General Notice No. …… of 2011.

MINISTRY OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT

PUBLIC-PRIVATE PARTNERSHIP FRAMEWORK POLICY

FOREWORD

The Government of Uganda has adopted a policy of Public-Private Partnership ("**PPP**") as a tool for the provision of public services and public infrastructure. Cabinet approved this Policy on March 10, 2010.

The application of PPP in provision of public services and infrastructure will bring about the following:

- Better utilization and allocation of public funds
- More efficient development and delivery of public infrastructure
- Ensure good quality public services
- Boost economic growth and foreign direct investments

Government will promote and encourage the various forms of PPP in the implementation of the National Development Plan, Medium Term Expenditure Framework and annual budgets. The choice between public and private sector provision of public services and public infrastructure will be based on a rigorous value for money assessment. Where it is determined that private sector provision of the public service, public infrastructure and related services will deliver better value for money, the choice of PPP Partners will be through a consistent, transparent system of competitive tendering.

The adoption of PPP Policy represents Government's commitment to increase private sector investment and participation in public infrastructure and provision of public services. In addition, Public-Private Partnership is an important tool for fiscal moderation and control of public debt as budget commitments in respect of infrastructure and services provided under Public-Private Partnership arrangements are known in advance. In this respect, the authority to decide on a PPP and the determination of any expected outcome of PPP projects in the form of public services, and their implementation, will remain with the relevant Government departments and state enterprises in charge of the provision of the public service or infrastructure in question.

However, PPPs impose a commitment on future budgets. Government therefore requires that any commitment arising from PPP projects be subject to approval by the Ministry of Finance, Planning and Economic Development. This is to ensure that the PPP arrangements are affordable, provide value for money and, commitments arising thereof are within the debt management limits. The Ministry will issue regulations and operating procedures to guide in the engagement of the private sector in PPP arrangements.

The Ministry of Finance, Planning and Economic Development shall set up a unit ("the PPP Unit") to advise Government on PPPs, ensure best practices are widely employed and standardize processes and documentation. The PPP Unit will also support government departments and agencies in assessing projects, choosing the best possible partner, negotiating agreements and monitoring them. Government therefore expects all components of the public sector to make use of resources available at the PPP Unit when implementing PPP.

Formulation of this Policy has been carried out through an extensive consultative process, which has involved the review of policies and PPP frameworks of many countries that are implementing PPP programmes, discussions with Government departments, local authorities and key stakeholders in the private sector.

In order to facilitate PPP implementation, Government will enact PPP legislation to provide for the roles and responsibilities of each stakeholder in the PPP implementation process, the institutional framework that will specify the relationship between the different stakeholders and the duties and responsibilities of the PPP Unit. The law will also provide for the protection of both the private and public sector against indiscriminate application of PPP.

The PPP Unit will develop a communication strategy and plan to consult with, educate and inform the public and all stakeholders on issues of PPP. The PPP Unit will also develop and implement a capacity building programme to provide Government officers with the skills required to develop, implement and monitor PPP projects.

HON. SYDA N.M. BBUMBA (MP).
Minister of Finance, Planning and Economic Development.

1.0 INTRODUCTION

1.1 The Government of Uganda has adopted a policy of involving the private sector in the provision of public services including public infrastructure and related services.

1.2 It is in this context that I am presenting the Public-Private Partnership ("**PPP**") Framework Policy, which reflects Government commitment to increasingly use this method/mode of service delivery to carry out projects as other governments have successfully done across the world. The Policy seeks to obtain better quality services at competitive costs, employ private sector expertise and finance when beneficial, reduce costs, delivery times and risks inherent in infrastructure projects and service delivery.

1.3 The Policy entails a structured approach for assessing projects with public-private partnership potential. This approach is based on carrying out a detailed feasibility study to show that the public stands to "win" in terms of service, cost and quality as well as insuring that the projects are affordable and will provide value for money.

1.4 This Policy has been developed following the recommendations of a study carried out with the support of the Public Private Infrastructure Advisory Facility (PPIAF), a multi-donor fund managed by the World Bank, and a national consultative conference held in September 2008. It reflects the policy approach of the Uganda Government and takes full account of the views expressed by various stakeholders that participated in the national stakeholders' consultative conference mentioned above as well as the views expressed by Cabinet during the discussion of the draft Policy.

