

# **DRAFT Terms of Reference on the Development of an Aviation Policy for Kenya and Review of the Proposed Medium-Term Investment Requirements for Enhancing Passenger Terminal at Jomo Kenyatta International Airport, Nairobi**

## **A. Background**

1. The Government of Kenya (GOK) has made Public Private Partnerships (PPPs) a priority mechanism that can help in the development and management of assets and provision of services to address the major infrastructure gaps in the country. For this purpose, GOK has received Additional Financing (AF) under the WB credit for the Infrastructure Finance and Public Private Partnership (IFPPP) project that seeks to increase private investment in the Kenyan infrastructure market and to improve the enabling environment to generate a pipeline of bankable PPP projects. Having now reached a stage of maturity, the AF is intended to help finance the costs associated with scaled-up activities on the existing PPP program, in a more efficient and sustainable manner.
2. These Terms of Reference are for the engagement of a Consultant to develop an Aviation Policy for Kenya and to review the proposed medium-term investment requirements for enhancing passenger terminal at Jomo Kenyatta International Airport, Nairobi. It is anticipated that the outcomes of this assignment will contribute towards a sound foundation for future PPP projects that will be generated within the Aviation Sub-sector.

## **B. Introduction to the Assignment**

3. The transport infrastructure is a central element for Kenya to reach its Vision 2030 aimed at transforming the country into a middle-income economy. Economic growth will only accelerate if Kenya increases its quantity and quality of infrastructure. The vision is to build modern, high-quality and efficient transport infrastructure facilities that would facilitate access to markets. In addition, better infrastructure is expected to boost tourism, which is one of the six priority sectors for development.
4. According to the International Air Transport Association (IATA) and Oxford Economics, the air transport sector contributed an estimated 5.1 percent to Kenya GDP (2014), a gross value-added contribution equivalent to US\$3.2 billion. The aviation industry alone enabled direct employment of 18,000 jobs, supported another 130,000 jobs through local services and suppliers, and an additional 410,000 tourism-related jobs.
5. Kenya has a thriving and viable aviation industry which is vital for the country's development through the provision of air transport services and hence facilitation of tourism, and promotion of trade and earning of foreign exchange. Historically, aviation in Kenya and the other EAC States followed British rules and regulations where EACT governments provided aerodromes infrastructure, while the International Aviation Organization (ICAO) and the United Nations Development Programme (UNDP) played a high role in the development of human resources and provision of air navigation equipment. When the former EAC collapsed in 1977, each Member State established its own flight information region with its own infrastructure and national airline based on what existed in its territory when the Community collapsed.

6. The key players in the sector include the following:
  - a) State Department of Transport under the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works is responsible for the policy and legislative activities;
  - b) Kenya Civil Aviation Authority (KCAA), established under (Cap. 394) responsible for regulation and air navigation services;
  - c) Kenya Airports Authority (KAA) established under (Cap. 395) provides airport facilities, infrastructure and services. KAA manages a network of 18 aerodromes majority of whom other than Jomo Kenyatta International Airport (JKIA) with 80% percent of the business are loss making; and
  - d) Kenya Airways (KQ) established under (Cap 486) provides domestic and international air services alongside other airlines. KQ is listed at the Nairobi, Dar-es-Salaam and Kampala Securities Exchange with current GoK shareholding standing at 48.9%.

7. Kenya has an integrated national transport policy that was prepared, legislated, approved by Parliament and adopted by Government 2012. The transport policy envisages “A world-class integrated transport system that is responsive to the need of people and industry” with a mission “To develop, operate and maintain an efficient, cost effective, reliable, safe, secure and integrated transport system and link transport policy with other sectors in order to achieve national and regional development aspirations in a socially, economically and environmentally sustainable manner”. The policy only provides the broad vision for the aviation transport sub-sector in the country in line with Vision 2030 with limited policy objectives. Thus, there is need to develop and an aviation policy that lays clearly the principles that will underpin the development of a more efficient, competitive, environmentally sound, secure, safe and economically and financially sustainable aviation sub-sector.

