

# Investment Policy On PPP in Lagos State

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## DEFINITIONS and ABBREVIATIONS

ADSCR.....	Annual Debt Service Cover Ratio.
BBO.....	Buy, Build & Operate
BDO.....	Build, Develop & Operate
BOO.....	Build, Own & Operate
BOT.....	Build, Own & Transfer
CMP.....	Contract Management Plan
CP.....	Condition Precedent
CSR.....	Capital Structure Ratio
DBFO.....	Design, Build, Finance & Operate
DBO.....	Design, Build & Operate
EBITDA.....	Earnings before Interest, Tax, Depreciation, Amortisation
EOI.....	Expressions of Interest
EPC.....	Engineering and Procurement Contractor
ERR.....	Economic Rate of Return
EXCO.....	Executive Council
FBC.....	Full or Final Business Case
HoA.....	House of Assembly
IE.....	Independent Engineer
IRR.....	Internal Rate of Return
ITB.....	Instructions to Bidders
JV.....	Joint Venture
KFI.....	Key Financial Indicators
KFM.....	Key Financial Milestones
LLCR.....	Loan Life Cover Ratio
LOI.....	Letter of Intent
MDA.....	Ministry, Department or Agency
MEPB.....	Ministry of Economic Planning & Budget
MOF.....	Ministry of Finance
NIT.....	Notice Inviting Tenders
NPV.....	Net Present Value
O&M.....	Operate & Maintain
OBC.....	Outline Business Case
OPPP.....	Office of Public Private Partnership
PIM.....	Project Information Memorandum
PPP.....	Public Private Partnership
PSC.....	Public Sector Comparator
QCBS.....	Quality Case Based Selection
RFP.....	Request for Proposals
RFQ.....	Request for Qualification
ROCE.....	Return on Capital Employed
ROE.....	Return on Equity
SEIA.....	Social & Environmental Impact Assessment
SLA.....	Service Level Agreement
SPV.....	Special Purpose Vehicle
TA.....	Transaction Advisor
VfM.....	Value for Money
VGf.....	Viability Gap Funding

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# 1. Introduction to PPP

## 1.1. What are Public-Private Partnerships (PPPs)?

The backbone for the development of any nation is its physical infrastructure, such as roads and bridges, power generation plants, power transmission and distribution networks, water and sanitation networks, seaports, airports, and railways. These infrastructure projects are highly capital-intensive in nature and exert a strain on public finances and developing nations in particular have limited resources at their disposal to finance infrastructure. As a result, public sector authorities in developing countries are constantly on the lookout for alternative sources of funds, and one such source is investment by the private sector through PPPs.

### 1.1.1. Definition of a PPP

As per the **State Policy on Public-Private Partnership** of the **Lagos State Government** (Section 8.19), a PPP is defined as a contract whereby the private sector is engaged by the public sector to manage public services and/or to design, build, finance and operate infrastructure to enhance efficiency, broaden access, and improve the quality of public services. The role of the public sector (i.e. ministries, departments, agencies, municipalities, or state- owned enterprises) is to plan and structure projects, while the private sector (i.e. local or international business) directly implements the projects. These PPP arrangements have been used successfully for decades in countries such as Australia, Canada, South Africa and the United Kingdom and are increasingly being adopted by governments in other countries as a way of increasing access to infrastructure services for their citizens and economies.

### 1.1.2. Objectives of a PPP

The objectives of a PPP are to increase the availability of infrastructure services, and to do so with greater efficiency (lower cost for the level of services provided) 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

### 1.1.3. 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 carrying out or operating the project and takes on a significant portion of the associated project risks. Often, though not always, the private sector will contribute the majority of the project's capital costs.

#### **1.1.4 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 on the basis of 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.

## **1.2. Characteristics of a PPP Project**

### **1.2.1. Major Operational Characteristics**

#### **1.2.1.1 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.

#### **1.2.1.2 Independent PPP Company**

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 recourse funding restricted to the SPV thus protecting the parent companies from the risks of project failure.



### **1.2.1.3 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 that 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 land owners.

### **1.2.1.4 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).

### **1.2.1.5 Performance-based Payment Mechanisms**

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

## **1.2.2 Major Financial Characteristics**

### **1.2.2.1 Private Financing**

In a PPP structure, the responsibility of financing the project assets often rests 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.

### **1.2.2.2 User Fees**

Unlike some forms of public infrastructure, PPP projects will often recover many of their costs from users. In these cases the PPP Company will need to recover their investment from the

project revenues, i.e. mainly user fees rather than from government directly. For example, many public, 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.

### **1.2.2.3 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.

### **1.2.2.4 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 in to 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.

## 1.3 Overview of PPP Delivery Models

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

**Table 1: Different Types of PPP Delivery Models**

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

### 1.3.1 Service Contracts

Under a service contract, the government (public authority) hires a private company or entity to carry out 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:

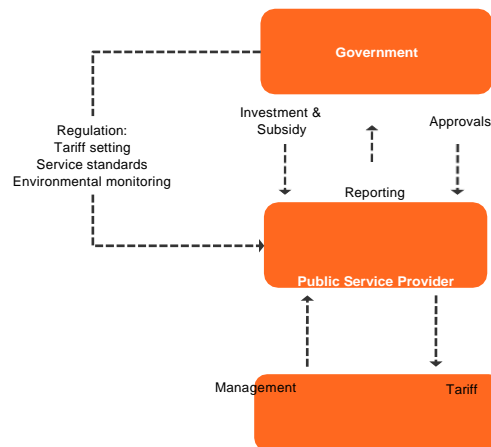
- Relatively low-risk option for expanding the role of the private sector.
- Quick and substantial impact on system operation and efficiency.
- Means for technology transfer and development of managerial capacity.

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.

### 1.3.2 Management Contracts

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



**Figure 1: Structure for Management Contracts**

Advantages include:

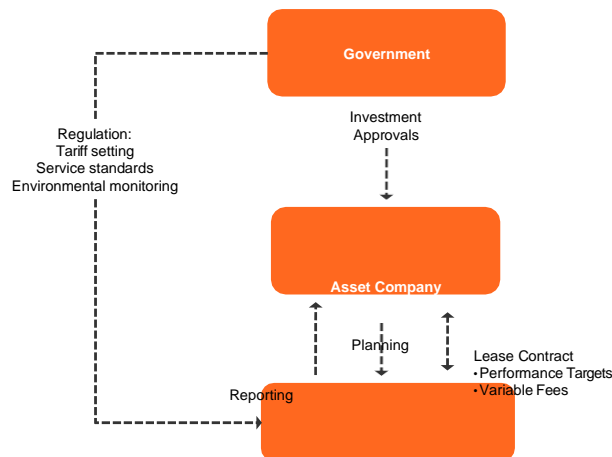
- Operational gains from private sector management can be realized without transferring the assets to the private sector partner.
- Less difficult to develop and less controversial than some of the other PPP models.
- Relatively low-cost contracts requiring no major capital from private operator.

Disadvantages include:

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

### 1.3.3 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. Leases do not involve any sale of assets to the private sector, however.



**Figure 2: Structure of Lease Contracts**

Advantages include:

- Separate the use of the facilities from the ownership of the facilities.
- Allows private sector to make the tough management decisions (e.g. labour reductions).
- Public authority receives stable stream of cash flows 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 many not be improved much.

### 1.3.4 Concessions (e.g. Build-Operate-Transfer (BOT), Build-Own-Operate (BOO))<sup>1</sup>

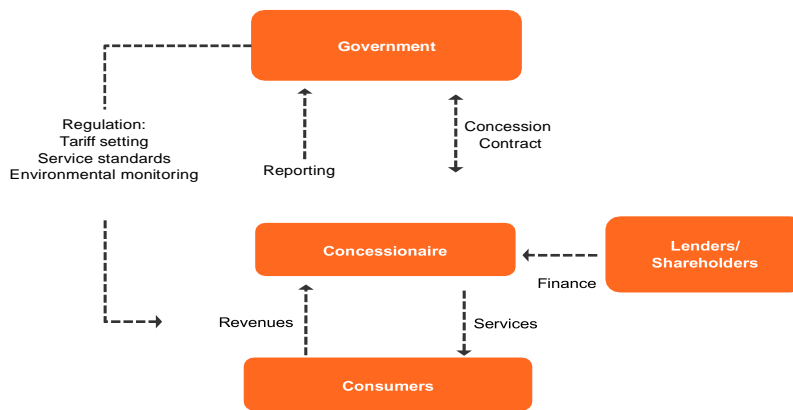
A Concession makes the private sector operator (Concessionaire) responsible for the full delivery of services in a specified area, including construction, operation, maintenance, collection, management, and rehabilitation of the system. Although the private sector operator is

<sup>1</sup>Some countries distinguish the term “concession” from other types of PPP arrangements with similar features. For the purpose of

this Toolkit, 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.

responsible for providing the assets, such assets often remain publicly owned and are returned to 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.



**Figure 3: Structure of Concessions**

Build-Operate-Transfer (BOT), Build-Own-Operate (BOO), etc. are forms of specialized concessions in which a private firm or consortium finances and develops a new infrastructure project or a major component according to performance standards set by the government.

**Table 2: Characteristics of Various Concessions**

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

Advantages include:

- 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.



## 2 LAGOS STATE PPP PROJECT LIFECYCLE

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

### 2.1 Phase I: Project Development

#### 2.1.1 Step 1: Project Inception

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 Office of Public – Private Partnership (OPPP) 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.

#### 2.1.2 Step 2: Project Planning

The 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.

#### 2.1.3 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 make a decision on whether or not to proceed with the project, and if so under what strategy. It is prepared and submitted to the Office of Public-Private Partnership (OPPP) for approval, as set out in the relevant State PPP Policy.

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 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.

## **2.2 Phase 2: Project Procurement**

### **2.2.1 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

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element of the pre-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).

### **2.2.2 Step 5: Preparation of Bid Documents**

The bidding process should aim to minimise 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 the OPPP, 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. Lagos State PPP Policy requires the approval of the Bid Documents before they are issued. In order to eliminate possible conflicts of interest, the Project Team will also need to constitute an independent Tender Evaluation Committee to select pre-qualified bidders once the Expressions of Interest have been submitted.

