FEDERAL NEGARIT GAZETTE
OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

Proclamation No. 1076/2018
A PROCLAMATION TO PROVIDE FOR THE PUBLIC PRIVATE PARTNERSHIP

WHEREAS, the participation of the private sector is recognized an essential strategy to realize the country’s development objectives, including the infrastructure system;

WHEREAS, it is desirable to establish a favorable legislative framework to promote and facilitate the implementation of privately financed infrastructure projects by enhancing transparency, fairness and long-term sustainability;

WHEREAS, it has become necessary to further develop the general principles of transparency, economy and fairness in the award of contracts by public entities through the establishment of specific procedures for the award of infrastructure projects;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:
CHAPTER ONE

GENERAL

1. Short Title

This Proclamation may be cited as “Public Private Partnership Proclamation No. 1076/2018”.

2. Definitions

In this Proclamation unless the context requires otherwise:

1. "Board" means the board established pursuant to this Proclamation.

2. "Contracting Authority" means a Public Body or a Public Enterprise which intends to enter into a Public Private Partnership Agreement with a Private Party.

3. "Infrastructure Facility" means any physical facility and systems that directly or indirectly provide Public Service Activity.

4. "Ministry" or "Minister" means the Ministry or Minister of Finance and Economic Cooperation, respectively.

5. “Person” means any natural or juridical person.

6. "Private Party" means a party that enters into a Public Private Partnership Agreement with a Contracting Authority.

7. "Project Agreement" means the Public Private Partnership Agreement and other agreements entered into between the Contracting Authority or another Public Entity and the Private Party for the purpose of the project.
8. "Project Company" means the legal entity incorporated under the laws of the Federal Democratic Republic of Ethiopia by the successful bidder whose sole purpose shall be to execute and implement the Public Private Partnership Agreement and other Project Agreements, if any.


10. "Public Enterprise" means an enterprise fully owned by the Federal Government and defined under the relevant laws of the Federal Democratic Republic of Ethiopia.

11. "Public Entity" means a Public Body or a Public Enterprise.

12. "Public Private Partnership" or "PPP" means a long-term agreement between a Contracting Authority and a Private Party under which a Private Party:

a) undertakes to perform a Public Service Activity that would otherwise be carried out by the Contracting Authority;

b) receives a benefit by way of:

(1) compensation by or on behalf of the Contracting Authority;

(2) tariffs or fees collected by the Private Party from users or consumers of a service; and
c) is generally liable for risks arising from the performance of the activity or use of the state property in accordance with the terms of the Project Agreements.

13. "Public Private Partnership Agreement" means a contract concluded between the Contracting Authority and a Private Party setting forth the terms and conditions of the Public Private Partnership.

14. "Public Service Activity" means any activity the government has decided to perform for the reason that it has deemed it to be necessary in the general interest of the public and considered that private initiative was inadequate for carrying it out.

15. "Public Private Partnership Directorate General" or "PPP Directorate General" means the unit established within the Ministry pursuant to this Proclamation;

16. "Regional States" means any region referred to in Article 47(1) of the Constitution of the Federal Democratic Republic of Ethiopia and includes the Addis Ababa and Dire Dawa city administrations;

17. "Unsolicited Proposal" means any proposal undertaking a Public Private Partnership project that is not submitted in response to a request or solicitation issued by the Contracting Authority within the context of a competitive selection procedure.
18. "Value for Money" means that the undertaking of a Public Service Activity of the Contracting Authority by a Private Party under a Public Private Partnership results in a net benefit accruing to that Contracting Authority or consumer defined in terms of cost, price, quality, quantity, timeliness of implementation and other factors which influence the determination of the best economic value compared to other options of delivering this Public Service Activity or use of government property.

19. any expression in the masculine gender includes the feminine.

3. Objective

This Public Private Partnership Scheme shall have the following objectives:

1/ to create a favorable framework for promoting and facilitating the implementation of privately financed projects to support Ethiopian economic growth;

2/ to enhance transparency, fairness, Value for Money, efficiency and long-term sustainability;

3/ to improve quality of Public Service Activity; and

4/ to maintain macroeconomic stability by reducing growth in public debt.
4. Scope of Application

1/ This Proclamation shall apply to Public Private Partnership projects of Public Bodies and Public Enterprises;

2/ The following activities are expressly excluded from this Proclamation:

   a) oil, mines, minerals, rights of air space; and

   b) Privatization or divestiture of public infrastructure or public enterprises.

5. Forms of Public Private Partnerships

1/ Public private partnerships may involve any of the following activities or any combination thereof:

   a) The design, construction, financing, maintenance or operation of new Infrastructure Facilities.

   b) The rehabilitation, modernization, financing, expansion, maintenance or operation of existing Infrastructure Facilities; and/or

   c) The administration, management, operation or maintenance pertaining to new or existing Infrastructure Facilities.

2/ The Contracting Authority shall select the form of contract which reflects the desired allocation of risks and responsibilities for each agreement.

6. Contracting Authority

1/ The Contracting Authority for a Public Private Partnership shall be the Public Entity legally mandated to be responsible for the infrastructure to be delivered by way of the Public Private Partnership.
2. In the event that a Public Private Partnership project involves infrastructures and/or services which are the responsibility of more than one Public Entity, the Board shall among Public entities select the appropriate Contracting Authority for this specific project.

7. Authorization to grant rights for Public Private Partnerships

Rights to use or operate publicly owned Infrastructure Facilities and/or provide Public Service Activities may be granted by the Contracting Authority which by its establishing legislation is responsible for such activities, to a Private Party in accordance with this law.

