



THE PRESIDENCY

DEVELOPMENT OF CONTRACT COMPLIANCE FRAMEWORK FOR PUBLIC PRIVATE PARTNERSHIP (PPP) CONTRACTS



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CHAPTER 1

Introduction:

Overview of Public Private Partnerships (PPPs)

Public–Private Partnerships (PPPs)—An Overview

This chapter introduces the concept of the public–private partnerships or PPPs, as well as its key characteristics and rationale.

Defining Public–Private Partnerships

The term “public–private partnership” describes a range of possible relationships between public and private entities in the context of infrastructure and other services.

- PPPs present a framework that—while engaging the private sector—acknowledge and structure the role for government in ensuring that social obligations are met and successful sector reforms and public investments achieved.

A strong PPP allocates the tasks, obligations, and risks among the public and private partners in an optimal way. The public partners in a PPP are government entities, including ministries, departments, agencies or state-owned enterprises. The private partners can be local or international and may include businesses or investors with technical or financial expertise relevant to the project. Increasingly, PPPs may also include nongovernment organizations (NGOs) and/or community-based organizations (CBOs) who represent stakeholders directly affected by the project.

Effective PPPs recognize that the public and the private sectors each have certain advantages, relative to the other, in performing specific tasks. The government’s contribution to a PPP may take the form of capital for investment (available through tax revenue), a transfer of assets, or other commitments or in-kind contributions that support the partnership. The government also provides social responsibility, environmental awareness, local knowledge and an ability to mobilize political support. The private sector’s role in the partnership is to make use of its expertise in commerce, management, operations and innovation to run the business efficiently. The private partner may also contribute investment capital depending on the form of contract.

The structure of the partnership should be designed to allocate risks to the partners who are best able to manage those risks and thus minimize costs while improving performance.

- PSP is a term often used interchangeably with PPPs. However, PSP contracts transfer obligations to the private sector rather than emphasizing the opportunity for partnership. In the mid to the late 1990s, there was a slowdown in public–private contracting in infrastructure sectors, which was largely precipitated by a social backlash against the perceived preference for the private sector over the public sector in delivering infrastructure

Sectors in which PPPs have been completed worldwide include:

- Power (electricity) generation and distribution,
- sea ports,
- marine services,
- airports,
- water and sanitation,
- refuse disposal,
- pipelines,
- hospitals,
- healthcare services
- school buildings and teaching facilities,
- stadiums,
- air traffic control,
- prisons,
- railways,
- roads,
- bridges,
- billing and other information technology systems, and
- housing,
- industrial parks,
- tourism,
- district and township development,
- trade fair parks,
- dredging,
- government buildings,
- land reclamation,
- environmental remediation and clean-up,
- telecommunications,
- satellite and ground receiving stations and other
- infrastructure and development projects

Motivation for Engaging in PPPs

The three main needs that motivate governments to enter into PPPs for infrastructure are:

- to attract private capital investment (often to either supplement public resources or release them for other public needs);
- to increase efficiency and use available resources more effectively; and
- to reform sectors through a reallocation of roles, incentives, and accountability.

Each of these is discussed below.

Mobilization of Private Capital

Governments face an ever-increasing need to find sufficient financing to develop and maintain infrastructure required to support growing populations. Governments are challenged by the demands of increasing urbanization, the rehabilitation requirements of aging infrastructure, the need to expand networks to new populations, and the goal of reaching previously unserved or underserved areas. Furthermore, infrastructure services are often provided at an operating deficit, which is covered only through subsidies, thus constituting an additional drain on public resources.

Combined with most governments limited financial capacity, these pressures drive a desire to mobilize private sector capital for infrastructure investment. Structured correctly, a PPP may be able to mobilize previously untapped resources from the local, regional, or international private sector which is seeking investment opportunities.

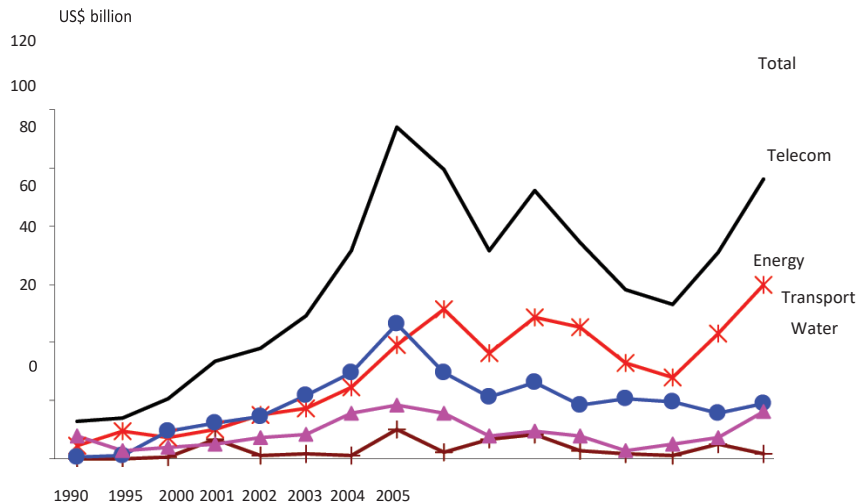
The goal of the private sector in entering into a PPP is to profit from its capacity and expertise in managing businesses (utilities in particular). The private sector seeks compensation for its services through fees for services rendered, resulting in an appropriate return on capital invested.

PPP as a Tool for Greater Efficiency

The efficient use of scarce public resources is a critical challenge for governments—and one in which many governments fall far short of goals. The reason is that the public sector typically has few or no incentives for efficiency structured into its organization and processes and is thus poorly positioned to efficiently build and operate infrastructure. Injecting such incentives into an entrenched public sector is difficult, though not impossible, as Singapore has demonstrated by developing a government-wide dedication to efficiency while maintaining many critical services within the public domain.

In 2005, investment commitments to private infrastructure projects in low- and mid-dle-income countries grew by over 30% against 2004 to almost \$96 billion.

Figure 1: Investment Commitments in Infrastructure Projects with Private Participation in Developing Countries by Sector, 1990–2005



The World Bank estimates that about 70% of infrastructure investment currently comes from the public sector, 8% from official development assistance, and 22% from the private sector.

Private sector operators, however, enter into an investment or contracting opportunity with the clear goal of maximizing profits, which are generated, in large part, by increased efficiency in investment and operations. If the PPP is structured to let the operator pursue this goal, the efficiency of the infrastructure services will likely be enhanced. Improving the efficiency of services and operations also increases the chances that those services are economically sustainable and provided at affordable rates—even after satisfying the profit requirements of the private operators.

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

PPP as a Catalyst for Broader Sector Reform

Governments sometimes see PPP as a catalyst to provoke the larger discussion of and commitment to a sector reform agenda, of which PPPs are only one component. A key issue is always the restructuring and clarifying of roles within a sector. Specifically, there is a requirement to reexamine and reallocate the roles of policy maker, regulator, and service provider,

particularly to mobilize capital and achieve efficiency, as outlined above. A reform program that includes PPP provides an opportunity to reconsider the assignment of sector roles to remove any potential conflicts and to consider a private entity as a possible sector participant.

Implementing a specific PPP transaction often forces concrete reform steps to support the new allocation of sector roles such as the passage of laws and establishment of separate regulatory bodies. In essence, re-examination of the regulatory and policy arrangements is critical to the success of a PPP project.

PPP contract management

PPP contract management is one of the most important aspects of PPP delivery. If done effectively, it will support the long-term success of the project in line with the agreed contract terms. But, if managed poorly, it can seriously undermine years of project preparation and procurement and can ultimately lead to major cost implications for taxpayers and service disruptions for end users.

In the face of growing investment needs and constrained budgets, many governments are increasingly looking to the private sector to bring expertise and financing to infrastructure delivery; often through the use of PPPs. However, despite the growing trend among governments to consider PPPs as a procurement and financing model for infrastructure projects, the contract management of these projects through their construction and operations phases is one of the more overlooked areas of infrastructure delivery.

Given the long-term nature of these contracts, combined with their size and complexity, there is clear potential for significant impact on the delivery of public services if they are not appropriately managed. Variations, scope changes and other changes after a contract has been negotiated, even if agreed by all parties, will not necessarily maintain the initial value and competition inherent in a project's procurement.

Contract management is important not just in the context of an individual project, but because no project is undertaken in isolation from other PPP initiatives.

The learnings from one project should inform improvements in subsequent projects.

The public sector must therefore recognize the value and opportunities created by effective PPP contract management, and must develop a strategic approach to capitalizing on this model throughout the project life cycle, to continuously inform and improve the way we utilize private sector involvement in the delivery of public infrastructure.

This submission is intended to be user-friendly and interactive, providing guidance to public sector teams around the world responsible for contract management of PPPs from financial close to hand back. It is designed to supplement other resources currently available to help with oversight and governance of PPP projects. It is also designed to help drive enhancements to structural arrangements in the pre-financial close stages of a project, by highlighting some of the most common challenges and issues faced by projects.

This submission covers critical issues of contract management, including the establishment of the contract management team; routine contract management issues; as well as non-routine issues that can have major implications for a project – for example, instances of dispute, contract renegotiation, insolvency or termination. The case studies demonstrate leading practices from successful projects and highlight the lessons learned.

This submission also gives insights into the circumstances that may result in disagreements between the Procuring Authority and the Project Company and provides leading practice guidance on managing such issues. Importantly, this submission also addresses matters that are not typically addressed in a PPP contract, but are important for the Procuring Authority in managing the delivery of a project, for example public stakeholder engagement.

While This submission is not a prescriptive PPP management manual, it is a guide that provides insight into the potential issues inherent in PPPs, and provides leading practice recommendations on how to resolve them during the implementation phase (including design, construction and delivery of the project assets) and operations phase (including operation and maintenance during service delivery). It is not a route to a single solution. This submission should enable the user to gain an overview of typical pitfalls and an insight into critical issues in terms of underlying causes, potential impacts on the PPP contract and possible approaches to proactively manage risk.

It is not a replacement for any existing guidance document, but rather a supplemental resource focused on leading practice contract management post-financial close which is informed by systematic research and analysis, and real case study examples. Finally, it is not a model to provide a rating of the maturity of a Procuring Authority's capabilities or to identify where gaps exist. However, this submission may highlight organisational issues that require improvement to ensure more effective contract management.

DEFINITIONS AND SECTOR COVERAGE

The reference tool can be used by public officials in any country in either common or civil law jurisdictions. It provides guidance on projects delivered not only under a jurisdiction's specific PPP laws, but also projects that are delivered under concession laws or other laws that fall within the broad definition of a public private partnership.

For the purposes of the reference tool, a PPP contract is taken to mean a long-term contract between a Procuring Authority (government or other public agency), and a Project Company (private partner or commercial partner) for the development and/or management of a public asset or service, where the Project Company bears significant risk and management responsibility throughout the life of the contract, and where remuneration is significantly linked to performance and/or the demand or use of the asset or service. It covers both greenfield and brownfield projects.

This definition is deliberately broad. It includes projects where demand risk is passed entirely on to the private partner (also known as ‘user-pay’ projects or concessions) and projects that are based on availability payments by government irrespective of demand (availability-based projects). It also includes, for example, power purchase agreements where a government entity is the purchaser of the power.

Although the data collection and case study elements of the research are focused solely on economic infrastructure projects across transport, energy, water and waste, many of the broader principles of contract management are applicable to other projects, including social infrastructure projects, such as school and hospital projects.

Before starting any work on project development, the implementing government agency ought to have clear understanding of the basic requirements that the PPP project in consideration must meet, the administrative processes involved, and the capacity in the government to develop and implement the project. Such an understanding is required to prepare detailed terms of reference for the work to be undertaken and a timeframe for its execution. Generally, the following need to be clearly understood:

- The legal and regulatory environment, and government policy on PPPs;
- The objectives that the proposed project has to achieve;
- The PPP process in the country, and administrative and approval processes and their requirements;
- Private sector requirements and capacity in the government to implement the project; and
- How to ensure good governance in project development and procurement.

THE LEGAL AND REGULATORY ENVIRONMENT AND GOVERNMENT POLICY

A government agency should have the necessary powers laid down by statute or legal act to enter into a PPP agreement with a private party and undertake obligations under the agreement. A PPP project may also require authorization from government bodies at different levels of government. However, in an emerging PPP market, it may not be always clear what government bodies/agencies may have the legal authority to make such agreements or can authorize a PPP project. It is important to note that obligations undertaken or agreements made, or authorization provided without legal right are *ultra vires* and generally considered to be void and unenforceable. An *ultra vires* act may be void by law and can affect the acts of private companies and government agencies.

In order to clarify these important legal issues, some countries have enacted special laws on PPPs that define the legal regime, administrative and approval processes involved and other related matters. The coverage in national laws may vary widely but should provide clarity and certainty to award contracts and implement projects and may specify:

- Division of responsibility between levels of government and powers of government bodies;
- Sectors covered, details of project identification, approval, procurement and implementation arrangements;

Types of permitted PPP models and general conditions for these models;

- Guidelines on risk sharing arrangements;
- Provision of financial and other incentives by the government;
- Provisions concerning contract management including dispute resolution;
- The extent to which lenders can undertake security over project assets and its liabilities;
- Administrative process (G to G activities) involved in PPP project development and implementation;
- Rights of the parties to a PPP contract agreement.

It is important to note that the PPP legal regime may, however, scatter over many legal instruments, not just the special law. These instruments may include the private contract law, infrastructure sector regulatory laws, company law, tax law, labour law, competition law, consumer protection law, insolvency law, infrastructure sector laws, property law, foreign investment law, intellectual property law, environmental law, public procurement law or rules, pledge law, acquisition or appropriation law and many other laws. Separate sets of operational rules and guidelines may also exist for many of such applicable laws. All such applicable laws, statutes, operational rules and guidelines and other specified institutional and administrative arrangements together constitute the legal regime of PPPs in a country. Careful consideration of the legal regime is necessary to examine the extent to which it:

- Provides the legal coverage to enter into an enforceable contract;
- Provides the private sector the necessary legal coverage to finance, build, operate and collect revenues or service payments;
- Covers issues to avert future confusions related to regulatory control, obligations of parties, services, land acquisition, risk and profit sharing, pricing and handover of facilities;
- Deals with issues in contract management (monitoring, dispute settlement mechanisms).

Provisions in the legal framework concerning the following four important aspects need to be carefully considered:

- Do they sufficiently meet the requirements/interests of the government and the private parties involved;
- How a contract would need to be structured around the provisions in all applicable laws;
- How difficult it would be to enforce the rights of the parties;
- What obligations are allowed to undertake and what government agency has the power to make an agreement and what government body has the authority to approve the project.

The legal regime may not allow all types of PPPs in a sector, or may have specified conditions for some PPP models. General policy guidelines on PPPs or specific policy frameworks for PPPs in different sectors may also be available. The implementing agency needs to clearly understand these policies and their implications for the proposed project.

Certain projects may not be allowed as PPPs. Government policy or legal provisions may not allow a private sector company to hold majority stake in a joint venture with the public sector. For example, considering the strategic importance of ports and airports or large power and energy projects, private stakes in such projects could be limited to a maximum allowable percentage, which can be greater than or less than 50 per cent of the stakes.

Policy guidelines may also mention what type of government support would be available for a project and the requirements for such support.

A PPP project has to be structured considering all such legal, regulatory and policy requirements.

Whether defined in the special law and/or in other laws or in policy frameworks, the implementing agency needs to have clear understanding of the basic requirements that a PPP project has to meet. In this context, the vital questions that the implementing agency may have to consider include:

- Whether a PPP project is allowed in that sector or sub-sector and what legal, regulatory or policy restrictions may apply;
- What government policy guidelines on PPPs exist;
- Which other government agencies would have to be involved in the process and their roles;
- What would be the procurement process; and
- What sort of government support may be available for the project.

Answers to these questions will set the basic parameters that need to be considered in project development and in structuring the contract.

• **MAIN OBJECTIVES THAT THE PROJECT HAS TO ACHIEVE**

A PPP is not a solution option to an infrastructure service problem but could be a viable project implementation or procurement mechanism for a preferred solution option. A project is expected to meet some service needs as well as to achieve some policy objectives of the government. A basic question is how far the proposed project can meet these requirements as a solution option.

A preliminary needs assessment by the implementing agency may be considered to show:

- The project is among the best options for meeting the service needs;
- The project can help achieve some of the relevant objectives of the government; and
- A PPP would be a viable project implementation/procurement option.

Details analyses and confirmation of these aspects will, however, have to be undertaken as a part of the feasibility study at a later stage.

It is also important at this stage to consider the government stake in the proposed project. Considering the public good nature of infrastructure projects, their strategic importance, effects on other sectors, public safety and security, and utilization of natural resources, the government has an important stake in all such projects. How a PPP project may satisfy these requirements needs to be carefully examined.

• THE PPP PROCESS IN OTHER COUNTRIES

The implementation of PPP projects may require the involvement of several public authorities at various levels of government. A project may require approvals at several stages by many different authorities. The authority for final approval and award of PPP contracts is generally centralized. This may be a special body set up for this purpose and is usually at the council of ministers level.

The whole process of project development, approval and implementation should be clearly understood by the implementing agency at the outset. In some countries, the process, activities at various stages of the process and requirements for approval by the competent authority are all well-defined. The implementing agency just follows them.

In other countries, however, these elements may not be defined or may be only partially defined. In such a case, the implementing agency in consultation with the concerned authorities may consider to:

- Determine the administrative, legal and regulatory requirements for the project.
- Map out the whole PPP process.
- Identify tasks involved at each stage of the process.
- Set clear definitions and procedures of the tasks to be undertaken at each stage and
- Find out the approvals that may be required and possible requirements and criteria for such approvals.

The above activities would give a clear idea about the entire project development and implementation process, amount of work involved in each stage and the likely requirements of human and financial resources.

Table 2 provides some guidance in developing a PPP project. The activities at different stages in project development, as mentioned in the table, are discussed in Chapters 3 through 6.

Any previous experience of the concerned implementing agency or any other agency in the government in implementing PPP projects can greatly help in mapping out the whole process and in establishing the requirements and approval criteria.

A process flow diagram showing all the stages and their linkages, and tasks to be accomplished at each stage can help to understand the whole process by all persons involved in the project. The diagram can also help to estimate human and other resource requirements in project development.

Table 2. Stages in PPP project development and implementation

- *Project Identification and preparatory activities*
 - 1A. Project identification and preliminary internal stakeholder consultation
 - 1B. In-house preparatory arrangements
 - Scoping of the project and its structure
 - Identifying the major planning and implementation issues
 - Institutional due diligence
 - Establishment of a project management structure
 - Setting up of mechanism for stakeholder consultation and information disclosure
 - Government approval (e.g. by a special body established for PPPs)
 - Appointment of transaction advisor (if needed)
 - Terms of reference
 - Appointment
 - Government approval
- Project development and due diligence
 - Project planning and feasibility
 - Risk analysis and risk management matrix
 - Financing
 - Value for money
 - Government support
 - Responsibilities of, and liabilities on government
 - Regulatory arrangements
 - Service and output specifications
 - Terms of contract
- Government approval (Special body, concerned ministries)
- *Implementation arrangement and pre-procurement*
 - Implementation arrangement
 - Independent credit rating of the project (when possible)
 - Bidding documents
 - Draft contract
 - Special issues (land acquisition, investment promotion, etc.)
 - Bid evaluation criteria, committees

- *Procurement and project construction*
 - Interest of the private sector
 - Pre-qualification of bidders
 - RFP – finalization of service and output specifications
 - Final tender
 - Bid evaluation and selection
 - Government approval (Special body, cabinet, etc.)
 - Contract award, negotiation and signing; financial close and construction

Contract management

- Establishment of a contract management team
- Monitoring of operation and service delivery
- Management of financial matters

Dispute resolution

- Establishment of a process and a dispute resolution team
- Government approval (when needed by defined bodies)

Note: Mention of government approval and the activities shown against different stages are only indicative. The actual stages of government approval and activities undertaken in any stage may vary from one country to another.

