ANAMBRA STATE PUBLIC – PRIVATE PARTNERSHIP MANUAL

ANAMBRA STATE INVESTMENT PROMOTION AND PROTECTION AGENCY (ANSIPPA)November 2024

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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 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

A PPP is defined as a contract whereby the public sector engages the private 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 expertisein commerce, management, operations, and innovation to run the project efficiently. The private sector is responsible for conducting or operating the project and takes on a significant portion of the associated project risks. Often, though not always, the private sector will contribute most of the project's capital costs.

1.2. Value-for-money (VfM)

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

1.3. Characteristics of a PPP Project

1.3.1. Major Operational Characteristics

1.3.1.1. 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.

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

1.3.1.3. 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 those financial returns are adequate to repay loans. The public sector, on the other hand, often assumes risks related to macro-economic stability (e.g., inflation) and land acquisition from public and private landowners.

1.3.1.4. 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).

1.3.1.5. 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.

1.3.2. Major Financial Characteristics

1.3.2.1. 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.

1.3.2.2. 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.

1.3.2.3. 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.

1.3.2.4. 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, the public sector project sponsor must describe in general details in the RFP, a full set of minimum performance standards for the requested services, covering the availability of the assets provided by the private sector concessionaire and the required minimum service levels. Detailed service performance standards are then negotiated with the selected preferred bidder, as part of the PPP concession contract negotiations. These performance standards are backed by an incentive or penalty system for rewarding or punishing the private sector operator for service levels delivered above or below the agreed performance standards. In extreme cases of continuous poor performance below the agreed performance standards, the PPP contract will be terminated, or the Lenders Direct Agreement will come into operation. The incentive/penalty system is usually points based which translates into a monetary amount at agreed periods. The benefit to the public sector sponsor is that any penalties that are levied due to poor service performance, go straight to reduce the equity return thereby encouraging the private sector SPV management to ta ke immediate corrective action.

1.4. Overview of PPP Delivery Models

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

Table 1: Different Types of PPP Delivery Models

Contract type (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 Contract Public Public Public government to private sector for specific services
Management Contract (3-8 years)	Public	Private	Public	Public	Private sector manages the operation of a Contract Public Private Public Public government service and receives fees paid directly (3-8 years) by government
Lease Contract (5-10 years)	Public	Private	Public	Private	Private sector manages, operates, repairs and/or Lease Contract maintains a public service to specified standards Public Private Public Private and outputs. Fees are charged to consumers/users (5-10 years) and the service provider pays the government rent for the use of the facility.
Concession, BOT, BOO, etc. (10-30 years)	Public & Private	Private	Private	Private	Private sector manages, operates, repairs, Concession, Private & maintains and/or invests in infrastructure to BOT, BOO, etc. Private Private Private specified standards and outputs. Fees are charged Public (10-30 years) to consumers/users. The service provider may also pay a Concession Fee to the government.

1.4.1. Service Contracts

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

Under a service contract, the government pays the private partner a predetermined fee for the service. Often there may be some financial incentives in the contract to reduce operating costs and/or improve operating performance. The government is responsible for funding any capital investments required to expand or improve the system. One financing option involves a costplus-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.

1.4.2. 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.

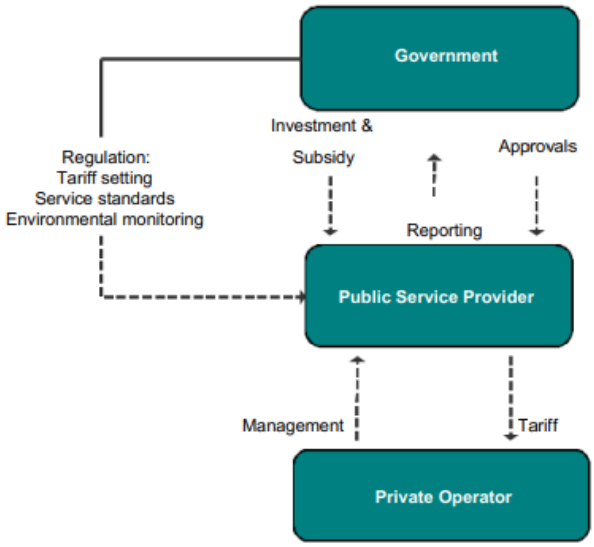


Figure 1: Structure for Management Contracts

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 operators.

Disadvantages include:

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

1.4.3. *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. However, leases do not involve any sale of assets to the private sector.

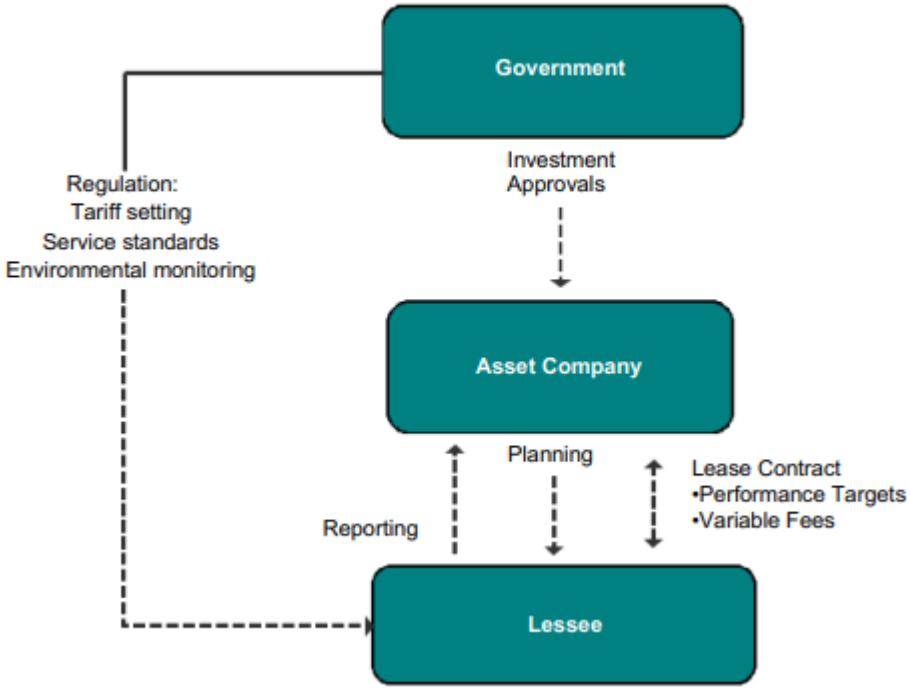


Figure 2: Structure of Lease Contracts

Advantages include:

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

Disadvantages include:

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

1.4.4. Concessions [e.g., Build-Operate-Transfer (BOT), Build-Own-Operate (BOO)][1]

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.

[1] 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.

