



LEGAL NOTICE NO.....

THE PUBLIC PRIVATE PARTNERSHIPS ACT
(*Cap. 430*)

IN EXERCISE of the powers conferred by section 89 of the Public Private Partnership Act, the Cabinet Secretary responsible for matters relating to finance, makes the following Regulations—

**THE PUBLIC PRIVATE PARTNERSHIPS
(GENERAL) REGULATIONS, 2026**

PART I —PRELIMINARY PROVISIONS

- Citation. 1. These Regulations may be cited as the Public Private Partnerships (General) Regulations, 2026
- Interpretation. 2. In these Regulations, unless the context otherwise requires—
- Cap. 412A. “accounting officer” has the meaning assigned to it in section 2(1) of the Public Finance Management Act;
- “county corporation” has the meaning assigned to it in section 2(1) of the Public Finance Management Act;
- Cap. 265. “county executive committee” has the meaning assigned to it in section 2 of the County Governments Act;
- “county executive committee member” means the member of a county executive committee responsible for matters relating to finance;
- “Directorate” means the Directorate of Public Private Partnerships established under section 15 of the Act; and
- “material change” include any change concerning affordability, value for money or substantial technical, operational, legal and financial risk transfer.
- Application. 3. These Regulations shall apply to contracts for the design, financing, construction, operation, equipping or maintenance of a project under the Act.
- Object of the Regulations. 4. The object of these Regulations is to harmonise and standardise the procedure for the procurement, implementation and execution of projects.
- PART II—PUBLIC PRIVATE PARTNERSHIPS
COMMITTEE**
- Qualifications of the members of the Committee. 5. (1) A person qualifies for appointment as a member of the Committee under section 6(1)(e) and (f) of the Act if that person—
- (a) is a Kenyan citizen;

- (b) has not been convicted of an offence involving corruption; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(2) In addition to the qualifications under subregulation (1), a person qualifies for appointment as a member of the Committee under section 6(1)(e) of the Act if that person is a public officer.

(3) The members of the Committee appointed under section 6(1)(f) of the Act shall hold office for a term of three years and may be reappointed for a one further term of three years.

Filling vacancies in the Committee.

6. Where a vacancy occurs in the office of a member of the Committee appointed under section 6(1)(e) or (f) of the Act, the vacancy shall be filled in accordance with the Act.

PART III—PROJECT PREPARATION AND APPRAISAL

Project identification, selection and prioritisation team.

7. (1) Pursuant to sections 19(1) and 30 (1) of the Act, there shall be a project identification, selection and prioritisation team which shall consist of the contracting authority and the Directorate.

(2) The team appointed under subregulation (1), shall be the project implementation team.

Project implementation teams.

8. (1) Pursuant to section 31 of the Act, a project implementation team constituted by a contracting authority shall comprise—

- (a) four representatives of the contracting authority one of whom shall be the chairperson;
- (b) three representatives of the Directorate; and
- (c) two representatives from the respective parent ministry,

provided that the contracting authority may vary the representatives based on the nature and necessity of the project in the instrument of appointment.

(2) The contracting authority shall appoint a Secretary to support the project implementation team in the performance of its functions.

Feasibility studies.

9. (1) In addition to the considerations listed under section 32(2) of the Act, a contracting authority shall, in undertaking a feasibility study, provide—

- (a) an explanation of the strategic and operational benefits of the proposed project for the contracting authority in terms of its strategic objectives and government policy;

- (b) the proposed allocation of financial, technical, operational and legal risks between the parties;
- (c) any financial commitments of the contracting authority and a demonstration on the affordability of the project for the contracting authority;
- (d) the capacity of the contracting authority to procure, implement, manage, enforce, monitor and report on the project;
- (e) environmental and social impact assessments, including any impacts of the project relating to climate change and mitigation measures to be taken during and after implementation of the project;
- (f) the integration of climate change vulnerability assessments, and relevant adaptation and mitigation actions;
- (g) a detailed stakeholder engagement and communication plan; and
- (h) a local content plan.

(2) The Directorate shall, within twenty-one days after receipt of the feasibility study report—

- (a) consider and evaluate the report; and
- (b) submit an evaluation report and its recommendations to the Committee for approval in accordance with section 33 (3) of the Act.

(3) The Directorate shall in writing and with reasons, notify the contracting authority, where it determines that the feasibility study report submitted and evaluated under subregulation (2), does not satisfy the requirements of the Act.

Assessment
Criteria for
evaluation for the
feasibility study.

10. Subject to section 33 of the Act, the Directorate shall in evaluating a feasibility study report, consider—

- (a) affordability assessment;
- (b) value for money assessment;
- (c) public private partnerships suitability;
- (d) risk assessment including environment and climate change assessment;
- (e) risk allocation;
- (f) land availability; and
- (g) legal assessment.

