BILL

A BILL ENTITLED

THE PUBLIC PRIVATE PARTNERSHIP ACT 2012

ARRANGEMENT OF SECTIONS

Section No

PART I- PRELIMINARY

1. Interpretation.

2. Application.

3. Exclusion of public procurements, privatizations or granting of mineral rights.

4. Commencement.

PART II- PUBLIC – PRIVATE PARTNERSHIP AGREEMENTS

5. Contents of PPP Agreement.

6. Governing law.

7. Ownership of assets.

8. Acquisition of rights related to PPP Project site.

9. Easements.

10. Financial arrangements.

11. Security interest.

12. Assignment of a PPP Agreement.

13. Transfer of controlling interest in private partner.

14. Operation of a PPP Project.

15. Compensation for specific changes in legislation.

16. Revision of a PPP Agreement.

17. Takeover of a PPP Project.

18. Substitution of private partner.

19. Duration and extension of a PPP Agreement.

20. Termination of a PPP Agreement by contracting authority.

21. Termination of a PPP Agreement by private partner.

22. Termination of a PPP Agreement by either party.

23. Compensation upon termination of a PPP Agreement.

24. Management of PPP Agreement.

25. Winding up and transfer measures

PART III- APPROVAL OF PPP PROJECTS BY THE CABINET

26. Approval of PPP Projects by the Cabinet

PART IV - THE PUBLIC PRIVATE PARTNERSHIP UNIT AND RELATED PROVISIONS

27. Establishment of the Unit

28. Functions of the Unit

29. Director

30. Other staff of Unit

31. Consultants and experts

PART IV- FINANCIAL PROVISIONS

32. Funds of Unit

33. Accounts and audit

34. Financial year of Unit

35. Annual report

PART VI- CONTRACTING AUTHORITIES

36. Responsibilities of contracting authority

37. Cabinet approval following PPP Project feasibility study

38. Directions given by Cabinet.

PART VII- COMPETITIVE SELECTION PROCESS AND AWARD PROCEEDINGS

39. Procurement principles

40. Requests for expression of interest and pre-selection bidding documents

41. Pre-selection criteria

42. Participation of consortia

43. Evaluation of qualifications

44. Pre-selection report

45. Requests for proposals

46. Two-stage bidding procedure

47. Bid securities

48. Clarifications and revisions of the request for proposals

49. Evaluation of proposals

50. Evaluation criteria

51. Reconfirmation of qualifications

52. Approval of the evaluation report by the Cabinet

53. Cabinet approval prior to PPP Agreement finalization

54. Circumstances authorising award without competitive procedures

55. Negotiation of PPP Agreements not competitively procured

56. Confidentiality

57. Notice of PPP Agreement award

58. Record of selection and award proceedings

59. Review procedures

60. Organisation of private partners

61. Unsolicited proposals

PART VIII –SETTLEMENT OF DISPUTES AND GENERAL PROVISIONS

62. Disputes between the contracting authority and the private partner

63. Disputes involving customers or users

PART IX- MISCELLANEOUS

64. Regulations

65. Unenforceability of PPP Agreements entered into without authorisation

66. Offences

67. Transitional provisions

68. Consequential amendments

SCHEDULE. ILLUSTRATIVE PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS

BILL

A BILL ENTITLED

**Short title.** THE PUBLIC PRIVATE PARTNERSHIP ACT, 2012

Being an Act to promote, facilitate and streamline conclusion and implementation of public private partnership agreements; to establish a Public Private Partnership Unit; to establish private partner selection procedures in PPP Agreements; and to provide for matters incidental thereto.

**Date of commencement.** { }

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I - PRELIMINARY

|  |  |
| --- | --- |
| **Interpretation.** | 1. In this Act, unless the context otherwise requires - |

**“affordable”** means an arrangement where a contracting authority is able to meet any financial commitment likely to be incurred under the PPP Agreement from the contracting authority’s existing or future budgetary funds;

**“Asset”** means an existing movable or immovable property (including the rights and intellectual property) of a relevant contracting authority or a new property to be acquired or created for the purposes of entering into a PPP Agreement;

**“Bid”** means a tender, an offer, a proposal or price quotation, given in response to an invitation to participate in a PPP Project;

**“Bidder**” means any person, including a group of persons (consortium), corporate body or joint venture that participates in selection proceedings relating to a PPP Project;

**“Bidding documents”** means the tender solicitation documents or other documents for solicitation of bids for a PPP Project, on the basis of which bidders are to prepare their bids;

**“Bidding consortium”** means a situation where a proposal for a PPP Project is made by more than one person, and “bidding consortia” shall be construed accordingly;

**“commercial close”** means the event that occurs when a contracting authority and a private partner have reached agreement on all terms of the PPP Agreement, subject only to the private partner obtaining financing for the proposed PPP transaction where such financing is required;

**“contract finalisation phase”** means that phase of concluding a PPP Agreement which takes place following the issuance, by the Cabinet, of the approval required by section 53(1), and prior to the commencement of the implementation phase, and shall include the achievement of both the commercial close and, where financing is required, the financial close of the PPP Agreement;

**“Contracting authority”** means a public agency, authority or entity, which has legal capacity to enter into contractual obligations;

**“Cabinet”** has the meaning assigned to it in the Constitution of Sierra Leone, 1991, or the respective sub-committee of the Cabinet, formed under the regulations governing Cabinet activities, for the purpose of this Act;

**“Director”** means the Director appointed under section 29;

**“Feasibility study”** means a study commissioned or undertaken by the Unit for submission to the Cabinet in accordance with section 37(3);

**“Financial close”** means the event that occurs, subsequent to commercial close, when a private partner has obtained the financing for a PPP Agreement;

**“Implementation phase“**means that phase of a PPP transaction which takes place following the achievement of the financial close of the PPP transaction;

**“Local authority”** has the meaning assigned to it under the Local Government Act, 2004;

**“material default”** means material failure of a private partner to perform his duty as defined under a PPP Agreement which remains unsatisfied after the private partner has received written notice of the failure from the contracting authority;

**“Minister”** means the minister responsible for finance;

**"NPPA"** means National Public Procurement Authority, as defined in the Public Procurement Act, 2004.

**“Parties”** means the contracting authority and the private partner in a PPP Agreement;

**"Public Private Partnership Agreement"** or **“PPP Agreement”** means is a written agreement between a contracting authority and a private partner, in relation to any activity in which the private partner:

(a) Performs a public function on behalf of the public authority; and / or

(b) designs, develops, operates or uses an asset for its own commercial purposes; and / or

(c) forms a joint venture with the contracting authority (by way of divestiture, new establishment or otherwise); and

(d) assumes financial, technical or operational risks in connection with the performance of a public function, use of an asset or running the joint venture; and

(e) receives consideration for performing a public function, utilising public asset or running the joint venture, by way of:—

(i) A fee from any revenue fund or budgetary fund of the Government;

(ii) user levies collected by the private partner or joint venture from the end-users or customers for a service provided by the private partner or the joint venture; or

(iii) a combination of the consideration paid under sub-paragraphs (i) and (ii).

