

Unsolicited Project Proposals and their Qualifying Criteria

1. (1) Any proposal to the State Government for a PPP project that is not contained in the Infrastructure Master Plan or PPP priority list of the State Government, shall be referred to as an unsolicited Project Proposal.
 - (2) A prospective Contracting Authority that receives an Unsolicited Project Proposal shall forward it to the PPP Secretariat with its comments and recommendations for registration.
 - (3) The PPP Secretariat shall undertake a review of the submission.
 - (4) Only those proposals that fulfil the criteria set out shall be registered.
- (5) Upon the registration of an Unsolicited Project Proposal by the PPP Secretariat, it shall be deemed to have been included in the Infrastructure Master Plan or Project Priority List and shall then comply with the provisions of the Law.

Prohibited Transactions

2. (1) The following shall not be valid without the written consent of the Board:
 - a. Any transfer of shares in a project SPV or any other transaction resulting in a change of control in such SPV;
 - b. Any issue of bonds or other security to be undertaken by the SPV;
 - c. Any merger, takeover or other change in corporate status of the SPV;
 - d. Any assignment in part or full by the SPV of its existing or future claims under a PPP Agreement to a domestic or foreign financial institution involved in financing of the PPP, or contracts with such other financial institutions to secure their claims arising from such financing; and
 - e. Any assignment under paragraph(e) immediately preceding to a domestic or foreign financial institution for the purpose of conversion of such claims to securities.
- (2) The listing of the shares of a project SPV in the Nigerian or other capital market as otherwise permitted by the PPP Agreement.

FIRST STAGE APPROVAL

Registration of a Potential Unsolicited PPP Project

3. (1) Where a relevant institution or prospective Contracting Authority intends to implement a Project as a public private partnership, the Accounting Officer of that Contracting Authority or in the absence of the Accounting Officer, any person acting in that capacity, shall apply to the Agency, and submit a Public Private Partnership Proposal as a Solicited Project Proposal with the PPP Secretariat.
- (2) The PPP Secretariat shall register a Proposal if it:
 - (a) Is specified in the Infrastructure Master Plan or PPP Priority List;

- (b) Revalidates the pre-feasibility study submitted by the Contracting Authority with its Application for Inclusion;
- (c) Contains information on the expertise in the Contracting Authority to proceed with the project and a detailed profile of the members of its project team and the project management arrangements for undertaking the project;
- (d) Gives the details for the appointment of a transaction adviser if the Contracting Authority deems this necessary; and
- (e) Demonstrates payment of the applicable registration fee in accordance with relevant Regulations made under this Law.

Review of Proposal

4. The PPP Secretariat shall within *two weeks* of registering a proposal assess and present it to the Agency with its recommendations there on as to whether or not to proceed with it as a PPP project.

First Stage Approval

5. (1)The Agency shall consider the reviewed proposal along with the PPP Secretariat's recommendation thereon and issue a decision thereon within two weeks.
- (2)If the Agency approves of the Proposal, its hall immediately issue an "in-principle" approval for the PPP project to proceed to the next stage.
- (3)The giving of an "in-principle" approval, which shall be called a First Stage Approval, shall be communicated by the PPP Secretariat to the Contracting Authority.
- (4)Thereafter, the Procuring Authority shall within six months undertake and complete a detailed feasibility study and submit it to the PPP Secretariat.

FEASIBILITY STUDY AND SECOND STAGE APPROVAL

Feasibility Study

6. The feasibility study shall research in to and provide details of all project issues, including:
 - (1)The project's comparative advantage to the State in terms of value for money, affordability, transfer of risk to the private sector, social impact, employment generation and improvement in the living standards of citizens of the State;
 - (2)A consideration of the policy context in which the project is undertaken, a needs analysis and a full environmental impact assessment of the proposed project within its immediate locality in particular and the State in general, if necessary;
 - (3)The role of the Contracting Authority in the project and the specific functions to be considered in relation thereto;
 - (4) Expected input and deliverables by the private sector;

(5)The extent to which the functions to be undertaken by the project shall be efficiently performed by the private sector;

(6)A financial model that reasonably applies various assumptions and sensitivities to all anticipated project costs and revenues, the factors that may affect them and the expected rates of return there from;

(7)The most appropriate PPP option by which the Contracting Authority may implement the project; and

(8) The capacity of the Contracting Authority to effectively undertake whatever obligations are conferred on it and, where this is deficient, measures that may be taken to ameliorate such deficiency.

