



NATIONAL PUBLIC-PRIVATE PARTNERSHIPS GUIDELINES

Main Document

PPP Unit of the Ministry of Finance, Planning and Economic Development

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List of abbreviations

CA	Contracting Authority
MFPEd	Ministry of Finance, Planning and Economic Development
MOF	Minister responsible for Finance
MOU	Memorandum of Understanding
PPP	Public Private Partnership
PPPC	Public Private Partnerships Committee
PPPU	Public Private Partnerships Unit
PST	PPP Screening Tool
RFQ	Request for Prequalification
RFB	Request for Bids
SPC	Special Purpose Company
TA	Transaction Advisor
UGX	Uganda Shilling
USD	United States Dollar
USP	Unsolicited Proposal

Glossary

Accounting Officer	The Accounting Officer of the Contracting Authority.
Bid Evaluation Report	The report prepared by the Evaluation Committee, documenting the evaluation of the bids and recommending the Preferred Bidder, as referred to in paragraph 5.3.48 of these <i>Guidelines</i> .
Commercial Close	The point at which agreement is reached on all the commercial terms of the PPP agreement and the PPP agreement is signed.
Contract Management Plan	The plan prepared by the Contracting Authority (or by the Transaction Advisor) for the monitoring and management of the PPP project during its Implementation Stage, as referred to in paragraph 7.3.1 of these <i>Guidelines</i> .
Contract Management Team	The Project Team in the Implementation Stage.
Contracting Authority	The ministry, department of Government or any other body established by Government and mandated to carry out a public function (as per the definition in section 4 of the <i>PPP Act</i>).
Contracting Stage	The fourth stage of the PPP Project Cycle, during which the Contracting Authority and the Preferred Bidder conduct contract negotiations, resulting in the signing of the PPP agreement (commercial close). The Contracting Stage is described in Chapter 6 of these <i>Guidelines</i> .
Development Committee	The committee within MFPED responsible for the review and approval of projects for inclusion in the public investment plan.
Evaluation Committee	The committee for the evaluation of applications for prequalification and bids, appointed by the Accounting Officer of the Contracting Authority pursuant to section 19 of the <i>PPP Act</i> . The composition and functions of the Evaluation Committee are described in section 19 of the <i>PPP Act</i> and paragraphs 2.2.22 to 2.2.26 of these <i>Guidelines</i> .
Feasibility Stage	The second stage of the PPP Project Cycle, during which the Feasibility Study is carried out and the project is submitted for approval to the PPP Committee. The Feasibility Stage is described in Chapter 4 of these <i>Guidelines</i> .
Feasibility Study	The study of the PPP project carried pursuant to section 22 of the Public Private Partnerships Act.
Feasibility Study Report	The report in which the Feasibility Study is documented, as referred to in paragraphs 4.2.7 and 4.2.8 of these <i>Guidelines</i> .

Financial Close	The point at which all of the project documentation is signed, all the pre-conditions attached to the project's financing have been met or waived, and draw-downs become permissible.
Government	The government of Uganda.
<i>Guidelines</i>	The present document.
Implementation Stage	The fifth and final stage of the PPP Project Cycle, during which the project is designed, constructed and operated until the end date of the PPP agreement. The Implementation Stage is described in Chapter 7 of these <i>Guidelines</i> .
Inception Stage	The first stage of the PPP Project Cycle, during which the Preliminary Economic Cost-Benefit Analysis is carried out, and the PPP project is registered. The Inception Stage is described in Chapter 3 of these <i>Guidelines</i> .
Independent Expert	The expert jointly appointed by the Contracting Authority and the Private Party as referred to in Section 7.4 of these <i>Guidelines</i> .
Notice of Award	Written confirmation of the award of the PPP agreement to the Successful Bidder, as referred to in paragraph 5.3.76 of these <i>Guidelines</i> .
Performance Monitoring Plan	The plan prepared by the Private Party for the monitoring of the performance of the Private Party in the Implementation Stage, as referred to in Section 7.5 of these <i>Guidelines</i> .
<i>PPP Act</i>	The Public Private Partnerships Act, 2015.
PPP Committee	The committee established pursuant to section 5 of the <i>PPP Act</i> , whose composition and functions are described in sections 5 to 9 of the <i>PPP Act</i> and in paragraphs 2.2.43 to 2.2.45 of these <i>Guidelines</i> .
PPP Project	A project in one of the sectors defined in section 2 of the <i>PPP Act</i> undertaken as a Public Private Partnership.
PPP Project Approval Decision	The approval for the project to proceed to the Procurement Stage, pursuant to subsection 22(5) of the <i>PPP Act</i> and referred to in paragraph 4.2.30 of these <i>Guidelines</i> .
PPP Project Cycle	The consecutive stages of a PPP project, from inception until handover of the project assets to the Contracting Authority, as defined in Section 2.1 of these <i>Guidelines</i> in line with the description of the PPP process in Part III of the <i>PPP Act</i> .
PPP Project Fiscal Affordability Report	The report prepared by the MFPED review team, as referred to paragraphs 4.2.24 to 4.2.27 of these <i>Guidelines</i> .

PPP Project Register	The database of registered PPP projects maintained by the PPP Unit, as referred to in paragraph 3.2.14 of these <i>Guidelines</i> .
PPP Project Assessment Report	The report prepared by the PPP Unit containing a comprehensive appraisal of the PPP project on the basis of the Feasibility Study Report, as referred to in paragraph 4.2.19 of these <i>Guidelines</i> .
<i>PPP Regulations</i>	The Public Private Partnerships Regulations, 2019 and the Public Private Partnerships (Meetings of the Committee) Regulations, 2019
PPP Screening Tool (PST)	The tool for the screening of the PPP suitability of PPP projects, as described in Annexes C1 and C2 of these <i>Guidelines</i> .
PPP Unit	The unit established pursuant to section 10 of the <i>PPP Act</i> , whose composition and functions are described in sections 10 and 11 of the <i>PPP Act</i> and in paragraphs 2.2.50 to 2.2.53 of these <i>Guidelines</i> .
Preferred Bidder	The bidder who is ranked highest among the bidders by the Evaluation Committee, as referred to in paragraph 5.3.47 to 5.3.49 of these <i>Guidelines</i> .
Preliminary Economic Cost-Benefit Analysis (CBA)	The preliminary analysis of the PPP suitability of an envisaged PPP project as referred to in subsection 21(2) of the <i>PPP Act</i> and paragraphs 3.2.3 to 3.2.7 of these <i>Guidelines</i> .
Private Party	The private Special Purpose Company incorporated by the Successful Bidder signing the PPP agreement with the Contracting Authority, as referred to in section 20 of the <i>PPP Act</i> and paragraphs 2.2.27 to 2.2.31 of these <i>Guidelines</i> .
Procurement Stage	The third stage of the PPP Project Cycle, during which the Contracting Authority selects a Private Party for the implementation of the PPP project. The Procurement Stage is described in Chapter 5 of these <i>Guidelines</i> .
Process Auditor	The person appointed pursuant to section 17 of the <i>PPP Act</i> , whose functions are described in section 17 of the <i>PPP Act</i> and paragraphs 2.2.54 to 2.2.58 of these <i>Guidelines</i> .
Project Concept Note (PCN)	The note prepared by the Contracting Authority containing summary information on an envisaged PPP project, as referred to in paragraph 2.1.3 of these <i>Guidelines</i> .
Project Information Memorandum	The memorandum with summary information on the PPP procurement that is attached to the Request for Qualifications for purpose of informing applicant bidders, as referred to in paragraph 5.3.8 of these <i>Guidelines</i> .

Project Officer	The person appointed by the Contracting Authority pursuant to section 14 of the <i>PPP Act</i> , whose functions are described in section 14 of the <i>PPP Act</i> and paragraphs 2.2.13 to 2.2.16 of these <i>Guidelines</i> .
Project Team	The team appointed by the Contracting Authority pursuant to section 15 of the <i>PPP Act</i> , whose composition and functions are described in section 15 of the <i>PPP Act</i> and paragraphs 2.2.17 to 2.2.21 of these <i>Guidelines</i> .
Public-Private Partnership (PPP)	A commercial transaction between a Contracting Authority and a Private Party as defined in section 4 of the <i>PPP Act</i> , and reproduced in paragraph 1.3.2 of these <i>Guidelines</i> .
Successful Bidder	The bidder to whom the PPP project is awarded, subsequent to the designation as Preferred Bidder, the successful conclusion of final contract negotiations and, the case being, the approval of the PPP agreement by the Cabinet, as referred to in paragraph 5.3.76 of these <i>Guidelines</i> .
Transaction Advisor	The person appointed in writing by a Contracting Authority who has the appropriate skill and experience to assist and advise the Contracting Authority or the PPP Unit on matters related to a public-private partnership, including the preparation, accession and conclusion of a project agreement and financial close (as per the definition in section 4 of the <i>PPP Act</i>).

1. Introduction

1.1 Purpose of the Guidelines

- 1.1.1. Experience around the world has shown that public-private partnerships (PPP) can deliver public infrastructure faster and with better quality to price ratio than conventional public procurement projects. However, the benefits of public-private partnerships (PPP) do not originate spontaneously. They must be actively pursued during the preparation and management of the PPP project by the government.
- 1.1.2. The present *PPP Guidelines* (henceforth also abbreviated to "*Guidelines*") provide contracting authorities and the PPP Unit with a rigorous procedural framework and with a comprehensive set of assessment tools enabling them (i) to identify the projects where the use of PPP can deliver benefits, and (ii) to effectively achieve these benefits through a sound preparation and implementation process.
- 1.1.3. These Guidelines are also of use to private companies that are considering participating in a PPP project as investor, developer, operator or lender, or as advisors to one of these parties. From the Guidelines the private sector can learn how the government intends to prepare, approve, implement and manage PPP projects. This information allows private sector parties to fulfil their role in PPP projects with maximum efficiency and in accordance with the government's PPP policy.

1.2 Background of the Guidelines

- 1.2.1. In 2010, the Government of Uganda adopted a PPP policy. The policy creates a framework for the involvement of the private sector in provision of public infrastructure and services.
- 1.2.2. The *Public Private Partnerships Act* came into force on 1 October 2015. The *PPP Act* establishes the legal and institutional framework for the concrete implementation of PPP projects. The *PPP Act* provides for the establishment of the Public Private Partnerships Committee, the Public Private Partnerships Unit and the Project Development Facilitation Fund. The *PPP Act* also sets out the procedure for the implementation of PPP projects across all steps of the project cycle from inception to the end date of the PPP agreement. Furthermore, the *PPP Act* defines the contents of the PPP agreement.
- 1.2.3. Pursuant to the *PPP Act*, the Minister responsible for finance issued the *Public Private Partnerships Regulations, 2019* and the *Public Private Partnerships (Meetings of the Committee) Regulations, 2019* (together, *the PPP Regulations 2019*). The *PPP Regulations* prescribe the bidding methods and procedures for the selection of a Private Party.
- 1.2.4. The *Guidelines* presented in this document are firmly grounded in the policy and legal framework that has been put in place by the Government for the implementation of PPP projects. They comply with the *PPP Act* and the *PPP Regulations*.

1.3 Application of the Guidelines

1.3.1. The *Guidelines* apply to all projects undertaken in PPP by government entities established in Uganda, regardless of size, complexity and identity of Contracting Authority

1.3.2. In section 4 of the *PPP Act*, a PPP is defined as follows:

“a commercial transaction between a Contracting Authority and a Private Party where the Private Party performs a function of the Contracting Authority on behalf of the Contracting Authority, for a specified period, and

- (a) acquires the use of the property, equipment or other resource of the Contracting Authority for the purposes of executing the agreement;*
- (b) assumes substantial financial, technical and operational risks in connection with the performance of the function or use of the property; or*
- (c) receives a benefit for performing the function through payment of the Contracting Authority or charges or fees collected by the Private Party from the users of the infrastructure or service, or both.”*

1.3.3. Subsection 2(1) of the *PPP Act* defines the projects where public-private partnerships may be employed:

“in particular shall apply to the design, construction, maintenance and operation of infrastructure or services provided under the following projects—

- (a) road, rail, subway, water and air transport facilities, including harbour and port facilities, airports and airport facilities;*
- (b) information and computer technology, telecommunication and telecommunication networks;*
- (c) social infrastructure, including health care facilities, correctional facilities, educational facilities, accommodation facilities, public housing and court facilities;*
- (d) water management facilities, including dams and water storages, water supply and distribution systems, irrigation and drainage systems and sanitation, sewerage and waste management systems;*
- (e) oil pipelines, gas pipelines and gas storage, refinery, conveyance and distribution facilities;*
- (f) energy-related facilities and other facilities for the generation, preservation, transmission and distribution of electricity;*
- (g) sports and recreational facilities, sports grounds and space for sports and recreation, including facilities for recreational, sports and cultural activities;*
- (h) tourist infrastructure facilities;*
- (i) extraction and processing of mineral raw materials;*

(j) *agricultural processing industries; or*

(k) *any other project as the Minister may, by statutory instrument, approve."*

1.3.4. If a PPP project does not comply with these *Guidelines*, the PPP Committee may conclude that the project does not meet the requirements set out in the *PPP Act* and the *PPP Regulations* and is not allowed to proceed.

1.3.5. In the event of discrepancy and/or contradiction between these *Guidelines* and the *PPP Act* or the *PPP Regulations*, the *PPP Act* and the *PPP Regulations* prevail in that order of priority.

1.3.6. The definition of a PPP and key PPP concepts are further detailed in Annex A of the *Guidelines*.

1.4 Structure of the Guidelines

1.4.1. The *Guidelines* consist of this *Main Document* and a set of *Annexes*.

1.4.2. The *Main Document* sets out in detail the steps of the preparation, procurement and implementation of a PPP project. It covers all stages of the PPP Project Cycle from inception to the end date of the PPP agreement. It addresses the responsibilities and tasks of all key institutions that are involved in the realisation of a PPP project, both public and private.

1.4.3. The *Main Document* consists of eight chapters, including this introductory chapter (Chapter 1).

(a) The next chapter (Chapter 2) presents an overall overview of the PPP Project Cycle and briefly describes the roles of the key institutions in the preparation, procurement and implementation of a PPP project.

(b) Following this overview, each stage of the Project Cycle is addressed in detail in a separate chapter:

- Inception (Chapter 3);
- Feasibility study (Chapter 4);
- Procurement (Chapter 5);
- Contracting (Chapter 6); and
- Implementation (Chapter 7).

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

1.4.4. In order to preserve the readability of the *Guidelines*, detailed descriptions of evaluation tools and methodologies, as well as document templates and models, are attached in separate *Annexes*. The following *Annexes* are included:

Annex A	Key PPP Concepts
Annex B	Project Concept Note template
Annex C1	PPP Screening Tool (PST) Excel workbook
Annex C2	PST Manual
Annex D	PPP Project Register template
Annex E	Terms of Reference for Transaction Advisor
Annex F	Feasibility Study Guidelines

Annex G	Financial analysis guidelines
Annex H	Value for Money Analysis Guidelines
Annex I	Generic Project Risk Matrix
Annex J1	Guidelines for the Management of Contingent Liabilities ¹
Annex J2	Draft terms of reference for the review team formed for assessing the fiscal affordability of a PPP project
Annex K	Bidding documents
Annex L	Disclosure framework

- 1.4.5. The reader of these *Guidelines* is advised to consult the website of the PPP Unit at <https://pppunit.go.ug/> for the most recent version of the *Guidelines*, as well as for additional guidance on PPPs.
- 1.4.6. For any clarifications on the contents of these *Guidelines*, the reader may contact the PPP Unit as detailed on the PPP Unit website.

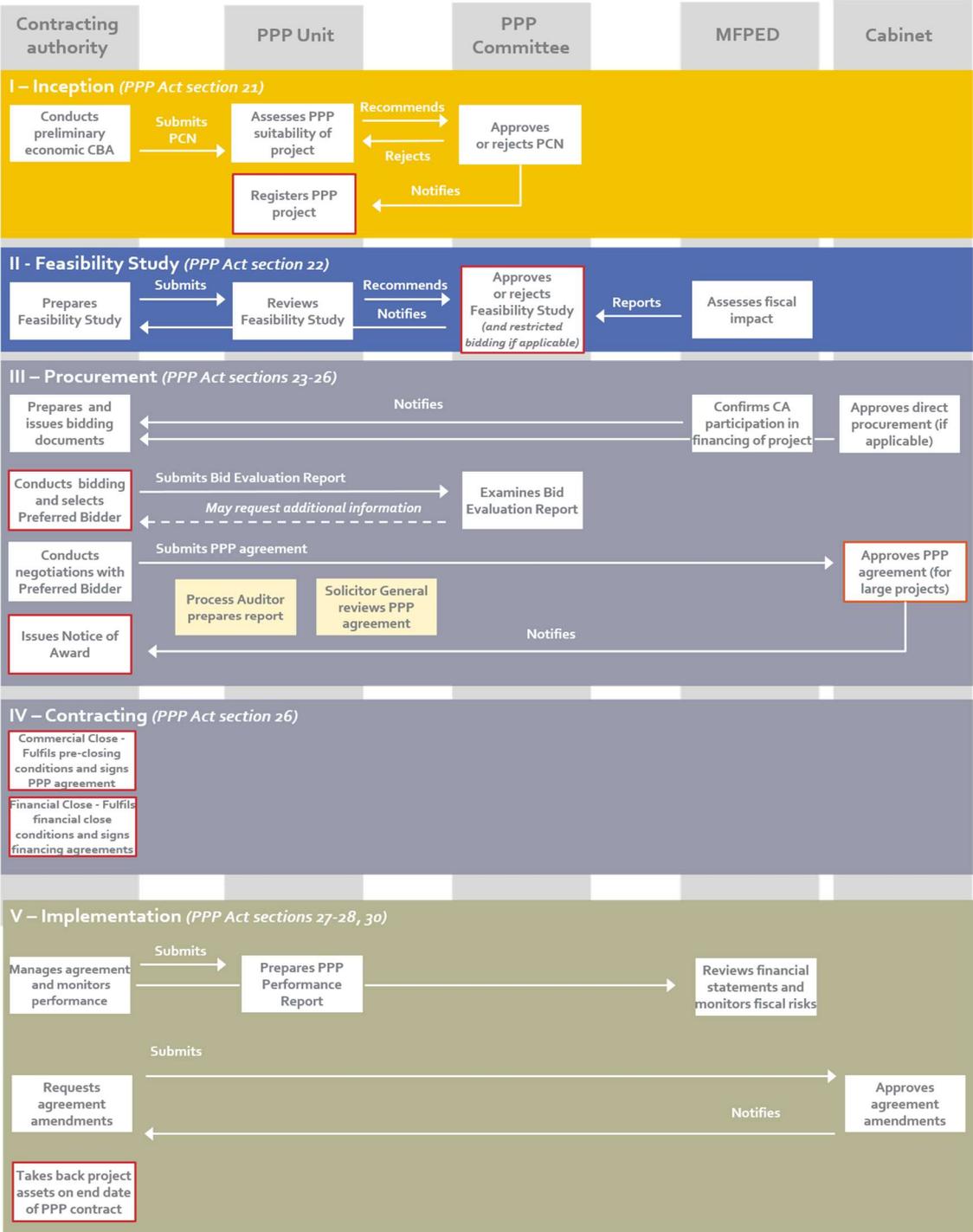
¹ Annex J1 is Chapter 5 of the “Guidelines for the Management of Contingent Liabilities” (Draft June 2019) issued by MFPEd.

2. Overview of the PPP Project Cycle

2.1 Stages of the PPP Project Cycle

2.1.1. The preparation, procurement and implementation of a PPP project consists of five stages, which together constitute the PPP Project Cycle. The stages of the PPP Project Cycle are defined by Part III of the PPP Act. They are presented in the figure below. The figure also shows for each stage the corresponding sections of the PPP Act, as well as the main activities and approvals.

Figure 1: PPP Project Cycle



- 2.1.2. The contents of the various stages of the PPP Project Cycle are very briefly described below. Detailed guidance on the procedural steps and the methodological approach in each stage is provided in chapters 3 -7 of these *Guidelines*. Appropriate information disclosure takes place at each stage of the project cycle in accordance with the framework for disclosure presented in Annex L of these *Guidelines*.

