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THE ELECTRICITY ACT
(CAP 131)

THE ELECTRICITY (PROCUREMENT OF POWER PROJECTS AND APPROVAL OF
POWER PURCHASE AGREEMENTS) RULES, 2019

(Made under sections 25 (2), 45 and 46)

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THE ELECTRICITY ACT
(CAP 131)

THE ELECTRICITY (PROCUREMENT OF POWER PROJECTS AND APPROVAL OF
POWER PURCHASE AGREEMENTS) RULES, 2019

(Made under section 25 (2), 45 and 46)

PART I
PRELIMINARY PROVISIONS

- Citation 1. These rules may be cited as the Electricity (Procurement of Power Projects and Approval of Power Purchase Agreements) Rules, 2018.
- Application 2.-(1) These rules shall govern the regulatory processes related to the initiation and procurement process of power projects and the approval of power purchase agreements in Mainland Tanzania.
- GN No. 446/13 (2) These rules shall be read together with the Public Procurement Regulations and in the event of any conflict between the two the latter shall prevail.
- (3) Notwithstanding the generality of sub-rule (1), these rules shall not apply to:
- (a) the procurement of electricity transmission or distribution infrastructure, unless directly related to purchase of power;
 - (b) procurement and approval of power purchase agreements related to small power projects;
 - (c) procurement of generation projects that are wholly owned and operated by a purchasing licensee;
 - (d) sale of electricity to eligible customers; or
 - (e) electricity purchase and sale in markets determined by the Authority to be competitive.
- Interpretation 3. In these rules, unless the context otherwise requires:
- Cap. 131 “Act” means the Electricity Act;

- Cap. 414
- “Authority” shall have the meaning ascribed to it under the Act;
 - “Best Practice Guidelines” means the guidelines issued by the Authority to guide on negotiation of power purchase agreements;
 - “Board” shall have the meaning ascribed to it under the EWURA Act;
 - “capacity based projects” means power generation projects implemented out of the declared capacity by a purchasing licensee;
 - “emergency power situation” means situation declared by the Minister responsible for electricity matters under Section 4(2) of the Act and which is characterized by an immediate unforeseen shortfall in electricity supply leading to an inability to meet demand;
 - “EWURA Act” shall have the meaning assigned to it the Energy and Water Utilities Regulatory Authority Act;
 - “generation licensee” shall have the meaning ascribed to it under the Act
 - “Indicative Price” means the tariffs prescribed in the First Schedule to this Rules and which the Authority may review them from time to time;
 - “non-standardized procurement process” means a procurement process other than a standardized procurement process;
 - “Main-Grid” means the interconnected electricity transmission network of Mainland Tanzania, to which the largest cumulative capacity of electricity generating facilities are connected;
 - “Mini-Grid” means an electricity transmission or distribution network physically isolated from the Main-Grid;
 - “Minister” means a Minister for electricity matters;
 - “PMU” means the Procurement Management Unit of a purchasing licensee;

“project agreements” means any agreement that is relevant to the generation and purchase of power and it shall include the implementation agreement, fuel supply agreement and transmission agreement;

“purchasing licensee” means an entity that has been authorized by the Authority to undertake electricity distribution or transmission activities or to operate the power system and which proposes to purchase power from any other party;

“prudently incurred costs” means any costs arising under a power purchase agreement where:

(a) the power purchase is needed to meet demand, or serve another legitimate function within the power system including maintenance of reliability, frequency keeping or providing black start capacity; and

(b) the costs and risks associated with the power purchase shall be accepted by a well-informed, and a rational purchaser seeking to minimize costs while meeting customer expectations of quality;

“power purchase agreement” or in its acronym “PPA” means a standardized contract on the sale and purchase of electric power between a purchasing licensee and any other party and it shall be in the form to be prescribed by the Authority from time to time;

“project” means site specific power generation project or capacity based power generation project;

“PPP Centre” means the Public-Private Partnership Centre established under the provisions of the Public-Private Partnership Act;

“Power System Master Plan” means a planning document prepared by the Minister and updated on annual basis by the system operator dealing with indicative medium and long term plans for the expansion of the electricity system to cater for expected demand;

“tender Board” means the Tender Board of a respective purchasing licensee;

“Request for Proposals” also known in its acronym “RFP” means an invitation to qualified developers to submit a binding offer to install and operate a power plant based on the terms and conditions listed in the Request for Proposals and the Qualified Bidders subsequent bid;

“Request for Qualifications” also known as “RFQ” means an invitation for power developers to seek qualification to bid for tendered power projects as shall be prepared by a purchasing licensee;

“site specific projects” means power generation projects which a purchasing licensee has identified a specific site and conducted all necessary studies for implementation of the project;

“Small Power Project” or in its acronym “SPP” means an electricity generating project with an installed capacity not exceeding 10 MW;

“standardized procurement process” means a procurement process composed of the following elements pre-approved by the Authority before they are used in practice:

- (a) a competitive tender process consists of:
 - (i) standardized tender documents, specifying the size, location and duration of the generation required to overcome the emergency; and
 - (ii) standardized methods of evaluating bids;
- (b) a standardized power purchase agreement; and
- (c) a standardized procurement time frame that specifies the time limit between the release of tender documents and the submission of a power purchase agreement to the Authority;

Cap. 285

“Tribunal” means the Fair Competition Tribunal established pursuant to the provisions of the Fair Competition Act.

