REPUBLIC OF ZAMBIA

MINISTRY OF FINANCE AND NATIONAL PLANNING




# PUBLIC–PRIVATE PARTNERSHIP GENERAL GUIDELINES

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## ACRONYMS/ABBREVIATIONS

| | |
|---|---|
| **ADSCR** | Annual Debt Service Coverage Ratio |
| **BAFO** | Best and Final Offer |
| **BOT** | Build-Operate-Transfer |
| **BOOT** | Build-Own-Operate-Transfer |
| **CAPEX** | Capital Expenditures |
| **CA** | Contracting Authority |
| **CBA** | Cost Benefit Analysis |
| **COMESA** | Common Market for Eastern and Southern Africa |
| **CSR** | Corporate Social Responsibility |
| **DBFO** | Design-Build-Finance-Operate |
| **DBO** | Design-Build-Operate |
| **EPC** | Engineering Procurement and Construction |
| **ESMP** | Environmental and Social Management Plan |
| **FCCL** | Fiscal Commitments and Contingent Liabilities |
| **FS** | Feasibility Study |
| **IFC** | International Finance Corporation |
| **IRR** | Internal rate of return |
| **LTCR** | Loan Term Coverage Ratio |
| **MIGA** | Multilateral Investment Guarantee Agency |
| **NPV** | Net Present Value |
| **O & M** | Operation and Maintenance |
| **OPEX** | Operating Expenditures |
| **PP** | Project Proposal |
| **PPP** | Public–Private Partnership |
| **REOI** | Request for Expression of Interest |
| **RFP** | Request for Proposals |
| **RFQ** | Request for Qualifications |
| **SPV** | Special Purpose Vehicle |
| **SDGs** | Sustainable Development Goals |
| **TDB** | Trade and Development Bank |
| **USP** | Unsolicited Proposal |
| **VfM** | Value for Money |

## FOREWORD

The Government of the Republic of Zambia under the Ministry of Finance and National Planning through the Public Private Partnership Office is committed to strengthening partnerships with the private sector as a means of accelerating sustainable development, enhancing service delivery, and expanding infrastructure across the Country. The strengthening of Zambia's legal framework through the enactment of the Public–Private Partnership (PPP) Act No. 18 of 2023 and the subsequent issuance of the PPP (General) Regulations of 2024 underscore this commitment by providing a robust legal and institutional framework for the preparation, procurement, and implementation of PPPs in Zambia.

These PPP General Guidelines offer practical step-by-step guidance to the PPP Office, Contracting Authorities and Private Sector Partners on how to implement PPPs. They are designed to promote consistency, transparency and efficiency in project identification, preparation, structuring, procurement, and monitoring. The Guidelines further provide tools for addressing fiscal commitments and contingent liabilities, project identification, feasibility studies, risk management, project procurement and managing both solicited and unsolicited proposals.

By equipping institutions and stakeholders with this resource, Zambia stands to strengthen its capacity to unlock private capital, harness innovation and deliver infrastructure and public services that improve the lives of our people. The Guidelines will also not only improve Zambia's ability to attract private investment but also ensure that projects deliver measurable value for money, are fiscally responsible, aligned with our national development priorities and the Sustainable Development Goals, and are beneficial to the Public.

I am confident that these Guidelines will serve as a vital reference point for all stakeholders engaged in PPPs. They embody our vision of fostering mutually beneficial partnerships that support inclusive growth, resilience, and prosperity for the Republic of Zambia.

Dr. Situmbeko Musokotwane, MP
**MINISTER OF FINANCE AND NATIONAL PLANNING**

## ACKNOWLEDGMENTS

The Ministry of Finance and National Planning wishes to extend its sincere appreciation to all institutions, partners and individuals who contributed to the development of Zambia's Public–Private Partnership (PPP) General Guidelines.

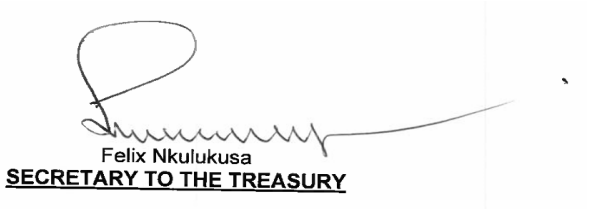
Special recognition is given to COMESA and the World Bank for the financial support in the development of these guidelines, the Public–Private Partnership Office, through the PPP Council and Technical Committee for their technical support in the drafting process. Their commitment to building a clear, transparent, and robust PPP framework has been invaluable.

We also acknowledge the contribution of Contracting Authorities across Ministries, Provinces, and Agencies whose inputs ensured that the Guidelines are practical, well aligned, relevant and responsive to Zambia's development priorities.

The Ministry is grateful for the technical assistance and knowledge sharing provided by development partners and private sector stakeholders whose expertise and international experience enriched the content of these Guidelines.

Finally, appreciation is extended to the dedicated team of experts, consultants and reviewers who worked tirelessly to ensure that the Guidelines are comprehensive, user-friendly, and aligned with the provisions of the PPP Act No. 18 of 2023 and the PPP (General) Regulations of 2024.

It is my hope that these PPP General Guidelines will serve as a valuable tool for all stakeholders in advancing Zambia's infrastructure development and service delivery through well-structured, sustainable and inclusive PPPs.



Felix Nkulukusa
**SECRETARY TO THE TREASURY**

# 1 INTRODUCTION

## 1.1 Objectives and application of the PPP Guidelines

Public-Private Partnerships (PPPs) are a form of public contracts that involves a long-term collaboration between government entities and private parties to develop and implement infrastructure and public service projects. The private party bears significant risk and management responsibility. Furthermore, remuneration is linked to performance.

In Zambia PPPs are covered by:

- The Act No. 18 of 2023 came into effect on 2nd February, 2024. An Act to regulate the implementation of PPPs in the Republic; promote the participation of the private sector in the design, financing, construction, development, operation or maintenance of infrastructure or delivery of services through PPPs; provide for the procedures for the approval, award and implementation of PPP projects in accordance with principles of transparency, fairness, stability, proper management, integrity, competition, economy and long term sustainability; provide for rehabilitation, modernisation, expansion and operation of existing infrastructure facilities and systems and their maintenance; strengthen the institutional framework for the implementation of PPP projects; provide for the establishment of the Public-Private Partnership Office (PPP Office); provide for a transparent project selection process, clear procurement procedures, effective regulatory approvals and expanded contractual models in order to promote private sector investment; provide for the establishment of the PPP Project Development Support Fund; repeal and replace the PPP Act, 2009; and provide for matters connected with, or incidental to, the foregoing, cited as the PPP Act, 2023[1]

- The PPP (General) Regulations, 2024.
  In recent years, PPPs have been increasingly used worldwide, due to their ability to accelerate project implementation and deliver better value for money than other public procurement methods.

  Successful PPPs require orderly preparation and management to ensure that the expected benefits are realised. The PPP Guidelines (the "Guidelines") aim to provide a framework serving as practical guidance on the implementation of PPP projects.

  Ultimately the Guidelines will support Contracting Authorities, the PPP Office and other institutions involved in PPPs to identify projects where the use of PPP can be advantageous, and effectively realise these benefits through a sound preparation and implementation process. In essence, Contracting Authorities emerge as the primary beneficiaries of these Guidelines. As they navigate the complex landscape of PPPs, these Guidelines stand as an invaluable resource, aimed to enhance decision-making, streamline processes, and pave the way for successful and mutually beneficial collaborations between the public and private sectors.

[1] Assented by the President 22nd December 2023, and became effective on 2nd February 2024

## 1.2 Structure of the Guidelines

The Guidelines are structured around three pillars:

I. An introductory chapter (Chapter 1), followed by the institutional framework (Chapter 2), and the role of private parties in this framework (Chapter 3).
II. The PPP project cycle, presenting the different stages in the development and implementation of PPP projects as follows:

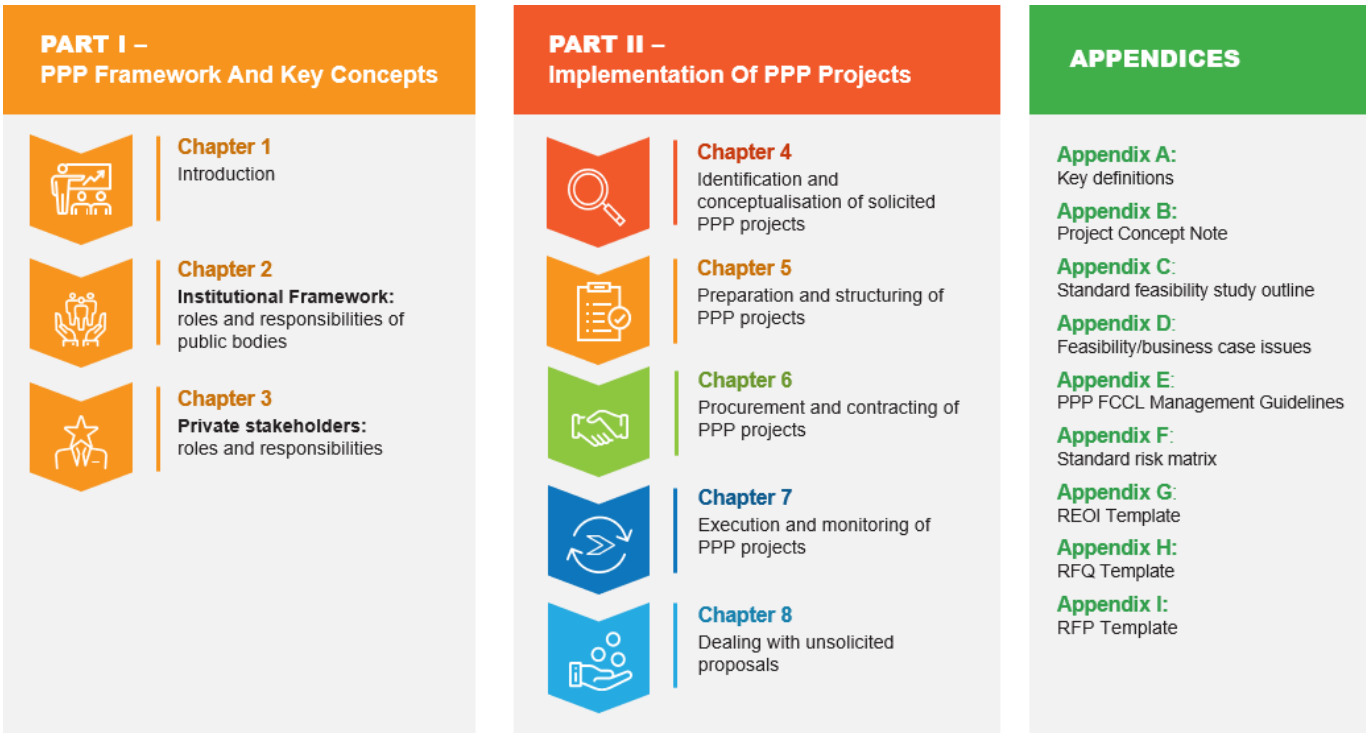
- Identification and conceptualisation of solicited PPP projects (Chapter 4)
- Preparation and structuring of PPP projects (Chapter 5)
- Procurement and contracting of PPP projects (Chapter 6)
- Execution and monitoring of PPP projects (Chapter 7)

Zambia has established a specific framework for small and medium PPPs, defined as a PPP whose total project value is less than ten (10) Million USD. Specific provisions have been developed and the adjusted processes are described throughout the project cycle from chapters 4 to 6.

III. The last chapter (Chapter 8) is dedicated to PPP projects based on unsolicited proposals.

The following figure depicts the structure of the Guidelines.

**Figure 1-1: Proposed Structure of the PPP Guidelines**



# 2 INSTITUTIONAL FRAMEWORK FOR PPPS

The public players involved in the process of implementing a PPP in Zambia are:

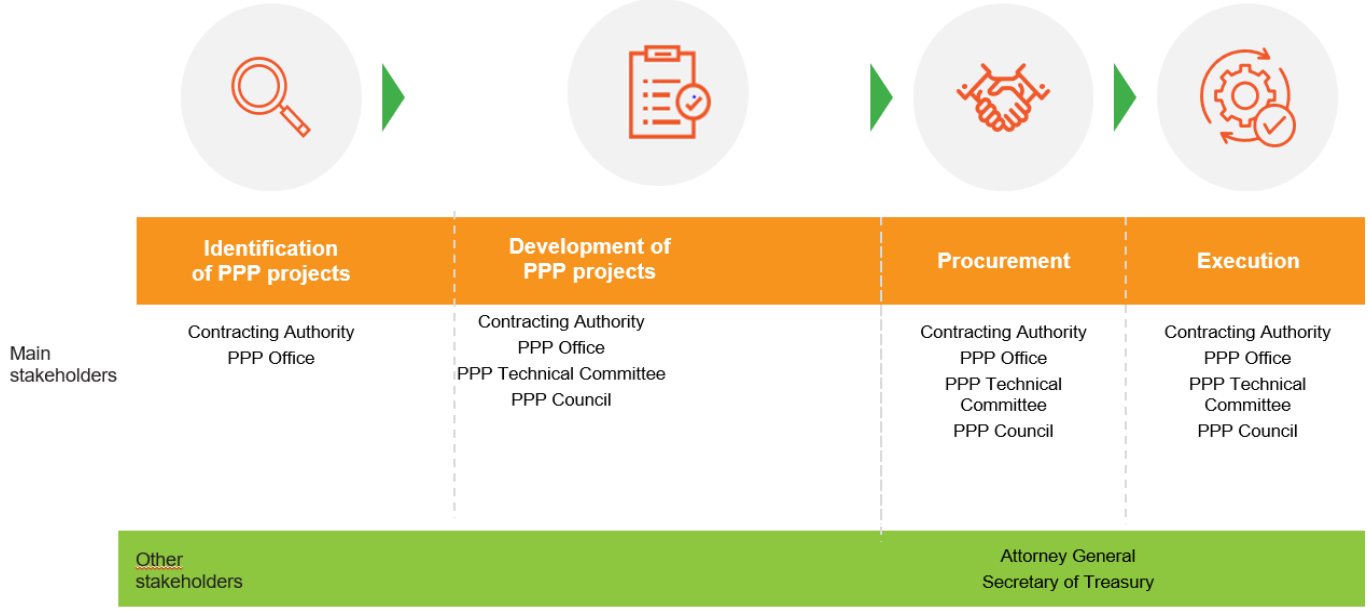
- PPP Council
- PPP Technical committee
- PPP Office
- Contracting Authority

Other stakeholders contributing to the PPP framework are:

- Attorney General
- Secretary to the Treasury

The following figure sets out the tasks of these institutions as defined by the PPP Act, 2023 and the PPP (General) Regulations of 2024.

**Figure 2-1: Role of stakeholders at each stage of PPP**




| Institution | Responsibilities |
|---|---|
| **Main stakeholders** | |
| PPP Council | - Approve or reject a project proposal<br>- Approve or reject feasibility studies<br>- Approve or reject a proposed PPP agreement<br>- Approve or reject a proposed variation or amendment to a PPP agreement<br>- Approve or reject a proposed termination of a PPP agreement by a Contracting Authority<br>- Give directions to a Contracting Authority, regulatory agency, or concessionaire regarding the implementation of a project<br>- Request a Contracting Authority, regulatory agency, concessionaire, or any other body or person to furnish the Council with information, details, documents, and particulars relating to a PPP<br>- where a proposed project involves more than one Contracting Authority, designate a lead Contracting Authority and all communications with, or applications to, the PPP Office in respect of the project, shall be made by, or in the name of, the lead Contracting Authority |

| Institution | Responsibilities |
|---|---|
| **Main stakeholders** | |
| PPP Technical committee | - Advise the Council on technical matters relating to PPPs and projects<br>- Provide guidance to the PPP council on:<br>° Concept notes<br>° Project proposals<br>° Feasibility studies<br>° Appraised projects<br>° Negotiated contract terms<br>° Proposed cancellation of procurements<br>° Proposed termination of a PPP agreement<br>° Proposed variation or amendment of a PPP agreement<br>° The manner of implementation of a project |
| PPP Office | - Identify and provide guidance on a project within the national development agenda.<br>- Receive and assess a proposed project.<br>- Provide technical support and guidance to a Contracting Authority in the structuring, procurement, implementation, and evaluation of a project.<br>- Develop and disseminate information in respect of standard bidding documents, technical and best practice guidelines, PPP agreements, and manuals for PPPs.<br>- Examine a request for a proposal to ensure conformity with an approved feasibility study as may be prescribed.<br>- Oversee the monitoring and evaluation of a PPP agreement from commencement to hand back and review the process if required under this Act.<br>- Provide oversight on the implementation, management, enforcement, and monitoring of a project and PPP agreement.<br>- Facilitate the internal and external auditing of a project.<br>- Approve terms of reference for consultancy assignments or transaction advisors.<br>- Assess and provide advice on fiscal commitments, financial support, and contingent liability for a project.<br>- Undertake capacity building programmes for a Contracting Authority and other relevant stakeholders.<br>- Manage the Fund.<br>- Promote PPP awareness and advocacy.<br>- Hire transaction advisors for a specified project when required<br>- Perform any other functions necessary for the purposes of the PPP Act<br>- Establish an open, efficient and equitable process for the management of the identification, screening, prioritisation, development, procurement, implementation and monitoring of projects<br>- Provide training in matters relating to PPP<br>- Provide advisory and support services to a Contracting Authority at all stages of a project<br>- Provide guidance and support to a Contracting Authority in the selection of a consultant or transaction advisor<br>- Review a tender evaluation report<br>- Identify and monitor fiscal risks and contingent liabilities as they relate to a public-private partnership<br>- Conduct research and publish findings on PPPs in order to ensure the continuous improvement of projects. |

| Institution | Responsibilities |
|---|---|
| **Main stakeholders** | |
| Contracting Authority | - Identify potential projects that the Contracting Authority intends to implement through a PPP.<br>- Prepare a list of projects that the Contracting Authority intends to undertake on a priority basis and submit the list to the PPP Office.<br>- Undertake a preliminary economic cost benefit analysis of the project to conceptualise the project.<br>- Undertake a feasibility study of the project in order to determine the viability of the project. Submit a feasibility study report and a project proposal to the PPP Office for appraisal.<br>- Prepare a request for expression of interest. Submit the request for expression of interest to the PPP Office for authorisation to advertise, invite, solicit or call for bids.<br>- Engage in pre-selection proceedings for the purposes of identifying bidders.<br>- In consultation with the PPP Office, constitute an evaluation committee for the purpose of evaluating pre-qualifying bidders.<br>- Conduct the procurement process, issuing the request for proposals, convene meetings and hold meetings with bidders for clarification, receive the evaluation report and submit to the PPP Office.<br>- Invite a preferred bidder for negotiations of the PPP agreement. On conclusion of the negotiations submit a negotiation report to the Council for approval.<br>- Submit the approved PPP agreement to the Attorney-General for clearance.<br>- Cause to be published the results of the tender and the preferred bidder in a daily newspaper of general circulation in the Republic and electronic media.<br>- Notify the PPP Office of amendments to, or change of, any standard solicitation document.<br>- Request extension of PPP agreement. |
| **Other stakeholders** | |
| Secretary to the Treasury | - Clearance of final PPP agreement in relation to financial implications. |
| Attorney General | - Clearance of final PPP agreement prior to execution. |