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

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

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

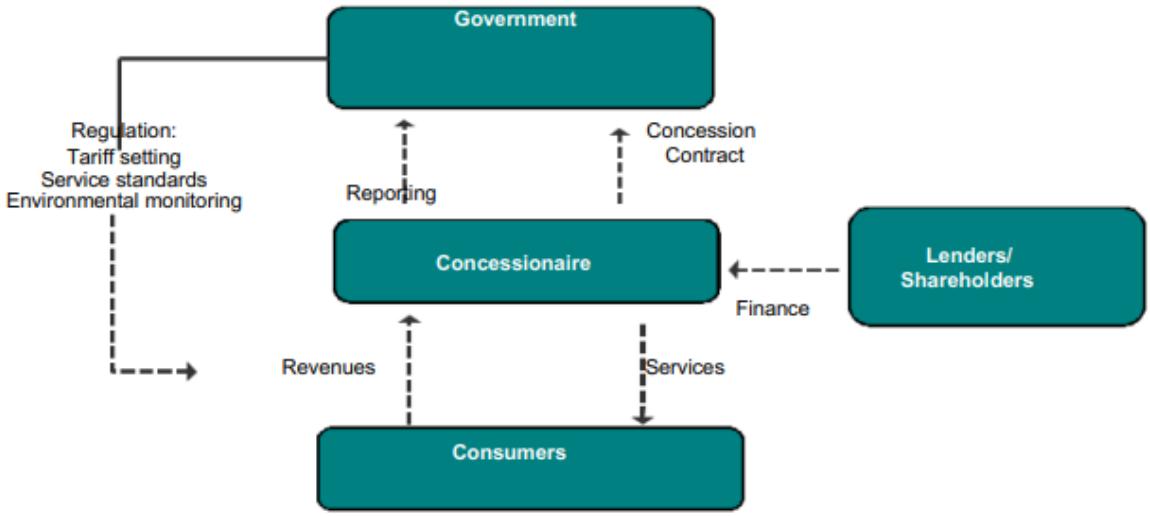


Figure 3: Structure of Concessions

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	Characteristics				Financial Responsibility
(Duration)	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-Finace-Operate (DBFO)	Public	Private by fee contract	Private by fee contract	Private by fee contract	Public, Public/Private or Private
Build-Own-Operate (BOO)	Private	Private by Contract	Private by Contract	Private by Contract	Private by Contract

Advantages include:

- An effective way to attract private finance for new construction or rehabilitate existing facilities.
- Initial capital construction costs may be reduced due to the private sector's expertise.
- Motivates the 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.

1.5. Pros and Cons of PPP

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

Advantages of PPP

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

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

A brief description of each of these advantages follows.

Access to private-sector finance

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

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

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

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

Increased efficiency resulting from private sector participation

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

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

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

Sector reformation through reallocation of roles, incentives, and accountability

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

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

Disadvantages of PPP

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

Difficulty in demonstrating value for money in advance

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

Complex procurement process with associated high transaction costs

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

Risk of contract renegotiation

PPPs usually cover a long-term period of service provision (for example 25-40 years or life of the asset). Any agreement covering such an extended period into the future is subject to uncertainty. If the requirements of the public sponsor or the conditions facing the private sector change during the lifetime of the PPP, the contract may need to be renegotiated to reflect these changes. This entails large costs to the public sector and the benefit of competitive tendering is usually not available under such circumstances.

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

Enforcement and monitoring

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

1.6. Challenges and Pitfalls in PPP Procurement

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

Institutional/ Legislative Framework

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

Clear project objectives

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

PPP model selected for the project

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

Internal capacity

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

Value for Money

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

Planning the PPP

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

1.7. Myths and Facts about PPP Procurement

Some of the myths and facts about the implementation of projects through the PPP route are described below:

Higher cost of private financing

It can be argued that private sector financing under some PPP models will result in a higher financing cost for the project, since the borrowing rate for the private sector is generally higher than the borrowing rate for a government. The financing cost for the private sector might be higher because lending to the private sector could inherently be riskier than lending to the government. Private borrowing rates also include profit margins that private financiers must make.

Mitigation measures: The cost of private financing for the project can be controlled by managing the risks of the project. Appropriate risk mitigation measures should be put in place to ensure private financiers of the viability and bankability of the PPP deal. Private financiers could then provide lower borrowing rates to a PPP project sponsor.

With appropriate risk management measures in a win-win PPP deal, the higher private financing costs could be offset by the efficiency gains that private financing can provide, such as better capital investment decisions.

Inflexible long-term contracts

Projects generally involve long-term contracts, where the private sector is committed to providing services to the government or the public. The government is also committed to a payment stream over the entire contract period. If no variation provisions are included in the PPP contract, the contract will be too inflexible to handle unforeseen circumstances, such as changes in demand from the public or changes in technology.

Mitigation measures: To avoid this pitfall, particularly in long-term projects, it is important to build a flexible PPP contract to allow for variations in specifications and requirements, with appropriate changes in payment terms to the private sector. The variation provisions should be fair to both the public and private sector. In addition, termination clauses should also be included to allow both parties to terminate the contract under exceptional circumstances, with fair compensation (to either party), where necessary.

Costly and lengthy procurement process

Generally, PPPs may involve a longer procurement period as compared to traditional procurement. PPP bidders also incur higher bidding costs due to the increased complexity. Hence, only large PPP projects can generate sufficient efficiency improvements to offset the higher bidding costs from PPP procurement.

Mitigation measures: PPP should generally be used for projects which involve the development of assets with a capital value above a certain threshold. Public agencies and potential private bidders should also ensure that their project teams have sufficient competencies to understand the implications of the clauses in a PPP contract and to structure and manage PPP deals effectively.

Service discontinuity if private provider fails

If the private sector were to run into financial difficulties during the contract length, the government might not be able to take over the project functions immediately, which will ultimately affect service continuity. The risk of the private provider failing exists if the service is outsourced, regardless of whether a PPP model is used or not.

Mitigation measures: To mitigate the impact of private sector failure on service continuity, the contract should include provisions for the government to step in, to manage the private sector's staff and equipment and to continue delivering the service. There could also be provisions for private financiers to identify other potential providers who can take over the operations, subject to the government's approval, if the original provider fails.

To conclude, when implementing a project through the PPP route, it is important to identify the potential pitfalls and challenges associated with the PPP structure and then structure the deal such that both the public and private sectors benefit, creating a solution where everyone benefits . There should be a regular dialogue between the public agency and potential private providers on the best structure of the PPP deal, to ensure delivery of the greatest value to the government while offering sufficient business opportunities for the private sector.

2. LEGAL AND INSTITUTIONAL FRAMEWORK FOR PPPS IN ANAMBRA STATE

Anambra State has established a comprehensive legal and institutional framework to facilitate the successful implementation of Public-Private Partnerships (PPPs). This framework ensures transparency, efficiency, and accountability in the preparation, procurement, and management of PPP projects. It is grounded in statutory provisions, supported by institutional arrangements, and aligned with international best practices.

2.1. Legal Framework

The legal framework for PPPs in Anambra State is primarily anchored within supporting legislations, which outlines the rules and procedures for engaging private sector participation in public infrastructure and service delivery. Key legal instruments include:

1. **Anambra State Executive Order 9 of 2023**:
    - Provides ANSIPPA the legal authority for the development and implementation of PPPs.
    - Determine the framework of engagements of consultants and responsibilities of stakeholders.
    - Stipulates the processes for project approval, procurement, and contract management.
2. **Anambra State Public Procurement Law**:
    - Ensures competitive and transparent procurement processes.
    - Mandates compliance with procurement guidelines for all PPP projects.
3. **Supporting Regulations**:
    - Issued by the State Executive Council to provide operational clarity.
    - Includes guidelines on risk-sharing, financial management, and stakeholder engagement.
4. **Environmental and Social Impact Assessment (ESIA) Requirements**:
    - Mandates compliance with environmental and social safeguards.
    - Aligns with federal and international environmental standards.

