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Regulations

2015

The Public Private Partnership Regulations, 2015

The United Republic of Tanzania

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THE PUBLIC PRIVATE PARTNERSHIP ACT,
(CAP.103)

REGULATIONS

(Made under section 28)

THE PUBLIC PRIVATE PARTNERSHIP REGULATIONS, 2015

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THE PUBLIC PRIVATE PARTNERSHIP ACT,
(CAP.103)

REGULATIONS

(Made under section 28)

THE PUBLIC PRIVATE PARTNERSHIP REGULATIONS, 2015

PART I
PRELIMINARY PROVISION

Citation	1. These Regulations may be cited as the Public Private Partnership Regulations, 2015 and shall come into operation on the date of publications.
Interpretation	2. In these Regulations unless the context otherwise requires-
Cap.103	“Act” means the Public Private Partnership Act; “affordability” means the ability and wiliness of the general public to pay for the general service rendered and evidence of the contracting authority 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) designated for the institution in accordance with the government’s future budgetary allocations for the contracting authority;
Cap.410	“Authority” means the Public Procurement Regulatory Authority established under the Public

- Procurement Act;
- “accounting officer” has the meaning ascribed in the Act;
- “Public Private Partnership Technical Committee” means the Committee established under Section 7 of the Act;
- Cap.38 “National Investment Steering Committee” means the Committee established under Section 5 of the Tanzania Investment Act;
- “Executive Director” means the Head of the Centre appointed under section 6 of the Act;
- “Centre” means the Public-Private Partnership Centre established under Section 4 of the Act;
- “contracting authority” shall have the same meaning ascribed to it in the Act;
- Cap.410 “consultant” means a person defined under section 3 of the Public Procurement Act;
- “government support” means the various forms of participation by the government in the planning, procurement, implementation, monitoring and evaluation of projects;
- “institutional function” means a service, task, assignment or other function that a public institution is entitled or obliged to perform;
- “PPP Node” means the Node created in the Ministry responsible for local government designed to support Public Partnership Projects in the local governments;
- “small-scale public-private partnerships” has the meaning ascribed to it under regulation 76;
- “Local PPP team” means a team established under local government;
- “Minister” means the Minister responsible for investment;
- “public private partnership” means a contractual

arrangement between a contracting authority and a private party in which the private party-

- (a) undertakes to perform a contracting authority's function on behalf of the contracting authority for a specified period;
- (b) assumes substantial financial, technical and operational risks in connection with the performance of the contracting authority's function or use of government property in accordance with agreed output specifications;
- (c) receives a benefit for performing the contracting authority's function or from utilizing the public property, either by way of:
 - (i) consideration to be paid by the contracting authority which derives from a revenue fund or where the contracting authority is a central government or local government authority, from the revenues of such authority;
 - (ii) charges or fees to be collected by the private party or an agent from users or customers; or
 - (iii) a combination of consideration and charges or fees.

“agreement” means a written contract recording the terms of the public-private partnership concluded between a contracting authority and a private party;

“PPP Facilitation Fund” means the fund established under Section 10A of the Act;

“preferred bidder” means a bidder, including any bidding consortium, appointed in accordance to these Regulations;

“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 and transfer;
- (c) design, build, operate;
- (d) design, build, operate and maintain;
- (e) build, operate, transfer;
- (f) design, build, finance, operate;
- (g) design, build, finance, maintain;
- (h) build, own, operate, transfer;
- (i) build, lease and transfer;
- (j) build, transfer and operate;
- (k) operation and maintenance;
- (l) operation, maintenance and management; and
- (m) lease-develop-operate.

“project officer” means a person appointed by the accounting officer to manage and coordinate a public-private partnership project;

“Special Purpose Vehicle” means the project company established for the purpose of implementing and operating the specific PPP project;

“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;

“transaction advisor” means a person with skills, knowledge and experiences on the project under discussion engaged by a contracting authority to assist and advise on preparation and conclusion of a public-private partnership in accordance with the requirements of the Act and including assisting in the preparation of tender documents and the PPP agreement;

“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 optimum combination of whole life cost and quality of fitness for purpose of goods or services to meet the users requirements.

PART II IDENTIFICATION OF PROJECTS

Identification of
solicited
proposals

3.-(1) The Minister shall, at least two months before the beginning of the budget cycle, ask contracting authorities to submit to the Centre a list of potential projects.

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

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

(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 the projects and forward the selected projects the Centre for recommendations and the Centre shall analyse and

resubmit the recommendations to the PPP Node within thirty working days.

(6) Projects submitted to the Centre pursuant to sub-regulation (2), shall be in line with the National Development Plans and guidelines accompanied by a preliminary affordability, value for money statement and justification for private sector participation.

(7) Where a contracting authority is required to conduct a pre-feasibility study pursuant to sub-regulation (5), the pre-feasibility study report shall conform to the following criteria that-

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

(8) Contracting authorities shall submit the pre-feasibility study report to the Centre for consideration.

(9) The Centre shall process the pre-feasibility study report submitted to it within fourteen working days.

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

Identification of
unsolicited
proposals

4.-(1) Before undertaking a feasibility study for an unsolicited project, the private party shall submit a project concept 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 (MOU) or any other gentleman's agreements prior to the selection of a private party through a competitive procurement process.

