Guidelines to Implement

Public - Private Partnerships (PPP) Projects
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SECTION A: PPP Introduction
1. Introduction

Public-private partnership (PPP) represents a relationship involving private investment in public projects and/or public co-financing of private projects that are in the public interest. Such relationship is formed between public and private partners in connection with the construction, maintenance and operation of public infrastructure or other projects that are in the public interest.

PPP can also be in connection with the provision of commercial and other public services or other investment of private or public funds in the construction of structures and facilities that are in part or entirely in the public interest, or in activities where their provision is in the public interest.

The term ‘Public Private Partnership’ (PPP) does not have a single agreed model or definition. Different governments and private enterprises across the world have developed widely different models to suit their goals.

PPP broadly covers a range of different models, where private sector engages with the public sector to deliver a service or a project. The guiding principle in such alliances is the larger good of the recipients of the service. These arrangements range from relatively short term management contracts (with little or no capital expenditure), through concession contracts (which may encompass the design and building of substantial capital assets along with the provision of a range of services and the financing of the entire development and operation of the project), to joint ventures and partial privatization, where there is a sharing of ownership between the public and private sectors.

Typically, PPP involves an agreement or a contract between a public sector authority and a private party, where the private party commits to provide a public service or a project and assumes substantial financial, technical and operational risk of the project. In some types of PPP, the cost of using the service is borne exclusively by the users of the specific service and not by all the taxpayers. In other types, the cost of providing the service is borne wholly or in part by the government authorities. Government may also
contribute to the PPP arrangement in kind instead of cash, for example by leasing or transfer of existing assets.

Though PPP is a good model for implementing public projects, combining strengths of the Government sector and the private sector, it may not be a standard solution to all Government projects for citizen centric services. The agencies should exercise caution and review the feasibility and risk when considering a PPP arrangement.

There are different types of Public Private Partnerships with varying risks and responsibilities.

**PPP Terminology:**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Partner:</td>
<td>“Public partner” is the state or a self-governing local community, which within the framework of its real and local jurisdiction establishes a public-private partnership.</td>
</tr>
<tr>
<td>Private partner:</td>
<td>“private partner” or “public-private partnership contractor” is one or more legal or physical persons that establish a public-private partner relationship in which they also acquire the right and obligation to operate a public-private partnership;</td>
</tr>
<tr>
<td>PPP Relationship:</td>
<td>“public-private partner relationship” is a relationship between public and private partners in connection with public-private partnership. A public-private partner relationship may be conducted as a contractual partner relationship (contractual partnership) or an equity partner relationship (equity partnership);</td>
</tr>
<tr>
<td>Concessionaire:</td>
<td>“concessionaire” is the public-private partnership contractor in the case of a concession form of public-private partnership (concession partnership)</td>
</tr>
<tr>
<td>Special Exclusive Rights:</td>
<td>“special or exclusive right” is the right granted by the public partner in respect of which the purpose is to restrict the right</td>
</tr>
</tbody>
</table>
to perform activities to one or more persons, although the number of persons is limited if in this situation other persons that do not have this right cannot perform the same activities under equal conditions in the same geographical area. Where a right in the sense of this point is granted through an administrative or other act, irrespective of how it is referred to under a special act (concession, license, permit, authorization and so forth), such right shall be deemed to be a special or exclusive right.

Application:

“Application” is any application aimed at obtaining a public-private partnership.

The purpose of this document on PPP Guidelines is to devise a framework for EICTDA to enable and promote private investment in the ICT infrastructure creation, maintenance and/or operation of structures and facilities that are in the public interest ensuring economically sound and efficient performance and service delivery. The public-private partnership framework includes the areas of financing, design, construction, supervision, organization and management of PPP projects.

Fundamental PPP Principles:

1. Principle of Partnership

1.1 Decisions determining the public interest in establishing public-private partnership and on implementing projects in one of the forms of public-private partnership shall be taken by the EICTDA with the consent of the Procurement department.
1.2 PPPs should draw on the full range of structures and contractual precedents available for partnering.

1.3 Asset-intensive PPPs should not assume that project financing is the only funding method capable of delivering a value for money solution. Different forms of funding may be appropriate, and their impact on the structure and cost of the partnering should be clearly understood from the start.

1.4 EICTDA should ensure fair reward for the contractor’s efforts. To drive better performance there must be real and proportionate incentives for contractors.

1.5 Management of the partnering should be addressed explicitly from the outset and cannot be achieved through mutual board membership alone. PPPs need to draw more deeply on both the public and private sectors’ practical experience of bringing together and managing teams of people.

2. Principle of transparency

2.1 In establishing a public private partnership the EICTDA must ensure highest possible degree of transparency in public information, purpose, nature, subject and value (scope) of the public-private partnership project.

2.2 All tender notices and other procedural documents in the process of establishing public-private partnerships (selection document and so forth) must be made available in the public
domain preferably on the EICTDA website, National Portal.

2.3 In the procedure of establishing a public-private partnership EICTDA shall ensure that candidates have access to the same information for preparing applications and for participating in the establishment procedure, as well as to information on the conditions and criteria for candidate selection. Public-private partnership contractors must be selected in a transparent manner and according to the prescribed procedure in the procurement guidelines.

3. Principle of Adherence to Law

3.1 In the procedure of establishment and operation of a PPP, the EICTDA may only employ those measures to achieve the objective provided by law or by a regulation.

4. Principle of balance

4.1 In a public-private partnership a balance of rights, obligations and legal benefits between the EICTDA and private partners shall be ensured. Ensuring the public interest shall be a top priority of the EICTDA, but both partners shall ensure the interests of users and all other participants, both in the procedure of establishment and of operating the public-private partnership project.

4.2 Risk must be spread within the public-private partnership such that it is borne by the party that can most easily control it; in any event the public-private partnership contractor must, irrespective of the nature of the public-private partnership, bear at least part of the commercial
risk and market risk associated with the scope of demand, supply and availability risk.

4.3 Where a public-private partnership contractor does not bear even part of the commercial risk, the relationship, irrespective of its title or of the provisions of a special law, shall not be a public-private partnership.

5. **Principle of Competition**

5.1 In the procedure of establishing a public-private partnership EICTDA shall ensure fair competition among candidates. In creating and operating a public-private partnership EICTDA shall act in compliance with the regulations on protecting or preventing the restriction of competition.

6. **Principle of Procedural autonomy**

6.1 Unless otherwise provided by law, the parties to a public-private partnership may freely arrange the contractual relationship and resolve conflicts through arbitration.

6.2 EICTDA may in compliance with regulations provide incentives designed to enable a specific investment in a public project being carried out as a public-private partnership.

7. **Principle of cooperation**

7.1 EICTDA shall assist the public-private partnership contractor in securing the necessary material and other rights and the various permits which the contractor alone cannot obtain, in compliance with regulations and the public-private partnership contract.
8. Principle of Direction

8.1 EICTDA must lay down clear objectives and principles identify projects, set realistic targets and the means of achieving them in the interest of the citizens.

8.2 EICTDA must set a ‘roadmap’ for the implementation. Without it, there will be no mechanism to enable aspirations to materialize into concrete projects.

9. Principle of economic viability

9.1 EICTDA shall ensure that the PPP will be established only when it is proved to be economically the most efficient method and one that offers the best ‘value for money’.

10. Principle of Social Objectivity

10.1 EICTDA shall prove, before establishing the PPP, the benefits of public interest goals such as social equity, inclusiveness, accessibility, transparency and accountability or services to citizens, especially those who are economically and socially disadvantaged, if there is a compromise in the economic efficiency for social benefit.
General Guidelines:

A PPP agreement between a Public and a private party must:

I. Provide value for money to the Public entity
II. Be affordable for the Public entity
III. Describe in specific terms the nature of the private party’s role in the PPP
IV. Confer effective powers on the Public entity
V. Provide for monitoring the implementation and assessment of the private party’s performance under the agreement
VI. Provide for management and enforcement of the agreement
VII. Impose financial management duties on the private party, including transparent processes relating to internal financial control, budgeting, accountability and reporting
VIII. Provide for the termination of the agreement if the private party:
   IX. Fails to comply with terms or conditions of the agreement
   X. Deliberately provides incorrect or misleading information
   XI. Restrain the private party, for the full period of the agreement, from offering otherwise than in accordance with the agreement an employment, consultancy or other contract to a person:
       i. Who is an official of the public player/EICTDA or an entity under the sole or shared control of the Public player/EICTDA
       ii. Who was such an official at any time during a period of one year before the offer is made
   XII. Restrain the private party, for a period of three years, from offering an employment, consultancy or other contract to an employee of the public party/EICTDA directly involved in the negotiation of the agreement.
2. Applications of PPP

Those contracts between the EICTDA and private sectors will be considered PPP if they would bind the private sector to supply and/or operate public services or infrastructure projects that have typically been the realm of the public sector.

I. Viability:

Following are various scenarios under which a PPP can be a viable option:

i. Where the service requires external expertise and government will not be able to provide it independently.
ii. Where a private partnership would significantly enhance the quality of service compared to what the government could extend independently.
iii. Where a private partnership would expedite the project implementation significantly.
iv. Where there would be a considerable reduction in the project cost and also the service cost with the involvement of a private player.
v. Where PPP offers greater scope for innovation which would simplify the existing systems and processes.
vi. Where PPP provides larger scope for socio economic welfare

II. Preconditions for PPP Application

The introduction of PPP is conditioned by the following fundamental principles:

A. Value for Money – It is the main requirement that the resulting economic value of a PPP project should be lower than if implemented in a traditional manner of public sector funding. Since PPP represents a long-term and comprehensive concept, the total resulting economic value should also be viewed in a comprehensive manner (total costs of the public sector and opportunity costs) rather than solely from the sum of the cash payable from public budgets. The
total economic value of a PPP project must be determined prior to launching the relevant PPP tender.

B. Risk Track

C. nsfer – The party best capable of managing risk should be the party to bear it; any material risks should be transferred to the private sector.

D. Specification of Public Service Standards – The public sector in the capacity of a client must define standards applicable to public services, both in order to guarantee optimum public services and taking into account the economics of such standards.

E. Maintenance of Public Assets Value – Since public assets would not be usually transferred to the PPP operator or they should come back to the public sector upon the expiration of the contract, it is essential to define clearly the relevant rules applicable to the maintenance of the value of such public assets managed by the private sector under PPP contracts

F. Ensuring Innovation and Competition – PPP contracts must not result in a monopoly of a single contractor; rather, PPP should manage competition so that it brings about utmost innovations in the given public service.