### **2.2.3 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 of time 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 finalises any remaining project agreement terms. Throughout the procurement process, the State OPPP 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.

### **2.2.4 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, finalisation 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

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diligence on the project in order 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 finalised 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.

## **2.3 Phase 3: Project Implementation**

### **2.3.1 Step 8: Project Operation**

The oversight of the project will shift from the Project Team to a 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 the Lagos State Office of PPP, 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.

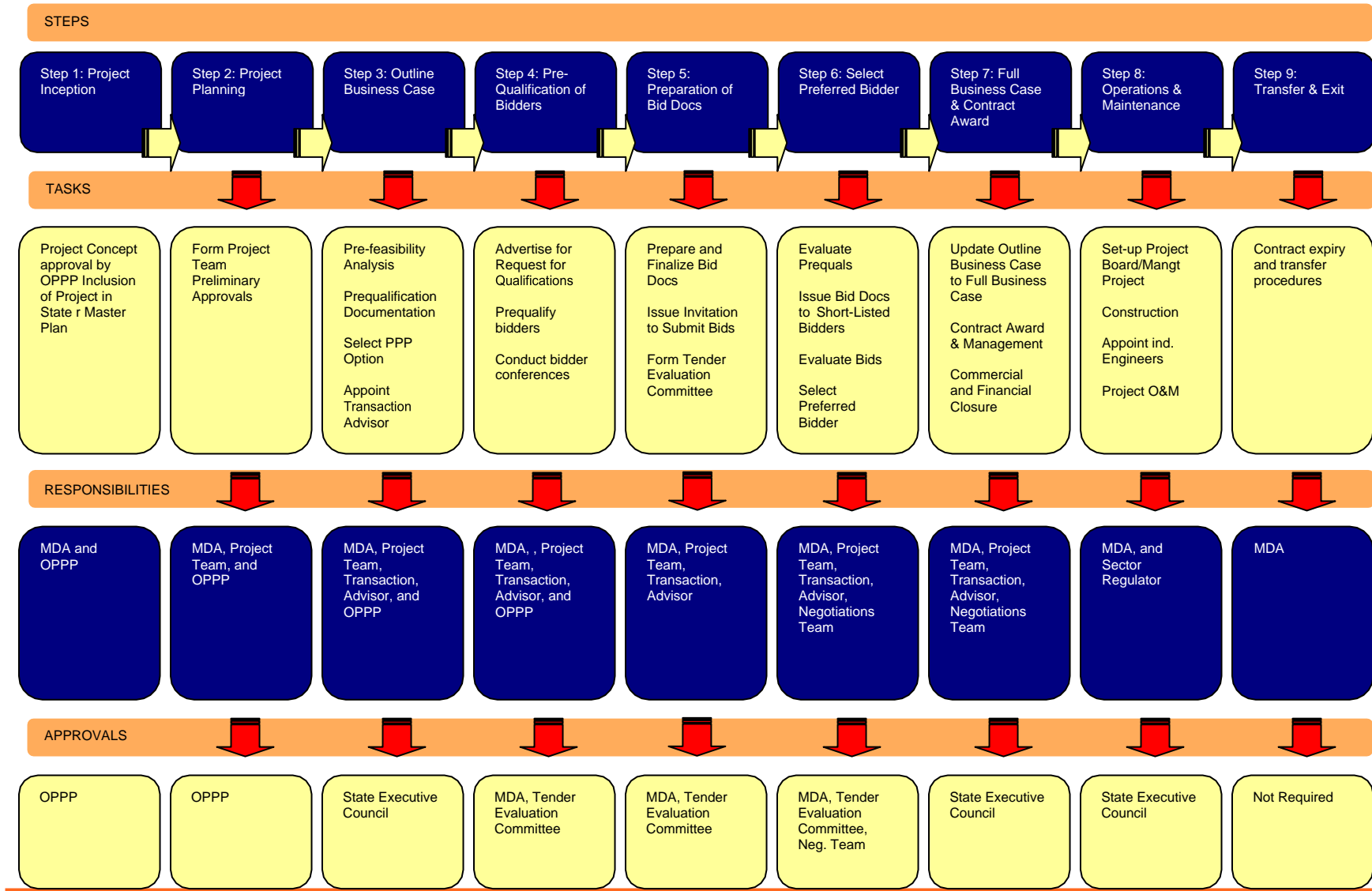
Depending on the sector, any regulator of tariffs will also be heavily involved in the operations of the project to make sure the PPP Company is receiving fair revenues for the services provided. The Project Implementation stage is predominantly the responsibility of the MDA, with some oversight from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

## **2.4 Phase 4: Project Maturity**

### **2.4.1 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.

Figure 4: PPP Project Lifecycle



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## **3 The ENABLING ENVIROMENT FOR PPPS**

PPPs in Lagos State can be initiated and managed at the state level. The Lagos State Government manages projects affecting Lagos State. However, some Lagos State projects may require some form of Federal Government guarantee in order 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. First and foremost, 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 properly manage the procurement process, make necessary approvals, and regulate, and in some cases modify, the PPP once it's operational.

### **3.1 Major PPP Responsibilities of Government**

#### **3.1.1 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.

#### **3.1.2 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.

#### **3.1.3 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

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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.

### **3.1.4 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 specialised personnel or train existing staff to properly manage PPP procurement and operations.

### **3.1.5 PPP Procurement**

Properly procuring a PPP is the foundation for whether or not 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.

### **3.1.6 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 generally 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 handle 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.

## 3.2 The Lagos State Legislative Framework

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

- The Lagos State PPP Law 2011
- The Lagos State Public Procurement Act 2011; and
- Regulations issued by the State Executive Council (Excom) governing the PPP process.

These laws and regulations set out the requirements for competition and private sector participation in all public procurement and also specify the necessary approvals required for PPP 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 optimise 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 Lagos State.

### 3.2.1 The Lagos State Office of Public – Private Partnership

The Office of Public-Private Partnership (OPPP) was established under the Lagos State Public Private Law 2011.

#### Objectives of the Office



(1) In performing its functions and exercising its powers, the primary objective of the Office shall be to develop public infrastructure or public assets and provide social amenities and other facilities for the State through Public Private Partnerships.

(2) 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 programmes 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 Office**

The functions of the Office 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 Lagos 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;

(4) 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;

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

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

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

(8) verify and monitor performance of the terms and conditions of concession agreements by concessionaires;

(9) 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;

(10) undertake or conduct research, investigations or inquiries and collect information relating to public infrastructure or public assets in general;

(11) liaise with bodies of professional persons, and private agencies performing work with regard to public infrastructure or public assets; and

(12) in relation to Public Private Partnerships initiated by the Office, 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 Office and the State, to uphold and observe the terms of any concession agreement subject to the provisions of this Law.

The Office 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 Lagos 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 Office;

(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 government agencies and parastatals 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

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

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

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

### **3.2.2 The Lagos State Public Procurement Agency**

The Lagos State Public Procurement Act 2011 established a body known as the Lagos 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 changes in procurement process to adapt to changes in technology;
- (iii) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Law;
- (iv) formulate the general policies and guidelines relating to public sector procurement for the approval of the Governor;
- (v) publicise 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; and
- (xii) carry out such other functions which are essential to run an efficient procurement process and the effective implementation of its functions under this Law.

(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) maintain a database of contractors and service providers to the exclusion of all procuring entities;
- (f) prescribe classifications and categorisations for the Companies or Limited Liability Partnerships (LLPs) on the register;
- (g) 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;
- (h) 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;
- (i) call for the production of books of account, plans, documents, and examine persons or parties in connection with any procurement proceeding;
- (j) act on complaints by public procurement entities in accordance with the procedures set out in this Law;
- (k) nullify the whole or part of any procurement proceeding or award which is in contravention of this Law;
- (l) 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;

- (m) undertake procurement and contract performance audits;
- (n) train personnel and build state-wide institutional capacities for a sustainable and efficient public procurement system;
- (o) recommend to the approving authority contracts for the award of procurement of goods, works and services within the provisions of this Law;
- (p) 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
- (q) issue a Certificate of Compliance after it has certified compliance by a procuring entity within the provisions of this Law.

(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:

