

GENERAL INFORMATION

Capital: Pretoria	Population: 59.39 million (2021)	GDP: USD 419 billion (2021)
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LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law and other applicable texts	<ul style="list-style-type: none"> - No specific law relating to PPP - National Treasury Public Private Partnership Manual - The Standardized PPP Provisions, 2004
Other Applicable Sectoral Law	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - 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)	<p>“Public private partnership” means a commercial transaction between an institution and a private party in terms of which the private party:</p> <ul style="list-style-type: none"> (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 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: <ul style="list-style-type: none"> (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

(National Treasury PPP Manual, Module 5: PPP Procurement)

Fair, equitable, transparent, competitive and cost effective procurement process.

Tendering and contracting procedures/ Choice of the private partnership

Procurement of PPPs goes through distinct stages that are covered by Module 5 (“PPP Procurement”) of the National Treasury PPP Manual:

(National Treasury PPP Manual, Module 5: PPP Procurement)

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

(Art. 16.5 of the PFMA)

(Practice Note 11 on Unsolicited Bids, 2008/2009)

The Treasury 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.

If the unsolicited proposal is compliant, namely the product or service is unique, innovative and provided by a sole provider, the institution must prepare and issue bid documents (art. 4.2.2, Practice Note 11 on unsolicited bids).

Project Evaluation

(Art. 16.4 of the PFMA, 2015)

(National Treasury PPP Manual, Module 4: PPP Feasibility Study)

The accounting officer or the accounting authority of that institution must undertake a feasibility study for the National Treasury’s approval. The feasibility study stage includes: (i) needs analysis, (ii) options analysis, (iii) project due diligence, (iv) value assessment, (v) economic valuation, and (vi) a procurement plan (art. 16-4).

Negotiation and Signature of PPP Contracts

Negotiations take place with the preferred bidder to finalize the PPP agreement and the associated management plan.

(Art. 16.6 of the PFMA)

(National Treasury PPP Manual, Module 5: PPP Procurement)

Once the procurement process is concluded, the accounting officer must obtain approval from the Treasury to sign the PPP agreement by submitting a report (art. 16.6 of the PFMA).

Rights and Obligations of the

The national authority must have the capacity to monitor the

public partner (Art. 36.5 of the PFMA)	implementation and the performance of the PPP agreement (art. 36.5 of the PFMA).
Rights and Obligations of the private partner (Art. 7 and 33.6.5 of the Standardized PPP Provisions, 2004)	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).
Obligations of both public and private partners	No provision in the Regulations and the Standardized PPP Provisions.
Applicable Law/ Dispute resolution (Art. 16.1.8.1 of the PFMA)	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)

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