

THE PUBLIC PRIVATE PARTNERSHIP ACT
NO. 8 OF 2015

PUBLIC PRIVATE PARTNERSHIP REGULATIONS, 2017
(Made under section 71)

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**THE PUBLIC PRIVATE PARTNERSHIP ACT
NO. 8 OF 2015**

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(Made under section 71)**

L.N. 134
of 2017

IN EXERCISE of the powers conferred upon me under section 71 of the Public Private Partnership Act, No. 8 of 2015, **I, DR. KHALID SALUM MOHAMED**, Minister for Finance and Planning do hereby make the following Regulations:

**PART ONE
PRELIMINARY PROVISIONS**

Citation and
commence-
ment.

1. These Regulations may be cited as the Public Private Partnership Regulations, 2017 and come into operation after being signed by the Minister and published in the Official Gazette.

Interpreta-
tion.

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

“Act” means the Public Private Partnership Act No.8 of 2015;

“advisor” means any independent, third-party expert or consultant hired to provide advisory services;

“agreement or Public Private Partnership agreement” means a concession contract, a Public Private Partnership contract, or an institutional arrangement that results in a Public Private Partnership;

“applicant” means a private entity or consortium which has submitted a response to the Request for Qualifications;

“application” means the submission made in response to the Request for Qualifications;

“application date” means the date for submission of applications in accordance with the Request for Qualifications;

- “bid” means the submission made in response to the Request for Proposals;
- “bidder” means legal entity including groups thereof, which participate in a selection procedures concerning a concession or Public Private Partnerships agreement;
- “bidder’s conference” means a meeting that a Public Authority may schedule upon releasing a Request for Proposals designed to give interested and eligible bidders the chance to request clarifications regarding the Public Private Partnership;
- “bid security” means a security furnished by the bidder to a Public Authority to secure the performance of any obligation under the Request for Proposals, and includes such arrangements as bank guarantees, surety bonds, stand-by letters of credit, checks on which a bank is primarily liable, cash deposits, promissory notes, and bills of exchange;
- “Commissioner” means a person appointed under section 9(2) of the Act;
- “concession agreement” means an agreement between the Government and a Private Partner relating to the implementation of a concession project;
- “concession project” means an exclusive right granted by a Public Authority to a Private Partner for the purpose of building, setting up, owning, operating, renting, leasing, financing, modernizing, managing, maintaining, developing, or transferring an infrastructure facility for a specified period of time in accordance with a concession agreement;
- “consortium” means a group of bidders;
- “conflict of interest” means any current or past circumstances, relationships or connections that may unfairly influence or be seen to provide an unfair advantage to an Entity or Consortia, or to unfairly influence the integrity, objectivity

or transparency of the Tender Proceedings, Public Private Partnership agreement or Public Private Partnership project;

“Department” means the Public Private Partnership Department as established under Section 9 of the Act;

“due date” means the date for submission of bids in accordance with the Request for Proposals;

“entity” means:

- (a) a company, body corporate, or legal person,
- (b) an association of companies or bodies corporate,
- (c) a natural person;

“evaluation panel” means a panel constituted for evaluating Major or non-Major Projects;

“financial proposal” means the documentation as detailed in section 35(2) of the Act;

“force majeure” means an unforeseeable event that cannot be reasonably anticipated, controlled or prevented by parties, that prevents a party from fulfilling an agreement;

“Government” means the Revolutionary Government of Zanzibar;

“Government financial support” means any commitment by the Government to contribute financial resources to a Public Private Partnership project, in the form of a capital contribution, tax exemption, guarantee, or similar provision as described in regulation 5;

“Government liability” means a commitment by the Government in the form of a guarantee, indemnity and, or direct payment that is required to make a PublicPrivate Partnership project viable;

“greenfield projects or greenfield Public Private Partnership projects” means a project in which a private partner or a

public private joint venture finances, builds, and operates a new or expanded facility for the period specified in the agreement;

“Implementing Authority” means a Public Authority that has entered into a Public-Private Partnership agreement with a private partner and the Ministry responsible for finance, in accordance with the provisions of the Act;

“independent engineer” means a third party advisor hired from outside an organization, free from any conflict of interest, to provide advisory services for project evaluation and, or monitoring;

“infrastructure facility” means physical infrastructure assets and systems that directly or indirectly provide services to the public;

“Information Memorandum” means a document contained in the Request for Proposals providing the bidders with information including the project description, purpose, structure, and scope to assist in the formulation of their bid submissions;

“investment cost” means the present value of the project’s total required capital investments and budgeted costs;

“letter of award” means the letter of award issued by the Public Authority to the winning bidder;

“Local Organization” means any business organization:

- (a) established under the laws of Zanzibar;
- (b) with its principal place of business located within Zanzibar or Tanzania Mainland; and
- (c) owned and, or operated by a Citizen of Zanzibar or Tanzania;

“Major Project” means a project which:

- (a) has investment costs of more than Ten (10) Million U.S. Dollars or a value as the Minister for Finance determines in the Legal Notice;
- (b) results in Government liabilities of more than Ten(10) Million U.S. Dollars or a value as the Minister for Finance determines in the Legal Notice; or
- (c) is for the provision of monopolistic services;

“Memorandum of Understanding” means a non-binding annex to the Public Private Partnership agreement, signed by the Implementing Authority and the Private Partner;

“notification of qualification” means the notification of the short-list of pre-qualified bidders;

“permission” means official written authorization;

“pre-feasibility study” means the preliminary feasibility analysis report undertaken by a Public Authority setting forth the rationale to proceed with a feasibility study report for a project;

“Private Partner” means the entity or consortium that enters into a Public-Private Partnership agreement with the Government to deliver infrastructure and services;

“project or Public Private Partnership project” means activities or any combination, such as: a design, construction and development of new infrastructure facilities, rehabilitation, modernization, and expansion of existing infrastructure facilities; or administration, expansion or other services pertaining to new or existing infrastructure facilities;

“Project Development Fund” means the Fund established under section 20 of the Act;

“project value” means:

- (a) in the case of Public Private Partnership projects where the private entity is expected to make capital investments, the Investment Cost of the asset or facility to be constructed including the cost of land, if the cost of land is to be borne by the private entity; or
- (b) in the case of Public Private Partnership projects where the private entity is not expected to make capital investments, the expected investment needed to maintain and operate the facility in accordance with the Public Private Partnership agreement;

“proponent” means a private entity who submits an unsolicited proposal to the Public Private Partnership Department;

“Public Authority” means a central, regional, municipal or other executive authority, public body, ministry, department, agency, or other authority that exercises executive, legislative, regulatory, public administrative, or judicial powers;

“public contract” means a service contract, a supply or procurement contract, construction or civil engineering contract, a public framework contract, or an immovable property contract;

“public infrastructure” means physical infrastructure assets, structures, and systems that directly or indirectly provide public services;

“Public Private Partnership” refers to concessions of existing public infrastructure, Greenfield Projects, or any of these combinations, and means any form of cooperation between one or more public authorities and one or more private partners, whereby the Private Partner:

- (a) provides a public service or a public infrastructure on behalf of the Public Authority;
- (b) assumes financial, technical, construction, and operational risks, including demand and, or availability risks, in connection with the provision of the public service or the public infrastructure;
- (c) receives a benefit for providing the Public Service or the public infrastructure in the form of payment made by the public authority from the budget of such Public Authority;
- (d) charges fees to be collected by the private partner from users or customers of a Public Service or a public infrastructure provided to them; or
- (e) a combination of such payment and such charges or fees;

“public service” means any service, task, or function which a Public Authority is mandated by law to provide in the general public interest and which is of a non-industrial and non-commercial character such as a service whose primary purpose is not focused on making a profit;

“qualified applicant” means an applicant that has been qualified in the Request for Qualifications stage;

“qualification criteria” means the principle or standard by which the Public Authority pre-qualifies a short-list of interested applicants who are most capable of meeting project objectives over the project term;

“Request for Qualifications” means the request issued by the Public Authority to solicit initial qualifications from interested bidders in order to pre-qualify a short-list of potential bidders for the Public-Private Partnership project;