Inception

- 2.1.3. In the Inception Stage the Contracting Authority selects a project for development as a potential PPP. For this purpose, the Contracting Authority conducts a Preliminary Economic Cost-Benefit Analysis as defined in section 21(2) of the PPP Act in which it demonstrates the basic suitability of the project for implementation as a PPP. The PPP Screening Tool (PST) or any other appropriate tools may be used at this Inception Stage. The template for the Preliminary Economic Cost-Benefit Analysis is laid down in a Project Concept Note as set out at Annex B of these *Guidelines*. The Contracting Authority may discuss the preparation of the Project Concept Note with the PPP Unit.
- 2.1.4. The Contracting Authority submits the Project Concept Note to the Development Committee of MFPED, who determines if the project is to be best achieved under the PPP modality as per the Development Committee Guidelines² and the PPP Project Screening Tool. The key PPP concepts set out in Annex A to these Guidelines may be used by Development Committee to assess if a project is suitable for PPP delivery.
- 2.1.5. The Project Concept Note is then submitted to the PPP Unit for approval by the PPP Committee. The PPP Unit conducts a review of the PPP suitability of the project and submits its findings to the PPP Committee. Upon approval by the PPP Committee of the selection of the project as a PPP, the PPP Unit registers the project.
- 2.1.6. At this Stage the Contracting Authority can also apply to the Project Development Facilitation Fund for financial support for defraying the costs of the Transaction Advisor.³
- 2.1.7. The registration closes the Inception Stage. It indicates that the project is designated for further development as a PPP project and can proceed to the next stage.
- 2.1.8. Detailed guidance on the Inception Stage is provided in Chapter 3 of these *Guidelines*.

² Section 3.11(i) of the Development Committee Guidelines, August 2016. The Development Committee is a body within MFPED chaired by the Permanent Secretary/Secretary to the Treasury, with representatives of the National Planning Authority, the Office of the Prime Minister, the Office of the President and several officials from MFPED. Contracting Authorities are represented on a case-by-case basis. The Development Committee is responsible for the review and approval of projects for inclusion in the public investment plan. The Development Committee Guidelines are issued by MFPED and set out the project review and approval process, including requirements and templates for each stage of the process.

³ The primary objectives of the Project Development Facilitation Fund (PDFF) are to (a) support the Contracting Authorities in the preparation phase of a project, the procurement process and project appraisal, (b) support the activities of the PPP Unit, and (c) provide a source of liquidity to meet any contingent liabilities arising from a project. The PDFF only supports PPP projects that fulfil the objectives of the National Development Plan, are consistent with the Government's PPP Policy and follow international best practice. The reader of these *Guidelines* is advised to consult the website of the PPP Unit for further guidance on applying to the PDFF.

Feasibility Study

- 2.1.9. In the Feasibility Study Stage, the Contracting Authority engages a Transaction Advisor to undertake a comprehensive Feasibility Study of the project. In the Feasibility Study the project is elaborated and all aspects of the feasibility of the project are assessed: technical, economic, financial, fiscal, environmental, social, legal and any other appropriate aspects.
- 2.1.10. The Contracting Authority submits the Feasibility Study Report (including draft or heads of terms of the PPP agreement and procurement plan) to the PPP Unit for approval by the PPP Committee.
- (a) The PPP Unit reviews the Feasibility Study Report. Based on its appraisal of the Feasibility Study Report it formulates conclusions on the suitability of the project for implementation as a PPP and submits to those to the PPP Committee.
 - (b) In parallel and before submission of the Feasibility Study to the PPP Committee, the team constituted by the Permanent Secretary/ Secretary to the Treasury (PS/ST) of MFPED assesses the fiscal impact and risks of the project and presents its findings and recommendations to the Minister.
 - (c) The PPP Committee examines the Feasibility Study Report, the conclusions of the review by the PPP Unit and the findings of the fiscal affordability assessment by MFPED. On this basis it decides to approve, instruct the Contracting Authority to revise the Feasibility Study Report and resubmit to the PPP Unit for approval by the PPP Committee or reject the project for implementation as a PPP. The decision is notified to the Contracting Authority.
- 2.1.11. The project decision of the PPP Committee closes the Feasibility Study Stage. In case the project is approved for implementation as a PPP, it can proceed to the Procurement Stage.
- 2.1.12. Detailed guidance on the Feasibility Study Stage is provided in Chapter 4 of these *Guidelines*.

Procurement

- 2.1.13. The Contracting Authority, assisted by a Transaction Advisor and with the support of the PPP Unit, conducts a procurement process to select a Private Party.
- (a) If the Contracting Authority wishes to select the Private Party through direct procurement, it must first seek the approval from Cabinet.
 - (b) If Contracting Authority wishes to select the Private Party through restricted bidding procedure, it must first seek the approval of the PPP Committee.
 - (c) If the Contracting Authority wishes to participate in the financing of the project, it must first obtain the confirmation from the Minister responsible for finance that the required funds will be available.
- 2.1.14. Following the evaluation of the bids by the Contracting Authority, the Contracting Authority submits the Bid Evaluation Report to the PPP Unit for comments by the PPP Committee. The PPP Unit reviews the Bid Evaluation Report and the choice of the Preferred Bidder, and communicates the findings of this review to the PPP Committee. The PPP Committee examines the Bid Evaluation

Report and the choice of the Preferred Bidder, and notifies its comments to the Contracting Authority.

- 2.1.15. The Contracting Authority conducts negotiations with the Preferred Bidder to finalise the PPP agreement.
- 2.1.16. The Process Auditor submits to the Accounting Officer his final report prior to the submission by the Accounting Officer of the PPP agreement to Cabinet.
- 2.1.17. For PPP projects with a contract value exceeding a prescribed amount (see paragraph 5.3.68 of these *Guidelines*) Cabinet must also approve the PPP agreement before signature.
- 2.1.18. Clearance of the PPP agreement is also required from the Solicitor General.
- 2.1.19. The issue of the Notice of Award to the Successful Bidder closes the Procurement Stage.
- 2.1.20. Detailed guidance on the Procurement Stage is provided in Chapter 5 of these *Guidelines*.

Contracting

- 2.1.21. In the Contracting Stage the Contracting Authority and the SPC that is established by the Successful Bidder sign the PPP agreement. In this stage the financing agreements are also finalised and signed.
- 2.1.22. Detailed guidance on the Contracting Stage is provided in Chapter 6 of these *Guidelines*.

Implementation

- 2.1.23. In the Implementation Stage the project is carried out by the Private Party. The Implementation Stage generally consists of a construction phase, in which the project assets are acquired, constructed and installed, and a maintenance and operation phase, in which the project assets are maintained and operated in order to provide services to the users.
- 2.1.24. The role of the Contracting Authority in this stage consists of contract management:
 - (a) Throughout the duration of the PPP agreement the Contracting Authority monitors and audits the performance the Private Party and determines whether it complies with the conditions of the agreement.
 - (b) The Contracting Authority submits periodic performance reports to the MOF and the PPP Unit.
 - (c) The Contracting Authority receives the financial statements, audited financial statements and an annual report from the Private Party and forwards those to MFPED for review.
- 2.1.25. In case the Contracting Authority wishes to modify the PPP agreement (for instance to deal with changing requirements or external circumstances), it must seek prior approval from the Cabinet.
- 2.1.26. Upon the expiry of the PPP agreement the Private Party hands over the project assets to the Contracting Authority. This handback constitutes the end of the PPP Project Cycle.

2.1.27. Detailed guidance on the Implementation Stage is provided in Chapter 7 of these *Guidelines*.

2.2 Institutional roles in the PPP Project Cycle

2.2.1. Many parties are involved in the delivery of a PPP project from inception to the end date of the PPP agreement.

- (a) The primary actors in the PPP Project Cycle are the signatories of the PPP agreement, i.e.
 - 1. the Contracting Authority; and
 - 2. the Private Party.
- (b) The Contracting Authority is assisted by external experts, in particular:
 - 3. the Transaction Advisor; and
 - 4. the Independent Expert (jointly appointed by and providing advice to the Contracting Authority and the Private Party).
- (c) The institutions involved in the appraisal and approval of the PPP project are:
 - 5. the PPP Committee;
 - 6. MFPED; and
 - 7. the Cabinet.
- (d) The key coordinating and supporting institution in the preparation, appraisal and implementation of the PPP projects is:
 - 8. the PPP Unit.
- (e) The following institutions are responsible for the legal review, accounting and financial reporting, and auditing of PPP project on behalf of the government:
 - 9. the Process Auditor;
 - 10. the Accountant General;
 - 11. the Auditor General; and
 - 12. the Solicitor General.
- (f) Many projects are subject to review or approval by regulatory authorities as a condition for obtaining a construction permit or an operating license. For example, ERA must provide regulatory approval on electricity projects, and NEMA must provide environmental permits. Which regulatory authorities are involved varies between projects in function of the sector in which the project is realised (for example transport, energy, water), and the type of project impacts (for example environmental, resettlement). The Contracting Authority must identify the relevant regulatory authorities in the Inception Stage to make sure that they are involved in a timely manner in the preparation and the implementation of the PPP project.

2.2.2. The respective roles of the above institutions in the preparation, procurement and implementation of PPP projects are defined in the *PPP Act* and the *PPP Regulations*. A brief description of the institutional roles is presented in the paragraphs that follow. These roles are further elaborated in chapters 3 to 7, each devoted to a stage of the PPP Project Cycle.

Contracting Authority

- 2.2.3. The role of the Contracting Authority in the PPP Project Cycle is defined by section 12 of the *PPP Act*.
- 2.2.4. The *PPP Act* designates the Contracting Authority as the prime actor in the development and implementation of PPP projects. The Contracting Authority takes the lead in all stages of the PPP Project Cycle. In particular, it is responsible for:
- (a) identifying projects to be developed as PPPs;
 - (b) carrying out a Feasibility Study to assess the feasibility and desirability of the project and its implementation in a PPP;
 - (c) conducting a procurement process to select the Private Party;
 - (d) procuring a Transaction Advisor to assist with the Feasibility Study and the procurement process;
 - (e) signing the PPP agreement with the selected Private Party; and
 - (f) managing the PPP relationship in the implementation phase until the end date of the PPP agreement (including performance monitoring and contract management).
- 2.2.5. The Contracting Authority grants to the Private Party, for the duration of the PPP agreement, the right to use the public assets that the latter needs to undertake the project. The asset use rights may be granted by means of a concession, lease or any other form of assignment of use rights.
- 2.2.6. The *PPP Act* allows the Contracting Authority to provide capital funds to the project (for instance by contributing to the equity of the Special Purpose Company or SPC that is established to implement the project).
- 2.2.7. The *PPP Act* also defines the role of some organs within, or appointed by, or acting on behalf of the Contracting Authority, in particular:
- the Accounting Officer;
 - the Project Officer;
 - the Project Team; and
 - the Evaluation Committee.

Accounting Officer

- 2.2.8. The role and responsibility of the Accounting Officer is defined by section 13 of the *PPP Act*.
- 2.2.9. The Accounting Officer of the Contracting Authority is ultimately responsible for the functions of the Contracting Authority in all stages of the PPP Project Cycle.
- 2.2.10. In particular, the Accounting Officer takes all decisions – in consultation with the minister responsible for the Contracting Authority where applicable – in the preparation, procurement and implementation of the PPP project, such as:
- (a) appointment and supervision of the Project Officer and the Project Team;

- (b) approval of the identification of a project for implementation as a PPP;
- (c) approval of Project Concept Note;
- (d) approval of terms of reference of Transaction Advisor;
- (e) award of Transaction Advisory mandate;
- (f) acceptance of Feasibility Study Report;
- (g) approval of PPP project for submission to PPP Unit and PPP Committee;
- (h) approval of Contracting Authority budgetary expenses for PPP project;
- (i) approval of bidding documents prior to their publication;
- (j) appointment of the Evaluation Committee;
- (k) approval of selection of prequalified bidders upon the recommendation of the Evaluation Committee;
- (l) review of selection of Private Party by the Evaluation Committee;
- (m) signature of PPP agreement with Private Party on behalf of the Contracting Authority;
- (n) granting to the Private Party of the right to use public assets owned or controlled by the Contracting Authority;
- (o) approval of all actions taken as part of contract management (payment of invoices, application of penalties, payments in compensation events, appointment of external experts, contract change requests, handling of disputes).

2.2.11. The Accounting Officer – authorised and instructed by the minister responsible for the Contracting Authority where applicable – represents the Contracting Authority in high-level meetings on the PPP project with other government entities and the Private Party.

2.2.12. The Accounting Officer is responsible for the institutionalisation of a PPP team within the Contracting Authority (e.g. department or unit) so that skills in preparing and implementing PPP projects are not lost.

Project Officer

2.2.13. The role and responsibility of the Project Officer is defined by section 14 of the *PPP Act*.

2.2.14. The Project Officer is appointed and supervised by the Accounting Officer. The Project Officer should have sufficient skills and expertise to carry out the role and ideally be a senior member of staff within the Contracting Authority. The Project Officer is the head of the Project Team and is responsible for the everyday management of the PPP project in all stages of the PPP Project Cycle. The Project Officer prepares the decisions of the Accounting Officer and takes all decisions about the project that are not elevated to the Accounting Officer.

2.2.15. In general, the function of Project Officer is fulfilled by several persons, appointed consecutively, during the lifetime of the PPP project. Since a PPP agreement has a very long duration (30 years and more), it is unlikely that the same person will be able to fulfil this function from inception to the end date of the PPP agreement. Furthermore, the skills that are required for the management of the PPP project change between the stages of the PPP Project Cycle. It is therefore often optimal to appoint a new Project Officer with the appropriate skills at the start of another stage of the project cycle.

2.2.16. Which arrangement works best must be determined by the Accounting Officer and depends on the availability of project management staff and their skills and interests. However, a common arrangement that often proves optimal is the following:

- (a) The first Project Officer is responsible from inception up to the completion of the works and the commissioning of the project assets. In this part of the PPP Project Cycle the focus is on the development of the project. The tasks of the Project Officer are mostly non-routine and include project design, management of the Feasibility Study, interaction with stakeholders and organising the procurement process.
- (b) At the start of the operational phase a new Project Officer is appointed. In this part of the project cycle the focus is on performance monitoring and contract management. The tasks are periodically recurring and to a large degree of an administrative nature. These tasks require different skills than in the project development phase. Given the long duration of the operational phase (up to 25 years and more), it will be probably be necessary to replace the Project Officer several times throughout the term of the PPP agreement as the person occupying the position retires or changes jobs.

Project Team

- 2.2.17. The role and responsibility of the Project Team is defined by sections 15 and 16 of the *PPP Act*.
- 2.2.18. The Project Team is appointed by the Accounting Officer for each specific PPP Project and headed by the Project Officer. The Project Team is responsible for the practical fulfilment of all duties of the Contracting Authority in the development and implementation of a PPP project. In particular, the Project Team carries out the following tasks:
 - (c) carrying out of preliminary analysis and drafting of a Project Concept Note;
 - (d) drafting of terms of reference for a Transaction Advisor;
 - (e) conducting of procurement procedure for selection of a Transaction Advisor;
 - (f) management and supervision of the work of the Transaction Advisor;
 - (g) review of Feasibility Study Report prepared by the Transaction Advisor;
 - (h) design of the procurement strategy and choice of the bidding method;
 - (i) review of bid documents prepared by Transaction Advisor (request for prequalification, request for bids, draft PPP agreement, output specifications);
 - (j) conducting of procurement, clarification responses, co-ordinate site visits and contracting process (with assistance from Transaction Advisor);
 - (k) technical assistance to prequalification and bid Evaluation Committees (analysis of applications for qualification, analysis of technical and financial bids, drafting of bid evaluation report);
 - (l) verification of satisfaction of conditions precedent for commercial close and financial close by the Private Party;
 - (m) ensuring that the Contracting Authority fulfils its conditions precedent and obligations under the PPP agreement (such as delivery of the right-of-way);
 - (n) monitoring of performance of Private Party;
 - (o) PPP contract management;
 - (p) reporting on performance of PPP project to PPP Unit;
 - (q) reporting on fiscal liabilities to MFPED; and
 - (r) management of the interfaces and communication with other public and private stakeholders.

- 2.2.19. The size and composition of the Project Team depend on the size and complexity of the particular PPP project.
- (a) In general, the Project Team is at least composed of:
- technical personnel, specialised in the facilities and services that will be built and operated under the PPP agreement;
 - legal personnel, with expertise in public procurement and/or PPP;
 - financial personnel, ideally with competencies in financial analysis and modelling, feasibility studies, risk assessment etc.;
 - a representative from the Solicitor General's office; and
 - a representative of the PPP Unit.
- (b) If necessary, the team may be expanded (possibly on a temporary basis) by:
- additional sector or technical experts, specialised in particular technical fields that are relevant for the project, for example an environmental expert;
 - a social and resettlement expert;
 - a communication and stakeholder management expert; and
 - other relevant experts.
- 2.2.20. At the start of the operational phase (after the completion of the works and the commissioning of the project assets) the Project Team during the development phase is usually dissolved and replaced by a contract management team or by a contract management unit within the Contracting Authority. The reason is that the skills required in the development phase are different from those needed in the operational phase. The members of the original Project Team are then available for redeployment in the preparation and development of other projects.
- 2.2.21. The Project Officer and Project Team must be established before the registration of the PPP project with the PPP Unit under section 21(4) *PPP Act*.

Evaluation Committee

- 2.2.22. The role and responsibility of the Evaluation Committee is defined by section 19 of the *PPP Act*.
- 2.2.23. The Evaluation Committee is appointed by the Accounting Officer. Such appointment should be by letter from the Accounting Officer specifying the terms and conditions of appointment, including voting rights (if any). Its function is to evaluate the bids submitted by candidate private parties, and to select the Preferred Bidder. The evaluation of the bids comprises the:
- the technical and financial capacity selection criteria;
 - the technical bids; and
 - the financial bids.
- 2.2.24. In many procurement procedures the bidders must first submit a prequalification application, demonstrating their technical and financial capacity to undertake the project. In this case an Evaluation Committee is appointed to evaluate the prequalification applications that are submitted and to recommend to the Accounting Officer the selection of prequalified bidders.

2.2.25. The Evaluation Committee is composed of officials, appointed from the staff of the Contracting Authority, with the skills required for the evaluation of the prequalification documents and bids. In general, the Evaluation Committee is composed of:

- technical personnel, specialised in the facilities and services that will be built and operated under the PPP agreement;
- legal personnel, with expertise in public procurement and/or PPP; and
- financial personnel, ideally with competencies in financial analysis and modelling, feasibility studies, risk assessment etc.

Resources permitting, it is recommended to appoint a separate prequalification Evaluation Committee and bid Evaluation Committee.

2.2.26. The *PPP Act* allows experts from outside the Contracting Authority to be included in the Evaluation Committee, if needed. These may be the Transaction Advisor and the PPP Unit. The Transaction Advisor and the PPP Unit only have a support and advisory role. They cannot be voting members of the Evaluation Committee.

Private Party

2.2.27. The role and responsibility of the Private Party is defined by section 20 of the *PPP Act*.

2.2.28. The Private Party is responsible for the implementation of the project under the terms of the PPP agreement. Depending on the type of project and the scope of the PPP agreement this may include:

- construction of new public infrastructure or rehabilitation of existing public infrastructure;
- maintenance and operation of said infrastructure, in order to provide services to users; and
- financing of capital expenditures on infrastructure and equipment (initial capital expenditures in the construction phase, as well as replacement investments and major maintenance works in the operational phase).

2.2.29. The Private Party is responsible (with facilitation from the Contracting Authority to the extent possible) for obtaining from the relevant authorities the permits that are required for undertaking the project. These permits must be issued in the name of the Private Party.

2.2.30. In return for the above services the Private Party is remunerated by user fees (in user-pays PPPs), by government payments (in government-pays PPPs), or a hybrid combination of both (user-pays PPPs with government support). These types of PPPs are further elaborated in Section 2.1 of Annex A.

