Oyo State Government Public-Private Partnership Guidelines and Fiscal Commitment and Contingency Liability Framework

Oyo State Government Public-Private Partnership Support

The objective of the assignment is to increase private investment in the Oyo infrastructure market across sectors and to sustain this participation over an extended period of time.

Fiscal Commitments and Contingent Liabilities FCCL Framework

The Final Report presents the FCCL guidelines and methodology of FCCL management proposed for OYSG, updated based on the feedback and inputs received from the Client and OYSG stakeholders.

Acknowledgements

The Team acknowledges and is thankful for the input of those consulted, as well as the guidance and the input of representatives from the OYSG.

Opinions and Limitations

Unless otherwise indicated, the opinions herein are those of the authors. Efforts were made to validate data obtained from third parties, but we cannot warrant the accuracy of these data.

Table of Contents

Acronyms/Abbreviations

AG	Accountant-General
AO	Accounting Officer
CA	Contracting Authorities
CL	Contingent Liabilities
DMD	Debt Management Department
DML	Debt Management Law
FCCL	Fiscal Commitments and Contingent Liabilities
FDMO	Federal Debt Management Office
ExCo	Executive Council
FBC	Full Business Case
FC	Fiscal Commitments
FCCL register	Fiscal Commitments and Contingent Liabilities Register
FRC	Fiscal Responsibility Commission
FRL	Fiscal Responsibility Law (FRL)
IFI	International Financial Institutions
IPSAS	International Public Sector Accounting Standards
OYSG	Oyo State Government
OYSIPA	Oyo Investment Promotion Agency
OYSPPA	Oyo State Public Procurement Authority
OYSOF	Oyo State Ministry of Finance
OYSPPL	Oyo State Public Procurement Law
MDA	Ministry, Department and Agencies
MTEF	Medium-Term Expenditure Framework
P&BC	Planning and Budget Commission
PDT	Project Delivery Team
PFF	Project Facilitation Fund
PFS	Pre-Feasibility Study
PFM	Public Financial Management
PFML	Oyo State Public Finances (Control and Management) Law
PFRAM	PPP Fiscal Risk Assessment Model 2.0
PFRM	Project Fiscal Risk Matrix
PFRR	Project Fiscal Risk Register
PIM	Public Investment Management
PO	Project Officer
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public Private Partnership
PPP Manual	Oyo State Public - Private Partnership Manual,
UKNAIF	United Kingdom Nigeria Infrastructure Advisory Facility
VfM	Value for Money

SECTION I

CHAPTER I: GENERAL PROVISIONS

1. Short Title and Commencement

1.1 These Guidelines may be called the Procurement Guidelines for PPP Projects, 2024, and referred herein as the "Guidelines" or "PGP 2024". These Guidelines shall be effective immediately upon being published in the official Gazette.

2. Objectives

2.1 The selection of a Private Partner for the delivery of PPP Projects is based on 4 (four) phases. These include:

- Identification Phase
- Development Phase
- Bidding Phase
- Approval and Award Phase

2.2 These Guidelines set out the process, timescales and institutional roles and responsibilities for delivering each of the phases required for the selection of a Private Partner.

2.3 The objectives of these Guidelines are to:

- ensure that PPP Projects are thoroughly developed in order to maximize their potential for successful delivery and

implementation;

- enable efficient processing of PPP Projects in order to minimise the time taken for development and delivery;
- establish a range of alternative Private Partner selection mechanisms that provide flexible options for the delivery of different types of PPP Projects;
- promote transparency and fairness while maximising the potential for successful selection.

3. Scope and Applicability of these Guidelines

1. Unless stated otherwise, and subject to any specific PPP procurement guidelines issued by the PPP Authority, these Guidelines shall apply where the Contracting Authority is selecting a Private Partner for the delivery of its PPP Project under the framework of the PPP Act.
2. In case of any incomplete work which was initiated under the repealed Policy and Strategy for Public-Private Partnership (PPP), 2010 ("PPP Policy"), that work shall be completed in accordance with the provisions of

the repealed PPP Policy as if it has not been repealed and we these Guidelines shall not be applicable only to such extent.

3. Subject to the foregoing, these Guidelines shall immediately be applicable for the rest of the procurement process to be undertaken after completion of the above-mentioned work initiated under the repealed PPP Policy.
4. In case of Unsolicited Proposals, these Guidelines shall apply subject to incorporation of the requirements of the Guidelines for Implementation of Unsolicited Proposals, 2016, as issued under Section 20 of the PPP Act.
5. These Guidelines shall not be applicable for national priority projects developed under Section 15 of the PPP Act.
6. Notwithstanding anything contained in any other provision of these Guidelines, for PPP Projects to be delivered through government to government ("G2G") partnerships under the "Policy for Implementing PPP Projects through Government to Government (G2G) Partnership, 2017", the Memorandum of Understanding ("MoU")and/or any other agreement entered into by the Government with any other sovereign government shall be applicable.
7. In cases where at least 50% of the financing (loan, equity, credit or grant) for the delivery of the PPP Project is being sourced from a multilateral or bilateral development partner, a multilateral or bilateral development bank, a foreign sovereign government or by one of its

state owned entities, on the basis of an agreement reached between that entity or its parent organization and the Government or any of its line ministry, division or authority, then the bidding process to be carried out will be based on that agreement subject to any policies, rules, regulations, guidance, guidelines or notifications issued in this regard under the PPP Act. The details of the bidding process as set out in Chapter IV of these Guidelines shall not apply, unless stated otherwise in the agreement.

4. Definitions

4.1 In these Guidelines, unless there is anything repugnant in the subject or context:

(i) "Addenda" or "Addendum" means a document which will form an integral part of the RFQ, RFP or IFB (as applicable) issued by the Contracting Authority prior to the Due Date and which will supplement the documents and schedules in the RFQ, RFP or IFB (as applicable).

(ii) “Applicable Line Ministry” means the ministry of the People's Republic of Oyo State which is mandated under the Rules of Business for the delivery of goods and services on a PPP basis.

(iii) “Applicant” means the entity or a Consortium who submitted an application in response to the Request for Qualification (“RFQ”) document. The term Applicant used herein shall apply to both a single entity and a Consortium.

(iv) “Application” means the application that contains the requirements of the RFQ document which is submitted by the Applicants in order to be pre-qualified and thereafter shortlisted for the PPP Project.

(v) “Approval and Award Phase” means the fourth phase in the process for the selection of a Private Partner for the delivery of a PPP Project and which has been described in more detail in Chapter V of these Guidelines.

(vi) “BAFO” means Best and Final Offer.

(vii) “Bid” means the Bidder’s written offer based on the covenants, terms and conditions as contained in the IFB for the PPP Project. This

Includes the Technical Bid and the Financial Bid.

(viii) “Bidder” means the entity or Consortium of more than one entity who submits a Bid in response to the IFB. The term Bidder used herein shall apply to both a single entity and a Consortium.

(ix) “Bidding Phase” means the third phase in the process for the selection of a Private Partner for the delivery of a PPP Project and which has been described in more detail in Chapter IV of these Guidelines.

(x) “Bid Security” means the bid security of the amount specified in the RFP or IFB document (as applicable).

(xi) “Board of Governors” means the board of governors of the PPP Authority as detailed in Section 7 of the PPP Act.

(xii) “CEO” means Chief Executive Officer of the PPP Authority

(xiii) “CCEA” means Cabinet Committee on Economic Affairs as defined in the PPP Act.

(xiv) “Consortium” means a group of entities coming together to submit an

Application, Proposal or Bid (as applicable) and shall include a Lead

Member and up to 4 (four) Non-Lead Members, unless any exemption is provided by the PPP Authority on a case-to-case basis.

(xv) “Consortium Member” means a member of a Consortium (including both Lead Member and Non-Lead Members).

(xvi) “Contracting Authority” means a line ministry or division; or any office or directorate or corporation or statutory organization or local government or any similar organization under the line ministry or its division; or the PPP Authority, in the event that the PPP Authority is

given the duty to carry out the functions from the time of taking up/initiating a PPP Project up until the execution of the PPP Contract and which proposes to enter into a PPP Contract or other contractual agreement with the Preferred Bidder and/or the Project Company.

(xvii) “Corrigenda” or “Corrigendum” means a document issued prior to the Due Date by the Contracting Authority to correct any errors and which will form an integral part of the RFQ, RFP or IFB (as applicable).

(xviii) “Data Room” means an online virtual data room providing certain information and documents relevant to the PPP Project.

(xix) “Day” means calendar day. For the purpose of this definition, if something becomes due or needs to be done on a day that is a non-working day, it shall be deemed to have become due or be required to be done on the immediately following working-day.

(xx) “Development Phase” means the second phase in the process for the selection of a Private Partner for the delivery of a PPP Project and which has been described in more detail in Chapter III of these Guidelines.

(xxi) “Due Date” means the date specified in the RFQ, RFP or IFB (as applicable) for the submission of the Applications, Proposals or Bids, as the case may be, including any extensions thereof.

(xxii) “Evaluation Committee” means a committee constituted under Guideline 38 herein below to evaluate the Applications, Proposals or Bids (as applicable).

(xxiii) “External Member” means any member of the Evaluation Committee who is not from the Applicable Line Ministry or the Contracting Authority.

(xxiv) “Final Approval” means the approval provided by the CCEA for the Contracting Authority to enter into a contract with the Preferred Bidder and/or the Project Company, as the case may be.

(xxv) “Financial Bid” means the financial bid submitted by a Bidder in order to meet the financial criteria stipulated in the IFB.

(xxvi) “Financial Proposal” means the financial proposal submitted by a Shortlisted Bidder in order to meet the financial criteria stipulated in the RFP.

(xxvii) “Government” means the government of the Oyo State People

(xxviii) “Guidelines” means these Procurement Guidelines for PPP Projects.

(xxix) “Head of the Contracting Authority” or “HOCA” means the chairman, the head or the chief executive officer, by whatever designation called, of the Contracting Authority.

(xxx) “Identification Phase” means the first phase in the process for the selection of a Private Partner for the delivery of a PPP Project and which has been described in more detail in Chapter II of these Guidelines.

(xxxi) “IFB” means the Invitation for Bid issued by the Contracting Authority to request information from prospective Bidders participating in the bidding process for a PPP Project, and it refers to the document which contains the detailed information and instructions

required to submit a Bid. This is applicable only in case of a single-stage bidding process.

(xxxii) “In-Principal Approval” means the initial approval provided by the CCEA to select a Project for development on a PPP basis.

(xxxiii) “Interested Investors” means those individuals or entities who have previously registered their interest with the PPP Authority for being informed about upcoming PPP Projects.

(xxxiv) “Lead Member” with respect to a Consortium means the Consortium Member:

a) who has entered into an agreement with the remaining Consortium Members to have at least 26% equity shareholding in the Project Company;

b) who is or will be the largest shareholder in the Project Company; and

c) who is authorized by all other Consortium Members to be responsible for the bidding process on behalf of the Consortium.

(xxxv) “LoA” means letter of award.

(xxxvi) “Non-Lead Member” means a Consortium Member who has entered into an agreement with the remaining Consortium Members to subscribe to at least 10% of the equity in the Project Company.

(xxxvii) “Opening Committee” means a committee constituted under Guideline 36 herein below to open the Applications, Proposals or Bids (as applicable).

(xxxviii) “PPP” means Public Private Partnership.

(xxxix) “PPP Act” means the Oyo State Public-Private Partnership Act....

(xl) “PPP Authority” means the Public Private Partnership Authority established under the PPP Act.

(xli) “PPP Authority IPA Concurrence” has the meaning set out in Guideline 9.3(i).

(xlii) “PPP Contract” means the contract signed between the Contracting Authority and the Preferred Bidder and/or the Project Company, as the case may be, for implementation of the PPP Project.

(xliii) “PPP Project” means any public sector Project which will be implemented through a PPP basis.

(xliv) “PPP Project Proposal” means the proposal for a Project to be delivered on a PPP basis.

(xlv) “Pre-Application Meeting” means the meeting held with the Registered Entities in relation to the RFQ.

(xlvi) “Pre-Bid Meeting” means the meeting held with the Registered Entities in relation to the IFB.

(xlvii) “Preferred Bidder” means the Shortlisted Bidder or Bidder (as applicable) chosen by the Contracting Authority following evaluation of the Proposals submitted in response to the RFP or Bids submitted in response to the IFB (as applicable) based on the pre-established

evaluation criteria.

(xlviii) “Pre-Proposal Meeting” means the meeting held with the Shortlisted Bidders in relation to the RFP.

(xlix) “Pre-Qualified Bidder” means an Applicant who has submitted an Application and has been pre-qualified by the Contracting Authority in order to be considered for shortlisting for the RFP Stage of the bidding process.

(l) “Private Partner” means the Preferred Bidder who has entered into the PPP Contract with the Contracting Authority and who has formed or will form the Project Company for implementation of the PPP Project.

(li) “Project” means any such actions or program or a combination of both by means of which the following plan or work is taken up for implementation:

a) construction and/or operation of any new infrastructure or a plan

to construct and/or operate any new infrastructure;

b) plan to reconstruct1 any existing infrastructure;

c) plan to carry out the work specified in Sub-guideline (a) and (b) both; or

d) deliver any such goods or services which are not related to any infrastructure facility.

(lii) “Project Assessment Committee” or “PAC” means the committee established by the PPP Authority, as set out in Guideline 13.

(liii) “Project Company” means the special purpose company duly incorporated under the applicable laws of Oyo State, either by the Preferred Bidder prior to execution of the PPP Contract or the Private Partner after execution of the PPP Contract (as applicable) for delivery of the PPP Project.

(liv) “Project Delivery Team” means a team of one or more members who together are responsible for the development and delivery of the PPP Project and is led by the Project Director.

(lv) “Project Director” means the nominated individual who is the head of the Project Delivery Team and is responsible for the development and delivery of the PPP Project.

(lvi) “Proposal” means the Shortlisted Bidder’s written offer based on the covenants, terms and conditions as contained in the RFP for the PPP Project. This includes the Technical Proposal and the Financial Proposal.

(lvii) “Quorum” means at least 3 (three) members in a 5 (five) member Evaluation Committee or at least 4 (four) members in a 7 (seven) member Evaluation Committee.

(lviii) “Registered Entities” means interested parties registered as stipulated in Guideline 19 herein below.

(lix) “Review Panel” means a panel of specialists constituted under Guideline 53 herein below.

(lx) “RFP” or “Request for Proposal” means the Request for Proposal document issued by the Contracting Authority to request information from Shortlisted Bidders participating in the bidding process for a PPP Project, and it refers to the document which contains the detailed information and instructions required to submit a Proposal.

(lxi) “RFP Stage” means the stage of the bidding process where the Shortlisted Bidders submit their Proposals in response to the RFP in order to be selected as the Preferred Bidder to execute the PPP Project. This shall be applicable only in case of a two-stage bidding process.

(lxii) “RFQ” or “Request for Qualification” means the Request for Qualification document issued by the Contracting Authority to request prescribed information from prospective Applicants participating in the pre-qualification proceedings for a PPP Project, and it refers to the document which contains the detailed information and instructions required to submit an application.

(lxiii) “RFQ Stage” means the stage of the bidding process where the Applicants submit their applications in response to the RFQ in order to be pre-qualified and shortlisted for the RFP Stage of the bidding process. This shall be applicable only in case of a two-stage bidding

process.

(lxiv) “Rules of Business” means the Rules of Business, 1996 issued by the Government.

(lxv) “Scheduled Bank” means a bank for the time being included in the list of banks maintained under Sub-clause (a) of Clause (2) of Article 37 of the Oyo State Bank Order, 1972.

(lxvi) “Shortlisted Bidder” means an Applicant who has submitted an application and has been pre-qualified and shortlisted by the Contracting Authority at the end of the RFQ Stage of the bidding process.

(lxvii) “Technical Bid” means the technical bid submitted by a Bidder in order to meet the technical criteria stipulated in the IFB.

(lxviii) “Technical Proposal” means the technical proposal submitted by a Shortlisted Bidder in order to meet the technical criteria stipulated in the RFP.

(lxix) “Tied Bids” means a situation where more than one Bidder has achieved the same highest score upon completion of the evaluation of their Bids.

(lxx) “Tied Proposals” means a situation where more than one Shortlisted Bidder has achieved the same highest score upon completion of the evaluation of their Proposals.

(lxxi) “Unsolicited Proposal” means unsolicited proposal as defined in the Guidelines for Implementation of Unsolicited Proposals, 2016.

5. Details, Clarifications & Revisions

5.1 Any Government entity may directly contact the PPP Authority for clarifications and/or to feedback on the PPP program, the PPP Act and/or any policies, rules, regulations, guidance, guidelines or notifications issued thereunder. Further, the PPP Authority may also contact the Contracting Authority, the Applicable Line Ministry and/or any agencies thereunder at any time on any PPP related matter, seeking clarifications and/or to ensure

that the process and timelines are being met.

5.2 The PPP Authority may issue guidance or office orders to provide further details and clarifications from time to time in relation to these Guidelines, as well as developing, modifying and issuing templates and model documentation for the procurement process for the selection of Private Partners. The PPP Authority may amend these Guidelines as and when deemed necessary, including incorporation of corrections, omissions,

clarifications, additions or deletions.

5.3 In case of any ambiguity, uncertainty or lack of clarity in relation to any wording contained in these Guidelines, the interpretation provided by the PPP Authority in this regard shall be final and binding.

CHAPTER II: PROCEDURES FOR IDENTIFICATION PHASE

6. Introduction to the Identification Phase

6.1 The Identification Phase is the first phase in the process for the selection of a Private Partner for the delivery of a PPP Project. During this phase the Contracting Authority and/or the PPP Authority may identify the Project to be delivered on a PPP basis, apply the opinion

of the PPP Authority in relation to the Project and seek In-Principle Approval.

7. Project Identification

7.1 The Contracting Authority and/or the PPP Authority may identify a Project to be delivered on a PPP basis from the list of Projects set out in the Government’s Annual Development Program (“ADP”) or may identify a Project that is not listed in the ADP. Under the Rules of Business, the delivery of the identified Project should fall within the scope of the Contracting Authority.

7.2 The Board of Governors, either on the basis of recommendations submitted by the PPP Authority or on their own volition, may direct the Contracting Authority or the PPP Authority to implement a Projection a PPP basis.

7.3 To assist with Project identification, the Contracting Authority may contact the PPP Authority to clarify the potential scope for delivering the Project on a PPP basis and to understand the procedures in relation to the PPP Act, and/or policies, rules, regulations, guidance, guidelines or notifications issued thereunder.

8. Applicable Line Ministry Endorsement of PPP Project Proposal

8.1 Where the Contracting Authority is not an Applicable Line Ministry, it will submit the proposal for the identified Project ("PPP Project Proposal") for endorsement by their Applicable Line Ministry.

8.2 The Applicable Line Ministry may contact the PPP Authority to clarify the potential scope for delivering the Project on a PPP basis and adopt their feedback into the PPP Project Proposal.

8.3 After completion of their assessment of the PPP Project Proposal, the Applicable Line Ministry will endorse the PPP Project Proposal, reject the PPP Project Proposal or seek a resubmission of the PPP Project by the Contracting Authority incorporating the Applicable Line Ministry's feedback.