PART II
PROCUREMENT OF POWER PROJECTS DURING NORMAL TIMES

Sub-Part I
Initiation of Procurement

Application for approval of initiation of procurement of power projects

4.-(1) A purchasing licensee shall not initiate the procurement of any power project without an approval from the Authority as provided for under these rules.

(2) Any purchasing licensee who wishes to initiate the procurement of a new power project shall lodge a written application to the Authority which shall contain:

- (a) a summary of the project, including the proposed capacity, site location, generation, technology and the predicted project risks;
- (b) a brief summary of the project rationale, explaining the need for the project, the benefits expected from the project, how the project will meet projected demand and how the project fits with the Power System Master Plan;
- (c) for a project undertaken under the Public-Private Partnership arrangement, a recommendation from PPP Centre pursuant to Regulations 3 and 4 of the Public Private Partnership Regulations, 2015;
- (d) for a project to be procured through unsolicited proposal, evidence of the technical and financial capability of the project developer to successfully undertake the project;
- (e) all relevant project information that has been prepared to date, including any feasibility studies, environmental and social impact assessments and site appraisals; and
- (f) a brief summary of the procurement process that will be followed, including:
 - (i) indicative timeline for the procurement process; and
 - (ii) any agreement signed between the project developer and the Government of Tanzania in support of the project, including memoranda of understanding, letters of support and Government guarantees.

GN No.
542 of 2015

(3) The application for initiation of the power procurement process shall be lodged by a purchasing licensee:

- (a) for solicited proposals, before releasing tender advertisements seeking bids or expressions of interests for such projects; and
- (b) for unsolicited proposals, after the acceptance of the project concept by the purchasing licensee and before commencing formal negotiations for a power purchase agreement.

(4) A purchasing licensee may request the Authority to treat any information submitted under sub-rule (2) as confidential and the Authority shall treat such information as confidential unless there are compelling reasons for making the information public.

Preliminary
evaluation

5. The Authority shall evaluate the contents of the application received under rule 4 (2) in order to verify its completeness, and shall, in the event of an incomplete application, notify the purchasing licensee within ten working days and further specify the information needed to make the application complete.

Detailed
evaluation

6.-(1) The Authority shall, after satisfying itself to the completeness of the application, proceed to evaluate the application and thereafter make a decision.

(2) The Authority shall, while evaluating the application under rule 5:

- (a) assess:
 - (i) for site specific project, whether sufficient project preparation has been completed with a view to ensuring that project risks are well understood and mitigated; and
 - (ii) for capacity based projects, whether the proposed capacity is expected to meet the projected demand and how the project fits with the Power System Master Plan; and

(b) evaluate conformity of the project with the requirements of the Act, EWURA Act and these Rules.

(3) Notwithstanding the generality of sub-rules (1) and (2), the evaluation of the application received by the Authority under rule 4 shall be completed within a period of thirty working days after receipt of a complete application.

Decision of the Authority

7.-(1) After the conclusion of the detailed evaluation process in rule 6, the Authority shall make its decision, which shall either be:

- (a) granting approval of the application;
- (b) denying to approve the application; or
- (c) referring back the application.

(2) The decision of the Authority under sub-rule (1) shall consider, *inter alia*:

- (a) the findings of the detailed evaluation completed under rule 6;
- (b) whether the project is listed in the Power System Master Plan in a similar order to the proposed procurement; or, if the project is not listed in the Power System Master Plan, whether the project is least cost or provides social-economic benefits in excess of projects that are listed in the Power System Master Plan;
- (c) for projects to be procured through unsolicited proposals, whether the project developer has sufficient technical and financial ability to undertake the project successfully; and
- (d) whether the applicant has undertaken sufficient project preparation to demonstrate that:
 - (i) the project has a feasible technology to generate electricity;
 - (ii) the project has a feasible site including proof of ability to acquire the necessary land; and
 - (iii) the risks of the project have been clearly identified and proposed mitigation measures.

(3) An applicant may, in the event of an application that has been referred back in terms of sub-rule (1), re-submit the application in future date after correcting the anomalies pointed out in that behalf.

Consequence
of approval of
initiation of
procurement

8.-(1) A purchasing licensee shall, upon issuance of the approval to the application under rule 7 by the Authority, be allowed to proceed with the procurement process and shall be allowed to recover the reasonable costs of the procurement process through a tariff, in the event the procurement process ultimately results in a new source of power supply.

(2) The Authority may select a representative to observe the procurement process followed by a purchasing licensee, provided that:

- (a) all parties to the negotiation agree to the presence of a representative from the Authority;
- (b) such a representative:
 - (i) is not a member of the Board;
 - (ii) does not comment on the process other than answering specific questions about the application of the Act, the EWURA Act and these rules; and
 - (iii) makes it known to all parties at the start of each negotiation session that he is there as an observer only; and
- (c) unless authorized in writing by the Authority, such a representative shall not disclose any sensitive commercial or confidential information to any third party outside the Authority.