2.2. Institutional Framework

The institutional framework for PPPs in Anambra State assigns clear roles and responsibilities to various entities to ensure effective governance and implementation. The key institutions involved are:

1. **Anambra State Investment Promotion and Protection Agency (ANSIPPA)**:
    - Serves as the central coordinating agency for PPPs.
    - Provides technical support to Ministries, Departments, and Agencies (MDAs).
    - Oversees the development and execution of PPP projects.
2. **Ministries, Departments, and Agencies (MDAs)**:
    - Identify and propose potential PPP projects.
    - Conduct feasibility studies and preliminary project assessments.
    - Ensure compliance with sector-specific regulations.
3. **State Executive Council (SEC)**:
    - Grants final approval for major PPP projects.

- Issues policy directives to ensure alignment with the State's development objectives.

4. **PPP Steering Committee**:
   - Provides strategic oversight and policy guidance.
   - Monitors the performance of PPP projects to ensure value for money.
5. **Project Delivery Teams (PDTs)**:
   - Established at the project level to manage day-to-day operations.
   - Include representatives from ANSIPPA, MDAs, and private sector partners.

2.3. Governance Structure

The governance structure for PPPs in Anambra State ensures accountability and alignment with strategic objectives. The process is organized across three phases:

1. **Project Development Phase**:
   - MDAs identify infrastructure gaps and potential PPP solutions.
   - ANSIPPA conducts pre-feasibility and feasibility studies.
2. **Procurement Phase**:
   - Competitive bidding processes are managed in line with procurement laws.
   - The SEC provides final approval after thorough evaluation.
3. **Implementation and Monitoring Phase**:
   - Independent engineers and consultants monitor project execution.
   - ANSIPPA oversees compliance with contractual obligations.

2.4. Key Features of the Legal and Institutional Framework

Feature	Description
Risk Allocation	Risks are allocated to the party best positioned to manage them effectively.
Transparency Mechanisms	Open bidding processes and disclosure requirements ensure stakeholder confidence.
Capacity Building	Regular training programs enhance the capabilities of public officials and private partners.
Dispute Resolution	Established mechanisms, such as arbitration, address disputes efficiently.
Monitoring and Evaluation	Continuous monitoring ensures compliance with project objectives and performance standards.

International Alignment

The framework aligns with global standards, including the World Bank's PPP Framework and the United Nations Sustainable Development Goals (SDGs). These alignments ensure that Anambra State remains competitive in attracting private sector investments while safeguarding public interests.

Challenges and Opportunities

Challenges:

- Limited institutional capacity for managing complex PPP projects.
- Resistance to change within traditional bureaucratic systems.

Opportunities:

- Potential for increased private sector investments in critical infrastructure.

- Enhanced economic growth and service delivery through well-structured PPPs.

In conclusion, the legal and institutional framework for PPPs in Anambra State provides a solid foundation for leveraging private sector expertise and resources. Continuous improvements in governance, capacity building, and stakeholder engagement will ensure the sustainable success of PPP initiatives.

3. TRANSPARENCY AND DISCLOSURE FRAMEWORK FOR PPPS IN ANAMBRA STATE

Several Nigerian laws significantly influence PPP disclosure, both directly and indirectly. The **Freedom of Information (FOI) Act of 2011** grants individuals the right to request and access information held by public officials or institutions. The Act defines public institutions broadly, encompassing executive, legislative, and judicial authorities, ministries, and extra-ministerial departments, as well as corporations established by law and companies where the government holds a controlling interest. It also includes private entities utilizing public funds, delivering public services, or performing public functions. This expansive definition extends the obligation for proactive and on-demand disclosure, typically required of public bodies, to private partners engaged in PPP contracts with public institutions. The Act mandates public entities to proactively disclose materials containing information related to any grants or contracts entered into with another public institution or private organization, thereby explicitly including PPPs within its scope.

Similarly, the **Fiscal Responsibility Act** obligates the Anambra State Government to conduct its fiscal and financial operations transparently. It mandates the full and timely disclosure of all transactions and decisions involving public revenues and expenditures, emphasizing their implications for government finances. This reinforces the State's commitment to accountability and openness in managing public funds.

The success of Public-Private Partnerships (PPPs) in Anambra State hinges on transparency and accountability, which are fundamental for building trust among stakeholders and ensuring effective project outcomes. The **Transparency and Disclosure Framework** is designed to operationalize these principles by mandating systematic information disclosure at all stages of the PPP lifecycle. This comprehensive framework encompasses the legal and policy guidelines for PPP disclosure and evaluates its practical application while addressing associated challenges.

3.1. Legal and Policy Foundations for PPP Disclosure

The legal and policy framework governing PPP disclosure in Anambra State is anchored in the following statutes and guidelines:

1. **State Procurement Law**:
    - Ensures that procurement processes for PPPs are conducted openly and competitively.
    - Requires the publication of bid documents, evaluation criteria, and award decisions.
2. **PPP Disclosure Framework**:
    - Defines the scope, timing, and modalities for information disclosure.
    - Aligns with international benchmarks such as the World Bank's Framework for Disclosure in PPPs.
3. **Environmental and Social Impact Assessment (ESIA) Regulations**:
    - Mandates the disclosure of environmental and social risks and mitigation measures.

- Supports community engagement through public consultations.

4. **State Executive Council Directives**:
   - Provides additional policy guidance to ensure alignment with the State's development objectives.

A summary of the relevant clauses of existing laws and their potential implications for PPP disclosure is provided in table below:

Text Description	**Implications for PPP Disclosure**
Freedom of Information Act 2011	
MDA Public institutions to proactively publish information.	Places proactive disclosure obligations on all public institutions
Public institutions to proactively publish "materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization	This can be extended to all project documents related to PPP projects.
Public institutions are defined as "all authorities whether executive, legislative or judicial agencies, ministries, and extra ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions".	This definition clearly incorporates PPP SPVs and project proponents, as well as ICRC, NSIA, and line ministries and agencies, all of which hold project-related information on various PPPs.
Public interest override.	Access to be granted where public interest in disclosing information outweighs whatever injury that disclosure would cause, which is likely to apply to PPP information requests.
Exemptions to disclosure of trade secrets, commercial information, or financial information obtained from a person or business that is proprietary, privileged, or confidential.	This clause could be used to exempt portions of bid documents, evaluation reports, and contracts from disclosure.
Unqualified exemption to any part of a record that contains the result or product of environmental testing carried out by or on behalf of a public institution, and to information that contains course or research materials prepared by faculty.	In cases where PPP projects involve environmental testing and/or other research, this blanket exemption could be invoked.
Reporting obligations of public institutions	PPPs must also fulfill these obligations.
Anambra State Fiscal Responsibility Act, 2007	
Provides for full and timely disclosure and wide publication of all transactions and decisions	Obligation extends to MDAs, and ANSIPPA, as these are public institutions, and covers PPPs,

