

**Presentation to the UN (OHRLLS) – 11th -
12th October 2021**

**Training Workshop for
Developing successful Public-
Private Partnerships (PPPs) for
increased transport connectivity
in Botswana**

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Role of Transaction Advisor

Role of Transaction Advisor: Phase 1 Feasibility

The Transaction Advisor will be required to produce comprehensive feasibility analysis for all components of the Project, including assessment of alternate methods of project delivery and operation. This must enable the Government to determine:

- Full project cycle costs
- Affordability limits
- Risks and their costs
- Optimal value-for-money (VfM) methods of procurement and delivery.

The Transaction Advisor will also conduct market sounding of potential developers and/or operators of the Project, so as to inform the relevant sections of the feasibility study. The Phase 1 deliverables required of the Transaction Advisor are set out in detail below

Role of Transaction Advisor: Phase 2 Procurement

If, on the basis of the feasibility study, a PPP solution is chosen, and if the Government requires it, the transaction advisor will provide the necessary technical, legal and financial advisory support for the procurement of a private partner. This must be in compliance with applicable law in the country.

The Phase 2 deliverables are set out in the section below.

Role of Transaction Advisor

Components of Phase 1: Feasibility

- The Transaction Advisor is required to produce, in close liaison with the Government, a comprehensive feasibility study for the Project. The feasibility study needs to clearly demonstrate affordability for the full project cycle and propose the optimal VfM solution for the Government to achieve its desired outcomes.
- The Transaction Advisor shall be responsible for carrying out initial technical, financial and legal framework reviews that are deemed necessary for a successful completion of the transactions, including, but not limited to:
 - Relevant existing reports, studies, audits, etc. necessary to become familiar with the Project sector in the country
 - Existing analysis prepared for proposed similar projects in the country, including pre-feasibility studies, feasibility studies, scoping studies, market studies, etc.
 - Existing and proposed laws and regulations relating to the sector and to PPPs
 - Responsibilities and relationships of government entities at different levels.

Role of Transaction Advisor

Components of Phase 1: Feasibility

The feasibility study must include the following:

Introduction

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

Section 1-Needs analysis, including

- Government's strategic objectives
- Available public budget
- Institutional analysis
- Output specifications
- Scope of the Project.

Role of Transaction Advisor

Components of Phase 1: Feasibility

Section 2 -Technical and commercial options analysis, consisting primarily of two to three alternative scenarios for development of project facilities in the country. Each scenario should focus on:

- Which facilities should be developed
- The sequence of development of such facilities
- The business case for developing the specified combination of facilities in the specified sequence.
- The business case will entail describing the current and forecast market for the Project in the country for the useful life of the Project (minimum ?? years), and supply options the country has in terms of its own or alternative options to meet the projected demand.
- The transaction advisor will meet with major users of project services in the country (current and prospective) to inform and verify this market analysis. This sub-section should refer to (but not necessarily be limited to) the market opportunities already identified on other relevant studies.

Role of Transaction Advisor

Components of Phase 1: Feasibility

The Transaction Advisor will undertake a SWOT (Strengths Weaknesses Opportunities Threats) analysis on all identified technical scenarios. Taking into account all considered factors, the transaction advisor will recommend a preferred scenario (the Preferred Technical & Commercial Option). The transaction advisor will produce all Front-end Engineering and Design (FEED), cost estimates and drawings for the Preferred Technical & Commercial Option, to the extent that they are not already available and adequate or being prepared by other parties.

Role of Transaction Advisor

Components of Phase 1: Feasibility

Section 3 -Delivery and O&M options analysis, covering, for each technical and commercial scenario discussed in the prior section, consideration of alternative modalities of delivering the Project and operating and maintaining it over time, including in particular:

- Conventional public procurement
- Public-private partnership (PPP)

For this purpose, a PPP is considered to be any contractual arrangement in which substantial risk for project delivery, operation and maintenance is transferred to a private party. The transaction advisor will delineate those variants of PPP (for example, build operate-transfer (BOT)) that would be feasible for the Project;

- Hybrid solutions (e.g. PPP for some facilities and public procurement for others)
- Integrated operation and maintenance of all or some combination of facilities.

Role of Transaction Advisor

Components of Phase 1: Feasibility

This section should compare alternatives in terms of:

- Expected interest from potential developers, operators, lenders and/or other required parties
- Risk allocation
- Financing
- Tax treatment
- Government role;
- Legal architecture of transaction and confirmation of legality in the country
- Other contractual and commercial relationships in the sector or related to the sector and how those relationships will interface with the PPP project.

