

Public-Private Partnerships Statement

Given the dire situation of many government budgets, governments at all levels are looking for innovative alternatives to provide services, maintain existing infrastructure, and finance new public works. Puerto Rico's Public-Partnerships Act of 2009 offers a recent framework to do that. This Act authorizes all departments, agencies, public corporations, and instrumentalities, and the legislative and judicial branches of the Government of Puerto Rico to establish Public-Private Partnerships. Such partnerships couple the resources and efforts of the public sector with resources of the private sector by means of a joint investment that results in the benefit of both parties.

This Act generally defines Public-Private Partnerships as contracts between a government entity and one or more people to delegate operations, functions, services, or responsibilities of any government entity, or to design, develop, finance, maintain or operate one or more facilities, or any combination thereof. It spells out the criteria to set up Public-Private Partnerships and defines the terms of Public-Private Partnership contracts. For example, the Act sanctions the following contract arrangements: design / build, design / build / operate, design / build / finance / operate, design / build / transfer / operate, design / build / operate / transfer, turnkey contract, long-term lease contract, surface right contract, administrative grant contract, joint venture contract, long-term administration and operation contract, and any other kind of contract that separates or combines the design, building, financing, operation or maintenance phases of a project.

Such contracts can involve:

- the development, construction or operation of sanitary landfill systems, including methane recovery operations, as well as facilities for the management and disposal of non-hazardous and hazardous solid waste, such as plants for recycling, composting, and converting waste into energy;
- the construction, operation or maintenance of reservoirs and dams, including any infrastructure necessary for their operation to produce, treat, and distribute water and any infrastructure for the production of hydroelectric energy and for sewage and potable water treatment plants;
- the construction, operation or maintenance of existing or new plants for the production of energy that use alternate fuels other than oil or that use renewable energy sources, such as wind, solar and oceanic-thermal energy, among others, as well as the transmission of energy of any kind;
- the construction, operation or maintenance of transportation systems of any kind, thoroughfare system or related infrastructure, including maritime or air transportation;
- the construction, operation or maintenance of educational, health, security, correctional and rehabilitation facilities;
- the construction, operation or maintenance of affordable housing projects;
- the construction, operation or maintenance of sports, recreational, tourist and cultural entertainment facilities;
- the construction, operation or maintenance of wired or wireless communication networks for communications infrastructure of any kind;
- the design, construction, operation or maintenance of high-technology, informatics and automation systems, or
- the construction, operation or maintenance of any kind of activity or facility or service as may be identified from time to time as a priority project through legislation.

This Act creates a Public-Private Partnership Authority as an affiliate of the Government Development Bank for Puerto Rico and defines the Authority's powers to oversee public-private partnerships. Generally, the Authority can:

- evaluate and select the government entities, functions, services, and facilities for partnerships;
- analyze the feasibility, desirability and convenience of partnerships to determine whether it is advisable to such partnerships;
- create regulations and procedures to establishment partnerships;
- negotiate partnership contracts;
- post public notice of pending partnerships;
- co-supervise approved partnerships;
- render a contract ineffective, and
- take over from a contractor and carry out directly or contract a third party on an provisional or temporary basis to develop, operate, maintain, and administer a facility or to provide a service or discharge a function if the Authority determines in its reasonable discretion that the contractor's ongoing performance of such tasks poses a risk to the public health and safety or to the environment.

The Authority uses Partnership Committees to:

- approve documents required to evaluate and select partnerships;
- evaluate potential contractors and pre-qualify those suitable to participate in a partnership;
- evaluate and select partnership proposals;
- engage in or supervise the negotiation of the terms and conditions of partnership contracts;
- contract with consultants to help the committee and Authority discharge their functions, and
- prepare reports about the procedures leading to partnerships.

The reports include information about the government objectives and social welfare goals of partnerships, details about qualifying suitable partners, requests for proposals, and the reasons why partners are chosen. These reports must be submitted to the governor and the legislature, and be published on the Internet.