- “Request for Proposals” means an official solicitation issued by the Public Authority to request formal proposals from pre-qualified bidders as part of the public Tender Proceedings;
- “small project” or “non-Major Project” means a project which is not a Major Project under the Act;
- “special purpose vehicle” means a limited recourse project company specifically created to finance, develop, operate, maintain, and, or promote a specific Public Private Partnership project;
- “Technical Committee” means a Public Private Partnership Technical Committee as established under section 12 of the Act;
- “Technical Proposal” means the documentation as detailed in section 35(1) of the Act;
- “Tender Document” means, as applicable, the Request for Proposals, draft Public Private Partnership agreement, and, or any addenda or corrigenda issued by a Public Authority in respect thereof as part of the Tender Proceedings;
- “Tender Proceedings” means the process adopted by a Public Authority for the competitive bidding and award of the Public-Private Partnership project;
- “terms of reference” means the purpose, structure, and scope of a Public-Private Partnership project;
- “trade secrets” means, for the purposes of these Regulations, intellectual property including patent, copyright and trademark rights;
- “unforeseeable” means a circumstance not able to be anticipated or predicted;
- “unsolicited proposal” means any proposal for undertaking a Public Private Partnership project that is not submitted

in response to a request or solicitation issued by the Implementing Authority within the context of a competitive selection process;

“value for money” means that the provision of public infrastructure or a public service by a Public Authority pursuant to a Public Private Partnership results in a higher economic, social and financial benefit, including cost, price, quality, quantity, risk transfer, or a combination thereof, compared to the provision of such public infrastructure or public service in any other form;

“White Book” means a collection of all technical studies, bidding documents, memoranda, contracts, and other documents relevant to a specific Public Private Partnership project or Public Private Partnership Tender Proceedings that is made available for public consultation after agreement signing;

“winning bidder” means a bidder who has been ranked number one as per the process laid out in the Request for Proposals and criteria.

PART TWO PUBLIC PRIVATE PARTNERSHIPS

Responsibility of a Public Authority.

3. A Public Authority shall be subject to these Regulations while identifying, evaluating, preparing, procuring, and managing Public Private Partnership projects.

Memorandum of Understanding.

4.-(1) A Private Partner, Implementing Authority and the Minister responsible for finance may enter into the Public Private Partnership agreement.

(2) An Implementing Authority and a Private Partner may also choose to enter into a Memorandum of Understanding, which shall be included as a non-binding annex to the Public Private Partnership agreement.

(3) The purpose of the Memorandum of Understanding is to outline the relationship between an Implementing Authority and a Private Partner under a Public Private Partnership agreement.

(4) As per sections 16(2) and 17(2) of the Act, an Implementing Authority and a Private Partner shall comply with the terms of a Public Private Partnership agreement and shall fulfill their respective obligations contained therein.

(5) The Memorandum of Understanding, shall include the following elements:

- (a) Public Private Partnership purpose, goals and objectives;
- (b) partner roles and responsibilities;
- (c) Public Private Partnership governance structure; or
- (d) period of performance.

(6) Memorandum of Understanding included as an annex to the Public Private Partnership agreement shall contain the following language:

“The Parties enter into this Memorandum of Understanding while wishing to maintain their own separate and unique missions and mandates, and their own accountabilities. The cooperation among the parties as outlined in this Memorandum of Understanding shall not be construed as a legal partnership or other type of legal entity or personality. Each Party shall accept full and sole responsibility for any and all expenses incurred by itself relating to this Memorandum of Understanding. Nothing in this Memorandum of Understanding shall be construed as superseding or interfering in any way with any agreements or contracts entered into among the Parties, either prior to or subsequent to the signing of this Memorandum of Understanding. Nothing in the Memorandum of Understanding shall be construed as an exclusive working relationship. The Parties specifically acknowledge that this Memorandum of Understanding is not an obligation of funds, nor does it constitute a legally binding commitment by any party or create any rights in any third party.”

5.-(1) When duly justified and required on the basis of value for money and with prior recommendation by the Technical Committee and approval by the Minister responsible for finance, the Government may provide financial, budgetary or other aid as Government financial support to ensure the sustainability, implementation, and, or financial viability of the project.

(2) Such types of financial support to a Public Private Partnership project shall include but is not limited to:

- (a) guarantees;
- (b) indemnities and other contingent payments;
- (c) capital contributions;
- (d) land;
- (e) tax and other incentives;
- (f) guaranteed traffic or demand;
- (g) equity;
- (h) debt; and
- (i) operating grants or payments.

(3) The nature and size of the Government financial support shall be determined based on the needs of each specific project.

(4) The support shall be specified in the Request for Proposals and in the project Tender Documents, and shall be offered under equal conditions to all bidders.

(5) A Government financial support granted to a Public Private Partnership in accordance with the Act shall not be subject to approval by any applicable law on Government funding provided:

- (a) the Private Partner is obligated to discharge a clearly defined public service as per the agreement;
- (b) a Government financial support granted to the Public Private Partnership was established in advance in an objective and transparent manner and does not exceed

what is necessary to cover all or part of the costs incurred in the discharge of the public service; and

- (c) the Private Partner was selected in an open, transparent and competitive procedure in accordance with the Act.

(6) Subject to prior approval by the Technical Committee, the Government may also accept modifications to the conditions and obligations under the Public Private Partnership agreement or provide compensation to the Private Partner in the event that its financial condition is negatively and materially affected by unforeseeable changes in legislation or regulations which directly impact the public infrastructure or the public services it provides, in accordance with sections 55 and 56 of the Act.

(7) If the Government is required to incur debt or to provide a guarantee in order to finance any obligations to the Private Partner or any form of Government funding for the purpose of implementing a Public Private Partnership, then any such debt or guarantee shall be subject to any applicable laws on public debt.

6.-(1) The Public Authority may require, as specified in the Tender Documents, that a transaction fee be paid by a Private Partner for the purposes of partially or fully compensating the costs associated with a specific transaction and, or to ensure sufficient financial resources are available for monitoring compliance with the terms of the agreement;

Transaction
and
oversight
fees.

(2) As part of the Tender Documents, the Public Authority may require that the Private Partner pay either a one-time or annual oversight fee for the purpose of partially or fully compensating the costs associated with project development and, or monitoring compliance by all parties to a Public Private Partnership agreement.

(3) The terms and conditions relating to the calculations of any transaction fee and, or oversight fee, as well as the terms and conditions relating to its payment, shall be stipulated in the Tender Documents.

(4) Payment of the transaction fee and, or the oversight fee shall be considered a non-negotiable, binding obligation of the selected bidder.

(5) Transactions and oversight fees shall be payable to the Project Development Fund.

PART THREE INSTITUTIONAL FRAMEWORK

Composition
of expertise
of Public
Private
Partnership
Department.

7.-(1) The Public Private Partnership Department may be comprised of experts in:

- (a) economic and financial;
- (b) financial modeling;
- (c) legal;
- (d) engineering;
- (e) project management and coordination;
- (f) accounting;
- (g) procurement;
- (h) demand forecasting;
- (i) due diligence issues; and
- (j) sector specific expertise.

(2) Some of these skills may be provided by full-time staff members, and outside technical experts may be contracted, as needed, potentially paid for through the Project Development Fund as prescribed in regulation 9.

(3) Other skills may be provided by experts from line ministries within the Government.

Roles and
responsibilities
of the
Private
Partner.

8.-(1) For the sole purpose of entering into an agreement and implementing a project, a bidder selected in accordance with the Act shall establish a business organization in the form of a joint stock company or a limited liability company incorporated under the laws of Zanzibar, prior to formalizing an agreement.

(2) A requirement relating to the minimum capital of such a business organization and the procedures for obtaining the approval of a Public Authority to its statute and by-laws and significant changes therein, shall be set forth in the terms of the Request for Proposals and be consistent with requirements established by applicable law.

9.-(1) The Project Development Fund established under the section 20 of the Act shall be under management of the Zanzibar Planning Commission, and shall be held in a separate commercial bank account.

Management of the Project Development Fund.

(2) Funds allocated to the Project Development Fund by the Government or paid into the Fund by bidders shall remain separate from any Government budget, and shall not be used for any Government budget allocations.