(3) All costs or part thereof of any project that has been procured in contravention of the provisions of rule 4, shall not be allowed in any application by a purchasing licensee for a tariff review by the Authority.

(5) Notwithstanding the generality of the provisions of sub-rules (1) and (2), the approval of the initiation process by the Authority under these rules does not imply an automatic approval to subsequent reviews including application for approval of power purchase agreements and licence applications.

Material changes

9.-(1) If there are any material change to the capacity, technology, fuel or location of a project subsequent to the approval given by the Authority to initiate procurement, then:

- (a) the purchasing licensee shall in writing, notify the Authority about such change; and
- (b) the Authority reserves the right to reconsider its approval to initiate procurement.

(2) Notwithstanding the provisions of sub-rule (1), a purchasing licensee shall continue with the procurement and recover the reasonable costs of the procurement through a tariff, where the Authority does not notify the purchasing licensee of any concerns about the changes to the project within forty-five working days of being notified by the purchasing licensee of the said changes.

Reasons for decisions

10. The Authority shall, in the event it denies or refers back an application for an approval under rule 7 (1), inform the applicant of such decision in writing, including the reasons thereof.

Sub-Part II

Competitive Procurement of Power Projects

Declared capacity

11. A purchasing licensee shall comply with the requirements of the declared capacity to be procured in each bid round for power projects, as shall be announced by the Minister.

Electricity (Procurement of Power Projects and Approval of Power Purchase Agreements)

Gn. No. 453 (Contd.)

Issuance of
RFQ

12. - (1) A purchasing licensee shall, upon receipt of the decision from the Authority under rule 7 and in any event not later than thirty days after the date thereof, prepare and issue RFQ documents to prospective developers in accordance with the Public Procurement Act, Public Procurement Regulations and these rules.

(2) Project developers shall, after receipt of RFQ documents from a purchasing licensee, submit to the said purchasing licensee a response to the RFQ as per the instructions to applicants.

RFQ
submission

13. The RFQ issued by a purchasing licensee shall remain open for the period specified in the RFQ and any response to the RFQ submitted after the deadline shall not be accepted.

Evaluation of
bids

14.-(1) Bids received by a purchasing licensee shall be evaluated in accordance with the Public Procurement Act and the Public Procurement Regulations.

(2) A purchasing licensee shall, in evaluating the bids received, seek to identify developers who are capable of constructing and operating a given power project, and the bids shall be evaluated on a pass or fail basis.

(4) A purchasing licensee shall, within seven days after the tender Board has made up a decision, publish the list of qualified bidders and notify the unqualified bidders about the results.

(5) Qualified bidders who timely submit responses to the RFQ that passes qualification review shall be invited to submit a binding project proposal in response to the RFP.

Issuance of
RFP

15.-(1) A purchasing licensee shall, within thirty days after the announcement of qualified bidders, issue the RFP and such request shall remain open for a period not exceeding eighteen months.

(2) A purchasing licensee shall only issue RFP to qualified bidders inviting them to submit binding project proposals in response to the said RFP.

(3) Qualified bidders shall include in their submission all the details or information as prescribed in the RFP.

(4) Notwithstanding the generality of the provisions of sub-rule (3), qualified bidders shall include, in their submission, proof of payment of bid security which amounts to 2 USD per kW of a proposed project capacity, which shall be refundable, without interest if:

- (a) the bid is unsuccessful;
- (b) the qualified bidder properly submits a bid withdrawal form to a purchasing licensee prior to publication of the list of preferred bidders; or
- (c) a preferred bidder executes a preliminary obligation bond as required under rule 18.

Evaluation of bids

16. – (1) A purchasing licensee shall evaluate the project proposals received in response to the RFP in accordance with the provisions of the Public Procurement Act and the Public Procurement Regulations.

(2) Without prejudice to the provisions of sub-rule (1), a purchasing licensee shall evaluate each binding project proposal using the same criteria as prescribed in the RFP, and the proposals shall be ranked in order of bid price from the lowest price to highest up to the capacity to be procured as stated in the RFP.

Selection of preferred bidders

17. – (1) A purchasing licensee shall reject any project proposal for which the bid price exceeds the Indicative Price.

(2) Any capacity withdrawn by any preferred bidder shall be offered to the next-lowest price project proposal that passed the evaluation.

(3) Any capacity awarded to a preferred bidder but not operating within 24 months, may be re-tendered in a subsequent capacity addition round.

Notification to preferred bidders

18. A purchasing licensee shall notify preferred bidders and offer them an opportunity to execute a PPA after posting a preliminary obligation bond at the rate of 25 USD per kW of the proposed project capacity. The preliminary obligation bond shall be discharged, in the event that the preferred bidder:

- (a) reaches financial close ; or
- (b) properly submits a successful bid withdrawal form for more than 20% of its bid capacity no more than six months from the date on which the purchasing licensee announced the preferred bidders.

