

Roads (Financing and Participation of Public Private Partnership)

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THE ROADS (FINANCING AND PARTICIPATION OF PUBLIC
PRIVATE PARTNERSHIP) REGULATIONS, 2013

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THE ROADS ACT
(CAP. 167)

REGULATIONS

(Made under section 61 (2))

THE ROADS (FINANCING AND PARTICIPATION OF PUBLIC PRIVATE PARTNERSHIP)
REGULATIONS, 2013

PART I

PRELIMINARY PROVISIONS

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| 1. These Regulations may be cited as the Roads (Financing and Participation of Public Private Partnership) Regulations, 2013. | Citation |
| 2. In these Regulations unless the context requires otherwise- | |
| “Act “ means the Roads Act; | Interpre-
tation |
| “Authority” means the roads authority as prescribed in the Act; | Cap. 167 |
| “Board” means the Roads Fund Board established under section 5 of Road and Fuels Tolls Act; | Cap. 220 |
| “concession agreement” means a contract of the nature specified in the First Schedule between a developer and road authority, relating to a road infrastructure project; | |
| “Coordination Unit” has the meaning prescribed to it under the Public Private Partnership Act; | Act. No.
18 of
2010 |
| “developer” means a person with whom a concession agreement is entered into by road authority; | |
| “escrow account” means a bank account in which cash is deposited or from which cash is withdrawn in such a manner as specified in the concession agreement; | |
| “local authority” has the meaning ascribed to it under the Local Government (District Authority) Act and Local Government (Urban Authority) Act; | Caps 287
and 288 |
| “project” means any project undertaken within the road reserve; | |

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Caps 287
and 288
Act No.
18 of
2010

“Public Private Partnership Finance Unit” has the meaning prescribed to it under the Public Private Partnership Act;

“responsible officer” means a person authorised by road authority to certify evaluation reports;

“road authority” means any local government authority and shall include any institution, agency or any other body entrusted by the Minister with the duties to develop, manage and maintain roads;

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18
of 2010

“road infrastructure” means facilities provided by a road project;

“road reserve user charges” means money charged by road authority being for management costs for surveys, processing of applications, supervision and general monitoring of the performance of the service provider in compliance with the permit requirements in the proper utilisation of the road reserve;

“subsidy” means financial assistance in cash or kind provided by the Government;

“standards specifications” means a non-proprietary specification based on accepted standards, or on requirements set by an acceptable authority, which describes products, materials, or pieces of equipment to be incorporated in a project;

“utilities” means service infrastructure and shall include but not limited to electric power, gas and any other source of power supply, telephone lines, mobile phone cables; optic fibre cables, gas supply pipes, urban railway lines, water supply and sewerage networks laid under, on or above the ground surface of road reserve.

PART II

UTILITIES INSTALLATION

Manual
for
utilities
installation

3.-(1) The Minister shall prepare a manual for control of utilities installation within the road reserve.

(2) The manual for control of utilities installation shall provide for the requirements of road safety, positioning, spacing, location, construction and maintenance.

(3) Subject to sub-regulation (1), the manual for control of utilities installation shall be reviewed from time to time to take into account development changes.

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| 4.-(1) Any person who intends to temporarily use or utilise the space in the road reserve for installation of utility services shall make an application in writing to road authority. | Applica-
tion for
permits |
| (2) The application shall be accompanied by an application fee as may be determined by road authority and approved by the Minister. | |
| 5. An Application for a permit for installation of utility services shall contain the following information: | Applica-
tion
requirem-
ents |
| (a) full particulars of the applicant; | |
| (b) the proposed descriptions or specifications; | |
| (c) Proposed locations; | |
| (d) drawings(layout plan, typical cross sections and parts details) showing key dimensions, necessary calculations and design details; and | |
| (e) photographs as relevant. | |
| 6.-(1) Road authority shall upon receipt of an application, invite the applicant for a joint site inspection on a specified date. | Procedure
for
applica-
tion |
| (2) Road authority shall issue a permit to the applicant subject to satisfaction of road authority. | |
| 7.-(1) Any person who has been permitted to use the road reserve shall pay to road authority an annual road user charge as may be specified in the Second Schedule to these Regulations. | Road
reserve
user
charge |
| (2) The annual road user charge collected under sub regulation (1) shall be remitted to the Board Account. | |
| 8. All utilities installed on the road reserve shall be owned and maintained by the respective investor or service provider. | Installat-
ion and
ownership |

