
THE PUBLIC-PRIVATE PARTNERSHIP ACT, 2023

ARRANGEMENTS OF SECTIONS

PART I

PRELIMINARY PROVISIONS

Section

1. Short title and commencement
2. Interpretation
3. Application

PART II

PUBLIC -PRIVATE PARTNERSHIP OFFICE

4. Continuation and renaming of Public-Private Partnership Unit
5. Functions of Public-Private Partnership Office
6. Director-General and other staff

PART III

THE PUBLIC -PRIVATE PARTNERSHIP COUNCIL AND TECHNICAL COMMITTEE

7. Establishment of Council
8. Functions of Council
9. Continuation of Technical Committee
10. Functions of Technical Committee

PART IV

SOLICITED PROPOSALS

11. Project identification and conceptualisation
12. Submission of project list
13. Conceptualisation of project by contacting authority
14. Project identification and conceptualisation by Public-Private Partnership Office
15. Variation of project list
16. Feasibility study
17. Appraisal and approval of feasibility study report and project proposal
18. Request for expression of interest
19. Pre-selection proceedings

20. Participation of consortia
21. Qualification of bidder of consortium
22. Evaluation committee
23. Disqualification of bidder
24. Approval of evaluation report by Public-Private Partnership Office
25. Request for proposals under single stage procedure
26. Request for proposals under two-stage procedures
27. Content of request for proposal
28. Bid securities
29. Clarifications and modifications
30. Evaluation criteria
31. Evaluation of proposal
32. Negotiations
33. Approval of negotiation report by Council
34. Notification of approval of public-private partnership agreement
35. Execution of public-private partnership agreement
36. Notice of award
37. Confidentiality
38. Record of selection and award proceedings
39. Termination or cancellation of procurement proceedings

PART V

UNSOLICITED PROPOSALS

40. Submission of unsolicited proposal
41. Preliminary approval of unsolicited proposal
42. Inspection of project site
43. Evaluation of unsolicited proposals
44. Preliminary approval
45. Due diligence
46. Procurement of unsolicited proposal
47. Conditions for changing unsolicited bidding to solicited bidding

PART VI

DIRECT PROCUREMENT

48. Circumstances authorising award without competitive procedures
49. Procedure for direct procurement

PART VII

GENERAL PROCUREMENT PROVISIONS

50. Prohibition of inappropriate influence on evaluation and other matters
51. Standard solicitation documents
52. Special purpose vehicle
53. Technical expertise of contracting authority
54. Standards and procedures

PART VIII

PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

55. Contents and implementation of public-private partnership agreement
56. Factors in determining duration of public-private partnership agreement
57. Extension of concession period or agreement
58. Property and assets under public-private partnership agreement
59. Public-Private Partnership model
60. Subcontracting
61. Fiscal commitment
62. Ownership of assets
63. Acquisition of rights related to project site
64. Compulsory acquisition of land
65. Easement
66. Collection of prescribed fees or levies
67. Security interest
68. Assignment of public-private partnership agreement
69. Transfer of controlling interest in concessionaire
70. Use of infrastructure, asset, facility or other service
71. Revision of concessionaire agreement
72. Takeover of project

- 73. Substitution of concessionaire
- 74. Winding-up and handback
- 75. Duties of contracting authority
- 76. Project implementation
- 77. Contract manager
- 78. Inspection
- 79. Financial management and reporting

PART IX

PARTICIPATION IN SMALL AND MEDIUM SCALE

PUBLIC-PRIVATE PARTNERSHIP PROJECT

- 80. Small and medium scale public-private-partnerships
- 81. Small and medium scale public-private-partnerships agreement

PART X

PUBLIC -PRIVATE PARTNERSHIP PROJECT DEVELOPMENT SUPPORT FUND

- 82. Establishment of Public-Private Partnership Project Development Support Fund
- 83. Purpose of Fund
- 84. Remission of funds
- 85. Management of Fund
- 86. Accounts and audit of Fund
- 87. Annual report of Fund
- 88. Regulations relating to Fund
- 89. Recoverable project development cost

PART XI

GENERAL PROVISIONS

- 90. Appeals
- 91. Local content
- 92. Registers
- 93. Offences and penalties
- 94. Participation in tenders under Act
- 95. Regulations
- 96. Repeal of Act No. 14 of 2009, and savings and transitional provisions

SCHEDULES

GOVERNMENT OF ZAMBIA

ACT

No. 18 of 2023

Date of Assent: 22December, 2023

An Act to regulate the implementation of public-private partnerships in the Republic; promote the participation of the private sector in the design, financing, construction, development, operation or maintenance of infrastructure or delivery of services through public-private partnerships; provide for the procedures for the approval, award and implementation of public-private partnerships projects in accordance with principles of transparency, fairness, stability, proper management, integrity, competition, economy and long term sustainability; provide for rehabilitation, modernisation, expansion and operation of existing infrastructure facilities and systems and their maintenance; strengthen the institutional framework for the implementation of public-private partnership projects; provide for the establishment of the Public-Private Partnership Office; provide for a transparent project selection process, clear procurement procedures, effective regulatory approvals and expanded contractual models in order to promote private sector investment; provide for the establishment of the Public-Private Partnership Project Development Support Fund; repeal and replace the Public-Private Partnership Act, 2009; and provide for matters connected with, or incidental to, the foregoing.

[26th December, 2023

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Public-Private Partnership Act, 2023, and shall come into operation on the date appointed by the Minister by statutory instrument.

Short title
and
commence-
ment

Inter-
pretation

2. In this Act, unless the context otherwise requires—

“affordability” means—

- (a) the financial commitments to be incurred by a contracting authority in terms of public-private partnership agreement that are sustainable and do not impose an unreasonable burden on the contracting authority and may be met by funds—
 - (i) designated within the existing budget of the contracting authority for its function to which the public-private partnership agreement relates; and
 - (ii) assigned to the contracting authority in accordance with its relevant future budgetary allocation; and
- (b) meeting the cost of delivering a facility or service in relation to the project by the contracting authority which does not impose an unreasonable financial burden on the end users;

“asset” means an existing asset and includes movable and immovable property of a contracting authority or a new asset to be acquired for the purposes of entering into a public-private partnership agreement and the intellectual property rights vested in the contracting authority;

“associate” has the meaning assigned to the words in the Anti-Corruption Act, 2012;

“bid” means a tender, an offer, a proposal or price quotation, given in response to an invitation to participate in a project;

“bidder” means a person that participates in pre-selection or evaluation proceedings relating to a project;

“bidding documents” means a solicitation document or other document for solicitation of bids, on the basis of which a bidder shall prepare its bids;

“bidding consortium” means two or more bidders who collectively submit a bid for project, and “bidding consortia” shall be construed accordingly;

“Chairperson” means the person appointed as Chairperson of the Council under section 7;

Act No. 3 of
2012

- “chairperson” means the person appointed as chairperson of the Technical Committee under section 9;
- “citizen” has the meaning assigned to the word in the Constitution; Cap. 1
- “concessionaire” means a person from the private sector who is awarded and undertakes a project under a public-private partnership agreement;
- “constitutional officer holder” has the meaning assigned to the words in the Constitution; Cap. 1
- “contingent liability” means a fiscal obligation dependent on a specific but uncertain event that may or may not materialise in the future on which the materialisation of this obligation creates a fiscal cost for the Government;
- “contracting authority” means a public body and entity owned by a public body that has the power to enter into a public-private partnership agreement and intends to have any of its functions performed by a concessionaire for the implementation of a project;
- “controlling officer” has the meaning assigned to the words in the Public Finance Management Act, 2018; Act No. 1 of 2018
- “Council” means the Public-Private Partnership Council established under section 7;
- “councillor” has the meaning assigned to the word in the Constitution; Cap. 1
- “economic feasibility” means the assessment of cost or benefit analysis of a project that assists a contracting authority to determine the viability, cost, and benefits associated with a project;
- “Emoluments Commission” means Emoluments Commission established under the Constitution; Cap. 1
- “Engineering Institution of Zambia” means the Engineering Institution of Zambia established under the Engineering Institution of Zambia Act; 2010; Act No. 17 of 2010
- “evaluation committee” means an evaluation committee established under section 22;
- “feasibility study” means a study undertaken to determine the technical, financial, legal, social and environmental viability of undertaking a project;

“financial close” means a circumstance where the project financing agreements are signed, conditions precedent required are met and the concessionaire can start drawing down finances to commence work on a project;

“Fund” means the Public-Private Partnership Project Development Support Fund established under section 82;

“generic risks” means circumstances that have the potential to adversely affect the development of, or interests of the parties to a project in the period of development construction or operation;

“handback” means the date at the end of the period of the public-private partnership agreement where the assets or infrastructure which make up the project transfer to a contracting authority;

“infrastructure project” means the design, construction, development and operation of a new infrastructure or the rehabilitation, modernisation, expansion or operation of an existing infrastructure;

Act No. 6 of
2019

“legally disqualified” means the absence of legal capacity as provided under section 4 of the Mental Health Act, 2019;

Act No. 2 of
2019

“local authority” has the meaning assigned to the words in the Local Government Act, 2019;

“local content” means the extent of utilisation of local materials, products or personnel in the production of goods and services in the Republic;

“material default” means a failure by a party to a public private partnership agreement to honour its obligations which negatively affects the delivery of infrastructure and provision of services to the public, and remains unsatisfied after a reasonable period of time and after a party has received written notice of the failure;

Act No. 1 of
2020

“National Development Plan” has the meaning assigned to the words in the National Planning and Budgeting Act, 2020;

“office holder” means an employee of the Public-Private Partnership Office or contracting authority;

“person with disability” has the meaning assigned to the words in the Persons with Disabilities Act, 2012;

Act No. 6 of 2012

“preferred bidder” means a successful bidder selected during the competitive selection process including a bidding consortium;

“project” means the—

- (a) design, construction, development or operation and maintenance of a new infrastructure, asset or facility under a public-private partnership agreement;
- (b) provision of services under a public-private partnership agreement; or
- (c) the rehabilitation, modernisation, expansion, operation or management of an existing infrastructure, asset or facility under a public-private partnership agreement;

“project agreement” means a contract concluded between a concessionaire and third party;

“public authority” means a public officer, state officer, councillor, constitutional office holder, judge and judicial officer;

“public body” has the meaning assigned to the words in the Public Finance Management Act, 2018;

Act No. 1 of 2018

“public-private partnership” means a mechanism for private sector participation in the performance of a public function through a project on behalf of a contracting authority;

“public-private partnership agreement” means a contractual arrangement between a contracting authority and a concessionaire, made in accordance with this Act, in which the concessionaire—

- (a) undertakes to perform in an infrastructure project or infrastructure facility or asset as specified in the Second Schedule or as prescribed and agrees to handback the infrastructure project or infrastructure facility or asset at the end of the public-private partnership agreement;
- (b) undertakes to provide public services as may be required;
- (c) assumes substantial financial, technical and operational risks in connection with the performance of the infrastructure project or use

of State assets; and

(d) receives consideration for performing a public function or utilising State property, either by way of—

