



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

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Ref: TNT/PPPD/1/24 Vol. I (91)

Date: 24th April, 2025

NATIONAL TREASURY CIRCULAR

**To: All Cabinet Secretaries
All Principal Secretaries/All Accounting Officers
All County Governors**

RE: PUBLIC DISCLOSURE ON PRIVATELY INITIATED PROPOSALS

1. INTRODUCTION

Public-Private Partnerships have been identified as an enabler to the country's Vision 2030 and are fast gaining momentum in the country. Owing to the importance of transparency and information disclosure in enhancing the confidence of investors and other stakeholders, including the general public, the National Treasury, Government of Kenya seeks to embed disclosure into its Public Private Partnerships (PPP process and in particular the Privately Initiated Proposal (PIP) process.

2. PURPOSE

This Circular therefore enhances openness, transparency and accountability in the processing of Privately Initiated Proposal (PIP). In addition, this Circular provides guidance to enable systematic and organized disclosure of information at different stages of the PIP.

The PIP process is outlined under Sections 40 to 44 of the PPP Act 2021 (Cap 430) and generally consists of 3 phases namely:

- a) The receipt and evaluation of the privately initiated proposal by the contracting authority and the approval thereof by the PPP Committee;
- b) The Project Development Phase; and
- c) The Procurement Design Phase.

3. Responsibilities of Contracting Authorities

(i) Receipt of any PIP by the Contracting Authority

Within 14 days of receipt of any Privately Initiated Proposal, the **contracting authority shall publish a notification** informing the public of the receipt of the privately initiated proposal. The notification shall, at a minimum, be made in at least two newspapers of nationwide circulation and on the contracting authority's digital channels, including their website, and shall include the following:

- a) The name of the proponent;
- b) A brief description of the proposed project;
- c) Actual or estimated project cost;
- d) An identification of the stakeholders likely to be affected or impacted by the project; and
- e) An express written indication that if any other private party has interest in submitting a similar proposal, they should submit their intention to the contracting authority **within 21 days** of the date of the notice.

(ii) Approval of the Proposal Phase by the PPP Committee

Within 14 days of receipt of the written approval by the PPP Committee, **the contracting authority shall publish** a notification in at least two newspapers of countrywide circulation and on the contracting authority's digital channels, including their website, informing the public of the approval of the project to progress to the project development phase.

(iii) The Project Development Phase

As part of the project development phase activities (Feasibility studies), the private party should develop a plan for **public participation and stakeholder outreach** to ensure social acceptability of the project. A comprehensive stakeholder engagement, detailing the **potential impact on different stakeholders (informed by the stakeholder engagement exercise)** shall be submitted to the contracting authority as part of the project development report from the private party.

(iv) Approval of the Project Development Phase

Following the determination of the PPP Committee that the project meets the public interest, public private partnership suitability, project feasibility and affordability criteria, the project shall be eligible to proceed to direct negotiations under the PPP Act. The contracting authority shall **within 30 days of receipt of the written approval by the PPP Committee, publish the feasibility studies and project documentation (the evaluation criteria)** developed under section 42(3) of the PPP Act, used to evaluate the project subject to the disclosure requirements under Schedule 1.

(v) Negotiations and Execution of the Project Agreement

Following the execution of the Project Agreement, **the contracting authority shall publish** in at least two newspapers of nationwide circulation and on their website, the results of the concluded PIP process, alongside the project information stipulated under Section 69 (1) (a to j) of the PPP Act. The publication can be in the form of a notification furnishing an electronic link to the requested information.

4. CONCLUSION

Accordingly, all Contracting Authorities are required to ensure strict adherence to this Circular and to bring the contents of this Circular to the attention of all officers working under them, including Heads of Parastatals and Autonomous or Semi-Autonomous Government Agencies (SAGAs).

The Public Private Partnerships Directorate is responsible for ensuring adherence to this Circular with effect from the date of the Circular.

The detailed aspects to be considered is further presented in Schedule 1.



**HON. FCPA JOHN MBADI NG'ONGO, EGH
CABINET SECRETARY**

Schedule 1

SCHEDULE 1 – DISCLOSURE REQUIREMENTS

INTRODUCTION

The following practice notes are instructive to the PPP Directorate and all Contracting Authorities for disclosure of information at appropriate stages.

They are underpinned on Constitutional imperatives and the statutory right of access to information – on the basis of a duty to disclose.

1. PIP Submission to the Contracting Authority by a Private Party

Section 40 compliance: The contracting authority shall notify the public that a PIP has been submitted to it. The notification shall comply with the provisions of this Circular.

The following information should be disclosed:

- a) Project name and high-level project description;
- b) Contracting Authority;
- c) Proponent name and brief description;
- d) Public interest rationale, and expected social or economic benefits;

2. Project Development Phase

Section 43(14) compliance: This provision requires the contracting authorities that have attained *approval of the PPP Committee for the Project Development Phase*, to publish the feasibility studies and project documentation used to evaluate the project, *subject to any applicable disclosure guidance on PPPs*.

The contracting authority should publish:

- Feasibility studies – Summaries of economic, technical, environmental and social viability studies;
- *Basic project information:* high-level information i.e. contracting authority; proponent; project description
- *Risk:* material risks, allocation, mitigation, actual risk events.
- *Reasons for choice of PPP:* qualitative and quantitative analysis
- *Financial information:* financing structure, estimated project cost.
- *Government support:* guarantees, grants, land, rights, payments for service, and others
- *Tariffs:* tariff methodology and review and regulation
- *Stakeholder Engagement* -results of any preliminary public consultations and responses to key concerns

The following areas or elements are considered confidential and should not be disclosed: the base case financial model, debt structure and pricing methodology.

3. Project Agreement Execution/Contract award stage

Section 69 compliance: This section requires that the contracting authorities that have executed project agreements (achieved commercial close), should publish *inter alia*, the nature of the project and its key terms in at least two newspapers of national circulation. This can be achieved by publishing a notification advertisement, with a link to the relevant documents.

- a) The relevant documents should primarily include the project agreement. The key terms to be disclosed include:
- i) Project scope and duration;
 - ii) Roles and responsibilities of the public and private parties;
 - iii) Financial structure (payment terms and revenue sharing arrangements)
 - iv) Risk Allocation framework;
 - v) Performance metrics and penalties; and
 - vi) Local content.