



PUBLIC PRIVATE PARTNERSHIP



Understand the Legal and Institutional Framework Governing Public Private Partnership Arrangement in Tanzania (PPPs); and the existing PPP Pipelines

THE LEGAL FRAMEWORK GOVERNING PPPS IN TANZANIA.

- ▶ National PPP Policy of 2009
- ▶ Public-Private Partnership Act, Cap.103 (as amended)
- ▶ PPP Regulations of 2020 (as amended)
- ▶ Government Loans Grants and Guarantees Act, Cap.134
- ▶ Budget Act, Cap. 439
- ▶ Tanzania Investment Act, Cap. 38
- ▶ Public Procurement Act, Cap.410
- ▶ The Companies Act, Cap. 212



What is PPP?

PPP is the contractual arrangement between a contracting authority and a private party in which the private party;

- ▶ Undertakes to perform for contracting authority function on behalf of the contracting authority for a specified period;
- ▶ Assumes substantial financial, technical and operation risks in connection with the performance on behalf of the contracting authority function or use of government property;
- ▶ Receives a benefit for performing on behalf of contracting authority function or from utilizing the public property,
- ▶ Must be paid by the contracting authority through revenue fund, or revenues of such authority (Government Pays PPPs); or
- ▶ Charges or fees to be collected by a private party or its agent from users of the service (User Pays PPPs)
- ▶ Upon the expiry of the contract the project is

The purpose of a PPP contract is to use innovation, expertise, and resources from the Private Sector to provide public services cost-effectively for the service payer.

- I. The private investor can be paid by the Government Institution through its annual budget; or
- II. The investor can collect revenues or fees directly from the users of the service they provide; or
- III. Both methods can be used simultaneously.

How is a private sector entity that fulfils the contract conditions compensated?

Payments to the investor are made only when the service has been delivered fully and to the agreed standards, and not otherwise.

A PPP project must fully go through the following stages of the project life cycle according to the PPP Act and its Regulations:

1. Project Identification (Prefeasibility Study)
2. Feasibility Study
3. Procurement of Private Party
4. Project Construction
5. Project Operation
6. Project Handback to Government



Key criteria of a quality Partnership Contract

- ▶ **Risk Sharing:** How much risk is the private party willing to accept? (The extent of negative risks borne by the Private Sector)
- ▶ **Affordability:** Can the service payer (i.e., Government, user, or both) afford to pay for the service throughout the duration of the Agreement?
- ▶ **Value for Money:** Does the intended partnership provide benefits to the Government and the public at large? This includes high-quality service at a reasonable cost, job creation, environmental protection, and increased national income.

What are the Roles of the Key Actors in the implementation of PPP Projects?

1. Contracting Authority (Implementing Agency)

- ▶ Identify, appraise and develop projects
- ▶ Conduct pre-feasibility and feasibility studies;
- ▶ Conduct procurement processes
- ▶ Signatory of PPP agreements
- ▶ Monitoring and evaluation of projects through the entire contract term

2. Sector Specific Minister

- ▶ Approves pre-feasibility study and feasibility study and other related documents before being submitted to the PPPC for considerations and approval
- ▶ Analyze and Approve small scale PPPs
- ▶ Give exemption of small scale PPPs from being competitively tendered

3. National Planning Commission

- ▶ Scrutinize prefeasibility study of potential PPP projects for consideration in the National Development Plan before submission to the PPP Centre for budget allocation

4. Public Private Partnership Centre

- ▶ One stop Center to streamline promotion and co-ordination of all matters relating to the implementation of PPP program in the country
- ▶ Provide technical support to the contracting authorities and private sector in identification, development and procurement of PPP projects
- ▶ Develop operational guidelines for contracting authorities; Support the PPP capacity building needs of the contracting authorities
- ▶ Monitor, review, and evaluate implementation of PPP Facilitation Fund (PPPF)

5. PPP Steering Committee

- ▶ Approves feasibility studies, shortlisted bidders and the RFP documents;
- ▶ Approves PPP agreements and any amendment to the agreements
- ▶ Approve allocation of project development funds from the PPPFF
- ▶ Recommend to the Minister for PPPs for guarantee and exemptions

6. Minister Responsible for Finance

- ▶ Approves government guarantee or any fiscal obligations for PPPs under the Government Loans and Grants Act.
- ▶ Approves for exemption from competitive tendering (solicited and unsolicited)
- ▶ Monitor and manage fiscal risks and other financial matters, and Value for Money

9. Private Sector

- ▶ Carry out feasibility study for unsolicited proposals
- ▶ Solicit funds for the implementation of the PPP projects
- ▶ Risk sharing
- ▶ Operate and maintain the facility/ project assets
- ▶ Establish SPV to run the project
- ▶ Deliver efficient services according to the agreed standards

Methods of Procurement of Private Party

The PPP Act provides four methods of Procurement of Private Party under the PPP Act;

1. Competitive tendering

All PPP projects shall be procured through an open competitive bidding processes.