(3) The Ministry responsible for finance may approve the use of monies from the Project Development Fund for other aspects or purposes in addition to those listed in section 21 of the Act, only if they are directly related to the costs associated with the preparation, development or monitoring of a Public Private Partnership project.

(4) The Project Development Fund may charge a one-time fee at financial close or periodic fees during the concession period to reflect monies used for the allowed activities under section 21 of the Act, plus a margin to cover the risk of failed projects as specified in the Tender Documents, paid by the winning bidder, in order to ensure the sustainability of the Project Development Fund for future projects.

(5) The fees amount referred to under sub regulation (4) of this regulation, shall be specified on a case-by-case basis in the Tender Documents.

(6) The Department shall establish an annual budget for the use of monies of the Project Development Fund to be approved annually by the Ministry responsible for finance.

(7) The use of non-budgeted monies of the Project Development Fund shall require application by a Public Authority or the Public Private Partnership Department to, and approval and signature by the Ministry responsible for finance.

(8) Payment of fees by winning bidders into the Project Development Fund shall take place:

- (a) at financial close in cases where Tender Documents specify a one-time fee required to re-pay project development costs; or
- (b) periodically, throughout the concession period in cases where Tender Documents specify a periodic payment to cover the cost of project monitoring.

Approval of funding by the Ministry responsible for finance for pre-feasibility and feasibility studies.

10. The Ministry responsible for finance shall approve all necessary funding for the project's pre-feasibility and feasibility studies either through approval of budgetary spending from the relevant Public Authority or through the Public Authority or Department's application for the use of funds from the Project Development Fund, if available.

PART FOUR

IDENTIFICATION AND PREPARATION OF PUBLIC PRIVATE PARTNERSHIP PROJECTS

Identification of a Public Private Partnership projects.

11.-(1) A Public Authority shall identify potential projects, with the assistance of the Public Private Partnership Department.

(2) The process for identification of a Public Private Partnership project for consideration may be detailed in guidelines.

Designation of Project Manager and Project Management Team.

12.-(1) The Public Authority shall assign a Project Manager either from within a Public Authority or through contracting of an outside technical advisor.

(2) The Project Manager shall be responsible for ensuring the pre-feasibility study and the feasibility study are prepared in accordance with regulations 13 and 15.

(3) In the event the project is granted clearance in accordance with regulation 15, the Project Manager shall be responsible for the preparation and procurement of the Public Private Partnership project, through signing of the agreement and financial close.

(4) In the case the Project Manager becomes the Contract Manager in accordance with regulation 52(1), that Project Manager shall be responsible for contract management and project monitoring throughout the duration of the Public Private Partnership agreement.

(5) Depending on the size and complexity of the Public Private Partnership Project, the Public Authority may:

- (a) constitute a Project Management Team, and, or;
- (b) appoint such Advisors in accordance with regulation 14 as may be required, to support the Project Manager in discharging his responsibilities under these Regulations. ✓

(6) The Project Manager shall be responsible for the following:

- (a) maintaining all documentation related to a Public Private Partnership project;
- (b) defining the objective of a Public Private Partnership project;
- (c) undertaking consultations with stakeholders for the identification of a Public Private Partnership project and documenting the same;
- (d) establishing the suitability of a project for Public Private Partnership and determining the value for money of such project in accordance with these Regulations;
- (e) assessing payment or revenue mechanism for a Public Private Partnership project and establishing its affordability for the Public Authority and potential users;

- (f) developing the structure of a Public Private Partnership project;
- (g) undertaking the processes for appointment of Advisors, if required, and documenting the same;
- (h) managing preparation of the pre-feasibility study;
- (i) planning, budgeting and implementing the feasibility study and procurement process and documenting the same;
- (j) obtaining necessary approvals from relevant authorities for developing a Public Private Partnership project;
- (k) coordinating with and providing continuous updates on project status to the Department;
- (l) efficiently managing all key activities related to the development and procurement of a Public Private Partnership project, on behalf of the Public Authority; and
- (m) supporting the Contract Manager in an efficient transition after the issue of Letter of Award to the winning bidder.

Pre-
feasibility
study.

13.-(1) The Public Authority shall carry out a project pre-feasibility study to determine whether a potential project should be implemented.

(2) The Public Authority may engage advisors in accordance with regulation 14 to provide input and assistance to the Project Manager in preparing the pre-feasibility study.

(3) The pre-feasibility study shall be submitted to the Department for review prior to undertaking the feasibility study.

(4) Not including any objection in writing by the Department, within twenty (20) business days, the pre-feasibility study shall be automatically approved.

(5) Upon approval of the pre-feasibility study, the Public Authority may proceed with the feasibility study; or upon objection, the Department shall advise the Public Authority in writing, stating the reasons for the objection or rejection of the pre-feasibility study.

(6) The pre-feasibility study shall confirm on a preliminary basis that the project being considered is economically, financially, environmentally, socially and legally viable, and shall include:

- (a) Needs analysis: Analysis on the need to invest in a project, identifying advantages and disadvantages to the Revolutionary Government of Zanzibar in implementing a project, with such supporting evidence as may be available, including a consideration of competing priorities;
- (b) Project description: Preliminary contemplation and analysis of a project's anticipated scale, location, land use demand, construction size, output capacity, technology, technical aspects, site clearance and resettlement plan, if any, and social and environmental impacts;
- (c) Sectoral analysis: Preliminary analysis of the appropriateness of the project for development within the context of the relevant sectors, including alignment with sector policies, and in accordance with selection criteria typically used for such sectors by the Public Authority;
- (d) Public Private Partnership analysis: Preliminary analysis of the socio-economic advantages and effectiveness of implementing a Public Private Partnership project;
- (e) Proposed form of contract: Preliminary contemplation of the form of contract to be used for a Public Private

Partnership project and preliminary analysis of the rationale for selecting of a proposed contract form;

- (f) Implementation plan: Preliminary progress, expected lifecycle, main construction timelines and investment schedules of a Public Private Partnership project, if any;
- (g) Estimated costs: Estimated total investment costs, estimated Government financial support, revenue sources, anticipated service price and fee in accordance with current regulations and estimates of a project, and the feasibility of raising capital to implement a project;
- (h) Preliminary financial model: Establishment of preliminary financial model for a project in the form of a spreadsheet;
- (i) Initial risk assessment: Identification and preliminary allocation of risks in investing in a Public Private Partnership project, including consideration of revenue and cost impacts given identified risks;
- (j) Initial Government financial support assessment: Analysis of need for Government to provide financial contributions or incentives such as investment guarantee mechanisms to ensure the financial viability of a Public Private Partnership project;

(7) In addition to the items under sub regulation (6), the pre-feasibility study shall be in compliance with other regulations for the establishment of investment projects within the relevant sector.

Appoint-
ment of
advisors.

14.-(1) The Public Authority may, based on the size and complexity of the Public Private Partnership project, engage Transaction Advisors to be responsible for advice related to all aspects of the preparation and procurement of a Public Private Partnership project, including financial, legal, and technical advice.

(2) Prior to undertaking the process of engagement of Advisors, the Project Manager shall prepare a procurement plan for consulting and, or advisory services which shall necessarily cover the following aspects:

- (a) duration of the consulting and, or advisory services;
- (b) terms of reference of the consulting and, or advisory services;
- (c) milestones and schedule of the consulting and, or advisory services;
- (d) skills, expertise and knowledge needed from each Advisor eligibility and qualification;
- (e) estimated budget for the consulting and, or advisory services;
- (f) procurement schedule; and
- (g) any other matter concerning the procurement of consulting and, or advisory services.

15.-(1) After receiving approval of the pre-feasibility study, the Department or the Public Authority shall conduct a full-feasibility study whether the project is a non-major project or a major project. ^{Full feasibility study.}

(2) The feasibility study shall be carried out by an independent third-party advisor, hired by the Public Authority through budgetary spending, or through non budgetary spending or through a request for use of funds from the Project Development Fund in accordance with regulation 9(4);

(3) If the project is a non-Major Project, the full-feasibility study shall be submitted to the Department for review and approval.

(4) Review and approval of the feasibility study for non-Major Projects shall be completed within twenty (20) business days.