9. PPP Authority Screening of PPP Project Proposal

9.1 The Applicable Line Ministry shall submit the endorsed PPP Project Proposal to the PPP Authority for screening of the PPP Project Proposal prior to their submission to the CCEA for In-Principle Approval.

9.2 In conducting the screening process, the PPP Authority may directly contact the Contracting Authority, the Applicable Line Ministry, relevant Government agencies or carry out site visits for further information or clarification in relation to the Project or related issues.

9.3 After completion of the screening process, the PPP Authority may provide an opinion to the Contracting Authority:

(i) endorsing the PPP Project Proposal, subject to the incorporation of any changes to the Project scope or any conditions, for submission by the

Applicable Line Ministry to the CCEA for In-Principle Approval ("PPP Authority IPA Concurrence");

(ii) rejecting the PPP Project Proposal; or

(iii) seeking a resubmission of the PPP Project Proposal incorporating the PPP Authority's comments.

9.4 A pre-feasibility study may also be carried out by the Contracting Authority or the PPP Authority during the Identification Phase prior to submission of the PPP Project Proposal to the CCEA for In-Principal Approval. The PPP Authority may also request the Applicable Line

Ministry and/or Contracting Authority to submit a draft version of the summary note for In-Principal Approval for the PPP Authority's review.

10. In-Principal Approval by CCEA

10.1 After receipt of the PPP Authority IPA Concurrence, the Applicable Line Ministry shall submit the PPP Project Proposal, taking into account the PPP Authority's opinion, attaching the PPP Authority IPA Concurrence and other relevant Project documents to the CCEA for

In-Principal Approval and shall provide a copy of the submission to the PPP Authority.

10.2 The CCEA may provide In Principal Approval to the PPP Project Proposal, reject the PPP Project Proposal or seek a resubmission of the PPP Project Proposal incorporating the CCEA's feedback. CCEA may forward a copy of the above communication to the PPP Authority. On

receipt of the written confirmation of the In-Principal Approval from the CCEA, the Applicable Line Ministry shall forward a copy of the In-Principal Approval directly to the PPP Authority.

10.3 The Applicable Line Ministry should submit the PPP Project Proposal to the CCEA for In-Principal Approval within 2 (two) months of the date of the PPP Authority IPA Concurrence. If the timelines are not

met, the PPP Authority may cancel the PPP Authority IPA Concurrence and request the PPP Project Proposal to be resubmitted for screening under Guideline 9 herein above.

CHAPTER III: PROCEDURES FOR DEVELOPMENT PHASE

11. Introduction to the Development Phase

11.1 The Development Phase is the second phase in the process for the selection of a Private Partner for the delivery of a PPP Project. During this phase the Contracting Authority with the support of the PPP Authority and relevant experts shall determine the feasibility of implementing the Project on a PPP basis.

12. Appointment of Project Delivery Team

12.1 On receipt of the In-Principal Approval, the PPP Authority shall communicate with the Contracting Authority to form a Project Delivery Team led by a Project Director to ensure smooth development and delivery of the PPP Project.

12.2 The Project Director should be appointed by the Contracting Authority subject to the PPP Authority's concurrence or any guidance issued in this regard.

12.3 The Contracting Authority shall ensure that there is a succession plan in place to appoint a new Project Delivery Team member so that no interruption is caused to the procurement process in the event that there is any change in the Project Delivery Team.

12.4 The PPP Authority shall nominate a representative from the PPP Authority who will coordinate activities with the Project Delivery Team and liaise with the transaction adviser(s), consultant(s), Contracting Authority and/or other stakeholders.

12.5 The responsibilities of the Project Director shall include Project development, administration, management, coordination, execution, monitoring and reporting on the progress. Further, the Project Director shall ensure that the feasibility study to be carried out in accordance with Guideline 14 is completed within the timescales as set out in the

agreement with the transaction adviser(s) and/or consultant(s) or as may be agreed with the PPP Authority.

12.6 The Project Delivery Team shall oversee progress and development of the feasibility study and shall ensure that the agreed timelines are met. The Project Delivery Team shall work closely with the transaction adviser(s) and/or consultant(s) and shall implement any

recommendation received from the PPP Authority.

12.7 The Project Delivery Team shall brief the PPP Authority on a fortnightly basis or on any time scale as may be instructed by the PPP Authority regarding the progress and/or any new findings in relation to the PPP Project.

12.8 The PPP Authority, the Applicable Line Ministry or other Government stakeholders may, at any time, convene a meeting with the Project Delivery Team or the Contracting Authority to expedite the delivery of the PPP Project.

13. Establishment of the Project Assessment Committee

13.1 On receipt of the In-Principal Approval the PPP Authority shall establish a PAC for each project. The PAC shall be constituted with the approval of the CEO, and shall comprise of at least 5 (five) members, including:

a) The CEO as the chairperson of the PAC. However, the CEO may on a project-by-project basis, permanently or temporarily, delegate the role to any other officer of the PPP Authority;

b) 1 (one) member from the PPP Authority, who shall act as the member secretary;

c) 1 (one) member from the Applicable Line Ministry, who may be the nominated PPP focal point or any other relevant representative;

d) 2 (two) members from the Contracting Authority's PPP Cell, Project Delivery Team, and/or any other relevant representative.

13.2 The PPP Authority, with the approval of the CEO, may:

a) replace any of the members of the PAC;

b) co-opt additional members to the PAC;

c) invite representatives of government and/or technical, legal, financial, commercial, project management and other relevant consultants and advisory firms to attend the PAC meeting to provide support on specific agenda items; and/or

d) establish a technical sub-committee to support the PAC.

13.3 In order to ensure smooth operation of the PAC, a provision for honorarium, incentive or fee as determined by the PPP Authority from time to time, for each PAC member shall be made. The necessary budgetary provisions for payment of such fees or honoraria may be made in the PPP Authority's budget. The PPP Authority shall provide the necessary secretarial support for the PAC.

14. Feasibility Study of the PPP Project

14.1 To test the overall viability and in order to finalize the scope and commercial structure of the PPP Project, a feasibility study of the PPP Project must be carried out by or on behalf of the Contracting Authority. The scope of the feasibility study may include, but shall not be limited to, the following:

a) Technical issues;

b) Commercial and financial considerations;

c) Environmental factors;

d) Social issues;

e) Linked projects; and

f) Any other issues which may be deemed relevant by the PPP Authority or the Contracting Authority.

14.2 Upon completion, the Contracting Authority shall submit the draft feasibility study to the PPP Authority.

14.3 The PPP Authority shall review the draft feasibility study through the PAC. After completion of the review process the PAC shall provide feedback to the PPP Authority, who may take this into account in providing an opinion to the Contracting Authority.

14.4 The Contracting Authority shall finalize and approve the feasibility report after taking into account any comments received from the PPP Authority.

15. Appointment of Transaction Adviser(s) and/or Consultant(s)

15.1 The Contracting Authority or the PPP Authority may appoint external transaction adviser(s) and/or consultant(s), use any internal and/or in-house experts and/or any other resources retained by the PPP Authority or the Contracting Authority for purposes which may include carrying out the feasibility study, marketing, supporting the procurement process, negotiations, contract signature, Condition Precedent ("CP"), construction and/or operations, etc.

15.2 The Contracting Authority may carry out the procurement process for appointing the transaction adviser(s) and/or consultant(s) using their own funds or they may request the PPP Authority to appoint them using the PPP Authority funds.

15.3 The PPP Authority or the Contracting Authority may also appoint transaction adviser(s) and/or consultant(s) from a shortlisted and/or pre-selected panel of transaction advisors, consultants and/or experts established by the PPP Authority.

15.4 The Contracting Authority or the PPP Authority shall follow the process stipulated in the Public Procurement Act, 2006 ("PPA") and Public Procurement Rules, 2008 ("PPR"), including any amendments made thereto, in order to appoint the transaction adviser(s) and/or consultant(s) until the applicable policies, rules, regulations, guidance, guidelines or notifications for appointment of transaction adviser(s) and/or consultants under the PPP Act are promulgated.

15.5 The terms of reference of the transaction adviser(s) and/or consultant(s) shall be finalized by the Contracting Authority after incorporating the comments and feedback received from the PPP Authority, (if any).

16. Registration of Interest ("ROI")

16.1 The Contracting Authority may instruct for an ROI process to be carried out in order to obtain formalized feedback from the market in relation to the PPP Project, subject to the concurrence of the PPP Authority.

CHAPTER IV: PROCEDURES FOR BIDDING PHASE

17. Introduction to the Bidding Phase

17.1 The Bidding Phase is the third phase in the process for the selection of a Private Partner for the delivery of a PPP Project. During this phase the Contracting Authority shall process and approve the Applications, Proposals or Bids (as applicable) submitted in response to the bid documents (RFQ, RFP or IFB) issued by the Contracting Authority in order to select the Private Partner who shall implement the Project on a PPP basis.

18. Advertisement

18.1 The Contracting Authority shall advertise all RFQ or IFB, as applicable based on any guidance or standard templates issued by the PPP Authority or as may be specifically approved by the PPP Authority. The PPP Authority may also issue advertisements in

relation to the RFQ or IFB, as applicable.

18.2 Invitations for interested parties to participate in the RFQ or IFB process shall be advertised in an indigenous language national newspaper and 1 (one) English language national newspaper, both of which shall have a wide daily circulation within Oyo State.

18.3 All invitations shall also be advertised on the Contracting Authority's, Applicable Line Ministry's and the PPP Authority's website.

18.4 The Contracting Authority shall publish the invitation on the Development Gateway Market (dgMarket) and may also consider any other similar publications or sites, as appropriate.

18.5 The PPP Authority may directly contact any foreign trade missions in

Oyo State, trade missions abroad and/or Interested Investors in the PPP Authority's database to inform them about the launch/issue of the RFQ or IFB.

18.6 In order to generate further interest in the PPP Project, the PPP Authority or their transaction adviser(s) or consultant(s) may carry out Project promotion activities at any time up until submission of the Applications or Bids.

19. Online Registration

19.1 The Contracting Authority may require all interested parties to register online in order to access the bid documents and other relevant information and to participate in the bidding process.

19.2 The Contracting Authority may, subject to the concurrence of the PPP Authority, fix a charge to be paid by all interested parties in order to download the documentation from the Data Room.

19.3 Notice of any subsequent change or amendment to the invitation for the RFQ or IFB may be made available to only the Registered Entities through an online medium and/or also in writing, as appropriate.

19.4 Online registration shall be in accordance with the instructions set out on the website, the details of which shall be specified in the invitation.

20. Data Room

20.1 The Contracting Authority may use an online Data Room in order to share documents and communicate with Applicants or Bidders (as applicable). During the RFQ Stage and IFB stage, only Registered Entities shall be given access to the Data Room which shall contain

the RFQ or IFB (as applicable), any Addenda and/or Corrigenda to the RFQ or IFB issued by the Contracting Authority, notice of invitation to the Pre-Application Meeting or Pre-Bid Meeting and/or any other relevant information for the bidding process. Further, any updates or additional information relating to the PPP Project may be uploaded to

the Data Room.

20.2 Only Registered Entities shall be allowed to submit an Application or Bid (as applicable).

20.3 In case of a two-stage bidding process, the access to the Data Room shall be terminated at the end of the RFQ Stage of the bidding process, i.e. after notification of the Shortlisted Bidders. These Shortlisted Bidders shall thereafter be notified of relevant details in order to access the Data Room for the RFP Stage of the bidding process.

20.4 During the RFP Stage, only Shortlisted Bidders shall be given access to the Data Room which shall contain the RFP document, any Addenda and/or Corrigenda to the RFP issued by the Contracting Authority, notice of invitation to the Pre-Proposal Meeting and/or any

other relevant information for the bidding process. Further, any updates or additional information relating to the PPP Project may be uploaded to the Data Room.

21. Overview of the Bidding Process

21.1 The Contracting Authority shall apply the type of bidding process for the PPP Project based on the instruction of the PPP Authority or any policies, rules, regulations, guidance, guidelines or notifications issued by the PPP Authority pursuant to the PPP Act....

21.2 The bidding process for PPP Projects can either be a single-stage bidding process or a two-stage bidding process.

- Single-stage bidding process - shall comprise of only an IFB.
- Two-stage bidding process - shall comprise of an RFQ as well as an RFP.

22. Types of Bidding Process

22.1 Single-Stage Bidding Process

a) The single-stage bidding process shall comprise of only an IFB. As part of the IFB process, interested parties shall complete their registration in order to become Registered Entities. An IFB document shall be issued to Registered Entities inviting them to participate in the bidding process. The Bidders shall submit their Technical Bids and their Financial Bids in two separate, sealed envelopes enclosed together in an outer single envelope. Initially

only the Technical Bids shall be opened and evaluated in accordance with the IFB.

b) Thereafter, the Financial Bids of only those Bidders who are compliant and who conformed to the specified requirements under the technical evaluation shall be opened and evaluated in accordance with the criteria stipulated in the IFB. Upon completion of the evaluation of the Financial Bids, the Preferred Bidder shall be selected for award of the PPP Contract.

22.2 Two-Stage Bidding Process

a) The two-stage bidding process shall comprise of an RFQ Stage as well as an RFP Stage. As part of the RFQ Stage, interested parties shall complete their registration in order to become Registered Entities. An RFQ document shall be issued to Registered Entities inviting them to participate in the bidding process. The Applicants shall thereafter submit their Applications in response to the RFQ.

b) The RFQ Stage of the bidding process shall include pre- qualification and shortlisting. The Applications shall be evaluated on the basis of pre-determined qualifying criteria stipulated in the RFQ. The Pre-Qualified Bidders shall thereafter be shortlisted in accordance with the process stipulated in the RFQ. The maximum number of Shortlisted Bidders shall be 5 (five).

c) Only those Applicants who pre-qualify and are shortlisted in line with the criteria set out in the RFQ under this RFQ Stage, shall be eligible to submit their Proposals during the RFP Stage of the bidding process.

d) During the RFP Stage, subject to the qualification criteria, the Shortlisted Bidders may be invited to submit their Technical Proposals and Financial Proposals in two separates, sealed

envelopes enclosed together in an outer single envelope. Initially only the Technical Proposals shall be opened and evaluated in accordance with the RFP on the basis of the pre-determined selection criteria stipulated in the RFP. Thereafter, the Financial Proposals of only those Shortlisted Bidders who are compliant and who conformed to the specified requirements under the technical evaluation shall be opened and evaluated in accordance with the criteria stipulated in the RFP in order to select the Preferred Bidder.

e) Alternatively, during the RFP Stage, subject to the qualification criteria, the Shortlisted Bidders may be invited to submit only their Financial Proposals in sealed envelopes. Financial Proposals of the Shortlisted Bidders shall be opened and evaluated in accordance with the criteria stipulated in the RFP in order to select the Preferred Bidder.

23. Evaluation Criteria and Method for RFQ

23.1 Prequalification may be carried out on the basis of technical and financial capacity of the Applicants. Technical capacity may include examples of past experience of having undertaken Projects of a similar nature as defined in the RFQ document. Financial capacity may include examples of experience of having provided and/or raised funds for Projects as defined in the RFQ document.

23.2 The shortlisting process may include a single test or multiple tests. The shortlisting process will be carried out based on the criteria as stipulated in the RFQ document.

23.3 Further, the RFQ may specify mandatory requirements and/or compliance requirements. Where these requirements have been specified in the RFQ document and it is found that an Applicant has not complied with the said requirements, that Applicant shall be

deemed to be non-compliant. Applications submitted by any such Applicant shall not be eligible for consideration and shall be rejected.

23.4 Applications shall not be evaluated on any basis other than on the basis of the criteria stipulated in the RFQ document.

24. Evaluation Criteria and Method for RFP or IFB

24.1 The evaluation method may either include the Quality and Cost Based Selection ("QCBS") method or the Cost Based Selection ("CBS") method. The Contracting Authority shall determine and thereafter seek concurrence of the PPP Authority on the appropriate evaluation method, on the criteria and the weighting (where relevant), and this shall be clearly stipulated in the RFP or IFB document.

24.2 Quality and Cost Based Selection ("QCBS") Method: Under this method the technical criteria (including commercial criteria, where applicable) and the financial criteria of the Proposal or Bid (as applicable) shall be taken into account in selection of the Preferred

Bidder. The technical criteria (including commercial criteria, where applicable) and financial criteria shall be outlined in the RFP or IFB document. The Proposal or Bid (as applicable) shall be evaluated and scored. There shall be a technical score and a financial score, which shall be weighted in order to derive the total score. The Shortlisted Bidder or Bidder (as applicable) with the highest total score shall be awarded the PPP Project. The evaluation criteria may also include additional criteria in order to ensure that there are no Tied Proposals or Tied Bids. Such additional criteria may include the use of Best And Final Offer ("BAFO") as set out in Guideline 25 herein below.

24.3 Cost Based Selection ("CBS") Method: Under this method, the technical criteria (including commercial criteria, where applicable) may be evaluated on a pass/fail and/or scoring basis. The Shortlisted Bidders or Bidders who have either passed the technical evaluation or the requisite number of Shortlisted Bidders or Bidders as stipulated in the RFP or IFB who have ranked/scored the highest from among the Shortlisted Bidders or Bidders in the technical evaluation may be identified and only their Financial Proposals or Financial Bids may be opened, evaluated and scored. The Shortlisted Bidder or Bidder (as applicable) who receives the highest financial score may be awarded the PPP Project.

Alternatively, in case of a two-stage bidding process, subject to the qualification criteria, where the Shortlisted Bidders have been invited to submit only their Financial Proposals under the RFP Stage, the Financial Proposals of the Shortlisted Bidders may be opened,

evaluated and scored under this method. The Shortlisted Bidder who receives the highest financial score may be awarded the PPP Project. The Contracting Authority may, subject to the concurrence of the PPP Authority, if it so desires, indicate a maximum ceiling below or

minimum floor above which the Shortlisted Bidders or Bidders (as applicable) should bid as part of their Financial Proposal or Financial Bid (as applicable). The evaluation criteria may also include additional criteria in order to ensure that there are no Tied Proposals or Tied Bids. Such additional criteria may include the use of Best And Final Offer ("BAFO") as set

out in Guideline 25 herein below.

24.4 Further, the RFP or IFB may specify mandatory requirements and/or compliance requirements. Where these requirements have been specified in the RFP or IFB document and it is found that a Shortlisted Bidder or Bidder has not complied with the said requirements, that Shortlisted Bidder or Bidder shall be deemed to be non-compliant. Proposals or Bids submitted by any such Shortlisted Bidder or Bidder shall not be eligible for consideration and shall be rejected.

24.5 Proposals or Bids shall not be evaluated on any basis other than on the basis of the criteria stipulated in the RFP or IFB document (as applicable).

25. Tied Proposals or Tied Bids

25.1 Where a BAFO has been applied, Shortlisted Bidders or Bidders may be asked to resubmit either a revised Technical Proposal and Financial Proposal or Technical Bid and Financial Bid (as applicable) or only a revised Financial Proposal or Financial Bid (in case of a QCBS method). The Shortlisted Bidders or Bidders may be asked to resubmit only a revised Financial Proposal or Financial Bid (in case of a CBS method). Thereafter, the Shortlisted Bidder or Bidder that obtains the highest total score or the highest financial score, as the case may be, shall be chosen as the Preferred Bidder.

