

**NATIONAL TREASURY
PPP MANUAL
MODULE 3: PPP INCEPTION**

**NATIONAL TREASURY PPP PRACTICE NOTE
NUMBER 04 OF 2004**

In accordance with section 76(4)(g) of the Public Finance Management Act, 1999 (PFMA), National Treasury may issue instructions to institutions to which the PFMA applies in order to facilitate the application of the PFMA and the regulations promulgated under the PFMA.

This National Treasury PPP Practice Note Number 04 of 2004 'PPP Inception' applies to departments, constitutional institutions, public entities listed or required to be listed in schedules 3A, 3B, 3C and 3D to the PFMA and subsidiaries of such public entities.

Extract from Treasury Regulation 16 to the PFMA

16.3 Project inception

16.3.1 As soon as the institution identifies a project that may be concluded as a PPP, the accounting officer or accounting authority must in writing –

- (a) register the PPP with the relevant treasury;*
- (b) inform the relevant treasury of the expertise within that institution to proceed with a PPP;*
- (c) appoint a project officer from within or outside the institution; and*
- (d) appoint a transaction advisor if the relevant treasury so requests.*



PPP unit

PPP PROJECT CYCLE

Reflecting Treasury Regulation 16 to the Public Finance Management Act, 1999

PPP Manual reference

PROJECT PREPARATION PERIOD

PROJECT TERM

Phase I

INCEPTION

- Register project with the relevant treasury
- Appoint project officer
- Appoint transaction advisor

Phase II

FEASIBILITY STUDY

Prepare a feasibility study comprising:

- Needs analysis
- Options analysis
- Project due diligence
- Value assessment
- Economic valuation
- Procurement plan

Treasury Approval: I

Phase III

PROCUREMENT

- Design a fair, equitable, transparent, competitive, cost-effective procurement process
- Prepare bid documents, including draft PPP agreement

Treasury Approval: IIA

- Pre-qualify parties
- Issue request for proposals with draft PPP agreement
- Receive bids
- Compare bids with feasibility study and each other
- Select preferred bidder
- Prepare value-for-money report

Treasury Approval: IIB

- Negotiate with preferred bidder
- Finalise PPP agreement management plan

Treasury Approval: III

PPP agreement signed

Phase IV

DEVELOPMENT

- Measure outputs, monitor and regulate performance, liaise effectively, settle disputes

Phase V

DELIVERY

- Report progress in the Annual Report

Phase VI

EXIT

- Scrutiny by the Auditor-General

Module 1
Module 2

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ABOUT THIS MODULE

Module 3: PPP Inception covers the four stages of the first phase (inception) of the PPP project cycle, and introduces National Treasury's Project Development Facility (PDF).

Stage 1: First steps

A critical part of the inception phase is the appointment of the project officer. Other key activities of the first stage are: a preliminary needs analysis, registration of the project with the relevant treasury, assessing budgets and sources of funding, and setting up the project team.

Stage 2: Attracting a transaction advisor

The bulk of the work of this stage is the defining of the terms of reference for the transaction advisor. In doing so, the institution must make a range of important decisions about the potential PPP project itself. The rest of this stage involves establishing the bid evaluation panel, preparing the bid package, advertising the transaction advisor position, and preliminary liaison with potential bidders.

Take note

1. In terms of the PFMA, institutions are required to maintain appropriate procurement systems which are fair, equitable, transparent, competitive and cost-effective. This module captures these requirements and has been developed from experience. It is recommended that the institution follows the specific steps elaborated here for hiring a PPP transaction advisor and makes use of the various templates provided as annexures.

The wrong choice of transaction advisor can easily kill a project.

2. *The Code of Good Practice for BEE in PPPs* provides the BEE framework to be adopted by institutions for the selection of PPP transaction advisors, and is elaborated here.

Stage 3: Receiving and evaluating transaction advisor bids

The module explains in detail how the bid evaluation process should proceed. The separation of the technical and BEE proposals from the price proposals is a crucial element here. The conduct of the bid evaluation panel is also discussed.

Stage 4: Finalising and signing the contract

This section sets out the formalities of the arrangement between the institution and the transaction advisor.

Applying for funding from the Project Development Facility

The Project Development Facility is a possible source of funding for transaction advisor costs. This section of the module explains the requirements for being eligible for this funding, and the terms and conditions.

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INTRODUCTION

The role of the accounting officer/authority in PPPs

The PFMA assigns significant responsibilities and accountability to accounting officers/authorities to manage the resources of institutions in the public interest and as mandated. This applies equally to any PPP project and is set out in detail in Treasury Regulation 16 to the PFMA.

In this inception phase of the PPP project cycle, the accounting officer/authority is responsible for:

- informing the relevant treasury of the institution's expertise to proceed with a PPP
- registering the project with the relevant treasury
- appointing a project officer
- appointing a transaction advisor.

In giving practical effect to these regulatory responsibilities, the accounting officer/authority will, in this phase, need to:

- provide strategic direction and vision to the PPP throughout the PPP project cycle, from this inception phase onwards, ensuring that the project's outcomes are consistent with the institution's mandate and strategy for service delivery and/or use of state property
- build and secure political support for the project
- ensure that senior management supports the project and builds other stakeholder support
- provide the project officer with suitable delegations and responsibility for project management, and include him/her in the senior management team of the institution
- allocate suitable project resources, including budgets and personnel, to the project officer.

As the PPP progresses, the accounting officer/authority will further be required to:

- receive regular, direct reports from the project officer and provide ongoing strategic direction
- as far as possible, resolve disputes that cannot be resolved at project level
- ensure smooth transitions between changing institutional personnel who may be responsible for the project at different times in the PPP project cycle
- represent the project publicly on behalf of the institution.

The accounting officer/authority's further regulatory responsibilities in PPPs are set out in the regulations, and include:

- obtaining treasury approvals
- representing the institution on behalf of government as signatory to the PPP agreement
- ensuring that the PPP agreement is properly enforced
- ensuring that the institutional function is effectively and efficiently performed in the public interest, and/or that state property is appropriately protected.

STAGE 1: FIRST STEPS

First steps

Part 1: Initial needs analysis

Part 2: Register with the relevant treasury

Part 3: Appoint the project officer

Part 4: Assess project budgets and consider PDF funding

Part 5: Set up the project team

Part 1: Initial needs analysis

It is important that the institution does an initial needs analysis and considers its options for meeting these needs within its mandate and strategy for delivery.

The full needs analysis and solution options analysis¹ will be done by the project officer and his or her team and the transaction advisor as part of the feasibility study. The work in the feasibility study phase must be based on the institution's preliminary assessment of its needs and options here.

Part 2: Register with the relevant treasury

When an institution decides to explore a PPP as a procurement choice for a project, and has done an initial needs assessment, the accounting officer/authority should call a meeting with the relevant treasury's PPP unit to discuss the possible project(s) and the existing resources (human and budgetary) available, and agree on how to approach the work that lies ahead.

What does National Treasury's PPP Unit do?

National Treasury has a dedicated PPP Unit which has the following core functions:

- provides quality technical assistance to institutions embarking on PPPs, throughout the PPP project cycle, to help them achieve a quality PPP project and comply with Treasury Regulation 16 to the PFMA
- recommends to National Treasury whether treasury approvals should be granted or declined
- develops and disseminates PPP policy, manuals, standardisation and sectoral toolkits
- disseminates accurate and up-to-date information on PPP projects
- builds PPP capacity
- builds confidence and integrity in South Africa's PPP market.

Upon future delegation of Treasury Regulation 16 approvals to provincial treasuries, the provincial treasuries will establish similar PPP units. *National Treasury's PPP Manual and Standardised PPP Provisions*, as updated by National Treasury from time to time, will continue to apply through the provincial treasuries to all PPPs undertaken in terms of the PFMA.

1. *Module 4: PPP Feasibility Study* deals with how to do a full needs analysis and solution options analysis in the feasibility study phase of the PPP project cycle.

Step 1: Meet with the PPP Unit

Questions the PPP Unit will ask

The following will be important considerations for the institution to determine how best to take the project forward:

- What work has the institution done to define its needs and assess its options for a solution?
- What budget does the institution have (a) for meeting these needs, and (b) for financing project development costs, including the cost of a project officer, project management and administration, and hiring a transaction advisor?
- Have any consultants been hired already for the project? If so, what is their brief, and on what terms?
- Is an application to the PDF for funding appropriate?
- Is there an internal senior manager who is suitably skilled and experienced to be appointed as full-time project officer?
- Is the accounting officer/authority willing and able to assign delegations, budgets and administrative support to the project officer, and include him or her in the senior management team of the institution?
- Is a single project envisaged, or are there a number of them?
- Can a number of projects either be bundled into a single project or developed simultaneously in the PPP project cycle to optimise use of project development resources?
- What is the institution's envisaged timeframe for the project?
- Has the accounting officer/authority obtained the support of the relevant Minister or MEC for the project?

Step 2: Register the project

The accounting officer/authority submits a letter to the relevant treasury, requesting registration of the project in terms of Treasury Regulation 16 to the PFMA.

The relevant treasury will, in writing:

- confirm registration of the project, assign a project number, and enter the project on the official database of PPP projects,² in which the progress of the project will be tracked and updated throughout the PPP project cycle
- confirm its request to the institution to appoint a transaction advisor
- assign a PPP Unit project advisor.

2. This database is maintained by National Treasury's PPP Unit. It can be viewed on www.treasury.gov.za.

The PPP Unit's project advisor

The PPP Unit of the relevant treasury will assign a project advisor to every PPP project registered in terms of Treasury Regulation 16.

The project advisor provides hands-on technical assistance from the date of registration to the signing of the PPP agreement, and in the development and delivery phases of the project term.

The PPP Unit's project advisor

- supports the institution through every step of the PPP project cycle, drawing on best practice from other projects, and advising on how the institution can best meet the requirements of Treasury Regulation 16
- recommends an institution's application to the PDF, if applicable
- ensures that treasury approval applications are processed efficiently within the relevant treasury
- recommends to the relevant senior official of the relevant treasury whether the institution's applications for treasury approvals should be approved or declined
- ensures that communication between the relevant treasury and the institution is managed professionally at all times.

The project advisor's first tasks will be to assist the project officer to:

- establish a project team
- draft the terms of reference for the transaction advisor
- calculate a suitable budget for the costs of the transaction advisor
- make an application to the PDF, if applicable
- procure the services of the transaction advisor.

Part 3: Appoint the project officer

Extract from Treasury Regulation 16 to the PFMA

16.1 Definitions

“project officer” means a person identified by the accounting officer or accounting authority of an institution, who is capable and appropriately qualified to manage a PPP to which that institution is party from its inception to its expiration or termination.

What does the project officer do?

The project officer is responsible for making the project work for the institution, on time, on budget and to the standards set by National Treasury. All the institutional tasks and obligations detailed in Treasury Regulation 16, *National Treasury's PPP Manual* and *Standardised PPP Provisions* are placed on the desk of the project officer. In effect, the content of these substantial documents constitutes the project officer's job.

The project officer's roles and responsibilities span the whole PPP project cycle.

The project officer's is a full-time project management job, requiring a suitable term contract. The intention should be that the project manager is hired to manage the project from inception, through the feasibility study phase, the procurement phase, and into at least the development phase and the first years of the delivery phase, when he or she will be primarily concerned with PPP agreement management functions.

Broadly, the project officer will:

- manage the planning, procurement and implementation of the PPP project on behalf of the institution, exercising delegated authority
- carry out all functions of the inception phase, including the appointment of the transaction advisor
- direct and manage the work of the transaction advisor and approve payments in terms of the contract at every phase of project preparation
- manage the PPP agreement for the project term,³ representing the institution.

What competencies does the project officer need?

Fulfilling these diverse, complex and important functions effectively requires a range of personal and technical skills. Figure 3.1 provides a competency model for a project officer. The model is grouped into three main clusters – self, task and people.

Competencies are attributed to each cluster, and for each competency a number of key indicators is provided. While the model presents a somewhat idealised 'Renaissance human', its aim is to illustrate the wide range of attributes required in a project officer.

Institutions can use it as:

- a recruitment and selection tool
- an assessment tool for performance appraisals
- a development tool when the project officer is looking to keep his or her expertise aligned with the evolving requirements of the job.

3. See *Module 6: Managing the PPP Agreement*, for a detailed description of the project officer's PPP agreement management functions throughout the PPP project cycle.

Figure 3.1 Competency model for a PPP project officer

| Competency cluster | Competencies | Indicators |
|--------------------|---|---|
| Self | Applies professional expertise and experience | PPP knowledge and experience, from the public or the private sector Comparable project experience Relevant knowledge and skill in law, finance, public administration and document management |
| | Develops self and others | PPP knowledge Personal development Team development Career development of self and others |
| | Is resilient and motivates | Determination Self-motivation Motivation of others |
| Task | Implements strategy | Strategy development Strategy implementation Strategy communication |
| | Solves problems | Problem solving Creative thinking Decision making |
| | Achieves results | Project management Resource management Quality management Risk management Managing ongoing change Variation management Knowledge management Monitoring |
| People | Builds relationships, communicates and negotiates Leads and manages team | Partnership and relationship management Communication PPP negotiation Leadership and management Delegation |

Source: Adapted from UK Office of Government Commerce, *A Competence Framework for Creating Effective PFI Projects*, 2000.

The project officer is the institution’s anchor and champion for a PPP project.

If the project officer is incompetent, lazy or unreliable, the project is bound to fail. He or she must be unquestionably honest and committed to achieving best value in the public interest. The job needs the kind of person who is prepared to live the project. It requires a passionate driver, committed to achieving an optimal project outcome, and with the skills to match. The project officer will be required to act and make decisions with the utmost integrity at all times, and to protect the institution’s interests and those of the public.

Where does the project officer fit in the institution?

The project officer should be given suitable, legally sound delegations by the accounting officer/authority for the central, driving role he or she has to play. The project officer should therefore be or become a member of the institution’s senior

management team in order to ensure thorough institutional buy-in and management's contribution to key project decisions. He or she should have the full trust of the accounting officer/authority, who will depend on the project officer to deliver the best possible project for the institution.

Formalise the project officer's appointment

The project officer may be appointed from within or outside the institution, depending on the institution's own capacity and resources. In either case, the institution is advised to enter into a contract with the project officer. (See 'Annexure 1: Template project officer duties and responsibilities.')

The contract should clearly identify the measurable outputs of the job, and provide that the project officer's services can be terminated by the institution if he or she fails to deliver as agreed, or if he or she is found to be corrupt.

Part 4: Assess project budgets and consider PDF funding

Step 1: Identify budgets

An early task for the project officer is to identify the budgets needed to manage and administer the project and to hire the services of a transaction advisor. This will entail identifying budgets in the 'professional and special services' line items of the institution's Medium-Term Expenditure Framework (MTEF) budgets that may be used, and ensuring that such budgets are built into the next available budget cycle.

Step 2: Consider PDF funding

In addition, the project officer should assess the likelihood of needing to apply for PDF funding, whether the project would fit the PDF criteria, and at what stage in project preparation the institution would be best placed to submit an application for PDF funding. (See the final section of this module, which deals with the PDF in detail, including how to apply for funding.)

Part 5: Set up the project team

Step 1: Appoint the project secretariat

The project officer will need back-up from a meticulous, efficient and reliable secretariat.

The project officer should thus be appropriately resourced with administrative support and a suitable operating budget.

The primary function of the project secretariat

The secretariat's primary role will be to ensure scrupulous document management and meetings administration throughout the PPP project cycle.

Well-kept project records are vital, enabling an institution to:

- compile its annual reports as required by the PFMA
- supply the Auditor-General with the legally required documentation at any time⁴
- produce, at any time, accurate project information in terms of the Promotion of Access to Information Act, 2000
- make decisions quickly and compile PPP procurement documentation accurately and efficiently, based on preceding project decisions
- give quick and accurate briefings to the institution's accounting officer/authority and senior management
- devise and implement an effective project communication strategy for engaging with key stakeholders throughout the project cycle.

Step 2: Appoint the PPP project team

The institution will require a strong team to lead and monitor the project from the start. This team should be chaired by the project officer and comprise the officials who can provide both strategic and technical support to the project officer. The project officer's secretariat should also be the secretariat of the project team.

What does the project team do?

- provides strategic direction and ensures management and political buy-in in all the project cycle phases
- oversees project development budgets and expenditure
- ensures that the progress of the project is effectively communicated within the institution and to the public where required
- approves the deliverables of the transaction advisor
- reviews and endorses documentation to be submitted to the accounting officer/authority for the applications for the treasury approvals.

The transaction advisor and the relevant treasury's PPP Unit's project advisor should participate actively in the regular meetings of the project team. For day-to-day project management, the project officer will need to set up structured working arrangements with the transaction advisor and the project advisor.

Take note

The project officer and the project secretariat are strongly advised to set up the PPP project management systems in consultation with the institution's internal audit⁵ unit to ensure appropriate compliance with the institution's risk management, internal controls, and governance standards.

4. See *Module 7: Auditing PPPs*.

5. See *Module 7: Auditing PPPs*.

STAGE 2: ATTRACTING THE TRANSACTION ADVISOR

Introduction

At PPP project inception, Treasury Regulation 16.3.1(d) requires that the accounting officer/authority, 'must appoint a transaction advisor, if the relevant treasury so requests'.

What is a transaction advisor?

Extract from Treasury Regulation 16 to the PFMA

16.1 Definitions

"transaction advisor" means a person or persons appointed in writing by an accounting officer or accounting authority of an institution, who has or have appropriate skills and experience to assist and advise the institution in connection with a PPP, including the preparation and conclusion of a PPP agreement.

The transaction advisor is typically a consortium of professional consultants, from one or more firms, who work collectively as a team. The transaction advisor contracts with the institution through the lead firm. All other members of the consortium participate either through subcontracts with the lead firm or via a joint venture arrangement.

What does the transaction advisor do?

The transaction advisor does all the detailed financial, technical, BEE and legal work required to prepare the institution for a PPP agreement. In Phase II: PPP feasibility study, the transaction advisor will complete a feasibility study to a standard that will enable the institution to obtain Treasury Approval: I (TA:I) if required. In Phase III: PPP procurement, the transaction advisor will prepare for and implement the PPP procurement process, including preparing all necessary documentation to enable the institution to obtain treasury approvals IIA (TA:II), IIB (TA:II B) and III (TA:III), and complete a close-out report and case study.

The transaction advisor may also be required to provide PPP agreement management support to the institution after signature of the PPP agreement, particularly in the development phase and the early years of the delivery phase.

What skills and experience are required?

The professional skills and experience of the transaction advisor are typically in: project finance, contract and administrative law, insurance, PPP procurement management, project management, BEE, and in all technical disciplines relevant to the particular project sector (for example, facilities management, IT, security, transport, tourism). The transaction advisor has to be sufficiently competent to cost-effectively complete the work necessary for the institution to meet the stringent requirements of each treasury approval, up to and including financial closure at the end of the procurement phase.

Advantages of using a transaction advisor

Good transaction advisors bring clear advantages to the institution:

- experience in similar transactions
- protection against very costly, avoidable mistakes
- access to national and international best practice
- technical strength to the institution's team
- enhancement of investor confidence

- an opportunity for skills development among government officials
- a single point of accountability for getting the job done well and on time
- an opportunity to grow the number of black consultants in the South African PPP market.

Managing the transaction advisor

Getting maximum benefit from a transaction advisor requires good management and effective leadership and oversight by the institution – from defining the transaction advisor's tasks, to choosing the transaction advisor, and throughout their engagement with the institution. Without this, the transaction advisor's work can be misdirected, misunderstood, and may even amount to fruitless expenditure by the institution.

The project officer and the project team play a pivotal role in managing the transaction advisor. The transaction advisor should be managed on a day-to-day basis by the project officer, and will play the key technical roles in the work of the project team.