involving public revenues and expenditures, and the implications for government finances	as these have implications for government finances and involve public revenues directly or indirectly in most instances
Anambra State Public Procurement Law, 2011	
Obliges the procurement regulatory body to publish details of all major contracts in the procurement journal.	This would extend to PPPs, especially given that the PPA mentions or covers several types of PPP projects. In addition, since ICRC has not issued separate guidelines or processes, by default PPA would apply, as it does in similar situations in other countries. Currently, this is being used for hiring transaction advisors for PPP projects by MDAs.
Requires public institutions to use standard bidding documents issued by the Bureau of Public Procurement, which includes conditions for qualification; technical specifications of goods, works, and services to be procured; and criteria for selection of winning bids and bidders.	This would extend to PPPs, especially given that PPA mentions or covers several types of PPP projects. In addition, since ICRC has not issued separate guidelines or processes, by default PPA would apply, as it does in similar situations in other countries. Currently, this is being used for hiring transaction advisors for PPP projects by MDAs.
Requires unclassified public procurement records to be disclosed on request, and records of procurement processes to be disclosed after a winner is selected or if the process is terminated without a winner.	This would extend to PPPs, especially given that PPA mentions or covers several types of PPP projects. In addition, since ICRC has not issued separate guidelines or processes, by default PPA would apply, as it does in similar situations in other countries. Currently, this is being used for hiring transaction advisors for PPP projects by MDAs.

3.2. Key Provisions of the Disclosure Framework

1. **Scope of Disclosure**:
    - Covers all stages of the PPP lifecycle, including project identification, procurement, implementation, and post-project evaluation.
    - Requires the publication of feasibility studies, contracts, financial models, and performance reports.
2. **Timing of Disclosure**:
    - Pre-award Phase: Feasibility studies, Environmental Impact Assessments (EIAs), and bid documents.
    - Award Phase: Contract details, risk allocation, and financial obligations.
    - Post-award Phase: Project performance reports, operational milestones, and audit results.
3. **Institutional Responsibilities**:
    - **ANSIPPA**: Maintains a central PPP disclosure portal and ensures compliance with disclosure requirements.

- **MDAs**: Provide accurate and timely project data.
- **State Auditor-General**: Conducts periodic audits to verify the accuracy of disclosed information.

4. **Compliance and Enforcement**:
   - Non-compliance with disclosure requirements results in penalties, including project delays or cancellations.
   - A grievance redress mechanism allows stakeholders to report and address disclosure-related issues.

3.3. Practical Implementation of PPP Disclosure

Anambra State has implemented several initiatives to operationalize the PPP Disclosure Framework:

1. **Centralized PPP Portal**:
   - Serves as the primary platform for publishing project information.
   - Features user-friendly interfaces for accessing feasibility studies, contracts, and performance data.
2. **Stakeholder Engagement**:
   - Regular public consultations and workshops to inform and involve citizens in the PPP process.
   - Collaboration with civil society organizations to monitor and evaluate disclosure practices.
3. **Capacity Building**:
   - Training programs for public officials on data management and reporting.
   - Partnerships with international organizations to adopt best practices in PPP disclosure.

3.3.1. Challenges in PPP Disclosure

Despite significant progress, several challenges persist in the implementation of the PPP Disclosure Framework:

1. **Data Quality and Timeliness**:
   - Inconsistent and outdated information undermines stakeholder confidence.
   - Limited capacity within MDAs to generate and validate data.
2. **Technological Barriers**:
   - Inadequate digital infrastructure affects the accessibility and usability of the PPP portal.
3. **Institutional Resistance**:
   - Cultural and bureaucratic resistance to full transparency.
4. **Limited Public Awareness**:
   - Insufficient awareness among citizens about their right to access PPP information.

3.3.2. Proposed Solutions to Enhance PPP Disclosure

1. **Strengthening Institutional Capacity**:
    - Recruit and train dedicated personnel to manage the PPP disclosure process.
    - Allocate resources for technological upgrades to the PPP portal.
2. **Enhancing Stakeholder Engagement**:
    - Increase public awareness through media campaigns and community outreach programs.
    - Foster partnerships with civil society organizations for independent monitoring.
3. **Adopting Advanced Technology**:
    - Leverage blockchain technology for secure and transparent record-keeping.
    - Develop mobile applications for real-time access to PPP data.
4. **Regular Audits and Reviews**:
    - Conduct periodic reviews to assess the effectiveness of the disclosure framework.
    - Publish audit findings to maintain accountability.

3.4. Comparative Insights and Best Practices

Anambra State's PPP disclosure practices align with global standards, such as the World Bank's Framework for Disclosure in PPPs, which emphasizes:

- Proactive disclosure of information.
- Stakeholder consultations at every project stage.
- Integration of disclosure requirements into legal and contractual frameworks.

By adopting these best practices, Anambra State aims to enhance its reputation as a transparent and investor-friendly destination.

4. ANAMBRA STATE PPP PROJECT LIFECYCLE AND BIDDING PROCESS

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

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

4.1. Stages of a typical PPP Project (PPP Lifecycle)

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

Phase I: Project Development – This phase consists of the following steps:

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

Phase II: Project Procurement – This stage consists of the following:

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

Phase III: Project Implementation – This stage involves the following:

- Monitoring of the design and construction, and subsequently operation and maintenance of project assets to ensure compliance with the required service standards,
- Monitoring the performance of the Concessionaire against the requirements of the Concession Agreement.

Phase IV: Project Maturity - This stage involves the following:

- Inspection of the project assets and preparation for the handover of project assets,
- Analysis of future service delivery options and further procurement options if required
- Closing out the contract.

4.1.1. Phase I: Project Development

4.1.1.1. 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 ANSIPPA. 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.

4.1.1.2. 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.

4.1.1.3. 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 decide on whether to proceed with the project, and if so under what strategy. It is prepared and submitted to ANSIPPA 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.

4.1.2. Phase 2: Project Procurement

4.1.2.1. 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 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).

4.1.2.2. 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 ANSIPPA, 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. Anambra State PPP Policy requires the approval of the Bid Documents before they are issued. 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.

4.1.2.3. 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 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 ANSIPPA 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.

4.1.2.4. 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 diligence on the project to assess the risks involved in financing the project. Any subcontracts between the consortium and separate joint venture companies providing design, construction, or maintenance services are also 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.

4.1.3. Phase 3: Project Implementation

4.1.3.1. Step 8: Project Operation

The oversight of the project will shift from the Project Team to an MDA Project Board and/or Management Board at this stage. The commencement of construction begins, and the MDA should appoint Independent Engineers jointly with the developer, to review and audit the construction activities. The Independent Engineers ensure that the construction is in conformance with contractual commitments and notify the MDA of any deviations. After the project is constructed and begins operating, the MDA Project Board, supported by the Anambra State ANSIPPA PPP Office, 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.

