

# THE PUBLIC-PRIVATE PARTNERSHIP ACT 2004

Act 37/2004 Proclaimed by [\[Proclamation No. 8 of 2005\]](#) w.e.f. 1<sup>st</sup> March 2005

## ARRANGEMENT OF SECTIONS

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## AN ACT

**To provide for the implementation of public-private partnership agreements between contracting authorities and private parties and to establish a set of rules governing public-private procurement**

ENACTED by the Parliament of Mauritius, as follows –

### 1. **Short title**

This Act may be cited as the **Public-Private Partnership Act 2004**.

Disclaimer: This version has been corrected by the BOT Projects Unit following the Finance (Miscellaneous Provisions) Act 2021. The BOT Projects Unit accepts no liability for any errors and omissions. For an official version, one has to consult the version from the Supreme Court.

## 2. Interpretation

In this Act -

"agreement" means a public-private partnership agreement;

"Board" has the same meaning as in the Public Procurement Act

**Amended by** [\[Act No. 33 of 2006\]](#)

"contracting authority" means a Ministry, a Government department, a local authority, the Rodrigues Regional Assembly, a statutory body or any other Government-owned, or Government-controlled, entity designated by Government;

"control", in relation to "Government-controlled", has the same meaning as in the Public Debt Management Act;

**Amended by** [\[Act No.15 of 2021\]](#)

"local authority" has the same meaning as in the Local Government Act;

"Minister" means the Minister to whom responsibility for the subject of finance is assigned;

"Ministry" means the Ministry responsible for the subject of finance;

"own", in relation to "Government-owned", has the same meaning as in the Public Debt Management Act;

**Amended by** [\[Act No. 15 of 2021\]](#)

"PPP" means public-private partnership;

"private party", in relation to an agreement, means a party to the agreement other than a contracting authority;

"project" means a project to be implemented under an agreement;

"public-private partnership agreement" means an agreement between a contracting authority and a private party, approved under this Act, under which –

- (a) the private party undertakes to provide goods, works or other services to the contracting authority for a specified period;
- (b) the private party receives a benefit for providing goods, works or other services, by way of –
  - (i) compensation from a revenue fund;
  - (ii) charges or fees collected by it from users or customers of a service provided by it; or
  - (iii) a combination of compensation and charges or fees;

- (c) State facilities, equipment or other State resources may be transferred or made available to the private party;

"request for proposal" means the project requirements, the procedures for submission of bids, the criteria for the evaluation of bids and includes a model agreement;

“unit” **Repealed by** [\[Act No. 18 of 2008\]](#)

“value for money” means the net benefit accruing to a contracting authority or users in respect of the provision of goods, works or other services by the private party;

**Amended by** [\[Act No. 18 of 2008\]](#); [\[Act No. 18 of 2016\]](#); [\[Act No. 14 of 2019\]](#)

## **2A. Non-application of Public Procurement Act**

The Public Procurement Act shall not apply to a project under this Act.

**Added by** [\[Act No. 15 of 2021\]](#)

## **3. BOT Projects Unit**

There shall be, within the Procurement Policy Office, a BOT Projects Unit which shall deal with PPP projects.

**Amended by** [\[Act No. 18 of 2008\]](#); [\[Act No. 18 of 2016\]](#); [\[Act No. 14 of 2019\]](#)

## **3A. Functions of BOT Projects Unit**

The BOT Projects Unit shall –

- (a) formulate policies, directives, procedures and guidelines on PPP projects;
- (b) issue standard templates for request for proposal and model PPP Agreements;
- (c) assist a contracting authority in structuring a project to ensure value for money;
- (d) assist a contracting authority in preparing a request for proposal documentation;
- (da) monitor the implementation of a project until the signature of a contract with a private party and the operation of the project;
- (e) conduct training programmes on PPP;
- (f) maintain a register of projects; and
- (g) provide such other assistance as may be required to a contracting authority or to the Board.

**Amended by** [\[Act No. 18 of 2016\]](#); [\[Act No. 14 of 2019\]](#); [\[Act No. 15 of 2021\]](#)

### **3B. Powers of BOT Projects Unit**

- (1) The BOT Projects Unit may, in the discharge of its functions, by notice in writing, request a contracting authority to provide, within the time limit specified in the notice, such information, records and other documents as it may require regarding a project.
- (2) Where, in the discharge of its functions, the BOT Projects Unit finds that there has been a deliberate non-compliance with any provision of this Act, the officer in charge of the BOT Projects Unit shall refer the matter to the Secretary to Cabinet and Head of the Civil Service and recommend such action as he considers appropriate.
- (3) The Secretary to Cabinet and Head of the Civil Service may, where he considers it appropriate, refer any matter referred to him under subsection (2) to the police for enquiry.

