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THE PUBLIC PRIVATE PARTNERSHIP ACT,
(CAP.103)

REGULATIONS

(Made under section 28)

THE PUBLIC PRIVATE PARTNERSHIP REGULATIONS, 2020

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THE PUBLIC PRIVATE PARTNERSHIP ACT,

(CAP. 103)

REGULATIONS

(Made under section 28)

THE PUBLIC PRIVATE PARTNERSHIP REGULATIONS, 2020

PART I
PRELIMINARY PROVISIONS

- Citation 1. These Regulations may be cited as the Public Private Partnership Regulations, 2020.
- Interpretation 2. In these Regulations unless the context otherwise requires-
- Cap.103 “Act” means the Public Private Partnership Act;
“affordability” means the ability and willingness of users to pay service rendered and demonstration of the contracting authority’s readiness to meet financial commitments by using funds-
- (a) designated within the contracting authority’s existing budget for the institutional function to which the agreement relates; or
- (b) expected to be designated for the institution in accordance with the government’s future budgetary allocations for the contracting authority;
- “accounting officer” has the meaning ascribed to it under the Act;
- Cap 410 “Appeals Authority” means the Public Procurement Appeals Authority (PPAA) established under the Public Procurement Act:

- Cap. 410
- “Authority” means the Public Procurement Regulatory Authority established under the Public Procurement Act;
- “bid validity period” means the period fixed by a contracting authority to permit evaluation and comparison of tenders, obtaining all necessary clearances and approvals, and notification award of contracts and finalize a contract;
- “contracting authority” shall have the same meaning ascribed in the Act;
- “Executive Director” means the Head of the PPP Centre appointed under section 6 of the Act;
- “government support” means government funding and any other forms of contribution or support by the government throughout the PPP life cycle;
- “institutional function” means a service, task, assignment or other function that a public institution is entitled or obliged to perform;
- “local firm” means a firm which is incorporated and registered in the Mainland Tanzania”
- “local government PPP team” means a team established under local government;
- “Minister” means the Minister responsible for Public Private Partnership;
- Cap 134
- National Debt Management Committee has the meaning ascribed to it under the Government Loans, Guarantees and Grants Act;
- “partnership model” means any form of engagement of the private party by the public party to which may include among others the form of:
- (a) service and management contracts;
 - (b) design, build, operate and transfer;
 - (c) design, build, operate and maintain;
 - (d) build, operate and transfer;
 - (e) design, build and operate;
 - (f) design, build, finance, operate and maintain;
 - (g) build, own, operate and transfer;
 - (h) build, lease and transfer;
 - (i) build, transfer and operate;
 - (j) operation and maintenance;

- (k) operation, maintenance and management;
and
 - (l) lease, develop and operate.
- “PPP advisor” means a person with skills, knowledge and experiences on the project under discussion engaged to assist and advise on any aspects of public private partnership life cycle in accordance with the requirements of the Act;
- “PPP Centre” means the Public-Private Partnership Centre established under section 4 of the Act;
- “PPP facilitation fund” means the fund established under section 10A of the Act;
- “PPP desk” means the desk designated pursuant to provisions of these Regulations to coordinate the implementation of Public Private Partnership Projects in the Ministries, Departments and Agencies;
- “PPP Node” means the Node created in the Ministry responsible for local government designed to support Public Private Partnership Projects in the local governments;
- “PPP project management team” means the Team established under Ministries, departments, government agencies and local government authorities;
- “preferred bidder” means the bidder, including any bidding consortium, appointed in terms of these Regulations;
- “project officer” means a person appointed by the accounting officer to manage and coordinate a public-private partnership project;
- “Public Private Partnership Steering Committee” means the Committee established under section 7 of the Act;
- “small-scale public private partnerships” or “small-scale PPP” means a PPP project approved under the Act of an amount not exceeding twenty million US dollars;
- “Special Purpose Vehicle” means a project company established for the purpose of implementing a specific PPP project in accordance with the

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provisions of the Act;
“solicited proposal” means any proposal related to the implementation of a project which is submitted in response to a request or solicitation issued by the contracting authority within the context of a competitive selection procedure for the project initiated by the public sector;
Technical Debt Management Committee has the meaning ascribed to it under the Government Loans Guarantees and Grants Act;
“tender board” Means a tender board of the respective contracting authority;
“tender period” means the period between the date of the first publication of the invitation to tender or the date of the mailing of the invitation to tender and the closing date for the submission of tenders;
“unsolicited proposal” means a written proposal that is submitted to a relevant contracting authority on the initiative of a private party for the purpose of entering into a public private partnership agreement with the public sector; and
“value for money” means the provision of a service by a Private Party under a PPP Agreement that results in a net benefit to the Government in terms of cost, price, quality, quantity, risk transfer or a combination thereof;

PART II
IDENTIFICATION OF PROJECTS
(a) solicited proposals

Identification of solicited proposals

3.-(1) The Minister shall, at least two months before the beginning of the financial year ask contracting authorities to submit to the PPP Centre concept note of potential public private partnership projects.

(2) The contracting authorities shall, at the beginning of every budget cycle, submit to the PPP Centre concept note of all potential projects to be undertaken in partnership with the private sector:

Provided that, before submission to the PPP

Centre, the contracting authority shall -

(a) ensure that the concept note has assessed whether the project is worthwhile, viable, affordable and appropriate at that particular time, and

(b) submit the concept note to the responsible Minister for approval.

(3) Subject to sub-regulation (2), the PPP Centre shall, within twenty one working days from the date of receiving the project, analyse the projects submitted to it and respond to the relevant contracting authority on concept note of potential projects undertaken through public private partnership, and contracting authority shall proceed to undertake pre-feasibility.

(4) Subject to sub regulation (2), if the contracting authority is the Local Government Authority, it shall submit the potential projects to be undertaken in partnership with the private sector to the PPP Node.

(5) The PPP Node shall scrutinise projects and forward the selected projects to the PPP Centre for recommendations and the PPP Centre shall analyse and provide back recommendations to the PPP Node within thirty working days.

(6) The analysis made under sub regulation (3) and scrutiny under sub regulation (5) shall ensure that the project submitted -

(a) is in line with the National Development priorities and within the budget cycle; and

(b) contains preliminary affordability and value for money statements and justification for private sector participation.

Contents of concept note

4. A concept note to be prepared in terms of this regulation shall contain preliminary analysis as prescribed in the First Schedule to these Regulations, and shall include:

(a) project summary;

(b) project description including:

(i) statement of the problem;

- (ii) project objectives and outputs;
- (iii) geographic description of the project;
- (iv) needs and options analysis; and
- (v) suitability for PPP procurement.
- (c) project administration;
- (d) relevance of the project to the National Development Priorities;
- (e) economic feasibility;
- (f) project financing analysis, including project costs, revenues and cash flow;
- (g) marketing and commercial assessment;
- (h) value for money analysis;
- (i) affordability assessment;
- (j) assessment of risks;
- (k) stakeholder's analysis;
- (l) legal requirement;
- (m) approval of the project by the respective Minister;
- (n) implementation Action Plan;
- (o) any other information relevant to the project; and
- (p) annexes, if any.

General requirements for pre feasibility study

5.-(1). The PPP Centre shall analyze the proposed PPP project, to determine whether it is likely to be viable, fiscally affordable, provide value for money and in the best interest contracting authority and Government and either-

- (a) reject the proposed PPP project, stating the reasons for rejection;
- (b) request further clarification or modification by contracting authority or any aspect of the proposed PPP project, stating reasons for the clarification or modification; or
- (c) approve the proposed PPP project at pre feasibility study.

(2) Without prejudice to the foregoing provisions and after the project registration, a contracting authority shall conduct the pre feasibility study of the project in conformity with following

criteria:

- (a) the project is in line with government priorities as per national development plans;
- (b) the project complies with the value for money requirements;
- (c) the project complies with affordability requirements;
- (d) the project presents a new and cost-effective method of service delivery;
- (e) the project sustainably addresses acute social needs;
- (f) the project adheres to the requirements under the Act, these Regulations and other relevant laws; and
- (g) the project includes adequate risk analysis and optimal risk allocation.

(3) A contracting authority shall submit its pre-feasibility study report to the PPP Centre for consideration.

(4) The PPP Centre shall, within thirty working days from the date of receipt of submission under sub regulation (3), process the pre-feasibility study report and make recommendations to the contracting authority.

(5) Based on the recommendation of the PPP Centre, a contracting authority, shall conduct or cause to be conducted a full feasibility study in respect of the PPP project.

(6) Nothing in sub regulation (4) or regulation 3 of these Regulations shall preclude the PPP Centre from forwarding the concept note or pre-feasibility study to the PPP Steering Committee for record after registration of the project proposal

Contents of pre feasibility study

6. A prefeasibility study to be prepared in terms of this regulation shall include the following contents and information:

- (a) executive summary of the report;
- (b) background of the project;
- (i) detailed project description;

- (ii) project objectives and outputs; and
- (iii) project scope and rationale;
- (c) preliminary economic analysis;
- (d) preliminary social and environmental analysis;
- (e) preliminary commercial analysis;
- (f) preliminary technical assessment;
- (g) preliminary financial including affordability analysis;
- (h) analysis of critical aspects that may directly or indirectly affect the project;
- (i) legal due diligence;
- (j) estimated costs of feasibility study;
- (k) risk identification, allocation, quantification and mitigation matrix;
- (l) institutional and stakeholder's analysis;
- (m) Action Plan; and
- (n) Such other information as prescribed in the First Schedule to these Regulations.

(b) Unsolicited proposals

Identification of
unsolicited
proposals

7.-(1) Before undertaking a feasibility study for an unsolicited project, the private party shall submit a pre-feasibility study to the contracting authority.

(2) All projects proposed by the private party to be done under a Public Private Partnership shall not be governed by a Memorandum of Understanding or any other non-binding agreements.

(3) Upon receipt of pre-feasibility study referred to under sub regulation (1), the contracting authority shall assess the project within thirty working days and accept or reject the pre feasibility study.

(4) Where the contracting authority accepts the pre feasibility study, it shall forward it to the PPP Centre for recommendations.

(5) Upon receipt of the pre feasibility study from the contracting authority, the PPP Centre shall review the pre-feasibility study within twenty one working days and resubmit the recommendations to the

contracting authority.

(6) Notwithstanding sub regulation (3), where a contracting authority is a local government authority accepts the project to be undertaken in Public Private Partnership, it shall submit the pre- feasibility study to the PPP Node, and the PPP Node shall, within twenty one working days review and forward to PPP Centre for recommendations.

(7) After receiving recommendations from the PPP Centre, the contracting authority shall, immediately communicate in writing to the private party on approval or rejection of the pre feasibility study or require the private party to review the pre feasibility study.

Commitment
deposit

8.-(1) A private party shall, upon approval of a pre-feasibility study in correspondence to these Regulations, be required to deposit in a special bank account, an amount of not exceeding three percent of the estimated cost of the project to be conducted.

(2) The deposit amount referred to under sub regulation (1) shall be made upon the instructions of the contracting authority and in the manner prescribed in the guidelines.

(3) The amount deposited under sub-regulation (1), shall be refunded to private party where-

- (a) the proposal of the pre-feasibility study is rejected by contracting authority or the PPP Centre;
- (b) the private party fails to be a preferred bidder upon introduction to competition during procurement;
- (c) the private party becomes preferred bidder and sign the contract;
- (d) the private party submits claim for refund not later than one year after issuance of approval by a contracting authority or complies with requirements of these Regulations; or
- (e) the feasibility study report is submitted by private party to the contracting authority

within the agreed time.

(4) The PPP Centre shall prescribe guidelines for management of the special account.

(5) Where the government undertakes due diligence on the pre-feasibility study submitted by the private party and finds that the private party mislead or submit false information, the costs incurred by the government on undertaking such due diligence shall be borne by the private party through such arrangement as may be imposed by the contracting authority.

Review fee by private party

9.-(1) Where a private party intends to undertake unsolicited project, such party shall be required to submit a review fee of 0.1% of the estimated project capital cost at the time of presenting the unsolicited proposal and the unsolicited proposals shall not be reviewed until the funds have been deposited into the PPP Facilitation Fund.

(2) The payment of the review fee shall not create any obligation on the part of the contracting authority toward the unsolicited proposal proponent.

Forms of communications

10.-(1) The communications between the private party, contracting authority, PPP Centre and the PPP Node shall be in written or through electronic form.

(2) All communications referred to under sub-regulation (1) shall be addressed to the respective accounting officer of a contracting authority, Executive Director, or the head of PPP Node, as the case may be, and through postal, physical or electronic means.

(3) All communications related to unsolicited proposals shall be channelled through the respective contracting authority before submission to the PPP Centre or PPP Node as the case may be.

Contents of pre-feasibility study for unsolicited proposals

11.-(1). The PPP Centre shall analyze the proposed PPP project, to determine whether it is likely to be viable, fiscally affordable, provide value for

money and in the best interest of contracting authority and Government and either-

- (a) to reject the proposed PPP project, stating the reasons for rejection;
 - (b) request further clarification or modification by contracting authority or any aspect of the proposed PPP project, stating reasons for the clarification or modification; or
 - (c) approve the proposed PPP project at pre feasibility study.
- (2) Save as provided in regulation 6, a pre-feasibility study for unsolicited proposal shall contain:
- (a) a private party's name, postal and physical address, tax registration certificate or Tax Identification Number, VAT registration number, Exercise Duty License, country of registration and domicile of parent company;
 - (b) a company profile, audited accounts and evidence of financial capacity;
 - (c) the title and description of the proposed project;
 - (d) a statement of the objectives, approach and scope of the proposed project;
 - (e) a statement describing property rights or any confidential information or proprietary data;
 - (f) a statement describing how the proposal is innovative and unique, supported by evidence that the proponent is the sole provider and owner of the innovation;
 - (g) a statement of the anticipated benefits or cost advantages to the contracting authority including the total estimated cost for developing the project and projected cash flow to allow a meaningful consideration;

- (h) a statement showing how the proposed project supports the Government's development plans;
- (i) a statement to indicate compliance with other relevant laws and government policies;
- (j) a statement outlining:
 - (i) expected government support other than government guarantee or any form of financial support from government; or
 - (ii) government participation in the execution of the project;
- (k) a statement showing how the project complies with empowerment of Tanzania Citizens and corporate social responsibilities; and
- (l) a statement with sufficient information showing the manner in which integrity due diligence shall be conducted by the contracting authority in line with the information submitted by the proponent.

Approval and rejection of pre-feasibility study for unsolicited proposals

12. A contracting authority may approve a pre feasibility study for unsolicited proposal based on the criteria that-

- (a) the project complies with the value for money requirement;
- (b) the project complies with affordability requirement to both Government and end users;
- (c) the project does not relate to institutional requirements acquired by normal competitive bidding or any other method than public private partnership;
- (d) the project does not relate to products or services which are available and mobilized through normal investment procedures or public procurement;
- (e) the project presents new and cost-effective methods of service delivery compared to

other procurements options;

- (f) the project addresses social needs sustainably;
- (g) the private sector participation in the project results in net benefits and savings as compared to public procurement;
- (h) the pre feasibility study exclusively belongs to the private party and protection of intellectual property rights;
- (i) the project complies with the provisions of Act and other relevant written laws; and
- (j) the project includes adequate risk analysis and optimal risk allocation.

PART III FEASIBILITY STUDY OF A PROJECT

Appraisal elements
for feasibility
study for solicited
project

13.-(1) After the approval of the pre feasibility study, the contracting authority shall, conduct or cause to be conducted a comprehensive feasibility study in respect of each identified project.

(2) The feasibility study shall confirm whether the project being considered is technically, economically, commercially, financially, environmentally, socially and legally viable, fiscally affordable and shall provide value for money.

(3) A comprehensive feasibility study to be prepared pursuant to the requirement under sub regulation (1) shall contain basic appraisal elements including-

- (a) clear specification of project's objectives;
- (b) broad alternative options to meet project's objectives are identified and comparatively examined;
- (c) the most promising option is subject to detailed analysis;
- (d) project costs are fully and accurately estimated; and
- (e) project benefits are assessed qualitatively as likely to justify the costs.

(4) The contracting authority may, for the purpose of this regulation, engage a PPP advisor with knowledge and experience on the subject matter of the project to conduct a feasibility study.

Feasibility study
for unsolicited
project

14.-(1) Upon approval of the pre-feasibility study for unsolicited proposal, the private party shall undertake the feasibility study at its own cost.