The Act specifies that any labor contractual clause that prohibits the transfer of functions, services, facilities or employees to a Public-Private Partnership shall be neither valid nor effective under certain circumstances.

The legislation provides for the acceptance and use of federal and local funds to further the purposes of the Act and it authorizes granting certain tax exemptions and benefits to partners in Public-Private Partnerships.

The Act directs all government entities to submit to the Authority proposals for partnership projects in connection with any function, service or facility for which the government entities are responsible. The Authority must publish these proposals on a website and in a newspaper of general circulation.

Before commencing a partnership, the Authority, with the assistance of the Bank, must study the desirability and convenience of a proposal to determine whether establishing such partnership is advisable. The scope of such study depends on the kind of project or function, service or facility under review. The Authority shall consider:

- the essential characteristics of the function, facility or service involved;
- the social impacts of the proposed partnership;
- operational and technological risks involved in the proposed partnership;

- the projected investment and operating costs;
- potential partnership profitability;
- federal funding;
- environmental effects, and
- local business participation.

The Act requires the Authority to publish such studies on its website and in a newspaper of general circulation.

This Act establishes the requirements to be a non-governmental partner under such contracts and the criteria required to get approved. Generally, anyone who wishes to be considered as a non-government partner must:

- be authorized to do business in the Commonwealth of Puerto Rico;
- have available such corporate or equity capital or securities or other financial resources that, in the judgment of the Authority and the Partnership Committee, are necessary for the proper operation of the Partnership;
- have a good reputation and the managerial, organizational and technical capacities to develop and administer a partnership, and
- certify that they or their company has never been formally convicted for acts of corruption.

The bill requires partnerships approved by the Authority to be presented to the governor or the governor's delegate for final approval. The governor or their delegate has 30 days to approve or deny a partnership in writing. If the governor or delegate does not approve a partnership during that term, the partnership is deemed denied.

Approved partnership contracts must contain:

- a definition and description of the Services to be rendered, the Function to be discharged or the Facility to be developed or improved by the selected Proponent;
- in the case of new facilities or repairs, replacements or improvements to existing facilities, the plan for the financing, development, design, building, rebuilding, repair, replacement, improvement, maintenance, operation or administration of the facility;
- the term of the partnership;
- the rights the government and non-government partners have to income from a function, service or facility under the partnership or any real property included as part of the partnership;
- the contractual rights and the mechanisms available to the partnering government entity to ensure compliance by the selected non-government partner with the conditions of the partnership contract, including but not limited to compliance with quality standards set for the function or service under the partnership or adequate maintenance of the facility under the partnership or compliance with the approved design and other standards for building, repair or improvement projects or to ascertain compliance by the non-government partner with its obligations under the contract;
- the rights of partners to fix, impose and charge fees to citizens or partnering government entity for rendering a service or discharging a function or for the use of a facility;
- mechanisms and procedures to be used by the partnering government entity to resolve and adjudicate controversies and complaints from the citizens about the service, function or facility delivered through the partnership;
- causes for terminating the partnership contract;
- nonbinding informal proceedings to hear allegations by the parties as to breach or interpretation of contract;
- procedures and rules for amending or assigning the partnership contract;

- the rights concerning inspections by the Authority and the partnering government entity to inspect facilities addressed by the partnership contract;
- requirements for obtaining and maintaining all such insurance policies as required by law;
- requirements for non-government partners to periodically file audited financial statements with the Authority or the partnering government entity or with such other entity as the parties may agree;
- circumstances under which a partnership contract can be modified, and
- provisions for breach of contract or non-compliance and remedies to such instances, including penalties and fines; Partnership Contract.

The Act enables the Government Development Bank for Puerto Rico to issue sureties or other mechanisms to ensure compliance by Partnering Government Entities with their obligations under the Public-Private Partnership contracts. It authorizes lawsuits against the Commonwealth of Puerto Rico based on a Public-Private Partnership Contract and authorizes the transfer of rights and the constitution of liens under the Public-Private Partnership contracts.

Submitted as:

Puerto Rico

[SB 469](#)

Status: Enacted into law in 2009.