



Draft Generation Expansion Planning and Competitive Procurement Regulations

August 2019

GRENADA

ARRANGEMENT OF REGULATIONS

| | |
|---|----|
| PART I- PRELIMINARY..... | 4 |
| 1. Citation and commencement | 4 |
| 2. Interpretation..... | 4 |
| 3. Obligations of Network Licensees..... | 7 |
| PART II- REQUIREMENTS AND PROCEDURE FOR THE PREPARATION AND SUBMISSION OF SUSTAINABILITY PLANS AND EXPANSION PLANS..... | 7 |
| 4. Stages of development of generation projects | 7 |
| PART III- IDENTIFICATION OF GENERATION PROJECTS..... | 8 |
| 5. Identification of potential projects | 8 |
| 6. Fact finding..... | 8 |
| 7. Future energy scenarios..... | 10 |
| 8. Expansion strategy and sustainability plan..... | 11 |
| 9. Screening projects..... | 12 |
| 10. Definition of responsibilities and project allocation..... | 13 |
| 11. Prioritisation of projects | 15 |
| PART IV- BUSINESS CASE STAGE | 16 |
| 12. Business Case Stage | 16 |
| 13. Preparation for Business Case | 17 |
| 14. Determination of project viability..... | 20 |
| 15. Structuring of the proposed project | 20 |
| 16. Submission of Business Case for approval | 24 |
| PART V- TRANSACTION | 25 |
| 17. Transaction and procurement | 25 |
| 18. Preparation for Transaction..... | 25 |
| 19. Preparation of procurements documents, draft licence and Power Purchase Agreement | |
| 26 | |

| | | |
|-----|---|----|
| 20. | Power Purchase Agreement | 27 |
| 21. | Generation licence | 29 |
| 22. | Procurement contract | 30 |
| 23. | Qualification of bidders..... | 31 |
| 24. | Post-qualification | 33 |
| 25. | Preparation of Request for Proposals | 33 |
| 26. | Issuance of Request for Proposals and management of bids | 35 |
| 27. | Reception of proposals | 37 |
| 28. | Evaluation of proposals and selection of preferred bidder | 37 |
| 29. | Commercial and financial close | 39 |
| | PART VI- CONTRACT MANAGEMENT | 41 |
| 30. | Contract Management stage | 41 |
| 31. | Contract management team: the Operating Committee | 42 |
| 32. | Contract management processes and tools | 43 |
| 33. | Monitoring service delivery and risks | 45 |
| 34. | Managing change | 47 |
| | ANNEX I: PROJECT VIABILITY CHART | 48 |
| | ANNEX II: POSSIBLE PROJECT FINANCE STRUCTURES..... | 51 |
| | ANNEX III: RISK ALLOCATION MATRIX | 53 |
| | ANNEX IV: LEGAL AND FINANCIAL STRUCTURE | 60 |
| | ANNEX V: RECOMMENDED PROCUREMENT PROCESS..... | 61 |
| | ANNEX VI: LIFECYCLE OF A POWER PURCHASE AGREEMENT..... | 62 |
| | ANNEX VII: INTEGRATED RESOURCE PLANNING..... | 63 |

GRENADA

STATUTORY RULES AND ORDERS NO. OF 2019

**THE MINISTER IN EXERCISE OF THE POWERS CONFERRED ON HIM UNDER
SECTIONS 3 AND 62 OF THE ELECTRICITY ACT MAKES THE FOLLOWING
REGULATIONS**

(Gazetted , 2019).

(Draft)

**Generation Expansion Planning and Competitive Procurement
Regulations**

PART I- PRELIMINARY

1. Citation and commencement

(1) These Regulations may be cited as the Generation Expansion Planning and Competitive Procurement Regulations, 2019.

(2) These Regulations come into force on the commencement date.

2. Interpretation

(1) In These Regulations, unless the context otherwise requires:

“Electricity Act” refers to the Electricity Supply Act No. 19 of 2016 as amended by the Electricity Supply (Amendment) Act. No. 33 of 2017;

“Commission” means the Public Utilities Regulatory Commission established under section 4 of the Public Utilities Commission Act No.20 of 2016;

“contract” and “agreement” are synonyms;

“expansion studies” means the plans that Network Licensees are obliged to prepare and to submit in accordance with section 37 (7) of the Electricity Act which shall: (a) assess demand growth in the country in the short, mid and long-term, (b) recommend new generation that will be necessary to meet increased demand for electricity; (c) meet increased demand or to replace existing power generation from fossil fuels by more efficient electric plants or by electricity generated from renewable energy resources; (d) assess the transport capacity of the transmission and distribution system to connect new generation capacities; (e) assess the investments necessary to increase the transport capacity in transmission and distribution systems in areas already supplied by a Network Licensee in order to meet new demand for electricity in those areas or to connect new generation capacities; and (f) assess the investments necessary to expand transmission and distribution to new areas in order to connect new consumers with electricity or to interconnect new generation capacities;

“distribution” means the transport of electricity through the distribution system, and the term “distribute” shall be construed accordingly;

“distribution system” means medium and low voltage networks and associated equipment as prescribed;

“electricity” includes electric voltage, electric current, electric energy and any like agency;

“Electricity Act” means the Electricity Act, 2016 (the Electricity Supply Act, 2016 amended by the Act N° 33 of 2017);

“generation” means the production of electricity from renewable or non renewable energy sources, and the term “generate” shall be construed accordingly;

“Laws of Grenada” means the acts and other legislation of inferior hierarchy which is in force in Grenada;

“Independent Power Producer” means a generation licensee from whom a Network Licensee purchases electricity in accordance with a Power Purchase Agreement;

“Minister” means the Minister for the time being with responsibility for the electricity sector in Grenada;

“network licence” means the licence granted pursuant to section 14 of the Electricity Act which allows its holder to transmit electricity, or to transmit, distribute and supply electricity to consumers;

“Network Licensee” refers to the holder of a Network Licence;

“Person” means-

- (a) any natural person, or
- (b) any public body, company or association or anybody of persons corporate or unincorporated;

“Power Purchase Agreement” means a contract for the generation and sale of electricity between an Independent Power Producer, who generates and sells electricity, and the Network Licensee who purchases such electricity;

“prescribed” means prescribed by regulations;

"Procurement" means the acquisition by any means of goods, services and construction activities related to new generation facilities to be installed in Grenada; and the term “procure” shall be construed accordingly;

"Procuring Entity" is the entity responsible for the transaction stage and for procuring the generation project and which, pursuant to regulation 13 (2), may be the Commission or the Network Licensee;

“renewable energy” means the electricity generated from renewable energy resources;

“self-generator” means a person who generates electricity only for his or her own use and who may also be allowed to provide excess electricity to the network licensee in accordance with the requirements of the Electricity Act;

“supply” means the sale and resale of electricity;

“sustainability programme” means both an annual and a rolling five-year plan of a Network Licensee, or a person who holds both a generation licence and a network licence, which sets out, the manner in which the licensee intends to achieve and maintain the customer service, engineering, financial and technical standards necessary for a regular, efficient, secure, co-ordinated and economical supply of electricity under its licence;

“These Regulations” mean these Generation Expansion Planning and Competitive Procurement Regulations;

“transmission” means the transport of electricity through the transmission system, and the term “transmit” shall be construed accordingly;

“transmission system” means the transport of electricity through high voltage electricity systems, and the transport of electricity for interconnecting the island of Grenada with another island or country as prescribed;

(2) Unless a term is defined in These Regulations or the context otherwise requires, terms defined by the Act have the same meaning when used in These Regulations.

3. Obligations of Network Licensees

(1) The Network Licensee shall prepare its sustainability plan and its expansion planning in accordance with section 37 of the Electricity Act 2016 and with These Regulations.

(2) The procurement of new generation capacities shall be subject to the rules and requirements established in the Electricity Act and in of These Regulations.

PART II- REQUIREMENTS AND PROCEDURE FOR THE PREPARATION AND SUBMISSION OF SUSTAINABILITY PLANS AND EXPANSION PLANS

4. Stages of development of generation projects

(1) These Regulations prescribe the framework and process for the expansion of new generation capacities in Grenada which shall be subject to the following stages:

- (a) Identification of Generation Projects;
- (b) Business Case;
- (c) Transaction and Procurement; and

- (d) Contract Management.

PART III- IDENTIFICATION OF GENERATION PROJECTS

5. Identification of potential projects

(1) The Network Licensee shall identify candidate generation projects which have been determined, in the approved IRP document, procedures of which are contained in Annex VII and are necessary to:

- (a) ensure and maintain sufficient generation capacity in Grenada;
- (b) allow the Network Licensee to permanently meet current and new projected electricity demand with a sufficient reserve margin.

(2) The Network Licensee shall also ensure that generation projects identified pursuant to this regulation comply with requirements established in section 37 of the Electricity Act and with all applicable regulations, including those prescribing minimum margin of reserve, safety requirements, quality of service standards, and electricity supply below a certain price.

(3) The tasks related to the identification of generation projects comprise:

- (a) identification of potential projects;
- (b) screening and analysis of viability of candidate projects;
- (c) prioritisation of candidate projects; and
- (d) definition of responsibilities and project allocation.

6. Fact finding

(1) The Network Licensee shall identify potential projects pursuant to the following three stages:

- (a) identification of future energy scenarios;
- (b) fact finding; and
- (c) expansion strategy and business plan.

- (2) To complete the fact finding, the Network Licensee shall:
- (a) carry out an Infrastructure Gap Analysis which identifies service shortfalls and investment needs in generation, transmission and distribution;
 - (b) consider the public sector development and identify medium and long-term projects based on the expected demand development, which:
 - (i) shall take into consideration the specific expansion plans of the public sector;
 - (ii) might require the development of electricity infrastructure in new areas, sectors or industries; and
 - (iii) shall be previously notified to the Network Licensee by the corresponding authorities;
 - (c) make a policy driven project selection and shall:
 - (i) consider the specific expansion plans indicated in policy decisions such as the National Energy Policy or the National Energy Strategy;
 - (ii) take into consideration projects considered as of national interest because they improve energy independence of the country and reduce the cost of electricity or improve reliability of the energy sector, and which have been previously notified by the Commission or the Minister to the Network Licensee.
- (3) Upon projecting and determining increased demand for electricity pursuant to sub-regulations 6 (2) and (3), the Network Licensee shall identify new generation projects which are necessary to meet any new demand for electricity.
- (4) The projections of increased demand for electricity and identification of new generation projects shall, in addition to the requirements established in sub-regulations 6 (1), (2) and (3), take into consideration:
- (a) a load forecast of peak power and annual energy demand;
 - (b) demand side management options (for a range of gross domestic product scenarios);
 - (c) reserves and reliability needs, including intermittent resources, variable renewable energies, load shape, forced outage rate and maintenance outage schedules, number and size of generators in specific service areas, required reserve margins and backup;
 - (d) supply options, considering reasonable assumptions about costs, including lifecycle and decommissioning costs, performance and availability of each resource;
 - (e) environmental costs and constraints;
 - (f) existing energy resources in Grenada including their economic, environmental and efficiency features and concerns;

- (g) uncertainties of all kinds considered in the low, medium and high probability scenario, combining various factors of uncertainty.
- (5) Upon completion of the analysis, requirements and projections indicated in sub-regulations (2), (3), (4) and (5), the Network Licensee shall:
 - (a) develop a comprehensive fact base of renewable and conventional electricity generation options, including their costs, cost trajectories and risks;
 - (b) summarise alternatives with high potential in terms of energy efficiency;
 - (c) analyse and identify all technical aspects related to the generation projects which have been identified in accordance with this regulation, including aspects such as grid-integration, upgrades required in electricity networks and potential operational challenges; and
 - (d) indicate studies which are necessary to determine, in accordance with These Regulations, whether the new generation projects should be better developed by the Network Licensee, by Independent Power Producers or by self-generators.
- (6) The Network Licensee may be supported and advised by external experts or consultants in the preparation of the analysis, projections and studies required by this regulation including those related to grid stability, back up and storage and renewable resources potential.
- (7) The results of the fact finding described in this regulation shall be:
 - (a) previously discussed with stakeholders of the sector including such as Independent Power Producers, self-generators, other network licensees, big consumers, household consumers; and
 - (b) subsequently submitted to the Commission for its approval.