Guidelines for PPP Eligibility

PPPs will mainly be projects or services that meet any of the following features:

1. Shared responsibility for the supply of infrastructures or services whereby the private sector accepts higher risk, typically combining the design, construction, funding, and management and maintenance elements.

2. A long-term commitment (at least 3 years) by the private sector to provide defined good quality public services.

3. Shared expertise and capabilities by the private and public sectors so that the public sector may optimise the exposure and guarantee a higher value of public expenditure application mainly, while making use of qualities inherent to the private sector in the technical, financial, management, and innovation fields.
EICTDA Guidelines for Establishment of a PPP:

EICTDA shall follow the below guidelines to establish a PPP project:

I. The project shall be implemented i.e. developed, financed, constructed, maintained and operated for the Project Term by a Private Sector Company to be selected by the EICTDA or a statutory entity through a process of open competitive bidding.

II. The project should provide a service against payment of a predetermined tariff or user charge.

III. The Project shall be related to ICT or sectors closely linked to ICT.

IV. EICTDA shall finalize appropriate PPP form to facilitate effective project design and achieve early buy-in of the parties.

V. EICTDA shall assess the needs to define the service requirements and to determine the objectives to be achieved through the PPP. These objectives shall be quantifiable, measurable and specific in order to assist in analysis and the future preparation of the procurement process.

VI. EICTDA shall certify, with reasons the practicality of the tariff/user charge, Project term and that the Capital and Operational costs are reasonable and based on the industry standards and specifications normally applicable to such projects.

VII. Proposals for any other form of assistance may be considered by an empowered Committee and sanctioned with the approval of EICTDA on a case-by-case basis.

VIII. A Program Management Unit (PMU) will be setup to monitor and appraise the implementation of the PPP. The PMU shall be responsible for regular monitoring and periodic evaluation of project compliance with agreed milestones and performance levels. It shall send quarterly progress reports to the EICTDA which will make a consolidated progress report once every quarter for review by the Director General of EICTDA.

IX. EICTDA shall establish the true cost of providing a service with the purpose of benchmarking potential private costs. The benefits and costs should be systematically analyzed considering both quantifiable and non-quantifiable items.
3. Potential Benefits

Public Private Partnerships provide a host of benefits for the government and the public as compared to traditional procurement arrangements. This makes it an attractive option for implementing critical projects. The principal reason for using PPPs is that, where the project is suitable, they can deliver better value for money than the alternatives.

Highlighted below are some of the advantages that make PPP an attractive option:

I. PPPs make projects affordable

Under PPPs, the private sector finances the project or a part of the project and is repaid by a service charge from the authority over time or by revenues from the project, or a combination of the two. Thus it reduces outlay from Government side. So in circumstances when the public authority does not want to, or cannot, increase its direct levels of borrowing, PPPs make projects affordable.
II. PPPs maximize the use of private sector skills

Under traditional procurement, the private sector is responsible for delivering an asset within fixed time and budget without assuming any operational risk. In contrast, PPPs require the private sector to:

- Deliver assets on time and budget.
- Ensure that those assets deliver the service levels required by the public sector.
- Manage the overall delivery of the project.
- Ensure that the individual assets and other elements of the project that have been procured work together to successfully deliver services.
- Maintain and refurbish assets on an effective basis, so that services are delivered continuously at satisfactory levels over the long-term.

PPPs therefore offer significant opportunities to benefit from private sector skills to a far greater degree because of these additional requirements. Following are some of the issues regarding own track record of project delivery of public sector authorities, which need to be examined, when PPP options are being looked into:

- Have projects been delivered on time and on budget?
- Has systems integration risk been properly managed?
- Have effective project management skills been introduced?
- Are required skills and resources available, to manage and maintain the assets effectively after their acceptance from the private sector contractor?

Public sector authorities often do not have in-house capability to deliver projects and maintain them over lengthy periods. They may only procure projects infrequently and therefore lack the necessary skills and training to implement projects, and therefore have no need to retain such a capacity in-house. Therefore, more extensive use of the private sector throughout a project’s life gives best value, as the private sector parties have that experience and are repeatedly delivering projects.

III. The private partner bears the life cycle cost risk

PPPs require the private sector to compete to deliver services over the long-term at the most economically advantageous price. In traditional procurement the private sector is indifferent to higher maintenance costs after the upfront capital expenditure. With PPPs,
the public sector should seek to achieve the best value over the life of the asset and project. As a result, the private sector focus would be to design and implement projects with a view to their long-term cost to the taxpayer rather than the immediate capital spend.

IV. **Risks are allocated to the party best able to manage or absorb that particular risk**

PPPs are designed so that risks are allocated to the party that is best able to manage them. Where the private sector bodies have the necessary long-term project skills and the public sector does not, it follows that the risks associated with project delivery should be transferred to the private sector. In so doing, the public sector should obtain best value because those with the greatest and most relevant expertise will be best able to manage or absorb the risks, thereby pricing them more economically and minimizing the costs.

V. **PPPs deliver budgetary certainty**

At the financial close of a transaction, the future cost of a PPP project is known; the public sector will receive known outputs for known costs. This is in contrast to traditional procurement where the costs of project completion and future maintenance of the assets are uncertain and remain the responsibility of the public sector.

VI. **PPPs deliver value for money**

This is a factor that should be examined for every PPP project. It is probable that the PPP approach will deliver value for money: where a PPP project is using private sector skills across a number of disciplines; where the public sector track record of project implementation is poor; where bidders are competing to provide the best services over the life of the assets; and where risks are allocated to the party best able to manage or absorb them.

VII. **The public sector only pays when services are delivered**

Usually, any PPP payments by the public authority would commence when project services begin to be delivered. If projects are late, the authority will not pay and therefore the taxpayer does not bear the cost. The level of payment made by the authority will relate to the quality of services provided and will reduce in some sort of relation to a
reduction in services being delivered. The private sector contractor has a direct financial interest in ensuring that the asset is delivered on time and the required service levels are provided.

**VIII. PPPs force the public sector to focus on outputs and benefits from the start**

PPPs rely on developing a detailed output specification and therefore they change the fundamental nature of the public sector procurement:

- The primary focus of the public sector becomes - which services it wants delivered, not the means by which those services are delivered. The public sector’s expertise should therefore be focused on service levels, and not detailed design, for which the public sector often does not have the necessary in-house skills, or is simply not set up to carry out in-house.

- PPP output specifications are fixed for lengthy periods; therefore it becomes critical that the service levels are set correctly at the outset. This leads to an even greater focus on defining service levels at the beginning of a project than has historically been the case. This might necessitate tough choices between the ideal service levels an authority might want and what is actually affordable – choices that under traditional procurement are often hidden or avoided until too late in the process, leading to projects that are far more expensive than originally envisaged.

- Defining service levels in detail at the outset minimizes or removes the need for “change orders”, i.e. changes to the output or specification of assets during the procurement, which is a large contributor to cost overruns with traditional procurement. This focus on output levels is a key reason why PPPs prove to be better value for money.

**IX. The quality of service has to be maintained for the life of the PPP**

The quality of service under a PPP is specified at the outset and is not expected to decline throughout the life of the PPP. The price committed to by the private sector is to maintain those standards throughout. This obligation contrasts starkly with traditional procurement, where asset condition and hence service levels will often decline significantly as the asset becomes older.
4. PPP Models

In public-private partnerships, the public and private sectors join forces to design, finance, build, manage or maintain infrastructure projects. Such partnerships can take many forms, depending upon the exact allocation of risks and responsibilities. These include:

1. Service contracts:

   The private sector provides a bundle of specific services to a public utility, but the public sector retains overall operational responsibility. Service contracts can in practice take many forms, but two of the most common ones are:

   - Management support:

     The private operator supplies the public authority with human and technical resources for a fee. It provides technical know-how with all operational and financial aspects of project management remaining within the jurisdiction of the public authority.

   - Operation and Management (O&M):

     The private operator is in charge of daily maintenance of the facilities. The private operator is paid for its services by the public authority according to specific and qualified performance criteria. Unlike management support, the private operator may in some cases take on the responsibility for operating the facilities.

2. Delegated management contracts:

   In this type of contract the public sector retains overall ownership of the assets, but delegates the responsibility for their operation to a private operator for a definite (often long) period of time. Two of most commonly seen models are:

   - Lease agreement:
The private operator manages the services for a period (often five to fifteen years) and is responsible for maintaining and renewing the facilities according to the terms of the contract. In this capacity, it takes charge of all personnel and existing assets but is not responsible for financing new facilities. The public authority remains responsible for all new investment and compliance to existing norms. The private operator invoices the end-users directly.

- **Concession:**

  The public authorities fully entrust the private operator with management of the services and all necessary investment for a period of 20 years or more. The private operator invoices the end-users directly, the public authorities retaining strict control over service terms as well as all key decisions related to applicable rates and targets.

3. **Construction support:**

   In the most wide-ranging form of PPP contracts, the private operator is involved in the design and construction phases of new infrastructure and carries at least some of the risks associated therewith. Some of the main forms of construction support are:

   - **Build Design Operate (BDO):**

     The public authorities entrust the private operator for a fixed period of time with design, construction and operation of new facilities which remain the property of the public authorities. The private operator assumes the risks linked to design and management of the facility. It is paid a fee by the public authorities and commits to an overall cost for the facility’s construction and operation.

   - **BOT (Build Operate Transfer):**

     The private operator designs, finances and builds infrastructure. While formal ownership of the assets is assigned to the government, the private sector operates the project long enough to service any debt incurred and to earn a suitable return.

   - **BOO (Build Own Operate):**

     In contrast to the BOT case, the private investor retains ownership and control of the project.
4. Hybrid Model: Design-build-finance-operate DBFO

The concession (DFBO) agreement enables the private sector partner (or Special Purpose Company) to finance, construct and operate an income generating infrastructure provision/service delivery improvement in exchange for the right to collect the revenues for a specified period of time. Concessions, in best practice, extend for a long period of time (10-30 years is normal) and are awarded under a competitive bidding process.