• **UNDERSTANDING THE PRIVATE SECTOR’S REQUIREMENTS AND CAPACITY IN THE GOVERNMENT TO IMPLEMENT THE PROJECT**

The private sector has certain requirements that a project must meet in order to be considered as a viable project. Often the term “bankability” is used in the industry to refer to the viability of a PPP project. The term, however, may mean different things to different parties in a PPP but, generally, it means if the project is financially viable, legally tenable, and administratively implementable.

Some of the typical requirements of the private sector are:

- Private investment is feasible in size and manageable considering the technical managerial and financial capacity of the private sector;
- A fair return on investment taking into account the level of involvement and assumption of risks;
- Security of the private investment;
- Political and social comfort in cost recovery pricing of the services;
- Government policy, continuity and
- Predictable timeframe in administrative and regulatory processes.

The implementing agency possibly will also have to consider other specific requirements that the private sector should have for specific projects. Concerning the capacity in the government, the implementing agency should take into consideration the following matters before considering further work on the project development:

- Whether there is any PPP unit in government or any agency that can help in project development and implementation;
- What previous experience exists within the government and how much capacity does the agency have in implementing the project;
- How much fund is available for project development and, if needed, how more funds can be obtained.

The agency should make a realistic assessment of the capacity in the government, the likely need of resources for project development and resources available for this purpose. This assessment is needed to establish the terms of reference for the appointment of a transaction advisor, if needed.

• **GOOD GOVERNANCE**

The promotion of good governance based on certain generally accepted core principles is a major responsibility of the government. These core principles include: accountability, transparency, fairness, efficiency, participation, and decency. Given these core principles, the implementing agency may consider the following matters to ensure good governance in the PPPs:

- A fair and transparent rule-based administrative process by which projects are developed and procured;
- Fair incentives to all stakeholders and fair return to all partners taking into account their level of involvement and assumption of risks;
- A widely representative participatory decision-making process that takes into account concerns of all concerned stakeholders including those who may be adversely affected;
- An acceptable dispute resolution mechanism that assures continuation of services and prevents the failure of project;
- An arrangement for project delivery that ensures efficient utilization of human, financial, natural and other resources without sacrificing the needs of the future generations;
- An arrangement that improves and ensures public security and safety, and environmental safety; and an arrangement for the improvement of essential public services without harming or causing grievance to people and for which public officials remain responsible to society.

Further elaborations on issues in PPP governance can be found in a publication prepared by the Economic Commission for Europe.

CHAPTER 2:

Review of Some PPP Contracts / Leases in the
Commission Custody

CHAPTER 2

2. OVERVIEW OF PROVISIONS OF THE CONCESSION AGREEMENTS

2.1. Execution of Concession Agreements

Following the conclusion of negotiations between NPA, BPE and the concessionaires that emerged after the international competitive bidding process, concession agreements were executed between the parties. NPA (lessor) granted each concessionaire (lessee) a lease of properties as well as the right to operate and maintain the designated port terminal. The BPE, as "Confirming Party", ensured that each concession was in conformity with the Ports Reform and Modernization

Strategy of the Federal Government of Nigeria which had the following objectives:

- a) To increase the efficiency of Port operations;
- b) To decrease the costs of port services to port users;
- c) To decrease the costs to the government for the support of a viable port sector;
- d) To boost economic activity and accelerate development; and
- e) To make Nigerian ports the hub for international freight and trade in West and Central Africa.

The concessions were carried out under the provisions of the Nigerian Ports Authority Act, CAP NI 26, Laws of the Federation of Nigeria, 2004.

2.2 Nature and Scope of the Concessions

There are 26 terminals concessioned to 20 terminal operators (two of the terminal operators, Apapa Bulk Terminal Limited and ENL Consortium Limited have two terminals each while Intels has 5 terminals). For administrative purposes, the ports are divided into the western ports and eastern ports. The western ports are the Lagos Port Complex and the Tin Can Island Port Complex. The eastern ports are Delta Ports Complex, Warri, Delta State; Rivers Port Complex, Port Harcourt; Onne Port Complex, Onne, Rivers State; and Calabar Port Complex, Calabar, Cross River State.

In Lagos Port Complex, there are 5 terminal operators with 7 concessions in Apapa. The terminal operators are: Apapa Bulk Terminal Limited (ABTL); ENL Consortium Limited (ENL); Greenview Development Nigeria Limited (GDNL); APM Terminals Apapa Limited (APMT); and Lilypond Container Depot Nigeria Limited (LCDNL).

In Tin Can Island Port Complex, there are 5 terminal operators with 5 concessions. The terminal operators are: Josepdam Port Services Limited (Josepdam); Tincan Island Container Terminal (TICT); Port and Cargo Handling Services Limited (Port and Cargo); Five Star Logistics (Five Star); and Port and Terminal Multiservices Limited (PTML).

In Delta Ports Complex, there are 4 terminal operators and 5 concessions, The terminal operators are: Associated Marine Services (AMS); JUIIUS Berger Nigeria Limited; Intels Nigeria Limited (Intels) and Greenleigh Ports Limited.

In Rivers Port Complex, there are 2 terminal operators and 2 concessions. The terminal operators are: BUA Ports and Terminals Limited (BUA); and Port Terminal Operators Limited (PTOL).

In Onne Ports Complex, there are 3 terminal operators and 4 concessions. The operators are: West African Container Terminal Limited (WACT); Intels Nigeria Limited (Intels); and Brawal Oil Services Limited (Brawal).

In Calabar Port Complex, there are 3 terminal operators and 3 concessions. The terminal operators are Messrs Shoreline or Addax Logistics; Intels; and Eco-Marine Terminals Limited.

Table 2 below gives a breakdown of the terminal operators, the terminals they operate, length of berth, commencement and duration of concession and nature/scope of operations.

Table 2: Summary of the Concessions

Table 2.1: Lagos Port Complex

S/N	OPERATOR	TERMINAL/BERTHS	COMMENCEMENT/DURATION	NATURE OF OPERATION/ACTIVITY	REMARKS
1	ABTL	Term, A and B / Berths 1-5	April 2006/25 years	Bulk cargo only	
2	ENL	Term, C and D/Berths 6-14	April 2006/10 years	General cargo, bulk cargo and containers	Tenure extended to 15 years
3	GDNL	Term E/Berths 19-21	April 2006/26 years	General cargo, bulk cargo and containers	
4	APMT	Apapa Container Terminal/Berths 15-16	March 2006/25 years	Containers only	
5	LCDNL	Inland container depot	Commencement date contentious / 10 years	Containers only	

Table 2.2: Tin Can Island Port Complex

S/N	OPERATOR	TERMINAL/BERTHS	COMMENCEMENT/DURATION	NATURE OF OPERATION/ACTIVITY	REMARKS
1	JOSEPDAM	Term, A/berths 1, and 2	May 2006 / 10 years	General cargo, bulk cargo, vehicles and containers	
2	TICT	Term, B/ Berths 3, 4, 4A and 5	June 2006 / 15 years	General cargo, bulk cargo, vehicles and containers	Tenure extended to 20 years
3	PORTS AND GARGO	Term, 6/ Berths 6,7,7A and B	May 2006 / 10 years	General cargo, bulk cargo, vehicles and containers	Tenure extended to 15 years
4	FIVE STAR	Term, D (Roro)/Berths 9 and 10	May 2006/ 15 years	General cargo, bulk cargo, vehicles and containers	
5	PTML	Term, E/ Berths 11 and 12	Execution date: 10 th February, 2005/25 years	Roro	This terminal was built on BOT basis

Table 2.3: Delta Port Complex (Warri Port)

S/N	OPERATOR	TERMINAL/ BERTHS	COMMENCEMENT/ DURATION	NATURE OF OPERATION/ ACTIVITY	REMARKS
1	AMS	Term, B old Port / Berths 3 and 4	June 2007 / 10 years	General cargo, container and vehicles	
2	Julius Berger	Canal Berth – Terminal C	April 2007 / 25 years	General cargo, containers, vehicles dry and liquid buil	
3	Intels	Terms. A and B	June 2006 / 25 years on each terminal	General cargo, containers, vehicles dry and liquid bulk	
4	Greenleigh	Koko Port	June 2007 / 10 years	General cargo and fish	Concession Terminated on 16 th August, 2011

Table 2.3: Rivers Port Complex

S/N	OPERATOR	TERMINAL/ BERTHS	COMMENCEMENT/ DURATION	NATURE OF OPERATION/ ACTIVITY	REMARKS
1.	BUA	Berths 1 -4	June 2006 / 20 years	General cargo, containers, dry and Liquid bulk	
2.	PTOL	Berths 6,7, 8a and 8b	June 2006 / 15 years	General cargo, containers, dry and Liquid bulk	

Table 2.5: Onne Port Complex

S/N	OPERATOR	TERMINAL/ BERTHS	COMMENCEMENT/ DURATION	NATURE OF OPERATION/ ACTIVITY	REMARKS
1	WACT	Federal Ocean Terminal (FOT) A/berth 7 & 8	September 2007 / 25 years	Containers only	Terminal built on BOT basis
2	Intels	Federal Ocean Terminal (FOT) and Federal Lighter Terminal (FLT)	June 2006 / 25 years on each termina	General cargo, containers, vehicles, dry and liquid bulk	
3	Brawal	Term, A (FLT)	September 2007 / 25 years	General cargo and containers	

Table 2.6: Calabar Port Complex

S/N	OPERATOR	TERMINAL/ BERTHS	COMMENCEMENT/ DURATION	NATURE OF OPERATION/ ACTIVITY	REMARKS
	Shoreline	Terminals 1 and 2 of old port	May 2007 / 25 years	General cargo, containers, dry and Liquid bulk	
	Intels	Berth 1 & 2	June 2006 / 25 years	General cargo, containers, dry and Liquid bulk	
	ECM	Berth 3 – 6 of new port	August 2007 / 25 years	General Cargo, Bulk and Liquid, Roro and Containers	

2.3 Common Features of the Concession/Lease Agreements

The 26 concession/lease agreements have the following common features:

- a) The grantor of the lease is the Nigerian Ports Authority (NPA);
- b) The duration of the leases ranges from 10 to 25 years with expectations that the Lessee would recoup its investments within the period;
- c) There is provision for inspection;
- d) All the agreements have effective date which is the date from which all contractual obligations actually commence;
- e) There is restriction on use of lease property which limits use to performance of operations as defined under the agreements;
- f) There are representations and warranties for both parties, one of which is that the lessee has the experience, resources, qualification and capabilities to perform its obligations;
- g) The agreements provide for insurance policy and undertaking that the lessee shall maintain and repair the leased property when the need arises;
- h) There are provisions for payments of lease fees to the landlord; initial payment being commencement fee with an annual payment of lease fee for every operating year. Throughput fees payment is monthly dependent on the volume of cargo handled by the lessee;
- i) The agreements also have provisions for development plans which are attached as schedules; this ensures that the lessee is committed to making new investments to improve the infrastructure in the designated terminal;
- j) The agreements provide for events of default and what constitutes such. They are as follows:
 - i. insolvency of lessee;
 - ii. failure of lessee to perform operations within 14 consecutive days in an operating year;
 - iii. failure of lessee to pay any amounts due in accordance with the agreement;

- iv. insolvency of lessor;
- v. expropriation and change in law.

In all of the above instances, the non-defaulting party has the right to serve a notice of default detailing the alleged default to which the defaulting party has 15 days to respond. In the event that there is no response from the defaulting party, the non-defaulting party may serve a termination notice.

If, however there is a response acknowledging default, the defaulting party is given 30 days to remedy the default. If, on expiry of the 30 days, the default is not remedied, the non-defaulting party may serve a notice of termination.

k) The agreements provide for termination in any of the following ways:

- expiry of the term of lease;
- upon occurrence of an event of default as stated above;
- upon an occurrence of force majeure;

L) The agreements shall be governed by the laws of Nigeria.

M) The agreements provide for resolution of disputes through negotiation and arbitration. Arbitration shall be governed by the rules of the International Chamber of Commerce.

2.4 Tenor and Fees Payable

The agreements differ in tenor and fees payable by each concessionaire. In general, the adopted concession period of between 10 and 25 years is based on technical and institutional requirement which include the level of investment required per concession. Accordingly, the higher the amount required, the longer the concession period, to allow for the recouping of the amount invested coupled with the need to install long-term stability in the industry.

The concession fee structure for each terminal was based on the following:

- i. **Commencement/Entry Fee:** This is an initial one-time lump-sum paid up- front for participation in the bidding process and to provide assurance that it will be in the interest of the concessionaires to maintain equipment and infrastructure in good order.
- ii. **Royalties, Cargo Dues or Throughput Fees:** These are variable and are paid to the landlord for each unit of cargo handled (TEIJ Ton & Unit of cars)
- iii. **Annual Lease Fee:** This is rent payable in respect of the immovable assets leased out to the concessionaires on annual basis over the life of the concession and adjusted annually to take care of inflation.

2.5 EVALUATION OF PERFORMANCE OF THE CONCESSIONAIRES

1.1 Lessees Obligations under the Agreement

The Committee by its second term of reference is required to evaluate the performance of the concessionaires under the lease agreements and their effectiveness in cargo handling and delivery.

In order to achieve this, it is necessary to understand the obligations of the concessionaires under the agreements. The following is a summary of these obligations:

a) **Financial Obligations:**

The lessees are required to pay certain prescribed fees as prescribed in the agreements. These are commencement or entry fee, annual rent or lease fee, and royalty or throughput fees based on the volume of cargo handled on vessels, or the containers discharged. In addition to these fees, they are also to pay Taxes, levies, duties, withholdings, etc. required by Nigerian law; purchase and maintenance, at own expense, insurance cover for general liability not below US\$10M (Ten Million US Dollars). The different categories of insurable risks include loss, damage or destruction of commodities within the terminals, accidents, injury or death to persons lawfully within the premises, and parties making lawful use of the terminal area; risks associated with the disposal of wastes, loss, damage, or destruction from fire and other extraneous perils.

b) **Lease Property:**

The use of, access to, maintenance of, and physical Development or improvements to the lease property are regulated in the agreements. The use of the premises is limited to the performance of the operations of the concessionaire and must be in accordance with applicable law and without prejudice to the reversionary rights and interests of the landlord. The operations of the concessionaires are to be carried out so as to ensure safety, efficiency, effectiveness, economy with due care and in accordance with law and industry standards. The lessee is mandated to grant unlimited access to the lessor to verify compliance with the agreement and, in event of emergency, to fulfill its obligations.

Improvement or physical development of the property can only be done in accordance with the development plan while anything outside the plan requires the prior written approval of the landlord. The lessee is also obligated to provide adequate office space to the lessor and all government agencies authorized by law to be in the ports, to enable them carry out their official duties. Finally, the movable assets of the concessionaire are not to be disposed in any manner unless the landlord has been offered the right of first refusal.

c) **Services:**

The lessee's obligations to provide services under the agreement include operational, safety & security, environmental protection, information & communication, and staffing documentation services.

- **Operational Services** include all aspects of cargo handling and delivery; equipment operation and maintenance; warehousing, stuffing & stripping, clearing, fumigation, etc. Also included are ship shore handling of supplies for vessels, handling over-sized cargo, terminal, inland depot transfer, and all other activities required to conduct operations.
 - **Safety & Security Services** on the other hand have to do with the preparation and implementation of operational safety procedures for the health and safety of workers, users and the property. Included in this category are safety and security systems for property and cargo, transport operations and activities, firefighting services, appropriate signage to indicate the location of, and access route to, the premises.
 - The other obligatory services of the concessionaire are to ensure:
 - i. Adequate prevention and control of pollution of environment;
 - ii. Computerization of cargo recording and tracking within the port terminal
 - iii. Employment of adequate, suitably skilled manpower to perform the variety of essential services at the port and, to ensure that Nigerians are adequately represented particularly at the top managerial and technical levels;
 - iv. a reporting requirement which ensures that the lessee provides the lessor and relevant government agencies with adequate feedback for purposes of monitoring compliance, project review, subsequent planning, etc. In this regard, the agreements have provided for:
- a) **Annual Report:** This captures the operational performance of the concessionaire on all the relevant parameters and is to be submitted not more than 120 days after the end of each year;
- b) **Quarterly Reports** of Registers, Books and Records showing management and supervision of the port terminals and, for public information. This is to be submitted within 30 days after each quarter;

- c) **Accounting/Non-Accounting Records** of technical, commercial, financial and personnel information as well as records of the location and state of the property; and
- d) **Planning Investment Reports (PIR)** which are to be produced every five years.

2.6. Findings and Observations

The following are the findings and observations of the Committee on the performance of the concessionaires' obligations:

- (i) Most of the terminal operators have substantially complied with the terms of their leases in terms of meeting their financial obligations and implementation of their development plans,
- (ii) Appreciable level of success has been achieved in areas of improved sanitation, security and cleanliness of the terminal environment.
- (iii) The Concessionaires have commenced the implementation of their development plans. The ambience of the port terminals has been transformed. Security has been beefed up with the construction of perimeter fences, lighting and installation of other security measures including CCTV.
- (iv) In addition to rehabilitation of the plants and equipments acquired from NPA by some of the concessionaires in the process of the concession, most terminal operators have invested substantially in the procurement of new modern equipments. These equipments include cranes, forklifts, trailers and other operational vehicle.
- (v) In terms of physical structures, the construction of new structures and rehabilitation of dilapidated buildings and structures (including office blocks, lavatories and warehouses) have been substantially carried out. Similarly, the structures earmarked for demolition to create additional container stacking areas have been mostly carried out. The rehabilitation of faulty water systems and construction of new boreholes has also been accomplished.
- (vi) Most of the terminal operators have invested in modern Information and Communications Technology for improved operational and administrative efficiency including the installation of modern container tracking systems.
- (vii) Overall, there is considerable improvement in the port infrastructure and equipment, though a few of the concessionaires are lagging behind in the implementation of their development plan either due to encumbrances on portions of the concessioned areas by NPA itself and third parties or absence of commercial business opportunities attributed to insecurity and draught limitations.

2.7 Recommendation

- (i) NPA should make concerted effort to identify and expeditiously resolve lingering issues that affect performance of the concessionaires details of which are provided in chapter 5 and in appropriate cases sanction erring concessionaires in accordance with the terms of the agreements.

CHAPTER 3:

ICRC Web Disclosure Portal and Published PPP
Projects Pipeline 2021



Contract Disclosure Portal

3. Introduction

3.1 Disclosure of Information

The Commission was established by the Infrastructure Concession Regulatory commission (Establishment, ETC) Act 2005 to regulate and monitor infrastructure contracts. Section 20 of "the Act" provides a mandate to the ICRC to take custody of all concession agreements under the Act. A number of concession contracts have been signed between ministries, departments and agencies (MDAs) and private entities in the last few years. These contracts are in various sectors such as airports, roads and ports, etc. These contracts are now in the possession of the Commission.

In order to make information on infrastructure concessions easily accessible to the general public, the Commission decided to make all non-confidential information of the contracts publicly available on its website.

3.2 Objectives of Disclosure

Disclosure can educate Nigerians on the salient features of the contract, agreed standards of service and the actual performance levels achieved. Disclosure of performance indicators with their targeted levels can help put pressure on providers to perform well. As users get more educated about the contracts through regular disclosure of information, service provision through the public-private partnership procurement would gain greater acceptance in the country.

Disclosure of contract documents places a responsibility on the MDAs to ensure that value for money is obtained throughout the life of the contract and services are performed at the levels agreed to in the contract. It also places a greater responsibility on public authorities to ensure implementation of the contract. The decision to proactively disclose contract information will also help the Commission and MDAs involved to streamline their information systems and spend more effort and time in collecting, organizing and managing data.

Disclosure of contract information may have a positive effect on the bidding process for future projects as it has the potential of increasing the confidence of the private sector which then leads to greater participation.