Determination of
the public private
partnership
Committee

11. (1) The Committee shall consider the feasibility study report and the evaluation report submitted by the Directorate and shall within twenty-one days from the date of receipt of the evaluation report either—

- (a) approve the feasibility study report; or
- (b) reject the feasibility study report.

Approval of
feasibility reports
by the Committee.

12. (1) Where the Committee approves a feasibility report pursuant to section 33(3) of the Act, the Committee shall inform the contracting authority through Directorate, in writing, of the approval and authorise the contracting authority to procure the project pursuant to the provisions of the Act.

(2) Where the Committee rejects the feasibility study, notify, the contracting authority of its decision, specifying the reasons for the rejection, and recommend to the contracting authority the necessary measures to be undertaken for the feasibility study report to be approved.

(3) The contracting authority shall where it intends to resubmit a feasibility report for approval by the Committee, comply with the recommendations of the Committee, and resubmit the revised feasibility study report within ninety days after the receipt of the notification under subregulation (2).

(4) The Committee shall, within twenty-one days after receipt of the revised feasibility study report prepared pursuant to subregulation (3), consider the report, and notify the contracting authority of its decision of whether or not the contracting authority may proceed to procure the project.

(5) The contracting authority may in writing request the Committee to extend the period for resubmission of the revised feasibility report, where it is unable to comply with the time lines set out under subregulation (3).

(6) The contracting authority shall where there is a material change after a feasibility study report has been approved—

- (a) in writing, inform the Committee through the Directorate, of its intention to revise the feasibility report specifying the details of the intended revision including a statement on the purpose and impact of the intended revision on the affordability, value for money and risk transfer evaluation contained in the feasibility study; and

- (b) submit the revised feasibility study report to the Committee for consideration and approval.

(7) The contracting authority shall not procure the project under the Act until the Committee notifies the contracting authority of its decision.

(8) Where a contracting authority does not resubmit the feasibility study report pursuant to subregulation (3), the project shall be deemed to have been abandoned.

PART IV—TRANSACTION ADVISORS

Procurement of
transaction
advisors.

13. (1) The procurement and appointment of a transaction advisor under section 34(2) of the Act, shall be undertaken after the appointment of the project implementation team appointed pursuant to section 31(1) of the Act.

Cap. 412C.

(2) The procurement of transaction advisors by the contracting authority or through the Project Facilitation Fund, shall be in accordance with the Public Procurement and Asset Disposal Act.

(4) The procurement of transaction advisors through other means other than those contemplated under subregulation (2), shall be in accordance with the procurement regime of the development partner or sponsoring agency

Role of transaction
advisors.

14. A transaction advisor procured under section 34(2) of the Act, shall in accordance with the terms of reference agreed upon with the contracting authority, advise the contracting authority on—

- (a) the development of a feasibility study;
- (b) the preparation and evaluation of tender documents;
- (c) carrying out due diligence activities for the project;
- (d) market sounding;
- (e) the structuring of the project;
- (f) the negotiation process with the preferred bidder;
- (g) the management of technical, financial, legal, and socio-environmental risks matters in relation to the project;
- (h) financial close; and
- (i) the development of a contract management framework for the project and monitoring tools.

Supervision of
transaction
advisors.

15. Where the Directorate procures a transaction advisor in accordance with section 34(4) of the Act—

- (a) the Fund shall bear the cost of procuring the transaction advisor; and
- (b) the Directorate shall, in consultation with contracting authority, supervise the transaction advisor in the performance of the transaction advisor's functions in accordance with the terms of reference.

PART V—DIRECT PROCUREMENT OF PROJECTS

Requirements for direct procurement.

16. A contracting entity shall in procuring for a project through a direct procurement method under section 38 of the Act —

- (a) comply with the conditions set out in section 38 of the Act;
- (b) record the reasons upon which it determined that the conditions set out in section 38 of the Act have been satisfied;
- (c) provide details of the proposed private party including the name, address and beneficial ownership information of the private party;
- (d) negotiate—
 - (i) in accordance with the provisions of the Act and these Regulations; and
 - (ii) in a manner that ensures value for money.

Approval of the use of direct procurement.

17. (1) Subject to section 38 of the Act, a contracting authority intending to undertake a direct procurement shall ensure that a feasibility study has been conducted for the project and that the feasibility study report, recommending utilisation of the direct procurement method, has been approved.

(2) The Directorate shall, within twenty-one days after receipt of the feasibility study report from the contracting authority under subregulation (1), determine whether or not the proposed project may be procured through direct procurement.

(3) If the Directorate is satisfied that the project may be procured through direct procurement, the Directorate shall submit the justification provided by the contracting authority and its recommendations to the Committee for determination.

(4) The Committee shall consider the justification provided by the contracting authority and recommendations of the Directorate and shall, within twenty-one days after receipt of the recommendations from the Directorate—

- (a) approve, if satisfied, by the justification of the contracting authority to use direct procurement method and the selected private party; or
- (b) reject the justification by the contracting authority and the use of direct procurement method for the project.

(5) The Committee shall, through the Directorate, notify the contracting authority in writing of its decision under subregulation (4).

