



No. **1** of 2023.

Public Private Partnership Regulation 2023.

ARRANGEMENT OF CLAUSES.

1. Interpretation -
 - "application kit"
 - "appointment process auditor"
 - "contact officer"
 - "contract execution"
 - "EOI"
 - "financial close"
 - "guidelines"
 - "initial assessment report"
 - "preferred bidder"
 - "Project Team"
 - "recruitment and appointment plan"
 - "RFP"
 - "RFQ"
 - "service requirement"
 - "the Act".
2. Overall process
3. Certificate of Compliance
4. Registration and Register of Projects
5. Appointment of Chief Executive Officer

SCHEDULE 1.
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No. **1** of 2023.

Public Private Partnership Regulation 2023,

Being a Regulation to prescribe certain matters for the purposes of the ***Public Private Partnership Act 2014,***

MADE by the Head of State, acting with, and in accordance with, the advice of the National Executive Council under the ***Public Private Partnership Act 2014.***

1. INTERPRETATION

In this Regulation, unless the contrary intention appears -

- "application kit" means a kit referred to in Step 2 of Schedule 3;
- "appointment process auditor" for purposes of selection of a Chief Executive Officer, means the person appointed as such under Step 3 of Schedule 3;
- "contact officer" for purposes of selection of a Chief Executive Officer, means the person appointed as such under Step 3 of Schedule 3;
- "contract execution" refers to the point at which all significant commercial issues in relation to a project have been resolved and an agreed contract in writing and otherwise in compliance with the requirements of the Act and Regulation, is signed by all relevant parties involved in that project;
- "EOI" means Expression of Interest;
- "financial close" refers to the point after contract execution at which all required conditions precedent attached to the financing of a project have been satisfied, and project funding is made available;
- "guidelines" means such guidelines, which include procedures, guidelines, instructions and related guidance material, in relation to public private partnership arrangements, as issued by the PPP Centre pursuant to Section 26 of the Act, for purposes of the Act and regulations;
- "initial assessment report" means the report referred to in Step 1(5) of Schedule 1;
- "preferred bidder" refers to the successful bidder selected from the short-listed bidders identified during the project preparation and procurement phases provided in Schedule 1 of this Regulation;
- "Project Team" means a team prescribed in Schedules 1 and 4;
- "recruitment and appointment plan" means a plan referred to in Step 1 of Schedule 3;
- "RFP" means Request for Proposal;
- "RFQ" means Request for pre-qualification;
- "service requirement" means the services to be provided by the Partner under the PPP contract;
- "the Act" means the ***Public Private Partnership Act 2014.***

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2. OVERALL PROCESS

- (1) For purposes of solicited proposals under Section 11(1) of the Act -
 - (a) the process for determining whether a project is suitable for procurement as a public private partnership arrangement; and
 - (b) the procurement of such a project determined to be a public private partnership arrangement and including the implementation of such a project,is as set out in Schedule 1.
- (2) The process in Schedule 1 shall be applied in respect of all projects that originate as solicited proposals and are of a kind described in Schedule 3 of the Act, except to the extent that a direction under Section 10 or 16(1)(c) of the Act provides otherwise.
- (3) For purposes of unsolicited proposals under Section 11(1) of the Act -
 - (a) the process for determining whether a project is suitable for procurement as a public private partnership arrangement; and
 - (b) the procurement of such a project determined to be a public private partnership arrangement and including the implementation of such a project,is as prescribed in Schedule 4.
- (4) The process applicable for unsolicited proposals is as outlined in Schedule 4 and shall be applied in respect of all projects that originate as unsolicited proposals and are of a kind described in Schedule 3 of the Act, except to the extent that a direction under Section 10 or 16(1)(c) of the Act provides otherwise.

3. CERTIFICATE OF COMPLIANCE

For the purposes of section 6(2) of the Act -

- (a) a certificate of compliance shall be issued in the form prescribed in Schedule 2; and
- (b) a certificate of compliance shall be issued by the PPP Centre to the applicant referred to in section 6(1) of the Act.

