

COUNTY GOVERNMENT OF BUSIA



Private Sector Engagement Framework

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December, 2023

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LIST OF ABBREVIATION

CBO	Community Based Organization
KALRO	Kenya Agricultural and Livestock Research Organization
KEMRI	Kenya Medical Research Institute
KEPHIS	Kenya Planned Health Inspectorate Service
KRA	Kenya Revenue Authority
NEMA	National Environmental Management Authority
NGOs	Non-Governmental Organizations
PSE	Private Sector Engagement

PART ONE: THE FRAMEWORK PURPOSE

1.0 Introduction

The Urban Areas and Cities Act, 2011 (as amended 2019), Kenya Urban Development Policy, the private sector has representation in the Municipal Boards. The private sector is a key stakeholder and driver of economic prosperity in any urban set up. It is a growing contributor of financial resources in terms of taxes and revenues as collected by Central and devolved Governments as taxes and revenues, as well as an effective partner providing non-financial (in kind) support to programs of public interest around the urban areas towns. Engagement with private sector partners is a vital part of increasing impact, increasing resources and developing innovative solutions to scale up service delivery of Municipal Services.

Under this framework, private sector includes corporations and private foundations, those involved in third party fundraising and High Net worth Individuals. To maintain the integrity of its operations and brand, the Municipality of Busia will always ensure that contributions are derived from legitimate sources and reputable private sector partners that subscribe to the applicable fiscal regime in Kenya. In addition, it is important to ensure that partners or groups of partners do not have undue influence on decisions made by the Municipality Board and Management through strong internal processes and a core principle of transparency. Any breaches, whether perceived, potential or actual, may diminish public confidence in the Municipality and may even affect its performance in terms of projects and programs. The Municipality of Busia recognizes the need for a strong and well-implemented risk management approach and associated procedures that will help to ensure the benefits of partnerships are recognized in the context of appropriate risk assessment.

This approach Improve fairness and transparency in decision making processes, Improve trust and confidence among key stakeholders and the general public, and protect the reputation and integrity of the Municipality and associated organizations.

1.1 Objective of the Framework

This Framework gives guidance on the approach to partnerships with the private sector and outlines accountabilities governing private sector engagement for resource mobilization. It recognizes the need to identify the risks of private sector engagement and balance these against the expected benefits.

This framework will:

- i. Support the Municipality in establishing significant and impactful private sector partnerships that are relevant and consistent with the principles of the municipality approach;
- ii. Enhance transparency and facilitate communications with prospective private sector partners;
- iii. Ensure that interested stakeholders within and external to the Municipality of Busia are consulted as appropriate; and
- iv. Enable relationship managers to apply risk controls and monitoring at a level proportionate to each private sector partnership.

This framework is enacted as:

- a) The Private Sector Engagement Guidance Note on Screening and Risk Management ;
- b) the Municipality of Busia Partner Screening Guidelines ;
- c) Private Sector Engagement & Avoidance of Conflict of Interest Guide; and
- d) Private Sector Engagement Training Guide on analysis, risk management & conflict of interest avoidance.

PART TWO: PRIVATE SECTOR PARTNERS AND CONTRIBUTIONS

2.1 Private Sector Partners

The principle types of partners considered under this framework encompasses:

- a) Corporations - refers generally to a company or group of people authorized to act as a legal person and recognized as such in law. These are commercial enterprises, either publicly listed or privately owned, that are intended to make a profit for their owners. They typically operate in a regulated legal compliance and financial environment (particularly if they are publicly-listed).

Corporations within Municipality of Busia include Kenya Revenue Authority (KRA), Kenya Agricultural Finance, KEPHIS, KALRO, KEMRI, NEMA, Kenya Forest Service, Posta, Water Resources Authority, etc.

- b) Private Foundations - refers to private non-profit entities such as foundations and trusts, whose assets are provided by donors and whose income is spent on socially useful purposes. Such entities typically operate in a similar environment as companies when it comes to operating standards in developed countries but the legal, bureaucratic, and political framework for foundations and trusts in the developing world tends to be more varied.

- c) Individuals - refers primarily to High Net worth Individuals (HNWIs). Partnerships with such individuals and their families will typically be focused on philanthropy, through individual gifts, family foundations or other vehicles such as donor advised funds.
- d) Third Party Development Partners - Refers to partners that undertake fundraising activities with third parties, such as consumers or the public, for the benefit of the municipality. Examples include the Linda Mazingira Initiative, Bus Park Business Operators CBO, Boda boda Association, Busia County Youth Association, ECO Green, and Western Folks among others. Such third party partners can include private sector entities such as corporations, not for profit companies and professional groups, as well as non-private sector entities such as Non-Governmental Organizations (NGOs), community organizations, civil society groups and networks, and faith-based organizations.