3.3 Confidential Information

PPP contracts would contain sensitive commercial information and the Commission is prohibited from disclosing trade secrets, commercial or financial information which are confidential or any information which may if disclosed would interfere with contractual

or other negotiations of a third party, and proposal or bids for any contract which may have adverse effects on a procurement process. Please see (Section 15 (1) of the Freedom of Information Act 2011).

3.4 Challenges Associated with Disclosure

Apart from the issues associated with confidential information discussed in section 1.3 above, there can be other challenges associated with disclosure. PPP contracts are usually long term with periods of up to 25 years. The information disclosed would remain in the public domain for a long period of time and would need to be updated regularly during the project lifecycle. Typically, PPP contracts have several schedules containing technical information which would require breaking down into simple language to make it more comprehensible to the public

These reasons make infrastructure PPP contract disclosure technically, as well as administratively, challenging. The following issues need to be carefully considered:

- (i) matters to be proactively disclosed
- (ii) formats/template for disclosure
- (iii) inclusion of standard disclosure provisions in contracts
- (iv) procedures for validating information before proactive disclosure
- (v) protection of confidential information through application of exemptions under the FOI Act 2011.

The extent of disclosure of performance assessments would be related to the efficiency of collection of performance information.

3.5 Framework for Disclosure

While Nigerian PPP infrastructure contracts are concise and full disclosure of the contracts will be relatively easy in practice, disclosure of full legal contracts may still not make contract information comprehensible to the public who may find it difficult to interpret the legal clauses and schedules correctly. Project and contract information can be disclosed in a systematic and organized manner through the use of contract and project summaries.

The aim of this guidance is to provide a suggested framework for officials dealing with the disclosure of information relating to infrastructure concessions, along with a recommended template, for the proactive disclosure of project and contract information.

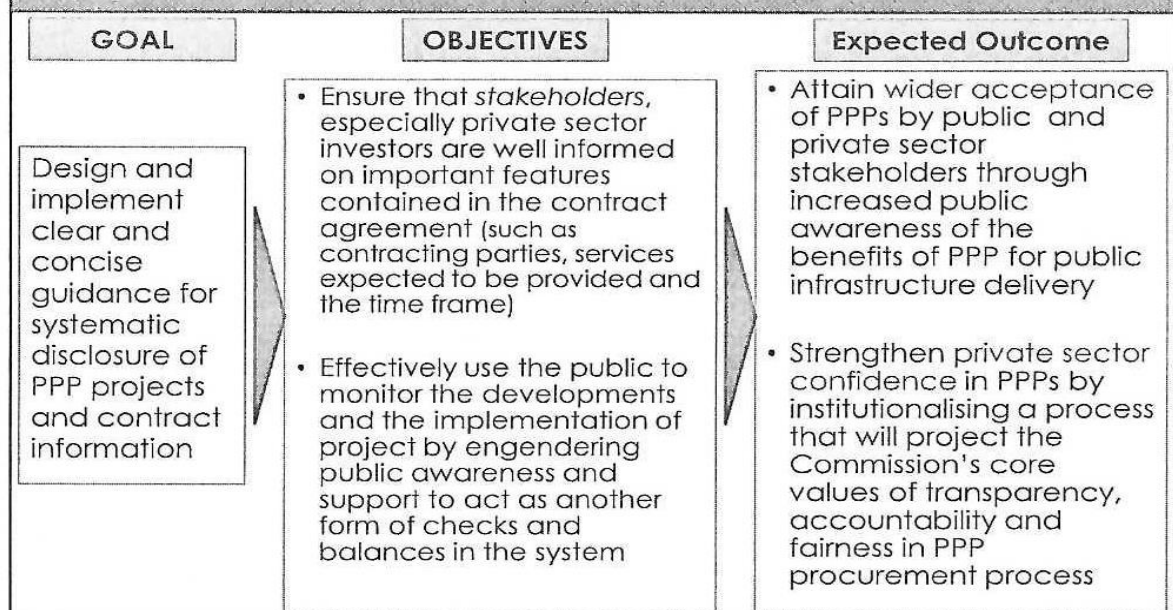
Contract Disclosure Framework

Overview

- The Infrastructure Concession Regulatory Commission (ICRC) In collaboration with the World Bank Institute (WBI) for PPP Practice seeks to bring about improvements in disclosure practices in PPP projects.
- The contract disclosure document is a template designed to ensure all non-confidential information relating to a PPP contract is made available and easily accessible to members of the public who may have a need for such information
- The Primary objective of the support received from WBI is to assist the Commission to design and implement clear and concise guidance for systematic disclosure of PPP project and contract information, along with assistance in developing the formats for presentation of information.

Contract Disclosure Framework

Objectives



Contract Disclosure Framework

Salient Features

- These Guidelines apply to all concessions/PPP Infrastructure procurement contracts procured by MDAs pursuant to Section 1 of the Act.
- **Method of Disclosure:**
 - i. **www:** The Commission's website
 - ii. **www:** public entity's website for disclosure of performance
 - iii. **Hard copy:** made available on request at the Commission's office
 - iv. **Limitations:** The Commission and MDAs to ensure that confidential information is not disclosed
- **Timeline for Contract Disclosure:**

Non-confidential portion of the concession agreement will be placed in the public domain within 30 days of attainment of financial close	The Commission shall disclose key project information within 60 days of financial close	Performance report from Independent Engineer/Concessionaires shall be published within 30 days of receipt of such reports	Any variation to the agreement shall be published within 60 days of such variation	Audited Annual Financial Statements of Concessionaire shall be published within 30 days of the receipt of same (subject to a provision)
30 days	60 days	30 days	60 days	30 days

Contract Disclosure Framework

Framework of Project Summary

Part 1: Project Information	Part 2: Project Information
<p>Basic project information expected to be disclosed, includes:</p> <ul style="list-style-type: none"> • General overview of the project • Brief description of the scope of work • Social and economic benefits of the project • The procurement process and approving authority 	<ul style="list-style-type: none"> • Essential Contract Information are expected to be highlighted, such as: <ol style="list-style-type: none"> i. Parties to the Contract and Contact details ii. Issues on Land and Asset transfer to the Concessionaire iii. Risk Allocation iv. Projected revenues from User Charges v. Service level agreements vi. Default, Termination and dispute resolution vii. Redactions + Proposed Template
Part 3: Implementation Information	Part 4: Contract (terms) Modification
<ul style="list-style-type: none"> • The performance parameters and achievement + Proposed Template • Performance failure and assessment of level of success + Proposed Template 	<ul style="list-style-type: none"> • Proposed Template • Details as they occur • Process to be followed in validating disclosed information
<p>Information on actual performance will be added within 30 days of the 1st anniversary of the date of execution of the agreement.</p>	

Contract Disclosure Framework

Redaction and Confidentiality

■ Privity of Contracts

"Each party agrees to hold in confidence for a period of five (5) years following the termination of the lease, any information supplied"

■ Exceptions

- The provision of this clause shall not apply to:
 - Information already in public domain
 - Information lawfully in a party's possession prior to receipt from disclosing party
 - Information received from a party having no obligation of confidentiality
 - Information, the revelation of which is required by **Applicable Law**

Contract Disclosure Framework

Redaction and Confidentiality (Cont'd)

- Section 1 of the Freedom of Information Act, 2011 establishes:

"The right of any person to access or request information which is in the custody or possession of any public official, agency, or institution howsoever described".

- Section 2 (2) of the Act further states that:

"A public institution shall ensure the proper organisational maintenance of all information in its custody in a manner that facilitate public access to such information."

Exempt Information

- Section 15(1) of the FOI Act 2011 provides that a public institution can deny disclosure of :
 - a) Trade secrets and Commercial or financial information obtained from person or business..
 - b) Information that would interfere with contractual or other negotiations of a third party
 - c) Proposal and bids for any contract, grants or agreements, which if disclosed will frustrate procurement or give advantage to any person.
- See also Section 15(4) which provides that :

“ A public institution shall disclose any information described in subsection (1) of this section if
the public interest in the disclosure clearly outweigh in importance any financial loss or gain to a third party.”

ICRC's Effort at Information Disclosure

- Publication and distribution of The ICRC Act and National Policy on PPP (N4P)
- Annual reports of the Commission since inception
- Development for approval and subsequent publication of:
 - The Public Private Partnership Regulations
 - The PPP Manual
 - Unsolicited Proposal Procedure Guideline
- Regular PPP awareness campaigns and stakeholders forums some of which include:
 - **Presidential Retreat:** The ICRC jointly organized a presidential retreat with the National Planning Commission (NPC) in Abuja on 14th June, 2010. The theme was "Presidential Retreat on The First Implementation Plan of NV 20:2020 and PPP Imperatives for Infrastructure Development in Nigeria"
 - **Briefings & Road-shows:** ICRC has held joint briefing on PPPs in conjunction with International Project Finance Association (IPFA). ICRC also jointly organized a road-show with Standard Chartered Bank which was held in the UK.
 - **Conferences & Workshops:** ICRC has organized joint PPP conferences with the International Finance Corporation (IFC). Workshops were jointly hosted with the Development Bank of South Africa (DBSA), AMETrade UK, Infrastructure Bank of Nigeria (UDBN), IDFC India. ICRC is also an active promoter of the Nigeria PPP Network (NPPPN).
- Recently, **Nineteen (19)** Pipeline projects were advertised for investment interest, pursuant to section 2(4) of the Act

Conclusion

- The Commission shall continue to provide guidance to MDAs and members of the public involved in the execution of PPP transactions.
- Regulations to be issued by the Commission shall be placed on our website for easy access to the public.
- The merits and benefit of this proposal far outweigh any concern that may be raised

As part of its regulatory oversight, the Commission in April 2021 in Federal Republic of Nigeria Official Gazette No 58, Vol. 108 published 51 project eligible for PPP investment.

The list is as presented below:

**INFRASTRUCTURE CONCESSION REGULATORY COMMISSION (ICRC)
THE PRESIDENCY**

Commencement : 8th April, 2021

LIST OF ELIGIBLE PUBLIC PRIVATE PARTNERSHIP (PIPELINE) PROJECTS FOR 2021

<i>S/N.</i>	<i>MDA</i>	<i>Project</i>	<i>Sector</i>	<i>Estimated Project Cost</i>	<i>Phase</i>
1.	Federal Ministry of Aviation	<i>Concession of Mallam Aminu Kano International Airport, Kano</i> The FGN proposed to concession the Mallam Aminu Kano International Airport Terminal Building, Kano State as part of aviation sector reform programme.	Aviation	USD 35 Million	Procurement RFQ is about to be issued
2.	Federal Ministry of Aviation	<i>Concession of Port Harcourt International Airport</i> The FGN proposed to concession the Port Harcourt International Airport Terminal Building, Rivers State as part of aviation sector reform programme.	Aviation	USD 90 Million	Procurement RFQ is about to be issued
3.	Federal Ministry of Aviation	<i>Concession of Murtala Muhammed International Airport, Lagos</i> The FGN proposed to concession the Murtala Muhammed International Airport Terminal Building, Lagos State as part of aviation sector reform programme.	Aviation	USD 650 Million	Procurement RFQ is about to be issued
4.	Federal Ministry of Aviation	<i>Concession of Nnamdi Azikiwe International Airport, Abuja</i> The FGN proposed to concession the Nnamdi Azikiwe International Airport Terminal Building, Abuja-FCT as part of aviation sector reform programme.	Aviation	USD 250 Million	Procurement RFQ is about to be issued

5.	Federal Ministry of Aviation	<i>Development of a Maintenance, Repairs and Overhaul (MRO) Facility</i> The FGN intends to establish an MRO facility for aircraft maintenance, inspections and supply of parts to the aviation sector.	Aviation	USD 150 Million	Development RFQ is about to be issued
6.	Federal Ministry of Aviation	<i>Establishment of an Aviation Leasing Company (ALC)</i> The FGN intends to establish an ALC for the leasing of aircrafts to operators in the country and the continent as none exist in Africa at the moment.	Aviation	USD 10 Million	Development RFQ is about to be issued
7.	Federal Ministry of Aviation	<i>Establishment of a National Carrier</i> The FGN intends to establish a National Carrier for the country through a PPP arrangement. The national carrier will have a hub in a designated airport as one of the outcomes of the assignment from the TA.	Aviation	NGN 91,500,000,000	Procurement RFQ is about to be issued
8.	National Commission for Museums and Monuments/ Federal Ministry of Information and Culture	<i>Development of Recreational Park within the Museum premises, Enugu.</i> (Unsolicited Proposal): An unsolicited proposal submitted to the National Commission for Museums and Monuments to develop recreational park in Enugu, within the Museum premises.	Culture	NGN 750 Million	Development OBC Certificate of Compliance issued
9.	Federal Ministry of Education / Federal University Gusau (FUG)	<i>PPPs involving the following :</i> (i) Proposed construction of Students Hostel, 500-Units of Staff Housing, Roads and Drainages, Shopping Mall, Staff/Students Cafeteria, Bio-gas Electricity Power plant and Poultry Farm. (ii) On-line application System for e-registration platform, Computation /compilation of Students' results, e-Learning and web portal development.	Education	USD 89.393 Million	Development To resubmit OBC

		Proposed construction of Vice Chancellor's Lodge, Pro-Chancellor's Lodge, Principal Officers' Quarters, Senior Staff Housing, Junior Staff Housing, External Electrification, Borehole and Overhead Tanks, etc.			
10.	Federal Ministry of Education	<i>Development of Commercial Hub at National Open University of Nigeria (NOUN)</i> The National Open University of Nigeria is desirous of building a commercial hub for the University Community within the campus at Jabi, Abuja using the PPP arrangement. The complex will have the following facilities Banking malls, Supermarket, Restaurants, Bookstore, retail shops etc.	Education	NGN 100,000,000	Development OBC Certificate of Compliance Issued
11.	Federal Ministry of Education / Federal College of Education, Ogun State	<i>Development of Student Hostels at Federal College of Education Abeokuta, Ogun State</i> Federal College of Education Abeokuta seeks guidance to develop hostel accommodation using PPP procurement process.	Education	NGN 1,948,188,530.83	Development To re-submit OBC
12.	Federal Ministry of Education/ University of Abuja	Construction of 16 Nos 400 Rooms Students Hostels at University of Abuja Through Public Private Partnership (PPP)	Education	NGN 1.8 Billion	Procurement RFQ Issued RFP about to be issued to shortlisted bidders
13.	Federal Ministry of Education/ University of Uyo and University of Port Harcourt	<i>Construction of Students Hostels on a PPP arrangement.</i> The University of Uyo is seeking to collaborate with a Private Proponent for the development of students hostels at the various campuses of the University with a capacity for 12,000 bed spaces.	Education	NGN 18 Billion	Development To resubmit OBC

14.	Federal Ministry of Water Resources	<i>Owena Multi-Purpose Dam water supply (Unsolicited Proposal)</i> The project will provide about 1.5kwh of electricity to the national grid.	Energy	NGN 872,035,000	To commence procurement
15.	Federal Ministry of Water Resources	<i>Development of 9MW Oyan Dam Unsolicited</i> This involves the Operations and Maintenance of 9MW hydroelectric power.	Energy	NGN 4,500,000,000	To commence swiss challenge procurement
16.	Federal Ministry of Water Resources	<i>Development of 220MW River Mada Medium hydropower plant in Nasarawa State</i> This involves the Operations and Maintenance of 220MW hydroelectric power.	Energy	NGN 123,200,000,000 (123.2 Billion)	To commence swiss challenge procurement
17.	Federal Ministry of Power	<i>Concession of 1.2MW Grid Connected PV Solar Power Plant</i> Concession of 1.2MW Grid Connected PV Solar Power Plant at Lower Usuma Dam, Abuja under the Japanese Grant-In-Aid to the FGN	Energy	NGN 1,437,187,500	Development
18.	Federal Ministry of Education	<i>University of Benin 15MW Solar Project (Unsolicited Proposal)</i> The project is a 15MW PV Solar power to be sited on a 30Hectare parcel of land at the University of Benin Ugbowo Campus.	Energy	USD 30,000,000,000	Development Revised OBC awaited
19.	Federal Ministry of Power / Federal Ministry of Water Resources	<i>40 MW Kashimbila Dam Hydropower Station</i> Kashimbila Dam is a 32m high composite dam with a 40 MW hydropower station located on the Katsina-Ala River, Taraba State, a tributary of the Benue River, approximately 20 km downstream of the Nigeria-Cameroon border. It comprises a zoned rockfill embankment with a central mass gravity ogee spillway, an outlet works which consist of multi-level intakes and outlet structure.	Energy	NGN 7.26 Billion	To commence procurement

20.	Federal Ministry of Power	<p><i>Makurdi Hydropower Project</i></p> <p>The Makurdi Hydropower Project (Makurdi HPP) was originally conceived as part of the Plan for Electric Power System Development issued by the then National Electric Power Authority [NEPA] in 1974. The planned dam site is located on the Benue River, the primary tributary of the Niger River in Nigeria, about 10 ~ 15 km upstream of Makurdi, the capital of Benue State.</p>	Energy	USD 3,348,000,000	To commence Procurement
21.	Federal Ministry of Water Resources	Development of 136 MW Many Hydropower Generation Facility, Taraba State	Energy	USD 221,636,921.24	To commence procurement
22.	Federal Ministry of Water Resources	Development of 182 MW Bawarku Hydropower Generation, Benue State	Energy	USD 267,159,890.11	Procurement Re-issue OBC Certificate of Compliance
23.	Federal Ministry of Health	<p><i>Upgrade of the 3rd Phase of Teaching Hospital Rehabilitation Project</i></p> <p>The contracts for rehabilitation and modernization of select Federal Teaching Hospitals (8 in phase 1 and 6 in phase 2) were awarded in November 2002 and September 2006 respectively to VAMED Engineering Ltd and a Presidential Project Implementation Committee was set up to monitor proper and timely execution of the projects. The remaining 7 Teaching hospitals were supposed to be rehabilitated and modernized through PPP and a Technical Working Group (TWG) with membership drawn from FMOH, NSIA, ICRC, and four members from private sector was set up to deliberate and agree with VAMED/CPL Group on the most suitable PPP model to be adopted for phase 3.</p>	Health	NGN 924,614,000,000.0	Procurement Re-issue OBC Certificate of compliance

24.	Federal Ministry of Health (FMoH)	<i>Establishment of Anti-Snake Venom Production Facility in Nigeria through PPP</i> The Ministry seeks the Establishment of Anti-Snake Venom Production Facility through PPP.	Health	NGN 6,157,000,000 USD 13.1 Million	Development To resubmit OBC
25.	Federal Ministry of Health	<i>Radiotherapy and Oncology Centre and Operation of Oxygen Gas Plant at Aminu Kano Teaching Hospital, Kano</i> The management of Aminu Kano Teaching Hospital, Kano wrote to the Honourable Minister proposing the implementation of the following projects through PPP: Establishment of Radiotherapy/Oncology Centre and Operation of Oxygen Gas Plant.	Health	NGN 150.7 Million	Development To resubmit OBC
26.	Federal Ministry of Health	<i>Abuja Healthcare City project</i>	Health	USD 102 Million for phase I	Development To resubmit OBC
27.	National Veterinary Research Institute/Federal Ministry of Health	<i>Vaccine Production Facility</i> National Veterinary Research Institute (NVRI) is desirous to commercialize vaccine production within the institute.	Agric-Health		Development
28.	Federal Ministry of Health	<i>National Orthopaedic Hospital, Enugu</i>	Health	NGN 900,000,000,000.0	Development OBC Certificate withheld
29.	Federal Ministry of Health/ Usmanu Danfodio University, Sokoto	PPP Initiative on Pharmaceutical Products and Surgical Consumables and Diagnostic Laboratory Services, Usmanu Danfodio University Teaching Hospital, Sokoto	Health		Development To resubmit OBC