**Added by** [\[Act No. 15 of 2021\]](#)

### **3C. Unsolicited proposal**

- (1) Any person may, notwithstanding section 4(1)(a), but subject to this Act, identify a project to be implemented under an agreement and submit to the contracting authority-
  - (a) a description thereof; and
  - (b) an estimated costs of the feasibility study of the project.
- (2) The estimated costs referred to in subsection (1)(b) shall not exceed 3 percent of the project value and shall be subject to the approval of the BOT Projects Unit.
- (3) On receipt of a project under subsection (1), the contracting authority shall, within 15 working days, refer the project to the BOT Projects Unit together with its recommendations.
- (4) Where, pursuant to subsection (3), the BOT Projects Unit recommends the retention of the project, the contracting authority shall, within 5 working days, request the person to submit a proposal in relation thereof, containing -
  - (a) details of his technical, commercial, managerial and financial capabilities;
  - (b) a feasibility study containing the technical and commercial details of the project; and
  - (c) the nature of information which is proprietary.

**Amended by** [\[Act No. 15 of 2021\]](#)

(5) On receipt of the proposal referred to in subsection (4), the contracting authority shall proceed in accordance with section 4(1)(d).

(5A) The contracting authority shall, on obtaining the approval of Cabinet pursuant to section 4(1)(d), prepare a request for proposal which shall be issued by way of the open advertised bidding method –

- (a) using its internal procedures for a project below the prescribed threshold; or
- (b) through the Central Procurement Board for a project above the prescribed threshold.

**Added by [\[Act No. 15 of 2021\]](#)**

(6) Where the approval of Cabinet is obtained pursuant to section 4(1)(d), the person making the proposal shall be requested in the request for proposal referred to in subsection (5A) to submit only its financial proposal.

**Amended by [\[Act No. 15 of 2021\]](#)**

(7) The contracting authority shall specify in the request for proposal referred to in subsection (5A) that in case the price quoted by the person making the proposal is within the range of 10 per cent when compared with the price quoted by a preferred bidder, the person making the proposal shall be the preferred bidder.

**Amended by [\[Act No. 15 of 2021\]](#)**

(8) The contracting authority shall follow the procedures relating to the invitation for request for proposal in accordance with this Act.

(9) Where the person making the proposal under this section -

- (a) is not the successful bidder, the contracting authority shall –
  - (i) compensate the person for the costs of the feasibility study referred to in subsections (1) and (2); and
  - (ii) claim such costs from the successful bidder.
- (b) is the successful bidder, the costs of the feasibility study referred to in subsections (1) and (2) shall be borne by the person;
- (c) is the only bidder pursuant to the procurement exercise referred to in subsection (8), the contract may be awarded to the person following successful negotiation of the conditions of the contract.

**Amended by [\[Act No. 18 of 2008\]](#); [\[Act No. 18 of 2016\]](#); [\[Act No. 15 of 2021\]](#)**

- (10) Notwithstanding this section, where a person submits a project –
- (a) which has no financial implication for the Government; and
  - (b) which will benefit the public,
- he may be awarded the project subject to successful negotiation with the contracting authority.

**Added by** [\[Act No. 15 of 2021\]](#)

### **3D. Services of technical advisory firm or consultant**

- (1) For the purpose of this Act, the BOT Projects Unit may, in accordance with the procurement rules, hire the services of –
- (a) a technical advisory firm, which shall be remunerated by –
    - (i) the BOT Projects Unit;
    - (ii) the private party; or
    - (iii) both the BOT Projects Unit and the private party; or
  - (b) a consultant, by direct procurement up to a prescribed value, or by any other procurement method above the prescribed value. <sup>1</sup>

**Amended by** [\[Act No. 12 of 2023\]](#)

- (2) The technical advisory firm or consultant shall –
- (a) assist the BOT Projects Unit in its functions; and
  - (b) assist the Central Procurement Board in its functions pursuant to section 10.
- (3) A contracting authority may hire the services of a technical advisory firm to assist it to carry out the procurement –
- (a) of a project not exceeding the prescribed threshold; or
  - (b) through the Board, of a project above the prescribed threshold.
- (4) In this section –
- “procurement rules” means procurement rules established by the BOT Projects Unit.

**Added by** [\[Act No. 7 of 2020\]](#)

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<sup>1</sup> For the purpose of section 3D(1)(b) of the Act, the prescribed value shall be one million rupees. *[as per Regulation 3 of the Public-Private Partnership (Prescribed Threshold) Regulations 2020 – GN 258 of 2020]*

#### **4. Responsibilities of contracting authority**

- (1) A contracting authority shall, for the purposes of this Act –
  - (a) identify a project to be implemented under this Act;
  - (b) submit to the BOT Projects Unit a project brief for the registration of a project;
  - (c) structure a project, with the assistance of the BOT Projects Unit, to ensure value for money;
  - (d) seek approval of Cabinet to proceed with the procurement exercise for a project;
  - (da) carry out the procurement exercise to select a private party for a project below the prescribed threshold with the assistance of the BOT Projects Unit or a consultant;
  - (e) seek approval of Cabinet prior to signing an agreement;
  - (f) furnish such information, record or other document as the BOT Projects Unit may require with respect to a project.
  