4. REGISTRATION AND REGISTER OF PROJECTS

- (1) The PPP Centre shall maintain a register of projects that have been deemed under section 12(4) of the Act as being suitable for procurement as a public private partnership arrangement.
- (2) For purposes of Section 12(4) of the Act, a Relevant Public Body shall on registering a project, provide to the PPP Centre, details of the project (in the initial assessment report in a form to be prescribed in the guidelines issued by the PPP Centre).
- (3) The following details shall be included in the register in relation to a project -
 - (a) the title of the project; and

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- (b) a description of the project with an explanation as to why the project should be procured as a PPP, including any preliminary market feedback on the project; and
 - (c) the estimated value of the project; and
 - (d) the Relevant Public Body involved and the identity of the key contact person; and
 - (e) the date of registration.
- (4) The register shall be kept in Port Moresby, Papua New Guinea.
 - (5) The register may be kept electronically.
 - (6) The register shall be available for searching by members of the public.

5. APPOINTMENT OF CHIEF EXECUTIVE OFFICER

- (1) For the purposes of Sections 20(1) and 22(2) of the Act, the merit-based appointment process for the Chief Executive Officer is as set out in Schedule 3 and this section.
- (2) The selection process shall be conducted in accordance with the recruitment and appointment plan for the selection process.
- (3) An application may only be lodged on the application form in the application kit prepared for the selection process.
- (4) Except as set out in this section and Schedule 3, only the contact officer may contact or deal with prospective applicants in relation to the selection process.
- (5) The contact officer shall respond promptly to all queries in relation to the selection process from applicants and prospective applicants.
- (6) If a prospective applicant (before submitting an application) makes a query to the contact officer (other than a request for the application kit), the contact officer may provide to other prospective applicants who have been or will be given an application kit both the query and the reply (without identifying the prospective applicant making the query).
- (7) A person associated with the selection of a Chief Executive Officer shall not use or disclose any information about an applicant or a prospective applicant obtained because of that association -
 - (a) for a purpose other than the purpose of the proper conduct of the selection process; or
 - (b) with the written consent of the applicant or prospective applicant.
- (8) The PPP Steering Group may terminate the selection process at any time and for any reason.

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SCHEDULE 1.

OVERALL PROCESS.

Act., Sec. 11 and 12.

1. Initial Assessment.

- (1) Relevant Public Bodies shall have the primary responsibility for identifying and prioritising projects within their portfolio.
- (2) Relevant Public Bodies are to identify all infrastructure projects in their investment plans of a value equal to or above the referral threshold set out in Schedule 5 and which have or shall seek to have National Executive Council approval.
- (3) For each infrastructure project which is equal to or above the value of the referral threshold as set out under Schedule 5, the Relevant Public Body must undertake an initial assessment of whether such project potentially is suitable for procurement as a public private partnership arrangement under the Act.
- (4) The undertaking of this initial assessment shall be supported by guidelines and such other materials as provided by the PPP Centre, and the Relevant Public Body may seek the assistance of the PPP Centre in undertaking this assessment.
- (5) For all projects where an initial assessment has been undertaken, the Relevant Public Body must prepare an initial assessment report, based on the guidelines prepared by the PPP Centre, and provide the initial assessment report to the PPP Centre for its review and approval in accordance with Step 2 of this Schedule.

2. Registration and Resolution of Suitability.

- (1) The PPP Centre shall review the initial assessment report provided by the Relevant Public Body and may, in its discretion -
 - (a) accept the initial assessment report; or
 - (b) request additional information or analysis to enable it to determine whether to accept the conclusions set in the initial assessment report.
- (2) Where the Relevant Public Body concludes in the initial assessment report that the project is not suitable for procurement as a public private partnership arrangement but the PPP Centre believes that such project is, or may be, suitable for PPP procurement under the Act, the Relevant Public Body must amend the initial assessment report to address directly the matters raised by the PPP Centre. The Relevant Public Body must resubmit an updated initial assessment report within 14 days of the PPP Centre's response to the Relevant Public Body on its review of the initial assessment report, in accordance with Step 2(1) of this Schedule.

