Oyo State Public Private Partnership (PPP) Policy

Signed by me this 30th Day December 2024

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INTRODUCTION

In June 2022, the Federal Ministry of Finance, Budget and National Planning launched the revised National Integrated Infrastructure Master Plan (NIMP 2022) which showed a requirement of investment of about USD 2.3 trillion within 23 years (2020-2043) to bridge the infrastructure gap.

Global demand for basic infrastructure services has grown over the years, quickly outstripping the supply capacity of existing assets. Many years of underinvestment and poor maintenance has left most developing Countries with a significant infrastructure deficit which is holding back development and economic growth.
Oyo State which is no exception needs to make massive investments, beyond the means available to government, in order to close its yawning infrastructure gap. The Government believes that the private sector can play an important role in providing some of this new investment through Public Private Partnerships (PPPs).
Private financing sources as alternatives portend an uncapped and near-limitless pool of funding for investments in infrastructure and the goal is to combine the best capabilities of the public and private for mutual benefits. By promoting PPPs, and articulating comprehensive policies, strategies and programs, and putting in place efficient procedures and processes and effective institutions for the planning and delivery of successful PPPs will help to close the infrastructure gaps.

What are Public-Private Partnerships (PPPs)?

The bane of development of any nation is its critical infrastructure, such as roads and bridges, power generation plants, power transmission and distribution networks, water and sanitation networks, seaports, dry-ports, Logistic parks, Real Estates, airports, and railways. The cost attributable to these infrastructures are massive due to their nature and exert significant strain on public funds and governments with limited resources at their disposal. This pressure on public funds necessitated the need for alternative critical funding through the PPP initiatives.

Definition of a PPP

Public Private Partnership is a valid arrangement whereby the private sector is engaged by the public sector to manage public services and/or to design, build, finance, operate and maintain infrastructure to enhance efficiency, broaden access, and improve the quality of public services. The role of the public sector is to plan and structure projects, while the private directly implements the projects. These PPP arrangements are increasingly being adopted by governments in other countries as a way of increasing access to infrastructure services for their citizens and economies.

Objectives of a PPP

The objectives of a PPP are to increase the availability of infrastructure services, and to do so with greater cost efficiency and effectiveness than could be achieved using the traditional public sector approach. These objectives can be achieved as:

- PPPs allow access to the substantial financial resources of the private sector.
- PPPs enable the public sector to benefit from private sector technical expertise, experience, and efficiency.

- PPPs enable the public sector to transfer project-related risks to the private sector.

Roles of Public and Private Sector

A PPP is therefore structured in a manner that allows both the public and private sectors to take on certain roles and enjoy certain advantages relative to each other while performing their specific tasks. The government's contribution to a PPP may take the form of capital for investment, a transfer of assets, or other commitments or in-kind contributions that support the partnership. The government also provides social responsibility, environmental awareness, regulation, and the ability to mobilize political support. During the operational life of the project, the public sector's

role is to monitor the performance of the private partner and enforce the terms of the contract. The private sector's role in the partnership is to make use of its expertise in commerce, management, operations, and innovation to run the project efficiently. The private sector is responsible for conducting or operating the project and takes on a significant portion of the associated project risks. Often, though not always, the private sector will contribute most of the project's capital costs.

Value-for-money (VfM)

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

Characteristics of a PPP Project

Major Operational Characteristics

Long-Term Contracts

PPP projects requiring investment are generally long-term in nature, typically ranging from 10 to 30 years or more (note: PPP projects not requiring investment, such as management contracts, could be for shorter terms). The tenure of the contract is such that it typically covers the entire economic life of the asset to ensure that the private sector partner takes a whole life-cycle view for the development of the asset. The asset is then designed, constructed, operated, and maintained such that the whole life-cycle cost of the project is minimized, and the private sector operator ensures that the asset is well-maintained throughout its entire economic life.

Given the capital-intensive nature of PPP infrastructure projects and the risks associated with

them, private sponsors of the project often form a separate independent PPP Company, often under a Special Purpose Vehicle (SPV) structure. The rationale for SPVs is that the risks associated with a project are unique to that project and therefore should be limited to that project. In addition, when a government tender goes to market interested private sector parties often will pool skills and finances in a consortium that will form the basis of the SPV, so the implementing partners often are also unique to that project. The SPV also allows the private sector consortium to raise limited resource funding restricted to the SPV thus protecting the parent companies from the risks of project failure.

Allocation of Risks

One key factor to achieving successful implementation of a PPP project is the optimal sharing of risks and responsibilities between the public and private sector. The guiding principle adopted in identifying and allocating responsibilities is that the party best able to manage a particular activity should be responsible for the risks associated with that activity and receive the associated rewards or losses. For example, PPP risks typically assigned to the private sector include the proper designing and construction of the assets and those financial returns are adequate to repay loans. The public sector, on the other hand, often assumes risks related to macro-economic stability (e.g., inflation) and land acquisition from public and private landowners.

Output Standards and Specifications

Output specifications form a vital part in encouraging innovation in PPP projects. Producing effective output specifications involves defining the ends without being prescriptive about the means for meeting these outputs. The public agency concerned clearly states the public service requirements for the facilities and services, while leaving room for the private sector to produce innovative, cost-effective solutions. The output specifications detail what needs to be achieved and not how it is to be achieved. In these types of PPP contractual arrangements, the public agency concerned makes payments to the private sector based on whether the outcome/output specifications have been met (e.g., a certain number of new electricity connections are made).

1.3.1.1 Performance-based Payment Mechanisms

A PPP can be structured in such a manner that the contract includes a performance-based payment mechanism, whereby the public sector only pays when services are delivered by the private sector. Moreover, the recurrent payment may depend on whether the services provided meet the specified performance standards as well.

Major Financial Characteristics

Private Financing

In a PPP structure, the responsibility of financing the project assets often rest with the private sector partner, depending on the service delivery model adopted. In the models which involve funding the project assets by the private sector, the private sector partner raises project finance through equity and/or debt finance. The project is usually owned (or leased) by one or more equity investors during the project term. Some of these shareholders may also be contractors to the project, who carry out construction, design or management of the assets. Others may be pure

financial investors. Debt finance, in the form of bank loans or bonds, also can be raised to at least partially finance the construction and operation of the project.

User Fees

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

Viability Gap Funding (VGF) or Availability Payments

The PPP route will not be viable if the business case does not demonstrate that the private sector can achieve an acceptable rate of return for the risks it takes in financing the project's assets. Under such circumstances and to cover any shortfall in income to cover total project costs, the public sector may provide a payment to part-finance the project costs, which in turn will raise the return to the private sector making the project more financially attractive. This payment called a VGF or availability payment is provided on the basis that the assets involved in the project which are used to provide the infrastructure services are available 24 hours of every day for the whole year, except for periods of pre-arranged maintenance and therefore continue to pass part of the risk to the private sector, which is one of the main benefits and objectives of a PPP structure, instead of a capital grant to assist with debt coverage and/or operating costs. A PPP is only structured to include VGF/availability payments when total income does not cover total project costs to make the project financially viable and bankable and to attract private investors. Availability payments but not VGF, are also used in PPP social infrastructure or soft infrastructure projects, where the user charges are payable to the SPV or private sector services provider solely by the public sector, as part of the agreed payment mechanism for the provision of those services. In this case the assets used to provide the services are divided into areas on the basis of importance or priority. If any of these areas is not available, then through the payment mechanism formula the user charges that are payable by the public sector, are reduced by a percentage based on the importance or priority of the area concerned and the time that the area is unavailable, after deduction of an agreed time allowance for the SPV or services provider to bring the area back to full availability.

Service Performance Standards

To ensure that the private sector concessionaire or service operator fully understands the minimum service levels that the public sector requires for the PPP project in question, it is necessary for the public sector project sponsor to describe in general details in the RFP, a full set of minimum performance standards for the requested services, covering the availability of the assets provided by the private sector concessionaire and the required minimum service levels. Detailed service performance standards are then negotiated with the selected preferred bidder, as part of the PPP concession contract negotiations. These performance standards are backed by an incentive or penalty system for rewarding or punishing the private sector operator for service levels delivered above or below the agreed performance standards. In extreme cases of continuous poor performance below the agreed performance standards, the PPP contract will be terminated, or the Lenders Direct Agreement will come into operation. The incentive/penalty system is usually points based which translates into a monetary amount at agreed periods. The

benefit to the public sector sponsor is that any penalties that are levied due to poor service performance, go straight to reduce the equity return thereby encouraging the private sector SPV management to take immediate corrective action.

Overview of PPP Delivery Models

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

Service Contracts

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

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

Advantages include:

- Relatively low-risk option for expanding the role of the private sector.
- Quick and substantial impact on system operation and efficiency.

- Means for technology transfer and development of managerial capacity.

Disadvantages include:

- Require strong enforcement of contracts and laws by public sector.
- Does not attract capital investment from the private sector.
- Private partner's incentives are limited and therefore may not encompass overall objectives.

Management Contracts

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

Advantages include:

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

Disadvantages include:

- The Private partner does not have authority over the labour force and, as a result, deep and lasting changes are hard to achieve.
  The Private partner often has limited authority to disconnect services, raise tariffs, etc.

Lease Contracts

Under a lease contract, the private partner is responsible for the service in its entirety and undertakes obligations relating to quality and service standards. Except for major capital investments, which remain the responsibility of the public authority, the operator provides the service at his expense and risk. In particular, the operator is responsible for losses and for unpaid consumers' debts. Given the increased risk burden on the private sector, the duration of a leasing contract is typically longer than a service or management contract. However, leases do not involve any sale of assets to the private sector.

Advantages include:

- Separation of the use of the facilities from the ownership of the facilities.
- Allows the private sector to make the tough management decisions (e.g. labour reductions).
- The Public authority receives stable streams of cash flow without having to manage

operations and maintenance of the facilities.

Disadvantages include:

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

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

A Concession makes the private sector operator (Concessionaire) responsible for the full delivery of services in a specified area, including construction, operation, maintenance, collection, management, and rehabilitation of the system. The term "concession" will be used more broadly to reference PPP types such as Build-Own Operate (BOO), Build-Operate Transfer (BOT), Buy-Build-Operate (BBO), Design-Build-Operate (DBO), Build-Develop-Operate (BDO), etc.

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

The public sector is responsible for ensuring that the Concessionaire meets performance standards and the public sector's role subsequently shifts from being the service provider to regulating the price and quality of service.

The Concessionaire collects the user fees directly from the system's customers. The tariff is typically established by a regulator, but as part of the Concession arrangement the methodology for tariff adjustments will be established in advance. The Concessionaire is responsible for financing capital investments and working capital out of its resources and from the tariffs paid by the system users, but in certain cases the government may choose to provide financing support (e.g. VGF) to help the Concessionaire fund its capital expenditures. Given the complexity of the arrangement and the need for long-term financing, a Concession contract is typically valid for a much longer period than a service contract, management contract, or lease agreement.

Advantages include:

- Effective way to attract private finance for new construction or rehabilitate existing facilities.
- Initial capital construction costs may be reduced due to private sector's expertise.
- Motivates private sector to achieve improved levels of service as efficiency gains are translated into increased profits for the Concessionaire.

Disadvantages include:

- Governments may need to upgrade their regulatory capacity and performance monitoring.
- Tenders can be long, and complex given the scale and long-term nature of the projects.
- Benefits of competition are limited to the initial bidding process as a private operator often has a monopoly of the service and contracts cannot be terminated easily.

- Given the difficulty in anticipating events over multiple decades, contracts are often renegotiated during their life.

Pros and Cons of PPP

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

Advantages of PPP

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

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

accountability. A brief description of each of these advantages follows.

Access to private sector finance

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

Subsidies when combined with most governments limited financial capacity, pressures the government to mobilize private sector capital for infrastructure investment. PPPs is one way to mobilize this private sector capital.

PPP projects involve the private sector in arranging and providing finance. This frees the government from the need to meet financing requirements from its own revenues (taxes) or through borrowings. By taking over the responsibility for raising finance from the government, PPPs can enable more investment in infrastructure and increased access to infrastructure services.

Using private sector finance also allows the government to move large capital expenditure programs “off the balance sheet”. This has been a motivating factor for PPPs in countries where the constraint on finance is a government commitment to borrowing (i.e., public debt).

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

Increased efficiency resulting from private sector participation

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

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

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

Sector reformation through reallocation of roles, incentives, and accountability

At times, PPP acts as a catalyst to provoke a larger discussion of and commitment to a sector reform agenda. A reform program that includes PPP provides an opportunity to reconsider the assignment of sector roles to remove any potential conflicts and to consider a private entity as a possible sector participant.

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

Disadvantages of PPP

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

Difficulty in demonstrating value for money in advance

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

Complex procurement process with associated high transaction costs

The PPP project must be clearly specified, including the allocation of risks and a clear statement of the service output requirements. The long-term nature of PPP contracts requires greater consideration and specification of contingencies in advance. The tendering and negotiation process is a costly exercise, particularly, as transactions advisors and legal experts are required. The tendering costs in PPPs are typically in the range of 1-3% of project value.

Risk of contract renegotiation

PPPs usually cover a long-term period of service provision (for example 25-40 years or life of the

asset). Any agreement covering such an extended period into the future is subject to uncertainty. If the requirements of the public sponsor or the conditions facing the private sector change during the lifetime of the PPP, the contract may need to be renegotiated to reflect these changes. This entails large costs to the public sector and the benefit of competitive tendering is usually not available under such circumstances.

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

Enforcement and monitoring

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

OYO STATE PPP PROJECT LIFECYCLE AND BIDDING PROCESS

Like the PPP Project Lifecycle in many other countries, the process for developing, procuring, implementing, and exiting a PPP in Oyo State consists of the following phases and steps.

This section of the manual provides an overview of the institutional framework governing PPP Procurement in Oyo State and the various stages involved in the development, procurement, and implementation of a project through the PPP route. The section first provides an overview of the Project cycle and the Bidding Process and then describes each step, in detail. Thereafter, the bid documents issued in the Bidding Process, the negotiations with the Bidders and the process of awarding the contract are described.

Stages of a typical PPP Project (PPP Lifecycle)

Identifying, developing, and implementing a project through the PPP route involves a series of steps. As per the National Policy on Public-Private Partnerships, the PPP project lifecycle in Nigeria consists of the following phases.

- ***Phase I: Project Development*** – This phase consists of the following steps:
  - Identification of the need for undertaking the project,
  - Arriving at the appropriate solution to meet the identified need,
  - Preparing economic, social, and environmental cost benefit analysis, and an Environmental Impact Assessment, if required,
  - Testing the affordability and the Value for Money (VFM) of the different procurement options,
  - Preparing the pre-feasibility and full feasibility studies (together called the Outline Business Case) and getting the necessary approvals for this OBC.

- ***Phase II: Project Procurement*** – This stage consists of the following:
  - Creation of a project team and management structure,
  - Preparation of an Information Memorandum and bid documentation,
  - Market consultation and selection of the preferred bidder through a competitive and transparent Bidding Process,
  - Preparation and Approval of the Full Business Case; the FBC needs to be approved by the Federal Executive Council prior to contract award.
  - Award of the contract to the preferred bidder.

- ***Phase III: Project Implementation*** – This stage involves the following:
  - Monitoring of the design and construction, and subsequently operation and maintenance of project assets to ensure compliance with the required service standards,
  - Monitoring the performance of the Concessionaire against the requirements of the Concession Agreement.

- ***Phase IV: Project Maturity*** - This stage involves the following:
  - Inspection of the project assets and preparation for the handover of project assets,
  - Analysis of future service delivery options and further procurement options if required
  - Closing out the contract.

Phase I: Project Development

Step 1: Project Conception

The project is usually initiated by a Ministry, Department, and/or Agency (MDA) of the government. In select cases, the project could be initiated by the private sector as an Unsolicited Proposal under a transparent, competitive process which will also be managed by a MDA. The first step for the MDA is to develop a project concept to be approved by the *Oyo State Investment and Public – Private Partnership (OYSIPA)* The project concept will usually be based on a Pre-Feasibility study or Outline Business Case (OBC), and if it is approved, will allow the project to be included in the State's Development Plan which sets out the State Government's infrastructure investment strategy covering all forms of procurement, including projects that will be financed in whole or in part from the State Budget.

Step 2: Project Planning

The Private project planning stage is initiated by the MDA and begins with the appointment of a Project Team of public officials. The Project Team begins planning by (i) conducting an initial assessment of the best methods for project identification, preparation, appraisal, and approval, and (ii) securing necessary preliminary approvals (e.g., initial project development funding, rights for land acquisitions, preparing for environment/social impact assessments, etc.). The project planning stage requires approvals in line with the relevant State PPP Policy.

Step 3: Preparation and Approval of Outline Business Case

An Outline Business Case or feasibility study is a decision tool prepared by the Project Team to provide the government with sufficient early-stage information to decide on whether to proceed with the project, and if so under what strategy. It is prepared and submitted to the Oyo State Investment and Public Private Partnership Agency (OYSIPA) for approval, as set out in the relevant State PPP Policy in line with the private project objectives.

The Outline Business Case usually involves a pre-feasibility analysis to establish that the identified project has sufficient merit to be taken forward by the MDA. More specifically, it covers:

- A description of the policy context and business need;
- Cost benefit analysis including non-quantifiable costs and benefits;
- An evaluation of the options for meeting the project objectives;
- Identification of the preferred procurement route based on Value-for-money and the Feasibility or desirability of using PPP;

- Analysis of the project risks and mitigation measures;
- Description of the proposed risk allocation and contract terms;
- Affordability and Value for Money analyses, including a cash flow model of estimated costs and returns for the Public Sector carrying out the project and being responsible for O&M and all the project risks as compared to a shadow PPP cash flow model of a Private Sector contractor carrying out the project and bearing most of the project risks, together with any required financial support or consequent annual payments to or by the public sector;
- Sensitivity analysis of the key input variables to test the strength of the cash flow to meet unexpected events.

In addition, the Outline Business Case should also contain key documentation required for the first stage of the procurement phase such as a Project Information Memorandum) that provides the bidders with the background and objectives of the project and the Prequalification Documents). The MDA may need to procure external technical, legal, and financial advice for the preparation of the Outline Business Case.

If the Outline Business Case is approved by the government, the Project Team will likely procure a professional Transaction Advisor which is a firm or group of firms that has professional expertise in financial analysis, economic analysis, legal analysis, environmental impact analysis, contract documentation preparation, tender processing, engineering and cost estimation. The Transaction Advisor supports the Project Team to take a PPP project from the Outline Business Case through public bidding and award to actual execution. They will also prepare a Full Business Case **and investors' assessment check list** prior to contract award as a final check that the Preferred Bid is affordable, provides value for money, and that the project still meets its original objectives.

Phase 2: Project Procurement

Step 4: Pre-qualification of Bidders

At this stage, the project is advertised in the press and through other media to invite potential bidders to submit their Request for Qualifications (RFQ), also called an Expression of Interest (EOI) (i.e., qualification credentials for the project). The pre-qualification process is typically a much more simplified process where no project specific information is requested; only information on whether or not an interested bidder has the sector/project experience, technical expertise, financial resources, and overall ability to implement the project if selected. While there is no international standard for the desired number of pre-qualified bidders, typically any number between 4 bidders and 8 pre-qualified bidders is seen as a robust set. If the number of prequalified bidders is low (e.g., < 4 bidders), then there will not be sufficient competition and an opportunity for collusion. If the number is high (e.g., > 8 bidders), then prequalified bidders will not believe they have a probability of winning the tender and therefore will not bid. Once a group of bidders are pre-qualified, one or several bidders' conferences are subsequently held to provide further background to the project and answer questions from the bidders. A key qualification process is to make sure that all pre-qualified firms have equal access to all information (i.e., answers to any questions are provided to all bidders).

Step 5: Preparation of Bid Documents

The bidding process should aim to minimize the complexity, duration, and costs of participation to all parties, while facilitating sufficient competition to obtain the best Value-for-Money for the government. The MDA, with the assistance of the Transaction Advisor and management of OYSIPA, initiates the process of drafting the Bid Documents (i.e., Request for Proposals (RFP), Concession Agreement, etc.). In addition, this step includes establishing evaluation criteria, bid submission formats, output specifications, payment mechanisms, minimum performance standards requirements, etc. **OYSIPA Policy on PPP requires the approval of the Bid Documents before they are issued using the existing template for bidding contract in the procurement procedure once the Expressions of Interest have been submitted.**

Step 6: Selection of Preferred Bidder & Negotiations

Once the pre-qualification stage is complete, then a full Request for Proposals (RFP) is issued to the pre-qualified bidders. After a sufficient period to prepare their proposals, the bidders submit full technical and financial proposals according to the Instructions to Bidders within the RFP. The Tender Evaluation Committee follows an established, detailed procedure for evaluating proposals strictly in accordance with the criteria set out in the RFP. The bidding process involves either a final evaluation or it can lead to Best and Final Offers from at least two of the bidders. After identification of the preferred bidder, a Negotiations Team is formed which initiates discussions with the preferred bidder and finalizes any remaining project agreement terms. Throughout the procurement process, **OYSIPA** acts as an independent monitor under the State procurement legislation, to oversee the process and to ensure the transparency of the project tendering and the budget allocation processes.

Step 7: Preparation of Full Business Case and Contract Award

The Outline Business Case is then updated based on the pricing and other technical information contained in the preferred bid to form the Full Business Case. The Full Business Case is used, prior to Commercial Close and formal award of contract, to provide the government with all the information needed to support a decision to award a contract, commit any actual required funding, and determine criteria for contract oversight, monitoring and evaluation and benefits realization. The Full Business Case is submitted to the State Executive Council for approval. Once the Full Business Case has been approved, the procedure to Award the Contract between the Preferred Bidder and the MDA is undertaken. There will be some Conditions Precedent (e.g. obtaining permits, finalization of the Financing Documents) before Financial Close is achieved and Contract Commencement.

There is a time limit for achieving the Conditions Precedent defined in the Concession Agreement. Investors and lenders carry out their own technical, financial, and commercial due diligence on the project to assess the risks involved in financing the project. Any subcontracts between the consortium and separate joint venture companies providing design, construction, or maintenance services are also finalized and the Special Purpose Vehicle (SPV) established. If investors and

lenders are satisfied with the financial and risk elements of the project, then the Preferred Bidder can reach Financial Close, and the project is ready for implementation.

Phase 3: Project Implementation

Step 8: Project Operation

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

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

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

Phase 4: Project Maturity

Step 9: Exit and Transfer

This phase marks the completion of the contract period and leads to the natural termination of the agreement. It involves the exit from the project by the PPP Company, the transfer of land and assets back to the MDA, and the decision by the MDA on appropriate next steps, including re-tendering the project to the private sector. However, in some cases the MDA may have an option to extend the project term.

The ENABLING ENVIROMENT FOR PPPS

PPPs in Oyo State can be initiated and managed at the State level. The Oyo State Government manages projects affecting Oyo State. However, some Oyo State projects may require some form of Federal Government guarantee to attract international finance, and these projects should also comply with the process for Federal projects since the guarantees will require the approval of the Federal Executive Council.

Regardless of whether the project is Federal or State, government has certain initial roles and responsibilities to ensure that PPPs can be implemented successfully with the acceptance of all stakeholders and to the satisfaction of all beneficiaries. Primarily, the State Government is responsible for establishing a sound enabling environment for PPPs, meaning that transparent and effective PPP legislative and institutional frameworks are in place, and the State Government is also responsible for the necessary planning to determine whether the PPP model is most appropriate. The State Government also must have the capacity to effectively manage the procurement process, make necessary approvals, and regulate, and in some cases modify, the PPP once it's operational.

Major PPP Responsibilities of Government

Institutional/ Legislative Framework

The success or failure of PPPs can often be traced back to the initial design of PPP policies, legislation, and guidance. In most countries that successfully use the PPP model, a comprehensive, PPP/Concession Law is in place which stipulates the sectors for private sector participation, details the PPP awarding process (sometimes in conjunction with a Procurement Law), and provides the governance structure for operational PPPs. In addition, guidelines and other forms of institutional frameworks are often required to provide more detail on the overall roles and responsibilities of the participating PPP parties.

Sector Planning

PPPs are simply a procurement process to develop infrastructure. Before determining whether a PPP model is the right approach for specific infrastructure, the State Government must first understand what its broad-based sectorial objectives are. Master planning provides a comprehensive map to achieving overall infrastructure goals and, once this plan is in place, the State Government can determine if a PPP model may be the most appropriate vehicle for achieving components of the overall infrastructure sector's goals.

Selecting a PPP Model

Selection of an appropriate PPP model, depending upon the characteristics of the project, is the key to ensure successful implementation of a project through the PPP route. The main distinction between the various PPP models is the level and nature of risk shifted from the public

sector to the private sector. In addition, a major consideration is the ability of the State Government to provide the required capital investment and/or operational expertise required.

Government Capacity

The ability of the public sector to understand the project requirements in detail, ensures appropriate identification and allocation of risks among the contract partners. To ensure appropriate understanding of its roles, and to get expert guidance at each step of the project implementation, the State Government may need support from external advisers. However, many tasks cannot be outsourced, and often government does not have the skills internally to manage complex PPPs or the dedicated team required to address the time-intensive upfront structuring needs. The State Government, therefore, may need to hire specialized personnel or train existing staff to properly manage PPP procurement and operations.

PPP Procurement

Properly procuring a PPP is the foundation for whether the project will provide its intended benefits and Value-for-Money. Given the complexity and monopoly aspects of PPP projects, the procurement process will be longer as compared to traditional procurement. PPP bidders also incur higher bidding costs due to this increased complexity. However, neither of these characteristics of PPP procurement are necessarily negative as a longer procurement process will increase the bidder's knowledge of the project and higher bidding costs will filter away smaller players who may not have the capacity to implement the project. The key is to ensure that procurement rules are transparently followed by government and, in addition to any transaction advisors who may be hired, sufficient government planning and capacity are already in place to manage the tendering process properly.

Project Oversight and Restructuring

While the private sector is responsible for the day-to-day management of a PPP project, the State Government has an important role to play in project oversight and, when necessary, enabling modifications to a project structure. PPP projects involve long-term contracts, and unforeseen changes can happen to the projects enabling environment (e.g., macroeconomic fluctuations, currency depreciations, natural disasters, etc.). If no variation provisions are included in the PPP contract, the contract may be too inflexible to manage these unforeseen circumstances. To avoid this pitfall, particularly in long-term projects, it is important to build-in flexibility into the PPP contract to specify the conditions in which modifications are allowed, and what the adjustment process will be. These variation provisions should be balanced and equally benefit both the public and private sector. In addition, termination clauses should also be included to allow both parties to cancel the contract under exceptional circumstances, with fair compensation (to either party), where necessary.

The Oyo State Legislative Framework

The Oyo State Government (OYSG) requires due process to be followed for any form of procurement involving the OYSG and any of its ministries, departments, and agencies (MDAs). PPP procurement in Oyo State is governed by the following legislation:

- The Oyo Investment and Public Private Partnership Law 2019
- The Oyo State Public Procurement Act 2010; and
- Regulations issued by the State Executive Council (the "SEC", or "Exco") governing the PPP process.

These laws and regulations set out the requirements for competition and private sector participation in all public procurement and specify the necessary approvals required for procurement. Through such legislation, the State Government assures investors that all contracts completed in compliance with these laws are legal and enforceable, and that investors would be able to recover their expected return subject to compliance with the terms of the PPP contract.

The objectives of these laws are to:

- Ensure that public authorities are empowered to enter into agreements for the implementation of privately financed infrastructure projects and that they can contract public services functions to private companies;
- Ensure that the regulation and licensing of public service operators and operations is transparent, timely, and effective;
- Provide appropriate remedies for protecting the safety and integrity of public infrastructure from vandalism and other criminal activity;
- Ensure that there are no distortions created by existing tax, banking, company, or any other laws that would bias the investment decisions of public authorities for or against PPP as a procurement option, or would distort the commercial decisions of PPP investors, contractors, or operators;
- Provide for transparent, efficient, and competitive procurement procedures for PPP-type contracts that encourage innovation from bidders, and allow dialogue to optimize the allocation of risks between the contracting parties;
- Ensure that there is an effective dispute resolution process which can operate independently and in a timely manner to provide alternative procedures such as arbitration and expert determination;
- Ensure that the proposed institutional and financial framework for PPP is consistent with the corresponding legislation proposed or enacted in Oyo State.

Oyo State Investment Public Private Partnership Agency (OYSIPA)

The Oyo State Investment Public Private Partnership Agency (OYSIPA) was established under the Oyo State Public Law 2019.

Objectives of the Office

(1) In performing its functions and exercising its powers, the primary objective of the OYSIPA as a special purpose vehicle (SPV) and investment window for the state; shall be to develop public infrastructure or public assets and provide social amenities and other facilities for the State through Public Private Partnerships. In seeking to achieve its objectives, the Office shall:

(a) initiate and develop public infrastructure and public assets development strategies for the State by means of Public Private Partnerships;

(b) advise on policies that will promote and sustain Public Private Partnerships in the development of public infrastructure or public assets in the State;

(c) co-ordinate policies and programs of the State with respect to Public Private Partnerships for the provision and development of public infrastructure or public assets in the State; and

(d) ensure that Public Private Partnerships for the provision and development of public infrastructure or public assets in the State are in accordance with prevailing Government Policy and public interest.

The Functions of the OYSIPA

The functions of the OYSIPA are to:

(1) initiate procurement of Public Private Partnerships for the development of public infrastructure and public assets by conducting pre-qualification assessment of private investors willing to enter into Public Private Partnerships with the State, based on a request for expressions of interest;

(2) evaluate technical and financial proposals, submissions or tenders by private investors interested in Public Private Partnerships with the State and issue a preferred mandate in accordance with the provisions of the OYO STATE State Public Procurement Law;

(3) act on behalf of the Government or any of its agencies in Public Private Partnerships under this Law and develop optimal means of financing public investment projects in order to achieve value for money; ensure on behalf of the Government or any of its agencies that all aspects of financing, refinancing and insurance of public private partnership projects are duly undertaken by means of Public Private Partnerships, within the public sector;

(4) prepare and develop on behalf of the State, strategic master plans for Public Private Partnerships;

(5) identify priority sectors for Public Private Partnership initiatives;

(6) determine the framework of engagement of consultants, specialists and advisers for Public Private Partnerships in the State;

(7) verify and maintain performance of the terms and conditions of concession agreements by concessionaires;

(8) advise the Government on matters relating to financing, construction and maintenance of public infrastructure or public assets by means of Public Private Partnerships in the State; and in particular, to identify and make recommendations to the Government with respect to the acquisition of land required for such purposes;

(9) undertake or conduct research, investigations or inquiries and collect information relating to public infrastructure or public assets in general; liaise with bodies of professional persons, and private agencies performing work regarding public infrastructure or public assets; and

(10) in relation to Public Private Partnerships initiated by OYSIPA, it shall:

(i) ensure the provision by the Concessionaire of such facilities and amenities that are necessary for the users of public infrastructure or public assets;

(ii) oversee the development, operation and maintenance of public infrastructure or public assets provided by means of Public Private Partnerships and such other facilities necessary or adjacent to such public infrastructure or public assets; and

(iii) satisfy, discharge, and perform the obligation of the OYSIPA and the State, to uphold and observe the terms of any concession agreement subject to the provisions of this Law.

