



LAW N^o 2023/008 OF 25 JUN 2023

TO LAY DOWN THE GENERAL REGIME OF PUBLIC-PRIVATE
PARTNERSHIP CONTRACTS

*The Parliament deliberated and adopted,
the President of the Republic hereby
enacts the law set out below:*

CHAPTER I GENERAL PROVISIONS

SECTION 1: (1) This law lays down the general regime of Public-Private Partnership contracts, abbreviated as PPP.

SECTION 2: (1) Public-private partnership contracts shall govern the collaboration between a contracting authority and one or more private entities for the purpose of executing a public project.

(2) Public-private partnership contracts governed by this law may also be in the form of delegated management of the public service, which is the responsibility of the contracting authority.

(3) The Prime Minister shall be the High Authority for Public Private Partnership Contracts. To this end, he shall have powers to award and amend contracts, where necessary, as well as regulate the PPP sector, at the request of the Minister in charge of public investments and the expert body on PPPs.

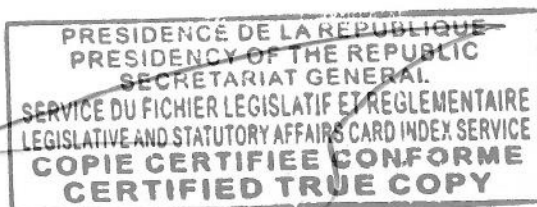
SECTION 3: (1) Public-Private Partnership contracts signed by the State, a decentralized local authority, a public establishment, a public enterprise or any other public entity shall be subject to this law.

(2) The provisions of this law shall apply to all sectors of economic and social life, excluding those regulated by specific laws.

(3) Notwithstanding the provisions of (2) above, Ministries and other public entities may solicit the assistance of the expert body provided for in this law for the structuring, award and monitoring of contracts signed under sector-specific laws.

SECTION 4: (1) Public-private partnership contracts governed by this law may be in the following forms:

- Government-paid Public-Private Partnership contracts wherein the remuneration of the private partner shall be provided by the contracting authority in the form of rentals, according to the periodicity defined in the contract;
- User-paid Public-Private Partnership contracts (concessions), wherein the remuneration of the private partner shall be provided by users of the facility or service;



- Mixed-payment Public-Private Partnership contracts, which shall be a combination of the two forms of remuneration mentioned above.

(2) User-paid Public-Private Partnership contracts (concessions) shall include in particular:

- Build, Operate and Transfer (BOT) contracts and the variations thereof;
- Temporary occupation authorizations and/or agreements (TOA), concerning public property exclusively for the purpose of carrying out a general interest project, or to contribute towards executing a public service mission, not including those issued by Administrative Authorities and legal entities on which sector-specific laws have conferred special prerogatives over the public property assigned to them, in particular for projects with high self-financing capacity or whose projected financial profitability leverage does not pose any fiscal risk or latent liability for the State.

SECTION 5: Within the meaning of this law, the following definitions shall apply:

a) Public-Private Partnership Contract: contract whereby, pursuant to section 3, the State or one of the legal entities subject to this law, for a specified period, as appropriate, and based on the amortization period of the investments or funding methods chosen, entrusts an overall mission to a private entity, with the following objectives:

- except in the cases of leasing (or affermage) and cost-plus contracts: construction, transformation, renovation, or rehabilitation, installation, dismantling or destruction of structures, facilities, intangible assets, or land developments necessary for public service or the execution of a general interest mission;
- all or part of the design thereof, where applicable;
- all or part of the funding thereof;
- operation or management, where applicable;
- maintenance or upkeep.

Under the said contract, the contracting partner of the contracting authority shall supervise the works to be undertaken.