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- (3)
 - (a) If after addressing the issues raised by the PPP Centre and resubmission of the updated initial assessment report the Relevant Public Body still concludes that the project is still not suitable for procurement as a public private partnership under the Act but the PPP Centre assesses that the project is, or may be, suitable for procurement as a public private partnership under the Act then the matter will be referred to the PPP Steering Group who will consider and make a final decision on whether the project is suitable for registration as a public private partnership arrangement under the Act.
 - (b) In the event that the Relevant Public Body fails to amend and or submit the updated initial assessment report within 30 days of the date of the written request by the PPP Centre to do so, then the project will be referred to the PPP Steering Group who will consider and make a final decision on whether the project is suitable for procurement as a public private partnership arrangement under the Act.
 - (c) In the event the PPP Steering Group decides the project is suitable for procurement as a public private partnership under the Act it will communicate that decision in writing to the Relevant Public Body who must register the project in accordance with the Act.
 - (4) If the initial assessment report concludes that the project is suitable for procurement as a PPP, and the PPP Centre agrees, the project shall be registered under section 12 of the Act.
 - (5) Only projects registered in this manner can proceed to the next phase.
3. **Project Studies.**
 - (1) The PPP Steering Group shall establish a Project Team to manage the project.
 - (2) The Project Team shall consist of persons with the skills, knowledge and experience relevant to the project and shall include the following members :
 - (a) a person nominated by the PPP Centre, who shall lead the Project Team; and
 - (b) a person nominated by the Relevant Public Body whom the project is of interest to; and
 - (c) such other persons whom, in the opinion of the PPP Steering Group, have the necessary technical skills required.
 - (3) The PPP Steering Group may co-opt advisers to assist the Project Team in the discharge of its functions.
 - (4) Where necessary, the PPP Centre shall issue such procedures, guidelines and instructions with respect to the Project Team.
 - (5) A project study, or studies as appropriate, must be undertaken to determine the feasibility of the project and to confirm its suitability, or otherwise, for PPP procurement.

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- (6) The Project Team shall make a submission to the PPP Steering Group seeking approval for the undertaking of a project study. The submission shall include the study's proposed terms of reference and budget estimate for consultancy services.
- (7) Where the PPP Centre considers that the initial assessment report clearly indicates suitability for PPP procurement, the submission shall recommend that the project proceed directly to the undertaking of a feasibility study. In other cases, the submission shall recommend that a pre-feasibility study be undertaken to assess whether the project warrants the undertaking of a PPP feasibility study. The PPP Centre shall provide such guidelines on the undertaking and reporting of pre-feasibility and feasibility studies, including the areas to be covered in these studies.
- (8) Following approval by the PPP Steering Group of the study and its terms of reference, and the securing of funding for the study, a tender process shall be undertaken to engage consultancy services to prepare the study.
- (9) The approval of the PPP Steering Group shall be obtained prior to the appointment of the consultant(s) to undertake the study.
- (10) The Project Team shall report to the PPP Steering Group on the study's progress at key milestones, and at other stages as necessary, to allow the PPP Steering Group to provide guidance or direction to the Project Team.
- (11) Upon completion of the study, the Project Team shall submit recommendations to the PPP Steering Group which will include -
 - (a) for a pre-feasibility study, whether the project warrants the undertaking of a feasibility study; or
 - (b) for a feasibility study, whether the project is feasible and whether it is suitable for PPP procurement under the Act.
- (12) The PPP Steering Group shall consider the Project Team's recommendations and determine its own recommendations to be put to the National Executive Council and the recommendation to be submitted by the PPP Steering Group shall include the proposed key service output, technical, commercial and financial terms of the PPP and have regard to the guidance produced by the PPP Centre on the undertaking and reporting of pre-feasibility and feasibility studies.
- (13) If the PPP Steering Group endorses that the project should not be procured as a PPP, the project shall be de-registered from the register of projects.
- (14) Where the PPP Steering Group endorses the project to be procured as a PPP, the National Executive Council approval is required for the project to be undertaken as a PPP and funding shall be confirmed for the project and secured for the transaction process.

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4. PPP Project Preparation & Procurement.

- (1) The PPP Centre will prepare such procedures, guidelines and instructions as are necessary to provide guidance on the PPP project preparation and procurement process, the period from National Executive Council approval of the project being procured as a PPP to contract execution and financial close. Such guidelines will be prepared for approval by the PPP Steering Group
- (2) Procurement of PPP projects will follow the processes outlined in the guidelines and relevant guidance material, as endorsed by the PPP Steering Group.
- (3) Consistent with the procedures, guidelines and instructions to be prepared by the PPP Centre, project preparation and procurement will be undertaken having regard to, inter alia -
 - (a) management of the project by a suitably-resourced and capable Project Team, supported by the engagement of expert advisers; and
 - (b) issuing of Request for Proposal (RFP) documentation only when there has been appropriate due diligence undertaken by the Project Team and when any major identified issues or constraints to project success have been resolved or suitable management or mitigation arrangements put in place; and
 - (c) use of tendering processes that are competitive, efficient and fair; and
 - (d) project assessment and approval of governance structures that are capable, nimble and respectful of the commercial-in-confidence nature of these transactions; and
 - (e) an ongoing focus on achieving a value for money solution that meets the government's project objectives.
- (4) The Project Team shall report regularly to the PPP Steering Group during the project preparation and procurement phases of the project including at the following project milestones (where they occur) -
 - (a) release of request for pre-qualification (RFQ) or expressions of interest (EoI); and
 - (b) short-listing of bidders; and
 - (c) release of RFP; and
 - (d) selection of preferred bidder; and
 - (e) prior to and after negotiations with the preferred bidder; and
 - (f) prior to contract execution; and
 - (g) prior to and after financial close.
- (5) Approval from National Executive Council, or any Ministerial sub-committee established by National Executive Council for the purposes of this project, is required prior to -
 - (a) issue of a RFP from tenderers; and
 - (b) execution of a contract with the preferred bidder.

