power generation potential, hydrological data, and associated technical studies.
- Identify key hydrological, operational, and structuring risks arising from existing studies and update the same to address any such risks.
- Carry out a grid stability study, including updated evacuation plans, grid connection details, and system integration requirements.
- Prepare conceptual designs for the project and its assess cost estimates.
- Evaluate implications for the transmission line system and necessary transmission investments arising from the Project.
- Consider alternative structuring options, including integrated generation and transmission versus disaggregated models.
- Recommend the appropriate installed capacity and update the same to address any such risks and advise whether there is need for phased development of the Project.
- Examine the tariff regime applicable to the Kibuka Falls project and evaluate whether it is capable of supporting the investment costs of this Project, taking into account whole project lifecycle cost analysis.
- Advice on the optimal financing structure that meet PPP suitability criteria while remaining within end-user affordability threshold.
- Carry out site investigations comprising of geotechnical investigations, topographical surveys
- Conduct Environmental and Social impact assessment including a resettlement action plan for the project affected persons and the associated cost
- Develop a Land acquisition strategy and resettlement of the Project Affected Persons.

B. Irrigation Component

- Review and validate irrigation water demand studies, including assessment of projected future water demand.
- Assess water resource availability, reservoir operations, seasonal variability, and climate resilience considerations.
- Review the proposed irrigation command areas and recommend the distribution of the 500,000 acres across Tharaka, Kitui, Garissa and Tana River counties clearly demarcating community irrigation and commercial areas.
- Determine irrigation water demand for each of the above sites including assessment of projected future water demand

- Establish water availability and reliability for each site and make recommendations
- Assess different options for efficient irrigation water conveyance, distribution and application including pipes, earth /lined canals, sprinkler, drip, center pivot e.t.c. and make recommendations;
- Prepare detailed design for bulk water abstraction, diversion requirements, conveyance, distribution and recommend the most appropriate water application methods for each proposed site.
- Assess all requirements for efficient conveyance of irrigation water from head works to the farms and evaluate related operation and maintenance cost that would sustain and enhance optimum water utilization through acceptable cost sharing mechanism.
- Gather information on capacity of farmer’s organizations for community irrigation and their ability to participate in irrigation related management, operation and maintenance requirements, establish constraints and take them into consideration
- Review the design of the required irrigation infrastructure, including conveyance systems, distribution networks, drainage systems, and command area development.
- Evaluate viable crops, associated crop margins, farm uptake potential, and agricultural market integration.
- Assess irrigation tariff frameworks, cost recovery mechanisms, and affordability considerations.
- Examine institutional arrangements for irrigation management and water rights considerations.
- Recommend the optimal phasing and commercial structuring approach for the irrigation component.
- Conduct Environmental and Social impact assessment including a resettlement action plan for the project affected persons and the associated cost
- Develop a Land acquisition strategy and resettlement of the Project Affected Persons.

C. Lifecycle Costing and Commercial Viability

- Estimate the full lifecycle costs of the Project based on:
 - Preliminary outline engineering designs and estimated construction and operations & maintenance costs;
 - Proposed phasing of capital expenditure;
 - Maintenance, management, and operating costs, taking into account current maintenance practices and regulatory requirements;
 - Asset replacement and major maintenance schedules; and
 - Economic life of the facilities.

- Evaluate integrated versus separate commercial models for the power and irrigation components.
- Examine the tariff regime for the project and evaluate whether it is capable of supporting the investment cost of this project in particular taking into account the life cycle cost analysis above while identifying commercially viable components and components that would require viability gap funding.
- Assess overall project bankability under alternative structuring scenarios.
- Design and structure an indicative and optional stapled financing, ensuring that financing terms are transparent, competitive, and market-tested.
- Present the optional stapled financing to all prequalified bidders as part of the RFP, ensuring neutrality, non-exclusivity, and standardized access.

D. Ancillary and Auxiliary Revenue Assessment

The Study shall identify and evaluate additional revenue streams where possible and commercial development potential capable of enhancing overall project bankability and financial sustainability, including but not limited to:

- Climate finance and carbon credits;
- Reservoir-based tourism and eco-tourism development (recreation facilities, lodges, water sports);
- Aquaculture and fisheries within the reservoir;
- Agro-processing and value-chain development linked to irrigated agriculture;
- Industrial or logistics park development in proximity to irrigation zones;
- Bulk water supply to municipalities or industrial users; and
- Biodiversity offsets or conservation finance mechanisms.

Task 1.2: Project Due Diligence

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

- i. Economic and Social Cost Benefit Analysis.
- ii. Financial Viability.
- iii. Legal and Regulatory due diligence.
- iv. Technical and Site due diligence.
- v. Environmental and Disaster Risk Assessment.
- vi. Risk identification and analysis.
- vii. Social impact assessment, land acquisition strategy and resettlement action plan.

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 for the project.

The TA will conduct a comprehensive economic analysis (including externalities) of the Projects. As part of this analysis, the Consultant shall calculate the Economic Internal Rate of Return (“EIRR”) of the Projects along with accompanying justifications and clarifications. Methodology and methods to be used will be made clear (e.g. the least cost methodology, the with-and-without projects methodology, cost-benefit analysis (CBA), contingent valuation, etc.).

Task 1.2.2 Financial Viability Assessment

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

- i. The Financial Viability of the Project including determination of Project and Equity IRRs
- ii. Project Financing Needs – up front and recurring as driven by Capex requirements
- iii. Project Funding Needs – assessment of annual funding requirements to cover O&M, debt service and other recurring costs
- iv. Revenue requirements – assessment of revenue requirements to cover the Project’s Funding Needs
- v. 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
- vi. The Affordability of the Project for consumers and the public sector
- vii. The potential fiscal impact of the Project.

The TA will be required to develop a Public Sector Comparator (“PSC”) and a shadow bid model to undertake a Value for Money (“VFM”) analysis of the Project.

The TA shall compute the Fiscal Commitments and Contingent Liability (FCCL) impact of the Project.

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 due diligence will also examine 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 and commence with 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, leading onto the local legal implications of the identified and preferred PPP models. Parallel to that, the existing regulatory and institutional framework will be assessed as to its actual effectiveness and as to its ability to accommodate the envisaged future PPP option, identifying any deficiencies and cornerstones of the current/future regulatory set up.