Following is a classic structure diagram for the simplified DBFO model:
## Schemes and Modalities of PPP

<table>
<thead>
<tr>
<th>Schemes</th>
<th>Modalities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Build-own-operate (BOO)</td>
<td>The private sector designs, builds, owns, develops, operates and manages an asset with no obligation to transfer ownership to the government. These are variants of design-build-finance-operate (DBFO) schemes.</td>
</tr>
<tr>
<td>Build-develop-operate (BDO)</td>
<td></td>
</tr>
<tr>
<td>Design-construct-manage-finance (DCMF)</td>
<td></td>
</tr>
<tr>
<td>Buy-build-operate (BBO)</td>
<td>The private sector buys or leases an existing asset from the Government, renovates, modernizes, and/ or expands it, and then operates the asset, again with no obligation to transfer ownership back to the Government.</td>
</tr>
<tr>
<td>Lease-develop-operate (LDO)</td>
<td></td>
</tr>
<tr>
<td>Wrap-around addition (WAA)</td>
<td></td>
</tr>
<tr>
<td>Build-operate-transfer (BOT)</td>
<td>The private sector designs and builds an asset, operates it, and then transfers it to the Government when the operating contract ends, or at some other pre-specified time. The private partner may subsequently rent or lease the asset from the Government.</td>
</tr>
<tr>
<td>Build-own-operate-transfer (BOOT)</td>
<td></td>
</tr>
<tr>
<td>Build-rent-own-transfer (BROT)</td>
<td></td>
</tr>
<tr>
<td>Build-lease-operate-transfer (BLOT)</td>
<td></td>
</tr>
<tr>
<td>Build-transfer-operate (BTO)</td>
<td></td>
</tr>
</tbody>
</table>

Source: *Public Private Partnership, Fiscal Affairs Department of the IMF.*
# Strengths and weaknesses of PPP arrangements:

<table>
<thead>
<tr>
<th>PPP Type</th>
<th>Main Features</th>
<th>Application</th>
<th>Strengths</th>
<th>Weaknesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contracting</td>
<td>Contract with Private party to design &amp; build public facility</td>
<td>• Suited to capital projects with small operating requirement.</td>
<td>• Transfer of design and construction risk&lt;br&gt;• Potential to accelerate construction programme.</td>
<td>• Possible conflict between planning and environmental considerations.&lt;br&gt;• May increase operational risk.&lt;br&gt;• Commissioning stage is critical.&lt;br&gt;• Limited incentive for whole life costing approach to design.</td>
</tr>
<tr>
<td>• Facility is financed &amp; owned by public sector</td>
<td>• Suited to capital projects where the public sector wishes to retain operating responsibility.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Key driver is the transfer of design and construction risk.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BOT</td>
<td>Contract with a private sector contractor to design, build and operate a public facility for a defined period, after which the</td>
<td>• Suited to projects that involve a significant operating content.</td>
<td>• Transfer of design, construction and operating risk&lt;br&gt;• Potential to accelerate construction&lt;br&gt;• Risk transfer provides</td>
<td>• Possible conflict between planning and environmental considerations.&lt;br&gt;Contracts are more complex and tendering process can take longer</td>
</tr>
<tr>
<td></td>
<td>• Particularly suited to water and waste projects.</td>
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<td></td>
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</tbody>
</table>
| PPP Guidelines | Facility is handed back to the public sector.  
- The facility is financed by the public sector and remains in public ownership throughout the contract.  
- Key driver is the transfer of operating risk in addition to design and construction risk. | Incentive for adoption of whole life costing approach  
- Promotes private sector innovation and improved value for money.  
- Improved quality of operation and maintenance  
- Contracts can be holistic  
- Government able to focus on core public sector responsibilities. | - Contract management and performance monitoring systems required.  
- Cost of re-entering the business if operator proves unsatisfactory. |

<p>| Design-build-finance-operate | Contract with a private party to design, build, operate and | Suited to projects that involve significant operating | Attracts private sector finance; Attracts debt | Possible conflict between planning and environmental |</p>
<table>
<thead>
<tr>
<th>(DBFO)</th>
<th>finance a facility for defined period, after which the facility reverts to the public sector.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• The facility is owned by the private sector for the contract period and it recovers costs through public subvention.</td>
</tr>
<tr>
<td></td>
<td>• Key driver is the utilization of private finance and transfer of design, construction &amp; operating risk.</td>
</tr>
<tr>
<td></td>
<td>• Variant forms involve different combinations of the content.</td>
</tr>
</tbody>
</table>

|        | particularly suited to roads, water and waste projects. |
|        | • Delivers more predictable and consistent cost profile; |
|        | • Greater potential for accelerated construction programme; and |
|        | • Increased risk transfer provides greater incentive for private sector contractor to adopt a whole life costing approach to design. |

|        | finance; |
|        | • Contracts can be more complex and tendering process can take longer. |
|        | • Cost of re-entering the business if operator proves unsatisfactory. |
|        | • Funding guarantees may be required. |
|        | • Change management system required. |
## Summary of PPP Models:

<table>
<thead>
<tr>
<th>Management support</th>
<th>Operation &amp; maintenance</th>
<th>Ownership</th>
<th>Investment</th>
<th>Commercial risk</th>
<th>Duration (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Public and private</td>
<td>Public</td>
<td>Public</td>
<td>Public</td>
<td>1 to 2</td>
</tr>
<tr>
<td>O&amp;M</td>
<td>Private</td>
<td>Public</td>
<td>Public</td>
<td>Public</td>
<td>3 to 5</td>
</tr>
<tr>
<td>Leasing</td>
<td>Private</td>
<td>Public</td>
<td>Public</td>
<td>Semi-private</td>
<td>8 to 15</td>
</tr>
<tr>
<td>Concession</td>
<td>Private</td>
<td>Public</td>
<td>Private</td>
<td>Private</td>
<td>20-30</td>
</tr>
<tr>
<td>BDO</td>
<td>Private</td>
<td>Public</td>
<td>Public</td>
<td>Private</td>
<td>20-30</td>
</tr>
<tr>
<td>BOT / BOO</td>
<td>Private</td>
<td>Public/ private</td>
<td>Private</td>
<td>Private</td>
<td>20-30</td>
</tr>
</tbody>
</table>
Choice of a Delivery Model

The choice of delivery model is a critical step in the project and in the development of the procurement strategy. The delivery model decision requires:

- sound understanding of project or program strategic outcomes and their relationships to the various aspects of different delivery models;
- sound understanding of the project risks and characteristics (identified through risk assessment and data-gathering);
- detailed analysis to identify which option best optimizes project or program strategic outcomes/objectives, which includes achieving value for money;
- detailed analysis facilitating the alignment of key project risks with relevant characteristics of suitable delivery models to optimize risk management opportunities;
- risk assessment of the selected delivery model within the project context.

Factors to be considered while evaluating the delivery Model:

<table>
<thead>
<tr>
<th>Sr#</th>
<th>Factor</th>
<th>Description</th>
</tr>
</thead>
</table>
| 1   | Design                   | ❖ complexity of the design solution  
❖ need for and ability to achieve complete design prior to tendering or construction commencing  
❖ desire for design flexibility during construction  
❖ obsolescence of the design and the ability to upgrade  
❖ scope for innovation and benefits of having competing design solutions |
| 2   | Capacity and capability  | ❖ availability of suitable contractors  
❖ the in-house resources and skills of the principal |
| 3   | Political                | ❖ Government policy and other political considerations                      |
| 5   | Cost Certainty           | ❖ the need for strict cost control and/or certainty  
❖ what degree of certainty is there about design and achievement of KPIs?  
❖ what is the need for cost certainty? |
| 6   | Project characteristics  | ❖ risk factors particular to a project  
❖ unique or unusual circumstances or factors |
Timing constraints

- what model is likely to best accommodate time constraints?
- are there critical deadlines?

Guidelines for Selecting a Delivery Model

In determining the appropriate model, EICTDA needs to consider which model will:

I. Facilitate achievement or optimization of project objectives and outcomes;
II. Achieve the most suitable balance between the level of control the department requires and the degree of risk that is optimal to bear;
III. Optimize the schedule, cost and quality outcomes for the project;
IV. Best suit the characteristics of the project;
V. Provide best value for money;
VI. Achieve the risk management objectives for the organization and the project;
VII. Provide the most appropriate risk allocation between parties.
SECTION B: PPP Implementation
1. Feasibility Study

After analyzing the applicability of a PPP model, the next major task is to study the feasibility of the PPP model. Through this analysis, EICTDA must ensure that the project is viable and is beneficial to the stakeholders. This can be done by building a business case to evaluate the pros and cons of the project. Identifying the scope for partnering should be part of a rigorous option appraisal in line with current best practice. The business case should be analyzed holistically answering the following key questions.

- The nature of the private party’s role in the PPP
- The extent to which this role, both legally and by nature, can be performed by a private party
- Describe how the proposed agreement will Provide value for money to the EICTDA
- Be affordable for EICTDA
- Transfer appropriate technical, operational and financial risks to the private party
- Impact on the EICTDA’s revenue flows and its current and future budgets.
- Takes into account all relevant information
- Explains the capacity of the EICTDA to effectively monitor, manage and enforce the agreement.

When the feasibility study is completed, the in charge PPP officer in the EICTDA must present the feasibility study report, with all relevant documents, to the Procurement office for its decision “in principle” to continue with the proposed PPP.

The business case primarily delves into the practicality of the PPP through key parameters as discussed below:

I. Business Requirement

While considering a PPP, a clear definition of the required business outcomes is particularly important because the project objectives provide the framework within which the parties work together.
II. Services

After the business requirement is clearly defined, the services need to be structured to avoid ambiguity about the scope of the project. The primary approach would be to make the services citizen centric. Following are the few key questions that need to be answered while considering the PPP for providing the services.

• How much of the service could be carried out reliably by the private sector?

• What are the public and private sector’s specific skills and competencies and where will the public/private sector add value?

• What additional services can be provided?

While there may be many clear boundaries between public and private sector provision, if there are any activities or processes that would benefit from being shared, then partnering may deliver a better solution than contracting out. This may be the case in areas that appear to be too close to the “core” of public sector provision and where close involvement of the public sector is needed alongside any private sector input.

III. Value addition

The private sector must have capability to deliver elements of the service better than the public sector could. Many public sector activities and assets are common to private sector businesses, for example, the operation of customer account and information systems or logistics services. These can be simply contracted to the private sector, but greater benefits may be delivered by involving the service provider in delivery of strategic decisions and/or operational improvements. This needs to be considered while designing the partnering structure.

It is always advisable to consult the potential private sector partners before finalizing the scope of the partnership, particularly where the service requirement is novel or unusual.

Conversely, it is also worth considering what assets, skills or intellectual property the partners would bring to the partnership. There may be things which only the public sector can provide and exposure to which may benefit the private sector partner in terms of experience, information and understanding. If there are real benefits to be
gained from working with, rather than for, the public sector, then the private sector partner would be more willing to partner.