26. Bidding Documents

26.1 Invitation for Bid (“IFB”)

a) The IFB document shall contain detailed information and instructions required to submit a Bid (Technical Bid and Financial Bid). Further, it may stipulate the pre-qualification criteria as well as the technical and financial criteria. The draft PPP Contract shall also be annexed to the IFB document.

b) The Contracting Authority shall develop the draft IFB document and the draft PPP Contract based on the outcome of the feasibility study, market feedback and on the model documentation issued by the PPP Authority (where available), and as amended from time to

time.

c) The Contracting Authority shall send the draft IFB document (copied to the Applicable Line Ministry) to the PPP Authority for its concurrence prior to issuing the IFB document. The PPP

Authority shall review the draft IFB document and the draft PPP Contract through the PAC. After completion of the review process the PAC shall provide feedback to the PPP Authority, who may take this into account in providing an opinion to the Contracting Authority. The Applicable Line Ministry may forward any comments and/or observations that they have to the PPP Authority for its consideration. The PPP Authority may also request any feedback from the Applicable Line Ministry.

d) Upon obtaining the concurrence of the PPP Authority, the Contracting Authority shall finalize and issue the IFB document, after taking into account any comments received from the PPP Authority.

e) Once issued, the process to be followed shall be as set out in the IFB document up until selection of a Preferred Bidder and completion of negotiation (where applicable).

26.2 Request for Qualification (“RFQ”)

a) The Contracting Authority shall ensure that the RFQ contains sufficient information to allow potential Applicants to form a view on whether they have sufficient capabilities and identify potential partners for the PPP Project and it shall contain the detailed information and instructions required to submit an Application.

b) The Contracting Authority shall develop the draft RFQ document based on the outcome of the feasibility study, market feedback and/or on any model documentation issued by the PPP Authority (where available), and as amended from time to time.

c) The Contracting Authority shall seek concurrence of the PPP Authority prior to issuing the RFQ document. The PPP Authority shall review the draft RFQ document through the PAC. After completion of the review process the PAC shall provide feedback to the PPP Authority, who may take this into account in providing an opinion to the Contracting Authority.

d) Upon obtaining the concurrence of the PPP Authority, the Contracting Authority shall finalize and issue the RFQ document, after taking into account any comments received from the PPP Authority. Once issued, the process to be followed shall be as set

out in the RFQ document up until selection and approval of the Shortlisted Bidders.

26.3 Request for Proposal ("RFP")

a) The Contracting Authority shall ensure that the RFP document contains detailed information and instructions required to submit a Proposal (Technical Proposal and Financial Proposal). It shall stipulate the technical and financial criteria. The draft PPP Contract shall also be annexed to the RFP document.

b) The Contracting Authority shall develop the draft RFP document and the draft PPP Contract based on the outcome of the feasibility study, feedback from the market and/or Shortlisted Bidders and on the model, documentation issued by the PPP Authority (where available), and as amended from time to time.

c) The Contracting Authority shall send the draft RFP document (copied to the Applicable Line Ministry) to the PPP Authority for its concurrence prior to issuing the RFP document. The PPP Authority shall review the draft RFP document and the draft PPP Contract through the PAC. After completion of the review process the PAC shall provide feedback to the PPP Authority, who may take this into account in providing an opinion to the Contracting

Authority. The Applicable Line Ministry may forward any comments and/or observations that they have to the PPP Authority for its consideration. The PPP Authority may also request any

feedback from the Applicable Line Ministry.

d) Upon obtaining the concurrence of the PPP Authority, the Contracting Authority shall finalize and issue the RFP document, after taking into account any comments received from the PPP Authority.

e) Once issued, the process to be followed shall be as set out in the RFP document up until selection of a Preferred Bidder and completion of negotiation (where applicable).

27 Timeline

27.1 The following minimum timelines shall apply in relation to the bidding process. The overall timelines may be extended on a case-by-case basis and the timelines for detailed actions within the RFQ Stage, RFP Stage or the IFB stage shall be as set out in the

respective bid documents or as stipulated in any guidance or standard templates issued by the PPP Authority or specifically approved by the PPP Authority.

IFB: The Bids submitted in response to the IFB shall be received within a minimum of 42(forty-two) Days from issue of the IFB document.

RFQ: The Applications submitted in response to the RFQ shall be received within a minimum of 28 (twenty-eight) Days from the issue of the RFQ document.

RFP: The Proposals submitted in response to the RFP shall be received within a minimum of 42(forty-two) Days from the issue of the RFP document.

27.2 The Contracting Authority may, at its discretion, upon informing the PPP Authority extend the Due Date, for any reason whatsoever.

28 Treatment of a Single Application, Proposal or Bid

28.1 IFB: In the event that only one Bid is received in response to the IFB, the bidding process shall continue.

28.2 RFQ: In the event that only one Application is received in response to the RFQ or if there is only one Applicant who has been pre-qualified at the end of the RFQ Stage, the bidding process shall be cancelled. The Contracting Authority may re-launch the RFQ process, modifying the RFQ as required, after taking into account any feedback received from the interested private parties, transaction advisers, consultants and/or any directions from the PPP Authority on the cancelled RFQ process. Alternatively, the Contracting Authority may opt for a single-stage bidding process and issue an IFB.

28.3 RFP: If only one Proposal is received in response to the RFP, the bidding process shall continue, provided that the Shortlisted Bidder is compliant and technically responsive and the amount quoted in its Financial Proposal is close to the estimated figures set out in the approved feasibility study subject to any subsequent amendments thereof or in any other studies carried out in this regard with the concurrence of the PPP Authority.

29. Proposal or Bid Validity Period and Bid Security

29.1 The Proposal or Bid validity period shall be determined based on the nature and complexity of the PPP Project and shall be specified in the RFP or IFB document.

29.2 The Shortlisted Bidder or Bidder (as applicable) shall be required to submit a Bid Security along with its Technical Proposal or Technical Bid (as applicable). The Bid Security shall remain valid for at least 60 (sixty) Days beyond the expiry date of the Proposal or Bid validity period. The validity period of the Bid Security shall be specified in the RFP or IFB document

29.3 The Contracting Authority may, subject to notification to the PPP Authority, request in writing a Shortlisted Bidder or Bidder to extend the Proposal or Bid validity period at any time prior to the expiration date. Shortlisted Bidders or Bidders consenting to extend the Proposal or Bid validity period shall also correspondingly be required to extend the validity period of their Bid Security.

29.4 In the event that any Shortlisted Bidder or Bidder refuses to extend the Proposal or Bid validity period, its Proposal or Bid (as applicable) shall not be evaluated and the Bid Security shall be returned to the Shortlisted Bidder or Bidder as soon as possible.

29.5 The validity period of the Bid Security shall be extended by at least 60 (sixty) Days beyond the new expiry date of the Proposal or Bid validity period, if the Proposal or Bid validity period is extended.

29.6 The Bid Security may be in the form of a bank draft or bank guarantee issued by a Scheduled Bank in the State or any other internationally reputed bank.

29.7 If a Shortlisted Bidder or Bidder (as applicable) is selected as the Preferred Bidder, its Bid Security shall be extended until such time as the Preferred Bidder submits an appropriate security in accordance with the PPP Contract. The Bid Security of the Shortlisted Bidders or Bidders (as applicable) who are not selected as the Preferred Bidder shall be returned as soon as possible upon execution of the PPP Contract with the Project Company and/or Preferred Bidder, as the case may be.

29.8 Any Proposal or Bid (as applicable) submitted without a Bid Security shall be automatically rejected by the Contracting Authority.

30. Pre-Application Meeting, Pre-Proposal Meeting or Pre-Bid Meeting

30.1 A Pre-Application Meeting, Pre-Proposal Meeting or a Pre-Bid Meeting (as applicable) shall be held for Registered Entities or Shortlisted Bidders (as the case may be) at the designated date, time and place as mentioned in the RFQ, RFP or IFB document. Only the Registered Entities or Shortlisted Bidders (as the case may be) shall be allowed to participate in the Pre-Application Meeting, Pre-Proposal Meeting or Pre-Bid Meeting.

30.2 During these meetings the Contracting Authority shall provide further information about the PPP Project and the bidding process. During the course of these meetings, Registered Entities or Shortlisted Bidders (as the case may be) may seek clarifications and make suggestions for consideration of the Contracting Authority. The Contracting Authority

may provide responses and clarifications at the meeting as it deems appropriate. However, the official responses shall only be provided in writing.

30.3 The Contracting Authority may also issue, if it deems appropriate, minutes of the Pre-Application Meeting, Pre-Proposal Meeting or Pre-Bid Meeting. These minutes may include the text of the questions raised and the responses given, together with any responses prepared after the meetings and shall be uploaded to the Data Room for information purposes only. Such minutes, questions, and responses shall not constitute an addition or revision to the RFQ, RFP or IFB. Any addition or revision to the RFQ, RFP or IFB that may become necessary as a result of the Pre-Application Meeting, Pre-Proposal Meeting or Pre-Bid Meeting will be made by the Contracting Authority exclusively through the issue of an Addendum or a Corrigendum and not through the minutes of the meeting.

30.4 The Contracting Authority may at any time prior to the Due Date, subject to the concurrence of the PPP Authority, amend and/or modify the RFQ, RFP or IFB documents whether on its own volition or in response to a clarification requested by any Registered Entity or Shortlisted Bidder (as applicable) or for any reason whatsoever by issuing Addenda and/or Corrigenda. The amended documents shall be deemed to be the applicable documentation for purposes of the bidding process. The Contracting Authority may revise the date, time, venue and/or the number of delegates permitted to attend the meeting.

The Contracting Authority may hold a single or multiple meetings and it further reserves the right to set up a follow up meeting after the initial Pre-Application Meeting, Pre-Proposal Meeting or Pre-Bid Meeting, if it deems necessary.

30.5 In addition to these meetings, the Contracting Authority may also organize additional open sessions whereby the Registered Entities or Shortlisted Bidders shall be invited to discuss in more detail the relevant aspects of the PPP Project.

31. Addenda and/or Corrigenda

31.1 In case of any Addenda and/or Corrigenda, the Contracting Authority shall ensure that the Due Date is fixed in such a way that there is a period of at least 14 (fourteen) Days or more between the issue of the Addenda and/or Corrigenda and the Due Date for submissions.

31.2 Any Addenda and/or Corrigenda shall be approved by the Contracting Authority and/or the PPP Authority prior to being issued.

32. Contacting and/or Communicating with the Applicants, Shortlisted Bidders or Bidders

32.1 The PPP Authority and/or the Contracting Authority may, for the purpose of understanding the market interest, to market the PPP Project, to take feedback on potential options for structuring the PPP Project, discuss with interested parties prior to the issue of the RFQ or IFB (as applicable) or may discuss with the Shortlisted Bidders post completion of the RFQ Stage and prior to the issue of the RFP document. After issue of the RFQ, RFP or IFB (as applicable) any contact or communication by the Contracting Authority with the Applicants, Shortlisted Bidders or Bidders shall be based on the mechanism as set out in the bid documents.

32.2 The medium of communication shall be as set out in the bid documents and may include email, letter or fax or a combination of any.

33. Rejection or Disqualification

33.1 The Contracting Authority reserves the right to reject any Application, Proposal or bid and/or disqualify any Applicant, Shortlisted Bidder or Bidder (as applicable) as set out in the bid documents.

33.2 In the event that a Shortlisted Bidder or Bidder is disqualified after having already been selected as the Preferred Bidder but prior to entering into the PPP Contract, then the highest ranked Shortlisted Bidder or Bidder (excluding the disqualified Shortlisted Bidder or Bidder) from the remaining Shortlisted Bidders or Bidders who have been through the Proposal or Bid evaluation process may be selected as the Preferred Bidder.

33.3 Further, in the event that negotiations between the Contracting Authority and the Preferred Bidder break down or the Preferred Bidder delays the signing of the PPP Contract beyond a stipulated date, the Contracting Authority may appoint the highest ranked Shortlisted Bidder or Bidder (excluding the Preferred Bidder) from the remaining Shortlisted Bidders or Bidders who have been through the Proposal or Bid evaluation process in place of the Preferred Bidder.

34. Professional Misconduct, Offences, Etc.

34.1 The Contracting Authority, Applicants, Shortlisted Bidders, Bidders and any concerned entities shall, at all-time including the procurement process and during execution of PPP Contracts, ensure –

(a) strict compliance with the provisions of Section 24 and 25 of the PPP Act...

(b) that neither it nor any other member of its staff or any other agents or intermediaries working on its behalf engages in any practice detailed in Guideline 34.2 below.

32.2 For the purpose of Guideline 34.1 the terms -

(a) corrupt practice means offering, giving or promising to give, receiving, or soliciting, either directly or indirectly, to any officer or employee of a Contracting Authority or other public or private authority or individual, a gratuity in any form; employment or any other thing or service of value as an inducement with respect to an Act. or decision or method followed by a Contracting Authority in connection with any procurement process;

(b) fraudulent practice means the misrepresentation or omission of facts in order to influence a decision to be taken in connection with any procurement process;

(c) collusive practice means a scheme or arrangement between two

(2) or more persons, with or without the knowledge of the Contracting Authority, that is designed to arbitrarily reduce the number of Applications, Proposals or Bids to be submitted or fix Financial Proposals or Financial Bid at artificial, non-competitive levels, thereby denying a Contracting Authority the benefits of competitive price arising from genuine and open competition; or

(d) coercive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence a decision to be taken in connection with any PPP bidding process, and this will include creating obstructions in the normal submission process used for Applications, Proposals or Bids;

34.3 If corrupt, fraudulent, collusive or coercive practices of any kind come to the knowledge of the Contracting Authority, the Contracting Authority shall call for a written explanation, to be provided within a period of 14 days, from Applicant, Shortlisted Bidder, Bidder or the

entity alleged to have carried out such practices.

34.4 Unless a satisfactory explanation is given by the concerned Applicant, Shortlisted Bidder, Bidder or the entity that is acceptable to the Head of the Contracting Authority, the Contracting Authority shall, subject to the approval of the Applicable Line Ministry, debar the Applicant, Shortlisted Bidder, Bidder or the entity from participating in further procurement process of any PPP Project executed under the PPP Act.

34.5 Any Applicant, Shortlisted Bidder, Bidder or the entity that has been debarred by the Contracting Authority or by any other Government entity shall not be eligible to participate in further procurement process of any PPP Project executed under the PPP Act for a

minimum period of 3 (three) years or for any other extended period that may be specified in the bid documents from the date of being debarred.

34.6 The PPP Authority may create, maintain and publish a list of debarred entities. The PPP Authority shall specify in the list of debarred entities the reasons for and the period for which that Applicant, Shortlisted Bidder, Bidder or the entity has been debarred and other appropriate information.

34.7 An entity, or an officer or staff member of the Contracting Authority to whom the PPP Act and these Guidelines apply, committing an offence related to professional misconduct, shall be dealt with as described in the PPP Act in Section 24 and 25 and Anti-corruption

Commission Act 2004.

35. Conditions for Eligibility

35.1 An Applicant, Shortlisted Bidder or Bidder (as applicable) shall not be eligible to participate in the bidding process if the Applicant, Shortlisted Bidder or Bidder:

a) is from a country which does not have diplomatic relations with the Government;

b) does not have legal capacity to enter into a contract with the Contracting Authority;

c) is insolvent, in receivership, bankrupt or being wound up or its business activities are to be suspended or it is to be the subject of legal proceedings for any of the foregoing, or it intends to submit an application for insolvency or liquidation;

d) is the one with whom the Contracting Authority has previously entered into a contract for some other purpose and later terminated the contract (within the last 3 (three) years) prior to the expiry of the contract due to an event of default on the part of the Applicant, Shortlisted Bidder or Bidder (as applicable);

e) has, including any directors thereof, been convicted of a criminal offence in Oyo State within the last 5 (five) years;

f) has 100% ownership in any entity which is prohibited by the Government from participating in any Project and if that prohibition subsists as on the Due Date.

36 Opening Committee and Opening Procedure

36.1 The Head of the Contracting Authority shall constitute the Opening Committee, consisting of 3 (three) members, of which at least 1 (one) member must be from the Evaluation Committee.

36.2 All Applicants, Shortlisted Bidders or Bidders who have successfully completed the evaluation process shall be invited to attend the opening of their Applications, Proposals or Bids (as applicable). The Opening Committee shall open the Applications, Proposals or Bids

(as applicable) in the presence of their representatives, if any, who choose to attend the opening and at the time, date and place as specified in the bid documents.

36.3 The Applicants', Shortlisted Bidders' or Bidders' representatives who attend the opening of the Applications, Proposals or Bids (as applicable) shall sign a register to record their attendance.

36.4 After opening the Applications, Proposals or Bids, each member of the Opening Committee shall sign individually a declaration of impartiality in the following manner - "I (name of the Opening Committee member & designation) do hereby declare and confirm that I have no conflict of interest as provided in Section 25 of the PPP Act with any of the competing Applicants, Shortlisted Bidders or Bidders (as applicable.)"

36.5 The Opening Committee shall handover the sealed Financial Proposal to the Head of the Contracting Authority for safe custody, until the scheduled time for the opening of the Financial Proposal.

37. Financial Proposal Opening

37.1 All Shortlisted Bidders or Bidders (as applicable) who have successfully completed the evaluation process of their Technical Proposals or Technical Bids (where applicable) shall be invited to attend the opening of their Financial Proposals or Financial Bids (as applicable). The Evaluation Committee shall open the Financial Proposals or Financial Bids in the presence of the Shortlisted Bidders' or Bidders' representatives, if any, who choose to attend and at the time, date and place as specified in the bid documents.

37.2 Shortlisted Bidders' or Bidders' representatives who attend the opening of the Financial Proposals or Financial Bids shall sign a register to record their attendance.

38. Constitution of the Evaluation Committee

38.1 For evaluation of the Applications, Proposals or Bids (as applicable), an Evaluation Committee shall be formed immediately after the issue of the RFQ or IFB (as applicable) and in any case no later than the Due Date.

38.2 The Applicable Line Ministry shall, on the basis of the recommendation of the PPP Authority and the Contracting Authority, approve the formation of the Evaluation Committee.

38.3 The Applicable Line Ministry, based on the recommendation of the PPP Authority, may approve formation of an Evaluation Committee to evaluate Applications, Proposals or Bids of more than one PPP Project.

39. Responsibility of the Evaluation Committee

39.1 The Evaluation Committee members shall on their own responsibility, following the provisions of the PPP Act and/or any policies, rules, regulations, guidance, guidelines or notifications made there under and the terms and conditions of the RFQ, RFP or IFB (as applicable) shall:

a) examine and evaluate the Applications, Proposals or Bids (as applicable);

b) prepare the RFQ evaluation report containing the names of the Shortlisted Bidders based on the technical and financial capacity requirements as provided in the RFQ document (applicable in case of the RFQ Stage of a bidding process);

c) prepare the RFP evaluation report with a scoring and ranking of the Shortlisted Bidders based on the technical (including commercial if applicable) and/or financial evaluation criteria specified in the RFP document (applicable in case of the RFP Stage of a bidding process);

d) prepare the IFB evaluation report with a scoring and ranking of the Bidders based on the technical (including commercial if applicable) and/or financial evaluation criteria specified in the IFB document (applicable in case of a single-stage bidding process);

e) submit the evaluation report directly to the Head of the Contracting Authority.