- (i) a fee from any revenue fund or a Ministry's budgetary funds;
- (ii) user levies collected by the concessionaire from users or customers for a service provided by the concessionaire; or
- (iii) a combination of the consideration paid under subparagraphs (i) and (ii);

“Public-Private Partnership Office” means the Public-Private Partnership Office established under section 4;

Cap. 1

“public officer” has the meaning assigned to the words in the Constitution;

“regulatory agency” means a statutory corporation that is entrusted with the power to issue and enforce the laws governing infrastructure development or the provision of services;

Act No. 3 of 2012

“relative” has the meaning assigned to the words in the Anti-Corruption Act, 2012;

Act No. 14 of 2009

“repealed Act” means the Public-Private Partnership Act, 2009;

“solicited proposal” means a proposal relating to the implementation of a project that is initiated by a contracting authority or public body;

“special purpose vehicle” means a project company incorporated in the Republic by a preferred bidder for the purpose of undertaking a project in accordance with a project agreement executed by the parties;

Cap. 1

“State officer” has the meaning assigned to the words in the Constitution;

“Technical Committee” means the Public-Private Partnership Technical Committee constituted under section 9;

“transaction advisor” means a person who has the appropriate skills and experience to assist and advise

a contracting authority or the Public-Private Partnership Office on matters related to a public-private partnership;

“unsolicited proposal” means a proposal relating to a project that is initiated by the bidder;

“user fee” means the right or authority granted to a concessionaire by a contracting authority to recover investment and a fair return on investment, and includes tolls, fees, tariffs, charges or other benefit;

“value for money” means the value attached to the undertaking of a public function of a contracting authority by a concessionaire under a public-private partnership which results in a net benefit accruing to that contracting authority defined in terms of cost, price, quality, quantity, timeliness or risk transfer;

“Vice-Chairperson” means the person elected as Vice-Chairperson of the Council under section 7;

“vice-chairperson” means the person elected as vice-chairperson of the Technical Committee under section 9;

“Zambia Environmental Management Agency” means the Zambia Environmental Management Agency established under the Environmental Management Agency Act, 2011; Act No. 12 of 2011

“Zambia Institute of Chartered Accountants” means the Zambia Institute of Chartered Accountants established under the Accountants Act, 2008; and Act No. 13 of 2008

“Zambia Public Procurement Authority” means the Zambia Public Procurement Authority established under the Public Procurement Act, 2020. Act No. 8 of 2020

3. (1) This Act applies to— Application

(a) a project implemented through the Public-Private Partnership Office; and

(b) a project undertaken under a public-private partnership agreement.

(2) This Act does not apply to the following:

(a) a project which is undertaken as a joint venture with a statutory corporation, Government Ministry or department or local authority;

- (b) a project between a statutory corporation and a Government Ministry or department;
- (c) a project which may be taken over by a concessionaire or a private sector entity on privatisation by a Government Ministry or department, a statutory corporation, a state owned enterprise or local authority; or
- (d) the outsourcing of public services without the transfer of financial and operational risks to a bidder.

PART II

PUBLIC -PRIVATE PARTNERSHIP OFFICE

Continuation
and
renaming of
Public-
Private
Partnership
Unit

4. (1) The Public-Private Partnership Unit established under the repealed Act is continued as if established under this Act and renamed as the Public-Private Partnership Office.

(2) The Public-Private Partnership Office shall be with the ministry responsible for finance and is responsible for the implementation of the provisions of this Act.

Functions of
Public-
Private
Partnership
Office

5. (1) The functions of the Public-Private Partnership Office are to—

- (a) identify and provide guidance on a project within the national development agenda;
- (b) receive and assess a proposed project;
- (c) provide technical support and guidance to a contracting authority in the structuring, procurement, implementation and evaluation of a project;
- (d) develop and disseminate information in respect of standard bidding documents, technical and best practice guidelines, public-private partnership agreements and manuals for public-private partnerships;
- (e) examine a request for a proposal to ensure conformity with an approved feasibility study as may be prescribed;
- (f) oversee the monitoring and evaluation of a public-private partnerships agreement from commencement to handback and review the process if required under this Act;
- (g) provide oversight on the implementation, management, enforcement and monitoring of a project and public-private partnership agreement;
- (h) facilitate the internal and external auditing of a project;
- (i) approve terms of reference for consultancy assignments or transaction advisors;

- (j) assess and provide advice on fiscal commitments, financial support and contingent liability for a project;
- (k) undertake capacity building programmes for a contracting authority and other relevant stakeholders;
- (l) manage the Fund;
- (m) promote public private partnership awareness and advocacy;
- (n) hire transaction advisors for a specified project when required; and
- (o) perform any other functions necessary for the purposes of this Act.

(2) The Public-Private Partnership Office shall, in the performance of its functions—

- (a) establish an open, efficient and equitable process for the management of the identification, screening, prioritisation, development, procurement, implementation and monitoring of projects;
- (b) provide training in matters relating to public-private partnership;
- (c) provide advisory and support services to a contracting authority at all stages of a project;
- (d) provide guidance and support to a contracting authority in the selection of a consultant or transaction advisor;
- (e) review a tender evaluation report;
- (f) identify and monitor fiscal risks and contingent liabilities as they relate to a public-private partnership; and
- (g) conduct research and publish findings on public-private partnerships in order to ensure the continuous improvement of projects.

6. (1) The President shall, on the recommendation of the Civil Service Commission, appoint as a public officer, a Director-General of the Public-Private Partnership Office.

Director-General and other staff

(2) The Director-General shall be responsible for the day-to-day management of the Public-Private Partnership Office and shall execute the decisions of the Council and the Technical Committee.

(3) A person qualifies for appointment as Director-General if that person—

Act No. 4 of
2013

Act No. 13
of 2011

- (a) holds an advanced degree or an equivalent qualification from a higher education institution established, registered or declared under the Higher Education Act, 2013, and recognised by the Zambia Qualifications Authority under the Zambia Qualifications Authority Act, 2011; and
- (b) has knowledge and experience in any of the following fields:
- (i) public-private partnerships;
 - (ii) finance;
 - (iii) economics;
 - (iv) law;
 - (v) engineering;
 - (vi) project management; or
 - (vii) any other related and relevant field; and
- (c) has at least five years' working experience at senior management level.

(5) The Civil Service Commission shall appoint other staff, as public officers, that may be necessary for the performance of the functions of the Public-Private Partnership Office.

PART III

THE PUBLIC -PRIVATE PARTNERSHIP COUNCIL AND TECHNICAL COMMITTEE

Establishment
of Council

7. (1) There is established a Public-Private Partnership Council consisting of the following part-time members appointed by the President:
- (a) the Minister responsible for finance, who shall be the Chairperson;
 - (b) the Minister responsible for infrastructure;
 - (c) three other Ministers, whose portfolio functions are relevant to public-private partnerships; and
 - (d) four other persons from the private sector with proven knowledge and experience in matters relating to public-private partnerships.
- (2) The members shall elect the Vice-Chairperson from among the members referred to under subsection (1)(b) and (c).

(3) The First Schedule applies to the Council.

8. (1) The functions of the Council are to—

Functions of
Council

- (a) approve or reject a project proposal;
- (b) approve or reject feasibility studies;
- (c) approve or reject a proposed public-private partnership agreement;
- (d) approve or reject a proposed variation or amendment to a public-private partnership agreement;
- (e) approve or reject a proposed termination of public-private partnership agreement by a contracting authority;
- (f) give directions to a contracting authority, regulatory agency or concessionaire regarding the implementation of a project; and
- (g) request a contracting authority, regulatory agency, concessionaire or any other body or person to furnish the Council with information, details, documents and particulars relating to a public-private partnership.

9. (1) There is constituted a Public-Private Partnership Technical Committee consisting of the following part-time members appointed by the Minister:

Constitution
of Technical
Committee

- (a) a representative of the Secretary to the Treasury, who shall be the chairperson;
- (b) a representative of the ministries responsible for—
 - (i) infrastructure; and
 - (ii) local government; and
- (c) a representative of the—
 - (i) Attorney-General;
 - (ii) Engineering Institution of Zambia;
 - (iii) Zambia Environmental Management Agency;
 - (iv) Zambia Public Procurement Authority;
 - (v) Zambia Institute of Chartered Accountants; and
 - (vi) any other relevant professional body.

(2) The members shall elect the vice-chairperson from among themselves.

(3) The First Schedule applies to the Technical Committee.

Functions
of Technical
Committee

10. (1) The Technical Committee shall advise the Council on technical matters relating to public private partnerships and projects under this Act.

(2) Despite the generality of subsection (1), the Technical Committee shall provide technical guidance to the Council on—

- (a) concept notes;
- (b) project proposals;
- (c) feasibility studies;
- (d) appraised projects;
- (e) negotiated contract terms;
- (f) proposed cancellation of procurements;
- (g) proposed termination of a public-private partnership agreement;
- (h) proposed variation or amendment of a public-private partnership agreement; and
- (i) the manner of implementation of a project.

PART IV

SOLICITED PROPOSALS

Project
identification
and
conceptua-
lisation

11. (1) A contracting authority shall identify potential projects that the contracting authority intends to implement through a public-private partnership.

(2) A contracting authority shall, after the identification of potential projects referred to under subsection (1), prepare a list of projects that the contracting authority intends to undertake on a priority basis.

(3) A project list referred to under subsection (2) shall be—

- (a) part of the development programme of the Republic in line with the National Development Plan; and
- (b) supported by brief project concept notes which shall be prepared in accordance with guidelines issued by the Public-Private Partnership Office.

Submission
of project
list

12. (1) A contracting authority shall submit the project list referred to under section 11 to the Public-Private Partnership Office for consideration.

(2) The Public-Private Partnership Office shall, on receipt of the project list referred to under section 11, refer the project list to the Technical Committee which shall make a recommendation to the Council.

(3) The Council may, on recommendation by the Technical Committee—

- (a) approve a proposed project list;
- (b) reject a project included in a proposed project list and specify the reasons for the refusal, in writing; or
- (c) guide the contracting authority to revise a project list.

13. A contracting authority shall, where the Council approves the project under section 12 and the contracting authority intends to implement a project, undertake a preliminary economic cost-benefit analysis of the project as prescribed and conceptualise the project.

Conceptualisation of project by contracting authority

14. (1) Despite section 11, the Public-Private Partnership Office may, in collaboration with a contracting authority, identify and conceptualise a project to be undertaken through a public-private partnership agreement.

Project identification and conceptualisation by Public-Private Partnership Office

(2) The Public-Private Partnership Office shall, in collaboration with a contracting authority, conduct a preliminary economic cost-benefit analysis of the project referred to under subsection (1) as prescribed.