CHAPTER TWO

ADMINISTRATION OF PUBLIC PRIVATE PARTNERSHIPS

8. Public Private Partnership Board

1/ It is hereby established the Public Private Partnership Board which shall consist of:

a) The Ministry of Finance and Economic Cooperation;

b) The National Bank of Ethiopia;

c) The Ministry of Water, Irrigation and Electricity;

d) The Ministry of Transport;

e) The Ministry of Public Enterprises;

f) The National Planning Commission;

g) The Ministry of Federal and Pastoralist Affairs;
9. Responsibilities of the Board

1/ The Board shall have the following responsibilities:

a) approve the PPP project structure (including any feasibility study related thereto) prior to the commencement of the tendering process;

b) approve significant changes to the risk allocation or expected cash flow from that envisioned under the initial structure pursuant to changes during the tendering process or prior to signing;

c) approve any significant amendment to a Project Agreement;

d) identify the appropriate Contracting Authority when required for specific projects;

e) recommend specific tax or other incentives for a particular project to the relevant authority;

f) approve the tender or negotiation results carried out to select the private sector which can participate in the Public Private Partnership;

g) Recommend government support requested in accordance with Article 47.

h) Two members from the private sector appointed by the Minister.

2/ The Minister of Finance and Economic Cooperation shall chair the Board.

3/ The PPP Directorate General shall act as secretariat to the Board.
2/ The Board shall have the power to prohibit a Contracting Authority from issuing any solicitation document and/or formalizing any agreement for any Public Private Partnership project which does not demonstrate Value for Money or meet minimum standards set forth by the PPP Directorate General.

3/ The Board shall have the power to instruct a Public Body or a Public Enterprise to carry out a project as a Public Private Partnership project. Such Public Body or a Public Enterprise shall comply with the instruction of the Board.

4/ The Board may consider delegating its responsibilities to the Ministry or the PPP Unit as it may consider appropriate.

5/ The Board shall meet quarterly, or more frequently as necessary, to carry out its responsibilities.

6/ The Board shall issue a guideline prescribing its working procedures.

10. PPP Directorate General

1/ A PPP Directorate General is hereby established within the Ministry.

2/ The Ministry shall be responsible to adequately staff the PPP Directorate General and for ensuring that there is an incentive mechanism to employees of the Directorate General.

11. Objectives of the Directorate General

The Directorate General shall have the objectives of achieving the country’s development objectives by ensuring that public private partnerships are carried out
as per the provisions of this Proclamation.

12. Duties and Responsibilities of the Directorate General

The PPP Directorate General shall have the following responsibilities:

1/ promote the participation of the private sector in the financing, construction, maintenance and operation of Public Service Activities;

2/ provide technical assistance and support to the Board, the Ministry and the contracting authorities on all matters relating to Public Private Partnerships;

3/ make recommendations regarding the Public Private Partnership legal, regulatory, institutional and policy framework;

4/ develop and implement guidance, mandatory or otherwise, related to project preparation, procurement procedures, preparation of bid documents and Project Agreements or other topics as may be necessary to support the implementation of Public Private Partnerships in accordance with this Proclamation;

5/ conceptualize, identify and categorize projects for purposes of this Proclamation;

6/ review and issue opinions regarding the viability of proposed projects and make recommendations to the Board, the Ministry and contracting authorities;

7/ disseminate information regarding projects contemplated as potential Public Private Partnerships;

8/ select private sector candidates that may participate in public private partnerships
in accordance with the procedures provided in this Proclamation and submit its recommendations to the Board;

9/ monitor and evaluate the progress of implementation of Public Private Partnerships;

10/ at certain intervals, determined by the Board provide information to the public on the implementation of public private partnership projects.

11/ coordinate activities relating to Public Private Partnerships.

12/ Carry out activities delegated to it by the Board;

CHAPTER THREE
DUTIES AND RESPONSIBILITIES OF CONTRACTING AUTHORITIES

13. Contracting Authority

1/ Subject to other provisions of this Proclamation, the Contracting Authority shall have overall responsibility for the initiation, development, procurement, signing of agreements and implementation of Public Private Partnership projects it administers.

2. In addition to those specified in the directive, the Contracting Authority shall have the following detailed responsibilities:

a) Execute preparatory activities for a potential project, including all relevant feasibility and options studies, financial models, Value for Money analysis and other studies necessary to structure a technically and financially viable project;

b) Submit proposed projects to the
Ministry and the Board as provided in this Proclamation;

c) Establish a technically qualified project management team to oversee the transaction process;

d) Sign public private partnership agreements referred to it by the PPP Directorate General;

e) Provide information, as reasonably requested, by the Ministry, the Board and the PPP Directorate General;

f) Unless otherwise stipulated in the Project Agreements, supervise the Private Party and ensure its strict compliance with the terms of the Project Agreements.

14. Project Management Team within the Contracting Authority

1/ A Contracting Authority that intends to enter into a Public Private Partnership shall establish a project management team dedicated to a particular project which shall consist of such financial, technical and legal personnel as that Contracting Authority shall consider necessary for the performance of its functions. The project management team shall include a member of the PPP Directorate General.