The OYSIPA shall have power to:

(1) grant concessions to private investors interested in Public Private Partnerships for design, construction, operation, management, control, maintenance, rehabilitation and financing of public infrastructure or public assets, in accordance with the Oyo State Public Procurement Law;

(2) negotiate with prospective private partners;

(3) obtain from any government agency or private institutions, statistical or other information relevant to the functions of the OYSIPA;

(4) inspect and monitor concessionaires to ensure compliance with the terms of any concession agreement;

(5) recommend the designation of a public infrastructure or public asset as a service charge, user fee or toll paying public infrastructure or public asset and specify the condition for the use of such infrastructure or assets;

(6) liaise and co-operate with all MDAs with respect to private investors' participation in the provision and development of public infrastructure or public assets;

(7) pursuant to and in accordance with the provisions of this Law, approve the fares that may be charged by any private or public operator with respect to any public infrastructure, public assets or amenities for the purpose of imposing toll or user fees in accordance with the payment mechanism stated in the relevant concession agreement;

(8) establish and operate an information management system concerning public infrastructure or public assets and public private partnership projects;

(9) perform such other functions as may be assigned to it by the Governor under this Law; and do all things that are necessary or expedient for the performance of its functions, including the engagement from time to time of consultants and advisers and other services providers.

Procurement of Public Private Partnerships

(1) The OYSIPA may give letters of procurement, comfort, or undertakings in respect of any Public-Private Partnership or concession agreement.

(2) The OYSIPA shall be a procuring entity for the purpose of the Oyo State Public Procurement Law and shall comply with the provisions and intentions of that Law.

(3) The OYSIPA may undertake restricted or emergency procurements in accordance with the provisions of the Oyo State Public Procurement Law.

3.3.1. The Oyo State Public Procurement Agency

The Oyo State Public Procurement Act 2021 established a body known as the Oyo State Public Procurement Agency.

The objectives of the Agency are to –

(1) ensure probity, accountability and transparency;

(2) establish fair pricing standards and benchmarks;

(3) ensure the application of fair, competitive, value-for-money standards and practices for the procurement and disposal of public assets and services;

(4) create ample opportunities for the citizenry, particularly small and medium scale enterprises, to participate in the economic opportunities and benefits of public procurement;

(5) Create a cost and time efficient and effective adjudicatory mechanism for the resolution of complaints arising from public procurement process in the State and its Local Governments filed by procuring entities, bidders, and the general public; and

(6) attain transparency, competitiveness, professionalism and guarantee integrity and public trust in the public procurement procedure.

The Agency shall:

(i) consider, amend, and review the monetary benchmark for the application of this Law;
(ii) approve the employment of staff of the Agency other than the Director General;
(iii) approve changes in procurement process to adapt to changes in technology;

(iv) formulate the general policies and guidelines relating to public sector procurement for the approval of the Governor;
(v) publicize the provisions of this Law;
(vi) certify all State procurements prior to, during and after the award of any contract;
(vii) supervise the implementation of established procurement policies;
(viii) oversee and superintend compliance by all procuring entities with the procurement policies of the State;
(ix) monitor the prices of tendered items and keep a database of standard prices;
(x) publish the details of major contracts in the State Procurement Journal;
(xi) publish paper and electronic editions of the State Procurement Journal and Procurement Manual and maintain an archival system for the State Procurement Journal;
(xii) register and maintain a database of contractors and service providers to the exclusion of all procuring entities;
(xiii) register and maintain a list of firms and persons that have been blacklisted or banned from participating in the public procurement system and publish them in the State procurement Journal; and
(xiv) carry out such other functions which are essential to run an efficient procurement process and the effective implementation of its functions under this Law.

Section 18 of the OYSIPA Law 2019

(1) The Agency shall have the power to:

(a) enforce the rules and review benchmarks set pursuant to this Law;
(b) inspect and review any procurement transaction to ensure compliance with the provisions of this Law;
(c) investigate and determine whether any procuring entity has violated any provision of this Law;
(d) blacklist or ban any supplier, contractor or consultant that contravenes any provision of this Law and Regulations made pursuant to this Law;
(e) prescribe classifications and categorizations for the Companies or Limited Liability Partnerships (LLPs) on the register;
(f) call for information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement or collusion has been alleged, reported or proved against a procuring entity or service provider;
(g) call for the production of books of account, plans, documents, and examine persons or parties in connection with any procurement proceeding;
(h) act on complaints by public procurement entities in accordance with the procedures set out in this Law;
(i) nullify the whole or part of any procurement proceeding or award which is in contravention of this Law;
(j) recommend the discontinuance, stoppage, or suspension of any payment due from the State Treasury under any procurement contract, activity or proceeding which has contravened or is likely to contravene any provision of this Law;
(k) undertake procurement and contract performance audits;
(l) train personnel and build state-wide institutional capacities for a sustainable and efficient public procurement system;
(m) recommend to the approving authority contracts for the award of procurement of goods, works and services within the provisions of this Law;

(n) constitute a Technical Review Committee comprising of technical, financial, and legal experts to assist in the re-evaluation of a bid where it deems necessary in the public interest; and
(o) issue a Certificate of Compliance after it has certified compliance by a procuring entity within the provisions of this Law.
(p) ensure that set standards in the Monitoring and Enforcement Department are maintained.

(2) Where there are persistent or serious breaches of this Law, its Regulations or any other guideline made under this Law, the Agency shall recommend to the Governor the following:

(a) suspension from Office of Officers concerned with the procurement or disposal proceeding in issue;
(b) removal from Office of the Head of any Procuring or Disposal Unit;
(c) discipline of the Accounting Officer of any Procuring entity;
(d) temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third-party procuring entity; or
(e) any other sanction that the Agency may consider appropriate.

(3) The Agency shall have power to do all such things as are reasonably necessary for the purpose of carrying out its functions under this Law and may carry on in that behalf either alone or in association with any other person or body.

The OYSIPA Institutional Framework

The legislative framework governing PPPs in Oyo State allocates specific roles and responsibilities to various entities within the state. These specific OYSG entities have roles and responsibilities for PPP development and how they work together in the PPP process are referred to as the institutional framework for PPP development. To make sure that there are checks and balances in the system, as well as oversight of the decision-making process, many OYSG entities participate in the PPP process from beginning to end.

Ministries, Departments and Agencies (MDA)

Ministries, Departments and Agencies (MDAs) are responsible for managing public infrastructure and services and for the management of their own resources. The MDAs prepare long-term plans for infrastructure investment and maintenance. These plans are incorporated into the OYO STATE State Development Plan being prepared by the Oyo State Ministry of Budget and Economic Planning. As part of this process, the MDAs, in consultation with the OYSIPA identify where PPP is likely to offer better Value-for-money over other forms of public procurement and the same is factored into the Investment Strategy of the relevant MDA. The MDAs are guided by the Oyo State Ministry of Budget and Economic Planning in consultation with the OYSIPA for the criteria to be adopted for measurement of the Value-for-Money and assessment of the risks associated.

Oyo State Ministry of Finance (MoF)

The Ministry of Finance (MoF) plays an important role in public financial management of PPP projects, and in evaluating and managing fiscal risks that may result from PPP agreements. The MoF ensures that the forecasted costs for the OYSG including any subsidies that may be required to make a project viable are affordable over the full life of the contract. Together with the relevant MDA, it also reviews the costs and contingent liabilities as the project design and risk valuations are refined during the project preparation and procurement phases.

Oyo State Ministry of Economic Planning and Budget

The **Oyo State Ministry of Economic Planning and Budget** has a rich history rooted in the state's pursuit of sustainable development and economic growth. Established alongside the creation of Oyo State in 1976, the ministry was initially tasked with the responsibility of ensuring proper economic planning and budgeting, with a focus on driving development across the state's diverse sectors. Over the years, it has played a pivotal role in formulating policies that align with the evolving economic landscape of Nigeria.

Historically, the ministry has been instrumental in shaping Oyo State's financial and developmental frameworks, particularly in areas like agriculture, infrastructure, and human capital development. It has also worked to optimize public resource allocation to achieve the state's developmental goals. In the 2000s, with the advent of modern economic challenges, the ministry expanded its focus to include strategic partnerships with both national and international bodies, aligning with the state's efforts to diversify its economy.

The partnership between the Ministry of Economic Planning and Budget and the **Oyo State Investment and Public-Private Partnership Agency (OYSIPA)** has strengthened Oyo State's investment climate, driving the state's economic transformation. By tapping into the potential of Public-Private Partnerships (PPP), the ministry has been pivotal in securing investments in infrastructure and other critical sectors, making a significant impact on the state's development trajectory.

Its vision is to be the primary agency of government that facilitates efficient and effective mobilization, planning, allocation, and utilization of resources for socio-economic transformation of Oyo State and its mission is ensuring continuous and dynamic socio-economic policies through prudent and equitable resource management in Oyo State.

Oyo State Ministry of Justice

Its vision is to be the public Legal Service that Promotes Integrity, Values Innovation, and a tradition where merit is the primary key to advancement and its mission is by working together, to

serve the people by Professional and Ethical Standards that promote Access to Justice regardless

of Socio-Economic class and to attract, develop, motivate, and retain the best law officers within supportive work environments.

The Ministry is focused on Law Reform and Legislative Initiatives, especially in Public Law and improvement of the Legal Environment to promote economic activities.

OUTLINE BUSINESS CASE

The Rationale for an Outline Business Case (OBC)

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

The completion and approval of an Outline Business Case, however, often does not mean that all project preparation has been completed. The government may not require that an Outline Business Case contains all the studies/analysis that is necessary before contract award. For example, although screening of the project's environmental and social impact will have been done for the OBC, the full Environmental and Social Impact Assessments (ESIA) may be on-going during the early stages of the procurement and the costs of any mitigation against adverse impacts only estimated for the OBC. Similarly, more detailed ground investigations may be carried out in consultation with the bidders who will be preparing their outline designs during the bidding phase. One reason for only doing pre-feasibility studies (i.e., basic studies) at the Outline Business Case stage is that MDA's Project Development Team may not want to spend the necessary budget to complete more in-depth, and more costly, feasibility studies until they know that the Outline Business Case has been approved by the government.

The Outline Business Case:

- Ensures that the project is designed in accordance with identified needs and is the most suitable technical solution for those needs;
- Provides information about costs (explicit and hidden), and provides an assessment of financial viability and impact on MDA's budget without disruptions to other activities;
- Allows for the identification, quantification, mitigation and allocation of risks associated with the project life cycle;
- Completes the resettlement plan as well as the ethnic minority plan (if relevant);
- Completes the Consultation Plan;
- Documents all consultation completed for the project;
- Includes the project specific land acquisition; and
- Considers whether the project is affordable to the government and or the end user of the services in terms of explicit and contingent fiscal obligations

In addition to this, for the MDA, the OBC would:

- Consider how the project will be structured;
- Contain a financial model establishing key investment ratios and capable of running scenario and sensitivity analyses;
- Identify constraints which may cause the project to be halted; and
- Ensure that the project is developed around a proper business plan and has been subject to a due diligence that shows it is legally, technically, and socially compliant.

The Project OBC is based on a design of an appropriate level of detail that meets good engineering design practices and the design and construction standards as specified by the

Developing an Outline Business Case

The Outline Business Case process involves bringing together the following information gathered during project preparation:

- Strategic Needs Assessment
- Analysis of the Service Delivery Options
- Technical analysis of options and outline design
- Preparation of a Risk Matrix which identifies all the project risks and allocates them to the party best able to handle each specific risk
- Financial modelling of the project costs and revenues, including sensitivity and value for money and affordability analyses for government, and viability for private investors, by constructing a PSC where the public sector carries out the project and includes the public sector pricing and taking responsibility for all the project risks identified in the Risk Matrix. A shadow private sector PPP model is then also constructed with the risks priced and shared as set out in the Risk Matrix. The discounted NPV of the cash flows of the two models are then compared
- Economic cost benefit analysis
- Project Implementation Plan
- Compilation of the Outline Business Case Report.

Strategic Needs Assessment

A case for the strategic need for the project, in terms of output, scope, and objectives, must be made. This involves reviewing any previous Strategic Needs Assessment studies done (if applicable) and determining the project's ability to meet the MDA's objectives. The project should already be a component of the government's sectoral planning, and therefore should be justified in the major sector development plans. However, there is also a need to justify "why now."

As part of this Strategic Needs Assessment, the key elements to be included are:

- the project's contribution to the implementation of government policy;
- the MDA's ability and capacity to develop the project;
- the relative demand for and corresponding size of the project in terms of its anticipated budget or capital expenditure;

- detailing the desired outputs, including any minimum service/technical standards and performance requirements;
- the capacity of the private sector to provide the services;
- any desired outcomes and impacts of the project (i.e., how it will provide additional benefits to the service area);
- and any other major driving factors for the rationale of developing the project.

Analysis of the Service Delivery Options

As part of the Outline Business Case, the MDA should identify and evaluate the potential options for meeting their service delivery needs. The objective of this exercise is to list the alternatives and recommend the preferred option, and subsequently why the recommended option should be structured as a PPP project. However, even if a PPP is the preferred method the decision to procure as a PPP will depend on several other factors (e.g., enabling environment, private sector interest, financial analysis, etc.).

When identifying all potential options for service delivery, options to include are:

- *Non-asset solutions:* Service needs may be met without creating additional government assets, through reconfiguring the means of service delivery, developing initiatives to manage demand more effectively, or allowing the private sector to offer the service in an openly competitive market (i.e., internet, mobile phones, etc.);
- *Upgrading existing asset solutions:* Consider whether existing infrastructure held by the MDA, by another government body, or under an existing or planned PPP might be used. This may involve an expansion or refurbishment to bring the infrastructure to the required standard; or
- *New asset-based solutions:* new infrastructure may be developed to provide the required service.

Each of the service delivery options identified in the previous step should be evaluated to identify their advantages and disadvantages, such as the associated risks and benefits; the technical feasibility elements, social and environmental impacts, potential effects on government budgets and capacity, land acquisition / site issues, legislative and procurement processes, and labour and private sector capacity issues.

Technical Options Analysis

All major non-financial aspects of feasibility should be carefully analyzed to ensure that the project can be practically implemented from a technical perspective. Depending upon the complexity of the project and the availability of experienced personnel within the public sector agency, the Project Team often will need to appoint consultants and other outside experts to undertake technical studies as part of the due diligence process. Typically, technical Options Analysis involves three main components: a Technical (Pre) Feasibility Study, a Social and Environment Impact Assessment, and a Legal Review.

Technical (Pre) Feasibility Study

The Technical (Pre) Feasibility Study focuses on the engineering elements of the project. This should include:

- Field surveys of the selected project site, which may include (depending on the project) mapping, topographical and geotechnical surveys;
- Analysis of natural conditions (e.g., weather) that may impact the technical design; and
- A preliminary design of some different technical solutions that meet the preferred service delivery option.

At this stage, the technical design is not finalized and is not typically completed to the level of detail required for the final specifications. The focus here is on identifying the preferred technical solution and confirming the project's technical feasibility, determining minimum technical requirements to be specified in the procurement process, and on providing a design benchmark for estimating project costs to be used in the economic and the financial analysis.

Social and Environmental (Pre) Feasibility Study

Infrastructure projects often have significant social and environmental impacts arising from their construction and operation, which can be both positive and negative. Environmental impacts on the project location and in associated areas (for example downstream, ground water or ambient air) include effects on natural resources, biodiversity, and sustainability due to alterations and/or pollutants. Social impacts on communities affected by the project may include, for example, resettlements of communities at the project site and the associated impact on quality of life and livelihoods, and impacts related to environmental alteration (for example on health and livelihoods). Given the importance of recognizing and mitigating these impacts, social and environmental impact assessments are often a mandatory regulatory requirement of an infrastructure project's development process.

The scope of social and environmental studies covers the following:

- Quantifiable social and environmental costs and benefits;
- Non quantifiable social and environmental costs and benefits;
- Options for mitigating adverse impacts and the cost of mitigation;
- Types of permits and licenses required;
- Health and safety standards;
- Any secondary effects should also be included;
- Public consultations as part of the process to ensure that the secondary effects are adequately captured.
- Any additional environmental studies / analysis that will be required before the project is ready for procurement (often detailed studies are required for the major issues).

Legal Review

A comprehensive Legal Review must be done to ensure that all the foreseeable legal requirements are met for the development of the project. Although it may be costly to undertake a comprehensive review of all legislative and regulatory aspects of the project in this early phase,

it is essential as a minimum to have a legal screening. Common legal issues pertain to land use rights, regulatory matters, governing legislation, tax laws, and other related matters.

Financial Due Diligence

Financial Feasibility

It is essential to establish the financial viability of the project through a Financial (Pre) Feasibility Study with respect to the costs involved and the revenue potential, especially if the project will be developed as a PPP as return on investment is the private sector's main motive for doing the project. The first step is obviously to estimate the project's cost. The three broad categories of costs that need to be considered are:

- **Capital costs:** Capital costs are the costs incurred for the creation of an asset. In the case of infrastructure, this includes costs of development. These are one-time costs incurred in the process of creation of the specific infrastructure.
- **Operating costs:** Operating costs indicate the expenditure to be incurred for the routine operation and use of the infrastructure created. These would include expenditure on manpower, utility costs, and other administrative expenses.
- **Maintenance costs:** Maintenance costs include all costs of periodic and routine inspection, maintenance, and repairs of the asset to ensure that it is available to the required performance standard throughout its intended lifetime.

Secondly, project revenues need to be estimated. Project revenues represent the income that is generated from the provision of services to the users. These could be in the form of user charges levied, fare or toll revenue, revenue from ancillary sources like sale of carbon credits, provision of advertising rights etc. Project revenues may also include direct payments from the government authority in the form of VGF/availability payments.

The revenue sources for various sectors could vary from one sector to another and are often dependent on tariffs or tolls that are regulated. A key component to estimating revenues is to understand the price that can be charged, and the willingness to pay for the service. Therefore, a detailed analysis of the tariff or toll setting process is required. Furthermore, demand analysis and, in many cases, a willingness to pay assessment is required following surveys of potential users. For many transport projects a traffic model will need to be made incorporating the results of comprehensive traffic surveys of journeys, alternative routes and modes, and price elasticities.

Financial Modelling

Therefore, the basic inputs for the financial model include:

- Project cost as derived from the detailed project report on capital costs, pre-operational expenses (to be capitalized), cost of legal approvals, etc. with the capital costs including the risk pricing in line with the Risk Matrix, using either the optimism bias or probability analysis methodologies.

- Operations and maintenance costs as derived from the demand projections and the estimated operating expenses including the risk pricing in line with the Risk Matrix, using either the optimism bias or probability analysis methodologies.
- Financial costs split between the different sources of finance, that is, equity and debt, with the equity split between real equity and long-term loans and with the debt split between loans and bond financing and between currencies if more than one currency involved. In addition, all financing fees should be included as well as all financial reserve requirements and financial ratios. The equity return used as an input should be the result of a review of other competing investment returns available in the international and local markets, including local government bonds.
- Project revenues include the revenues which have been identified from all the sources, and income from grants which may accrue to a specific project.
- Assumptions for projecting the cash flows in the future, for instance, long-term inflation rates, long-term interest rates, tax rates, etc.

The financial viability of any capital-intensive project is largely defined by the return on investment the project is expected to earn the investors (i.e., the Internal Rate of Return (IRR) of the project). These returns are calculated based on project cash flows, which are available for investors to the project (both debt and equity investors). Key statements would have to be prepared covering both the Public Sector Comparator (PSC) and the shadow PPP models as applicable including Projected Profit and Loss Account, Projected Balance Sheet, Projected Cash Flows, equity, and debt tables, financial ratios table, a statement of the assumptions used across the financial statements and total capital expenditure and its phasing and financing.

Value for Money and Affordability

The discounted NPVs of the cash flows of the PSC and shadow PPP models adjusted for any tax paid are then compared in the value for money analysis, the lowest value being the best financing option for that specific PPP project. The discount rate is normally the government cost of funds for comparable maturities. Depending on the type of project and the source of the income, the income payable by the public sector sponsor and/or the VGF/availability payments are then reviewed to ensure that they are affordable to the public sector sponsor.

Financial Sensitivity

In addition, a sensitivity analysis is conducted to gauge the financial robustness of the project (i.e., to see how changes in key assumptions impact the financials of the project). Some variables to consider are:

- Changes in construction period, phasing, and project duration
- Changes in inflation rate, interest rates
- Changes in construction costs
- Changes in operating costs
- Changes in market demand
- Changes in discount rate

In cases where the project returns are not found to be sufficient or where the sensitivity shows the project to be too risky, the possibility of obtaining government financial support (e.g., guarantees, Viability Gap Funding, etc.) may be explored.

Economic Cost Benefit Analysis

It is particularly important to the government policy makers that the feasibility phase should also include an Economic Cost Benefit Analysis, and correspondingly demonstrates the economic benefits of the project. The purpose of economic analysis is to determine whether there is an economic case for the investment decision. The economic assessment goes beyond the items typically included in a financial analysis and includes:

- The *economic* benefits from the project
- The *economic* costs of the project
- The balance of these expressed in present value terms (i.e., the net economic benefit or Economic Rate of Return (ERR))

Economic analysis includes project impacts that do not have a market price and positive/negative externalities that are experienced by people who are not the direct users of the project services. For example, a new coal power plant must assess such things as job creation at local mines (positive externality) and the health costs of increased air pollution (negative externality).

Some elements of the Economic Cost Benefit Analysis include:

- Market valuations of the inputs (land, materials, labour, etc.) to the project, adjusted for any distortions in the market (such as taxes or subsidies)
- The valuation placed on the services by the users (i.e., the amount that the users would be willing to pay for the benefit they would receive from the service, including indirect benefits such as improved safety which cannot be directly measured). This is not necessarily the same as what they would be charged.
- Secondary or spill-over costs and benefits (i.e., externalities) that have an impact beyond the project itself.
- Looking at Value-for-Money elements of the project (e.g., if the MDA delivers the same service through conventional public procurement benchmark (Public Sector Comparator)).

Project Implementation Plan

A Project implementation Plan is developed once all the project (pre) feasibility has been conducted to reflect the timing and the interrelationships of all the major components of the project. The purpose of the Project Implementation Plan is to provide a detailed list of the remaining studies, procurement milestones, and other task required to bring the project to fruition.

Compilation of the Outline Business Case

The outputs of the feasibility analysis are drawn together into an Outline Business Case, which provides the overall business rationale for proceeding with the PPP project (assuming the feasibility studies and other analysis supports the investment and procurement by PPP). It should provide all the information that is needed for a decision by the relevant approval authority to start a procurement process, as defined in the PPP Policy.

The Outline Business Case contains summaries of the outputs of each component of the assessments, options analysis, and feasibility studies described above. Most importantly, the Outline Business Case should answer these essential questions:

- Why is the project needed? – A description of the project, a definition of its services / outputs, project location, target user group, technologies to be employed, etc.
- Why should the project be implemented as a PPP? - Gaps identified in public sector implementation, budget and know-how constraints, market analysis that private firms would be interested in bidding, alternatives considered, financial analysis that provides evidence the project will provide an adequate financial return, any public sector support required, etc.
- What are the expected positive benefits and negative impacts to the project? - Social and environmental impacts of the project, their planned mitigations and possible externalities, analysis showing the economic benefits / service improvements, etc.
- What is the implementation plan going forward and how long will it take? - A realistic project implementation schedule, identification of major project risks and their allocation between the public and private partners.
- Who will implement the project? - Capacity of sponsor (MDA) to implement the PPP, information on the MDA's project team and their technical advisors, the project officers and the project team, lines of decision-making within the MDA, and the technical consultants (or the process for selecting technical advisors).

The Outline Business Case can then be presented to the relevant authority for approval.

PROCUREMENT PROCEDURES

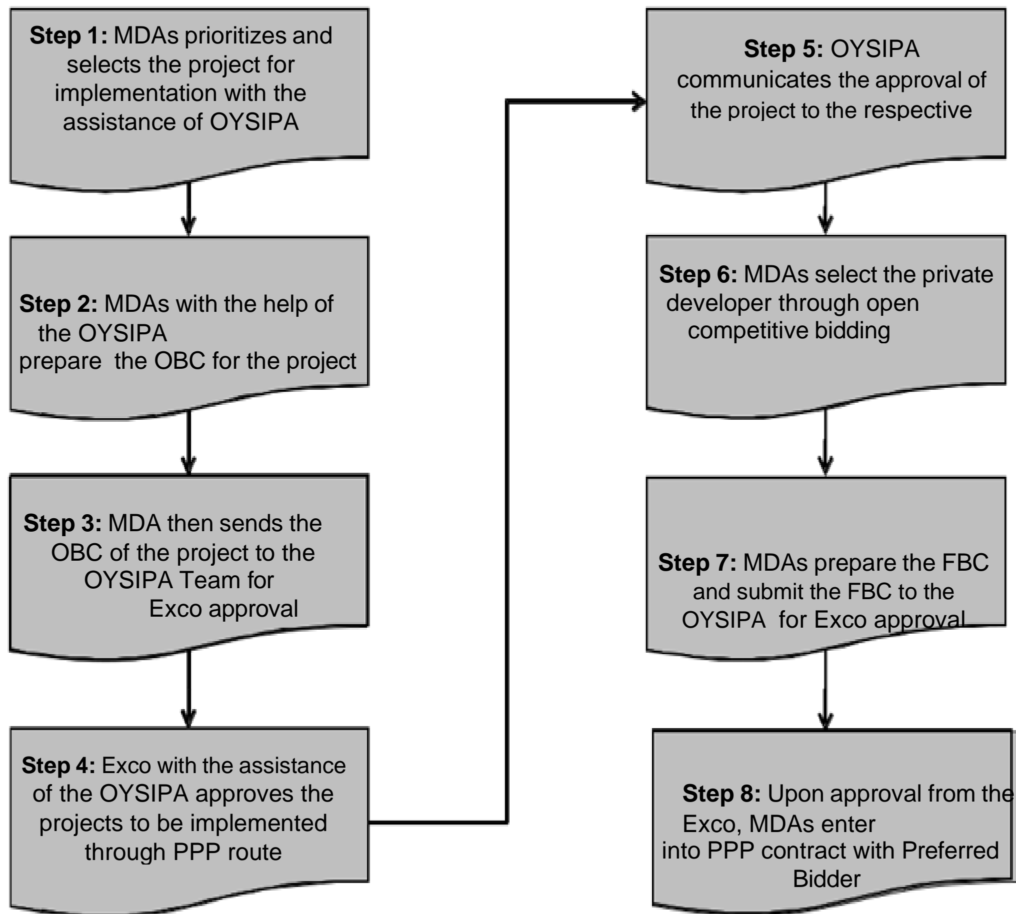
Government Planning and Budgeting for a PPP Project

The development of PPP projects is generally initiated by Ministries, Departments and Agencies (MDAs) within their functional and geographical jurisdiction. They conceptualize the project, undertake various preparatory studies to develop the project and take the project through various stages of approvals and reviews. Given the importance of determining a project's viability before proceeding to PPP procurement, making sure the procurement process itself is professionally managed, covering the government's oversight responsibilities for the full PPP lifecycle, and having a system for any PPP fund transfers (i.e. subsidies going out or royalties coming in), a very first critical step is for the sponsoring MDA to secure the necessary funding to cover all of government's responsibilities from the appropriate budget and planning entities.

PPP Procurement at the Oyo State Level in Nigeria

Once funding is secure for the complete project development and procurement phases, and once a PPP project has an Outline Business Case approved and all necessary feasibility studies completed, the project is ready to move to the procurement phase. The key to a successful PPP procurement process is to maximize transparency and competition. Participating private sector entities expect that the process will provide all bidders with the information they need to properly evaluate the opportunity and an equal chance to win the project.

Figure 7: PPP Procurement at the Oyo State Level



A brief description of the procurement and approval process for a PPP project at the Oyo State Level is provided below.

- ***Step 1:*** The MDAs with the assistance of the OYSIPA select and prioritize the projects to be implemented on a PPP basis for each sector;
- ***Step 2:*** For the projects selected to be implemented through the PPP route, the respective MDA with the assistance of the OYSIPA prepares an Outline Business Case;
- ***Step 3:*** The Outline Business Case is then submitted by the MDA to the OYO STATE State Executive Council for approval;
- ***Step 4:*** The Exco with the assistance of the OYSIPA approves the projects to be implemented through the PPP route for various sectors;
- ***Step 5:*** The OYSIPA communicates to the respective MDAs about the projects approved by the Oyo State Executive Council for implementation through the PPP route;
- ***Step 6:*** The MDAs select the private developer for the implementation of the project through open competitive bidding process;
- ***Step 7:*** Once the Preferred Bidder is selected, the MDA prepares a Full Business Case based on the Outline Business Case and the proposal of the Preferred Bidder and submits the same with the assistance of the OYSIPA to the Oyo State Executive Council for approval; and
- ***Step 8:*** Upon approval of the Full Business Case by the Oyo State Executive Council, the MDA enters a PPP contract with the Preferred Bidder.

The Competitive Bidding Process

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

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

Competitive Bidding following a Two -Stage Process should be adopted for the selection of the private developer. To this end, in the first stage, applications to qualify are invited against threshold technical and financial criteria specified in the Request for Qualification (RFQ) document. Firms are short-listed based on their Technical and Financial capabilities. The shortlisted firms are required to submit detailed proposals in response to a Request for Proposal (RFP) document. The Proposals are then evaluated as per the conditions of the RFP. The table below provides the indicative steps and timelines in a Two-Stage Bidding process.