8. Kenya Airways (KQ) was successfully privatized in 1995. Following a decade of rapid expansion and profitability, in 2012 it launched an aggressive expansion plan. This plan sought to increase its passenger’s headcount from 3.6 million then to 8.7 million in 2017 based on the opening of 31 additional routs and an investment in new airplane totaling near US\$2.5 billion (i.e. acquisition of 27 aircraft). However, this plan was not well implemented. Following cumulative losses of near US\$1 billion between 2013 and 2018, KQ had to be rescued by the Government resulting in the Government becoming the largest shareholder of the company.

9. Currently, there are about 570 aerodromes in Kenya, nine (9) of which are managed directly by the Kenya airports Authority (KAA). The nine (9) aerodromes managed by KAA are collectively viable and represent over 95% of the commercial activities in the airport related business. The rest are either airstrips under the Ministry responsible for Transport or privately-owned airstrips. With the current developed governance system, it is not clear whether county governments have a role to play in the management of airships. This requires clarification. Most of the airships under the Ministry responsible for transport are financially unviable, resulting in serious problems in their operation in their operation and maintenance.

10. In 2018, total traffic through KAA managed airports was 11.90 million passengers, 319,580 aircraft movements, and 359,590 tons of cargo. Jomo Kenyatta International Airport (JKIA) handled approximately two-thirds of this traffic or 8.02 million passengers, 36% of

108,652 aircraft movements, and 94% or 273,623 tons of cargo. At the moment, 38% different carriers, of which 29 are for passenger services and nine dedicated airfreight services, connect Kenya to various destinations nationally, regionally and across the globe, thereby illustrating JKIA's importance as a regional hub for East Africa. A number of new airlines continue to express interests in commencing operations at JKIA. Though passenger at JKIA have recently been expanded, capacity constraints remain and unless addressed will lower the service standards at this premier airport. The passenger terminal design capacity of 7.0 million pax/year was surpassed in 2017, as passenger traffic surged from 4.8 million passengers in 2008 to 7.27 million (a 51% increase) and is likely to continue to exceed 8 million in 2019.

11. In most respects, Kenya's civil aviation sector is well established and has provided the basis, over the last 20 years, for the creation of a major new economic sector (lowers and fresh horticulture produce) as well as supporting the tourist sector and the most traditional sectors of the economy. The experience of the flower and horticulture sector demonstrates that Kenya can take advantage of the opportunities for export. If Kenya can successfully operate an international logistics chain which must ensure delivery of flowers and fresh produce to international markets within 24 hours of harvesting, there is no reason to suppose that other logistics chains cannot also be managed.

12. Except for providing basic information on basic traffic flows at airports, there is minimal clarity and transparency on operational, commercial or financial performance. Clear policy direction on the development, financing and management of the civil aviation infrastructure in Kenya is required. It is not simply a question of the management of the of the main airports but also of the ownership, governance and financing of all the airports – international, domestic and secondary airstrips. The present structure is clearly not delivering the quality of infrastructure and governance required. There are alternative models, that should be explored.

13. The recent poor performance of Kenya Airways has triggered the intervention of policymakers in the sub-sector albeit it was once taken for granted that the airline was a privately owned and managed company, able to operate commercially and to adjust its services to market's demands. Policymakers now see Kenya Airways as the 'National Carrier' and a Parliamentary Departmental Committee on Transport, Public Works and Housing has recommended an aviation sector-wide restructuring based on the vertical consolidation of the country's four parastatals – Kenya Airways (KQ), Jomo Kenyatta International Airport (JKIA), Kenya Airports Authority (KAA) an Aviation Academy – under a single public Aviation Holding Group (KAHG). This approach which would usher the nationalization of KQ has been approved by the Parliament.