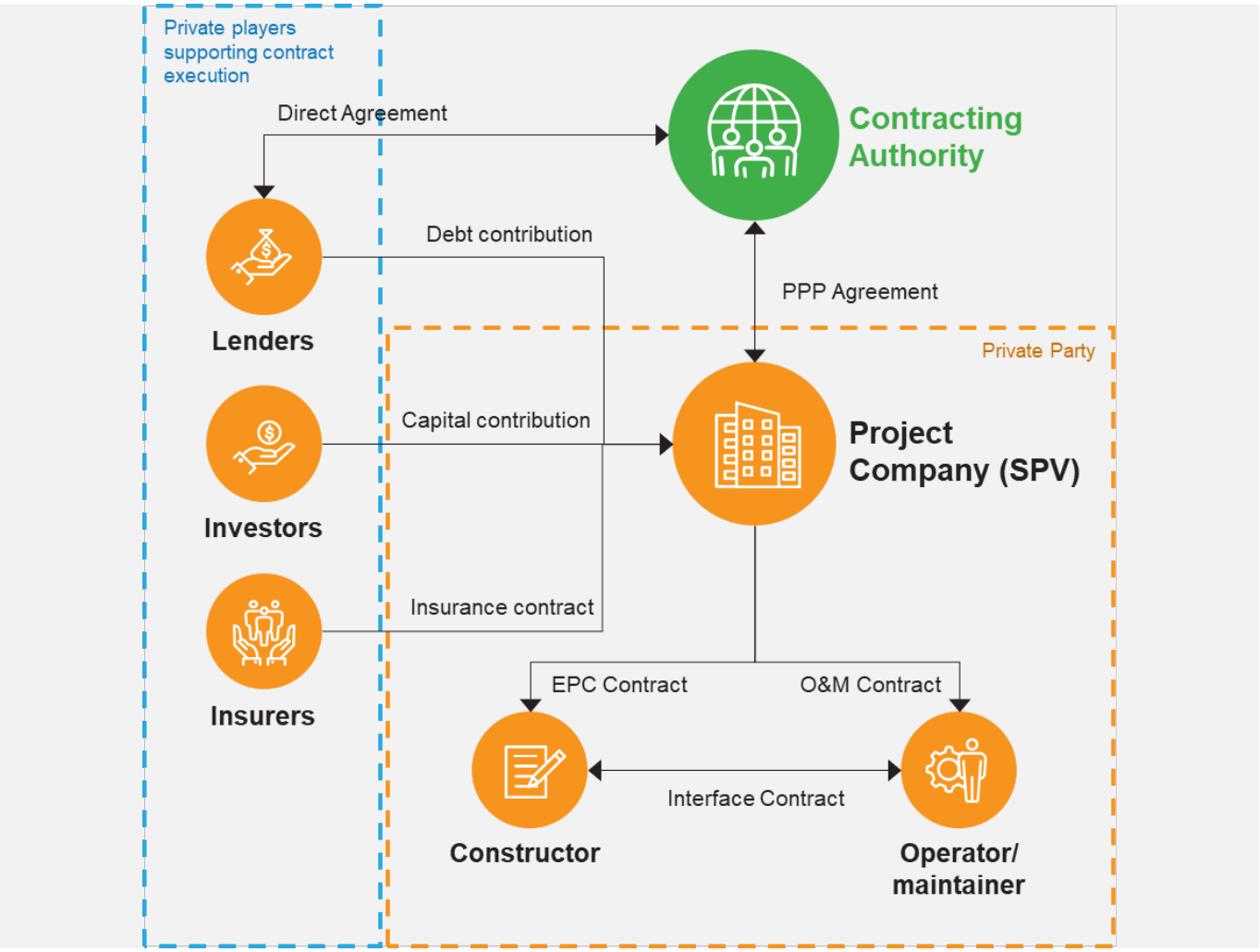
# 3 PRIVATE STAKEHOLDERS

## 3.1 General presentation

This chapter outlines the roles and responsibilities of the private stakeholders in the project implementation. Private stakeholders include the Private Partner, who is directly involved in the financing, construction, and maintenance of the project, and other Private Players who support the execution of the PPP contract. These supporting players include lenders, who provide essential financing; investors, who contribute capital; and insurers, who mitigate financial risks. Together, these stakeholders play a crucial role in ensuring the successful execution and sustainability of PPP projects.

The diagram below shows the interactions between private stakeholders during the project execution phase.

**Figure 3-1: Roles of private stakeholders**




*EPC Contract: Engineering Procurement and Construction*
*O&M Contract: Operation and Maintenance*

The diagram above distinguishes two main types of players:

1. the Private Partner, directly involved in the financing and/or construction and/or maintenance of a PPP project.
2. Private Players supporting the execution of the PPP contract, whether they provide financing or insurance products enabling the contract to be implemented.

**Special Purpose Vehicle**

According to the PPP Act, 2023, before signing a PPP agreement, the selected bidder must set up a Special Purpose Vehicle (SPV) registered in Zambia. It is defined as "a project company incorporated in the Republic by a preferred bidder for the purpose of undertaking a project in accordance with a project agreement executed by the parties".

The PPP agreement for the SPV must include:

a) The minimum amount of capital required for the SPV.
b) The process for getting approval from the Contracting Authority for the SPV's Articles of Association or any changes to them.

## 3.2 The Private Entity, partner of the Contracting Authority

The PPP Act, 2023 uses various terms for private partners. The table below sets out these definitions and the role of the private sector in the project cycle for solicited projects.

| # | Stage in the project cycle | Name of the private sector according to the legal framework | Role |
|---|---|---|---|
| 1 | Identification and conceptualisation | N/A | N/A |
| 2 | Preparation and structuring | N/A | N/A |
| 3 | Procurement and contracting of PPP | Bidder<br>Bidding consortium[2] | Participates in pre-selection or evaluation proceedings relating to a project.<br>Eligible to respond to a request for expression of interest .<br>May request clarifications on the request for proposal. |
| | | Pre-selected bidder | Receives invite from Contracting Authority to submit proposals.<br>Completes and submits the required document referred in the request for proposal. |
| | | Preferred bidder | Successful bidder selected during the competitive selection process including a<br>bidding consortium. |
| 4 | Execution and monitoring of PPP contracts | Concessionaire<br>SPV | Entity awarded and undertakes a project under a PPP agreement.<br>Private party executing the contract (which may consist of several members). Concessionaire may build, own, lease, operate, transfer, design, develop, rehabilitate, maintain, or supply an infrastructure asset.<br>The concessionaire shall carry out this obligation through a special purpose vehicle established for the execution of the PPP agreement. |

[2] Two or more bidders who collectively submit a bid for project.

For unsolicited projects, the Private Party, named a bidder, may submit an unsolicited proposal to a Contracting Authority. The bidder pays into the Fund a prescribed non-refundable fee at the time of submitting its unsolicited proposal to cover the costs for processing, review and evaluation of the unsolicited proposal.

The Private Partner contracts other private operators to execute the PPP agreement and in particular:

- Constructor (EPC Contractor): EPC stands for Engineering, Procurement, and Construction. An EPC Contractor is responsible for the design, procurement of materials, and construction of a project. The EPC Contractor takes on the full responsibility for the project, ensuring that it is completed on time, within budget, and according to the specified quality standards.

- Operator/Maintainer (O&M Contract): O&M stands for Operation and Maintenance. An O&M contract involves the management and maintenance of a project after its construction. The Operator/Maintainer is responsible for ensuring that the project operates efficiently and is maintained properly throughout its operational life. This includes routine maintenance, repairs, and ensuring compliance with operational standards

The SPV, established by the Private Partner, is solely responsible for the overall execution and performance of the project. This responsibility remains with the SPV even when subcontractors are engaged for specific tasks. The SPV must ensure that all subcontractors comply with the terms and conditions of the PPP agreement and maintain the required standards of quality and performance. The SPV's accountability for the project's success and adherence to contractual obligations cannot be transferred to subcontractors, ensuring that the Contracting Authority has a single point of responsibility for the project's delivery and operation.

### 3.3 Private entities supporting the PPP contract execution

As depicted in Figure 3 1 there are also other private players who play a role in PPP contracts, in support of the contractual players.
There are three types of private players:

- Lenders
- Investors
- Insurers

**Lenders**

Lenders are essential to the financing of a PPP project. They are the first source of funding, as the project company borrows from financial institutions to finance its project.

Given the substantial size of the projects generally envisaged under PPPs, investments are significant, and a single lender cannot carry the entire project financing. It often forms a syndication with other lenders. This syndication also enables lenders to diversify their risk and limit their exposure to a single project. In most cases, the lenders' financing payments to the project company are staggered over the course of the project's construction phase, and are conditional on the project's progress.

In parallel with the PPP contract, the lenders and the Contracting Authority are generally bound by a direct agreement that reinforces the lenders' right to debt repayment, notably by providing for the lenders' rights of intervention in the project.

### Investors

The money that investors put into the project company is a crucial source of funding. This investment reassures lenders that the project is financially stable. Due to the large scale of PPP projects, multiple investors usually contribute capital. However, the amount of borrowed money (debt) is generally higher than the money invested by the investors (equity). Typically, PPP projects have a financing structure of 70-80% debt and 20-30% equity.

Investors come from various backgrounds and include builders, operators, pure investors, and financial backers. Builders and operators often invest in PPP projects because lenders or other investors require it. This financial commitment ensures that the builders and operators will work diligently to avoid losing their investment.

Investors can also be external to the project, such as investment funds. These external investors may provide loans (debt) or invest money (equity) in the project company. They can be international commercial banks, international private or public investment banks or funds.

### Insurers

Insurance companies play an important role in PPPs worldwide. In PPP projects, many risks are transferred to the private sector, so it is important for the Private Party to have insurance to protect against financial risks. The Contracting Authority and lenders also scrutinize insurance arrangements to ensure stable cash flows and service provision.

International insurance companies have developed a variety of products tailored to each stage of PPP projects. Typical insurance for PPP projects includes coverage for construction risks, property damage claims, third-party liability. They also often include insurance against business interruptions, strikes, and terrorist attacks.

The Multilateral Investment Guarantee Agency (MIGA) is a World Bank institution designed to encourage foreign direct investment in developing countries. Its main role is to provide insurance against political and non-commercial risks to foreign investors. By offering this insurance, MIGA helps alleviate concerns about expropriation, political conflict and other unforeseen events that could result in financial losses.

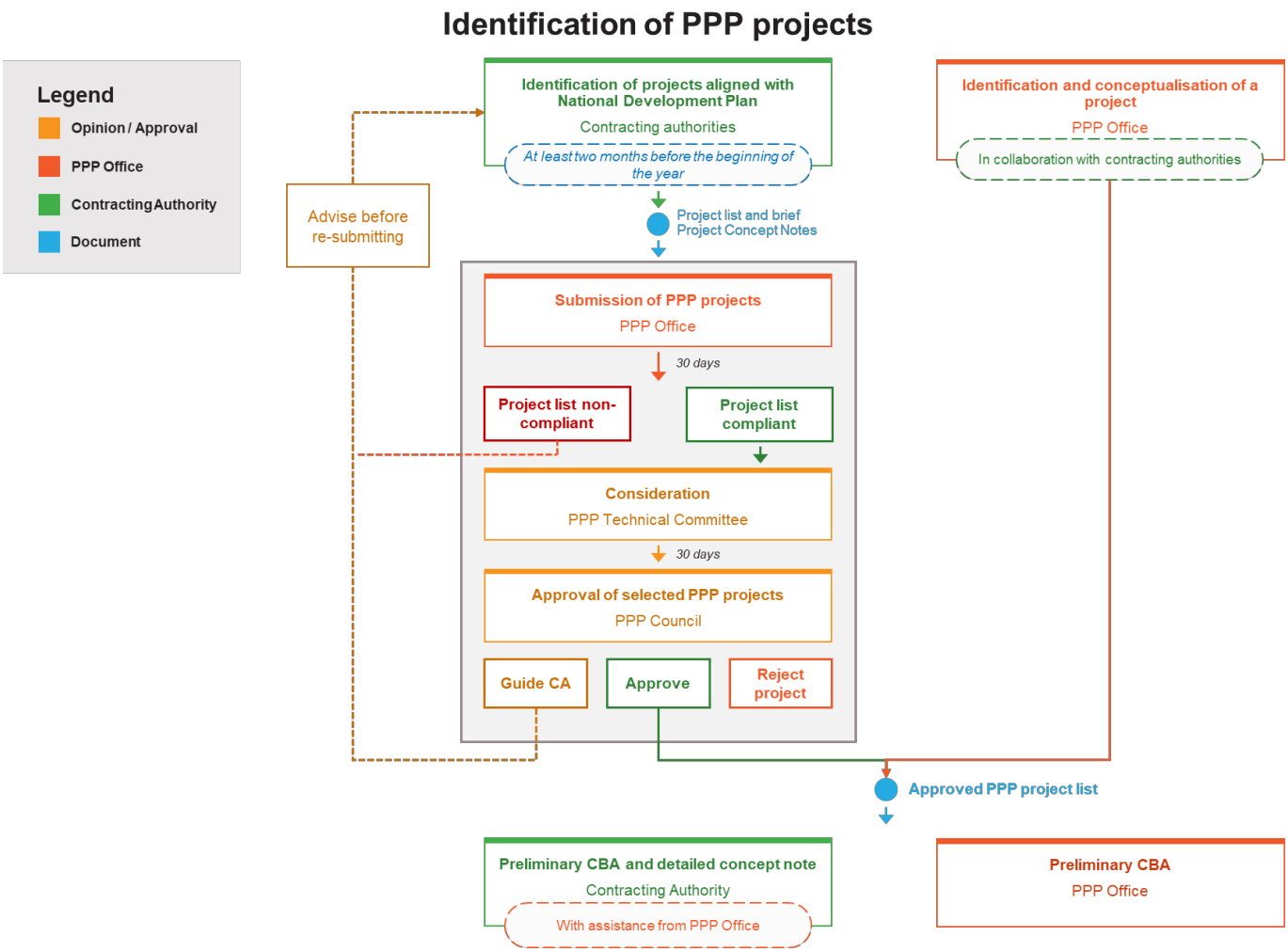
# 4 IDENTIFICATION AND CONCEPTUALISATION OF SOLICITED PPP PROJECTS

The first step in the PPP process is for public entities wishing to develop projects to identify those projects of public interest that are likely to attract private investors. A preliminary analysis is carried out to identify projects that can meet the needs of the Contracting Authority and have performance objectives that can be delivered by the private sector.

## 4.1 Overview of the solicited PPP project identification process

The diagram below presents the various stages associated with the PPP project identification phase as described in the PPP Act, 2023.

**Figure 4-1: Process for the identification of PPP projects**




**Note:** *"Concept Notes" can be submitted at any time of the year*

## 4.2 Overview of the process for identifying PPP projects

### Identification of PPP projects

At least two months before the start of the financial year, Contracting Authorities must identify projects that could be developed as PPPs within their public investment programmes.

At this stage, a preliminary analysis should be conducted to prioritise projects and help decision-makers focus on the most important ones.

Once potential PPP projects are identified, the Contracting Authority must create a prioritised project list.

### Development of preliminary project concept notes

For each project included on the project list, the Contracting Authority must prepare a brief project concept note. These notes shall be developed in accordance with the guidelines issued by the PPP Office.

The PPP Regulations require the project concept note to include the following details:

- the name or title of the project
- the name of the Contracting Authority
- where there are multiple Contracting Authorities, the name of the lead Contracting Authority and other Contracting Authorities, if any, anticipated to be involved in the project
- a short description of the project and its proposed location
- an initial estimate of the size or cost of the project
- project rationale and benefits
- an explanation of how the project is in line with the National Development Plan
- an assessment of the viability, affordability and bankability of the project.

Other relevant details should be added, such as:

- an analysis of the initial consultations undertaken with stakeholders
- an outline of the legal and institutional requirements of the project
- what the expected private sector outcomes from the project are, and the capacity of the Contracting Authority to deliver the project
- a justification for the project specifying the following:
  - the projects suitability for procurement as a PPP;
  - the project's value for money;
  - how the project is in line with the National Development Plan;
  - how the agreement on the project shall provide for the transfer of adequate risk to the private party;
  - preliminary feasibility estimates and initial affordability, demand and revenue forecasts;
  - the project's fiscal implications to the Government;
  - an initial project financing analysis, and estimated costs, revenues and financing requirements; and
  - an assessment of the risks and challenges of the project.

A model project concept note can be found in 0 of this guide.

### Validation of project list and concept notes

The Contracting Authority submits the project list and concept notes to the PPP Office for review.

Within 30 days of receiving the project list and concept notes, the PPP Office will assess whether they comply with the Act, Regulations, issued guidelines, and the National Development Plan. If any project does not meet these requirements, the PPP Office will notify the Contracting Authority in writing, requesting necessary amendments before resubmission.

If the PPP Office finds that the project list and concept notes comply with all relevant requirements, it will forward them to the Technical Committee for consideration.

The Technical Committee will then review the documents within 30 days and submit them, along with its recommendations, to the Council. Based on the Technical Committee's recommendations, the Council may:

- Approve the proposed project list;
- Reject specific projects, providing written reasons for the rejection; or
- Request revisions to the project list, offering guidance to the Contracting Authority.

**Development of preliminary economic cost benefit analysis**

Once a project is approved and the Contracting Authority decides to proceed, a preliminary economic cost-benefit analysis is carried out as required, alongside further project conceptualisation. The preliminary economic cost-benefit analysis must:

- Clearly state the needs that the project intends to meet, and the degree to which the project intends to meet those needs;
- Identify all realistic options, including the option of maintaining the status quo, and where possible, quantify the key elements of all the options;
- Compile a preliminary assessment of the estimated costs and benefits of all the options;
- Choose a preferred option and make a judgment on whether its benefits are sufficient to warrant incurring the costs associated with the project; and
- Clearly state climate change practices to be taken into account by the project to ensure quality climate resilience and adaptable infrastructure for the project.

In addition to projects proposed by Contracting Authorities, the PPP Office may, on its own initiative and in collaboration with a Contracting Authority, identify and conceptualise additional projects. In such cases, the PPP Office and the Contracting Authority shall jointly conduct the required preliminary economic cost-benefit analysis.

The capital investment identified at this stage determines whether the PPP is small and medium scale, i.e., under ten million USD or kwacha equivalent.

**Criteria for identifying PPP projects**

Public projects whose preliminary analysis shows potential for structuring as PPPs are grouped together in a long list of pre-selected PPP projects. To determine a project's PPP potential, the criteria outlined below are used.

**Figure 4-2: Criteria for identifying PPP projects**

| Criteria | Description |
|---|---|
| Level of preparation/maturity | • This criterion reflects the project's degree of maturity, i.e., its level of preparation, particularly the degree of analysis of the project's technical, legal, socio -environmental and commercial/financial feasibility. |
| Strategic interest of the project | • This criterion reflects the political will of the Contracting Authority and the government to develop the project, nota bly through anchoring the project in the national programming documentation. |
| Alignment with Sustainable Development Goals and climate change priorities | • This criterion refers to the potential impact of the project on advancing the SDGs and addressing clima te change effects in the country/region. |
| Project implementation capacity | • This criterion reflects the degree of successful implementation of a given project, given its intrinsic characteristics and its implementation framework. |
| Budget sustainability | • This criterion reflects the magnitude of the required public contribution to the project. |
| Project's attractiveness to the private sector | • This criterion anticipates the project's ability to generate the required private sector appetite and a return on equity in line with potential investors' expectations. |
| Value for Money | • The PPP option must outperform traditional procurement. |

These criteria serve as essential benchmarks for evaluating whether the elaborate, time-consuming, and costly structuring involved in a PPP can better fulfil the objectives of the Contracting Authority in comparison to alternative forms of public procurement, either more effectively or at a lower cost. This evaluation process is refined continuously throughout every stage of the project's assessment and structuring. Consequently, what may have initially appeared suitable for a PPP might be deemed better suited for a conventional construction contract as the feasibility study progresses.

All projects included in the PPP project list are intended for development. Establishing an order of priority simply means focusing public attention and resources on the most mature projects first, until they are completed. It does not imply that other projects are discarded. The ordering of priority is a dynamic exercise that must be reviewed and updated regularly.

