

GENERAL INFORMATION

Capital: Mbabane / Lobamba	Population: 1,113,276 (2021)	GDP (USD): 4,484 Billion (2019)
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LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law	<ul style="list-style-type: none"> - No PPP law - Swaziland Final PPP Policy, 2008 (SPPPP)
Other Applicable Sectoral Law	<ul style="list-style-type: none"> - The Procurement Act, 2011 - Mines and Minerals Act, 2011 - Diamonds Act Notice, 2011 - Public Procurement Regulations, 2020 (PPR) - The Electricity Act, 2007 (Act No.3 of 2007) - The Eswatini Electricity Company Act, 2007 (Act No. 1 of 2007) - The Energy Regulatory Act, 2007 (Act No.2 of 2007) - The Electricity Licensing By-laws; and - The Public Enterprises (Control and Monitoring) Act, 1989.
PPP Unit	<ul style="list-style-type: none"> - No PPP Unit. PPP are governed by relevant line Ministries
Definition (Annexure 1 of SPPPP)	<p>The Swaziland PPP Policy defines the PPP:</p> <p>“Public Private Partnerships normally defined as a partnership between the public sector and the private sector for the purpose of delivering a service or project traditionally falling within the ambit of public sector.”</p>
General Principles (Art. 8 of SPPPP – Principles governing implementation of PPPs)	<ul style="list-style-type: none"> - Be in the public interest; - Provide value for money; - Be conducted and procured transparently; - Be developed with full stakeholder consultation; - Not infringe consumer rights; - Share risks.

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<p>Tendering and contracting procedures</p> <p>Choice of the private partnership (Art. 11 of SPPPP)</p> <p>(Art. 39 to 42 of PRR, 2020)</p>	<p>The procurement procedure must be in accordance with regulations on public procurement and applies to the implementation of a PPP (art. 11 of SPPPP).</p> <p>Procurement processes (art. 40 to 44 of Regulations) that apply to the PPP:</p> <ul style="list-style-type: none"> - Open tendering (art. 38) - Limited tendering (art. 39) - Single Source Procurement (art. 42)
<p>Project Evaluation</p>	<p>According to the SPPPP, the Minister of Finance remains responsible for implementing the PPP, but the line Ministries conduct the initial feasibility study (Initial Feasibility Assessment). Articles 58 to 66 of Regulations are applicable to the evaluation project process.</p>
<p>Negotiation and Signature of PPP Contracts (Art. 86 & 107 of PPR)</p>	<p>No provision in the Policy.</p> <ul style="list-style-type: none"> - Under the PPR, negotiations are limited to minor changes and logistical issues. The scope of negotiations does not include matters that may materially or significantly change the substance or costs in proposals or contracts. (art. 86 of PPR) - The PPR sets the procedure for negotiations to require: (i) an evaluation committee to plan and set objective and parameters for the negotiations; (ii) at least three procuring entity staff who, however, have no power to commit the entity, and who (iii) shall prepare minutes of the negotiations that the tenderer shall certify to be a faithful record of the negotiations (art. 107). <p>There's no express provision on the signing of PPP Contracts. However, the entities that have the power to manage contracts procurement (PPP) contracts, in order of increasing authority, are (i) The Controlling Officer, (ii) The Entity Tender Board, and (iii) the Government Tender Board. (art. 8)</p>
<p>Rights and Obligations of the public partner</p>	<p>No provision in the Policy.</p>
<p>Rights and Obligations of the private partner</p>	<p>No provision in the Policy.</p>
<p>Obligations of both public and private partners (Art. 8 of SPPPP)</p>	<p>Sharing of risks:</p> <p>The negotiation of risk, and the use of risk mitigation measures (such as insurances and guarantees) by the private party, should be used to reduce the risk cost to the government. At the same time, government must work to limit any risks which are within its</p>

PPP COUNTRY PROFILE – ESWATINI

control (Principle 9: Appropriate sharing of risk of PPP Policy)

**Applicable
resolution**

Law/

Dispute

No provision in the Policy but the future PPP law shall include contractual clauses on arbitration and dispute resolution (art. 8 – Principles governing implementation of PPPs)

(Art. 8 of SPPPP)

EXAMPLES OF PROJECTS STRUCTURED AS PPP

Telecoms

MTN Swaziland