"Public Private Partnership policy" (PPP)

For
Kano State Government.

Prepared by:

Kano State Investment Promotion Agency

KanInvest.

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1. Forward by KanInvest.

Kano State Government recognizes the role of the private sector in bringing about socio-economic development through investments. Public-Private Partnership (PPP) frameworks provide an important instrument for attracting investments. Indeed, Public-Private Partnerships (PPPs) have been identified as viable means to effectively address financing, management and maintenance constraints of public goods and services. Additionally, PPPs can enable Kano State Government to fulfill its responsibilities in the efficient delivery of socio-economic goods and services by ensuring efficiency, effectiveness, accountability, quality and outreach of industrial development services.

The concept of PPP entails an arrangement between the public and private sector entities whereby the private entity renovates, constructs, operates, maintains, and/or manages a facility in whole or in part, in accordance with specified output specifications. The private entity assumes the associated risks for a significant period of time and in return, receives benefits and financial remuneration according to agreed terms. PPPs constitute a cooperative venture built on the synergy of expertise of each partner that best meets clearly defined public needs through the most appropriate allocation of resources, risks and rewards.

Most PPPs implemented in Nigeria are concession arrangements for running existing enterprises with limited provisions for rehabilitation and new investments. It is noteworthy that in the case of services, PPPs have been implemented successfully by Nigerian Government Organizations in the areas of education, health, water sectors and many others. However, in the case of other sectors, the performance has been mixed largely due to the complexity of such projects and lack of clear guidelines on the criteria for public and private sector partnership.

Private sector participation in areas previously treated as the monopoly of the public sector has made major contributions to increasing the pace of growth and development in many States. In contemplating to utilize this instrument, Kano State will encounter a number of challenges including but not limited to the followings:

i. Lack of comprehensive policy, legal and institutional frameworks that provide clear guidelines and procedures for development and implementation of PPPs.

ii. Lack of realistic and comprehensive technical, socio-economic and commercial feasibility analysis which leads to poor project design.

iii. Inadequate enabling environment which includes lack of long-term financing instruments and appropriate risk sharing mechanisms, and

iv. Insufficient capacity in negotiations, procurement, implementation and management of PPPs.

To achieve the universal SDG goal of poverty reduction by 2030, Kano State has chosen to initiate and implement measures for the realization of Green / Agricultural / Industrial development by several measures. This (PPP) will be the development vehicle for modernizing agriculture and thereby attaining economic transformation that is needed for a sustained poverty reduction. Transformation of agriculture will depend on heavy investment in the development of capacity for delivery of PPPs to contribute to the attainment of the Kano state development plan 2025.

In this regard, the Government must recognise that greater private sector participation through PPPs in providing efficient, reliable and affordable socio-economic services is fundamental for the Green Revolution, broad-based growth and sustainable poverty reduction. The creation and operation of an appropriate enabling environment to guide public & private sectors, donor community and other stakeholders in PPPs will go a long way in contributing to the achievement of our development goals.

Furthermore, the State PPP Policy will serve as an important intervention to accelerate economic empowerment by ensuring that Kano State citizens are adequately empowered in various PPP interventions. In this spirit, a cross-section of various stakeholders has been involved in the development of this policy, and we look forward to the necessary collaboration for its implementation so that the noble goal of economic growth and development, and sustainable poverty reduction in Kano State is achieved.

(Muhammad Nazir Halliru),
Director General,
KanInvest.

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2. List of abbreviations and Acronyms:-

BBO	Buy-Build-Operate.
BLT	Build-Lease-Transfer.
BOO	Build-Own-Operate.
BOOT	Build-Own-Operate-Transfer.
BOT	Build-Operate-Transfer.
CBOs	Community Based Organizations.
DB	Design-Build.
DBO	Design-Build-Operate.
DBFO/M	Design-Build- Finance-Operate/Maintain.
DBOM	Design-Build-Operate- Maintain.
DPs	Development Partners.
EIA	Environmental Impact Assessment.
FDI	Foreign Direct Investment.
GDP	Gross Domestic Product.
HBS	Household Budget Survey.
KIPL	Kano Independent Power Limited.
LGAs	Local Government Authorities.
MDAs	Ministries, Departments and Agencies.
M & E	Monitoring and Evaluation.
NGOs	Non-Governmental Organizations.
NSGRP	National Strategy for Growth and Reduction of Poverty.
ODA	Official Development Assistance.
PPA	Public Procurement Act.
PPP(s)	Public-Private Partnership(s).
SNR	Sub-National-Regions.
TISP	Transport Investment Sector Programme.
KSRL	Kano State Railways Limited.
USD	United States Dollar.
MDAs	Ministries, Departments & Agencies.

3. Introduction

3.1 What is Public-Private Partnership (PPP)?

Public-Private Partnership (PPP) is a form of procurement introduced in 2004 under the Best Sourcing framework. Best Sourcing encourages public agencies to engage private sector providers in delivering non-core government services if it is more efficient to do so. Public agencies can engage the private sector in many ways, such as contracting for manpower, service outsourcing or Business Process Outsourcing. Public-Private Partnership (PPP) is another form of Best Sourcing that can be used to work with the private sector to deliver services, particularly services that require the development of new physical assets.

PPP refers to long-term partnering relationships between the public and private sectors to deliver services. The Kano State Government has adopted this approach to increase private sector involvement in the delivery of public services.

Conventionally, public agencies have only engaged the private sector to construct facilities or supply equipment. Public agencies will then own and operate the facilities or equipment to deliver services. For example, a public agency might engage private companies to build a water treatment plant. Upon completion, the public agency will own and operate the water treatment plant to provide water to the public.

With PPP, the public sector will focus on acquiring services at the most cost-effective basis rather than directly owning and operating assets. For example, suppose PPP is used to develop a water treatment plant. In that case, the private sector will be engaged not only to construct the plant but also to design, operate, maintain and secure financing to build the plant to supply water to the public agency. Hence, instead of owning and operating the water treatment plant, the public agency purchases the water directly from the private sector. This means that the private sector has more room to introduce innovation into the delivery of public sector services.

Under PPP, the private sector can expect to provide a wider range of services over a longer contract period (usually between 15 and 30 years). Through closer collaboration with the private sector, public services can deliver more value for money by optimally combining the public and private sectors' expertise, resources, and innovation to meet public needs effectively and efficiently.

3.2 PPPs for the Operation of Existing Public Assets.

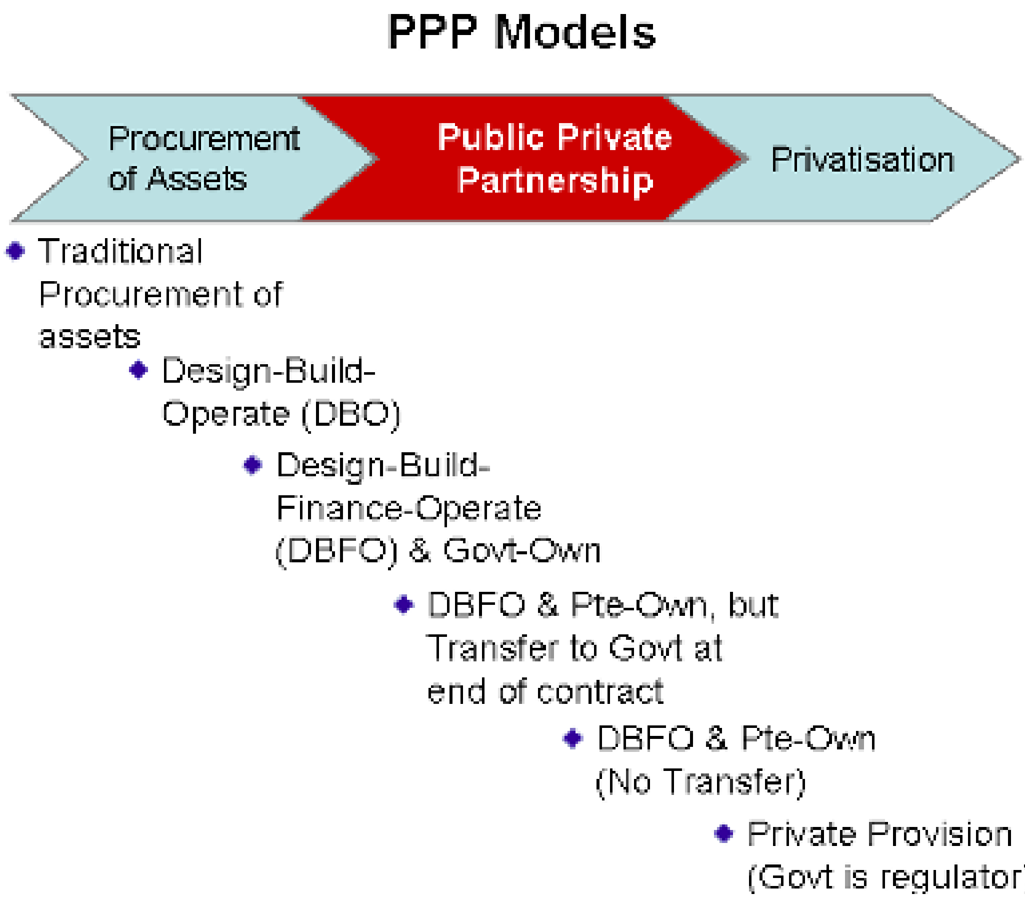
3.2.1 Service, Management, Leasing Contracts and Concessions.

In a service contract, the government contracts with a private entity to provide services the government previously performed. A management contract defers from service contract in that the private entity is responsible for all aspects of operation and maintenance of the facility under contract. A Lease Contract provides an alternative arrangement whereby the government grants a private entity a lease holds interest in an asset and the private partner operates and maintains the assets in accordance with the terms of the lease. A third variant is a concession arrangement whereby the government grants private entity exclusive rights to build, operate and maintain an asset over a long period of time in accordance with performance requirements set forth by the state government. The public sector retains ownership of original asset while the private operator retains ownership over any improvements made during contract period.

3.3 PPPs for Development and Operations of New Facilities.

The core issue in this category is the development of new facility and its ownership over time. Focus is on design and construction of required new facilities, and hence emphasis on the terms: construction, operations and ownership. The resulting options include: Design and Build (DB); Design Build and Operate (DBO); Build, Operate and Transfer (BOT); Build, Lease and Transfer (BLT); Design, Build, Finance and Operate/Maintain (DBFO/M); Build, Own and Operate (BOO); and Buy, Build and Operate (BBO).

Figure 1.1



3.3.1 Design-Build (DB):

Under this model, the government contracts with the private partner to design and design and build a facility in accordance with the requirements set by the government. After completing the facility, the government assumes responsibility for operating and maintaining the facility.

3.3.2 Design-Build-Operate (DBO):

Under this model, the government contracts with the private partner to design and build a facility in accordance with the requirements set by the government. After completing the facility, the ownership of the facility remains with the public sector while the private partner operates the facility according to public performance requirements. The operator is also responsible for replacing the assets whose life has expired.

3.3.3 Design-Build-Operate- Maintain (DBOM):

This combines the responsibilities of design-build procurements with the operations and maintenance of a facility for a specified period by private sector partner. At the end of that period, the facility is transferred back to the public sector. This model is also referred to as Build-Operate- Transfer (BOT).

3.3.4 Build-Lease-Transfer (BLT):

After building the asset, the concessionaire rents or leases it from Government and eventually transfers it again.

3.3.5 Design-Build- Finance-Operate/Maintain (DBFO or DBFM):

Under this model, the private sector designs, builds, finances, operates/or maintains a new facility under a long term lease. At the end of the lease term, the facility is transferred to the public sector.

3.3.6 Build Own Operate & Transfer (BOOT):

In this model, the government grants the right to finance, design, build, operate and maintain a project to a private entity, which retains ownership of the project. The private entity is not required to transfer the facility back to the government.

3.3.7 Build –Operate &Transfer (BOT):

In this model, the government grants a franchise to a private partner to finance, design, build and operate a facility for a specified period of time. Ownership of the facility is transferred back to the public sector at the end of that period.

3.3.8 Buy-Build-Operate (BBO):

BBO is a form of asset sale that includes a rehabilitation or expansion of an existing facility. The government sells the asset to the private sector entity, which then makes the improvements necessary to operate the facility in a profitable manner.

3.3.9 Unsolicited Bids:

These are bids for which a private entity or an individual identifies and submits a proposal to the relevant MDA (in this case, KanInvest). The proposal is examined using defined criteria and if it qualifies it is designated as a PPP. Such bids emanate from the fact that potential PPPs may not always be known and tendered to the public for submission of bids.

3.3.10 Solicited Bids:

These are bids for which KanInvest identifies for private participation and announces a request for proposal, leading to the selection of the successful bidder.

4. Review of Kano State Economic Performance.

The Government of Kano State has been implementing socio-economic reforms aimed at stimulating high rates of economic growth for the achievement of sustainable infrastructural development and poverty reduction goals, resulting in substantial economic performance and service delivery for public good. The reforms include fiscal and monetary policies, privatization of Kano state owned enterprises, trade liberalization, and improvement of the business environment and strengthening of public expenditure management. These key reforms have resulted into encouraging performance of the economy.

Kano State has experienced steady recovery in growth from 2 percent per annum from 1990 - 1995; to 2.5 percent during the period 1995 - 2000. Macro-economic performance over the period 2001 – 2007 was impressive. The GDP growth during this period averaged 5.0 percent per annum, inflation averaged 9.0 percent over the same period. Inflation rate for Kano State was 8.5 percent in 2008, and rose to 10.0 percent by September, 2009. This was caused by rising fuel prices, drought, and the global financial crisis. However, Kano State needs to sustain a high GDP growth rate of about 8.0 percent or more in order to achieve the goals of the State Development Plan 2020 - 2025.

Investments have also increased although marginally as a percent of GDP in 2015. While savings as a percentage of GDP remained at a low level of 15.4 in 2015. However, credit to the private sector has maintained an upward trend from 4.6% of GDP in 2016 to 13.8% in 2018, but it remains low compared to other developing states (e.g Lagos State). Foreign Direct Investment (FDI) has remained stagnant in the last stagnant between 2022 and 2023. This stagnant growth in FDI remains a challenge and when compared to global and Sub –National Regions (SNR) average, as well as in terms of the big demand for the attainment of robust economic growth, will be addressed by a substantial and robust PPP arrangement.