**PPP pipeline**

Public projects that show potential for structuring as PPPs, after application of the prioritisation criteria, make up the PPP pipeline.

AT THE END OF THE IDENTIFICATION STAGE: PPP projects that best reflect the potential of the country are identified with priority projects ranked, where efforts should be invested. These elements constitute the country's PPP pipeline: the projects in the portfolio are now ready to be evaluated in detail.

# 5 PREPARATION AND STRUCTURING OF PPP PROJECTS

The PPP project preparation stage is paramount as it determines the technical, legal and financial structuring of the project and prepares for its implementation. It consists of a feasibility study that provides the necessary data to inform the procurement of works and/or services.

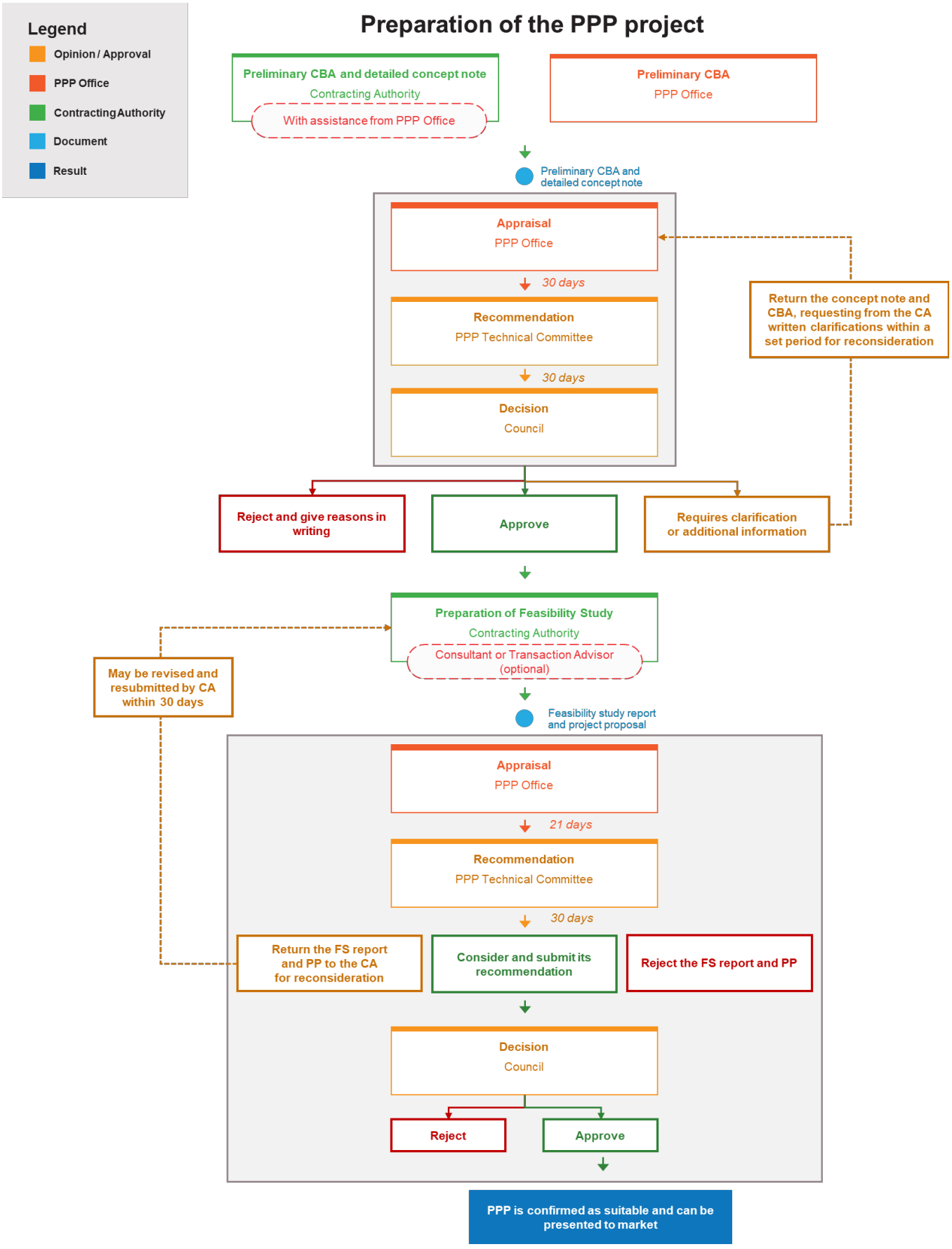
The purpose of this analysis is to identify the following for each project:

- The market for the project in question (it will include sound "sector-specific" assessment criteria)
- Its social and environmental feasibility, including the effects on climate change
- Its technical feasibility
- Its legal feasibility
- Its commercial feasibility
- Its economic impact
- Its financial feasibility
- The financial requirements and associated financing structure and expected returns on investment for the private partner including bankability of a project.
- The risks associated with the project for both public and private sectors using a risk matrix.

These elements are intended to provide public authorities with key information on projects that is essential to decide whether to proceed with the project using PPPs. Project feasibility studies are therefore an essential step in any PPP project, and success or failure of the project depends greatly on the robustness of the assessment.

The diagram below shows the preparation process for PPPs which are part of the approved PPP project list or where projects are identified by the PPP Office.

**Figure 5-1: Process for the preparation of a PPP project**



### Feasibility study

Feasibility studies are an essential phase in any PPP project, and their quality can have a substantial impact on the success or failure of a project.
The objectives of feasibility studies are the following:

- Develop the project's technical specifications
- Identify public demand for the services generated by the project
- Determine the applicable legal framework and identify potential constraints
- Determine the optimal institutional arrangement based on existing mandates
- Determine the financial sustainability of the project
- Determine the project's financing requirements, the respective share of public and private financing, and the fiscal sustainability of the public share
- Determine its acceptability to users
- Determine the project's risks and the appropriate allocation between the public and private sectors, by drawing up a risk matrix.

These elements are intended to provide Contracting Authorities with detailed information on their projects, which are necessary to decide whether to go ahead with the project and submit it to the market to select a private partner.

#### Duration of a PPP agreement

The following factors are to be considered to determine the duration of a PPP:

- the life span of the technology to be employed under the PPP agreement
- the investment standards that are required to be maintained by each party to the PPP agreement throughout the duration of the PPP agreement
- the economic and financial viability of the project and the economic life of the infrastructure, asset or facilities to be provided
- the depreciation of the project assets during the life span of the PPP agreement
- the period required by the parties to the partnership to— (i) maintain service delivery standards and investment levels during the life span of the PPP agreement; and (ii) recoup the party's investment.

The duration of a small and medium scale PPP agreement shall be determined by the financial model, and negotiated by the parties.

The Contracting Authority holds the prerogative to cease the advancement of a PPP project at any stage, without the obligation to provide justification for its decision. As a result, it retains the flexibility to opt out of the process, even if the feasibility study confirms the project's viability.

Furthermore, there are always avenues to explore to render a project feasible. For instance, an initially unviable PPP project could potentially become viable if substantial public subsidies are allocated by the public party. Each feasibility condition necessitates thorough assessment and scrutiny by the Contracting Authority before determining the project's progression.

The following table outlines the standard components of a feasibility study for PPP projects. However, additional information may be necessary based on the specific characteristics of the project under consideration. Appendix C provides the outline for a standard feasibility study.

| General Theme and Objective | Content | Rational |
|---|---|---|
| **Technical feasibility:** demonstrating the technical feasibility of the proposed PPP | Project implementation, technological choices, associated technical benefits and constraints, etc. | If no technical option meets the needs of the project, whether envisaged as a PPP or in another form, there is no point in continuing with the preliminary assessment.<br>In most cases, the Contracting Authority will call in one or more external consultants, experts in the technical sector of the project in question.<br>At the end of the technical feasibility study, the Contracting Authority must be in a position to answer the following question: what are the technical options available and how can they be implemented to meet the identified need? |
| **Economic feasibility:** demonstrating the benefits of the PPP for local populations and its acceptability to users | Confirmation of socio-economic interest, in particular the project's ability to meet the country's development challenges, within the framework of a cost–benefit analysis. | Socio-economic analysis studies the economic benefits that the project will bring to the public as a whole. These studies generally include an analysis of the social and economic environment of the project area, including demographic data, economic indicators and market trends. This analysis helps identify potential social and economic risks and opportunities associated with the project. |
| **Commercial feasibility:** assessing the demand for the project and the tariffs/user charges that could support the investment | Assessment of project demand, tariffs/user charges, and ensuring financial sustainability through comprehensive market analysis, forecasting, tariff structuring and risk assessment. | Having established that the project is technically feasible and economically viable, the next step is to understand whether the project, structured as a PPP, is attractive to the market.<br>Private operators assess the commercial attractiveness of a project if it enables them to obtain attractive returns in relation to the project's level of risk. In particular, the internal rate of return (IRR) is used to measure a project's profitability. |
| **Legal feasibility:** demonstrating the legality of the proposed PPP | Applicable legal framework, potential obstacles, choice of procurement procedure, etc. | Preparing the legal feasibility study ensures that the project complies with current laws and regulations. This means identifying legal constraints and following the necessary procedures.<br>Legal feasibility also enables to manage the legal risks associated with the project. It enables measures to be taken to mitigate these risks, and to ensure that they are properly managed throughout the project.<br>Finally, legal feasibility provides analysis and recommendations on the choice of procurement procedure. |

| General Theme and Objective | Content | Rational |
|---|---|---|
| **Institutional feasibility:** assess the Contracting Authority's ability to manage all phases of the project and the PPP Contract | The Contracting Authority's ability to structure the project, conduct the procurement procedure, negotiate, monitor and manage the project and the PPP contract in all its phases. | The purpose of an institutional feasibility study for a PPP project is to examine in detail the Contracting Authority's ability to take on the responsibilities and challenges inherent in successfully implementing the project and managing the PPP contract. This in-depth assessment determines whether the Contracting Authority has the skills, resources and mechanisms required to structure the project properly, carry out the procurement process, manage negotiations effectively and ensure appropriate monitoring and management at each phase of the project and contract.<br>Institutional feasibility involves analysing the Contracting Authority's organisational and technical capabilities, as well as its understanding of the legal, financial and operational aspects of the PPP. This may include assessing its past experience in delivering similar projects, the quality of its staff and teams dedicated to the PPP, its ability to coordinate and collaborate with internal and external stakeholders, and its command of the regulations and processes required to successfully set up and manage a PPP.<br>Institutional feasibility also includes identifying the public entities that play a role in the development or implementation of the PPP project, to ensure that the mandates of public institutions are respected (regulatory authorities, for example, or local authorities). |
| **Socio-environmental feasibility:** assessing the environmental impact of the PPP and demonstrating that this impact will comply with current legislation | Environmental and social issues and impacts, with particular assessment of climate change components. | This study is generally carried out in parallel with the technical feasibility study, which must be adapted to the results of the environmental and social impact study. Assessing and mitigating environmental and social risks is as much an integral part of risk management as managing the operational and financial risks of a PPP project. Taking environmental and social risks into account is crucial to the project, its success, and the impact it will have.<br>Proper consideration of environmental and social issues from the outset of a PPP project often results in improved performance of the final project.<br>For project stakeholders and neighbouring communities, analysing and mitigating the potential negative consequences of the project increases its social impact. Moreover, identifying and communicating the benefits of the project can lead to greater acceptance by the local population and communities, ultimately reducing the potential risks of project blockages. |

| General Theme and Objective | Content | Rational |
|---|---|---|
| | | Most bilateral and multilateral donors, as well as many financial institutions, require a demonstration of environmental and social risk assessment and mitigation. In addition to national regulations, most require compliance with international standards and best practices (e.g. Equator Principles, IFC performance standards, World Bank Group environmental, health and safety guidelines, etc.). -Establishing a methodology for managing these environmental and social risks makes it easier for international lenders to participate, thereby facilitating the search for financing. Certain international Private Parties may also be concerned about these principles, through their Corporate Social Responsibility (CSR) policy or because they are concerned about the reputational risk posed by environmental and social impacts. |
| **Financial feasibility:** demonstrating the financial robustness of the PPP in terms of expected traffic or revenues, and the corresponding financial and operating costs | Assessment of the project's financial and capital returns. | Evaluating project, financial and capital returns requires financial analysis, i.e. establishing a financial model of the project. A model generally involves determining the project's cash flows and various returns. This is followed by an analysis of the project's financial soundness.<br>In the case of a user-pay PPP, when revenues derived from user charges exceed investment and operating costs, the project is generally considered commercially attractive (provided the risks are deemed acceptable by potential investors and lenders). On the other hand, when the revenues from user tariffs are not deemed sufficient by potential project investors to achieve a certain level of profitability, the government will have to assess the public contributions required to guarantee the financial equilibrium of the project for the private partner in the PPP contract.<br>In the case of a public-payment PPP, the latter must be sufficiently large to ensure financial profitability for the Private Party in charge of the overall mission associated with the PPP contract. |

**Risk matrix**

The risk matrix is an essential document in the feasibility process. Its purpose is to identify the project's various risks at every stage, and to allocate management responsibility (anticipation, avoidance and/or treatment) to the party best placed to manage the risk, according to its nature, source, solution(s) to be implemented, etc. This risk matrix, which must be specific to the project concerned and its environment, will necessarily differ according to whether the PPP project is "public-pay", where risks are shared, or "user-pay", where risks are essentially, if not exclusively, borne by the concession operator.

Based on these analyses, the feasibility study results in:

- A recommendation for the most efficient form of contract, in line with the objective of optimising public expenditure.
- A proposed financial structure for the PPP project
- The project's technical specifications and associated costs (CAPEX and OPEX)
- A proposed risk allocation matrix for the project
- A reasoned note on the choice of procurement method
- The measures to be taken and the next steps to be taken to implement the PPP project.

A standard risk matrix is included as Appendix E: Standard Risk Matrix.

**Appraisal and approval of feasibility study report**

Once a Contracting Authority completes a feasibility study, it must submit the report and project proposal to the PPP Office for appraisal.

Within 21 days of receiving the documents, the PPP Office will review them and forward them to the Technical Committee for consideration.

Upon receiving the documents, the Technical Committee may:

- Recommend the feasibility study report and project proposal to the Council for approval.
- Recommend the feasibility study report and project proposal to the Council for rejection or approval providing written reasons.
- Return the feasibility study report and project proposal to the Contracting Authority for revisions.

If the documents are sent back for revisions, the Contracting Authority must review and resubmit them within 30 days for further appraisal and referral to the Technical Committee.

Based on the Technical Committee's recommendation, the Council may approve or reject the feasibility study report and project proposal. If rejected, the Council must provide written reasons.

If significant changes occur after approval—especially regarding affordability, value for money, or risk transfer—the Contracting Authority must prepare and submit a revised feasibility study report to the PPP Office.

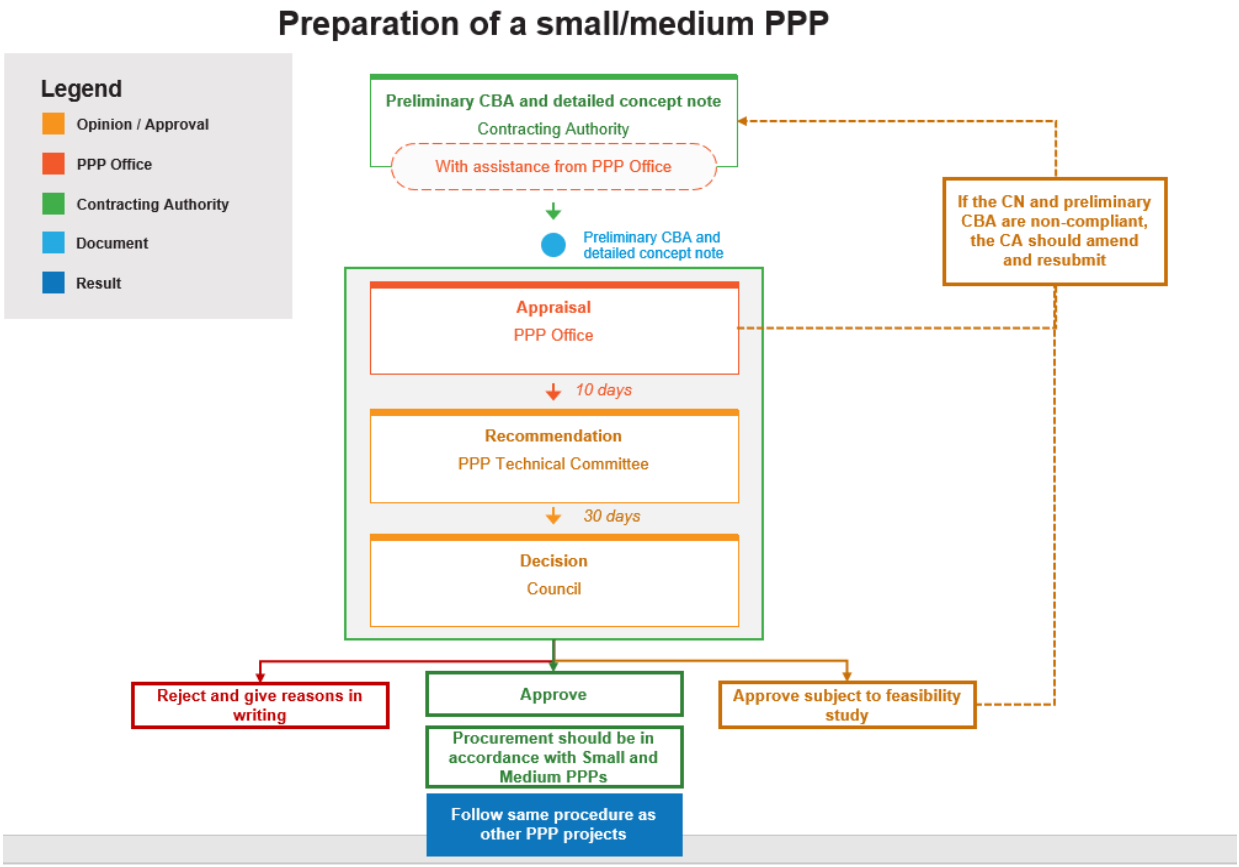
The PPP Office will then forward the revised report to the Technical Committee, which will review and submit its recommendation to the Council for a final decision.

**Appraisal of small and medium scale PPPs**

The PPP Act includes specific provisions related to small and medium scale PPPs, defined as "a Public Private Partnership whose total project value shall be as prescribed", related to the procurement process of

those PPPs and their duration. The PPP Regulations set out the process for small and medium-scale PPPs, defined as partnerships with a value of 10 million US dollars or less. The graph below illustrates the specific points at which the preparation process differs for these PPPs – they require a detailed concept note and preliminary economic cost benefit analysis, to be appraised by the PPP Office, Technical Committee and Council.

**Figure 5-3: Process for the preparation of a small or medium PPP**




## Fiscal commitments and contingent liabilities

The option of financing public infrastructure projects or the provision of social services through Public Private Partnership tends to free governments of fiscal space and minimises risks. However, governments may be exposed to fiscal risks and contingent liabilities such as viability gap funding and related capital contributions, subsidies or foregone incomes, or other means of sharing risks. These liabilities can be direct in which case the outcomes can be predicted with ease or indirect where the liability may or may not occur.

FCCL guidelines have been developed by the Public Private Partnership Office and are to be followed to undertake this assessment. Appendix D provides FCCL management guidelines.

The FCCL Management Guidelines provides a methodological tool for use by the Public-Private Partnership Office and the Contracting Authorities at both the Central and Local government levels to assess and manage fiscal commitments and contingent liabilities arising from Public Private Partnership projects.

AT THE END OF THE EVALUATION PHASE: The Contracting Authority has a full understanding of the project, its characteristics and what contractual, institutional and financial structuring to retain to obtain the best results from the project.

