



# ONDO STATE PUBLIC- PRIVATE PARTNERSHIP FRAMEWORK

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# **SECTION 1**

## **INTRODUCTION TO PUBLIC-PRIVATE PARTNERSHIPS**

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### **1.1 WHAT IS PUBLIC-PRIVATE PARTNERSHIP?**

Public-Private Partnership (PPP) is a procurement model introduced to foster collaboration between public agencies and private sector providers to enhance the delivery of public services. In Ondo State, PPP is a strategic mechanism to address infrastructure deficits and operational inefficiencies, particularly in critical sectors such as healthcare, agriculture, education, and transportation. This approach leverages private sector expertise and innovation while allowing the public sector to focus on core responsibilities like policy-making and regulation.

PPP in Ondo State is defined by long-term partnerships aimed at achieving sustainable development goals. The state's adoption of PPP emphasises private sector involvement in the design, construction, financing, operation, and maintenance of public infrastructure and services. This approach not only ensures better value for money but also integrates innovation and efficiency into service delivery.

Traditionally, public agencies in Ondo State have engaged private entities primarily for construction or equipment supply, with ownership and operation retained by the public sector. For instance, a public agency might contract a private company to construct a water treatment plant and subsequently manage its operations. This conventional method often limits innovation and efficiency.

With the PPP framework, Ondo State now emphasises acquiring services rather than assets. For example, in the case of a water treatment plant, the private sector may be contracted to design, build, operate, and maintain the plant while securing the necessary financing. The state purchases water directly from the private provider, ensuring cost-effectiveness and freeing public resources for other critical needs. This model encourages private entities to innovate and deliver superior services.

PPP arrangements in Ondo State typically span 15 to 30 years, fostering enduring partnerships that maximise the expertise and resources of both sectors. By collaborating closely with private entities, the state aims to deliver public services that optimises value for money, meets public needs effectively, and drives innovation in infrastructure

and service delivery. This long-term vision aligns with Ondo State’s commitment to sustainable development and inclusive growth.

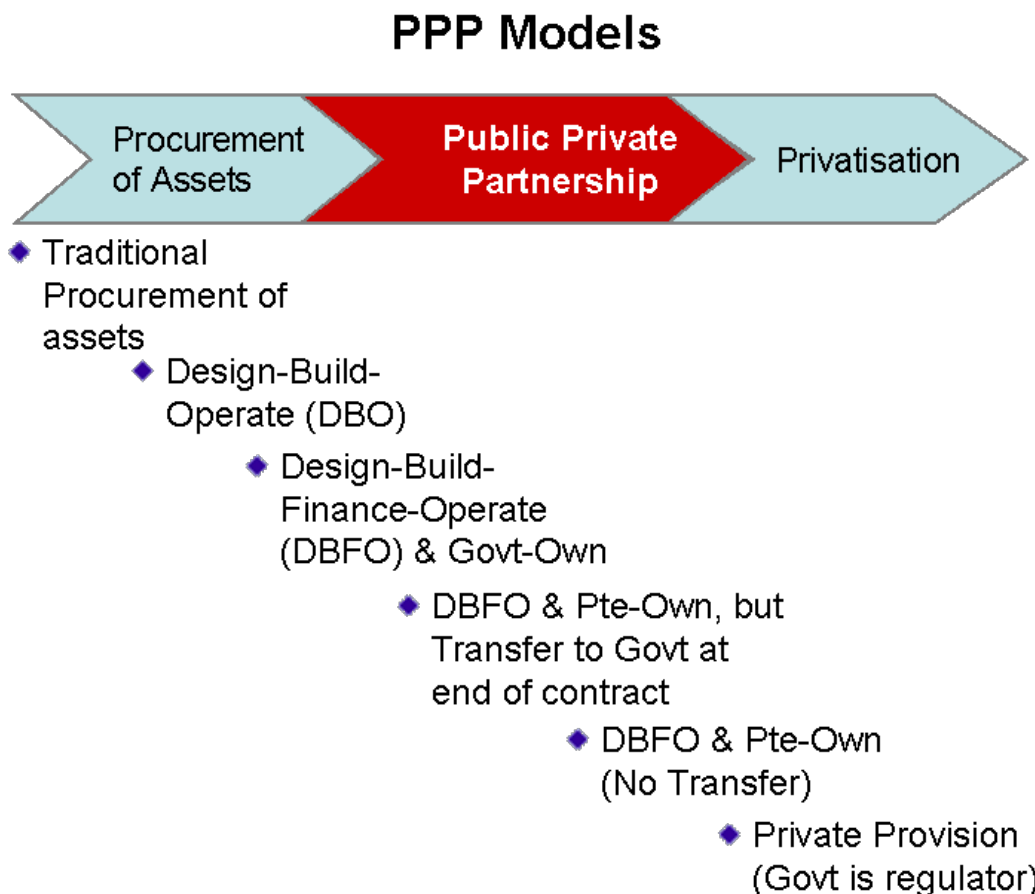
## 1.2 TYPICAL PPP DELIVERY MODELS

### 1.2.1 Overview of PPP Models:

Ondo State recognises the diversity of PPP models and seeks to adopt approaches that best suit the specific requirements of each project. These models include joint ventures, strategic partnerships, and innovative frameworks such as Design-Build-Operate (DBO) and Design-Build-Finance-Operate (DBFO).

Figure 1.1 illustrates some common PPP models.

**Figure 1.1 Some Common PPP Models**



Ondo State employs various PPP models, selecting the most suitable approach for each project through critical evaluation. These models include:

- **Design-Build-Finance-Operate (DBFO):** The private partner is responsible for designing, constructing, financing, and operating the facility.

- **Design-Build-Operate (DBO):** The public sector funds the project, while the private partner handles design, construction, and operation.
- **Joint Ventures (JV):** Public and private sectors share resources, risks, and rewards in project execution.
- **Strategic Partnerships:** Collaborations aimed at optimizing the use of government assets for enhanced service delivery.

### 1.2.2 Application of PPP Models in Ondo State:

#### a) Design-Build-Finance-Operate (DBFO) Model:

This is the most common form of PPP, involving the integration of Design, Build, Finance, and Operate functions within one PPP service provider. The private provider secures its financing to build, maintain, and operate facilities that meet public sector requirements. Payments are based on service delivery standards over the contract's duration. This model reduces financial risks for the state, as private entities conduct due diligence to ensure financial viability.

*Example:* The proposed Ondo Multipurpose Deep Sea Port illustrates this model. Estimated at \$1 billion, the project involves private sector participation in design, construction, financing, and operation. It is envisioned to create one of the most modern ports in Nigeria, enhancing trade and economic activities in the region.

#### b) Design-Build-Operate (DBO) Model:

In this variation, the public sector provides funding for the design and construction of the facility but continues to engage the private vendor for operational management. The vendor is compensated through performance-based management fees. This model suits projects where the private sector's financial capacity may not fully cover the project's scale.

*Example:* The 30MW Power Plant in Ore is an excellent example of this model. The state government funded its construction, but operational aspects involve private sector participation to ensure efficiency and sustainability. The plant supports industrial activities in the southern senatorial district and the Ore industrial park.

#### c) Joint Ventures (JV):

Joint ventures involve the public and private sectors sharing resources, risks, and rewards. This model allows both parties to pool their strengths to achieve common goals while distributing responsibilities equitably.

*Example:* The concession of the Grain Storage Facility in Akure is a notable JV. This 10-year partnership between the Federal Ministry of Agriculture and Rural Development and Agro Universal Consortium ensures efficient management of grain silo complexes, enhancing food security and agricultural productivity.

#### d) Strategic Partnerships:

Strategic partnerships focus on leveraging existing assets and resources to improve service delivery. These partnerships allow for innovative solutions and efficient use of government assets.

*Example:* The Rural Access and Agricultural Marketing Project (RAAMP) is a strategic partnership aimed at improving rural infrastructure. By asphaltting feeder roads, the project connects rural dwellers to urban centers, boosting the agricultural economy in Ondo State. The state government's commitment of N3.47 billion as counterpart funding highlights its dedication to rural development.

### 1.2.3 Critical Evaluation and Selection Process:

Ondo State's approach to PPP involves a thorough assessment of each project's unique requirements, potential risks, and expected outcomes. By analyzing factors such as financial viability, technical feasibility, and socio-economic impact, the state ensures that the chosen PPP model aligns with its strategic development goals and delivers optimal value to its citizens.

This meticulous selection process reflects Ondo State's commitment to leveraging PPPs as effective tools for sustainable development, fostering economic growth, and improving public service delivery.

### 1.3.1 Overview:

PPP offers a win-win-win solution for the public sector, private sector, and members of the public, addressing Ondo State's unique developmental challenges while fostering growth and efficiency.

#### **For the Public Sector:**

1.3.2 PPP allows the public sector to get better value for money in delivering public services. By transitioning from a provider to a buyer of services, Ondo State's government can focus on its core responsibilities of policy-making and regulation. Efficiency gains and other benefits include:

**a) Private Sector Expertise and Competitive Advantage:** Ondo State leverages private sector expertise, innovation, and competitive advantages in delivering public goods and services. For instance, private sector involvement in the proposed Ondo Deep Sea Port aims to introduce advanced logistical operations, maximizing trade potential and infrastructure utilization.

**b) Cost Efficiency through Lifecycle Optimization:** By integrating design, build, maintain, and operate functions into a single PPP contract, Ondo State ensures that projects consider operational and lifecycle costs from inception. The DBFO approach for projects like the Ore Power Plant is an example of how long-term cost efficiencies are achieved.

**c) Optimal Sharing of Risks:** PPP projects allocate risks based on which party is better equipped to manage them. In the Grain Storage Facility concession, construction and operational risks are borne by the private partner, while regulatory risks remain with the public sector. This approach reduces uncertainty in government cash flows.

#### **For the Private Sector:**

1.3.3 PPP provides diverse business opportunities for the private sector in Ondo State. Private entities are engaged to deliver comprehensive services—from design and construction to operations and maintenance—fostering innovation and efficiency.

1.3.4 PPP enables the private sector to innovate beyond traditional asset construction. For example, private partners in the RAAMP project can deploy advanced engineering solutions to ensure rural road connectivity, boosting agriculture-driven commerce.

1.3.5 The expertise gained through Ondo State’s PPP projects positions private companies to compete for similar contracts nationally and internationally, expanding their market presence.

#### **For Members of the Public:**

1.3.6 PPP combines government oversight with private sector innovation to deliver high-quality public services tailored to community needs. Projects like RAAMP directly enhance rural livelihoods by improving access to markets and essential services.

1.3.7 The public interest is safeguarded through robust governance structures. Ondo State ensures:

**a)** Private providers meet public needs effectively; **b)** Accountability is maintained through clear service delivery frameworks; **c)** Public safety, health, and security are prioritized; and **d)** Personal data and information confidentiality is preserved.