PART III

TECHNICAL SPECIFICATION

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| 9.-(1) There shall be guidelines, standards, specifications and manuals for the purpose of planning, designing, procuring, executing, maintaining and monitoring road works as provided for in the First Schedule to these Regulations. | Issuing
of
Manuals
for
technical
and
standard
specifica-
tions |
| (2) Subject to the provisions of sub regulation (1), no person shall use any guidelines, standards, specifications or manuals other than those provided by the road authority unless with the prior written consent from road authority. | |

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Performance
agreements

10.-(1) There shall be performance agreements between the:

- (a) Ministry and TANROADS for development projects;
- (b) Board and the road authorities for road maintenance; and
- (c) Prime Minister's Office Regional Administration and Local Government (PMORALG) and Local Government Authorities (LGAs) for maintenance and development of roads.

(2) The performance agreements shall provide for technical standards, financial and timeframe of performance for the road works.

(3) The performance agreement shall be signed by both parties within one month after the approval of the budget by the Parliament.

PART IV

USE OF RESOURCES

Allocation
of
resources

11.-(1) The Minister shall allocate resources to the road network based on socio-economic considerations.

(2) Notwithstanding the provisions of sub regulation (1), allocation for development works shall be in accordance with approved long term investment program and as per annual budgets approved by the Parliament.

Allocation
of
maintenance
resources

12.-(1) The Board shall allocate maintenance funds between national and district roads in accordance with maintenance needs of such road categories.

(2) Without prejudice to the provision of sub regulation (1), funds from other sources for road maintenance shall be used in accordance with the agreed terms between the government and financier.

(3) Subject to the provisions of sub regulation (1), the criteria to determine road maintenance needs shall include-

- (a) traffic volume;
- (b) road condition;
- (c) road type; and
- (d) maintenance standards.

(4) The ratio of allocation of road maintenance funds between the National and District Roads shall be seventy percent for National Roads and thirty percent for District Roads.

(5) The ratio for allocation shall be reviewed from time to time to reflect road network maintenance requirements.

PART V

ADMINISTRATION OF PUBLIC PRIVATE PARTNERSHIP PROJECTS

13. Any developer may participate in financing, construction, maintenance and operation of a project. Participation in a project

14.-(1) A developer may enter into a concession agreement of the types specified in the First Schedule, with road authority. Types of concession agreements

(2) Where the Coordination Unit having regard to the types of a road project is satisfied that it is necessary so to do, it may permit combination of two or more agreements of the types specified in the First Schedule to these Regulations.

15.-(1) A proposal prepared by road authority for participation by a developer in financing, construction, maintenance and operation of the project, shall be submitted to the Coordination Unit along with proposed concession agreement relating thereto for its consideration and make recommendation to the Public Private Partnership Finance Unit. Recommendation by coordination unit

(2) The Public Private Partnership Finance Unit shall consider the proposal and the proposed concession agreement submitted to it under sub-regulation (1) and may either recommend with or without modifications or not recommend, or return the proposal and concession agreement for reconsideration of road authority .

(3) Subject to the provisions of sub regulation (2) where the Public Private Partnership Finance Unit makes its recommendations, it shall forward to the Minister the proposal and concession agreement for approval as provided under the Public Private Partnership Act. Act No. 18 of 2010

16. Road authority may provide, to a developer assistance in the following manner- Assistance by road Authority

- (a) opening and operation of escrow account;
- (b) conferment of a right to develop any land;
- (c) incentives as provided for in other written laws;
- (d) in any other matter as deemed fit.

17.-(1) No concession agreement for undertaking a project shall be entered into with any developer unless the procedure provided in the Public Procurement Act has been adopted. Procedure for concession agreement Cap.410

(2) For unsolicited proposals the procedure under regulation 18 and 19 shall be observed.