2/ The project management team shall, on behalf of the Contracting Authority:

a) prepare and appraise the Public Private Partnership project to ensure its, legal, regulatory, social, financial, economic and commercial viability;

b) prepare the project in accordance
with guidelines and standard documents issued by the PPP Directorate General;
c) ensure that the Private Party comply with the provisions of this Proclamation;
d) monitor the implementation of the Public Private Partnership Agreement entered into with the Contracting Authority;
e) liaise with all key stakeholders during the project cycle;
f) oversee the management of a project in accordance with the Project Agreements entered into by the Contracting Authority;
g) submit to the PPP Directorate General, annual or such other period reports requested by the PPP Directorate General on the Project Agreements entered into by the Contracting Authority;
h) maintain a record of all documentation and agreements entered into by the Contracting Authority relating to the Public Private Partnership project;
i) ensure that the transfer of assets at the expiry or early termination of a Public Private Partnership Agreement is consistent with the terms and conditions of such agreement, where this agreement involves a transfer of assets; and
j) carry out such other functions as may be assigned to it by the Contracting Authority.

3/ In performing its functions under sub-
article (2) of this Article, a project management team shall:

a) Implement the recommendations and guidelines issued by the PPP Directorate General;
b) Submit such information as shall be required by the PPP Directorate General or other Directorates of the Ministry.

CHAPTER FOUR
PUBLIC PRIVATE PARTNERSHIP PROJECT DEVELOPMENT AND APPROVAL PROCESS

15. Project identification

1/ The identification of potential Public Private Partnership projects shall be carried out by the Contracting Authority, a Public Entity or the PPP Directorate General.

2/ A Contracting Authority which intends to implement a project through a Public Private Partnership shall be responsible for conceptualizing and administering the contract of the project.

3/ In conceptualizing, identifying and prioritizing potential projects, a Contracting Authority shall consider the strategic and operational benefits of entering into a Public Private Partnership compared to the development of the facility or the provision of the service by the Contracting Authority itself.

16. Preliminary Approval of the Board

Where a Contracting Authority considers it appropriate to potentially implement a project
through a Public Private Partnership, it shall submit an application to the Ministry for approval before undertaking an in-depth analysis of the project under a Public Private Partnership scheme.

17. **Feasibility Study**

1/ Upon approval by the Ministry, the Contracting Authority shall undertake a feasibility study of the project for the purpose of:

   a) determining the viability of the project; and

   b) ensuring that a Public Private Partnership approach is the most economically advantageous to the Contracting Authority.

2/ In undertaking a feasibility study under Sub-Article (1) of this Article, a Contracting Authority shall consider:

   a) the technical requirement of the project;

   b) the legal requirement to be met by the parties to the project;

   c) the social, economic and environmental impact of the project;

   d) the Value for Money of the project compared to other procurement method;

   e) the affordability of the project by the Contracting Authority and/or end-users;

   f) the sustainability of the project for both parties;

   g) the institutional capacity of the Contracting Authority to prepare, tender, implement and monitor the project.

3/ Taking into account the analysis carried
out pursuant to sub-article (2) of this Article, the feasibility study shall describe the proposed structure for the project including:

a) project capital and operating costs under various scenarios;

b) proposed responsibilities and risks assumed by each the Contracting Authority and the Private Party;

c) proposed government participation and support, if any.

18. Approval of the Board

1/ The Contracting Authority shall submit the feasibility study prepared under Article 17 to the Board and the Ministry.

2/ The Board shall review the feasibility study with the support of the PPP Directorate General. The Board shall in its review take into account the assessment of the departments of the Ministry responsible for debt management and guarantees and take a decision that complies with this assessment.

3/ The Board may require additional studies be carried out either by the PPP Directorate General or the Contracting Authority prior to issuing a determination as to whether the project is authorized to proceed to tender.

4/ If specific incentives or government support is required, the Board shall with its suggestion submit the matter to the appropriate authority.

5/ If the Board is satisfied that the project meets the desired expectations of
viability and Value for Money, the Board may authorize to proceed to tender the project.

CHAPTER FIVE

SELECTION OF PRIVATE PARTY

19. Procurement Through Open Bidding Process

1/ Except as otherwise provided for under this Proclamation, all projects shall be procured through an open bidding process with prequalification.

2/ In procuring and awarding a Public Private Partnership Agreement to a Private Party, the Directorate General shall be guided by the principles of transparency, free and fair competition and equal opportunity.

20. Prequalification

1/ Upon approval of the Board pursuant to Article (18) the Directorate General shall engage in prequalification proceedings with a view to identifying bidders that are suitably qualified to successfully implement the project.

2/ The Directorate General shall issue a notice of request for qualifications:

a) in a widely circulated publication inviting potential bidders to participate in a prequalification proceeding;

b) in addition to publication in a newspaper the content of which is to be determined in a directive, may send the request for qualifications to potential bidders identified by the
21. Prequalification criteria

1/ In order to qualify for the pre-selection proceedings, interested bidders must meet objectively justifiable criteria that the Directorate General considers appropriate in the particular proceedings of the project, as stated in the request for qualifications.

2/ In determining the minimum prequalification criteria, the PPP Directorate General shall ensure that prequalified bidders demonstrate:

a) Sufficient financial capacity to undertake the project, through evidence of net worth or other appropriate measure; and

b) Sufficient technical capacity to undertake the project, through evidence of previous appropriate experience.

3/ The details of the minimum prequalification criteria shall be further prescribed by the relevant directive.

22. Participation of consortia

1/ The Directorate General, when first inviting the participation of bidders in the prequalification proceedings, shall allow them to form bidding consortia. The information required in the request for qualifications from members of bidding consortia shall relate to the consortium as a whole as...
well as to its individual participants.

2/ Unless stated in the request for qualifications, each member of a consortium may participate, either directly or indirectly, in only one consortium at the same time. A violation of this rule shall cause the disqualification of the consortium and of the individual members.