(2) The private party shall submit the completed feasibility study to the contracting authority for assessment.

(3) Upon receipt of feasibility study referred to under sub regulation (1), the contracting authority shall assess the project within thirty working days and make recommendation to the private party for consideration.

(4) A contracting authority shall, before submission of a project to the PPP Centre, obtain an approval of the respective sector ministry which is the overall in charge of that project.

Contents of
feasibility study
report

15. Without prejudice to the provision of section 10 of the Act, the feasibility study report shall contain-

- (a) details regarding salient features of the proposed project, including
 - (i) technical assessment;
 - (ii) economic and social analysis;
 - (iii) risk analysis;
 - (iv) commercial analysis; and
 - (v) financial analysis;
- (b) action plan and explanation of the strategic and operational benefits of the proposed project in relation to its objectives;
- (c) description in specific terms-
 - (i) in the case of a performance function, the nature of the function concerned and extent to which it may be performed by the private party;
 - (ii) proposed design standard and detailed output specifications of the

- project; and
- (iii) in the case of use of government property, description of the property concerned and the types of use the property may be subjected to;
- (d) in case of incurring any financial commitments by the contracting authority, demonstration of the affordability of the project by the contracting authority;
- (e) proposals for allocation of financial, technical and operating risks between the partners;
- (f) demonstration of the anticipated value for money to be achieved;
- (g) estimated costs of the project;
- (h) public sector comparator test;
- (i) project financing model;
- (j) proposed partnership model;
- (k) analysis of critical aspects that may directly or indirectly affect the project;
- (l) procurement plan;
- (m) project implementation and operation plan;
- (n) recommendation or advice on the technical and economic viability of the project or projects;
- (o) description of environmental and social impact assessments;
- (p) monitoring and evaluation;
- (q) regulatory authority consultation;
- (r) legal due diligence;
- (s) institutional analysis;
- (t) stakeholder's analysis;
- (u) the manner by which Tanzania citizens may be empowered and participate in the projects, including corporate social responsibility; and
- (v) such other information and contents to be adhered as prescribed in the First Schedule to these Regulations.

Resolution of
critical aspects

16. (1) A contracting authority shall appraise critical aspects of the project and submit to PPP Node or, as the case may be, the PPP Centre on the

determination of any critical aspect of the project, and such appraisal shall-

- (a) in the case of pre-feasibility study, be resolved at any time prior to the preparation of a feasibility study;
- (b) in the case of feasibility study, be resolved at any time prior to the implementation of project.

(2) The PPP node or, as the case may be, the PPP Centre shall, within seven days from the date of receiving the appraisal under sub regulation (1), evaluate the critical aspects and make recommendation to the PPP Steering Committee for determination:

Provided that, where the project is a small-scale PPP project, the PPP Centre shall recommend critical aspect to the respective contracting authority.

PPP advisor

17.-(1) Upon completion of the preparation of a feasibility study report in terms of these Regulations, the contracting authority may engage a PPP advisor to review the feasibility study report and prepare appropriate business case and transaction documents.

(2) The procedures and terms of reference for the PPP advisor shall be as determined by the contracting authority and advised by the PPP Centre.

(3) A PPP advisor duly contracted shall, among other things, undertake the following duties-

- (a) review financial, technical, legal, economic, technological aspects of the project and prepare appropriate business case and financial model;
- (b) prepare pre-qualification documents, request for proposal and draft agreements;
- (c) advice and participate in negotiation;
- (d) prepare counter-business case for feasibility studies submitted by the private party;
- (e) facilitate financial closure; and
- (f) prepare PPP Contract Management Plan.

Consultation with regulatory

18.-(1) The contracting authority shall, after selection of a project, consult the relevant regulatory

authority authority under which the selected project is regulated, to seek recommendations or approval where necessary.

(2) Where the regulatory authority is the contracting authority, consultations for the purpose of this regulation shall be done with the Permanent Secretary of the respective ministry to which the project relates, and the provisions of sub regulations (1) shall apply accordingly.

Submission of projects for approval by contracting authority

19.-(1) The contracting authority, or as the case may be, the Permanent Secretary shall, upon working on recommendation from the regulatory authority, submit the project to the PPP Centre.

(2) The submission under sub-regulation (1), shall be accompanied by:

- (a) a feasibility study report;
- (b) approval or recommendation by the National Environment Management Council;
- (c) recommendations and relevant permits and licences from the regulatory authority responsible for the project;
- (d) community engagement plan ; and
- (e) any other information as may be required by the PPP Centre.

(3) In case the submitted project is for an unsolicited project, the contracting authority shall annex verifiable and audited costs of undertaking the feasibility study.

(4) Subject to the provision of section 5 of the Act, the PPP Centre shall within thirty working days from the date of receipt of project from a contracting authority, analyse the project and recommend to the PPP Steering Committee for approval.

(5) For the purpose of sub regulation (4), the PPP Centre may constitute a multidisciplinary team of experts with knowledge on the subject matter of the project to study and consider the feasibility study for the project and all financial implications relating to the implementation of the project in a manner prescribed in these Regulations.

(6) The PPP Centre may, before expiration of thirty working days, require the contracting authority to improve the project as recommended.

(7) The PPP Centre shall, within five working days from the date of approval, publish or cause to be published in the *Gazette* and PPP Centre's website, the summary of approved project for public awareness:

Provided that, notice in the *Gazette* may be effected for such period not exceeding thirty days.

(8) Where the PPP Centre approves the submission under this regulation, shall fill a Form prescribed in the Second Schedule and inform the contracting authority accordingly.

Government
support

20.-(1) The Minister shall, for any project that requires public funding and any other forms of contribution, upon receipt of request for funding from the PPP Steering Committee, undertake analysis of fiscal risk and other financial matters in the manner prescribed in section 7B of the Act.

(2) For the purpose of sub regulation (1), analysis of fiscal risk shall be undertaken by the Technical Debt Management Committee scrutinise and analyse the project prior to forwarding the same to the National Debt Management Committee for determination by the Minister.

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(3) Save as otherwise provided in Government Loans, Grants and Guarantees Act, in the course of undertaking its scrutiny and analysis, the National Debt Management Committee shall have regards to the project's-

- (a) value for money;
- (b) affordability;
- (c) bankability;
- (d) technology transfer; and
- (e) innovation.

PART IV
MANAGEMENT OF PUBLIC PRIVATE
PARTNERSHIP AGREEMENTS

Contracting
authority's
responsibility

21.-(1) Without prejudice to the provisions of section 11 of the Act, any agreement involving the performance of an institutional function shall not divest the contracting authority the responsibility of ensuring that such institutional function is effectively and efficiently performed in the public interest or for the benefit of the public service.

(2) An agreement that involves the use of public or government property by a private party shall not divest the contracting authority of the responsibility for ensuring that such government property is appropriately protected against forfeiture, theft, loss, wastage and misuse.

Conduct of
accounting officer
in PPP projects

22.-(1) For the purposes of ensuring effective implementation of the responsibilities conferred under the Act, an accounting officer shall:

- (a) manage the implementation of the project;
- (b) manage any monies received during processing of unsolicited proposals;
- (c) build and secure political and stakeholder support for the project;
- (d) ensure availability of adequate project resources, including budgets and suitable personnel for implementation of the project;
- (e) ensure the feasibility study and procurement processes are effectively and efficiently performed in the public interest, and protection of government property;
- (f) ensure that funds received from the Public Private Partnership Facilitation Fund are properly managed and applied for the purposes intended;
- (g) allocate budget funds to perform functions arising from public private partnership projects;
- (h) appoint appropriate and relevant PPP

advisors or consultants and other experts as may be needed; and

- (i) provide overall oversight, monitoring and evaluation of the project.

(2) The accounting officer may form a PPP team with appropriate personnel and resources for efficient discharging of roles and responsibilities regarding to the implementation, monitoring and evaluation of PPP projects of its contracting authority.

Project officer

23.-(1) Subject to section 17 of the Act, the contracting authority shall, in writing, appoint a project officer on full time basis from within or outside the contracting authority.

(2) Without prejudice to section 17(2) of the Act, the functions of the project officer shall include:

- (a) day to day supervision of the project;
- (b) be liaison officer between the accounting officer, project management team, PPP Centre and private party;
- (c) preparation of periodic, quarterly and annual reports on the development of the project;
- (d) maintaining records related to project implementation from initiation to conclusion; and
- (e) management of the public private partnership agreement and its implementation and hand-back.

PPP Project Management Team

24.-(1) An accounting officer shall, for the purpose of implementing PPP projects during various stages of the project life cycle, constitute project management team which shall be the task force mandated to deliberate on the project in line with the provisions of the Act and these Regulations.

(2) The project management team shall be composed of officers with skills and knowledge of the respective PPP project from-

- (a) the contracting authority;
- (b) PPP Centre;
- (c) PPP Node;

(d) Ministry responsible for finance;

(e) the Office of Attorney General.

(3) Save as provided in sub regulation (1), the accounting officer of the contracting authority to which the project management team relates, may appoint an additional member to constitute the project management team.

(4) Without prejudice to the generality of sub regulation (1), the functions of the Project Management Team shall include-

(a) to advise the accounting officer as regards project feasibility study, procurement, agreements and project implementation;

(b) to assist in mobilisation of human and financial resources necessary for project implementations; and

(c) to ensure the project is properly monitored and evaluated in accordance with the project agreements.

(5) For the purpose of sub regulation (1), the “project life cycle” means a period commencing from the time of preparation of project concept note to the hand back”.

PPP Steering
Committee

25.-(1) Without prejudice to sections 7A and 7B of the Act, the PPP Steering Committee shall assume its responsibilities to undertake deliberations and approval of administrative matters for the PPP Centre.

(2) The PPP Steering Committee may prepare internal guidelines to facilitate the performance of its functions under these Regulations.

Team of experts

26.-(1) The Executive Director may appoint or cause to be appointed, a multidisciplinary team of experts to analyse the project submitted to it by contracting authorities.

(2) Persons appointed under sub regulation (1) shall be competent on the subject matter for which the PPP project relates.

PPP operational guidelines

27.- The PPP Centre may prepare operational guidelines and manuals for proper functioning and management of PPP projects, and shall be approved by the PPP Steering Committee.

PPP Procurement Guidelines

28 (1) The Authority shall prepare PPP procurement guidelines in collaboration with the Centre in line with the PPP Operational guidelines and manuals.

(2) A contracting authority shall comply with and use any standardized procurement documents prescribed in the Guidelines, which shall include-

- (a) request for qualification;
- (b) request for proposal;
- (c) evaluation guidelines; and
- (d) PPP agreement.

Project records to be kept in a register

29.-(1) The PPP Centre shall, immediately after approval of the concept note, record the particulars of the project in the register.

(2) The register referred to under sub regulation (1) shall be kept by the PPP Centre.

(3) The particulars required to be recorded in the register shall indicate:

- (a) the title of the project and its location;
- (b) the name of contracting authority;
- (c) the name and address of private party;
- (d) the duration of the project;
- (e) date of commencements of the project; and
- (f) any other particulars as the PPP Centre may determine.

(4) The PPP Centre shall keep to the register independent records for each individual project, consisting of details specific to the particular project.

(5) The independent records under sub regulation (4) shall include:

- (a) feasibility study of the approved project;

- (b) project agreements;
- (c) tender documents; and
- (d) records of the Government obligations and support.

PART V
PUBLIC PRIVATE PARTNERSHIP FACILITATION FUND

PPP Facilitation
Fund and its
purposes

30.-(1) Pursuant to section 10A of the Act, the PPP Centre shall open a bank account in Mainland Tanzania into which monies of the Public Private Partnership Facilitation Fund shall be kept.

(2) The account opened in terms of sub-regulation (1), shall have three components, namely:

- (a) project development facility;
- (b) capacity development facility; and
- (c) viability gap funding.

(3) The PPP Centre shall issue guidelines to contracting authorities on accessing funds of the Public Private Partnership Facilitation Fund.

(4) Access to the fund by the contracting authority shall be subject to the approval by the PPP Steering Committee.

(5) The project development facility shall be an instrument to enable contracting authorities to finance project preparation costs, including financing of feasibility studies and costs of PPP advisors or consultants.

(6) The capacity development facility shall provide funds for cross-project support functions including training project officers, public and private officials, conducting PPP awareness forums, program development and development of sector specific public private partnership guidelines.

(7) A viability gap funding shall provide capital grants to support bankable projects that offer value for money and contribute to government development priorities but are not financially viable.

(8) The PPP Centre shall from time to time establish a ceiling for access to the PPP Facilitation Fund for which a contracting authority may apply.

Access to facility

31.-(1) Pursuant to section 10A of the Act, the Fund shall be coordinated by the PPP Centre.

(2) The terms of funding approval, disbursement, and recovery in so far as are applicable shall be documented in a project support agreement signed between the contracting authority and the PPP Centre.

(3) A contracting authority may, subject to regulation 32, request for project development facilitation, and the request shall comprise of the following minimum information:

- (a) evidence of approval of the pre feasibility study by the PPP Centre;
- (b) the total cost of the activity;
- (c) disbursement schedule;
- (d) available funds for the activity;
- (e) project duration;
- (f) project beneficiaries;
- (g) project affordability;
- (h) project description and specification;
- (i) evidence of refund, including cash flow projections and financial model; and
- (j) evidence that it is not an unsolicited project.

(4) An access to funds shall be subject to compliance by the contracting authority to the guidelines prescribed by the PPP Centre.

Projects eligible for PPP Facilitation Fund

32. (1) Projects that are eligible for funding from the PPP Facilitation Fund shall be limited to:

- (a) payments for services that are competitively procured;
- (b) projects that are of high priority to the government as per national development plans;
- (c) projects that generate revenues from user charges or tariffs that are insufficient to recover investment costs; and
- (d) viability gap funding, projects with properly executed feasibility study

demonstrating that the viability gap contribution requested represent value for money.

(2) Notwithstanding the provision of sub-regulation (1), the viability gap funding to be contributed shall be determined in the manner prescribed in the project feasibility study and in the PPP Facilitation Fund guidelines.

Recovering of projects preparation costs

33.-(1) Subject to section 10B of the Act, the private party shall be required to pay project preparation fee equivalent to one hundred percent (100%) to be deposited to the PPP Facilitation Fund Account.

(2) Save as otherwise provided in subsection (1), the mode of payment and the amount to be deposited in the Facilitation Fund Account shall be as determined in the request for proposal.

(3) Where the feasibility study reveals that the PPP project is viable and qualify for waiver for payment of project preparation costs, the Steering Committee shall consider and recommend to the Minister for waiver.

(4) The Minister may, on considering the recommendation referred to under sub regulation (3), partially or wholly wave payment of project preparation costs.

PART VI
PROCUREMENT OF SOLICITED PUBLIC PRIVATE
PARTNERSHIP PROJECT

(a) Principles and methods of procurement of solicited projects

Procurement principles

34-(1) A contracting authority shall adhere to procurement procedures on the basis of the fundamental principles of rules governing the award of public contracts to attain best value for money.

(2) The fundamental principles shall include-

(a) economy and efficiency;

(b) competition;

- (c) transparency and accountability;
- (d) fairness; and
- (e) promotion of the integrity and confidence in the selection process.

Methods of procurement of solicited projects

35 Save as otherwise provided in the Act, methods of procurement of PPP projects and services shall be through -
(a) National competitive tendering; and
(b) International competitive tendering.

Market sounding

36.-(1) The contracting authority or PPP advisor acting on behalf of the contracting authority may, during or following the preparation of the feasibility study, conduct market sounding to-
(a) inform the contracting authority's preparation of the PPP or verification of its feasibility, fiscal affordability or value for money;
(b) secure investor's interest in the proposed project;
(c) secure aspects that needs to be considered to improve bankability of the project; and
(d) inform potentially interested private parties, investors, lenders and other entities of PPP procurement plans and requirements.
(2) Any market sounding conducted under sub regulation (1) shall not-
(a) distort competition or efficiency among potentially interested entities; or
(b) undermine the principles of fairness, value for money, transparency and proportionality.

Procurement of solicited projects

37.-(1) Subject to the provisions of these Regulations, a contracting authority shall, before undertaking the procurement of solicited project, carry out a feasibility study.
(2) A contracting authority shall not proceed with the procurement phase of solicited public private partnership project if the feasibility study indicates that

the proposed project shall not deliver value for money and improve the quality of the public service.

