GOVERNMENT OF AKWA IBOM STATE

Public-Private Partnerships (PPP) Manual and Policy Statement

December 2023

1. INTRODUCTION

1.1 The Need for Investment

The Government of Akwa Ibom State ("the Government") has been implementing socio-economic reforms aimed at stimulating high rates of economic growth for the achievement of poverty reduction goals, resulting in substantial economic performance. The reforms include investing more in the physical and social infrastructure of the State to improve the social and economic wellbeing of all its citizens and residents, as well as enhancing the business environment and strengthening of public expenditure management to attract investment that will enable Akwa Ibom State to become a diversified and sustainable economy.

Presenting a bold and ambitious economic blueprint tagged "A.R.I.S.E." Agenda, the Government is focusing on the five broad areas of Agricultural Development, Rural Development, Infrastructure Development, Security Management and Education.

This initiative promises to develop all sectors of the state economy but will prioritize Agriculture and Rural Development as a precursor to reduce rural-urban migration. Akwa Ibom State, just like all the other States, is faced with challenges in the provision of adequate public services such as electricity, roads, housing, etc. These inefficiencies continue to impose higher costs on businesses and households in the State. Consequently, internal revenue generation targets are usually not met, which could reduce the potential for economic growth.

To address these and other existing socio-economic challenges, the State Government is making conscious and deliberate efforts to increase internally generated revenue through tax to bridge the resource gap for implementing critical development projects.
The investment needed to attain high growth and reduce poverty is enormous and cannot be met from either revenue generated directly by the State or through the Federal Account Allocation Committee (FAAC) in a timely manner. Hence, participation of private capital is key to resolving the prevailing budgetary resource constraints. To sustain progressive socio-economic development, therefore, the State Government requires innovative tools for financing development programmes in order to expand its production frontier as well as to improve economic competitiveness.

This Policy Statement requires the Government of Akwa Ibom State to support and stimulate various actors participating in economic growth, by encouraging the private sector to undertake investments in infrastructure and services development. Such investments can be achieved through a Public-Private Partnership (PPP) framework. For many years, PPPs have proven to provide effective alternate source of financing, management and maintenance of public sector projects, thus this Policy Statement will also ensure that PPPs will enable the Government to streamline its responsibilities in providing socio-economic goods and services, and thus enhance efficiency, accountability, quality of service and be prioritised to maximise value for money for government and the public. The Government will also ensure that the costs of providing these services do not place an unsustainable burden on users of public services.

As much as possible, basic public services such as interstate roads, power, rail, airports, and seaports are the responsibilities that require collaborative and joint efforts of the National and Sub-National Governments though they are capital intensive projects. To augment the efforts of the National and Sub-National Governments, there is need to involve the private sector through PPP to finance such projects for the long-term interest of the State.

1.2 What is Public-Private Partnership?

Public-Private Partnership (PPP) is a funding model for public infrastructure projects and initiatives such as a new access road, public transportation system, airport, public hospital, public school, or power plant. Government agencies represent the public partner at a Local, State and/or National level while companies with a specific area of expertise represent the Private Partner. PPP is a broad term that can be applied to anything from a simple, short-term management contract - with or without private investment requirements - to a long-term contract that includes funding, planning, building, operation, maintenance and divestiture. PPP projects (also known as P3 projects) are helpful for large ventures that require the procurement of highly skilled workers and a significant cash outlay to get them started.

1.3 PPP Project Delivery Models

There are various PPP contract models based on funding and which partner is responsible for owning and maintaining assets at different stages of the government project. Examples of these PPP models include:

1.3.1 Design-Build (DB): The private sector partner designs and builds the infrastructure to meet the public sector stakeholder's specifications, often for a fixed price. In this model, the private sector partner assumes all the risk.

1.3.2 Operation and Maintenance Contract (O&M): In this model, the private firm, under contract, operates a publicly owned asset for a specific period. The public partner then retains ownership of the assets.

