

Approved for tabling

REPUBLIC OF KENYA



SN
3/12/2020



PARLIAMENT OF KENYA

TWELFTH PARLIAMENT – FOURTH SESSION

THE REPORT OF

THE MEDIATION COMMITTEE ON THE PUBLIC PRIVATE PARTNERSHIP
(AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2017)

PURSUANT TO ARTICLE 113 OF THE CONSTITUTION

JOINT CLERKS CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.

December, 2020

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1 INTRODUCTION

1.1 Establishment of the Committee

1. The Mediation Committee on the Public Private Partnership (Amendment) Bill (National Assembly Bill No. 52 of 2017) was constituted by the Speaker of the National Assembly pursuant to standing order 149 (2) of the National Assembly Standing Orders and the Speaker of the Senate pursuant to standing order 160 (2) of the Senate Standing Orders on 11th September, 2020, and 7th August, 2020 respectively.
2. The Committee membership was constituted as follows-
 - i. Hon. Peter Kaluma, MP - **Chairperson**
 - ii. Sen. Mutula Kilonzo Junior, MP - **Vice Chairperson**
 - iii. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP
 - iv. Hon. Isaac N. Waihenya, MP
 - v. Sen. Kimani Wamatangi, MP
 - vi. Sen. Rose Nyamunga, MP
 - vii. Sen. Aaron Cheruiyot, MP
 - viii. Hon. David M. Mboni, MP
 - ix. Hon. George Gitonga Murugara, MP
 - x. Hon. Edith Nyenze, MP

1.2 Mandate of the Mediation Committee

3. The Mediation Committee derives its mandate from the provisions of Articles 112 and 113 of the Constitution, SO 149 of the National Assembly Standing Orders and SO 160 of the Senate Standing Orders which outline the functions of the Committee as follows:-
 - i. To consider Bills where the Houses do not agree on all or any of the amendments made by either Houses;

- ii. To consider Bills where either House rejects a Motion that a Bill which originated in the other House be read a Second or Third time; and,
 - iii. To attempt to develop a version of the Bill that both Houses will pass.
4. The Committee was established to develop an agreed version of the Public Private Partnership (Amendment) Bill (National Assembly Bill No. 52 of 2017) and in particular-
- i. Clause 2
 - ii. Clause 4A
 - iii. New Clause 5A
 - iv. New Clause 20 (a), (b), (c) and (d).
5. The version would then be presented to both Houses for approval pursuant to SO 150(1) of the National Assembly Standing Orders and SO 161(1) of the Senate Standing Orders.

1.3 Committee Meetings and Methodology

6. The Committee held a total of two (2) sittings to deliberate on the Public Private Partnership (Amendment) Bill (National Assembly Bill No. 52 of 2017) in accordance with the Constitution and relevant provisions of the Standing Orders of the Senate and the National Assembly.
7. During the first sitting, the Committee elected Hon. Peter Kaluma, MP and Sen. Mutula Kilonzo Junior, MP as Chairperson and Vice-Chairperson respectively pursuant to SO 160 (4) of the Senate Standing Orders and SO 149 (4) of the National Assembly Standing Orders.
8. At this meeting the Committee made reference to the report of the pioneering Mediation Committees that recommended that in future, the Chairperson of the me-

diation Committee should be elected from amongst members of the House that originated the Bill.

9. Appended to this report is a version of the Bill developed by the Committee for consideration by both Houses.

1.4 Acknowledgements

10. The Committee appreciates the offices of the Speakers and the Clerks of both Houses of Parliament for the support extended to it in the execution of its mandate.

11. The Chairperson in particular extends his appreciation to all the Members of the Committee for their patience, sacrifice, endurance and commitment to their assignment under tight schedules which enabled the Committee to complete the task within the stipulated period of time.