**“PPP Project”** means activity, project or any other subject matter in relation to which the contracting authority enters or intends to enter into the PPP Agreement pursuant to this Act;

**“Priority PPP Project”** means a PPP Project which is determined as such by the President for its importance to Sierra Leone due to its size, potential social impact or term of implementation;

**“Pre-feasibility study”** means a study commissioned or undertaken by a contracting authority for submission to the Unit in accordance with Section 37;

**“Preferred bidder”** means a bidder, including any bidding consortium, selected as a successful bidder during the procurement phase;

**“Private partner”** means a person or an entity from the private sector which undertakes a PPP Agreement;

**“Procurement phase“**means that phase of concluding a PPP Agreement which takes place following the issuance, by the Cabinet, of the approval required by Section 37;

**“Project identification phase“**means the initial phase of concluding a PPP Agreement prior to the issuance, by the Cabinet, of the approval required by Section 37;

**“Public authority”** means a Ministry, Government department, local authority or other statutory body;

**“Public function”** means a function lying within the area of responsibility of a contracting authority;

**“Sierra Leone Investment and Export Promotion Agency”** has the meaning assigned to it in the Sierra Leone Investment and Export Promotion Agency Act, 2007;

**“Unit”** means the Public Private Partnership Unit established by section 33 ;

**“Unsolicited proposal”** means any proposal relating to the conclusion of a PPP Agreement that is not submitted in response to a request or solicitation issued by a contracting authority under Sections 39 to 53;

**“user levy”** means the right or authority granted to a private partner by a contracting authority to recover investment and a fair return on investment through collections from the end-users of an asset or services provided under PPP Agreement, and includes tolls, fees, tariffs, charges or any other benefit whatsoever called; and

**“Value for money”** means the carrying out of the public function of a contracting authority, the use of an asset by a private partner, or running a joint venture pursuant to a PPP Agreement, which results in a net benefit to the contracting authority, defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof.

|  |  |
| --- | --- |
|  |  |
| **Application.** | 2. (1) This Act shall apply to conclusion and implementation of any PPP Agreement undertaken between a public authority and a private partner.  (2) A PPP Agreement may be in the form of a concession transaction, a lease transaction, a management contract transaction, a long-term service contract transaction, as described in the Schedule, a joint venture transaction, or may be in such other forms as may be prescribed by the Cabinet.  (3) Where this Act conflicts with the procurement rules of a donor organisation or funding agency, the application of which is mandatory under an obligation entered into by the Government, the requirements of those rules shall prevail; but in all other respects, the provisions of this Act shall apply to all PPP Agreements, other than those which have been expressly excluded from the provisions of this Act. |
| **Exclusion of public procurements, privatizations or granting of mineral rights.**  **Commencement.** | 3. (1) This Act does not apply to the purchases of goods, services and works pursuant to the Public Procurement Act, 2004 nor it applies to the full privatization or full divestiture of public infrastructure or publicly owned enterprises as prescribed by the National Commission for Privatisation Act, 2002;  (2) This Act does not apply to the granting of any mineral rights pursuant to the Mines and Minerals Act, 2009;  (3) PPP Agreements shall not be concluded in relation to any military installations or administration of justice without previous consideration and approval by the Parliament.  4. This Act shall come into operation on such date as the President may, by statutory instrument appoint. |
|  |  |

