

GENERAL INFORMATION

Capital: Windhoek

Population: 2,53 million (2021)

GDP: USD 12,31 billion (2021)

LEGAL AND INSTITUTIONAL FRAMEWORK

PPP Law

- Public Private Partnership Act, 2017 (PPPA)
- Namibia Public Private Partnership Policy, 2012 (NPPPP)
- Public Procurement Act, 2015 (PPA)

Other Applicable Sectoral Laws

- Water Act 54 of 1956

PPP Unit

Directorate of Public Private Partnerships established under the Ministry of Finance.

Definition

(Art. 1, PPPA)

“Public Private Partnership Project” means an agreement between a public entity and a private entity, in terms of which – (a) the private entity provides public infrastructure assets or services for use, either directly or indirectly, by the public; (b) investments are made by or management of the infrastructure asset or service is undertaken by the private entity for a specified time; (c) risk is optimally shared between the private entity and the public entity; and (d) the private entity receives performance linked payment.

General Principles

(Art. 2 - 4, PPPA)

- Promote private sector participation;
- Enable private sector investment in the provision of public infrastructure assets and services;
- Create frameworks and ensure oversight and governance on projects selected for development through PPP mode;
- Enable the creation of adequate institutional capacity for processing and regulating PPP projects;
- Ensure fairness, transparency, equity and competition in the process of awarding PPP projects;
- Probity and transparency during the initiation, preparation, procurement, management and implementation of PPP projects.

Tendering and contracting procedures / Choice of the private partnership

(Art. 19-29, PPPA)

- Competitive Bidding Process: procurement in the form of a two-stage process comprising (i) a pre-qualification and (ii) a final selection stage. Single stage process only for PPP projects with a low project value, comprising a single request for proposal stage, which also includes the request for qualification stage (*Art. 20 (1) and (2)*).
- Unsolicited Proposals: no provision in the Act.

However, the Policy refers to unsolicited proposals (*Sect. 28*) and sole bid/speculative bid (*Sect. 29*).

Project Evaluation
(Art 17-18, PPPA)

- Feasibility assessment made by the public authority to determine if the PPP project is in the public interest.
- The PPP Committee reviews feasibility assessments. Direct or contingent funding requirements must be cleared with the Treasury. On receipt of a response from Treasury, the PPP Committee in consultation with the Minister may approve the feasibility assessment.

Negotiation and Signature of PPP Contracts
(Art. 30-31, PPPA)

No provision in the Act regarding negotiation.
The public entity can enter into a PPP agreement only through the accounting officer. (*Art. 30*)
Before the accounting officer of a public entity enters into a PPP agreement, the public entity must obtain approval from the PPP Committee, the Minister and the Attorney General. (*Art 31*)

Rights and Obligations of the public partner
(Sect. 24, NPPPP)

No provision in the Act.
However, the Policy refers to “Termination and Termination Payment Obligations” as a mandatory provision contained in any PPP agreement (*Sect. 24 PPP Agreement*).

Rights and Obligations of the private partner
(Sect. 24, NPPPP)

No provision in the Act. However, the Policy refers to “step-in rights” as a mandatory provision contained in any PPP agreement (*Sect. 24 PPP Agreement*).

Obligations of both public and private partners

No provision in the Act. However, the Policy refers to the specific “monitoring obligations” of both parties as part of the mandatory provisions contained in any PPP agreement (*Sect. 24 PPP Agreement*).

Applicable Law

No provision in the Act.

Dispute resolution
(Art. 35, PPPA)

Resolving disputes arising from the implementation of PPP agreement amicably firstly, applying to the Committee for mediation secondly. If no agreement between the parties with the decision of the Committee, the parties may refer the dispute for arbitration (Arbitration Act, 1965) or may institute judicial proceedings within Namibia.

EXAMPLES OF PROJECTS STRUCTURED AS PPP

Energy	Reho-Electricity
Water	Goreangab Water Plant