Unsolicited bids

18.-(1) A developer may prepare and submit a proposal and concession agreement for undertaking a road project with the cost of preparing such proposal to road authority.

(2) On receiving the proposal and the proposed concession agreement, the road authority may consider the proposal and the proposed concession agreement from all aspects and if necessary, modify the same in consultation with the developer who has submitted the proposal and the proposed concession agreement.

(3) Where road authority accepts the proposal, the procedure under regulation 15 shall be followed.

(4) Subject to sub regulation (3), on acceptance of the recommendation by the Coordination Unit and the Public Private Partnership Finance Unit where financial assistance is required road authority shall notify the proposer of its intention of subjecting the proposal to the procedure of competitive public bidding as specified in regulation 17.

(5) Where the proposal is rejected it shall be returned to the proposer with no costs to road authority.

Procedure for selected of a of developer under unsolicited bidding

19.-(1) Where a developer is selected by following the Procedure of the competitive Public bidding (hereinafter referred to as "the selected developer"), the proposal of the selected developer shall be compared with the proposal earlier submitted by a developer to road authority (hereinafter referred to as "the earlier proposer").

(2) Where the proposal of the earlier proposer is not preferable to the proposal of the selected developer, the earlier proposer shall be given an opportunity to make his proposal competitive with that of the selected developer within a period of thirty days from the date on which he has been given the opportunity.

(3) Subject to sub regulation (2) where the earlier proposer fails to make his proposal competitive within the said period, road authority may enter into a contract with the selected developer.

(4) Where a concession agreement has been entered into with the selected developer, the earlier proposer shall be reimbursed the cost of preparation of the proposal and the concession agreement incurred by him by road authority and on such reimbursement, the proposal and the concession agreement submitted by the earlier proposer shall be property of road authority .

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| 20.-(1) Any developer who intends to prepare a proposal for undertaking of a project shall notify road authority. | Notifica-
tion to
The
Authority
of
Unsoli-
cited bids
in writing |
| (2) Road authority when accepts the proposal shall issue a letter notifying the developer. | |
| (3) Road authority on accepting the proposal shall request the name of the proposal and the developer. | |
| 21. Where, in pursuance of a concession agreement with road authority the developer- | Charges
for
service
provision |
| (a) has constructed a project for providing services, and the project vests in the developer for a period specified in the concession agreement an existing project is vested to a developer to renovate, operate and maintain for a period specified in the concession agreement; | |
| (b) may charge such amount as specified in the agreement for providing services by the projects so long as the project continues to vest in him. | |
| 22. The procedure for review and amendment of the concession agreement shall be as provided in the Public Private Partnership Act. | Amend-
ment of
the
agreement
Act No.
18 of
2010 |
| 23. Where a provision is made in a concession agreement requiring the developer to maintain the project constructed by him for a period specified in such agreement- | Financial
security
for
mainte-
nance of
a
project |
| (a) there shall be opened escrow account by the developer the money out of which shall be expended for the maintenance of the project in accordance with the provisions made in the concession agreement or in any other agreement with road authority; or | |
| (b) the developer shall execute a bond in the favour of road authority binding himself to make payment of such amount of money as specified in the bond to road authority, in case he fails to maintain the project in accordance with the provisions made in the concession agreement or any other agreement with road authority. | |

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Training to employees 24. A developer shall provide at his expense, training to the employees of road authority in all aspects of implementing the project in accordance with the provisions made in the concession agreement or in any other agreement with road authority.

Transfer of rights 25. Where the project is transferred to road authority according to the provisions of the concession agreement, all the rights of the developer in respect of the project shall stand transferred to road authority.

PART VI

MISCELLANEOUS PROVISIONS

Fees for the application to construct a road of access 26. Subject to the provisions of section 35 of the Act, an application for a road access shall be accompanied by an application fee of one hundred thousand shillings.

Fees for application to construct a private road 27. An applicant for the construction of a private road shall be required to pay to road authority an application fee of one hundred thousand shillings.