12. Finally, it is now my pleasant duty and privilege, on behalf of the Mediation Committee on the Public Private Partnership (Amendment) Bill (National Assembly Bill No. 52 of 2017), to present and commend this report to the Houses for approval pursuant to Article 113(2) of the Constitution and SO 161(1) of the Senate Standing Orders and SO 150(1) of the National Assembly Standing Orders.

Hon. Peter Kaluma, M.P.

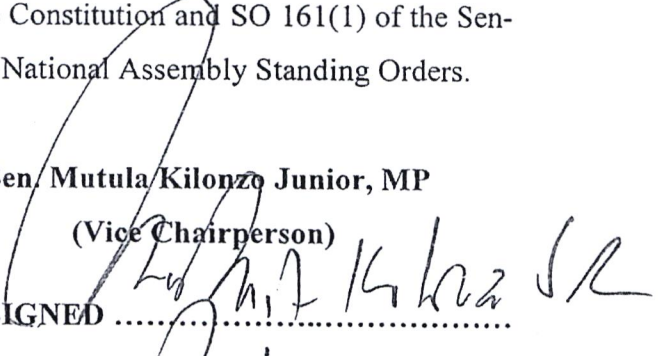
(Chairperson)

SIGNED 

DATE: 02/12/2020

Sen. Mutula Kilonzo Junior, MP

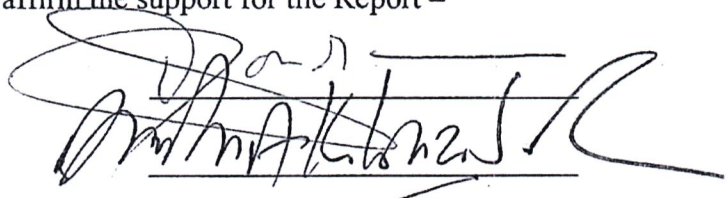
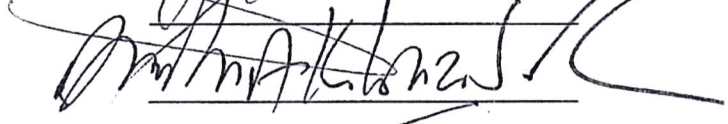
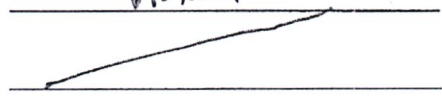
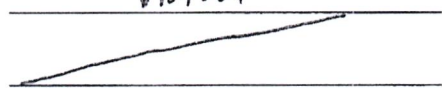
(Vice Chairperson)

SIGNED 

DATE: 8/12/2020

1.5 Adoption of the Report

13. Pursuant to SO 213 (2) of the Senate Standing Orders and Standing Order 199 of the National Assembly Standing Orders, the Mediation Committee adopted the report on the consideration of the Public Private Partnership (Amendment) Bill (National Assembly Bill No. 52 of 2017). Members of the Committee hereby affix their signatures to this Report to affirm the support for the Report –

- i. Hon. Peter Kaluma, MP 
- ii. Sen. Mutula Kilonzo Junior, MP 
- iii. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP _____
- iv. Hon. Isaac N. Waihenya, MP _____
Virtual
- v. Sen. Kimani Wamatangi, MP _____
Virtual
- vi. Sen. Rose Nyamunga, MP _____

- vii. Sen. Aaron Cheruiyot, MP _____
Virtual
- viii. Hon. David M. Mboni, MP _____
Virtual
- ix. Hon. George Gitonga Murugara, MP _____

- x. Hon. Edith Nyenze, MP _____
Virtual

2 CONSIDERATION OF THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 52 OF 2017)

2.1 Background

14. The present Bill was preceded by the Public Private Partnership (Amendment) Bill (National Assembly Bill No. 52 of 2017) which was passed by the National Assembly and referred to the Senate. The Senate considered and passed the Bill with amendments on 20th February, 2019. National Assembly rejected some of the amendments proposed by Senate and the Bill was referred to a Mediation Committee pursuant to Article 112(2)(b) of the Constitution.