Under a Public-Private Partnership contract, the contracting authority may also, where necessary, entrust to a third party, the execution of a public

service mission for which it is responsible and of which the facility provided or any other existing facility is a vehicle.

b) Contracting Authority: any legal entity referred to under Section 3 above, responsible for the project that initiates and conducts the procedure for awarding the public-private partnership contract, and signs the ensuing contract in accordance with this law and its implementing instruments.

c) Leasing: contract whereby a legal entity subject to this law, entrusts to a third party known as the lessee, the operation under its responsibility of a public service or an existing public facility, against payment of a fee, in return for the facility put at its disposal.

d) Cost-plus contract: contract whereby a legal entity subject to this law entrusts the operation of a public service or an existing public facility to a third party, on its behalf, against payment of a dead rent with profit-sharing by the said legal entity. The third party shall collect revenue from users, on behalf of the contracting legal entity.

e) Concession: contract whereby one or more contracting authorities subject to this law, entrust the execution of works and management of a public service to a third party, to which shall be transferred a risk related to the operation of the facility or service, in return either for the right to operate the facility or service concerned by the contract, or the said right along with a fee.

f) Authorization for temporary occupation of public property: contract whereby a legal entity referred to under Section 3 above authorizes a third party to temporarily occupy on its behalf, the public property put at its disposal, for a public service mission or general interest project falling within its jurisdiction. Such occupation may constitute real rights for the third party.

g) Client: contracting partner of the contracting authority, having the prerogatives and obligations of owner of the facility during the period of the Public-Private Partnership contract.

h) Spontaneous Offer or Spontaneous Bid: offer or bid submitted to a contracting authority by a private partner, for an infrastructural, public facility or public service management project, without any prior express invitation issued by the said contracting authority.

i) Most economically advantageous tender: best combination for maximizing utility and minimizing cost for the contracting authority based on

specific criteria defined by the technical and financial offers.

j) Private Partner: contracting partner of one of the legal entities referred to under Section 3 above under a Public-Private Partnership contract. The private partner may constitute a project company whose sole objective shall be the execution of the partnership contract concerned.

k) Expert Body: public body in charge of Public-Private Partnership contracts.

l) Complex Project: project with technical, legal and financial aspects that do not allow the contracting authority to singlehandedly predefine the technical needs of the project or even specify the financial or legal arrangements of the project.

m) Emergency Project: project serving to make up for a delay detrimental to general interest and impacting the delivery of public facilities, or a public service, or even addressing unexpected circumstances.

CHAPTER II

CONTENTS AND CONDITIONS OF USE OF PUBLIC-PRIVATE PARTNERSHIP CONTRACTS

I - CONTENTS OF A PUBLIC-PRIVATE PARTNERSHIP CONTRACT

SECTION 6: A Public-Private Partnership contract shall necessarily contain clauses relating to the following:

- the period, cost and comprehensive financing conditions of the partnership contract;
- land tenure and property operations, where applicable;
- conditions governing risk sharing between the contracting authority and its private contracting partner;
- performance goals assigned to the contracting partner, in particular in respect of service delivery quality, quality of structures and facilities, the state thereof at the time of delivery to the contracting authority during or after the contract, and where applicable, their frequency of use;
- terms and conditions of remuneration of the contracting partner, reasons and modes of variations thereof during the contract period;
- amount and conditions of payment by the contracting partner, where

applicable, of any license fee and import duty to the contracting authority for a partnership for concession contracts;

- obligations of the contracting partner aimed at ensuring that the structures and facilities are duly used for the public service remaining, where applicable, within the jurisdiction of the contracting authority, as well as compliance with the requirements of the said public service;
- conditions under which the contracting authority shall directly, as well as through the expert body, control and monitor contract implementation, in particular with regard to meeting the performance goals and the conditions under which the contracting partner may solicit the services of other companies, small- and medium-size enterprises or local craftsmen for the execution of the contract;
- the applicable provisions where the contracting partner fails to meet its performance goals;
- the conditions under which, some aspects of the contract, through a rider clause, or in the case of no agreement, through a unilateral decision of the contracting authority, may be amended in particular to reflect the changing needs of the contracting authority, technological innovations, or modifications to the financing conditions obtained by the contracting partner, and in such case, of the conditions of payment of compensation to the contracting partner for damage suffered and/or lost earnings;
- the power of the contracting authority to partially or completely terminate the contract;
- the conditions under which public service continuity is ensured, where the contracting parties are wanting, in particular when contract termination is pronounced;
- conditions for the transfer of structures and facilities to the contracting authority at the end of the contract or assigned to any other use agreed by the parties;
- where applicable, the conditions for implementing the environmental and social management plan resulting from the environmental and social impact assessment;
- consequences at contract completion, whether early or not, in particular relating to ownership of structures and facilities;
- dispute prevention and settlement conditions, and if need be, those for arbitration and/or other alternative means of dispute settlement in accordance with Cameroonian law;
- obligations relating to technology transfer, development of local