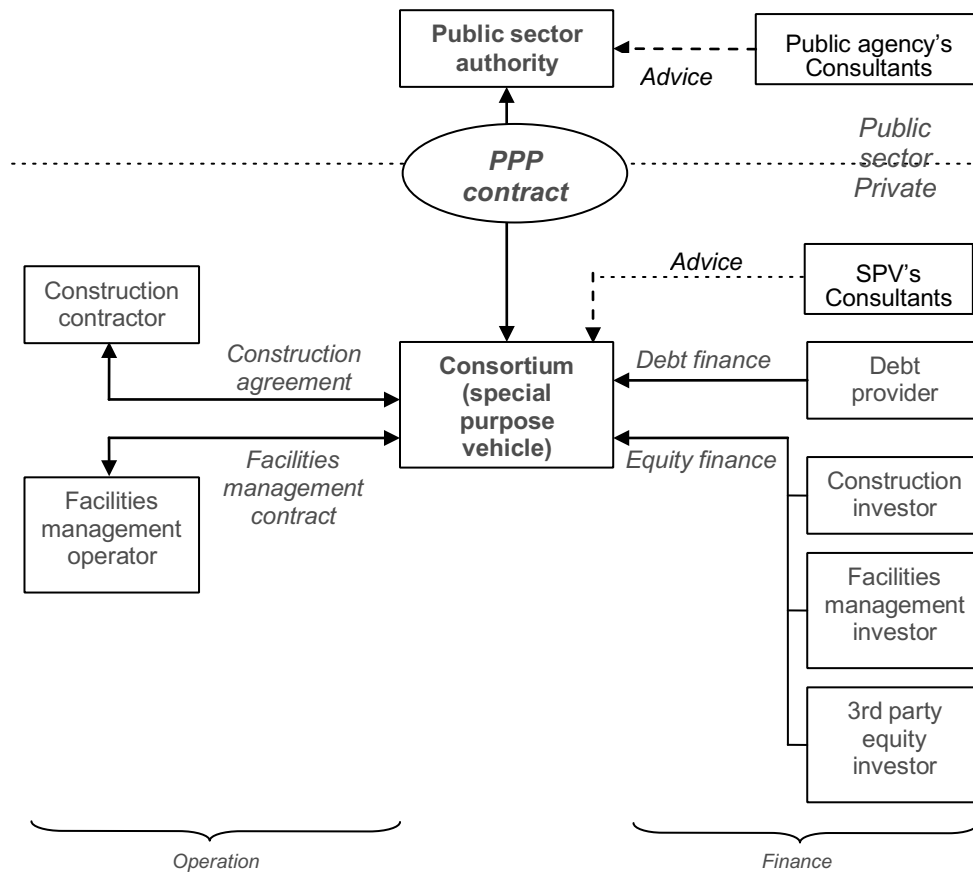
This inclusive and transparent approach reinforces public confidence in PPP initiatives, ensuring projects align with community expectations and developmental goals.

## **1.4 ROLES OF THE PUBLIC AND PRIVATE SECTORS IN PPP PROJECTS**

1.4.1 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.

**Figure 1.2 Typical PPP (for DBFO model) project structure**



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

**1.4.1 Collaboration and Role Allocation:**

A PPP project involves collaboration between various private sector companies and public agencies. In Ondo State, the Ondo State Development and Investment Promotion Agency (ONDIPA) serves as the primary coordinating authority for PPP projects. However, contracting authorities may vary based on the specific project scope and sector. For example:

- **Ondo State Ministry of Health** for healthcare-related PPP projects such as hospitals and diagnostic centers.
- **Ondo State Ministry of Works and Infrastructure** for road, bridge, and other infrastructural projects.
- **Ondo State Ministry of Education** for educational infrastructure projects.



## **Broad Categorization of Roles:**

The roles and responsibilities of the collaborating parties in a PPP project are outlined below:

### **a) Public Agency - Purchaser of Services:**

- Specifies the outcomes or outputs required and avoids micromanaging the means of service delivery.
- Monitors compliance with performance standards.
- Makes payments to the PPP provider based on successful service delivery in accordance with the contractual agreements.
- Agencies such as ONDIPA ensure alignment with state goals and facilitate investor relations.

### **b) Design, Construction, Operations, and Maintenance Companies - Service Providers:**

- Private sector companies form a Special Purpose Vehicle (SPV) to bid for and manage the PPP project.
- The SPV handles design, construction, operational, and maintenance responsibilities.
- Subcontractors, often equity investors, may supply equipment and specialized services.
- The SPV raises financing, determining debt/equity ratios, loan tenures, and return expectations with equity and debt providers.
- Revenue streams (service payments or third-party income) are used to repay loans, investors, suppliers, and subcontractors.

### **c) Equity Investors and Debt Providers - Private Financiers:**

- **Equity Investors:** Often construction or operations companies involved in service delivery, equity investors aim for positive returns by ensuring adherence to performance standards.
- **Debt Providers:** Banks and bondholders often fund up to 80-90% of the project cost. Debt providers conduct rigorous due diligence on the SPV's technical and financial soundness before providing funding.

### **d) Consultants - Advisors:**

- Public agencies and private sector bidders may engage technical, legal, and financial consultants to structure the PPP tender and ensure a viable proposal.
- Advisors highlight best practices and potential pitfalls, strengthening the contract negotiation and project implementation phases.

### **e) Ministry of Finance - PPP Policy Owners:**

- Formulates policies and guidelines to govern PPP projects.

- Raises awareness among public agencies to improve PPP knowledge and build sectoral capacity.
- Works closely with agencies during project evaluation and ensures fiscal responsibility in PPP contracts.

#### 1.4.3 Special Purpose Vehicle (SPV):

In Ondo State’s PPP framework, an SPV plays a pivotal role in project management. The SPV:

- Acts as the central coordinating entity for private sector responsibilities.
- Oversees project lifecycle management, including financing, construction, and operations.
- Aligns with contracting authorities such as ONDIPA or relevant ministries to ensure project compliance and alignment with state goals.

#### 1.4.4 Collaborative Risk Management:

Effective risk-sharing mechanisms are central to successful PPP projects. In Ondo State:

- **Private Sector:** Takes on construction, operational, and financial risks.
- **Public Sector:** Manages regulatory, political, and land acquisition risks.
- **Shared Risks:** Demand or revenue risks are allocated based on the party best equipped to manage them.

#### 1.4.5 Sector-Specific Authorities:

The contracting authority for a PPP project in Ondo State may differ depending on the sector and scope of the project. For instance:

- **Infrastructure Projects:** Ondo State Ministry of Works and Infrastructure.
- **Health Projects:** Ondo State Ministry of Health.
- **Education Projects:** Ondo State Ministry of Education.

### Section 1.5: Conclusion

Public-Private Partnerships (PPPs) represent a transformative approach to delivering public services by leveraging private sector innovation, resources, and expertise. When structured effectively, PPPs create a long-term, mutually beneficial relationship that drives better outcomes for all stakeholders. In Ondo State, these outcomes include:

- **Optimal Life Cycle Costing:** Projects are designed with a focus on long-term sustainability, reducing operational and maintenance costs over time.
- **Risk Sharing:** Proper allocation of risks between the public and private sectors ensures efficiency and reduces the financial burden on the state.
- **Maximizing Asset Utilization:** By engaging the private sector, public infrastructure is optimized for greater utility and commercial potential.

- **Business Opportunities:** PPPs open new avenues for private sector growth, fostering innovation and investment in the local economy.

This handbook outlines the foundational principles, models, and processes that underpin successful PPPs. It details considerations in structuring a PPP deal, managing the procurement process, and maintaining collaborative relationships throughout the project lifecycle. By aligning with Ondo State's developmental objectives, PPPs have the potential to drive sustainable growth, enhance service delivery, and improve the quality of life for citizens.

As Ondo State continues to embrace PPPs, the emphasis remains on transparency, accountability, and innovation. Through partnerships that prioritize public interest and strategic alignment, Ondo State aims to set a benchmark for effective PPP implementation in Nigeria.

# SECTION 2

## STRUCTURING A PPP DEAL

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### Section 2.1: Characteristics of a PPP Deal (Customized for Ondo State)

#### 2.1.1 Introduction to Key Characteristics:

When structuring a PPP deal, it is crucial to understand the defining characteristics of the various PPP models. The Design-Build-Finance-Operate (DBFO) model, which involves the private sector across the widest range of services, serves as a comprehensive example for explaining these characteristics. The principles discussed here also apply to other PPP models, such as Design-Build-Operate (DBO).

#### 2.1.2 Overview of the DBFO Model:

In the DBFO model, the private sector assumes responsibility for designing, financing, constructing, and operating a public service facility over a long-term contract, typically 15-30 years. The public sector specifies desired outputs, risk-sharing arrangements, and payment structures, ensuring alignment with performance standards. Figure 2.1.1 illustrates a typical DBFO project structure.

#### Key Responsibilities of the Private Sector in a DBFO Model:

- a) Design (D):** The private partner is responsible for designing the facility based on output specifications provided by the public sector. This flexibility fosters innovation and cost-efficiency, allowing Ondo State to benefit from cutting-edge designs tailored to specific needs.
- b) Build (B):** The private partner constructs the facility, ensuring that it meets the agreed-upon technical and operational standards.
- c) Operate (O):** The private partner may handle ancillary services (e.g., cleaning, maintenance) and core services (e.g., operating a desalination plant for potable water supply). In Ondo State, this flexibility is vital for projects like hospitals, where ancillary services can be outsourced while healthcare delivery remains public-led.
- d) Finance (F):** The private partner raises the necessary capital through loans, bonds, and equity investments, reducing the financial burden on Ondo State's government.

**e) Own (O):** Ownership structures may vary. In some cases, the private sector owns the facility for the contract duration, while in others, the public sector retains ownership. For instance, critical infrastructure projects like prisons or defense facilities may follow a Government-Owned, Contractor-Operated (GOCO) model.

### 2.1.3 Adaptability of the DBFO Model in Ondo State:

In Ondo State, PPP projects under the DBFO model are customized based on the sector's requirements. For example:

- **Education Sector:** Facilities like schools may involve private partners constructing and maintaining infrastructure, while educational services remain under public management.
- **Healthcare Sector:** Projects like diagnostic centers could leverage private sector expertise for design, construction, and non-clinical operations, enhancing service delivery.
- **Transportation Infrastructure:** Toll roads or bus terminals could use DBFO models, where private operators handle construction, maintenance, and operations, reducing the state's burden.

### 2.1.4 Key Characteristics of DBFO Projects:

#### **Contractual Characteristics:**

**a) Long-Term Contracts:** Contracts typically span 15-30 years, aligning the private sector's incentives with the facility's long-term functionality and maintenance. For instance, road projects in Ondo State could involve lifecycle management to ensure sustainability.

**b) Outcome/Output Specifications:** Public service requirements are framed as output specifications, giving private partners flexibility to innovate while meeting Ondo State's performance expectations. For example, specifying that school facilities provide 90% availability during term time encourages innovative maintenance solutions.

**c) Special Purpose Vehicle (SPV):** Private companies form an SPV to bid for DBFO contracts. The SPV integrates expertise from construction firms, financial institutions, and operational managers to ensure project success.

**d) Risk Sharing:** Responsibilities and risks are allocated to the party best equipped to manage them. For example, construction and financial risks are transferred to the private sector, while regulatory risks remain with Ondo State agencies.

**e) Performance-Based Payments:** Payments to the private sector are tied to performance standards. Failure to meet these standards results in deductions, ensuring accountability.

**f) Flexibility:** Contracts include mechanisms for variations, enabling adjustments to service requirements or delivery methods over the contract term. For instance,

contracts for Ondo State’s energy projects may allow for scaling operations based on demand.

**Financial Characteristics:**

**a) Private Financing:** Projects are primarily funded through private equity and debt, reducing the immediate financial burden on Ondo State. Debt providers conduct extensive due diligence, ensuring financial viability.

**b) Publicly Funded in the Long Term:**

PPP projects in Ondo State are structured to ensure long-term public funding mechanisms, with costs ultimately recovered through one or more of the following means:

- **User Fees:** Members of the public pay directly for services, such as tolls for roads or fees for accessing water treatment facilities. This model works well for financially self-sustaining projects.
- **Government Payments:** In cases where user charges are not feasible or would place undue burdens on the public, the government covers the costs through budget allocations or performance-based payments. For instance, diagnostic centers in Ondo State may receive fixed payments based on the number of patients served and the quality of services.
- **Hybrid Models:** A combination of user fees and government subsidies ensures affordability for essential services while maintaining project viability. For example, public transportation terminals might involve ticketing revenue supplemented by government grants.

**c) Transparent Financial Models:** Financial transparency is critical. Ondo State’s Bureau of Public Procurement ensures that all financial models are thoroughly vetted to prevent over-commitment or mismanagement.