Challenges to attract more FDI include improving the business and investment climate, specifically, improving and expanding the transportation system (i.e Roads, Dry Ports, and Railways), utilities (power, water and sanitation services), legal and regulatory framework as well as financial services. Other challenges include low value addition in productive and economic services sectors, other supply side constraints and market accessibility all within Kano State.

As far as poverty trend is concerned, data from the National Bureau of Statistics show a limited decline in income poverty levels in all areas. According to the Poverty and Human Development Report (2018), the proportion of the population below the basic needs poverty line slightly declined from 35.0% to 33.0%, while and the incidence of food poverty continues to rise due to the foreign exchange rate and the impact of fuel subsidy removal on food commodities.

Poverty is mainly a rural phenomenon whereby 37.0% of rural households live below the basic needs poverty line, compared with 24% of households in urban areas and 16.0% in Abuja, Lagos & Kano

States. To address these and other existing socio-economic challenges, Kano State, like most other developing States, is currently facing huge budgetary needs and therefore needs to address the constraint of a narrow domestic tax base so as to bridge the resource gap for implementing critical development needs. The investment requirements to attain high growth and reduce poverty are enormous and cannot be met from the public sector and Official Development Assistance (ODA) alone and in a timely manner. Hence, participation of private capital is key to resolving the prevailing budgetary resource constraints. To sustain progressive socio-economic development, therefore, Kano State requires innovative tools for financing development programmes in order to expand its production frontier as well as to improve economic competitiveness.

Kano State Development Plan 2025 requires the Government to support and stimulate various actors participating in economic growth, by encouraging the private sector to undertake investments in infrastructure and services development. Such investments can be achieved through PPPs frameworks. Indeed, PPPs have proven to provide effective alternate source of financing, management and maintenance of public sector projects. Additionally, PPPs will enable the Government to streamline its responsibilities in providing socio-economic goods and services, and this will enhance efficiency, accountability, quality of service and wide outreach.

Given the absence of policy, PPPs have been implemented either by virtue of existing laws such as the various existing Laws of the State, or through the mandate emanating from structural reform policies. This has created several challenges that have to be addressed by creating specific legislation and regulatory framework for PPPs.

4.1 Status of Public-Private Partnerships in Kano State.

Most developmental projects in Kano State are undertaken through the privatization programme, and have mainly involved direct service delivery. New investments in physical infrastructure development using PPP basis are low with a few exceptions which are in the power and communications sectors. There has been a limited success in some few institutions within the State.

PPPs implemented in Kano State are concession agreements for running existing enterprises with limited provisions for rehabilitation and new investments. Following adoption of liberalization policies, there has been an increased involvement of the private sector in investment and provision of services which previously were being provided by the Government. For example, in the case of services, PPPs could be implemented successfully by Kano State in education, health and water sectors for many years coming. For other sectors, the performance would be mixed largely due to the complexity of such undertakings and lack of clear guidelines on the criteria for public and private sector partnership.

5. Vision, Mission, Goal and Objectives:

Realization of the State infrastructural and sustainable development goals requires achieving and sustaining a high rate of shared growth based on building a strong and competitive economy. The private sector has a key role in the achievement of these goals and PPPs provide a powerful instrument among others in attaining this goal.

5.1 Vision.

Efficient and sustainable PPPs for the delivery of reliable and affordable socio-economic goods and services.

5.2 Mission.

Creating an enabling environment for promoting PPPs to achieve sustainable high and broad-based economic growth.

5.3 Goal.

Contribute to the state poverty reduction objective through delivery of competitive and sustainable PPPs.

5.4 Objectives

5.4.1 Main Objective.

The main objective of this policy is to promote private sector participation in the provision of resources for PPPs enterprises in terms of investment capital, managerial skills and technology adoption for sustainable development.

5.4.2 The Specific Objectives.

i. To develop an enabling legal and institutional framework that will guide investments in PPPs.

i. To implement effective strategy showing specific obligations and rights for various stakeholders.

ii. To introduce fair, equitable, transparent, competitive and cost-effective procurement processes for PPPs.

iii. To adopt operational guidelines and criteria for PPPs.

iv. To attract resources for development of PPPs.

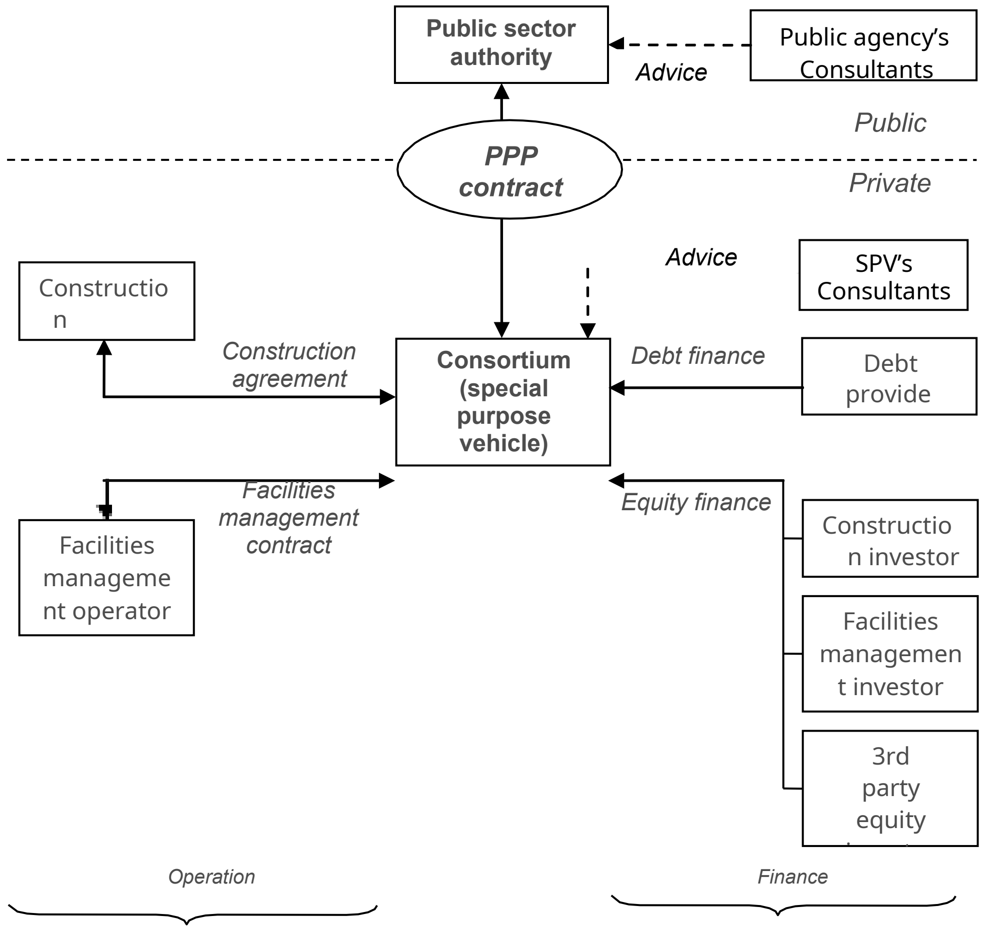
v. To develop institutional capacities for technical analysis & negotiation of PPPs, associated contracts, and

vi. To establish efficient and quality socio-economic PPPs.

6. Policy Issues and Statements:

A PPP project involves collaboration between various types of private sector companies and the public agency. The PPP deal should be structured to be mutually beneficial to all the parties involved, with each party taking on the responsibilities which it is best able to manage. The roles of the public sector and the various private sector parties (including construction companies, operations companies, financial institutions and PPP consultants/advisors) in a typical PPP project under the Design- Build-Finance-Operate model are shown in Figure 1.2.

6.1 Typical PPP (for DBFO model) project structure



In general, the roles and responsibilities of the various parties collaborating in a PPP project are as follows:

a. **Public agency – Purchaser of services**. As the purchaser of services, the public agency will specify the outcomes/outputs that it requires and avoid specifying the means of the delivering the services. The public agency will also pay the PPP provider when the services are delivered according to the contract performance standards.

b. **Design, Construction, Operations and Maintenance companies – Service providers.** These private companies will form the Special

c. **Purpose Vehicle (SPV) to bid for the PPP project. These companies play the critical role of proposing** innovative solutions to meet Government's objectives for the PPP project. In a typical PPP project, the SPV will manage its design, construction, operational and maintenance responsibilities, by subcontracting the construction, operations and equipment supply to suitable providers. These subcontractors may be the parent companies of the SPV (i.e the construction, operations and maintenance companies which are the equity investors of the SPV). In addition, the SPV will also raise the financing it needs to build any asset it requires to deliver the services. It will need to explore the financing arrangements, such as the quantum of the debt/equity, the rates of returns required and the tenure of loan, with potential equity and debt providers. When the SPV starts to deliver the services, it will use the service payment streams it receives from the procuring agency or any third-party revenue generated to repay its debt and equity providers, as well as its suppliers and subcontractors.

d. **Equity investors and Debt providers– Private financiers**: The equity investors of the SPV are typically the construction and operations companies who will be involved in the actual service delivery. Fund managers or other financial institutions may also take equity stakes in the SPV. Equity investors are interested in generating positive returns on their investment, and hence have a strong interest in ensuring that the services delivered meets the performance standards that were agreed between the public agency and the SPV. Debt providers, such as banks and bond holders, usually provide the majority of the funding (sometimes up to 80% - 90%). The debt providers will carry out due diligence on the SPV (such as its technical capability and financial soundness to be able to deliver on the PPP contract) and scrutinise its business plan to ensure that its plans are robust.

e. **Consultants (if necessary) – Advisors**: The public agency and the private sector bidder may also separately decide to engage consultants (such as technical, legal and financial consultants) to help them structure a PPP tender, and to work out a viable PPP proposal respectively. Advisors who have experience in developing PPP contracts can help to highlight the best practices to adopt or the pitfalls to avoid when preparing for a PPP deal.

f. **KANINVEST – PPP Policy Owner:** The role of KanInvest is in the formulation of PPP policies and guidelines, taking into account the feedback from private sector players and public agencies, as well as the PPP experience of other state governments. At the same time, KanInvest is raising awareness amongst public agencies to level up knowledge of PPP and build capability within the public sector. KanInvest also engages agencies early and works closely with them on specific projects. In particular, KanInvest will build up staff's PPP expertise in order to assist agencies in the design and management of PPP contracts. The desk officers will continue to be responsible for evaluating the DPC proposals.

6.2 Issue: Comprehensive Policy, Legal and Institutional Frameworks for PPPs.

Most sector policies underscore the role of public-private partnerships in addressing the need to stimulate higher rates of economic growth. This is due to increasing demand for financial and technical resources compared to available public resources needed to develop PPPs. Experience shows that effective legal and institutional framework for coordination and implementation of PPP Policy is crucial for mobilizing private sector resources. However, implementation of PPPs in Kano State has not been very impressive although there have been few success stories particularly in the case of health and education sectors. This is caused by among others, lack of comprehensive policy, legal and institutional framework for PPPs. The big demand for development needs makes it imperative for Kano State to adopt the PPP instrument in order to achieve its development goals.

Objective: To put in place an enabling policy, legal and institutional framework for PPPs.

Policy Statement: Kano State Government in collaboration with Stakeholders have, in 2023:

Enacted new legislation, to put in place regulations and operational guidelines for PPPs. This enabling environment will ensure transparent and clear administrative mechanisms for PPP projects facilitation in the state.

Established a central PPP Coordination Unit under KanInvest to be responsible for investment and private sector development and a PPP finance Unit. The legislation appropriates the power for coordinating and overseeing all PPP-related activities to KanInvest while working with other relevant MDAs in the achievement of the state's overarching goals.

6.3 Issue: Adequacy of Resources for Development and Maintenance of PPPs.

Considering the limitation of public resources, there is a need to create enabling environment to mobilize private sector resources to augment public resources for development activities. The Private sector can bring in unique strengths and the required resources. The PPP approach provides a feasible option for governments in the developing States, including Kano, to bridge the gap on resources required for socio-economic development.

Policy Objective:

To put in place an enabling environment to generate and mobilize adequate financial and technical resources for PPPs.

Policy Statement: Kano State Government, in collaboration with relevant stakeholders, should put in place appropriate instruments to enable the private sector to mobilize resources for the development of PPPs.

6.4 Issue: Procurement Process for PPPs.

Some PPPs have not been as successful as envisaged partly due to pitfalls in the procurement process. International best practice requires both solicited and unsolicited bids to be subjected to competitive procurement processes with details available for public scrutiny and accountability. The emphasis of having a competitive procurement process is to ensure fair, equitable, transparent, competitive and cost-effective procurement. In addition, all parties should expose themselves to public scrutiny in order to avoid conflict of interests and to safeguard national interests.

PPP projects are complex and span over long durations. It is therefore critical that the PPP provider is carefully chosen, so that it can deliver on its commitments and work well with the Bureau of Public Procurement (BPP) throughout the entire duration of the partnership.

This selection process can be elaborate, lengthy and costly to both BPP and potential providers. This can deter participation from the private sector in PPP tenders. Hence, the selection process should aim at minimizing the complexity, duration and costs to both parties, while facilitating strong competition for the BPP to obtain the best value for money for the PPP.

Objective: To ensure PPPs are transparently and competitively procured.

Policy Statement: Kano State Government, in collaboration with relevant stakeholders, should ensure that the PPPs are procured through an open competitive bidding process in accordance with the Public Procurement Act (PPA) and as may be amended from time to time. However, unsolicited bids will also be accepted and treated on a case-by-case basis as provided for by relevant laws.

6.5 Issue: Feasibility of PPPs.

Most PPPs undertaken so far were not subjected to a comprehensive analysis of socio-economic viability and implications on government budgetary resources. International best practice requires that PPPs be subjected to rigorous technical, financial, economic and social feasibility. In all investment evaluation decisions and subsequent project procurement decisions, all parties should consider public interest matters such as accountability, environmental protection, health and safety, consumer rights, public access, equity and sustainability.

Projects qualifying for PPP should also be bankable and meet the value-for-money investment criteria. This is imperative, considering that financiers will be reluctant to commit finances when a project entails high participation costs, unreasonable risk transfer or lengthy and complex contract negotiations. It is, therefore, critical to ensure that project developers/investors are assured of steady and predictable income streams over the lifetime of the project in order to guarantee service delivery.