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5. Implementation & Contract Management.

- (1) Prior to contract execution, or financial close as applicable, the PPP Project Team shall prepare a proposed framework for ongoing management of the contract for submission to the PPP Steering Group. The framework shall include proposed governance arrangements, contract management procedures and processes, funding and consultancy resource requirements, and reporting arrangements.
- (2) Following consideration of this submission, the PPP Steering Committee shall make recommendations to National Executive Council, or any Ministerial sub-committee established by National Executive Council for the purposes of this project, with regard to ongoing project management and related resourcing needs.
- (3) Prior to the beginning of the operations stage for PPP projects with a construction component, a further framework for ongoing management of the contract during the operations stage shall be submitted for consideration by the PPP Steering Group, and approval by National Executive Council for purposes of the project.
- (4) The Treasurer shall advise the National Executive Council to ensure that the Relevant Public Body has been allocated appropriation, for each year of the contract as appropriate, to meet any financial obligations that the Relevant Public Body has under the PPP contract.
- (5) Any proposals to vary the contract shall be approved by the appropriate Minister and the responsible Minister, and by the National Executive Council for the purposes of the project, if the variation increases the Government's fiscal exposure or materially changes the service requirements.
- (6) The PPP Centre shall prepare guidelines and such other guidance materials on the management of PPP contracts.

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SCHEDULE 2.

Act., Sec. 6(2) and Reg., Sec 3.

CERTIFICATE OF COMPLIANCE.

CERTIFICATE OF COMPLIANCE	
Act., Sec.6(2) and Reg., Sec 3.	
	Certificate No. <input type="text"/>
	<i>number / year</i>
	Date <input type="text"/>
	<input type="text"/>
	<i>project name</i>
<p>I, <i>[insert name]</i>, Chief Executive Officer of the PPP Centre, on behalf of the PPP Centre, certify that the project described in the Schedule has been approved in compliance with the <i>Public Private Partnership Act 2014</i> and the regulations made under that Act, including procedures, guidelines and instructions as issued by the PPP Centre.</p>	
	Chief Executive Officer
Name of project	SCHEDULE <input type="text"/>
Name of Relevant Public Body	<input type="text"/>
Registration No	<input type="text"/>
Date of approval	<input type="text"/>

SCHEDULE 3.

APPOINTMENT OF CHIEF EXECUTIVE OFFICER.

Act., Sec. 20(1) and 22(2) and Reg., Sec. 5.

STEPS	ACTIONS TO TAKE
1	The PPP Steering Group shall prepare a recruitment and appointment plan for the selection process. The recruitment and appointment plan - (a) shall set out the selection criteria for the appointment, and may include weightings of the various criteria; and (b) sets out the timetable for the appointment process, and the responsibilities for the various elements of the process.
2	The PPP Steering Group shall prepare an application kit that includes information relevant to applicants for the position, including in particular - (a) the role of the PPP Centre and role of the CEO; (b) the required knowledge, skills and experience; (c) the selection criteria; (d) the job description, including its accountabilities and reporting lines; (e) an application form; and (f) a description of the appointment process.
3	The PPP Steering Group appoints a contact officer, and an independent appointment process auditor.