IV. Financial Issues

The financing needs for partnerships vary – from large up-front capital commitments, such as in an infrastructure project, to a rolling requirement for asset renewal funded out of revenue, as can often be found in an IT services partnership or simply front-end working capital requirements for a fully service-based partnership.

Private sector sources of funding are usually a feature of PPPs. This reflects the fact that, by providing the finance, the private sector is able to optimize the mix of initial and through-life spending and will also engage in rigorous risk management procedures. An important step is to develop the contractual and risk sharing framework that will allow the private sector to finance the capital investment underpinning the service delivery.

Critical questions that must be asked in designing this framework include:

• What assets will the partnership be required to finance in order to meet the service requirement?

• Will the private sector require the assets to be returned at expiry of the partnering arrangements or upon termination of the partnership?

• Do the assets have an alternative use or user from which value could be extracted?

Such questions will begin to determine how far the partnership must rely upon contractual arrangements with the private sector in order to raise finance, and how closely the partnership might mirror a more conventional private sector business. If, the partnership will to some degree be relying upon public sector contractual support, then the types and level of risk that are transferred to the partnership must be clearly defined and well understood. In addition, the scope for the partnership to manage risk needs to be understood. Where the contractual arrangements can be made to help risk management, this should be factored into the project structure. For example, if different project activities have differential risk profiles, then these can be placed in
separate subcontracts and delivery vehicles to promote their efficient management and competitive financing.

V. Cost – Benefit Analysis:

This involves evaluating monetary benefits of implementing the project through PPP model as against that of deploying the project using more traditional procurement and service delivery models. This is an important criteria for deciding on the PPP approach.

VI. Risk Assessment

Large scale projects such as the PPP always come with a baggage of risks associated. Hence it becomes imperative to assess the main risks and how they can be mitigated.

A clear and complete register of the project risks, which is continually utilized in risk management, is an essential tool in developing and managing any project. The information about the nature and degree of risks will help determine the structure of the public-private involvement.

The allocation (and transfer) of project risks is a key consideration in choosing a PPP approach to a project. Risks are not always to be transferred to the private sector. The ideal approach is to transfer the risk to the party best able to manage or control it effectively. Project risks, along with other costs and benefits, need to be thoroughly analyzed to ensure that the government agency gets the best value for money.

Once the business case is prepared and approved by the project stakeholders then it should be forwarded for obtaining the necessary approvals in order to proceed with the project.

VII. Project overview

- Analyzing the project scope
- Formulating project objectives.
- Conducting an AS-IS study of the current situation and services offered
- Conducting the Gap analysis to estimate the effort required
- Streamlining the deliverables and the impact intended
VIII. Market Readiness

It is very important to study the market need to ensure that there are suitable takers for the services offered. At times the services end up as a futile effort if the citizens do not endorse them. Therefore, readiness of the market should be tested to get the users perspective. Readiness can be tested by employing a focus group study or a survey of a sample population by administering a questionnaire.

IX. Conflict of Interest

There has been a growing tendency in involving the private sector in providing high-standard infrastructure, services to meet the needs of rapid economic growth and service quality. The private sector, with its wide range of managerial, commercial, and technical skills, can perform these tasks more efficiently than the government, thereby offering benefits to the public. Despite widely acknowledged benefits associated to these types of public private partnership projects, experiences show that there can be many issues affecting the successful implementation of these partnerships. Apart from Leadership and Resource sharing, Service Overlap is a major conflict of interest from the private player.

Private partner may take away the market share of the PPP revenue and which will affect its self-sustainability. In contract agreement there should be a provision for non-compete/ exclusivity for a period of at least 5years. After completion of the non-compete period only private player may enter into similar business.

X. Capacity to deliver:

Another major question to be answered is whether the Government and the Private sector have the capacity to implement the project. The capacity can be in terms of financial muscle, technical prowess, regulatory constraints or the experience for handling such large scale projects.

XI. Controls & Monitoring

PPPs usually have a long duration of implementation that demands effective contract, operational and financial controls in order to succeed. Strong regulatory and auditing measures are also essential for PPP monitoring. Lack of these checks will impede the quality of services offered by the project.
Thus the Feasibility study will provide the broad overview of the project and will also assist the EICTDA to assess whether it is a viable option to be pursued. Once the approval of the management committee is obtained, a more detailed review by experts is necessary. Since the PPP will involve huge effort, time and funding, the risks need to be minimized through exhaustive due diligence by experts. Following is a sample Feasibility study template for analyzing the viability of the PPP.

**Feasibility Study Template:**

<table>
<thead>
<tr>
<th>Sn #</th>
<th>Item</th>
<th>Description</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Name of the Project</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Type of PPP</td>
<td>(BOT, BOOT, BOLT, OMT etc.)</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Location (Region/Woreda)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Private sector company’s responsibility</td>
<td>(financing, construction, maintenance and operation of the project)</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Project Description</td>
<td></td>
<td></td>
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<tr>
<td>6</td>
<td>Scope of Project</td>
<td></td>
<td></td>
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<tr>
<td>7</td>
<td>Justification for the project</td>
<td></td>
<td></td>
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<tr>
<td>8</td>
<td>Possible alternatives, if any</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Estimated total project cost with break-up</td>
<td>under major heads of expenditure. Including the basis of cost estimation</td>
<td></td>
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<tr>
<td>10</td>
<td>Phasing of investment</td>
<td></td>
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<tr>
<td>11</td>
<td>Project Implementation Schedule</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Financing Arrangements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Sources of financing (equity, debt, etc.)</td>
<td></td>
<td></td>
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<tr>
<td>14</td>
<td>Revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Net Present Value (NPV) of revenue streams with appropriate discounting. Financial IRR, indicating various assumptions (attach separate sheet if necessary)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Tariff and Procedure for fixing the tariff/ user charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Will the project have predetermined user charges/tariffs?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Clearance required from the Government and other local bodies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Indicate how the user fee has been determined; the legal provisions in support of user fee (attach the relevant rules/notification); and the extent and nature of indexation for inflation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Provisions, if any, for mitigating the risk of lower revenue collection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sr#</td>
<td>FACTOR</td>
<td>COMMENT</td>
<td></td>
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<td>-----</td>
<td>------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Provisions, if any for compulsory buy-back of assets upon termination/expiry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Provisions for change of scope and the financial burden thereof</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Minimum standards of Operation and Maintenance/ Performance standards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Penalties for violation of prescribed O&amp;M standards/ Performance standards</td>
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<td></td>
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</tbody>
</table>

Template for Analyzing Feasibility Issues:

<table>
<thead>
<tr>
<th>Sr#</th>
<th>FACTOR</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Local and national government policy</td>
<td>• Does the policy environment favor PPP application and the different components required for a PPP</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Is PPP consistent with other government policies i.e. land use, social policies etc</td>
</tr>
<tr>
<td>2</td>
<td>Extent of legislative authority</td>
<td>• Is there a sufficient legislative authority for entering into PPPs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Is there sufficient legislation to support the management and supervisory role of the public sector in a PPP</td>
</tr>
</tbody>
</table>
| 3 | Taxation framework | • Are there sufficient authorizations and what are the limits to enter into debt agreements  

• What is the tax status of a PPP  

• What are the possibilities to offer tax exemptions to private parties |
| 4 | Reporting and accounting requirements | • How are PPPs treated in public authority accounts  

• What are public disclosure requirements |
| 5 | Financial issues | • Can private sector financing compete with public financing  

• What is the effective cost of borrowing  

• Is the project financially self sufficient or can it become so  

• What financial support mechanisms are available |
| 6 | Technical and organizational issues | • Is there sufficient data to allow design and preparation  

• Can competitive tendering be assured  

• What quality control |
### Political and social considerations

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
</table>
| 7 | Political and social considerations | • Is the public authority regarded as creditworthy  
• Is there strong political commitment to the PPP approach  
• Will a PPP be socially acceptable |

| 8 | Ability to integrate different forms of funding | • Will a PPP be acceptable to existing sources of financing and what factors are likely to have to be integrated into design i.e. procurement rules |

Thus the Feasibility study will give EICTDA a broad overview of the project and will also assist the senior management to assess whether it is a viable option to be pursued. Since the PPP will involve huge effort, time and funding, the risks need to be minimized through exhaustive due diligence by experts as described in the next section.
2. Due Diligence

Independent experts and advisers

Independent experts and advisers play an important role at various stages of PPP. Experienced companies typically supplement their own technical expertise by retaining the services of outside experts and advisers, such as financial experts, international legal counsel or consulting engineers.

Furthermore, independent experts and advisers may assist the EICTDA in the preparation of feasibility and other preliminary studies, in the formulation of requests for proposals or standard contractual terms and specifications, in the evaluation and comparison of proposals or in the negotiation of the project agreement.

Experts from different fields will bring in valuable insights and recommendations that need to be evaluated in order to remodel the PPP Project scope and approach to ensure effective implementation and success. In longer-term PPPs, where whole life and operating risks are borne by the private sector, and usually in a thinly-capitalized SPV, due diligence on partnership robustness is critical.

Following are a few broad expert support areas that could be required for the due diligence phase.

I. TECHNICAL

The Technical or Sectoral experts will assess the core field in which the PPP will be offering its services.

The following are a few vital questions that the experts would evaluate.

- Achievability of requirements
- Ability of subcontractors
- Achievability of programme
Adequacy of costings

Availability of resources

Appropriateness of methodologies

Competitor Analysis

Suitability of technology

Suitability of Performance

Measurement of Service quality

II. LEGAL

The legal experts will look into the regulatory constraints and policies such as those indicated below, that the PPP project needs to abide by so that there are no legal issues or hurdles for implementing the PPP.

- Acts and Regulations for PPP
- Sectoral Regulations
- Structuring and drafting PPP contract and tender documents.
- Identifying the implications of contract terms and liabilities
- Property rights
- Accuracy/Completeness of Project documentation
- Requirements of security

III. FINANCIAL

The financial expert will have to structure the PPP to ensure adequate source of funding, and model the revenue streams to ensure sufficient cashflows for the smooth functioning of the PPP. The finance expert will also have to assist in the following activities:

- Model Audit mechanism and sensitivity analysis for the investments.
- Conduct NPV Analysis and financial modeling for the project
- Conduct Asset valuation
- Verification of property value
- Suitability of residual value assumptions
- Commodity/Service pricing

### IV. INSURANCE

Insurance Adviser will address the following aspects of project risk:

- Appropriateness/Completeness of insurance cover
- Adequacy of pricing provision
- Suitability of risk sharing mechanism
3. PPP Financing

There are several means of financing PPP projects, each sourcing funds in different ways to make the project financially sustainable. This requires a thorough understanding of the funding requirements to ensure valid financial estimations.