Preferred bidder to finalize remaining project development steps

19. Preferred bidders who choose to execute a PPA with a purchasing licensee shall proceed through the remaining project development steps, which include:

- (a) establishing a business entity (project company), pursuant to the laws of Tanzania, which has no any other business or purpose than building, owning, and operating the power project, including entering into all necessary agreements to build and operate the project, receive financing under the loan agreements and sell electricity to the purchasing licensee;
- (b) obtaining a provisional licence from the Authority. The information and documentation requested through the RFQ and RFP should be sufficiently comprehensive to obtain a provisional license, but the preferred bidders shall still need to make a formal application;
- (c) reaching financial close with all lenders that provide the necessary debt finance in accordance with the loan agreements;

- (d) executing the PPA, direct agreement, implementation agreement, transmission or distribution agreement, connection direct agreement if and as required in a form and manner by the Authority, a purchasing licensee and lenders, respectively;
- (e) executing contracts or sub-contracts necessary for engineering, procurement and construction of the power projects;
- (f) executing contracts or subcontracts necessary for operations and maintenance of the power project for the duration of the PPA;
- (g) completing physical construction of the power project and interconnection facilities;
- (h) commissioning the power projects; and
- (i) commencing commercial operations and successfully exporting electricity to the purchasing licensee.

Sub Part III

Procurement of Power Projects Through Unsolicited Proposals

Procurement
through
unsolicited
proposals

20- (1) A purchasing licensee may procure a power project, through unsolicited proposals provided that:

- (a) the costs and risks of the said projects are reasonably weighed against the costs and risks of a similar projects;
- (b) the project developers' return on equity is reasonably when weighed against the return on equity of projects with similar costs and risks;
- (c) the proposed price is below or within the range of the Indicative Price;
- (d) the major components of the project shall be subjected to competitive tendering process, where appropriate; and
- (e) the outcome of the procurement was not affected by ownership interests or payment of any commission, gratuity or fee.

(2) The phrase “major component of the project” in sub-rule (1) (d) above shall mean the procurement of the EPC contractors.

(3) A project developer who has been procured through unsolicited proposal as provided for under sub-rule (1) and who chooses to sign a PPA with a purchasing licensee, shall proceed with other project development stages as prescribed under rule 19.

Sub Part IV

Appeals and Penalties

Appeals

21. Any person who is aggrieved by the decision of the tender Board made under this Part may appeal to the Public Procurement Appeals Authority pursuant to the provisions of the Public Procurement Act.

Cap. 410

Penalty

22. Any purchasing licensee who contravenes the provisions of rule 4 commits an offence and shall, on conviction, be liable to a fine of not less than three million Tanzania Shillings or imprisonment to a term not exceeding three years or both.

PART III

PROCUREMENT OF POWER PROJECTS DURING EMERGENCY

Procurement during emergency

23. – (1) The provisions of this Part shall apply only in the event the Minister declares the existence of an emergency situation in terms of Section 4 (2) of the Act.

(2) A purchasing licensee shall not procure a power project on emergency basis except as it is provided for under these Rules.

(3) Any power purchase agreement executed in contravention of these rules shall be void.

Application for initiation of emergency procurement

24.- (1) Any purchasing licensee who wishes to apply for procurement of a power project under emergency shall lodge an application with the Authority which shall include the following:

(a) a declaration by the Minister of an emergency in terms of Section 4 (2) of the Act;

- (b) a brief summary of the purchase rationale, explaining why the electricity produced by a project of the said size, location and duration is needed in order to overcome the emergency power situation; and
- (c) a statement of intent describing the type of procurement process to be undertaken, which shall either be a standardized process or a non-standardized process and the timeframe for undertaking the said procurement.

(2) The Authority shall evaluate the contents of the application received under sub-rule (1) in order to verify its completeness and it shall notify the licensee within five working days if the application is not complete, and shall specify the information needed to make the application complete.

(3) A purchasing licensee may request the Authority to treat any information submitted under sub-rule (1) as confidential and the Authority shall treat such information as confidential unless there are compelling reasons for making the information public.

(4) The application in sub-rule (1) shall be lodged by a purchasing licensee before:

- (a) releasing a tender advertisement seeking bids or expressions of interest to provide a new source of power supply; or
- (b) commencing formal negotiations for a power purchase agreement.

(5) The Authority shall approve the initiation of an emergency power procurement process if the project size is needed at specified location to cover the shortage in electricity generation for the predicted period of the emergency.

Decision of the Authority

25.- (1) The Authority shall make a decision within ten working days after receiving an application completed in accordance with rule 24 (1), which may be:

- (a) granting the application; or
- (b) rejecting the application; or

(c) referring back the application.

(2) In the event that the Authority rejects or refers back an application, it shall inform the applicant of such decision in writing, including the reasons thereof.

(3) Where the application is referred back in terms of sub-rule (1), the applicant may re-submit the application in future dates after correcting the anomalies therein, and in case the application is rejected and the applicant is aggrieved, he may seek redress under rule 47.

Consequences of approval to initiate emergency procurement

26.-(1) A purchasing licensee shall, upon issuance of the approval to the application in rule 25, be allowed to proceed with the procurement process and shall be allowed to recover the reasonable costs of the procurement process through a regulated tariff if the procurement process ultimately results in a new source of power supply.

(2) Notwithstanding the generality of the provisions of sub-rule (1), the approval of the initiation process by the Authority under these rules does not imply an automatic approval to subsequent reviews including application for approval of power purchase agreements and licence applications.