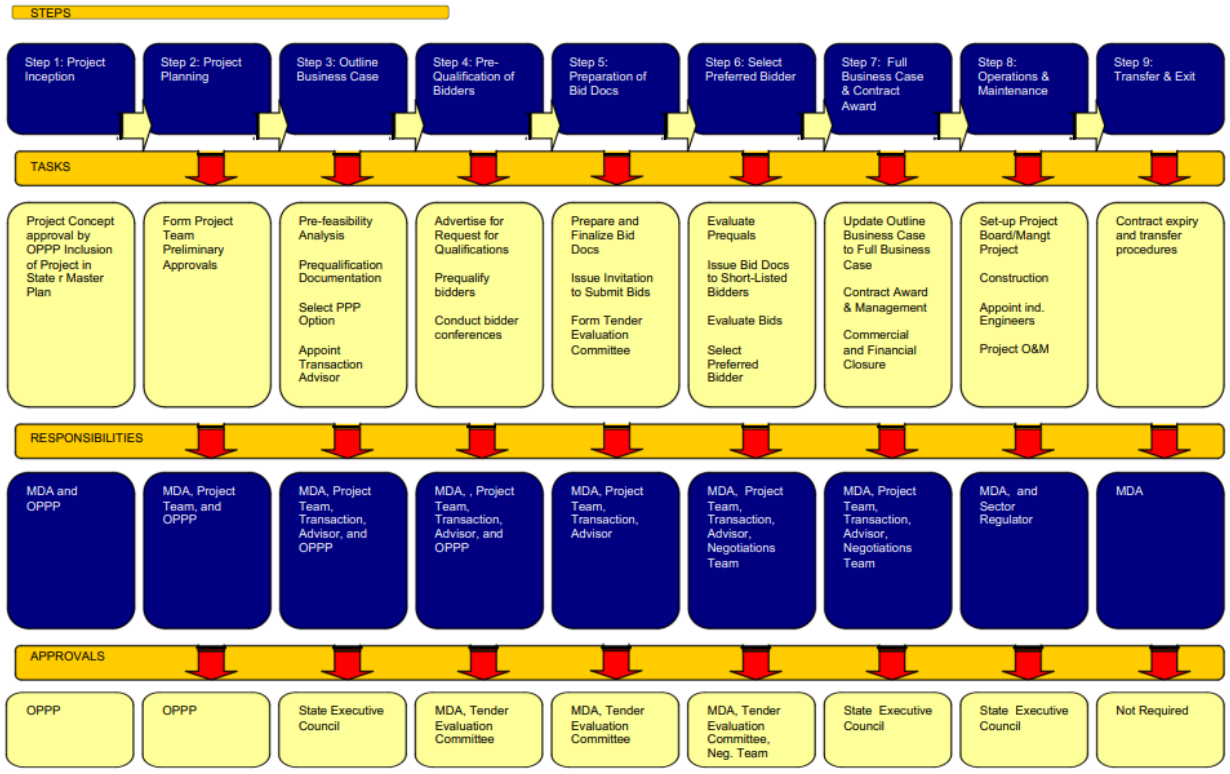
Depending on the sector, any regulator of tariffs will also be heavily involved in the operations of the project to make sure the PPP Company is receiving fair revenues for the services provided. The Project Implementation stage is predominantly the responsibility of the MDA, with some oversight from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

4.1.4. Phase 4: Project Maturity

4.1.4.1. 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 retendering 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



5. The ENABLING ENVIRONMENT FOR PPPS

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

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

5.1. Major PPP Responsibilities of Government

5.1.1. 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 Anambra State, the development and implementation of PPPs are governed by the **Anambra** State Executive Order 9, which provides the legal authority for undertaking PPP projects. This law make provision for the development of public infrastructure or public assets in the State are in accordance with prevailing government policy and public interests, the process for awarding PPP contracts, and the governance structures to ensure effective project implementation. Additionally, the order empowers ANSIPPA (Anambra State Investment Promotion and Protection Agency) to initiate procurement of public private partnerships for the provision and development of public infrastructure or public assets by conducting pre-qualification process for Private Investors willing to enter PPP based on request or expression of interests with the requisite approval from the State Executive Council.

Also, the order empowers ANSIPPA to act on behalf of the Government or any of its agencies in Public Private Partnerships under the Anambra State Investment Promotion and Protection Agency (ANSIPPA) Law, 2015 and develop optimal means of financing the cost of public investment projects in order to achieve value for money.

Further guidance is provided through supporting frameworks, such as the Fiscal Commitment and Contingent Liabilities (FCCL) Framework and the PPP Disclosure Framework, which collectively ensure transparency, fiscal responsibility, and alignment with the State's development objectives. These frameworks clarify roles, responsibilities, and accountability mechanisms for all participating parties.

Legal Basis of Development

The **Anambra State PPP Manual** derives its legal authority from the **Anambra State Executive Order 9** enacted under Section 2(c), 2(d) & 3(f) of the Order. This section mandates the development of a

comprehensive manual to guide the preparation, procurement, and implementation of PPP projects within the State. The manual ensures alignment with international best practices while addressing local needs and priorities. Furthermore, the manual's provisions are consistent with other statutory frameworks, including the State Procurement Law and regulations issued by the State Executive Council.

5.1.2. Sector Planning

PPPs a re 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.

5.1.3. 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
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.

5.1.4. 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.

5.1.5. PPP Procurement

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

5.1.6. 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 involve long-term contracts, and unforeseen changes can happen to the

projects enabling environment (e.g., macroeconomic fluctuations, currency depreciations, natural disasters, etc.). If no variation provisions are included in the PPP contract, the contract may be too inflexible to manage these unforeseen circumstances. To avoid this pitfall, particularly in long-term projects, it is important to build-in flexibility into the PPP contract to specify the conditions in which modifications are allowed, and what the adjustment process will be. These variation provisions should be balanced and equally benefit both the public and private sector. In addition, termination clauses should also be included to allow both parties to cancel the contract under exceptional circumstances, with fair compensation (to either party), where necessary.

5.2. The State Legislative Framework

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

- The State Public Procurement; and
- Regulations issued by the State Executive Council (the "SEC", or "Exco") governing the PPP process.

These laws and regulations set out the requirements for competition and private sector participation in all public procurement and specify the necessary approvals required for

QQQ 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 Anambra State.

5.3. The Anambra State PPP Institutional Framework

The legislative framework governing PPPs in Anambra State allocates specific roles and responsibilities to various entities within the State. These specific ANSG 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. To make sure that there are checks and balances in the system, as well as oversight of the decision-making process, many ANSG entities participate in the PPP process from beginning to end

5.3.1. Ministries, Departments and Agencies (MDA)

Ministries, Departments and Agencies (MDAs) are responsible for managing public infrastructure and services and for the management of their own resources. The MDAs prepare long-term plans for infrastructure investment and maintenance. These plans are incorporated into the Anambra vision 2070. As part of this process, the MDAs, in consultation with ANSIPPA 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 Anambra State Ministry of Budget and Economic Planning in consultation with ANSIPPA for the criteria to be adopted for measurement of the Value-for-Money and assessment of the risks associated.

6. OUTLINE BUSINESS CASE

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

The Outline Business Case:

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

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

- Consider how the project will be structured;
- Contain a financial model establishing key investment ratios and capable of running scenario and sensitivity analyses;
- Identify constraints which may cause the project to be halted; and

- Ensure that the project is developed around a proper business plan and has been subject to a due diligence that shows it is legally, technically, and socially compliant.

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

6.2. 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 carries out the project and includes the public sector pricing and taking responsibility for all the project risks identified in the Risk Matrix. A shadow private sector PPP model is then also constructed with the risks priced and shared as set out in the Risk Matrix. The discounted NPV of the cash flows of the two models are then compared.
- Economic cost benefit analysis
- Project Implementation Plan
- Compilation of the Outline Business Case Report.

6.2.1. 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.

6.2.2. 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.

6.2.3. 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.

6.2.3.1. 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 some 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.