Getting value for money from the transaction advisor

The PPP transaction advisor should be viewed as an investment and not simply as an expense, and as key to assisting the institution to secure the best PPP deal possible.

The institution should therefore balance its need to obtain top quality technical assistance with its need to keep the overhead costs of preparing the PPP in check. The aim is to get optimal value for money from the transaction advisor.

This involves some important prerequisites:

- The accounting officer/authority should mandate the project officer to manage the work of the transaction advisor directly, take certain binding project decisions, and drive the project on a day-to-day basis on behalf of the institution.
- The transaction advisor should be hired at the start of the PPP project cycle and retained either until after the signing of the PPP agreement at the end of the procurement phase, or, in some instances, until after PPP agreement management systems have been bedded down in the development phase of the project term.
- The terms of reference for the transaction advisor should be precise and focused on clear deliverables.
- In line with government's constitutional mandate for the hiring of services, the procurement of the transaction advisor must be fair, equitable, transparent, competitive and cost-effective.
- There should be one lead advisor in the transaction advisor, who is responsible for managing the deliverables of each member of the consortium and who reports daily to the project officer.
- Avoid separately retaining or subsequently hiring additional consultants for the project outside of the transaction advisor. This can create conflicting work streams and accountability, and may be detrimental to both the quality and timing of the project.
- If there are already consultants working for the institution on the project before its registration with the relevant treasury as a potential PPP, consider either bringing these contracts to closure before advertising for the transaction advisor or transferring these services to the management of the transaction advisor in a manner clearly articulated during the procurement of the transaction advisor.
- The terms of the contract between the institution and the transaction advisor should incentivise quality completion of milestones according to the PPP project cycle, on time and within the budget.
- The project team should meet regularly with the transaction advisor to receive progress updates, provide project direction, resolve impasses, and ensure ongoing institutional input and support.

Attracting a transaction advisor

Part 1: Establish the bid evaluation panel and the bid secretariat

Part 2: Define the transaction advisor terms of reference

Part 3: Prepare the rest of the bid package

Part 4: Publish the advertisement, brief bidders, and respond to queries

Part 1: Establish the bid evaluation panel and bid secretariat

Step 1: The bid evaluation panel

By choosing the transaction advisor, the bid evaluation panel plays a key role in ensuring the success of the PPP.

The bid evaluation panel should be made up largely of the same people who constitute the project team. The relevant treasury's PPP Unit's project advisor should be appointed as a voting member of the bid evaluation panel.

The project officer should establish the bid evaluation panel early, so that its members can become familiar with the project itself, the transaction advisor's terms of reference and the bid evaluation criteria.

Step 2: The bid secretariat

The person or people who comprise the bid secretariat should be drawn from the institution's tendering component and should assist the project officer to prepare the bid package.

The bid secretariat ensures that the rules of bidding are strictly adhered to.

The bid secretariat plays a key role by:

- preparing the required documentation for the bid evaluation panel
- administering and recording the receiving of the bids
- preparing the scoring sheets for each bid and the spreadsheets for compiling the scores, consistent with the bid package
- organising the venue and all logistical matters for the bid evaluation and ensuring that all bid documents are delivered securely to and from the venue
- collating the scores
- setting up the interviews with short-listed bidders and recording the proceedings.

(See Stage 3 for details of the role and functions of the bid secretariat in the bidding process and the evaluation of bids.)

Part 2: Define the transaction advisor terms of reference

The purpose of the terms of reference is to give the bidding transaction advisors clear direction about what the institution wants and expects.

The institution's terms of reference together with the selected transaction advisor's proposal will be consolidated into the deliverables schedule of the transaction advisor contract, so it is important for the institution to get the terms

of reference right from the start. The project advisor from the relevant treasury's PPP Unit will provide hands-on assistance to the project officer with drafting this document. The better the information made available to bidders, the higher the quality of the bids will be in technical and BEE solutions and pricing. The more precise the terms, the firmer the project's footing will be when it goes forward.

The terms of reference will vary in content from project to project and sector to sector.

The steps below outline what to do for each part of the terms of reference. (See 'Annexure 2: Template transaction advisor terms of reference', which can be adapted in consultation with the PPP Unit of the relevant treasury.)

Contents of the transaction advisor terms of reference

1. Introduction

2. Scope of work

- 2.1 Part 1: Feasibility study
- 2.2 Part 2: PPP procurement

3. Background

- 3.1 Mandate
- 3.2 Needs
- 3.3 Objectives
- 3.4 Background documentation and preparatory work
- 3.5 Project budget

4. PPP feasibility study deliverables

- 4.1 Components of the feasibility study
- 4.2 Presentation of the feasibility study
- 4.3 Submission requirements for the feasibility study report and request for TA:I

5. PPP procurement deliverables (if applicable)

- 5.1 TA:IIA and administration of the bidding process
- 5.2 Evaluation of bids, demonstrating value for money and TAI:B
- 5.3 PPP agreement negotiations, PPP agreement management plan and TA:III
- 5.4 PPP agreement signature, close-out report and case study, and financial closure

6. Transaction advisor skill, experience, remuneration and management by the institution

- 6.1 Necessary transaction advisor skills and experience
- 6.2 Remuneration schedule and disbursement arrangements
- 6.3 Management of transaction advisor by the institution

7. Rules of bidding, bid submission requirements and bid evaluation

- 7.1 Rules of bidding
- 7.2 Bid submission requirements
- 7.3 Bid evaluation criteria
- 7.4 Bid evaluation
- 7.5 Compulsory briefing session
- 7.6 Address and deadline for submission of bids

Appendix A: Background and supporting documentation

Appendix B: Draft transaction advisor contract

Step 1: Introduction

Briefly describe the project and its objectives, and how these align with the institution's strategic vision.

Introduce the terms of reference.

Step 2: Scope of work

Outline the scope of the two parts of the work of the transaction advisor:

- feasibility study for the project
- procurement of the PPP (if applicable).

Step 3: Background

Introduce the project as comprehensively as possible:

- 3.1 The institutional mandate to proceed with the project
- 3.2. The institutional needs that led to the project
- 3.3 The objectives of the project
- 3.4 Background documentation and preparatory work: Explain and attach as 'Appendix A: Background and supporting documentation' to the terms of reference all non-confidential preliminary work which the institution has already done. Describe the challenges which the institution faces in pursuing the project, and the legal and policy framework for the project.
- 3.5 The budget for the project.

Step 4: PPP feasibility study deliverables

Set out the deliverables for the feasibility study as follows:

- 4.1 Components of the feasibility study
- 4.2 Presentation of the feasibility study
- 4.3 Submission requirements for the feasibility study report and request for TA:I.

Step 5: PPP procurement deliverables

Set out the procurement deliverables as follows:

5.1 Treasury Approval: IIA and administration of the bidding process

- 5.1.1 Pre-qualification
- 5.1.2 Payment mechanism
- 5.1.3 Bid evaluation criteria, bid process design, and BEE requirements
- 5.1.4 Request for proposals (RFP)
- 5.1.5 A draft PPP agreement
- 5.1.6 Treasury Approval: IIA
- 5.1.7 Administration of the bidding process

5.2 Evaluation of bids, demonstrating value for money, and TA:IIB

- 5.2.1 Evaluation of bids
- 5.2.2 The value-for-money report and TA:IIB

5.3 PPP agreement negotiations, PPP agreement management plans and TA:III

5.4 PPP agreement signature, close-out report and case study, and financial closure

Step 6: Required transaction advisor skills and experience, remuneration, and management by the institution

6.1 Skills and experience

- Emphasise that the individuals named in the bid are expected to be properly available and committed to the project, and that the lead transaction advisor will be held accountable for the team and the deliverables.
- List the full range of skills and experience the institution is seeking.

6.2 Budget, remuneration system and schedule, and disbursement arrangements

6.2.1 Budget for the transaction advisor's professional fees

The institution may or may not declare the fees budget.

Now is the time to cost the transaction advisor's fees

While the institution should reserve a budget for the transaction advisor during Stage 1, Part 4 of inception, the real extent of the work will only become evident during this preparation of the terms of reference. The project officer should therefore carefully cost the transaction advisor fees at this stage, referring to current market rates and to contracts for similar, recent projects. Having estimated the probable costs, the institution must then decide whether or not to declare the budget limit in the terms of reference.

If the institution is unable to secure all the necessary funds from its base-line budget for the costs of the transaction advisor, application can be made to National Treasury's Project Development Facility (PDF), established to provide such support. See the final section of this module for details of the PDF and the application procedures.

How to decide whether to declare the fees budget or not

Institutions will need to be familiar with the bid evaluation process to be able to fully understand what lies behind this decision and its implications. Please read Step 7 and Stage 3 before proceeding.

If the fees budget is declared, the institution is consciously focusing its bid evaluation selection on the quality of service it can get for the budget it has. If the bidders deem the budget to be reasonable or generous, they are likely to bid their price at the specified budget. If they deem the budget to be too small, they will either not bid or they will bid at a higher price in the hope that the institution will reconsider. In this instance, bid evaluation must rest heavily on the technical and BEE components of the bids, and the weighting of the points for these two components should be adjusted accordingly. The two-envelope system enables technically weak bids to be eliminated before any of the price bids are considered. (See Step 7.)

If the fees budget is not declared bids are likely to come in at a wide range of prices, and the cheap bids are likely to be technically weak. In this instance, the bid evaluation system must place a heavier weighting on the price component (although never more than on the technical). The two-envelope system must be applied, otherwise the

institution may be tempted to choose the cheapest, technically weakest bid, which would undoubtedly result in a failed project.

While the two-envelope system will push selection of the strongest technical and BEE bids, with reasonable competition for lower price, the institution always runs the risk, when not declaring the budget, of facing a price for the job which it may not be able to afford. It may be possible to negotiate for a portion of the above-budget price to be paid as a success fee as an initial cost to the PPP project itself, but this is not a solution that can always be relied upon, particularly for small- or medium-value PPPs where project cash flows and affordability levels are likely to be constrained.

If the institution is realistically able to cost the transaction advisor's work, it is National Treasury's preference that the transaction advisor's fees budget is declared in the terms of reference.

Figure 3:2 Recommended weighting for bid evaluation elements

| Evaluation element | Weighting if fees budget declared | Weighting if fees budget not declared |
|--------------------|-----------------------------------|---------------------------------------|
| Technical | 70 (with a threshold of 65%) | 50 (with a threshold of 65%) |
| BEE | 10 (with a threshold of 60%) | 10 (with a threshold of 60%) |
| Price | 20 | 40 |

6.2.2 Remuneration system and schedule

Transaction advisors should be paid a fixed price for identified deliverables within the feasibility study and procurement phases (not by hourly rates), and their bids structured accordingly.

Professional fees should be paid in the form of retainer fees (for identified deliverables at milestones in the PPP project cycle) and a success fee (upon financial closure of the PPP, and upon completion of the close-out report and case study). Retainer fees should be payable, for example, on completion of the feasibility study to the satisfaction of the institution. This retainer should not be linked to the attainment of TA:I, but rather to a decision in respect of TA:I. This is because the institution may decide, based on the feasibility study, not to proceed with a PPP, or the relevant treasury may have reason to refuse the approval – and such decisions may not reflect on the quality of the transaction advisor's work, but on unsuitable conditions which the study exposes.

The purpose of the fixed fee payment structure is to incentivise delivery at each key stage of the PPP project cycle, and to incentivise the drive to close the PPP agreement.

Calculate success fees at about 10 per cent of the cost of procurement phase fees, depending on the size of the transaction. Specify the terms of the success fee to enable the institution to deduct from the success fee if significant delays can be directly linked to the work of the transaction advisor.

For cash-flow reasons, transaction advisors will seek to be paid upfront as far as possible. But it is in government's interests to link payments to outputs delivered to requisite standards. The terms of reference should therefore establish a remuneration schedule that both reflects the real costs of expected inputs (in this case, professional time) and links the payments to definite outputs, while leveraging an incentivising percentage for payment at final delivery.

6.2.3 Disbursement arrangements

There are two options here:

- **Option 1: Actual costs with a ceiling**

Out-of-pocket expenses, such as travel and materials, can be payable by the institution as a reimbursement of actual overhead costs, pre-approved, with supporting invoices, and within agreed budgetary limits. Either set a ceiling on these costs in the terms of reference, or ask the transaction advisors to bid a ceiling in their proposals. The amount does not form part of the bid evaluation criteria, but a ceiling for each part of the work should become part of the contract. The ceiling incentivises the transaction advisor to manage these costs wisely, and enables the institution to budget properly. To keep tight control throughout the contract, these expenses will need to be pre-approved by the project officer in writing (via a simple but recordable email system), on each occasion, before they are incurred. The template in the annexure to this module uses this option.

Take note

The PDF will not be able to fund disbursement costs that have not been fixed, as in this option. Thus, if project development costs are to be funded in part by the PDF, the institution will have to carry variable disbursement costs as part of its own budget during the procurement phase.

- **Option 2: Fixed costs**

Specify that transaction advisors must bid disbursements as part of the total fixed fee. This means that they will have to make a calculation of their anticipated overhead expenditure. The likelihood is that they will calculate high to cover unexpected costs, which could have value-for-money implications for the institution.

The upside for the institution in this option is two-fold: firstly, it does not have to administer disbursement approvals on a day-to-day basis, and secondly, if it is able to obtain PDF support, the PDF will pick up the fixed disbursement sum as part of the overall fixed cost during the procurement phase.

6.3 Management of the transaction advisor by the institution

Set out the appointment, reporting and decision-making arrangements under which the transaction advisor will be required to work, the roles and responsibilities of the project team, and the project officer's contact details.

Step 7: Rules of bidding, bid submission requirements and bid evaluation

The details of the bidding and bid evaluation process are covered in Stage 3. This part of the module is limited to the information that institutions must include in the transaction advisor's terms of reference. Readers may want to familiarise themselves with the bid evaluation process first, then come back to preparing the terms of reference.

7.1 Rules of bidding

Set out all rules and procedures of the transaction advisor bid process.

Take note

Care must be taken to ensure that there is no inconsistency between the rules of bidding and the bid submission requirements set out in the terms of reference, and those that may be issued from time to time by tendering components within institutions and provinces. To avoid confusion and contradictory instructions to bidders, the institution must not attach extra or pro forma tender instructions to the bid package. If these kinds of instructions are important for all institutional tenders, they should be incorporated into the relevant components of the bid package. Any tender instructions that could obstruct receiving and evaluating transaction advisor bids as set out in this module must be resolved between the relevant tender component(s) of the institution and/or province and the relevant treasury's PPP Unit before the advertisement is published.

7.2 Bid submission requirements

Explain the two-envelope system (See 7.3 below) and set out exactly what must be submitted in each envelope, and the format to be followed.

7.3 Bid evaluation criteria

Set out the criteria and minimum thresholds against which the institution will evaluate the transaction advisor bids, and give the weightings by which they will be scored.

Clear measures by which the scoring of bids will be done must be specified for each element in scorecards for the technical and BEE components.

The two-envelope system

It is strongly recommended that a two-envelope system for the evaluation of bids be used, and that threshold scores be set for the technical and BEE elements. Only those bids that meet or better the technical and BEE thresholds should have their price envelopes opened.

The technical element

The technical element is key simply because, unless the team is excellent, it is not worth having. There are also numerous components of the technical element that need to be evaluated and scored.

The BEE element

The transaction advisory work in a PPP provides an excellent opportunity for black professionals to develop specialist skills in this growing market, and for black firms to benefit and grow. If the bid passes the technical threshold, but fails to pass the BEE threshold, it should not be considered further. *The Code of Good Practice for BEE in PPPs*, presented as Module 2 of this manual, sets out government's BEE policy on hiring transaction advisors.

The price element

This is specifically weighted to reflect whether the fees budget is declared or not.

Bid evaluation weighting, minimum thresholds and formula to be applied

In compliance with the Preferential Procurement Policy Framework Act, 2000 (PPPFA), the BEE component of a Transaction Advisor bid will constitute 10% of the bid evaluation weighting, with the price and technical elements constituting the remaining 90%. A minimum threshold of 60% of the total BEE points will be set and a minimum threshold of 65% of the total technical points will be set. The technical, BEE and price elements are each scored out of 100 points, and the scores achieved (if they meet the thresholds), calculated into the bidder's overall score using the following formula:

$$a * (\text{technical score}/100) + b * (\text{BEE score}/100) + c * (\text{price score}/100) = d$$

where:

a is the weighting for technical (either 50% or 70%)

b is the weighting for BEE (10%)⁶

c is the weighting for price (either 20% or 40%)⁷, and

d is the total score achieved by the bidder.

The alternative technical and price weightings (together making up 90%) vary depending on whether the fees budget is declared or not declared by the institution.

| Evaluation element | Weighting if fees budget declared | Weighting if fees budget not declared |
|--------------------|-----------------------------------|---------------------------------------|
| Technical | 70 (with a threshold of 65%) | 50 (with a threshold of 65%) |
| BEE | 10 (with a threshold of 60%) | 10 (with a threshold of 60%) |
| Price | 20 | 40 |

7.4 Bid evaluation

Explain how the bids will be evaluated.

7.5 Compulsory briefing session

Explain the purpose of the briefing session.

Give the date, time and place.

Provide contact details for bidders to confirm their attendance.

7.6 Address and deadline for submission of bids

Give instructions on how the bids must be packaged.

Provide the physical address and the deadline for submitting bids.

Part 3: Prepare the rest of the bid package

The project officer should prepare the transaction advisor bid package with the hands-on assistance of the PPP Unit's project advisor. The bid secretariat – drawn from the tendering component of the institution – should also assist.

6. 10% is the maximum weighting allowed in terms of the PPPFA for BEE elements in a contract valued above R500 000.

7. The calculation of price points will be done using the prescribed price formula set in the regulations to the PPPFA.

The completed bid package must be endorsed by the institution, in accordance with its internal procurement system, before it is issued.

What goes into the transaction advisor bid package?

- Advertisement calling for transaction advisors
- Letter of invitation
- Terms of reference
- Background and supporting documentation
- Draft contract

Prepare the bid package in the following order

Part 1: Define the terms of reference (above)

Part 2: Prepare the rest of the bid package

- Step 1: Background and supporting documentation
- Step 2: Draft transaction advisor contract
- Step 3: Advertisement
- Step 4: Letter of invitation
- Step 5: Get endorsement

Step 1: Background and supporting documentation

The project officer must collate all non-confidential project information that will be useful to potential transaction advisors in preparing and costing their bids, and attach it as Appendix A to the terms of reference, or provide a list of this documentation and refer potential bidders to the data room.

This background and supporting documentation will:

- enable transaction advisors to calculate the time they need for all possible elements of the project
- enable transaction advisors to avoid costing work that has already been done
- better inform them of what remains to be done and of the institution's mandate
- contribute to the value that the institution is able to get from the transaction advisor.

Background and supporting documentation should include:

- the initial needs assessment
- project objectives
- the institution's management of the project
- copies of relevant government policy and regulations
- any preliminary costing, budgeting, legal and/or technical due diligence
- any preparatory studies that may have been done.

If appropriate, the institution may open a data room of background and supporting documentation, giving bidders the opportunity to read and photocopy information in preparation for their bids. Such a data room must be open and supervised by the institution at specified times each day, from the date the advertisement is published to a few days before the closing date.

Step 2: Draft transaction advisor contract

To clearly inform bidders of the contractual terms under which the transaction advisor is to be hired, attach a draft contract to the terms of reference. Bidders should be required to mark up this contract and submit it as part of their bids. (See 'Annexure 3: Template draft transaction advisor contract', which can be adapted in consultation with the relevant treasury.)

Step 3: Advertisement

The advertisement should be concise but informative. (See 'Annexure 4: Template transaction advisor advertisement', which the institution can adapt in consultation with the relevant treasury.)

Bid submission deadline

Allow potential transaction advisors at least four weeks to prepare their bids by placing the advertisement at least four weeks before the bid submission deadline. They need enough time to become familiar with the project, construct a consortium of professionals (usually from different firms), and cost the project as accurately as possible.