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4	<p>The position is advertised:</p> <ul style="list-style-type: none"> (a) in the National Gazette; (b) in a newspaper of general circulation; and (c) on the website of the Department responsible for planning matters and Department responsible for treasury matters. <p>The PPP Steering Group may arrange for other advertising, including overseas.</p> <p>An advertisement must include:</p> <ul style="list-style-type: none"> (a) the title of the position; (b) a statement of the term of the position (up to a maximum of 3 years); (c) a generalised indication of remuneration and benefits package; (d) a brief description of the role and its accountabilities; (e) a brief description of the qualifications, skills and experience required; (f) the closing date for applications; and (g) contact officer details (name, phone number and email address) to obtain further information and the application kit.
5	<p>Prospective applicants are to obtain an application kit from the contact officer.</p>
6	<p>Applications must include all relevant information. This includes:</p> <ul style="list-style-type: none"> (a) the applicant's name, including any alias; (b) the applicant's permanent address (c) details of the applicant's nationality, passports and rights of residency (d) the applicant's date of birth; (e) the applicant's responses to each of the selection criteria; (f) the applicant's curriculum vitae, including details of: <ul style="list-style-type: none"> (i) education qualifications – including school, college, tertiary and vocational qualifications; (ii) memberships and professional associations; (iii) accreditations; (iv) criminal history; and (v) work experience, positions held and relevant dates; and (g) confirmation of the applicant's availability.
7	<p>Immediately after the closing date for applications, the contact officer opens the applications received and records the receipt of the applications.</p>
8	<p>The contact officer circulates the list of applicants to the members of the PPP Centre Appointments Committee and the members of the PPP Steering Group.</p>

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9	The contact officer formally acknowledges receipt of all applications.
10	Subject to there being a sufficient number of applicants meeting the required qualifications, the PPP Steering Group selects up to 5 applicants for shortlisting. The selection is made using the selection criteria determined by the PPP Steering Group.
11	For each shortlisted applicant, the PPP Steering Group may - (a) seek the views of nominated referees; and (b) conduct an interview with the applicant; and (c) if the PPP Steering Group so determines - carry out other appropriate assessment activities.
12	Subject to there being a sufficient number of suitable applicants, the PPP Steering Group selects not less than 3 applicants as best meeting the selection criteria and prepares a selection report supporting that selection. In the event there is insufficient numbers of suitable applicants, the PPP Steering Group may select such number of applicants as it determines possible in the circumstances.
13	The selected applicants are to be asked to provide, within a specified period: (a) formal police clearance; (b) medical certificate indicating good health; (c) certified copies of the applicant's qualifications cited in his or her application; (d) a work referee(s) from the applicant's current or immediate past employer; and (e) evidence of date of birth, from a birth certificate, a church leader, or census records.
14	The appointment process auditor reports to the PPP Centre Appointment Committee on the compliance of the process with the requirements of the Act and this Regulation.
15	The PPP Steering Group's selection in step 12, together with the documents provided for each of those candidates in step 13 and the appointment process auditor's report, are provided to the PPP Centre Appointments Committee.
16	Within 1 month, the PPP Centre Appointments Committee deliberates and prepares a report identifying the first ranked candidate.
17	The PPP Steering Group negotiates terms of engagement with the first ranked candidate. If agreement has not been reached within 1 month, the PPP Steering Group can choose to negotiate terms of engagement with the next ranked candidate as identified by the PPP Centre Appointments Committee or to restart the appointment process.

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18	When agreement on the terms of engagement is reached, the PPP Steering Group reports to the PPP Appointments Committee recommending the appointment of the selected candidate on the terms agreed.
19	The PPP Appointments Committee, upon acceptance of the recommendation of the PPP Steering Group, shall recommend to the National Executive Council, who in turn shall advise the Head of State for the appointment of the selected candidate on the terms agreed.
20	Following the appointment and signing of an employment contract for the position of the chief executive officer, the other candidates shall be formally notified that they have been unsuccessful.

SCHEDULE 4.

UNSOLICITED PROPOSALS.

Act., Sec. 2 and Sec. 11, and Reg., Sec. 2.