Policy Statement: Kano State Government, in collaboration with other relevant stakeholders, should establish operational guidelines and procedures to ensure that PPPs are technically, financially, economically and socially viable. In addition, all parties will ensure that PPPs are bankable and provide value for money.

6.6 Issue: Negotiation of the PPPs and Approval.

There are underlying challenges and risks in the negotiation and approval processes for PPPs, and this calls for a guided negotiation and approval system. The experience of PPPs implemented in the energy, minerals, water, and transport sectors, all in the Country (Nigeria) shows that there have been underlying poor contractual arrangements. Therefore, there is a need to strengthen the existing Kano State system in order to safeguard the states goals, concerns and interests.

Policy Objective: To improve negotiations and approval processes for PPPs.

Policy Statement: The Kano State Government, in collaboration with relevant stakeholders, should provide a comprehensive framework for negotiating and approving PPPs.

6.7 Issue: Risk Allocation Mechanism for PPPs.

Risk allocation is normally based on the "**optimal risk allocation**" by allocating to the party most capable of managing that particular risk. Efficient and optimal risk sharing is essential in the design and implementation of PPPs. This is important to safeguard returns to all parties and ensure sustainability. The major reason to have an appropriate risk sharing mechanism is that the parties involved in PPPs have differing interests and objectives. Therefore, a cost-effective risk-sharing mechanism is fundamental for PPPs' success.

Policy Objective: To ensure equitable and optimal risk allocation for PPPs.

Policy Statement: Kano State Government in collaboration with Stakeholders should provide the necessary risk sharing framework in PPP investments to ensure that risks are assigned to the party most suited to manage them and that the risk allocation is cost-efficient and optimal.

6.8 Issue: Investment Opportunities and Promotion.

Lack of a guideline for investors to exploit various PPP opportunities existing in different sectors of the State economy hinders investments in PPPs. The guideline will provide guidance to private sector participation in PPPs in order to broaden investment opportunities, innovation and technology transfer. In addition, PPPs must be promoted for all parties concerned to benefit.

Policy Objective: To widen the scope of investment opportunities and the promotion of PPPs.

Policy Statement: Kano State Government in collaboration with Stakeholders should formulate PPP guidelines to facilitate smooth implementation of PPPs.

6.9 Issue: Awareness Creation.

PPP is a relatively new concept in Kano State, although it has been applied through divestiture of public enterprises. Therefore, awareness and sensitization campaigns on PPP aspects are needed to broaden and deepen the public's understanding.

In this regard, awareness creation and sensitization on PPPs should be extended to all segments of society and stakeholders, including government leaders, State parliamentarians, State civil servants, investors, civil societies, the private sector, and the public in general. This is one way to stimulate participatory policy implementation, monitoring, and evaluation.

Policy Objective: To create public awareness among stakeholders on PPPs.

Policy Statement: Kano State Government, in collaboration with relevant stakeholders, should:

Prepare a communication strategy to create awareness and build consensus so that all stakeholders, including government leaders, state parliamentarians, public officials, investors, and the general public, will accept PPPs and their outcomes. In this process, all stakeholders will also be educated on the benefits of PPPs and associated costs and risks.

6.10 Issue: Capacity Building and Technological Transfer.

The existing Kano State capacity to deal with PPPs is inadequate and therefore, there is the need for major capacity building programme in all areas of PPP designs and implementation. These areas include identification, negotiations, feasibility, procurement, management and other implementation aspects. In addition, the development of PPPs is a complex task which requires diverse skills in areas including technical, economic, financial, legal and procurement disciplines. International best practices demonstrate the need to undertake capacity building measures for effective implementation of PPPs, encompassing also change of mindset to all parties and stakeholders. Human resources development is essential for KanInvest and relevant agencies involved in PPPs given the fact that PPP practice is dynamic and needs latest best practice.

Parallel with efforts to enhance capacity building, technological transfer is needed for the effective and efficient implementation of PPPs. Technology transfer in PPPs will be encouraged as the process of sharing skills, knowledge, designs, and management of various PPP contracts and other implementation aspects. This will ensure that scientific and technological development is accessible to a wider range of users.

Policy Objective: To ensure sustainable capacity building and technological transfer for PPPs.

Policy Statement: KanInvest, in collaboration with relevant stakeholders, should:

a) Design and implement a strategy for development of human resources in PPPs.

b) Build on the experiences of successful PPP implemented in Nigeria such as in health and education sectors, and also from international best practices; and

c) Encourage interventions for technological transferincluding promoting research and development (R&D) in PPPs.

6.11 Issue: Pricing for PPPs.

Payment for services rendered to members of the public and other customers may take different forms depending on the service's nature. For example, tolls are common for PPP investments in roads, bridges, and railway lines. In Kano's case, the affordability of user charges or fees to the majority of service beneficiaries is an issue that must be considered. A wide spectrum of all options for pricing PPPs should be exploited to suit broad-based public interest, particularly in this era of political governance.

Policy Objective: To provide an environment that ensures sustainable recovery of costs and affordable prices and tariffs.

Policy Statement: KanInvest, in collaboration with relevant stakeholders, should adopt and implement a PPPs pricing policy that provides suitable and sustainable pricing instruments.

6.12 Issue: PPPs Coverage in Marginal Areas.

PPP interventions in both geographical and economical marginal areas pose a challenge. Due to locational factors, some regions are not commercially viable; and still other areas are not viable on economic grounds such as lower concentration of economic activities and lower incomes. PPPs may not be feasible in these areas mainly due to unique risks involved. In these special circumstances, the private sector is not attracted due to unfavorable business and investment environment.

Policy Objective: Extend special consideration to geographical and economically disadvantaged regions in the promotion of PPPs.

Policy Statement: KanInvest, in collaboration with relevant stakeholders, should establish an enabling environment to attract PPPs in marginal areas (e.g., Local Governments outside the Municipality) to the extent possible.

6.13 Issue: Empowerment of citizens.

PPPs undertaken so far have not adequately considered the empowerment of citizens. The implementation of PPPs should consider the State Empowerment Policy and other relevant policies to ensure that the empowerment of Kano State citizens in all socio-economic aspects is adequately considered. There should be concerted efforts at all levels and by all parties involved to ensure that PPP undertakings provide the necessary supporting environment to attract enough participation of local investors through inclusion in various socio-economic opportunities.

Policy Objective: Ensure that PPPs contribute to the economic empowerment of Kano State citizens.

Policy Statement: KanInvest, in collaboration with relevant stakeholders, should establish an enabling environment for PPPs to be an instrument of economic empowerment that will support the State Economic Empowerment Policy.

7. CHARACTERISTICS OF A PPP DEAL

When structuring a PPP deal, it is important to fully understand the key characteristics of the PPP models. To give a comprehensive view of the characteristics of a PPP project, this section will describe the Design-Build-Finance- Operate model. This model involves the private sector in the widest range of services, and hence will give a broader view of the characteristics of PPP. Other PPP models, e.g. DBO, will share the same characteristics.

7.1 DESIGN-BUILD-FINANCE-OPERATE MODEL

Figure 4.1 illustrates the typical commercial structure of a DBFO project. The centre of the DBFO project is a PPP contract within which the public sector specifies the outputs it requires from a public service facility, the basis for payment for those outputs, and the risk-sharing arrangements between the public and private sectors, typically over 15-30 years.

7.2 WHAT IS THE PRIVATE SECTOR RESPONSIBLE FOR IN THE DBFO MODEL?

Under a typical PPP-DBFO project, the private sector is engaged to perform a wide range of functions, including:

a. Design (D): The private partner designs the facility according to the output specifications set by the public sector. As far as possible, the public sector should not be prescriptive on the design, and should only set minimal input specifications on how the facility is to be designed.

Build (B): The private partner constructs the facility.

Operate (O): The private partner can provide ancillary and/or core operations services.

i. Ancillary: The private sector maintains the facility and provides non-core functions, such as cleaning, security, transport, etc.

ii. Core: The private partner delivers the core public service that the facility was built for (e.g. operating a desalination plant to provide potable water).

Finance (F): The private partner raises the money through e.g. bank loans, bonds and equity to finance the upfront cost to design and build the facility.

Own (O): Ownership of the land and PPP facilities thereon often resides with the private partner for the duration of the contract. There are, however, cases where ownership of the land and PPP facility thereon resides with the public sector even though the private partner finances it. Ownership of the land and PPP facility thereon generally has little influence over the performance of the private partner, since the private partner's profitability is affected by the payment stream from Government or the users and not by its ownership of the facility.

In a DBFO project, the private sector does not have to undertake all the operations related to delivering a service. The private sector will only provide the services that it is more efficient and competent at performing.

As an example, in schools or hospitals PPP, the private partner may only construct the facilities and provide ancillary services such as catering, laundry, waste management, security, transport and maintenance services, while core education and healthcare services may continue to be provided by the public sector.

There are also DBFO projects where the outputs can be clearly defined and measured, and thus the private provider can be involved in delivering more services. For example, for PUB's DBFO desalination plant, the private partner will not just design, build and maintain the plant, but also operate it to generate water output.

7.3 KEY CHARACTERISTICS OF DBFO PROJECTS

A DBFO project usually has the following characteristics:

7.3.1 Contractual Characteristics

a. **Long Term contract**. PPP contracts tend to be long-term, possibly up to 30 years, depending on the nature of the facilities and services to be delivered.

b. **Outcome/Output Specifications**. Public service requirements would normally be framed as output specifications, instead of precise input specifications and design, to give more room to the private sector to provide innovative solutions to meet the public sector's requirements.

c. **Special Purpose Vehicle (**SPV**)**. The private provider is usually a consortium formed by multiple companies.

d. **Sharing of Responsibilities**. Responsibilities and risks for activities that can be better controlled and managed by the private partner are transferred to the SPV.

e. **Performance based payment mechanism**. The public sector pays only when services are delivered (e.g. the private sector is not paid during the construction phase). These service payments vary depending on whether the services provided meet specified performance standards. If the PPP provider consistently fails to provide satisfactory services, the public agency concerned can terminate the PPP contract.

f. **Flexible contract with mechanisms for variations**. The DBFO contract entered into at the outset recognises that there will be a need for changes over the 15-30 year life of the contract. The public sector has a right to change, within limits, some aspects of the building or service provision, subject to agreement with the DBFO contractor on cost. Usually, there is also a binding dispute resolution procedure in the contract.

7.3.2 Financial Characteristics

a. **Private Financing comprising of equity and debt.** The SPV is owned by one or more equity investors, but the debt providers provide the majority (typically 80% or 90%) of the financing.

b. **Publicly funded**. DBFO is neither a source of free money nor a means of implementing ill-conceived, unaffordable projects. While the private sector provides the capital funding for the project, this is ultimately recovered from members of the public (as user charges/fees) and/or the public agency (as a stream of payments to the provider).

The following sections elaborate on the contractual and financial characteristics highlighted above.

7.4 CONTRACTUAL CHARACTERISTICS

7.4.1 Long Term Contracts

PPP projects tend to be long-term, typically ranging from 15 to 30 years or more. The length of the contract will typically cover the entire economic life of the asset. This ensures that the private sector partner takes a whole life-cycle view for the development of the asset. The asset will then be designed, constructed, operated and maintained such that the whole lifecycle cost of the project is minimised. The private sector operator will also ensure that the asset is well maintained for its entire economic life.

7.4.2 Output Specifications

Output specifications form a vital part in encouraging innovation in PPP deals. Private sector innovation is especially critical for DBFO deals, where the private provider is expected to generate management efficiencies compared to public sector in-house provision. Hence, it is necessary for the public agency concerned to state clearly what needs to be achieved from the facilities and services while leaving room for the private sector to produce innovative, cost-effective solutions. In short, the output specifications detail what needs to be achieved, not how it is to be achieved.

Examples of Input Specifications vs. Output Specifications	
Input Specifications	**Output specifications**
Maintaining School Playing Fields	
Playing fields must be trimmed and cleaned thrice a week.	Playing fields must be capable of providing seven hours playability per week.
Maintaining Drains, sewers and gutters	
Drains, sewers and gutters must be cleared at least once every day.	All drains, sewers and gullies to be maintained free-flowing and free from odours.

Producing effective output specifications involves the art of defining the end without being prescriptive on the means for meeting these outputs. The specifications should clearly and comprehensively state what is required and the standards to be achieved.

In a PPP project, the public agency concerned will make payments to the private sector based on whether the output specifications are met. Therefore, it is vital that both the public and private sectors have a clear understanding of how performance against these output specifications are measured and monitored. Performance measurement may be linked to an agreed set of standards or key performance indicators, which will generally relate to the quality, amount and frequency of service provision. There has to be agreement within the PPP contract on how such performance is to be measured and monitored since the payments to the private sector are based on these performance specifications being met.

7.4.3 Special Purpose Vehicle

Companies in the private sector typically form consortiums, also known as Special Purpose Vehicles (SPV), to bid for the Design-Build-Finance-Operate contract. Usually, the SPV is formed from a joint venture between an experienced construction contractor and a facilities management or service operations company capable of running and maintaining the asset. Other contractors required to deliver other outputs specified in the contract will also join the SPV. The SPV will produce a bid which takes into account the whole-of-life cost of the asset, incorporates the proper level of repairs and maintenance, and reflects the cost of the services provided, and the cost of private finance. Competition between bidding consortiums during the procurement process to select the PPP provider helps to ensure value for money.

7.4.4 Sharing of Responsibilities and Risks

Key to ensuring value for money benefits in DBFO projects is an optimal sharing of responsibilities and risks between the public and private sectors. This does not mean all responsibilities and risks should be transferred to the private sector. Indeed, if the private sector is asked to be responsible for activities and risks that it has no control over, it would increase the contract costs to Government, resulting in poorer value for value for both the Government and the private sector.

In a PPP deal, the public and private sectors bring different skill-sets and add value to different business processes. Responsibilities for the various parts of the value-chain must be allocated to the party that can add the most value and continually bring about improvement in the business process. For example, promoting and marketing the use of the facilities, commercialization of the assets, design and construction, may be allocated to the private provider, who generally can perform this part of the value chain more effectively.

Similarly, the guiding principle adopted in identifying and allocating risks is that the party best able to manage a risk should be responsible for that risk and receive the rewards or losses associated with it. The allocation of responsibilities and risks in PPP projects vary depending on the nature and objectives of the project. Please refer to Section 3.7 for more details on risk allocation and management.