Table 3: Indicative steps and timelines – Two stage bidding

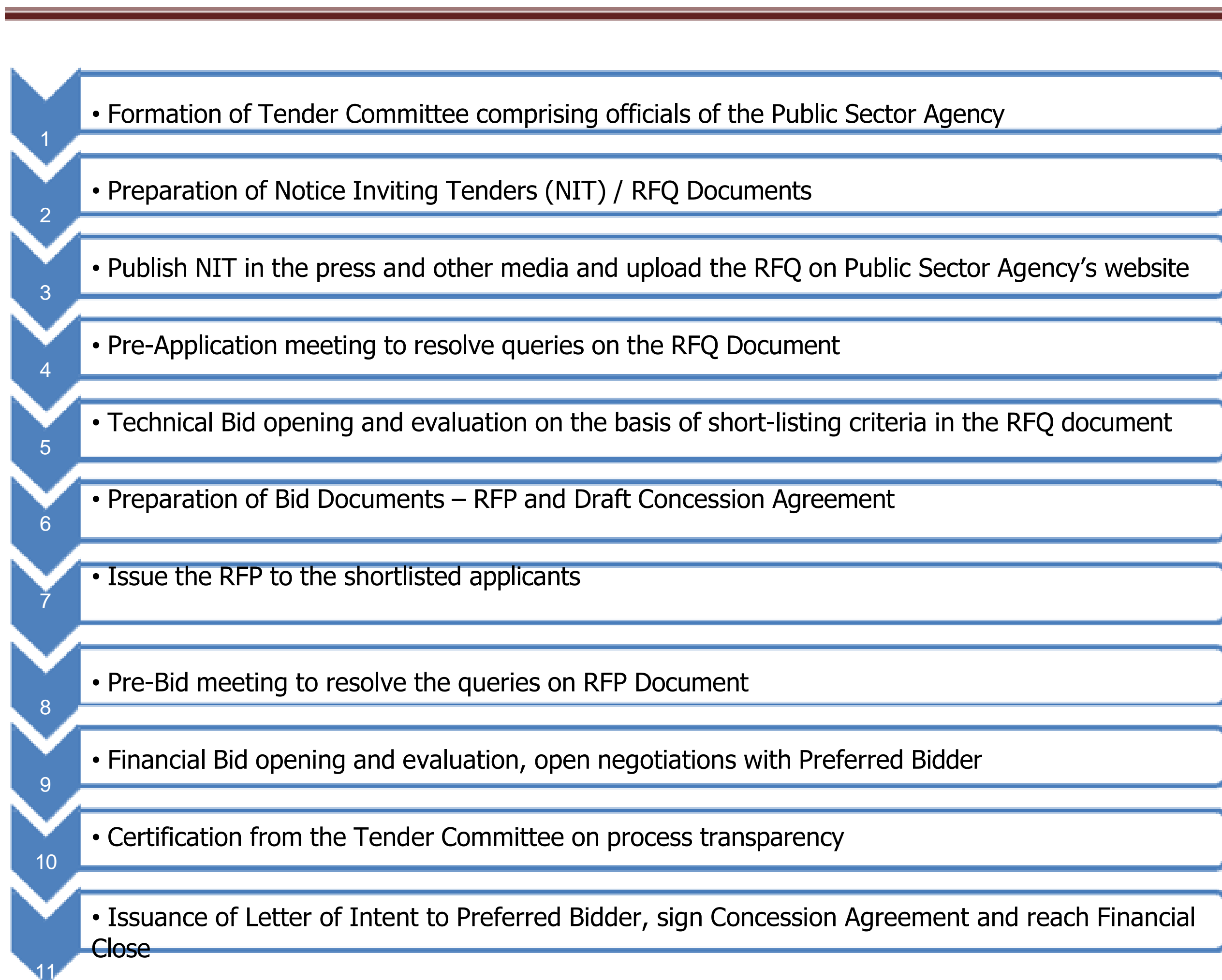
Sr. No.	Event Description	Estimated Date
Stage-1: Pre-Qualification Stage		
1	Publication of RFQ document	Zero Date (X)
2	Submission of query by the perspective bidders	X + 15 days
3	Pre-bid meeting	X + 20 days
4	Authority response to queries	X + 30 days
5	Application Submission Due Date	X + 60 days
6	Opening of Technical Proposal	X + 60 days
7	Technical Capability Evaluation & Report	X + 75 days
8	Acceptance of Technical Evaluation Report by the Procurement Committee	X + 80 days
Stage-2: Bid Stage		
1	Sale of Bid/RFP document to short-listed applicants	X + 90 days
2	Submission of query by the perspective applicants	X + 105 days
3	Pre-Bid meeting	X + 110 days
4	Authority response to queries	X + 130 days
5	Bid Submission Due Date	X + 150 days
6	Opening of Bids	X + 150 days
7	Letter of Intent (LOI)	within 30 days of Bid Due date
8	Signing of the Contract	within 30 days of LOI

Figure 8. below is a flow chart showing the steps in a typical Bidding process.

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

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

Figure 8: Steps of a Two Stage Bidding Process



Step 1: Formation of a Procurement Committee

A Procurement Committee, often called a Tender Evaluation Committee, is formed for overseeing and conducting the bidding process. Typically, the Procurement Committee is formed with representatives from several MDAs with responsibility for the financial, legal, and operational aspects of the project as well as the Oyo State Board of Public Procurement to have diversity and no one government group alone in charge of selecting the preferred bidder. The Committee appoints an in-house Co-ordinator or an external consultant (Transaction Advisor) to manage the day-today aspects of the bidding process. However, the Procurement Committee itself (and not the Co-ordinator or Transaction Advisor) is responsible for making the final determination of the preferred bidder.

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

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

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

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

The RFQ includes the formats for submission of applications and instructions on how to present proof/testimonials of eligibility and qualification. This usually includes such items as the details of applicant, experience with similar projects and their Completion Certificates, Statement of Legal Capacity, Board Resolution, Solvency Certificate, Non-Collusion Certificate, Financial Statements for the previous 3 years, Certificate of Incorporation of Entity, etc.

5.3.1 Step 3: Pre-Application Meeting and Issue of Clarifications

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

Step 4: Evaluation of Applications and Short listing of Bidders

The applications are evaluated based on the technical and financial capabilities to implement the project as per the selection criteria given in the RFQ. At this stage, the evaluation normally focuses on threshold criteria such that all proposals meeting the criteria are shortlisted for the next stage and all non-confirming proposals are rejected. A Pass/Fail approach is generally the preferred approach for evaluation of responses to the RFQ. However, a target number (3-5) of shortlisted bidders is usually preferred to ensure sufficient competition but not at the same time overcrowd the bidding process, and therefore sometimes only the highest qualifying firms will pass on to the full tender phase. If firms feel there are too many bidders, and thus the odds of winning are low, they will not participate in the full tender.

Step 5: Request for Proposal Stage

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

Step 6: Bidders' Conference and Processing of Clarifications

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

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

Step 7: Proposal Evaluation

At the RFP stage, bidders are required to submit their proposals in two parts: a Technical Offer and a Financial Offer. The Technical Offer is normally evaluated by the Transaction Advisor, along with Procurement Committee members and other technical experts, through a scoring approach with a threshold cut-off score (often of 70%). Financial Offers of only those bidders scoring above this technical threshold are opened. A scoring system which combines the technical score with the financial offer is then used to determine the winner of the tender.

Step 8: Approval by Procurement Committee and Issue of Letter of Intent (LOI)

The Project Co-ordinator or the Transaction Advisor presents an Evaluation Reports – Technical and Financial - as per the procurement timeline to the Procurement Committee. This Committee considers and approves the report then issues a Certificate of Transparency that this process was carried out in accordance with regulations and was fair and transparent. On this basis, the Procurement Committee confirms the Preferred Bidder.

The technical and the financial proposals of the preferred bidder are incorporated into the contract and the Full Business Case prepared based on the pricing and the technical information contained in the preferred bidder's bid. A Letter of Intent is then issued by the MDA in favour of the Preferred Bidder. The Letter of Intent specifies the Conditions Precedent to be completed by the Preferred Bidder. These typically include
a) Checking all legal requirements of signatories, and land ownership
b) Furnishing the Performance Security if any and any other Project Development Fees payable if any and
c) Formation of a SPV if required under the RFP. Once the Conditions Precedent to the signing of the Contract Agreement are met, the Agreement is signed between the MDA and the Preferred Bidder, its coming into effect being subject to reaching financial close.

Bid Documents for PPP Procurement

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

Request for Qualification (RFQ)

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

- Description of key project details including,
  - Description of the project scope and objectives, with a focus on the services to be provided including performance levels;
  - Envisaged PPP model and financing mechanism;
  - Envisaged payment mechanism;
  - Project timeframe and indicative implementation schedule; and

- Details of the qualification requirements and bidding process, including

- Qualifying criteria for the evaluation and selection of shortlisted bidders;
- Details of the pre-submission conference or meeting and of other opportunities to ask questions or seek clarification;
- Process for submitting responses and evaluation;
- Indicative procurement schedule;
- Specific legal requirements or restrictions associated with the RFQ or the project;
- Other general instructions to applicants; and
- Application forms (as annexure)

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

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

Request for Proposal (RFP)

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

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

Part I: Instructions to Bidders (ITB)

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

Part II: Project Information Memorandum (PIM)

The project information memorandum consists of project details, including:

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

Part III: Draft Concession Agreement

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

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

The criteria for bid evaluation are based on the following approaches:

Selection Method

There are several methods for determining the winner bidder. Some of the more common are:

Qualifying Criteria

The qualifying criteria used to evaluate the responses to the RFQ should be:

- Based on the project requirements.
- Selected before the RFQ is prepared.
- Related to a scoring system.
- Clearly stated in the RFQ itself.

The criteria reflect the technical, financial, and other requirements of the project and are chosen specifically for that project. The requirements' section of the RFQ specifies that the responses should provide all necessary information to meet the qualifying criteria.

Qualifying criteria may include:

- Technical qualifications
  - Experience with similar projects, in terms of service outputs and project size and complexity
  - Experience with PPPs in similar projects and generally
  - Relevant experience locally and internationally
  - Specific technical capabilities of the firm or consortium
  - Experience of working together (if firms are forming a consortium)

- Financial qualifications
  - Ability to raise sufficient funding for the project and in the form required
  - Consortium structure, including minimum equity contribution of lead firm and evidence of binding agreement among the members

- Evidence of no conflict of interest

The RFQ may also request brief comments on the project scope and structure to evaluate the firm or consortium's understanding of the requirements.

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

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

Request for Proposal (RFP)

The RFP, together with the Draft Concession Agreement (CA), comprise the Bid Documents. These are the most important documents in the bidding process. The objective at the RFP stage is to select a preferred bidder based on an objective, comprehensive and transparent selection process. The RFP and CA specify the main terms of the project which are largely non - negotiable at the award stage. It is therefore important that these terms are clear and well understood by all parties. The Concession Agreement also lays the foundation for the contract management process throughout the life of the PPP.

A quality RFP provides bidders with clarity on the requirements of the project and assures them that the public partner is credible and well organized. This makes them more likely to devote resources to bid. It also reduces the likelihood of delays to the bidding process because of subsequent changes to the RFP.

The draft Bid documents are finalized based on the details from:

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

Contents of the RFP

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

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

- ☐ *Detailed description of the project scope and required service outputs based on the specifications developed in the feasibility study including:*
  - Output-focused specification
  - Site-specific details
  - Financing requirements
  - Environmental and social safeguard requirements

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

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

Criteria for bid evaluation

- The evaluation of bids is based on the following approaches

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

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

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

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

  Where:

  X is the weight for technical;

  Y is the weight for financial, and this will be 100% in Least Cost approach;

- For the purposes of applying the above-mentioned formula, "technical" refers to all project factors under evaluation other than the price elements.

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

- Where discount rates are used for the assessment of Financial Proposals, such discount rate shall be the Government of Nigeria bond rate adjusted for risk premium (risk associated with the project). The selected government bond should have a similar maturity as the project life.

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

  - Lowest contract value;

Negotiations

Before the signing of a contract with the Preferred Bidder, there are typically certain negotiations between the MDA and the Preferred Bidder to reach consensus on the detailed terms of the contract, the allocation of risks among the parties and the deliverables of the parties under the contract. In addition, there is usually a set of Conditions Precedent that must be met for the Contract Agreement to become effective, and often these Conditions Precedent must also be negotiated. This negotiations process must be carefully planned and managed to ensure that it is fair and transparent while at the same time carried out in such a manner that the confidentiality of the negotiations is strictly maintained.

Preliminary Activity

Prior to entering negotiations, the MDA appoints a Negotiations Team, which in turn undertakes the following preliminary activities.

- **Define and articulate the objective of the negotiation**: The objective of the negotiation is to refine the understanding of the terms and conditions of the project and to reach a consensus on a mutually acceptable PPP agreement;
- **Prepare a timeline for negotiations**: This timeline includes the start and end dates of negotiation and is also structured to fall within the period of validity of the bid;
- **Identify a Negotiations Team**: This involves first identifying the skills set required for negotiations and then matching up qualified persons within and outside the MDA with the defined skill set. A lead negotiator should be identified.
- **Develop a Negotiation Strategy**: To be able to effectively negotiate, it is important for the Negotiations Team, in consultation with the Project Team and Transaction Advisors, to anticipate the preferred bidder's interests and any potentially contentious issues. The Negotiations Team develops a Negotiation Strategy which considers certain predefined positions of the MDA as well as setting the minimum negotiating parameters.
- **Establish initial contact with the Preferred Bidder**: A formal written communication inviting the Preferred Bidder for negotiations is sent. This communication includes the administrative details such as date, time, venue and expected duration of negotiations. It also provides the Preferred Bidder with the key points of discussion, the approach proposed by the MDA and any additional information required from them. The composition of the Preferred Bidder's negotiation team is one such requirement.

Initiating Negotiations

The actual act of negotiation takes multiple interactions between the Negotiations Team and the Preferred Bidder to arrive at a set of mutually acceptable terms and conditions for the project. The key considerations during this process include:

- **Defining the Objective**: Initiating the negotiations with an opening statement on the objective of the project and how it fits into the strategic objectives of the MDA. In this first contact, a clear delineation of roles and responsibilities of each member of the respective negotiation teams is clarified to create an atmosphere of trust and cooperation.
- **Setting Parameters**: Predetermination and joint agreement on the agenda for negotiations meetings.
- **Documenting**: Carefully document all discussions and interactions during the meetings. The MDA must appoint an assigned drafter to track, number and date all documents being negotiated. The MDA also ensures security of documentation and limits access to documentation as required.
- **Finding Solutions**: Working towards identifying and suggesting options to resolve
Formal Record: The Negotiations Team must produce minutes of the meetings and obtain the written agreement from the Preferred Bidder that the same are a true and accurate record of the negotiations held.

Formal Settlement

The formal settlement between the two parties happens after them reaching a compromise wherein both parties believe that the settlement is the best possible under the circumstances. Conditions Precedent in the PPP agreement are set that need to be resolved, failing which the Contract Agreement, when signed, would not be enforceable. During the formal settlement, the MDA should:

- Record all details of the negotiation
- Agree on Conditions Precedent
- Establish a preliminary schedule for signing the PPP agreement.

Once a formal settlement is reached, it is signed by all members of the Negotiations Team and the representatives of the Preferred Bidder. It is then forwarded for recommendation to the appropriate approving authority for approval and signature.

The recommendations of the Negotiations Team may be to:

- Proceed with contract award to the preferred bidder, incorporating the agreements reached during negotiations;
- Revise the negotiation objectives and hold further negotiations; or
- Terminate the negotiation and reject the preferred bidder, and subsequently open negotiations with the second highest ranked bidder.

The appropriate approving authority reviews the recommendations and then either approves the recommendation thus authorizing the MDA to proceed or may refuse to authorize acceptance and refer the matter back to the MDA with further instructions.

Contract Award

After finalization of the Contract Agreement between the Negotiations Team and the Preferred Bidder, a relevant Officer appointed by the MDA signs the contract on behalf of the government and is responsible for both the project procurement and its implementation. After the award of the PPP contract to the Preferred Bidder, the Preferred Bidder needs to achieve the financial closure of the project which is a condition precedent to the coming into force of the PPP contract/Concession Agreement within an agreed timeline in the Concession Agreement. While government may have a role to play in assisting with financial closure, it is primarily the responsibility of the Preferred Bidder to secure the necessary financing to begin the project. Once the Contract Agreement is signed, subject to reaching Financial Close the Preferred Bidder becomes the PPP Company or incorporates the SPV if it has not already done so (also referred to as the Project Operator or Concessionaire).

FINANCING PUBLIC-PRIVATE PARTNERSHIPS

Project Bankability

The term "bankability" refers to the general willingness of private sector lenders to provide financing for a PPP project. In practice, however, it is often used as a broader term to reflect the overall attractiveness of a project to equity investors as well (as they will rarely move forward without bank support). If a project is perceived to be "unbankable," then investors and lenders are unlikely to participate and consequently the government will not be able to move forward with the project under a PPP model.

Many factors can make a project unbankable such as a weak enabling environment, unconvincing user demand, a lack of confidence in government's long-term commitment to the project, an insufficient tariff structure, general regulatory uncertainty, poorly designed projects, and other project-level and economy-wide risks (e.g., labour unrest, currency stability, etc.). Given the variety of factors that can influence a project's perceived bankability, it is critical for governments to make the project attractive to potential lenders during the project design phase, otherwise the tendering process will be wasted as the project will be unable to reach financial closure.

Some of the major project characteristics that investors and lenders look at to determine a project's bankability include:

? **Enabling environment**: To reach an investment decision, the lenders/investors would also consider the likely changes in the regulatory and political conditions over the duration of their investment. Consistency in approach to regulation can reduce regulatory risk. They will also consider whether there are any legal constraints existing to prevent the successful implementation and operation of a PPP project.

? **Government support**: If the lenders/investors are not confident about the robustness of the project cash flows, they may require financial support from the government in the form of a capital grant, guarantee, VGF/availability payment arrangement or equity contribution to provide them with additional comfort for investing in the project.

? **Robustness of the cash flows**: The lenders/investors would primarily value the likelihood of project cash flows to service debt by looking at coverage ratios, monetary reserves and margins. The lenders/ investors may securitize these project cash flows so that they can allocate risks / returns of debt most efficiently.

? **Third-party support**: International development institutions may also provide financing for the project, through loans and equity, project guarantees, country risk guarantee, partial or full risk guarantees, etc. Currency support, in the case of swaps or other forms of financial derivatives, may also be used to reduce macro-level economic risks.

Project Funding Approaches

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

Corporate Finance

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

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

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

Project Finance

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

To get a project finance arrangement started, the PPP Company, structured as a SPV, receives seed money financed with debt and/or equity from one or more sponsoring firms, recoverable as development costs from the first drawdown of the loans arranged to finance the PPP project. However, the specific assets and liabilities of the PPP Company do not appear on the sponsors' balance sheet and, as a result, the PPP Company does not have access to internally generated cash flows of the sponsoring firm.

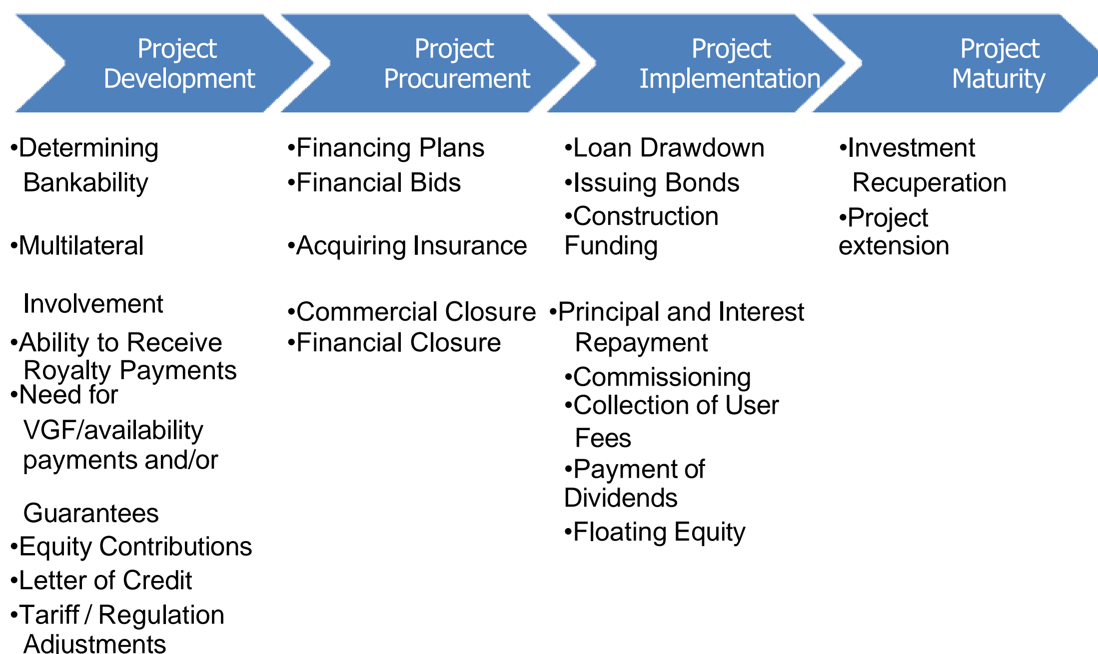
After the PPP Company receives some seed capital from its sponsors, the PPP Company will approach the market for additional financing. Investors and lenders are asked to only consider the bankability / financial opportunity of the project for which the PPP Company was created. As a result, all the interest, loan repayments, and equity returns come only from the cash flows generated from the project. The term of the investment is also limited, as the PPP Company is dissolved once the project is completed and the concession reaches maturity, although this may not be for up to 30 years.

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

PPP Financial Milestones

Project Finance transactions usually consist of several key financial milestones in each critical phase of the project.

Figure 10: Key Financial Milestones



Project Development

During the preparation of the project, a priority of government will be to evaluate key financial thresholds for the project. The first and most important task is to determine project bankability. If preliminary reviews show that the project may not be bankable under a PPP model, the government may want to have a third party, such as a multilateral agency, become involved to improve credit worthiness. Often a project's bankability can be increased by making improvements to the enabling environment, such as making tariff/regulatory reforms. There may also need to be modelling around royalty/VGF or availability payments to/from government. At the same time, potential private sponsors will need to make sure they have sufficient access to equity capital and bank loans/bond finance.

Project Procurement

Any bidder will have included business and financing plans and a financial model as part of his bid. To ensure the availability of the financing, it is critical that bidders involve banks and investors as early as possible in their bid preparation and that these financing plans take into account the major requirements of those potential financiers. Bidders will also need to begin to think about insurance requirements at this stage. In addition, the government will need to carry out its own due diligence on the credibility of the Preferred Bidder's proposed financing to have confidence that bidders will be able to reach financial closure.

Once a bidder is selected, the two important project finance milestones then become reaching Commercial Close and Financial Close. At Commercial Close, both the Bidder and the Authority will have reached agreement on all the contractual documents, including the amount of, and schedule for, any royalty / VGF or availability payments. These additional financial flows will be inputted into the decision by lenders/investors to reach Financial Close, where the terms of financing have been agreed and all financing agreements have been signed between the parties.

Project Implementation

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

Once a project is physically ready for operations, project commissioning is critical as this is when the project is accepted by the government as ready-to-operate and the PPP assumes the ability to charge customers for its services. From the lender's point of view, operations and revenues should allow for more confidence that a loan can be repaid. From an equity investor's perspective, the project demand will become clearer and the PPP Company/SPV can be valued more

accurately. In addition, equity income in the form of interest on mezzanine finance or quasi equity loans may become available to the equity holder, as dividend income is normally not payable until the later stages of the PPP project when net cash flow is sufficient. Once the project has been properly accepted and commissioned one of the core risks – the completion risk – has also been eliminated.

Project Maturity

The project revenues generated should cover the project running costs and be used to repay the financing and pay dividends to shareholders. During this operating phase, the true value of the project is understood, and equity holders will be able to receive real returns. At this operating stage PPP projects may have also initiated other forms of financial arrangements, such as issuing bonds or listing projects on exchanges, and project equity can be more easily sold to investors who may have had less appetite for the early-stage project completion risks. In the final stages of the operating phase, or the maturity phase, the asset is managed and continuously maintained to ensure that the assets meet minimum quality standards, which are checked by an assets survey approximately 12 to 18 months prior to the maturity of the concession. Any deficiencies revealed by the survey must be rectified within a given period by and at the cost of the SPV.

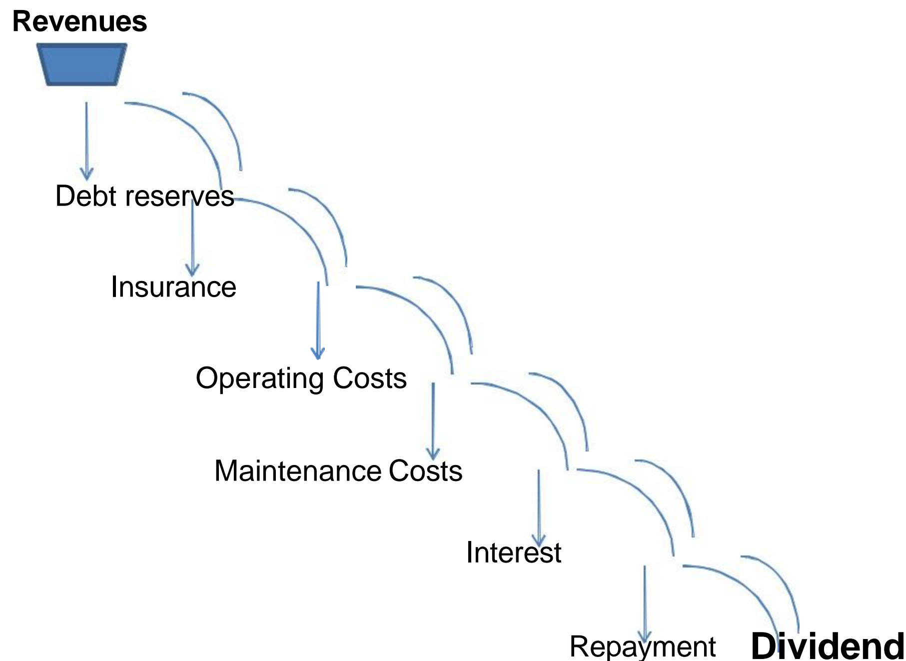
Sources of Finance

PPP projects are financed using some or all the following sources of funding:

- Equity: ownership of the project company and the associated risks and rewards;
- Debt/bond financing: first priority for payment and first rights over project cash flows; and
- Mezzanine funding and quasi-equity: secondary call on the project cash flows.
- Government Support: capital grants or VGF/availability payments from the government.

Each type of investor or lender receives a consideration from the project by way of a return on their investment. The lenders (banks, bond holders) receive interest and the equity holders receive dividend (some projects allow for hybrid models). The key is who has priority or order for payment.

Figure 11: Cash Flow Waterfall Model



This prioritization of the cash flows is enforced using financing agreements for each source of funding for the project.

Equity

Equity is provided by 'project sponsors' (those who have an operational interest in the contract) or 'financial investors' (those who have only an investment interest). Often the private project sponsor is required by government or lending institutions to invest a certain percentage of equity capital in the PPP project. This can be done either by the private project sponsor alone or be contributed by a consortium of operational investors. The advantage of funding PPP projects through a consortium of equity investors is that the consortium can be constituted to minimise project risks by assigning each consortium member to manage the risks that correspond to their area of functional expertise.

Equity can be raised by:

- **Internal Resources/Retained Earnings:** The parent company contributes funds out of surplus funds available in its existing business
- **Equity Issuances**: Equity may be raised by the project sponsors separately or by a fund set up to invest in the project or by PPP Investment Funds. It can be classified as public issuance, rights issuance, or private placement.
- **Equity can also be provided in the form of Mezzanine Debt or Quasi Equity.** The advantage is that the interest payable can be offset against corporate tax, whereas dividends are payable from taxed earnings. In addition,

interest can be earned from the start of the operating period, whereas dividends can only be paid in the later stages of the project, when net cash flow is sufficient.

Debt

Debt is defined as an amount owed to a person or organization for funds borrowed. Debt can be represented by a loan agreement, loan note, bond, mortgage, or other form stating repayment terms and interest requirements. These different forms all imply intent to pay back an amount owed by a specific date, which is set forth in the repayment terms.

Debt can be raised by:

- **Bank Loans**: These represent the most common form of debt funding and can be availed in various forms with respect to the repayment facilities, tenure of the loan, interest payment options (floating or fixed), and currency denomination. Bank loans are structured based on the expected project cash flows, with a moratorium or grace period, interest payment, and principal repayment schedule. Bank loans are generally fully secured and have recourse to project assets in the event of any default. Given that PPP projects are highly capital intensive in nature, they are often funded using a high proportion of debt (to reduce overall funding costs). To reduce individual exposure, banks often prefer to be part of a consortium or 'syndicate' of banks. One bank often acts as the "lead or arranging bank".
- **Bonds**: Bonds represent the debt funding raised for a project from the capital markets. The benefit of a bond issuance is that many different investors can be brought together, many of which only take a small piece of the project loan. Investors in a bond issue can be broadly categorized as (1) banks and financial institutions; (2) insurance companies, provident funds, and pension funds; (3) mutual funds; and (4) retail investors.
- **Multilateral Agencies**: International institutions, such as the World Bank private sector lending organization, the International Finance Corporation, European Investment Bank, and the various regional development banks are major financiers of PPP projects globally in developing countries. While multilateral agencies follow the same debt structures as purely private lenders, they do have some unique characteristics that make them good partners for infrastructure projects. For example, multilateral agencies typically lend for long-duration projects, are focused on projects with high economic development impacts, and provide technical guidance throughout the project lifecycle. They can also take the back-end loan maturities where national and international banks will only provide short to medium term loan maturities. In addition, with the requirement of banks for higher debt: equity ratios with resultant higher equity amounts being required, they can participate in the equity of the SPV.
- **Pension Funds, Insurance Companies, Sovereign Wealth Funds, and Infrastructure Funds**: Like multilateral institutions, certain types of funding groups focus on infrastructure projects given its unique characteristics and long-term, predictable cash flows. Speciality funds, such as those that come from pensions, insurance, sovereign government's resources, and dedicated infrastructure funds, are often managed by investment banks or managers.

Mezzanine Funding or Quasi Equity

As mentioned above, in addition to more traditional equity and debt arrangements, infrastructure projects may wish to raise secondary or complementary funding. Mezzanine financing or quasi-equity represents a form of equity midway between senior debt and real equity and has features of both kinds of financing. It can assume the forms of subordinated loans, convertible subordinate loans, redeemable preference shares, or debt issued with stock warrants, and takes greater risks than senior debt since it is generally subordinate in terms of collateral rights over security and rights to cash flow. Such debt, at times, is usually also unsecured other than by the project cash flow in which case the rate of interest charged would be significantly higher than that charged for senior debt. It can have one other major advantage. The interest on quasi equity can be offset against SPV corporate tax, whereas dividends are paid from post corporate tax revenue. The use of quasi equity can therefore lower the cost of equity and reduce the cost of any necessary government support.

Government Support

In specific cases, especially in high risk and/or high developmental impact projects, Federal or State governments might contribute funds to enhance the viability of the project. A key reason for this may be to make the project “bankable” or more viable to the private sector. Some reasons for government support may include:

- Supporting economically and socially weaker sections of society who cannot pay commercial prices for basic services;
- Encouraging the use of public amenities or environmental beneficial options like public transport systems by charging concessional prices;
- Executing their social mandate to provide certain services without charging citizens, such as senior citizens.

