

Kenyan PPP: it's now or never

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In November 2017 the head of Kenya's PPP Unit, Stanley Kamau, said that if the government was to realise its Vision 2030 economic plan it "must partner with the private sector to undertake more infrastructure projects than those it can undertake while only relying on public financing."

The comment was made as five international teams prequalified for the PPP contract to develop the [2nd Nyali Bridge](#) in Mombasa. The project is one of five major roads earmarked for PPP procurement by the government several years ago. That only two of those projects have made any significant progress since meant the prequalification milestone for the 2nd Nyali Bridge was a rare good news moment.

Yet less than a year later Kamau has been removed from his role and no replacement has yet been named.

Infrastructure development is one of the key pillars of Vision 2030, an economic plan launched by then-President Mwai Kibaki in 2008.

As Kamau highlighted last year (2017), the PPP programme has been touted as the ideal way of bridging funding gaps for the country's most ambitious projects. But his dismissal in early 2018, having led the programme from its inception, suggests the government had begun to run out of patience.

Market participants agree that much now depends on the most advanced of the road projects – the [Nairobi-Nakuru-Mau Summit Highway](#). Four groups were eventually prequalified for the project last year, though only two subsequently submitted bids.

Evaluation of the bids has been completed but at the time of publication no winner had been announced.

Even if a winner is confirmed soon, the significant funding requirement for the project suggests a lengthy financing stage to come. And question marks remain over payments under the concession and the nature of the government guarantee.

Challenges for the programme

The Kenyan government appointed Kamau to lead the PPP Unit in 2010, and it then passed a PPP Act in 2013. With World Bank assistance and funding it modelled its programme on European PPPs.

"The structure of the PPP concession looks very much like that used for the UK highways, with many of the firms involved in those projects now advising the Kenyan government," says Gowling WLG partner Jonathan Brufal.

The government has a priority list of 71 projects across many sectors, though it initially identified just five road projects to be procured as PPPs. Two were O&M contracts for existing roads, and three involved new construction:

- [Nairobi-Mombasa Highway](#)
- [2nd Nyali Bridge](#) connecting Mombasa Island to the mainland

- [Nairobi-Nakuru-Mau Summit Highway](#)

Kamau's PPP Unit launched separate advisory tenders for all five in 2014, and subsequently selected teams for each. This decision was based on the belief that advising on all five projects would be too much for one team.

The downside was that there was no unifying structure for the programme and the government subsequently decided that it needed standards established. A PwC-led team, which had been selected for Nairobi-Mombasa, was picked to undertake this standardisation.

"There was not that capacity in Kenya at the time, so it made sense to tender the advisory contracts individually, says Jean-Pierre Bernardus Labuschagne, a partner at Deloitte.

"It also then made sense to programme some of the documentation so it was not bespoke and had some level of standardisation. It just took a while to work its way through the system."

Any momentum built was then lost in 2015 after five government ministers were embroiled in a corruption scandal. Among them was Michael Kamau, the Transport and Infrastructure Minister who had been a supporter of the programme.

New feasibility studies for the projects were finally completed in 2016, a stage the two O&M projects have not progressed beyond. Two of the projects did move into the prequalification stage, however – the 2nd Nyali Bridge and Nairobi-Nakuru.

These tenders have attracted international bidding consortia which is a credit to the work done by the PPP Unit. But bidders are still waiting for clarification on a couple of vital issues.

Firstly, the government is understood to have not yet established the national roads fund which will collect the toll revenues. Under the PPP contracts, concessionaires will operate and maintain the roads on an availability basis. Tolls will be collected separately and fed into the fund, which will make payments to the concessionaire over the 30-year contract.

The fund is intended to first subsidise the payments made by the government under the concessions, and then eventually cover the full costs. The concessionaire will not be exposed to any traffic risk, but will also not benefit from any upside from higher than expected traffic volumes.

A separate concessionaire will install and operate the tolling systems, with a tender currently being undertaken. This obviously requires each concessionaire to assume the risk of another project, which creates added complexity.