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

1. Review applicable national and county legislation, regulations, administrative issuances, policies and institutional arrangements relevant to the Project and proposed PPP structures.
2. Identify legal risks, constraints, and required approvals for project implementation; assess the viability of alternative PPP structures for the project, including the Contracting Authorities' capacity to manage and monitor the project once operational, while identifying the gaps in the legal and regulatory framework and recommend required governance, institutional or regulatory improvements.
3. Prepare a Legal Due Diligence Report and mitigation matrix and develop a permits and approvals schedule.
4. Provide legal structuring support by translating the agreed risk allocation framework into enforceable contractual provisions, providing legal input into the Heads of Terms, and advising on government support instruments and contingent liability implications.
5. Provide support for procurement documentation by drafting and/or reviewing the RFQ and RFP from a legal compliance perspective, drafting and/or reviewing the PPP/Project Agreement, Power Purchase Agreement (PPA) and all related agreements, ensuring consistency across the contractual documentation suite, and supporting bidder clarification processes and issuance of addenda.
6. Provide negotiation and financial close support by participating in negotiations with bidders and the preferred bidder, incorporating negotiated outcomes into the final agreements, reviewing financing documentation to ensure alignment with the Project Agreements, supporting preparation of documentation required for statutory and regulatory approvals, and coordinating legal opinions required for financial close.
7. Support contract management preparation by developing a PPP contract management framework and preparing legal compliance guidance and checklists.
8. Formulate appropriate institutional arrangements for the Project taking into consideration the roles and responsibilities of KenGen, NIA, other Government

- agencies & entities (e.g., KETRACO, KPLC, APRA and WRA), county governments, private sector, and other stakeholders, including consumers and public at large.
9. Provide advice on appropriate Institutional and Organizational Framework and Capacity Building needs for project procurement and subsequent contract management – including advice on:
 - i. public sector side procurement management and procurement steering arrangements
 - ii. resourcing, training and capacity building needs for the public-sector side
 - iii. operational arrangements between public sector side and advisers during procurement
 - iv. contract management arrangements
 - v. resourcing, training and capacity building needs for contract management function
 - vi. outline terms of reference for Independent Engineer/ Consultant
 10. Assist in resolving legal issues associated with the 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 Site Due Diligence

The TA will carry out a due diligence on the Project site with a view to identifying any impediments to Project implementation and advising on how such impediments should be addressed, covering, inter alia:

- i. Land requirements and availability
- ii. Title, rights of way, easements, encumbrances
- iii. Site access and construction logistics
- iv. Resettlement
- v. Land acquisition process and costing
- vi. Existing utilities and infrastructure constraints
- vii. Required permits and approvals related to site development

Task 1.2.5 Environmental and Social Safeguards Sustainability

The TA shall identify, assess, and propose mitigation measures for environmental and social risks and impacts associated with the planning, design, financing, construction, commissioning, operation and maintenance of the **Kibuka (High Grand) Falls Hydropower and Irrigation Dam Project**.

All E&S work shall be undertaken in accordance with:

- Kenyan environmental law and NEMA requirements (including EMCA and subsidiary regulations);
- Applicable international E&S standards where relevant to project financing (including IFC Performance Standards and Equator Principles, where applicable); and
- The **Environmental, Social and Land Studies framework set out in Annex 1** to these Terms of Reference, which forms an integral part of this assignment.

Environmental and social safeguards shall follow a structured two-stage approach:

- a) Government-Led Safeguards activities to be undertaken by the Transaction Advisor in accordance to this section of the TOR and Annex 1.
- b) Private Partner-Led full Statutory ESIA to be undertaken by the Concessionaire or Private Party in compliance with applicable law upon commercial close. This will not be undertaken by the Transaction Advisor.

The Transaction Advisor shall ensure that the Environment, Social and Safeguards activities are undertaken strictly in accordance with the scope, methodology, safeguards strategy and deliverables prescribed under **Annex 1 (Environmental, Social and Land Acquisition Studies)**.

Without limiting the requirements under Annex 1, the Transaction Advisor shall:

1. **Undertake Government-led Safeguards at feasibility stage** as indicated under Annex 1 which shall include preparation of the following:
 - A Government-led preliminary PPP ESIA (feasibility-stage environmental and social assessment) to inform project structuring, risk allocation and procurement documentation;
 - A stakeholder engagement plan (SEP) and execution of stakeholder consultations consistent with Kenyan requirements and applicable standards;
 - A full Resettlement Action Plan (RAP) including land acquisition impacts, livelihood restoration measures and cost estimates
 - A land acquisition plan (LAP); and
 - An Environmental and Social Management Plan (ESMP) based on the preliminary PPP ESIA (and where necessary, supporting management plans) covering mitigation, monitoring and institutional arrangements.
2. **Assessment of project-specific environmental risks and impacts based on the Transaction Advisor’s concept/reference designs**, including construction impacts (borrow pits/quarries, spoil disposal, traffic, noise, dust);
3. **Assessment of project-specific social risks and impacts based on the Transaction Advisor’s concept/reference design**, including but not limited to:
 - Land acquisition, physical and economic displacement, and livelihood impacts;
 - Labour and working conditions, labour influx and community interface;

- Identifying Community health and safety risks (including road safety and communicable disease risk management);
 - Gender and social inclusion (including GBV/SEA/SH risk screening and mitigation);
 - Stakeholder engagement and grievance redress mechanisms.
4. **Undertake climate and disaster risk assessment.**
5. **Identify permits, approvals and E&S conditions precedent**, including:
- A permitting and approvals register with indicative timelines and sequencing;
 - Critical E&S preconditions required prior to PPP launch and/or Financial Close (as applicable).

All E&S outputs shall inform the Feasibility Study Report, project structuring and risk allocation, and be integrated into the PPP procurement documentation (RFQ/RFP and draft PPP agreements), consistent with **Annex 1**.

Task 2: Procurement Options and PPP Structure Analysis

Having established the Project Feasibility, the TA will determine the optimum way of procuring the Project through Public Private Partnership framework and the most appropriate PPP arrangement for implementation of the Project. In the analysis the TA must consider all infrastructure which needs to be developed for the Project; including generation assets, transmission assets, access and supporting infrastructure, the Dam, 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:

1. Describe a range of credible alternative procurement and PPP options including justification for their selection. Options must include Public Sector Comparator. For each option the TA will set out:
 - i. The key roles and responsibilities of the private sector and of the public sector
 - ii. The key risk allocation under each option
2. Develop, describe and justify a set of evaluation criteria to be used in evaluating alternative procurement and PPP options to include, inter alia:
 - i. 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
 - ii. Affordability for users and the public sector

- iii. Assessment of Fiscal Impact including any contingent liabilities for the public sector
 - iv. Private sector feedback on attractiveness, bankability and risk allocation, based on a Preliminary Market Sounding amongst potential operators, developers, investors and financiers
3. Present the results of the Evaluation
 4. Provide a detailed description of the preferred Procurement Option and PPP Structure, including:
 - i. Key Risk Allocation
 - ii. Outline Payment Mechanism/ Tariff arrangements
 - iii. Indicative Financing Structure and sources – private sector bank debt, multilateral debt, public sector debt, project bonds, grants (indicate source), developer equity, other (specify)
 - iv. Key Heads of Terms for the proposed PPP Structure

In support of the Options Analysis, the TA will:

1. Develop a detailed and comprehensive Financial Model
2. Carry out Market Sounding to determine the optimal risk allocations/ PPP structures

Task 2.2: Financial Modeling

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

- i. The Economic Cost Benefit Analysis of the Project and Alternative Technical Solutions (Task 1.2.1)
- ii. The Financial Viability Analysis, including but not limited to the determination of revenue requirements to meet Project Funding needs, the determination of necessary tariff levels, the evaluation of affordability for both user pays and public sector pays models, including fiscal and public sector borrowing impact (Task 1.2.2)
- iii. The Project's Financing requirements and the evaluation of alternative financing structures and sources (Task 2.1)
- iv. An evaluation of alternative procurement options and PPP options, including Value for Money analysis (Task 2.1)

And in the implementation phase of the Project:

- v. The detailed design of the Payment Mechanism/ Tariff arrangements
- vi. Act as a shadow Bid Model and assist in evaluating bids and their robustness.