Table 5: Key Instruments of Government Support

Key Instruments of Government Support	Description
Construction Support /Capital Grant	A grant usually spread over the construction period. It reduces the capital expenditure that the private investor needs to incur for the project.
Operational VGF or availability payments	A financing that contributes to the operational revenue of the project. Generally, provided where there is a need to keep the user charges lower than required to cover costs because of social considerations. or to cover a financing gap.
Minimum Revenue Guarantee	A guarantee by which a sponsoring government shares the traffic risk or demand risk for a project. Through a minimum revenue guarantee, the sponsoring government promises to compensate the private developer of an infrastructure asset if the actual user charges fall short of the projected user charges.
Annuity Payments/Unitary Payment Mechanism	Used to compensate the PPP Company for capital expenditure, operational expenditure, financing costs, and reasonable return on investment where the public sector is the sole user of the infrastructure services provided Most common in social infrastructure projects...
Credit Enhancement/ Debt Service Guarantee	A guarantee of the loan that the PPP Company obtains from a financial institution for a project. The credit guarantee increases the viability of the PPP project by taking repayment risk. Only used for priority projects.

Key Financial Indicators

Table 6: Key Financial Indicators

Financial Ratio	Formula	Definitions and Notes
Capital Structure Ratio (CSR)	(Equity + Quasi-equity) ÷ Financial Capital	Provides a ratio of equity to all the financial resources invested and is placed under the company's control by the capital providers.
Debt-Equity Ratio (DER)	Total Long-term Liabilities ÷ (Equity + Quasi-equity)	Indicates the proportion of the fixed assets of the project which is funded by owners' funds and the proportion of fixed assets which is funded by borrowed funds. Long-term liabilities include all liabilities such as loans and debts that the sponsor raises.
Annual Debt Service Coverage Ratio (ADSCR)	Available cash flow for servicing the debt (Profit After Tax (PAT) + Interest + Depreciation) ÷ Annual debt service (Interest + Principal repayment instalment)	Calculated each year and therefore provides a continuous view of a project's ability to service its debt. Provides a measure of the surplus free cash flows available after meeting all the operating expenses to service the debt. The DER for funding a project would always be capped by the ADSCR requirement of the lenders.
Net Present Value Debt Cover Ratio (NPV CDR)	NPV of cash flow available for servicing the debt over the loan life ÷ Outstanding debt	Also called Loan Life Cover Ratio. Is a commonly preferred practice in financial analysis. The discounted value is preferred to the average value because the time value of money is considered. The discount rate used in calculating the NPV is the minimum return expectation for the given risk profile of the project.
Project life cover ratio	Cash flow available to service debt over the project life ÷ outstanding debt	Used by lenders as it indicates strength of cash flow available over the project life.
Internal Rate of Return (IRR)	Discount rate required to receive a NPV of 0	Based on the discounted cash flow method. Rate of discount that equates the present value of future cash benefits (cash inflows) to the present value of capital cost over the economic life of the project (cash outflows).
Return on Capital Employed (ROCE)	Earnings before Interest and Taxes (EBIT) ÷ Capital Employed (Long-Term Liabilities + Shareholders' Equity)	Provides a measure of the returns generated by a project on the capital invested in it on a year-on-year basis.
Return on Equity (ROE)	Profit after Tax (PAT) ÷ Shareholders' Equity	Provides a measure of the returns generated by a project on the equity invested in it on a year-on-year basis.
Operating Profit Margin (EBITDA Margin)	Operating Profit ÷ Sales	Provides the measure of the operating profit as a percentage of sales. The operating profit margin is the best ratio for comparison of investments as it is independent of the capital structure of the investments and helps investors to base their decisions purely on the operating performance of the investments.
Net Profit Margin (PAT Margin)	Profit after Tax (PAT) ÷ Sales	Provides the measure of PAT as a percentage of sales.

6.1.1. Project Insurance

Insurance forms an integral and key element of the overall security package for a PPP project. Insurance provides safety to the operators, lenders, equity investors, and government should a major casualty or disaster occur to all, or a material part of, the project, Insurance can vary from one project to another and from one phase of the project to another.

Types of Insurance Coverage

Construction Insurance

This type of insurance covers:

- Physical damage to project facilities during the course of construction;
- Physical damage to other assets such as offices, vehicles, etc.;

- Transit insurance (e.g., parts in transit);
- Employers, workmen's compensation and third-party liability insurance;
- Environmental liability insurance; and
- Against increased costs resulting from delay caused by an insured loss

Operations Insurance

This type of insurance covers:

- Insurance against physical damage to project facilities;
- Insurance against physical damage to other assets (e.g. plant, equipment, motor vehicles);
- Transit insurance covering the period until point of sale;
- Employers, workmen's compensation and third -party liability insurance;
- Environmental liability insurance; and
- Business interruption or loss of profits insurance

A significant part of an insurance policy may be re-insured with other insurers because the local insurers may not be able to underwrite the full value of risks of a large project. In some projects the government may agree to act as insurer of last resort when certain risks (e.g., terrorism, force majeure, etc.) become uninsurable in the local market.

CONTRACT MANAGEMENT

Contracts define the frameworks under which parties are legally obligated to meet their respective project development and service delivery obligations. Managing PPP contracts is never simple and requires governments to maintain a balance between over and under-regulation during the term of the project contract. Over-regulation of the private party interferes with service delivery and limits innovation while under-regulation leads to increased risks of service delivery not meeting project objectives.

The approach followed in managing contracts is largely dependent on the sector in which the PPP project operates, the risk profile of the project, and the phase which the contracts have reached. In projects or situations where the consequences of private party performance failure would be severe, a rigorous monitoring regime would be required based on agreed minimum service performance standards, backed up by a penalty/incentive system. In less critical circumstances, a more flexible monitoring system can be used. Similarly, a penalty mechanism might be applied with greater flexibility during the development phase compared to during the implementation phase.

Some key success factors for PPP contract management include:

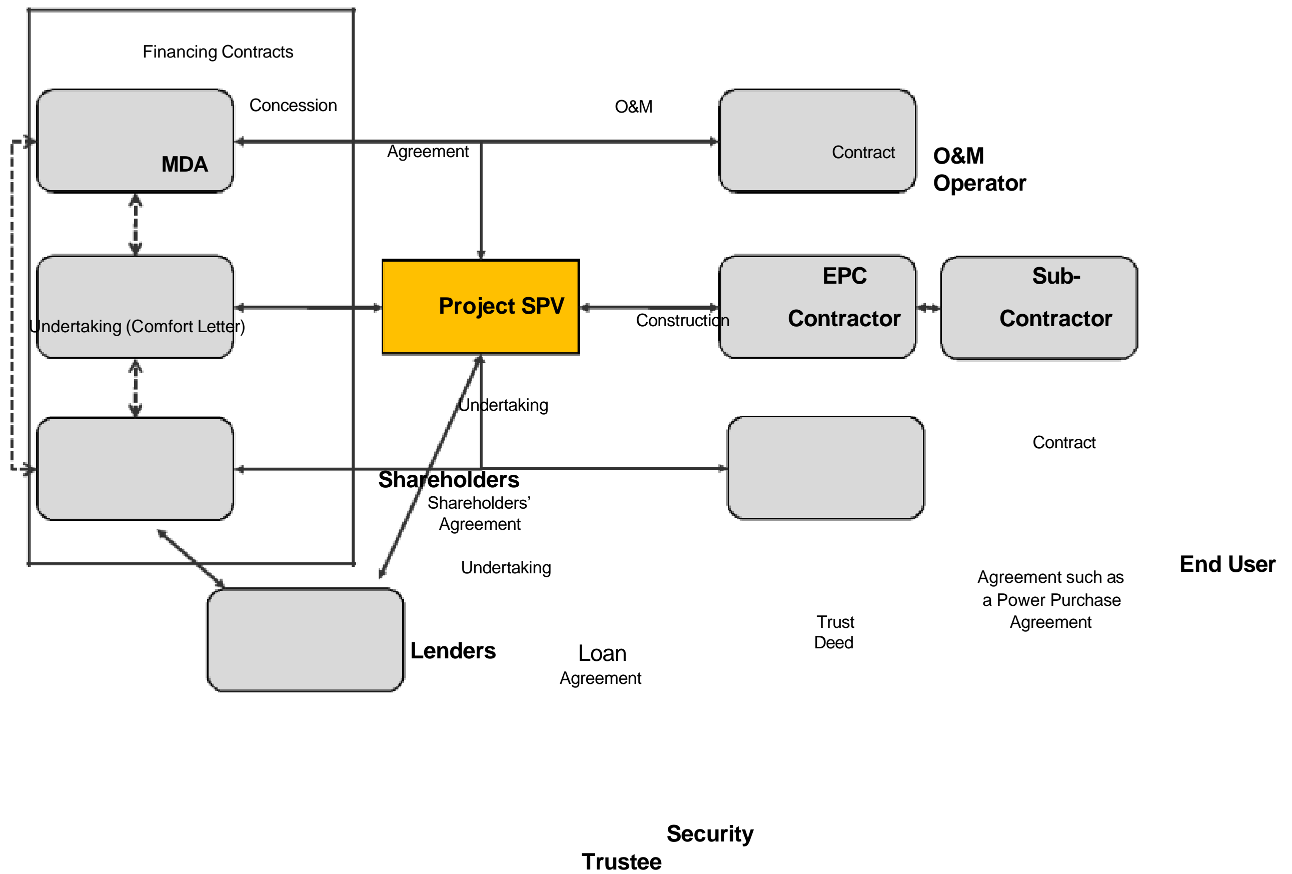
- Viewing the PPP arrangement as a "partnership" between government and the private parties.
- Having a project monitoring team with the requisite skill set to effectively monitor and manage the project and the PPP relationship.

- Having well-structured contracts that explicitly detail the allocation of risks and quality of service required, with a backup incentive or penalty system for service levels above or below standard, and procedures for communication and dispute resolution.
- Establishing an effective contract management framework.
- Disputes are resolved at the appropriate level through the partnership management system without recourse to external dispute resolution.
- Changes in service delivery requirements are anticipated, and variation procedures are used to minimize any negative consequences and maximize any opportunities brought about by change.

Types of PPP Contracts

Given their complexity, PPP projects have several types of contracts. Some of these contracts govern the project development phase (e.g., raising funds, construction) and some govern the operational phase (e.g., service delivery obligations).

Figure 12: PPP Project Agreement Structure



Project Participation Agreements

Pre-development Agreements

Pre-development agreements are usually entered into by two or more companies that have agreed to undertake a feasibility study and other early development activities in relation to a proposed project. As the arrangements between the parties may not be sufficiently developed to warrant a formal shareholders' agreement, this document can conveniently deal with such matters as initial decision-making and allocation of tasks in relation to investigating a particular project or proposal. Typically, the agreement would be for a limited duration and would be quite specific about the scope of the proposed arrangements and the terms upon which a party could withdraw from the arrangements. It would also deal with appointment of advisors; cost sharing, confidentiality, and restrictions on competing against one another, among other things.

Construction Guarantees

Governments, lenders, and/or investors may require private sponsors to guarantee project completion (i.e., guarantee that the construction would be completed in a specified amount of time). A purpose of this guarantee is to shift completion risk to the private sponsor and avoid cost overruns / delays being used as renegotiation tools by private sponsors. It also allows the lenders to avoid having to conduct a costly and time-consuming due diligence exercise on the construction plans of the project. The Construction Guarantee can take several forms, such as requiring (i) the private sponsor to pay a fixed sum of money to the lenders in case construction is not completed within the committed time and/or (ii) the private sponsor to provide a letter of credit / construction bond from a bank. In a PPP contract this requirement is an integral part of the contract and no separate guarantee is required. The construction sub-contract passes this requirement down to the construction contractor.

Shareholders Agreement/ Joint Venture Agreement

For projects that are implemented through a SPV with two or more investors, these parties usually regulate the relationship between them by entering into a Shareholders Agreement (also called a Joint Venture Agreement). A Shareholders Agreement deals with items such as:

- Establishment of a PPP Company (SPV)
- Injection of share capital;
- Funding of the PPP Company;
- Voting requirements for particular matters;
- Resolution of disputes;
- Dividends policy;
- Management of PPP Company; and
- Disposal of shares and pre-emption rights.

Shareholders Support Agreement

In some cases, the shareholders enter into a support agreement with the PPP Company itself to perform certain services, sometimes at the request of lenders or government. This Shareholders Support Agreement contains several commitments that are required from the shareholders with respect to the project development, such as:

- Provide PPP Company management and technical assistance;
- Secondment of shareholder employees for a limited basis;
- Materials and other assets to be provided; and
- Short-term loans, bridge financing, guarantees, and other short-term financial support. Shareholders are often paid in cash or through equity for these services.

Concession Agreement

The Concession Agreement deals with the detailed terms and conditions on which the project is awarded and broadly covers:

- Scope of Work
- Period of Contract
- Construction period
- Parameters on which contract is to be granted obligations of the PPP service provider and sponsoring authority
- Process of handing over of site to PPP service provider
- Monitoring and supervision details
- Safety and environmental requirements
- Support and incentives to be given by the sponsoring authority
- Operations & Maintenance requirements
- Force majeure and Termination payment arrangements
- Dispute resolution mechanism, and
- Other terms and conditions relevant to the project.

Construction Contract

The Construction Contract covers the construction works to be performed to build and/or rehabilitate the PPP project. It is normally a fixed price time certain contract. These works may be performed by a third-party construction company or one of the project sponsors if they have the required corporate expertise and resources.

Operating & Maintenance Contract

The O&M contract covers the operations and maintenance services to be provided and the minimum service performance standards with the backup incentive or penalty system for service performance standards above or below these minimum standards. It also includes the agreed assets life cycle replacement requirements.

Financial Agreements

Equity Support Agreement

Governments and/or investors have an interest in ensuring that the private project sponsors inject the equity they have committed. This is typically done through an Equity Support Agreement, also called an Equity Subscription Agreement, which is provided to lenders. In this agreement, the sponsors will agree to inject equity- in the form of share capital or subordinated loans or combination of both –at a specific time, which in turn becomes part of the sponsor's financial plan and the lenders' base case financial model.

Comfort Letters

Comfort Letter can also be supplied between parties to add assurance that a contracting party will fulfil its obligations. For example, a parent corporation may provide a Comfort Letter on behalf of its subsidiary with the necessary resources to fulfil the contract if questioned by government or lenders. For PPP projects, often a government provides a Comfort Letter to potential private project sponsors that certain actions / obligations will be fulfilled by certain deadlines. It is important for all the parties to be clear on the extent to which a comfort letter is intended to be legally binding at the outset.

Project Loan Agreement

The Project Loan Agreement is entered into between the borrower (i.e., PPP Company in a project finance arrangement) and the project lenders. It regulates the terms and conditions upon which the project loans are drawn down and line items of the project expenditure which may be funded by these the loans, together with the minimum debt reserves and banking ratios required. The agreement contains the usual provisions relating to representations, covenants, and events of default found in other syndicated loan agreements. The provisions relating to repayment of principle, and interest are also present with the provision for the capitalization of interest during the construction period or until project revenues come on stream. Subordinated loans, such as mezzanine financing, will also have their own Project Loan Agreements.

Lenders' Direct Agreement

This agreement is normally between the government project sponsor and the lenders, although sometimes the SPV is included, which sets out the procedure if the project runs into trouble, and there is a danger that the PPP contract will be cancelled, which will mean that the cash flow will terminate and with it the lenders main security for repayment of the debt. In this event it gives the lenders the right, but not the obligation, to step into the shoes of the SPV, take over the project and take the necessary action to rescue the project. This arrangement is also of benefit to the Government, as the lenders may assist the Government in rescuing the project, so that it is not necessary to cancel the PPP contract; although there may be a need to change the SPV management, the construction contractor, or the O&M contractor.

Contract Monitoring Framework

Given the large number of agreements that are involved in a typical PPP project, the monitoring of a PPP Company's compliance requires substantial attention and resources from government. A best practice is to set-up a Contract Monitoring Framework which covers the following major elements:

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

There are two major components – a Contract Management Team and a Contract Management Plan – which need to be established for government's overall contract management framework.

Contract Management Team

To ensure effective management of PPP contracts government will need a dedicated Contract Management Team comprised of experienced personnel. At minimum, a typical Contract Management Team should consist of the following personnel.

Project Officer

Key responsibilities of the Project Officer include:

- Manage the PPP project relationships on behalf of government
- Ensure the PPP Company meets its contractual obligations
- Appoint and manage the PPP technical advisory team with the necessary technical skills
- Ensure that the PPP project continues to be affordable, provides quality service, is good Value-for-Money, and has appropriate risk transfer
- Prevent and/or resolve disputes
- Monitor the performance of the Independent Engineer if one appointed under the terms of the Concession Contract
- Develop and implement the Contract Management Plan
- Develop and manage any contract administration systems
- Manage consequences of contract breach
- Prepare an Exit Strategy for any transition of services post-PPP

Accounting Officer

Key responsibilities of the Accounting Officer include:

- Provide financial oversight
- Review financial performance of PPP

- Manage any capital flows to/from government

Technical Advisory Team

Key responsibilities of the Technical Advisory Team include providing support on or monitoring of:

- Design and construction
- Business and product assurance
- Facilities and services management
- Information Technology
- Statutory safety and regulatory responsibilities
- Environmental impact and compliance
- Legal and regulatory
- Post-PPP transition

Contract Management Plan (CMP)

Contract management planning should start at an early stage during the procurement process. This ensures that the contract management requirements are included in the draft Concession Agreement and other key documents. A first step in the process is to develop a Contract Management Plan (CMP).

The CMP is a strategic management tool to guide the Contract Management Project Officer and other team members throughout the PPP project's operational phase. It clarifies the key roles and responsibilities of government during project operations and identifies the resources that government will require to undertake these responsibilities.

Figure 13: Components of a Contract Management Plan

- **Tools and Processes**: The CMP should identify the necessary tools and processes that are needed to effectively manage the contract during its lifecycle. These tools and processes (e.g., accounting software, risk management framework, performance targets) should help the Contract Management Team perform their regular day-to-day tasks efficiently and effectively. They should also specify how risks will be evaluated and risk adjustments will be made.

- **Resource Availability**: The availability of the relevant resources plays a dominant role in determining the tools and processes defined within the contract management framework. Such resources can be in three forms: Human, Financial, and Technological.
- **Timeline for Development of Tools and Processes**: The CMP should contain the timeline needed to develop and install these tools and processes within the contract management framework, subject to the availability of resources. It should also detail the regular contract compliance reform milestones and reporting requirements to government.

The exact operating procedures for contract management should be provided in a manual or other form of guidance document. This manual is:

- A repository of CMP procedures
- A contact list for key stakeholders
- A repository for key documents (e.g., Concession Agreement)
- Training guidance for newly appointed PPP contract management staff and technical advisors.

Table 7: Sample Template for Contract Management Plan

Section	Subsection	Summary Of Contents
1.Purpose and Approach	1.1 Purpose	Purpose of the PPP contract management plan
	1.2 Approach	Partnership principles Benefits to the MDA and the private party of a successful partnership The MDA's approach to PPP contract management
2.Strategic Objectives and Key Deliverables	2.1 Objective	Summary of project objectives
	2.2 Key Deliverable	Summary of the output specifications and key deliverables
3.Transition Management Strategy	3.1 Transition Management	Listing of key issues in Transition Management Strategies to be adopted to overcome the issues identified
4.Relationship Management	4.1 Relationship Management Plan	Key elements of relationship management plan defined in section on Relationship Management
5.Service Management	5.1 Risk Management	Key elements of risk management plan defined in section on Risk Management
	5.2 Performance Management	Key elements of performance management plan defined in section on Performance Management
6.Contract Administration	6.1 PPP contract administration	Contents of PPP contract management plan defined in section on Contract Administration
7. Contingency Plan	7.1 Business Continuity Plan	Key elements of Business Continuity plan detailed in section on Business Continuity Plan
	7.2 Step in Plan	Key elements of Step In plan detailed in section on Step in Plan
	7.3 Default Plan	Key elements of Default plan detailed in section on Default Plan
8. Exit Strategy	8.1 Exit Strategy	Evaluation of the options for continuing the service after termination/expiry based on the provisions of the PPP contract Outline of the procedures, roles and responsibilities and resources required for a smooth transition to the new service delivery arrangements
9. Implementation Plan	9.1 Development	Table with key tasks, Target Dates, Responsibilities and MDA Budget
	9.2 Delivery	Table with key tasks, Target Dates, Responsibilities and MDA Budget
	9.3 Exit	Table with key tasks, Target Dates, Responsibilities and MDA Budget

Source: South Africa PPP Manual

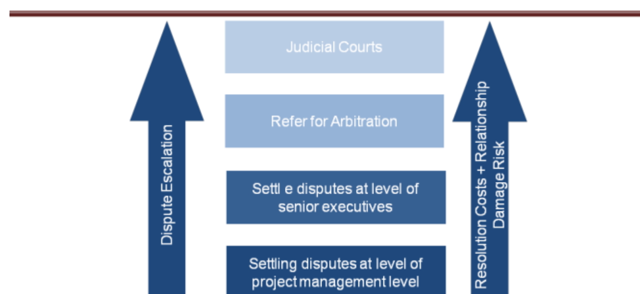
Dispute Resolution and Management

Given the long-term nature of PPP projects, there is a reasonable possibility of disputes arising regarding a party's contractual obligations and allocated risk positions. Contracts should therefore include agreed mechanisms for settling disputes. A proper dispute resolution framework should lead to a quick resolution, which in turn reduces costs to both parties and minimizes negative publicity.

There are a number of widely-used dispute resolution approaches, such as:

- Discussion between both parties;
- Fast Track resolution process;
- Dispute resolution board;
- Expert determination;
- Mediation or conciliation;
- Arbitration; or
- Legal court system.

Figure 14: Dispute Resolution Escalation



The Contract Management Team should provide guidance on the following relevant dispute resolution issues:

- Preferred resolution approach
- Project continuity during dispute resolution
- Dispute costs allocation

PPP Project Modifications

In many cases there are specific circumstances that could not be anticipated or quantified when the PPP contract was signed and could represent changes to works, services or form of delivery. There are typically four categories of modifications:

- **Modifications without Additional Costs**: The government and the PPP Company should discuss the best way of implementing the proposed change. If the modification will result in a reduction in costs to the PPP Company, then the parties will need to reach agreement about how to distribute such savings, including any potential cost reductions to the users. The two parties would be expected to agree modifications to the project financial model and to contracts without recourse to dispute resolution procedures.
- **Small Works Variations**: These types of modifications usually cover minor, unforeseen circumstances that require additional small works outside of the original contracts. Any dispute between the parties relating to small works variations must be determined in accordance with the dispute resolution procedures and are generally decided on a case-by-case basis with adjustment as necessary to the project financial model without major modifications to existing agreements.
- **Government-request Modifications**: If government wishes to make a change to the PPP project deliverables, it must first submit this request to the PPP Company. The proposal must describe the nature of the variation and require the PPP Company to provide an assessment of the technical, financial, contractual and timetable implications of the proposed change. After reviewing, government must decide who will fund the modification (i.e., PPP Company, government, or users). If the PPP Company is adversely affected by this modification, they should be compensated in some manner and the project financial model adjusted accordingly.
- **PPP Company-request Modifications**: If the PPP Company wishes to introduce a variation it must submit a proposal to government setting out the details of the modification and the likely impact on service delivery and the PPP contract via the use of the project

financial model. Government must decide whether to accept it or not and, if accepted, how to modify the funding regime that has been agreed and adjust the project financial model accordingly.

Other Forms of PPP Contract Contingency Planning

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

Business Continuity and Disaster Recovery Plan, which cover events that disrupt service delivery but do not involve default by the private party.

Step-in Plan, which covers events that disrupt service delivery and involve a default by the private party. If there is a lenders Direct Agreement in place, this will set out the agreed procedure to be followed.

Default Plan, which covers private party defaults that do not result in disruption of service delivery.

Government should identify all significant contingency events related to the PPP Project and develop appropriate contingency plans which should form part of the CMP.

Project Hand-back / Termination

Almost all PPP projects have a specified duration of the concession (usually 10-30 years), and at the expiry of the concession contract the private sector is required to hand over the project assets to government in a good operating condition. At this time there is a set of obligations that both the private sector and the government need to fulfil, which are usually detailed in the Concession Agreement.

The Concession Agreement should:

- Clearly specify the standard required of the assets on the handover date

- Lay out a process for monitoring the asset standards over a period leading up to the contract end date
- Specify financial penalties for failure to meet the required standards.

Government should aim to avoid a situation where it only discovers at the very end of the contract that the asset condition is sub-standard. Because assets can be allowed to deteriorate over a long period before the end of the contract, it is important to regularly follow the CMP and monitor the asset conditions in terms of the standard required.

The Contract Management team should also manage the handover of relevant documents and records and government should plan for the continuity of service delivery and maintenance of service standards either in the form of an extension to the contract, a new project development or through other means.

Summary of Contract Management Framework

PPP Lifecycle Phase	Key Functions		
	Service Management	Relationship Management	Contract Management
PPP Inception and Feasibility	Identify & specify □ Service delivery specifications □ Affordability limit □ PSC/PPP and Value-for-Money benchmark □ Risk Allocation framework	Undertake following tasks □ Appoint the Project Officer & Project Team □ Decide on project type & procurement method	Establish following systems and processes for □ Document tracking & Management □ Financial management
PPP Procurement	Develop and prepare □ Performance management plan □ Payment mechanism □ Risk management plan	Undertake following tasks □ Develop the relationship management plan □ Identify and establish the PPP contract management team □ Prepare the PPP contract management plan	Develop and prepare the PPP contract management plan
PPP Development	Establish, monitor and manage □ Risk control procedures □ Performance management systems □ Progress of project towards completion	Establish and implement □ Relationship management plan □ Transition management plan □ Change management measures	Establish procedures and systems □ Financial administration □ PPP contract maintenance □ Variation management □ Recording penalties □ Updating the PPP contract management manual
PPP Delivery	Monitor and Manage □ Risk □ Performance in relation to standards specified □ Variations	Undertake following tasks □ Review and revise partnerships □ Commission independent reviews □ Review and revise PPP contract management plan	Review, monitor and update □ Financial administration □ PPP contract maintenance □ Variation management □ Recording penalties □ PPP contract management manual
Exit	Review and assess □ Deliverables □ Value-for-money □ Quality of Innovation	Undertake following tasks □ Manage Change □ Organise closure □ Record the lessons of the	Implement and monitor □ Hand over procedures □ Transition to new/alternate service delivery

	Identify means of service delivery through ▫ MDA ▫ Contract extension ▫ New PPP project Organise post implementation review	PPP project	

EXPLANATORY NOTES& ANNEXES

Value-for-money (VfM)

The value for money estimation is a critical element in the decision to undertake a PPP project. The assessment of value for money involves a quantitative and a qualitative assessment of the private party bids. The use of the Public Sector Comparator aids in the quantitative assessment.

The factors that determine whether a project delivers value for money will vary by type of project and by sector. In general, PPP projects can generate improved value for money through several ways including,

(1) Reduced whole life costs - the integration of infrastructure design, build and operation, facilitating private sector innovation in design, an avoidance of over-specification and improved maintenance scheduling;

(2) Better allocation of risk - cost effective transfer of risk to the private sector, enabling efficiency benefits to be generated across the term of the contract;

(3) Faster implementation - the transfer of design and construction risks, together with the principle of no payment until commencement of service delivery, will provide significant incentives for the private sector to deliver infrastructure projects within short construction timeframes;

(4) Improved quality of service resulting from better integration of services with supporting assets, improved economies of scale, the introduction of new technology and innovation in design, and the performance incentives and penalties included in the Public Private Partnership contract; and

(5) Generation of additional revenue - more intensive exploitation of assets to generate additional revenues, for example from shared use of facilities or the sale of surplus assets.

PPP Reference Project

The PPP reference project is a hypothetical private party bid which meets the service delivery specifications of the MDA. The PPP reference project enables the MDA to identify the best value for money for the MDA in service delivery either through MDA‘s service delivery or from the private

party. In determining the PPP reference project, the MDA should undertake a preliminary assessment of the PPP arrangement for service delivery. The service delivery specifications for the PPP reference project should be identical to that used in estimating the PSC. The key considerations in construction the PPP reference project should include:

(1) Determining the nature of PPP procurement arrangement: In undertaking this exercise, the MDA should address the following issues:
- Most appropriate form of PPP to meet service delivery specifications
- Risks that can be transferred to the private party
- Tenure of the PPP arrangement
- Asset ownership and transfer arrangements and treatment of residual value

(2) Determining the Financing structure of the project whether it would be a project finance structure, corporate finance structure or whether it would involve capital contributions by the Government.

(3) Determining the payment mechanism for the project.

(4) Determining the cost-of-service delivery considering the heads of costs used in estimating the PSC for a comparable period.

All assumptions used in developing the PPP reference project should be precisely documented for ready reference.

The value for money test forms part of both the PPP feasibility phase as well as the PPP procurement phase.

In the PPP feasibility phase, the objective of undertaking the preliminary value for money test is to identify the benefit, if any, of undertaking a PPP procurement of the service delivery as opposed to conventional MDA's procurement. In this case the Public Sector Comparator developed is compared to a PPP reference project which approximates the cost-of-service delivery through a PPP arrangement. If the MDA can demonstrate value for money through PPP procurement, the next phase of PPP procurement is undertaken.

In the PPP procurement phase, the bids received from private parties are compared to the public sector comparator to determine the actual value for money from PPP service delivery.

Value for Money

The public sector comparator is an important tool in the quantitative assessment of value for money during the procurement process in terms of evaluation and comparison of bids. The project description and brief provided to bidders in the RFP document will detail the service delivery specification and the PPP agreement terms detailing the risk allocation. The project brief would replicate the service specification and primary assumptions used in calculation of the PSC. Doing this would ensure a more accurate comparison of bids against the PSC. Bidders are required to structure and submit their bids based on this information. The private party bids thus received should be first assessed against the project description to ensure compliance to the brief and

There after it should be compared to the PSC. It is important for the MDA to ensure that the bids received are based on the same level of risk transfer as the project brief.
To facilitate effective comparison, bids should be standardized to allow comparison with other bids as well as the PSC.