**Ownership of PPP Facilities:**

Ownership structures under the DBFO model vary based on the project type and strategic objectives. Two common ownership models include:

**a) Contractor-Owned, Contractor-Operated (COCO):**

Under the COCO model, the private sector retains ownership of the facility for the contract duration. This structure is particularly suitable for projects where:

- The facility generates significant revenue independently (e.g., toll roads or power plants).
- The public sector’s use is limited to a portion of the asset’s life span.
- Continuous enhancement or upgrades by the private owner can improve productivity.

For instance, a water treatment plant under a COCO structure allows the private partner to own and operate the asset, delivering water services to users while generating revenue.

#### **b) Government-Owned, Contractor-Operated (GOCO):**

In the GOCO model, the public sector retains ownership of the land and facility, while the private sector operates and maintains it. This structure is ideal for critical infrastructure, such as prisons or defense facilities, where government oversight is essential. Ondo State may use this model for sensitive facilities while ensuring private sector efficiency in day-to-day operations.

#### **2.1.5 Examples of DBFO Projects in Ondo State:**

**a) Ore Power Plant:** A DBFO model where the private partner handles design, construction, and non-core operations, ensuring energy efficiency and reliability. This project highlights the potential for private sector innovation in addressing energy needs.

**b) Deep Sea Port:** This ambitious project leverages private sector expertise for design, construction, and operations, boosting trade and economic growth.

**c) Rural Road Access Projects:** Using the DBFO model, the state has prioritized connecting rural communities to markets, enhancing agricultural productivity and local commerce.

#### **2.1.6 Risks and Mitigation Strategies:**

**a) Construction Delays:** Allocating clear deadlines and performance penalties ensures timeliness.

**b) Financial Risks:** Private sector bears financial risks, with thorough due diligence conducted by debt providers to ensure robust business models.

**c) Regulatory Changes:** Ondo State's government works closely with private partners to ensure stability in regulatory frameworks.

## **2.2 COMPETENCIES NEEDED TO STRUCTURE PPP DEALS**

### **Complexities of PPP Deals:**

PPP projects are inherently more complex than traditional government procurement projects. These complexities arise from the need to:

- Develop and understand output and outcome specifications.
- Prepare whole lifecycle costing to ensure project sustainability.

- Structure viable payment mechanisms aligned with performance.
- Establish fair termination rights to protect both parties.

### **Importance of Competent Management Teams:**

For PPP projects to succeed, it is crucial to have well-trained and experienced project management teams within the public sector agency. These teams should possess competencies in financial modeling, legal frameworks, and technical specifications unique to PPP projects. Similarly, private sector bidders must demonstrate the capability to manage complex contracts and deliver on specified outcomes. Public agencies in Ondo State can also seek advisory support from specialized PPP units or consultants.

### **Scope of the Chapter:**

This section elaborates on:

- Responsibilities of public sector project management teams.
- Possible project management structures for public sector teams.
- Essential competencies required for both public and private sector participants.
- Key factors contributing to effective project management.

### **Responsibilities of the Public and Private Sectors:**

#### **Public Sector Responsibilities:**

The public sector project team is responsible for:

- Evaluating the feasibility of structuring a PPP model for the project.
- Designing a PPP tender that delivers value for money to the government while providing viable opportunities for private sector participants.
- Conducting detailed studies, including financial feasibility, and drafting tender documents.
- Evaluating tender proposals and selecting the most suitable bidder.
- Monitoring and evaluating the private provider's progress and performance against the contract.

Public sector project teams should include officers familiar with the policy objectives and service requirements for the project. Where in-house expertise is lacking, external advisors may be engaged to supplement financial, legal, and technical capabilities.

Public agencies can consult Ondo State's Bureau of Public Procurement for guidance on procuring PPP advisory services and finalizing tender documents.

#### **Private Sector Responsibilities:**



Private sector bidders must demonstrate the capacity to:

- Understand the proposed PPP model and its financial implications on cash flows and revenues.
- Identify innovative solutions to meet public sector needs.
- Secure financing at the lowest possible cost.
- Propose tender submissions that balance public sector objectives with profitability.
- Manage projects effectively to meet performance requirements throughout the contract term.

Private bidders lacking in-house expertise may consider hiring PPP advisors to prepare comprehensive and competitive tender proposals.

### **Structure of Public Sector Management Teams:**

A typical public sector project management structure includes:

- **Steering Group or Board:** Comprising key decision-makers such as Permanent Secretaries, Chief Executives, or senior managers of the procuring agency.
- **Project Sponsor:** A senior manager accountable for the project and part of the Steering Group.
- **Project Manager and Team:** Including in-house staff and external advisors with expertise in finance, legal frameworks, and technical operations.
- **Project Sub-Teams:** Focused on specific issues such as planning and stakeholder consultations.
- **Advisory Units:** Ondo State's Bureau of Public Procurement and external PPP consultants can provide guidance and expertise as required.

### **Key Competencies for PPP Teams:**

The success of PPP projects depends on developing and integrating the following competencies:

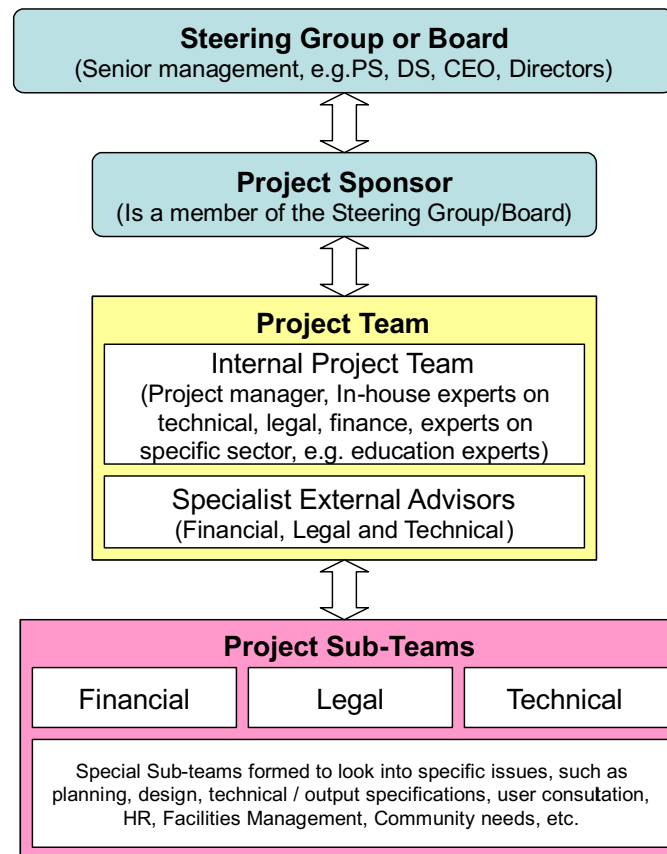
- **Financial Skills:** Expertise in cost modeling, revenue projections, and risk analysis.
- **Legal Knowledge:** Understanding of PPP contract law, dispute resolution, and regulatory compliance.
- **Technical Expertise:** Familiarity with project-specific technical standards and lifecycle maintenance requirements.
- **Stakeholder Management:** Ability to manage relationships between public agencies, private providers, and end-users.
- **Performance Monitoring:** Skills in tracking compliance with performance indicators and contractual obligations.

Continuous training and capacity-building programs are essential for developing these competencies within Ondo State's public agencies and private sector partners.

By fostering these skills and implementing effective project management structures, Ondo State can ensure that its PPP projects deliver value for money, meet public service objectives, and maintain high standards of accountability and transparency.

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

- a. the project is affordable to the public sector agency,
- b. the PPP project is able to deliver better value for money and
- c. there is sufficient interest in the project for competition to take place.

**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.

2.2.14 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.

2.2.15 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.

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

- a) Build up a robust business case for the PPP project;
- b) Identify the responsibilities and risks borne by the public sector and the private sector and the financial implications of such responsibilities;
- c) Structure payment mechanisms that offer the optimum balance of responsibilities, risks and rewards for the public agency and PPP provider;
- d) 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
- e) 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 general legal 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, organs of state and government departments must consult AGC for advice before seeking external legal advisors.** Statutory Boards, on the other hand, can engage private sector legal advisors without consulting AGC.

### **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.

## **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.

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 Ondo State, both the public and private sectors can learn from the experience in other 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.



## **Section 2.3: Structuring Win-Win PPP Deals for Ondo State**

### **2.3.1 Key Features of Win-Win PPP Deals**

In Ondo State, Public-Private Partnership (PPP) projects must be structured to align with the developmental priorities of the state while fostering mutual benefits for both the public sector and private investors. Specifically, PPP deals must deliver value for money to the government and provide commercially viable opportunities for the private sector. By adopting a tailored approach, Ondo State seeks to achieve sustainable infrastructural growth and improved public services.

### **2.3.2 Ondo State's Approach to PPP**

The Ondo State Government, through its designated agencies such as the Ondo State Investment Promotion Agency (ONDIPA), evaluates the applicability of PPP for various projects using a Best Sourcing approach. This involves comparing the PPP model (e.g., private sector to design-build-finance-operate) with conventional government procurement models (e.g., private sector builds while the government operates). The chosen model must demonstrate superior value for money and align with the specific needs of Ondo State citizens.

To ensure the success of PPPs, ONDIPA works collaboratively with other ministries, including the Ministry of Finance and the Ministry of Works, to streamline processes and maintain transparency throughout the project lifecycle.

### **2.3.3 Revenue Considerations for the Private Sector**

For private sector participants, Ondo State ensures that PPP projects are structured to offer sufficient revenue streams, either through government payments or direct user charges. This guarantees that investors can recover their initial investments and operational costs while delivering high-quality services. For example, toll roads, renewable energy projects, and modern healthcare facilities are structured to combine government support with sustainable user fees.

### **2.3.4 Key Factors in Structuring a Win-Win Deal**

Ondo State works closely with private sector stakeholders to address critical factors for structuring effective PPP deals. These include:

#### **a) Competent Private Sector Providers:**

- Ondo State emphasizes the selection of experienced and reliable private sector partners capable of delivering the required services.
- A competitive bidding process ensures multiple proposals, fostering innovation and driving continual improvements in service delivery. For instance, ongoing collaborations in agriculture and renewable energy sectors demonstrate the state's commitment to leveraging private sector expertise.

**b) Measurable Output/Outcome Specifications:**

- Clear service outcomes and outputs are outlined to provide a transparent framework for private sector involvement.
- Key Performance Indicators (KPIs) specific to Ondo’s developmental goals—such as improved healthcare access or reduced transportation costs—are used to monitor performance and incentivize excellence.

**c) Sufficient Project Scale:**

- Projects requiring significant investment, such as the construction of a modern technology hub or integrated transport facilities, are prioritized for PPP arrangements.
- Smaller-scale projects are bundled to achieve economies of scale, ensuring efficient resource utilization. For example, multiple rural healthcare centers can be integrated into a single PPP project.

**d) Scope for Private Sector Innovation and Efficiency:**

- Ondo State’s PPP framework encourages innovation by granting private providers the flexibility to introduce new technologies and optimize asset utilization.
- The state remains open to collaborative asset-sharing proposals, particularly for infrastructure projects like schools, hospitals, and renewable energy plants, provided they align with public policy goals.

**e) Adequate Planning and Procurement Time:**

- Adequate timeframes are set for planning and procurement to ensure thorough preparation and robust project structuring.
- For example, ONDIPA ensures that sufficient time is allocated for feasibility studies, stakeholder consultations, and private sector engagement before finalizing PPP agreements.

**f) Manageable Interfaces with Other Projects:**

- Clearly defined roles and responsibilities for PPP providers and other contractors are critical to project success.
- For instance, in projects where IT services are managed separately from construction and maintenance, Ondo State ensures seamless coordination through detailed contractual agreements and oversight mechanisms.

**Key Issues to Address in the PPP Contract**

**2.3.5 Comprehensive Contract Provisions**

PPP contracts in Ondo State must clearly outline the rights, responsibilities, and obligations of all parties involved. Specific considerations include:

**a) Project Phases:**



- Contracts must define clear milestones, deliverables, and timelines for each phase, from design and construction to operations and maintenance.

