



HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT (HoAGDP)

PROJECT ID NO. P161305

TERMS OF REFERENCE

FOR SHORT-TERM

**CONSULTANCY SERVICES ON DEVELOPMENT OF RULES AND PROCEDURES
FOR HANDLING PROCUREMENT COMPLAINTS.**

TENDER NO KeNHA/2419/2021

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TERMS OF REFERENCE (TOR) FOR SHORT-TERM CONSULTANCY SERVICES ON DEVELOPMENT OF RULES AND PROCEDURES FOR HANDLING PROCUREMENT COMPLAINTS.

1. PROJECT BACKGROUND

1.1 The Client and Name of the assignment

The Government of the Republic of Kenya (hereinafter called “Borrower”) the Ministry of Transport, Infrastructure, Housing and Urban Development (MoTIHUD) has received financing from the International Development Association (IDA) (the “Bank”) in the form of a “credit” (hereinafter called “credit”) toward the cost of the Horn of Africa Gateway Development Project (HoAGDP). The Kenya National Highways Authority, an implementing agency intends to apply a portion of the proceeds of this credit for provision of **Consultancy Services on Development of Rules and Procedures for Handling Procurement Complaints** through engaging an individual Consultant.

The Government of Kenya (GOK), through its agency, the Kenya National Highways Authority, now presents these Terms of Reference (TOR) to the individual consultants.

2. PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

Public Procurement Regulatory Authority (PPRA) was established under Public Procurement and Asset Disposal Act (PPADA), 2015 PPRA and is headed by the Director General. Section 9 of the Act confers the Authority to perform among other functions, to monitor, assess and review the public procurement and Asset Disposal system to ensure they respect the National values and other provisions including Article 227 of the constitution on public procurement.

In addition, the Authority has a role in dispute resolution, research in public procurement and provision of information on status of public procurement and asset disposal.

Public Procurement Regulatory Authority (PPRA) has two boards namely; Public Procurement Regulatory Board and Public Procurement Administrative Review Board.

2.1 The Public Procurement Administrative Review Board (PPARB).

The Public Procurement Administrative Review Board (PPARB) is an unincorporated board established under Section 27 of the Public Procurement and Asset Disposal Act, 2015 (the Act) as a central, independent procurement appeals review board. Its mandate is reviewing, hearing and determining tendering and asset disposal disputes; and to perform any other function conferred to it by the Act, its appurtenant Public Procurement and Asset Disposal Regulations, 2020 (the Regulations) or any other written law.

PPARB discharges its mandate when a request for review application is filed against an accounting officer of a procuring entity by a candidate or a tenderer, who claims to have suffered or risk suffering loss or damage due to breach of a duty imposed on such a procuring entity by the Act or Regulations.

According to section 28 (2) of the Act, the PPARB, in performance of its functions under subsection (1)(a) of the same section, the Review Board shall have powers to develop rules and procedures to be gazetted by the Cabinet Secretary. Therefore, the PPARB, in performance of its functions under the Act, has powers to develop rules and procedures to be gazetted by the Cabinet Secretary of the National Treasury and Planning.

However, since its establishment, PPARB has not developed its Rules and Procedures but has nevertheless been guided by the Constitution of Kenya, 2010 (the Constitution), Act and Regulations in performance of its functions.

Consequently, PPRA wishes to engage the services of individual consultant to guide it in the Development of Rules and Procedures for Handling Procurement and Asset disposal Complaints.

As part of Institutional Capacity building support, the World Bank, through HoAGDP has agreed with the Government of Kenya to finance the Consultancy Services on Development of Rules and Procedures for Handling Procurement and Asset Disposal Complaints for PPARB.

3. OBJECTIVES OF THE CONSULTANCY

The main objective of the consultancy is to review all the relevant policies, laws, regulations and current practices to enable development of rules and procedures that will guide how procurement and asset disposal related appeals reviews and complaints lodged at PPARB will be handled in a streamlined manner within the provisions of the Constitution, laws of Kenya, Procurement Act, Procurement Regulations, bilateral or multilateral agreements between the Government of Kenya and any other foreign government, agency, entity or multilateral agency and treaty or other convention ratified by Kenya.

The specific objective is to develop draft Rules and Procedures for handling Procurement and Asset Disposal related reviews and complaints at PPARB.

4. SCOPE OF THE ASSIGNMENT (CONSULTANCY ACTIVITIES)

The main activities of the consultancy are to:

- i. Review the relevant provisions and intent of the Public Procurement and Asset Disposal Act, 2015, its attendant Public Procurement and Asset Disposal Regulations, 2020 and all other relevant procedures;
- ii. Review any rules and procedures currently used by PPARB under its jurisdiction;
- iii. Review the current practices and efficiencies of discharging the mandate of reviewing, hearing, and determining tendering and asset disposal disputes and appeals. Review the procedures whether the complaints are first received by the respective procurement implementing agencies and whether the appeals are made against the resolution provided by the said procurement entities.
- iv. Review procedures for how the complainants or the protesting parties appeal the disputed case for PPARB's review, including legal time bars or standstill periods and the parties right to complain based on the rules of each tendering document.
- v. Engage relevant stakeholders such as private sector, development partners, civil society, professional associations, etc, to enhance the research/review to be done;
- vi. Identify any gaps in the relevant legislation with respect to handling Procurement and Asset Disposal related reviews and complaints under both Government and external financing;
- vii. Assess what type of Procurement and Asset Disposal related reviews and complaints are lodged at PPARB and analyze whether the requests for review received are consistent within the responsibilities of the PPARB and within the mandate vested to it;
- viii. Ascertain the jurisdiction of the PPARB in relation to development partner funded procurements and asset disposals procedures;
- ix. Carry out research on the guiding principles and scenarios necessary for assisting the Review Board in making determinations procurement related complaints.
- x. Make inference of appropriation of possible PPARB orders in tandem with its findings;
- xi. Based on (i), (ii), (iii), (iv), (v), (vi) (vii), (viii), and (ix) above, develop "Rules and Procedures of handling Procurement and Asset and Disposal reviews and complaints by the PPARB", irrespective of the source of financing including, before and after signing of the respective financing agreements, particularly by external financiers.
- xii. The rules and procedures may detail the mandate of the PPARB engagement in procurement and asset disposal related reviews and complaints, and how other grievances and contracts implementation stage issues may be addressed; and
- xiii. Assist PPARB to organize a stakeholders' validation workshop to provide feedback on the draft Rules and procedures of handling Procurement and Asset Disposal related reviews and complaints. The PPARB will handle the sourcing of the venue, mobilization of participants and other logistical requirements.

5. INDIVIDUAL CONSULTANTS (IC) SELECTION METHOD (METHODOLOGY).

IC selection, as provided in the World Bank's Procurement Regulation for IPF Borrowers, July 2016 as updated November 2020, will apply.

6. TIME FRAMES AND DELIVERABLES

6.1 The assignment is estimated to take a maximum of 2 months (Between July and August 2021) after which the Rules and Procedures should be ready for gazette, launching and implementation.

6.2 The individual consultant will prepare draft Rules and Procedures of handling Procurement and Asset Disposal related reviews and complaints by the PPARB that will be implemented by PPARB once gazette by the Cabinet Secretary of The National Treasury and Planning.

I/No	Deliverable	Timeframe
1	Inception report	Within 2 weeks of commencement of the assignment
2	Draft Rules and Procedures of PPARB's procurement and Asset Disposal Complaints' appeals review	Within 4 weeks of clearance of Inception report by the PPRA
3	Facilitation of stakeholder's validation meeting workshop, and a Workshop Report	Within eight weeks of commencement of the assignment; Validation Workshop Report submitted within one (1) week of the workshop
4	Final Draft Rules and Procedures of PPARB's procurement Complaints' appeals review	Within ten weeks of commencement of the assignment

7. QUALIFICATIONS / COMPETENCIES

- i. Knowledge and experience in at least two similar assignments.
- ii. Knowledge of the Constitution, Act, Regulations and any other written laws with respect to public procurement and asset disposal matters.
- iii. Knowledge of the public procurement law, regulations and PPARB's procurement related complaints appeal mechanisms and review processes, practices, and operations.
- iv. Experience of at least two years in similar public institutions advisory and consultancy work
- v. The Consultant performing the services under the engagement should have at least Three (3) years' experience as a practitioner either in procurement, Legal services, or any relevant field.

- vi. Must have as a minimum a degree in Procurement, Law or a relevant field from a recognized university. A master's degree in a relevant field from a recognized university will be an added advantage.
- vii. Must have as a minimum a professional qualification in Supplies Management or Law or any relevant field.
- viii. Current membership to a relevant professional body e.g. KISM, LSK etc.
- ix. Any other relevant qualification/experience will be an added advantage

8. TERMS OF CONTRACT

The contract will be issued for a period of 2 months. The contract may be extended (if necessary) upon agreement between the consultant and the Government. The dates and checkpoints will be agreed upon with PPRA. As this will be a lump-sum contract, payment will be made based on acceptance of main deliverables (inception report (20%), draft report (40%) and final report (40%) upon the delivery of the main outputs as outlined above (item # 5.2) to the satisfaction of PPRA and following submission of an invoice from the consultant.

The details of this will be articulated in the contract agreement.

9. PERFORMANCE MANAGEMENT

The reporting requirements will be set out in the contract between the consultant and the Client.

The Client will provide the following as part of its responsibilities under the assignment:-

- a) Relevant Literature in its possession, for review by the Consultant;
- b) Any information on the current practice of PPARB
- c) Office space, if necessary and when available;
- d) Letters of Introduction to various institutions when required by the Consultant.

The Consultant shall be required to submit its report(s) to PPRA/PPARB, both in Hard Copy (three (3) copies) and Soft copy (in MS-Word and PDF formats) sent via the official email addresses and stored in digital format (such as a flash disk).

10. CONFIDENTIALITY STATEMENT

All data and information received during the assignment, from respondents, PPRA, KeNHA and the World Bank are to be treated confidentially and are only to be used in connection with the execution of these Terms of Reference. All intellectual property rights arising from the execution of these Terms of Reference are assigned to PPRA. The content of written materials obtained or prepared in this assignment will not be disclosed to any third parties without the expressed advance written authorization of PPRA, KeNHA and/or the World Bank.