content approach, training and employment of the Cameroonian workforce;

- contract validity and entry into force.

CONDITIONS OF ELIGIBILITY FOR PUBLIC-PRIVATE PARTNERSHIP CONTRACTS

SECTION 7: (1) A project shall be eligible for a public-private partnership contract only where an assessment at the beginning of the contracting procedure carried out by the expert body and based on a feasibility study requested by the contracting authority, determines that, taking into consideration the characteristics of the project under consideration, it fulfils one of the following conditions:

- the project is of a complex nature;
- the project is an emergency;
- advantages/disadvantages assessment of the project which favours a PPP implementation. The conditions for such assessment shall be laid down by regulation.

(2) Notwithstanding the fulfilment of one of the 3 (three) conditions mentioned in (1) above, concluding a public-private partnership contract shall become possible only where such contract type shows a net financial advantage over other contract types in terms of overall costs and revenues, performance and risk evaluation.

(3) The assessment report must explain in detail, the economic, financial, legal, administrative and socio-environmental reasons which, after the analysis described above, have led to the selection of the best option for carrying out the project. Such prior assessment shall be the responsibility of an expert body, the organization and functioning of which are laid down by the regulation.

(4) For all projects, following assessment by the expert body regardless of the PPP method considered, the conclusion of any Public-Private Partnership Contract must be preceded by a notice of fiscal sustainability issued by the Minister in charge of budget, under conditions laid down by regulation.

(5) The assessment and notices provided for in (3) and (4) above shall be issued following a review of a feasibility study which must show the technical, economic, financial and commercial viability, as well as the control

of any fiscal risks generated during the various implementation phases of the project.

(6) The provisions of (1) above shall also apply to projects resulting from bids or unsolicited proposals made to the contracting authorities provided for in this law and submitted by economic operators.

SECTION 8: The contracting authority may use a Government-paid Public-Private Partnership Contract to carry out a given project only if the estimated value of the investment is greater than or equal to the threshold laid down by regulation according to the nature and purpose of the project.

CHAPTER III CONTRACTING PARTNER SELECTION METHOD AND CONDITIONS FOR EXECUTING PUBLIC-PRIVATE PARTNERSHIP CONTRACTS

I - CONTRACTING PARTNER SELECTION METHOD

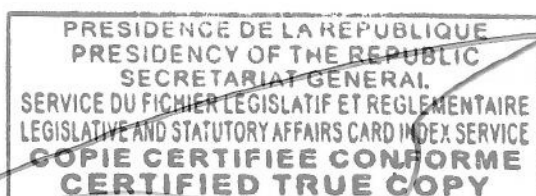
SECTION 9: (1) The signing of a partnership contract shall be subject to the principles of free access to public procurement, equal treatment of bidders, transparency and objectivity in competitive bidding procedures.

(2) A public call for tenders shall be initiated by the contracting authority. It shall be preceded by an advertisement that enables the submission of several competitive bids under conditions laid down by regulation.

(3) However, even in case of a single tender following a call for tenders, its review shall remain subject to the procedure provided for in Section 10 below.

SECTION 10: (1) Selection of the contracting partner shall involve the following stages:

- public call for expression of interest;
- restricted call for tenders,
- competitive dialogue;
- award;
- negotiation of contract terms;
- contract signature.



(2) The conditions for signing a Public-Private Partnership Contract shall be laid down by regulation.

SECTION 11: (1) The contract shall be awarded to the bidder that submitted the most economically advantageous bid.

