

# PUBLIC-PRIVATE PARTNERSHIP ACT

Act 37 of 2004 — 1 March 2005

## ARRANGEMENT OF SECTIONS

### *Section*

1. Short title
2. Interpretation
3. BOT Projects Unit
4. Responsibilities of contracting authority
5. *Feasibility study [Repealed]*
6. Public-private partnership agreement
7. *Referral to Central Tender Board [Repealed]*
8. *Pre-selection of bidders [Repealed]*
9. *Invitation to bid [Repealed]*
10. Powers of Board
11. *Award of project and signature of agreement [Repealed]*
12. Regulations
13. Consequential amendment
14. *Act not applicable [Repealed]*
15. Commencement

## **PUBLIC-PRIVATE PARTNERSHIP ACT**

### **1. Short title**

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

### **2. Interpretation**

In this Act—

“agreement” means a public-private partnership agreement;

“Board” has the same meaning as in the Public Procurement Act;

“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 section 3(1D) of the Public Procurement Act;

“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 section 3(1D) of the Public Procurement Act;

“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;

“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;

### **3. BOT Projects Unit**

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

#### **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;
- (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.

#### **3 C. Unsolicited Proposals**

(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 cost of the feasibility study of the project.

(2) The estimated costs referred to in subsection (1) (b) shall not exceed 3 per cent 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 section 3B (a), 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.

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

(6) The person making the proposal shall be requested in the request for proposal under section 4 (1) (d) to submit only its financial proposal.

(7) The contracting authority shall specify in the request for proposal referred to in section 4 (1) (d) 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.

(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.

#### **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 the approval of Cabinet to proceed with a project;
- (e) seek approval of Cabinet prior to signing an agreement; and
- (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 BOT Project.

## **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.

**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]**

**9. Invitation to bid**

**Repealed by [Act No.14 Of 2019]**

**10. Powers of Board**

(1) The Board—

(a) shall be responsible for ensuring transparency and equity in the bidding procedures;

(b) shall examine and evaluate the 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 the project.

**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.

**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 pre-selection exercises;
- (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]**

**15. Commencement**

(1) This Act shall come into operation on a date to be fixed by proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.