A variety of funding methods can be used across the public-private spectrum. For privatizations, where entire undertakings are transferred to the private sector, funding usually comes from the balance sheet of the new shareholders. Part of their consideration for the shares may be investment into the privatized entity.

Where the business plans are credible, the entity may raise debt in its own right, secured on its own, or its shareholders’ assets.

In contrast, the most common form of funding is usually via bank debt loaned to the private sector project company (as opposed to its shareholders), and combined with a small element of risk capital from the sponsors or other shareholders.

The key to raising significant finance as debt is the existence of comprehensive and clear allocation of risks between each of the parties.

In order for a true partnership to fulfill its aspirations and objectives, it is likely to require a significant degree of operational and financing flexibility. Without this flexibility, it will be difficult for the partnership to adapt to changing circumstances, fund projects if they differ from those originally conceived and integrate services as seamlessly as may be desired.

Other departures from standard financing arrangements must therefore be considered if the partnership is to achieve the flexibility to respond to new funding requirements and operational demands. This may take the form of capital structures that involve higher levels of shareholder-provided finance. Another solution is to require the partner vehicle to retain earnings in reserve to fund certain types of expenditure.

Finally, the project can simply provide for subsequent fundraising on the terms in the financial markets at the time.
The following Guidelines would assist in building a sound financial estimation.

<table>
<thead>
<tr>
<th>STEP I. Understanding the Funding Requirement</th>
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<tbody>
<tr>
<td>Firstly ascertain the cash needs of the project, such as:-</td>
<td></td>
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<tr>
<td>- Capital Costs</td>
<td></td>
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<tr>
<td>- Operational Costs</td>
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<tr>
<td>- Cost of Funding such as interest and taxation</td>
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<tr>
<td>- Depreciation costs of assets</td>
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<tr>
<td>- Bidding costs and project development</td>
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<tr>
<td>- Building and maintaining the asset</td>
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<tr>
<td>- Provision of services / Duration</td>
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</table>

<table>
<thead>
<tr>
<th>STEP II. Understanding the Cash inflows</th>
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<tbody>
<tr>
<td>Clearly analyze cash receipts from the various channels of the project such as:-</td>
<td></td>
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<tr>
<td>- Unitary payment/service payment/tolls/fares</td>
<td></td>
</tr>
<tr>
<td>- Grants/Subsidies</td>
<td></td>
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<tr>
<td>- Asset sales</td>
<td></td>
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</tbody>
</table>
STEP III. Characterizing the Investment

Consider following questions in order to characterize the investments:

- Over what period will a return be generated?
- Which cashflows are contracted and which are estimates?
- What contractual mechanisms exist that might vary the related cashflows?
- What market factors might impact my anticipated cashflows
- Which cashflows are likely to vary in line with an index

STEP IV. Model the Capital Structure

Having defined the investment proposition, the next step is to model the finance structure

- Should we use debt/Equity?
- Does debt enhance the value of an investment?
- How Much Debt?
**Tax Considerations:**

It is essential to understand the tax implications and benefits that the debt component can offer while financing. Certain forms of financing are given tax advantages.

**Financial Distress**

Financial distress leads to many direct and indirect costs which arise from the failure to respect the capital structure agreements. Hence proper attention needs to be given to this possibility while designing the capital structure.

If risks materialise, the consequence could be:

- Insufficient capital available to complete project
- Erosion in revenue forecasts
- Increased costs to maintain/operate assets
- Failure of contractors

**Optimization**

Optimization in PPP transactions helps finding the lowest charge that satisfies the requirements of all financial stakeholders (i.e. lowest charge that allows financing the transaction)

**Revenue Sharing**

Most of the successful PPPs work on the revenue sharing model. The revenue generated from the services in terms of fee charges from citizens can be ploughed back into the PPP. The stakeholders can take out a share of this revenue after the initial working capital is deducted as per the contract.

The contract document should clearly define percentage of the revenue that the private player is entitled to receive. This not only lessens the burden of Government investments but also acts as an incentive for the private players to generate more revenue. The Government should be cautious in the revenue generating aspirations of the private partner to ensure that the citizens are not charged exorbitant fees.
At times PPP projects involve the development of innovative technologies and services can be leased out to third parties for generating additional revenues. The Government needs to ensure that the additional revenue does not mislead the PPP from the initial objectives and scope of the project.

**Public sector equity**

One common model for partnership involves the public sector client co-investing directly with the private sector contractor in a newly formed limited company. In order to protect this investment, there will frequently be public sector representation on the company’s board of directors.
4. Commercial Structuring

It is essential to review the mechanism in which the public sector contracts with the private sector in order to affect risk transfer and how the private sector responds to this, how it manages the risks allocated to it and also how the public sector protects itself from the failure of the private sector to manage those risks.

Understanding the underlying drivers of a typical PPP commercial structure is fundamental to analyzing how it might be financed.

I. Contracting with the Private Sector

The PPP Contract is the principal legal interface between the public sector and private sector

The PPP contract must address all the underlying issues of the project. The key aspects of the project that the contract should comprehensively cover are:

- Description of the project and the facility/service required by the public sector
- Description of how the private sector will get paid for providing that facility/service
- Formalization of the risk allocation between public and private sector in all conceivable situations
- Definition of each parties’ legal rights and obligations
- Provision for the consequences of situations where there might be a need to terminate the PPP contract earlier than anticipated

II. Private Sector Response

PPP projects are often complicated undertakings which the private sector may rush to procure. Private sector would require multi-disciplined teams to deliver the requirements of the PPP. Due to the nature of a PPP Contract, the private sector is often required to respond as a consortium. There are inherent complexities while dealing with consortiums and hence proper monitoring and contractual agreements
need to be made with all the stakeholders of the consortiums who are usually associated through subcontracting.

**Risk Transfer within a Consortium**

Private sector risks are usually allocated amongst consortium members via a subcontract structure. There are certain risks that might not be transferred under the subcontract structure such as:

- Changes in tax legislation
- Insurable events
- Cost of insurance
- Residual value of assets
- Demand (i.e. market risks)
- Cost of financing investment requirements
- Failure of Sub-Contractors
- Lifecycle costs i.e. long term maintenance costs

**Contractual rights against consortium failure**

In order to guard itself against consortium failures the public sector must formulate effective checks and clauses that protect the PPP as well as the public sector stakes. The rights that are required within the PPP Contract and the events that crystallize these rights will depend on the nature of the project. Following are few such checkpoints:

- Penalties/Warnings
- Enforced replacement of sub-contractor
- Emergency powers of step-in
- Variation of scope
- Termination of PPP contract
Ⅲ. Corporate structures

Having established the commercial and likely funding structures, the partnership’s legal structure should be addressed. The choices of vehicle for the partnership broadly consist of:

- a contractual arrangement alone, including unincorporated joint ventures
- a partnership
- a company.

The majority of PPP deals currently use an agreement-based structure, although the contractors themselves are generally formed into one, or several SPVs, as a result of the requirements of their parent companies and funders.

But there may, in certain cases, be advantages in entering a legal partnership or even a company. This is particularly the case in Local Authority transactions where the decision may be driven by issues of funding and possibly taxation.
5. Risk Management

Risk management including the allocation and transfer of risk in the context of the PPP project lifecycle should be strongly integrated into the PPP functioning.

I. Potential risk factors:

Typical PPP risks are with respect to:

Income risk:
Income risk depends on two factors: customer usage and prices set.

Partner risk
The public procurement process for selecting partners does not in itself allow extended negotiating periods between partners to establish mutual knowledge and confidence.

Implementation risk
The allocation of implementation risk to the private partner can be a strong factor in the success of the PPP. The financial penalties must be sufficiently large to focus the private partner towards on-time completion and ensuring quality.

Operating and financial risks
There are several operational risks that are inherent during the implementation of the PPP project. Majority of operational risks are to do with funding availability.

Regulatory risk
Generally the laws governing PPPs are new and untested and this compounded with the inexperience of the private sector is a huge risk.

Political risk
Most PPP agreements are long term and, as such, there is an inherent political risk where there may be a number of new governments within the lifetime of the agreement.
Environmental risk

The environmental risks of projects which use natural resources and seek to commercially exploit existing unused assets must be carefully considered.

Latent defect risks

The defects could be inherent in the design or in the assets used for implementing the PPP. Hence it is important to assess periodically through external audits.

Public acceptance risk

If the citizens and end users do not accept the provision of services through a PPP it is bound to fail. It is necessary to keep track of the changing needs of the customer since the initial feasibility study could have indicated a need but during the course of the project implementation the users requirements also evolve.

II. Identification of risk

The risks need to be identified well before the formulation of the PPP contract by analyzing all the high level risks and drilling down into the underlying minute components of the risk. There is also a cost associated with every risk. So risk identification should be followed by quantifying the cost of the risk and predicting the probability of that risk.

“Expected” Cost of Risk = Probability of Risk Occurring x Cost, if Risk Occurs

When considering allocation, key questions must therefore be:

- Who is best placed to reduce the probability of risk occurring?
- Who is best placed to manage the costs of the risk if it does occur?

Minimizing the expected cost of risk is critical to achieving value for money

III. Risk allocation

Risks should be allocated to the party best able to understand and manage them.

Following is an illustration of the general practices of allocating risks between Public and Private player in a PPP model.
<table>
<thead>
<tr>
<th>Public</th>
<th>Shared</th>
<th>Private</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land acquisition</td>
<td>Inflation</td>
<td>Design &amp; construction</td>
</tr>
<tr>
<td>Demand risk</td>
<td>Regulatory</td>
<td>Commissioning</td>
</tr>
<tr>
<td>Changes in requirement</td>
<td>Taxation</td>
<td>Operating &amp; maintenance costs</td>
</tr>
<tr>
<td>Latent defects (existing)</td>
<td>Force Majeure</td>
<td>Operating performance</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Latent defects (new)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Third party revenue</td>
<td></td>
</tr>
</tbody>
</table>

If neither party is in a position to fully control a given risk, the risk allocation should be shared or transferred to a third party.