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

(4) Where the contracting authority accepts the project concept, it shall forward it to the Centre for recommendations.

(5) Upon receipt of the project concept from the contracting authority, the Centre shall review the project concept within fourteen working days and resubmit the recommendations to the contracting authorities.

(6) Notwithstanding sub regulation (3), if the contracting authority is the Local Government Authority and accept the concept project, it shall submit the potential projects to be undertaken in partnership with the private sector to the PPP Node.

(7) After receiving recommendations from the Centre, the contracting authority shall, communicate in writing to the private party on approval or rejection of the project concept or require the private party to review the project concept.

Commitment
deposit

5.-(1) The private party after submission of the project concept shall be required to deposit in a special bank account to be held by the contracting authority an amount equivalent to five percent of estimated cost of

feasibility study to be conducted once the project concept is approved.

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

- (a) the proposal is rejected by contracting authority or the Centre;
- (b) private party does not become a preferred bidder upon introduction to competition during procurement;
- (c) private party becomes preferred bidder and sign the contract;

(3) The amount deposited under sub-regulation (1) shall not be refunded to private party where:

- (a) no correspondence is received from the private party within one year after issuance of approval by a contracting authority or submitted and not satisfactory comply with requirements of these Regulations;
- (b) feasibility study report is not submitted by private party to the contracting authority within the agreed time.

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

(5) Where the Government makes due diligence on the project concept submitted by the private party and found that the private party mislead or submit false information, the costs incurred by the Government on undertaking such due diligence shall be deducted from the amount deposited by the private party.

Administrative
cost incurred by
the private party

6. Where the private party wants to undertake unsolicited project, such party shall submit a project proposal before starting of the budget cycle, and if the submission is done during the budget cycle and the private party wants the project to be processed within

that period, it shall incur all administrative costs associated with processing of that project up to project concept approval.

Forms of
communications

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

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

Contents of
project concept
for unsolicited
proposals

8. The project concept shall contain:

- (a) a private party's name, postal and physical address, tax registration certificate or Tax Identification Number, VAT registration number, 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 expected government support or participation in the execution of the project; and
- (k) a statement showing how the project provides employment opportunities for Tanzanians.

Approval and
rejection of
project concept
for unsolicited
proposals

9.-(1) The contracting authority shall select the project concept based on criteria that:

- (a) the project is in line with government priorities and public interest;
- (b) the project complies with the value for money requirement;
- (c) the project complies with affordability requirement to both Government and end users;
- (d) does not relate to institutional requirements acquired by normal competitive bidding or any other method than public private partnership;
- (e) relates to products or services which are available and mobilized through normal investment procedures or public procurement
- (f) the project presents new and cost-effective methods of service delivery compared to other procurements options;
- (g) the project addresses social needs sustainably;
- (h) the private sector participation in the project

results in net benefits and savings as compared to public procurement;

- (i) the project concept exclusively belongs to the private party and protection of intellectual property rights;
- (j) the project comply with the provisions of the Act and other relevant written laws; and
- (k) the project includes adequate risk analysis and optimal risk allocation.

(2) The contracting authority shall reject the project concept, if the project concept does not meet conditions set under sub-regulation (1).

PART III FEASIBILITY STUDY OF A PROJECT

Feasibility study
for solicited
project

10.-(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 contracting authority may, for the purpose of this regulation, engage a consultant with knowledge and experience on the subject matter of the project to conduct a feasibility study.

Feasibility study
for Unsolicited
project

11.-(1) Upon approval of the project concept, 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) Any contracting authority that wants to submit any solicited and unsolicited project to the Centre shall ensure that, before submission of such PPP project to the Centre receive permission from the Permanent Secretary who is overall in charge of that project or the Head of the institution.

Contents of the
feasibility study
report

12.-(1) 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;
- (b) 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) procurement plan;
 - (l) project implementation and operation plan;
 - (m) recommendation or advice on the technical and economic viability of the project or projects;
 - (n) description of environmental and social impact assessments;
 - (o) monitoring and evaluation;
 - (p) regulatory authority consultation;
 - (q) the manner by which Tanzania citizens may be empowered and participate in the projects; and
 - (r) any other information desirable to support the feasibility study.
- (2) Subject to the provision of sub regulation (1), the Centre shall prepare guideline on how to prepare feasibility study.

Transaction
advisor

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

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

(3) The role of the transaction advisor may include among others-

- (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
authority

14.-(1) The contracting authority shall, after selection of a project, consult the relevant regulatory authority under which the selected project is regulated, seeking for recommendations.

(2) For the purpose of sub-regulation (1), the contracting authority shall furnish to the regulatory authority a copy of the feasibility study report together with the recommendations of the transaction advisor.

(3) The regulatory authority shall, within fifteen working days after submission of the project by the contracting authority, submit recommendations to the contracting authority with regard to the implementation of the project.

Submission of
application by
contracting
authority

15.-(1) The contracting authority, shall, upon working on recommendation submitted by the regulatory authority, submit the project to the 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) communication and public sensitization strategy; and

(e) any other information required by the PPP Centre for that purpose.

(3) In case the submitted project is unsolicited, 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 Centre shall analyse projects submitted by contracting authority within thirty working days from the date of receipt and forward to the Ministry responsible for finance.

