LEGAL NOTICE NO....................

THE PUBLIC PRIVATE PARTNERSHIPS ACT

(Cap. 430)

IN EXERCISE of the powers conferred by sections 30(4), 40(8), 53(10), 68(9), 69 (3) and 89 of the Public Private Partnership Act, the Cabinet Secretary responsible for matters relating to finance, in consultation with the Public Private Partnerships Directorate, makes the following Regulations—

THE PUBLIC PRIVATE PARTNERSHIPS (PROJECT MANAGEMENT) REGULATIONS, 2026

PART I—PRELIMINARY

Citation.

1. These Regulations may be cited as the Public Private Partnerships (Project Management) Regulations, 2026.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"county executive committee member" means a member of a county executive committee responsible for matters relating to finance;

"financial year" has the meaning assigned to it under Article 260 of the Constitution;

"large bank" means a bank classified as such by the Central Bank of Kenya; and

"technical secretariat" means the technical team comprised of officers from the National Treasury constituted to assess public private partnerships projects and recommend whether the projects should be procured on budget through the Public Procurement and Asset Disposal Act or under the Act.

Cap. 412C.

Objects.

3. The object of these Regulations is to provide a framework for—

(a) the identification, preparation, and implementation of public private partnership projects;

(b) the management and monitoring of a public private partnership project; and

(c) ensuring compliance with the principles of public finance, transparency, accountability, and value for money under the Constitution, the Act and other written laws relating to public finance and procurement.

Scope.

4. These Regulations shall apply to—

(a) project identification, selection and prioritisation under section 30 of the Act;

(b) privately-initiated proposals under section 40 of the Act;

(c) project companies under section 68 of the Act;

(d) disclosure obligations under section 69 of the Act; and

(e) contract management under section 73 of the Act.

PART II—PROJECT IDENTIFICATION, SELECTION AND PRIORITISATION

Project identification, selection and prioritisation.

5. (1) A contracting authority shall select projects for prioritisation and implementation under the Act from the national or county development agenda.

(2) The accounting officer of a contracting authority shall ensure that—

(a) each project is identified through a stakeholder consultation process; and

(b) no project concept note is initiated for a project that is already under implementation by a national or county government agency.

(3) Any project selected for prioritisation and implementation shall be aligned to the relevant national government or county government development, sector and strategic plan.

Project concept notes.

6. (1) Each project prioritised and implemented under the Act shall require a project concept note prepared by the contracting authority.

(2) The accounting officer of a contracting authority shall—

(a) ensure the project conceptual designs are undertaken using the logical framework analysis and develop the logical framework matrix;

(b) ensure the project concept notes for all projects are prepared by the relevant departments and submitted to the technical secretariat for review and recommendation;

(c) consider the recommendations of the technical secretariat on the project concept note and make a decision;

(d) where a project concept note emanates from a State, county corporation, or autonomous or semi-autonomous government agency, ensure that the project concept note is cleared by the accounting officer and the Board of the respective corporation or agency and the relevant Cabinet Secretary or county executive committee member, as the case may be, before submission to the National Treasury or relevant county treasury; and

(e) upon approval, submit the project concept note for the project to the project pipeline of the Public Investment Management Information System established under regulation 29 of the Public Finance Management (Public Investment Management) Regulations.

Sub. Leg.

(3) A concept note developed under subregulation (1) shall be submitted to the National Treasury for review and determination whether the project shall be procured under the Act.

(4) Where the National Treasury determines that the project may be procured under the Act, the concept note developed under subregulation (1) shall be submitted to the Directorate for review and approval in accordance with section 25 of the Act

Evaluation of project concept notes.

7. The Directorate shall, when evaluating a project concept note consider—

(a) the mandate of the contracting authority;

(b) the proposed public private partnership structure for the project;

(c) output specifications and requirements;

(d) the proposed financing structure;

(e) the procurement strategy;

(f) demand assessment;

(g) the estimated cost of the project based on—

(i) the prevailing market rates;

(ii) an updated cost of similar projects; and

(iii) international best practices;

(h) key details of the project;

(i) the proposed private sector role in the project;

(j) the operational and strategic benefits of the project;

(k) a preliminary environmental and social assessment;

(l) a description of key project risks and risk allocation under the proposed project, including environmental and social risks;

(m) details of any Government support measure the project may require;

(n) the duration of the proposed project;

(o) the market interest for the proposed project; and

(p) the proposed project's innovation potential.

PART III—PRIVATELY-INITIATED PROPOSALS

Submission of privately-initiated proposals.

8. (1) Where a private party intends to submit a privately initiated proposal under section 40(1) of the Act, the private party shall submit the proposal to the relevant contracting authority in writing, and the proposal shall be accompanied by the information required under section 40(3) of the Act.