1. GENERAL PROVISIONS.

- (1) For the purpose of Section 11(1) of the Act, this Schedule prescribes the overall process for the project analysis and procurement of PPPs which originate as unsolicited proposals only. The process for the project analysis and procurement of PPPs that originate as solicited proposals is as prescribed in Schedule 1.
- (2) A Project procured as a PPP shall originate from a request solicited by a Relevant Public Body; except for instances where a project is procured as a PPP through an unsolicited proposal.
- (3) It is not the intention of the Government to encourage unsolicited proposals as a means of avoiding, or substituting for, public expenditure on project development or as a means simply of expediting time frames for infrastructure development;
- (4) A partner may request a meeting with the PPP Centre before submitting an unsolicited proposal, to gain an understanding of whether the proposal is likely to be compliant or of interest to the Government. The PPP Centre shall invite the Relevant Public Body to this meeting.
- (5) Unsolicited proposals will be of interest to the Government only if they -
 - (a) are consistent with the Government and Relevant Public Body priorities; and
 - (b) satisfy the requirements of a PPP as specified under Schedule 3 of the Act; and
 - (c) possess a means of delivering significant new public infrastructure and related services related services without new infrastructure that is unlikely to have been considered by, or been feasible to, the Relevant Public Body; and
 - (d) are likely to provide a better value for money outcome for the Government in delivering significant new public infrastructure and related services or related services without new infrastructure than a project proposed in a Relevant Public Body's pipeline or, for projects not in a Relevant Public Body's pipeline, than delivery means likely to be used by the Relevant Public Body; and
 - (e) are considered to be capable of being delivered efficiently by the partner; and
 - (f) relate to infrastructure or services for which the Government has not already begun a solicited procurement process or announced publicly its intentions to begin such a process; and
 - (g) are affordable, including after consideration of likely contingent liabilities.
- (6) Unsolicited proposals may be submitted by a partner to a Relevant Public Body or directly to the PPP Centre. Unsolicited proposals received by a Relevant Public Body are to be provided to the PPP Centre for initial assessment to be conducted in consultation with the Relevant Public Body.

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- (7) It is not expected that an unsolicited proposal will be developed by the partner to encompass the feasibility study before submission to the Government. However, the unsolicited proposal needs to contain sufficient information such as to enable the Government to undertake a compliancy assessment.
- (8) Should an unsolicited proposal proceed to the procurement stage, this shall occur through a competitive tendering process as set out in Section 4 of Schedule 1. Only where the proposal has a significant strategic or unique attribute, that is unlikely to allow a competitive tendering process to provide a value for money outcome, a negotiated procurement process may be considered.
- (9) No compensation shall be paid for the efforts of a partner in its preparation of an unsolicited proposal for compliancy assessment by the Government as per Section 2 of this Schedule, or for assessment as to the appropriate project development and procurement path under Section 3 of this Schedule. The potential for compensation for subsequent project development costs and for any valuable intellectual property purchased by the Government will be considered during the phase mentioned in Section 3 of this Schedule, should the project proceed to that stage.
- (10) The PPP Centre shall prepare and issue Guidelines on the treatment of unsolicited proposals.

2. COMPLIANCE AND REGISTRATION

- (1) The PPP Centre shall undertake a compliancy assessment, in consultation with the Relevant Public Body, on each unsolicited proposal, on the basis of whether -
 - (a) the proposal satisfies the requirements of an unsolicited proposal set out in Section 1(5) of this Schedule; and
 - (b) the submission contains sufficient information to address the matters specified in Section 1(5) of this Schedule.
- (2) Where further information is required to determine compliancy, this information can be sought from the partner by the PPP Centre.
- (3) Within 60 days of its receipt of the unsolicited proposal, or from the date of receipt of additional information provided by the partner in support of its proposal, the PPP Centre shall advise the partner of whether its unsolicited proposal is compliant, subject to the PPP Centre's consultation with the Relevant Public Body.
- (4) For unsolicited proposals deemed by the PPP Centre to satisfy compliancy requirements, the Relevant Public Body shall register that project with the PPP Centre in accordance with Section 12 of the Act.
- (5) Only unsolicited proposals registered in this manner shall proceed to the next stage.
- (6) Upon registration of an unsolicited proposal, the PPP Centre shall disclose this on its website.

3. DETERMINATION OF PROJECT DEVELOPMENT AND PROCUREMENT PATH.

- (1) Following registration of the project, the PPP Steering Group shall establish a Project Team to manage the project.
- (2) The Project Team shall consist of persons with the skills, knowledge and experience relevant to the project and shall include the following members:
 - (a) a person nominated by the PPP Centre, who shall lead the Project Team; and
 - (b) a person nominated by the Relevant Public Body whom the unsolicited proposal is of interest to; and
 - (c) such other persons whom, in the opinion of the PPP Steering Group, have the necessary technical skills required.
- (3) The PPP Steering Group may co-opt advisers to assist the Project Team in the discharge of its functions.
- (4) Where necessary, the PPP Centre shall issue such procedures, guidelines and instructions with respect to the Project Team.
- (5) The PPP Centre may engage specialist advisers to assist in the consideration, further development and procurement of the unsolicited proposal.
- (6) The Project Team shall assess whether the unsolicited proposal has unique elements or intellectual property that warrant a different project development and procurement path to that outlined in Sections 3 and 4 of Schedule 1 of this Regulation.
- (7) A new or additional proposal is not required from the partner at this stage, however, the Project Team may seek clarification or supporting information from the partner as it undertakes this assessment.
- (8) The Project Team may also undertake wider investigations, including a public consultation process if necessary, in examining the "uniqueness" of an unsolicited proposal.
- (9) The Guidelines to be issued by the PPP Centre, as per Section 1(9) of this Schedule, shall outline the steps and criteria which shall be used to determine the "uniqueness" of an unsolicited proposal.
- (10) Should the Project Team determine that there is no material unique elements or intellectual property inherent in the unsolicited proposal, or that any such features can be handled adequately within a normal competitive procurement process, the PPP Centre shall recommend to the PPP Steering Group that the project be developed and procured as per Sections 3 and 4 of Schedule 1, and shall also outline how it proposes that any material unique features be handled.