30.	Federal Ministry of Health	<p><i>Development of Advanced Surgeries Centres in Nigeria Government Hospitals</i></p> <p>The Federal Ministry of Health, submitted an unsolicited proposal developed by LAANJ International Ltd, requesting the Federal Government to allocate specific departments in three Nigerian Public hospitals, one each in Abuja, Jos and Port Harcourt, where they can bring in experts from India at intervals to perform advanced surgeries. The proposal aimed to be established as an Operation and Management (O & M) Pubic Private Partnership (PPP) model</p>	Health	NGN 200,000,000.0	Development To resubmit OBC
31.	Federal Ministry of Justice	<p><i>Criminal Justice Management Information System (CJMIS)</i></p> <p>The Federal Ministry of Justice (FMOJ) has received an Unsolicited Proposal from ECR Technology Services Limited (ECR) seeking to utilize the application of a Criminal Justice Management Information System (CJMIS) that will enable the achievement of an economically viable way of implementing the Criminal Justice Act (2015).</p>	ICT	NGN 5,619,542,516.82	To commence swiss challenge procurement
32.	National Communications Commission	<p><i>Deployment of a Revenue Assurance System (RAS)</i></p> <p>The procurement of Revenue Assurance (RAS) to combat revenue leakages amounting to NITrillion naira annually in the telecoms market generally.</p>	ICT/ Communications	NGN 12,889,090,32.99	Procurement
33.	Federal Ministry of Transportation / Nigeria Shippers Council (NSC)	<p><i>The Dagbolu Inland Container Depot (ICD) :</i></p> <p>(Solicited Proposal) The project concerns the development of a Greenfield ICD in Osun State, South-West Nigeria. The ICD is being developed to exploit the strategic advantages in Nigeria's huge export and import market by making the country a</p>	Ports	NGN 1,072,480,500	Procurement FRQ is about to be issued

		trans-shipment hub for the West African region. The ICD when developed would provide storage and cargo handling facilities for export and import of containerized cargos to and from the hinterland of Nigeria especially around the Southwest states of Ondo, Ekiti, Osun; Edo State and Kwara State.			
34.	Federal Ministry of Transportation/ Nigeria Shippers Council (NSC)	<i>Development of Inland Container Depot (ICD) in Onitsha, Anambra State:</i> This has a design that consists of an annual 5,000 TEUs capacity facility which can be expanded with increasing throughput.	Ports	NGN 920,000,000	Procurement RFQ is about to be issued
35.	Federal Ministry of Transportation/ Cross River State Government (CRSG)	<i>The Development of the Bakassi Deep Sea Port</i> The Cross River State Government intends to develop a sea port at Bakassi under a PPP arrangement, in pursuance of which it sought the collaboration of the Federal Government of Nigeria in accordance with existing legal framework for port development in implementing the proposal.	Ports Sector	USD 2 Billion	Procurement RFQ advertised
36.	Federal Ministry of Transportation / Nigeria Shippers Council (NSC)	<i>Development of Inland Container Depot (ICD) in Benin, Edo State</i> The Benin Dry Port is proposed to act as a port of destination for container cargoes waiting for further delivery instructions. It is also proposed to provide services for the unloading of full container loads and breaking them down into smaller lots per consignee. The primary objective of establishing the BENIN DRY PORT is to provide a one stop cargo reception and clearance facility to boost exports from and imports into Edo State particularly and Nigeria's South-South, South East and some States in the	Ports Sector	NGN 1.2 Billion	Development Preparation of RFQ in progress

		Middle Belt regions in general. It is expected to provide proper handling and logistics services which emphasize promptness, dependability and cost effectiveness.			
37.	Federal Ministry of Transportation/ Nigeria Shippers Council (NSC)	<p><i>Development of Truck Transit Park (TTP) in Obollo-Afor, Enugu State</i></p> <p>The NSC proposes to facilitate the development of TTPs through PPP with facilities for short-term breaks as well as long-term parking services where truck drivers can get fuel, food, restrooms, showers and basic supplies like oil and spare parts as well as servicing and repairs of haulage vehicles. The Truck Transit Parks will have the following facilities including but not limited Gas Station, Hotel and Motel, Restaurants, Mechanic Workshop, Fire Station, Police Post, Automated Cargo Tracking System.</p>	Port Sector	NGN 1,247,068,226	Procurement Preparation of RFQ in progress
38.	Federal Ministry of Transportation/ Nigeria Shippers Council (NSC)	<p><i>Development of Truck Transit Park (TTP) in Lokoja, Kogi State</i></p> <p>The NSC proposes to facilitate the development of TTPs through PPP with facilities for short-term breaks and also long-term parking services where truck drivers can get fuel, food, restrooms, showers and basic supplies like oil and spare parts as well as servicing and repairs of haulage vehicles. The Truck Transit Parks will have the following facilities including but not limited to Gas Station, Hotel and Motel, Restaurants, Mechanic Workshop, Fire Station, Police Post, Automated Cargo Tracking System.</p>	Ports Sector	NGN 1.2 Billion	Procurement Preparation of RFQ in progress

39.	Federal Ministry of Transport/ Nigerian Ports Authority	<i>The Rehabilitation and Expansion of the Burutu Port</i> Burutu Port is located in Burutu Local Government Area of Delta State. The current Port is on a 40.716 Hectares of Land and was originally built as a logistic Port for the export of Solid minerals and Agricultural Produce as well as importation and transportation of foreign goods from Europe for onward movement to the hinterland River Ports via the inland waterways.	Port	NGN 10 Billion	Procurement Preparation of RFQ to commence under Swiss Challenge methodology
40.	Federal Ministry of Transportation (FMoT)/ National Inland Waterways Authority (NIWA)	<i>Re-development of NIWA Marina Land, Lagos State</i> The project involves the re-development of a narrow strip land measuring 3.9 hectares with plans to reclaim 39.2 hectares to a total of 41.1 hectares in Marina, Lagos; both the land and water areas are under the jurisdiction of the National Inland Waterways Authority (NIWA). The facility is currently being used for berthing and docking of passengers' boats and other vessel services referred to as "marina land".	Ports	NGN 1,056,480,000,000.0	Procurement Preparation of RFQ to commence under Swiss Challenge methodology
41.	Federal Ministry of Works & Housing (FMW&H)	Concession of 10 roads under the Highway Development & Management Initiative (HDMI) <ol style="list-style-type: none"> 1. Asaba-Agbor (Delta/Edo States) 2. Abuja-Lokoja (FCT/Kogi) 3. Kano-Katsina (Kano/Katsina) 4. Onitsha-Aba (Anambra/Abia) 5. Shagamu-Benin (Ogun/Edo) 6. Abuja-Akwanga (FCT/Nasarawa) 7a. Kano-Shuuri [lot 1] (Kano State); 7b. Potiskum-Damaturu [lot 2] (Yobe State) 8. Lokoja-Auchi (Kogi/Edo) 9. Enugu-Port Harcourt (Enugu/Rivers) 	Roads and Bridges	NGN 1.3 Trillion	Procurement RFQ Advert in print media (29th March, 2021)

		<p>10. Ilorin-Jebba (Kwara/Niger)</p> <p>11. Lagos-Abeokuta (Lagos/Ogun)</p> <p>12. Lagos-Badagry (Lagos)</p> <p>These routes have been selected for the 1st phase of the VAC.</p> <p>The routes have been further broken down into lots. This is to ease management and development, ensuring that the entire route is adequately accounted for.</p> <p>Certain criteria have been used to ensure that the most suitable 1st phase routes have been chosen.</p>			
42.	Nigeria Police Force	<p><i>Development of Senior Police Officers Quarters at Ikeja, Lagos through PPP arrangement</i></p> <p>The redevelopment of 6.750 hectare of land at Ikeja into senior police officer's housing units using 2.1 hectares of the land and use of 4.65 hectares for the development of 130 four-bedroom duplex housing units.</p>	Security	NGN 6,415,500,000.0	Procurement
43.	Federal Ministry of Youth and Sports	<p><i>PPPs involving the following:</i></p> <p>(i) Upgrading/rebuilding of National Stadium, Lagos</p> <p>(ii) Completion of Athletes' hostel, Abuja</p>	Sports		Development To submit OBC Procurement
44.	Federal Ministry of Trade and Investment/ Small and Medium Enterprises Development Agency of Nigeria (SMEDAN)	<p><i>Development of 23 Industrial Development Clusters (IDCs)</i></p> <p>The objective of the project is to redevelop 23 Industrial Development Centers (IDCs) into Industrial Clusters across Nigeria (in 6 geopolitical zones) using the PPP Model.</p>	Trade and Investment		Procurement

45.	Federal Ministry of Industry, Trade and Investments and Niger State	<i>Babanna Transnational Border & Regional Market Project</i> Integration of informal trade with the formal sector, Elimination of smuggling, Revenue generation, Enhancement of bilateral integration and trade, Enhancement of security along the border are all aspects of this Transnational border project.	Industry, Trade and Investment	NGN 48,013,853,422	Development To resubmit OBC
46.	Ogun Osun River Basin Development Authority	K'MAOUN Complex in IJORA Lagos State	Urban Development	NGN 657,800,000.0 (CAPEX)	Swiss challenge procurement to commence
47.	Federal Ministry of Works & Housing and Council for the Regulation of Engineering in Nigeria (COREN)	<i>COREN Head Office Project</i> (Solicited Proposal): The proposal will involve the Construction of COREN head office complex in Abuja using PPP procurement methodology.	Urban Development	NGN 230 Billion (OPEX)	Procurement
48.	Federal Ministry of Works and Housing	<i>Marina Quayside Strip Project</i> The proposed project is a transformative urban/ waterfront development Project intended to be a tourism centre that will provide Hotels, Condominiums, Commercial Complexes, Water Sports, Restaurants, Art Galleries, Cinemas, Shops, Car Parks, Bus Transport Terminals, Museums, Offices, Residential buildings, Rented Houses, Theme parks, Parks, Port Authorities, Cruise Ship Facilities, Jetties, Boardwalks, Marinas, Aquaria, Sports Complexes, Casinos, Medical Facilities and Marine Transport.	Urban Development	USD 2.9 Billion	To commence procurement

49.	National Hajj Commission of Nigeria (NAHCON)	The NAHCON seek to engage a private sector operator to DFBOT a building at its landed property located at Hajj Complex, along Katsina Road, Kano State. The plan is to build a 4blocks complex housing 376 units of shops, 8 portal steel block, a mosque, convenience and parking spaces.	Urban Development	NGN286 Million	Development To resubmit OBC
50.	Nigerian Communications Commission	<i>Revenue Assurance System</i> A Revenue Assurance Solution, software designed to ensure efficient collection of revenues and taxes to government.	Telecommunications	NI2.9 Billion	Procurement (Negotiations with with PPP Partner ongoing).
51.	Abuja Infrastructure Investment Centre (AIIC)/ Federal Capital Territory Administration (FCTA)	<i>Jabi Lake Tourism and Development Project</i> The Jabi Lake Tourism and Recreation development project is being designed to transform the man-made lake in the Jabi District of Abuja into a tourist destination.	Urban Infrastructure (Tourism and Hospitality)	\$21 Million	Procurement (Swiss Challenge Methodology) —Issuance of Request for Qualification.

J. A. MICHAEL OJIHANI
 Ag. Director-General
 Infrastructure Concession Regulatory Commission

ABOUT ICRC

The Infrastructure Concession Regulatory Commission (ICRC) was established by an Act in 2005 to regulate Public Private Partnership transactions over Federal Government assets aimed at addressing Nigeria's huge infrastructure deficit.

The timely implementation of the projects listed above is significantly dependent on :

- (1) the MDAs ability to provide adequate project transaction funds ;
- (2) Commitment of all parties to transparency in the process ; and
- (3) adequate funding of the Infrastructure Concession Regulatory Commission to carry out its regulatory mandate.

SN	PPP PROJECTS DATABASE.					
	MDA	Project	Project Description	Sector	Status	Phase
1	Federal Ministry of Power, Works & Housing	<ul style="list-style-type: none"> Lagos-Iseyin-Kishi-Kaiama Road Kaiama-Bahama-Kaoje-Gwambu-Fokku-Sokoto 	The Kaiama-Babana-Kaoje-Gwambu-Fokku-Sokoto Road is a 631km road connecting Kosubusu, Yasikera, Chikanda, Karanji, Babana, Shafaci, Kaoje, Koko, Fokku Jega, Aliero, Shagari and Sokoto in Kwara, Niger, Kebbi and Sokoto States of Nigeria.	ROADS	Outline Business Case (OBC) is being prepared by the Ministry	DEVELOPMENT
2	Federal Ministry of Power, Works & Housing	<ul style="list-style-type: none"> River Katsina Ala Bridge at Buruku River Benue Bridge at Ibi 	<p>The River Katsina Ala at Buruku is situated in the North Central of Nigeria in Benue State, 32 km r east of Gboko town.</p> <p>The proposed River Benue Bridge at Ibi is situated in the North Central area of Nigeria, The crossing is approximately 200m.</p>	ROADS	Outline Business Case (OBC) is being prepared by the Ministry	DEVELOPMENT
3	Federal Ministry of Power, Works & Housing	<ul style="list-style-type: none"> Improvement of Apakun-Murtala Muhammed Airport (MMA) Road Route No. F269 	The Federal Government of Nigeria Proposes to rehabilitate and expand the Apakun-Murtala Muhammed Airport (MMA) Road using PPP. The road is a 2.8Km dual carriageway connecting Apakun to the MMA Road. It is expected that the road would be upgraded from a 4 lane to	ROADS	OBC Certificate of Compliance has been granted. The full Business Case (FBC) is being awaited from the Ministry	PROCUREMENT

			an 8 lane facility with 2.75m shoulders on either side including construction of vehicular and pedestrian bridges at appropriate locations.			
4	Federal Ministry of Power, Works & Housing	<ul style="list-style-type: none"> 2nd Niger Bridge 	The 2nd Niger Bridge is a 6-lane dual carriageway of approximately 1.760m long and 32.4m wide including 14km long approach road with three (3) river bridges and three (3) interchanges on the approach road. It is situated at Onitsha/Asaba in Anambra/Delta States and is being developed under a PPP arrangement	ROAD & BRIDGES	FBC has been reviewed by the ICRC and the FMoW is required to update the FBC based on ICRC comments	PROCUREMENT
5	Federal Ministry of Transportation / Nigeria Shippers' Council (NSC)	<ul style="list-style-type: none"> Gombe Container Freight Station 	This is a green field project aimed at providing a common user facility outside the seaport area for shipping operators, logistics firms, freight forwarders and other relevant stakeholders to movement of export cargoes to and from the hinterland.	PORTS	Negotiation with the preferred Transaction Adviser is truncated.	DEVELOPMENT
6	Federal Ministry of Transportation (FMOT) / Nigeria Ports Authority (NPA)	<ul style="list-style-type: none"> Kirikiri Port Lighter Terminal I & II 	The Federal Ministry of Transport, through the Nigerian Ports Authority, proposes to procure a concessionaire to rehabilitate and upgrade the existing ports facility. The project development and procurement costs is being sponsored by the World Bank.	PORTS	OBC has been reviewed by ICRC.	DEVELOPMENT
7	Federal Ministry of Transportation (FMOT)/	<ul style="list-style-type: none"> Onitsha Inland River Port 	The Federal Government of Nigeria has adopted PPP arrangements to operate and	PORTS	The OBC is being reviewed	DEVELOPMENT

	National Inland Waterway Authority (NIWA)		manage four river ports in the Lower Niger namely Onitsha, Lokoja, Baro and Oguta River Ports. Onitsha River Port has been selected as the pilot case. PPP Project development and procurement of the Inland Port Concessionaire is being sponsored by the World Bank.			
8	Federal Ministry Of Transportation/ Akwa Ibom State Government	<ul style="list-style-type: none"> Ibom Deep Seaport Project 	This is an integrated, multi-purpose deep seaport which is to be developed jointly by the FGN, Akwa Ibom State Government (AKSG) and private investors. At present, 5,000 hectares of land is available for the project. The Ibom port is planned to have 17 and 18 meters all time draught without dredging and its quay area will span over two miles. This will make it the deepest port in the West African sub-region.	PORTS	OBC Certificate of Compliance has been granted and Federal Executive Council (FEC) has approved the OBC.	PROCUREMENT
9	Federal Ministry Of Transportation /Nigerian Ports Authority (NPA)	<ul style="list-style-type: none"> Lekki Deep Seaport 	The project plans to handle about 1.2 million foot equivalent units (FEU) per annum, with berthing for vessels of 160,000 dead weight ton (DWT) capacity.	PORTS	The project is yet to reach financial close.	IMPLEMENTATION
10	Federal Ministry of Transportation	<ul style="list-style-type: none"> Lagos – Shagamu- Ijebu Ode- Ore- Benin City (300km) (standard gauge) Benin- Agbor-Ogwashi Uku- Asaba- Onitsha –Nnewi- Owerri-Aba with additional line from Onitsha-Enugu- Abakaliki (500km) (standard gauge) 	The Nigerian Railway Corporation seeks to concession various railway corridors in the country. Coastal rail line involving standard gauge and high speed rail	RAIL	OBC is being prepared by the Ministry	DEVELOPMENT

		<ul style="list-style-type: none"> Ajaokuta(Eganyi)-Obajana-Jakura-Baro-Abuja with additional line from Ajaokuta-Otukpo(533km) (standard guage) Zaria- Funtua- Tsafe- Gusau-Kaura- Namoda-Sokoto-Illela-Birnin Koni (520Km) (standard guage) Lagos –Ibadan- Oshogbo-Baro-Abuja (615KM) (high speed). 				
11	Federal Ministry of Transportation	<ul style="list-style-type: none"> Narrow Gauge Railway Concession 	The Nigerian Railway Corporation sought to grant concession of the Eastern (Port Harcourt to Maiduguri) and Western (Lagos to Kano) railway lines in the country. The Nigeria Infrastructure Advisory Facility (NIAF), an arm of the United Kingdom Department for International Development (DFID), assisted the ECN in funding the preparation of an Outline Business Case (OBC) as part of the project development work for the concession of the railway lines.	RAIL	The OBC has been reviewed and Ministry is to seek FEC approval of the OBC.	DEVELOPMENT
12	Federal Ministry of Interior	<ul style="list-style-type: none"> Proposed production of International Civil Aviation Organization (ICAO) compliant e-passport. 	Production and management of Nigeria's e-passport project	IMMIGRATION	Revised OBC recently submitted and under review.	DEVELOPMENT
13	Federal Ministry of Health	<ul style="list-style-type: none"> Development of Abuja Medical Mall/City 	Development of a world class tertiary medical facility on a Greenfield site in Abuja to harness the potential of the private health sector and provide high quality alternatives to Nigerians who require specialist	HEALTH	Project Delivery Team (PDT) & Project Steering Committee (PSC) established and inaugurated, Ministry is in the process of engaging a T.A.	DEVELOPMENT

			medical care in the country.			
14	Federal Ministry of Trade and Investment/ (TBSMB)	National Trade and International Business Centre	The Federal Ministry of Industry, Trade and Investment through the Tafawa Balewa Square Management Board (TBSMB), wishes to partner with the private sector to rehabilitate, manage and operate the National Trade and International Business Centre, Lagos (NTIBC) through a concession arrangement.	TRADE & INVESTMENT	OBC being reviewed	DEVELOPMENT
15	Federal Ministry of Trade & Investment	SMEDAN – Industrial Development Clusters (IDCs)	Development of 23 IDCs in 6 geopolitical zones by PPP arrangement.	TRADE & INVESTMENT	Ministry is in the process of engaging a T.A.	DEVELOPMENT
16	Federal Ministry of Trade & Investment	National Automotive Council (NAC) – Mechanics Villages	The mechanics' villages' project is an initiative of the National Automotive Council (NAC), a body established pursuant to the National Automotive Council Act, Cap N8, Laws of the Federation of Nigeria, with responsibility for the development of the automotive industry in Nigeria. The objective for the establishment of the mechanic's villages is among other things is to stimulate the growth and development of the mechanic business in a specialized and orderly manner.	TRADE & INVESTMENT	Submitted OBC under review	DEVELOPMENT
17	Fed Min of Solid Minerals	Mining Cadastral Office (MCO) Building	To develop a world class office structure capable of meeting MCO and public needs	URBAN INFRASTRUCTURE	MCO to establish PDT and engage a T.A. to develop OBC	CONCEPT