(3) A purchasing licensee shall, after obtaining the approval for initiation of procurement of power project under rule 25 and in any event not later than fourteen days after the date thereof, proceed with the procurement process.

PART IV
PROCEDURES FOR APPROVAL OF POWER PURCHASE AGREEMENTS DURING
NORMAL TIMES

Negotiation of PPA

27. – (1) A purchasing licensee shall, after the approval by the Authority to initiate the procurement of a power project in terms of rule 7 and conclusion of the procurement process under Part II, proceed with the negotiation of a PPA in accordance with this Part and the Best Practice Guidelines.

(2) A purchasing licensee shall conclude the procurement process together with the negotiation of a PPA in the shortest period possible and in any event not more than six months after the approval under rule 7.

(3) The Authority may sit as an observer during the negotiation of a power purchase agreement and it shall only be responsible for providing clarification on some legal and regulatory issues during the negotiation.

(4) During negotiations, the parties may, with prior approval of the Authority, agree on terms that are not included or at variance with the power purchase agreement model, provided that such terms aim at protecting public interest.

Application for
approval of
PPA

28.-(1) Any purchasing licensee who intends to execute a power purchase agreement with any other party, shall lodge an application to the Authority which shall contain the following particulars:

- (a) the initialed power purchase agreement, together with any project agreements;
- (b) details of procurement process used in procuring new source of supply, supporting evidence of the procurement process, a report explaining how bids were evaluated and the justification for the selection of a successful bidder;
- (c) the names of a person or firm, both domestic and international, paid a commission, gratuity or a fee of not less than fifty thousand shillings in relation to the procurement or execution of the agreement in the form prescribed in the second schedule to these Rules;
- (d) a summary of key terms of the agreement, and a filled in risk allocation table as provided for in the Third Schedule to these rules; and
- (e) details disclosing the project owners, including beneficial ownership of companies and trusts and any relationship that owners have to ministers, officials and staff of purchasing licensee, Ministry or the Authority.

(2) The application in sub-rule (1) shall be made to the Authority after all the parties to the agreement have agreed to the terms and conditions of the power purchase agreement and before the said power purchase agreement is signed.

(3) Unless there are compelling reasons to the contrary Authority shall, upon a request from a licensee, treat any information specified in that behalf as confidential.

Evaluation of
PPA for
solicited
project
proposal

29.-(1) The Authority shall evaluate the contents of the application received under rule 28 in order to verify its completeness and shall, in the event of:

- (a) a complete application, notify the purchasing licensee within fifteen working days and proceed with the evaluation; and
- (b) an incomplete application, notify the purchasing licensee within fifteen working days to submit further information needed to make the application complete.

(2) The Authority shall allow the costs of a power purchase agreement resulting from a solicited proposal under Part III to pass through a tariff.

Evaluation of
PPA for
unsolicited
project
proposals

30.-(1) A purchasing licensee shall, for procurements done out of unsolicited proposals under rule 20, submit to the Authority a detailed breakdown of the project developer's costs and finances, including forecasts of capital and operating expenditure, depreciation, debt servicing costs and the projected return on investment for the project.

(2) The Authority shall approve the costs to pass through a tariff for power purchase agreement entered out of unsolicited proposals if:

- (a) the costs and risks of the power purchase agreement are reasonably weighed against the costs and risks of similar projects;
- (b) the project developers' return on equity is reasonably weighed against the return on equity of projects with similar costs and risks;

- (c) the proposed price is below or within the range of the indicative price;
- (d) the major components of the project shall be subject to competitive tendering processes, where appropriate; and
- (e) the outcome of the procurement was not affected by ownership interests or the payment of any commission, gratuity or fee.

Factors for evaluation of PPA

31. Without prejudice to the requirements of rules 29 and 30, the Authority shall, while evaluating the application for approval of a power purchase agreement, considers the following where:

- (a) the application conforms with the Act, EWURA Act and these rules;
- (b) costs of the power purchase agreement were prudently incurred and their effects to the economy;
- (c) the power purchase agreement is arrived at a win-win negotiation.
- (d) the influence of the project tariff on average tariff of the power system;
- (e) all calculations were correctly made; and

Submission of additional information

32.-(1) During evaluation process, the Authority may require a purchasing licensee to provide further information and such licensee shall promptly comply with the instructions from the Authority.

(2) In the event a purchasing licensee fails without a justifiable cause or refuses to comply with the instructions of the Authority as required under sub-rule (1) after the lapse of thirty days from the due date, the application which is pending at the Authority shall abate.

Decision of the Authority

33. – (1) After conclusion of the evaluation process, the Authority may:

- (a) grant approval to the application;
- (b) reject the application; or
- (c) refer back the application.

(2) The decision of the Authority shall be made within thirty working days after receipt of a complete application of a solicited proposal and forty-five working days in case of unsolicited proposal.

(3) The Authority shall, in the event it rejects or refers back an application made under sub-rule (1), inform the applicant of such decision in writing, including the reasons for such a refusal or referral.

(4) An applicant may, in the case of an application that has been referred back in accordance with sub-rule (1), re-submit the application in future dates.