(6) Where the Committee does not approve the use of direct procurement, it shall specify the reasons in writing

and may recommend that the project be procured using an alternative procurement method under the Act or any other relevant written law.

Procedure for
direct
procurement.

18. Where the Committee approves the use of direct procurement method, the contracting authority shall—

- (a) publish in at least two daily newspapers of national circulation, and on its website, a notification on the intended use of the direct procurement method for the development of the project; and
- (b) prepare the tender documents which set out the following—
 - (i) general information relating to the project;
 - (ii) the specifications of the project including technical and financial conditions to be met by the private party;
 - (iii) the specifications of the final product, level of service, and performance indicators to be met by the private party including safety, security, and environmental preservation requirements;
 - (iv) the basic terms of the project agreement, including non-negotiable conditions;
 - (v) the criteria and method to be used in evaluating the tender documents;
 - (vi) the bid security required and the necessary form and amount of the bid security;
 - (vii) the date, time and place for submission of the tender by the private party; and
 - (viii) any other matter that may be necessary for the proper conduct of the tender stage of the project.

Evaluation
committee.

19. (1) The evaluation committee under section 39(b) of the Act, shall be appointed by the accounting officer of the contracting authority, to undertake the evaluation of the tender documents submitted by the private party.

(2) The evaluation committee appointed under subregulation (1) shall comprise the representatives of the—

- (a) contracting authority;
- (b) Directorate;
- (c) sector regulatory body or bodies; and
- (d) any other relevant expert as determined by the contracting authority in consultation with the Directorate.

(3) The accounting officer of the contracting authority shall appoint the chairperson of the evaluation committee and a Secretary to support the evaluation committee.

(4) Where a contracting authority has appointed a transaction advisor for the project, the transaction advisor may be appointed as a member of the evaluation committee to advise on the evaluation or observe the evaluation process.

(5) The evaluation committee shall evaluate the tender documents within thirty days after receipt of the documents from the private party.

(6) The evaluation committee may, through the contracting authority and Directorate, seek approval from the Committee for the extension of the period for the evaluation of tender documents.

Negotiation.

20. (1) The contracting authority shall, in consultation with the Directorate, constitute a negotiating committee in accordance with section 57 of the Act to undertake negotiation of the project with the private party.

(2) The negotiating committee shall, in addition to the members of the evaluation committee appointed under regulation 19(2), comprise—

- (a) a representative of the Attorney-General;
- (b) persons representing relevant State Departments as the contracting authority may consider necessary; and
- (c) the transaction advisor appointed by the contracting authority, or such other professional or consultant as may be determined by the contracting authority, where necessary.

(3) A contracting authority shall, before negotiating the direct procurement of a project, develop criteria for negotiations with the private party and submit the criteria to the Directorate for review.

(4) The criteria developed under subregulation (3) shall include —

- (a) the financing parameters;
- (b) the terms of the contract including non-negotiable terms;
- (c) the terms of delivery of the project;
- (d) risk allocation;
- (e) payment mechanisms and financial structure;
- (f) performance standards and monitoring;
- (g) termination provisions;

(h) legal and governance framework; and

(i) land acquisition and site risk.

(5) The Directorate shall, within twenty-one days after receipt of the criteria from the contracting authority under subregulation (4), determine whether the proposed project may be negotiated using the criteria.

(6) The Directorate shall, if satisfied with the criteria submitted under subregulation (4), submit the criteria together with its recommendations thereon to the Committee for approval.

(7) The Committee shall, on receipt of the criteria under subregulation (6), consider the criteria and the recommendations of the Directorate within fourteen days and, if satisfied, approve the criteria.

(8) The Committee shall, through the Directorate, notify the contracting authority in writing of the approval of the criteria for negotiations.

(9) The Committee shall where it rejects the criteria recommended by the Directorate under subregulation (6), inform the contracting authority in writing and specify the reasons for the rejection.

Principles of negotiation.

21. The negotiating committee shall, when negotiating with a private party—

(a) take all reasonable steps to ensure that the contracting authority obtains value for money in relation to the negotiations;

(b) ensure that the laws relating to public financial management are complied with at all times during the negotiations;

(c) ensure the affordability and value for money proposition for the project; and

(d) take all reasonable steps to prevent any impropriety in relation to the negotiation.

Negotiation of direct procurement projects.

22. The procedure for negotiations provided under sections 57, 58, 59 and 60 of the Act and any guidelines issued under the Act, shall apply, with the necessary modifications, to the negotiation of direct procurement of projects.

PART VI—RESTRICTED BIDDING

Preliminary assessment of restricted bids.

23. (1) A contracting authority may tender for a project under the Act through restricted bidding method if—

(a) the conditions set out in section 45 of the Act have been met;

(b) the contracting authority has conducted a feasibility study of the project; and

(c) the feasibility study of the project has been approved by the Committee.