# 6 PROCUREMENT AND CONTRACTING OF PPP PROJECTS

The objective of the Contracting Authority is to identify the best private partner, with whom it can build a long-term partnership through a PPP contract.

The Contracting Authority prepares tender documents and the PPP contract. The basic procurement stages are organised into the Pre-qualification Stage and the Request-for-Proposal Stage. For complex PPP projects, where the Contracting Authority requires additional market consultations to establish private-sector appetite, the Contracting Authority could also conduct early market engagements prior to the pre-qualification to facilitate a more accurate targeting of the tender process.

To identify the private partner, a competitive bidding process (call for tenders) is recommended to take advantage of the technical, economic and financial competition between the various potential candidates and thus ensure the selection of the best possible private partner.

Once the private partner has been selected, a negotiation process begins, during which the parties discuss their respective rights and obligations in the context of the PPP project and results in a final contract that will govern relations between the two parties.

## 6.1 Overview of the procurement phase

The principles guiding PPP procurement encompass the following key elements:

1. **Competition:**
   - Encouraging a competitive environment by fostering fair and open competition among economic operators.

2. **Freedom of access to public procurement:**
   - Ensuring unrestricted access to public procurement through effective advertising and the implementation of measures that facilitate free access to information for all economic operators.

3. **Equal treatment of candidates and bidders:**
   - Establishing clear and precise criteria for the equal treatment of candidates and bidders.

4. **Transparency of the procedure:**
   - Guaranteeing transparency by informing all candidates and bidders in advance about the clear rules governing the call for tenders. It is crucial to ensure that these rules are adhered to, and the results of the procurement procedure are publicly disclosed.

5. **Selection based on most economically advantageous offer:**
   - Emphasising the selection of the most economically advantageous offer, where the decision is not solely driven by price. Factors such as product or service quality, delivery times, durability, innovation, and supplier reliability play a pivotal role in making an informed choice, contributing to a comprehensive evaluation beyond monetary considerations.

The figure below shows the stages involved in PPP procurement.

**Figure 6-1: Preparation of procurement process**

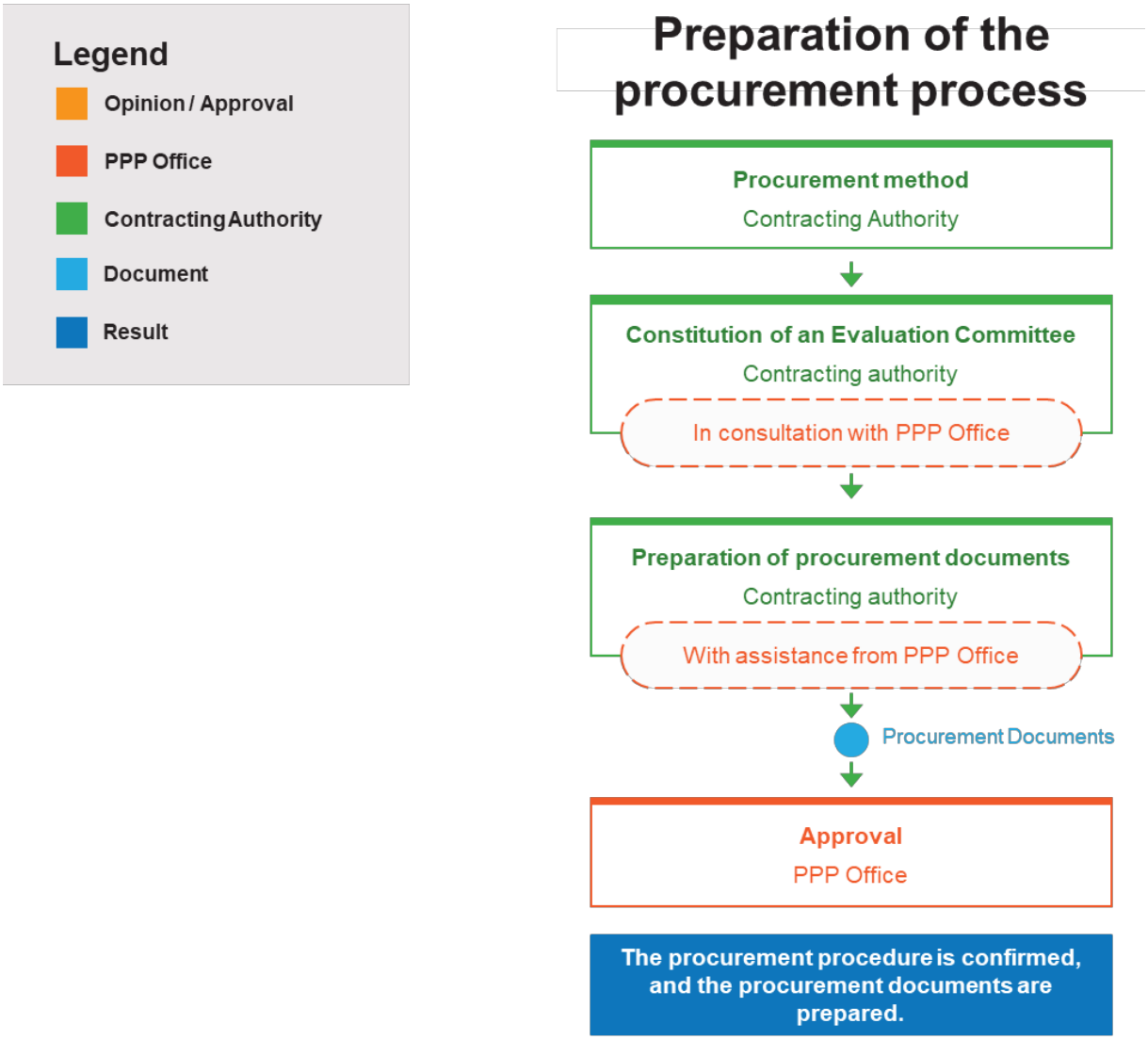
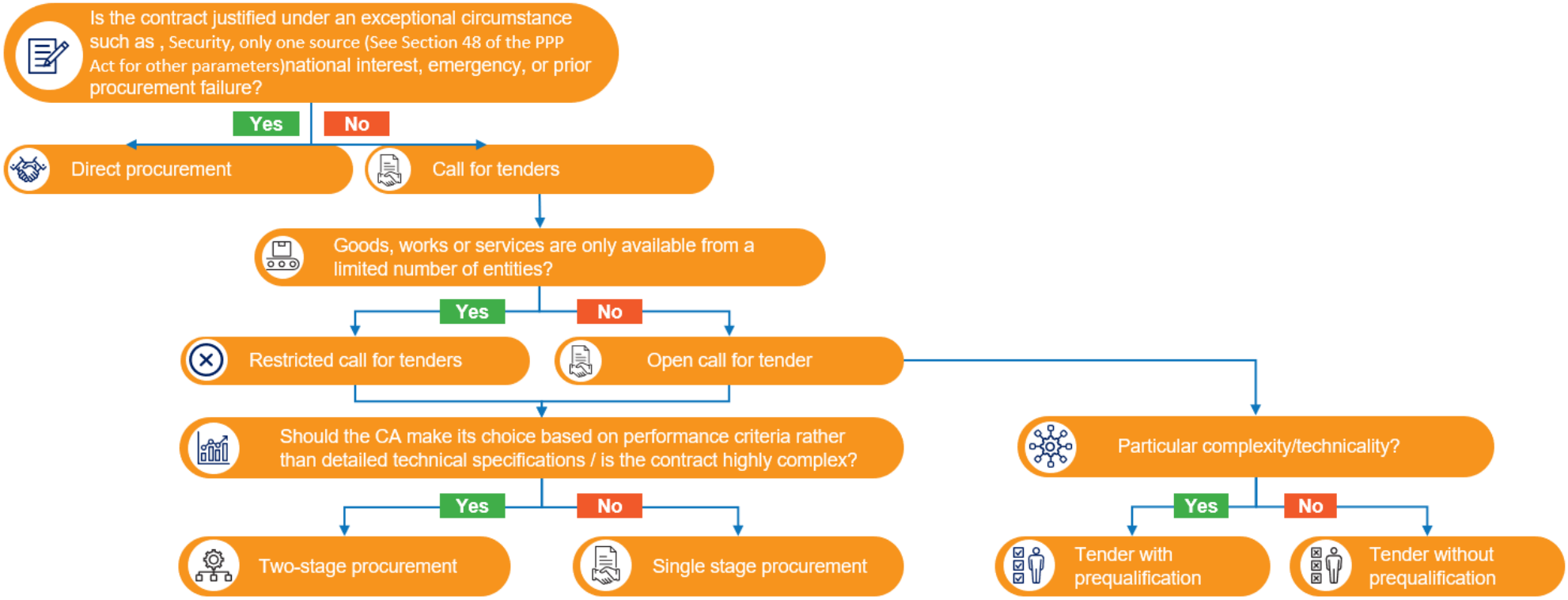


**Figure 6 2: Procurement process decision tree**



**Determining the procurement method**

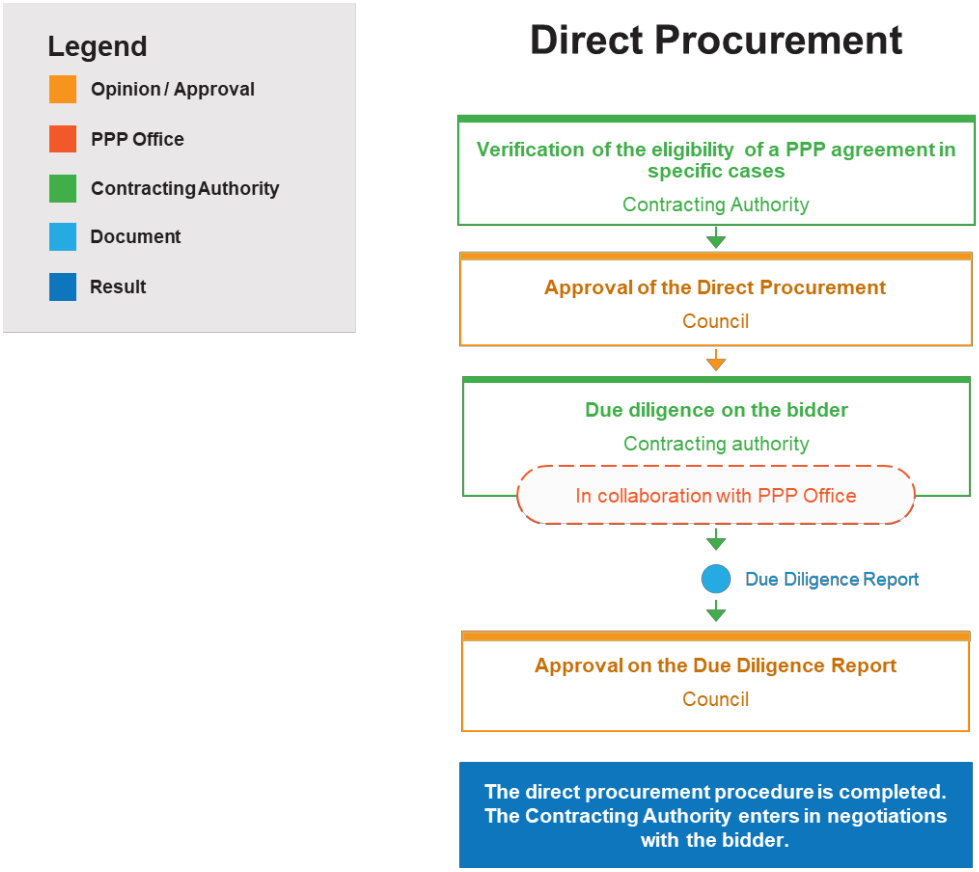
The adoption of a competitive bidding principle is compulsory for the selection of the private partner, emphasising candidate qualification and the evaluation of the most economically advantageous offer. The invitation to bid follows the following approaches:

- Pre-qualification
- Open or, exceptionally, direct.

Small and medium PPPs can be procured through (a) solicited, (b) unsolicited, or (c) direct procurement.

Direct procurement
The following figure depicts the stages under a direct procurement.

**Figure 6-3: Process for direct procurement**




Subject to Council approval, a Contracting Authority may enter into negotiations for a PPP agreement without following the solicited or unsolicited procedures in the following circumstances:

- The project is short-term and the anticipated initial investment does not exceed a prescribed threshold;
- The project concerns national defence or security;
- Only one source is capable of delivering the required service;
- There are operational or strategic advantages linked to a specific bidder based on national interest, bilateral or international cooperation, or external trade;
- There is an urgent need for the works or services and alternative procurement methods are impractical, provided the urgency was not foreseeable or caused by the contracting authority's delay;
- No proposals were received, or all were non-compliant, in response to a prior pre-selection or request for proposals, and a repeat process is unlikely to yield timely results;

- Additional goods, equipment, technology or services are required from an existing supplier for reasons of standardisation or compatibility, taking into account:
  - the effectiveness of the original procurement,
  - the limited size of the additional procurement,
  - and the reasonableness of price and lack of suitable alternatives;
- Any other case the Council deems appropriate based on its merits.

Where direct procurement is approved, the contracting authority, in collaboration with the PPP Office, shall conduct due diligence on the bidder. Subject to Council approval of the due diligence report, the contracting authority may proceed with negotiations.

**Procurement of transaction advisor**

If the PPP Office finds that a Contracting Authority does not have the technical expertise to procure a project, the Contracting Authority must, in consultation with the PPP Office, appoint a transaction advisor. The advisor will assist with project development, preparation, procurement, negotiation, and financial completion.

The appointment of a transaction advisor shall be based on the principles of transparency, disclosure, equality, cost-effectiveness, and equal opportunity.

**Constitution of an evaluation committee**

Each PPP project involves the establishment, of an evaluation committee within the Contracting Authority to assess pre-qualification applications and bids. This committee is constituted by the Contracting Authority in consultation with the PPP Office.

The functions of the evaluation committee are to:

- Evaluate bids in accordance with the relevant legislation and the solicitation documents issued by the Contracting Authority; and
- Prepare a detailed evaluation report.

Members of the evaluation committee carry out their mission with integrity and complete independence. They are bound by the confidentiality of information they become aware of during the exercise of their functions, including the PPP Contract, Bidders, and Offers, which continue to apply even after the cessation of their functions.

The number and qualifications of members of the evaluation committee shall be determined by the value and complexity of the procurement process.

**Preparation of procurement documents**

Any procurement procedure requires the preparation of procurement documents which provide potential bidders with information about the project and instructions on how to express their interest and/or submit their proposal for implementation. These procurement documents are prepared before the procedure is launched. Although they can be adjusted between the different stages, if necessary, it is recommended to prepare all the procurement documents upstream (for pre-qualification and for the tender notice).

The procurement documents consist of the notices of procurement and award, request for qualifications, requests for proposals and notification to bidders, which contain the draft PPP contract and its specifications. The procurement documents are then forwarded to the PPP Office for their approval.

The Request for Expression of Interest includes a description of the proposed project, key elements such as the services to be provided by the concessionaire and the envisaged financial arrangements and a summary of the main terms of the anticipated PPP agreement. The Request for Expression of Interest also sets out the procedure, location, and deadline for submitting applications, provides information on how to obtain the pre-selection documents, and reserves the Contracting Authority's right to invite proposals only from a limited number of qualified bidders who best meet the pre-selection criteria.

The Request for Proposals sets out the detailed requirements that bidders must follow in preparing and submitting their proposals for a PPP project. It includes general information necessary for proposal preparation, a clear outline of the project scope, estimated cost, and any non-negotiable contractual terms. The request for proposals also defines technical specifications and performance indicators, including requirements related to safety, security, and environmental standards. Additionally, it specifies the evaluation criteria, any thresholds for disqualifying non-responsive proposals, the relative weighting of each criterion, and the methodology for applying these during the evaluation process.

Best practice is to share the draft PPP contract with potential bidders during the PPP bidding phase, as an appendix to the bidding documents. Potential bidders should be invited to provide comments on the draft contract, and to identify any terms of concern. This will speed up the subsequent contract negotiation phase.

The Contracting Authority shall ensure that the tender documents do not contain any significant discrepancies with the information contained in the feasibility study report (including the draft clauses or sections of the PPP contract and procurement plan) and with the approved PPP contract.

A generic Concession Agreement template can be obtained from the PPP Office.

**Approval of the procurement documents**

Once the procurement documents are prepared, the Contracting Authority submits them to the PPP Office for approval. This approval allows the authority to advertise, invite, solicit, or request bids for the pre-selection process.

The PPP Office checks the consistency of the documents and may suggest improvements to the chosen procurement method and the content of the documents.

### 6.1.1 Pre-qualification

The prequalification process allows for a shortlist to be developed prior to the publication of call for tenders. The following figure depicts the pre-qualification process.

**Figure 6 4: Pre-qualification process for applicants**




### Publication of Request of Expression of Interest

A Contracting Authority may issue a bidding document for a PPP to a prospective bidder only after obtaining the approval of the PPP Office.

PPP tenders are complex and time-consuming to evaluate. The pre-qualification stage enables the Contracting Authority to notify the market that it intends to select a private operator to implement a public project. The definition of general criteria at the pre-qualification stage promotes adequate competition at the tendering stage.

The Request for Expression of Interest must contain sufficient information about the project and how it will be developed to enable bidders to decide whether to express interest. This document also clearly sets out the rules for submitting and compiling applications for prequalification, as well as the legal, technical and financial requirements for prequalification.

The invitation for Request for Expression of Interest must be published in line with guidelines issued by the PPP Office.

- For national invitations to tender, a Request for Expression of Interest is published by the Contracting Authority in a daily newspaper of general circulation and in any other medium deemed relevant. The Request for Expression of Interest is published in such a way as to inform all potential candidates of the existence of the project.
- For international invitations to tender, the Request for Expression of Interest is also published in a medium with wide international circulation.

**Criteria for assessing bidder's capabilities**

One of the aims of the pre-qualification procedure is to select competent companies with the necessary capacity to implement the project. It is therefore important to take into account the qualifications of each company expressing interest in the project. Company pre-qualification criteria can be quantitative or qualitative. Generally, financial strength and experience gained in similar projects should be taken into account.

**Figure 6-5: Minimum criteria for pre-qualification**

| Themes | Evaluation criteria | Document to provide |
|---|---|---|
| • General experience and relevant technical expertise:<br>• Adequate professional and technical qualifications to carry out all phases of the project. | • Candidate's experience in similar projects.<br>• Minimum number of projects developed/constructed/operated of specified capacity.<br>• Minimum number of projects developed/constructed/operated of more than a specified value.<br>• Minimum number of similar plant operation and maintenance contracts.<br>• Any other criteria appropriate to the needs of the PPP project.<br>• Ability to deliver a PPP project in addition to existing commitments.<br>• Proposed team of experts.<br>• Experience of working under similar conditions (this criterion is critical if local conditions have a material impact on the technical solution or | • Information and references relating to similar projects.<br>• Detailed statement of the workforce, equipment and materials available to the candidate to carry out the PPP contract, specifying whether they are owned or leased.<br>• Proof of professional risk insurance. |
| • Material and human resources:<br>• Management and organisational skills, relevant and appropriate experience, particularly past experience in managing similar infrastructures of comparable size. | | |
| • Financial capacity, net income, sales figures, or other financial criteria deemed appropriate:<br>• Sufficient financial capacity to manage the project's financial flows and to support its financing requirements. | • Capital / value of the applicant (a minimum net worth may be requested depending on the size and needs of the project)<br>• Average annual sales (from audited and certified financial statements)<br>• Cash flow (from audited financial statements)<br>• Applicant's ability to invest the capital required for the project.<br>• Ability to secure the funds required for the project.<br>• Applicant's ability to meet contractual terms for the duration of the contract. | • Certified financial statements and annual reports for the last three financial years, or equivalent documents complying with regulations.<br>• Statement of total sales and net income for services related to the PPP project over the last three financial years.<br>• Certificate from the national authorities or the State of the foreign candidate confirming that the candidate has fulfilled its tax and social security obligations.<br>• Attestation from the national authorities or the government of the foreign candidate's country certifying that neither the candidate nor its de facto or de jure managers have been subject to temporary or definitive sanctions. |

**Evaluation of pre-qualification applications**

The evaluation committee must review the Expressions of Interest and submit an evaluation report to the Contracting Authority, which includes:

- A shortlist of qualified bidders; and
- A statement confirming that:
  - The shortlisted bidders have the capacity and mechanisms to successfully implement, manage, enforce, monitor, and report on the proposed project; and
  - The PPP Office and the shortlisted bidders have conducted due diligence, ensuring their competence to enter into a PPP agreement.