1.3.3 Design-Build-Finance-Operate (DBFO): The private-sector company designs, finances and constructs a new infrastructure component and owns the operation and maintenance under a long-term lease. When the lease is up, the private-sector partner transfers the infrastructure component to the public-sector partner.

1.3.4 Build-Own-Operate (BOO): The private party finances, builds, owns and operates the infrastructure component perpetually. The public sector partner’s constraints are stated in the original agreement and through ongoing regulatory authority.

1.3.5 Build-Own-Operate-Transfer (BOOT): Privatization is granted for financing, design, building and operation of an infrastructure component (and to charge user fees) for a specific time, after which ownership is transferred back to the public sector partner.

1.3.6 Buy-Build-Operate (BBO): This publicly owned asset is legally transferred to a private sector partner for a designated period.

1.3.7 Build-Lease-Operate-Transfer (BLOT): The private sector partner designs, finances and builds a facility on leased public land. The private sector partner operates the facility for the duration of the land lease. When the lease expires, assets are transferred to the public sector partner.

1.3.8 Operation License: The private sector partner is granted a license or other expression of legal permission to operate a public service, usually for a specified term. (This model is often used in IT projects.)

1.3.9 Finance Only: The private entity partner, usually a financial services company, funds the infrastructure component and charges the public-sector partner interest to use the funds.

The PPP models are not without its challenges. The fact that PPP projects are often complex, with multiple stakeholders involved in the decision-making process, can lead to decisions for political incentives rather than what is best for the project. Another challenge is that PPP contracts are typically long-term, so getting out of a deal that later becomes disadvantageous can be challenging. And finally, because PPP projects are often large and require heavy private-sector financing, there is a high risk of cost overruns and schedule delays.

1.4 Benefits of Public-Private Partnerships

The PPP arrangement is beneficial to Akwa Ibom State and justifiable in view of the potential benefits that accrue to all parties. These potential benefits include:

1.4.1 Facilitating creative and innovative approaches in stimulating private sector to engage in specific PPPs; with the State Government allowing bidders to compete based on their ability to develop unique and creative approaches to the delivery of the required output.

1.4.2 Enhancing government's capacity to develop integrated solutions that effectively address public needs.

1.4.3 Reduced costs of implementation and realization of quality products and services attributable to economies of scale and operating efficiency.

1.4.4 Accessing technical and managerial expertise, financial resources and technology from the private sector.

1.4.5 Facilitating large scale capital injections while reducing public debt and dependency on aid.

1.4.6 Better responsiveness to consumer needs and satisfaction of those needs.

1.4.7 Fostering economic growth by developing new investment opportunities and increasing provision of public goods and services; and;

1.4.8 Ensuring fulfillment of the best interest of the public and private sector through an appropriate allocation of risks and returns.

1.5 Value For Money

A key objective of the Government of Akwa Ibom State in implementing PPPs, particularly in infrastructure, is to achieve value for money (VFM). Value for money means achieving the optimal combination of benefits and costs in delivering the services users want. Many PPP programmes will require an assessment of whether a PPP is likely to offer better value for the public than conventional public procurement.

VFM in PPP projects is gained through the engagement of private sector efficiency, effectiveness, and economy and through the appropriate allocation of risks in the project. The assessment of the potential to secure VFM is a key element of the PPP assessment process. The conclusions on VFM potential will inform the State Government on whether to proceed with a PPP procurement, and, if so, the form of PPP that could be used.