18	Ministry of Communication Technology	Nigerian Postal Service (NIPOST) Financial Inclusion	The objective of the NIPOST Financial Inclusion PPP Project is to increase financial inclusion (FI) penetration rate in the country by providing banking services to the financially excluded population	ICT	Negotiations ongoing with the preferred TA. T.A. awaiting payment from CBN and NIPOST	DEVELOPMENT
19	Ministry of Culture and Tourism	National Theatre and Culture centers	Development (design, finance, build, operate and transfer) of complementary facilities - five star hotel, shopping mall, offices, land and water parks, leisure and entertainment centre, and multi-level car park - to the National Theatre. The facilities would be built on the fallow land of the National Theatre in accordance with the original master plan to make the Theatre more attractive and viable.	TOURISM	Awaiting approval of FEC 1;455266	PROCUREMENT
20	Federal Ministry of Transportation (Nigerian Ports Authority, NPA)	Lagos Port IPP	It is proposed to select a concessionaire to generate and distribute power at the Port's lo behalf of	POWER	OBC Certificate of Compliance given to NPA to proceed for FEC approval for the construction, operation and maintenance of 36MW of power.	PROCUREMENT
21	Federal Ministry of Transportation (Nigerian Ports Authority, NPA)	Onne Port IPP	It is proposed to select a concessionaire to generate and distribute power at the Port's location on behalf of NPA	POWER	OBC Certificate of Compliance given to NPA to proceed for FEC approval for the construction, operation and maintenance of 72MW of power/ Awaiting submission	PROCUREMENT

					and FEC approval of harmonized report.	
22	Federal Ministry of Power, Works & Housing and Federal Ministry of Solid Minerals	Development of coal to power projects in Enugu, Benue, Kogi & Gombe States	To improve and increase power generation in the country using coal as fuel. It has always been reported that there are reasonable quantity of coal deposits that could be used as fuel sources for the generation of fuel	POWER	Ministry in the process of engaging Consultants to identify the quantities of the coal deposits, in order to ensure their feasibility	CONCEPT
23	Federal Ministry of Power, Works & Housing	Development of hydroelectric power from existing 10 small & medium from dams across the country	To generate about 45MW of off-grid power for the dam environments. The dams include Owena, Ikere Gorge and Oyan dams in Lot 1; Bakalori, Doma and Omi-Kampe dams in Lot 2; Challawa, Tiga, Jibiya and Zobe dams in Lot 3.	POWER	OBC Certificates of Compliance have been issued for 8 of the 10 Projects	DEVELOPMENT
24	Federal Ministry of Power, Works & Housing and Federal Ministry of Water Resources	Concession of the Dadin Kowa (34MW) hydroelectric dam	A concession was granted to a private investor for the use of water for hydropower generation from the multi-purpose dam to boost power in the North East. However the project has not been fully achieved as expected, with both private and public partners yet to fully meet with their contractual obligations.	POWER	Ministry is reviewing Concession Agreement to enable Concessionaire obtain water licence and Power Purchase Agreement	IMPLEMENTATION
25	Federal Ministry of Power, Works & Housing	Transmission Company of Nigeria (TCN) PPP High Voltage Transmission.	The TCN submitted six projects for PPP aimed at boosting the capacity of the grid to evacuate generated power: i. Refurbishment & replacement where necessary of transmission assets measuring approximately 12,000 km of 330kv/132kv &	POWER	A Project Delivery Team (PDT) has been established by the Ministry for the project	DEVELOPMENT

			<p>132kv/33kv primary/secondary substations. These projects are located nationwide.</p> <p>ii. Completion of 60 ongoing 330kv & 132kv transmission lines and 330kv/132kv and 132kv/33kv substation projects. These projects are located nationwide.</p> <p>iii. New projects for 10GW grid system capacity consisting of 61 new 330kv & 132kv lines and 330kv/132kv & 132kv/33kv primary/secondary substations together with multiple reactive compensation projects. These projects are located in Kainji, Birnin Kebbi, Gusau, Lagos, Jos, Gombe, Damaturu, Awka, Uguwaji, Zungeru, & Kaduna.</p> <p>iv. New projects for 13 GW grid system capacity consisting of 40 new 330kv & 132kv lines and 330kv/132kv & 132kv/33kv primary/secondary substations together with multiple reactive compensation projects. These projects are located In Makurdi, Apir, North Bank, Igando, Ugbegu, Zungeru, &</p>			
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			<p>Kaduna.</p> <p>v. New projects for 16 GW grid system capacity consisting of 32 new 330kv & 132kv lines and 330kv/132kv & 132kv/33kv primary/secondary substations together with multiple reactive compensation projects. These projects are located in Kano, Dutse, Damaturu, Jos, Samenaka, Asoada & Degema.</p> <p>vi. New projects for 20 GW grid system capacity consisting of 33 new 330kv & 132kv lines and 330kv/132kv & 132kv/33kv primary/secondary substations together with multiple reactive compensation projects. These projects are located in N Makurdi, Birnin Kebbi, Argungu, & Calabar.</p>			
26	Federal Ministry of Agriculture and Rural Development (FMARD)	Three (3) sets of Value Chain Projects: i. 18 Nos. Agro-Industrial Estate ii. 8 Nos. Agro Processing Centre iii. 9 Nos. Farmers Markets	To improve the operations of the value chain projects using the private sector	AGRICULTURE	Ministry reviewing the scope of the projects.	DEVELOPMENT
27	Federal Ministry of Water Resources	Operations and Maintenance of about 1000Ha irrigation infrastructure for commercial agriculture at Gurara I Dam, Azare-Jere, Kaduna State.	To lease the irrigation facilities built by the Federal Government to private investors for optimal use	AGRICULTURE	OBC Compliance Certificate has been granted.	DEVELOPMENT

28	Federal Ministry of Water Resources	Operations and Maintenance of 30MW hydropower from Gurara 1 multi-purpose dam, Kaduna State	The construction has been completed, while the evacuation facilities are about to be completed.	POWER	The OBC is being reviewed	DEVELOPMENT
29	Federal Ministry of Water Resources	Concession of the Gurara 2 Dam, Niger State	Concession of the Greenfield multi-purpose components of the dam, including 300MW of hydropower	POWER, AGRICULTURE ETC	OBC is being prepared by the Ministry	DEVELOPMENT
30	Federal Ministry of Agriculture and Rural Development	Concession and Leasing of Grain Storage Facilities (33 silos across the country)	To optimally operate and maintain the silos using private sector	AGRICULTURE	The OBC is being reviewed	PROCUREMENT
31	Federal Ministry of Police Affairs/Nigerian Police Force	Supply, Own and Operate(SOO) of Contingent Owned Equipment to Peace Keeping Missions in Central African Republic (CAR), South Sudan, Somalia, Dafur and Liberia	Supply Own and Operation of Contingent Owned Equipments for the Nigerian Police Force in the Peace Keeping Missions in CAR, South Sudan, Dafur and Liberia	NATIONAL SECURITY	FBC Certificate of Compliance has been granted	PROCUREMENT
32	Federal Ministry of Power, Works & Housing	Lagos-Ibadan Expressway	The 127km Lagos to Ibadan Expressway. Reconstruction, rehabilitation and expansion is in progress via traditional procurement. Additional Private Finance Initiative (PFI) required to close EPC construction funding gap	Road	ICRC granted FBC compliance certificate only for the financing aspect of the project and stated that <u>the certificate only confers on MAL investment recovery rights and does not grant MAL a concession over the road or right to toll the road</u>	PROCUREMENT
33	Federal Ministry of Transportation	The Construction of Berth 21 at Terminal E, Lagos Port Complex, Apapa	NPA entered into a PPP arrangement with a private company (Greenview Development Nigeria Limited) to develop an additional Berth in Apapa port.	Port	<ul style="list-style-type: none"> Full Business Case (FBC) Compliance Certificate has been granted 	PROCUREMENT
34	Federal Ministry of Transportation	Inland Container Depot (ICD) in Dagbolu, Osun State	<ul style="list-style-type: none"> The Dagbolu Inland Container Depot project concerns the 	Inland Port	<ul style="list-style-type: none"> OBC Compliance Certificate has been granted and 	DEVELOPMENT

			<p>Greenfield Inland Container Depot (ICD) in Osun State, South-West Nigeria.</p> <ul style="list-style-type: none"> The ICD is being developed to exploit the strategic advantages inherent in Nigeria's huge export and import markets by contributing significantly to the country's realization of its vision of becoming the transshipment hub for the West African region 		<p>process of engaging a Transaction Adviser for the project.</p>	
35	Federal Ministry of Transportation	Inland Container Depot (ICD) in Lolo Kebbi State	<ul style="list-style-type: none"> Outline Business Case (OBC) from the NSC in respect of the unsolicited proposal developed by Deltaatlantic Nigeria Ltd for the concessioning of an Inland Container Depot (ICD) in Lolo, Kebbi State 	Inland Port	<ul style="list-style-type: none"> Ministry is in the process of appointing a Transaction Adviser for the project 	DEVELOPMENT
36	Federal Ministry of Transportation	Container Freight Depot (CFS) in Ogwashi-Uku, Delta State	<ul style="list-style-type: none"> The proposed ICD has a modular design that consists of an annual 5,000 TEUs capacity facility that can be easily expanded with increasing throughput. 	Inland Port	<ul style="list-style-type: none"> Ministry is in the process of appointing a Transaction Adviser for the project 	DEVELOPMENT
37	Federal Ministry of Transportation	Inland Container Depot (ICD) in Onitsha ICD, Anambra State <ul style="list-style-type: none"> 	<ul style="list-style-type: none"> The proposed ICD has a modular design that consists of an annual 5,000 TEUs capacity facility that can be easily expanded with increasing throughput. 	Inland Port	<ul style="list-style-type: none"> Ministry is in the process of appointing a Transaction Adviser for the project 	DEVELOPMENT
38	Federal Ministry of Transportation	Industrial Port Complex by Modandola Group	<ul style="list-style-type: none"> The proposed port complex will comprise a Berthing and Cargo Terminal. 	Port	<ul style="list-style-type: none"> OBC Compliance Certificate has been granted 	DEVELOPMENT

39	Federal Ministry of Transportation	The Development of Deep Sea Port in Badagry, Lagos	<ul style="list-style-type: none"> The Badagry Port project is a Greenfield development designed to cater for containers, dry bulk, liquids, Ro-Ro, oil & gas supply services, and also operate a free trade and local logistic zones. 	Port	<ul style="list-style-type: none"> OBC Compliance Certificate has been granted and FEC approval obtained 	DEVELOPMENT
40	Federal Ministry of Transportation	NRC Landed Property Development	<ul style="list-style-type: none"> The Nigerian Railway Corporation (NRC) as part of its reform programme through its subsidiary, the Railway Property Management Company Ltd (RPMCL) intends to partner with private investors to develop some parcels of railway landed properties. 	Railway	<ul style="list-style-type: none"> The OBC is being reviewed. 	DEVELOPMENT
41	Federal Ministry of Transportation	Remodeling of NRC Terminals across the country	<ul style="list-style-type: none"> The remodeling of nine (9) major railway stations in , Iddo, Ebute Metta Junction, Port Harcourt, Ilorin, Kano, Kaduna Junction, Jos, Gombe and Enugu as PFP projects. 	Railway	<ul style="list-style-type: none"> The OBC is being reviewed 	DEVELOPMENT
42	Federal Ministry of Transportation	NRC Core Assets	<ul style="list-style-type: none"> Rehabilitation and upgrading of railway network, rolling stocks, stations, ancillary facilities and equipment 	Railway	<ul style="list-style-type: none"> The OBC is being reviewed 	DEVELOPMENT
43	Nigerian Prison Service	Land Swap Correctional Facility 1. Lagos 2. Owerri	<ul style="list-style-type: none"> Procure New Correctional Facilities in three (3) locations in Nigeria on a land (value) 	Prison	<ul style="list-style-type: none"> Negotiations on going with preferred Transaction 	DEVELOPMENT

		Kaduna	swap basis		Adviser	
44		Prison Integrated Farm Facility 1. Ozala (Edo State) 2. Kujama (Kaduna State) Lakushi (Plateau State)	<ul style="list-style-type: none"> Establish integrated farm centers in three (3) Prison farms locations 	Prison	<ul style="list-style-type: none"> Negotiations on going with preferred Transaction Adviser 	DEVELOPMENT
45		Industrial Laundry Facility	<ul style="list-style-type: none"> Refurbishment of Existing laundry facility in Kuje and Establishment of Industrial Laundry Facility in other Prison locations nationwide 	Prison	<ul style="list-style-type: none"> Ministry is in process of engaging a Transaction Adviser 	DEVELOPMENT
46	Federal Ministry of Power, Works and Housing (Housing Sector)	(Mainland Heritage) Redevelopment of FMPW&H's property behind the National Stadium, Surulere Lagos.	The proposed Mainland Heritage Housing Project is a housing development scheme aimed at unlocking land value belonging to the Federal Ministry of Power, Works and Housing located behind the National Stadium Complex in Surulere, Lagos. The objective is to fully optimize the potentials of this prime location by developing Residential Housing U	Social/Urban Infrastructure	Final OBC is expected from the Ministry.	DEVELOPMENT
47	Federal Ministry of Power, Works and Housing (Housing Sector)	(Gregory Lux) Redevelopment of FMPW&H's property on St. Gregory Road, Onikan, Lagos.	<p>The proposed Gregory Luxury Housing Project is a housing development scheme aimed at unlocking land value belonging to the Federal Ministry of Power, Works and Housing located in St. Gregory Road, Lagos.</p> <p>The objective is to fully optimize the potentials of this prime location by developing Residential</p>	Housing	Final OBC is expected from the Ministry	DEVELOPMENT

			Housing Units.			
48	Federal Ministry of Power, Works and Housing (FMPW&H) (Housing Sector)	(Osborne Lux) Redevelopment of FMPW&H's property on Osborne Road, Ikoyi, Lagos.	<p>The proposed Osborne Luxury Housing Project is a Housing Development scheme aimed to unlock land value belonging to the Federal Ministry of Power, Works and Housing located in St. Osborne Road, Lagos.</p> <p>The objective is to fully optimize the potentials of this prime location by developing Residential Housing Units.</p>	Housing	Final OBC is expected from the Ministry.	DEVELOPMENT
49	Federal Ministry of Power, Works and Housing (FMPW&H) (Housing Sector)	Proposed Development for New Eko Project/Lagoon City, Lagos.	This project is an Unsolicited Proposal for the Sand-filling and Reclamation of water bodies within the vicinity of existing Banana Island, Lagos.	Social/Urban Infrastructure	Outline Business Case (OBC) is expected from the Ministry	DEVELOPMENT
50	Federal Ministry of Power, Works and Housing (FMPW&H)	Development of Marina Quayside Strip Project	The proposed Marina Quayside development Project is a formative urban/waterfront Project to be developed through PPP along the Marina axis in Lagos. It is intended to be a tourism centre that will provide Hotels, Condominiums, Commercial Complexes, Recreation facilities, Bus Transport Terminals, Offices and Residential buildings.	Social/Urban Infrastructure	OBC is expected from the Ministry.	DEVELOPMENT
51	Federal Capital Territory Administration	Abuja Rail Mass Transit Lot 1A and 3 projects	The FCTA is seeking for private sector investment to enter into a PPP contract of operating and maintaining	Rail	OBC is being prepared by the Ministry	DEVELOPMENT

	(FCTA)		the Abuja Mass Transit Rail project for a period that will allow amortization of investment made. The Private Sector will provide investment in procuring the rolling stock, maintenance of equipment and operate the system.			
52	Federal Capital Territory Administration (FCTA)	Abuja Light Rail Lot 2 PPP Project	The proposal is for the construction and operation of Abuja Light Rail Lot 2 network route through PPP. The distance will cover 54.1 kilometers, from Garki area 11 passing through the interchange centre at Eagle Square to Gudu, Nyanya, Karu axis, in Abuja	Rail	FCTA is in the process of engaging a Transaction Adviser to develop an OBC.	DEVELOPMENT
53	Federal Capital Development Authority. (FCDA)	Dual Carriage Way from Onnex Mpape-Gurku-Ado/Gurku-Nyanya in the FCT.	The proposed Public Private Partnership project is for the construction, operation and maintenance of Dual Carriage way from Outer Northern Express Way (Murtala Mohammed Way) through Mpape to Gurku, pass through u. The project is to ease congestion on Nyanya road and surrounding axis.	Roads	FCTA is in the process of engaging a Transaction Adviser to develop an OBC	DEVELOPMENT
54	Federal Capital Development Authority. (FCDA)	Maintenance & Management of Pedestrian Bridges and Metal Barrier in the FCT.	The project is for the repair and replacement of damaged Pedestrian Metal Barriers on Municipal roads. This will also involve the development of new areas of expansion for the erection of new metal barriers within the Municipal through Public Private Partnership model.	Social/Urban Infrastructure	FCTA is in the process of engaging a Transaction Adviser to develop an OBC.	DEVELOPMENT

55	Federal Capital Development Authority. (FCDA)	Automated Parking Centres in Designated Car Parks in the FCT.	The project is for the construction of Automated Parking Centres in designated car parks in the Federal Capital Territory through Public Private Partnership model.	Social/Urban Infrastructure	FCTA is in the process of engaging a Transaction Adviser to develop an OBC.	DEVELOPMENT
56	Federal Housing Authority. (FHA)	Development of FHA Corporate Headquarters Building, Abuja	This project is to construct the Corporate Head Office of Federal Housing Authority (FHA) in Abuja through Build Operate Transfer. (BOT) located at the Central Business District CBD in Abuja.	Housing	Procurement of Transaction Advisor is in Progress.	DEVELOPMENT
57	Federal Housing Authority. (FHA)	Abuja New Towns Homes in Bwari and Kwali Area Council, Abuja	This project is to develop New Towns in Kwali and Bwari Area Councils respectively through PPP.	Housing	FCTA is in the process of engaging a Transaction Adviser to develop an OBC.	DEVELOPMENT
58	Federal Ministry of Youth and Sports	Concession of National Stadium Lagos	Upgrade/rebuilding of National Stadium, Lagos	Sports	Ministry is in the process of engaging a Transaction Adviser to develop an OBC	DEVELOPMENT
59		Concession of Athletic Hostel Abuja.	Completion of athletes hostel, Abuja.	Sports	Ministry is in the process of engaging a Transaction Adviser to develop an OBC	
60	Council for the Regulation of Engineering in Nigeria (COREN)	Development of Office Complex in Abuja	A Green Field Project for the Construction of office complex.	Housing	OBC is being reviewed	DEVELOPMENT

CHAPTER 4:

Contract Compliance Framework for PPP Projects

– Monitoring Report Template



CONTRACTS COMPLIANCE FRAMEWORK FOR PUBLIC PRIVATE PARTNERSHIP (PPP) CONTRACTS

- **Introduction**

According to APMG international, 2002, PPP contract compliance and management has the singular objectives of obtaining the services and fulfilling the obligations specified in the contract and schedules of output specifications to ensure ongoing affordability, Value for Money (VfM) and appropriate management of risk transfer.

Under PPP contract, parties in the contract are expected to meet their respective obligations in order to deliver the objectives required from the PPP contract. Once the contract has been signed, and the “deal” has been agreed, each party should perform its respective role.

In Nigeria, the Infrastructure Concession Regulatory Commission is mandated under the ICRC (Establishment, et) Act, 2005 to take custody of the PPP contract “by whatever name called” and monitors the efficient execution of the contract thereof. This requires the establishment of a good working relationship between the two parties and the regulatory institution (ICRC) throughout the project duration.