1.5 The principal features of this Policy Framework include clear statements of the scope, principles and aims for the use of Public-Private Partnerships, the identification of key project implementation issues and a clear recognition of the critical role of social partnership and stakeholder consultation in underpinning the success of Public-Private Partnerships. The Policy Framework also makes provision for monitoring and evaluation of PPP projects.

1.6 This policy document provides a high level framework and will be underpinned by detailed guidance material to be developed in consultation with relevant stakeholders and issued from time to time.

2. Scope and Application

2.1 This PPP Policy Framework applies to Uganda Government Ministries, autonomous Government Departments, Local Authorities and Statutory Corporations directly responsible for delivering public services. It is to be used when selecting and developing public infrastructure and any related services as potential PPPs in the context of meeting Uganda's overall economic and social development objectives and priorities.

2.2 Public-Private Partnerships will be used alongside conventional public expenditure and funding forms to achieve new investment in our public services. Key drivers for the use of Public-Private Partnerships to deliver quality public infrastructure and services in Uganda will be:

- **Value for money** – improved quality of service and lower whole life costs i.e., the optimum combination of whole life costs and service quality to meet user requirements;

- **Accelerated Investment** – doing more and sooner, resulting in a faster rate of public service improvement;

- **Meeting public needs** – providing quality, reliable public services to meet the needs and expectations of the community and promote social inclusion/or cohesion; and

- **Reform and Change Management** - in some sectors it may be helpful for an alternative provider to play a part so that change and development can be stimulated, with the effect that new working practices or less bureaucratic procedures can be developed.

3. Objective

3.1 This PPP Policy ("Policy") provides a framework that enables public and private sectors to work together to improve public service delivery through private sector provision of public infrastructure and related services.

3.2 The objectives of the Policy are to:

- put in place an enabling environment that will stimulate investment in public infrastructure and related services
- encourage private sector investment and participation in public infrastructure and related services where value for money for can be clearly demonstrated;
- streamline the PPP procurement process; and
- clearly articulate accountability for outcomes.

3.3 The key objectives to be realised through the use of Public Private Partnerships are summarised in the paragraphs that follow:

- **Cost Effective Delivery** – the net present cost of a service delivered under a Public Private Partnership should be lower than that achieved under traditional procurement, reflecting the benefits of competition, whole life costing, design innovation, improved efficiency and risk transfer;
- **Good Quality Services** – the quality of service delivered under a Public Private Partnership should be equivalent or higher than that achieved under traditional procurement, reflecting the benefits of competition, innovation, performance incentives and planned life cycle maintenance;
- **Clear customer focus** – a Public Private Partnership arrangement should help the public sector to focus more clearly on the services people want, rather than on the management of existing forms of service delivery. The shift in focus from service inputs to outputs can create the scope for innovation in service delivery and enhance customer focus overall;
- **Enhanced service diversity** – by exposing the provision of public services to competition and diversity, Public Private Partnerships should help enable the quality and cost of such services to be benchmarked against market standards, thereby helping to secure productivity improvements within the economy as a whole;
- **Enhanced incentive** – by allocating risk to the party best able to manage it and by linking service payments to performance, Public Private Partnerships should provide a clear

incentive to deliver capital projects on time and to budget and then to ensure that service standards are being met on an ongoing basis;

- **Better asset utilisation** – by allowing the private sector to generate third party income from the commercial utilisation of public sector assets, Public Private Partnerships should reduce the cost of public service provision while maximising the wider social and economic benefits associated with third party use;
- **More project delivery** – by using private sector finance where it is considered appropriate, Public Private Partnerships should promote the accelerated delivery of the public capital programme by enabling more infrastructure projects to be carried out within a defined period of time and by enabling the public sector to proceed with projects at times when capital budgets are constrained; and
- **Wider economic benefits** – by allowing major investment projects to proceed at times when capital budgets are constrained, Public Private Partnerships should help to stimulate the private sector and contribute to increased employment and economic growth.