Second Stage Approval

7. (1) The PPP Secretariat shall:

- (a) Undertake an assessment of the feasibility study submitted to it and within six weeks
 - (b) consult the Ministry of Finance in order to identify and appropriately handle any risk and contingent liabilities issues that may arise from the project
 - (c) present its recommendations to the Board, for review and decision;
- (d)Notify the Contracting Authority of the presentation of the feasibility study to the Board and the Board's decision thereon.

(2)The Board's approval of the feasibility study shall also authorise the prospective Contracting Authority to proceed to the next stage.

(3) This approval, which shall be called a Second Stage Approval, shall be communicated by the PPP Secretariat to the prospective Contracting Authority within one week of being given.

PREPARATION TO BID AND THIRD STAGE APPROVAL

Contract Award

8. (1)Upon receiving a Second Stage Approval, the Contracting Authority shall consult the PPP Secretariat to secure its concurrence with the proposed financial terms and risk allocation provisions of the draft PPP Agreement to be included in the Request for Proposals.

(2) The Contracting Authority shall, with the assistance of the PPP Secretariat:

- (a)Draw up a procurement plan setting out the actions to be taken, the persons or entities responsible there for and a time frame within which it expects to achieve

the execution of a Public Private Partnership Agreement (herein after called “PPP Agreement”);

(b) Select and design an equitable, transparent, and cost-effective Procurement Procedure to be stated in the Request for Proposals, which procedure shall be stated in detail in the Request for Proposals; and

(c) Draw up a draft PPP Agreement.

(3) The content of the various optional contract award procedures and the matters to be provided for in a Request for Proposals shall be stated by the PPP Secretariat and in subsequent regulations that may be issued by the Agency.

Third Stage Approval

9. (1) After its review and recommendation, The PPP Secretariat shall present the following to Board for its approval;

- (a) Contract award plan;
- (b) the draft Request for Proposals; and
- (c) the draft PPP Agreement

(2) The Board shall after a review of the contract award plan, the draft Request for Proposals and the draft PPP Agreement, issue a Third Stage Approval for the Contracting Authority to proceed with the procurement process.

Collaboration with Related Agencies

10. The Contracting Authority and the PPP Secretariat shall identify all public entities whose support or participation shall be necessary to execute the contract award plan and they shall ensure that such a public entity is aware in advance of the supportive role it will be required to play, the precise deliverables required of it and the time frame within which such deliverables must be available.

Approval of other documents

11. (1) The Contracting Authority shall, ensure all other draft contract award documents are prepared and submitted to the PPP Secretariat and the Procurement Body for their joint review and approval. These documents include;

- (a) Pre-qualification notices;
- (b) Statement of evaluation criteria; and
- (c) Evaluation sheets

(2) The PPP Secretariat and the Procurement Body shall undertake the said joint review and send the results thereof back to the Contracting Authority within *four weeks* of the submission.

(3) No Request for Proposals shall be issued to a candidate unless the PPP Secretariat and the Procurement Body have approved all other relevant and associated contract documents after a joint review.

BIDDING AND STATE EXECUTIVE COUNCIL APPROVAL

Contents of a Bid

12. Every proposal submitted by a candidate in response to a Request for Proposals shall, in order to be valid, discuss without equivocation or evasion each of the matters required in RFP, and to be discussed to the detail required therein.

Duties of the Contracting Authority

13. The Contracting Authority shall be responsible for:

- (1) Conducting the bidding process with respect to any PPP project in accordance with the Kebbi State Price Intelligence and Public Procurement Law 2020;
- (2) Examining and evaluating the bids received;
- (2) Making recommendations to the PPP Secretariat for negotiating with the preferred bidder with the objective of completing a PPP transaction.

State Executive Council Approval

14. (1)The PPP Secretariat shall consult with the Procurement Body regarding the Procurement Report and they shall make and conclude a joint review of the said Report *within three weeks* of receiving it.
- (3) Within a further *one week* of concluding the joint review, the PPP Secretariat shall forward the result and recommendations of the joint review to the Board.
- (4)The Board shall consider the said result and recommendations and if it approves the PPP transaction to go forward, it shall forward its decision along with minutes of its relevant proceedings to the State Executive Council for ratification.
- (5)Upon its decision to ratify the Board's approval, the State Executive Council shall thereby be deemed to have authorised the Board to issue a Notice of Award.
- (6)This approval, which shall be called a State Executive Council (or "Exco") Approval, shall be communicated by the PPP Secretariat to the Contracting Authority.