Briefing session

Set the briefing session for approximately halfway through the bid preparation period. This allows the potential transaction advisors some time to consider which elements of the project they need clarification on in order to complete their bids.

Step 4: Letter of invitation

The project officer must prepare a brief but informative covering letter for the bid package, addressed to all potential transaction advisors who collect it. It should be signed by the accounting officer/authority of the institution.

Step 5: Institutional endorsement

Before being issued publicly, the transaction advisor bid package must be reviewed, changed, and/or expanded upon, and then finally endorsed by:

- the project team
- the tendering component (of the institution and/or the province as the case may be) from which the bid secretariat should be drawn
- senior management, either individually or in committee
- the accounting officer/authority.

PPP projects – in both their preparation and implementation – entail the co-operation and involvement of all components of the institution to one degree or another. The endorsement of the transaction advisor bid package will ensure that internal or regulatory systems or requirements have been taken care of, and that senior management is fully briefed on and supportive of the work that is about to begin.

Part 4: Publish the advertisement, brief bidders and respond to queries

Step 1: Advertise

Before publishing the advertisement, ensure that the transaction advisor bid package is complete and ready for distribution, both electronically and for physical collection.

To alert the top PPP advisory firms to the project, the advertisement should be placed:

- in the *Government Tender Bulletin*
- in prominent newspapers and/or journals
- on the institution's website
- on National Treasury's PPP website.

Take note

1. The transaction advisor bid package must be available electronically from the project officer and/or must be easily downloadable from the institution's website. There should be no passwords or website registration requirements, for example, and documents should be in common formats and programmes. While hard copies must be available for collection at the institution's offices, this must not be the only way for potential transaction advisors to get copies.
2. Institutions can place their PPP advertisements on National Treasury's PPP Unit's website at no charge. PPP transaction advisors and investors watch this website closely, so it is an effective way to reach them. Contact National Treasury's PPP Unit's website administrator for advertisement submission requirements (www.treasury.gov.za).

Where warranted, an institution may choose to advertise internationally as well. To attract the required levels of PPP expertise and experience, it would seldom be advisable to advertise only provincially.

Step 2: Conduct the briefing session

Attendance at the briefing session should be compulsory for any transaction advisor intending to submit a bid, and should be attended by the bid evaluation panel.

The briefing session is an opportunity for:

The institution

- to introduce the project to potential transaction advisors in person, highlighting key issues and challenges, and briefing them on the most important elements of the bid package
- to demonstrate the competence and commitment of the institution, its project team and the project officer in particular.

The project officer

- to answer any substantive queries that may have been received since the advertisement was published.

Potential transaction advisors

- to meet the key institutional managers and ask questions
- to know who else is bidding for the job – this both to stimulate competitive bidding and to present opportunities for the formation of consortia.

The bid evaluation secretariat

- to register all potential transaction advisors for the project and their contact details so that all subsequent queries received by the project officer can be answered in writing and copies sent to all parties
- to record questions and answers for distribution after the session.

The briefing session should consist of:

- an opening presentation by the project officer and the members of the project team
- a question and answer session.

The project officer's presentation should:

- highlight the key features of the terms of reference
- set out the institution's approach to the project
- give a full picture of what the project is likely to entail.

Distribute by email copies of the following to all registered participants not later than the end of the following day:

- the institution's presentation(s)
- questions asked and the answers given
- a register of participants.

Take note

The level of professionalism and commitment that the institution shows at the briefing session will affect the quality of the bids. If potential transaction advisors sense that the institution is ill-prepared, poorly managed, divided or confused, they will price the cost of the delays and uncertainties that are likely to arise.

Step 3: Respond to administrative queries promptly by email

Before the briefing session

Once the advertisement has been published, the project officer can expect to receive queries by email, and must be directly available to respond. The project officer should reply to all emails the same day they are received. If any telephone enquiries are received, ask the caller to email the query for a written response. Keep strict records of all correspondence.

No information that would be prejudicial to other parties may be conveyed to any one party exclusively, so refer any substantial queries to the briefing session and answer them there. All the potential transaction advisors will be represented at the briefing session, and the institution's responses will be confirmed in writing to all bidders.

After the briefing session

After the briefing session, the institution will know the names and contact details of all the potential bidders and must respond to all written queries in writing by email. Copies of all this correspondence must go to all the registered potential transaction advisors.

A deadline for receiving and responding to queries – normally 48 hours before the submission date for the bid – must be given in the terms of reference in the section on rules of bidding.

STAGE 3: RECEIVING AND EVALUATING BIDS

Receiving and evaluating bids

Part 1: Prepare for the evaluation

Part 2: Receive the bids

Part 3: Technical and BEE evaluation

Part 4: Price evaluation

Part 5: Interview and make the final choice

Part 1: Prepare for the evaluation

Well before the bid submission date, the bid evaluation panel should meet to:

- confirm membership
- be briefed on the bid evaluation system, receive and confirm their understanding of the role of the bid evaluation panel and receive a sample scoresheet (see ‘Annexure 5: Template transaction advisor technical and BEE evaluation scoresheets’)
- sign the code of conduct (see ‘Annexure 6: Template code of conduct for bid evaluation panel members’)
- confirm that all members understand and will abide by their responsibilities to the panel
- diarise the dates for the evaluation
- diarise the provisional dates for short-listed bidders to present their consortia to the panel and answer the panel’s questions
- diarise the final meeting date for the panel to choose the transaction advisor.

The bid secretariat should establish an Excel spreadsheet to reflect the bid evaluation criteria and scoring. (See ‘Annexure 8: Example transaction advisor bid evaluation scoring spreadsheet’, also provided electronically on www.treasury.gov.za.)

Part 2: Receive the bids

Step 1: Register the bids

Bids should be officially received and registered internally by the bid secretariat on or before the bid submission date and in the manner and at the place specified in the bid package. Consider late submissions only in exceptional circumstances and only in the manner precisely specified in the bid package. Late submissions are accepted at the project officer’s discretion.

The bid secretariat should have the bid evaluation arrangements ready to start evaluating the bids the day after the bid submission date.

Step 2: Separate and secure the price envelopes

On receipt, the bid secretariat should ensure that the price envelopes are separated from the technical and BEE envelopes of each bid, and that the price envelopes are locked securely in a safe until the bid evaluation panel calls for them.

Step 3: Open the technical and BEE envelopes

The project officer should officially open the technical and BEE envelopes of each bid in the presence of at least three senior officials of the institution, preferably including its chief financial officer. The bid secretariat should record the names of each of the bidding consortia.

Each member of the bid evaluation panel is then given access to all the technical and BEE bids. After reviewing the consortia membership, each member is required to sign and submit to the bid secretariat the declaration of interest statement before starting the bid evaluation. (See 'Annexure 7: Template declaration of interest statement'.)

Step 4: Check the technical envelopes

The bid secretariat should then check each technical envelope for administrative compliance, namely, that it includes tax clearance certificates and the curricula vitae of each member. If any of these are missing, contact the bidders and ask them to complete their submissions within a limited period. Failure to do so will render their bid non-compliant and they will not be considered for evaluation.

Part 3: Technical and BEE evaluation

Take note

The bid evaluation panel should evaluate the bids strictly in accordance with the system and criteria set out in the bid package.

The decisions and actions of officials representing the state need to be able to withstand any subsequent scrutiny. The bid evaluation process must be sound and fair, and the behaviour of officials must be ethical.

- The bid evaluation panel meets on an uninterrupted basis in a designated venue for a number of days to undertake the entire bid evaluation process.
- The project officer is the chairperson of the bid evaluation panel.
- The bid secretariat records all proceedings and files all score sheets. Everything the project officer and bid evaluation panel do and decide should be recorded accurately.
- At the start of each day's proceedings each member of the panel needs verbally for the record to confirm his or her adherence to the code of conduct and to the declaration of interest.
- In the event of any conflict of interest being declared at any stage, the chair will recuse the relevant member from further participation on the panel.

The responsibilities of a bid evaluation panel member include: to thoroughly read each bid, to evaluate it strictly according to the bid package criteria, and thereafter to participate fully in all meetings of the panel. If a member fails to properly prepare evaluations he or she should be expelled from the panel.

Technical and BEE evaluation

- Step 1: Score the technical bids
- Step 2: Plenary discussion
- Step 3: Enter the scores
- Step 4: Confirm the bids that have passed the technical threshold score
- Step 5: Score the BEE bids
- Step 6: Plenary discussion
- Step 7: Enter the scores
- Step 8: Confirm the bids that have passed the BEE threshold
- Step 9: Discuss and record any reservations
- Step 10: Confirm which bids may go forward
- Step 11: Sign and hand in the scoresheets

Step 1: Score the technical bids

The scoring of each element in the technical scorecard must be judged as excellent, acceptable or poor, and given a preset score accordingly (for example: excellent = 8 points; acceptable = 4 points; poor = 0 points). No ‘in-between’ points should be allowed, meaning, for example, no 1 or 6 scores, only 8, 4 or 0.

Each member individually (without discussing it with any other member):

- reads and evaluates each technical proposal
- gives preliminary scores to each element
- writes explanatory notes (with reference to bid page numbers where appropriate) to substantiate each preliminary score.

Step 2: Plenary discussion

When each member has given preliminary scores to every bid, the chair calls the panel to a plenary discussion of each technical element and sub-element of each bid. Agreement must be reached on any bids that should be disqualified for non-compliance at this point. Members are required to state their evaluations and to listen to other members’ evaluations. They may adjust their scores and notes if other members bring to their attention features of the bids they did not previously consider. Any adjustments should be initialled on the score sheets.

Step 3: Enter the scores

Once all the bids have been so discussed, the chair calls on the bid secretariat to display the bid evaluation scoring spreadsheet for the technical component so that the panel can witness each member’s scores being entered.

The chairperson systematically allows each member to call out his or her technical score for each element and each sub-element of each bid. If at any time any member believes that, based on the plenary discussion, another member’s score is unreasonable, he or she may ask for an explanation. The chair’s decision on any dispute between members will be binding on the members and on the panel.

Step 4: Confirm the bids that have passed the technical threshold score

The bid secretariat will total the aggregate scores for each technical element of each bid, and announce which bids have passed the technical threshold score, and which have failed.

Step 5: Score the BEE bids

In compliance with the *Code of Good Practice for BEE in PPPs*, the BEE component must be evaluated as set out in the BEE scorecards for PPP transaction advisors.

| | Transaction Advisor bid evaluation BEE elements | Maximum score | Scoring criteria | Weighting | Points total |
|---|--|---------------|---|-----------|--------------|
| 1 | The percentage of Black People playing leading professional roles in the Transaction Advisor consortium | 5 | 25% – 35% = 3 >35% = 5 | 6 | 30 |
| 2 | The percentage of black equity in the Transaction Advisor consortium | 5 | 25% – 35% = 3 >35% = 5 | 6 | 30 |
| 3 | A credible plan for structuring effective BEE for the PPP, with necessary skill and experience in the team | 5 | Poor plan, poor skill & experience = 1 or 2 Incomplete plan, limited skill & experience = 2 or 3 Credible plan, skill & experience = 4 or 5 | 4 | 20 |
| 4 | A credible plan for skills transfer within the consortium to directly benefit Black professionals inexperienced in PPPs (may specify targeting of Black People within a geographic area) | 5 | Poor plan = 1 or 2 Incomplete plan = 2 or 3 Credible plan = 4 or 5 | 4 | 20 |
| | Total BEE points | | | | 100 |
| | Minimum threshold for BEE | | | | 60 |

Evaluation of the BEE proposals must examine:

- In element 1: how black people are included in all aspects of the work (legal, financial, technical and at all phases of the PPP project cycle), and must specifically indicate those aspects where they are designated to play leading roles. Fronting of black people for the purpose of winning contracts will not be tolerated and will lead to contract termination. Black people are therefore expected to perform the work they were assigned to, and the fee sharing structure must reflect the actual work, risk and responsibility assumed by each of the team members. The cash flow earmarked for each member of the consortium must therefore also be examined in the price envelope, indicating how black people will benefit.
- In element 2: the percentage of black equity in the companies making up the transaction advisor consortium, with a weighted average calculated on the

percentage of the work to be performed by each company as follows.⁸ The table has been completed with an example to illustrate the method used in the calculation.

| Name of consortium member | Percentage of total reimbursement accruing to that consortium member (A) | Percentage of black equity in that consortium member (B) | Calculated % black equity in consortium (A) x (B) |
|---------------------------|---|---|--|
| X | 80% | 15% | 12% |
| Y | 10% | 50% | 5% |
| Z | 10% | 100% | 10% |
| Total | 100% | | 27% |

Column B must show the percentage of ownership by individuals who are actively involved in the management of the specific company. To verify this, the proposal must be accompanied by supporting documents.

- For element 3: which member(s) of the consortium are to be responsible for structuring the BEE elements of the PPP project throughout the assignment, and must demonstrate their clear understanding of the *Code of Good Practice for BEE in PPPs*. References should be checked to substantiate claims of skills and experience.
- For element 4: that the skills transfer plan allows the institution to see the success being achieved in this respect throughout the transaction advisor assignment. While the leading black professionals on the team are expected to be both skilled and experienced, the intention is to encourage the transaction advisor consortia to include black professionals who are inexperienced in PPPs, and who can learn on the job.

Steps 6, 7 and 8

As with the scoring of the technical bids, there is a plenary discussion, and the scores are entered systematically.

Only those bids that pass the BEE threshold score, having passed the technical threshold score, will proceed to the price evaluation.

Step 9: Discuss and record any reservations

All reservations that panel members have about any element of the technical and/or BEE components of any bidder should be discussed, listed and accurately recorded by the bid secretariat for referral after the scoring of the price components. These will be used as reference in the interviews with short-listed bidders.

8. Bidders are required to provide this information in this format in their bids. See 'Annexure 2: Template transaction advisor terms of reference'.

Step 10: Confirm which bids may go forward

The chair will confirm which bids may proceed to price scoring, and will call on the bid secretariat to open those price envelopes only.

Step 11: Sign and hand in the scoresheets

Each panel member signs his or her technical and BEE scoring sheets and hands them in to the bid secretariat who will return them to members at the interview session (Part 5).

Part 4: Price evaluation

Step 1: Enter the prices and evaluate

The bid secretariat enters the prices on the electronic spreadsheet displayed before the panel, and calculates the price scores and the totals, using the formula prescribed by the PPPFA.

Step 2: Add up technical, BEE and price scores

This will be done by the bid secretariat in the electronic spreadsheet.

Step 3: Short-list the top bidders for interviews

At this point it is recommended that the panel identifies the two or three top-scoring bids for interviews.

Interviews allow the panel to clarify any outstanding questions and meet the proposed transaction advisors face-to-face.

In preparation for these interviews, the bid secretariat must clearly minute the key issues to be raised by panel members with the bidders.

The bid secretariat will then contact the short-listed bidders and:

- ask them to prepare a presentation for the panel
- set a date for the interview suitable to both the institution and the bidders, preferably within a week of the evaluation.

Part 5: Interview and make the final choice

Step 1: Interview

The interviews should take place one after the other on the same day, so that the panel can apply its mind to all the short-listed bidders. Members' technical and BEE scoresheets must be used by the panel as reference in the interviews.

Step 2: Revisit technical and BEE scores and adjust if necessary

The panel discusses all members' observations from the interviews, and the chair then asks each member to:

- adjust his or her technical and BEE scores if any of the interviews warranted this
- initial the changes
- write their motivations for the changes on the individual scoresheets.

Step 3: Make the final choice

The panel reconvenes immediately after the interviews to discuss them. The bid secretariat clearly minutes all assessments, adjusts the scores in the electronic spreadsheet, and confirms final totals.

The panel thus reaches a conclusion on the choice of the preferred transaction advisor immediately.

The chairperson will forward this choice to the accounting officer/authority or the necessary committee of the institution for approval. A letter is sent to the preferred transaction advisor, inviting the lead firm to finalise and sign the contract with the institution. The project officer should ensure that this process is concluded within the period of the validity of the bids.

Best and final offer (BAFO)

In the event that the bid evaluation panel cannot make a decision between two bidders due to serious deficiencies in both bids, the institution may choose to approach both bidders with a request for best and final offers (BAFO). This process involves a re-bid, and should seldom be necessary if the bid process was managed according to *National Treasury's PPP Manual*. A transaction advisor BAFO should only be followed in exceptional circumstances and only with the direct assistance of the relevant treasury's PPP unit's project advisor, using best practice.

STAGE 4: FINALISING AND SIGNING THE CONTRACT

The project officer will meet with the lead firm of the preferred transaction advisor to finalise the terms of the contract and complete all the necessary documentation as soon as possible within the bid validity period.

The final terms of the contract may not deviate materially from the original terms of reference or the terms of the draft contract, taking account of the mark-up (the transaction advisor's proposed changes) which will have been submitted by the transaction advisor as part of the bid.

The deliverables schedule to the contract should be a summarised version of the deliverables specified in the terms of reference and the winning proposal's response as to how they will deliver. It has to be compiled by the lead firm and agreed between the parties.

The preferred transaction advisor should not be required, as a condition of being awarded the contract, to undertake responsibility for work not stipulated in the terms of reference.

It should be a condition in the terms of reference that the institution reserves the right to negotiate price with the preferred transaction advisor.

If the negotiations fail to result in an acceptable contract, the institution should terminate the negotiations and invite the next-ranked bidder for negotiations. Inform the original preferred transaction advisor in writing of the reasons for terminating the negotiations. Once negotiations begin with the next-ranked firm, the institution should not re-open the earlier negotiations.

After negotiations are successfully completed, the accounting officer/authority should sign the contract, and the institution should promptly notify the unsuccessful bidders.

FUNDING FOR TRANSACTION ADVISORS THROUGH THE PDF

Introduction to the PDF

The Project Development Facility (PDF) may fund a significant portion of a project's transaction advisor costs after TA:I. The PDF recovers these funds from the successful private party bidder after the financial closure of the PPP.

The costs of procuring PPPs, and particularly the costs of transaction advisors, are significant, and often put a burden on the budget of the institution. But quality advisory services are fundamental to procuring affordable, value-for-money PPPs, and adherence to the PPP procurement requirements set out in Treasury Regulation 16 to the PFMA is essential. Due to the increasing number of PPP projects requiring assistance, National Treasury's PPP Unit has established the PDF as a vehicle for institutions to source funding for a portion of the transaction advisor costs and thus reduce the impact of PPP procurement costs on institutions' budgets. Ideally, also, the PDF should increase the quality and quantity of successful deals that are processed through the PPP Unit's project pipeline.

The PDF has been established as a fund with a limited life span. It will wind down its operations after ten years, by which time PPPs will be well established and their procurement will form part of institutions' budgeting.

While the PDF will play an important role in assisting institutions to procure PPPs, the institution's ownership of the project is essential to the project's success. Thus, the PDF will not assume responsibility for procuring or managing a PPP. In accordance with the PFMA, these functions reside with the accounting officer/authority of the institution. The transaction advisor must thus be appointed by the institution.