An illustration of the comparison of bids received with the PSC is presented below:

Illustration of Value for M				
Project Cost Items	**PSC**	**Bidder I**	**Bidder II**	**Bidder III**
Cost of service delivery	50			
Transferable Risks				
Construction	11			
O&M	7			
Estimated Project Cost	**68**	**57**	**54**	**62**
Retained Risk				
Regulatory	5	5	5	5
Actual Net Project Cost	**73**	**62**	**59**	**67**

In determining the best value for money option from the bids, Bid II would be the most likely option, as it has the same risk transfer structure as the other bids, but has the lowest estimate project cost of services to MDA. In addition, Bid II's actual total cost of services is lower than the PSC's total cost of services. Bidder II has submitted a bid with an estimated project cost of USD 54 million which includes Transferable Risk valued in the PSC at USD 18 million. The bid, however, excludes the Retained Risks valued at USD 5 million in the PSC. The total bid cost to government is the estimated project cost of the bidder's service charges of USD 54 million and the costs of the Retained Risks, giving a total cost of USD 59 million.

The risk-adjusted Bid II of USD 59 million compares favourably against the PSC cost of USD 73 million. Ignoring qualitative considerations, value for money is achieved where the NPC of service charge for a bidder is lower than the NPC of the expected cost to government under the PSC.

Qualitative assessment

When assessing the value for money offered by a PPP arrangement, the project officer/accounting officer should not rely solely on a straight comparison of a PPP bid to its PSC, which should never be regarded as a pass/fail test, but instead as a quantitative way of informed judgement. This is especially important where bids are very close to the value of the PSC. The assessment should also consider all other relevant factors of bid evaluation including (but not exhaustively):

(1) The value to the public sector of the risk the private sector accepts through the proposed PPP arrangement;
(2) Any differences in service deliverable between the PSC and PPP bid; and

(3) The wider consequences to the public sector of first receiving service from a different date under PPP compared to that in the PSC.

Adjustments or standardizations are often needed for the PSC to allow for these and other factors to ensure a fair comparison between the PSC and PPP bids. Some factors may be difficult to quantify, such as differences between the standards of service or methods and dates of delivery. These may require the conclusion to be made on a qualitative basis. Achieving value for money does not necessarily mean accepting the lowest cost bid. Where decisions reflect qualitative factors, they must be sufficiently documented to allow future understanding of how the conclusions were drawn.

Qualitative factors, by definition, are not fully accounted for in the PSC as they are not accurately quantifiable. However, they need to be considered in conjunction with the PSC as part of a fully informed evaluation process.

Qualitative factors that need to be considered may typically include the following:

(1) Material costs (including risk) that are not capable of being quantified for a project (either explicitly or as a contingency factor);

(2) The identity, credit standing and proven reputation of the bidder (including consortium parties and financiers). This will help ensure the ability of the bidder to deliver the proposed service at the specified bid price;

(3) Any differences in the deliverable service which cannot be quantified and adjusted for any wider net benefits or costs that a PPP approach may bring. For example, the social and wider benefits of earlier provision of key infrastructure services under a partnership delivery method; and

(4) The accuracy and comprehensiveness of the information used, and the assumptions made in the PSC.

Qualitative factors become particularly important either where the lowest private bids are close to the PSC or where an important consideration cannot be quantified for the PSC. Where value for money decisions reflects the consideration of qualitative factors, these must be fully documented to leave a verifiable decision trail which can be used by parties involved in the decision-making process. To this end, it is important that the procurement team constructs a list of all qualitative factors at an early stage. This may be developed in conjunction with the PSC, to identify costs that could not be meaningfully quantified in the PSC.

While the estimating of the PSC and the assessment of value for money is quantitative assessment of value for risk which has been widely used, the process and methodology for assessment is a learning curve wherein MDA‘s and governments can benefits greatly from the experience of one another in avoiding costly mistakes and maximizing the value for money from the projects they undertake.

Constructing a Public Sector Comparator (PSC) and Managing Risks

The construction of the public sector comparator should not be a rigid process but should be flexible. It should consider the varying characteristics and circumstances of the individual projects and the potential form the PPP agreement can take. This annexure aims to familiarize the MDA's practitioners on the key elements of the Public Sector Comparator (PSC) and the process of construction of the same.

Definition of Public Sector Comparator

The Public Sector Comparator can be defined as a hypothetical risk-adjusted cost to the MDA for an output specification produced as part of a PPP procurement exercise. The PSC has the following characteristics:

(1) It is expressed as a net present value term.
(2) It is based on recent public sector procurement for a similar service delivery requirement. The recent public sector procurement information should also capture the inefficiencies in the system.
(3) It effectively captures the risk inherent in the project and procurement process envisaged.

For projects where no track record for public procurement exists, the MDA should consider devoting additional resources and time in the options analysis stage to ensure that the alternatives to the PPP procurement are clearly identified.

The PSC should act as a benchmark for comparison and choice of preferred bid. Hence to be a valid benchmark against which private sector bids can be compared fairly, the PSC must reflect not only certain procurement costs but also the additional costs that may arise on account of the risks inherent to the project. During the procurement process, risks should be identified, and ways in which these risks can be mitigated considered. It is necessary to assess the impact of these risks on costs, estimate their probabilities, and explore and appreciate the sensitivity of these estimates. Comprehensive accounting for risk is required to ensure that valid and informed comparisons can be made amongst the bids and between the bids and the PSC.

Key Elements of the Public Sector Comparator

The public sector comparator consists of the following elements:

(1) Primary Public Sector Comparator which reflects the costs of service delivery
(2) Retained Risk
(3) Transferable Risk

Each element of the PSC is analyzed in greater detail in the subsequent sections.

Direct Capital Costs

The direct capital costs are the costs associated directly with the provision of the service. The basic capital costs should include the basic costs of capital assets, such as buildings, required for the project, including any fit-out costs required to convert an existing property to the required use. Cost estimates should reflect the full resource costs of the project. They should include the opportunity cost of any assets already owned by the MDA and which are to be used in the project. If the asset could be sold or used for another purpose, then the use of that asset in the project has an opportunity cost.

All assumptions and sources of information, relating to the costing and timing of expenditure should be clearly listed out. Sometimes PSCs are constructed on the assumption that major construction work will be delayed due to constraints on the availability on public capital. This approach is not recommended as any assumptions made are inherently non - verifiable and recent history has shown that levels of available public capital can be quite volatile even over relatively short periods. If there is any doubt regarding the availability of public capital sensitivity analysis should be undertaken to quantify the effect of delayed construction work.

However, assumptions about the start, completion, and if applicable, the phasing of construction work should reflect what could be realistic to expect in the public sector and will not necessarily correspond to the bidders' proposals.

The construction techniques assumed in estimating capital costs should reflect recent actual practice in the public sector using existing plans for a site or the likely approach (the costs should not be amended during the competition to mimic the bidders' proposals). It should be recognised that this may evolve over time and clients involved in a series of similar procurements should not automatically assume that assumptions used in a previous PSC will remain valid. Sometimes the assumptions will need to be amended to reflect changes in conventional procurement practices.

The assumptions regarding cost or time overruns should normally reflect recent experience of conventional procurement. However, judgement must be applied to assess the relevance of that experience. The size and complexity of a project have a direct impact on the risk of delay, and it would be misleading to apply data from recent relatively small projects to a PSC for a very large project. There is much experience to suggest cost over-runs were more likely on larger projects. Time delays also show some correlation with the size of the project.

Operating and Maintenance Costs

The direct costs associated with operating, and maintenance of the project should be included in constructing the PSC. While the exact nature of the cost would be dependent on the service to be delivered, the costs would broadly include:

(1) Operating cost covering the following:
- Cost of inputs
- Cost of employees directly involved in service delivery including wages and salaries, employee entitlements, superannuation, training, and development etc.
- Direct Management costs
- Insurance

(2) Maintenance costs are recurring in nature and will be linked to maintaining the capacity and quality of the asset rather than upgrading or improving the asset. Maintenance cost typically includes raw materials (spares), tools and equipment and the employee costs associated with maintenance work.

The cost estimates for a number of these items can be determined by comparison with similar projects undertaken in the public sector. Since the PPP agreements normally involve long tenures, the effect of inflation on the costs during the term of the agreement would be significant. However, as the construction and comparison of the PSC is being undertaken at prices in the base year, effects of inflation should be excluded. The forecasted operating and maintenance costs of the PSC should reflect to a reasonable degree improvements in service delivery on account of technological improvements or learning from experience. This would ensure that the PSC reflects a reasonably accurate picture of value for money from traditional procurement methods.

Third Party Revenue and Capital Receipts

Certain PPP agreement may involve not just costs but also potential third-party revenues which may lead to a reduction in the costs to the MDA. The two variables in determining revenue, price and quantity should be identified separately and potential equilibrium price and quantity should be determined. In determining price of service, the MDA should consider pricing for alternate sources of similar services. The MDA should consider expert inputs for demand forecasting based on a cost benefit trade-off of such expert information.

Capital receipts of the MDA in case of determining the PSC could include the revenue from upfront sale, lease, or disposal of an asset and/ or residual value treatment of the asset at the end of the PPP agreement term. Based on their expected timing such revenues should be deducted from the PSC.

A PPP agreement could involve rationalization or restructuring of a project with pre -existing assets and subsequent disposal of the surplus assets. In case of estimating the primary PSC using the conventional procurement method, the treatment of such disposal should be considered. The receipts from such disposal should be deducted from the PSC with reasonable and reliable estimates of receipts from sale. If the estimated value of asset sale is large, the MDA could consider employing the services of specialist.

If, at the conclusion of the PPP agreement, the MDA accepts the asset for zero or nominal consideration, then the economic effect is that the supplier must earn a return on its initial investment through the service charges payable during the service period. However, the MDA is left with an asset with a remaining useful economic life and there should be a deduction from the NPV of the service charges to reflect the true net cost of the services provided under the contract.

Where such a deduction is made to the cost of the PPP option an equivalent deduction should be made from the PSC. In each case the value of the asset to the client is the appropriate figure. As there is unlikely to be a material difference between these two figures it is usually legitimate to exclude the residual value on the grounds that it will not affect the comparison. The key point is to achieve consistency of approach, i.e., include a deduction for residual value in both

calculations. However, it is best practice to include the figures as this demonstrates that the matter has been addressed.

If, at the conclusion of a PPP agreement, the public sector has the option to pay an amount equal to market value at the end of the contract, to retain the asset, or to pay nothing and to - walk away‖, i.e., leave the asset with the supplier. In this case no residual value deduction is needed from the NPV of the service payments to calculate the NPV of the services received under PPP. However, for the PSC calculation a deduction is needed to avoid overstating the cost of services (otherwise the PSC would represent the cost of services for X years + the cost of asset with Y years remaining useful economic life after X years of service). Where estimates of residual value are required, care must be taken to ensure the value is consistent with the level of maintenance assumed in the operating cost forecasts.

Risk transfer

The risks associated with each service delivery are unique to the project. Th e first step in estimating a risk adjusted PSC, is to identify and estimate the cost associated with each risk of the project. The underlying objective of risk identification is that the party best able to handle a particular risk should carry that risk and receive the gains or losses on account of the same. Optimal risk transfer would be the key to maximizing the value of a project.

The underlying premise of all PPP transactions is value for money. The objective of value for money should be to obtain optimal risk transfer rather than maximum risk transfer. The value for money is improved by transfer of appropriate risk to the private party who can either reduce or decrease the probability associated with the specific risk. However, if the risk cannot be effectively managed by the private party, the value for money will decline as the premium demanded by the private party would outweigh the benefit to the MDA.

Discounted Cash Flow

The public sector comparator identifies and estimates the project cash inflows and outflows, and the discounted cash flow analysis estimates the value of this cash flow at a single point in time. The Discounted Cash Flow (DCF) follows a process whereby all future cash flows are forecast over a given period and then adjusted to a common reference date, considering the time value of money and risks associated with a project. The estimation of the PSC using the Discounted Cash Flow method thus requires two basic elements:

- Forecasted net cash flows from the project
- Discount rate

The discounted cash flow model assumes that a dollar today is worth more than a dollar received tomorrow. The effect of discounting is to bring a variety of different values and ranges of future cash-flows back to today's values. That is, to produce the net present value (NPV) of a stream of future cash-flows. In the case of a PSC, the NPV is a net cost figure, i.e., all the costs of the project to the MDA less the receipts associated with the project. Since the cash flow stream for the PSC and the PPP reference project or bids received can vary significantly, the use of discounted cash flow is particularly important.

The sum of the DCFs over the entire period of the project forms the net present cost (NPC). The NPC result is a useful measure because it is a compatible dollar figure which is easily interpreted and readily comparable to other projects or bids expressed in NPC terms for the same reference date.

The following techniques for minimizing errors are suggested in the UK Technical Note on How to Prepare a Public Sector Comparator:

(1) Ensuring there is a clear audit trail from the calculation of NPV to the undiscounted cash flow to the base assumptions producing the cash flow for the PSC to the supporting evidence for the assumptions. This will assist a reviewer identifying any inconsistency or other errors;
(2) The discount factor applied to each years' cash flow should be shown to minimize the possibility of confusion over base dates for discounting cash flows; and
(3) The financial data should be kept as simple as possible to minimize the risk of arithmetical error and avoid spurious accuracy.

For projects that the MDA believes are not very complex and where the risks associated with the project can be readily quantified as cash flow items, the PPP guidelines recommend the use of government bond rates of similar maturity as the term of the project. In more complex project where such assessment and quantification of risk as a cash flow item is not possible, the discount rate used in calculating the discounted cash flow is typically the cost of capital of the project. The cost of capital of a project can be determined using the Capital Asset Pricing Model (CAPM). The calculation of cost of capital based on the CAPM model is as follows:

$$R_k = R_f + \beta (R_m - R_f)$$

Where,

R_k represents the cost of capital for the project
R_f represents the risk-free rate, the interest on Government bonds of equivalent term as the project could be taken as proxy
β represents the project beta or the degree to which the returns of the project are likely vary with the return on the market
R_m represents the return on market portfolio

The choice of appropriate discount rate should be specific to the requirements of the project and should be decided by the MDA with the expert inputs of its transaction advisors.

The discount rate decided by the MDA would be used to discount PSC, the PPP Reference Project and the private party bids received.

Inflation

The PSC should be developed using nominal values and not real costs. All costs should be expressed as nominal values with the effect of inflation included in them. The inflation projections to be used should be based on the inflation forecasted by the Central Bank of Nigeria.

An illustration on the process of discounting for a hypothetical technology hub is presented below. This illustration for calculating the net present value of cash flows has been adapted from the UK Technical Note on How to construct a Public Sector Comparator. Please note that cost figures used in this illustration do not represent actual cost in setting up a technology hub and have been used solely for the purposes of illustrating the process of calculation of the PSC.

Brief Illustration of Calculation of the Net Present Value of Public Sector Comparator

The MDA/government is considering a project for developing a technology hub for centralizing all of its functions including customer/end user interface. Based on a preliminary estimate of available land with the MDA, a site has been identified which presently has some structure and equipment. The capital cost estimated for the project is to the tune of USD 107 million. Site development will cost approximately USD 18 to 20 million and the equipment to run the centre would be about USD 10 million to start off. After an initial assessment of the project site, it is understood that some of the structure and equipment on the site can be sold. The estimated value of such asset is about USD 5 million. The initial term of the project is estimated at 10 years and the overall operating costs during this period are likely to be about USD 150 million.

Subsequent to an initial analysis of project details, the project team believes that the capital costs of the project are subject to risks of construction cost overrun, changes in original design, construction costs being higher than budgeted. As a consequence, they believe that these costs should also be reflected in the Capital cost cash flow estimates of the project. Presented in the figures below is the estimated capital cost cash flows which incorporates risks associated with capital costs.

Figure 29: Public Sector Comparator – Capital Cost Cash flows

Captial Cost Cash Flows						
						Million USD
Project Year	Building	Site Development	Equipment	Capital Receipts	Risk Adjustment	Total Capital
0				2.5	5.1	2.6
1	15	5	3	2	6.6	27.6
2	25	7	2		7	41
3	32	6	5		5.1	48.1
4	30				6.4	36.4
5	5				4.6	9.6
6					3.3	3.3
7					2.7	2.7
8					2.5	2.5
9					2.8	2.8
10					2.9	2.9

Figure 30: Public Sector Comparator – Capital Cost Risk Adjustment

Capital Cost Risk Adjustment			
			Million USD
Project Year	Construction Risk	Maintenance Cost Risk	Total Risk Adjustment

0	3	2.1	5.1
1	3.1	3.5	6.6
2	2	5	7
3	2	3.1	5.1
4	3	3.4	6.4
5	1	3.6	4.6
6		3.3	3.3
7		2.7	2.7
8		2.5	2.5
9		2.8	2.8
10		2.9	2.9

The Project Team then went ahead to estimate the operating cost of the project. There is a common belief in the team that certain changes are envisaged by the Government which would limit the function of the technology hub. This aspect is likely to be related to certain regulatory compliance issues and separation of execution and regulation functions of the MDA. The Project Officer believes that the risk from such regulatory changes is significant and material enough to include its impact in calculating the operating costs of the project. The second important element of operating risk relates to technological risk which the team believes is very real and material for the technology hub proposed and should be captured in the cost of the project. The figures below present the calculation for operating cost cash flows of the project over the ten-year term of the project.

Figure 31: Public Sector Comparator – Operating Cost Cash Flows

Operating Cost Cash Flows				
				Million USD
Project Year	**Building**	**Equipment**	**Risk Adjustment**	**Total Operating Costs**
0	1	2.5	0	3.5
1	1.5	2.1	0	3.6
2	3.8	1.8	0	5.6
3	7	1.5	0	8.5
4	10	1.9	0	11.9
5	15	1.75	0	16.75
6	15	1.5	13	29.5
7	22	1.7	12.5	36.2
8	20	1.5	15.8	37.3
9	21	1.8	17.9	40.7
10	21	1.65	17.8	40.45

Figure 32: Public Sector Comparator – Operating Cost Risk Adjustment

Operating Cost Risk Adjustment			
			Million USD
Project Year	**Regulatory Risk**	**Technological Risk**	**Total Risk Adjustment**

0			0
1			0
2			0
3			0
4			0
5			0
6	3	10	13
7	3.5	9	12.5
8	6	9.8	15.8
9	8	9.9	17.9
10	8	9.8	17.8

Having calculated the operating and capital cost cash flows, the team now estimates the total undiscounted cash flow of the project. This figure is calculated at approximately USD 410 million. However, the team is aware that this does not consider the time value of money and hence they now calculate the discounted cash flow for the project with the discount rate taken at 5%. The figure below shows the calculation of the discounted cash flow of the project and the Net Present Value of the Public Sector Comparator thus arrived at.

Figure 33: Public Sector Comparator – Net Present Value

Net Present Value (Public Sector Comparator)				Million USD
Project Year	Capital Costs	Operating Costs	Total Undiscounted Cash flows	Discounted Cashflows*
0	2.6	3.5	6.1	6.1
1	27.6	3.6	31.2	29.7
2	41	5.6	46.6	42.3
3	48.1	8.5	56.6	48.9
4	36.4	11.9	48.3	39.7
5	9.6	16.75	26.35	20.6
6	3.3	29.5	32.8	24.5
7	2.7	36.2	38.9	27.6
8	2.5	37.3	39.8	26.9
9	2.8	40.7	43.5	28.0
10	2.9	40.45	43.35	26.6
Net Present Value (Public Sector Comparator)				321.1 Site cant be reached

*Discount Rate assumed at 5%

For more information on Public Sector Comparators (PSC) in infrastructure PPPs, please see the following resources.

Request for Proposal (RFP) – Sample Table of Contents

Request for Proposal for PPP Projects
Sample Table of Contents

1. Introduction
    - 1.1. Background
    - 1.2. Brief description of the bidding process
    - 1.3. Schedule of the bidding process
2. Instructions to Bidders
    - 2.1. General
        - 2.1.1. General terms of bidding
        - 2.1.2. Change in composition of bidding consortium
        - 2.1.3. Change in ownership
        - 2.1.4. Cost of bidding
        - 2.1.5. Site visit and verification of information
        - 2.1.6. Right to accept or reject any or allbids
    - 2.2. Documents
        - 2.2.1. Contents of the RFP
        - 2.2.2. Clarifications
        - 2.2.3. Amendment of RFP
    - 2.3. Preparation and submission of bids
        - 2.3.1. Format and signing of bids
        - 2.3.2. Sealing and marking of bids
        - 2.3.3. Bid due date
        - 2.3.4. Late bids
        - 2.3.5. Contents of the bid
        - 2.3.6. Modification/ substitution/ withdrawal of bids
        - 2.3.7. Rejection of bids
        - 2.3.8. Validity of bids
        - 2.3.9. Confidentiality
        - 2.3.10. Correspondence with bidders
    - 2.4. Bid security
3. Evaluation of bids
    - 3.1. Opening and evaluation criteria of bids
    - 3.2. Tests of responsiveness
    - 3.3. Selection of bidder
    - 3.4. Contacts during bid evaluation
4. Fraud and corrupt practices
5. Pre-Bid conference
6. Miscellaneous
7. Appendices
    - 7.1. Letter Comprising the bids
    - 7.2. Bank Guarantee for bid security
    - 7.3. Power of Attorney for signing of bid
    - 7.4. Power of Attorney for lead member of consortium
    - 7.5. Guidelines of the Disinvestment

Concession Agreement – Sample Table of Contents

Concession Agreement
Table of Contents

Part I: Preliminary
1. Recitals
2. Definitions

Part II: The Concession
3. Scope of the Project
4. Grant of Concession
5. Conditions Precedent
6. Obligations of the Concessionaire
7. Obligations of the Authority
8. Representations and Warranties
9. Disclaimer
10. Performance Security
11. Right of Way
12. Utilities, Associated Roads and Trees
13. Construction of the Project Highway
14. Monitoring of Construction
15. Completion Certificate
16. Entry into Commercial Service
17. Change of Scope
18. Operations and Maintenance
19. Safety Requirement
20. Monitoring of Operations and Maintenance
21. Traffic Regulation
22. Emergency Medical Aid
23. Traffic Census and Sampling
24. Independent Engineer
25. Financial Close
26. Grant/ (or Premium)
27. Concession Fee
28. User Fee
29. Revenue Shortfall Loan
30. Effect of Variations in Traffic Growth
31. Construction of Additional Toll way
32. Escrow Account
33. Insurance
34. Accounts and Audit
35. Force Majeure
36. Compensation for Breach of Agreement
37. Suspension of Concessionaire's Rights
38. Termination
39. Divestment of Rights and Interest
40. Defects Liability and Termination
41. Assignment and charges
42. Change in Law
43. Liability and Indemnity
44. Rights and Title over Site
45. Dispute Resolution
46. Disclosure
47. Redress of Public Grievance
48. Miscellaneous

Unsolicited Bids

Introduction

Unsolicited PPP proposals are proposals submitted by the Private Sector in the absence of a publicly announced tender. While such proposals have the potential to address gaps in meeting infrastructure demands, unlock hidden value and introduce innovation, they may not be seen as conducive to transparency.

Key considerations

The key considerations in defining the treatment of unsolicited proposals can be summarized as follows:

1. The Private Sector may come up with innovative ways of accomplishing a project that may be in line with the authorities' strategic initiatives in that sector;

2. In the absence of high level of transparency and accountability unsolicited bids might contribute to corruption and a low value for money. Hence, robust government processes are required to deal with unsolicited proposals;

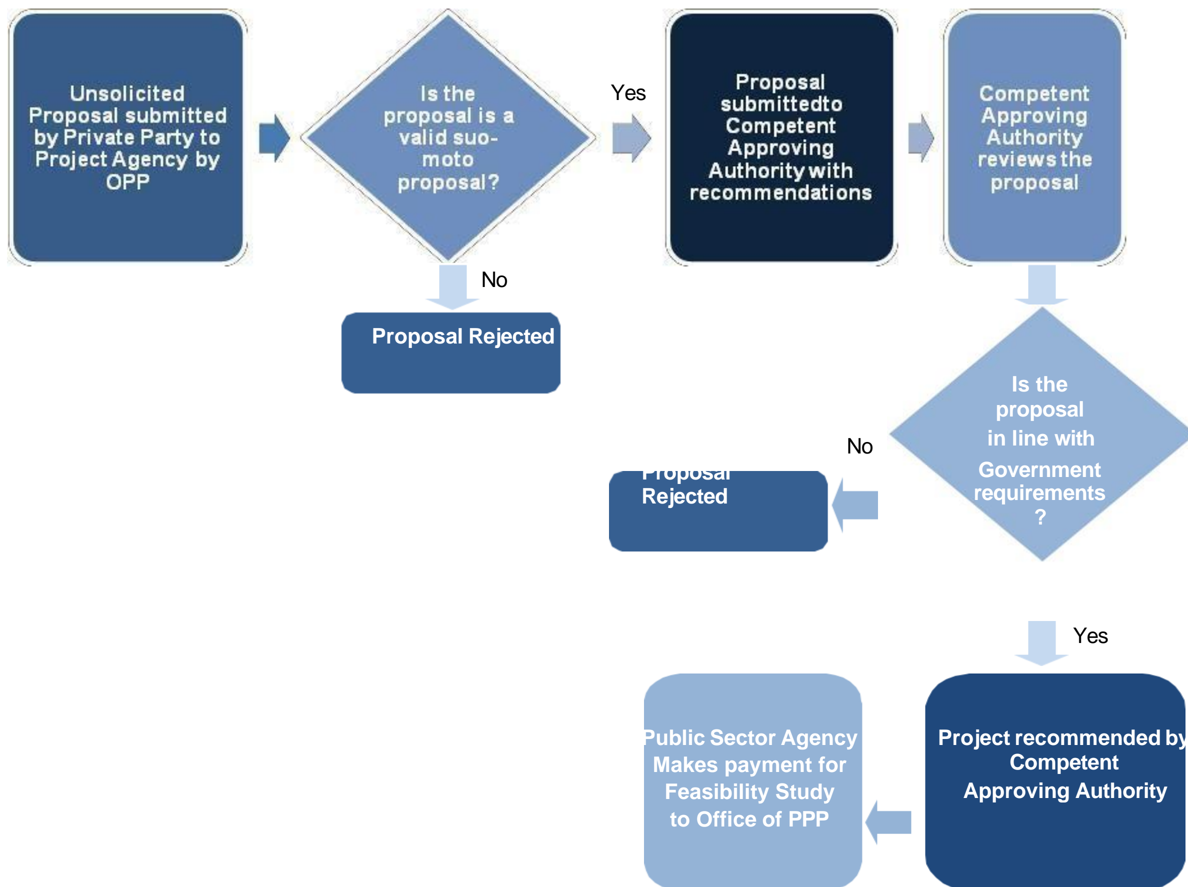
3. In the markets with limited competition (e.g., natural monopolies), it is important to have a robust and systematic process for consideration of unsolicited bids to enhance the transparency of the system; and

4. If the Original Proposal Proponent (OPP) intends to use special technology/processes that are unavailable to other bidders, exposing that know-how in the open tender might not be in the best interest of the OPP. This may dissuade the submission of unsolicited proposals.

Guidelines for dealing with unsolicited proposals

To maintain a fair and transparent bidding process, the Public Sector Agency needs to have a process for dealing with unsolicited proposals. Practices in other jurisdictions are discussed in Sections 4 and 5 below. The following process describes the steps that should be taken on receiving an unsolicited proposal for a project from a Private Sector. The process is implemented as follows:

Figure 34: Dealing with Unsolicited Proposals



Step 1: The Private Sector Proponent (the "Proponent") would submit his proposal to the MDA or the Office of PPP. The Office of PPP will then screen the project to ensure the validity of the

proposal as a — Suo-motoll proposal. The Office of PPP needs to submit the following for approval of the SEC at this stage:

(1) Project details including project specifications and performance standards, scale and scope, and other technical, financial and commercial details;

(2) Details of technical, commercial, managerial and financial capability of the Office of PPP;

(3) Principles of the PPP Agreement including risk sharing and risk assessment, options analysis, commercial principles and an implementation plan;

(4) Feasibility Study including market, technical and financial feasibility of the project. The feasibility study should also include a strategic needs assessment and a legal framework; and

(5) Estimated cost of the feasibility study of the project. This cost should not exceed 2.5% of the project value. The approval of any such amount and feasibility report will be subject to the approval of the Office of PPP.

If the proposal does not satisfy the above submission criteria the agency should inform the Office of PPP that the submission is invalid. If the project proposal satisfies the above submission criteria the MDA will review the proposal and forward it to the Office of PPP, within 30 working days with its recommendations.

Checklist for selecting an unsolicited proposal

The MDA may receive many unsolicited proposals and not all may be in line with the MDA’s policies and objectives. Following is a list of key parameters the MDA should use to make its recommendation to the Office of PPP regarding an unsolicited proposal. Checklist is as below:

Sr. No.	Parameter	Valid/ Not Valid
1	The project is not already listed in the list of priority projects identified by the Public Sector Agency.	☐ ☐
2	No direct government guarantee, subsidy, or equity is required. While projects that do not require government guarantee, subsidy or equity will be preferred, it does not imply that the unsolicited proposal will be rejected if any form of government support is required.	☐ ☐
3	The project is in public interest and the scale and scope of the project is in line with the requirements of the Public Sector Agency.	☐ ☐
4	Sharing of risks as proposed by the OPP is in conformity with the risk-sharing framework as adopted by the Public Sector Agency. If any variations to the risk sharing are required the proposals should be looked at on a case-by-case basis.	☐ ☐
5	The cost of the project exceeds (the minimum project cost for a project to fall under the PPP category).	☐ ☐
6	The proposal is financially viable, and it has the potential for securing private financing.	☐ ☐
7	The proposal satisfies all the above conditions.	☐ ☐

Step 2: The Office of PPP will review the proposal and forward it together with its recommendation and the recommendation of the MDA to the SEC. The SEC will ascertain whether the proposal is in line with Government's requirements. If the SEC recommends the retention of the project, then the Proponent will compensate the Office of PPP the cost for the preparation of the feasibility study.

Thereafter, the Office of PPP will initiate a competitive tendering process. The Proponent would be invited to participate in the competitive tendering process as one of the prospective bidders. If the Proponent is not the winning bidder, then the winning bidder will compensate the Proponent for the cost of the feasibility study prepared by the Office of PPP.

The OPP would not be given any advantage over other bidders in this case as that under the systems like the bonus system or Swiss challenge system. The OPP would only be compensated for the Feasibility Study submitted to the Public Sector Agency.

Key Policy Choices

The MDA needs to have in place a set of policies to deal with unsolicited proposals to ensure a transparent and corruption free process. The MDA must address questions such as:

(1) Screening of unsolicited proposals;

(2) The amount of reimbursement for project development costs (optional); and

(3) Timelines for the project approval and comparative/competitive bidding process. These policy choices are discussed in detail below.

Screening of unsolicited proposals

To streamline evaluation of unsolicited bids, many governments have developed checklists for initial evaluation and have a two-stage evaluation process, with relatively short period (about 15-30 days) allocated to the initial evaluation.

Reimbursement of project development costs to the Office of PPP

Full or partial compensation of project development costs encourages development and protection of intellectual property, maintains Private Sector interest and innovation.

