BENUE STATE PUBLIC-PRIVATE PARTNERSHIPS FRAMEWORK

Policy Manual and Guidelines

2024

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Acronyms

BLT	**Build, Lease, Transfer**
BENIPA	Benue Investment Promotion Agency
BOO	Build, Own, Operate
BOQ	Bill of Quantities
BOT	Build, Operate, Transfer
BSPPC	Benue State Public Procurement Commission
CP	Conditions Precedent
CPI	Consumer Price Index
DBFOT	Design, Build, Finance, Operate, and Transfer
DBO	Design, Build, Operate
DSRA	Debt Service Reserve Account
EIA	Environmental Impact Assessment
EOI	Expression of Interest
FBC	Full Business Case
FC	Financial Close
FCT	Federal Capital Territory
FID	Final Investment Decision
FM	Financial Model
FSA	Fuel Supply Agreement
GCC	General Conditions of Contract
GDP	Gross Domestic Product
IA	Independent Auditor
ICA	Independent Consultant Agreement
IFRS	International Financial Reporting Standards
IRR	Internal Rate of Return
KPI	Key Performance Indicator
KYC	Know Your Customer
LoI	Letter of Intent
LOI	Letter of Intent
MDA	Ministry, Department, or Agency
NDA	Non-Disclosure Agreement
NDIC	Nigeria Deposit Insurance Corporation
NDPR	National Data Protection Regulation
NIT	Notice Inviting Tenders
NIWA	National Inland Waterways Authority
OBC	Outline Business Case
PDT	Project Development Team
PIM	Project Information Memorandum
PPA	Power Purchase Agreement
PPA	Public Procurement Act
PPC	Public Procurement Committee
PPP	Public-Private Partnership
PSA	Project Service Agreement
RFP	Request for Proposals
RFQ	Request for Qualification
ROI	Return on Investment
SLA	Service Level Agreement
SPV	Special Purpose Vehicle
TA	Transaction Advisor
TSA	Treasury Single Account
VfM	Value for Money

PART I:

1 Introduction

1.1 Background and Purpose

Public-Private Partnership (PPP) framework is defined as the established procedures, rules, and institutional responsibilities that guide government selection, implementation, and management of PPP projects. Through defining these procedures and rules, effective PPP practices can be institutionalized within the government, thereby limiting and managing risks while ensuring consistency. The delineation of institutional responsibilities within a PPP framework holds entities accountable for their roles in the process. A robust PPP framework communicates to the market how projects will be developed and how bids will be evaluated, leading to more competitive procurement and enhanced value for the public.

PPPs can be executed on an ad-hoc basis without a specific framework, they are inherently complex, involving numerous stakeholders with often conflicting objectives. Thus, a well-structured PPP framework is crucial for aligning the interests of both public and private sectors. It establishes rules that prevent impropriety and promote public interest by ensuring quality projects are completed efficiently.

A sound PPP framework aims to ensure that appropriate projects are selected as PPPs and that they are developed, delivered, and managed in a structured, transparent, and efficient manner. It also minimizes the risks associated with not achieving Value for Money (VfM) in PPP projects. Given the multiple conflicting interests involved, improper risk allocation can lead to unforeseen costs for the public sector. Additionally, failure to consider market conditions during procurement may hinder competitiveness, while unmonitored contingent liabilities can result in unexpected fiscal obligations for the government.

The main benefits of having a PPP framework include:

- Enhancing Government Capability: Various agencies may develop PPP projects; however, most are not experts in this area. A standardized framework reduces learning costs and mitigates risks associated with mistakes.
- Reconciling Conflicting Objectives: A PPP framework facilitates cooperation among diverse government agencies and private firms with competing objectives, improving stakeholder alignment and program longevity.
- Limiting Whole-of-Government Risk: Sector-specific agencies may overlook broader risks affecting government reputation and fiscal stability. A comprehensive framework incorporates processes to identify and mitigate these risks.
- Generating Market Interest: A competitive procurement process is vital for successful PPPs. An effective framework communicates the quality of the program to potential investors, enhancing project attractiveness and reducing perceived investment risk.
- Facilitating Oversight: Independent oversight is essential for any significant government initiative. Clear processes and decision-making criteria enhance accountability and allow evaluators to assess compliance with established frameworks

A well-defined PPP framework guides governments and private partners through each stage of developing a PPP project, ensuring alignment with expectations. Key components include:

- Procedures: Detailed steps outlining who is responsible for what actions at each stage of the project lifecycle.
- Decision Criteria: Explicit criteria that guide decision-making processes at various phases of project development.
- Institutional Responsibilities: Clear delineation of tasks among entities involved in the PPP process, ensuring accountability.

A comprehensive framework also addresses fiscal commitment management and establishes oversight mechanisms.

Governments should adopt a structured approach to leverage the PPP model effectively for infrastructure development. A well-articulated PPP program encompasses strategies for utilizing PPPs to enhance service provision across various sectors. Objectives may include:

- Increasing investment options for infrastructure financing.
- Achieving Value for Money in public service delivery.
- Enhancing accountability within infrastructure provision.
- Leveraging private sector innovation and efficiency.
- Ensuring sustainable long-term delivery of PPPs amidst changing stakeholder dynamics.
- Stimulating national growth and development.

The development of a robust framework is justified when multiple projects are anticipated; however, single-project endeavours may not necessitate extensive codification.

Investment in social and economic infrastructure is crucial to accelerating sustainable, balanced economic growth and inclusive social development in Benue State. In the face of budgetary constraints and with the expectation of benefitting from substantial efficiency gains through the participation of the private sector, the Benue State government, like other subnationals in Nigeria and elsewhere, is turning increasingly to public-private partnerships (PPPs) as one way to accelerate infrastructure investment, access private financing, and improve service delivery.

Recognising the importance of clear, consistent, and transparent processes for implementing PPP projects, the Benue State Government has prioritised the development of this PPP Manual. The manual serves as a comprehensive guide for all stakeholders involved in PPP projects, including government officials, private sector partners, financial institutions, and development agencies. It provides detailed procedures, guidelines, and frameworks essential for the successful identification, development, procurement, implementation, and monitoring of PPP projects in the State.

1.2 Application and Scope of the Framework

The PPP Framework applies to all government entities within Benue State involved in the identification, preparation, and execution of PPP projects, as well as to private sector entities interested in partnering with the State on infrastructure projects. It covers the spectrum of PPP activities across various sectors, including but not limited to transportation, energy, health, education, water, housing, and information technology.

The scope of the framework encompasses the following:

i. The policy statement capturing the Benue State's commitment and motivation in attracting private capital investment in infrastructure and public services into the state.
ii. Project Identification and Development: Guidance for public institutions on identifying potential PPP projects, conducting feasibility studies, and developing business cases that ensure the viability of proposed projects.
iii. Procurement Process: Detailed steps for competitive procurement, including pre-qualification, bidding, contract negotiation, and the selection of private partners.
iv. Contract Management and Implementation: Guidelines for managing PPP contracts, monitoring performance, resolving disputes, and ensuring compliance with the terms and conditions of the PPP agreement.
v. Financing and Risk Management: Frameworks for financial structuring, risk assessment, and allocation, detailing the roles of financial institutions, public financing tools, and private investment mechanisms in the successful delivery of PPP projects.
vi. Monitoring and Evaluation: Procedures for tracking project performance against key performance indicators (KPIs) and evaluating project outcomes post-implementation.

vii. Legal and Regulatory Framework: An overview of the legal, policy, and regulatory context within which PPP projects must operate in Benue State, including alignment with national PPP guidelines and state-specific legislation.

1.3 Structure of the Framework

This Framework is organised into three parts, each addressing critical aspects of the PPP program and processes. This structure ensures that the framework is comprehensive, providing stakeholders with a clear policy statement and a step-by-step guide through the lifecycle of a PPP project—from inception to handback. Each part is designed to address different phases of PPP project development, delivery, financing, and management.

PART I: Policy Statement & Context for PPPs in Benue State

This section provides the foundation for understanding PPPs within Benue State. It offers insights into the conceptual framework, definitions, legal and institutional frameworks, and the rationale for adopting PPPs. The section also outlines the limitations, misconceptions, and key delivery models for PPPs.

- Section 1: Introduction, including the background, purpose, scope, and structure of the manual.
- Section 2: Definitions and conceptual framework, with an overview of PPPs, their characteristics, and the distinction between PPPs and traditional procurement.
- Section 3: The enabling legal and institutional frameworks that guide PPPs in Benue State, including relevant national and state laws.

PART II: PPP Project Development & Delivery Lifecycle

This part details the step-by-step procedures for developing and implementing PPP projects from the identification of potential PPP projects to their procurement, implementation, and eventual hand-back or termination.

- Section 4: Project inception, including identification, pre-feasibility assessment, and the formation of a Project Development Team.
- Section 5: Feasibility studies and business case development, detailing the importance of an Outline Business Case (OBC) and the role of a Transaction Advisor.
- Section 6: Procurement processes, including documentation, competitive bidding, and the selection of private partners.
- Section 7: Project implementation, focusing on contract management, monitoring frameworks, and modifications.
- (2): Project hand-back or termination, including critical considerations for asset handback and contract expiry.

PART III: PPP Project Financing, Contract Management, and Dealing with Unsolicited Proposals

This section addresses the financial aspects of PPP projects, including bankability, financing sources, and milestones. It also covers contract management practices and the handling of unsolicited proposals.

- Section 9: PPP project financing, focusing on financial milestones, key indicators, and sources of finance.

- Section 10: Contract management frameworks, monitoring, and enforcement mechanisms.
- Section 11: Dealing with unsolicited proposals, offering guidelines and approaches to handling proposals outside the formal bidding process.

The annexures provide additional resources, templates, and tools to assist stakeholders throughout the PPP process. These include forms for project assessment, risk identification, concept notes, and codes of conduct for evaluation panels, amongst others.

2. PPP Policy Statement and Conceptual Framework

2.1 Policy Statement

The Government of Benue State is resolutely committed to fostering sustainable economic growth and development through the strategic implementation of Public-Private Partnerships (PPPs). This effort represents a collaborative approach between the public and private sectors, aimed at mobilizing private sector investment, expertise, and innovation to effectively deliver critical infrastructure and public services that enhance the quality of life for all citizens.

In alignment with the State's development goals and the objectives outlined in the Benue State PPP framework, the following robust policy objectives have been established:

i. Promote Infrastructure Development: By actively engaging with the private sector, Benue State aims to deliver high-quality infrastructure projects that not only support economic activities but also enhance public services and improve living standards across Benue State.

ii. Ensure Value for Money (VfM): Each PPP project will undergo rigorous assessment and structuring to guarantee optimal value for public funds. This approach ensures that investments contribute to long-term economic sustainability while maximizing cost-effectiveness.

iii. Enhance Transparency and Accountability: The Benue State Government is dedicated to maintaining the highest standards of governance throughout the PPP process. Our framework mandates transparency in project selection, procurement, implementation, and monitoring, thereby upholding principles of accountability and serving the public interest.

iv. Foster Economic and Social Development: PPP projects will align with broader economic development objectives, such as job creation, poverty alleviation, and social inclusion. The State will focus on key sectors like transportation, healthcare, education, energy, and housing amongst others to promote comprehensive development.

v. Risk Sharing and Innovation: The framework ensures a balanced distribution of risks between public and private sectors in PPP infrastructure projects. This encourages innovative solutions from private partners while safeguarding public interests.

vi. Strengthen Capacity and Regulatory Oversight: The Benue State Government will enhance institutional capacity and regulatory mechanisms to ensure successful execution and management of PPP projects. This will create a stable environment conducive to private sector participation.

A well-structured PPP framework is essential for ensuring that projects are selected, developed, delivered, and managed in a transparent and efficient manner. This framework will limit government risk while ensuring consistency across projects. Key components include:

a. Defining specific objectives for both the overall PPP program and individual projects to align public and private interests effectively.

b. Establishing procedures for project identification, appraisal, procurement, contract management, and oversight to facilitate efficient project delivery.

c. Clearly delineating roles among government agencies to ensure accountability throughout the PPP lifecycle.

d. Implementing sound fiscal management practices to monitor commitments associated with PPPs, thereby minimizing unexpected financial liabilities.

Through this enhanced PPP framework, Benue State reaffirms its commitment to building a prosperous and inclusive future by delivering transformative projects that meet the aspirations of its people. This is a clear invitation to both local and international investors to partner with the state in realizing this vision for sustainable development.

2.2 Public Private Partnerships — An Overview

The term PPP describes a long-term contractual arrangement in which a public authority and private partner collaborate in delivering public infrastructure assets and related services. The public authority makes performance-based payments to the private partner linked to the availability and/or use of the asset and the provision of the services. Alternatively, the authority grants the private partner the right to generate revenues from the provision of the services (e.g. tolls from users of a bridge). Under this contract, the private partner bears significant risks and management responsibilities.

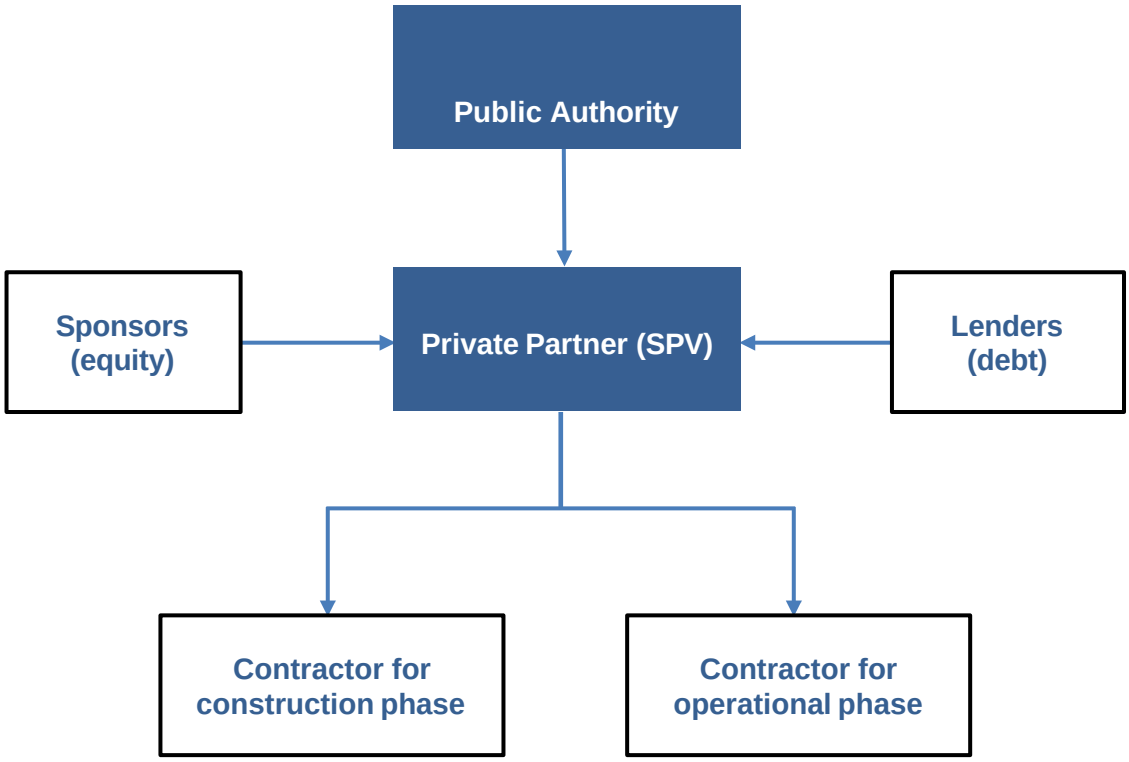
The types of PPP contract that are most often used are for projects that either have an availability-based payment arrangement (sometimes called a *government-pay* PPP) or rely on end user payments (i.e. *a* concession, such as a toll road), or involve both these payment types in a combined form (i.e. a mixed payment PPP).

The common features of a PPP contract are listed in Box 1 below and the typical structure of a PPP is described in Figure 2.

Box 1 – Common features of a PPP

- a long-term contract between a public authority (the **public authority**) and a private sector company (the **private partner**, usually established as a special purpose vehicle or **SPV**) set up to deliver the project and a public service;
- a focus on the specification of project service outputs rather than project inputs, taking account of the whole-life requirements of the project;
- the transfer of project risks to the private partner, notably the designing, building, operating and/or financing the project;
- the use of private financing (most often project finance) from a lender to underpin the risks transferred to the private partner;
- the remuneration of the private partner either by service payments from the end users (in user-pay projects or concessions) or through payments from the public authority (availability-based projects) or a combination of both;
- in an availability-based PPP, the use of a systematic means of making financial deductions from the service payment to ensure the delivery of the service to the agreed quality and quantity.

Figure 2 – Typical structure of a PPP project



2.1.1 Objectives of PPPs

The primary motivation to use a PPP procurement approach in the delivery of a project is to achieve an outcome that represents good *value for money* (or *VfM*). Common motivations for using a PPP approach to delivering a project – and getting VfM – are listed in Box 2 below.

A public authority should be able to identify its primary motivations from this list if it is to be satisfied that there is a strong, positive rationale for procuring a project as a PPP.

Box 2 – Common motivations for using PPP to deliver projects for VfM

- Better long-term maintenance of assets
- Better quality and consistency of service delivery
- Better long-term management of risks
- Reduced interface risks through integration of design, construction and service delivery obligations
- Greater visibility and certainty of whole-life costs
- Greater certainty of on-time delivery of assets within the budget
- Opportunity for private sector innovation in design, construction and service delivery solutions

- Access to skills from the private sector that are not available in the public sector
- Opportunity for the public sector to focus on its core public service activities
- Access to third party (e.g. financier) scrutiny of project delivery proposals;
- Reform of current public sector practices (e.g. in procurement, project management, asset management)
- Mobilising private sector capital to enable additional and /or earlier service delivery
- More effective revenue generation through improved asset utilisation
- Matching of long-term benefits of infrastructure to long-term funding

2.1.2 Roles of the Public and Private Sectors

PPPs are designed to allocate roles and responsibilities between the public and private sectors. The public sector typically contributes by planning and structuring the project, which may involve providing capital investment, transferring assets, or making other in-kind contributions. Governments also ensure that the project adheres to social responsibility standards, environmental protection, regulatory requirements, and provides political support.

During the operational phase, the public sector is responsible for monitoring the performance of the private partner and enforcing contract terms. On the other hand, the private sector contributes its commercial expertise, management capabilities, operational knowledge, and innovation to efficiently run the project. The private sector also bears significant project-related risks and is often responsible for a large share of the capital costs and direct project implementation.

2.1.3 Value for Money (VfM)

The best Value for Money (VfM) in public service delivery or in public procurement, involves a comparison of which option, or bid provides the highest ratio of net benefits to overall cost. It allows a comparison of different means of delivering the project objectives and their expected economic and social impacts alongside their expected costs. This is important in PPPs where different options may entail varying levels of risk and quality outcomes. Traditional procurement usually selects bids based on the lowest cost and assumes that the outcomes are the same for all bids. The decision of whether to procure services through PPP or traditional procurement should also be based on an assessment of which option is likely to result in the best VfM. Since this may result in a better-quality outcome, the VfM solution or bid must be affordable at all key stages in the project appraisal and procurement process.

See Annexure 1 for a detailed approach and methodology for VfM Analysis

2.3 Characteristics of the PPP Project

2.3.1. Major Operational Characteristics

Long-Term Contracts

PPP projects requiring investment are generally long-term in nature, and typically range from 10 (ten) to 30 (thirty) years or more. The tenure of the contract typically aligns with the economic life of the asset. The actual tenure is typically a product of negotiations between the Contracting Authority and private sector parties; and is informed by the project financial model, which assesses the point where the private sector is able to recover the costs for developing and operating the asset plus an acceptable risk-adjusted return on its investment.

Special Purpose Vehicle for Joint Venture Projects

Given the capital-intensive nature of PPP projects and the risks associated with them, private sponsors of the project often form a separate independent PPP Company, often under a Special Purpose Vehicle (SPV) structure.

The reasoning behind SPVs is that the risks associated with a project are unique to that project and therefore should be limited to that project. In addition, when a government tender is issued, interested private sector parties often pool skills and finances in a consortium that will form the basis of the SPV; so the implementing partners and the arrangements established for the delivery of the project are often also unique to that project.

The SPV also allows the private sector consortium to raise limited recourse funding restricted to the SPV, thus protecting the parent companies from the risks arising from specific project risks, such as project failure.

Allocation of Risks

One key factor to achieving successful implementation of a PPP project is the optimal sharing of risks and responsibilities between the public and private sectors.

The basic principle behind risk transfer in PPPs is that the public authority should transfer risks to the private sector only if the private sector can handle the risk efficiently and cost-effectively.

In other words, if the private sector seeks to charge more for taking on the risk than the public authority could efficiently manage it for, it may be better to retain the risk in the public sector.

Project risks can be classified under a number of categories, e.g.:

- **Construction risks**: The risk that a project may not be completed on time, on-budget and to the required specification.
- **Demand risk:** The risk that the project is not used to the extent projected.
- **Revenue risk:** The risk that a project's revenue is lower than projected.
- **Operating risk:** The risk that the project does not perform as expected or that operation and maintenance (O&M) costs are higher than projected.
- **Macro-economic risk:** Risks such as currency exchange-rate movements (where a project has revenues in one currency but debt in another), interest-rate fluctuations, or inflation.
- **Regulatory risk:** The risk that there may be a change in law or regulations that affect the project's viability.
- **Political risk:** The risk of unanticipated government interference with the project, of civil unrest or of war.

The guiding principle adopted in identifying and allocating responsibilities is that the party best able to manage a particular activity should be responsible for the risks associated with that activity and receive the associated rewards or losses.

Lenders to the project company are typically conservative about risk and oftenprefer that the SPV transfers risks to other parties. For example, construction risk is usually transferred by the project company to an EPC contractor which may or may not be a shareholder in the SPV. This is typically done through a turnkey contract, under which the EPC contractor quotes a fixed price for

design and construction and pays penalties if the project is not completed on time or to specification.

Some risks are not so easily transferred this way, e.g. the demand and revenue risks for a toll road, and so may be retained by the project company, who may in turn need to obtain guarantees on the minimum level of traffic using the toll road or similar support to reduce the risk.

A project company's inability to satisfy its lenders of the bankability of its project – i.e. that appropriate measures have been put in place to effectively manage all the risks that can undermine the delivery of the project outcomes, and the realisation of the revenues required to service their obligations to lenders, can lead to a lack of expected funding or significant delays in achieving 'Financial Close'.

The Contracting Authority will therefore need to take these factors into consideration in the selection of potential private counterparties and their expectations of the risks than can effectively be transferred to potential private sector partners.

Output Standards and Specifications

The focus on defining output specifications, rather than design and technical specifications is a key distinction between PPPs and conventional public procurement as it tends to serve as a critical mechanism for facilitating innovation and competitive tension in PPP projects.

Output specifications detail 'what' needs to be achieved, but not 'how' it is to be achieved. In response, private sector parties may provide costed (whole life costs) solutions for how this can be achieved.

Producing effective output specifications involves defining the 'ends' without being prescriptive about the 'means' for meeting these outputs.

The Contracting Authority concerned clearly states the public service requirements for the facilities and services, while leaving room for the private sector to produce innovative, cost-effective solutions.

Under such contractual arrangements, the public agency agrees to pay the project company based on performance against specified output standards have been met (e.g. number of new electricity connections made in a given period).

Service Performance Standard

To ensure that the private sector concessionaire or service operator fully understands the minimum service levels that the public sector requires for the JV project in question, it is necessary for the Contracting Authority to describe in the Request for Proposal (RFP), a full set of minimum performance standards for the requested services, covering the availability of the assets provided by the private sector concessionaire and the required minimum service levels.

Detailed service performance standards are then negotiated with the selected preferred bidder, as part of the PPP Agreement negotiations. The performance standards are usually backed by an incentive or penalty system for rewarding or punishing the private sector operator for service levels delivered above or below the agreed performance standards.

In extreme cases of continuous poor performance below the agreed performance standards, the JV contract will be terminated, or the Lenders Direct Agreement will come into operation.

The incentive/penalty system is usually points-based which translates into a monetary amount at agreed periods. This benefits the Contracting Authority because penalties which are levied for poor service performance reduce the equity return thereby encouraging the private sector SPV management to take immediate corrective action.

Performance-based Payment Mechanisms

A PPP can be structured in such a manner that the contract includes a performance-based payment mechanism, whereby the public sector only pays when services are delivered by the private sector. Moreover, the recurrent payment may depend on whether the services provided meet the specified performance standards as well. For example, it may not only be expected that a new water distribution PPP project provides customers with adequate quantity of water, but also that the potable water meets specified quality standards.

2.3.2. Major Financial Characteristics

PPP Contract – Payment Structure

Payments under a PPP contract, whether by the public authority or by users, have to be calculated to cover:

- The project's operating and maintenance (O&M) costs
- The debt service (i.e. interest payments and principal repayments)
- The investors' required return on their investment.

This only applies however, if the project's construction is completed on time and on budget as payments usually begin only after the construction of the project is complete, and the project operates as required under the contract. Conversely, deductions are typically made from the JV payments if the project company does not provide services (often based on KPIs) as agreed.

Private Financing

In a PPP, the responsibility of financing the project assets typically rests with the private sector partner, who draws on a mix of debt and equity finance to fund the development and delivery of the project.

The project asset is usually owned (or leased) by the project company or one or more equity investors during the project term; some of these investors may also be sub-contractors to the project, who carry out construction, design or management of the assets while others may serve solely as financial investors.

Debt instruments, in the form of bank loans or bonds, can also be raised to at least partially finance the construction and operation of the project. However, successful financing relies heavily on the substantiation and reliability of the assumptions driving the project revenues for the Project company.

User Fees

Unlike some forms of public infrastructure, PPP projects will often recover many of their costs from users. In these cases, the PPP Company will need to recover their investment from the project revenues, i.e. mainly user fees rather than from government directly. For example, many publicly-funded highways do not charge vehicle tolls, whereas most PPP road projects are structured as toll roads that collect revenue directly from cars and trucks.

Viability Gap Funding (VGF)

The PPP route will not be viable if the business case does not demonstrate that the private sector can achieve an acceptable rate of return for the risks it takes in financing the project's assets. Under such circumstances, and to cover any shortfall in income to cover total project costs, the public sector may provide a payment to part-finance the project costs, which in turn will raise the return to the private sector making the project more financially attractive. This payment, known as Viability Gap Funding (VGF) or availability payment, is provided on the basis that the assets

involved in the project which are used to provide infrastructure services, are available 24 hours a day for the whole year, except during periods of pre-arranged maintenance. This arrangement continues to pass part of the risk to the private sector, which is one of the main benefits and objectives of a PPP structure, instead of a capital grant to assist with debt coverage and/or operating costs.

A PPP is only structured to include VGF when total income does not cover total project costs to make the project financially viable and bankable and to attract private investors. Availability payments but not VGF, are also used in PPP social infrastructure or soft infrastructure projects, where user charges are payable solely by the public sector to the SPV or service provider, as part of the agreed payment mechanism. In this case, the assets used to provide the services are divided into areas according to their importance or priority. If any of these areas become unavailable, then, through the payment mechanism formula, the user charges payable by the public sector are reduced by a percentage based on the importance or priority of the area concerned and the time that the area is unavailable, after deduction of an agreed time allowance for the SPV or service provider(s) to restore full availability.

2.4 PPP and Public Procurement

The planning and preparation process for a PPP procurement is significantly more complex than for conventional procurement.

This is because the procurement of a PPP requires public officials to do things that are not typical of conventional public procurement (and for which they may not have the skills, unless they are provided with capacity-building support):

- As a PPP involves not just the construction but also the long-term operation and maintenance of public infrastructure, the PPP Agreement, and hence the procurement has to take into account the long-term performance, maintenance and other operating requirements of the asset.
- As part of this process, project risks need to be analysed in detail and important decisions must be made as it relates to the allocation of risk between the public and private sector.
- PPPs use external finance rather than the public budget, and hence the procurement has to take the requirements of external investors and lenders into account.

2.5 Why PPPs?

PPP agreements are an alternative to conventional Public Procurement; and despite being more complex, are typically used, when;

- budgetary and borrowing constraints may mean that this is the only way the project can be procured in the near future.
- developing the project sooner, rather than later when there is a budget for it, will lead to an acceleration of economic development.
- using PPPs for infrastructure development frees up government resources for other uses – including other infrastructure projects not suitable to be delivered via PPP agreements.
- competitive tension, private-sector efficiency and innovation may produce a better result, as the incentives for good project management and the penalties for bad management are more pronounced in the private sector than in the public sector.
- PPP agreements present the opportunity to avoid the construction cost and time overruns typically in many public-sector projects
- it is important to ensure that long-term maintenance is carried out regularly, while ensuring government is able to reliably predict future costs and obligations; as this is built into the PPP Agreement

- long-term thinking and budgeting is required and needs to be supported by detailed inter-disciplinary analysis which ensures that all aspects of the project are considered in great depth, thus making it more likely that the project will succeed.

2.6 Private Participation in Public Infrastructure and Related Services: What is, and What is not PPP?

PPPs as a broad concept are an option to procure and/or manage infrastructure (including systems, facilities, equipment and plants) and related services, that is, the term implies the existence of a contract and the specific intention by a government to contract out the development and/or management of infrastructure or service. As a public contract, it has to meet a number of specific and demanding features or conditions for the infrastructure PPP types of contracts to be regarded as a PPP.

Only a procurement contract, one which meets all the features described in Section 2.3, can be a PPP. Therefore, mere private sector involvement does not constitute sufficient reason to describe an arrangement as a PPP, nor does the presence of a complete scope bundled in one single contract, or the provision of finance by the private sector.

The nature of the revenues does not constitute a decisive factor either, as there are many forms of contractual and non-contractual arrangements in which revenue may come either from users or from the budget. For example;

A PPP does not include the privatisation or divesture of public assets or liabilities.

A PPP does not constitute borrowing by the state and is not the commercialisation of a public asset or service by a state-owned enterprise.

The fundamental aspects of a PPP are as follows:

- An arrangement with a private partner. The asset and/or service under the contractual agreement will be provided by the private sector. The arrangement outlines the risk sharing dynamic and allows the private partner to provide a public asset and deliver the service;
- Provision of a public asset or service for public benefit;
- A specified time period for the arrangement;
- Sharing of risks, which is a key aspect of PPP agreements;
- Payments that are linked to performance; and
- Adhering to performance standards by the private entity to pre-set as well as measurable standards that are outlined by the public partner.

2.7 Overview of PPP Delivery Models

There are several types of PPP models depending on the stakeholders involved, their ownership arrangements, and allocations of risk between the private and public partners. The choice of a PPP model depends on the objectives of the government (e.g. improving service efficiency, transferring investment risk, maintaining service control).

Table 1: Different Types of PPP Delivery Models

Contract Type	Characteristics				Service & Payment to Private Sector Contractor
	Asset Ownership	O&M	Capital Investment	Commercial Risk	
Service Contract (1-3 years)	Public	Public & Private	Public	Public	A definitive, often technical service fee paid by government to private sector for specific services.
Management Contract (3-8 years)	Public	Private	Public	Public	Private sector manages the operation of a government service and receives fees paid directly by government.
Lease Contract (5-10 years)	Public	Private	Public	Private	Private sector manages, operates, repairs and/or maintains a public service to specified standards and outputs. Fees are charged to consumers/users and the service provider pays the government rent for the use of the facility.
Concession Contract (10 – 30 years)	Public & Private	Private	Private	Private	Private sector manages, operates, repairs, maintains and/or invests in infrastructure to specified standards and outputs. Fees are charged to consumers/users. The service provider may also pay a Concession Fee to the government.

2.7.1 Service Contracts

Under a service contract, the government (public authority) engages a private company or entity to conduct one or more specified tasks or services for a period, typically one to three years. The public authority remains the primary provider of the infrastructure service and outsources only certain aspects of its operation to the private partner. The private partner must perform the service at the agreed cost and must meet performance standards set by the public sector.

Under a service contract, the government pays the private partner a fixed fee for the service. Often there may be financial incentives included in the contract to reduce operating costs and/or improve operating performance. The government is responsible for funding any capital investments required to expand or improve the system. One option for financing involves a cost-plus-fee formula, where costs such as labour are fixed and the service contractor receives a premium over the fixed costs for its efforts.

Advantages include:

- Relatively low-risk option for expanding the role of the private sector. Quick and substantial impact on system operation and efficiency.
- Means for technology transfer and development of managerial capacity.

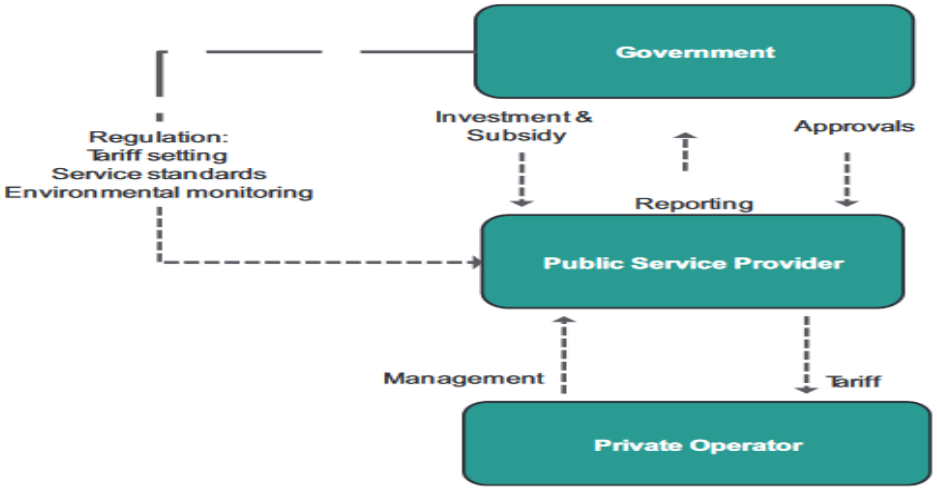
Disadvantages include:

- Requires strong contract and legal enforcement by the public sector. Does not attract capital investment from the private sector.
- Private partner's incentives are limited and therefore may not achieve overall objectives.

2.7.2 Management Contracts

A management contract is a comprehensive service contract that covers all of the management and operational components of the public utility or service provider. Although the ultimate obligation for service provision remains with the public sector, daily management control and authority are assigned to the private partner. The private contractor is paid a predetermined rate for labour and other anticipated operating costs and, often, to provide an incentive for performance improvement, the contractor is paid an additional amount for achieving pre-specified targets. In most cases, the private partner provides some working capital, but major capital investments remain the obligation of the public sector, particularly those required to expand or substantially improve the system.

Figure 2: Structure for Management Contracts



Advantages include:

- Operational gains from private sector management can be realized without the need to transfer the assets to the private sector partner.
- Less complex to develop and less controversial than other PPP models. Relatively low-cost contracts requiring no major capital from private operators.

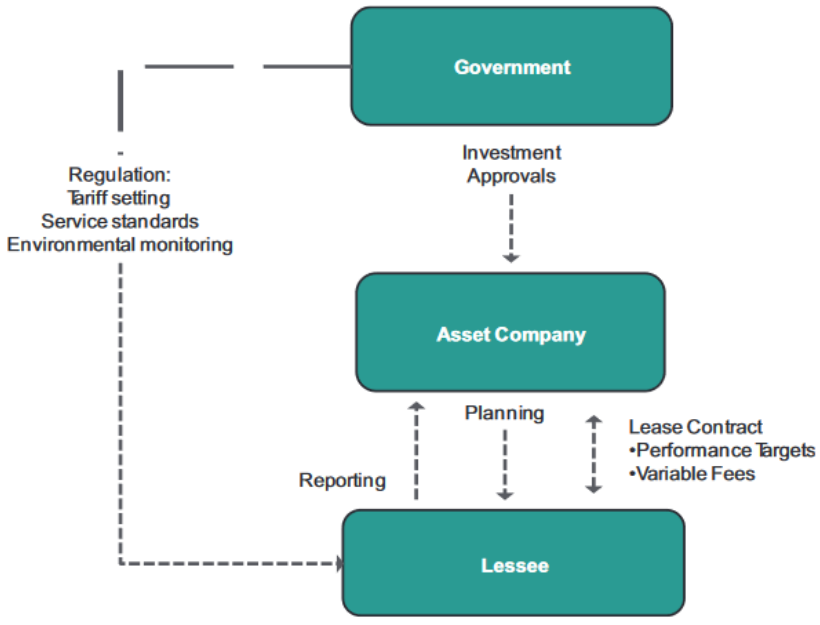
Disadvantages include:

- The private partner does not have authority over the labour force and, as a result, deep and lasting changes are hard to achieve.
- Restricted authority for the private partner regarding service disconnections, tariff adjustments, etc.

2.7.3 Lease Contracts

Under a lease contract, the private partner assumes full responsibility for the service and is obliged to adhere to quality and service standards. Except for major capital investments, which remain the responsibility of the public authority, the operator provides the service at their own expense and risk. In particular, the operator is liable for losses and for unpaid consumers' debts. Given the increased risk exposure for the private sector, the duration of a leasing contract is typically longer than a service or management contract. However, leases do not include any sale of assets to the private sector.

Figure 3: Structure of Lease Contracts



Advantages include:

- Separation of operational use from asset ownership.
- Allows the private sector to make the crucial management decisions (e.g. labour reductions).
- The public authority benefits from stable cash flow without having to manage operations or maintenance of the facilities.

Disadvantages include:

- Responsibility for capital investment remains with the government and no private investment capital is mobilized.
- Private sector cannot improve physical infrastructure on its own so technical inefficiencies are often not addressed.

2.7.4 Concessions (e.g., Build-Operate-Transfer (BOT), Build-Own-Operate (BOO))

A Concession contract grants the private sector operator (Concessionaire) full responsibility for the delivery of services in a specified area, including construction, operation, maintenance, billing and revenue collection, management, and rehabilitation of the system.

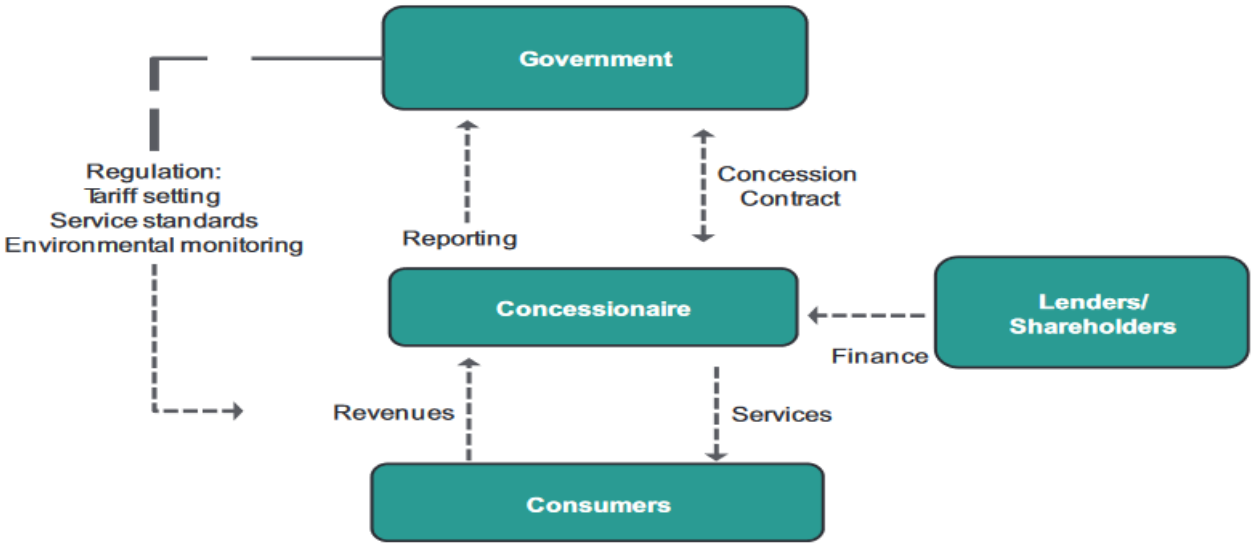
Some countries distinguish the term “concession” from other types of PPP arrangements with similar features. For this Manual, the term “concession” will be used broadly to encompass PPP models such as Build-Own-Operate (BOO), Build-Operate-Transfer (BOT), Buy-Build-Operate (BBO), Design-Build-Operate (DBO), Build-Develop-Operate (BDO), etc.

Although the private sector operator is responsible for providing the assets, these assets often remain publicly owned and are transferred back to the government at the end of the Concession period.

The public sector is responsible for overseeing the Concessionaire's compliance with performance standards thus shifting its role from being the service provider to regulating the price and quality of service.

The Concessionaire collects fees directly from users, with tariffs typically set by a regulator. As part of the Concession agreement tariff adjustment mechanisms will be established in advance. The Concessionaire is responsible for financing capital investments and working capital from its resources and the tariffs paid by the users. In some cases, the government may offer financing support (e.g. VGF) to support the Concessionaire’s capital expenditures. Due to the complexity and the need for long-term financing, a Concession contract is typically valid for a much longer period than a service contract, management contract, or lease agreement.

Figure 4: Structure of Concessions



Build-Operate-Transfer (BOT), Build-Own-Operate (BOO), etc. are specialized concessions in which a private firm or consortium finances and develops new infrastructure projects or major components, meeting performance standards set by the government.

Table 2: Characteristics of Various Concessions

Nature of Contract	Characteristics				Financial Responsibility
	Asset Ownership	Design	Build	O&M	
Design-Bid-Build (DBB)	Public	Private by fee contract	Private by fee contract	Public	Public
Design-Build (DB)	Public	Private by fee contract	Private by fee contract	Public	Public
Build-Operate-Transfer (BOT)	Public	Private by fee contract	Private by fee contract	Private by fee contract	Public
Design-Build-Finance-Operate (DBFO)	Public	Private by fee contract	Private by fee contract	Private by fee contract	Public, Public/Private or Private
Build-Own-Operate (BOO)	Private	Private by contract	Private by contract	Private by Contract	Private by Contract

Advantages include:

- An effective mechanism for attractingprivate finance for new construction or rehabilitate existing facilities.
- Potentially reduces initial capital construction costs due to the private sector's expertise.
- Incentivises private sector performance improvements as efficiency gains increase profitability for the Concessionaire.

Disadvantages include:

- Governments may need to upgrade their regulatory capacity and performance monitoring.
- Tenders for long-term and large-scale projects can be complex and time-consuming.
- Benefits of competition are limited to the initial bidding process as a private operator often has a monopoly of the service and contracts cannot be terminated easily.
- Challenges in predicting long-term changes often necessitate contract renegotiation.

2.8 Pros and Cons of PPP

PPPs offer the public sector potential cost, quality, and scale advantages in achieving infrastructure service targets. However, as every coin has a flip side, PPPs also have certain disadvantages. In general, in a well-designed and supported PPP, the advantages will outweigh the disadvantages. The advantages and disadvantages of implementing projects through the PPP route are listed below:

2.8.1 Advantages of PPP

The major advantages of using PPP as a route to implement infrastructure projects are:

- Access to private-sector finance.
- Increased efficiency resulting from the use of private sector skills and transfer of risks to the private sector
- Introduction of sector reforms through reallocation of roles, incentives, and accountability.

A brief description of each of these advantages follows.

Access to Private-Sector Finance

One of the key factors driving the economic growth of any nation is the availability of adequate infrastructure facilities. With the increase in population and the passage of time, there is a constant need for rehabilitation and refurbishment of the existing infrastructure and the addition of new infrastructure facilities to meet the growing infrastructure needs of the population. Infrastructure projects by their very nature are highly capital-intensive and require large capital investments. As a result, governments often experience an ever-increasing need to find sufficient financing to develop and maintain the infrastructure required to support growing populations. Governments are challenged by the demands of increasing urbanization, the rehabilitation requirements of aging infrastructure, the need to expand networks to new populations, and the goal of reaching previously non-served or underserved areas. Furthermore, infrastructure services are often provided at an operating deficit, which is covered only through subsidies; subsidies result in an additional drain on public resources.

Combined with most governments' limited financial capacity, these pressures drive a desire to mobilise private sector capital for infrastructure investment. PPPs help to mobilise this private sector capital. PPP projects involve the private sector in arranging and providing finance. This frees the government from the need to meet financing requirements from its own revenues (taxes) or through borrowings. By taking over the responsibility for raising finance from the government, PPPs can enable more investment in infrastructure and increased access to infrastructure services.

By using private financing, governments can sometimes move significant capital projects "off the balance sheet". This has been a motivating factor for PPPs in countries where the constraint on finance is a government commitment to borrowing (i.e., public debt).

PPPs also provides the private sector with the opportunity to participate in implementing infrastructure projects and benefiting from its capacity and experience in managing businesses (utilities in particular). The private sector seeks compensation for its services through fees for services rendered, resulting in an appropriate return on capital invested.

Increased efficiency resulting from private sector participation

The public sector often lacks adequate skills to effectively utilize the scarce public resources in an efficient manner. The public sector typically offers weak incentives for efficiency and is thus poorly positioned to efficiently build and operate infrastructure. Injecting such incentives into an entrenched public sector is difficult, though possible.

The private sector in contrast is exposed to competitive pressures that are difficult to replicate for public agencies. This gives the private sector an edge over the public sector in carrying out the capital (design, construction) and operating phases of the project. Private sector operators have a clear goal of maximizing profits, which are generated, in part, by increased efficiency in investment and operations. Improving the efficiency of services and operations also increases the

chances of those services being economically sustainable and their provision at competitive rates, even after satisfying the profit requirements of the private operators.