The PDF is not a source of grant funding to institutions. Funds are paid to the transaction advisor according to the contract between the institution and the transaction advisor. These are later recovered, in part or in full, from the successful private party bidder at the financial closure of the PPP, through the success fee.⁹

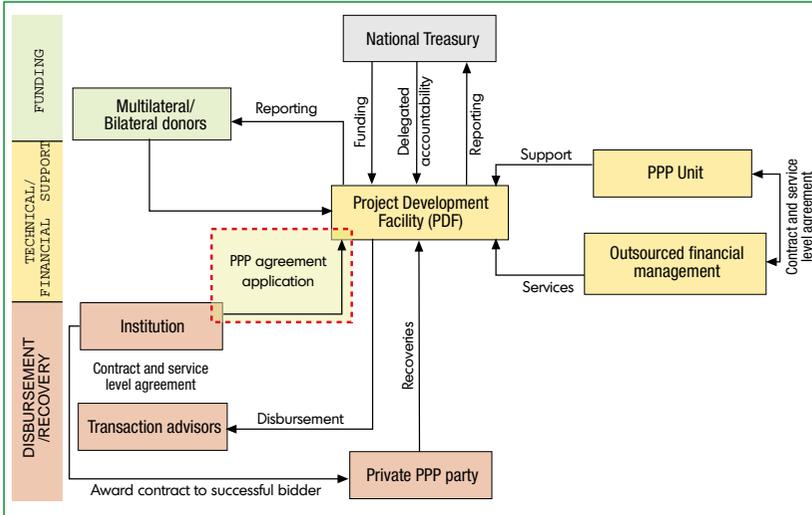
Because the PDF has to recover the funds it disburses, it requires successful deals. Thus, in all but the most unusual circumstances, PDF funding will cover the transaction advisor's costs after TA:I of the feasibility study. This has two main implications:

- the institution will have to commit funding to the project officer and to the feasibility study
- the PDF will not pre-empt the feasibility study's decision about whether the PPP is viable or not.

In addition to funds from the South African government, the PDF seeks funding from bilateral or multilateral donors. The PDF's financial management system makes provision for the specific funding and reporting requirements of potential donors. Thus, donors are able to fund projects in the specific sectors or geographic areas according to their particular financial management and reporting requirements.

9. See *Module 5: PPP Procurement*.

Figure 3.3: The PDF's relationships with other institutions



The PDF funds small, medium and large PPP projects across all sectors. The PDF projects that over the ten years of the PDF's operation a total of 45 small projects, 24 medium projects and eight large projects will be funded, and of these 75 per cent will be successfully closed. These assumptions will be tested over time. The size of a project is determined by its anticipated turnaround time (defined as Phase II: Feasibility Study and Phase III: Procurement) and annual funding requirements:

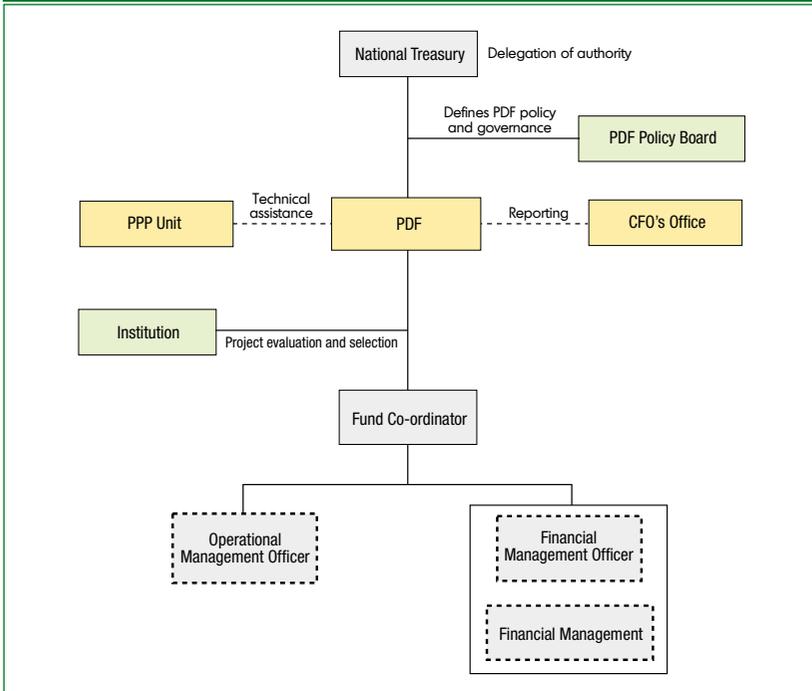
- **Small projects** are defined as having a 12-month turnaround time and annual funding requirements of R750 000. These projects allow the PDF a faster turnover of funds.
- **Medium projects** are defined as having a turnaround time of two years and annual funding requirements of R2 million.
- **Large projects** are defined as having a turnaround time of two years and annual funding requirements of R4 million.

Core activities of the PDF

- develops procedures and guidelines for choosing which projects to give funds to
- selects the projects
- establishes the terms and conditions under which funding is to be provided
- disburses and recovers (where appropriate) funding

The PDF is a single-function trading entity, created within the PPP Unit of National Treasury in accordance with the PFMA. The PDF will be administered and managed by the PPP Unit, which will also provide technical assistance to the PDF. The head of the PDF is the head of the PPP Unit, who reports to the accounting officer of National Treasury. The PDF reports on a monthly basis to National Treasury.

Figure 3.4: Organisational structure of the PDF



All PDF support functions are provided by National Treasury's PPP Unit, which carries all personnel and ancillary costs, including the financial management costs.

Good financial management and administration are an integral part of the PDF's overall management function and crucial to its success. The PPP Unit has contracted a financial management company to be its financial manager for an initial period of three years. Its mandate is to create an environment that promotes accountability and ensures that financial resources are used in an efficient, effective, economical and appropriate way. The PDF is regulated in terms of National Treasury regulations 18 and 19 and must accordingly comply with Generally Accepted Accounting Practice (GAAP). The accounting system subscribes to, and complies with, the requirements of the Accountant-General. The accounting system supplies financial information in the format and with the frequency required by National Treasury, the Auditor-General, as well as the PDF's donors.

Operational management applies the criteria for funding, facilitates the application and selection of projects to be funded by the PDF, and structures the specific funding agreements with the institution.

Applying for funding

The PDF will only provide funds once it has evaluated and approved an application by the institution and all conditions have been met.

Two initial requirements

1. The application must be for funding for a single project, which has been registered as a PPP with the relevant treasury's PPP Unit. All applications must be for individual projects, regardless of whether several projects are grouped under a single transaction advisor.
2. The application must be for funding to pay a transaction advisor, appointed by the institution, for the procurement phase of the project. Only in exceptional circumstances will the PDF fund the feasibility study.

Three opportunities to apply for funding

- pre-TA:I
- post-TA:I
- special case application

Applying before TA:I has been granted

To give accounting officers/authorities more certainty about whether they will get PDF funding, there is an opportunity to apply immediately after the institution has chosen its transaction advisor. Institutions' accounting officers/authorities are responsible for budgeting for transaction advisor costs for the feasibility study and procurement phases, so the costs of the transaction advisor will be known and work can start on the feasibility study.

Take note

Before starting the feasibility study, the institution must always reserve the right not to proceed with the procurement of the PPP, as this is contingent on the outcome of the feasibility study. This must always be a condition of the appointment of a transaction advisor.

A significant benefit of a pre-TA:I application is that an institution will not have to delay the procurement phase while it waits for approval of an application submitted to the PDF after TA:I.

Applying after TA:I has been granted

In addition to having obtained TA:I, institutions applying for PDF funding at this point must have assessed whether recovering the PDF funding from the project does not make the project unaffordable or unduly reduce the value for money of the project.

Special case applications

This category of application is for projects with special circumstances, for example:

- The project is unable to recover procurement costs
- The institution needs to cover transaction advisor costs before the project gets TA:I
- The institution needs to hire an external project officer.

Institutions with this kind of project can make a pre- or post-TA:I application, with the additional information and motivation for why the PDF needs to treat the project as a special case.

An institution must see the PDF as a fully integrated part of the overall budget cycle and must refer to the *Treasury Guidelines: Preparing Budget Submissions* before applying for PDF funding.

Eight steps in the PDF application process

- Step 1: The accounting officer/authority submits the application
- Step 2: The PDF acknowledges receipt of the application
- Step 3: The project advisor makes a recommendation
- Step 4: The PDF evaluates the application
- Step 5: The project advisor informs the accounting officer/authority of the PDF's decision
- Step 6: The funding agreement is prepared and signed
- Step 7: The institution meets all conditions
- Step 8: The PDF takes over funding the transaction advisor

The process is the same for pre- and post-TA:I applications.

Step 1: The accounting officer/authority submits the application

Address the application to:

The Head

PPP Unit

National Treasury

Private Bag X115

Pretoria 0001

For attention: Project Development Facility

Checklist for pre-TA:I applications

(See 'Annexure 10: Template application to the PDF – pre-TA:I'.)

- Provide the name and status of the institution, and give details of its mandate, enabling legislation and institutional history.
- Provide the name of the PPP project, and full details, including how it will meet the strategic goals of the institution and service delivery outcomes of the project and improvements on the current outcomes.
- Attach any additional project information.
- Confirm that the project has been registered with the PPP Unit.

- Confirm that the project will follow the procedures prescribed in Treasury Regulation 16 to the PFMA.
- Summarise any other PPPs undertaken by the institution.
- Provide details of the transaction advisor which has been appointed.
- Attach a summary of the bid evaluation process for the transaction advisor.
- Confirm that the transaction advisor has been appointed for the feasibility study phase, and that the appointment for procurement phase is contingent on the outcome of the feasibility study.
- Attach the transaction advisor's terms of reference and contract.
- Provide the total amount of the transaction advisor's fees.
- Break down the total amount of the transaction advisor's fees into Part 1 (feasibility study) and Part 2 (PPP procurement).
- Provide details of the source of the payment of fees for part 1.
- Confirm that the fees for part 2 are payable on delivery of the milestones set out in the contract.
- Attach details of project timelines and projected cash flow for payment of the transaction advisor for both parts.
- Confirm that the institution is applying for funding for part 2 of the transaction advisor costs.
- Confirm that the institution has reserved the right to recover part 2 costs as a success fee from the successful private party bidder should the project reach financial closure.
- Set out the initial estimates of the capital and operational expenditure (to show the ratio of transaction advisor fees to project value).
- Set out the institution's appointment of internal and external staff to manage the PPP process.
- Set out the institutional capacity to manage the project during procurement and operations.
- Attach any additional information on institutional capacity.
- Describe how the project will leverage private sector investment.
- Confirm that the institution is aware that PDF funding may be conditional on the outcome of the feasibility study and that the PDF reserves the right to cover the funds in the form of a success fee from the successful private party bidder at financial closure.

Checklist for post-TA:I applications

(See 'Annexure 11: Template application to the PDF – post-TA:I'.)

- Provide the name and status of the institution, and give details of its mandate, enabling legislation and institutional history.
- Provide the name of the PPP project.
- Confirm that the project has received TA:I.
- Attach the feasibility study.
- Summarise any other PPPs undertaken by the institution.
- Provide details of the transaction advisor which has been appointed.

- Attach a summary of the bid evaluation process for the transaction advisor.
- Confirm that the transaction advisor has been appointed for the feasibility study phase, and that the institution has made the decision to proceed to the procurement phase.
- Attach the transaction advisor's terms of reference and contract.
- Provide the total amount of the transaction advisor's fees.
- Break down the total amount of the transaction advisor's fees into part 1 and part 2.
- Provide details of the source of the payment of fees for part 1.
- Confirm that the fees for part 2 are payable on delivery of the milestones set out in the contract.
- Attach details of project timelines and projected cash flow for payment of the transaction advisor for both phases.
- Confirm that the institution is applying for funding for part 2 of the transaction advisor costs.
- Confirm that the institution has reserved the right to recover part 2 costs as a success fee from the successful private party bidder should the project reach financial closure, and that the feasibility study shows that this does not compromise the preliminary affordability or value for money of the project.
- Set out the institution's appointment of internal and external staff to manage the PPP process.
- Set out the institutional capacity to manage the project during procurement and operations.
- Attach any additional information on institutional capacity.
- Confirm that the institution is aware that the PDF reserves the right to cover the funds in the form of a success fee from the successful private party bidder at financial closure.

Step 2: The PDF acknowledges receipt of the application

Step 3: The project advisor makes a recommendation

The PPP Unit project advisor assigned to the project does the first evaluation, with input from the responsible budget officer in National Treasury and/or a provincial treasury representative, and/or a relevant official of the Intergovernmental Relations branch of National Treasury. A recommendation is made to the PDF evaluation committee setting out the proposed PPP project's compliance with PDF evaluation criteria. The recommendation must be lodged with the PDF within two weeks of its receiving the application.

Step 4: The evaluation

The PDF selects projects through a rigorous evaluation procedure. To qualify for PDF funding, projects need to meet the established criteria and have the right risk profile.

The PDF evaluation committee

The PDF evaluation committee is part of the PDF and is responsible for evaluating and choosing projects. The committee is made up of not more than five members. The following or their nominated delegates are permanent members: the head of the PDF; a representative of the Intergovernmental Relations branch of National Treasury, and the head of the Technical Assistance Unit of National Treasury. The other two members will be any two of the fund co-ordinators of the PDF, the financial manager of the PDF, and an appropriate representative of a donor who contributes to the PDF (where applicable).

The PDF evaluation committee sits within one week of receiving the recommendation from the project advisor.

The evaluation criteria

When making its decision to fund a project or not, the PDF asks the following questions:

About the institution

- Does the institution have funds available (on budget and from donor sources) for procuring the project?
- Has the institution included procuring the project in its MTEF budget?
- Has the institution recently procured a PPP project (successfully or unsuccessfully)?
- Will the institution's strategic goals be achieved by the project?
- Has the institution made a commitment to fund the project procurement and transaction advisor costs?
- Has the institution appointed a suitably experienced and qualified project officer?
- What is the institution's history of PPP project procurement, and does this reflect adequate commitment to the project?

About the sector

- Is it a provincial or national project?
- Is this the first time a PPP would be procured for this sector?
- Have any similar PPP projects been procured in the sector?
- Is the project in a priority sector for the PDF or the donor?
- Is the proposed project in the social services sector? If so, will the project provide a core or support function?

About the project

- Is the project registered under Treasury Regulation 16 to the PFMA?
- Has the transaction advisor been selected according to *National Treasury's PPP Manual*? Was the PPP Unit represented on the bid evaluation panel or have full transcripts of the bid evaluation procedures been provided?
- Do the milestones for transaction advisor payment put the transaction advisor at risk if financial closure is not reached?

- Are the transaction advisor costs proportional to project value? (This varies from sector to sector.)
- What is the project's capacity to generate private sector capital investment or to generate system improvements in non-capital intensive projects?
- Does the private sector demonstrate sufficient interest and capacity for collaborating on the project?
- What service delivery outcomes and improvements on current service delivery are expected from the project?

Because the PDF is not expected to recover all disbursed funds – 25 per cent non-recovery is expected – it has the flexibility to fund projects that are innovative in relation to the sector and/or the service provided.

Criteria related to funding

- Has the institution's projected transaction advisor cash flow been verified by the PPP Unit's project advisor?
- Has a project funding cash flow been established and measured against the PDF financial models for small, medium and large projects?

A project's eligibility for funding is assessed under three categories:

- priority
- risk
- how it fits in with the PDF's projected cash flow.

Each category has its own rating. Each category then feeds into a matrix which is used to decide whether funding will be provided unconditionally, on certain conditions, or no funding will be provided.

PDF priorities

The PDF policy board will set annual priorities for the types of projects to be funded by the PDF, and make these public. Projects that fall outside these priorities will not be excluded from getting PDF funding, but the PDF priority will be one of the factors taken into account.

Risk management

The PDF is fully exposed to the risk that the PPP project will not reach financial closure.

The PDF has to assess and manage two critical areas of risk:

- A PPP project may not reimburse the PDF funds (as a success fee), either because it does not reach financial closure or because the private party does not pay the success fee.
- A PPP project may require a disbursement at a time other than that scheduled in the PDF financial management cash flow.

Choosing the right project is the most important factor in mitigating risk.

The PDF evaluation committee sits within one week of receiving the recommendation and makes a decision:

- funding approved unconditionally

- funding approved subject to certain conditions
- funding not approved.

Conditions

PDF funding always comes with the following conditions:

- The institution must obtain TA:I
- The feasibility study must calculate PDF funding as a project expense.

Other conditions are set at the discretion of the evaluation committee, based on recommendations from the PPP Unit project advisor and the PDF financial management officer. One of these may be that the institution jointly funds the costs of procurement.

For pre-TA:I applications conditions may require that certain project details are confirmed before funding is committed, and that there is an assessment of the affordability and value-for-money implications of recovering procurement costs as a success fee.

For post-TA:I applications the institution may have to meet certain requirements relating to its capacity to procure the project.

Step 5: The project advisor informs the accounting officer/authority of the PDF's decision in writing

Step 6: The funding agreement

An agreement between the head of the PDF and the institution's accounting officer/authority, which includes all funding conditions, will be prepared and signed.

The PDF carries all the risk if the project does not reach financial closure, except when the institution defaults on its obligations.

Step 7: The institution meets all conditions

The accounting officer/authority must confirm in writing that the project has received TA:I and that any other conditions have been met. If all the conditions cannot be met, the accounting officer/authority may, if appropriate, apply for special case funding, as described below.

Step 8: The PDF takes over funding the transaction advisor

Once the PDF has fully accepted the application, the PDF takes over the funding of the transaction advisor, in part or in full, depending on the funding conditions.

The PDF application and funding processes have been designed as an integral part of the PPP project cycle.

The PDF will make payments in instalments against milestones set out in the deliverables schedule to the institution's contract with the transaction advisor.

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TEMPLATE PROJECT OFFICER DUTIES AND RESPONSIBILITIES

Agreements concluded in the Public Service Collective Bargaining Council from time to time, in respect of public sector contracts of employment, and the consequent determinations by the Minister for Public Service and Administration, will be applicable to the appointment of project officers if institutional budgets are used for project officer remuneration. Provisions of the Public Service Act, 1994, dealing with secondments of existing officials may also apply. Institutions are therefore advised to consult the Department of Public Service and Administration in drafting suitable contracts for PPP project officers, whether they are appointed from within or outside the institution.

Outlined here is a template description for the PPP project officer's duties and responsibilities, which, once amended by the institution as appropriate to the specific project, can be incorporated into the project officer's contract of employment with the institution.

Recommended insert (to be adapted for the specific project) into the institution's contract of employment with the project officer.

Duties and responsibilities of the project officer

1. Under the direct supervision of the [Accounting Officer/Authority], the project officer will carry out the following duties and have the following responsibilities:
 - 1.1. manage the planning and implementation of the PPP project on behalf of the [Accounting Officer/Authority], exercising delegated authority;
 - 1.2. consult with the management of the institution at all relevant stages in the project cycle and ensure ongoing consultation and buy-in from relevant stakeholders;
 - 1.3. directly support the [Accounting Officer/Authority] to comply with the requirements of Treasury Regulation 16 to the Public Finance Management Act;
 - 1.4. follow diligently, the PPP Practice Notes issued by National Treasury in terms of the PFMA;
 - 1.5. establish and manage a project team and project secretariat;
 - 1.6. draft terms of reference and secure a suitable budget for a transaction advisor;
 - 1.7. manage the procurement process to appoint a transaction advisor;
 - 1.8. direct and manage the work of the transaction advisor at every phase of the project cycle, exercising delegated authority;

- 1.9. carry out all functions of the inception, feasibility and procurement phases as delegated;
- 1.10. carry out all functions required of the institution to properly submit applications for all Treasury approvals in terms of Treasury Regulation 16 to the PFMA and respond to all queries from the relevant Treasury in respect thereof;
- 1.11. diligently manage the project from inception to the signing of the PPP agreement and financial closure, to ensure that the project is affordable to the institution, provides an optimal value for money solution for the [service delivery/use of state property], and appropriately allocates risk to the private party;
- 1.12. manage all information systems necessary for the proper planning and implementation of the project;
- 1.13. manage the PPP, into the term of the PPP agreement, in terms of the PPP agreement management plan, on behalf of the institution, specifically in:
 - 1.13.1. the development phase; and
 - 1.13.2. the [.....years] of the delivery phase, effecting appropriate hand-over to another contract manager if appropriate.
- 1.14. ensure that the PPP agreement is properly enforced in terms of Treasury Regulation 16.7 and in so doing maintain mechanisms and procedures as approved in the PPP agreement management plan for:
 - 1.14.1. measuring the outputs of the PPP agreement;
 - 1.14.2. monitoring and regulating the implementation of, and performance in terms of, the PPP agreement;
 - 1.14.3. liaising with the private party;
 - 1.14.4. resolving disputes and differences with the private party;
 - 1.14.5. generally overseeing the day-to-day management of the PPP agreement; and
 - 1.14.6. reporting on the PPP agreement in the institution's annual report.
- 1.15. ensure that the institutional function is effectively and efficiently performed in the public interest, [and/or that state property is appropriately protected];
- 1.16. establish and maintain close links to the PPP Unit of the National Treasury in order to ensure proper alignment of policy and best practice;
- 1.17. prepare and compile any information as may reasonably be required by the institution from time to time in connection with the PPP project;
- 1.18. conform to all statutory obligations and non-statutory external obligations binding upon the institution in respect of the PPP project;
- 1.19. comply with all the institution's rules, regulations, policies, practices and procedures laid down from time to time; and
- 1.20. remain honest and faithful to the institution in the performance of these duties and responsibilities, acting at all times according to good industry practice and in compliance with the public service code of conduct.