3/ When considering the qualifications of bidding consortia, the PPP Directorate General shall consider the capabilities of each of the consortium members and assess whether the combined qualifications of the consortium members are adequate to meet the needs of all phases of the project.

23. Decision on prequalification

1/ The PPP Directorate General shall:

a) make a decision with respect to the qualifications of each bidder that has submitted an application for prequalification.

b) shall apply only the criteria set forth in the request for qualifications.

c) Invite all prequalified bidders to submit their bids.

2/ Notwithstanding Sub-Article (1) of this Article, the PPP Directorate General may, provided that it has made an appropriate statement in the request for qualifications to that effect, reserve the right to request proposals upon completion of the prequalification proceedings only from a limited number of bidders that best meet the
24. Request for Proposals
1. The PPP Directorate General shall prepare a request for proposals for the purpose of inviting bidders to submit proposals.

2. The details of the request for proposals shall include at least the following information:
   a) General information related to the project necessary for the preparation and submission of a proposal.
   b) Specifications of the project including the technical and financial conditions that should be met by a bidder.
   c) Specifications of the final product, level of services, performance indicators and such other requirements as the Directorate General and relevant regulatory bodies shall consider necessary.

3. For the purpose of Sub-Article (2) of this Article, the Directorate General shall rate the bidders that meet the prequalification criteria on the basis of the criteria applied to assess their qualifications and draw up the list of bidders that will be invited to submit proposals upon completion of the prequalification proceedings.

4. In drawing up the list, the Directorate General shall apply only the manner of rating that is set forth in the request for proposals.
including the safety, security and environment preservation requirements to be met by a bidder;

d) the contractual terms of the Project Agreements proposed by the PPP Directorate General;

e) the criteria and method to be used in evaluating a proposal;

f) the value of the bid security required to be submitted by a bidder; and

g) the manner and the deadline for submitting proposals.

3/ The directive may prescribe additional requirements of the request for proposals.

25. **Bid securities**

1/ The request for proposals shall set forth the requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required bid security.

2/ The amount and the details of the ways a bid security is to be submitted or forfeited as the case may be and other related matters shall be prescribed by directive.

26. **Meetings, clarifications and modifications**

The PPP Directorate General:

1/ may hold one-on-one or group meetings with prequalified bidders to provide information on the project, respond to their enquiries and receive comments from the bidders.
2/ Shall communicate in writing to all bidders any information provided to a bidder.

3/ may invite prequalified bidders to provide comments on the request for proposals including on the terms of the Project Agreements.

4/ shall respond to request for clarification from prequalified bidders.

5/ may, whether on its own initiative or as a result of a comment or request for clarification of a bidder, review and, as appropriate, revise any element of the request for proposals, including the Project Agreements.

6/ shall communicate in writing any revision made subject to sub-article (5)of this to the bidders at a reasonable time prior to the deadline for submission of proposals.

27. Submission of proposals

A bidder who intends to bid for a project shall complete and submit a technical proposal and a financial proposal and enclose each proposal in a separate sealed envelope as may be specified in the request for proposals.

28. Evaluation of proposals

1/ Unless provided otherwise in the request for proposals, the PPP Directorate General shall not open the financial proposal unless it has opened and deemed the technical
2/ The PPP Directorate General shall compare and evaluate each proposal in accordance with the evaluation criteria, the relative weight accorded to each criterion if applicable and the evaluation process set forth in the request for proposals.

3/ For the purpose of Sub-Article (2) of this Article, the PPP Directorate General may establish thresholds with respect to quality, technical, financial and commercial aspects. Proposals that fail to achieve the thresholds shall be regarded as non-responsive and be rejected from the selection procedure.

4/ The PPP Directorate General may provide a preference margin to be granted to proposals reflecting local participation in the manner as described by directive.

29. **Evaluation report**

1/ The PPP Directorate General shall, upon evaluating the proposals and before declaring the first ranked bidder, prepare an evaluation report specifying the evaluation criteria, the manner in which the first ranked bidder satisfied the requirements specified in the request for proposals in comparison with the other bidders, and such other information as the PPP Directorate General shall consider necessary.

2/ If negotiations take place with the successful bidder in accordance with Article (31) the evaluation report shall be updated following negotiations and indicate any changes to the Project proposal to be responsive.
<table>
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<tr>
<th>30. <strong>Further demonstration of fulfillment of qualification criteria</strong></th>
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<tr>
<td><strong>1/</strong> The PPP Directorate General may require any bidder that has been prequalified to demonstrate again its qualifications in accordance with the same criteria used for prequalification.</td>
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<th>31. <strong>Negotiations</strong></th>
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<td><strong>1/</strong> The process provided in Article 26 of meetings and receiving comments from the bidders on the request for proposals shall enable the PPP Directorate General to reduce and if possible avoid the need for negotiations of the Project Agreements.</td>
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<tr>
<th><strong>2/</strong> However, in exceptional circumstances and only where deemed appropriate by the Directorate General, the Directorate General may:</th>
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<tr>
<td>a) enter into negotiations with the successful bidder; and</td>
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<td>b) request the second ranked bidder to extend the validity of its bid pending the completion of negotiations with the successful bidder.</td>
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| **3/** Where the negotiations carried out with the successful bidder are unsuccessful, | Agreements as a result of the negotiations. |
the PPP Directorate General shall enter into negotiations with subsequently ranked bidders in order of their ranking, provided that such bidder submitted a bid that was deemed responsive during the evaluation process.

32. Approval of the Board

1/ The PPP Directorate General shall require the approval of the Board if there is any material change to the project structure previously approved by the Board prior to the tender and which has changed during the tender process. This approval of the Board on changes to the project structure may be sought during the tender process and/or at the end prior to the award of the project in accordance with Sub-Article (2) of this Article.