(5) Approval by the Department shall signal approval of the full-feasibility study for non-Major Projects.

(6) If the project is a Major Project, the full feasibility study shall be submitted to the Technical Committee for consideration and potential recommendation for approval.

(7) Review and approval of the feasibility study for Major Projects shall be completed within forty (40) business days.

(8) The signature of the Principal Secretary of the Ministry responsible for finance shall signal approval of the full-feasibility study for major projects.

(9) Upon approval of the Feasibility Study, the Department shall:

- (a) advise the Public Authority to proceed with project Tender Proceedings; or
- (b) upon objection, the Department shall advise the Public Authority, in writing, stating the reasons for the objection or rejection of the feasibility study.

(10) The full-feasibility study shall include:

- (a) details regarding the salient features of the proposed project;
- (b) description of the strategic and operational benefits of the proposed project in relation to its objectives;
- (c) specific description of:
 - (i) in the case of performance of a function, the nature of the function to be performed, and the extent to which it may be performed by the private party;
 - (ii) the services to be delivered; and
 - (iii) in the case of the use of a Government property, the description of the property concerned and the types of use the property may be subjected to;

- (d) in the case that the Public Authority will incur any financial commitments, a demonstration of the affordability of a Public Private Partnership project by the Public Authority;
- (e) market analysis and project scope, to assess the need for and appropriate scope of the project, building on the work already done at the pre-feasibility stage, this includes:
 - (i) needs analysis;
 - (ii) options analysis;
 - (iii) affordability analysis;
 - (iv) analysis of market or investor appetite;
 - (v) defining the output;
 - (vi) estimated or forecasted demand with sensitivity analysis;
- (f) social and environmental feasibility, including the requirements for impact assessments and for the associated mitigations;
- (g) technical feasibility and technical parameters based on the market analysis, including specification of required facilities and scenarios of project size, for use in preliminary project design and engineering;
- (h) risk studies and refinement of the Public Private Partnership structure selected at the pre-feasibility stage including an outline of the terms of a Public Private Partnership agreement;
- (i) preliminary cost assessment;
- (j) financial analysis and due diligence, incorporating a projected revenue structure including proposed tariff, demand forecasts, required Government payments, and assessment of financial viability and any need for

Government financial support from the public sector, including the total amount required, and the terms and conditions of the support; and this analysis shall incorporate sensitivity testing to capture potential variations in revenue and costs;

- (k) consideration of other priorities and the potential interaction of the project with other existing or potential projects;
- (l) economic feasibility assessment of overall net economic benefit of a Public Private Partnership project, incorporating estimated project benefits and costs including non-market factors such as those from the social and environmental assessment including value for money analysis and affordability for the Public Authority and for users;
- (m) other Public Private Partnership due diligence analysis as necessary;
- (n) project implementation schedule, including an outline of the proposed PublicPrivate Partnership procurement and award process through to technical and financial close, an outline of the construction schedule and target operation date, and any phasing that is planned for a Public Private Partnership project extensions or ongoing development.

(11) Upon receipt of the feasibility study, the Department, Technical Committee, and the Principal Secretary of the Ministry responsible for finance shall evaluate the feasibility study, in accordance with section 19(8) of the Act and sub regulations (1) to (8) of this regulation, this review shall include:

- (a) the needs analysis including specification of outputs and project scope;
- (b) analysis of viable options for Public - Private Partnership structuring;

- (c) preliminary project due diligence, value for money assessment, proof of affordability, need for a Government financial support, fiscal risk allocation and appropriate risk sharing and allocation; and
- (d) profile of Public Authority's capacity for Public Private Partnership development, implementation, and management.

PART FIVE PROJECT TENDERING AND PRIVATE PARTNER SELECTION

16.-(1) After approval of the feasibility study under regulation 15, the Public Authority shall formally start the procurement process by public announcement of the project and issuance of a Request for Qualifications, placing an advertisement in the media inviting bidders to express their interest to bid for a Public Private Partnership project. Public announcement and invitation to qualify.

(2) The announcement shall include the rules for any bidder's consultation to take place during the Tender Proceedings.

(3) The published Request for Qualifications should contain a brief description of the project such as the scope, project value, contact details for further information, schedule of qualification proceedings and deadline for submission of qualifications.

17.-(1) The Public Authority, when first inviting the participation of bidders in the selection proceedings, shall allow them to form bidding consortia. Participation of consortia.

(2) The information required from members of bidding consortia to demonstrate their qualifications shall be specified in the Request for Qualifications Documents.

(3) Unless otherwise stated in the Request for Qualifications, each member of a consortium may participate, either directly or indirectly, in only one consortium.

(4) A violation of sub regulation (3) of this regulation shall cause the disqualification of the consortium and of the individual members, except for local organizations which may participate as a member of a consortium in:

- (a) more than one application in response to a Request for Qualifications; and
- (b) more than one bid in response to a Request for Proposals,

to the extent the Request for Qualifications and Request for Proposals so provide.

Removal of
conflict of
interest.

18.-(1) An applicant or bidder, including consortia, suffering from a conflict of interest, as specified in the Tender Documents, shall be excluded from the Tender Proceedings, unless the applicant or bidder can prove it is able to mitigate or remove the conflict of interest.

(2) The mechanism for mitigating or removing the conflict of interest shall be submitted to the Public Private Partnership Technical Committee for review by the date indicated in the Request for Proposals and must be approved in order for the applicant or bidder to continue in the application or bidding process.

(3) The results of the Public Private Partnership Technical Committee's review of such mechanisms shall be disclosed to all applicants or bidders by the date specified in the Request for Proposals.

(4) The mechanism for mitigating the conflict of interest, or the removal of the conflict of interest, shall be enacted by the applicant or bidder through application or bid due date.

Request for
Qualifica-
tions.

19. The Request for Qualifications stage shall be undertaken to:

- (a) communicate information about the project to the public; and
- (b) allow the Public Authority to qualify Applicants for the Request for Proposal stage, who are most capable of meeting project objectives over the project term.

20.-(1) The Project Manager, directly or with the support of an external consultant, shall prepare the Request for Qualifications, overseen by the Commissioner of the Department;

Preparation of the Request for Qualifications.

(2) The Project Manager shall ensure that:

- (a) the Request for Qualifications contains sufficient information to allow potential respondents to form a view on whether they have sufficient capabilities and to identify potential partners for the Public Private Partnership project; and
- (b) the information requested from the applicants is such that the Public Authority can qualify the applicants.

21. The Request for Qualifications document shall contain the following; more detailed lists may be defined in guidelines:

Contents of the Request for Qualifications.

- (a) a description of the Public Private Partnership project, an estimated project cost, and a project structure;
- (b) conditions of eligibility of applicants, information sought from applicants for qualification and the form and procedure of the application;
- (c) a description of the parameters and method of evaluating qualification of applicants, the objective of the evaluation should be to identify Applicants that have the requisite capability to undertake the Public-Private Partnership Project; and
- (d) criteria or conditions, if any, for the disqualification of applicants, such as conflict of interest, national security, and other relevant considerations.

22.-(1) The qualifying criteria used by the Public Authority to evaluate the responses to the Request for Qualifications shall be objective, equitable, unambiguous, and shall be clearly stated in the Request for Qualifications, and shall be published through public notice in accordance with regulation 16.

Qualifying criteria.

(2) The qualifying criteria shall cover the following aspects of the applicant:

- (a) the applicant's experience and track record in delivering projects of similar nature, including consideration of the individual experts being proposed;
- (b) the applicant's ability to deliver against all aspects of a Public Private Partnership project and, importantly, its ability and track record in delivering services under long-term contractual arrangements;
- (c) the financial strength of the applicant to provide the required services;
- (d) the ability of the applicant to support the contractual arrangements over the contract term, for example, but not limited to, the ability to design, finance, construct, operate, maintain the public infrastructure facility.

(3) Based on the nature of a Public Private Partnership project, the Public Authority may, in addition to the above, specify qualifying criteria in relation to the following areas, among others:

- (a) proposed team of experts, if a Public Private Partnership project requires specialized technical expertise; and
- (b) experience of applicant or the proposed team for working in local conditions.