The Financial Model will be used to analyse 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 propose an optimized project structure for the transaction from the financial point of view.

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), Loan Life Coverage Ratio (LLCR) and Project Life Coverage Ratio (PLCR) 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:

1. 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, fee payment mechanisms, performance guarantees including Take-or-Pay provisions in the Power Purchase Agreements (PPAs), Water Purchase Agreements (WPAs), pre-conditions of a private operator for meeting service obligations, as well as specific default and risk clauses, and step-in rights of lenders and the contracting authority.
2. 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.
3. Based on the risk analysis, prepare a contingent liability model for use by the PPPD, KenGen, NIA and ultimately the Debt Management Office that quantifies the contingent liabilities, how the same shall be managed and the funding requirements.
4. The project's risk analysis and allocation and contingent liabilities model shall be presented to representatives of the Contracting Authorities and the PPP Directorate 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 and tools they would employ in carrying out the necessary financial analysis.

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:

1. Organize a meeting with the CAs officials to provide an overview of the approach to market sounding.
2. Prepare a Market Sounding document that will include a Project Profile (which will cover the objectives of KenGen and NIA, 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
3. Provide the Project Profile to the identified private parties and hold one-on-one discussions with them, either telephonically, or if practical and cost effective, face to face
4. Organize and participate in a half-day workshop with the CAs and other stakeholders to review findings of the market sounding and determine key areas that will need consideration in preparing the Feasibility Report;
5. 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:
 - i. Market sounding objective;
 - ii. Key issues that needed to be considered;
 - iii. List of companies consulted;
 - iv. List of questions with answers from the one-on-one sessions;
 - v. 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. 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, 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:

- i. A summary of how the proposed PPP project addresses CAs' strategic objectives and its consistency with the sector's master plans;

- ii. A summary of the output specifications for the Project;
- iii. Other potential commercial activities that the PPP Company may undertake to augment revenues and lessen the fees charged to the off-taker
- iv. A list of significant Government assets which will be used for the Project (such as land and existing structures, access roads, transmission lines, power sub-stations, etc.);
- v. A summary of the fiscal implications and potential contingent liabilities for the public sector;
- vi. A detailed description of the type of PPP project proposed and its envisaged payment mechanism/ tariff regime
- vii. A detailed description of the proposed Key Risk Allocation
- viii. Draft Heads of Terms which will form the basis for the 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 will cover all the tasks required of all parties to procure the Project, identifying: Tasks, Timing, Responsibilities for each task, and the Key approval/ decision points and milestones.

Task 3: Support to KenGen and NIA on Securing PPP Committee Approval and All Other Government Approvals

The Feasibility Study Report will be submitted in the first instance to KenGen, NIA and the PPP Directorate, and subsequently to the PPP Committee through PPP Directorate. The TA shall assist the CAs to address all PPP Directorate concerns and provide address requested clarifications if any to facilitate approval by the PPP Committee and any other relevant government entity including Energy and Petroleum Regulatory Authority (EPRA).

If it is determined at the feasibility study stage that the project will not be implemented under PPP arrangements, the consultancy services shall be deemed to have been completed under the contract and the Transaction Advisor shall be paid for the milestone(s) completed. The PPP Directorate shall not be liable for any further payment and the contract shall terminate.

PHASE 2: PPP PROCUREMENT

The TA will work with the CAs 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 the CAs, 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.

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

The TA must also provide the CAs with all the necessary drafting, bidder communication and administrative support necessary for the entire procurement process through to financial close to 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:

1. Advice on optimum bid strategy
2. Advice on mechanisms to maximize competition while avoiding unrealistic bids and project vulnerability from overly aggressive bidding.
3. Review of information to be provided by KenGen to bidders to manage third party liabilities.
4. 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
5. Design of key aspects of the tender procedure, for example the number of stages in the process, use of competitive dialogue, deciding whether and to what extent to accept variant bids and non-conforming bids, how many bidders must bid before the process is valid, what rules to set in relation to the assessment of bids (scoring regimes, timing of bids and

rejecting of excessively low bids) and how to maximize competition without sacrificing quality of bids.

6. 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.
7. Information Memorandum and other marketing materials
8. Tender documentation
9. The PPP contract (including all annexes) that implements the chosen PPP approach:
 - i. applying the risk matrix and heads of terms developed during the Feasibility Study, updated, if needed, to address all project issues and market context,
 - ii. incorporating, as appropriate, the outputs from the financial model,
 - iii. explaining to the CAs whether and to what extent certain provisions could be amended (eg in the process of negotiations) without disturbing the key risk allocation goals of the CAs,
10. 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 KenGen, and subsequently a final procurement plan. The TA will conduct workshops with the CAs and other GOT 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 design and administer a pre-qualification (request for qualification (RFQ)) process with the intention of:

- i. ensuring that CAs' objectives and requirements are communicated clearly to the market
- ii. determining the extent and nature of interest from the private sector
- iii. 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:

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

- vi. help the CAs 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 the TA will prepare a Prequalification Evaluation Report for approval.

Task 1.3: Bid Evaluation Criteria and Tender Process Design

The TA will:

- i. design a suitable bid evaluation process and criteria;
- ii. design a suitable tender process that will help ensure compliant, high quality and comparable bids;
- iii. devise effective systems for communicating with bidders during the tender process; and
- iv. inspire market confidence.

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

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:

- i. design criteria
- ii. the output and performance specifications
- iii. requirements for compliant bids
- iv. a risk profile as established in the feasibility study
- v. stapled financing option with proposed sources of financing taking into consideration Section 2.3 on Domestic Capital Mobilization
- vi. the payment mechanism
- vii. tariff arrangements
- viii. the bid process
- ix. evaluation criteria
- x. bidder communication systems and procedures

- xi. bid forms – technical and financial bid submission forms, bid letter, statement of compliance etc
- xii. all other information necessary to ensure compliant, high quality and comparable bids.

The TA shall assist in discussions with local institutional capital providers, multilaterals and DFIs willing to provide stapled financing for the project.

Task 1.5: Draft PPP Project Agreements

The TA will prepare a draft PPP Project Agreement and related agreements (eg Power Purchase Agreement, Direct Agreement, Shareholders Agreement, ToR for Independent Engineer/ Expert), in close liaison with the CAs, implementing the risk allocation regime and using best practice to maximize competition and minimize project costs, while protecting the CAs' interests, particularly regarding project implementation and manageability over the term of the project. The TA shall also develop the proposed PPP governance and contract management framework for the Project.