2.2.31. The *PPP Act* requires that the Private Party is constituted as a special purpose company (SPC) under the laws of Uganda. The SPC is established prior to the signature of the PPP agreement and the shareholders of the SPC will be the Successful Bidder, either the members of the consortium that has been awarded the project, or by an individual bidder, as the case may be.

2.2.32. The PPP agreement will contain share transfer restrictions, which will ensure that the original shareholders are tied into the SPC for a certain period of time after PPP agreement signature (usually for the construction phase as the bare minimum).

- 2.2.33. Subsection 12 (2) of the *PPP Act* allows the Contracting Authority to participate in the capital of the SPC. Capital increases, share transfers and changes in the corporate status of the SPC are subject to approval from the MOF and the minister responsible for the Contracting Authority.

Transaction Advisor

- 2.2.34. The role and responsibility of the Transaction Advisor is defined by section 18 of the *PPP Act*.
- 2.2.35. The Transaction Advisor is appointed by the Contracting Authority in consultation with the PPP Unit and assists the Contracting Authority with the preparation and procurement of the PPP project. In particular, the Transaction Advisor is tasked with:
- (a) carrying out of a comprehensive Feasibility Study of the PPP project, covering all aspects of the project: technical, economic, financial, fiscal, social, environmental, legal, institutional, PPP rationale (value for money) and PPP structuring;
 - (b) preparing of bid documents (request for prequalification, request for bids, PPP agreement, output specifications);
 - (c) assistance to Contracting Authority in the procurement and contracting process (including answering questions form bidders, organization of pre-bid conferences, negotiation with bidders, evaluation of prequalification documents and bids);
 - (d) preparation of contract management framework.
- 2.2.36. Due to the multidisciplinary nature of the transaction advisory services, the Transaction Advisor usually consists of a consortium of specialised consulting firms and advisors (technical, legal, financial).
- 2.2.37. The cost of the Transaction Advisor depends on the size of the project but is typically between 0.5-1% of the cost of the project. Although project preparation may seem an expensive initial outlay, it is essential that accurate project preparation is carried out. Investment in project preparation and a competent Transaction Advisor at the start is a good investment, compared to the escalating costs of entering into a badly structured or ill- conceived project.
- 2.2.38. The appointment of the Transaction Advisor is dealt with in more detail in Sections 4.2.1 to 4.2.6 below.

Independent Expert

- 2.2.39. The Independent Expert is appointed jointly by the Contracting Authority and the Private Party. The fee of the Independent Expert is shared between both parties.
- 2.2.40. The Independent Expert intervenes in the Implementation Stage of the project.
- (a) In the construction phase the functions of the Independent Expert are:
 - review of the detailed engineering design to verify its conformity with the output specifications in the PPP agreement;
 - inspection and monitoring of construction works;

- review modification requests and claims for compensation for special circumstances (for instance force majeure).
 - conducting of commissioning tests; and
 - issuing of completion certificate.
- (b) In the operational phase (after the commissioning of the project assets) the functions of the Independent Expert are:
- monitoring of compliance with maintenance and performance standards;
 - review of modification requests and claims for compensation for special circumstances.
- (c) At the end of the PPP agreement, the Independent Expert is responsible for the:
- conducting of handover tests; and
 - issuing of a handover certificate.
- 2.2.41. The first contract for the Independent Expert covers the construction phase until the final delivery of the project assets. During the operation phase several Independent Experts are appointed consecutively, each for a period of three to five years.
- 2.2.42. These Guidelines recommend that an Independent Expert is appointed, based on international best practice.

PPP Committee

- 2.2.43. The role and responsibility of the PPP Committee is defined by sections 5 to 9 of the *PPP Act*.
- 2.2.44. The PPP Committee is the key supervisory and decision-making body in the PPP Project Cycle. The role of the Committee is to ensure that PPP projects are prepared, procured and implemented in accordance with the *PPP Act* and the PPP Policy. For this purpose, the PPP Committee performs the functions defined in section 7 of the *PPP Act* and described below.
- (a) At the Inception Stage, the PPP Committee approves the registration of the PPP project.
- (b) In the Feasibility Stage the PPP Committee evaluates the Feasibility Study report submitted by the Contracting Authority. On this basis the PPP Committee decides to approve or reject the project for implementation as a PPP. It must also ensure approval of the government support to the project, if applicable. These approvals are a condition for proceeding to the Procurement Stage.
- (c) In the Implementation Stage the PPP Committee oversees the performance monitoring and financial management of PPP projects by Contracting Authorities.
- 2.2.45. The composition of the PPP Committee is defined by section 5 of the *PPP Act*, and includes:
- (a) the Attorney General or a person appointed by him or her;
 - (b) the Permanent Secretary of the Ministry responsible for finance or his or her representative (Chairperson of the Committee);
 - (c) the Permanent Secretary of the office of the Prime Minister or his or her representative;
 - (d) a representative of the National Planning Authority;

- (e) the Permanent Secretary of the Ministry responsible for lands or his or her representative;
- (f) the Permanent Secretary of the Ministry responsible for local governments or his or her representative;
- (g) a representative of the Private Sector Foundation;
- (h) a representative of the Uganda Investment Authority;
- (i) a representative of the academia;
- (j) a retired judge; and
- (k) the director of the PPP Unit (secretary of the PPP Committee).

Ministry of Finance, Planning and Economic Development (MFPED)

2.2.46. The MOF has the following functions in the PPP Project Cycle:

- (a) The Development Committee of MFPED determines if a project is to be best achieved under the PPP modality as per the Development Committee Guidelines;
- (b) approval of any transfer of shares, increase in share capital or changes in the corporate status of a special purpose company (section 20 (2) of the *PPP Act*);
- (c) in case the Contracting Authority participates in the financing of the project, confirm the availability of financing (section 23 (4) of the *PPP Act*);
- (d) provide a copy of the PPP agreement to the Parliament within one month of contract signing. (section 26 (10) of *PPP Act*).

2.2.47. The Debt and Cash Policy Directorate of the Ministry of Finance, Planning and Economic Development monitors the fiscal commitments and contingent liabilities from PPP projects, in cooperation with the PPP Unit.

2.2.48. Other key departments within MFPED involved in the assessment of PPPs include the Budget Policy Evaluation Department, the Project Analysis and Preparation department, and the Macro Economic Policy Department.

Cabinet

2.2.49. The Cabinet has the following functions in the PPP Project Cycle:

- (a) approval of PPP agreements with a contract value exceeding the amount notified by the MOF by statutory instrument from time to time (section 26 (2) of the *PPP Act*);
- (b) approval of amendments to the PPP agreement (subsection 26 (8) of the *PPP Act*);
- (c) approval of direct procurement of the Private Party (subsection 33 (3) of the *PPP Act*).

PPP Unit

2.2.50. The role and responsibility of PPP Unit is defined by sections 10 and 11 of the *PPP Act*.

2.2.51. The PPP Unit within MFPED has two functions in the PPP Project Cycle:

- (a) It serves as the secretariat and technical arm of the PPP Committee.
 - (b) It provides technical assistance to contracting authorities (in particular the Project Team of the Contracting Authority) on PPP issues.
- 2.2.52. In its first function the PPP Unit carries out the following duties:
- (a) registration of PPP projects;
 - (b) evaluation of the Feasibility Study, as input for the PPP Project Approval Decision of the PPP Committee;
 - (c) evaluation of requests for government support, resulting in an advice to the Committee on the granting of government support to a project;
 - (d) maintain a record of all project documentation, including the PPP Project Register;
 - (e) approval of project information disclosed by the Contracting Authority prior to its disclosure (see Disclosure Guidelines in Annex L);
 - (f) practical organisation of the communication of the PPP Committee with contracting authorities and other stakeholders (such as receipt and sending of reports and letters).
- 2.2.53. In its second function the PPP Unit assists the Contracting Authority with technical, legal and financial expertise in all stages of the PPP Project Cycle. The assistance covers the following areas (non-exhaustive list):
- (a) identification and prioritisation of projects;
 - (b) selection of a Transaction Advisor;
 - (c) supervision of the work of the Transaction Advisor;
 - (d) interpretation of findings of Feasibility Study;
 - (e) structuring of PPP project (risk allocation, payment mechanism, output specifications);
 - (f) fiscal risk analysis;
 - (g) preparation of bid documents;
 - (h) evaluation of prequalification documents and bids;
 - (i) negotiation with bidders;
 - (j) financial close;
 - (k) performance monitoring;
 - (l) assessment of claims in compensation events;
 - (m) monitoring of fiscal impact and contingent liabilities.

Process Auditor

- 2.2.54. The role and responsibility of the Process Auditor is defined by section 17 of the *PPP Act*.
- 2.2.55. The Process Auditor is an independent person appointed – after the registration of the project with the PPP Unit – by the Accountant General or nominated by the Accounting Officer and approved by the Accountant General.
- 2.2.56. The Process Auditor verifies whether the Contracting Authority complies with the provisions of the *PPP Act* and the *PPP Regulations* in the preparation, procurement and implementation of a PPP

project. Before the signing of the PPP agreement the Process Auditor reports his or her findings to the Accounting Officer.

2.2.57. In addition, the Process Auditor prepares interim reports at the following stages:

- (a) registration of the Project;
- (b) procurement of the Transaction Advisor;
- (c) prequalification evaluation;
- (d) technical bid evaluation;
- (e) financial bid evaluation; and
- (f) conclusion of negotiations with the Preferred Bidder.

2.2.58. The Process Auditor has the right to attend Project Team meetings as an observer in order to stay informed about the project and the actions of the Contracting Authority.

Accountant General

2.2.59. The Accountant General has the following functions in the PPP Project Cycle:

- (a) appointment of the Process Auditor (section 4 of the *PPP Act*);
- (b) prescribe accounting and financial reporting rules for PPPs (subsection 28(3) of the *PPP Act*).

Auditor General

2.2.60. The Auditor General has the following functions in the PPP Project Cycle (section 30 of the *PPP Act*).

- (a) audit (or appoint an auditor to do so) all PPPs in accordance with the National Audit Act in each financial year from inception to the end of the project;
- (b) report to Parliament about the above audits.

Solicitor General

2.2.61. The Solicitor General reviews and approves the PPP agreement as per Article 119(5) of the Ugandan Constitution.

3. Inception

3.1 Introduction to Inception Stage

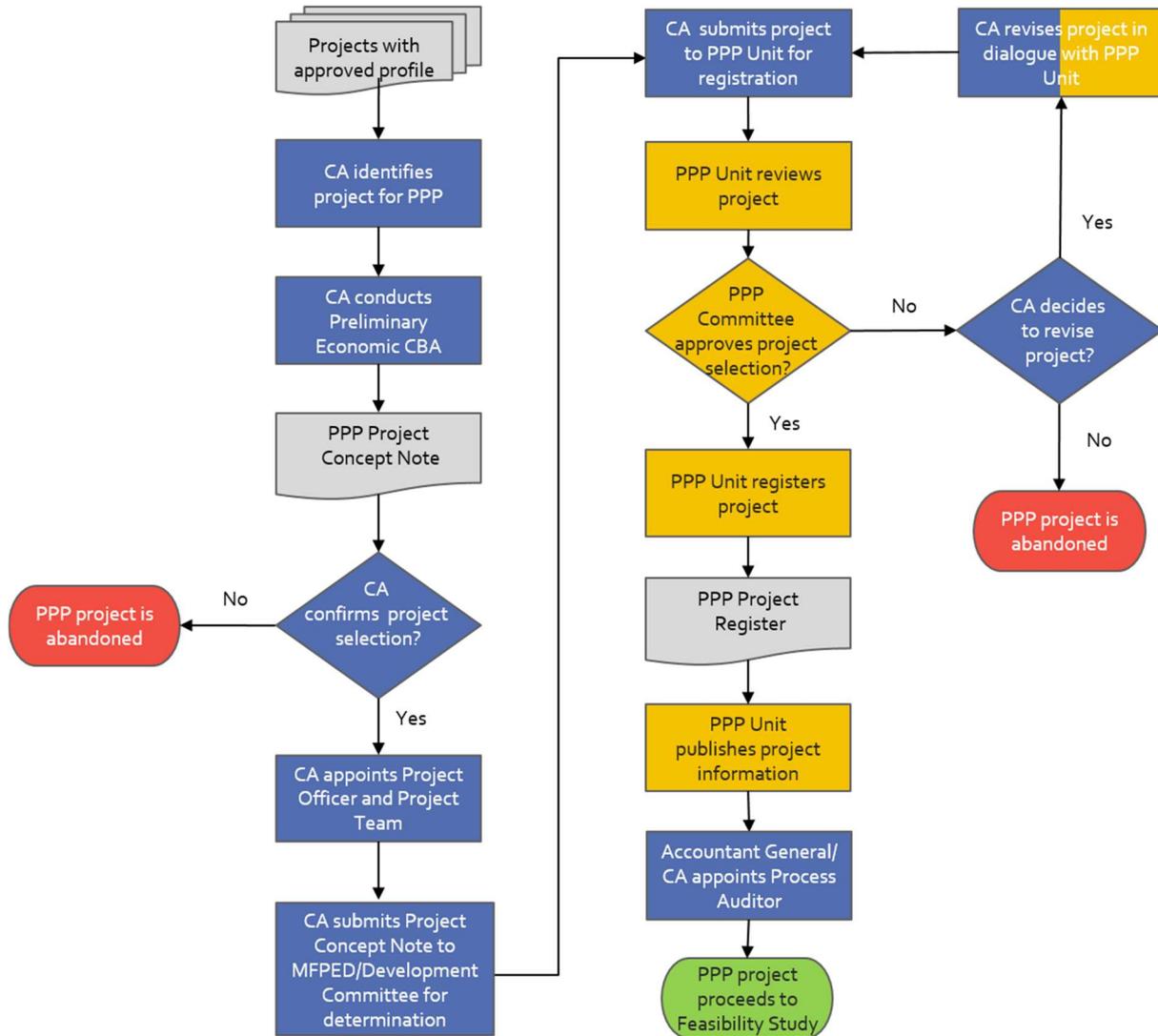
Purpose of Inception Stage

- 3.1.1. The objective of the Inception Stage is the selection of a project for further development as a PPP.
- 3.1.2. At this stage no detailed analysis of the feasibility and desirability of PPP is conducted. The Contracting Authority only verifies whether the project is in principle suitable for delivery as a PPP. This preliminary PPP screening requires limited efforts (in comparison with a full Feasibility Study) and is in principle carried out by the staff of the Contracting Authority. However, when needed the PPP Unit can assist the Contracting Authority with the identification and the preliminary analysis of potential PPP projects.
- 3.1.3. The preliminary analysis does not result in a definite assessment on the suitability of the project to be undertaken as a PPP. The objective of the preliminary analysis is to determine whether the project shows sufficient promise to justify the expenses of a Feasibility Study.
- (a) If the preliminary analysis is positive, the project is registered as a potential PPP and a Transaction Advisor is appointed to undertake a Feasibility Study. The final decision on the approval of the project will be taken in the next stage on the basis of the results of this Feasibility Study (see chapter 4).
 - (b) If the preliminary analysis is negative, then the project is abandoned for implementation as a PPP. In this way no Contracting Authority resources are wasted on the further development as a PPP of a project with a low suitability for PPP. However, instead of abandoning the project altogether the Contracting Authority may decide to pursue it in a non-PPP mode under traditional procurement. In that case the present *Guidelines* do not apply to the further development of the project.

Overview of the process of the Inception Stage

- 3.1.4. The process of the Inception Stage is set out in section 21 of the *PPP Act*. The process consists of the following steps:
- (a) initial identification of a project for implementation as a PPP (subsection 21(1) of the *PPP Act*);
 - (b) conducting of a Preliminary Economic Cost-Benefit Analysis (subsection 21(2) of the *PPP Act*);
 - (c) confirmation of suitability of project for implementation as a PPP (subsection 21(3) of the *PPP Act*);
 - (d) appointment of a Project Officer and establishment of a Project Team (subsection 21(4) of the *PPP Act*); and
 - (e) registration of the PPP project with the PPP Unit (subsection 21(3)(a) of the *PPP Act*).
- 3.1.5. The next flow chart below presents an overview of the steps in the Inception Stage. The steps are described in detail in the remainder of this chapter.

Figure 2: Inception Stage process



3.2 Detailed process of Inception Stage

Initial project identification and preliminary analysis by Contracting Authority

3.2.1. The Accounting Officer of the Contracting Authority identifies a project for potential implementation as a PPP. Sources of project ideas may include (non-exhaustive list):

- National Development Plan (projects with approved project profile);
- Regional, local and sector investment plans;
- Contracting Authority investment plans;
- projects proposed by local governments.

3.2.2. In this initial identification step no formal selection criteria apply. Consequently, any project may be identified, provided it fulfils the objectives of the National Development Plan as required by subsection 2(2) of the *PPP Act*. However, the Accounting Officer must take into account his knowledge about the project and about the project selection criteria (see paragraphs 3.2.5 to 3.2.7

below) to make sure that on the one hand potentially suitable projects are identified, and that on the other hand projects for which it can be concluded without any analysis that they are not suitable for implementation as a PPP, are discarded at the outset.

- 3.2.3. Next the Contracting Authority conducts a Preliminary Economic Cost-Benefit Analysis of the identified PPP project. The objective of this preliminary analysis is to collect information for preparing a Project Concept Note. The template of the Project Concept Note is provided in Annex B of the *Guidelines*. The template consists of a structured list of questions about the project that must be answered. If enough data is available, the guidelines for preliminary financial analysis in Annex G can be used to conduct a preliminary financial viability assessment of the PPP project.
- 3.2.4. If the information required to answer a particular question of the Project Concept Note is not available, then the answer is left blank. The Contracting Authority should, however, attempt to answer as many questions as possible and at least all qualitative questions.
- 3.2.5. The Contracting Authority assesses whether the project is suitable for implementation as a PPP. For this purpose, the Contracting Authority may screen the projects using the PST. The PST Excel workbook is provided as Annex C1 of the *Guidelines*. The manual of the PST is enclosed in Annex C2 of the *Guidelines*.
 - (a) The PST evaluates a PPP project on six parameters: Strategic suitability, Preliminary feasibility, Risk assessment, PPP suitability, Fiscal affordability and Institutional capacity. The tool comprises questions detailing the parameters, and the Contracting Authority must record responses to the questions based on the information in the Project Concept Note. Where no information is available the questions are skipped or answered with the response "uncertain". The Contracting Authority must try to answer as many questions as possible and at least all qualitative questions.
 - (b) The responses to the questions in the PST deliver results in the form of scores for each parameter, the identification of deficiencies and areas of improvement in the next stage of the project development, and conclusions on the suitability of the project for PPP.
- 3.2.6. A project is suitable for implementation as a PPP if, according to the PST, it meets all the following conditions:
 - (a) the project has an overall score of at least 'Moderately Adequate';
 - (b) all pre-requisite criteria are met;
 - (c) most deal-breaker criteria are satisfied;
 - (d) overall project and parameter comments indicate that the project can be taken ahead to the next stage of development; and
 - (e) the identified areas of improvement are manageable in the next stage of development.
- 3.2.7. By answering the questions in the Project Concept Note template and subjecting the project to the PST and/or other appropriate evaluation techniques, the Contracting Authority complies with the requirements stipulated in subsection 21(2) of the *PPP Act* regarding the Preliminary Economic Cost-Benefit Analysis.

Appointment of Project Officer and Project Team

- 3.2.8. After confirming the selection of the PPP project, the Accounting Officer appoints a Project Officer and a Project Team for the specific PPP project.
- (a) The Project Officer must have excellent project management skills and a good technical knowledge of the sector in which the project takes place. Knowledge and expertise in PPP are a strong plus, but this expertise can also be supplied by another member of the Project Team or by the PPP Unit.
 - (b) The size and composition of the Project Team is described in paragraph 2.2.19 above.
- 3.2.9. The Project Team (or some members of the team) may be provisionally appointed to undertake the preliminary study and prepare the Project Concept Note. If the Contracting Authority confirms its decision to proceed with the project and register it with the PPP Unit, the Project Officer and the Project Team are formally appointed for a reasonable tenure.