Evaluation
of
application.

23.-(1) Application in response to a Request for Qualifications shall be evaluated by the Public Authority, with assistance from the Department, on the basis of objectivity, equity, and fairness, using the qualifying criteria as specified in the Request for Qualifications.

(2) The applicants shall be assessed on the basis of their respective aggregate experience in accordance with the qualifying criteria as specified in the Request for Qualifications.

(3) Applicants attaining aggregate experience beyond the pre-specified minimum threshold shall be qualified for submission of bids.

24.-(1) Applicant attaining the pre-specified minimum threshold under regulation 23(1) shall be included on a short-list of pre-qualified bidders. Notification of Qualification.

(2) The Public Authority shall promptly notify each applicant in writing whether or not it has been qualified, in compliance with regulation 25(d).

(3) The Public Authority shall make available to any person, the names of all applicants that have been qualified.

(4) Only applicants who have qualified are entitled to participate further in the Tender Proceedings.

25. The following minimum periods shall be followed by the Public Authority while determining the schedule of the qualification process: Schedule of Request for Qualifications.

- (a) the application date shall not be less than twenty (20) business days from the date of advertisement or notification of the Request for Qualifications;
- (b) the Public Authority and the Department shall complete the review and selection of shortlisted of qualified applicants;
- (c) review of applications in response to the Request for Qualifications shall be completed within thirty (30) business days from the date of submission of the applications;
- (d) notification of shortlisting of qualified applicants shall be made within five (5) business days of finalization of the short list of qualified applicants.

PART SIX
PROCEDURES FOR REQUESTING PROPOSALS

Request for
Proposals.

26.-(1) Only the qualified applicants short-listed during the Request for Qualifications stage shall be invited to submit bids under the Request for Proposals stage.

(2) Against payment of any fee that might be applied or assessed, as specified in the Notification of Qualification, the Public Authority shall provide the Qualified Applicants with a Request for Proposals, in compliance with the Act.

Preparation
of the
Request for
Proposals.

27.-(1) The Project Manager, directly or with the support of an external consultant, shall prepare the Request for Proposals and the draft of Public Private Partnership agreement to be included in the Tender Documents, with support from the transaction advisor, if applicable, and the Department overseen by the Commissioner of the Department.

(2) The Project Manager shall ensure that, the Request for Proposals is clearly written and contains sufficient information related to the project to allow potential bidders to provide detailed responses to the Request for Proposals.

Contents
of the
Request for
Proposals.

28.-(1) The Request for Proposals shall formally solicit bids from bidders.

(2) The Request for Proposals shall include at least the following components:

- (a) terms of reference, including but not limited to:
 - (i) project objectives and rationale;
 - (ii) site details;
 - (iii) role of the Government and stakeholders; and
 - (iv) project scope in accordance with regulation 29;
- (b) the project's information memorandum;

- (c) instructions to bidders including but not limited to detailed timeline of the Tender Proceedings and required formats;
- (d) evaluation criteria;
- (e) information related to required bid securities, transaction or oversight fees required to be paid by the winning bidder, Government financial support being provided to the project, any required performance bond to be included in the agreement, or other such fees or provisions;
- (f) definition of what constitutes a conflict of interest for the project;
- (g) deadline for submitting a mechanism for mitigating or removing any conflicts of interest as per regulation 18;
- (h) applicability and requirements for making changes to the composition of consortia both prior to and after the due date;
- (i) procedures for contesting of bids, including amount to be paid and time limit for submission of challenge documentation;
- (j) definition of 'material' and 'non-material' conditions as they relate to the project evaluation criteria, as well as procedures for negotiation of such non-material provisions;
- (k) conditions and requirements for establishment of the project special purpose vehicle, if applicable;
- (l) a draft Public Private Partnership agreement; and
- (m) a Memorandum of Understanding to be included as a non-binding annex to a Public Private Partnership agreement.

29.-(1) The Public Authority shall set out the detailed description of a Public Private Partnership project and the project scope in the Request for Proposals.

(2) To the extent practicable, the description of the Public Private Partnership project and project scope shall be objective and functional and shall set out the relevant technical, quality and performance characteristics expected.

(3) There shall be no requirement for or reference to a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the project scope and specifications and provided that words such as, or equivalent, are included.

30.-(1) Number of bids:

- (a) a bidder shall not submit more than one bid for a Public Private Partnership project;
- (b) a bidder applying individually or as a member of a consortium shall not be entitled to submit more than one application either individually or as a member of any consortium.

(2) The Public Authority, as part of the Tender Proceedings, shall establish a Data Room, accessible to all bidders, containing all Tender Documents and available information related to the project.

(3) The Public Authority may convene a bidder's conference to clarify questions concerning the Request for Proposals and to clarify the terms of the Public Private Partnership agreement.

(4) The date and time of the bidder's conference shall be included in the instructions to bidders as part of the Tender Documents.

(5) The bidder's conference shall be held not less than three (3) weeks before the due date.

(6) The Public Authority shall prepare minutes of any such bidder's conference or discussion containing the questions raised and the clarifications provided by the Public Authority concerning the Request for Proposals and draft of a Public Private Partnership agreement.

(7) The Public Authority shall send a copy of the minutes and any changes made to the Tender Documents in response to the bidders conference to all bidders not less than ten (10) business days before the due date.

(8) If the Public Private Partnership project involves important site related issues, a site visit may be included in the Tender Documents and organized early in the Request for Proposals stage.

(9) Bidders shall be invited to participate in the site visit, and will bear all costs associated with their participation in such site visit.

31.-(1) The Public Authority shall evaluate bids in accordance with the criteria and requirements set out in Part Five of the Act and these Regulations.

Appoint-
ment of
evaluation
team and
evaluation
criteria.

(2) The Public Authority shall appoint an evaluation team comprising not less than five (5) members based on relevant expertise, common knowledge and skills on the subject matter.

(3) Evaluation shall be based on objectivity, equity, and fairness, using the evaluation criteria as specified in the Request for Proposals.

(4) The Public Authority shall select a winning bidder solely on the basis of the most advantageous bid for the Government, as specified in the Request for Proposals.

(5) The criteria established in the Request for Proposals may include:

- (a) upfront payment paid to Public Authority;
- (b) revenue shared with Public Authority;

- (c) present value of royalties;
- (d) tariff or shadow toll required;
- (e) present value of lifecycle investment cost;
- (f) period of the concession;
- (g) use or transfer of technology or technical solution proposed;
- (h) equity stake required from Public Authority;
- (i) expected subsidy or payment from the Public Authority;
- (j) extent or share of subsidized facilities to the Public Authority;
- (k) Government financial support sought;
- (l) other Government support;
- (m) environmental benefits;
- (n) social benefits to the community; or
- (o) other concepts as deemed appropriate.

Opening of
bids.

32.—(1) Opening of bids shall take place publicly, at the time and place and in the manner and procedure specified in the Request for Proposals in the presence of bidders and other members of the public who choose to attend.

(2) Evaluation of bids shall take place in two stages:

- (a) opening and evaluation of technical proposals; and
- (b) following the results of the technical evaluation, opening of financial proposals for only those bids that passed the minimum score established for the technical evaluation.

(3) The Public Authority may, in exceptional circumstances, defer the date for opening of the bids, and record in writing the reasons therefore.

(4) Until the opening of the applications, the Project Manager shall ensure that the applications remain unopened and are stored in a secure location.

(5) Bidders who have submitted bids or their representatives shall be permitted by the Public Authority to participate in the opening of technical bids.

(6) Minutes of the proceedings of bid evaluations shall be maintained as part of the record of Tender Proceedings.

33.-(1) The Public Authority shall determine the criteria for technical evaluation based on the nature of the Public Private Partnership project and the type of facility being developed and, or service being provided. Technical evaluation.