Another way of looking at PPP contract compliance framework is to ensure proactive disclosure of anticipate future needs of the project, as well as, making provision and clearly defining the processes of meeting such needs which of course must be incorporated in the contract. PPP contract compliance process and procedures seeks to ensure parties do not deviate or jettison their contractual obligations as stated in the contract over the life of the PPP contract.

For the benefit of this framework and to the users, PPP contract compliance management would be assumed to commence from the contract commercial close to contract expiration and handback to the Government.

The success of contract compliance management depends largely on a number of activities which are inherent in the PPP contract itself and are essential to the success of the project.

Such activities may include:

- Addressing the various needs, concerns, and expectations of the stakeholders in executing the project;
- Establishing and maintaining a good database on each contract implementation
- Ensuring effective communications amongst project stakeholders in a collaborative manner;
- Effectively partner with the project parties to manage expectations and overall project requirements;
- Periodically communicating project objectives to the parties and efficiently guiding the parties to ensure fulfillment of contractual obligations;

- The regulatory authority should work with the parties, especially on green field projects to ensure the balancing of the competing project needs and challenges as it affects the project scope, quality, schedules, timelines, budget, resources, and risks allocation.

It is important to highlight here that the regulatory authority should effectively monitors parties' fulfilment of their assigned obligations, as failures in attainment of one could affect the entire timeline and duration of the Contract. Parties should also bear in mind that where there are changes to the project scope or timelines, these may create additional risks that must be shared. The project team created within the MDA's or within the Regulatory Authority should be able to assess the situation, balance the demands, and maintain proactive communication during project implementation in order to deliver a successful project.

Reaching financial close marks, the end of the procurement phase. There may be some Conditions Precedent that have to be met (such as draw down of the financing by the contractor, or granting access to the site or providing permits and consents) before implementation can commence. Usually, a separate team comprising of the representatives from the Government is formed for the Implementation phase. However there needs to be an effective handover between the two teams. Project Implementation is carried out at two levels, Project Construction and Project Operation and Maintenance. A Project Board comprising the Accounting Officer and a senior representative of the contractor provides strategic oversight, while a joint Management Board provides day to day management.

The Project Implementation stage is predominantly the responsibility of the MDA. This process covers project implementation and monitoring over the life of the PPP project. Eventually, for the project to take off, the preferred PPP Project Proponent must achieve Financial Close. Financial closure is defined as a stage when all the conditions precedent of a financing agreement are satisfied or waived prior to the initial availability of funds. Financial closure is attained when all the tie ups with banks/financial institutions for funds are made and all the conditions precedent to initial drawing of debt is satisfied.

In a Public Private Partnership (PPP) project, financial closure indicates the commencement of the Concession Period. A concession period is the span of time granted by the government to the private sector within which the private sector is responsible for the financing, construction and operation of a project. The date on which financial closure is achieved is the appointed date which is deemed to be the date of commencement of concession period. At this point, it is now permissible to draw money for project execution.

4.1 PROJECT CONSTRUCTION

This stage entails the commencement and construction of the project and ends at the commercial operations date. The project development stage comprises of the following:

- Achievement of financial closure;
- Mobilization of resources;
- Project Implementation
- Monitoring of project construction; and
- Project audit

At this stage of the project lifecycle, the MDAs appoint Independent Engineers, jointly with the developer to review and audit the construction activities. The Independent Engineers ensure that the construction is in conformance with contractual commitments and notify the MDA of any deviations.

4.2 PROJECT OPERATION AND MAINTENANCE

After the project begins commercial operations, the MDA, supported by the ICRC, monitors the performance of the Concessionaire throughout the Concession period. Project operation comprises of the following:

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

At this stage, Independent Engineers/ Auditors ensure that the operations of the project facility and provision of the contracted service is compliant with the project requirements.

The Role of the Contract Compliance Officer

- Monitor for contract and regulatory compliance
- Provides technical assistance to agency
- Conducts compliance reviews
 - a. Administrative
 - b. Service/Programmatic reviews
 - c. Invoice reviews

- Participates in Post Project Implementation Audit
- Facilitates communication between the service providers, the Grantor and the User public

Key success factors for PPP Contract Compliance

The success of a PPP contract compliance process to a large extent is dependent on the following enabling factors:

1. **Having a Contract Compliance team with the requisite skill set:** To be able to realize the full potential of a project, the project team and especially the project officer should have the requisite skill sets to effectively monitor and manage the project and the PPP relationship
2. **Clearly extract the project objectives from the contract and shared understanding** of the participants of the relationship between the project objective and the service need that it aims to meet.
3. **A well-structured PPP contract** that explicitly details the allocation of risks, quality of service required, value for money and procedures for communication and dispute resolution.
4. **Establishing an effective contract management framework:** This includes a framework for both process and relationship management. Knowledge management and succession planning are used to retain intellectual capital and the expertise of key staff
5. **Effective monitoring of service delivery continues** to be satisfactory to both the MDA and the private party
6. **Expected PPP benefits, value for money and innovation** are being realized
7. **Disputes resolution and mediation** at the appropriate level through the partnership management system with or without recourse to external dispute resolution
8. **Monitoring and managing project changes** and variation to minimise any negative consequences and maximise any opportunities brought about by change.

Despite being aware of the requirements for successful PPP contract management, a number of PPP contracts fail or become unworkable on account of a number of factors such as poorly drafted PPP contracts, ineffective performance management, personality

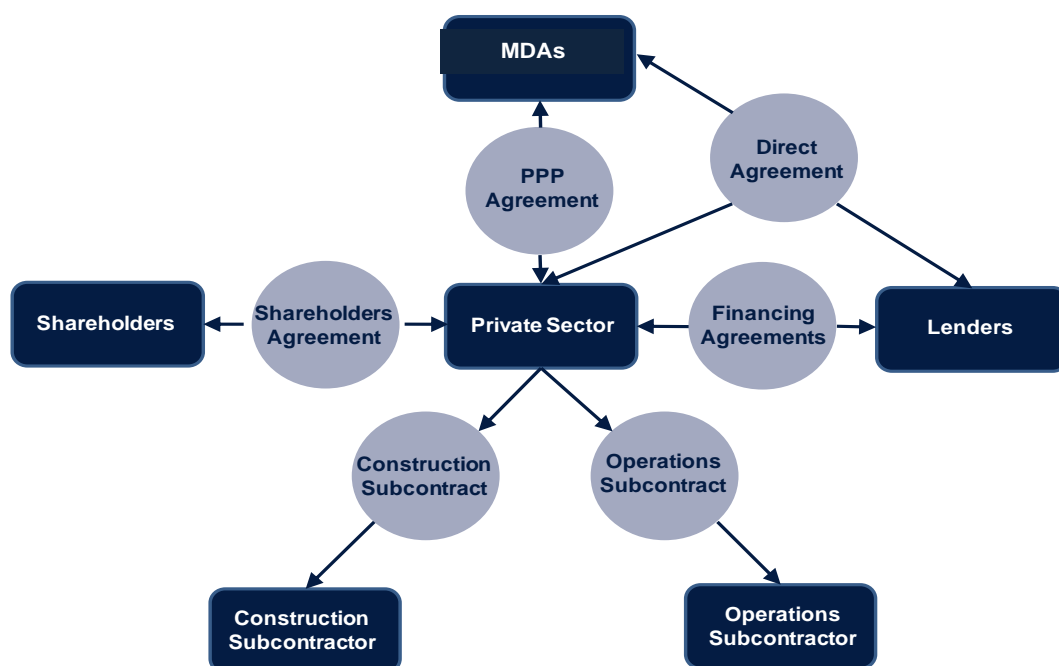
clashes, etc. The explanatory notes provide further lessons from international PPP projects.

9. Understanding the Contract

Before any effort is committed towards developing an effective contract management strategy, it is important to understand the various stakeholders in the PPP Contract.

The terms of the Concession Contract encapsulate the powers, obligations and responsibilities of the parties to the contract. Understanding the relationships between all parties is vital as each party may have conflicting goals that may not necessarily align to achieving the project objectives. The typical parties to a PPP Contract are shown below.

Figure 1: PPP Contract Structure



1. Accounting Officer

With respect to managing the PPP contract, key responsibilities of the accounting officer include:

- Mobilise support for the PPP project amongst the key stakeholders
- Appoint a project officer, to provide management continuity across various phases of the project.
- Obtain the necessary external approvals (eg Federal Executive Council approval of the Full Business Case) and sign the PPP contract
- Delegate sufficient powers to the project officer after the PPP contract has been signed to enable him to effectively implement the PPP contract
- Step in to resolve any dispute which the project officer is unable to settle
- Provide executive commitment to relationship management
- Provide financial oversight and ensure that the PPP project continues to operate in the public interest after the PPP contract has been signed
- Ensure that the PPP contract is effectively enforced
- Report on the management of the PPP contract in the MDA's annual report

2. Project Officer

The process of contract management starts as early as the PPP inception phase with the appointment of the project officer. The project officer is expected to play a central role in managing the PPP contract. The project officer should possess a diverse skill set covering personal and technical competencies essential for the contract management function. The project officer is expected to act as a safe guard of the MDA's interests in the PPP contract. He shall also be responsible for hiring a project team with the necessary technical skills to manage the MDA's interests set out in the PPP contract.

The primary responsibilities of the project officer in managing the PPP contract are:

- Manage the project on behalf of the MDA, exercising delegated authority
- Ensure that the PPP project continues to be affordable, and provides quality, value for money and appropriate risk transfer
- Ensure both parties meet their contractual obligations
- Ensure the requirements of the output specifications are achieved
- Appoint a PPP contract management team with the necessary technical skills
- Administer the MDA's obligations and protect its rights in the PPP contract
- Build a strong partnership and good working relations with the private party
- Prevent and/or resolve disputes
- Manage risks
- Monitor private party performance and take corrective action where necessary

- Develop and implement the PPP contract management plan, develop and maintain the PPP contract management manual
- Develop and manage the contract administration systems
- Report on the management of the PPP contract, as required for the MDA's annual report, and by any other government regulator such as ICRC or the PPP Office
- Ensure that the private party maintains insurance and indemnities in force
- Manage approved variations
- Develop an effective communication framework
- Organise PPP contract management reviews
- Manage consequences of contract breach.

The project officer acts as the MDA's liaison officer, responsible for dispute resolution and meeting with the private party on a regular basis to consider performance reports. Depending on the size of the project, it may be prudent for the project officer to delegate some of these responsibilities to another member of the PPP contract management team, specifically with respect to the dispute resolution procedures.

3. Contract Management Team

The project officer is supported by a PPP contract management team consisting of a range of specialists and technical advisors with varying levels of involvement. The PPP Contract Management Team plays a critical role in ensuring that the various segments of the project run smoothly throughout the term of the contract.

The overall size and complexity of the project determines the size and skill sets required by the PPP Contract Management Team. In some cases, it may be possible for the PPP contract management function to be carried out by a single individual. The size and composition of the team evolves through the PPP project life cycle as varied technical skills and experience are required at each phase in the project lifecycle. During the PPP Inception, feasibility and procurement phases, the Project Team takes the lead, while in the PPP development, delivery and exit phases, the PPP Contract Management Team represents the MDA.

Typical expertise

The project officer, in consultation with the accounting officer/authority, is responsible for deciding the composition of the team, how it is deployed, and whether and when to call on additional expertise (within the scope of the budget). The composition of the team reflects the various skill sets required to effectively fulfil PPP contract management during each stage of the PPP contract. Typical expertise that needs to be represented or made available includes:

- Knowledge of the subject matter
- Design and construction
- Business and product assurance
- Facilities and services management
- Information Technology (especially, but not only, for IT projects)
- Statutory safety and regulatory responsibilities
- Legal and regulatory
- Finance

Structure

It is the responsibility of the project officer to co-ordinate inputs from the various team members in order to ensure effective and consistent PPP contract management. The project officer establishes a suitable structure for the PPP contract management team well before the PPP contract comes into force. The private party is made fully aware of the PPP contract management structures that have been established within the MDA. Usually, the private party appoints its own PPP contract management team to act as its interface with the MDA.

Outside expertise

Where contract management expertise is brought in from outside the MDA, either on an ad hoc basis or under a long-term arrangement, it is important to ensure that commercially confidential information held by the MDA is protected. The terms of reference, timeframes and the basis of fees for such advisors should be clearly defined to ensure that management of the PPP contract rests with the MDA. Any contract with independent professional advisors providing contract management services should contain clear arrangements for reporting the results of performance monitoring to the MDA and the private party. For large construction projects it may sometimes be appropriate to appoint an Independent Engineer.

4. Succession Planning

For long term PPP Contracts, the personnel involved in the management of the contract are likely to change several times over the PPP Project lifecycle. New and uninitiated personnel will take considerable time to become sufficiently familiar with the project to manage it efficiently.

The MDA should establish a succession plan for the key personnel to manage personnel changes effectively. The plan should be sufficiently flexible to provide quality ongoing management while accommodating management changes. The aim should be to limit

concurrent departures and to ensure that the retained team has an adequate mix of old and new personnel.

5. Transition Management Strategy

The transition period runs from the signing of the PPP contract to the commencement date of the contract. At the time of finalizing the details of the PPP contract, a strategy for smooth transition from the old arrangements to the new arrangements should be developed. The number of transition issues (and effort required to manage them) will depend on the nature, range and complexity of the services being provided.

Developing a transition management strategy is particularly important for larger and more complex projects which may involve the use or transfer of existing assets of the MDA. The objective should be to manage the transition to the private party while minimizing the loss of service delivery and impact on key stakeholders.

A possible set of issues that should be considered in the Transition Management Strategy include:

- **Industrial Relations Issues:** The MDA should consider whether the PPP Contract is likely to be IR sensitive and also identify which aspects of the PPP contract are likely to be most sensitive to these issues.
- **Familiarisation Period:** This is more relevant for large and complex projects wherein a familiarization period allows the transfer of existing data/documentation and knowledge and allows the provider time to recruit and train personnel, while the MDA or existing provider continues to provide the service. For complex projects, the commencement of the project could be conditional upon satisfactory completion of the familiarisation period. For less complex contracts only a few days may be necessary.
- **Transfer Plans:** This includes transfer (or sale) of resources such as staff, equipment, systems and information. Management should consider the logistics associated with transferring staff (e.g. conditions), the physical relocation of assets, arranging on-site facilities and security of site and purchaser data (through systems access).

6. Exit Strategy

The Project officer should prepare an exit strategy as part of the Contract management plan. This strategy should be based on the provisions contained in the PPP contract in relation to termination and expiry, and should demonstrate the MDA's capacity to bring the project to an end efficiently while ensuring ongoing service delivery. This may be

achieved either by continuing the functions in-house or by setting up the inception phase of a new PPP project.

The exit strategy should include:

- An analysis of options, within the parameters of the PPP contract, for continuing the service after termination or expiry, and an initial recommendation on the preferred option
- Plans for organizing a post-implementation review of the project, which should:
 - ✓ Assess key deliverables, value for money, quality and project innovation; and
 - ✓ Be carried out within six months of the expiry or termination date
- The steps that will be taken to integrate the lessons of the project into the day-to-day work of the MDA
- An implementation plan based on the hand-back procedures set out in the PPP contract
- Plans to deal with the implications of any employee transfers from the private party to either the MDA or a successor body
- An estimate of the resources and personnel that the MDA will allocate to managing the exit strategy
- Plans for a closure event to celebrate the achievements of the project and prepare PPP contract management staff and end users for their new role.

The exit strategy should be reviewed at appropriate points during the delivery phase, and revised as necessary to ensure that robust plans are in place three years in advance of expiry of the project term.

7. Contract Management Manual

The Contract Management Manual is the key document in the contract management process. The main purpose of the PPP contract management manual is to provide:

- A repository of contract management procedures, key stakeholder details and all the important documents relating to the PPP Contract
- A document management tool
- A resource that can be used to train newly-appointed PPP contract management staff, and orientate technical advisors and end users

The PPP contract management manual should contain the following documents:

- The PPP contract
- All schedules contained in the PPP Contract

- All financing contracts
- Financial models
- The close-out reports
- The PPP contract management plan
- Variation procedures
- The names, roles and contact details of key individuals in: the MDA; the private party; third party entities; end-user organisations; and other key stakeholder groups
- All other documents relating to the PPP contract.

The tables below provide the sample templates for a Contract Management Plan and for an Implementation Plan.

Table 1: Sample Template for Contract Management Plan

Section	Subsection	Summary Of Contents
1.Purpose and Approach	1.1 Purpose	<ul style="list-style-type: none"> • Purpose of the PPP contract management plan
	1.2 Approach	<ul style="list-style-type: none"> • Partnership principles • Benefits to the MDA and the private party of a successful partnership • The MDA's approach to PPP contract management
2.Strategic Objectives and Key Deliverables	2.1 Objective	<ul style="list-style-type: none"> • Summary of project objectives
	2.2 Key Deliverable	<ul style="list-style-type: none"> • Summary of the output specifications and key deliverables
3.Transition Management Strategy	3.1 Transition Management	<ul style="list-style-type: none"> • Listing of key issues in Transition Management • Strategies to be adopted to overcome the issues identified
4.Relationship Management	4.1 Relationship Management Plan	<ul style="list-style-type: none"> • Key elements of relationship management plan defined in section on Relationship Management
5.Service Management	5.1 Risk Management	<ul style="list-style-type: none"> • Key elements of risk management plan defined in section on Risk Management
	5.2 Performance Management	<ul style="list-style-type: none"> • Key elements of performance management plan defined in section on Performance Management
6.Contract Administration	6.1 PPP contract administration	<ul style="list-style-type: none"> • Contents of PPP contract management plan defined in section on Contract Administration

Section	Subsection	Summary Of Contents
7. Contingency Plan	7.1 Business Continuity Plan	<ul style="list-style-type: none"> Key elements of Business Continuity plan detailed in section on Business Continuity Plan
	7.2 Step in Plan	<ul style="list-style-type: none"> Key elements of Step In plan detailed in section on Step in Plan
	7.3 Default Plan	<ul style="list-style-type: none"> Key elements of Default plan detailed in section on Default Plan
8. Exit Strategy	8.1 Exit Strategy	<ul style="list-style-type: none"> Evaluation of the options for continuing the service after termination/expiry based on the provisions of the PPP contract Outline of the procedures, roles and responsibilities and resources required for a smooth transition to the new service delivery arrangements
9. Implementation Plan	9.1 Development	<ul style="list-style-type: none"> Table with key tasks, Target Dates, Responsibilities and MDA Budget
	9.2 Delivery	<ul style="list-style-type: none"> Table with key tasks, Target Dates, Responsibilities and MDA Budget
	9.3 Exit	<ul style="list-style-type: none"> Table with key tasks, Target Dates, Responsibilities and MDA Budget

Source: South Africa PPP Manual

Table 2: Sample Template for Implementation Plan

Key Tasks	Target Date	Responsibility	MDA Budget
1. Development phase <ul style="list-style-type: none"> Establish partnership management structure Establish performance monitoring system Arrange staff transfers Survey end-user requirements Other 			
2. Delivery phase <ul style="list-style-type: none"> Conduct quality assurance review Prepare performance report Review and revise the PPP contract management plan 			

<ul style="list-style-type: none"> • Conduct regular review meetings • Other 			
3. Exit phase <ul style="list-style-type: none"> • Evaluate exit options • Review PPP contract termination/ expiry conditions • Other 			

Source: South African Treasury PPP Manual

2. Service Delivery Management

Once the project advances to the service delivery stage, it is vital to have a service delivery monitoring mechanism in place to proactively ensure that the service meets the standards specified in the contract. The monitoring mechanism should also proactively ensure that the costs associated with the project do not exceed those estimated at the procurement stage.

Service Delivery Management covers the two basic areas of risk management and performance management and ensures that all the risks associated with the project are kept at a level acceptable to the MDA.

1. Risk Management

Management of risks is an essential element of the PPP procurement process. The development of the Contract Management Plan at the procurement phase attempts to identify all potential risks. The strength of the risk management strategy of the MDA can be gauged by its ability to effectively identify and manage additional risk during the term of the PPP Contract.