7.4.5 Performance based Payment Mechanism

The DBFO contract includes a performance-based payment mechanism, where the public sector only pays when services are delivered (e.g. the private sector is not paid during the construction phase) and recurrent payments varies depending on whether the services provided meet specified performance standards. The private provider can be encouraged to improve performance beyond the specified standards through incentives or benefit sharing arrangements. On the other hand, there could be deductions/penalties to the payments if the PPP provider fails to perform satisfactorily. However, it is important to note that a mechanism that veers too much towards penalty will not encourage partnership over the PPP contract life and hence should only be used on critical performance standards. More guidelines on the PPP payment mechanism are in Section 2.4.

If the private provider consistently fails to meet required performance requirements, the public agency can ensure that service levels are restored through the following ways:

a. *Deductions/Penalties.* If a private provider fails to deliver the project on schedule or the services provided fall below the standard originally specified, deductions and penalties can be imposed on the payments made by the public sector. This is to ensure that the private provider will work towards remedying any shortcomings in service delivery.

b. Step-In to take over operations. The public agency can also step in to take over the operations and delivery of the services *in certain circumstances*

c. (even where there is no default), e.g. serious risk to public health, safety or the environment, serious national security implications.

d. *Terminate the contract due to private sector default*. Where a private provider consistently fails to deliver the services to the standard specified and the private sector has failed to remedy this deficiency, the PPP contract will fall into default, giving the public sector the right to terminate the contract and step in to ensure continuity of service delivery. In these circumstances:

i. Projects will revert to public ownership, including the assets necessary to continue to deliver the service;

ii. Compensation may be due to the SPV based on the termination compensation clauses as stipulated in the PPP contract; and

iii. The public sector would then take ownership of the project itself or re-tender the opportunity to take over the project to other private sector contractors. The public agency concerned would have to proceed with legal action, as appropriate, to recover from the defaulting private partner the costs incurred in rectifying defects, and in the maintenance and management of the facility.

7.4.6 Flexible Contract with Mechanisms for Variations

When entering into a PPP-DBFO deal, the public agency and the private provider should recognise that there will be a need for changes to the service delivered over the 15-30 year life of the contract. Where necessary, some aspects of the service requirements or service delivery methods can be changed, subject to agreement by the public agency and the private provider on cost. To ensure that agreement is reached quickly, the public sector can require a competitive tender for any works involving changes over a certain threshold. If a dispute arises regarding the scope of the changes, there is a binding dispute resolution procedure in the concession agreement.

7.5 FINANCIAL CHARACTERISTICS

7.5.1 Private Financing

The private provider will raise project finance through equity and debt finance. The SPV is usually owned by one or more equity investors. Some of these shareholders may be contractors to the consortium who undertake to carry out construction, design or facilities management work in the project. Others may be financial investors. Debt finance, in the form of bank loans or bonds, is also raised to pay for the construction and operation of the project. Both providers of equity and debt play important roles in the overall success of the DBFO project.

Equity Providers own the consortium company (i.e. the SPV). An equity investor only benefits from its investment in a DBFO project after it is completed and successfully in operation as the public agency concerned only starts paying when the asset becomes available. In addition, the value of the project to the equity investor is determined by the expected performance of the project over its whole life. Hence, the equity investor will ensure that the SPV performs up to the specified standards so that there are positive returns on investment for the company.

Debt providers provide the majority of the funding (in the UK, about 80% to 90% of financing for a DBFO project comes from debt providers). The banks and other financial institutions that lend to DBFO projects play the following key roles:

a. *Due diligence* – When private sector financiers consider financing a project, they will carry out extensive due diligence work, aided by independent advisors in technical, insurance, legal and financial aspects of the DBFO deal. This due diligence is intended to ensure that the SPV's business plan is robust; and

b. *Taking overall project risk* – Debt providers hold the overall risk that their debt is not repaid. To manage this risk, they hold step-in rights to take over failing projects and bring in new contractors who can meet public sector requirements, subject to the public agency's agreement.

7.5.2 PPP Projects are Publicly Funded

DBFO is neither a source of free money nor a means of implementing ill- conceived, unaffordable projects. While the private sector provides the capital funding for the project, this is ultimately recovered from:

a. *Members of the public* – These are financially free-standing projects undertaken by the private sector with cost-recovery by means of user charges imposed on the users (usually a member of the public). This charging model is typically used for toll roads.

b. *The public sector* – These are projects that involve the sale of services to the public sector, with costs recovered only from the public sector, e.g. in the defence related PPP projects.

c. *Both members of the public and the public sector* – These are projects for services delivered to the end users with the public agency sharing the costs so that user charges imposed on the end users remain affordable. This charging model is typical for the development and maintenance of the public agency's buildings which may also be rented out to interested third party users.

7.6 OWNERSHIP OF THE PPP FACILITY

Under the DBFO model, the private sector can own the land and PPP facility thereon that it finances and develops. However, this is not always the norm. There are some DBFO deals where the public agency will own the land and PPP facility thereon once construction is completed. For example, in some UK Roads and Prisons PPP deals, the public sector retains ownership of the land and assets, but the contractor will be responsible for the operations. Public agencies entering into PPP deals have to decide whether Government or the private sector partner should own the facility.

In general, there are two ownership structures for PPP projects:

a. **Contractor-Owned, Contractor-Operated (COCO).** In COCO, the ownership of the land and facility thereon resides with the private sector for the length of the contract. COCO is particularly suitable for projects where:

i. the facility is not dedicated for Government's use only but can be shared by other users, i.e. there is scope for generating additional revenue flows through providing services to other users;

ii. Government's usage is only for a portion of the asset life. For example, if Government only needs the asset for 5 years out of its economic life of 30 years;

iii. the owner can affect the productivity of the asset through enhancement, maintenance or upgrading during its life, especially when the risk of obsolescence of the asset is high; and

iv. the main "productive" capacity of the asset is through its operations, i.e. the facility plays an integral role in providing the service for the users. For example, COCO is suitable for PPP water treatment plants where the private sector partner has to operate the asset to supply water to the users/Government. This is in contrast with school buildings, where the facility is meant to house the productive activities, i.e. education activities, but is not an integral part of the education services that is delivered.

b. **Government-Owned, Contractor-Operated (GOCO).** In GOCO, the private sector will finance and develop the facility, but the public agency retains ownership of the land. Upon completion of construction, the ownership of the facility will be held by the public agency since it owns the underlying land. GOCO is suitable for critical and unique facilities that should remain under Government's ownership and control, e.g. national defence infrastructures. The contractor maintains all the properties but the land title to the properties remains with the public agency. However, with GOCO, the public sector has to assure the private provider and its financiers that their investment in the facility will be safeguarded even if they do not hold title to the asset. This includes giving the right to the operator to use the land and operate the asset on the land once it is developed.

7.7 COMPETENCIES NEEDED TO STRUCTURE PPP DEALS

PPP, being a long-term service-purchase contract, can be more complex than most government procurement projects. Public agencies and potential private sector providers need to address several issues, such as crafting and understanding output/outcome specification, preparing whole lifecycle costing, structuring a viable and realistic payment mechanism, ensuring fair termination rights, etc.

For the success of the PPP project, it is important to have a strong project management team within the public sector agency to oversee the implementation of the project. This team should have competencies in the financial, legal and technical aspects of contracting through PPP. Similarly, private sector bidders should demonstrate that they have a strong management team that is capable of delivering on the contract.

This section describes:

a. The responsibilities of the public sector project management teams;

b. A possible project management structure for the public sector team;

c. The competencies that the project team should have. Such competencies can be developed in-house (or might already be available in-house) and/or supplemented by private sector PPP advisors who have experience in managing PPP projects; and

d. Key factors in effective project management.

7.7.1 RESPONSIBILITIES OF THE PUBLIC AND PRIVATE SECTORS

Public Sector

Generally, the public sector project team is responsible for:

a. Evaluating whether it is feasible to structure a PPP model for the project;

b. Structuring the PPP tender that delivers best value for money to Government while providing sufficient business opportunities for the private sector. This could include carrying out a detailed study to recommend a feasible PPP scheme, including the financial arrangements, pre-qualifying criteria of the PPP provider and preparation of the PPP tender documents;

c. Evaluating the tender proposals to select the best provider for the PPP contract;

d. Preparing the final PPP contract document after the preferred bidder has been selected; and

e. Monitoring the progress and performance of the private provider's work.

The public sector PPP project team should be made up of public officers who understand the policy objectives and service requirements for the project. If the public officers involved in the PPP project are not familiar with the financial, legal or technical aspects of the project, private sector PPP advisors can be engaged to provide the necessary expertise to design a viable PPP deal. Agencies can also approach KanInvest if they have queries on project management.

Before appointing private sector PPP advisors, public agencies may wish to first approach the Bureau of Public Procurement (BPP) for inputs and advice on the tender documents for procuring the services of a PPP advisor.

Private sector bidders

Private sector providers who are interested in tendering for a PPP project should also have sufficient competencies to:

a. Understand the PPP model proposed by the public sector and the financial implications on the revenue, cost and cash-flow of the PPP provider;

b. Identify business opportunities and propose innovative solutions that can meet the public sector's needs;

c. Identify the responsibilities of the private sector in the PPP model proposed by the public sector;

d. Identify sources of financing which offer the lowest financing cost;

e. Structure and price a tender proposal that can meet Government's objectives with the best value for money while remaining profitable for the company; and

f. Manage the project (if awarded the PPP contract) to consistently meet agreed performance requirements.

Potential private providers for PPP projects can also consider engaging PPP advisors to assist in preparing the tender proposals if they do not have sufficient in- house competencies/experience to respond to PPP tenders.

7.7.2 STRUCTURE OF PUBLIC SECTOR MANAGEMENT TEAM

Generally, the project management structure of in a public sector will involve:

a) A Steering Committee – which will consist of key decision makers, such as Permanent Secretaries, Directors and/or other senior managers of the procuring agency;

b) A Project Sponsor, who is also a member of the Steering Committee. The Project Sponsor is usually also part of senior management and is accountable for the project.

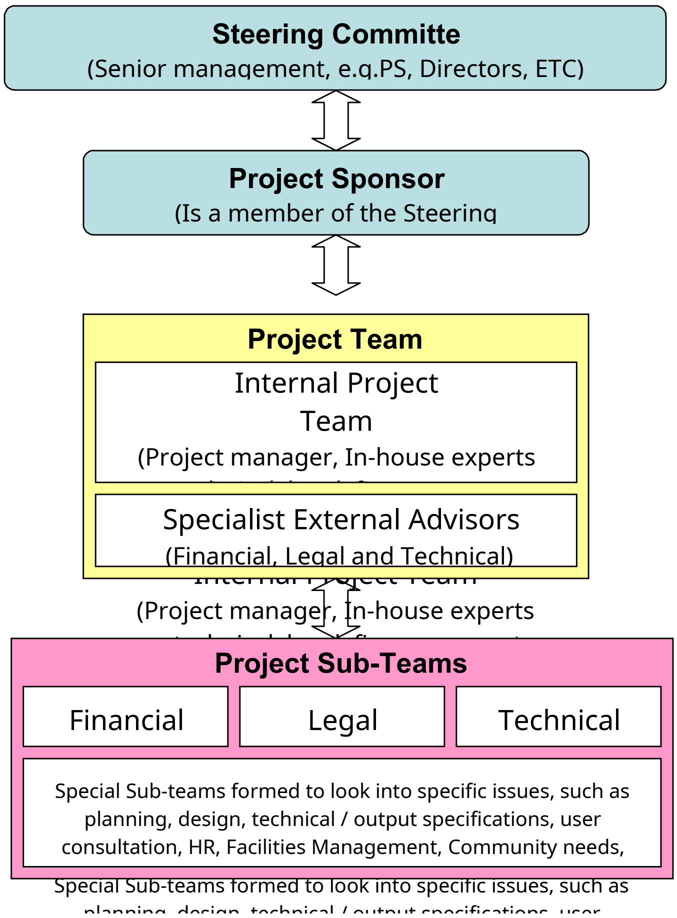
c) A project manager and the project team, which will include in-house staff and specialist external advisors on financial, legal and technical aspects; and

d) Project Sub-teams (if applicable), which will look into specific issues such as planning and user consultations.

e) KanInvest, in an advisory role if agencies require inputs and assistance on project management issues.

Figure 2.2.1 shows a possible project management structure for the Public Sector Project Team.

Figure 2.2.1 Possible Project Management Structure for Public Sector Project



In addition to understanding policy objectives and service requirements of the project, the project manager should also ensure that (i) the project is affordable to the public sector agency, (ii) the PPP project is able to deliver better value for money and (iii) there is sufficient interest in the project for competition to take place.

7.7.3 WHAT COMPETENCIES ARE NEEDED IN THE PROJECT TEAMS?

Both the public and private sector project teams (including their PPP advisors) should have competencies to structure and evaluate the (i) financial, (ii) legal and (iii) technical aspects of the PPP deal.

Financial Expertise

Generally, financial experts in the PPP project teams should have a good understanding of project financing, including an understanding of the different financial markets and financial instruments that can provide financing for the PPP project.

For the public sector, such financial competencies will help public agencies identify the likely financiers of the PPP project and their risk attitudes, so as to structure the PPP contract (e.g. including step-in rights, termination clauses and payment mechanisms) that are acceptable to the private financiers. Without a good understanding of the financing aspects of the project, the public sector might end up structuring a PPP contract where the PPP providers can only secure financing at expensive borrowing rates, thereby leading to higher contract cost to the public agency.

For the private sector bidders, a good understanding of project financing and financial markets will help them identify suitable sources of financing to meet the public sector's requirements at the lowest cost.

In general, financial experts on the project teams should be able to:

- Build up a robust business case for the PPP project;
- Identify the responsibilities and risks borne by the public sector and the private sector and the financial implications of such responsibilities;
- Structure payment mechanisms that offer the optimum balance of responsibilities, risks and rewards for the public agency and PPP provider;
- Prepare/Review tender proposals. The private sector will have to prepare and submit tender proposals detailing the business model and the financial costs to the public agency. The public agency's team will assess the accuracy of the financial models and the implications on the cost for the public agency; and
- Identify the financial implications of the contract clauses in the PPP contract, e.g. implications of step-in rights and termination clauses.