(2) The contracting authority shall, within fourteen days after receipt of a privately-initiated proposal under subregulation (1), publish a notice of the proposal—

(a) in at least two newspapers with nationwide circulation; and

(b) on its official website.

(3) The notification referred to under subregulation (2), shall include the following information—

(a) the name of the private party;

(b) a brief description of the proposed project; and

(c) an indication that if any other private party has interest in submitting a similar proposal, the interested party shall submit their intention to do submit a proposal to the contracting authority within twenty-one days from the date of the notice.

Additional requirements of a privately initiated proposal.

9. In addition to the information set out under section 40(3) of the Act, a privately-initiated proposal shall contain the following information—

(a) a detailed description of the constitutive instruments, including the company profile and governance structure, of the private party;

(b) in the case of a consortium of private parties, a notarised binding agreement executed by the consortium's members indicating the lead member and the powers vested in the lead member; and

(c) evidence of similar projects that have been successfully undertaken by the private party.

Justification for using non-compete option.

10. A private party that submits a privately-initiated proposal for a project shall demonstrate in the justification that the project is not suitable for competitive procurement under section 40(3)(j) that—

(a) there is an urgent need for continuity in the construction, development, maintenance or operation of a facility or provision of a service and engaging in a competitive procurement process would be impractical;

(b) the costs relating to the intellectual property in relation to the proposed design of the project are substantial;

(c) there exists only one person or firm capable of undertaking the project, maintaining the facility or providing the service and the person or firm has exclusive rights over the intellectual property, trade secrets or other rights necessary for the construction, operation or maintenance of the facility of provision of the service; or

(d) the proposal is anchored on unique elements.

Submission of the privately initiated proposal to the Directorate.

11. (1) The contracting authority shall, if satisfied that a privately-initiated proposal complies with section 40(2) and (3) of the Act, through the parent Ministry, in the case of a national government entity, or the relevant County Executive Committee member, in case of county government projects, submit the privately-initiated proposal to the Directorate for assessment.

(2) The submission under subregulation (1) shall be accompanied by—

(a) the contracting authority's duly filled checklist form, assessment report, and a written confirmation that the proposal satisfies the criteria set out under section 40(2) and (3) of the Act;

(b) an approval by the respective Cabinet Secretary, if the contracting authority is a national government entity, or county executive committee member, if the contracting authority is a county government entity;

(c) a confirmation that the contracting authority has not received a similar proposal form any other private party to undertake the project;

(d) benchmarking or market testing results;

(e) written justification for why the contracting authority should progress the project through the privately-initiated proposal option;

(f) proof of payment into the Fund of the non-refundable review fee payable under section 40(6) of the Act;

(g) a written declaration stating that the contracting authority has obtained independent advice regarding the privately-initiated proposal and understood—

(i) that the payment of the review fee payable under section 40(6) is not a guarantee that the privately-initiated proposal will be approved; and

(ii) the applicable law, standards and procedures regarding privately-initiated proposals;

(h) a company profile, notarised audited financial accounts for the last three years and evidence of the financial capacity of the private party or each of the consortium's members, if the private party consists of a consortium or private parties;

(i) a statement describing intellectual property rights, confidential information or proprietary data that is not to be made public;

(j) a statement indicating compliance with other relevant laws and Government policies; and

(k) in the case of a privately-initiated proposal by a consortium, a notarised binding agreement executed by the members of the consortium indicating the lead member and the powers vested in the lead member.

Preliminary due diligence of privately-initiated proposals.

12. (1) A contracting authority shall, in accordance with section 42(5) of the Act, and in consultation with the Directorate, constitute an evaluation committee to conduct—

(a) preliminary due diligence of the private party and

(b) undertake the evaluation of the privately-initiated proposal

(2) The evaluation committee shall comprise—

(a) representatives of the contracting authority;

(b) officers of the Directorate; and

(c) the relevant Government departments necessary to undertake the evaluation of the project.

(3) The evaluation committee shall undertake the due diligence of the private party within twenty-one days from the date of appointment and thereafter, undertake the evaluation of the privately-initiated proposal.

(4) The chairperson of the evaluation committee shall be appointed by the contracting authority.

(5) The Directorate shall, pursuant to section 41 of the Act, in co-ordination with the contracting authority, conduct due diligence on the private party whether constituted as a single entity or as a consortium.

(6) Where the private party is a consortium, the evaluation committee shall conduct due diligence on each member of the consortium.