PPPs allows the government to pass operational roles to efficient private sector operators while retaining and improving its focus on core public sector responsibilities, such as regulation and supervision. Properly implemented, this approach should result in a lower aggregate cash outlay for the government and better and cheaper services to the consumer. This should hold true even if the government continues to bear a part of the investment or operational cost since the government's cost obligation is likely to be targeted, limited, and structured within a rational overall financing strategy.

Sector reformation through reallocation of roles, incentives, and accountability

PPPs can catalyse a larger discussion of and commitment to a sector reform agenda. A reform program that includes PPP provides an opportunity to reconsider the assignment of sector roles to remove any potential conflicts and to consider a private entity as a possible sector participant.

Implementing a specific PPP transaction often entails executing concrete reform steps to support the new allocation of sector roles such as the passage of laws and establishment of separate regulatory bodies.

2.8.2 Disadvantages of PPP

The disadvantages of PPPs are described below. Many of these disadvantages can be minimised under certain circumstances and through careful management of the PPP design by the sponsoring authority. However, public sector capacity (experience and expertise) is required to manage the PPP process.

Difficulty in demonstrating value for money in advance

Ideally, a project should be procured as a PPP based on a clear demonstration that it provides value for money (VFM) compared to public sector procurement. However, it is difficult to demonstrate VFM in advance due to uncertainties in predicting what will happen over the life of the project and due to a lack of information about comparable previous projects.

Complex procurement process with associated high transaction costs

The PPP project must be clearly specified, including the allocation of risks and a clear statement of the service output requirements. The long-term nature of PPP contracts requires greater consideration and specification of contingencies in advance. Transaction costs can be significant, typically ranging from1-3% of project value, due to the involvement of transaction advisors and legal consultants.

Risk of contract renegotiation

PPPs usually cover a long-term period of service provision (for example 25-40 years or life of the asset). Any agreement covering such an extended period into the future is subject to uncertainty. If the requirements of the public sponsor or the conditions facing the private sector change during the lifetime of the PPP, the contract may need to be renegotiated to reflect these changes. This can increase public sector costs, and competitive bidding benefits may be lost.

However, this issue can be mitigated by selecting relatively stable projects as PPPs and by specifying in the original contract terms how future contract variations should be handled and priced.

Enforcement and monitoring

The successful implementation of a PPP project depends upon the ability of the sponsor to monitor performance against standards during the construction and operations period and to enforce the terms of the contract. However, this is usually difficult to attain unless special mechanisms and dedicated monitoring capacity are put in place by the sponsor.

2.9 Challenges and Pitfalls in PPP Procurement

Although PPP projects can be beneficial to the government and the private sector, there are certain areas in which care needs to be taken to ensure that the PPP is implemented successfully with the acceptance of all stakeholders and to the satisfaction of all beneficiaries. Some common pitfalls are described below.

Institutional/ Legislative Framework

The success or failure of PPPs can often be traced back to the initial design of PPP policies, legislation, and guidance. A common pitfall is placing too many restrictions, conditions, and expectations of risk transfer on the private sector, which makes it impossible to structure a financially feasible deal.

Clear project objectives

The key factor driving the success of PPPs as a means for timely and successful implementation of infrastructure projects is the clarity of the project objectives and a well-defined scope of work for both the private and the public sectors. For improved performance and greater contribution by the private sector, the public sector may specify the output standards and specifications expected from the public service and allow the private sector the freedom to design the inputs to achieve the specified service. However, within the public sector, officials sometimes lack consensus about the purpose and expected outcomes of the project and, consequently, often try to compensate for this failure by over-specifying the project inputs.

PPP model selected for the project

Selection of an appropriate PPP model, depending upon the characteristics of the project, is the key to ensure successful implementation of a project through the PPP route. The main distinction between the various PPP models is the level and nature of risk shifted from the public sector to the private sector. A common pitfall is the selection of a PPP model that transfers demand risk (the amount of use the infrastructure will receive) to the private sector even when the private contractor has no control over these factors. This mostly leads to project failure.

Internal capacity

The ability of the public sector to understand the project requirements in detail ensures appropriate identification and allocation of risks among the contract partners. To ensure appropriate understanding of its roles, and to get expert guidance at each step of the project implementation, external advisers support the Government. However, many tasks cannot be outsourced, and often the agency does not have the skills internally to manage complex PPPs or the dedicated team required to address the time-intensive upfront structuring needs. This acts as a major challenge for successful project implementation, particularly in new PPP markets.

Value for Money

Ideally, projects should only be implemented on a PPP basis when there is a clear demonstration of value for money (VFM) in comparison to public sector procurement. However, it is difficult to demonstrate VFM in advance due to uncertainties in predicting the entire life of a project and also lack of information about comparable projects. When the borrowing and tendering costs associated with PPPs are not sufficiently offset by efficiency gains, and when the value-for-

money test is unclear or impractical, the project may not generate sufficient value for the public sector.

Planning the PPP

Inadequate planning on the part of the public or the private sector leads to unsuccessful implementation of projects through the PPP route. Without taking proper account of the market's appetite in the planning phase, governments may come out with more projects than bidders, thus creating a non-competitive environment. Similarly, too few projects may result in the industry moving on to a more active jurisdiction.

2.10 Enabling Framework for PPPs in Benue State

Benue State Investment Agency Law 2024

The Benue State Investment Promotion Agency (BENIPA) was established under the BENIPA Law of 2024, positioning the Agency as a principal authority for promoting and coordinating investments within the State. Its mandate includes attracting and facilitating investments through various partnership and ownership models, including Greenfield projects, Public-Private Partnerships (PPPs), privatizations, concessions, and the commercialization of state-owned assets. The Agency is also empowered to ensure that all PPP agreements and other models such as joint ventures, privatization shall conform with the PPP Policy and Manual, Fiscal Commitments and Contingent Liabilities (FCCL), or other regulations as may be issued by the Agency from time to time.

The Agency shall be responsible for conducting the bidding process with respect to any PPP project in an equitable, transparent, cost-effective and competitive manner subject to the Public Procurement Law of the State.

The BENIPA Law 2024 serves as the foundational legal framework for PPPs in Benue State, as stated above. It empowers BENIPA to facilitate private-sector investment engagements, guiding the legal, financial, and technical procedures for establishing PPPs within the State. The law assigns BENIPA several key roles throughout the lifecycle of a PPP project, including:

i. Technical Assistance: BENIPA provides technical assistance to ministries, departments, agencies, and specific Contracting Authorities during the life cycle of a PPP project, ensuring alignment with State priorities and standards.

ii. Procurement Oversight: The Agency is responsible for overseeing the procurement process for PPP projects on behalf of the public sector, ensuring that projects align with the State's strategic objectives and that procedures are transparent, efficient, and in compliance with BENIPA's legal and procedural frameworks.

iii. Private Sector Facilitation: BENIPA serves as the primary point of contact between the private sector and government agencies, offering support in regulatory navigation and partnership facilitation. This includes acting as the PPP for all private-sector investment enquiries.

Benue State Public Procurement Law 2020

The Benue State Public Procurement Law (APPL) 2020 provides the statutory framework for the procurement of goods, works, and services by the State Government and its procurement entities. The law establishes the Benue State Public Procurement Commission, which is responsible for upholding transparency, accountability, and efficiency in all state-level procurement processes.

The APPL 2020 articulates principles governing procurement activities and provides a detailed procedural guide for the procurement of works and services. This framework ensures that all procurement activities, including those involving PPPs, are carried out in a manner that is

competitive, fair, and in line with international best practices. The APPL aligns with the State's broader investment and development objectives, supporting BENIPA's mandate by establishing a transparent procurement environment conducive to private sector participation in public projects.

Sectoral Laws

In the delivery of PPPs within Benue State, various sectoral laws will play a significant role. PPP projects often span multiple sectors such as transport, energy, water, health, and agriculture, each governed by specific regulatory frameworks that must be adhered to for successful project implementation. The integration of sectoral laws ensures that PPP arrangements are compliant with industry standards, regulatory requirements, and best practices.

While the BENIPA Law and the Public Procurement Law (APPL) 2020 provide the overarching framework for PPPs, sector-specific regulations are critical for project delivery. These laws will come into play based on the type of infrastructure or service being developed, and they guide aspects such as licensing, environmental compliance, health and safety, and the operation of services.

PART II:

3 The Benue State PPP Project Guidelines

3.1 Benue State PPP Project Lifecycle

Like the PPP Project Lifecycle in many other jurisdictions, the process for planning, developing, procuring, implementing, and managing the exit from a PPP in Benue State consists of the following phases and steps.

This section of the manual provides an overview of the key stages involved in the development, procurement, and implementation of a project through the PPP route. The section first provides an overview of the Project lifecycle Process and then describes each step, in detail.

The overview of the PPP Process is shown in Table 4 followed by the detailed procedure.

Table 4: Detailed Benue PPP Process

PPP Project Lifecycle	Key Activities	Institutional Stakeholder Responsibility
Phase I: Project Identification	Project identification. prioritisation and Concept Note Development	Ministry, Department, and Agency (MDA)/ BENIPA
	Review and Approval of Project Concept Note	BENIPA
	Set up Project Delivery Teams with cross-cutting membership (teams include membership from MDA, PPP Unit/Department BENIPA, Ministry of Finance, Benue State Public Procurement Commission, Ministry of Justice) Chaired by the PPP Lead in BENIPA and the relevant Director in the MDA as Secretary.	MDA & BENIPA
Phase II: Project Development and Preparation	Development of TA Procurement Documents Issuance of RFQ and RFP for TA	Project Delivery Team through BENIPA
	Approval of appointment of TA	Governor with ratification by State Executive Council
	Preparation of Outline Business Case (OBC)	Transaction Adviser
Phase III: Project Procurement	Review of OBC (Including the examination of Direct/ Contingent Liability issues)	Project Delivery Team and Ministry of Finance
	Development of some or all of; i. Financial and risk structure of the project. ii. RFQ and RFP for Private Partner Selection iii. Contract Management Plan iv. Value for Money Report v. Bid Process Evaluation Criteria vi. Summary Information Sheet vii. Procurement Strategy viii. Knowledge Management strategy	Transaction Adviser

PPP Project Lifecycle	Key Activities	Institutional Stakeholder Responsibility
	ix. Preliminary Information Memorandum x. Stakeholder Management Plan xi. Draft Concession Agreement xii. Approach to Negotiation Strategy	
	Issue RFQ, respond to queries, and shortlist bidders	Project Delivery Team
	Submit Draft Concession Agreement and submit to the Ministry of Justice (MoJ) for vetting and Approval	TA / Ministry of Justice
	Issue RFP to shortlisted bidders (including the evaluation of proposals to identify preferred and reserve bidders)	Project Delivery Team
	Negotiations with the preferred bidder	Project Delivery Team and Transaction Adviser
	Completion of Full Business Case (FBC)	Transaction Adviser and Project Delivery Team
	Submit negotiation report to the Benue State Public Procurement Commission, and obtain no objection	BENIPA/MDA & Procurement Agency
	Submission of FBC by MDA to EXCO for ratification and approval	EXCO
	Contract Signing between State/MDA and preferred bidder	A combination of some or all of the following; Governor, MDA, Ministry of Justice (MoJ), BENIPA
	Fulfil conditions precedent for the project to reach financial close (land, compensation, settlement, etc).	MDA
Phase IV: Project Implementation	Oversight of project implementation and compliance with contract	MDA/BENIPA

3.2 Project Identification

3.2.1 Project Inception

The PPP project is usually initiated by a Ministry, Department, and/or Agency (MDA) as the Contracting Authority of the government. In certain cases, the project could be initiated by the private sector as an Unsolicited Proposal which must follow a transparent and competitive process and will also be managed by an MDA. The first step for the MDA is to develop a Project Concept Note to be approved by the BENIPA.

The Contracting Authority is required to develop and submit this Project Concept Note (see Annexure I for a sample template) to BENIPA. While developing the Project Concept Note, the MDA must ensure to consider the following key aspects of the project;

i. Potential to provide value for money
ii. Opportunities for risk transfer
iii. Market capability and appetite
iv. Integration of social and economic safeguards.

After submission of the Project Concept Note by the MDA, BENIPA shall register it if:

i. It is specified in the Infrastructure Master Plan or PPP Priority List;
ii. It revalidates the pre-feasibility study submitted by the Contracting Authority with its Application for Inclusion;
iii. It demonstrates expertise in the Contracting Authority to proceed with the project and includes a detailed profile of the members of its project team and the project management arrangements for undertaking the project;
iv. It outlines the need for the appointment of a transaction adviser if the Contracting Authority deems this necessary;

BENIPA shall within two weeks of registering a proposal assess and present it to the Board with its recommendations thereon as to whether or not to proceed with it as a PPP project.

3.2.2 Appraisal and Approval of Project

BENIPA is responsible for registering and assessing the PPP Concept Note presented to it.

BENIPA will start its assessment by using a Project Screening Tool (see ANNEXURE I) adopted by BENIPA to serve as a comprehensive tool for screening and evaluating Public-Private Partnership (PPP) projects in Nigeria. Designed to ensure that projects align with national and State development priorities, international commitments, and best practices, the framework addresses a broad spectrum of criteria, including commercial, financial, and economic viability, climate change mitigation and adaptation, environmental and social risk management, gender equality, and poverty reduction. These criteria are essential for meeting both regulatory and investor requirements while supporting the State's broader economic and social goals.

Concept Notes that pass the screening will be evaluated in more detail based on the following;

i. consistency with strategic objectives;
ii. technical feasibility;
iii. socio-economic feasibility; and
iv. financial affordability.

The assessment of socio-economic feasibility is based on the following considerations:

i. project capital costs;
ii. projected maintenance expenses;
iii. expected project benefits; and
iv. comparative importance based on social, strategic, environmental and/or other factors.

The BENIPA management shall present the screening results and detailed evaluation with recommendations to the Board.

A positive decision means the project is consistent with strategic development objectives, as well as technically and socio-economically feasible. The positive decision does not imply that the project will be funded. It only implies that further design work to develop a pre-feasibility study (or directly to full feasibility/Outline Business Case, depending on the project complexity) could be undertaken within agreed cost and time parameters.

A postponed decision implies that the project is not consistent with strategic development objectives or/and are not technically and socio-economically feasible. Therefore, it should not be a part of the investment plan considered for financing from the available financing options.

Specific requests for clarification will accompany a decision to return the Project Concept Note for revision.

Project Concept Notes that do not comply with the requirements in the template provided (for example, because of missing or inaccurate information) are then returned to Contracting Authorities for additional input.

The Board, after reviewing the proposal and its BENIPA's recommendation, will issue an "in-principle" approval (if an approval is its decision) to proceed to the next stage. The next stage will be;

i. The setup of a Project Delivery Team
ii. The Engagement of a Transaction Advisor

It is pertinent to note, that in certain cases, the in-principle approval given by the Board might be accompanied certain recommendations, such as updating the Concept Note based on gaps identified, or further developing a Pre-Feasibility Studies, before proceeding with the project (mostly for complex projects). The Approval and any recommendation thereon will be communicated by the BENIPA to the MDA (i.e Contracting Authority).

Where the Board decides to reject the proposal, this shall be communicated to the MDA by BENIPA, and the reasons for the decision will be provided.

3.2.3 Pre-feasibility assessment

Projects receiving a positive assessment can proceed to a Pre-Feasibility Study or directly engage a Transaction Adviser for a Full Feasibility Study/Outline Business Case, as required.

The Pre-Feasibility Study builds on the Project Concept Stage by examining costs and benefits in more detail. It improves the cost estimates by preparing initial engineering drawings. Whenever possible, data derived from secondary sources at the project concept note phase should be substituted with more accurate estimates.

Contracting Authorities are responsible for carrying out financial and socio-economic analysis of their projects, which can be conducted using either the cost-benefit or cost-effectiveness methods of analysis.

The Pre-Feasibility Study should also specify the date that pre-feasibility analysis was completed. This analysis would then remain valid for a maximum of three years. After this period, the project should be revalidated. A project may also need to be reappraised if there are significant changes in the project environment.

The pre-feasibility study should include a project implementation plan and management scheme, as well as a draft procurement plan. Additional impact assessment studies should include:

i. A preliminary environmental impact assessment;
ii. A social impact assessment;
iii. Initial VfM Assessment;
iv. Potential procurement options – noting particularly if there is sufficient interest from the private sector to undertake the project under a JV agreement;
v. Cost estimates for conducting the Feasibility Study; and
vi. Any other relevant studies required

Unless the BENIPA decides that the project shall go through reappraisal, the project shall immediately proceed in its delivery lifecycle after the Pre-feasibility studies is completed.

3.2.4 Project Development Team (PDT)

BENIPA in consultation with the Contracting Authority must establish a dedicated Project Development Team to lead and monitor the project from inception to project implementation, and into post-award contract management and hand-back.

The Contracting Authority will identify all relevant MDAs whose participation and support shall be necessary to execute the project and ensure that the MDAs' roles and responsibilities are spelt out clearly to them, the precise deliverables required of it and the time frame within which such deliverables must be available.

Typically, the Project Development Team will consist of staff with the appropriate skills from the Contracting Authority, BENIPA, the Ministry of Finance, the Ministry of Justice, and other relevant MDAs. The Project Delivery Team will be led by a Project Manager, who will act as the focal point for the project.

The PDT will also have a dedicated PPP Advisor from the BENIPA, to provide support as required by the PDT throughout the project development lifecycle.

The Primary functions of the Project Development Team include:

i. Appraise, review, monitor, evaluate and recommend action to the Board on all PPP Projects in the State

ii. Provide all necessary support to ensure the successful completion of the project.

iii. Facilitate the engagement with its Agencies, and secure similar support and cooperation of any community or interested persons and Authority, as may be required for establishing the project.

iv. Ensure that the progress of the project is effectively communicated within both parties and the communities affected at large

v. Facilitate and provide full support to the private sector and serve as liaison between the private sector and government agencies and relevant authorities regarding PPPs in the State

vi. Reviewing and endorsing documentation to be submitted to any relevant MDA.

vii. Giving updates on project implementation

viii. Facilitate the issuance or renewal of all public sector regulatory approvals for PPP Projects in the state

ix. Review, evaluate and recommend project proposals and feasibility studies and oversee the procurement process for the PPP projects on behalf of the public sector

x. Recommend to the Board, the extension, termination or renegotiation of PPP agreements in force

xi. Ensure that the expiration of a PPP Agreement, all parties thereto fully enjoy the irrespective rights and discharge the irrespective obligations in accordance with the said PPP Agreement

xii. Issue progress reports detailing project status, compliance with timelines, and any challenges encountered

The Project Manager

The Project Development Team will be led by a Project Manager, who is competent and appropriately qualified to manage a PPP Project. The role and responsibilities of the Project Manager will include;

i. Managing the planning and implementation of the project
ii. Ensuring adequate stakeholder engagement and support
iii. Leading the coordination of projects teams, including internal staff, external consultants and contractors
iv. Monitoring financial performance and report any issues or deviations
v. Preparing progress reports, including project status, outcomes and, any issues encountered.
vi. Ensuring that projects comply with all relevant legal and regulatory requirements.
vii. Overseeing the maintenance and evaluation of the project
viii. Advising on financial structure for mobilization of debt
ix. Recommending the preferred procurement and financing options for the project
x. Advising on legal documentation, including concession agreement, shareholder agreements and other binding contracts
xi. Providing insights on project costs, financing structures, and potential funding sources (including public funds, private investments and loans)

The PPP Advisor from BENIPA

BENIPA will assign a dedicated Project Advisor who will provide hands-on technical assistance to support the development and delivery of projects being considered for delivery under the PPP, throughout the project's lifecycle.

The Project Advisor:

i. supports the Contracting Authority through every step of the PPP project cycle, drawing on best practices from other projects, and advising on how the Contracting Authority can best meet the requirements of PPP
ii. ensures that BENIPA's approval applications are processed efficiently within a reasonable time
iii. checks that professional communication is maintainedbetween all critical stakeholders in the project

The Project Advisor's tasks will include support as appropriate to the PDT Project Manager to:

i. establish a project team with appropriate skills and representation from relevant agencies
ii. draft the TOR for the transaction advisor
iii. calculate a suitable budget for the costs of the transaction advisor
iv. make an application to any available Project Development Facility (PDF), if applicable
v. oversee the procurement of services of the transaction advisor.

4.2.4 Budgeting for the PPP Procurement

An early task for the project manager is to identify the budgets needed to manage and administer the project, to hire the services of a Transaction Advisor, and to cater for additional funding for the Contracting Authority's in-house team members who may need to travel and incur expenses during the PPP procurement processes and/or to obtain additional staff, temporary or permanent, to cover for or fill in for and perform the normal duties of the said in-house team.

The expenditures may be significant as Transaction Advisor costs for complex infrastructure projects can reach several million Dollars. The PPP procurement processes may also take

several months, during which time the Contracting Authority's in-house team members may not be able to attend to their non-PPP procurement related duties.

The Contracting Authority should prioritise securing the required funding.

The Project Manager will need to identify budgets in the services line items of the Contracting Authority's Medium-Term Expenditure Framework (MTEF) to fund the PPP project and ensure that this funding is included in the next available budget cycle.

In addition, the Project Manager should assess the requirements for accessing funds from any other Project Preparation Development Facility (PDF) available in the state, nationally or from Development Financial Institutions (DFIs), International Development Partners (IDPs) and Multilateral Institutions.

4.3 Engagement of Transaction Advisors

Using Transaction Advisors is strongly recommended to support the process of preparing and delivering a PPP Project. Engaging a Transaction Advisor is critical to ensuring that the project is structured, procured, and delivered successfully. The advisor typically provides technical, financial, environmental, and legal expertise to the Project Delivery Team helping them to navigate the complexities of PPP arrangements.

The preparation of the feasibility study/OBC documents typically starts with the selection of a Transaction advisor to assist the Project Steering Committee in assessing the strategic, commercial, financial, economic and legal viability of a potential PPP project – including advising on the potential implementation options.

A transaction advisor is usually a consortium of experienced professional consultants with legal, financial and technical expertise, who work collectively as a team, under direct contract with the Contracting Authority.

A transaction advisor assists in developing and preparing a PPP project for public procurement. A well-structured and properly marketed transaction is critical to the success of a PPP, and increases the likelihood of the successful completion of a PPP Agreement.

Where appointed, the selection of Transaction Advisors (TA) should adhere to the Benue State Public Procurement Law 2020.

Advantages of using a Transaction Advisor

Effective transaction advisors bring clear advantages to the Contracting Authority:

- experience in similar transactions
- protection against costly, avoidable mistakes
- access to national and international best practices
- technical strength to bolster the Contracting Authority's team
- enhancement of investor confidence
- an opportunity for skills development among government officials
- a single point of accountability for achieving objectives and meeting deadlines
- an opportunity to grow the number of local consultants in the Nigerian PPP market.

Transaction Advisor responsibilities

In line with the BENIPA Law, the Transaction Advisor performs all detailed financial, technical, economic, and legal activities and functions required for the Contracting Authority to conduct the assessments required for the approval to execute a PPP agreement, including:

- Completion of a feasibility study / OBC to a standard that will enable the Contracting Authority to obtain approval to proceed with procurement;
- Preparation of all procurement documents, including the draft PPP agreement and assisting in the implementation of the procurement processes, including preparing all necessary documentation to enable the Contracting Authority to obtain approval for issuance of tender documents;
- Assisting in the negotiations process with the preferred bidder, obtaining an agreed PPP agreement and enabling the PPP agreement to be awarded;
- Additionally, the Transaction Advisor may be required to provide PPP agreement fiscal management support to the Contracting Authority after the execution of the PPP agreement.

Transaction Advisors Payment

To ensure the continued support and commitment of the TA until financial close is reached, Contracting Authorities may consider two payment options;

i. Option one is to include an appropriate success fee component to the transaction advisory contract fee —payable on financial close. This aligns the incentives of the TA to those of the Contracting Authority and encourages ongoing support to get to financial close.
ii. Option two is to use two contractual payment mechanisms for transaction advisory services: a fixed-price component to get to commercial close (typically easier to plan for and budget), and a time and expenses component thereafter until financial close is reached. This allows the Contracting Authority to leverage support services on an as-needed basis, without the constraints of a fixed budget.

The process of selecting a Transaction Advisor includes the following steps:

i. Define Scope of Work and Prepare the Procurement Documents

ii. Conduct a Procurement Process for the selection of a Transaction Advisor in line with the Benue State Public Procurement Law (2020) and any other relevant regulation

iii. Appoint/Contract the Transaction Advisor

Once appointed, the Transaction Advisor assists in preparing the project (feasibility studies/Outline Business Case, Environmental and Social Impact Assessment (ESIA), and all other relevant reports including the project procurement documents). They also guide the procurement process and facilitate negotiations with private sector partners.

Typically, the TA will be responsible for developing some or all of the following;

i. Outline Business Case
ii. Financial and risk structure of the project.
iii. RFQ and RFP for Private Partner Selection
iv. Contract Management Plan
v. Value for Money Report
vi. Bid Process Evaluation Criteria
vii. Summary Information Sheet
viii. Procurement Strategy
ix. Knowledge Management strategy
x. Preliminary Information Memorandum
xi. Stakeholder Management plan
xii. Draft Concession Agreement
xiii. Approach to Negotiation Strategy

A sample Terms of Reference for Transaction Advisors is attached as Annexure III

iv. **Monitoring and Collaboration:** Throughout the project lifecycle, the Transaction Advisor collaborates with the Contracting Authority, PDT, and other stakeholders, ensuring that the project meets its objectives and adheres to best practices.

4.4 Project Development and Preparation

4.4.1 Feasibility Study / Outline Business Case (OBC)

The Transaction Advisor will work collaboratively with the Contracting Authority to develop the Feasibility Study/Outline Business Case.

The **Feasibility Study / Outline Business Case** is a critical component of any Public-Private Partnership (PPP) project. It is designed to determine the technical, economic, financial, and environmental viability of a proposed project. This process ensures that the project aligns with Benue State's strategic development goals, such as improving public infrastructure, stimulating economic growth, and ensuring value for money. The feasibility study aims to:

- Confirm that the project aligns with public policy and strategic objectives.
- Evaluate the potential to attract private sector investment.
- Identify and assess risks, and develop mitigation strategies.
- Ensure the project's affordability and sustainability over its lifecycle.

The Outline Business Case (OBC) consolidates the findings from the Concept Note and Pre-feasibility study and further develops the analysis to form the basis for decision-making.

The purpose of developing an OBC is to combine all project development information, including technical, legal, social, economic, financial, and environmental aspects, into one document prior to seeking the government's approval to proceed to the procurement phase. The OBC also sets out the proposed project structure, such as a PPP, the procurement process for awarding the contract, the required resources and proposed management arrangements. The OBC is the critical document of the project preparation phase.

The completion and approval of an OBC, however, often does not mean that all project preparation has been completed. The government may not require that an OBC contains all the studies/analysis that is necessary before contract award. For example, although screening of the project's environmental and social impact will have been done for the OBC, the full ESIA may be on-going during the early stages of the procurement and the costs of any mitigation against adverse impacts only estimated for the OBC. Similarly, more detailed ground investigations may be carried out in consultation with the bidders who will be preparing their outline designs during the bidding phase. The OBC is a living document, and through procurement and negotiations, further detailed studies will be completed, which will be used to update the OBC into a Full Business Case before contract signing.

The OBC provides a structured framework for evaluating the project's potential from several critical perspectives. Following the UK Treasury 5 Case Model, the OBC makes the case for investment in a PPP Project by explaining:

i. where are we now;
ii. where do we want to get to; and
iii. how are we going to get there?

In more detail this OBC asks five key questions:

i. Is the project strategically necessary?
ii. Is the project economically and socially desirable?
iii. Is the project commercially viable?
iv. Is the project affordable?
v. Can the project be practically delivered?

These questions are answered in turn through five individual cases, each of which will be prepared using a combination of stakeholder workshops, technical studies, and desktop research:

International experience indicates that using this approach leads to:

- a more transparent system for infrastructure planning and development;
- better quality projects;
- fewer failed and stalled projects;
- more and better bidders and bids;
- lower transaction costs and quicker delivery times;
- easier investment decisions for lenders;
- improved understanding of risk and delivery confidence across projects and programmes;
- better decision-making for the government; and
- increased access and equity.

These are critically important to incentivise private sector investment, reduce waste in public expenditure and maximise the economic and social benefits of investment that infrastructure can bring.

Each of the five cases ensures that the project is viable from different perspectives:

- **The Strategic Case** provides the rationale for the project, describes its fit with wider policy/strategy, sets the project's scope and boundaries, describes clear project objectives, summarises environmental and social risks and opportunities, and identifies the outcomes expected. It should clearly express the "strategic need" for the project.
- **The Economic Case** demonstrates that a wide range of options for developing the project has been considered and refined to a shortlist, and eventually a "preferred option" using cost-benefit analysis. With a PPP (public-private partnership) project, the Economic Case considers the cost of using private finance compared to using public capital (the "Public Sector Comparator").
- **The Commercial Case** demonstrates that the project is commercially viable. It sets out the proposed contractual structure, allocation of risk and the procurement strategy.
- **The Financial Case** demonstrates that capital investment and operating costs are affordable from public resources and that sufficient allowance has been made for risk management, monitoring and unexpected events. This includes any expected income which the government may earn from the project.
- **The Management Case** describes the project delivery team and demonstrates it has the right skills and experience, appropriate governance, and a realistic project delivery plan. It should include plans for stakeholder engagement, risk management and benefits realisation.

An OBC Template is attached as annexure I

It is important to note, that as part of the Project Preparation led by the Transaction Adviser, the deliverables at a minimum, will include the following;

i. The Feasibility Report / Outline Business Case
ii. Preliminary/Final Environmental and Social Impact Assessment Report
iii. The Procurement Documents (Procurement Notice, RFQ, RFP)

iv. Draft PPP Agreement

4.4.2 Submission of the Feasibility Study/Outline Business Case (OBC)

The BENIPA Law (2020) requires that the feasibility study report/OBC and other relevant project preparation documents must be submitted to BENIPA for consideration for approval by the The Board.

After review, BENIPA will submit recommendations The Board for the Board's determination.

Upon receipt of the Project documents together with the recommendations of BENIPA thereon, the Board may-

a. approve the project to proceed to procurement, or
b. reject the project and give its reasons for rejection, or
c. provisionally approve the project to proceed to procurement on fulfilment of certain conditions specified by the Board; or

After approval of the Feasibility Studies/OBC by the The Board, and subsequent approval of the Draft PPP Agreement, the Contracting Authority then proceeds to procurement.

4.5 PPP Procurement

Once a PPP project has its Feasibility Study/Outline Business Case approved and all other necessary studies completed, the project moves to the procurement phase. The key to a successful PPP procurement process is to maximize transparency and competition. Participating private sector entities expect that the process will provide all bidders with the information they need to properly evaluate the opportunity and an equal chance to win the project.

As part of the commencement process of the procurement phase of the Project, the Transaction Advisor working with the Project Development Team, will complete all procurement documents, and develop a procurement strategy, that will guide the procurement process.

The key to a successful PPP procurement process is to maximize transparency and competition. Participating private sector entities expect that the process will provide all bidders with the information they need to properly evaluate the opportunity and an equal chance to win the project.

At a high level, the PPP Process is set out below.

4.5.1 The Competitive Bidding Process

PPP projects should always undergo a competitive bidding process. Competition not only provides transparency in the process but also provides a mechanism for selecting the best-value proposal. As a result, most international lending institutions and grant funding organizations require the use of competitive bidding as a condition for their support.

It is important to recognise that the benefits of competition are only realised if there is sufficient interest to generate multiple bidders, however. Competitive Bidding therefore requires a significantly higher level of preparation by the MDA compared to conventional procurement. One of the major differences is that PPP projects should follow a Two-Stage Process.

Competitive Bidding following a Two-Stage Process should be adopted for the selection of the private developer. In the first stage, applications to qualify are invited against technical and

financial threshold criteria specified in the Request for Qualification (RFQ) document. Firms are short-listed based on their Technical and Financial capabilities. The shortlisted firms are required to submit detailed proposals in response to a Request for Proposal (RFP) document. The Proposals are then evaluated as per the conditions of the RFP. The table below provides the indicative steps and timelines in a Two-Stage Bidding process.

Table 5: Indicative steps and timelines – Two-stage bidding

#	Stage and Activity	Duration
	Stage-1: Pre-Qualification Stage	
1	Publication of RFQ document	Zero Date (X)
2	Submission of queries by the prospective bidders	X + 15 days
3	Pre-bid meeting	X + 20 days
4	Authority response to queries	X + 30 days
5	Application Submission Due Date	X + 60 days
6	Opening of Technical Proposal	X + 60 days
7	Technical Capability Evaluation & Report	X + 75 days
8	Acceptance of Technical Evaluation Report by the Procurement Committee	X + 80 days
	Stage-2: Bid Stage	
1	Sale of Bid/RFP document to short-listed applicants	X + 90 days
2	Submission of queries by the prospective applicants	X + 105 days
3	Pre-Bid meeting	X + 110 days
4	Authority response to queries	X + 130 days
5	Bid Submission Due Date	X + 150 days
6	Opening of Bids	X + 150 days
7	Letter of Intent (LOI)	Within 30 days of the Bid Due Date
8	Signing of the Contract	Within 30 days of the LOI

The table below shows the steps in a typical Bidding process.

In the first stage, applications to qualify are invited against technical and financial threshold criteria specified in a Request for Qualification (RFQ) document. Any firm may respond to an open, public RFQ. The best firms are then short-listed based on their technical and financial capabilities, but not on their specific vision or approach for the project. The purpose of the RFQ stage is simply to determine whether an interested firm has the technical and financial capabilities to implement the project.

Firms that exceed the RFQ threshold criteria are then shortlisted and are offered the opportunity at a late date to submit detailed proposals in response to a Request for Proposal (RFP) document. Full proposals are then evaluated as per the conditions of the RFP. To manage each step correctly and allow the interested firms sufficient time to evaluate the project and prepare their bids, this whole process can take several months, or even up to a year to complete.

Table 6: The PPP Procurement Process

Step	Activity
1	Formation of a Procurement Committee comprising officials of key MDAs including relevant Independent Observers (from a Civil Society Organisation preferably)
2	Finalisation of Procurement Notice Inviting Tenders (NIT), RFQ and Publication of the Procurement Notice in the press and other media and upload the RFQ on the Public Sector Agency's website
3	Pre-application meeting to resolve queries on the RFQ Document
4	Evaluation of Applications and Short listing of Bidders
5	Finalisation of Bid Documents – RFP and Draft PPP Agreement, and issuance of both to the shortlisted applicants
6	Bidders' Conference and Processing of Clarifications
7	Formation of Technical and Financial Evaluation Sub-Committees and Evaluation of the Technical and Financial Bid
8	Open negotiations with the Preferred Bidder, Conduct Due Diligence and update the Outline Business Case into a Full Business Case based on the outcome of the Negotiations
9	Apply for and Secure a Certification of No Objection on the Procurement Process from the Benue State Public Procurement Commission
10	Completion of the Full Business Case
11	Approval of Contract by the State Executive Council and issuance of Letter of Intent to Preferred Bidder, sign Concession Agreement and reach Financial Close

The Project Delivery Team must document and record accurately each aspect of the procurement process. At a minimum, this documentation and recording of proceedings should include:

- The names of all respondents to a Request for Qualification (RFQ) or Expression of Interest (EOI) and a Request for Proposal (RFP);
- Minutes of all meetings;
- A review of how each of the bidder's submissions was compared and evaluated at the RFQ or EOI and RFP stages of the process, and the reasoning behind the elimination of bidders at each stage of the process;
- All information that was disclosed in response to questions or requests for information from bidders and how the requests were handled.

Maintaining these documents and records is essential as it ensures that the procurement process was fair, open and transparent. Not only does this build trust with the private sector for future PPP tenders but also confidence from constituents/the public who will be the end users of infrastructure or services provided by the PPP.

Such record keeping also assists in capturing relevant experience of key challenges and success factors that can be utilised in developing future projects.

The steps for conducting the procurement process for the PPP are further set out below

Step 1: Formation of a Procurement Committee

A Procurement Committee, often called a Tender Evaluation Committee, is formed for overseeing and conducting the bidding process. Typically, the Procurement Committee is formed with representatives from several MDAs with responsibility for the financial, legal, and operational aspects of the project as well as the representatives from relevant regulatory bodies, such as the Benue State Public Procurement Commission. This structure ensures diversity and prevents any single government group from being solely responsible for selecting the preferred bidder. The Committee appoints an in-house Co-ordinator or an external consultant (Transaction Advisor) to

manage the day-today aspects of the bidding process. However, the Procurement Committee itself (and not the Co-ordinator or Transaction Advisor) is responsible for making the final determination of the preferred bidder.

The Procurement Committee, in turn, could be divided into functional teams to focus on evaluation of specific aspects of the bidders' proposals. For example, the Procurement Committee could have separate teams for technical review, legal review, local preference review and financial review. The number of teams may depend upon the complexity of the project evaluation.

Step 2: Procurement Notice Inviting Expressions of Interest (EOI) and Request for Qualification (RFQ)

The MDA finalises and issues the Procurement Notice Inviting Expressions of Interest (EOI) from firms or consortia interested in providing the range of services required for the proposed project. This Notice Inviting EOIs provides a brief overview of the project and scope of the services to be provided (including the requirement to raise finance for the project) and sets out qualification/eligibility criteria, together with the submission deadline. The Notice Inviting EOIs is widely published in appropriate internationally circulated newspapers, journals, and websites as well as official gazettes and government websites. Typically, the Notice Inviting EOIs remains open for 30-90 days.

The Notice Inviting EOIs will provide details of where interested parties can obtain the Request for Qualification (RFQ) document and Project Information Memorandum, which provides details of the qualification and eligibility criteria, with instructions for submission of applications, and background to the project and scope of services. The RFQ could also be uploaded on the official website of the MDA and/or other relevant agencies. The RFQ may be provided free of charge or for a nominal fee to exclude the most frivolous parties from participating.

The RFQ includes the formats for submission of applications and instructions for presenting proof/testimonials of eligibility and qualification. This typically includes details about the applicant, experience with similar projects and their Completion Certificates, Statement of Legal Capacity, Board Resolution, Solvency Certificate, Non-Collusion Certificate, Financial Statements for the previous 3 years, Certificate of Incorporation of Entity.

Step 3: Pre-Application Meeting and Issue of Clarifications

A Pre-Application meeting may be held to clarify doubts and answer queries from prospective bidders regarding the project and the RFQ. The purpose of this meeting is not to answer detailed project information, which will come after firms are shortlisted, rather to provide a forum for any general inquiries about the RFQ process itself. After the meeting, the RFQ may be modified if deemed necessary, to update any changes to the requirements by issuing an addendum. The revised RFQ documents are uploaded again on the website.

Step 4: Evaluation of Applications and Short listing of Bidders

The applications are evaluated based on the technical and financial capabilities to implement the project according to the selection criteria given in the RFQ. At this stage, the evaluation focuses on threshold criteria with all proposals meeting the criteria shortlisted for the next stage and non-confirming proposals rejected. A Pass/Fail approach is generally the preferred approach for evaluation of responses to the RFQ. However, a target number (3-5) of shortlisted bidders is usually preferred to ensure sufficient competition without overcrowding the bidding process, and therefore sometimes only the highest qualifying firms will pass on to the full tender phase. If firms percieve too many bidders, and thus the odds of winning are low, they maynot participate in the full tender.

Step 5: Finalisation of Bid Documents – RFP and Draft PPP Agreement, and issuance of both to the shortlisted applicants

The RFQ stage culminates in the approval of the shortlisted bidders by the Procurement Committee and issuance of the RFP to the shortlisted bidders. Depending on the type of contract and the local requirements, the bid package can range from a concise set of documents to several volumes of material. Even if the full RFP package is ready to issue at the time of shortlisting and the project is relatively straightforward, there will usually still be a significant time period (e.g. minimum 90 days) for shortlisted firms to review the RFP, further evaluate the project opportunity, and prepare their full bid.

Step 6: Bidders' Conference and Processing of Clarifications

A Bidders' Conference is a key element of the communication strategy that helps the MDA build trust and confidence with the bidders and other stakeholders. Key elements include:

- Adequate time should be provided between the issue of RFQ/ RFP and the date of the Bidders' Conference and the deadline for submission of bids.
- All information, including answers to any one firm's questions, should be made available to all shortlisted bidders.
- Shortlisted firms should provide their queries in writing within a specified number of days before the Bidders' Conference.
- The Bidders' Conference should be attended by senior representatives of the MDA together with their Transaction Advisers on the project. All shortlisted firms are invited to attend.
- Further project details should be provided at the Bidders' Conference, including answers to all the queries submitted in writing, and additional questions may be entertained at the Bidders' Conference.
- The Bidders' Conference may be followed by a visit to the project site or service area arranged by the MDA.

The discussions at the Bidders' Conference will be documented and all responses and clarifications will be communicated in writing to all shortlisted firms. The responses should also be published on the MDA's website.

Step 7: Proposal Evaluation

At the RFP stage, bidders are required to submit their proposals in two parts: a Technical Offer and a Financial Offer. The Technical Offer is normally evaluated by the Transaction Advisor, along with Procurement Committee members and other technical experts, usinga scoring approach with a threshold cut-off score (often set at70%). Financial Offers of only those bidders scoring above this technical threshold are opened. A scoring system which combines the technical score with the financial offer is then used to determine the winner of the tender.

It might be expedient to set up Sub-Committees of experts from the Procurement Committee to support the evaluation of the Technical and Financial Bids, given the technical skill that is involved in such evaluation. The Procurement Committee can also engage external independent evaluators to form part of the Sub-Committees. The Evaluation Report submitted by the Sub-Committees to the Procurement Committee is advisory, as the Procurement Committee makes final reviews and decisions. The Transaction Advisers can guide this process and also form part of the independent evaluators of the Sub-Committees.

At the end of the evaluation process, the Procurement Committee selects a Preferred Bidder and a Reserve Bidder. The Reserve bidder will only be engaged if negotiations fail with the preferred bidder.

Step 8: Negotiation with Preferred Bidder, and Conduct of Due Diligence

After the Procurement Committee has selected the Preferred Bidder based on the evaluation of proposals, the next step is to enter into negotiations. These negotiations typically focus on finalizing the terms of the contract, addressing any outstanding concerns from either party, and ensuring that the bidder can meet all contractual obligations.

During this stage, due diligence is conducted to verify the bidder's technical, financial, and legal capacity to implement the project. This may include reviewing the bidder's financial stability, ensuring compliance with regulatory requirements, and confirming the availability of resources and expertise for the project.

The goal of the negotiation and due diligence process is to reach a mutually acceptable agreement while maintaining transparency and adherence to the procurement guidelines. This ensures that the project is awarded to a capable and reliable bidder, minimizing risks for the contracting authority.

Step 9: Apply for and Secure a Certification of No Objection on the Procurement Process from the Benue State Public Procurement Commission,

Once negotiations with the Preferred Bidder have been concluded and the contract terms finalized, the next step is to apply for a "Certification of No Objection" from the Benue State Public Procurement Commission, (BSPPC). This certification is a formal approval indicating that the procurement process was conducted in compliance with the relevant laws, guidelines, and best practices set forth by the BSPPC.

To secure this certification, the contracting authority (e.g., the MDA or Procurement Committee) submits a comprehensive report detailing all stages of the procurement process, including:

- Details of the Project: A summary of the project objectives, scope, and the need for the procurement.
- Procurement Process Documentation: This includes evidence of publication of notices (EOI, RFQ, RFP), minutes from meetings (such as pre-bid and bidder conferences), evaluation reports, and the outcomes of negotiations with the Preferred Bidder.
- Evaluation and Due Diligence: Proof that technical, legal, and financial evaluations were conducted in accordance with the set criteria, and that the Preferred Bidder met all the requirements.
- Contractual Terms: A draft of the final concession agreement or contract negotiated with the Preferred Bidder.

The BPP reviews this submission to ensure that the procurement process was transparent, competitive, and compliant with all legal frameworks. Upon satisfactory review, the BPP issues a "Certificate of No Objection," which is a mandatory approval needed before the contract can be signed. This certification serves as an additional safeguard, ensuring accountability and adherence to procurement standards.

Step10: Completion of the Full Business Case

The Full Business Case (FBC) integrates the Preferred Bidder's technical and financial proposals, the Outline Business Case (OBC), and the outcomes of the negotiation process. This step ensures that the final project structure is aligned with the agreed terms and conditions of the contract.

Key actions in completing the FBC include:

i. Integration of Preferred Bidder's Proposals: The technical and financial details from the Preferred Bidder's submission are incorporated into the FBC. These details include the

technical design, implementation plans, pricing, and financing structure that have been agreed upon during negotiations.

ii. Alignment with the Outline Business Case (OBC): The FBC builds on the previously approved OBC, updating it to reflect the Preferred Bidder's inputs. This ensures that the project's strategic objectives, cost estimates, and risk assessments are consistent with the final proposals and the agreed terms in the contract.

iii. Negotiation Outcomes: The final terms of the contract, including any adjustments made during the negotiation phase, are reflected in the FBC. This ensures that all negotiated aspects, such as risk allocation, project timelines, and financial responsibilities, are formally documented.

iv. Value-for-Money (VfM) and Risk Analysis: The FBC incorporates updated assessments of the project's Value-for-Money and risk management strategies, based on the Preferred Bidder's proposals. This demonstrates that the final contract offers the best possible outcome for the public sector.

v. Final Documentation: The FBC also includes the draft contract, finalized concession agreement, and any additional agreements needed for financial closure.