Consequences
of approval of
PPA

34.-(1) In the event the Authority approves a power purchase agreement under rule 34, the costs of the power purchase agreements shall be allowed into a tariff.

(2) The Authority shall, before allowing the costs of the power purchase agreements into a tariff, ensure that-

(a) the date on which tariffs are changed to reflect the cost of power purchase aligns with the date that the purchasing licensee starts to pay for power; and

(b) the change in tariffs accurately reflects the costs of power purchase.

(3) The Authority's approval of a power purchase agreement may allow a specified degree of flexibility for parties to agree on the changes to the agreement, provided that, the Authority is satisfied the import of its decision shall not be undermined by flexibility or any permitted change.

(4) Where the parties to the agreement require flexibility to change terms after the relevant regulatory decision is made, the desired level of flexibility shall be detailed in the application and sent to the Authority with reasons supporting the need for flexibility.

(5) The Authority may consider the request for additional flexibility, within five working days, and shall notify the purchasing licensee of the level of flexibility that is acceptable to the Authority.

PART V
PROCEDURE FOR APPROVAL OF POWER PURCHASE AGREEMENTS DURING
EMERGENCY

Approval
process during
emergency

35. The provisions of this Part shall apply only in the event the Minister declares existence of an emergency situation in terms of section 4 (2) of the Act.

Negotiation of
PPA

36.-(1) A purchasing licensee shall, after the approval by the Authority to initiate the procurement of a power project under emergency in terms of rule 24 and conclusion of the procurement process under rule 26 (3), proceed with the negotiation of a PPA in accordance with this Part and the Best Practice Guidelines.

(2) A purchasing licensee shall conclude the procurement process together with the negotiation of a PPA in the shortest period as possible and in any event not more than thirty days after the approval under rule 27 (4).

(3) The Authority may sit as an observer during the negotiation of a power purchase agreement and it shall only be responsible for providing clarification on some legal and regulatory issues during the negotiation.

(4) During negotiations, the parties may, with prior approval of the Authority, agree on terms that are not included or at variance with power purchase agreement model provided such terms aim at protecting public interest.

Application for
approval of
PPA during
emergency

37.-(1) Any purchasing licensee who intends to apply for the approval of a power purchase agreement under emergency shall lodge an application to the Authority.

(2) The application under sub-rule (1), shall include the following particulars:

(a) the initialed power purchase agreement, together with any documents referred therein;

- (b) evidence that the project developer has technical capabilities to undertake this type of emergency power project ;
- (c) the names of any person or firm, both domestic and international, paid a commission, gratuity or fee not less than fifty thousand shillings in relation to the procurement or execution of agreement in a manner set out in the second schedule to these Rules;
- (d) a summary of the key terms of the agreement, and a filled in risk allocation table in the form provided in the third schedule to these Rules;
- (e) detailed description of the procurement process used to procure the new source of supply, and provide supporting evidence of the procurement process including negotiation minutes;
- (f) details disclosing project owners, beneficial ownership of companies and trusts and any relationship that owners have to ministers, officials and staff of a purchasing licensee, Ministry or the Authority;
- (g) for a standardized procurement, evidence that a pre-approved standardized process which shall include advertisements, tender documents, competing proposals and report from the purchasing licensee explaining how bids were evaluated and selection of the successful bidder; and
- (h) for a non-standardized procurements, evidence that the project developer has the financial ability to undertake the project.

(3) Unless there are compelling reasons to the contrary Authority shall, upon a request from a licensee, treat any information specified in that behalf as confidential.

(4) A purchasing licensee shall lodge to the Authority the application under sub-rule (1):

- (a) when all parties to the power purchase agreement have agreed to the terms and conditions of the agreement; and
- (b) before the emergency power purchase agreement is signed.

(5) The Authority shall evaluate the contents of application received under sub-rule (1) in order to verify its completeness and shall, in the event of an incomplete application, notify a purchasing licensee within ten working days after receipt of the application the information needed to make the application complete.

Evaluation
process for
standardized
emergency
PPA

38. - (1) The Authority shall approve the costs of an emergency power purchase agreement for passing through into a tariff where a standardized procurement process is followed, unless the outcome of the procurement is negatively affected by ownership interests or payment of any commission, gratuity or fee.

(3) The Authority shall make its decision in respect of application received under rule 37 within fifteen working days after receipt of a complete application.

(4) The Authority shall, before approving the costs of a power purchase agreement to pass through a tariff, ensure that:

- (a) the date on which tariffs are changed to reflect the costs of the power purchase aligns with the date that the purchasing licensee starts to pay for the power; and
- (b) the change in tariffs which reflect the costs of the power purchase.

Evaluation of
non-
standardized
emergency
PPA

39.- (1) The Authority shall approve the costs of an emergency power purchase agreement resulting from a non-standardized procurement process pass through into a tariff if:

- (a) the costs and risks of the power purchase are reasonably weighed against the costs and risks of similar emergency projects;

- (b) the project developers' return on equity is reasonably weighed against the return on equity of projects with similar costs and risks; and
- (c) the outcome of the procurement was not affected by ownership interests or the payment of any commission, gratuity or fee.

(2) The Authority shall make its decision under this rule within thirty working days after receipt of a complete application.