The various categories of risk include:

- **Project risks contractually allocated to the Government:** These risks are explicitly allocated to the Government and may also represent risks arising from contractual obligation implied by the law.
- **Risk arising from issues not resolved at the time of signing the PPP Contract:** While an attempt is made by the MDA to identify and allocate all risks associated with a project, it is likely that certain risks may not have been identified and hence not allocated to one of the parties in the PPP Contract. Other risks may not have been resolved during the negotiation stage and hence not allocated. The MDA should

manage such unresolved risks with the objective of minimizing their impact on the project.

- **Risk borne by the MDA:** These would cover the residual risk to the MDA of not being able to manage and mitigate risks allocated to private party. These may also include the risk of ineffective PPP Contract administration.
- **Risk of change in the terms of the Contract:** These include risks associated with changes proposed to the terms of the contract which could lead to the risk that the changed terms of the contract are not managed effectively or the risk of impact of the changes on the ongoing success of the project.

The MDA should develop an effective Risk Management Strategy to identify and manage all risks associated with the project. The figure below shows the Risk Management Framework that can be adopted to mitigate the risks during implementation of a PPP.

2. Performance Management

A well-structured performance management system will allow the MDA, among others, to quantify benefits and costs, clearly define services and their deliverables and ensure that services provided comply with the identified business requirements.

The performance management consists of systems for monitoring and reporting of performance.

The key issues to consider while developing a performance management system are:

- **Timing:** The timing of performance management and reporting would change with time. The reporting requirement frequency during the construction period would be different from the operating period.
- **Nature of monitoring and reporting:** The monitoring and reporting requirements will be governed by the type of project and delivery structure. For e.g. the financial reporting requirements for a special purpose vehicle would be different from a corporate finance structure where a substantially publicly traded company carrying out the project on its own books.
- **Level and type of action required** based on the monitoring and reporting: The monitoring system needs to focus attention of the MDA on the key areas.

The various steps in performance management include:

- Development of a performance management model which forms a part of the PPP contract. This performance management model includes three elements as follows.
 - ✓ **Baseline level of performance that meets the service delivery specifications:** The baseline determined should be reasonable and measurable. Performance measures and any improvements in the same are tracked against the baseline performance.
 - ✓ **Performance monitoring system:** Monitoring of performance happens at three levels. The most basic level is the systematic self-monitoring through a quality management system. The second is a review of the quality management system by the MDA or a third party. The third means is end user feedback on the quality and effectiveness of service delivery. The PPP contract should specify the form of reporting for monitoring of performance.
 - ✓ **Penalties associated with not meeting baseline requirement:** The consequences of the private party failing to meet the baseline requirements should be specified in the PPP contract and any such situation should be handled as per the terms of the contract. The penalties should be over a wide range from warnings to deductions in payments and eventually to termination of contract on account of default.
- **Detail a performance management plan in the PPP contract management plan:** The performance management plan should detail the performance management model developed in the previous step and also provide the reporting requirements. The key elements of the performance management plant are:
 - ✓ Reporting requirements of the private party with respect to self-monitoring
 - ✓ Performance monitoring system that would be sued by the MDA and/or independent third parties to review the private party's quality management system
 - ✓ Mechanisms that would be used to solicit end user feed back
 - ✓ MDA officials responsible for monitoring affordability, service delivery, value for money, quality and performance improvement
 - ✓ Estimate of the resources that the MDA would allocate to manage the private party performance
- **Establish performance monitoring systems:** Subsequent to the signing of the PPP contract, the project officer should implement the various performance monitoring systems that had been identified as a part of the performance management system. The objective of the performance monitoring systems should be to regularly check progress of the project against established milestones, hold progress meeting and

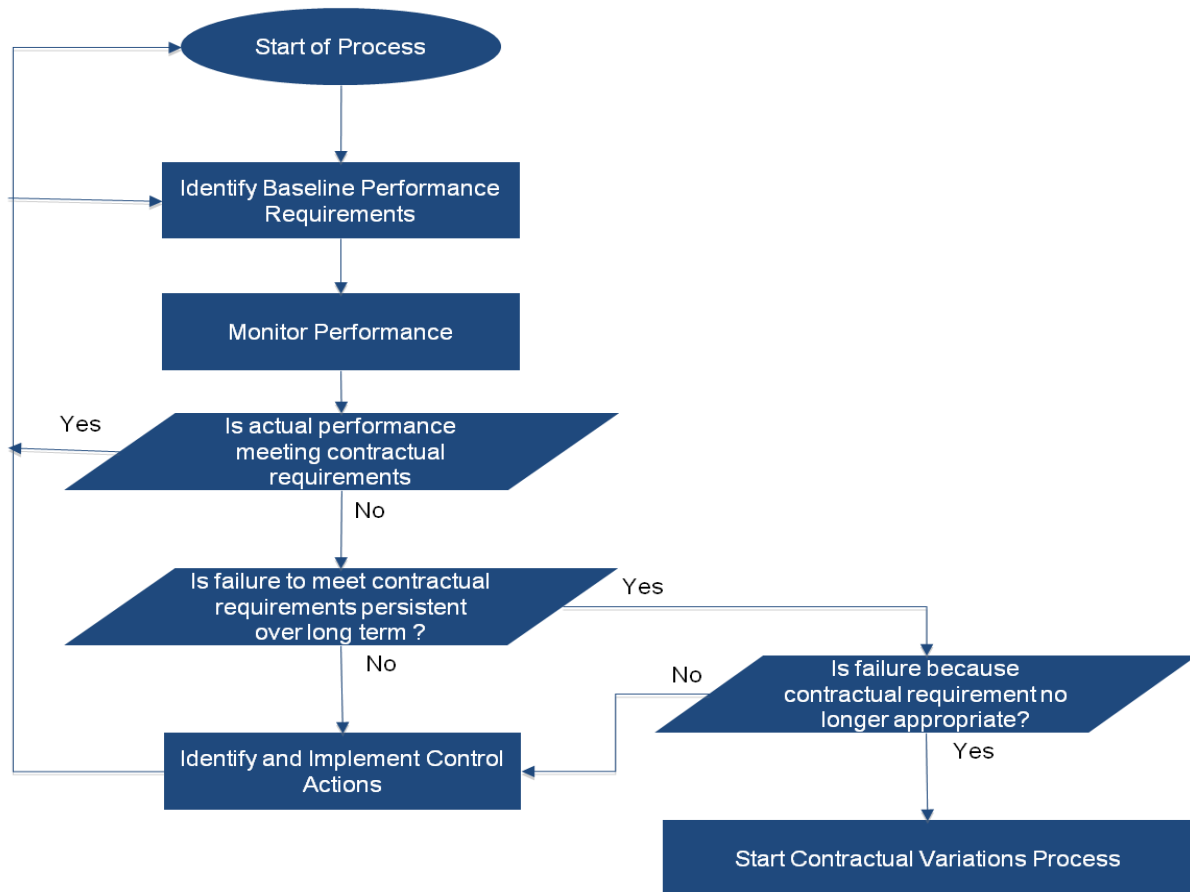
discuss performance report, check that all performance conditions and clauses in the PPP contract are acted upon, develop effective mechanism for feedback, review third party monitoring reports and maintain comprehensive documentation on performance monitoring.

- **Review of performance monitoring and taking corrective action:** The monitoring systems established should allow the MDA in reviewing the performance of the private party against the baseline requirements specified and also aid in taking corrective action where required. In carrying out review the project officer should consider using generic quality assurance systems or industry specific systems to evaluate the effectiveness of the private party's quality management system. The corrective action should be in line relevant provisions of the PPP contract and should consider the severity and impact of deviation from baseline requirements. The application of formal warnings, penalty deductions, step-in and other responses should be undertaken in a manner that is likely to achieve the best result from the MDA's point of view. An overly rigid approach may jeopardise continuing service delivery to end users, while too much lenience could encourage the private party to commit further breaches.
- **Effecting performance improvement measures:** The objective of effecting performance improvement is not to extract more from the private party but it aims at improving service delivery quality and value for money in a manner that benefits both parties to contract. Since the term of most PPP contracts tend to relatively large, there could be changes to baseline performance requirements which could be warranted on account of technological changes or improvement in productivity. The payment mechanism can capture the incentives to private parties for such improvement. For example, a fixed payment system which would mean any reduction in costs on account of productivity improvement would reflect in higher margins for the private party.
- **PPP contract management systems:** Steps should be taken to ensure that PPP contract management procedures and ways of working are as robust as possible. One way to achieve this is to review and revise the PPP contract management plan every three years. Another way is for the MDA to commission a comprehensive independent review of the project. Such reviews should again be undertaken in accordance with the strategies outlined in the PPP contract management plan, and used to identify opportunities to improve PPP contract management arrangements, quality, value for money and the scope for innovation.

3. Performance Monitoring

The Performance Monitoring process is depicted in the figure below.

Figure 2: Performance Monitoring Process



The purpose of performance monitoring is to ensure that the private developer meets the agreed level of performance. Most of the monitoring roles are carried out by the Contract Management Team of the MDA. At the same time, the private developer also monitors the MDA's performance to ensure that the MDA upholds its end of the contract.

The contractual requirements reflect the agreed risk allocations. Performance monitoring helps to ensure that the risks allocated to the parties are actually shouldered by the parties responsible for handling them. These allocations are different for different projects. Accordingly, performance requirements, criteria and monitoring roles also vary from one project to another.

If the failure to meet contractual requirements is persistent over the longer term, the MDA should seek to understand the cause of such persistence. If the failure is due to contractual requirement being not appropriate over time, the contractual variations process can be activated to examine the changes that are needed. To be effective, performance

monitoring should be done periodically. It can be done in the form of either reports or meetings, examination of financial data and inspections.

Table 3: Examples of Performance Monitoring Matrix

Pre-operative stage			
Performance requirements	Performance criteria	Monitoring arrangements	Example Penalties
Achieving financial close	Relevant financial documents are effective and finance is available	Reporting by the private developer (“Reporting”)	Financial penalty for delay
Carrying out technical planning and design	Specifications and standards	Reporting, evaluation by the Contract Management Team of the MDA	
Environmental and social management assessments and planning	Assessments made and plans in place	Reporting, evaluation by the Contract Management Team of the MDA	
Obtaining permits / approvals	Required permits are obtained May include MDA obligations	Reporting	
Land acquisition	Rights to land acquired – obligation typically on the MDA	MDA reporting, providing legal entitlement	Financial penalty for delay
Project management arrangements	Project management plan, systems and staff in place	Reporting	

Construction stage			
Performance requirements	Performance criteria	Monitoring arrangements	Example Penalties
Site-related obligations	Access, site condition, safety, utilities etc May include obligations on the MDA, such as granting access	Testing, inspections	Private developer required to remedy any failings. MDA to pay compensation in case of access delays.
Meeting the design specification, construction quality	Specifications and standards	Testing, inspections	Private developer required to remedy any failings. May also incur delay penalties.
Meeting construction schedule and timelines	Construction milestones – including dates; Reporting requirements (progress reports, including frequency – For example, monthly)	Reporting	Private developer pays time-based damages during period of delay
Implementing environmental and social safeguards		Reporting, consultations with affected parties, environmental testing	Private developer required to remedy any failings. May include compensation and damages payments.
<p>Notes:</p> <p>The Concession Contract will specify the testing requirements, including who is responsible for carrying out the tests, schedule for testing, and who will bear the cost.</p> <p>Also, to be clearly specified, with measurable performance criteria, are the requirements and standards to be met before the construction can be declared complete.</p>			
Operation stage			
Performance requirements	Performance criteria	Monitoring arrangements	Example Penalties
Quality of services	Specifications and standards	Tests, inspections, user complaints procedure	

Maintenance	Schedules, including dates; Specifications and standards	Tests, inspections, reporting	
Financial reporting	Schedules, including dates; Accounting standards	Reporting, audits	
Notes: The Concession Contract will specify the testing requirements, including who is responsible for carrying out the tests and who will bear the cost.			
Contract closure and asset transfer stage			
Performance requirements	Performance criteria	Monitoring arrangements	Example Penalties
Asset quality at handover	Specifications and standards	Tests, inspections	Private developer required to remedy any failings. Withholding of Termination Payment
Documentation, records, titles	Completeness, timeliness	Reporting and auditing	
Notes: The Concession Contract will specify the testing requirements, including who is responsible for carrying out the tests and who will bear the cost. Also specified will be measurable requirements for declaration of contract closure and release of termination payment.			

4. Relationship Management

Given the long-term nature of PPP projects, it is imperative for the MDA and the private developer to build a strong and solid ongoing relationship.

Good relationship management shall enable both the parties to anticipate and mitigate any potential risk events more effectively. Relationship management is based on an understanding of mutual benefits, open communication and information sharing.

The Contract Management team should identify processes that require establishment of strong relationships with other stakeholders to the contract. The Contract Management team should aim to build the following in relationship management:

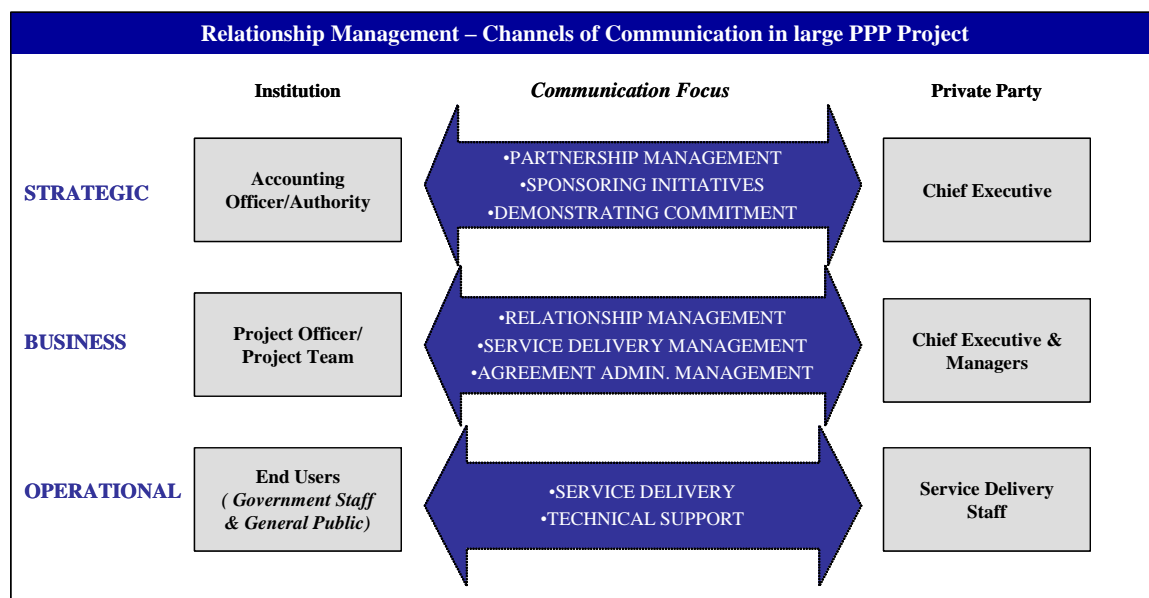
- The parties appreciate each other's objectives, strategy and point of view;
- The parties are prepared to work collaboratively when it comes to resolving disputes and issues that may arise during the lifetime of the PPP. Both parties should have agreed on a mutually agreed issue and dispute resolution mechanism beforehand;
- There is a clear and open communication channel between both the parties at all the levels;
- A degree of commercial trust should be established between the two parties. This is the foundation for achieving both efficiency and effectiveness in progressing the PPP project; and
- The relationship should be championed at senior levels in each organization.

Good communication and strong relationships are essential when dealing with issues or dispute resolution. Once both parties have mutually agreed on an issue and dispute resolution process, a strong working relationship should minimize impact on the relationship and help the parties increase the odds of achieving success in the project.

1. Levels of Communication

Given that the responsibilities differ at each level of seniority in both the MDAs and the private organization, effective relationship management requires effective communication management. Effective communication between the MDA and the private developer entails establishing varying levels of communication that are focused on specific issues. The communication levels can be divided into three different levels: Strategic, Business and Operational. The figure below illustrates the manner in which the levels can be organized.

Figure 3: Communication Process



- **Strategic level:** At this level, the two parties need to establish commitment to making the partnership work, mobilizing political and financial support, and ‘leading from the front.’ Ultimately this level must deal with dispute resolution if difficulties cannot be resolved at the business level. This is not, and should not be allowed to become, the level where day-to-day project matters are managed.
- **Business level:** The business level is the level at which the PPP contract is formally managed by the MDA’s Project officer/ Manager (with his or her project team) and his or her private party counterpart (with his or her managers). This is where the day-to-day partnership is managed, services are planned and their delivery is monitored.
- **Operational level:** The operational level is where services are delivered to end users comprises of staff in the MDA and the general public. Staff order or call off components as they require them and receive technical support as necessary from the private party’s service delivery management. The private party and its subcontractors provide the service to agreed levels. A call-centre may be used to log levels of satisfaction from end users. Day-to-day problems in the delivery of services may be resolved here. If this is not possible, they can be escalated to the Project officer.

2. Consistency in Communication

Consistency in communication is important to minimize differences in understanding and views of the participants.

- **Attitude and behaviour:** Behaviour is a manifestation of the attitude of the participants to the contract. Emphasis should be on developing attitude and behaviour that respects the contribution of others, does not over emphasize the power of formal authority, looks at the benefit of all parties, is collaborative and inclusive rather than adversarial in nature and creates a pervasive relationship which operates at many levels. The objective articulated for obtaining and providing feedback should be for using such information for improvement rather than penalty.
- **Proximity:** Proximity of PPP contract management staff of counterparties enhances the communication channels between the two by facilitating face to face communication. On the issue of co-location of strategic level teams, this is not advisable as it may infringe on the private party’s independence and confidentiality.
- **Trust:** In the context of the PPP contract management, trust can be viewed as the confidence of one party in another towards integrity, commitment to the relationship,

goodwill and the capability to successfully execute the work at hand. This element of the relationship needs to be worked upon by both parties to the contract. Senior managers should seem visibly committed to the relationship and this should be communicated throughout the organisation and reiterated over the term of the contract.

3. Relationship Assessment

In addition to assessing performance of financial and service indicators, for a long term contract the MDA should establish a means of assessing other aspects of the partnership between the MDA and the private party. Such an assessment should be carried out by an independent third-party review once every few years to identify existing and potential areas of difference and identify mechanisms for dispute resolution. It may be appropriate for this review to be carried out by the Contract Compliance Department within ICRC or by peer review by other State Government members of the Nigerian PPP Network.

Periodic assessments might address issues such as:

- Whether each party is getting the expected benefits when the PPP contract was signed?
- How well the management structures are seen to be operating?
- How successful communication is seen to be?
- The degree to which information is shared freely and openly between the parties.
- Whether conflicts are being avoided or resolved effectively?
- End-user satisfaction and perceptions of the relationship.

While issues like these may be perceived subjectively to a large extent, these perceptions by each party of the relationship can have a material effect on PPP contract management, regardless of their validity. There should be a willingness to learn from mistakes and, if necessary, to take part in partnership development programmes if they will help to strengthen the relationship.

4. Issue Management

Issue Management involves the management of service delivery related problems faced during the lifetime of the project.

Clear procedures for raising issues and managing the problems are needed to ensure that they are dealt at the earliest and appropriate level. The Contract Management team should identify in the contracts the different issue escalation mechanisms in the contract to ensure that the issues are managed at the appropriate level.

A standard issue management procedure shall cover the following:

- **Issue Register:** There should be an issue register that is set up to record the issues as they occur. This is done to identify potential trends in the types of issues recorded in order to help assess any potential threat to value for money. Modern information technology platforms can facilitate such functionality;
- **Issue Notification Mechanism:** Issues identified by the MDA should be notified to the appropriate level of the Private Sector. The same mechanism should be applied to any issues identified by the Private Sector;
- **Issue Escalation Mechanism:** Escalation mechanism and procedures should be built in to allow for successive level of responses depending on the nature of the problem and outcomes of the actions achieved at lower levels; and
- **Documentation of approach and resolution:** Any issues that are successfully resolved should be fully documented including the resources needed, approaches and levels of escalation needed to arrive at a satisfactory resolution.