(2) Contract award criteria shall necessarily include the overall bid amount, the performance objectives defined according to the contract purpose and the share of the contract execution the bidder undertakes to entrust to local small and medium-size enterprises and/or craftsmen, unless the bidder concerned itself belongs to such category of enterprises.

(3) Other criteria, concerning contract purpose and nature, may be adopted, in particular the technical value and innovative nature of the bid, the structure or facility execution period, its aesthetic or operational quality, the rate of user charges, and where applicable the amount of the fee to be paid to the contracting authority.

(4) The contracting authority must necessarily require an architectural plan, in the case of bids relating to buildings and civil engineering structures, in order to assess the components and overall quality of the structures concerned as a criterion for awarding the contract.

SECTION 12: (1) Notwithstanding the provisions of Section 9, where circumstances so require, and in particular under conditions specified by the regulations, the High Authority for Public-Private Partnership Contracts may, following the opinion of the expert body, authorize the competent contracting authority to enter into direct discussions and negotiations with an identified private partner, on the basis of an initial bid.

(2) The initial bid referred to in (1) above shall be systematically reviewed by the contracting authority concerned, in order to ensure the relevance and consistency of PPP projects with the guidelines of the sector-specific strategy and the related strategic development plans.

(3) The conditions for this procedure shall be laid down by regulation.

SECTION 13: (1) The following may not bid for a Public-Private Partnership Contract:

- corporate bodies whose incumbent managers have been convicted of a

crime or misdemeanour since less than 5 (five) years;

- corporate bodies under compulsory liquidation or in receivership or having been subject to equivalent procedures governed by a foreign law;
- corporate bodies banned from bidding for public contracts by a competent authority;
- corporate bodies which, as at 31 December of the year preceding the one when the call for bids was issued, are yet to fulfil their fiscal and corporate obligations.

(2) The provisions of (1) above shall also be applicable to corporate bodies involved in a direct negotiation procedure.

SECTION 14: (1) Once the successful bidder is known, the contracting authority shall inform the other bidders of the rejection of their bids within 10 (ten) days of the date of publication of the results of the award.

(2) The contract shall be notified to the successful bidder prior to any commencement of execution.

(3) Where the contracting authority calls off the contract award procedure, it shall notify the bidders accordingly. They may, in some cases, be entitled to compensation under the conditions laid down by regulation.

II - GENERAL FRAMEWORK FOR THE EXECUTION OF PUBLIC-PRIVATE PARTNERSHIP CONTRACTS

SECTION 15: (1) Where a Public-Private Partnership contract entrusts a contracting partner with all or part of the design of structures, the contracting authority itself shall be bound to find a team or assistance to monitor the designing of the structures and execution thereof.

(2) Where the contracting authority entrusts only part of the designing of structures to the contracting party, it may itself seek for a management team or any other form of assistance for the part of the designing which is its responsibility and, where necessary, for the execution of all the work.



SECTION 16: (1) Amendments may be made to a Public-Private Partnership contract through rider clauses, at the request of the contracting authority or the contracting party.

(2) Rider clauses may concern only non-substantial amendments that do not upset the balance of the contract.

(3) The rider clauses concerned shall be signed only after the expert body has issued its opinion as to whether or not the amendments to be made are substantial.

(4) An amendment shall be considered non-substantial:

- where it does not include conditions which, if included in the original award procedure, would have enabled the selection of a bidder other than that initially selected;
- where it does not alter the contract purpose;
- where it does not modify the contract economics to favour the private partner at a cost less than or equal to 30% (thirty percent) of the contract amount of the initial investment.

(5) In the event of a substantial amendment necessary for the proper execution of the project, the contracting authority must either:

- sign a supplementary contract, where the conditions set out in Section 17 below are met; or
- launch a new procurement procedure, and in such case cancel the original contract beforehand.

SECTION 17: (1) A contract complementary to an existing Public-Private Partnership Contract may be concluded through direct negotiation with the same contracting partner where, for economic reasons, social or cultural necessity, or for reasons relating to the need for consistency in the technical and financial management of the project, the contracting authority decides to extend it.