### **C. Objectives of the Assignment**

14. The State Department for Transport intends to engage a consultant to define the long-time development goals of the aviation sub-sector in order to devise an enabling policy that would deliver a well governed and sustainable sector. This will include:

- a) Development of a National Aviation Policy (NAP) for Kenya;
- b) Reviewing the interim (short to medium term) investment requirements of KAA against a longer-term sustainable solution;
- c) Benchmarking the recommendations (including those relating to KAA and Kenya Airways) with best practice in the aviation sector globally;

- d) Advice on the institutional and advisory support to the State Department for Transport in providing policy direction and oversight including deepening of PPP in the transport sector; and
- e) Advice on aviation safety and security issues.

15. In doing so, the consultant will identify and elaborate the main issues, constraints, challenges facing the aviation sector, the prevailing opportunities and prepare a policy that will lead to an efficient, well governed, competitive, environmentally sound, safe and secure aviation sub-sector and take into account known international best practices and experiences, adapted to the local context and tailored to ensure realistic implementation, to maximize the contribution of the civil aviation sub-sector to the economic and social development of Kenya.

16. Development of the policy should consider that: (a) Kenya is a signatory to the Chicago Convention of 1944 and its Annexes; (b) the existing apportionment of roles between the government, private sector and civil society; (c) Promotion of aviation Safety and security; (d) optimal development, maintenance and utilization of air transport infrastructure; (e) promoting fair competition; ensuring consumer satisfaction and protection; (f) enforcement of regulatory mechanisms to enhance industry order and discipline; and (g) the recommendation by Parliamentary of vertical consolidation of the aviation public institutions – Kenya Airways, Jomo Kenyatta International Airport (JKIA), Kenya Airports Authority (KAA), and an Aviation Academy –under a single public Aviation Holding Group (KAHG). Finally, the Aviation Policy should also address the problems of aviation safety and security and include the management of transport and other supporting infrastructure; human resource development and equipment upgrading to meet industry’s obligations nationally, regionally and internationally.

#### **D. Scope Work**

17. The scope of work will involve reviewing and providing guiding policy principles in line with international best practices on the following aspects: (a) institutional relationships, corporate governance structures and regulations of all Sector’s players; (b) pricing, taxes, investment and financing approaches related to infrastructure and equipment funding, maintenance and operations; (c) human resource development and employment models; and (d) acquisition and utilization of technology. This will specifically involve:

- a) A review of the existing transport policy, key problems, constraints and issues concerning the aviation sector in Kenya;
- b) Analysis of previous studies and assessments of Kenya’s systems to establish their relevance to the current situation context and strategic vision;
- c) A review of existing plans and strategies concerning the institutional arrangements, operations and management, safety and economic regulatory frameworks, fiduciary controls, technical skills requirements, adoption of technology, and financing of the aviation subsector in the light of policy objectives for the transport sector and aviation sector;

- d) Updating of relevant data and information on the aviation sub-sector to provide an adequate basis for the proposed national aviation policy;
- e) A review of existing institutional and governance arrangements concerning, (i) the ownership, operations and management, (ii) cost structure, fund flows and financing arrangements; (iii) stakeholder engagement, consultation, and facilitation; (iv) enabling environment for involvement of private sector participation in the aviation industry;
- f) An assessment of viable options for effective and sustainable institutional and management for the aviation sector/industry;
- g) An assessment of an assessment of viable options for effective and sustainable institutional and management arrangement for the aviation sector/industry;
- h) An assessment of options for adequate and sustainable public and/or private financing of the aviation sector;
- i) A review of the existing transport inter-modal arrangements and recommendation of options for integrating transportation modes;
- j) Recommending policy objectives to improve aviation industry efficiency; and
- k) Developing an overall aviation policy document and action plan clearly linking policy objectives and strategy for Kenya.

18. The Consultant will assemble a team of experienced senior transport and social development experts with in-depth knowledge of the aviation sector to carry out this assignment.