An effective Issue Management mechanism should enable both parties to resolve issues effectively and efficiently.

5. Dispute Resolution and Management

Given the long-term nature of PPP projects, the possibility of disputes arising with regard to a party's contractual obligations and allocated risk positions cannot be completely discounted.

The contracts should include agreed mechanisms for settling disputes. A proper dispute resolution framework should lead to a quick resolution. A quick resolution also reduces costs to both parties and minimizes negative publicity. There are a number of existing dispute resolution approaches as documented below:

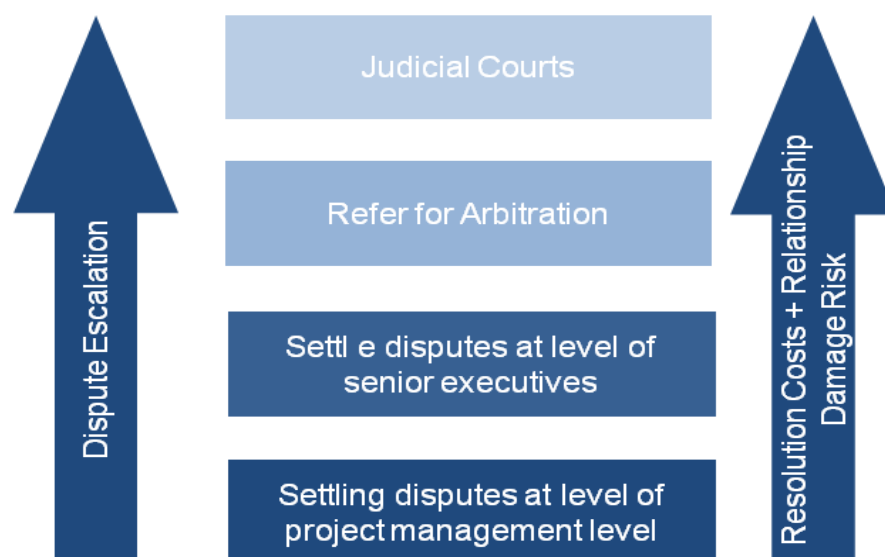
- Discussion between both parties;
- Fast Track resolution process;
- Dispute resolution board;
- Expert determination;
- Mediation or conciliation; or
- Arbitration or Courts.

The Contract Management team should ensure that the relevant arbitration clauses are built in to the contract.

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

- **Preferred resolution approach:** Disputes can come in many forms. The team should provide guidance on the relevant dispute resolution mechanisms and approach;
- **Project continuity during dispute resolution:** Both the public and Private Sector shall adhere to project obligations in the event of a resolution. Such adherence should extend, where possible, to the continuation of work and service delivery; and
- **Dispute costs allocation:** The costs to settling dispute should be agreed upon both parties. However, this needs to be carefully designed to ensure that both parties do not perceive disputes as a potential income stream. Such perception will come at a detriment to the project.

• **Figure 4: Dispute Resolution**



Adjudication by courts of law for dispute resolution should be considered as the last option for both parties. Additional Information on Dispute Management and Resolution is provided in the Explanatory Notes.

6. Financial Administration

Effective financial administration involves the development of systems and procedures to make and receive financial payments, and to keep records of financial transactions. In preparing the PPP Contract, the MDA should include procedures for: making unitary payments and additional payments to the private party; administering penalty deductions; calculating inflation; dealing with late payments; and receiving reports linked to unitary payments and additional payments.

7. Prepare PPP Contract Administration Plan

The Project officer should develop a PPP Contract Administration Plan, which sets out:

- A summary of the proposed systems and procedures for variation management, PPP Contract maintenance and financial administration.
- The roles and responsibilities of the MDA and the private party in relation to variation management, PPP contract maintenance and financial administration.
- The plans for the development of the PPP contract management manual that will be used to provide details of all documents relating to the PPP contract, and the variation management, PPP contract maintenance and financial administration procedures.
- An estimate of the resources that the MDA will devote to variation management, PPP contract maintenance and financial administration.

After the PPP contract has been signed, the Project officer must ensure that the PPP contract administration plan is implemented, and that the PPP contract management team has the resources and expertise necessary to deliver the plan. Particular attention should be devoted to the development and regular updating of the PPP contract management manual.

4. PPP Contingency Planning

Contingency planning is an important element of the PPP contract management process. In the event that the private party fails to deliver the services as specified under the PPP Contract, the MDA may face significant reputation damage and this failure could inconvenience end users. Additionally, force majeure conditions could potentially relieve the private party from its obligation although the MDA would still be required to provide the service to meet its objectives. Contingency planning thus aids the MDA in being prepared for such situations.

Contingency planning consists of three primary activities which cover the basis forms of contingencies:

- Business Continuity and Disaster Recovery Plan which cover events that disrupt service delivery but do not involve default by the private party
- Step in Plan which covers events that disrupt service delivery and involve a default by private party
- Default Plan which covers private party defaults that do not result in disruption of service delivery

The MDA should identify all significant contingency events related to the PPP Project and develop appropriate contingency plans which should form part of the PPP Contract Management Plan.

1. Business Continuity and Disaster Recovery Plan

The objective of developing a business continuity plan is to mitigate the impact of disruption in service delivery on the key stakeholders such as the MDA and end users. While the disaster recovery plan aims at restoring critical service functions following an event which has a catastrophic impact on the project.

In developing the business continuity and disaster recovery plans, the MDA should keep in mind that the plans would need to be implemented at short notice and under significant pressure. The plans should thus be short, clear, easily accessible and understandable.

The MDA should consider among others, the following key issues in developing and maintaining a business continuity plan:

- Potential events that could severely disrupt service delivery
- Immediate action that should be taken in response to the disruption of service
- Priority and timeframes for restoring critical services
- Service delivery specification and service level targets to be set for each critical service
- Identifying resources required for implementing the plan and allocating roles and responsibilities to MDA personnel for triggering and implementing the business continuity plan
- Information required to implement the business continuity plan
- Channels of communication with stake holders
- Testing of the business continuity plan

A Disaster recovery plan may not be required in all PPP projects, as restoring critical service functions may be entirely in the private party control. If a disaster recovery plan is required, the process of preparation is similar to the business continuity plan.

2. Step in Plan

The Standard PPP Provisions allows the MDA to “step in” in certain circumstances and temporarily enter or take control of the private party’s facilities used in providing the services.

In PPP Contract where the “step in” rights exist, a “step in” plan should be developed in conjunction with the business continuity and default plans. While the “step in” plan may not be an all-inclusive document, it should contain the basic requirements.

The MDA should keep in mind the following issues while detailing a “step in” plan:

- Events that are likely to trigger the “step in” right of the MDA
- Contractual conditions that should be satisfied before the “step in” rights can be exercised
- Roles and responsibilities of the MDA personnel responsible for implementing the “step in” plan
- Authorisation required prior to exercise of the “step in” right.
- Obligations and liabilities incurred in exercise of the “step in” right
- Resources required to implement the plan
- Communication channels to implement the “step in” plan
- Whether “step out” is possible or feasible for the project

3. Default Plan

The default plan would need to be activated when the default clause as per the Standard PPP Provisions is invoked. The default plan should be developed in a manner similar to and in conjunction with the business continuity and “step in” plans. Since the plan is likely to be triggered at short notice and under high pressure, the default plan should be short, concise, easily accessible and understandable.

The MDA should keep in mind the following issues while detailing a default plan:

- Events likely to lead to a default
- Impact of the default on service delivery
- Time period before the MDA can act on the default
- Remedies available in the contract and impact of the remedies on service delivery
- Role and responsibilities of the MDA personnel responsible for implementing the default plan
- Communication channels to implement the default plan

4. Project Handback process

At the end of the life of the contract there is a set of obligations that both the private sector and the MDA need to fulfil. At the expiry of the contract, the private sector is required to hand over the project assets to the MDA.

For PPPs that have asset transfer, the critical management issue is ensuring that the assets are up to the agreed standard. It may happen that since the concessionaire would be handing the assets over at the end of the concession period, it won't receive benefits from its maintenance costs and so may skip these costs. For this reason, as a PPP with asset transfer nears the end of its lifetime there is a risk that the concessionaire will allow maintenance standards of the assets to slip.

In developing the PPP contract the aim should be to create the correct incentives for the concessionaire to maintain the assets to the agreed standard, and to provide the MDA with the information it needs to check that standards have been met.

The PPP Contract should:

- Clearly specify the standard required of the assets on the handover date
- Lay out a process for monitoring the asset standards over a period leading up to the contract end date
- Specify financial penalties for failure to meet the required standards.

The MDA should aim to avoid a situation where it only discovers at the very end of the contract that the asset condition is sub-standard. Because assets can be allowed to deteriorate over a long period before the end of the contract; it is important that the monitoring of the asset condition in terms of the standard required at the end date is ongoing well in advance of the contract end date.

The payment structure for the PPP should include a termination payment possibly by means of an escrow Retention Account, which should be conditional on the assets being to the agreed standard. If the standards had not been met then this payment could be withheld until repairs are made or withheld entirely.

The Contract Management team should also manage the hand back of relevant documents and records. Further at this stage the Contract Management team should plan for the continuity of service delivery and maintenance of service standards either in the form of new project development or through other means.

If the PPP mode does not involve transferred assets (For example, a management contract, or a BOO) the contract closure process simply requires the termination of the contract.

PROJECT MONITORING TEMPLATE

Name of Concessionaire / License Holder	
Project Name	
License Number (if any)	
Effective Date of License	
Validity of License (if any)	
Project Monitoring Report No.	
Reporting Period	
Overall Project Progress Achieved To-Date (%)	
Date of Commencement of Project Implementation	
Construction Period (Months)	
Commission Date	

1. KEY PROJECT INFORMATION

Project Location	
District, State, Region	
GPS Coordinates for Power House and Weir	
River(s)	
Total Project Land Requirement (ha)	
Key Project Parameters	
Installed Capacity (MW)	
Plant Factor (%)	
Project Type (run-of-river or storage)	
Design Flow (m ³ /s)	
Gross Head (m)	
Net Head (m)	
Turbine Type	
Length of Headrace (m)	
Length of Penstock (m)	
Length of Tailrace (m)	
Length of Dam/Weir (m)	
Height of Dam/Weir (m)	
Distribution / Transmission line type	
Line Voltage (kV)	
Line Length (km)	

2.PROJECT SUMMARY

Table 2-A: Project Progress Summary		
Answer the following questions based on the most up-to-date Work Plan	Data	Remarks/explanation and action
What is the percentage of work completed?		
What is the percentage of the funding spent?		
By how many days is the project:		
a). ahead of schedule?		
b). behind schedule?		
By how much is the project:		
a). within budget?		
b). outside budget?		
List any changes made in relation to the originally approved project plan / scope		

3. PROJECT PROGRESS

3.1 Project Milestones & Deliverables Achieved or in Progress

Based on the most up-to-date Project Work Plan (PIP), provide the information required in the following tables:-	
· Table 3-A : Project milestones and deliverables	
· Table 3-B : Project reporting on progress	
· Table 3-C : Major project tasks and activities to be undertaken in the next work plan quarter (from date of visit)	
· Table 3-D : Deliverables and project scope changes	
In addition to this, list major milestones and deliverables that were achieved but were not scheduled in the PWP during the reporting period. Indicate the status of each line item and provide an explanation in cases where the variance between planned and actual completion dates is greater than 5%	
<u>Guidelines</u>	
Major Deliverable	A tangible output of project work, such as project plant designs, penstock and power house construction, etc.
Major Milestone	A key moment that occurs in a project's life cycle that indicates that a specific stage in the project has been reached.
Planned Start Date	This is the baseline start date provided in the original CWP in the Gantt Chart in the license agreement.
Planned Completion Date	This is the baseline completion date provided in the original CWP in the Gantt Chart in the license agreement.
Explanation of variance	Why the activity was completed late or early.
	How other project activities have been or might be impacted.
	What actions need to be taken, if any, to bring the project back on track.

Table 3-A: Project Milestones & Deliverables Achieved or in Progress*									
Major Deliverable/Milestone & Description	Planned Start Date**	Actual Start Date	Planned Completion Date**	Revised Completion Date	Percentage Complete	Actual Completion Date	Cost to Date (US\$ Million)	Status/Variance Explanation	Material delivered (%)
Performance Bond									
Implementation Agreement									
Project Management									
Securing of finance									
Land acquisition									

Table 3-A: Project Milestones & Deliverables Achieved or in Progress*									
Major Deliverable/Milestone & Description	Planned Start Date**	Actual Start Date	Planned Completion Date**	Revised Completion Date	Percentage Complete	Actual Completion Date	Cost to Date (US\$ Million)	Status/Variance Explanation	Material delivered (%)
Signature of PPA									

List in the following table any problems requiring immediate resolution. This should cover the entire project construction history so continue the same table from the previous Quarterly Progress Report. Items listed should include all open/outstanding issues and those resolved within this reporting period, as well as issues identified during this reporting period that may impact the project in later reporting periods.

4A

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CHAPTER 5:

Conclusion

Contract Management is very to any successful PPP project.

Some of the issue that desire special attention include the following

1. LINKS TO ALL CONTRACT DOCUMENTS

PARTIES TO THE CONTRACT WITH CONTACT DETAILS

- Public authority: name of authority, name of representative, address, telephone, fax, e-mail
- Private party: name of company or consortium, name of representative, address, telephone, fax, e-mail
- Financiers: name of Lead FI, other FIs, name of representative of lead FI, address, telephone, fax, e-mail

2. PROCUREMENT INFORMATION

Dates and summary details, links to all procurement documents, final feasibility study, including land acquisition, social, environmental, and rehabilitation related information, reports of independent procurement auditors (if any):

- RFQ
- Pre-qualification or short list
- RFP
- Evaluation criteria: brief description with weightage
- Brief information on constitution of the evaluation committees
- Negotiation parameters: brief description of the parameters for negotiation with preferred proponent
- Minutes of pre-bid meetings
- Selection of preferred bidder

3. RISK

Listing of risks with information on who bears the risk. The following table can be used. This is not an exhaustive listing. Countries, sectors, and individual projects may use different categorizations. Several risks can be further broken down into components or listed together. If within a large category of risk subcategories are allocated to different parties, it makes sense to show the subcategories clearly:

	DESCRIPTION	ALLOCATION	MITIGATION
Pre-construction risk: all risks up to financial close			
Construction/completion			
Cost risk: capital, operating			
Refinancing risk			
Risk related to change in law, taxes, scope, technical standards, regulatory framework			
Exchange rate risk			
Operating risk			
Commercial risk, market risk, demand risk			
Performance risk			
Financial risk			
Force majeure risk			

4. EVALUATION OF PPP OPTION: VALUE FOR MONEY OR OTHER APPROACH USED^a

Link to evaluation report (value for money or other

State the rationale for doing the project as a PPP, including any qualitative or quantitative value-for-money or other analysis that might have been used. If nonfinancial benefits have been quantified or considered, these could be stated.

The discount rates used should be specified in the disclosure along with the risk premium used, if any and an explanation for the rate of risk premium used, referring to guidance, if any, available in this regard or describing project-specific circumstances that justify the risk premium rate used.

5.

Equity-debt ratio

FINANCIAL INFORMATION^f

Share capital:

Shareholders with proportion held and voting rights

Certain contracts provide for caps on equity transfer in different stages of the contract, especially during the construction stage and for a few years thereafter. Give details of any such provisions.

Commercial lenders, institutional investors, bilateral or multilateral lenders, public issue of bonds, supplier credit, other

Categorize senior debt, mezzanine debt, other

Amount and tenor of each, fixed or floating rate

Security and step in arrangements

Forecast IRR

6.

GOVERNMENT SUPPORT

Guarantees	Detail the type and exact details of the guarantees provided—both explicit and contingent guarantees—such as minimum revenue guarantee, exchange rate guarantee, debt repayment guarantee, and other guarantees. Provide links to fiscal commitments and contingent liabilities disclosure reports, if any.
Grants	Subsidy as a proportion of project value Capital subsidies paid during construction with periodicity or milestones Operating subsidies and their periodicity or milestones
Service payments	These are payments made by the public authority or purchaser to the private provider for infrastructure services (applicable in PFI type projects) Total payments and periodicity Methodology for calculating payments Indexation used
Land leases, asset transfers	Land transferred on lease or other basis by government: give details of property numbers with the quantum of land transferred, zoning information, conditions of transfer Equipment transfers: details of equipment with conditions of transfer Human resources/personnel transfers: details and conditions of transfer

Other support Non-complete clauses
Provision for revenue shortfall loan

Revenue-share, if any Revenue share on base case
Revenue share on upside
Links to graphs: annual concessionaire payments to government

Tariffs and pricing This information will be required only where the infrastructure is
financed partly or fully through the levy of user charges
TARIFFS^h Methodology for tariff setting/pricing
Scope for reviews of tariff, pricing, regulatory mechanisms
*Links to graphs: tariff increases over time, consumer price index
movement*

7. CONTRACT TERMINATION

Events of default and termination payments

PARTY	EVENTS OF DEFAULT	BRIEF DESCRIPTION OF EVENT OF DEFAULT	TERMINATION PAYMENTS
Concessionaire	1. 2. n.		
Authority	1. 2. n.		
Handover	State details of hand over of assets back to state, condition of assets, and any other conditions relating to hand over. Include details of provisions for continuity of service.		

State variations to contract, if any, after signing of the original contract detailing each change.

8 RENEGOTIATIONS

State in addition the details of renegotiations and circumstances leading to renegotiations. State specifically any change due to the renegotiated clauses in the following: roles and responsibilities relating to the project, risk allocation, fiscal exposure, that is, any change in fiscal commitments and contingent liabilities with a rationale for agreeing to the change. Use the following formats:

Nature of Variation

Rationale for variation

Change in roles and responsibilities of the parties due to the variation, if any

Change in original risk allocation due to the variation, if any

Change in original fiscal commitments or contingent liabilities of government
due to the variation, if any

Change in capital or operational costs due to the variation, if any

Change in tariffs or service levels due to the variation, if any

Describe key events of default under two major categories: concessionaire's events of default, and public authority's events of default. State the termination payments against each, stating clearly the methodology used for total payments. The following format may be used

Date of variation

Annual demand levels State the actual annual measured levels of demand or

9. PERFORMANCE INFORMATION

stated levels of demand in the provider's report or contract manager's report. Use the following format.

	Year 1	Year 2	Year 3	Year n
Annual demand				

Annual revenues

Recommended only where revenue share clauses or other related clauses such as MRGs are present in the contract

State the actual annual total revenues reported in the financial statements and reports using the following format. If different categories of revenues need to be reported, create more rows in the table. Provide links to audited financial statements of the provider company

	Year 1	Year 2	Year 3	Year n
Annual total revenues				

Actual IRR

Recommended only where there is government equity investment or other form of government support that is substantial.

Performance

State actual year-wise performance here against each of 10-12 identified key performance indicators:

KEY PERFORMANCE INDICATORS	Year 1		Year n	
	Target	Achievement	Target	Achievement

Performance failures

State instances of performance failure during the year and the penalty or abatement. Use the format given below to provide information on the provisions of the contract as well as the actual penalties imposed:

Year	
Category of failure	
Nr. of events	
Penalty or abatement provided in contract	
Penalty or abatement imposed	
Penalty paid or Abatement effected: Yes/No	

Performance assessments

Provide links to audit reports, independent performance assessments of the independent engineer and any other performance reports available for the project.

This can be disclosed at the pre-procurement stage with the exception of information on the parties to the contract, which will be disclosed once it becomes available, that is, at the end of the procurement process.