(2) The Public Authority shall specifically define the criteria for technical evaluation for each Public Private Partnership project in the Request for Proposals, which shall include parameters covering the following aspects of bidders and their bids:

- (a) basic information and review thereof to confirm the eligibility of the bidder to bid for the Public Private Partnership project;
- (b) technical capability of the proposed team or consortia members to implement the Public Private Partnership project;
- (c) evaluation of project experience to assess the proven capacity of the bidder to implement projects similar to the capacity and project value of the Public Private Partnership project;
- (d) demonstrated understanding of the scope of work;
- (e) technical solution, approach and methodology proposed and adequacy of the same to provide the stated outputs while conforming to minimum technical requirements;

- (f) proposed business plan for implementing the Public Private Partnership project to ensure that, the technical solution proposed can:
 - (i) be sustainably implemented and monitored;
 - (ii) be adequate for the project scope; and
 - (iii) conform to the minimum technical requirements, applicable laws and regulations over the course of the agreement;
- (g) capacity for investment, operational and investment projections and acquisition plans are synthesized into a realistic financial model, supported by financing adequate for implementing the project.

(3) The marks allocated for each of the parameters shall be aggregated to calculate a single score, to be specified in the Request for Proposals.

Notification
of passed
technical
proposals to
bidders

34.-(1) The Public Authority shall promptly notify each bidder whether or not the technical proposal submitted by it has passed the minimum technical score established in the Request for Proposals.

(2) The Public Authority shall also make available to any person from the names of all bidders whose technical proposals have passed.

(3) Only bidders whose technical proposals have passed are entitled to participate further in the Tender Proceedings.

Schedule of
bid process.

35. The following minimum periods shall be followed by the Public Authority in the Request for Proposals stage:

- (a) the due date shall not be less than forty (40) business days from the date of delivery of the Tender Documents for Major Projects, and not less than ten (10) business days from the date of delivery of the Tender Documents for non-Major Projects;

- (b) the bidder's conference, if any, shall be held not less than fifteen (15) business days before the due date;
- (c) the clarifications on the queries of bidders shall be issued not less than ten (10) business days before the due date;
- (d) corrigenda or notifications of amendments to the Request for Proposals or Draft Public Private Partnership agreement shall be issued not less than ten (10) business days before the due date;
- (e) for all clarifications, corrigenda or notifications of amendments to Tender Documents issued less than ten (10) business days before the due date, an extension of the due date shall be provided to comply with regulation 36.

36.-(1) Where the bidder is a consortium, change in the composition of a consortium may be permitted by the Public Authority prior to the due date, only where: Change in composition of consortium.

- (a) the application for such change is made no later than two (2) weeks prior to the due date;
- (b) the substitute is at least equal, in terms of capacity, to the consortium member who is sought to be substituted and the modified consortium continues to meet the pre-qualification criteria for the Tender Proceedings;
- (c) the new member does not present a conflict of interest that cannot be mitigated or removed as per regulation 18; and
- (d) the change to the composition of the consortium is made according to the requirements for changes to composition of consortia specified in the Request for Proposals.

(2) Approval for change in the composition of a consortium prior to the due date, shall be, at the sole discretion of the Public Authority, communicated by the Public Authority to all bidders in writing.

(3) The modified or reconstituted consortium shall submit a revised joint bidding agreement satisfactory to the Public Authority with the application for such change.

(4) The Public Authority may authorize changes in the composition of the consortium after the due date only if permitted by the Request for Proposals document, and only in accordance with the procedures specified in the Tender Documents for making changes to consortia after the due date.

(5) Changes made to consortia after the due date shall be submitted in writing to review and approval by the Public Private Partnership Technical Committee.

(6) If the changes approved, the results of the review and change to the consortium shall be communicated in writing to all bidders.

Bid
securities.

37.-(1) The Request for Proposals shall set forth the requirements with respect to the issuer and principal terms and conditions of any required bid security, including the nature, form and amount.

(2) A bidder shall not forfeit any bid security that it may have been required to provide, other than in case of:

- (a) withdrawal or modification of a bid after the due date;
- (b) failure to enter into final negotiations with the Public Authority pursuant to section 38 of the Act;
- (c) failure to sign the agreement, if required by the Public Authority to do so, after the bid has been accepted; or
- (d) failure to provide required security for the fulfillment of the agreement after the bid has been accepted or to comply with any other condition prior to signing the agreement specified in the Request for Proposals.

Validity
of bid.

38.-(1) Bid shall be valid during the period of time specified in the Request for Proposals.

(2) Prior to the expiry of the period of validity of bid, the Public Authority may request bidder to extend the period.

(3) A bidder may refuse the request referred to in sub regulation (2) without forfeiting its bid security.

(4) If a bidder agrees to extend the period of validity of its bid, the bidder shall also extend the period of effectiveness of the bid security for the additional specified period of time.

(5) If a bidder has not extended the bid security, or has not provided a new bid security in the time provided, it shall be considered as refusal of the request to extend the period of validity of its bid.

39.-(1) Only those bids that passed the minimum score established for the technical evaluation shall pass to the financial evaluation. Evaluation of Financial Proposals.

(2) Bidders who pass to the financial evaluation, or their representatives, shall be permitted by the Public Authority to participate in the opening of financial bids.

(3) Bids that do not meet the minimum score established for the technical evaluation shall be returned to bidders, along with their unopened financial bid.

40.-(1) All bids shall be ranked in accordance with the evaluation criteria specified in the Request for Proposals and the first ranked bidder shall be the winning bidder, subject to the provisions of regulation 44. Selection of the winning bidder.

(2) In the event that the first ranked bidder withdraws or is not selected for some reason, the Public Authority may request bidders to extend their respective bid securities, as necessary.

(3) The Public Authority may then select the second-ranked bidder as the winning bidder.

(4) The winning bidder shall be notified in writing by the Public Authority no later than five (5) business days after being selected.

(5) Simultaneous with the selection, the Public Authority shall communicate with other bidders, the selection of, and its intention to execute the Public Private Partnership agreement with, the winning bidder.

(6) Bidders who submitted technically responsive bids shall be considered reserve bidders until agreement signing.

(7) Upon agreement signing, bid securities shall be refunded to non selected reserve bidders.

(8) After selection, a letter of award shall be issued by the Public Authority to the winning bidder.

(9) The winning bidder shall, within seven (7) days of the receipt of the letter of award, confirm in writing their acknowledgement thereof.

Contesting
the results
of the
winning
bidder.

41.-(1) Contesting the results of the selection of the winning bidder may only take place in accordance with the procedures for contesting of bids outlined in the Request for Proposals.

(2) Non-selected bidders wishing to contest results of the Tendering Process shall submit a payment to the Public Private Partnership Department for an amount equal to the estimated cost of the official complaint process, as specified in the Request for Proposals.

(3) Challenges shall be submitted within the time period specified in the Request for Proposals.

Treatment
of sole bid.

42. In the case of the competitive bidding process resulting in a sole bid, the Public Authority shall apply to the Technical Committee to make a determination on whether to:

- (a) accept the sole bid, if the Technical Committee is of the opinion that re-tendering will not yield more bids and there is a clear value for money in accepting the sole bid; or

(b) reject the sole bid.

43.-(1) In the event that two or more bids prove equally advantageous, the Public Authority shall identify the winning bidder by asking the respective bidders to provide their best and final offer. Treatment of two equal bids.

(2) The bidder offering the most advantageous revised bid shall be adjudged the winner.

(3) If the approach in sub regulations (1) and (2) of this regulation is not successful, the Public Authority shall identify the winning bidder by taking into account the aggregate experience score of each such bidder from the Request for Qualifications stage, wherein the bidder with the higher score shall be adjudged the winning bidder.

(4) If the approach in sub regulation (3) is not successful, the Public Authority shall identify the bid with the highest value of local participation, greater technology transfer, lowest proposed tariffs, or other measure as deemed most appropriate by the Technical Committee and established as part of the Tender Documents.

(5) The bidder with the most favorable proposed value, based on the measure established under sub regulation (4) of this regulation, shall be adjudged the winning bidder.

(6) If the tie persists, the Public Authority shall defer to the Technical Committee to make a final determination as to whether to initiate fresh Tender Proceedings.

44.-(1) The Public Authority may deem the financial bid as speculative if it is abnormally high or low with reference to: Treatment of bids.

- (a) the value for money analysis;
- (b) other bids received; and
- (c) such other consideration as it may deem fit.