7. Future energy scenarios

- (1) Upon preparation of the fact base required by sub-regulation 6 (5) (a), the Network Licensee shall consider and propose a spectrum of energy supply, demand reduction, transmission and distribution options pursuant to the requirements of this regulation.
- (2) The Network Licensee shall:
 - (a) propose a number of energy scenarios for further evaluation;
 - (b) identify the best scenario, based on two boundary analysis:
 - (i) the Business as Usual (BAU) and
 - (ii) a high to full Renewable Energy penetration scenario.
 - (c) Propose the evaluation criteria to determine the best scenario, based on the following requirements:
 - (i) present value of revenue;

- (ii) reliability;
- (iii) fuel diversity;
- (iv) environmental costs;
- (v) risk mitigation; and
- (vi) other factors.

(3) All the proposals prepared by Network Licensee pursuant to sub-regulation 7 (1) and (2) shall be consulted and agreed with the Commission and subject to the approval mentioned in sub-regulation 7 (5).

(4) The energy scenarios identified pursuant to this regulation shall allow the Government of Grenada, the Commission and the Network Licensee, as well as other key stakeholders to understand the financial and technical implications of each scenario.

(5) The best scenario proposed by the Network Licensee shall require the approval of the Commission.

8. Expansion strategy and sustainability plan

(1) Upon identification and approval of the best scenario, the National Energy Strategy shall be prepared and approved by the Government of Grenada in accordance with the requirements of the Electricity Act.

(2) The National Energy Strategy shall be initiated by the Minister after consultation with:

- (a) the Commission;
- (b) key stakeholders of the sector, such as Independent Power Producers, self-generators, other network licensees, big consumers, household consumers;
- (c) other relevant governmental agencies and authorities which may be relevant for the development, such as the Minister, environmental authorities and authorities responsible for land management and use.

(3) The National Energy Strategy shall comply with the requirements and content established in the Electricity Act and in particular identify:

- (a) specific generation projects;
- (b) renewable Energy Generation Capacity;
- (c) required grid improvements.

(4) The National Energy Strategy shall also contain:

- (a) a business model;
- (b) technical and economic implications of the proposals;
- (c) implications on consumers' rates;
- (d) a draft report.

(5) The Sustainability Plan that licensees must prepare pursuant to section 37 of the Electricity Act shall be based on the National Energy Strategy proposed and approved in accordance with this regulation.

- (6) The National Energy Strategy shall:
- (a) be prepared for the long term, covering a period of at least twenty (20) years; and
 - (b) shall be reviewed at least every five (5) years.

9. Screening projects

(1) The set of candidate generation projects identified as “energy scenarios” pursuant to sub-regulations 7 and 8 shall be subject to pre-feasibility analysis in order to determine whether or not they are technically, legally, commercially and economically viable.

(2) Technical pre-feasibility analysis shall consider whether or not existing electricity networks may absorb the electricity injected as well as other technological aspects of the projects such as technologies, capability of demand response, voltage and frequency stabilisation.

- (3) Commercial pre-feasibility analysis shall examine:
- (a) the interests of private parties in developing candidate projects included in energy scenarios; and
 - (b) whether or not those projects are attractive for private investments, taking into consideration matters such as country risk profile, access to financing, potential return on investment and tax exemptions offered by the Government.

(4) The Network Licensee shall evaluate its own interest in developing some or all of candidate generation projects and such interest shall be:

- (a) communicated to the Commission;
- (b) duly justified; and
- (c) subject to the approval of the Commission required by sub-regulation 10.

(5) The Commission shall in consultation with the Network Licensee evaluate the commercial and economic viability of candidate generation projects.

10. Definition of responsibilities and project allocation

(1) The Commission in consultation with the Network Licensee shall analyse which projects are technically, economically, commercially and legally “viable” pursuant to the criteria established in sub-regulation 9.

(2) Viable candidate generation projects may be developed by the Network Licensee in any of the following cases:

- (a) when the project is considered as system relevant; or
- (b) when there is no sufficient market response and private interest in the project.

(3) A generation project shall be considered as system relevant when all the following requirements are complied with:

- (a) the new generation project is necessary to ensure reliable and safe operation of Grenada’s overall electricity system; and
- (b) when a new generation project which will produce electricity from conventional energy is necessary to provide spinning reserve or to ensure frequency balancing to other generation projects based on intermittent renewable energy to be developed by Independent Power Producers or by self-generators provided that these last ones are not equipped with storage technologies.

(4) It shall be considered that there is no sufficient market response to a project when the pre-feasibility analysis of the commercial viability of a specific project shows that such specific project is unlikely to:

- (a) be marketed in a competitive procurement process; and
- (b) attract potential bidders taking into account, among others, its required outputs, timetable, site or facility, commercial principles, expected cash flows, allocation of major risks and payment mechanisms.

(5) A generation project shall be considered as marketable and commercially viable when the market sounding and commercial pre-feasibility analysis shows that there is sufficient interest in the candidate generation project among private parties with the expertise and financial resources to develop such project.

(6) In order to carry out the market sounding of the project, the Commission shall:

- (a) identify the best alternatives to carry out market sounding, including the proposed timeline, process, objectives and feedback methods.
- (b) make consultations and publications to identify interest in the project either by advertisements in industry journals as well as consultations with industry experts, among others.
- (c) request the opinion of private parties in the project by:

- (i) distributing questionnaires;
 - (ii) making consultations in meetings and open forums;
- (d) distribute and publish market sounding information, described as detailed as possible and including:
 - (i) a brief description of the project, its key features, and commercial principles and the topics on which the Commission needs feedback; and
 - (ii) the methods by which private parties may give responses.

(7) After receiving the information detailed in sub-regulation 10 (6) the Commission shall carry out the market sounding analysis and shall ask opinions to private parties and investors about the following:

- (a) key constraints that private parties might encounter in developing the project, including technical or supply matters, as well as areas requiring further clarification or specification;
- (b) financial structure of the project, risks allocation, and commercial attractiveness of the proposed payment arrangements, including acceptable purchase price and the proposed level and structure of government contributions; and
- (c) constraints related to the proposed legal structure and framework of the project.

(8) The Commission shall conduct the market sounding described in sub-section (7) with the purpose of determining the number of parties interested in participating in a competitive procurement, their level of interest, their capacity to deliver the project and factors that would encourage or discourage parties from bidding.

(9) The market sounding carried out by the Commission shall:

- (a) be open, fair, and transparent, and:
 - (i) all documents related to the market sounding shall be published in national or international press as well as on the website of the Commission;
 - (ii) open forums or consultation shall be conducted by the Commission, in which all interested parties shall be allowed to attend;

- (iii) a wide list of possible interested parties must be previously prepared and those parties shall be invited to participate in market sounding.
 - (b) be properly documented, keeping a record of:
 - (i) all private parties contacted and met with; and
 - (ii) all market sounding process documents and information distributed.
 - (c) clearly inform the private sector that the market sounding is to gauge the market's likely response to the project instead of sounding out any particular party's ability to meet the project requirements.
- (10) After conducting the market sounding and the analysis required by sub-regulations 10 (4), (5), (6), (7), (8), and (9) the Commission shall decide which candidate generation projects have been considered as viable and shall be developed by:
- (a) the Network Licensee,
 - (b) Independent Power Producers; or
 - (c) self-generators.
- (11) Commercially viable candidate generation projects to be developed by Independent Power Producers shall be subject to a competitive procurement process.

11. Prioritisation of projects

- (1) Candidate generation projects which have already been identified and screened in accordance with sub-regulations 5, 6, 7, 8, 9 and 10 shall be prioritised pursuant to the following criteria:
- (a) the highest overall priority shall be granted to generation projects which:
 - (i) are critical for the reliability and safety of Grenada's electricity system; and
 - (ii) have been declared by the Commission as being "System Relevant" pursuant to sub-regulation 9 (4).
 - (b) The rest of candidate projects shall be prioritised taking into consideration the following requirements:
 - (i) level of project readiness and stage of preparation;
 - (ii) responsiveness to the overall needs and priorities of the electricity sector;
 - (iii) high probability of being implemented in practice, taking into consideration:

1. precedent experiences in the local or regional market;
 2. the economic and commercial viability of the project;
 3. the maturity of the technology and energy source involved in the project and other matters.
- (2) The Network Licensee shall make a proposal which:
- (a) identifies which candidate generation projects should be considered as priority projects in accordance with the criteria set in sub-section (1); and
 - (b) shall be justified.
- (3) The Commission shall take a decision:
- (a) approving or rejecting the priority of projects proposed by the Network Licensee within thirty (30) calendar days; and
 - (b) its decision shall be duly justified and published in the Gazette and in the Commission's website.

PART IV- BUSINESS CASE STAGE

12. Business Case Stage

- (1) Candidate generation projects which have been identified, screened and prioritised pursuant to sub-regulations 5, 6, 7, 8, 9, 10 and 11 shall proceed to the Business Case stage.
- (2) The tasks and analysis to be carried out during the stage of Business Case, described in sub-regulations 13, 14, 15 and 16 shall provide the Commission with adequate information and recommendations to determine whether or not each specific candidate generation project may or not continue and be procured in the Transaction Stage.
- (3) The tasks involved in the stage of Business Case are:
- (a) preparation to develop Business Case;
 - (b) determination of project viability;
 - (c) structuring the project;
 - (d) evaluation of proposed project against project criteria.

13. Preparation for Business Case

(1) Candidate generation projects shall be prepared for the Business Case in accordance with this regulation.

(2) All the tasks and obligations related to the development of the Business Case and described in this Part shall be carried out by:

- (a) the Network Licensee when, pursuant to sub-regulation 10 (10), the Commission decides that such project is to be developed by the Network licensee;
- (b) the Independent Power Producers when, pursuant to sub-regulation 10 (10), the Commission decides that such project is to be developed by Independent Power Producers.
- (c) in case of small to medium size projects to be developed by Independent Power Producers or by Self-Generators, the tasks required by this sub-regulation will be limited to a general analysis of technical and financial requirements, and will take into consideration the work done by the Network Licensee during the Project Identification stage.

(3) The Commission or the Network Licensee, whichever is responsible for the development of the Business Case in accordance with sub-regulation 13 (2), shall:

- (a) prepare the Business Case;
- (b) determine if the Project is a technically, legally, environmentally, socially, and economically viable and meets the priorities of the electricity sector and of the Network Licensee;
- (c) structure the Project by clearly specifying outputs and allocating project functions and risks in a way that maximises value for money;
- (d) evaluate each candidate generation project against the Project Criteria for the Business Case Stage to ensure that it:
 - (i) achieves value for money;
 - (ii) is marketable and
 - (iii) is fiscally responsible.