(3) The Authority shall, before approving the costs of a power purchase agreement pass through a regulated tariff, ensure that:

- (a) the date at which tariffs are changed to reflect the cost of the power purchase aligns with the date that the purchasing licensee starts to pay for the power; and
- (b) the change in tariffs accurately reflects the costs of the power purchase agreement.

Factors considered in evaluation of emergency PPA

40. Without prejudice to the requirements of rules 38 and 39, the Authority shall, while evaluating the application for approval of a power purchase agreement, consider whether:

- (a) the application conforms with the Act, EWURA Act and these rules;
- (b) costs of the power purchase agreement were prudently incurred and their effects to the economy;
- (c) the influence of the project tariff on average tariff of the power system;
- (d) all calculations were correctly made; and
- (e) the power purchase agreement is considered to be fair to all parties.

Submission of information

41.-(1) During evaluation process, the Authority may require a purchasing licensee to provide further information and such licensee shall promptly comply with the instructions from the Authority.

(2) In the event a purchasing licensee fails without reasonable cause or refuses to comply with the instructions of the Authority as required under sub-rule (1) after a lapse of thirty days from the due date, the application which is pending at the Authority shall abate.

Decision of the Authority

42. - (1) The Authority shall, after concluding the evaluation under rules 38 or 39, proceed in making a decision, which may be:

- (a) granting approval to the application;
- (b) rejecting the application; or
- (c) referring back the application.

(2) The Authority shall, in the event it rejects or refers back an application in accordance with sub-rule (1), inform the applicant of such decision in writing, including the reasons thereof.

(3) An applicant may, in the event the application is referred back in terms of sub-rule (1), re-submit the application in future dates after correcting the anomalies specified there in.

Provisional approval of emergency PPA

43.-(1) Notwithstanding the provisions of rule 42, the Authority may, where it deems necessary, issue a provisional approval of an emergency power purchase agreement, provided such approval shall not exceed six months.

(2) A provisional approval of an emergency power purchase agreement shall entitle a purchasing licensee to reflect in the tariffs the costs of the power purchase and shall contain some conditions which the purchasing licensee shall be obliged to fulfill.

(3) A purchasing licensee shall fulfill all the conditions given under sub-rule (2) and submit a progress report to the Authority within ninety days of receiving a provisional approval.

(4) In the event a purchasing licensee fails to fulfill the conditions given by the Authority under sub-rule (2) and where the Authority does not receive a progress report from the purchasing licensee under sub-rule (3), then the power purchase agreement shall become null and void after a notice of thirty days issued by the Authority has lapsed.

(5) The Authority shall make a final decision on the application within sixty days after receipt of a progress report.

PART VI
GENERAL PROVISIONS

General
penalty

44. - (1) A purchasing licensee who contravenes any provisions of these Rules for which no specific penalty is prescribed shall be liable to a fine of not less than three million shillings.

(2) A purchasing licensee who employs an agent, clerk, servant or other person, shall be answerable and liable for any acts or omissions of such persons in so far as the actions or omissions relate with activities covered by these Rules.

(3) Where a person who is charged with the breach of the provisions of these Rules is a body corporate, every person who, at the time of the breach, was a director, manager or employee of the body corporate may be charged jointly in the same proceedings with such body corporate

Amendment
and
termination of
PPA

45.-(1) A purchasing licensee shall not later than seven working days after receipt of a notice from the other party to a power purchase agreement of the intention to terminate or amend the power purchase agreement, notify the Authority on the receipt of the notice.

(2) Without prejudice to the provisions of sub-rule (1) a purchasing licensee shall not terminate a power purchase agreement unless ninety days written notice has been served to the Authority.

(3) Notwithstanding the provisions of sub-rule (1), no power purchase agreement shall be amended unless approved by the Authority.

Electricity (Procurement of Power Projects and Approval of Power Purchase Agreements)

GN. NO. 453 (Contd.)

Overriding
effect of PPA

46. For avoidance of doubts in case of conflict between project agreements and power purchase agreement, the latter shall prevail.

Appeals

47. Any person who is aggrieved by the decision of the Authority under rules 7, 26, 34 or 43 may appeal to the Tribunal pursuant to the provisions of the EWURA Act.

Revocation of
GN No.
245 of 2017

48. The Electricity (Procurement of Power Projects and Approval of Power Purchase Agreements) Rules, 2017 are hereby revoked.

Authority to
supplement
procedures

49. Where there is a procedure not provided for under these Rules, the Authority may do whatever is necessary and permitted by the Act, the EWURA Act and relevant law to enable it to effectively and completely adjudicate on any matter before it.

Electricity (Procurement of Power Projects and Approval of Power Purchase Agreements)

GN. NO. 453 (Contd.)

—————
FIRST SCHEDULE
—————

Made under rule (3)
—————

INDICATIVE PRICE

Technology	Cap Price USC/kWh
CCGT	5.00
IGCC	6.00
Hydro	4.00
Wind	7.00
Solar	5.00

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GN. NO. 453 (Contd.)