40 Composition of the Evaluation Committee

40.1 The Evaluation Committee shall be comprised of either 5 (five) members or 7 (seven) members.

Evaluation Committee shall be constituted in the following manner:

e) 1 (one) member from the Applicable Line Ministry to be nominated by the Applicable Line Ministry;

f) 2 (two) members from the Contracting Authority to be nominated by the Contracting Authority;

g) 2 (two) External Members nominated by the PPP Authority form within or outside the PPP Authority.

40.2 A 7 (seven) member Evaluation Committee shall be constituted in the following manner:

a) 1 (one) member from the Applicable Line Ministry to be nominated by the Applicable Line Ministry;

b) 2 (two) members from the Contracting Authority to be nominated by the Contracting Authority;

c) 1 (one) member nominated by the Contracting Authority from outside the Applicable Line Ministry, Contracting Authority or PPP Authority;

d) 3 (three) members s nominated by the PPP Authority form within or outside the PPP Authority, at least 2 (two) of whom must be External Members.

40.3 The members from the Contracting Authority shall be designated to act as the chairman and the member secretary of the Evaluation Committee.

40.4 The chairman of the Evaluation Committee shall be an officer of at least Grade-4 or equivalent category. In the event that there is no officer of such ranking in the requisite Government entity, then that Government entity shall contact the PPP Authority for advice to constitute the Evaluation Committee.

41 Members of the Evaluation Committee

41.1 The Evaluation Committee members may be selected from -

a) officers of the concerned units of the Applicable Line Ministry or Contracting Authority, namely finance, commercial, technical units or PPP cell, if any;

b) officers having experience in technical, commercial, financial or legal matters from other ministries, divisions, departments, authorities or agencies, or any other Government entities or experts from universities or reputable professional bodies or specialists from the relevant fields (applicable in case of the External Members).

41.2 In nominating the members of the Evaluation Committee, the Applicable Line Ministry, the Contracting Authority and/or the PPP Authority shall, in order to accelerate the review and approval process of the evaluation report, ensure that the members of the Evaluation

Committee are qualified officials or professionals with experience in technical, commercial, financial, legal matters and/or PPPs and are persons of high integrity.

41.3 The members of the Evaluation Committee shall include officers of at least Grade-6 or equivalent category. In the event that there is no officer of such ranking in the requisite Government entity, then that Government entity shall contact the PPP Authority for advice to constitute the Evaluation Committee.

42 Replacement of the Members of the Evaluation Committee

42.1 The Applicable Line Ministry may replace any member of the Evaluation Committee by a new member for any of the following reasons, namely:

a) if any member does not disclose his or her connection with an Applicant, Shortlisted Bidder or Bidder (as applicable);

b) if any member remains absent in 2 (two) consecutive Evaluation Committee meetings;

c) if any member is in direct breach of Section 24 or 25 of the PPP Act; and

d) in the case of transfer, death or absence of any member from the country.

43 Operation of the Evaluation Committee

43.1 Notice of the Evaluation Committee meetings shall be sent to all members of the Evaluation Committee and the meeting shall be held valid only where the required Quorum is present.

43.2 The Evaluation Committee shall, to the extent practical and possible, work continuously once they have begun an evaluation in order to complete evaluation within the time limit prescribed.

43.3 The Evaluation Committee, in administering the evaluation process, may seek support of the transaction adviser(s) and/or consultant(s) appointed for the PPP Project, the PPP Authority and/or any other person, if needed.

43.4 The Contracting Authority may also constitute technical sub-committee(s), if needed. The member(s) of a technical sub-committee shall not be more than 3 (three). If the Contracting Authority decides to constitute technical sub-committees, it shall do so prior to the Due Date.

43.5 The Evaluation Committee shall in strict compliance with the pre-determined criteria set out in the RFQ, RFP or IFB (as applicable), evaluate and examine the Applications, Proposals or Bids (as applicable) and shall follow the procedures set out in the bid

documents and/or in any other applicable policies, rules, regulations, guidance, guidelines or notifications.

44. Honorarium and Other Support for Members of the Evaluation Committee

44.1 In order to ensure smooth operation of the Evaluation Committee, a provision for honorarium, incentive or fee as determined by the PPP Authority from time to time, for each Evaluation Committee member shall be made. The necessary budgetary provisions for payment of such fees or honoraria may be made in the PPP Authority's budget or the Contracting Authority's budget.

44.2 The PPP Authority and/or the Contracting Authority may also make provisions for providing the necessary resource and facilities for the Evaluation Committee to enable them to carry out the evaluation in an expeditious manner.

45 Clarification of Applications, Proposals and Bids

45.1 During evaluation, the Evaluation Committee, through the Contracting Authority, may at its sole discretion seek written clarifications and/or supplementary information from any Applicant, Shortlisted Bidder or Bidder regarding their Applications, Proposals or Bids (as applicable) through letter and/or email. The Contracting Authority in communicating with the Applicants, Shortlisted Bidders or Bidders may take support of transaction advisers and/or consultants and shall keep the PPP Authority copied in all communications.

45.2 The Applicants, Shortlisted Bidders or Bidders shall respond to the request of the Contracting Authority within the prescribed time and in the manner prescribed in the RFQ, RFP or IFB documents. Any extension to the clarification date shall be at the sole discretion of the Evaluation Committee.

45.3 The Evaluation Committee, with concurrence of the PPP Authority,

may waive any minor informality, non-conformity or irregularity in any Application, Proposal or Bid if it does not -

a) constitute any material deviation from the provisions of the RFQ, RFP or IFB (as applicable), and/or any violation under the PPP Act, any policies, rules, regulations, guidance, guidelines or notifications issued there under and/or any other applicable laws

and regulations; and

b) prejudice or affect the qualification or relative ranking of any other Applicant, Shortlisted Bidder or Bidder, in any way, in the technical and/or financial evaluation. Where, material deviation means anything that affects in any substantial way the scope, quality, and/or performance of the works and/or which limits in any substantial way the Contracting Authority's rights and/or the Applicant's, Shortlisted Bidders or Bidders obligations. It further refers to anything whose rectification would affect unfairly the competitive position of other Applicants, Shortlisted Bidders or Bidders participating in the bidding process. Minor informality, non-conformity or irregularity refers to minor and/or insignificant deviations, which do not meaningfully alter or depart from the technical specifications, characteristics and/or commercial terms and conditions and/or other requirements set out in the bid documents. It further refers to errors or oversights, which if corrected, would not alter the key aspects of the bid documents.

45.4 The Evaluation Committee may allow rectification of any bona fide arithmetical errors in the Applications, Proposals or Bids as prescribed in the RFQ, RFP or IFB documents.

46 Recommendation of the Evaluation Committee, its Approval, etc.

46.1 The Evaluation Committee shall prepare the evaluation report with recommendations and shall submit it to the Head of the Contracting Authority.

46.2 Each member of the Evaluation Committee shall collectively sign in the evaluation report, by certifying as follows – "The Evaluation Committee certifies that the examination and evaluation has followed the requirements of the PPP Act and the applicable policies, rules, regulations, guidance, guidelines and/or notifications made there under and the terms and conditions of RFQ, RFP or IFB (as applicable) and that all facts and information have been correctly reflected in the evaluation report and that no substantial or important information has been omitted".

46.3 If the signatures of all the members of the Evaluation Committee are not available, then the evaluation report shall at a minimum be required to be signed by the required Quorum, provided that at least one member is from the Contracting Authority and one is an External

Member.

46.4 A summary of the key milestones starting from the invitation of the Applications, Proposals or Bids shall be attached to the evaluation report by the Evaluation Committee.

46.5 The Evaluation Committee shall submit its evaluation report on Shortlisted Bidders along with all necessary documents to the Head of the Contracting Authority.

46.6 The Head of the Contracting Authority upon reviewing the evaluation report on the Shortlisted Bidders may either

a) approve the recommendation of the evaluation report; or

b) seek any clarification from the Evaluation Committee on any specific issues in connection with such evaluation report and recommendation; or

c) explaining the reasons -

I. rejects the evaluation report with recommendation and request the Evaluation Committee for a re-evaluation;

ii. reject the recommendations and issue instructions to reprocess the selection of the Shortlisted Bidders.

46.7 Prior to issuing the list of Shortlisted Bidders, the Contracting Authority shall submit a copy of the evaluation report on the Shortlisted Bidders to the PPP Authority.

46.8 The Evaluation Committee shall submit its evaluation report on the Preferred Bidder along with all necessary documents to the Head of the Contracting Authority, copied to the PPP Authority.

46.9 The Head of the Contracting Authority upon reviewing the evaluation report on the Preferred Bidder may either -

a) approve the recommendation of the evaluation report; or

b) seek any clarification from the Evaluation Committee on any specific issues in connection with such evaluation report and recommendation; or

c) explaining the reasons -

I. rejects the evaluation report with recommendation and requests the Evaluation Committee for a re-evaluation;

ii. reject the recommendations and issue instructions to reprocess the selection of the Preferred Bidder.

46.10 If the PPP Authority has any questions in relation to the evaluation report, then the PPP Authority may seek clarifications from the Contracting Authority and/or the Evaluation Committee.

46.11 Prior to selecting the Preferred Bidder, the Head of the Contracting Authority may contact the PPP Authority for any comments and/or feedback that the PPP Authority may have.

47. Negotiation

47.1 Upon completion of the evaluation of the Proposals or Bids (as applicable), the Evaluation Committee may, through the Contracting Authority, invite the Preferred Bidder for negotiations

47.2 The Contracting Authority shall notify the Preferred Bidder in writing that its Proposal or Bid (as applicable) has been accepted and shall set a date for the commencement of PPP Contract negotiations.

47.3 The Evaluation Committee shall, in order to finalize the PPP Contract, negotiate with the Preferred Bidder in relation to only those terms and conditions which are identified as capable of being negotiated in the PPP Contract. The Contracting Authority may include other representatives to join the negotiation meetings alongside the Evaluation Committee.

47.4 Negotiations in relation to price and/or rates would only be permitted where it improves the position of the Contracting Authority.

48. Conflict of Interest

48.1 Applicants, Shortlisted Bidders or Bidders (as applicable) shall not have a conflict of interest as described in the bid documents (“Conflict of Interest”). An Applicant, Shortlisted Bidder or Bidder bidding individually or as a Consortium Member shall not be entitled to submit another Application, Proposal or Bid (as applicable) either individually or as a Consortium Member of any other Consortium and shall not be entitled to participate in any other Consortium bidding for the PPP Project prior to issuance of the LoA. Furthermore, an

Applicant, Shortlisted Bidder or Bidder can submit only one Application, Proposal or Bid in response to the RFQ, RFP or IFB, as the case may be. In the event that an entity applying individually or as a Consortium Member participates in more than one Application,

Proposal or Bid, all the Applications, Proposals or Bids with that entity’s participation shall be deemed invalid.

48.2 Any Applicant, Shortlisted Bidder or Bidder found to have a Conflict of Interest, shall be disqualified, subject to the Guidelines herein below or provisions on change of Consortium in the bid documents.

48.3 In case of an Applicant which is a Consortium, if during the evaluation of the Applications submitted in response to the RFQ, any Conflict of Interest is discovered, then the concerned Applicant maybe allowed an opportunity to remove the Consortium Member with the Conflict of Interest. The Applicant shall have to ensure that the Consortium Member is duly removed within 10 (ten) Days after the Due Date.

48.4 However, removal shall not be permitted in cases where the Consortium Member with the Conflict of Interest is a Lead Member of the Consortium.

49. Confidentiality

49.1 All communications between the Applicants, Shortlisted Bidders or Bidders (as applicable) and the Contracting Authority and all information obtained in connection with or arising out of the RFQ, RFP or IFB shall be treated as confidential during as well as after

preparation and submission of the Applications, Proposals or Bids (as applicable). In the event of any such breach of confidentiality by the Applicant, Shortlisted Bidder or Bidder, the Contracting Authority, at its sole and absolute discretion, may at any time reject their Application, Proposal or Bid without any further consideration and terminate their right to continue in the bidding process.

49.2 Notwithstanding the foregoing, the obligation of confidentiality shall not pertain to information which was at the time of disclosure, or which thereafter became, part of the public domain or is required to be disclosed by law or a court order, where, in such cases, all reasonable attempts shall be made to notify the Contracting Authority in advance of doing so.

49.3 Except as otherwise stated, the Contracting Authority shall endeavour to maintain the confidentiality of any information and/or documents relating to the pre-qualification, examination, clarification, evaluation, negotiation, approval or any other function related to the bidding process.

49.4 Notwithstanding the foregoing, the Contracting Authority shall not in any way be liable for disclosure of any confidential information if the disclosure is required under the Right to Information Act,...or if the Contracting Authority has been directed to do so by any statutory

entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the Contracting Authority or as may be required by law or in connection with any legal process.

50. Complaint, Review and Objection Method

50.1 Formal complaints may be lodged against the Contracting Authority or any of its concerned officers by Applicants, Shortlisted Bidders or Bidders who have been aggrieved as a result of any order or decision taken by the Contracting Authority or any of its concerned officers in relation to the procurement process as stipulated in Guideline 51 herein below.

51. Determination of situations when complaints may be filed

51.1 Formal complaints may be lodged by Applicants, Shortlisted Bidders or Bidders under the following circumstances:

a) In case of Invitation for Bid (IFB):

i. failure to adhere to the advertisement requirements set out in Guideline 18; or

ii. failure of the Contacting Authority to respond to a relevant request for clarification from a Registered Entity 10 (ten) Days prior to the Due Date; or

iii. allegation (on the basis of reasonable grounds) of possible corrupt, fraudulent, collusive, or coercive practices as provided in Guideline 39.2; or

iv. failure to hold a stipulated Pre-Bid Meeting; or

v. failure to open all the Bids which were received prior to the Due Date; or

vi. opening of the Financial Bids at the same time as the opening of the Technical Bids; or

vii. failure by the Evaluation Committee to evaluate the Bids in compliance with the evaluation criteria stated in the IFB document; or

viii. allegation (on the basis of reasonable grounds) of unfair and erroneous award of the PPP Contract.

b) In case of Request for Qualification (RFQ):

i. failure to adhere to the advertisement requirements set out in Guideline 18; or

ii. failure of the Contacting Authority to respond to a relevant request for clarification from a Registered Entity 10 (ten) Days prior to the Due Date; or

iii. failure of the Evaluation Committee to evaluate the qualifications in the light of criteria stated in the RFQ or where there has been perceived unfair denial of pre-qualification;

iv. allegation (on the basis of reasonable grounds) of possible corrupt, fraudulent, collusive, or coercive practices as provided in Guideline 34.2; or

v. failure to hold a stipulated Pre-Application Meeting; or

vi. failure to open all the Applications which were received prior to the Due Date.

c) In case of Request for Proposal (RFP):

I. failure of the Contacting Authority to respond to a relevant request for clarification from a Shortlisted Bidder 10 (ten) Days prior to the Due Date; or

ii. allegation (on the basis of reasonable grounds) of possible corrupt, fraudulent, collusive, or coercive practices as provided in Guideline 34.2; or

iii. failure to hold a stipulated Pre-Proposal Meeting; or

iv. failure to open all the Proposals which were received prior to the Due Date; or

v. opening of the Financial Proposals at the same time as the opening of the Technical Proposals; or

vi. failure by the Evaluation Committee to evaluate the Proposals in compliance with the evaluation criteria stated in the RFP document; or

vii. allegation (on the basis of reasonable grounds) of unfair and erroneous award of the PPP Contract.

52. Process for the submission of complaints

52.1 An aggrieved Applicant, Shortlisted Bidder or Bidder shall submit his/her complaint in writing within 5 (five) Days from the date of becoming aware or from a date he/she should have become aware of the circumstances giving rise to the complaint.

52.2 In the first instance, the aggrieved Applicant, Shortlisted Bidder or Bidder shall submit his/her complaint in writing to the Head of the Contracting Authority who shall

a) If he/she is a member or chairman of the Evaluation Committee, forward the complaint to the secretary of the Applicable Line Ministry within 7 (seven) Days of receiving the complaint, advising the Applicant, Shortlisted Bidder or Bidder that the complaint has been so forwarded.

b) If he/she is in a position to accept the complaint, then he/she shall consider the subject matter of the complaint and decide whether to reject the complaint or to take any corrective action. In the event that any clarification is required, the Head of the

Contracting Authority shall seek clarifications from the aggrieved Applicant, Shortlisted Bidder or Bidder within 10 (ten) Days of receiving the complaint. The Head of the Contracting Authority shall, within 30 (thirty) working days of receiving the complaint, issue a final written decision to the aggrieved Applicant, Shortlisted Bidder or Bidder, stating either the reasons for the rejection of the complaint or advising what corrective

actions have been or will be taken.

52.3 If the aggrieved Applicant, Shortlisted Bidder or Bidder is not satisfied with the written decision, taken under Guideline 52.2, and wishes to pursue its complaint, or if the Head of the Contracting Authority fails to provide the written decision with a period of 30 (thirty) working days of receiving the complaint, the aggrieved Applicant, Shortlisted

Bidder or Bidder may submit the complaint to the PPP Authority ("Appeals Authority") within 10 (ten) Days of receiving the decision of the Head of the Contracting Authority. The aggrieved Applicant, Shortlisted Bidder or Bidder shall be required to pay a non-refundable

52.4 Upon receipt of a complaint, the PPP Authority shall constitute within a period of 7 (seven) Days, a Review Panel and shall pass the complaint to that Review Panel which shall decide whether to reject the complaint or to implement any corrective actions. The Review

Panel may seek clarifications from the aggrieved Applicant, Shortlisted Bidder or Bidder and shall issue a written decision to the Applicant, Shortlisted Bidder or Bidder stating either the reasons for the rejection of the complaint or informing of the corrective action that has been taken, along with a copy to the Applicable Line Ministry, the Contracting Authority and the PPP Authority. Any decision taken by the Review Panel shall be final and binding on all parties concerned.

52.5 The Contracting Authority shall maintain a complaint register in which brief information of all complaints and the decisions taken regarding such complaints shall be recorded.

52.6 The LoA shall not be issued during the time that the complaint is being considered and until a final decision on the complaint is made, but the evaluation process shall continue. The Contracting Authority or any other concerned officer shall not entertain any complaint after the signature of the PPP Contract.

52.7 The aggrieved Applicant, Shortlisted Bidder or Bidder shall not be able to file a civil case in any court unless and until it has exhausted all options of complaint, review and/or objection available under these Guidelines.