The agreements will include all necessary annexes and subsidiary documentation, such as output specifications, performance specifications, service levels, project scope, CAs requirements, technical specification, project performance monitoring regime, code of construction practice, requirements for network integration, etc.

Task 1.6: Necessary Approvals

The TA will compile all documentation necessary for the CAs to obtain the approvals required to enable the procurement process to begin, including the AG's office if necessary and the PDMO in the event that the estimated fiscal commitment and contingent liabilities have materially changed from the Feasibility stage.

Task 1.7: Administration of the Bidding Process

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

Task 1.8: Evaluation of Bids, updating of Value for Money and Fiscal Commitment/ Contingent Liability Evaluation

Bids will be evaluated with the support of the TAs in accordance with the PPP Act and with the framework for bid evaluation developed earlier.

Value for money, affordability, fiscal impact, and potential contingent liabilities must be reassessed for the received bids.

The results of the bidding and evaluation of bids must be presented in a single bid evaluation report (with relevant annexures) that demonstrates clearly how value for money will be achieved by the preferred bidder and the implications of the preferred bid on affordability, the fiscus and public sector contingent liabilities. 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 selected preferred bidder. The report must clearly indicate the preferred and second-ranked bidders.

Task 1.9: PPP agreement, Power Purchase Agreement (PPA) negotiations, PPP agreement management plan

The Consultant shall assist the Contracting Authorities and the PPP Directorate in its negotiations with the preferred bidder until the signing of the Project Agreements (“**Commercial Close**”). The Consultant shall include assisting in drafting and negotiating Power Purchase Agreement (PPA) and all other associated agreements as will be recommended and developed by the TA.

The Consultant will assist with the negotiations with the preferred bidder to reach an agreement on outstanding elements of the Project Agreements. In case negotiations are not successful, the Consultant will support the Contracting Authority and the PPP Directorate in negotiations with the reserve bidder (second-highest-scoring bidder) in the same manner.

The TA will assist the CAs in final negotiations with the preferred bidder (if any). This will involve:

- i. Draft the negotiation criteria to guide the Contracting Authorities and the PPP Directorate in negotiations with the preferred bidder;
- ii. Evaluate the terms of negotiation proposed by the preferred bidder from the perspectives of impact on the Government risk profile and the sanctity of the procurement process.
- iii. Assist the Government in negotiating with the preferred bidder by recommending the positions to take on the terms being negotiated (including categorising issues appropriately, developing timelines for completion, and planning negotiation tactics) and drafting suitable responses subject to approval by the Government.
- iv. Review and advice on technical, legal, financial and accountable aspects of the project's contractual documentation and other proposals made by the preferred bidder.
- v. Amend the Projects Agreements and any other relevant agreements consistent with the final outcome of the negotiations.
- vi. Review proposed sub-contracts, in particular with construction contractors and operators, and ensure conformity with the PPP Project Agreements and the Procurement Documents.
- vii. Document any agreed changes to the technical provisions arising out of negotiations and implement them in the final contract documents as appropriate.

- viii. 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,
- ix. Manage relationships with second-ranked and third-ranked bidders, including managing bid bonds and ongoing discussions to prepare for the eventual withdrawal of the preferred bidder,
- x. Assist the Contracting Authorities and the PPP Directorate in validating the contracts as needed.
- xi. Manage the preparation of the execution versions of the Project Agreements and any other relevant agreement.
- xii. Assist in monitoring the obligations of the Government under the Project Agreements and recommending actions to the Government to ensure they are met.
- xiii. Assist the Contracting Authorities in evaluating requests, if any, raised by the Private Party that are meant for achieving Financial Close and recommending suitable responses.

Support the Contracting Authorities and the PPP Directorate in the discussions about the Lenders' Direct Agreement (legal and financial) and eventual amendments to the Project Agreements.

Manage and assist 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 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.

- xiv. Assist the Contracting Authorities and the PPP Directorate in the finalisation of all financial documentation necessary to reach the financial close of the project in a timely manner and, in the discussions with the Private Party and its potential Financiers, advising the Contracting Authorities for the CAs' best interest in order to preserve the general balance of risks and responsibilities.
- xv. Coordinate with the other advisors for the Private Party as required, if any, managing the achievement of conditions precedent and making sure that the Contracting Authorities have met all conditions precedent that must be satisfied to achieve Financial Close.
- xvi. Review the Private Party's audited financial model and verify that the adjustment required in payments is fair and the process of adjustment is followed. The

financial model will be updated and adjusted at financial close / signing of financing agreements with the relevant data such as the latest macroeconomic values and long-term swap rate wherever necessary and appropriate.

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. The TA will be responsible for compiling the necessary submissions for the CAs to secure this approval.

The TA will, in close liaison with the CAs, draft a comprehensive Contract Management Framework for the CAs. This will include a clear, complete and easy to follow guide for the CAs on the implementation of the PPP Project, with mapping of the different rights and obligations of all parties, including the role of the Independent Expert (IE) and guidance to the CAs on processes, remedies and mechanisms set out in the PPP contract, all other project agreements at law, and will be in accordance with the provisions of the PPP Project Agreements. The TA will be required to carry out a two-day training workshop with the CAs and other government stakeholders including those who will form a part of the contract management team.

Task 1.10: PPP agreement signature, financial closure, and close-out report and case study

The TA will provide all necessary help to the CAs with all functions and activities related to signing the final Project Agreement and through to Financial Close. The TA must also compile a comprehensive close-out report and case study and must incorporate any additional factors that may be required by the CAs. The close-out report will be a confidential document of KenGen, NIA and the PPP Directorate. The redacted Case Study and Technical Feasibility Report will become a public document, made available on various government websites.

The TA will also compile a comprehensive close-out report and will incorporate any additional factors that may be required by the CAs. The close-out report will be a confidential document of the CAs and the PPP Directorate.

PHASE 3: PROJECT BASED LEARNING (To run concurrently with Phases 1 and 2)

To ensure knowledge and skills transfer by the TA to KenGen, NIA and the PPP Directorate, the TA will be required to provide classroom-based and on-the-job capacity building to a cohort of at least 30 No. Public officials comprising of the CAs and PPP Directorate (Project Implementation Team) 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 implementation 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, the Project Implementation Team 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.

6. TRANSACTION ADVISOR SKILLS AND EXPERIENCE

The Transaction Advisor (TA) shall comprise either a single firm or a consortium of firms and/or individual experts, collectively demonstrating the full range of required expertise, including public-private partnership structuring, design and engineering, hydropower development, Dam Engineering, large-scale irrigation systems, financial advisory, legal advisory, and environmental and social safeguards and Resettlement Action Plan. The Lead Advisor shall enter into contract with the Client (National Treasury). 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.