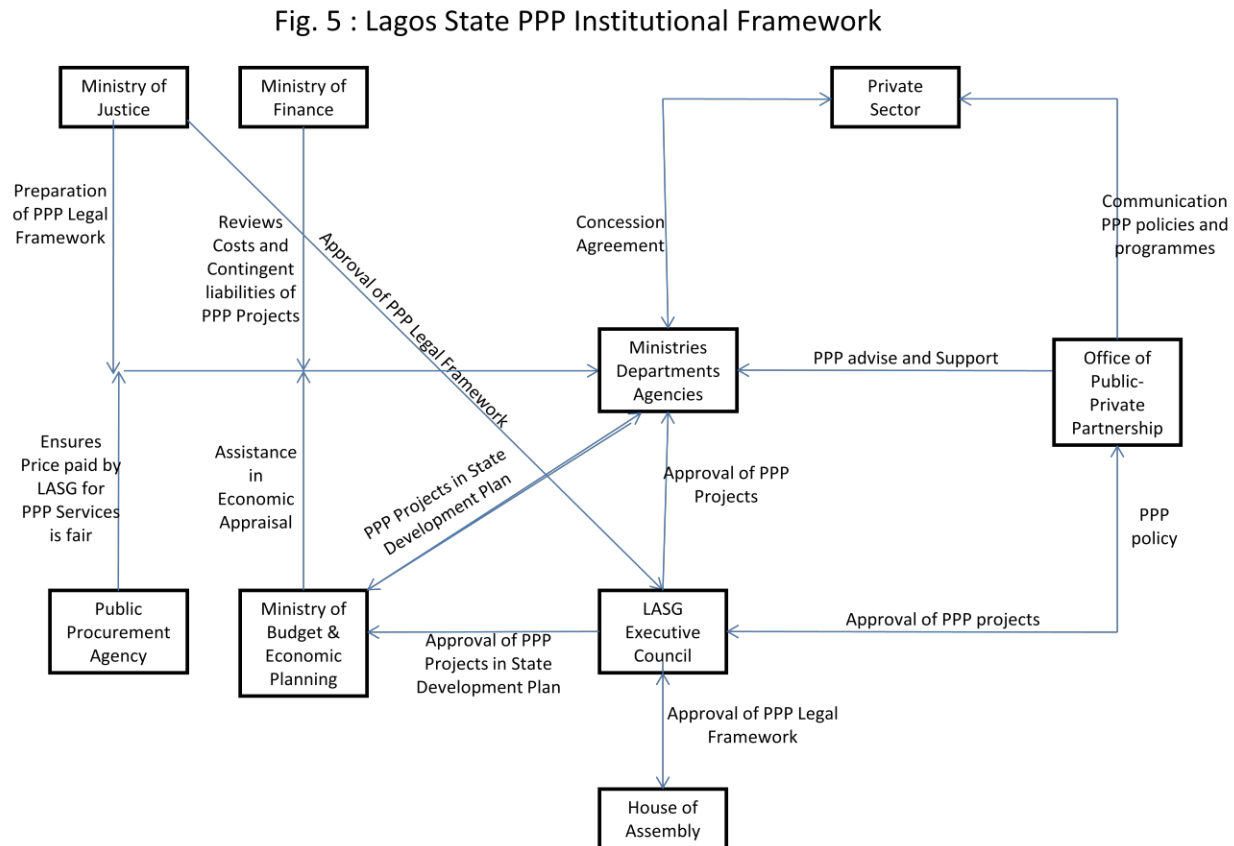
- (i) the suspension from Office of Officers concerned with the procurement or disposal proceeding an issue;
- (ii) the removal from Office of the head of any Procuring or Disposal Unit;
- (iii) the discipline of the Accounting Officer of any Procuring entity;
- (iv) temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant: or
- (v) 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.

### **3.3 The Lagos State PPP Institutional Framework**

The legislative framework governing PPPs in Lagos State allocates specific roles and responsibilities to various entities within the LASF. These specific LASG entities 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. In order to make sure that there are checks and balances in the system, as well as oversight of the decision making process, many LASG entities are involved in the PPP process from beginning to end.

Figure 5: Lagos State PPP Institutional Framework



### **3.3.1 Ministries, Departments and Agencies (MDA)**

Ministries, Departments and Agencies (MDAs) are responsible for managing public infrastructure and services and also for the management of their own resources. The MDAs prepare long-term plans for infrastructure investment and maintenance. These plans are incorporated into the Lagos State Development Plan being prepared by the Lagos State Ministry of Budget and Economic Planning. As part of this process, the MDAs, in consultation with the OPPP 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 Lagos State Ministry of Budget and Economic Planning in consultation with the OPPP for the criteria to be adopted for measurement of the Value-for-Money and assessment of the risks associated.

### **3.3.2 Lagos 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 LASG 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.

### **3.4.3 Lagos State Ministry of Budget and Economic Planning**

The Lagos State Ministry of Economic Planning and Budget (MEPB) was created in June 1999 out of the erstwhile Plans, Programmes and Budget Bureau (PPBB) by the administration of Asiwaju Bola Ahmed Tinubu, Governor of Lagos State. The upgrading of the defunct PPBB to a ministerial status was informed by the policy thrust of the Tinubu Administration as enunciated in its blueprint in which planning and popular participation were placed at the centre stage of governance and development. Prior to this time, economic planning or development had been an appendage to other ministerial folio such as Finance and Establishment. Thus, the appearance of the MEPB was a deliberate attempt by the State Government to ensure that governance is rooted in planning. In this regard, the assignment of ministerial responsibility of the Ministry of Economic Planning and Budget (MEPB) are, as spelt out in the State Government Gazette, No18. Vol.32 of 1st, July, 1999.

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

### **3.4.4 Lagos 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 the area of Public Law and improvement of the Legal Environment to promote economic activities.

## **4 OUTLINE BUSINESS CASE**

### **4.1 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 of 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.

### **4.2 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 carry 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.

#### 4.2.1 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.

#### 4.2.2 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.

### **4.2.3 Technical Options Analysis**

All major non-financial aspects of feasibility should be carefully analysed 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.

#### **4.2.3.1 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 a number of different technical solutions that meet the preferred service delivery option.

At this stage, the technical design is not finalised 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.

#### **4.2.3.2 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,

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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).

#### **4.2.3.3 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.

#### **4.2.4 Financial Due Diligence**

##### **4.2.4.1 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 in order to ensure that it is available to the required performance standard throughout its intended lifetime.

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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.

#### **4.2.4.2 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 capitalised), 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 i.e. 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 also 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 on the basis of 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 PSC and the shadow PPP models as applicable including Projected Profit and Loss Account, Projected Balance Sheet, Projected Cash Flows, equity and debt

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tables, financial ratios table, a statement of the assumptions used across the financial statements and total capital expenditure and its phasing and financing.

#### **4.2.4.3 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.

#### **4.2.4.4 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.

#### **4.2.5 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 also 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 actually 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)).

#### 4.2.6 Project Implementation Plan

A Project implementation Plan is developed once all of 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.

**Table 3: Sample Project Implementation Plan**

SN	Information to be covered in the implementation schedule	Timeline (Weeks)	Start Date	End Date	Responsibility
1	Additional studies required before commencing procurement				
1a	List of study to be performed				
1b	(continued)				
2	Timeline for obtaining the approvals:				
2a	First draft of tender documents and other key project documents				
2b	Timetable for approval of the OBC				
3	Pre-qualification and final document preparation. Market survey				
3a	Issue Request for Qualification				
3b	Pre-qualification of bidders				
3c	Final draft of tender documents, and feedback on bid documents from bidders for complex / new sector projects				
4	Application for Final Approval of the PPP				
5	Procurement and award timeline:				
5a	Issue Request for Proposals, arrange Bidders Conference				

SN	Information to be covered in the implementation schedule	Timeline (Weeks)	Start Date	End Date	Responsibility
5b	Evaluation of bids				
5c	Negotiation and award				
6	Technical and financial closure timelines:				
6a	Detailed technical studies and planning				
6b	Obtaining clearances				
6c	Arranging and finalising finance				
7	Construction timeline (for projects that involve a capital expenditure component)				
7a	Details of major milestones through the construction process				
7b	(continued)				
8	Post-construction activities				
8a	Such as surveys and commissioning facilities				
9	Expected date for commencement of operations				
10	Major milestones in the operating lifecycle of the project				

#### 4.2.7 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.

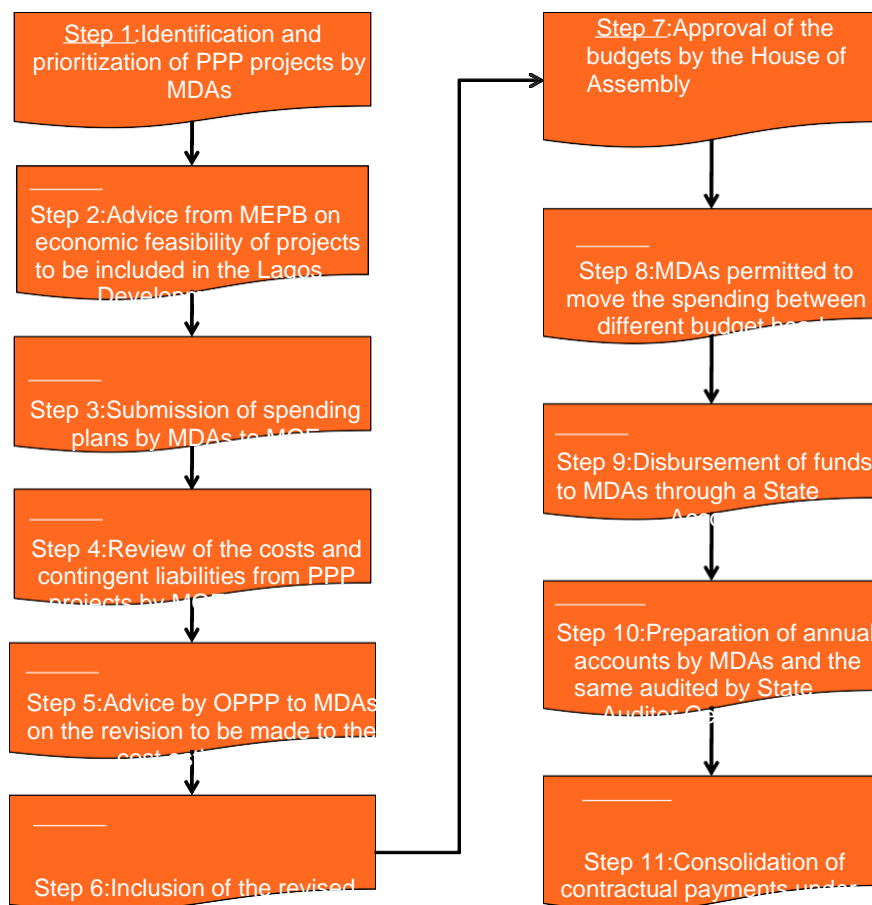


## 5 PROCUREMENT PROCEDURES

### 5.1 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 conceptualise 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.