(4) During the preparation for the developing the Business Case the Procuring Entity shall:

- (a) quantify the financial resources that should be necessary to cover the costs of the procurement of the project;
- (b) identify internal staff that shall be involved in the preparation of the Business Case and in the procurement of the project;

- (c) identify the type of external consultants, including the required professions and expertise, that should be hired to prepare the Business Case and to procure the project.
- (5) External advisors to be hired shall have previous experience in:
- (a) the field they are engaged to advise on;
 - (b) project development, evaluation, procurement and implementation;
 - (c) working with utilities on projects of a similar nature;
 - (d) Grenada or in the Caribbean region.
- (6) External advisors to develop, procure and implement a generation project may include, among others, economic, financial, technical and legal experts.
- (7) Economic and financial experts may be necessary to give advice on the structuring, evaluation and procurement of the project, and may provide assistance in:
- (a) conducting economic cost-benefit analyses;
 - (b) developing the Public-Sector Comparator and Market Comparator;
 - (c) developing the proposed commercial arrangements;
 - (d) developing bid evaluation criteria;
 - (e) assessing market interest;
 - (f) conducting bidder consultations;
 - (g) evaluating bids;
 - (h) evaluating contract amendments and variations;
 - (i) negotiating the final contract.
- (8) Technical experts may provide assistance in assessing the technical viability of the project including support in:
- (a) assessing project feasibility and environmental impacts;
 - (b) estimating costs;
 - (c) developing a concept level project design;
 - (d) specifying outputs;
 - (e) identifying technical risks;
 - (f) developing the technical components of the bid evaluation criteria;
 - (g) evaluating bids.
- (9) Legal experts may assist in:
- (a) developing the risk allocation matrix;
 - (b) structuring the Project;
 - (c) preparing the draft Power Purchase Agreements and/or other legal agreements;

- (d) preparing Request for Proposals;
- (e) analysing departures from the draft contract;
- (f) documenting the final contractual requirements.

(10) The Commission or the Network Licensee, whichever is responsible for the development of the Business Case in accordance with sub-regulation 13 (2), shall:

- (a) develop a Project Plan which shall:
 - (i) list all the tasks which are required to develop, evaluate, procure, and implement the project;
 - (ii) include the estimated time frames for their completion;
 - (iii) be used to coordinate the completion of works during the Business Case and Procurement stages, and to monitor the progress and keep on track works during the Business Case Stage;
- (b) develop a communication strategy for the project which shall guide all communications about the project, including public consultations and interactions with potential bidders, and which shall assist the Commission or the Network Licensee to ensure that:
 - (i) the project process and arrangements to be developed during the procurement process are responsive to stakeholders concerns;
 - (ii) communication with the public and private sectors is consistent during the Business Case as well as during the Procurement and Contract Management stages;
 - (iii) the project is commercially, socially and politically successful.
- (c) develop, as part of the communication tasks, a Stakeholder Analysis Matrix which shall:
 - (i) identify all stakeholder groups;
 - (ii) describe stakeholders' project interests, influences, and relevant background;
 - (iii) show how stakeholders may be kept informed about the project and engaged in a manner that is responsive to their concerns.
- (d) Develop, as part of the communication tasks, a Draft Communication Strategy which shall establish:
 - (i) when, how and in what order stakeholders should be engaged;
 - (ii) the consultation mechanisms to be used over a longer period of time by means of consultation documents, meetings or public hearings.
 - (iii) the means and requirements to involve each group of stakeholder, indicating:
 - 1. how each group should be maintained informed and engaged;
 - 2. key messages that should be conveyed to each group;

3. the most appropriate terminology or language for communicating those messages; and
4. the recommended method for communication.

14. Determination of project viability

(1) Once the Business Case has been prepared and the tasks detailed in sub-regulation 13 have been completed, the viability of each candidate generation project must be analysed and determined in accordance with the rules established in this regulation.

(2) The Commission or the Network Licensee, whichever is responsible for the development of the Business Case in accordance with sub-regulation 13 (2), shall review and manage information compiled during the Project Identification phase and shall:

- (a) determine whether or not it is updated;
- (b) update, review and complete the compiled information if necessary; and
- (c) determine, based on the information compiled and updated, whether or not the generation project is viable.

(3) Generation projects identified pursuant to previous regulations shall be considered viable if they meet the project viability criteria established in the Project Viability Chart included as Annex I.

(4) Generation projects that according to sub-regulation 14 (3) are not considered as viable shall not be further developed.

(5) Sub-regulations 14 (3) and (4) are not applicable to generation projects to be developed by self-generators.

(6) Generation projects to be developed by self-generators shall be:

- (a) subject to a general analysis of compliance of the technical and financial requirements; and
- (b) considered viable when they comply with paragraph (a).

15. Structuring of the proposed project

(1) After having determined that a specific generation project is viable, the Commission or the Network Licensee, whichever is responsible for the development of the Business Case in accordance with sub-regulation 13 (2), shall comply with the tasks specified in this regulation and shall structure the project through:

- (a) specifying outputs;
- (b) allocating functions;
- (c) allocating risks;
- (d) developing and indicating legal and financial structure.

(2) The outputs to be specified shall be:

- (a) specific, measurable, achievable, realistic and timely; and
- (b) clearly determined in measurable terms and shall, among others, include:
 - (i) details related to the basis for payment;
 - (ii) penalties and incentives;
 - (iii) specific provisions to be included in contracts or agreements related to the procurement of the project.

(4) The functions to be executed to structure the project may include:

- (a) design;
- (b) build;
- (c) finance;
- (d) operation and maintenance.

(5) The allocation of functions which need to be carried out when delivering the project shall be identified and allocated in a manner that maximises the value for money through maximising expertise, incentives and power in accordance with the following criteria:

- (a) specialisation and experience in the design, construction, maintenance or operation of the proposed generation facility, or in providing a service related to the generation facility are indicators of expertise;
- (b) incentives and penalties for performance shall be incorporated and considered, and shall include a case-by-case analysis;
- (c) the allocation of functions shall respect exclusive rights that certain parties, such as the Network Licensee, may have been granted to carry out certain activities.

(6) The Commission or the Network Licensee, whichever is responsible for the development of the Business Case in accordance with sub-regulation 13 (2), shall:

- (a) prepare a comprehensive list of all kinds of risks related to the project;
- (b) develop a comprehensive Risk Matrix; and
- (c) allocate risks in accordance with the principles detailed in sub-regulations 15 (8), (9) and (10).

(7) The Risk Matrix shall serve to:

- (a) finalize the proposed project structure;
- (b) evaluate the proposed project structure against the project criteria; and
- (c) draft the Engineering, Procurement and Construction Contract, the Power Purchase Agreement and other legal agreements.

(8) The functions identified pursuant to this regulation, shall subsequently be allocated in the best manner to maximise “value for money” and in accordance with the following principles:

- (a) Expertise:
 - (i) risks shall be allocated to the party who is best able to manage, mitigate and diversify the likelihood of the risk;
 - (ii) if a private party is responsible for certain function, such as the construction of a facility, such party should be also responsible for the construction risks because it is in a better position to prevent those risks;
 - (iii) if the Network Licensee is also experienced in performing a certain function, a comparison of its past performance with the one of potential bidders will be instructive;
- (b) Incentives: Allocate functions to a private party where it can be incentivised or penalised for performance;
- (c) Powers: If the function depends on a power or a certain exclusive right granted to a party such as the Network Licensee, or to a public entity, such power or exclusive right shall be an indicator that such function should be allocated to such public entity or Network Licensee.

(9) An indicative risk allocation matrix containing possible project finance structured options is included in Annex II.

(10) The Network Licensee or Independent Power Producer, whichever is responsible for the development of the Business Case in accordance with regulation 13 (2), shall identify and allocate material risks of the project using value for money principles and shall develop a comprehensive Risk Matrix that will serve to:

- (a) finalise the project structure;
- (b) evaluate the proposed project structure against the Project Criteria;
- (c) draft the Engineering, Procurement and Construction contract, the Power Purchase Agreement and/or other legal agreements.

(11) The Commission or the Network Licensee, whichever is responsible for the development of the Business Case in accordance with sub-regulation 13 (2), shall:

- (a) identify all project risks with the assistance of external advisors; and
- (b) allocate the identified risks between itself and the private party to be contracted to develop the project.

(12) The allocation of risks mentioned in paragraph (b) of sub-regulation 15 (11) shall be done in the best manner to maximise “value for money” and in accordance with the following principles:

- (a) manage: the risk shall be firstly allocated to the party best able to manage the likelihood of the risk eventuating;
- (b) mitigate: when a risk cannot be easily managed by either party, such risks shall be allocated to the party best able to mitigate it;
- (c) diversify: where a risk cannot be well managed or mitigated by either party, such risk shall be allocated to the party best able to absorb it at a lower cost;
- (d) the overall level of risk allocated to a private party shall be considered and when such level or risk is prohibitively costly or discourages private parties from bidding, the following may be done:
 - (i) rebalance the allocation of some shared risks, or
 - (ii) reduce the overall risk profile that a private party should bear.
- (e) symmetry of shared risks: the symmetrical provisions in risk allocations create entitlements to upside benefits, as well as liabilities from materialised risk.

(13) An indicative Risk Allocation Matrix is included as Annex III.

(14) Once the functions and risks have been allocated, the Commission or the Network Licensee, whichever is responsible for the development of the Business Case in accordance with sub-regulation 13 (2), shall diagram the likely legal and financial structure of the project which:

- (a) clarifies the financial and legal arrangements;
- (b) reflects the functions and risks that each party assumes.

(15) An indicative legal and financial structure diagram is included in Annex IV.

(16) The Government of Grenada may participate in the project structuring by means of defining and establishing incentives to promote specific candidate projects such as loans, grants, tax incentives, among others.

16. Submission of Business Case for approval

(1) Generation projects which, pursuant to a decision of the Commission adopted in accordance with sub-regulation 10 (10), is to be developed by the Network Licensee shall require the approval of the Commission in accordance with the following:

- (a) once the tasks indicated in sub-regulations 13, 14 and 15 are complied with, the Network Licensee shall submit the Business Case to the Commission for approval;
- (b) the submission of the Business Case shall at least contain:
 - (i) a project summary sheet listing key aspects of the project including a description of the project, of its structure, of its major risks and estimated costs;
 - (ii) a statement of evaluation from the Network Licensee stating:
 - 1. a description of the criteria used to prepare and evaluate the Business Case;
 - 2. the source and type of information used to evaluate compliance of the required criteria;
 - 3. a comparison between the costs of the chosen technology with the costs of other alternative technologies;
 - 4. that the project is consistent with the generation expansion plans of the Network Licensee approved by the Commission;
 - 5. Impacts, either positives or negatives, which the project would have on the tariff and quality of service of such Network Licensee.

(2) Projects whose approval is requested in accordance with sub-regulation (16) (1) may be submitted individually or as part of the generation expansion plan of the Network Licensee.

(3) The Commission shall not approve the Business Case of generation projects which:

- (a) have not met the required criteria; or
- (b) are not sufficiently supported.

PART V – TRANSACTION

17. Transaction and procurement

(1) Generation projects that have fulfilled all the requirements established in regulations 13, 14, 15 and 16 shall proceed to the Transaction stage for its procurement.

(2) The Commission shall act as Procuring Entity of a project.

(3) The Procuring Entity shall:

- (a) be responsible for managing the Transaction stage;
- (b) preparing and completing the procurement process;
- (c) comply with the conditions and tasks indicated in this Part.

(4) The procurement of generation projects shall promote competition, efficiency, probity and transparency.

(5) The Transaction stage shall comply with the process described in this Part, which include the following phases:

- (a) preparation for Transaction;
- (b) draft of Power Purchase Agreement, licence, procurement contracts and other agreements;
- (c) qualification of bidders;
- (d) preparation of Request for Proposals;
- (e) issuance and management of Request for Proposals;
- (f) commercial and financial close.

18. Preparation for Transaction

(1) In order to prepare the generation project for Transaction, the Procuring Entity shall:

- (a) update the project plan;
- (b) engage advisors or consultants if necessary;
- (c) complete a Transaction checklist to ensure that the project is ready for procurement.

(2) The project plan prepared during the Business Case stage shall be updated and shall be used to coordinate the completion of tasks and reviews, and to monitor the progress of the transaction stage.

(3) The specific professions, experience and specific qualifications of consultants who will act as advisors of the Procuring Entity during the transaction stage shall be identified.

(4) The Request for Proposal and procurement process to hire the consultants mentioned in sub-regulation 18 (3) shall be launched and completed.