SECOND SCHEDULE

(Made under Rule 28(1) (c))

BENEFITS REGISTER

This register shall be completed by the project developer (not the purchasing licensee) for all commissions, gratuities and fees above 50,000 Tanzanian shillings paid in relation to the procurement of power or execution of the Power Purchase Agreement.

An authorized representative of the project developer must sign an affidavit confirming that the benefit register is complete and accurate.

Date when the benefit was given	Name of the person who gave the benefit and name of their employer	Name of the person who received the gift, and name of their employer	Description of benefit (e.g. cash, meal, entertainment, etc)	Approximate value of the benefit (in Tanzanian Shillings)	Reasons for giving the benefit	Name of person within the organization who authorized the giving of the benefit	Signature of person making the report	Date when this report was made

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THIRD SCHEDULE

(Made Under Rule 28(1) (d))

RISK ALLOCATION TABLE

Description of Risk	Party to whom Risk is Allocated	Rationale for Allocation	Allocation Mechanism (section of the PPA that implements this risk allocation)
<i>A. GOVERNMENT, POLICY AND REGULATORY RISKS</i>			
A1. Permits and approvals: Risks that requires approvals (for example, environmental permits, water use rights, generation licence) may not be obtained or obtained subject to conditions that increase costs.			
A2. Government policy: Risks that a change in law, policy or other Government action increases the estimated cost of the power supply.			
A3. Environmental liabilities: Risks that power production over the contract term result in significant environmental liabilities (greater than anticipated at contract signing) other than a change in law			
<i>B. FINANCING RISKS</i>			
B1. Availability of finance: Risk that debt and or equity is not available when required by the seller to develop the project			
B2. Sponsor insolvency: Risk that the seller is unable to provide required services due to insolvency			
B3. Interest rate: Risk that interest rates move adversely after the contract is signed			

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GN. NO. 453 (Contd.)

Description of Risk	Party to whom Risk is Allocated	Rationale for Allocation	Allocation Mechanism (section of the PPA that implements this risk allocation)
B4. Exchange rate: Risk that exchange rates may move adversely after the contract is signed, affecting the seller's ability to service foreign denominated debt and obtain its expected return on investment			
B5. Refinancing impact: Risk that seller can or cannot refinance as expected after project commissioning			
B6. Tax changes: Risk that before or after completion, tax rates change			
<i>C. COMPLETION RISKS</i>			
C1. Site: Risk that unanticipated conditions at the site are discovered during construction adding costs or delay			
C2. Design: Risk that design of the facility is not able to deliver supply at expected cost and specified level of service			
C3. Construction: Risk that events occur during construction which prevent the facility from being delivered on time and on cost			
C4. Industrial relations: Risk that industrial action (for example, strikes, lockouts, work bans, work-to-regulations, blockades, go-slow action, etc.) negatively affects the viability of the project			
C5. Commissioning: Risk that commissioning tests required for supply to commence cannot be successfully completed on time, or have higher than anticipated costs			
<i>D. OPERATING RISKS</i>			
D1. Inputs and fuel supply: Risk that required inputs (such as fuel) cost more than anticipated, are of inadequate quality or are unavailable in required quantities			
D2. Maintenance and refurbishments: Risk that the facility incurs higher than anticipated maintenance and refurbishment			

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GN. NO. 453 (Contd.)

Description of Risk	Party to whom Risk is Allocated	Rationale for Allocation	Allocation Mechanism (section of the PPA that implements this risk allocation)
costs			
D3. Plant performance: Risk that plant does not provide contracted capacity, energy or other services (reserves, black-start capability), or experiences higher than expected outage rates			
D4. Output requirements: Risk that output requirements (capacity or energy) are changed after contract signing, whether before or after project commissioning			
D5. Operator failure: Risk that operator (including an operating subcontractor) fails financially or fails to provide specified contracted services.			
<i>E. TRANSMISSION AND DISTRIBUTION RISKS</i>			
E1. Transmission access: Risk that seller is not provided access to networks required to deliver power as per contract conditions.			
E2. Transmission investment: Risk that cost of connecting facility or transporting power to buyer's facility requires further investment in the transmission network.			
E3. Transmission constraints: Risk that transmission constraints impose costs on power delivers under contract terms.			
<i>F. COMMERCIAL AND MARKET RISKS</i>			
F1. Demand risk: The risk that the demand for the service or the use of a facility will vary from forecast levels, generating less revenue from users than expected.			
F2. Non-technical losses: Risk that end users of the service will fail to pay for electricity (due to either theft, non-billing, or non-payment of bills).			
F3. Non-payment: Risk that the buyer is unable or unwilling to pay the purchase price for contracted services			
F4. Economic obsolescence: Risk that costs of providing contracted services can be			

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GN. NO. 453 (Contd.)

Description of Risk	Party to whom Risk is Allocated	Rationale for Allocation	Allocation Mechanism (section of the PPA that implements this risk allocation)
provided at lower cost from alternative suppliers			
<i>G. OTHER RISKS</i>			
G1. Security of supply risks: Risk that plant outages will negatively affect security of supply on the Buyer's electricity system			
G2. <i>Force majeure</i> : Risk that inability to supply power is caused by reason of <i>force majeure</i>			

Dodoma
....., 2019

NZINYANGWA E. MCHANY
Director General