

## ACT

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### THE PUBLIC PRIVATE PARTNERSHIP ACT, 2014

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SIGNED this 29th day of September, 2014.

DR. ERNEST BAI KOROMA,  
*President.*



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#### **The Public Private Partnership Act, 2014.**

Short title.

**Being an Act to promote, facilitate and streamline conclusion and implementation of public private partnership agreements by a contracting authority; 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 1—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 which is reasonably 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;

“**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 purposes of this Act;

“**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 and the PPP Agreement has been approved by the Cabinet, with the finalisation of the PPP Agreement being subject only to the private partner obtaining financing for the proposed PPP transaction, where such financing is required;

“**complex PPP Project**” means a PPP Project involving a proposed capital expenditure in excess of an amount specified by the Cabinet;

“**contract finalisation phase**” means the phase of concluding a PPP Agreement, which takes place following the issuance, by the Cabinet, of the approval required by subsection (1) of section 52, 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 ministry, local council, public agency, authority or entity, which has legal capacity to enter into contractual obligations;

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

“**feasibility study**” means a study commissioned or undertaken by the Unit for submission to Cabinet in accordance with subsection (3) of section 36;

“**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 in 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;

**“Ministries, Department and Agencies or MDAs”** means all public authority organisations, including local government bodies.

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

**“Ministry of Finance”** means the ministry responsible for finance;

**“Ministry of Justice”** means the ministry responsible for justice;

**“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 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;
- (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);

(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;

(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 otherwise; or

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

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

**“PPP Project proposal”** means a summary outline of a proposed PPP project as required by subsection (3) of section 36 which shall–

- (a) identify the contracting authority;
- (b) describe the activities to be undertaken by the private partner and the contracting authority;
- (c) set out the anticipated timeline for the project;
- (d) describe the mechanism whereby the private partner will receive compensation;

- (e) identify the key allocations of risk between contracting authorities, the private partner, end-users and other parties; and
- (f) describe the expected financial implications for the Government over the lifetime of the project, including liabilities to be assumed by the Government;

**“pre-feasibility study”** means a study commissioned or undertaken by a contracting authority for submission to the Unit in accordance with Section 36(2);

**“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 36;

**“project identification phase”** means the initial phase of concluding a PPP Agreement prior to the issuance, by Cabinet, of the approval required by subsection (4) of 36;

**“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;

**“regulator”**(or **“statutory utility regulator”**) is a public authority or government agency responsible for exercising autonomous authority over some area of human activity in a regulatory or supervisory capacity and is generally independent from other branches or arms of the government.

**“risk transfer”** means allocation of the probability of losses or other harmful consequences to the Project between the parties of PPP Agreement .

**“service level”** means a specific, measurable, attainable, relevant and time-bound deliverable by the private partner under the PPP Agreement.

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

**“Swiss Challenge”** is a part of the project procurement phase of the PPP Project, whereby the contracting authority, which has received an unsolicited proposal for a PPP project, under the agreed conditions and procedures (which might include the first-mover incentives) can invite the third parties on a competitive basis to match or exceed the conditions of the unsolicited proposal;

**“Unit”** means the Public Private Partnership Unit established by section 26;

**“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 38 to 52 and 60;