(5) The Procuring Entity shall prepare a checklist to ensure the project is ready to proceed with Transaction, by determining whether or not:

- (a) the conclusions of the Business Case are still relevant;
- (b) the list of tasks outlined in the Project Plan is comprehensive;
- (c) the scope of the tasks outlined in the Project Plan is appropriate;
- (d) the staff of the Commission or of the Network Licensee has the necessary qualifications and experience to complete each task;
- (e) the timing of tasks is realistic;
- (f) the communication strategy for the project needs to be updated.

(6) The procurement of the generation project shall not be initiated if the tasks described in sub-regulations 18 (1), (2), (3), (4) and (5) have not been completed.

(7) A diagram of the recommended procurement process is contained in Annex V.

19. Preparation of procurements documents, draft licence and Power Purchase Agreement

(1) The Procuring Entity shall draft contractual agreements and carry out the tasks and duties established in this regulation.

(2) When in accordance with sub-regulation 13 (2) the generation project is to be developed, owned and operated by an Independent Power Producer, a Power Purchase Agreement and other legal agreements shall be drafted in accordance with the requirements established in sub-regulation 19 (3) and in compliance with the Electricity Act.

(3) The Power Purchase Agreement and other legal agreements shall be enforceable and shall reflect the structure developed and approved at the Business Case stage.

(4) Standard Power Purchase Agreements may be used for small and medium scale generation projects.

(5) Any other legal agreements that may be necessary for the procurement and development of the generation project shall be drafted at this stage and include:

- (a) an implementation agreement which may specify obligations assumed by the Government in supporting the generation project, such as the ones mentioned in sub-regulation 19 (6);
- (b) financing agreements when the Government provides any kind of financing;
- (c) guarantees when any kind of guarantee from the Government is provided.

(6) The role and obligations of the Government with regard to the generation project may also include:

- (a) assistance in land acquisition or use, in which case the rights and obligations of the Government and of the private investor in terms of land acquisition and easements shall be specified;
- (b) tax and duty waivers may be granted to waive or limit taxes and custom duties;
- (c) immigration clearances.

(7) A diagram indicating the lifecycle of a Power Purchase Agreement is included in Annex VI.

20. Power Purchase Agreement

(1) The Power Purchase Agreement shall at least specify:

- (a) rights and obligations of the licensee, of the Network Licensee and of the authorities of Grenada, including the Commission and the Minister;
- (b) specific outputs identified in the Business Case expressed in a clear and legally enforceable manner;
- (c) performance service standards;
- (d) arrangements to monitor and enforce the Power Purchase Agreement;
- (e) payments due;
- (f) changes external to the contract;
- (g) dispute resolution mechanisms;
- (h) termination provisions.

(2) The specific outputs to be included in the Power Purchase Agreement include:

- (a) the amount of electricity to be generated and sold to the Network Licensee;
- (b) energy capacity and ancillary services;
- (c) availability of the generation facility;

- (d) exceptions or contingencies clearly indicated, including provisions related to force majeure and forced outages;
- (e) performance service standards which shall be measurable;
- (f) all services that the Independent Power Producer shall provide.

(3) The arrangements to monitor and enforce the Power Purchase Agreement shall include:

- (a) performance monitoring arrangements indicating information to be provided and gathered, and the respective competences and obligations of the producer, of the Network Licensee, of the Commission and other authorities of Grenada;
- (b) auditing arrangements;
- (c) incentives and sanctions of any kind applicable in cases of compliance or breach of obligations, respectively, established in the Power Purchase Agreement and/or in other legal agreements.
- (d) sanctions may include, among others, warnings, economic penalties and termination of contract.

(4) Payments due by the Network Licensee to the Independent Power Producer may have the following components:

- (a) a capacity charge applicable in case of firm energy projects or variable renewable energy projects with sufficient storage capacity and which shall cover:
 - (i) debt service;
 - (ii) return on equity;
 - (iii) fixed operations and maintenance costs;
 - (iv) overhead costs; insurance and similar expenses;
 - (v) the cost of providing ancillary services.
- (b) an output charge applicable in case of firm and intermittent electricity projects related to the electricity generation costs, which includes:
 - (i) a variable fuel charge, if applicable, which covers the cost of fuel used to generate electricity; and
 - (ii) a variable operations and maintenance charge.
- (c) a fixed output charge which covers all costs of the Independent Power Producer and which is applicable when a fix tariff per kWh produced is paid throughout the term of the Power Purchase Agreement;

(5) Other payments due under the Power Purchase Agreement may include the arrangements and costs linked to the electricity supplied to the Independent Power Producer by the Network Licensee;

(6) Payments arrangements shall:

- (a) be linked to performance and subject to compliance with outputs and service standards specified in the Power Purchase Agreement;
- (b) be indexed to factors with track costs such as fuel costs indices or labour costs;
- (c) in case of variation of labour costs, be indexed only when:
 - (i) such variation is reflected in a national labour index or any other kind of index; and
 - (ii) it is not linked to a variation of the labour costs that exclusively affects the Independent Power Producer;
- (d) contain structured adjustment mechanisms, to adjust variable payment mechanisms to changing circumstances.

(7) Changes external to the contract shall detail how any right and obligation established in the contract may change due to external factors such as:

- (a) change in laws which causes a modification of the costs of the generation project;
- (b) operating environment;
- (c) others.

(8) Dispute resolution mechanisms shall be established and applicable in disputes related to the Power Purchase Agreement, and shall:

- (a) ensure an efficient process under which the dispute may be solved in a short term;
- (b) not allow the interruption of service;
- (c) detail the process to be followed;
- (d) indicate the different dispute resolution mechanisms which shall be applicable, such as negotiation, mediation, conciliation or arbitration.

(9) Termination provisions shall include:

- (a) termination for expiration of term of the licence;
- (b) other grounds for early termination of licence.

21. Generation licence

(1) A generation licence shall be drafted by the Commission in compliance with sections 13, 14, 15, 17, 18, 19, 20, 21, 22, 23 and 24 of the Electricity Act, and with other

applicable sections of the Electricity Act, of the Public Utilities Regulatory Commission Act and of any applicable regulation.

(2) When in accordance with sub-regulation 13 (2) the generation project is to be developed by Independent Power Producer, the generation licence shall be granted to the winner of the competitive procurement process.

(3) When in accordance with sub-regulation 13 (2) the generation project is to be developed by the Network Licensee, the Minister may opt for:

- (a) granting a new and separate generation licence to allow for the construction of the new generation facilities; or
- (b) modifying the generation licence in force.

22. Procurement contract

(1) When in accordance with sub-regulation 13 (2) the generation project is to be developed by the Network Licensee, such Network Licensee shall comply with the procurement requirements and rules established in applicable acts and legislation, and in its licence.

(2) In the case described in sub-regulation 22 (1), the Network Licensee shall draft the contracts for the services to be procured which shall:

- (a) comply with international best practice standards; and
- (b) adhere and comply with international standards referred to the equipment, facilities or services to be procured, such as the ones recommended by the International Federation of Consulting Engineers (FIDIC) for engineering, procurement and construction contracts.

(3) At the conclusion of the competitive procurement process where the generation project is to be developed by the Network Licensee, the Licensee shall bear the burden to prove, and shall promptly submit to the Commission evidence demonstrating, that its procedures for, conduct of, and award of the procurement was carried out on a fair, transparent and arm's length basis as to prospective participants and all parties that actually participated in the competitive process.

(4) An Affiliate of the Licensee, and Affiliates of such Affiliates, may participate in the competitive procurement provided that:

- (a) such Affiliate is treated on the same arm's length basis and on the same terms and conditions that apply to unaffiliated parties participating in the competitive procurement process;

- (b) the Licensee proves that the award to an Affiliate under a competitive procurement process meets the standards required by this regulation.

23. Qualification of bidders

(1) The Procuring Entity shall engage in prequalification of bidders with a view towards identifying, prior to the submission of proposals, contractors that are qualified and shall:

- (a) set the bidder qualification process and criteria;
- (b) draft the documents related to the Request for Qualification;
- (c) market the opportunity and invite bidders to prequalify in accordance with the requirements of this regulation;
- (d) short-list qualified bidders.

(2) The selection criteria applicable to the qualification of bidders shall be clear, measurable and objectively verifiable and shall contain:

- (a) all legal requirements such as:
 - (i) that they are not insolvent, in receivership, bankrupt or being wound up, and that their business have not been suspended;
 - (ii) that they have fulfilled specific obligations in Grenada, such as payment of taxes, etc.;
 - (iii) that they and their directors have not been convicted of any of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract in Grenada;
- (b) the required technical criteria which shall be used to evaluate the experience and expertise of bidders and of the team proposed for the project;
- (c) the financial criteria which shall be used to evaluate bidders financial capacity for carry out the generation project;

(3) The Request for Qualification shall include the following documents:

- (a) a Project Brief containing a description of the project and of the principal required terms and conditions of the procurement contract;
- (b) all applicable qualification criteria;

- (c) an instruction to interested parties setting out the timeline and all formal requirements applicable to the submission of applications for qualification;
 - (d) template forms to be completed to submit an application for qualification;
 - (e) any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;
 - (f) the manner and place for the submission of applications to prequalify and the deadline for such submission, expressed as a specific date and time as well as any other requirement for qualification;
 - (g) the rules governing the process which shall include:
 - (i) rules prohibiting collusion and other illegal and prohibited practices;
 - (ii) the rule excluding government liability and the right of the Government of Grenada to decide not to proceed with the procurement process.
- (4) Before receiving applications for qualification, the Request for Qualification:
- (a) shall be broadly marketed by putting advertisements in the local and international trade press as well as on online national and international websites;
 - (b) shall be made available for download on the website of the Government of Grenada or of the Commission;
 - (c) may be advertised by other means such as meetings.
- (5) Once the Request for Qualification has been issued, the Procuring Entity shall:
- (a) receive applications for qualification;
 - (b) evaluate and score applications for qualification in accordance with the evaluation criteria established in the Request for Qualification;
 - (c) make a decision with respect to the qualifications of each contractor who has submitted an application to prequalify and such decision shall be made applying only the criteria set forth in the Request for Qualification;
 - (d) prepare a qualification report which lists the evaluation results and the applicants that have been qualified.
- (6) When in accordance with sub-regulation 13 (2) the generation project is to be developed by the Network Licensee, such Network Licensee shall submit the results of its

evaluation described in sub-regulation 23 (4) and of its proposal related to the bidders to be prequalified to the Commission for its review and approval.

(7) No prequalification shall be valid without obtaining the previous approval of the Commission.

(8) The Procuring Entity shall inform the list of prequalified bidders and shall:

- (a) notify each applicant submitting an application to prequalify whether or not it has been prequalified; and
- (b) publish the list of prequalified applicants on the website where the Request for Qualification was published.

24. Post-qualification

(1) Post-qualification is a procurement process in which there is no prequalification stage and in which all interested parties are allowed to submit their proposals upon a Request for Proposals.

(2) The Procuring Entity may opt for post-qualification:

- (a) in any of the following situations:
 - (i) when there is a need to complete the procurement process quickly and the time required for prequalification would imply an important delay; or
 - (ii) when there is need for a wide field of competition; or
 - (iii) when it is considered desirable for bidders not to know which other firms may be bidding;
- (b) provided that the Procuring Entity is confident that:
 - (i) quality bids will be received even without prequalification; and
 - (ii) rejection of bids that are non-qualified will be defensible.

(3) In a post-qualification process the Request for Proposals shall set the qualification criteria which shall comply with the requirements established in sub-regulation 23.

25. Preparation of Request for Proposals

(1) The Procuring Entity shall prepare the Request for Proposal by:

- (a) setting the process and criteria for evaluating bids; and
- (b) assembling the documents that form the Request for Proposal.

