



A Review of the Public-Private Partnership (General) Regulations

Introduction

On 15 November 2024, the Zambian government enacted the Public-Private Partnerships Regulations (the “**Regulations**”) which are designed to operationalise the Public-Partnership Act No.18 of 2023 (the “**PPP Act**”).

These Regulations provide comprehensive and detailed guidelines on key aspects of public-private partnerships (“**PPP**”) in Zambia, including a prescribed time period of the establishment of a project implementation team, additional requirements for solicited and unsolicited proposals, and the steps to be followed when making an amendment to public-private partnership agreements (“**PPP Agreements**”).

This Article highlights some key provisions of the Regulations and considers the impact of such provisions on PPPs in Zambia.

Establishment of a Project Implementation Team

Section 76 of the PPP Act provides that the contracting authority (“**Contracting Authority**”) shall constitute a project implementation team for the implementation of all phases of a PPP project. The Regulations have enhanced this provision by prescribing a specific time period in which the project implementation team must be established.

Specifically, Regulation 3 mandates that the Contracting Authority should constitute a project implementation team within 45 days of the execution of the PPP Agreement.

The Regulations further set out the functions of a project implementation team to include establishing mechanisms for:

1. measuring project outputs as specified in the PPP Agreement; and
2. preparing monthly status reports and annual reports for submission to the Public-Private Partnership Office (the “**PPP Office**”), through the Contracting Authority.

From a practical perspective, it remains to be seen how the project implementation team will work with the independent expert, the concessionaire and the project steering committees that are commonly provided for under PPP Agreements in the Zambian context.

Additionally, the implication of failing to establish a project implementation team for a PPP project, in compliance with the PPP Act, remains unclear.

Solicited Proposals

Section 11 and 12 of the PPP Act provide that a Contracting Authority shall identify potential projects, prepare a list of such projects and submit the project list to the PPP Office for consideration.

According to Regulation 6, at least 2 months before the start of the financial year, the Contracting Authority shall identify, prepare and submit a list of projects, accompanied by a brief

project concept note for each listed project, to the PPP Office.

The Regulations further provide that the concept note should include, the name of the project, the relevant Contracting Authority, description and location of the project and assessment of viability and affordability of the project. Upon receipt, the PPP office will forward the list to the technical committee, which will then submit the list to the PPP Council for approval.

Once the list of projects is approved and the Contracting Authority decides to undertake a project from the approved list, Regulation 7 provides that the Contracting Authority must prepare a detailed concept note for that particular project and conduct an economic cost benefit analysis to determine the most feasible and advantageous project option. This analysis should justify the project’s suitability for procurement as a PPP. Thereafter, the Contracting Authority is required to conduct a feasibility study and prepare a project proposal to be submitted for further approval.

The analysis enables government to identify and assess the risks associated with each project. For private entities, the analysis provides a clearer understanding of project feasibility and potential returns, empowering them to make informed investment decisions and assess the risks involved in PPP Projects. However, it is unclear as to

whether the list of projects compiled by the Contracting Authority will be made available to the public and the Regulations do not address the implication of the Contracting Authority not identifying projects within the prescribed period.

Unsolicited Proposals

Section 2 of the PPP Act defines unsolicited proposals as projects initiated by the bidder. Regulation 17 supplements section 40 (2) (b) of the PPP Act by specifying additional requirements for unsolicited proposals. The Regulations mandate that the private party must demonstrate its capacity in key areas, including adequate human resource who are professionally and technically qualified, ability to procure requisite equipment and evidence of managerial and organisational capacity.

Variation or amendment of Public Private Partnership Agreements

The Regulations provide steps that must be followed by the parties when amending a PPP Agreement and specific time periods for review of the draft, which were not outlined under the current PPP Act or repealed PPP laws.

Under Regulation 20, when parties intend to vary or amend the PPP Agreement, the Contracting Authority must submit a proposed draft to the PPP Office for consideration. The PPP Office is required to review the draft within 10 days and

forward to the technical committee for further consideration. The technical committee, in turn, must submit the draft to the PPP Council within 10 days, which may approve or reject the draft amendment or variation.

If approved, the Contracting Authority will submit to the Attorney General for clearance. Following clearance, the Minister of Finance and the Contracting Authority shall execute the varied or amendment PPP Agreement.

This insertion makes the amendment of PPP Agreements quite onerous. Essentially, an amendment to a PPP Agreement will go through the same approval process as the original PPP Agreement. As a result, this regulation is likely to be a deterrent to addenda to PPP Agreements.

Conclusion

In conclusion, the PPP Regulations introduce some material changes in the execution of PPP projects in Zambia.

Notably, they establish a specified time period in which a Contracting Authority should establish a project implementation team.

The Regulations also introduce additional requirements for unsolicited proposals which can help ensure transparency and fairness in project selection. However, the added procedural requirements to the process of amending or varying PPP Agreements may create additional

administrative burdens on both the private and public sectors.

As a result, while the Regulations offer improved structure and oversight, they may also complicate the PPP process, potentially affecting flexibility of the parties to the PPP Agreement.

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