

THE PROJECT FACILITATION FUND (PFF)

Part Four of the PPP Act 2021 establishes the Project Facilitation Fund as a financing mechanism for PPP activities in Kenya.

1. THE PROJECT FACILITATION FUND (PFF) FRAMEWORK

The Fund is managed within a framework guided by Regulations made by the Cabinet Secretary, National Treasury in accordance with the PFM Act 2012.

2. FUND SUPPORT WINDOWS

The Fund, has four support (4) windows:

WINDOW 1: SUPPORT TO CONTRACTING AUTHORITIES FOR PROJECT PREPARATION

The objective of this window is to provide support to contracting authorities during the preparation stage of a project. Funds may be applied for by the contracting authority to meet the costs of:

- i. Land acquisition, compensation, resettlement and environmental remediation
 - ii. Consultancy services related to the public private partnership programme, including undertaking feasibility studies
 - iii. Conducting the tender process, including project advertisements, marketing and communications, tender documentation and due diligence
 - iv. Undertaking transaction and associated advisory services
 - v. Undertaking other project preparation activities approved by the PPP Committee.
- Any support provided to a contracting authority for land acquisition costs is recoverable and should be refunded by the contracting authority to the Fund within the immediate next budgeting cycle. This includes the cost of land acquisition, compensation, resettlement and environmental remediation.
 - Support provided for the items listed in (iii) and (iv) may be recoverable, based on guidelines issued and the terms of engagement set out in the Funding Agreement that is entered into between the contracting authority and the Fund.

WINDOW 2: SUPPORT TO THE PPP DIRECTORATE

- The Fund also has a window dedicated towards supporting the project related activities for the PPP Directorate.
- This window is therefore available to the Unit to support the following key functions, which are instrumental in helping it fulfil its mandate:
 - i. Costs relating to consultancy services
 - ii. Undertaking of capacity building programmes
 - iii. Purchase of office equipment, systems and associated software
 - iv. Undertaking research activities
 - v. Establishment of knowledge management systems and frameworks; and
 - vi. Meeting recurrent operational and maintenance costs for the Fund Secretariat.

WINDOW 3: VIABILITY GAP FUNDING (VGF)

- The next option for financial support is the viability gap funding window. Viability Gap Funding refers to money that is provided to infrastructure projects that are economically viable, but fall short of being financially viable. Support under this window may be made by way of loan, grant, equity, or any other financial instrument required to improve the financial viability of a project.
- Support under this window may be applied to fund:
 - i. Capital grants made to a project during construction
 - ii. Recoverable advances made to a contracting authority
 - iii. Any other permitted recoverable advances; and
 - iv. Loans, equity or other financial arrangements as may be made available to a project in accordance with the provisions of the PPP project agreement and guidelines governing the operation of the Fund.
- This window is only be available to support project capital costs and recoverable land acquisition costs.

WINDOW 4: CONTINGENT LIABILITY SUPPORT

- The Fourth window provides a liquid source to meet short-term liquidity gaps in relation to contingent liabilities arising from the implementation of a PPP project agreement.
- This window/sub-account will only be available to support projects where the contingent liability:
 - i. Cannot be handled by the National Treasury under alternative frameworks
 - ii. Cannot be handled by the National Treasury under the National Government Contingency Fund
 - iii. Does not arise from a contracted obligation of a contracting authority under a project agreement for which a budgetary allocation has been made to the contracting authority and
 - iv. Materializes out of a national government default, which is not recoverable from a contracting authority, under a project agreement.
- Contingent liabilities arising out of a contracting authority default under a project agreement shall remain the responsibility of the contracting authority to settle. As a last resort however, the contracting authority, in exceptional circumstances, may apply to the Fund for a recoverable advance in settling such liabilities.
- Contingent liabilities, which are neither the responsibility of the contracting authority or the private party, and which arise from the implementation of a project agreement, shall be eligible for settlement under the Fund, subject to any guidelines issued.
- Contracting authorities, in conjunction with the Debt Management Office, shall be required to submit annually to the Officer Administering the Fund, estimates of contingent liabilities arising from their eligible projects and any short-term liquidity gaps.
- Where payments are made to meet materialized contingent liabilities under a project upon the request of a contracting authority, the contracting authority shall refund the monies paid in its immediate subsequent budget cycle.

4.2 SOURCES OF REVENUE

Section 75 of the Act prescribes the sources of revenue for the Fund as:

- i. Grants and donations
- ii. Levies or tariffs imposed on a project
- iii. Success fees paid by a project company
- iv. Appropriations-in-aid; and
- v. Any other source prescribed by the Cabinet Secretary/National Treasury.

The monies paid into the Fund shall be used to meet the objectives of the four (4) windows outlined above.