(5) For the purpose of sub-regulation (3), 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 Centre may, before expiration of thirty working days, require the contracting authority to improve the project as recommended.

(7) The Ministry responsible for finance shall undertake analysis of fiscal risk and other financial matters and submit the project to the Centre within fifteen working days from the date of receipt of the application from the Centre.

(8) The Centre shall, after receiving recommendation from the Ministry responsible for finance and within seven days, submit the project to the PPP Technical Committee.

(9) The PPP Technical Committee shall review the project submitted by the Centre and approve within fifteen working days from the date of receipt.

(10) Subject to sub-regulation (7), the PPP

Technical Committee may instruct the Centre to forward the recommendations to the contracting authority.

(11) The PPP Technical Committee shall direct the Centre to submit the approved project to the National Investment Steering Committee for taking note and providing overall guidance as regards to implementation of the particular project.

(12) Where the project requires public financing, the National Investment Steering Committee shall direct the Minister responsible for finance to initiate the funding process.

(13) The Centre shall, within five working days from the date of approval, publish in the gazette and Centre's website the summary of the approved project for public awareness.

PART IV MANAGEMENT OF PUBLIC PRIVATE PARTNERSHIP AGREEMENTS

Responsibility of
contracting
authority

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

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

Accounting
Officer

17.-(1) Without prejudice provisions of section

19 of the Act, the Accounting Officer shall have the following responsibilities:

- (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 consultants including transaction advisor 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 or section with appropriate personnel and resources for efficient discharging of roles and functions regarding to the implementation, monitoring and evaluation of project under the contracting authority.

Project officer

18.-(1) As soon as the contracting authority initiates a project that may be public private partnership, the accounting officer shall, in writing, appoint a project officer on full time basis from within or outside the contracting authority

(2) The functions of the project officer shall include:

- (a) day to day supervision of the project;
- (b) the liaison officer between the accounting officer, private party and the PPP Centre;
- (c) preparation of quarterly and annual reports on the development of the project;
- (d) maintaining records on 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

19.-(1) The accounting officer may, during various stages of the project life cycle, constitute Project Management Team within and outside the contracting authority to deliberate on the project in line with the provisions of the Act and these Regulations.

(2) The functions of the Project Management Team shall include-

- (a) to advise the accounting officer on the 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.

PPP Technical
Committee

20. Without prejudice to section 7A and 7B of the Act, the PPP Technical Committee shall assume its responsibilities to undertake deliberations and approval of administrative matters for the Centre.

Team of experts

21.-(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) Subject to sub-regulation (1), a person appointed shall be competent on the subject matter of the projects.

PPP Guidelines

22. The PPP Centre may prepare administrative guidelines and manuals, and shall be approved by the Technical Committee.

Projects to be kept
in a register

23.-(1) The Centre shall, after accept the project, record the particulars of the project in the register which shall be kept by the Centre.

(2) The register for recommended projects under sub-regulation (1) 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 Centre may determine.

(3) The Centre shall keep to the register an independent record for each individual project, which shall containing details on specific project.

(4) The records 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

Facilitation fund
and its purposes

24.-(1) The Centre shall establish a Public-Private Partnership Facilitation Fund and open an account at a reputable investment bank in Mainland Tanzania.

(2) The Centre shall issue guidelines to contracting authorities to access the funds.

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

(4) The fund established under sub-regulation (1), shall have three components, namely:

- (a) Project Development Facility;
- (b) Capacity Development Facility; and
- (c) Viability Gap Funding.

(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 transaction advisors.

(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 Centre shall from time to time establish a ceiling for access to the PPP Facilitation Fund for which a contracting authority may apply, including the conditions for replenishment of such fund.

(9) The accounting officer of the Ministry responsible for local government may establish a special fund to provide costs associated with the project development, capacity building and viability fund.

(10) The accounting officer of the Ministry responsible for local government shall prepare operational guidelines for fund management, and in doing so, shall seek recommendation from the Centre and the Ministry responsible for finance.

Sources of fund

25. The sources of funds for the facilitation fund may be from the following:

- (a) the government, development partners, and public entities, parastatal organisations and Social Security Funds;
- (b) funds paid by the private party as stipulated in the bidding process at financial close;
- (c) funds recovered wholly or partially from the contracting authorities in accordance with the provisions of the Project Support Agreement.

Access to facility

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

(3) Without prejudice to section 10A of the Act, request for project development facility shall comprise

the following minimum information:

- (a) evidence of approval of the Project concept by the 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) Access to funds shall be subject to compliance by the contracting authority to the guidelines prescribed by the Centre.

Projects eligible
for facility

27.-(1) Projects that are eligible for Project Development Facility or Viability Gap 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 whose pre-feasibility studies have been completed and approved;
- (d) those projects that generate revenues from user charges or tariffs that are sufficient to recover investment costs; and
- (e) for viability gap funding, those projects with properly executed feasibility study demonstrating that the viability gap contribution requested represent value for money.

PART VI
PROCUREMENT OF SOLICITED PUBLIC PRIVATE
PARTNERSHIP PROJECT

Procurement of
solicited project

28.-(1) Subject to the provisions of these Regulations, the contracting authority shall carry out a feasibility study before undertaking the procurement of solicited project.