Once completed, the FBC is submitted to the Board for final approval and submission to the State Executive Council for ratification. The FBC shows that the project is financially viable, technically sound, and ready for implementation. The FBC serves as the formal foundation for the project's execution and financial close.

Step 11: The Board Approval and State Executive Council Ratification of the Signing of the Contract

After finalizing the Full Business Case and completing negotiations with the Preferred Bidder, the project requires formal approval and ratification from key government bodies. The following steps outline the process:

i. The Board Approval: The Full Business Case, along with the proposed contract, is submitted to the Public-Private Partnership (PPP) Board for review and approval. The Board evaluates the project's compliance with regulatory and financial guidelines, ensuring that it delivers value for money and meets the government's objectives. This approval is a critical step toward proceeding with the contract signing.

ii. State Executive Council Ratification: After the Board grants its approval, the project is presented to the State Executive Council for ratification. This ratification signifies the final governmental endorsement of the project, allowing the signing of the contract with the Preferred Bidder to proceed.

iii. Issuance of Letter of Intent (LoI): Following ratification, the Ministry, Department, or Agency (MDA) issues a Letter of Intent (LoI) to the Preferred Bidder. This letter formally confirms the government's intent to award the contract, subject to the fulfilment of certain Conditions Precedent. The LoI typically outlines the following key requirements:
    - Legal Compliance: The Preferred Bidder must ensure that all legal requirements are met, including verifying the signatories and any land ownership issues.
    - Performance Security and Project Fees: The Preferred Bidder is required to furnish any necessary Performance Security and pay any applicable Project Development Fees as specified in the contract terms.
    - Formation of Special Purpose Vehicle (SPV): If required under the Request for Proposals (RFP), the Preferred Bidder must form an SPV to carry out the project.

iv. Completion of Conditions Precedent: The Preferred Bidder must fulfil all the Conditions Precedent outlined in the LoI. This includes completing legal, financial, and administrative requirements before the final contract is signed.

v. Signing of the Contract Agreement: Once all Conditions Precedent have been satisfied, the Contract Agreement is signed between the MDA and the Preferred Bidder, formalizing the partnership and enabling the project to move forward to the implementation and financial closure stages.

4.5.2 The Request for Qualification (RFQ) Documentation and Evaluation Process

Some content of the Bid documents will differ depending on the contract type and the procurement approach being followed for the selection of the private developer. However, some standard bid documents involved during the procurement of the private project developer are described.

Request for Qualification (RFQ) and Evaluation Methodology

An RFQ includes the following information about the project and qualification procedure:

i. Description of the project scope and objectives, with a focus on the services to be provided including performance levels;
ii. Proposed PPP model and financing mechanism; Envisaged payment mechanism;
iii. Project timeframe and indicative implementation schedule; and
iv. Details of the qualification requirements and bidding process, including:
    - Qualifying criteria for the evaluation and selection of shortlisted bidders;
    - Details of the pre-submission conference or meeting and of other opportunities to ask questions or seek clarification;
    - Process for submitting responses and evaluation; Indicative procurement schedule;
    - Specific legal requirements or restrictions associated with the RFQ or the project; Other general instructions to applicants; and
v. Application forms (as annexure)

The qualifying criteria used to evaluate the responses to the RFQ should be based on the project requirements, related to a scoring system, and clearly stated in the RFQ itself. Qualifying criteria may include:

i. Technical qualifications
    - Experience with similar projects, in terms of service outputs, size, and complexity Experience with PPPs in similar projects and generally
    - Relevant experience locally and internationally
    - Specific technical capabilities of the firm or consortium
    - Experience of working together (if firms are forming a consortium)
ii. Financial qualifications
    - Ability to raise sufficient funding for the project and in the form required
    - Consortium structure, including minimum equity contribution of lead firm and evidence of binding agreement among the members
iii. Evidence of no conflict of interest
iv. The RFQ may also request brief comments on the project scope and structure to evaluate the firm's or consortium's understanding of the service output requirements.

A scoring system is developed to allow the firms to be ranked. The Independent Monitor may review the criteria and the scoring system.

Both the criteria and the scoring system are explicitly stated in the RFQ. This allows potential bidders to judge whether they are sufficiently qualified for the project and allows them to focus their responses on what the MDA wants.

Details of the Benue RFQ Process

Government considers it to be best practice for a Contracting Authority to limit the number of private parties eligible to participate in a PPP procurement by carrying out a pre-qualification exercise. This is the Expression of Interest. The objectives of this exercise are to:

- Select a limited number of bidders that are qualified – technically and financially and have sufficient experience and commitment to prepare proposals and execute the project;

- Set out the rules of participation in the procurement process clearly and unequivocally;
- Disseminate information on the project;
- Give guidance on the expected structure of a bidder – for most PPPs, the preferred structure of a bidder is a consortium, which, if selected, will form a Special Purpose Vehicle (SPV) to execute the project; and
- Gather information from a bidder that is verifiable and can be evaluated.
- Only pre-qualified bidders will be invited to submit proposals at the RFP stage.

Critical considerations at the EOI stage

- The number of pre-qualified bidders should be kept to a minimum of three (3) and a maximum of six (6). Bid preparation is a costly undertaking, and limiting the number of pre-qualified bidders provides a level of comfort to the short-listed bidders that they have a reasonable chance of success. Furthermore, RFP bid evaluation is a costly and time-consuming process for the Contracting Authority and project committee, and limiting the number of pre-qualified bidders will ensure that the RFP evaluation will be carefully and deliberately undertaken.
- To avoid the risk of pre-qualified bidders dropping out of the process, a bid bond should be required from them before the RFP is issued. Pre-qualification should be contingent upon providing such a bond, in an approved format. The amount of the bid bond should approximate the cost to the Contracting Authority of restarting the procurement from the EOI stage.
- The level of demonstrated empowerment participation by a bidder also deserves careful consideration. In most PPPs for service delivery infrastructure, there are ample opportunities for empowerment in the construction of the infrastructure, and also as suppliers to the successful SPV during the delivery stage. The level of empowerment required of a bidder at the EOI stage should be informed by the empowerment assessment carried out in the feasibility study.
- The nature and status of parties eligible to participate in a bidder's consortium also deserve careful consideration. These considerations include:
    - For privately-owned firms, if they have been blacklisted by Central Government or by any professional body, or have been found guilty of fraud or corruption, they should not be eligible for participation.
    - Not-for-profit entities are typically not eligible to lead a bidder's consortium, because of the financial uncertainty of their existence. They may, however, play an important role in achieving the socio-economic aims of the project. Their participation in a bidder's consortium should be at the invitation, and risk, of the private party.
    - Public entities are, by definition, not private parties. Since the essence of a PPP is to access private sector funding, which is put at risk during the project's implementation, public entities are not eligible for participation. Public sector financial institutions may, however, play a role in providing debt financing for a PPP, as long as it does not duplicate what the private sector provides and is provided at competitive rates, in a competitive environment, and such financing is made available to all pre-qualified bidders.
    - As per Section 80(1) (a) of the Benue State Public Procurement Law 2020, conflicts of interest considerations are also important. No member of one bidder's consortium should be a member of any other bidder's consortium or bid independently. Any bidder that contravenes this provision shall be disqualified.
    - No advisor or member of a consortium should also be the lead arranger, underwriter or lead bank to the consortium.
    - No member of the PDT, including its transaction advisor, should have any interest in a bidding consortium.

Prepare the EOI document

The EOI document provides bidders with the opportunity to present relevant information about themselves, their capacities and capabilities. The document must also clearly set out how the EOI will be evaluated, the evaluation criteria and processes. Any special requirements of the Contracting Authority must be clearly stated. The precise content of the EOI document may slightly vary according to the specific requirements of each project. However, as per the Benue State Public Procurement Law 2020 as well as best practice, the document should identify the contracting authority and describe the proposed PPP project. It shall specify;

i. the minimum professional and technical qualifications, human resources, equipment and other physical facilities needed to carry out all the phases of the project, including design, construction, operation and maintenance; and

ii. the evidence and information potential counterparties will be required to demonstrate the capability to manage the financial aspects of the project and their ability to sustain its financial requirements; and

iii. the minimum managerial and organisational capability, reliability and experience required from potential counterparties, including their previous experience in providing or operating similar infrastructure, assets, facilities or services.

Additional best practice inclusions in the EOI include the following;

iv. A general disclaimer to the effect that the Contracting Authority does not warrant any of the information contained in the document and that it reserves the right to terminate the procurement at any stage in the proceeding;

v. The terms and conditions for issuance of the EOI, including when and where the responses are to be submitted, specifying the date, time and place;

vi. The purpose of issuing the EOI – that the Contracting Authority is seeking to qualify a specified number of suitable qualified bidding consortia to be invited to respond to an RFP to be issued after the determination of the short-list;

An outline of the contents of the EOI;

Information about the project:

- Project description and background;
- The Contracting Authority's view of the PPP;
- Any land issues that may be relevant;
- Empowerment and socio-economic requirements;
- Performance parameters;
- Legal requirements related to the PPP;
- Financial requirements;
- Identified revenue sources, as appropriate;
- Envisaged risk transfer to the private party; and
- SPV requirements for consortium membership.

- Procurement process
  - Stages and timelines;
  - Clarification processes;
  - Changes to the consortium composition;

- Prohibition against participation in more than one consortium; and
- Bid bond requirement

- Instructions to bidders
  - Format of submissions, including compulsory forms of response;
  - Treatment of late submissions;
  - Structure and composition of bidders
  - Contracting Authority contact restrictions;
  - Contracting Authority contact details; and
  - Grounds for disqualification, including ineligible parties.
- Required information from bidders
  - Consortium capability and strength;
  - Structure of consortium with roles of each member clearly described;
  - Skill and experience of consortium members in projects of a similar nature;
  - Financial commitments;
  - Financial and market standing;
  - Proposed consortium equity, ownership and directorship;
  - Ability to fulfil empowerment and socio-economic requirements;
  - Capacity to deliver;
  - Commitment to meet project timetable;
  - Ability to raise debt and equity and provide security;
  - Project management capability;
  - Risk management capability;
  - Demonstrated understanding of key project requirements;
  - Previous relationship, if any, with the NSG;
  - Quality assurance systems; and
  - Approach to the PPP and integration of deliverables.
- The EOI evaluation process
  - Methodology; and
  - Evaluation criteria.

Publishing of the EOI Notice

The method of EOI distribution must follow the agreed project delivery team and Contracting Authority's preferred procurement plan in line with the Benue State Public Procurement Law. This can involve advertising the project in relevant publications locally and globally and in Benue's Tender Bulletin. This will encourage participation in the process and ensure fairness and openness, as well as ensuring that the full target market is covered.

The publishing of the EOI should include:

- a brief description of the project including names of the contracting authority
- the role that will be played by the successful private sector partner
- a summary of the evaluation criteria
- the location and deadline for submissions

- the expected format of submissions
- a contact name
- an address where the full EOI document can be obtained
- quantum and form of bid bonds required (where necessary)

A briefing session may also be held, to give the Contracting Authority and PDT, an opportunity to clarify their view of the project's scope, gain further market feedback on the project structure and deliverables, and discuss any other relevant matters. Briefings and communications must be transparent, and interested parties must be treated in a fair and equitable manner.

As a general rule, potential bidders/counterparties should have between 30 and 60 days from the date of the advertisement to prepare their submissions. Providing sufficient time for submissions generally improves the quality of submissions.

Evaluate the submissions

The EOI evaluation is based on the evaluation criteria set out in the EOI document, and the information provided by the bidders in terms of the criteria. In line with the Benue State Public Procurement Law 2020 these criteria are;

i. professional and technical qualifications, human resources, equipment and other physical facilities needed to carry out all the phases of the project, including design, construction, operation and maintenance; and

ii. the evidence and information that demonstrate the capability to manage the financial aspects of the project and the ability to sustain its financial requirements; and

iii. the managerial and organisational capability, reliability and experience, including previous experience in providing or operating similar infrastructure, assets, facilities or services.

iv. Proof of compliance with statutory licenses and certifications for businesses in Nigeria

The evaluation will be undertaken by the PDT, with the assistance of the transaction advisor. The transaction advisor will act as a resource to the PDT, but will not make any recommendation as to the evaluation process.

At the outset, the EOI submission should be evaluated as to completeness – that is, "did the bidder provide information on all of the mandatory requirements listed in the EOI"? otherwise, it may be disqualified from further consideration.

As for submissions that provide all of the mandatory information, it is helpful to construct a table listing the evaluation criteria, and scoring each bid using the table. Scoring should be on the basis of "good", "adequate" or "poor" in respect of each criterion. If the project committee or transaction advisor lacks expertise about any particular criteria, such expertise should be brought in to the project committee to assist in the evaluation. Only the PDT, may score the evaluation table.

Table 7: Example of some RFQ evaluation criteria

CRITERIA	SCORE – GOOD, ADEQUATE OR POOR
Bidders' capability and strength	
Consortium composition and structure spelt out clearly	
Skill and experience of consortium in: - construction - operations - management	
Financial and market standing	
Ability to raise debt and equity and propose security	
Local capacity	
Ability to Deliver	
Commitment and capacity to meet project timetable	
Project management capability	
Risk management capability	
Quality assurance systems	
Project awareness	
Demonstration of understanding of key project demands	
Approach to PPP and integration of deliverables	

The selected number of bidders with the most scores in the “good” and “adequate” range should be selected for short-listing. BENIPA must recommend on this selection.

Again, in line with the Benue State Public Procurement Law 2020, the short-listing of potential counterparties shall be subject to review by BENIPA and the accounting officer of the contracting authority shall communicate its outcome to all potential counterparties that submitted expressions of interest.

Communicate with bidders

The Project Manager or PDT must advise all bidders of the EOI evaluation outcome at the same time. This includes those that are short-listed for the RFP stage as well as those that are eliminated. The Project Manager may wish to publicly announce the short-listed firms.

It is important to provide relevant feedback to the eliminated bidders, in line with legal requirements. The PDT may on the request of individual non-short-listed bidders, meet with them to discuss the selection process.

A pre-bid conference with the short-listed bidders may then be called, where information on the RFP processes and timelines will be communicated.

4.5.3 Bid Documents for PPP Procurement: The Request for Proposal (RFP)

The RFP, together with the Draft Concession Agreement (CA), or Heads of Terms of the CA, comprise the full tender bid documents. These are the most important documents in the bidding process. The RFP and CA specify the main terms of the project which are non-negotiable at the award stage. It is therefore important that these terms are clear and well understood by all

parties. The CA also lays the foundation for the contract management process throughout the life of the PPP.

A quality RFP provides bidders with clarity on the requirements of the project and assures them that the public partner is credible and well-organised. This increases the likelihood of bidders devoting resources to bid and reduces the chance of delays to the bidding process because of subsequent changes to the RFP.

The draft Bid documents are finalised based on details from:

- The project specifications contained in the feasibility study;
- VGF or other grant approvals and any added requirements or requested changes; and
- The qualification criteria developed at the RFQ stage

Contents of the RFP

The RFP is the comprehensive request for proposal from the shortlisted firms or consortia. The RFP communicates to the bidders the MDA‘s requirements. The RFP typically includes several sections detailing the essential aspects of the project and the bid, for example:

General instructions to bidders include:

- Introduction and overview of the RFP itself, detailing its contents and purpose
- Instructions to bidders, including details of the minimum submission requirements, required format for financial bids, and submission procedures
- Details of pre-bid meetings, site visits and data room
- Requirements for Bid Security or contract performance security

A detailed description of the project scope and required service outputs based on the specifications developed in the feasibility study/Outline Business Case including:

- Output-focused specification
- Site-specific details
- Financing requirements
- Environmental and social safeguard requirements

Draft Concession Agreement specifying the commercial framework in legal terms including,

- The intended risk allocation
- Roles, rights, and responsibilities of all parties
- Key schedules to the Agreement, including
    - Site description
    - Specifications and standards
    - Required tests and inspections, and procedures for testing, independent inspections, and reporting
    - Schedule of user fees/ tariff rates
    - Financial arrangements, such as performance security and escrow account

Criteria for bid evaluation

The evaluation of bids is based on the following approaches

In the case of projects where the developer is responsible for the detailed design of the facilities, there is flexibility available to introduce innovation and design efficiencies, and a Quality cum Cost Based Selection (QCBS) approach may be used. But where Technical Proposals shall be allotted a specified weight, the Financial/Price Proposal shall carry the residual weight. Selection of weights depends on the specific requirements of the PPP project.

In all other projects, a Least Cost approach shall be used. Under the Least Cost approach, the financial proposals of all bidders who qualify on technical criteria, are opened, and assessed. The bidder quoting the most advantageous financial offer to government is then selected as the preferred bidder.

The process and evaluation methodology are set out so that bidders take comfort from an auditable process with the necessary checks. The RFP specifies that the technical and financial criteria of the bid will each be scored out of 100 points. The scores achieved should be combined into the bidder's overall score using the following formula:

Total Bid Score = X *(Technical Score/100) + Y * (Financial Score/100)

Where:

X is the weight for technical;

Y is the weight for financial, with Y at 100% in the Least Cost approach;

In this formula, "technical" refers to all project factors under evaluation other than price elements.

Evaluation of the various elements of the technical and price proposal shall be aimed at gauging whether the proposal provides an integrated solution to the service delivery requirement of the MDA. Weights for technical and financial proposals may vary across projects. The evaluation of the bid is performed from the perspective of an integrated service delivery solution.

If discount rates are used for the assessment of Financial Proposals, the rate shall be the Government of Nigeria bond rate adjusted for a project-related risk premium. The selected government bond should have a maturity similar to the project life.

The Selection/Financial criteria for a PPP project may be one or a combination of the following:

- Lowest contract value;
- Lowest bid in terms of the present value of user fees;
- Highest revenue share to the Government;
- Highest upfront fee;
- Shortest concession period;
- Lowest present value of the subsidy or grant;
- Lowest capital cost and Operation & Management cost for Projects having a definite scope;
- Highest equity premium;
- Lowest quantum of State Support solicited in present value terms; Lowest net value of payments required from the Government;
- Such other suitable selection criteria as the Appropriate Approving Authority may approve, allow, or prescribe.

All clarification requests and responses shall be documented and shared with all pre-qualified bidders. The MDA shall maintain a register of bidder notes and meetings and copies of the minutes of such meetings should be circulated among the bidders.

The evaluation is typically conducted by an Evaluation Sub-Committee (appointed by the Procurement Committee), who then make their submission or recommendations to the Procurement Committee. The financial evaluation Sub-Committee will include:

- The Transaction Advisor;

- Selected members from the MDA;
- A representative from BENIPA (BENIPA);
- Any other member as considered necessary for the project.

The Evaluation Sub-Committee may be divided into functional teams to focus on evaluation of specific aspects of the bidders' proposals. For example, the Evaluation Sub-Committee could have separate teams for undertaking technical review, legal review, and financial review. The number of teams depends upon the complexity of the project evaluation.

Where applicable, alternate or variant bids submitted by bidders that meet the minimum requirements of the RFP, shall be evaluated after the evaluation of conforming bids. Each alternate bid shall be evaluated as a stand-alone proposal.

The evaluation report of the Evaluation Sub-Committee along with all supporting scores sheets and notes will be submitted to the Procurement Committee to be reviewed for final decision on the scoring.

If no single bidder emerges as the preferred bidder, the Procurement Committee can recommend to the Board for a Best and Final Offer (BAFO) process (see Annexure VI for a BAFO Process).

Following this evaluation, the highest-ranking bid based on the evaluation criteria shall be declared the preferred Bidder and the MDA shall award the contract to the Bidder who submitted the highest-ranking bid.

Typically, the RFP Document comprises of three parts as described below:

Part I: Instructions to Bidders (ITB)

This document contains an introduction to the MDA, project scope and objective, instructions for preparing the bid document, forms to be included in the bid, timelines for the bidding process, and required documents to be attached for the bidding.

Part II: Project Information Memorandum (PIM)

The project information memorandum consists of project details, including:

- Population profile (i.e., density, income group, economic activities in the project area)
- Detailed land information with proof of ownership
- Report on existing assets and their potential use for the proposed infrastructure services
- Contour map of the site
- Revenue from any existing infrastructure services with assumptions on user charges Construction and O&M guidelines
- Environmental guidelines
- Existing contract if any for the proposed infrastructure services and any other pertinent information.

Part III: Draft Concession Agreement

The Draft Concession Agreement sets out the detailed terms and conditions on which the project is awarded and broadly covers:

- Scope of Services and Performance Standards with incentives and penalty arrangements
- Period of Contract
- Construction period

- Parameters for contract award
- Obligations of the PPP service provider and sponsoring authority
- Process of handing over of site to PPP service provider
- Monitoring and supervision details
- Safety and environmental minimum requirements
- Support and incentives, if any to be given by the sponsoring authority
- Minimum Operations & Maintenance requirements which link to the Performance Standards
- Force majeure and Termination payment arrangements
- Dispute resolution mechanism, and
- Other terms and conditions relevant to the project.

Preparing the RFP

The RFP is a two-way communication tool between the Contracting Authority and the bidders. The RFP must communicate project data and the Contracting Authority's requirements to bidders, and describe how bidders must communicate their proposals, in response, to the Contracting Authority.

A request for proposals sent to potential counterparties that have been short-listed in line with the Benue State Public Procurement Law 2020;

(a) may expand on the requirements specified in the call for expressions of interest:

Provided that the amplification shall not render the requirements more restrictive; and

(b) shall specify the following —

i. whether the bidding will be held in one or two stages; and
ii. whether the project will be financed entirely from fees tariffs or other sources; and
iii. the technical requirements and relative weighting that will be accorded to such requirements in line with the Act, including the minimum threshold for accepting offers; and
iv. environmental standards, if any, to be met by the project, and the weight that will be accorded to them;
v. the operational feasibility of the project; and
vi. the quality of service expected of the counterparty.

More generally, the RFP document includes:

- General information to bidders;
- Essential minimum requirements;
- Service specifications
- Standard specifications
- Payment mechanism and penalty regime;
- Legal requirements and draft PPP agreement;
- Commitments required from bidders;

- Evaluation criteria; and
- Bid formalities.

General information to bidders

General information to bidders consists of:

- An explanation of the project, taken from the feasibility study or Outline Business Case, communicating the background to the project and the Contracting Authority's desired outcomes;
- A description of the institutional environment, including the regulatory, physical, political and social environments;
- The Contracting Authority's view of what the PPP is and how it may be structured, including the envisaged relationship between the parties and the financing structure;
- Identification of all the project assets the Contracting Authority requires the private party to take over, and the expected condition thereof at the end of the project term, together with a statement as to whether any such assets may be encumbered during the term of the project;
- An outline of the procurement framework and timelines, explaining how the procurement will be carried out, the governing legislation for the procurement, and how the project has complied with that legislation to date. The process must be comprehensively described, including any parallel requirement of obtaining any required permissions and consents;
- Instructions to bidders, listing all items that must be completed for a valid bid including:
    - Structure of the bid consortium;
    - The requirement that the consortium must be an incorporated entity when the bid is submitted;
    - Consortium change requirements;
    - Submission of proposal requirements;
    - Communication with the Contracting Authority requirements;
    - Site visit arrangements;
    - Bid clarification meetings, including draft PPP agreement clarification meetings;
    - Costs of submissions are borne by the bidder;
    - Confidentiality requirements;
    - Bid bond requirements;
    - Grounds for disqualification; and
    - Other project specific requirements.
- Third-party requirements, such as requirements for provision of utilities;
- The identification of a data room, where all project information to be given to the short-listed bidders will be kept and managed. It is recommended that the Public Sector Comparator (PSC) (which is expected to be prepared along with the Feasibility Report or Outline Business Case during the project development phase) be provided to short-listed bidders, so they may know the Contracting Authority's understanding of its costs, were it to undertake the project in its own right. It is important that bidders understand that all information is being provided without warranty, and that each bidder must conduct its own verification of any information provided;

- Disclosure of available environmental impact data, without warranty, concerning all environmental impact activities carried out, and the requirements for each bidder with regard to finalising all such processes;
- A requirement that each bidder undertake a due diligence before bid submission, in terms of all information provided on technical, financial and legal matters;
- A clear statement on the quality management system that each bidder must propose to ensure provision of the proposed services, retaining the right of the Contracting Authority to audit any quality management system proposed, if implemented; and
- Important definitions of terms used throughout the RFP, which must be the same as those used in the draft PPP agreement.

Essential minimum requirements

Essential minimum requirements include those requirements necessary for a bidder to meet the project objectives, including, at least, the following:

- Financial – the bidder must demonstrate that it has the financial resources necessary to undertake the project; and this might be backed by submission of a bid bond, to ensure commitment to the process, and prevent the winning bidder from withdrawing without good cause. This bid bond might increase to meet the definitive guarantee once the contract is awarded.
- Legal – the bidder must demonstrate that the consortium is composed of eligible participants, consortium member details, term sheets or draft first-tier sub-contracts and a markup of the draft PPP agreement to indicate proposed deviations from the draft provided in the RFP, explaining the reasons for all deviations;
- Technical – the bidder must demonstrate its knowledge of each component making up the life-cycle of the proposed service and understand the minimum operational requirements;
- Empowerment - each bidder demonstrates its ability to meet the empowerment requirements of the RFP; and
- Other minimum requirements, such as tax clearance certificates for all consortium members.

Bids that do not meet these minimum requirements may be rejected for non-compliance.

Service specifications

The service specifications listed in the RFP refine the specifications described in the feasibility study or Outline Business Case. All required outputs for the service must be specified. Details of how the service specifications are to be met will be included as schedules to the draft PPP agreement attached to the RFP, and are to be completed by each bidder. Service specifications generally include the following:

- A statement of the required service outcome, not how that outcome is to be provided;
- A statement of required input specifications. Most projects require minimal input specifications to meet the specific institutional needs of the project. Since all inputs represent an assumption of risk by the Contracting Authority, and create constraints on the bidders; they must be carefully considered before including them in an RFP; and
- Asset condition specifications for the condition and value of assets at the project term's end when they revert to the Contracting Authority, which involves maintenance cycles by the private party and financial implications.

Standard specifications

The Contracting Authority should use specifications applicable to all standard components of the project, including construction specifications and standard operational requirements. ISO standards, for example, are commonly used.

Payment mechanism and penalty regime

The RFP must include a payment mechanism, which includes at least the following in a unitary payment structure:

- A single, indivisible unitary payment for full availability and performance of the services;
- An appropriate payment indexation;
- A mechanism for penalising partial or complete failure of the availability and performance of the service, by penalty deductions; and
- A mechanism for dealing with changes to service requirements.

Legal requirements

These are the requirements necessary to ensure the bidder's consortium has the legal status and capacity to fulfil the requirements of the PPP agreement, including:

- Shareholding agreements;
- Corporate governance requirements; and
- A full disclosure of the consortium makeup, including lenders, sponsors and parent companies.

Draft PPP Agreement

The RFP must include a draft PPP Agreement that allows for structured bidder input, incorporating the Standardized Provisions. Additional provisions should include limits to deductions for non-availability and the amount of debt the Contracting Authority must repay to a financial institution upon private party default.

Required bidder commitments

This is a critical section in the RFP, outlining the information required from bidders on all aspects of their bid, including:

- Technical aspects, including relevant service details, particularly the description of how the service specifications are to be met, to be included as schedules to the PPP agreement;
- The bidder's empowerment plan;
- Level of funding commitment from the bidder's financial institutions;
- Acknowledgement of anti-competition requirements;
- Corporate governance commitment;
- Financial and project structure;
- Security requirements, specifying the amount of any security – construction bond, operating bond, parent company guarantee, and associated costs;
- Any cap on liquidated damages;
- The contents of the bidder's financial model, including:

- Its base date (as specified in the RFP),
- The funding structure of the project, including debt and equity and from whom the equity is contributed and in what form and the cost of debt.
- The model must also provide:
    - An explanation and operation guide;
    - Inflation assumptions;
    - Key output ratios and return metrics;
    - All tax treatments;
    - Capital expenditure according to component breakdown in the RFP;
    - A funding plan;
    - A debt schedule;
    - Total operating cost and maintenance assumptions;
    - The NPV of real revenues using the discount rate specified in the RFP;
    - The projected rate of return (IRR), both real and nominal;
    - The return on equity for the entire term of the PPP agreement;
    - Interest cover;
    - Various sensitivities, as prescribed;
    - Risk pricing;
    - Assumptions on penalty deductions; and
    - Any forecast gains from refinancing.

- For project finance PPPs, the model must set out:
    - Debt to equity ratio;
    - Annual debt service cover ratios;
    - Loan life cover ratio;
    - Project life cover ratio; and
    - The percentage of debt to be repaid in the event of private party default.

Evaluation criteria

The categories for evaluation must be described in sufficient detail to focus the bidder's attention on the value-for-money areas of the RFP. The evaluation process and methodology must also be clearly explained. The scoring criteria for each project will vary according to the strategic importance of the various elements.

It is important to note, that the Evaluation Criteria for a **Quality and Cost Based Procurement method** is different from that of a **Least Cost Approach**

An example of a scoring formula for a **Quality and Cost Based Procurement method** should be in terms of the following:

A*(technical score/100) + B*(price score/100) = C

Where:

A is the weighting for technical (typically 70%, but could be adjusted based on project peculiarity or complexity)

B is the weighting for price (Typically, 30%, but could be between 25% and 45% depending on the project peculiarity and complexity)

C is the total bidder's score

For a Least Cost Approach, a technical benchmark is set (for instance at 70%). All bidders who meet the Technical Score Hurdle Rate are evaluated based on their financial proposal, to determine which offer provides the best value for money. Financial proposals of all bidders who qualify on technical criteria are opened and assessed. The bidder with the most advantageous financial offer to the government is then selected as the preferred bidder.

Considerations for evaluating the PPP Solution at the RFP Stage

Technical solution

In a typical PPP, there will be two phases – a development phase where the services infrastructure is constructed, and a delivery phase where the services to be provided from the infrastructure take place. Each bidder must propose a solution for each phase, and will be evaluated in line with the following criteria:

- The development phase solution.

Evaluation criteria for a bidder's proposed development phase solution include:

  - Extent, quality, safety, cost-effectiveness, functionality and innovation of designs;
  - The level of design and robustness of cost estimates;
  - Impact of the infrastructure on social and physical environments;
  - Deliverability and time schedules;
  - Integration of design, development and operations with a clear commissioning programme; and
  - Quality management system.

- The delivery phase solution.

The delivery phase solution of each bidder will be evaluated based on:

  - Extent to which proposed performance targets and measurement systems exceed minimum specifications;
    - Operating methodology;
    - Quality and type of services to end users;

- The extent to which the proposed asset management and maintenance supports the project's objectives and maximises value for money;
- Quality of the proposed management structure, staffing, systems and practices;
- Quality and extent of proposals on branding, promotion and public relations;
- Quality of the safety plans;
- Integration of the PPP with existing services;
- Integration of the PPP information systems with the existing IT systems;
- Quality management system proposed for the delivery phase; and
- Compliance with the Contracting Authority's monitoring and reporting requirements.

Legal solution

The legal solution is considered a part of the technical solution. Each bidder's legal solution will be evaluated in terms of:

- Bidder's SPV structure;
- Robustness of the bidder's consortium structure
  - Does the bidder's bid representations reflect the structure?
  - The level of commitment of each consortium member.
  - The equity participation of each member
- The level of mark-up of the draft PPP agreement and its impact on risk allocation

Financial solution

Likewise, the financial solution is considered part of the technical solution. Each bidder's financial solution will be evaluated in terms of:

- Total project cost compared to the affordability constraints of the PPP;
- Realism of the operating and capital expenditures are, and whether the cost of the quality management system is included in such expenditures;
- Robustness of the financial proposals, including sensitivity to changes in operating and maintenance costs, currency fluctuations, inflation and interest rates, and changes in the cash-flow profiles;
- Robustness of the funding structure, including the level and nature of equity in it;
- Cost of empowerment commitments;
- Commitment demonstrated by debt and equity providers, including terms and conditions linked to providing this funding;
- Level and types of risk assumed and deviation from the tender documentation, including:
  - Nature and extent of the risk;
  - Likelihood of the risk occurring; and
  - Whether the risk is passed down to other entities
- Cost, level and nature of insurance cover proposed;
- Consistency between the financing arrangement and the draft PPP agreement as marked up by the bidder, together with the level of acceptance by the bidder's financiers of the terms of the marked-up PPP agreement; and

- What percentage of total debt outstanding the bidder believes should be repaid in the event of private party default?

Price

Price is evaluated separately, and the bidders must be so informed. In most PPPs, the price often has explicit conditionality, making it essential to ensure that the price evaluated has a reasonable degree of certainty. The RFP must prescribe that each bidder is to set forth its price in terms of a net present value (NPV) of unitary payments to be received over the life of the project using a prescribed discount rate. The bidder's response to the qualitative aspects of the financial solution will also inform the price evaluation process.

Overall integrated solution

All of the components of each bid must clearly represent a single, integrated solution capable of delivering VfM to the Contracting Authority.

Bid formalities

Bid formalities include:

- The time, date and place of submission, which date will vary depending upon the size and nature of the project, but which should be of a sufficient length of time to allow for submission of quality bids;
- How proposals will be opened;
- Bid bonds;
- Bid validity period;
- Formal requirements for filling out bid forms – e.g. the payment mechanism;
- Formal processes for bidders to communicate with the Contracting Authority;
- The Contracting Authority's right to terminate the procurement process, including the right to terminate negotiations with a preferred bidder if it is unlikely that an agreement will be concluded, in which case negotiations with a reserve bidder may begin, and further that the Contracting Authority must state that it is not bound to enter into any contract with any bidder;
- Evaluation panel discretion for non-compliance in bids; and
- Reservation of the Contracting Authority's right to conduct a Best and Final Offer (BAFO) process.

Obtain PPP BENIPA recommendation and issue the RFP

The completed RFP document and the draft PPP agreement must be presented by the project committee to BENIPA for recommendation. Only upon BENIPA approval may these documents be issued to the pre-qualified bidders.

Code of conduct

The PDT, the transaction advisor and the BENIPA member assigned to the project must sign a code of conduct that requires compliance with ethical requirements in order to protect the integrity of the project.

All pre-qualified bidders must also sign a similar code of conduct, prepared by the project committee for the project.

Clarification meetings

Bidder clarification meetings are recommended during proposal preparation:

- Early meetings allow bidders to request clarifications on RFP requirements.
- Later meetings focus on draft PPP agreement provisions.

All such meetings should be formally announced, an attendance register distributed, and minutes taken. Copies of all such minutes should be circulated to all the pre-qualified bidders and maintained by the project committee BENIPA in the appropriate file.

Individual bidder communications

The RFP specifies a timeframe for individual bidders to seek clarification in writing. Both the question and response, if not confidential, must be shared with all the short-listed bidders.

The project committee must have one point of contact, as must each bidder. Attempts by a bidder to communicate with the project committee through individuals other than the designated contact person must be referred to the designated contact person for response. Communication from a bidder that is not from the designated bidder contact person must be returned to the bidder, with an instruction that communications from the bidder may only be through its designated contact person. The project committee BENIPA shall maintain records of such communications in the appropriate file.

Changes to consortia during bidding

It is not unusual for consortia formed during the RFQ phase to change during the bidding stage. Permitting such a change may be preferable to disqualifying the bidder. Changes to bidding consortia may take place at any time up to the execution of a PPP agreement. The process for changing members of a consortium should be outlined in the RFP, and include the following:

- All requests for changing the membership of a bidder's consortium must be written, and provide full details of the reason for the change, the parties involved and the impact on the consortium.
- In considering such a request, the project committee must apply the same criteria to the proposed substitution as that used during the RFQ process. If possible, the same evaluation team and processes should be applied.
- The standard for approving a change to a bidder's consortium is that the changed consortium should score at least as high as the consortium did during the RFQ process.
- If such a standard is achieved, the project committee must advise the bidder in writing.
- If such a standard is not achieved, the project committee must advise the bidder in writing and permit such time as it believes reasonable for the bidder to propose an alternative. Failing this, the consortium is disqualified.

One-Stage Bidding vs Two-Stage Bidding

The Benue State Public Procurement Law, 2020 permits one-stage or two-stage RFP bidding. Specifically, bidding should be held in two stages where the authority does not consider it feasible to formulate precise project specifications, performance indicators, financial arrangements or contractual terms in sufficient detail to allow bidding to be held in one stage.

Where the contracting authority decides that bidding is to be held in one stage, then;

(a) potential counterparties shall submit their bids as final proposals; and

(b) the proceedings shall be subject to review by the Special Procurement Oversight Committee.

When the contracting authority decides that bidding is to be held in two stages, it should;

(a) request potential counterparties to submit initial technical and contractual proposals that exclude financial information;

(b) enter into simultaneous negotiations with all the potential counterparties that submitted their proposals; and

(c) issue revised specifications for the project to all potential counterparties that submitted their proposals and request them to submit their best and final offers that include financial information.

Before calling for second proposals from potential counterparties, the contracting authority—

(a) may amend the project's initial specifications, including financial requirements, and amend the criteria for making the award;

(b) shall indicate to all the potential counterparties that submitted proposals whether they all qualified or whether a limited number selected from bidders in the first stage will participate in the second stage; and

(c) shall inform all bidders invited to submit proposals in the second stage of the criteria for evaluating their proposals.

Evaluate the bids

The PDT must ensure that the evaluation process conforms to the Benue State Public Procurement Law 2020; and strictly follows the evaluation criteria listed in the RFP.

When evaluating the proposal from a potential counterparty, the PDT should consider—

(a) the present value of the proposed fees or tariffs, unit prices and other changes over the period of the project; and

(b) the present value of any proposed direct payments by the contracting authority; and

(c) the costs of design and construction activities, annual operating costs, the present value of capital costs and of operating and maintenance costs; and

(d) the extent of financial support, if any, expected from the contracting authority; and

(e) the soundness of the counterparty's financial arrangements; and

(f) the extent to which the counterparty accepts any negotiable contractual terms proposed by the contracting authority in the request for proposals; and

(g) the social and economic development potential offered by the proposal.

The evaluation process will primarily have three steps:

1 Preliminary evaluation and report to the PDT prepared by the transaction advisor.

2 Review of the report and final evaluation by the PDT.

3 Report of the evaluation and request for evaluation review to BENIPA.

Preliminary evaluation and report by transaction advisor

The transaction advisor team should possess the expertise necessary to undertake a preliminary evaluation and prepare a report to the project committee. The transaction advisor will not make any recommendations. It will only conduct preliminary evaluations, in accordance with the RFP.

The preliminary evaluations will be conducted as follows:

- Checking for completeness. Completeness assesses whether the bidder has submitted all required documents, for example, consortium formation documents and the like, as required by the RFP. Incomplete bids will be recorded.
- Checking for compliance. Compliance refers to whether the bidder has met the essential minimum requirements set out in the RFP. Great care must be taken to ensure that the essential minimum requirements are fully met. Non-compliant bids will also be recorded.
- Detailed analysis. Those bids that are complete and compliant are then subjected to a detailed analysis. This analysis includes:
  - Technical solution
    - Each element of the service specification must be assessed from the design, development and delivery perspectives. The objective is to:
      - Confirm that the bidder's response to the service specifications meets the Contracting Authority's needs;
      - Identify deficiencies or added benefits;
      - Rate the response as inadequate/adequate/good to carry through to scoring;
      - Compile a list of questions to be answered before an award is made; and
      - Assess a value-for-money impact.
    - Each proposal must be checked against the requirements of the standard specifications.
    - While no scoring methodology is prescribed at this stage, ratings for all technical criteria should be applied to pre-determined weightings. Each technical evaluation will generate:
      - A weighted score;
      - A report on the number of inadequate ratings; and
      - Notes on matters requiring resolution.
  - Legal solution. There are two tasks in the legal evaluation:
    - Legal due diligence on the legality of the bidding consortium, empowerment credentials and the status of the firms comprising the consortium; and
    - Evaluation of the marked-upPPP agreement entails:
      - Capturing all marked up amendments;
      - Comparing the mark up against the risk matrix from the feasibility study;
      - Assessing value-for-money implications noted in the feasibility study and commenting on them; and
      - Working with the financial evaluation member of the transaction advisor team to evaluate value-for-money on issues not identified in the feasibility study.

- No scoring is recommended; rather the transaction advisor should focus on presenting notes requiring resolution and updating the risk matrix in respect of each bidder, in conjunction with the financial evaluation member of the transaction advisor team.

- Financial solution. The financial evaluation of a bid is complex, and requires an understanding of the project costs throughout the whole term of the agreement, the structure of the bidding consortium and its funding, and the value-for-money strengths or weaknesses in each bid. The financial solution evaluator thus requires inputs from the technical, legal and citizen participation members of the transaction advisor team, to identify the following:
  - Affordability;
  - Certainty of project costs -developmental and operational;
  - Certainty, nature and costs of funding proposed;
  - Items omitted by the bidder from its financial model; and
  - Project bankability.

The financial evaluation member, with input from transaction advisor colleagues, will then generate a score for the financial evaluation and a series of notes listing matters that need resolution.

- Empowerment. The empowerment component may be rated as inadequate, adequate and good. The methodology of converting these ratings into a score will be determined by the transaction advisor. Bidders must meet the minimum threshold listed in the RFP to justify further consideration.
- Price. The transaction advisor will examine the price of each bid to confirm that it follows the prescribed RFP format. The price must also be consistent with the financial solution. Points for price will be allocated in line with the formula described in the RFP.

The transaction advisor will then prepare a report to the PDT presenting its findings on the completeness and compliance of the bids received. The report will include the score sheets and notes from the individual transaction advisor team members on their findings as to the technical, legal and financial solutions, together with comments and findings on the empowerment and price aspects of each bid.

Recommendation by BENIPA

BENIPA will receive the report of the PDT and examine it to confirm that the processes followed are consistent with the National Procurement Laws and that the basis for selecting the preferred and reserve bidder is reasonable and justifiable.

If BENIPA's investigation finds that the processes have not been adequately demonstrated or that the preferred and reserve bidder recommendation is not reasonable or justifiable, it will return the report to the PDT and recommend further actions consistent with its findings.

When BENIPA has determined that the processes followed are consistent with these guidelines and that the recommended preferred and reserve bidder is both reasonable and justifiable, it will recommend to the PDT to proceed with negotiations.

4.5.4Negotiations

After BENIPA's recommendation for negotiations to commence, the PDT may begin the negotiations with the preferred bidder/counterparty. It should be noted that negotiations are a process, not an event. Typically, the Contracting Authority and the preferred bidder have different perspectives on negotiations. The private party will have made it clear, by its submission and by its mark-up of the draft PPP agreement, that it is seeking to reduce risk and

increase its profits, while the Contracting Authority aims to reduce its costs and maximise the value of the services provided through the PPP.

The goal of the negotiations must be a finalised PPP agreement, complete with all required schedules and an agreed upon payment mechanism.

As per the Benue State Public Procurement Law, 2020, when a contracting authority and a successful bidder negotiate a PPP agreement they shall not—

> (a) negotiate or vary any terms stated as being non-negotiable in the request for proposals issued or in the bidder's proposal; or
>
> (b) change the essential elements of the project.

Negotiations for a PPP agreement between a contracting authority and a successful bidder shall be limited to;

> (a) finalising the details of the documentation; and
>
> (b) satisfying the reasonable requirements of lenders or funders of the project.

If a contracting authority and a successful bidder fail to negotiate a PPP agreement, the contracting authority should proceed to negotiate an agreement with the next-ranked bidder or reserve bidder and shall not resume negotiations with the original successful bidder.

Preparatory work

The bid evaluation process outlined above provides the basis for preparing for the negotiations. At several stages in the evaluation of each bid, the transaction advisor will have noted deficiencies in the technical solution, and compiled a list of questions to be be answered before an award is made. Similarly, during the evaluation of the legal solution, the transaction advisor will have made notes requiring resolution in terms of the legal status of the SPV and the mark up of the draft PPP agreement. The TA will also have updated the risk matrix prepared during the feasibility study to reflect the allocation of risks included in each bidder's mark-up of the draft PPP agreement. Further, during the financial solution evaluation, a series of notes would be drawn up listing matters to be resolved.

Finally, during consideration of the overall integrated solution, notes would have been prepared listing resolution issues.

From these notes, lists, questions and deficiencies noted, an initial list of issues for each of the solutions – technical, legal, financial, empowerment participation, price and overall integrated solution must be created. The list of issues should then be placed into a matrix, similar to that set forth below, where initial in-house discussions may take place, and initial Institutional positions determined.

The Negotiation Team

The negotiation team should consist of the transaction advisor team plus representatives from the project committee with appropriate expertise in procurement, technical, legal, financial/price and empowerment matters. Ideally, each element of the bid will have a negotiation team composed of a transaction advisor representative and a project committee representative. The chair of the project committee serves as the overall negotiation team leader, and is expected to liaise closely with the project committee's PSIP member, who will lead the financial/price sub-team.

The negotiation team will populate the initial list of issues, and the transaction advisor and project committee will jointly define the Contracting Authority's position on the issues. During the

compilation of the issues list, it is encouraged to categorize each issue as being either deal-breaker, major, important or minor.

Prepare a negotiations strategy

It is important to seek resolution of the major issues first, particularly the "deal-breakers", so that time is not spent resolving important and minor issues while negotiations may then fail on a "deal-breaker." Often, major issues will require more time to resolve than important or minor ones. And, there may be more than one major issue in specific bid areas – i.e., legal and financial/price – and none in others – i.e., empowerment.

There should be very few "deal-breaker" issues in any negotiations. These positions may be entered into the "comment" column in the issues list, or an additional column may be provided. Note that any issues list matrix must remain confidential and measures should be taken to secure such documents.