(2) Where a contracting authority intends to use restricted bidding method to tender for a project under the Act, it shall submit to the Directorate—

- (a) the restricted bidding proposal;
- (b) a statement of the reasons for the intention to use the restricted bidding method; and
- (c) a list of at least two and not more than five proposed restricted bidders.

(4) The Directorate shall, within thirty days after receipt of the submissions under subregulation (2), determine whether the proposed project may be procured through restricted bidding and, if satisfied, submit the proposal and the contracting authority's reasons to the Committee for approval.

(5) The Directorate shall, if not satisfied with the reasons provided by the contracting authority for the proposed use of restricted bidding, notify the contracting authority in writing specifying the reasons for the Directorate's determination.

(6) The Committee shall consider the restricted bidding proposal and recommendation of the Directorate and, if satisfied, approve the restricted bidding for the project and the list of the proposed restricted bidders within twenty-one days from the date of receipt of the proposal from the Directorate.

(7) The Committee shall, through the Directorate, notify the contracting authority in writing of its approval.

(8) The Committee shall, where it does not approve the use of restricted bidding, notify the contracting authority in writing of the Committee's decision and specify the reasons for the non-approval.

Invitation to tender.

24. (1) A contracting authority shall, when procuring a project under the Act, in consultation with the Directorate, prepare an invitation to tender for purposes of inviting bids.

(2) The invitation to tender prepared under subregulation (1) shall include—

- (a) general information relating to the project necessary for the preparation and submission of bids;
- (b) specifications of the project including technical and financial conditions to be met by bidders;
- (c) specifications of the final product, level of service and performance indicators;
- (d) requirements to be met by bidders in respect of safety, security and environmental protection;

- (e) basic terms of the project agreement including non-negotiable terms;
- (f) the criteria and method to be used in evaluating bids;
- (g) forms and documents that to be filled and submitted by bidders;
- (h) value of the bid security required from bidders;
- (i) conditions, procedures and administration of bid clarifications;
- (j) date, time and place for the submission of tender documents by bidders;
- (k) instructions regarding pre-bid conferences, where necessary;
- (l) conditions to be met by any consortiums on permissible changes to a consortium arrangement; and
- (m) procedure to be followed in a competitive dialogue process.

Notices.

25. (1) The contracting authority shall notify in writing or through any other appropriate method the proposed restricted bidders specified in regulation 21(2)(c) of the invitation to tender and the notification shall include all the information set out in regulation 24(2).

(2) The contracting authority shall publish the invitation to tender on its website and the Government portal established for public communication.

Submission of tenders.

26. A bid for a project under this Part shall be undertaken in accordance with sections 51, 52, 53, 54, 55, 56 and 57 of the Act.

PART VII—COMPETITIVE BIDDING

Invitation of requests for qualification.

27. (1) A contracting authority shall, where it intends to procure a project through competitive bidding, invite requests for qualifications from prospective bidders through a notice in at least two newspapers of national circulation and electronic media.

(2) The contracting authority shall specify in the notice under subregulation (1), the qualifications of prospective bidders including—

- (a) technical qualifications;
- (b) financial requirements;
- (c) the bidders' legal capacity to bid; and
- (d) the bidders' relevant experience.

(3) The contracting authority shall provide in the notice under subregulation (1), a description of the bid process

including whether it intends to adopt a two-stage bid process or a single stage bid process.

(4) A contracting authority intending to tender for a project under the Act using competitive bidding may, adopt a two-stage bid process or a single-stage bid process.

(5) Where a contracting authority adopts a two-stage bid process as provided under subregulation (4), the provisions of regulations 28 to 54 shall apply.

(6) Where a contracting authority adopts a single-stage bid process as provided under subregulation (4), the provisions of regulations 33 to 54 shall, with the necessary modifications, apply.

Prequalification committees.

28. (1) An accounting officer of a contracting authority intending to procure a project through competitive bidding shall appoint a prequalification committee in accordance with section 48(1) of the Act.

(2) The prequalification committee shall comprise—

- (a) the members of the project implementation team;
- (b) representatives of the Directorate;
- (c) representatives of the contracting authority; and
- (d) any other qualified person appointed by the contracting authority.

(3) The prequalification committee shall be chaired by a representative of the contracting authority.

(4) The functions of a prequalification committee shall be to—

- (a) advise the contracting authority on any aspect of the prequalification process;
- (b) open, register and evaluate applications by prospective bidders for prequalification; and
- (c) prepare a prequalification evaluation report for the contracting authority.

Evaluation of applications for prequalification.

29. (1) The prequalification committee may, while evaluating an application by a prospective bidder for prequalification, request, in writing, clarifications from the prospective bidder.

(2) A request for clarification under subregulation (1) shall be made through the accounting officer of the contacting authority.

(3) The prequalification committee shall evaluate applications for prequalification within twenty-eight days from the date of submission of the applications.