(2) The 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.

Advertisement of
request for
Expression of
interest for
qualification

29.-(1) The contracting authority shall, after approval of the project by the Technical Committee, prepare and submit to the Authority for advertisement in the Tanzania Procurement Journal, contracting authority and centre's website, a request for qualification in the form of the specific procurement notice as prescribed in the Second Schedule of these Regulations.

(2) The contracting authority shall advertise the same notice in at least one newspaper of wide circulation in the United Republic of Tanzania and where there is need for international competitive bidding, in any international media.

(3) The international notification of the request for expression of interest for qualification shall be done at the same time as the advertisement in the local newspaper, and shall be given in sufficient time to enable prospective renderers to obtain request for qualification documents, prepare and submit their

responses.

(4) The notification of the request for qualification shall contain the following:

- (a) a brief description of the intention of the contracting authority to undertake the project;
- (b) identification of the specific location where interested parties may obtain a copy of the request for qualification, the dates and times during which the request for qualification is available, including any costs of obtaining a copy;
- (c) the date, time and place for submissions of the request for qualification to the contracting authority, and
- (d) the role that played by the successful private partner.

Selection process
of a private party

30.-(1) The selection of a private party shall be in accordance with the competitive bidding procedures specified under these Regulations and shall 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 value for money to a project shall include:

- (a) project design;
- (b) project delivery schedule;
- (c) use of innovation;
- (d) access to expertise;
- (e) project financing and user fee schedule, if applicable, over the duration of the partnership; and
- (f) any other factors as deemed necessary.

(3) The contracting authority shall require a potential private party to furnish key information

including-

- (a) qualifications and experience;
- (b) legal capacity;
- (c) financial capability;
- (d) references;
- (e) risk transference related to responsibility to project risks;
- (f) litigation and controversy, if any; and
- (g) an in-depth review of each potential partner.

Pre-qualification
Proceedings

31.-(1) The contracting authority shall, prior to floating of a bid, engage in 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) 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 the expression of interest document.

(3) The selection of a private party including invitation for pre-qualification, preparation of shortlist, preparation and issuance of the request for proposal, receipt and opening of proposals and evaluation of proposals shall follow the basic steps stipulated in the tender documents prepared by the contracting authority.

Expression of
interest in the pre-
qualification
proceedings

32.-(1) The invitation to submit expressions of interest for participation in the pre-qualification proceedings shall include at least the following:

- (a) a description of the services and outputs

required by the contracting authority and the manner of delivery;

- (b) the manner and place for solicitation of the expression of interest documents; and
- (c) the manner and place for submission, expressed as a specific date and time, allowing sufficient time for bidders to prepare and submit their expressions of interest.

(2) The invitation for Expression of Interest shall be prepared by the contracting authority and approved by the tender board, and shall be advertised in media of wide circulation in the country and where necessary internationally, including the Tanzania Procurement Journal.

(3) Invitations for Expression of Interest which are issued without prior approval of the tender board and which do not satisfy these Regulations shall not be considered valid.

(4) A minimum period for national and international competitive tendering as prescribed in the Third Schedule shall be allowed for the preparation and submission of Expression of Interest applications.

Pre-qualification documents

33.-(1) The pre-qualification documents shall include, at a minimum 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) When pre-qualification is undertaken, 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 their:

- (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) transfer of knowledge; and
- (h) compliance with required regulatory obligations.

(3) The contracting authority shall provide a set of pre-qualification documents to any prospective bidder, on request and subject to payment of fee, if any.

Participation of
Consortia

34.-(1) A contracting authority when requesting for submission of expressions of interest for the pre-qualification proceedings, may allow bidders 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 the consortia, the consortia shall be required to appoint a leading bidder 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, either directly or indirectly, 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) Tenderers who are citizens of Tanzania or associations between local and foreign firms, shall be eligible to be granted a margin of preference only if they meet the criteria provided in these Regulations, and are registered by the Tanzania Investment Centre.

(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 (10) percent for the benefit of local investors or association between local and foreign investor as prescribed in the Sixth Schedule to these Regulations.

Clarification of
applications for
pre-qualification

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

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, without identifying the source of the request, be communicated to all bidders to which the contracting authority provides the pre-qualification documents.

Appointment of
evaluation team

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

(2) Any member of evaluation team referred to under subregulation (1), shall not be a member of the Tender Board.

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

(4) The evaluation team referred to in subregulation (1) shall consist of not less than four members

Receipt,
Evaluation of
applications for
pre-qualification

37.-(1) The contracting authority shall receive, open, and evaluate applications for expression of interest for pre-qualification and prepare evaluation report and obtain approval by the tender board within thirty days since the last date of submission by the prospective bidders.

(2) Applications received for pre-qualification shall be evaluated by the evaluation team using the

criteria for qualification explicitly stated in these Regulations and in the invitation to pre-qualify.

(3) The contracting authority shall evaluate the applications to prequalify bidders using the following minimum criteria:

- (a) technical experience;
- (b) operational and maintenance experience;
- (c) financial capacity; and
- (d) relevant managerial skills.

(4) An evaluation report shall be prepared for recommending a list of firms or individuals to be considered as pre-qualified.