**b) Performance Standards:**

- Establish measurable KPIs tied to payment mechanisms, ensuring accountability and incentivizing high-quality service delivery.
- Include mechanisms for performance-based penalties and rewards to drive continuous improvement.

**c) Risk Allocation:**

- Allocate risks to the party best positioned to manage them effectively. For instance, construction and operational risks are typically borne by the private sector, while political and regulatory risks remain with the government.

**d) Termination Clauses:**

- Specify conditions under which contracts may be terminated, including provisions for compensating the private sector while safeguarding public interests.

**e) Dispute Resolution Mechanisms:**

- Include binding arbitration and mediation procedures to resolve conflicts efficiently and maintain project momentum.

By addressing these considerations, Ondo State aims to foster robust partnerships that balance public needs with private sector capabilities, ultimately driving sustainable development and economic growth.

**Table 2.3.1 Issues that should be addressed in a PPP contract**

<b>Issue</b>	<b>Construction Phase</b>	<b>Service Delivery or Operational Phase</b>	<b>Contract Expiry or Termination Phase</b>
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.

### **Avoiding Potential Pitfalls When Structuring a PPP Deal for Ondo State**

#### **Understanding Potential Pitfalls**

Although PPP projects offer immense benefits, such as improved efficiency and enhanced service delivery, they are not without challenges. In Ondo State, the government is committed to mitigating these potential pitfalls through proactive measures, ensuring that PPP arrangements align with the state’s developmental priorities and remain sustainable over the long term.

#### **Higher Private Financing Costs**

It is often argued that private sector financing, particularly under models like Design-Build-Finance-Operate (DBFO), can result in higher financing costs due to the private sector’s higher borrowing rates. These costs arise from the inherently higher risks associated with lending to private entities compared to government borrowing, as well as the inclusion of profit margins by private financiers.

However, in Ondo State, private financing is viewed as an essential component of PPP projects. By involving the private sector in raising capital, the state instills greater discipline in capital usage and promotes optimized investment decisions. Additionally, the due diligence performed by private financiers enhances project viability and ensures robust financial planning.

#### **Mitigation Measures in Ondo State:**

- **Risk Management:** ONDIPA, in collaboration with private financiers, implements risk mitigation strategies to ensure that PPP projects are deemed bankable and viable. By addressing potential risks upfront, private financiers are incentivized to offer competitive borrowing rates.
- **Efficiency Gains:** The higher costs of private financing are offset by efficiency gains achieved through superior capital investment decisions and operational excellence, which ultimately benefit the state.

#### **Inflexible, Long-Term Contracts**

PPP projects often involve long-term contracts that lock both the public and private sectors into commitments over extended periods. Without provisions for flexibility, such contracts may struggle to adapt to unforeseen changes, such as technological advancements or shifts in public demand.

#### **Ondo State's Approach to Flexibility:**

- Contracts include variation provisions, allowing for adjustments in specifications and requirements while maintaining fair compensation for both parties.
- Termination clauses are built into contracts to account for exceptional circumstances. This ensures that either party can exit the agreement amicably if necessary.
- Stakeholders are encouraged to adopt a collaborative “give-and-take” attitude to sustain long-term partnerships.

#### **Costly and Lengthy Procurement Process**

The complexity of PPP procurement often results in prolonged timelines and higher bidding costs for private sector participants. This makes PPP more suitable for projects with substantial capital value to justify the procurement effort.

#### **Ondo State's Streamlined Procurement Measures:**

- ONDIPA prioritizes large-scale infrastructure projects, such as integrated transport systems and energy solutions, for PPP arrangements.
- The state invests in capacity building to equip public sector teams with the expertise needed to efficiently structure and manage PPP deals.
- Standardized templates and frameworks are used to reduce the time required for documentation and contract negotiation.

### **Service Discontinuity if Private Provider Fails**

One of the risks associated with PPPs is the potential failure of private providers due to financial difficulties, which could disrupt service delivery. This risk persists in any outsourcing arrangement but is particularly critical in PPP models where private sector involvement is extensive.

### **Ensuring Service Continuity in Ondo State:**

- Contracts include step-in rights, allowing the government to temporarily take over operations and manage private sector staff and equipment if necessary.
- Provisions are made for private financiers to identify alternative providers, subject to government approval, to ensure uninterrupted service delivery.
- A robust monitoring framework is in place to assess the financial health and performance of private providers throughout the contract duration.

Ondo State is committed to structuring PPP deals that avoid common pitfalls while maximizing the benefits of private sector participation. By fostering regular dialogue between public agencies and private providers, the state ensures that PPP arrangements are well-structured, flexible, and sustainable. Proactive measures to address potential challenges, such as financing costs, contract inflexibility, and service continuity risks, position Ondo State as a model for successful PPP implementation in Nigeria.

## Section 2.4: The PPP Payment Mechanism for Ondo State

### **2.4.1 Overview of the Payment Mechanism**

The payment mechanism determines the payments that the Ondo State Government makes to private providers in PPP projects. Often referred to as the unitary charge, this mechanism represents a structured approach for compensating private sector partners based on service delivery standards. It translates the allocation of risks and responsibilities between the state and the private sector into financial terms.

### **2.4.2 Customization for Ondo State Projects**

For Ondo State, the payment mechanism must be tailored to address the unique requirements of its public services, its citizens, and the nature of each PPP arrangement. The payment structure should ensure alignment with the state's socio-economic objectives while offering fair returns to private providers.

### Objectives and Features of the PPP Payment Mechanism

**2.4.3 Objectives** The PPP payment mechanism in Ondo State seeks to:

- Provide incentives for private providers to meet or exceed the availability and performance standards stipulated by the state.
- Align payments with the desired outcomes and outputs that Ondo State aims to achieve.
- Encourage private providers to promptly rectify deficiencies when performance or availability falls below agreed standards.
- Foster innovation and efficiency gains throughout the lifecycle of the PPP contract, ensuring long-term value for money.

**2.4.4 Key Features** The payment mechanism for PPP projects in Ondo State includes the following features:

- **No Payments Until Service Delivery:** The state will not initiate payments until the required service or facility is fully operational. For instance, in a water treatment PPP, payments will commence only after the water meets specified quality standards.
- **Performance-Based Payments:** Payments will reflect the availability and performance standards outlined in the contract. Incentives for exceptional performance and penalties for substandard service will ensure accountability and continuous improvement.
- **Focus on Outputs, Not Inputs:** Payments will be tied to the delivery of outcomes rather than inputs, such as construction milestones or material costs. This approach emphasizes service delivery over asset procurement.
- **Integrated Payment Structure:** The unitary charge will integrate all service components to reflect overall performance. For example, in a student accommodation project, payments for ancillary services like laundry will only be made if the primary accommodation services meet availability standards.

## Payments to the PPP Provider vs. Fees Charged to Users

**2.4.5 Subsidy Models and Fee Structures** In some Ondo State PPP projects, user fees may partially or fully offset the state’s payments to private providers. The state retains flexibility to set user fees based on broader subsidy policies. For instance, in transport PPPs, user fees may be supplemented by state funds to ensure affordability for residents. When user fees fall short of covering provider payments, Ondo State will provide top-up payments to bridge the gap.

## Structuring the Payment Mechanism

**2.4.6 Early Considerations** To ensure the payment mechanism supports a sustainable partnership, Ondo State incorporates feedback from private providers during the development phase. Key considerations include:

- Objective measurement of service delivery.
- Clear definitions of quality and quantity standards.
- Realistic and measurable availability and performance criteria.

**2.4.7 Transparency and Simplicity** The payment mechanism is designed to be objective, transparent, and easy to operate. This fosters trust and clarity between the state and private providers.

## Elements of the Unitary Charge/Payment

**2.4.8 Payment Components** The unitary charge in Ondo State’s PPP projects may vary based on the following elements:

- **Availability:** Payments linked to the readiness of facilities or services, such as the availability of classroom spaces in an education PPP.
- **Performance Quality:** Deductions or bonuses based on the quality of ancillary services, such as maintenance or security.
- **Usage:** Payments tied to service utilization, such as the volume of water treated or the number of patients served in a healthcare PPP.

**2.4.9 Integrated Approach** Most projects will combine these elements. For example, in a healthcare PPP, availability payments may cover the readiness of hospital facilities, while performance-based payments reward or penalize operational excellence in patient care.

**2.4.10 Context-Specific Application** The choice of availability, performance, or usage as the basis for payments depends on the specific project. For instance:

- **Education PPPs:** Emphasize availability of classroom spaces and performance of teaching aids.
- **Healthcare PPPs:** Combine availability of facilities with performance-based indicators like patient satisfaction.
- **Transport PPPs:** Focus on usage metrics, such as passenger numbers, combined with performance criteria like punctuality.

## Availability in Ondo State PPP Payment Mechanism

### **2.4.12 Definition of Availability-Based Payments**

Under the availability payment model, the Ondo State Government commits to compensating private providers for each unit of service or facility made operational at the specified performance standard. Payments are based on the availability of the service or facility, regardless of its actual usage. For instance, availability payments could apply to hospital beds, courtrooms, or the capacity of a water treatment plant, as long as they meet the agreed standards and are ready for use.

### **2.4.13 Applicability in Ondo State Context**

The availability payment structure is particularly relevant for PPP projects in Ondo State where:

- **Focus on Readiness Over Usage:** The government prioritizes having critical infrastructure available and ready for use, such as classrooms or road networks, regardless of the extent to which they are utilized.
- **Responsibility for Demand Management:** The state assumes the responsibility for managing demand levels. For example, in school PPP projects, the Ondo State Ministry of Education may assign students to schools, ensuring that facilities are optimally utilized while the private provider is paid based on their availability.

### **2.4.14 Quality Standards and Availability**

In Ondo State, availability is not solely defined by the physical presence of infrastructure but also by its readiness and quality. A courtroom, for instance, is considered available only if it is clean, safe, air-conditioned, and all necessary systems are operational. These quality benchmarks are non-negotiable and form the basis for payments.

### **2.4.15 Key Considerations for Structuring Availability-Based Payments**

The following critical questions guide the structuring of availability payments in Ondo State PPP contracts:

- **Defining Availability:** What constitutes availability or unavailability? This definition must specify conditions under which services are considered ready for use or deemed unavailable.
- **Critical Areas and Penalties:** Which facilities or services are most critical? For instance, unavailability of classrooms might warrant higher penalties compared to less critical areas like recreational spaces. The payment mechanism must incentivize the availability of these essential services.
- **Rectification Periods:** How long does the provider have to resolve issues before the service is considered unavailable? A clear rectification window encourages prompt action while minimizing service disruptions.

- **Handling Usage of Unavailable Facilities:** How should the state address situations where defective facilities, such as classrooms, are still in use? Options include treating such facilities as available or applying reduced payment deductions.
- **Restoration of Availability:** What processes determine when availability is restored after an issue is resolved?
- **Planned Maintenance:** Should scheduled maintenance periods be considered as unavailability? Clear guidelines on this ensure fairness in evaluating service availability.

#### Performance-Based Payments in Ondo State

##### 2.4.16 Definition and Scope

Performance-based payments in Ondo State focus on service delivery quality rather than availability. These payments are typically used for non-essential services, such as transportation or ancillary school services, and are linked to measurable performance standards.

##### 2.4.17 Structuring Performance-Based Payments

When designing performance-based payments, the Ondo State Government considers:

- **Required Standards:** Defining clear and measurable performance benchmarks.
- **Monitoring Mechanisms:** Establishing effective methods to evaluate private providers' performance.
- **Penalty and Incentive Structures:** Determining the financial consequences of failing to meet standards and offering rewards for exceeding expectations.

#### Usage Payments in Ondo State

##### 2.4.18 Context for Usage-Based Payments

In certain projects, payments may depend on actual service usage. This model applies where private providers can influence demand, such as in public transport systems or utility services.