(3) The procurement of PPP projects shall be in accordance with the provisions of the Act and guidelines issued by the Authority in collaboration with the PPP Centre.

(b) Selection process of a private party

Bidding criteria of private party

- 38.-(1) The selection of a private party shall-
- (a) be in accordance with the competitive bidding procedures specified under these Regulations; and
 - (b) be based on the best value for money to the project for the duration of the partnership as opposed to the lowest bidder.
- (2) Factors that contribute to the value for money of a project shall include-
- (a) project plan and design;
 - (b) project delivery schedule;
 - (c) use of innovation;
 - (d) access to expertise;
 - (e) affordable and better quality of services;
 - (f) project financing and user fee schedule over the duration of the partnership; and
 - (g) any other factors as the Authority in collaboration with PPP Centre may deem necessary.

Issuance of pre-qualification documents

- 39.-(1) Upon approval of the feasibility study, a contracting authority shall, subject to payment of a prescribed fee, if any, issue pre-qualification documents which shall include the following information:
- (a) terms and conditions of issuance of the pre-qualification;
 - (b) purpose of issuing the pre-qualification;
 - (c) outline of the contents of the pre-qualification;
 - (d) information about the project;
 - (e) brief description of the bidding process;

- (f) instructions of preparation and submission of the pre-qualification documents;
 - (g) required bidders, including a list of documentary evidence to demonstrate their respective qualifications, technical, financial and managerial capacity;
 - (h) local content plan including empowerment of Tanzanians;
 - (i) the evaluation process, including the pre-qualification criteria;
 - (j) any other information that may be required by the contracting authority.
- (2) The contracting authority shall use the standard documents prepared by the Authority in collaboration with PPP Center.
- (3) When undertaking pre-qualification, the qualification of bidders by a contracting authority shall be based upon the legal capacity, capability and resources of the applicants including to perform the particular agreement satisfactorily, taking into account the bidder's-
- (a) technical capacity to carry out the project either directly or *via* specific major sub-contractors;
 - (b) experience and past performance on similar projects;
 - (c) knowledge of local working conditions;
 - (d) capabilities with respect to personnel, equipment and construction or manufacturing facilities;
 - (e) financial capacity to carry out the project;
 - (f) current commitments and capacity to take on projects;
 - (g) implementation plan for transfer of knowledge; and
 - (h) compliance with required regulatory obligations.
- (4) A private party who intends to bid consequent to the issuance of pre-qualification documents under sub regulation (1) shall furnish to the contracting authority, the following key information-

- (a) relevant professional and technical qualifications;
- (b) financial capability and human resources;
- (c) legal capacity;
- (d) equipment and other physical facilities;
- (e) relevant managerial capability;
- (f) risk transference related to responsibility to project risks;
- (g) litigation and controversy, if any;
- (h) references regarding previous and existing projects including PPP projects;
- (i) experience necessary to carry out the project;
- (j) an in-depth review of each potential partner at the point of evaluation;
- (k) inclusion of local firms and experts in consultancy contracts;
- (l) use of local goods and experts in works and non-consultancy services; and
- (m) any other information as the contracting authority may deem necessary.

Pre-qualification proceedings

40.-(1) A contracting authority shall, prior to floating of a bid, undertake pre-qualification of bidders to ensure that only technically and financially capable firms having adequate managerial capability are invited to submit bids:

Provided that, such pre-qualification shall solely be based upon the ability of the interested parties to deliver with satisfaction the performance and output as specified by the contracting authority.

(2) A contracting authority may, in order-

- (a) to ensure that prospective bidders are adequately informed; and
- (b) to secure commitment of the prospective bidders,

call a bidders' conference prior to issuance of the expression of interest document.

(3) The selection of a private party including-

- (a) invitation for pre-qualification;
- (b) preparation of shortlist;
- (c) preparation and issuance of the request for

proposal; and
(d) receipt and opening of proposals and evaluation of proposals,
shall follow the basic steps stipulated in the tender documents prepared by the contracting authority.

Participation of consortia

41.-(1) A contracting authority may, when requesting for submission of expressions of interest for the pre-qualification proceedings, allow potential parties to form bidding consortia and in such case the bidding consortium shall demonstrate its qualifications in accordance with these Regulations.

(2) Where the contracting authority allows bidders to form consortia, the consortia shall appoint a leading member who shall communicate on all matters regarding the bids proceedings.

(3) Unless otherwise authorized by a contracting authority in the pre-qualification documents, each members of a consortium may participate directly by legal representation in only one consortium at the same time.

(4) When considering the qualifications of bidding consortia, a contracting authority shall consider the capabilities of each of the consortium's members and assess whether the combined qualifications of the consortium's members are adequate to meet the needs of all phases of the project.

(5) Bidders who are citizens of Tanzania or associations between local and foreign firms shall be eligible for grant of a margin of preference only if they meet the criteria provided in these Regulations.

(6) A contracting authority shall, when procuring solicited or unsolicited public private partnership projects by means of national and international competitive tendering or selection, grant a margin of preference of up to ten percent for the benefit of local investors or association between local and foreign investor as prescribed in the Fifth Schedule to these Regulations.

(7) The margin of preference shall only be applied in the cost comparison of the submitted bids and

the calculation of the margin of preference in the course of evaluating bids, and shall, in addition, be in accordance with the conditions and methods prescribed in the Fifth Schedule to these Regulations.

Clarification of applications for pre-qualification

42.-(1) A contracting authority shall, not less than fourteen working days before the deadline for submission of applications to pre-qualify, respond to the request by the bidder for clarification of the pre-qualification documents received by the procuring entity:

Provided that, the response by the contracting authority shall be given within seven days for bidder to make a timely submission of its application to pre-qualify.

(2) The response to any request shall not necessarily require the identification of the source of the request, and shall be communicated to all bidders to which the contracting authority provides the pre-qualification documents.

Appointment of evaluation team

43.-(1) The accounting officer shall appoint an evaluation team to evaluate the applications for pre-qualification.

(2) Any member of the evaluation team shall not be a member of the tender board of the respective contracting authority.

(3) The evaluation team shall be appointed based on relevant expertise, knowledge and skills on the subject matter.

(4) Members of the evaluation team may be obtained outside the contracting authority, where the required skills and expertise are not available within the contracting authority.

(5) The evaluation team referred to in sub regulation (1) of this regulation shall consist of not less than four members.

Receipt, evaluation of applications for pre-qualification

44.-(1) The contracting authority shall, within thirty days from the last prescribed date of submission of applications for pre-qualification by the prospective

bidders-

- (a) receive, open, and evaluate applications for expression of interest for pre-qualification;
 - (b) prepare evaluation report; and
 - (c) obtain approval by the tender board.
- (2) Applications received for pre-qualification of bidders shall be evaluated by the evaluation team using-
- (a) the criteria for qualification explicitly stated in these Regulations and in the invitation to pre-qualify
 - (b) key information supplied in terms of regulation 39(4).
- (3) An evaluation report shall be prepared for recommending a list of firms or individuals to be considered as pre-qualified.
- (4) For the purpose of this regulation, opening and evaluation of bids shall be carried out as per guidelines issued by the Authority in collaboration with the PPP Centre.

Approval of shortlist

45. The process of approval by tender board and notification of results of pre-qualification process shall follow the procedures stipulated in the pre-qualification documents.

Contents of request for proposals

46. The request for proposal shall include at minimum the following information:

- (a) letter of invitation for bid;
- (b) data sheet containing information about the project;
- (c) instructions for preparing bids;
- (d) amount and manner of payment of bid security and performance guarantee, where applicable;
- (e) the manner, place, date and time for submission of bidding documents;
- (f) the manner, place, date and time of opening of bids;
- (g) method of procurement used by the contracting authority and the legislation

- relevant thereto;
- (h) a detailed and unambiguous evaluation criteria;
 - (i) terms and conditions of the contract agreements, as far as already known by the contracting authority;
 - (j) output specifications of the project;
 - (k) the manner in which bid price is to be assessed and computed, including information about tax liability;
 - (l) currency or currencies in which bid price is to be formulated and expressed;
 - (m) bid validity period;
 - (n) a copy of integrity pact to be signed by the parties, where applicable;
 - (o) detailed company profile, including legal status, location, management, financial capability and experience on undertaking similar projects;
 - (p) composition of consortium and company profile for all members of consortium;
 - (q) project implementation and operational plan; and
 - (r) any other information as may be provided in the standardised document prescribed in the guidelines.

Approval and
issuance of
request for
proposals

47.-(1) The tender board of a contracting authority shall approve the request for proposal documents before submission by the accounting officer to the PPP Centre or PPP Node for recommendations.

(2) The contracting authority shall issue the approved request for proposals to all approved pre-qualified bidders in accordance with the procedures and requirements specified in these Regulations.

(3) A contracting authority shall, except for bidders who have declined in writing, provide to each approved pre-qualified bidder a complete set of approved request for proposal.

(4) Request for proposals shall be issued at cost related to printing, photocopying and distribution and

shall not include any element of profit.

- (5) For the purpose of sub regulation (1)-
 - (a) the PPP Steering Committee shall approve the request for proposals submitted to it by the PPP Centre; and
 - (b) the PPP Node shall forward its recommendation of the request for proposals to the Ministry responsible for local government authority for approval.
- (6) The contracting authority may conduct procurement of PPP projects through electronic means in the manner or procedures set out in the guidelines prepared by the Authority in collaboration with the PPP Center.

Further demonstration of fulfilment of qualification criteria

- 48.-(1) A contracting authority may require any bidder who is pre-qualified to demonstrate again its qualifications in accordance with the same criteria used for pre-qualification.
- (2) A contracting authority shall disqualify any bidder who fails to demonstrate again its qualifications if requested to do so.

Bid securities for solicited proposal

- 49.-(1) A pre-qualified bidder shall deposit with the contracting authority a bid security as determined by the contracting authority based on the project cost and such security to be deposited at the time of bid submission.
- (2) The contracting authority shall, within thirty days of the announcement of the preferred bidder, return the bid security to all unsuccessful bidders in the prescribed manner.

Clarification and modification of bid documents

- 50.-(1) Any clarification on the request for proposal shall be requested and issued in accordance with the procedures stipulated in the tender documents prepared by the contracting authority and the Sixth Schedule
- (2) A contracting authority shall re-issue the request for proposal to all pre-qualified bidders after obtaining approval of tender board if it is reasonably

satisfied that there is a material infirmity or ambiguity in the request for proposal, which cannot be addressed without modifying the contents of the request for proposal.

Submission of bids

51. (1) Bids shall be submitted on the date, place and time and in the manner specified in the request for proposal in the Fourth Schedule.

(2) Any bid submitted late shall not be considered by the contracting authority.

(3) For the avoidance of doubt, extended time stipulated in terms of regulation 50 shall be deemed to be appropriate time of submission within the requirement of sub regulation (1).

Extension of time for submission of bids

52.-(1) A contracting authority may at any time before the actual deadline, extend the prescribed deadline for submission of bids.

(2) Notwithstanding sub regulation (1), the contracting authority may only extend the deadline for submission of bids after the deadline where:

(a) only one valid tender is received on the specified date, unless the appropriate tender board is unanimous in its view that wider competition is not ensured by extending the deadline;

(b) the contracting authority is reasonably convinced that extraordinary circumstances have arisen owing to law and order situation or a natural calamity that the deadline should be extended:

Provided that the advertisement of such extension of time shall be made in a manner similar to the original issuing of the request for proposal.

Evaluation of submitted proposal

53.-(1) The contracting authority shall, within sixty days from the prescribed date of submission of proposal by the bidders, receive, open, and evaluate all requests for proposals.

(2) The evaluation team shall prepare a detailed report on the evaluation and comparison of bids, setting

forth the specific reasons which the determination of the best value for money bid is based.

(3) The evaluation team shall recommend the bids in a manner that demonstrates the best value for money criteria as specified in these Regulations.

(4) The evaluation report shall be submitted to the tender board for approval and forward the same to the accounting officer for necessary action.

General
Evaluation criteria

54.-(1) Evaluation of the proposals under regulation 51 shall be based on-

- (a) best value to the public for the duration of the partnership and not on the basis of lowest financial bid; and
- (b) the criteria specified in the bidding document.

(2) The criteria of best value under sub regulation (1)(a) shall comprise of, among others, a combined and detailed evaluation of:

- (a) project design;
- (b) technical and managerial skills;
- (c) technological capacity and innovation;
- (d) proposed partnership model;
- (e) financial structure of the Special Purpose Vehicle;
- (f) financial and commercial viability and bankability of project;
- (g) appropriate risk transfer of technical, operational or financial;
- (h) affordability;
- (i) value for money;
- (j) local contents and empowerment of Tanzanians;
- (k) the extent of government support or contribution required and the manner of discharge;
- (l) extent of compliance with environmental and regulatory requirements;
- (m) financing proposal;
- (n) standard of services delivered; and
- (o) structure of envisage facilities management

and handover.

(3) In evaluating the funding sources proposed by the potential private partner, the contracting authority shall look at each proposal and its overall value for the duration of the PPP including where applicable, -

- (a) the involvement of the contracting authority in proposed treatment of any profits resulting from the project;
- (b) any revenue sharing proposals with the contracting authority, and
- (c) setting, controlling and collection of user fee schedules.

Financial
evaluation criteria

55.-(1) Where appropriate, the contracting authority shall, in evaluating the responsive bids and depending on the type of the project, have due regard to the following matters:

- (a) lowest proposed tariff, toll, fee or charge at the start of operation of the project if a parametric formula for periodical tariff adjustment is specified in the request for proposal;
- (b) lowest present value of the proposed tariffs, tolls, fees and charges for the period covered by the public-private partnership agreement if there is no such formula;
- (c) lowest present value of payments from the government;
- (d) lowest present value of a government subsidy to be provided for the period covered by the public-private partnership agreement;
- (e) highest present value of the proposed payments to the contracting authority including concession fees, lease or rental payments, fixed or guaranteed payments or variable payments and percentage shares of revenues for the period covered by the public-private partnership agreement; or
- (f) any other appropriate financial parameters

approved by the Minister.

(2) For the purpose of comparison of bids quoted in different currencies, price shall be converted into a single currency specified in the request for proposal and the rate of exchange shall be at the official selling rate prevailing seven working days before the date of opening of bids specified in the request for proposal, as notified by the Bank of Tanzania.

Evaluation of proposals based on criteria in bidding document

56.-(1) For the purpose of regulation 54(1)(b), evaluation of proposals in bidding document may be conducted using any rating method or combination of methods, as long as they are specified in the bidding document.

(2) The contracting authority shall determine the strength, deficiency, weakness, and concern supporting the evaluation of each proposal.

(3) The criteria for evaluation of proposals shall be specified in the bidding document and shall include:

- (a) technical capacity;
- (b) legal capacity;
- (c) financial capability;
- (d) acceptance of risk transfer;
- (e) environmental and social management plan;
- (f) detail engineering design;
- (g) local content and empowerment of citizens;
- (h) demonstrated experience in delivery of similar projects;
- (i) demonstrated experience in working with similar public agencies;
- (j) capacity to deliver the required quantity and quality of project or services;
- (k) proposed infrastructure and end of term treatment; and
- (l) proposed timelines for the project.

Conduct of due diligence

57.-(1) The contracting authority shall conduct due diligence on the bidder that is recommended to be awarded the contract by:

- (a) verifying experience of the bidder to ensure that they possess the qualifications

- and expertise necessary to meet the contracting authority's objectives in accordance with the request for proposals;
 - (b) verifying legal aspect relating to the bidder;
 - (c) contacting a list of references provided by the bidder indicating other public agencies and projects similar to that being proposed;
 - (d) ensuring that the company listed as the reference contact actually worked directly with the bidder in question and determining the capacity in which he worked;
 - (e) ensuring that any litigation or controversy (if any) associated with a bidder does not affect the ability to execute the contract;
 - (f) confirming the qualifications and experience that the private partner possesses through verification of financial, managerial, legal and technical capacity including years in the specific business sector, experience with a project of similar size, nature, and complexity, as well as experience with public private partnership projects;
 - (g) reviewing a list of ongoing and successfully completed projects by the proposed bidder to ascertain the extent of prior experiences;
 - (h) verifying the potential bidder's financial capability; and
 - (i) confirming the available working capital proposed for the projects as well as the bonding capability of the proposed bidder through the provided bank and surety references.
- (2) The references referred under sub regulation (1)(b), shall provide:
- (a) information regarding interaction of persons listed in the references with the bidder and

its staff; and

(b) insight on issues they encountered, the resolution process and the responsiveness of the bidder to any agency concerns.