*Risks should be mitigated, managed and controlled by employing effective auditing checkpoints, monitoring mechanisms, SLA agreements with all contractors/sub-contractors and payment mechanisms that are strongly integrated with the Key performance indicators of the PPP.*
6. Payment mechanisms

Payment mechanisms refer to how a public agency will make the payment to the private partner for the delivery of service in a PPP project. Payment here is the unitary charge for the units of service rendered by the private partner.

Structuring a good payment mechanism is crucial to the success of PPP projects. The payment structure and parameters should be realistic and fair to support the long-term PPP partnership. Building a good payment mechanism requires negotiators to take into consideration the project nature, the public agency needs and the final beneficiary of the PPP project.

I. Forms of PPP Payment

There are many payment forms but having the same objective – to reflect the desired transfer of risk

- Lease payments
- Unitary Charge
- Shadow tolls
- User based payments (tolls, fares etc.)
- Grants
- Subsidies
- Tariffs
II. Payment Mechanisms

The payment mechanism is one of the key tools available for the public sector to transfer risk effectively.

Payment mechanisms act as a risk transfer interface between the public sector and private sector since they allocate the financial consequences of various risks, performance and digressions from contractual agreement.

III. Objectives of the PPP payment mechanism

The structure of PPP payment mechanisms must be designed to achieve the following objectives

- Incentivize the private partner to strive for the successful delivery of PPP project, services and quality
- Strongly Integrate the payment with performance of all the stakeholders

Guidelines for Tariff setting and tariff control:

Tariffs or usage fees charged by the Private partner may be the main or sometimes even the sole source of revenue to recover the investment made in the project in the absence of subsidies or payments by Government. The Private partner will therefore seek to be able to set and maintain tariffs and fees at a level that ensures sufficient cash flow for the project. However, in some legal systems there may be limits to the Private partner’s freedom to establish tariffs and fees. The cost at which public services are provided is typically an element of the Governments’ infrastructure policy and a matter of immediate concern for large sections of the public.

EICTDA must establish parameters for pricing goods or services, for instance by requiring that tariffs meet certain standards of “reasonableness”, “fairness” or “equity”.
Tariff control methods

(i) Rate-of-return method
Under the rate-of-return method, the tariff adjustment mechanism is devised so as to allow the Private partner an agreed rate of return on its investment. The tariffs for any given period are established on the basis of the Private partner’s overall revenue requirement to operate the facility, which involves determining its expenses, the investments undertaken to provide the services and the allowed rate of return. Reviews of the tariffs are undertaken periodically, sometimes whenever the EICTDA or other interested parties consider that the actual revenue is higher or lower than the revenue requirement of the facility.

For that purpose, the EICTDA verifies the expenses of the facility, determines to what extent investments undertaken by the Private partner are eligible for inclusion in the rate base and calculates the revenues that need to be generated to cover the allowable expenses and the return on investment agreed upon.

The rate-of-return method is typically used in connection with the supply of public services for which a constant demand can be forecast.

(ii) Price-cap method
Under the price-cap method, a tariff formula is set for a given period such as four or five years taking into account future inflation and future efficiency gains expected from the facility. Tariffs are allowed to fluctuate within the limits set by the formula. The implementation of the price-cap method may be less complex than the rate-of-return method. The price-cap method has been found to provide greater incentives for public service providers, since the Private partner retains the benefits of lower than expected costs until the next adjustment period. At the same time, however, public service providers are typically exposed to more risk under the price-cap method than under the rate-of-return method. In particular, the Private partner faces the risk of loss when the costs turn out to be higher than expected, since the Private partner cannot raise the tariffs until the next tariff adjustment. The greater risk exposure increases the costs of capital.
Guidelines for establishing a Payment mechanism

EICTDA must ensure that the payment mechanism:

- Reimburses the contractor for initial capital outlay, and be sufficiently secure to meet the funders’ criteria
- Covers ongoing periodic operating costs of the project.
- Reimburses the contractor for any investment of time in developing the project and/or subsequent projects as part of the partnering
- Adapts to cover changes in the current project
- Is extendable to new projects undertaken by the partnering
- Deals with risk sharing arrangements, both upside and downside risk
- Provides incentives for better performance and continuous improvement
- Includes a process for dealing with uncertainty
SECTION C: PPP Management
1. PPP Project Management

1. Stakeholder Management

Importance of Stakeholder Management cannot be over-emphasized. Project stakeholders are defined as *individuals and groups affected by and capable of influencing the project outputs and business outcomes*.

Stakeholder management activities must begin during the Project conception stage in case of PPP projects and continue throughout the project’s life.

The identification and management of all the stakeholders is critical to project success. Assessment of stakeholders and stakeholder issues is necessary to identify the broad range of interests which need to be taken into consideration. It will also form an input to the development of a Change Vision, Change Plan and drives the Communications Plan.

Different stakeholders can perceive the same project in different ways depending upon their:

- Expectations;
- Previous experience with projects;
- Existing pressure of work; or
- Particular characteristics and priorities.

Stakeholder management, as mentioned earlier is a continuous activity throughout the project cycle and appropriate mechanisms, structures should be created, which would form part of the performance management of the project. A sample stakeholder management form is provided, which framework may be used to identify and manage the requirements, expectations of different stakeholders.
Sample Stakeholder Management Form

<table>
<thead>
<tr>
<th>STAKEHOLDER MANAGEMENT FORM (CONFIDENTIAL)</th>
<th>Page of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reference Number:</td>
<td>Date:</td>
</tr>
<tr>
<td>Organisation:</td>
<td>Version No:</td>
</tr>
<tr>
<td>Stakeholder:</td>
<td></td>
</tr>
<tr>
<td>Internal</td>
<td>External</td>
</tr>
<tr>
<td>Project role:</td>
<td></td>
</tr>
<tr>
<td>Ownership:</td>
<td>Responsibilities:</td>
</tr>
<tr>
<td>Level of power:</td>
<td>Level of influence:</td>
</tr>
<tr>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Level of influence:</td>
<td>Impact of the project on the stakeholder:</td>
</tr>
<tr>
<td>High</td>
<td>High</td>
</tr>
<tr>
<td>Medium</td>
<td>Medium</td>
</tr>
<tr>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Level of support required:</td>
<td>Necessary</td>
</tr>
<tr>
<td>Necessary</td>
<td>Desirable</td>
</tr>
<tr>
<td>Unnecessary</td>
<td>Unnecessary</td>
</tr>
</tbody>
</table>
### Involvement schedule:

<table>
<thead>
<tr>
<th>Business Case</th>
<th>Design</th>
<th>Project Close</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Start-up</td>
<td>Build/Buy</td>
<td>New Business Operations</td>
</tr>
<tr>
<td>Analysis</td>
<td>Accept</td>
<td>Business Benefits Realisation</td>
</tr>
<tr>
<td>Deploy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Action required:

<table>
<thead>
<tr>
<th>Action required</th>
<th>Action taken</th>
<th>Date completed</th>
<th>Completed by</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
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<tr>
<td>2</td>
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<td></td>
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<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
II. Change Management and Capacity Building Plan

PPP projects will bring a major change in the way the organization and its related entities work. Consequently, the employees as well as the customers will be required to be equipped with the tools and knowledge to be able to contribute to the change and benefit from it. Effective Communication Plan for reaching out to all stakeholders and keeping them involved and curious needs to be prepared.

A proper Change Management and capacity building program will need to be established by the PPP management:

The ADKAR model for implementing Change Management programs may be used. This model uses the following principles to communicate with different stakeholders and suitable communications and programs are created to ensure their ‘buy-in’ and success of the initiative.

- **Awareness** – of why the change is needed
- **Desire** – to support and participate in the change
- **Knowledge** – of how to change
- **Ability** – to implement new skills and behaviours
- **Reinforcement** – to sustain the change

While Awareness and Desire within the employees will ensure support from the employees, dissemination of Knowledge, Ability and Reinforcement amongst them will guarantee the sustainability of the initiatives.
III. Contract and Performance Management

Principles of Contract & Performance Management:
The implementation of projects using the PPP approach is intended to deliver cost effective, reliable and timely services at agreed prices and to agreed quality standards, consistent with legal standards, financial probity and management accountability. The success of this process will be significantly aided by the maintenance of a good relationship between the EICTDA and the Contractor.

Project Agreement
The contract management and performance monitoring duties associated with a PPP project will be derived substantially from the terms of the Project Agreement. The Project Agreement will include specific provisions in relation to:

a) **Monitoring** - provisions on contract management covering the monitoring to be undertaken by the EICTDA and the financial consequences of under-performance.

b) **Risk management** - management of the risks to be retained by the EICTDA or which fall to the EICTDA for management due to substandard service delivery by the Contractor.

c) **Change management** - provisions in relation to change management, covering items such as technical developments, changes in law, changes in volumes and changes in EICTDA requirements.

d) **Under-performance** - EICTDA may have to enhance the scale, nature and frequency of its management and monitoring capability where there is continued under-performance by a Contractor.

e) **Interdependence** - some projects may be dependent on delivery of certain enabling services by the EICTDA. This may require organizational interfaces, information flows and the meeting of key milestone dates or objectives, to be included in the agreement.
Typical problems that can arise include:

- A failure to ensure quality control may lead to asset defects in the long term;
- A failure to maintain plant and equipment may similarly result in increased liabilities at the end of the contract;
- A failure to manage the interface between the EICTDA and the Contractor may lead to the blurring of responsibilities or even the transfer of performance liability. This might occur, for example, if poor management of the network caused unacceptable load conditions;
- A failure to implement independent monitoring or equipment calibration may result in a failure to detect unsatisfactory performance or an overpayment for service delivery; and
- A failure to resolve issues or disputes promptly may lead to more serious conflict and a loss of control of the contract.