1.6 The Scope

In Akwa Ibom, Public-Private Partnership is a multi-dimensional concept that should be pursued from the perspective of state macroeconomic and sectoral policies with emphasis on the following:

1.6.1 Establishment of an enabling Policy, Legal and Regulatory Framework for promotion of PPPs

1.6.2 Implementation strategy outlining among others, activities, roles of stakeholders, resource requirements and time frame

1.6.3 Operational guidelines and standards for the development of PPPs

1.6.4 Identification of the nature of private sector participation, extent and conditions for Government support and risk-sharing mechanisms

1.6.5 Mechanism for coordination and promotion of PPPs

1.6.6 Identification of appropriate performance indicators, skills and competencies required to achieve PPPs in relation to best practice as well as feedback and control mechanisms; and

1.6.7 Monitoring and Evaluation system.

1.7 Objectives of the PPP Framework in Akwa Ibom State

The Akwa Ibom State Government, in developing a PPP Policy for the State, seeks to:

1.7.1 Facilitate and encourage private investment in the provision of new and refurbished public infrastructure;

1.7.2 Release financial resources for investment in necessary social services;

1.7.3 Develop more reliable, public services by deploying private sector skills in project financing, risk management, project planning and the use of new technologies and thus ensure greater value for money in the provision of public infrastructure;

1.7.4 Enhance the employment generation potential and diversity of the State economy;

1.7.5 Act as a catalyst for the implementation of the State Economic Blueprint, Master Plan and any subsequent action plans, taking account of the State's urban, regional, or development plans;

1.7.6 Improve the management of State resources in order to enable efficient and cost-effective delivery of infrastructure and social services in the State;

1.7.7 Strengthen institutional governance in the State by improving managerial skills and accountability in the planning, construction, rehabilitation and provision of infrastructure and social services in the State; and framework for the identification, procurement, approval, and management, of PPP projects.

1.8 Application of the Policy

This policy will apply to all projects for the provision of infrastructure and services by the State or Local Governments that are included in the State's Master Plan[1]. The Master Plan will need to be updated and be prepared following consultation with Ministries, Departments and Agencies (MDAs) of the State and will comprise those projects or programmes under the present administration that are deemed suitable for PPP within each MDA's medium- and long-term Action Plans for infrastructure development. The Master Plan will be compiled and updated from time to time by the Office of Public-Private Partnership, operating as a Subsidiary of the Akwa Ibom Investment Corporation (AKICORP) in accordance with the PPP Master Plan Regulations and approved by the Akwa Ibom State Public-Private Partnership Council and the State Executive Council. Unsolicited proposals by the private sector will be subject to the same project review process described in the Regulations and will be procured in accordance with this Policy once they are incorporated into the Master Plan. Two or more MDAs, or Local Government Councils or a combination of State MDAs and Local Government Councils may jointly propose a project for inclusion in the PPP Master Plan.

Where the policy refers to a "contracting authority" this may be any Ministry, Department, Agency or Statutory Corporation of the State Government, or any Local Government Council or Agency. It also includes or any company in which the State has controlling shares or a controlling beneficial interest, that intends to enter a PPP agreement to carry out works or to provide services.

2. THE INSTITUTIONAL FRAMEWORK FOR PPP

There shall be a law to facilitate and regulate partnerships between the public and private sectors in the planning, design, construction, operation and maintenance of infrastructure and other public assets in Akwa Ibom State. This Law shall also establish the Akwa Ibom State Public-Private Partnership Council and its secretariat, the Office of Public-Private Partnership.

2.1 Akwa Ibom State Public-Private Partnership Council

The Akwa Ibom State Public-Private Partnership Council ("the Council") is established to:

2.1.1 Recommend policy in respect of Public-Private Partnerships to the State Executive Council;

2.1.2 Review and forward Public-Private Partnership project proposals to the State Executive Council in accordance with this Law;

2.1.3 Designate unsolicited project proposals as Public-Private Partnership proposals to be undertaken in accordance with this Law;

2.1.4 Take custody of all Public-Private Partnership agreements entered into by Contracting Authorities and monitor compliance by the parties thereto;

2.1.5 Facilitate the resolution of such disputes as may arise from time to time in the course of executing a Public-Private Partnership Agreement;

2.1.6 Establish standards, procedures and regulations for the execution of Public-Private Partnership projects;

2.1.7 Supervise the activities of the Office;

2.1.8 Constitute as and when necessary committees comprising persons drawn from its membership, the public and the private sectors with requisite technical experience to advise on specific Public-Private Partnership projects and act in the name of the Council in executing the functions hereby conferred;

2.1.9 Meet with the State Executive Council, with the Governor presiding, at least once a quarter to present a report of the extent of progress to date on its action plan for the year and its proposed activity for the rest of the year; and

2.1.10 Carry out such other functions as the Governor may deem necessary for the due attainment of the objectives of this Law.