15. Subject to sections 11 and 12, a contracting authority may vary the project list.

Variation of project list

16. (1) A contracting authority shall, after undertaking the economic cost-benefit analysis and conceptualisation of the project under section 13, under the guidance of the Public-Private Partnership Office, undertake a feasibility study of the project in order to determine the viability of the project.

Feasibility study

(2) A contracting authority shall, consider the following when undertaking a feasibility study under subsection (1):

- (a) the technical requirements of the project;
- (b) the legal requirements to be met by the parties to the project;
- (c) the social, economic and environmental impact of the project;
- (d) the affordability and value for money proposition in the project; and
- (e) a project's land requirements and required site preparatory activities necessary for the effective and efficient commencement of the project.

Appraisal and approval of feasibility study report and project proposal

17. (1) A contracting authority shall, after undertaking a feasibility study in accordance with section 16, submit a feasibility study report and a project proposal to the Public-Private Partnership Office for appraisal.

(2) The Public-Private Partnership Office shall, within twenty-one days of the receipt of the feasibility study report and project proposal, appraise and submit the feasibility study report and the project proposal to the Technical Committee.

(3) The Technical Committee shall, on receipt of the feasibility study report and the project proposal referred to under subsection (2)—

- (a) consider and recommend the approval of the feasibility study report and project proposal, within a prescribed time, to the Council;
- (b) return the feasibility study report and project proposal to a contracting authority for re consideration and request the contracting authority to re submit for approval, within a prescribed time; or
- (c) reject the feasibility study report and project proposal within a prescribed time.

(4) The Council may, on receipt of a feasibility study report and project proposal under subsection (3)(a), approve or reject the feasibility study report and project proposal.

(5) The Council shall, where it rejects the feasibility study report and project proposal, state the reasons for the rejection.

(6) A contracting authority shall submit to the Public-Private Partnership Office a revised feasibility study report if at any time, after the Council has approved a feasibility study report for a project, the assumption in the feasibility study is materially revised relating to affordability, value for money and substantial technical, operational and financial risk transfer.

(7) The Public-Private Partnership Office shall, after receipt of a revised feasibility study report under subsection (6)—

- (a) submit a revised feasibility study report to the Technical Committee for consideration; and
- (b) submit the recommendation of the Technical Committee on the revised feasibility study report to the Council.

- 18.** (1) A contracting authority shall, on receipt of the approval of the feasibility study report and project proposal by the Council under section 17, prepare a request for expression of interest. Request for expression of interest
- (2) A contracting authority shall submit the request for expression of interest to the Public-Private Partnership Office for authorisation to advertise, invite, solicit or call for bids for the purposes of engaging in pre-selection proceedings.
- (3) The invitation for request for expression of interest for participation in pre-selection proceedings shall include the following:
- (a) a description of the proposed project;
 - (b) an indication of other essential elements of the project, which includes—
 - (i) services to be delivered by the concessionaire; and
 - (ii) financial arrangements envisaged by a contracting authority;
 - (c) a summary of the material terms of the proposed public private partnership agreement;
 - (d) the manner and place for the submission of applications for pre-selection and the date and time for submission;
 - (e) the manner and place for solicitation of pre-selection bidding documents; and
 - (f) an appropriate statement empowering a contracting authority to reserve the right to request proposals on completion of the pre-selection proceedings only from a limited number of bidders that best meet the pre-selection criteria.
- (4) A person who responds to a request for expression of interest shall comply with the provisions of this Act and the instructions to bidders contained in the tender documents.
- (5) A contracting authority shall not issue a bidding document for a public-private partnership to a prospective bidder before obtaining the approval of the Public-Private Partnership Office, in accordance with this section.
- (6) The invitation for request for expression of interest shall be published in accordance with guidelines issued by the Public-Private Partnership Office.
- 19.** (1) A contracting authority may engage in pre-selection proceedings for the purposes of identifying bidders that are suitably qualified to implement the proposed project. Pre-selection proceedings

- (2) The pre-selection bidding documents shall include—
- (a) the pre-selection criteria;
 - (b) whether a contracting authority intends to waive a limitation on the participation of consortia in accordance with section 20;
 - (c) whether a contracting authority intends to request only a limited number of pre-selected bidders to submit proposals on completion of the pre-selection proceedings and, if applicable, the manner in which this selection may be carried out;
 - (d) adequate professional and technical qualifications, human resources and equipment and other physical facilities as may be necessary to carry out all the phases of the proposed project; and
 - (e) appropriate managerial and organisational capability, reliability and experience, including previous experience in implementing or operating a similar proposed project.

(3) A bidder who meets the criteria stated in the pre-selection bidding documents shall qualify for the pre-selection proceedings.

Participation
of consortia

20. (1) A contracting authority may allow bidders to form bidding consortia and the bidding consortium shall demonstrate its qualifications in accordance with section 19.

(2) A bid by a consortium shall be accompanied by a duly authenticated written undertaking executed by the consortium members.

(3) Each member of a consortium shall participate, either directly or indirectly, in only one consortium at the same time unless otherwise authorised by a contracting authority in the pre-selection bidding documents.

(4) A contracting authority shall, when considering the qualifications of bidding consortia, consider the capabilities of each of the consortium's members and assess whether the combined qualifications of the consortium's members are adequate to meet the needs of all phases of a proposed project.

Qualification
of bidder or
consortium

21. A bidder or consortium is eligible to respond to a request for expression of interest if the bidder or consortium—

- (a) satisfies the criteria specified in the request for expression of interest issued by a contracting authority;
- (b) is not insolvent, in receivership, bankrupt, undergoing business rescue proceedings or in the process of being wound up; and

(c) is not for any reason precluded by a contracting authority from entering into a public-private partnership agreement with the contracting authority.

22. (1) A contracting authority shall, in consultation with the Public-Private Partnership Office, constitute an evaluation committee for the purpose of evaluating pre-qualifying bidders. Evaluation committee

(2) Despite the generality of subsection (1), the functions of an evaluation committee are to—

(a) evaluate bids in accordance with this Act and solicitation documents issued by the contracting authority; and

(b) prepare an evaluation report.

(3) The evaluation committee shall review the requests for expression of interest and submit an evaluation report to a contracting authority.

(4) An evaluation report referred to under subsection (3) shall—

(a) contain a short list of qualified bidders; and

(b) contain the following statements:

(i) that the bids explain the capacity of the shortlisted bidders and their proposed mechanisms and procedures to effectively implement, manage, enforce, monitor and report on the proposed project; and

(ii) that a due diligence has been completed by the Public-Private Partnership Office and the shortlisted bidder in relation to matters of the shortlisted bidders respective competence and capacity are qualified to enter into the public-private partnership agreements.

(5) A contracting authority shall, within seven days of the receipt of an evaluation and due diligence report, submit the evaluation report to the Public-Private Partnership Office and demonstrate how the pre-selection criteria specified under this Part has been met after the evaluation of the pre-selection bids.

(6) The number and qualification of members of an evaluation committee shall depend on the value and complexity of the procurement process.

23. A bidder shall be disqualified at the pre-qualification stage if that bidder— Disqualifi-
cation of
bidder

(a) submits false, inaccurate or incomplete information;

(b) colludes, connives or is involved in a corrupt or dishonest practice;

(c) fails to meet any of the eligibility criteria specified in the request for expression of interest; or

(d) contravenes the provisions of this Act or any other written law.

Approval of
evaluation
report by
Public-
Private
Partnership
Office

24. (1) The Public-Private Partnership Office shall, on receipt of the evaluation and due diligence report under section 22, submit the evaluation and due diligence report to the Technical Committee for consideration.

(2) The Technical Committee shall, on consideration of the evaluation and due diligence report, make a recommendation to the Council who shall approve or reject the evaluation and due diligence report.

(3) A contracting authority shall, where the Council approves the evaluation and due diligence report, invite the pre-selected bidders to submit proposals in accordance with this Act.

Request for
proposals
under single
stage
procedure

25. (1) For purposes of this section, a single-stage procedure shall be used where a contracting authority considers feasible to describe the characteristics of the proposed project in a request for proposals.

(2) A contracting authority shall, in a single-stage procedure, issue the request for proposals and related documents including the draft public-private partnership agreement to the pre-selected bidders under section 24.

(3) The pre-selected bidders shall be issued with a request for proposals and other related documents on payment of a prescribed fee.

(4) A pre-selected bidder intending to bid for a project under this Act shall complete and submit the required document referred to under subsection (2) in a sealed envelope as prescribed.

Request for
proposals
under two-
stage
procedure

26. (1) For the purposes of this section, a two-stage procedure shall be carried out where a contracting authority does not consider it feasible to describe the characteristics of the proposed project in the request for proposals.

(2) Where a two-stage procedure is used, the following shall apply:

(a) the initial request for technical proposals shall call upon the bidders to submit, in the first stage of the procedure, initial proposals relating to project specifications, performance indicators, financing requirements or other characteristics of the project as well as the main contractual terms proposed by the contracting authority or Public-Private Partnership Office;

- (b) the contracting authority may convene meetings and hold discussions with any of the bidders to clarify questions concerning the initial request for technical proposals or the initial technical proposals and accompanying documents submitted by the bidders which shall be recorded in minutes of the meeting or discussion;
 - (c) following evaluation of the technical proposals received, the contracting authority may review and, as appropriate, revise the initial request for technical proposals by removing, modifying or adding to any aspect of the initial project specifications, performance indicators, financing requirements or other characteristics of the project, including the main contractual terms and any criterion for evaluating technical proposals and ascertaining the preferred bidder, as set out in the initial request for technical proposals;
 - (d) the contracting authority shall indicate in the record of the selection proceedings to be kept the justification for any revision to the request for technical proposals and which shall be communicated in the invitation to submit final proposals; and
 - (e) at the second stage of the procedure, the contracting authority shall invite the bidders to submit final proposals with respect to a single set of project specifications, performance indicators or contractual terms.
27. A request for proposals shall contain the following:
- (a) general information as may be required by a bidder in order to prepare and submit a proposal;
 - (b) outline project scope, cost and proposed non-negotiable contractual terms;
 - (c) project specifications and performance indicators, as appropriate, including the contracting authority's or Public-Private Partnership Office's requirements regarding safety and security standards and environmental protection; and
 - (d) criteria for evaluating proposals and the thresholds, if any, set by a contracting authority for identifying non responsive proposals, the relative weight to be accorded to each evaluation criteria and the manner in which the criteria and thresholds are to be applied in the evaluation and rejection of proposals.
- Content of
request for
proposal

Bid securities	<p>28. (1) A request for a proposal shall set out the terms and conditions of the required bid security.</p> <p>(2) A contracting authority shall release a bid security promptly to an unsuccessful bidder on expiry of the term of the bid security or on entering into a public-private partnership agreement with a successful bidder.</p> <p>(3) A contracting authority shall not release a bid security to a successful bidder until the successful bidder reaches financial close.</p>
Clarifications and modifications	<p>29. (1) A contracting authority may, on its own initiative or on request by a bidder, clarify, review or revise any element of the request for a proposal as set out in section 27.</p> <p>(2) A contracting authority shall indicate in the record of the selection proceedings under this section, the justification for a revision to the request for a proposal which shall be communicated to the bidder, in the same manner as the request for a proposal, at a reasonable time prior to the deadline for submission of proposals.</p>
Evaluation criteria	<p>30. (1) The criteria for evaluating the technical aspect of a proposal shall include the following:</p> <ul style="list-style-type: none">(a) technical soundness;(b) compliance with environmental standards under any written law;(c) operational feasibility;(d) quality of services and measures to ensure continuity; and(e) any other prescribed criteria. <p>(2) The criteria for evaluating financial and commercial aspects of a proposal shall include the following:</p> <ul style="list-style-type: none">(a) the present value of proposed user levies, unit prices and other charges over the agreement period;(b) the present value of proposed direct payments by the contracting authority, if any;(c) the costs for design and construction activities, annual operation and maintenance costs, present value of capital costs and operation and maintenance costs;(d) the soundness of the proposed financial arrangements;(e) the extent of acceptance of the negotiable contractual terms proposed by a contracting authority in the request for technical proposals;(f) the social and economic benefit of the proposals; and(g) any other prescribed criteria.