Preliminary
bidders' meeting

30. (1) A contracting authority intending to procure a project through competitive bidding may hold a preliminary meeting with the prospective bidders to—

- (a) deliberate on issues relating to the project specifications and initial preliminary conditions; and
- (b) address enquiries by the prospective bidders in relation to the project.

(2) The contracting authority shall, in writing, communicate to all bidders any enquiry made by a prospective bidder in respect of the project and the response by the contracting authority.

Shortlist of
prequalified
bidders.

31. (1) The prequalification committee shall evaluate the submitted bids based on the criteria set out in the request for qualifications.

(2) The prequalification committee shall prepare a shortlist of prequalified bidders and submit the shortlist to the contracting authority.

(3) The contracting authority shall notify each applicant in writing of the results of the prequalification process.

(4) The contracting authority shall publish the shortlist of prequalified bidders in at least two newspapers of national circulation, electronic media and through the contracting authority's website.

(5) The prequalification committee shall, shortlist a minimum of two prequalified bidders.

(6) Where the responses received are less than two bids, the contracting authority shall in consultation with the Directorate re-tender the project.

(7) Subject to subregulation (5), the prequalification committee shall evaluate the submitted bids based on the criteria set out in the request for qualification.

(8) The prequalification committee shall after the prequalification process and only if one bid is responsive, notify the contracting authority in writing.

(9) The contracting authority shall consult the Directorate if it decides to re-tender the project.

(10) The contracting authority shall, where it decides to proceed with a responsive prequalified bidder, seek the approval of the Committee.

Alteration of
project
specifications.

32. (1) A contracting authority may, based on the outcome of the preliminary bidders' meeting held under regulation 28, alter the specifications of a project:

Provided that the alteration of the specifications of the project shall not operate to disqualify any shortlisted prospective bidder.

(2) The accounting officer of the contracting authority shall, in writing, notify all the shortlisted bidders of the altered specifications of the project within seven days after the alterations are made.

(3) Where a contracting authority alters the specifications of a project, the contracting authority shall invite bids for the project based on the altered specifications.

Tender documents.

33. (1) A contracting authority intending to procure a project using the competitive bidding method may delegate to the project implementation team constituted under regulation 8 the preparation of tender documents.

(2) In addition to the information required under section 50(2) of the Act, tender documents shall include the following information—

- (a) the validity period of the bids;
- (b) the value of bid security;
- (c) the performance bond;
- (d) the validity period of a performance bond;
- (e) whether the competitive dialogue procedure will be used;
- (f) the deadline for receiving bids;
- (g) where the tender documents may be collected from;
- (h) the scoring system to be applied in the evaluation of bids, where applicable;
- (i) the criteria for assessing technical bids and the threshold each technical bid should meet;
- (j) the criteria for ranking the successfully evaluated bids;
- (k) the criteria for evaluating and comparing financial bids;
- (l) the mode of submission of bids specifying whether the submission shall be done electronically or manually or both means; and
- (m) the circumstances under which a bid may be rejected.

Issuance of tender documents and invitation to tender.

34. The accounting officer of a contracting authority shall—

- (a) issue the tender documents to the prequalified bidders; and

- (b) publish a notice on the contracting authority's website informing the public that the contracting authority has started accepting bids from prequalified bidders.

Pre-bid conferences and site visits.

35. (1) After the contracting authority has issued the prequalified bidders with the tender documents under paragraph 34(a), the contracting authority shall convene a pre-bid conference with prequalified bidders to clarify any key issues in relation to a tender.

(2) Any prequalified bidder participating in the tender may attend a pre-bid conference.

(3) The contracting authority may, where necessary, conduct a site visit with prequalified bidders at the proposed site of the project.

Modification of tender documents.

36. (1) A contracting authority may modify a tender document through an addendum based on the outcome of the pre-bid conference held under regulation 35(1).

(2) Where a contracting authority has modified a tender document under subregulation (1), it may extend the deadline for the submission of bids if the modification introduces significant changes to the original project conceptualisation

(3) The contracting authority shall promptly provide a copy of the addendum to each person to whom the procuring entity provided copies of the tender documents.

(4) The addendum shall be deemed to be part of the tender documents.

Manual submission of bids.

37. (1) Where a prequalified bidder submits a bid manually, the bidder shall provide, in two separate clearly marked and sealed envelopes—

(a) the technical bid which shall include details of the inputs required in relation to the tender specifications; and

(b) the financial bid which shall be in the form prescribed in the tender documents.

(2) Each prequalified bidder shall, in the case of manual submission, cause the bid to be delivered to the place of submission on or before the deadline specified by the contracting authority in the tender documents.

(3) The contracting authority shall receive and register each bid.

(4) The contracting authority shall not receive or register a bid from a prequalified bidder if the bid has not been delivered—

(a) to the place specified in the tender documents; or

(b) within the time specified in the tender document.