This section should conclude by recommending a preferred method of delivering each of the technical and commercial scenarios discussed in the prior section. The preferred method of delivering the Preferred Technical & Commercial Option will be known as the Preferred Project Option.

Role of Transaction Advisor

Components of Phase 1: Feasibility

Section 4 -Due diligence in connection with the Preferred Project Option, including:

- Legal aspects, including Use rights, Regulatory matters, Approvals required
- Identify licensing, permitting and other legal risks that need to be addressed and allocated under the chosen approach.
- For PPP options, ensuring all necessary approvals and permissions are obtained before commencement of tender process, in particular to allow the relevant Government entity to sign the tender documents and the PPP contract.
- Site enablement
- Socio-economic and environmental
- Revenue sources and demand analysis
- Tax and accounting issues
- Financing issues
- Investor analysis.

Role of Transaction Advisor

Components of Phase 1: Feasibility

Section 5 -Financial Model for the Preferred Project Option

- Production of a base Financial Model that can serve as the basis for the affordability analysis (Section 6) and value assessment (Section 7).

All variables are to be clearly identified and evidence for assumptions given. Key functional relationships should be discussed, and the main variables to be stressed for sensitivity analysis should be identified.

Section 6 -Affordability Analysis in connection with the Preferred Project Option

- Determination that under the assumptions used in the base financial model, the Preferred Project Option is affordable for the Government and for the end user.

Role of Transaction Advisor

Components of Phase 1: Feasibility

Section 7 -Value assessment in connection with the Preferred Project Option. At a minimum, this will include a comprehensive assessment of project risks and how they may be allocated among the project participants. Such risk assessment will include:

- Comprehensive risk matrix for all project risks, including at least the following: construction, operation, market/demand, political, macroeconomic, regulatory, environmental, force majeure
- Identify the risks that the Project would face, including probability of materialization and magnitude if materialized
- Who among the stakeholders (Government, investors, IFIs and other financiers) would be negatively affected
- Summary of the institution's retained and transferable risks in the Preferred Project Option and alternatives
- Recommended mitigation mechanisms for each of the identified risks to be implemented by the party identified to bear that risk.

Role of Transaction Advisor

Components of Phase 1: Feasibility

This should include assessment and applicability and economy of various risk mitigation mechanisms such as full and partial guarantees. The value assessment may also include preparation of discrete risk-adjusted financial models for alternate delivery scenarios (e.g. a public sector comparator [PSC] model and a PPP reference case), if the transaction advisor is of the opinion that such an analysis can fairly capture the relative value of the alternate scenarios.

Section 8 -Economic valuation

- Introduction and evaluation approach
- Assumptions
- Valuation results
- Macroeconomic Impact

Role of Transaction Advisor

Components of Phase 1: Feasibility

This should analyse the:

(a) revenues that would accrue to the Government through:

(i) value added taxes;

(ii) other taxes and levies as contributions to specific funds;

(iii) corporate taxes; (iv) municipal taxes;

(v) customs duties and excise levies on equipment and services imported/ purchased; (vi) guarantee/on lending margins charged by Government;

(b) impact on the Government's overall positions of debt, debt service and contingent liability; and

(c) employment generation, regional development, betterment of people directly effected, etc.

- Project Level Analysis Project cost benefit analysis, including net present value (NPV), financial internal rate of return (FIRR) and economic internal rate of return (EIRR).

Section 9 -Procurement plan

Role of Transaction Advisor

Components of Phase 1: Feasibility

Annexures

- Annexure 1: Statements for information verification and sign off from each advisor to the Project;
- Annexure 2: Base financial model;
- Annexure 3: PSC model and PPP reference model (if applicable);
- Annexure 4: Risk assessment and comprehensive risk matrix;
- Annexure 5: Document list (list of all documents related to the Project, where they are kept, and who is responsible for ensuring that they are updated) ; and
- Annexure 6: Attach as annexure all other documents that have informed the feasibility study and that are of decision-making relevance to the Project.

Role of Transaction Advisor

Components of Phase 1: Feasibility

Market Sounding

The Transaction Advisor will sound the market for potential developers and/or operators for the Project. This will entail at least the following:

- Identification of firms potentially interested in serving as developer and/or operator of the Project;
- Preparation of a Project Concept Note describing possible configurations of the Project to an appropriate level of detail;
- Preparation of a Project Interest Inquiry designed to gauge the interest and preferred terms of potential developers and/or operators;
- Distribution of the Project Concept Note and Project Interest Inquiry to the identified potential developers and/or operators;
- Telephone interviews (or where feasible and cost-effective, face-to-face meetings) with potential developers and/or operators to discuss their reactions to the Project Concept Note and their responses to the Project Interest Inquiry; and
- Preparation of a short report summarizing these responses (written and oral) for the Government. The transaction advisor will use the results of this market sounding to inform the relevant sections of the feasibility study, including in particular Sections 3, 7 and 9.