Once the Contracting Authority receives the evaluation and due diligence report, it must submit it to the PPP Office within seven days, demonstrating compliance with the pre-selection criteria.

A bidder will be disqualified at the pre-qualification stage if they:

a) Provide false, inaccurate, or incomplete information
b) Engage in collusion, dishonesty, or corrupt practices
c) Fail to meet the eligibility criteria stated in the Request for Expressions of Interest
d) Violate the provisions of these Regulations or any other relevant law.

**Review and approval**

Once the PPP Office receives the evaluation and due diligence report, it will submit it to the Technical Committee for review.

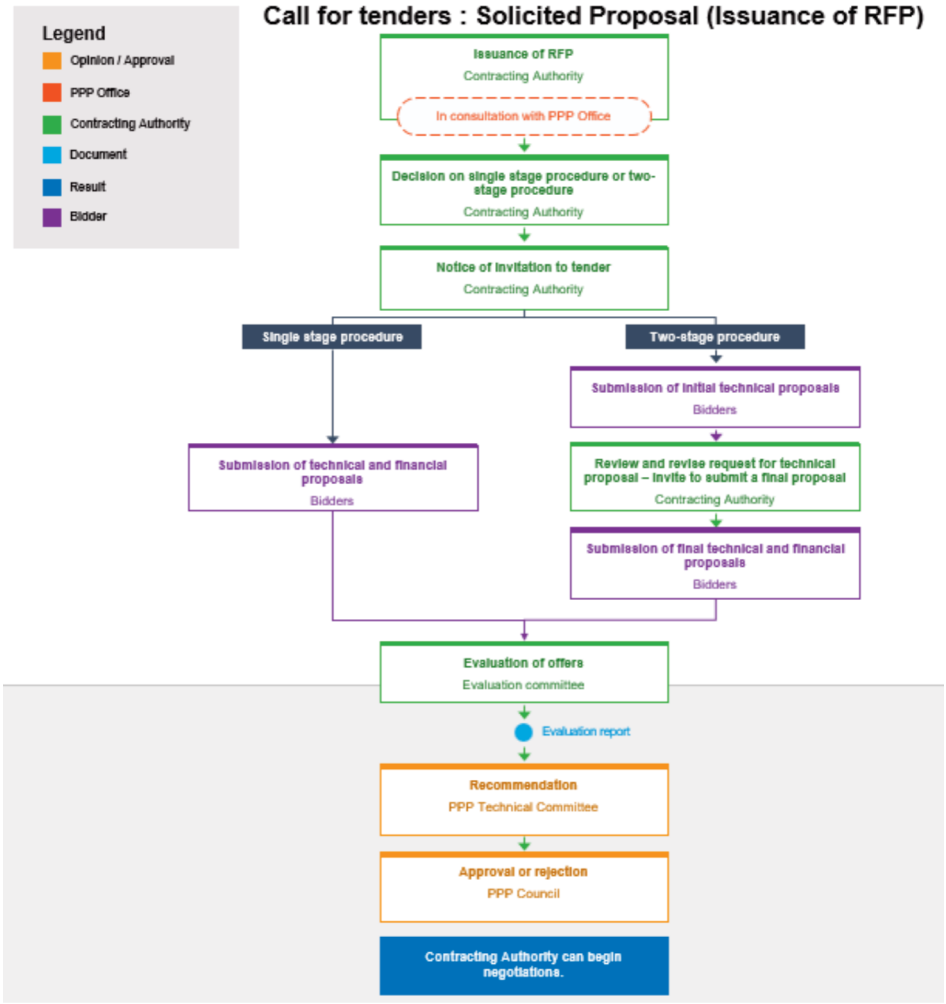
The Technical Committee will assess the report and make a recommendation to the Council, which will decide whether to approve or reject it.

If the Council approves the report, the Contracting Authority will invite the pre-selected bidders to submit proposals.

### 6.1.2 Open call for tenders

The following figure depicts the tendering and evaluation process for a PPP contract.

**Figure 6-6: Process for solicited call for tenders**




**Single stage and two-stage procedures**

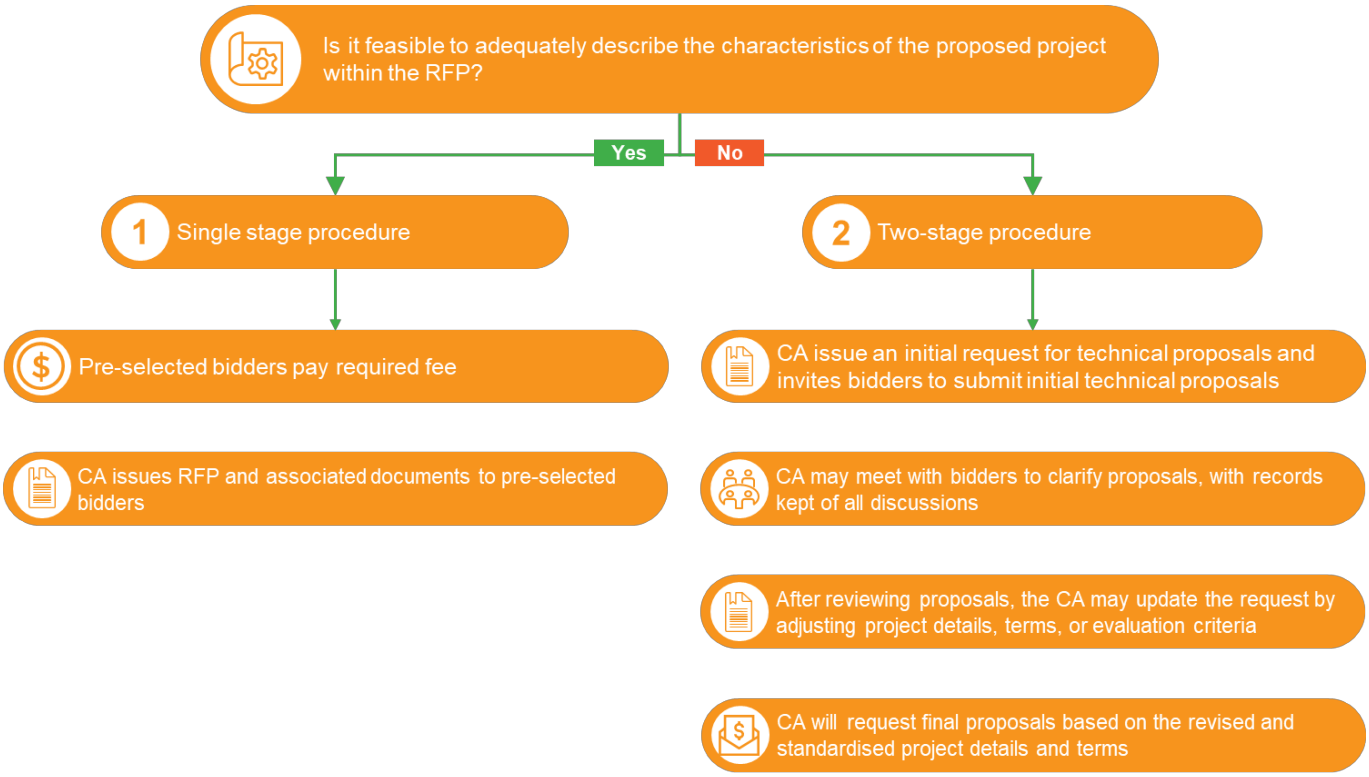
In a one-stage procurement process, the Contracting Authority issues a single solicitation document, typically a Request for Proposals (RFP), to all interested bidders. Bidders submit their technical and financial proposals simultaneously. The evaluation committee reviews and evaluates these proposals based on predefined criteria, and the contract is awarded to the bidder with the most advantageous offer.

In a two-stage procurement process:
(a) the initial request for technical proposals shall call upon the bidders to submit, in the first stage of the procedure, initial proposals relating to project specifications, performance indicators, financing requirements or other characteristics of the project as well as the main contractual terms proposed by the Contracting Authority or Public-Private Partnership Office.

(b) the Contracting Authority may convene meetings and hold discussions with any of the bidders to clarify questions concerning the initial request for technical proposals or the initial technical proposals and accompanying documents submitted by the bidders which shall be recorded in minutes of the meeting or discussion.

(c) following evaluation of the technical proposals received, the Contracting Authority may review and, as appropriate, revise the initial request for technical proposals by removing, modifying or adding to any aspect of the initial project specifications, performance indicators, financing requirements or other characteristics of the project, including the main contractual terms and any criterion for evaluating technical proposals and ascertaining the preferred bidder, as set out in the initial request for technical proposals.

**Figure 6-7: Single-stage and two-stage procedure**




## Evaluation criteria

The criteria for evaluating the technical aspects of a proposal must include:

- technical soundness;
- compliance with environmental standards in accordance with applicable laws;
- operational feasibility;
- quality of services and measures to ensure service continuity; and
- any other criteria that may be prescribed.

The criteria for evaluating the financial and commercial aspects of a proposal shall include:

- the present value of proposed user levies, unit prices, and other charges over the term of the agreement;
- the present value of any direct payments proposed by the Contracting Authority;
- the estimated costs associated with design, construction, annual operation and maintenance, including the present value of capital and operating expenditures;
- the robustness of the proposed financial arrangements;
- the extent to which the bidder accepts the negotiable contractual terms proposed by the Contracting Authority in the request for technical proposals;
- the anticipated social and economic benefits of the proposal; and
- any other criteria that may be prescribed.

**Outcome of Evaluation**

The evaluation committee reviews all proposals based on the criteria and weighting outlined in the request for proposals. It ranks all eligible proposals and awards the preferred bidder status to the highest-ranked bidder. This ranking will be included in the evaluation report submitted to the Contracting Authority.

Once the Contracting Authority receives the evaluation report, it forwards it to the PPP Office within seven days. The evaluation report must include a summary of the evaluation findings, an affordability assessment, a value for money assessment, and a risk assessment, including a risk allocation matrix. It must also detail any government support required, including any significant potential contingent liabilities.

The evaluation process takes 30 days, covering preselection, technical, financial, commercial, and other relevant aspects of the project, leading to the preparation and submission of the report.

**Approval**

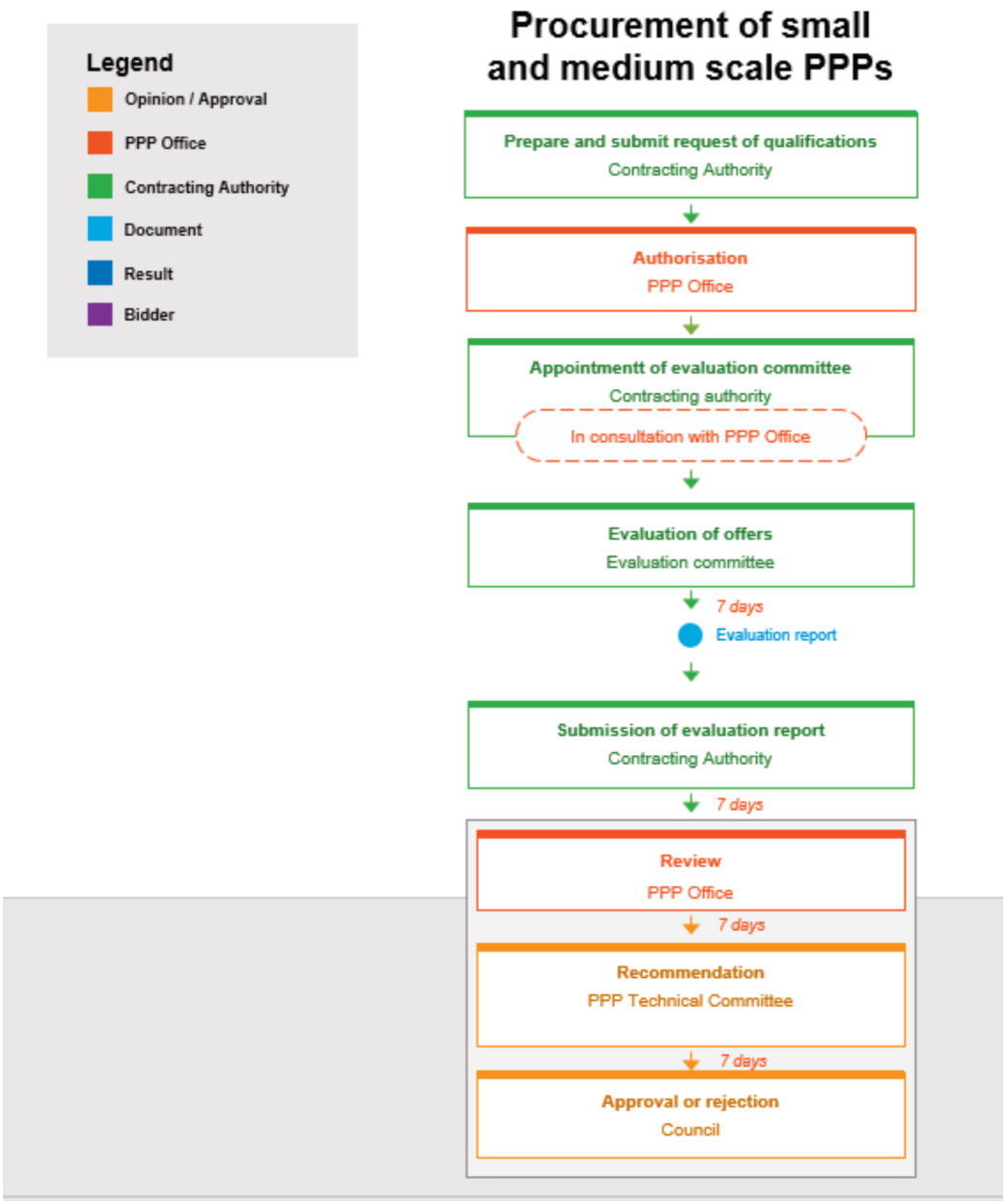
The PPP Office submits the evaluation report to the Technical Committee for review. After assessing the report, the Technical Committee makes a recommendation to the Council, which will either approve or reject it. If approved, the Council directs the Contracting Authority to begin negotiations with the preferred bidder.

### 6.1.3 Procurement of Small and Medium Scale PPPs

The procurement of Small and Medium Scale Public Private Partnerships is simplified.

A Contracting Authority that intends to procure, a Small and Medium Scale Public Private Partnership, using a solicited method, shall, after the approval of the Small and Medium Scale Public Private Partnership by the Council, prepare and submit a request to the PPP Office for authorization, to issue a Request for Proposals, which shall include a Request of Qualifications of the proposed bidder.

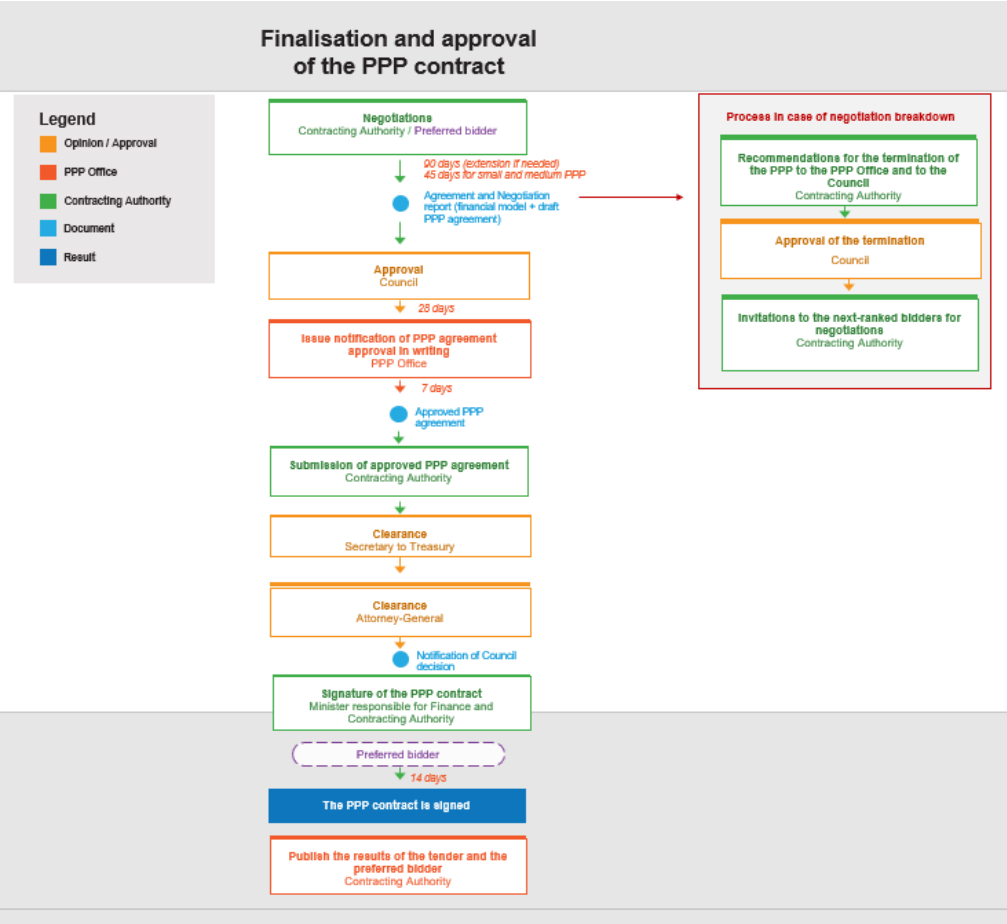
**Figure 6-8 Procurement of Small and Medium Scale PPPs**



## 6.2 Finalisation and Approval of the PPP Contract

The following figure depicts the contracting stages.

**Figure 6-9: Finalisation and approval of the PPP contract**




### Negotiation

Within 10 days of the Council approving the evaluation report, and in consultation with the PPP Office, the Contracting Authority appoints a multi-sectoral negotiation team to engage with the preferred bidder on the partnership's terms and conditions. The negotiation team shall consist of at least nineteen members with relevant technical knowledge, experience and skill of the project, and experts with knowledge in Public Private Partnership, law and finance. The team shall have at least one representative from the PPP Office.

The Contracting Authority then invites the preferred bidder to negotiate the PPP agreement. Negotiations must not change the project scope in a way that significantly shifts risk, nor include terms marked as non-negotiable in the Request for Proposals.

Negotiations must be completed within 90 days unless the PPP Office grants an extension. Any request for an extension must be submitted at least 21 days before the deadline, with valid reasons, and any rejection must be explained in writing.

If negotiations seem unlikely to succeed, the Contracting Authority must inform the bidder of its intention to terminate negotiations and allow time for the bidder to submit its best and final offer. If the offer remains unacceptable, the Contracting Authority recommends terminating negotiations to the PPP Office, seeking Council approval.

Once approved, the Contracting Authority may invite the next-ranked bidder(s) who meet the evaluation criteria to negotiate, following the ranking order. This process continues until an agreement is reached with one of the bidders or all proposals are rejected.

Once negotiations with a bidder are terminated, they cannot be resumed.