53. Constitution of the Review Panel

53.1 For the purpose of constituting the Review Panel, the PPP Authority shall establish and maintain a publicly available list of well-known specialists as detailed below-

a) well-reputed specialists in legal matters, experienced in PPP related legal issues which could also include retired senior officers from Government and semi-Government autonomous bodies or corporations;

b) well-reputed specialists having relevant technical expertise and experience in PPP;

c) well-reputed experts in PPP and contract management practices with experience in complaints and dispute settlement whose names can be provided by Oyo State

Chamber of Commerce and Industry (FBCCI).

53.2 No active public servant shall be included in the Review Panel(s).

53.3 Each Review Panel(s) shall have a minimum of 3 (three) members with representation from each of the groups set out in Clause 58.1.

The PPP Authority shall nominate one of the representatives as the chairperson of the Review Panel.

53.4 Depending on the nature of the complaint, the Review Panel may request the PPP Authority to co-opt 2 (two) members on a case-by-case basis, out of the lists of specialists maintained by the PPP Authority.

53.5 In order to ensure smooth operation of the Review Panel(s), a provision for an incentive or honorarium, as determined by the PPP Authority from time to time, for payment to each member of the Review Panel shall be made.

54. Debriefing

54.1 The Contracting Authority may, upon request of any unsuccessful Shortlisted Bidder or Bidder (as applicable) conduct a debriefing session with such unsuccessful Shortlisted Bidder or Bidder. Any information given to the Shortlisted Bidder or Bidder in a debriefing

session must remain confidential and the Shortlisted Bidder or Bidder must, if so, requested by the Contracting Authority, enter into a confidentiality agreement to that effect. During such debriefing, the evaluation, ranking and content of any Proposal or Bid (as applicable)

shall not be disclosed. Only the strengths and weaknesses of the Proposal or Bid (as applicable) relative to the evaluation criteria shall be disclosed and discussed.

CHAPTER V: PROCEDURES FOR APPROVAL AND AWARD PHASE

55. Introduction to the Approval and Award Phase

55.1 The Approval and Award Phase is the fourth phase in the process for the selection of a Private Partner for the delivery of a PPP Project. During this phase the PPP Contract shall be sent to the CCEA for Final Approval and the Contracting Authority with the support of the

PPP Authority shall issue the LoA to the Preferred Bidder.

56. CCEA Final Approval and Letter of Award

56.1 Upon completion of the negotiation as set out in Chapter IV above, the Applicable Line Ministry shall submit the legally vetted PPP Contract to the CCEA for its Final Approval. The said legal vetting may have been carried out by the Legislative and Parliamentary Affairs Division of the Ministry of Law, Justice and Parliamentary Affairs in relation to the specific PPP Project or the PPP Project may have been based on previously legally vetted model documentation in which case no further legal vetting will be required.

56.2 Upon receipt of the Final Approval from the CCEA, the Contracting Authority shall issue the LoA to the Preferred Bidder, inviting that Preferred Bidder and/or the Project Company to sign the CCEA approved PPP Contract with the Contracting Authority for implementation of the PPP Project.

56.3 The LoA shall be issued within 4 (four) weeks following receipt of CCEA approval. However, this timeline may be extended upon concurrence of the PPP Authority.

57. Miscellaneous

57.1 The Contracting Authority shall, subject to the concurrence of the PPP Authority, be able to take necessary steps in order to complete the bidding process in an efficient manner on issues which have not already been covered in these Guidelines.

57.2 In addition to the requirements set out in these Guidelines, the Contracting Authority may incorporate additional requirements and/or instructions in the RFQ, RFP or IFB and these shall be applicable for the relevant PPP Project.

57.3 The Contracting Authority may seek references and/or conduct any investigations or enquiries in order to verify any and all statements, information, references and documents submitted by the Applicants, Shortlisted Bidders or Bidders (as applicable) in response to the RFQ, RFP or IFB.

57.4 The Contracting Authority and/or the Applicable Line Ministry may contact the PPP Authority at any time for clarifications and/or to feedback on progress. Further, the PPP Authority may also contact the Contracting Authority and/or the Applicable Line Ministry at any time seeking clarifications and/or to ensure that the process and timelines are being met.

57.5 The PPP Authority may at any point during the Identification Phase, Development Phase, Bidding Phase and Approval and Award Phase, discuss with local and/or international private sector institutions, bilateral, multilateral and/or development banks and/or PPP practicing entities in order to identify new PPP Projects and/or test potential private sector interest in the PPP Projects, assess market practice in delivering Projects on a PPP basis and/or seek financing or insurance opportunities and/or carry out any other market sounding activities.

57.6 The PPP Authority may at any time receive queries and/or discuss with interested private parties, Applicants, Shortlisted Bidders or Bidders (as applicable), in relation to the PPP Act and/or policies, rules, regulations, guidance, guidelines or notifications issued under

the PPP Act as well as any other matters which may include but shall not be limited to general PPP program matters and PPP pipelines, irrespective of whether they intend to bid for the concerned PPP Project.

(1) The Procurement Guidelines for PPP Projects, 2016, hereinafter referred to as the repealed Guidelines, shall be repealed as soon as this Guidelines comes into force.

(2) Notwithstanding such repeal under sub-section (1), -

a) all acts done or measures taken under the repealed Guidelines shall be deemed to have been done or taken under this Guidelines; and

b) If any activity undertaken under the repealed Guidelines is not complete, it may be completed in such a manner as if the said Guidelines had not been repealed.

Section vi: VIABILITY GAP FUNDING

Viability Gap refers to the financial shortfall between the cost of a project and the revenue it generates, making it unattractive for private investment without additional funding or support. It's commonly used in Public-Private Partnerships (PPPs) for infrastructure projects (e.g., roads, bridges, or public transportation) where the project is economically beneficial but not financially self-sustaining due to high costs or low returns.

Key Points for adoption of VGF in Oyo State:

1. Purpose: Bridge the gap between project costs and revenue to make the project viable for private investors.
2. Funding Source: Often provided by governments or development agencies as grants, subsidies, or equity.
3. Application: Used in sectors like transportation, energy, water supply, and social infrastructure (e.g., hospitals, schools).
4. Goal: Attract private investment in critical projects that benefit the public but lack sufficient commercial viability.

Steps to Adopt VGF with PPPs in Oyo State

1. Project Identification: Identify a project that requires VGF to make it viable for private sector participation.
2. Feasibility Study: Conduct a feasibility study to determine the project's viability gap and estimate the required funding.
3. PPP Model Selection: Select a suitable PPP model, such as Build-Operate-Transfer (BOT) or Design-Build-Finance-Operate (DBFO).
4. Bid Process: Invite bids from private sector companies, and evaluate them based on pre-defined criteria.
5. VGF Calculation: Calculate the viability gap funding required for the project.
6. Government Support: Obtain approval and support from the government for the VGF.
7. Contract Negotiation: Negotiate the contract with the selected bidder, including the terms and conditions of the VGF.
8. Project Implementation: Implement the project, and disburse the VGF according to the agreed-upon terms.

Key Considerations

- Eligibility Criteria: Ensure the project meets the eligibility criteria for VGF.
- Funding Percentage: Determine the percentage of VGF required for the project.
- Risk Allocation: Allocate risks between the public and private sectors.
- Monitoring and Evaluation: Establish a monitoring and evaluation framework to track the project's progress.

Benefits

Increased Private Sector Participation: VGF attracts private sector investment in infrastructure projects.
- Improved Project Viability: VGF bridges the financial gap, making projects more viable.
- Better Service Delivery: PPPs with VGF can lead to efficient creation of assets and proper service delivery.

SECTION II

Oyo State Fiscal Commitment and Contingencies Liability Framework

1 Introduction

1.1 Purpose of Developing an FCCL Framework

A Fiscal Commitments and Contingent Liabilities (FCCL) Framework is a primary tool for fiduciary assurance. A clear understanding of the FCCL associated with Public Private Partnership (PPP) projects is crucial for policy decisions and sound Public Financial Management (PFM). Ring-fencing government risk and FCCL is critical to effectively managing: future debt and interest payment liabilities; financial compensation under termination provisions; and recurrent contractual obligations found in PPP contracts[1] such as operational subsidies.

FCCL assessment and monitoring needs to be carried out in order to safeguard the public finances against unanticipated future fiscal risks. OYSG currently has no specific framework in place for managing on-going fiscal commitments (FC) triggered by PPP agreements. This lack of an FCCL Framework and methodology is a key gap in the current PFM framework which these Guidelines seeks to address.

1.1.1 PPP project pipeline

The PPP landscape in Oyo State is still at a nascent state with the recent formalization of critical PPP framework instruments such as the PPP Policy and the PPP Manual.
However, Oyo State Government's (OYSG's) strategy for PPPs as a central mechanism to achieve its investment targets are well articulated in the Oyo State Infrastructure Master Plan

***Table 1-1: OYSG Current PPP Project Pipeline**

OYSIPA
OYO STATE INVESTMENT AND PUBLIC PRIVATE PARTNERSHIP AGENCY

OYO STATE DISCLOSED PPP PIPELINE PROJECTS

S/N	ame of MDAs	Project	Sector	Company	Location	Estimated Cost
1	Ministry of Public Works	Ibadan Inland Dry Port	Infrastructure		Moniya, Ibadan	₦43,200,000,000.00
2	Oyo State Housing Corporation	Yekinni Adeojo GRA Project	Infrastructure	Allianz W/A LTD	Ibadan	₦15,000,000,000.00
3	Ministry of Public Works	Bola-Ige International Market:	Infrastructure	Lee Fakino Ltd	New Gbagi, Ibadan	₦350,800,609.20

		Redevelopment of Existing Structure				
4	Oyo State Housing Corporation	Bode Thomas Housing Project	Infrastructure	E-Chostone	Ibadan	₦8,034,690.00
5	Ministry of Public Works	Samonda Business Complex	Infrastructure	Wemabodtahc	Agbowo, Ibadan	₦10,000,000,000.00
6	Ministry of Public Works	of Nursing & midwifery, Eleyele Ibadan	Infrastructure	Advent Int. Services Ltd	Eleyele, Ibadan	₦268,000,000.00
7	Ministry of Agriculture	Concession on cashew plantain Eruwa	Agriculture	Brahdali Integrated Ranches	Eruwa	₦75,000,000.00
8	Ministry of Public Works	Aviation Fuel Facilities at Ibadan Airport	Transportation	Bovas & Company LTD	Ibadan	₦1,207,678,540.38
9	Ministry of Health	Radiotherapy Treatment Centre	Health	Advent Integrated Services Ltd	Ibadan	
10	Oyo State Housing Corporation	Ace Continental Estate, Samonda	Infrastructure	Zubali Logistics & Construction Ltd	Samonda, Ibadan	₦2,204,000,000.00
11	Ministry of Public Works	Transmotel, Iseyin	Social	Fadolla mega Apex limited	Iseyin	
12	Oyo State Housing Corporation	Samonda Business Complex	Infrastructure	Fort Capital	Ibadan	₦5,200,000,000.00
13	Ministry of Health	Health Matters	Health	Matrix Rex Limited	Ibadan	

Folami Said Olatilewa
Director-General (OYSIPA)
27th December, 2023

Data provided by OYSG on the 4 projects in the PPP project pipeline does not include clear requirements for VGF and FCCL. The projects are currently at early stages of preparation.

1.2 Elements of the FCCL Framework

The FCCL assessment for PPPs, which underpins the FCCL Framework, is a tool to assess:

- Affordability from the perspective of the Government
- Project risk and the impact of FCCL on the fiscus

- Value for Money (VfM) compared to traditional procurement

The FCCL Framework is divided into Two (2) main sections:

i **FCCL Guidelines**: which provide a detailed description of fiscal liabilities arising from the execution of PPP agreements. It presents how they should be managed through the project life cycle in accordance with the legal, institutional and regulatory framework; and

ii **FCCL Technical Guidance**: which presents the methodologies for measuring and valuing direct and contingent liabilities. It describes how they are applied in the Medium-Term Expenditure Framework (MTEF) Tool which has been developed to monitor these liabilities.

In addition to the framework, an excel-based tool (the Medium-Term Expenditure Framework Tool or MTEF Tool) and its user manual (the MTEF Tool Manual) have been developed to assist in the identification, assessment and monitoring of FCCL arising from the PPP projects. It is to be used in conjunction with the FCCL Framework.

2 FCCL Guidelines

2.1.1 Introduction

The objective of the FCCL Framework is to provide a methodological approach for public officials of the Oyo Investment Promotion Agency (OYSIPA), Oyo State Ministry of Finance (OYSMOF), Fiscal Responsibility Commission (FRC), Debt Management Department (DMD) and the Contracting Authorities (CA), to assess and manage FCCL arising from PPP projects.

2.1.2 *Current regulatory framework*

This section summarizes the existing regulatory framework for PPPs and PFM in Oyo State and its impact on developing the FCCL Guidelines. As per consultation with OYSG stakeholders the current practices with respect to FCCL are limited to recording payment obligations and do not cover Contingent Liabilities (CL). The stakeholders do not have significant experience addressing and accounting for FCCL for PPP projects.

2.1.2.1 Oyo State Fiscal Responsibility Law (FRL)

The FRC, established under the ambit of the FRL, is an agency mandated to provide standards for the efficient allocation and management of public expenditure, revenue collection, debt control, and transparency in fiscal matters. The FRL defines the procedure for the preparation and approval of the Medium-Term Expenditure Framework (MTEF) for Oyo State, a framework that outlines the expenditure plan for the State Government over three financial years. The MTEF contains the Macro Economic Framework, the Fiscal Strategy Paper, and the Expenditure and Revenue framework.

As stipulated in the FRL, the MTEF must also contain:

- A Debt Statement which describes the fiscal debt liability of OYSG
- A Statement describing the nature and fiscal significance of contingent liabilities and measures to minimize/ mitigate such liabilities.

The FCCL framework will have to comply with the requirements of the MTEF to ensure adherence to the provisions of the FRL.

2.1.2.2 Debt Management Law (DML)

The DML deals with both domestic and external debt; section 4 of the DML provides for the establishment of the Debt Management Department (DMD), as a body corporate which is entrusted with:

- Maintaining databases of loans and loan guarantees
- Verifying and servicing external debt guaranteed. This is done in conjunction with the Federal Debt Management Office (FDMO)
- Verifying and servicing debt directly taken by the OYSG. This is done in conjunction with, the State Accountant-General (AG)
- Liaison with International Financial Institutions (IFIs) and Donor Agencies.

The functions of the DMD particularly as they relate to guarantees, will require all PPP projects to go through a vetting process by the DMD. The FCCL will also be included in the DMD database.

2.1.2.3 Oyo State Public Finances (Control and Management) Law (PFML), *2016*

The PFML is focused on ensuring proper accountability for use of government monies but has no specific provisions at present with respect to FCCL. Its potential impact on FCCL will revolve around the government's decision to budget for/create a special fund for contingent liabilities arising from PPPs

2.1.2.4 Oyo State Public Procurement Law (OYSPPL),

While there are no specific provisions with respect to FCCL, the functions of the Oyo State Public Procurement Authority (OYSIPPA), as expressed in Section 13(f) and (k) include the issuance of a Certificate of No Objection for contract award in respect of all public procurements (the law does not specify whether PPPs are exempted from its purview), as well as to prepare and update standard tender and contract documents. Though the relevant CA would execute the contract and act as contractual counter-party, the PPP Manual prescribes that representatives of OYSIPPA are included in the tender committees for procurement of PPP projects.

2.1.2.5 PPP Policy,

Based on the requirements in the PPP Policy, OYSIPA and the relevant Ministries, Departments and Agencies (MDAs) are expected to review different aspects of a PPP project during preparation and procurement stages, including the review of contingent liabilities.

2.1.2.6 PPP Manual,

The PPP Manual provides for checklists of the assessment and management of PPP projects throughout the project process cycle. The Government's FC to a project must be determined by the affordability to make such commitments. Therefore, the FCCL framework will be impacted by the affordability and VfM assessment processes at the project preparation stage.

The Concession Agreement Checklist in the PPP Manual includes an item for "Contingent Liabilities of the MDA". This alerts the MDAs on the need to assess, quantify, document, and prepare for the contingent liabilities in a project, before signing a contract. The FCCL framework will need to align with this approach of pre-contract assessment of contingent liabilities by MDAs.

2.1.2.7 OYSIPA Law,

The Law entrusts investment promotion and facilitation responsibilities to OYSIPA but it does not vest any powers on the Agency to assume fiscal risks or liabilities on behalf of the Government. Functions assigned to OYSIPA, to "perform such other functions as the Governor may from time to time directs", could, however, enable it to do such things as subscribing to equity in a PPP project company and thereby assuming certain risks that may impact the FCCL framework.

The OYSIPA Law is currently under review. The draft review report recommends that the role of project preparation, VfM analysis and assessment of risks for a PPP project be segregated from the approval/authorization of fiscal risks and liabilities. The review report suggests that the

OYSMOF's risk unit should undertake the role of confirming risk transfers in VfM analyses, including analysis of contingent liabilities.

2.1.3 Application of FCCL framework

The FCCL Framework will be mandatory for all PPP projects submitted for consideration and approval by the OYSIPA Board (or the PPP Unit established under OYSIPA) All PPP projects executed before this date will also be reviewed for FCCL by OYSG for the purpose of collecting

2.2 PPP Fiscal Liabilities and Risks

While PPPs can offer a range of benefits both qualitative and quantitative, they have fiscal implications. PPPs are not "cost free" to a government. Although PPPs are viewed as means of leveraging financial resources from the private sector, the government assumes FC over the life of the contract as set out under the PPP agreement.

2.2.1 Public liabilities under PPP

Under a PPP arrangement, the Government almost always bears some risk which can take the form of support that gives rise to an on-going **Fiscal Commitment** (FC) - either a CL or an actual direct liability.

- A **Direct Liability** takes the form of a defined and quantified undertaking to pay or carry a funding obligation for a feature, phase or item in a PPP project essential to its development, operation and/or completion. Its salient characteristic is that the occurrence of the payment obligation is known, although uncertainty may remain as to the size. Examples of such direct liabilities include: (i) Supplying the land needed for the project; (ii) Upfront "viability funding gap" payments, in which the government makes a capital contribution to ensure a project that is economically desirable but commercially unattractive can proceed; and (iii) Annuity or availability payments in which a regular unitary payment over the life of a project is conditional on the availability of the service, etc.

- A **Contingent Liability (CL)** is an obligation that arises from a particular discrete but uncertain future event (i.e. one that may or may not occur) that is outside the control of the government. For CL, the occurrence (trigger event), value, and timing of a payment may all be unknown or cannot be definitively determined. Such liabilities include guarantees on specific risk variables e.g. exchange rate, inflation, prices and traffic, force majeure, termination payments and credit guarantees, **inter alia**.

Most FCs are explicitly specified in PPP agreements. However, FCs can also come from **implicit sources**. For example, a letter of support for a specific project may be considered a type of guarantee for some stakeholders. Also, political or socially sensitive projects may be expected to be rescued by government in the event of financial distress.

Additionally, increase of existing obligations or creation of new obligations may arise from contract adjustments and renegotiations. They may, for example, significantly modify the costs of the projects and the payments to be made by Government. Such variations would fall under the purview of the DMD as contemplated by the DML.