2. Non - competitive tendering

Unsolicited proposals may be exempted from competition upon fulfilment of the following criteria provided under s. 15(2) of the PPP Act;

- ▶ The project is a priority to the Government at the particular time and consistent with the government strategic objectives;
- ▶ The private proponent does not require Government guarantee or any form of financial support from the Government;
- ▶ The project shall have unique attributes that justify departing from a competitive tender process;
- ▶ The project is of significant size, scope and requires substantial financing

7. Attorney General Chambers:

- ▶ Reviews the draft contract and issues a legal opinion

8. Regulatory Authorities

- ▶ For monitoring and Pricing eg. EWURA, LATRA, NEMC



- ▶ The project demonstrates value for money, affordability and has transfer significant risks to the private proponent;
- ▶ The project has wide social economic benefits including improved services, employment and taxation; and
- ▶ The proponent commits to bear cost of undertaking a feasibility study.

3. Direct Negotiations

Solicited proposals may be exempted from competition upon the fulfilment of the following criteria

- ▶ Fulfilment of the criteria under section 15(2) AND any of the following criteria;
- ▶ The project deliverable is of an urgent need, and any other procurement method is impracticable: Provided that, the circumstances giving rise to the urgency were not foreseeable by the contracting authority; or
- ▶ The private party possesses the intellectual property rights to the key approaches or technologies required for the project; or
- ▶ A particular private party has exclusive rights in respect of the project, and no reasonable alternative or substitute is available.

4 Special arrangements for development of a strategic project

- ▶ The Agreement shall be vetted by the Attorney General and submitted to the Cabinet for approval.

Small Scale PPPs

- ▶ A small-scale PPP is a public-private partnership whose total project value does not exceed 20 million US Dollars. The procedures for the implementation of Small Scale PPPs are provided under Part XI of PPP Regulations of 2020
- ▶ Small Scale PPPs implemented within the LGAs are coordinated by PPP Node established under the Ministry responsible for Local Government Authorities
- ▶ Small Scale PPPs implemented within the MDAs are coordinated by PPP Desk established within the respective the Ministry government department authority or agency.
- ▶ Small Scale PPPs are approved by the accounting officer of the contracting authority

PPP Incentives

- ▶ Tax incentives eg. tax exemptions
- ▶ Government guarantees/future fiscal commitment
- ▶ Viability Gap Funding – upfront capital contribution by the government
- ▶ International Arbitration

PROJECTS IN THE PPP PIPELINE AND THEIR CURRENT STAGES



Construction Sector – TANROADS

- 1 Toll Road Construction Project Lot 1 (Kibaha – Mlandizi – Chalinze 78.9 KM) Procurement Stage
- 2 Toll Road Construction Project Lot 2 (Chalinze – Morogoro 126.1 KM) Feasibility Study Stage
- 3 Toll Road Construction Project Morogoro – Dodoma (262 KM) Expression of Interest Stage
- 4 Inner and Outer Ring Roads in Dar es Salaam (131.96 KM; Inner 53.31 KM, Outer 78.65 KM) Expression of Interest Stage



Transport Sector – TAA

- 1 Construction of 4-Star Hotels at Julius Nyerere International Airport Procurement Stage
- 2 Construction of a Commercial Building at Julius Nyerere International Airport Procurement Stage
- 3 Construction of a Cold Storage Facility for Produce at Songwe and Njombe Airports. Pre- Feasibility Study.
- 4 Construction of a Building at Kilimanjaro International Airport (KIA) Pre- Feasibility Study Stage
- 5 Construction of a 5-Star Hotel and a Special Guest Terminal (CIP – Commercially Important Person) at Kilimanjaro International Airport (KIA) Pre- Feasibility Study Stage

Transport Sector

DART

- 1 Rapid Bus Service Provision in Dar es Salaam Phase I – Procurement Stage
- 2 Rapid Bus Service Provision in Dar es Salaam Phase II – Feasibility Study Stage
- 3 Rapid Bus Service Provision in Dar es Salaam Phase III – Pre-Feasibility Study Stage
- 4 Rapid Bus Service Provision in Dar es Salaam Phase IV – Pre- Feasibility Study.