(7) The Directorate shall retain the right to appoint an independent expert to undertake the due diligence of a private party and evaluation of a privately-initiated proposal and where it appoints an independent expert, the

Directorate shall do so in consultation with the contracting authority

(8) A private party or consortium of private parties shall, for purposes of undertaking a detailed assessment of the due diligence elements as provided for under section 41 of the Act, submit a written undertaking confirming that it complies with the due diligence requirements and, in this regard, provide—

(a) the corporate and governance structure of the private party containing —

(i) its layered and non-layered ownership structure and all affiliates;

(ii) the registered place of business of the private party;

(iii) corporate identity of the private party and the relationship with its affiliates;

(iv) a declaration that the proposed project is compatible with the objects of the private party and its affiliates;

(v) the certificate of incorporation or registration in its country of incorporation, and the articles of incorporation and by-laws proving that the private party has the capacity to submit the privately-initiated proposal and to enter into a project agreement with the contracting authority; and

(vi) a list of shareholders, shares held and directors of the private party and its affiliates;

(b) a notarized declaration that the private party or each member of the consortium has not been debarred or disqualified by any country or international organization from participating in public private partnerships pursuant to administrative suspension or debarment proceedings;

(c) a notarized declaration that the private party or each member of the consortium is not corrupt, has not engaged in acts of corruption, and has not been sued or convicted on account of acts of corruption;

(d) a notarized declaration that the private party or each member of the consortium is not insolvent, has no insolvency proceedings instituted by or against the private party or member of the consortium, its directors, shareholders or its affiliates, is not under receivership or bankrupt and its affairs are not being administered by a court or judicial officer;

(e) an updated tax compliance certificate to be provided by the private party or each member of the consortium in all jurisdictions in which the private party or member of the consortium has a tax presence and in the home countries;

(f) a certificate evidencing payment of social security and employment benefits or contributions by the private party or each member of the consortium in the jurisdictions of operation and registration;

(g) performance track record of the private party or each member of the consortium and affiliates of the private party or member of the consortium on other transactions and confirm whether there exist any instances of non-performance or failed projects arising from its actions or inactions;

(h) a notarized declaration that its business activities have not been suspended, and it is not subject to any proceedings for receivership, insolvency or any other analogous process;

(i) litigation history of the private party or each member of the consortium and its affiliates, and the measures that the private party or each member of the consortium took or intends to take to mitigate escalation of the disputes, if any;

(j) audited financial statements of the private party or each member of the consortium for the three years preceding the privately-initiated proposal that give a clear picture of its financial position and capacity to meet its obligations under the project agreement;

(k) in the case of a consortium, a list of the members of the consortium and their respective expertise and the consortium agreement or memorandum of understanding;

(l) evidence of previous projects, including relevant technical experience, capital expenditure, location and role played in the previous projects;

(m) a declaration of how the private party and each member of the consortium will align the project with the legal and institutional framework of the respective sector; and

(n) a report, which shall form part of the evaluation report developed following the evaluation conducted pursuant to section 42 of the Act.

Submission of additional information during evaluation of a privately initiated proposal.

13. (1) Where a private party is required to submit additional information or clarification, such information shall be provided within fourteen days from the date of such request.

(2) The period referred to under subregulation (1), shall not be included in the computation of the ninety days period set out under section 42 (5) of the Act.

(3) A contracting authority may, at the request of a private party, extend the timeframe referred to under subregulation (2), subject to sufficient justification provided by the private party.

Preparation of a detailed assessment reports.

14. (1) The members of the evaluation committee shall execute the evaluation report and, where a member of the committee does not agree with the contents of the report, that fact shall be included in the report specifying the reasons thereof.

(2) A contracting authority shall, for purposes of a detailed assessment of an evaluation report, submit the report to the Directorate.

(3) The Directorate shall, upon assessment of the report received under subregulation (2), provide recommendations, if any, in respect of the proposal.

Committee approval of privately-initiated proposal evaluation reports.

15. (1) The Committee shall not approve a privately-initiated proposal evaluation report unless there is—

(a) evidence from benchmarking or market testing has been conducted by the contracting authority that establishes that the project can be delivered at a fair market price;

(b) a reasonable justification for why the project is not suitable for open competitive procurement;

(c) a disclosure of Government support measures the proposed project may require;

(d) evidence that the private party has paid the non-refundable proposal review fee under section 40(6) of the Act; and

(e) a due diligence report confirming fulfilment of the requirements under section 41 of the Act.

(2) The Committee may, within seven days after receipt of a report on a privately-initiated proposal, request the Directorate to clarify any matter set out in the proposal or provide additional information relating to the proposal.

(3) The period under subregulation (2) shall not be included when computing the fourteen-day period provided for under section 42(7) of the Act.