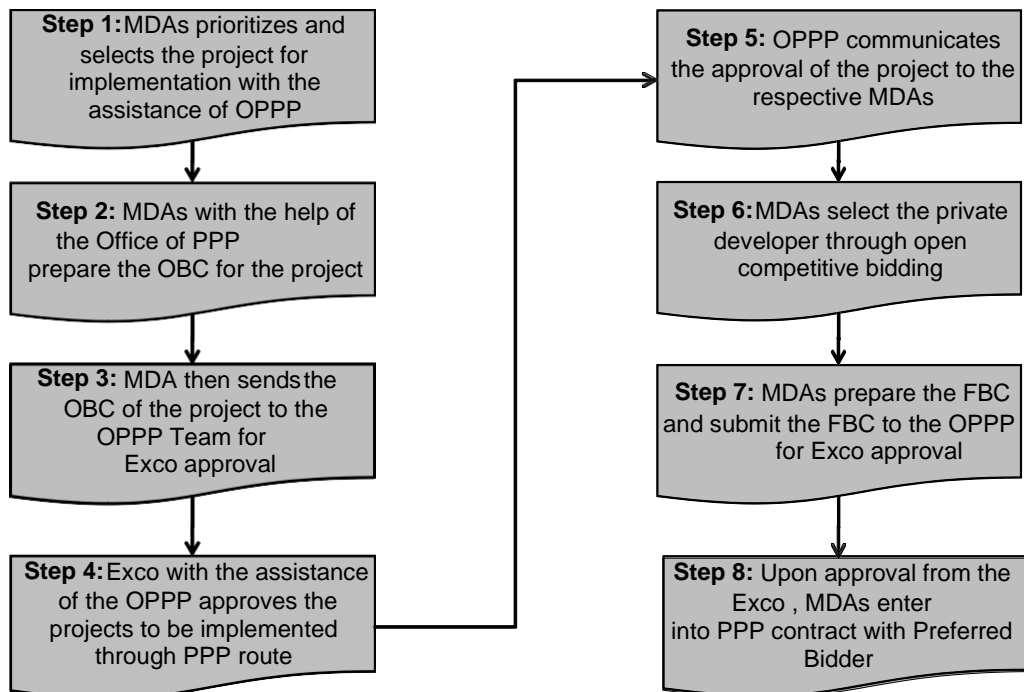
**Figure 6: Lagos State Government PPP Project Planning and Budgeting Cycle**



## 5.2 PPP Procurement at the Lagos State Level in Nigeria

Once funding is secure for the complete project development and procurement phases, and once the 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 Lagos State Level**



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

- **Step 1:** The MDAs with the assistance of the OPPP select and prioritise 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 OPPP prepares an Outline Business Case;
- **Step 3:** The Outline Business Case is then submitted by the MDA to the Lagos State Executive Council for approval;
- **Step 4:** The Exco with the assistance of the OPPP approves the projects to be implemented through the PPP route for various sectors;
- **Step 5:** The OPPP communicates to the respective MDAs about the projects approved by the Lagos State Executive Council for implementation through the PPP route;

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- **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 on the basis of the Outline Business Case and the proposal of the Preferred Bidder and submits the same with the assistance of the OPPP to the Lagos State Executive Council for approval; and
  - **Step 8:** Upon approval of the Full Business Case by the Lagos State Executive Council, the MDA enters into a PPP contract with the Preferred Bidder.

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

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 or not 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. In order 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**



### 5.3.1 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 a number of MDAs with responsibility for the financial, legal and operational aspects of the project as well as the Lagos State Board of Public Procurement in order 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-to-day 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.

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### **5.3.2 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 in order 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.

### **5.3.3 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.

### **5.3.4 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 in order 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.

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### **5.3.5 Step 5: Request for Proposals 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.

### **5.3.6 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.

### **5.3.7 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.

### 5.3.8 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.

## 5.4 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.

### 5.4.1 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 in order to evaluate the firm's or consortium's understanding of the service output requirements.

#### **5.4.2 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:

##### **5.4.2.1 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.

##### **5.4.2.2 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 utilised 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.

#### 5.4.2.3 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:

#### 5.4.2.4 Selection Method

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

- ✓ Quality Cost Based Selection (QCBS) can be used in the case of projects where the developer/operator is responsible for detailed designing of the facilities, there is flexibility available to introduce innovation and design efficiencies, and both quality and cost are important. Technical Proposals shall be allotted a specified weight and 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.

$$\text{Total Bid Score} = X * (\text{Technical Score}/100) + Y * (\text{Financial Score}/100)$$

*(Note: X + Y = 1.00)*

- ✓ Least Cost Selection determines the winner based only on the financial proposals of all bidders who qualify on technical criteria. The bidder quoting the most advantageous economically financial offer to government is then selected as the preferred bidder.

### 5.4.2.5 Financial Bid Criteria for Scoring

The financial selection criteria for a PPP project may be one, or a combination of, the following:

- ✓ Most economic contract value;
- ✓ Lowest bid in terms of the present value of user fees;
- ✓ Highest revenue share to the government;
- ✓ Highest upfront fee;
- ✓ Shortest concession period;
- ✓ Lowest present value of the VGF/availability payments or capital grant ;
- ✓ Lowest capital cost and/or O&M costs;
- ✓ Lowest equity return ;
- ✓ Lowest net value of payments required from the government.

Table 4: Examples of Bid Selection Criteria

Country	Relevant Legislation Frameworks	Practice
United Kingdom	Directive 2004/17/EC of The European Parliament The Public Contracts Regulations 2006	Choice between: <ul style="list-style-type: none"> <li>• Price only (lowest price to the public procurer)</li> <li>• Price and economic benefits (value of features of the tender linked to subject matter of the contract)</li> </ul>
South Africa	PPP Manual (published by PPP Unit of South Africa); Preferential Procurement Policy Framework Act 2000	Weighted average of the following factors: <ul style="list-style-type: none"> <li>• Price (weight between 20% and 40%)</li> <li>• Technical Evaluation Score (weight between 50% and 70%)</li> <li>• Black Economic Empowerment Score (weight between 10% and 20%)</li> </ul>
South Korea	Basic Plan for Private Participation in Infrastructure 2007	Weighted average of the following factors: <ul style="list-style-type: none"> <li>• Engineering Factor- focusing on the content, plans and drawings (weight of 50%)</li> <li>• Price Factor- Net Present Value of all payments to be made by the public entity (weight of 50%)</li> </ul>
Australia	Practitioners' Guide- National PPP Guidelines	Combination of the following: <ul style="list-style-type: none"> <li>• Highest savings as compared to Public Sector Comparator (Bidder ranked accordingly)</li> <li>• Qualitative assessment of individual bids</li> </ul>

## 5.5 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 in order 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.

### 5.5.1 Preliminary Activity

Prior to entering into 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 takes into account 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.

### 5.5.2 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 so as 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 issues and situations of stalemate in the discussions.

- **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.

### 5.5.3 Formal Settlement

The formal settlement between the two parties happens subsequent to 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.

## 5.6 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).

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## 6. Financing Public-Private Partnerships

### 6.1 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 as a consequence 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.

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## 6.2 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 utilised and Project Finance.

### 6.2.1 Corporate Finance

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

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

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

### 6.2.2 Project Finance

A common approach to financing PPP projects is to structure the PPP Company as a Special Purpose Vehicle (SPV). The investors/lenders have rights to the cash flows of only the 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

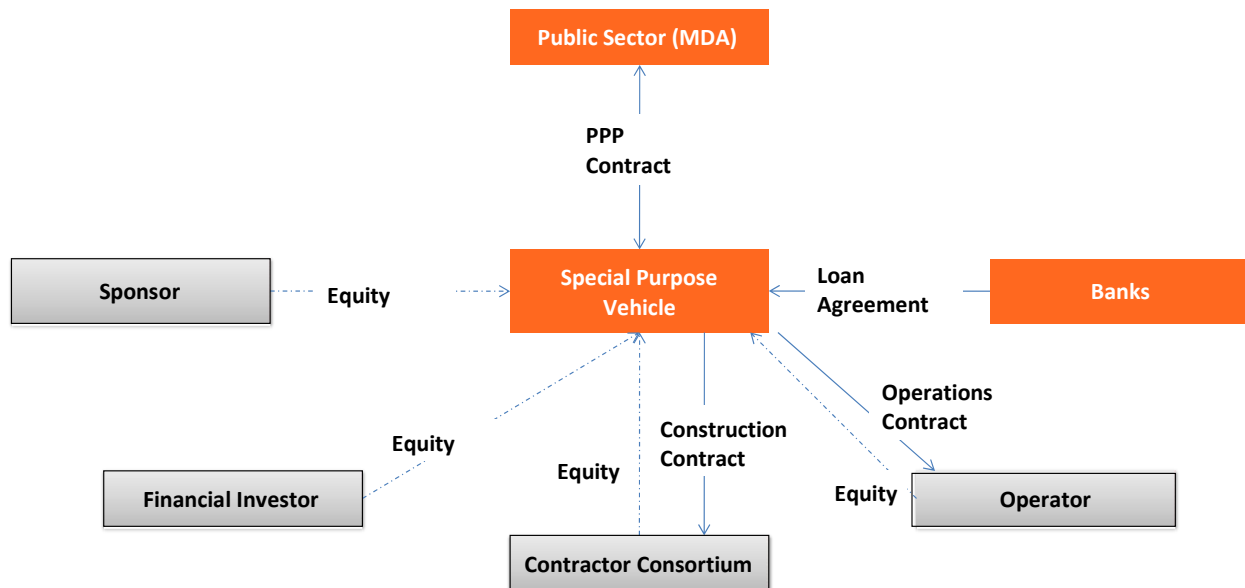
the assets of the project sponsor. A sponsor structures projects this way to safeguard their company from the complex and ever-changing project risks.

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 particular 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.