15. The Mediation Committee was established to develop an agreed version of the Public Private Partnership (Amendment) Bill (National Assembly Bill No. 52 of 2017) and in particular clause 2, clause 4A, new clause 5A and new clause 20.

2.2 Clauses under Mediation

The specific substance of discussion by the Mediation Committee were:-

16. **Clause 2:** the Senate had proposed deletion of the definition of the term transaction advisor. However, the National Assembly rejected the amendment and proposed that the definition be retained but with modification to read as follows-

“transaction advisor” means a person appointed in writing by a contracting authority or the unit 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, including the preparation, accession and conclusion of a project and the financial close”.

17. **Clause 4A:** The Senate had proposed that Ministry of Transport, Public Works and Housing be represented by one Principal Secretary. However, the National Assembly rejected the amendments and indicated that State Departments of Infrastructure and Housing have different Principal Secretaries who should both be members of the Committee.

18. **New clause 5A:** The Senate had proposed that public participation shall be conducted on any Public Private Partnership project. The National Assembly agreed with the amendment but proposed further amendments that public participation must be done before signing a project agreement.

New clause 20

19. Sub-clause (1) paragraph (c): Senate had proposed that the Committee shall prepare the reports indicating financial performance of the public private partnership projects. The National Assembly rejected the amendments and proposed that the amendments be deleted and replaced with the following paragraph:-

(c) the financial and other performance indicators of the project during the year under review.

20. Sub-clause (2): Senate had proposed that the reports be submitted to Parliament, Controller of Budget, Commission on Revenue Allocation and the respective county government. National Assembly rejected the amendment and proposed that the reports be submitted to National Assembly, in the case of National Government projects and Senate, in the case of county government projects.

21. Sub-clause (3): Senate had proposed that Parliament and the respective county assembly shall consider the report submitted and provide feedback to the Committee. National Assembly rejected the amendment and proposed that only the National Assembly and the Senate will consider the report and provide feedback.

22. Sub-clause (5): Senate had proposed that the Committee shall take into account the feedback provided under sub-clause (3) above. National Assembly rejected the amendment and proposed that the words '*take into account*' be deleted and replaced with the word '*consider*'.

3 THE COMMITTEE'S DETERMINATION AND RECOMMENDATIONS

The Mediation Committee considered the amendments by the National Assembly and recommended as follows:-

23. Clause 2 be amended to provide that "transaction advisor" means a person appointed in writing by a contracting authority or the unit 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, including the preparation, accession and conclusion of a project and the financial close;
24. Clause 4A be amended to provide for principal secretaries in charge of Housing and infrastructure.
25. New clause 5A be amended to provide that public participation must be done before signing a public private partnership project agreement.
26. New clause 20 be amended as follows-
 - a) Subclause (1) paragraph (c) – to provide that the report shall include the financial and other performance indicators of the project during the year under review.
 - b) Subclause (2) – Agreed to
 - c) Subclause (3) – Agreed to
 - d) Subclause (5) – to provide that the Committee shall consider the feedback provided.

MINUTES OF THE 2ND SITTING OF THE MEDIATION COMMITTEE ON THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL (N.A. BILL NO. 52 OF 2017) HELD VIRTUALLY ON WEDNESDAY, 2ND DECEMBER, 2020 AT 3.00 PM

PRESENT

1. Hon. Peter Kaluma, MP - Chairperson
2. Sen. Mutula Kilonzo Junior, MP - Vice Chairperson
3. Hon. Isaac N. Waihenya, MP
4. Sen. Kimani Wamatangi, MP
5. Sen. Aaron Cheruiyot, MP
6. Hon. David M. Mboni, MP
7. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP
2. Sen. Rose Nyamunga, MP
3. Hon. George Gitonga Murugara, MP

