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LEGAL PRACTITIONERS

Public Private Partnership Bill 2023

Identification of PPP Projects



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To enhance transparency and long-term sustainability in the procurement of solicited PPP projects, the PPP Bill proposes a more robust framework and approval process for contracting authorities for projects that have been identified as suitable for development as PPPs. In this article, we discuss the approval processes that the PPP Bill proposes should be undertaken before the private sector developers are invited to participate in the development of PPP projects.

Identification of Projects and Submission of Project List

As a first step in the development of solicited PPP projects, the PPP Bill makes it mandatory for contracting authorities (this includes any parastatal, statutory body, local authority of Government Ministry) to prepare and submit for consideration, their respective project lists (the “PPP List”) to the Public-Private Partnership Office (the “PPP Office”). The Project List specifies the projects which a contracting authority intends to develop as PPPs. The PPP Bill requires the projects on the PPP List to be aligned to Zambia’s National Development Plan. The PPP List should be supported by brief concept notes for each project, in line with guidelines issued by the PPP Office. The PPP Bill is silent on the period for which the PPP List should cover. It remains to be seen whether this will be addressed when the PPP Bill is enacted into law.

Upon receipt of a PPP List from a contracting authority, the PPP Office refers it to the Public-Private Partnership Technical Committee (the “Technical Committee”) which in turn makes recommendations to the Public-Private Partnership Council (the “Council”). The Council is empowered to do any of the following:

- (a) approve the proposed PPP List;
- (b) reject a project included in a proposed PPP List, specifying the reasons; and
- (c) guide the contracting authority on the revisions to made to a PPP List.

The requirement to prepare PPP Lists and obtain approval from the Council based on recommendations by the Technical Committee, creates transparency and accountability in relation to projects that contracting authorities can develop as PPPs. There is no requirement under the existing PPP legislation for contracting authorities to prepare PPP Lists.

Conceptualizing PPP Projects

The PPP Bill proposes that a contracting authority should prepare a preliminary cost-benefit analysis and project concept for all approved projects on a PPP List that it intends to implement.

The PPP Bill also provides that a project may also be initiated by the PPP Office, in collaboration with contracting authority, even if such project is not on the PPP List. In such a scenario, the PPP Office would be the one to conduct a preliminary cost-benefit analysis of the proposed project.

Project Feasibility Study

The PPP Bill provides that a feasibility study must be conducted for all projects that are intended to be developed by contracting authorities to determine the viability of such projects. Contracting authorities would be required to take the following into account when undertaking project feasibility studies:

- (a) the technical requirements of the project;
- (b) the legal requirements that must be complied with by the parties to the project;
- (c) the social, economic and environmental impact of the project;
- (d) an affordability and value for money proposition of the project; and
- (e) the land requirements and site preparatory activities necessary for effective and efficient project initiation.

The PPP Bill proposes that a feasibility study, together with a project proposal, (collectively, the “Feasibility Documents”) prepared by a contracting authority must be appraised by the PPP Office before submission to the Technical Committee for recommendation to the Council.

Upon receipt of the Feasibility Documents, the Technical Committee may either make a recommendation for approval to the Council, return them the contracting authority for reconsideration or reject them altogether.

In circumstances where the Technical Committee makes a recommendation for approval of the Feasibility Documents, the Council still retains the discretion to either approve or reject the project notwithstanding

the recommendation of the Technical Committee. However, the Council is required to give reasons for any rejection. This ensures accountability on the part of the Council.

Any material revisions to approved Feasibility Documents relating to assumptions made in respect of the affordability, value for money and substantial technical, operational and financial risk transfer of a project, require approval from the Technical Committee and the Council.

In our next article we discuss how projects are awarded to developers under the solicited procurement method once the approval process discussed in this article is completed and the project is ready for implementation and development by the private sector.

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