**Figure 9: Project Financing Structure**



### 6.2.3 Islamic Finance

Islamic finance can play an important role in funding PPP projects in certain parts of the world. The rise of sovereign wealth funds, particularly from the Middle East, has created a potential

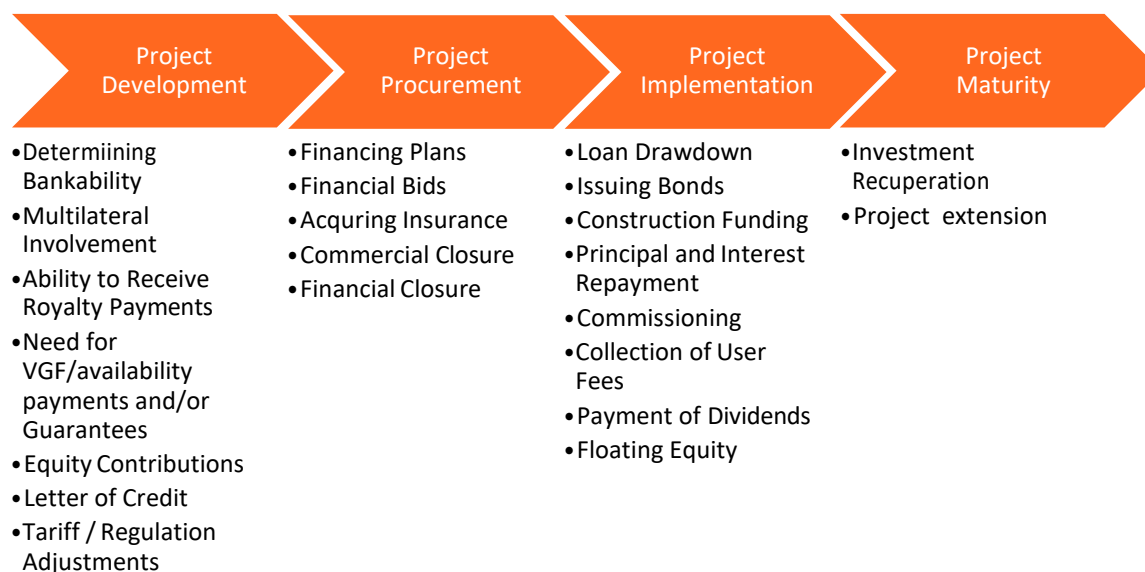
source of regional financing for PPP projects. The important characteristic is that Islamic finance is consistent with the principles of Sharia Law, which does not allow specific interest or fees (known as 'riba' or 'usury') for loans. In order for Islamic banks to make returns, the focus is therefore on the sharing of profit and loss.

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

### 6.3 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**



#### 6.3.1 Project Development

During the preparation of the project, a first 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



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the same time, potential private sponsors will need to make sure they have sufficient access to equity capital and bank loans/bond finance.

### **6.3.2 Project Procurement**

Any bidder will have included business and financing plans and a financial model as part of his bid. In order 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.

### **6.3.3 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.

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### 6.3.4 Project Maturity

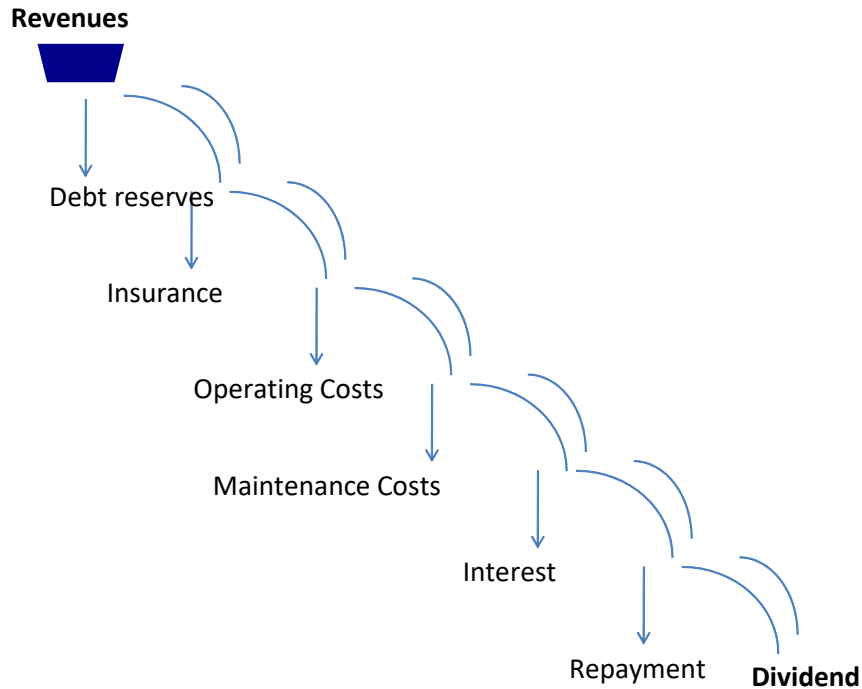
The project revenues generated should cover the project running costs and also be used to repay the financing and pay dividends to shareholders. During this operating phase, the true value of the project is understood and equity holders will be able to receive real returns. At this operating stage PPP 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 time period by and at the cost of the SPV.

## 6.4 Sources of Finance

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

- Equity: ownership of the project company and the associated risks and rewards;
- Senior 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 prioritisation of the cash flows is enforced using financing agreements for each source of funding for the project.

#### 6.4.1 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

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

#### 6.4.2 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 on the basis of 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 categorised 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 organisation, 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.

### 6.4.3 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.

### 6.4.4 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
<b>Construction Support /Capital Grant</b>	A grant usually spread over the construction period. It reduces the capital expenditure that the private investor needs to incur for the project.
<b>Operational VGF or availability payments</b>	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.
<b>Minimum Revenue Guarantee</b>	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.
<b>Annuity Payments/Unitary Payment Mechanism</b>	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...
<b>Credit Enhancement/ Debt Service Guarantee</b>	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.

## 6.5 Key Financial Indicators

**Table 6: Key Financial Indicators**

Financial Ratio	Formula	Definitions and Notes
Capital Structure Ratio (CSR)	$(\text{Equity} + \text{Quasi-equity}) \div \text{Financial Capital}$	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)	$\text{Total Long-term Liabilities} \div (\text{Equity} + \text{Quasi-equity})$	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)	$\text{Available cash flow for servicing the debt (Profit After Tax (PAT) + Interest + Depreciation)} \div \text{Annual debt service (Interest + Principal repayment instalment)}$	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)	$\text{NPV of cash flow available for servicing the debt over the loan life} \div \text{Outstanding debt}$	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 taken into account. 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	$\text{Cash flow available to service debt over the project life} \div \text{outstanding debt}$	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)	$\text{Earnings before Interest and Taxes (EBIT)} \div \text{Capital Employed (Long-Term Liabilities + Shareholders' Equity)}$	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)	$\text{Profit after Tax (PAT)} \div \text{Shareholders' Equity}$	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)	$\text{Operating Profit} \div \text{Sales}$	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)	$\text{Profit after Tax (PAT)} \div \text{Sales}$	Provides the measure of PAT as a percentage of sales.

## 6.6 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.

### 6.6.1 Types of Insurance Coverage

#### 6.6.1.1 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

#### **6.6.1.2 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.

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## 7 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 particular 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:

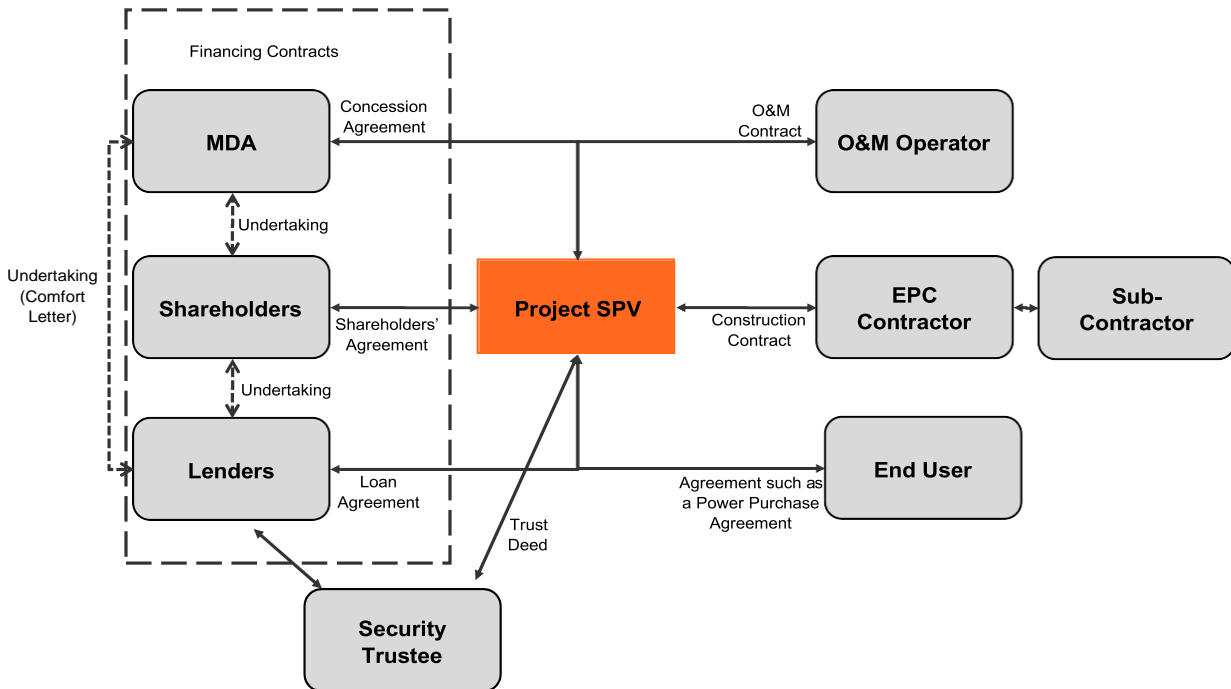
- Viewing the PPP arrangement as a “partnership” between government and the private parties.
- Having a project monitoring team with the requisite skill set to effectively monitor and manage the project and the PPP relationship.
- Having well-structured contracts that explicitly detail the allocation 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 minimise any negative consequences and maximise any opportunities brought about by change.

### 7.1 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



## 7.1.1 Project Participation Agreements

### 7.1.1.1 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.

### 7.1.1.2 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.

#### **7.1.1.3 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.

#### **7.1.1.4 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 a number of 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;
- Short-term loans, bridge financing, guarantees, and other short-term financial support.

Shareholders are often paid in cash or through equity for these services.

#### **7.1.1.5 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.

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#### **7.1.1.6 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.

#### **7.1.1.7 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.

### **7.1.2 Financial Agreements**

#### **7.1.2.1 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.

#### **7.1.2.2 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.

#### **7.1.2.3 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 capitalisation 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.