(3) The list of references shall relate to projects and public sector which are similar to the proposed project and contracting authority respectively.

Preferred and reserve bidders

58.-(1) The contracting authority shall, upon receiving approval of preferred bidders and the reserve bidders from the tender board, submit the preferred bidder to the PPP Centre.

(2) The PPP Centre shall, upon receipt of the preferred bidder, make recommendations and submit the same to the PPP Steering Committee for approval.

(3) The PPP Node shall seek recommendations of the PPP Centre on the preferred bidder before obtaining an approval of the accounting officer of the Ministry responsible for local government authorities.

(4) Upon receipt of the recommendations from the PPP Centre or PPP Node as referred to under sub regulations (2) and (3), the contracting authority shall within seven working days, notify the preferred bidder and the reserve bidders.

(5) The PPP Centre shall, within fourteen working days after receipt of the recommendations from the Steering Committee, notify the preferred bidder and the reserve bidders.

(6) The PPP Node shall, within twenty one working days after receipt of the recommendations from the PPP Centre, notify the preferred bidder and the reserve bidders.

Value for money report

59.-(1) The contracting authority shall prepare value for money report demonstrating among other things, the criteria for affordability, value for money and substantial technical, operational and financial risk transfer applied in evaluation of the bids.

(2) The value for money report shall include:

(a) summary of the evaluation findings;

(b) affordability assessment;

- (c) value-for-money assessment;
 - (d) appropriate risk transfer of technical, operational or financial;
 - (e) Government support required;
 - (f) notes raised and bid deficiencies; and
 - (g) consideration on the options for the reserve bidders negotiation plan.
- (3) The detailed content of value for money report shall be prescribed in the Guidelines.

Approval of award of contract by PPP Steering Committee

60.-(1) Upon receipt of the approved evaluation report and the supporting documents, the accounting officer shall, after satisfying himself that proper procedures are followed, forward the same to the PPP Centre or PPP Node for verification and recommendations.

(2) The PPP Node after verification and recommendations shall forward the same to the PPP Centre for scrutiny.

(3) For the purpose of sub (1) and (2), the PPP Centre shall forward the approved evaluation report and the supporting documents to the PPP Steering Committee for approval.

(4) The contracting authority shall not award the contract to any of the preferred or reserve bidders before receiving written recommendations from the PPP Centre and PPP Node.

Notice of intention to award contract

61.-(1) Upon receipt of the recommendations from the PPP Centre or PPP Node, and after working on recommendations, the contracting authority shall, within five working days issue a notice of intention to award the contract to all bidders who participated in the tender.

(2) Notices of notification referred under sub regulation (1), shall provide ten working days upon which the bidders may submit complaints or dispute thereof, if any.

(3) Any complaint or dispute on the tender proceedings shall be as set out in the Seventh Schedule.

(4) Where no complaints or dispute is lodged pursuant to a notice under sub-regulation (1), or after all

complaints lodged are cleared pursuant to procedure set out in sub-regulation (3), the contracting authority shall issue a notice of acceptance to the preferred bidder, and proceed to issue a provisional award.

(5) The notification referred to in sub-regulations (4) shall be communicated in written form as prescribed in the request for proposal and signed by the contracting authority.

(6) The contracting authority shall send a copy of the provisional award letter to the PPP Centre, Ministry responsible for PPP, the Authority, the institution responsible for Planning, the Controller and Auditor General, the Office of Attorney General, the Tanzania Revenue Authority, the Internal Auditor General and the PPP Node for local government project, for information.

(7) The provisional award shall be made within the period specified on the validity of the tender to the bidder whose proposal has been determined to be the preferred, evaluated, and meets the required financial and managerial capability, legal capacity, technical, environmental and technological experience and resources to carry out the contract effectively.

(8) The bidder shall be responsible for due diligence and value for money tests undertaken in regulations 57 and 59.

(9) Subject to sub-regulation (7), the contracting authority shall notify the reserve bidder or bidders accordingly and such notice shall state the fact on the appointment is subject to unsuccessful negotiations with the preferred bidder in that order.

(10) After completing the competitive selection process as set out under these Regulations, a contracting authority shall invite the preferred bidder, for final negotiation of the agreement in accordance with provisions of these Regulations.

PART VII

PROCUREMENT PROCEDURES FOR UNSOLICITED PROPOSAL

Procurement of

62.-(1) Pursuant to section 15 of the Act, all

unsolicited PPP unsolicited public private partnership projects shall be procured through an open and competitive bidding process.

(2) The contracting authority shall undertake procurement of an unsolicited project after the approval of the feasibility study prepared by a private party in the manner prescribed under these Regulations.

(3) The contracting authority shall not conduct a procurement process for unsolicited project proposal which:

- (a) does not meet conditions set under these regulations;
- (b) provide for exclusivity;
- (c) require any form of government financial support at any stage of the pre-feasibility study, procurement or pre-development;
- (d) does not serve the public interest or fall within the national development plans;
- (e) in any way interferes with an ongoing solicited or unsolicited project under competitive tendering or under preparation for competitive bidding; and
- (f) in any way interferes with a government development project under the Act or any other regime where the government has already incurred development cost.

(4) The government may suspend the unsolicited process before signing the contract without incurring any liabilities, if a private party submits a pre-feasibility study or feasibility study that does not comply with the provisions of the Act and these Regulations.

(5) Tendering of unsolicited projects may not necessarily require pre-qualification procedure in case of only one expression of interest is received, otherwise it shall follow the same procedures as prescribed in the solicited projects.

Approval
process of
unsolicited
proposal

63.-(1) A contracting authority shall submit a feasibility study of unsolicited proposal to the PPP Steering Committee through the PPP Centre for approval in the manner set out under these Regulations.

(2) Where the PPP Steering Committee is of the opinion that an approved feasibility study suffices to be exempted from competitive tendering, it shall, upon the request of the proponent, forward the approved feasibility study to the Minister for determination under section 15(2) of the Act.

Bidders
conference

64.-(1) The contracting authority may, in order to ensure that prospective bidders are adequately informed and to secure their commitment, call a bidders' conference prior to issuance of request for proposal.

(2) All proposals for tendering under unsolicited proposal shall be accompanied by bid security as prescribed by the contracting authority in the request for proposal.

(3) The request for proposal shall spell out that the winning bidder shall be required to reimburse the original proponent, reasonable verifiable costs incurred in undertaking the feasibility study within thirty days after signing the contract.

(4) The winning bidder shall reimburse the original proponent of audited and verified cost incurred in undertaking the feasibility study.

(5) In reaching a fair cost of the feasibility study the contracting authority shall lead the process of negotiation between the winning bidder and the original proponent who is required to be reimbursed the on the cost incurred and the project reverting to the winning bidder.

(6) Request for proposals shall be issued at cost related to printing, photocopying and distribution and shall not include any element of profit.

Advertisement
of request for
proposal

- 65.-(1) A request for proposal shall be-
- (a) prepared by the contracting authority and approved by the tender board;
 - (b) advertised in media of wide circulation both locally and internationally including the Tanzania Procurement Journal, PPP Centre, Contracting Authority and PPRA websites and TANePS; and
 - (c) in the advertisement as prescribed in the Third

Schedule to these regulations

(2) The request for proposal shall include the following information:

- (a) letter of invitation for bid;
- (b) data sheet containing information about the project;
- (c) instructions for preparing bids;
- (d) amount and manner of payment of bid security and performance guarantee, where applicable;
- (e) the manner, place, date and time for submission of bidding documents;
- (f) the manner, place, date and time of opening of bids;
- (g) mechanism of providing a fair advantage to the bidder established by the contracting authority and approved by the PPP Steering Committee accordance to these Regulations;
- (h) detailed and unambiguous evaluation criteria;
- (i) terms and conditions of the agreements, as far as already known by the contracting authority;
- (j) technical specifications for the infrastructure to be procured and terms of reference for the services to be rendered;
- (k) the manner in which bid price is to be assessed and computed, including information about tax liability;
- (l) currency or currencies in which bid price is to be formulated and expressed;
- (m) bid validity period;
- (n) a copy of integrity pact to be signed by the parties, where applicable; and
- (o) any other information specified in guidelines issued by the PPP Centre.

(3) Any clarification on the request for proposal shall be requested and issued in accordance with the procedures stipulated in the tender documents prepared by the contracting authority.

Bid securities
for unsolicited

66.-(1) Save as otherwise provided under regulation 47, the interested bidder shall, during bid

proposal submission, required to deposit to the contracting authority a bid security as prescribed in the tender documents.

(2) Subject to sub regulation (1), the bid security may be in the form of a bid bond from a bank that meets the criteria, if the contracting authority direct so in the tender documents.

(3) The contracting authority shall, within thirty days of the announcement of the preferred bidder, return the bid security to all unsuccessful bidders in the prescribed manner.

(4) The contracting authority shall return the bid security to the successful bidder upon submission of performance bond and before signing of PPP agreement.

(5) Processes for submission and release of bid security and performance bond shall be prescribed in the guidelines

Bid submission and extension of time

67.-(1) Bid under this Part shall be submitted on the place, date and time and in a manner specified in the request for proposal.

(2) Any bid submitted late contrary to sub regulation (1) due to any reason whatsoever, shall not be considered by the contracting authority.

(3) The submitted proposals shall contain all the necessary information as prescribed in the guidelines to these Regulations.

(4) The original proponent shall also submit a bid proposal as prescribed in these Regulations.

(5) The contracting authority shall extend the deadline or re-issue the invitation for proposal only once after the deadline, if no bid has been submitted apart from original project proponent.

(6) The contracting authority shall proceed to appoint the original project proponent as the preferred bidder, if no bid has been submitted after the first extension of deadline or after issuing a modified invitation for proposal.

Criteria for selection of

68.-(1) The selection of the preferred bidder shall follow an open and competitive approach using the

preferred bidder Bonus System and shall further be detailed in the guidelines issued by the Authority in collaboration PPP Center.

(2) The tender board shall proceed to appoint the original proponent as the preferred bidder if qualifies and the next best proposal as the reserve bidder.

(3) The contracting authority shall, in consultation with the PPP Centre, develop the following criteria to determine the best proposal:

- (a) adheres to the provisions of the Act;
- (b) lowest per unit charge of output;
- (c) local content and empowerment;
- (d) requires lowest Government contributions; and
- (e) value for money; and
- (f) any other criteria to be determined by the contracting authority.

Method of selection of preferred bidder

69.-(1) The tender board shall prescribe criteria and scores to be used in the selection of preferred bidder.

(2) Subject to sub regulation (1), the PPP Centre shall prepare standard guidance to assist contracting authorities on selection of preferred bidder.

(3) Once the scores are approved by the tender board, the original proponent shall receive a bonus of ten points of the score, added to its score.

(4) The contracting authority may, in consultation with the PPP Centre, determine an alternative method of selection of preferred bidder in case the bonus system shall not guarantee the best value for money.

Approval and notification of unsolicited bidder

70. The contracting authority shall follow procedures for approval of preferred bidder and notification of the preferred bidder using procedures stipulated under these Regulations.

PART VIII
PROCUREMENT PROCEDURES FOR PPP ADVISORS

selection and
engagement of
PPP advisor

71.-(1) A contracting authority may, where independent expertise is required, or it is unlikely that all kinds of expertise, experienced and human resources needed to develop and implement a Public Private Partnership project is not available in-house, engage a PPP advisor.

(2) A PPP advisor engaged shall have the appropriate skills and experience to assist and advise the contracting authority on matters related to the project development and its implementation.

(3) Without prejudice to the generality of sub regulation (2), a PPP advisor shall possess the following minimum qualities-

- (a) possess knowledge of the subject matter of the project under consideration;
- (b) evidence of experience in undertaking feasibility studies for PPP Projects;
- (c) if PPP advisor, evidence of experience in PPP project structuring, tendering and advisory services on various components of the project, drafting of PPP Agreements and facilitation through to financial close;
- (d) relevant experience in the drafting and negotiating of PPP agreements; and
- (e) competence in project planning management.

(4) The PPP advisor shall be selected and engaged using the procedures for selection and engagement of PPP advisors pursuant to these Regulations and as shall be elaborated further in the Guidelines.

Procuring
entity's
contributions

72.-(1) The contributions which the contracting authority is in a position to make to the PPP advisor's assignment shall be defined in the terms of reference indicated in the requests for proposals and finalized in the contract.

(2) The nature and type of the contributions shall be reviewed during negotiations and shall not be included in the cost of the services.

Except for a budgetary allocation to cover the entire or part of the local expenditure, the contributions shall include-

- (a) office space with electricity, water, telephone, equipment, vehicles and maintenance;
 - (b) housing;
 - (c) support staff such as secretary, messenger, driver, administrative and technical service; and
 - (d) information, documentation and all studies relating to the assignment.
- (3) The value and type of the procuring entity's contributions shall be finally concluded during the negotiations.

Basic steps for selection of PPP advisors

73. A contracting authority may, in order to secure a wide range of services, promote streamlining and harmonization, and reduce administrative complexities and transaction costs, choose from a range of selection methods specified in these Regulations, and the selection process shall comprise of-

- (a) preparation of the terms of reference;
- (b) preparation of cost estimate and the budget;
- (c) advertising the request for expression of interest or prequalification of the consultancy services;
- (d) preparation of the short list of PPP advisors or consultants;
- (e) determination of the selection procedures and criteria for selection;
- (f) preparation and issuance of the request for proposals;
- (g) invitation of the PPP advisors to submit proposals;
- (h) receipt of proposals;
- (i) evaluation of technical proposals;
- (j) evaluation of financial proposal;
- (k) final evaluation of quality and cost;
- (l) post qualification where necessary;
- (m) negotiations;
- (n) award of the contract to the selected PPP

- advisor; and
- (o) signing and concluding the contract.

Terms of
reference

74.-(1) A contracting authority shall prepare detailed terms of reference for the PPP advisor which clearly mention the scope of work and services required, and deliverables and their timeframes.

(2) The PPP advisor shall have qualifications on project planning, financial, legal and technical expertise and the terms of reference shall place emphasis on output, outcome and service standards rather than specifying the technical parameters of input.

(3) In preparation of terms of reference, the contracting authority shall have regards to the following contents-

- (a) a precise statement of the objectives and goals sought;
- (b) a clear description of the nature and scope of the services required, their context and the time interval in which they are provided;
- (c) a description of the duties and responsibilities of the PPP advisor;
- (d) a description of the duties and responsibilities of the contracting authority;
- (e) information on any counterpart staff and its role;
- (f) information on training and the transfer of technology, where necessary;
- (g) a summary of the data, a list of all available studies and information on the assignment, facilities and services which the procuring entity will provide to the PPP advisor; and
- (h) a clear statement of the criteria to be used in the selection procedure; and
- (i) any other information as the contracting authority may require and as shall be prescribed in the guideline.

(4) The contracting authority shall, prior to negotiation of agreement, submit the terms of reference to PPP Centre or, as the case may be, PPP Node for recommendation.

Transfer of skills and capacity building

75.-(1) A qualified counterpart staff employed by the contracting authority or its executing agency shall be engaged in the assignment of a PPP advisor with a view to build in-house capacity.

(2) The number of counterparts shall be determined on an individual basis depending on the importance of the assignment, and the requirements of the executing agency or the contracting authority.

(3) The counterpart staff shall-

- (a) through a day-to-day contact with the PPP advisor's experts, benefit from a transfer of skills and thus receive on-the-job training; and
- (b) liaise between the organs of the contracting authority and the PPP advisor and assist the latter with data collection, providing it with all available information, documentation and studies on the assignment.

Association between PPP advisors

76.-(1) A PPP advisor may associate with each other to complement their respective areas of expertise, or for other reasons in which case such association may be for the long term independent of any particular assignment or for a specific assignment and may take the form of a joint venture or of a sub-consultancy.

(2) In the case of a joint venture, all members of the joint venture shall be jointly and severally liable for the entire assignment.

(3) A joint venture of firms may pre-qualify by combining the capabilities and past experience of each firm.

(4) A firm shall not associate with more than one partner in the same pre-qualification proceedings.

(5) A firm which is individually pre-qualified may form a joint venture in order to submit a technical proposal.

(6) Firms which are pre-qualified as partners in a joint venture shall not submit individual technical proposals.

(7) Where the short list is finalized and request for proposals is issued, any association in the form of

joint venture or sub-consultancy among short listed firms shall be permissible only with the prior approval of the tender board.