The Council will be chaired by the Deputy Governor and will have the Attorney-General and Commissioner for Justice and the members of the State Executive Council responsible for Finance; Trade and Investment; Economic Development; and Investment Promotion as members. The Governor will also be at liberty to nominate four other members of the State Executive Council and three other individuals drawn from the private sector who are professionals with not less than twelve (12) years active experience in any field of endeavour relevant to the work of the Council including Economics, Finance, Business, Management, Engineering, Accountancy, Law, Architecture or Social Sciences. Also, one person appointed by the Governor on the recommendation of Civil Society Organizations working on transparency issues in the State, as members. Finally, there will be a Director-General of the Office of the PPP who shall be Member and Secretary of the Council.

2.2 Akwa Ibom State Office of Public-Private Partnership

The Akwa Ibom State Government will also set up an Office of Public-Private Partnership ("the PPP Office") to act as a secretariat to the Council and to become a centre of expertise for the promotion, development, and implementation of PPPs. The PPP Office will serve as the primary and definitive source of all information on PPP legislation, regulations, guidelines and standards applicable and in force in the State. In this role it will facilitate and provide support to the project teams within contracting authorities and where necessary act as primary point of contact for the private sector on the development of PPP policy and projects generally. It will also act as the first level facilitator for dispute resolution between a contracting authority and a private party. In addition, the Office will liaise with similar units in other States and particularly with the Federal Government's Infrastructure Concession Regulatory Commission (ICRC) to facilitate consistency of policy, coordination of PPP programmes across the Federation and the dissemination of PPP know-how and capacity building.

The Office shall be the secretariat of the PPP Council and as such it shall have the responsibility on behalf of the Council to:

2.2.1 Appraise, review, monitor, evaluate and recommend action to the Council on all PPP projects in the State;

2.2.2 Interface with and provide technical assistance to Ministries, Departments and Agencies and specific Contracting Authorities throughout the life cycle of a PPP project;

2.2.3 Build up and enhance the capacity of Government to design, implement, monitor and evaluate PPP projects;

2.2.4 Be a centre of expertise for the promotion, development, and implementation of PPPs and develop and serve as a primary and definitive source of all information on PPP legislation, regulations, guidelines and standards applicable and in force in the State;

2.2.5 Facilitate and provide full support to the private sector and serve as liaison between the private sector and Government Agencies and relevant authorities with regards to PPPs in the State;

2.2.6 Undertake the formulation, development, periodic review and modification of the State PPP Master Plan;

2.2.7 Facilitate the issuance or renewal of all public sector regulatory approvals for PPP projects in the State;

2.2.8 Review, evaluate and recommend project proposals and feasibility studies and oversee the procurement process for PPP projects on behalf of the Public Sector;

2.2.9 Recommend to the Council the extension, termination or renegotiation of PPP Agreements in force;

2.2.10 Ensure that at the expiration of the term of a PPP Agreement, all parties thereto fully enjoy their respective rights and discharge their respective obligations in accordance with the said PPP Agreement;

2.2.11 Issue quarterly progress reports on PPP Agreements in force to the Council and through the Council to the State Executive Council;

2.2.12 Advise the Council on resolving disputes arising from all PPP Agreements to which the State is a party; and

2.2.13 Carry out such functions in accordance with this Law as the Council may deem fit.

2.3 The Identification, Procurement, and Approval of PPP Projects

The Government will set out in the legislation the eligibility criteria that all contracting authorities must meet to obtain the approval of the PPP Council and the State Executive Council at key stages during the planning, preparation, and procurement of a PPP project. This process will ensure that only projects that are demonstrably viable, achievable in line with the Master Plan and are affordable are taken to market. The PPP Office will support this process and act as the interface between a contracting authority and the Council. There will be four key stages in the process. In order to reduce bureaucratic delay and the time elapsed to completion of a PPP transaction, the first three stages require only the approval of the PPP Council, whilst the fourth must receive the approval of the State Executive Council.