Notice of Award

15. (1)The PPP Secretariat shall, immediately after State Executive Council Approval is granted, and after notifying the Contracting Authority, publish in the name of the State Executive Council in at least national newspaper, the State Tenders Journal, the State newspaper and the electronic media in the State, notice of the award of the PPP contract.
- (2)The notice shall include the essential terms of the proposed PPP, particularly the names of the parties, the tenure of the PPP Agreement, a summary of the services to be provided, the cost of the project and the value for money benefits for the general public.

Closed Bid

(1) Notwithstanding anything to the contrary, the State Executive Council may approve a closed bid provided that each of the following conditions are met:

- (a) There are peculiar intellectual property and trade secrets required to undertake the project; and there is only one source capable of providing the service due to peculiarities of such intellectual property and trade secrets, or other similar consideration;
- (b) The project is incorporated into the Infrastructure Master Plan or the PPP Priority List;
- (c) The State Executive Council establishes that regardless of not adopting the contract award procedures, value for money for the citizens of the State will be obtained.
- (d) All documentation relevant to the closed bid, including minutes of meetings, correspondence, Request for Proposals or bid document howsoever called, proposals from one or more prospective candidates and a draft PPP Agreement are submitted by the PPP Secretariat to the State Executive Council for review and approval; and
- (e) There is a compelling public interest to so approve.

(2) If the State Executive Council determines that the conditions in sub-section (1) has been met, it shall approve the PPP Agreement resulting from the closed bid in terms satisfying the Law, and issue a State Executive Council Approval to the Board.

(3) Upon grant of State Executive Council Approval under sub-section(2) above, the provisions of Section 24(4) and 25 of the KIPA Law shall apply.

Execution of the Public-Private Partnership Agreement

16. (1) Upon receiving State Executive Council Approval, the Contracting Authority shall, with the support of the Office of the Attorney-General and the PPP Secretariat, conclude the PPP Agreement between the Private Party and the Contracting Authority.

(2) The PPP Agreement shall include a management plan that establishes the capacity of the Contracting Authority and the private party to effectively implement, operate and continuously monitor and evaluate the project.

(3) Within *two weeks* of concluding the PPP Agreement, the Contracting Authority shall send an electronic copy thereof without commentary or mark-up, and complete with all relevant schedules, ancillary agreements, and with any relevant duly executed supporting financing agreements, project agreements, consents and licences, to the PPP Secretariat; which documents shall collectively be called “the PPP Documents”.

Completion, Execution, Registration of the Public Private Partnership Agreement

17. (1) Upon receiving the PPP Documents, the PPP Secretariat shall prepare the requisite number of clean copies thereof and ensure that each page is initialled by a representative each of the Contracting Authority and the Private Party, which stage

shall be known as “completion”, to signify that both parties confirm the correctness of the initialled copies.

(2)The completed PPP Agreement with all relevant PPP Documents shall be formally presented by the Board and executed for the State only by the Governor, or by a person acting in such capacity, with his signature witnessed by the political or the administrative head of the Contracting Authority; and for the Private Party by its Chairman or person acting in that capacity with his signature witnessed by its chief executive officer or person acting in that capacity.

(3)Upon the execution of a PPP Agreement, the PPP Secretariat shall immediately register it, retain a counterpart with copies of all other PPP Documents and transmit to the counterparts each to:

- (i) The Governor;
- (ii) The Deputy Governor;
- (iii) The Contracting Authority;
- (iv) The Private Party;
- (v) The Office of the Attorney General;
- (vi) The Ministry of Finance;
- (vii) The Ministry of Budget, and Economic Planning;
- (ix) The Ministry of Commerce, Industry and Tourism
- (x) The Office of the Accountant-General of the State;
- (xi) The Procurement Body; and
- (xii) The Government body responsible for monitoring and/or evaluating Government-wide project performance.

(4) The Board shall be the sole authority empowered to issue certified true copies of a PPP Agreement and any accompanying PPP Documents.

(5) No PPP Agreement shall commence prior to the issuance of a State Executive Council Approval.