Cost estimate and budget

77.-(1) The cost estimate shall be made on the basis of the cost of the consulting assignment on the assessment of the resources needed to carry out the assignment, staff time, logistical support, and physical inputs.

(2) The cost estimate and budget shall be based on the terms of reference, in which case the budget shall be as detailed and accurate as possible, and shall be broken down into foreign and local currency where applicable.

(3) The principal cost categories and characteristics on which the cost estimate may be based are as follows-

- (a) the PPP advisors' staff, time spent at headquarters and in the field;
- (b) other professional and support staff;
- (c) direct costs and any reimbursable that may arise;
- (d) the cost of physical inputs and materials such as equipment, vehicles and office supplies;
- (e) other expenditure such as offices, communications, services; and
- (f) costs for special services, if any.

Advertisement for request of expression of interest

78.-(1) The contracting authority shall include, in the general procurement notice, a list of expected consulting assignments which shall be updated as the contracting authority considers necessary for all outstanding procurement.

(2) The invitation for expression of interest shall be advertised by the contracting authority in the Journal and Tender Portal in accordance with the Third Schedule to these Regulations.

(3) In the advertisement, the contracting authority shall request the applicants to submit adequate information for the contracting authority to make decision on the firm's suitability and the advertisement

shall not be complex as to discourage PPP advisors from expressing interest.

(4) A minimum period prescribed in the Fourth Schedule to these Regulations shall apply for submission of expressions of interest.

(5) A PPP advisor who wishes to provide the requested services may express his desire in writing to be short-listed to the contracting authority concerned.

(6) Notwithstanding sub-regulation (5), an expression of interest to participate in the provision of services shall not oblige the contracting authority to include the applicant in the short list.

(7) In evaluating the expression of interest, a contracting authority shall accord first consideration to firms that possess the relevant qualifications.

Preparation of short list

79.-(1) A contracting authority shall prepare a short-list to be made up of PPP advisors or consultants who, in the view of a contracting authority, possess the required capabilities and experience to provide the specific services.

(2) A shortlist shall be prepared for every new request for proposals and shall comprise of five to ten firms, at least three of which shall be national firms.

(3) Where there are no qualified firms from Tanzania and for the purposes of establishing the short list, the nationality of a firm shall be the country in which the firm is registered or incorporated.

(4) A tender board may require the procurement management unit to expand or reduce a short list and where a tender board has approved a short list, a procurement management unit shall not add or delete names without an approval of the tender board.

(5) Prior to the issue of the request for proposal documents, the PPP advisors shall be requested to confirm their desire to participate in the competition.

(6) Subject to sub-regulation (2), the procurement management unit shall, with the tender board's consent, replace firms that have communicated to the contracting authority in writing that they shall not participate or firms which did not confirm their participation pursuant to sub-

regulation (4), by other firms where available.

Provision of final shortlist

80. Firms that expressed interest, as well as any other firm that specifically so requests, shall be provided with the final short list of firms.

Criteria to be used where no expression of interest is provided

81. Where a contracting authority has not invited expression of interest, it may use the following sources when drawing up the short list of PPP advisors or consultant:

- (a) contracting authority's own experience of consulting firms and individual PPP advisors;
- (b) soliciting interest directly from qualified firms based on its own knowledge; or
- (c) established standard list of PPP advisors who have performed similar services in other contracting authorities or donor funded assignments, where available.

Composition of firm of PPP advisors

82.-(1) A firm of PPP advisors shall comprise of local and foreign PPP advisors:

Provided that, at least thirty percent of the firm's PPP advisors are Tanzania citizens.

(2) Notwithstanding sub regulation (1), A short list may entirely comprise of local or foreign PPP advisors if-

- (a) a sufficient number of qualified local or, as the case may be foreign firms are available for having a short list of firms with competitive costs;
- (b) a competition that include local or foreign PPP advisors is *prima facie* not justified; or
- (c) local or foreign PPP advisors have not expressed interest.

(3) A short list which is not approved by the tender board shall not be used for the selection of a PPP advisor.

Tender board not to object PPP advisor

83. Where an eligible PPP advisor has satisfactorily carried out feasibility studies for a project, and is technically qualified to undertake detailed project

or engineering design, preparation of tender documents or, supervision of implementation, a tender board shall not object the PPP advisor if the PPP advisor is appointed to carry out such subsequent functions.

Pre-qualification

84.-(1) In the case of major and complex services, the short list shall be prepared by either inviting PPP advisors renowned for their experience and skills or by means of an announcement to PPP advisors to express their interest in the assignment.

(2) The announcement shall contain a brief outline of the assignment and only request PPP advisors to submit a detailed statement of capability and experience relevant to the assignment in the format to be provided by the contracting authority in line with standard prequalification documents issued by the Authority.

(3) The criteria used in pre-qualification shall not be applied during the follow-up evaluation of the technical proposals.

(4) Pre-qualification shall be mandatory in all situations where a contracting authority intends to engage into restricted architectural competition in accordance with architectural competition procedures prescribed by the relevant regulatory board and subject to the approval of the Authority.

(5) The contracting authority shall evaluate the responses and information obtained and shall prepare a short list to be approved by the tender board, by including the best qualified firms.

(6) The maximum period prescribed in the Fourth Schedule to these Regulations shall apply for submission of pre-qualification application

Preparation and issuance of request for proposals

85.-(1) Before inviting proposals, a procurement management unit shall furnish to the tender board for its review, the short list and the proposed request for proposal and shall make modifications to the short list and the documents as the tender board shall reasonably direct.

(2) Any further modification shall require the tender board's prior approval before the request for proposal is issued to the short-listed PPP advisors.

(3) The contracting authority shall invite proposals from five to ten qualified and experienced PPP advisors, and shall, through a suitable selection procedure, choose the PPP advisor most qualified for the assignment.

(4) Contracting Authorities shall use standard request for proposals documents issued by the Authority and shall list all the documents included in the request for proposals.

(5) The request for proposals shall contain-

- (a) a letter of invitation;
- (b) instructions to PPP advisors, including a data sheet and evaluation criteria;
- (c) terms of reference;
- (d) proposed contract;
- (e) technical and financial proposal standard forms; and
- (f) anti-bribery pledge.

(6) The procuring entity shall send the request for proposals to PPP advisors on the short list.

(7) The contracting authority may use electronic system to request proposals if the Authority is satisfied with the adequacy of such system and the system shall be secured to avoid modifications to the request for proposals and shall not restrict the access of short-listed PPP advisors to the request for proposals.

Letter of invitation

86. The letter of invitation shall state the intention of the contracting authority to enter into a contract for the provision of consulting services, the source of funds, the details of the client and the date, time, and address for submission of proposals.

Instruction to PPP advisors

87.-(1) The instruction to PPP advisors shall-

- (a) contain all necessary information to help PPP advisors to prepare responsive proposals, and

- shall manifest the transparency in the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score;
- (b) indicate the expected input of key professional staff time and the PPP advisors or consultants and shall be free to prepare their own estimates of staff time necessary to carry out the assignment;
 - (c) specify the proposal validity period which shall not be less than sixty days and not exceeding one hundred and twenty days.
- (2) The instructions to PPP advisors or consultants shall include the following aspects of the assignment:
- (a) a brief description of the assignment;
 - (b) the names and contact information of officials to whom clarifications shall be addressed and with whom the PPP advisors' or consultants' representative shall meet, if necessary;
 - (c) details of the selection procedure to be followed, including:
 - (i) a listing of the technical evaluation criteria and weights given to each criterion;
 - (ii) the details of the financial evaluation;
 - (iii) the relative weights for quality and cost in the case of quality and cost-based selection;
 - (iv) the minimum pass score for quality;
 - (v) the details on the public opening of financial proposals; and
 - (vi) available budget in the case of fixed budget selection;
 - (d) an estimate of the level of key staff inputs (in staff-months) required of the PPP advisors, and indication of minimum experience,

- academic achievement, and so forth, expected of key staff or the total budget, if a given figure cannot be exceeded;
- (e) details and status of any external and internal financing;
 - (f) information on negotiations; and financial and other information that shall be required of the selected firm during negotiation of the contract;
 - (g) the deadline for the submission of proposals;
 - (h) currency in which the costs of services shall be expressed, compared, and paid;
 - (i) reference to any written laws in Tanzania that may be particularly relevant to the proposed PPP advisors' or consultants' contract;
 - (j) a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project if, in the contracting authority judgement, such activities constitute a conflict of interest with the services provided under the assignment;
 - (k) the method in which the proposal shall be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;
 - (l) a request that the invited firm:
 - (i) acknowledges receipt of the request for proposal; and
 - (ii) informs the contracting authority whether or not it will be submitting a proposal;
 - (m) the short list of PPP advisors or consultants being invited to submit proposals, and whether or not associations between short-listed PPP advisors are acceptable;
 - (n) the anticipated date on which the selected PPP advisor shall be expected to commence the assignment;

- (o) any requirements of the contracting authority with respect to the issuer and the nature, form, amount and other principal terms and conditions for the performance security for the procurement contract to be provided by the PPP advisors who enters into the contract;
- (p) a statement indicating:
 - (i) whether or not the PPP advisors' contract and personnel shall be tax-free; and
 - (ii) what the likely tax burden will be or where this information can be obtained, and a statement requiring that the PPP advisor shall include in its financial proposal a separate amount clearly identified, to cover taxes;
- (q) if not included in the terms of reference or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the contracting authority;
- (r) phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
- (s) the procedure to handle clarifications about the information given in the request for proposals; and
- (t) any conditions for subcontracting part of the assignment.

Procurement
contract

88.-(1) A contracting authority shall use the appropriate standardised documents to be prepared as prescribed under these Regulations with necessary alterations to address specific project issues.

(2) The alterations in the standard contract shall be introduced through the special conditions of contract.

(3) Where the forms are not available for a specific service, contracting authorities shall use other contract forms acceptable to the Authority.

PART IX
NEGOTIATIONS AND AGREEMENT

Negotiation
team

89.-(1) The accounting officer of a contracting authority shall, within twenty one days from date of notification of award, form a multi-disciplinary negotiation team to negotiate with the private party on the terms, conditions and other issues of an agreement.

(2) The negotiation team shall be comprised of not less than five members with knowledge, experience and skills on the subject matter of the project which may include among others, experts in economics, law, finance and banking, engineering and PPP management.

(3) The negotiation team shall perform functions stipulated in the Act and advise the accounting officer accordingly.

(4) Before commencement of the negotiations, the negotiation team shall prepare a negotiation plan to be endorsed by the relevant accounting officer.

Procedures for
negotiation of
agreement

90.-(1) Negotiation shall commence with the preferred bidder upon the approval and announcement of preferred and reserve bidders.

(2) Where the negotiation with the preferred bidder is terminated, the contracting authority shall invite the reserve bidder for negotiation, and continue in that order of reserve bidders until the list is exhausted.

(3) The contracting authority shall, after successful completion of negotiations with the preferred bidder and before signing of any contract, submit to the PPP Steering Committee through PPP Center for final approval of the project agreement in accordance with the provision of the Act.

(4) The submission referred to under sub regulation (3), shall be accompanied by brief summary of the agreement which may include the following:

- (a) final negotiated project costs;
- (b) value for money and affordability analysis;
- (c) the proposed PPP model and terms of the public-private partnership agreement;
- (d) all financial liabilities borne directly or

- indirectly by the Government;
- (e) contracting authority's public-private partnership agreement management plan;
- (f) legal due diligence on competency of parties to enter into public-private partnership agreement; and
- (g) any material changes to the terms and conditions of the project, in particular Government's obligations and liabilities, from the feasibility as approved by the PPP Steering Committee.

(5) Any material variation, change or amendment, agreement to the project, including those needed to achieve financial close, refinancing, renegotiations or other conditions precedent, shall be approved in advance, in writing by the PPP Steering Committee.

(6) Negotiation for procurement of private party shall be conducted on key areas for negotiation as provided in section 11(3) and (4) of the Act.

Approval and finalization of agreement

91.-(1) Upon conclusion of the negotiation the contracting authority shall finalise the agreement and submit all related documents to the PPP Centre for recommendation.

(2) The PPP Centre and shall, within fourteen working days recommend on the submitted agreement and forward to the PPP Steering Committee for approval before further submission to contracting authority for further action.

Submission of draft agreement to Attorney General

92.-(1) The contracting authority shall submit to the Attorney General the draft agreement as approved by the PPP Steering Committee and agreed by both parties for vetting.

(2) The draft agreement submitted to the Attorney General shall be accompanied by other documents as relating to the project or contracting parties as may be necessary for clarity during vetting.

(3) The Attorney General shall, after consideration of the draft agreement and any other

Cap.268	<p>attached documents, provide a legal opinion on the draft agreement within fourteen working days in accordance with the Office of the Attorney Generals' (Discharge of Duties) Act,</p> <p>(4) The contracting authority shall, after receiving the opinion of the Attorney General on the draft agreement, consider the opinion and prepare the final draft of the agreement.</p> <p>(5) Where the opinion of the Attorney General has an impact on the terms and conditions of the draft agreement as agreed by the parties, the contracting authority shall immediately notify the private party on the new terms or consideration of new terms.</p> <p>(6) Upon agreement by both parties, a final agreement shall be prepared for signature by the parties.</p>
Signing of agreement	<p>93.-(1) The accounting officer shall, upon being satisfied with the contents of the agreement, signs the agreement on behalf of the contracting authority.</p> <p>(2) After the signing of the agreement, the contracting authority together with the private party shall commence the process for implementation of the project.</p>
Copies of agreement	<p>94.-(1) Upon signing of the agreement, the accounting officer shall forward copies of the agreement to the PPP Centre, PPP Node, Ministry responsible for finance, authority responsible for National Planning, Office of Attorney General, Controller and Auditor General, Tanzania Revenue Authority, Internal Auditor General and to the Authority for record keeping , monitoring and auditing implementation of the public private partnership projects.</p> <p>(2) Details of the agreement shall be recorded and entered into the registers separately prepared, kept and maintained for that purpose by both the contracting authority and the PPP Centre.</p>
Role of Controller and Auditor General	<p>95- (1) The Controller and Auditor General shall audit the implementation of PPP Contract.</p> <p>(2) The PPP Center in collaboration with the Office of Controller and Auditor General shall prepare</p>

guidelines for auditing public private partnership projects.

(3) The guidelines to be prepared under sub-regulation (1), shall include the scope and methodology of auditing PPP projects covering the aspects of financial, performance, compliance and value for money audits in the course of preparation and implementing PPP projects.

PART X
PROJECT MANAGEMENT PLAN

Management of
project after
financial close

96.-(1) Upon conclusion of financial close, the services of PPP advisor shall be deemed to cease to apply provided that the Terms of Reference specify that the scope of advisory services for the advisor end at conclusion of financial close.

(2) The accounting officer shall ensure that information about the project is carefully kept, managed, and appropriate knowledge and skills are passed over to personnel who may oversee the next phases of the project.

(3) Without prejudice to sub-regulation (2), the contracting authority shall execute a sound Project Management Plan for the specific project based on the signed partnership agreement, to enable the accounting officer to effectively manage, enforce, monitor, and report on the Public Private Partnership Agreement.

(4) The accounting officer shall ensure that the Project Management Plan demonstrates the value for money, affordability, and risk transfer expected from the agreement are not eroded after the signing of the agreement.

(5) The contracting authority shall, in collaboration with the private party and immediately after successful negotiation, prepare management plan which shall consist of:

- (a) performance criteria;
- (b) external audit and reporting requirements;
- (c) submission of progress reports;
- (d) verification of project assets and value;
- (e) stakeholders' communications;

- (f) monitoring and evaluation;
 - (g) a clear and objective definition of performance standards required;
 - (h) self-monitoring and reporting by the private party;
 - (i) a scheduled independent review of the private party's monitoring and reporting system;
 - (j) mechanism to get feedback from users which may reveal performance issues;
 - (k) mechanism for the monitoring team to check files and the operating system;
 - (l) penalties which incentivise correction of performance problems;
 - (m) management of project, assets and facilities by the private party; and
 - (n) warnings for consistent poor performance.
- (6) For the purpose of protecting users interest, imposition of fees and tariffs, and their alterations from time to time, shall be regulated by the relevant regulatory authority with mandate on the service to be provided.

Implementation of projects

97.-(1) After the signing of the agreement and commencement of the project, the accounting officer shall, through its Project Management Team designated under these regulations, ensure that the agreement is properly implemented, managed, enforced, monitored and reported on from its inception up to the expiry or its termination.