The PPP models in Section 1.3 above, may be the subject of procurement. These models are not exhaustive and none will be specifically mandated for a given project. The determination of the preferred PPP model to adopt is left to each MDA; but prospective private parties will retain the choice to put forward a PPP model different from that selected by an MDA. Identifying, developing, and implementing a project through the PPP route involves a series of steps. According to the National Policy on Public-Private Partnerships, the PPP project lifecycle in Nigeria is made up of the following four stages:

Stage I: Project Development – This stage consists of the following steps: 1. Identification of the need for undertaking the project 2. Arriving at the appropriate solution to meet the identified need 3. Preparing economic, social, and environmental cost benefit analysis, and an Environmental Impact Assessment, if required 4. Testing the affordability and the Value for Money (VFM) of the different procurement options 5. Preparing the pre-feasibility and full feasibility studies (together called the Outline Business Case) and getting the necessary approvals for this OBC.	**Stage II: Project Procurement** – This stage consists of the following: 1. Creation of a project team and management structure 2. Preparation of an Information Memorandum and bid documentation 3. Market consultation and selection of the preferred bidder through a competitive and transparent Bidding Process 4. Preparation and Approval of the Full Business Case; the FBC needs to be approved by the Federal Executive Council prior to contract award 5. Award of the contract to the preferred bidder.
Stage III: Project Implementation – This stage involves the following: 1. Monitoring of the design and construction, and subsequently operation and maintenance of project assets to ensure compliance with the required service standards 2. Monitoring the performance of the Concessionaire against the requirements of the Concession Agreement	**Stage IV: Project Maturity** – This stage involves the following: 1. Inspection of the project assets and preparation for the handover of project assets 2. Analysis of future service delivery options and further procurement options if required 3. Closing out the contract.

2.3.1 Stage I: Project Development

2.3.1.1 Step 1: Project Inception

The project is usually initiated by a Ministry, Department, and/or Agency (MDA) of the State Government. In select cases, the project could be initiated by the private sector as an Unsolicited Proposal under a transparent, competitive process which will also be managed by an MDA. The first step for the MDA is to develop a project concept to be approved by the Office of Public-Private Partnership (PPP Office) The project concept will usually be based on a Pre-Feasibility Study or Outline Business Case (OBC), and if it is approved, will allow the project to be included in the State's Development Plan (A.R.I.S.E. Agenda) which sets out the State Government's infrastructure investment strategy covering all forms of procurement, including projects that will be financed in whole or in part from the State Budget.

2.3.1.2 Step 2: Project Planning

The project planning stage is initiated by the MDA and begins with the appointment of a Project Team of public officials. The Project Team begins planning by;
(i) conducting an initial assessment of the best methods for project identification, preparation, appraisal, and approval, and (ii) securing necessary preliminary approvals (e.g., initial project development funding, rights for land acquisitions, preparing for environment/social impact assessments, etc.). The project planning stage requires approvals in line with the Akwa Ibom State PPP Policy.

2.3.1.3 Step 3: Preparation and Approval of Outline Business Case

An Outline Business Case or feasibility study is a decision tool prepared by the Project Team to provide the government with sufficient early-stage information to decide on whether to proceed with the project, and if so under what strategy. It is prepared and submitted to the PPP Office for approval, as set out in the State PPP Policy. The Outline Business Case usually involves a pre-feasibility analysis to establish that the identified project has sufficient merit to be taken forward by the MDA. More specifically, it covers:

a. A description of the policy context and business need;
b. Cost benefit analysis including non-quantifiable costs and benefits;
c. An evaluation of the options for meeting the project objectives;
d. Identification of the preferred procurement route based on Value-for-Money and the Feasibility or desirability of using PPP;
e. Analysis of the project risks and mitigation measures;
f. Description of the proposed risk allocation and contract terms;
g. Affordability and Value for Money analysis, including a cash flow model of estimated costs and returns for the Public Sector carrying out the project and being responsible for O&M and all the project risks as compared to a shadow PPP cash flow model of a Private Sector contractor carrying out the project and bearing most of the project risks, together with any required financial support

or consequent annual payments to or by the public sector;

h. Sensitivity analysis of the key input variables to test the strength of the cash flow to meet unexpected events.

In addition, the Outline Business Case should also contain key documentation required for the first stage of the procurement phase such as a Project Information Memorandum) that provides the bidders with the background and objectives of the project and the Prequalification Documents). The MDA may need to procure external technical, legal, and financial advice for the preparation of the Outline Business Case.

If the Outline Business Case is approved by the government, the Project Team will likely procure a professional Transaction Advisor which is a firm or group of firms that has professional expertise in financial analysis, economic analysis, legal analysis, environmental impact analysis, contract documentation preparation, tender processing, engineering and cost estimation. The Transaction Advisor supports the Project Team to take a PPP project from the Outline Business Case through public bidding and award to actual execution. They will also prepare a Full Business Case prior to contract award as a final check that the Preferred Bid is affordable, provides value for money, and that the project still meets its original objectives.

2.3.2 Stage 2: Project Procurement

2.3.2.1 Step 4: Pre-qualification of Bidders

At this stage, the project is advertised in the press and through other media to invite potential bidders to submit their Request for Qualifications (RFQ), also called an Expression of Interest (EOI) (i.e., qualification credentials for the project). The pre-qualification process is typically a much more simplified process where no project specific information is requested; only information on whether or not an interested bidder has the sector/project experience, technical expertise, financial resources, and overall ability to implement the project if selected. While there is no international standard for the desired number of pre-qualified bidders, typically any number between 4 bidders and 8 pre-qualified bidders is seen as a robust set. If the number of prequalified bidders is low (e.g., < 4 bidders), then there will not be sufficient competition and an opportunity for collusion. If the number is high (e.g., > 8 bidders), then prequalified bidders will not believe they have a probability of winning the tender and therefore will not bid. Once a group of bidders are pre-qualified, one or several bidders' conferences are subsequently held to provide further background to the project and answer questions from the bidders. A key qualification process is to make sure that all pre-qualified firms have equal access to all information (i.e., answers to any questions are provided to all bidders).

2.3.2.2 Step 5: Preparation of Bid Documents

The bidding process should aim to minimise the complexity, duration, and costs of participation to all parties, while facilitating sufficient competition to obtain the best Value-for-Money for the government. The MDA, with the assistance of the Transaction Advisor and the PPP Office, initiates the process of drafting the Bid Documents (i.e., Request for Proposals (RFP), Concession Agreement, etc.). In addition, this step includes establishing evaluation criteria, bid submission formats, output specifications, payment mechanisms, minimum performance standards requirements, etc. To eliminate possible conflicts of interest, the Project Team will need to constitute an independent Tender Evaluation Committee to select pre-qualified bidders once the Expressions of Interest have been submitted.

2.3.2.3 Step 6: Selection of Preferred Bidder & Negotiations

Once the pre-qualification stage is complete, then a full Request for Proposals (RFP) is issued to the pre-qualified bidders. After a sufficient period to prepare their proposals, the bidders submit full technical and financial proposals accordingly. The Tender Evaluation Committee follows an established, detailed procedure for evaluating proposals strictly in accordance with the criteria set out in the RFP. The bidding process involves either a final evaluation or it can lead to Best and Final Offers from at least two of the bidders. After identification of the preferred bidder, a Negotiations Team is formed which initiates discussions with the preferred bidder and finalises any remaining project agreement terms. Throughout the procurement process, the PPP Office acts as an independent monitor under the State procurement legislation, to oversee the process and to ensure the transparency of the project tendering and the budget allocation processes.

