

GENERAL INFORMATION

Capital: Gaborone	Population: 2,262,485	GDP (USD): 14,39 Billion
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LEGAL AND INSTITUTIONAL FRAMEWORK

- PPP Laws**
- Public-Private Partnership Policy and Implementation Framework, 2009 (PPPPIF 2009)
 - No PPP dedicated law

- Other Applicable Sectoral Law**
- Public Procurement and Asset Disposal Act, 2001 (PPADB Act)
 - Public Procurement and Asset Disposal Regulations, 2014 (PPADB Regulations)

- PPP Units**
- A PPP Unit within the Ministry of Finance and Development
 - Public Procurement and Asset Disposal Board (PPADB)

Definition

(Art. 3.1 of PPPPIF, 2009)

The PPPPIF defines a PPP:

“a Public-Private Partnership” involves a contractual arrangement between a governmental institution and a private party whereby the private sector party provides public infrastructure and/or infrastructure related services and where the provision of such infrastructure and/or infrastructure related services is:

- (a) Based on measurable output (end result) specifications;

- (b) Governed by a payment mechanism that provides payment only on delivery of services at required standards;
- (c) Accompanied by a transfer of financial and operational risks with consequential financial effects; and
- (d) Demonstrates Value for Money to Government (Art. 3.1)

**General Principles
 (Art. 3.19 of PPPPIF, 2009)**

Implementation of the Public-Private Partnership Policy has to accord with the following principles:

- (a) public Sponsoring Institutions purchase services, not assets;
- (b) the services to be purchased are expressed as outputs or service standards, rather than on input specifications;
- (c) risks are allocated to the party best able to manage them;
- (d) the private party is compensated according to performance and penalties are imposed where performance fails to meet established performance indicators;
- (e) a public-private partnership must demonstrate “Value-for-Money” based upon affordability to the public institution and transfer of significant risk to the private party;
- (f) processes for the procurement and implementation of public-private partnerships must be transparent and accountable; and
- (g) Standardized procedures, as listed in the Public-Private Partnership Framework, must be used to minimize transaction cost and time.

**Tendering and contracting procedures/ Choice of the private partnership
 (Art. 5.7 and 5.8 of PPPPIF, 2009)**

Project Procurement Phase (art. 5.7 / 5.8, and Annexure 3 of PPPPIF 2009)

The procurement phase will commence once approval of the feasibility study has been secured from the PPP Unit. PPP procurement, like other forms of government procurement, is required to follow the highest standards of transparency and will be implemented under the relevant procurement regulations. Subsequent to PPAD Board award of the project to the selected preferred bidder, financial closure should occur as soon as possible, signifying that the procurement has been successfully completed and the final PPP agreement has

(Art. 55, 56, 60 and 61 of PPADB Regulations, 2006)

been signed.

- International and domestic competitive bidding (art. 55 and 56)
- Restricted international and domestic bidding (art. 57 and 58)
- Micro procurement (art. 60)
- Direct procurement (art. 61)

Project Evaluation

(Annexure 3 of PPPPIF, 2009)

(Art. 40 to 48 of PPADB Regulations, 2006)

Guidelines of this step include the business case/feasibility study (appointment of transaction advisor, undertaking detailed analysis of project in terms of costs and risk assessment and determining preferred option) by institutions, transaction advisors, Project Committee and PPP Unit

Evaluation process detailed from art. 40 to art. 48 of Regulations.

Negotiation and Signature of PPP Contracts

(Art. 84 and 85 of PPPPIF, 2009)

When all details are recorded, and reflected in the PPP agreement and schedules and all conditions precedent clearly defined, formal settlement arrangements may be initiated. At this time, the Institution should commence discussions with the preferred bidder on development of the Institution's contract management plan (art. 84)

When the PPP agreement is in a form suitable for execution, it must be presented by the PPP project committee to the PPADB, for contract award (art. 85)

Rights and Obligations of the public partner

No provision in the Policy.

Rights and Obligations of the private partner

No provision in the Policy.

Obligations of both public and private partners

No provision in the Policy.

Applicable Law / Dispute
(Clauses 37 and 38 of
Annexure 2 of PPPPIF,
2009)

Governing Law and Jurisdiction, states that the PPP agreement is governed by the laws of the Republic of Botswana (clauses 37 and 38 Annexure 2 – Standard Clauses for Use in PPP Agreements)

EXAMPLE OF PROJECTS STRUCTURED AS PPP

Energy

KSE Orapa and Mmashoro IPP