(4) An approval of the proposal under section 42(7) shall not create any obligation or impose any liability on the Directorate, contracting authority or Government towards the private party.

(5) Where the Committee approves a privately initiated proposal, the contracting authority shall, by notice in at least two newspapers of national circulation and on the Committee's website, notify the public that the proposal has been approved to progress to the project development phase.

Project development agreement.

16. (1) Subject to section 43(6) of the Act, a contracting authority and private party may, within twenty-one days from the date of approval of the privately initiated proposal under regulation 15 but before commencing the project development phase, enter into a project development agreement.

(2) The project development agreement between a contracting authority and the private party shall form part of the activities to be completed in accordance with section 43(2) of the Act.

(3) The requirements of section 43(7)(c) shall apply where a contracting authority and a private party do not enter into a project development agreement.

Extension of project developm ent phase

17. (1) Where the contracting authority requests for the extension of time under section 43(3) of the Act, the contracting authority shall submit the application in writing to the Directorate at least thirty days before the expiry of the period of six months prescribed under section 43(2).

(2) Subject to section 43(3) of the Act, there shall be no further extension after a contracting party and a private party have agreed on a new timeframe for the completion of the project development phase.

Evaluation of project development documents

18. (1) The privately initiated proposal evaluation committee may perform the role of a project development evaluation committee in accordance with these Regulations

(2) The privately initiated proposal evaluation committee shall, within seven days of conclusion of the project development evaluation report, submit the report to the Directorate.

(3) Subject to section 44(5) of the Act, where an evaluation has been undertaken and the contracting authority determines that the project is to proceed to open competitive tender after approval of the evaluation, the contracting authority shall prepare tender documents for the bidding process within seven days.

Restructuring of a project during project development.

19. (1) Where a contracting authority restructures a project on the same subject matter in accordance with section 43(12) of the Act, the contracting authority may request the private party to resubmit the documents for fresh review in accordance with section 40 of the Act.

(2) A resubmission under subregulation (1) shall not constitute a fresh submission and shall not require the payment of review fees by the private party.

Publication of the feasibility study reports.

20. (1) Subject to section 43(14) of the Act, the contracting party shall publish feasibility study reports and project documentation in at least two newspapers of national circulation and on the contracting authority's website.

(2) A feasibility study report published under subregulation (1) may be subject to reasonable confidentiality agreements as the Directorate may determine.

Determination of the procurement method by the contracting authority.

21. (1) Subject to section 44(1) of the Act, the accounting officer of a contracting authority shall, for purposes of justifying direct negotiation with a private party, provide a written declaration to the Directorate confirming that—

(a) the proposal does not generate market interest under competitive procurement;

(b) the proposal is anchored on unique elements; or

(c) direct negotiations are justified in the public interest.

(2) A contracting authority may elect to utilise the restricted tendering process only where—

(a) a feasibility study has been undertaken; and

(b) the contracting authority has issued a request for proposal to potential bidders.

(3) Subject to section 44(4), (5) and (6) of the Act, a private party that submits the most responsive bid shall be awarded the tender.

Negotiations between the contracting authorities and private parties.

22. (1) Where a project is procured pursuant to section 40 of the Act, the negotiation committee appointed in respect of the project shall be composed of the members of the private initiated proposal evaluation committee constituted under regulation 7.

(2) A private party and contracting authority or authorities shall conduct direct negotiations on a privately-initiated proposal within six months in accordance with section 44 (2) and (3) of the Act.

(3) The negotiations shall be deemed to have commenced on the date the representatives of the contracting authority and private party first meet.

(4) Where direct negotiations are not completed within six months, the negotiations between a contracting

authority and private party shall be terminated in line with section 44(3) of the Act.

(5) The negotiations between the negotiating committee and a private party—

(a) shall cover the technical, commercial, legal, social, environmental, local content and financial terms of the project agreement; and

(b) may be subject to any limitations that may be expressly set out in the approvals issued under section 43(11)(a) of the Act.

(6) The negotiations between a contracting authority and private party and the outcomes thereof shall not—

(a) alter the financial structure of the project; and

(b) affect the conditions applying to privately initiated proposals.

(7) The contracting authority and a private party may, by agreement in writing, adjust the prices relating to a privately initiated proposal during negotiations to account for changes in the foreign exchange rate or changes due to inflation and such an adjustment shall not be deemed to be a price increase adjustment.

(8) The outcome of negotiations between a contracting authority and private party shall be the project and risk assessment report and the draft project agreement, and the documents shall be initialled on each page by representatives of the parties.

Consideration of project and risk assessment reports and draft project agreements.