2/ Prior to the award of the project in accordance the PPP Directorate General shall apply to the Board for approval. For this purpose, the PPP Directorate General shall submit to the Board the evaluation report of the proposals, the Project Agreements and other documents deemed relevant.

33. Process to be Confidential

1/ After opening of the proposals, information relating to examination, clarification, and evaluation of the proposals and recommendations for award must not be disclosed to bidders or other Persons not officially concerned with this process until the award of the Public Private Partnership is announced.

2/ The PPP Directorate General shall treat proposals in such a manner as to avoid
34. Notification of Award and Signing of Contract

1/ Prior to the expiry of the period of the bid validity and upon receipt of the Board approval in accordance with Article (32) the PPP Directorate General shall notify the successful bidder that its proposal has been accepted. The notification of the award shall specify the time within which the Project Agreements must be signed. The unsuccessful bidders shall also be informed as to who the successful bidder is and why they have lost the bid.

2/ The PPP Directorate General shall within two days from the date of the award send the Project Agreement to the Contracting Authority together with the necessary documents for it to be signed by the Contracting Authority.

3/ The Project Agreement shall not be signed by the Contracting Authority prior to the receipt of the notice by all unsuccessful bidders or before the period specified in the relevant directive has lapsed.

4/ Upon execution of a Project Agreement by the parties, the PPP Directorate General shall publish the results of the tender in the manner to be prescribed by directive.

5/ Re-verification of qualifications may be conducted prior to award to confirm that a bidder continues to possess the necessary financial and technical
CHAPTER SIX
TWO-STAGE BIDDING

35. Conditions of use of Two-Stage Bidding

1/ Notwithstanding the provisions contained in Chapter Five of this Proclamation, if it is not feasible to formulate a request for proposals with adequate project specifications, performance indicators or contractual terms in a manner sufficiently detailed to enable the submission of final proposals, the PPP Directorate General may engage in a two-stage bidding.

2/ The PPP Directorate General shall run a prequalification procedure in accordance with Articles (20) to (23) to invite only prequalified bidders to participate in the two-stage bidding procedure.

36. Procedure for Two-Stage Bidding

1/ The initial request for proposals shall call upon the bidders to submit, in the first stage of the procedure, initial proposals relating to project specifications, performance indicators, financing requirements or other characteristics of the project as well as to the main contractual terms of the Project Agreement.

2/ The PPP Directorate General may convene meeting and hold discussion with any of the bidders to clarify questions concerning the initial request for proposals or the initial proposals qualification stated in the request for qualifications and/or the request for proposals.
and accompanying documents of the bidders.

3/ Following examination of the proposals received, the PPP Directorate General shall draw up a request for proposal which is more appropriate to its requirements. For this purpose it may revise the initial request for proposals by deleting, adding or modifying any aspect of the initial project specifications, performance indicators, financing requirements or other characteristics of the project, including the main contractual terms of the Project Agreements, and any criterion for evaluating and comparing proposals and for ascertaining the successful bidder, as well as by adding characteristics or criteria.

4/ In the second stage of the proceedings, the Directorate General shall invite bidders to submit final proposals with respect to a single set of project specifications, performance indicators or contractual terms in accordance with Articles (24) to (34).

5/ The Directorate General shall prepare an evaluation report and obtain the approval of the Board prior to award and execution of the Project Agreements in accordance with Articles (29), (32) and (34).

CHAPTER SEVEN

COMPETITIVE DIALOGUE

37. Conditions of use of Competitive Dialogue

1/ The PPP Directorate General may engage in competitive dialogue, upon approval by the Board, for particularly complex projects where the PPP Directorate General considers that the use of single stage or two-stage bidding
procedure is not appropriate for the award of the Public Private Partnership Agreement.

2/ The PPP Directorate General shall run a prequalification procedure in accordance with Articles (20) to (23) to invite only prequalified bidders to participate in the competitive dialogue procedure.

38. Procedure for Competitive Dialogue

1/ The PPP Directorate General shall establish a contract notice setting out its needs and requirements, which it shall define in that notice and/or in a descriptive document.

2/ The PPP Directorate General shall invite prequalified bidders to participate in a dialogue the aim of which shall be to identify and define the means best suited to satisfying its needs. The Directorate General may discuss all aspects of the Project Agreements with the prequalified bidders during this dialogue.

3/ During the dialogue, the PPP Directorate General shall ensure equality of treatment among all bidders. In particular, it shall not provide information in a discriminatory manner which may give some bidders an advantage over others.

4/ The PPP Directorate General shall not reveal to other bidders solutions proposed or other confidential information communicated by a bidder participating in the dialogue without his agreement.

5/ The PPP Directorate General may provide for the procedure to take place in
successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or descriptive document. The contract notice or descriptive document shall indicate that recourse may be had to this option.

6/ The PPP Directorate General shall continue such dialogue until it can identify the solution or solutions, if necessary, after comparing them, which are capable of meeting its needs.

7/ Having declared that the dialogue is concluded and having so informed the bidders, the PPP Directorate General shall ask them to submit their final proposals on the basis of the solution or solutions presented and specified during the dialogue. These proposals shall contain all the elements required and necessary for the performance of the project.

8/ The proposals may be clarified, specified, and fine-tuned at the request of the PPP Directorate General. However, such clarification, specification, fine-tuning or additional information may not involve changes to the basic features of the proposal or the call for proposals, nor any variations in which are likely to distort competition or have a discriminatory effect.

