

**THE PUBLIC PRIVATE PARTNERSHIPS
(AMENDMENT) BILL, 2016**

A Bill for

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

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Public Private Partnerships (Amendment) Act, 2016.

Short title.

2. Section 2 of the Public Private Partnerships Act, 2013, in this Act, referred to as the “principal Act,” is amended by deleting the definition of “contracting authority” and substituting therefor the following definition—

Amendment of section 2 of No. 15 of 2013.

“contracting authority”—

- (a) at the national government level, means a state department, agency or state corporation which intends to have a function undertaken by it performed by a private party; or
- (b) at the county government level, means the county government or county corporation which intends to have functions undertaken by it performed by a private party.

3. The principal Act is amended by repealing section 3 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 Public Procurement and Asset Disposal Act, 2015, shall not apply to contracts 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 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.
- 8.** 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
- 9.** 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
- 10.** Section 51 of the principal Act is amended by renumbering the existing provision as subsection (1) and adding the following new subsections (1)—
- 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.

11.Section 54 of the Public Private Partnerships Act, 2013, is amended—

Amendment of section 51 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).

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

Insertion section 54A in No.15 of 2013.

Procedures for county government public private partnership projects.

54A. (1) A county government may enter into a public private partnership arrangement and shall be responsible for the management and 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 and submit a project proposal to the Unit for consideration and recommendation detailing the strategic and operational benefits of entering into such an arrangement.

(3) Where the Unit recommends that a project may be developed as a public private partnership under this Act, the county government may grant its approval for the

project and subject the project to a detailed feasibility study in accordance with section 33.

(4) For every county public private partnership project, the Committee shall—

- (a) approve the feasibility study report prepared by the county government on each proposed public private partnership arrangement, in accordance with section 35;
- (b) approve the negotiated commercial, financial and technical terms of a proposed public private partnership project in accordance with section 54;
- (c) approve any proposed variations to a project agreement in accordance with section 64; and
- (d) exercise the powers vested in it under section 8(c).

(5) A county government shall implement a public private partnership project if the project—

- (a) provides value for money;
- (b) is determined to be affordable; and
- (c) ensures appropriate risks are transferred to the private party.

(6) The Cabinet Secretary may make regulations for the better implementation of public private partnership arrangements by county governments, including—

- (a) projects that may be undertaken by county governments;
- (b) the thresholds of contingent liabilities that may be approved for such projects;
- (c) the management of the public private partnership procurement processes by county governments; and

- (d) the negotiation of project terms by county governments.

13.Section 67(2) of the principal Act is amended in subsection (2)—

Amendment of section 67 of No. 15 of 2013.

- (a) by deleting paragraph (b) and substituting therefor the following new paragraph—
- (b) not less than six but not more than eight other persons with such knowledge and experience as the Cabinet Secretary shall, in consultation with the unit, consider appropriate;
- (c) by deleting paragraph (c).

MEMORANDUM OF OBJECTS AND REASONS**Statement of the Objects and Reasons for the Bill**

This Bill has been submitted by the Cabinet Secretary for the National Treasury in line with the proposals announced in the Budget for 2016/2017. The object of this Bill is to amend the Public Private Partnerships Act, 2013, to recognise county governments as distinct contracting authorities for public-private partnerships projects. To achieve this, the Bill makes further provisions for guidelines to be made by the Cabinet Secretary to facilitate the manner in which county governments may deal with public-private partnerships arrangements.

Statement of the delegation of legislative powers and the limitation of fundamental rights and freedoms.

The Bill does not delegate any legislative power nor limit any fundamental right or freedom.

Statement of how the Bill concerns county governments.

The Bill concerns county governments in terms of Article 109(4) of the Constitution as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.

The Bill is a money Bill within the meaning of Article 114 of the Constitution.

Dated the 9th June, 2016.

ADEN DUALE,
Leader of the Majority Party, National Assembly.

The definition of “contracting authority” in section 2 of Act No. 15 of 2013 which is intended to delete—

“contracting authority”, means a State department, agency, state corporation or county government which intends to have a function undertaken by it performed by a private party

Section 3 of Act No. 15 of 2013 which is intended to amend—

3. The provisions of this Act shall apply to every contract for the financing, construction, operation, equipping or maintenance of a project or for the provision of public services undertaken as a public private partnership.

Section 15 of Act No. 15 of 2013 which is intended to amend—

15. The Cabinet Secretary shall make rules for the administrative and financial framework of the unit, the relationship of the unit with other State departments and organizations and the conduct of the affairs of the unit.

Section 24(2) of Act No. 15 of 2013 which is intended to amend—

24. (2) Upon receipt of the project lists, the Committee shall consider lists and the recommendations of the unit and prepare and submit to the Cabinet for approval, a national priority list.

Section 31(3) of Act No. 15 of 2013 which is intended to amend—

31. (3) Where a contracting authority considers it appropriate to implement a project through a public private partnership, it shall submit a report of the consideration and analysis under subsection (2) and a project proposal in relation to the project to the Committee for approval in the prescribed form.

Section 49 (2) of Act No. 15 of 2013 which is intended to amend—

49. (2) The contracting authority shall submit the evaluation report prepared under subsection (1) to the Committee for approval.

Section 52(1) of Act No. 15 of 2013 which is intended to amend—

52. (1) A contracting authority may, with the approval of the Committee—

- (a) enter into negotiations with the successful bidder; and
- (b) request the second ranked bidder to extend the validity of its bid pending the completion of negotiations with the successful bidder.

Section 54(2) of Act No. 15 of 2013 which is intended to amend—

54. (2) The Committee shall consider the reports submitted to it under subsection

(1) and prepare a report on its recommendations as to whether the project may be undertaken as a public private partnership under this Act.

Section 67(2) of Act No. 15 of 2013 which is intended to amend—

67. (2) The Petition Committee shall consist of —

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

(c) the unit director.