PART II - PUBLIC PRIVATE PARTNERSHIP AGREEMENTS

|  |  |
| --- | --- |
| **Contents of PPP Agreement.** | 5. A PPP Agreement shall provide for such matters as the parties consider appropriate, but shall include-  (a) the nature and scope of works to be performed and services to be provided by the private partner in a form of the output specification;  (b) the conditions for provision of services and carrying out any works and the extent of exclusivity, if any, of the private partner's rights under the PPP Agreement;  (c) the assistance that a contracting authority may provide to the private partner in obtaining licences and permits to the extent necessary for the performance of the PPP Agreement;  (d) ownership, use, management and return of assets, if any, to a contracting authority, at the termination or expiry of the PPP Agreement as provided under Section 7;  (e) in the case of a PPP Agreement for infrastructure, procedures for the review and approval of engineering designs, construction plans and specifications by the contracting authority, if any, and the procedures for testing and final inspection, approval and acceptance of the works performed under PPP Agreement;  (f) private partner performance measurement system , and the conditions and extent to which the contracting authority may order variations in respect of the works and conditions of service or take such other reasonable actions as they may find appropriate to ensure that the PPP Agreement is properly implemented and the services are provided in accordance with the applicable legal and contractual requirements;  (g) the extent of the private partner's obligation to provide the contracting authority, as appropriate, with reports and other information on its operations;  (h) mechanisms to deal with additional costs and other consequences that might result from any order issued by contracting authority, including any compensation to which the private partner might be entitled;  (i) any rights of the contracting authority to review and approve major contracts or their material amendments to be entered into by the private partner, in particular with the private partner's own shareholders or other affiliated persons;  (j) guarantees of performance to be provided and insurance policies to be maintained by the private partner in connection with the PPP Agreement (including reinstatement of the assets under the PPP Agreement following an insurance event);  (k) remedies available in the event of default of either party;  (l) the extent to which either party may be exempt from liability for failure or delay to comply with any obligation under the PPP Agreement owing to circumstances of *force majeure*;  (m) the duration of the PPP Agreement and the rights and obligations of the parties upon its expiry or termination;  (n) the manner for calculating compensation in case of termination of the PPP Agreement, as provided under Section 23;  (o) the governing law, as provided under Section 6 and the mechanisms for the settlement of disputes (including international arbitration, if applicable);  (p) the rights and obligations of the parties with respect to confidential information;  (q) the relevant financial terms and payment mechanism;  (r) the sharing of risks between the contracting authority and the private partner;  (s) the payment to the private partner by way of compensation or of user levies collected by the private partner of the joint venture formed with contracting authority for a service provided by it as provided under Section 10; and  (t) such other information as may be prescribed. |
| **Governing law.** | 1. A PPP Agreement shall be governed by and construed in accordance with the laws of Sierra Leone unless otherwise provided in the PPP Agreement. |
| **Ownership of assets.** | 7. (1) A PPP Agreement shall specify, which assets are or shall be in ownership of contracting authority during the term of PPP Agreement, which assets will be transferred to the use or management of the private partner and which assets are or shall be the ownership of the private partner.  (2) A PPP Agreement shall, in particular, identify which assets belong to the following categories-  (a) assets, if any, that the private partner is required to return or transfer to the contracting authority in accordance with the terms of the PPP Agreement;  (b) assets, if any, that the contracting authority, at its option, may purchase from the private partner; and  (c) assets, if any, that the private partner may retain or dispose of upon expiry or termination of the PPP Agreement. |
| **Acquisition of rights related to PPP Project site.** | 8. (1) A contracting authority, shall make available to the private partner or, as appropriate, shall be authorised to request from the other relevant public authority, pursuant to the relevant legislation for the private partner to obtain the rights related to the site indicated in the PPP Agreement, including the title thereto or utility connections, as may be necessary for the performance of the PPP Agreement.  (2) Any compulsory acquisition of land that may be required for the performance of a PPP Agreement shall be carried out in accordance with the applicable law.  (3) In addition to the PPP Agreement, a Government support agreement dealing with the matters that are outside of contracting authority's control or responsibility can be concluded with the private partner. |
| **Easements.** | 1. A contracting authority or other public authority under the terms of any law and a PPP Agreement shall make available and assist the private partner to enjoy the right to enter upon, transit through or do work or fix installations upon property of third parties required for the performance of the PPP Agreement. |
| **Financial arrangements.** | 10. (1) A PPP Agreement may permit a private partner or a joint venture formed with the contracting authority to have the right to charge, receive or collect user levies for the use of an asset or services under the PPP Agreement in accordance with the terms indicated therein, which shall provide for methods and formulas for the establishment and adjustment of user levies in accordance with any applicable legislation.  (2) A contracting authority may agree to make direct payments to the private partner according to the invoices presented, as a substitute for, or in addition to, the user levies as provided in the PPP Agreement. |
| **Security interest.** | 11. (1) Subject to any restrictions that may be contained in a PPP Agreement, a private partner shall have the right to create security interests over any of its own property, rights or interests, including private partner's own property covered under the PPP Agreement, as shall be required to secure any financing needed for the PPP Project, including, in particular, the following:  (a) security over movable or immovable property owned by the private partner or its interests in PPP Agreement; and  (b) a pledge of the proceeds of, and receivables owed to the private partner the PPP Agreement.  (2) The shareholders of a private partner's company shall have the right to pledge or create any other security interest in their shares in the private partner's company.  (3) No security under subsections (1) and (2) may be created over public property or other property, assets or rights needed for the provision of a public service, where the creation of such security is prohibited by the laws of Sierra Leone. |
| **Assignment of a PPP Agreement.** | 12. (1) Except as otherwise provided in section 11, the rights and obligations of the private partner under a PPP Agreement may not be assigned to a third party without the prior written consent of the contracting authority .  (2) A PPP 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 private partner under the PPP Agreement, including the acceptance by the new private partner of all obligations thereunder and evidence of the new private partner's technical and financial capability as shall be necessary for undertaking the PPP Agreement obligations. |
| **Transfer of controlling interest in private partner.** | 13. (1) Except as otherwise provided in a PPP Agreement, a controlling interest in the private partner's company shall not be transferred to third parties without the consent of the contracting authority.  (2) A PPP Agreement shall set forth the conditions under which the consent of a contracting authority shall be given pursuant to subsection (1). |