SECRETARIAT

1. Ms. Jennifer Ndeto - Principal Legal Counsel
2. Ms. Leah Mwaura - Senior Clerk Assistant
3. Ms. Laureen Wesonga - Clerk Assistant
4. Mr. Christopher Gitonga - Clerk Assistant
5. Ms. Lucy Radoli - Legal Counsel

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Consideration and adoption of the report on the Public Private Partnership (Amendment) Bill (N.A. Bill No. 52 of 2017)**
6. Adjournment/Date of the next meeting

MIN.NO.MED/PPP/2020/005: PRELIMINARIES

The meeting was called to order at 3:10 p.m. and a prayer was said. The agenda was adopted having been proposed and seconded by Sen. Aaron Cheruiyot, MP and Hon. David mboni, MP respectively.

MIN.NO.MED/PPP/2020/006: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

The Minutes of the 1st Sitting were adopted having been proposed and seconded by Sen. Mutula Kilonzo, MP and Hon. Waihenya Ndirangu, MP

MIN.NO.MED/PPP/2020/007: CONSIDERATION AND ADOPTION OF THE REPORT ON THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL, 2017

The Mediation Committee considered the amendments by the National Assembly and recommended as follows:-

1. Clause 2 be amended to provide that “transaction advisor” means a person appointed in writing by a contracting authority or the unit 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, including the preparation, accession and conclusion of a project and the financial close;
2. Clause 4A be amended to provide for principal secretaries in charge of Housing and infrastructure.
3. New clause 5A be amended to provide that public participation must be done before signing a public private partnership project agreement.
4. New clause 20 be amended as follows-
 - a) Subclause (1) paragraph (c) – to provide that the report shall include the financial and other performance indicators of the project during the year under review.
 - b) Subclause (2) – Agreed to
 - c) Subclause (3) – Agreed to
 - d) Subclause (5) – to provide that the Committee shall consider the feedback provided.

The report was adopted having been proposed and seconded by Hon. David Mboni, M.P and Sen. Aaron Cheruiyot, M.P.

MIN.NO.MED/PPP/2020/008: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business the meeting was adjourned at 3.58 p.m.

HON. PETER KALUMA, MP
(CHAIRPERSON)

SEN. MUTULA KILONZO JUNIOR, MP
(VICE-CHAIRPERSON)

SIGNED.....

SIGNED.....

DATE..... 02/12/2020

DATE..... 8/12/2020

MINUTES OF THE 1ST SITTING OF THE MEDIATION COMMITTEE ON THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL (N.A. BILL NO. 52 OF 2017) HELD ON TUESDAY, 3RD NOVEMBER, 2020 IN BOARDROOM ON FIRST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 12.30 PM

PRESENT

1. Hon. Peter Kaluma, MP - **Chairperson**
2. Sen. Mutula Kilonzo Junior, MP - **Vice Chairperson**
3. Sen. Rose Nyamunga, MP
4. Sen. Kimani Wamatangi, MP
5. Hon. David M. Mboni, MP
6. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Sen. (Eng.) Mohamed M. Mahamud, CBS, MP
2. Hon. Isaac N. Waihenya, MP
3. Sen. Aaron Cheruiyot, MP
4. Hon. George Gitonga Murugara, MP

SECRETARIAT

1. Ms. Jennifer Ndeto - Principal Legal Counsel
2. Ms. Leah Mwaura - Senior Clerk Assistant
3. Ms. Laureen Wesonga - Clerk Assistant
4. Mr. Christopher Gitonga - Clerk Assistant
5. Ms. Lucy Radoli - Legal Counsel
6. Mr. Ian Otieno - Audio Officer

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Election of the Chairperson and Vice-Chairperson**
6. **Consideration of the Public Private Partnership (Amendment) Bill, 2017**
7. Adjournment/Date of the next meeting

MIN.NO.MED/PPP/2020/001: COMMUNICATION FROM THE CLERK

The meeting was called to order at 12.52 p.m. and a prayer was said. The agenda was adopted having been proposed and seconded by Sen. Kimani Wamatangi, MP and Hon. Peter Kaluma, MP respectively. The Committee Clerk, Mr. Christopher Gitonga then welcomed the meeting to deliberate on the day's agenda.