31. (1) An evaluation committee shall, on receipt of proposals under this Part, review each proposal in accordance with the evaluation criteria and, the relative weight accorded to each such criteria and the evaluation set out in the request for proposals. Evaluation of proposal

(2) An evaluation committee shall rank all responsive proposals on the basis of the evaluation criteria and award the preferred bidder status to the bidder that has attained the best ranking.

(3) The ranking referred to under subsection (2) shall form part of the evaluation report.

(4) The evaluation committee shall submit an evaluation report to the contracting authority.

(5) The contracting authority shall on receipt of the evaluation report submit the report to the Public-Private Partnership Office as prescribed.

(6) The Public-Private Partnership Office shall submit the evaluation report to the Technical Committee for consideration.

(7) The Technical Committee shall, on consideration of the report make a recommendation to the Council who shall approve or reject the evaluation report.

(8) The Council shall, on approval of the evaluation report under subsection (7), direct the contracting authority to commence negotiations with the preferred bidder.

32. (1) A contracting authority shall invite a preferred bidder for negotiations of the public-private partnership agreement, except that the negotiations shall not— Negotiations

(a) change the scope of the project, resulting in a material re-allocation of risk; and

(b) include contractual terms that were stated as non-negotiable in the request for a proposal.

(2) The negotiations under subsection (1) shall not exceed ninety days.

(3) Despite subsection (2), a contracting authority may, twenty-one days prior to the lapse of the ninety days referred to under subsection (2), on justifiable grounds shown, apply to the Public-Private Partnership Office, in writing, to extend the period for negotiations.

(4) The Director-General may, on receipt of an application under subsection (3), grant or reject the application.

(5) The Director-General shall, where the Director-General rejects an application under subsection (3), state the reasons for the rejection.

(6) A contracting authority shall, where it becomes clear to the contracting authority that the negotiations with the bidder may

not result in an agreement, inform the bidder of the intention to terminate the negotiations and give reasonable time as prescribed to formulate the bidder's best and final offer.

(7) The contracting authority shall, where a bidder gives its best and final offer and a contracting authority does not find that offer acceptable, make recommendations for the termination of the negotiations with the bidder to the Public-Private Partnership Office for approval by Council.

(8) A contracting authority shall, where the Council approves the termination of negotiations under subsection (7), invite other bidders who met the evaluation criteria for negotiations, in the order of ranking, and commence negotiations with the other bidders until a public-private partnership agreement is concluded with one of the bidders or a contracting authority rejects all the remaining proposals.

(9) A contracting authority shall not resume negotiations with a bidder with whom negotiations have been terminated in accordance with this section.

Approval of
negotiation
report by
Council

33. (1) A contracting authority shall, on conclusion of the negotiations under section 32, submit a negotiation report which contains a financial model and a draft public-private partnership agreement to the Council for approval.

(2) The Council shall, within twenty-eight days of the receipt of the negotiation report, approve, reject or defer the execution of a public-private partnership agreement between a contracting authority and a preferred bidder.

Notification
of approval
of public-
private
partnership
agreement

34. (1) The Public-Private Partnership Office shall, within seven days of the approval of the execution of the public-private partnership agreement under section 33, notify a contracting authority, in writing, of the approval of the public-private partnership agreement.

(2) A contracting authority shall, prior to the execution of the public-private partnership agreement, submit the approved public-private partnership agreement to the Attorney-General for clearance.

(3) The contracting authority shall notify, in writing, all bidders who participated in the tender process of the decision of the Council.

Execution of
public-
private
partnership
agreement

35. The Minister responsible for finance and a contracting authority shall, on clearance of the public-private partnership agreement by the Attorney-General, execute the public-private partnership agreement with the preferred bidder.

36. A contracting authority shall, within fourteen days of the execution of a public-private partnership agreement, cause to be published the results of the tender and the preferred bidder in a daily newspaper of general circulation in the Republic and electronic media.

Notice of award

37. (1) A contracting authority and the Public-Private Partnership Office shall keep proposals received under this Part confidential.

Confidentiality

(2) A party to a negotiation shall not disclose to any person, any other information in relation to negotiations done under this Act, without the consent of the other party unless required by law, a court order or permitted by the request for proposals.

(3) A person who contravenes subsections (1) and (2) commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units.

38. (1) A contracting authority shall keep an appropriate record of information relating to the pre-selection and award proceedings in the prescribed manner.

Record of selection and award proceedings

(2) The contracting authority shall provide the Public-Private Partnership Office with copies of the records referred to under subsection (1).

39. (1) A contracting authority may, at any time prior to the notification of the contract award, terminate or cancel the procurement proceedings without entering into a contract if—

Termination or cancellation of procurement proceedings

- (a) the subject procurement is overtaken by—
 - (i) operation of law; or
 - (ii) substantial technological change;
- (b) the procurement need has ceased to exist or changed significantly;
- (c) there is a significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the recommencement of procurement proceedings is necessary;
- (d) there is evidence of collusion among bidders;
- (e) it is in the public interest;
- (f) there is evidence of corrupt practices by an office holder or any other person involved in the procurement;
- (g) no bids were received;
- (h) all evaluated bids are non responsive; or
- (i) there is an incidence of *force majeure*.

(2) A contracting authority that terminates or cancels the procurement proceedings under this section shall, within fourteen days from the date of the termination or cancellation—

(a) submit to the Public-Private Partnership Office, a written report on the termination or cancellation stating the reasons for the termination or cancellation; and

(b) notify, in writing, the person that submitted bids of the reasons for the termination or cancellation.

(3) Despite subsection (2), a contracting authority shall obtain the approval of the Council before terminating or cancelling a procurement process under this Part.

PART V

UNSOLICITED PROPOSALS

Submission
of
unsolicited
proposal

40. (1) A bidder may submit an unsolicited proposal of a project to a contracting authority who shall notify the Public-Private Partnership Office.

(2) A contracting authority shall, within fourteen days of receipt of an unsolicited proposal referred to under subsection (1), undertake a preliminary evaluation of the unsolicited proposal for a public-private partnership if the proposal—

(a) is innovative, independently originated and beneficial to the public; and

(b) includes the following sufficient information for a contracting authority to evaluate the proposal in an objective and timely manner:

(i) business case regarding a proposed project to include the project cost and how the concessionaire shall recoup their investment;

(ii) technical requirements in the form of scope of work of a project;

(iii) legal requirements to be met by the parties to the project;

(iv) social economic and environmental impact of the project;

(v) affordability and value for money proposition in the project;

(vi) financial model and key financial indicators;

(vii) projects land requirements, if any; and

(viii) type of public-private partnership model.

(3) A bidder shall pay into the Fund a prescribed non-refundable fee at the time of submitting its unsolicited proposal under subsection (1) to cover the costs for processing, review and evaluation of the unsolicited proposal.

(4) A fee paid under subsection (3) shall not create an obligation on a contracting authority or the Public-Private Partnership Office towards the bidder.

(5) A contracting authority and the Public-Private Partnership Office shall maintain a record of unsolicited proposals received on a first-come-first-serve basis, in order to identify the initial bidder of the proposed project.

(6) A contracting authority and the Public-Private Partnership Office shall take appropriate action to protect the confidential or proprietary information that a bidder provides as part of an unsolicited proposal.

(7) A contracting authority shall, where the contracting authority rejects an unsolicited proposal, notify the bidder, in writing, of its decision.

41. A contracting authority shall, within seven days of concluding the preliminary evaluation under section 39, and on being satisfied with the unsolicited proposal, submit to the Public-Private Partnership Office—

Preliminary approval of unsolicited proposal

- (a) a recommendation to consider the unsolicited proposal, in writing, accompanied by the unsolicited proposal; and
- (b) a report on the preliminary evaluation.

42. The Public-Private Partnership Office shall, before commencing an evaluation of an unsolicited proposal, conduct an inspection of the site for the proposed project.

Inspection of project site

43. (1) The Public-Private Partnership Office shall, within fourteen days of the conclusion of an inspection of the proposed site under section 42, evaluate the unsolicited proposal in order to determine the unsolicited proposal's suitability for further development as a project.

Evaluation of unsolicited proposals

(2) The Public-Private Partnership Office shall, where it determines that the unsolicited proposal is suitable for further development as a project, submit the unsolicited proposal to the Technical Committee for consideration.

(3) The Technical Committee shall, if satisfied that the unsolicited proposal meets the requirements of section 40(2), submit the proposal to the Council for preliminary approval.