| **Operation of a PPP Project.** | 14. (1) A PPP Agreement shall set out, among other things, the extent of a private partner's obligations to ensure–  (a) the modification of the PPP Agreement so as to meet the public demand for the purpose of the PPP Agreement;  (b) the continuity of the PPP Agreement;  (c) the provision of the assets or services under the PPP Agreement under essentially the same conditions for all users; and  (d) the non discriminatory access, as appropriate, of other service providers to any assets or services under the PPP Agreement operated or provided by the private partner.  (2) Subject to the applicable legislation, a private partner shall have the right to issue and enforce rules governing the use of the assets or services under the PPP Agreement, subject to the approval of the contracting authority. |
| **Compensation for specific changes in legislation.**  **Revision of**  **a PPP Agreement** | 15. A PPP Agreement shall set out the extent to which a private partner is entitled to compensation in the event that the cost of the private partner's performance of the PPP Agreement has substantially increased or that the value that the private partner receives for such performance has substantially diminished, as compared with the costs and the value of performance originally foreseen, as a result of changes in legislation or regulations specifically applicable to the PPP Agreement.  16. (1) Without prejudice to Section 15, a PPP Agreement shall set out the extent to which a private partner is entitled to a revision of the PPP Agreement with a view to providing compensation in the event that the cost of the private partner’s performance of the agreement has substantially increased or that the value the private partner receives for such performance has substantially diminished as compared with the costs and the values of performance originally foreseen , as a result of –  (a) changes in economic or financial conditions; or  (b) changes in legislation or regulations not specifically applicable to the PPP Agreement; provided that the economic, financial, legislative or regulatory changes  (i) occur after the conclusion of the PPP Agreement;  (ii) are beyond the control of the private partner; and  (iii) are of such a nature that the private partner could not reasonably be expected to have taken them into account at the time the PPP Agreement was negotiated or have avoided or overcome their consequences.  (2) A PPP Agreement shall establish procedures for revising the terms of the PPP Agreement following the occurrence of the circumstances described in subsection (1).  (3) A PPP Agreement shall specify rights of the contracting authority to make changes to the works or services which private partner must perform under the PPP Agreement and any compensation payable in such circumstances. |
| **Takeover of a PPP Project.** | 17. A contracting authority shall have the right, under the prescribed circumstances set out in a PPP Agreement, to take over the PPP Project, for the purpose of ensuring the effective and uninterrupted delivery or timely completion of the PPP Project in the event of a-  (a) material default by the private partner in the performance of its obligations; and  (b) failure by the private partner to rectify the breach within a period of time, as provided by the PPP Agreement, after having been given notice by the contracting authority to do so.  (c) a clear and present danger to life, liberty, health, the environment, or national security, having obtained approval of the Cabinet.  (2) The duration of a takeover referred to in subsection (1) and the residual rights(if any) of the private partner shall be as set out in the PPP Agreement.  (3) When a contracting authority elects to take over a PPP Project under subsection (1), the contracting authority, in accordance with the terms of the PPP Agreement—  (a) shall collect and pay any revenues that are subject to lien to satisfy any obligation;  (b) may perform works and provide services, impose user levies and comply with any existing service contracts; and  (c) may solicit proposals, as appropriate, for the construction, maintenance or operation of the assets under the PPP Agreement. |
| **Substitution of private partner.** | 18. (1) A contracting authority may agree with any entity extending financing for a PPP Agreement to provide for the substitution of the private partner with another person appointed to perform under the existing PPP Agreement, upon a material default by the private partner or other event that could otherwise justify the termination of the PPP Agreement under conditions indicated therein.  (2) A contracting authority may facilitate a private partner to securitise any receivables and assets under the PPP Agreement in favour of a lender (security agent or trustee, or other agents or trustees of those providing financing), subject to such terms as the contracting authority may determine in order to safeguard the successful implementation, completion, working, management and control of the PPP Agreement. |
| **Duration and extension of a PPP Agreement.** | 19. The PPP Agreement shall indicate its duration, and the contracting authority may not agree to extend its duration except as a result of the following circumstances-  (a) delay in completion or interruption of operation due to circumstances beyond the reasonable control of either party;  (b) suspension of the PPP Agreement brought about by acts of the contracting authority or other public authority;  (c) increase in costs arising from requirements of the contracting authority not originally foreseen in the PPP Agreement, if the private partner would not be able to recover such costs without such extension;  (d) on agreement with the private partner, for reasons of national or public interest, as justified in the record to be kept by the contracting authority; or  (e) as otherwise provided in the PPP Agreement. |
| **Termination of a PPP Agreement by contracting authority.** | 20. A contracting authority may terminate a PPP Agreement-  (a) when it can no longer be reasonably expected that the private partner will be able or willing to perform its obligations, owing to insolvency, material default or otherwise, as agreed in the PPP Agreement; or  (b) for compelling reasons of national or public interest, subject to payment of compensation to the private partner, as agreed in the PPP Agreement.  (c) as otherwise provided in the PPP Agreement. |
| **Termination of a PPP Agreement by private partner.** | 21. A private partner shall not terminate a PPP Agreement except under the following circumstances:-  (a) when there is material default by the contracting authority of its obligations under the PPP Agreement;  (b) if the conditions for a revision of the PPP Agreement under subsection (1) of Section 16 and respective PPP Agreement provisions are met, but the parties have failed to agree on a revision of the PPP Agreement. |
| **Termination of a PPP Agreement by either party.** | 22. Either party has the right to terminate a PPP Agreement by mutual consent. |
| **Compensation upon termination of a PPP Agreement.** | 23. A PPP Agreement shall stipulate how compensation due to either party shall be calculated in the event of termination of the PPP Agreement and shall provide, where appropriate, for compensation for the fair value of works performed under the PPP Agreement, costs incurred or losses sustained by either party, including, as appropriate, lost profits. |
| **Management of PPP Agreement.** | 24. A contracting authority shall be responsible for ensuring that PPP Agreements executed by the contracting authority are properly implemented, managed, enforced, monitored and reported on by the private partner. |
| **Winding up and transfer measures.** | 25. A PPP Agreement shall provide, for—  (a) mechanisms and procedures for the transfer of assets to a contracting authority in case of a winding up;  (b) the compensation to which the private partner may be entitled in respect of assets transferred to a contracting authority or to a successor private partner or purchased by a contracting authority;  (c) the transfer of technology or industrial property rights (trademarks, know-how, etc) required for the PPP Agreement;  (d) the training of a contracting authority's personnel or of a successor private partner in the operation and maintenance of the assets or performance of services under the PPP Agreement; and  (e) the provision, by the private partner, of continuing support services and resources, including the supply of tools, spare parts and required materials, for a reasonable period after the transfer of the PPP Agreement to a contracting authority or to a successor private partner. |