IV. Relationship Management

In practice a flexible but controlled range of contacts may be required to manage effectively the day to day delivery of the required services. It will be important to ensure that such arrangements are properly managed so as not to confuse the respective contractual responsibilities of each party. Underlying these arrangements will be specific provisions in the Project Agreement to be administered by the contract management team, covering all aspects of service delivery and payment. These will include:

A. **Output Specifications** – establishing the required levels of performance and the associated information requirements for judging service performance, all of which must be capable of objective measurement;

B. **Payment arrangements** – enforcing and monitoring the payment mechanism, including the conditions required for the commencement of payment and the basis for ongoing certification (frequency, measurement basis, variations, and specific conditions);

C. **Financial performance** – reviewing the ongoing financial performance and position of the contractor against the forecasts set out in the financial model and enforcing and monitoring any arrangements for revenue sharing or profit capping;
D. **Monitoring** arrangements – involving the defined monitoring obligations of the EICTDA and the Contractor, the provision of facilities for monitoring by the EICTDA, and the procedures for determining compliance;

E. **Security and insurance** – monitoring compliance with specific conditions in relation to insurance policies, indemnities, tax clearance certification, safety procedures and systems;

F. **Management of interactions** - managing all of the interfaces between the operations of the Contractor and those of the EICTDA. These interfaces may cover network management issues, the effects of new planning and development and the regulation of existing development

G. **Dispute resolution** – providing mechanisms for problem solving and dispute resolution where and when appropriate;

H. **Compliance** - setting out the arrangements for dealing with non compliance by the Contractor for rectification and payment deductions;

I. **Contingency for default** - arrangements to cover default on the part of the Contractor or its subcontractors where the continued delivery of the service is at risk, including step-in rights;

J. **Change management** – implementing and managing the procedures and protocols for dealing with changing requirements over the life of the project; and

K. **End of contract conditions** – dealing with maintenance, the condition of the assets at the expiry of the contract period and the ability of the EICTDA to re-tender for the provision of the service.

v. **Quality Management**

In a conventional infrastructure project, monitoring involves direct sampling, analysis and compliance determination. In a PPP project, these quality management processes will be performed differently in that the Contractor will be expected to provide for performance monitoring and quality management as part of its role.

The EICTDA will then be entitled to independently verify the information produced by these systems as considered necessary. The role of the EICTDA will therefore be to audit these systems, with planned and random spot checks, to ensure that performance is being measured and reported reliably, accurately and comprehensively.
Similarly, detailed approval of drawings or other design arrangements may not always be regarded as essential provided the quality assurance system established by the Contractor is demonstrated to be effective. Nevertheless, it is in the interest of the EICTDA to ensure a robust and high quality to minimize the risk of operational problems later. Equally, the EICTDA will not normally interfere in relations between the Contractor and its subcontractors. However, the EICTDA will also wish to be satisfied that the Contractor retains proper control of the project and that its contract management arrangements are generally robust. For these reasons, it is usual to retain a technical adviser during the implementation stage to monitor and confirm that the Contractor is complying with the Output Specification and to review the testing and commissioning process.

vi. Dispute Management

Formal dispute resolution procedures for the efficient and cost effective determination of issues arising during the contract should be put in place as an alternative to legal procedures. The contract manager must endeavor to resolve matters in dialogue and discussion wherever possible. Where this fails and more formal dispute resolution procedures are invoked (such as conciliation, arbitration and litigation), the contract manager should have comprehensive records of all relevant issues and be capable of giving evidence and generally supporting the EICTDA throughout the process.
Guidelines for Contract management:

A. Contract management structures should be established during the procurement stage in parallel with the project management function in order to ensure a full understanding of how the specifics of the service and the monitoring systems are reflected in the contract documentation.

B. Personnel will require a detailed knowledge of contract documentation in order to provide for continuity in achieving effective service delivery.

C. At the outset, it will be necessary for the EICTDA to establish realistic financial and resource budgets to cover the costs relating to contract management and performance monitoring. While arrangements can be made to have these costs covered by the Contractor, it is usually considered more satisfactory that each party bear its own costs in order to avoid any possible conflict of interest.

D. In addition, while the PPP approach is designed to allocate risk to the Contractor, competent contract management is necessary to ensure that this risk transfer is effective.
2. SLA and KPI Management

Service Level Agreements (SLA) and Key Performance indicators (KPI) must be strongly linked with the payment mechanisms in the contract to ensure that the Government Authority receives satisfactory services from the private sector partners. A robust Service Level Agreement (SLA) will provide clear accountabilities, responsibilities and communication mechanisms. When services are being delivered by a third party provider/partner, accountability and clear lines of responsibility can be reinforced via an SLA. Before drawing up the SLA, participants need to determine the level of service that are needed, balancing the level desired with the cost of providing it.

A. Components of the SLA:

- Scope of agreement, activities to be included (type of processes, entities, duration)
- Description of services
- Negotiated levels of service for each activity
- Cost for levels of service
- Factors that drive the cost of the service (such as volume, delivery time, quality measure,)
- Consensus on ways to minimize costs
- Penalties for noncompliance or non-conformance to specifications
- Period of time covered by the SLA
- Periodic updates to review performance
- Recourse for dissatisfaction including clear issue escalation routes
- To make sure the services remain effective and responsive to changing conditions, the SLA should be reviewed annually or quarterly.
• Reference to relevant policies, regulations and laws

• Change control procedures

B. Technical specifications

(1) The EICTDA must formulate the technical specifications of the subject of a public-private partnership in such a way that they are determined with regard to the fulfilment of standards and with regard to precise functional requirements. Here it must ensure that the technical specifications would not hinder competition.

(2) EICTDA may also accept other products, services or constructions, although technology other than that set out in the standard has been used, if the end result of the public-private partnership fulfils all the requirements regarding success, effectiveness and functional requirements.

C. Intellectual property

PPP projects frequently involve the use of new or advanced technologies protected under patents or similar intellectual property rights. They may also involve the formulation and submission of original or innovative solutions, which may constitute the proponent’s proprietary information under copyright protection. Therefore, private investors, national and foreign, bringing new or advanced technology into Ethiopia or developing original solutions will need to be assured that their intellectual property rights will be protected and that they will be able to enforce those rights against infringements, which may require the enactment of provisions designed to combat infringements of intellectual property rights.

A legal framework for the protection of intellectual property may be provided by adherence to international agreements regarding the protection and registration of intellectual property rights.

D. PPP Model for Monitoring:

<table>
<thead>
<tr>
<th>Category</th>
<th>Action</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Price regulation</td>
<td>Gather information and data</td>
<td>Public Partner must gather information on current and projected tariff revenues and</td>
</tr>
</tbody>
</table>
| Service quality regulation | Establish rules | Public Partner must define quality standards for different types of technologies and providers and for different customer categories.
Specify the date by which standards must be achieved.
Specify penalties for failure to achieve standards.
Determine how compliance will be measured and monitored. |
| Gather information and data | Public Partner must obtain information on current service levels.
Carry out technical studies on the feasibility and cost of different service standards (technical and commercial). |

| Monitor the implementation of existing rules | Establish rules | Structures need to be established in the absence of competition, with provisions to link some parameters to inflation.
Public Partner must establish procedures for adjusting tariffs for unexpected events or at the end of a specified tariff period. |
| Monitor the implementation of existing rules | Public Partner must Audit financial accounts, if necessary or feasible.
And also ensure that tariffs comply with rules |

| Enforce decisions | Public Partner must enforce decisions
Define tariff adjustments on basis of performance.
Apply sanctions if tariff rules are violated. |

| Establish rules | Get information on willingness-to-pay for alternative service levels. |

<p>| Establish rules | Public Partner must establish procedures for adjusting tariffs for unexpected events or at the end of a specified tariff period. |</p>
<table>
<thead>
<tr>
<th><strong>PPP Guidelines</strong></th>
<th><strong>EICTDA</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Specify events that excuse compliance.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Monitor the implementation of existing rules</strong></td>
<td>Public Partner must monitor service to ensure that mandated levels of service quality are being achieved</td>
</tr>
<tr>
<td><strong>Enforce decisions</strong></td>
<td>Public Partner must enforce decisions Apply sanctions if the operator has failed to achieve the standards. Specify events that excuse compliance</td>
</tr>
</tbody>
</table>

**Subsidies**

| **Gather information and data** | Public Partner must determine the magnitude of subsidy funds that will be available. Decide which communities and/or entities will have priority to limited subsidy funds. |
| **Establish rules** | Public Partner must decide on the levels of capital and operating cost subsidies for eligible entities. Decide on how and when the subsidies will be disbursed. Decide on the actions (for example, connections, maintenance visits) that will trigger disbursement. |
| **Monitor the implementation of existing rules** | Public Partner must monitor performance to verify that recipient has performed the actions that qualify for subsidies. |
| **Enforce decisions** | Public Partner must enforce decisions Withhold subsidies for nonperformance, or apply penalty or refund requirements. |
3. Procurement Management

A. General Procurement Guidelines:

Guidelines for Procurement:

I. Irrespective of the form and the regulation of the public-private partnership procedure competitive dialogue shall be used by the EICTDA for selecting the most economically advantageous bid.

II. The EICTDA shall initiate the procedure of competitive dialogue through public tender, which shall set out the aims and requirements associated with the public-private partnership project.

III. In the first stage of competitive dialogue, in compliance with the terms set out in the public tender, the EICTDA shall select candidates with which in the second stage of the procedure it shall conduct a dialogue at determining and defining the funds and the most appropriate solution to satisfy the aims and requirements of the EICTDA. In this dialogue the EICTDA may discuss with selected candidates all aspects of the public-private partnership project and where necessary may compare solutions with each other.

IV. In the case of a public procurement partnership, the minimum number of candidates in the procedure of competitive dialogue, except in the event of dialogues that permit the issuing of a public procurement order without public tender (protection of exclusive rights, exceptional urgency of events and so forth) shall be three.

V. Where there are objective reasons, such as the non-existence of major competition in the market or where there is no demonstrable interest, the number of candidates may also be less than three.

VI. During competitive dialogue the EICTDA would ensure equal treatment of all candidates, whereby it must especially without discrimination provide candidates with information, including information obtained on the basis of applications regarding interest, in order to prevent any unjustified advantage in the selection procedure.
VII. EICTDA shall not disclose to other candidates in the competitive dialogue procedure, other persons proposed solutions or other confidential information that has been submitted by a specific candidate participating in the competitive dialogue, without their written consent.

VIII. EICTDA shall determine that the competitive dialogue procedure be conducted in more than two successive stages, in order to reduce the number of solutions on which the dialogue will be conducted - whereby in excluding individual solutions it must act in accordance with the criteria set out in the public tender. The EICTDA must envisage the possibility of conducting the competitive dialogue procedure in several successive stages in the public tender.

IX. The EICTDA shall continue the dialogue with candidates until it finds a solution (solutions) that correspond with its aims and requirements.

X. Upon deciding that the dialogue is concluded, the EICTDA shall notify all candidates that have participated in the final stage of the dialogue, and call upon them to submit bids drawn up with account taken of the solutions presented and defined during the dialogue. The submitted bids must contain all elements required and necessary for implementing the public-private partnership project.

XI. The EICTDA may require bidders to clarify, specify and harmonize the details of their bids with the project requirements, whereby through clarifying, specifying, harmonizing and providing additional information they may not change their bids, if this might lead to a distortion of competition or have a discriminatory effect.

