

THE BUILD OPERATE TRANSFER PROJECTS ACT 2016

Act 1/2016

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I assent

BIBI AMEENAH FIRDAUS GURIB-FAKIM

President of the Republic

5 April 2016

ARRANGEMENT OF SECTIONS

Section

1. [Short title](#)
2. [Interpretation](#)
3. [Non-application of enactment](#)
4. [BOT Projects Unit](#)
5. [Functions of BOT Projects Unit](#)
- 5A. [Powers of BOT Unit](#)
- 5B. [Services of technical advisory firm or short-term consultant](#)
6. [Staff of BOT Projects Unit](#)
7. [Functions of contracting authority](#)
8. [Feasibility report](#)
9. [Request for proposal](#)
10. [Functions of Central Procurement Board](#)
- 10A. [Pre-selection of bidders](#)
11. [BOT agreement](#)
12. [Regulations](#)

An Act
To provide for a legal framework for the execution of projects under Build Operate Transfer (BOT) agreements

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the **Build Operate Transfer Projects Act 2016**.

2. Interpretation

In this Act

“bid” means a proposal submitted in response to a request for proposal pursuant to section 10;

“bidder” means a participant in a request for proposal proceedings;

“BOT” means build, operate and transfer;

“BOT agreement” means an agreement, in relation to a BOT project, between a contracting authority and a private party;

“BOT project” -

(a) means a project based on the granting of rights, under a BOT agreement, to a private party, to build, set up, own, operate, rent, lease, finance, modernise, manage, maintain or develop, and to transfer the undertaking, in accordance with the BOT agreement; and

(b) includes any agreement which may provide for a project based on BOO (Build, Own and Operate), BOOT (Build, Own, Operate and Transfer), DBFOT (Design, Build, Finance, Operate and Transfer) or MOT (Modernise, Own/Operate and Transfer) models;

“BOT Projects Unit” means the unit referred to in section 4;

“Central Procurement Board” means the Central Procurement Board established under section 8 of 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 entity, 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;

“Director” means the Director referred to in section 4(1) of the Public Procurement Act;

“foreign State” has the same meaning as in section 2 of the Public Procurement Act;

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

“own”, in relation to “Government-owned”, has the same meaning as in section 3(1D) of the Public Procurement Act;

“private party” means a corporate body established, incorporated or registered in Mauritius, or a consortium of corporate bodies;

“Procurement Policy Office” means the Procurement Policy Office referred to in section 4 of the Public Procurement Act;

“procurement rules” means procurement rules established by the BOT Projects Unit;

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

“project period” means the initial period of a BOT agreement and any extension thereof.

“request for proposals” –

- (a) means the project requirements, the procedures for submission of bids and the criteria for the evaluation of bids; and
- (b) includes a model agreement;

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

Amended by [\[Act No. 10 of 2017\]](#); [\[Act No. 14 of 2019\]](#)

3. Non-application of enactment

- (1) The Public-Private Partnership Act and the Public Procurement Act shall not, subject to subsection (2), apply to any BOT project under this Act.
- (2) Where there is an agreement or arrangement between Mauritius and a foreign State for a BOT project which allows Mauritius to benefit from the expertise and

development experience of that foreign State in a particular field, section 3(1A)(a), (1B), and (1Ba) of the Public Procurement Act shall apply to that BOT project.

(3) This Act shall not apply to a BOT project referred to in subsection (2)

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

4. BOT Projects Unit

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

5. Functions of BOT Projects Unit

The BOT Projects Unit of the Procurement Policy Office shall -

(a) formulate policies, including directives, procedures and guidelines on BOT projects;

(b) issue templates in relation to BOT projects;

(c) assist the contracting authority in –

(i) structuring a project to ensure value for money;

(ii) preparing request for proposals documentation;

(ca) monitor value for money and budget affordability during the operational stage of a BOT project;

Added by [\[Act No. 10 of 2017\]](#)

(d) maintain a register of BOT projects; and

(e) conduct training programmes on BOT Projects.

Amended by [\[Act No. 10 of 2017\]](#); [\[Act No. 14 of 2019\]](#)

5A. Powers of BOT Projects Unit

(1) In the discharge of its functions, the BOT Projects Unit may, 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 may be required with respect to a BOT 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 Head of

the BOT Projects Unit shall refer the matter to the Secretary to Cabinet and Head of the Civil Service recommending such action as he considers appropriate.

- (3) The Secretary to Cabinet and Head of the Civil Service may, where he considers appropriate, refer any matter referred to him under subsection (2) to the Police for enquiry.

Added by [\[Act No. 10 of 2017\]](#)

5B. Services of technical advisory firm or short-term 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, to be remunerated by the private party; or
 - (b) a short-term consultant, by direct procurement up to a prescribed value.¹
- (2) The technical advisory firm or short-term consultant shall –
 - (a) assist the BOT Projects Unit in its functions; and
 - (b) assist the Central Procurement Board in its functions under 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 BOT project not exceeding the prescribed threshold; or
 - (b) of a BOT project above the prescribed threshold through the Central Procurement Board.