(2) Without prejudice to sub-regulation (1), the accounting officer shall maintain a mechanism or procedures for-

- (a) measuring the outputs of the project under the agreement;
- (b) monitoring the implementation of, and performance of the project under the agreement;
- (c) liaising with the private party;
- (d) resolving disputes and differences with the private party;
- (e) generally overseeing the day to day management of the project;

- (f) reviewing of costing and tariffs in view of the long lifetime involved for the project; and
- (g) preparation of annual reports and other reports on the project at any time, if circumstances dictate.

(3) The accounting officer shall be responsible for the service delivery through the project facilities as if the facilities were being managed and operated directly by the Government, and in so doing shall ensure-

- (a) regular follow up of maintenance of the facilities developed by the project;
- (b) service delivery is at an acceptable level in terms of quality and reliability;
- (c) regular and annual performance reports are submitted to the PPP Centre and PPP Node in accordance with the Act and these regulations;
- (d) the facilities are subjected to regular accounting and auditing;
- (e) technology transfer and training of counterpart management to take over the management of the facility; and
- (f) smooth transfer of assets during hand-back.

Evaluation and monitoring of project

98. Every public private partnership project shall be monitored and evaluated by the contracting authority and the PPP Centre to ensure that the project is implemented in accordance with the agreement.

Variation

99.-(1) Any variations to the agreement shall be agreed and amended by the parties provided that such variations are approved by the respective contracting authority and PPP Steering Committee, and shall be vetted by the Office of Attorney General.

(2) Notwithstanding the requirement in sub-regulation (1), all amendments to the agreement shall not affect the value for money, affordability, agreed technical, operational and financial risk transfer to the private party.

(3) Any variations effected under sub-regulation (1), shall ensure that the costs associated with such variations are fairly compensated amongst the parties in

accordance with standard commercial terms.

Refinancing of project

100.-(1) Any proposed refinancing of debt extended by lenders to the project shall be done subject to the consent and of the contracting authority and the Ministry responsible for finance.

(2) Any proposed refinancing of debt that affect the scope of project, value for money and end user cost extended by lenders to the private party shall be done subject to the contracting authority's consent and approved by the Ministry responsible for finance.

(3) Subject to the provision of section 28(3) of the Act, the Minister shall develop guidelines for monitoring, evaluating and managing all fiscal risks, debts, contingent liabilities and other financial matters.

Termination of project

101.-(1) The parties shall have a right to terminate the project if any party to the project fails to fulfil its commitment set under the agreement.

(2) The reasons and compensation for termination shall be solely those set out in the agreement.

(3) The agreement shall include provisions to achieve the conditions set out in sub regulation (2) of this regulation.

(4) Where the agreement is terminated for the failure of the either private party to meet its obligations set under the agreement, such party shall, within the time stipulated in the agreement, compensate the other party for damages or losses suffered.

(5) Upon termination of the agreement, the contracting authority may, in accordance to the provisions of the Act and these Regulations, engage another private partner to implement the project.

PART XI
PARTICIPATION OF MINISTRIES, LOCAL GOVERNMENT
AUTHORITIES, GOVERNMENT DEPARTMENTS AND
AGENCIES
IN SMALL-SCALE PUBLIC PRIVATE PARTNERSHIP

Small scale
public-private
partnerships

102.-(1) A small-scale PPP may be undertaken by the public sector according to the procedures set out in these Regulations.

(2) For the purpose of this regulation, a small-scale PPP is a public-private partnership whose total project value does not exceed US\$ 20 million; and

(3) For the purpose of sub regulation (2), project value shall be the total capital investment during the project duration as will be determined by the contracting authority during project preparation.

Establishment
of PPP Node

103. The Accounting Officer of the Ministry responsible for local government shall establish a PPP Node.

Establishment
of PPP Desk

104. The Accounting Officer of a Ministry undertaking small scale PPP project shall designate within the Ministry, a PPP Desks to coordinate the implementation of a PPP project of the respective ministry, government department authority or agency.

Identification of
small scale PPP
projects

105.-(1) A contracting authority which intends to undertake a small-scale PPP shall submit a concept note to the PPP Node or as the case may be, PPP Desk, for scrutiny.

(2) The PPP Node or as the case may be, PPP Desk shall, within twenty one working days from the date of receipt of the project concept note, forward the concept note to the respective minister who shall either approve or reject the concept note.

(3) Upon approval of the concept note, a contracting authority may proceed to conduct a pre-feasibility study in accordance with the requirements stipulated under these regulations.

(4) A contracting authority shall submit a

prefeasibility study report prepared in terms of sub regulation (3) to the PPP Node or as the case may be, PPP Desk for scrutiny.

(5) The PPP Node or as the case may be, PPP Desk shall upon receiving recommendations from the Centre, within twenty one working days, forward the prefeasibility study report to the respective Minister for approval or direct otherwise.

(6) A prefeasibility study report for small scale PPP project shall conform to the criteria and content as provided in regulation 3B and 3C respectively.

Recommendations by PPP Centre

106.-(1) The PPP Node or as the case may be, PPP Desk, shall submit the project prefeasibility and feasibility studies to the PPP Centre to seek recommendations.

(2) The PPP Centre shall give recommendations within thirty working days as regards to the project prefeasibility and feasibility study.

(3) On receipt of the recommendations of the PPP Centre, the PPP Node or as the case may be, the PPP Desk shall, in writing, forward to the contracting authority, the project together with specific recommendations for considerations.

(4). The Contracting Authority shall work upon the consolidated recommendations from the PPP Node or as the case may be, PPP Desk, PPP Centre and re-submit the project to the respective responsible Minister for approval.

Pre-feasibility and feasibility study for unsolicited proposals

107. The procedure for submission of project prefeasibility and conducting feasibility studies for the unsolicited projects under these Regulations shall apply to small scale PPP project under this Part.

Approval of small scale PPP's

108. All powers in respect to approvals of small scale PPP feasibility study and procurement prescribed under these Regulations shall be undertaken by the accounting officer of the respective Ministry, local

government authority, Authority, Department or Agency.

Approval of
PPP agreement

109.-(1) Upon completion of the procurement process for the small-scale PPP, the contracting authority may enter into an agreement with the private party which shall comply with the requirements as set out under the Act and these Regulations.

(2) Before entering into such agreement, the contracting authority shall submit the draft agreement to the PPP Node or as the case may be, PPP Desk for recommendation, based on its assessment of whether the project complies with the requirements out in the Act and these Regulations.

(3) On receipt of the draft agreement, the PPP Node or as the case may be, the PPP Desk, shall work upon and provide its recommendations within thirty working days.

(4) The PPP Node or as the case may be, PPP Desk shall, after the expiry of thirty working days from the date of receipt, forward the project and recommendations to the PPP Centre for recommendation.

(5) The PPP Centre shall provide recommendations on the draft agreement within thirty working days, and forward to the PPP Node.

(6) The PPP Node or as the case may be, PPP Desk on receipt of the recommendations on the Draft Agreement, shall compile all recommendations and submits to the contracting authority for finalization.

(7) As soon as the accounting officer finalizes the PPP agreement, shall submit the same to the PPP Node or as the case may be, PPP Desk for onward submission to the Office of the Attorney for vetting.

Copies of
agreements

110.-(1) Upon signing of the agreement, the accounting officer of the contracting authority shall forward copies of the agreement to the PPP Node, the PPP Centre, Ministry responsible for PPP, Attorney General, Controller and Auditor General, Tanzania Revenue Authority, Internal Auditor General and to the Authority, as the case may be, for record keeping and monitoring of implementation of the project.

(2) Details of the agreement shall be recorded and entered into the registers separately prepared, kept and maintained for that purpose by both the local government authority, PPP Centre and PPP Node or as the case may be, PPP Desk,.

Duration and extension of an agreement

111.-(1) The duration of an agreement for a small-scale PPP shall be determined by the financial model, and shall be negotiated by the parties.

(2) The duration of the agreement shall not be extended unless:

- (a) there is a delay in completion or interruption of operations due to circumstances beyond any party's control;
- (b) the project is suspended for reasons not caused by the private party; or
- (c) there is an increase in costs arising from requirements of the contracting authority which was not foreseen or included in the agreement.

Monitoring and evaluation

112.-(1) All small-scale PPP projects undertaken under these Regulations shall be monitored by the contracting authority that implements the respective project in order to ensure an effective management of the performance under the corresponding agreement.

(2) All small-scale public-private partnerships undertaken under these Regulations shall be registered in a project concept note to be maintained and updated at least semi-annually by the small-scale PPP Node.

(3) Each contracting authority that is undertaking a small-scale public-private partnership shall provide to the small-scale PPP Node or as the case may be, PPP Desk and the PPP Centre the information regarding the project's execution, semi-annually, including information on:

- (a) the overall contract performance measured against the targets as set out in the agreement;
- (b) any disputes having arisen between the parties to the agreement;
- (c) any contractual penalties arising; and

(d) any other information as it deems necessary.

Local
Government
PPP team

113.-(1) Each contracting authority under this Part who intends to implement a PPP may form a PPP team with the responsibility to perform the functions of a contracting authority for PPP to:

- (a) advice contracting authorities on identification, appraisal and procurement of PPP projects;
 - (b) lead negotiations with the preferred bidder;
 - (c) monitor the respective PPP during its execution.
- (2) The PPP team shall consist of:
- (a) one local government officer with expertise in finance and or planning;
 - (b) one local government officer with expertise in infrastructure and public works;
 - (c) one local government officer with expertise in land management;
 - (d) one local government officer with expertise in procurement;
 - (e) one local government officer with expertise in legal affairs;
 - (f) two officers, one of whom shall be a representative of the PPP Node and the other of the PPP Centre; and
 - (g) three persons not being public officers with expertise in matters relating to commercial investment, infrastructure finance and public-private partnerships to be appointed by the respective head of local government in a manner prescribed in the guidelines to be prepared by the PPP Node.
- (3) The functions of the PPP team shall be as set out in the By-laws to be passed by the local government.

Approval of
projects
exceeding
stipulated
threshold

114.-(1) Notwithstanding the provisions of Regulation 82, feasibility studies and procurements processes for all PPP projects exceeding the stipulated threshold shall follow the normal procedure stipulated

under the Act and these Regulations.

(2) Subject to the provision of sub regulation (1), the contracting authority shall, before submission of pre-feasibility, feasibility study and PPP agreements to the PPP Centre, obtain recommendations from the PPP Node or as the case may be, the PPP Desk.

Contracting
authority PPP
team for MDA's

115. The PPP team for MDA's shall consist of:

- (a) one executive representative from contracting authority responsible for finance and or planning;
- (b) one executive representative from contracting authority responsible for infrastructure and public works
- (c) one executive representative from contracting authority responsible for procurement;
- (d) one executive representative from contracting authority responsible for legal affairs;
- (e) one executive representative from sector ministry PPP's desk responsible for legal affairs;
- (f) one executive representative from PPP centre responsible for small scale projects; and
- (g) one person not being public officers with expertise in matters relating to commercial investment, infrastructure finance and public-private partnerships to be appointed by the respective head of contracting Authority for a term of three years in a manner prescribed in the guidelines to be prepared by the PPP centre.

PART XII PROCUREMENT OVERSIGHT BY THE AUTHORITY

Monitoring of
procurement

116.-(1) The head of internal audit unit of each contracting authority shall prepare and submit to the contracting authority quarterly audit report which shall include a report on whether the provisions of the Act and these Regulations have been complied with.

(2) After receiving the report under sub-regulation (1), the contracting authority shall, within fourteen days, submit to the Authority a copy of such report.

(3) Upon receipt of the report, the Authority may, if it considers necessary, require the contracting authority to submit a detailed report on any procurement implemented in violation of the Act and these Regulations for review and necessary action.

(4) Upon the request by the Authority, the contracting authority shall submit the requested report within fourteen working days after receiving the request.

(5) The report under this regulation shall be in the format prescribed by the Authority.

Continuous
monitoring

117.-(1) The Authority in the process of monitor procurement activities under the public private partnership projects and contract implementation, shall subject the contracting authorities to submit to the Authority-

- (a) feasibility study report for solicited or unsolicited public private partnership projects which include a procurement plan for both solicited and unsolicited proposals and which comply with the requirements of the Act and these regulations not later than fourteen working days after approval by relevant approving authorities;
 - (b) information on prequalification process, invitations for expression of interest, the shortlist, request for proposal within seven working days after submission of proposals,
 - (c) monthly and quarterly procurement implementation reports within seven working days after the end of respective month or quarter and annual procurement implementation reports within thirty working days after the end of the respective financial year; and
 - (d) any other information as may be required by the Authority for monitoring purpose.
- (2) The contracting authority shall-

- (a) within thirty working days from the date of award, notify the Authority the name of the person or body to whom the contract is awarded, the amount of proposal and the date on which the award was made;
- (b) inform the Authority, not later than fourteen working days from the date of terminating any contract and give details on measures taken by it before terminating the contract;
- (c) not later than seven working days after issuing the instruction to amend, alter or vary any solicited or unsolicited contract and submit a report to the Authority of any amendment, alteration or variation made thereof, by giving details on the reasons, cost implication and approvals.

(3) The contracting authority and the Chief Executive Officer of the Appeals Authority shall submit to the Authority not later than fourteen days after issuing their decisions, copies of the decisions concerning, complaints or disputes arising out of procurement process under these Regulations.

(4) The Authority may, upon receipt of reports of findings from the contracting authority or decision of the Appeals Authority, recommend to the competent authority to take disciplinary measures against the concerned person or body implicated in the report or decision, as the case may be, in accordance with the provisions of this Act and the Public Procurement Act.

Cap 410

Procurement,
contract and
performance
audits

118.-(1) Subject to the criteria prescribed by the Authority, the Authority may, at any time and where circumstances requires, select any contracting authority project, or contract for audit.

(2) Before the audit, the Authority shall inform the relevant contracting authority on the intention, objectives and compliance indicators to be used for the audit.

(3) For the purpose of enabling the Authority to carry out the audit, the contracting authorities shall make available all documents requested for auditing in a timely

manner prescribed by the Authority.

(4) For ease of procurement information retrieval, contracting authorities shall be required to keep procurement records in a proper manner as prescribed in the Procurement Records Guideline prepared by the Authority.

(5) Upon completion of the audit and before issuing the final audit report, the Authority shall submit, in writing, the audit findings to the audited contracting authority.

(6) A contracting authority shall submit to the Authority detailed responses to the audit findings within fourteen working days after receipt of the audit findings.

(7) After approval of the audit findings by the Board of Directors of the Authority, the audit report shall be submitted to the contracting authority together with recommendations of the Authority.

Procurement investigation

119.-(1) The Authority shall conduct investigation on any matter it considers necessary or desirable stipulated in the Act and these Regulations.

(2) The budget approving authority may submit to the Authority a request to carry out investigation on any procurement if it is not satisfied with the implementation of any procurement by the contracting authority.

(3) Subject to the provisions of the Act, the Authority may require any officer or member of a public body or any other person, who, in its opinion, is able to give any assistance in relation to the investigation of any matter, to furnish information and produce any document under his control and such information shall be submitted within seven working days from the date of the request.

Cooperation with other authorities

120. In the course of, or after conducting an investigation, or procurement, contract and performance audit, the Authority may cooperate with the law enforcement organs, and for that purpose the Authority may establish a mechanism for sharing of information relating to the investigation or procurement, contract and performance audit, or enforcing the findings.

Actions to be taken in the course of monitoring procurement activities

121.-(1) The Authority shall, after conducting an investigation or procurement, contract and performance audit, produce a written report containing its findings and recommendations to the competent authority.

- (2) The recommendations may include the-
- (a) disciplining of the accounting officer, chairman or member of the tender board, the head of procurement management unit, a member of the tender evaluation committee or any other officer concerned with the procurement process;
 - (b) replacement of the head of procurement management unit, the chairman, or any member of the tender board, as the case may be;
 - (c) termination of the procurement proceeding;
 - (d) rectification of the contravention by taking actions as may be necessary to rectify the same; and
 - (e) suspension of the officer concerned to participate in procurement related activities for a specified period.

Response and implementation of Authority's recommendations

122. The competent authority shall respond in writing to the recommendations of the Authority within fourteen working days from the date of receipt of the recommendations indicating the actions to be taken and shall, in addition, prepare and submit to the Authority a report on implementation status within three months from the date of receiving the recommendations.