#### **7.1.2.4 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

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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.

## 7.2 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 minimisation 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.

### 7.2.1 Contract Management Team

In order 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.

#### 7.2.1.1 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

#### **7.2.1.2 Accounting Officer**

Key responsibilities of the Accounting Officer include:

- Provide financial oversight
- Review financial performance of PPP
- Manage any capital flows to/from government

#### **7.2.1.3 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

### **7.2.2 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 policy document 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

Section	Subsection	Summary Of Contents
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

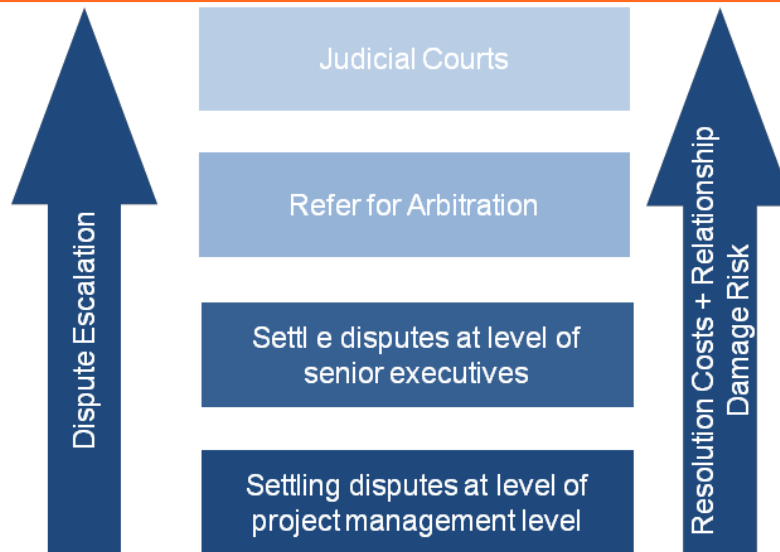
### 7.2.3 Dispute Resolution and Management

Given the long term nature of PPP projects, there is a reasonable possibility of disputes arising with regard to 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; or
- Arbitration
- 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

#### 7.2.4 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:

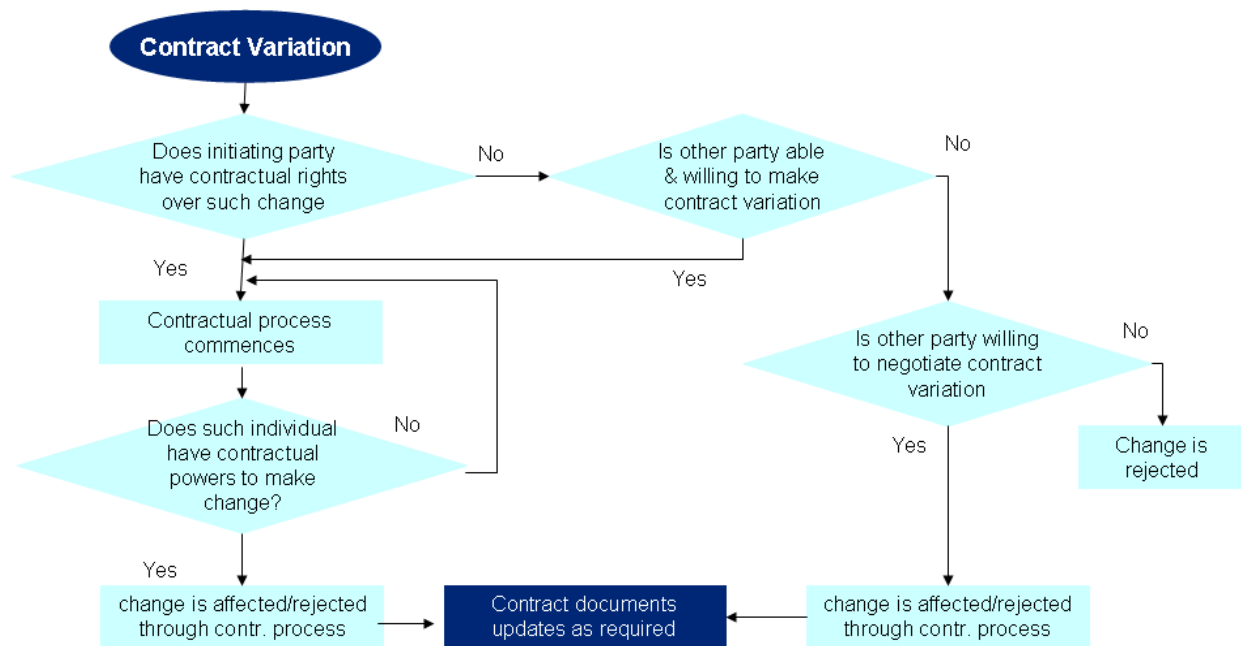
- **Modifications without Additional Costs:** The government and the PPP Company should discuss the best way of implementing the proposed change. If the modification will result in a reduction in costs to the PPP Company, then the parties will need to reach agreement about how to distribute such savings, 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.

**Figure 15: Contract Variation Process Flow**



Source: *Contract Management Guide, Partnerships Victoria*

### 7.2.5 Other Forms of PPP Contract Contingency Planning

Contingency planning is an important element of the PPP contract management process. In the event that the private party fails to deliver the services as specified under the PPP Contract, 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.

### 7.2.6 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.

### 7.2.7 Summary of Contract Management Framework

PPP Lifecycle Phase	Key Functions		
	Service Management	Relationship Management	Contract Management
<b>PPP Inception and Feasibility</b>	Identify & specify <ul style="list-style-type: none"> <li>▪ Service delivery specifications</li> <li>▪ Affordability limit</li> <li>▪ PSC/PPP and Value-for-Money benchmark</li> <li>▪ Risk Allocation framework</li> </ul>	Undertake following tasks <ul style="list-style-type: none"> <li>▪ Appoint the Project Officer &amp; Project Team</li> <li>▪ Decide on project type &amp; procurement method</li> </ul>	Establish following systems and processes for <ul style="list-style-type: none"> <li>▪ Document tracking &amp; management</li> <li>▪ Financial management</li> </ul>
<b>PPP Procurement</b>	Develop and prepare <ul style="list-style-type: none"> <li>▪ Performance management plan</li> <li>▪ Payment mechanism</li> <li>▪ Risk management plan</li> </ul>	Undertake following tasks <ul style="list-style-type: none"> <li>▪ Develop the relationship management plan</li> <li>▪ Identify and establish the PPP contract management team</li> <li>▪ Prepare the PPP contract management plan</li> </ul>	Develop and prepare the PPP contract management plan

PPP Lifecycle Phase	Key Functions		
	Service Management	Relationship Management	Contract Management
<b>PPP Development</b>	Establish, monitor and manage <ul style="list-style-type: none"> <li>▪ Risk control procedures</li> <li>▪ Performance management systems</li> <li>▪ Progress of project towards completion</li> </ul>	Establish and implement <ul style="list-style-type: none"> <li>▪ Relationship management plan</li> <li>▪ Transition management plan</li> <li>▪ Change management measures</li> </ul>	Establish procedures and systems <ul style="list-style-type: none"> <li>▪ Financial administration</li> <li>▪ PPP contract maintenance</li> <li>▪ Variation management</li> <li>▪ Recording penalties</li> <li>▪ Updating the PPP contract management manual</li> </ul>
<b>PPP Delivery</b>	Monitor and Manage <ul style="list-style-type: none"> <li>▪ Risk</li> <li>▪ Performance in relation to standards specified</li> <li>▪ Variations</li> </ul>	Undertake following tasks <ul style="list-style-type: none"> <li>▪ Review and revise partnerships</li> <li>▪ Commission independent reviews</li> <li>▪ Review and revise PPP contract management plan</li> </ul>	Review, monitor and update <ul style="list-style-type: none"> <li>▪ Financial administration</li> <li>▪ PPP contract maintenance</li> <li>▪ Variation management</li> <li>▪ Recording penalties</li> <li>▪ PPP contract management manual</li> </ul>
<b>Exit</b>	Review and assess <ul style="list-style-type: none"> <li>▪ Deliverables</li> <li>▪ Value-for-money</li> <li>▪ Quality of Innovation</li> </ul> Identify means of service delivery through <ul style="list-style-type: none"> <li>▪ MDA</li> <li>▪ Contract extension</li> <li>▪ New PPP project</li> </ul> Organise post implementation review	Undertake following tasks <ul style="list-style-type: none"> <li>▪ Manage Change</li> <li>▪ Organise closure</li> <li>▪ Record the lessons of the PPP project</li> </ul>	Implement and monitor <ul style="list-style-type: none"> <li>▪ Hand over procedures</li> <li>▪ Transition to new/alternate service delivery</li> </ul>

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### 7.3 Unsolicited Bids

One other subject is that of unsolicited bids. This is a very difficult subject as no one wants to put off the private sector from coming up with innovative new ideas or solutions to infrastructure development or rehabilitation, but the public sector has to protect itself from being exploited due to a lack of a competitive bid process. Some countries will permit unsolicited bids for PPP projects, but in this event many international financial institutions will not provide supporting finance, as they have a policy which does not permit financing projects awarded to sole bidders. Some other countries will accept unsolicited bids, but then open the unsolicited bid, with the knowledge of the unsolicited bidder, to other competitive bids, but giving the unsolicited bidder a marking advantage in the bid evaluation process, so that the unsolicited bidder has an advantage over the other competitive bids and has a good chance of being appointed as the Preferred Bidder. Unfortunately, the track record of PPP projects awarded on a sole bid basis has not been good, with many being unsuccessful for various reasons, often due to the costs involved and too high a level of tolls or service charges which result in civil unrest, and/or the public sector taking over the project at considerable cost.

For more information on Unsolicited Proposals in infrastructure PPPs, please see the following resources.