Approval of
shortlist

38. 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

39. The request for proposal shall include at least 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) project implementation and operational plan; and
- (q) any other information specified in regulations to be issued by the Committee.

Approval and
issuance of
Request for
Proposals

40.-(1) The tender board of the contracting authority shall approve the request for proposal documents before submission by the accounting officer to the Centre, PPP Node and Ministry of Finance 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 provide a complete set of approved request for proposal to each approved pre-qualified bidder, except for those bidders who have declined in writing.

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

Further demonstration of fulfilment of qualification criteria

41.-(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

42.-(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

43.-(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.

(2) The 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.

Extension of time
for submission of
bids

44.-(1) The contracting authority may extend deadline for submission of bids at any time before the deadline.

(2) After the deadline, the contracting authority may only extend the deadline for submission of bids 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 be ensured by extending the deadline;
- (b) the contracting authority is reasonably convinced that there are extraordinary circumstances or a natural calamity that order the deadline to 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.

Submission of bids

45. Bids shall be submitted on the place, date and time and in the manner specified in the request for proposal and any bid submitted late due to any reason whatsoever, shall not be considered by the contracting authority.

Evaluation criteria

46.-(1) Evaluation of the proposals shall be based on best value to the public for the duration of the partnership and not on the basis of lowest bidder.

(2) The criteria of best value shall comprise 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) risk transfer;
- (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.

Financial
Evaluation criteria

47.-(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 tender 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

48.-(1) Proposals shall be evaluated solely on the criteria specified in the bidding document and such evaluations 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 a 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 include:

- (a) expertise;
- (b) legal capacity;
- (c) financial capability;
- (d) acceptance of risk transfer;
- (e) demonstrated experience in delivery of similar projects;

- (f) demonstrated experience in working with similar public agencies;
- (g) capacity to deliver the required quantity and quality of project or services;
- (h) proposed infrastructure and end of term treatment;
- (i) proposed timelines for the project; and
- (j) any other resources and capacity.

(4) 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 public agency in proposed treatment of any profits resulting from the project;
- (b) any revenue-sharing proposals with the public agency, and
- (c) setting, controlling and collection of user fee schedules including toll roads.

Evaluation of
Submitted
proposal

49.-(1) The contracting authority shall receive, open, and evaluate all requests for proposals submitted .

(2) Subject to sub regulation (1) the contracting authority shall prepare evaluation report and obtain approval by the tender board within sixty days from the date of submission by the bidders

(3) 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.

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

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

Preferred and
reserve bidders

50.-(1) Upon receiving approval of a preferred bidder and the reserve bidders from the tender board, the contracting authority shall notify the bidders accordingly.

(2) The contracting authority shall notify PPP Centre and PPP Node of the preferred bidder and one or more reserve bidders.

Conduct of due
diligence

51.-(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;
 - (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 the projects and public sector which are similar to the proposed project and contracting authority, respectively.
- (4) The contracting authority shall prepare a due diligence report for the project in accordance with the guidelines issued by the Centre or PPP Node.

Value for money
report

52.-(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) risk transfer assessment;
 - (e) Government support required;
 - (f) notes raised and bid deficiencies and
 - (g) consideration on the options for the reserve bidders negotiation plan.

Approval of
Award of Contract
Tender Board

53. The tender board shall review the evaluation report, due diligence report, value for money report and recommendations made shall:

- (a) approve the recommendation and advise the contracting authority to accept the tender; or
- (b) refuse to authorize recommendation of any of the bids and refer the evaluation back to the contracting authority with an instruction to re-evaluate the bids, re-tendering or other action.

Approval of award
of contract by
Technical
Committee

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

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

Notice of Intention
to award

55.-(1) Upon receipt of the recommendations from the Centre of 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 remedied using the procedures stipulated under the Authority.

(4) Where no complaints or dispute lodged, pursuant to sub-regulation (1) or after all complaints lodged cleared pursuant to 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 Centre, Ministry responsible for finance, the institution responsible for Planning, the Controller and Auditor General, the Attorney General's Chambers, Public Procurement Regulatory Authority the Internal Auditor General and 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 and technological experience and resources to carry out the contract effectively.

(8) The bidder shall be responsible to due diligence and value for money tests undertaken in Regulations 48 and 49.

(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, the contracting authority shall invite the preferred bidder, for final negotiation of the agreement.

PART VII PROCUREMENT PROCEDURES FOR UNSOLICITED PROPOSAL

Procurement of
unsolicited PPP

56.-(1) Pursuant to section 15 of the Act, all 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) require Government financial support, for example a guarantee;
- (c) provide for exclusivity;
- (d) require any form of government financial support at any stage of the project conception, procurement or pre-

development;

- (e) does not serve the public interest or fall within the national development plans;
- (f) has a value of less than United States Dollar ten million with an exception to local government;
- (g) in any way interferes with an ongoing solicited or unsolicited projects under competitive tendering or under preparation for competitive bidding; and
- (h) in any way interferes with a government development project provided under the Act or any other project where the government has already incurred development cost.

(4) The Centre may review from time to time the threshold referred to under sub regulation 3(f) and recommend to the Technical Committee for approval.