(2) Additional services must be closely related to the purpose and nature of the original contract.

(3) Authorization to award the complementary contract shall be given by the High Authority for Public-Private Partnership Contracts,

following a referral from the contracting authority and an expert opinion issued by the expert body.

(4) Referral to the High Authority for Public-Private Partnership contracts shall be made by means of a written agreement justifying the appropriateness of the works, supplies or services, which shall be the subject of the extension, as well as their link with the initial project.

CHAPTER IV

TAX, FINANCIAL, LAND TENURE AND STATE PROPERTY PROVISIONS

I - FISCAL, FINANCIAL AND ACCOUNTING REGIME

SECTION 18: Public-Private Partnership contracts and the services of the private partner shall be subject to specific fiscal, financial and accounting legislation.

II - LAND TENURE AND STATE PROPERTY REGIME

SECTION 19: Land and property operations carried out under the Public-Private Partnership contract shall be subject to the laws and regulations in force in Cameroon.

SECTION 20: (1) Where the public-private partnership contract entails occupation of public property, an authorization shall be required to occupy such property, for the contract period. Unless otherwise stipulated in the contract, the contract holder shall have real rights over the structures and facilities it builds.

(2) The rights referred to in (1) above shall confer on the contract holder the prerogatives and obligations of an owner, under the conditions and within the limits defined by the clauses of the contract whose purpose shall be to ensure the integrity and use of such public property.

CHAPTER V

DISPUTES AND SANCTIONS

SECTION 21: (1) The contracting authority shall have reasonable grounds to take sanctions against the offending contracting partner without prejudice to institute legal proceedings against the latter, where it is established,

following notification of the contract or at any time during its execution, that:

- the contracting partner wilfully concealed or manipulated information that favoured its selection;
- the contracting partner is failing to honour contract clauses.

(2) the sanctions applicable and the related procedure shall be specified in the contract.

SECTION 22: (1) Any bidder that may feel aggrieved in the procedure for awarding a Public-Private Partnership contract may lodge an appeal with the High Authority for Public-Private Partnership Contracts with a copy to the expert body.

(2) An aggrieved bidder may lodge an appeal within seven (7) working days of the date of publication and/or notification of the results of each phase of the public-private partnership contract.

(3) The High Authority for Public-Private Partnership Contracts shall rule on the appeal, after receiving the opinion of the expert body, within thirty (30) days of the date of referral by the unsuccessful candidate.

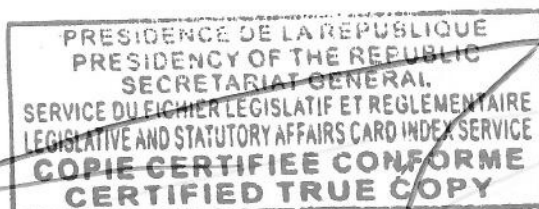
CHAPTER VI

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

SECTION 23: The Government shall periodically design a strategic plan for the development of Public-Private Partnerships under conditions defined by regulation.

SECTION 24: Public-Private Partnership contracts concluded prior to the date of enactment of this law shall remain in force, for the period for which they were entered into, and governed by the legal regime under which they were concluded.

SECTION 25: All previous laws and regulations repugnant hereto, in particular Law No. 2006/12 of 29 December 2006 to lay down the rules and regulations governing partnership contracts, are hereby repealed.



SECTION 26: Conditions for the implementation of this law shall be laid down by separate instruments.

SECTION 27: This law shall be registered, published according to the procedure of urgency and inserted in the Official Gazette in English and French./-

PRESIDENCE DE LA REPUBLIQUE
PRESIDENCY OF THE REPUBLIC
SECRETARIAT GENERAL
SERVICE DU FICHER LEGISLATIF ET REGLEMENTAIRE
LEGISLATIVE AND STATUTORY AFFAIRS CARD INDEX SERVICE
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CERTIFIED TRUE COPY

YAOUNDE, 25 JUIL 2023



PAUL BIYA
PRESIDENT OF THE REPUBLIC