Having prepared the initial issues list, categorised the risks and set the bottom line and fall-back positions on the major and important issues, the next step is to review the negotiations timeline listed in the procurement plan, adjust if necessary, and set a time to meet with the preferred bidder.

Initial contact with the preferred bidder

The preferred bidder should be invited to a meeting, in writing, and given the initial list of issues (without any comments, bottom line or fall-back positions) with a request that the preferred bidder review the list and confirm the recitation of the bidder's position as listed. A further request should be made to expand the list, if necessary, to cover all interests. The invitation letter should also include the names of the negotiating team members, with their contact details, and the negotiating sub-grouping responsibilities that they will address – i.e., technical, legal, financial/price, etc. Depending upon the project, it may be advisable to have separate subgroups within the technical area – i.e., IT, change management or training.

The letter should recommend that the preferred bidder form a negotiations team of similar makeup, or propose a different team structure. The Contracting Authority's proposed approach to the negotiations should be outlined, with an invitation to the preferred bidder to suggest an alternative approach.

Allow sufficient time for the preferred bidder to fully comprehend the invitation and prepare its response. The preferred bidder should be permitted to suggest a different meeting date, however it is preferred that the venue for the first meeting be on the Contracting Authority's premises.

Engagement

At the first meeting with the preferred bidder, the agenda should include inter alia:

- Introductions of the negotiation team members for each side, with an exchange of contact details;
- An agreement on the list of issues and the statement of both the preferred bidder's positions and the Contracting Authority's positions on each issue;
- Agreement on the timetable for concluding the negotiations;
- Agreement on the methodology for recording discussions on the issues, and the preparation and maintenance of a master issues list and subgroup issue lists;
- A declaration as to the decision-making authority on each side; and
- Agreement on a methodology for resolving deadlocked discussions.

If the methodology agreed upon includes joint subgroups to address the issues for consideration by such subgroups, meeting dates, times and venues should be set. In this regard, it is often more productive to have meetings at venues mutually convenient for the members of the subgroups, rather than on the Contracting Authority's premises.

The timetable agreed should call for regular meetings of both negotiating teams. At the outset, and depending upon the complexity of the negotiations, these high-level meetings should take place at least every two weeks, to maintain the pace of negotiations.

Managing the negotiations

Each meeting, whether of a subgroup or the whole negotiating team, should have an agenda and minutes should be kept. The objective of every meeting is to refine issues and seek agreement.

One person from the Contracting Authority's side should be appointed as the assigned document manager, whose shall have the responsibility of maintaining the master issues list and the updated subgroup issues lists. The primary negotiating document is the draft PPP agreement, and it is the assigned document manager's responsibility to reflect all changes, including the date of each update, and ensure that the negotiating teams have the latest, agreed upon version with which to proceed with the negotiations.

During the periodic meetings of both negotiating teams, those issues that seem difficult to refine and resolve in the subgroups should be identified, and a mutually agreed course of action set to allow the negotiations to proceed. At these meetings, the master issue list should be reviewed, and new timetables set for resolution, as necessary.

Achieving resolution

No two negotiations are alike. Because a partnership is being established, negotiations should be conducted in a professional, transparent manner with a clear desire by both parties to achieve resolution. As the negotiations proceed, it will become clear at the sessions or meetings, whether or not the atmosphere is conducive for resolution. Where it appears the atmosphere is unconducive for resolution, it is the responsibility of the Contracting Authority's negotiating team to meet separately with the leader of the preferred bidder's negotiating team to assess the potential for resolution.

If the parties mutually agree that there is a potential for resolution, definitive timetables should be agreed upon and the negotiations resumed with new vigour. If resolution seems unachievable, the Contracting Authority's negotiating team leader should notify the preferred bidder's negotiating team leader that unless resolution is reached by a date certain, negotiations will be terminated, and the reserve bidder invited to negotiate.

Resolution is achieved when each party undertakes to modify and refine positions in a manner that will achieve desired goals.

Final bargaining

Final bargaining requires assessing and choosing options or alternatives that may not represent the ideal for both parties, but which are settled on in the interest of concluding the deal. The objective in achieving resolution is to mutually discover a "win-win" scenario that will allow the project to proceed in a manner that continues to demonstrate affordability, transfer of significant risk to the private party and value-for-money. From the Contracting Authority's side, an apparent affordability gap may be bridged by clarifying commercial details and modifying output specifications.

It is important, however, that final bargaining does not leave items on the table for resolution as a condition precedent to project funding. There should be very few conditions precedent to any final

PPP agreement, and certainly no conditions precedent that will negatively affect the availability of funding.

Formal settlement

All details of negotiated points and resolutions must be recorded and reflected in the PPP agreement and schedules. Any conditions precedent must be clearly defined and achievable in a very short period of time. An example might be the receipt of a record of decision on an environmental impact statement, or the provision of access to the infrastructure site.

During this period of time it is also important for the Contracting Authority to engage the preferred bidder in the development of the Contracting Authority's contract management plan (CMP). A mutually-agreed CMP will be a major step forward in ensuring the success of the PPP. Outstanding minor issues may also be resolved by addressing them in the CMP.

PPP Agreement Signing

Before Final Signing of the PPP agreement, the Contracting Authority should ensure that;

i. There has been total compliance with the PPP Act and the Benue State Public Procurement Law (2020), as well as other relevant laws
ii. approval from the Cabinet has been acquired,
iii. approval has been secured from the Benue State Public Procurement Commission.

Thereafter, both sides should agree on a schedule for signing the PPP agreement upon the contract award.

Commercial Close

Commercial Close signifies that the procurement has been successfully completed and the final PPP agreement signed, subsequent to all necessary approvals. Financial close should occur as soon as possible after the signing of the PPP Agreement and careful preparation should be done to ensure this is achieved.

Financial Close

Financial Close occurs when all project and financing agreements have been signed and all the required conditions contained in them have been met. It enables funds (e.g. loans, equity, grants) to start flowing so that the project implementation can start.

Any remaining "conditions precedent" contained in the financing agreements need to be fulfilled before funds can be disbursed. Typically:

- the main permitting and planning approvals have been secured;
- the key land acquisition steps have been completed;
- the outstanding technical design issues have been clarified;
- any remaining key project and financing documents have been finalised and signed;
- all funding approvals are in place; and
- proper registration of the security for the loans has been confirmed.

The project committee will need to confirm that the requirements of all internal approvals have been met. These could include:

- confirmation of the legality of the procurement;
- approval of derogations from any standard contracting terms;
- the VfM check; and
- the affordability check.

The counterparty and the project committee will need to carry out a considerable amount of detailed work to reach financial close. The effort needed should not be underestimated. The project committee will need to manage its tasks effectively and should seek the support of its Transaction Advisors.

4.6 Project Implementation

4.6.1 Project Operation

The oversight of the project will shift from the Project Delivery Team to an MDA Project Board and/or Management Board at this stage. The commencement of construction begins, and the MDA should appoint Independent Engineers jointly with the developer, to review and audit the construction activities. The Independent Engineers ensure that the construction is in conformance with contractual commitments and notify the MDA of any deviations. After the project is constructed and begins operating, the Project Delivery Team, supported by BENIPA, monitors the performance of the PPP Company throughout the concession period. The monitoring should include:

- Service delivery by the PPP Company;
- Fulfilment of obligations to the MDA, including payment obligations, if any, by the PPP Company;
- Project monitoring and financial audit by the MDA or any other government authority.

Depending on the sector, any regulator of tariffs will also be heavily involved in the operations of the project to make sure the PPP Company is receiving fair revenues for the services provided. The Project Implementation stage is predominantly the responsibility of the MDA, with some oversight from BENIPA with no approvals required from any other authorities.

4.6.2 Project Company Finance

From a project finance perspective, the most important milestone in this stage is the disbursement of debt and equity to the PPP Company so that it can pay for project construction (or rehabilitation and maintenance of existing facilities). In the construction phase it is essential to complete the investment on time, within the planned budget, and according to the specifications and the financing allocated to the construction contract. Cost overruns may not have financing available and therefore can jeopardize the entire project, and time delays may cause the repayment of loans to become too expensive while the project is still not generating revenue. The construction contract will therefore be based on a firm date fixed price, time certain contract.

Once a project is physically ready for operations, project commissioning is critical as this is when the project is accepted by the government as ready-to-operate and the PPP assumes the ability to charge customers for its services. From the lender's point of view, operations and revenues should allow for more confidence that a loan can be repaid. From an equity investor's perspective, the project demand will become clearer and the PPP Company/SPV can be valued more accurately. In addition, equity income in the form of interest on mezzanine finance or quasi equity loans may become available to the equity holder, as dividend income is normally not payable until the later stages of the PPP project when net cash flow is sufficient. Once the project has been properly accepted and commissioned one of the core risks – the completion risk – has also been eliminated.

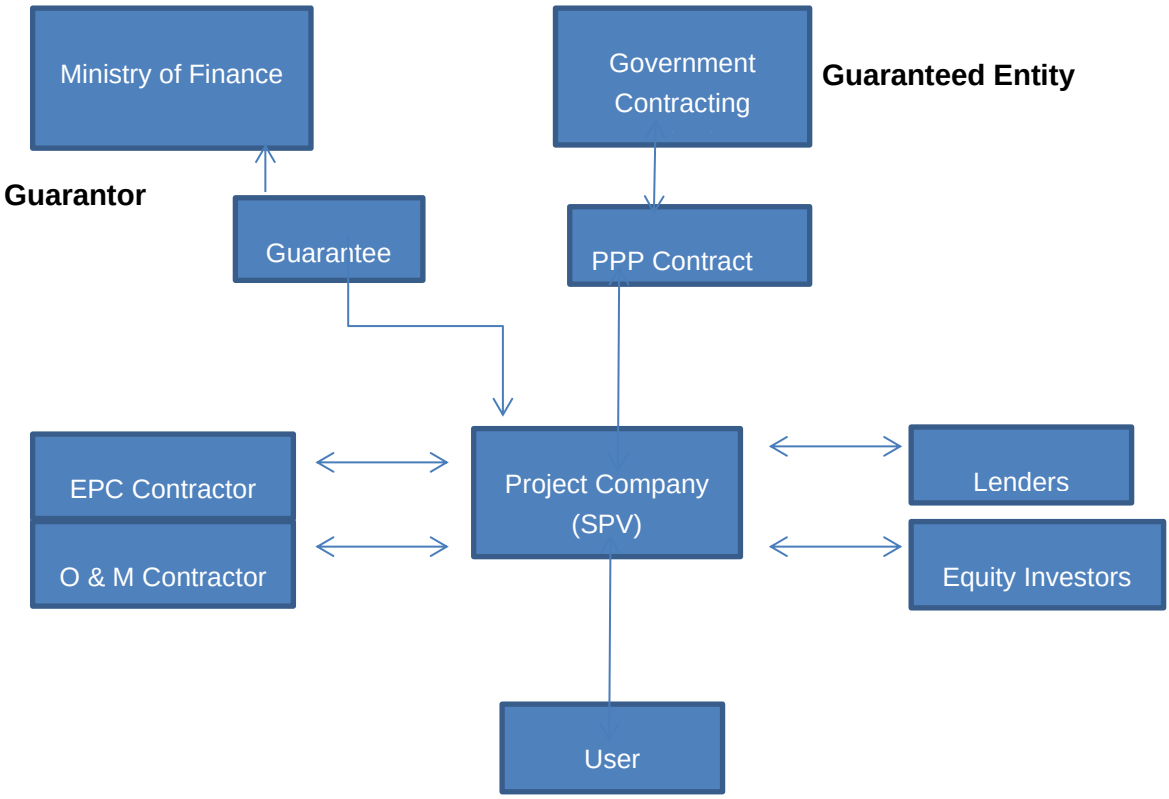
4.6.3 Contract Management

The objective of PPP contract management is to obtain the services specified in the output specifications and ensure on going affordability, value for money (VfM), and appropriate management of risk transfer. PPP contract management enables the public partner to exercise its rights and meet its obligations to ensure the objectives required from the PPP contract are met.

Contract management is also important because a project is rarely undertaken in complete isolation from other initiatives of the public partner and other government (municipal) agencies. For example, a road PPP will form part of the wider road network and may link with other transport infrastructure such as airports and ports, and a hospital PPP forms part of the government's overall strategy for providing healthcare services to the community. The public partner's management of PPP contracts ensures that PPPs play their role as part of the overall network of infrastructure that supports positive economic and social outcomes.

Contract management is important not just in the context of an individual project, but because no project is undertaken in isolation from other PPP initiatives. The learning's from one project should inform improvements in subsequent projects. The public sector must therefore recognize the value and opportunities created by effective PPP contract management, and must develop a strategic approach to capitalizing on this model throughout the project life cycle, to continuously inform and improve the way that private sector involvement is used in the delivery of public infrastructure.

Figure 6: Types of PPP Contracts



Shareholders Support Agreement

In this case, stakeholders play an active role in the PPP process, and they must be given not only a forum for participation but also the information they need to participate effectively. The appropriate forum to communicate and build support for PPP is through an iterative dialogue with stakeholders. Each communications program must be tailored to the local context and specific PPP, but should include some or all of the components below:

Opinion research: Opinion research gathers data on stakeholders, their perceptions, and behaviours related to issues concerning a specific PPP. The research influences the content and media of the communications program, as well as the reforms themselves. The research is conducted on a relatively formal basis through questionnaires, polling, etc.

Stakeholder consultation: Consultation is a less formal process through which themes and policies of interest are discussed within or across stakeholder groups. It is intended to gather information and build an understanding among the reformers regarding current perceptions and understanding and the basis of those opinions. A key part of stakeholder consultation is to manage expectations concerning how feedback will be incorporated into the reform process; that is, the feedback may not translate into a direct change in the PPP design or process but will be one stream of influence. This might be accomplished through focus groups or stakeholder discussion groups.

Operating & Maintenance Contract

Performance monitoring allows the public sector sponsor to ensure that the services being provided are consistent with the contract. Armed with measures of performance, public sector sponsors can formulate policy and implement plans that are relevant to any problems they identify and, conversely, that avoid unnecessary action.

Performance monitoring should take place against a number of clearly defined indicators; performance targets can be developed for a particular period and for the local context, enabling managers to identify areas for improvement.

The operators of the service should be required to: publish key performance indicators regularly; provide convenient consumer inquiry and complaint mechanisms; and consult consumers regarding major new investments through surveys and public forums. In addition, the public sector sponsors could establish their mechanisms, such as formal consumer committees and surveys, for assessing public opinion about services

4.6.4. Contract Monitoring Framework

While the private sector is responsible for the day-to-day management of a PPP project, the State Government has an important role to play in project oversight and, when necessary, enabling modifications to a project structure. Given the large number of agreements involved in a typical PPP project, the monitoring of the SPV's compliance will require substantial attention and resources from the government. The MDA will need to set up a Contract Monitoring Framework covering the following major elements:

- **Risk Mitigation**: Managing the PPP from the perspective of risk mitigation by identifying, monitoring and managing risks to minimize them when possible.
- **Service Delivery and Performance**: Ensuring that the PPP Company is achieving required service delivery to agreed-upon performance standards.
- **Relationship Management**: Managing the structure of authority and accountability within the PPP service delivery framework.
- **Contract Administration**: Following administrative processes required to make sure all procedural and documentation requirement issues are followed, such as periodic reporting and service quality reviews

Table 8: Contract Management Framework

Phases and Timelines		Key Contract Management Activities		
		Relationship Management Cluster	Services Delivery Management Cluster	Administration Cluster
Years 1 - 2	Inception & Feasibility	Senior Responsible Officer training Readiness assessment Appoint Program Director Appoint initial project team Categorise project using PCAT Systems modelling Select Procurement strategy Partnering workshop	Readiness assessment Define project outcomes / outputs, affordability limits, assessment system, KPI, and risk allocation Define scale of technology, services delivery, financial change anticipated Systems modelling Technology strategy HRM strategy – transfer, etc Benchmarking Develop implementation strategy– staged etc	Readiness assessment Systems modelling Risk workshop Establish knowledge management system Establish budgets for each phase Establish financial management system Establish project management system Establish contract management strategy Gateway Review

			Define outcome /output standards and specification	
Years 2 - 3	Procurement	Market testing Develop the Partnering management plan Establish the contract management system and team External reviews Assessment workshops	Finalise outcome / output specification Define the phase specific KPI, performance measures, and payment system Project and contract manage the Procurement process Track performance Establish Taking charge, integration, and consolidation phase plan	Develop the contract management system Contract management training Evaluate proposed contract management strategy, plan, system and team Plan client contract management system establishment and operation Risk workshop Finalise contract management provisions in contract Gateway Review
Years 3 - 5	Implementation Taking charge, Integration, and consolidation	Establishment Partnering workshops Manage a seamless transition Develop the relationship Succession planning and induction Manage change Focus on integration and consolidation	Establishment Ongoing risk management Focus on integration and consolidation Implement performance measurement system Issues identification and resolution Manage change External reviews	Establishment Contract manage taking charge, integration, and consolidation plan Risk workshops Training Integrate and consolidate administration processes Gateway review
Years 5 - 20	Services Delivery	Ongoing development of services delivery system Succession planning and induction Ongoing Partnering process Manage change to the services and the contract.	Performance measurement Compliance Asset management Continuous improvement Innovation Benchmarking Issues identification and resolution Technology refresh Manage change to service delivery model External Review	Contract management Time scale performance analysis Reviews/ change of KPI Reviews of PPP contract Risk management External reviews
Years 18 - 20	Exit	Plan exit Partnering workshop Transition out managed as a project.	Inspections and remediation Validate hand over condition and compliance Plan for business continuity Post implementation review	Implement hand back procedures Finalise accounts Post implementation review

4.6.5. Contract Management Team

The existence of an effective contract management team is vital to ensure a project's objectives are met in the long term. This section provides guidance on how to set up a Procuring Authority's contract management team to carry out this role in the most effective manner, considering the challenges any project is likely to face. Training of project staff also needs to be planned and delivered by the Procuring Authority, covering both general training as well as PPP-specific training, and this chapter guides on the specific topic of staff training. For this chapter, the 'contract management team' refers to the Procuring Authority's contract management team. The Project Company will also have a team responsible for managing its contractual obligations and liabilities and interfacing with the Procuring Authority's team;

The following checklist shows the key issues to be addressed in setting up the contract management team.

- Conduct an initial Partnering Workshop
- Identify the extent of contract management resources required during the initial business planning process
- Quantify and secure funding for the contract management team early in the business planning process
- Allocate contract management responsibility early in the procurement stage
- Identify any staff already working in the government who have skills, knowledge and abilities that can be transferred to a PPP/PFI project
- If external recruitment is required, then start this process early
- Involve the contract manager, or their representative, in Competitive Dialogue and evaluation of bids during the Competitive Dialogue period to ensure a thorough understanding of the contract and ownership
- Ensure that the contract management team is in place well in advance of service commencement
- Ensure that the partnership ethos is developed and maintained
- Identify initial and ongoing team training requirements
- Ensure the contract manager fully understands the contract, output specification and payment mechanism that are being or have been agreed
- Produce a Contract Management Manual for handover between the procurement team and contract management team

1. Project Officer

Key responsibilities of the Project Officer include**:**

- Contract Compliance
- Stakeholder Coordination-
- Monitoring & Reporting
- Risk Management
- Contract Amendments
- Dispute Resolution
- Performance Management

2. Accounting Officer

Key responsibilities of the Accounting Officer include**:**

- Budget Oversight
- Payment Processing
- Financial Reporting
- Auditing & Compliance
- Risk Mitigation
- Value for Money

3. Technical Advisory Team

Key responsibilities of the Technical Advisory Team include**:**

- Technical Compliance
- Quality Assurance
- Due Diligence
- Project Evaluation
- Risk Assessment
- Contract Variation
- Support to the Project Officer

Figure 7: Components of a Contract Management Plan

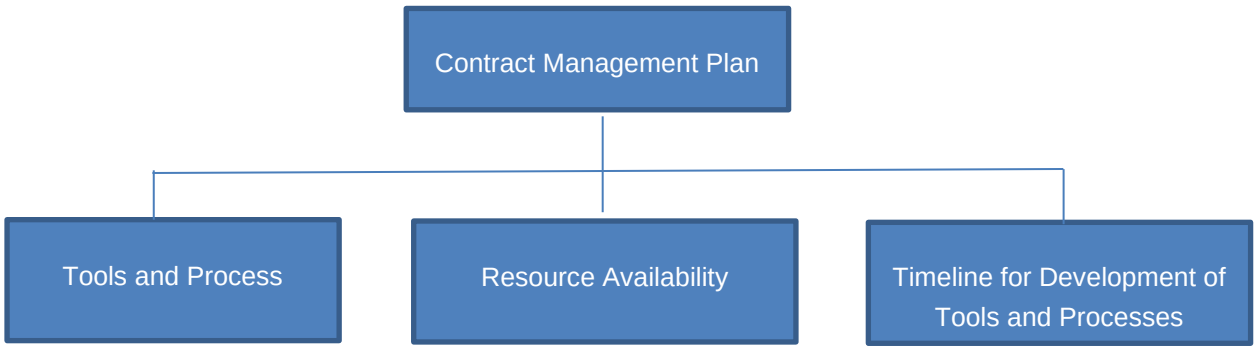


Table 8: Template for Contract Management Plan (CMP)

Sections	Subsections	Summary of Contents
Purpose and Approach	Purpose	Purpose of the PPP Contract Management Plan
	Approach	Partnership principles Benefits to the institution and the private party of a successful partnership. The institution's approach to PPP contract management
Strategic Objectives and key deliverables	Objectives	Summary of project objectives Journey management plan
	Key deliverables	
Partnership management	Partnership management plan	Summary of the output specifications and key deliverables
Service Delivery management	Risk management	Risk management plan
	Performance management	Performance management plan

PPP Contract administration	PPP Contract administration	PPP Administration Plan
Exit Strategy	Exit strategy	Evaluation of the options for continuing the service after termination/expiry based on the provisions of the PPP contract Outline of the procedures, roles and responsibilities and resources required for a smooth transition to the new service delivery arrangements
Implementation Plan	Inception	Project Plan strategy, resources, KPI, Risks, and key milestones
	Procurement	Project Plan strategy, resources, KPI, Risks, and key milestones
	Taking Charge	Project Plan strategy, resources, KPI, Risks, and key milestones
	Integration	Project Plan strategy, resources, KPI, Risks, and key milestones
	Consolidation	Project Plan strategy, resources, KPI, Risks, and key milestones
	Exit	Project Plan strategy, resources, KPI, Risks, and key milestones

4.6.6 Dispute Resolution and Management

Disputes within a PPP project emerge for many reasons; there are often deeper underlying reasons for why disagreements arise in the first place and why they can escalate into a dispute. Some of these relate to the inherent complexities associated with PPPs:

- PPP contracts are long-term and unexpected circumstances are likely to arise at times
- PPP projects tend to be complex in their scope with multiple stakeholders involved
- Contract documents are complex and subject to interpretation (particularly given multiple interfaces between different parties and potential contradictions between a large number of different but interrelated project documents)

Other underlying reasons for why disagreements arise in PPPs are detailed throughout this chapter. These include a lack of understanding of the PPP contract and/or the performance monitoring requirements of a PPP; poor relationship management; ambiguous contract drafting; and weak underlying project economics.

Given the long-term nature and complexity of PPP projects, it is not uncommon for there to be some form of disagreement or dispute during the contract management period. Disputes have the potential to damage the relationship between the Project Company and the Procuring Authority. In addition, while they are being resolved there is a risk that the service levels will be affected. The most important goal of any party involved in dispute resolution is to make decisions that will ensure the project moves forward in a viable and sustainable manner while maintaining value for money.

The Procuring Authority and the Project Company may have differing opinions on a range of issues where they have conflicting interests. In this chapter "**disagreement**" refers to a difference of opinion not subject to a formal dispute resolution mechanism, while "**dispute"** refers to a disagreement where formal dispute resolution mechanisms are implemented.

4.7 PPP Project Modifications

In many cases there are specific circumstances that could not be anticipated or quantified when the PPP contract was signed and that may represent changes to the works, services or the form of delivery. PPP projects generally involve long-term contracts, and unforeseen changes can happen to the project's enabling environment (e.g. macroeconomic fluctuations, currency depreciations, natural disasters, etc.). If no variation provisions are included, the contract may be too inflexible to handle these unforeseen circumstances. To avoid this pitfall, particularly in long-term projects, it is important to build in flexibility to specify the conditions in which modifications are allowed and to define the adjustment process. These variation provisions should be balanced and equally benefit both the public and private sectors. In addition, termination clauses should also be included to allow both parties to cancel the contract under exceptional circumstances, with fair compensation (to either party), if necessary. There are typically four categories of modifications:

- **Modifications without Additional Costs:** The government and the PPP Company should discuss the best way of implementing the proposed change. If the modification results in a reduction in costs to the PPP Company, the parties will need to agree on how to distribute these savings, including any potential cost reductions to the users. The parties are expected to agree modifications to the project financial model and to contracts without recourse to dispute resolution procedures.

- **Small Works Variations:** These modifications usually cover minor, unforeseen circumstances that require additional small works outside of the original contracts. Any dispute between the parties relating to small works variations must be determined in accordance with the dispute resolution procedures and is generally decided on a case-by-case basis with adjustment as necessary to the project's financial model without major modifications to existing agreements.

- **Government-requested Modifications:** If the government wishes to make a change to the PPP project deliverables, it must first submit this request to the PPP Company. The proposal must describe the nature of the variation and require the PPP Company to provide an assessment of the technical, financial, contractual and timetable implications of the proposed change. After reviewing, the government must decide who will fund the modification (i.e. PPP Company, government, or users). If the PPP Company is adversely affected by this modification, they should be compensated in some manner and the project financial model adjusted accordingly.

- **PPP Company-requested Modifications:** If the PPP Company wishes to introduce a variation, it must submit a proposal to the government outlining the modification details and the likely impact on service delivery and the PPP contract via the use of the project financial model. The government must decide whether to accept the proposal and, if accepted, how to adjust the funding regime and the project financial model.

Other Forms of PPP Contract Contingency Planning

Contingency planning is one of the most important steps within both contract management and financial allocation for PPPs. Both the government and the private partner should undertake contingency planning, albeit for different reasons. The private party will, within its cost baseline, set aside contingency reserves as a budget allocated for identified risks that it has accepted and for which contingent or mitigating responses are developed. Contingency reserves are often viewed as part of the budget intended to address the "known-unknowns" that can affect a project. For example, the re-work of some project deliverables could be anticipated, but the amount of this re-work may be unknown. Contingency reserves may be estimated to account for this unknown amount of re-work. Such reserves can provide for a specific activity, for the whole project, or both. The contingency reserve may be a percentage of the estimated cost, a fixed

amount, or may be developed by using quantitative analysis methods. As more precise information about the project becomes available, the contingency reserve may be used, reduced, or eliminated. Contingency reserves should be clearly identified in cost documentation and are part of the cost baseline together with the overall funding requirements for the project.

For the government, contingency planning is related to the risks it retains, for example, land acquisition or funding of variations it requires. It is unusual for the government to maintain explicit reserves, as this is generally discouraged under public budgeting rules. Instead, budget adjustments are made on an annual or semiannual basis for contingencies that have been realized. A contingency plan should be developed as part of the contract management manual. This plan covers what happens if the private partner fails in its duty to deliver the services, whether as a result of an external emergency or due to issues within the private partner and its sub-contractor group. It should include emergency planning measures that should be implemented in the event of a major incident that affects the availability of all or a large part of a facility. The plan should not be over-complicated or extensive because if it needs to be implemented, it is likely to be during a period of high pressure. As a result, it needs to be accessible and easy to implement effectively. The plan should identify the following information:

- Events that will lead to service failure and/or default.
- Impact on the services, both short- and long-term.
- Remedies and timelines in the contract.
- Emergency planning measures in the event of a major incident.
- Communication strategy (internal and external).
- Staff and resources needed and how these will be mobilized at short notice.
- The steps needed to return the project to normal monitoring post-crisis.
- Any consent that may be required and from whom it is needed.
- A list of key personnel, including their contact information and each person's role and responsibility

Contingency planning is an important element of the PPP contract management process. In the event that the private party fails to deliver the services as specified under the PPP contract, the government may have to act swiftly and should have the necessary planning in place to do so. Some types of additional contingency planning include:

- Business Continuity and Disaster Recovery Plan, which covers events that disrupt service delivery but do not involve default by the private party
- Step-in Plan, which covers events that disrupt service delivery and involve a default by the private party. If there is a lenders' Direct Agreement in place, this will set out the agreed procedure to be followed.
- Default Plan, which covers private party defaults that do not disrupt service delivery. Government should identify all significant contingency events related to the PPP Project and develop appropriate contingency plans that should form part of the CMP.

4.8 Project Hand-back / Termination

PPP contracts have specific provisions for the orderly asset handover at the end of the contractual term of the contract and clearly define the approach for the transition of assets and operations at the end of the contract.

The project hand-back period is the end of the operating phase of the PPP project. At this stage the contract authority begins the process of hand-back or transfer of full project management and asset control to the state government pursuant to the terms of the contract.

4.8.1 Critical Considerations to Asset Hand-back

The concession agreement outlines specific and detailed obligations that need to be fulfilled by both the state government and the private sector.

The concession agreement should lay out these components;

i. A clear and well-defined asset hand-back standard on the handover date.

ii. Financial requirements.

iii. Provisions for the establishment of a contingency fund for any maintenance needs after hand-back.

iv. Asset hand-back provisions: lay out the required condition for the contract authority to handback assets and financial penalties for failure to meet the required standards.

v. Termination conditions: lay out conditions in which the contract may be terminated ahead of the hand-back date either due either to a breach or force majeure (unforeseen circumstances or events).

vi. Dispute resolution: lay out mechanisms for resolving conflicts.

vii. Monitoring and reporting: lay out procedures for monitoring and reporting standards by the state government until the hand-back date.

The contracting authority objectives for the hand-back period will be:

I. Ensuring that the PPP assets are in the standard condition as stipulated on the contract.

II. Ensuring that, where, needed there is continuity in service delivery during and after the contract expires.

III. Ensuring that there is a budget for miscellaneous expenses and liabilities associated with the hand-back period.

IV. Extending the PPP contract (if applicable, depending on the type of PPP contract).

The project committee manages the entire handover of documents and records, the continuity of service delivery and maintenance and any other business.

4.8.2 Grounds for Termination of PPP Contract

Grounds for termination include:

- Default by the Contracting Authority
- Default by the State government
- Termination due to prolonged force majeure
- Failure to comply with provisions of the BENIPA Law.

The PPP contract should clearly outline the conditions under which either party may terminate the agreement, particularly in cases where the other party fails to meet its obligations. For termination to occur, a breach must be significant, and, where feasible, should be subject to "remedy periods" to allow for corrections. For instance, the Benue State Government, would be entitled to terminate the PPP contract if the private entity becomes insolvent or bankrupt, or if there is a critical deficiency in service delivery (e.g., where public safety or health is at risk), that compromises the objectives of the partnership.

A common instance of default by the Contracting Authority under a Concession Agreement is the non-payment of agreed amounts to the Concessionaire (e.g., operational fees or subsidies). This also includes the failure by the Contracting Authority to adjust the Concessionaire's compensation

in line with the agreed terms of the concession. Persistent default on payments can lead to a breach of contract, warranting termination if unresolved within specified cure periods

A typical PPP Agreement should describe in detail the circumstances that allows a party to terminate the contract, another typical example is a default by the Contracting Authority in failing to put the agreed equity into the project. This includes cases where the Contracting Authority has not made the necessary equity contributions in accordance with the terms of the PPP agreement. Such failures can significantly affect the project's financial structure and viability, potentially leading to termination if the situation is not remedied within the stipulated time frame

Termination Payment

In the event of a default by the Contracting Authority, termination payments will be structured to ensure that the Contracting Authority bears the primary responsibility for the default. Partners may also face potential losses to reinforce their incentives to address issues, though this approach may affect the overall bankability of the project. The following options will be considered when determining termination payments:

- Re-tendering the project in the open market
- The depreciated value of the assets involved
- Fairness

In the event that the State Government defaults, a fair contract should ensure the private party is fairly compensated. Termination payments in such cases will typically cover the full value of the outstanding debt, along with a reasonable measure of equity. Additionally, compensation may include lost future profits, where applicable, to ensure the private party is not unduly disadvantaged by the government's default

Contract expiry;

As the Public-Private Partnership (PPP) contract nears its expiration, a critical element is the successful handover of project assets and services back to the contracting authority. This process involves ensuring that all assets are transferred in accordance with the quality standards specified in the contract.

Few years before the contract's termination, an audit should be conducted to assess the condition of the assets. This audit helps identify any improvements needed to meet the quality standards agreed upon in the contract, ensuring that the assets are handed over in good condition, given that these assets will become a valuable resource for the government after the contract’s conclusion

Termination by Default of the Private Party;

Each of the following, if not cured within the permitted period, is a Private Party Event of Default which shall entitle Benue State Government to issue a Notice of Intention to Terminate immediately:

- The commencement of any action for the dissolution or liquidation of the Private Party except for the purposes of amalgamation or reconstruction on terms approved in advance by Benue State Government in writing;

- The occurrence of a material breach by the Private Party of its obligations under any Agreement that has continued unresolved for thirty (30) days or more after notice has been given to it by Benue State Government;

- The Private Party abandoning the Project for a period of seven (7) days without the prior written consent of Benue State Government.

- If the Private Party becomes insolvent or bankrupt, or goes into liquidation or receivership, whether compulsory or voluntary.

- Where a PPP project sponsor is deemed to have defaulted in meeting its obligations as stipulated in the project agreement, the lenders shall have the right to assume and perform (or to arrange for a third party to assume and perform) the project sponsor's obligations under the project agreements.

Default by the State government;

Each of the following, if not cured within the time period permitted, is a Benue State Government Event of Default which shall entitle the private party to issue a Notice of Intention to Terminate immediately:

- A material breach by Benue State Government of any of its obligations under this Agreement that has continued unresolved for thirty (30) days or more after notice has been given to it by the private party specifying the breach and requiring Benue State Government to remedy the same; or

- Any representation or warranty made by Benue State Government in any Agreement proving to have been materially incorrect when made such that the Benue State Government's ability to perform its obligations under this Agreement is materially adversely affected.

Termination due to prolonged force majeure;

- Where any Agreement becomes non-viable due to a force majeure or the force majeure subsists for a period exceeding six (6) calendar months from the Effective Date, the Agreement shall terminate immediately upon notice by either Party.

- Upon termination of any Agreement pursuant to any force majeure, neither Party shall be liable to the other for any damages or losses in respect of such termination.

- Force majeure shall not include insufficiency of funds to undertake the Project by the private party.

4.8.3 Asset condition at expiry of the PPP Contract;

The contract should include clear provisions to ensure that all assets are handed back to the state government in good condition at the expiry of the agreement and that the legal ownership of the assets remains with the public sector throughout the contract. While the rights to use the assets will be transferred back upon contract expiry, key provisions could include:

Condition Indicators: The contract should specify the condition in which the assets must be at expiry. This may include performance metrics such as the expected remaining useful life of each asset or the ability to pass certain performance tests.

Independent Assessment: Prior to contract expiry, a third-party assessment should be conducted by an independent expert to evaluate the condition of the assets and determine any necessary works to meet the required standards. This assessment should occur sufficiently far in advance of the expiration date to allow for any corrective actions.

Retention of Service Fees: The contract could include provisions for retaining a portion of the service fee over a defined period leading up to contract expiry. The retained amount would be held in a reserve account as a guarantee to cover any necessary asset improvements or repairs.

Verification and Release of Retention: An independent expert would also verify that the required works to meet hand-back conditions have been satisfactorily completed. Upon verification, the retention sums held in reserve would be released to the Contracting Authority.

PART III:

5. PPP Project Financing

5.1 Introduction

Project financing is a critical component of Public-Private Partnerships (PPPs), where external funds are required to cover initial investment costs and are gradually recovered through future revenue streams. Whether sourced from the public or private sector, these funds come with associated costs that significantly influence the project's financial structure and long-term affordability. The relationship between perceived credit risks—arising from technical, commercial, and operational uncertainties—and the cost of finance plays a pivotal role in shaping the economic viability of PPP projects.

Typically, governments can access financing at lower costs compared to private operators, even when both operate within the same country. However, private sector involvement in financing often increases the overall cost due to higher perceived risks. Despite this, the efficiency gains achieved through PPPs often offset the additional financial burden. These efficiency improvements can lead to cost savings and better service delivery for consumers in the long run. Furthermore, the scarcity of public sector funding is a key driver for PPPs, encouraging private investment to bridge the gap and ensure the successful implementation of vital infrastructure projects.

5.2 Project Financing Approach

When a project is proposed as a PPP, the responsibility for arranging the funds for financing the project typically rests with the private bidders. In general, there are two approaches to finance a PPP project: Corporate Finance, which is rarely utilised, and Project Finance.

5.2.1 Corporate Finance

Corporate Finance, also sometimes referred to as Balance Sheet Finance, refers to a financial structure in which PPP project sponsors raise funding for a project from their corporate balance sheet or tie funding (at least partially) to their corporate balance sheet. The capital investment decision for the project is made at the corporate level and finance comes from the corporate coffers, either in the form of existing company funds or through outside loans/equity directly to the company.

Project funding can be structured in many ways. If the project is funded directly by the sponsor through existing resources, then it can be structured as a loan and/or equity investment from the sponsor to the PPP Company. If the project is funded by lenders, they will base their decision to finance upon the strength of the overall corporate balance sheet of the project sponsor, usually secured by a corporate guarantee in addition to specific project cash flow analysis. If it is funded by investors, the sponsor company may issue stock or seek direct equity finance and investors will base their willingness to participate based on the expected increase in the corporate stock prices, the equity’s liquidity, and/or other forms of equity returns. In all cases, if the PPP Company is unable to repay a loan, then the PPP Company’s sponsor(s) will be held liable by the lenders.

There are certain advantages to a Corporate Finance approach for funding. If the PPP project is considered risky for lenders/investors to finance directly, the recourse to the sponsors’ overall corporate balance sheet offers a higher level of security. If the sponsor is a publicly listed company, then information on its performance and viability is usually available through stock markets, rating agencies, and other market-making institutions. This combination of security, liquidity, and information availability allows debt to be issued at a lower cost than through project finance. Further, because the enterprise’s overall risk is diversified over all the activities that it is engaged in, the cost of equity is also usually lower. Therefore, the financing of a PPP project by corporate finance usually makes both the cost of debt and equity capital less expensive but

exposes the sponsor companies to additional risks. This form of financing of PPP projects is the exception to the rule in international PPP projects.

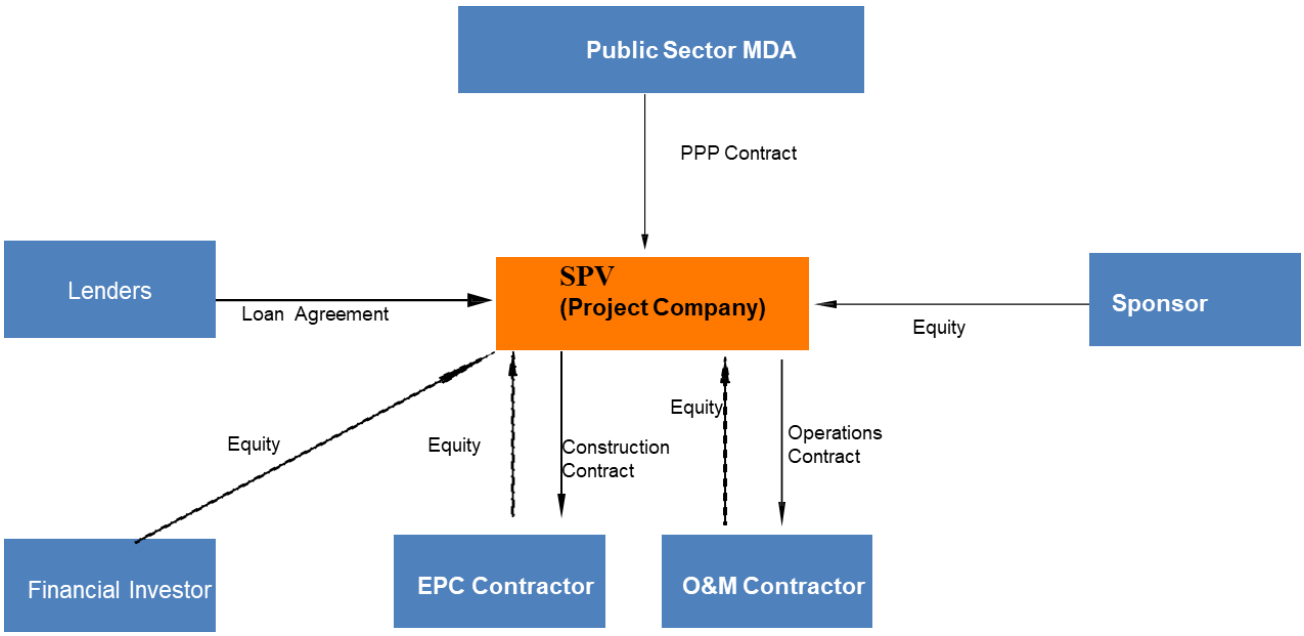
5.2.2 Project Finance

A common approach to financing PPP projects is to structure the PPP Company as a Special Purpose Vehicle (SPV). The investors/lenders have rights to the cash flows of only the SPV itself and have no or limited recourse to the cash flows of the project sponsor. In other words, project loans and investments are only secured by the project assets with no claim on the assets of the project sponsor. A sponsor structures projects this way to safeguard their company from the complex and ever-changing project risks.

To get a project finance arrangement started, the SPV receives seed money financed with debt and/or equity from one or more sponsoring firms recoverable as development costs from the first drawdown of the loans arranged to finance the PPP project. However, the specific assets and liabilities of the SPV do not appear on the sponsors' balance sheet and, as a result, the SPV does not have access to the internally-generated cash flows of the sponsoring firm. After the SPV receives some seed capital from its sponsors, the SPV will approach the market for additional financing. Investors and lenders are asked to only consider the bankable financial opportunity of the project for which the SPV was created. As a result, all the interest, loan repayments, and equity returns come only from the cash flows generated from the project. The term of the investment is also limited, as the SPV is dissolved once the project is completed and the concession reaches maturity, although this may not be for up to 30 years.

Since the SPV is a standalone, legally independent company, the debt and/or equity is structured without recourse to the sponsor. This can make the cost of debt and equity higher, although it may also provide a higher risk/reward return to equity investors.

Figure 8: Project Financing Structure



5.2.3 Islamic Finance

Islamic finance can play an important role in funding PPP projects in certain parts of the world. The rise of sovereign wealth funds, particularly from the Middle East, has created a potential source of regional financing for PPP projects. The important characteristic is that Islamic finance is consistent with the principles of Sharia Law, which does not allow the charging of specific interest or fees (known as 'riba' or 'usury') for loans. For Islamic banks to make returns, the focus

is therefore on the sharing of profit and loss. More specifically, Islamic modes of financing are classified into two categories: equity and debt. The equity instruments include mudarabah and musharakah, and the debt or the fixed-income instruments include murabahah (cost-plus or mark-up sale), bai-muajjal (price-deferred sale), istisna/salam (object-deferred sale or pre-paid sale) and ijarah (leasing). For example, the PPP project assets may be bought by the Islamic financial institution at a certain price, and then resold back to the Project Company at a higher price with a payment instalment plan.

5.3 Project Bankability

Project bankability refers to the likelihood of a project attracting financing from investors or lenders based on its financial viability, risk profile, and overall structure. In the context of Public-Private Partnerships (PPP), the bankability of a project is influenced by factors that determine whether the project will generate predictable, sufficient cash flows to meet its financial obligations.

Some of the key elements that affect project bankability are:

- **Commercially Attractive Design and Tariffs**: The project should be designed in a way that offers a reasonable return on investment (ROI) for investors. Shorter payback periods and clear revenue models, such as well-structured tariffs, make the project more attractive and financially viable.
- **Off-take Arrangements**: Strong off-take agreements (contracts ensuring the purchase of the project's output) can reduce market or revenue risk. These agreements create predictability in cash flow, as they guarantee a buyer for the services or goods the project generates, thus reducing uncertainties.
- **Regulatory Certainty and Transparency**: A stable and clear regulatory environment provides confidence in the future cash flow of the project. Investors need to be assured that regulatory policies, including tariffs and other market rules, will remain consistent and predictable over time.
- **Government support**: if the lenders/investors are not confident about the robustness of the of the project's cash flows, they may require financial support from the government in the form of a capital grant, guarantee, Viability Gap Funding (VGF) availability payment arrangement, or equity contribution to provide them with additional comfort for investing in the project.

5.4 PPP Financial Milestones

Financial milestones are critical benchmarks that reflect the progress of the PPP project through the project lifecycle. These milestones are divided into four key phases.