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

Qualification Requirements of the firm

The Consultant shall comprise either a single firm or a consortium of firms, led by a Technical Advisor (Design and Engineering Firm). The lead firm shall be responsible for overall coordination, integration of deliverables, and quality assurance across all workstreams. The Consultant (or consortium collectively) shall demonstrate the following skills and experience:

- Experience in project structuring, financial analysis, financial advisory, procurement, and negotiations of PPPs or project financed projects in the energy and water sector with evidence of having led Transaction Advisory assignments on at least three (3) PPP/project-financed projects, with at least two (2) financially closed projects. Significant merit will be given for a large hydropower project. Additional credit will also be given to experience in Africa;
- Experience in planning, technical designs, construction supervision and procurement for large hydropower projects including IPP projects. Additional credit will be given to experience in Africa;
- Experience in planning, technical designs, construction supervision and procurement for irrigation projects. Additional credit will be given to experience in Africa;
- Experience in carrying out Environmental and Social Impact Assessments (ESIA), Environmental and Social Management Plans (ESMPs), Resettlement Action Plans (RAP) and related safeguards studies for large dam or water sector projects in Africa.
- Demonstrated experience in structuring and raising capital or financing for infrastructure projects from local institutional capital providers including domestic infrastructure funds,

pension funds, and capital markets, particularly under BOT, DBFOM, concession, or similar PPP or project finance arrangements.

- Demonstrated experience in identifying, assessing, and structuring auxiliary and non-traditional revenue streams for infrastructure projects, including land value capture mechanisms, green finance structures, and other ancillary commercial opportunities with evidence that such mechanisms reached contractual execution and/or revenue realization.

NB: Under each of the experience criteria, firms are expected to clearly state relevant projects or transactions for the experience required, the country where the project was done, and the stage in the PPP project cycle where the firm reached with the project. This should be supported by relevant documentation (TA contract award letters, completion certificates, letters of recommendation or extracted relevant sections of the consultancy contracts etc).

Given the field-intensive nature of the assignment, the Consultant shall demonstrate the capacity to maintain a continuous and effective operational presence in Kenya for the duration of the assignment. This requirement may be satisfied through an existing operations office in Kenya or through a formal association with a Kenyan consulting firm (joint venture or sub-consultancy) with the relevant technical capability and experience. Evidence of such arrangements shall be provided in the proposal by the bidders.

Qualifications Requirements of Key Personnel

Bidders are free to propose their own team structure, however they are advised that the Contracting Authorities expects, as a minimum, the personnel specified as Key Experts under this section of the TOR

Bidders must propose distinct individuals for each key expert position; personnel cannot be duplicated across multiple roles. Bidders may 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. However, bidders must make it explicitly clear that this is what they are doing in order to ensure proper evaluation.

The Key Experts required are as indicated below and will be evaluated against the Expertise Expectations set out in the table below:

No.	Position	Expertise Expectations
1.	Dam Expert/Team Leader	<ul style="list-style-type: none"> • A university degree in civil and Structural Engineering, Geotechnical Engineering. • A postgraduate qualification in Civil Engineering, Dam Engineering, or related disciplines will be an added advantage.

		<ul style="list-style-type: none"> • Specialized training in dam safety, dam risk assessment, and dam instrumentation will be an added advantage. • A minimum of fifteen (15) years of professional experience in the engineering with at least 10 years’ experience specifically in design, construction, operation, and maintenance of dams, including demonstrated experience in the design of large dams (above 30 meters in height in accordance with ICOLD standards) and dam safety investigations, monitoring, risk management, and preparation of Emergency Action Plans (EAPs). The expert shall have hands-on experience in construction supervision and field assignments, preferably in complex, remote, or developing country contexts. • Demonstrated proficiency in dam engineering and hydrological modelling software: numerical modelling for seepage, stress-strain, and flood routing. • Transaction advisory experience for PPP/project finance or IPP projects is an added advantage, particularly in water sector
2.	<p>PPP Expert/ Transaction Structuring Expert</p>	<ul style="list-style-type: none"> • A university degree in Finance, Management, Economics, Engineering, Law or any other relevant field. • Postgraduate qualification in PPP, Infrastructure Finance or Project Finance shall be an added advantage. • A minimum of 10 years’ demonstrated experience in infrastructure project management and development, with at least 7 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. • Successful preparation of PPP/project finance or IPP projects with at least three (3) financially closed projects, of which one (1) should be in the water sector. • Relevant qualifications and experience in power infrastructure development, operation & maintenance projects in general, and in developing countries in particular.

		<ul style="list-style-type: none"> • Experience in hydropower development, construction production/generation projects will be an additional merit. • Good English communication and writing skills, especially in report writing, are essential.
3.	Irrigation and Water Resource Specialist	<ul style="list-style-type: none"> • A university degree in Civil/Agricultural Engineering or a related field. • A relevant postgraduate qualification will be an added advantage. • Registered by Engineers Board of Kenya as a Professional Engineer or similar relevant professional body in other jurisdictions (provide registration certificate as evidence) • A minimum of ten (10) years of professional experience in the planning, design, construction, supervision and contract administration of large-scale irrigation and water conveyance infrastructure projects. • Demonstrated experience in at least three (3) irrigation projects each covering a minimum command area of 3,000 hectares, undertaken as a design, supervision or lead irrigation engineer. • Good English communication and writing skills, especially in report writing, are essential.
4.	PPP Financial Expert	<ul style="list-style-type: none"> • A relevant university degree in Finance, Economics, Engineering or relevant technical field • A post graduate qualification in Finance is an added advantage • At least 7 years of professional experience in PPPs and project finance transactions including IPPs, 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. • Demonstrated project finance financial modelling and audit skills and in dealing with project finance structures and products • Experience in economic viability analysis and familiarity with tariff setting in the power and/or water sectors • Experience in at least two (2) PPP or Independent Power Producer (IPP) transactions that reached financial close, each with capex exceeding USD 100 million

		<ul style="list-style-type: none"> • Good English communication and writing skills, especially in report writing, are essential
5.	PPP Legal Expert	<ul style="list-style-type: none"> • A university degree in Law. Bachelor of Laws (LL.B) degree. • Admission to practice law in a recognized jurisdiction. • Postgraduate qualification in commercial law, project finance, energy law or PPP shall be an added advantage. • 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. • Participation in at least three (3) project finance infrastructure transactions with at least one being a project in the energy sector or being an IPP. • Demonstrate understanding of Kenya’s Legal and Institutional Framework with specific knowledge of Kenya’s PPP legal framework, including the PPP Act, Public Procurement and Asset Disposal Act, Energy Act and Water Act. • Good English communication and writing skills, especially in report writing, are essential.
6.	Environmental & Social (E&S) Safeguards specialist	<ul style="list-style-type: none"> • A university degree in sociology, social work, social anthropology, or environmental sciences, development studies or another related field. An advanced degree will be an added advantage. • A minimum of ten (10) years of demonstrated experience in the assessment and management of environmental and social risks for large-scale infrastructure projects with at least two (2) similar assignment in energy/water/dam or agriculture projects. (Water, Energy, Transport, or Agriculture), preferably in Sub-Saharan Africa. • Participation in ESIA, RAP, SA and VMGP preparation, land acquisition in dam projects/ water project requirements that met the requirements of an International Financial