4. Definition of Public Private Partnership

4.1 In Uganda a "public-private partnership" (PPP) generally:

- refers to a medium to long-term contractual arrangement between public and private sector to finance, construct/renovate, manage and/or maintain a public infrastructure, or the provision of a public service;
- involves the sharing of risks and rewards;
- delivers desired policy outcomes that are in the public interest.

4.2 A particular arrangement or project may constitute a Public Private Partnership where the following key characteristics are present, that is arrangements where:

- The government contracts to purchase public infrastructure or services from the private sector;
- The private sector is utilised to exploit the commercial potential of government assets with a view of delivering affordable quality services more efficiently and effectively;
- The private sector participates in all or some of the different stages in the project (design, financing construction, and operation);
- The private sector receives revenue for the services provided either from government budget allocations, user charges, or a combination of the two that is dependent on the availability and quality of the service provided
- There is better value for money and optimal allocation of risk, for example, by exploiting private sector competencies (managerial, technical, financial and innovation) over the project's lifetime and by promoting the cross-transfer of skills between the public and private partners;
- The public sector partner concentrates primarily on defining the objectives to be attained in terms of output specifications, quality of services provided and takes responsibility for monitoring compliance;

4.3 Public infrastructure refers to physical assets and related services, where:

- physical assets cover (but are not limited to) economic infrastructure such as roads, rail, ports, communications and social infrastructure such as correctional facilities, health care facilities, educational facilities, accommodation facilities, and court facilities; and
- related services may encompass services that support the main public service function, including non-core services such as maintenance, security, cleaning, laundry, grounds keeping and other support services.

4.4 There is a clear distinction between a PPP arrangement within which the private sector partner supplies infrastructure or related services on behalf of the public sector for a contract period, and the sale to the private sector of public sector assets (i.e. privatisation).

5. Statement of Principles

5.1 The fundamental principles, which are summarised in this section, are central to the use of PPP in the achievement of the Government's objectives with respect to providing a high quality public services and the maintenance of partnership of working together with the private sector.

5.2 In designing PPPs to deliver the objectives outlined above, the Government will adhere to the following principles:

(a) **Value for Money:** Value for money is paramount and achieving the best value for money outcome should be the key consideration at all stages of a PPP project. Value for money is a combination of the service outcome to be delivered by the private sector, together with the degree of risk transfer and financial implications for government.

(b) **Public Interest:** Consideration of public interest requires ensuring that the project will provide quality, reliable public services that meet needs and expectations of the community and promote social inclusion/cohesion as well as ensuring the fair treatment of employees of the public sector that are affected by the PPP transaction.

(c) **Risk Allocation:** The principle governing risk transfer is one of optimal risk allocation. Risk will be allocated to whoever is best able to manage it, taking into account public interest considerations.

(d) **Output Oriented:** Projects shall focus on the specification of what services are to be delivered rather than how they should be delivered. Performance measures would be established to ensure that the required services are delivered in accordance with the output specification.

(e) **Transparency:** Transparency and openness are important requirements of all government procurement. The use of PPPs should not diminish the availability of information on the use of government resources to Parliament, taxpayers and other stakeholders. There should be an emphasis on transparency and disclosure of the processes and outcomes, acknowledging the need to protect commercial confidentiality where appropriate.

(f) **Accountability:** PPPs do not absolve government institutions from responsibility for provision of the public service. Government will remain responsible for the delivery of the infrastructure service outputs including where PPPs are used to deliver those outputs. Public institutions cannot transfer this accountability to the private sector.

(g) **Competitive tender process:** Bids will be invited only when it is clear that there is scope for a private party to deliver value for money. The tender process must ensure that it is done in a professional, fair, equitable and open manner ensuring probity and minimising of tendering costs. Standardized documents will be used to ensure consistency and to reduce transaction time and cost.

5.3 The use of Public Private Partnerships in any sector or project should be determined by a number of factors including:

- The likelihood of it delivering value for money as compared to conventional public capital procurement;
- Long-term affordability including the forward commitments in relation to public expenditure;
- Willingness and capacity of the private sector and others to participate in projects; and
- The balance between economic and social benefits and costs (including relevant opportunity costs).