PART III- APPROVAL OF PPP PROJECTS BY THE CABINET

|  |  |
| --- | --- |
| **Approval of PPP Projects by the Cabinet.** | 26. (1) The Cabinet shall approve the implementation of all PPP Projects in Sierra Leone.  (2) Without prejudice to the generality of subsection (1) and any other legislation governing activities of the Cabinet, shall be the function of the Cabinet to -  (a) consider for approval, modification or rejection all decisions relating to PPP Agreements, proposed by the Unit under Section 28 (2) (a);  (b) consider for approval, modification or rejection all initial proposals made by a contracting authority for PPP Projects pursuant to Section 37(3), taking into account the results of the required feasibility study and the recommendations of the Unit made pursuant to section 28 (2) (h);  (c) consider for approval, modification or rejection all proposed PPP Agreements, taking into account the recommendations of the Unit made pursuant to Section 28 (2) (l);  (d) review the quarterly reports of the Unit submitted pursuant to Section 28 (2) (o);  (e) resolve, on an emergency basis, any issues relating to the PPP Projects, as may be raised by the Unit or as may be raised by the members of the Cabinet on their own initiative, and take such decisions as may be required;  (f) refer any unsolicited proposals received by it to an appropriate contracting authority for examination and evaluation pursuant to Section 61. |
|  | PART IV - THE PUBLIC PRIVATE PARTNERSHIP UNIT AND RELATED PROVISIONS |
| **Establishment of the Unit.** | 27. (1) For the purposes of this Act the Public Private Partnership Unit is hereby established within the Office of the President which shall be responsible for managing the process to conclusion of PPP Agreements for the priority PPP Projects, and for providing technical and legal support in pursuance of other PPP Agreements by contracting authorities, as well as performance of other functions relating to the PPP Projects, as indicated in Section 28.  (2) The Unit shall be a body corporate, having perpetual succession and capable of acquiring, holding and disposing of any property, and of suing and being sued in its corporate name and, subject to this Act, of performing all such acts as bodies corporate may by law perform. |
| **Functions of the Unit.**    **Director** | 28. (1) The responsibilities of the Unit will be as follows:   1. develop awareness about the PPP Projects 2. initiate PPP Projects them from time to time as required; 3. conduct implementation reports for the priority PPP Projects and appoint appropriate advisers to produce them; 4. carry through the tender process for the selection of private partners for the PPP Agreements in the priority PPP Projects, and provide support and advice to the contracting authority on the tender process, selection of private partners and other aspects of other PPP Projects; 5. liaise with the contracting authority at all stages of the PPP Agreement, but particularly with respect to the initial proposals for PPP Projects, value for money assessment, the output specification, the performance measurement system and the payment mechanism, prequalification criteria in private partner selection process, assessing technical proposals, negotiating the PPP Agreement, continued monitoring of the PPP Agreement by the contracting authority, and analysing the lessons learnt; 6. liaise with NPPA to ensure transparency and compliance of private partner selection process; 7. coordinate activities of the Government of Sierra Leone in relation to priority PPP Projects; 8. manage the private partner selection process for the priority PPP Projects; 9. negotiate PPP Agreements for the priority PPP Projects; 10. ensure continued monitoring of PPP Agreements for priority PPP Projects; 11. process all unsolicited proposals for PPP Projects.   (2) In the light of the above the Unit will further be required to deliver on the following activities:  (a) develop, for consideration by the Cabinet, decisions relating to this Act;  (b) develop technical and best practice guidelines in relation to PPP Agreements;  (c) provide assistance to contracting authorities in respect of PPP Agreements;  (d) provide training for contracting authorities in respect of PPP Agreements;  (e) consider for approval, modification or rejection all pre-feasibility studies regarding PPP Projects submitted by contracting authorities pursuant to section 37(3);  (f) assist the contracting authority with the preparation of the feasibility study for a proposed PPP Project as required by Section 37(3);  (g) consider each PPP Project initial proposal developed by a contracting authority, with the accompanying feasibility study, and give the Unit recommendations to the applicable contracting authority as to whether the proposed PPP Project-  (i) is affordable to the contracting authority;  (ii) provides value for money; and  (iii) is otherwise feasible;  (h) make recommendations for the consideration of the Cabinet in respect of PPP Project initial proposals and feasibility studies submitted by contracting authorities pursuant to section 37(3);  (i) provide recommendations for approval, modification or rejection of requests for written authorization to issue a request for submission of expressions of interest;  (j) consider for approval, modification or rejection all pre-selection reports;  (k) make recommendations for the consideration of the Cabinet in respect of requests for proposals, based on a full legal and financial analysis of each proposed PPP Agreement, including an analysis of any investment incentives (if any) offered to a private partner by or on behalf of a contracting authority;  (l) make recommendations for the consideration of the Cabinet in respect of proposed PPP Agreement;  (m) monitor all ongoing PPP Projects managed by contracting authorities, and provide advice and support to contracting authorities in relation thereto;  (n) monitor that each contracting authority develops and implements a public awareness strategy, to educate the public on the objectives, structure and progress of each PPP Project being undertaken by the contracting authority;  (o) provide quarterly reports for the consideration of the Cabinet regarding the management by contracting authorities of all ongoing PPP Projects;  (p) provide emergency reports, as required, to the Cabinet regarding the management by a contracting authority of any PPP Project under stress;  (q) prepare, when appropriate, standardised terms of reference for consultants engaged by contracting authorities, standardised bidding documents for selection of the private partner in the PPP Agreement and standard PPP Agreement provisions;  (r) in liaison with the Sierra Leone Investment and Export Promotion Agency, facilitate and market investment into PPP Projects; and  (s) perform such other functions provided for under this Act, or as may be assigned by the President.  29. (1) The Unit shall have a Director who shall be appointed by the President for the tenure and on such terms and conditions as the President may determine.  (2) The Director of the Unit shall be a person with—  (a) formal qualifications in any profession relevant or appropriate to the functions of the Unit;  (b) demonstrated comprehension of issues related to public administration and management; and  (c) extensive legal and financial experience related to complex commercial transactions.  (3) The Director of the Unit shall, subject to the general or specific directions of the President or his designee  (a) be responsible for the day-to-day administration of the Unit; and  (b) exercise such other duties as may be determined by the Cabinet. |
| **Other staff of Unit**    **Consultants and experts**  **Funds of Unit**  **Accounts and audit**  **Financial year of Unit**  **Annual report** | 30. There shall be appointed by Director, on such terms and conditions as the President may determine, other staff of the Unit as the Unit may require for the efficient discharge of its functions under this Act.  31. The Unit may engage the services of such consultants or experts as it may consider necessary for the proper and efficient performance of its functions.  PART V- FINANCIAL PROVISIONS  32. The activities of the Unit shall be financed by funds consisting of –  (a) moneys appropriated by the Parliament for the purposes of the Unit; and  (b) monies accruing to the Unit in the course of its activities as transaction management expense recovery, as well as other revenues approved by the President or his designee.  33. (1) The Unit shall keep proper books of accounts and proper records in relation to them in a form approved by the Auditor-General.  (2) The books of account referred to in subsection (1), shall be audited by the Auditor-General or an auditor appointed by him within three months after the end of each financial year.  34. The financial year of the Unit shall be the same as the financial year of Government.  35. (1) The Director shall as soon as possible but not later than three months after the end of each financial year, submit to the Cabinet a report of the activities, operations, undertakings, properties and finances of the Unit for that year, including the Auditor-General’s report .  (2) The Minister shall lay a copy of the report referred to in subsection (1) before Parliament within thirty days of receipt of the report .  PART VI- CONTRACTING AUTHORITIES |
| **Responsibilities of contracting authority** | 36. A contracting authority shall have primary responsibility for the management of the priority PPP Project identification phase and priority PPP Project implementation phase. The Unit shall have primary responsibility for managing the procurement phase of the priority PPP Projects. The contracting authority shall have primary responsibility for managing the procurement phase of any other PPP Project. |
| **Cabinet approval following PPP Project feasibility study** | 37. (1) A contracting authority shall obtain the agreement of the Unit before commissioning or undertaking a feasibility study for any piority PPP Project.  (2) A contracting authority shall commission or undertake, and submit to the Unit, a pre-feasibility study for each proposed PPP Project.  (3) A contracting authority shall submit an initial PPP Project proposal, including the completed feasibility study, to the Cabinet for evaluation and approval after –  (a) completion of the feasibility study; and  (b) consultation with the Unit regarding the feasibility study.  (4) A contracting authority shall obtain the approval of the Cabinet before proceeding to the procurement phase of any proposed PPP Project, following determination by the President if it is a priority PPP Project [*to be discussed with CoS*].  (5) If the Cabinet has given approval for a PPP Project to proceed to the procurement phase, the contracting authority shall immediately-  (a) provide the Unit with details of the intended revision including a statement regarding the purpose and impact of the intended revision on the affordability, value for money and risk transfer evaluation contained in the feasibility study; and  (b) provide the Unit with a revised feasibility study and other relevant information for commencement of the procurement procedure for selection of private partner in PPP Agreement. |
| **Directions given by the Council** | 38. (1) The Cabinet shall give direction to a contracting authority and the Unit in respect of the management of any phase of a PPP Project after consultation with the Minister responsible for the sector affected by the PPP Project.  (2) A contracting authority shall adhere to any directions given by the Cabinet and the Unit referred to in subsection (1). |