(2) If the Public Authority deems a bid to be speculative in accordance with sub regulation (1) of this regulation, it shall request in

writing details of the constituent elements of such bid that it considers relevant, which may include:

- (a) the economics of the construction method, processes and, or the services provided;
- (b) the technical solutions chosen and, or any exceptionally favorable conditions available to the bidder;
- (c) the originality of the work, supplies or services proposed by the bidder;
- (d) compliance with applicable laws;
- (e) assumptions relating to granting of Government financial support or concessions;
- (f) assumptions affecting revenue and expense projections, investment cost, capacity utilization, tariff, traffic, inflation, foreign exchange, interest rates, growth, or others.

(3) The Public Authority shall permit the concerned bidder to make a representation in support of its bid with any such information as the bidder may deem necessary or relevant.

(4) If the Public Authority considers the bid speculative on the basis of the information and, or representation pursuant to subregulations (2) and (3) of this regulation, then the Public Authority shall seek an opinion on the same from an independent expert or a body of repute.

(5) If the Public Authority continues, following such opinion, to consider the bid speculative, it may reject the bid subject to the decision of the Technical Committee in accordance with sub regulation (8) of this regulation.

(6) The process for determining the bid as speculative shall be completed no later than ten (10) business days from the due date.

(7) The bidder shall conform to the timeline specified in the sub regulation (6) of this regulation, in complying with any requests of the Public Authority under this regulation.

(8) The decision to reject a bid in accordance with this regulation shall be made by the Technical Committee, and the reasons thereof, including all communications with the bidder under this regulation, shall be included in the record of the Tender Proceedings.

(9) The decision of the Technical Committee and the reasons therefore shall be promptly communicated to the bidder concerned.

45.-(1) Award of additional services authorized without Competitive Procedures as described in section 38 of the Act, shall be limited to additional services with a maximum aggregate value of 25% of the original contract value. Award of additional services.

(2) Any services exceeding this value must be solicited through formal Tender Proceedings in accordance with the provisions of the Act and Regulations.

46.-(1) Negotiation on material issues shall not take place between the Public Authority and winning bidder after the due date with respect to a bid submitted by the bidder. Negotiations.

(2) A material negotiation shall be conducted prior to the bid submission deadline, and the results of negotiations shall be made available to all bidders.

(3) Negotiation of non-material conditions, as they relate to the evaluation criteria, may take place in accordance with the procedures and details specified in the Request for Proposals.

47.-(1) Subject to fulfillment by the winning bidder of the requirements specified in the Request for Proposals, and in the letter of award, the Ministry responsible for finance and the Implementing Authority shall execute the Public Private Partnership agreement with the winning bidder within twenty (20) business days of award. Agreement finalization and award.

(2) Except as provided in regulation 46, the winning bidder, implementing Authority and the Ministry responsible for finance shall not engage in negotiation on or modification to the draft Public Private Partnership agreement as per the Request for Proposals, after the due date.

Amendments to the agreement after signing.

48. Amendments to the signed Public Private Partnership agreement are only allowed in the case of force majeure, including severe economic downturn, and only with the review and recommendation of the Technical Committee and the subsequent approval of the Ministry responsible for finance.

Publication of White Book.

49. Following contract finalization and award, all Tender Documents and any documentation related to the Tender Proceedings including:

- (a) the Request for Qualifications;
- (b) shortlist of qualified applicants;
- (c) minutes from the bidder's conference;
- (d) revisions to Tender Documents;
- (e) minutes from opening and evaluation of technical and financial bids;
- (f) the final Public Private Partnership agreement;
- (g) Memorandum of Understanding, shall be published in a White Book and made available to the public.

PART SEVEN UNSOLICITED PROPOSALS

Treatment of unsolicited proposals.

50.-(1) The Public Private Partnership Department may accept unsolicited proposals in accordance with section 42 of the Act.

(2) Unsolicited Proposals must satisfy all of the following conditions:

- (a) the project should not require any form of Government financial support, with the exception of transfer of land and tax exemptions, from the Government, Local Government, or their agencies;
- (b) the project should not have been identified earlier by the Public Authority, as duly documented in its published plans or in any of its predetermined projects under active consideration; and
- (c) the project should not be for monopolistic services.

(3) Irrespective of section 43(5) of the Act, the Public Private Partnership Department shall not make use of trade secrets after the period of review of the unsolicited proposals without appropriate permissions.

51.-(1) A private entity referred to as a Proponent, may submit an unsolicited proposal to the Public Private Partnership Department, which shall include:

Procedures
for
accepting
unsolicited
proposals.

- (a) details of the project including project specifications, performance standards, scale and scope and other technical, financial and commercial details;
- (b) details of the technical, commercial, managerial, and financial capability of the private entity making the proposal;
- (c) detailed pre-feasibility study of the project, clearly establishing that the project will be financially viable;
- (d) the estimated cost of the detailed pre-feasibility study of the Private Public Partnership project developed by the private entity.

(2) The Department shall be responsible for the receipt and review of all unsolicited proposals.

(3) Within sixty (60) business days of receipt of such unsolicited proposal, the Department, in coordination with the relevant Public Authority, shall undertake a detailed review of the unsolicited proposal documents to determine whether the project being considered is economically, financially, environmentally, socially and legally viable, and that the unsolicited proposal addresses the pre-feasibility study requirements contained in regulation 13(6).

(4) As part of the detailed review process, the Department shall record, in writing, the results of the review process including an evaluation of the items mentioned in sub regulation (2) of this regulation.

(5) Following the detailed review process, within fifteen (15) business days, the Department shall formally decide whether to accept or reject the potential project derived from the unsolicited proposal.

(6) If the unsolicited proposal is accepted by the Department, the Department firstly shall request a review from the Technical Committee to authorize moving to the feasibility study stage.

(7) The Technical Committee shall review the unsolicited proposal documents and the detailed review undertaken per sub regulation (3) of this regulation and, within fifteen (15) days of receipt of the unsolicited proposal and detailed review, barring any objection, the project will automatically move to the feasibility study stage.

(8) Once the project is authorized per sub regulation (7), the Department shall request the Public Authority to initiate the undertaking of a feasibility study in accordance with the Act, to be carried out by an independent, third party advisor.

(9) After the feasibility study is completed, the project shall follow the review and approval procedures outlined for major and non-major projects in the Act and Regulations.

(10) If the unsolicited proposal is not authorized by the Technical Committee, it shall advise the Department, in writing, stating the reasons for the objection or rejection of the unsolicited

proposal, and the Department shall return to the proponent the original and any copies of documents that the Proponent submitted and prepared as part of its unsolicited proposal.

(11) If the feasibility study is approved for the unsolicited proposal, the Proponent shall be invited to participate in any competitive selection procedure initiated in response to its unsolicited proposal.

(12) The total time allowed to review an unsolicited proposal and either recommend for the feasibility stage or reject, shall take no more than one hundred twenty (120) business days from the date of receipt of the documentation set forth in sub regulation (2) of this regulation.

PART EIGHT POST AWARD PROJECT AND CONTRACT MANAGEMENT

52.-(1) The Public Authority shall assign a Contract Manager Contract management. with support from financial, technical, and legal experts within the Department.

(2) The Project Manager may be designated as the Contract Manager.

(3) The Contract Manager shall be assigned on or prior to the date of issue of the letter of award to the winning bidder.

(4) The Project Manager shall provide all documents and communications including the procurement report in relation to the Public Private Partnership project to the Contract Manager.

53.-(1) The Contract Manager shall be responsible for formulation and monitoring of the implementation of the Contract Management Plan, as per regulation 56. Responsibility of the Contract Manager.

(2) The responsibilities of the Contract Manager shall include ensuring:

- (a) adherence to timelines and other obligations specified in the Public Private Partnership agreement;
- (b) adherence to the performance standards specified in the Public Private Partnership agreement;
- (c) adherence to reporting procedures between the private partner and the Public Authority;
- (d) periodic measurement and testing as required under the Public Private Partnership agreement;
- (e) conflict management;
- (f) remedial measures and action plan for curing defaults;
- (g) imposition of penalties in the event of default;
- (h) levy and collection of user charges based on approved principles;
- (i) progress of on-going disputes and arbitration proceedings, if any; and
- (j) tracking the events that could lead up to additional public sector liabilities;

(2) In compliance with instructions of the Public Authority, the Contract Manager shall provide a periodic report on issues covered under sub regulation (2) of this regulation to the Public Authority and the Department.