MIN.NO.MED/PPP/2020/002: ELECTION OF THE CHAIRPERSON

Following the call for proposals for the position of Chairperson, Hon. Peter Kaluma, MP was proposed by Sen. Rose Nyamunga, MP and seconded by Hon. David M. Mboni, MP.

There being no other proposal for the position of Chairperson, Hon. Peter Kaluma, MP was declared duly elected Chairperson of the Mediation Committee.

MIN.NO.MED/PPP/2020/003: ELECTION OF THE VICE-CHAIRPERSON

Following the call for proposals for the position of Vice Chairperson, Sen. Mutula Kilonzo Junior, MP was proposed by Sen. Kimani Wamatangi, MP and seconded by Hon. Edith Nyenze, MP.

There being no other proposal for the position of Vice Chairperson, Sen. Mutula Kilonzo Junior, MP was declared duly elected Vice Chairperson of the Mediation Committee.

MIN.NO.MED/PPP/2020/003: CONSIDERATION OF THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL, 2017

The Committee considered the contentious clauses of the Bill and resolved as follows-

- a) Clause 2 – Agreed to
- b) Clause 4A – Agreed to
- c) New Clause 5A – Agreed to
- d) New Clause 20 (a) – Agreed to
- (b) – Consideration deferred
- (c) – Consideration deferred
- (d) – Consideration deferred

Members' Deliberation

The meeting deliberated and agreed that Members need more time to consult on sub-clauses 20(b), (c) and (d) before making a decision on them. Thus, deliberation on the same was deferred to the next meeting.

MIN.NO.MED/PPP/2020/004: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business the meeting was adjourned at 2.07 p.m. The next meeting will be held on Tuesday, 10th November, 2020 at 12.00 pm.

HON. PETER KALUMA, MP
(CHAIRPERSON)

SEN. MUTULA KILONZO JUNIOR, MP
(VICE-CHAIRPERSON)

SIGNED.....


SIGNED.....


DATE 07-12-2020.....

DATE 3/12/2020.....



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 52 of 2017)

THE PUBLIC PRIVATE PARTNERSHIP (AMENDMENT) BILL, 2017

**(A version of the Public Private Partnership (Amendment) Bill, 2017
(National Assembly Bill No. 52 of 2017) as agreed on 2nd December, 2020, by
a Mediation Committee appointed pursuant to Article 113 of the
Constitution.)**

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

THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL, 2017

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

ENACTED by the Parliament of Kenya, as follows—

Short title

1. This Act may be cited as the Public Private Partnerships (Amendment) Act, 2018.

Amendment of section 2 of No. 15 of 2013

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

(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 entity 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 appointed in writing by a contracting authority or the unit 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, including the preparation, accession and conclusion of a project and the financial close;”.

(c) inserting the following new definition immediately before the definition of the word “affordability”-

“accounting officer” means in the case of-

(a) a national government entity, the person designated as an accounting officer by the Cabinet Secretary responsible for finance

in accordance with the provisions of the Public Finance Management Act;

- (b) the Parliamentary Service Commission, the Clerk of the Senate;
- (c) the National Assembly, the Clerk of the National Assembly;
- (d) a Constitutional Commission, institution or Independent Office the person responsible for the administration of the Commission or institution or Independent Office in accordance with the provisions of the Public Finance Management Act;
- (e) a county government entity, the person responsible for the administration of the county government entity in accordance with the provisions of the Public Finance Management Act;
- (f) a county assembly, the clerk of the county assembly; and
- (g) the Judiciary, the Chief Registrar of the Judiciary.