19. The team should include the following:

- a) **Transport Economist/Team Leader:** (5 staff months) shall have a graduated degree in transport economics with a minimum of 20 years post qualification experience and must possess post graduate qualifications in Transport Economics or air transportation. Experience with transport sector institutional, policy and regulatory reform in essential. The expert must also have at least five (5) years working experience in developing countries with sufficient knowledge and experience to be able to respond to technical issues which may arise in the course of the assignment. The expert shall have a good command of spoken and written English.
- b) **Aviation Transport Planner:** (5 staff months) shall have a basic degree in engineering, economics, finance or other social science and a minimum of 10 years of postgraduate working experience, part of which must have covered traffic network analysis, transport demand forecasting and financial analysis. The expert shall have a good command of spoken and written English.
- c) **Aviation Transport Lawyer:** (5staff months) shall have a law degree with a post graduate specialization in legal aviation/legislation matters with a minimum of 15 years in reviewing

and drafting aviation and/or transport laws. The expert shall have a good command of spoken and written English.

- d) **Institutional/Management Specialist:** (2.5 staff months) shall have a basic university degree with 10 years' experience and experience with transport sector related institutional studies, planning, development and management. The expert shall have a good command of spoken and written English.
- e) **Management/Workshop Facilitation Expert:** (one staff month) to be responsible for preparation of the shareholder workshops and preparation of the reports of the workshop. The expert shall have a basic university degree and a minimum of five (5) years of postgraduate working experience. Experience in planning organization and facilitating of seminars dealing with technical issues and writing reports on the proceeding is essential. Experience with transport sector will be an advantage. The expert shall have a good command of both spoken and written English.

#### **E. List of Reports, Schedule of Deliveries, Period of Performance**

20. Reports to be provided include: an inception report; a draft/interim study report; a draft final report; and final study report including the aviation policy paper. The assignment will take six months.

21. The consultant will present a **succinct inception report** setting out the approach to developing the aviation policy paper. The approach will enable the key stakeholders and decision makers to make informed comments through a systematic consultative process elaborated in the inception report. The report should be submitted within three (3) weeks from the commencement of the assignment.

22. The **draft/interim report** comprising the aviation policy document and action plan will be submitted to National Treasury and State Department for Transport in four (4) copies (soft and hard). This will provide the basis of the consultative process whose recommendations shall be incorporated during the production of the draft report (four copies) and should be submitted within ten (10) weeks after the commencement of the assignment. State Department for Transport should provide comments on the inception **within one week**.

23. The **draft final report** comprising the aviation policy document and action plan will be submitted to National Treasury and State Department for Transport in four (4) copies (soft and hard). This report should incorporate comments provided on the interim report and should include a draft policy paper for presentation at a workshop as part of the consultative process. The draft final report (four copies) should be submitted within eighteen (18) weeks after the commencement of the assignment. State Department for Transport should provide comments on the **inception within two weeks**.

24. A **final study report** and a succinct aviation policy paper and action plan. The report should be submitted to National Treasury and State Department for Transport in four (4) copies taking into account the comments received from State Department for Transport and from stakeholders' workshop, should be produced in English. The stakeholders' workshop shall be held

two (2) weeks after submission of the draft report during which the stakeholders will have an opportunity to present their comments. The final study report should be submitted to State Department for Transport by the end of week 24.

**F. Data, Service, Personnel and Facilities to be provided by the Client**

25. The client will provide study reports that are relevant to the study including:

- a) Integrated National Transport Policy;
- b) Parliamentary Departmental Committee on Transport, Public Works and Housing Report on Restructuring of the Aviation Sub-sector; and
- c) The National Aviation Management Bill/Act 2010.

26. The client will provide counterpart staff and an office.

**F Institutional and Organization Arrangements**

27. The technical client is the State Department for Transport. The Principal Secretary has appointed the Head of Aviation Sector as the contact person to whom the consultant will report to on today-to-day basis.