PROCLAMATION NO. 1283/2023

APPROCLAMATION TO AMEND THE PUBLIC PRIVATE PARTNERSHIP PROCLAMATION

WHEREAS, it is found necessary to amend the Public Private Partnership Proclamation No. 1076/2018;

NOW THEREFORE, in accordance with Article 55 (1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows.

1. Short title
   This Proclamation may be cited as “Public Private Partnership Proclamation (Amendment) Proclamation No. 1283 /2023”.

2. Amendment
   Public Private Partnership Proclamation (Amendment) Proclamation No.1076 /2018” is hereby amended as follows.
   1/ a New Sub Article 2(19) is added after Sub Article 2 (18) of Article 2.
19/ "Direct Negotiation" means a selection of private party or private parties for direct negotiations to engage in development and implementation of infrastructure or public service projects initiated by the private party, contracting authority or Public Private Partnership Directorate General.

1/ New paragraph (c) is added after paragraph (b) of Sub Article (2) of Article 4.

c) Business activity conducted by a joint venture or a company established by public enterprise in conjunction with a private party or a Foreign Government or a public enterprise of a Foreign Government.”

2/ Article 8 Board Members of Private Public Partnership:

A) Ministry of Finance,
B) National Bank of Ethiopia,
C) Ministry of Planning and Development,
D) Ministry of Water and Energy,
E) Ministry of Peace,
F) Ministry of Transport and Logistics,
G) Ministry of Urban Infrastructure,
H) Two board Members appointed by the Ministry from Private Sector.

3/ Notwithstanding Sub Articles (1) and (2) of this Article, The board may permit the implementation of a project proposal through direct negotiations if it is believed to benefit public interest and ensure quick financing in accordance with understanding reached through Bilateral Government Economic Cooperation.
and diplomacy or through a private party project initiation.

4/ A project proposal submitted to the Board for consideration of implementation by means of Public Private Partnership using direct negotiation shall be consistent with the overall development plan and strategy of the country.

5/A Public Private or a consortium of Private Party proposing to implement a Public Private Partnership project by direct negotiation as a prospective private party shall meet the following minimum requirements:

a) A certificate of incorporation evidencing that the Private Party is duly incorporated and registered as a company in accordance with the laws of its country of residence and a document certifying that the government of the country in which the company is incorporated supports the participation of the company in the development and implementation of the project. Local Private Partners has undertaken in collaborate with concerned Government institution to support the implementation of Public and Private Partnership Project through financial capacity, technical skill and decent image. However, this Article provision shall not nullify the evaluation of the capabilities of the company by the Public and Private Partnership Director General.

b) To demonstrate with evidence financial status to implement the project; technical capacity and experience to develop and manage two or more projects in the area or to provide service;
c) The project proposed by the Private Party shall be developed in such a way that promotes the participation of domestic investors, the use of domestic products and the creation of job opportunity for Ethiopian Nationals;

d) The Private Party or its chief executive officer or its directors or shareholders having a participation interest representing more than five percent of the capital share of the Private Party shall have clean track record of a criminal offence in the last five years prior to the decision of the Board to endorse the project to develop and implementation through direct negotiation;

e) The Private Party shall produce evidence of financing from the lender or lenders for the portion of the total cost of the project that is financed by loan;

f) The Ministry may prescribe by Directive additional requirements.

3. New Sub Article (7) is added after Sub Article (6) of Article 40.

7) Notwithstanding the Provisions of Sub Articles (1) - (6) of this Article;

a) A project proposal desired to be implemented by direct negotiation within the framework of Public Private Partnership in accordance with understanding reached through Bilateral Government Economic Cooperation and Diplomacy or through direct initiation by a private party, shall at first be evaluated by a Contracting Authority and the Ministry for its special significance. If the Ministry determines that the project proposal is particularly beneficial to the public, it shall direct detailed pre-feasibility study to be
conducted on the project proposal and the profile of the private party giving general information on the technical, financial and legal standing of the private party to be prepared jointly by the Public Private Partnership directorate General and the Contracting Authority.

b) The Ministry shall evaluate the pre-feasibility study conducted on the project proposal and the profile of the Private Party giving general information on the technical, financial and legal standing of the company proposing the project and report the result of the evaluation to the Board.

c) The Board may, on the basis of the evaluation report of the Ministry, decide to endorse the project proposal for implementation by direct negotiation within the framework of Public Private Partnership or may order the pre-feasibility study and the profile of the Private Party showing the financial, technical and legal standing of the company to be revised or reject the project proposal. However, the decision of the Board to endorse the project proposal for implementation by means of Public Private partnership does not in itself constitute final acceptance of the project proposal and award of the project to the Private Party.

d) If the Board decides to approve the implementation of the project by direct negotiation within the framework of Public Private Partnership, it shall refer the project proposal to the Ministry for detailed feasibility study.

e) The Directorate General for Public Private Partnership shall cause detailed feasibility study to be conducted on the project proposal by the appropriate Contracting Authority and upon
receipt of the feasibility study carried out by the Contracting Authority, conduct a review on the study. For this purpose, Articles 17 and 18, as the case may be, of this Proclamation shall apply.

f) The Directorate General for Public Private Partnership shall present the report of the feasibility study to the Board for approval and upon approval, prepare draft project agreement that serves as base document for the negotiation in consultation with the Contracting Authority and send the document to the Private Party before the negotiation to enable it prepare for the negotiation.

g) Before embarking on the negotiation, parties to the negotiation shall agree on the timeframe within which the negotiation is to be completed and prepare a code of ethics governing the conduct of the negotiation and submit same for approval to the Minister.

h) The Directorate General for Public Private Partnership together with the Contracting Authority shall then conduct the negotiation with the Private Party in accordance with this Proclamation.

i) Upon successful completion of the negotiation, the Directorate General for Public Private Partnership shall report to the Board for approval the result of the negotiation and the acceptance of the Private Party as a Private Party for implementation of the project.

j) The Provisions of Article 34 and Articles 44 to 68 shall apply mutatis mutandis to the signing of the contract with the Private Party and the process of implementation of the project.
3. Effective Date:

This Proclamation shall inter into force on the date of its publication in the Federal Negarit Gazette.

Done at Addis Ababa, On this Day of 3rd February,

2023

SAHLE - WORK ZEWDE

PRESIDENT OF THE FEDERAL

DEMOCRATIC REPUBLIC OF ETHIOPIA