9/ The PPP Directorate General shall assess the proposals received on the basis of the award criteria laid down in the contract notice or descriptive document and shall choose the most economically advantageous proposal.
10/ At the request of the PPP Directorate General, the bidder identified as having submitted the most economically advantageous proposal may be asked to clarify aspects of the proposal or confirm commitments contained in the proposal provided this does not have the effect of modifying substantial aspects of the proposal or the call for proposals and does not risk distorting competition or cause discrimination.

11/ The PPP Directorate General may specify prices or payments to bidders in the dialogue.

12/ The PPP Directorate General shall prepare an evaluation report and obtain the approval of the Board prior to award and execution of the Project Agreements in accordance with Articles (29), (32) and (34).

**CHAPTER EIGHT**

**DIRECT NEGOTIATION**

**39. Conditions for use of Direct Negotiations**

2/ The PPP Directorate General may engage in direct negotiation in respect of a Public Private Partnership, upon approval by the Board, only where the following conditions are satisfied:

a) Where there is an urgent need in the provision of the service and engaging in the procedures set forth in Articles (20) to (37) would be impractical, provided that the circumstances giving rise to the urgency where neither foreseeable by the Contracting Authority nor the result of dilatory
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<th>Conduct on its part;</th>
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<td>b) Where the project is of short duration and the anticipated initial investment value does not exceed the amount to be specified by directive.</td>
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<td>c) Where the project involves infrastructure projects related to national defense or national security;</td>
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<td>d) Where there is only one source capable of providing the required service, such as when the provision of the service requires the use of intellectual property, trade secrets or other exclusive rights or assets owned or possessed by a certain Person or Persons;</td>
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<td>e) When an invitation to the prequalification proceeding or a request for proposals has been issued but no applications for qualification or proposals were submitted or all proposals failed to meet the evaluation criteria set forth in the request for proposals and if, in the judgment of the PPP Directorate General, issuing a new invitation to the prequalification proceedings and a new request for proposals would be unlikely to result in a project award within the required time frame;</td>
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<td>f) Where a Public Private Partnership project, of limited value, length or otherwise as specified by directive, is ancillary and the necessary complement to a mining, industrial or other type of investment and must be carried out by the private sponsor of such mining, industrial or other type of investment.</td>
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2/ Except for Project Agreements negotiated pursuant to sub article (1) of this Article, the PPP Directorate General must publish a notice of its intention to commence negotiations in respect of Project Agreements.

40. Procedures for Direct Negotiation

1/ The PPP Directorate General may engage in negotiations with as many Persons as the PPP Directorate General Judges capable of carrying out the project as circumstances permit. The PPP Directorate General may run a prequalification procedure if it deems it appropriate.

2/ The PPP Directorate General shall prepare a description of its needs and requirements, a draft of the Project Agreements and establish evaluation criteria against which proposals shall be evaluated and ranked. This document shall be communicated to the bidder(s).

3/ The Directorate General shall be free to negotiate to all aspects of the project including price and payment terms.

4/ During the negotiations, the PPP Directorate General shall ensure the equal treatment of all bidders. In particular, they shall not provide information in a discriminatory manner which may give some bidders an advantage over others.

5/ The PPP Directorate General may provide for the negotiated procedure to take place in successive stages in order to reduce the number of bidders to be negotiated by applying the evaluation criteria. The specifications communicated to the bidder(s) shall indicate whether recourse has
**CHAPTER NINE**

**UNSOLICITED PROPOSALS**

41. **Admissibility of Unsolicited Proposals**

The PPP Directorate General in consultation with the Contracting Authority may review and accept Unsolicited Proposals Provided that such proposals do not relate to the project that has already received approval by the Board for study or implementation as a PPP project.

42/ **Unsolicited Proposal**

1/ Following receipt and preliminary examination of an Unsolicited Proposal, the PPP Directorate General shall make use reasonable efforts to inform the proponent whether or not the project is considered to be potentially in the public interest.

2/ If the project is considered to be potentially in the public interest, the PPP Directorate General shall invite the proponent to submit as much information on the proposed project as is feasible to allow the Directorate General to make a proper evaluation of the proponent's qualifications and the technical and economic feasibility of the project and to determine whether the project is likely to be successfully implemented in the manner proposed in terms acceptable to the Directorate General.

6/ The PPP Directorate General shall prepare an evaluation report and obtain the approval of the Board prior to award and execution of the Project Agreements in accordance with Articles 29, 32 and 34.
In considering an Unsolicited Proposal, the PPP Directorate General shall respect the intellectual property, trade secrets or other exclusive rights contained in, arising from or referred to in the proposal.

43. Procedure for Unsolicited Proposal

1/ Following receipt of the documents provided in Article 42(2) the PPP Directorate General shall formally decide whether to accept or reject the potential project derived from the Unsolicited Proposal.

2/ If the Unsolicited Proposal is accepted by the PPP Directorate General, the Contracting Authority shall proceed to prepare a feasibility study and submit it to the Board prior to moving to tender.

3/ An Unsolicited Proposal shall be awarded through a competitive selection procedure in accordance with Chapters 5 to 7 and may be awarded through direct negotiations only if it meets the requirements set forth in Article 39.

4/ The proponent shall be invited to participate in any competitive selection procedure initiated in response to its unsolicited proposal. The PPP Directorate General may decide to award the proponent a bonus on its technical and/or financial score during the competitive selection procedure or award the proponent a financial compensation for studies undertaken by the proponent should the proponent not be awarded the project. The bonus point scheme principle or the amount of the financial compensation shall be agreed upon acceptance of the proposal in accordance with Sub-Article (1) of this Article. The identity of the proponent,
the detailed allocation of bonus points or the amount of the potential compensation to the proponent shall be indicated in the competitive selection procedure documents.