Table 9: Template for Contract Management Plan (CMP)

Project Development	Project Procurement	Project Implementation	Project Maturity
Determining bankability	Financing Plus	Loan Drawdown	Investment Recuperation
Multilateral involvement	Financial Bid	Issuing Bond	Project extension
Ability to receive Royalty Payment	Acquiring Insurance	Construction funding	
Need for VGF/Availability Payment/Guarantee	Commercial closure	Principal and interest repayment	
Equity Contribution	Financial Close	Commission	`
Tariff/Regulation Adjustment		Collection of user fees	
		Payment of Dividends	

5.5 Sources of Finance

PPP projects or large-scale projects in general, are financed by a combination of equity financing and debt financing. Equity investors bear the most risk with respect to any losses on the project and as such they require a higher return on their investment. Since debt financing is generally considered cheaper than equity financing, given the investment risks associated with equity financing, there is a tendency for the project company to be highly leveraged. Equity investors typically adopt a project finance structure with respect to any debt finance that is obtained for the project company (SPV) , this is to ensure that the lenders' recourse in the case of a default by the SPV is solely to the assets of the SPV but not the balance sheet of the equity investors – hence the term "off-balance sheet financing". The contracting authority will be concerned with ensuring that the SPV is not too thinly capitalized as it is important for the private party/consortium to have enough "skin in the game" to ensure that their interests are aligned. Typically, lenders in a project finance scenario will also acquire a supervisory role (including rights to step in place of the project company) to the project, to ensure that the project is operational and generating revenue which will be used to service their debt. It is also often the case that lenders will require some additional credit support from the SPV's shareholders and/or third parties.

- **Equity**: Provided by project sponsors or private investors who expect returns through dividends or appreciation from the PPP project.
- **Climate Finance**: Climate finance refers to financial resources provided to support initiatives aimed at reducing greenhouse gas emissions and adapting to the impacts of climate change
- **Debt**: Loans from commercial banks, development finance institutions (DFIs), or infrastructure bonds.
- **Government Grants/Support:** Governments may provide viability gap funding (VGF) to make the project more attractive and bankable.
- **Mezzanine funding and quasi-equity:** Secondary call on the project cash flows
- **Climate Finance**

5.5.1 Equity

Equity in PPP projects is typically provided by project sponsors, who hold an operational interest in the contract, or by financial investors, who have a purely investment-based interest. It is common for governments or lending institutions to require private project sponsors to invest a specific percentage of equity capital into the project. This equity contribution can come from a single private sponsor or through a consortium of operational investors.

The benefit of using a consortium of equity investors, as seen in other PPP projects, lies in its ability to mitigate project risks. Each member of the consortium can take responsibility for managing risks within their specific area of expertise, ensuring a more balanced risk management approach.

5.5.2 Climate Finance

Climate finance refers to financial resources provided to support initiatives aimed at reducing greenhouse gas emissions and adapting to the impacts of climate change, it is especially important in infrastructure development, where investment needs align with sustainability goals.in the context of PPP projects, climate finance can be a critical component of funding especially for projects that address environmental sustainability, renewable energy, and climate resilience.

There are various sources of climate finance that can be leveraged for PPP projects include:

- Loans: climate finance loans have a longer repayment period and also attract a lower interest rate than regular loans issued by financial institutions

- Green Bonds: Climate Bonds offer investors a return on their capital. Climate or green bonds are linked to climate change solutions.
- Grants: Climate grants are usually provided for non-revenue generating programs such as knowledge management and capacity building.
- Guarantees: These are Guarantees taken by a third party to fulfil obligations in the event of non-performance or default.
- Equity: Equity involves the investor taking a stake in a company or a project because of the climate initiative of the project.
- Insurance: The insurance company pays if a particular risk materializes e.g weather -in linked insurance.
- Debt swaps: Offer debt relief in exchange for commitments to invest in climate actions.

5.5.3 Debt

In project finance, debt refers to borrowed capital used to finance a portion of the total project cost. For PPP projects, debt is typically raised from financial institutions, such as commercial banks, development banks, or through the issuance of bonds. The project company (SPV) that is set up to manage the project borrows this capital, which must be repaid over time, along with interest. Debt in PPP projects generally has a long-term maturity period, aligning with the lifespan of the infrastructure being developed. Debt financing allows the project to leverage capital from lenders without diluting the equity stakes of the project sponsors (typically the private sector).

Debt in a PPP project can be raised through:

- Loans from Bank: One of the most common ways to raise debt in PPP projects is through **commercial loans** from banks. These loans are typically extended to the SPV based on the project's expected future cash flows. Bank loans are structured on the basis of expected project cash flows, with a moratorium or a grace period, interest repayment, and principal repayment schedule. Bank loans are generally fully secured and have recourse to project assets in the event of any default. Given that PPP projects are highly capital-intensive in nature, they are often funded using a high proportion of debt (to reduce overall funding costs) to reduce individual exposure, banks often prefer to be part of a consortium or syndicate
- **Development Finance Institutions (DFIs) and Multilateral Development Banks (MDBs)** Many PPP projects, especially in emerging markets, raise debt from **DFIs** and **MDBs** like the World Bank, African Development Bank (AfDB), or the International Finance Corporation (IFC). These institutions provide long-term, concessional loans with favorable terms to promote infrastructure development and economic growth.
- Bonds: Bonds are debt financing raised from the capital Markets. The advantage of issuing bonds is that it allows multiple investors to participate, each contributing a small portion of the overall loan required for the project. Investors in a bond issuance generally fall into four main categories: (1) banks and financial institutions, (2) insurance companies, provident funds, and pension funds, (3) mutual funds, and (4) retail investors.

5.5.4 Mezzanine financing

Also known as **quasi-equity**, mezzanine financing is a type of funding that sits between senior debt and pure equity, combining elements of both. It can take forms such as subordinated loans, convertible subordinated loans, redeemable preference shares, or debt with stock warrants. This financing typically carries more risk than senior debt, as it ranks lower in terms of collateral rights and access to cash flow. In many cases, it may also be unsecured, relying solely on project cash flow, leading to higher interest rates compared to senior debt. One notable benefit of quasi-equity is that the interest can be deducted from the SPV's taxable income, unlike dividends, which are paid from after-tax revenue. This can reduce the overall cost of equity and lessen the need for government financial support.

5.5.5 Government Support:

In certain situations, particularly for high-risk or high-development impact projects, national or sub-national governments may provide financial contributions to improve the project's viability. The primary goal of such support is often to make the project more "bankable" or attractive to private sector investors. Key reasons for government intervention include:

i. Supporting economically and socially disadvantaged groups who may be unable to afford commercial rates for essential services;

ii. Promoting the use of public amenities or environmentally beneficial alternatives, such as public transport systems or hostel accommodations projects, by offering concessional pricing;

iii. Fulfilling their social mandate to provide specific services free of charge to citizens, such as benefits for senior citizens.

5.6 Key Financial Indicators

Table 10: Key financial indicators

Financial Ratio	Formula	Definitions and Notes
Capital Structure Ratio (CSR)	(Equity + Quasi-equity) ÷ Financial Capital	Provides a ratio of equity to all the financial resources invested and placed under the company's control by the capital providers.
Debt-Equity Ratio (DER)	Total Long-term Liabilities ÷ (Equity + Quasi-equity)	Indicates the proportion of the fixed assets of the project that are funded by owners' funds versus the proportion of fixed assets funded by borrowed funds. Long-term liabilities include all liabilities such as loans and debts that the sponsor raises.
Annual Debt Service Coverage Ratio (ADSCR)	Available cash flow for servicing the debt (Profit After Tax (PAT) + Interest + Depreciation) ÷ Annual debt service (Interest + Principal repayment instalment)	Calculated each year providing a continuous view of a project's ability to service its debt. Measures the surplus of free cash flows available after meeting all operating expenses to service the debt. The DER for funding a project is always capped by the ADSCR requirement of the lenders.
Net Present Value Debt Cover Ratio (NPV CDR)	NPV of cash flow available for servicing the debt over the loan life ÷ Outstanding debt	Also called the Loan Life Cover Ratio. This is a commonly preferred practice in financial analysis. The discounted value is preferred to the average value because it considers the time value of money. The discount rate used in calculating the NPV represents the minimum return expectation for the given risk profile of the project.
Project life cover ratio	Cash flow available to service debt over the project life ÷ outstanding debt	Used by lenders as it indicates strength of cash flow available over the project life.
Internal Rate of Return (IRR)	Discount rate required to receive a NPV of 0	Based on the discounted cash flow method. The discount rate that equates the present value of future cash benefits (cash inflows) to the present value of capital cost over the economic life of the project (cash outflows).

Return on Capital Employed (ROCE)	Earnings before Interest and Taxes (EBIT) ÷ Capital Employed (Long-Term Liabilities + Shareholders' Equity)	Provides a measure of the returns generated by a project on the capital invested in it on a yearly basis.
Return on Equity (ROE)	Profit after Tax (PAT) ÷ Shareholders' Equity	Provides a measure of the returns generated by a project on the equity invested in it on a year-on-year basis.
Operating Profit Margin (EBITDA Margin)	Operating Profit ÷ Sales	Provides the measure of the operating profit as a percentage of sales. The operating profit margin is ideal for comparing investments as it is independent of their capital structures, enabling investors to base decisions solely on operating performance.
Net Profit Margin (PAT Margin)	Profit after Tax (PAT) ÷ Sales	Provides the measure of PAT as a percentage of sales.

6 Contract Management

6.1 Introduction

The terms of a PPP are set out in the contract to outline responsibilities of individual parties and allocate risk accordingly. PPP contract management is one of the most critical elements of PPP delivery lifecycle, this typically involves monitoring and enforcing the contract requirements, managing the relationship between the public and private partners.

All PPP projects undergo transitions between various phases, such as from financial close to construction, from construction to operations, and from operations to handback. A contract management plan for a PPP project must be flexible to accommodate all phases of the project.

The groundwork for effective contract management is established early in the PPP implementation process; procedures for handling changes and mechanisms for dispute resolution should be outlined in the PPP agreement. The contracting authority is expected to use this plan as a guide to monitor and evaluate the PPP project.

A contract management plan for PPP seeks to ensure that;

I. All services are delivered diligently in compliance with the contract and all payments/penalties are handled accordingly.

II. All contractual responsibilities and risk allocations are maintained and managed efficiently in practice.

III. Any changes in external environment are spotted and acted on effectively.

IV. The handback provisions and efficiency expectations in the contract are adhered to.

A well-executed PPP contract management plan contributes to the long-term success of the project.

6.2 Types of PPP Contracts

There are different types of Public-private partnership contracts in the private finance initiative depending on the type of project, level of risk transfer, investment level and the desired outcome.

6.2.1 Build-Operate-Transfer (B0T)

A BOT model is the responsibility of the private partner. The private entity is responsible for designing, financing, constructing, and operating a public infrastructure asset for a specified period between (15-30) years, after which ownership is transferred to the public sector.

Under the BOT contract, the government entity usually grants a concession to a private company to finance, build, and operate a project, the company operates for a period with the goal of recouping its investment, then transfers control of the project back to the public entity

6.2.2 Design-Build-Finance-Operate (DBFOM)

This model allows the private partner to take on responsibilities for designing, building, financing and maintaining a project over its life cycle, while the public sector retains ownership of the asset. This model is usually used for large-scale projects with a long lifespan, such as roads and bridges. It can also be used for smaller-scale projects such as schools, or hospitals.

The main advantage of using this model is that it allows the public sector to transfer the risks associated with designing, building and financing infrastructure projects to the private sector.

6.2.3 Build-Operate-Own (BOO)

The BOO is a project delivery model used for large, complex PPP infrastructure projects. In this kind of arrangement, the government sells the Private Partner, the right to construct, finance, build, and operate the infrastructure for over a specified period according to the agreed design specifications and the Contracting Authority, retains ownership of the infrastructure in perpetuity. In this case, the government might offer some sort of incentives, such as tax exemptions.

6.2.4 Concession Contracts

In a Concession Contract Model, the concession grants a concessionaire the long-term right to use all utility assets conferred on the concessionaire, including responsibility for operations and some investment.

Under a typical concession, the public sector grants (concessions) the private sector (concessionaire) a right to deliver certain services in certain areas for a fee paid by the concessionaire for those rights. The private sector operator is responsible for operation, maintenance and even rehabilitation of the asset including any capital required for upgrade and expansion even though ownership of the asset remains with the government throughout the duration of the concession period. The public sector sets performance standards and ensures that they are met thereby being in effect regulators of the price and the quality of services delivered.

In a concession, the concessionaire typically obtains most of its revenues directly from the consumer and so it has a direct relationship with the consumer. A concession covers an entire infrastructure system (so may include the concessionaire taking over existing assets as well as building and operating new assets).

6.2.5 Design Build and Operate (DBO)

A design, build, and operate contract is a project delivery model in which a single contractor is appointed to design and build a project and then operate it for some time.

A simple design-build approach creates a single point of responsibility for design and construction and can speed project completion by facilitating the overlap of the design and construction phases of the project. On a public project, the operations phase is normally handled by the public sector under a separate operations and maintenance agreement. Combining all three phases into a DBO approach maintains the continuity of private-sector involvement and can facilitate private-sector financing of public projects supported by user fees generated during the operations phase.

6.2.6 Rehabilitate Operate and Transfer (ROT)

This is a contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, operate and maintain for a period. At the expiry of the concession/agreement, the legal title to the facility is returned to the Contracting Authority.

6.2.7 Lease Develop Operate and Transfer (LDOT)

In this type of PPP arrangement, an asset is leased to the private sector under specific terms, to operate and maintain the asset for the term of the concession period, after which the asset is transferred to the Contracting Authority.

6.2.8 Design Build Finance Operate and Transfer (DBFOT)

In this type of PPP model, the project is developed by private partners on design, build, finance, operate and transfer framework. In consideration for performing its obligations under the agreement, the private sector party may be paid by the Contracting Authority or from fees

collected from the project's end users. The asset is transferred to the government at the end of the Agreement.

6.2.9 Operation and Maintenance (OM)

Under this model, the Contracting Authority bids out the right to deliver a specific service or gives part of the undertaking to the private sector for the operations and maintenance of the asset

6.2.10 Joint development Agreement (JDA)

This JDA is an arrangement between two parties collaborating to work on a project or initiative to develop a project. Joint Ventures are often alternatives to full privatizations in which the infrastructure is co-owned and operated by both the public and private sector. In practice, the private sector often assumes the operational role. Under a Joint Venture both parties may decide to incorporate a joint venture company which would be responsible for the project.

6.3 Contract Monitoring Framework

A typical PPP project has numerous agreements; therefore, monitoring a PPP contract demands careful consideration and resources from the state government.

The PPP contract should clearly outline:

I. The performance standards associated with the required output specifications.

II. The methods the contracting authority will use to monitor the Private Party's performance against these standards.

III. The repercussions for the Private Party in the event of failing to meet the required performance levels.

The monitoring committee shall do the following:

I. Oversee on behalf of the Government on any and all PPP investment funds established under this Bill or which, though not established under this Bill, have funds invested in a PPP in the State;

II. Obtain, review and report to the Board on periodic financial and operating reports in respect of such funds from the persons or bodies charged with their management.

A contract monitoring framework should cover the following elements;

I. Risk management; The risk management plan should be developed by the contract manager before the start of the contract to identify, minimise and manage emerging risks associated with the project.

   BENIPA shall provide technical assistance to Contracting Authorities on risk allocation and the Board shall issue regulations on risk allocation and specific measures by the Contracting Authorities and/or State Government to mitigate or eliminate project risk.

II. Relationship Management; Organizing and managing the authority structure within the PPP project delivery model

III. Contract management; Adhering to administrative processes to ensure compliance with all procedural and documentation requirements, including regular reporting and service quality assessments.

IV. Service Delivery and Performance; Ensuring that the contracting authority meets the required service delivery standards as stipulated in the contract.

To enable innovation and enhance risk transfer, the PPP contract should establish the required performance level through output specifications instead of detailing the required inputs.

A monitoring report should cover the following aspect;

I. A performance management system to evaluate the quality management system.

II. Designated government officials responsible for monitoring.

III. An estimate of the resources the government will need.

IV. Established performance monitoring systems.

V. Effective knowledge management throughout the project duration.

VI. The roles and obligations of each party should be clearly defined in a responsibility map.

6.3.1 Consequences for Not Meeting Service Levels

I. Monitoring should serve as the foundation for assessing performance against outputs.

II. Any failure to meet output requirements will be addressed according to the contract, including:

   a. Formal warnings

   b. Penalty deductions

   c. Step-in rights

   These measures should be implemented to ensure a constructive response.

7 Dealing with Unsolicited Proposals

7.1 Introduction

Unsolicited Proposals (UPs) refer to project proposals submitted to the Benue State Government by private sector entities without being specifically requested or included in the State's existing Infrastructure Master Plan or Public-Private Partnership (PPP) priority list. These proposals present an innovative opportunity for the government to access private sector creativity, expertise, and resources that may not have been initially identified or planned for by the government itself.

UPs offer private entities the chance to bring forward new, potentially ground breaking infrastructure or service delivery solutions that can contribute to the development of the state. They are especially useful for identifying untapped opportunities in critical sectors, fast-tracking the delivery of public services, and filling gaps in the government's planned infrastructure projects.

By their nature, unsolicited proposals are initiated by the private sector. However, they still require careful evaluation to ensure they align with the government's broader policy objectives, provide value for money, and adhere to regulatory standards. The Benue State Government, through BENIPA, has established a framework to guide the submission, review, and potential acceptance of unsolicited proposals, balancing the innovative contributions from the private sector with the government's public interest priorities.

Unsolicited bids

Unsolicited bids, for an expression of interest, means a proposal that is prepared or made without the invitation, solicitation, supervision or request of a contracting authority. In terms of section 8 of the PPP Act, once the Unit receives the unsolicited bid or expressions of interest it shall consult with the relevant contracting authorities within fourteen days, as to whether the PPP of the type proposed is acceptable or not.

Contracting Authorities should note that unsolicited PPP bids can present a serious risk of entering into obligations that fail to demonstrate affordability, transfer of significant risk to the private sector and value-for-money. Unsolicited PPP bids, if not properly managed, can also encourage corrupt activity, and dissuade other private sector firms and financial institutions from participating in competitive PPP procurement bids.

It should also be noted, that the cost of conducting the feasibility studies shall be borne entirely by the unsolicited proposal proponent/sponsor. However, if the sponsor fails to win the bid, after subjecting the proposal to a competitive process as provided by the procurement laws, then the winning bidder shall compensate the unsolicited proposal proponent for the cost of conducting the feasibility studies, as well as other related verifiable cost.

Principles for Considering Unsolicited Proposal

The Public Private Infrastructure Advisory Facility (PPIAF) report on Policy Guidelines for Managing Unsolicited Proposals in Infrastructure Projects ("PPIAF report") outlined six key principles for contracting authorities to follow to successfully manage a direct Unsolicited Proposal ("USP") negotiation. These principles are relevant throughout any USP process - from evaluation of the original USP through project feasibility studies, procurement (if required) and implementation - and should be embedded in all USP approvals and decision-making processes by the necessary authorities.

USPs require greater technical expertise within the public sector than publicly initiated PPPs, due to the challenges associated with the imbalance of information available to the public sector as

compared to the private sector and a weaker government negotiating position. The six key principles are as follows:

(i) Public interest - a USP project must align with national infrastructure priorities and meet a societal and economic need and reflect the government's growth policies and development plans.

(ii) Value for money – Contracting Authority should only structure USP projects as PPPs if they are expected to generate greater VfM under PPP delivery than under conventional delivery. Generating VfM from a USP requires greater technical capacity than doing so from a publicly initiated PPP. USP proponents will have greater knowledge of the USP; therefore, it is advisable that the procuring authority appoints its external advisors to support the Contracting Authority's interest and provide independent advice. Additionally, USP proponents may scope the USP to meet their own competitive advantages, which could limit market interest and competition if the USP is subject to open procurement competition, and thus also VfM.

(iii) Fair market pricing – The Contracting Authority must ensure that PPP contracts resulting from USPs reflect market prices, avoid excessive private returns and include a risk allocation appropriate for the government. As with publicly procured PPP projects, USP projects are more likely to generate a fair market price when they are procured in a competitive tender that attracts more than one bidder. In a direct negotiation, a government will not be able to compare the price proposed by the USP proponent with prices proposed by other bidders. Therefore, the government will need to rely on alternative approaches to ensuring that the USP represents a fair market price, such as benchmarking, market sounding and introducing competition in specific sub-contracts of the project.

(iv) Transparency and accountability – Contracting authorities should publicly disclose the USP as soon as possible; engage relevant government agencies, decision makers, and technical experts early on in the negotiation process and at significant decision points (as applicable). Disclosure is particularly important for directly negotiated USPs, which often are negotiated behind closed doors. Perceptions of corruption and irregular processes will likely reduce public support and private-sector interest in participating in PPP tenders.

The BENIPA Law provides the legal framework under which these proposals can be evaluated, ensuring transparency, competitiveness, and fairness in the approval process.

7.2 Approaches to Unsolicited Proposals.

There are three (3) approaches to handling unsolicited proposals.

- Direct negotiation with the offeror
- Purchase the project concept then conduct a competitive tender among a range of bidders
- Offer the original proponent a predefined advantage in recognition of the value of the original proposal (bonus system) and open bidding.

7.3 Guideline for Dealing with Unsolicited Proposals.

The Benue Investment and Development Agency Law (BENIPA Law) establishes a clear process for managing unsolicited project proposals (UPs). These proposals, which are not part of the State's Infrastructure Master Plan or PPP priority list, follow a structured review and approval process to ensure they meet state requirements and add value. Outlined below are the steps involved:

Step 1: Submission of the Unsolicited Proposal

Any private entity submitting a proposal for a Public-Private Partnership (PPP) project to the Benue State Government that is not part of the State's Infrastructure Master Plan or the PPP priority list is classified as submitting an “Unsolicited Project Proposal.”

Step 2: Initial Review by the Contracting Authority

The relevant Contracting Authority, upon receiving the unsolicited project proposal, conducts a preliminary review of the submission. The Contracting Authority must prepare comments and recommendations regarding the proposal's relevance, feasibility and alignment with public sector priorities.

Step 3: Forwarding to BENIPA

Once the Contracting Authority has completed its review, it must forward the unsolicited proposal, along with its comments and recommendations, to BENIPA for further evaluation.

Step 4: Comprehensive Review by BENIPA

BENIPA will undertake a thorough assessment of the unsolicited proposal. This review includes examining the proposal's technical, financial, and legal aspects to ensure that it meets the standards and criteria outlined by BENIPA. After completing the review, the BENIPA prepares a report to submit to the BENIPA Board.

Step 5: Submission to the BENIPA Board

BENIPA forwards its assessment, along with the Contracting Authority’s recommendations, to the BENIPA Board. The Board evaluates the proposal and ensures adherence to the framework established by BENIPA Law.

Step 6: Approval by the State Executive Council

The BENIPA Board presents the proposal to the State Executive Council for final approval. Only unsolicited proposals that satisfy the criteria specified in Section 27 of the BENIPA Law are eligible for approval by the Council.

Step 7: Integration into the Infrastructure Master Plan or PPP Priority List

Once approved by the State Executive Council, the unsolicited proposal is officially incorporated into the Benue State Infrastructure Master Plan or PPP Priority List. At this stage, the proposal is treated similarly to other planned projects and becomes subject to the provisions of the BENIPA Law.

Step 8: Swiss Challenge at Procurement Stage

Upon inclusion in the Master Plan or Priority List, the unsolicited proposal will be subjected to a **Swiss Challenge** during the procurement phase. This process allows other interested parties to bid for the same project, ensuring a transparent, competitive procurement environment that secures the best value for the State.

Annexures

Annexure I: Concept Note and OBC Template

Overview of PCN/OBC guide

This template/guide is intended for both Concept Notes and OBCs. While the structure is the same for the different stages of project preparation, the level of detail and the extent of analysis and evidence deployed will be significantly greater at the OBC level.

For Concept Notes, the main document should be around 15 pages. OBC main text should be 30 pages at most - plus however many annexes needed to cover the detail.

The annexes would cover (something like):

- project description and strategic/policy/institutional context;
- technical/physical options, costing and analysis;
- demand projections under different physical and pricing scenarios;
- socio-economic costs and benefits including PGESI;
- climate and environment/nature costs and benefits/analysis;
- commercial options and analysis;
- financial projections and analysis;
- organisational/institutional/management readiness/capability.

The main text should draw things together as required under the five different cases and set out overall conclusions and recommendations. It should be concise with a clear narrative flow. Matters of detail should to a large extent rely on cross-references to where things are dealt with in the annexes.

In addition to the main PCN/OBC text. There should be an executive summary of no more than three pages.

Drafting Approach

A lead writer should be appointed for each PCN/OBC (usually the overall team leader). The lead-writer has responsibility for drafting the entire main report and executive summary. Topic experts are responsible for drafting material included in PCN/OBC annexes only but will assist the lead writer in identifying key material for inclusion in the main report and in responding to queries. The team leader is responsible for QA for all annex material.

Acronyms

1. Executive Summary

The Executive Summary should be extremely concise and simply drafted. It should include:

- a very brief statement of the problem/opportunity;
- a short description of the preferred option, together with bullets covering *(for the preferred option only)*:

  the strategic case;
  the economic case;
  the commercial case;
  the financial case;
  the management case;

- a very abridged summary of the other options considered but not preferred, likely in a tabular format;
- summary of conclusions and recommendations including:

  whether the project is considered strong enough to take forward to the next stage of the project preparation and appraisal process;

  the particular options that should be taken forward for further evaluation;

  the support that UKNIAF would be able to provide going forward;

  key issues identified that should be addressed:
  (a) ahead of proceeding to the next stage; and/or
  (b) during studies/analysis forming part of the next stage of work.

2. Introduction and Overview

This section should be short. Its purpose is:

- to introduce the reader to the project (at the simplest and highest level[1]) and to the principal project actors (sponsoring MDA, project owner, etc.);
- to explain the purpose of the PCN/OBC and to set it in the context of the wider project preparation/transaction process (including what came before and what—depending on the outcome of the current stage—will be the next steps);
- to set out the bare bones of the work that has been done in preparing the PCN/OBC and set out the collaboration between UKNIAF and the client/counterpart;
- to introduce the 5-case model in outline and explain its role in the appraisal[2];
- to summarise and signpost contents and role of subsequent sections of the PCN/OBC main document and the annexes to it.[3]

The section should conclude with a very brief but clear elaboration of the Nigerian project

[1] For example, “the project is to construct student hostel accommodation for Benue State University”, “the project is to develop a hybrid renewable energy solution for the proposed Gudi agro-industrial park”, “the project is to develop an initial FastTrack bus mass transit service on one route as the first step in establishing a larger Ogun State BMT network”. Further details like number of bedspaces, MW of generating capacity, kms of route or numbers of buses are not required or appropriate.
[2] We will prepare short boiler-plate text that can be used for this on a fully standard basis.
[3] We will prepare boiler-plate text that can be included with minimal editing.

investment context and the importance of contriving projects that meet the requirements and priorities of the community of potential investors. It will explain that a major focus of project preparation work has been on ensuring that the project is positioned to attract a blend of climate finance, social finance and private finance that, taken together, will enable projects with strong developmental, climate/nature and PGESI benefits to be implemented—if possible, without making any claim on public financial resources.

[Suggested page length: 1 - 2 pages]

3. Project Description

This section should provide a more detailed description of the project, covering:

- **the problem**—the project is intended to address or **the opportunity** that it is intended to exploit;
- **the base case**—what will happen if the project is not implemented (the 'do nothing'—sometimes 'do-minimum'—base case);[4]
- **options**—the main project options, including location, summarised quantitative data, such as the numbers benefiting, capital costs, projected operating costs, projected annual income, project economic life, indicative construction period, and commissioning date;[5]

  Note, although more detailed, the data/projections describing the base case and options can
  still be kept fairly simple here. The real detail should be set out in the appropriate Annex (see below) and just cross-referenced/summarised in the main text. The object here is to highlight the salient features of, and differences between, the project options.

[Suggested page length: 2 pages]

4. Strategic Case

This section is concerned with whether the project is well-aligned with relevant government policies, strategies and institutional (legal and regulatory) frameworks.

While the primary focus should be on the national and sub-national government strategic context, it is also appropriate to consider alignment with FCDO and other international stakeholder priorities and programmes in this section.

For the avoidance of doubt, this section should not address organisational and capacity issues. These should be addressed in the Management Case.

[Suggested page length: 1-2 pages]

[4] The 'do minimum' case, if it arises, will usual represent a zero or negligible cost option, often a pure management or operational solution, that will contribute towards the (partial) achievement of project objectives without implementation of the project itself. It is effectively an optimised do-nothing case.

[5] The particular information to include will depend on the particularities of the individual project,

5. Economic Case

This section is concerned with demonstrating that the total value that the project is projected to deliver over time exceeds the total cost of delivering it, and that it represents a worthwhile application of resources taking into account potential alternatives. It is not concerned with the balance of costs and benefits falling to particular parties, such as government, private sector, beneficiaries, etc.

The main report section should not include detailed data or supporting calculations, which should be set out in appendices/annexes, and report only key values/results. The section should have a strong narrative.

The economic case appraisal should focus on comparing the main project options against a base case 'do-nothing' (or sometimes 'do-minimum') option.

We should include four categories of costs/benefits:

Economic:

- capital expenditure, including the market value of land valued

  (a) on an opportunity cost basis (i.e., market/alternative use value)

  (b) on a resource cost basis (i.e., net of transfer payments such as taxes, levies, etc.)

- operating expenditure (also valued at opportunity/resource cost basis)
- operating income
- *external* capital costs (costs associated with things like access road improvements, utilities, etc.)
- *external* operating costs and benefits falling to users and/or the wider community, for example:
  - travel time savings or penalties experienced by other road users resulting from a bus mass transit scheme
  - vehicle operating cost savings or increases
  - additional maintenance costs on assets that do not form part of a project (resulting from higher footfall/usage)

In general, economic costs and benefits should be both **quantified** and **monetized**. All monetary projections should be made in *real* terms (i.e., at constant prices without including inflation).

We can consider the question of whether to include multiplier effects … the knock-on gains in terms of growth in GDP in activities upstream and downstream of the project. In general, we should not include them, however, as they can be hard to justify.

Climate change:

- changes in GHG emissions *directly attributable* to the project (computed by comparison with the base case)
- changes in GHG emissions *indirectly attributable* to the project (assessed by comparison with the base case)
- climate change adaptation effects (assessed by comparison with the base case)/

In general, climate change costs and benefits should be **quantified** and, where possible should

also be **monetised**. All monetary projections should be made in *real* terms (i.e., at constant prices without including inflation).

Environment and nature/biodiversity:

- local non-climate related environmental/biodiversity impacts such as:
  - air and water pollution, including exposure to harmful/toxic emissions
  - quality of the local environment (visual and noise intrusion)
  - levels of motorised vehicular traffic
  - destruction/preservation of natural habitat
  - disturbance during the construction phase

Costs and benefits should be **quantified**, where possible, although monetisation is not generally expected.

Social:

- impact on vulnerable members of society with a focus on women, girls and people living with disabilities including:
  - personal security including exposure to risk of GBV
  - ability to participate fully in family/community/political life
  - the breadth of available life choices
- health, longevity and related quality of life impacts.

Costs and benefits should be **quantified**, where possible, although monetisation is not generally expected.

Overall Assessment of Economic Case

A cost-benefit analysis should be carried out comprising all monetised costs and benefits. Note:

- the timescale for the CBA should cover the full expected usable life of the principal project assets or, for very long-lived assets, should include their estimated terminal value *Note that the evaluation period for the economic case is unrelated to the proposed contract period for the associated PPP*
- net present value (NPV) should be computed based on the appropriate terms. Social time preference rate (currently advised at 7% p.a. for Nigeria). *Note that all projects with a positive NPV greater than zero are (technically) worthwhile but UKNIAF will be looking for higher returns before a project can be recommended to go ahead (see below on benefit to costs ratio). This reflects the scarcity of available capital resources.*
- the economic internal rate of return (EIRR) may also be computed
- the projected benefit-cost ratio (BCR) should be computed
  A minimum BCR of 2x is required but a BCR of at least 3 is preferred.
- the above should be calculated for a range of project options and should be subject to sensitivity testing and, for OBCs, should be subject to scenario assessment (i.e., assessment of the combined effect of a plausible, internally consistent, set of adverse or advantageous assumptions.

It is recognised that some key elements of costs and benefits may not be monetisable, especially at the PCN stage. These elements should be quantified as far as possible and then included in multi-criteria analysis (MCA). MCA entails scoring different project attributes (costs and benefits) consistently across the different options. By attaching weights to the different attributes/criteria, MCA then allows a systematic/consistent comparative assessment to be made of the different options in terms of non-monetisable costs and benefits.

The overall performance of each of the project options should be compared using both the monetised CBA results and the qualitative MCA and a judgement reached on their relative merits. A subset of options should be selected to take forward to commercial and financial assessment. This comparative assessment inevitably entails qualitative elements and collaborative assessment with the client/ counterpart at an appraisal workshop is essential to this.

[Suggested page length: 3-4 pages for PCN, 5-7 pages for OBC]

6. Commercial Case

The focus of the commercial case is to identify the preferred commercial model(s) for project implementation. It is particularly concerned with how project expenditure and income is distributed between:

- the project sponsor (usually a government MDA);
- the project developer; and
- project users/beneficiaries.

It includes:

- the business model through which project benefits can be captured as revenue by the developer and/or project sponsor
- the type of PPP arrangement/funding model that will best allocate risks and returns between the key protagonists (private developer, government, and possibly third-party participants such as donors, DFIs, etc.)
- how charges will be regulated, if appropriate
- where required, mechanisms proposed to bundle the project returns with returns from associated activities/projects (for example, arrangements to give the project developer preferential rights to benefit from other potential income streams).

[Suggested page length: up to one page max. for PCN, 3-4 pages for OBC]

7. Financial Case

The financial case is designed to demonstrate that the project delivers an acceptable return/good value for money from the perspective of each participant. Financial modelling for the financial case assessment should use the same cost and income streams as those used for the economic appraisal, except as advised below.

- market costs/prices should be used rather than ‘resource costs’ so that the projections will reflect the actual expected cash flows of the different participants
- all non-cash items (for example, monetised externalities included in the economic case assessment) and accounting provisions (notably depreciation) should be excluded from the evaluation
- cash flows should be separated to reflect the position of each project participant
- the appraisal should be carried out in real (constant price) terms

- the cost of capital to be used to evaluate the viability of the different project options from the point of view of private participants will depend on the evaluation approach adopted
    - at the concept note stage, discounting the project level cash-flows using real terms the weighted average pre-tax cost of capital for private investment is probably appropriate
    - at the OBC stage, discounting cash flows from the perspective of equity holders may be preferred and the post-tax cost of equity financing is then appropriate
- the cost of capital to be used to evaluate the value for money delivered to the public sector sponsors should be the national social time preference rate (assumed 7% p.a. real)
- sensitivity testing and, where appropriate, scenario evaluation should be employed to assess the robustness of the financial case for each option under appraisal
- options should be ranked according to their financial attractiveness to the private developer
- demonstrating VfM for the government does not require the use of the public sector comparator and should focus instead on the benefit-cost ratio

Note that the financial and commercial case assessments are very closely intertwined and cannot be undertaken on a strictly sequential basis. If there is a viability gap that needs to be bridged this will need to be taken into account in selecting the commercial/PPP model, possibly involving a blended financing approach.

[Suggested page length: up to 2 pages for PCN, 3-4 pages for OBC]

8. Management Case

The focus of the management case should be on the assessment of the capability of the project sponsor and other relevant agencies including:

- the ability of the public sector counterpart to fulfil its obligations under the expected form of commercial arrangement
- the ability of the public sector counterpart to supervise the private developer/operator during project development and subsequent operation
- ability to manage the tendering process and negotiations with the preferred bidder

Appropriate measures to remedy management weaknesses should be identified and/or changes to the commercial model that would reduce the management load.

[Suggested page length: up to 1 page for PCN, 2-3 pages for OBC]

9. Conclusions and Recommendations

The overall conclusions and recommended next steps should be set out succinctly together with the reasons underlying them.

Consideration may be given to preparing conclusions and recommendations separately for FCDO and for the client, especially if any sensitive political economy issues arise.

[Suggested page length: up to 1 page for PCN and OBC]

Annexure II: Contract Management Template

Contract Summary and Background of the Scope of Work

This section provides an overview of the project or program, detailing the type of work to be undertaken, the objectives of the contract, the location of performance, and key features of the contract.

Summary

The project involves [insert type of work], aimed at achieving [insert goals of the contract]. The work will be carried out in [insert place of performance]. Notable aspects of the contract include [insert significant features of the contract].

Key Contract Management Team Members

This section identifies individuals responsible for overseeing the contract to ensure the government receives the required deliverables.

Key members may include:

- **Contracting Officer:** (Name)- (Responsibilities)
- **Contracting Officer Representative (COR):** (Name) – (Responsibilities)
- **Technical Monitors:** (Names) – (Responsibilities)
- **Federal Project Director:** (Name) – (Responsibilities)
- **Quality Assurance Monitors:** (Names) – (Responsibilities)
- **Facilities Representatives:** (Names)- (Responsibilities)
- **Program Officials:** (Names) – (Responsibilities)
- **HR Specialists:** (Names)– (Responsibilities)
- **Property Management Officer:** (Name) – (Responsibilities)

Authorities and Limitations

- **Authorities:** (Outline decision-making powers)
- **Limitations:** (Specify any constraints)

1. Contract Monitoring Template

SECTION	SUMMARY
1. Contract Overview This section provides an overview of the project, detailing the type of work to be undertaken, the objectives of the contract, the location of performance, and key features of the contract.	(The project involves [insert type of work], aimed at achieving [insert goals of the contract]. The work will be carried out in [insert place of performance]. Notable aspects of the contract include [insert significant features of the contract].
I. Project Name II. Contract Number III. Contracting Parties IV. Contract Start Date V. Contract End Date VI. Contract Value	(Insert Project Name) (Insert contract Name) Public Entity (Insert Name) Private Entity (insert name) (insert Date) (Insert Date) (Insert Value)
2. Project Objectives	(Insert Objectives)
3. Roles and Responsibilities I. Contract Managers' Name: II. Project Team Members:	(Insert Name) (Insert Name(s)
4. Contract Monitoring (Outline the approach for monitoring contract performance to ensure compliance and quality**)** I. Performance Metrics II. Monitoring Schedule III. Reporting Process	(Insert KPIs) Review Frequency (Insert Frequency) Format: (Insert Format)
5. **Risk Management** (Outline the approach for identifying, assessing, and mitigating risks throughout the project) I. Risk Identification II. Risk Mitigation Strategies III. Contingency Plans	(Insert Identified Risks) (Insert Mitigation for identified risk) (Insert plans)

6. **Communication Plan** (Define the communication strategies to ensure effective information sharing) I. Communication channels II. Meeting schedule III. Documentation	(Insert channels) (Insert frequency) (Insert process for documenting Communication)
7. **Change Management** (Outline the process for managing changes to the contract, ensuring clarity and control) I. Change Request Process II. Impact Assessment	(Insert Procedure for Change Requests) (Insert Assessment Process)
8. Contract Closure (Outline the steps required to formally close the contract, ensuring all obligations are fulfilled) I. Closure Criteria II. Final evaluation III. Formal closure	(Insert Criteria) (Insert process) (Insert Steps)
9. Conclusion	(Insert Summary Statement)

Annexure III: Draft Code of Conduct for Bid Evaluation Panel Member

CODE OF CONDUCT FOR BID EVALUATION PANEL MEMBER

INTRODUCTION

This Code of Conduct outlines the principles and expectations for members of the Bid Evaluation Panel for Public-Private Partnerships (PPP) in Benue State. Adhering to these guidelines ensures transparency, integrity, and fairness in the evaluation process.

1. **Ethical Principles**

- **Integrity**

All members must at all times act honestly and uphold the highest ethical standards in all evaluations.

- **Transparency**

The Bidding process shall be fair and relevant bid documents must be readily accessible to all parties to maintain public trust and confidence.

- **Fairness**

All evaluations must be conducted impartially, ensuring that all bidders are treated equally without favouritism or prejudice.

- **Confidentiality**

All members must protect sensitive information and not disclose any details related to the bids outside the evaluation process.

- **Accountability**

All members are accountable for their actions and decisions and must be prepared to justify them.

2. **Responsibilities of Panel Members**

- **Conflict of Interest**

  - All members shall disclose to all relevant parties any potential conflicts of interest before participating in the evaluation process.
  - Members shall withdraw themselves from discussions or decisions where there is bias.

- **Compliance with Laws and Regulations**

All members shall at all times comply and adhere with all relevant laws, regulations, and guidelines governing the bidding process.

- **Evaluation Criteria**

Members shall use the established evaluation criteria consistently and objectively to assess bids.

- **Decision-Making**

  - Members shall base all decisions on factual information and data, avoiding personal biases or preferences.

- Members shall not mispresent facts in order to influence decision making.

- **Gifts and Hospitality**

All members shall refrain from accepting gifts or hospitality either directly or indirectly from bidders at all times to prevent any potential influence on their decision-making.

- **Fraudulent activities**

- Members shall avoid any deceptive financial practices, including bribery, double billing, or any other improper financial activities.
- Members shall not collude with parties with the intention of depriving other parties of fair and open competition.
- Members shall not unlawfully obtain data relating to the process in order to influence decision making.

- **Documentation**

All members shall maintain thorough and accurate records of the evaluation process and decision-making rationale.

3. Conduct During Meetings

- **Respectful Interaction**

Treat all panel members, bidders, and stakeholders with respect and professionalism.

- **Active Participation**

Engage actively in discussions, providing constructive feedback and insights.

- **Time Management**

Respect the scheduled times for meetings and evaluations, ensuring efficient time management.

4. Violations of the Code

- **Reporting Violations**

Members must report any suspected violations of this Code to the appropriate authorities.

- **Consequences**

Violations of this Code may result in disciplinary action, including and not limited to removal from the panel.

NOTE: This Code of Conduct serves as a commitment to uphold the principles of integrity, transparency, and fairness in the bid evaluation process for PPP projects in Benue State. Members are encouraged to embody these values in all their professional interactions and decisions.

Annexure IV: Appointment and Management of Transaction Advisers

Who is a Transaction Advisor?

A transaction advisor is a person or group of persons (firm or company) that either possesses or has access to the professional expertise in financial analysis, economic analysis, legal analysis, environmental impact analysis, contract documentation preparation, tender processing, engineering, and cost estimating. The role of a transaction advisor is to bring a PPP project from the concept stage through public bidding and award to actual execution.

Need for a Transaction Advisor

The project development process might require the inputs of a transaction advisor of the Office of PPP and the Government feels that capacity within the Government is not adequate to manage the project development process, especially if the project is complex. Even if the capacity within the Government is adequate to manage the project development process, a professional firm associated as the technical advisor is considered to add value to the process by:

(1) Bringing in their experience in similar transactions and protecting against costly, avoidable mistakes;

(2) Providing technical strength to the MDA's and Office of PPP's team;

(3) Bringing legitimacy to the PPP process and placing an external stamp of endorsement on the Government's proposals, increasing investor and public confidence;

(4) Providing an opportunity for knowledge transfer;

(5) Developing strategies for government consideration;

(6) Helping develop public messages and information;

(7) Performing analysis of PPP options;

(8) Supporting the bidding and negotiation processes;
etc.

Accordingly, the Office of PPP may hire the services of the transaction advisors and/or specialist advisors such as lawyers, financial analysts, financiers, economists, sociologists, and sector specialists to support the Office of PPP and the Government for successful implementation of the projectthroughthePPProute.Theseadvisorscanbeprocuredasateamorrecruitedindividually, in which case coordination among the team members should be ensured.

Considerations for appointment of Transaction Advisors

Some essential considerations to be taken care of when appointing a transaction advisor and during the tenure of the project include:

(1) The transaction advisor should be hired at the start of the PPP project development and retained either until after the signing of the PPP agreement or at the end of the procurement phase.

(2) The procurement of the transaction advisor must be fair, equitable, transparent, competitive, and cost-effective.

(3) The terms of reference for the transaction advisor should be precise and focused on clear deliverables.

(4) The terms of the contract between the Public Sector Agency and the transaction advisor should incentivise quality completion of milestones on time and within the budget.

(5) The Public Sector Agency should avoid separately retaining or subsequently hiring additional consultants for the project outside of the transaction advisor. Otherwise, conflicting work streams and accountability can be created which might be detrimental to both the quality and timing of the project.

(6) The project team should meet regularly with the transaction advisor to receive progress updates, provide project direction, resolve impasses, and ensure ongoing institutional input and support.

Terms of Reference for the Transaction Advisor

The terms of reference (TOR) for the transaction advisor should clearly articulate the requirements and expectations of the Public Sector Agency. The terms of reference and the proposal submitted by the transaction advisor will form the deliverables schedule of the transaction advisor's contract. Hence the clearer and more precise the terms of reference are, the higher would be the quality of bids received. Some of the example contents of terms of reference for appointing a transaction advisor are as follows:

Introduction: Briefly describe the project and its objectives, and how these align with the institution's strategic vision. Briefly narrate the background of the assignment including the institutional mandate to proceed with the project, needs that led to the project and any preparatory work which has been carried out.

(1) ***Scope of work:*** Outline the scope of work for the transaction advisor during the project development process, including but not limited to, feasibility analysis and procurement support.

(2) ***Deliverables:*** List the deliverables required from the transaction advisor and the schedule which they need to conform to while submitting the deliverable.

(3) ***Required skills/ experience:*** List the professional experience of the transaction advisor that is required for the specific project. List the firm-level skills and team member-level skills that are required for the specific project.

(4) ***Payment terms:*** The payment terms will narrate the remuneration system and schedule.

(5) ***Performance terms:*** Set out the appointment, reporting and decision-making arrangements under which the transaction advisor will be required to team, and the project officer's contact details.

(6) ***Bidding procedure:*** Briefly narrate the bidding procedure, mostly in conceptual terms for a general understanding of the bidders.

Selection of Transaction Advisor

The selection of Transaction Advisors will vary from project to project depending, in part, on the country in which it is being undertaken, the type of project and the source of financing. However, best practice selection should follow four main rules as below.