23. (1) The negotiating committee shall, upon concluding the negotiations under section 57 of the Act, submit to the contracting authority—

(a) the draft initialled project agreement in respect of the project;

(b) the project and financial risk assessment report in respect of the project; and

(c) the negotiating committee's recommendations.

(2) Where the contracting authority is satisfied with the recommendations of the negotiating committee, the contracting authority shall submit the initialled project agreement between the contracting authority and private party and the project and financial risk assessment report to the Directorate for assessment.

(3) Where the Directorate is not satisfied with the recommendations of the negotiating committee, the Directorate shall in writing, notify the contracting authority specifying the reasons thereof and making recommendations on how to address the reasons for the Directorate's dissatisfaction.

(4) Where the contracting authority has been notified by the Directorate of its dissatisfaction with the recommendations of the negotiating committee, the contracting authority shall, within twenty-one days thereof, refer the initialled project agreement and project and financial risk assessment report to the negotiating committee together with the Directorate's recommendations for review.

(5) Where the Directorate is satisfied with the recommendations of the negotiating committee, the Directorate shall submit the initialled project agreement, the project report and financial risk assessment report and its recommendations thereon to the Committee for approval.

(6) The Committee shall consider the initialled project agreement, and the project and financial risk assessment report submitted to it under section 59 of the Act and, if satisfied, approve the execution of the project agreement between the contracting authority and the successful private party.

Notification of project agreement approval.

24. The Committee shall, within fifteen days after approval of a project agreement and the project and financial risk assessment report by the Committee, notify the contracting authority in writing of the approval.

Approval of project agreement by the Attorney-General and notification to Cabinet.

25. (1) A contracting authority shall prepare the draft of the project agreement between the contracting authority and the private party approved by the Committee and submit it to the Attorney-General for legal clearance.

(2) Upon legal clearance of the project agreement by the Attorney-General, the contracting authority shall present the project agreement to the private party for execution.

(3) The contracting authority shall notify the Cabinet, in writing, of the Committee's approval and legal clearance by the Attorney-General of the project agreement between the contracting authority and private party.

Publication of project agreements.

26. (1) The accounting officer of a contracting authority shall, within thirty days of execution of a project agreement, cause a notification of the execution of the project agreement to be published in accordance with section 69 of the Act.

(2) The notification under subregulation (1) shall—

(a) specify the name of the private party; and

(b) include a summary of the essential terms of the project agreement as provided in section 69(1) of the Act.

Commencement of a project.

27. (1) A private party that executes a project agreement with a contracting party shall commence the project within twelve months from the date of execution of the project agreement.

(2) Where the private party fails to commence the project after the execution of the project agreement within the period specified in subregulation (1), the contracting authority shall terminate the project agreement, and no liability shall attach to the contracting authority or the Government as a consequence of the termination.

Contract management of privately-initiated proposals.

28. The contract management process for privately initiated proposals shall be as provided under section 73 of the Act.

PART IV—PROJECT COMPANIES

Project companies.

29. Where a project company is incorporated for the purposes of undertaking a project under the Act, the project company shall not be incorporated for any other purpose except for the purpose of undertaking the project.

Performance security.

30. (1) A project company shall provide a performance security in relation to a project in the manner specified in the project agreement before expiry of the validity of the bid security provided by the private party.

(2) The performance security provided by the project company under subregulation (1) shall be—

(a) in the form of an unconditional and irrevocable letter of guarantee in favour of the contracting authority—

(i) issued by a large bank in Kenya that is regulated and licensed by the Central Bank of Kenya; or

(ii) issued by a reputable international bank accepted by the contracting authority, and forwarded by a local large bank in Kenya regulated and licensed by the Central Bank of Kenya; and

(b) a written undertaking by the issuing bank under subregulation (1) to pay the contracting authority on the first formal claim for payment by the contracting authority, regardless of any objection by the project company or private party.

(3) The value of a performance security shall not be altered for the duration specified in the tender documents and where the period for the completion of the project has been extended, the period of validity of the performance security shall be extended to cover the extended period.

(4) The value of a performance security during the construction phase of a project shall be a percentage of the annual value of the construction works specified in the financial offer.

(5) Subject to subregulations (2), (3) and (4), the contracting authority may prescribe such other performance security arrangements that may be appropriate or may be specified in the tender documents during the operation and maintenance phase or service phase of the project.

Bid security.

31. (1) A bid security by a bidder shall be—

(a) in the form of an unconditional and irrevocable letter of guarantee in favour of the contracting authority, issued by a —

(i) bank in Kenya that is regulated and licensed by the Central Bank of Kenya; or

(ii) reputable international bank accepted by the contracting authority, and forwarded by a local bank in Kenya regulated and licensed by the Central Bank of Kenya; and

(b) a written undertaking by the issuing bank to pay the contracting authority on the first formal claim for payment by the contracting authority, regardless of any objection by the bidder.