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

6. Staff of BOT Projects Unit

- (1) The Secretary to Cabinet and Head of the Civil Service may, on the recommendation of the Procurement Policy Office and subject to the Public Service Commission Regulations -
 - (a) designate such public officers as may be necessary to assist the BOT Projects Unit;
 - (b) enlist, on ad hoc basis and for such period as may be necessary, the services of suitable BOT experts to advise the Procurement Policy Office.

¹ For the purpose of section 5B(1)(b) of the Act, the prescribed value shall be one million rupees.
[as per Regulation 3 of the Build Operate Transfer Projects (Prescribed Threshold) Regulations 2020 - *GN 257 of 2020*]

- (2) Any officer designated or expert enlisted under subsection (1) shall be under the administrative control of the Director.

7. Functions of contracting authority

- (1) A contracting authority shall, for the purposes of this Act –
- (a) identify a BOT project to be implemented under this Act;
 - (b) submit to the BOT Projects Unit a project brief for the registration of a BOT project;
 - (c) structure a BOT project, with the assistance of the BOT Projects Unit, to ensure value for money;
 - (d) seek approval of Cabinet to proceed with a BOT project;
 - (e) seek approval of Cabinet prior to signing an agreement.
- (2) For the purpose of this Act, a contracting authority shall set up a project team and designate a suitable and qualified project officer who shall be capable to effectively manage a BOT project.

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

8. Feasibility report

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

9. Request for proposal

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

- (3) A notice of invitation or document pertaining to a request for proposal may be issued under the following procurement methods –
- (a) open advertised bidding method, whereby the invitation to bid shall be published in a national newspaper with wide circulation and, in the case of international bidding, in selected international media with 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, will enter into one or more BOT agreements with the contracting authority in the period during which the agreement applies; or

- (c) restricted bidding procedure, whereby a contracting authority has reason to believe that the BOT agreement may be implemented by a limited number of bidders.

Added by [\[Act No. 10 of 2017\]](#)

10. Functions of Central Procurement Board

- (1) The Central Procurement Board shall, in respect of a BOT project, above the prescribed threshold -²
 - (a) examine and approve the request for proposal documentation to be issued by the contracting authority;
 - (b) evaluate bids in accordance with its rules and procedures;
 - (c) make recommendations to the contracting authority for entering into
 - (d) negotiations with the preferred bidder; and
 - (e) recommend the contracting authority to enter into an agreement with a private party.

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

- (2) Where section 3(1)(b) and (1B) of the Public Procurement Act applies to a BOT project -
 - (a) “Ministry”, in section 3(1B)(b) of that Act, shall be deemed to refer to any of the entities described as a contracting authority;
 - (b) the high-powered committee shall forward its report to Cabinet, as specified in section 3(1B)(b)(ii)(A) of that Act, through the Prime Minister.

10A. Pre-selection of bidders

The Central Procurement Board shall be responsible for the authorisation, approval and carrying out of pre-selection exercises of BOT Projects above the prescribed threshold.²

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

11. BOT agreement

- (1) Notwithstanding any other enactment but subject to this Act, a contracting authority may, after informing Cabinet through the Minister responsible for that

² (1) For the purpose of sections 10(1) and 10A of the Act, the prescribed threshold shall be 300 million rupees.

(2) The prescribed threshold under paragraph (1) shall consist of the capital cost of a BOT Project but shall exclude the operation and maintenance costs of the project.

[as per Regulation 4 of the Build Operate Transfer Projects (Prescribed Threshold) Regulations 2020 - GN 257 of 2020]

contracting authority, enter into an agreement with a private party for the purpose of implementing a BOT project.

- (2) Every agreement shall include provisions for -
 - (a) the rights and obligations of the contracting authority and private party;
 - (b) the period of execution of the project;
 - (c) the relevant financial terms;
 - (d) the conditions for the supply of services;
 - (e) the management of performance of the private party;
 - (f) the sharing of technical, operational, commercial and financial obligations and responsibilities among the parties;
 - (g) the termination of the agreement in case of breach of terms and conditions by either party, or otherwise;
 - (h) the remedies in the event of default by either party, including lenders' step-in-rights;
 - (i) the return of the assets to the contracting authority, at the termination or expiry of the agreement, in such manner as may be provided for in the agreement; and
 - (j) such other requirements as may be prescribed.

- (3) Every agreement shall -
 - (a) be governed by, and construed in accordance with, the laws of Mauritius;
 - (b) provide for disputes between the private party and contracting authority to be resolved by amicable settlement, mediation or arbitration according to the rules specified in the agreement;
 - (c) as soon as practicable, be laid before the National Assembly by the contracting authority.

- (4) This section shall also apply to a BOT project referred to in section 3(2).

12. Regulations

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

Passed by the National Assembly on the twenty ninth day of March two thousand and sixteen.

Bibi Safeena Lotun (Mrs)
Clerk of the National Assembly