CHAPTER TEN
CONTENT AND IMPLEMENTATION OF THE PUBLIC PRIVATE PARTNERSHIP AGREEMENT

44. Establishment of a Project Company
1/ The PPP Directorate General shall require that the successful bidder establish a Project Company incorporated under the laws of the Federal Democratic Republic of Ethiopia whose sole purpose shall be to execute and implement the Public Private Partnership Agreement and other Project Agreements, if any.
2/ The Public Private Partnership Agreement may:
a) establish requirements around the share capital of the Project Company;
b) require approval of changes to by-laws and shareholders’ agreement and other related agreements of the Project Company; and
c) impose restrictions around the transfer of ownership interests, such as shares, in the Project Company, including in accordance with sub-article (3) of this Article.
3/ A Project Company may include a Public Entity as a minority shareholder in the Project Company or its holding.
4/ Except as otherwise provided in the Project Agreement, any ownership interests in the Project Company, such as shares, the transfer of which would result in a change of control of the Project Company shall not be permitted without the consent of the Contracting Authority. The Project Agreement shall set forth the conditions under which consent of the Contracting Authority shall be given.

45. **Duration of Public Private Partnership**

The duration of the Public Private Partnership shall be set forth in the Project Agreements.

46. **Price**

1/ The Private Party shall receive financial compensation by way of:

   a) compensation by or on behalf of the Contracting Authority subject to paragraph (b) of this Article;

   b) tariffs or fees collected by the Private Party from users or consumers of a service provided to them; and/or

   c) a combination of such compensation and such charges or fees.

2/ The Private Party shall have the right to charge, receive or collect tariffs or fees for the use of the facility or its services in accordance with the terms and conditions set forth in the Project Agreements, which shall additionally provide the methods and formulae for the establishment and adjustment of those tariffs or fees.

3/ The cost of delivering a facility or service shall be affordable and provide
Value for Money to the Contracting Authority and end users while enabling the Private Party to maintain its financial integrity, attract capital, operate efficiently and compensate a Private Party for any assumed risk.

47. Government Support

1/ When duly justified and required on the basis of Value for Money and with the prior approval of the Board, or the appropriate authority if required, the Directorate General and/or the Ministry may provide economic support and guarantees to ensure sustainability, implementation and/or financial viability of the project.

2/ This economic support must be initially identified in the request for proposals documentation and must have been recommended by the Board in accordance with Article (9) and (18) of this Proclamation.

3/ The economic support may take any reasonable form, including (but not limited to):

a) Direct payments to the Private Party as a substitute for, or in addition to, tariffs or fees for the use of the facility or its services. These may include availability payments, cash subsidies, capital grants, minimum trafficking or revenue guarantees and minimum off-take or capacity payments and purchase guarantees;

b) Contributions in-kind, including asset transfers and land usage rights;
48. **Ownership of Assets**

Without prejudice to relevant laws, the Project Agreement shall specify, as appropriate, which assets are or shall be public property and which assets are or shall be the private property of the Private Party.

49. **Acquisition of Rights related to the Project Site**

1/ The Contracting Authority or other Public Entity under the terms of the law and the Public Private Partnership Agreement shall make available to the Private Party or, as appropriate, shall assist the Private Party in obtaining such rights related to the project site, including title thereto, as may be necessary for the implementation of the project.

2/ Any compulsory acquisition of land that may be required for the implementation of the project shall be carried out in accordance with the relevant law relating to expropriation.

3/ The Private Party may possess land and use it for the purpose of the implementation of the project. The restrictions in terms and tenure of land...

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c) Payment guarantees, securities, undertaking or binding letters of comfort;

d) Guarantees for the performance of obligations of the Contracting Authority under the Project Agreement.

4/ The economic support to be granted in accordance with sub-article 3 of this Article shall be provided in the Project Agreement.

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c) Payment guarantees, securities, undertaking or binding letters of comfort;

d) Guarantees for the performance of obligations of the Contracting Authority under the Project Agreement.

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and bidding system shall not apply on land that is covered under the project.

4/ The Private Party shall have the right to mortgage the immovable property developed under the project in order to obtain loans from financial institutions.

50. Operation of Infrastructure
1/ The Project Agreements shall set forth, as appropriate, the extent of the Private Party's obligations to ensure:
   a) The modification of the service so as to meet the demand for the service;
   b) The continuity of the service;
   c) The provision of the service under essentially the same conditions for all users; and
   d) The non-discriminatory access of other service providers to any public infrastructure network operated by the Private Party.

2/ The Private Party shall have the right to issue and enforce rules governing the use of the facility, subject to the approval of the Contracting Authority or any other authorized Public Entity.

51. Performance Guarantee
1/ The Project Agreements may specify security to be provided by the Private Party to guarantee the performance of any of its obligations under the Project Agreements.

2/ If such security is required, the Project Agreements shall also set forth:
   a. the requirements with respect to the issuer and the nature, form, amount
52. Security Interests

1/ Subject to any restriction that may be contained in the Project Agreements, the Private Party has the right to create security interests over any of its assets, rights or interests, including those relating to the infrastructure project, as required to secure any financing needed for the project, including, in particular, the following:

a) Security over movable or immovable property owned by the Private Party or its interests in project assets;

b) A pledge of the proceeds of, and receivables owed to the Private Party for, the use of the facility or the service it provides.