Even though Direct Liabilities are often considered more predictable than Contingent Liabilities, there can also be some uncertainty with respect to certain components. For example, the project agreement of a toll road project may include a service payment defined as an Annual payment to be made by the government to the concessionaire based on the availability indicators set out in the agreement. This service payment can change due to a change in several factors - inflation, exchange rate, local interest rate, change of scope, increase of road size, and other components – which may lead to change in the amount and/or timing of payments. Hence, direct liabilities can also carry a significant amount of uncertainty.

***Table 2-1: Illustrative Public Liabilities in a PPP Scheme**

Type of FCCL	Examples	Illustrative examples
Direct - Explicit Liabilities / FCs	• Up-front commitments such as contribution to capital investment, land acquisition costs, etc.	• In many of the Nigeria Port Concession contracts, the Nigeria Ports Authority (NPA) has a commitment of capital dredging to specific depths and then maintenance dredging onwards • For medical warehouses in Abuja and Oshodi, Lagos, implemented on PPP, the Federal Ministry of Health, the grantor, is responsible for heavy maintenance and repairs, whereas the operator is responsible for recurring maintenance
	• On-going commitments such as availability payments, output based subsidies, operational subsidies, and capital subsidy obligations	• Nairobi – Nakuru – Mau Summit Highway project in Kenya, where the highway authority is committed to providing quarterly availability payments to the Concessionaire. The highway authority will finance the availability payments through tolls collected by a separate toll operator. The concessionaire will expand and rehabilitate the road sections based on output specifications and adhere to defined performance standards during the O&M phase over the course of the concession term.

Contingent Liabilities (CLs) / Fiscal Risks	• State guarantees on project loans, minimum levels of demand / revenue guarantees, exchange rate risks, put call option agreements (PCOA), etc. •	• Nairobi – Nakuru – Mau Summit Highway project in Kenya, where the Central Bank of Kenya is providing exchange rate support and a major multilateral development bank is extending a partial payment risk guarantee to cover two quarterly availability payments in case of default by the highway authority. • The Azura power IPP in Nigeria had a put & call option agreement (PCOA)
	• Termination payment in case of concessionaire default, contracting authority default, or force majeure	
Indirect - Implicit Liabilities	• Implicit liabilities that are not explicit because they are not expressed and defined contractually but they are, nonetheless expected to be the	• Nairobi – Nakuru – Mau Summit Highway project in Kenya, where the Government of Kenya is providing a letter of support to the concessionaire
	responsibility of government. Perhaps the most obvious and often overlooked liability is the implicit guarantee from governments that ultimately underwrites all public infrastructure and services.	in case of default by the highway authority (Contracting Authority). • For medical warehouses in Abuja and Oshodi, Lagos, implemented on a PPP, the Federal Ministry of Health, the grantor guaranteed a minimum occupancy of the warehouse. If occupancy fell below this level, the operator was allowed to increase tariffs.

2.2.2 Other fiscal risks

Fiscal risks are factors that cause fiscal outcomes to deviate from expectations or forecasts. They arise from the occurrence of an uncertain event and from the realization of macroeconomic shocks, or other unpredictable variables that trigger CL obligations. Hence, CLs are by definition fiscal risks. Direct liabilities may be subject to fiscal risks when they may change because of uncertain parameters. Within the context of PPP agreements, other sources of fiscal risks than those embedded in direct or contingent liabilities merit attention.

Other sources of fiscal risks are those channeled through provisions – controlled by the government– of the PPP agreement. For example, an extension of the project scope – allowed in the PPP agreement and subject to government's consent – that modifies the costs of the project to the government. Other sources of fiscal risk are outside the scope of liabilities to be paid by the government to the private partners. For instance, a reduction of user-based revenues used by the government to fund a project. This reduction does not affect the government's liabilities to the concessionaire (that may be fixed and independent of user-revenues performance) but it does have a fiscal impact.

Uncertainty, or more precisely, unpredictable outcomes is what will make the estimation and management of FCs more challenging.

Table 2-2: Examples of FCCL in PPP

Type of Project	Fiscal Commitment Contingent Liabilities

		Payment and Termination	Other Fiscal Risks
Toll road	• Upfront capital subsidy • Service payment adjusted by macroeconomic parameters and contingent events	• Revenue or traffic guarantee • Termination payment in case of concessionaire or contracting authority default, or force majeure.	• Change of scope that modifies the service payment. • Compensation for imposed decrease in toll rates due to social unrest
Roads Annuity Prog ram	• Availability payment adjusted by macroeconomic parameters and contingent events	• Termination payment in case of concessionaire or contracting authority default, or force majeure.	• Disputes on land acquisition or resettlement • Change of scope or governance
Hydroelectric Dam Power Plant	• Viability Gap Funding	• Take or pay commitment from public utility • Termination payment	• Change in hydrological conditions • Renegotiation
Type of Project	**Fiscal Commitment**	**Contingent Liabilities**	
		Payment and Termination	**Other Fiscal Risks**
Students' accommodation	• Availability payments	• Guarantee on occupation • Termination payment	• Change in university governance

Overall, it is important to note that Government commitments to PPPs are materially different to Government's public debt and require a different management approach. When a Government borrows, it uses the borrowed funds and the Government is obliged to repay the debt regardless of how well the borrowed funds are used. Government liabilities to PPPs are non/limited recourse in nature, structured as performance-based payments for services delivered and/or assets/infrastructure developed/made available for use.

2.3 FCCL Management

2.3.1 Structure of FCCL Management

Managing and controlling liabilities takes place in all phases of PPP development, approval, and implementation processes. Figure 2-1 describes the PPP Project Planning and Budgeting, Procurement and Approval Process Cycle lifecycle as per PPP Manual, and Figure 2-2 describes the management of FCCL at development and implementation stages of a PPP project. The functions to be undertaken are shown in the context of the broader PPP project development and implementation process

At the project development stage, from project identification up to contract execution, the assessment and required approvals of the project FCCL are carried out by:

- Initial assessment during project preparation stage, through feasibility studies including project risks analysis and finance structuring
- Approval of initially assessed FCCL by the required institutions as described in the following chapter
- Updated assessment during procurement (i.e. prior to PPP agreement signature) taking in account variance based on the CA's assessment and bids received private partner
- Checking accurate representation of FCCL in the final version of the project agreement Section 3.2 provides technical guidance on FCCL management during project development stage.

During the project implementation stage, monitoring and recording of FCCL are made through annual budget documents that need to provide systematic disclosure of key fiscal risks and indications of potential impacts. Section 3.3 provides technical guidance on FCCL monitoring and reporting.

2.3.2 Institutional Framework for FCCL Management

While the primary FCCL oversight is role assigned to the FRC, the general governance and institutional framework, including the specific functions that need to be undertaken to manage direct and contingent liabilities during the PPP project lifecycle, is shared as follows:

Function	Objectives	Role/ Responsibility
Preparing	To develop a project design that will be bankable and ensure that the risks the government will bear are consistent with good risk allocation principles, borne at the lowest cost and with minimal fiscal impact.	**Contracting Authorities / OYSIPA:** Project feasibility analysis and implementation plans.
Analyzing	To inform decision making when the project is structured and approved, and provide a basis for monitoring and budgeting for liabilities.	**Contracting Authorities / OYSIPA / Project Delivery Team (PDT)** Fiscal risk assessments and other tools for analyzing liabilities.
Approving	To ensure the use of government resources (which take the form of liabilities) are: focused on policy priorities; represent value for money; and are consistent with good fiscal management.	**OYSIPA Board / ExCo** Centralized approval to ensure that PPPs are focused on the government's policy priorities, represents value for money, and are consistent with good fiscal management. **Planning and Budget Commission (P&BC), DMD, MoF** Allocated the overall responsibility of approving the FCs and contingent liabilities before submission to the PPP Committee for approval.
Accepting	To clarify the government's commitment to its liabilities (i.e.	**Contracting Authorities, OYSIPA, DMD, MoF, MoJ:**

Function	Objectives	Role/ Responsibility
	financial obligations), and to ensure the executed contract is consistent with earlier analysis and approval	Involves the government executing formal instruments such as project agreements, issuing letters of support or performance undertakings with the purpose of guaranteeing that they will honour its obligations and commitments.
Monitoring	To provide information needed to disclose, act on emerging issues and, if necessary, budget for liabilities	**Contracting Authorities, DMD, P&BC, OYSIPA:** To help government track its exposure to fiscal risks from year to year, and improve its ability to take action to reduce the cost and/or likelihood of an event triggering a payment.
Budgeting and paying	To ensure resources are available to make payments promptly when required, improving credibility and clarity as to how costs of liabilities will be borne, and mitigating the fiscal impact.	**Contracting Authorities, P&BC, MoF, DMD:** Establish a well-defined system for budgeting and paying for liabilities will ensure the government has the resources available to meet its obligations and mitigate the fiscal or budgetary impact of contingent liabilities.
Disclosing	To improve accountability for decision makers, and increase transparency of the government's commitments to third parties (such as credit agencies and lenders).	**FRC, DMD, OYSIPA, P&BC:** Reporting on exposure to liabilities through the budget and government accounts to increase transparency and improve the accuracy and completeness of information available to external parties.
Mitigating	To help reduce the cost to government of bearing contingent liabilities by reducing the likelihood or cost of the occurrence of those liabilities.	**Contracting Authorities, MoF, DMD, OYSIPA, P&BC, FRC:** Continuous monitoring of exposure to contingent liabilities from PPP projects, and actively managing that exposure where possible, by identifying and taking action on emerging issues.

An adequate identification and assessment of FCs and risks during the project development stage will allow the government to be well informed when it makes decisions regarding the financial structure, risk allocation, and approval of the project.

3 FCCL Technical Guide

3.1 Overview

The purpose of the technical guidance is to

- Develop an analytical process to identify, assess and monitor FCCL during the project life cycle of PPP projects
- Detail a methodology for implementing the tools involved in the management of FCCL including pre-formatted tools for the identification and quantification of FCCL.

3.2 FCCL Management during project development stage

The project development stage covers all the steps taken to design, prepare and procure a PPP project. The FCCL framework includes: (i) the identification and assessment of FCs and risks, and (ii) the assessment of affordability. Both activities will help authorities to take well-informed decisions over the project.

This section sets out:

- The identification and evaluation of PPP fiscal risks through the PFRM and Project Fiscal Risk Register (PFRR)
- The calculation of FCCL through the FCCL Register and Affordability.

3.2.1 Identification and evaluation of PPP fiscal risks through the PFRM

Risk allocation is a centerpiece of structuring a PPP agreement. The basic principle is that each risk should be allocated to the party best able to manage it. Risks may be allocated to one party or shared in a specified way.

During the preparation of a PPP project, the assessment and allocation of project risks should be completed. The CA (or the Transaction Advisors appointed for the project by the CA or OYSIPA as the case may be) should create a risk matrix and a risk register, documenting the evaluation of the likelihood and impact of each risk at the OBC stage. These should be periodically assessed by the CA.

3.2.1.1 Rationale

Assessing the fiscal implications of a PPP agreement involves the identification and allocation of risks of the project, definition of payment mechanism, and determination of the other financial obligations and rights of parties. In practice, the base information needed shall be found in the risk analysis and risk matrix within the relevant feasibility studies. For active projects, these would be determined based on a review of project agreements, letters of support, guarantee instruments, and other relevant project documentation.

PPP project agreements, letters of support and other forms of explicit government support provide the baseline information on FCCL arising from PPP projects. They contain the core financial provisions, namely: the payment mechanism and allowed adjustments to availability payments; tariff-based payments; guarantees and trigger conditions; and termination payments.

However, the project documentation may not explicitly contain all risks and therefore their fiscal impact not fully understood. For instance, a government may take revenue risk and pay to the concessionaire an availability payment. In this case, the contract provides the terms of the availability payment yet does not set out the effects of, for instance, real demand falling below expectations. Hence, the risk matrix complements the contract agreement in identifying FCs and fiscal risks.

In addition, fiscal risks may also result from risks not identified or not clearly allocated in the contract. The most obvious is the risk that the private partner does not have the managerial capacity to implement the project or face the stipulated risks, culminating in its bankruptcy and potentially the failure of the project. Project finance solutions, with limited or no recourse to the assets of the borrower, require a careful assessment of the capital and private-sector guarantees needed for sound project execution to spread the risk among multiple investors, insurers, and diverse financial entities.

Changes to the project and the contract, especially if not triggered by the private partner, can generate a fiscal risk. When negotiating and agreeing to such changes, the private partner always has greater leverage than the CA as the project incumbent. The two most common sources for such changes are as follows:

- Fiscal costs related to changes in scope or policy changes introduced by government during the term of the contract. Typical examples for this are: (1) transferring some cost overruns to the government when the government asks for changes in project design, or (2) renegotiating the contract when the government decides to change the user-fee structure in response to lower-than-expected demand. It is key to understand the FCCL impact of such government-initiated changes on PPPs and conduct the cost-benefit analysis of initiating such changes in this context.
- Fiscal costs triggered by exogenous changes resulting, for example, from technological improvements, demographic movements, or changes in consumers' preferences. It is crucial for the government to manage the consequences of exogenous changes in a continuous and proactive manner to mitigate the impact on projects and provide solutions to challenges.

The objective of the **Project Fiscal Risk Matrix** is to support the **identification, assessment, and mitigation of common fiscal risks from each specific PPP project**. The PFRM, which is prepared on a project-by project basis, is a tool to formalize the evaluator's assessment of the various fiscal risks of a project, including those specified and unspecified in the contract. The overall assessment of fiscal risks of a PPP project follows a six-step approach as illustrated in Figure 3-1.

The PFRM should be prepared as per the provisions of this Section 3.2.1.

Figure 3-1: Assessment of Fiscal Risks

3.2.1.2 Approach to PFRM

a. Identification of Fiscal Risks (and Allocation)

The identification of fiscal risks focuses on those risks that may have significant fiscal implications.

In doing so, it looks into both contractual risks and other risks not allocated directly by contract (for example, risks arising from the governance structure, legal framework, or government institutional capacity). It does not assess all of the potential risks that can arise during the project cycle

Based on the World Bank's PPP Fiscal Risk Assessment Model (PFRAM 2.0) instrument, 11 major categories of risks and 40 subcategories are to be captured in the PFRR. The main risk categories, as well as the subcategories included in PFRAM 2.0, are presented in Table 3-1. 3.3.3Appendix A presents a detailed illustration of risks and sub-risks. Appendix B provides a detailed questionnaire as to how these risks should be assessed by a CA (or Transaction Advisor appointed for the project).

Table 3-1: Risk Categories

Main Risk Category	Number of Risks Sub-Categories
1 Governance Risks	3 detailed risks
2 Construction Risks	11 detailed risks
3 Demand Risks	7 detailed risks
4 Operation & Performance Risks	6 detailed risks
5 Financial Risks	4 detailed risks
6 Force Majeure Risks	No Subcategories
7 Material Adverse Government Actions (MAGA)	No subcategories
8 Change in Law	No Subcategories
9 Rebalancing of Financial Equilibrium	3 detailed risks
10 Renegotiation Risks	No Subcategories
11 Contract Termination Risks	2 detailed risks

Source: PFRAM 2.0 User Manual

At the early stage of the project design, and when preparing the draft contract, it is recommended that CAs:

- Review the major risk categories
- Identify the important fiscal risks from the project that should be covered in the PPP agreement or the legal framework
- Starts establishing the PFRR illustrated in Table 3-2. **Table 3-2: Project Fiscal Risk Register**

Risk Identification		Allocation	Likelihood	Fiscal Impact		Rating	Mitigation
Category	*Event type*	*Govt/Private/ Shared*	*Probability of Occurrence*	*Base Costs*	*Cost of Occurrence*		*Measures and costs*
Governance	Risk A						
	Risk B						
Construction	Risk A						
	Risk B						
	Risk C						

Demand	Risk A						
Operation	Risk A						
	Risk B						

Risk Allocation

As stated above (section 3.2.1.1), risk allocation is at the heart of PPP structuring. Risks may be allocated to either the Government or the private partner or shared. The more the risk is borne by the private partner, the less its occurrence will impact the Government purse. In its project risk assessment, the evaluator (CA or Transaction Advisor) should primarily focus on those borne by the Government or shared.

c. Assessment of Likelihood of Risks

After identifying the relevant risks for a PPP project, the evaluator shall assess the likelihood of such risks materializing in the future.

Initially, it is sufficient to identify whether the likelihood is low, medium, or high. A number of factors can help determine the likelihood. For example, the logic illustrated in

Table 3-3 could be used as a reference.

Table 3-3: Risk Likelihood Assessment

	Low	Medium	High
Likelihood	• Very unlikely but not negligible • Would require highly unusual circumstances	• Likely and possible • Not unprecedented	• Very likely, almost certain • Extensive precedents

Source: PFRAM 2.0 User Manual

In case the risk rating is high, and it's further assessment is a priority in accordance with the project heat map (Table 3-5), the probability of occurrence may need to be determined for the purpose of contingent liabilities monitoring (section 3.2.2.1).

c. Estimation of Fiscal Impact of Risks

Evidently, the most critical output when looking at FCCL is the cost of risk occurrence. It is also the most difficult to predict as most fiscal risks could have varying impact depending on how they materialize.

Firstly, the Project Officer (PO) / Accounting Officer (AO)[2] should evaluate the potential fiscal impact of a particular risk in a holistic manner from a qualitative perspective, providing as much information as possible to support the assessment of low, medium, or high.

For instance, this qualitative assessment could be made by comparison with the state GDP or with the project costs. The fiscal implications of governance risk materializing would be reflected also in terms of the government's loss of reputation, efficiency, availability, and transparency.

d. Determination of Risk Rating

The qualitative likelihood and fiscal impact are put together to estimate the overall risk rating (typically called the *severity of the risk*). This is done by combining the likelihood and fiscal impact, as show in Table 3-5. Risks assessed as having a high likelihood and a high fiscal impact, would be regarded as "critical". A "high" risk rating would be the result of a high likelihood and a medium fiscal impact, as well as a medium likelihood and a high fiscal impact.

Table 3-5: Example of Heat Map based on Risk Rating

Risk Rating = Likelihood x Fiscal Impact				
Fiscal Impact	High	Medium	High	Critical
	Medium	Low	Medium	High
	Low	Irrelevant	Low	Medium
		LOW	MEDIUM	HIGH
			Likelihood	

Source: PFRAM 2.0 User Manual

e. Identification of mitigation strategy

Possible mitigation measures vary with the risks. 3.3.3Appendix A presents a detailed illustration of risks, sub-risks and typical mitigation measures for each of the subcategories. These suggestions are not meant to be exhaustive; they represent typical mitigation measures based on international good practices.