		<p>Institution, such as the World Bank, IFC or an Equator bank, AfDB, or EIB</p> <ul style="list-style-type: none"> • Must be accredited by a relevant and recognized professional body. The candidate must be registered as a lead expert with Kenya’s National Environment Management Authority (NEMA). (Evidenced by valid practising license). • Demonstrated experience in applying Environmental and Social Management Frameworks and development partner safeguard policies (including involuntary resettlement, indigenous peoples, and physical cultural resources) in large infrastructure projects specifically Dam. • Experience in assessment of PPP infrastructure projects is an added advantage, particularly in energy sector • Experience in assessing social risks including labour influx and displacement, GBV risks, vulnerability assessments, gender and disability inclusion, and development of mitigation measures. • Demonstrated experience in stakeholder consultations in accordance with Kenyan regulations and development partner standards. • Demonstrated proficiency in written and spoken English, with strong report writing skills. • The E&S Team Leader will be stationed in Nairobi, Kenya, for the duration of the assignment and will be required to coordinate the efforts
7.	Power Systems Engineer	<ul style="list-style-type: none"> • A university degree in Electrical Engineering or related field. • A postgraduate qualification in power and electrical engineering shall be an added advantage. . • Minimum of ten (10) years of demonstrated experience in power systems analysis and planning, grid interconnection design, including a minimum of three (3) projects involving transmission/distribution network design and power system studies (load flow, short circuit, stability), proficiency in tools such as PSS®E/DIGSILENT/ETAP. • Demonstrated strong knowledge of grid codes and experience in substation and transmission system design.

		<ul style="list-style-type: none"> • Demonstrated proficiency in written and spoken English, with strong report writing skills.
8.	Hydropower Plant Engineer	<ul style="list-style-type: none"> • A university degree in Mechanical, Electrical Engineering or related field. A postgraduate qualification in the relevant field shall be an added advantage. • Minimum of ten (10) years of demonstrated experience in the design of hydropower plants, including evidence of undertaking at least two (2) hydropower projects each of a minimum capacity of 100 MW that have been successfully commissioned and are operational. • Minimum of five (5) years of experience in the operation and maintenance of hydropower plants. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
9.	Resettlement Specialist	<ul style="list-style-type: none"> • A degree in Sociology / Anthropology /Community/Rural Development or any social science discipline from a recognized university (Development Studies, Social Anthropology, Sociology, Gender and Development, International Development or a related field).. • A postgraduate degree in social science or any other related field will be an added advantage. • 10 years' in conducting socio-economic surveys and demonstrate experience in at least three (3) projects of similar scope and nature, particularly involving land acquisition, involuntary resettlement, and livelihood restoration. Specific experience on this requirement for dam projects will be an added advantage. • Experience in the assessment and management of social and environmental risks for large-scale infrastructure projects (Water, Energy, Transport or Agriculture), including social impact assessment, gender analysis and community health and safety for publicly and privately funded investment projects in Sub-Saharan Africa. • Experience in applying development partner Environmental and Social Management Frameworks and safeguard policies including the Environmental and Social Framework (ESF) and ESS7 (including involuntary

		<p>resettlement, indigenous peoples and physical cultural resources) in large infrastructure or PPP projects will be an added advantage.</p> <ul style="list-style-type: none"> • Excellent written and oral communication skills in English (knowledge of Kiswahili will be an added advantage), with the ability to present complex issues to diverse audiences. <p>The Social and Resettlement Specialist will be required to spend at least 75% of their time in the project site to ensure the right level of supervision for the various succeeding social aspects of the various studies – ESIA, RAP, Social Assessment and VMGP.</p>
10.	Hydromechanical Engineer	<ul style="list-style-type: none"> • A university degree in Mechanical Engineering or related field. A postgraduate qualification in the relevant field shall be an added advantage. • Minimum of ten (10) years of demonstrated experience in the design of hydromechanical systems (gates, penstocks, valves, turbines) including evidence of undertaking at least two (2) hydropower projects each of a minimum capacity of 100 MW that have been successfully commissioned and are operational. • Minimum of five (5) years of experience in the operation and maintenance of hydropower plants. • Demonstrated proficiency in written and spoken English, with strong report writing skills
11.	Agronomist	<ul style="list-style-type: none"> • A bachelor’s degree in Agronomy, Agriculture or a related field. • At least ten (7) years of professional experience in agronomy and soil analysis for large-scale agricultural projects, including a minimum of five (5) years of experience in irrigated agriculture. • Demonstrated proficiency in written and spoken English, with strong report writing skills.

Non-Key Experts / Short-Term Specialists

The Consultant may mobilize the following additional non-key experts as short-term specialists as and when required. The subsequent description of the non-key experts is not intended to be prescriptive and will not be scored but is provided as a guide for consideration by bidders:

No.	Position	Expert Suggested Qualifications
1.	Land Expert and Land Valuer	<ul style="list-style-type: none"> • A bachelor's degree in Land Economist or associated discipline. A relevant postgraduate qualification will be an added advantage. • At least ten (7) years of professional experience in land acquisition and transactions. Demonstrated experience in land acquisition processes including contact with the relevant institutions in Kenya such as surveying and National Land commission. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
2.	Geotechnical Expert	<ul style="list-style-type: none"> • A bachelor's degree in Geotechnical Engineering, Civil Engineering or a related field. Postgraduate qualifications is an added advantage. • A minimum of ten (10) years of professional experience in geotechnical investigations for large dam or water infrastructure projects, including foundation investigations, slope stability assessment, seepage analysis, and preparation or review of geotechnical investigation reports. • Demonstrated experience in planning and supervising field investigations (borehole drilling, in-situ testing, laboratory testing) and interpreting results for design and construction purposes. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
3.	Geological Expert	<ul style="list-style-type: none"> • A bachelor's degree in Geology, Engineering Geology, Geophysics, Geotechnical Engineering, Civil Engineering or a related field. Postgraduate qualifications is an added advantage. • A minimum of ten (10) years of professional experience in geological investigations for the design and construction of large dams or water infrastructure projects.

No.	Position	Expert Suggested Qualifications
		<ul style="list-style-type: none"> • Demonstrated experience in engineering geological mapping, fault and fracture analysis, foundation assessment, reservoir rim stability evaluation, and identification of construction materials (borrow areas and quarries). • Experience in supervising geological field investigations and interpreting results for dam design and safety assessment will be an added advantage. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
4.	Topographical Surveyor	<ul style="list-style-type: none"> • A bachelor's degree in Geospatial Engineering, Geomatics, Surveying, or a related field. A relevant postgraduate qualification will be an added advantage. • A minimum of ten (10) years of professional experience in topographical and land surveys for large infrastructure or water resources projects. • Demonstrated experience in terrain mapping, preparation of topographic maps and digital terrain models (DTMs), and supervision of field survey activities. • Must be registered with the Institution of Surveyors of Kenya (ISK) or an equivalent recognised professional body. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
5.	Climate Change Expert	<ul style="list-style-type: none"> • A university degree in Climate Science, Environmental Science, Meteorology, Hydrology, Water Resources Engineering, Environmental Engineering, Atmospheric Science or a related field. Postgraduate qualifications is an added advantage. • At least ten (10) years of experience in climate risk assessment, hydrological and climate change impact analysis for large infrastructure or water resources projects. • Demonstrated experience in climate modelling, rainfall and temperature trend analysis, and assessment of climate risks for hydropower, water resources or irrigation projects. • Experience in climate resilience and adaptation planning for infrastructure projects, including assessment of flood and drought risks. • Demonstrated proficiency in written and spoken English, with strong report writing skills.