Legal Expertise

Legal experts play an important role in preparing the PPP contract. The legal experts should be able to identify the implications of contract terms, especially potential "deal breakers", such as payment mechanisms, termination clauses and step-in rights. Specifically, Legal experts in the PPP project teams (for the public and private sectors) should be able to:

a. Structure and draft the tender documents, PPP contract and land lease agreements;
b. Advise on the best procurement or bidding; and
c. Provide generallegal advice on taxation, property, planning, environmental law, banking, competition law and intellectual property.

If legal expertise is not available in-house, public agencies and potential PPP bidders can consider engaging external legal advisors. However, ministries, agencies and departments (MDAs) must consult the Ministry of Justice for advice before seeking external legal advisors**.** Statutory Boards, on the other hand, can engage private sector legal advisors without consulting the Ministry of Justice.

Technical Expertise

Technical expertise includes knowledge of technical requirements for the services purchased by Government. Some technical specialists that might be required include surveyors, engineers, architects, contractors, project managers, actuaries and other technical professions. If such technical expertise is not available in-house, public agencies and potential PPP providers can consider engaging external technical advisors to assist in crafting technical specifications.

For the public sector, technical experts can assist in:

a. Defining output/outcome specifications and service standards for the services to be provided under the PPP tender and contract;
b. Technical evaluation of proposals and bids, including capability of the private sector tenderers;
c. Quality assurance during the construction phase, including ensuring contractor compliance and assessing technical risks;
d. Valuing assets that may be sold or transferred to the PPP provider; and
e. Developing appropriate performance measures and monitoring systems to determine the performance of private sector providers.

Technical experts in public sector should avoid specifying inputs, such as how to build facilities and how to design work processes, to give the private sector providers as much autonomy as possible to determine the best means of meeting the public sector's requirements. It will still be necessary for the public sector to provide the necessary constraints in the design, construction and operation of some facilities (e.g. public agencies might wish to specify design themes if the PPP facility has to be iconic). However, public agencies should bear in mind that PPP is about procuring services, not assets. Hence, the focus should be on determining output specifications, instead of input technical requirements.

For the potential private sector bidders, technical experts should work on designing and constructing assets, systems, equipment and work processes that can deliver services that meets the public agency's service requirements.

7.7.4 KEY FACTORS IN EFFECTIVE PROJECT MANAGEMENT

The project managers should ensure that the following key factors are in place to allow them to manage the project effectively:

a. Clear decision-maker and decision-making process, which will ensure that critical decisions, e.g. on whether to proceed with PPP procurement, is taken promptly;

b. Continued involvement and support from the project sponsor;

c. Regular communications between the sub-teams in the project team to ensure that the impact of a decision or change can be estimated accurately, e.g. the financial sub-team can work out the potential increase in costs if the legal sub-team introduces more restrictive terms into the contract;

d. Sufficient stakeholder support through well-managed consultation and communications with stakeholders, e.g. users;

e. Affordable project to the public agency, which means that the project team should keep up-to-date information on the potential costs of the project, to regularly check if the project is still affordable. It is also important to set realistic expectations on the quality of the service given the amount of budget available for the project;

f. PPP can deliver better value for money for the project. The public sector should only proceed with procuring the project with PPP if PPP can deliver better value for money than conventional procurement; and

g. Sufficient competition for the PPP project from the private sector, which will ensure that the public sector will get the best value for money from the deal. The project team also needs to consider if the PPP project will change the industry structure, e.g. create a monopoly in the provider market, and recommend measures to address the new industry structure (if necessary), e.g. through regulations.

CONCLUSION

It is important for public agencies with PPP projects and potential PPP providers to build up sufficient competencies to structure and evaluate PPP deals. Such expertise can be developed in-house or supplied by external private sector advisors. Competent project teams can help the public agency and the private sector cut down the PPP procurement time and costs.

As PPP is still in a nascent stage in Kano state, both the public and private sectors can learn from the experience in other states and countries to build up the competencies to not only structure a win-win PPP deal, but also to manage and sustain the long-term partnering relationship throughout the PPP contract.

8. STRUCTURING WIN-WIN PPP DEALS

8.1 KEY FEATURES OF WIN-WIN PPP DEALS

PPP projects must be structured to benefit both the public sector and the private sector. Specifically, the PPP deal must deliver value for money to government and also present commercially attractive business opportunities for the private sector.

Public agencies will adopt a Best Sourcing approach in deciding whether to use PPP. This means that agencies will compare the PPP approach (e.g. Private sector to design-build-finance-operate) with the conventional government procurement model (e.g. private sector build and government operate). The public agencies will then select the best approach to deliver the services (either through PPP or through conventional procurement). PPP will only be used if it can deliver better value for money than conventional procurement for that project.

Similarly, for the private sector, there should be sufficient revenue, either from Government or directly from the users, to recover the initial investment and the costs incurred by the private sector.

There are several key factors which will affect whether the PPP deal can deliver value for money to Government while remaining attractive for the private sector. Public agencies should work closely with the private sector to address these issues in order to structure a win-win PPP deal.

a) Competent Private sector providers – Are there reliable and capable private sector providers who can deliver the required services? Is it possible for the private sector to deliver services better and more efficiently than Government?

b) Fundamentally, PPP will only be successful if the private sector has the capabilities to add value to the delivery of public services. Hence, PPP should only be applied to projects where the private sector has the competencies to meet the service standards required by Government or the public.

c) In addition, there should also be multiple potential private providers who can offer different proposals and ideas that will drive continual improvement in the delivery of public services.

d) Measurable Output/Outcome specifications – Are the performance requirements expressed clearly in terms of service outcomes and outputs? Are there meaningful Key Performance Indicators (KPIs) to measure the delivery of the service outcomes/outputs?

e) In a PPP project, the desired service outputs/outcomes must be clearly stated so that the private sector can have a clear understanding of Government's policies and objectives. The private sector can then introduce innovative solutions to meet Government's needs. Clearly stated service requirements also reduce the uncertainty faced by both the public agency and the PPP provider. The service outputs/outcomes should also be measurable. A set of performance measures and targets can then be developed to incentivise the private sector to meet the objectives of the public agency. The public agency can also objectively monitor the performance of the private sector to ensure that its service requirements are met.

f) **Sufficient Project Scale** – Does the project require a significant level of investment in the development or redevelopment of capital assets? If not, can the project be bundled with similar projects to form a larger PPP deal? Generally, the larger the scale of the project (in terms of capital value of assets), the more potential for management efficiencies through increased private sector involvement, particularly through economies of scale. This is particularly true for services which can be easily replicated, e.g. development of school buildings.

g) **Scope for private sector innovation and management efficiencies** – Is there sufficient scope for the private sector to innovate? Can the private sector improve the level of utilisation of assets? Is the private sector able to exploit economies of scale through the provision, operation and maintenance of other similar assets/services to other customers?

h) PPP tends to be more successful for projects where the private sector is well-equipped to introduce innovation. Therefore, the scope of the PPP project should allow the private sector sufficient flexibility to introduce new ideas, e.g. new technology, business process re-engineering, to generate efficiency gains. As far as possible, public agencies should also be open to the private sector's suggestions to share assets or facilities with other users, unless such sharing of resources undermines public policy and objectives.

i) **Sufficient time to plan and procure through PPP** – Is there sufficient time to procure the services through PPP, given the timeframe of the project?

j) PPP projects are generally more complex than conventional government projects. Hence, more effort, time and resources have to be put in to structure and tender for a PPP project. Insufficient planning and procurement time might prevent the public agency from identifying all its requirements clearly. The private sector will also need time to examine the business opportunities in a PPP project to propose new ideas. Hence, it is beneficial to both Government and the private sector if ample time is available for both parties to fully understand the objectives of the PPP project and the potential opportunities in the project.

k) **Manageable interfaces with other projects or existing contracts** – Are there other projects or contracts that interface with the PPP project? Are the responsibilities of the PPP provider and other contractors clearly stated? Are there procedures governing the relationship and interaction between the PPP provider and contractors of other projects/contracts?

l) In some PPP projects, the public agency might decide to engage separate contractors for specialised services that are not within the scope of the PPP project. For example, the public agency might engage a PPP provider to construct and maintain an office building, but the IT services are separately provided by another IT vendor. In such projects, there should be a clear distinction between the responsibilities of the PPP provider and other vendors (e.g. IT vendors) engaged directly by the public agency. Procedures should also be put in place to govern the interactions between the various providers, e.g. how the vendors should respond to service failures.

8.2 KEY ISSUES TO BE ADDRESSED IN THE PPP CONTRACT

It is important that the contract itself stipulates clearly the contractual rights and responsibilities of the Agency and the PPP provider. A comprehensive PPP contract should address the treatment of issues identified in Table 2.3.1, under each phase of the project.

Table 2.3.1 Issues that should be addressed in a PPP contract

Issue	Construction Phase	Service Delivery or Operational Phase	Contract Expiry or Termination Phase
Tenure and Continuing Access Rights	X	X	X
Commissioning of the completion of construction	X		
Service Delivery Performance Requirements	X	X	

Availability of Contracted Services		X	
Payment	X	X	X
Performance measurement and monitoring		X	
Price Review and Adjustments		X	
Ownership of Land and Facility	X	X	X
Intellectual Property	X	X	X
Step-in Rights	X	X	
Insurance	X	X	X
Changes in Service Requirements	X	X	
Technical Upgrade and Technology Obsolescence		X	
Change Management	X	X	
Ongoing Review		X	
Contingency Planning	X	X	
Dispute Resolution	X	X	
Termination of Contract			X
End of Term Arrangements			X

The contract should also cover allocation of risk, the quality of service required, and procedures for variation of service scope and dispute resolution procedures. The agency can also consider building reductions in prices, improvements in price, quality or service, built into the contract terms.

8.3 AVOIDING POTENTIAL PITFALLS WHEN STRUCTURING A PPP DEAL

Although PPP projects can be beneficial to Government and the private sector, there are some pitfalls or problems that can affect the success of PPP projects. Such problems can be mitigated if appropriate measures are put in place to address these issues upfront.

8.3.1 Higher Private Financing Cost

It can be argued that private sector financing under some PPP models, e.g. the Design-Build-Finance-Operate (DBFO) model, will result in higher financing cost for the project, since the borrowing rate for the private sector is generally higher than the borrowing rate for Government. The financing cost for the private sector might be higher because lending to the private sector could inherently be riskier than lending to Government. Private borrowing rates also include profits that private financiers have to make.

However, private financing is an important element of PPP projects as it helps to instil discipline in the use of capital. As the private sector is required to raise financing, there is an incentive to optimise capital investment in Government projects. Private financing also allows Government to tap into the expertise of private financiers in evaluating business proposals. The due diligence by private financiers will ensure that business proposals are robust and sustainable over the contract length.

In addition, 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 the private financiers of the viability and bankability of the PPP deal. Private financiers could then provide lower borrowing rates to a PPP provider.

With appropriate risk management measures under a win-win PPP deal structure, the higher private financing costs could be offset by the efficiency gains that private financing can provide, e.g. through better capital investment decisions.

8.3.2 Inflexible, long-term contracts

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

To avoid this pitfall in such 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 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. Developing a give-and-take altitude between the stakeholders and the concession party is also very important for such long-term contractual relationship

8.3.3 Costly and lengthy procurement process

Generally, PPP would involve a longer procurement period. 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. Therefore, PPP should generally be used on projects which involve the development of assets with a large capital value.

Public agencies and potential private bidders should also ensure that their project teams have sufficient competencies to understand the implications of the contract clauses in a PPP contract and also to structure and manage PPP deals effectively.

8.3.4 Service discontinuity if private provider fails

If the private provider is to run into financial difficulties during the contract length, there are concerns that the government might not be able to take over the function immediately, which will ultimately affect service continuity. The risk of the private provider failing exists as long as the service is outsourced, regardless of whether a PPP model is used or not. To help mitigate the impact on service continuity, the PPP contract should include provisions for Government to step in to manage the private sector's staff and equipment to continue delivering the service. There could also be provisions for the private financiers to identify other potential providers who can take over operations, subject to Government's approval, in the event that the original provider fails.

CONCLUSION

It is important to structure win-win PPP deals that benefit both the public and private sectors. There should be regular dialogue between the public agency and potential private providers on the best structure of the PPP deal which can deliver the most value to Government while offering sufficient business opportunities for the private sector. In addition, the deal should be structured to avoid the potential problems that might arise, e.g inflexible contracts or service discontinuity.

8.4 THE PPP PAYMENT MECHANISM

The payment mechanism determines the payments that government makes to the private provider in a PPP project. This payment is often referred to as the unitary charge, as it is a payment for the delivery of units of service required by the public sector. The payment mechanism is at the heart of the PPP contract as it puts into financial effect the allocation of risk and responsibility between the public agency and the private sector.

The payment mechanism for any individual project will need, more than almost any other aspect of the PPP contract, to be tailored and structured to reflect the particular needs of the public agency, the users and the nature of the deal.

8.4.1 OBJECTIVES AND FEATURES OF THE PPP PAYMENT MECHANISM

The objectives of the PPP payment mechanism is to:

a) Provide an incentive for the private provider to meet the availability and performance standards set out by the public agency;

b) Match payments to the outcomes and outputs that the public sector agency wishes to deliver;

c) Provide an incentive for the private provider to rectify problems promptly when availability or performance fails to meet the agreed standards; and

d) Provide an incentive for the private provider to innovate and secure efficiency gains and deliver best value for money throughout the contract period.

In general, the key features of a payment mechanism in a PPP project are:

a) The public agency will make no payments to the private provider until the service is available. For example, in a water treatment project, no payments will begin until water of the required quality is received.

b) Payment will only be made to the extent that the service is meeting the availability and performance standards set out in the contract and specifications.

c) The payment mechanisms should provide for incentives for improved efficiency or outstanding performance by the private provider, as well as penalties to be made for unavailability or sub-standard performance. Incentives and penalties should reflect the magnitude of the improvement or severity of failure. For example, „no service‟‟ will lead to „no payment‟‟, but a minor failure should only cause at most a minor deduction, except in the case of prolonged failure where the public agency can increase the penalties for persistent failures.

d) The payment to the provider should not be related to inputs. Since the basis of the PPP project is the procurement of a service, the unitary charge should not be made up of elements which relate to delivery of any inputs. For example, the payment should not be related to completion of

e) stages of construction, cost of materials or labour. As far as possible, the payment mechanism should not contain a fixed element that the provider always receives, irrespective of availability or performance of the service. For example, where possible, the payment mechanism should not commit the public agency to make a fixed payment which covers the provider's debt service obligations, even when the service is not available in the first instance.

f) As far as possible, there should be a single charge for the service, not separate payments for elements relating to availability or performance. Typically, the unitary charge consists of a number of separately identifiable availability and performance elements (e.g. availability of office building space and performance of catering services). However, the public agency is buying an integrated suite of services. Hence, the payment for these elements should be integrated to ensure that no payments commence until the essential services/facilities are delivered. For example, for a student accommodation PPP project, no payments should be made if the accommodation facilities are not available even if the ancillary services, such as laundry services, are available.