6.2.3.2. 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, 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).

6.2.3.3. Climate Mitigation and Adaptation Assessment

To align with the Presidential requirements and global sustainability standards, the **Anambra State PPP Manual** incorporates a climate mitigation and adaptation screening assessment. This assessment ensures that all PPP projects undergo rigorous evaluation for their potential environmental impacts and contributions to climate resilience. Key components include:

- **Mitigation Measures**: Identification of strategies to minimize greenhouse gas emissions, such as incorporating energy-efficient technologies and promoting renewable energy use.
- **Adaptation Strategies**: Evaluation of project designs to ensure resilience against climate-related risks, such as flooding, extreme weather events, and rising temperatures.
- **Compliance Requirements**: Adherence to environmental impact assessment (EIA) regulations and global sustainability benchmarks, such as the United Nations Sustainable Development Goals (SDGs).
- **Monitoring and Reporting**: Establishment of a robust monitoring framework to track the environmental performance of PPP projects over their lifecycle.

By integrating climate considerations into the project development process, Anambra State aims to foster sustainable infrastructure development that supports economic growth while safeguarding the environment.

6.2.3.4. 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.

6.2.4. Financial Due Diligence

6.2.4.1. 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 to ensure that it is available to the required performance standard throughout its intended lifetime.

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

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

6.2.4.2. 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, that is, equity and debt, with the equity split between real equity and long-term loans and with the debt split between loans and bond financing and between currencies if more than one currency involved. In addition, all financing fees should be included as well as all financial reserve requirements and financial ratios. The equity return used as an input should be the result of a review of other competing investment returns available in the international and local markets, including local government bonds.
- Project revenues include the revenues which have been identified from all the sources, and income from grants which may accrue to a specific project.
- Assumptions for projecting the cash flows in the future, for instance, long-term inflation rates, long-term interest rates, tax rates, etc.

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

6.2.4.3. 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.

6.2.4.4. 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.

6.2.5. 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 the health costs of increased air pollution (negative externality).

Some elements of the Economic Cost Benefit Analysis include:

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

6.2.6. Project Implementation Plan

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

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				
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				
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				
8	Post-construction activities				
9	Expected date for commencement of operations				
10	Major milestones in the operating lifecycle of the project				

6.2.7. 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.

7. PROCUREMENT PROCEDURES

7.1. 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.

Budget

7.2. 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.

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

Table 3: Indicative steps and timelines – Two stage bidding

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

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

The best firms that exceed the RFQ threshold criteria are then shortlisted and are offered the opportunity at a late date to submit detailed proposals in response to a Request for Proposal (RFP) document. Full proposals are then evaluated as per the conditions of the RFP. To manage each step correctly and allow the

interested firms sufficient time to evaluate the project and prepare their bids, this whole process can take several months, or even up to a year to complete.

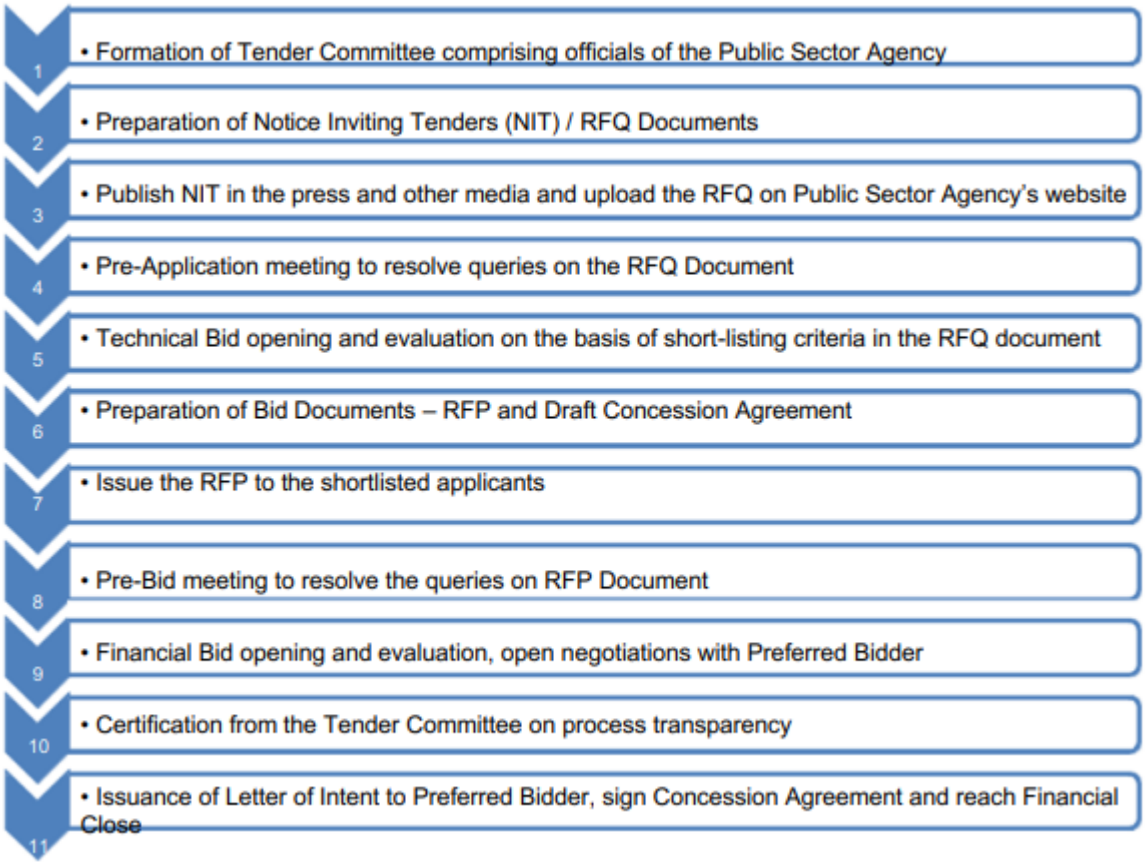


Figure 8: Steps of a Two Stage Bidding Process

7.2.1. *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 several MDAs with responsibility for the financial, legal, and operational aspects of the project as well as the Anambra State Board of Public Procurement to have diversity and no one government group alone in charge of selecting the preferred bidder. The Committee appoints an in-house Co-ordinator or an external consultant (Transaction Advisor) to manage the day-today aspects of the bidding process. However, the Procurement Committee itself (and not the Co-ordinator or Transaction Advisor) is responsible for making the final determination of the preferred bidder.

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

7.2.2. 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 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.

7.2.3. 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.

7.2.4. 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 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.

7.2.5. Step 5: Request for Proposal Stage

The RFQ stage culminates in the approval of the shortlisted bidders by the Procurement Committee and issuance of the RFP to the shortlisted bidders. Depending on the type of contract and the local requirements, the bid package can range from a concise set of documents to several volumes of material. Even if the full

RFP package is ready to issue at the time of shortlisting and the project is relatively straightforward, there will usually still be a significant time period (e.g. minimum 90 days) for shortlisted firms to review the RFP, further evaluate the project opportunity, and prepare their full bid.

7.2.6. 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.

7.2.7. 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.

7.2.8. 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.

7.3. 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.

7.3.1. 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 two parts as described below:

7.3.1.1. 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.