Electronic submission of bids.	<p>38. (1) Where a prequalified bidder submits a bid electronically, the bid shall be transmitted to, and received in, an electronic tender procurement system established by the contracting authority.</p> <p>(2) Each prequalified bidder shall sign all statements, documents and certificates relating to the bid and submit them electronically to the contracting authority</p>
Financial bids.	<p>39. The financial figures quoted by the prequalified bidder in a financial bid shall be expressed in both words and figures and where there is a discrepancy between the amount expressed in words and the amount expressed in figures, the figure expressed in words shall prevail.</p>
Evaluation of financial bids.	<p>40. The contracting authority shall evaluate the financial bid submitted by a prequalified bidder only where the technical bid submitted by the prequalified bidder has passed the scoring threshold specified in the tender documents.</p>
Bid documents not to be tampered with.	<p>41. The contracting authority shall establish measures to ensure that the bid documents submitted by prequalified bidders are not tampered with.</p>
Submitted bids not to be withdrawn.	<p>42. A prequalified bidder may not withdraw a bid once the bid has been submitted to the contracting authority after the date for the submission of bids has lapsed.</p>
Validity of bids.	<p>43. A bid submitted by a prequalified bidder shall be valid during the bid validity period specified in the tender document.</p>
Extension of bid validity periods.	<p>44. The contracting authority may extend the bid validity period:</p> <p>Provided that the extension shall lapse on the date of the award of the tender.</p>
Proposal evaluation teams.	<p>45. (1) The accounting officer of a contracting authority procuring a project through competitive bidding shall appoint a proposal evaluation team in accordance with section 54(1) of the Act.</p> <p>(2) The proposal evaluation team shall include the project implementation team and shall be chaired by a representative of the contracting authority.</p> <p>(3) Where a contracting authority has appointed a transaction advisor for the project, the transaction advisor shall be a member of the proposal evaluation team but shall not participate in scoring in relation to any decision made by the proposal evaluation team.</p> <p>(4) The proposal evaluation team shall keep in safe and secure custody all bids submitted by bidders in respect of the project.</p>

(5) The proposal evaluation team shall preserve the confidentiality of the tender evaluation process in accordance with the Act and these Regulations.

Opening of bids.

46. (1) The proposal evaluation team shall, immediately on the expiry of the deadline for submitting the bids, open all the bids that were received from prequalified bidders before the deadline.

(2) The prequalified bidders shall be invited by the contracting authority to witness the opening of the bids and the bidders present at the bid opening shall sign a record of attendance.

Bid opening register.

47. (1) The chairperson of the proposal evaluation team shall as each bid is opened, read out loud and record in the bid opening register, the following details—

- (a) name of bidder and country of all members;
- (b) bid security present or absence;
- (c) the completeness of the financial proposal; and
- (d) any modifications or withdrawals.

(3) The proposal evaluation team shall assign an identification number to each submitted bid.

Bid opening minutes.

48. (1) The proposal evaluation team shall take minutes of the meeting at which submitted bids are opened which shall record—

- (a) the procedure followed by the project evaluation team during the opening of the bids; and
- (b) the particulars of bidders who submitted bids, or the bidders' representatives, who attended the opening of the bids.

(2) Each member of the proposal evaluation team shall, upon conclusion of the bid opening, initial each page of the minutes and append his or her signature to the final page of the minutes indicating his or her name in full and designation.

(3) Where the evaluation team receives only one bid, the tender evaluation shall proceed to evaluate and establish if the bid is responsive.

(4) Where the evaluation team receives one bid and the bid is unresponsive or fails, the evaluation team shall prepare a report and submit the report to the contracting authority.

Opening of bids submitted electronically.

49. The contracting authority shall ensure that financial bids in electronic format are only accessed and opened by the project evaluation team after the technical evaluation of the bids has been completed.

Disqualification of bids and

50. (1) Where the proposal evaluation team disqualifies a bid submitted by a bidder, the contracting authority shall

termination of tenders.

notify the bidder in writing of the reasons for disqualification of the bid.

(2) Where the proposal evaluation team disqualifies all bids submitted by the bidders, the tender process shall be terminated and all processes or proceedings in relation to that tender shall cease.

(3) Where a bid submitted by a bidder has been disqualified by the contracting authority, the contracting authority shall promptly return the bid security to the bidder whose bid has been disqualified.

(4) Where a tender process is terminated in accordance with the Act and these regulations, the contracting authority may re-initiate the tender as if it was a fresh tender.

Financial offers to be returned unopened.

51. (1) Where the proposal evaluation team disqualifies a bid based on the evaluation of the technical offer, the contracting authority shall enclose the unopened financial offer in the notification of disqualification of the bid made under regulation 50(1).

(2) Where a tender process has been terminated under regulation 50(2), the contracting authority shall return the unopened financial bids submitted by the bidders.

Bid security to be returned.

52. Where the contracting authority disqualifies a bid on account of the evaluation of the technical bid and financial bid, the contracting authority shall return the bid security to the bidder before the expiry of the tender.

Opening of financial bids.

53. (1) The project evaluation team shall open the financial bids submitted by bidders at a time and place designated by the proposal evaluation team after the technical bids have been opened and evaluated.