TEMPLATE TRANSACTION ADVISOR TERMS OF REFERENCE

Terms of reference for transaction advisor services to the [insert name of institution] for the [insert description of the project]

Contents

1. Introduction
2. Scope of work
3. Background
4. PPP feasibility study deliverables
5. PPP procurement deliverables (if applicable)
6. Transaction advisor skill, experience, remuneration and management by the [insert name of institution]
7. Rules of bidding, bid submission requirements and bid evaluation

Appendix A: Background and supporting documentation

Appendix B: Draft transaction advisor contract

1. Introduction

The [insert name of institution] has identified the need [describe project].¹ This will [describe objectives].² It is also in line with the institution's strategic vision of [describe strategic vision].

The [insert name of institution] wishes to explore the feasibility of this project as a public-private partnership (PPP) in terms of the relevant National Treasury regulations to the Public Finance Management Act, 1999 (PFMA). It will follow *National Treasury's PPP Manual*, which potential transaction advisors are required to be familiar with.

The [insert name of institution] thus intends to procure the services of an experienced transaction advisor to assist it through the regulated phases of the PPP project cycle.

These terms of reference invite proposals from a transaction advisor representing a team of suitably qualified and experienced financial, technical and legal advisors to help the [insert name of institution]:

- Part 1: Undertake a comprehensive feasibility study for the [describe project]

1. For example: To substantially upgrade its head office accommodation and related services.

2. For example: Help to create a working environment that is conducive to staff productivity, operational effectiveness, and quality client relations.

- Part 2: If required afterwards, provide advisory services for the appropriate procurement of the project.

The scope of work is divided into these two parts. The transaction advisor needs to submit a single bid, in the formats prescribed in this terms of reference.

(Reference to 'the transaction advisor' includes the entire advisory team, or relevant members, under the management of a single lead advisor who shall contract with the [name of institution].)

2. Scope of work

The scope of work for the transaction advisor is:

2.1 Part 1: Feasibility study

The transaction advisor will be required to produce a comprehensive feasibility study for the [insert name of institution]'s [describe project] using public sector comparator and PPP reference models. This must enable the [insert name of institution] to determine:

- full project cycle costs
- affordability limits
- risks and their costs
- optimal value-for-money methods of delivery.

Section 4 below sets out the deliverables required of the transaction advisor for the feasibility study.

2.2 Part 2: PPP procurement

If, on the basis of the feasibility study, a PPP solution is decided on, and if the [name of institution] requires it, the transaction advisor will be required to provide the necessary technical, legal and financial advisory support for the procurement of a private partner. This must be in compliance with all elements of Treasury Regulation 16 to the PFMA.

The procurement deliverables are set out in Section 5.

3. Background

3.1 Mandate

The [insert name of institution]'s mandate is [describe mandate].

3.2 Needs

The project will address the [insert name of institution]'s [describe why the institution needs the project].

3.3 Objectives

The objectives for this project are [describe objectives].

3.4 Background documentation and preparatory work

The transaction advisor will have to become familiar with all background documentation and preparatory work conducted to date by the [insert name of institution] for this project. Refer to 'Appendix A: Background and supporting documentation' for a list and/or copies of [delete as required] relevant material.

A preliminary needs analysis has been undertaken, establishing [describe what the needs analysis has established, including any initial costings].³ [Note any costings not undertaken.]⁴

The institution has identified the following challenges which it faces in pursuing the project: [list challenges].

The legal and policy framework for the project is [describe legal and policy framework].

3.5 Project budget

The base-line budget currently available for operating expenditure for the project has been identified as [insert Rand amount] in the [insert year] financial year, escalating by CPIX. In addition, a capital budget of [insert Rand amount] for expenditure over the three years [insert years] of the MTEF has been secured.

4. PPP feasibility study deliverables

The transaction advisor is required to produce, in close liaison with the [insert name of institution], a comprehensive feasibility study for [describe the project].

The feasibility study needs to clearly demonstrate affordability for the full project cycle and propose the optimal value-for-money solution for the [insert name of institution] to achieve its desired outcomes.

The feasibility study is to be conducted in compliance with *National Treasury's PPP Manual*, available on www.treasury.gov.za or from the PPP Unit.

4.1 Components of the feasibility study

In line with *National Treasury's PPP Manual, Module 4: PPP Feasibility Study*, the feasibility study must include the following:

Introduction

- Covering letter from the accounting officer/authority requesting TA:I
- Executive summary
- Introduction
- Project background
- Approach and methodology to the feasibility study

3. For example: Space planning requirements and some initial costing of capital works.

4. For example: No life-cycle costing of facilities management or IT services has yet been done.

Section 1**Needs analysis**

- Institution's strategic objectives
- Budget
- Institutional analysis
- Output specifications
- Scope of the project

Section 2**Solution options analysis**

- Options considered
- Evaluation and assessment of each option
- Summary of evaluation and assessment of all options considered
- Recommendation of a preferred option

Section 3**Project due diligence**

- Legal aspects
 - Use rights
 - Regulatory matters
- Site enablement
- Socio-economic and BEE

Section 4**Value assessment**

- PSC model
 - Technical definition of project
 - Discussion on costs (direct and indirect) and assumptions made on cost estimates
 - Discussion on revenue (if relevant) and assumptions made on revenue estimates
 - BEE targets
 - Discussion on all model assumptions made in the construction of the model, including inflation rate, discount rate, depreciation, budgets and MTEF
 - Summary of results from the base PSC model: NPV
- PPP reference
 - Technical definition of project
 - Discussion on costs (direct and indirect) and assumptions made on cost estimates
 - Discussion on revenue (if relevant) and assumptions made on revenue estimates
 - Discussion on proposed PPP type
 - BEE targets
 - Proposed PPP project structure and sources of funding
 - Payment mechanism
 - Discussion on all model assumptions made in the construction of the model,

- including inflation rate, discount rate, depreciation, tax and VAT
- Summary of results from the PPP-reference model: NPV
- Risk assessment
 - Comprehensive risk matrix for all project risks
 - Summary of the institution's retained and transferable risks
 - The NPV of all risks (retained and transferable) to be added onto the base PSC model
 - The NPV of all retained risks to be added onto the PPP reference model
- Risk-adjusted PSC model
 - Summary of results: NPV
- Risk-adjusted PPP-reference
 - Summary of results: NPV, key indicators
 - Sensitivity analyses
 - Statement of affordability
 - Statement of value for money
 - Recommended procurement choice
- Information verification
 - Summary of documents attached in Annexure 1 to verify information found in the feasibility study report

Section 5

Economic valuation

- Introduction and evaluation approach
- Assumptions
- Valuation results

Section 6

Procurement plan

Annexures

Annexure 1: Statements for information verification and sign off from each advisor to the project

Annexure 2: Letter of concurrence from CFO of institution and/or provincial treasury⁵

Annexure 3: PSC model

Annexure 4: PPP reference model

Annexure 5: Risk assessment and comprehensive risk matrix

Annexure 6: Document list (list of all documents related to the project, where they are kept, and who is responsible for ensuring that they are updated)

Annexures 7, 8, 9 etc: Attach as annexures all other documents that have informed the feasibility study and that are of decision-making relevance to the project.

5. If Treasury approvals for PPPs have been delegated to a provincial treasury in terms of the PFMA, its concurrence here is not applicable.

4.2 Presentation of the feasibility study

The feasibility study, comprising all the above deliverables, must be compiled in a single report in Word format (with relevant annexures), and delivered as both electronic and hard copy documents. All financial models must be in Excel format, and must clearly set out all assumptions made, sensitivity analyses carried out, and model outputs. The financial models must be sufficiently adaptable for use by others at later stages. The feasibility study must be presented with a thorough executive summary and must be accompanied by a PowerPoint presentation that encapsulates all the key features of the study. The executive summary and PowerPoint presentation must be compiled in such a manner that they can be used by the [insert name of institution]'s management for decision-making purposes.

4.3 Submission requirements for the feasibility study report and request for Treasury Approval: I

If the [insert name of institution] decides to pursue a PPP solution for the [describe project], the feasibility study must be of a standard that will be accepted by National Treasury for the purposes of the [insert name of institution] obtaining Treasury Approval: I (TA:I) in terms of Treasury Regulation 16 to the PFMA. The transaction advisor is therefore advised to be fully familiar with the requirements of the PPP Unit as set out in *Module 4: PPP Feasibility Study of National Treasury's PPP Manual*.

5. PPP procurement deliverables (if applicable)

If the [insert name of institution] decides on a PPP procurement solution, the transaction advisor is required to work with the [insert name of institution] to manage the procurement process for securing contracts with a private party. All this needs to be in accordance with the systems and standards set out for PPPs in Treasury Regulation 16 and using *National Treasury's PPP Manual* and *Standardised PPP Provisions*.

The transaction advisor will then have to deliver the following:

5.1 Treasury Approval: IIA and administration of the bidding process

The transaction advisor must prepare a complete set of procurement documents, complying with public sector procurement law, policies and guidelines, and in accordance with the tendering systems of the [insert name of institution]. The documentation must be consistent with the results of the feasibility study and enable the [insert name of institution] to obtain Treasury Approval II: A (TA:IIA) in terms of Treasury Regulation 16.

The transaction advisor must also give the [insert name of institution] all the necessary drafting, bidder communication and administrative support necessary for the entire procurement process to be conducted in accordance with law and policy, and to the highest standards of efficiency, quality and integrity.

5.1.1 Pre-qualification

The transaction advisor must design and administer a pre-qualification (request for qualification (RFQ)) process with the intention of:

- ensuring that the [insert name of institution]'s exact interest is communicated clearly to the market
- determining the extent and nature of interest in the private sector
- pre-qualifying a competitive number of competent consortia in an equitable and transparent way.

The desired result is that every pre-qualified bidder is capable of providing the facilities and services required by the [insert name of institution].

The transaction advisor must: prepare all the necessary RFQ documentation, including advertising material; set up and administer the process by which the [insert name of institution] can pre-qualify the parties; and help the [insert name of institution] evaluate and pre-qualify bidders.

5.1.2 Payment mechanism

The transaction advisor must develop a rigorous payment mechanism that captures the elements of risk transfer established in the feasibility study.

5.1.3 Bid evaluation criteria, bid process design and BEE requirements

The transaction advisor must: set up a bid evaluation system and criteria; design a suitable bid process that will ensure comparable bids; devise effective systems for communicating with bidders; inspire market confidence; and incorporate all BEE requirements for the project. If appropriate, a system that allows for variant bids may be designed.

5.1.4 Request for proposals (RFP)

The transaction advisor must prepare an RFP document in accordance with best industry practice and *National Treasury's PPP Manual*, consistent with the results of the feasibility study. The RFP must concisely set out:

- the output specifications of the [insert name of institution]
- requirements for compliant bids
- a risk profile as established in the feasibility study
- the payment mechanism
- BEE targets
- the bid process
- evaluation criteria
- bidder communication systems.

5.1.5 A draft PPP agreement

The transaction advisor must prepare a draft PPP agreement, based on National Treasury's *Standardised PPP Provisions*. Close liaison with the [insert name of institution] management and the PPP unit of the relevant treasury is required during drafting.

5.1.6 Treasury Approval: IIA

The transaction advisor must compile all the documentation necessary for the [insert name of institution] to obtain Treasury Approval: IIA (TA:IIA) in terms of Treasury Regulation 16 to the PFMA to enable the procurement process to begin.

5.1.7 Administration of the bidding process

The transaction advisor is to provide all necessary administrative support to the [insert name of institution] for the efficient and professional management of the bidding process. This includes managing a data room, facilitating structured engagement between the [insert name of institution] and bidders, helping the [insert name of institution] communicate effectively with bidders, and receiving bids.

5.2 Evaluation of bids, demonstrating value for money and Treasury Approval: IIB

5.2.1 Evaluation of bids

The authorised staff of the [insert name of institution], helped by the transaction advisor, must evaluate bids, following guidance given in *Module 5: PPP Procurement of National Treasury's PPP Manual*.

A best and final offer (BAFO) process may be required. When costing this phase of work the transaction advisor must allow for the possibility of administering BAFO processes. If there is no BAFO process, the transaction advisor's remuneration will be adjusted accordingly.

5.2.2 The value-for-money report and Treasury Approval: IIB

Value for money must be demonstrated by comparing the net present value (NPV) of the bids received with the NPV of the PSC for [describe the project], with a suitable adjustment for risk assumed.

The results of the bidding and evaluation of bids must be presented in a single value-for-money report (with relevant annexures) that demonstrates clearly how value for money will be achieved with the preferred bidder. The report must clearly indicate the preferred and second-ranked bidders and provide motivations.

The value-for-money report must be in a suitable format and of a suitable standard for the [insert name of institution] to get Treasury Approval: IIB (TA:IIB) in terms of Treasury Regulation 16 to the PFMA. The guidance given in *Module 5: PPP Procurement of National Treasury's PPP Manual* should be followed.

5.3 PPP agreement negotiations, PPP agreement management plan and Treasury Approval: III

The transaction advisor must assist the [insert name of institution] in final negotiations with the preferred bidder. This will involve preparing suitable negotiations teams, categorising issues appropriately, developing timelines for completion, and

planning negotiation tactics and processes for reaching agreement. The transaction advisor must ensure that all agreements reached are incorporated into all the financial, commercial and legal documentation, and must assist with drafting the necessary and related correspondence.

The final terms of the agreement, each as negotiated with the preferred bidder, must be submitted by the [insert name of institution], along with the PPP agreement management plan for the [describe project], for Treasury Approval: III (TA:III) in terms of Treasury Regulation 16. The transaction advisor is responsible for compiling the necessary submissions for the [insert name of institution] to obtain this approval. (See Treasury Regulation 16.6.1(a).)

The transaction advisor must, in close liaison with the [insert name of institution], draft a comprehensive PPP agreement management plan for the [insert name of institution]. (See Treasury Regulation 16.6.1(b).) This will be in accordance with the provisions of the PPP agreement and following the guidance given in *Module 6: Managing the PPP Agreement of National Treasury's PPP Manual*.

The transaction advisor must ensure that a comprehensive legal due diligence of the accounting officer/authority has been completed. This will relate to legal compliance, competence and capacity to enter into the PPP agreement. (See Treasury Regulation 16.6.1(c).)

5.4 PPP agreement signature, close-out report and case study, and financial closure

The transaction advisor must help the [insert name of institution] with all functions related to signing the final agreement.

The transaction advisor must also compile a comprehensive close-out report and case study. These must follow the formats prescribed in *Module 5: PPP Procurement of National Treasury's PPP Manual*, and must incorporate any additional factors that may be required by the [insert name of institution].

The close-out report will be a confidential document of the [insert name of institution], and will also be lodged with National Treasury. The case study will become a public document, made available on various government websites.

Financial closure signifies that all the procurement deliverables have been successfully completed, and that the transaction advisor's work is finished, if applicable.

6. Transaction advisor skill, experience, remuneration and management by the [insert name of institution]

6.1 Necessary transaction advisor skills and experience

The transaction advisor will comprise a team, managed by a single lead advisor. The members of the team will have both the skill and experience necessary to undertake the range of tasks set out in this terms of reference. Each individual on the team must be personally available to do the work as and when required. The lead advisor will be held accountable, in terms of the transaction advisor contract,

for ensuring project deliverables and for the professional conduct and integrity of the team. (See 'Annexure B: Draft transaction advisor contract'.)

The skills and experience required in the transaction advisor are as follows:

- financial analysis, with relevant PPP and project finance experience
- PPP procurement and structuring
- legal, with relevant South African experience in the drafting and negotiating of PPP agreements
- [describe project] planning management
- [describe project] facilities management
- relevant expertise in [set out elements of project]⁶
- BEE expertise with relevant PPP experience
- negotiations
- contract management
- project management.

6.2 Remuneration schedule and disbursement arrangements

The total sum budgeted by the [insert name of institution] for remuneration of professional services under this terms of reference is [insert Rand amount].⁷ Bidders are advised to bid within this figure, and to allocate resources according to the remuneration schedule below.

Remuneration of the transaction advisor will be payable in South African Rands, on a fixed price for each of 2.1 and 2.2 above (corresponding to Phase II: PPP Feasibility Study and Phase III: Procurement of the project cycle). The procurement portion of the work may or may not transpire at the end of the feasibility study, and should be costed accordingly.

6.2.1 Remuneration schedule

The following remuneration schedule is set for each part of the contract. Bidders should adhere to these in their proposals, within the total budget given.

| Feasibility study | |
|--|------------|
| Deliverable | Percentage |
| Signing of transaction advisor contract as a mobilisation allowance | 10 |
| Completion of sections 1– 2 | 20 |
| Completion of section 3 | 20 |
| Completion of section 4 | 20 |
| Completion of sections 5– 6 | 15 |
| Completion of feasibility study report (4.2) to the satisfaction of the [insert name of institution], and a decision by National Treasury about TA:1 | 15 |
| Total | 100 |

6. For example: Building design, construction, engineering, quantity surveying, and property development and planning applicable to the proposed facilities.

7. This template is for a declared fees budget. In the event that the budget is not declared, the terms of reference will have to be adapted by the project officer with the assistance of the PPP Unit.

| PPP procurement | |
|--|------------|
| Deliverable | Percentage |
| Mobilisation allowance and TA:I | 10 |
| A decision by National Treasury in respect of TA:IIA | 25 |
| A decision by National Treasury in respect of TA:IIB | 25* |
| A decision by National Treasury in respect of TA:III | 20 |
| Success fee | 10 |
| Total | 100 |
| BAFO allowance (if applicable) | 15% of * |

Deliverables completed per the remuneration schedule will be approved by the project officer, after which invoices may be submitted for payment as per the remuneration schedule. The [insert name of institution] will pay within 30 days of receiving the approved invoice.

6.2.2 Disbursement arrangements⁸

Out-of-pocket expenses will be paid by the [insert name of institution] at cost within an agreed ceiling. All claims for travel and other legitimate disbursement expenditure must be pre-approved by the project officer before they are incurred. An email system for these approvals will be set up when the transaction advisor contract is signed. Pre-approved project expenditure on travel outside the province, related reasonable accommodation costs, expenditure on document reproduction, or any other legitimate pre-approved project disbursement expenditure will be reimbursed at cost. Payment will be made within 30 days of the [insert name of institution] receiving approved and substantiated invoices, and does not form part of the remuneration schedule. Bidders are required to propose a ceiling for such disbursements. This ceiling will not be evaluated as part of the price proposal.

6.3 Management of transaction advisor by the [insert name of institution]

The transaction advisor will be appointed by the [insert title of the accounting officer/authority of the institution].

A project officer has been appointed by the [insert title of the accounting officer/authority of the institution] to take full responsibility for managing the transaction advisor's work and for ensuring delivery on the project. The project officer is [insert name of project officer], and can be contacted at [insert contact details].