7.3.1.2. Part III: Draft MOU

The Draft 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:

7.3.2. Selection Method

There are several methods for determining the winner bidder. Some of the more common are:
Qualifying Criteria
The qualifying criteria used to evaluate the responses to the RFQ should be:

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

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

Qualifying criteria may include:

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

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

- Evidence of no conflict of interest

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

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

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

7.3.2.1. Request for Proposal (RFP)

The RFP, together with the Draft Concession Agreement (CA), comprise the Bid Documents. These are the most important documents in the bidding process. The objective at the RFP stage is to select a preferred bidder based on an objective, comprehensive and transparent selection process. The RFP and CA specify the main terms of the project which are largely non - negotiable at the award stage. It is therefore important that these terms are clear and well understood by all parties. The Concession Agreement also lays the foundation for the contract management process throughout the life of the PPP.
A quality RFP provides bidders with clarity on the requirements of the project and assures them that the public partner is credible and well organised. This makes them more likely to devote resources to bid. It also reduces the likelihood of delays to the bidding process because of subsequent changes to the RFP.

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

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

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

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

Detailed description of the project scope and required service outputs based on the specifications developed in the feasibility study including:

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

Draft Concession Agreement specifying the commercial framework in legal terms including,
The intended risk allocation
Roles, rights, and responsibilities of all parties

Key schedules to the Agreement, including

✓ Site description
✓ Specifications and standards
✓ Required tests and inspections, and procedures for testing, independent inspections, and reporting
✓ Schedule of user fees/ tariff rates
✓ Financial arrangements, such as performance security and escrow account

7.3.2.2. 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; and
- 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: □ Price only (lowest price to the public procurer) □ Price and economic benefits (value of features of the tender linked to subject matter of the contract)
South Africa	PPP Manual (published by PPP Unit of South Africa); Preferential Procurement Policy Framework Act 2000	Weighted average of the following factors: □ Price (weight between 20% and 40%) □ Technical Evaluation Score (weight between 50% and 70%) □ Black Economic Empowerment Score (weight between 10% and 20%)
South Korea	Basic Plan for Private Participation in Infrastructure 2007	Weighted average of the following factors: □ Engineering Factor- focusing on the content, plans and drawings (weight of 50%) □ Price Factor- Net Present Value of all payments to be made by the public entity (weight of 50%)
Australia	Practitioners' Guide- National PPP Guidelines	Combination of the following: □ Highest savings as compared to Public Sector Comparator (Bidder ranked accordingly) □ Qualitative assessment of individual bids

7.4. Negotiations

Before the signing of a contract with the Preferred Bidder, there are typically certain negotiations between the MDA and the Preferred Bidder to reach consensus on the detailed terms of the contract, the allocation

of risks among the parties and the deliverables of the parties under the contract. In addition, there is usually a set of Conditions Precedent that must be met for the Contract Agreement to become effective, and often these Conditions Precedent must also be negotiated. This negotiations process must be carefully planned and managed to ensure that it is fair and transparent while at the same time carried out in such a manner that the confidentiality of the negotiations is strictly maintained.

7.4.1. Preliminary Activity

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

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

7.4.2. 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 to create an atmosphere of trust and cooperation.
- **Setting Parameters:** Predetermination and joint agreement on the agenda for negotiations meetings.
- **Documenting:** Carefully document all discussions and interactions during the meetings. The MDA must appoint an assigned drafter to track, number and date all documents being negotiated. The MDA also ensures security of documentation and limits access to documentation as required.

- **Finding Solutions:** Working towards identifying and suggesting options to resolve Formal Record: The Negotiations Team must produce minutes of the meetings and obtain the written agreement from the Preferred Bidder that the same are a true and accurate record of the negotiations held.

7.4.3. Formal Settlement

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

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

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

The recommendations of the Negotiations Team may be to:

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

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

7.5. 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).

8. FINANCING PUBLIC-PRIVATE PARTNERSHIPS

8.1. 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 consequently the government will not be able to move forward with the project under a PPP model.

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

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

- Enabling environment: To reach an investment decision, the lenders/investors would also consider the likely changes in the regulatory and political conditions over the duration of their investment. Consistency in approach to regulation can reduce regulatory risk. They will also consider whether there are any legal constraints existing to prevent the successful implementation and operation of a PPP project.
- Government support: If the lenders/investors are not confident about the robustness of the project cash flows, they may require financial support from the government in the form of a capital grant, guarantee, VGF/availability payment arrangement or equity contribution to provide them with additional comfort for investing in the project.
- Robustness of the cash flows: The lenders/investors would primarily value the likelihood of project cash flows to service debt by looking at coverage ratios, monetary reserves and margins. The lenders/ investors may securitize these project cash flows so that they can allocate risks / returns of debt most efficiently.
- Third-party support: International development institutions may also provide financing for the project, through loans and equity, project guarantees, country risk guarantee, partial or full risk guarantees, etc. Currency support, in the case of swaps or other forms

of financial derivatives, may also be used to reduce macro-level economic risks.

8.1.1. *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.

8.1.2. 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.

8.1.3. Project Finance

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

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

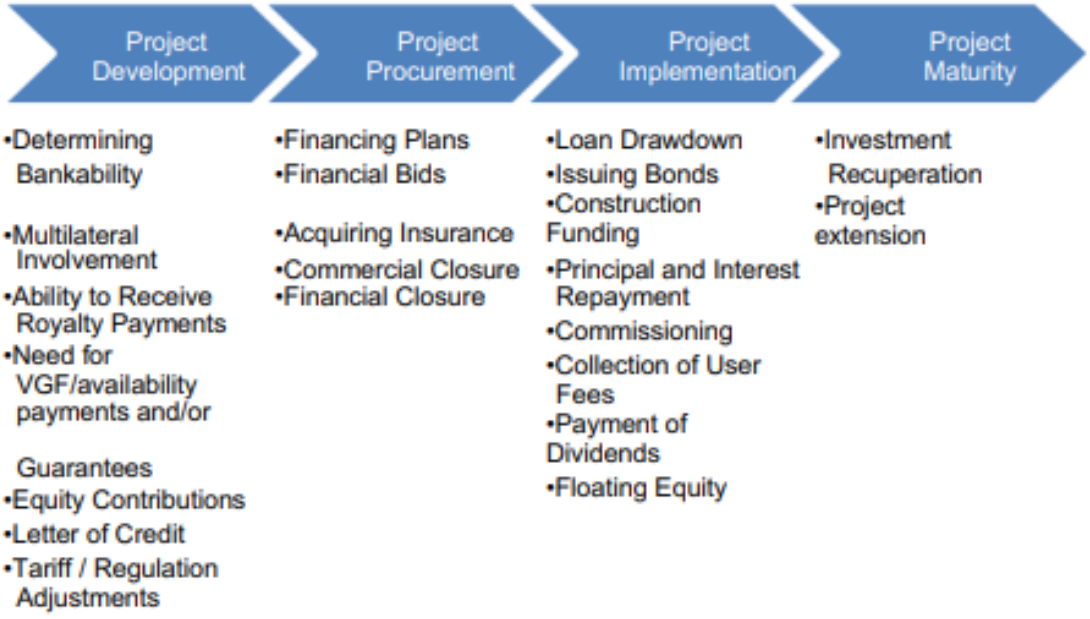
After the PPP Company receives some seed capital from its sponsors, the PPP Company will approach the market for additional financing. Investors and lenders are asked to only consider the bankability / financial opportunity of the project for which the PPP Company was created. As a result, all the interest,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

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

8.2. 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



8.2.1. Project Development

During the preparation of the project, a priority of government will be to evaluate key financial thresholds for the project. The first and most important task is to determine project bankability. If preliminary reviews show that the project may not be bankable under a PPP model, the government may want to have a third party, such as a multilateral agency, become involved to improve credit worthiness. Often a project's bankability can be increased by making improvements to the enabling environment, such as making tariff/regulatory

reforms. There may also need to be modelling around royalty/VGF or availability payments to/from government. At the same time, potential private sponsors will need to make sure they have sufficient access to equity capital and bank loans/bond finance.