Determination by Development Committee

- 3.2.10. The Contracting Authority submits the Project Concept Note to the Development Committee of MFPEd, who determines if the project is to be best achieved under the PPP modality as per the Development Committee Guidelines and the PPP Project Screening Tool.

Registration of PPP project

- 3.2.11. The Accounting Officer submits the Project Concept Note to the PPP Unit. The concept note contains all the information that the Contracting Authority is required to provide to the PPP Unit by subsection 21(3) (a) and (b) of the *PPP Act*. If the PPP Unit finds that the Project Concept Note has incomplete information, it returns said note within two weeks to the Contracting Authority with the request to provide the missing information.
- 3.2.12. Acting as the technical arm of the PPP Committee, the PPP Unit assesses, on the basis of the information in the Project Concept Note, whether the project is suitable for implementation as a PPP. For this purpose, the PPP Unit may screen the projects in turn using the PST, as described in paragraph 3.2.5 above. The PPP Unit submits its findings to the PPP Committee within one month from the receipt of the complete Project Concept Note.
- 3.2.13. The PPP Committee decides whether the project is suitable for implementation as a PPP, taking into account the findings of the PPP Unit. In case of a positive evaluation the PPP Committee approves the Project Concept Note.
- 3.2.14. Upon the approval of the Project Concept Note by the PPP Committee the PPP Unit records the project in the PPP Project Register with the status "Concept" and notifies the Contracting Authority thereof. The registration must be executed within one week from the approval by the PPP Committee.
- (a) The template of the PPP Project Register is presented in Annex D of the *Guidelines*. The PPP Unit enters the information from the concept note in the PPP Project Register. Fields for which the information is not yet available in this stage of the project are left empty. The PPP Project

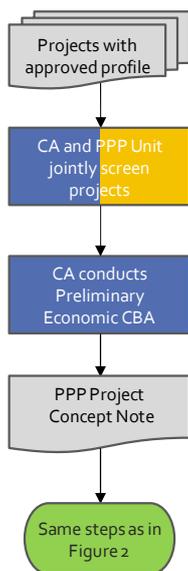
Register is a dynamic database and is regularly updated in function of the progress of the project.

- (b) The PPP Unit publishes the information of the PPP Project Register on its website within 21 days following the PPP Unit's registration of the project. In addition, the website contains a link to the Project Concept Note.
- 3.2.15. If, on the other hand, the PPP Committee does not approve the Project Concept Note, the PPP Unit returns the Project Concept Note to the Contracting Authority, indicating the reasons why the project was not approved for registration.
- 3.2.16. Upon being informed of the PPP Committee's refusal to approve the Project Concept Note, the Accounting Officer decides between the following courses of action:
- (a) revise the project and resubmit it for registration (in this case the Project Team of the Contracting Authority starts a dialogue with the PPP Unit to revise the concept of the PPP project and prepare an updated Project Concept Note); or
 - (b) abandon the project for implementation as a PPP (the Contracting Authority may, in that case, decide not to abandon the project altogether, but pursue it further through conventional procurement).
- 3.2.17. After registration of the project as a PPP, the PPP Unit assigns from its staff a project support officer to be a member of the Project Team. The project support officer will advise the Project Team of the Contracting Authority during the Feasibility Study, procurement and Contracting Stages of the project. The project support officer will also coordinate the inputs from specialist experts on the staff of the PPP Unit to address specific issues that arise in the development of the PPP project. The project support officer will attend meetings of the Contracting Authority's Project Team in order to keep informed about the progress of the development of the PPP project and to offer advice where needed.
- 3.2.18. After registration of the project as a PPP, the Accountant General appoints a Process Auditor. Alternatively, the Accounting Officer of the Contracting Authority may nominate a Process Auditor who is then approved by the Accountant General.

Supplementary inception process: initial project identification and screening by PPP Unit

- 3.2.19. Contracting authorities may miss in their PPP project identification exercise some projects with PPP potential. Therefore, a supplementary project identification and selection process, initiated by the PPP Unit and undertaken in collaboration with contracting authorities, is provided for. The supplementary process is shown in the figure below. It is used along with the inception process initiated by the Contracting Authority described above.

Figure 3: Supplementary Inception Stage process



- 3.2.20. As part of its mandate under subsection 11(2)(d) of the *PPP Act*, the PPP Unit must regularly screen the proposed projects in the National Development Plan, the local government and sector investment plans, and the investment plans of contracting authorities on their potential for implementation as a PPP.
- 3.2.21. The PPP Unit will engage with Contracting Authorities for this purpose and jointly identify potential PPP candidates. Thereafter, initial concepts could be developed along with designated officers from the Contracting Authority. These initial concepts could then be screened using the PST to establish their suitability for PPP delivery.
- 3.2.22. The results of the screening exercise can then be shared with the Contracting Authority as an input for selection of projects. In this way the attention of the Contracting Authority is drawn to potentially suitable PPP projects that it may have missed otherwise.
- 3.2.23. For each of the projects recommended by the PPP Unit, the Accounting Officer of the Contracting Authority decides whether to select it as a PPP project. For projects that are selected the Contracting Authority prepares a Project Concept Note and submits this to the PPP Unit for approval by the PPP Committee and registration as described above (see paragraphs 3.2.11 to 3.2.18).

3.3 Disclosure

- 3.3.1. Basic project information along with estimated dates for key milestones must be published within 21 days following the PPP Unit’s registration of the project. Basic project information includes the project name, location, sector, name of Contracting Authority, estimated project value (with breakdown of costs), project need, technical description of asset and services to be provided, estimated demand to be served annually, rationale for selecting the project for development as a PPP, the projected policy outcomes of the project, name and contact of the Project Officer in charge of the project.

4. Feasibility Study

4.1 Introduction to Feasibility Study Stage

Purpose of Feasibility Study Stage

4.1.1. The objectives of the Feasibility Study are:

- investigate and assess the feasibility and desirability of undertaking the project as a PPP;
- develop the project definition (resulting in output specifications);
- determine the optimal PPP arrangement (incorporated in a draft PPP agreement);
- prepare an implementation plan, describing the tasks that must be undertaken to realize the project.

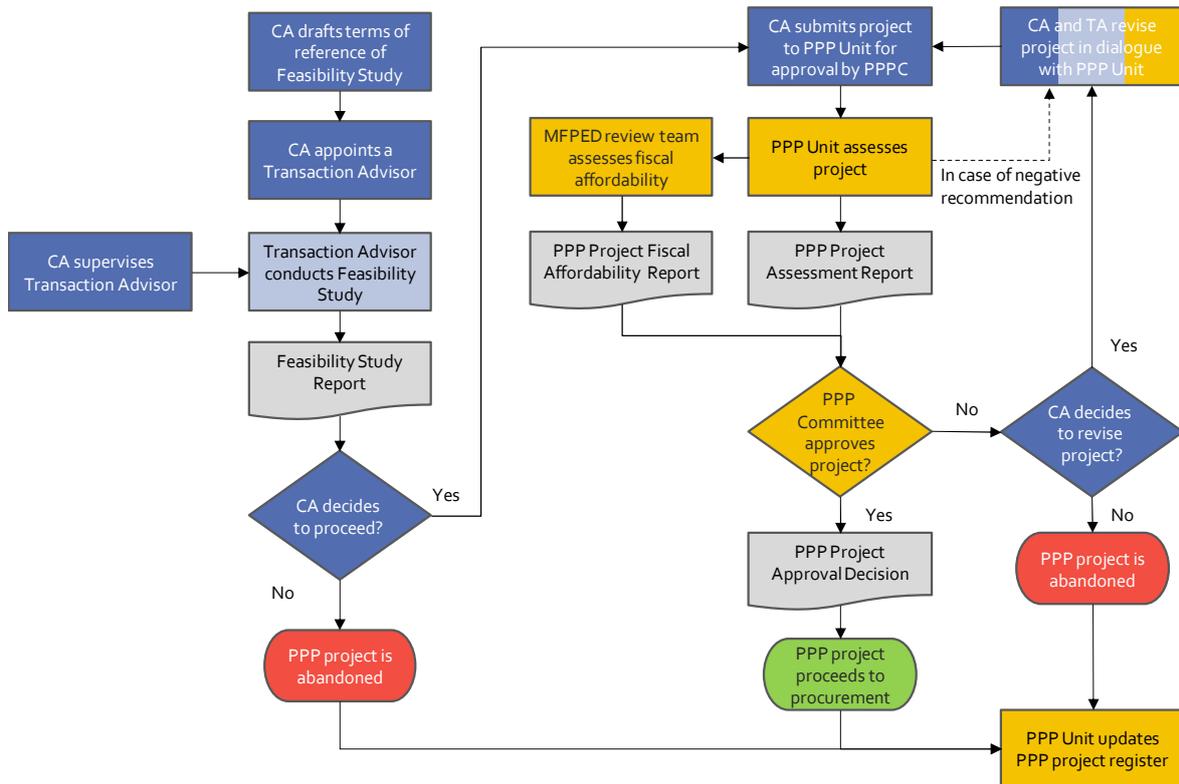
4.1.2. On the basis of the Feasibility Study the decision is taken whether or not to approve the project. In case of approval the project proceeds to the procurement phase. In that case the Feasibility Study Report provides the project information (technical, legal, financial, environmental, social) that will be incorporated in the bidding documents.

Overview of the process of the Feasibility Study Stage

4.1.3. The required contents of the Feasibility Study and the project approval process are defined in section 22 of the *PPP Act*. The present chapter and its annexes provide practical guidance on how to comply with the requirements in section 22.

4.1.4. The next flow chart presents an overview of the steps in the Feasibility Study Stage. The steps are described in detail in the remainder of this chapter.

Figure 4: Feasibility Study Stage process



4.2 Detailed process of Feasibility Study Stage

Appointment of Transaction Advisor

4.2.1. The scope of work of the Transaction Advisor consists of two parts:

- undertaking of the Feasibility Study;
- assistance to the Contracting Authority with preparing and conducting the procurement and contracting process.

4.2.2. The contract with the Transaction Advisor must allow for the assignment to be terminated upon request of the Contracting Authority after Feasibility Study. In this way the Contracting Authority can stop the services of the Transaction Advisor if it decides on the basis of the Feasibility Study not to proceed with the procurement of the project.

4.2.3. The first step of the procurement of a Transaction Advisor is the preparation of terms of reference. A template of the technical terms of reference for the services of a Transaction Advisor is provided in Annex E of the *Guidelines*.⁴ The Project Team must adapt this template in function of the specific circumstances of the PPP project that will be studied, including specific responsibilities and payment schedule. The technical terms of reference are included with the invitation for proposals from candidate Transaction Advisors.

⁴ The terms of reference presented in Annex E comply with the description of the functions of the Transaction Advisor in section 18 of the *PPP Act*, and constitute a further elaboration of this section.

- 4.2.4. The selection and appointment of the Transaction Advisor is carried out in accordance with the provisions applying to the procurement of services in the *Procurement and Disposal of Public Assets Act*.⁵
- 4.2.5. The Contracting Authority shall consult with the PPP Unit on the preparation of the terms of reference of the Transaction Advisor, and on the evaluation of the candidates.
- 4.2.6. Within one week of the appointment of the Transaction Advisor, the Contracting Authority notifies the PPP Unit thereof. The PPP Unit registers the identity of the Transaction Advisor in the PPP Register, and discloses this information on its website within 21 days.

Carrying out the Feasibility Study

- 4.2.7. The Transaction Advisor carries out the Feasibility Study under the supervision of the Project Team of the Contracting Authority. The input data, calculations, analyses and conclusions are laid down in a **Feasibility Study Report**. The Feasibility Study documents also comprise a draft or the heads of terms of the PPP agreement and a procurement plan.
- 4.2.8. The contents and quality requirements of the Feasibility Study Report are described in detail in Annex F of the *Guidelines*. Other requirements for specific parts of the Feasibility Study Report are described in Annex G (*Financial Analysis Guidelines*), Annex H (*Value-for-Money Guidelines*), Annex I (*Project Risk Matrix*) and Annex J1 (*Guidelines for the Management of Contingent Liabilities*). Compliance with the requirements these Annexes ensures that the provisions of section 22 of the *PPP Act* are respected.
- 4.2.9. The role of the Contracting Authority in conducting the Feasibility Study is managing and supervising the Transaction Advisor. For this purpose, the Project Team conducts regular project meetings with the Transaction Advisor. The objectives of these meetings are to:
 - monitor the progress and quality of the study;
 - verify compliance with the terms of reference;
 - discuss interim results;
 - make practical arrangements to move forward, for instance on data collection and interactions with other stakeholders;
 - take remedial actions when necessary.
- 4.2.10. In addition to the regular project meetings, the Project Officer of the Contracting Authority and the team leader of the Transaction Advisor communicate with each other in function of requirements.
- 4.2.11. The Transaction Advisor submits the Feasibility Study Report to the Contracting Authority. The Project Team checks whether the report complies with the terms of reference and advises the Accounting Officer accordingly.
- 4.2.12. If the Feasibility Study Report does not meet the requirements in the terms of reference, then the Contracting Authority refuses to accept the report. The Transaction Advisor revises the report until it meets the requirements.

⁵ Thereby also complying with the definition of the Transaction Advisor in the section 4 of the *PPP Act*, which stipulates that the Transaction Advisor is “appointed in writing by a contracting authority.”

- 4.2.13. Throughout the study the PPP Unit advises the Project Team in the review of the work of the Transaction Advisor and in the assessment of interim results. In particular, the PPP Unit provides suggestions to improve the PPP suitability of the project and alerts the Project Team about issues that may result in a later negative evaluation by the PPP Committee.

Project appraisal by Contracting Authority

- 4.2.14. On the basis of the Feasibility Study Report the Contracting Authority appraises the feasibility and desirability of the PPP project, and decides whether to proceed with the project.
- 4.2.15. For a PPP project to be feasible and desirable it must meet the following criteria:
- (a) The proposed technical solution for the implementation of the project is practically feasible and cost-efficient.
 - (b) The project has acceptable environmental impacts.
 - (c) The project has acceptable social impacts (for example resettlement, impact on livelihoods).
 - (d) The project complies with all applicable legislation and regulations.
 - (e) The economic benefits of the project outweigh the economic costs.
 - (f) The project services are affordable to users.
 - (g) The project is commercially and financially viable, i.e. able to generate sufficient revenues to cover costs and to provide an adequate return to lenders and investors.
 - (h) The project is suitable for PPP procurement.
 - (i) The project is fiscally sustainable for the government, both in the short and the long run.
- 4.2.16. If several project options satisfy all the above criteria (and are therefore feasible), the Preferred Option is in principle the option with the largest economic net present value. The economic net present value measures the overall contribution of the project to the welfare of the population. However, the Contracting Authority may choose to trade off economic net present value and other criteria. For instance, the Contracting Authority may select as Preferred Option a project option with a slightly lower economic net present value but a higher score for PPP suitability in order to increase the probability that the PPP will be successful. Or it may choose an option with a slightly lower economic net present value but less environmental impact. Such trade-offs are a matter of political judgment. Therefore, these *Guidelines* cannot provide additional guidance on these trade-offs, beyond the point that they must be made in a transparent way on the basis of the facts and findings in the Feasibility Study. The Contracting Authority may take advice from the PPP Unit as necessary.
- 4.2.17. The Accounting Officer of the Contracting Authority takes one of the following conclusions and decisions.
- (a) None of the project options is feasible and desirable, and the PPP project is abandoned.
 - (b) The implementation of the project as a PPP is feasible and desirable. If several project options are feasible, the Accounting Officer selects a Preferred Option for procurement.
 - (c) The feasibility and desirability of the implementation of the project as a PPP is not fully confirmed. There are uncertainties or doubts with respect to some feasibility criteria.

However, the project shows enough promise to justify that it proceeds to a (detailed) Feasibility Study. In the (detailed) Feasibility Study the remaining uncertainties and doubts must be addressed.

Project appraisal by PPP Unit

- 4.2.18. Upon receiving the Feasibility Study Report (including draft or heads of terms of the PPP agreement and procurement plan) from the Contracting Authority the PPP Unit checks its completeness. If some parts of the Feasibility Study report are missing without acceptable explanation, then the PPP Unit notifies to the Accounting Officer of the Contracting Authority that the submission is incomplete. The required table of contents of the Feasibility Study report is presented in Annex F of the *Guidelines*.
- 4.2.19. Acting as the technical arm of the PPP Committee, the PPP Unit performs an appraisal of the project. The PPP Unit records its findings in a **PPP Project Assessment Report**. A template of this report is provided in Annex F of the *Guidelines*. The PPP Project Assessment Report contains a recommendation whether to approve the project for implementation as a PPP.
- 4.2.20. If the recommendation is negative, the PPP Unit informs the Accounting Officer of the Contracting Authority of this fact before submitting the PPP Project Assessment Report to the PPP Committee. The Contracting Authority has then the option to stop the submission of the PPP Project Assessment Report and to revise the project in dialogue with the PPP Unit. After this revision the updated Feasibility Study report is resubmitted to the PPP Unit.
- 4.2.21. The PPP Unit submits the Feasibility Study Report and the PPP Project Assessment Report to the PPP Committee for appraisal.
- 4.2.22. The notification in 4.2.20 or the submission in 4.2.21 must take place within one month of the complete submission of the Feasibility Study report by the Contracting Authority. However, if the PPP Unit finds that it is unable to respond within this deadline, it may communicate to the Contracting Authority an extended deadline, justifying that the analysis needs more time.

Fiscal affordability assessment by MFPED review team

- 4.2.23. Upon receiving the compliant Feasibility Study Report (including draft or heads of terms of the PPP agreement and procurement plan) from the Contracting Authority, the PPP Unit immediately forwards this report to the Permanent Secretary/Secretary to the Treasury (PS/ST) in MFPED.
- 4.2.24. The PS/ST constitutes a review team of from key departments of within the MFPED to review the Feasibility Study report, identify issues relating to the debt, budget, macro-economic, social, financial, tax, contingent liabilities and legal aspects of the project, and accordingly provide technical advice to the Minister of Finance on the implication of the project to Government. The team constituted should include senior officials from Macroeconomic policy, Debt, Budget, Economic Development Policy and Research, Tax Policy, Infrastructure Services and Social Development, and the PPP Unit. Model terms of reference for the review team are attached in Annex J2 of the *Guidelines*.
- 4.2.25. The review team assesses the project across issues related to the rationale for the project, affordability, bankability, value for money, debt sustainability, appropriate allocation of risks and the tax implications of the project. The methodology for assessing the fiscal affordability of the project is described in Annex J1 (*Guidelines for the Management of Contingent Liabilities*) of the *Guidelines*.

- 4.2.26. The review team provides clear recommendations on the fiscal affordability of the project and in accordance with subsection 23(4) of the *PPP Act*, confirming the availability of financing towards the fiscal commitments and contingent liabilities from the project.
- 4.2.27. The review team documents its assessment in a **PPP Project Fiscal Affordability Report**, which is submitted to the PPP Committee within one month of receiving the Feasibility Study Report. The contents of the report are described in Section 5.2.2 of Annex J1 of the *Guidelines*.
- 4.2.28. Based on the PPP Project Fiscal Affordability Report, the MOF will accord approval under section 23(4) PPP Act to the Accounting Officer.

Approval by PPP Committee

- 4.2.29. The PPP Committee evaluates the project on the basis of the:
- Feasibility Study Report (including draft or heads of terms of the PPP agreement and procurement plan);
 - PPP Project Assessment Report prepared by the PPP Unit;
 - PPP Project Fiscal Affordability Report; and
 - Any other information relevant to the PPP project.
- 4.2.30. The PPP Committee approves the project if it is satisfied that:
- the Feasibility Study Report has been prepared according to the requirements in Annex F of the *Guidelines*;
 - the Feasibility Study Report has convincingly demonstrated that the project is feasible, fiscally affordable and provides value-for-money.
- 4.2.31. The PPP Committee refuses to approve the project if it concludes that:
- the Feasibility Study Report contains shortcomings and does not allow to evaluate the feasibility and desirability of the PPP project; or
 - the Feasibility Study Report has been prepared according to requirements but shows that the PPP project falls short of the approval criteria (feasible, affordable and providing value-for-money).