(2) The process for evaluating bids will preferably comprise a three evaluation process which comprises:

- (a) a statement of qualification where bidders must demonstrate again that they still meet the qualification criteria;
- (b) a technical proposal; and
- (c) a financial proposal.

(3) The Procuring Entity shall evaluate:

- (a) the statement of qualification to reconfirm just those bidders who proved that they still meet the qualification criteria;
- (b) the technical proposal which shall serve as a basis to:
 - (i) score each proposal based on its technical qualifications; and
 - (ii) reject technical bids that do not comply with the minimum technical and financial criteria established in the Request for Proposals;
- (c) the financial proposal.

(4) The statement of qualification, the technical proposal and the financial proposal shall be submitted by each bidder in three separate envelopes.

(5) If any bidder fails to comply with the criteria required in each one of the stages and for each one of the proposals described in sub-regulation 25 (2), such bid shall be automatically rejected and the remaining envelopes of such bidder shall be sent back unopened.

(6) The Procuring Entity may determine a different evaluation process where, for instance, technical and financial scores are combined to give an overall score, with the preferred bidder being the one with the highest overall score.

(7) In all cases, the evaluation criteria shall be established in the Request for Proposal and the evaluation of proposals shall never deviate from such criteria.

(8) The Procuring Entity shall prepare the technical evaluation criteria which comprise proposed methodology, implementation structure and management team.

(9) The Request for Proposal shall indicate how technical and financial proposals shall be evaluated, weighted and scored.

(10) The Procuring Entity shall specify in the Request for Qualification:

- (a) all formal conditions for submitting proposals including:
 - (i) deadline for submitting bids; and

- (ii) required manner, content and form of applications;
- (b) rules applicable to bid handling including arrangements related to management and opening of bids in order to ensure that bids are securely held either in case of electronic submissions of proposals as well as in case of submissions in paper.

(11) The Procuring Entity shall subsequently draft and assemble all the documents that form the Request for Proposals, which in general comprise:

- (a) an Information Memorandum containing a description of the commercial principles of the Project as well as an indication of the public authorities and private actors with whom the contractor will have to interact;
- (b) the draft Power Purchase Agreement as well as other legal agreements;
- (c) the evaluation criteria and process;
- (d) instructions to bidders containing the rules governing the process, including:
 - (i) when and how bids must be received;
 - (ii) prohibitions of bid-rigging, such as market allocation, cover bidding, bid rotation or bid suppression, and other collusive practices; and
 - (iii) reservation of the Commission or the Network Licensee's rights to alter the process, or to refuse to accept any bid, at its discretion.
- (e) proposal templates setting out the information requirements and structure required for the proposals to be submitted.

26. Issuance of Request for Proposals and management of bids

(1) Once the Request for Proposals is prepared, the Procuring Entity shall issue it and manage the bid preparation period in accordance with this regulation.

(2) The Procuring Entity shall contact qualified bidders by notifying the contact person identified in the bidders' Statement of Qualification.

(3) Bidders shall have the term indicated in the Request for Proposals to prepare and submit their bids, and to interact with the Procuring Entity.

(4) Permitted interaction between the Procuring Entity and the bidders before the submission of bids comprise:

- (a) pre-bid meetings;
 - (b) responses to requests for clarifications and changes.
- (5) Pre-bid meeting may be organised by the Procuring Entity in order to:
 - (a) brief qualified bidders on the project, commitments and objectives of the Government;
 - (b) answer questions related to the Request for Proposal, Power Purchase Agreement and other legal agreements;
 - (c) increase bidder confidence in the quality of the Project and process;
 - (d) request opinion of bidders related to the Request for Proposal, Power Purchase Agreement and other legal agreement as well as with regard to possible barriers which may prevent or limit incentives to the development of the generation project;
- (6) The Procuring Entity:
 - (a) may organise pre-bid meetings in an open forum with all bidders or in individual sessions; and
 - (b) in case of a pre-bid meeting organised in an open forum with all bidders, in which case:
 - (i) the risk of reduction of competition or facilitation of collusion that such kind of meeting it might create should be considered; and
 - (ii) rules to ensure that no bidder is provided with information that might give him an advantage over other bidders shall be established.
 - (c) may recommend modifications to the draft Power Purchase Agreement or other legal agreement after the pre-bid meeting, particularly when those amendments:
 - (i) were requested by many bidders;
 - (ii) were requested by a specific bidder that is particularly desirable due to its technical or financial capacity, means, expertise, experience or to other objective qualifications;
 - (iii) make sense taking into consideration a public-interest perspective; or
 - (iv) promote competition.
- (7) Any modification to the Request for Proposal shall be:
 - (a) made by issuing addenda to the Request for Proposal; and
 - (b) notified immediately and simultaneously to all bidders.

- (8) Request for clarifications shall be:
- (a) submitted in writing while telephone contacts shall be prohibited;
 - (b) sent to the named person, contact addresses including emails identified in the Request for Proposals; and
 - (c) replied:
 - (i) in writing; and
 - (ii) by the person appointed at the Procuring Entity to respond questions and request for clarifications, with the assistance of legal advisors or other staff of the Procuring Entity if necessary.
- (9) Answers to the questions or request for clarifications shall be informed to all bidders.
- (10) The Procuring Entity may set up a data room to provide all relevant information related to the generation project and to its procurement, and such data room:
- (a) may be physical or virtual, such as a website;
 - (b) shall ensure equal access to it;
 - (c) shall contain as much information as possible;
 - (d) shall facilitate the preparation of the proposal but prevents dissemination of confidential information.

27. Reception of proposals

- (1) The Procuring Entity shall be responsible for receiving proposals and such task comprises:
- (a) making available a tender box for physical submission at required times, and/or a secure and appropriate electronic process for receiving bids;
 - (b) logging bids received by the deadline for proposal submissions;
 - (c) public opening and reading out prices of bids;
 - (d) rejection of bids received after the deadline for proposal submissions, except if late bids were allowed by the Request for Proposals;
 - (e) ensuring that all bids remain confidential to the entity evaluating until the evaluation is complete.

28. Evaluation of proposals and selection of preferred bidder

- (1) The Procuring Entity shall evaluate bids in accordance with the evaluation criteria and process established in the Request for Proposals.
- (2) Evaluation of proposals generally involves:
- (a) checking completeness and conformity of bids;

- (b) reconfirming qualifications to ensure that bidders still meet the qualification criteria;
 - (c) evaluating the technical proposal;
 - (d) evaluating the financial proposal;
 - (e) drafting the evaluation report which should specify:
 - (i) which bidders were dropped from consideration because they did not:
 - 1. demonstrate qualifications; or
 - 2. achieve the minimum technical score;
 - (ii) which bidder is evaluated highest, and the ranking of the other bidders;
 - (iii) risks of any kind, uncertainties or significant qualifications to the bid documents which might affect the ranking of bidders or the ability to sign an agreement with the highest evaluated bidder.
- (3) When the Procuring Entity is the Commission:
- (a) the evaluation report which identifies the preferred bidder shall be sent to the Minister for its review; and
 - (b) the generation licence will be granted by the Minister in accordance with the Electricity Act.
- (4) When the Procuring Entity is the Network Licensee, the Network Licensee shall not initiate final contract negotiations before:
- (a) sending the evaluation report which identifies the preferred bidder to the Commission for its review and approval;
 - (b) obtaining the approval of the Commission.
- (5) When the Commission is not tendering a specific generation project but the modification of generation capacity from small to medium scale Independent Power Producers, the selection criteria may vary in accordance with the following:
- (a) the Commission may invite potential Independent Power Producers with self-generation projects to participate in a tender for a maximum generation capacity;
 - (b) depending on the financial evaluation criteria all eligible bidders might turn out to be winners provided that their combined generation capacity does not exceed the overall volume of the tender.

- (6) If only one bid is received, the Procuring Entity should:
 - (a) in principle accept such bid;
 - (b) not accept such bid and retender the Project when it has reasons to believe that:
 - (i) the bidder knew that there would be no competitors, and
 - (ii) more bidders would participate if the Project was retendered.
- (7) If the preferred bidder proposes significant changes to the draft Power Purchase Agreement or to the procurement contract, the Procuring Entity might choose to select the second ranked bidder.
- (8) If in case of Independent Power Producer projects, the bids shall be evaluated by comparing them to the cost of developing the project by the Network Licensee and:
 - (a) if the best evaluated bid offers better value for money, the Commission should proceed with the Transaction;
 - (b) if the best evaluated bid offers worse value for money the Procuring Entity should:
 - (i) require additional information on the cost of the service or on the asset that was available before the initiation of the Transaction stage;
 - (ii) if the information required by paragraph (i) is sent, the Network Licensee may be asked to recalculate its own costs for developing the project based on the information received;
 - (iii) if the bid offers better value for money than the recalculated costs of the Network Licensee, the Commission shall accept the bid;
 - (iv) if the bid does not offer better value for money than the recalculated costs of the Network Licensee, the Commission shall not accept the bid and may opt for:
 - 1. making consultation with two or more of the best bidders in order to ask for better and final offers, modifying contract terms to a limited extent if this appears justified;
 - 2. redesigning the Project structure and retendering it;
 - 3. granting the project to the Network Licensee;
 - 4. not proceeding with the project.

29. Commercial and financial close

- (1) The transaction stage is complete when it has both commercial and financial close.

(2) Commercial close occurs when all the project agreements related to the generation project have been negotiated and signed with the preferred bidder.

(3) When the Procuring Entity is the Network Licensee the signature of all project agreements related to the generation project requires the previous approval of the Commission in accordance with sub-regulation 29 (11).

(4) Financial close occurs when all the project and financing agreements have been signed and all the required conditions contained in them have been met, thus enabling funds to start flowing so that project implementation can actually start.

(5) If necessary and in order to reach commercial close, the Procuring Entity must negotiate with the preferred bidder the final terms of all project contracts, including the Power Purchase Agreement, procurement contract and/or any other legal agreement related to the construction linked to the generation project.

(6) Negotiation may be necessary or recommendable in order to:

- (a) clarify specific elements of the Power Purchase Agreement, procurement contract and/or any other legal agreement;
- (b) adjust the Power Purchase Agreement, procurement contract and/or any other legal agreement to the terms of the proposal of the preferred bidder;
- (c) help to ensure that the project meets the requirements of the eventual lenders of the Independent Power Producer.

(7) Negotiations shall be done in a structured way, with a defined time frame and may be conducted:

- (a) only with the preferred bidder; or
- (b) with the first and second ranked bidders in parallel in any of the following cases:
 - (i) when a deal that offers the best value for money with the second ranked bidder is considered possible; or
 - (ii) when negotiations with the preferred bidder reach an impasse; or
 - (iii) in the case mentioned in sub-regulation 29 (9).

(8) To start negotiation, the Procuring Entity must inform the preferred bidder of:

- (a) its intention to negotiate;
- (b) all elements that need to be negotiated;
- (c) the time frame within which negotiations should be concluded.

(9) If any matter subject to negotiation is not resolved within the allotted time, the Procuring Entity should initiate negotiations with the second ranked bidder.

(10) Once negotiations conclude satisfactorily, all project contracts may be signed subject to the previous compliance of requirements established in sub-regulation (11).

(11) When the Procuring Entity is the Network Licensee, the signature of all project contracts related to the generation project requires that the final versions of all project contracts, including the Power Purchase Agreement, procurement contract and/or any other legal agreement related to the generation project, have been previously:

- (a) submitted to the Commission for its review; and
- (b) approved by the Commission.

(12) To achieve financial close the Procuring Entity:

- (a) may identify and monitor risks, and involve the identified lenders of the project in the negotiations when that is necessary to:
 - (i) mitigate risks; and
 - (ii) facilitate financial close;
- (b) ensure that all conditions for financial close were achieved, which may require:
 - (i) finalising and executing all project agreements;
 - (ii) securing final approvals from all governmental authorities;
 - (iii) securing construction permits and planning approvals;
 - (iv) commencing or completing project land acquisition.