The project officer has established a project team to engage regularly with the transaction advisor for efficiently completing the various delivery items. The project team will meet at least monthly and the transaction advisor will report progress at these meetings, as instructed by the project officer.

8. The disbursement arrangement set out here assumes Option 1: Actual cash with a ceiling. See Module 3: PPP Inception Stage 2: Part 2.

The project officer will confirm that the transaction advisor has satisfactorily completed each deliverable before invoices can be submitted to the [insert name of institution] for payment.

7. Rules of bidding, bid submission requirements and bid evaluation

7.1 Rules of bidding

- 7.1.1 The transaction advisor must be a single legal entity with all other necessary expertise secured via subcontract, or under a joint venture arrangement. The [insert name of institution] will enter into a single contract with a single firm for the delivery of the work set out in these terms of reference.
- 7.1.2 Tax clearance certificates dated within six months of the closing date of this bid must be submitted by all South African firms submitting bids as part of a consortium or joint venture.
- 7.1.3 Foreign firms providing proposals must become familiar with local conditions and laws, and take them into account in preparing their proposals.
- 7.1.4 Bids must be submitted in South African Rands, on a fixed price basis.
- 7.1.5 The costs of preparing bids and of negotiating the contract will not be reimbursed.
- 7.1.6 The [insert name of institution] is not bound to accept any of the bids submitted, and reserves the right to call for best and final offers from short-listed bidders before final selection.
- 7.1.7 The [insert name of institution] reserves the right to call interviews with short-listed bidders before final selection.
- 7.1.8 The [insert name of institution] reserves the right to negotiate price with the preferred bidder.
- 7.1.9 Firms may ask for clarification on these terms of reference or any of its annexures up to close of business 48 hours before the deadline for the submission of bids. Any request for clarification must be submitted by email to the project officer at [insert project officer's email address]. Copies of questions and answers will be emailed to all firms that register at the briefing session, without revealing the identity of the source of the questions.
- 7.1.10 The [insert name of institution] reserves the right to return late bid submissions unopened. Late submissions will be accepted only in exceptional circumstances and only within 12 hours of the deadline for the submission of bids and at the discretion of the project officer.
- 7.1.11 Firms may not contact the [insert name of institution] or the relevant treasury on any matter pertaining to their bid from the time when bids are submitted to the time the transaction advisor contract is awarded. Any effort by a bidder to influence bid evaluation, bid comparisons or bid award decisions in any manner, may result in rejection of the bid concerned.

7.2 Bid submission requirements

Transaction advisors are required to submit their proposals in two envelopes in the following format:

7.2.1 Envelope 1: Technical and BEE proposals

- Marked with the name of the transaction advisor.
- Titled 'Technical and BEE proposal: Transaction advisor services to [insert name of institution] for feasibility study and possible PPP procurement for [describe project]'.

This envelope must contain at least the following:

7.2.1.1 A covering letter signed by the lead transaction advisor, among others:

- accepting the rules of bidding, evaluation of bids, and bid evaluation criteria set out in the terms of reference
- attaching a tax clearance certificate from South African Revenue Services for the lead transaction advisor firm and all South African firms to be subcontracted to it for this assignment, or all South African firms participating in a joint venture for purposes of this bid
- providing full contact details for the lead transaction advisor.

7.2.1.2 Information on and motivation for the lead transaction advisor, attaching his or her curriculum vitae, and setting out his or her personal, and his or her firm's:

- suitability for this assignment
- relevant skills and experience: For each relevant experience cited, outline the precise role the lead transaction advisor played, the role of the firm, contract duration, contract outcomes, and contract value
- availability to perform the work: This must be substantiated by listing the lead transaction advisor's other known professional commitments for the forthcoming two years.

7.2.1.3 Names of all proposed team members, and their firms, setting out:

- the professional role that each person will play in the assignment. This must be cross-referenced to each deliverable and to each specified technical evaluation element set out in the technical scorecard
- the suitability of each person for the proposed roles in terms of his or her relevant skills and experience
- the availability to perform the work
- one-page resumés of each person highlighting responsibilities held for experience relevant to this assignment in the last five years
- the black South African professionals on the team, clearly showing the roles they will play.

7.2.1.4 The BEE proposal, cross-referenced to each element of the BEE scorecard clearly setting out:

- the number and percentage of black professionals playing leading roles in the transaction advisor consortium
- the percentage of black equity in the companies making up the consortium, with a weighted average calculated on the percentage of work to be performed by each company, presented in the following format. (The table has been completed with an example.)

| Name of consortium member | Percentage of total reimbursement accruing to that consortium member (A) | Percentage of black equity in that consortium member (B) | Calculated % black equity in consortium (A) x (B) |
|---------------------------|---|---|--|
| X | 80% | 15% | 12% |
| Y | 10% | 50% | 5% |
| Z | 10% | 100% | 10% |
| Total | 100% | | 27% |

Column B must show the percentage of ownership by individuals who are actively involved in the management of the specific company. To verify this, the proposal must be accompanied by supporting documents.

- a credible plan for structuring effective BEE for the PPP, with the necessary skill and experience in the team, substantiated by references.
- a credible plan for skills transfer within the consortium to directly benefit black professionals inexperienced in PPPs.

7.2.1.5 Project comprehension and project management plan, setting out:

- the transaction advisor's understanding of the terms of reference, and any proposals for amendments to the terms of reference that would enhance desired outcomes
- how the transaction advisor proposes to manage the set of deliverables outlined in the terms of reference
- a proposed outline work plan with timetable for delivery
- how the transaction advisor members will be supervised
- how reporting to the project officer will take place
- any innovative ideas on how the whole assignment can best achieve its objectives.

The technical and BEE envelope must not include any price proposal.

7.2.2 Envelope 2: Price proposal

- Marked with the name of the transaction advisor.
- Titled: 'Price proposal: Transaction advisor services to [insert name of institution] for feasibility study and possible PPP procurement for [describe project]'.

This envelope must contain:

7.2.2.1 Proposed remuneration for professional fees:

- a remuneration proposal in the remuneration format outlined in 6.2.1 above, giving professional cost per deliverable item and total for each part as indicated
- VAT must be specified as a separate total for each of the feasibility study and PPP procurement parts. While VAT will be paid pro rata for each delivery item in each part of the assignment, it should be indicated as a total sum per part for purposes of this submission.

7.2.2.2 Cash flow earmarked for each member of the consortium, indicating how black people will benefit. The fee-sharing structure must reflect the actual work, risk and responsibility assumed by each member.

7.2.2.3 An estimation of anticipated disbursement costs per part of work. This information will not be used as a criterion for the evaluation of bids, and the successful bidder will not be held to this amount.

7.2.2.4 A marked-up version of the draft transaction advisor contract (attached here as Appendix B), including the proposed remuneration set out in a draft proposed payments schedule to the contract.

7.3 Bid evaluation criteria⁸

Evaluation will be based on a points system. The following is the maximum number of points that can be awarded for each element and the threshold score for each category:

| Evaluation element | Weighting | Threshold score |
|--------------------|-----------|-----------------|
| Technical proposal | 70 | 65% |
| BEE proposal | 10 | 60% |
| Price proposal | 20 | N/A |
| Total | 100 | |

The bid which achieves the highest total points out of 100 will be recommended by the bid evaluation panel as the preferred transaction advisor.

In compliance with the PPPFA, the BEE component of a transaction advisor bid will constitute 10% of the bid evaluation weighting, with the price and technical elements constituting the remaining 90%. A minimum threshold of 60% of the total BEE points will be set and a minimum threshold of 65% of the total technical points will be set. The technical, BEE and price elements are each scored out of 100 points, and the scores achieved (if they meet the thresholds), calculated into the bidder's overall score using the following formula:

8. Remember that this template is for a declared fees budget. If the fees budget is not declared the weightings will be different.

$$a^* (\text{technical score}/100) + b^* (\text{BEE score}/100) + c^* (\text{price score}/100) = d$$

where:

a is the weighting for technical (70%)

b is the weighting for BEE (10%)

c is the weighting for price (20%), and

d is the total score achieved by the bidder.

The calculation of price points will be done using the prescribed price formula set in the regulations to the PPPFA.

The technical and BEE proposal will be evaluated according to the criteria and thresholds set in the technical and BEE scorecards, as follows:

| Technical scorecard | | | | |
|--|---|--|----------------|------------|
| Technical proposal | | Scoring (for whole or each sub-element where applicable) | Maximum points | |
| 1 | Financial analysis and project finance - Skills - Relevant experience | Excellent = 8 Acceptable = 4 Poor = 0 | 8 8 | 16 |
| 2 | Legal - Skills - Relevant experience | Excellent = 8 Acceptable = 4 Poor = 0 | 8 8 | 16 |
| 3 | Technical skills appropriate to the project ⁹ - Skills - Relevant experience | Excellent = 8 Acceptable = 4 Poor = 0 | 8 8 | 16 |
| 4 | PPP procurement and structuring: Relevant experience and track record | Excellent = 8 Acceptable = 4 Poor = 0 | | 8 |
| 5 | Negotiations: Relevant experience and track record | Excellent = 8 Acceptable = 4 Poor = 0 | | 8 |
| 6 | Other skills and relevant experience ¹⁰ | Excellent = 8 Acceptable = 4 Poor = 0 | | 8 |
| 7 | Quality of project comprehension demonstrated in proposals ¹¹ | Excellent = 8 Acceptable = 4 Poor = 0 | | 8 |
| 8 | Quality of proposed work plan, project management approach and timetable for the project | Excellent = 10 Acceptable = 5 Poor = 0 | | 10 |
| 9 | Lead transaction advisor's availability for the work | Excellent = 10 Acceptable = 5 Poor = 0 | | 10 |
| Total technical points | | | | 100 |
| Minimum threshold for technical | | | | 65 |

9. Specify, for example: working environment planning and facilities management.

10. Specify, for example: design, construction, engineering, quantity surveying, property planning.

11. Specify, for example: for design and development of environmentally appropriate buildings.

| BEE scorecard | | | | | |
|----------------------------------|--|----------------------|---|------------------|---------------------|
| | BEE proposal | Maximum score | Scoring | Weighting | Points total |
| 1 | The percentage of Black People playing leading professional roles in the Transaction Advisor consortium | 5 | 25% – 35% = 3 >35% = 5 | 6 | 30 |
| 2 | The percentage of black equity in the Transaction Advisor consortium | 5 | 25% – 35% = 3 >35% = 5 | 6 | 30 |
| 3 | A credible plan for structuring effective BEE for the PPP, with necessary skill and experience in the team. | 5 | Poor plan, poor skill & experience = 1 or 2 Incomplete plan, limited skill & experience = 2 or 3 Credible plan, skill & experience = 4 or 5 | 4 | 20 |
| 4 | A credible plan for skills transfer within the consortium to directly benefit Black professionals inexperienced in PPPs (may specify targeting of Black People within a geographic area) | 5 | Poor plan = 1 or 2 Incomplete plan = 2 or 3 Credible plan = 4 or 5 | 4 | 20 |
| Total BEE points | | | | | 100 |
| Minimum threshold for BEE | | | | | 60 |

7.4 Bid evaluation

A bid evaluation panel will be established by the [insert name of institution] comprising representatives of the [insert name of institution] and the relevant treasury's PPP Unit. The panel will evaluate all transaction advisor bids received by the deadline, according to the criteria indicated here. It will make a recommendation to the [insert name of institution/tender committee] on the appointment of the preferred transaction advisor.

The bid evaluation panel reserves the right to call bidders to complete any outstanding elements of their bids, make presentations of their bids, and/or present best and final offers if required.

The decision of the [insert name of institution/tender committee] will be final.

The price proposal envelopes of each bid received will be locked away until the technical and BEE proposals have been evaluated by the bid evaluation panel. The price proposals of only those bids whose technical and BEE proposals meet or better the technical and BEE threshold scores set out in the bid evaluation criteria will be considered. Those bids that do not meet the technical and BEE threshold scores will have their price proposal envelopes returned unopened and will not be considered further for selection.

Any bid which fails to submit any element of the bid submission requirements set out in 7.2 above may, at the discretion of the bid evaluation panel, be rejected as unsuitable for evaluation, and will therefore not be considered further.

7.5 Compulsory briefing session

The [insert name of institution] will hold a briefing session on the terms of reference. All potential transaction advisors are required to attend and to register their interest in submitting bids. The list of attendees will be circulated to all present to encourage the formation of appropriate consortia. No party registering interest is, however, bound to submit a bid.

Date: [insert date of briefing session]

Time: [insert time of briefing session]

Venue: [insert venue for briefing session]

Please confirm attendance by email to: [insert email address]

7.6 Address and deadline for submission of bids

Bids by transaction advisors must be submitted in a single sealed envelope, **containing the two, separate, sealed envelopes** required.

The envelope must be marked: "Transaction advisor services to [insert name of institution] for feasibility study and possible PPP procurement for [describe project]". The bid must be hand delivered to:

The bid box

Attention: [insert name]

[insert name of institution]

[insert physical address of institution]

By no later than [insert time and date (day, month, year)]

The [insert name of institution] will record all bids received by the deadline.

Appendix A: Background and supporting documentation

[insert list of available material and/or list of attached documentation]

Appendix B: Draft transaction advisor contract

TEMPLATE DRAFT TRANSACTION ADVISOR CONTRACT

General terms and conditions for the appointment of a transaction advisor between [insert name of institution] herein represented by [insert name of institution's representative] in his or her capacity as accounting officer/authority who warrants that he or she is authorised thereto (hereinafter referred to as 'the institution') and [insert name of transaction advisor company], registration number [insert registration number], herein represented by [insert name of transaction advisor representative] in his or her capacity as [insert capacity] who warrants that he or she is duly authorised thereto (hereinafter referred to as 'the transaction advisor')

Background

The [insert name of institution] wishes to provide the public with a cost-effective, efficient service [insert description of the PPP project] and related activities, and requires the services of an experienced transaction advisor in bringing the PPP project from the concept stage through feasibility approval, competitive bidding and award, to actual execution.

Pursuant thereto, the institution has entered into negotiations with the transaction advisor for the provision of services based on the transaction advisor's proposal in response to the terms of reference.

The transaction advisor has agreed to provide the services on the terms and conditions set out herein.

Now it is hereby agreed as follows:

1. Definitions

In the agreement, unless the context indicates otherwise, the following words and expressions shall have the following meanings unless inconsistent with the context:

- | | |
|-------------------|---|
| “the Act” | means the Public Finance Management Act, 1999, and the regulations promulgated thereunder and as amended from time to time; |
| “affiliate” | in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and 'holding company' and 'subsidiary', shall have the meanings assigned to them in the Companies Act, 1973; |
| “agreement” | means this agreement and the schedules thereto; |
| “applicable laws” | means all applicable laws, ordinances, regulations, judgements and orders of any competent court, central bank or |

governmental agency, authority in any relevant jurisdiction within the Republic of South Africa, requirements of the PFMA, National Treasury regulations, and such other laws as may be applicable;

“business day” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;

“commencement date” means the [insert date as agreed by parties];

“completion date” means the date on which the services by the transaction advisor are completed;

“confidential information” means any information:

- (a) determined by the institution to be privileged or confidential;
- (b) discussed in closed session by the bid evaluation panel;
- (c) which if disclosed would violate a person's right to privacy;
- (d) declared to be privileged, confidential or secret in terms of any law including, but not limited to, information contemplated in sections 34(1); 35(1); 36(1); 37(1)(a); 38(a); 39(1)(a); 40 or 43(1) of the Promotion of Access to Information Act, 2000;

“deliverables” means those deliverables as set out in the agreement documents;

“good industry practice” means using standards, practices, methods and procedures conforming to applicable law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected of a skilled, and experienced person engaged in a similar type of undertaking under similar circumstances;

“institution” in relation to the agreement, means [insert name of the national or provincial department, constitutional institution, public entity listed in schedules 3A, 3B and 3D of the Act or any subsidiary or entity under the ownership or control of any such public entity], and includes the officials of the institution acting in the course and scope of their employment;

| | |
|--------------------------------|---|
| “institutional default” | means an act or omission by the institution which results in a breach of any of its material obligations under the agreement; |
| “parties” | means the institution and the transaction advisor; |
| “private party” | means the private party in relation to a PPP agreement contemplated in Treasury Regulation 16.1; |
| “PPP” | means public private partnership as defined in Treasury Regulation 16.1; |
| “PPP agreement” | means an agreement contemplated in Treasury Regulation 16.1 between the institution and a private party; |
| “project” | means a PPP as defined by Treasury Regulation 16.1; |
| “project officer” | means that person designated by the [accounting officer/ authority] of the institution as project officer for the project; |
| “proposal” | means the transaction advisor's response to the institution's terms of reference in respect of the carrying out of the services; |
| “services” | means those services to be provided by the transaction advisor; |
| “signature date” | means the date of signature of this agreement by the last signing party; |
| “success fee” | means the portion of the transaction advisor's compensation which is contingent upon the financial closure as more fully set out in clause 6.2; |
| “termination date” | means any date of termination of the agreement in accordance with clause 13 of the agreement; |
| “transaction advisor” | means [insert name of transaction advisor company]; |
| “variation” | means any variation to the scope of services in terms of the agreement; and |
| “VAT” | means any value-added tax, or any similar tax which is imposed in place of or in addition to such tax. |

2. Interpretation

- 2.1 The agreement shall be interpreted according to the following provisions, unless the context requires otherwise:
- 2.1.1 References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under the agreement;
 - 2.1.2 References to clauses, sub-clauses, annexures and schedules are references to the clauses, sub-clauses, annexures and schedules of the agreement;
 - 2.1.3 The headings of clauses, sub-clauses, annexures and schedules are included for convenience only and shall not affect the interpretation of the agreement;
 - 2.1.4 Reference to 'the agreement' shall include the agreement and its annexures, schedules as amended, varied, novated or substituted in writing from time to time;
 - 2.1.5 The parties acknowledge that each has had the opportunity to take legal advice concerning the agreement, and agree that no provision or word used in the agreement shall be interpreted to the disadvantage of either party, because that party was responsible for or participated in the preparation or drafting of the agreement or any part of it;
 - 2.1.6 Words importing the singular shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter, and 'person' shall include both corporeal and incorporeal entities;

3. Agreement to provide services

- 3.1 With effect from the commencement date, the institution hereby appoints the transaction advisor to provide the services and the transaction advisor agrees to provide the services to the institution on the terms and conditions recorded in the agreement.

4. Duration

- 4.1 The agreement shall commence on the commencement date and terminate on the termination date.

5. Scope of services

- 5.1 The scope of services to be provided by the transaction advisor in terms of the agreement is set out in the deliverables schedule, annexed hereto as Schedule A.

6. Price and payment terms

- 6.1 During the term of the agreement and in consideration for the services

provided by the transaction advisor to the institution, the institution will pay the transaction advisor that fixed fee as specified in the payments schedule, annexed hereto as Schedule B.

- 6.2 The success fee portion of the transaction advisor's compensation will be contingent upon the financial closure (with all formalities completed) of the PPP agreement between the institution and the selected private party, and of receipt by the institution of the close-out report and relevant case study reports as set out in the deliverables schedule, annexed hereto as Schedule A.
- 6.3 Payment of the mobilisation allowance will be made by the institution within 30 days of the signature date. Invoices for further instalments may be submitted to the institution by the transaction advisor upon milestones achieved, as specified in the payments schedule, annexed hereto as Schedule B, and will be paid within 30 days of receipt of invoice.