(2) The bid security shall be valid and enforceable until the issuance of the performance security by the project company incorporated by the private party or termination of the procurement proceedings in accordance with the Act and these Regulations.

PART V—CONTRACT MANAGEMENT AND PROJECT MONITORING

Contract management framework.

32. (1) Each contracting authority that is a party to a project agreement, shall pursuant to section 73(1) of the Act, and in consultation with the relevant sector regulators and Directorate, establish and implement a contract management framework.

(2) A contract management framework under subregulation (1) shall be approved by the accounting officer of the contracting authority within thirty days after the execution of the project agreement between the contracting authority and private party.

(3) The implementation of the contract management framework shall commence immediately after the approval by the accounting officer under subregulation (2).

(4) The contract management framework established under subregulation (1) shall comprise—

(a) a contract management strategy outlining—

(i) the strategic approach to project oversight;

(ii) realisation of performance expectations;

(iii) communication and stakeholder engagement, relationship management; and

(iv) allocation of dedicated resources including skilled personnel, financial resources and technological tools;

(b) a strategic governance structure defining the overall project oversight arrangements, including—

(i) the project management approach;

(ii) knowledge and information management arrangements;

(iii) clear reporting lines and systems;

(iv) decision-making authorities; and

(v) dispute management systems;

(c) a performance monitoring framework for measuring project outputs against agreed key performance indicators that includes mechanisms for—

(i) data collection;

(ii) verification of service standards; and

(iii) the linkage of performance results to the applicable service payment mechanism or deduction, where relevant;

(d) a change and variation management system for the identification, assessment, approval and documentation of proposed modifications to the project scope or contractual obligations;

(e) a contract management plan outlining the approach to manage the project throughout its lifecycle;

(f) a contract administration manual providing detailed procedures for day-to-day administration, including obligations tracking, payment processes, communication protocols and change management; and

(g) a risk management framework to identify, assess and mitigate project risks including emerging project risks.

Contract administration manual.

33. The contract administration manual required under regulation 31(4)(f) shall include the following—

(a) governance and administrative authority which shall—

(i) identify the roles and contact details of authorised representatives; and

(ii) contain a delegated authority matrix specifying approval thresholds for financial decisions, contract variations and issuance of formal notices;

(b) communication and relationship management procedures including procedures for—

(i) formal correspondence;

(ii) standard templates for contractual notices; and

(iii) a schedule for performance review meetings, stakeholder engagement activities and grievance management processes;

(c) financial administration and payment verification procedures including procedures for—

(i) reviewing and validating payment claims;

(ii) verification of performance data against output specifications; and

(iii) the application of relevant indexation, adjustment and deduction mechanisms;

(d) performance oversight and quality assurance procedures including procedures for—

(i) monitoring service delivery;

(ii) frequency of inspections;

(iii) technical audits where applicable; and

(iv) the collection and verification of performance data against key performance indicators;

(e) change control and variation procedures including procedures for—

(i) managing modifications to the project scope, including;

(ii) documentation requirements;

(iii) assessment processes and approval protocols for contract variations;

(iv) assessment processes; and

(v) approval protocols for contract variations;

(f) risk and dispute resolution procedures providing mechanisms for reporting emerging risks, notifying crystallized events and escalating administrative disputes in accordance with the dispute resolution provisions of the project agreement; and

(g) knowledge and information management providing procedures for maintaining project documentation, including asset registers, variation records and other relevant contract records required for effective oversight, audit and eventual asset hand-back.

Contract management plan.

34. (1) A contracting authority shall prepare a contract management plan for a project under the Act.

(2) The contract management plan under subregulation (1) shall be a project-specific implementation document translating the contract management framework and contract administration manual into day-to-day operational arrangements.

(3) The contract management plan under subregulation (1) shall contain details of—

(a) the project execution plan;

(b) specific performance indicators;

(c) risk allocation schedules;

(d) project milestones; and

(e) resource assignments required to ensure the successful delivery of the project throughout the project lifecycle.

