

GENERAL INFORMATION

Capital: Monrovia

Population: 5,193 (2021)

GDP: USD 3,509 billion (2021)

LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law

- Amendment and Restatement of the Public Procurement and Concessions Act 2005 approved in 2010 (PPCA)
- Regulations accompanying the Public Procurement and Concession Commission Act of 2005 as amended and reinstated in 2010 (PPCAR)
- National Bureau of Concessions Act of 2010

Other Applicable Sectoral Laws

- Minerals and Mining Act, 2006
- 205 Electricity Law of Liberia

PPP Unit

Public Procurement and Concessions Commission established as the PPP Unit in partnership with the National Investment Commission (NIC).

Definition

The Act does not define a PPP but defines a concession:

(Sect. 73, PPCA)

“Concession” means the grant of an interest in a public asset by the Government or its agency to a private sector entity for a specified period during which the asset may be operated, managed, utilized or improved by the private sector entity which pays fees or royalties under the condition that the Government retains its overall interest in the asset and that the asset will revert to the Government or agency at a determined time. Under this Act, the term “Concession” shall include all its variants, including but not limited to the following: BOT BTO, BOOT, BOO, Joint Ventures, Partial Privatization, Natural Resources.

(Reg. 43 PPCAR)

The definition of Concessions set out under Sect. 73 of the PPCA shall be deemed to cover and shall also be applicable to all variants of Public Private Partnerships.

General Principles

(Part I Preliminary, PPCA)

- (i) Promote competition and foster participation in procurement proceedings and Concession agreements by qualified suppliers, contractors and consultants;
- (ii) Provide equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders;
- (iii) Promote integrity, fairness, accountability and public confidence in the procurement process;
- (iv) Achieve transparency in the procedures, processes and decisions relating to procurement and Concession agreements;
- (v) Promote the growth of an indigenous

Liberian Private sector; (vi) Harness private sector financial, human and technical resources through Concession agreements; (vii) Eradicate monopolies and promote competitiveness in the Concession procurement process.

Tendering and contracting procedures / Choice of the private partnership

(Sect. 95-101, PPCA)

(Reg. 64-70, PPCAR)

- Competitive Bidding: unless otherwise permitted by Section 101 of the Act. Concession bidding proceedings shall be undertaken by means of advertised open bid proceedings, to which equal access shall be provided to all eligible and qualified bidders without discrimination, except that Concession bidding shall utilize prequalification of bidders unless the relevant Inter-Ministerial Concessions Committee concludes that it is highly likely that only a small number of bidders will be interested, in which case bidder qualifications shall be evaluated post-bid (*Section 95-98*).
- Restricted Competitive Bidding: subject to the approval of the Commission, Restricted Competitive Bidding shall be employed where the Concessions Entity has pre-qualified bidders in accordance with the provisions of the Act (*Section 100*).
- Sole Source Bids: a Concession may be granted on a sole source basis only upon a determination by the Cabinet, after consultation with the Commission, that sole source procurement is the only reasonable way of obtaining the resource controlled by the bidder and one or more of the following conditions is determined to exist: (a) The Concession requires specialized expertise that is available only to one specific bidder; (b) The Concession involves an innovation the patent for which is held by one particular bidder; (c) The Concession requires specialized research, or experiment that only one person is prepared to undertake; or (d) The Concession is in respect of strategic national interest or national defense or security and it is not in the national interest to have more than one bidder.
- Unsolicited bids: a Concession Entity wishing to consider an unsolicited bid shall request the formation of an Inter-Ministerial Concession Committee that will arrange for the formation of a Concession Bid Evaluation Panel to conduct an independent assessment of the quality of the unsolicited bid and the qualifications and reputation of the bidder (*Section 101*).

The Inter-Ministerial Concessions Committee is appointed for the purposes of a specific Concession award process in accordance with sections 80 and 81 of the Act. The Inter-Ministerial Concessions Committee shall be chaired by the chairperson of the NIC.

Project Evaluation
(Sect. 88-103, PPCA)
(Reg. 75-84, PPCAR)

- The tendering and contracting procedures are elaborated further between Regulations 64-70 of the PPCAR.
- Feasibility Studies: the Inter-Ministerial Concessions Committee may require a Concession Entity to undertake preliminary or prefeasibility studies to determine the technical feasibility of a proposed Concession prior to completion of the related Concession Procurement Plan (Sect. 103).
 - Public Consultation: a Concession Entity shall undertake public stakeholder consultations with respect to each proposed Concession prior to the finalization of the bid documents to be included in the invitation to bid (Sect. 90).
 - Certificate for Concession: every Concession implementation process shall commence with the issue of a Certificate for Concession and no Concession shall be implemented unless the proposed project has been issued with a Certificate for Concession (Sect. 88-89).
 - The project evaluation procedures are elaborated further between Regulations 75-84 of the PPCAR.

Negotiation and Signature of PPP Contracts
(Art. 117-119, PPCA)

The form of each Concession agreement shall be developed by the Concession Entity and approved by the Inter-Ministerial Concessions Committee prior to negotiations. The agreement shall be approved as to legal form by the Ministry of Justice prior to submission to the bidder, or, if and to the extent the final form of the agreement is included in the bid documents, prior to the release of the bid documents to the bidders (Section 118).

Where the bid documents do not provide that contractual provisions set forth in the bid documents are non-negotiable, the Negotiation Team shall negotiate the contract within the context of existing laws and shall take into account the factors listed in section 119 (1)(a) of the Act.

The Concession agreement as executed shall be approved by the Minister of Justice as complying with the requirements of this Act and any other applicable law before submission to the President and Cabinet for approval (Section 117).

Rights and Obligations of the public partner

No provision in the Act. To be considered during negotiations (Section 119 (1)).

Rights and Obligations of the private partner

No provision in the Act. To be considered during negotiations (Section 119 (1)).

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| Obligations of both public and private partners | No provision in the Act. To be considered during negotiations (<i>Section 119 (1)</i>). |
| Applicable Law | No provision in the Act. |
| Dispute resolution | No provision in the Act. To be considered during negotiations (<i>Section 119 (1)</i>). |

EXAMPLES OF PROJECTS STRUCTURED AS PPP

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| Agriculture | Concession agreement with Firestone Natural Rubber Company |
| Energy | Buchanan Renewables IPP Kakata Power Plant |
| Transport | Freeport of Monrovia |