(2) The proposal evaluation team shall invite every bidder whose technical offer has been evaluated successfully to witness the opening of the financial bids.

(3) Where a bidder or the bidder's representative attends the session for the opening of the financial offers, the bidder or the bidder's representative shall sign an attendance sheet kept and maintained by the proposal evaluation team.

(4) The proposal evaluation team shall confirm to the bidders present that each of the envelopes containing the financial bids is sealed before the offers are opened.

(5) The financial bid submitted by each bidder that is opened at the financial bid opening shall be final.

(6) The chairperson of the proposal evaluation team shall announce the value of each financial bid at the session where the financial offers are opened.

Evaluation scoring systems.

54. (1) The proposal evaluation team shall apply the criteria specified in the tender documents when evaluating financial offers.

(2) The proposal evaluation team shall apply the criteria specified in the tender documents in respect of each technical bid but shall not compare one bid against another bid.

(3) Where the proposal evaluation team assesses a technical bid as falling below the threshold of the criteria specified in the tender documents, the bidder's financial bid shall be returned to the bidder unopened.

(4) The proposal evaluation team shall evaluate the financial bids within seven days of opening the financial bids.

(5) Where the proposal evaluation team applies a scoring system, it shall rank each financial bid in accordance with the scores each bid has attained after the evaluation.

PART VIII—PUBLIC PRIVATE PARTNERSHIP PROJECTS BY COUNTY GOVERNMENTS

Submission of project lists.

55. (1) Where a county government intends to procure a project under the Act, the county executive committee member shall prepare a list of projects intended to be implemented by the county government or county corporation pursuant to section 66(2) of the Act.

(2) The county executive committee member shall submit the public private partnership priority list to the county executive committee for approval and upon approval, submit the list to the Directorate in accordance with section 66(1) of the Act.

(3) The county executive committee member may subject to section 112 of the County Government Act update the list of projects

(4) A project list updated under subregulation (3) shall be consistent with the relevant county integrated development plan prepared under section 108(1) of the County Governments Act.

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County project implementation teams.

56. A county government intending to procure a project under the Act shall, in consultation with the Directorate, constitute a county project implementation team which shall consist of technical, financial, environmental, social, governance and legal experts.

Functions of county implementation teams.

57. The county project implementation team shall be responsible for—

- (a) preparing the project concept and project proposal;
- (b) overseeing the conduct of feasibility studies;

- (c) overseeing the structuring and implementation phases of the project;
- (d) preparing the project for procurement;
- (e) conducting the tender stage of the project;
- (f) negotiating project agreements for the project; and
- (g) overseeing the implementation of the contract management framework.

Feasibility study report of a county government.

58. (1) A county government shall, subject to sections 32 and 33 of the Act, and regulations 9 and 10, undertake a feasibility study and prepare a feasibility study report and submit the report to the Directorate after approval by the county executive committee.

(2) The feasibility study report under subregulation (1) shall be submitted by the county executive member.

(3) The Directorate shall on the receipt of the feasibility study report, evaluate and make recommendations to the Committee for determination whether or not the county may procure the project under this Act.

(4) When considering a feasibility study report and evaluation report submitted to it under this regulation, the Committee shall evaluate the feasibility study report in accordance with regulations 11 and 12.

Projects requiring National Treasury approval.

59. (1) For purposes of section 64(5) of the Act, the county executive committee member shall submit the feasibility study report for the project to the county executive committee for approval.

(2) Upon approval under subregulation (1), the county executive committee member responsible for finance shall submit the feasibility study to the Directorate for assessment and submission of recommendations to the Committee.

(3) The Directorate shall submit its recommendations on the feasibility study report in writing to the Committee for a determination.

(4) The Committee shall, within fourteen days after receiving the feasibility report and recommendation from the Directorate under subregulation (2), determine whether the county government can undertake the project.

(5) Where the Committee determines that the project should be abandoned, the Committee shall notify the county government in writing of the determination.

(6) Where the Committee notifies a county government that the project should be abandoned under subregulation (4), the county government may elect to restructure the project and resubmit the feasibility report to the Directorate for fresh review.

Project and risk assessment report.

60. (1) After the negotiation of a county public private partnership project under section 57 of the Act, the negotiating committee shall submit the project and risk assessment report and the initialled project agreement to the county executive committee for approval.

(2) The county executive committee shall approve the project and risk assessment report and the initialled project agreement and submit it to the Directorate for approval pursuant to section 58(2) of the Act.

Procurement methods.

61. A county government intending to undertake a project that has been approved under these Regulations, shall comply with procurement provisions provided for under these Regulations.

PART IX—GOVERNMENT SUPPORT MEASURES

Pre-approval of Government support measures.

62. (1) After the approval of the feasibility study and where the feasibility study report shows that the project requires a Government support measure, a contracting authority shall, before undertaking the procurement and negotiation of the project, seek a pre-approval from the Cabinet Secretary for the Government support measure.