PART VI – CONTRACT MANAGEMENT

30. Contract Management stage

(1) Once the commercial and financial close are achieved, the Contract Management stage is initiated in order to ensure that the Parties to the Power Purchase Agreement, to the procurement contract and/or to any other legal agreement related to the generation project comply with the terms and provisions of those agreements.

(2) To achieve the goals of this stage, the following tasks must be fulfilled:

- (a) define contract management roles and responsibilities and establish an operating committee;
- (b) establish contract management processes and tools;
- (c) monitor service delivery and risks; and
- (d) manage changes.

31. Contract management team: the Operating Committee

(1) An Operating Committee responsible for monitoring, managing and enforcing the Power Purchase Agreement, the procurement contract and/or to any other legal agreement shall be created in accordance with this regulation.

(2) Members of the Operating Committee shall be appointed as follows:

- (a) each one of the parties to the Power Purchase Agreement and the Commission shall appoint the same, even number of representatives to the Operating Committee; and
- (b) the Head of the Operating Committee shall be appointed by the Commission.

(3) The Head of the Operating Committee shall:

- (i) administer and manage the Operating Committee; and
- (ii) be appointed because of his/her experience in the field relevant for the project, and
- (iii) have:
 - 1. the necessary skills and ability to understand legal contracts and language,
 - 2. experience in monitoring performance and in taking corrective actions in cases of breach of contract and performance obligations;
 - 3. ability to understand financial statements and risks, and
 - 4. good communication skills.

(4) The number of members of the Operating Committees should be defined in the project contracts signed during the commercial close.

(5) The Operating Committee shall comply with the governance obligations and shall have the specific functions and powers detailed in the project contract signed during the commercial close and/or in its Statute.

(6) Every decision of the Operating Committee shall be taken:

- (a) in meetings that have the quorum required by sub-regulation 31 (7);
- (b) by majority of votes of the members who are present in such meeting, and in the event of equality of votes the Head of the Operating Committee shall have a casting vote.

(7) Meetings shall have a quorum when at least half plus one of the members of the committee are present.

(8) The Operating Committee shall meet as often as it deems necessary but not less than once (1) every six (6) months, upon an invitation from the Head of the Operating Committee.

(9) A number of members of the Operating Committee representing at least (40) percent of its members may apply in writing to the Head of the Operating Committee to convene a meeting to discuss specified matters, in which case the meeting shall be held no later than thirty (30) days from the date of reception of such request

(10) Unless a different term is specified in the project contract, members of the Operating Committee shall hold office for two (2) years, and may be reappointed at the end of their term but only for one additional term.

(11) The term of members of the Operating Committee, including of the Head of the Operating Committee, shall be terminated if such member:

- (a) is declared bankrupt;
- (b) is convicted of a criminal offence involving dishonesty, fraud or moral turpitude;
- (c) is unfit to continue in office by reason infirmity of body and mind;
- (d) commits any offence which calls into question his or her professional standing.

32. Contract management processes and tools

(1) Processes and tools related to the management of the contract shall be established, and processes should define the responsibilities and communication mechanisms that will enable an effective relationship between the Parties to the Power Purchase Agreement.

(2) The following processes and tools shall be defined by the Commission during the Business Case Stage and the Transaction Stage:

- (a) communication protocols;

- (b) contract management matrix;
- (c) risk management plan;
- (d) fiscal risk monitoring, if applicable.

(3) Communications protocols shall define the kind of information to be communicated, to whom and when it shall be communicated, and they shall rule communication between:

- (a) the Independent Power Producer and the Network Licensee;
- (b) the Parties to the Power Purchase Agreement and the Commission;
- (c) the Independent Power Producer and other Governmental agencies and authorities;
- (d) the Network Licensee and other Governmental agencies and authorities.

(4) A contract management matrix shall be created by the Commission at the Transaction Stage, later adjusted as necessary in accordance with the terms of the project contract and shall:

- (a) include all tasks that need to be done or monitored, by either Party, on a regular basis during the contract management phase;
- (b) typically comprise:
 - (i) performance standards as set out in the Power Purchase Agreement and in other legal agreements;
 - (ii) arrangements to measure those performance standards;
 - (iii) payments as set out in the Power Purchase Agreement and other legal agreements, including amount and frequency of payments, including payments for contingencies.
 - (iv) monitoring arrangements set out in the Power Purchase Agreement and clarified within the roles of the Operating Committee, with specifications related to the type and frequency of monitoring, and what and who is to be monitored.

(5) The Head of the Operating Committee should create a Risk Management Plan, which

- (a) may be in matrix form; and
- (b) shall identify and list the major risks the project is exposed to, which will be drawn from the Risk Matrix prepared at the Business Case Stage.

(6) For each risk, the Risk Management Plan should identify:

- (a) which party the risk is allocated to;
- (b) which contract terms achieve such risk allocation;
- (c) the fiscal risks and their importance;
- (d) which risk might undermine the viability of the project and their importance;
- (e) the information needed to monitor the risk;
- (f) possible actions to mitigate the risk or its impact, where this may be controlled.

(7) When public funds are tied to the generation project, a Fiscal Risk Report shall be periodically sent to the Ministry responsible for finance, in order to allow such Ministry to:

- (a) monitor the fiscal risks of the project; and
- (b) be informed of projects that might have an adverse fiscal impact.

(8) A Fiscal Risk Report should list:

- (a) major fiscal risks posed by the project, identified in the Business Case analysis, and updated during the Business Case and commercial close;
- (b) indicators for the likelihood of these risks eventuating;
- (c) other indicators of the project's stability.

(9) A Fiscal Risk Report shall be:

- (a) prepared and completed by the Independent Power Producer;
- (b) submitted by the Independent Power Producer to the Head of the Operating Committee;
- (c) forwarded along with any other issues that might have fiscal implications by the Head of the Operating Committee to the Ministry responsible for finance;; and
- (d) used by the Ministry responsible for finance to monitor the fiscal risk of the contract.

33. Monitoring service delivery and risks

(1) The Head of the Operating Committee shall:

- (a) monitor compliance of agreements by the Independent Power Producer as well as its service performance;
- (b) ensure that penalties or bonuses established in those agreements are efficiently and appropriately applied;
- (c) monitor and ensure compliance by the Network Licensee with its obligations under the Power Purchase Agreement;

- (d) monitor and mitigate risks.
- (2) During the construction phase, the Head of the Operating Committee shall:
 - (a) be responsible for ensuring that the generating facility is being constructed in accordance with the required specifications and quality; and
 - (b) if necessary, identify and engage the external assistance that may be necessary in this task, such as an independent engineering firm to have oversight over the construction.
- (3) During the operations phase:
 - (a) the Independent Power Producer shall prepare regular reports related to the compliance of targets and service standards, which should be required by the Power Purchase Agreement, and
 - (b) the Head of the Operating Committee shall:
 - (i) regularly receive and control the accuracy of the information contained in the reports submitted by the Independent Power Producer; and
 - (ii) take actions in case of shortfalls in performance, in accordance with contractual rules, which may involve contract enforcement and application of penalties.
- (4) To comply with the tasks indicated in sub-regulation 33 (3) (b), the Head of the Operating Committee shall ensure independent verification of the information provided by the Independent Power Producer, which may require:
 - (a) hiring independent auditors, who shall:
 - (i) be given unfettered access to the premises, records, and data collection systems of the Independent Power Producer; and
 - (ii) whose audits shall be done periodically, with or without previous notification to the Independent Power Producer.
 - (b) supplement audits with feedback from the Network Licensee;
 - (c) involve the Commission in part of the monitoring system, for example in:
 - (i) requiring information to the Independent Power Producer;
 - (ii) enforcing the Power Purchase Agreement; or
 - (iii) applying penalties.

- (5) The Head of the Operating Committee shall:
- (a) monitor compliance with the Power Purchase Agreement by the Network Licensee and by other entities, including Governmental agencies and authorities; and
 - (b) adopt the actions established in the Power Purchase Agreement in case of breaches, including the application of penalties when such competence has been granted to him/her.

- (6) The Head of the Operating Committee shall:
- (a) follow the risk management plan, monitoring the levels of risks indicators against expected values; and
 - (b) investigate and identify corrective actions when indicators stray from expected levels;
 - (c) getting reports; and
 - (d) have a thorough understanding by different means, including:
 - (a) carrying out investigations;
 - (b) making personal visits to the facilities;
 - (c) establishing communication with the Parties to the Power Purchase Agreement;
 - (d) identifying necessary corrective actions.

34. Managing change

(1) The Power Purchase Agreement shall contain rules to deal with changes that might occur during the term of the contract and that might have an impact on the contract and on its parties, including:

- (a) dispute resolution;
- (b) force majeure and
- (c) termination provisions.

(2) If it is necessary to resort to any of the mechanisms mentioned in sub-regulation (1), the Head of the Operating Committee should:

- (a) analyse whether or not members of the Operating Committee have the necessary skills and expertise; and
- (b) determine if an external advisor may be needed, such as legal advisor.

ANNEX I: PROJECT VIABILITY CHART

| Viability Criterion | Definition | Information Needed | Utility/PURC Analysis | Inputs for Later tasks |
|---|---|--|--|--|
| Effective in meeting the electricity sector's objectives | The project effectively meets the sector's objectives, and is consistent with sector strategy and relevant development plans | <ul style="list-style-type: none"> - Description of project objectives - Sector planning and policy documents - List of sector's existing and planned assets and services - Relevant development plans | <ul style="list-style-type: none"> - Check that information is up-to date and complete - Analyse against Project criterion. | Statement of how the project will meet the sector's objectives and aligns with sector policy |
| Technically feasible | The Project can be implemented technically, as planned, using known and proven technologies and engineering methods | Engineering feasibility study produced by a reputable firm with expertise in this type of project | <ul style="list-style-type: none"> - Check that the feasibility study says it is viable. - Examine risks, caveats, and prerequisites | List of technical risks |
| Legally feasible | All aspects of the Project are permitted by law, parties that will be involved are legally empowered to complete their responsibilities | Legal due diligence and opinion by a reputable law firm with knowledge of this type of project | <ul style="list-style-type: none"> - Check that the opinion says the project is legally viable. - Examine risks, caveats, and | List of legal risks |

| Viability Criterion | Definition | Information Needed | Utility/PURC Analysis | Inputs for Later tasks |
|----------------------------------|--|---|--|---|
| | under the project, and required agreements can be made legally binding on all parties. | | prerequisites for viability | |
| Environmentally compliant | Environmental impacts of the Project are in compliance with environmental laws and regulations, or the necessary permits can be obtained for the Project to be compliant | Environmental impact assessment prepared by a reputable firm with knowledge in the area | <ul style="list-style-type: none"> - Check that the assessment says the project is feasible - Examine risks, caveats, and prerequisites for Project compliance | <ul style="list-style-type: none"> - List of environmental risks - List of environmental costs and benefits |
| Socially sustainable | All substantial social impacts have been assessed, stakeholders have been given ample opportunity to provide feedback and voice concerns, mitigation solutions have been incorporated into the Project | <ul style="list-style-type: none"> - Social impact assessment identifies affected parties and the Project's likely impact on those parties. - Stakeholder Analysis Matrix is updated with the results of public consultations | <ul style="list-style-type: none"> - Analyse against criterion - Check if stakeholders are seriously or detrimentally affected - Check that suitable mitigates have been designed into the Project. | <ul style="list-style-type: none"> - List of social risks - List of social benefits and costs |

| Viability Criterion | Definition | Information Needed | Utility/PURC Analysis | Inputs for Later tasks |
|----------------------------|---|---|---|-------------------------------------|
| | agreements as appropriate | | | |
| Economically viable | An economic analysis of the Project shows the expected economic benefits exceed the expected economic costs | Economic feasibility study prepared by reputable economic consulting group with expertise in the area | <ul style="list-style-type: none"> - Check the study says the project is viable and least cost. - Examine risks, caveats, and prerequisites for the Project's success | List of economic benefits and costs |

ANNEX II: POSSIBLE PROJECT FINANCE STRUCTURES

The following table presents various options that may be used to structure such projects.