4.3 ELIGIBILITY CRITERIA

a. Project Preparation Support window

- Contracting authorities seeking support under the project preparation window must demonstrate the following:
 - i. Feasibility Study support: evidence that the project has been included in the approved list of projects under the Act and the contracting authority has engaged or intends to engage an approved transaction advisor to undertake the study. The project proposal approval letter issued to the contracting authority can be used to demonstrate this.
 - ii. Land acquisition and associated matter support: demonstrate evidence of an approved feasibility study under the Act, which demonstrates the land acquisition requirements and outlines the compensation and resettlement plans. The feasibility study approval letter issued to the contracting authority can be used to demonstrate this.
 - iii. Tender process: show evidence of an approved feasibility study and that the contracting authority has engaged or intends to engage an approved transaction advisor. The feasibility study approval letter issued to the contracting authority as well as the approval to proceed to the tender stage can be used to demonstrate this.

b. Viability Gap Funding Window

- To be eligible for support under this window, a project needs to have undertaken an estimation of its contingent liability requirements, and had the same approved at the feasibility study stage. This assessment needs to be re-estimated and re-confirmed prior to contract execution, following the conclusion of the contract negotiation process.

- Further, a contracting authority is required to demonstrate:
 - i. an approved feasibility study
 - ii. an approved project and financial risk assessment report. The approval letter issued to the contracting authority approving the project and financial risk assessment report can be used to demonstrate this
 - iii. a PPP project agreement for the delivery of the project results in the provision of a service whose compensation structure to the private sector relies on user fees or a tariff
 - iv. that the private company holds and controls fifty-one (51%) per cent of the subscribed and paid up equity in the special purpose vehicle (project company), and
 - v. that the private party was selected on the basis of an open competitive bidding process and is responsible for financing construction, maintenance and operation of the project.
- If there is a variation to the project agreement, and this variation affects the projects financial risk and contingent liability profile, then the approval of the Debt Management Office shall be sought and obtained prior, so as to maintain the projects eligibility for support under this window.
- Projects that require more than fifty (50%) per cent viability gap funding shall not be eligible for support under this window.

c. Contingent Liability Window

- To be eligible for support under this window, a contracting authority must demonstrate:
 - i. that it has prepared, in conjunction with the Debt Management Office and submitted annually to the Officer Administering the Fund, estimates of contingent liabilities for their projects
 - ii. it has remitted a percentage of their estimated contingent liability funding requirements in accordance with the guidelines issued
 - iii. the approval of the projects Contingent Liability Funding Requirement. This can be evidenced by way of the letter received from the approving entity
 - iv. that the Contingent liability was notified to the Fund upon execution of the project agreement or as a consequence of a variation to the project agreement during the implementation stage of the project and
 - v. that the contingent liability has materialized. Evidence showing that the liability has materialized must be clearly demonstrated.

4.4 EXCLUSIONS

- The Fund shall not be used to support:
 - i. viability gap funding for Privately Initiated Investment Proposals (PIIPs).
 - ii. projects that were procured before the Act came into operation.

4.5 APPLICATION PROCESS

Request for support for project preparation

- A request to the Fund with respect to project preparation funding support is made in the prescribed form and supported by relevant evidentiary documents outlined in section (c) above.

PPP Directorate Support

- A request to the Fund with regards to this window is made in the prescribed form and supported by evidence of the Directorate's approved annual budget estimates.

Viability Gap Funding Support

- Applications under this window are made in the prescribed form and supported by a signed PPP project agreement and evidence of the approved viability gap-funding requirement.

Contingent Liability Support

- A request under this window is made in the prescribed form, demonstrating evidence of the projects approved contingent liability funding requirements and evidence that the Fund was notified of the projects contingent liabilities upon the execution of a project agreement or as a consequence of a variation to the project agreement during the implementation stage

4.6 PRIORITIZATION CRITERIA

- The Fund applies the principle of first come first serve, in addition to the following selection criteria:
 - i. the extent to which the contracting authority is able to co- fund the requested support
 - ii. the potential economic impact of the project
 - iii. the potential value for money impact of the project
 - iv. equitable application of support under the Fund
 - v. the quantum of viability gap funding and its impact on the continued availability of the Fund to support other eligible projects.
- A contracting authority's history of compliance under the Act and track record of effective use of the Fund support and any specific requirements applying to the resources available within the Fund. Contracting authorities are required to adopt prior planning strategies to support a clear and efficient budgetary process so as to enable and support the Funds efficiency in meeting requests for support.

4.7 RECORDS

- Records on the Funds revenue and expenditure are kept and maintained in accordance with the provisions of the Public Finance Management Act, 2012.