2.3.2.4 Step 7: Preparation of Full Business Case and Contract Award

The Outline Business Case is then updated based on the pricing and other technical information contained in the preferred bid to form the Full Business Case. The Full Business Case is used, prior to Commercial Close and formal award of contract, to provide the government with all the information needed to support a decision to award a contract, commit any actual required funding, and determine criteria for contract oversight, monitoring and evaluation and benefits realization.

The Full Business Case is submitted to the State Executive Council for approval. Once the Full Business Case has been approved, the procedure to Award the Contract between the Preferred Bidder and the MDA is undertaken. There will be some Conditions Precedent (e.g. obtaining permits, finalisation of the Financing Documents) before Financial Close is achieved and Contract Commencement.

There is a time limit for achieving the Conditions Precedent defined in the Concession Agreement. Investors and lenders carry out their own technical, financial, and commercial due diligence on the project to assess the risks involved in financing the project. Any subcontracts between the consortium and separate joint venture companies providing design, construction, or maintenance services are also finalised and the Special Purpose Vehicle (SPV) established. If investors and lenders are satisfied with the financial and risk elements of the project, then the Preferred Bidder can reach Financial Close, and the project is ready for implementation.

2.3.3 Stage 3: Project Implementation

2.3.3.1 Step 8: Project Operation

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

a. Service delivery by the PPP Company;
b. Fulfilment of obligations to the MDA, including payment obligations, if any, by the PPP Company;
c. Project monitoring and financial audit by the MDA or any other government authority.

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

2.3.4 Stage 4: Project Maturity

2.3.4.1 Step 9: Exit and Transfer

This Stage marks the completion of the contract period and leads to the natural termination of the agreement. It involves the exit from the project by the PPP Company, the transfer of land and assets back to the MDA, and the decision by the MDA on appropriate next steps, including retendering the project to the private sector. However, in some cases the MDA may have an option to extend the project term.

2.4 Key Players in the PPP Transaction Process

In these stages summarised in paragraph 2.3 above, there are a number of key participants whose roles are complementary but clearly identifiable. They are:

2.4.1 Contracting Authorities

For each PPP transaction, the respective MDAs are very influential as each has the key responsibility for identifying projects that meet the eligibility criteria for listing in the PPP Master Plan and which are consistent with their sector investment priorities. Thereafter, they must deploy procurement, project planning and management skills to develop a programme that will start with the preparation of a comprehensive project feasibility study and an accompanying financial model through to undertaking the various studies that collectively demonstrate project viability. Following PPP Council approval, they will then be responsible for managing a procurement process to award a PPP contract to a party with the capacity to deliver the project and meet the Government's objectives and the wider public interest.

2.4.2 Ministry of Finance

The Akwa Ibom State Ministry of Finance is responsible for the management of State Government debt and contingent liabilities. It must also manage the financial risk inherent in transactions to which the State Government is a party. It is therefore the Ministries responsibility to review the financial models built for specific projects, test the assumptions in those models and design strategies/instruments to hedge against contingent liabilities becoming crystallised. At the point of considering whether or not to grant a Second Stage Approval, the Ministry of Finance will be critical as the financial risk adviser to the Council.

2.4.3 The Procurement Bureau

The State procurement legislation that established the Akwa Ibom State Bureau of Public Procurement Bill No. 5 of 2020, will require that the procurement of all goods, works and services carried out by the State Government or any of its parastatals shall be done in accordance with the principles enshrined therein. PPP legislation must therefore conform to the letter and spirit of the procurement legislation; whilst making provision for contract award documents and the result of the private party procurement process to be reviewed and approved by the Procurement Bureau established under the legislation.