PART VII

COMPETITIVE SELECTION PROCESS AND AWARD PROCEEDINGS

|  |  |
| --- | --- |
| **Procurement principles** | 39. (1) The procurement procedure for selection of private partner in PPP Agreements shall be as follows:  (a) the procurement procedure shall be non-discriminatory and transparent and cost effective; and  (b) notwithstanding any provision in any other legislation, the procurement procedure shall be in accordance with this Act and any regulations or rules made thereunder. |
| **Requests for expressions of interest and pre-selection bidding documents** | 40. (1) contracting authority, or the Unit on behalf of the contracting authority in case of priority PPP Project, shall prepare a request for submission of expressions of interest and the associated pre-selection bidding documents, after approval from the Cabinet pursuant to Section 26(2)(b) has been obtained.  (2) The request for submission of expressions of interest shall be published in accordance with the regulations and rules issued under this Act.  (3) The request for submission of expressions of interest shall include at least the following-  (a) a description of the proposed PPP Project and contracting authority;  (b) an indication of the essential elements of the PPP Project, such as the-   1. services to be delivered by the private partner; and 2. financial arrangements envisaged by the contracting authority;   (c) a summary of the main required terms of the PPP Agreement to be entered into;  (d) the manner and place for the submission of applications for pre- selection and the deadline for the submission, expressed as a specific date and time, allowing sufficient time for bidders to prepare and submit their expressions of interest;  (e) the manner and place for solicitation of the pre-selection bidding documents; and  (f) an appropriate statement to the effect that the contracting authority reserves the right to request proposals upon completion of the pre- selection proceedings only from a limited number of bidders that best meet the pre-selection criteria.  (4) The pre-selection bidding documents shall include at least the following information:  (a) the pre-selection criteria in accordance with Section 41;  (b) whether the contracting authority intends to waive any limitation on the participation of consortia in accordance with Section 42;  (c) whether the contracting authority intends to request only a limited number of pre-selected bidders to submit proposals upon completion of the pre-selection proceedings and, if applicable, the manner in which this selection shall be carried out; and  (d) whether the contracting authority intends to require the preferred bidder to establish an independent legal entity under any other law in accordance with Section 60*.* |
| **Pre-Selection criteria** | 41. Any person who meets the criteria stated in the pre-selection bidding documents shall qualify for the pre-selection proceedings, which criteria shall include the following:  (a) adequate professional and technical qualifications, human and physical resources as may be necessary to carry out all aspects of the PPP Project;  (b) appropriate managerial and organisational capability, reliability and experience, including, if applicable, previous experience in operating similar PPP Projects;  (c) adequate financial capacity to fund, or experience in arranging financing, for the investment required for the PPP Project, and  (d) no involvement in litigation that could materially affect the ability to carry out the PPP Project. |
| **Participation of consortia** | 42. (1) contracting authority, or the Unit, when requesting the submission of expressions of interest, may allow bidders to form bidding consortia in accordance with the terms and conditions imposed by the contracting authority and, in such a case, the bidding consortium shall demonstrate its qualifications, in accordance with section 41 relating to the consortium as a whole as well as to its individual members.  (2) Unless otherwise indicated in the pre-selection bidding documents, each member of a consortium may participate, either directly or indirectly, in only one consortium at the same time.  (3) When considering the qualifications of bidding consortia, the contracting authority or the Unit shall 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 aspects of the PPP Project. |
| **Evaluation of qualifications** | 43. (1) contracting authority, or the Unit in case of priority PPP Projects shall evaluate the qualifications of each bidder that has submitted an expression of interest for pre-selection, applying only the criteria that are set forth in the pre-selection bidding documents and this Act. |
| **Pre-selection report** | 44. (1) After the evaluation of the pre-selection bids pursuant to section 43, contracting authority, or the Unit, in case of priority PPP Project, shall prepare its pre-selection report, demonstrating how the pre-selection criteria have been met.  (2) The pre-selection report shall contain the following statements-  (a) that the pre-selection bids explain the capacity of the private partner to effectively implement, manage, enforce, monitor and report on the proposed PPP Project;  (b) that a satisfactory due diligence analysis has been completed by the Unit, in consultation with the concerned contracting authority, in relation to the capacity and qualifications of the pre-selected private partners to complete the proposed PPP Project; and  (c) that the contracting authority has developed and is implementing a public awareness strategy, to educate the public on the objectives, structure and progress of the PPP Project. |
| **Requests for proposals** | 45. (1) contracting authority, or the Unit in case of priority PPP Project, shall prepare a request for proposals after preparation of the pre-selection report.  (2) A request for proposals shall include the following -  (a) general information as may be required by the bidders in order to prepare and submit their proposals;  (b) criteria for evaluating technical offers, and the thresholds, if any, for identifying non responsive proposals, the relative weight to be accorded to each evaluation criterion and the manner in which the criteria and thresholds are to be applied in the evaluation and rejection of proposals;  (c) the date by which the bidders’ proposals must be submitted, expressed as specific date and time, allowing sufficient time for bidders to prepare and submit their proposals in response to the final version of the request for proposals;  (d) a set of tender documents emphasizing functional requirements and performance criteria of the PPP Project, rather than input specifications for the PPP Project and a draft of proposed PPP Agreement for the proposed PPP Project; and  (e) the requirements with respect to the issue of, and the nature, form, amount and other principal terms and conditions of, the required bid security.  (3) A request for proposals shall request the submission of both a technical offer and a financial offer, which shall be two separate envelopes:  (a) The emphasis of the technical offer shall be on the overall design of the PPP Project as well as on the related quality and conditions of delivery, including the contracting authority's requirements regarding safety and security standards and environmental protection.  (b) The emphasis of the financial offer shall be on the lowest average price for the service over the lifetime of the PPP Project.  (4) contracting authority or the Unit in case of priority PPP Project, shall submit the request for proposals to the Cabinet for review, prior to issuing the request for proposals to the pre-selected bidders.  (5) contracting authority or the Unit shall not issue a request for proposal to any pre-selected bidder unless it receives approval from the Cabinet to issue such request for proposals.  (6) In support of a request for the approval, by the Cabinet, of the issuance of a request for proposals, the contracting authority and the Unit shall provide the Cabinet with a full legal and financial analysis of the proposed PPP Agreement to be attached to the final request for proposals, including an analysis of any investment incentives offered to a private partner by or on behalf of a contracting authority. |
| **Two-stage bidding procedure** | 46. (1) contracting authority or the Unit in case of priority PPP Project, in consultation with the contracting authority, may use a two-stage bidding procedure when it is not feasible to describe fully the characteristics of the PPP Project in the initial request for proposals.  (2) A two- stage bidding procedure shall take the following steps -  (a) a pre-selected bidder may submit suggestions and amendments relating to all aspects of the initial request for proposals, including a mark-up of the draft PPP Agreement, on a specified date prior to bid submission  (b) the Unit in consultation with the contracting authority shall –  (i) review the comments of the pre-selected bidder on the initial request for proposals;  (ii) submit the final version of the request for proposals to the Cabinet for approval;  (iii) issue the final version of the request for proposals to the pre-selected bidders; and  (iv) submit the technical and financial offer to the Cabinet. |
|  |  |
| **Bid securities** | 47. A bidder shall not forfeit any bid security that it may have been required to provide, other than in cases of a-  (a) withdrawal or modification of a proposal after a specified deadline;  (b) failure to sign the PPP Agreement, if required by the contracting authority to do so, after the proposal has been accepted; or  (c) failure to provide the required security for the fulfilment of the PPP  Agreement after the proposal has been accepted or to comply with any  other condition prior to signing the PPP Agreement as specified in the  request for proposals. |