#### Direct and Indirect Incentives/Penalties

##### 2.4.19 Structuring Incentives and Penalties

Ondo State employs both direct and indirect approaches to incentivize performance and penalize deficiencies:

- **Direct Approach:** Immediate payment adjustments based on performance metrics.
- **Indirect Approach:** Awarding performance or penalty points, which accumulate to trigger further actions, such as bonuses or warnings.



## 2.4.22 Ensuring Balanced Structures

To avoid unintended outcomes, Ondo State caps positive incentives to prevent overinvestment in areas that exceed necessary service levels. This ensures resources are appropriately allocated across all critical service areas, delivering balanced and sustainable outcomes.

### **MECHANISM TO MANAGE PERSISTENT POOR PERFORMANCE OR UNAVAILABILITY**

In line with the Ondo State PPP framework, a “ratchet” mechanism shall be introduced to address recurring poor performance or unavailability of services. This mechanism ensures that penalties for service failures increase incrementally if such failures persist beyond acceptable limits within a defined timeframe.

For instance:

- If a particular service output failure results in an initial deduction of xxx penalty points, subsequent failures beyond a predetermined threshold within a 12-month period may attract x+3x+3x+3 penalty points for each additional occurrence.
- Such incremental penalties serve to incentivize compliance with agreed service standards while protecting the public interest.

ONDIPA, in collaboration with relevant MDAs, shall ensure that these provisions are included in all PPP contracts to uphold service quality and reliability. The mechanism will align with the dispute resolution procedures established by the Ondo State Ministry of Justice to safeguard fairness and transparency.

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### **VARIATIONS TO THE PAYMENT MECHANISM**

The Ondo State PPP framework recognizes the need for flexibility in payment mechanisms to accommodate economic realities and safeguard the interests of both the public and private sectors.

#### **1. Indexation:**

- The unitary charge stipulated in the PPP contract may be indexed to economic indicators such as the Consumer Price Index (CPI).
- Only specific components of the payment structure, such as operational costs, shall be indexed to mitigate inflationary risks borne by the private provider.
- This approach ensures fiscal prudence while maintaining the financial viability of projects.

#### **2. Periodic Price Reviews:**

- PPP contracts may incorporate price review mechanisms at regular intervals, such as every five years.

- These reviews, overseen by ONDIPA, shall focus on "soft" services (e.g., maintenance, catering) and be based on predefined criteria, including cost trends and technological advancements.
  - Independent reviewers may be engaged to mediate in cases of disagreement over reviewed prices.
- 3. Benchmarking and Market Testing:**
- Selected operational services may undergo regular benchmarking or market testing to validate alignment with prevailing market standards.
  - ONDIPA shall prioritize "soft" services for this process, excluding critical infrastructure-related services that could disrupt lifecycle synergy.
- 4. Service Changes:**
- Any amendments to service delivery, scope, or facility requirements shall be reflected in corresponding adjustments to the unitary charge.
  - Such changes must be mutually agreed upon and documented, with ONDIPA ensuring compliance with performance measurement standards.

## **OPERATING THE PAYMENT MECHANISM – CONTRACT MONITORING**

To ensure effective implementation, ONDIPA shall collaborate with MDAs to establish robust monitoring systems. These systems will track compliance with availability and performance standards and facilitate transparent evaluation of penalty triggers. Monitoring mechanisms will be simple, cost-effective, and aligned with Ondo State's broader regulatory framework.

### **The PPP Procurement Process in Ondo State**

#### **3.1 Introduction to the PPP Procurement Process**

### **3.1.1 The Unique Context of Ondo State PPPs**

In Ondo State, Public-Private Partnerships (PPPs) are recognized as essential instruments for addressing infrastructural deficits and fostering economic growth. Given the high capital costs, long contract durations, and complex risk-sharing dynamics, the state's approach to PPP procurement must be meticulous and tailored to its unique needs. ONDIPA (Ondo State Development and Investment Promotion Agency) is leading efforts to establish PPP frameworks that attract credible private sector partners while ensuring value for money.

### **Objectives of the Ondo State PPP Procurement Process**

#### **3.1.2 Strategic Goals of the Process**

PPP projects in Ondo State are designed to span long durations and must ensure the delivery of high-quality services to the public. To achieve this:

- The selection process will identify private providers who can deliver on commitments and collaborate effectively with Ondo State entities throughout the contract period.
- The process aims to minimize complexity, time, and costs while fostering healthy competition to secure the best value for money.

### **Key Considerations for the Ondo State Procurement Team**

#### **The Procurement Team**

#### **3.1.4 Building the Right Team**

To ensure the success of PPP procurement in Ondo State, ONDIPA emphasizes a multidisciplinary approach. The procurement team must include representatives from:

- Finance and Budget Office;
- Relevant sector ministries or agencies (e.g., Education, Health, Infrastructure);
- Estate management and building development units; and
- Procurement experts.

#### **3.1.5 Leadership and Oversight**

A project director will oversee the PPP initiative, mobilizing expertise as needed. Senior management's involvement is critical to ensure the contract aligns with Ondo State's long-term objectives.

#### **3.1.6 Advisor Inputs**

While external PPP advisors may provide technical support, final decisions on structuring contracts and selecting providers will remain with the state's agencies, led by ONDIPA.

### **Transparency Without Compromising Value for Money**

### **3.1.7 Ensuring Equity in the Process**

All selection processes in Ondo State will adhere to national and state procurement rules. This guarantees transparency and fair treatment for all potential bidders, thereby attracting credible investors.

### **An Efficient Process for Selecting a PPP Provider**

#### **3.1.8 Streamlined and Cost-Effective Processes**

Given the long-term nature of PPPs, it is imperative that Ondo State minimizes costs for both public and private entities while fostering competition. This involves:

- Securing funding and management approvals for PPP projects before initiating tenders;
- Conducting market sounding sessions to brief potential bidders and financiers on upcoming projects; and
- Using selective tendering to pre-qualify and shortlist credible bidders.

#### **3.1.9 Reducing Abortive Tenders**

ONDIPA ensures pre-procurement diligence to avoid abortive tenders. Market briefing sessions are organized 3 to 6 months before tendering, providing private stakeholders with sufficient information to assess their participation.

#### **3.1.10 Selective Tendering Process**

Ondo State employs selective tendering to streamline bidder participation. This includes a pre-qualification phase where key details about the project and draft contracts are disclosed. Only pre-qualified bidders are invited to submit tenders.

#### **3.1.11 No Reimbursement Policy**

To maintain fiscal discipline, bidding costs will not be reimbursed to private sector participants.

#### **A Robust and Balanced PPP Contract for Ondo State**

#### **3.1.13 Balancing Flexibility and Risk Sharing**

The state acknowledges the need for robust contracts that balance flexibility with certainty. Key considerations include:

##### **(i) Contractual Flexibility**

Contracts must account for unforeseen circumstances, enabling changes through predefined variation mechanisms. Examples include pre-priced options for additional capacity and transparent benchmarking to assess costs for operational variations.

##### **(ii) Optimal Risk Sharing**

Risk transfer must be carefully calibrated. Risks should be allocated to the party best equipped to manage them to avoid inflated project costs. ONDIPA will ensure all risks are clearly defined and addressed within contracts.

## **Performance Specifications and Measurement**

### **(i) Output-Based Specifications**

ONDIPA prioritizes output-based specifications to encourage innovative solutions. However, where necessary, certain input-based specifications may be included to guide project implementation.

### **(ii) Performance Measurement and Payment Mechanism**

Performance metrics linked to service quality, frequency, and availability will underpin payment mechanisms. Payments will commence only upon service delivery and will be performance-based to incentivize timely and efficient outcomes.

### **(iii) Contract Management**

Contract management will emphasize collaboration between Ondo State agencies and private providers. Involving contract management personnel early in the process will enhance their understanding and foster productive relationships.

## **3.1.24 Conclusion**

Through comprehensive due diligence, transparent processes, and robust contract structures, Ondo State aims to establish PPPs that deliver enduring value. By ensuring pre-procurement readiness and facilitating competitive tendering, ONDIPA seeks to attract credible private partners and deliver transformative infrastructure projects for the people of Ondo State.

### **Procedures for Identifying the Right PPP Provider**

#### **3.2.1 Guidance on Selection**

ONDIPA's guidelines for identifying PPP providers include:

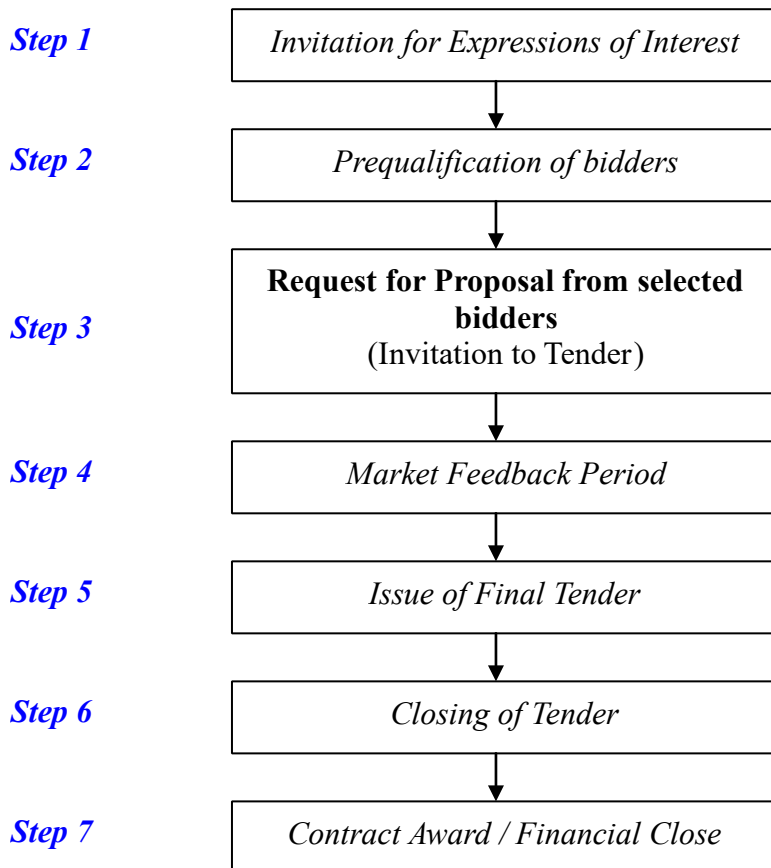
- Conducting market sounding exercises to gather private sector feedback before tendering;
- Following staged approval processes for complex projects above specified thresholds;
- Employing selective tendering to pre-qualify bidders; and
- Maintaining transparency by addressing bidder feedback and amending tender documents as necessary.

#### **3.2.2 Key Steps**

1. Pre-procurement briefings to engage the private sector and assess market interest.

2. Pre-qualification of bidders to streamline the tender process and minimize costs.
3. Issuance of clear tender documents, including draft contracts.
4. Avoidance of post-tender negotiations to uphold transparency.
5. Comprehensive record-keeping to ensure accountability throughout the procurement process.

**Figure 3.2.1 Flowchart of the PPP Procurement Process**



### **STEP 1: INVITATION FOR EXPRESSIONS OF INTEREST**

3.2.3 Before issuing a PPP tender, the GPE 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**

3.2.4 At the very beginning, before even calling the pre-qualification, the GPE 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 GPE. Rather, market sounding helps the GPE assess the likely reaction of the market to the proposed PPP procurement, and the GPE's preliminary thinking on the salient aspects of the PPP contract. With the feedback from the market sounding stage, the GPE 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.