2.4.4 PPP Council

The Council (and its secretariat, the PPP Office) serves as the State PPP policy coordination and contract monitoring body. It will be responsible for the preparation and periodic updating of a PPP Master Plan, oversight of the preparation and procurement of PPPs by the relevant MDA, based on stated principles that ensure competitiveness and value for money, and for facilitating the resolution of any disputes that may arise during the tenor of the PPP Agreement. The Council must always be careful not to take on the roles of project planning, preparation, development and procurement and day-to-day contract management that are the peculiar province of the relevant MDA.

2.4.5 The State Executive Council

The State Executive Council ("Exco") is the ultimate body to which the Council is accountable for ensuring that any PPP project presented to it for final approval has gone through each procurement stage and has complied with statutorily established eligibility criteria. The State Exco will scrutinise the entire PPP award process to ensure that each PPP project meets the fundamental requirements of value for money and affordability for the State and public.

2.4.6 Private Parties

The private sector will be given greater responsibility for the delivery of public services under this Policy, although each MDA will remain ultimately accountable for the delivery of these services. Each PPP Agreement will set out the service standards that the private party will be required to meet and arrangements to ensure that the interests of service users and the wider public are respected.

2.5 The Financial Management of PPP Commitments

The Government recognises that the long-term financial commitments incurred by contracting authorities under PPP agreements will in almost all cases fall outside State revenue inflow expectations; and would, if left to budgetary allocations, be completely unaffordable. Through the Ministry of Finance, it will provide oversight of the long-term financial commitments that will arise under PPP contracts by way of direct investment, guarantees, indemnities or subsidies. Even where the services are commercial in character, or where it is intended to recover costs through user charges, there are likely to be some long-term risks retained by the State or a need for non-cash long-term support that enables the Government of Akwa Ibom State free up financial resources for other important social objectives.

The Government will use the arrangements described in Section 2.3 above to ensure long-term liabilities are acceptable. Thus, while risk and contingent liability management are the responsibility of the Ministry of Finance, it must be clearly noted that contracting authorities will remain accountable for the quality and cost of services delivered through PPP contracts, and for negotiating any spending commitments that are incurred. Also, where there is a need for Government funding to supplement revenues from user charges, this will be justified against quantified economic and social benefits that derive from the project, and these payments will be provided in annual budgets through a specific fund established for such purposes, or via similar arrangements.

2.6 The Legal Framework for PPP

The Government has put in place a legal framework (Executive Order 005 0f 2023) to Provide Public-Private Partnership, Establish the Akwa Ibom State Public-Private Partnership Council, and Establish the Office of Public-Private Partnership under the Akwa Ibom Investment Corporation and for Other Connected Purposes) for the implementation of this policy and of PPP contracts that is effective enough to maintain both the public interest and that of private investors in projects. It will also ensure that there are no distortions created by existing banking, tax, or other laws that would bias the investment decisions of contracting authorities for or against PPP as a procurement option, or would distort the commercial decisions of PPP investors, contractors, or operators. It will require that all PPP contracts contain a clear and detailed description of the rights and obligations of both the contracting authority and the private party, and include appropriate procedures for dispute resolution. In addition, apart from the incentives described in section 2.5 above, the State is at liberty to promote, with its private sector partners, something like an Infrastructure Facility Fund that will aggregate capital for investment in eligible State PPP projects.

The legal framework takes full account of the constitutional separation between Federal and State powers and responsibilities and respects the personal and property rights of all citizens. It will protect the investments or security interests of individuals or companies and will not discriminate between domestic or foreign persons and investors. This framework will enable incentives to be developed to ensure attention to environmental and conservation concerns; while also respecting commercial confidentiality within the requirements for transparency and openness in public procurement and public service delivery. The State will ensure that all public authorities responsible for granting permits or licenses or the conveyance and registration of property, comply with good practice and the timely implementation of their statutory responsibilities.

3. CONCLUSION

In conclusion, the test of a credible PPP legal framework is that it establishes a process whereby the PPP agreements that are the outcome of that process stand on a firm foundation that brings together both public and private sector interests, for the duration of the agreement, in a way that is mutually beneficial.