XII. The EICTDA shall assess received bids on the basis of criteria set out for the assessment of bids in the public tender, and shall then select the most economically advantageous bid.

XIII. The EICTDA may require the bidder that submitted the most economically advantageous bid to clarify certain elements of such bid or to confirm undertakings given in the bid, provided that a clarification or confirmation would not signify a change in the bid that would distort competition or have a discriminatory effect.
B. Evaluation criteria Guidelines

The criteria for the evaluation and comparison of the technical proposals should concern the effectiveness of the proposal submitted by the bidder in meeting the needs of the EICTDA, including the following:
(a) Technical soundness;
(b) Operational feasibility;
(c) Quality of services and measures to ensure their continuity;
(d) Social and economic development potential offered by the proposals.

The criteria for the evaluation and comparison of the financial and commercial proposals may include, as appropriate:
(a) The present value of the proposed tolls, fees, unit prices and other charges over the concession period;
(b) The present value of the proposed direct payments by the contracting authority, if any;
(c) The costs for design and construction activities, annual operation and maintenance costs, present value of capital costs and operating and maintenance costs;
(d) The extent of financial support, if any, expected from the Government;
(e) Soundness of the proposed financial arrangements;
(f) The extent of acceptance of the proposed contractual terms.

Specific evaluation criteria would need to be made as per individual PPP project requirements. However at a broad level, the criteria would include (but not limited to) the following:

I. Support for required functionality

II. Timeframe for provision of required solutions and services

III. Implementation risk

IV. Quality of services, Service levels and user interface

V. Risk management plan

VI. Degree of ease of use of solution /customization;

VII. Vendor’s experience and success with provision & support of PPP
VII. Vendor’s financial stability & commitment to the industry

IX. Cost of all hardware, product licensing, customization, support & other services

C. Duration of partnership:

I. Public-private partnerships shall be long-term relationships established for a fixed period.

II. The duration of the public-private partner relationship shall be determined such that it affords the Private partner stability and security of investment, the possibility of effective and safe financial investment and the return of what it has invested. In view of the nature of the subject of partnership, during the relationship the return to the partnership of funds invested and the achievement on this of a proper market yield, while at the same time the contractor keeps, assumes and manages, depending on the nature of the public-private partnership, part of the commercial risk, also should be considered.

III. The duration of the public-private partnership may be extended in a manner provided in advance by the public-private partnership instrument, where:
   i. owing to the measures of the EICTDA or other measures by an authority the contractor cannot implement the relationship;
   ii. this is necessary owing to additional investment by the Private partner resulting from requests of the EICTDA or its measures in the public interest.

IV. The duration of the public-private partnership may not be extended by more than half of its established duration.

V. In the event of a public procurement partnership, any extension of the relationship must also be in compliance with the Public Procurement Act.

D. RFP Guidelines:

The RFP may be segregated into three volumes as follows:

I. Functional Requirements, Technical Specifications and Capacity Building and Change Management requirements – this volume typically includes:
   i. Service Requirements
   ii. Project Implementation approach
iii. Scope of work
iv. Functional Requirements
v. Technical Requirements
vi. Infrastructure Requirements
vii. Change Management requirements
viii. Capacity Building requirements
ix. Project Management Organization
x. Roles and Responsibilities

II. Commercial Specifications and Bid process – this volume typically includes:

i. General Instructions
ii. Scope of Work
iii. Business Model
iv. Request for Proposal Process
v. Proposal Instructions and Conditions
vi. Bid Formats
vii. Proposed Evaluation Process
viii. Evaluation Criteria
ix. Award of Contract
x. Payment Schedule
III. Operational and Legal Specifications – this volume typically includes:

i. Operational Requirements of the Solution

ii. Service Level Requirements

iii. Master Services Agreement

iv. Change Control Procedures

v. Acceptance Criteria

vi. Exit Management

vii. Audit, Access and Reporting

viii. Governance Schedule

ix. Invoicing and Settlement Schedule

x. Terms of Payment Schedule
4. Governance, Audit and Exit Management

A. The Governance structure

PPP projects should have a strong governance structure. The governance structure can be classified into following three categories:

1. Executive Committee
2. Working Committee
3. Operational Manager
4. Expert Committee

1. The Executive Committee

The executive Committee will consist of high ranking representatives from the public authority and private partner. This Executive Committee will be responsible for the overall strategic control and direction of the project, and will be the highest governing body for this project.

The key responsibilities of the Executive Committee will be:

- Control and Implement the overall strategy of the Project
- Resolve any major issues and concerns raised by the Working Committee
- Evaluate the Performance of the Working Committee
- Specify and amend the Service Levels

2. The Working Committee

The Working Committee will consist of the Project Managers, Team Leaders and Team members from EICTDA and the Private Agency. This group will be responsible for the overall management of the project and achieving targets set by the Executive Committee.

The key responsibilities of the Working Committee will be:

- Management of the implementation of the project
- Management of the operations of the project
- Ensuring adherence to the set service levels
- Ensure timely reconciliation of accounts
Identifying and resolving any issues and concerns
Escalating any unresolved issues or concerns to the Executive Committee
Prepare various reports for the Executive Committee

3. Operational Manager

The operational manager from EICTDA has primary responsibility for ensuring that the project’s operational requirements are addressed, including the services to be provided by the private sector. This role is often supported by a facilities management advisor who will develop the output specifications for the services to be delivered. They will play a key role in ensuring that users are sufficiently involved with the specification development, interactive tender process, and evaluation.

4. Expert committee

a. EICTDA shall appoint an expert committee for the selection of a private partner for operating the subject of a public-private partnership or establishing an equity partnership, comprising a chairman and at least two members. All members of the committee must have at least university-level education and working experience in the relevant area in order to facilitate expert assessment of applications.

b. The chairman and members of the committee may not be in a business relationship with candidates, their representatives, members of boards, supervisory boards, founders, partners or shareholders with a controlling interest or in any other way associated by interest. The EICTDA may not appoint to the committee any person who was employed by or worked in any other way for a candidate, unless a period of three years has passed since employment or other form of cooperation was terminated.

c. The EICTDA must, on the proposal of the chairman or member of the committee, when so requested by a candidate or on the EICTDA’s own initiative, appoint a new chairman or member of the committee immediately upon learning of grounds for exclusion or has discovered circumstances that cast doubt on the impartiality of the committee.
d. If the EICTDA changes the committee structure after the candidates have already collected the tender documentation, the EICTDA must notify all those that have collected tender documentation to that effect.

e. The expert committee shall participate in the procedure of selecting the private partner by reviewing and assessing applications and determining whether they fulfill the tender conditions, by composing reports and indicating which applications fulfill the tender requirements, by classifying applications such that it is clear which of the applications are most successful in meeting the criteria set and what subsequent ranking they achieve in terms of meeting the criteria, and shall submit such reports to the EICTDA.

B. Audit and Control

1. Guidelines for Control

(1) The EICTDA shall have the right and obligation to control the implementation of a contract on public-private partnership. The EICTDA shall exercise control over the operation of a public-private partnership in compliance with the agreed plan of control and quality assurance.

(2) EICTDA shall request a written report on the operations of the Private partner relating to the fulfillment of obligations pursuant to the contract on public-private partnership. Reports shall contain information on:

   i. the fulfillment of obligations held by the Private partner and relating to the fulfillment of obligations pursuant to the public-private partnership contract,

   ii. liabilities, receivables and other property of the public-private partnership contractor,

   iii. complaints from users of the public-private partnership services (record by date and content) and on how they were dealt with,

   iv. the awarding of business to subcontractors and changes in the public-private partnership contractor company,
v. damage events (record by date, content, amount and possible amount of damages payments), changed conditions for carrying out the public-private partnership contract,

vi. insurance claims, and

vii. all other circumstances that might directly or indirectly affect the execution of the public-private partnership contract.

2. Supervisory measures

   a. In addition to supervision in compliance with the regulations on inspections, EICTDA shall conduct supervision of the fulfillment of tasks and obligations pursuant to the contract on public-private partnership.

   b. Within the framework of such supervision, authorized representatives of the EICTDA or the Program management Unit shall:

      i. inspect structures and facilities of the public-private partnership;

      ii. inspect the documentation of the Private partner;

      iii. Determine the quality of performance of the subject of the public-private partnership.

   c. Where the competent body of the EICTDA determines that the Private partner is not properly fulfilling the obligations proceeding from the public-private partner relationship, such body may, if so provided by law or a regulation issued on the basis thereof require the contractor through an administrative decision to fulfill these obligations or to act in some other way appropriate to the public-private partner relationship. In the event of it not being possible to require the fulfillment of obligations unilaterally through an administrative decision, fulfillment of obligations by the private partner shall be governed by the provisions of other regulations and the public-private partnership contract.
3. Approvals for Operations:

a. Public-private partnership contracts shall lay down the conditions for awarding business to subcontractors.

b. Where necessary in view of the nature, scope and subject of the public-private partnership, the public-private partnership contract may also lay down business which the Private partner may undertake only on the basis of prior consent from the EICTDA.

c. The EICTDA may refuse the consent referred to in the second paragraph of this article exclusively if such business would run counter to the public-private partnership contract, or would threaten the unimpeded operation of the public-private partner relationship.

C. Exit Management:

Termination or expiry of PPP:

A PPP contract may end for a variety of reasons such as:

- the expiry of the fixed term (and the parties are unable or unwilling to agree upon the terms for its renewal)
- termination by the Public party for convenience
- termination by the Public party/EICTDA as a result of the Private partner’s material breach or insolvency
- termination by the Private partner for the Public partner’s material breach (e.g. non-payment of fees); or
- Force majeure.
Guidelines for Termination of PPP:

I. Before entering into a PPP contract the parties should consider the potential disengagement scenarios and develop appropriate tailored disengagement provisions.

II. Appropriately drafted disengagement provisions will assist to effect a smooth disengagement and transition upon the expiry or termination of the contract, with parties being clear about their respective rights and obligations and with minimal disruption to the end user of services.

III. Before terminating the contract, the parties must revisit the deliverables and evaluate the outcomes and settle the payments and liabilities accordingly as per the contract.

IV. The private partner must share all the information, knowledge, best practices and experience with the public partner in form of properly articulated documents, guidelines and case studies. And will ensure that tools and models are used, guidelines or criteria are adopted and proper access is provided to the public partner in terms of third party rights and licenses.

V. Guidelines for maintenance and enhancement must also be provided by the private partner upon the termination of the project.