The first three rows apply to projects prepared by the Network Licensee while the last line applies to projects prepared by the Commission.

| Design | Build | Operation and Maintenance | Finance | Project Structure Acronyms | Comments |
|--------------------------|--------------------------|---------------------------------|--------------------------|--|---|
| Network Licensee | Private Party Contracted | Network Licensee | Network Licensee | - Private contractor is only hired to supply / build the generator | This may be the case for replacement of existing generators |
| Private Party Contracted | Private Party Contracted | Network Licensee | Network Licensee | - Design-Bid-Build (DBB) - Design-Build (DB) - Build-Transfer (BT) | Examples may differ in terms of whether functions are “bundled” or tendered separately. |
| Private Party Contracted | Private Party Contracted | Private Party Contracted | Network Licensee | - Design-Build-Lease (DBL) - Build-Transfer-Lease (BTL) - Built-Transfer-Operate (BTO) | Examples may differ in terms of which party takes demand risk |
| Private Party Contracted | Private Party Contracted | Private Party Contracted | Private Party Contracted | - Build-Operate-Transfer (BOT) | Examples may also differ in terms of what “ownership” means (extent to |

| | | | | | |
|--|--|--|--|---|---|
| | | | | <ul style="list-style-type: none"> - Build-Own-Operate-Transfer (BOOT) - Design-Build-Finance-Operate (DBFO) - Build-Own-Operate (BOO) | which assets can be pledged, developed, disposed, or transferred) |
|--|--|--|--|---|---|

DRAFT

ANNEX III: RISK ALLOCATION MATRIX

The table included in this annex presents an indicative risk allocation matrix. It assumes that a private party has been contracted to design, build, finance, and operate and maintain the project.

The risks are allocated amongst the Independent Power Producer (IPP) and the Utility.

| Risk | Description of Risk | IPP | Network licensee | Comments |
|------------------------------|---|-----|------------------|--|
| 1. Commercial | | | | |
| 1(a) Market Risk | The demand for electricity is not sufficient to ensure project is able to sell capacity and energy at prices that will enable its sponsors to recover their costs and earn a reasonable return on their investment. | | X | <ul style="list-style-type: none"> - Allocated in PPA Section: Contracted Services - Risk allocation changes by technology or project structure: No |
| 1(b) Utility's Credit | Utility's financial position weakens, creating the risk of non-payment to IPP | X | | <ul style="list-style-type: none"> - Allocated in PPA Section: Billing and Payment; Default and Termination - Risk allocation changes by technology or project structure: No |
| 1(c) Price | The capacity charge and variable charge are not sufficient to deliver the | X | | <ul style="list-style-type: none"> - Allocated in PPA Section: Contracted Services |

| Risk | Description of Risk | IPP | Network licensee | Comments |
|--|---|-----|------------------|---|
| | anticipated returns on equity | | | - Risk allocation changes by technology or project structure: Yes |
| 2. Development and Construction | | | | |
| 2(a) Availability of Financing | Debt and/or equity is not available when required by the developer to develop the Project | X | | - Allocated in PPA Section: Conditions Precedent - Risk allocation changes by technology or project structure: Yes |
| 2(b) Cost Overruns | Events occur during construction that cause generation facility construction costs to overrun | X | | - Allocated in PPA Section: Design, Construction, and Commissioning - Risk allocation changes by technology or project structure: No |
| 2(c) Delay in Completing Construction | Construction of the facility is not completed on time, whether as a result of a default by the Construction Contractor under the EPC Contract or otherwise. Does not apply to Force Majeure | X | | - Allocated in PPA Section: Design, Construction, and Commissioning - Risk allocation changes by technology or project structure: No |
| 2(d) Transmission Line | Construction of transmission lines are not completed on time (provided Utility is responsible for transmission | | X | - Allocated in PPA Section: Interconnection |

| Risk | Description of Risk | IPP | Network licensee | Comments |
|----------------------------------|--|-----|------------------|--|
| | lines to interconnect the Project) | | | - Risk allocation changes by technology or project structure: No |
| 2(e) Construction Defects | Defects in the generating station may appear after the warranty period | X | | - Allocated in PPA Section: Insurance - Risk allocation changes by technology or project structure: Yes |
| 2(f) Site Conditions | Unanticipated conditions at the site are discovered during construction, increasing cost of construction and/or delaying construction | X | | - Allocated in PPA Section: Design, Construction, and Commissioning - Risk allocation changes by technology or project structure: Yes |
| 2(g) Commissioning | Commissioning tests required for supply to commence cannot be successfully completed on time, or have higher than anticipated costs | X | | - Allocated in PPA Section: Design, Construction, and Commissioning - Risk allocation changes by technology or project structure: No |
| 2(h) Environmental | The Site may have pre-existing environmental contamination that may need to be remedied, in accordance with the applicable laws, before construction can begin. Alternatively, the Site may be contaminated during | X | | - Allocated in PPA Section: Design, Construction, and Commissioning - Risk allocation changes by technology or project structure: No |

| Risk | Description of Risk | IPP | Network licensee | Comments |
|---|---|-----|------------------|--|
| | construction, operation, or maintenance activities. | | | |
| 2(i) EPC Transfer of Facility to IPP | Facility output may be lower than the guaranteed value upon the transfer of the completed facility from the EPC contractor to the IPP | X | | <ul style="list-style-type: none"> - Allocated in PPA Section: Design, Construction, and Commissioning - Risk allocation changes by technology or project structure: Yes |
| 2(j) Project Abandonment | The IPP abandons, or ceases to operate, the Facility following the Commercial Operations Date | | X | <ul style="list-style-type: none"> - Allocated in PPA Section: Default and Termination - Risk allocation changes by technology or project structure: No |
| 3. Operations | | | | |
| 3(a) Design, Technology, or Resource | Generation facility fails to deliver the specified technical performance (for example output or efficiency) due to the technology or unavailability of the resource | X | | <ul style="list-style-type: none"> - Allocated in PPA Section: Operation and Maintenance - Risk allocation changes by technology or project structure: Yes |
| 3(b) Default by the Parties | A Party to the PPA defaults | ½ | ½ | <ul style="list-style-type: none"> - Allocated in PPA Section: Default and Termination - Risk allocation changes by technology or project structure: No |

| Risk | Description of Risk | IPP | Network licensee | Comments |
|--------------------------------------|---|-----|------------------|--|
| 3(c) Operating Costs | Operating costs escalate over time | X | | <ul style="list-style-type: none"> - Allocated in PPA Section: Calculation of Payments - Risk allocation changes by technology or project structure: Yes |
| 3(d) Operating | Operational failure or mistakes cause reduction of, or interruption to, the operations of the generation facility, reducing the availability of the facility. | X | | <ul style="list-style-type: none"> - Allocated in PPA Section: Operation and Maintenance - Risk allocation changes by technology or project structure: No |
| 3(e) Operator failure | Operator (including an operating subcontractor) fails financially or fails to provide contracted services to specification | | X | <ul style="list-style-type: none"> - Allocated in PPA Section: Operation and Maintenance, Default and Termination - Risk allocation changes by technology or project structure: No |
| 3(f) Transmission Constraints | Transmission constraints prevent electricity from being delivered | | X | <ul style="list-style-type: none"> - Allocated in PPA Section: Interconnection - Risk allocation changes by technology or project structure: No |
| 3(g) Force Majeure | Force Majeure Events occurs, damaging the Facility or preventing it from operating | ½ | ½ | <ul style="list-style-type: none"> - Allocated in PPA Section: Force Majeure - Risk allocation changes by technology or project structure: No |
| | | | | |

| Risk | Description of Risk | IPP | Network licensee | Comments |
|---|---|-----|------------------|--|
| 4. Financial and Economic | | | | |
| 4(a) Exchange Rate | Local currency devalues against the currency in which loans are payable, on-going costs are incurred, or equity contributions are denominated | | X | <ul style="list-style-type: none"> - Allocated in PPA Section: Billing and Payment, Currency Risk - Risk allocation changes by technology or project structure: No |
| 4(b) Dividend Transfers | The government enacts laws that limit the IPP's ability to pay dividends to offshore investors or that provide for withholding taxes on the payment of dividends. | ½ | ½ | <ul style="list-style-type: none"> - Allocated in PPA Section: Miscellaneous Provisions (Change in Law) - Risk allocation changes by technology or project structure: No |
| 4(c) Taxation and Royalties | The tax regime may change over the course of the project. | X | | <ul style="list-style-type: none"> - Allocated in PPA Section: Miscellaneous Provisions (Change in Law) - Risk allocation changes by technology or project structure: Possibly |
| 5. Legal and Regulatory | | | | |
| 5(a) Adverse Government Action | A change in the laws or regulations of the Country where the Project is developed increases the cost of constructing or | X | | <ul style="list-style-type: none"> - Allocated in PPA Section: Miscellaneous Provisions (Change in Law) |

| Risk | Description of Risk | IPP | Network licensee | Comments |
|--------------------------------------|--|---------------|------------------|--|
| | operating the Generation facility, or impacts the IPP's ability to exercise its rights under the PPA and/or other legal agreements. | | | - Risk allocation changes by technology or project structure: Possibly |
| 5(b) Permits and Licenses | The Minister / Commission fails to approve or re-issue a permit or license. Alternatively, the permit or license may be revoked, or renewal or reissuance of the permit or license is subject to terms that have an impact on the Project. | $\frac{3}{4}$ | $\frac{1}{4}$ | - Allocated in PPA Section: Design, Construction, and Commissioning - Risk allocation changes by technology or project structure: Yes |
| 5(c) Enforcement of Contracts | It may be difficult to enforce the project agreements due to the time it takes for litigation to be resolved in local courts, political interference, or judicial corruption. | $\frac{1}{2}$ | $\frac{1}{2}$ | - Allocated in PPA Section: Dispute Resolution - Risk allocation changes by technology or project structure: No |