Role of Transaction Advisor

Components of Phase 1: Feasibility

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 Government's management for decision-making purposes. The Transaction Advisor will subsequently conduct a 1-day workshop for the Government and other Government stakeholders to present and discuss the findings and recommendations of the feasibility study.

Role of Transaction Advisor

Components of Phase 1: Feasibility

Submission Requirements for the Feasibility Study Report

If the Government decides to pursue a PPP solution for the Project, the Feasibility Study must be of a standard that will be accepted by relevant authorities for all necessary approvals. The Transaction Advisor is therefore advised to be fully familiar with the requirements of the relevant authorities.

Role of Transaction Advisor

Components of Phase 2: Procurement

PPP Procurement Deliverables (if applicable)

Based on the feasibility study, the Government will choose a technical & commercial option as well as a delivery option for the Project. If the Government decides on a PPP procurement solution for the Project, the transaction advisor will work with the Government to manage the procurement process for securing contracts with a private party, all in accordance with the systems and standards set out for PPPs in relevant laws and regulations.

The Transaction Advisor will then have to deliver the following:

Approval and Administration of the Bidding Process

- The Transaction Advisor must prepare a complete set of procurement documents, complying with applicable law and other relevant policies and guidelines, and in accordance with the tendering systems of the Government.
- The documentation must be consistent with the results of the feasibility study and enable the Government to obtain relevant approvals.

The following steps and deliverables are envisioned, subject to the Transaction Advisor's recommendations in the Feasibility Study and the requirements of applicable law and related regulations in the country:

Role of Transaction Advisor

Components of Phase 2: Procurement

- Bidders are encouraged to suggest possible modifications to this procurement plan in their proposals, together with clear arguments and available evidence for any such modifications.
- The Transaction Advisor must also give the Government 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.

(a) Detailed Procurement Plan

The Transaction Advisor will design a complete procurement plan and process, based on applicable procurement requirements, including:

- Advice on mechanisms to maximize competition while avoiding unrealistic bids and project vulnerability from overly aggressive bidding[
- Review of information to be provided by the Government to bidders to manage liabilities;
- Design of pre-qualification and bidding procedures;
- Design of key aspects of the tender procedure;
- Outline of tender documentation.

Role of Transaction Advisor

Components of Phase 2: Procurement

Outline of the PPP contract (including all annexes) that implements the chosen PPP approach:

- applying the risk matrix developed during the feasibility study, but updated to address all project issues and market context;
- developing and implementing a detailed financial model and developing the contract to fit the requirements of the model ; and
- explaining to the Government whether and to what extent certain provisions could be amended without disturbing the key risk allocation goals of the Government.
- All advice compliant with applicable law and considering any constraints or opportunities associated with applicable law.

The Transaction Advisor will prepare and deliver a draft Procurement Plan to the Government, and subsequently a final procurement plan. The Transaction Advisor will conduct a 1-day workshop with the Government and other Government stakeholders to discuss the procurement plan and the roles and responsibilities of all actors.

Role of Transaction Advisor

Components of Phase 2: Procurement

(b) Pre-qualification

The Transaction Advisor will design and administer a pre-qualification (request for qualification (RFQ)) process with the intention of:

- Ensuring that the Government'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 Government. The transaction advisor must:

- Prepare all the necessary RFQ documentation, including advertising material;
- Set up and administer the process by which the Government can pre-qualify the parties, including responding to questions and interfacing with bidders; and
- Help the Government evaluate and pre-qualify bidders.

Role of Transaction Advisor

Components of Phase 2: Procurement

As part of this process, the Transaction Advisor shall develop a tightly focused promotional campaign for the Project, which may include short press briefings, advertisement inserts to be published in international trade publications and business newspapers, followed up by the targeted marketing of identified companies through organizing road shows and seminars for potential investors as well as initiating direct communications with them.

The authorised staff of the Government, assisted by the Transaction Advisor, will evaluate submissions and pre-qualify bidders.

(c) Bid evaluation criteria and bid process design

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.