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- (11) Should the Project Team determine that there are material unique elements or intellectual property inherent in the unsolicited proposal that warrant a departure from the process set out in Sections 3 and 4 of Schedule 1, it shall advise the PPP Steering Group of this.
- (12) The PPP Centre shall advise the partner, in writing, of the PPP Steering Group's decision.
- (13) An unsolicited proposal, for which the PPP Steering Group has determined should follow the standard project development and procurement process for PPP projects, shall proceed as per Sections 3 and 4 of Schedule 1, subject to any modifications agreed by the PPP Steering Group in recognition of material unique features inherent in the unsolicited proposal. Other unsolicited proposals shall proceed to Section 4 of this Schedule.
- (14) The PPP Centre shall provide regular updates on the status of the unsolicited proposal on its website.

4. NEGOTIATED PROJECT DEVELOPMENT

- (1) The intent during this stage is to develop an understanding of the unsolicited project proposal similar to that provided by a feasibility study.
- (2) Prior to embarking on a process to further develop the unsolicited proposal submitted by the partner, the Project Team, as approved by the PPP Steering Group, and the partner shall negotiate a project development deed that sets out how this process is to occur.
- (3) The project development deed shall address matters such as -
 - (a) The criteria set by each party that the project must meet to proceed to the procurement stage; and
 - (b) The types and level of information and analysis which needs to be assembled to allow an assessment against these criteria; and
 - (c) The roles of each of the Government and partner, and the resources to be committed, in gathering this information and in undertaking the necessary analysis; and
 - (d) The relative cost-bearing to be borne by the parties in undertaking this further project development, and any arrangements for re-imbursment of costs; and
 - (e) An open-book approach to costs; and
 - (f) Timeline for project development period; and
 - (g) Extent of commitment by the Government to proceed to a negotiated procurement, should the project satisfy the stated criteria; and
 - (h) Governance framework for this negotiated project development stage; and
 - (i) Treatment of any agreed intellectual property or other unique strategic element inherent in the unsolicited proposal; and
 - (j) The Government's ability to use material developed during this stage in a competitive tender process, subject to appropriate protection of any intellectual property held by the partner, should that be the outcome of this stage; and
 - (k) Extent of, and process for, public disclosure of project progress and outcomes.

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- (4) The Project Team shall submit the project development deed to the PPP Steering Group and its approval is necessary before embarking on the negotiated project development process.
- (5) The Guideline to be issued by the PPP Centre, as per section 1(10) of this Schedule, shall entail a more detailed outline of how project development should occur for projects subject to a one-on-one negotiated process.
- (6) The Project Team shall provide regular progress reports to the PPP Steering Group during this process and seek guidance as necessary on issues arising.
- (7) After the completion of the further project development phase, the Project Team shall submit its recommended next steps to the PPP Steering Group, which may include that the project -
 - (a) can proceed through the competitive process set out in Section 4 of Schedule 1 of this Regulation, and outline how the identified unique elements in the unsolicited proposal can be handled in that process;
 - (b) proceed through to a one-on-one negotiated procurement stage, and provide an outline of any key matters that may impact that process; or
 - (c) is not feasible, or not value for money or not in the public interest and should be de-registered.
- (8) Where the PPP Steering Group approves both the project being procured under a negotiated procurement process and the proposed outline of this process, and where these decisions have been endorsed by the National Executive Council, the project can proceed to Section 5 of this Schedule.
- (9) The PPP Centre shall provide regular updates on the status of the project including the proposed approach to procurement, and a description of the project on its website.