No.	Position	Expert Suggested Qualifications
6.	GIS Expert	<ul style="list-style-type: none"> • A bachelor’s degree in GIS, Geospatial Engineering, Geomatics, Geography or a related field. Postgraduate qualifications will be an added advantage. • A minimum of ten (10) years of experience in the development and management of geospatial databases and cartographic production using GIS. • Demonstrated experience in preparing thematic maps and spatial analysis for environmental and social assessments of large infrastructure projects. • Experience in GIS support for site characterization of hydropower or water infrastructure projects will be an added advantage. • Proficiency in GIS software such as ArcGIS or QGIS is required. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
7.	Hydraulic Engineer	<ul style="list-style-type: none"> • A bachelor’s degree in civil engineering with specialization in Hydraulic Engineering, Water Resources Engineering or a related field. Postgraduate qualifications will be an added advantage. • A minimum of ten (10) years of professional experience in hydraulic design and analysis for dams or large water infrastructure projects. • Demonstrated experience in flood routing analysis, spillway and outlet works design, river diversion, and hydraulic safety assessments. • Experience in physical or numerical hydraulic modelling will be an added advantage. • Demonstrated proficiency in written and spoken English, with strong report writing skills.
8.	Hydrologist	<ul style="list-style-type: none"> • A university degree in Hydrology, Water Resources Engineering, Civil Engineering (with specialisation in Hydraulics/Hydrology), Environmental Engineering or a related field. A Master’s degree will be an added advantage. • A minimum of ten (10) years of professional experience in dam or large water infrastructure projects, including hydrological and hydraulic modelling, water balance analysis, flood estimation and sedimentation assessment.

No.	Position	Expert Suggested Qualifications
		<ul style="list-style-type: none"> • Demonstrated experience in river basin hydrology, reservoir yield analysis and climate variability assessment for large infrastructure projects. • Demonstrated proficiency in written and spoken English, with strong report writing skills.

7. DURATION OF THE ASSIGNMENT

Considering that several activities will be undertaken concurrently, the above services are expected to require approximately 18 calendar months. In addition, an estimated cumulative period of two months will be required to obtain government approvals at various stages. Consequently, the total duration from the commencement of services to the project's financial close is expected to be approximately **20 calendar months**. The appointed TA is expected to sign a contract for 20 months, extendable at no extra cost for a further 12 months in the event that Financial Close has not been reached within 20 months.

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. The bidders may propose timelines, and the detailed plan will be discussed and agreed with the Contracting Authorities and PPP Directorate before signing the contract.

8. DELIVERABLES OF THE ASSIGNMENT

The general deliverables of the project are as represented in the table below:

No.	Deliverable	Target Timeline (Time from contract signing)
Phase I		
1	Inception Report	3 weeks
2	Draft Feasibility Study Phase Deliverables including: <ul style="list-style-type: none"> • Draft Feasibility Study Report including drafts of Project Financial Model, Hydrological survey report, Geotechnical report, Site selection and suitability assessment (Site Due Diligence Report) and all other requirements in accordance with this TOR. 	5 months

	<ul style="list-style-type: none"> • Location plan (electronic copy) • Draft deliverables under Annex 1 (Environmental, Social and Land Acquisition Studies) 	
3	<p>Updated final Feasibility Study Phase Deliverables including:</p> <ul style="list-style-type: none"> • Complete feasibility Study Report including Project Financial Model, Hydrological survey report, Geotechnical report, Site selection and suitability assessment (Site Due Diligence Report) and all other requirements in accordance with this TOR. • Location plan (electronic copy) • All deliverables under Annex 1 including government-led preliminary PPP ESIA, Final RAP, VMGP, and Land acquisition plan, • Market sounding report • Communication Strategy and Plan/Required Disclosures 	8 months
	Phase I Completion	8 months
Phase II		
4	RFQ stage procurement documentation and completion of the RFQ process	10 months
5	RFP bidding stage documents, including RFP, proposed staple-financing structure, draft PPP project agreements, Design Criteria and Performance Specifications, evaluation criteria, including any other relevant bid documents	11 months
6	Completion of the RFP bidding process and evaluation of bids, and delivery of the evaluation report	14 months
8	Negotiated Project Agreement & Negotiation Report	15 months
9	Commercial Close, Project's contract management framework and case study	18 months
10	Financial close, delivery of the close-out report and Case Study	20 months
	Phase II Completion	20 months

* Phase III shall be implemented simultaneously with phases I and II.

All reports shall be submitted to the contracting authorities in electronic format as well as MS Word document 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 the Project Implementation Team composed of representatives of KenGen, NIA and PPP Directorate shall conduct quality reviews to obtain feedback on all draft versions of deliverables as appropriate. The TA shall make presentations to the Project Implementation Team on each deliverable (e.g. draft Feasibility Study), with the team’s key experts present.

9. REMUNERATION SCHEDULE AND DISBURSEMENT ARRANGEMENTS

The Transaction Advisor will be paid on a lump-sum basis in a freely convertible currency acceptable to the Contracting Authority.

Bidders must submit bids in the formats prescribed in this RFP. Bidders should specify a fixed amount in an acceptable currency to the Contracting Authority for each of:

- i. Phase 1 (the “Phase 1 Amount”) – 45% of the Contract Amount
- ii. Phase 2 (the “Phase 2 Amount”) – 55% of the Contract Amount

After Phase 1 KenGen will decide whether to proceed with Phase 2. If KenGen decides not to proceed with Phase 2, the contract with the TA will be terminated.

Remuneration schedule

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

Deliverable No.	Milestone / Deliverable	Payment (% of Contract Amount)
1	Delivery and approval of Inception Report	10%
2	Delivery of Draft Feasibility Study	15%
3	Delivery & Acceptance of the Final Feasibility Study	20%
	Total – Phase 1	45%
4	Completion of RFQ process	15%
6	Delivery of RFP, bid evaluation criteria, draft PPP Agreement and related agreements Completion of bidding process, evaluation of bids, and submission of Bid Evaluation Report	20%
7	Completion of negotiations and execution of the PPP Agreement (Commercial Close)	10%
8	Achievement of Financial Close and delivery of the Close-Out Report and Case Study	10%
	Total – Phase 2	55%
	Total – Phase 1 and 2	100%

10. INSTITUTIONAL ARRANGEMENTS AND COUNTERPART ASSISTANCE

The National Treasury will sign the contract (lump sum) with the selected firm for providing transaction advisory services. The Transaction Advisor shall then work closely with KenGen, NIA, PPP Directorate and other government agencies as may be required during the assignment.