8.2.2. Project Procurement

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

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

8.2.3. 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.

8.2.4. Project Maturity

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

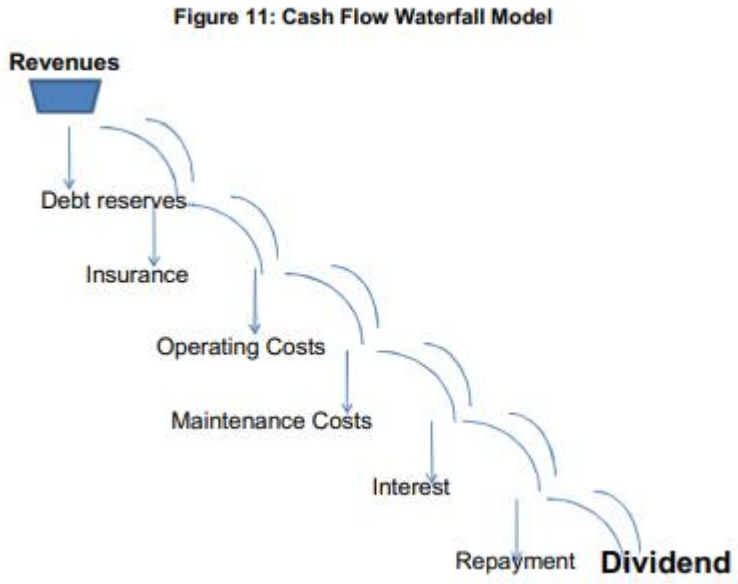
initiated other forms of financial arrangements, such as issuing bonds or listing projects on exchanges, and project equity can be more easily sold to investors who may have had less appetite for the early-stage project completion risks. In the final stages of the operating phase, or the maturity phase, the asset is managed and continuously maintained to ensure that the assets meet minimum quality standards, which are checked by an assets survey approximately 12 to 18 months prior to the maturity of the concession. Any deficiencies revealed by the survey must be rectified within a given period by and at the cost of the SPV.

8.3. Sources of Finance

- PPP projects are financed using some or all the following sources of funding:
- Equity: ownership of the project company and the associated risks and rewards;
- Senior debt/bond financing: first priority for payment and first rights over project cash flows; and
- 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.

8.3.1. 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, issuance, or private placement.
- Equity can also be provided in the form of
- Mezzanine Debt or Quasi Equity. The advantage is that the interest payable can be offset against corporate tax, whereas dividends are payable from taxed earnings. In addition, interest can be earned from the start of the operating period, whereas dividends can only be paid in the later stages of the project, when net cash flow is sufficient.

8.3.2. 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 based on the expected project cash flows, with a moratorium or grace period, interest payment, and principal repayment schedule. Bank loans are generally fully secured and have recourse to project assets in the event of any default. Given that PPP projects are highly capital intensive in nature, they are often funded using a high proportion of debt (to reduce overall funding costs). To reduce individual exposure, banks often prefer to be part of a consortium or 'syndicate' of banks. One bank often acts as the "lead or arranging bank".

Bonds: Bonds represent the debt funding raised for a project from the capital markets. The benefit of a bond issuance is that many different investors can be brought together, many of which only take a small piece of the project loan. Investors in a bond issue can be broadly 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.

8.3.3. 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.

8.3.4. 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.

8.3.5. Project Insurance

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

Types of Insurance Coverage

8.3.5.1. 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

8.3.5.2. 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.

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

Some key success factors for PPP contract management include:

- Viewing the PPP arrangement as a "partnership" between government and the private parties.
- Having a project monitoring team with the requisite skill set to effectively monitor and manage the project and the PPP relationship.
- Having well-structured contracts that explicitly detail the allocation of risks and quality of service required, with a backup incentive or penalty system for service levels above or below
- standard, and procedures for communication and dispute resolution. Establishing an effective contract management framework.
- Disputes are resolved at the appropriate level through the partnership management system without recourse to external dispute resolution.
- Changes in service delivery requirements are anticipated, and variation procedures are used to minimise any negative consequences and maximise any opportunities brought about by change.

9.1. 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).

9.1.1. Project Participation Agreements

9.1.1.1. 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.

9.1.1.2. 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.

9.1.1.3. 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 Sha reholders 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.

9.1.1.4. 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 several commitments that are required from the shareholders with respect to the project development, such as:

- Provide PPP Company management and technical assistance;
- Secondment of shareholder employees for a limited basis;
- Materials and other assets to be provided; and
- Short-term loans, bridge financing, guarantees, and other short-term financial support.

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

9.1.1.5. 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.

9.1.1.6. 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.

9.1.1.7. 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.

9.1.2. Financial Agreements

9.1.2.1. 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.

9.1.2.2. 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.

9.1.2.3. 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.

9.1.2.4. 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 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.

9.2. 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.

9.2.1. Contract Management Team

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

9.2.1.1. 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

9.2.1.2. Accounting Officer

Key responsibilities of the Accounting Officer include:

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

9.2.1.3. 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

9.2.2. 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 manual is:

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

9.2.3. Dispute Resolution and Management

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

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

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

9.2.4. *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 catego ries 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 caseby-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.

9.2.5. Other Forms of PPP Contract Contingency Planning

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

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

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

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

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

9.2.6. 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.

10. CONCLUSION

The Anambra State Public-Private Partnership (PPP) Framework serves as a comprehensive guide to fostering strategic collaborations between the public and private sectors in the state. Through detailed coverage of the principles, processes, and mechanisms underpinning PPPs, this document provides a structured approach to identifying, implementing, and managing PPP projects effectively.

By emphasizing value-for-money (VfM), efficient risk allocation, and adherence to best practices, the framework underscores the government's commitment to sustainable development and improved service delivery. The document outlines a clear lifecycle for PPP projects, from concept development and procurement to implementation and eventual project maturity. This ensures transparency, accountability, and alignment with Anambra State's development objectives.

Furthermore, the framework's focus on creating an enabling environment—supported by a robust legislative and institutional structure—provides the foundation for successful PPP endeavors. This is complemented by detailed guidance on financing options, contract management, and dispute resolution mechanisms, which are vital for maintaining project integrity and stakeholder confidence throughout the partnership.

Ultimately, the Anambra State PPP Framework is more than a procedural document—it is a strategic tool for unlocking private sector expertise, innovation, and investment. By leveraging this framework, the state can accelerate infrastructural development, boost economic growth, and enhance the welfare of its citizens, setting a benchmark for excellence in public-private collaboration across Nigeria and beyond.