5.4 Private finance in PPPs should generally be additional to public finance, complementing the resources available in funding investment in public services infrastructure.

6. **PPP Project Development**

6.1 **Implementation:** The PPP Unit in the Ministry of Finance, Planning and Economic Development will have the lead role as the centre of excellence and expertise in PPPs. It will also assist other Government departments in operational work on project management and procurement. More detailed and specific aspects of PPP project planning; preparation and on-going management will be the responsibility of the Government ministries, agencies and local government. The PPP Unit will, under the mandate of the Ministry of Finance, Planning and Economic Development, keep an overview of the policy and practical issues in relation to PPPs as they evolve and develop. The roles of the main actors in relation to PPPs are set out in Section 9 below.

6.2 **Project Preparation:** For every PPP project selected by a government institution, a feasibility study shall be undertaken to assess whether the proposed project is feasible as a PPP project. The feasibility study shall demonstrate comparative advantage in terms of strategic and operational benefits for implementation under a PPP and describe the specific functions to be tendered out and deliverables, described in output terms. The feasibility study shall also demonstrate that the project is affordable and delivers value for money.

6.3 A project team shall be formed for every PPP project to support the government institution in project development and processes leading to PPP contract award. The project team should have the necessary resources to manage each project and skills for project preparation, commercial negotiation and 'deal-making' with appropriate sectoral knowledge and technical expertise. Technical assistance may be used where such expertise is lacking.

6.4 **Scale:** Investment strategies should ensure that scoping of requirements provides sizable projects, measured in either capital value or total contract value, to ensure value for money outcomes. The concept of bundling or aggregating similar projects should also be considered in order to achieve sizeable projects.

6.5 **Tendering:** PPP contract award will follow a tendering process based on the principles of transparency, competitiveness and fairness. Competitive dialogue will be allowed, if required, to obtain value for money for the project. Unsolicited project proposals will be subjected to a competitive tendering process. The proponent may be compensated for proprietary interest or costs in accordance with guidelines that will be issued for the treatment of unsolicited proposals.

6.6 **Project Pipeline:** A pipeline of planned PPP projects will periodically be developed and promoted widely to ensure a significant project flow is maintained to achieve a high level of market interest from the private sector. This will help promote more competition among potential bidders, hence greater potential for value for money and help develop and maintain the public sector skills and expertise necessary to deliver the projects.

6.7 **PPP Models:** There are various PPP models that may be used in PPP arrangements. Each contracting authorities will adopt whichever PPP model is best suited to meet the project needs, whether it be Design, Build, Finance, Operate (DBFO), Concession, User charging, or other forms, as set out in Appendix A.

6.8 **PPP Agreements:** The complexity of PPP agreements requires rigorous prior risk definition, risk evaluation and risk allocation to the different partners. The terms and conditions of the PPP contract are crucial since in PPP projects, a long-term partnership is created for the procurement of an asset and/or the delivery of a service to a specified quality level. The following steps should be taken to ensure that implementation, operation and on-going management of these long-term contracts is effective and efficient to ensure value for money, affordability, timely and quality standards of service:

- Use will be made of standardised contract clauses and conditions where appropriate to streamline the procurement process and minimise transaction and bid costs;
- Output specifications and performance levels and standards should be objective, fair and easy to measure to ensure successful ongoing contract management and payment mechanisms;
- Provisions should be made for change mechanisms in the contract within legal, government policy and other constraints, to deal with possible changes to scope of requirements;
- Effective monitoring of contract through good contract management mechanism will be maintained through out the life of the project.

6.9 **Legal Due Diligence:** A review of the potential legislative impediments to the use of Public Private Partnerships will be done in respect of each project as well as ensuring that potential contracting authorities have the necessary legal powers and capacity to enter into Public Private Partnership deals.

6.10 **Employee Issues:** In some PPPs it may be necessary for a range of functions formerly undertaken directly by the public sector and the associated public sector employees to be transferred to the private sector. Where this occurs appropriate and effective consultation should take place with employees and their trade union representatives. Their terms and conditions must at least be equal or better than their previous terms.