- (4) The Council shall, on receipt of the unsolicited proposal under subsection (3), approve or reject the unsolicited proposal.
- (5) The Council shall, where the Council rejects the unsolicited proposal in accordance with subsection (4), state the reasons for the rejection.
- Preliminary approval **44.** A contracting authority shall, on approval of the unsolicited proposal by the Council under section 43, notify the bidder, in writing, of the Council's decision.
- Due diligence **45.** The Public-Private Partnership Office shall, after approval of the unsolicited proposal by the Council under section 43, and in collaboration with the contracting authority conduct a due diligence for approval by the Council.
- Procurement of unsolicited proposal **46.** (1) The Council shall, where the Council approves an unsolicited proposal and the due diligence report, direct a contracting authority to advertise for competitive proposals.
- (2) A contracting authority shall, where a contracting authority subjects an unsolicited proposal to competition, issue an advertisement—
- (a) outlining the general nature and scope of the unsolicited proposal;
 - (b) providing the location of the project and the work to be performed on, or in connection with, the project; and
 - (c) specifying an address to which a competing proposal may be submitted.
- (3) An advertisement issued under subsection (2) shall specify a reasonable period within which competitors may submit a competing proposal to the contracting authority and specify the cost of the solicitation documents.
- (4) A contracting authority shall, on receipt of a competing proposal—
- (a) determine if a competing proposal is comparable in nature with the scope of the original unsolicited proposal; and
 - (b) evaluate the comparable competing proposal against the original unsolicited proposal using the following criteria:
 - (i) novel methods, approaches or concepts demonstrated by the proposal;
 - (ii) scientific, financial, technical, or socio economic merits of the proposal;
 - (iii) potential contribution of the proposal to the contracting authority's mission;

- (iv) capabilities, related experience, facilities, or techniques of the bidder or unique combinations of these qualities that are integral factors for achieving the proposal's objectives;
 - (v) qualifications, capabilities and experience of the proposed team leader or key personnel, who are critical to achieving the proposal's objectives;
 - (vi) the benefits of the proposal to the public; and
 - (vii) any other factors appropriate to a particular proposal.
- (5) A contracting authority may, after evaluating an unsolicited proposal and a competing proposal—
- (a) accept the unsolicited proposal and reject a competing proposal;
 - (b) accept the competing proposal and reject the unsolicited proposal; or
 - (c) reject both the unsolicited proposal and a competing proposal.
- (6) A contracting authority shall, in collaboration with the Public-Private Partnership Office, where a bidder that submitted a competing proposal is evaluated as the preferred bidder, conduct a technical, financial and due diligence on the preferred bidder.
- (7) A contracting authority shall submit to the Public-Private Partnership Office—
- (a) an evaluation report containing the preferred bidder and proposal; and
 - (b) in addition to the evaluation report referred to under paragraph (a), a technical, financial and due diligence report in accordance with subsection (6).
- (8) The Public-Private Partnership Office shall submit both the evaluation report and a technical, financial and due diligence report to the Technical Committee for consideration and re-submission to the Council.
- (9) The Council may, where the Council is satisfied with the evaluation report and a technical, financial and due diligence report submitted under subsection (8), direct the contracting authority to proceed to negotiate the proposal.
- (10) Sections 32 to 39 shall apply to an unsolicited proposal with the necessary modifications.

Conditions
for changing
unsolicited
bidding to
solicited
bidding

47. (1) A contracting authority may, with approval of the Public-Private Partnership Office, where a contracting authority receives more than one unsolicited proposal with respect to the same matter which have high market interest or the existence of equally competent alternative technologies that could deliver value for money to the Government, determine that the unsolicited proposal be procured using restricted tendering procedure that limits competitive bidding to the bidders that submitted the unsolicited proposals.

(2) Subject to subsection (1), a contracting authority shall ensure equitable bidding conditions when determining a procurement process to be adopted under this section.

PART VI

DIRECT PROCUREMENT

Circumstances
authorising
award
without
competitive
procedures

48. Subject to approval by the Council, a contracting authority may negotiate a public-private partnership agreement without using the solicited or unsolicited procedures under Parts IV and V in the following circumstances:

- (a) the project is of short duration and the anticipated initial investment value does not exceed a prescribed amount;
- (b) the project involves the national defence or national security;
- (c) there is only one source capable of providing the required service;
- (d) the contracting authority determines that there are operational and strategic advantages or reasons linked to a particular bidder on the basis of national interest, bilateral or international cooperation, or external trade;
- (e) there is an urgent need for the works or services, and any other procurement method is impractical, and the circumstances giving rise to the urgency were not foreseeable by the contracting authority or the result of dilatory conduct by the contracting authority;
- (f) an invitation to the pre selection proceedings or a request for a proposal has been issued but no proposals were submitted or all proposals failed to meet the evaluation criteria set out in the request for proposals and in the opinion of the contracting authority, issuing a new invitation to the pre-selection proceedings and a new request for proposals is not likely to result in a contract award within the required time frame;

- (g) the contracting authority, having procured goods, equipment, technology or services from a bidder, determines that additional supplies shall be procured from the bidder for reasons of standardisation or the need for compatibility with existing goods, equipment, technology or services, taking into account the—
 - (i) effectiveness of the original procurement in meeting the needs of the contracting authority;
 - (ii) limited size of the proposed procurement in relation to the original procurement; and
 - (iii) reasonableness of the price and the unsuitability of alternatives to the goods or services in question; or
- (h) in any other case that the Council authorises such an exception based on the merits of each case.

49. (1) A contracting authority in collaboration with the Public-Private Partnership Office shall, where the Council approves direct procurement of a project, undertake a due diligence on the bidder.

Procedure for direct procurement

(2) A contracting authority shall where the Council approves the due diligence report, enter into negotiations with the bidder.

(3) Sections 32 to 39 shall apply to a direct procurement, with the necessary modification.

PART VII

GENERAL PROCUREMENT PROVISIONS

50. (1) A person shall not influence, or attempt to influence, an evaluation and comparison of a bid.

Prohibition of inappropriate influence on evaluation and other matters

(2) A bidder shall not, after the deadline for submission of bids, make unsolicited communications to a contracting authority or a person involved in procurement proceedings that might reasonably be construed as an attempt to influence the evaluation and comparison of bids.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units.

(4) In addition to the penalty under subsection (3), where—

- (a) a bidder contravenes subsection (1) or (2), that bidder shall be disqualified from participating in an existing or future procurement proceeding under this Act for a prescribed period; or

(b) an office holder contravenes subsection (1) or (2), that office holder shall be subject to disciplinary action.

Standard
solicitation
documents

51. (1) A contracting authority shall use a standard solicitation document issued by the Public-Private Partnership Office for procurement.

(2) The Public-Private Partnership Office shall ensure that the standard solicitation documents are easily available to a contracting authority by posting the solicitation documents on the website of the Public-Private Partnership Office or directly obtaining the standard solicitation document from the Public-Private Partnership Office.

(3) A contracting authority shall notify the Public-Private Partnership Office of amendments to, or change of, any standard solicitation document.

(4) An amendment to a solicitation document that is not notified to the Public-Private Partnership Office shall not take effect until the notification has been given.

(5) A contracting authority shall, in any procurement proceedings under this Act, issue a solicitation document to bidders at the same time on payment of a prescribed fee.

(6) A contracting authority shall specify the period within which a bidder may respond to a solicitation document, except that the period shall not exceed sixty days.

Special
purpose
vehicle

52. (1) A preferred bidder shall establish a special purpose vehicle incorporated in the Republic prior to the execution of a public-private partnership agreement.

(2) The public-private partnership agreement relating to a special purpose vehicle shall contain the following terms that are consistent with terms of the request for proposals:

(a) the minimum capital of a special purpose vehicle established under subsection (1); and

(b) the procedures for obtaining the approval of a contracting authority to the special purpose vehicle's Articles of Association or amendments in the Articles of Association.

(3) A director of a special purpose vehicle shall not wind up a special purpose vehicle, alter the legal structure or reduce the share capital of a special purpose vehicle without the approval of a contracting authority.

(4) A contracting authority may reject to issue an approval under subsection (3) if there is a reasonable ground to suspect that the requested alteration may compromise the delivery of a public facility or service under this Act.

53. (1) Where the Public-Private Partnership Office determines that a contracting authority does not have the technical expertise to procure a project, a contracting authority shall, in consultation with the Public-Private Partnership Office, procure a transaction advisor to assist the contracting authority in the development, preparation, procurement, contract negotiations and financial close phases of a project.

Technical
expertise of
contracting
authority

(2) The engagement of a transaction advisor under subsection (1) shall be based on the principles of disclosure, transparency, equality, cost effectiveness and equal opportunity in accordance with the prescribed procedure.

54. The Minister may, on the recommendation of the Public-Private Partnership Office, prescribe the standards and procedures for—

Standards
and
procedures

- (a) identifying, evaluating, operating and managing projects under this Act;
- (b) undertaking of feasibility studies for the purposes of this Act;
- (c) implementing and monitoring projects under a public-private partnership agreement; and
- (d) any other matter to ensure that public-private partnership agreements provide value for money and afford the optimum transfer of appropriate technical, operational or financial risk to concessionaires.

PART VIII

PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

Contents
and
implemen-
tation of
public-
private
partnership
agreement

55. A Public-Private Partnership agreement shall provide for such matters as the parties consider appropriate, including—

- (a) the nature and scope of works to be performed and services to be provided by the concessionaire;
- (b) the conditions for provision of services and the extent of exclusivity, if any, of the concessionaire's rights under the agreement;
- (c) the assistance that a contracting authority may provide to the concessionaire in obtaining licences and permits to the extent necessary for the implementation of the project;
- (d) the return of assets, if any, to a contracting authority, at the termination or expiry of the agreement, in such manner as may be provided for in the agreement, as specified in section 62;
- (e) procedures for the review and approval of engineering designs, construction plans and specifications by the contracting authority and the procedures for testing and final inspection, approval and acceptance of the project;
- (f) the Public-Private Partnership Office, contracting authority or other regulatory agency's right to monitor the works to be performed and services to be provided by the concessionaire and the conditions and extent to which the Public-Private Partnership Office, contracting authority or other regulatory agency may order variations in respect of the works and conditions of service or take other reasonable actions as they may find appropriate to ensure that the project is properly operated and the services are provided in accordance with the applicable legal and contractual requirements;
- (g) the extent of the concessionaire's obligation to provide the Public-Private Partnership Office, the contracting authority or other regulatory agency, as appropriate, with reports and other information on its operations;
- (h) remedies available in the event of default of either party;

- (i) the extent to which either party may be exempt from liability for failure or delay to comply with an obligation under the Public-Private Partnership agreement owing to circumstances beyond either party's reasonable control;
- (j) the duration of the Public-Private Partnership agreement and the rights and obligations of the parties on the expiry or termination;
- (k) the manner for calculating compensation;
- (l) the governing law and mechanisms for the settlement of disputes that may arise between the Public-Private Partnership Office or contracting authority and the concessionaire;
- (m) the rights and obligations of the parties with respect to confidential information;
- (n) the relevant financial terms;
- (o) the sharing of generic risks between the contracting authority and the concessionaire;
- (p) corporate social responsibility;
- (q) the payment to the concessionaire by way of compensation from a revenue fund or of user levies collected by the concessionaire for a service provided by the concessionaire as provided under section 66;
- (r) mechanisms and procedures for the transfer of assets to a contracting authority in the case of the winding up of project;
- (s) the revised prices relating to a negotiation not to compromise the quality specifications of the original tender; and
- (t) such other information as may be prescribed.

56. (1) A contracting authority shall, in determining the duration of a Public-Private Partnership agreement, consider the following factors:

- (a) the life span of the technology to be employed under the public-private partnership agreement;

Factors in determining duration of Public-Private Partnership agreement

- (b) the investment standards that are required to be maintained by each party to the Public-Private Partnership agreement throughout the duration of the public-private partnership agreement;
- (c) the economic and financial viability of the project and the economic life of the infrastructure, asset or facilities to be provided;
- (d) the depreciation of the project assets during the life span of the public-private partnership agreement; and
- (e) the period required by the parties to the partnership to—
 - (i) maintain service delivery standards and investment levels during the life span of the public-private partnership agreement; and
 - (ii) recoup the parties investment.