(4) The contract management plan under subregulation (1) shall include the following information—

(a) project-specific governance and resource allocation details including the —

(i) designation of a contract manager; and

(ii) identification of the technical, legal, financial and other relevant personnel assigned to the project team, and their responsibilities;

(b) performance monitoring and output specifications setting out a detailed schedule of project-specific key performance indicators defining—

(i) the objective metrics for service delivery;

(ii) the frequency of specific data collection cycles; and

(iii) the methodologies for calculating project payments and performance-linked deductions;

(c) milestone and deliverable tracking farmework providing a comprehensive timeline for the project lifecycle, identifying critical milestones, construction deadlines, service commencement dates, and reporting schedules;

(d) a project-specific risk register identifying retained, shared and transferred risks, and risk mitigation and contingency measures;

(e) stakeholder engagement arrangements identifying key stakeholders and communication protocols applicable to the project including public information disclosure as required by the strategic governance strategy;

(f) maintenance schedules required to ensure the asset meets the prescribed hand-back condition at the end of the contract term;

(g) financial and asset management information, including relevant payment administration details and asset management considerations necessary to support oversight of the project, maintenance schedules required to ensure the asset meets the prescribed hand-back condition at the end of the contract term;

(h) specific change-notice and variation logs providing the initial baseline for the project scope against which any subsequent variations, compensation events, or relief events shall be measured, tracked and audited for value-for-money compliance; and

(i) records of variations and change events, including procedures for documenting and tracking any modifications to the project scope or contractual obligations and audited for value-for-money compliance.

Implementation of the contract administration manual and the contract management plan.

35. The contract administration manual under regulation 32 and contract management plan under regulation 33 shall be established and implemented—

(a) at least ninety days before financial close; or

(b) where the period between commercial close and financial close is less than ninety days, within such shorter period as may be agreed between the contracting authority and private party in writing:

Provided that in no case shall the time taken to establish the contract administration manual and contract management plan exceed ninety days.

Strategic governance structure.

36. A contracting authority shall establish a strategic governance structure that shall define the mandatory professional competencies, reporting lines, and decision-making authorities required for project oversight.

Contract management team.

37. A contracting authority shall constitute a specific contract management team comprising—

(a) a contract director;

(b) a contract manager;

(c) a contract administrator;

(d) an engineering expert;

(e) a legal expert;

(f) an information technology expert; and

(g) a person with knowledge of environmental and governance matters.

Project implementation.

38. Pursuant to section 73(6) of the Act, the Directorate shall monitor and guide a contracting authority on the implementation of a project under the Act by—

(a) reviewing the contract management plan and contract administration manual developed by the contracting authority to ensure conformity with the Act and these Regulations;

(b) maintaining a central repository of project performance data, fiscal liabilities and lessons learnt;

(c) providing technical support on complex contractual matters including variations, refinancing, and dispute avoidance and resolution processes;

(d) reviewing project implementation reports submitted by the contracting authority and providing feedback;

(e) maintaining oversight of contingent liabilities and the accounting and budgetary aspects of the project in accordance with to section 19(2)(i) of the Act;

(f) participating in project inspections and monitoring activities;

(g) co-ordinating the conduct of periodic project performance reviews and evaluations;

(h) conducting research and publishing findings pursuant to section 19(2)(j) of the Act;

(i) undertaking capacity building for contracting authorities on matters relating to contract management;

(j) guiding contracting authorities on knowledge management for projects;

(k) preparing and submitting the projects reports required under the Act; and

(l) providing support in the co-ordination and resolution of emerging issues by offering inter-agency liaison services that facilitate the timely mitigation of emerging issues.

Monitoring performance of contracting authorities.

39. (1) Pursuant to section 73(8) of the Act, and in co-ordination with the Directorate, a sector regulatory authority shall monitor the project's compliance with the relevant regulatory requirements.

(2) Monitoring by a sector regulatory authority under subregulation (1) shall include—

(a) issuing and administering relevant licences, permits and approvals required for the implementation and operation of the project;

(b) monitoring compliance with applicable service standards, technical requirements and other regulatory obligations;

(c) reviewing reports and information submitted by the project company, contracting authority or Directorate in accordance with regulatory requirements and facilitating the timely consideration and resolution of matters within its regulatory mandate relating to the project;

(d) issuing notices of regulatory or legal changes or issues affecting projects undertaken under the Act in a timely manner to allow the project company, contracting authority or Directorate reasonable time to comply;

(e) undertaking audits, where necessary, to verify compliance with regulatory obligations;

(f) providing guidance or training to the project company, contracting authority or Directorate, where necessary, to support compliance with regulatory requirements;

(g) undertaking inspections or audits, where necessary, to verify compliance with applicable regulatory obligations;

(h) addressing regulatory breaches or non-compliance in accordance with the applicable laws and regulatory procedures; and

(i) providing periodic updates to the Directorate and the contracting authority on matters relating to regulatory compliance of the project.

Reports on project implementation.

40. (1) Pursuant to section 73(1)(e) of the Act, a contracting authority shall, within fifteen days after the end of the second and fourth quarters of the financial year, prepare and submit to the Directorate a report on the status of all projects under implementation.

