

GENERAL INFORMATION

Capital: Pretoria	Population: 56.5 million (2020)	GDP: 295 Billion (2020)
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LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law and other applicable texts

- No specific law relating to PPP
- National Treasury PPP published 9 PPP Modules for each stage of a PPP
- The Standardized PPP Provisions, 2004

Other Applicable Sectoral Law

- The Public Finance Management Act, 1999 (PFMA)
- The Revised Public Finance Management Act, 2015 (PFMA 2015)
- The Preferential Procurement Policy Framework Act 5, 2000 (PPPFA)

PPP Unit

- National Treasury PPP Unit (Ministry of Finance)
- Government Technical Advisory Center (GTAC under the National Treasury authority)

Definition

(Art. 16-1 of the PFMA, 2015)

“Public private partnership” means a commercial transaction between an institution and a private party in terms of which the private party

(a) performs an institutional function on behalf of the institution; and/or

(b) acquires the use of State property for its own commercial purposes; and

(c) assumes substantial financial, technical and operational risks in connection with the performance of the institutional

Last update: 15 July 2020

function and/or use of State property; and (d) receives a benefit for performing the institutional function or from utilizing the State property, either by way of:

- (i) consideration to be paid by the institution which derives from a revenue fund or, where the institution is a national government business enterprise or a provincial government business enterprise, from the revenues of such institution; or
- (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or
- (iii) a combination of such consideration and such charges or fees (Definitions, art. 16-1)

**General Principles
 (Module 5: PPP Procurement)**

Fair, equitable, transparent, competitive and cost effective procurement process. The procurement stages are covered in Module 5 PPP Procurement.

**Tendering and contracting procedures/
 Choice of the private partnership
 (Art. 16.5 of the PFMA)
 (Module 5 PPP Procurement)
 (Practice Note 11 on Unsolicited Bids, 2008/2009)**

The procurement of PPPs goes through distinct stages that are covered by the Module 5 PPP Procurement of the National Treasury:

- (i) pre-qualification,
- (ii) request for proposals,
- (iii) best and final offer, where appropriate,
- (iv) negotiations and
- (v) financial closure.

The regulations do not include provisions for unsolicited bids and the National Treasury is not in favor of this process. However, if the unsolicited proposal is a PPP, the accounting officer or accounting authority must comply with the requirements of Treasury Regulation 16 and the unsolicited proposal practice note 11. When it is compliant with the abovementioned provisions, the normal procurement process is conducted (art. 4.2.2, Practice Note 11 on unsolicited bids).

**Project Evaluation
 (Art. 16.4 of the PFMA, 2015)**

The accounting officer or the accounting authority of that institution must undertake a feasibility study that the National Treasury will approve. This feasibility study stage includes: (i) needs analysis, (ii) options analysis, (iii) project

<p>(Module 4: PPP Feasibility Study)</p>	<p>due diligence, (iv) value assessment, (v) economic valuation, and (vi) a procurement plan (art. 16-4).</p>
<p>Negotiation and Signature of PPP Contracts (Art. 16.6 of the PFMA) (Stage 4, Module 5 PPP Procurement)</p>	<p>Negotiations take place with the preferred bidder to finalize the PPP agreement and the associated management plan. Once the procurement process is concluded, the accounting officer must obtain approval from the Treasury approval to sign the PPP agreement by submitting a report (art. 16.6 of the PFMA)</p>
<p>Rights and Obligations of the public partner (Art. 36.5 of the PFMA)</p>	<p>The national authority must have the capacity to monitor the implementation and the performance of the PPP agreement (art. 36.5 of the PFMA).</p>
<p>Rights and Obligations of the private partner (Art. 7 and 33.6.5 of the Standardized PPP Provisions, 2004)</p>	<p>The obligation of the Private Party to self-monitor its performance of the Services (art. 33.6.5 of the Standardized PPP Provisions). Other general obligations and responsibilities covered by the “Standard Clause” (art. 7 of the Standardized PPP Provisions).</p>
<p>Obligations of both public and private partners</p>	<p>No provision in the Regulations and the Standardized PPP Provisions.</p>
<p>Applicable Law/ Dispute resolution (Art. 16.1.8.1 of the PFMA)</p>	<p>The accounting officer is responsible for ensuring that a PPP agreement is properly enforced, and must establish mechanisms and procedures for resolving disputes and differences with the private party (art.16.1.8.1 of the PFMA)</p>

EXAMPLES OF PROJECTS STRUCTURED AS PPP

Transport	Gautrain light rail concession
Power	KaXu Solar One 100 MW Power Plant
	Kathu CSP 100 MW Power Plant