(2) The Public-Private Partnership Office may issue additional guidelines in respect of the determination of the duration of a public-private partnership agreement.

Extension of
concession
period or
agreement

57. (1) A contracting authority may request for an approval from the Council for the extension of the period of the public-private partnership agreement in the following circumstances:

- (a) there is a delay in completion or interruption of operation due to circumstances beyond the reasonable control of either party;
- (b) the project is suspended as a result of acts of the Public-Private Partnership Office or contracting authority or other public authority;
- (c) increase in costs arising from requirements of the Public-Private Partnership Office or a contracting authority not originally foreseen in the public-private partnership agreement, if the concessionaire would not be able to recover costs without such extension; or
- (d) a contracting party and concessionaire agree to an extension on the basis of national or public interest, which shall be justified in a record to be kept by the Public-Private Partnership Office.

(2) The Council may, on receipt of the request for extension under subsection (1), approve or reject the extension.

(3) The Council shall, where the Council rejects a request for an extension, state the reasons for the rejection.

58. (1) A contracting authority may, where a contracting authority enters into a Public-Private Partnership agreement with a bidder, designate as appropriate, its property for the use by a concessionaire, in relation to, and for the duration of, a project on terms and conditions that the contracting authority determines.

Property and assets under Public-Private Partnership agreement

(2) A public-private partnership agreement shall, where a project involves more than one contracting authority, specify which of the contracting authorities shall be the lead contracting authority.

(3) A public-private partnership agreement involving the performance of a function of a contracting authority by a concessionaire shall not divest a contracting authority of the responsibility for ensuring that the function is effectively and efficiently performed.

(4) A public-private partnership agreement involving the use of a contracting authority's assets by a concessionaire shall not divest the contracting authority of the responsibility of ensuring that the assets are protected against factors which may negatively affect the assets including forfeiture, theft, loss and wastage.

59. Subject to this Act, a contracting authority may enter into any appropriate public-private partnership model with a bidder as set out in the Second Schedule.

Public-Private Partnership model

60. A contracting authority shall, for the purposes of this Act and any other written law, require a concessionaire to subcontract at least ten percent of the total works of the project to citizen contractors and suppliers.

Subcontracting

61. (1) A contracting authority shall —

(a) ensure that it identifies the fiscal commitment; and

(b) provide mitigation measures for fiscal risks that may arise through its budgetary allocations.

Fiscal commitment

(2) Subject to subsection (1), the Minister may, in consultation with the Public-Private Partnership Office, where the contingent liabilities crystallise, approve the limitation of contingent liabilities.

(3) The Public-Private Partnership Office shall prepare and submit to the Minister an annual report on contingent liabilities assigned during a particular year providing projections on future contingent liability requirements based on the projects portfolio in the project list prepared under section 12.

Ownership
of assets

62. (1) A public-private partnership agreement shall specify, as appropriate, which assets are, or shall be, public property, and private property of the concessionaire.

(2) Despite the generality of subsection (1), a public-private partnership agreement shall identify which assets belong to the following categories:

(a) assets a concessionaire is required to return or transfer to a contracting authority or another entity indicated by a contracting authority in accordance with the terms of the public-private partnership agreement;

(b) assets contracting authority may purchase from the concessionaire; and

(c) assets a concessionaire may retain or dispose of on expiry or termination of the public-private partnership agreement.

Acquisition
of rights
related to
project site

63. A contracting authority or other public authority shall, in accordance with the terms of any relevant written law and agreement make available and assist a concessionaire in obtaining such rights related to the project site, as may be necessary for the implementation of the project.

Compulsory
acquisition
of land
Cap. 189

64. A compulsory acquisition of land that may be required for the implementation of a project shall be carried out in accordance with the Lands Acquisition Act.

Easement

65. A contracting authority or other public authority may, in accordance with the terms of any agreement or relevant written law, make available and assist the concessionaire to enjoy the right to enter, transit through or do work or fix installations on, property of third parties, as may be necessary for the implementation of the project.

Collection of
prescribed
fees or levies

66. (1) A concessionaire shall have the right to charge, receive or collect a prescribed fee or levy for the use of an infrastructure asset or facility, for the provision or services where the right is granted in a Public-Private Partnership agreement.

(2) A contracting authority may agree to make direct payments to the concessionaire as a substitute for, or in addition to, the prescribed fee or levy referred to under subsection (1).

67. (1) Subject to a restriction that may be contained in a public-private partnership agreement, a concessionaire shall have the right to create security interests over any of the public-private partnership assets, rights or other interests, including those relating to the project, as required to secure any financing needed for the project, including the following:

Security interest

- (a) security over movable or immovable property owned by the concessionaire or the concessionaire's interests in project assets; and
- (b) a pledge of the proceeds of, and receivables owed to the concessionaire for, the use of the project or the services that the concessionaire provides.

(2) The shareholders of a concessionaire shall have the right to pledge or create any other security interest in their shares in the public-private partnership agreement.

(3) A security under subsections (1) and (2) shall not be created over public property or other property, assets or rights needed for the provision of a public service or where the creation of the security is prohibited by any written law.

68. (1) Except as otherwise provided in section 69, the rights and obligations of the concessionaire under a public-private partnership agreement may not be assigned to a third party without the prior written consent of an appropriate contracting authority.

Assignment of Public-Private Partnership agreement

(2) A public-private partnership agreement shall set out the conditions under which a contracting authority shall give its consent to an assignment of the rights and obligations of the concessionaire under the concession agreement, including the acceptance by the new concessionaire of all obligations under the public-private partnership agreement and evidence of the new concessionaire's technical and financial capability as shall be necessary for providing the service or undertaking the project.

69. (1) Except as otherwise provided in a public-private partnership agreement, a controlling interest in a concessionaire shall not be transferred to a third party without the consent of a contracting authority.

Transfer of controlling interest in concessionaire

(2) A public private-private partnership agreement shall set out the conditions under which the consent of a contracting authority shall be given.

Use of
infrastructure,
asset, facility
or other
service

70. (1) A concessionaire shall have the right to issue and enforce rules governing the use of an infrastructure, asset, facility or other service under a public private-partnership agreement, subject to the approval of a contracting authority or relevant regulatory agency.

(2) Despite subsection (1), a public-private partnership agreement shall set out, as appropriate, the extent of a concessionaire's obligations to ensure—

- (a) the modification of the service so as to meet the demand for the service;
- (b) the continuity of the service;
- (c) the provision of the service under essentially the same conditions for all users; and
- (d) the non-discriminatory access, as appropriate, of other service providers to a public infrastructure network operated by the concessionaire.

Revision of
concessionaire
agreement

71. (1) Subject to subsection (2) and (3), a public-private partnership agreement shall set out the extent to which a concessionaire is entitled to a revision of the public-private partnership agreement with a view to providing compensation in the event that the cost of the concessionaire's performance of the public-private partnership agreement has substantially increased or that the value that the concessionaire receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of —

- (a) changes in economic or financial conditions; or
- (b) changes in legislation not specifically applicable to the project or the services the concessionaire provides.

(2) In order for the economic, financial or legislative changes referred to under subsection (1) to apply, the economic, financial or legislative changes shall—

- (a) have occurred during the performance of the concession agreement;
- (b) be beyond the control of the concessionaire; and

- (c) be of such a nature that the concessionaire may not reasonably be expected to have—
- (i) taken the changes into account at the time the Public-Private Partnership agreement was negotiated; or
 - (ii) avoided or overcome the consequences.
- (3) Despite the provisions of subsection (1), a review of a public-private partnership agreement shall be approved if the concessionaire demonstrates that the public-private partnership agreement, if revised shall ensure—
- (a) that the project continues to provide value for money;
 - (b) that the project continues to be affordable as verified by the Public-Private Partnership Office, where the revision has financial implications;
 - (c) the continued transfer of appropriate risks to the concessionaire;
 - (d) the continued provision of efficient and effective public services; and
 - (e) the continued protection and preservation of the environment.
- (4) An approval under subsection (3) shall be in writing.
- (5) A Public-Private Partnership agreement shall establish procedures for revising the terms of the public-private partnership agreement in accordance with this section.
- (6) A revision of the public-private partnership agreement shall not be effected without the approval of the Council.

72. (1) A contracting authority shall have the right, under the circumstances set out in a Public-Private Partnership agreement, to temporarily take over the —

- (a) operation of an infrastructure, asset or facility under a project, for the purpose of ensuring the effective and uninterrupted delivery of a service; or
- (b) timely completion of the project, in the event of a material default by the concessionaire in the performance of the concessionaire's obligations and to rectify the breach within a reasonable period of time.

Takeover of
project

(2) In the event that a contracting authority elects to take over a project under subsection (1), the contracting authority—

- (a) shall collect and pay any revenues that are subject to a lien to satisfy an obligation;
- (b) may develop and operate the project, impose user levies and comply with any existing service contract; and
- (c) may solicit proposals, as appropriate, for the construction, maintenance or operation of the infrastructure project except that the contracting authority may determine whether or not to reimburse the costs incurred by the concessionaire if —
 - (i) the project is awarded to any other bidder;
 - (ii) the project achieves financial close; and
 - (iii) the development costs are borne by the concessionaire.

Substitution
of
concessionaire

73. (1) A contracting authority may, on a material default by the concessionaire or other event that could otherwise justify the termination of the public-private partnership agreement, agree with any entity extending financing for a project and a concessionaire to provide for the substitution of the concessionaire with another person to the obligations under the existing public-private partnership agreement.

(2) The contracting authority may facilitate for a concessionaire to securitise any project receivables and assets in favour of an existing financing for a project on terms that the contracting authority may determine in order to safeguard the successful implementation, completion, management and control of the project, subject to approval of the Council.

Winding-up
and
handback

74. (1) A public-private partnership agreement shall provide, as appropriate, for —

- (a) the compensation to which the concessionaire may be entitled in respect of assets transferred to a contracting authority or to a new concessionaire or purchased by a contracting authority;
- (b) transfer of technology required for the operation of a project;

- (c) the training of a contracting authority's personnel or of a successor concessionaire in the operation and maintenance of the project;
- (d) the provision, by the concessionaire, of continuing support services and resources, including the supply of spare parts, if required, for a reasonable period after the transfer of the project to a contracting authority or to a successor concessionaire;
- (e) a requirement that the asset has a reasonable remaining useful life at the expiration date; and
- (f) the establishment of a contingency fund for any maintenance requirements after handback.

(2) The public-private partnership agreement shall provide for the mechanism for winding and handback under subsection (1) to occur two years prior to expiration of the public-private partnership agreement.