3.2.5 GPEs 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 GPE can plan a pre-procurement briefing on the PPP project, say 3-6 months, before issuing the PPP tender. The preprocurement briefing should be open to any interested bidders, including financiers. At the briefing, the GPE can inform the industry of the following:

- a) What services does it intend to procure under this PPP deal? What is the size of the demand (e.g. a facility capable of accommodating xxx students)?
- b) What is the likely tenure of the PPP contract?
- c) What will be the role of the successful tenderer? E.g. to design, build, finance and operate the facility?
- d) What can the provider own in this PPP deal? E.g. land and building?
- e) How will the payments be structured? Will there be only availability payments, or will there be usage-related payments?
- f) To what extent is the provider free to generate third-party revenue streams, and how is the provider to share this revenue with the GPE?
- g) Which risks will the provider bear, and which will be borne by the GPE? E.g. is the demand risk to be borne by the GPE? What are some of the key risks to be co-shared between the GPE and the provider?
- h) What are the exit arrangements (including compensation if any) like (e.g. if PPP provider defaults, if GPE terminates, or if unforeseen events arise?)

3.2.6 The above information, though indicative only, will help the industry to give informed feedback to the GPE. GPE 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.

3.2.7 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, the GPE should review the proposed approach and structure of the PPP contract.

### **Invite Expressions of Interest**

3.2.8 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,**

**GPEs can adopt the selective tender for choosing a PPP provider.** This is allowed under our Instruction Manual (IM), 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<sup>1</sup>.

3.2.9 We now describe the pre-qualification stage of this formal provider selection process. At this stage, GPEs should publish the Invite Expression of Interest (EOI) on the Government Electronic Business system (GeBIZ), the one-stop procurement portal for our public sector <http://www.gebiz.gov.sg/>. 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 GPE 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.

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

#### **Period of Invite Expressions of Interest Notice**

3.2.11 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, GPEs may wish to allow for the period to be at least 30 days.** GPEs shall comply with the guidelines contained in the IMs on Government Procurement.

#### **Information to be included in the Invite Expressions of Interest**

3.2.12 **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 GPEs 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

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<sup>1</sup> 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.



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) **GPEs 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**

**3.2.13 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.

3.2.14 The GPE 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**

3.2.15 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.

3.2.16 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.

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

3.2.18 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.

**3.2.19 It is important that GPEs set their prequalification criteria carefully. GPEs 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, GPEs 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**

3.2.20 Before issuing the Invitation to Tender (ITT) at this stage of the PPP tender, the GPE 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 GPE.

**3.2.21 Before issuing the ITT, the GPE 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 the GPE 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**

3.2.22 A Tender Notice (incorporating Notice of Proposed Procurement and Summary Notice) should be released on GeBiz to inform and invite the shortlisted suppliers to submit Tender Proposals for the PPP project, in accordance with instructions contained

in the Invitation to Tender (ITT). GPEs shall comply with the guidelines contained in the IMs.

3.2.23 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 GPE is inviting offers for a PPP procurement;
- b) the draft PPP contract to be signed by the GPE 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

3.2.24 **The GPE 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. The GPE can consider setting up a data room where all the relevant information can be made available to bidders.

### **Period of Tender**

3.2.25 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, GPEs could consider setting 46 months before this PPP tender closes.

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

3.2.27 If the closing date has to be brought forward, the GPE 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. GPEs 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. GPEs should thus avoid this as much as possible.

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

3.2.28 The ITT shall be published in GeBIZ. GPEs 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 the GPE in the PPP contract. Output specifications will allow the potential bidders as much as flexibility as possible to produce innovative proposals as well as not to restrict the GPE from considering alternative proposals. GPEs 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**

3.2.29 **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 GPE 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 GPE 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.

3.2.30 Typically there will be three types of information exchanges between the GPE and the pre-qualified bidders during the market feedback. GPEs must clearly state in the ITT what these are and how each will be dealt with accordingly.

3.2.31 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 GPEs. 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 the GPE.

3.2.32 The GPE 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. The GPE will release to all the bidders its written replies to all the clarification. The reason for publishing the replies for the information of all prequalified 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 GPE 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 the GPE.

3.2.33 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 GPE. 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 the GPEs, and be marked confidential by the bidders. Upon receiving the suggestions, the GPE will ensure that it will not disclose the suggestion. Nonetheless, the GPE is not required to reply to the suggestion. Nor is it obliged to accept the suggestion. In the event that the GPE does accept the suggestion, it will amend the PPP tender documents (such as the tender specifications or the PPP contract) accordingly.

3.2.34 The third type of information exchange refers to alternative proposals on how the GPE'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. GPEs must make clear to the pre-qualified bidders that alternative proposals submitted as variant bid can only be considered provided that the GPEs also submit their base bid in accordance with the specifications of the PPP tender.

3.2.35 GPEs 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**

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

3.2.37 GPEs 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**

3.2.38 The requirement to publish the schedule of tenders on GeBIZ not later than three working days after the tender closing date applies.

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

### **Establish the Evaluation Team**

3.2.40 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**

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

3.2.42 If the GPE wishes 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 GPE 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 GPE can be avoided if the GPE has in the first instance conducted its 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.

3.2.43 Any clarification of proposals submitted by the bidders during the evaluation process must be documented by the GPE, 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**

3.2.44 Having taken into account all elements of the evaluation criteria, the GPE shall prepare a Tender Evaluation Report detailing the recommendation of the preferred bidder and justifications. The GPE 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**

**3.2.45 A signed contract between the GPE 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 GPE 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.

**3.2.46 The GPE 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, GPEs can consider giving the PPP provider as a guide about 3 months, to reach financial close.**

### **CONCLUSION**

3.2.47 Agencies 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.





# **SECTION 4**

## **MANAGING A PPP RELATIONSHIP**

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### **4.1 CONTRACTUAL ISSUES IN PPP**

#### **PURPOSE OF THIS SECTION**

4.1.1 The purpose of this section is to provide general guidance for the government procuring entity (GPE)'s management of a PPP contract with the PPP provider throughout the life of the PPP project.

## DIFFERENCES BETWEEN A PPP PROJECT AND A CONVENTIONAL PROJECT

4.1.2 It is important for the GPE to understand and appreciate these differences, as these differences necessitate a different approach to managing a PPP provider, as compared to managing a conventional contractor.

4.1.3 **A PPP project differs from a conventional procurement in the following significant ways:**

- a) **A PPP project is not a construction project.** GPEs should avoid the tendency to manage a PPP project the way they manage a conventional construction project, and inadvertently limiting the room for the PPP provider to innovate in the design and construction of the asset;
- b) **As the PPP provider is delivering services and not an asset, the focus should be more on the performance of the PPP provider in delivering the services according to the stipulated service levels** though the GPE might need to ensure that the asset could revert to itself in a reasonable (but not new) condition at the expiry of the PPP contract should the asset still have residual economic lifespan;
- c) **The risk allocation between the PPP provider and the GPE is more complex than that of a conventional procurement, and the GPE must be careful that the risks undertaken by the PPP provider such as construction and operational risks are not inadvertently passed back to the GPE;** and
- d) **Due to the long tenure of the PPP contract, managing the relationship between the PPP provider and the GPE becomes critical to the success of the PPP project.**

## KEY ASPECTS OF WORKING IN PARTNERSHIP WITH A PPP PROVIDER

4.1.4 There are 3 key aspects of managing a PPP provider:

- a. **contract management;**
- b. **performance monitoring; and**
- c. **relationship management.**

4.1.5 **Contract management is the process that enables both the GPE and the PPP provider to meet their contractual obligations in order to deliver the objectives required from the contract.** This continues throughout the life of a contract and involves managing proactively to anticipate future needs as well as reacting to situations that arise. In contract management, the GPE ensures that the respective roles and responsibilities set out in the contract are fully understood and fulfilled to the contracted standards so that value for money is delivered. Where contracted standards are not fulfilled, the GPE would have to rely on mechanisms established in the contract to rectify any unsatisfactory performance. Contract management may also involve aiming for continuous improvement in performance over the life of the contract.

4.1.6 **Performance monitoring** are specific activities within the management of the PPP provider. It **includes the day-to-day monitoring of performance, assessing whether the**

**contracted services are delivered to the contracted standards, and evaluating the remedial actions taken by the PPP provider when the performance standards are not met.**

4.1.7 Managing the relationship with the PPP provider is covered in details in Section 4.3. Suffice to say here that **given the long tenure of a PPP project and the “partnership” nature of a PPP project where the PPP provider and the GPE are mutually dependent, the relationship management of the PPP provider is different from that of a conventional project.**

4.1.8 The players in each of the above aspects may be different, e.g. in the case of a PPP school, the principal would be responsible for performance monitoring, while MOE might be in charge of managing the contract according to the inputs from the principal.

### **WHY PPP CONTRACTS CAN FAIL**

4.1.9 If a PPP contract is not well managed by the GPE, any or all of the following may happen, and ultimately the contract becomes unworkable:

- a) the PPP provider may take control, resulting in unbalanced decisions that do not serve the GPE’s interests;
- b) decisions are not made at the right time, or not made at all;
- c) new business processes do not integrate with existing processes, and therefore fail;
- d) people (in both the GPE and the PPP provider) fail to understand their obligations and responsibilities;
- e) misunderstandings, disagreements and underestimations may arise, and too many issues would be escalated inappropriately;
- f) progress is slow or there seems to be an inability to move forward;
- g) the intended benefits are not realized; or
- h) missed opportunities to improve value for money and performance.

4.1.10 **There are several reasons why a GPE may fail to manage contracts successfully. Some possible reasons include:**

- a) contracts that are poorly drafted;
- b) inadequate resources are assigned to contract management;
- c) the GPE team does not match the PPP provider team in terms of either skills or experience (or both);
- d) a failure to adopt a partnership attitude;
- e) personality clashes between the people in the project teams;
- f) the context, complexities and dependencies of the contract are not well understood;
- g) a failure to validate the assumptions of the PPP provider;
- h) authorities or responsibilities relating to commercial decisions are not clear;
- i) a lack of performance measurement or benchmarking by the GPE;
- j) a focus on current arrangements rather than what is possible or the potential for improvement; or
- k) a failure to monitor and manage retained risks (statutory, political and commercial).

### **KEY CONSIDERATIONS IN MANAGING THE PPP RELATIONSHIP**

## **Get the Contract Right in the First Instance**

4.1.11 The foundations for contract management, performance monitoring and relationship management have to be laid in the stages before contract award, including during the procurement process. This fundamentally means getting the PPP contract right.

4.1.12 Getting the PPP contract right is a very important aspect of managing the PPP provider. An ambiguous contract or a contract that is less than comprehensive could lead to disputes that could arise years later, when the personnel involved at the beginning of the PPP project might no longer be around.

4.1.13 Indeed, given the long tenure of the PPP contract, the personnel and stakeholders involved in the PPP project at the GPE and the PPP provider are likely to change over the contract life. It is thus important that the contract itself stipulates clearly the contractual rights and responsibilities of the GPE and the PPP provider. Please see section 3.3 and 3.4 for guidelines on the issues that the PPP contract should address.

4.1.14 Good preparation is essential to deriving a sound and robust contract. An accurate assessment of needs by the GPE helps create a clear output-based specification focused on services to be delivered, not an asset or facility to be built. The procedures for selecting the PPP provider should focus on getting value for money and finding the right PPP provider who can deliver the contracted requirements over the contract life. The contract should cover pertinent aspects such as allocation of risk, the quality of service required, and procedures for variation of service scope and dispute resolution. Improvements in price, quality or service should be, where possible, built into the contract terms.

## **Getting the Right People with the Needed Skills Mix to Manage the PPP Contract**

4.1.15 There must be people with the right interpersonal and management skills to manage relationships at multiple levels in the organisation. Clear roles and responsibilities should be defined, and continuity of key staff should be ensured as far as possible. **A contract manager (or contract management team) should be designated early and be involved in the process for selecting the PPP provider in the first instance.** The contract management team must understand the business fully and know the contract documentation thoroughly. This is essential if they are to understand the implications of problems (or opportunities) over the life of the contract.