A Project Implementation Team (PIT), composed of representatives from KenGen, NIA and the PPP Directorate, will be established to review and assess the acceptability of project deliverables. During the tender stage, a Prequalification Committee, Proposal Evaluation Team, (Contract) Negotiation Committee, and other bodies specified in the PPP Act, 2021 shall be appointed by KenGen. 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 the PIT to discuss any key constraints encountered by the TA, work planned for the subsequent period, inputs and support needed from the contracting authority(ies) and other parties and will update the work plan accordingly.

KenGen and NIA shall provide the Transaction Advisor with all available pertinent data and previous studies, if any, useful to the Project. KenGen 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.

11. BID EVALUATION CRITERIA

The selection method shall be quality and cost-based. The evaluation committee shall evaluate the proposals on the basis of their compliance and responsiveness to ToR's.

ANNEX 1: ENVIRONMENTAL, SOCIAL AND LAND ACQUISITION STUDIES

1. Purpose and Legal Basis

This Schedule sets out the requirements for Environmental, Social and Land Acquisition Studies to be undertaken as part of the Feasibility Study for the proposed **KIBUKA (High Grand) Falls Hydropower and Irrigation Dam Project**, to be implemented under a Public–Private Partnership (PPP) framework.

The assignment shall be undertaken in accordance with:

- The Public Private Partnerships Act, 2021 and applicable Regulations;
- The Environmental Management and Coordination Act (EMCA) and subsidiary regulations;
- The Land Act, 2012 and applicable National Land Commission (NLC) guidelines;
- The Physical and Land Use Planning Act, 2019;
- The Water Act, 2016 and applicable Water Resources Authority (WRA) regulations;
- Applicable international lender environmental and social standards (including IFC Performance Standards, where relevant).

2. Environmental and Social Safeguards Strategy

Environmental and social safeguards shall follow a structured two-stage approach:

2.1. Government-Led Safeguards at Feasibility Stage *(This will be undertaken by the Transaction Advisor).*

- Preparation of a Government-led preliminary **PPP Environmental and Social Impact Assessment (Government-Led Preliminary PPP ESIA)** in accordance with Section 3 below;
- Preparation of a full **Resettlement Screening and a Resettlement Action Plan (RAP)**;
- Preparation of a Stakeholder Engagement Plan (SEP)
- Preparation of a Land Acquisition Plan (LAP);
- Identification of environmental and social permitting pathway and approvals register.

2.2. Private Partner-Led Full Statutory ESIA. *(This will be undertaken by the Concessionaire or Private Party and not the Transaction Advisor).*

- Preparation of a **Full Statutory ESIA Study Report** based on final engineering designs;
- Obtaining all required NEMA approvals and licenses;
- Compliance with applicable lender environmental and social standards prior to Financial Close.

This approach ensures that land acquisition, reservoir-related displacement, and major site-related risks are identified and addressed prior to concession award, while preserving the requirement for a design-based ESIA by the Private Partner.

3. Government-Led Safeguards

This shall be undertaken by the Transaction Advisor

3.1.Objective

The Transaction Advisor shall prepare a PPP Environmental and Social Safeguards assessment to:

- Identify and assess material environmental and social risks through a preliminary ESIA;
- Inform project structuring and risk allocation;
- Provide baseline environmental and social data;
- Define mitigation principles for procurement documents;
- Develop Terms of Reference for the Private Partner-led Full ESIA;
- Prepare the full RAP (Resettlement Action Plan);
- Prepare a Land Acquisition Plan (LAP).

The Government-Led PPP ESIA shall not replace the statutory ESIA required under EMCA. The full statutory ESIA shall be undertaken by the private party/concessionaire based on their proposed detailed design and not the Transaction Advisor.

3.2.Scope of the Government-Led preliminary PPP ESIA

The Government-led preliminary PPP ESIA is based on the TA concept/reference design and shall identify environmental and social impacts associated with:

- Dam construction and associated civil works;
- Reservoir impoundment and inundation area;
- Hydropower plant development and operation (approximately 700MW installed capacity);
- Irrigation infrastructure development (including conveyance systems, canals, pumping stations, and command area development covering up to 500,000 acres);
- Access roads, borrow areas, construction camps and auxiliary facilities;
- Associated transmission or evacuation infrastructure (where applicable).

The preliminary assessment shall include, at a minimum:

- Hydrological impacts and downstream flow regime (including environmental flows);
- Sedimentation and reservoir management considerations;
- Biodiversity, aquatic ecology and habitat impacts;
- Water quality and public health implications (including vector-borne disease risks);
- Community health and safety, including dam safety and emergency preparedness considerations;
- Noise, dust and construction-phase impacts;
- Climate resilience and climate change implications (including flood and drought risk);
- Cumulative impacts and induced development impacts;

- Decommissioning and long-term asset management considerations.

3.3. Full Resettlement Action Plan (RAP)

The Transaction Advisor shall assess whether land acquisition, physical displacement, economic displacement, wayleaves or easements arise from:

- Dam footprint and reservoir inundation area;
- Irrigation corridors and command areas;
- Access roads and associated infrastructure;
- Borrow pits, quarries, and ancillary facilities.

The Transaction Advisor shall prepare a full **Resettlement Action Plan (RAP)** compliant with Kenyan law and applicable lender standards. The RAP shall include but not limited to:

- Land Acquisition Plan (LAP)
- Census of Project Affected Persons;
- Asset inventory and valuation at replacement cost;
- Livelihood restoration measures;
- Compensation and entitlement framework;
- Grievance redress mechanism;
- Costed implementation schedule and institutional responsibilities.

Land acquisition and compensation, where required, shall be undertaken by Government prior to Financial Close or, where appropriate, considered as part of the project cost to be financed by the private party.

3.4. Stakeholder Engagement

The Transaction Advisor shall prepare an initial **Stakeholder Engagement Plan (SEP)**, including:

- Stakeholder identification and mapping;
- Consultation and disclosure strategy;
- Public participation framework in accordance with EMCA and applicable laws;
- Grievance redress mechanism;
- Roles and responsibilities.

Stakeholder engagement activities shall inform both the Government-Led PPP ESIA and RAP.

4. Private Partner-Led Full Statutory ESIA

The Private Partner/Concessionaire shall be responsible for:

- Preparing a Full ESIA Study Report based on final engineering designs compliant with relevant statute;

- Obtaining NEMA approvals and all required environmental licenses with assistance from Contracting Authority where needed;
- Complying with applicable lender environmental and social standards;
- Satisfying environmental and social conditions precedent prior to Financial Close.

The PPP ESIA prepared at Feasibility Stage shall serve as a baseline reference document.

5. Integration with PPP Procurement

The Transaction Advisor shall ensure that environmental and social obligations are clearly reflected in the PPP procurement documentation, including:

- Allocation of environmental and social responsibilities between Government and the Private Partner;
- Updating of RAP (where applicable) prior to concession award;
- Identification of residual environmental and social risks;
- Definition of environmental and social conditions precedent to Financial Close;
- Environmental and social monitoring, reporting and compliance obligations under the PPP Agreement.