In case of a refusal to approve the project, the decision must state the reasons why the PPP Committee has refused to approve the project. The PPP Committee may also offer suggestions to improve the Feasibility Study Report or to revise the project.

- 4.2.32. The PPP Project Approval Decision of the PPP Committee is taken within two weeks of the receipt of the documents mentioned in paragraph 4.2.29. The PPP Unit forwards the decision of the PPP Committee to the Contracting Authority.
- 4.2.33. If the PPP Committee has refused to approve the project, the Contracting Authority may decide to:
- abandon the project;
 - further pursue the project by other means than PPP;
 - revise the project and resubmit it to the PPP Unit for approval by the PPP Committee.

Revision of the Feasibility Study after PPP Committee approval

- 4.2.34. If an approved PPP project is later revised, the Contracting Authority must resubmit the revised project and Feasibility Study to the PPP Unit for approval by the PPP Committee. The revised Feasibility Study must clearly show:
- the motivation justification for the revision;
 - the changes compared to the approved project;
 - updated fiscal affordability and value-for-money assessment.

4.3 Disclosure

- 4.3.1. Each time that a milestone is reached (Feasibility Study Stage started, Feasibility Study approved) the PPP Unit registers the milestone in the PPP register, and discloses this information on its website within 21 days.
- 4.3.2. The Feasibility Study Report (including the preliminary environmental and social impact assessment, but with financial models and / or financial information which may have an impact on the ability of the government to negotiate with private parties redacted) will be disclosed before or at the time of publication of the Request for Prequalification (RPO) documents. The complete Feasibility Study Report will be disclosed within 21 days of execution of the project agreement (commercial close). Further details related to disclosure, responsibilities and timelines are provided in Annex L (*Disclosure framework*) of these *Guidelines*.

5. Procurement

5.1 Introduction to Procurement Stage

Purpose of Procurement Stage

- 5.1.1. The objective of the Procurement Stage is the selection, through a procurement procedure, of a Private Party for the implementation of the PPP project. The procurement procedure must ensure that the most suitable Private Party among the available candidates is selected. This means that the selected Private Party is technically and financially capable of undertaking the project and offers the most advantageous price/quality combination.

Overview of the Procurement Stage

- 5.1.2. The outline of the procedure for the procurement of PPPs and bidding methods is set out in sections 23-25 of the *PPP Act*. The bidding methods that may be used are presented in sections 31-36 of the *PPP Act*. Further details on the procurement procedure and the bidding methods are provided in the *PPP Regulations*.
- 5.1.3. The present chapter of the *Guidelines* provides practical guidance on the procurement of PPP projects in accordance with the provisions of the *PPP Act* and the *PPP Regulations*. The *PPP Regulations* define three bidding methods for the procurement of PPP projects. The default method is the **open bidding method**. Two alternative methods (**restrictive bidding** and **direct procurement**) are allowed under specific conditions. The three bidding methods are addressed consecutively in this chapter of the *Guidelines*.

5.2 Preliminary steps for procurement

Confirmation of financing funds

- 5.2.1. If the Contracting Authority intends to provide financing to the project, then this is mentioned in the bidding documents (in particular in the description of the project and the envisaged PPP arrangement). In this case the Contracting Authority must, prior to releasing the bidding documents, obtain written confirmation from the Minister responsible for finance that the funds for financing the project will be available (subsection 23(4) of the *PPP Act*).

Pre-competitive promotion of the project

- 5.2.2. Before formally starting the procurement process, the Contracting Authority may want to promote the project to potential bidders and financiers. Subsection 23(5) of the *PPP Act* allows such promotional activities. They may consist of advertisements in specialised publications, direct marketing, or the organization of roads shows or an investors' conference. In addition to promoting the project, promotional activities can also be used for collecting initial reactions to the project from potential bidders (for instance during the plenary discussion or the closing reception of an investors' conference). This information is useful for optimising the structure of the project and the PPP agreement before the bidding documents are finalised and sent out.

- 5.2.3. Pre-competitive promotional activities must be distinguished from the prequalification and pre-bid meetings that are described later in these *Guidelines*. Prequalification and pre-bid meetings are part of the procurement procedure, while promotional activities take place before the formal announcement of the procurement procedure. However, the prequalification meeting can also be used to advertise the project to prospective bidders.
- 5.2.4. Pre-competitive promotional activities are especially useful for large and/or complex projects or in case the Contracting Authority wishes to attract the interest of international bidders. For small and/or standard projects there are likely to be enough bidders, so that the costs of pre-competitive promotional activities would not be justified.

5.3 Open bidding method

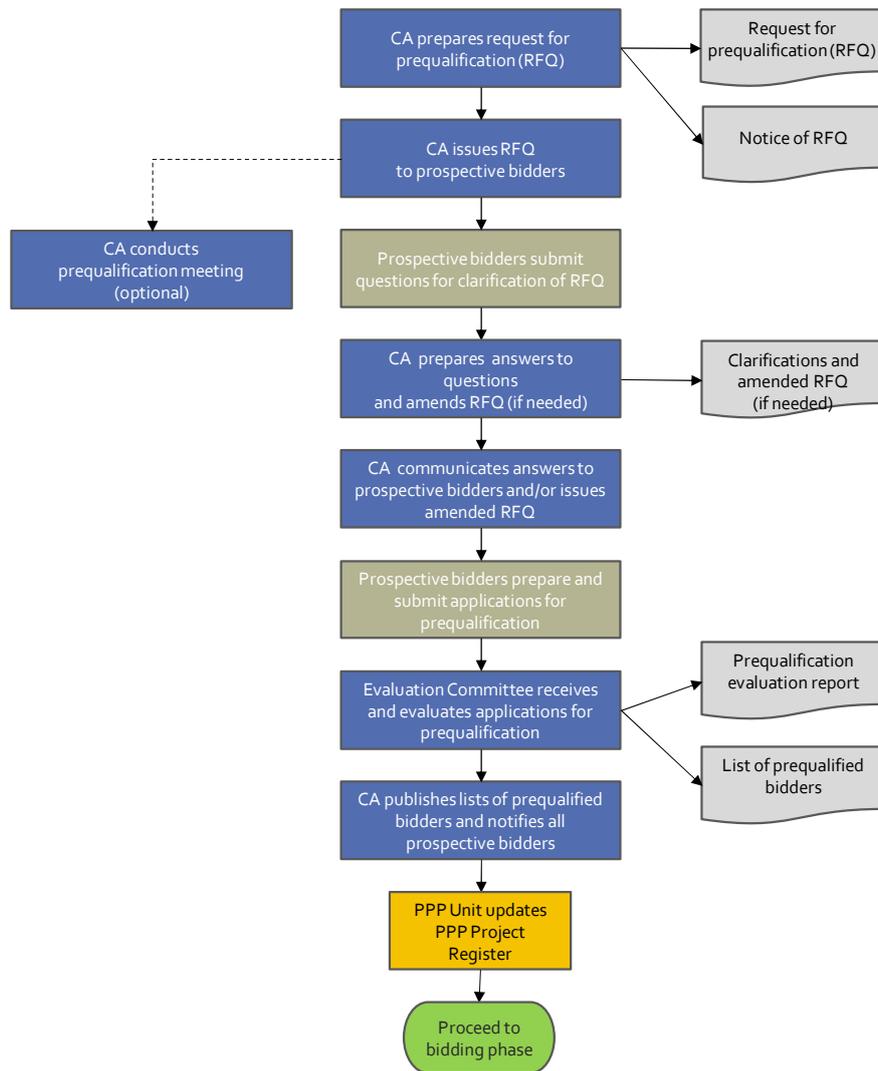
Use of the open bidding method

- 5.3.1. In the open bidding method (section 31 of *PPP Act* and *PPP Regulations 4* to 22) all interested private parties can apply to participate in the procurement by filling out and submitting a Request for Prequalification (RFQ). The Contracting Authority evaluates the applications and selects the applicants that meet the prequalification criteria defined in the RFQ. These prequalified bidders are subsequently invited to submit a bid.
- 5.3.2. The open bidding procedure yields an efficient mix of competition and selectivity in the procurement process. It allows all private parties that are interested in carrying out the project to respond to the procurement, resulting in competitive bids with advantageous price/quality ratios. But by applying prequalification criteria the Contracting Authority ensures that only serious applicants possessing the required technical and financial capability are invited to submit a bid.
- 5.3.3. The open bidding method is the default method for the procurement of a PPP project. The open bidding method must be used unless the specific conditions for restricted bidding or direct procurement are fulfilled (see below).
- 5.3.4. The open bidding method consists of three phases:
- prequalification phase;
 - bidding phase;
 - final contract negotiations.

Prequalification phase

- 5.3.5. The next flow chart presents an overview of the steps of the prequalification phase. The steps comply with *PPP Regulations 4* to 8 and are described in detail in the remainder of this section.

Figure 5: Open bidding procedure – prequalification phase



Preparation of Request for Qualification

5.3.6. The Project Team, with the support of the Transaction Advisor, prepares the notice of the RFQ, which is used to announce the procurement of the project and the RFQ, which is used to invite prospective bidders to apply for prequalification. The PPP Unit provides advice where needed.

5.3.7. The notice of the RFQ contains:

- a brief description of the project and the intention of the Contracting Authority to undertake the project;
- a brief description of the envisaged PPP arrangement, specifying the obligations of the Private Party;
- the place, date and times for obtaining a copy of the RFQ (this can be an email address); and
- the fee, if any, to be paid by the prospective bidders for obtaining a copy of the RFQ.

5.3.8. The RFQ contains:

- a brief description of the project and the envisaged PPP arrangement (usually in the form of a separate Project Information Memorandum attached to the main document of the RFQ or made available by digital means);
- the definition of the criteria that the applicants must meet in order to prequalify;
- the procedure for the submission of the prequalification applications (procedures for submitting clarification questions, submission date, time and place); and
- forms or templates that must be completed by the applicants (including form for clarification questions, applicant identification form, project reference form, CV form).

Templates for the RFQ and Project Information Memorandum are provided in Annex K – Bidding documents of the *Guidelines*.

5.3.9. The prequalification criteria consist of the following:

- (a) **legal requirements:** applicants must be duly registered and not fall under any of the causes for disqualification in section 24 of the *PPP Act*.
- (b) **financial capability:** applicants must have sufficient financial capability to undertake the project. The financial capability must be demonstrated by one or more of the following proofs:
 - value of turnover commensurate with the value of the project; and/or
 - sound financial health, as measured by the net profit margin⁶ or the net worth;⁷ and/or
 - testimonial from a reputable bank that attests the ability of the bank to secure financing for the project;⁸ and/or
 - any other documentation to substantiate the financial capability of the applicants.

To demonstrate their financial capability, the applicants will be asked to submit their latest annual audited financial statement.

- (c) **technical capability:** applicants must have sufficient technical capability to undertake the project. The technical capability is demonstrated by a number of project references relevant to the type and size of the project, and possibly also by the CVs of key staff.

5.3.10. The RFQ must also specify whether the above criteria must be satisfied by a single consortium partner or by all consortium partners, and whether the consortium can rely on the capabilities or references of a subcontractor.

5.3.11. The ideal number of prequalified applicants is generally between three and five. If the number of applicants is less than three, then there may not be enough competitive pressure for obtaining bids with a favourable price/quality ratio, especially if one of the prequalified applicants decides not to submit a bid. If, on the other hand, there are more than five prequalified applicants, then the applicants are less incentivised to invest time and costs in preparing bids, as they consider the probability of success too low. When defining the financial and technical prequalification criteria the

⁶ Net profit margin = profit after tax / revenue.

⁷ Net worth = (book) value of all assets less total liabilities.

⁸ The testimonial only confirms that the applicant is in principle eligible to obtain financing from the bank issuing the testimonial. The testimonial does not commit the bank to effectively providing financing to the applicant or the project. At this stage of the procurement procedure no committed financing is required, nor desired.

Contracting Authority must verify that there are enough potential bidders that can meet the criteria. If the criteria are set at a too high level, there may not be enough applicants to ensure competition among bidders. On the other hand, if they are set at a too low level, then too many applicants may be qualified.

- 5.3.12. If the Contracting Authority expects that many applicants will pass the prequalification criteria, then it must rank the applicants in function of their technical and/or financial capability, and only select the highest ranked applicants as candidate bidders. If the Contracting Authority intends to rank the applicants, it must announce in the RFQ which criteria will be used to determine the rank, and how many applicants will approximately be selected. Only objectively measurable technical and financial capability criteria can be used as ranking criteria (for instance the number or contract value of valid references). Legal criteria cannot be used to rank applicants. Legal criteria must all be met, or the applicant can be disqualified (section 24 of the *PPP Act*).

Issuing of RFQ

- 5.3.13. The procurement is announced to prospective bidders by publishing the notice of the RFQ in at least two newspapers with wide national circulation, and on the website of the PPP Unit. The notice may also be advertised on the website of the Contracting Authority.
- 5.3.14. The publication of the notice of the RFQ is the official start of the procurement process. The Contracting Authority should not publish the notice of the RFQ if it does not have sufficient certainty that it will be able to continue the procurement process up to the award of the contract and commercial close. Aborting a procurement process after it has been launched would damage the reputation of the Contracting Authority (and even of the Uganda government as a whole) and may result in a lack of interest among potential bidders in future tenders. The RFQ is not an instrument for testing market interest in the project. The latter should have been done in the Feasibility Study Stage or through pre-competitive promotion of the project.

Clarification of RFQ

- 5.3.15. The applicants can ask clarification questions about the RFQ, in particular about the prequalification criteria and the submission procedure. Questions are submitted and answered in writing. Clarifications and addenda or modifications of the RFQ are sent simultaneously to all applicants. Any questions from applicants cited in the clarification must be anonymised. For practical reasons the Contracting Authority must set a deadline for the submission of questions and should provide a bundled reply. If so, the applicants must be granted enough time to study the RFQ before submitting questions, and to complete their application after receiving the last clarifications.
- 5.3.16. The Contracting Authority may optionally organise a prequalification meeting. The objective of the prequalification meeting is to present the project to potential bidders and financiers, as well as to explain the procurement procedure.

Submission and evaluation of RFQs

- 5.3.17. The applicants submit their applications within the timeline and in the manner prescribed in the RFQ. Depending on the number of elements that must be submitted, the applicants should get a period of 4 to 8 weeks to submit the prequalification application. If the Contracting Authority wishes to also attract foreign companies, and if certified or notarised documents are required, then more time must

be allowed (i.e. 6 to 8 weeks). Applications that are not submitted on or before the submission deadline or by a different method than prescribed in the RFQ are not accepted.

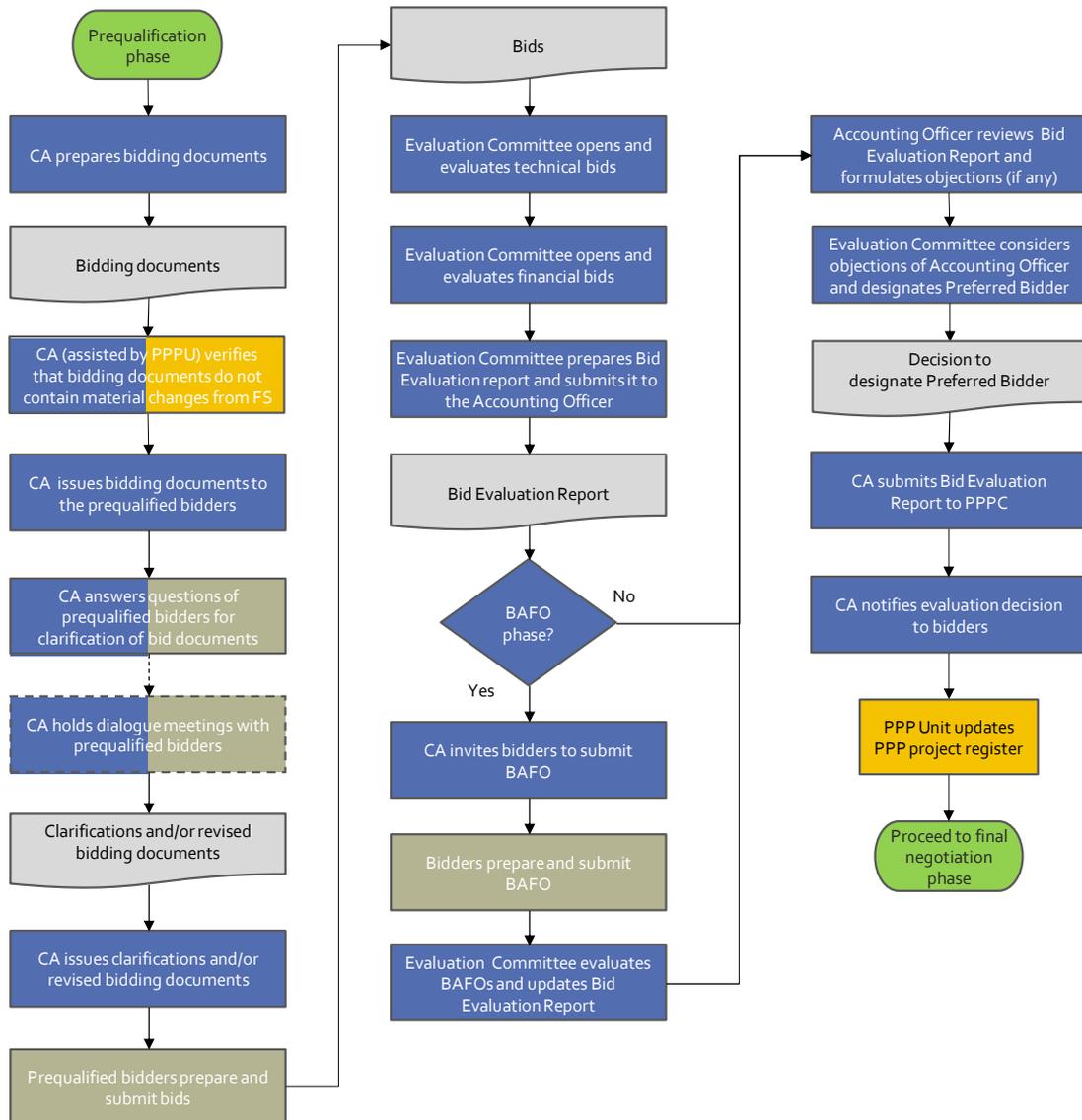
- 5.3.18. The applications are opened and evaluated by the prequalification Evaluation Committee, appointed for this purpose.⁹
- 5.3.19. The applications are opened in a public session to which the applicants are invited. The Evaluation Committee opens the applications that have been received and reads aloud and records the name of each applicant. The Evaluation Committee performs a check of the presence of the forms and the documents prescribed in the RFQ, and of the payment of the processing fee (if applicable). Applications that are not complete, or for which the processing fee has not been paid (if applicable), can be immediately disqualified. The Evaluation Committee prepares a list of the applications that were received and communicates this list to the applicants.
- 5.3.20. The Evaluation Committee evaluates the applications against the prequalification criteria specified in the RFQ. It prepares an evaluation report, which contains:
- individual assessment result of each applicant;
 - lists of applicants that failed and passed the prequalification criteria; and
 - ranking of prequalified applicants (in case that rated prequalification criteria were used).
- 5.3.21. The Evaluation Committee can recommend the disqualification of an applicant, if that applicant:
- fails to meet the prequalification criteria;
 - submits false, inaccurate or incomplete information with respect to their qualifications;
 - is involved in corrupt or dishonest practices.
- 5.3.22. The Accounting Officer determines the selection of prequalified applicants on the basis of the evaluation report of the Evaluation Committee and the results of the prequalification are communicated to the applicants in writing.
- 5.3.23. The list of prequalified bidders is published in at least two newspapers of national circulation, and on the websites of the Contracting Authority and the PPP Unit.
- 5.3.24. If the Accounting Officer concludes that no or too few applications have been received, or that no or too few applicants pass the prequalification criteria to ensure a competitive bidding process, he must cancel the procurement. It is recommended that the Contracting Authority undertakes a review of the RFQ and consults the private sector to determine the reasons why private sector interest was inadequate, before procurement is recommenced.