(5) The government may suspend the unsolicited process before signing the contract without incurring any liabilities, if a private party submits a project concept or feasibility study that does not comply with the provisions of the Act.

(6) 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.

Bidders
Conference

57.-(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 and performance guarantee as prescribed by the contracting authority in the request for proposal.

(3) The request for proposal shall spell out that the winning bidder is 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 on the cost incurred and the project riveting 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.

Contents of
request for the
proposal

58.-(1) The request for proposal shall be prepared by the contracting authority and approved by the tender board, and shall be advertised in media of wide circulation both locally and internationally including the Tanzania Procurement Journal and website as prescribed in the Second Schedule of 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 proponent bidder established by the contracting authority and approved by the Technical 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 that may be issued by the 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

59.-(1) Interested bidder shall deposit to the contracting authority a bid security as determined by the contracting authority based on the project cost, and

shall be deposited at the time of bid submission.

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

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

Bid submission
and extension of
time

60.-(1) Bids shall be submitted on the place, date and time and in a manner specified in the request for proposal.

(2) Any bid submitted late subject to subregulation (1), shall not be considered by the contracting authority.

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

(4) The original proponent shall also required to 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 is submitted after the first extension of deadline or after issuing a modified invitation for proposal.

Criteria for
Selection of
preferred bidder

61.-(1) The selection of the preferred bidder shall follow a competitive approach using the Bonus System and shall further be detailed in the guidelines.

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

(3) The tender board, in agreement with the Centre shall develop the following criteria to determine the best proposal:

- (a) adheres to the provisions of the Act;
- (b) lowest per unit cost of output;
- (c) local content and empowerment;
- (d) requires less government participation; and
- (e) value for money.

Method of
Selection of
preferred bidder

62.-(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 Centre shall prepare standard guidance to assist contracting authorities on selection of preferred bidder.

(3) Once all 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 Centre, determine an alternative method of selection of preferred bidder in case the bonus system is not guarantee the best value for money.

Approval and
notification of
unsolicited bidder

63. 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 NEGOTIATIONS AND AGREEMENT

Negotiation Team

64.-(1) The accounting officer of a contracting authority shall, within twenty one days from

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.

Procedures for
negotiation of
agreement

65.-(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 Technical Committee 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 obligations and liabilities, from the feasibility as approved by the Technical 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 Technical Committee.

Approval and
finalization of
agreement

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

(2) The Centre and the Ministry responsible for finance shall, within fourteen working days recommend on the submitted agreement and forward to the contracting authority for further improvement of the agreement.

Submission of
Draft agreement to
Attorney General

67.-(1) The contracting authority shall submit to the Attorney General the draft agreement as approved by the Technical 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 attached documents, provide a legal opinion on the draft agreement within twenty one working days to the contracting authority.

(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.

(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.

(6) Upon agreement by both parties, a final agreement shall be prepared for signature by the parties.

Signing of
agreement

68.-(1) The accounting officer shall, upon being satisfied with the contents of the agreement, sign the agreement on behalf of the contracting authority.

(2) After the signing of the agreement, the contracting authority together with the private party shall commence the process for implementation of the project.

Copies of
agreement

69.-(1) Upon signing of the agreement, the accounting officer shall forward copies of the agreement to the Centre, PPP Node, Ministry responsible for finance, Institution responsible for planning, Attorney General, Controller, Auditor General, and Internal Auditor General and to the Public Procurement Regulatory Authority for record keeping and monitoring 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 contracting authority and the Centre.

PART IX PROJECT MANAGEMENT PLAN

Knowledge
transfer

70.-(1) Upon conclusion of financial close, the contracting authority shall terminate the services of transaction advisor.

(2) The accounting officer shall ensure that information on the project is kept, managed, and the knowledge and skills are passed over to personnel who may overseeing 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 alterations from time to time, shall be regulated by the relevant regulatory authority which has mandate on the service to be provided.

Implementation of projects

71.-(1) After the signing of the agreement and commencement of the project, the accounting officer shall 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 are 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 Centre and PPP Node and the same shall be forwarded to the Minister;
- (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

72.-(1) Every public private partnership project shall be monitored and evaluated by the contracting authority to ensure that the project is implemented in accordance with the agreement.

Variation

73.-(1) Any variations to the agreement shall be agreed and amended by the parties provided that such variations are approved by the technical committee in consultation with the Ministry responsible for finance and relevant stakeholders 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 the standard commercial terms.

Refinancing of project

74.-(1) Any proposed refinancing of debt extended by lenders to the project shall be done subject to the contracting and approved by authority's consent and Ministry of 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 of Finance

(3) Subject to the provision of section 7B (4) of the Act, the Ministry responsible for finance shall develop guidelines and regulations for monitoring, evaluating and managing all fiscal risks, debts, contingent liabilities and other financial matters.

Termination of the project

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

(2) The reasons and compensation for termination shall be as 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 private 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 X

PARTICIPATION OF LOCAL GOVERNMENT AUTHORITIES IN SMALL-SCALE PUBLIC-PRIVATE PARTNERSHIPS

Small-scale
public-private
partnerships

76.-(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-

(a) whose total project value does not exceed US\$ 70 million;

(b) which entails an agreement not exceeding a maximum duration of fifteen years.

(3) Subject to sub regulation (2) (a), project value shall be the total capital investment during the project duration.