7. Project team

- 7.1 The parties shall, immediately after the signature date, form a project team, which will be responsible for the management of the agreement so as to ensure the smooth and satisfactory delivery of the services by the transaction advisor to the institution.
- 7.2 The project team shall be composed of the following:
- 7.2.1 the project officer appointed by the institution, who shall act as manager on behalf of the institution;
 - 7.2.2 such other additional members as appointed by the institution;
 - 7.2.3 a representative appointed by the transaction advisor, who shall have authority to bind the transaction advisor; and
 - 7.2.4 such other members of the transaction advisor as appointed by the transaction advisor.
- 7.3 The functions of the project team shall be as follows:
- 7.3.1 to facilitate communication between the parties;
 - 7.3.2 to review the progress on the implementation of the agreement;
 - 7.3.3 to manage and resolve potential disputes;
 - 7.3.4 to monitor and maintain alignment with institutional policy and strategy;
 - 7.3.5 to achieve agreement objectives within agreed scope, time, cost and quality;
 - 7.3.6 to provide advice and consent on scope variation;
 - 7.3.7 to facilitate all necessary institutional and treasury approvals; and
 - 7.3.8 to provide feedback to relevant stakeholders.
- 7.4 The project team shall determine an appropriate set of meetings to be held and the frequency thereof.

8. Obligations of parties

8.1 The institution undertakes:

- 8.1.1 to remunerate the transaction advisor for its services as set out in the payments schedule, annexed hereto as Schedule B;
- 8.1.2 to provide all necessary logistical support to the transaction advisor so as to enable it effectively to render the services;
- 8.1.3 to use its best endeavours to ensure that the transaction advisor has timely and adequate access to all information, personnel and documentation available to the institution that will be required by the transaction advisor to render the services; and
- 8.1.4 to co-operate with the transaction advisor at all times for purposes of facilitating a timeous and efficient delivery of the services.

8.2. The transaction advisor undertakes:

- 8.2.1 to perform the services according to good industry practice;
- 8.2.2 to devote the necessary time and attention to providing the deliverables, as set out in the deliverables schedule, annexed hereto as Schedule A, and not engage in any business or activity that will prevent the transaction advisor from providing the services;
- 8.2.3 to maintain, at all times, the highest degree of good faith towards the institution and to ensure that no conflict of interest materialises, and in the event of a conflict of interest arising, to immediately advise the institution of same, upon which advice the institution shall, in its sole and absolute discretion, decide whether to proceed with the agreement or to terminate it forthwith. Failure by the transaction advisor to advise the institution of any conflict of interest shall amount to a material breach of the agreement and shall entitle the institution to terminate the agreement forthwith;
- 8.2.4 to render the services in accordance with the deliverables, timeframes and specifications, as set out in the deliverables schedule, annexed hereto as Schedule A, as amended by written agreement of the parties;
- 8.2.5 that all actions and commitments agreed upon or pursuant to the project management committee meetings or agreed to with the project officer, will be strictly adhered to;
- 8.2.6 to maintain independence from other individuals, organisations or government bodies;
- 8.2.7 to take out, at its own cost, appropriate insurance coverage against loss arising out of negligence, malpractice or unprofessional conduct of the transaction advisor;
- 8.2.8 to observe neutrality and objectivity in its views and opinions;
- 8.2.9 to respect and observe all applicable laws;
- 8.2.10 to provide the institution with any information and reports reasonably requested by the institution in connection with the services, and which

information the transaction advisor warrants to be accurate and complete;

- 8.2.11 to maintain the professional personnel as promised and committed to by the transaction advisor in its proposal and as recorded in the deliverables schedule, annexed hereto as Schedule A, and that in the event of any dedicated member of the transaction advisor becoming incapacitated and unable to carry out his or her duties or whose performance the institution reasonably considers to be unsatisfactory in its discretion, to replace, at the transaction advisor's cost, such member, subject to the written approval of the institution.

9. Confidentiality

- 9.1 The transaction advisor shall not, during the term of the agreement and thereafter, without the prior written consent of the institution, disclose any confidential information relating to the institution and the services to anyone other than those persons who are connected to the institution and/or transaction advisor and who are required or authorised to have access to such information.
- 9.2 The obligation to maintain the confidentiality of information shall survive the termination of the agreement, but will not apply to confidential information which was in the public domain prior to being disclosed by the transaction advisor and has come into the public domain other than as a result of being divulged by the transaction advisor.

10. Ownership of material and intellectual property

- 10.1 Any information provided by the institution to the transaction advisor and any studies, reports and documentation produced by the transaction advisor in performance of the services (hereinafter 'materials') shall belong to and remain the property of the government of the Republic of South Africa as represented by the institution, and will not be used by the transaction advisor for any purpose other than in accordance with the agreement, or by written permission of the institution.
- 10.2 Upon termination of the agreement for any reason whatsoever, the transaction advisor must return to the institution all materials in its possession which belong to the institution, regardless of whether or not such materials were originally supplied by the institution to the transaction advisor.

11. Warranties and indemnities

- 11.1 The transaction advisor warrants that:
- 11.1.1 All corporate approvals and consents required for the incorporation of the transaction advisor and all resolutions of the board of

directors of the transaction advisor authorising the execution and performance of the agreement have been obtained prior to the signature date of the agreement; and

11.1.2 It will use good industry practice and skill in performing the services.

11.2 The transaction advisor indemnifies and holds the institution harmless against any claim by any third party howsoever arising in connection with any wrongful act or omission of the transaction advisor.

11.3 The institution indemnifies and holds the transaction advisor harmless against any claim by any third party arising in connection with any wrongful act or omission of the institution.

12. Liability limitation

12.1 The transaction advisor will accept liability to pay damages for losses suffered by the institution arising as a direct result of breach of contract or negligence on its part in respect of the services. The maximum liability of the transaction advisor for all claims arising out of the services provided in connection with this agreement shall be limited to an amount equal to twice the fees charged for the services.

13. Termination

13.1 The institution reserves the right to terminate the agreement or temporarily defer the provisioning of the services, or any part thereof, at any phase with immediate effect on written notice to the transaction advisor, should the institution in its sole and absolute discretion decide not to proceed with the services.

13.2 In the event of termination of the services in accordance with clause 13.1 above, the transaction advisor will be remunerated for such services as have already been rendered.

13.3 Termination on institutional default

13.3.1 On the occurrence of an institutional default, or within a reasonable time after the transaction advisor becomes aware of the same, the transaction advisor may serve notice on the institution of the occurrence (and specifying details) of such institutional default. If the relevant default has not been remedied or rectified within 10 (ten) business days of such notice, the transaction advisor may serve a further notice on the institution terminating the agreement with immediate effect.

13.4 Termination on transaction advisor default

13.4.1 Transaction advisor default means any of the following events or circumstances:

- 13.4.1.1 The transaction advisor ceasing to carry on business;
- 13.4.1.2 A resolution being passed or an order of court being made for the administration or the judicial management, winding-up, liquidation or dissolution of the transaction advisor;
- 13.4.1.3 The transaction advisor failing to maintain any required insurance in terms of clause 8.2.7;
- 13.4.1.4 The transaction advisor committing a breach of any of its material obligations under the agreement;
- 13.4.1.5 The transaction advisor ceasing to provide all or a substantial part of the services in accordance with the agreement;
- 13.4.1.6 The transaction advisor providing services that are not good industry practice.

13.4.2 Institutional options

13.4.2.1 On the occurrence of a transaction advisor default, or within a reasonable time after the institution becomes aware of the same, and while the same is subsisting, the institution may:

13.4.2.1.1 In the case of the transaction advisor default referred to in clauses 13.4.1.1 to 13.4.1.3, terminate the agreement in its entirety by notice in writing with immediate effect;

13.4.2.1.2 In the case of the transaction advisor default referred to in clauses 13.4.1.4 to 13.4.1.6, serve notice of default on the transaction advisor, requiring the transaction advisor to remedy the transaction advisor default within 10 (ten) business days.

13.4.2.2 Failure by the transaction advisor to remedy the transaction advisor default within the specified time, as stipulated in clause 13.4.2.1.2, shall entitle the institution to terminate the agreement.

13.4.3 Costs

13.4.3.1 Each party shall reimburse the other party with all costs incurred by that party in exercising any of its rights (including, without limitation, any relevant administrative expenses), on an own attorney and client basis incurred by that party in enforcing its rights under the

agreement arising out of any breach, together with all supporting documents of such amount, which amount shall not exceed twice the amount of fees payable in terms of this agreement.

14. Dispute resolution

- 14.1 Should any dispute arise between the parties to this agreement with regard to the interpretation, the carrying into effect and implementation of any one or more of the provisions of this agreement, any of the rights and obligations of either party arising from the agreement, the termination or purported termination of, or arising from the termination of, or the rectification or proposed rectification of the agreement, or out of pursuant to this agreement, or any other matter which in terms of this agreement requires agreement by the parties, the institution and the transaction advisor shall, in the first instance, attempt to come to an agreement in relation to any such dispute by consultation and negotiation in good faith.
- 14.2 In the event that the parties, after consultation and negotiation, are unable to come to an agreement, then either party may give written notice to the other party of its intention to cancel the agreement.

15. Notices

- 15.1 The parties choose as their respective *domicilium citandi et executandi* for all purposes of the giving of notices and the serving of any process, and for any other purpose arising from the agreement, as follows:
 In the case of the institution:
 Address: [insert institution's address]
 Telefax no: [insert institution's fax number]
 In the case of the transaction advisor:
 Address: [insert transaction advisor's address]
 Telefax no: [insert transaction advisor's fax number]
- 15.2 A notice shall be deemed to have been duly given:
- 15.2.1 On delivery, if delivered to any party's physical address in terms of this clause 15.1;
- 15.2.2 On despatch, if sent to any party's then telefax number in terms of clause 15.1 as confirmed by telefax confirmation printout.
- 15.3 Either party may change its address to any physical address and telefax number (in the Republic of South Africa) for this purpose, by notice in writing to the other party.

16. Entire contract

- 16.1 The agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the agreement, and the parties

waive the right to rely on any alleged express provision not contained in the agreement.

17. No representations

17.1 No party may rely on any express, tacit or implied term, representation, promise, warranty or the like which allegedly induced that party to enter into the agreement, unless the term, representation, promise, warranty is recorded in the agreement.

18. Variation, cancellation and suspension

18.1 No contract varying, adding to, deleting from or cancelling the agreement, and no suspension of any right under the agreement shall be effective unless reduced to writing and signed by or on behalf of the parties.

19. Waiver

19.1 No waiver by a party of any right under the agreement shall be effective unless reduced to writing and signed by or on behalf of all the parties.

20. Indulgences

20.1 No indulgence granted by a party shall constitute a waiver or abandonment of any of that party's rights under the agreement. Accordingly, that party shall not be precluded, as a consequence of having granted that indulgence, from exercising any rights against the other party which may have arisen in the past or which may arise in the future.

21. Assignment

21.1 Save as expressly provided in the agreement, the transaction advisor shall not cede any of its rights nor delegate any of its obligations in terms of the agreement without the prior written consent of the institution.

22. Costs

22.1 Each party shall bear its own legal costs of, and incidental to, the negotiation, drafting and preparation of the agreement.

22.2 Any costs, including attorney and own client costs, incurred by a party, arising out of the breach by either party of any of the provisions of the agreement, shall be borne by the party in breach.

23. Subcontracting

23.1 The transaction advisor shall not, without the prior written consent of the institution (which shall not be unreasonably withheld), subcontract or delegate any of the services to any parties other than those listed as members of the transaction advisor as contained in the proposal and recorded in the deliverables schedule, attached hereto as Schedule A.

23.2 The transaction advisor shall not be relieved of any obligations, responsibility or liability under the agreement by the appointment of any subcontract to carry out any part of the services. As between the transaction advisor and the institution, the transaction advisor shall be responsible for the payment, performance, act, defaults, omissions, breaches and negligence of all subcontractors. All reference in the agreement to any performance payment, act, default, omission, breach or negligence of the transaction advisor shall be deemed to include any or the same by a subcontractor.

24. Governing law and language

24.1 The agreement shall be governed by the laws of the Republic of South Africa, and its language shall be English.

25. Counterparts

25.1 The agreement shall be capable of execution in counter parts, all of which when read together shall constitute one and the same document.

Signed and witnessed by the parties on the following dates and at the following places respectively:

Date:

Place:

Witness:

Signature:

For:
[insert name of institution]

Date:

Place:

Witness:

Signature:

For:
[insert name of transaction advisor]

Schedule A: Deliverables schedule

Schedule B: Payments schedule

TEMPLATE TRANSACTION ADVISOR ADVERTISEMENT

[Insert name of institution] seeks a transaction advisor for a feasibility study and possible PPP procurement for [describe project]

The [insert name of institution] has identified the need for [describe project] to [describe institution's objectives]. A public private partnership (PPP) may be appropriate.

In accordance with the relevant Treasury regulations and *National Treasury's PPP Manual* and *Standardised PPP Provisions*, a suitably skilled and experienced transaction advisor is required to assist the [insert name of institution] with:

- the feasibility study for Treasury Approval: I
- the production of all bid documents, including draft PPP agreement, for Treasury Approval: IIA
- PPP procurement and value-for-money report for Treasury Approval: IIB
- negotiated PPP agreement and PPP agreement management plan for Treasury Approval: III
- a close-out report and case study.

The procurement phase will be decided by the [insert name of institution] only on completion of the feasibility study, and the [insert name of institution] reserves the right to end the transaction advisor contract on completion of the feasibility study.

The contract for these services will be with a single transaction advisor, and all other team members must be hired by the transaction advisor via subcontract or joint venture.

High quality expertise and experience is required in:

- financial analysis and project finance
- legal
- PPPs
- negotiations
- BEE
- [insert specific areas of skill required for particular project].

Bids will be evaluated in terms of applicable procurement legislation, on technical, BEE and price considerations, and will include interviews with short-listed bidders before selection.

Terms of reference, detailing the work and bid requirements, are available from [insert name of person] at [insert email address] on [insert website address] and/or in hard copy from [insert physical address].

All queries must be directed to [insert name of person] at [insert email address] or on [insert telephone number].

A compulsory briefing session for bidders will be held at [insert physical address] on [insert date] at [insert time].

Bids must be submitted according to the specifications in the terms of reference.

Closing date: [insert time] on [insert date].

TEMPLATE TRANSACTION ADVISOR TECHNICAL AND BEE EVALUATION SCORESHEETS

Evaluation scoresheets: Tender [insert tender number]

Appointment of transaction advisor services to the [insert name of institution]
for [describe project]

Evaluation phase: Technical and BEE proposals

Name of bidder: [insert name of bidder]

Name of panel member: [insert name of panel member]

Date: [insert date]

This document is highly confidential

Signature of panel member: [signature]

| TECHNICAL PROPOSAL | Maximum points | Points awarded | Reasons/motivation/remarks |
|--|----------------|----------------|----------------------------|
| 4. PPP procurement and structuring – relevant experience and track record Excellent = 8 Acceptable = 4 Poor = 0 | 8 | | |
| Notes: Clarification needed | | | |
| 5. Negotiations – relevant experience and track record Excellent = 8 Acceptable = 4 Poor = 0 | 8 | | |
| Notes: Clarification needed | | | |
| 6. Design, construction, engineering, quantity surveying, property planning – skills and relevant experience Excellent = 8 Acceptable = 4 Poor = 0 | 8 | | |
| Notes: Clarification needed | | | |
| 7. Quality of project comprehension demonstrated in proposals for [...] Excellent = 8 Acceptable = 4 Poor = 0 | 8 | | |
| Notes: Clarification needed | | | |

| TECHNICAL PROPOSAL | Maximum points | Points awarded | Reasons/motivation/remarks |
|--|----------------|----------------|----------------------------|
| 8. Quality of proposed work plan, project management approach and timetable for the project Excellent = 10 Acceptable = 5 Poor = 0 | 10 | | |
| Notes: Clarification needed | | | |
| 9. Lead transaction advisor's availability for the work Excellent = 10 Acceptable = 5 Poor = 0 | 10 | | |
| Notes: Clarification needed | | | |
| TOTAL technical score | 100 | | |
| Technical threshold score | 65 | | PASS / FAIL |

| BEE PROPOSAL | Maximum score | Score awarded | Weighting | Maximum points | Points awarded | Reasons/Motivation Remarks |
|---|---------------|---------------|-----------|--------------------|----------------|----------------------------|
| 1. The percentage of Black People playing leading professional roles in the Transaction Advisor consortium 25% – 35% =3 >35% =5 | 5 | | 6 | 30 | | |
| Notes: Clarification needed | | | | | | |
| 2. The percentage of black equity in the Transaction Advisor consortium 25% – 35% = 3 >35% = 5 | 5 | | 6 | 30 | | |
| Notes: Clarification needed | | | | | | |
| 3. A credible plan for structuring effective BEE for the PPP, with necessary skill and experience in the team. Poor plan, poor skill & experience = 1 or 2 Incomplete plan, limited skill & experience = 2 or 3 Credible plan, skill & experience = 4 or 5 | 5 | | 4 | 20 | | |
| Notes: Clarification needed | | | | | | |
| 4. A credible plan for skills transfer within the consortium to directly benefit black professionals inexperienced in PPPs Poor plan = 1 or 2 Incomplete plan = 2 or 3 Credible plan = 4 or 5 | 5 | | 4 | 20 | | |
| Notes: Clarification needed | | | | | | |
| TOTAL BEE score | 100 | | | | | |
| BEE threshold score | 60 | | | PASS / FAIL | | |
| TOTAL technical score | 100 | | | PASS / FAIL | | |
| TOTAL BEE score | 100 | | | PASS / FAIL | | |

TEMPLATE CODE OF CONDUCT FOR BID EVALUATION PANEL MEMBERS

This code of conduct is to be signed by members of bid evaluation panels appointed by institutions to evaluate:

- transaction advisor bids
- PPP bids.¹

1. Background

In terms of the Constitution of the Republic of South Africa, 1996, section 217:

When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

This code of conduct is issued by National Treasury to instil standards of integrity, ethical conduct, and professionalism in the South African government's adjudication and evaluation of all procurement undertaken by institutions governed by Treasury Regulation 16 to the Public Finance Management Act, 1999 (PFMA), in relation to public private partnerships (PPPs). It is to be applied by institutions in the evaluation of:

- transaction advisor bids
- PPP bids.

Every member of a bid evaluation panel appointed by an institution to act on behalf of the state in the adjudication and evaluation of these bids is required to sign this code of conduct before receiving bids.

In addition, each member has to sign the attached declaration of interest form once the institution has announced and recorded the identities of the bidding parties.

The aims of the code

This code of conduct does not address every possible situation that may arise. It also cannot serve as a substitute for the responsibility of the accounting officer/ authority and the bid evaluation panel members to:

- exercise sound judgment
- act with exceptional standards of moral integrity

1. For the evaluation of PPP bids, this code of conduct must be signed by all members of the technical evaluation teams (TETs), the evaluation co-ordination committee (ECO), and the project evaluation committee (PEC).

- abide by all applicable laws.

This code of conduct is intended to:

- confirm the member's commitment to all its prescripts
- guide members who are faced with ethical dilemmas in an increasingly complex operational environment
- provide a reference for disciplinary and/or prosecuting procedures if a member is found guilty of fraud or corruption
- serve as a public commitment by the institution to the highest standards of ethical and professional conduct in the evaluation of bids.

Breaching the code

A member will be found guilty of breaching the code of conduct if he or she

- contravenes or fails to comply with any provision in it
- when declaring interests, willfully gives incorrect or misleading details.

In these cases, a member will be liable for disciplinary action in terms of public service regulations to the Public Services Act, 1994 and may also be liable for criminal prosecution.

The accounting officer/authority, acting on his or her own or on a complaint by any person, may investigate any alleged breach of this code by a member of an evaluation panel and may withdraw the member from the panel during the investigation.