75. (1) A contracting authority has a duty to—

- (a) identify, conceptualise and develop solicited proposals;
- (b) screen and undertake the preliminary evaluation of unsolicited proposals;
- (c) liaise with key stakeholders during the life span of the project;
- (d) undertake or cause to be undertaken a feasibility study for a project;
- (e) provide technical expertise for development of the project;
- (f) ensure compliance of the project with the applicable written law;
- (g) on written request by a concessionaire, provide reasonable support to the concessionaire in procuring applicable permits or other legal instruments;
- (h) monitor and implement the project in accordance with the public-private partnership agreement;
- (i) submit to the Public-Private Partnership Office periodic or other annual reports on the implementation of project agreements;

Duties of
contracting
authority

- (j) prepare public-private partnership agreements in accordance with standard documents and other guidance issued by the Public-Private Partnership Office; and
- (l) ensure that the transfer of assets at the expiry or early termination of a public-private partnership agreement is consistent with the terms of the public-private partnership agreement where the project involves a transfer of assets.

(2) Subject to the provisions of subsection (1), a contracting authority shall, in the performance of its duties, report to the Public-Private Partnership Office and shall—

- (a) implement the directives of the Council;
- (b) comply with the guidelines issued by the Public-Private Partnership Office; and
- (c) submit information as may be required by the Public-Private Partnership Office or Council.

Project
implementa-
tion

76. (1) A contracting authority shall, under the direction of the Public-Private Partnership Office, constitute a project implementation team for the implementation of all phases of a project.

(2) A project implementation team constituted under subsection (1) shall consist of members that possess technical, financial or legal expertise except that one member shall be a representative of the Public-Private Partnership Office.

(3) The Public-Private Partnership Office shall provide oversight and guidance on the implementation of each project.

(4) A concessionaire shall prepare and submit project performance reports and monitoring reports to a contracting authority within such periods as may be specified in the public—private partnership agreement.

Contract
manager

77. (1) A contracting authority shall appoint a contract manager for every public-private partnership agreement, who shall be responsible for—

- (a) managing the obligations of a contracting authority specified in the Public-Private Partnership agreement; and
- (b) ensuring that the concessionaire performs the Public-Private Partnership agreement in accordance with the terms and conditions specified in the contract.

(2) A contract manager shall be appointed in a manner as prescribed.

78. A concessionaire shall, on the request of a contracting authority or Public-Private Partnership Office, grant access to the project site for purposes of conducting an inspection in accordance with the terms of a Public-Private Partnership agreement.

Inspection

79. (1) A concessionaire shall keep and maintain proper books of accounts and other records relating to its accounts, which shall be open for scrutiny by a contracting authority or the Public-Private Partnership Office on giving one month's notice to a concessionaire.

Financial
Management
and
Reporting

(2) A concessionaire shall submit audited financial accounts and any other information as may reasonably be required by a contracting authority or Public-Private Partnership Office within three months after the end of each financial year.

PART IX

PARTICIPATION IN SMALL AND MEDIUM SCALE PUBLIC-PRIVATE PARTNERSHIPS

80. (1) In this Part, unless the context otherwise requires—
“small and medium scale public-private partnership” means a public private partnership whose total project value shall be as prescribed.

Small and
medium
scale Public-
Private
Partnerships

(2) A bid security shall not be required in a procurement for small and medium scale Public-Private Partnership, except that a citizen or a group of citizens shall complete a bid securing declaration in a prescribed manner and form.

(3) A small and medium scale public-private partnership may be procured as may be prescribed.

81. (1) The duration of a small and medium scale public-private partnership agreement shall be determined by the financial model, and negotiated by the parties.

Small and
medium
scale Public-
Private
Partnerships
agreement

(2) The duration of a small and medium scale public-private partnership agreement shall not be extended, except where —

(a) there is a delay in completion or interruption of operations due to circumstances beyond any party's control;

(b) the project is suspended for reasons not caused by the concessionaire;

- (c) there is an increase in costs arising from requirements of the contracting authority which was not foreseen or included in the agreement; or
- (d) there is an increase in costs arising from requirements of the bidder in an unsolicited project which was not foreseen or included in the financial model or agreement.

PART X

PUBLIC-PRIVATE PARTNERSHIP PROJECT DEVELOPMENT SUPPORT FUND

Establishment
of the
Public-
Private
Partnership
Project
Development
Support
Fund

82. There is established the Public-Private Partnership Project Development Support Fund which consists of—

- (a) a prescribed percentage of the fees from a solicitation document issued by a contracting authority;
- (b) a percentage from the Government revenue share of the annual gross revenue for the duration of the period of the public-private partnership agreement as prescribed;
- (c) monies that may be appropriated by Parliament for the purposes of the Fund;
- (d) monies received by way of grants or donations, from national or international development partners or financial organisations; and
- (e) monies that vest in, or accrue to, the Fund.

Purpose of
Fund

83. The Fund shall be applied for —

- (a) supporting project development costs in the initial development phase of a project;
- (b) capacity development;
- (c) supporting the activities of the Public-Private Partnership Office and Council under this Act; and
- (d) transaction advisory services, where appropriate.

Remission of
funds

84. A contracting authority shall remit the prescribed percentage of the fees for a solicitation document to the Public-Private Partnership Office for the purposes of the Fund.

Management
of Fund

85. Subject to the Public Finance Management Act, 2018, the Fund shall be administered by the Public-Private Partnership Office.

Act No. 1
of 2018

86. (1) The Public-Private Partnership Office shall cause to be kept proper books of accounts and other records relating to the accounts of the Fund.

Accounts
and audit of
Fund

(2) The Auditor-General or an auditor appointed by the Auditor-General shall audit the Fund annually.

(3) The fees for the audit of the Fund shall be paid from the Fund.

87. (1) The Director-General shall, as soon as practicable, but not later than ninety days after the end of a financial year, submit to the Minister, a report concerning the activities relating to the Fund during the financial year.

Annual
report of
Fund

(2) The report referred to under subsection (1) shall include information on the financial affairs relating to the Fund and there shall be appended to the report —

- (a) an audited statement of financial position;
- (b) an audited statement of comprehensive income and expenditure; and
- (c) other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to under subsection (1), lay the report before the National Assembly.

88. The Minister may, on the recommendation of the Public-Private Partnership Office, by statutory instrument, make Regulations to provide for—

Regulations
relating to
Fund

- (a) the manner of financing programmes and activities to which the Fund shall be applied;
- (b) fiscal controls and accounting procedures governing the Fund;
- (c) reporting procedures for matters relating to the Fund;
- (d) investment of the monies of the Fund; and
- (e) any other matter necessary for the efficient operation, administration and management of the Fund.

89. (1) The Public-Private Partnership Office shall impose a prescribed development fee where the Public-Private Partnership Office or a contracting authority incurs costs for transaction advisory services offered in support of project preparatory and procurement activities or any other recoverable project development costs.

Recoverable
Project
Development
cost

(2) Despite subsection (1), the costs shall be recoverable in full, without any inflation adjustment from the bidder that enters into a Public-Private Partnership agreement with a contracting authority that achieves financial close on a project.

(3) Recoverable project costs under subsection (2) shall be payable into the Fund.

PART XI

GENERAL PROVISIONS

Appeals

90. (1) A bidder who is aggrieved with a decision made by a contracting authority under this Act may appeal against the decision to the Council.

(2) An appeal under subsection (1) shall be made in the prescribed manner on payment of the prescribed fee.

(3) The Public-Private Partnership Office shall not accept an appeal made under this section unless it is submitted within ten working days from the date the bidder submitting the appeal was informed, or became aware, of the circumstances giving rise to the appeal or from the date the bidder should have become aware of those circumstances, whichever is earlier.

(4) Unless an appeal is dismissed or resolved by mutual agreement between the applicant and the contracting authority, the Council shall—

(a) on receipt of the appeal, institute an investigation;

(b) ensure that no Public-Private Partnership agreement is made prior to the resolution of the appeal; and

(c) issue a written decision, within ten working days after the submission of the appeal.

(5) A decision issued under subsection (4)(c) shall state—

(a) whether the appeal is upheld, in whole or in part or dismissed;

(b) the reasons for the decision; and

(c) any corrective measures that are to be taken by the Contracting authority or the bidder.

(6) The decision of the Council on an appeal under this Act is final.

91. (1) The parties to a Public-Private Partnership agreement may grant preferential treatment for a local business in respect of the level of local content as prescribed. Local content

(2) The parties to a Public-Private Partnership agreement shall, in the performance of project related activities—

- (a) give priority to services provided in the Republic;
- (b) give priority to supplies manufactured in the Republic where the supplies meet the specifications applicable to the related industry;
- (c) ensure mechanisms for technology transfer locally;
- (d) optimise opportunities for trade concessions for Zambian goods and services outside the Republic;
- (e) promote structured corporate social responsibility programmes; and
- (f) comply with local content requirements provided under any other written law and policy for the time being in force or applicable in the Republic.

(3) The Public-Private Partnership Office shall issue guidelines on local content as the Public-Private Partnership Office considers necessary based on the priority requirements of the Republic.

92. (1) The Public-Private Partnership Office shall keep and maintain registers of— Registers

- (a) project implemented under this Act;
- (b) approved project lists specifying the type of project, size and estimated value of the project; and
- (c) bidders to whom solicitation documents are issued by contracting authority.

(2) The registers shall be kept in the custody of the Director-General at the Public-Private Partnership Office and shall be open for inspection by the members of the public during normal office hours on payment of a prescribed fee.

(3) The Director-General shall, on application by a person, issue to the person a certified extract from the registers on payment of a prescribed fee.

Offences
and
penalties

- 93.** (1) A person commits an offence if that person—
- (a) obstructs or hinders a person carrying out a duty or function or exercising a power under this Act;
 - (b) knowingly makes a false or misleading statement to a person carrying out a duty or function, or exercising a power under this Act; and
 - (c) unduly influences or exerts pressure on a member of an evaluation committee, or employee or agent of the Public-Private Partnership Office or contracting authority to take a particular action which favours or is likely to favour a particular party.
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Participation
in tenders
under Act

- 94.** (1) An office holder of the Public-Private Partnership Office or contracting authority shall not directly or indirectly, participate in a tender under this Act.
- (2) An office holder who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Regulations

- 95.** (1) The Minister may, by statutory instrument, make Regulations for the better carrying out of the provisions of this Act.
- (2) Despite the generality of subsection (1), the Minister may make Regulations for—
- (a) any thresholds relating to the procurement process;
 - (b) any matter relating to competitive bidding and direct negotiations; and
 - (c) the imposition, revision and collection of user levies.

Repeal of
Act No. 14
of 2009, and
savings
transitional
provisions

- 96.** (1) The Public-Private Partnership Act, 2009, is repealed.
- (2) A public-private partnership agreement entered into before the commencement of this Act shall have effect as if executed under this Act.

(3) A person who before the commencement of this Act was an officer or employee in the Public-Private Partnership Unit shall continue to be an officer or employee of the Public-Private Partnership Office, as if appointed or employed under this Act.

(4) The service of persons referred in subsection (3) shall be treated as continued service.

(5) Nothing in this Act affects the rights and liabilities of a person employed or appointed by the Public-Private Partnership Unit before the commencement of this Act.