FIRST SCHEDULE

(Made under regulation 14)

TYPES OF CONCESSION AGREEMENT

1. Build Own Operate and Transfer Agreement: An agreement whereby the developer undertakes to finance, construct, maintain and operate a project and whereby such project is to vest in the developer for a specified period during the period of operation of the project by the developer, he may be permitted to charge user charges as specified in an agreement. The developer is required to transfer the project to road authority after the expiry of the period of operation.

2. Build Own Operate and Maintain Agreement: An agreement whereby a developer undertakes to finance, construct, operate and maintain a project and whereby such project is to vest in the developer for specified period, during the period of operation of the project, he may be permitted to charge user charges as specified in the agreement.

3. Build and Transfer Agreement: An agreement whereby a developer undertakes to finance and construct a project. After the completion of the project, the developer is required to transfer the project to road authority. The developer shall be paid such amount as is fixed in amortization schedule specified in the agreement.

4. Build Lease and Transfer Agreement: An agreement whereby a developer undertakes to finance and construct the project. On completion of the project, the developer hands it over to road authority, for operation under a lease agreement for period specified in the agreement after the expiry of which the project stands transferred to road authority.

5. Build Transfer and Operate Agreement: An agreement whereby the developer undertakes to finance and construct the project. On completion of the project, the developer transfers the project to road authority which permits the developer to operate the project on its behalf for a period specified in the agreement.

6. Lease Management Agreement: An agreement whereby the State Government, a Government agency or a specified Government agency leases a project owned by road authority to the person who is permitted to operate and maintain the project for the period specified in the agreement and to charge user charges therefore.

7. Management Agreement: An agreement whereby road authority entrusts the operation and management of a project to a person for the period specified in the agreement on payment of specified consideration. In such agreement road authority may charge the user charges and collect the same either itself or entrust the collection for consideration to any person who shall after collecting the user charges pay the same to road authority.

8. Rehabilitate Operate and Transfer Agreement: An agreement whereby an existing project is vested in a person to renovate, operate and maintain for the period specified in the agreement after the expiry of which the project is required to be transferred to road authority. During the period of operation of the project by the developer, he may be permitted to charge user charges as specified in the agreement.

9. Rehabilitate Own Operate and Maintain Agreement: An agreement whereby an existing project is vested in a person to renovate, operate and maintain. The developer shall be permitted to charge user charges as specified in the agreement.

10. Service Contract Agreement: An agreement whereby a person undertakes to provide services to road authority for a specified period. Road authority shall pay him an amount according to the agreed schedule.

11. Supply Operate and Transfer Agreement: An agreement whereby a person supplies to road authority the equipments and machinery for a project and undertakes to operate the project for a period and consideration specified in the agreement. During the operation of the project, he shall undertake to train employees of road authority to operate the project.

12. Joint Venture Agreement: An agreement whereby road authority, enters into an agreement with a developer to jointly finance, construct, operate and maintain a project for a period specified in the agreement after the expiry of which the project is required to be transferred to road authority.

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SECOND SCHEDULE

(Made under Regulation 7(1))

ANNUAL ROAD USER CHARGES

TYPE OF UTILITY/FACILITY	TYPE OF STRUCTURE	UNIT	INITIAL MANAGEMENT CHARGE RATE (US \$ IN EQUIVALENT TO TSHS)	ANNUAL MANAGEMENT CHARGE RATE (US \$ IN EQUIVALENT TO TSHS))
Electricity	Pole	Number	2	0
	Pylon	Number	5	0
Water	Pipe	Kilometer	50	0
Sewage	Pipe	Kilometer	50	0
Telephone overhead Wire	Pole	Number	2	1.5
Telephone underground cable	Line	Kilometer	50	30
Gas/Oil	Pipe	Kilometer	50	30
Fiber Optic Cable	Line	Kilometer	1,000	1,000
Duct > 0.28m ²	Line	Kilometer	100	100
Duct > 0.28m ²	Line	Kilometer	100	75
Camps and Places	Fuel filling Station	M ²	0	10
	Camp/Recreation place /kiosk	M ²	0	2
	<u>Parkway Area</u>	M ²	0	2

Dar es Salaam,
02nd December, 2013

JOHN POMBE MAGUFULI
Minister for Works