Bidding phase

- 5.3.25. The next flow chart presents an overview of the steps of the bidding phase of the open bidding procedure. The steps are described in detail in the remainder of this section.

⁹ See paragraphs 2.2.22 and following for details on the Evaluation Committee.

Figure 6: Open bidding procedure – bidding phase



Preparation of bidding documents

5.3.26. The Transaction Advisor prepares the bidding documents on behalf of and under the direction from the Project Team.

5.3.27. The bidding documents consists of the following documents:

- the Request for Bids (RFB);
- the draft PPP agreement (attached as annex to the RFB); and
- the output and performance specifications (attached as annex to the PPP agreement).

5.3.28. The RFB must contain:

- the procedure for the submission of the bids, including the procedure for the clarification of the bidding documents (procedure for submitting clarification questions, submission

date, time and place – the place may be an email address or a digital platform where the bid must be uploaded);

- indicative timing of the bidding and contracting procedure (pre-bid meeting, one-on-one/dialogue meetings, clarifications, submission of bids, designation of Preferred Bidder, contract negotiations, contract close)
- the evaluation criteria and the scoring system;
- description of the documents that must be submitted by the bidders;
- templates of forms that must be completed by the bidders (including form for clarification questions, bidder identification form, price form);
- the amount and format of the bid security.

A model RFB is provided in *Annex K – Bidding documents* of the *Guidelines*.

- 5.3.29. The draft PPP agreement is attached in annex to the RFB. The heads of terms of the draft PPP agreement are provided in Annex K of the *Guidelines*. It complies with subsections 26(4) and (5) of the *PPP Act*, in which the required contents of the PPP agreement are defined.
- 5.3.30. Sample contract provisions regarding disclosure requirements are presented in *Annex L – Disclosure framework* of the *Guidelines*.
- 5.3.31. The output and performance specifications are an important annex of the PPP agreement. They describe the outputs that the Private Party must deliver under the PPP agreement in the construction and operational phase of the project. Their form and contents depend on the type of project (sector, technology, scope). The output and performance specifications are prepared by the Transaction Advisor in the Feasibility Study phase and updated where needed prior to the publication of the RFB.
- 5.3.32. The Contracting Authority, in cooperation with the PPP Unit, must verify that the bidding documents do not contain material discrepancies with the information in the Feasibility Study Report (including draft or heads of terms of the PPP agreement and procurement plan) and of the approved project. If material changes are found (for instance in the scope and terms of the project and the PPP agreement) then the Contracting Authority must modify the Feasibility Study in line with the bidding documents and resubmit the modified project for approval to the PPP Committee (via the PPP Unit, as explained in section 4.2).

Issuing of bidding documents to prequalified bidders

- 5.3.33. Following the publication of the list of prequalified bidders, the Contracting Authority sends the bidding documents to the prequalified bidders on the list.
- 5.3.34. The Contracting Authority may, at any time in the bidding stage, request prequalified bidders to demonstrate that they still fulfil the prequalification criteria. If a prequalified bidder fails to confirm the fulfilment of the qualification criteria, it may be disqualified. In order to preserve the transparency and expediency of the bidding process such requests should only be issued if there are grounds to doubt the continued satisfaction of prequalified bidders with the prequalification criteria, and in a manner that does not discriminate against an individual bidder.

Clarification of bidding documents and dialogue with prequalified bidders

- 5.3.35. Shortly (one or two weeks) after the issuance of the RFB to the prequalified bidders, the Contracting Authority should organise a pre-bid conference. During the pre-bid conference the Contracting Authority presents the project to candidate bidders and answers any initial questions the candidate bidders may have pertaining to the bid procedure, the scope of the PPP project, and the proposed PPP arrangement. Any documents and clarifications presented or provided during the pre-bid conference must be circulated in writing to all prequalified candidate bidders (even to those that did not attend the conference).
- 5.3.36. The Contracting Authority may also invite the prequalified bidders to one or several rounds of one-on-one/ competitive dialogue meetings based on the specific requirements of the project as approved by the PPP Committee. During these rounds the candidate bidders have the opportunity to submit questions on the project, the RFB and the draft PPP agreement (including output specifications). The bidders are also allowed to provide alternative technical solutions, contractual arrangement or inputs on any other aspect of the project. The Contracting Authority cannot share information from one candidate bidder with the other candidate bidders, unless it has received an explicit permission from the concerned candidate bidder.
- 5.3.37. The Contracting Authority conducts one or several written question and answer rounds. During these rounds candidate bidders have the opportunity to submit questions on the project, the RFB and the draft PPP agreement (including output specifications). The Contracting Authority compiles the questions, formulate responses, and distributes the full list of questions and responses simultaneously to all pre-qualified bidders, without revealing the identity of the bidders that have submitted the questions. For practical reasons it is recommended that the Contracting Authority sets a deadline for the submission of questions (possibly in several rounds) and provides a bundled reply to all questions submitted in a round. The first round is usually held two or three weeks after the issuance of the RFB, so that the candidate bidders have enough time to study the RFB. Answers are communicated within two - three weeks. The candidate bidders must have enough time to complete their bids after receiving the last clarifications.
- 5.3.38. As a consequence of new insights gained in the dialogue rounds the Contracting Authority may decide to revise the RFB and its annexes. The revised RFB is sent to the candidate bidders, sufficiently before the submission date of the bids. If the last clarifications or amendments cannot be sent in time, the bid submission date must be postponed so that the candidate bidders have enough time to incorporate the last changes into their bids. In general, at least three weeks must be allowed between the last clarifications or amendments of the RFB and the bid submission date, but this may vary in function of the importance of the said clarifications and amendments.
- 5.3.39. If the revision of the bidding documents entails material changes in the scope or conditions of the project and the PPP agreement in comparison with the Feasibility Study Report (including draft or heads of terms of the PPP agreement and procurement plan) that was approved by the PPP Committee, the project must be resubmitted for approval to the PPP Committee (via the PPP Unit, as explained in section 4.2).
- 5.3.40. Before the release of the final bidding documents to the bidders, the Contracting Authority (through the Transaction Advisor) must update the financial model and the fiscal assessment of the project. In the event of any material change the project must be resubmitted for approval to the PPP Committee (via the PPP Unit, as explained in section 4.2).

Submission of bids

- 5.3.41. The bidders prepare and submit their bids, comprised of a technical bid and a financial bid in separate envelopes or boxes. The bid letter and the proof of the bid security are enclosed in the technical bid envelope or box.
- 5.3.42. Pursuant to *PPP Regulation 14* the Contracting Authority must extend the time period for the submission of bids if:
- (a) only one bid is received, except if the Contracting Authority determines that wider competition cannot be achieved by extending the time for the submission of bids;
 - (b) there are extraordinary circumstances (such as a natural calamity) that necessitate the extension of the period for submission.

The extension of the period for the submission of bids is communicated in writing to all prequalified bidders. Bidders that have already submitted a bid must receive the opportunity to withdraw their bid and submit a new bid.

Evaluation of bids

- 5.3.43. The Evaluation Committee¹⁰ opens the bids in a public session to which the bidders are invited. The technical bid envelopes are opened, and the names of the bidders are read aloud from the enclosed bid letter and recorded.
- (a) The Evaluation Committee first checks that the bids have been correctly submitted (on time and in the form prescribed in the RFB) and verifies the identity of the bidders. Only prequalified firms or consortia can submit a bid. The invitation to bid cannot be transferred to another firm, and no changes in the composition of the prequalified consortia are allowed, unless pre-approved by the Contracting Authority and provided that the changed consortium still meets the prequalification criteria.
 - (b) The Evaluation Committee checks for the submission of a bid security of the prescribed value and for the physical presence of (i) the forms and documents that must be included with the technical bid, and (ii) a separate, sealed financial bid envelope or box. If one of these elements is missing, the bid may be immediately disqualified.
 - (c) The financial bids are not yet opened but are kept in a secure place until after the evaluation of the technical bids. To create trust among the bidders that the financial bids will not be tampered with, the bidders present at the opening can be asked to sign a sealed envelope or box in which all financial bid envelopes will be kept until the opening.
- 5.3.44. The Evaluation Committee evaluates the technical bids in accordance with the evaluation criteria defined in the RFB. The bidders whose technical bid does not meet the minimal requirements (are 'non-responsive'), or whose score does not exceed a threshold prescribed in the RFB (if applicable), are disqualified. They are informed that their technical bid did not meet minimal criteria and their financial bid will therefore not be opened.

¹⁰ See paragraphs 2.2.22 and following for details on the Evaluation Committee.

- 5.3.45. The remaining bidders are invited to a public session for the opening of the financial bids. On the day of the opening the bidders inspect the sealed envelope or box containing the financial bids and signed by the bidders present at the opening of the technical bids. The financial bids are then opened, and the bid prices read aloud.
- 5.3.46. The Evaluation Committee evaluates the financial bids in accordance with the criteria defined in the RFB. If applicable it checks the compliance with the minimal requirements of the financial bid for instance the presence of lender letters of support or proof of equity commitment, or compliance with bid price ceilings.
- 5.3.47. The evaluations of the technical and financial bids are combined to determine the rank of the bidders. There are two alternative methods for determining the rank of the bidders:
- on the basis of the financial bid¹¹, among all bidders whose technical bid exceeds a defined threshold score;
 - on the basis of the sum of the financial and technical scores.¹²

Which method will be applied must be indicated in the RFB.

- 5.3.48. The Evaluation Committee prepares a Bid Evaluation Report, describing the history of the bid process, the submitted bids and the results of the evaluation. The Bid Evaluation Report also contains the recommendation from the Evaluation Committee regarding the Preferred Bidder. The Bid Evaluation Report is submitted to the Contracting Authority.
- 5.3.49. Pursuant to PPP Regulation 21(3) the Accounting Officer of the Contracting Authority may formulate objections to the recommendation of the Evaluation Committee. In that case Evaluation Committee will independently consider the objections of the Accounting Officer and may revise, as a result, the Bid Evaluation Report and its recommendations regarding the selection of the Preferred Bidder.

Optional BAFO phase

- 5.3.50. If the Evaluation Committee and the Contracting Authority conclude that they are unable to determine a Preferred Bidder, the Contracting Authority may invite the bidders to submit Best and Final Offers (BAFO). A BAFO may be used if:
- the amount of the requested government support requested by the bidders exceeds the amount of government support approved for the project;
 - the value-for-money of all bids is assessed as too low; or
 - the submitted bids do not sufficiently address the project requirements or are in some other respect unclear or deficient.
- 5.3.51. Only one round of BAFO can be undertaken. The invitation for BAFOs must state that bidders are not obliged to submit a BAFO but can instead reconfirm their original bid.

¹¹ Lowest tariff or fee, or lowest present value of payments of users or the Government to the Private Party, or highest present value of payments from the Private Party to the Government, depending on the choice of the financial bid parameter among the options allowed by subregulation 19(2) of the *PPP Regulations*.

¹² In that case the financial bid (i.e. the tariff or fee, the present value of payments of users or the Government to the Private Party, or the present value of payments from the Private Party to the Government, depending on the choice of the financial bid parameter) is converted into a score using a formula specified in the RFB. In this way the scores of the financial and technical bids can be summed to determine the total score and rank of the bidders.

- 5.3.52. The Evaluation Committee evaluates the BAFOs in accordance with the criteria and scoring method defined in the RFB and prepares an updated Bid Evaluation Report for submission to the Contracting Authority.

Indicative timeline of open bidding procedure

- 5.3.53. An indicative timeline for the open bidding procedure is presented below.

One-on-one/dialogue meetings and issuing of revised RFB (optional):	1-3 months
Preparation and submission of bids (including questions and answers for clarification of bid documents):	3-6 months
Evaluation of bids and selection of Preferred Bidder:	1-2 months
Optional BAFO round	1-2 months

Submission of Bid Evaluation Report to PPP Committee

- 5.3.54. Pursuant to subsection 25 (2) of the *PPP Act*, the Contracting Authority submits the Bid Evaluation Report to the PPP Committee.

- 5.3.55. The PPP Committee, with the technical assistance of the PPP Unit, examines the Bid Evaluation Report for the following purposes.

- (a) It verifies that the evaluation criteria have been correctly applied and the selection of the Preferred Bidder is justified.
- (b) It checks that the RFB and the bid do not include any significant changes compared to the approved project and Feasibility Study (including draft or heads of terms of the PPP agreement and procurement plan). If it finds changes, it assesses whether the changes have an adverse impact on the value-for-money of the PPP agreement and the fiscal affordability of the project.

- 5.3.56. On the basis of the examination of the Bid Evaluation Report the PPP Committee may request additional information from the Contracting Authority on the evaluation of the bids and the selection of the Preferred Bidder. It requests additional information if it is of the opinion that:

- (a) the evaluation of the bids has not been correctly conducted;
- (b) the bid of the Preferred Bidder includes significant changes from the approved project and Feasibility Study, and these changes have an adverse impact on the value-for-money of the PPP agreement or on the fiscal affordability of the project.

- 5.3.57. The PPP Committee issues its request for additional information to the Contracting Authority within two weeks of the receipt of the Bid Evaluation Report.

- (a) The Evaluation Committee replies to the requests for additional information of the PPP Committee and may revise its recommendations regarding the selection of the Preferred Bidder.

- (b) The Accounting Officer considers the requests for additional information of the PPP Committee, and decides whether to proceed to the contracting phase or to undertake other actions (such as revisiting the project Feasibility Study or rebidding the project after a revision of the bidding documents).

Notification of evaluation decision to bidders

5.3.58. If the Contracting Authority decides to proceed to the contracting phase, it notifies in writing the bidders of the results of the evaluation and of the designation of the Preferred Bidder.

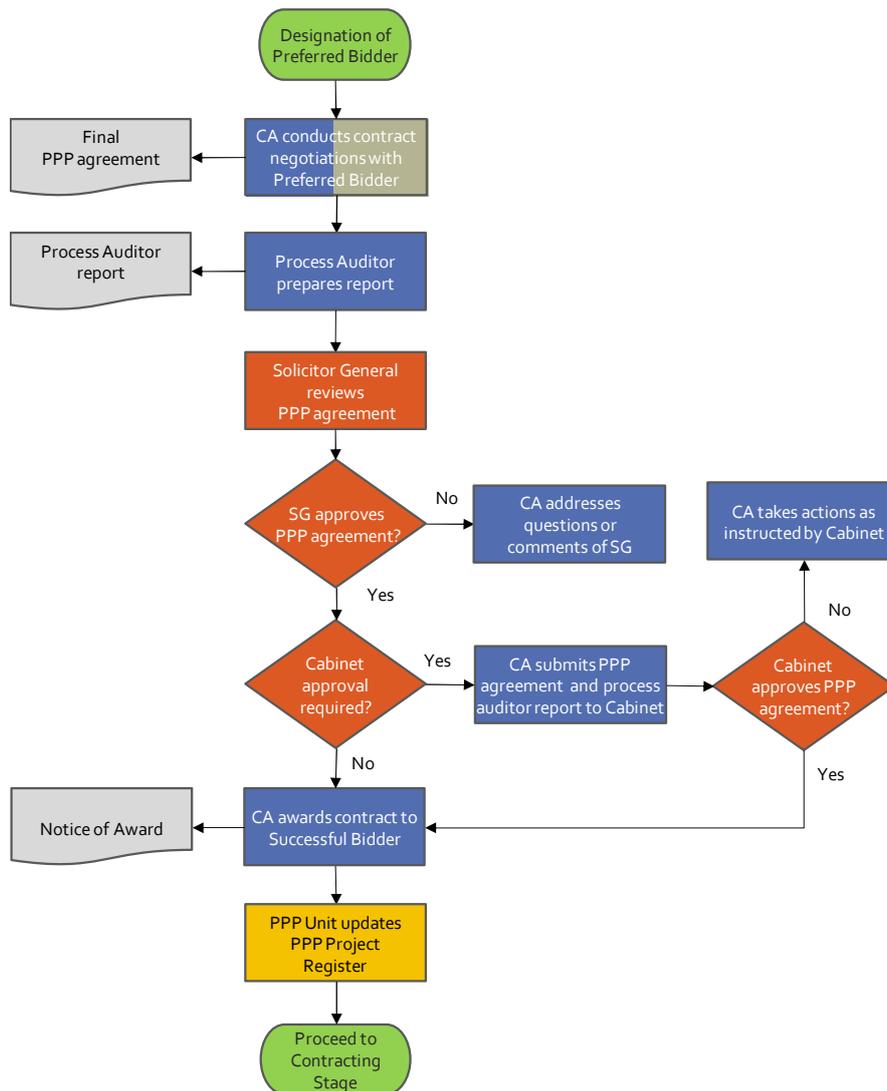
- (a) The notification to the Preferred Bidder must state that the award of the project is subject to the successful conclusion of contract negotiations with the Contracting Authority.
- (b) The second and third ranked bidders are requested to extend the validity of their bids pending the successful completion of the contract negotiations with the Preferred Bidder.

5.3.59. The PPP Unit updates the PPP Register.

Contract negotiations

5.3.60. The next flow chart presents an overview of the steps in the phase of contract negotiations with the Preferred Bidder. The steps are described in detail in the remainder of this section.

Figure 7: Open bidding procedure – contract negotiations



- 5.3.61. The Contracting Authority finalises the PPP agreement in dialogue with the Preferred Bidder. In this stage of the PPP Project Cycle, the finalisation of the PPP agreement only involves minor points and formalities, for instance inserting the names of the representatives, updating the dates of milestone events, and clarifying wording. No substantive changes should be made.
- 5.3.62. The Accounting Officer heads the negotiation team and appoints its members. The negotiation team must comprise, in addition to the Accounting Officer, a senior technical expert, specialised in the facilities and services that will be built and operated under the PPP agreement, a senior legal expert and a senior financial expert. The members of the negotiation team can be drawn from the Project Team, or consist of other experts inside and outside the Contracting Authority.
- 5.3.63. Recall that the RFB documents include a draft PPP agreement. In the bid process the bidders can request clarifications about the draft PPP agreement. In the two-stage procurement procedure the bidders can propose amendments of the technical output specifications, while in the competitive dialogue procedure they can also propose amendments to the PPP agreement. In many cases the inputs from the bidders induce the Contracting Authority to issue a revised and optimized PPP

agreement. On the basis of this RFB the bidders prepare and submit their bids, taking into account the output specifications and the terms of the draft PPP agreement attached to the RFB. All this serves to explain that in the Contracting Stage the time for drafting the PPP agreement is past. Any substantive changes of the PPP agreement at this point would invalidate the outcome of the competitive procurement process and require the project to be rebid.

Process Auditor report

- 5.3.64. The Process Auditor prepares a report with his findings regarding the compliance of the Contracting Authority with the provisions of the *PPP Act* from the registration of the PPP project up to the contract negotiations with the Preferred Bidder. The report is submitted to the Accounting Officer.
- 5.3.65. If the Process Auditor report shows non-compliances that have not yet been addressed, the Accounting Officer addresses these issues before proceeding to the signing of the PPP agreement.

Solicitor General review

- 5.3.66. The Solicitor General reviews the PPP agreement as per Article 119(5) of the Ugandan Constitution. Following this review the Solicitor General may:
 - (a) clear the PPP agreement without amendments;
 - (b) clear the PPP agreement with amendments;
 - (c) reject the PPP agreement; or
 - (d) seek further clarification.
- 5.3.67. The Contracting Authority takes appropriate actions to address the comments or questions of the Solicitor General on the PPP agreement.

Cabinet approval of PPP agreement

- 5.3.68. PPP agreements with a contract value exceeding the amount notified by the MOF by statutory instrument from time to time must be approved by Cabinet before their signature, in accordance with subsections 26(1) to 26(3) of the *PPP Act*.
- 5.3.69. For this purpose, the Accounting Officer of the Contracting Authority submits the PPP agreement, the Contract Management Plan and the Process Auditor Report to the Cabinet.
- 5.3.70. Subsection 26(3) of the *PPP Act* stipulates that the Accounting Officer can only submit the PPP agreement to the Cabinet if three conditions are met:
 - (a) the best evaluated bid meets the requirements of affordability, value for money and substantial operational and financial risk transfer;
 - (b) the Contracting Authority puts in place a management plan that explains the capacity, including the mechanisms and procedures of the Contracting Authority, to implement, manage, enforce, monitor and report on the project effectively; and
 - (c) satisfactory due diligence is carried out on the Private Party in relation to the competence and capacity of the Private Party to enter in the agreement.