7 Stakeholder Consultations

7.1 Effective stakeholder consultations should be a feature of all PPPs. Stakeholders can be defined in this context as all those involved in the provision and receipt of public services, including service users and their representatives, staff and their representatives, public servants and the broader public that the project would touch.

7.2 In order to ensure effective stakeholder consultations as many of these diverse groupings should be included in consultation process as possible. There are a number of benefits from stakeholder involvement, primarily:

- ***Wider Ownership of PPP Policy*** – It is important that stakeholders believe they have ownership of projects, having significant input into their development. Their views should be taken account of, and constructively incorporated where possible.
- ***Better Understanding*** – Understanding of both the benefits and costs associated with PPP projects must be improved, in order to ensure that facts determine public and media perceptions rather than rhetoric.
- ***Consensus*** – All stakeholders, including employee and union representatives, should be consulted early in the process. Through active participation the views of social partners can be taken into account promoting consensus on the proposed way forward.

8. Public Awareness:

8.1 Communication between service providers and users is a two-way process. An adversarial relationship between government and social partners should be avoided, while ensuring frank and open dialogue.

8.2 There will be transparency in the use of PPP, with a clear framework adopted, including opportunities for public scrutiny. In this respect public understanding about PPPs should be increased, and the costs and benefits communicated to all stakeholders.

8.3 Responsibility for developing and promoting a PPP communications and awareness strategy will rest with the Public Private Partnership Unit and will be directed at all key stakeholders and the general public.

8.4 For each PPP project, the implementing contracting authority will develop and implement a public awareness strategy to educate the public on the objectives of the project, project structure and progress of implementation.

9. Roles and Responsibilities

9.1 **PPP Unit:** The PPP Unit shall be the centre of knowledge and expertise for PPP project implementation; including project development, project management, PPP procurement and PPP contract monitoring. It will be responsible for:

- Advising on the appropriate use of PPPs in the context of the National Development Plan and offer specific advice in relation to particular PPP projects.

- Providing guidance and support to Government institutions on the appropriate use of PPP projects.

- Promoting a consistent approach to PPP project development, encouraging the use of PPP by Departments and identifying their training needs and providing training necessary to build capacity of staff of contracting authorities.

- Disseminating best practice guidance to the wider public sector; and identifying and developing new models of PPPs drawing on international experience.

9.2 Until the PPP Unit has been established, contracting authorities shall seek the guidance and support of the Ministry of Finance, Planning and Economic Development regarding public private partnerships.

9.3 Ministry of Finance, Planning and Economic Development: Where PPPs are concerned, Ministry of Finance, Planning and Economic Development shall be responsible for the following:

- Providing funding and oversight for the PPP Unit,

- Developing policies and guidelines for the implementation of PPPs;

- Advising Government on the financial implications of any PPP project. The Ministry will advise, in particular, on the use of borrowings and the management of debt obligations and public expenditure as a whole taking account of the use of PPPs by Government institutions.

- Quality assurance on the economic appraisal of all PPP projects to ensure they are affordable and achieve value for money; and

- Taking into consideration the financial obligations imposed on the national budget, advise the contracting authority on the suitability of the projects and where applicable authorize budgets specific to PPP projects.

9.4 Contracting Authority: Government Ministries, departments and local government authorities shall be responsible for identifying, developing and managing PPP projects. The contracting authorities will consult the Ministry of Finance, Planning and Economic Development on policy issues and the PPP Unit for project support

9.5 Cabinet: Cabinet approval will be obtained for all PPP projects.

10 Monitoring and Evaluation

10.1 Monitoring and Evaluation of the PPP programme will be the on-going responsibility of the PPP Unit. At the project level, the contracting authorities have the responsibility for monitoring and evaluation of their projects and to provide such data as will be needed for the overall programme-monitoring role of the PPP Unit. In this respect it will be especially important and necessary for contracting authorities to plan for changes in project management personnel over the project life. This will help to ensure that successors receive the necessary training to continue effective monitoring of the contract to secure value for money and to meet accountability and legal obligations.

11 Audit of the PPP Program

11.1 In line with his responsibilities outlined in the National Audit Act (2008), the Auditor General will periodically carry out a value for money audit of the PPP program. This audit will evaluate whether the resources invested in the PPP program are achieving the stated aim of improving the effectiveness of investment in public infrastructure and the delivery of related services.