8.4.2 PAYMENTS TO THE PPP PROVIDER VS. FEES CHARGED TO THE USERS

For services where the public agency will recover part or all of its costs from the users, the fees paid by the users do not necessarily have to be the same as the PPP payment, because the public agency can set the fees based on its subsidy policies. In a PPP deal, the public agency can collect the fees from the users at fee rates set by the agency. The public agency then pays the PPP provider for the PPP services that are delivered. If the fees charged are insufficient to cover the payments to the PPP provider, the public agency will have to „top-up" the difference. This is equivalent to providing a subsidy to the users.

STRUCTURING THE PAYMENT MECHANISM

Appropriate consideration should be given to the payment mechanism at an early stage in the development of a PPP project. The payment parameters should be realistic and fair to support the long-term partnership. The public agency should also seek feedback from the private sector when developing the payment mechanism.

Before developing the payment mechanism, the public agency should ensure that:

a) Service delivery can be objectively measured;

b) Both quantity and quality of service can be measured; and

c) Availability and performance standards are measurable, recordable and realistic.

The payment mechanism should also be objective, transparent and easy to operate.

8.4.3 ELEMENTS OF THE UNITARY CHARGE/PAYMENT

Depending on the nature of the project, the payment may vary with:

a) Availability of the service. Availability payments will be made when the facility (e.g. school building) or required capacity levels (e.g. required volume of treated water) are made available at a minimum specified standard and ready to use, regardless of the extent to which it is actually used.

b) Performance quality of the service. Performance payments are typically used for ancillary services, such as cleaning and security, where there will be penalties if the performance level is less than specified.

c) Usage of the service**.** The service provider will be paid based on the extent that the service is actually used, e.g. number of transactions or number of accommodation units occupied.

Many PPP projects use a combination of two or more of the above elements. For example, a student accommodation PPP project may use an availability component associated with the availability of hostel rooms and a performance-based component for operational services, such as laundry services. It is important that these elements do not have their own independent payment regimes. The payment for these components should be integrated to reflect overall service performance and availability. For example, payment for usage should only be made when availability or performance standards were met for the essential elements of the service.

Whether to use availability, performance or usage as the basis for the payment depends on the nature of the function and the allocation of responsibilities between the public and private sector. The following sections summarise the key features and considerations under each payment basis.

Availability

Under the availability basis of payment, the public agency will pay the private provider an amount, #x, for each unit of service/facility that is made available, i.e. service at the specified performance standard is ready for use, up to an agreed quantity. Availability payment is made regardless of the extent to which the service/facility is actually used. The services that need to be made available may comprise physical places or units (such as courtrooms, hospital beds) or peak capacity levels (such as capacity of a water treatment plant).

The availability payment structure is typically used for PPP projects where:

a) The public agency is more concerned about having an available service/facility, instead of the actual us age of the facility/service. In other words, the public agency needs the facility to be available and ready to use, regardless of the extent to which it is actually used, e.g. military facilities/equipment, and the availability of a road.

b) The public agency decides to bear the responsibility of managing demand to meet planned usage levels, as the demand is more within the control of the public sector than the private sector. For example, e.g. in school PPP projects where students are assigned to each school by the public education authority, the public sector can better manage the usage of the school facilities. Hence, the responsibility of ensuring that actual usage levels meet the planned usage requirements will be borne by the public agency, by paying the private provider based on the availability of the school facilities, regardless of the actual student population.

Availability is defined not simply by the accommodation or capacity being made available but also by the accommodation or capacity being available at the specified quality standards. For example, a PPP courtroom is only available if it is clean, safe, has suitable air-conditioning and all electrical and mechanical systems are in working order.

The following questions should be considered when structuring availability- based payments:

a) When does availability/unavailability commence?

b) When using the availability basis of payment, public agencies must define what is meant by "available" or what is meant by "unavailable". The definition must also specify the conditions that must be met if the service is to be treated as available or unavailable.

c) Are there critical groups of facilities/services where unavailability will lead to higher penalties to the unitary payment? The financial consequences of unavailability of a group of units/ facilities should depend on its criticality level, as some areas will be more critical to the provision of the required service than others, e.g. the availability of classrooms is more critical than the availability of, say, common areas such as corridors. In which case, the deduction mechanism should ensure that the deductions for unavailability of critical areas are sufficient deterrent to ensure that the PPP provider will keep these areas available in the first instance. Really, what matters to the public agency is that the PPP facility is available in the first instance.

d) How long is the rectification period for the provider to rectify a problem without triggering the start of unavailability? If the facility/service falls below standards, the provider is typically given a "remedy" period to resolve the problem. If the problem is left unresolved at the end of the remedy period, the service will be deemed to be unavailable and payment should be reduced accordingly. If the PPP provider fails to rectify the problem further after the first deduction has kicked in, KanInvest may invoke a further deduction. This is to ensure that the problem is rectified as soon as possible so as not to unduly disrupt the delivery of public services. However, a balance should be struck as to how many further deductions to be made, as this will only complicate the payment mechanism and thus the cost of the PPP contract.

e) How can the public agency deal with unavailable service/facility that is being used? There are some situations where the public agency might continue to use a service/facility, e.g. classroom, despite defects which would have rendered that part of the service unavailable. In such cases, the public agency can either (i) consider the service to be available especially when the continued use by the public agency prevents the provider from rectifying the problem, or (ii) make a smaller deduction to the unitary payment, instead of the full deduction if the service/facility is unavailable and unused.

f) What mechanism will be used to assess when availability has been restored following an episode of poor performance?

g) Will planned maintenance of the facility be considered as unavailability?

Performance-based payments

Performance based payments are typically only used to address levels of service performance that do not have a direct impact on the availability of the required services/facilities. Performance based payments are also used for payment of non- essential services, e.g. school bus service for schools PPP project.

When developing performance-based payments, public agencies should decide on:

a) The standard or level of performance required;

b) The means to monitor the provider‟s performance against the required standard; and

c) The consequences of a failure to meet the required standard, e.g. quantum of penalties suffered due to a fall in performance standards.

Usage payments

The use of a service may in some cases determine either all or part of the unitary charge. This means that the private sector will be responsible for ensuring that actual usage levels (i.e. demand for the service) meets the planned usage levels that the PPP facilities were developed for. The transfer of this responsibility is only appropriate in cases where the provider can reasonably influence usage/demand.

8.4.4 DIRECT FINANCIAL OR INDIRECT NON-FINANCIAL INCENTIVES/PENALTIES

In structuring the payment mechanism, the public agency also has to decide whether to use direct or indirect incentives/penalties for each element of the service.

Both direct and indirect incentives/penalties can be applied to encourage the provider to improve service delivery or remedy the failure promptly.

The direct approach involves immediate increases in payments for good performance or immediate reductions in payment if the provider fails to perform up to standard.

On the other hand, the indirect approach involves the award of performance points for above-average performance and/or penalty points for sub-standard performance. For penalty points, the number of points imposed varies according to the severity and regularity of the breach. When the private party accumulates a certain level of performance/penalty points, a range of other incentives/penalties can be imposed. For example, for accumulation of performance points for above-average performance, the public agency can reward the provider with financial bonuses. For accumulation of penalty points above a certain level, the public agency can issue formal warnings or impose financial penalties, or in extreme cases, terminate the contract as the provider's breach of the contract.

In constructing a points-based performance payment, care needs to be taken that unintended consequences do not arise whereby incentives cancel out the penalties due to sub-optimal performance. In addition, public agencies should also introduce caps for positive incentives (performance payments) to ensure that the provider does not put in too many resources to deliver services beyond the performance quality needed by customers/users.

8.4.5 MECHANISM TO MANAGE PERSISTENT POOR PERFORMANCE OR UNAVAILABILITY

It might be appropriate to introduce a "ratchet" mechanism to allow penalties for unavailability or poor performance to increase if the provider consistently provides the service below the agreed standard, or if a specific failure is not rectified. A simple ratchet mechanism will work by increasing the number of penalty points awarded for a particular failure that recurs too often with a specified period. For example, if x points are awarded for a failure to achieve a particular output, then (x+3) points may be awarded for each failure above a specified maximum number of failures in a pre-defined period.

Variations to the Payment Mechanism

The PPP contract will set out the unitary charge for the entire contract period. Due to uncertainties of inflation rates and certain operating costs over a long-term contract, it is usually in the interests of both the public agency and the private provider to set out provisions for varying the unitary charge in certain specified circumstances. The variation provisions help the provider address future unforeseeable changes in costs. The provider will thus not have to make such a significant provision for this risk in its bid price. The variation provisions also help the public agency ensure that the price that it agreed to pay in future years will not be in excess of future market prices for similar services.

There are several processes that can be introduced to vary the unitary charge.

a) Indexation

The payment mechanism can include arrangements for indexing the unitary charge agreed at contract signature, i.e. varying the unitary charge according to a price or cost index, e.g. the Consumer Price Index. Indexation is typically used to vary the price according to inflation. This means that the public sector bears the inflation risk for the project since inflation risk is typically outside the control of the provider and is difficult to forecast accurately.

Generally, the indexation will only apply to a part of the unitary payment, instead of being applied to the whole unitary charge.

b) Price Reviews

An alternative way to indexation is to build in price review mechanisms at regular intervals of the PPP contract, say once every 5 years. However, government agencies should note that this price review is generally applicable for "soft" services, e.g. catering, cleaning and grounds maintenance. The contract should clearly define the price review procedures and basis for determining the changes in price, including who or when to initiate the review, who to be consulted on the new unitary charge and how disagreements can be resolved.

Through the price review, the public agency can share in significant cost decreases arising from, for example, technological improvements. Conversely, the provider may argue that the public agency should share part of the burden of any significant cost increases outside the provider's control.

Public agencies should note that price reviews might involve protracted negotiations, particularly when the public agency and the private provider cannot agree on the reviewed price. For complex projects, the PPP contract can allow for the appointment of an independent reviewer at the mutual consent of both parties. This reviewer can help to revise the price during the price reviews.

c) Benchmarking and Market Testing

Benchmarking and/or market testing some elements of the service can also be conducted regularly to determine if the unitary charge is comparable to market price.

Although, in theory, it is sensible to compare costs to ensure that value for money continues, the practice of benchmarking and market testing are often more difficult. This difficulty may be due to (i) the inter-related nature of the services being purchased, which means that the services cannot be benchmarked or market tested separately, or (ii) the absence of a ready comparator.

The PPP contract can allow for market testing or benchmarking of some operations services, e.g., sub-contracted services, at regular intervals. However, agencies should note that market testing and benchmarking are generally used for "soft" services, e.g. catering, cleaning and grounds maintenance, which do not involve a significant capital investment in their delivery, or do not affect the value of any capital asset under the contract. Services that can affect the value of the capital asset, such as retrofitting the building and maintaining the building over the contract period, are usually not benchmarked or market tested because market testing such services can disrupt the synergy of the design, build, maintain and operational phases, and remove the incentive for the private sector to consider whole lifecycle costing in a PPP project.

The public agency should be aware that benchmarking or market testing can result in either an increase or a decrease in the unitary charge.

d) <u>Service Changes</u>

A change mechanism can also be included in the contract for dealing with changes to the service, such as additions or deletions to the project facilities, new service requirements or any volume changes. Appropriate arrangements will need to be included in the contract and payment mechanism to reflect the impact of any service changes on the payment mechanism and the unitary charge. For example, in a PPP sports stadium project, the contract should state clearly the increases in payments by the public agency if it needs to use the stadium for days that the public agency has not reserved for the government's use only.

For service changes, the public agency and the private provider will have to agree on:

a) The amended method of service delivery (if applicable);

b) The adjusted price for the services or additional services;

c) Whether there are capital payments needed; and

d) Changes to the performance measurement system.

8.4.6 OPERATING THE PAYMENT MECHANISM – CONTRACT MONITORING

For the payment mechanism to operate effectively, there must be a mechanism under the contract that enables the public agency to easily and cost-effectively monitor the provider's performance against the availability and performance standards agreed in the contract. Monitoring involves the collection and evaluation of data that should be objective, relevant and quantifiable, and agreed with the provider. There should also be a clear connection between the data collected and the financial penalties for unavailability or sub-standard performance.

CONCLUSION

The payment mechanism should incentivise the PPP provider to deliver the service at the required standards. The payment mechanism should include penalties and/or incentives. The payments can be based on availability, performance and/or usage. Public agencies should ensure that the payment mechanism, including the deduction mechanism, is not too complex to administer. Trigger points for penalties should also be set such that the PPP provider has a reasonable chance to remedy a service failure. Otherwise, the provider might deem the payment stream as being too volatile and risky. Such perceived volatility and risk might in turn result in higher costs of capital when the provider seeks private financing, e.g. bank loans, for the project.

9. INTRODUCTION TO THE PPP PROCUREMENT PROCESS

Unlike typical conventional procurement, PPPs are highly complex and involve high capital costs, long contract periods that create long term obligations and a greater sharing of responsibilities and risks between the private and public sectors.

9.1 OBJECTIVES OF THE PPP PROCUREMENT PROCESS

PPP projects are complex and span over long durations. It is therefore critical that the PPP provider is carefully chosen, so that it can deliver on its commitments and work well with the Bureau of Public Procurement (BPP) throughout the entire duration of the partnership.

This selection process can be elaborate, lengthy and costly to both BPP and potential providers. This can deter participation from the private sector in PPP tenders. Hence, the selection process should aim at minimizing the complexity, duration and costs to both parties, while facilitating strong competition for the BPP to obtain the best value for money for the PPP.

9.2 KEY CONSIDERATIONS FOR THE PUBLIC SECTOR PROCUREMENT TEAM

9.2.1 The Procurement Team

A suitable project team is essential. They should at least include representatives from the following MDAs:

a) KanInvest (Coordinating Agency)

b) Ministry of Finance;

c) The relevant MDA concerned. E.g. PPP deal for a sports complex should include officers from the Ministry of Youth and Sport;

d) Building development, and estate management;

e) Procurement.