**Mandatory provisions in a PPP agreement**

A PPP agreement shall provide for such matters as the parties consider appropriate, including:
(a) the nature and scope of the works to be performed and the services to be provided by the concessionaire;
(b) the conditions under which services are to be provided, and the extent of any exclusivity granted to the concessionaire under the agreement;
(c) the assistance that may be provided by the Contracting Authority to the concessionaire in securing the necessary licences and permits required for the implementation of the project;
(d) the return of assets, if any, to the Contracting Authority upon the termination or expiry of the agreement, in such manner as may be provided for in the agreement;
(e) the procedures for review and approval of engineering designs, construction plans and specifications by the Contracting Authority, and the procedures for testing, final inspection, approval, and acceptance of the project;
(f) the right of the PPP Office, the Contracting Authority, or any relevant regulatory agency to monitor the works and services performed by the concessionaire, and the conditions and extent to which they may order variations to the works or services or take other reasonable actions to ensure the proper operation of the project and compliance with applicable legal and contractual requirements;
(g) the concessionaire's obligation to provide the PPP Office, the Contracting Authority, or other relevant regulatory agency, as applicable, with reports and other information concerning its operations;
(h) the remedies available in the event of default by either party;
(i) the extent to which either party may be exempt from liability for failure or delay in performing its obligations under the agreement due to circumstances beyond its reasonable control;
(j) the duration of the agreement and the respective rights and obligations of the parties upon its expiry or termination;
(k) the methodology for calculating compensation;
(l) the governing law of the agreement and the mechanisms for settlement of disputes that may arise between the concessionaire and the Contracting Authority or PPP Office;
(m) the rights and obligations of the parties concerning confidential information;
(n) the applicable financial terms;
(o) the allocation of generic risks between the Contracting Authority and the concessionaire;
(p) corporate social responsibility requirements, where applicable;
(q) the payment arrangements to the concessionaire, whether by way of compensation from a revenue fund or through user levies collected by the concessionaire for services rendered;
(r) the mechanisms and procedures for transfer of assets to the Contracting Authority in the event of winding up of the project;
(s) provisions on price revisions following negotiations, provided such revisions do not compromise the quality specifications set out in the original tender; and
(t) any other information as may be prescribed.

**Approval**

Once negotiations are completed, the Contracting Authority must submit a negotiation report to the Council for approval. This report must include the financial model and the draft PPP agreement.

The Council shall within 28 days of the receipt of the negotiation report, approve, reject, or defer the execution of a Public Private Partnership agreement between a Contracting Authority and a preferred bidder.

A Contracting Authority shall submit the approved Public Private Partnership agreement for clearance to the Secretary to Treasury in accordance to the Public Financial Management Act.

A Contracting Authority shall, prior to the execution of the Public Private Partnership agreement, submit the approved Public Private Partnership agreement to the Attorney General for clearance.

**Constitution of an SPV**

Before the execution of the PPP agreement, the preferred bidder must establish an SPV incorporated in the Republic of Zambia. The agreement must include terms consistent with those in the request for proposals. These terms must specify the minimum capital required for the SPV and the process for obtaining the Contracting Authority's approval of the SPV's Articles of Association and any amendments.

**Execution of agreement**

After receiving clearance from the Attorney-General, the Minister responsible for finance and the Contracting Authority will sign the agreement with the SPV formed by the preferred bidder.

**Disclosure**

Within 14 days after signing the agreement, the Contracting Authority must publish the tender results and details of the preferred bidder in a widely circulated daily newspaper and through accessible electronic media in the Republic of Zambia.

# 7 EXECUTION AND MONITORING OF PPP PROJECTS

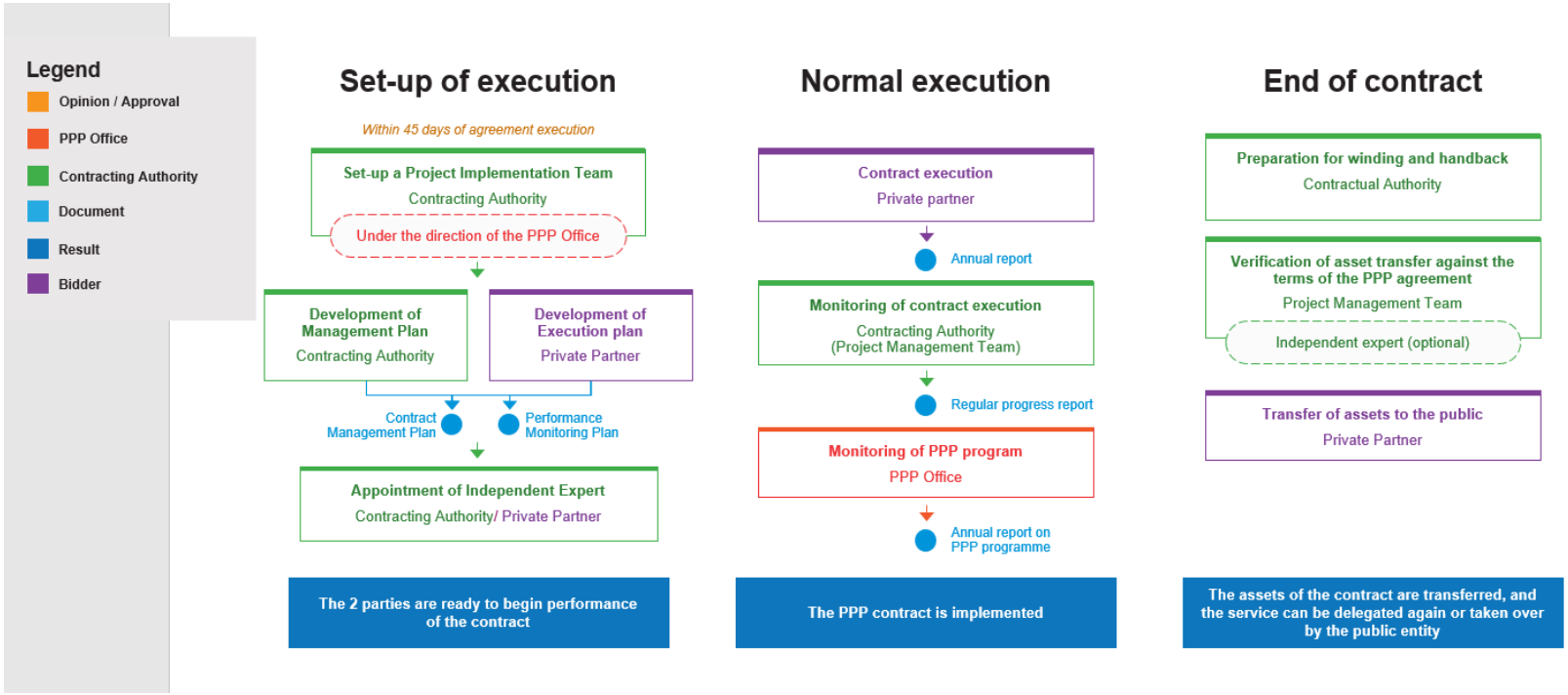
Following the signing of the PPP Agreement, the Contracting Authority sets up a project implementation team to monitor the project's implementation, ensure its accordance with the applicable legal standards and the contractual conditions agreed to by the parties, and ensure that the private partner fulfils its contractual obligations during the major phases of the project's implementation:

- The development phase
- The construction phase
- The pre-operational phase
- The operation phase
- The end of the contract
- The project handback

The project implementation team must also ensure that the public entity fulfils its contractual obligations.

Executing and monitoring the implementation of the PPP contract requires the participation and coordination not only of the private partner and the Contracting Authority, but also of other public authorities with competencies in this area.

**Figure 7-1: Execution and monitoring of PPP projects**



## 7.1 Project implementation team

### Setting up the project implementation team

With guidance from the PPP Office, the Contracting Authority must set up a project implementation team to oversee all phases of the project within 45 days of the execution of the PPP agreement. The team is headed by an officer of the Contracting Authority, who is appointed by the Contracting Authority in consultation with the PPP Office taking into account the officer's skillset and experience in PPPs, and appropriate technical, legal or financial experience.

The project implementation team operates within the Contracting Authority's allocated budget and shall establish and maintain mechanisms for:

- measuring project outputs, as specified in the PPP agreement;
- monitoring the implementation and performance of the project;
- ensuring coordination with the concessionaire;
- maintaining communication channels with relevant stakeholders;
- reviewing issues identified and reported by the contract manager appointed under the PPP agreement; and
- preparing monthly status reports on the implementation and performance of the project, annual reports, and other periodic reports for submission to the PPP Office through the Contracting Authority.

### Development of the performance and monitoring plan and contract management plan

During the execution stage, the concessionaire must prepare and submit project performance and monitoring reports to the Contracting Authority at intervals set in the PPP agreement.

At the same time, the Contracting Authority must develop a project management plan and appoint a Contract Manager. The Contract Manager is responsible for overseeing the Contracting Authority's obligations and ensuring the concessionaire's performance aligns with the PPP agreement.

### Project implementation

The normal execution of a PPP contract begins once all contractual conditions have been fulfilled by both parties. The PPP agreement clearly defines the rights, obligations, and conditions under which the private partner carries out the works and delivers the agreed services. This legal framework includes key elements such as the nature and scope of the works, service delivery conditions, approval and inspection procedures, compensation mechanisms, risk allocation, confidentiality, dispute resolution, and governance.

Once the contract is launched, the private partner undertakes the execution phase of the agreement.

In addition to its execution duties, the private partner is required to submit an annual report detailing the progress of the project. This report helps monitor contract implementation and enables early detection of potential risks or delays.

Simultaneously, the Contracting Authority, through its project management team, is responsible for the monitoring of contract execution. This includes technical, administrative, and financial oversight, as well as the submission of regular progress reports to the PPP Office. The Contracting Authority also plays a key role in coordinating inspections, approving deliverables, and ensuring compliance with timelines and contractual obligations.

The PPP Office, provides oversight of the overall PPP program. It offers technical guidance, ensures regulatory compliance, and compiles an annual report on the PPP program, which includes key performance indicators and forecasts related to future commitments.

The concessionaire is also required to submit detailed project performance and monitoring reports according to the schedule defined in the PPP agreement. The concessionaire must maintain accurate accounting records, which must be made available for review by the Contracting Authority or the PPP Office upon one month's notice and submit audited financial statements and any other reasonably requested information within three months after the end of each financial year.

Once all these steps are fulfilled and the required reports are submitted and reviewed, the PPP contract is deemed to be properly implemented, in alignment with the objectives of the PPP program.

**End of contract**

At the conclusion of a PPP agreement whether at expiry or upon early termination the Contracting Authority is responsible for ensuring that the transfer of assets is carried out in accordance with the terms and conditions set out in the PPP agreement. This process, known as handback marks the moment when the project's infrastructure or assets formally revert to the public sector.

The handback phase begins with an evaluation of the condition of the assets, which is conducted by the project management team or an independent assessment body designated for this purpose. The goal is to determine whether the infrastructure has been maintained to the required standards over the contract period.

Following this evaluation, the Contracting Authority verifies that the condition and status of the assets align with the obligations established in the PPP agreement. This includes checking for compliance with technical specifications, maintenance requirements, and any refurbishment or upgrade obligations that may be stipulated before the transfer.

Winding-up and handback

According to the PPP Act, 2023, a PPP agreement shall provide, as appropriate, for:
(a) the compensation to which the concessionaire may be entitled in respect of assets transferred to the Contracting Authority or to a successor concessionaire, or acquired by the Contracting Authority;
(b) the transfer of technology necessary for the continued operation of the project;
(c) the training of personnel of the Contracting Authority or of a successor concessionaire in the operation and maintenance of the project;
(d) the provision by the concessionaire of ongoing support services and resources, including, where required, the supply of spare parts, for a reasonable period following the transfer of the project to the Contracting Authority or to a successor concessionaire;
(e) a requirement that the asset, at the time of expiry of the agreement, shall possess a reasonable remaining useful life; and
(f) the establishment of a contingency fund to cover any maintenance requirements after handback.

The PPP agreement shall include provisions setting out the mechanism by which winding-up and handback shall be affected no later than two years prior to the expiry of the agreement.

Once compliance is confirmed, the assets are formally transferred to the Contracting Authority. This marks the completion of the PPP contract's lifecycle. At this point, the Contracting Authority may choose to reassign service delivery through a new PPP arrangement or resume direct control and operation of the service or infrastructure internally.

## 7.2 Managing unforeseen events during implementation

Since a PPP contract is complex and concluded for a long period, many unforeseen events may occur during its execution. The PPP contract must therefore stipulate how these events, and their consequences, are to be managed by the Parties. These include:

- Substitution of concessionaire
- Variation or amendment of the PPP contract
- Termination of the PPP contract.

### Substitution of concessionaire

A Contracting Authority may, in the case of material default by the concessionaire or in any other event that could otherwise justify termination of the PPP agreement, agree with any entity extending financing for the project and the concessionaire to substitute the concessionaire with another party to assume the obligations under the existing PPP agreement.

The Contracting Authority may also facilitate for the concessionaire to securitise any project receivables and assets in favour of an existing financing for a project on terms that the Contracting Authority may determine in order to safeguard the successful implementation, completion, management, and control of the project, subject to the approval of the Council.

### Variation or amendment of the PPP contract

During implementation, exceptional circumstances may justify a revision of the concession, particularly in cases of significant economic, financial, or legislative disruptions that alter the contract's original balance. Such revisions are strictly regulated. They must include the following:

- occurred during the performance of the concession agreement;
- be beyond the control of the concessionaire; and
- be of such a nature that the concessionaire may not reasonably be expected to have:
  - taken the changes into account at the time the PPP agreement was negotiated; or
  - avoided or overcome the consequences.

They may also be considered in the event of force majeure, project suspension by a public entity, or mutual agreement justified by national or public interest.

Notwithstanding these provisions, a PPP agreement may be revised if the concessionaire demonstrates that the revision upholds the core objectives of the partnership. In particular, the proposed revision must ensure:

- the project continues to deliver value for money;
- the project remains affordable, as verified by the PPP Office where the revision has financial implications;
- the appropriate transfer of risk to the concessionaire is maintained;
- public services continue to be delivered efficiently and effectively; and
- environmental protection and preservation are upheld.

If parties to a PPP agreement wish to change or amend the contract, the Contracting Authority must submit a draft of the proposed changes to the PPP Office for review.

The PPP Office will assess the proposal within 10 days and forward it, along with recommendations, to the Technical Committee. The Technical Committee will then review the draft within 10 days and submit its recommendations to the Council.

If the Council approves the proposed changes based on the Technical Committee's recommendations, the Contracting Authority must send the amendment to the Attorney General for legal clearance.

Once cleared, the amended PPP agreement will be signed by the Minister responsible for finance, the Contracting Authority, and the private party.

The duration of a Small and Medium Scale PPP agreement shall not be extended, except where (a) there is a delay in completion or interruption of operations due to circumstances beyond any party's control; (b) the project is suspended for reasons not caused by the concessionaire; (c) there is an increase in costs arising from requirements of the Contracting Authority which was not foreseen or included in the agreement; or (d) there is an increase in costs arising from requirements of the bidder in an unsolicited project which was not foreseen or included in the financial model or agreement.

**Termination**

A PPP agreement shall include provisions that:

a) allow the Contracting Authority to terminate the agreement where the concessionaire can no longer reasonably be expected to perform its obligations due to insolvency or material default, or for compelling reasons related to public interest, subject to the payment of compensation as agreed in the PPP agreement;
b) allow the concessionaire to terminate the agreement in the case of material default by the Contracting Authority or another public authority of its obligations under the agreement, or, where the parties have failed to agree on a revision of the agreement;
c) allow either party to terminate the agreement by mutual consent or where the performance of obligations is rendered impossible by circumstances beyond a party's reasonable control;
d) specify how compensation due to either party shall be calculated in the event of termination of the PPP agreement.

# 8 DEALING WITH UNSOLICITED PROPOSALS

What is an unsolicited bid?

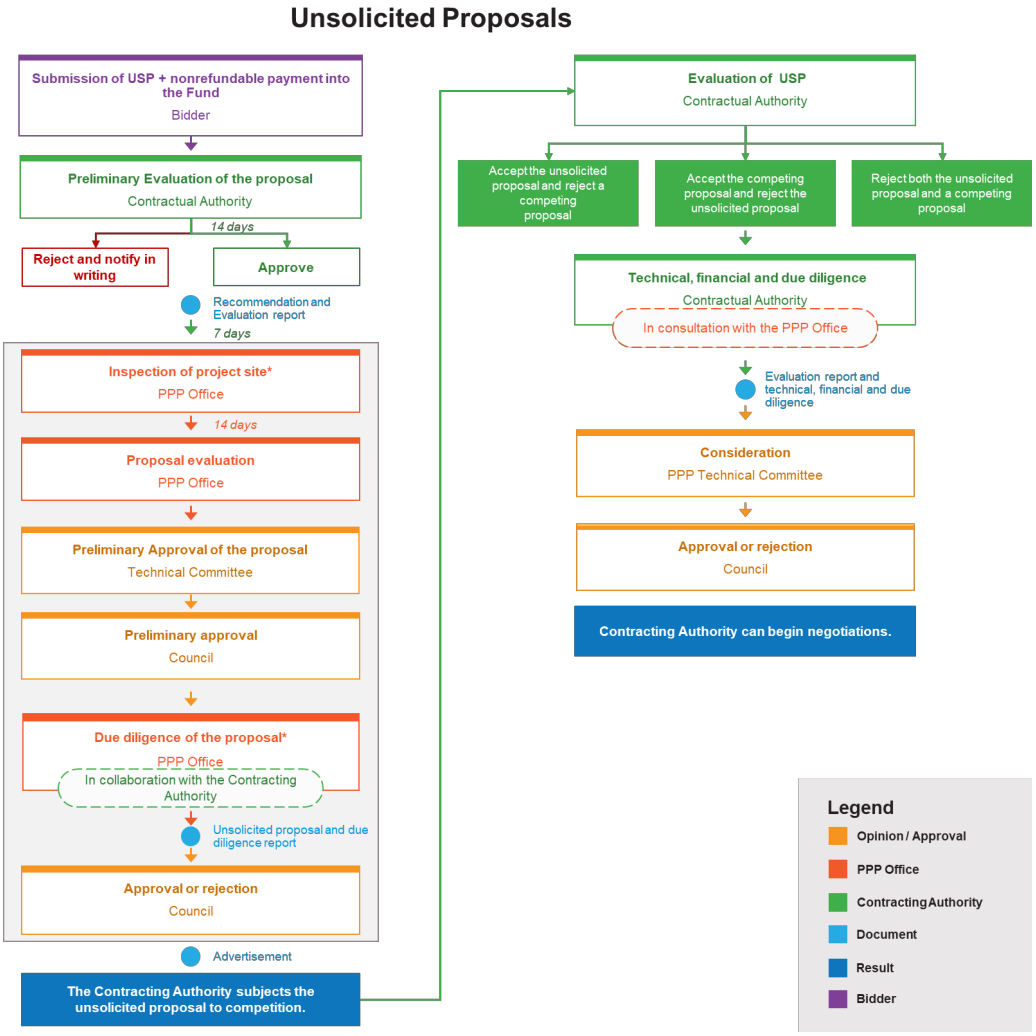
Traditionally, governments engage the private sector in infrastructure development through a public planning process, known as public-initiated projects. However, in instances where a private entity initiates the proposal for an infrastructure or service without explicit government invitation, it is termed as an unsolicited proposal, representing an exception to the principle of public initiative.

Unsolicited proposals (USP) offer several advantages for the government:

- They provide opportunities for the private sector to innovate in addressing public infrastructure and service needs that may not have been identified by the government.
- Government resources allocated for project preparation and development can be conserved if the unsolicited bidder undertakes the feasibility study.
- The interest shown by the promoter in the project signals its viability, thus enhancing the likelihood of successful implementation.