- 5.3.71. Compliance with conditions (a) and (c) is ensured by the procurement procedure and demonstrated in the Process Auditor report.
- (a) The output specifications and the draft PPP agreement in the RFB documents are based on the approved Feasibility Study and project, and hence meet the requirements of affordability, value for money and risk transfer.
 - (b) The bid evaluation procedure ensures that the winning bid complies with the minimal criteria in the RFB. Finally, the prequalification procedure is intended to only allow bidders that have the required legal, technical and financial capacity to undertake the project and fulfil the obligations of the PPP agreement.
- 5.3.72. The guidelines for preparing the Contract Management Plan are presented in Chapter 7 below. The preparation of the Contract Management Plan is one of the first steps of the Implementation Stage. If Cabinet approval of the PPP agreement is required, the Contract Management Plan must be prepared prior to the submission of the PPP agreement to Cabinet (to be joined to the said agreement). In this way the Contracting Authority can demonstrate to Cabinet that condition (b) in paragraph 5.3.71 is also satisfied.
- 5.3.73. The Cabinet decides whether to approve the PPP agreement.
- 5.3.74. If the Cabinet approves the PPP agreement, the project can proceed to the Contracting Stage (see Chapter 6).
- 5.3.75. If the Cabinet does not approve the PPP agreement, it instructs the Contracting Authority on which course of actions must be taken regarding the project. In such a case, the Contracting Authority will take appropriate actions to implement the advised course of action by the Cabinet.

Issue of Notice of Award

- 5.3.76. After the finalisation (and, if applicable, Cabinet approval) of the PPP agreement, the Contracting Authority issues a Notice of Award that confirms the award of the project to the Preferred Bidder, henceforth the Successful Bidder.

5.4 Restricted bidding method

Use of the restricted bidding method

- 5.4.1. In the restricted bidding method (section 32 of the *PPP Act* and *PPP Regulation 25*) the Contracting Authority prepares a shortlist of potential bidders. The invitation to submit a bid is only sent to the bidders on the shortlist. The shortlist should contain at least three independent private parties.
- 5.4.2. The restricted bidding method may be used if:
- (a) the need for the project is urgent and the Contracting Authority wishes to accelerate the procurement by avoiding an open prequalification;
 - (b) there are only a limited number of firms able to implement the project; or

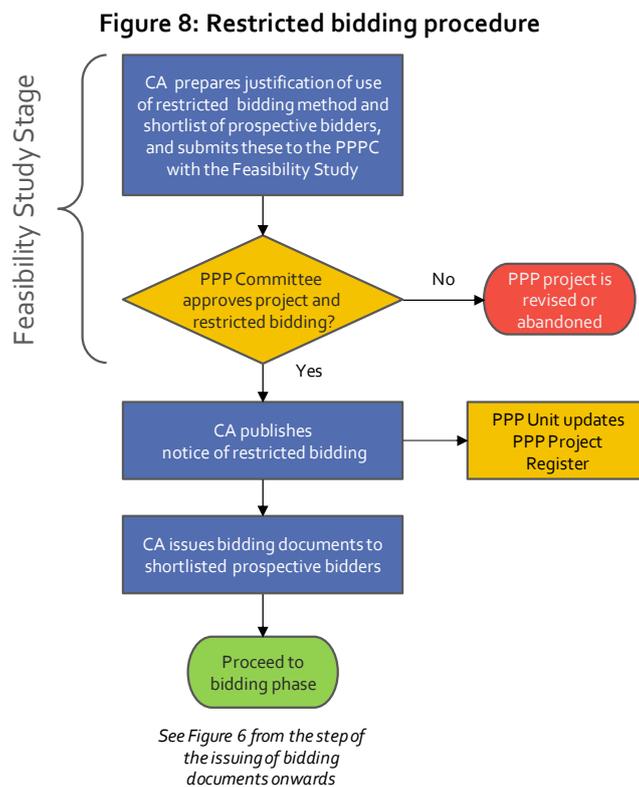
The Contracting Authority compiles a shortlist of all firms of which it knows or expects that they are technically and financially capable of implementing the project. In this manner time and efforts can be saved by not having to evaluate applications from candidate bidders that are known to be unsuitable.

5.4.3. Examples of where the second ground (limited number of firms able to implement the project) apply are:

- only a few firms possess the required resources, technology or skills to undertake the project;
- the project needs to be compatible with existing assets or services, and this can only be achieved by procuring the project from firms already operating such assets or services;
- legal grounds such as ownership rights, liabilities or the preservation of warranties.

Restricted bidding procedure

5.4.4. The restricted bidding procedure is defined in *PPP Regulation 25* and shown in the figure below.



5.4.5. If the Contracting Authority wishes to use the restricted bidding method, it must already indicate this intention in the Feasibility Study. In addition, it must provide in the Feasibility Study Report the following information:

- justification for use of the restricted bidding method (referring to the grounds cited in paragraph 5.4.2 above);
- shortlist of prospective bidders (at least two and not more than five).

- 5.4.6. The PPP Committee takes this information into account in its PPP Project Approval Decision (see paragraphs 4.2.29 and following).
- 5.4.7. If the project is approved and proceeds to the Procurement Stage, the Contracting Authority publishes a notice of restricted bidding on its website, mentioning:
- a brief description of the project;
 - the motivation for the use of the restricted bidding method; and
 - the shortlist of prospective bidders.
- 5.4.8. The Contracting Authority, with the support of its Transaction Advisor, prepares the bidding documents, and issues them to the shortlisted prospective bidders.
- 5.4.9. From the step of the issuing of the bidding documents onwards the bidding phase and the subsequent contract negotiation phase are identical with the open bidding procedure (from paragraph 5.3.35 onwards).

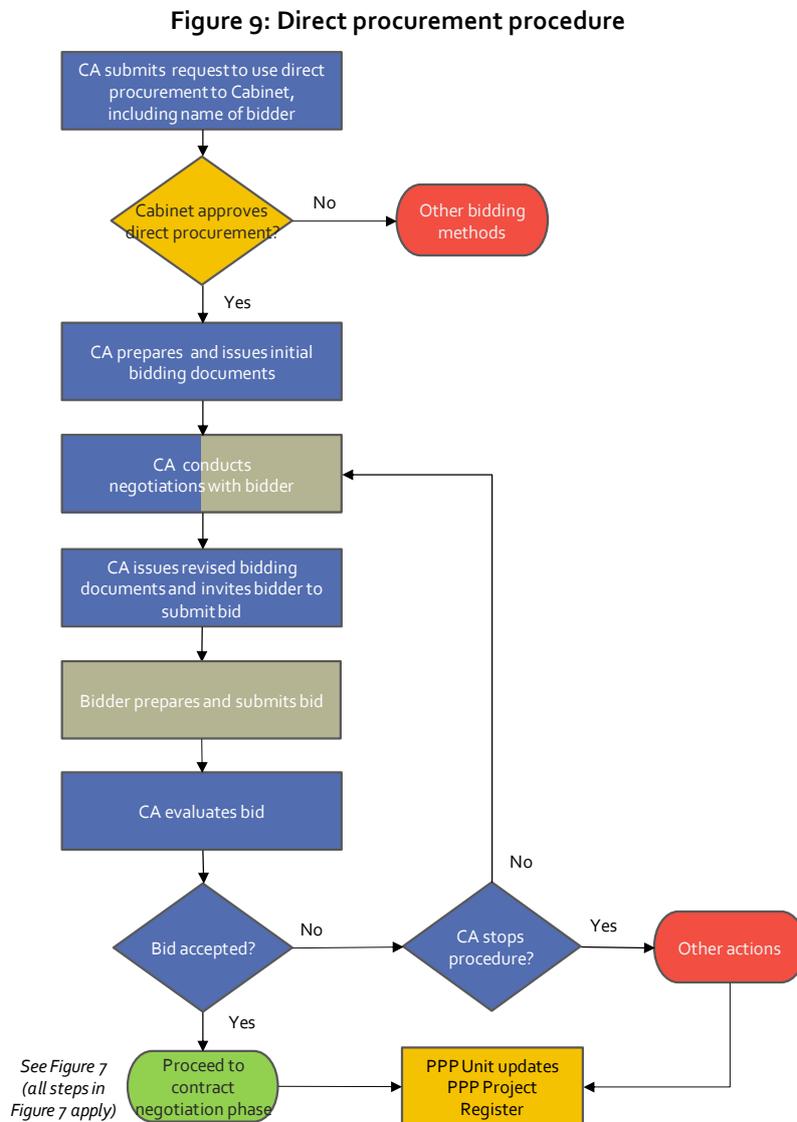
5.5 Direct procurement method

Use of the direct procurement method

- 5.5.1. In the direct procurement method (section 33 of the *PPP Act* and *PPP Regulation 26*) the Contracting Authority invites only one Private Party to submit a bid.
- 5.5.2. Direct procurement may be used on the following grounds:
- (a) the need for the project is urgent and the Contracting Authority wishes to accelerate the procurement by avoiding a competitive procedure;
 - (b) the project is for national defence, national security or health emergencies; or
 - (c) only one firm is considered to be capable of undertaking the project.
- 5.5.3. With respect to the first ground (urgency) it should be noted that the preparation of a PPP project and the negotiation of a PPP agreement require substantial time. Hence, if urgency is an issue the Contracting Authority should reconsider the use of PPP, as it is unlikely to be a suitable option for urgent projects.
- 5.5.4. Examples of where the third ground (unique capability) apply are:
- only one firm possesses the required resources, technology or skills to undertake the project;
 - the project needs to be compatible with existing assets or services built or operated by a Private Party, and this can only be achieved by procuring the project from the same Private Party;
 - legal grounds such as ownership rights, liabilities or the preservation of warranties.

Direct procurement procedure

5.5.5. The direct procurement procedure is defined in *PPP Regulation 26* and shown in the figure below.



5.5.6. The use of direct procurement requires the prior approval of Cabinet. To request this approval, the Contracting Authority must submit to the Cabinet a comprehensive justification of the need for direct procurement from a specific, named bidder, which explains why other potential bidders are unable to undertake the project under reasonable terms (referring to the reasons cited in paragraph 5.5.4 above).

5.5.7. If the Cabinet rejects the request to use the direct procurement method, then the Contracting Authority must use the open or restricted bidding method.

5.5.8. If the Cabinet approves the request, then the Contracting Authority issues bidding documents (draft PPP agreement and the output and performance specifications) to the sole bidder. For guidance on the drafting of the bidding documents, the reader is referred to paragraphs 5.3.26 and following in the section on the open bidding method.

- 5.5.9. The Contracting Authority conducts negotiations with the bidder to refine the bidding documents. Potential subjects for negotiation meetings are:
- alignment of infrastructure (in relation with land acquisition and resettlement);
 - technical specifications of assets;
 - service levels and performance indicators;
 - risk allocation;
 - payment and revenue mechanisms.
- 5.5.10. On the basis of the findings of the negotiation the Contracting Authority revises the bidding documents and invites the bidder to prepare and submit a bid.
- 5.5.11. The Contracting Authority evaluates the bid. If the bid is accepted, then the project proceeds to the final negotiation phase. The final negotiation phase is the same as in the open bidding procedure (see paragraphs 5.3.60 to 5.3.76 above).
- 5.5.12. If the bid is not acceptable then the Contracting Authority may initiate an additional negotiation round or stop the procedure and take alternative actions (abort the project, revisit the Feasibility Study, or use the open or restricted bidding methods). Reasons for not accepting the bid are:
- the amount of the requested government support exceeds the available budget,
 - the value-for-money of the bid is regarded as too low;
 - the technical bid does not meet the output specifications;
 - the bid deviates from key provisions of the draft PPP agreement; or
 - the bid is in some other respect unclear or deficient.

5.6 Disqualification of Bidders

- 5.6.1. At any time during the procurement process, the Evaluation Committee can recommend the disqualification of a bidder, if that bidder:
- submits false, inaccurate or incomplete information with respect to their bid;
 - is involved in corrupt or dishonest practices.

5.7 Redressal of disputes related to procurement

- 5.7.1. The procurement documents will specify a dispute resolution procedure for the resolution of any dispute that arises during the procurement process.

5.8 Disclosure

- 5.8.1. Each time that a milestone of the procurement procedure is reached (RFQ issued, prequalification applications received, candidate bidders prequalified, RFB issued, bid submitted, BAFO submitted, Preferred Bidder selected) the Contracting Authority notifies the PPP Unit thereof within one week. Information on the identity of the bidders is also provided. The PPP Unit registers the milestones and the bidder information in the PPP register, and discloses this information on its website within 21 days.

- 5.8.2. Links to the RFQ and the Notice of Award are made available on the website of the PPP Unit within 21 days of their issuing. A link to the RFB is provided within 21 days of the execution of the PPP agreement (commercial close). Further details on information disclosure during the procurement phase, including responsibilities and timelines are provided in Annex L of these *Guidelines*.

6. Contracting

6.1 Introduction to Contracting Stage

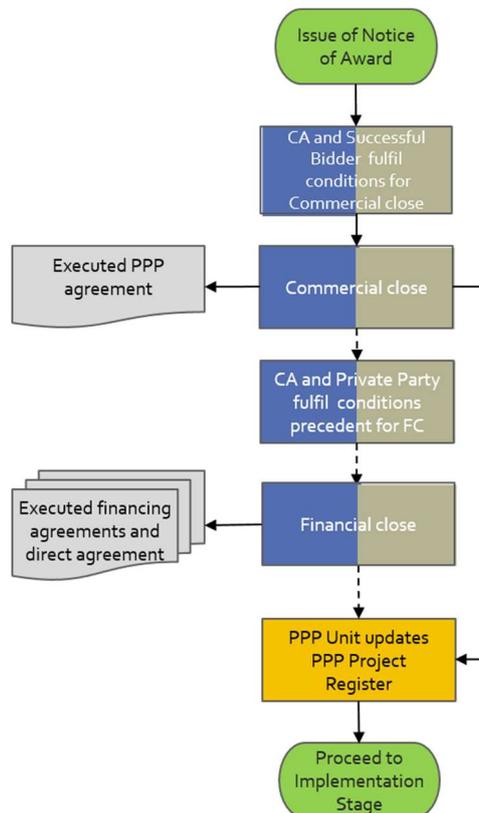
Purpose of Contracting Stage

6.1.1. The objective of the Contracting Stage is the signing of the PPP agreement (commercial close). In addition, the Private Party and its lenders sign the financing agreements at financial close.

Overview of the Contracting Stage

6.1.2. The next flow chart presents an overview of the steps in the Contracting Stage. The steps are described in detail in the remainder of this chapter.

Figure 10: Contracting Stage process



6.2 Commercial close

6.2.1. The Contracting Authority and the Successful Bidder undertake the required actions for meeting the requirements or conditions for commercial close defined in the RFB and recapitulated in the Notice of Award. In addition to fulfilling the conditions in the Notice of Award and the RFB, for which it is

responsible, the Contracting Authority also verifies that the compliance with the conditions in the Notice of Award and the RFB by the Preferred Bidder.

6.2.2. The steps involved before commercial close include:

- the establishment by the Successful Bidder of a special purpose company (SPC) under Uganda Law, as required by subsection 20(1) of the *PPP Act*;
- due diligence on the formation of the SPC in line with the requirements of the RFB and the PPP agreement;
- the submission of a performance security;
- the taking out of insurance, as specified in the PPP agreement; and
- any other condition specified in the RFB, for example the payment of a success fee.

6.2.3. When all conditions for commercial close have been met, the Contracting Authority notifies the Private Party of this fact and sets a date for commercial close. On the agreed date the Accounting Officer of the Contracting Authority and the representatives of the SPC execute and sign the PPP agreement.

6.2.4. In case of refusal or inability of the Successful Bidder to sign the PPP agreement within the time specified in the Notice of Award, the contracting process is stopped and the Successful Bidder forfeits its bid security. In this case the Contracting Authority contacts the second ranked bidder in view of the signing of a PPP agreement. If this bidder also fails to enter into a PPP agreement with the Contracting Authority, its bid security is likewise forfeited, and the third ranked bidder is contacted. In the event that the Contracting Authority is unable to execute the PPP agreement with any of the three highest ranked bidders, a failure of bidding is declared, and the project must be subjected to a re-bidding.

6.2.5. After commercial close, the bid securities of all remaining bidders are released. The PPP Unit is notified of the reaching of commercial close and updates the PPP Project Register to this effect.

6.3 Financial close

6.3.1. Financial close occurs when the financing agreements between the SPC and its lenders have been signed, and when all conditions for drawdowns have been fulfilled. If applicable, hedging instruments (such as interest rate swaps), guarantees, grant funding etc. are contracted. Furthermore, the Contracting Authority may enter into three-way Direct Agreement with the SPC and the lenders. In addition, the Successful Bidder along with other shareholders must commit equity to the SPC in accordance with the financing agreements.

6.3.2. The PPP agreement stipulates that the Private Party must arrange the debt financing within a defined period after commercial close. In general, the Private Party is accorded 3-12 months to secure financing and achieve financial close. In the event that the Private Party is not able to obtain financial closure within the stipulated period, the Contracting Authority has a right to levy a penalty for such delay period. The services contract with the Transaction Advisor must provide for support to the Contracting Authority until financial close is achieved.

Conditions precedent for financial close

- 6.3.3. Financial close is often subject to various conditions precedent, such as:
- achieving commercial close;
 - the delivery of the environmental and construction permits;
 - the completion of land acquisition and resettlement;
 - documentation from the SPC with regards to company incorporation documents, board resolutions, equity shareholding etc.;
 - legal opinions on the suitability of the incorporation documents of the SPC to undertake this project;
 - any specific conditionality required in the PPP agreement for example commencement of specific legislation etc..
- 6.3.4. If such conditions precedent are present, the Contracting Authority and the Private Party must take actions to fulfil the conditions precedent for which it is responsible, as well as verify the compliance with conditions precedent by either party.
- 6.3.5. In case of refusal or inability of the Private Party to achieve financial close within the time specified in the PPP agreement (possibly after an extension of the time limit, as is usually allowed under specific conditions by the PPP agreement), while the Contracting Authority has fulfilled its conditions precedent, the PPP agreement may be terminated due to contractor default.

Role of the Contracting Authority in financial close

- 6.3.6. The Contracting Authority monitors financial close and must receive the necessary cooperation from the Private Party to do so. The Contracting Authority can be assisted in this by the Transaction Advisor, whose assignment should run up to financial close or any extension thereof.
- (a) The Contracting Authority must verify that sufficient funds have been secured to finance the project, so that the implementation of the project will not enter into difficulties due to a shortfall of financing. Monitoring of financial close allows to the Private Party to meet subsections 20(4) and (5) of the *PPP Act*, which call for the Private Party to furnish the Accounting Officer of the Contracting Authority with evidence of its financial capacity to undertake the project. The Transaction Advisor assists the Contracting Authority with requesting and evaluating the required evidence.
- (b) In some PPP agreement the remuneration of the Private Party is dependent on the financing terms (for instance on a reference interest rate). In that case, the Contracting Authority must monitor and approve the determination of these terms, so that the remuneration level can be appropriately adjusted.
- 6.3.7. In many projects the Contracting Authority enters into a three-way Direct Agreement with the SPC and the lenders. Under the Direct Agreement the Contracting Authority agrees to give the lenders a period of advance notice of the impending termination of the PPP agreement. This Direct Agreement will also offer the lenders the opportunity to step in, either directly or through a nominee or representative, to remedy the termination event or to find another party acceptable to the authority to take over the rights and obligations of the SPC under the PPP agreement.

6.4 Disclosure

Disclosure after commercial close

6.4.1. After commercial close the following information is disclosed:

- notification that commercial close has been reached;
- summary project information (in accordance with the template in *Annex L – Disclosure framework*);
- complete project Feasibility Study Report;
- redacted PPP Agreement; and
- key project documents as defined in *Annex L – Disclosure framework*.