However, determination of reimbursements costs is a complex process and may lead to unnecessary proposals, exaggeration of project development costs and additional costs to the Public Sector Agency to determine or verify the amount of reimbursement.

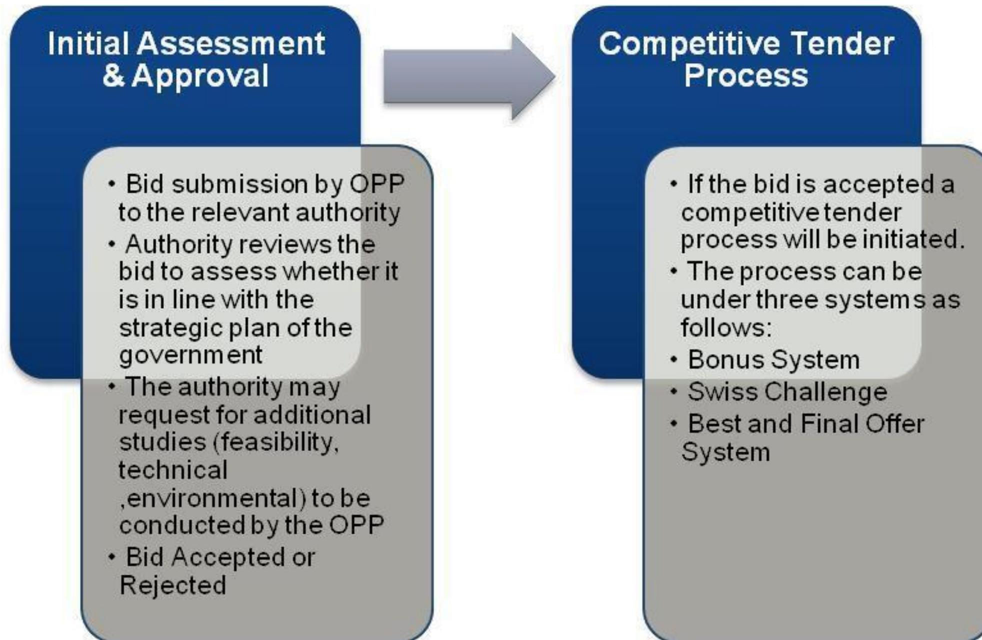
Timelines for dealing with unsolicited proposals

Most of the countries will have a fixed time frame for completion of each stage of a bidding process. The time constraints for dealing with unsolicited proposals are set up for preliminary approval, putting the project out for bidding, and a closing date for counter proposals. These timelines should be setup keeping in mind the obvious advantage to the Office of PPP who has an advantage over other proponents as the Office of PPP is more familiar with the project. An opponent in many countries is given a short time of usually 60 days to challenge the project. This may discourage potential proponents from competing for the bid. Thus, selecting an appropriate timeframe for the bidding process is essential to ensure a fair, transparent and competitive bidding process.

Approaches to unsolicited bids

Countries across the world use different approaches to unsolicited bids. While some countries do not allow unsolicited bids, others have a framework as shown below:

Figure 35: Approaches to Unsolicited Proposals



Following are the systems used for a competitive tender process in dealing with unsolicited bids in different countries.

Bonus system

If the proposal is accepted by the Government, the project is opened to other bidders, but an advantage (usually between 5% and 10%, made known to other bidders) is granted to the Proponent. This implies that the Proponent wins if his bid is x% or x$ higher than the other bidders. If the Proponent loses the bid or decides not to bid, the winning bidder might be required to compensate the Proponent for the case development costs. The size of the bonus can be used to calibrate the number of unsolicited proposals.

Swiss Challenge System (right to match)

If the proposal is accepted by the authority-in-charge, the project is opened to other bidders, but the OPP is granted the right to match the best offer, thus securing the contract. Following are examples of countries that use the Swiss Challenge system.

As this system generally provides for little time for preparing counter bids, it may discourage Private Sector bidders. Also, other proponents may bid quite aggressively to counter the Proponent and then expect a renegotiation with the Government at a later stage.

Best and Final Offer (BAFO)

If the proposal is accepted by the authority-in-charge, the project is opened to other bidders and multiple rounds of tendering take place, but the OPP is guaranteed participation in the final round.

Hybrid System

Many countries now use a hybrid model for dealing with unsolicited proposals. These approaches follow the same process up to project acceptance stage. Once the project is accepted different countries use different combinations of BAFO and other systems for the bidding stage.

Appointment and Management of Transaction Advisers

Who is a Transaction Advisor?

A transaction advisor is a person or group of persons (firm or company) that either possesses or has access to the professional expertise in financial analysis, economic analysis, legal analysis, environmental impact analysis, contract documentation preparation, tender processing, engineering, and cost estimating. The role of a transaction advisor is to bring a PPP project from the concept stage through public bidding and award to actual execution.

Need for a Transaction Advisor

The project development process might require the inputs of a transaction advisor if the OYSIPA and the Government feels that capacity within the Government is not adequate to manage the project development process, especially if the project is complex. Even if the capacity within the Government is adequate to manage the project development process, a professional firm associated as the technical advisor is considered to add value to the process by:

(1) Bringing in their experience in similar transactions and protecting against costly, avoidable mistakes;

(2) Providing technical strength to the MDA's and Office of PPP's team;

(3) Bringing legitimacy to the PPP process and placing an external stamp of endorsement on the Government's proposals, increasing investor and public confidence;

(4) Providing an opportunity for knowledge transfer;

(5) Developing strategies for government consideration;

(6) Helping develop public messages and information;

(7) Performing analysis of PPP options;

(8) Supporting the bidding and negotiation processes; etc.

Accordingly, the Office of PPP may hire the services of the transaction advisors and/or specialist advisors such as lawyers, financial analysts, financiers, economists, sociologists, and sector specialists to support the Office of PPP and the Government for successful implementation of the project through the PPP route. These advisors can be procured as a team or recruited individually, in which case coordination among the team members should be ensured.

Considerations for appointment of Transaction Advisors

Some essential considerations to be taken care of when appointing a transaction advisor and during the tenure in the project include:

(1) The transaction advisor should be hired at the start of the PPP project development and retained either until after the signing of the PPP agreement or at the end of the procurement phase.

(2) The procurement of the transaction advisor must be fair, equitable, transparent, competitive, and cost-effective.

(3) The terms of reference for the transaction advisor should be precise and focused on clear deliverables.

(4) The terms of the contract between the Public Sector Agency and the transaction advisor should incentivize quality completion of milestones on time and within the budget.

(5) The Public Sector Agency should avoid separately retaining or subsequently hiring additional consultants for the project outside of the transaction advisor. Otherwise, conflicting work streams and accountability can be created which might be detrimental to both the quality and timing of the project.

(6) The project team should meet regularly with the transaction advisor to receive progress updates, provide project direction, resolve impasses, and ensure ongoing institutional input and support.

Terms of Reference for the Transaction Advisor

The terms of reference (TOR) for the transaction advisor should clearly articulate the requirements and expectations of the Public Sector Agency. The terms of reference and the proposal submitted by the transaction advisor will form the deliverables schedule of the transaction advisor's contract. Hence the clearer and more precise the terms of reference are, the higher would be the quality of bids received. Some of the example contents of terms of reference for appointing a transaction advisor are as follows:

Introduction: Briefly describe the project and its objectives, and how these align with the institution's strategic vision. Briefly narrate the background of the assignment including the institutional mandate to proceed with the project, needs that led to the project and any preparatory work which has been carried out.

(1) ***Scope of work:*** Outline the scope of work for the transaction advisor during the project development process, including but not limited to, feasibility analysis and procurement support.

(2) ***Deliverables:*** List the deliverables required from the transaction advisor and the schedule which they need to conform while submitting the deliverable.

(3) ***Required skills/ experience:*** List the professional experience of the transaction advisor that is required for the specific project. List the firm level skills and team member level skills that are required for the specific project.

(4) ***Payment terms:*** The payment terms will narrate the remuneration system and schedule.

(5) ***Performance terms:*** Set out the appointment, reporting and decision-making arrangements under which the transaction advisor will be required to team, and the project officer's contact details.

(6) ***Bidding procedure:*** Briefly narrate the bidding procedure, mostly in conceptual terms for a general understanding of the bidders.

Selection of Transaction Advisor

The selection of Transaction Advisors will vary from project to project depending, in part, on the country in which it is being undertaken, the type of project and the source of financing. However, best practice selection should follow four main rules as below.

(1) ***Transparency:*** As much information as possible should be made publicly available. A transparent process eliminates doubt about the quality of the final winning team. Furthermore, it is a pre-requisite to the participation of most top consultancies, which will not bother to participate in a process that is opaque and difficult to understand.

(2) ***Fairness:*** All parties are treated equally. All parties receive the same information at the same time and are evaluated on the same criteria.

(3) ***Cost-effectiveness:*** Costs should be minimized without sacrificing quality. Costs can be minimized, and quality of service maintained by choosing and employing the appropriate selection method (For example a form of competitive bidding and by understanding the likely cost components of the work while drafting the terms of reference).

(4) ***Freedom from conflicts of interest:*** The selection process should avoid both actual and perceived conflicts of interest. This requires avoiding the participation of companies that may be involved as investors or consumers, the participation of government officials who have current or recent connections to the companies involved and the linking of rewards to anything other than performance.

The appointment of a Transaction Advisor would preferably be done based on proposals submitted in accordance with a comprehensive RFP. Prospective transaction advisors would preferably be required to submit proposals in two sections as described below.

Technical Proposal

The technical proposal would normally carry the highest weighting of say 60 -70 percent of the overall assigned scores for evaluation. The technical proposal could consist of the following sections:

(1) Company and staff experience (say about 75 percent of the total weight assigned to the technical proposal).
(2) Proposed execution plan (say around 10 percent of the total weight assigned to the technical proposal).
(3) Understanding of transaction requirements (say about 15 percent of the weight assigned to the technical proposal).

The technical proposal would also be accompanied by the relevant documents to support the above.

A threshold may also be established in terms of which a prospective Transaction Advisor's proposal might need to achieve a minimum number of technical evaluation points for that bid to be further evaluated based on its financial proposal.

Financial Proposal

The components of the financial proposal could be the total cost, retainer, and success fee. For the evaluation of the financial proposal, the maximum number of points could be awarded to the proposal with the lowest total tendered cost, being the aggregate of a retainer and a success fee. The retainer fee could consist of the sum disbursed regardless of the success or financial closure of the project. The success fee on the other hand, could be contingent on the success or financial closure of the project.

The other proposals could be awarded on a pro rata number of points, calculated on the percentage difference in cost between their tendered costs and the lowest tendered total cost.

Managing the Transaction Advisors

Once Transaction Advisors have been appointed it is crucial that they are managed properly. Getting maximum benefit from a transaction advisor requires good management and effective leadership and oversight by the Public Sector Agency right from defining the transaction advisor's tasks, to choosing the transaction advisor, and monitoring and managing their performance throughout their engagement with the Public Sector Agency. Without this, the Transaction Advisor's work can be misdirected, misunderstood, and may even amount to fruitless expenditure by the Public Sector Agency.

The Public Sector Agency would appoint a Project team lead by a Project Officer for the implementation of the Project. The Project Officer and the Project team play a pivotal role in managing the transaction advisor. The transaction advisor would be managed on a day -to-day basis by the Project Officer and will play the key technical roles in the work of the Project team. The Transaction advisor will furnish the Project team, in a format to be agreed upon by the Project team, with all the documentation required during the project. The project team could meet the Transaction Advisor at regular intervals to assess the progress of the project and the progress on the Transaction Advisor's deliverables and to assist the Transaction Advisor with the necessary data requirements of the Transaction Advisor, obtaining the approvals and the clearances as required for the successful implementation of the project.

8.1.2. Categories of Transaction Advisors

PPP Financial Advisers:

- Firms and individuals with relevant financial skills and experience of PPP and project-finance arrangement
- They should understand the different risk and return appetites of different financial markets and instruments
- Can act as Transaction Advisory Team Leader if need also for Legal Advisory skills and Technical Advisory skills

Legal Advisers:

- Firms and individuals with relevant financial knowledge and experience of PPP and project-finance arrangements
- International lawyers can work together with local lawyers if international and national legal experience is required
- They can explain to the public sector PPP project sponsor the implications of contract terms and other legal and security issues
- They can document for the public sector PPP project sponsor how the proposed contract will achieve the allocation of risk and the commercial terms which the sponsor has negotiated with their selected preferred bidder

Technical Advisers:

- Can cover a range of disciplines-Surveyors, engineers, architects, project managers, actuaries, and many other technical professions
- Need to be clear what technical advice is required, over and above in-house skills

Risk Identification and Allocation

Risk is an inherent part of all projects. In the context of the PSC, risk reflects the potential for additional costs above the base case assumed in the primary PSC or for revenue below it. For the PSC to provide a meaningful test for value for money against the private bids, it must include a comprehensive and realistic pricing of all quantifiable and material risks.

In constructing the PSC, the value of risk is included in the cash flow numerator of the PSC. This is seen as offering the following advantages:

(1) By valuing risk as a separate cash flow item, government is better able to focus on the key factors influencing the optimal level of risk allocation;

(2) Cash flow valuation takes better account of the timing of risk by analyzing the risk profile of each risk. For example, construction risk arises early in the project, while upgrade and residual value risks arise towards the end;

(3) The value and impact of a particular risk may vary over time; and

(4) Cash flow valuation provides a transparent methodology by using a consistent government discount rate across projects.

Identifying the project risks

The first step in managing and allocating risk is to identify all risks associated with a project. Risks are usually identified by reference to generic risk categories and/or risks based on different phases of the project. The risks associated with project phases include bid phases; negotiation with bidders; construction; operation and transfer risks. The first two project phase risks are not accounted for in the PPP agreement. An illustrative list of risks associated with a project is presented in the table below.

Table 12: Constructing a Risk Matrix – Risk Identification

Risk category	Description of risk
Commissioning risk	The risk that the infrastructure will not receive all approvals to satisfy an output specification, such as expected changes in legislation which allows for a specific output specification not materializing
Construction risk	The risk that the construction of the assets required for the project will not be completed on time, budget or to specification
Demand (usage) risk	The risk that actual demand for a service is lower than planned
Design risk	The risk that the proposed design will be unable to meet the performance and service requirements in the output specification
Environmental risk	The risks that the project could have an adverse environmental impact which affects project costs not foreseen in the environmental impact assessment
Financial risk	The risk that the private sector over stresses a project by inappropriate financial structuring
Force majeure risk	An act occasioned by an unanticipated, unnatural, or natural disaster such as war, earthquake, or flood of such magnitude that it delays or destroys the project and cannot be mitigated
Industrial relations risk	Industrial relations risk is the risk that industrial relations issues will adversely affect construction costs, timetable, and service delivery
Latent defect risk	The risk that an inherent defect exists in the structure being built or equipment used, which is not identified upfront, and which will inhibit provision of the required service
Operating risk (service under-performance)	The risks associated with the daily operation of the project, including an unexpected change in operating costs over budget
Performance risk	The risk that the operator will not perform to the specified service level, such as a power generator supplying less power than demanded
Change in law risk	The risk that the current regulatory regime will change materially over the project or produce unexpected results

Risk category	Description of risk
Residual value risk	The risk relating to differences from the expected realisable value of the underlying assets at the end of the project
Technology obsolescence risk	The risk that the technology used will be unexpectedly superseded during the term of the project and will not be able to satisfy the requirements in the output specification
Upgrade risk	The risks associated with the need for upgrade of the assets over the term of the project to meet performance requirements

Source: Partnerships Victoria, Technical Note on Public Sector Comparator

The depth and accuracy of information collected should reflect the materiality of the costs (or revenues) to be quantified. It would generally be inappropriate to devote excessive time and resources to valuing minor or less sensitive risks. To constructing the PSC, only material risks should be included.

Risk Assessment

After all material risks have been identified, the next step would be to assess and quantify the consequence of each risk. The two factors impacting the consequence of the risk are first the likelihood of its occurrence and second the size of its consequence if it were to materialize.

The consequences of risk can be either direct or indirect. Direct consequences include time and cost overruns over the initial base costs used in the Raw PSC. Indirect consequences arise from the interaction between risks, where the occurrence of one risk has flow-on implications for other aspects of the project. When identifying the consequences of a particular risk, the potential interaction between risks needs to be considered. This is particularly relevant where the risk would delay the critical path and has a flow-on effect throughout the project.

Table 13: Constructing a Risk Matrix – Direct Consequences of risk

Risk category	Direct Consequence
Commissioning risk	Additional ramp-up costs, cost of maintaining existing infrastructure or providing a temporary alternative solution where this leads to a delay in the provision of the service
Construction risk	Additional raw materials and labour costs, cost of maintaining existing infrastructure or providing a temporary alternative solution where this leads to a delay in the provision of the service
Demand (usage)	Reduced revenue based on lower throughput risk

Risk category	Direct Consequence
Design risk	Cost of modification, redesign costs
Environmental risk	Additional costs incurred to rectify an adverse environmental impact on the project, incurred from the construction or operation of the project or pre-existing environmental contamination
Financial risk	Additional funding costs for increased margins or unexpected refinancing costs
Force majeure risk	Additional costs to rectify
Industrial relations risk	Increased employee costs, lost revenue, or additional expenditure during delay in construction or service provision (post-construction)
Latent defect risk	Cost of new equipment or modification to existing infrastructure
Operating risk	Increased operating costs or reduced revenue over the project term
Performance risk	Cost of failing to comply with performance standards
Change in law risk	Cost of complying with new regulations
Residual value risk	Lower realisable value for underlying assets at end of project term
Technology obsolescence risk	Cost of replacement technology
Upgrade risk	Additional capital costs required to maintain specified service above the level included in the Raw PSC
Maintenance risk	Increased cost of repairs above the level included in the Raw PSC

Source: Partnerships Victoria, Technical Note on Public Sector Comparator

A useful tool for identifying the consequences and financial impact of risk is a risk matrix. A comprehensive risk matrix should be more than an indication of whether each risk should be

transferred, retained, or shared. It should also identify the main con sequences, financial impact and potential mitigation strategies for each risk. This allows the risk matrix to serve as a reference point for valuing risk in a PSC. An example of a risk matrix is presented in the table below:

Table 14: Constructing a Risk Matrix – Example of a risk matrix element

Risk	Cause	Consequence of risk	Potential financial impact	Strategy/ mitigation
Commissioning risk – delay in service provision	(1) Failure to complete or construct adequately	Cost and time overruns (e.g., additional ramp-up costs) Cost of maintaining existing infrastructure or providing a temporary solution through inability to deliver the new facility as planned	Dependent on extent of time overrun Known (monthly/daily) cost but dependent on extent of time overrun Dependent on probability of risk occurring	Allocate risk to bidder; fixed time and price contract with an experienced builder Ensure construction company provides a liquidated damages bond
	(2) Council failure to deliver approvals in a timely manner	Cost and time overruns (e.g., additional ramp-up costs) Cost of maintaining existing infrastructure or providing a temporary solution through inability to	Dependent on time taken to acquire approvals (if they can be obtained at all) Dependent on probability of risk occurring	Simplify approval process (as far as is reasonable) Obtain as many approvals as is possible prior to contract signature Use best legal advisers to determine and obtain all approvals

Risk	Cause	Consequence of risk	Potential financial impact	Strategy/ mitigation
		deliver the new facility as planned		required
	(3) Flaws in output specification	Cost and time overruns (e.g., additional ramp-up costs) Cost of maintaining existing infrastructure or providing a temporary solution through inability to deliver the new facility as planned	Dependent on extent of time overrun Known (monthly/daily) cost but dependent on extent of time overrun Dependent on probability of risk occurring Potential cost of redefining the output specification Dependent on probability of risk occurring	Remove high risk technological elements from specification (keep it simple and unambiguous) Nature of commissioning tests should be clearly spelt out upfront, focusing attention on whether the output specification will be met

Source: Partnerships Victoria, Technical Note on Public Sector Comparator

It is useful to separate the different causes and consequences of each risk for two reasons:

(1) Different consequences may have a different probability of eventuating — typically, more severe consequences have a lower probability of occurring; and
(2) It may be optimal to allocate different causes for the same risk between the parties, based on their ability to manage it at least cost.

This process is performed for each risk to complete the risk matrix. The entire process should be thoroughly documented to ensure an adequate probity trail exists to justify the risk valuation and allocation, and to allow for future review of the process.

Having identified the material risks and assessed the variety of potential consequences, it is then necessary to estimate the probability of each of the consequences occurring. There are various risk valuation techniques that can be used to provide probability estimates. These range from simple techniques that provide a subjective estimate of probability, to more advanced techniques that produce weighted probabilities for specific risks based on given confidence intervals, and single comprehensive risk estimates for all project risks using multivariable statistical techniques.

Quantifying the risk

This step involves assessing the financial impact of the risk. Given that the project risks are being captured only in the numerator of the cash flows rather than being an intrinsic element of the discount rate, hence a contingency factor should be included in each major risk category (e.g. construction, operations and maintenance) to account for any unobservable costs which would otherwise lead to the undervaluation of identifiable and quantifiable risks.

The amount of the contingency that should be added to the major risk categories depends on several factors, including:

(1) The accuracy of information used in valuing the particular risk;
(2) The size of the contingency (as a proportion of the underlying cost) — this will be inversely proportional to the amount of resources devoted to valuing the observable components of the risk; and
(3) The degree of uncertainty for completeness.

The MDA should also gather contingency risk data from previous public procurement projects and base its contingency factor for a particular risk or risk category on this, supplemented by information from the private sector where appropriate (e.g., where these have not been previously included). The value of each risk is then calculated individually using the following probability weighted formula:

Value of risk = consequence x probability of occurrence + contingency

Once the consequences and probability of the occurrence have been quantified, the value of each risk can be determined. There is often more than one possible consequence for a particular risk. The value of each risk in such cases is the sum of all these probability weighted consequences (assuming the consequences are all independent), plus a contingency amount.

Estimating the probability of occurrence

The techniques for estimating the probability of occurrence of a consequence vary from simple probability valuation techniques based on subjective estimates to more advanced probability valuation based on multivariate statistical techniques.

(1) **Simple probability valuation**: In its most basic form probability valuation involves making subjective estimates of likelihood of the occurrence of each risk. It is normally based on experience, current best practices, and anticipated improvements in future. One such technique is to make point estimates. This would involve realistically estimating the extent to which the final cost of the project is likely to be above or below the estimated value of the PSC. Each point estimated will be associated with a likely consequence and the consequence would be dependent on the materiality of the occurrence to the project. In case of subjective estimates as well as in empirical estimation, all assumptions related to the estimation should be clearly stated and documented.

(2) **Advanced probability valuation**: These techniques involve estimating the probability of occurrence by creating a probability distribution and interpreting resulting outputs. These distributions are based on professional experience, supported where available by historical information and reliable assumptions for similar recent projects. Once these distributions have been calculated, a reliable estimate of probability can then be made to a given level of accuracy (known as the confidence interval). Statistical risk measures have the advantage that they are based on rigorous economic principles, use a mix of professional experience and available information, and map a variety of possible outcomes. Conversely, they have the disadvantage that they can be more complicated to calculate and interpret and may require a significant amount of reliable information to determine an appropriate distribution. This may be significantly mitigated where experienced risk professionals are engaged, increasing the ability to make reliable and objective forecasts. The accuracy and reliability of probability distribution estimates therefore depends on the capability to provide reasonable forecasts of likely outcomes, supported by the quality of available information. Instead of estimating each risk and its components separately, it may be possible to calculate a single risk measure through multivariable analysis and simulation. These techniques typically involve the use of computer-based simulation packages. One accepted method of multivariable analysis is Monte Carlo simulation. This technique constructs an artificial probability distribution for total risk, or a subset of risks, based on assumed or actual distributions for each of the individual risks. It then provides a single value for risk by simultaneously solving some different risk relationships.

The choice of risk valuation technique should depend on the size and complexity of the project and the cost benefit analysis of using an advanced probability valuation technique.

Illustration of estimating of value of risk

This illustration of estimating risk is adopted from Partnerships Victoria- Public Sector Comparator, Technical Note.

Consider the construction of some new educational facilities with a total base cost of USD100 million. Closer examination indicates that the following risk consequences are associated with construction of the facilities:

(1) Likely increase in construction costs (based on average cost overruns): Evidence suggests there is a 15 per cent probability that actual total construction costs will be the

same as the initial base cost (included in the Raw PSC). It is also determined that there is a 40 per cent probability that total construction costs will exceed the base amount by 10 per cent ('likely' scenario), a 25 per cent probability that costs will exceed the base amount by 15 per cent ('moderate' scenario), and a 15 per cent probability of a 25 per cent increase in costs (extreme' scenario). In addition, there is a 5 per cent probability that costs will be 5 per cent below the base amount;

(2) **Increase in costs arising from a delay in the construction schedule (time overrun):** Assume the cost of delay is a uniform USD 4 million per year, accumulating at a constant rate over the year. The procurement team estimates there is a 15 per cent probability that the facilities will be completed on time, a 50 per cent probability that completion of the new facility will be delayed by one year, and a 25 per cent probability that construction will be delayed by 18 months. In addition, there is a further 10 per cent probability that the delay will be two years;

(3) **The cost of providing similar services during the delay period, generally from existing facilities ("service maintenance")**: In this case, the probability of needing to provide similar services is assumed to be directly related to the probability of a time overrun, and that the cost of utilizing existing facilities to meet required demand will be USD 3 million per year;

(4) **Increase in construction costs if the planned facility is not sufficient and additional treatment capacity needs to be added ("upgrade costs"):** The procurement team estimates there is a 20 per cent probability that the facilities will be completely adequate, and no upgrade will be required. In the event that additional upgrades are required over the initial design, it is estimated that there is a 40 per cent probability that the cost will be approximately 5 per cent of the initial base amount (_likely' scenario), a 30 per cent probability that the cost will increase by 7 per cent (_moderate' scenario), and a further 10 per cent probability that the cost will increase by 10 per cent (_extreme' scenario); and a contingency factor of 2 per cent is also included to account for any unobservable costs associated with construction risk.

These scenarios can be represented in a simple risk valuation table.

Figure 36: Constructing a Risk Matrix – Example of risk valuation table

Scenario	Outcome	Consequence	Probability	Value of Risk
Cost Overruns				
Below Base Figure	95	-5	5%	-0.3
No Deviation from Base	100	0	15%	0.0
Overrun- Likely	110	10	40%	4.0
Overrun- Moderate	115	15	25%	3.8
Overrun- Extreme	125	25	15%	3.8
			Subtotal	***11.3***
Time Overruns				
No Time Overrun	100	0	15%	0.0
Overrun- Likely	104	4	50%	2.0
Overrun- Moderate	106	6	25%	1.5
Overrun- Extreme	108	8	10%	0.8
			Subtotal	***4.3***
Service Maintenance				
No Deviation from base	100	0	15%	0.0
Overrun- Likely	103	3	50%	1.5
Overrun- Moderate	104.5	4.5	25%	1.1
Overrun- Extreme	106	6	10%	0.6
			Subtotal	***3.2***
Upgrade Costs				
No Deviation from base	100	0	20%	0.0
Overrun- Likely	105	5	40%	2.0
Overrun- Moderate	107	7	30%	2.1
Overrun- Extreme	110	10	10%	1.0
			Subtotal	*5.1*
			Contingency Factor (2% value of project)	2
			Total Value of Risk =	**25.9**

The timing of each possible consequence then needs to be assessed. This may be different for some consequences within a particular risk and is represented in the simple matrix below.

Figure 37: Constructing a Risk Matrix – Timing and probability of consequence

Consequence	Year 0	Year 1	Year 2
Cost Overrun	70%	30%	
Time Overrun	71%	29%	
Service Maintenance*		71%	29%
Upgrade Cost*		100%	
Contingency Factor*	70%	30%	

*In practice, these risks may be expected to occur in later years. However, for illustrative purposes, all consequences are assumed to occur in Years 0-2.

For example, the cost of providing a similar service will only be incurred once the service is expected to be delivered under the timetable assumed in the Reference Project (e.g., Year 1). The timing of the contingency factor is assumed to be the same as the cost overrun. The subtotal cost of each risk component is then allocated across the term of the project according to the timing weightings given above. For example, the cost overrun component (in real terms) would be allocated as follows:

Figure 38: Constructing a Risk Matrix – Allocating Cost of Risk

(USD Million)

Consequence	Year 0	Year 1	Year 2
Cost Overrun	7.9 (11.3 x 70%)	3.4 (11.3x 30%)	0 (11.3 x 0%)

Each of the components then needs to be converted into nominal cash flows to account for the effect of inflation. In this example, inflation is assumed at 2.5 per cent per year.

Figure 39: Constructing a Risk Matrix – Estimating Present Value of Risk

(USD Million)

Cost	Year 0	Year 1	Year 2
Construction Risk			
Cost Overrun	7.9	3.4	0
Time Overrun	3.1	1.2	0
Service Maintenance	0	2.3	0.9
Upgrade Cost	0	5.1	0
Contingency Factor	1.4	0.6	0
Real Cost	**12.4**	**12.6**	**0.9**
Nominal Costs (Assuming inflation at 2.5% p.a.)	**12.4**	**12.9**	**1**
Discounted Cash Flow	**12.4**	**11.9**	**0.8**
Present Value of Construction Risk	**25.1**		

Thus, the present value of construction risk for this project has been estimated at USD 25.1 million.

Estimating Transferable Risk

All risks of the project can be classified as either Transferable Risk (those that MDA seeks to allocate to bidders) or Retained Risk (that MDA is willing to accept). However, there may be situations where specific components of a particular risk are allocated between parties, or where an overall risk is shared. In the former situation, the particular risk needs to be separated into both its Transferable and Retained Risk components. Risk sharing may occur in accordance with an agreed formula contained in a negotiated contract. For example, where a department or agency is not expected to be the only end-user of an asset or service, government may specify a base level of demand it will support. Bidders may be required to take demand risk above this base level.

Where a risk is classified as a Transferable Risk, bidders should be given a substantial degree of flexibility to determine the best method of controlling the costs associated with that risk. This creates a powerful incentive for bidders to manage the risk in the overall interests of the project, while delivering greater value for money to government. This is further enhanced using a performance-based payment mechanism. Achieving an optimal risk allocation can have substantial value for money implications.

Once all the Transferable Risks have been identified, the size and timing of the expected cash flows associated with each risk needs to be aggregated to determine the NPC of the Transferable Risk component of the PSC. Each of the risks should be included as a separate cash flow item and then added to form the Transferable Risk component, to allow for a detailed analysis of the key risks and their sensitivity to the overall PSC.