The PPP Act, 2023 outlines the following process for responding to unsolicited proposals.

**Figure 8 1: Process for unsolicited proposals**




*These steps are not required for small and medium scale PPPs.*

**Submission of Unsolicited Proposals**

A bidder may submit an Unsolicited Proposal to a Contracting Authority to initiate a PPP project. Upon receipt of the proposal, the Contracting Authority must immediately notify the PPP Office. For the proposal to be considered, it must be innovative, independently developed by the bidder, and demonstrate clear benefits to the public. The proposal must also include sufficient supporting documentation such as the business case (including project cost and revenue recovery plan), technical scope, legal requirements, socioeconomic and environmental impacts, affordability and value-for-money analysis, financial model and indicators, land requirements (if applicable), and the proposed PPP model. The bidder must also demonstrate that the project is bankable.

At the time of submission, the bidder is required to pay a prescribed, non-refundable fee into the PPP Fund to cover the costs associated with the processing, review and evaluation of the Unsolicited Proposal. The payment of this fee does not create any obligation on the part of the Contracting Authority or the PPP Office to approve or proceed with the proposal.

The Contracting Authority and the PPP Office must maintain a register of all Unsolicited Proposals received, on a first-come, first-served basis, and are responsible for ensuring the confidentiality of any proprietary information contained in the proposal. If the proposal does not meet the eligibility requirements, the Contracting Authority must communicate this decision in writing to the bidder.

**Assessment and approval**

Within 14 days of receiving the Unsolicited Proposal, the Contracting Authority undertakes a preliminary assessment. If the proposal meets the necessary criteria, it is forwarded to the PPP Office together with a recommendation and a summary of the preliminary evaluation. The PPP Office then undertakes a site inspection and, within 14 days of the inspection, reviews the proposal to assess its suitability for further consideration. If found suitable, the PPP Office submits the proposal to the Technical Committee for review. If satisfied that the proposal meets the criteria for Unsolicited Proposal, the Technical Committee forwards it to the Council for preliminary approval. The Council may approve or reject the proposal and must provide written reasons in the event of a rejection.

If the Council grants preliminary approval, the Contracting Authority must formally notify the bidder. Following this, the PPP Office, together with the Contracting Authority, undertakes due diligence on the proposal and on the bidder. The due diligence report is submitted to the Council for further consideration. If satisfied with the proposal and the bidder's capacity to implement it, the Council directs the Contracting Authority to proceed with competitive procurement.

**Competitive Procurement**

When a Contracting Authority decides to subject an unsolicited proposal to competition, it must issue a public advertisement that:

- Describes the general nature and scope of the unsolicited proposal;
- Indicates the location of the project and the nature of the work to be performed on or in connection with the project; and
- Provides the address to which competing proposals may be submitted.

The advertisement must also specify:

- A reasonable period within which competitors may submit their proposals; and
- The cost of obtaining the solicitation documents.
- The shared roles and responsibilities of the Contracting Authority and the unsolicited bidder, including the list of studies to be carried out;
- Communication procedures between the two parties;
- The timetable for carrying out the required studies, if need be; and
- The confidentiality of the documents, to facilitate making the studies available to all candidates in the call for tenders for the project.

**Evaluation of Unsolicited Proposals**

Competing proposals are evaluated for comparability against the original unsolicited proposal and are assessed based on innovation, technical and financial merit, public benefit, and the qualifications and experience of the bidder. Following evaluation, the Contracting Authority may proceed with the original Unsolicited Proposal, a competing proposal, or reject all proposals.

If a competing proposal is selected, the Contracting Authority and the PPP Office must undertake technical, financial, and legal due diligence on the preferred bidder. The due diligence report is submitted to the Technical Committee and then to the Council for final approval.

If the Council is satisfied with the outcomes of the procurement process, it authorises the Contracting Authority to proceed with negotiations and contract finalisation. All subsequent steps negotiation, contracting, and financial close must follow the same procedures as those applicable to all PPP projects, subject to any modifications necessary to reflect the unsolicited nature of the original proposal.

# APPENDIX A: KEY DEFINITIONS

The following is a selection of definitions extracted from the PPP Act, 2023.

**"affordability"** means—

(a) the financial commitments to be incurred by a contracting authority in terms of PPP agreement that are sustainable and do not impose an unreasonable burden on the contracting authority and may be met by funds—

(i) designated within the existing budget of the contracting authority for its function to which the PPP agreement relates; and

(ii) assigned to the contracting authority in accordance with its relevant future budgetary allocation; and

(b) meeting the cost of delivering a facility or service in relation to the project by the contracting authority which does not impose an unreasonable financial burden on the end users;

**"asset"** means an existing asset and includes movable and immovable property of a contracting authority or a new asset to be acquired for the purposes of entering into a PPP agreement and the intellectual property rights vested in the contracting authority;

**"bid"** means a tender, an offer, a proposal or price quotation, given in response to an invitation to participate in a project;

**"bidder"** means a person that participates in pre-selection or evaluation proceedings relating to a project;

**"bidding documents"** means a solicitation document or other document for solicitation of bids, on the basis of which a bidder shall prepare its bids;

**"bidding consortium"** means two or more bidders who collectively submit a bid for project, and **"bidding consortia"** shall be construed accordingly;

**"Chairperson"** means the person appointed as Chairperson of the Council;

**"chairperson"** means the person appointed as chairperson of the Technical Committee;

**"citizen"** has the meaning assigned to the word in the Constitution;

**"concessionaire"** means a person from the private sector who is awarded and undertakes a project under a PPP agreement;

**"constitutional officer holder"** has the meaning assigned to the words in the Constitution;

**"contingent liability"** means a fiscal obligation dependent on a specific but uncertain event that may or may not materialise in the future on which the materialisation of this obligation creates a fiscal cost for the Government;

**"contracting authority"** means a public body and entity owned by a public body that has the power to enter into a Public Private Partnership agreement and intends to have any of its functions performed by a

concessionaire for the implementation of a project;

**"controlling officer"** has the meaning assigned to the words in the Public Finance Management Act, 2018;

**Council** means the Public Private Partnership Council

**Councillor** has the meaning assigned to the word in the Constitution.

**"economic feasibility"** means the assessment of cost or benefit analysis of a project that assists a contracting authority to determine the viability cost, and benefits associated with a project;

**"evaluation committee"** means an evaluation committee established for the purpose of evaluating pre-qualifying bidders;

**"feasibility study"** means a study undertaken to determine the technical, financial, legal, social and environmental viability of undertaking a project;

**"financial close"** means a circumstance where the project financing agreements are signed, conditions precedent required are met and the concessionaire can start drawing down finances to commence work on a project;

**"Fund"** means the Public Private Partnership Project Development Support Fund;

**"generic risks"** means circumstances that have the potential to adversely affect the development of, or interests of the parties to a project in the period of development construction or operation;

**"handback"** means the date at the end of the period of the PPP agreement where the assets or infrastructure which make up the project transfer to a contracting authority;

**"infrastructure project"** means the design, construction, development and operation of a new infrastructure or the rehabilitation, modernisation, expansion or operation of an existing infrastructure;

**"local authority"** has the meaning assigned to the words in the Local Government Act, 2019;

**"local content"** means the extent of utilisation of local materials, products or personnel in the production of goods and services in the Republic;

**"material default"** means a failure by a party to a Public Private Partnership agreement to honour its obligations which negatively affects the delivery of infrastructure and provision of services to the public, and remains unsatisfied after a reasonable period of time and after a party has received written notice of the failure;

**"National Development Plan"** has the meaning assigned to the words in the National Planning and Budgeting Act, 2020;

**"office holder"** means an employee of the Public Private Partnership Office or contracting authority;

**"person with disability"** has the meaning assigned to the words in the Persons with Disabilities Act, 2012;

**"preferred bidder"** means a successful bidder selected during the competitive selection process including a bidding consortium;

**"project"** means the—

(a) design, construction, development or operation and maintenance of a new infrastructure, asset or facility under a Public Private Partnership agreement;

(b) provision of services under a PPP agreement; or

(c) the rehabilitation, modernisation, expansion, operation or management of an existing infrastructure, asset or facility under a Public Private Partnership agreement;

**"project agreement"** means a contract concluded between a concessionaire and third party;

**"public authority"** means a public officer, state officer, councillor, constitutional office holder, judge and judicial officer;

**"public body"** has the meaning assigned to the words in the Public Finance Management Act, 2018;

**"Public Private Partnership"** means a mechanism for private sector participation in the performance of a public function through a project on behalf of a Contracting Authority;

**"Public Private Partnership agreement"** means a contractual arrangement between a Contracting Authority and a concessionaire, made in accordance with this Act, in which the concessionaire—

(a) undertakes to perform in an infrastructure project or infrastructure facility or asset as specified in the Second Schedule or as prescribed and agrees to handback the infrastructure project or infrastructure facility or asset at the end of the PPP agreement;

(b) undertakes to provide public services as may be required;

(c) assumes substantial financial, technical and operational risks in connection with the performance of the infrastructure project or use of State assets; and

(d) receives consideration for performing a public function or utilising State property, either by way of—

(i) a fee from any revenue fund or a Ministry's budgetary funds;

(ii) user levies collected by the concessionaire from users or customers for a service provided by the concessionaire; or

(iii) a combination of the consideration paid under subparagraphs (i) and (ii);

**"Public Private Partnership Office"** means the Public Private Partnership Office which shall be with the ministry responsible for finance and is responsible for the implementation of the provisions of the PPP Act;

**"public officer"** has the meaning assigned to the words in the Constitution;

**"regulatory agency"** means a statutory corporation that is entrusted with the power to issue and enforce the laws governing infrastructure development or the provision of services;

**"relative"** has the meaning assigned to the words in the Anti-Corruption Act, 2012;

**"solicited proposal"** means a proposal relating to the implementation of a project that is initiated by a contracting authority or public body;

**"special purpose vehicle"** means a project company incorporated in the Republic by a preferred bidder for the purpose of undertaking a project in accordance with a project agreement executed by the parties;

**"State officer"** has the meaning assigned to the words in the Constitution;

**"Technical Committee"** means the Public Private Partnership Technical Committee which shall advise the Council on technical matters relating to public private partnerships and projects under the PPP Act;

**"transaction advisor"** means a person who has the appropriate skills and experience to assist and advise a contracting authority or the Public Private Partnership Office on matters related to a PPP;

**"unsolicited proposal"** means a proposal relating to a project that is initiated by the bidder;

**"user fee"** means the right or authority granted to a concessionaire by a contracting authority to recover investment and a fair return on investment, and includes tolls, fees, tariffs, charges or other benefit;

**"value for money"** means the value attached to the undertaking of a public function of a contracting authority by a concessionaire under a Public Private Partnership which results in a net benefit accruing to that contracting authority defined in terms of cost, price, quality, quantity, timeliness or risk transfer;

**"Vice-Chairperson"** means the person elected as Vice-Chairperson of the Council;

**"vice-chairperson"** means the person elected as vice-chairperson of the Technical Committee;

**"Zambia Environmental Management Agency"** means the Zambia Environmental Management Agency established under the Environmental Management Agency Act, 2011;

**"Zambia Institute of Chartered Accountants"** means the Zambia Institute of Chartered Accountants established under the Accountants Act, 2008;

**"Zambia Public Procurement Authority"** means the Zambia Public Procurement Authority established under the Public Procurement Act.

# APPENDIX B: PROJECT CONCEPT NOTE

The aim of the project concept note is to guide project owners on the essential preliminary information required. It serves as a foundational guide for conducting initial analyses to justify their choice of options.

**PROJECT CONCEPT NOTE TEMPLATE**

| ITEM | PROJECT INFORMATION REQUIRED |
|---|---|
| **PROJECT INFORMATION** | |
| **Identification Number (ID)** | Insert project identification number.<br>Identification number should be unique and should include an abbreviation of the CA followed by the number of the PPP project/ year of inception.<br>e.g. MoFNP/PPP001/2025 |
| **Contracting Authority (CA)** | Insert CA responsible for the project e.g. Ministry of Finance and National Planning |
| **Implementing Agency** | Indicate the authority that is in charge of implementing the project, (If different from CA) e.g. ZRA as implementing agency while Ministry of finance is the Contracting Authority |
| **Project Name** | Short and succinct, capturing the essence of the project. |
| **Location** | Provide project location including Province and District/City. |
| **Sector(s)** | Insert the sectors in which the project is being implemented |
| **PPP Model** | Insert suggested PPP Model e.g. Design Finance Build Operate and Transfer (DFBOT), Build, Own, Operate, Transfer (BOOT), Built, Operate and Transfer (BOT) etc. |
| **Project Start Date** | Indicate the day/month/year in which project implementation is expected to begin. |
| **Project End Date** | Indicate the day/month/year in which project implementation is expected to end. |
| **Concession Period** | Indicate the Concession Period |
| **Estimated Project Lifetime** | Provide an estimate of the project's economic lifetime. |

| Item | Project Information Required |
|---|---|
| **Contact Name, Email, phone number and Designation** | Ensure the contact person is the project officer in charge of the daily management of the project. |
| **Submission Date to PPP Department** | Indicate the day/month/year of submission to the PPP Department. |
| **PROJECT BACKGROUND AND JUSTIFICATION** | |
| **Project Objective** | Describe the problem and the critical issue which the project seeks to resolve, clearly outlining the gap(s) that the project will address. Think of the fundamental reason as to why the project is being proposed — examining immediate change or overall result. Do not provide project details here that can be described elsewhere on the form. |
| **Status Before Project** | Briefly describe the current situation (that is, without the project), using factual data. |
| **Status After Project** | Briefly, describe how the current situation will be affected if the project is implemented. Use specific and accurate data. |
| **Options Analysis and Technical Feasibility** | Briefly, describe the options considered to deliver the project outputs and the viable technical solutions. (How you intend to achieve the technical solutions) |
| **Justification** | Identify options selected and justify technical solutions to it. Justification is done by comparing anticipated results and expected costs. |
| **Alignment with Development Strategies** | How does the project align with the National Development Plans, including the SDG and Policy Directives? And / or how does the project fit in the CAs strategic Plans/focus. |
| **Other Strategic Consideration** | Does the project fit in with national security considerations? Could it prevent or mitigate a national disaster (for example, a drought or epidemic)? Provide additional details on the strategic significance of the project such as the ability to attract new investments or supporting forward or backward linkages with other projects or positive impact on the lives of citizens. |

| Project Information Required | |
|---|---|
| **Project Scope** | Describe the Project Scope and technical Characteristics. |
| **Demand** | Describe the demand for the services that the project will provide for the next 5 to 15 years and how the project plans to adapt/accommodate to future shifts in demand? |
| **COST AND FUNDING** | |
| **Total Capital Cost (Kwacha / US Dollar millions)** | Provide preliminary estimates of the project's total capital costs. |
| **Operating and Maintenance Costs (Kwacha / US Dollar millions)** | Anticipated annual operating/maintenance expenditures. |
| **Financing Structure Ratio** | The private sector (Equity/Debt) |
| **RESULTS MATRIX** | |
| **Socio-economic Impact** | Provide evidence on the demand for project outputs. List quantifiable and other socio-economic benefits that the project is expected to generate. |
| **Main Activities** | List the main project activities associated with the delivery of outputs. Activities should be listed in a logical order and numerically linked to outputs to facilitate an assessment of whether the proposed activities can realistically produce the outputs expected. |
| **Outputs** | List all expected outputs to be directly delivered by the project (that is, the direct result of project activities. See below). Outputs should be within or just within the Government agency's control. List all anticipated results (that is, those that will remain once the project has ended). |
| **Outcomes** | List all expected outcomes resulting from the project. Outcomes should be a direct result of the project outputs. |
| **Project Information Required** | |
| **Environmental Impact** | List main environmental and social impacts, if adverse, propose mitigation strategies. Provide the summary |
| | of Environmental Decision letter issued by the Environmental Council, Decision number and Decision Date were applicable. |
| Implementation Plan | |
| Implementation Plan | Provide a project implementation plan which is technically optimal with timelines. The construction schedule should also specify funds required for each phase and propose sources of funding. |

| STAKEHOLDER ASSESSMENT | | | |
|---|---|---|---|
| **Stakeholder** | Role | Qualitative Impact (if applicable) | Quantitative Impact (if applicable) |
| **Project Beneficiaries** | | | |
| **Stakeholders with adverse impacts from the project (specify)** | | | |
| **Project Information Required** | | | |
| **Project Sponsor Department / CA** | | | |
| **Implementing Authority** | | | |
| **Local government authority** | | | |
| **Donor Organisations** | | | |
| **Civil Society Organisations** | | | |
| **Organised Labour** | | | |
| **Local Committees** | | | |
| **Others** | | | |
| **RISK MATRIX** | | | |
| **Risk Variable (use risks which are applicable to the project) e.g.** | Mitigation Strategy | | |
| **Completion risks** | | | |
| **Cost Over – run risk** | | | |
| Environmental risk | | | |
| Residual Value risk | | | |
| Exchange risk | | | |
| Force majeure risk | | | |
| Insolvency risk | | | |
| Insurance risk | | | |
| Other risks see appendix | | | |
| **Project Information Required** | | | |
| **ATTACHMENTS** | | | |
| **Sources of Information** | Attach Pre-Feasibility or Full Feasibility Study Report were applicable. | | |
| **List of Supporting Documentation Attached** | List all supportive documents/studies that are attached to the form should be numbered | | |

# APPENDIX C: STANDARD FEASIBILITY STUDY OUTLINE

**Introduction**

a. Study objectives:
i. Assessment of the project's technical, economic, commercial, legal, institutional and financial feasibility;
ii. Assessment of the project's environmental and social impacts, including the effects of climate change, and methods of mitigating these impacts;
iii. Assessment of the project's budgetary and financial sustainability;
iv. Assessment of project risks and their distribution among the parties involved, by drawing up a risk matrix.
v. Evaluation of procurement methods and their suitability for the project in question.
b. Project summary (executive summary)
c. Institutional framework and project team
i. The institutions in charge of implementing the project, in particular the contracting authority and the ministries, agencies and local authorities responsible for developing or implementing the project.
ii. About the Contracting Authority: presentation of the team and resources dedicated to preparing and monitoring project implementation, specifying which activities will (or could) be carried out in-house and which will (or could) be outsourced.
d. Positioning of the feasibility study in the project life cycle: reminder of the stages already undertaken within the PPP framework (project file, inclusion in the PPP project portfolio, pre-feasibility study, etc.), as well as public programming (inclusion in the public investment program, etc.) and stages subsequent to the feasibility study.
e. Study approach and methodology

**Needs assessment and project/service description**

a. Socio-economic and sectoral context and integration into the framework of public policies and government strategy - link with public investment programming to be made here
b. Description of project services
- In terms of objectives and results. This differs from a technical specification, which would focus more on the means to be employed.

c. Beneficiaries of services provided by the project
- It is advisable to identify all the organisations or groups of people that will be affected by the project, in order to take their interests into account, ensure that the project takes their needs and constraints into account and meets them, and then seek their support for the project.

d. Expected net socio-economic benefits
i. In addition to direct impacts, the aim here is to explain how the realisation of the project and delivery of the service described above will bring value to its beneficiaries, and how this will have a positive impact on the local/national economy, and society in general. Socio-economic costs may also exist (destruction of natural areas, pollution, replacement of existing economic activities, etc.) and need to be identified.
ii. Wherever possible, net socio-economic benefits will be quantified over the entire life of the project.

e. Similar relevant experience

- If relevant, describe the experience of similar projects carried out internationally, on the continent or in the country, in terms of difficulties encountered and lessons learned, and results, specifying the elements of relevance for the development of the project in question.