A project director will need to be appointed for each project and be responsible to both drive the project and mobilise the appropriate skills at the required time. It is important that the team be overseen by the senior management of the agency, as such management commitment can help the team better structure the PPP deal to achieve a workable and sustainable PPP contract that meets the needs of the agency over the duration of the contract.

The entire procurement team will need to work with the PPP advisor or KanInvest. While the inputs of the advisor can be useful to the execution of the PPP deal, ultimately, the decisions on the structuring of the PPP contract and the selection of the PPP provider should be made by the public agency, with the relevant inputs from the PPP advisor.

9.2.2 Transparency without Compromising Value for Money

The process for selecting a PPP provider must be transparent, while ensuring value for money. The selection should be made in accordance with government procurement rules and practices to ensure transparent and non-discriminatory treatment of potential providers. All bidders should be treated fairly and equally throughout the selection process.

9.2.3 An Efficient Process for Selecting a PPP Provider

PPP projects span over long durations. Hence it is critical that the BPP and KanInvest work together to select a PPP provider who can deliver on its commitments and work well with the MDAs throughout the entire duration of the partnership. The process for selecting the PPP provider should aim at minimising costs to both the public and private sectors while facilitating strong competition to ensure value for money. Excessive bidding costs may increase the costs for the specific PPP project concerned, and limit competition for PPP projects in the long term.

9.2.4 What then does the above mean in practice?

First, KanInvest should seek the needed funding commitments and management approval for the PPP project, before inviting private sector participation in PPP tenders. This is to minimise the possibility of abortive PPP tenders which are called and subsequently not awarded.

Second, KanInvest should work with the BPP and their PPP advisor to ensure that the PPP contract is a viable one before they issue the PPP tender. To do so, the BPP should conduct a pre-procurement briefing, say, 3 to 6 months before the PPP tender. The pre-procurement briefing should be open to any interested party, including financiers. For PPP procurement, therefore, KanInvest should not merely publish upcoming PPP projects in its portal, but can also arrange for separate market sounding sessions to prepare potential providers ahead of the procurement.

Third, a selective tendering process can be used to identify the right PPP provider. The initial stage involves inviting the private sector to a pre-qualification round. Certain potential providers are then shortlisted and pre-qualified from all who have responded to the pre-qualification stage of the tender. The pre-qualified players are then invited to submit their bids for the PPP tender. The pre-qualification stage is important – if executed properly, it can help to eliminate unsuitable bidders as early as possible, thus keeping bidding costs as low as possible for both the private and public sector. At the pre-qualification stage, the BPP and KanInvest should release information on the salient features of the PPP procurement (the PPP draft contract can be published only at the Invitation to Tender stage), so that potential bidders can make an informed decision whether to even participate in the pre-qualification stage of the PPP tender in the first instance.

As a general policy, BPP should not reimburse bidding costs incurred by suppliers.

A Robust and Balanced Contract

Given the long-term lifecycle of the project, the contract should provide (i) flexibility to accommodate future changes within defined limits, and (ii) optimal transfer of responsibilities (and the associated risks) under the project.

i. Contractual Flexibility

PPPs usually involve long-term contracts during which time circumstances may change. This may occur for any number of reasons, only some of which can be foreseen. The public sector therefore requires a flexible contract with suitable mechanisms for achieving necessary operational variations in a transparent, cost- effective way. Notwithstanding this, the PPP contract requires some fundamental certainty in order to be viable.

BPP could incorporate, as part of the contract, a "change" or "variation" procedure that provides a mechanism for the implementation of such changes and a basis for calculating the consequences for the payment to the private sector and any consequential adjustment in the project's allocation of risk. Within this, two basic methods can be applied: 1) in-built tolerances (eg. a right to change space needs within parameters as part of the original deal); 2) variation procedures (eg. pre-priced options for additional capacity, or specific procedures such as benchmarking and tendering to determine the costs of the variations). Stipulating variation procedures upfront in the contract is an objective way to obtain fair prices for reasonable changes in requirements. The underlying objective is the need to balance flexibility with value for money.

ii. Sharing of Responsibilities and Risks

To obtain value for money, there should be optimal, not maximum, transfer of responsibilities (and the associated risks) under the project – excessive transfer impairs value for money as the risk premium will be priced into the project by the PPP provider. Responsibilities and thus risks should be borne by the party best able to manage them.

It is essential that the existence of risks is recognised and that their occurrence and consequences are specified in the contract, where possible, to ensure that the PPP is sustainable over the contract duration.

iii. Performance Specifications and Measurement

Output (rather than Input) Specifications: PPPs are procurement of services. Thus, output- or outcome-based specifications should be used as much as possible to allow the private sector as much flexibility as possible to provide innovative solutions that meet the need of the BPP at the lowest possible whole lifecycle cost.

Nonetheless, it is hard to achieve 100% use of output- or outcome-based specifications for PPP contracts. Some input-based specifications will usually be necessary, such as specifying the key defined materials to construct a building or an outline but not detailed design for the PPP provider's reference.

iv. Performance Measurement and Payment Mechanism

To ensure that the output- or outcome-based specifications work, they should be measurable. Performance measurement is critical to PPP contracts because they form the basis of the payments to the PPP provider. Performance measurement will be linked to an agreed set of standards or key performance indicators, which generally relate to the quality, amount and frequency of service provision.

The sharing of responsibilities and risks comes into effect through the performance-based payment mechanism, which has the following key elements:

a. Payments commence only upon the provision of services by the private sector (to incentivise timely completion of the building construction);
b. The PPP provider earns payments only to the extent that it provides services which meet the service requirements as set out in the contract.

Typical methods of performance-related payment are based on usage or availability.

Contract Management

Unlike conventional procurement that establishes the BPP and the private sector in a product supplier/ buyer relationship, PPP procurement places emphasis on both the PPP provider and the agencies working together to ensure that this long-term contract works for mutual benefit. This is central to the management of the contractual relationship, and will depend on the people and procedures in place for managing this relationship as well as the terms of the PPP contract.

Involving procurement and contract management personnel in the project team from the beginning will enhance their understanding of the project and enable them to form necessary relationships with the awarded private sector company prior to implementation.

CONCLUSION

Given the complexity of PPP procurement, the more thorough the due diligence done before the BPP calls the PPP tender, the lesser the bidding costs are likely to be for both the private and public sectors. This will in turn increase the likelihood of the BPP attracting bidding interests from strong and competent private sector players. Such due diligence includes working out a balanced and robust PPP contract, and conducting market sounding before the PPP tender is called.

10. PROCEDURES FOR IDENTIFYING THE RIGHT PPP PROVIDER

This section provides guidance on the process for identifying the PPP provider. In conjunction with this guide, KanInvest should also comply with the guidelines in the BPP Procurement Manual on selective tendering procedures.

10.1 Essentially, under the process, KanInvest and BPP should:

a) sound out the market on their proposed PPP approach, so as to gather as early as possible (3-6 months before the issue of the PPP tender), feedback from the private sector;

b) follow the MOF gateway process, where projects above $500 million or those that are more complex in nature are subject to staged approvals for concept, design and implementation;

c) adopt the selective tender for the PPP tender to select the PPP provider;

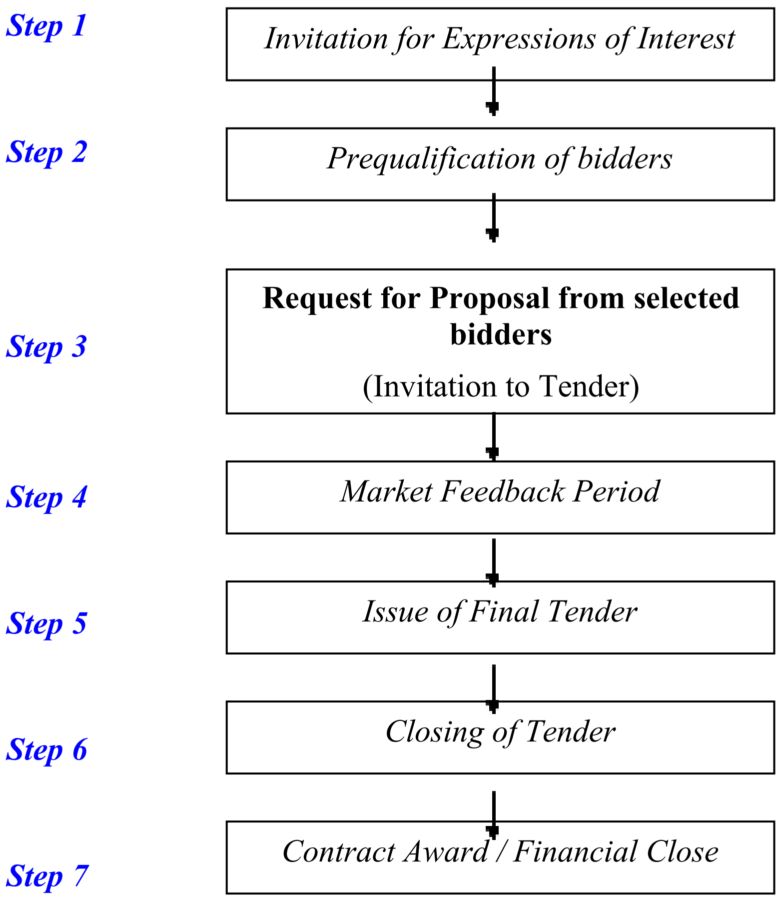
d) pre-qualify tenderers for participation in the Invitation to Tender stage of the PPP tender;

e) address and consider the feedback and concerns raised by the potential bidders during the time gap between the issue of the PPP tender documents (including the draft PPP contract) and the closure of the tender. If need be, the MDAs should thereafter amend the tender documents and must make known these changes openly. All potential bidders will then be aware of these revised tender documents before they submit their bids and the tender closes;

f) avoid negotiation with bidders once the tender is closed; and

g) keep proper records of the entire PPP process, including decisions and actions taken during the process and the reasons. These records should be retained for a period required by the Instruction Manual.

10.1.1 Figure 3.2.1 Flowchart of the PPP Procurement Process



STEP 1: INVITATION FOR EXPRESSIONS OF INTEREST

Before issuing a PPP tender, the BPP and KanInvest should have first established the business case on whether to proceed with the procurement of the services concerned via PPP, work with the PPP advisor (if any) to structure the PPP contract, and obtained necessary approvals from the relevant authorities to proceed with PPP.

Market Sounding

At the very beginning, before even calling the pre-qualification, the BPP and KanInvest should sound out the market, where practicable with the PPP advisor"s help. Market sounding focuses on the supplier market as a whole, not individual suppliers. It does not include any element of provider selection or bid evaluation. There is no commitment of any kind from either the private sector or the MDA. Rather, market sounding helps the MDAs assess the likely reaction of the market to the proposed PPP procurement, and the MDA's preliminary thinking on the salient aspects of the PPP contract. With the feedback from the market sounding stage, the MDAs can better structure the subsequent PPP tender such that it is workable (e.g. whichever company is chosen subsequently as the PPP provider can raise the needed financing from the capital market based on the PPP contract), and can attract strong bidding interest from competent potential PPP providers.

KanInvest should ensure that the market sounding is conducted in a fair and transparent manner and does not give any one potential bidder an unfair competitive advantage. For instance, the MDAs can plan a pre-procurement briefing on the PPP project, say 3-6 months, before issuing the PPP tender. The pre- procurement briefing should be open to any interested bidders, including financiers. At the briefing, the BPP and KanInvest can inform the industry of the following:

a) What services does it intend to procure under this PPP deal?

b) What is the size of the demand (e.g. a facility capable of accommodating xxx students)?

c) What is the likely tenure of the PPP contract?

d) What will be the role of the successful tenderer? E.g. to design, build, finance and operate the facility?

e) What can the provider own in this PPP deal? E.g. land and building?

f) How will the payments be structured? Will there be only availability payments, or will there be usage-related payments?

g) To what extent is the provider free to generate third-party revenue streams, and how is the provider to share this revenue with the KanInvest?

h) Which risks will the provider bear, and which will be borne by the MDA? E.g. is the demand risk to be borne by the MDA? What are some of the key risks to be co-shared between the MDAs and the provider?

i) What are the exit arrangements (including compensation if any) like (e.g. if PPP provider defaults, if KanInvest terminates, or if unforeseen events arise?)

The above information, though indicative only, will help the industry to give informed feedback to the MDAs. KanInvest can then use this market sounding phase to assess a) the potential level of bidding interest; and b) the valid concerns which the industry may have on the draft PPP structure.

If responses from the market during this market sounding phase indicate that the proposed PPP project is unfeasible or that there is not likely to be much competition during the bidding process, KanInvest should review the proposed approach and structure of the PPP contract.

10.1.2 Invite Expressions of Interest

The invitation for Expressions of Interest marks the beginning of the formal process for selecting the PPP provider, i.e. the formal procurement process. Basically, the BPP and KanInvest can adopt the selective tender for choosing a PPP provider. This is allowed under our procurement manual, and is compliant with the WTO-Agreement for Government Procurement (GPA). Briefly, selective tendering involves a pre- qualification stage. At a later stage, the pre-qualified tenderers will submit their bids, while those who had not participated in the pre-qualification can submit their request for pre-qualification in order to submit their bids[1].

[1] The GPA requires that suppliers who request to participate in a bid but who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure.

We now describe the pre-qualification stage of this formal provider selection process. At this stage, KanInvest should publish the Invite Expression of Interest (EOI) on its website, the one-stop PPP portal for our public sector. The objective of the Invite EOI is to invite private sector players who are interested in the PPP procurement to submit their bids, so that the BPP and KanInvest can pre-qualify potential PPP providers. This notice should include sufficient explanation of the project, and the period of Invite Expression of Interest notice. This Invite EOI is identical to the Pre-Qualification in the current Selective Tendering process.

An EOI notice should not be altered after it has been published. KanInvest and the BPP should pay special attention to the following aspects when drafting the Invite EOI.

Period of Invite Expressions of Interest Notice

The Period of Invite EOI Notice refers to the time period between the publication of the Invite EOI Notice and the closing date for receipt of application for qualification from suppliers. Given the complexity of the PPP project, the period of Invite EOI Notice should not be less than 14 days. As a suggestion, KanInvest may wish to allow for the period to be at least 30 days. KanInvest shall comply with the guidelines contained in the procurement manual on Government Procurement.