| **Clarifications and revisions of the request for proposals** | 48. (1) contracting authority or the Unit in case of priority PPP project may, whether on its own initiative or as a result of a request for clarification by a bidder, review and, as appropriate, clarify or revise any element of a request for proposals. |
|  | (2) contracting authority and the Unit shall indicate in the record of the selection proceedings to be kept pursuant to Section 58 the nature of, and the justification for, any clarification or revision to the request for proposals, which shall be communicated to all bidders, in the same manner as the request for proposals, at a reasonable time prior to the deadline for submission of proposals. |
| **Evaluation of proposals** | 49. (1) contracting authority or the Unit in case of priority PPP Project shall establish an evaluation committee to evaluate each proposal in accordance with the evaluation criteria, the relative weight accorded to each such proposal criterion and the evaluation process set out in the request for proposal  (2). An evaluation committee shall include representatives of the contracting authority.  (3) For the purposes of subsection (1), the Unit may establish thresholds with respect to minimum acceptable technical and financial offers. |
| **Evaluation criteria** | 50. (1) The criteria for evaluating technical offers shall include the following:  (a) technical soundness;  (b) compliance with environmental standards under any law;  (c) operational feasibility;  (d) quality of services and measures to ensure their continuity;  (e) timetable and work plan for the delivery of the PPP Project; and  (f) any other prescribed criteria.  (2) The criteria for evaluating financial offers shall include-  (a) the present value of proposed user levies, unit prices, and other charges over the full term of the PPP Agreement;  (b) the present value of proposed direct payments by the contracting authority, if any;  (c) the present value of the costs for design and construction activities plus annual operation and maintenance costs;  (d) the extent of financial support, if any, expected from a public authority in Sierra Leone;  (e) the soundness of the proposed financial arrangements;  (f) the social and economic development potential offered by the proposals; and  (g) any other prescribed criteria. |
| **Reconfirmation of qualifications** | 51. (1) contracting authority or the Unit in case of priority PPP Project may require any bidder that has been pre-selected to reconfirm its qualifications in accordance with the same criteria used for pre-selection.  (2) contracting authority or the Unit in case of priority PPP Project shall disqualify any bidder that fails to reconfirm its qualifications if requested to do so. |
| **Approval of the evaluation report by the Cabinet** | 52. (1) contracting authority or the Unit in case of priority PPP Project shall rank all responsive proposals on the basis of the evaluation criteria and prepare an evaluation report, identifying the preferred bidder.  (2) contracting authority or the Unit in case of priority PPP Project shall submit its evaluation report to the Cabinet for approval. |
| **Cabinet approval prior to PPP Agreement finalisation** | 53. (1) After the approval of the evaluation report submitted pursuant to Section 52, the contracting authority or the Unit in case of priority PPP Project shall submit the proposed negotiated PPP Agreement to the Cabinet for evaluation and approval.  (2) Where a PPP Project involves a financial close in addition to a commercial close, the Unit shall, following the achievement of the commercial close and after seeking the advice of the contracting authority, submit to the Cabinet any revision to the proposed PPP Agreement proposed by the private partner as a result of discussions between the private partner and its financiers for evaluation and approval.  (3) contracting authority or the Unit in case of priority PPP Project shall obtain the approval of the Council before proceeding to the commercial or financial close of any proposed PPP Project. |
| **Circumstances authorizing award without competitive procedures** | 54. Subject to the approval of Cabinet and with the support of the Unit, a contracting authority may negotiate a PPP Agreement without using the procedure set out in Sections 39 to 53, in the following exceptional situations-  (a) when there is an urgent need for ensuring continuity in the provision of the service and engaging in the procedures set out in this Part VII would be impractical; provided that the circumstances giving rise to the urgency were neither foreseeable by the contracting authority nor the result of any dilatory conduct on its part;  (b) where the PPP Project is of short duration and the anticipated initial investment value does not exceed an amount prescribed by the Cabinet;  (c) where the PPP Project involves national defence or national security;  (d) where there is only one source capable of providing the required service, such as when the provision of the service requires the use of intellectual property, trade secrets or other exclusive rights owned or possessed by a certain person or persons;  (e) where pre-selection bidding documents or a request for proposals has been issued but no responses were received, or all proposals failed to meet the evaluation criteria set out in the request for proposals, and if, in the opinion of the contracting authority, issuing new pre-selection bidding documents and a new request for proposals is not likely to result in an award within the required time frame; or  (f) in any other case where the Cabinet authorises such an exception for compelling reasons of national or public interest. |
| **Negotiation of PPP Agreements not competitively procured** | 55. Where a PPP Agreement is negotiated without using the procedures set out in Sections 39 to 53, Unit shall —  (a) undertake or commission a pre-feasibility study and a feasibility study, in accordance with section 37;  (b) except for an agreement negotiated pursuant to sub paragraph (c) of section 54, cause a notice, of its intention to commence negotiations in respect of the PPP Agreement, to be published in the prescribed manner;  (c) engage in negotiations with as many persons as the Unit considers capable of carrying out the PPP Project, as circumstances permit; and  (d) establish evaluation criteria against which proposals shall be evaluated and ranked. |
| **Confidentiality** | 56. (1) A contracting authority, the Cabinet and the Unit shall treat proposals in such a manner as to avoid the disclosure of their content to competing bidders, and any discussion, communication or negotiation between the contracting authority and a bidder shall be confidential, save for communications concerning the clarification of a request for submission of expressions of interest, a pre-selection bidding document or a request for proposals.  (2) Unless required by law or by a court order or permitted by the request for proposals, a party to a negotiation shall not disclose, to any other person, any technical or financial matter or any other information in relation to any discussion, communication or negotiation submitted, received or done, as the case may be, under this Act, without the consent of the other party. |
| **Notice of PPP Agreement award** | 57. (1) Except for a PPP Agreement awarded pursuant to paragraph (c) of section 54, the contracting authority or the Unit in case of priority PPP Project shall cause a notice of the PPP Agreement award to be published in the prescribed manner.  (2) A notice issued under subsection (2) shall identify the private partner, contracting authority and include a summary of the essential terms of the PPP Agreement. |
| **Record of selection and award proceedings** | 58. contracting authority or the Unit in case of priority PPP Project shall keep an appropriate record of information pertaining to the selection and award proceedings in the prescribed manner. |
| **Review procedures** | 59. A bidder that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on a contracting authority under this Act or any other written law, may seek a review of the matter by the Cabinet, prior to having recourse to the dispute resolution procedures in section 62. |
| **Organization of private partners** | 60. (1) contracting authority or the Unit in case of priority PPP Project may require that the preferred bidder establish a legal entity incorporated under the laws of Sierra Leone.  (2) Where a preferred bidder establishes a legal entity in accordance with subsection (1), the bidder shall make a statement to that effect in the pre-selection bidding documents or in its technical proposal, as appropriate.  (3) Any requirement relating to the minimum capital of a legal entity established under subsection (1) and the procedures for obtaining the approval of a contracting authority to the legal entity's articles of association or any significant changes in the articles shall be set out in the PPP Agreement in a manner consistent with the terms of the request for proposals. |
| **Unsolicited proposals** | 61. (1) A contracting authority may receive, consider, evaluate and accept an unsolicited proposals for PPP Projects, which shall be considered and implemented in accordance with Section 54 and 55, upon approval of the Cabinet.- |