(1) ***Transparency:*** As much information as possible should be made publicly available. A transparent process eliminates doubt about the quality of the final winning team.

Furthermore, it is a pre-requisite to the participation of most top consultancies, which will not bother to participate in a process that is opaque and difficult to understand.

(2) ***Fairness:*** All parties are treated equally. All parties receive the same information at the same time and are evaluated on the same criteria.

(3) ***Cost-effectiveness:*** Costs should be minimized without sacrificing quality. Costs can be minimized, and quality of service maintained by choosing and employing the appropriate selection method (For example a form of competitive bidding and by understanding the likely cost components of the work while drafting the terms of reference).

(4) ***Freedom from conflicts of interest:*** The selection process should avoid both actual and perceived conflicts of interest. This requires avoiding the participation of companies that may be involved as investors or consumers, the participation of government officials who have current or recent connections to the companies involved and the linking of rewards to anything other than performance.

The appointment of a Transaction Advisor would preferably be done based on proposals submitted in accordance with a comprehensive RFP. Prospective transaction advisors would preferably be required to submit proposals in two sections as described below.

Technical Proposal

The technical proposal would normally carry the highest weighting of say 60 -70 percent of the overall assigned scores for evaluation. The technical proposal could consist of the following sections:

(1) Company and staff experience (say about 75 percent of the total weight assigned to the technical proposal).

(2) Proposed execution plan (say around 10 percent of the total weight assigned to the technical proposal).

(3) Understanding of transaction requirements (say about 15 percent of the weight assigned to the technical proposal).

The technical proposal would also be accompanied by the relevant documents to support the above.

A threshold may also be established in terms of which a prospective Transaction Advisor's proposal might need to achieve a minimum number of technical evaluation points for that bid to be further evaluated based on its financial proposal.

Financial Proposal

The components of the financial proposal could be the total cost, retainer, and success fee. For the evaluation of the financial proposal, the maximum number of points could be awarded to the proposal with the lowest total tendered cost, being the aggregate of a retainer and a success fee. The retainer fee could consist of the sum disbursed regardless of the success or financial closure of the project. The success fee on the other hand, could be contingent on the success or financial closure of the project. The other proposals could be awarded on a pro rata number of points, calculated on the percentage difference in cost between their tendered costs and the lowest tendered total cost.

Managing the Transaction Advisors

Once Transaction Advisors have been appointed it is crucial that they are managed properly. Getting maximum benefit from a transaction advisor requires good management and effective leadershipandoversightbythePublicSectorAgencyrightfromdefiningthetransactionadvisor's tasks, to choosing the transaction advisor, and monitoring and managing their performance throughout their engagement with the Public Sector Agency. Without this, the Transaction Advisor's work can be misdirected, misunderstood, and may even amount to fruitless expenditure by the Public Sector Agency.

The Public Sector Agency would appoint a Project team lead by a Project Officer for the implementation of the Project. The Project Officer and the Project team play a pivotal role in managing the transaction advisor. The transaction advisor would be managed on a day-to-day basis by the Project Officer and will play the key technical roles in the work of the Project team. The Transaction advisor will furnish the Project team, in a format to be agreed upon by the Project team, with all the documentation required during the project. The project team could meet the Transaction Advisor at regular intervals to assess the progress of the project and the progression the Transaction Advisor's deliverables and to assist the Transaction Advisor with the necessary data requirements of the Transaction Advisor, obtaining the approvals and the clearances as required for the successful implementation of the project.

Categories of Transaction Advisors

PPP Financial Advisers:

- Firms and individuals with relevant financial skills and experience of PPP and project- finance arrangement
- They should understand the different risk and return appetites of different financial markets and instruments
- Can act as Transaction Advisory Team Leader if needed also for Legal Advisory skills and Technical Advisory skills

Legal Advisers:

- Firms and individuals with relevant financial knowledge and experience of PPP and project-finance arrangements
- International lawyers can work together with local lawyers if international and national legal experience is required
- They can explain to the public sector PPP project sponsor the implications of contract terms and other legal and security issues
- They can document for the public sector PPP project sponsor how the proposed contract will achieve the allocation of risk and the commercial terms which the sponsor has negotiated with their selected preferred bidder

Annexure V: Best and Final Offer (BAFO)

The outcome of the evaluation process should be the selection of a single preferred bidder and a reserve bidder. In some cases, there may not be a clear preferred bidder and procurement may have to go into a BAFO process.

There are two main reasons to extend the bidding process:

i. the bids are identical or too similar to choose a clear preferred bidder
ii. no single bid meets the Contracting Authority's defined project objectives which may occur as a result of:

a. Bidders' misunderstanding of the objectives;
b. evaluation criteria or processes that are not aligned with the Contracting Authority's priorities and objectives;
c. bids may have contrasting strengths and weaknesses.

These circumstances may arise if the bidders do not fully understand or acknowledge the project objectives or evaluation criteria, do not fully elaborate on their offers, or adopt different commercial approaches to the project. A well-structured RFP, with bidder interactions and clarifications -- and not BAFO -- is the best way to prevent such problems. Most projects do not need a BAFO process, and the decision to seek BAFOs should not be taken lightly.

Steps in a BAFO process

- Inform the bidders. The short-listed bidders must be informed that a BAFO process is to be used. Not all of the short-listed bidders should be invited to participate in the BAFO process. The two strongest bids should be invited, and the remaining short-listed bidders informed of the reasons for not extending an invitation to participate in the BAFO process. It must be explained, especially that the BAFO process does not allow a re-writing of the bids, but only a refinement of the bids in specific areas.
- Prepare a request for best and final offer. The request for best and final offer may not necessarily be the same for the two short-listed bidders invited to participate; for example, the areas of bid refinement may not be the same.

  A request for best and final offer should be created separately for each of the bidders invited to participate, specifying the areas in the bid submitted that require refinement and citing the particular area of the RFP to be addressed. The evaluation criteria for adjudging the refinement sought must also be listed. It should be noted that a BAFO submission addressing areas other than those specified in the request for best and final offer will be disregarded.

  The time for submission of the BAFO response must be specified, including its format, and the time for requesting clarification described, together with a reminder that the bidder communication rules listed in the RFP will apply during the BAFO process, including all of the bid formalities, including the maintenance of the bid bond.

  Consortium changes are not permitted during the BAFO process, and the bidders should be again reminded that the Contracting Authority may terminate the procurement process at any time.

  Receive the BAFO submissions and evaluate them. At the appointed date and time, the BAFO submissions should be received and recorded. The evaluation process should focus only on the particular areas of refinement requested of the BAFO participants, generally following the evaluation methodology listed in previous sub-sections, including preparation of a report containing the recommendation of a preferred bidder.

Annexure VI: Sample Template for Options Analysis

Sr. No.	Section	Description
1.	Executive	This section should provide a summary of the findings of the options analysis. Sufficient information should be included to allow key decision-makers to understand the issues and the rationale for the selected short-listed options. Necessary clarification of the implications of the proposed initiative should also be specified.
2.	Description of service requirements	This section describes service requirements
3.	Project functions, objectives and critical success factors	This section describes the Project functions, objectives and critical success factors
4.	Alignment with strategic objective	This section describes the strategic objectives of the parties.
5.	Stakeholder identification	This section describes the stakeholders involved
6.	Options Analysis	The range of feasible possibilities should be considered. A qualitative description of the advantages and disadvantages may be used to assist in evaluating the options. For major project proposals, risk-adjusted estimates (of revenue, costs, duration and benefits) need to be applied to address project characteristics, level of knowledge and degree of confidence in the estimates. In completing the template, the following criteria must be considered: Options would generally include: Base Case (do nothing) minimal approach non-asset solutions, for example, these may include: demand management, service transformation, optimising existing operations or asset use, alternative maintenance strategies, re-investment in replacement/renewal, enhancement of existing infrastructure investment in new assets. Public Procurement Option and PPP Option. The evaluation of options would include: rating of achievement of project objectives; rating of achievement of strategic objectives; capital cost (present value) (including confidence levels); recurrent costs (including confidence levels); potential revenues (including confidence levels); environmental benefits; social benefits and where these benefits are distributed, key assumptions and risk matrix ; timing of service delivery and the results associated, should the project not proceed
7.	Project Delivery Alternatives	For each of the above proposal options, all appropriate project procurement delivery approaches should be considered. These may range from traditional public procurement to design-construct or PPP Project procurement delivery, depending on the nature of the investment proposal
8.	Preliminary Risk	For each option, a high-level analysis of potential risks is

	Assessment	required to estimate their likelihood and consequences and determine the risk level. These highest-ranking risks should be listed in the options Risk Matrix assessment along with potential cost implications, responsibility for/sharing of individual risks and any indicative risk reduction strategies
9.	Preferred Option	Based on the options analysis and the preliminary risk assessment a prioritized short-listing of options and any clear preferred option for further analysis is provided. Reasons for the preferred option or prioritized shortlisting should be documented, including key assumptions made, the details of the ranking process and the assessment criteria. The preferred timing and sequencing for the project should also be documented
10.	Actions to progress to business case	Actions required to further progress the proposal should be listed. This may case include: further iterations of the options analysis; determining the impacts of deferring the project; issues to be specifically addressed in the business case; timeframe required to develop the outline business case and further the full business case; further studies for addressing information gaps
11.	Supporting Documents	All documentation that supports the finding of the options analysis

Annexure VII: Preliminary Project Assessment Form

SN	Particulars	Details (To be filled in by the MDA)
1.	Project name	Provide the name of the Project
2.	MDA name	Provide the name of the MDA acting as the procuring entity
3.	Brief description of the project	Describe the project including location, capacity, size etc
4.	The project being implemented under which MDA	Provide the Line Ministry under which the project is implemented
12.	Objective of the objective project and expected outcomes	The objective for pursuing this project and the outcomes expected are to be provided here
13.	Technical feasibility	The MDA's preliminary view on the technical feasibility of the project. Successful precedents of similar projects may be included here
14.	Legal framework	The MDA's view on the legal framework for the implementation of the project
15.	Project impact and suitability	The MDA's preliminary view on the likely impact of the project on the environment and community, as well as social acceptability and public benefits of the project. Long-term impact on the goals and position of the MDA. Please add more details as an annexure to this form
16.	Brief description of social and community requirements	Please add more details as an annexure to this form
17.	Estimated capital expenditure	This should be a preliminary estimate and need not be a detailed calculation.
18.	Estimated O&M expenditure over expenditure over the asset life in present terms	This should be a preliminary estimate and need not be a detailed calculation. The projected O&M expenditure over expenditure over the asset life should be discounted to arrive at the present value.
19.	Estimated investment	Summation of Capital Expenditure and Present Value of O&M Expenditure
20.	Revenue generating potential	State the various sources of revenues for this project. If available, also include the preliminary potential annual expected revenue
21.	Proposed means of financing	State the various proposed means of financing the project, indicative proportions and amount

1.		**Source**	**Proportion (%)**	**Amount (Naira Mn)**
		Private Sector		
		MDA		
		Benue State Government		
		Any other (Specify)		
		Total		
2.	Estimated project IRR (Internal Rate of Return) (where developed)	If estimation of returns is very difficult at this stage then, do not include at this stage.		
3.	Key risks envisaged	The key risks identified for this project should be provided under this section		
4.	Does the preliminary assessment show that the project is suitable for PPP	Reasons and necessity for involving Private Sector in the Project and analysis of suitability of alternative models of project delivery. Roles of MDA and Private Sector.		
5.	Estimated project development expenses (Naira)			

Signature and seal

Name of the authorized signatory:

Designation of authorized signatory:

Name of the MDA:

Date:

Annexure VIII: Sample Checklists

Feasibility Study Checklist

	Particulars (Tick "" the applicable box)	Provided	Not Provided	Not Applicable
1	**General**			
	Name of the Project			
	Type of PPP (BOT, BOOT etc.)			
	Location (Province/District/Town)			
	Responsible Ministry/Department			
2	**Project Description**			
	Brief description of the project			
	Justification for the Project			
	Possible alternatives, if any			
	Estimated capital costs with break-up under major heads of expenditure also indicate the basis of the cost estimated			
	Phasing of investment (if required)			
3	**Financing Arrangements**			
	Sources of financing (equity, debt, mezzanine capital etc.)			
	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions			
	Who will fix the tariff/user charges? Please specify in detail			
	Have any financial institutions been approached? If yes, their response may be indicated			
4	**IRR**			
	Economic IRR (if computed)			
	Financial IRR (project and equity), indicating various assumptions			
5	**Clearances**			
	Status of environmental clearances			
	Clearance required from the MDA and other local bodies			
	Other support required from the MDA			

6	**Federal and/or State Government Support**	
	Viability Gap Funding,/capital grant or availability payment support if required	
	Federal Government of Nigeria guarantees being sought, if any	
7	**Concession Agreement**	
	Heads of Terms of the proposed Concession Agreement	
8	**Criteria for short listing at RFQ stage**	
	Indicate the criteria for shortlisting.	

Annexure IX: Concession Agreement Checklist

SN	Particulars (Tick "" the applicable box)	Provided	Not Provided	Not Applicable
1	**General**			
	Scope of the Project			
	Nature of Concession to be granted			
	Period of Concession and justification for fixing the period			
	Estimated capital cost			
	Likely construction period			
	Conditions precedent, if any, for the concession to be effective			
	Status of land acquisition			
2	**Construction and O&M**			
	Monitoring of construction, whether an independent agency/engineer is contemplated			
	Minimum Standards of Operation and Maintenance			
	Penalties for violation of prescribed O&M standards or incentives for better performance			
	Safety related provisions			
	Environment related provisions			
3	**Financial**			
	Maximum period for achieving financial close			
	Nature and extent of capital grant/VGF/availability payments contemplated			
	Bidding parameter (capital grant VGF/availability payment or other parameter)			
	Provisions for change of scope and the financial burden thereof			
	Concession fee, if any, payable by the Concessionaire			
	User charges to be collected by the Concessionaire or paid by government			
	Indicate how the user charge is to be determined;			

	the legal provisions in support of user charge ; and the extent and nature of indexation for Inflation			
	Provisions, if any, for mitigating the risk of lower revenue collection			
	Provisions relating to escrow account, if any			
	Provisions relating to insurance			
	Provisions relating to audit and certification of claims, use and responsibilities of an Independent Engineer			
	Provisions relating to assignment/substitution rights relating to lenders Direct Agreement			
	Provisions relating to change in law			
	Provisions, if any for compulsory buy-back of assets upon termination/expiry			
	Contingent liabilities of the MDA			
	Maximum Termination Payment for the MDA's default			
	Maximum Termination Payment for Private Sector default			
	Maximum Termination Payment for Private Sector default			
	Specify any other penalty, compensation or payment contemplated under the agreement			
4	**Others**			
	Provisions relating to competing facilities, if any			
	Specify the proposed Dispute Resolution Mechanism			
	Specify the proposed governing law and jurisdiction			

Annexure X: Commercial Case Checklist

SN	Particulars (Tick “” the applicable box)	Provided	Not Provided	Not Applicable
1.	Is the project expected to achieve a satisfactory rate of return?			
	Explanatory Notes			
2.	Is the project likely to achieve Value-for-money (VFM)?			
	Explanatory Notes			
3.	Are the project outputs, service levels and performance requirements Specified clearly?			
	Explanatory Notes			
4.	Are credible proposed financing arrangements in place?			
	Explanatory Notes			

Annexure XI: Risk Management Checklist

SN	Particulars (Tick “” the applicable box)	Provided	Not Provided	Not Applicable
1	Have all major risks been identified, understood and evaluated?			
	Explanatory Notes			
2	Are risk management and sharing plans in place			
	Explanatory Notes			
3	Are approvals processes and clearances being addressed?			
	Explanatory Notes			
4	Are environmental and social issues being addressed?			
	Explanatory Notes			
5	Are land acquisition issues being addressed			
	Explanatory Notes			

Annexure XII: Readiness for Procurement Checklist

SN	Particulars (Tick “” the applicable box)	Yes	No	Unsure
	Is a robust procurement strategy in place, including for the management of deviations?			
	Explanatory Notes			
	Has the proposed procurement procedure been evaluated and, in particular, its compliance with legal requirements confirmed?			
	Explanatory Notes			
	Has stakeholder consultation confirmed the acceptability of the project and procurement strategy?			
	Explanatory Notes			
	Is there adequate knowledge of the market and potential suppliers/operators?			
	Explanatory Notes			
	Is progress in obtaining permits, approvals and clearances satisfactory and in accordance with the procurement strategy?			
	Explanatory Notes			

Annexure XIII: Procurement Plan Checklist

SN	Particulars (Tick “” the applicable box)	Yes	No	Unsure
1	Are the project budget and timetable under control?			
	Explanatory Notes			
2	Does the project team have adequate skills and resources, Including appropriate external advisors?			
	Explanatory Notes			
3	Have remaining project activities been timetabled, defined and resourced?			
	Explanatory Notes			

Annexure XIV: Capacity of the MDA Checklist

SN	Particulars (Tick “” the applicable box)	Yes	No	Unsure
1	Has a suitable Contract Management Team been formed?			
	Explanatory Note			
2	Have financial resources been secured for managing and monitoring the contract during the current budgetary cycle?			
	Explanatory Note			
3	Has a contract management plan been prepared?			
	Explanatory Note			
4	Do the plans for contract management and monitoring meet the 4 guiding principles for contract management (simple and focused, low cost, conducive to partnership, clear dispute resolution procedures)			
	Explanatory Note			
5	Has a monitoring schedule been developed?			
	Explanatory Note			
6	Are training and capacity building opportunities available to the contract management personnel?			
	Explanatory Note			
7	Are plans in place to respond to difficulties or problems in contract implementation as they arise?			
	Explanatory Note			

Annexure XV: Government Financial Support Examples

Country	Key Instruments of Government Support	Description
South Africa	Construction Capital Grant	Capital grant provided to ensure reasonable returns
	Unitary Payment Mechanism	Mechanism of compensating a concessionaire for construction cost, operating cost, and financing cost through lease payments/service payments
Chile	Construction S/Capital Grant	Competitively bid capital grant, provided mainly to ensure that highway tolls are at reasonable levels
	Minimum Revenue Guarantee	Guarantee by government to compensate a concessionaire for actual traffic being less than projected traffic
	Operational Grant /availability payments	Guarantee by government to compensate a concessionaire for actual traffic being less than projected traffic
European Union	Project Grant (Used as construction grant for PPP projects)	Grants from structural and cohesion funds; the grants are used by member-states to provide construction grants to PPP projects
India	Viability Gap Financing Grant	Competitively bid capital payment , specifically to enhance the viability of PPP projects
	Grants from Central Road Fund (used as construction grant on highway BOT projects)	Allocations from the Central Road Fund (fund generated by the levy of fuel cess) for national highways and used to projects) enhance the viability of highway BOT projects
South Korea	Construction Grant	Capital grant provided to ensure reasonable returns and reasonable tolls or given as compensation to a concessionaire for large fluctuations in currency exchange rates

	Minimum Revenue Guarantee	Guarantee by government to compensate a concessionaire for actual traffic being less than projected traffic
	Build Transfer Lease Scheme	Mechanism of compensating a concessionaire for construction cost, operating cost, and financing cost through lease payments/service payments
	Infrastructure Credit Guarantee	Guarantee by a statutory entity in favour of infrastructure SPVs borrowing funds from financial institutions
UK	Unitary Payment Mechanism	Mechanism of compensating a concessionaire for construction cost, operating cost, and financing cost through lease payments/service payments
	PFI Credit Mechanism	Mechanism of supporting capital expenditure in projects implemented at local levels
	Construction Grant	Capital grant provided for specific projects, only for exceptional circumstances
	DBFO Programme of Highways Agency	Mechanism of compensating a concessionaire for construction cost, operating cost, and financing cost through shadow tolls/availability payments

Annexure XVI: PPP Project Case Studies

PPP Case Studies (Nigeria)

Project Name:	Domestic Terminal at Murtala Muhammed Airport, Lagos
Country:	Nigeria
Sector	Transportation
Sub-sector	Airports
Type of PPP	Concession/BOT
Status:	Operations
Project Concept	Following the destruction of the domestic terminal in a fire in 2000, the project involves the design, construction, and operation of a new domestic terminal and ancillary facilities at the Murtala Muhammed Airport in Lagos. The new terminal, Murtala Muhammed Airport Two (MMA2), has a land area of 20,000m2 and comprises a terminal building, a multi-storey car park, and an apron
Procurement Details:	In 2003, the Ministry of Aviation advertised for bids for the project. Among the bidders were Royal Sanderton Ventures Limited and Bi-Courtney Limited. Initially, Sanderton was awarded the contract. However, after no significant construction had started six months into the contract signing, the government decided to revoke Sanderton's mandate and award the contract to Bi-Courtney following direct negotiations with the company. The contract was awarded for a period of 12 years and subsequently extended to 36 years. The Nigerian contracting entities are the Federal Government, represented by the Minister of Aviation, and the Federal Airports Authority of Nigeria (FAAN), the Nigerian Airports Authority
PPP Company	Bi-Courtney Limited, a Nigerian firm, is the parent company of Bi-Courtney Aviation Services Limited
Project Funding	The estimated cost of the project was US$200m for investments in physical assets. The project was part-financed with a loan of US$150m from a consortium of six banks -- Oceanic Bank International Plc, Zenith Bank Plc, GT Bank Plc, First Bank Plc, First City Monument Bank Plc and Access Bank Plc.
Key Lessons Learned	Key lessons include: (i) the importance of having an agreed financial model and long term financing in place at the outset of the project; (ii) the initial bidding process also points to the importance of managing politicians' expectations and setting realistic goals regarding timelines; (iii) revoking a contract and re-awarding it to a different company not only delayed the project but also triggered doubts in private participants' minds about whether such changes were spurred by political rather than economic

	issues; (iv) the difficulty of enforcing contractual agreements in some developing countries where institutions are competing interests (e.g. while the contract has a clause assuring that all scheduled domestic flights in and out of FAAN's airports in Lagos shall operate from the new terminal during the concession period, FAAN continues to operate the old domestic terminal (GAT); and (v) any conflict of interest faced by the Government puts significant pressures on the ability of the private sponsor to recover its investments and thus placed the financial viability of the project at risk

Project Name	Lekki Toll Road Concession Project, Lagos Area
Country	Nigeria
Sector	Transportation
Sub-sector	Roads
Type of PPP:	Concession/BOT
Status:	Construction
Project Concept	The project is proposed to be implemented in two phases. Phase I involves upgrading and maintenance of approximately 50 km of the Lekki-Epe Expressway on a BOT basis. The concession period for Phase I is 30 years. Phase II of the project involves construction of approximately 20 km of the Coastal Road on the Lekki Peninsular.
Procurement Details	The Concession was awarded to Lekki Concession Company Limited ("LCC")
PPP Company	Lekki Concession Company Limited ("LCC") is an SPV formed by the ARM Group of Companies for the execution of this project.
Project Funding	The project cost was funded, using a mix of debt and equity with some support from the State and the Federal Government of Nigeria. The various sources of funding included DFI soft loans, Federal Government loans/grants, and private sector finance. The major shareholders in the project include Macquarie Bank and Old Mutual of South Africa through the African Infrastructure Investment Fund. The project was able to raise the first ever 15-year tenured local-currency debt financing in Nigeria from Standard Bank. Support from the State Government of Lagos has been received in the form of a mezzanine loan.
Other Stakeholders	n/a
Project Outcome	The UN has forecast a population of 20 million in 2020 for the Lagos State. Given the population of the state, it is estimated that approximately one million motor vehicles are stationed in Lagos today with a daily traffic flow between the Lagos Mainland and the Lagos Island of about 5,000,000 vehicles. The poor condition of the roads in

	Lagos, characterized by crumbling sidewalks, badly pot-holed road surfaces, non-functional traffic lights, poor signage, and blocked or non-existent drainage systems lead to traffic congestion and high journey times, high fuel consumption, and low productivity. Improved road conditions will help in solving all the above-mentioned problems and result in time-saving and increased productivity of the citizens. Fuel would also be saved and thus the costs for both motor car owners and the Government would reduce, resulting in rapid development of the nation.
Key Lessons Learned	Lessons learned to date include: (i) the importance of stakeholder consultation in the early phases of the project (during feasibility study) as during the construction phase, communities living along the Lekki-Epe corridor began to protest about having to pay tolls and, as a result, tolling was suspended; (ii) the need for a strong contract management function within the Government team; and (iii) the importance of managing public and investor perceptions during project implementation, as the project has been delayed resulting in commuter frustration with the perceived lack of progress. (iv) The need for minimum service performance standards backed by an incentive/penalty system to reward/punish service performance above and below the agreed minimum service standards.(v) the need to take a "willingness to pay" survey into account when setting toll levels and identify any government support required to cover total project costs.

PPP Case Studies (Africa-wide)

Project Name:	Dar es Salaam Water Distribution Project
Country	Tanzania
Sector	Water and Sanitation
Sub-sector:	Water utility with sewerage
Type of PPP	Lease Contract
Status	Construction
Project Concept	The project involved the leasing of Dar es Salaam's Water and Sewerage Authority's (DAWASA's) infrastructure for water distribution to a private consortium for operation. The private company was responsible for billing, collecting revenues from customers, making new connections, and performing routine maintenance. Ownership of the infrastructure was still in the hands of DAWASA. Alongside the lease contract, there were contracts to install or refurbish pumps at treatment plants, repair transmission mains, supply customer meters, and manage 'Delegated Capital Works.'
Procurement Details	Initially, there were three bidders for the project – two French companies and the winning bidder, City Water. While the bid criterion was to be the lowest tariff, the two French companies did not submit their final tender and therefore City Water was awarded the contract. In

	addition to the main lease contract, two ancillary contracts for priority works were also awarded to City Water, including the refurbishment of pumps at treatment plants and repairs of transmission mains. The contract was awarded for a period of 10 years, commencing August 1, 2003. However, it was terminated within two years of operation. The Tanzanian contracting entity was the Republic of Tanzania, represented by DAWASA
PPP Company	The private consortium was led by Biwater, a UK-based water company with a 26% share, along with the Tanzanian local company Super Doll Trailer Manufacturer Company (SDT) with a 49% share and H.P. Gauff Ingenieure GmbH Co, a German company with 26% share
Project Funding	US$8.5m of investments in physical assets and payments to the Government under the lease contract. Significant further investment was to be undertaken under the ancillary contracts
Other Stakeholders	The project received multilateral support from the World Bank, AfDB and EIB (total loan amount of US$140m). DFID also provided support, with the funding of a consultancy contract to publicize the project.
Project Outcome	The contract was cancelled after two years, followed by complex arbitrations between the Government of Tanzania and City Water under the lease contract, and between the Government of Tanzania and Biwater Guaff (Tanzania) under international law. The lease contract arbitration was awarded in favour of the Government of Tanzania, and Biwater's claims for damages under the UK-Tanzania Bilateral Investment Treaty were dismissed. It was determined that City Water did not perform as (i) revenue collection targets were not met, (ii) improvements to the water distribution system (e.g., introduction of a new billing system) were not introduced, (iii) City Water stopped paying its monthly fee for leasing DAWASA's piping and other infrastructure in July 2004, less than a year into the contract, (iv) there were internal management problems within the consortium with SDT refusing to put in more equity without a greater share in the management, and (v) City Water had a social obligation to contribute to a fund for first-time connections, which was never created
Key Lessons Learned	The overall lesson was that given the difficult operating environment, considerable care needs to be applied in structuring a PPP transaction, with appropriate risk mitigation measures in place to ensure the financial viability and success of the transaction. More specifically, (i) the Government and its donors failed to ensure that DAWASA had a capable team of advisors to monitor City Water's performance adequately, (ii) only City Water submitted a proposal at the final tender stage, so there was no comparator to evaluate bids on a least cost basis, (iii) the contract needs to be viewed against available private expertise as there were assessments suggesting that Biwater did not have the experience of running a huge management operation before and that the project team was inexperienced, and (iv) the negotiations were undertaken in the run-up to the elections in Tanzania, and the Government was under pressure to 'resolve' the

	contract suitably

Project Name	Kenya-Uganda Railways
Country:	Kenya and Uganda
Sector	Transportation
Sub-sector:	Railways
Type of PPP	Concession
Status	Operations
Project Concept:	With an objective of improving overall performance, the concessionaire is responsible for the rehabilitation, operation, and maintenance of the railways systems in both countries, which were previously run by the government (the Kenya Railways Corporation and the Uganda Railways Corporation), The concessionaire also provides freight services in both the countries and passenger services in Kenya for at least five years
Procurement Details	While the two concessions for the Kenyan and Ugandan parts of the rail network are legally separate, the tendering process was undertaken jointly by the two governments and the contracts are fundamentally identical. The concession was awarded through an international, competitive bidding process and the bid criterion was the highest price paid to the government. From the two groups that bid for the project, the Rift Valley Railways (RVR) Consortium was awarded the concession. The concession was granted for 25 years and the concessionaires took over in December 2006
PPP Company:	When RVR was first awarded the concession, it was led by South Africa's Sheltam Rail Company (61%), with the remaining participants being Prime Fuels (Kenya, 15%), Comazar (South Africa, 10%), Mirambo Holding (Tanzania, 10%), and CDIO Institute for Africa Development Trust (South Africa, 4%). In March 2009, ongoing difficulties forced the parties into a further restructuring of the consortium whereby Sheltam's share was diluted from 35% to 10%, and the difference was taken by TransCentury and its partners
Project Funding	The project was expected to cost US$404m of which US$4m was made in payments to the governments and the remaining balance for investment commitments in physical assets. Of the US$404m, US$111m was estimated to be the cost for the first five years of the project, of which US$47m would be contributed to by the consortium in the form of direct equity and internal cash generation. The balance would be funded by loans from international organisations. Overall, the debt-to-equity ratio of the project was envisaged to be about 70:30
Other Stakeholders:	The original deal envisaged IFC and KfW providing loans worth US$32m each.

	IFC/DevCo and Canarail acted as advisors to the governments of Kenya and Uganda respectively. PwC provided assistance to the concession operators. PIDG provided support to DevCo, and additional grants were also obtained through the Technical Assistance Facility. In addition, the World Bank provided Partial Risk Guarantees (PRG) of US$45m for Kenya and US$10m for Uganda. An IDA credit for US$44m was made to fund labour retrenchment in Kenya.
Project Outcome:	Outcomes included: (i) the Kenya-Uganda railway concession is a flagship transport sector PPP in East Africa and won Euro money's Project Finance "Africa Transport Deal of the Year" award in 2006. However, the project has run into considerable operational and legal difficulties since then, which have seriously hampered its likelihood of success; (ii) contrary to the conditions governing the concession, the consortium has not undertaken any significant investment in structures or rolling stock. As a result, the US$64m in loans from the IFC and KfW have not been released in full; (iii) the overall operational effectiveness of the project has been reduced as Kenyan freight traffic has not increased as stipulated in the Concession Agreement; (iv) there were funding shortfalls to finance the retrenchment of 6,200 employees in Kenya and 1,000 employees in Uganda; and (v) there have been restructuring of the consortium arrangements
Key Lessons Learned	The key lessons were: (i) the importance of attracting 'competent' private companies for the successful implementation of the contract, (ii) a cross-border project requires that the two governments take similar positions on issue, and (iii) greater political issues may alter the incentives of the parties involved and negatively impact the outcome of a transaction.

Project Name	National Referral Hospital
Country	Lesotho
Sector	Health
Sub-sector	Health
Type of PPP	Concession/BOT
Status	Construction
Project Concept:	The project involves the replacement of Lesotho's main hospital, Queen Elizabeth II, an ageing facility with derelict infrastructure. The private company is responsible for designing, building, partially financing, fully maintaining and operating the new 390- bed public hospital. The project also features the refurbishment, upgrading and operation of three urban filter clinics
Procurement Details	The Government of Lesotho undertook an internationally competitive bidding process for the project, and selected Tsepong (Pty) Limited, a consortium led by Netcare, as its preferred bidder. The PPP agreement between the Government and the consortium was signed in

	October 2008, and the contract was awarded for a period of 18 years.
PPP Company	The private consortium is led by Netcare (40%), a leading private health care provider that has operations in South Africa and the UK, and is listed in the Johannesburg Stock Exchange (JSE). The consortium also included Excel Health (20%), an investment company for Lesotho-based specialists and general practitioners (GP's); Afri'nnai (20%), an investment company for Bloemfontein-basedspecialists and GP's; D10 Investments (10%), the investment arm of the Lesotho Chamber of Commerce; and WIC (10%), a Basotho women's investment company
Project Funding	The project is expected to cost US$100m. 80% of the capital costs will be provided by the Government and the remaining 20% will come from the private sector. The capital structure (excluding the government grant portion) has a debt-to-equity ratio of 85:15. All debt is provided by the Development Bank of Southern Africa (DBSA). 10% of equity is in the form of pure equity (40% provided by Netcare and 60% by the remaining consortium members) while 90% is in the form of loans (40% of which is a Netcare shareholder loan and 60% is a mezzanine loan/bridge finance from DBSA).
Other Stakeholders	The IFC acted as lead transaction advisor to Lesotho's Government. In addition, the Government has requested Partial Risk Guarantee (PRG) from the World Bank in order to provide the consortium, at their expense, with partial coverage against the Government's failing to make the unitary payment. The World Bank will also provide support to the Government with contract management. The Global Partnership for Output-based Aid (GPOBA) provided a grant of US$6.25m, which is payable over the first five years of the project, to augment the unitary payment by the Government
Project Outcome	This is a pioneering social sector PPP in Africa, which if successful, will have strong positive demonstration effects for future transactions. Expected outcomes include: (i) the project was structured such that the operating costs of the new facility would be roughly equivalent to those at the existing referral hospital, and thus fit into the Government's affordabilityenvelope; (ii) since the cost of the services remains the same, patients will not need to pay extra to benefit from the higher level of medical services at the new hospital; (iii) the project won the 2008 "Social Infrastructure Deal of the Year" award from media outlet Africa-investor due to the pioneering nature of the deal and its ability to be replicated in other African countries, as well as for the project's commitment to supporting local businesses and communities
Key Lessons Learned	Although the project is relatively new, some key lessons learned to date include: (i) the importance of robust political support for attracting competent bidders to a project; (ii) the possibility of structuring a financially attractive deal for the private sector without having to increase the charges imposed on users; (iii) a financial deal can also be made more compelling for the private sector by securing risk guarantees from various institutions against the failure of payments from the Government; and (iv) substantial involvement of local and

	regional stakeholders, as evidenced by the participation of Lesotho-based GPs and specialists, build long-lasting diverse support for a project.

Annexure XVII: PPP Case Studies (Worldwide)

Project Name	Panagarh-Palsit Highway Project
Country:	India
Sector	Transportation
Sub-sector:	Roads
Type of PPP	Concession/BOT
Status	Operational
Project Concept:	The project involves the design, construction, operation and maintenance of a 63km four-lane carriageway between Panaragh and Palsit, which forms part of the DelhiKolkata section of the 'Golden Quadrilateral Project' (main highway links between the major cities of India)
Procurement Details	Initially, the National Highways Authority of India (NHAI) shortlisted six bids from a mix of international and domestic companies – Larsen & Toubro, Kvaerner Construction, Road Builder, IJM Berhard Corp, Reliance Industries, and GamudaWCT. The bid criterion was the lowest annuity amount that would be paid semiannually by the NHAI to the private sponsor. However, the NHAI found the annuity amount quoted by the lowest bidder to be too high and decided to call for fresh bids from all six parties in a second round of bidding. Only Larsen & Toubro, Road Builder, and Gamuda-WCT participated in the second round, which Gamuda-WCT won. The contract was awarded for a period of 15 years, and the agreement between NHAI and Gamuda-WCT was signed in November 2001.
PPP Company:	Gamuda-WCT is a joint venture between Gamuda (70%) and WCT (30%), two Malaysian engineering and construction companies.
Project Funding	The project's estimated cost is US$69m. The financing package has a debt-equity ratio of 2:1. As the annuity payments are considered to be a secure and stable source of funding by the financial community, annuity-based models tend to be financed with higher debt-equity ratios compared to typical toll-based projects
Other Stakeholders:	Infrastructure Development Finance Company (IDFC) acted as the financial advisor to NHAI. IDFC was established in 1997 as a specialised financial intermediary to lead private capital to commercially viable infrastructure projects in India.
Project Outcome:	This was one of the first projects that were undertaken under the BOT-Annuity framework. The construction phase of the project was

	completed in June 2005, five months behind schedule. The delay was caused by land availability issues and finalization of change of scope orders. The Comptroller & Auditor General of India (CAG) report on BOT road projects undertaken by the NHAI had the following findings related to the Panagarh-Palsit section: (i) cracks and patch repairs were found to be less than 5% implying good maintenance; (ii) one hundred and thirty-two locations were test-checked for roughness with only one location's roughness within the "desirable" level (the rest were "acceptable" as per the Concession Agreement); (iii) deflection values in 10 out of 12 test-checked sections were more than the "acceptable" level stipulated in the Agreement, which indicates that the selected sections of the road are structurally weak and require overlay; and (iv) in two out of the five test-checked pits, the combined thickness of wet mix macadam and granular sub-base layers did not comply with the specifications.
Key Lessons Learned	Key lessons learned include: (i) revenue risks put significant uncertainty on the private sector's ability to recover its investments and may discourage participation in toll-based road PPPs, but an annuity method removes the revenue risks for the private sector and makes the deal more appealing to the private sponsor; (ii) the annuity payments reflect a transfer of revenue risk from the private sector to the government and if the government encounters difficulties in setting up toll charges, the annuity payments may put a strain on its budget; and (iii) considerable attention needs to be given to the way the PPP agreement is structured to make sure that the private participant is sufficiently incentivized to deliver the project on time (e.g., the Panagarh-Palsit Agreement did not stipulate target dates for individual project milestones and consequent penalty for non-achievement of milestones)

Project Name	Cross-Harbor Tunnel, Hong Kong
Country:	China
Sector	Transportation
Sub-sector:	Tunnel
Type of PPP	Concession/BOT
Status	Operational
Project Concept:	The project involved the construction, maintenance and operation of a tunnel connecting Kowloon to Hong Kong Island. The 1.9km Cross-Harbour Tunnel (CHT) was Hong Kong's first underwater tunnel and formed the first road connection between the Island and Kowloon.
Procurement Details	The procurement was done via reverse tender whereby the bids were evaluated on the basis of the lowest public sector subsidy required. On the basis of this criterion, the Cross-Harbour Tunnel Company Limited was awarded the contract. The contract was awarded for a period of

	30 years, commencing in 1969
PPP Company:	The company is a Hong Kong-based investment holding company with emphasis on transport infrastructures, such as tunnel operation, tunnel management, operation of driver training centres, and operation of electronic toll collection systems
Project Funding	The financing package had a debt-equity ratio of 64:36. Royalty payments amounted to 12.5% of operating receipts.
Other Stakeholders:	NA
Project Outcome:	Construction work commenced in September 1969 and the tunnel became operational ahead of schedule in August 1972. It successfully reached the end of its 30-year concession period and its control was transferred to the government in 1999. Other outcomes include: (1) CHT is the first BOT project in Hong Kong that did not need to be re-negotiated and is widely considered to be a success story; (ii) despite facing competition from an effective and cheap ferry service, the tunnel proved to be very popular and began to make profits four years after its opening, and had repaid all debts by 1977; (iii) at the time of its construction, CHT was at the forefront of tunnel engineering as the harbour's deep waters made a conventional underground tunnel impractical, so engineers devised an estuarine tube tunnel that would sit on the seabed and, at the time, was the longest immersed tube tunnel ever constructed; (iv) two more cross-harbour tunnels have been built since CHT became operational but CHT continues to be the most popular, with more than half the cross-harbour traffic passing through it; and (v) successful factors included that the private company had the necessary skills for undertaking the project, it was first and therefore, occupied strategically the best location for harbour crossing, and the concession period coincided with Hong Kong's rapid economic development.
Key Lessons Learned	Lessons learned include: (i) the importance of strong political support for successful completion of a project and a major tunnel project involved massive effort by the government through the planning and implementation stages; (ii) the importance of structuring the PPP transaction in an appropriate way to attract capable private sponsors; (iii) the government can transfer much of the operating risk to the private company by choosing a central location for the tunnel and thus ensuring a steady flow of traffic; (iv) with the right project characteristics and a strong government counterpart agency the government does not necessarily have to provide direct guarantees to sweeten the deal for the private sector, and that alternative incentives can be found that make the deal attractive to the private participant without increasing the risk that the government needs to assume

Project Name	Hamburg International Airport
Country:	Germany
Sector	Transportation
Sub-sector:	Airport
Type of PPP	Concession
Status	Operational
Project Concept:	The project involved the construction of a new terminal with large commercially usable real estate, extension of parking areas, and establishment of connectivity of the Hamburg International Airport to the suburban rail network. The project is part of a country-wide initiative to support further development of airports by extending their capacities in all functions in line with the demand for overall airport services.
Procurement Details	An EU-wide tender procedure was held and the contract was awarded, with the Senate of Hamburg's approval in July 2000, to a consortium Hamburg Airport Partners formed by Hochtief AirPort GmbH and Aer Rianta International GmbH, a subsidiary of the Irish airport operating company
PPP Company:	Flughafen Hamburg GmbH (FHG) was the original company responsible for the operations of the Hamburg International Airport. FHG was originally owned by City State of Hamburg (64%), FRG (26%), and State of Schleswig-Holstein (10%). Post tendering, the private sector consortium formed by Hochtief AirPort GmbH and Aer Rianta International GmbH owns 40% stake in FHG and the remaining stake is owned by City State of Hamburg and other government agencies
Project Funding	The construction and the extension of the Hamburg International Airport required capital investment to the extent of €350m. This was funded by means of a 36% stake sale in FHG to the private sector consortium of Hochtief AirPort GmbH and Aer Rianta International GmbH for €296m and through a €220m loan support from EIB, received through a local bank
Other Stakeholders:	The project received support from EIB in the form of a loan through a local bank of €220m.
Project Outcome:	The project is one of the first airport projects in Germany to be undertaken through the PPP route. The capacity augmentation of the Hamburg International Airport has provided quality airport infrastructure, solving the problem of capacity bottlenecks and resulting in higher revenues and increased profitability for all the stakeholders.
Key Lessons Learned	The Hamburg International Airport case shows that major PPP projects in airport construction can be successfully realized if the needs of all parties are integrated. Airports present particular environmental and social issues but these can be successfully addressed. The case shows that:

	Compensations like advanced noise protecting programs or noise quota systems can be established contractually and financially integrated. It is possible that private and business customers benefit from sophisticated contractual instruments like price-cap regulations. A right of veto in cases of conflict, granted to each of the partners within the partnership agreement, acts as a central instrument of risk management strategy

Project Name	Point Lisas Desalination Plant
Country:	Trinidad and Tobago
Sector	Water and Sanitation
Sub-sector:	Bulk Water Supply
Type of PPP	Concession/BOO
Status	Operational
Project Concept:	The project includes the financing, construction, and operation of an 110,000m3/day capacity desalination plant to service the industrial park at Point Lisas on the west coast of Trinidad. Trinidad's Water and Sewerage Authority (WASA) is the sole purchaser of the treated water and on-sells to industries located in Point Lisas and pumps the excess into the potable supply
Procurement Details	In 1999, a selection committee acting on behalf of the Government awarded the contract for the plant to a joint venture named the Desalination Company of Trinidad and Tobago (Desalcott). The contract was awarded for a period of 20 years
PPP Company:	Desalcott is a joint venture between the local company Hafeez Karamath Engineering Services Ltd. (60%) and Ionics Inc. (40%), a US-based company specialising in desalination, water reuse and recycling, and industrial

	ultrapure water services. Ionics was bought by General Electric (GE) in 2004.
Project Funding	The estimated cost of the project is US$120m
Other Stakeholders:	Initially, Desalcott attempted to raise financing for the project through the Overseas Private Investment Corporation (OPIC), a US government agency that helps US businesses invest overseas. Eventually, OPIC dropped out of the project as a result of the difficulties in securing government guarantees for the project
Project Outcome:	The plant became fully operational in 2002 and was subsequently expanded in 2004. Water from this plant accounts for more than 10% of the total water production in the country and it is the largest seawater reverse osmosis system in the western hemisphere. The plant was originally designed for 50% overall recovery but by 2006,it was already operating at around 62% recovery with significantly lower-than expected chemical consumption. The plant operates extremely reliably with an availability of over 95%. Despite the positive operational performance, public opinion of the desalination plant has been mixed. The water supply system in Trinidad is quite unreliable and even though the plant has made significant improvements in water supply to the industrial area, there is widespread conviction that WASA is giving foreign-owned companies preferential treatment at the expense of the general public. The project has also been subject to corruption allegations. The probe began in 2002 after the new Government promised an investigation into the contract which was entered into by the previous administration. It is claimed that the bid process was rigged and that payments to certain Trinidadian officials were made to make sure that Desalcott would be awarded the contract. In 2006, Desalcott's executive chairman Hafeez Karamath was arrested on fraud charges.
Key Lessons Learned	Lessons learned include: (i) operational success does not necessarily guarantee public support, and that it may be beneficial to undertake an effective public relations campaign to inform the general public of the benefits of the project; (ii) implementing PPPs in developing countries' water sector may be particularly difficult as increasing water tariffs tends to be a highly political issue and the inability to increase tariffs may put a serious strain on the financial viability of the project; (iii) a government's reluctance to grant tariff increase sets a bad precedent in enforcing the overall rule of law in some developing countries; (iv) during the tender process, significant attention needs to be paid to the ability of the private sector to raise financing for the project; and (v) companies should not partake in corrupt practices to win a tender – it is never worth it in the long-run.