Information to be included in the Invite Expressions of Interest

The Invite EOI notice should include the following information:

a) Factors that will be used to evaluate whether to pre-qualify a tenderer and the relative weighting of each factor, e.g. financial health, technical capability, track record, etc.

b) The procedure that will be used to select the suitable provider for the PPP project, such as shortlisted suppliers will be invited to submit a full proposal at the later stage of the tender process (Step 3 of the proposed process for selecting a PPP provider).

c) Salient aspects of the indicative PPP contract, such as those stated at paragraph Error! Reference source not found. above. Although there is no need for KanInvest to give the full PPP contract at this stage, a summary of these salient aspects of the PPP contract will help the private sector better assess whether to participate in the pre-qualification stage of the PPP tender in the first instance. The summary can also help the bidders work with their potential financiers early on the financial viability of the PPP deal.

d) The BPP and KanInvest may hold a pre-qualification briefing to clarify on the qualification document to bidders. As financiers play an important role in PPP projects, it is important to ensure that financiers are appropriately involved at the right time. Therefore, potential bidders should be allowed to attend the pre-qualification briefing with their financiers. Also, this briefing can be open to the banks and other financiers who have a bona fide interest.

STEP 2: PRE-QUALIFICATION OF BIDDERS

The suppliers who responded to the Invite EOI and have provided the required information should be evaluated against the evaluation criteria set out in the Invite EOI. The purpose of this stage is to assess the technical competency and financial soundness of the interested suppliers. It is not intended to cover proposals for that particular project and hence, factors relating to the award of the contract should only be considered at a later stage of the tendering process. The following information could be evaluated to assess the financial soundness of the bidders at this stage :

a) Financial ratios, such as interest cover for the PPP SPV proposed by the bidders;

b) The bidding costs estimated by the bidders as a gauge of their understanding of PPP complexity, and how they intend to fund their bid costs;

c) The financing proposals, i.e. how the bidders intend to finance the project. For instance, a bidder can present a letter of undertaking from the parent companies involved of their equity investment in the SPV; and

d) Details of who is going to advise bidder on financial issues including information and expertise.

KanInvest/BPP must not change the evaluation criteria or waive any mandatory and essential requirements or contractual terms after the closing of the Invite EOI. Any applications received after the closing date must be rejected.

Setting up of the evaluation team

An evaluation committee should be set up to evaluate the competence of the interested suppliers. The evaluation committee will evaluate all the applications received based on the evaluation criteria set forth in the Invite Expression of Interest notice. To ensure that the evaluation is done in a fair, open and transparent manner, the evaluation team members must declare any conflict of interest, directly or indirectly possessed and, on this basis, discontinue their involvement in the evaluation committee.

The PPP advisor may help furnish inputs to the Evaluation Committee on the evaluation of the responses to the Invitation for Expressions of Interest. However, the final recommendation as to which bidders to be pre-qualified should be made by the Evaluation Committee before submission to the approving authority. Given the complexity in PPP projects, public agencies can consider appointing the Tenders Approving Authority as the authority to approve the list of prequalified bidders.

After the prequalification stage, KanInvest/BPP will have prequalified a list of suppliers who pass the evaluation criteria set forth in the Invite (EOI) notice.

The following general guidelines must be applied in the recommendation and approval of applications for short listing:

a) the selection process is conducted fairly; and
b) all the suppliers that complied with the evaluation criteria in the Invite Expression of Interest notice shall be pre-qualified.

It is important that KanInvest/BPP set their prequalification criteria carefully. They must not have a pre-determined number to artificially limit the number of suppliers who can qualify for the Invitation to Tender stage, as this will limit competition by depriving suppliers who are capable of fulfilling the contract from tendering. Rather, both MDAs should be clear about what it is they need in the potential PPP provider, and set the corresponding stringent pre-qualification criteria. The choice of pre-qualification criteria used must only be to ensure supplier's capability to fulfil the contract and not have a discriminatory effect.

STEP 3: REQUEST FOR PROPOSAL FROM SELECTED BIDDERS (INVITATION TO TENDER)

- **Refine the project appraisal.**

Before issuing the Invitation to Tender (ITT) at this stage of the PPP tender, the BPP/KanInvest should consider whether the assumptions of its business case analysis done before the issue of the EOI are still valid, i.e. whether PPP is likely to yield value for money for the KanInvest.

Before issuing the ITT, KanInvest should as far as possible draw up a list of questions that potential bidders may raise. The response to each of the questions must be carefully drawn up and approved internally (if need be, by its legal advisor), so that KanInvest is ready with its stance on the possible queries which bidders may raise during the clarification stage after the issue of the ITT. Any inter-agency issues, such as indicative valuation of the land and land use planning parameters, should be resolved before the calling of the tender.

- **Tender Notice**

A Tender Notice (incorporating a Notice of Proposed Procurement and Summary Notice) should be released on the KanInvest (PPP) portal to inform and invite the shortlisted suppliers to submit Tender Proposals for the PPP project in accordance with the instructions contained in the Invitation to Tender (ITT). KanInvest/BPP shall comply with the guidelines contained in the procurement manual.

In addition to the information to be included in the Notice of Proposed Procurement, the notice shall also contain the following information:

a) a statement that the KanInvest/BPP is inviting offers for a PPP procurement;

b) the draft PPP contract to be signed by KanInvest and the successful PPP provider;

c) the timetable and the process for clarifying the set of terms and conditions of the PPP contract and for the submission of bids; and

d) the relevant documents to be given to potential bidders, which may include the:

i. Step-in agreement

ii. Letter of Conveyance

iii. Form of Bid Bond (issued by the bank)

iv. Form of Bank Acknowledgement Letter

v. Form of Letter of Intention

KanInvest should make available for all potential bidders as much accurate and pertinent information as possible, when issuing the ITT. Such legal, financial or technical information can then help the bidders to better evaluate the PPP contract and project, thus reducing the likelihood of misunderstandings, withdrawals of bids etc. Examples of information to be given to potential bidders may include technical conditions of the site such as the soil condition, the projected usage or user load for the amenities, bid evaluation criteria, and whether more than one successful bidder is envisaged. KanInvest can consider setting up a data room where all the relevant information can be made available to bidders.

➢ **Period of Tender**

The Period of Tender refers to the time period between the date of publication of Tender Notice and the closing date for receipt of Tender Proposals from bidders. A reasonable minimum Period of Tender should be specified for PPP projects given the complexity of tendering for PPP projects. As a guide, KanInvest could consider setting 4- 6 months before this PPP tender closes.

Where a decision has been made to extend the closing date, KanInvest shall issue a Corrigendum to Tender Notice on the PPP portal at least one month before the original closing date to effect this. This is to give all prospective bidders adequate notice of such extension.

If the closing date has to be brought forward, KanInvest shall issue a Corrigendum preferably one month before the new closing date. This is to give all prospective bidders adequate notice to respond on time. The period of tender can only be reduced in exceptional circumstances where there is extreme urgency or due to obvious errors with the original closing date. KanInvest should be mindful that shortening the tendering period may lead to some prospective bidders being caught unawares and unable to submit a bid on time. The agency should thus avoid this as much as possible.

- **Invitation to Tender (ITT) Document**

The ITT shall be published on KanInvest (PPP) portal. KanInvest should use output/outcome-based performance specifications as much as possible in its PPP contracts, although some input-based specifications may be necessary for certain requirements of KanInvest/BPP in the PPP contract. Output specifications will allow the potential bidders as much flexibility as possible to produce innovative proposals as well as not to restrict KanInvest/BPP from considering alternative proposals. KanIvest/BPP should also include a clause on periodic market testing in the tender. This is to ensure that the unitary payment is a fair and viable one.

STEP 4: MARKET FEEDBACK PERIOD

THIS IS AN IMPORTANT STAGE IN THIS WHOLE PROCESS TO SELECT THE PPP PROVIDER. As a guide, this market feedback period should be at least 3 months. This market feedback period, between the issue of the ITT and the closure of the ITT, serves two significant aims:

a) It helps both the MDAs and the potential bidders to understand what the terms and conditions of the PPP contract as stipulated in the PPP tender mean and the implications these terms and conditions pose. This will help the bidders evaluate the legal and financial implications of the PPP deal, and thus better decide whether to participate in the tender; and

b) It allows the KanInvest/BPP to amend the terms and conditions of the PPP contract, if necessary, to make it more robust and viable before the tender closes such that there will be strong bidding interests from potential providers.

Typically, there will be three types of information exchanges between the KanInvest/BPP and the pre-qualified bidders during the market feedback. The MDAs must clearly state in the ITT what these are and how each will be dealt with accordingly.

The first type of information exchange refers to pre-qualified bidders seeking clarification. Clarifications refer to queries raised by the bidders for which the bidders will want an answer from the MDAs. These queries can be on the PPP contract, the tender specifications, or any other aspect of the PPP project. Such clarification is to be submitted in writing to KanInvest.

KanInvest should allow at least 1 round of written clarification during this period before the tender closes. It should state the deadlines for each of these rounds of feedback. Pre-qualified bidders should submit their written queries by these deadlines**.** KanInvest will release to all the bidders its written replies to all the clarification. The reason for publishing the replies for the information of all pre- qualified bidders, irrespective of who has raised the clarification, is to ensure that all pre-qualified bidders have the same and common level of understanding on the PPP project. The agency should carefully prepare a written reply to all these queries within the specified time frame and disseminate the full and same list of queries and answers openly. All correspondences arising from the feedback process must be documented and kept properly within KanInvest.

The second type of information exchange refers to suggestions. By suggestions, these refer to any ideas or proposals which the pre-qualified bidders may have, and which it wishes to make known to the KanInvest. For instance, the suggestion can relate to the PPP contract, the tender specification or any other aspect of the PPP project. Suggestions should be sent in sealed envelope to KanInvest, and be marked confidential by the bidders. Upon receiving the suggestions, KanInvest will ensure that it will not disclose the suggestion. Nonetheless, the KanInvest is not required to reply to the suggestion. Nor is it obliged to accept the suggestion. In the event that the MDA does accept the suggestion, it will amend the PPP tender documents (such as the tender specifications or the PPP contract) accordingly.

The third type of information exchange refers to alternative proposals on how the MDA's needs can be met. Such information is of commercial interest to the bidders. Bidders may wish to submit such alternative proposals to the prescribed tender specifications instead as part of their official response to the PPP tender, as a variant bid. MDAs must make clear to the pre-qualified bidders that alternative proposals submitted as variant bid can only be considered provided that the MDAs also submit their base bid in accordance with the specifications of the PPP tender.

MDAs may hold a tender briefing during the period to explain the ITT and the various information exchanges that may take place during market feedback. The tender briefing should be open to all pre-qualified bidders including their financiers.

STEP 5: ISSUE OF FINAL TENDER

Where necessary, the MDA may issue a corrigendum to amend its ITT accordingly at the end of the cycle of market feedback rounds.

MDAs should consider extending the original closing date if bidders in general have difficulties complying with the stipulated period. Extension, if any must be announced through a corrigendum one month before the original closing date. This is to give all prospective bidders adequate notice of such extension.

STEP 6: CLOSING OF TENDER

The requirement to publish the schedule of tenders on KanInvest (PPP) portal not later than three working days after the tender closing date applies.

The ultimate aim of the evaluation process is to select the PPP provider who is best able to manage and deliver the project. KanInvest/BPP must evaluate tender proposals using the evaluation model or criteria set forth in the ITT. The MDA must not at this junction change criteria or waive essential requirements or contractual terms after the closing of the tender.

- **Establish the Evaluation Team**

Evaluation will be undertaken by an evaluation committee who is not biased toward any bidder. Evaluation team members must declare any conflict of interest, directly or indirectly possessed, and on this basis discontinue being in the evaluation committee. Key stakeholders must be represented in the evaluation team. The evaluation team should include technical/ operational, business, financial and senior management representatives.

- **Evaluate Tender Compliance**

In evaluating basic compliance, KanInvest/BPP may be left with a limited number of complying tenders, i.e. two or fewer complying tenders. The MDA will need to make a decision whether it wishes to continue with the evaluation process or re-tender.

If the MDAs wish to recommence the tender process, the relevant Tender Approving Authority's approval has to be obtained. Generally, if none of the tenders can comply with the requirements of the ITT, the MDAs should cancel the tender process and re-tender with revised specifications, terms and conditions, where applicable. However, such situations with its commensurate abortive bidding costs incurred by the bidders and the MDAs can be avoided if they have in the first instance conducted due diligence, such as in structuring a robust PPP contract, conducting market testing before issuing the prequalification tender and allowing market feedback sessions by potential bidders during the PPP tender process.

Any clarification of proposals submitted by the bidders during the evaluation process must be documented by KanInvest, including the need for clarification, reasons and the potential effect on other bidders. The clarification notice must be forwarded to the bidder in writing and a reasonable time frame must be set for provision of an answer. The response should be in writing and within the specified time.

- **Recommend PPP Provider**

Having taken into account all elements of the evaluation criteria, KanInvest/BPP shall prepare a Tender Evaluation Report detailing the recommendation of the preferred bidder and justifications. The MDAs will then put up a Tender Recommendation Report, which will include the Tender Evaluation Report, to the relevant Tender Approving Authority to seek approval for the recommendation.

STEP 7: CONTRACT AWARD / FINANCIAL CLOSE

A signed contract between the MDA and the selected PPP provider is mandatory for every PPP project. The contract must identify clearly the following:

a) risk allocations and responsibilities of the MDA and the PPP provider;

b) financial terms of the contract; and

c) agreed upon performance standards, target dates (milestones), deliverables and options for terminating the contract.

The MDA should allow the PPP provider to finalise all third party agreements (for example with banks, sub-contractors, etc.) within a reasonable timeframe, and to obtain the necessary permits from the relevant authorities. As a guide, MDAs can consider giving the PPP provider as a guide about 3 months, to reach financial close.

CONCLUSION

KanInvest and relevant PPP MDAs should conduct the needed market sounding, structure a robust, balanced and bankable PPP contract, and conduct the procurement process in a transparent and yet efficient manner (such as clarifying with bidders during the market feedback period before the closure of the tender) to secure bidding interests from more and competent potential PPP providers.

(Muhammad Nazir Halliru),
Director General,
KanInvest.

KanInvest