"The tolling concession will not just include the PPP roads, but also those being developed on an EPC basis", Brufal says. "It's complicated but I think using an availability model for the road PPPs is a better structure for getting them built."

The government is due to backstop all payments from the national roads fund in case of revenue shortfalls. However, in a further concern for bidders, it is yet to provide details on exactly what form this letter of support will take.

Name	Value	Update	Transaction adviser	Contracting authority
2nd Nyali Bridge Project	\$200m	RFQ closed on 9 Nov 2017. Teams prequalified	Deloitte	Kenya Urban Roads Authority
Nairobi-Nakuru-Mau Summit Highway Project	\$700m	RFP submitted April 2018 – bids in	Intercontinental Consultants and Technocrats	Kenya National Highways Authority
Nairobi-Mombasa Highway Project	\$2.35bn	Bilateral deal with US – Bechtel the developer	PwC	Kenyan National Highways Authority
Nairobi Southern Bypass project O&M	\$177m	Feasibility study in 2016	CPCS	Kenya National Highways Authority
Nairobi-Thika Highway O&M toll road	\$30m	Feasibility study in 2016	Intercontinental Consultants and Technocrats	Kenya National Highways Authority

Source: *The Kenya PPP Unit's disclosure portal*

Key projects

Both the 2nd Nyali Bridge and Nairobi-Nakuru attracted similar bid groups, with South African, European, and Asian developers/investors showing an interest.

The five groups prequalified for the 2nd Nyali Bridge are:

- China's CCCC
- Strabag
- Vinci and Meridiam
- Mota-Engil, South Africa's AECOM, Egis, and Orascom
- IHI, Japan's JOIN, and Acciona

These groups now wait on an RFP, which the more optimistic of market participants expect to be issued by the end of 2018.

The total cost of this project is expected to be roughly \$200 million, with works including the construction of a 400m new bridge, a 1.3km road at Kongowea, and 5km of road expansions.

The funding requirement for the more advanced Nairobi-Nakuru is far more significant and will test debt market appetite for the programme. The government has previously said the project will cost \$700 million.

Just three groups initially prequalified, though a group led by Strabag successfully appealed and was added to a revised list in May 2017. Ultimately neither they nor a team led by IL&FS entered bids earlier this year (2018).

The only two bids entered were from the same teams led by Vinci and Mota-Engil, respectively, which also prequalified for the 2nd Nyali Bridge tender.

A total of 273km will be operated and maintained under the concession, while construction involves 175km of additional lanes and 58km of road strengthening to the A8 highway.

The project will require a blended financing, as DFIs are not expected to lend the total debt amount. Local Kenyan commercial banks do not have the capabilities to lend long-term or at competitive rates but South African banks are expected to participate.

A proportion of project revenues will be paid in Kenyan shillings, so the concessionaire will look to create a natural hedge for this in the debt package to minimise exposure to changes in exchange rates. A group of nine Kenyan pension funds said in September (2018) that it would invest a combined \$70 million in local currency to the project once the contract had been awarded.

Ominous signs

While things seem to be taking shape for Nairobi-Nakuru, and there is clearly market appetite on both the debt and equity side, there are lingering concerns that a lack of government support could still scupper the project.

Some suggest that the ousting of Kamau speaks to a government losing faith with PPP, with no contracts signed, for roads or any other sector, five years after the legislation was signed.

Bernardus Labuschagne says that the debt requirements for major PPP projects may also be a growing concern for the government: "One of the challenges that Kenya is facing is the quantum of debt it has been borrowing, and the impact of that on its economy."

A competitor for the government's attention is the Nairobi-Mombasa Highway, which has now been awarded to Bechtel in a bilateral government agreement between Kenya and the US. The Kenyan government still, at least publicly, wants the project to be undertaken as a PPP, but Bechtel is lobbying hard for a more traditional design-build contract which it says will save money.

Given the political importance of Nairobi-Mombasa, there is a risk this project draws government capacity away from Nairobi-Nakuru. That might even have been the case if the PPP Unit still had a permanent leader in place to argue for its significance.

****The government of Kenya failed to provide comment for this article despite multiple requests.***

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