Appointment
and role of
Independent
Engineer.

54.-(1) The Public Authority shall appoint an Independent Engineer when the capacity to supervise construction and, or monitor operations does not exist within the relevant Public Authority.

(2) Hiring of the Independent Engineer may be done through the use of Project Development Fund monies in accordance with regulation 9(4).

(3) The Independent Engineer shall have the responsibility of supervising construction of the facility to be provided under the Public Private Partnership agreement which shall include, as applicable:

- (a) reviewing, inspecting and monitoring of construction works, examining the designs and drawings and conducting tests and issuing completion certificates during the construction period;
- (b) reviewing and inspecting the operations and maintenance arrangements, and monitoring compliance with the performance and maintenance standards, during the operations period;
- (c) reviewing and inspecting the capacity of the Private Partner to continue to fulfill its contract obligations;
- (d) identifying delays and lapses that require action on the part of the Public Authority for enforcing the agreement terms;
- (e) determining the reasonableness of costs for any works or services, as required under the Public Private Partnership agreement;
- (f) determining the period or extension thereof, for performing any duty or obligations, as required under the Public Private Partnership agreement;
- (g) carrying out such responsibilities as are assigned by the Public Authority.

(4) The Independent Engineer shall prepare and submit to the Contract Manager a monthly progress report.

55.-(1) The Public Authority shall require the Private Partner to identify the Lead Financial Institution providing financing to the private partner for construction of new facilities required under the agreement and ensure submission of a report by the Lead Financial Institution on the following:

Role of
Lead
Financial
Institution.

- (a) statement of debt and equity contribution;
- (b) any event of default or potential event of default; and

(c) any other relevant financial information, as required;

(2) Such reports shall be submitted at least every six (6) months during the construction period as applicable and annually until the operation period.

(3) The Lead Financial Institution shall inform the Public Authority at the earliest of any payment delays by the Concessionaire to the lenders or if the Lead Financial Institution comes to know of any financial irregularities by the Private Partner.

Contract
Management
Plan.

56.-(1) The Contract Manager shall prepare a "Contract Management Plan" which shall:

- (a) define the processes that enable both parties to meet their obligations;
- (b) monitor performance by the parties of their respective obligations under the Public Private Partnership agreement;
- (c) manage differences through proactive relationship management;
- (d) manage unanticipated developments and mitigating risks through efficient risk management; and
- (e) resolve disputes in an expeditious manner, with minimal impact on service delivery.

(2) The Contract Management Plan shall serve as a repository of management procedures and a resource tool, and shall include:

- (a) the Public Private Partnership agreement and its schedules;
- (b) all financing agreements as well as financial models;
- (c) the names, roles and contact details of key individuals of both parties;

- (d) implementation plan during development, construction, operations, and exit phases;
- (e) performance management plan;
- (f) risk management plan;
- (g) financial and contract administration plan;
- (h) relationship management and contingency plan; and
- (i) contract termination and handover plan.

57.-(1) This regulation shall be subject to sections 60 to 66 of the Act.

Treatment
of change in
circumst-
ances.

(2) Any event which has a material adverse effect on the Public Private Partnership, and is an event which could not have been anticipated by the Public Authority or the winning bidder, and is outside the control of either party, “change in circumstances” or “unanticipated change”, shall be addressed by the Public Authority only in accordance with this regulation.

(3) In cases where the Public Private Partnership agreement provides a regime that would apply to a change in circumstances, the provisions of the Public Private Partnership agreement shall solely apply.

(4) In all other cases, the Private Partner shall notify the Public Authority, in writing, of its claim of change in circumstances.

(5) The Private Partner shall also submit a report to the Public Authority and the Contract Manager:

- (a) certifying whether the event is a change in circumstance;
- (b) detailing the effect on the private partner, the users, and the Public Authority;
- (c) outlining the proposed amendments sought to the Public-Private Partnership Agreement and the language thereof; and

(d) providing such other information as may be relevant.

(6) Such report of the private partner shall be validated and certified by an independent expert or body of repute which shall have not been engaged or consulted, either on a full-time basis or in an advisory capacity by the private partner or any of its Associates in the five (5) years preceding the notice of the private partner under sub regulations (3) and (4).

(7) Notwithstanding the notification of a change in circumstances under sub regulations (3) and (4), the private partner shall continue to perform its obligations under the Public Private Partnership agreement.

(8) Upon receipt of the notification under sub regulation (3) and (4), the Contract Manager shall conduct a technical, financial, and legal due diligence to determine whether such event constitutes a change in circumstances and shall prepare and submit its recommendations for treatment of the change in circumstances.

(9) The Contract Manager, while preparing its recommendations, shall give due consideration to the value for money assessment, the pre-feasibility study, the feasibility study, and such other factors as may be relevant.

(10) The Public Authority shall consider the recommendations of the Contract Manager and decide whether the act or event is a change in circumstance and, if so, the specific treatment that ought to be accorded to the change in circumstances.

(11) The Private Partner shall provide such other information as the Public Authority may deem fit.

(12) In the event the Public Authority determines that the event is not a change in circumstance, it shall communicate this decision to the Private Partner along with reasons for such decision.

(13) In the event that the Public Authority determines that the event is a change in circumstance, the Public Authority shall make

a detailed report stating the reasons for such decision, the recommendation for treating the change in circumstances, and detailed reasons for such recommendation, duly supported by necessary documents.

(14) The Public Authority shall submit the report for approval to the Department in the case of Minor Projects, and to the Technical Committee in the case of Major Projects.

(15) The Public Authority shall proceed with treatment of the change in circumstances only on written approval by the Department or the Technical Committee, as the case may be.

58.-(1) The Public Authority shall ensure that the Public Private Partnership agreement provides for a handover and exit strategy for Public Private Partnership projects.

Handover
strategy for
continued
service
delivery.

(2) Such a handover strategy shall include:

- (a) review of options to ensure service continuity;
- (b) assessment of operations and maintenance needs, asset or service quality;
- (c) testing and valuation of assets;
- (d) implementation plan for handing back public assets to Public Authority;
- (e) resource allocation for implementing the handover strategy; and
- (f) obligation of the parties in relation to the handover strategy.

(3) The Contract Manager shall be responsible for implementation of the handover strategy at the end of the term of the Public Private Partnership agreement, or in the case where an agreement is terminated prior to the end of the term specified in the agreement, in accordance with the Act.

PART NINE

approved by the Ministry responsible for finance, shall not be subject to audit. **AUDIT OF THE PUBLIC PRIVATE PARTNERSHIP PROCESS**

59. (1) If necessary, an audit of the Public Private Partnership process may be undertaken. **60.** The Public Authority shall maintain such documents as required for the purpose of regulation 59. Responsibility of Public Authority.

(2) The entity subject to the audit of the Public-Private Partnership process shall be the Public Authority and not the Private Partner.

PART TEN

APPLICATION OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, No. 11 OF 2016

61.-(1) All Public-Private Partnership projects under the Act and these Regulations shall be procured through open and competitive tendering. Public Procurement Act.

(4) For the purpose of the audit, the Public Authority shall make available to the competent independent auditing authority an audit of process compliance.

(2) The procurement of Public-Private Partnership projects shall be subject to the Act and these Regulations.

(3) Reference shall be made to the Public Procurement and Disposal of Public Assets Act, No. 11 of 2016 and its Regulations for procurement related issues not addressed under this Act or its Regulations, where necessary and to the extent not consistent with the provisions of the Act or these Regulations.

(c) correspondence between the Public Authority and the Private Partner;

SIGNED on this.....day of, 2017

(d) all studies conducted and submitted in relation to the Public Private Partnership project;

DR. KHADID SALUM MOHAMED any Government financial (and recovery) of Project Development Fund monies;

(f) all communication and documentation providing for the exceptional circumstances relating to post award negotiations and, or contract modifications.

(5) The decision to implement a project on a Public Private Partnership basis and choice of the Public Private Partnership structure