Project Name	Tala Transmission Project
Country:	India
Sector	Energy
Sub-sector:	Transmission
Type of PPP	Concession/BOT
Status	Operational
Project Concept:	The project is to build, operate and maintain five 400kV and one 220kV double circuit electricity transmission lines of approximately 1,200 km, with a maximum load capacity of about 3,000MW. The new transmission system has been undertaken to transmit power from the Tala Hydro Project in Bhutan and carry surplus electricity from North-Eastern India to the power-deficient Northern Indian belt
Procurement Details	As a result of an international competitive bidding process, Tata Power was awarded the contract. The only other pre-qualified bidder was the National Grid of the UK. The contract was awarded for a period of 30 years, and reached financial closure in April 2004. The Indian contracting entity was the federal government
PPP Company:	The project is undertaken by Tala-Delhi Transmission Limited (TDTL), a joint venture between Tata Power (owning 51% of TDTL) and the Government of India's Power Grid Corporation of India Limited (PGCIL) which owns 49% of TDTL. Tata Power's main line of business is the generation, transmission and distribution of electricity. It is the country's largest private power utility
Project Funding	The estimated cost of the project is US$269m. The amount will be spent on investments in physical assets. The financing package consists of 30% equity and 70% debt. State Bank of India and IDFC provided term loans
Other Stakeholders:	The project received support from the IFC in the form of a US$75m loan. The Asian Development Bank also extended a US$62.24m private sector loan to the project
Project Outcome:	The Tala transmission project is India's first inter-state transmission project undertaken via PPP. It is also the first BOT electricity transmission line outside Latin America and the Caribbean region. The construction phase was completed within schedule and the project has been operating commercially since September 2006. In its first year of operation, the transmission line was able to ensure exchange of about 3,500 million units of surplus energy from the eastern to the northern regions.
Key Lessons Learned	The Tala case highlights the importance of structuring the PPP transaction in an appropriate way so as to make the project more attractive for the private sector. In this particular example, interest from private parties was initially limited as the returns on the project were deemed too low due to the tariff structure adopted by PGCIL. As a result of a petition filed by National Grid, the Central Electricity Regulatory Commission (CERC) of India decided to allow private transmission

Annexure XVIII: Lagos State PPP Policy Statement

Introduction

The Lagos State Government (LASG) has adopted a policy thrust that embraces the delivery of infrastructure projects and services in the public sector through Public Private Partnerships (PPP). This Policy Statement sets out the framework for using PPP in Lagos State. In this regard and towards institutionalising the policy thrust, the Lagos State Public Private Partnership Law 2011 was enacted. Furthermore, the Public Procurement Law 2011 was enacted and together both Laws stipulate the legal framework for PPP projects procurement in the State

The PPP Concept

A PPP is a contractual agreement between a public entity and a private entity, whereby the private entity performs part of a government organisation's service delivery functions, and assumes the associated risks for a significant period of time. In return, the private entity receives a benefit/financial remuneration according to predefined performance criteria, which may be derived:

Entirely from service tariffs or user charges for example tolls

Entirely from Government budgets, via availability charges or service charges

A combination of the above.

The public sector retains a significant role in the partnership project, either as the main purchaser of the services provided or as the main enabler of the project. It purchases services and specifies the service outputs/outcomes required as well as the performance criteria for payments, with performance below these standards leading to deductions from service charges payable by the public sector. The private party commonly provides the design, construction, operation maintenance and financing for the partnership project, and is paid according to performance. Risks are identified priced and placed with the party best able to bear and manage them at lowest cost.

A wide spectrum of PPP arrangements exists, differing in purpose, service scope, legal structure and risk sharing. One end of the spectrum would be outsourcing of some routine operation, while the other could involve the private sector conceiving, designing, building, operating, maintaining, and financing a project, thereby taking a considerable proportion of risk. The choice of the PPP arrangement for a particular project will depend on Government's policy in the related sector and on the potential value for money to be generated under such an arrangement.

Reasons for Using PPP

PPP offers both strategic and operational choices to the Government. Strategically, the use of PPP fosters economic growth by developing new commercial opportunities and increasing competition in the provision of public services, thus encouraging crowding-in of private and/or foreign investment. It also results in the development of the local financial equity and debt markets. At the same time, it allows the Government to set policy and strategy, and where appropriate, to regulate economic activities, while leaving service delivery to the private sector. Operationally, PPP provides opportunities for efficiency gains (better quality and more cost-effective delivery of services), better asset utilisation and quality, clearer customer focus (since payments are typically linked to performance rather than service inputs), and accelerated delivery of projects.

Well-structured PPP projects integrate recurrent and capital budgets and provide meaningful benchmarks for measuring performance, thus making PPP an important tool for better management of public expenditure. In addition, PPP is an instrument that Government can use to reform and re-structure certain strategic sectors of the economy to bring in competition, which will increase investment and efficiency, reduce prices and expand the range of services available.

Scope of PPP

It is LASG's intention to encourage innovation in as many areas as possible. The sectors in which PPP will be applied in the State as they relate to the LASG's THEMES agenda include traffic management and transportation, health and environment, education, and technology, making Lagos a 21stCentury economy, entertainment and tourism, security and governance to reform and re-structure certain strategic sectors of the economy to bring in competition, which will increase investment and efficiency, reduce prices and expand the range of services available.

Annexure XIX: Value-for-money (VfM)

The value for money estimation is a critical element in the decision to undertake a PPP project. The assessment of value for money involves a quantitative and a qualitative assessment of the private party bids. The use of the Public Sector Comparator aids in the quantitative assessment. The factors that determine whether a project delivers value for money will vary by type of project and by sector. In general, PPP projects can generate improved value for money through several ways including,

(1) Reduced whole life costs - the integration of infrastructure design, build and operation, facilitating private sector innovation in design, an avoidance of over-specification and improved maintenance scheduling;

(2) Better allocation of risk - cost effective transfer of risk to the private sector, enabling efficiency benefits to be generated across the term of the contract;

(3) Faster implementation - the transfer of design and construction risks, together with the principle of no payment until commencement of service delivery, will provide significant incentives for the private sector to deliver infrastructure projects within short construction timeframes;

(4) Improved quality of service resulting from better integration of services with supporting assets, improved economies of scale, the introduction of new technology and innovation in design, and the performance incentives and penalties included in the Public Private Partnership contract; and

(5) Generation of additional revenue - more intensive exploitation of assets to generate additional revenues, for example from shared use of facilities or the sale of surplus assets.

PPP Reference Project

The PPP reference project is a hypothetical private party bid which meets the service delivery specifications of the MDA. The PPP reference project enables the MDA to identify the best value for money for the MDA in service delivery either through MDA's service delivery or from the private party. In determining the PPP reference project, the MDA should undertake a preliminary assessment of the PPP arrangement for service delivery. The service delivery specifications for the PPP reference project should be identical to that used in estimating the PSC. The key considerations in construction the PPP reference project should include:

(1) Determining the nature of PPP procurement arrangement: In undertaking this exercise, the MDA should address the following issues:

- Most appropriate form of PPP to meet service delivery specifications

- Risks that can be transferred to the private party
- Tenure of the PPP arrangement
- Asset ownership and transfer arrangements and treatment of residual value

(2) Determining the Financing structure of the project whether it would be a project finance structure, corporate finance structure or whether it would involve capital contributions by the Government.

(3) Determining the payment mechanism for the project.

(4) Determining the cost-of-service delivery considering the heads of costs used in estimating the PSC for a comparable period. All assumptions used in developing the PPP reference project should be precisely documented for ready reference. The value for money test forms part of both the PPP feasibility phase as well as the PPP procurement phase.

In the PPP feasibility phase, the objective of undertaking the preliminary value for money test is to identify the benefit, if any, of undertaking a PPP procurement of the service delivery as opposed to conventional MDA's procurement. In this case the Public Sector Comparator developed is compared to a PPP reference project which approximates the cost-of-service delivery through a PPP arrangement. If the MDA can demonstrate value for money through PPP procurement, the next phase of PPP procurement is undertaken.

In the PPP procurement phase, the bids received from private parties are compared to the public sector comparator to determine the actual value for money from PPP service delivery.

Value for Money

The public sector comparator is an important tool in the quantitative assessment of value for money during the procurement process in terms of evaluation and comparison of bids. The project description and brief provided to bidders in the RFP document will detail the service delivery specification and the PPP agreement terms detailing the risk allocation. The project brief would replicate the service specification and primary assumptions used in calculation of the PSC. Doing this would ensure a more accurate comparison of bids against the PSC. Bidders are required to structure and submit their bids based on this information. The private party bids thus received should be first assessed against the project description to ensure compliance to the brief and thereafter it should be compared to the PSC. It is important for the MDA to ensure that the bids received are based on the same level of risk transfer as the project brief. To facilitate effective comparison, bids should be standardised to allow comparison with other bids as well as the PSC.

An illustration of the comparison of bids received with the PSC is presented below:

Illustration of Value for				
Project Cost Items	PSC	Bidder I	Bidder II	Bidder III
Cost of service delivery	50			
Transferable Risks				
Construction	11			

O&M	7			
Estimated Project Cost	68	57	54	62
Retained Risk				
Regulatory	5	5	5	5
Actual Net Project Cost	73	62	59	67

In determining the best value for money option from the bids, Bid II would be the most likely option, as it has the same risk transfer structure as the other bids, but has the lowest estimate project cost of services to MDA. In addition, Bid II's actual total cost of services is lower than the PSC's total cost of services. Bidder II has submitted a bid with an estimated project cost of USD 54 million which includes Transferable Risk valued in the PSC at USD 18 million. The bid, however, excludes the Retained Risks valued at USD 5 million in the PSC. The total bid cost to government is the estimated project cost of the bidder's service charges of USD 54 million and the costs of the Retained Risks, giving a total cost of USD 59 million.

The risk-adjusted Bid II of USD 59 million compares favorably against the PSC cost of USD 73 million. Ignoring qualitative considerations, value for money is achieved where the NPC of service charge for a bidder is lower than the NPC of the expected cost to government under the PSC.

Qualitative assessment

When assessing the value for money offered by a PPP arrangement, the project officer/accounting officer should not rely solely on a straight comparison of a PPP bid to its PSC, which should never be regarded as a pass/fail test, but instead as a quantitative way of informed judgment. This is especially important where bids are very close to the value of the PSC. The assessment should also consider all other relevant factors of bid evaluation including (but not exhaustively):

(1) The value to the public sector of the risk the private sector accepts through the proposed PPP arrangement;

(2) Any differences in service deliverable between the PSC and PPP bid; and

(3) The wider consequences to the public sector of first receiving service from a different date under PPP compared to that in the PSC.

Adjustments or standardisations are often needed for the PSC to allow for these and other factors to ensure a fair comparison between the PSC and PPP bids. Some factors may be difficult to quantify, such as differences between the standards of service or methods and dates of delivery. These may require the conclusion to be made on a qualitative basis. Achieving value for money does not necessarily mean accepting the lowest cost bid. Where decisions reflect qualitative factors, they must be sufficiently documented to allow future understanding of how the conclusions were drawn.

Qualitative factors, by definition, are not fully accounted for in the PSC as they are not accurately quantifiable. However, they need to be considered in conjunction with the PSC as part of a fully informed evaluation process.

Qualitative factors that need to be considered may typically include the following:

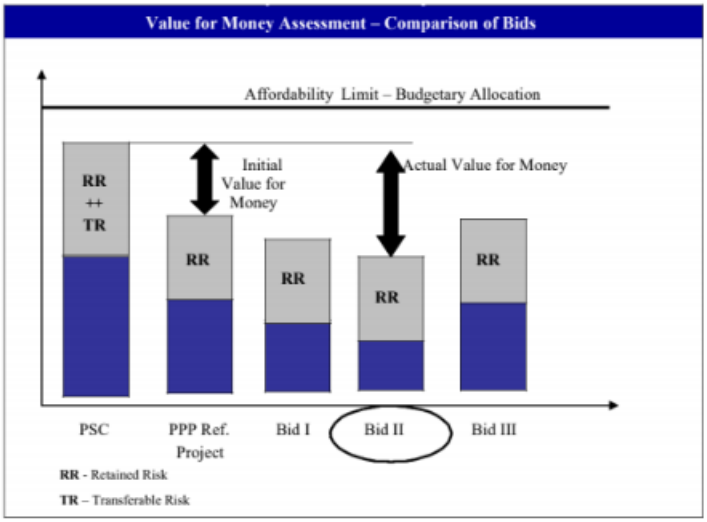
(1) Material costs (including risk) that are not capable of being quantified for a project (either explicitly or as a contingency factor);

(2) The identity, credit standing and proven reputation of the bidder (including consortium parties and financiers). This will help ensure the ability of the bidder to deliver the proposed service at the specified bid price;

(3) Any differences in the deliverable service which cannot be quantified and adjusted for any wider net benefits or costs that a PPP approach may bring. For example, the social and wider benefits of earlier provision of key infrastructure services under a partnership delivery method; and

(4) The accuracy and comprehensiveness of the information used, and the assumptions made in the PSC.

Qualitative factors become particularly important either where the lowest private bids are close to the PSC or where an important consideration cannot be quantified for the PSC. Where value for money decisions reflects the consideration of qualitative factors, these must be fully documented to leave a verifiable decision trail which can be used by parties involved in the decision-making process. To this end, it is important that the procurement team constructs a list of all qualitative factors at an early stage. This may be developed in conjunction with the PSC, to identify costs that could not be meaningfully quantified in the PSC. The figure below presents a graphical representation of the value for money assessment.



While the estimating of the PSC and the assessment of value for money is quantitative assessment of value for risk which has been widely used, the process and methodology for assessment is a learning curve wherein MDA‘s and governments can benefits greatly from the experience of one another in avoiding costly mistakes and maximising the value for money from the projects they undertake. The exhibit below presents the key learning from the London Underground Public Private Partnerships as identified by the National Audit Office of the United Kingdom.

Constructing a Public Sector Comparator (PSC) and Managing Risks

The construction of the public sector comparator should not be a rigid process but should be flexible. It should consider the varying characteristics and circumstances of the individual projects and the potential form the PPP agreement can take. This annexure aims to familiarize the MDA's practitioners on the key elements of the Public Sector Comparator (PSC) and the process of construction of the same.

Definition of Public Sector Comparator

The Public Sector Comparator can be defined as a hypothetical risk-adjusted cost to the MDA for an output specification produced as part of a PPP procurement exercise. The PSC has the following characteristics:

(1) It is expressed as a net present value term.

(2) It is based on recent public sector procurement for a similar service delivery requirement.

The recent public sector procurement information should also capture the inefficiencies in the system.

(3) It effectively captures the risk inherent in the project and procurement process envisaged.

For projects where no track record for public procurement exists, the MDA should consider devoting additional resources and time in the options analysis stage to ensure that the alternatives to the PPP procurement are clearly identified.

The PSC should act as a benchmark for comparison and choice of preferred bid. Hence to be a valid benchmark against which private sector bids can be compared fairly, the PSC must reflect not only certain procurement costs but also the additional costs that may arise on account of the risks inherent to the project. During the procurement process, risks should be identified, and ways in which these risks can be mitigated considered. It is necessary to assess the impact of these risks on costs, estimate their probabilities, and explore and appreciate the sensitivity of these estimates. Comprehensive accounting for risk is required to ensure that valid and informed comparisons can be made amongst the bids and between the bids and the PSC

Key Elements of the Public Sector Comparator

The public sector comparator consists of the following elements:

(1) Primary Public Sector Comparator which reflects the costs of service delivery

(2) Retained Risk

(3) Transferable Risk

Each element of the PSC is analysed in greater detail in the subsequent sections.

Direct Capital Costs

The direct capital costs are the costs associated directly with the provision of the service. The basic capital costs should include the basic costs of capital assets, such as buildings, required for the project, including any fit-out costs required to convert an existing property to the required use. Cost estimates should reflect the full resource costs of the project. They should include the opportunity cost of any assets already owned by the MDA and which are to be used in the project. If the asset could be sold or used for another purpose, then the use of that asset in the project has an opportunity cost.

All assumptions and sources of information, relating to the costing and timing of expenditure should be clearly listed out. Sometimes PSCs are constructed on the assumption that major construction work will be delayed due to constraints on the availability on public capital. This approach is not recommended as any assumptions made are inherently non - verifiable and recent history has shown that levels of available public capital can be quite volatile even over relatively short periods. If there is any doubt regarding the availability of public capital sensitivity analysis should be undertaken to quantify the effect of delayed construction work.

However, assumptions about the start, completion, and if applicable, the phasing of construction work should reflect what could be realistic to expect in the public sector and will not necessarily correspond to the bidders' proposals.

The construction techniques assumed in estimating capital costs should reflect recent actual practice in the public sector using existing plans for a site or the likely approach (the costs should not be amended during the competition to mimic the bidders' proposals). It should be recognised that this may evolve over time and clients involved in a series of similar procurements should not automatically assume that assumptions used in a previous PSC will remain valid. Sometimes the assumptions will need to be amended to reflect changes in conventional procurement practices.

The assumptions regarding cost or time overruns should normally reflect recent experience of conventional procurement. However, judgment must be applied to assess the relevance of that experience. The size and complexity of a project have a direct impact on the risk of delay, and it would be misleading to apply data from recent relatively small projects to a PSC for a very large project. There is much experience to suggest cost over-runs were more likely on larger projects. Time delays also show some correlation with the size of the project.

Operating and Maintenance Costs

The direct costs associated with operating, and maintenance of the project should be included in constructing the PSC. While the exact nature of the cost would be dependent on the service to be delivered, the costs would broadly include:

(1) Operating cost covering the following:

● Cost of inputs

● Cost of employees directly involved in service delivery including wages and salaries, oyee entitlements, superannuation, training, and development etc.

● Direct Management costs

● Insurance

Maintenance costs are recurring in nature and will be linked to maintaining the capacity and quality of the asset rather than upgrading or improving the asset. Maintenance cost typically includes raw materials (spares), tools and equipment and the employee costs associated with maintenance work.

The cost estimates for a number of these items can be determined by comparison with similar projects undertaken in the public sector. Since the PPP agreements normally involve long tenures, the effect of inflation on the costs during the term of the agreement would be significant. However, as the construction and comparison of the PSC is being undertaken at prices in the base year, effects of inflation should be excluded. The forecasted operating and maintenance costs of the PSC should reflect to a reasonable degree improvement in service delivery on account of technological improvements or learning from experience. This would ensure that the PSC reflects a reasonably accurate picture of value for money from traditional procurement methods.

Third Party Revenue and Capital Receipts

Certain PPP agreement may involve not just costs but also potential third-party revenues which may lead to a reduction in the costs to the MDA. The two variables in determining revenue, price and quantity should be identified separately and potential equilibrium price and quantity should be determined. In determining price of service, the MDA should consider pricing for alternate sources of similar services. The MDA should consider expert inputs for demand forecasting based on a cost benefit trade-off of such expert information.

Capital receipts of the MDA in case of determining the PSC could include the revenue from upfront sale, lease, or disposal of an asset and/ or residual value treatment of the asset at the end of the PPP agreement term. Based on their expected timing such revenues should be deducted from the PSC.

A PPP agreement could involve rationalisation or restructuring of a project with pre -existing assets and subsequent disposal of the surplus assets. In case of estimating the primary PSC using the conventional procurement method, the treatment of such disposal should be considered. The receipts from such disposal should be deducted from the PSC with reasonable and reliable estimates of receipts from sale. If the estimated value of asset sale is large, the MDA could consider employing the services of specialist.

If, at the conclusion of the PPP agreement, the MDA accepts the asset for zero or nominal consideration, then the economic effect is that the supplier must earn a return on its initial investment through the service charges payable during the service period. However, the MDA is left with an asset with a remaining useful economic life and there should be a deduction from the NPV of the service charges to reflect the true net cost of the services provided under the contract.

Where such a deduction is made to the cost of the PPP option an equivalent deduction should be made from the PSC. In each case the value of the asset to the client is the appropriate figure. As there is unlikely to be a material difference between these two figures it is usually legitimate to exclude the residual value on the grounds that it will not affect the comparison. The key point is to achieve consistency of approach, i.e., include a deduction for residual value in both calculations. However, it is best practice to include the figures as this demonstrates that the matter has been addressed.

If, at the conclusion of a PPP agreement, the public sector has the option to pay an amount equal to market value at the end of the contract, to retain the asset, or to pay nothing and to - walk away, i.e., leave the asset with the supplier. In this case no residual value deduction is needed from the NPV of the service payments to calculate the NPV of the services received under PPP. However, for the PSC calculation a deduction is needed to avoid overstating the cost of services (otherwise the PSC would represent the cost of services for X years + the cost of asset with Y years remaining useful economic life after X years of service). Where estimates of residual value are required, care must be taken to ensure the value is consistent with the level of maintenance assumed in the operating cost forecasts.

Risk transfer

The risks associated with each service delivery are unique to the project. The first step in estimating a risk adjusted PSC, is to identify and estimate the cost associated with each risk of the project. The underlying objective of risk identification is that the party best able to handle a particular risk should carry that risk and receive the gains or losses on account of the same. Optimal risk transfer would be the key to maximizing the value of a project.

The underlying premise of all PPP transactions is value for money. The objective of value for money should be to obtain optimal risk transfer rather than maximum risk transfer. The value for money is improved by transfer of appropriate risk to the private party who can either reduce or decrease the probability associated with the specific risk. However, if the risk cannot be

effectively managed by the private party, the value for money will decline as the premium demanded by the private party would outweigh the benefit to the MDA.

Discounted Cash Flow

The public sector comparator identifies and estimates the project cash inflows and outflows, and the discounted cash flow analysis estimates the value of this cash flow at a single point in time. The Discounted Cash Flow (DCF) follows a process whereby all future cash flows are forecast over a given period and then adjusted to a common reference date, considering the time value of money and risks associated with a project. The estimation of the PSC using the Discounted Cash Flow method thus requires two basic elements:

● Forecasted net cash flows from the project

● Discount rate

The discounted cash flow model assumes that a dollar today is worth more than a dollar received tomorrow. The effect of discounting is to bring a variety of different values and ranges of future cash-flows back to today's values. That is, to produce the net present value (NPV) of a stream of future cash-flows. In the case of a PSC, the NPV is a net cost figure, i.e., all the costs of the project to the MDA less the receipts associated with the project. Since the cash flow stream for the PSC and the PPP reference project or bids received can vary significantly, the use of discounted cash flow is particularly important.

The sum of the DCFs over the entire period of the project forms the net present cost (NPC). The NPC result is a useful measure because it is a compatible dollar figure which is easily interpreted and readily comparable to other projects or bids expressed in NPC terms for the same reference date.

The following techniques for minimising errors are suggested in the UK Technical Note on How to Prepare a Public Sector Comparator:

(1) Ensuring there is a clear audit trail from the calculation of NPV to the undiscounted cash flow to the base assumptions producing the cash flow for the PSC to the supporting evidence for the assumptions. This will assist a reviewer identifying any inconsistency or other errors;

(2) The discount factor applied to each years' cash flow should be shown to minimise the possibility of confusion over base dates for discounting cash flows; and

(3) The financial data should be kept as simple as possible to minimise the risk of arithmetical error and avoid spurious accuracy.

For projects that the MDA believes are not very complex and where the risks associated with the project can be readily quantified as cash flow items, the PPP guidelines recommend the use of government bond rates of similar maturity as the term of the project. In more complex project where such assessment and quantification of risk as a cash flow item is not possible, the discount rate used in calculating the discounted cash flow is typically the cost of capital of the project. The cost of capital of a project can be determined using the Capital Asset Pricing Model (CAPM). The calculation of cost of capital based on the CAPM model is as follows:

$$\mathbf{Rk = Rf + \beta\ (Rm - Rf)}$$

Where,

Rk represents the cost of capital for the project

Rf represents the risk-free rate, the interest on Government bonds of equivalent term as the project could be taken as proxy

β represents the project beta or the degree to which the returns of the project are likely vary with the return on the market

Rm represents the return on market portfolio

The choice of appropriate discount rate should be specific to the requirements of the project and should be decided by the MDA with the expert inputs of its transaction advisors. The discount rate decided by the MDA would be used to discount PSC, the PPP Reference Project and the private party bids received.

Inflation

The PSC should be developed using nominal values and not real costs. All costs should be expressed as nominal values with the effect of inflation included in them. The inflation projections to be used should be based on the inflation forecasted by the Central Bank of Nigeria.

An illustration on the process of discounting for a hypothetical technology hub is presented below. This illustration for calculating the net present value of cash flows has been adapted from the UK Technical Note on How to construct a Public Sector Comparator. Please note that cost figures used in this illustration do not represent actual cost in setting up a technology hub and have been used solely for the purposes of illustrating the process of calculation of the PSC.

Brief Illustration of Calculation of the Net Present Value of Public Sector Comparator

The MDA/government is considering a project for developing a technology hub for centralising all of its functions including customer/end user interface. Based on a preliminary estimate of available land with the MDA, a site has been identified which presently has some structure and equipment. The capital cost estimated for the project is to the tune of USD 107 million. Site development will cost approximately USD 18 to 20 million and the equipment to run the centre would be about USD 10 million to start off. After an initial assessment of the project site, it is understood that some of the structure and equipment on the site can be sold. The estimated value of such asset is about USD 5 million. The initial term of the project is estimated at 10 years and the overall operating costs during this period are likely to be about USD 150 million.

Subsequent to an initial analysis of project details, the project team believes that the capital costs of the project are subject to risks of construction cost overrun, changes in original design, construction costs being higher than budgeted. As a consequence, they believe that these costs should also be reflected in the Capital cost cash flow estimates of the project. Presented in the figures below is the estimated capital cost cash flows which incorporates risks associated with capital costs.

Public Sector Comparator – Capital Cost Cash flows

Capital Cost Cash Flows						Million USD
Project Year	Building	Site Development	Equipment	Capital Receipts	Risk Adjustment	Total Capital
				2.5	5.1	2.6
1	15	5	3	2	6.6	27.6
2	25	7	2		7	41
3	32	6	5		5.1	48.1
4	30				6.4	36.4
5	5				4.6	9.6
6					3.3	3.3
7					2.7	2.7
8					2.5	2.5
9					2.8	2.8
10					2.9	2.9

Public Sector Comparator – Capital Cost Risk Adjustment

Capital Cost Risk Adjustment			Million USD
Project Year	Construction Maintenance Total Risk	Maintenance Cost Risk	Adjusted Total Risk
0	3	2.1	5.1
1	3.1	3.5	6.6
2	2	5	7
3	3	3.1	5.1
4	1	3.4	6.4
5		3.6	4.6
6		3.3	3.3
7		2.7	2.7
8		2.5	2.5
9		2.8	2.8
10		2.9	2.9

The Project Team then went ahead to estimate the operating cost of the project. There is a common belief in the team that certain changes are envisaged by the Government which would limit the function of the technology hub. This aspect is likely to be related to certain regulatory compliance issues and separation of execution and regulation functions of the MDA. The Project Officer believes that the risk from such regulatory changes is significant and material enough to include its impact in calculating the operating costs of the project. The second important element of operating risk relates to technological risk which the team believes is very real and material for the technology hub proposed and should be captured in the cost of the project. The figures below present the calculation for operating cost cash flows of the project over the ten-year term of the project.

Public Sector Comparator – Operating Cost Cash Flows

Operating Cost Cash Flows				Million USD
Project Year	**Building**	**Equipment**	**Risk Adjustment**	**Total Operating Costs**
0	1	2.5	0	3.5
1	1.5	2.1	0	3.6
2	3.8	1.8	0	5.6
3	7	1.5	0	8.5
4	10	1.9	0	11.9
5	15	1.75	0	16.75
6	15	1.5	13	29.5
7	22	1.7	12.5	36.2
8	20	1.5	15.8	37.3
9	21	1.8	17.9	40.7
10	21	1.65	17.8	40.45

Public Sector Comparator – Operating Cost Risk Adjustment

Operating Cost Risk Adjustment			Million USD
Project Year	**Regulatory Risk**	**Technological Risk**	**Total Risk Adjustment**
0			0
1			0
2			0
3			0
4			0
5			0
6	3	10	13
7	3.5	9	12.5
8	6	9.8	15.8
9	8	9.9	17.9
10	8	9.8	17.8

Having calculated the operating and capital cost cash flows, the team now estimates the total undiscounted cash flow of the project. This figure is calculated at approximately USD 410 million. However, the team is aware that this does not consider the time value of money and hence they now calculate the discounted cash flow for the project with the discount rate taken at 5%. The figure below shows the calculation of the discounted cash flow of the project and the Net Present Value of the Public Sector Comparator thus arrived at.

Public Sector Comparator – Net Present Value

Net Present Value (Public Sector Comparator)				
				Million USD
Project Year	Capital Costs	Operating Costs	Total Undiscounted Cash flows	Discounted Cash flows
0	2.6	3.5	6.1	6.1
1	27.6	3.6	31.2	29.7
2	41	5.6	46.6	42.3
3	48.1	8.5	56.6	48.9
4	36.4	11.9	48.3	39.7
5	9.6	16.75	26.35	20.6
6	3.3	29.5	32.8	24.5
7	2.7	36.2	38.9	27.6
8	2.5	37.3	39.8	26.9
9	2.8	40.7	43.5	28.0
10	2.9	40.45	43.35	26.6
Net Present Value (Public Sector Comparator)				321.1

Discount Rate assumed at 5% **Site can't be reached**

For more information on Public Sector Comparators (PSC) in infrastructure PPPs, please see the following resources.

Annexure XX: Request for Proposal (RFP) – Sample Table of Contents

Request for Proposal for PPP Projects

Sample Table of Contents

1. Introduction

1.1. Background

1.2. Brief description of the bidding process

1.3. Schedule of the bidding process

2. Instructions to Bidders

2.1. General

2.1.1. General terms of bidding

2.1.2. Change in composition of bidding consortium

2.1.3. Change in ownership

2.1.4. Cost of bidding

2.1.5. Site visit and verification of information

2.1.6. Right to accept or reject any or all bids

2.2. Documents

2.2.1. Contents of the RFP

2.2.2. Clarifications

2.2.3. Amendment of RFP

2.3. Preparation and submission of bids

2.3.1. Format and signing of bids

2.3.2. Sealing and marking of bids

2.3.3. Bid due date

2.3.4. Late bids

2.3.5. Contents of the bid

2.3.6. Modification/ substitution/ withdrawal of bids

2.3.7. Rejection of bids

2.3.8. Validity of bids

2.3.9. Confidentiality

2.3.10. Correspondence with bidders

2.4. Bid security

Evaluation of bids

3.1. Opening and evaluation criteria of bids

3.2. Tests of responsiveness

3.3. Selection of bidder

3.4. Contacts during bid evaluation

4. Fraud and corrupt practices

5. Pre-Bid conference

6. Miscellaneous

7. Appendices

7.1. Letter Comprising the bids

7.2. Bank Guarantee for bid security

7.3. Power of Attorney for signing of bid

7.4. Power of Attorney for lead member of consortium

7.5. Guidelines of the Disinvestment

Source: Model Request for Proposal document issued by the Ministry of Finance, Government of India

Annexure XXI: Model RFP – Sample Table of Contents

Table of Contents

1. Introduction

1.1. Background

1.2. Brief description of the bidding process

1.3. Schedule of the bidding process

2. Instructions to Bidders

2.1. General

2.1.1. General terms of bidding

2.1.2. Change in composition of bidding consortium

2.1.3. Change in ownership

2.1.4. Cost of bidding

2.1.5. Site visit and verification of information

2.1.6. Right to accept or reject any or all bids

2.2. Documents

2.2.1. Contents of the RFP

2.2.2. Clarifications

2.2.3. Amendment of RFP

2.3. Preparation and submission of bids

2.3.1. Format and signing of bids

2.3.2. Sealing and marking of bids

2.3.3. Bid due date

2.3.4. Late bids

2.3.5. Contents of the bid

2.3.6. Modification/ substitution/ withdrawal of bids

2.3.7. Rejection of bids

2.3.8. Validity of bids

2.3.9. Confidentiality

2.3.10. Correspondence with bidders

2.4. Bid security

3. Evaluation of bids

3.1. Opening and evaluation criteria of bids

3.2. Tests of responsiveness

3.3. Selection of bidder

3.4. Contacts during bid evaluation

4. Fraud and corrupt practices

5. Pre-Bid conference

6. Miscellaneous

7. Appendices

7.1. Letter Comprising the bids

7.2. Bank Guarantee for bid security

7.3. Power of Attorney for signing of bid

7.4. Power of Attorney for lead member of consortium

7.5. Guidelines of the Disinvestment

Source: Model Request for Proposal document issued by the Ministry of Finance, Government of India

Annexure XXII: Concession Agreement – Sample Table of Contents

Concession Agreement

Table of Contents

Model Concession Agreement for National Highways in India

Part I: Preliminary

1. Recitals

2. Definitions

Part II: The Concession

3. Scope of the Project

4. Grant of Concession

5. Conditions Precedent

6. Obligations of the Concessionaire

7. Obligations of the Authority

8. Representations and Warranties

9. Disclaimer

10. Performance Security

11. Right of Way

12. Utilities, Associated Roads and Trees

13. Construction of the Project Highway

14. Monitoring of Construction

15. Completion Certificate

16. Entry into Commercial Service

17. Change of Scope

18. Operations and Maintenance

19. Safety Requirement

20. Monitoring of Operations and Maintenance

21. Traffic Regulation

22. Emergency Medical Aid

23. Traffic Census and Sampling

24. Independent Engineer

25. Financial Close

26. Grant/ (or Premium)
27. Concession Fee
28. User Fee
29. Revenue Shortfall Loan
30. Effect of Variations in Traffic Growth
31. Construction of Additional Toll way
32. Escrow Account
33. Insurance
34. Accounts and Audit
35. Force Majeure
36. Compensation for Breach of Agreement
37. Suspension of Concessionaire's Rights
38. Termination
39. Divestment of Rights and Interest
40. Defects Liability and Termination
41. Assignment and charges
42. Change in Law
43. Liability and Indemnity
44. Rights and Title over Site
45. Dispute Resolution
46. Disclosure
47. Redress of Public Grievance
48. Miscellaneous

Annexure XXIII: Samples of Bid Selection Criteria

Country	Relevant Legislation Frameworks	Practice
United Kingdom	Directive 2004/17/EC of The European Parliament The Public Contracts Regulations 2006 UK Treasury requirements for PPP projects (see web site)	Choice between: Price only (lowest price to the public procurer) Price and economic benefits (value of features of the tender linked to subject matter of the contract)
South Africa	PPP Manual (published by PPP Unit of South Africa); Preferential Procurement Policy Framework Act 2000	Weighted average of the following factors: Price (weight between 20% and 40%) Technical Evaluation Score (weight between 50% and 70% Black Economic Empowerment Score (weight between 10% and 20%
South Korea	Basic Plan for Private Participation in Infrastructure 2007	Weighted average of the following factors: Engineering Factor- focusing on the content, plans and drawings (weight of 50%) Price Factor- Net Present Value of all payments to be made by the public entity (weight of 50%)
Australia	Practitioners' Guide- National PPP Guidelines	Combination of the following: Highest savings as compared to Public Sector Comparator (Bidder ranked accordingly) Qualitative assessment of individual bids

Checklist for selecting an unsolicited proposal

The MDA may receive many unsolicited proposals and not all may be in line with the MDA's policies and objectives. Following is a list of key parameters the MDA should use to make its recommendation to the Office of PPP regarding an unsolicited proposal. Checklist is as below:

Sr No.	Parameter	Valid/ Not Valid
1	The project is not already listed in the list of priority projects identified by the Public Sector Agency.	
2	No direct government guarantee, subsidy, or equity is required. While projects that do not require government guarantee, subsidy or equity will be preferred, it does not imply that the unsolicited proposal will be rejected if any form of government support is required.	
3	The project is in public interest and the scale and scope of the project is in line with the requirements of the Public Sector Agency	
4	Sharing of risks as proposed by the OPP is in conformity with the risk-sharing framework as adopted by the Public Sector Agency. If any variations to the risk sharing are required the proposals should be looked at on a case-by-case bas	
5	The cost of the project exceeds (the minimum project cost for a project to fall under the PPP category).	
6	The proposal is financially viable, and it has the potential for securing private financing.	
7	The proposal satisfies all the above conditions	

Step 2: The Office of PPP will review the proposal and forward it together with its recommendation and the recommendation of the MDA to the SEC. The SEC will ascertain whether the proposal is in line with Government's requirements. If the SEC recommends the retention of the project, then the Proponent will compensate the Office of PPP the cost for the preparation of the feasibility study.

Thereafter, the Office of PPP will initiate a competitive tendering process. The Proponent would be invited to participate in the competitive tendering process as one of the prospective bidders. If the Proponent is not the winning bidder, then the winning bidder will compensate the Proponent for the cost of the feasibility study prepared by the Office of PPP.

The OPP would not be given any advantage over other bidders in this case as that under the systems like the bonus system or Swiss challenge system. The OPP would only be compensated for the Feasibility Study submitted to the Public.

Key Policy Choices

The MDA needs to have in place a set of policies to deal with unsolicited proposals to ensure a transparent and corruption free process. The MDA must address questions such as:

(1) Screening of unsolicited proposals;

(2) The amount of reimbursement for project development costs (optional); and

(3) Timelines for the project approval and comparative/competitive bidding process. These policy choices are discussed in detail below.

Screening of unsolicited proposals

To streamline evaluation of unsolicited bids, many governments have developed checklists for initial evaluation and have a two-stage evaluation process, with relatively short period (about 15-30 days) allocated to the initial evaluation.

Examples:

Gujarat (India): The proposal must contain the following:

(1) Feasibility study consisting of market analysis, technical aspects, financial analysis and operational/institutional aspects;

(2) Basic contractual terms and conditions;

(3) Pre-qualification requirements, which include legal requirements, experience or track record and financial capability to undertake the project;

(4) Preliminary financing plan, which describes how the project will be financed; and

(5) Implementation plan, which would show the timeframe of construction and implementation.

Costa Rica: In Costa Rica, during the screening stage, the private proponent submits a preliminary project presentation to the appropriate agency that assesses whether the project serves a public interest.

Within 45 days, the administration should conduct the initial assessment and if there is interest in the proposal, allow the Private Sector to present a full detailed proposal. Also, at this preliminary stage, the proponent is required to submit a bid bond to guarantee that its proposal which cannot exceed more than 1 percent of the estimated project value.

Reimbursement of project development costs to the Office of PPP

Full or partial compensation of project development costs encourages development and protection of intellectual property, maintains Private Sector interest and innovation. Some governments that offer reimbursement for project development costs include:

(6) **The Philippines** – The development costs will be reimbursed in the event the challenger outbids the OPP.

(7) **Gujarat (India)** – The state will reimburse costs of project development to the Office of PPP in case it does not win the project.

However, determination of reimbursements costs is a complex process and may lead to unnecessary proposals, exaggeration of project development costs and additional costs to the Public Sector Agency to determine or verify the amount of reimbursement.

Timelines for dealing with unsolicited proposals

Most of the countries will have a fixed time frame for completion of each stage of a bidding process. The time constraints for dealing with unsolicited proposals are set up for preliminary approval, putting the project out for bidding, and a closing date for counter proposals. These timelines should be setup keeping in mind the obvious advantage to the Office of PPP who has an advantage over other proponents as the Office of PPP is more familiar with the project. An opponent in many

countries is given a short time of usually 60 days (Philippines and Guam) to challenge the project. This may discourage potential proponents from competing for the bid. Thus, selecting an appropriate timeframe for the bidding process is essential to ensure a fair, transparent and competitive bidding process.

Approaches to unsolicited bids

Countries across the world use different approaches to unsolicited bids. While some countries do not allow unsolicited bids, others have a framework as shown below:

Approaches to Unsolicited Proposals

Following are the systems used for a competitive tender process in dealing with unsolicited bids in different countries. Bonus system If the proposal is accepted by the Government, the project is opened to other bidders, but an advantage (usually between 5% and 10%, made known to other bidders) is granted to the Proponent. This implies that the Proponent wins if his bid is x% or x$ higher than the other bidders. If the Proponent loses the bid or decides not to bid, the winning

bidder might be required to compensate the Proponent for the case development costs. The size of the bonus can be used to calibrate the number of unsolicited proposals.

Following are the examples of some of the countries that use this system

Countries using Bonus system

Chile – the OPP is allowed to sell the bonus to other bidders;

Korea – bonus points awarded are within 0-4% of a total of 1,000 evaluation points;

modification of original proposal by the OPP causes it to forfeit the bonus points;

Mauritius – the OPP will be awarded the contract if its price is within 10% of the

best challenger.

This system has its disadvantages in that the provision of a bonus may discourage other bidders from tendering and hence there may be fewer bids.

Swiss Challenge System (right to match)

If the proposal is accepted by the authority-in-charge, the project is opened to other bidders, but the OPP is granted the right to match the best offer, thus securing the contract. Following are examples of countries that use the Swiss Challenge system.

Countries using Swiss Challenge System

Gujarat and Andhra Pradesh (India) – An unsolicited bid is evaluated by the Public Sector Agency and if the proposal is acceptable, a competitive tender is held, and the OPP is given an opportunity to match it. If the Office of PPP does not win the bid, project development costs can be reimbursed. The Public Sector Agency of each state has specific checklists to screen unsolicited project bids.

The Philippines – If a lower priced proposal is submitted and approved, the Office of PPP is given 30 working days to provide a counter bid price. If the Office of PPP can match the lowest bid price it is immediately offered the project.

Guam – If a proponent submits a bid at a lower price and the Office of PPP can match it and

provide a counter bid within 30 working days then the BOT committee assesses which proposal has greater technical merit. It then submits the review to the board of directors for the final decision. within 30 working days, then the BOT committee will identify which proposal has greater technical merit and submit its recommendations to the board of directors for disposition

As this system generally provides for little time for preparing counter bids, it may discourage Private Sector bidders. Also, other proponents may bid quite aggressively to counter the Proponent and then expect a renegotiation with the Government at a later stage.

Best and Final Offer (BAFO)

If the proposal is accepted by the authority-in-charge, the project is opened to other bidders and multiple rounds of tendering take place, but the OPP is guaranteed participation in the final round.

Countries using Best and Final Offer System

South Africa – An unsolicited bid is evaluated by the Public Sector Agency and if the proposal is acceptable, a competitive tender is held, and the two most advantageous bids are selected. If the Office of PPP is not part of the two final bidders, it is automatically allowed to participate in the final round of bidding. The winning bidder is required to compensate the proponent for the project development costs as per the public bid documents.

Costa Rica – The Public Sector Agency mandates an open competition, and the Office of PPP is allowed to participate in it. The winning bidder will compensate the OPP for project development costs as per the public bid documents.

Hybrid System

Many countries now use a hybrid model for dealing with unsolicited proposals. These approaches follow the same process up to project acceptance stage. Once the project is accepted different countries use different combinations of BAFO and other systems for the bidding stage.

Countries using Hybrid System

Argentina – Argentina follows a combination of BAFO and Bonus system. If the Office of PPP‘s bid is within 5% of the best offer then the OPP‘s bid is selected. If however, the Office of PPP‘s bid is between 5% - 20% of the best offer the two proponents are allowed to submit their best and final offers. If the Office of PPP‘s bid is not selected in the final round then the proponent will compensate the Office of PPP with the project development cost estimated at 1% of the project cost.

For more information on Unsolicited Proposals in infrastructure PPPs, please see the following resources.

http://www.ppiaf.org/sites/ppiaf.org/files/publication/WP1-

Unsolicited%20Infra%20Proposals%20-%20JHodges%20GDellacha.pdf

Annexure XXIV: Appointment and Management of Transaction Advisers

Who is a Transaction Advisor?

A transaction advisor is a person or group of persons (firm or company) that either possesses or has access to the professional expertise in financial analysis, economic analysis, legal analysis, environmental impact analysis, contract documentation preparation, tender processing, engineering, and cost estimating. The role of a transaction advisor is to bring a PPP project from the concept stage through public bidding and award to actual execution.

Need for a Transaction Advisor

The project development process might require the inputs of a transaction advisor if the Office of PPP and the Government feels that capacity within the Government is not adequate to manage the project development process, especially if the project is complex. Even if the capacity within the Government is adequate to manage the project development process, a professional firm associated as the technical advisor is considered to add value to the process by:

(1) Bringing in their experience in similar transactions and protecting against costly, avoidable mistakes;

(2)Providing technical strength to the MDA's and Office of PPP's team;

(3) Bringing legitimacy to the PPP process and placing an external stamp of endorsement on the Government's proposals, increasing investor and public confidence;

(4) Providing an opportunity for knowledge transfer;

(5) Developing strategies for government consideration;

(6) Helping develop public messages and information;

(7) Performing analysis of PPP options;

(8) Supporting the bidding and negotiation processes; etc.

Considerations for appointment of Transaction Advisors

Some essential considerations to be taken care of when appointing a transaction advisor and during the tenure in the project include:

(1) The transaction advisor should be hired at the start of the PPP project development and retained either until after the signing of the PPP agreement or at the end of the procurement phase.

(2) The procurement of the transaction advisor must be fair, equitable, transparent, competitive, and cost-effective.

(3) The terms of reference for the transaction advisor should be precise and focused on clear deliverables.

(4) The terms of the contract between the Public Sector Agency and the transaction advisor should incentivise quality completion of milestones on time and within the budget.

(5) The Public Sector Agency should avoid separately retaining or subsequently hiring additional consultants for the project outside of the transaction advisor. Otherwise, conflicting work streams and accountability can be created which might be detrimental to both the quality and timing of the project.