(2) The report submitted under subregulation (1) shall include—

(a) performance against the key performance indicators;

(b) updated risk registers and mitigation actions taken;

(c) the status of contingent liabilities and their potential fiscal impact; and

(d) stakeholder engagement activities and community feedback.

(3) Pursuant to section 73(1)(f) of the Act, the contracting authority shall, on a quarterly basis , submit to the Directorate the reports outlined in the project agreement.

PART V—INDEPENDENT EXPERTS

Appointment of independent experts.

41. (1) Subject to section 73(2), the appointment of an independent expert shall be undertaken within six months from the date of signing the project agreement.

(2) The term of appointment of an independent expert shall expire on the second anniversary of the project's construction completion date, unless the parties agree, in writing, for an extension of the appointment.

(3) The parties shall, before the expiration of the term of appointment of an independent expert, meet to determine whether the appointment should be extended or allowed to expire.

(4) The terms of reference for an independent expert shall include—

(a) verifying that the private party has fulfilled specific construction-related requirements, technical specifications, and quality standards as outlined in the project agreement;

(b) reviewing and certifying the completion of commissioning tests, delivery of project milestones, and the achievement of commercial operation dates to facilitate the transition from the construction phase to the operational phase;

(c) certifying the validity of invoices presented by the private party for payment;

(d) undertaking periodic checks, site visits, and inspections to verify that the private party's construction and maintenance activities comply with the executed project agreement and applicable laws; and

(e) providing technical assessments, fact-finding reports, or non-binding recommendations to assist the project parties in resolving technical or performance-related issues before they escalate into formal disputes.

(5) A contracting authority shall, in co-ordination with the Directorate, monitor the performance of the independent expert and may, where the independent expert fails to discharge duties professionally or impartially, direct the contracting authority and private party to

terminate the appointment and appoint another independent expert.

PART VII—ACCOUNTS AND AUDIT

Auditing accounts of the project company.

42. (1) Pursuant to section 82(1) of the Act, a project company shall keep proper and complete financial records and documents relevant to all the transactions carried out by the company during the reporting period.

(2) The records kept under subregulation (1) shall include cash books, bank statements and ledgers and records necessary for the proper maintenance and production of the accounts.

(3) Project accounts and financial records shall be retained for a minimum period of seven years after the expiry of the project agreement and be available for audit during such period.

(4) A project company shall, within three months after the end of each financial year, prepare and submit its books and records of accounts to the Auditor-General or appointed an auditor appointed by the project company with the approval of the Auditor-General.

(5) The Auditor-General or auditor appointed by the project company shall audit the accounts of a project company to the extent that public funds are involved in accordance with Article 229 of the Constitution.

(6) Pursuant to section 82(3) of the Act, counterpart funding by a contracting authority may include—

(a) payment for land acquisition and compensation;

(b) viability gap funding;

(c) initial capital contribution;

(d) payment for relocation of utilities; and

(e) shadow tolls or availability payments.

(7) The Auditor-General shall carry out assessment of any deviations from the agreed financial model and whether project outputs meet agreed performance standards.

(8) The Auditor-General, contracting authority and Directorate shall have the authority to—

(a) access all public private partnership agreements and related documents, financial models, and records of the contracting authority;

(b) access records of the private party or project company relevant to public funds and obligations; and

(c) conduct site inspections and performance verification and obtain explanations from officials and private partner representatives.

(9) Pursuant to section 82 (4) of the Act, a project company shall seek approval from the Directorate for appointment of a reputable audit firm to audit its accounts where all the monies for a project are provided by a private party.

(10) Public private partnership contracts shall include clauses requiring the private party to—

(a) maintain proper books of accounts;

(b) provide auditors access to financial, operational, and technical data and project management systems; and

(c) allow inspection of project facilities.

(11) The Directorate shall periodically audit the public private partnership project's performance, payment mechanisms, compliance and ensure their effective implementation.

(12) Pursuant to section 82 (5) of the Act, the project company shall, after the end of each financial year, prepare and submit to the contracting authority and Directorate, a financial statement in compliance with the minimum accounting standards.

(13) The financial statement prepared under subregulation (12) shall include —

(a) statement of income and expenditure;

(b) statement of cash flows;

(c) statement of debt which is outstanding at the end of the financial year;

(d) statement of the entity's assets and liabilities as at the end of the financial year;

(e) statement of the accounting policies followed in preparing the financial statement; and

(f) statement of the performance against predetermined standards.

Made on the 25/6/, 2026.

JOHN MBADI NG'ONGO
Cabinet Secretary for the National Treasury.