Oversight, Guidelines and Management

123. For effective discharging of its functions, the authority in consultation with the PPP Centre may prepare Guidelines for oversight function.

PART XIII GENERAL PROVISIONS

Non-responsive

124.-(1) Where the contracting authority floats Request For Qualification (RFQ) and Request For

- bids Proposal (RFP) and gets unresponsive bids, the contracting authorities may, in consultation with Authority and PPP Center, undertake one of the following options, where-
- (a) none of the bids is received, assess and correct for the deficiencies in the issued tender documents and re-issue;
 - (b) only one bid is received on the grounds that all procurement processes were properly followed, conduct a thorough due diligence and select a sole bidder if such a sole bidder provides value for money solutions to the government; or
 - (c) more than one non-compliant bids are received, assess the reasons for non-compliance; re-package the tender and re-issue.
- (2) If it happens that unresponsive bids are due to difficult criteria stipulated in the bid documents and necessitate review of the project feasibility study, the contacting authority shall initiate the review process and submit the feasibility study and tender documents for approval, in line with the provisions of these Regulations
- (3) In the event that two or more bids prove equally advantageous, the contracting authority shall identify the Private Party by asking the respective bidders to provide their best and final offer
- (4) The bidder offering the most advantageous revised bid shall be adjudged the winner

- Hand-back 125.-(1) The provisions relating to handing-over the asset back to the contracting authority in the agreement shall include:
- (a) provisions for knowledge transfer;
 - (b) clear description of the asset to be handed over including its scope and estimated value;
 - (c) maintenance requirements on hand-back; and
 - (d) the right of the contracting authority to inspect the assets sometime before hand-back and to remedy any defects at the private party's expense.
- (2) The project officer shall prepare exit strategy based on the provisions contained in the agreement in

relation to termination and expiry of the project and such exit strategy shall be approved by the contracting authority.

(3) The private party shall ensure that the project is free from any financial liabilities before handing over to the contracting authority as provided for under the agreement.

(4) The exit strategy prepared under sub-regulation (2) shall ensure that the contracting authority has the capacity to bring the project to an end efficiently.

(5) Details of the agreement shall be recorded and entered into the registers separately prepared, kept and maintained for that purpose by both the contracting authority and the PPP Centre.

(6) The exit strategy shall be submitted to the PPP Centre for approval by the PPP Steering Committee in its next meeting.

(7) The accounting officer and the project officer shall ensure that the exit strategy is properly and appropriately executed to its finality.

Guarantees and Fiscal obligations

126 (1) Any guarantee or fiscal obligations for PPP Projects shall be subject to the relevant laws on loans, guarantees and grants.

(2) Save as otherwise provided under section 21 of the Act, the fiscal obligations shall be complied in line with the tax laws administered by the Tanzania Revenue Authority.

local content and corporate social responsibility

127. Save as otherwise provided in these regulations, every operator of an approved PPP project shall enshrine and implement local content and corporate social responsibility as stipulated in section 25 and section 28(2)(g) of the Act.

Preference to local goods

128. In contracts for goods and related services to be awarded on the basis of international competitive tendering or national competitive tendering, procuring entities shall grant a margin of preference of up to fifteen percent to domestically manufactured or produced goods and related services as prescribed in the Regulations

Promotion and
empowerment
of citizens

129.-(1) Save as otherwise provided under these Regulations and the Act, parties to a PPP agreement shall, at any appropriate point in the course of implementing a PPP project, endeavour to-

- (a) prioritize acquisition of goods and services, in the first instance, in favour of local service provider or locally manufactured goods, provided that such goods or services are of competitive terms and meet standards acceptable by Tanzania Bureau of Standards or other internationally acceptable standards;
- (b) ensure that qualified Tanzanians are afforded first opportunity for employment;
- (c) ensure prioritization of on-job training for Tanzanians;
- (d) ensure availability of succession plan, where applicable;
- (e) ensure that a Tanzanian citizen is given priority in any matter relating to the technology transfer, research, development and innovation in any Public Private Partnership related activities; and
- (f) adhere to the Corporate Social Responsibility and its disclosure requirements.

(2) For the purpose of sub-regulation (1) and without prejudice to section 5(1) of the Act, and any other written law relating thereto, the PPP Centre may at any reasonable time requires any such person to prepare and submit to the Minister a detailed employment and training plan which shall include:

- (a) forecast of the hiring and training needs of any person which shall, among others, contain:
 - (i) a specification of the skills needed;
 - (ii) the anticipated skill shortages in the Tanzanian workforce;
 - (iii) the specific training requirements;
 - (iv) the anticipated expenditure that will be incurred by the PPP project in implementing the Employment and Training Plan and Succession Plan as

- forecasted under PPP arrangement;
 - (v) a specification of the skills needed;
 - (vi) the anticipated skill shortages in the Tanzanian workforce;
 - (vii) the specific training requirements; and
 - (viii) the anticipated expenditure that will be incurred by the PPP project in implementing the Employment and Training Plan and Succession Plan as forecasted under PPP arrangement.
- (b) a time frame within which the PPP project will provide employment opportunities for the Tanzanian workforce for all phases of PPP life cycle to enable members of the Tanzanian workforce be prepared for such opportunities; and
- (c) efforts made and procedures adopted for the accelerated training of Tanzanians.

(3) A contracting party as the case may be a private party or any such other person shall provide to the PPP Centre, a semi-annual report on-

- (a) employment and training activities for the reporting period; and
- (b) a comparative analysis of the employment and training plan with the employment and training activities undertaken to monitor compliance

(4) Notwithstanding sub regulations (1), (2) and (3) a non-local company which intends to provide goods, works or services to the PPP projects within the country shall, subject to the Minister's approval, after thorough scrutiny by the PPP Centre and recommendation by the Public Private Steering Committee to the Minister, enter into any arrangement which will guarantee a local participation of at least ten percent shares, interest or equity of the contract value for the provisions of the works, goods and services provided that such arrangement does not divert from the Public Private Partnership arrangement.

(5) In the event that formation of arrangements in the form prescribed in sub regulation (4) fails, and upon application by the contracting party as the case may be private party or any such other person, after thorough

scrutiny by the PPP Centre and upon recommendation by the Public Private Partnership Steering Committee, the Minister shall grant approval for the said applicant to source such works, goods and services through any other arrangement which will provide the local company with a transfer of competence and technology.

Revocation
GN No. 542 of
2015

130. The Public Private Partnership Regulations, 2015 are hereby revoked.

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SCHEDULES
—————

FIRST SCHEDULE
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(Made under regulations 4, 6 and 15)

OUTLINE OF THE CONCEPT NOTE, PRE-FEASIBILITY STUDY AND
FEASIBILITY STUDY FOR PUBLIC-PRIVATE PARTNERSHIPS

A. OUTLINE OF THE CONCEPT NOTE

Instructions

1. The Concept Note should provide an overview of the project proposed by the Contracting Authority so its potential to achieve viability, fiscal affordability and value for money can be explored.
2. The Concept Note should explore specific issues that will be analysed in detail through a Pre-Feasibility Study.
3. The Concept Note must meet the requirements set out in the PPP Act, Cap. 103 [R.E 2018] and PPP Regulations of 2019.
4. The Concept Note should be concise. Indicative length of the main body is 10 to 20 pages. Detailed analysis can be presented in appendices.

Structure

1. Background

1.1 Project Administration

- Project Officer
- Project Desk Officer
- Project Management Team

1.2 Project Approval Status

1.3 Institution's Background

1.4 Challenges and Need for the Project

GN. NO. 37 (Contd.)

- 1.5 Problem Statement
- 2. Project Overview
 - 2.1 Geographic Description
 - 2.2 Objectives
 - 2.3 Services Delivered
 - 2.4 Option Analysis and Justification for Preferred Option
 - 2.5 Relevance to Development Priorities
 - 2.6 Sector Policies and Strategies
 - 2.7 National Policies and Strategies
- 3 Technical Overview
- 4 Economic Overview
- 5 Commercial Overview
 - 5.1 Risk Identification and Allocation
 - 5.2 Illustrative PPP Model
 - 5.3 Expected Market Readiness
- 6 Financial Overview
 - 6.1 Project Cost and Projected Revenue
 - 6.2 Financial Performance
 - 6.3 Financial Viability Tests: Initial Checking
 - 6.4 Value for Money and Affordability
- 7 Environmental and Social Overview
- 8 Legal Overview
- 9 Institutional Analysis and Stakeholder Overview
- 10 Next Steps
 - 10.1 Budget for Project Preparation
 - 10.2 Action Plan

B. OUTLINE OF THE PRE-FEASIBILITY STUDY

Instructions

1. The Pre-Feasibility Study should assess the likely viability, fiscal affordability and value for money of the project proposed by the Contracting Authority and advise whether the project should proceed to a Feasibility Study.
2. The Pre-Feasibility Study should identify specific issues that require detailed analysis through a Feasibility Study, if recommended.

3. The Pre-Feasibility Study must meet the requirements set out in the PPP Act 2010 (as amended in 2018) and PPP Regulations (2019).
4. The Pre-Feasibility Study should use material from the Project Concept Note with modifications and supplemented by deeper analysis.
5. The Pre-Feasibility Study should be concise and present the main findings and rationale for the findings. Indicative length of the main body is 50 to 100 pages. Detailed analysis can be presented in appendices, which may be packaged into a separate volume.

Structure and Content

Executive Summary

- Background
- Project Description
- Preliminary Technical Analysis
- Preliminary Economic Analysis
- Preliminary Commercial Analysis
- Preliminary Financial Analysis
- Social and Environmental Due Diligence
- Preliminary Legal Due Diligence
- Preliminary Institutional Analysis
- Preliminary Assessment of Likely Viability
- Statement of Compliance with the PPP Act and Regulations
- Next Steps

Chapter 1: Background

- Introduction to the CA covering its Mandate, Vision, Mission, Strategic Objectives etc.
- Project Context: Overview of the sector, planning and development context
- Problem Need and Problem Statement
- International Experience: Review of international experience in comparable PPPs within the sector with an emphasis on lesson and good practices.

Chapter 2: Project Description

- Project Scope
- Location: Site suitability and geographic location.
- Objective and Expected Output: Rationale for the project, setting out the problem the project will solve
- Beneficiaries: Identify who will receive the development benefits of the project, covering both users and other affected persons. Also identify any potentially adversely affected persons
- Needs Analysis: Define the problem the project will solve and present a solid business case for the project, demonstrating that the project aligns with the CA's strategic objectives
- Option Analysis: Evaluation of options for achieving the project objective and rational for choosing the preferred option, including reasons for selecting PPP approach
- Project Administration and Institutional Capability: Assessment of the readiness of the CA and other agencies for delivering the project, demonstrating their commitment and capacity

Chapter 3: Preliminary Technical Analysis

- Technical Features

- Conceptual Design

Conclude this section with the findings on likely technical viability based on the analysis above and indicate additional analysis to be undertaken during a feasibility study.

Chapter 4: Preliminary Economic Analysis

- Sector Background: Describe the sector dynamics performance, identifying key trends that will positively or negatively impact the project. Show key economic variables impacting the sector (e.g., Gross Domestic Product, inflation, interest rates trends etc.
- Sector Analysis: Use SWOT analysis to identify the strengths, weaknesses, opportunities and threats to the sector relevant to the project, and show how the project will improve sector performance
- Project Demand: Estimate and forecast demand for the project and its main components (e.g., using survey instruments to quantify results) with an outline of the methodology used
- Economic Benefits: Identify the gain in welfare from the project and its drivers, such as income generation or productivity improvements, with an outline of the methodology used
- Economic Costs: Present overall project cost and its components (e.g., capital, operations, maintenance) and adjustments made to derive economic costs

Conclude this section with the findings on likely economic viability based on the analysis above and indicate additional analysis to be undertaken during a feasibility study.

Chapter 5: Preliminary Commercial Analysis

- Project Structure: Presented expected structure inclusive of financing arrangements (e.g., debt/equity options)
- Proposed PPP Model
- Risk Identification, Allocation and Mitigation: Present and explain the project's risk matrix, inclusive of probability, impact, allocation and mitigation measures
- Output Specification: Explain the services to be delivered (e.g., type, volume and quality) and the key performance standards (with indicators) used to assess the performance of the private partner. The output specification applies to the operation and maintenance phase of the Project
- Project Revenue: Forecasts of expected revenue by main components
- Payment Mechanism: Schedule of user charges that will be collected, initial level of charges and escalation factors, any payments by government for services delivered are set out and benchmarked against comparable projects or services
- Asset Handover
- Likely Market Appetite: Present results of the preliminary market assessment, setting out expectations regarding the commercial profile of potential bidders (without identifying individual businesses) and financiers and their readiness to undertake the project

Conclude this section with the findings on likely commercial viability based on the analysis above and indicate additional analysis to be undertaken during a feasibility study.

Chapter 6: Preliminary Financial Analysis

- Financial Viability: Results of preliminary financial analysis should be presented, including model assumptions, costing, project revenue, projected Income Statement, Cash Flow and Balance Sheet, projected financial internal rate of return (FIRR), financial net present value (FNPV), payback period and Debt service cover ratios. Compare to market benchmarks, including for unit costs and financial parameters, presenting a rationale for the benchmarks
- Sensitivity Testing
- Government Support (if any): Identify the needs, if any, of government financial support, providing a time profile of direct and contingent liabilities. The financial support needs to be considered by the PPP Steering Committee and approved by the Minister of Finance
- Affordability Assessment: Provide a forward-looking assessment of affordability of the project to users and the government
- Value for Money: Present preliminary qualitative VfM analysis and quantitative VFN analysis based on a comparison of the PPP Model with the Risk adjusted PPP Reference Model (i.e., the public-sector comparator). If concrete data is not available at this stage, only indicate the qualitative assessment based on data available, a more in-depth analysis will be done during feasibility study

Conclude this section with the findings on likely financial viability, fiscal affordability and value for money based on the analysis above and indicate additional analysis to be undertaken during a feasibility study.

Chapter 7: Environmental and Social Due Diligence

- Community Engagement: Present results of community engagement conducted in accordance with the Guideline for Community Engagement in PPPs
- Environmental Due Diligence: Identify all positive and negative environmental impacts, proposed mitigation measures and their related costs (for input to the economic project cost) and set out likely process for securing environmental approvals
- Social Due Diligence: Identify all positive and negative social impacts and resettlement (if any), proposed mitigation measures and their related costs (for input to the economic project cost), including those arising from land acquisition, resettlement and livelihood protection, and set out progress in securing any related approvals (e.g. compensation) and unresolved matters

Conclude this section with the findings on likely social and environmental viability based on the analysis above and indicate additional analysis to be undertaken during a feasibility study

Chapter 8: Preliminary Legal Due Diligence

- Legal Environment: Preliminary identification and analysis of the relevant legislation, legal obstacles and risks, permits and approvals as well as the institutional framework. Some of legislation includes that relating to: PPPs, procurement, foreign investment, property, labor, land use planning, the environment and sector specific legislation under which the projects fall.
- Project Readiness: Preliminary analysis of legal and regulatory capacity, legal requirements of the Project, and the readiness for the PPP from a legal perspective. The ownership of Project land and whether title deeds are held is explained. If these items are not available the process, cost and timelines involved in securing land and title deeds is explained.