Establishment of
PPP Node

77.-(1) The Accounting Officer of the Ministry responsible for local government shall establish a PPP Node.

(2) The PPP Node shall review the thresholds stipulated periodically, at least once a year, and, if it sees the need of adapting it, shall publish the adjusted threshold in the Official Gazette, following the approval of the PPP Technical Committee.

Project pre-feasibility and feasibility study

78.-(1) A contracting authority which intends to undertake a small-scale PPP shall submit a project prefeasibility study to the PPP Node for approval.

(2) Within thirty working days after receipt of the project prefeasibility study, the PPP Node shall either approve or reject the project proposal.

(3) After approval of prefeasibility study contracting authority may proceed to conduct a feasibility study in accordance with the requirements stipulated under the Act.

(4) While reviewing the project proposal and the feasibility study, the PPP Node may request the contracting authority to provide additional information on the proposed project.

Recommendations by the Centre and Ministry responsible for Finance

79.-(1) The PPP Node shall submit the project prefeasibility and feasibility studies to the PPP Centre and Ministry responsible for finance to seek recommendations.

(2) The Ministry of Finance and 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 and the Ministry responsible for finance, the PPP Node shall, in writing, forward to the contracting authority, the project together with specific instructions for considerations.

(4). The contracting authority shall work upon the consolidated recommendations from the PPP Node, PPP Centre and Ministry responsible for finance, and re-submit the project to the PPP Node for approval.

Pre-feasibility and
Feasibility Study
for Unsolicited
Proposals

80. The procedure for local government for submission of project pre-feasibility and conducting feasibility studies for the unsolicited projects shall be as prescribed under these Regulations.

Delegation of
powers

81.-(1) All powers in respect to approvals of small scale PPP feasibility study and procurement prescribed under these Regulations shall be delegated to the Accounting Officer responsible for local government authority.

(2) The PPP Node shall prepare the guidelines to govern approval of feasibility study and procurement processes in respect of small scale PPP, and seek recommendations from the Centre.

(3) Such guidelines shall be read together with these Regulations.

Approval of
agreement

82.-(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 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 for recommendation, based on its assessment of whether the project complies with the requirements of the provisions of the Act and these Regulations.

(3) On receipt of the draft agreement, PPP Node shall work upon and provide its recommendations

within thirty working days.

(4) The PPP Node shall, after the expiry of thirty working days from the date of receipt, forward the project and recommendations to the PPP Center and Ministry of Finance for recommendation.

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

(6) The PPP Node, after receipt of the recommendations on the draft agreement, shall compile with all recommendations and submits the same to the contracting authority for finalization.

(7) The Accounting Officer after finalizes the PPP agreement, shall submit the same to the PPP Node, and the PPP Node shall forward the same to the Attorney General Chambers for vetting.

Copies of
Agreements

83.-(1) Upon signing of the agreement, the accounting officer of the local government authority shall forward copies of the agreement to the PPP Node, the Centre, Ministry responsible for finance, Attorney General, Controller and Auditor General, Internal Auditor General and to the Public Procurement Regulatory Authority 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, Centre and PPP Node.

Duration and
extension of an
agreement

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

(3) Any extension of an agreement shall not exceed five years.

Monitoring and
evaluation

85.-(1) All small-scale PPP projects undertaken by 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 list 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 and the Centre the information on 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

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

- (a) conduct the procurement process for the respective PPP;
- (b) lead negotiations with the preferred bidder;
- (c) sign and executing the agreement with the private party; and
- (d) monitor the respective PPP during its execution.

(2) The PPP team shall consist of:

- (a) one executive representative from local government responsible for finance and or planning;
- (b) one executive representative from local government responsible for infrastructure and public works;
- (c) one executive representative from local government responsible for land management;
- (d) one executive representative from local government responsible for legal affairs; and
- (e) 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 for a term of three years in a manner prescribed in the guidelines to be prepared by the PPP Node.

(3) The details of the functioning of the PPP team shall be as set out in the By-laws to be passed by the local government.

Local Government
Guidelines

87.-(1) The PPP Node may prepare the small scale PPP guidelines for proper and effective implementation of public private partnership projects, and shall be used together with these Regulations.

(2) In the process of preparing the guidelines under sub-regulation (1), the PPP Node shall consult the PPP Center, Ministry of Finance and other relevant stakeholders.

(3) The guidelines shall be approved by the Minister responsible for local government authorities.

Approval of
Projects exceeding
the stipulated
threshold

88.-(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 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 Centre, obtain recommendations from the PPP Node.

PART XI

PROCUREMENT OVERSIGHT BY THE AUTHORITY

Monitoring of
Procurement

89.-(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

90.-(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 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.

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

(5) 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 the Public Procurement Act.

Procurement,
contract and
performance
audits

91.-(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

92.-(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

93. 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

94.-(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

95. 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

96. For effective discharging of its functions, the authority in consultation with the Centre may prepare guidelines for oversight function.

PART XII GENERAL PROVISIONS

Hand-back

97.-(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 Centre.

(6) The exit strategy shall be submitted to the Centre for approval by the PPP Technical 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

98. Any guarantee or fiscal obligations for PPP Projects shall be subject to the relevant laws relating to loans, guarantees and grants.

