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GHANA'S GOVERNMENT CONTRACT SYSTEM: A COMPARATIVE ANALYSIS OF THE SUPERVISORY REGIMES

INTRODUCTION.

The regulatory regime for securing Government of Ghana (the “**Government**”) contracts encompass the processes and procedures by which Government entities procure goods, services, and infrastructural projects from private sector vendors and contractors. It involves a complex framework of regulations, guidelines, and oversight mechanisms designed to ensure transparency, fairness, and efficiency in the allocation of public funds and resources.

Contracting with the Government or any Government institution may be concluded under two supervisory regimes namely: (a) the regime under the Public Procurement Act, 2003 (Act 633) (the “**Public Procurement Act**”); and (b) the regime under the Public Private Partnership Act, 2020 (Act 1039) (the “**PPP Act**”). The basic difference between the two regimes is that the Public Procurement Act applies to contracts with private sector businesses for the purchase or supply of goods and services while the PPP Act applies to contracts with private sector partners for the provision of infrastructure like roads, electricity, etc.

In this write up, we discuss the differences between both regimes in terms of their;

1. application;
2. contracting authorities;
3. applicable contracts;
4. regulators; and
5. approving authorities.

COMPARATIVE ANALYSIS

APPLICATION

PUBLIC PROCUREMENT ACT	PPP ACT
<p>The Public Procurement Act applies to:¹</p> <ol style="list-style-type: none">a. the procurement of goods, works and services, financed in whole or in part with public funds;b. processes and procedure for the procurement of goods, works and services including the description, requirements, invitations and selection of bids and awards;c. the disposal of public stores and equipment; andd. procurement with funds or loans taken or guaranteed by the Government or with foreign aid funds	<p>The PPP Act, on the other hand, applies to the following:²</p> <ol style="list-style-type: none">a. partnership arrangements between the Government and a private sector partner for the provision of infrastructure and related services; andb. the establishment of efficient institutional arrangements for the identification, structuring, procurement, implementation and monitoring of partnership projects.

¹ Public Procurement Act, Section 14(1).

² PPP Act, Section 2.

CONTRACTING AUTHORITIES

PUBLIC PROCUREMENT ACT	PPP ACT
<p>Government bodies required to adopt the Public Procurement Act in acquiring goods and services include:³</p> <ul style="list-style-type: none"> a. Central Management Agencies (<i>being the Public Services Commission, Office of the President and Office of the Head of Civil Service</i>); b. Government Ministries, Departments and Agencies; c. Subvented Agencies (<i>being an Agency set up by Government to provide public services</i>); d. Governance Institutions; e. State Owned Enterprises to the extent that they utilise public funds; f. Public Universities, Schools, Colleges; g. Public Hospitals; h. Bank of Ghana and Public Financial Institutions; and i. Building Societies which are wholly owned by the Government or in which the Government has majority interest. 	<p>The PPP Act applies to all Government bodies as following:⁴</p> <ul style="list-style-type: none"> a. the Arms of Government (Executive, Legislature and Judiciary); b. Constitutional Bodies; c. Ministries, Departments, Agencies and Local Government Authorities; d. Public Service; e. Autonomous Agencies; f. Statutory Bodies; g. State Owned Enterprises and Public Corporations; and h. an entity owned by any of the entities above.

APPLICABLE CONTRACTS

PUBLIC PROCUREMENT ACT	PPP ACT
<p>The Public Procurement Act applies to contracts with suppliers, contractors or consultants.⁵</p> <p>Under such contracts, there is no transfer of the financial and management obligations or associated risks to the suppliers, contractors or consultants.</p>	<p>The PPP Act applies to infrastructural contracts that require the transfer of finance and management obligations as well as risks to the private sector partner.⁶</p> <p>Under such contracts, the private sector partner may finance the infrastructure project, perform all or part of the services of the Government and be responsible for associated risks.</p>

³ Public Procurement Act, Section 14(2).

⁴ PPP Act, Section 88.

⁵ Public Procurement Act, Section 98.

⁶ PPP Act, Section 88.

REGULATORS

PUBLIC PROCUREMENT ACT	PPP ACT
The Public Procurement Authority is the regulator of procurements under the Public Procurement Act. ⁷	PPP Projects are regulated by the PPP Committee established under the Ministry of Finance. ⁸

APPROVING AUTHORITIES

PUBLIC PROCUREMENT ACT	PPP ACT
<p>Under the Public Procurement Act, approval of contracts shall be obtained from the:</p> <ol style="list-style-type: none"> a. Tender Review Board set up by Government;⁹ b. Tender Committee created under each institution;¹⁰ and c. Public Procurement Authority for single-sourcing procurements.¹¹ 	<p>Approval of contracts under the PPP Act, however, depends on the value of capital or the type of contract as follows:¹²</p> <ol style="list-style-type: none"> a. approval by Parliament for partnership projects that require tax waivers and the grant or issuance of a loan by the Government; b. approval by Cabinet for partnership projects with an estimated capital cost exceeding Two Hundred Million United States Dollars (USD200m); c. approval by the PPP Committee for projects with an estimated value of up to Two Hundred Million United States Dollars (USD200m); and d. approval by the General Assembly of the Metropolitan, Municipal and District Assemblies for local Government authority for projects with such institutions with estimated value below Two Hundred Million United States Dollars (USD200m).

CONCLUSION

Having a clear grasp of the distinctions between public procurements and public private partnerships is essential for anyone looking to do business with the Ghanaian Government. By understanding which law applies to which type of project, who is in charge, and what rules to follow, businesses and investors can navigate Government contracts effectively. Stakeholders can also ensure that projects are awarded fairly, resources are utilized efficiently, and public interests are protected.

⁷ Public Procurement Act, Section 26.

⁸ PPP Act, Section 8.

⁹ Public Procurement Act, Sections 17 (c) and 20 (2) (b).

¹⁰ Ibid., Section 21(2) and (3).

¹¹ Ibid., Section 40(1).

¹² PPP Act, First Schedule.