APPENDIX A: PPP MODELS

Design, Build, Finance and Operate contracts are contractual relationships between the public sector and private sector contractors for the design, construction, operation and financing of public facilities or infrastructure. The private sector contractor is responsible for designing, building, operating and financing the facility and recovers its cost solely out of payments from the public sector. At the end of the term of the contract, ownership of the facility commonly transfers to the public sector.

Concession. These are contracts where existing assets are leased to the private party for a period of time. All or a substantial part of the risks associated with funding, developing, managing and operating the state assets are transferred to the private party.

The lessee or concessionaire may make lease payments to Government for use of the assets.

Under **sale and lease back** contracts, the public sector sells its assets to a private sector partner and then leases them back under a formal lease agreement. Sale and lease back contracts can be used as a mechanism to raise capital funding and also to improve the efficiency of property management services (through outsourcing). The contracts can be extended to include the provision of new properties, and the public sector can decide whether to take a capital receipt for the value of existing properties or to have the value of the properties reflected in a reduction in the lease payment.

Lease contracts are used for the provision of tangible assets (e.g. IT systems or vehicle fleets). There are two main types of lease: financial leases, where the risks and rewards of asset ownership would transfer to the lessee (the public sector) and the value of the asset is shown on the lessee's balance sheet; and operating leases, where the risks and rewards of ownership remain largely with the lessor (the private sector) and the value of the asset remains on the balance sheet of the lessor.

Joint ventures are established where the public sector and private sector wish to share in the risks and rewards associated with a particular commercial enterprise, with each party undertaking the specific roles for which it has particular skill and expertise. The parties share in the risks and rewards of the enterprise either in accordance with their respective shareholdings or through other contractual arrangements. Joint ventures may be used to exploit the commercial potential of many public sector assets. In addition, in a small number of cases a special purpose company established to deliver a DBFO contract on behalf of government may take the form of a joint venture, with the public sector taking a minority shareholding.

Appendix B: PPP Project Development and Delivery

The activities leading to the delivery of a PPP project encompasses all aspects of the public infrastructure investment and procurement decision making, through to the execution of a PPP agreement, its implementation, contract management and monitoring as illustrated in the following Flow Charts:

Chart 1: Feasibility Study Phase

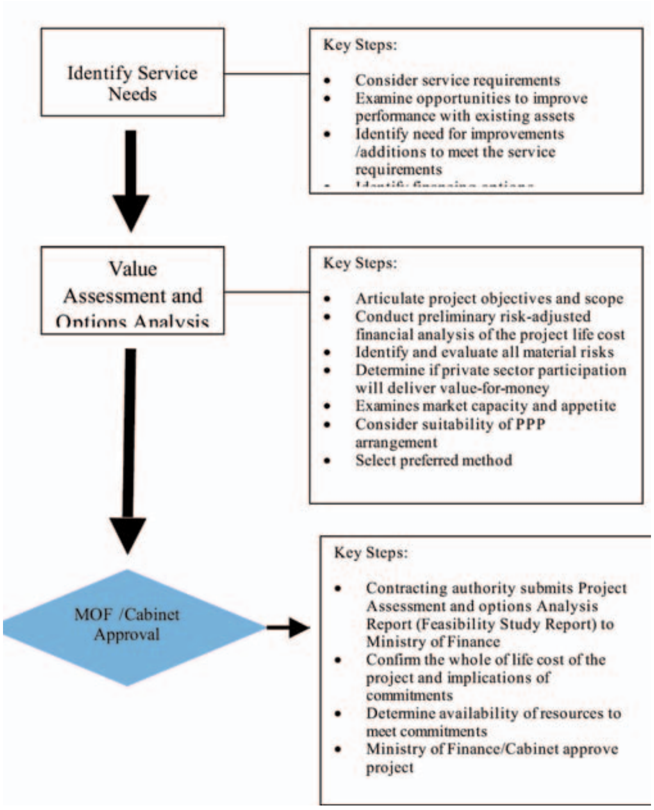

Chart 2: PPP Project Delivery Phase