[http://www.ppiaf.org/sites/ppiaf.org/files/publication/WP1-  
Unsolicited%20Infra%20Proposals%20-%20JHodges%20GDellacha.pdf](http://www.ppiaf.org/sites/ppiaf.org/files/publication/WP1-<br/>Unsolicited%20Infra%20Proposals%20-%20JHodges%20GDellacha.pdf)

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## 7.4 Appointment and Management of Transaction Advisers

Why appoint specialist advisers as Transaction Advisers?

- The public sector will not have all the skills which will be required
- Specialist advisers will have skills that will add value to the PPP procurement exercise
- Advisers should be selected through competition rather than be simply appointed
- Transfer of skills from advisers to in-house staff will occur
- Need for an in-house strong management and monitoring team by the public sector client..

PPP Financial Advisers:

- Firms and individuals with relevant financial skills and experience of PPP and project-finance arrangements
- 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.

Hiring PPP Transaction Advisers:

- Prepare well structure ToRs
- Make experience and expertise the key criteria, NOT price.
- Ultimate objective is the best experienced PPP Transaction Adviser team or individual at a competitive, but not necessarily the lowest, price.

For more information on the Appointment and Management of Transaction Advisors for PPP projects, please see the following resources.

[http://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/hiring\\_advisorys/fulltoolkit.pdf](http://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/hiring_advisorys/fulltoolkit.pdf)

## 7.5 Sector Specific Toolkits

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

<http://www.ppiaf.org/page/knowledge-center/toolkits>

## 7.6 Contract Management Framework

PPP Lifecycle Phase	Key Functions		
	Service Management	Relationship Management	Contract Management
<b>PPP Inception and Feasibility</b>	Identify & specify <ul style="list-style-type: none"> <li>▪ Service delivery specifications</li> <li>▪ Affordability limit</li> <li>▪ PSC and Value-for-money benchmark</li> <li>▪ Risk Allocation framework</li> </ul>	Undertake following tasks <ul style="list-style-type: none"> <li>▪ Appoint the Project officer &amp; Project Team</li> <li>▪ Decide on project type &amp; procurement method</li> </ul>	Establish following systems and processes for <ul style="list-style-type: none"> <li>▪ Document tracking &amp; management</li> <li>▪ Financial management</li> </ul>
<b>PPP Procurement</b>	Develop and prepare <ul style="list-style-type: none"> <li>▪ Performance management plan</li> <li>▪ Payment mechanism</li> <li>▪ Risk sharing management plan</li> </ul>	Undertake following tasks <ul style="list-style-type: none"> <li>▪ Develop the relationship management plan</li> <li>▪ Identify and establish the PPP contract management team</li> <li>▪ Prepare the PPP contract management plan</li> </ul>	Develop and prepare the PPP contract management plan
<b>PPP Development</b>	Establish, monitor and manage <ul style="list-style-type: none"> <li>▪ Risk control and sharing procedures</li> <li>▪ Performance management systems</li> <li>▪ Progress of project towards completion</li> </ul>	Establish and implement <ul style="list-style-type: none"> <li>▪ Relationship management plan</li> <li>▪ Transition management plan</li> <li>▪ Change management measures</li> </ul>	Establish procedures and systems <ul style="list-style-type: none"> <li>▪ Financial administration</li> <li>▪ PPP contract maintenance</li> <li>▪ Variation management</li> <li>▪ Recording penalties</li> <li>▪ Updating the PPP contract management manual</li> </ul>
<b>PPP Delivery</b>	Monitor and Manage <ul style="list-style-type: none"> <li>▪ Risk sharing</li> <li>▪ Performance in relation to standards specified</li> <li>▪ Variations</li> </ul>	Undertake following tasks <ul style="list-style-type: none"> <li>▪ Review and revise partnerships</li> <li>▪ Commission independent reviews</li> <li>▪ Review and revise PPP contract management plan</li> </ul>	Review, monitor and update <ul style="list-style-type: none"> <li>▪ Financial administration</li> <li>▪ PPP contract maintenance</li> <li>▪ Variation management</li> <li>▪ Recording penalties</li> <li>▪ PPP contract management manual</li> </ul>
<b>Exit</b>	Review and assess <ul style="list-style-type: none"> <li>▪ Deliverables</li> <li>▪ Value-for-money</li> <li>▪ Quality of Innovation</li> </ul> Identify means of service delivery through <ul style="list-style-type: none"> <li>▪ MDA</li> <li>▪ New PPP project</li> </ul> Organise post implementation review	Undertake following tasks <ul style="list-style-type: none"> <li>▪ Manage Change</li> <li>▪ Organise closure</li> <li>▪ Record the lessons of the PPP project</li> </ul>	Implement and monitor <ul style="list-style-type: none"> <li>▪ Hand over procedures</li> <li>▪ Transition to new/alternate service delivery</li> </ul>



## 7.7 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 Lagos State Policy on Public Private Partnership, ;
5	Establish and manage a project team;
6	Draft terms of reference and secure a suitable budget for a transaction advisor;
7	Manage the procurement process to appoint a transaction advisor;
8	Direct and manage the work of the transaction advisor at every phase of the project cycle, exercising delegated authority; carry out all functions of inception, feasibility and procurement phases as delegated;
9	Carry out all functions required of the MDA to properly submit applications for all Transaction approvals in terms of PPP Policy and PPP Guidelines and respond to all queries from the relevant Approving Authorities in respect thereof;
10	Diligently manage the project from inception to the signing of the PPP contract and financial closure, to ensure that the project is affordable to the MDA, provides an optimal Value-for-money solution for the [service delivery/use of state property], and appropriately allocates risk to the private party;
11	Manage all information systems necessary for the proper planning and implementation of the project;
12	Manage the PPP, into the term of the PPP contract, in terms of the PPP contract management plan, on behalf of the MDA, specifically in the development phase; and the [.....years] of the delivery phase.
13	<p>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:</p> <ul style="list-style-type: none"> <li>• Measuring the outputs of the PPP contract;</li> <li>• Monitoring and regulating the implementation of, and performance in terms of, the PPP contract;</li> <li>• Liaising with the private party;</li> <li>• Resolving disputes and differences with the private party;</li> <li>• Generally overseeing the day-to-day management of the PPP contract; and</li> <li>• Reporting on the PPP contract in the MDA's annual report.</li> </ul>
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.

## 7.8 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	<p>State the various proposed means of financing the project, indicative proportions and amount.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #ff8c00; color: white;"> <th>Source</th> <th>Proportion (%)</th> <th>Amount (Naira Mn)</th> </tr> </thead> <tbody> <tr> <td>Private Sector</td> <td></td> <td></td> </tr> <tr> <td>MDA</td> <td></td> <td></td> </tr> <tr> <td>Lagos State Government</td> <td></td> <td></td> </tr> <tr> <td>Any other (Specify)</td> <td></td> <td></td> </tr> <tr> <td>Total</td> <td></td> <td></td> </tr> </tbody> </table>	Source	Proportion (%)	Amount (Naira Mn)	Private Sector			MDA			Lagos State Government			Any other (Specify)			Total		
Source	Proportion (%)	Amount (Naira Mn)																		
Private Sector																				
MDA																				
Lagos State Government																				
Any other (Specify)																				
Total																				
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.																		

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:



## 7.9 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	<p>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.</p> <p>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.</p> <p>In completing the template, the following criteria must be considered: Options would generally include: Base Case (do nothing) minimal approach non-asset solutions, for example, these may include: demand management, service transformation, optimising existing operations or asset use, alternative maintenance strategies, re-investment in replacement/renewal, enhancement of existing infrastructure investment in new assets. Public Procurement Option and PPP Option.</p> <p>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.</p>
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 prioritised short-listing of options and any clear preferred option for further analysis is provided. Reasons for the preferred option or prioritised 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

## 7.10 Sample Table of Contents for the Outline Business Case

<b>Executive Summary</b>	
	<p>This summary provides the following information –</p> <ol style="list-style-type: none"> <li>Current service provision, if applicable and future requirements;</li> <li>A summary of the full list of options;</li> <li>A summary of the options selection procedure and the options chosen for detailed examination;</li> <li>A summary of the comparative findings and justification for the preferred option; and</li> <li>Highlights of the implementation plan</li> </ol>
<b>Part A: Feasibility Assessment</b>	
1) Project Background	<p>This section provides a background on the project location, type of infrastructure, the MDA, previous studies undertaken, and previous approvals received etc.</p>
2) Strategic Needs Assessment, Demand Assessment and Project Scoping	<p>This section analyses current and future needs. An analysis of the user's needs is included. The following issues are addressed –</p> <ol style="list-style-type: none"> <li>Existing or envisioned service gaps;</li> <li>Key stakeholders and their requirements; and</li> <li>Consultation plan with key stakeholders to ensure that the project remains relevant.</li> </ol> <p>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.</p>
3) Service Standard – Output and Services	<p>This section translates the needs identified in the previous step into specific outputs. The following issues should be addressed –</p> <ol style="list-style-type: none"> <li>Impact of the proposed project on the service gaps identified above and overall objectives the project aims to achieve;</li> <li>Outputs expected from the project, stated in measurable and quantifiable terms as far as possible;</li> <li>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</li> <li>Relevance of the project to the MDA's long-term strategic goals and overall national development plan.</li> </ol>
4) Market Assessment	<p>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 –</p> <ol style="list-style-type: none"> <li>Description of the industry;</li> <li>Current market analysis (current offerings, market players and their capability and appetite);</li> <li>Competition (alternative service and product offerings);</li> <li>Anticipated future market potential;</li> <li>Potential market players and sources of revenues; and</li> <li>Demand projections.</li> </ol>
5) Technical Feasibility	<p>This component details how a project can be delivered (i.e., outline technical solution). The study addresses the following elements</p> <ol style="list-style-type: none"> <li>Field surveys of the project site, which may include (depending on the project) mapping, topographical and geotechnical surveys;</li> <li>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.</li> <li>Guidance to materials and other inputs requirements;</li> <li>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</li> <li>Capital Expenditure estimated cost assessment and Operating and Maintenance estimated cost assessment based on the components of the preliminary guide to technical design.</li> </ol>
6) Financial Feasibility	<p>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:</p> <ol style="list-style-type: none"> <li>Estimated project costs (initial and replacement capex, cost of upgrades, opex);</li> <li>Guide to start-up capital;</li> <li>Potential sources of financing;</li> <li>Potential revenues;</li> <li>Estimated returns; and</li> <li>Estimated consulting costs</li> </ol>
7) Environment Impact	<p>This section examines environmental considerations, including details of any environment impact study conducted.</p>