(2) The Cabinet Secretary shall, before providing a pre-approval under subregulation (1), consider the strategic nature of the proposed project and any other relevant information relating to the project.

(3) The contracting authority shall, in consultation with the Directorate, submit to the Cabinet Secretary the application for pre-approval of a Government support measure under subregulation (2) which shall be accompanied by—

- (a) the risk assessment matrix;
- (b) the computation of fiscal commitments and contingent liabilities of the project;
- (c) the assessment of value for money for the project; and
- (d) the affordability assessment of the project.

(4) The Cabinet Secretary shall notify the contracting authority in writing whether the Government support measure shall be granted for the proposed project and if the support measure is not granted, the Cabinet Secretary shall specify the reasons in the notification.

Application process for Government support measures.

63. (1) After a contracting authority has negotiated and executed a project agreement with the private party, and having previously received a pre-approval from the Cabinet Secretary in accordance with regulation 62, the contracting authority shall apply in writing to the Cabinet Secretary for the issuance of the Government support measure.

(2) An application under subregulation (1) shall be accompanied by —

- (a) a feasibility study report on the proposed project, including a confirmation that the feasibility study has been approved in accordance with the Act and these Regulations;
- (b) a due diligence report by the contracting authority on the private party confirming that the private party has the technical capacity, legal capacity and financial capability to undertake the project;
- (c) project agreement initialled by the contracting authority and private party;
- (d) a draft of the proposed Government support measure instrument that is aligned with the provisions of the Act, these Regulations and the relevant policy on Government support measures;
- (e) a comprehensive risk matrix of the proposed project based on the negotiated project agreement highlighting—
 - (i) the key project risks allocated to the private party and the contracting authority; and
 - (ii) the main areas, events and circumstances likely to trigger the crystallisation of the risk allocated to the contracting authority and the respective risk mitigation measures;
- (f) a fiscal commitment and contingent liability report highlighting—
 - (i) estimated contingent liability including maximum termination sums of the project based on negotiated project agreement; and
 - (ii) any direct fiscal commitments against government arising from the project;
- (g) a justification by the contracting authority confirming how the proposed project fits into its development program within the national development agenda and the need for the Government support measure.

(3) The due diligence report submitted under subregulation (2)(b) shall specify whether the private party possesses the relevant technical experience in undertaking similar projects and demonstrated expertise in undertaking projects of a similar nature;

Approval of
Government
support measures.

64.(1) The Cabinet Secretary shall consider the application for a Government support measure under regulation 63 and the recommendations of the contracting authority thereon.

(2) The Cabinet Secretary shall submit the Government support measure to the Attorney-General for legal clearance and where the legal clearance is not obtained, the Attorney-General shall specify the reasons in writing.

(3) Where the Attorney-General gives legal clearance for a Government support measure, the Cabinet Secretary shall submit the application and recommendations to the Cabinet for approval.

(4) The submission by the Cabinet Secretary under subregulation (3) shall be accompanied by—

- (a) the broad elements of the proposed Government support measure to be issued;
- (b) a confirmation that a cost-benefit analysis with an assessment of the implication of the terms of the Government support measure has been undertaken by the Cabinet Secretary;
- (c) a confirmation that a detailed allocation of risks in the project and the proposed mitigation measures has been undertaken by the Cabinet Secretary;
- (d) an outline of the financial risks to the Government should the Government support measure crystallise; and
- (e) an outline of the monitoring and evaluation framework that will be implemented to ensure that the fiscal commitments and contingent liabilities of the Government under the Government support measure are managed.

(5) Where the Cabinet approves the terms of a Government support measure, the Cabinet Secretary shall notify the contracting authority of the approval in writing and thereafter, issue the Government support measure.

PART X—NEGOTIATIONS GENERALLY

65. Where a contracting authority enters into negotiations with a successful bidder under section 57 of the Act, the contracting authority shall—

- (a) take all reasonable steps to prevent a conflict of interest by any officer of the contracting authority and where such conflict of interest arises, to deal with it in accordance with the Conflict of Interest Act, 2025; and
- (b) take all reasonable steps to ensure that the contracting authority obtains value for money in relation to the negotiations;
- (c) ensure that the negotiations are only conducted at—
 - (i) the offices of the contracting authority;

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- (ii) the registered offices of the private party; or
- (iii) such other venue as the contracting authority may, in writing, specify;
- (d) take all reasonable steps to avoid private solicitations in relation to the negotiations and where private solicitations have been made, determine whether or not to discontinue the negotiations;
- (e) at all times, comply with the laws relating to public financial management, ethics and integrity of public officers during the negotiations;
- (f) at all times, comply with the laws relating to management of environment and climate change; and
- (g) take all necessary steps to prevent any impropriety in relation to the negotiations.

PART XI—REVOCATION

Revocation.
Sub. Leg.

66. The Public Private Partnerships Regulations are revoked.

Made on the^{25/6/}....., 2026.

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