(6) A person who immediately before the commencement of this Act held office as a member of the Council or Technical Committee shall continue to hold office as a member for a period three months, after which the President and the Minister shall appoint members of the Council and Technical Committee, respectively.

FIRST SCHEDULE

(Sections 7(3) and 9(3))

ADMINISTRATION OF THE COUNCIL AND TECHNICAL COMMITTEE

Tenure of
office and
vacancy

1. (1) A member of the Council and Technical Committee shall, subject to other provisions of this Act, hold office for a term of three years and may be reappointed for a further and final term of two years from the date of appointment except for the members referred to under section 7(1)(a), (b) and (c).

(2) A member of the Technical Committee and a member referred to under section 7(1)(d) may, on the expiration of a term for which a member is appointed, continue to hold office until another member is appointed but in no case shall an extension of the period exceed three months.

(3) The office of a member of the Council or Technical Committee becomes vacant if the member—

(a) dies;

(b) is adjudged bankrupt under any written law;

(c) resigns by giving one month's notice, in writing —

(i) in the case of the Council, to the President; and

(ii) in the case of the Technical Committee, to the Minister;

(d) is legally disqualified from performing the functions of a member of the Council or Technical Committee;

(e) is absent, without reasonable excuse, from three consecutive meetings of the Council or Technical Committee of which the member has had notice without the prior approval of the Council or Technical Committee; or

(f) is convicted of an offence under this Act or any other written law and sentenced to imprisonment for a term of six months without the option of a fine.

(4) The President shall, where the office of a member of the Council becomes vacant before the expiry of the term of office, appoint another member to replace the member who vacates office but that person shall only hold office for the unexpired term of that office.

(5) The Minister shall, where the office of a member of the Technical Committee becomes vacant before the expiry of the term of office, appoint another member to replace the member who vacates office but that person shall only hold office for the unexpired term of that office.

2. (1) Subject to the other provisions of this Act, the Council may regulate its own procedure.

Proceedings
of Council

(2) The Council shall meet for the transaction of business at least once in every three months at a place and time as the Chairperson may determine.

(3) The Chairperson may, on giving notice of not less than fourteen days, call for a meeting of the Council, or where one third or more of the Council members so request, in writing, except that if the urgency of a particular matter does not permit the giving of a notice, a special meeting may be called on giving a shorter notice.

(4) Five members of the Council shall form a quorum at a meeting of the Council.

(5) There shall preside at a meeting of the Council—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice -Chairperson;
or

(c) in the absence of both the Chairperson and Vice-Chairperson, a member of the Council as the members of the Council present may elect for the purpose of that meeting.

(6) A decision of the Council on any question shall be by a majority of the members of the Council present and voting at the meeting, and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(7) The Council may invite a person whose presence is in the Council's opinion desirable to attend and participate in the deliberations of the meeting, but that person shall have no vote.

(8) The validity of any proceedings, acts or decisions of the Council shall not be affected by a vacancy in the membership of the Council or any defect in the appointment of a member of the Council or by reason that a person not entitled to do so took part in the proceedings.

(9) The Council shall cause minutes to be kept of the proceedings of every meeting of the Council and of any committee of the Council.

Proceedings
of Technical
Committee

3. (1) Subject to the other provisions of this Act, the Technical Committee may regulate its own procedure.

(2) The Technical Committee shall meet for the transaction of business at least once in every three months at a place and time as the chairperson may determine.

(3) The chairperson may, on giving notice of not less than fourteen days, call for a meeting of the Technical Committee, or where one third or more of the Technical Committee members so request, in writing, except that if the urgency of a particular matter does not permit the giving of a notice, a special meeting may be called on giving a shorter notice.

(4) Five members of the Technical Committee shall form a quorum at a meeting of the Technical Committee.

(5) There shall preside at a meeting of the Technical Committee—

(a) the chairperson;

(b) in the absence of the chairperson, the vice chairperson;
or

(c) in the absence of both the chairperson and vice chairperson, a member of the Technical Committee as the members of the Technical Committee present may elect for the purpose of that meeting.

(6) A decision of the Technical Committee on any question shall be by a majority of the members of the Technical Committee present and voting at the meeting, and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(7) The Technical Committee may invite a person whose presence is in the Technical Committee's opinion desirable to attend and participate in the deliberations of the meeting, but that person shall have no vote.

(8) The validity of any proceedings, acts or decisions of the Technical Committee shall not be affected by a vacancy in the

membership of the Technical Committee or any defect in the appointment of a member of the Technical Committee or by reason that a person not entitled to do so took part in the proceedings.

(9) The Technical Committee shall cause minutes to be kept of the proceedings of every meeting of the Technical Committee.

4. (1) The Council may, for the purpose of performing its functions under this Act, constitute a committee and delegate any of the Council's functions to the committee as it considers necessary.

Committee of Council

(2) The Council may appoint as members of a committee persons who are or are not members of the Council except that at least one member of the Council shall be a member of a committee.

(3) A member of a committee shall hold office for a term that the Council may determine.

(4) Subject to any specific or general direction of the Council, a committee may regulate its own procedure.

5. A member of the Council, Technical Committee or any committee of the Council shall be paid an allowance that the Emoluments Commission may, on the recommendation of the President or Minister, as the case may be, determine.

Allowances

6. (1) A person who is present at a meeting of the Council, Technical Committee or a committee of the Council at which any matter is the subject of consideration, and in which that person or that person's relative or associate is directly or indirectly interested in a private capacity, shall, as soon as is practicable after the commencement of the meeting, declare that interest and shall not, unless the Council, Technical Committee or the committee of the Council otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.

Disclosure of interest

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

7. (1) A person shall not, without the consent in writing, given by or on behalf of the Council or Technical Committee, publish or disclose to a person, other than in the course of duties of that person, the contents of a document, communication or information which relates to, or which has come to the knowledge of that person in the course of that person's duties under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

(2) A person who contravenes subparagraph (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) A person who, having information which to that person's knowledge has been published or disclosed in contravention of subparagraph (1), unlawfully publishes or communicates the information to another person, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Immunity

8. An action or other proceedings shall not lie or be instituted against a member of the Council, Technical Committee or a committee of the Council or a member of staff of the Public-Private Partnership Office for, or in respect of, an act or thing done in good faith in the exercise or performance of any of the powers, functions or duties conferred under this Act.

SECOND SCHEDULE

(Section 59)

PUBLIC-PRIVATE PARTNERSHIP MODELS

1. In this Schedule, the models enumerated are indicative in nature and the contracting authority may evolve and arrive at an model incorporating any of the models enumerated hereunder or any other models as are necessary for a specific project. Application
2. (1) A contractual model where a concessionaire undertakes the financing and construction of a given project and after its completion hands it over to the contracting authority. Build and transfer
- (2) A contracting authority shall reimburse the total project investment, on the basis of an agreed schedule.
- (3) The model may be employed in the construction of a project, including critical facilities, which for security or strategic reasons must be operated directly by the contracting authority.
3. A contractual model where a concessionaire undertakes to finance and construct any project and on completion hands it over to the contracting authority concerned on a lease model for a fixed period, after which ownership of the project is automatically transferred to the contracting authority concerned. Build, lease and transfer
4. (1) A contractual model where a concessionaire undertakes the construction, including the financing of a given infrastructure facility, and the operation and maintenance thereof. Build, operate and transfer
- (2) The concessionaire operates the facility over a fixed term during which the concessionaire is allowed to collect user fees, rentals and other charges not exceeding those proposed in the bid or as negotiated and incorporated in the agreement or regulations to enable the recovery of the investment in the project.
- (3) The concessionaire transfers the project to the contracting authority concerned at the end of the fixed term that shall be specified in the agreement.
5. (1) A contractual model where a concessionaire is authorised to finance, construct, own, operate and maintain a project from which the concessionaire is allowed to recover the total investment by collecting user levies. Build, own and operate
- (2) The contracting authority may terminate its obligations after the period specified in the agreement.

Build, own,
operate and
transfer

6. (1) A contractual model where a concessionaire is authorised to finance, construct, maintain and operate a project and where the project is to vest in the concessionaire for a specific period.

(2) During the operation period, the concessionaire may be permitted to charge user levies specified in the agreement to recover the investment made in the project.

(3) The concessionaire is liable to transfer the project to the contracting authority after the expiry of the specified period of operation.

Build,
transfer and
operate

7. (1) A contractual model where the contracting authority contracts out a project to a concessionaire to construct the facility on a turn key basis, assuming costs overruns, delays and specified performance risks.

(2) Once the facility meets the standards and is commissioned, the concessionaire shall be given the right to operate the project and collect user fees under an agreement.

(3) The certificate of title vests with the contracting authority in the model.

Contract,
add and
operate

8. (1) A contractual model where the concessionaire adds to an existing project which it rents from the contracting authority and operates the expanded project.

(2) A concessionaire collects user levies to recover the investment over an agreed franchise period.

(3) There may or may not be a transfer arrangement with regard to the added facility provided by the concessionaire.

Develop,
operate and
transfer

9. A contractual model where favorable conditions external to a new project that is developed by a concessionaire is integrated into the build, operate and transfer arrangement by giving that entity the right to develop adjoining property.

Rehabilitate,
operate and
transfer

10. A contractual model where any existing facility is handed over to the bidder to refurbish, operate and collect user levies in the operation period to recover the investment and maintain for a franchise period, at the expiry of which the facility is turned over to the contracting authority.

Build, own,
operate and
maintain

11. (1) A contractual model where a concessionaire undertakes to finance, construct, operate and maintain a project and where such project is to vest in the concessionaire for a specified period.

(2) During the period of operation of the project, the concessionaire may be permitted to charge user fees as specified.

12. A contractual model where an existing facility is handed over to the concessionaire to refurbish and operate with no time limitation imposed except where a concessionaire violates the contractual model.

Rehabilitate,
and operate

13. A contractual model where the contracting authority leases a project owned by the Government to the person who is permitted to operate and maintain the project for the period specified in the agreement and to charge user fees.

Lease,
management
and correct

14. A contractual model where the contracting authority entrusts the operation and management of a project to a person for the period specified in the agreement on payment of specified consideration and the contracting authority retains ownership and control of all facilities and capital assets and properties.

Management
Contract

15. A contractual model where an existing project is vested in a concessionaire to renovate, operate, maintain and permitted to charge levies as specified in the agreement.

Service
Contract

16. A partnership between the government and a private sector partner for the development and management of a tourism product or service in a protected area.

Collaborative
management
partnership

17. A contractual model where a person undertakes to provide services or supply equipment or machinery to the contracting authority for a project and undertakes to operate the project for an agreed period and consideration specified in the agreement.

Supply and
operate

18. (1) A contractual model where a person supplies to the contracting authority the equipment and machinery for a project and undertakes to operate the project for an agreed period and consideration specified in the agreement.

Supply,
operate and
transfer

(2) The concessionaire shall train employees of the contracting authority to operate the project.

(3) At the end of the agreement, the concessionaire shall transfer the project equipment and machinery to the contracting authority.