4.1.16 The PPP provider should also be made fully aware of the GPE's contract management team and its structure, particularly the roles and responsibilities of the contract manager and its management reporting arrangements.

4.1.17 The GPE's contract management team should reflect the various skills and knowledge required to effectively discharge contract management responsibilities over the life of the project. Generally, the contract management team should consist of members with competencies to manage the following areas:

- a) design and construction;
- b) facilities and services management;
- c) information (especially for IT projects);
- d) statutory safety and regulatory responsibilities;

- e) contractual law; and
- f) finance.

4.1.18 **The main focus of the contract manager and his team will be to facilitate an “intelligent customer” approach, and not to interfere with the way the services are delivered by the PPP provider, provided the service specifications under the PPP contract are met.** It is the contract manager’s responsibility to coordinate inputs from the various team members in order to ensure effective and consistent contract management. Each member of the team will have varying degrees of inputs depending on the circumstances.

### **Flexibility**

4.1.19 Management of contracts usually requires some flexibility on both sides and a willingness to adapt the terms of the contract to reflect a rapidly changing world. Problems are bound to arise that could not be foreseen when the contract was awarded. **Often, this requires a structure in place for the management of both the GPE and the PPP provider to manage the relationship between both parties on an ongoing basis.**

4.1.20 Contracts should be capable of change (to terms, requirements and perhaps scope) and the relationship should be strong and flexible enough to facilitate it. Good contract management is not reactive, but aims to proactively anticipate and respond to business needs of the future.

### **Effective Monitoring and Management of the PPP Provider’s Performance**

4.1.21 Effective performance monitoring requires that the GPE monitors whether the service is being delivered, and to the contracted standards. **The GPE should not engage in detailed management of the PPP provider. Rather, it should ensure that during the procurement phase, the selected PPP provider has acceptable performance monitoring, quality management and management information systems, and cash flows during the construction and operational phases. The GPE should audit these systems with planned and random spot checks to satisfy itself that performance is being measured and reported reliably, accurately and comprehensively.**

4.1.22 **The contract should provide for incentives and remedies to be in place to ensure that the PPP provider provides accurate and timely data to assure the GPE that the contracted service is provided to the required standards, and would continue to be so.**

4.1.23 Any contract the GPE has with independent professional advisers must contain clear arrangements for reporting the results of performance monitoring to the GPE and the PPP provider. Both the GPE and the PPP provider’s financiers have a common interest, vis-à-vis the PPP provider, in the quality of the asset or facility being built, and in the services being delivered to the required standards. There may be circumstances where it is more cost effective for the GPE and the PPP provider’s financiers to jointly appoint an independent professional adviser. However, the GPE has to be careful that such a joint appointment would not introduce any conflict of interest.

4.1.24 **The GPE should avoid action that could result in project risk being assumed or transferred back to the GPE or the government.** For example, during the construction phase, the GPE should not approve any detailed drawings or designs. Instead, the GPE should in the first instance build into the contract which detailed designs and plans the PPP provider needs to

submit to the GPE during the construction phase. This set should be a smaller subset than what the GPE would typically require in a conventional procurement phase, as under PPP the GPE is not making payments linked to milestones being met. Also, the contract should provide that as part of the certification of the completion of the building before service commencement, a specified set of designs and plans should be submitted to the GPE. It should only need to ensure by audit checks, that the PPP provider's quality assurance system for achieving the quality of design and service standards specified in the contract is working.

The GPE should focus on enforcing the PPP provider's performance of its construction obligations under the contract. The GPE has to be constantly aware that it is procuring services, not equipment or facility.

## **CONCLUSION**

4.1.25 The unique nature of a PPP project necessitates a different, new approach and attitude towards managing the PPP provider. Mutual trust and understanding, openness, and excellent communications are as important to the success of an arrangement as the fulfilment of the formal contract terms and conditions.

4.1.26 Throughout the duration of a PPP project, there will be some tensions between the different perspectives of the GPE and the PPP provider. Managing the PPP provider is about resolving or easing such tensions to build a relationship with the PPP provider based on mutual understanding, trust, open communications and benefits to both the GPE and the PPP provider based on the PPP contract – a “win/win” contractual relationship.

4.1.27 Since the PPP project lasts for a very long time, the GPE should take a long term view of its approach in managing the PPP provider. Just as the contractual and commercial aspects are important, the relationship between the GPE and the PPP provider is equally vital to the success of the PPP project. In long term contracts such as PPP, the interdependency between the GPE and the PPP provider is inevitable, and it is therefore in the interests of both parties to make the relationship work. The switching costs involved in changing to any alternative provider in mid-term are likely to be very high and, in any case, contractual realities may make such a course of action highly unattractive.

## **4.2 WORKING IN PARTNERSHIP WITH THE PPP PROVIDER**

### **PURPOSE OF THIS SECTION**

4.2.1 This section discusses the key areas in managing the PPP contract which the GPE can focus on for the various phases of a PPP project.

### **PHASES OF A PPP PROJECT**

4.2.2 A typical PPP project has several distinct phases:

- a) **PPP provider selection (procurement) phase:** the process leading up to contract execution, during which the GPE should establish sound contractual foundation for subsequent management over the life of the contract;
- b) **Construction phase:** from the time when the PPP provider commences construction to the commissioning of the completion of the construction;
- c) **Service delivery or operational phase:** covering the start of the first payments for the provision of services required under the contract to the remaining life of the contract; and
- d) **Contract expiry or termination phase:** the period leading up to and after contract expiry or termination.

### Procurement Phase

**4.2.3 Preparation for the long term management of the PPP provider has to begin right at the beginning of the project, i.e. at the procurement phase. Specifically, this means that the GPE should amongst others:**

- a) **Get the PPP contract right, i.e. it should be balanced, robust and sustainable;**
- b) **Involve its own staff who will be managing the PPP contract in the procurement process as early as possible; and**
- c) **Ensure that the personnel who will actually be managing the PPP contract on behalf of the PPP provider are involved in the procurement process.**

### Construction Phase

**4.2.4 During this phase, the GPE's primary focus should be to monitor the PPP provider's progress towards meeting the service commencement date. The contract manager should do no more than monitor the PPP provider's implementation procedures to ensure that it would be able to deliver the services on time. This may involve inspecting and commenting on plans, having access to the site, confirming compliance with procedures and agreeing with the PPP provider that it is able to commence service delivery as per the stipulated schedule. However, there must be a clear limit to the extent of the GPE's responsibilities as involvement to a greater extent than is appropriate for monitoring purposes may lead to the GPE taking back the risks (such as construction risks) which it has paid already to the PPP provider to bear under the PPP unitary payment mechanism.**

4.2.5 The contract manager should only require sufficient management information from the PPP provider to retain confidence in the delivery timetable and to ensure compliance with any residual safety issues remaining with the GPE.

### Service Delivery Phase

**4.2.6 Managing service delivery means ensuring that the service as contracted is delivered, and to the required performance standards. The PPP contract will have defined the service levels and terms under which a service is provided. Typically, under the PPP contract, the PPP provider will self-monitor its performance and submit monthly performance forms (which must also be issued during the PPP tender and be incorporated as part of the PPP contract) to the GPE.**

4.2.7 Service level management is about assessing and managing the performance of the PPP provider to ensure value for money. **Besides the GPE's contract management team doing periodic audits on the PPP provider's service performance, the GPE contract management team should also educate and involve the public officers working at the PPP facility (such as a school or a stadium) to help monitor the service performance of the PPP provider.** Specifically, when the public officers detect a service failure (e.g. the lights do not work, or there is a spillage), they should call up the one-stop helpdesk of the PPP provider and report the service failure. If the PPP provider fails to take remedial measures to correct the failure within the agreed response time limits as specified within the PPP contract, the contract management team should invoke the deduction of the PPP provider's unitary payments as agreed under the PPP contract. This though pre-supposes that the contract management team knows that the PPP provider has failed to respond to the failure. The contract management team may thus wish to consider how it can mobilise the public officers working at the PPP facility to bring to its attention instances when the PPP provider has not responded to service failure on time.

4.2.8 Managing risk is another important aspect of managing service delivery. Business continuity plans and contingency plans help the GPE to prepare for situations where the PPP provider cannot deliver. Generally, contingency events can be divided into the following three categories:

- a) events that interrupt service delivery but do not involve default by the PPP provider - for example, force majeure events;
- b) events that interrupt service delivery and involve a default by the PPP provider - for example, the PPP provider fails to maintain the facility as required by the contract; and consequently fails to deliver services meeting the output specifications; and
- c) defaults of the PPP provider that do not result in an interruption to service delivery - such defaults could include failure by the PPP provider to maintain professional indemnity insurance as required by the contract, and subsequently insolvency of the PPP provider because of a negligence claim.

4.2.9 **Given the long tenure of the PPP contract and to periodically renew the partnership, the contract should allow for periodic value for money review during the service delivery phase, such as every 5 years.** As part of this review, questions such as the following should be explored between the management of the GPE and the PPP provider:

- a) Is the PPP contract still meeting the objectives of the GPE?
- b) Is the contract delivering the expected value for money benefits?
- c) Is the partnership working out well?
- d) What are the expected changes which the GPE may request for in the next few years?

### **Contract Termination or Expiry Phase**



**4.2.10 As the contract draws to a close (for whatever reason), the GPE has to assess the various options available to itself. The GPE's main concern at this phase is to ensure a smooth transition of service delivery from the PPP provider to the GPE or to another service provider.** This is critical as the GPE is still responsible to deliver its core services to the public. Depending on the options available in the contract, and on the GPE's requirements at that time, the assets or facility may be transferred to the GPE or remain with the PPP provider.

4.2.11 Some key issues the GPE should consider as it prepares itself for this phase are:

- a) What are the criteria for deciding whether to extend the services of the PPP provider, to engage another service provider, or to provide the services itself?
- b) What are the prerequisite resources (e.g. land, facility, equipment, intellectual property, manpower, documentation, etc.) that the GPE will need in order to provide the services on its own?
- c) Would the change of service provider cause a change in the way the GPE provides its core services to the public?
- d) Is there still the business need for the core services the GPE is providing?

**4.2.12 If the GPE is likely to need the PPP facility even after the expiry of the existing PPP contract, the GPE should work with the existing PPP provider to ensure that the latter continues to maintain the facility (setting aside the contractually agreed portion of its unitary payment to a dedicated lifecycle maintenance account) even as the existing contract nears expiry.**

### **CONTRACT ADMINISTRATION**

4.2.13 The importance of contract administration (both the GPE's and the PPP provider's procedures) to the success of the contract, and to the relationship between the two parties, should not be underestimated. Clear administrative procedures ensure that both parties understand who does what, when, and how. These include procedures governing the following:

- a) Variation, and change control;
- b) Performance measurement;
- c) Payment of the unitary charges;
- d) Management reporting; and
- e) Mechanisms for problem solving and dispute resolution.

4.2.14 Keeping the contract documentation up to date is an important activity, and it should not be a burden. The effort required may be reduced by ensuring that the contract is sufficiently flexible to enable changes to the requirement and pricing mechanism within agreed parameters without the need to change the contract documentation.

4.2.15 Managing the contractual obligations of the government can be more complex than managing the obligations of a private party in certain cases. – The GPE’s contract management team may need to coordinate the actions of other public sector entities in order to ensure that the government:

- a) can deliver on its obligations under the contract; and
- b) does not inadvertently act so as to hinder or prevent the PPP provider from meeting its obligations under the contract.

## CONCLUSION

4.2.16 Each phase of a PPP project has a different set of focus areas:

- a) Preparation for the long term management of the PPP provider has to begin right at the procurement phase. The GPE must get the PPP contract right, and involve the post-procurement PPP contract management teams from both itself and the PPP bidders in the process for selecting the PPP provider;
- b) During the construction phase, the primary focus of the GPE is to monitor the PPP provider’s progress towards meeting the service commencement date. The GPE should only monitor the PPP provider’s implementation procedures to ensure that the latter is able to deliver the services on time;
- c) During the service delivery phase, the GPE’s focus is on assessing and managing the performance of the PPP provider to meet the standards as specified in the PPP contract to realise value for money gains; and
- d) During the contract termination or expiry phase, the GPE’s main concern is to ensure a smooth transition of service delivery from the PPP provider to the GPE or to another service provider. This is critical as the GPE is still responsible for delivering its core services to the public.