For risks, the severity of which are rated high or critical, mitigation measures should be considered, and associated costs assessed.

f. Determination of priority actions

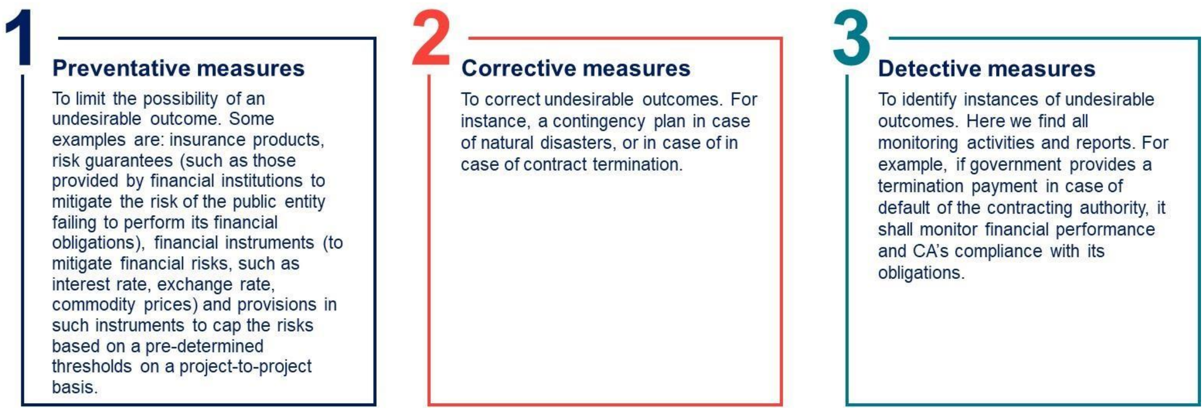
Based on the risk rating and the mitigation measures, an assessment of the priority of the required actions is to be undertaken as demonstrated in Table 3-6. The more severe risks - those with a high rating - should be addressed first. Risks rated as critical, paired with no mitigation measures in place, would result in the need to implement a "critical" priority action; the priority would be considered a "high priority" if mitigation measures exist. Addressing the less important risks, even if they are an easy fix, does not improve the overall risk profile of the project and does not reduce the risk for the government

Table 3-6: Prioritization of Risk Mitigation Measures

Priority Action = Risk rating x Mitigation measure						
Mitigation Measure	NO	No Action	Medium priority	High priority	High Priority	Critical
	YES	No Action	Low Priority	Medium priority	Medium priority	High priority
		Irrelevant	Low	Medium	High	Critical
		Risk Rating				

Source: PFRAM 2.0 User Manual

Depending on the stage of the project cycle, risks identified as areas for priority actions can be addressed as follows: (i) by changing the design of the project to avoid the risk—this is only relevant before the PPP is contracted; (ii) by introducing additional mitigation measures; or (iii) by creating fiscal space to absorb the potential fiscal cost if the risk materializes.



With respect to mitigation, the following are some suggested types of mitigation measures by the Government:

- *Preventive measures*: To limit the possibility of an undesirable outcome. Some examples are: insurance products, risk guarantees (such as those provided by financial institutions to mitigate the risk of the public entity failing to perform its financial obligations), financial instruments (to mitigate financial risks, such as interest rate, exchange rate, commodity prices) and provisions in such instruments to cap the risks based on a pre-determined thresholds on a project-to-project basis.

- *Corrective measures*: To correct undesirable outcomes. For instance, a contingency plan in case of natural disasters, or in case of contract termination.

- *Detective measures*: To identify instances of undesirable outcomes. Here we find all monitoring activities and reports. For example, if government provides a termination payment in case of default of the contracting authority, it shall monitor financial performance and CA's compliance with its obligations.

For each project, the compilation of the qualitative assessment of the identified fiscal risks constitute the PFRM which will provide for a heat map for the monitoring of fiscal risks during the project life cycle.

Table 3-7: Project Fiscal Risk Matrix

Risk identification	Likelihood	Fiscal Impact	Risk Rating likelihood Impact	Mitigation strategy is it in place?	Priority Actions	Suggested Mitigation Strategy
Governance Risks	Low	Medium	Low	No	Medium Priority	
Construction Risks	Medium	High	High	Yes	Medium Priority	
Demand Risks	Medium	Low	Low	No	Medium Priority	
Operational and Performance risks	Low	Low	Irrelevant	Yes	No action	
Financial risks	Medium	Medium	Medium	No	High Priority	
Force Majeure	Low	Low	Irrelevant	Yes	No action	
Material adverse government actions	Medium	Medium	Medium	No	High Priority	
Risk identification	Likelihood	Fiscal Impact	Risk Rating likelihood Impact	Mitigation strategy is it in place?	Priority actions	Suggested Mitigation Strategy
Change in law	Medium	High	High	No	Critical	
Rebalancing of financial equilibrium	High	Medium	High	Yes	High Priority	
Renegotiation	High	Low	Medium	Yes	Medium Priority	
Contact termination	Medium	Medium	Medium	Yes	Medium Priority	

Source: PFRAM 2.0 User Manual

The PFRM should be reviewed annually and each time an event changes the project risk profile, and the PFRR be filled in accordingly for all medium, critical and high priority risks.

3.2.2 FCCL Register and Affordability

3.2.2.1 FCCL register and calculation

As discussed in section 2.2, FCCL comprise direct and contingent financial liabilities. The direct liabilities include **Upfront payment, VGF, Construction or operation subsidies, and Availability payments**.

The universe of Contingent Liabilities is in essence more diverse but primarily include:

1) Any guarantee, insurance or financial support provided by the CA or any other public entities to ensure either

    a. a minimum level of revenues to the private partner: **Revenue Guarantee**, or

    b. the interest, fees or repayment due by the private partner under the terms of the financing products (Debt, Bonds, Guarantees) arranged for the project financing: **Debt Guarantee**

2) Any payment due to the private partner by the CA in case of termination of the PPP agreement before its terms: **Termination payment**. It shall be noted that Termination payment depends upon the cause of early termination, which comprise: private partner default, force majeure, contracting authority default, or termination for convenience.

3) Contingent liabilities arising from the occurrence of **other fiscal risks** as identified in the PFRR.

Based on the PFRR, the evaluator will quantify the contingent liabilities arising from the occurrence of a fiscal risk identified in the PFRM and analyzed the PFRR. This quantitative assessment shall be done in accordance with the priority actions determined on the project heat map and address the risks which have been qualified as critical or requiring high priority monitoring.

All direct and indirect liabilities shall be consolidated in the following FCCL Register (refer Table 3-8). The FCCL Register contains the type of liability, description of adjustment factors and trigger events, and the location (which will depend on the stage of the project).

Table 3-8: FCCL register

Fiscal Commitment	Type of Fiscal Commitment/definition	Adjustment Factors/Trigger events	Location
	Project X		
Payment 1	**Direct** Explain payment concept, periodicity, and form of calculation	Detail adjustment factors and trigger events if apply	Specific location where this information was taken (Feasibility Study, PPP Contract, Letter of Support, etc.) -
Payment 2	**Contingent** Explain payment concept, periodicity, and form of calculation		
Payment 3	-	-	-

Source:

Table 3-9 provides guidelines on what measures and methodologies to use for the assessment of typical FCCL.

Table 3-9: Methodologies for Assessment of FCCL

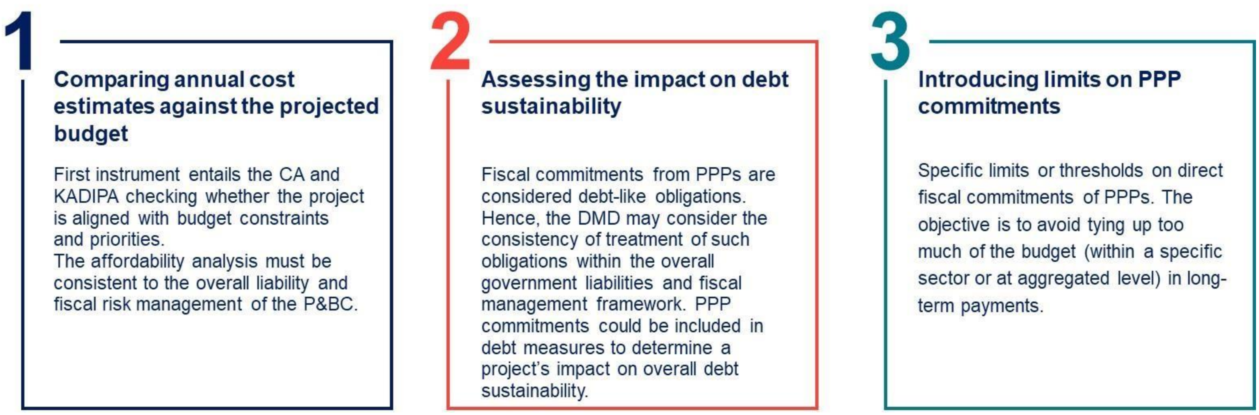
FCCL	Estimate	Function of Available Information
Direct Liabilities		
Upfront payment Availability payment	- Annual cost over life of project	- Base Case

Availability payment adjusted permanently by macroeconomic parameters Availability payment adjusted by contingent events	- Present value of payment stream for the period of agreement	- Scenario analysis - Qualitative analysis of likelihood of reaching trigger values - Probability of occurrence
Contingent liabilities		
Revenue guarantee Debt guarantee Guarantee over annual payment by stateowned enterprise, local or subnational government	- Estimated annual cost over life of project - Estimated present value of payment stream for the period of agreement - Maximum value	- Scenario analysis - Qualitative analysis of likelihood of reaching trigger values - Probability of occurrence
Termination payment Other fiscal risks		

Source:

3.2.2.2 Assessment of Affordability

With the estimations of fiscal costs, the government must now check if the project is affordable. This should be undertaken as part of the OBC preparation under Step 7 as illustrated in the Figure 2-1: PPP Project Planning and Budgeting, Procurement and Approval Process Cycle



The three common instruments used to check affordability are:

(1) Comparing Annual Cost Estimates against the Projected Budget;

(2) Assessing the impact on Debt Sustainability; and

(3) Introducing limits on PPP commitments.

The first instrument entails the CA and OYSIPA checking whether the project is aligned with budget constraints and priorities. Verifying that the FCs are affordable within the budget is the primary step. This is achieved by assessing if the commitments allow the CA to achieve their fiscal targets or surplus i.e. does the CA's Annual Budget Allocation accommodate the cost of FCCL.

It must be noted that this step needs to be done in line with the overall PPP framework, i.e. verification that the FC estimations allow for positive social benefits (pass the cost-benefit analysis). Also, the affordability analysis must be consistent to the overall liability and fiscal risk management of the P&BC.

FCs from PPPs are considered debt-like obligations. Hence, the DMD may consider the consistency of treatment of such obligations within the overall government liabilities and fiscal management framework. PPP commitments could be included in debt measures to determine a project's impact on overall debt sustainability.

Finally, some governments adopt specific limits or thresholds on direct FCs of PPPs. The objective is to avoid tying up too much of the budget (within a specific sector or at aggregated level) in long-term payments. At this point, however, such limits are usually not needed in the early stages of PPP programs, such as the case of OYSG. This could be developed later as the magnitude and potential of the program becomes clear.

Table 3-10 presents the affordability indicators proposed in this framework.

Table 3-10: Affordability Indicators

FC	Cost	Indicator of Fiscal Affordability (Including projections over PPP contract length beyond Medium-Term Horizon)
Direct liabilities	- Estimated Annual Payments - NPV	- Cost as percentage of Ministry Or Sector Agency, and National Annual Revenue / Deficit-Surplus Budget - Cost as percentage of sub-national public debt - Cost as percentage of GDP
FC	**Cost**	**Indicator of Fiscal Affordability (Including projections over PPP contract length beyond Medium-Term Horizon)**
Guarantees	- Estimated Annual Payment, or expected Average Payment - NPV (Base/Downside cases)	- Cost as percentage of ministry Or Sector Agency, and National Annual Revenue / Deficit-Surplus Budget - Cost as percentage of contingency line - Cost as percentage of public debt - Cost as percentage of GDP
Termination payment	- Estimated worst-case payment or expected average payment - NPV	- Cost as percentage of national budget - Cost as percentage of contingency line - Cost as percentage of GDP

Other fiscal risk	Estimated worst-case payment or expected average payment NPV (Base/Downside cases)	Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget Cost as percentage of contingency line Cost as percentage of GDP

Source:

3.3 FCCL Management during Project Implementation

3.3.1 Monitoring

Managing FCs entails monitoring, reporting and budgeting of PPP projects, both at individual project level and at portfolio program level. Adequate monitoring and disclosure of FCs and risks will allow the government to prevent undesirable events from occurring, mitigate their impact, and make informed decisions during the operation phase.

This stage will require gathering project financial parameters, risks and performance, and country macroeconomic information, and any other input that may affect fiscal commitments and fiscal risks. The objective will be to ensure that updated information is reported at the right time to the relevant gatekeeping entities, in line with the provisions of the FRL, 2016 and DML, 2015.

Each commitment or fiscal risks must have specific information, such as financial and accounting ratios and indicators, to monitor the evolution across the full term of the contract. Table 3-11 highlights what minimum information shall be collected and registered by the CAs in each PPP project:

Table 3-11: Monitoring Information: FCs and Fiscal Risks

FC	Required information / Periodicity	Entity who must send information	Obligation to submit information set at: (PPP Agreement, Letter of Support, etc.)	Follow-Up of Mitigation Activities of Risk Register
Project X				
Direct Liabilities				
Payment 1	-	-	-	-
Payment 2	-	-	-	-
Contingent Liabilities				
Payment 1	-	-	-	-
Payment 2	-	-	-	-
Other fiscal risks				
Risk A	-	-	-	-

3.3.2 Reporting and Disclosing

Reporting

A recent report Improving Transparency and Accountability in Public-Private Partnerships: Disclosure Diagnostic Report[3], Oyo State, Nigeria, examines the political, legal, and institutional environment for the disclosure of information on PPPs in Oyo State. It concludes that "the Freedom of Information (FOI) Act, 2011 and the Oyo Public Procurement Law, 2016 provide rights and guidance on access to information and an approach to commercially sensitive information, particularly as it pertains to the procurement phase. However, the PPP legal framework does not provide any guidance on PPP project information to be publicly disclosed. There is no disclosure/information policy that would guide this disclosure."

With respect to information dissemination, it purports that "Procurement information can be found via OYSIPPA's e-Procurement portal. OYSIPA's website contains general information on private sector investment opportunities, although there is no specific information about the current PPP pipeline and ongoing PPP projects. No PPP annual (or otherwise periodic) reports have been published. For PPP procurement information, there is no separate PPP procurement section on OYSIPPA's e-Procurement portal or on the Open Contracting Portal, and users cannot specifically search for or filter PPP procurement opportunities as a separate procurement type. More specific PPP information on OYSIPA's website would be useful to improve dissemination of PPP-related information."

Appendix C provides information on the current legal framework for disclosure and implications for PPP disclosure as summarised in the above study. Appendix D provides a summary of the recommended disclosures for PPP projects.

In line with the above, OYSG needs to **account for and report** on their FCs of PPP agreements. The FRC / Ministry of Finance shall keep a centralized register of FCs of PPP transactions at the national or sub-national level. Proper reporting incentivizes the government to scrutinize its own financial position. Also, making reports available to other parties, such as lenders, rating agencies, PPP stakeholders, and the public, enables them to make informed opinions on the government's PPP fiscal management and performance.

For internal and external transparency of the financial effects of PPPs on government's position, FCs shall be reported. Also, it is recommended that, given the FCs may have debt-like effects on public finances, they are subject to similar checks and limits to debt obligations.

Table 3-12 shows the suggested information to be reported on direct and contingent liabilities for each PPP project by CAs. Description shall include: description of the liability, estimate of the value of the liability, annual cost and present value (for direct liabilities), and maximum exposure (for contingent liabilities). This reporting shall be included in medium-term budget reports and debt strategy reports.

Disclosures

Specifically, the FRC shall publish information on all FCs and contingent liabilities as a section in the “Report on Public Debt, Guarantees and other Financial Liabilities”, as may be required under the FRL, (and the MTEF).

For public disclosure purposes, it is recommended to disclose the stream of annual payments and net present value of all payments of direct liabilities per project. It is also recommended to publish maximum exposure for those contingent liabilities which probability or occurrence is considered low (such as for instance termination payments). For the case of guarantees, it is recommended either: (1) to disclose the stream of annual payments and net present value of all payments per project if the information used for its estimation is reliable, or (2) maximum exposure of aggregated payments.

Table 3-12 shows a sample of reporting format to present direct and contingent liabilities by project.

Table 3-12: Reporting Sample of FCs by project

<table>
<tr><th rowspan="2">PPP project</th><th rowspan="2">Direct liabilities</th><th colspan="3">Annual payments value for 3-year budget</th><th>Present value of all payments</th></tr>
<tr><td>2019</td><td>2020</td><td>2021</td><td>2022</td></tr>
<tr><td>Project 1</td><td>- Annuity payment. Indexed quarterly by inflation.</td><td></td><td></td><td></td><td rowspan="2"></td></tr>
<tr><td>Project 2</td><td>- Annuity payment. Indexed quarterly by inflation.</td><td></td><td></td><td></td></tr>
<tr><th rowspan="2">PPP project</th><th rowspan="2">Contingent liabilities</th><th colspan="3">Estimated annual payments value for 3year budget</th><th>Present Value of Maximum exposure</th></tr>
<tr><td>2019</td><td>2020</td><td>2021</td><td>2022</td></tr>
<tr><td rowspan="2">Project 1</td><td>- Revenue Guarantee</td><td></td><td></td><td></td><td rowspan="3"></td></tr>
<tr><td>- Termination payment In case of default of contracting authority</td><td colspan="3"></td></tr>
<tr><td>Project 2</td><td>- Termination payment In case of default of contracting authority</td><td colspan="3"></td></tr>
</table>

Source: …

It must be noted that estimations of liabilities (Table 3-11) and follow-up activities must be updated in an ongoing basis.

Estimates should be updated at least during the following project milestones:

- Approval of PPP project in the PPP project pipeline by the Executive Council (ExCo)
- Approval of Full Business Case (FBC) by ExCo

- After financial closure for PPP project
- During construction years (they are the riskiest years) on an annual basis
- During operation (checking on financial performance of firm) on an annual basis

3.3.3 Accounting

Fiscal responsibility is usually examined in relation to thresholds over government's liabilities and expenditures. It must be taken into account that adequate accounting and reporting tackle the perception bias that PPPs attract immediate private financing without increasing government spending and debt. Determining how PPP commitments are to be recognized is important as it defines whether such liabilities count toward debt management limits. International public-sector accounting standards, such as International Public Sector Accounting Standards (IPSAS) 32, and international government financial reporting and statistics guidelines, such as IMF's GFSM (2014), and IMF's Guide on Public Sector Debt Statistics (2013) provide a framework for accounting and statistics of PPP transactions.

IPSAS 32 defines when PPP assets and liabilities should be recognized, assuming government is following accrual accounting standards. Assets and liabilities appear in government's balance sheet, if: (1) the government controls or regulates the services the operators must provide through a PPP agreement, and (2) the government control any residual interest in the asset at the end of the contract. Under this framework, the assets provided by the concessionaire are recognized, as well as its correspondent liabilities, either if the assets are funded by users-tariffs or by government. Regarding contingent liabilities, IPSAS 19 states that the expected cost of a contingent obligation should be recognized only if: (1) it is more likely than not (50%) that the event will occur; and (2) the amount of the obligation can be measured with sufficient reliability.

Based on the understanding that OYSMOF is already accustomed to IPSAS, it is recommended that this framework be used for accounting for FCCL.