ANNEX IV: LEGAL AND FINANCIAL STRUCTURE

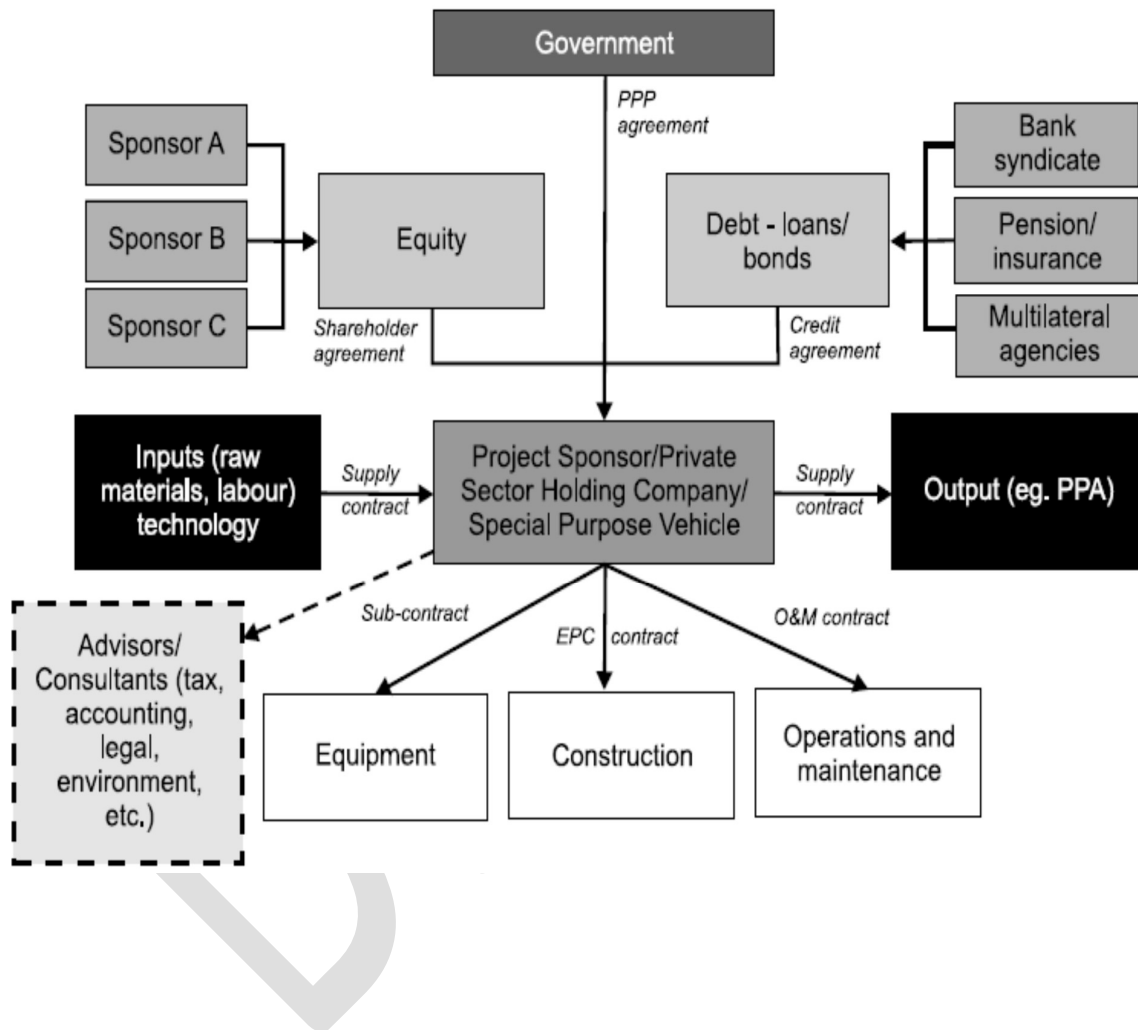
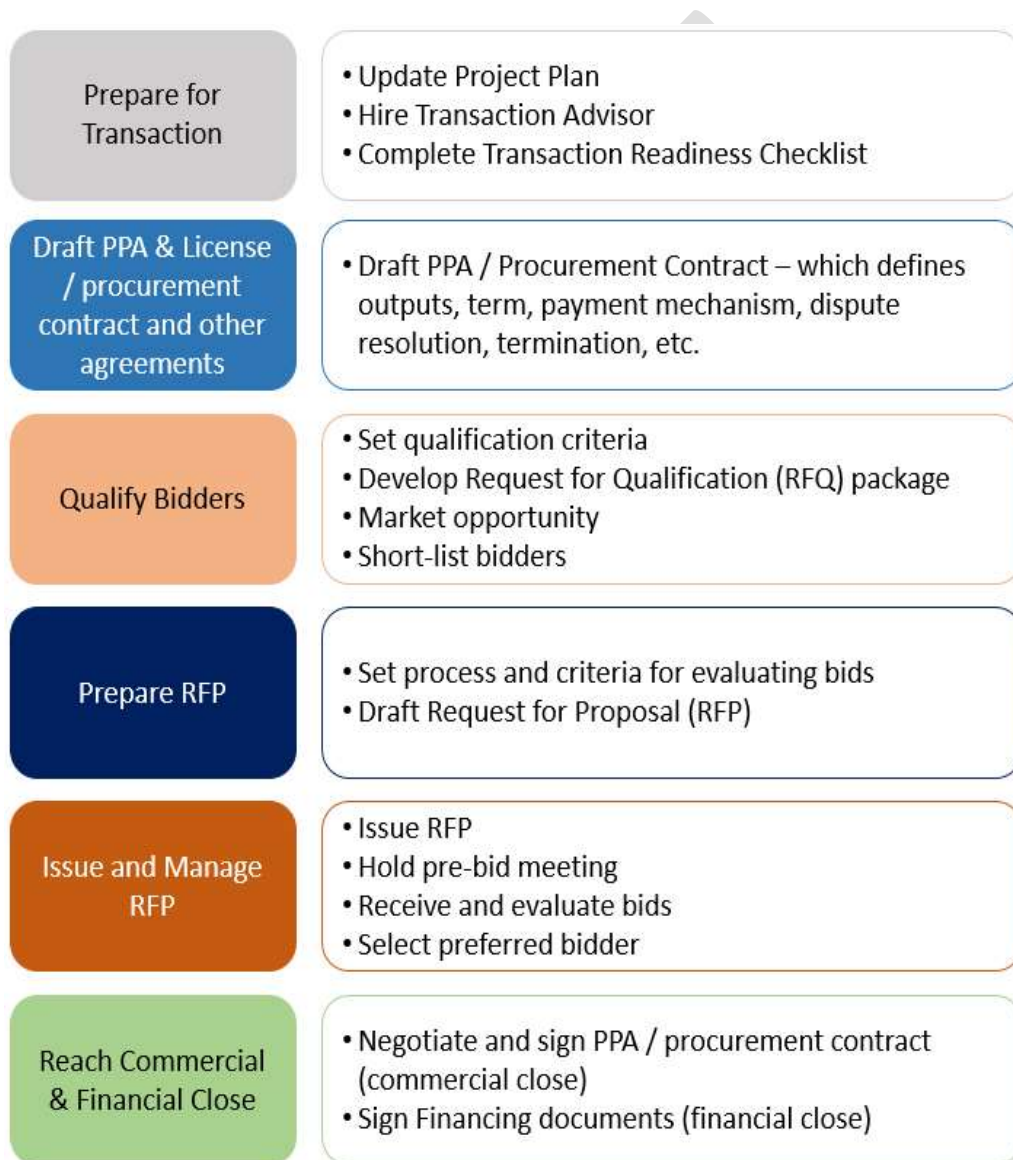


Diagram containing an example of the legal and financial structure for a
Design-Build-Operate-Maintain-Finance project

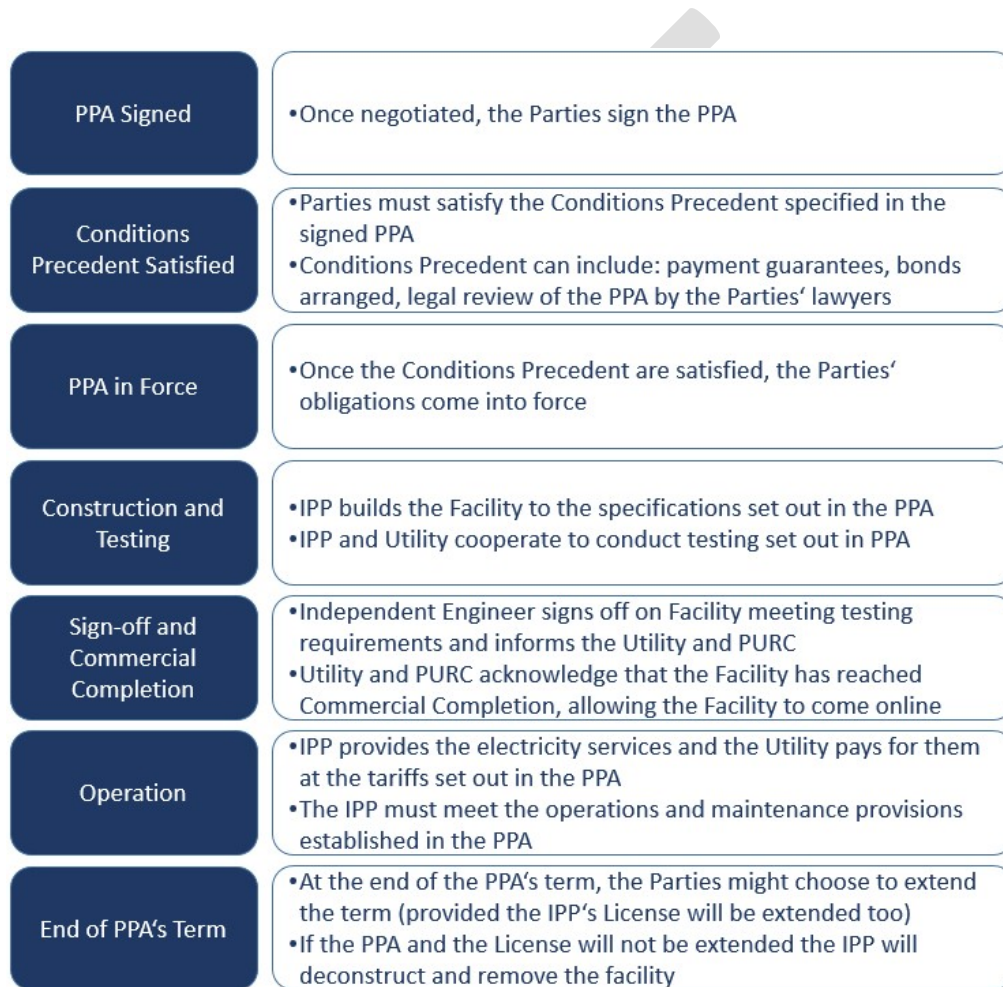
ANNEX V: RECOMMENDED PROCUREMENT PROCESS

The diagram below presents the steps that the Commission or Network Licensee, acting as Procuring Entity, should complete during the Transaction Stage.



ANNEX VI: LIFECYCLE OF A POWER PURCHASE AGREEMENT

The diagram below presents the Lifecycle of a Power Purchase Agreement



ANNEX VII: INTEGRATED RESOURCE PLANNING

Outline showing detailed procedures for IRP

Notice requesting IRP proposal

1. Within [2] years from the commencement date, and every 5 years or less as the Minister determines, the Commission shall issue a notice requesting an IRP proposal from a network licensee that contains -

- (a) a resource plan that includes the expected demand in its authorised area for the period referred to in paragraph 2(a) and the state of the network licensee's existing resources for supplying electricity to the authorised area;
and
- (b) a procurement plan that details how the network licensee proposes to meet this demand.

Content of notice

2. The notice shall include -

- (a) the period, not longer than 5 years determined by the Minister, which the proposal is to cover;
- (b) the date by which the proposal is to be sent to the Commission;
- (c) the format of the proposal and the information and documentation that it is to contain as required by the procedures;
- (d) other guidance or instructions concerning procedures that the Commission decides including the proposal preparation requirements under these Regulations; and
- (e) any other information that the Commission considers relevant.

Delivery and publication of notice

3. The notice shall be sent to the network licensee by registered mail and published on the website of the Commission.

IRP proposal preparation requirements

4. In preparing the IRP proposal a network licensee shall -

- (a) consider -
 - (i) all possible resources, including new generation capacity, demand-side resources (including demand response and energy efficiency), and retirement of generation capacity; and
 - (ii) a range of renewable energy and efficient generation options, and a prudent diversification of the generation portfolio;
- (b) prioritize actions that meet the most objectives in section 9 of the Electricity Act, and conform to the National Electricity Strategy;
- (c) include proposed limits for total generation capacity authorised under permits in its authorised area over the planning period;
- (d) indicate recommendations regarding whether any resources should be procured through competitive bidding; and
- (e) include, in respect of any resources recommended under paragraph 4 (d), a business case that includes -
 - (i) project feasibility - technical, economic, social, commercial and fiscal as applicable;
 - (ii) proposed project structure including identification of risks; and
 - (iii) parameters - for example technical and price - required for the project to be coherent with the National Electricity Strategy.

Submission of IRP proposal

5. The network licensee shall submit to the Commission an IRP proposal that complies with the notice under subsection 1 and in accordance with subsection 4.

Publication of IRP proposal

6. The IRP proposal shall be published on the website of the Commission.