Conclude this section with the findings on likely legal viability based on the analysis above and indicate additional analysis to be undertaken during a feasibility study

Chapter 9: Institutional Analysis

- Stakeholders: Introduce the regulators, approval authorities and other key stakeholders relevant to the PPP
- Roles and Responsibilities: Explain who is responsible for what, the existing arrangement between these stakeholders, and how the Project can cater to their needs
- Stakeholder Readiness: Address readiness of both the CA and key stakeholders to undertake the project

Conclude this section with key findings based on the analysis above and indicate additional analysis to be undertaken during a feasibility study

Chapter 10: Next Steps

- Critical Issues: Identify key issues that need to be addressed in a Feasibility Study
- Implementation Plan: Present key steps to be taken with timelines, through to technical and financial close, and planned operation date
- Procurement Plan: Outline the proposed PPP procurement and award process
-

Annexes

- Annex A: Project description
- Annex B: Project conceptual design and costing
- Annex C: Demand and willingness to pay analysis
- Annex D: Community engagement
- Annex E: Environmental due diligence
- Annex F: Social due diligence
- Annex G: Preliminary economic and financial models and findings
- Annex H: Value-for-money analysis
- Annex I: Fiscal analysis (as needed)
- Annex J: Legal and regulatory due diligence
- Annex K: Institutional analysis

C: OUTLINE OF THE FEASIBILITY STUDY

Instructions

1. The Feasibility Study should confirm or otherwise the viability, fiscal affordability and value for money of the project proposed by the Contracting Authority, and advise whether the project should proceed to procurement of the private partner
2. It is critical to identify any issues that require resolution before procurement of the private partner, if recommended.
3. The Feasibility Study should use material from the Pre-Feasibility Study with modifications and supplemented by thorough assessments.
4. The Feasibility Study must meet the requirements set out in the PPP Act 2010 (as amended) and PPP Regulations (2019)
5. The Feasibility Study should be concise and present the main findings and rationale for the findings. Indicative length of the main body is 100 to 150 pages. Detailed assessments are to be presented in the appendices, which may be packaged into a separate volume

Structure and Content

Summary

- Background
- Project Description
- Technical Assessment
- Economic Assessment
- Commercial Assessment
- Financial Assessment
- Environmental and Social Assessment
- Legal Due Diligence
- Institutional Assessment
- Assessment of Viability, Fiscal Affordability and Value for Money
- Statement of Compliance with PPP Act and Regulations
- Next Steps
-

Chapter 1: Background

- Contracting Authority (CA): Introduction to the CA covering Mandate, Vision, Mission, Strategic Objectives etc.
- Project Context: Overview of the sector, planning and national development planning context
- Problem Need and Problem Statement
- International Experience: Review of international experience in comparable PPPs within the sector with an emphasis on lessons learnt and good practices

Chapter 2: Project Description

- Project Scope
- Location: Site suitability and geographic location
- Objective and Expected Output: Rationale for the project, setting out the problem/gap the project will solve.
- Beneficiaries: Identify who will receive the benefits of the project, covering both users and other affected persons. Also identify any potentially adversely affected persons.

- Needs Assessment: Define the problem the project will solve and present a solid business case for the project, demonstrating that the project aligns with the PPP Act Cap 103 (meaning of PPP) and CA's strategic objectives.
- Option Assessment: Evaluation of options for achieving the project objective and rationally for choosing the preferred option, including reasons for selecting PPP approach.
- Project Administration and Institutional Capability: Assessment of the readiness of the CA and other agencies for delivering the project, demonstrating their commitment and capacity. Appointment of Project Officer and Project Management Team (PMT) to guide on project preparation, structuring, tendering, implementation, monitoring and evaluation.
-

Chapter 3: Technical Assessment

- Comprehensive Assessment of Technical Features. In this section, physical and technical evaluation of the site and required infrastructure that identifies any potential challenges related to the project site. Existing infrastructure at the site is assessed to determine whether any assistance is required from the CA to coordinate the preparation of the site for the project. Aspects to be examined include; access to energy, water, wastewater and solid waste management services; the potential need to relocate utilities; the suitability of access roads, parking and pedestrian routes including a traffic assessment of congestion and other implications of the projects, and potential mitigation measures.
- Preliminary Engineering Design: Summarize

Conclude this section with the findings on technical viability based on the assessment above and any issues that need to be resolved before procurement of the private partner.

Chapter 4: Economic Assessment

- Sector Background: Describe the sector dynamics performance, identifying key trends that will positively or negatively impact the project. Show key economic variables affecting the sector (e.g., Gross Domestic Product, inflation, interest rates trends etc. In this section it is expected to show only those variables/aspects that will affect negatively or positively, the project sustainability.
- Sector Assessment: use SWOT analysis to identify the strengths, weaknesses, opportunities and threats to the sector relevant to the project, and show how the project will improve sector performance under which it falls (e.g. growth of transport sector).
- Project Demand: Estimate and forecast demand for the project and its main components (e.g., using survey instruments or other methods to quantify results) with an outline of the methodology used.
- Economic Benefits: Critically identify the gain in welfare from the project and its drivers, such as income generation or productivity improvements, with an outline of the methodology used.
- Economic Costs: Present overall project cost and its components (e.g., capital, operations, maintenance) and adjustments made to derive economic costs.
- Economic Performance: Present economic rate of return and cost-benefit ratio.

Conclude this section with the findings on economic viability based on the assessment above and any issues that need to be resolved before procurement of the private partner.

Chapter 5: Commercial Assessment

- Project Structure: Presented expected structure inclusive of financing arrangements (e.g., debt/equity options).
- Proposed PPP Model
- Risk Identification, Allocation and Mitigation: Present and explain the project's risk matrix, inclusive of probability, impact, allocation and mitigation measures.
- Output Specification: Explain the services to be delivered (e.g., type, volume and quality) and the key performance standards (with indicators) used to assess the performance of the private partner. The output specification applies to the operation and maintenance phase of the Project.
- Project Revenue
- Payment Mechanism
- Asset/Facilities Handover
- Market Sounding: Explain the market sounding undertaken and findings.
- Market Appetite: Present results of market sounding, setting out the market sounding expectations regarding the commercial profile of potential bidders (without identifying individual businesses) and financiers and their readiness to undertake the project.

Conclude this section with the findings on commercial viability based on the assessment above and any issues that need to be resolved before procurement of the private partner.

Chapter 6: Financial Assessment

- Financial Viability: Results of financial assessment should be presented, including model assumptions, costing, project revenue, projected Income Statement, Cash Flow and Balance Sheet, projected financial internal rate of return (FIRR), financial net present value (FNPV), payback period and Debt service cover ratios, among others. Compare to market benchmarks, presenting a rationale for the benchmarks.
- Sensitivity Analysis
- Government Support (If Any): Identify the needs, if any, of fiscal support/subsidy, providing a time profile of direct and contingent liabilities. In case of any government support, the financial support needs to be deliberated by the PPP Steering Committee and approved by the Minister of Finance.
- Affordability Assessment: Provide a forward-looking assessment of affordability of the project to users and the government.
- Value for Money: Present qualitative VfM assessment and quantitative VFM assessment based on a comparison of the PPP Model with the Risk adjusted PPP Reference Model (i.e., the public-sector comparator).

Conclude this section with the findings on financial viability, fiscal affordability and value for money based on the assessment above and any issues that need to be resolved before procurement of the private partner.

Chapter 7: Environmental and Social Assessment

- Community Engagement Plan: Present the plan for community engagement prepared in accordance with the Guideline for Community Engagement in PPPs. Explain the roles of the contracting authority and private party
- Environmental Impact Assessment: Summarize the findings of the environmental and social impact assessment, identifying all positive and negative environmental impacts, proposed mitigation measures and their related costs (for input to the economic project cost).
- Social Impact Assessment: Identify all positive and negative social impacts and resettlement (*if any*), proposed mitigation measures and their related costs (for input to

the economic project cost), including an outline of any plans for land acquisition, resettlement and livelihood protection, and set out remaining requirements.

Conclude this section with the findings on environmental and social viability based on the assessment above and any issues that need to be resolved before procurement of the private partner.

Chapter 8: Legal Assessment

- Legal Environment: Identify and assess the relevant legislation, legal obstacles and risks, permits and approvals as well as the institutional framework. Some of legislation includes that relating to: PPPs, procurement, foreign investment, property, labor, land use planning, the environment and sector specific legislation under which the projects fall.
- Project Readiness: Assessment of legal and regulatory capacity, legal requirements of the Project, and the readiness for the PPP from a legal perspective. bThe ownership of Project land and whether title deeds are held is explained. If these items are not available the process, cost and timelines involved in securing land and title deeds is explained.

Conclude this section with the findings on legal viability based on the assessment above and any issues that need to be resolved before procurement of the private partner.

Chapter 9: Institutional Assessment

- Stakeholders: Introduce the regulators, approval authorities and other key stakeholders relevant to the PPP in consideration.
- Roles and Responsibilities: Explain who is responsible for what, the existing arrangement between these stakeholders, and how the project can cater to their needs.
- Stakeholder Readiness: Address readiness of both the CA and key stakeholders to undertake the project.

Conclude this section with the findings on likely institutional viability based on the assessment above and any issues that need to be resolved before procurement of the private partner.

Chapter 10: Conclusion and Next Steps

- Present a summary statement on the overall viability, fiscal affordability and value for money of the project.
- Critical Issues: Identify those issues critical for a decision to progress to the procurement phase and any gaps analysis, and those issues that need to be resolved before procurement of the private partner
- Implementation Plan: Present key steps to be taken with timelines, through to technical and financial close, and planned operation date.
- Procurement Plan: Outline the proposed PPP procurement and award process.

10.2.1 Annexes

- Annex A: Detailed project description
- Annex B: Project preliminary design and bill of quantities
- Annex C: Demand and willingness to pay assessment

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Annex D:	Market sounding report
Annex E:	Community Engagement Plan
Annex F:	Environmental and Social Impact Assessment (Summary)/Environmental Management Plan (as needed)
Annex G:	Resettlement and Livelihoods Protection Plan (as needed)
Annex H:	Economic and financial models and findings
Annex I:	Value-for-money assessment
Annex J:	Fiscal assessment (as needed)
Annex K:	Detailed legal and regulatory assessment
Annex L:	Detailed institutional assessment

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SECOND SCHEDULE

THE UNITED REPUBLIC OF TANZANIA



FORM FOR APPROVAL OF PPP PROJECT

(Made under regulation 19(8))

- 1. Name of Contracting Authority.....
- 2. Physical Address.....
- 3. Title of Project.....
- 4. Location of the Project.....
- 5. Description of the Project.....
- 6. Estimated cost of the Project (as appropriate).....
- 7. Duration of the Project
- 8. Name of PPP advisor (if any).....
- 9. Name of the Project Officer
- 10. Ministry responsible for the project.....

FOR OFFICIAL USE ONLY

- 11. Determination:
 - (a) Approved
 - (b) Disapproved
 - due to/pending on
 -
 -

RECOMMENDATION

NAME:.....

TITLE:.....

SIGNATURE.....

DATE:

THIRD SCHEDULE

ADVERTISEMENT OF TENDERS AND DISCLOSURE OF TENDER
AWARD INFORMATION

Made under regulations (65(1) (c) and 78(2))

Method of procurement	Mode of Advertisement
PREQUALIFICATION OR EXPRESSION OF INTEREST	
International competitive tendering/Selection	Tanzania Procurement Journal and Tender Portal; Procuring entity website and /or Notice Board; and At least one local newspaper and one international news paper
National competitive tendering/selection	Journal and Tender Portal; Procuring entity website and/or Notice Board; One local news paper
TENDERING	
International competitive tendering	Journal and Tender Portal; Procuring entity website and/or Notice Board; and At least one local news paper and one international news paper
National competitive tendering	Journal and Tender Portal; Procuring entity website and /or Notice Board; One local news paper
TENDER AWARD DISCLOSURE INFORMATION	
All tenders irrespective of the method used	Journal and Tender Portal; Procuring entity website and /or Notice Board

FOURTH SCHEDULE

PROCUREMENT PROCESSING TIME

(Made under regulations 51(1), 78(4) and 84(6))

Serial Number	Method of Procurement	Period (Working Days)
1.	Request for Qualifications for PPP Advisor	
	International Competitive Bidding	21
	National Competitive Bidding	14
2	Request for Proposal for PPP Advisor	
	International Competitive Bidding	30
	National Competitive Bidding	21
3	Preparation and submission of Solicited and Unsolicited Proposal for procurement of private party (Request for Qualification)	
	International Competitive Bidding	30
	National Competitive Bidding	21
4	Preparation and submission of Solicited and Unsolicited Proposal for procurement of private party (Request for Proposal)	
	International Competitive Bidding	60
	National Competitive Bidding	45

FIFTH SCHEDULE

PREFERENCE SCHEME FOR PROJECT COMPANY PARTNERING WITH LOCAL FIRMS

(Made under regulation 41 (6) and (7))

A: Margin of Preference in favour of local firms or association between local and foreign PPP Investors under national and international competitive tendering.

(a)	Margin of Preference under National and International competitive tendering for local PPP Investor.	Margin of preference shall be 10%
(b)	Margin of Preference under National and International competitive tendering or selection for association of local and foreign PPP Investors.	
Input of foreign PPP Investors in association either in the form of joint venture or subcontracting arrangements.	50-70%	Margin of preference shall be 6%
	25 -49%	Margin of preference shall be 8%
	0 -24%	Margin of preference shall be 10%

Public Private Partnership

GN. NO. 37 (Contd.)

B: Exclusive Preference to local PPP advisors shall be applicable to tenders whose values are shown below:

Procurement type	Value (Tshs)
Firms	3,000,000,000.00
Individual PPP advisors	300,000,000.00

C. Margin of Preference for goods locally mined or locally produced and manufactured in Tanzania shall be 15%.

D: Exclusive Preference to local suppliers, contractors or service providers shall be applicable to tenders whose values are shown below:

Procurement type	Value (Tshs)
Works	10,000,000,000.00
Goods	2,000,000,000.00
Non-PPP advisor Services	2,000,000,000.00

Note: The exclusive preference is applicable for local PPP advisors/PPP advisors or Contractors or Suppliers and Association of local and foreign PPP advisors/PPP advisors or Contractors or Suppliers in which the contribution of the national firm, local suppliers, contractors or service providers to the association is more than 51%

SIXTH SCHEDULE

RFP PROPOSAL SUBMISSION FORM

(Made under regulation 50(1))

[Bidder's letterhead]

Date: [insert: date of bid]

RFP: [insert RFP number]

[Insert: name of Contract]

To: [Insert Name and address of PE]

Having examined the site and the RFP documents for the implementation of the [insert project name and bid identification number], we the undersigned offer to [Insert whether it is design, finance, construct, market, operate and maintain or simply implement] the [Insert the title of PPP project] for the Contract period. Our offer is in conformity with the RFP OR Our offer has the following slight deviations from the RFP [delete as appropriate, and where there are deviations, list any such deviations]

We undertake, if our Proposal is accepted, to implement the project in accordance with the agreed scope and commence operations as per the RFP documents or the PPP Agreement within the implementation/time schedule indicated in technical Proposal, from the date of signing the PPP Agreement.

We agree to abide by this Proposal for a period of [insert proposal validity period] from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiry of that period.

We agree, if our Proposal is accepted, to enter into the PPP Agreement annexed to the RFP and to as required.

We agree that if we fail to furnish the Performance Security, then you have the right to execute the bid security being furnished by us along with this proposal.

We confirm that the Government of the United Republic of Tanzania has not declared our firm, its affiliates or subsidiaries ineligible under Tanzania's laws or any other official regulations.

This Proposal and your written acceptance of it shall constitute a binding Contract between us.

We understand that you are not bound to accept any Proposal you receive.

We hereby confirm that this Proposal complies with the Proposal validity and bid security required by the bidding documents and specified in the RFP.

Dated this [insert: number] day of [insert: month], [insert: year]

Name: _____

Signature: _____

Date: _____

In the capacity of [insert: title or position]

Duly authorized to sign this proposal for and on behalf of [insert: name and address of Bidder]

SEVENTH SCHEDULE

PROCEDURE FOR HANDLING OF COMPLAINT OR DISPUTE IN PROCUREMENT PROCESS

(Made under regulation 61(3))

1. Any complaints or dispute between contracting authorities and bidders which arise in respect of procurement proceedings and awards of contracts shall be reviewed and decided upon a written decision of the accounting officer of a contracting authority and give reasons for his decision.

2. On receiving a complaint under this Regulation the accounting officer may, depending on the nature of the complaint, constitute an independent review panel from within or outside his

organization which shall review the complaint and advise him on the appropriate actions to be taken.

3. Where after proper investigation, it is established that, the Chairman of the tender board, any member of the tender board, the secretary of the tender board or any other public officer of the contracting authority has violated procurement procedures; the accounting officer shall take appropriate actions against him.

4. The accounting officer shall not entertain a complaint or dispute or continue to entertain a complaint or dispute after the procurement contract has entered into force.

5. The accounting officer shall, within fourteen days after the submission of the complaint or dispute deliver a written decision which shall: -

(a) state the reasons for the decision; and

(b) if the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken

6. Where the accounting officer does not issue a decision within the time specified in subsection (5), the bidder submitting the complaint or dispute to the contracting authority shall be entitled immediately thereafter to apply for administrative review to the Appeals Authority.

7. The decision of the accounting officer shall be final unless the tenderer applies for administrative review to the Appeals Authority.

Dodoma
10th January, 2020

PHILIP I. MPANGO
Minister for Finance and Planning