The PSE Framework and associated procedures will be applied where partnerships with these entities are intended to mobilize resources.

2.2 Types of contribution

- a) **Financial Resources:** Municipality of Busia will mobilize financial contributions to promote urban climate resilient infrastructure. The Public Private Partnership Act, 2021 permits private sector partners and a limited number of authorized public mechanisms, to make restricted financial contributions to the urban establishments. These contributions can be notionally earmarked to an activity (i.e. such contributions do not increase the Board-approved upper-ceiling of funding from the County Government- principal), or contributions can fund components listed on the Municipality of Busia Integrated Investment Plan (i.e., deemed technically sound and strategically focused by the Municipal Board), which result in additional funds and activities for an already Board-approved investment.
- b) **Non-financial or in-kind partnerships:** Non-financial support can include, for example: provision of *pro bono* expertise and/or services to support capacity building initiatives and generate performance efficiency and/or effectiveness improvements to the Municipal staff and/or grant recipients (either directly by the partner's employees or through funding third parties to provide such expertise); advocacy support, such as raising awareness and encouraging behavioral change on health issues among employees, customers and business partners in line with the Municipality of Busia mission; donations of non-health products; among others.

PART THREE: PRINCIPLES, BENEFITS AND RISKS OF ENGAGEMENT

This Framework provides a firm basis for enhancing private sector engagement through a set of principles, and serves as an instrument for identifying the risks and balancing them against the expected benefits, while protecting and preserving the municipality's integrity and reputation. The municipal staff will be required to adhere to the Framework and its associated procedures.

3.1 Principles

The Municipality of Busia strives to identify opportunities for shared value creation and enters into partnerships that are consistent with the following guiding principles:

1. They demonstrate a clear potential benefit to the Municipality's Integrated Development Plan. The partner has an alignment with the Municipality's mission and vision.
2. The engagement supports the Municipality's strategic priorities and complies with all its policies and guidelines.
3. The engagement will be conducted on the basis of transparency, openness, inclusiveness, accountability, integrity and mutual respect.
4. The structure of the engagement will protect the Municipality from any undue influence and will not compromise the Municipality's integrity, independence, and credibility.
5. The engagement will be effectively managed, including by mitigating potential conflicts of interest and other forms of risks to the Municipality.

3.2 Benefits

Benefits arising from such engagements will have to include:

- i. The financial and non-financial contributions of the private sector to support the mandate of the Municipality.
- ii. The influence that the Municipality can have on private sector actors to enhance their impact on the Municipality's programmes; and
- iii. The leadership and influence that the private sector can bring to support the awareness, visibility and financing of the Municipality's programmes.

3.3 Risks

The benefits outlined above will be weighed against the potential risks of engagement. These need to be effectively managed and, where appropriate, avoided. Potential risk areas include (non-exhaustive):

- a) **Reputational risk:** where the partnership has the potential to impact negatively on the reputation, integrity or credibility of the Municipality or its grant implementers. Examples include: questionable partner business practices or behaviors; conflicts of interest; industry or partner type-specific issues; partnership being leveraged by the partner to serve its interests with limited benefits for the Municipality; partnership conferring an endorsement of the partner's name, brand, product, views or activity; whitewashing of a partner's image through engagement with the Municipality of Busia.
- b) **Financial risk:** where the partnership has the potential to impact negatively on the Municipality work linked to issues with its financial contribution. Examples include: contribution default (non-payment or delay); currency exchange risk; appropriate balancing and partner financial contributions to grants.
- c) **Program Effectiveness risk:** where an in-kind partnership has the potential to negatively affect the performance of grants and/or grant implementers. Examples include: undue or improper influence exercised by a private sector partner; non delivery of in-kind services; marginal or no impact of the intervention; lack of county support; lack of scale up; non-sustainability of donated products or services; captive solutions. Engagement with the private sector is underpinned by a comprehensive risk management process with clear roles and responsibilities for decision making.

Risk screening will include assessment against a comprehensive set of criteria, as well as additional criteria specifically relevant for particular partnerships. Examples of core assessment areas include:

- i. Business policy and practice (e.g. appropriate marketing policy, sanctions lists, bribery, fraud, collusion, corruption, money laundering, tax avoidance, terrorist financing, labor rights);
- ii. Political exposure;
- iii. Environmental policy and practice;
- iv. Human rights and gender policy and practice;
- v. Privacy and data security (where relevant for partnerships).

Mandatory due diligence processes assess the fit with the principles described above, as well as risks associated with each prospective partnership.