Revocation of
GN. No.446

99. The Public Procurement Regulations of 2013 are hereby revoked.

SCHEDULES

FIRST SCHEDULE

(Made under regulation 15)

PPP FORM 1

THE UNITED REPUBLIC OF TANZANIA



APPLICATION FOR APPROVAL OF PROJECT

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 Feasibility study consultant (if any).....
9. Name of Transaction Advisor (if any).....
10. Name of the Project Officer
11. Ministry responsible for the project.....

FOR OFFICIAL USE ONLY

12. Determination:
 - (a) Approved
 - (b) Disapproveddue to/pending on

RECOMMENDATION
NAME:.....
TITLE:.....
SIGNATURE.....
DATE:

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SECOND SCHEDULE

(Made under regulations 29(1) and 58(1))

ADVERTISEMENT OF TENDERS AND DISCLOSURE OF TENDER
AWARD INFORMATION

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 news paper 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

THIRD SCHEDULE

Made under regulations 32(4))

MINIMUM PROCUREMENT PROCESSING TIME FOR BIDDERBIDDERS

Time given under this Schedule is intended to give bidders adequate time to prepare their bids and shall not be reduced by PEs under any circumstances, except where a tender has been rejected provided that:-

(i) during retendering there are no major changes which necessitate preparation of new tenders; and

(ii) the same bidder bidders are invited, in which case the minimum processing time may be reduced by half.

Minimum Time for Preparation and Submission of Prequalification Documents and Tenders for Bidders

Serial Number	Method of procurement	Period (working days)
1	International competitive tendering	75
2	National competitive tendering	60

FOURTH SCHEDULE

(Made under regulation)

Anti-Bribery Policy/Code of Conduct and a Compliance Program

MEMORANDUM

Government of the United Republic of Tanzania

Procedures for tendering for public private partnership contracts

The following procedures will apply to the letting of contracts for the public sector in addition to the standard legal and projects. These procedures are administrative requirements; they will form part of the terms and conditions of each contract and will be actionable, in the event of breach, by the Government of the United Republic of Tanzania and any of the competing tenders.

(1) Each bidder must submit a statement, as part of the tender documents, with the following text.

"This company places importance on competitive tendering taking place on a basis that is free fair, competitive and not open to abuse. It is pleased to confirm that it will not offer or facilitate, directly or indirectly, any improper inducement or reward to any public officer their relatives or business associates, in connection with its tender, or in the subsequent performance of the contract if it is successful.

This company has an Anti-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the No bribery commitment given in this statement will be complied with by its managers and employees as well as by all third parties working with this company on the public sector projects, or contract including agents, consultants, consortium partners, sub contractors and suppliers. Copies of our Anti-Bribery Policy/Code of Conduct and compliance Program are attached"

(Alternatively: "This company has issued, for the purposes of this tender, a Compliance Program copy attached -which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers')".

(2) (a) This statement must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the tendering company and, where relevant, of its subsidiary in the United Republic of Tanzania. If a tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.

(b) Bidder will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners, the bidder may cover the subcontractors and consortium partners in its own statement, provided the bidder assumes full responsibility.

(3) (a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.

(b) Each bidder will make full disclosure in the tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the tender and, if successful, the implementation of the contract.

(c) The successful bidder will also make full disclosure [quarterly or semi annually] of all payments to agents and other third parties during the execution of the contract.

(d) Within six months of the completion of the performance of the contract, the successful bidder will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that are sufficient to establish the legitimacy of the payments made.

(e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.

(4) Tenders which do not conform to these requirements shall not be considered.

(5) If the successful bidder fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:

i) Cancellation of the contract,

ii) Liability for damages to the public authority and/or the unsuccessful competitors in the tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated damages), unsuccessful bidder would present their claims under international arbitration,

iii) Forfeiture of the tender security, and

iv) Debarment by the Government of the United Republic of Tanzania from tendering for further public contracts for a period of ten years and as the Government may deem appropriate.

(6) Bidders shall make available, as part of their tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their - general or project - specific- Compliance Program.

(7) The Government of the United Republic of Tanzania has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by bidders for this contract, and to which in turn all bidders and other parties involved or affected by the project shall have full access (provided, however, That no proprietary information concerning a bidder may be disclosed to another bidder or to the public).

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FIFTH SCHEDULE

FEEs FOR SERVICES RENDERED BY THE PPRA

(Made under regulations 58)

Fees for advertising in the Tanzania Procurement Journal and Tender Portal		
1	Procurement Plan	Fees in Tshs.
1.1	Procurement Volume up to Tshs one billion	500,000
1.2	Procurement Volume above Tshs one billion up to one hundred billion	750,000
1.3	Procurement Volume above Tshs one hundred billion	1,000,000
2	Advertising of Tenders	500,000
3	Posting Tender Disclosure Information	
3.1	Open Tendering/Selection	500,000

SIXTH SCHEDULE

(Made under regulation 34(6))

PREFERENCE SCHEME FOR PROJECT COMPANY PARTNERING WITH LOCAL FIRMS

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%

RFP Proposal Submission Form

[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

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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]

Dar es Salaam,
....., 2015

MIZENGO K.P. PINDA,
Prime Minister