Estimating retained risk

Retained risk is that component of the risk of the project that the MDA will continue to bare in a arrangement. The scope of Retained Risk reflects the nature of the project and the output specification. Where government retains responsibility for the provision of core services, these should not be considered in the intended risk allocation, as they are not part of the project. For example, in a project for the provision of educational facilities, government maintains the responsibility of providing teachers and developing the curriculum outside the project. This risk does not form part of the project's Retained Risk.

Once all the Retained Risks have been identified, the size and timing of the expected cash flows associated with each of these risks needs to be aggregated to determine the NPC of the Retained Risk component of the PSC. Each of the risks should be included as a separate cash flow item and then added to form the Retained Risk component to allow for a detailed analysis of the key risks and their sensitivity to the overall PSC.

Risk Allocation

The principle governing risk transfer is that each risk should be allocated to whoever is best able to manage it at least cost, considering public interest considerations. This requires an optimal rather than maximum transfer of risk. It is determined by assessing the ability of each party to reduce the probability of a risk occurring, and to minimize the consequences if that risk eventuates.

It is unlikely that either government or bidders will be best suited to manage all the risks of a project. Factors to be considered include:

(1) The nature of the project;
(2) The respective strengths and ability of each party to manage a risk (this may change over time as each party's risk mitigation skills improve);
(3) Flexibility of the output specification (whether any constraints exist which influence the method for managing risk);
(4) Previous levels of risk transfer (this indicates the historical success of each party in managing particular risks and the potential ability to manage risk in the future);
(5) Prevailing market attitudes towards risk;

(6) Public interest factors; and

(7) Other policy considerations.

Risk Mitigation

Risk mitigation is a component of risk allocation. Risk mitigation is any action that can be taken to reduce:

(1) The likelihood of a risk materializing; or
(2) The consequences to the contracting party taking the risk if it does materialize.

Risk mitigation is an attempt to reduce the relevant party's exposure to the risk and inherently increases the likelihood of achieving (or bettering) the project's base case scenario. Mitigation practices vary depending on the risks being considered and whether the party concerned is a private or public one.

Private sector risk mitigation mechanism is passing through the risk to a third party. It is one of the most used and readily available risk mitigation option for private parties is to pass the risk on to other parties who can control it at a lower risk premium. This supplementary risk allocation creates a chain of risk bearers, each best placed to control the particular risk, and each insulated from the collective risks which the private party would otherwise have to bear. Other private sector risk mitigation mechanisms include insurance, use of financial market instrument and developing diversified project portfolios. Public sector risk mitigation measures are like those used in the private sector. Additionally, an MDA could consider taking steps to reduce the risk during the procurement stage.

An illustration of a risk matrix adopted from Partnerships Victoria's Note on Risk Allocation and Contractual issues, is presented in the following pages:

Table 15: Constructing a Risk Matrix – Elements of a risk matrix element

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
Existing structure (refurbishment/ extensions)	Risk that existing structures are inadequate to support new improvements	Additional construction time and cost	Private party will pass to builder which relies on expert engineering reports	Private party
Site conditions	Risk that unanticipated adverse ground conditions are discovered which cause construction costs to increase and/or cause	Additional construction time and cost	Private party will pass to builder which relies on expert testing and due diligence	Private party

	construction delays			
Approvals	Risk that necessary approvals may not be obtained or may be obtained only subject to unanticipated conditions which have adverse cost consequences or cause prolonged delay	Delay in works commencement or completion and cost increases	Prior to beginning the tender process government may seek a planning scheme amendment or environmental impact assessment taking risk of a route diversion or special measures to protect environmental values; for example, in the case of linear infrastructure (road, rail, pipeline); during the tender process by means of a Project Development Agreement both government and the	Private party possibly up to a specific cost amount unless government assumes because of complexity or sensitivity

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
			private party may achieve a measure of pre-contractual certainty allowing an early start to the approval process and a sharing of costs	
Environmental (1)	Risk that the project site is contaminated requiring significant expense to remediate	Clean-up costs and delay	Reliance on expert reports and insurance	Private party will generally assume the risk although because of the time and cost implications of full due diligence for each bidder, some risk sharing may be a cost effective solution particularly using a regime for allocation of cost consequences such as a Material Adverse Effect regime
Environmental (2)	Risk that prior to financial close offsite pollution has been caused from a government preferred site (any	Clean-up liability	Government to commission reports; government should also have greatest knowledge of past	Government may assume responsibility by way of indemnity or obligation to

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
	site) to adjacent land		uses of its site	compensate for unidentified off site pollution pre financial close where the site is a preferred government site
Environmental (3)	Risk that prior to financial close (in case of a non-government site) or after financial close (any site) offsite pollution is caused to adjacent land	Clean up liability	Private party can manage site activity	The private party will be in control of activities on the site post financial close and will be required to assume risk of offsite pollution caused by those activities; also it will take risk of offsite pollution from any site which is not a government preferred site (even if it occurs pre-completion)
Clean-up and rehabilitation	Risk that the use of the project site over the contract term has resulted in a significant clean up	Financial liability on residual owner	Private party able to manage the use of the asset and attend to its maintenance and	Private party to take risk (whether government is to resume or

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
	or rehabilitation obligation to make the site fit for future anticipated use		refurbishment; government may require sinking funds if it is to resume the site and its use is liable to result in significant clean up/rehabilitation cost	not) and must demonstrate financial capacity or support to deliver the site in the state required by government
Native title	Risk of costs and delays in negotiating indigenous land use agreements where project site may be subject to native title or risk injunction and/or invalidity of approvals	Delay and cost	Search of registers and enquiry if appropriate and take expert advice	Government will usually take risk on government preferred sites as it generally has a better understanding of procedures, has special powers of acquisition and use of native title land for infrastructure and is usually in best position to manage this risk; government is also in better position to negotiate where policy discourages use of compulsory

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
				acquisition power
Cultural heritage	The risk of costs and delays associated with archaeological and cultural heritage discoveries	Delay and cost	Search of registers and enquiry if appropriate and take expert advice	Government will generally take risk on government preferred site as it generally has a better understanding of procedures, and is usually in best position to manage this risk otherwise private party takes responsibility
Availability of site	Risk that tenure/access to a selected site which is not presently owned by government or private party cannot be negotiated	Delay and cost	Bidders' obligation to secure access prior to contract signing	Private party, as it makes the decision to bid on a non preferred site
Design, construction, and commissioning risk				
Design	The risk that the design of the facility is incapable of delivering the services at anticipated cost	Long term increase in recurrent costs - possible long term inadequacy of service	Private party may pass risk to builder/architects and other subcontractors while maintaining primary liability; government has the	Private party will be responsible except where an express government mandated change has

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
			right to abate service charge payments where the risk eventuates and results in a lack of service - it may ultimately result in termination where the problem cannot be suitably remedied	caused the design defect
Construction	The risk that events occur during construction which prevent the facility being delivered on time and on cost	Delay and cost	Private party generally, will enter into a fixed term, fixed price building contract to pass the risk to a builder with the experience and resources to construct to satisfy the private party's obligations under the contract	Private party will be liable unless the event is one for which relief as to time or cost or both is specifically, granted under the contract, such as force majeure or government intervention
Commissioning	The risk that either the physical or the operational commissioning tests which are required to be completed for the provision of services to commence, cannot be successfully completed	For the private party and its financiers - delayed/lost revenue for government - delayed service commencement	No payment by government until all physical and operational commissioning tests have been successfully completed	Private party, although government will assume an obligation to cooperate and facilitate prompt public sector attendance on commissioning tests

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
Sponsor and financial				
Interest rates pre-completion	The risk that prior to completion interest rates may move adversely thereby undermining bid pricing	Increased project cost	Interest rate hedging may occur including under Project Development Agreement	Government may assume or share
Sponsor risk	The risk that the private party is unable to provide the required services or becomes insolvent or is later found to be an improper person for involvement in the provision of these services or financial demands on the private party or its sponsors exceed its or their financial capacity causing corporate failure	Cessation of service to government and possible loss of investment for equity providers	Ensure project is financially remote from external financial liabilities, ensure adequacy of finances under loan facilities or sponsor commitments supported by performance guarantees; also using Non-financial evaluation criteria and due diligence on private parties (and their sponsors)	Government
Financing unavailable	The risk that when debt and/or equity is required by the private party for the project it is not available then and in the amounts and on the conditions anticipated	No funding to progress or complete construction	Government requires all bids to have fully documented financial commitments with minimal and easily achievable conditionality	Private party

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
Further finance	The risk that by reason of a change in law, policy or another event additional funding is needed to rebuild, alter, reequip etc the facility which cannot be obtained by the private party	No funding available to complete further works required by government	Private party must assume best endeavours obligation to fund at agreed rate of return with option on government to pay by way of uplift in the services charge over the balance of the term or by a separate capital expenditure payment; government to satisfy itself as to likelihood of this need arising, it's likely criticality if it does arise, and as to financial capacity of private party to provide required funds and (if appropriate) budget allocation if government itself is required to fund it	Government takes the risk that private finance is unavailable
Change in ownership	The risk that a change in ownership or control of the private party results in a weakening in its financial standing or support or other detriment to the project	Government assurance of the financial robustness of the private party may be diminished and, depending on the type of project, probity	Government requirement for its consent prior to any change in control. private party will seek to limit this control to circumstances where substantive issues are of	Government risk as to the adverse consequence of a change if it occurs; private party risk that its commercial objectives may

		and other non	concern such as	be inhibited by

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
		financial risks may arise from a change in ownership or control which may be unacceptable to government	financial capacity and probity	a restrictive requirement for government consent to a change
Refinancing benefit	The risk (upside) that at completion or other stage in project development the project finances can be restructured to materially reduce the project's finance costs	A beneficial change in the financing cost structure of the project	Government will assure itself that likely benefit has been factored into competitive bids to avoid the risk that the private party will be allowed to earn super profits from the project	Private party to benefit; government will share in limited circumstances (essentially in symmetrical risk allocation and super profits)
Tax changes	The risk that before or after completion the tax impost on the private party, its assets or on the project, will change	A negative effect on the private party's financial returns and in extreme cases, it may undermine the financial structure of the project so that it cannot proceed in that form	The financial returns of the private party should be sufficient to withstand such change; with respect to specific infrastructure taxation particularly that relating to transactions with government, the private party should obtain a private tax ruling	Private party
Operating				

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
Inputs	The risk that required inputs cost more than anticipated, are of inadequate quality or are unavailable in required quantities	Cost increases and in some cases adverse effect on quality of service output	Private party may manage through long term supply contracts where quality/quantity can be assured; private party can address to some extent in its facility design	Private party unless government controls inputs e.g. water catchments
Maintenance and Refurbishment	The risk that design and/or construction quality is inadequate resulting in higher than anticipated maintenance and refurbishment costs	Cost increases where private party has assured whole of life obligation and adverse effect on delivery of contracted services and, in core services model, a corresponding adverse effect on government ability to deliver core services	Private party to manage through long term subcontracts with suitably qualified and resourced sub-contractors and through formal or informal consultation processes with government	Private party
Changes in output specification outside agreed specification range	Risk that government's output requirements are changed after contract signing whether pre or post commissioning	A change in output requirements prior to commissioning may necessitate a design change with capital cost consequences depending on	Government can mitigate this risk to an extent by minimising the chance of its specifications changing and, to the extent they must change, ensuring the design is likely to	Government

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
		the significance of the change and its proximity to completion; a change after completion may have a capital cost consequence or a change in recurrent costs only; for example where an increase in output requirements can be accommodated within existing facility capacity	accommodate it at least expense; this will involve considerable time and effort in specifying the outputs up front and planning likely output requirements over the term	
Operator failure	Risk that a subcontract operator may fail financially or may fail to provide contracted services to specification	The failure may result in service unavailability, an inability for government to deliver core services and, in each case, a need to make alternate arrangements for service delivery with corresponding cost consequences	Government will carry out due diligence on principal subcontractors for probity and financial capacity and commission a legal review of the major subcontracts including the guarantees or other assurances taken by the private party; if failure does occur the private party may replace the operator or	Private party is fully and primarily liable for all obligations to government irrespective of whether it has passed the risk to a subcontractor

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
			government may require operator replacement	
Technical obsolescence or innovation	Risk of the contracted service and its method of delivery not keeping pace, from a technological perspective, with competition and/or public requirements	Private party's revenue may fall below Projections either via loss of demand (user pays model) payment abatement (availability model) and/or operating costs increasing; for government - consequence will be failure to receive contracted service at appropriate quantity/ quality including adverse effect on core service delivery in core service model	Private party may arrange contingency/reserve fund to meet upgrade costs subject to government agreement as to funding the reserve and control of reserve funds upon default; also monitoring obligations in the contract and work on detailed, well-researched output specifications (government) and design solution (private party)	Private party except where contingency is anticipated and government agrees to share risk possibly by funding a reserve
Market				
General economic downturn	In a user pays model, the risk of a reduction in economic activity	Revenue below projections	Where government is the primary off-taker the private party will seek an	Private party except to the extent that government

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
	affecting demand for the contracted service		availability payment element; otherwise the private party will ensure robust financial structure and sponsor/financier support	has committed to an availability payment element or agreed to provide redress for impact of government subsidised competition
Competition	In a user pays model the risk of alternate suppliers of the contracted service competing for customers	Revenue below projections arising from a need to reduce the price and/or from a reduction in overall demand, because of increased competition	Private party to review likely competition for service and barriers to entry	Private party except to the extent that government has committed to an availability payment element or agreed to provide redress for impact of government subsidised competition
Demographic change	The risk of a demographic/socio-economic change affecting demand for contracted service	Revenue below projections	Private party to review likely competition for service, barriers to entry	Private party except to the extent that government has committed to an availability payment element

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
Inflation	Risk that value of payments received during the term is eroded by inflation	Diminution in real returns of the private party	Private party seeks an appropriate mechanism to maintain real value e.g., via linkage to CPI; government concern to ensure its payments do not overcompensate for inflation and to avoid any double payment for after costs adjustments e.g., on changes in policy/law	Private party takes risk on the methodology adopted to maintain value; government shares to the extent of agreed indexation
Network and interface				
Withdrawal of support network	The risk that, where the facility relies on a complementary government network, that support is withdrawn or varied adversely affecting the project	Negative patronage and revenue consequences	Private party will seek financial redress against change which unfairly discriminates against the project particularly on a user pays project where revenue is directly affected; under an availability model private party will seek to avoid abatement if government 'prevention' is cause of unavailability	Government where the change discriminates against the project
Changes in	The risk that an	Negative	Private party will	Private party

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
competitive network	existing network is extended/ changed/ re-priced so as to increase competition for the facility	patronage and revenue consequences	seek financial redress against change which unfairly discriminates against the project by government subsidising competition (existing or new)	except to the extent that government provides redress for appropriate, discriminatory changes
Interface (1)	The risk that the delivery of core services in a way which is not specified/anticipated in the contract adversely affects the delivery of contracted services	Adverse effect on delivery of contracted service, potential for default by private party and possible need for government to make other arrangements for service provision	Government manages core service activities allowing it to influence the materialisation of interface risk and its consequences; other mitigants include an upfront assessment (by both government and the private party) of the likely interface issues, continual review and monitoring and development of a communications strategy in respect of delivery of the two related services; government will also specify in the contract the extent of core services and the way in which they will be	Private party except to the extent that government provides redress for appropriate, discriminatory changes

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
			delivered so that only manifest and adverse changes and deficiencies can trigger this risk	
Interface (2)	The risk that the delivery of contracted services adversely affects the delivery of core services in a manner not specified/anticipated in the contract	Adverse effect on delivery of core services, default by private party and possible need for government to make other arrangements for core service provision	Private party manages contracted service activities	Private party
Industrial relations				
Industrial relations and civil commotion	Risk of strikes, industrial action or civil commotion causing delay and cost to the project	Cost and time delay	Private party or its sub-contractors manage project delivery and operations	Private party
Legislative and government policy				
Approvals	The risk that additional approvals required during the course of the project cannot be obtained	Further project development or change in business operation may be prevented	Private party to anticipate requirements	Private party unless government has initiated the change requiring approval
Changes in law/policy (1)	The risk of a change in law/policy of the	A material increase in the	Government may mitigate its liability	Government: although the

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
	State Government only, which could not be anticipated at contract signing and which is directed specifically and exclusively at the project or the services and which has adverse capital expenditure or operating cost consequences for the private party	private party's operating costs and/or a requirement to carry out capital works to comply with the change	for such change by monitoring and limiting (where appropriate) changes which may have these effects or consequence on the project and via mechanisms in the contract allowing compensation only above a pre-agreed 'Significant Amount'; also requiring the private party to effect the change in such a manner that the financial effect on government is minimised and, if payment is required, that payment is made in a way and a time best suited to government (e.g., pay on a progressive scale); also (in a user pays model) having in place a regulatory regime which allows pass through to end users	parties may share the financial consequences of capital cost increases in an agreed way, for example by the private party meeting a percentage of the cost up to a specific limit and government meeting any excess

Changes in law/ policy (2)	In some cases, the risk of a change in law/policy (at whatever level of	Requirement on the private party to fund and carry out	Government mitigates by excluding changes such as tax	Government: although the parties may share the

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
	government it occurs) which could not be anticipated at contract signing which is general (i.e. not project specific) in its application and which causes a marked increase in capital costs and/or has substantial operating cost consequences for the private party	capital works or meet a marked increase in operating costs to comply with the change	changes or changes for which the private party is compensated under a CPI adjustment or similar and only allowing compensation above a pre-agreed Significant Amount; also, again mechanisms could be used to minimise and manage financial impact on government and (where appropriate) a regulatory regime to allow pass-through to end users	financial consequences of capital cost increases in an agreed way for example by the private party meeting a percentage of the cost up to a specific limit and government meeting any excess
Regulation	Where there is a statutory regulator involved there are pricing or other changes imposed on the private party which do not reflect its investment expectations	Cost or revenue effects	Private party to assess regulatory system and may make appropriate representations	Private party
Force majeure				
Force majeure	The risk that inability to meet contracted service delivery (pre or post completion) is caused by reason of	Loss or damage to the asset, service discontinuity for government (may include	Private party given relief from consequences of service discontinuity; if uninsurable, private	Private party takes the risk of loss or damage to the asset and loss of revenue,

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
	force majeure events	inability to deliver core service) and loss of revenue or delay in revenue commencement for private party	party may establish reserve funding; government to establish contingency for alternate service delivery; if insurable, private party must ensure availability of insurance proceeds towards repair of asset and service resumption and government is to be given the benefit of insurance for service disruption costs	government takes some risk of service discontinuity both as to contracted service and core service subject to insurance availability and will need to arrange alternative service provision the cost of which will be met from redirected service payments and (if insurable) any shortfall made up from insurance proceeds
Asset ownership				
Technical obsolescence	The risk that design life of the facility proves to be shorter than anticipated accelerating refurbishment expense	Cost of upgrade	Private party may have recourse to designer, builder or their insurers	Private party, but in certain high technology projects costs may be anticipated and shared
Default and	Risk of 'loss' of the	Loss of	Private party (and	Private party

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
Termination	facility or other assets upon the premature termination of lease or other project contracts upon breach by the private party and without adequate payment	investment of private party; possible service disruption for government	its debt financiers) will be given cure rights (time and opportunity) to remedy defaults by the private party which may lead to termination including under tripartite deed with financiers; also, only serious breaches by the private party to lead to termination; if termination occurs pre completion government may (but need not) make payment for value in the project on a cost to complete basis; if it occurs post completion the private party may receive fair market value less all amounts due to government; government will require step in rights to ensure access and service continuity until ownership/control issues are resolved	will take the risk of loss of value on termination
Residual value on transfer to government	The risk that on expiry or earlier termination of the services contract	Capital costs incurred to upgrade the asset to the	Government will impose on the private party maintenance and	Government

Risk Category	Description	Consequence	Mitigation	Preferred Allocation
	the asset does not have the value originally estimated by government at which the private party agreed to transfer it to government	agreed value and useful life or asset demolished or removed	refurbishment obligations, ensure an acceptable maintenance contractor is responsible for the work, commission regular surveys and inspections; it may also direct funds from the project into dedicated controlled sinking fund accounts to accumulate funds sufficient to bring the asset to agreed condition and/or (if required) obtain performance bonds to ensure the liability is satisfied	

Sector Specific Toolkits

For more information on Sector Specific PPP Toolkits, please see the following resources.

Contract Management Framework

PPP Lifecycle	Key Functions		
	Service Management	Relationship Management	Contract Management
PPP Inception and Feasibility	Identify & specify □ Service delivery specifications □ Affordability limit □ PSC and Value-for-money benchmark □ Risk Allocation framework	Undertake following tasks □ Appoint the Project officer & Project Team □ Decide on project type & procurement method	Establish following systems and processes for □ Document tracking & management □ Financial management

PPP Procurement	Develop and prepare □ Performance management plan □ Payment mechanism □ Risk sharing management plan	Undertake following tasks □ Develop the relationship management plan □ Identify and establish the PPP contract management team □ Prepare the PPP contract management plan	Develop and prepare the PPP contract management plan
PPP Development	Establish, monitor and manage □ Risk control and sharing procedures □ Performance management systems □ Progress of project towards completion	Establish and implement □ Relationship management plan □ Transition management plan □ Change management measures	Establish procedures and systems □ Financial administration □ PPP contract maintenance □ Variation management □ Recording penalties □ Updating the PPP contract management manual
PPP Delivery	Monitor and Manage □ Risk sharing □ Performance in relation to standards specified □ Variations	Undertake following tasks □ Review and revise partnerships □ Commission independent reviews □ Review and revise PPP contract management plan	Review, monitor and update □ Financial administration □ PPP contract maintenance □ Variation management □ Recording penalties □ PPP contract management manual
Exit	Review and assess □ Deliverables □ Value-for-money □ Quality of Innovation Identify means of service delivery through □ MDA □ New PPP project Organize post implementation review	Undertake following tasks □ Manage Change □ Organize closure □ Record the lessons of the PPP project	Implement and monitor □ Hand over procedures □ Transition to new/alternate service delivery

Project Officer - Job Description

Sr. No.	Description of the Responsibility
1	Manage the planning and implementation of the PPP project on behalf of the [Accounting Officer/Authority], exercising delegated authority;
2	Consult with the management of the MDA at all relevant stages in the project cycle and ensure on-going consultation and buy-in from relevant stakeholders;
3	Directly support the [Accounting Officer/Authority] to comply with the requirements of the relevant PPP guidelines and regulations;
4	Follow diligently, the Guidelines for PPP issued under OYO STATE State Policy on Public Private Partnership, ;
5	Establish and manage a project team;
6	Draft terms of reference and secure a suitable budget for a transaction advisor;
7	Manage the procurement process to appoint a transaction advisor;

8	Direct and manage the work of the transaction advisor at every phase of the project cycle, exercising delegated

	authority; carry out all functions of inception, feasibility and procurement phases as delegated;
9	Carry out all functions required of the MDA to properly submit applications for all Transaction approvals in terms of PPP Policy and PPP Guidelines and respond to all queries from the relevant Approving Authorities in respect thereof;
10	Diligently manage the project from inception to the signing of the PPP contract and financial closure, to ensure that the project is affordable to the MDA, provides an optimal Value-for-money solution for the [service delivery/use of state property], and appropriately allocates risk to the private party;
11	Manage all information systems necessary for the proper planning and implementation of the project;
12	Manage the PPP, into the term of the PPP contract, in terms of the PPP contract management plan, on behalf of the MDA, specifically in the development phase; and the [.… years] of the delivery phase.
13	Ensure that the PPP contract is properly enforced in terms of the relevant sections PPP Policy and PPP guidelines and in so doing maintain mechanisms and procedures as approved in the PPP contract management plan for: □ Measuring the outputs of the PPP contract; □ Monitoring and regulating the implementation of, and performance in terms of, the PPP contract; □ Liaising with the private party; □ Resolving disputes and differences with the private party; □ Generally overseeing the day-to-day management of the PPP contract; and □ Reporting on the PPP contract in the MDA's annual report.
14	Ensure that the MDA's function is effectively and efficiently performed in the public interest, [and/or that state property is appropriately protected];
15	Establish and maintain close links to the relevant officials of the Approving Authorities in order to ensure proper alignment of policy and best practice;
16	Prepare and compile any information as may reasonably be required by the MDAs from time to time in connection with the PPP project;
17	Conform to all statutory obligations and non-statutory external obligations binding upon the MDAs in respect of the PPP project;
18	Continuously comply with the MDA's rules, regulations, policies, practices and procedures; and
19	Remain honest and faithful to the MDA in the performance of these duties and responsibilities, acting at all times according to good industry practice and in compliance with the public service code of conduct.

OYSIPA Preliminary Project Assessment Form

SN	Particulars	Details (To be filled in by the MDA)
1	Project name	Provide the name of the Project
2	MDA name	Provide the name of the MDA acting as the procuring entity
3	Brief description of the project	Provide a description of the project including location, capacity, size etc.
4	Project being implemented under which MDA	Provide the Line Ministry under which the project is implemented
5	Objective of the project and expected outcomes	The objective for pursuing this project and the outcomes expected are to be provided here
6	Technical feasibility	The MDA's preliminary view on the technical feasibility of the project. Successful precedent of similar projects may be included here
7	Legal framework	The MDA's view on the legal framework for the implementation of the project
8	Project impact and suitability	The MDA's preliminary view on the likely impact of the project on the environment and community, as well as social acceptability and public benefits of the project. Long-term impact on the goals and position of the MDA. Please add more details as an annexure to this form.
9	Brief description of social and community requirements	Please add more details as an annexure to this form
10	Estimated capital expenditure	This should be a preliminary estimate and need not be a detailed calculation.
11	Estimated O&M expenditure over the asset life in present value terms	This should be a preliminary estimate and need not be a detailed calculation. The projected O&M expenditure over the asset life should be discounted to arrive at the present value.
12	Estimated investment	Summation of Capital Expenditure and Present Value of O&M Expenditure
13	Revenue generating potential	State the various sources of revenues for this project. If available, also include the preliminary annual expected revenues
14	Proposed means of financing	State the various proposed means of financing the project, indicative proportions and amount.
15	Estimated project IRR (Internal Rate of Return) (where developed)	If estimation of returns is very difficult at this stage then, do not include at this stage.
16	Key risks envisaged	The key risks identified for this project should be provided under this section.
17	Does the preliminary assessment show that the project is suitable for PPP	Reasons and necessity for involving Private Sector in the Project and analysis of suitability of alternative models of project delivery. Roles of MDA and Private Sector.

Item 14 – proposed means of financing:

Source	Proportion (%)	Amount (Naira Mn)
Private Sector		
MDA		
OYO STATE State Government		
Any other (Specify)		
Total		

SN	Particulars	Details (To be filled in by the MDA)
18	Estimated project development expenses (Naira)	

Signature and seal
Name of the authorized signatory:
Designation of authorized signatory:
Name of the MDA:

Date:

Sample Template for Options Analysis

Sr. No.	Section	Description
1	Executive Summary	This section should provide a summary of the findings of the options analysis. Sufficient information should be included to allow key decision-makers to understand the issues and the rationale for the selected short-listed options. Necessary clarification of the implications of the proposed initiative should also be specified.
2	Description of service requirements	This section provides a description of service requirements.
3	Project functions, objectives and critical success factors	This section provides a description of the Project functions, objectives and critical success factors.
4	Alignment with strategic objectives	This section provides a description of the strategic objectives of the parties.
5	Stakeholder identification	This section provides a description of the stakeholders involved.
6	Options Analysis	The range of feasible possibilities should be considered. A qualitative description of the advantages and disadvantages may be used to assist in evaluating the options. For major project proposals, risk-adjusted estimates (of revenue, costs, duration and benefits) need to be applied to address project characteristics, level of knowledge and degree of confidence in the estimates. In completing the template, the following criteria must be considered: Options would generally include: Base Case (do nothing) minimal approach non-asset solutions, for example, these may include: demand management, service transformation, optimizing existing operations or asset use, alternative maintenance strategies, re-investment in replacement/renewal, enhancement of existing infrastructure investment in new assets. Public Procurement Option and PPP Option. The evaluation of options would include: rating of achievement of project objectives; rating of achievement of strategic objectives; capital cost (present value) (including confidence levels); recurrent costs (including confidence levels); potential revenues (including confidence levels); environmental benefits; social benefits and where these benefits are distributed, key assumptions and risk matrix; timing of service delivery and the results associated, should the project not proceed.
7	Project Delivery Alternatives	For each of the above proposal options, all appropriate project procurement delivery approaches should be considered. These may range from traditional public procurement to design-construct or PPP Project procurement delivery, depending on the nature of the investment proposal.
8	Preliminary Risk Assessment	For each option, a high-level analysis of potential risks is required to estimate their likelihood and consequences and determine the risk level. These highest-ranking risks should be listed in the options Risk Matrix assessment along with potential cost implications, responsibility for/sharing of individual risks and any indicative risk reduction strategies.
9	Preferred Option	Based on the options analysis and the preliminary risk assessment a prioritized short-listing of options and any clear preferred option for further analysis is provided. Reasons for the preferred option or prioritized short-listing should be documented, including key assumptions made, the details of the ranking process and the assessment criteria. The preferred timing and sequencing for the project should also be documented.
10	Actions to progress to business case	Actions required to further progress the proposal should be listed. This may include: further iterations of the options analysis; determining the impacts of deferring the project; issues to be specifically addressed in the business case; timeframe required to develop the outline business case and further the full business case; further studies for addressing information gaps.
11	Supporting Documents	All documentation that supports the finding of the options analysis

Sample Table of Contents for the Outline Business Case

Executive Summary

This summary provides the following information –

a) Current service provision, if applicable and future requirements;
b) A summary of the full list of options;
c) A summary of the options selection procedure and the options chosen for detailed examination;
d) A summary of the comparative findings and justification for the preferred option; and
e) Highlights of the implementation plan

1) Project Background

This section provides a background on the project location, type of infrastructure, the MDA, previous studies undertaken, and previous approvals received etc.

2) Strategic Needs Assessment, Demand Assessment and Project Scoping

This section analyses current and future needs. An analysis of the user's needs is included. The following issues are addressed –

a) Existing or envisioned service gaps;
b) Key stakeholders and their requirements; and
c) Consultation plan with key stakeholders to ensure that the project remains relevant.

Assessment of demand is also included in this section. Project scoping Component determines and defines the scope of the project, outlining the services to be delivered.

3) Service Standard – Output and Services

This section translates the needs identified in the previous step into specific outputs. The following issues should be addressed –

a) Impact of the proposed project on the service gaps identified above and overall objectives the project aims to achieve;
b) Outputs expected from the project, stated in measurable and quantifiable terms as far as possible;
c) Support service outputs (the outputs that are not the key drivers of the projects, but have potential to enhance the project's Value-for-money); and
d) Relevance of the project to the MDA's long-term strategic goals and overall national development plan.