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

Role of Transaction Advisor

Components of Phase 2: Procurement

(d) Request for proposals (RfP)

The Transaction Advisor must prepare an RfP document in accordance with best industry practice and applicable laws and regulations, consistent with the results of the feasibility study. The RfP must concisely set out:

- The output specifications of the Government
- Requirements for compliant bids
- A risk profile as established in the feasibility study
- The payment mechanism
- The bid process
- Evaluation criteria
- Bidder communication systems.

Role of Transaction Advisor

Components of Phase 2: Procurement

(e) A Draft PPP Agreement

The Transaction Advisor must prepare a draft PPP Agreement, in close liaison with the Government and relevant Government stakeholders, implementing the risk allocation regime and using best practice to maximize competition and minimize project costs, while protecting the Government's interests, particularly regarding project implementation and manageability over the term of the Project.

The agreement will include all necessary annexes and subsidiary documentation, such as performance specification, project scope, client's requirements, technical specification, Project performance monitoring regime, code of construction practice, requirements for network integration, etc.

(f) Government Approval

The Transaction Advisor must compile all the documentation necessary for the Government to obtain necessary approvals to enable the procurement process to begin.

(g) Administration of the Bidding Process

The Transaction Advisor is to provide all necessary administrative support to the Government for the efficient and professional management of the bidding process. This includes managing a data room, facilitating structured engagement between the Government and bidders, helping the Government communicate effectively with bidders, including responding to bidder queries, managing bidder conferences and responding to communications with bidders to manage Government liabilities, and receiving bids.

Role of Transaction Advisor

Components of Phase 2: Procurement

Evaluation of Bids, Demonstrating Value for Money

(a) Evaluation of bids

The authorised staff of the Government, assisted by the transaction advisor, will evaluate bids.

(b) The value-for-money report and approval

Value for money must be demonstrated with reference to the net present value (NPV) of the bids received using the relevant models from the feasibility study (particularly Section 7). 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.

Role of Transaction Advisor

Components of Phase 2: Procurement

PPP Agreement Negotiations, PPP Agreement Management Plan

The transaction advisor must assist the Government in final negotiations with the preferred bidder. This will involve:

- Preparing suitable negotiations teams;
- Categorizing issues appropriately, developing timelines for completion;
- Planning negotiation tactics;
- Reviewing proposed sub-contracts, in particular with construction contractors and operators, to the extent forms of these contracts have not been included in the PPP contract or the tender documents;
- Advising on proposed changes to the agreed form sub-contracts;
- Review of preferred bidder satisfaction of the conditions precedent to the PPP contract, often including the validity of licenses and permissions obtained by the preferred bidder, formation of corporate vehicles in the form required, financial close of the project financing, and implementation of the commercial requirements for performance of the Project;

Role of Transaction Advisor

Components of Phase 2: Procurement

- Relationship with second and third place bidders, including managing bid bonds and on-going discussions to prepare for the eventual withdrawal of the preferred bidder;
- Processes for reaching agreement;
- The above will normally involve a second set of negotiations with the lenders arguing similar points as those raised by the preferred bidder during the tender process and new issues often focused on financial covenants and protections;
- Review and negotiation of the financial documentation which will often have a direct effect on the rights and obligations of the Government;
- Legal opinion that transaction is binding on its terms;
- Legal opinion on security and financial management structure
- Legal opinion on revenue structure and current regulatory mechanism.

Role of Transaction Advisor

Components of Phase 2: Procurement

PPP Agreement Signature, Close-Out Report and Case Study, and Financial Closure

The Transaction Advisor must help the Government with all functions related to signing the final agreement through to financial close. The transaction advisor must also compile a comprehensive close-out report and case study, and must incorporate any additional factors that may be required by the Government. The close-out report will be a confidential document of the Government. The case study will become a public document, made available on various government websites.

The Transaction Adviser will provide a guidance note on the Government's rights and obligations under the final PPP agreement, and will conduct one 2-day workshop with the Government and other Government stakeholders to discuss project implementation and management of Government rights and obligations over the term of the Project.

Financial closure will signify that all the procurement deliverables have been successfully completed.

Role of Transaction Advisor

Components of Phase 2: Skills and Experience of Transaction Advisor

Transaction advisor skill, experience, remuneration and management by the Government

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 these 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.

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

- Financial analysis, with relevant PPP and project finance experience through to financial close
- PPP procurement and structuring
- Legal, with relevant law and experience in the drafting and negotiating of PPP agreements in East Africa or other countries with similar characteristics
- Technical due diligence and advice on PPP structuring and contracts
- Project planning management
- Project facilities management
- Relevant sector expertise