



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 52 of 2017)

**THE PUBLIC PRIVATE PARTNERSHIPS
(AMENDMENT) BILL, 2017**

(A Bill published in the Kenya Gazette Supplement No. 196 of 2017 and passed by the National Assembly, with amendments, on 31st July, 2018)

N.A. /B/No. 52/2017

**THE PUBLIC PRIVATE PARTNERSHIPS
(AMENDMENT) BILL, 2017**

A Bill for

AN ACT of Parliament to amend the Public Private Partnerships Act, 2013

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Public Private Partnerships (Amendment) Act, 2017.

Short title.

2. Section 2 of the Public Private Partnerships Act, 2013, in this Act, referred to as the “principal Act”, is amended by—

Amendment of section 2 of No. 15 of 2013.

(a) deleting the definition of the term “contracting authority” and substituting therefor the following new definition —

“contracting authority” means —

(i) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or

(ii) at the county government level, the county government or county corporation which intends to have its functions undertaken by a private party;

(b) deleting the definition of the term “transaction advisor” and substituting therefor the following new definition —

“transaction advisor” means a person who has the appropriate skill and experience to assist and advise the contracting authority or the unit on matters related to a public private partnership.

3. The principal Act is amended by repealing section 3 and replacing it with the following new section—

Amendment of section 3 of No. 15 of 2013.

Application.

3. The provisions of this Act shall apply to every contract for the design,

financing, construction, operation, equipping, management or maintenance of a project or for the provision of public services undertaken as a public private partnership.

4. The principal Act is amended by inserting the following new section immediately after section 3—

Insertion of section in No. 15 of 2013.

Exemption.

3A. The provisions of the Public Procurement and Asset Disposal Act, 2015 shall, be exercised subject to the relevant provision of this Act and apply to contracts under this Act only in the event where there is no express provision setting out the applicable procurement procedures under this Act.

5. Section 15 of the principal Act is amended by inserting the words “the county government or” immediately after the words “Unit with”.

Amendment of section 15 of No. 15 of 2013.

6. The principal Act is amended by repealing section 20.

Repeal of section 20 of No. 15 of 2013.

7. Section 23 of the principal Act is amended by inserting the following subsection immediately after subsection (2) –

Amendment of section 23 of No. 15 of 2013.

(3) In the preparation of project lists under subsection (1), a contracting authority may reserve certain projects for disadvantaged groups.

8. Section 24 of the principal Act is amended—

Amendment of section 24 of No. 15 of 2013.

(a) by adding the following proviso at the end of subsection (1)—

Provided that the county priority list shall be subject to approval by the county government and be submitted to the Unit for publication alongside the national government priority list.

(b) by deleting subsection (2) and substituting therefor

the following subsection—

(2) Upon receipt of the project lists from the national government contracting authorities, the committee shall consider the lists and the recommendations of the Unit and prepare and submit to the Cabinet for approval a national priority list which shall include county approved priority lists of public private partnership projects that have been submitted to the Unit.

9. Section 31 of the principal Act is amended in subsection (3) by deleting the word “Committee” and substituting therefor the word “Unit”.

Amendment of section 31 of No. 15 of 2013.

10. Section 36 of the principal Act is amended—

Amendment of section 36 of No. 15 of 2013.

(a) by deleting subsection (1) and replacing it with the following subsection—

(1) The unit shall assess the technical expertise of the contracting authority to procure the development, preparation, procurement, contract negotiation and management of a project under this Act.

(b) by deleting subsection (2) and replacing it with the following subsection—

(2) Where the unit finds that the contracting authority does not have the technical expertise to procure the project under this Act, the contracting authority shall, in consultation with the unit, appoint a transaction advisor to assist the authority in the preparation, procurement, contract negotiations and financial close phase of a project.

11. Section 37 of the principal Act is amended in subsection (1) by deleting the words “upon approval by the Committee”.

Amendment of section 37 of No. 15 of 2013.

12. Section 45 of the Public Private Partnerships Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of section 45 of No. 15 of 2013.

(1) A contracting authority may, in consultation with the unit, hold a competitive dialogue with each bidder to define the technical or financial aspects of the project in the manner

prescribed under this Act and in consistence with any policy guidance issued by the Committee from time to time.

13. Section 49 of the principal Act is amended in subsection (2) by deleting the words “Committee for approval” and substituting therefor the words “unit for concurrence”.

Amendment of section 49 of No. 15 of 2013.

14. Section 51 of the principal Act is amended by renumbering the existing provision as subsection (1) and adding the following new subsections —

Amendment of section 51 of No. 15 of 2013.