3.4 Excluded sectors

Based on these principles and risk categories the Municipality of Busia will exclude cooperation with the following sectors:

- i. Terrorists groups;
- ii. weaponry

Any business that is directly involved in the above or any other illegal undertakings shall be excluded as a potential partner.

PART FOUR: CONFLICT OF INTEREST

4.1 Conflict of Interest

Conflict of interest will occur when a prospective or existing private sector partner of the Municipality will use their position to advance their personal interests, the interests of an institution with which they are affiliated, or those of a close associate, in a way that disadvantages or excludes others or is otherwise detrimental to the overall effectiveness of the Municipality's programs.

The Municipality takes a broader view of the ethics of its partnerships that extends beyond just the strict definition of conflict of interest. The contribution should be made in good faith and the private sector partner should not seek to utilize their position as a partner with the Municipality, their relationship with the Municipality, or the knowledge and information they have received in connection with their relationship with the Municipality to derive direct commercial advantage related to the Municipality activities and programmes.

4.2 Material Interest

Each prospective private sector partner is required to provide adequate disclosure of any material interests that may place the various roles of the partners in conflict or result in reputational, financial or programmatic damage due to perceptions of undue influence of the partner on the Municipality or its grant recipients. A material interest includes, but is not limited to, the following:

- a) Being a staff member or member of an organization or institution that is a Principal Recipient, Sub-Recipient or other Implementing Partner funded by Municipality grants.
- b) Being a party to a contract, or directly involved in a transaction, for the provision of goods and services to an organization funded by the Municipality grants.
- c) Having a significant financial interest in an entity that is involved in a contract or transaction for the provision of goods and services to an organization funded by the Municipality grants, through being an owner, shareholder or employee

PART FIVE: DISCLOSURE REQUIREMENT

5.1 Duty to Disclose

Partners must disclose any material conflicts of interest or breaches of the principles detailed above during partnership discussions and also during the term of the partnership. Where clear breaches or conflicts of interest are identified, the Municipality will take appropriate action, including rejecting the partnership or contribution. Such measures may also be applied for perceived conflicts of interest. On an ongoing basis existing partners are required to disclose any material interest or issue that could lead to a conflict of interest or a breaching of the principles of the partnership.

5.2 Failure to Disclose

If the Municipality learns that a private sector partner failed to disclose a material interest or issue (as defined by the Municipality of Busia disclosure requirements) at the time the relationship between the Municipality and the entity was established:

- a) The Municipality should inform the entity of this fact and provide it with an opportunity to respond; and
- b) Where there is confirmation of a failure to properly disclose, the Municipality will take the most appropriate course of action including, if needed, ending or revising the relationship with the entity and a public announcement to that effect.

PART SIX: ROLES AND RESPONSIBILITIES

6.1 Private Sector Engagement Committee (PSEC)

This unit will be responsible for application and compliance of this engagement framework and due diligence procedures, and regular monitoring and tracking of partnership risks. The representative of association of Private sector in the Municipal Board shall chair the PSE Committee.

6.2 Municipal Board:

It shall be responsible for overseeing due diligence including those related to private sector partner disclosures, as well as monitoring and supporting risk management practices by the Resource Mobilization Committee.

6.3 The County Attorney:

Responsible for advising on the Municipal Board on framework applicable to proposed private sector partnerships and risks (including non-compliance risk), and negotiating and advising on contractual commitments, amendments, addendums.

6.4 Communications Department:

Responsible for advising, developing and, implementing communication strategies relating to private sector partnerships, including any risk mitigation plans to minimize reputational risks.

6.5 Audit & Risk Management Department:

Responsible for assessing and advising on institutional-level risks and relevant risk mitigation plans relating to private sector partnerships.

6.6 Finance Department:

Responsible for advising on finance-related risks for private sector partnerships and advising where appropriate on related risk mitigation measures.

6.7 Resource Mobilization Committee of the Board:

This committee will determine the value and relevance of the prospective partnership within Municipality context and priorities. It will be responsible for assessing country-specific risks for partnerships that involve country stakeholders, e.g. for partnerships that include restricted financial contributions, and/or service and in-kind support to grant recipients.

6.8 Municipality Community Development & Gender Department:

Responsible for advising on risks for private sector partnerships relating to community impact and engagement, human rights and gender equality, and advising where appropriate on related risk mitigation plans.

6.9 Other Key Stakeholders:

Following the initial screening and risk assessment, the Municipal Board, PSE Committee, resource mobilization committee and/or Office of the County Attorney may involve other stakeholders depending on the nature and risk profile of the partnership.