4.2.17 The GPE’s contract management team should reflect the various skills and knowledge required to effectively discharge contract management responsibilities over the life of the project. The main focus of the contract management team is to facilitate an “intelligent customer” approach, and not to interfere with the way the services are delivered by the PPP provider provided the service specifications under the PPP contract are met.

**4.2.18 Last but not least, given the long tenure of the PPP project and possible turnover of contract management staff at both the GPE and the PPP provider, contract administration processes (including clearly defined procedures and well-maintained documentation) are very crucial to institutionalize the knowledge and procedures for managing the PPP contracts.**



## **4.3 MANAGING A SUCCESSFUL RELATIONSHIP WITH THE PPP PROVIDER**

### **PURPOSE OF THIS SECTION**

4.3.1 This section discusses the key aspects of managing the relationship with the PPP provider.

### **ESTABLISHING THE RELATIONSHIP**

4.3.2 A successful relationship in a long-term service purchase under PPP will lead to the delivery of services that meet the requirements as stated in the PPP contract. The commercial arrangement under the PPP contract must be acceptable to both parties – offering value for money for the GPE and adequate profit for the PPP provider. Nonetheless, just as these commercial aspects are important, the relationship between the GPE and the PPP provider – the way they regard each other and work together during the PPP contract life - is vital to ensuring that the PPP does indeed lead to value for money.

**4.3.3 Good relations between the GPE and the PPP provider should foster a climate which encourages both parties to suggest or make improvements in the quality of services delivered. However, the relationship must not be at the expense of the PPP contract. Throughout the life of the contract, the GPE, for instance, has the responsibility of monitoring the PPP provider’s compliance with its contractual obligations.**

4.3.4 Management of the relationship between the GPE and the PPP provider is thus the process of ensuring that both parties can work together in meeting the requirements of the project. This entails the following two aspects:

- a) formal reporting and management arrangements – that is, governance; and
- b) „soft“ issues around the informal communications and cultural aspects.

4.3.5 Some key factors to be considered in establishing management structures for the relationship are as follows:

- a) Ensure that the partnership is championed at senior levels in both the GPE and the PPP provider;
- b) Recognise that the relationship demonstrated by the senior management of the GPE and the PPP provider will influence the tone of the relationship between both parties over the PPP contract life. The 'message' comes from the top;
- c) Make the governance arrangements equitable and the relationship as being peerto-peer. If not, imbalances will occur;
- d) Avoid a proliferation of structures for managing the relationship, especially if the structures are seen as rigid and bureaucratic. Nonetheless, some differentiation of structures is required to ensure that long-term strategic issues underlying the PPP contract are considered, as well as the more day-to-day service delivery issues;

- e) Set clear roles and responsibilities for the different structures for managing the relationship between the GPE and the PPP provider at different levels;
- f) Empower the staff involved in each structure; and
- g) Institute escalation procedures which should be understood and used properly – encourage an approach that seeks to resolve problems early, without escalating up the management chain unnecessarily.

#### **FORMAL REPORTING AND STRUCTURES FOR MANAGING THE RELATIONSHIP**

4.3.6 First, typically, the PPP contract should set out the management structures and the formal communications channels that will be put in place to manage the following aspects of the relationship between the GPE and the PPP provider:

- a) Strategic decisions – setting and managing strategic direction, identifying opportunities for innovation, agreeing and implementing policies, managing change;
- b) The service – communication between the GPE and the PPP provider at the operational users’ level on the delivery of services, day-to-day service monitoring, small scale change and identifying opportunities for improvements to service delivery; and
- c) The contract – communication between the GPE contract management and the PPP provider for the overall management of the contract and dealing with major changes to the contract.

**4.3.7 Second, consistent communication through the levels is important. Otherwise the differences in perspective may mask the problems in the PPP relationship.** For example, even where senior management regards the relationship as successful, serious disagreements and disputes may arise and the relationship deteriorate at the middle management level.

**4.3.8 Third, the formal point of contact between the GPE and the PPP provider should be identified.** The contract manager will be the point of contact for the GPE. Throughout the life of the PPP project, the contract manager has the responsibility of protecting the GPE’s agreed contractual position and ensuring that the agreed allocation of risk is maintained and that value for money is achieved.

**4.3.9 A crucial role for the contract manager is to try to prevent disputes from arising by preventative actions. The procedures for liaising with the PPP provider and the maintenance of agreed records of performance will help to resolve problems before they escalate. To minimize the costs of dispute resolution through court settlement, an alternative formal dispute resolution procedure is necessary. The PPP contract should specify the procedure for handling disputes.**

**4.3.10 Fourth, the long tenure of a PPP project can pose continuity problems. In most cases, the initial contract management team will not be present till the end of the PPP contract. Contract management staff are likely to change several times throughout the life of the**

**PPP contract. Effective succession planning is therefore important to ensure that the good working relationship and project understanding are maintained when new staff take over. Well-managed project role handover between incoming and outgoing personnel (with appropriate induction and exit procedures) can help in ensuring that the good working relationship extends throughout the life of the project and beyond the tenure of the individuals responsible for managing each side of the relationship.**

**4.3.11 Fifth, both the GPE and the PPP provider should take steps to monitor the relationship. They should put in place means to assess (and thus means to improve) the quality of the working relationship and management processes. This will be valuable in highlighting aspects that are perceived to be working well and those that require attention.** For example, attendance by representatives at meetings from both sides can be monitored through the minutes of meetings. If attendance by one side's representatives falls away, the other side should consider whether this indicates that the relationship between the two sides is losing strength, or that the meeting is not an effective communication and management forum.

4.3.12 Finally, the management of the relationship depends on the nature of the project, the services to be provided, and the extent to which the GPE's requirements change over time. Particular care should be paid to the beginning years of the project when the risk of problems is likely to be the highest. This may require additional resources for a limited period.

#### **PROCEDURES FOR ESCALATING ISSUES AND DISPUTES**

4.3.13 However good the relationship between the GPE and the PPP provider, and however stable the services being delivered, problems will arise over the PPP contract life. As such, procedures for handling these problems should be agreed. Clear reporting and escalation procedures help maintain the good relationship between the two parties. The objective is a relationship in which the GPE and the PPP provider co-operate to ensure that problems are recognized quickly and then resolved quickly and effectively.

**4.3.14 If a dispute cannot be resolved at the level where it arises, it will be necessary to involve a higher level of authority. This escalation process needs to be managed. Escalation procedures should allow for successive levels of response depending on the nature of the problem and the outcome of the action taken at lower levels. Every effort should be made to resolve the problem at the lowest practicable level. The levels of escalation should match those of the interfaces established between the PPP provider and the GPE. A crucial role of the contract manager is to try to ensure through prompt efforts that protracted disputes are avoided.**

#### **SOFT FACTORS IN MANAGING THE RELATIONSHIP**

4.3.15 Three key factors to a successful relationship are as follows:

- a) **Mutual respect and understanding** – The right attitudes and behaviours, based on mutual respect and understanding rather than an adversarial approach, should be encouraged. While the PPP contract underlies the basis for the relationship, mutual respect and understanding is necessary for the long-term partnership under PPP to work. Such mutual respect and understanding cannot be mandated within the PPP

contract. Ultimately, it has to be built through actions and behaviours, rather than assertions, and is tested when problems and disagreements arise;

- b) **Open communication** – Open communication does not mean that the parties must share all information relating to the project. However, a party should share an item of information if there is no good public interest, commercial or legal reason not to share it, and sharing the information would enhance the relationship. **The three primary levels of communication in a contractual arrangement are operational (end users/technical support staff), business (contract manager and relationship manager on both sides), and senior (senior management/board of directors). An important point is that the arrangement should be managed in such a way that these levels of communication are preserved even when problems arise.** For example, if an end user feels that the service is not being delivered to the required standards, he should refer this to the contract manager, who will liaise with the PPP provider’s management. It might not be appropriate for the end user to liaise directly with the PPP provider’s management;
- c) **Recognition of mutual aims** – The GPE and the PPP provider must approach the project as a mutually beneficial arrangement between them. There should be set procedures for raising issues and handling problems, so that they are dealt with as early as possible, and at the appropriate level at both sides.

## CONCLUSION

4.3.16 The long-term, interdependent nature of a PPP project necessitates a good strong working relationship between the GPE and the PPP provider as compared to a traditional procurement. Both parties should enter into the relationship with the understanding and intention to build a relationship that is mutually beneficial, without compromising their respective contractual rights and obligations.

4.3.17 The three key factors to a successful relationship are mutual respect and understanding, open communication, and recognition of mutual aims. An appropriate management structure at the three levels (strategic, business and operational) is necessary to ensure consistent and open communication between the two parties. As part of maintaining the good working relationship, both parties should monitor the relationship in order to assess and improve the quality of the relationship and the management processes.

4.3.18 The clear lines of open communication between the appropriate levels of the GPE and the PPP provider help in ensuring a prompt resolution of disputes that arise. This minimises the need for escalation, and alleviate the need for formal protracted disputes. Every effort should be made to resolve the dispute at the lowest practicable level. If needed, the levels of escalation should match those of the interfaces established between the PPP provider and the GPE.

# GLOSSARY

<b>Demand risk</b>	Risk arising from the variation of output or capacity from expected.
<b>Design-BuildFinance-Operate (DBFO) model</b>	The DBFO model is the most common form of PPP, involving the integration of four functions - Design, Build, Finance and Operate - within one PPP service provider. The PPP provider will raise financing from private financiers to develop the facilities needed to deliver services to the public sector. The provider will then build, maintain and operate the facilities to meet the public sector's requirements.
<b>Expression of Interest (EOI)</b>	A notice published on GeBIZ inviting all interested bidders to participate in the PPP procurement tender.
<b>Force Majeure</b>	Acts of God and other specified risks (e.g. terrorism) which are beyond the control of the parties to the contract and as a result of which a party is prevented from or delayed in performing any of its non-financial obligations under the contract.
<b>Invitation to Tender (ITT)</b>	Refers to the tender documentation provided to interested bidders. It contains all necessary information necessary for bidders submit responsive Tender Proposals.
<b>Lease</b>	An agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time.
<b>Output Specifications</b>	The output specifications define the services that are required from the private provider, in terms of what needs to be achieved, and not how the services or outputs should be achieved.
<b>Public Private Partnership (PPP)</b>	PPP refers to long-term partnering relationships between the public and private sector to deliver services. In PPP, the public sector will focus on acquiring services at the most cost-effective basis, rather than directly owning and operating assets.
<b>Risk</b>	The chance of an event occurring which would cause actual project circumstances to differ from those assumed when forecasting project benefit and costs.
<b>Risk allocation</b>	The allocation of responsibility for dealing with the consequences of each risk to one of the parties to the contract, or agreeing to deal with the risk through a specified mechanism which may involve sharing the risk.
<b>Risk management</b>	The identification, assessment, allocation, mitigation and monitoring of risks associated with a project. The aim is to reduce their variability and impact.



<b>Special Purpose Vehicle</b>	In establishing a project consortium, the sponsor or sponsors typically establish the private party in the form of a special purpose vehicle (SPV) which contracts with government. The SPV is simply an entity created to act as the legal manifestation of a project consortium.
<b>Unitary payment</b>	A single payment made in each period during the term of the PPP contract.
<b>Useful economic life</b>	The period of time over which an asset is expected to be used by the enterprise or the number of production or similar units expected to be obtained from the asset by the enterprise.
<b>Whole lifecycle cost</b>	Total cost of a project, including development cost and operating (recurrent) cost, over its useful economic life.