(2) A proposal evaluation team may reject all submissions by bidders where all bidders do not comply with the conditions and requirements specified in the tender documents or the rules made under section 44.

(3) Where a proposal evaluation team rejects a submission under this section, the proposal evaluation team shall prepare and submit to the accounting officer a report setting out the reasons for the rejection.

(4) The accounting officer shall inform the bidder of the decision of the contracting authority to reject the bid within fourteen days of receiving the report under subsection (3).

(5) A bidder whose bid has been rejected under this section shall not be entitled to compensation.

(6) Where all bids have been rejected under this section, the contracting authority may start the tender process anew.

15. Section 54 of the principal Act is amended—

Amendment of section 54 of No. 15 of 2013.

(a) by deleting subsection (2) and substituting therefor the following subsection—

(2) The Committee shall consider the reports submitted to it under subsection (1) and, if satisfied, approve the execution of the public private partnership agreement with the successful bidder.

(b) by deleting subsection (3).

16. The principal Act is amended by inserting the following new section immediately after section 54—

Insertion of section in No.15 of 2013.

Procedure for county government public private partnership projects.

54A. (1) A county government may enter into a public private partnership agreement and shall be responsible for the administration of the overall project development cycle in accordance with this section.

(2) Where a county government intends to enter into a public private partnership arrangement, it shall cause its user departments or county corporations, as the case may be, to prepare project proposals for approval at the county government level, detailing the strategic and operational benefits of entering into such an arrangement.

(3) Where the county approves that a project may be undertaken as a public private partnership, it shall cause the project to be subjected to detailed feasibility study assessment in accordance with section 33.

(4) The County Contracting Authority may liaise with the Unit as necessary in developing the PPP Feasibility Study.

(5) A Feasibility Study completed pursuant to sub-section (3) shall be approved by the County Government, prior to initiation of procurement processes for the project, provided that:

- (a) where such studies show that the project will require national government support measures or any other project specific guarantees that cannot be granted by the County Government or
- (b) exceeds the thresholds that have been prescribed by the Cabinet Secretary, the county government contracting authority shall obtain the approval of the National

Treasury prior to commencement
of the tender processes

County Government
Contracting Authority
to seek approval.

54B. (1) Subject to sub-section 54(A)(5) (b), a County Government Contracting Authority shall seek and obtain the approval from the county assembly where no national government support measures are required for the project prior to the execution of a project agreement at the county level, the contracting authority.

(2) Where the project requires national government support measures or other project guarantees which cannot be granted at the county level, or exceeds the threshold prescribed by the Cabinet Secretary by way of regulations, the county government shall not execute a project agreement without first seeking and obtaining the approval of the National Treasury.

17. Section 56 of the principal Act is amended by—

Amendment of
section 56 of No.
15 of 2013.

(a) deleting subsection (1) and substituting therefor the following subsection—

(1) The Committee shall, within a period of thirty days from the date of its decision of approving the project and financial risk assessment report, inform the contracting authority of its decision.

(b) deleting subsection (2) and substituting therefor the following subsection—

(2) Where the Committee approves an undertaking of a project, the contracting authority shall finalise the project agreement for execution by the parties to the project.

(c) deleting the words “Cabinet or Parliament as the case may be,” appearing in subsection (3) and

substituting therefor the word “Committee”.

18. The principal Act is amended by repealing section 57 and substituting therefor the following new section—

Amendment of section 57 of No. 15 of 2013.

Execution of contract.

57. After the approval of the project and financial risk assessment report under section 56, the contracting authority shall execute the contract awarded to that bidder.

19. Section 67 of the principal Act is amended —

Amendment of section 67 of No. 15 of 2013.

(a) in subsection (2)—

(i) by inserting the words “appointed by the Cabinet Secretary” immediately after the words “Kenya” appearing in paragraph (a);

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) six other persons with such knowledge and experience as the Cabinet Secretary shall, in consultation with the Unit, consider appropriate;

(iii) by inserting the following new paragraph immediately after paragraph (b)—

(ba) two persons of the opposite gender appointed by the Council of Governors.

(iv) by deleting paragraph (c);

(b) in subsection (3) by deleting the words “and shall be eligible” and substituting therefor the words “and may be eligible”;

(c) by deleting subsection (5) and substituting

therefor the following new subsection—

(5) A person aggrieved by the decision of the Committee may appeal to the High Court within seven days from the date of the Committee's decision.

The Public Private Partnerships (Amendment) Bill, 2017

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 31st July, 2018.

Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.

Speaker of the National Assembly