Appendix A PFRAM Risks and Mitigation Measures

RISK TYPE	DESCRIPTION	MITIGATION STRATEGY	RESPONSIBLE ENTITY
Failure to provide services in the manner agreed upon under the contract	The services provided by the private sector may not meet the required conditions or conform to the specifications issued by the governmental authority responsible for providing the service	Putting clear and accurate outputs of the specifications Monitoring the performance Imposing penal deductions from the payments released per unit/ for each unit separately	Private Sector Partner
Project completion risk	The completion of the project may be delayed due to construction delays, design issues, unforeseen events or funding complications	Providing special insurance coverage (against the delay in the project execution) Appointing an independent and specialized entity to approve the project completion Liquidating damage, construction warranties and other appropriate warranties provided by the private partner as incentives for project completion, unless the Federal Entity sponsoring the project is responsible for the delayed in completion	Private Sector Partner – unless delay is attributed to events of force majeure or the Federal Entity sponsoring the project
Exceeding scheduled cost	The actual costs of the project during phases of design and construction may exceed the expected costs of the project as per its feasibility studies	Drafting construction contracts with fixed prices Developing conditions relating to emergency plans	Private Sector Partner

		Providing alternate credit facilities / liabilities pertaining to rights of additional shares paid in advance and expected in the financial model of basic cases	
RISK TYPE	DESCRIPTION	MITIGATION STRATEGY	RESPONSIBLE ENTITY
Design-related risks	The design developed by the private partner may be inconsistent with the specifications of project outputs	Preparing clear specifications for the project outputs Defining the responsibilities for clear and latent defects Consulting the responsible Federal Entity and informing it of work progress Referring and appointing independent experts to settle the disputes promptly and effectively	Private Sector Partner
Environmental Risks	Consequences of the losses caused by environmental damage arising from: Works of construction The works performed by the Federal Entity or third party before transferring	Bidders must perform due diligence by conducting extensive studies on the project and conditions prevailing in worksite Taking the necessary corrective steps to handle the	Public and Private Sector Partner

	the responsibility for the project to this private partner	problems of environmental pollution identified	
Risks of force majeure or circumstances outside the reasonable control	Unforeseen events beyond the reasonable control of both parties may occur in a manner that would affect the activities of project construction or operation	Defining the force majeure properly that may be addressed through mechanisms such as taking the necessary relief events (relief events) Terminating the project due to the events of force majeure or circumstances beyond the reasonable control of both parties	Shared between Public and Private Sector Partners
Inflation Risks	Actual inflation rates may be greater than expected ones.	Link inflation indicators to payment calculations considering worst case scenarios as per WB or IMF projections. Add clause in PPP contract stating that payments should be reviewed in case inflation surpasses the forecasted rate by a certain percentage.	An agreement should be made between both the Public and Private Sector Partners on inflation of the agreed upon rates, and what so exceeds shall be afforded by the Private Partner

RISK TYPE	DESCRIPTION	MITIGATION STRATEGY	RESPONSIBLE ENTITY
Risks related to the cancellation of partnership or liquidation and dissolution of the private partner	The Private Company may be dissolved or liquidated	Establishing a unit with specific purposes to manage project cash flows/ liquidity Providing insurance cover and warranty for the project necessary assets Setting restrictions on the Private Sector partner regarding indebtedness and credit and finance restrictions Obligations of notification regarding the financial data and information and judicial lawsuit or dispute with creditors Replacing private partner by another new one by virtue of a direct agreement	Private Sector Partner
Risk of Insurances	Any risk insurable at the time of signing the project contract under agreed insurance cover may become uninsurable There is a significant increase	In the first case, and at the sole discretion of the Federal Entity, coverage shall be provided in the form of self-insurance submitted by the Federal Entity	If the Private Partner is the one who fails to provide insurance, they shall be held liable. Otherwise, risks shall be shared between partners

	in the rates of insurance premium	itself, or the PPP contract shall be terminated if it is not possible to provide insurance, like the termination due to events of force majeure and alike, subject to compensating the private partner.	
Interest Rate Risk	Factors that may affect the availability of financial credits and costs of finance	Providing means and tools of protection against financial losses (for example resorting to means of barter), borrowing at fixed interest rates or private sector to adopt suitable hedging strategy	Private Sector Partner
RISK TYPE	DESCRIPTION	MITIGATION STRATEGY	RESPONSIBLE ENTITY
Risk of Latent Defects	Losses or damage that may result from latent defects or deficiencies hidden in the fittings and facilities, including the project assets	Facilities must be designed and constructed by the private partner unless the project requires handing over the currently existing facilities to the private partner. In such case bidders must perform due diligence through conducting extensive studies and necessary inspection of facilities so that it be possible to detect	If the private partner assumes the works of design, it shall bear the consequences of the risk Otherwise, the sponsoring Federal Entity shall bear the same, provided that there is no insurance coverage sufficient to mitigate the consequences of such risk.

		shortcomings. As for the procedures and costs pertaining to the detected shortcomings, a prior agreement may be concluded with the Private Partner about them. The Private Partner should immediately report the detected defects	
Maintenance Risks	The maintenance necessary for keeping assets in a proper condition for providing the required services may require higher costs than those set out in the project prospections or maintenance may be not conducted at all	Preparing clear specifications for the project outputs Applying a system of penalties and performance monitoring Preparing an operation and maintenance contract includes and satisfies all the requirements of the sponsoring Federal Entity The sponsoring Federal Entity shall preserve its right to replace the Private Partner Providing a special insurance coverage and warranties in the form of final warranties of maintenance	The Private Sector Partner

Risks related to supply and demand, service size or market mechanism	Demand for the services provided under the project may be below expectations or the desired rate (for example, absence of the need for such services, expiry or low level of their demand, market competition or the objection of clients to the services provided by the main external partners)	For PPP projects in which the payments are made per unit, payment must be based on the availability of service (not on the basis of actual usage by the Federal Entity sponsoring the PPP project) Applying effective plan with clear objectives to market the services in question	For the projects financed on the basis of payment per unit, the sponsoring Federal Entity shall be responsible. For the projects financed by charging fees on the project users or beneficiaries, the private partner shall be responsible
RISK TYPE	DESCRIPTION	MITIGATION STRATEGY	RESPONSIBLE ENTITY
Operation risks	All factors that may affect the project operation requirements, including the expected costs of operation, the required skills of operation and alike (except for force majeure), such as: 1- Labor disputes 2- Employees' capabilities and level of efficiency 3- Acts of fraud and forgery committed by the employees. 4- Shortcomings of the technical field	Preparing clear specifications for the project outputs Applying the system of penalties and performance control Preparing an operation and maintenance contract includes and satisfies all the requirements of the sponsoring federal entity The sponsoring Federal Entity shall have the right to replace the private partner	The Private Partner

	5- Environmental factors 6- Failure to obtain the approvals required to conduct the necessary maintenance and fulfil the requirements needed in this regard.	Providing special insurance coverage	
RISK TYPE	DESCRIPTION	MITIGATION STRATEGY	RESPONSIBLE ENTITY
Planning risks	The proposed usage of project site under the terms and conditions included in the agreement of the PPP may conflict with the laws and regulations applied in the field of planning and usage of lands, properties or buildings (such as the requirements of cities planning and urban planning) or with any other requirements or approvals needed under the foregoing Or Delay or failure to obtain the necessary approvals or even if such approvals are obtained, the project will be	The competent Federal Entity must show all necessary approvals on the detailed proposal of design, building and constructions in the project regarding the large scale planning so in order to identify conflicts in the feasibility study of the project. The approvals include all approvals relate to the land utilization and identification of areas. The approvals must be obtained before offering the project in the bid. The private partner shall identify all cases of planning needed in the project and require the competent	For any approval on area identification and land utilization, the Federal Entity sponsoring the project shall be held liable for the risk, unless the Private partner is responsible for selecting the project site. For all approvals on any identified planning, design, constructions and buildings, the Private Partner shall be held liable

	executed at a cost much higher than the original costs expected under the project plans	authorities' approval regarding the proposal of design and constructions of the project, which authorities must take all procedures and precautions and include the same in their work schedule to arrange for the obtainment of approvals from the above authorities.	
Systemic risks/ risks related to practical measures	The federal entities or any governmental authorities may take unexpected acts that have a severe negative effect on the expected revenues from the rights of contributing in the project or service of debts and credit, or in any way results in increasing the costs incurred by the private partner.	Determine the risk of the unexpected behaviors and acts that have no other output in the agreement of PPP and determine the risk of the behaviors that result in expropriation. Distinguish between the general and discriminatory acts. For the unexpected discriminatory acts, a special compensation shall be granted. As for the acts that result in expropriation, the project shall be ended and compensation shall be granted.	For any unexpected discriminatory act or any act results in expropriation of public interest for example, the Federal Entity sponsoring the project shall be held liable for such risk. As for the unexpected public acts, the private partner shall be held liable

RISK TYPE	DESCRIPTION	MITIGATION STRATEGY	RESPONSIBLE ENTITY
Organizational risks	The necessary approval may be delayed or cannot be obtained, or even if such approval is obtained, the project will be executed at a cost much higher than the original costs expected under the project plans	Legal survey/study about the project aspects by the Federal Entity during feasibility study phase to identify the approvals. The Federal Entity shall take all necessary actions by coordination and consultation with different competent governmental authorities prior to the commencement of purchase phase. The private partner must perform due diligence to identify the approvals needed to fulfil the operational requirements.	If it is possible to obtain any approvals before concluding the contract and if it is possible to transfer the same to the private partner, the Federal Entity sponsoring the project shall be held liable for such risks. As for the operational requirements of the private partner, the private partner shall be held liable
Risks of facilities and equipment.	Project assets may not be in the agreed condition to be returned to the Federal Entity sponsoring the project upon expiration or termination of the PPP	The private partner must fulfill its obligations of maintenance and repair. The project assets must be checked and revised when the project is about to end. The private partner must provide a	The private partner

		guarantee to the Federal Entity responsible for the project. The guarantee may be, for example, in the form of final guarantees of maintenance or deductions from the payments made on the basis of units.	
Risks of inputs or resources	Shortage of supplies related to the project's inputs or resources (including financial credits) may occur, or there may be inability to provide the supplies needed to operate the project, including the defects related to the level of quality of the available resources.	Concluding supply contracts to fulfil the project requirements, such as the contracts based on direct supply for immediate pay-ment Taking prompt actions of as-sistance only in the event of shortcomings not falling under the responsibility of the private partner.	The private partner, unless the inputs are obtained from the Federal Entity sponsoring the project
RISK TYPE	DESCRIPTION	MITIGATION STRATEGY	RESPONSIBLE ENTITY
Liquidation of partners risk	Risks of liquidating the subcontractor's business or the failure of such subcontractor to fulfil its contractual obligations. These risks may arise in phases of	The main partners working in the project under subcontracts must have necessary skills, knowledge and experiences to fulfil the contractual obligations regarding the	The Private Partner

	construction and/ or operation.	desired performance level. Obtaining prior consent of the Federal Entity with regard to sub-contracting with alternative main partners. The responsible Federal Entity shall perform due diligence by conducting extensive studies that include reviewing the data of first-class subcontracting partners to make sure that they can overcome risks they encounter.	
Tax Risks	Changing the applied tax fees (for example, income tax or value added take "VAT") or imposing new taxes may result in reducing the expected revenues from the rights of contribution in the project.	If changes result from unexpected discriminatory acts or behaviors, a special compensation shall be granted to the Private Partner	Public Sector Entity
Technical Risks	The following may occur: 1- The technical inputs of the activities assigned by the governmental authority to external contractors may fail	The private partner must, from time to time, update the technologies used in the project to keep pace with advances and to fulfil the project specifications and requirements.	The Private Sector Partner

	to provide inputs that comply with the required specifications. 2- The technical inputs may not cope with the modern updates and advances in the field of technology	Apply penalties in case of the failure to comply with the specification of project outputs	

Appendix C Legal Framework for Disclosure and Implications for PPP Disclosure

Legal Framework for Disclosure and Implications for PPP Disclosure

Public-Private Partnerships (PPP) are crucial for the development of infrastructure and services in Oyo State, Nigeria. Transparency and accountability in PPP projects are essential to ensure public trust and successful project outcomes. This report outlines the disclosure guidelines for PPPs in Oyo State, focusing on the key principles, legal framework, required disclosures, and best practices.

Key Principles of PPP Disclosure

1. **Transparency:** Ensuring that comprehensive and accurate information about PPP projects is accessible to all stakeholders.
2. **Accountability:** Establishing clear mechanisms to hold all parties responsible for their roles and responsibilities.
3. **Public Participation:** Engaging the public and stakeholders in the decision-making process and providing avenues for feedback.

Legal Framework for PPP Disclosure in Oyo State

Constitution, 1999-

Article 39 (1 & 2) Freedom of Express : Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference, and own, establish and operate any medium for the dissemination of information, ideas and opinions. This allows the public to openly discuss and opine on PPPs

Freedom of Information Act, 2011

- **Article 2(7)** Definition of public institutions: Definition of public institutions: Public institutions are all authorities whether Executive, Legislative or Judicial Agencies, Ministries, and Extra-Ministerial Departments of the government, and all Corporations and Companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions.

Freedom of Information Act, 2011

- **Article 9** Classified material : "Classified matter" means any information that is not to be disclosed to the public and whose disclosure would be prejudicial to the security of Nigeria.

Note that this definition would apply to PPP project companies

Oyo State Public-Private Partnership Law (2014)

- **Purpose:** Establishes the legal basis for PPPs in the state, defining the roles of government and private partners.
- **Disclosure Provisions:** Mandates the publication of information related to PPP projects, including contracts, project milestones, and performance reports.

Oyo State Public Procurement Law (2010)

- **Purpose:** Provides a framework for public procurement processes, ensuring transparency and value for money.
- **Disclosure Provisions:** Requires the publication of procurement plans, contract awards, and audit reports.

Required Disclosures for PPP Projects

Project Identification

- **Project Description:** Detailed information on the nature, scope, and objectives of the project.
- **Feasibility Studies:** Results of feasibility studies, including economic, environmental, and social impact assessments.
- **Project Rationale:** Justification for selecting the PPP model and the expected benefits.

Procurement Process

- **Procurement Notices:** Public announcement of procurement opportunities, including requests for proposals (RFPs) and invitations to bid.
- **Selection Criteria:** Clear and transparent criteria for evaluating bids and selecting the preferred bidder.
- **Bidding Process:** Detailed description of the bidding process, including timelines and procedural requirements.

Contract Information

- **Contract Summary:** Summary of the PPP contract, highlighting key terms, conditions, and obligations of the parties involved.
- **Full Contract Text:** Full text of the signed PPP contract, with sensitive information redacted if necessary.
- **Financial Terms:** Detailed information on the financial arrangements, including funding sources, payment mechanisms, and risk allocation.

Performance Monitoring

- **Project Milestones:** Regular updates on project milestones and progress against established benchmarks.
- **Performance Reports:** Periodic performance reports, including key performance indicators (KPIs) and compliance with contractual obligations.
- **Issue Resolution:** Documentation of any issues or disputes that arise and the measures taken to resolve them.

Financial Reports

- **Annual Financial Statements:** Annual financial statements of the PPP project, including income statements, balance sheets, and cash flow statements.
- **Audit Reports:** Independent audit reports providing an unbiased assessment of the project's financial health and compliance with regulatory requirements.

Best Practices for PPP Disclosure

1. **Open Data Portals:** Establish and maintain online portals where all relevant PPP information can be accessed by the public.
2. **Stakeholder Engagement:** Conduct regular consultations with stakeholders, including civil society organizations, to gather feedback and ensure public interests are considered.
3. **Independent Audits:** Commission independent audits of PPP projects to provide unbiased assessments of project performance and compliance.
4. **Public Awareness Campaigns:** Increase public awareness of PPP projects and the importance of transparency through targeted communication campaigns.
5. **Continuous Improvement:** Regularly review and update disclosure guidelines to incorporate emerging best practices and address any gaps or challenges.

Appendix D Summary of Specific Disclosures for PPP Projects

No.	Document	Content	Creator	Approver	Time (in calendar days where relevant)
		Disclosure of information at project identification			
1.	PPP projects pipeline	List of projects approved for development including brief project description, contracting authority, sector, and estimated project cost	OYSIPA	OYSIPA	Within 30 days of approval for inclusion in the PPP project pipeline
2.	Basic project information	Project name Location Sector Contracting Authority Project value Project rationale Description of asset Services to be provided Estimated demand to be served annually Rationale for selecting the PPP mode Indicative investment size Pre-feasibility study report	CA	OYSIPA	Within 30 days of Approval.
3.	Project progress tracking	A section on the web-based platform that will reflect actual dates of achievement of key milestones: Date of inclusion in the published projects pipeline Date of appointment of transaction advisors Date of approval Date of procurement milestones, such as EoI, prequalification of bidders, RFP, selection of preferred and reserved bidder, date of issuance of FBC, date of FBC approval, and so forth Date of contract signing Date of financial close Beginning of construction End of construction Commencement of operation and maintenance Expiry of contract expiry	OYSIPA	OYSIPA / CA	Immediately after the information becomes available
		Disclosure of information during project preparation			
4.	Project preparation documents	Strategic needs assessment, technical analysis, risk matrix, financial model, economic analysis, and management arrangement,	CA	OYSIPA	Within 30 days of approval by the OYSIPA Board.
		Disclosure of information during procurement			
5.	EOI		CA	OYSIPA	Following approval and publication of EoI

No.	Document	Content	Creator	Approver	Time (in calendar days where relevant)
6.	List of shortlisted bidders		CA	OYSIPA	As soon as prequalification shortlisting is completed, and prequalified bidders have been contacted
7.	RFP		CA	OYSIPA	Immediately after close of bids
8.	Announcement of selected bidder	Details of the preferred bidder	CA	OYSIPA	Immediately after approval
9.	FBC		CA	OYSIPA	Within 30 days of final approval
Disclosure of information following execution of PPP contract (commercial close)					
10.	Project Summary	Project scope and nature Parties to the PPP contract Government support Project value Tariffs and pricing Termination clauses Hand-back provisions Key performance indicators with agreed target levels	CA	OYSIPA	Within 30 days of execution of project contract (commercial close)
11.	Financial structure of project	Debt-to-Equity ratio of the project company Debt and equity providers Senior debt/ bond financing Mezzanine funding and quasiequity Government support	CA	OYSIPA	Within 30 days of financial close.
12.	Project documents	All Non-Confidential project documents including PPP contracts and agreements	CA	OYSIPA	Within 30 days of execution of project contract (commercial close)
13.	Renegotiations	Summary information on each renegotiation All non-confidential renegotiated PPP contracts and agreements	CA	OYSIPA	Within 30 days of signature of renegotiated contract
Performance disclosure throughout contract period					
15.	Performance Information	Performance of the project company on Key Performance Indicators (KPIs) against agreed targets (including information on construction milestones, key financial information and information on performance failures, if any) Audit reports Audited Financial Statements Private party reports Independent Engineer reports	CA	OYSIPA	Within one year of financial close, updated annually.

Director-General
Oyo State Investment and Public Private Partnership Agency