Health Sector

- 1 Enhancing Cancer Services in Tanzania Feasibility Study Stage
- 2 Spinal and Trauma Care Center in Mbweni with Medical Equipment (MOI SITRC) Feasibility Study Stage



Local Government Authorities (LGAs) Projects

- 1 Development of Baraa Market - Arusha CC Feasibility Study Stage.
- 2 Development of Njiro Market and Dala-Dala Station - Arusha CC Feasibility Study Stage.
- 3 Development of Sisimba Bus Terminal - Mbeya CC Feasibility Study Stage.
- 4 Development of Uyole Dala-Dala Station - Mbeya CC Feasibility Study Stage
- 5 Development of Fish Market - Msasani Kinondoni MC Feasibility Study Stage

- 9 Solid Waste Management Project - Mbeya CC Pre- Feasibility Study Stage.
- 10 Solid Waste Management Project - Mtwara MC Pre-Feasibility Study Stage.
- 11 Construction of Students' Hostels at Government College, Mtaa Feasibility Study Stage.
- 12 Solid Waste Management Project - Dodoma CC Pre-Feasibility Study Stage.
- 13 Development of Mbuyuni Market - Moshi MC Feasibility Study.
- 14 Construction of Parking Facilities at Sisimba - Mbeya CC Feasibility Study Stage
- 15 Construction of Sisimba Market - Mbeya CC Feasibility Study Stage
- 16 Development of Shanty Town Market - Moshi MC Feasibility Study Stage
- 17 Commercial Building Project DDC - Ilala MC Construction Stage



- 6 Development of Temeke Market MC - Pre-Feasibility Study Stage
- 7 Development of Ilala Market CC - Feasibility Study Stage
- 8 Development of Chanika Dala-Dala Station - Ilala CC - Pre- Feasibility Study Stage.

Fisheries Sector

TAFICO

1. Deep-Sea Fishing Project
Pre Feasibility Study Stage
2. Construction of Cold Storage Facilities
Pre Feasibility Study Stage
3. Operation and Maintenance (O&M) of Ships between TAFICO and Dar es Salaam Merchant Group (DMG)
Expression of Interest

Education Sector

CBE

1. Construction of Student Hostels at CBE Dar es Salaam Campus
Feasibility Study
2. Construction of Student Hostels at CBE Dodoma Campus
Feasibility Study Stage.

TIA

3. Construction of Student Hostels at TIA Dar es Salaam Campus
Feasibility Study.
4. Construction of Student Hostels at TIA Mbeya Campus
Feasibility Study Stage.

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5. Construction of Student Dormitories at Rural Development College
Feasibility Study Stage

UDSM

6. Construction of Silver Sands Hotel, Kunduchi - UDSM
Pre-Feasibility Study.
7. ICT Park Development at Silver Sands Hotel, Kunduchi, DSM - UDSM
Pre-Feasibility Study.



Water Sector

1. Improvement of Water Supply and Sanitation in Vwawa and Mlowo (Mbozi Songwe VWAMWASSA)
Concept Proposal.
2. Improvement of Wastewater Infrastructure in Moshi Town (MOWASA)
Concept Proposal.
3. Construction and Renovation of Student Hostels at Water Institute
Concept Proposal.
4. Improvement of Clean Water and Wastewater Services in Tabora Town (TABORA UWASA)
Concept Proposal
5. Improving Reliable Water Supply and Distribution in Rural Areas through Prepaid Meters (RUWASA)
Feasibility Study Stage.

Internal Affairs

Police force

1. Mandatory Vehicle Inspection - Procurement Stage
2. Highway Patrol with Digital System - Pre-Feasibility Study.

Prisons

1. Wheat Production Project at Mollo Prison
Expression of Interest.
2. Aggregate Production at Msalatu Area - Preliminary Proposal.
3. Pyrethrum Production at Isupilo Prison - Preliminary Proposal.
4. Production of Palm Oil and Castor Oil at Kwitanga Prison
Preliminary Proposal.

NIDA

1. Establishment of a Modern National Identification Card Production Center - Chalinzhe, Pwani
Pre-Feasibility Study.