2/ The shareholders of the Private Party shall have the right to pledge or create any other security interest in their shares in the Private Party.

3/ No security under Sub-Article (1) of this Article may be created over public property or other property, assets or rights needed for the provision of a Public Service Activity where the creation of such security is prohibited by the law.

53. Financial reporting and audit

1/ A Project Company shall keep proper books of accounts and records in

and other principal terms and conditions of the required security; and

b. The amount and the details of the ways the security is to be submitted or forfeited as the case may be.
relation to the Project and shall be open for scrutiny by the Contracting Authority.

2/ A Project Company shall submit the duly audited financial accounts and any other information as may reasonably be required by the Contracting Authority within six months after the end of each financial year.

54. Assignment of the Project Agreements

1/ Except as otherwise provided in Article (52) and (57) of this Proclamation, the rights and obligations of the Private Party under the project agreements may not be assigned to third parties without written consent of the Contracting Authority.

2/ The Project Agreement shall set forth the conditions under which the Contracting Authority shall give its consent to an assignment of the rights and obligations of the Private Party under the Project Agreement, including the acceptance by the new Private Party of all obligations there under and evidence of the new Private Party's technical and financial capability as necessary for providing the service.

55. Compensation for Specific Changes in Legislation

The Project Agreements may set forth the extent to which the Private Party or the Contracting Authority is entitled to compensation in the event that the costs of the Private Party's performance of its obligations under the Project Agreements has substantially increased or decreased, or that the value that the Private Party receives for such performance has substantially diminished or increased, as compared with the costs and the value of performance originally foreseen, as a result of changes in legislation or regulations specifically
56. Takeover of an Infrastructure Project by the Contracting Authority

1/ Under the circumstances set forth in the Public Private Partnership Agreement, the Contracting Authority has the right to temporarily take over the operation of the facility for the purpose of ensuring the effective and uninterrupted delivery of the service in the event of serious failure by the Private Party to perform its obligations and to rectify the breach within a reasonable period of time after having been given notice by the Contracting Authority to do so.

2/ In the event that a Contracting Authority elects to take over a project under Sub-Article (1) of this Article, the Contracting Authority:
   a) shall collect and pay any revenues that are subject to lien to satisfy any obligation;
   b) may develop and operate the project, impose user levies and comply with any service contract existing; and
   c) may solicit proposals, as appropriate, for the construction, maintenance or operation of the project.

57. Substitution of the Private Party

The Contracting Authority may agree with the entities extending financing for an infrastructure project and the Private Party to provide for the substitution of the Private Party by a new entity or Person appointed to perform under the existing Project Agreements upon serious breach by the Private Party or other events that
could otherwise justify the termination of the
Project Agreements or similar circumstances.

58. **Termination of the Project Agreements**
The directive may prescribe events that
may cause the termination of the Project
Agreement.

59. **Compensation upon Termination of the
Project Agreements**
The Project Agreement shall stipulate how
compensation due to either party is
calculated in the event of termination of
the Project Agreement, and where
appropriate, for compensation for the fair
value of works performed under the
Project Agreement, costs incurred or losses
sustained by either party, including, as
appropriate, lost profits.

60. **Governing Law**
The Project Agreements are governed by
the laws of the Federal Democratic
Republic of Ethiopia.

61. **Disputes between the Contracting
Authority and the Private Party**
1/ Any disputes between the Contracting
Authority and the Private Party shall be
settled through the dispute settlement
mechanism agreed by the parties in the
Project Agreement.

2/ Notwithstanding any contrary provision
in any existing law, the Project
Agreements may provide for settlement
of disputes through arbitration or any
other forms of alternative dispute
resolution mechanism.

62. **Disputes involving Customers or Users
of the Infrastructure**
Where the Private Party provide services to the public or operates Infrastructure Facilities accessible to the public, the Contracting Authority may require the Private Party to establish simplified and efficient mechanism for handling claims submitted by its customers or users of the Infrastructure Facility.

63. **Other Disputes**

1/ The Private Party and its shareholders shall be free to choose the appropriate mechanism for settling disputes among themselves.

2/ The Private Party shall be free to agree on the appropriate mechanism for settling disputes between itself and its lenders, contractors, suppliers and other business partners.

**CHAPTER ELEVEN**

**MISCELLANEOUS PROVISIONS**

64. **Complaints**

The complaints and review mechanism provided under the Ethiopian Federal Government Procurement and Property Administration Proclamation, as they may be amended or replaced, shall be applicable mutatis mutandis to this Proclamation. Directives issued in accordance with this Proclamation may provide for an adaptation of these articles as to apply to Public Private Partnership projects.

65. **Power to issue Regulation and Directives**

1/ The Council of Ministers may issue regulation for the implementation of this Proclamation.

2/ The Ministry shall issue directives enabling the realization of the objectives of this Proclamation and for the proper implementation of the directives issued in
66. **Repealed and Non-Applicable Laws**

1/ Except for specific provisions referred to in this Proclamation, the provisions of the Ethiopian Federal Government Procurement and Property Administration Proclamation, as may be amended, are inapplicable to Public Private Partnership projects.

2/ No law, regulation, directive or practices inconsistent with this Proclamation shall have effect with respect to matters provided for in this Proclamation.

67. **Transitory Provisions**

This Proclamation shall not apply to existing public private partnership projects where contracts have already been concluded or are under negotiation.

68. **Effective Date**

This Proclamation shall enter into force on the date of its publication in the Federal Negarit Gazette.

Done at Addis Ababa, this 22nd day of February, 2018.

MULATU TESHOME (DR.)

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
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