- (2) For the purposes of this Act, a contracting authority shall set up a project team and designate a suitable and qualified project officer who shall be capable of effectively managing a Project.

**Amended by** [\[Act No. 18 of 2008\]](#); [\[Act No. 18 of 2016\]](#); [\[Act No. 14 of 2019\]](#); [\[Act No. 15 of 2021\]](#)

#### **5. Feasibility study**

**Repealed by** [\[Act No. 14 of 2019\]](#)

#### **6. Public-private partnership agreement**

- (1) Notwithstanding any other enactment but subject to this Act, a contracting authority may enter into an agreement with a private party for the provision of goods, works or other services.
  
- (2) Every agreement shall -
  - (a) identify the responsibilities of the contracting authority and the private party;
  - (b) specify the relevant financial terms;
  - (c) ensure the management of performance of the private party;
  - (d) provide for the return of assets, if any, to the contracting authority, at the termination or expiry of the agreement, in such manner as may be provided for in the agreement;
  - (e) provide for the sharing of risks between the contracting authority and the private party;

- (f) provide for the payment to the private party by way of compensation from a revenue fund or of charges or fees collected by the private party from users or customers of a service provided by it;
  - (g) provide for its duration; and
  - (h) contain such other information as may be prescribed.
- (3) Every agreement shall be governed by and construed in accordance with the laws of Mauritius.
- (4) Every agreement shall provide for disputes between the private party and the contracting authority to be settled by arbitration, according to the rules defined in the agreement.

**Amended by** [\[Act No. 14 of 2019\]](#)

## **7. Request for proposal**

A notice of invitation or document pertaining to a request for proposal for the procurement of a private party may be issued using any of the following procurement methods –

- (a) open advertised bidding method, whereby the invitation to bid shall be published in a national newspaper having wide circulation and, in the case of an international bidding, in selected international media having wide circulation;
- (b) framework agreement, between a contracting authority and one or more private parties, which establishes the terms and conditions under which the private party or parties, as the case may be, shall enter into one or more agreements with the contracting authority during the duration of the agreement; or
- (c) restricted bidding procedure, where a contracting authority has reason to believe that the agreement may be implemented by a limited number of bidders.

**Added by** [\[Act No. 15 of 2021\]](#)

## **7. Referral to Central Tender Board**

**Repealed by** [\[Act No. 18 of 2016\]](#)

## **8. Pre-selection of bidders**

**Repealed by** [\[Act No. 14 of 2019\]](#)

**Amended by** [\[Act No. 18 of 2008\]](#)



**9. Invitation to bid**

**Repealed by** [\[Act No. 14 of 2019\]](#)

**Amended by** [\[Act No. 18 of 2008\]](#); [\[Act No. 18 of 2016\]](#)

**10. Powers of Board**

The Board, in respect of contracts above the prescribed threshold, —<sup>2</sup>

- (a) shall be responsible for ensuring transparency and equity in the bidding procedures;
- (aa) shall be responsible for the authorisation, approval and carrying out of the pre-selection exercise to procure a private party;
- (b) shall examine and evaluate bids received;
- (c) shall make recommendations to the contracting authority for entering into negotiations with the preferred bidder; and
- (d) may approve the award of a project.

**Amended by** [\[Act No. 14 of 2019\]](#); [\[Act No.7 of 2020\]](#); [\[Act No. 15 of 2021\]](#)

**11. Award of project and signature of agreement**

**Repealed by** [\[Act No. 14 of 2019\]](#)

**12. Regulations**

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Any regulation made under subsection (1) may provide for the levying of fees and charges.

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<sup>2</sup> Amendments to Regulations in progress

**13. Consequential amendment**

The Central Tender Board Act is amended by inserting immediately after section 6, the following new section –

**6A. Award of public-private partnership project**

Notwithstanding the provisions of this Act, the Board

- (a) shall approve all documents relating to the bid;
- (b) shall authorise, approve and carry out pre-selection exercise;
- (c) shall authorise the advertisement, invitation locally or internationally, as the case may be, and call for bids;
- (d) shall examine and evaluate bids; and
- (e) may approve the award, of a public-private partnership project in the manner provided for under the Public-Private Partnership Act.

**14. Act not applicable**

**Repealed by** [\[Act No. 14 of 2019\]](#)

**Amended by** [\[Act No. 18 of 2016\]](#)

**15. Commencement**

**Proclaimed by** [\[Proclamation No. 8 of 2005\]](#) **w.e.f. 1<sup>st</sup> March 2005**