4) Market Assessment

Once the project outputs have been specified, assessment of the market potential can commence. The purpose of market assessment study is to assist the MDA in deciding how to design, and deliver the project. The study may address the following elements –

a) Description of the industry;
b) Current market analysis (current offerings, market players and their capability and appetite);
c) Competition (alternative service and product offerings);
d) Anticipated future market potential;
e) Potential market players and sources of revenues; and
f) Demand projections.

5) Technical Feasibility

This component details how a project can be delivered (i.e., outline technical solution). The study addresses the following elements

a) Field surveys of the project site, which may include (depending on the project) mapping, topographical and geotechnical surveys;
b) A preliminary technical guide to the design of facilities required to provide the project outputs. This should consider alternative design options, taking into account uncertainty in the demand projections and other site-related uncertainties.
c) Guidance to materials and other inputs requirements;
d) **Alternatives (such as those involving usage of existing assets for the project, rather than creating new ones; or achieving the desired outputs by some means other than the proposed solution guide) and their assessment in relation to the possibility of achieving the targets of the project; and**
e) **Capital Expenditure estimated cost assessment and Operating and Maintenance estimated cost assessment based on the components of the preliminary guide to technical design.**

6) **Financial Feasibility**

This component provides an estimate of project costs based on the technical solution guidance and identifies possible financing solutions. The study addresses the following elements:

a) Estimated project costs (initial and replacement capex, cost of upgrades, opex);
b) Guide to start-up capital;
c) Potential sources of financing;
d) Potential revenues;
e) Estimated returns; and
f) Estimated consulting costs

7) Environment Impact

This section examines environmental considerations, including details of any environment impact study conducted.

8) Legal Framework

This component examines the suitability of existing legislative environment for the execution and running of the project, as well as any licenses or requirements that potential service providers need to comply with.

a) The study should address the following elements –
b) Appraisal of current legislative environment in relation to requirements of the project;
c) Assessment of required amendments to the current legislation;
d) Legal requirements for any proposed market and organizational structure; and
e) Other legal issues that may inhibit / prevent the development of the PPP project

9) Stakeholder consultation findings and public interest evaluation

This component states the findings of the consultation process with the various stakeholders including but not limited to –

a) Users;
b) Developers and operators;
c) Community participants;
d) Citizens likely to be affected;
e) Financers; and
f) Other relevant government authorities

10) Conclusion and Recommendations on Feasibility Assessment

This component details the key conclusions and recommendations on the Feasibility Assessment.

11) Risk Assessment

This section identifies all material risks identified with the project, specifying the external and project development risks for the MDA, the project risks to be allocated to the Private Sector and those to be retained by the MDA.

12) Key Commercial Principles and Payment Mechanisms

This section details the key commercial principles for the PPP project. These commercial principles include among other principles, the payment mechanisms, relief, compensation and force majeure events, default events, termination payments, the MDA's and Lenders' step-in, cure rights, insurance etc.

13) Public Sector Comparator (PSC)

This section states the reference project and details the computation of the Public Sector Comparator and the Shadow Private project cash flow model.

14) Option analysis, Value-for-money and recommendations

This section identifies delivery options available for the development of the project, provides evaluation of these options and recommends the preferred one, based on the evaluation criteria specified and the results of the Value for Money analysis..

15) Evaluation Criteria for selection of Private Sector

This section details the evaluation criteria for selection of the Private Sector. The evaluation criteria may either be on a Least Cost Approach or on a Quality cum Cost Based Selection (QCBS) or Best Economic Offer selection..

16) Implementation Plan

This section details the activities and timelines during the project development period. It also states the person or entity responsible for each activity.

17) Project resource requirement

This section details the resources required during and after the project development period.

18) Conclusion and Recommendations on Structuring

This section details the key conclusions and recommendations on the Project Structuring.

Any supporting documents are included in the section like Detailed projected Financial Statements, Detailed Environment Impact Assessment study, Detailed Technical Report, Detailed review of legal framework, Value for Money analysis etc.

Sample Checklists

Feasibility Study Checklist

SN	Particulars (Tick "☐" the applicable box)	Provided	Not Provided	Not Applicable
1	General			
1.1	Name of the Project			
1.2	Type of PPP (BOT, BOOT etc.)			
1.3	Location (Province/District/Town)			
1.4	Responsible Ministry/Department			
2	Project Description			
2.1	Brief description of the project			
2.2	Justification for the Project			
2.3	Possible alternatives, if any			
2.4	Estimated capital costs with break-up under major heads of expenditure also indicate the basis of cost estimated			
2.5	Phasing of investment (if required)			
3	Financing Arrangements			
3.1	Sources of financing (equity, debt, mezzanine capital etc.)			
3.2	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions			
3.3	Indicate the Net Present Value (NPV) of revenue streams with appropriate discounting			
3.4	Who will fix the tariff/user charges? Please specify in detail			
3.5	Have any financial institutions been approached? If yes, their response may be indicated			
4	IRR			
4.1	Economic IRR (if computed)			
4.2	Financial IRR (project and equity), indicating various assumptions			
5	Clearances			
5.1	Status of environmental clearances			
5.2	Clearance required from the MDA and other local bodies			
5.3	Other support required from the MDA			
6	Federal and/or State Government Support			
6.1	Viability Gap Funding,/capital grant or availability payment support if required			
6.2	Federal Government of Nigeria guarantees being sought, if any			
7	Concession Agreement			
7.1	Heads of Terms of the proposed Concession Agreement			
8	Criteria for short listing at RFQ stage			
8.2	Indicate the criteria for short listing			

Concession Agreement Checklist

SN	Particulars (Tick " ☐ " the applicable box)	Provided	Not Provided	Not Applicable
1	General			
1.1	Scope of the Project			
1.2	Nature of Concession to be granted			
1.3	Period of Concession and justification for fixing the period			
1.4	Estimated capital cost			
1.5	Likely construction period			
1.6	Conditions precedent, if any, for the concession to be effective			
1.7	Status of land acquisition			
2	Construction and O&M			
2.1	Monitoring of construction, whether an independent agency/engineer is contemplated			
2.2	Minimum standards of Operation and Maintenance			
2.3	Penalties for violation of prescribed O&M standards or incentives for better performance			
2.4	Safety related provisions			
2.5	Environment related provisions			
3	Financial			
3.1	Maximum period for achieving financial close			
3.2	Nature and extent of capital grant/VGF/availability payments contemplated			
3.3	Bidding parameter (capital grant VGF/availability payment or other parameter)			
3.4	Provisions for change of scope and the financial burden thereof			
3.5	Concession fee, if any, payable by the Concessionaire			
3.6	User charges to be collected by the Concessionaire or paid by government			
3.7	Indicate how the user charge is to be determined; the legal provisions in support of user charge ; and the extent and nature of indexation for inflation			
3.8	Provisions, if any, for mitigating the risk of lower revenue collection			
3.9	Provisions relating to escrow account, if any			
3.10	Provisions relating to insurance			
3.11	Provisions relating to audit and certification of claims, use and responsibilities of an Independent Engineer			
3.12	Provisions relating to assignment/substitution rights relating to lenders Direct Agreement			
3.13	Provisions relating to change in law			
3.14	Provisions, if any for compulsory buy-back of assets upon termination/expiry			
3.15	Contingent liabilities of the MDA			
3.15a	Maximum Termination Payment for the MDA's default			
3.15b	Maximum Termination Payment for Private Sector default			
3.15c	Specify any other penalty, compensation or payment contemplated under the agreement			

SN	Particulars (Tick "☐" the applicable box)	Provided	Not Provided	Not Applicable
4	Others			
4.1	Provisions relating to competing facilities, if any			
4.2	Specify the proposed Dispute Resolution Mechanism			
4.3	Specify the proposed governing law and jurisdiction			

Commercial Case Checklist

SN	Particulars (Tick "☐" the applicable box)	Yes	No	Unsure
1	Is the project expected to achieve a satisfactory rate of return?			
	Explanatory Notes			
2	Are projected financing ratios satisfactory?			
	Explanatory Notes			
3	Is the project likely to achieve Value-for-money (VFM)?			
	Explanatory Notes			
4	Are the project outputs, services levels and performance requirements clearly specified?			
	Explanatory Notes			
5	Are credible proposed financing arrangements in place?			
	Explanatory Notes			

8.15.4 Risk Management Checklist

SN	Particulars (Tick "☐" the applicable box)	Yes	No	Unsure
1	Have all major risks been identified, understood and evaluated?			
	Explanatory Notes			
2	Are risk management and sharing plans in place?			
	Explanatory Notes			
3	Are approvals processes and clearances being addressed?			
	Explanatory Notes			
4	Are environmental and social issues being addressed?			
	Explanatory Notes			
5	Are land acquisition issues being addressed?			
	Explanatory Notes			

Readiness for Procurement Checklist

SN	Particulars (Tick "☐" the applicable box)	Yes	No	Unsure
1	Is a robust procurement strategy in place, including for the management of deviations?			
	Explanatory Notes			
2	Has the proposed procurement procedure been evaluated and, in particular, its compliance with legal requirements confirmed? Explanatory Notes			

SN	Particulars (Tick “ ☐ ” the applicable box)	Yes	No	Unsure
3	Has stakeholder consultation confirmed the acceptability of the project and procurement strategy?			
	Explanatory Notes			
4	Is there adequate knowledge of the market and potential suppliers/operators?			
	Explanatory Notes			
5	Is progress in obtaining permits, approvals and clearances satisfactory and in accordance with the procurement strategy? Explanatory Notes			

Procurement Plan Checklist

SN	Particulars (Tick “ ☐ ” the applicable box)	Yes	No	Unsure
1	Are the project budget and timetable under control?			
	Explanatory Notes			
2	Does the project team have adequate skills and resources, including appropriate external advisors?			
	Explanatory Notes			
3	Have remaining project activities been timetabled, defined and resourced?			
	Explanatory Notes			

Capacity of the MDA Checklist

SN	Particulars (Tick “ ☐ ” the applicable box)	Yes	No	Unsure
1	Has a suitable Contract Management Team been formed?			
	Explanatory Notes			
2	Have financial resources been secured for managing and monitoring the contract during the current budgetary cycle?			
	Explanatory Notes			
3	Has a contract management plan been prepared?			
	Explanatory Notes			
4	Do the plans for contract management and monitoring meet the guiding principles for contract management (simple and focused, low cost, conducive to partnership, clear dispute resolution procedures)?			
	Explanatory Notes			
5	Has a monitoring schedule been developed?			
	Explanatory Notes			
6	Are training and capacity building opportunities available to the contract management personnel?			
	Explanatory Notes			
7	Are plans in place to respond to difficulties or problems in contract			

	implementation as they arise?			
	Explanatory Notes			

Draft Code of Conduct for Bid Evaluation Panel Members

This code of conduct shall be applicable for both the selection of a transaction advisor and PPP procurement phase bid evaluation.

Background

Every member of a bid evaluation panel appointed by an MDA to act on behalf of the State in the adjudication and evaluation of these bids is required to sign this code of conduct before receiving bids. In addition, each member must sign the attached declaration of interest form once the MDA has announced and recorded the identities of the bidding parties.

This code of conduct does not address every possible situation that may arise. It also cannot serve as a substitute for the responsibility of the accounting officer/authority and the bid evaluation panel members to:

- Exercise sound judgment
- Act with exceptional standards of moral integrity
- Abide by all applicable laws.

This code of conduct is intended to:

- Confirm the member's commitment to all its prescripts
- Guide members who are faced with ethical dilemmas in an increasingly complex operational environment
- Provide a reference for disciplinary and/or prosecuting procedures if a member is found guilty of fraud or corruption
- Serve as a public commitment by the MDA to the highest standards of ethical and professional conduct in the evaluation of bids.

Breaching the Code

A member will be found guilty of breaching the code of conduct if he or she

- Contravenes or fails to comply with any provision in it
- When declaring interests, wilfully gives incorrect or misleading details.

In these cases, a member will be liable for disciplinary action in terms of relevant public service regulations and may also be liable for criminal prosecution. The accounting officer/authority, acting on his or her own or on a complaint by any person, may investigate any alleged breach of this code by a member of an evaluation panel and may withdraw the member from the panel during the investigation.

Definitions

"**Family member**" means a parent, sibling, child or spouse of a member;

"**Member**" means a person appointed by the accounting officer/authority to a bid evaluation panel, either as the chairperson, or as an ordinary member or secretariat, for purposes of conducting the evaluation of either transaction advisor bids or PPP bids as a representative of the MDA;

"Privileged or confidential information" means any information:

- determined by the MDA to be privileged or confidential
- discussed in closed session by the bid evaluation panel
- which if disclosed would violate a person's right to privacy
- declared to be privileged, confidential or secret in terms of any law

Code of Conduct

I, [insert name of member of bid evaluation panel], acting in my capacity as member of the [insert name of MDA] evaluation panel for the adjudication and evaluation of bids for transaction advisors/private parties (delete which is not applicable) under [insert tender number] hereby undertake:

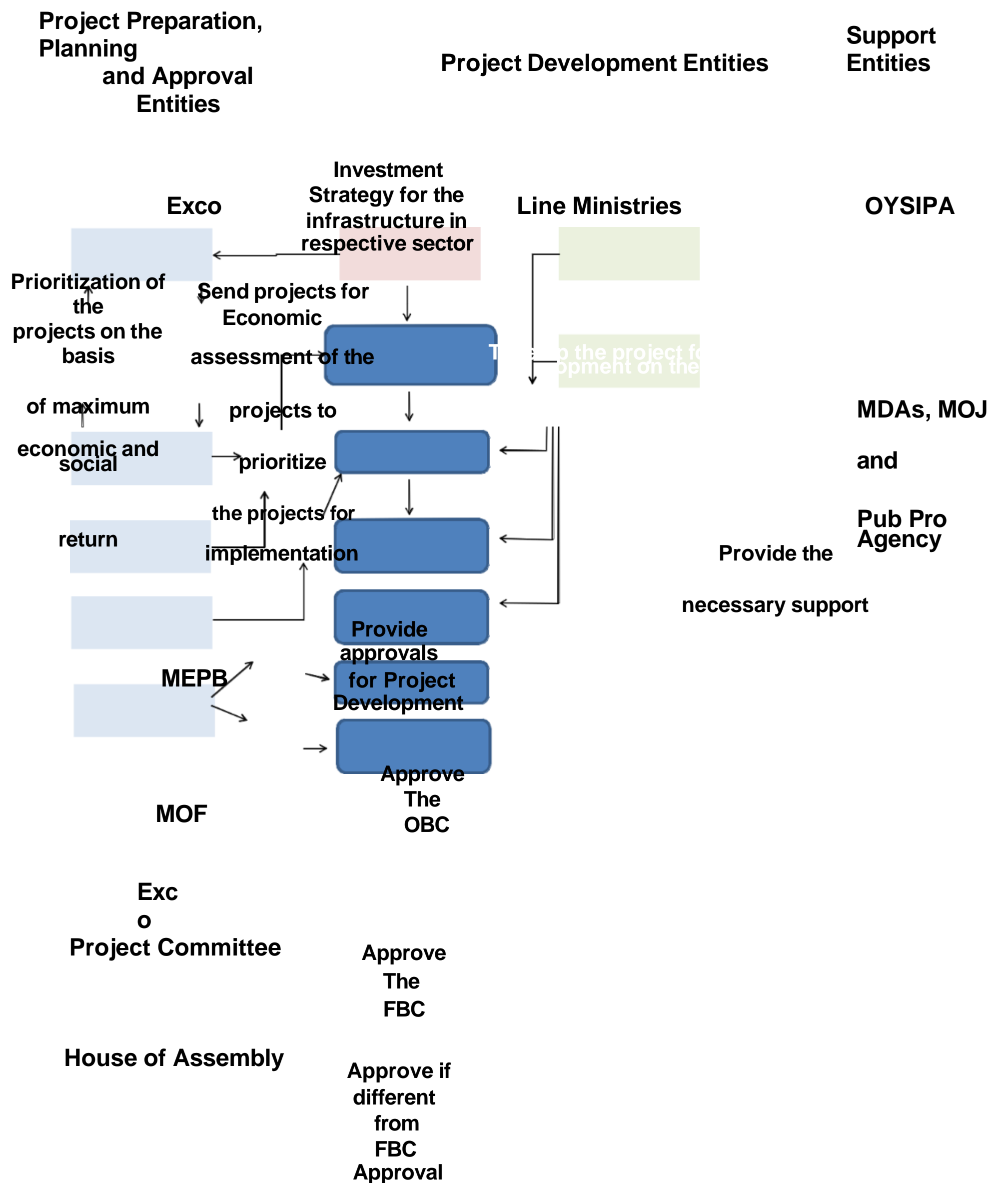
1. to act at all times with fidelity, honesty, integrity and in the best interests of the state and the general public it serves
2. to diligently perform the duties of a member efficiently, effectively and strictly in accordance with the rules of bidding and bid evaluation, as set out in the bid documentation and according to all relevant instructions given by the MDA
3. to properly prepare for and attend each meeting of the bid evaluation panel, and failing this to withdraw as a member
4. to act at all times in accordance with the relevant legislation and regulations, including regulations, and directives given by the MDA
5. to recognise the public's right to access to information in the interests of administrative justice
6. to take the utmost care in ensuring that there is reasonable protection of the records of the MDA and all bid documentation
7. not to misuse the position or privileges of a member, or privileged or confidential information obtained as a member
8. to carry out duties with the skill and care expected from a person of knowledge and experience, and to exercise due judgement
9. not to unfairly discriminate against any bidder on the grounds of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture, or language
10. not to abuse any position in the public service to promote or prejudice the interest of any political party or interest group
11. to give the State Auditor-General all the information and explanations it requires to carry out its functions to report to the appropriate authorities any case of fraud, corruption, nepotism, maladministration and any other acts which constitute an offence or which are prejudicial to the public interest, arising during the bid evaluation panel proceedings to

declare, diligently, accurately and honestly in the declaration of interest, all personal and/or business interests that I or a family member may have in any business of any bidder, and to willingly abide by any decision of the chairperson of the bid evaluation panel or the accounting officer/authority to withdraw as a member of the panel because of this to be open and honest about all decisions and actions taken regarding the bid evaluation, and to give clear reasons for these, which can be accurately recorded not to make any dishonest allegations about any bidder not to make any false or misleading entries into the records of the bid evaluation panel to make no contractual commitments related to the bid, to any bidding party, on behalf of the MDA to proactively protect privileged or confidential information of the bid evaluation panel from theft, unauthorised disclosure, or inappropriate use, and specifically: not to respond to any queries relating to the bid evaluation on behalf of the MDA, unless expressly authorised in writing by the accounting officer/authority to do so not to speak to or correspond carelessly with any person (fellow member, colleague, friend, family member or otherwise) on any matter related to the bid evaluation not to request, solicit or accept any reward, gift, or favour in return for voting or not voting in a particular way on any matter, or for disclosing privileged or confidential information not to accept or agree later to accept, any 'kickbacks' in the form of money, favours, inappropriate gifts or anything else of value from a member of the public, government, a political or social movement, or any stakeholder or potential stakeholder which is or may be viewed as aimed at influencing or directing my evaluation of the bids to disclose immediately to the chairperson or the accounting officer/authority any attempted inducement or offers of perks that may be construed as aimed at influencing or directing the evaluation of the bids to report to the chairperson of the panel any invitations to any kind of entertainment by any party that may be construed as being associated in any way with the outcome of the bid evaluation not to vote at, attend or participate in any other way in any meeting or hearing in relation to any matter before the bid evaluation panel, if any interest prevents me from carrying out my member functions in a fair, unbiased and proper way in accordance with this code of conduct

That, the breach of this Code of Conduct shall not preclude the MDA of criminal proceedings pursuant to the relevant laws and regulations in Oyo State .

Signed: ____________________. Witnessed: ___________________
[Signature of member]. [Signature of witness]
Date: _____________________. Date: _____________________

The Institutional Framework governing PPP Procurement in Oyo State comprises of the entities as depicted in the schematic below.



Oyo State PPP Policy Statement

Introduction

The Oyo State Government (OYSG) has adopted a policy thrust that embraces the delivery of infrastructure projects and services in the public sector through Public Private Partnerships (PPP). This Policy Statement sets out the framework for using PPP in Oyo State.

In this regard and towards institutionalizing the policy thrust, the Oyo State Investment Promotion

and Public Private Partnership Agency (OYSIPA) Law 2019 was enacted. Furthermore, the Public Procurement Law 2020 was enacted and together both Laws stipulate the legal framework for PPP projects procurement in the State.

The PPP Concept

A PPP is a contractual agreement between a public entity and a private entity, whereby the private entity performs part of a government organization's service delivery functions, and assumes the associated risks for a significant period of time. In return, the private entity receives a benefit/financial remuneration according to predefined performance criteria, which may be derived:

- Entirely from service tariffs or user charges for example tolls
- Entirely from Government budgets, via availability charges or service charges
- A combination of the above.

The public sector retains a significant role in the partnership project, either as the main purchaser of the services provided or as the main enabler of the project. It purchases services and specifies the service outputs/outcomes required as well as the performance criteria for payments, with performance below these standards leading to deductions from service charges payable by the public sector. The private party commonly provides the design, construction, operation and maintenance and financing for the partnership project, and is paid according to performance. Risks are identified and priced and placed with the party best able to bear and manage them at lowest cost.

A wide spectrum of PPP arrangements exists, differing in purpose, service scope, legal structure and risk sharing. One end of the spectrum would be an outsourcing of some routine operation, while the other could involve the private sector conceiving, designing, building, operating, maintaining, and financing a project, thereby taking a considerable proportion of risk. The choice of the PPP arrangement for a particular project will depend on Government's policy in the related sector and on potential value for money to be generated under such an arrangement.

Reasons for Using PPP

PPP offers both strategic and operational choices to Government. Strategically, the use of PPP fosters economic growth by developing new commercial opportunities and increasing competition in the provision of public services, thus encouraging crowding-in of private and/or foreign investment. It also results in development of the local financial equity and debt markets. At the same time, it allows Government to set policy and strategy, and where appropriate, to regulate economic activities, while leaving service delivery to the private sector. Operationally, PPP provides opportunities for efficiency gains (better quality and more cost-effective delivery of services), better asset utilization and quality, clearer customer focus (since payments are typically linked to performance rather than service inputs), and accelerated delivery of projects.

Well-structured PPP projects integrate recurrent and capital budgets and provide meaningful benchmarks for measuring performance, thus making PPP an important tool for better management of public expenditure. In addition, PPP is an instrument that Government can use

to reform and re-structure certain strategic sectors of the economy to bring in competition, which will increase investment and efficiency, reduce prices and expand the range of services available.

Scope of PPP

It is OYSG's intention to encourage innovation in as many areas as possible. The sectoral development and infrastructural provision through public private partnership business model. OYSIPA as investment window and special purpose vehicle (SPV). Oyo state as Pacesetter state, setting the pass in infrastructural development in the core areas of agribusiness, tourism, renewable energy, security and economy in Nigeria

Key Considerations of PPP Policy

While the benefits and advantages of PPP can be significant, they are not automatic. Rather, the positive outcomes must be earned through well-designed projects, thorough due diligence, and competitive and transparent procurement. There are thus certain key pre-conditions which need to be present in the policy framework for PPP, as they are critical in delivering successful outcomes. These have been identified as affordability, value for money, the legislative environment, institutional arrangements, and capacity building.

Affordability – Affordability will need to be the cornerstone of all PPP projects. PPP options must be affordable both to Government and the public, given other priorities and commitments. The rationale for PPP is improved management of scarce resources, better risk allocation and more efficient and cost-effective delivery of services. It will always need to be borne in mind, however, that while the private sector may be willing to finance and deliver infrastructure and services through PPP, only users or taxpayers can pay for them. Affordability thus acts as a real constraint, and public bodies will need to give serious consideration to the selection of potential PPP projects, ensuring always that their choices are in line with OYSG policy priorities and objectives. PPP provides real and exciting prospects for new forms of procurement, financing and operation in ways that are likely to result in improved management of scarce resources. Government's PPP program should not, however, be seen simply as an opportunity for public bodies to undertake projects that would ordinarily not obtain approval through normal budgetary approval processes.

The Legislative Environment - Political and regulatory risks are potential barriers to effective PPP implementation. Hence it is intended by Government that the Law will be amended to reflect emerging trends in the evolution of the PPP structure within the State. This will create opportunities to establish in law a set of general principles and rules for PPP procurement that

all public bodies will be expected to comply with, thereby ensuring some degree of consistency in approach across sectors.

Value for Money

For a PPP infrastructure program to be successful, it is essential the PPP projects involved in all sectors are seen to be “value for money”. In other words, that the public infrastructure services provided by the private sector are provided at a lower cost to the taxpayer, than equivalent services provided by the public sector, after taking into account the value of project risks passed from the public sector to the private sector.

Institutional Arrangements – International experience suggests that identifying and establishing clear and unambiguous institutional functions in relation to PPP, can greatly assist in successful PPP implementation. At the same time, it is useful to have a degree of institutional flexibility to encourage experimentation and innovation, and importantly, to ensure that public bodies that have capacity are not delayed while institutional capacity elsewhere is being developed. OYSG is creating an institutional framework that will provide better coordination and planning of infrastructure, greater accountability for public investment and delivery of public services, and more transparency in regulation and procurement. While institutional roles and responsibilities may change over time as Government’s experience with PPP grows, the following public institutions will play important roles in the program:

- Ministry of Economic Planning & Budget will improve the economic appraisal, planning, prioritization, and coordination of infrastructure projects and investment. It will develop a Master Plan of PPP projects to allow for public consultation on user charges, create a pipeline of PPP projects and allow the private sector to prepare for bidding opportunities.

- OYSIPA and its structure will be the driver of PPP policy and be responsible for its development and refinement over time. As the process develops and moves into the implementation stage, the OYSIPA will ensure effective stakeholder engagement, market interest and momentum of the process to reach financial close and the start of construction/operations. The OYSIPA will also support ministries, departments, and agencies (MDAs) and other public bodies to ensure that their PPP projects are carefully appraised, scoped and planned prior to initiating a procurement process. It coordinates with the Ministry of Economic Planning & Budget, the elaboration of the PPP Infrastructure Master Plan. Transaction advisers will be recruited by the public sector project sponsor in liaison with the OYSIPA, as and when required to assist in this process. As OYSG gains experience with PPP, OYSIPA will also develop guidelines on best practices to assist MDAs in the roll-out of their PPP projects; these will be codified in a body of regulations and model contracts supported by a PPP reference manual and an online toolkit, to demonstrate and assist MDAs in carrying out best practice. OYSIPA will not act as a contracting entity in its own right – it is an advisory and coordinating body i.e. A One Stop Shop of PPP Excellence.

- MDAs and other public bodies will play a lead role in the identification, selection, contracting and monitoring of PPP projects in their sectors. Sectors with capacity will be encouraged to

move forward with their projects, subject to them being affordable and generating value for money. Sectors with less capacity will benefit from the assistance of the OYSIPA and external transaction advisers.

- Ministry of Finance will play a key role in assessing the budgetary implications of PPP projects. OYSIPA will work closely with the Ministry in the assessment of PPP project affordability, value-for-money, feasibility and identification of any contingent liabilities associated with PPP projects.

- Public Procurement Agency under the oversight of the Public Procurement Board, has powers to issue regulations governing the procurement process and the certification of all contracts, including PPP. It requires that all procurement plans are subject to prior budgetary appropriation and that these plans set out the needs assessment and evaluation and analysis of the cost implications of the proposed procurement.

- OYSG State Executive Council (Exco) and the Governor of Oyo State are the competent approving authorities for decisions relating to development, and above all, to final approval of PPP transactions.

Capacity Building – As PPP represents a substantially new paradigm for OYSG, capacity building will be necessary for all stakeholders in the PPP process. The general level of awareness and understanding of PPP will be improved among all stakeholders to facilitate sound policy development and constructive discussion and debate. There is need to ensure a sufficient level of resources at all MDAs to deliver good PPP projects. The success of the PPP program will depend on the development and retention of appropriate skills and expertise within the public sector.

Unsolicited Bids

Occasional negative experiences with unsolicited proposals from private sector investors and developers for specific public sector infrastructure projects, have led some governments to pursue a policy of blanket refusals as the only way to safeguard against potential problems with corruption and lack of transparency during the project bidding and implementation stages. The risk of such an approach is that it fails to acknowledge that private companies are often well positioned to recognize potential demand for infrastructure facilities and to devise innovative ideas to develop and operate such infrastructure facilities. The difficulty always is in getting the balance right between encouraging such companies to submit project ideas, without losing the transparency and efficiency gains of a well-conceived competitive tender process. This difficulty is exacerbated when government officials lack the capacity to evaluate unsolicited proposals objectively. While all proposals will be treated on a case-by-case basis, consideration of unsolicited proposals will be the exception rather than the rule, limited mainly to projects that demonstrate genuine innovation and/or use of proprietary technology.

From time-to-time OYSG receives unsolicited proposals for infrastructure projects or services. These proposals may be accompanied by a pre-feasibility study, but in the initial stages at least, are often undeveloped. It is recognized that the private sector may sometimes recognize a public

OYO STATE PPP POLICY GUIDELINES

infrastructure need and a viable and innovative means of meeting this need, that the public sector has not recognized or has not had the resources to investigate or develop. To the extent that these proposals are financially free-standing and involve no public sector contribution, either from the budget or from the transfer of land or other assets, then these proposals may be judged on their merits and may be encouraged by the relevant MDA or the OYSIPA.

For those unsolicited infrastructure projects which will require a public contribution or the use of State assets, they will need to comply with the Public Procurement Law. This covers not only contributions from the State budget but also the sale or disposal of State assets. In these circumstances, OYSIPA will review each unsolicited proposal and may request further information and analysis from the proponent in the form of a pre-feasibility study. If the proposed project is consistent with the State's policy and investment priorities for that sector, then the OYSIPA may propose through the Board to Exco that it be processed in line with applicable PPP guidelines. The proponent may be invited to develop a draft agreement and fully priced proposal, which will then be subject to competing proposals from other firms, subject to the approval of the Public Procurement Agency. A concession would be awarded to the most economic competitive proposal following ratification of the proposal by Exco.

Conclusion

OYSG is committed to increasing private sector participation in infrastructure service provision, public sector delivery and to efficient use of taxpayer funds. But cost savings are not the sole consideration. Government also expects to realise substantially improved infrastructure service delivery from its PPP programme.

The Oyo State Public Private Partnerships law established OYSIPA and is the governing legislation for PPPs in Oyo State. Procurement practices for PPP has been streamlined in line with the Public Procurement Law and international best practices, while maintaining fairness and transparency in the award of PPP contracts. Capacity building will continue to be strengthened and more targeted towards implementing MDAs.

Signed by me this ...30th... Day ...December... 2024

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Engr. Seyi Makinde
The Executive Governor, Oyo State