

NEW PPP BILL FOR SENEGAL



CONTEXT

(before 2013)

- **Regulatory framework:**
 - ✓ The law n°2004-13 of the 1st March 2004,
 - ✓ the law n°2009-21 of the 4th May 2009 and n ° 2011-11 of 28th April 2011amending the previous 2004 law.
- **Scope of the law :**
 - ✓ Construction and operation of infrastructures to be part of the artificial public domain on a Build-Operate-Transfer (BOT) mode.

CONTEXT

(after 2013)

New vision of the President for implementing Major Infrastructures

- **Motivations**

- ✓ Handle unsolicited bids in order to enable more investments
- ✓ Increase the investments in capital and technical intensive sectors

- **New Regulatory framework**

- ✓ Assessment of the institutional and legal framework after several year of experience
- ✓ Definition of a new PPP bill in process

- **Scope of the new law**

(Exclusion of energy, mining and telecommunications sectors which have specific rules)

- ✓ Social sector
- ✓ Health sector
- ✓ Infrastructure sector, ect.

Prerequisites for a partnership agreement

- The **Complexity** of the project;
- The **Emergency** character of the project;
- **Prior evaluation** by the Contracting Authority with the assistance of the National Committee to Support Public-Private Partnerships (new structure), shows the economic, financial, legal and administrative reasons for choosing such a contract.

HOW TO COMPETE

1. By selection of the operator of the project who has gone through **international opened tender** in two stages preceded by a pre-qualification;

or

2. By **special procedures (unsolicited bid or direct contracting)** under certain conditions.

SPECIAL PROCEDURES : UNSOLICITED BID

Estimated cost exceeding an amount specified by decree and at least **two of the following conditions are met:**

- **The share of private funding** for the project is **at least seventy percent (70%)** of the initial investment costs of the project;
- The project is competitive compared to general market conditions;
- The project is a technological innovation or advanced technology and provides to the Contracting Authority indispensable and viable economic and ecological solutions.

SPECIAL PROCEDURES : UNSOLICITED BID

- The unsolicited bid is being negotiated under **procedures authorized by the Prime Minister or by the legislative body authorized** in the case of local authorities, on the basis of the advice of the National Committee to Support Public-Private Partnerships and the Minister of Finance.
- The private operator will first itself make **preliminary studies** in order to present a coherent project with adequate technical and financial proposals.

SPECIAL PROCEDURES : DIRECT CONTRACTING

When the construction or operation of a facility (or facilities) related to a project must be implemented under conditions of **compelling emergency**.

DEFINITION OF PARTNERSHIP CONTRACTING

Partnership contracting :

Contract by which the contracting authority entrusts

- a trader,
- a legal private person

for a **specified period**, depending on the **cost of investment** or **funding arrangements** selected, for the implementation of a project related to:

- construction or transformation,
- maintenance, operation or management structure,
- equipment or intangible assets

necessary for the public service that the contracting authority is responsible, and all or part of their funding.

CHARACTERISTICS OF PPP CONTRACTS



- Global;
- Long-term;
- Private funding;
- Risks shared between private and public parties;
- Submitted to public staggered payment.