**Public procurement method(s) envisaged for the project**

The feasibility study includes the preliminary assessment, which consists of a comparative analysis of different options, in order to demonstrate that the use of PPP offers a more favorable cost-benefit ratio than that of other public procurement contracts. The aim of this section is to present the various options available, which will be examined in subsequent sub-sections. The options will vary according to the project in question, but could include:

- Traditional public procurement, which generally consists of a public works contract (also often referred to as an EPC (Engineering Procurement and Construction) contract, which includes design, engineering, materials procurement and construction) and several service contract(s) for infrastructure operation and maintenance activities.
- The frequently used global PPP contract (often referred to as BOT) in which design, construction, operation and maintenance activities are delegated to the private partner, with two possible sub-options:

- Partner remuneration (mainly) from users
- Partner remuneration (mainly) by the public sector

- The PPP contract for operation and maintenance activities, essentially in cases where the infrastructure is pre-existing or has been built by the State via a traditional public contract, with two sub-options

- Partner remuneration (mainly) from users
- Partner remuneration (mainly) by the public sector

**Technical feasibility**

Evaluate project implementation methods, technological choices, associated technical benefits and constraints, etc. At the end of the technical feasibility study, the contracting authority must be able to answer the following question: what are the possible technical options and implementation conditions to meet the identified need?

a. Presentation of possible technical options for project implementation

- Different site possibilities, different technical options studied, and where applicable, presentation of the methodological approach that led to this technical solution.

b. Recommended/accepted technical choice

- Detailed presentation of the chosen technical solution
- Presentation of architectural plans and functionalities of the structure, as well as those related to quality of service.
- Choice of materials, where appropriate, and sourcing sites
- Work schedule

c. Considerations related to structuring options, if any.

**Economic feasibility**

a. Economic costs

- Initial investment
- Operation and maintenance

b. Economic benefits
- Direct and indirect benefits
- Overall economic impact

c. Analysis models
- Cost-benefit, cost-effectiveness, etc.

d. Distinction between economic and financial costs
e. Considerations related to structuring options, if any.

**Commercial feasibility**

a. Demand (or volumes or traffic)
- For commercial projects, it is necessary to carry out a realistic study of the projected demand for the service, considering three hypotheses if possible (high, median and low). Such a study requires field surveys or the use of existing documentation. The importance of this study is such that the profitability of the project and that of the investors depend on it. If demand falls short of the project's financial equilibrium target, the public partner may have to pay revenue to the private partner.

b. Tariff study
- As with demand, it's important to study how much, on average, users are willing to pay for the service offered by the Project. How will service rates be set? Are there any regulations in place? How will rates evolve? Will service quality have an impact on the pricing system?

c. Private sector interest and capacity.
- The aim here is to assess the appetite and interest of the private sector to participate in the project. This chapter will not only identify the private players potentially interested in the project, but also briefly gauge their capacity with regard to all the project's components (financiers (investors and lenders), builders and operators).
- Particular attention will be paid to opportunities for including national economic players - Could the project be implemented by national players? In all cases, how much of the work or operation could be subcontracted to national companies (SMEs or not) or craftsmen?

**Legal feasibility**

a. Identify the applicable legal framework: sectoral, PPP, environmental, etc.
b. Mapping of the project development and execution process, with identification of all necessary notices and approvals, their respective deadlines and effects, and identification of potential constraints in this process.
c. Legal risk management

i. Identification of potential legal risks associated with the project
ii. Assessing the impact of these risks on the project
iii. Risk mitigation measures

d. Analysis of procurement options

i. Analysis of existing procurement options, their relevance/applicability to the project in question and their respective advantages and disadvantages
ii. Recommendation of the most appropriate method and the reasons behind it

**Institutional feasibility**

a. Capacity of the Contracting Authority

i. Organisational capacity assessment

ii. Analysis of available human and technical resources
iii. Assessment of past experience in similar projects
b. Identification of teams dedicated to the project in question. Analysis of institutional viability
i. Overall assessment of the contracting authority's institutional viability
ii. Formulation of recommendations to strengthen the Contracting Authority's capacity and guarantee the success of the PPP.
c. Where there is more than one contracting or competent authority, assess the existing coordination and delegation mechanisms, their respective advantages and disadvantages, and recommend the best arrangement for the project in question.

**Financial feasibility**

a. Construction cost assumptions
b. Assumed operating and maintenance costs (regular and periodic maintenance relating to the rehabilitation and renovation of equipment (indicate frequency and anticipated costs)).
c. Revenue assumptions (based on commercial feasibility studies) and financing structure assumptions (equity, debt, subsidies);
d. Financial modeling

The purpose of financial modeling is to assess the viability of the project in terms of the criteria established and retained by the public or private contributors:

- Public bodies will be concerned with the budgetary sustainability of their contribution and the corresponding commitments (capital contribution, investment or operating subsidy, payment of availability rents, possible guarantee).
- Private investors who participate in the project company's capital, whether in the form of equity or subordinated loans, are interested in the profitability of their investment, measured by the Internal Rate of Return (IRR), which corresponds to the rate at which the present value of the flow consisting of their contributions (investments) and the resulting remuneration (dividends, interest or repayments) is zero.
- The lenders, generally banks, who arrange the debt subscribed by the project company will be interested in the capacity of the project's operating cash flow to cover the servicing of their loans (payment of interest and repayment of principal). This capacity is measured by the coverage ratios corresponding to the ratios between the cash flow available for debt servicing and the said servicing, measured over a 12-month period (Annual Debt Service Coverage Ratio - ADSCR) or over the term of the loan (Loan Term Coverage Ratio - LTCR).

These amounts, rates or ratios are calculated using an Excel spreadsheet (hereinafter the "Model") which, based on assumptions relating to the project's construction and operating costs, revenues and financing, establishes the project company's financial statement projections over the life of the project. These financial statement projections includes:

- The cash flow of the project company under construction, calculating and presenting the amounts of financing required to complete the project, based on the financing structure and, in particular, the ratio of debt to equity, often referred to as the gearing ratio,
- The project company's operating cash flow during the operating phase, to calculate the cash flow available for debt servicing,
- Financial and accounting amortisation tables to establish debt servicing over time, on the one hand, and asset depreciation, on the other,
- The project company's profit and loss accounts, which are needed to establish forecast dividend

distributions to investors and calculate taxes,

- Calculations of rates of return and coverage ratios, which are the ultimate indicators of the project's financial viability, since the thresholds reached for these largely determine the project's bankability, i.e. its ability to raise the financing required for its completion.

e. Presentation of key financial indicators at project level (NPV and IRR[3] project) and for these financiers (public subsidies and rents, investor IRR and lender coverage ratios) based on financial modeling.

f. Presentation of the project's main economic indicators: eNPV (economic net present value) and eIRR (economic internal rate of return)

g. Presentation of the project's financial flows: operating statement, cash flow statement, balance sheet

h. Presentation of financial flows from private and project sponsors.

**Project risk assessment (see also risk matrix tool)**

a. Identification, assessment and allocation of risks: The aim here is to identify the risks that may affect the execution of the project, during the construction phase and/or the operation phase. In PPP mode, it is necessary to indicate how these risks are shared between the partners (some risks may be assumed jointly).

b. Where possible, indicate the mitigation measures envisaged to limit their occurrence and/or impact. Also indicate whether these risks can be covered by an insurance policy, and if so, at what cost.

**The risk matrix is the culmination of this process.**

**Environmental and social impact assessment**

What are the expected social and environmental impacts, particularly in relation to the effects of climate change, and the methods for mitigating these impacts? Identify possible mitigation measures, legal authorisations to be received (impact studies, etc.).

a. Environmental impact assessment

i. Study of potential impacts on the environment, including biodiversity, natural resources, etc.

ii. Identification of sensitive or protected areas affected by the project

iii. Assessment of emissions, waste and resource consumption

b. Assessing the impact of climate change

c. Social impact assessment

i. Analysis of the project's social impact on local communities

ii. Identification of vulnerable populations affected

iii. Assessment of impacts on living conditions, health, education, etc.

d. Mitigation of negative consequences

i. Development of environmental and social impact mitigation measures

ii. Environmental and Social Management Plan (ESMP)

iii. Compensation and resettlement strategies where appropriate

e. Communication and consultation

i. Engagement with stakeholders, including local communities

ii. Dissemination of information on project benefits

[3] NPV: Net Present Value, IRR: Internal Rate of Return

iii. Managing stakeholder concerns and suggestions
f. Standards and regulations
i. Compliance with national environmental and safety regulations
ii. Compliance with international standards such as the Equator Principles and IFC standards
iii. Reference to World Bank environmental guidelines
g. Environmental and social risk management
i. Developing a risk management methodology
ii. Continuous risk monitoring and management plan
iii. Integration of environmental and social criteria into key project decisions

Study conclusions and recommendations

# APPENDIX D: PPP FCCL MANAGEMENT GUIDELINES, 2024

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# APPENDIX E: STANDARD RISK MATRIX

**Risk Distribution Matrix**

| | Risk category and description | | Specific description of the risk | | | | Risk distribution | | | Mitigation |
|---|---|---|---|---|---|---|---|---|---|---|
| No. | Risk | Subcategory | Specific description of the risk in the project | Award criteria | Consequences | PHASE DURING WHICH THE RISK MAY MATERIALIZE<br><br>P=Planning, D/C = Design/Construction O&M=Operation and maintenance R=Reversion | Public | Private | Shared | Mitigation mechanisms /comments |
| 1a | AVAILABILITY OF LAND, RISK RELATED TO ACCESS TO THE SITE AND LAND AVAILABILITY *Risk related to selecting a suitable site for the project, obtaining valid and unencumbered title, taking into* | Provision of necessary land - General | | | | | | | | |
| 1b | | Schedule for provision of necessary land | | | | | | | | |

| | Risk category and description | | Specific description of the risk | | | | Risk distribution | | | Mitigation |
|---|---|---|---|---|---|---|---|---|---|---|
| 1c | *account the rights of indigenous peoples, obtaining the necessary planning permissions, access to the site, site security, and the condition of the site and existing assets.* | Provision of additional permanent land | | | | | | | | |
| 1d | | Resettlement | | | | | | | | |
| 1e | | ... | | | | | | | | |
| 1f | | ... | | | | | | | | |
| 2a | SOCIAL RISK *Risk associated with the impact of the project on adjacent properties and affected* | Community and businesses | | | | | | | | |

| | Risk category and description | | Specific description of the risk | | | | Risk distribution | | | Mitigation |
|---|---|---|---|---|---|---|---|---|---|---|
| 2b | *persons (including protests and public unrest), resettlement, indigenous peoples' land rights, and industrial action.* | Heritage / indigenous people | | | | | | | | |
| 2c | | ... | | | | | | | | |
| 2d | | ... | | | | | | | | |
| 3a | ENVIRONMENTAL RISK *Risk related to pre-existing conditions, obtaining permits, compliance with laws, conditions caused by the project, external events, and* | Obtain environmental permits | | | | | | | | |
| 3b | | Conditions caused by the project | | | | | | | | |

| | Risk category and description | | Specific description of the risk | | | | Risk distribution | | | Mitigation |
|---|---|---|---|---|---|---|---|---|---|---|
| 3c | *climate change.* | External environmental permits | | | | | | | | |
| 3d | | Climate change event | | | | | | | | |
| 4a | DESIGN RISK *The risk that the project design is not suitable for the intended purpose; design approval and modifications.* | Suitability of design | | | | | | | | |
| 4b | | Approval of designs | | | | | | | | |

| | Risk category and description | | Specific description of the risk | | | | Risk distribution | | | Mitigation |
|---|---|---|---|---|---|---|---|---|---|---|
| 4c | | Changes to design | | | | | | | | |
| 4d | | ... | | | | | | | | |
| 5a | CONSTRUCTION RISK The risk that construction costs will exceed modeled costs, delays in completion, project management, interface, compliance with quality standards, health and safety, defects, compliance with intellectual property rights, | Increased costs | | | | | | | | |
| 5b | | Project management and interface with other works/facilities | | | | | | | | |
| 5c | | Health and safety compliance | | | | | | | | |

| | Risk category and description | | Specific description of the risk | | | | Risk distribution | | | Mitigation |
|---|---|---|---|---|---|---|---|---|---|---|
| 5d | union action, and vandalism. | ... | | | | | | | | |
| 6a | RISK RELATED TO DEMAND OR OTHER COMMERCIAL RISKS *Risk that the use of the service will differ from what is expected or that revenues will not be collected as anticipated.* | Demand risk | | | | | | | | |
| 6b | | Traffic risk | | | | | | | | |
| 6c | | Pricing risk | | | | | | | | |
| 6d | | ... | | | | | | | | |

| | Risk category and description | | Specific description of the risk | | | | Risk distribution | | | Mitigation |
|---|---|---|---|---|---|---|---|---|---|---|
| 7a | ECONOMIC OR FINANCIAL RISK *The risk that changes in interest rates, exchange rates, or inflation may have a negative impact on the project's results* | Interest rate risk | | | | | | | | |
| 7b | | Exchange rate risk | | | | | | | | |
| 7c | | Tax risk | | | | | | | | |
| 7d | | | | | | | | | | |
| 8a | FORCE MAJEURE Uninsurable risk of external events beyond the control of the parties to | | | | | | | | | |

| | Risk category and description | | Specific description of the risk | | | | Risk distribution | | | Mitigation |
|---|---|---|---|---|---|---|---|---|---|---|
| 8b | the contract that affect the project, such as natural disasters, war, or civil unrest. | | | | | | | | | |
| 8c | | | | | | | | | | |
| 9a | ASSET OWNERSHIP *Risks associated with asset ownership, including the risk of technological obsolescence or the risk that the value of the assets at the end of the contract will not be as expected* | Risk of asset depreciation | | | | | | | | |
| 9b | | Risk of asset deterioration | | | | | | | | |
| 9c | | | | | | | | | | |
| 9d | | | | | | | | | | |

# APPENDIX F: REOI TEMPLATE

Please check the Ministry of Finance and National Planning website for this document **https://www.mofnp.gov.zm/?page_id=3396**

# APPENDIX G: RFP TEMPLATE

Please check the Ministry of Finance and National Planning website for this document **https://www.mofnp.gov.zm/?page_id=3396**

# APPENDIX H: TEMPLATE NOTE FOR ANALYSING UNSOLICITED PROPOSAL

The purpose of this toolkit is to provide additional guidance and considerations for the policy decisions presented in Chapter 9 of the PPP Guidelines.

**Criteria for assessing whether to enter into USPs**

To qualify for a USP, the proponent's submission must satisfactorily meet the criteria listed in the following table. Initial assessment will be based on these criteria, with additional criteria potentially applied in later stages.

| Criteria | Key questions |
|---|---|
| Community need/ Government priority | • Does the proposal meet a project or service need?<br>• What is the overall strategic merit of the proposal?<br>• What is the opportunity cost for Government if it were to proceed with the proposal?<br>• Is the proposal consistent with the Government's plans and priorities?<br>• Does the proposal have the potential to achieve planning approval, taking into account relevant planning and environmental controls? |
| Uniqueness of the proposal | The proponent will need to demonstrate the unique aspects of their proposal. In particular the following are to be demonstrated:<br>• Can this proposal be readily delivered by competitors? – if so, what advantage is to be gained from the government entering into exclusive negotiations with the proponent? Are the benefits and outcomes of the proposal unlikely to be obtained via a standard competitive procurement process?<br>• Does the proponent own something that would limit the Government from contracting with other parties if the Government went to tender? This would include intellectual property, real property and other unique assets.<br>• Does the proponent have ownership of strategic assets such as contractual rights or real property that would place it in a unique position to deliver the aims of the proposal, and which other parties could not deliver?<br>• Does the proponent's proposal have other evidently unique elements or innovative ideas that are not able to be delivered by another party within acceptable timeframes? |
| No competing proposals | • The government will assess whether the unsolicited proposal can be procured Directly without competition |
| Value for Money | • Does the proposal deliver value for money to the Government? |

| | |
|---|---|
| | • What are the net economic benefits of the proposal (the status quo should be defined)?<br>• Is the proposal seeking to purchase a Government asset at less than its value in exchange for other services?<br>• Does the proposal provide time and/or financial benefits/savings that would not otherwise be achieved?<br>• A proposal is Value for Money if it achieves the required project outcomes and objectives in an efficient, high quality, innovative and cost-effective way with appropriate regard to the allocation, management and mitigation of risks.<br>• While Value for Money will be tested appropriately in the context of each specific proposal, factors that will be given consideration are likely to include:<br>• Quality of all aspects of the proposal, including: achievable timetable, clearly stated proposal objectives and outcomes, design, community impacts, detailed proposal documentation and appropriate commercial and/or contractual agreements (including any key performance targets), and a clearly set-out process for obtaining any planning or other required approvals.<br>• Innovation in service delivery, infrastructure design, construction methodologies, and maintenance.<br>• Competitively tendering aspects of the proposal where feasible or likely to yield value for money.<br>• Cost efficient delivery of Government policy targets.<br>• Optimal risk allocation (refer to criterion below).<br>• Evaluation of Value for Money may also include, but not be limited to the following quantitative analysis:<br>• Interrogation of the Proponent's financial models to determine the reasonableness of any capital, land acquisition, service and maintenance cost estimates and, if relevant, revenue estimates (including the appropriateness of any user fees or prices and estimates of quantity levels).<br>• This evaluation may include the use of independent experts or valuers, benchmarking analysis, sensitivity testing, and where appropriate, the use of comparative financial models like Public Sector Comparators or Shadow Bid Models, based on a Reference Project.<br>• Return on Investment. |
| Capacity and capability of the proponent | • The proponent will need to demonstrate it has the capacity and capability to deliver the proposal. Information will need to be provided regarding the proponents' relevant commercial and |

| | |
|---|---|
| | trading history, financial capacity and its experience in delivering similar projects.<br>• The proponent must also demonstrate that it has the technical competencies to successfully deliver the project. The proponent should provide information regarding any reliance on third parties. |
| Affordability | • Does the proposal require Government funding, or for the Government to purchase proposed services?<br>• Does the Government have these funds available or budgeted and if not, what source would be proposed? |
| Risk allocation | • What risks are to be borne by the proponent and by the Government?<br>• Appropriate risk allocation and quantification may also be considered under the Value for Money criterion. |

**Probity**

Government seeks to conduct its commercial dealings with integrity. The assessment of USPs must be fair, open and demonstrate the highest levels of probity consistent with the public interest. The assessment of USPs will be conducted through the application of established probity principles that aim to assure all parties of the integrity of the decision-making processes. These principles are outlined in this section

Maintaining impartiality

Fair and impartial treatment will be a feature of each stage of the assessment process. The process will feature a clearly defined separation of duties and personnel between the assessment and approval functions.

**Maintaining accountability and transparency**

Accountability and transparency are related concepts. The demonstration of both is crucial to the integrity of the assessment.

Accountability requires that all participants be held accountable for their actions. The assessment process will identify responsibilities, provide feedback mechanisms and require that all activities and decision making be appropriately documented.

Transparency refers to the preparedness to open a project and its processes to scrutiny, debate and possible criticism. This also involves providing reasons for all decisions taken and the provision of appropriate information to relevant stakeholders.

**Managing conflicts of interest**

In support of the public interest, transparency and accountability, the Government requires the identification, management and monitoring of conflicts of interest. Participants will be required to disclose any current or past relationships or connections that may unfairly influence or be seen to unfairly influence the integrity of the assessment process.

**Maintaining confidentiality**

In the assessment of USP there is need for high levels of accountability and transparency. However, there is also a need for some information to be kept confidential, at least for a specified period of time. This is important to provide participants with confidence in the integrity of the process.

# APPENDIX I: REQUEST FOR COMPETING PROPOSALS TEMPLATE

Please check the Ministry of Finance and National Planning website for this document **https://www.mofnp.gov.zm/?page_id=3396**

## Notes