5. NEGOTIATED PROJECT PROCUREMENT AND CONTRACT EXECUTION.

- (1) Only those unsolicited proposals which have been developed and approved in accordance with Sections 1 to 4 of this Schedule are eligible to be procured under the one-on-one negotiated procurement process outlined in this section.
- (2) Prior to embarking on a negotiated one-on-one procurement process, the Project Team, as approved by the PPP Steering Group, and the partner shall negotiate a procurement deed that sets out how the process is to occur.
- (3) The procurement deed shall address matters such as -
 - (a) The time period for negotiations, the scope of matters for negotiation, and the format for negotiations; and
 - (b) The criteria that the project must meet for it to proceed to contract execution; and
 - (c) The types and level of information and analysis that needs to be assembled to allow an assessment against these criteria; and
 - (d) Individual obligations on each party, for instance -
 - (i) On the Government to secure right-of-way and facilitate land purchase; and
 - (ii) On the partner to secure -

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- (A) relevant sub-contracts (e.g. construction, operation) with a suitable firm with capable nominated key personnel; and
 - (B) committed finance; and
 - (e) Roles of each party in preparing the set of contractual documents, and any cost reimbursement arrangements; and
 - (f) Process for the Government assessment of the project's value for money, which may include one or both of a benchmarking exercise undertaken unilaterally by the Government and an independent verification of the project costs submitted by the partner; and
 - (g) The internal approval process for each party once negotiations have been completed; and
 - (h) The conditions precedent for each party, if any, at contract execution; and
 - (i) Extent of, and process for, public disclosure of project progress and outcomes.
- (4) The Project Team shall submit the procurement deed to the PPP Steering Group for its approval, and upon receipt of the PPP Steering Group's decision, the PPP Steering Group shall then on behalf of the Project Team, submit its decision and procurement deed to the National Executive Council for further endorsement, prior to the Project Team embarking on the negotiated procurement process.
- (5) Upon receiving the endorsements under section 5(3) of this Schedule, the Project Agreement shall be drafted by the Project Team and the risk allocation outlined in the Project Agreement shall be similar to that if the project had been subject to a competitive tender.
- (6) The Project Team shall report regularly to the PPP Steering Group during this negotiation period, which includes receiving guidance as necessary.
- (7) Upon the conclusion of the negotiation period, the partner shall provide a final and firm offer, which includes committed finance.
- (8) The Project Team shall provide a submission to the PPP Steering Group which includes -
- (a) an outline of the services and infrastructure to be provided by the partner; and
 - (b) an outline of the Government's commitments under the Project Agreement, including any key actions, payments or guarantees; and
 - (c) a fiscal risk assessment undertaken by the Department of Treasury; and
 - (d) an outline of the key commercial elements of the deal, including the risk allocation in the Project Agreement, noting any key differences to international best practice; and
 - (e) an outline of key risks to project success and how they will be mitigated or managed; and
 - (f) an outline of key milestone dates; and
 - (g) a recommendation as to whether the partner's offer should be accepted or rejected.
- (9) The PPP Steering Group may seek further clarification or information from the Project Team in undertaking its assessment.
- (10) Where the PPP Steering Group endorses the partner's offer, it shall seek the National Executive Council's approval.

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- (11) Where the National Executive Council approves, the documents shall be executed with the partner. These shall include financial close documents as this should occur at or soon after contract execution.
- (12) Within 90 days of contract execution and financial close, a summary of the project and its key commercial features shall be displayed on the PPP Centre's website.

6. IMPLEMENTATION AND CONTRACT MANAGEMENT.

- (1) The framework for development and implementation of contract management arrangements shall be the same as for solicited proposals, as set out in Section 5 of Schedule 1.

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SCHEDULE 5.

REFERRAL THRESHOLD.

Act., Sec. 2, and Regs., Sec. 6.

1. GENERAL PROVISIONS

- (1) This Schedule commences on a date to be fixed by the PPP Steering Group.
- (2) For the purpose of Section 2 of the Act, this Schedule prescribes the Referral Threshold which applies to projects under the Act.
- (3) The referral threshold for projects or bundles of projects listed in Schedule 3 of the Act is PGK100 million, except where -
 - (a) the project's whole-of-life costs is at least twice the value of the capital costs, the minimum referral threshold is PGK75 million; and
 - (b) the project is from the health, education or renewable energy sectors, the minimum referral threshold is PGK75 million.

MADE this *Thursday, 28th* day of *September*, 2023.


GOVERNOR-GENERAL.