Amendment of section 3 of No. 15 of 2013.

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

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.

Insertion of section 3A in No. 15 of 2013.

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

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.

Amendment of section 4 of No. 15 of 2013.

5. Section 4 of the principal Act is amended in subsection (1) by-

- (a) inserting the following new paragraph immediately after paragraph (f)-
 - (fa) three persons nominated by the Council of County Governors;

The Public Private Partnerships (Amendment) Bill, 2017

- (b) deleting the word “four” appearing immediately before the words “persons not being” in paragraph (g) and substituting therefor the words “three”;

Amendment of section 15 of No. 15 of 2013.

6. 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 18 of No. 15 of 2013.

7. Section 18 of the principal Act is amended by inserting the following new subsection immediately after subsection (2) –

(3) A contracting authority under subsection (1) shall ensure that it facilitates public participation on a project that it intends to finance, operate, equip or maintain before signing a project agreement.

Repeal of section 20 of No. 15 of 2013.

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

Amendment of section 24 of No. 15 of 2013.

9. Section 24 of the principal Act is amended—

- (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 assembly 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.

- (c) in subsection (3) by inserting the words “in consultation with the Council of County Governors” immediately after the words “the Cabinet Secretary shall”.

Amendment of section 31 of No. 15 of 2013.

10. 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 36 of No. 15 of 2013.

11. (1) Section 36 of the principal Act is amended—

(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.

Amendment of section 37 of No. 15 of 2013.

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

Amendment of section 45 of No. 15 of 2013.

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

45. (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 consistent with any policy guidance issued by the Committee from time to time.

Amendment of section 49 of No. 15 of 2013.

14. 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 51 of No. 15 of 2013.

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

(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 a new.

Amendment of section 54 of No. 15 of 2013.

16. Section 54 of the principal Act is amended—

(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).

Insertion of new sections in No. 15 of 2013.

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

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 entity, as the case may be, to prepare a project proposals for approval by the respective county assembly, setting out 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 as necessary in developing the PPP Feasibility Study.

(5) A Feasibility Study completed pursuant to subsection (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.

Amendment of section 56 of
No. 15 of 2013.

18. Section 56 of the principal Act is amended by-

(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”.

Amendment of section 57 of
No. 15 of 2013.

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

Execution of
contract.

57. After the approval of the project and financial risk assessment under section 56, the contracting authority shall execute

awarded to that bidder.

Amendment of section 67 of
No. 15 of 2013.

20. Section 67 of the principal Act is amended —

(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 relevant 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 having relevant experience and knowledge 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.

Insertion of new of new
section 70A in No. 15 of 2013.

21. The principal Act is amended by inserting the following section immediately after section 70 —

Report of the Committee. **70A.** (1) Within three months after the end of each financial year, the Committee shall prepare a

report on project agreements entered into by all contracting authorities in that financial year.

(2) The Committee shall, in preparing the report under subsection (1), set out the following information –

- (a) the status of implementation of every project agreement that is under implementation by each contracting authority including the outputs of each project as against the projected targets;
- (b) any challenges or deviations in the implementation and estimated completion of the project and the reasons for such deviation or delay;
- (c) the financial and other performance indicators of the project during the year under review;
- (d) a risk assessment including information of any change in circumstances that may have an impact on the implementation of a project; and
- (e) such other information as the Committee and the Cabinet Secretary may consider necessary.

(3) The Committee shall submit the report prepared under subsection (1) to –

- (a) the National Assembly, in the case of National Government projects;
- (b) the Senate, in the case of county government projects.

(4) The National Assembly and the Senate shall, in accordance with their respective standing orders-

- (a) consider the report within thirty days of receipt of the report;
- (b) table a report together with its recommendations on the implementation of the projects; and
- (c) submit their recommendations to the Committee.

(5) The Committee shall, ensure that the contracting authorities take into account the recommendations under subsection (4) in the implementation of a project under this Act.