PART VIII - SETTLEMENT OF DISPUTES AND GENERAL PROVISIONS

|  |  |
| --- | --- |
| **Disputes**  **between the contracting authority and the private partner** | 62. Any disputes between the contracting authority and the private partner shall be settled through the dispute settlement mechanisms agreed by the parties in the PPP Agreement or, in the event of a failure of such mechanisms, in accordance with Section 16 of the Investment Promotion Act, 2004. |
| **Disputes involving customers or users** | 63. The Unit may require the private partner to establish efficient mechanisms for handling claims submitted by its customers or users of the PPP Project where the private partner provides services to the public or operates a PPP Project which is accessible to the public. |

PART IX - MISCELLANEOUS

|  |  |  |  |
| --- | --- | --- | --- |
| **Regulations** | 64. (1) Subject to the approval of the Cabinet, the Minister may, by statutory instrument, make regulations for carrying out the purposes of this Act.  (2) Without prejudice to the generality of subsection (1), the Minister, with the approval of the Cabinet, may make regulations for—  (a) any thresholds relating to the procurement process;  (b) any matter relating to competitive public bidding and direct negotiations;  (c) mechanisms for settling of disputes under this Act;  (d) the imposition, revision and collection of user levies; and  (e) anything that is required to be prescribed under this Act. | | |
| **Unenforceability of PPP Agreements entered into without authorization** | 65. If a contracting authority -  (a) enters into a PPP Agreement with a private partner without having received all required approvals from the Cabinet, as set out in Parts III and IV of this Act; or  (b) enters into a PPP Agreement with a private partner in contravention of a direction given by the Cabinet the PPP Agreement shall be null and void, and unenforceable as against either the contracting authority or the private partner. | | |
| **Offences** | 66. (1) A person shall not publish or disclose to any unauthorised person, otherwise than in the course of that person’s duties the contents of any documents, communication or information which relates to or which has to come to the knowledge of that person in the course of his duties under this Act unless with the written consent of the Cabinet.  (2) A person who contravenes sub-section (1) commits an offence and is liable, upon conviction, to a fine not exceeding five thousand United States Dollars or its equivalent in Leones, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment  (3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of sub-paragraph (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding five thousand United States Dollars or its equivalent in Leones, or to imprisonment for a term not exceeding twelve months, or to both. | | |
| **Transitional provisions** | 67. (1) Where an agreement was entered into before the commencement of this Act, and that agreement or arrangement would have been a PPP Agreement if this Act was in operation on such date, then such agreement shall have effect as if this Act was in operation when the agreement or arrangement was entered into, and shall be deemed to have complied with this Act.  (2) A PPP Agreement entered into or being amended after the commencement of this Act shall comply with this Act. | | |
| **Consequen-tial**  **Amendments** | | 68. (1) The National Public Procurement Act, 2004 is amended by the insertion of the following subsection at the end of Section 1:--  “(6) This Act shall not apply to PPP Agreements made under the Public Private Partnership Act, 2011.”  (2) The National Commission for Privatization Act, 2002 is amended by amending subsection (1) of Section 10 as follows:  "10. (1) The object for which the Commission is established is to serve as the policy and decision making body with regard to the divestiture and reform of public enterprises indicated in the First Schedule; to transfer the management of all public enterprises to the Commission, and remove the interference in the management of public enterprises from line Ministries thereby ensuring transparency, corporate governance and avoidance of conflict of interest in all affairs of public enterprises."--  (3) The National Commission for Privatization Act, 2002 is amended as follows:--  The First Schedule is amended as follows:  (a) Sections 4, 5, 9, 11, 18, 23 of the First Schedule are repealed.  (b) Section 8 of the First Schedule is repealed and replaced as follows: "8. Lungi International Airport"  (c) Section 10 of the First Schedule is repealed and replaced as follows: "10. Queen Elizabeth II Quay (Container and Bulk Cargo Terminal)" |

SCHEDULE

ILLUSTRATIVE PUBLIC PRIVATE PARTNERSHIP ARRANGEMENTS

The following PPP Agreement, with variations and combinations, may be entered into by a contracting authority for undertaking a PPP Project. The transactions enumerated in this Schedule are for illustration only, and do not constitute an exhaustive list of potential PPP Agreements.

|  |  |
| --- | --- |
| **Concession transaction** | 1. An arrangement whereby a contracting authority defines and grants specific rights to a private partner to build and operate a facility, or otherwise provide a public service, for a fixed period of time. In certain concession arrangements, ownership of the facility may revert to the contracting authority at the end of the contractual period, as is the case in Build-Operate-Transfer (BOT) or Rehabilitate-Operate-Transfer (ROT) transactions. Alternatively, ownership of the facility may remain with the private partner, as is the case in a Build-Own-Operate transaction. In concession transactions, payments can take place in either direction, in that a private partner may make payments to the contracting authority for the concession rights, including the right to charge end-users, or the contracting authority may make payments to the private partner to compensate the private partner for the cost of providing the facility or service. |
| **Lease transaction** | 2. An arrangement whereby a contracting authority leases a project owned by the Government to a private partner, who is permitted to operate and maintain the project for the period specified in the PPP Agreement. Pursuant to the terms of the lease, the private partner makes lease fee payments to the contracting authority, and is entitled to charge end-users for the service provided. |
| **Management contract transaction** | 3. An arrangement whereby a contracting authority entrusts the operation and management of a project to a private partner for the period specified in the agreement, on payment by the contracting authority of a specified fee to the private partner, which may involve incentive payments. |
| **Long-term service contract transaction** | 4. An arrangement whereby a contracting authority outsources the supply of a specific service to a private partner for an extended period of time, in excess of three years. The service may be provided either to the contracting authority or directly to the end-users. |

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide the legislative and legal framework for the introduction in Sierra Leone of the new development practice in which governments are increasingly turning to the private sector to design, build, finance and operate infrastructure facilities hitherto provided by the public sector. Accordingly , when enacted, the Bill will –

(a) establish a clear policy framework that will help both the public and the private sector to understand the core rationale for public private partnerships and how government will go about making them happen;

(b) create the necessary environment for successful implementation of public private partnerships in Sierra Leone

(c) establish a Public Private Partnership Unit in the Office of the President and identify institutions required for implementation of public private partnerships in Sierra Leone and

(d) create confidence in the private sector to do business with government in the area of providing infrastructure and other service provision.

The Bill is divided into nine parts.

Part I , the Preliminary Part sets out and defines a number of terms and expressions used widely in the Bill

Part II defines and sets out in a comprehensive manner the nature and contents of a public –private agreement.

Part III provides for the role of the Cabinet to oversee the all public private partnership projects in Sierra Leone

Part IV provides for the establishment of a Public- Private Unit to deal with all matters relating to the PPP Projects and provide logistical support for the Cabinet in relation thereto.

Part V deals with financial provisions.

Part VI provides for the responsibilities of contracting authorities.

Part VII deals with competitive selection process and award proceedings.

Part VIII contains provisions dealing with settlement of disputes

Part IX is concerned with the miscellaneous provisions of the Bill

DR SAMURA KAMARA

Minister of Finance and Economic Development

FREETOWN

SIERRA LEONE

MARCH 2012