(6) The project team should meet regularly with the transaction advisor to receive progress updates, provide project direction, resolve impasses, and ensure ongoing institutional input and support.

Terms of Reference for the Transaction Advisor

The terms of reference (TOR) for the transaction advisor should clearly articulate the requirements and expectations of the Public Sector Agency. The terms of reference and the proposal submitted by the transaction advisor will form the deliverables schedule of the transaction advisor's contract. Hence the clearer and more precise the terms of reference are, the higher would be the quality of bids received. Some of the example contents of terms of reference for appointing a transaction advisor are as follows:

***Introduction*:** Briefly describe the project and its objectives, and how these align with the institution's strategic vision. Briefly narrate the background of the assignment including the institutional mandate to proceed with the project, needs that led to the project and any preparatory work which has been carried out.

(1) Scope of work: Outline the scope of work for the transaction advisor during the project development process, including but not limited to, feasibility analysis and procurement support.

(2) Deliverables: List the deliverables required from the transaction advisor and the schedule which they need to conform while submitting the deliverable.

(3) Required skills/ experience: List the professional experience of the transaction advisor that is required for the specific project. List the firm level skills and team member level skills that are required for the specific project.

(4) Payment terms: The payment terms will narrate the remuneration system and schedule.

(5) Performance terms: Set out the appointment, reporting and decision-making arrangements under which the transaction advisor will be required to team, and the project officer's contact details.

(6) Bidding procedure: Briefly narrate the bidding procedure, mostly in conceptual terms for a general understanding of the bidders.

8.7.5. Selection of Transaction Advisor

The selection of Transaction Advisors will vary from project to project depending, in part, on the country in which it is being undertaken, the type of project and the source of financing. However, best practice selection should follow four main rules as below.

(1) **Transparency**: As much information as possible should be made publicly available. A transparent process eliminates doubt about the quality of the final winning team. Furthermore, it is a pre-requisite to the participation of most top consultancies, which will not bother to participate in a process that is opaque and difficult to understand

(2**) Fairness**: All parties are treated equally. All parties receive the same information at the same time and are evaluated on the same criteria.

(3) **Cost-effectiveness**: Costs should be minimized without sacrificing quality. Costs can be minimized, and quality of service maintained by choosing and employing the appropriate selection method (For example a form of competitive bidding and by understanding the likely cost components of the work while drafting the terms of reference).

(4) **Freedom from conflicts of interest**: The selection process should avoid both actual and perceived conflicts of interest. This requires avoiding the participation of companies that may be involved as investors or consumers, the participation of government officials who have current or recent connections to the companies involved and the linking of rewards to anything other than performance.

The appointment of a Transaction Advisor would preferably be done based on proposals submitted in accordance with comprehensive RFP. Prospective transaction advisors would preferably be required to submit proposals in two sections as described below.

Technical Proposal

The technical proposal would normally carry the highest weighting of say 60 -70 percent of the overall assigned scores for evaluation. The technical proposal could consist of the following sections:

(1) Company and staff experience (say about 75 percent of the total weight assigned to the technical proposal).

(2) Proposed execution plan (say around 10 percent of the total weight assigned to the technical proposal).

(3) Understanding of transaction requirements (say about 15 percent of the weight assigned to the technical proposal).

The technical proposal would also be accompanied by the relevant documents to support the above.

A threshold may also be established in terms of which a prospective Transaction Advisor's proposal might need to achieve a minimum number of technical evaluation points for that bid to be further evaluated based on its financial proposal.

Financial Proposal

The components of the financial proposal could be the total cost, retainer, and success fee. For the evaluation of the financial proposal, the maximum number of points could be awarded to the proposal with the lowest total tendered cost, being the aggregate of a retainer and a success fee. The retainer fee could consist of the sum disbursed regardless

of the success or financial closure of the project. The success fee on the other hand, could be contingent on the success or financial closure of the project.

The other proposals could be awarded on a pro rata number of points, calculated on the percentage difference in cost between their tendered costs and the lowest tendered total cost.

Managing the Transaction Advisors

Once Transaction Advisors have been appointed it is crucial that they are managed properly. Getting maximum benefit from a transaction advisor requires good management and effective leadership and oversight by the Public Sector Agency right from defining the transaction advisor's

tasks, to choosing the transaction advisor, and monitoring and managing their performance throughout their engagement with the Public Sector Agency. Without this, the Transaction

Advisor's work can be misdirected, misunderstood, and may even amount to fruitless expenditure by the Public Sector Agency.

The Public Sector Agency would appoint a Project team lead by a Project Officer for the implementation of the Project. The Project Officer and the Project team play a pivotal role in managing the transaction advisor. The transaction advisor would be managed on a day -to-day basis by the Project Officer and will play the key technical roles in the work of the Project team. The Transaction advisor will furnish the Project team, in a format to be agreed upon by the Project team, with all the documentation required during the project. The project team could meet the Transaction Advisor at regular intervals to assess the progress of the project and the progress on the Transaction Advisor's deliverables and to assist the Transaction Advisor with the necessary data requirements of the Transaction Advisor, obtaining the approvals and the clearances as required for the successful implementation of the project.

Categories of Transaction Advisors

PPP Financial Advisers:

● Firms and individuals with relevant financial skills and experience of PPP and projectfinance arrangement

● They should understand the different risk and return appetites of different financial markets and instruments

● Can act as Transaction Advisory Team Leader if need also for Legal Advisory skills and Technical Advisory skills

Legal Advisers:

• Firms and individuals with relevant financial knowledge and experience of PPP and project-finance arrangements

• International lawyers can work together with local lawyers if international and national legal experience is required

• They can explain to the public sector PPP project sponsor the implications of contract terms and other legal and security issues

• They can document for the public sector PPP project sponsor how the proposed contract will achieve the allocation of risk and the commercial terms which the sponsor has negotiated with their selected preferred bidder.

Technical Advisers:

• Can cover a range of disciplines-Surveyors, engineers, architects, project managers, actuaries, and many other technical professions

• Need to be clear what technical advice is required, over and above in-house skills

For more information on the Appointment and Management of Transaction Advisors for PPP projects, please see the following resources.

http://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/hiring_advisorys/fulltoolkit.pdf

Annexure XXV: Risk Identification and Allocation

Risk is an inherent part of all projects. In the context of the PSC, risk reflects the potential for additional costs above the base case assumed in the primary PSC or for revenue below it. For the PSC to provide a meaningful test for value for money against the private bids, it must include a comprehensive and realistic pricing of all quantifiable and material risks.

In constructing the PSC, the value of risk is included in the cash flow numerator of the PSC. This is seen as offering the following advantages:

(1) By valuing risk as a separate cash flow item, government is better able to focus on the key factors influencing the optimal level of risk allocation;

(2) Cash flow valuation takes better account of the timing of risk by analysing the risk profile of each risk. For example, construction risk arises early in the project, while upgrade and residual value risks arise towards the end;

(3) The value and impact of a particular risk may vary over time; and

(4) Cash flow valuation provides a transparent methodology by using a consistent government discount rate across projects.

Identifying the project risks

The first step in managing and allocating risk is to identify all risks associated with a project. Risks are usually identified by reference to generic risk categories and/or risks based on different phases of the project. The risks associated with project phases include bid phases; negotiation with bidders; construction; operation and transfer risks. The first two project phase risks are not accounted for in the PPP agreement. An illustrative list of risks associated with a project is presented in the table below.

Constructing a Risk Matrix – Risk Identification

Risk category	Description of risk
Commissioning risk	The risk that the infrastructure will not receive all approvals to satisfy an output specification, such as expected changes in legislation which allows for a specific output specification not materializing
Construction risk	The risk that the construction of the assets required for the project will not be completed on time, budget or to specification
Demand (usage) risk	The risk that actual demand for a service is lower than planned
Design risk	The risk that the proposed design will be unable to meet the performance and service requirements in the output specification
Environmental risk	The risks that the project could have an adverse environmental impact which affects project costs not foreseen in the environmental impact assessment
Financial risk	The risk that the private sector over stresses a project by inappropriate financial structuring
Force majeure risk	An act occasioned by an unanticipated, unnatural, or natural disaster such as war, earthquake, or flood of such magnitude that

	it delays or destroys the project and cannot be mitigated
Industrial relations risk	Industrial relations risk is the risk that industrial relations issues will adversely affect construction costs, timetable, and service delivery
Latent defect risk	The risk that an inherent defect exists in the structure being built or equipment used, which is not identified upfront, and which will inhibit provision of the required service
Operating risk The risks associated with the daily operation of the project,	The risks associated with the daily operation of the project, including an unexpected change in operating costs over budget
Performance risk	The risk that the operator will not perform to the specified service level, such as a power generator supplying less power than Demanded
Change in law risk	The risk that the current regulatory regime will change materially over the project or produce unexpected results
Residual value risk	The risk relating to differences from the expected realisable value of the underlying assets at the end of the project
Technology obsolescence risk	The risk that the technology used will be unexpectedly superseded during the term of the project and will not be able to satisfy the requirements in the output specification
Upgrade risk	The risks associated with the need for upgrade of the assets over the term of the project to meet performance requirements

Source: Partnerships Victoria, Technical Note on Public Sector Comparator

The depth and accuracy of information collected should reflect the materiality of the costs (or revenues) to be quantified. It would generally be inappropriate to devote excessive time and resources to valuing minor or less sensitive risks. To constructing the PSC, only material risks should be included.

Risk Assessment

After all material risks have been identified, the next step would be to assess and quantify the consequence of each risk. The two factors impacting the consequence of the risk are first the likelihood of its occurrence and second, the size of its consequence if it were to materialise.

The consequences of risk can be either direct or indirect. Direct consequences include time and cost overruns over the initial base costs used in the Raw PSC. Indirect consequences arise from the interaction between risks, where the occurrence of one risk has flow-on implications for other aspects of the project. When identifying the consequences of a particular risk, the potential interaction between risks needs to be considered. This is particularly relevant where the risk would delay the critical path and have a flow-on effect throughout the project.

Constructing a Risk Matrix – Direct Consequences of Risk

Risk category	Direct Consequence
Commissioning risk	Additional ramp-up costs, cost of maintaining existing infrastructure or providing a temporary alternative solution where this leads to a delay in the provision of the service
Construction risk	Additional raw materials and labour costs, cost of maintaining existing infrastructure or providing a temporary alternative solution where this leads to a delay in the provision of the service
Demand (usage)	Reduced revenue based on lower throughput risk
Design risk	Cost of modification, redesign costs
Environmental risk	Additional costs incurred to rectify an adverse environmental impact on the project, incurred from the construction or operation of the project or pre-existing environmental contamination
Financial risk	Additional funding costs for increased margins or unexpected refinancing costs
Force majeure risk	Additional costs to rectify
Industrial relations risk	Increased employee costs, lost revenue, or additional expenditure during delay in construction or service provision (post-construction)
Latent defect risk	Cost of new equipment or modification to existing infrastructure
Operating risk	Increased operating costs or reduced revenue over the project term
Performance risk	Cost of failing to comply with performance standards
Change in law risk	Cost of complying with new regulations
Residual value risk	Lower realisable value for underlying assets at end of the project term
Technology obsolescence risk	Cost of replacement technology
Upgrade risk	Additional capital costs required to maintain specified services above the level included in the Raw PSC
Maintenance risk	The increased cost of repairs above the level included in the Raw PSC

Source: Partnerships Victoria, Technical Note on Public Sector Comparator

A useful tool for identifying the consequences and financial impact of risk is a risk matrix. A comprehensive risk matrix should be more than an indication of whether each risk should be transferred, retained, or shared. It should also identify the main con sequences, financial impact and potential mitigation strategies for each risk. This allows the risk matrix to serve as a reference point for valuing risk in a PSC. An example of a risk matrix is presented in the table below:

Constructing a Risk Matrix – Example of a risk matrix element

Risk	Cause	Consequence of risk	Potential financial Impact	Strategy/ mitigation
Commissioning risk – delay in service provision	1. Failure to complete or construct adequately	Cost and time overturns (e.g., additional ramp-up costs) Cost of maintaining existing infrastructure or providing a temporary solution through inability to deliver the new facility as planned	Dependent on the extent of time overrun Known (monthly/ daily) cost but dependent on extent of time overrun Dependent on the probability of risk occurring	Allocate risk to bidder: fixed time and price contract with an experienced builder Ensure the construction company provides a liquidated damages bond
	2. council failure to deliver approvals in a timely manner	Cost and time overrun (e.g., additional ramp-up costs) Cost of maintaining existing infrastructure or providing a temporary solution through inability to deliver the new facility as planned	Dependent on time taken to acquire approvals (if they can be obtained at all) Dependent on probability of risk occurring	Simplify approval process (as far as is reasonable) Obtain as many approvals as is possible prior to contract signature Use best legal advisers to determine and obtain all approvals required
	3.flaws in output specification	Cost and time overruns (e.g., additional ramp-up costs)	Dependent on extent of time overrun Known (monthly/ daily) cost but	Remove high risk technological elements from specification (keep it simple and unambiguous)

		Cost of maintaining existing infrastructure or providing a temporary solution through inability to deliver the new facility as planned	dependent on extent of time overrun Potential cost of redefining the output specification Dependent on probability of risk occurring	Nature of commissioning tests should be clearly spelt out upfront, focusing attention on whether the output specification will be met

Source: Partnerships Victoria, Technical Note on Public Sector Comparator

It is useful to separate the different causes and consequences of each risk for two reasons:

(1) Different consequences may have a different probability of eventuating — typically, more severe consequences have a lower probability of occurring; and

(2) It may be optimal to allocate different causes for the same risk between the parties, based on their ability to manage it at least cost.

This process is performed for each risk to complete the risk matrix. The entire process should be thoroughly documented to ensure an adequate probity trail exists to justify the risk valuation and allocation, and to allow for future review of the process.

Having identified the material risks and assessed the variety of potential consequences, it is then necessary to estimate the probability of each of the consequences occurring. There are various risk valuation techniques that can be used to provide probability estimates. These range from simple techniques that provide a subjective estimate of probability, to more advanced techniques that produce weighted probabilities for specific risks based on given confidence intervals, and single comprehensive risk estimates for all project risks using multivariable statistical techniques.

Quantifying the risk

This step involves assessing the financial impact of the risk. Given that the project risks are being captured only in the numerator of the cash flows rather than being an intrinsic element of the discount rate, hence a contingency factor should be included in each major risk category (e.g. construction, operations and maintenance) to account for any unobservable costs which would otherwise lead to the undervaluation of identifiable and quantifiable risks.

The amount of the contingency that should be added to the major risk categories depends on several factors, including:

(1) The accuracy of information used in valuing the particular risk;

(2) The size of the contingency (as a proportion of the underlying cost) — this will be inversely proportional to the amount of resources devoted to valuing the observable components of the risk; and

(3) The degree of uncertainty for completeness

The MDA should also gather contingency risk data from previous public procurement projects and base its contingency factor for a particular risk or risk category on this, supplemented by information from the private sector where appropriate (e.g., where these have not been previously included). The value of each risk is then calculated individually using the following probability weighted formula:

Value of risk = consequence x probability of occurrence + contingency

Once the consequences and probability of the occurrence have been quantified, the value of each risk can be determined. There is often more than one possible consequence for a particular risk. The value of each risk in such cases is the sum of all these probability weighted consequences (assuming the consequences are all independent), plus a contingency amount.

Estimating the probability of occurrence

The techniques for estimating the probability of occurrence of a consequence vary from simple probability valuation techniques based on subjective estimates to more advanced probability valuation based on multivariate statistical techniques.

(1) Simple probability valuation: In its most basic form probability valuation involves making subjective estimates of likelihood of the occurrence of each risk. It is normally based on experience, current best practises, and anticipated improvements in future. One such technique is to make point estimates. This would involve realistically estimating the extent to which the final cost of the project is likely to be above or below the estimated value of the PSC. Each point estimated will be associated with a likely consequence and the consequence would be dependent on the materiality of the occurrence to the project. In case of subjective estimates as well as in empirical estimation, all assumptions related to the estimation should be clearly stated and documented.

(2) Advanced probability valuation: These techniques involve estimating the probability of occurrence by creating a probability distribution and interpreting resulting outputs. These distributions are based on professional experience, supported where available by historical information and reliable assumptions for similar recent projects. Once these distributions have been calculated, a reliable estimate of probability can then be made to a given level of accuracy (known as the confidence interval). Statistical risk measures have the advantage that they are based on rigorous economic principles, use a mix of professional experience and available information, and map a variety of possible outcomes. Conversely, they have the disadvantage that they can be more complicated to calculate and interpret and may require a significant amount of reliable information to determine an appropriate distribution. This may be significantly mitigated where experienced risk professionals are engaged, increasing the ability to make reliable and objective forecasts. The accuracy and reliability of probability distribution estimates therefore depends on the capability to provide reasonable forecasts of likely outcomes, supported by the quality of available information. Instead of estimating each risk and its components separately, it may be possible to calculate a single risk measure through multivariable analysis and simulation. These techniques typically involve the use of computer-based simulation packages. One accepted method of multivariable analysis is Monte Carlo simulation. This technique constructs an artificial probability distribution for total risk, or a subset of risks, based on assumed or actual distributions for each of the individual risks. It then provides a single value for risk by simultaneously solving some different risk relationships.

The choice of risk valuation technique should depend on the size and complexity of the project and the cost benefit analysis of using an advanced probability valuation technique.

Illustration of estimating of value of risk

This illustration of estimating risk is adopted from Partnerships Victoria- Public Sector Comparator, Technical Note.

Consider the construction of some new educational facilities with a total base cost of USD100 million. Closer examination indicates that the following risk consequences are associated with construction of the facilities:

(1) Likely increase in construction costs (based on average cost overruns): Evidence suggests there is a 15 per cent probability that actual total construction costs will be the same as the initial base cost (included in the Raw PSC). It is also determined that there is a 40 per cent probability that total construction costs will exceed the base amount by 10 per cent ('likely' scenario), a 25 per cent probability that costs will exceed the base amount by 15 per cent ('moderate' scenario), and a 15 per cent probability of a 25 per cent increase in costs (extreme' scenario). In addition, there is a 5 per cent probability that costs will be 5 per cent below the base amount;

(2) Increase in costs arising from a delay in the construction schedule (time overrun): Assume the cost of delay is a uniform USD 4 million per year, accumulating at a constant rate over the year. The procurement team estimates there is a 15 per cent probability that the facilities will be completed on time, a 50 per cent probability that completion of the new facility will be delayed by one year, and a 25 per cent probability that construction will be delayed by 18 months. In addition, there is a further 10 per cent probability that the delay will be two years;

(3) The cost of providing similar services during the delay period, generally from existing facilities ("service maintenance"): In this case, the probability of needing to provide similar services is assumed to be directly related to the probability of a time overrun, and that the cost of utilizing existing facilities to meet required demand will be USD 3 million per year;

(4) Increase in construction costs if the planned facility is not sufficient and additional treatment capacity needs to be added ("upgrade costs"): The procurement team estimates there is a 20 per cent probability that the facilities will be completely adequate, and no upgrade will be required. In the event that additional upgrades are required over the initial design, it is estimated that there is a 40 per cent probability that the cost will be approximately 5 per cent of the initial base amount (‗likely' scenario), a 30 per cent probability that the cost will increase by 7 per cent (‗moderate' scenario), and a further 10 per cent probability that the cost will increase by 10 per cent (‗extreme' scenario); and a contingency factor of 2 per cent is also included to account for any unobservable costs associated with construction risk.

These scenarios can be represented in a simple risk valuation table.

Constructing a Risk Matrix – Example of risk valuation table

Scenario	Outcome	Consequence	Probability	Value of Risk
Cost Overruns				
Below Base Figure	95	-5	5%	-0.3
No Deviation from Base	100	0	15%	0.0
Overrun- Likely	110	0	40%	4.0
Overrun- Moderate	115	10	25%	3.8
Overrun- Extreme	125	15	15%	3.8

Subtotal				**11.3**
Time Overruns				
No Time Overrun	100	0	15%	0.0
Overrun- Likely	104	4	50%	2.0
Overrun-Moderate	106	6	25%	1.5
Overrun-Extreme	108	8	10%	0.8
Subtotal				**4.3**
Service Maintenance				
No Deviation from Base	100	0	15%	0.0
Overrun- Likely	103	3	50%	1.5
Overrun-Moderate	104.5	4.5	25%	1.1
Overrun-Extreme	106	6	10%	0.6
Subtotal				**3.2**
Upgrade Costs				
No Deviation from Base	100	0	20%	0.0
Overrun- Likely	105	5	40%	2.0
Overrun-Moderate	107	7	30%	2.1
Overrun-Extreme	110	10	10%	1.0
Subtotal				**5.1**
			Contingency Factor (2% value of project)	2
			Total Value of Risk =	**25.9**

The timing of each possible consequence then needs to be assessed. This may be different for some consequences within a particular risk and is represented in the simple matrix below.

Constructing a Risk Matrix – Timing and probability of consequence

Consequence	Year 0	Year 1	Year 2
Cost Overrun	70%	30%	
Time Overrun	71%	29%	
Service Maintenance*		71%	29%
Upgrade Cost*		100%	

Contingency Factor*	70%	30%	
*In practice, these risks may be expected to occur in later years. However, for illustrative purposes, all consequences are assumed to occur in Years 0-2.			

For example, the cost of providing a similar service will only be incurred once the service is expected to be delivered under the timetable assumed in the Reference Project (e.g., Year 1). The timing of the contingency factor is assumed to be the same as the cost overrun. The subtotal cost of each risk component is then allocated across the term of the project according to the timing weightings given above. For example, the cost overrun component (in real terms) would be allocated as follows

Constructing a Risk Matrix – Allocating Cost of Risk

(USD Million)

Consequence	Year 0	Year 1	Year 2
Cost Overrun	7.9 (11.3 x 70%)	3.4 (11.3x 30%)	0 (11.3 x 0%)

Each of the components then needs to be converted into nominal cash flows to account for the effect of inflation. In this example, inflation is assumed at 2.5 per cent per year.

Constructing a Risk Matrix – Estimating Present Value of Risk

Consequence	Year 0	Year 1	Year 2
Construction Risk			
Cost Overrun	7.9	3.4	0
Time Overrun	3.1	1.2	0
Service Maintenance	0	2.3	0.9
Upgrade Cost	0	5.1	0
Contingency Factor	1.4	0.6	0
Real Cost	**12.4**	**12.6**	**0.9**
Nominal Costs (Assuming inflation at 2.5% p.a.)	**12.4**	**12.9**	**1**
Discounted Cash Flow	**12.4**	**11.9**	**0.8**
Present Value of Construction Risk	**25.1**		

Thus, the present value of construction risk for this project has been estimated at USD 25.1 million.

Estimating Transferable Risk

All risks of the project can be classified as either Transferable Risk (those that MDA seeks to allocate to bidders) or Retained Risk (that MDA is willing to accept). However, there may be situations where specific components of a particular risk are allocated between parties, or where an overall risk is shared. In the former situation, the particular risk needs to be separated into both its Transferable and Retained Risk components. Risk sharing may occur in accordance with an agreed formula contained in a negotiated contract. For example, where a department or agency is not expected to be the only end-user of an asset or service, government may specify a base level of demand it will support. Bidders may be required to take demand risk above this base level.

Where a risk is classified as a Transferable Risk, bidders should be given a substantial degree of flexibility to determine the best method of controlling the costs associated with that risk. This creates a powerful incentive for bidders to manage the risk in the overall interests of the project, while delivering greater value for money to government. This is further enhanced using a performance-based payment mechanism. Achieving an optimal risk allocation can have substantial value-for-money implications.

Once all the Transferable Risks have been identified, the size and timing of the expected cash flows associated with each risk need to be aggregated to determine the NPC of the Transferable Risk component of the PSC. Each of the risks should be included as a separate cash flow item and then added to form the Transferable Risk component, to allow for a detailed analysis of the key risks and their sensitivity to the overall PSC.

Risk Allocation

The principle governing risk transfer is that each risk should be allocated to whoever is best able to manage it at the least cost, considering public interest considerations. This requires an optimal rather than maximum transfer of risk. It is determined by assessing the ability of each party to reduce the probability of a risk occurring and to minimise the consequences if that risk eventuates.

It is unlikely that either government or bidders will be best suited to manage all the risks of a project. Factors to be considered include:

(1) The nature of the project;

(2) The respective strengths and ability of each party to manage risk (this may change over time as each party’s risk mitigation skills improve);

(3) Flexibility of the output specification (whether any constraints exist which influence the method for managing risk);

(4) Previous levels of risk transfer (this indicates the historical success of each party in managing particular risks and the potential ability to manage risk in the future);

(5) Prevailing market attitudes towards risk;

(6) Public interest factors; and

(7) Other policy considerations

Risk Mitigation

Risk mitigation is a component of risk allocation. Risk mitigation is any action that can be taken to reduce:

(1) The likelihood of a risk materialising; or

(2) The consequences to the contracting party taking the risk if it does materialise.

Risk mitigation is an attempt to reduce the relevant party's exposure to the risk and inherently increases the likelihood of achieving (or bettering) the project's base case scenario. Mitigation practices vary depending on the risks being considered and whether the party concerned is a private or public one.

Private sector risk mitigation mechanism is passing through the risk to a third party. It is one of the most used and readily available risk mitigation option for private parties is to pass the risk on to other parties who can control it at a lower risk premium. This supplementary risk allocation creates a chain of risk bearers, each best placed to control the particular risk, and each insulated from the collective risks which the private party would otherwise have to bear. Other private sector risk mitigation mechanisms include insurance, use of financial market instrument and developing diversified project portfolios. Public sector risk mitigation measures are like those used in the private sector. Additionally, an MDA could consider taking steps to reduce the risk during the procurement stage.

Constructing a Risk Matrix – Elements of a risk matrix element

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
Existing structure (refurbishment/ extensions)	Risk that existing structures are inadequate to support new improvements	Additional construction time and cost	Private party will	Private party
Site conditions	Risk that unanticipated adverse ground conditions are discovered which cause construction costs to increase and/or cause construction delays	Additional construction time and cost	A private party will pass to the builder which relies on expert testing and due diligence	Private party
Approvals	Risk that necessary approvals may not be obtained or may be obtained only subject to unanticipated conditions which have adverse cost consequences or cause prolonged delay	Delay in works commencement or completion and cost increases	Prior to beginning the tender process government may seek a planning scheme amendment or environmental impact assessment taking the risk of a route diversion or special measures to protect environmental values; for example in the case of linear infrastructure (road, rail, pipeline); during the tender process through a Project Development Agreement both government and the private party may achieve a measure of pre-contractual certainty allowing an early start to the approval process and a sharing of costs	Private party possibly up to a specific cost amount unless the government assumes because of complexity or sensitivity
Environmental (1)	Risk that the project site is contaminated	Clean-up costs and delay	Reliance on expert reports and	Private party will generally assume

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
	requiring significant expense to remediate		insurance	the risk although because of the time and cost implications of full due diligence for each bidder, some risk sharing may be a cost-effective solution particularly using a regime for allocation of cost consequences such as a Material Adverse Effect regime
Environmental (2)	Risk that prior to financial close offsite pollution has been caused from a government-preferred site (any site) to adjacent land	Clean-up liability	Government to commission reports; government should also have the greatest knowledge of past uses of its site	The government may assume responsibility by way of indemnity or obligation to compensate for unidentified off-site pollution pre-financial close where the site is a preferred government site
Environmental (3)	The risk that prior to financial close (in liability manage site activity party will be in case of a non-government site) or after financial close (any site) offsite pollution is caused to adjacent land	Clean up liability	A private party can manage site activity	The private will be in control of activities on the site post-financial close and will be required to assume the risk of offsite pollution caused by those activities; also, it will take the risk of offsite pollution from any site which is not a government preferred site (even if it occurs pre-completion)
Clean-up and rehabilitation	Risk that the use of the project site over the contract term has resulted in a significant clean-up or rehabilitation obligation to make the site fit for future anticipated use	Financial liability on the residual owner	A private party able to manage the use of the asset and attend to its maintenance and refurbishment; the government may require sinking funds if it is to result in significant cleanup/rehabilitation cost	Private party to take the risk (whether the government is to resume or not) and must demonstrate financial capacity or support to deliver the site in the state required

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
				by the government
Native title	Risk of costs and delays in negotiating Indigenous land use agreements where project site may be subject to native title or risk injunction and/or invalidity of approvals	Delay and cost	Search of registers and enquiry if appropriate and take expert advice	The government will usually take risks on government-preferred sites as it generally has a better understanding of procedures, has special powers of acquisition and use of native title land for infrastructure and is usually in the best position to manage risk; the government is also in a better position to negotiate where policy discourages use of compulsory
Cultural heritage	The risk of costs and delays associated with archaeological and cultural heritage preferred site d	Delay and cost	Search of registers and enquiry if appropriate and take expert advice	The government will generally take risks on government preferred sites as it generally has a better understanding of procedures, and is usually in best position to manage this risk otherwise private party takes responsibility
Availability of site	The risk that tenure/access to a selected site which is not presently owned by the government or private party cannot be negotiated	Delay and cost	Bidders' obligation to secure access prior to contract signing	Private party, as it decides to bid on a non-preferred site
Design, construction, and commissioning risk				
Design	The risk that the design of the facility is incapable of delivering the services at anticipated cost	Long-term increase in recurrent costs - possible long-term inadequacy of service	A private party may pass the risk to builder/architects and other subcontractors while maintaining primary	caused the design defect

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
			liability; government has the right to abate service charge payments where the risk eventuates and results in a lack of service - it may ultimately result in termination where the problem cannot be suitably remedied	
Construction	The risk that events occur during construction which prevents the facility from being delivered on time and at cost	Delay and cost	The private party generally, will enter into a fixed term, fixed price building contract to pass the risk to a builder with the experience and resources to construct to satisfy the private party's obligations under the contract	The private party will be liable unless the event is one for which relief as to time or cost or both is specifically, granted under the contract such as force majeure or government intervention
Commissioning	The risk that either the physical or the operational commissioning tests which are required to be completed for the provision of services to commence, cannot be successfully completed	For the private party and its financiers - delayed/lost revenue for the government - delayed service commencement	No payment by the government until all physical and operational commissioning tests have been successfully completed	Private party, although the government will assume an obligation to cooperate and facilitate prompt public sector attendance on commissioning tests
Sponsor and financial				
Interest rates pre-completion	The risk that prior to completion interest rates may move adversely thereby undermining bid pricing	Increased project cost	Interest rate hedging may occur including under Project Development Agreement	The government may assume or share
Sponsor risk	The risk that the private party is unable to provide the required services or becomes insolvent or is later found to be an improper person for involvement in the provision of these services or financial demands on the private party or its sponsors exceed its or their financial	Cessation of service to government and possible loss of investment for equity providers	Ensure the project is financially remote from external financial liabilities, ensure adequacy of finances under loan facilities or sponsor commitments supported by performance guarantees; also use Non-financial evaluation criteria and due diligence on private parties (and their sponsors)	Government

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
	capacity causing corporate failure			
Financing unavailable	The risk that when debt and/or equity is required by the private party for the project it is not available then and, in the amounts, and on the conditions anticipated	No funding to progress or complete construction	The government requires all bids to have fully documented financial commitments with minimal and easily achievable conditionality	Private party
Further finance	The risk that because of a change in law, policy or another event additional funding is needed to rebuild, alter, reequip etc the facility which cannot be obtained by the private party	No funding available to complete further works required by the government	The private party must assume best endeavours obligation to fund at the agreed rate of return with the option on the government to pay by way of uplift in the service charge over the balance of the term or by a separate capital expenditure payment; the government to satisfy itself as to likelihood of this need arising, it's likely criticality if it does arise, and as to the financial capacity of the private party to provide required funds and (if appropriate) budget allocation if the government itself is required to fund it	The government takes the risk that private finance is unavailable
Change in Ownership	The risk that a change in ownership or control of the private party results in a weakening in its financial standing or support or other detriment to the project	Government assurance of the financial robustness of the private party may be diminished and, depending on the type of project, probity and other non-financial risks may arise from a change in ownership or control which may be unacceptable to government	The government requirement for its consent prior to any change in control. private party will seek to limit this control to circumstances where substantive issues are of concern such as financial capacity and probity	Government risk as to the adverse consequence of a change if it occurs; private party risk that its commercial objectives may be inhibited by a restrictive requirement for government consent to a change
Refinancing	The risk (upside)	A beneficial	Government will	Private party to

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
benefit	that at completion or other stage in project development, the project finances can be restructured to materially reduce the project's finance costs	change in the financing cost structure of the project	assure itself that likely benefits have been factored into competitive bids to avoid the risk that the private party will be allowed to earn super profits from the project	benefit; government will share in limited circumstances (essentially in symmetrical risk allocation and super profits)
Tax changes	The risk that before or after completion the tax impost on the private party, its assets or on the project, will change	A negative effect on the private party's financial returns and in extreme cases, it may undermine the financial structure of the project so that it cannot proceed in that form	The financial returns of the private party should be sufficient to withstand such change; with respect to specific infrastructure taxation particularly that relating to transactions with the government, the private party should obtain a private tax ruling	Private party
Operating				
Inputs	The risk that required inputs cost more than anticipated, are of inadequate quality or are unavailable in required quantities	Cost increases and in some cases adverse effects on the quality of service output	A private party may manage through long-term supply contracts where quality/quantity can be assured; the private party can address to some extent in its facility design	Private party unless government controls inputs e.g. water catchments
Maintenance and Refurbishment	The risk that design and/or construction quality is inadequate resulting in higher than anticipated maintenance and refurbishment costs	Cost increases where the private party has assured whole of life obligation and adverse effect on the delivery of contracted services and, in the core service model, a corresponding adverse effect on the government's ability to deliver core services	Private party to manage through long-term subcontracts with suitably qualified and resourced sub-contractors and through formal or informal consultation processes with government	Private party
Changes in output specification outside the agreed specification range	The risk that the government's output requirements are changed after contract signing whether pre or post-commissioning	A change in output requirements prior to commissioning may necessitate a design change with capital cost	Government can mitigate this risk to an extent by minimising the chance of its specifications changing and, to the extent they must	Government

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
		Consequences depending on the significance of the change and its proximity to completion; a change after completion may have a capital cost consequence or a change in recurrent costs only; for example where an increase in output requirements can be Accommodated within existing facility capacity	change, ensuring the design is likely to accommodate it at least expense; this will involve considerable time and effort in specifying the outputs up front and planning likely output requirements over the term	
Operator failure	Risk that a subcontract operator may fail financially or may fail to provide contracted services to specification	The failure may result in service unavailability an inability for government to deliver core services and, in each case, a need to make alternate arrangements for service delivery with corresponding cost consequences	Government will carry out due diligence on principal subcontractors for probity and financial capacity and commission a legal review of the major subcontracts including the guarantees or other assurances taken by the private party if failure does occur the private party may replace the operator or government may require operator replacement	Private party is fully and primarily liable for all obligations to government irrespective of whether it has passed the risk to a subcontractor
Technical obsolescence or innovation	Risk of the contracted service and its method of delivery not keeping pace, from a technological perspective, with competition and/or public requirements	Private party's revenue may fall below Projections either via loss of demand (user pays model) payment abatement (availability model) and/or operating costs increasing; for government – Consequence will be failure to	Private party may arrange contingency/reserve fund to meet upgrade cost subject to government agreement as to funding the reserve and control of reserve funds upon default; also monitoring obligations in the contract and work on detailed, well researched output specifications (government) and	Private party except where contingency is anticipated and agrees to share risk possibly by funding a reserve

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
		receive contracted service at appropriate quantity/ quality including adverse effect on core service delivery in core service model	design solution (private party)	
Market				
General economic downturn	In a user pays model, the risk of a reduction in economic activity affecting demand for the contracted service	Revenue below projections	Where government is the primary off-taker the private party will seek an availability payment element; otherwise the private party will ensure robust financial structure and sponsor/financier support	Private party except to the extent that government has committed to an availability payment element or agreed to provide redress for impact of government subsidized competition
Competition	In a user pays model the risk of alternate suppliers of the contracted service competing for customers	Revenue below projections arising from a need to reduce the price and/or from a reduction in overall demand because of increased competition	Private party to review likely competition for service and barriers to entry	Private party except to the extent that government has committed to an availability payment element or agreed to provide redress for impact of government subsidized competition
Demographic change	The risk of a demographic/ socio-economic change affecting demand for contracted service	Revenue below projections	Private party to review likely competition for service, barriers to entry	Private party except to the extent that government has committed to an availability payment element
Inflation	Risk that value of payment received during the term is eroded by inflation	Diminution in real returns of the private party	Private party seeks an appropriate mechanism to maintain real value e.g., via linkage to CPI; government concern to ensure its payments do not overcompensate for inflation and to avoid any double payment for after costs adjustments e.g., on change in policy/ law	Private party takes risk on the methodology adopted to maintain value; government shares to the extent of agreed indexation

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
Network and interface				
Withdrawal of support network	The risk that, where the facility relies on a complementary government network, support is withdrawn or varied adversely affecting the project	Negative patronage and Revenue Consequences	A private party will seek financial redress against change which unfairly discriminates against the project, particularly on a user project where revenue is directly affected; under an availability model private party will seek to avoid abatement if government 'prevention' is the cause of unavailability	Government where the change discriminates against the project
Changes in competitive network	The risk that an existing network is extended/ changed/ re-priced to increase competition for the facility	Negative Patronage and Revenue Consequences	A private party will seek financial redress against change which unfairly discriminates against the project by government subsidizing competition (existing or new)	Private party except to the extent that government provides redress for appropriate, discriminatory changes
Interface (1)	The risk that the delivery of core services in a way which is not specified/anticipated in the contract adversely affects the delivery of contracted services	Adverse effect on the delivery of contracted service, the potential for default by a private party and the possible need for government to government to make other arrangements for service provision	The government manages core service activities allowing it to influence the materialisation of interface risk and its consequences; other mitigants include an upfront assessment (by both government and the private party) of the likely interface issues, continual review and monitoring and development of a communications strategy in respect of delivery of the two related services; government will also specify in the contract the extent of core services and the way in which they will be delivered so that only manifest and adverse	Private party except to the extent that government provides redress for appropriate, discriminatory changes

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
			changes and deficiencies can trigger this risk	
Interface (2)	The risk that the delivery of contracted services adversely affects the delivery of core services in a manner not specified/anticipated in the contract	Adverse effect on the delivery of core services, default by a private party and the possible need for the government to make other arrangements for core service provision	The private party manages contracted services activities	Private party
Industrial relations				
Industrial relations and civil commotion	Risk of strikes industrial action or civil commotion causing delay and cost to the project	Cost and time delay	Private party or its sub-contractors manage project delivery and operations	Private party
Legislative and government policy				
Approvals	The risk that additional approvals required during the course of the project cannot be obtained	Further project development or change in business operation may be prevented	Private party to anticipate requirements	Private party unless the government has initiated the change requiring approval
Changes in law/policy (1)	The risk of a change in law/policy of the State Government only, which could not be anticipated at contract signing and which is directed specifically and exclusively at the project or the services and which has adverse capital expenditure or operating cost consequences for the private party	A material increase in the private party's operating costs and/or a requirement to carry out capital works to comply with the change	The government may mitigate its liability for such change by monitoring and limiting (where appropriate) changes which may have these effects or consequences on the project and via mechanisms in the contract allowing compensation only above a pre-agreed 'Significant Amount'; also requiring the private party to effect the change in such a manner that the financial effect on government is minimised and, if payment is required, that payment is made in a way and a time best suited to government (e.g., pay on a progressive scale); also (in a user pays model)	Government: although the parties may share the financial consequences of capital cost increase in an agreed way, for example by the private party meeting a percentage of the cost up to a specific limit and government meeting any excess

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
			having in place a regulatory regime which allows passing through to end user	
Changes in law/ policy (2)	In some cases, the risk of a change in law/policy (at whatever level of government it occurs) which could not be anticipated at contract signing which is general (i.e. not project specific) in its application and which causes a marked increase in capital costs and/or has substantial operating cost consequences for the private party	Requirement on the private party to fund and carry out capital works or meet a marked increase in operating costs to comply with the change	Government mitigates by excluding changes such as tax changes or changes for which the private party is compensated under a CPI adjustment or similar and only allowing compensation above a pre-agreed Significant Amount; also, again mechanisms could be used to minimize and manage financial impact on government and (where appropriate) a regulatory regime to allow pass-through to end users	Government: although the parties may share the financial consequences of capital cost increases in an agreed way for example by the private party meeting a percentage of the cost up to a specific limit and the government meeting any excess
Regulation	Where there is a statutory regulator involved there are pricing or other changes imposed on the private party which do not reflect its investment expectations	Cost or revenue effects	Private party to assess regulatory system and may make appropriate representations	Private party
Force majeure				
Force majeure	The risk that inability to meet contracted service delivery (pre or post completion) is caused by reason of force majeure events	Loss or damage to the asset, service discontinuity for government (may include inability to deliver core service) and loss of revenue or delay in revenue commencement for private party	Private party given relief from consequences of service discontinuity; if uninsurable, private party may establish reserve funding; government to establish contingency for alternate service delivery; if insurable, private party must ensure availability of insurance proceeds towards repair of asset and service resumption and government is to be given the benefit of insurance for service	Private party takes the risk of loss or damage to the asset and loss of revenue, government takes some risk of service discontinuity both as to contracted service and core service subject to insurance availability and will need to arrange alternative service provision the cost of which will be met from redirected service

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
			disruption costs	payments and (if insurable) any shortfall made up from insurance proceeds
Asset ownership				
Technical obsolescence	The risk that design life of the facility proves to be shorter than anticipated refurbishment expense	Cost of upgrade	Private party may have recourse to designer, builder or their insurers	Private party, but in certain high technology projects costs may be anticipated and shared
Default and Termination	Risk of 'loss' of the facility or other assets upon the premature termination of lease or other project contracts upon breach by the private party and without adequate payment	Loss of investment of private party; possible service disruption for government	Private party (and its debt financiers) will be given cure rights (time and opportunity) to remedy defaults by the private party which may lead to termination including under tripartite deed with financiers; also, only serious breaches by the private party to lead to termination; if termination occurs pre completion government may (but need not) make payment for value in the project on a cost to complete basis; if it occurs post completion the private party may receive fair market value less all amounts due to government; government will require step in rights to ensure access and service continuity until ownership/control issues are resolved	Private party will take the risk of loss of value on termination
Residual value on transfer to government	The risk that on expiry or earlier termination of the services contract the asset does not have the value originally estimated by government at which the private	Capital costs incurred to upgrade the asset to the agreed value and useful life or asset demolished or removed	Government will impose on the private party maintenance and refurbishment obligations, ensure an acceptable maintenance contractor is	Government

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
	party agreed to transfer it to government		responsible for the work, commission regular surveys and inspections; it may also direct funds from the project into dedicated controlled sinking fund accounts to accumulate funds sufficient to bring the asset to agreed condition and/or (if required) obtain performance bonds to ensure the liability is satisfied	

Annexure XXVI: Project Officer - Job Description

Sr. No	Description of the Responsibility
1.	Manage the planning and implementation of the PPP project on behalf of then (Accounting Officer/Authority), exercising delegated authority;
2.	Consult with the management of the MDA at all relevant stages in the project cycle and ensure on-going consultation and buy-in from relevant stakeholders;
3.	Directly support the [Accounting Officer/Authority] to comply with the requirements of the relevant PPP guidelines and regulations;
4.	Follow diligently, the Guidelines for PPP issued under Lagos State Policy on Public Private Partnership, ;
5.	Establish and manage a project team;
6.	Draft terms of reference and secure a suitable budget for a transaction advisor;
7.	Manage the procurement process to appoint a transaction advisor;
8.	Direct and manage the work of the transaction advisor at every phase of the project cycle, exercising delegated authority; carry out all functions of inception, feasibility and procurement phases as delegated;
9.	Carry out all functions required of the MDA to properly submit applications for all Transaction approvals in terms of PPP Policy and PPP Guidelines and respond to all queries from the relevant Approving Authorities in respect thereof;
10.	Diligently manage the project from inception to the signing of the PPP contract and financial closure, to ensure that the project is affordable to the MDA, provides an optimal Value-for-money solution for the [service delivery/use of state property], and appropriately allocates risk to the private party
11.	Manage all information systems necessary for the proper planning and implementation of the project;
12.	Manage the PPP, into the term of the PPP contract, in terms of the PPP contract management plan, on behalf of the MDA, specifically in the development phase; and the [.....years] of the delivery phase.
13.	Ensure that the PPP contract is properly enforced in terms of the relevant sections PPP Policy and PPP guidelines and in so doing maintain mechanisms and procedures as approved in the PPP contract management plan for: Measuring the outputs of the PPP contract; Monitoring and regulating the implementation of, and performance in terms of, the PPP contract; Liaising with the private party; Resolving disputes and differences with the private party; Generally overseeing the day-to-day management of the PPP contract; and Reporting on the PPP contract in the MDA's annual report.
14.	Ensure that the MDA's function is effectively and efficiently performed in the public interest, [and/or that state property is appropriately protected];
15.	Establish and maintain close links to the relevant officials of the Approving Authorities to ensure proper alignment of policy and best practice
16.	Prepare and compile any information as may reasonably be required by the MDAs from time to time in connection with the PPP project;
17.	Conform to all statutory obligations and non-statutory external obligations binding upon the MDAs in respect of the PPP project;
18.	Continuously comply with the MDA's rules, regulations, policies, practices and procedures; and
19.	Remain honest and faithful to the MDA in the performance of these duties and responsibilities, acting at all times according to good industry practice and in compliance with the public service code of co