<p><b>8) Legal Framework</b></p> <p>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.</p> <ul style="list-style-type: none"> <li>a) The study should address the following elements –</li> <li>b) Appraisal of current legislative environment in relation to requirements of the project;</li> <li>c) Assessment of required amendments to the current legislation;</li> <li>d) Legal requirements for any proposed market and organisational structure; and</li> <li>e) Other legal issues that may inhibit / prevent the development of the PPP project</li> </ul>
<p><b>9) Stakeholder consultation findings and public interest evaluation</b></p> <p>This component states the findings of the consultation process with the various stakeholders including but not limited to –</p> <ul style="list-style-type: none"> <li>a) Users;</li> <li>b) Developers and operators;</li> <li>c) Community participants;</li> <li>d) Citizens likely to be affected;</li> <li>e) Financers; and</li> <li>f) Other relevant government authorities</li> </ul>
<p><b>10) Conclusion and Recommendations on Feasibility Assessment</b></p> <p>This component details the key conclusions and recommendations on the Feasibility Assessment.</p>
<p><b>Part B: Structuring</b></p>
<p><b>11) Risk Assessment</b></p> <p>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.</p>
<p><b>12) Key Commercial Principles and Payment Mechanisms</b></p> <p>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.</p>
<p><b>13) Public Sector Comparator (PSC)</b></p> <p>This section states the reference project and details the computation of the Public Sector Comparator and the Shadow Private project cash flow model.</p>
<p><b>14) Option analysis, Value-for-money and recommendations</b></p> <p>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..</p>
<p><b>15) Evaluation Criteria for selection of Private Sector</b></p> <p>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..</p>
<p><b>16) Implementation Plan</b></p> <p>This section details the activities and timelines during the project development period. It also states the person or entity responsible for each activity.</p>
<p><b>17) Project resource requirement</b></p> <p>This section details the resources required during and after the project development period.</p>
<p><b>18) Conclusion and Recommendations on Structuring</b></p> <p>This section details the key conclusions and recommendations on the Project Structuring.</p>
<p><b>Appendixes (other supporting documents)</b></p> <p>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.</p>

## 7.11 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.

### 7.11.1 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 has to 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.

### 7.11.2 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.

### 7.11.3 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

#### **7.11.4 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
12. 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

13. 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
14. not to make any dishonest allegations about any bidder
15. not to make any false or misleading entries into the records of the bid evaluation panel
16. to make no contractual commitments related to the bid, to any bidding party, on behalf of the MDA
17. 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
18. 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
19. 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
20. 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
21. 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
22. 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
23. That, the breach of this Code of Conduct shall not preclude the MDA of criminal proceedings pursuant to the relevant laws and regulations in Lagos State .

Signed: \_\_\_\_\_

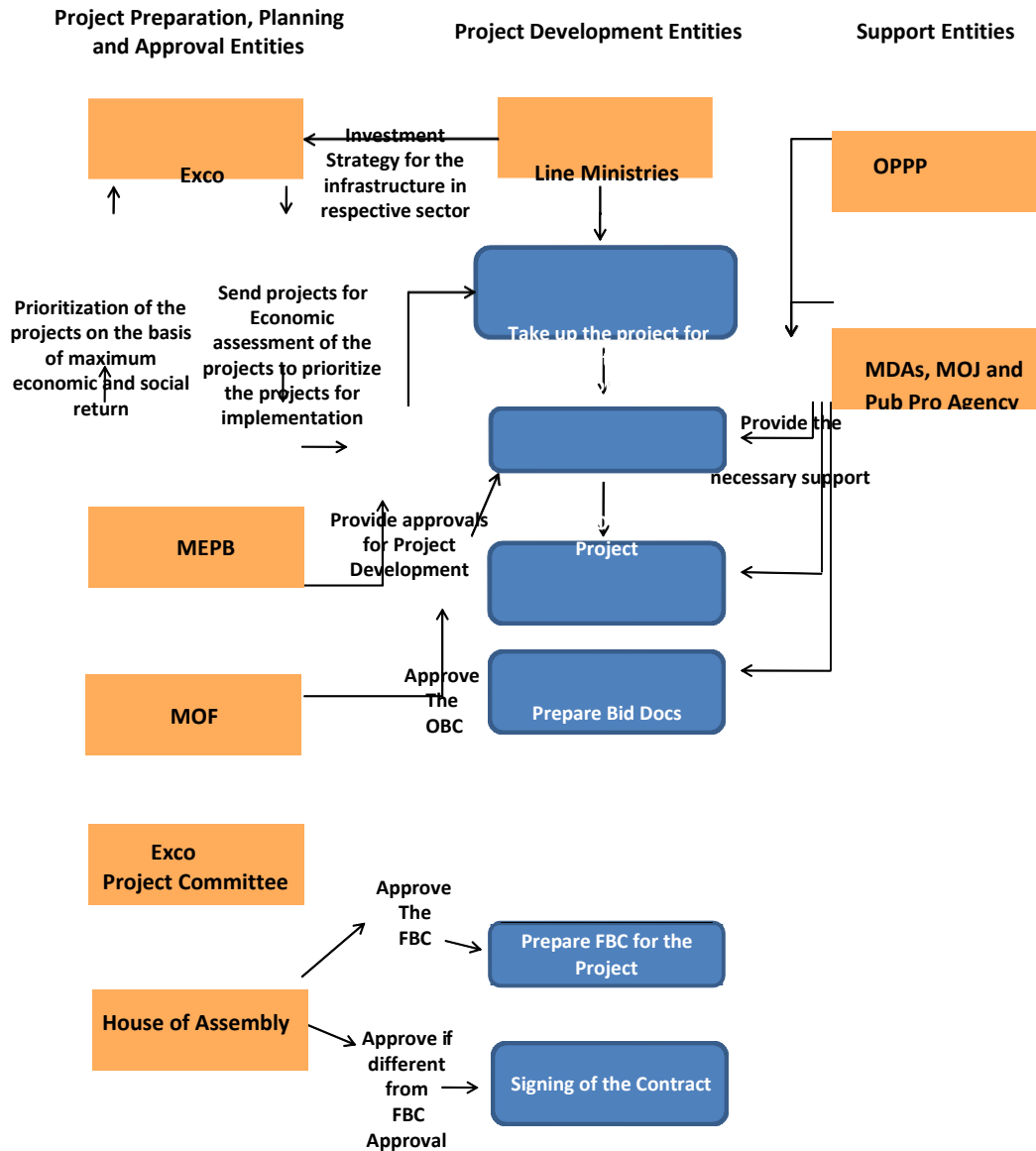
[Signature of member] [Insert date]

Date: \_\_\_\_\_

Witnessed: \_\_\_\_\_

[Signature of witness]

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



## 7.13 Lagos State PPP Policy Statement

### Introduction

The Lagos State Government (LASG) has adopted a policy thrust that embraces the delivery of infrastructure projects and services in the public sector through Public Private Partnerships (PPP).

This Policy Statement sets out the framework for using PPP in Lagos State.

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In this regard and towards institutionalising the policy thrust, the Lagos State Public Private Partnership Law 2011 was enacted. Furthermore, the Public Procurement Law 2011 was enacted and together both Laws stipulate the legal framework for PPP projects procurement in the State.

## The PPP Concept

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

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

The public sector retains a significant role in the partnership project, either as the main purchaser of the services provided or as the main enabler of the project. It purchases services and specifies the service outputs/outcomes required as well as the performance criteria for payments, with performance below these standards leading to deductions from service charges payable by the public sector. The private party commonly provides the design, construction, operation 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 utilisation and quality, clearer customer focus (since payments are typically linked to performance rather than service inputs), and accelerated delivery of projects.

Well-structured PPP projects integrate recurrent and capital budgets and provide meaningful benchmarks for measuring performance, thus making PPP an important tool for better management of public expenditure. In addition, PPP is an instrument that Government can use to reform and re-structure certain strategic sectors of the economy to bring in competition, which will increase investment and efficiency, reduce prices and expand the range of services available.

## Scope of PPP

It is LASG's intention to encourage innovation in as many areas as possible. The sectors where PPP will be applied in the State as they relate to the LASG ten point agenda include transportation, power, water, environment, health, education, agriculture, housing and tourism.

## Key Considerations of PPP Policy

While the benefits and advantages of PPP can be significant, they are not automatic. Rather, the positive outcomes have to 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 LASG 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 programme 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

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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 programme 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 tax payer, 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. LASG 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 programme:

- Ministry of Economic Planning & Budget will improve the economic appraisal, planning, prioritisation, 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.
- Office of PPP (OPPP) and its Board, an organ of the LASG Executive, 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 OPPP will ensure effective stakeholder engagement, market interest and momentum of the process to reach financial close and the start of construction/operations. The OPPP 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 OPPP, as and when required to assist in this process. As LASG gains experience with PPP, the OPPP 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. The OPPP will not act as a contracting entity in its own right – it is an advisory and coordinating body i.e. A Centre 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 OPPP and external transaction advisers.

- Ministry of Finance will play a key role in assessing the budgetary implications of PPP projects. The OPPP 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.
- Lagos State Executive Council (Exco) and the Governor of Lagos 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 LASG, 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 programme 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 recognise 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 LASG 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 recognised that the private sector may sometimes recognise a public infrastructure need and a viable and innovative means of meeting this need, that the public sector has not recognised 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 OPPP.

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 2011. This covers not only contributions from the State budget but also the sale or disposal of State assets. In these circumstances, OPPP 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 OPPP 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**

LASG 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.

Procurement practices for PPP will be streamlined in line with the Public Procurement Law 2011 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.