2. Definitions

“**Family member**” means a parent, sibling, child or spouse of a member;

“**Member**” means a person appointed by the accounting officer/authority to a bid evaluation panel, either as the chairperson, or as an ordinary member or secretariat, for purposes of conducting the evaluation of either transaction advisor bids or PPP bids as a representative of the institution;

“**Privileged or confidential information**” means any information:

- determined by the institution to be privileged or confidential
- discussed in closed session by the bid evaluation panel
- which if disclosed would violate a person's right to privacy
- declared to be privileged, confidential or secret in terms of any law, including, but not limited to, information contemplated in sections 34(1); 35(1); 36(1); 37(1)(a); 38(a); 39(1)(a); 40 or 43(1) of the Promotion of Access to Information Act, 2000.

3. Code of conduct

I, [insert name of member of bid evaluation panel], acting in my capacity as member of the [insert name of institution] evaluation panel for the adjudication and evaluation of bids for transaction advisors/private parties (delete which is not applicable) under [insert tender number] hereby undertake:

1. to act at all times with fidelity, honesty, integrity and in the best interests of the state and the general public it serves
2. to diligently perform the duties of a member efficiently, effectively and strictly in accordance with the rules of bidding and bid evaluation, as set out in the bid documentation and according to all relevant instructions given by the institution
3. to properly prepare for and attend each meeting of the bid evaluation panel, and failing this to withdraw as a member
4. to act at all times in accordance with the relevant legislation and regulations, including the public service regulations, the PFMA, National Treasury regulations, and directives given by the institution
5. specifically, to comply with the *Code of Conduct for the Public Service*, in Chapter 2 of the public service regulations
6. to recognise the public's right to access to information in the interests of administrative justice
7. to take the utmost care in ensuring that there is reasonable protection of the records of the institution and all bid documentation
8. not to misuse the position or privileges of a member, or privileged or confidential information obtained as a member
9. to carry out duties with the skill and care expected from a person of knowledge and experience, and to exercise due judgement
10. not to unfairly discriminate against any bidder on the grounds of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language
11. not to abuse any position in the public service to promote or prejudice the interest of any political party or interest group
12. to give the Auditor-General all the information and explanations it requires to carry out its functions
13. to report to the appropriate authorities any case of fraud, corruption, nepotism, maladministration and any other acts which constitute an offence or which are prejudicial to the public interest, arising during the bid evaluation panel proceedings
14. to declare, diligently, accurately and honestly in the declaration of interest, all personal and/or business interests that I or a family member may have in any business of any bidder, and to willingly abide by any decision of the chairperson of the bid evaluation panel or the accounting officer/authority to withdraw as a member of the panel because of this

15. to be open and honest about all decisions and actions taken regarding the bid evaluation, and to give clear reasons for these, which can be accurately recorded
16. not to make any dishonest allegations about any bidder
17. not to make any false or misleading entries into the records of the bid evaluation panel
18. to make no contractual commitments related to the bid, to any bidding party, on behalf of the institution
19. to proactively protect privileged or confidential information of the bid evaluation panel from theft, unauthorised disclosure or inappropriate use, and specifically:
 - 19.1. not to respond to any queries relating to the bid evaluation on behalf of the institution, unless expressly authorised in writing by the accounting officer/authority to do so
 - 19.2. not to speak to or correspond carelessly with any person (fellow member, colleague, friend, family member or otherwise) on any matter related to the bid evaluation
20. not to request, solicit or accept any reward, gift or favour in return for voting or not voting in a particular way on any matter, or for disclosing privileged or confidential information
21. not to accept or agree later to accept, any 'kickbacks' in the form of money, favours, inappropriate gifts or anything else of value from a member of the public, government, a political or social movement, or any stakeholder or potential stakeholder which is or may be viewed as aimed at influencing or directing my evaluation of the bids
22. to disclose immediately to the chairperson or the accounting officer/authority any attempted inducement or offers of perks that may be construed as aimed at influencing or directing the evaluation of the bids
23. to report to the chairperson of the panel any invitations to any kind of entertainment by any party that may be construed as being associated in any way with the outcome of the bid evaluation
24. not to vote at, attend or participate in any other way in any meeting or hearing in relation to any matter before the bid evaluation panel, if any interest prevents me from carrying out my member functions in a fair, unbiased and proper way in accordance with this code of conduct.

Signed: _____
[signature of member]

Date: _____
[insert date]

Witnessed: _____
[signature of witness]

TEMPLATE DECLARATION OF INTEREST STATEMENT

The table below shows the full list of all the bidders, including the names of all the consortium members of each bid, who have responded to the [insert name of institution] call for a transaction advisor/PPP (delete as appropriate) bid for [insert name and tender number of project].

As a member of the bid evaluation panel,¹ you are required to declare any interest, as far as you are aware that you have, in any of the bidders and their consortium member companies.

An interest includes, but is not limited to:

- your shareholding in a bidding company or any of its consortium member companies. Clearly indicate the extent of your shareholding and links to this bid.
- family members, friends or associates employed by a bidding company or any of its consortium members. Clearly indicate the extent of this relationship and links to this bid.
- family members, friends or associates' shareholding in a bidding company or any of its consortium members. Clearly indicate the extent of their shareholding and links to this bid.
- family members, friends or associates contracted to provide services to a bidding company or any of its consortium members. Clearly indicate these individuals' links to this bid.
- you, or any of your family members, friends or associates receiving, or in agreement to receive, any gifts, favours, payments, sponsorships, subsidies, or any other benefits from any bidders or any members of any of the consortia, within the last 12 months of the date of this declaration.
- any other personal interest that may reasonably be deemed relevant to protecting the integrity of the bid evaluation.

| All bidders' names and names of all consortium member companies | Interest (Yes / No) | Extent of interest |
|---|---------------------|--------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

1. For the evaluation of PPP bids, this declaration of interest must be signed by all members of the technical evaluation teams (TETs), the evaluation co-ordination committee (ECC) and the project evaluation committee (PEC).

I, [insert name of member], a member of the bid evaluation panel for the [insert name of institution and name and number of project] declare that the above information is true and correct to the best of my knowledge. I declare further that in the event of any such interests arising during the course of bid evaluation, these shall be promptly and accurately declared in writing to the accounting officer/authority.

Signed: _____
[signature of member]

Date: _____
[insert date]

Witnessed: _____
[signature of witness]

EXAMPLE TRANSACTION ADVISOR BID EVALUATION SCORING SPREADSHEET

Please note, this example is relevant if the budget for transaction advisors is declared. The points weighting will be adjusted if the budget is not declared. Refer to *Module 3: PPP Inception*. Only some of the scoring sheets are shown here for example purposes. The full electronic version of the scoring spreadsheet is available from the PPP Unit, National Treasury. Go to www.treasury.gov.za

| Cover sheet | |
|--|---|
| Department of _____ (insert department or public entity name) | |
| Transaction Advisor Evaluation | |
| Evaluation criteria | Points (insert relevant weighting) |
| Technical | 70 |
| BEE | 10 |
| Price | 20 |
| Total | 100 |
| Technical threshold | 65% |
| BEE threshold | 60% |
| <hr/> | |
| Evaluators (insert names) | Initials (insert initials) |
| Itumeleng A | IA |
| Themba B | TB |
| Maliyeng C | MC |
| John D | JD |
| Maria E | ME |
| Fernando F | FF |
| Pradeep G | PG |
| Johan H | JH |
| Isaac I | II |
| Number of evaluators | 9 |
| <hr/> | |
| Bidding companies (insert names) | |
| Company A | |
| Company B | |
| Company C | |
| Company D | |
| Company E | |
| Company F | |
| Company G | |
| Company H | |

| Instructions | |
|--------------------------------------|---|
| Section | Instructions |
| 1 Cover Sheet | Insert all fields in <i>italics</i> |
| 2 Technical Individual Scores | Insert technical evaluation scores of individual evaluators under relevant initials and under relevant company name. Spreadsheet is set up to calculate total scores. Insert only relevant fields in <i>italics</i> . |
| 3 BEE Individual Scores | Insert BEE evaluation scores of individual evaluators under relevant initials and under relevant company name. Spreadsheet is set up to calculate total scores. Insert only relevant fields in <i>italics</i> . |
| 4 Tech and BEE Total | Verify totals per company match up with individual scores. Spreadsheet is set up to calculate total scores and establish which bids have passed or failed the technical and BEE thresholds. It is not necessary to fill in any information on this sheet. |
| 5 Price Evaluation | If company has failed the technical and BEE thresholds, do not insert the name or bid price for that company into spreadsheet. Insert only relevant fields in <i>italics</i> . |
| 6 Total Evaluation Result | Spreadsheet is set up to calculate total result and rank bids. Rank Number 1 is the winning bid. |

Average scores of the evaluators per company

Technical and BEE evaluation: total scores

| Total scores | Maximum Points | Company A | Company B | Company C | Company D | Company E | Company F | Company G | Company H |
|---|----------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| | | Total |
| Technical Evaluation | | | | | | | | | |
| Financial analysis and project finance | | | | | | | | | |
| Skills | 8 | 7,56 | 4 | 8 | 4,89 | 4 | 4 | 5,33 | 4 |
| Relevant experience | 8 | 4,44 | 4 | 2,67 | 5,44 | 4 | 4 | 4 | 4 |
| Legal | | | | | | | | | |
| Skills | 8 | 4,89 | 4 | 8 | 6,22 | 4 | 4 | 8 | 4 |
| Relevant experience | 8 | 5,33 | 4,89 | 4 | 4 | 4 | 4 | 8 | 4 |
| Working environment planning and facilities management | | | | | | | | | |
| Skills | 8 | 5,33 | 4 | 4,89 | 2 | 4 | 3 | 4 | 4 |
| Relevant experience | 8 | 5,33 | 4 | 4,89 | 4 | 4 | 2,22 | 3,56 | 4,89 |
| PPP procurement and structuring – relevant experience and track record | 8 | 7 | 7,11 | 7,11 | 6,22 | 4 | 8 | 4,44 | 7,11 |
| Negotiations – relevant experience and track record | 8 | 5,78 | 4,89 | 4,89 | 6 | 3 | 6 | 4,67 | 6,22 |
| Design, construction, engineering, quantity surveying, property planning – skills and relevant experience | | | | | | | | | |
| Quality of project comprehension demonstrated in proposals for [...] | 8 | 5,78 | 6,22 | 4,89 | 5,78 | 5,78 | 4,89 | 4,44 | 6,22 |
| Quality of proposed workplan, project management approach and timetable for the project | 8 | 4,89 | 7,11 | 6,22 | 5,78 | 6,67 | 5,78 | 5,78 | 5,78 |
| Lead advisor's availability for the work | 10 | 5,56 | 5 | 6,67 | 7,78 | 6,11 | 7,22 | 6,67 | 7,22 |
| | 10 | 9,44 | 5 | 2,78 | 7,22 | 8,33 | 5,56 | 7,22 | 7,78 |
| Total for Technical | 100 | 68,33 | 60,22 | 65,01 | 65,33 | 57,89 | 58,67 | 66,11 | 65,22 |
| Technical Threshold | 65% | | | | | | | | |
| Pass/Fail | | P | F | P | P | F | F | P | P |
| BEE Evaluation | | | | | | | | | |
| The percentage of black people playing leading professional roles in the Transaction Advisor consortium | 30 | 18 | 18 | 18 | 18 | 18 | 0 | 18 | 18 |
| Percentage of black equity in the lead Transaction Advisor consortium | 30 | 30 | 18 | 18 | 30 | 18 | 30 | 30 | 30 |
| Plan for structuring effective BEE for the PPP, with skill and experience | 20 | 13,76 | 16 | 15,56 | 12 | 6,68 | 11,56 | 9,76 | 13,76 |
| Skills transfer plan within the consortium to directly benefit black professionals | 20 | 18,24 | 13,76 | 14,24 | 18,24 | 12 | 12 | 13,76 | 15,56 |
| Total for BEE | 100 | 80 | 65,76 | 65,8 | 78,24 | 54,68 | 53,56 | 71,52 | 77,32 |
| BEE Threshold | 60% | | | | | | | | |
| Pass/Fail | | P | P | P | P | F | F | P | P |

Price evaluation

| Technical evaluation Pass/Fail ** | BEE evaluation Pass/Fail ** | Company | Compliance passed Technical and BEE | Price | | Price ranking |
|--------------------------------------|--------------------------------|----------------------|--|-------------------|--------|------------------|
| | | | | Cost | Points | |
| P | P | Company A | Company A | R3 000 000 | 100 | 1 |
| F | P | Company B | | | – | |
| P | P | Company C | Company C | R3 200 000 | 93 | 2 |
| P | P | Company D | Company D | R4 200 000 | 60 | 4 |
| F | F | Company E | | | – | |
| F | F | Company F | | | – | |
| P | P | Company G | Company G | R5 250 000 | 25 | 5 |
| P | P | Company H | Company H | R4 000 000 | 67 | 3 |
| | | Lowest bidder | | R3 000 000 | | |

Total evaluation results

| | Technical | | BEE | | Price | | Total | Overall ranking |
|-----------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|-------------------|--------------------|
| Weighting | 70 | | 10 | | 20 | | | |
| Company | <i>(score ex 100)</i> | <i>Weighted score</i> | <i>(score ex 100)</i> | <i>Weighted score</i> | <i>(score ex 100)</i> | <i>Weighted score</i> | <i>(max. 100)</i> | |
| Company A | 68,33 | 47,83 | 80 | 8 | 100 | 20 | 75,83 | 1 |
| Company B | | | 65,76 | 6,58 | | | | |
| Company C | 65,01 | 45,51 | 65,8 | 6,58 | 93,33 | 18,67 | 70,75 | 2 |
| Company D | 65,33 | 45,73 | 78,24 | 7,82 | 60 | 12 | 65,56 | 4 |
| Company E | | | | | | | | |
| Company F | | | | | | | | |
| Company G | 66,11 | 46,28 | 71,52 | 7,15 | 25 | 5 | 58,43 | 5 |
| Company H | 65,22 | 45,65 | 77,32 | 7,73 | 66,67 | 13,33 | 66,72 | 3 |

TEMPLATE APPLICATION TO THE PDF – PRE-TA:I

The Head
Public Private Partnership Unit
National Treasury
Private Bag X115
Pretoria 0001

Attention: Project Development Facility
[insert date]

Dear Sir/Madam

Application for funding of transaction advisor services for a PPP

1. As the accounting officer/authority of [insert name of institution] I endorse the enclosed application for funding of transaction advisor costs for a prospective PPP for the [insert project name]. This project has been registered with the PPP Unit and will follow the process for PPPs prescribed by National Treasury regulations.
2. The [insert name of institution] is a [insert status¹] and has the following institutional functions: [set out details of mandate, enabling legislation and institutional history].
3. We have carried out the procurement of PPPs in the past, being [set out PPPs in procurement and in operation].
4. The project for which we apply for funding is [provide full details of the project as well as the strategic goals of the institution, service delivery outcomes and improvements on the current outcomes expected to be achieved by the project].
5. We have advertised the terms of reference for the transaction advisor services required for the project in accordance with *National Treasury's PPP Manual* and have evaluated the responses thereto. Following this process we have appointed [details of the transaction advisor]. Details of the assessment made of the consortium's capacity to procure a successful PPP are attached.
6. The transaction advisor has been appointed for part 1 of the project, being the work required to obtain Treasury Approval: 1. Given that the feasibility study may show insufficient value for money and that the project may either be terminated or proceed under conventional procurement, the appointment of the transaction advisor for part 2 of the project is contingent on the results of the feasibility study.

1. For example: Schedule 3b public entity.

7. The total amount of advisor fees is [insert R amount], made up as follows:
part 1 fees: [insert R amount]
part 2 fees: [insert R amount].
8. The part 1 fees will be paid by [specify the institution/other sources].
9. The part 2 fees are payable on delivery of work outputs/milestones as follows:
[insert payments schedule from contract]
10. Furthermore the [insert name of institution] has committed the following resources to manage the project procurement: [set out appointment of internal or external staff to manage PPP process].
11. Application is therefore made for the part 2 transaction advisor costs from the Project Development Facility.
12. We confirm that we have reserved the right to recover part 2 costs as a success fee from a successful bidder should this project reach financial closure as a PPP.
13. The estimated value of the project in capital expenditure and operational expenditure terms is [set out initial estimates of expenditure on the project²].
14. We envisage that the project will be able to leverage value for money through private sector investment in [set out objectives in involving private sector].
15. We have established institutional capacity to manage the project in procurement and during operations by [set out institutional capacity statement].
16. We attach details of the project timelines and projected cash flow for payment of the transaction advisor for both parts.
17. We confirm that, should funding be granted, it may be conditional on the outcome of the feasibility study, and that the PDF will reserve the right to recover the disbursed funds in the form of a success fee from any successful bidder at financial closure.

Yours faithfully

[signature of accounting officer/authority]

[insert name of accounting officer/authority]

Attached documents:

- Annex 1: Terms of reference for appointment of transaction advisor
- Annex 2: Summary of selection process for transaction advisor
- Annex 3: Terms of appointment of transaction advisor
- Annex 4: Additional project information, including initial cost estimates
- Annex 5: Additional institutional capacity description
- Annex 6: Details of project timelines and cash flow for advisor fees

2. This shows the ratio of transaction advisor fees to project value.

TEMPLATE APPLICATION TO THE PDF – POST-TA:1

The Head
Public Private Partnership Unit
National Treasury
Private Bag X115
Pretoria 0001

Attention: Project Development Facility
[insert date]

Dear Sir/Madam

Application for funding of transaction advisor services for a PPP

1. As the accounting officer/authority of the [insert name of institution] I endorse the enclosed application for funding of transaction advisor costs for a prospective PPP for the [insert project name]. This project has been registered with the PPP Unit and has received Treasury Approval: 1 for the feasibility study as prescribed by Treasury Regulation 16 to the PFMA.
2. The [insert name of institution] is a [insert status¹] and has the following institutional functions: [set out details of mandate, enabling legislation and institutional history].
3. We have carried out the procurement of PPPs in the past, being [set out PPPs in procurement and in operation].
4. We attach the feasibility study for the project in which are set out the full details of the project as well as the strategic goals of the institution, service delivery outcomes and improvements on the current outcomes expected to be achieved by the project.
5. The transaction advisor appointed is [provide details of the transaction advisor]. The appointment is based on terms of reference which are compliant with *National Treasury's PPP Manual*. Details of the assessment made of the advisory capacity to procure a successful PPP are attached.
6. The transaction advisors have been appointed for part 1 of the project and the decision has been made by [insert name of the institution] to proceed with part 2, being the procurement of the PPP.
7. The total amount of advisor fees is [insert R amount], made up as follows:
 - part 1 fees: R[insert Rand amount]
 - part 2 fees: R[insert Rand amount]

1. For example: Schedule 3b public entity.

8. The part 1 fees have been paid by [specify the institution/other sources].
9. The part 2 fees are payable on delivery of work outputs/milestones as set out in the annexes to this letter.
10. Furthermore, the [insert name of institution] has committed the following resources to manage the project procurement [set out appointment of internal or external staff to manage PPP process].
11. Application is therefore made for the part 2 transaction advisor costs from the Project Development Facility.
12. We confirm that we have reserved the right to recover part 2 costs as a success fee from a successful bidder should this project reach financial closure as a PPP, and that the feasibility study shows that this does not compromise the preliminary affordability or value for money determined for the project.
13. We have established institutional capacity to manage the project in procurement and during operations by [set out institutional capacity statement].
14. We attach details of the project timelines and projected cash flow for payment of the transaction advisor for both parts.
15. We confirm that, should funding be granted, the PDF will reserve the right to recover the disbursed funds in the form of a success fee from any successful bidder at financial close.

Yours faithfully

[signature of accounting
officer/authority]

[insert name of accounting
officer/authority]

Attached documents:

- Annex 1: Terms of reference for appointment of transaction advisor
- Annex 2: Summary of selection process for transaction advisor
- Annex 3: Terms of appointment of transaction advisor
- Annex 4: Additional project information including initial cost estimates
- Annex 5: Additional institutional capacity description
- Annex 6: Details of project timelines and cash-flow projects for advisory fees.