6.4.2. The milestone of commercial close is registered in the project register and published on the website of the PPP Unit. The documents are made available with a link on the website of the PPP Unit. The information must be made available within 21 days after commercial close.

Disclosure after financial close

6.4.3. Updated information on the financing structure (equity-debt ratio, debt and equity providers, share capital, shareholders, ownership, and so forth) of the project must be provided within 21 days of financial close.

7. Implementation

7.1 Introduction to Implementation Stage

Purpose of Implementation Stage

- 7.1.1. In the Implementation Stage what is agreed in the PPP agreement is effectively carried out by the parties to the agreement, both the Contracting Authority and the Private Party.
- 7.1.2. The Implementation Stage is by far the longest stage of the PPP Project Cycle. In general, it contains four phases:
- (a) pre-construction phase: preparatory activities prior to construction (delivery of right-of-way, application for permits, design studies, financial close, etc.)
 - (b) construction phase: purchase, installation and/or construction of the project assets;
 - (c) operations and maintenance phase: operation and maintenance of the project assets and provision of project services to the users; and
 - (d) handback: return of the assets to the Contracting Authority at the end of the PPP agreement.
- 7.1.3. The key institutions involved in the Implementation Stage are the following.
- (a) The role of the Private Party in the Implementation Stage is carrying out the required actions to construct and subsequently maintain and/or operate the project assets in accordance with the performance indicators in the PPP agreement.
 - (b) The role of the Contracting Authority is mainly that of contract management, i.e.:
 - the fulfilment of Contracting Authority obligations under the PPP agreement (for instance the delivery of the right-of-way, the procurement of an Independent Expert, etc.);
 - the monitoring of the performance of the Private Party, and checking it against the PPP agreement;
 - the settlement of payments due under the PPP agreement (including bonuses and penalties in function of performance);
 - the approval of periodical adjustments of user fees as allowed by the PPP agreement (in the case of user-pays projects);
 - the handling of special events according to the provisions of the PPP agreement (for instance risk events, force majeure, persistent non-compliance with contract requirements, ...).

In addition, the Contracting Authority has a number of responsibilities in the Implementation Stage that fall outside the purview of the PPP agreement but are nevertheless essential for the successful management and implementation of the project. These include the following:

- stakeholder management and communication (in cooperation with the Private Party, who must provide inputs for and participate in stakeholder communication actions);

- reporting on the progress and performance of PPP projects to the PPP Unit and the PPP Committee
 - reporting on the fiscal expenses and risks related to PPP projects to MFPED.
- (c) MFPED is responsible for the fiscal supervision of the project.
- (d) The Auditor General or an auditor appointed by him conducts an annual audit of all PPP projects according to the National Audit Act.

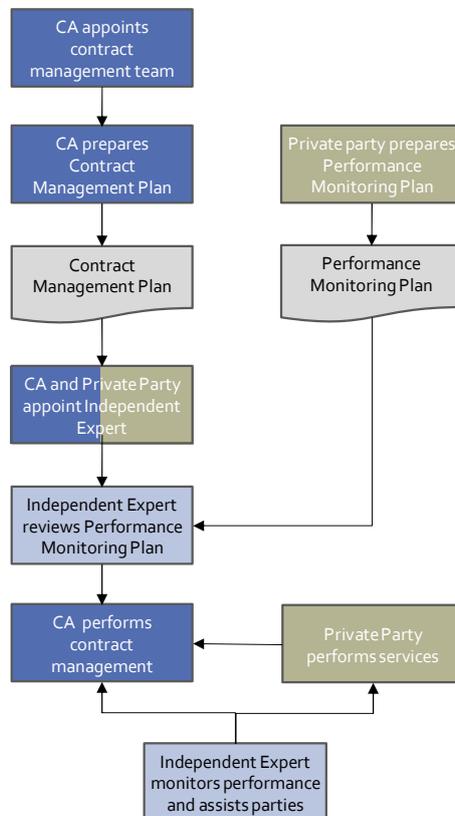
7.1.4. The key success factor of effective contract management is a good relationship between the Contracting Authority and the Private Party. The essence of PPP is that both parties proactively work together in order to avoid disputes and defaults, and to ensure the delivery of services in accordance with the performance standards defined in the PPP agreement.

Overview of the Implementation Stage

7.1.5. The main principles of the management of PPPs in the Implementation Stage are set out in sections 27 (performance monitoring), 28 (accounting and reporting) and 30 (audit) of the *PPP Act*. In this chapter of the *Guidelines* the procedure and approach for the management of PPPs is elaborated in more detail in line with the provisions of the *PPP Act*.

7.1.6. The next flow chart presents an overview of the steps in the Implementation Stage. The steps are described in detail in the remainder of this chapter.

Figure 11: Implementation Stage process



7.2 Appointment of Contract Management Team

- 7.2.1. The Contract Management Team is the Project Team in the Implementation Stage. While the Project Team appointed for the project preparation stages (Feasibility Study, procurement and contracting) can continue to serve in the Implementation Stage, it is more common to change the composition of the team (including the Project Officer) either on financial close, or on the date of the commissioning of the new assets and the start of the maintenance/operational phase. However, it may be useful that some members of the project preparation Project Team stay on for a period in the Implementation Stage to ensure a smooth transition.
- 7.2.2. The Contract Management Team is appointed by the Accounting Officer, and is in general composed of:
- an administrative and legal expert with expertise in public administration and public procurement contracts;
 - an accountant and budgeting expert;
 - a technical expert specialised in the services that are provided under the PPP agreement.
- 7.2.3. The contract management functions may also be performed by a contract management unit within the Contracting Authority, which is responsible for all PPP projects of the Contracting Authority.
- 7.2.4. The Contract Management Team is responsible for the daily administration of the PPP agreement. The head of the Contract Management Team unit (i.e. the Project Officer in the Implementation Stage) is the first point of contact for the Private Party in all matters related to the PPP project. Important issues may be escalated to the Accounting Officer or even the minister, but the head of the Contract Management Team is always the first level for raising issues.

7.3 Preparation of Contract Management Plan

- 7.3.1. The Contract Management Plan describes the tasks and obligations of the Contracting Authority in the Implementation Stage.
- 7.3.2. The Contract Management Plan contains:
- a description of the organisation of the contract management team;
 - a time schedule of all obligations of the Contracting Authority under the PPP agreement;
 - a procedure for the monitoring of the performance of the Private Party (including approval of periodic performance reports, application of penalty points and issuing of rectification requests);
 - a procedure for the handling of special events (compensation, extensions of time, requests, amendments of the PPP agreement);
 - procedure for handling early termination;
 - procedure for financial monitoring and reporting to MFPED;
 - plan for communication with external stakeholders;
 - a risk management matrix, detailing the actions to be undertaken by the Contracting Authority and the Private Party to prevent and mitigate project risks.
- 7.3.3. The table below shows the structure and indicative contents of a Contract Management Plan.

Table 1: Contract Management Plan outline

Project and contract identification
<p>The project identification data are presented on the cover or inside cover page.</p> <ul style="list-style-type: none"> • Name of project • Contract number • Contract value • Contract period • Name of Contracting Authority • Name and contact data of the Project Officer. • Name of Private Party • Contact person of Private Party
Project and contract background information
<p>The purpose of this section is to provide brief background information on the salient features of the project. This is useful for readers not yet familiar with the details of the project (for instance new members of the contract management team). The introduction contains:</p> <ul style="list-style-type: none"> • a summary of the objectives, output specifications and key deliverables of the PPP project; • significant features of PPP agreement (summary of payment schedule, important Contracting Authority obligations and risks); • table of milestones.
Contract Management Team
<p>This section describes the composition and organization of the Contract Management Team.</p> <ul style="list-style-type: none"> • Composition of Contract Management Team (names, functions and contact data). • Description of internal organization of Contract Management Team (reporting obligations, meeting frequency, etc.). • Assessment on current and anticipated manpower requirements to ensure that Contracting Authority is capable of satisfactorily performing its obligations and responsibilities under the PPP agreement.
Contract management in the pre-construction phase
<p>This section describes the contract management activities in the pre-construction phase. It is divided into three subsections.</p> <p>Contract Authority obligations</p> <p>This subsection describes the obligations of the Contracting Authority in the pre-construction phase. These include:</p> <ul style="list-style-type: none"> • handover of the project site and access to the project site within the committed schedule; • appointment of the Independent Expert (if applicable); • issue of approvals, authorisation and permits that are explicitly the responsibility of the Contracting Authority; • arrangements of the connecting/ feeder infrastructure facilities (if applicable); • issuance of Notice to Proceed. <p>The description explains who is responsible, procedures that must be followed and the time schedule.</p> <p>Monitoring compliance by the Private Party</p> <p>This subsection describes the monitoring of the obligations of the Private Party in the pre- construction phase by the Contracting Authority (with the assistance of the Independent Expert). These include</p> <ul style="list-style-type: none"> • review of Detailed Engineering Design (and other related plans);

- monitoring of approvals and permits (other than those which are explicitly the responsibility of the Contracting Authority);
- monitoring of the arrangement of the inputs (electricity connection, construction water supply);
- monitoring of the arrangement of the financial resources needed for the project and finalization of the financing contracts (financial close);
- verifying project insurance;
- verifying the submission of the performance/ security bonds and guarantees as required under the PPP agreement;
- verifying the opening of the project bank accounts and escrow arrangements.

The description explains the reporting procedures, who is responsible for the assessment of the compliance and the time schedule.

Risk management

This subsection describes the monitoring and management of project risks in the pre-construction phase. Typical risks are:

- delays and/or extra costs to acquire the right-of-way;
- delays and/or extra costs to obtain approvals and permits required for the project;
- inability of Private Party to arrange the financing of the project on the terms expected in his bid;
- risk that the design developed by the Private Party does not meet the requirement of the Contracting Authorities, leading to redesign of the project and consequent delays and costs;
- risk that essential inputs are not available.

The description covers the risk event, the current estimate of the probability of the risk, the consequences if the risk materializes, preventive/mitigating actions, the party responsible for those actions and the procedure for monitoring the risk. The description covers both Contracting Authority and Private Party risks, since the latter almost always also affect the Contracting Authority (for instance through delays or the early termination of the PPP agreement).

Contract management in the construction phase

This section describes the contract management activities in the construction phase. It is divided into three subsections.

Contract Authority obligations

This subsection describes the obligations of the Contracting Authority in the construction phase. These include:

- payment of contractual milestones (if applicable);
- issuance of certificate of completion.

The description explains who is responsible, procedures that must be followed and the time schedule.

Monitoring compliance by the Private Party

This subsection describes the monitoring of the obligations of the Private Party in the construction phase by the Contracting Authority (with the assistance of the Independent Expert). These include:

- review of construction progress;
- review of adherence to budget;
- review of adherence to approved design;
- review of adherence to output specifications.

The description explains the reporting and testing procedures, who is responsible for the assessment of the compliance and the time schedule.

Risk management

This subsection describes the monitoring and management of project risks in the construction phase. Typical risks are:

- risk that the approved design of the project turns out to be flawed;

- construction delays and cost overruns;
- delays caused by public opposition or legal procedures;
- unexpected site conditions.

The description covers the risk event, the current estimate of the probability of the risk, the consequences if the risk materializes, preventive/mitigating actions, the party responsible for those actions and the procedure for monitoring the risk. The description covers both Contracting Authority and Private Party risks, since the latter almost always also affect the Contracting Authority (for instance through delays or the early termination of the PPP agreement).

Contract management in the operations phase

This section describes the contract management activities in the operations phase. It is divided into three subsections.

Contract Authority obligations

This subsection describes the obligations of the Contracting Authority in the operations phase. These include:

- performance monitoring;
- approval and payment of availability or service fees (if applicable);
- approval of adjustment of user fees (if applicable)
- fulfilment of Contracting Authority non-financial obligations in operational phase (for instance adherence to obligation not to build competing facilities, or providing specific services to the Private Party
- reporting to PPP Committee and MFPED.

The description explains who is responsible, procedures that must be followed and the time schedule.

More guidance on contract management in the operations phase is presented in section 7.6 below.

Monitoring compliance by the Private Party

This subsection describes the monitoring of the obligations of the Private Party in the operations phase by the Contracting Authority (with the assistance of the Independent Expert). These include:

- conduct quality assurance reviews;
- review performance reports submitted by Private Party;
- conduct regular review meetings with Private Party;
- monitoring of users' grievances;
- monitoring of project financials;
- monitoring of service levels;
- monitoring of planned maintenance and replacement activities.

The description explains the reporting and testing procedures, who is responsible for the assessment of the compliance and the time schedule.

Risk management

This subsection describes the monitoring and management of project risks in the operations phase. Typical risks are:

- risk that the actual demand and revenues of the project facilities/services are higher or lower than expected;
- risk that the project may not be able to deliver the expected performance;
- operating cost overruns;
- risk that permits cannot be renewed, or only on additional onerous terms;
- risk that the regulator does not approve tariff adjustments;
- risk that the Private Party is unable to find financial resources needed for renewal investments.

The description covers the risk event, the current estimate of the probability of the risk, the consequences if the risk materializes, preventive/mitigating actions, the party responsible for those actions and the

procedure for monitoring the risk. The description covers both Contracting Authority and Private Party risks, since the latter almost always also affect the Contracting Authority (for instance through delays or the early termination of the PPP agreement).

Contract management in the handback phase

This section describes the contract management activities in the handback phase. It is divided into three subsections.

Contract Authority obligations

This subsection describes the obligations of the Contracting Authority in the handback phase. These include:

- approval and payment of residual value of assets (if applicable);
- taking over the possession of the project assets;
- preparing the transition to a new operator (either the Contracting Authority itself or a newly appointed private contractor) without disruption in service provision and the user's rights are protected while the handover is under process;
- issuance of the handover certificate.

The description explains who is responsible, procedures that must be followed and the time schedule.

Monitoring compliance by the Private Party

This subsection describes the monitoring of the obligations of the Private Party in the handback phase by the Contracting Authority (with the assistance of the Independent Expert). These include:

- review of the condition of the project assets before handback;
- monitoring of repair and maintenance activities that are required to bring the assets up to the required standards;
- monitoring of handback obligation of the Private Party (transfer of project documentation, training of staff of future operator, etc.).

The description explains the reporting and testing procedures, who is responsible for the assessment of the compliance and the time schedule.

Risk management

This subsection describes the monitoring and management of project risks in the handback phase. Typical risks are:

- the project assets do not meet the prescribed conditions upon the expiry of the PPP agreement;
- the costs required to bring the assets up to the required standards are much higher than expected by the Private Party;
- the service to the users is disrupted during the handover;
- delays in the appointment of the new operator.

The description covers the risk event, the current estimate of the probability of the risk, the consequences if the risk materializes, preventive/mitigating actions, the party responsible for those actions and the procedure for monitoring the risk. The description covers both Contracting Authority and Private Party risks, since the latter almost always also affect the Contracting Authority (for instance through delays or the early termination of the PPP agreement).

More guidance on the handback is provided in section 7.8 below.

Non-routine contract management

This section describes the procedures for the handling of special events in the Implementation Stage of the project. Such special events are:

- requests for compensations for risks (partially) borne by the Contracting Authority (change of law, force majeure, ...), or for failure of the Contracting Authority to full its obligations under the PPP agreement (for instance obtaining the right-of-way for the project);
- requests by Contracting Authority or by the Private Party to change the scope of the project; and

- early termination of the PPP agreement;
- dispute resolution.

These procedures are generally described in detail in the PPP agreement. The relevant clauses of the PPP agreement can be copied directly to the Contract Management Plan and supplemented with additional details on the internal review procedures and responsibilities within the Contract Management Team.

More guidance on non-routine Project Management is provided in section 7.7 below.

Communications and stakeholder management plan

This section describes the actions that the Contracting Authority will take to communicate about the project to stakeholders, and to address the concerns and expectations of the stakeholders regarding the implementation of the project.

- 7.3.4. The Transaction Advisor prepares a draft Contract Management Plan as part of the final deliverables of his assignment. The contract management team updates the Contract Management Plan at the start of the Implementation Stage with input from the Private Party (especially on performance management and risk management).

7.4 Appointment of Independent Expert

- 7.4.1. The Independent Expert assists the Contracting Authority and the Private Party with contract management tasks. The functions of the Independent Expert are described in paragraph 2.2.40 above.
- 7.4.2. The draft terms of reference of the Independent Expert are prepared by the Transaction Advisor as part of the PPP agreement. After commercial close the Contracting Authority finalises the terms of reference of the Independent Expert in consultation with the Private Party and the Transaction Advisor supports the Contracting Authority in procuring the Independent Expert.
- 7.4.3. The selection and appointment of the Independent Expert is carried out in accordance with the provisions applying to the procurement of services in the Procurement and Disposal of Public Assets Act. However, the costs of the Independent Expert are shared equally between the Contracting Authority and the Private Party. This cost sharing arrangement is defined in the PPP agreement.
- 7.4.4. The Independent Expert must be appointed a number of weeks before the start of the construction stage. Sufficient time must be allowed for the Independent Expert to review and approve the detailed engineering design before the start of construction.
- 7.4.5. The first mandate of the Independent Expert covers the design and construction period. The mandate is then rebid for consecutive periods of 3-5 years during the operational phase of the project.

7.5 Preparation of Performance Monitoring Plan

- 7.5.1. The main instrument for contract management is the Performance Monitoring Plan.
- 7.5.2. The Performance Monitoring Plan is closely integrated with the PPP agreement. The PPP agreement specifies the project outputs that the Private Party must deliver and the performance standards that he must meet. It also specifies the payments that the Private Party can claim in function of

performance, and that are paid either by the Contracting Authority or by the user of the project services. In case of sub-standard performance, the PPP agreement may also impose penalties or payment reductions. The Performance Monitoring Plan must enable the Contracting Authority to measure the performance of the Private Party and to determine and verify the payments that are due by the different parties under the PPP agreement.

7.5.3. This implies that the key components of the Performance Monitoring Plan are:

- (a) a **set of performance criteria**, directly linked to the output specifications and the payment mechanism in the PPP agreement;
- (b) a **performance monitoring and reporting system** enabling the contract authority to measure and assess the performance.

7.5.4. The performance indicators depend on the type of project and on the sector.

(a) In general, the performance indicators in the construction period cover:

- progress of construction compared to initial planning;
- expenditures compared to initial budget;
- non-compliances with approved detailed engineering design;
- non-compliance with regulations (for instance workplace safety, environmental requirements);
- disruption of existing users (in case the works are adjacent to existing facilities)

(b) The performance indicators during operations cover:

- project outputs:
 - volume of use of the facility (e.g. traffic in passenger car units for a highway project);
 - revenues (e.g. tolls collected, across categories of uses for a highway project).
- quality of services;
 - availability of facilities (e.g. number of available lane-days during a year for highway projects);
 - number of service disruptions (e.g. number of disruption lane-days during a year for highway projects);
 - number of user complaints;
 - percentage of consumer complaints timely resolved.

7.5.5. The **performance monitoring and reporting system** consists of three pillars:

- self-reporting by the Private Party in periodical reports;
- system for the registration of performance shortcomings reported by users and/or the Contracting Authority (the registration system being run by the Private Party);
- random inspections by the Contracting Authority or the Independent Expert to check the truthfulness and the completeness of the self-reporting and the complaints register.

- 7.5.6. The establishment of the Performance Monitoring Plan consist of the following steps.
- (a) The key requirements of the Performance Monitoring Plan are defined in the draft PPP agreement. The provisions of the PPP agreement regarding the monitoring and evaluation framework can be discussed in the one-on-one/dialogue meetings between the Contracting Authority and the bidders, possibly resulting in the issue of revised bidding documents with refined provisions on performance monitoring.
 - (b) The bidders must enclose a draft Performance Monitoring Plan with their bid, which must respond to the requirements in the draft PPP agreement.
 - (c) After commercial close the Private Party submits a final Performance Monitoring Plan. The Performance Monitoring Plans for the construction and operational periods must be submitted before the start of the respective periods.
 - (d) The Performance Monitoring Plan is reviewed by the Independent Expert. The Independent Expert checks that the Performance Monitoring Plan is adequate for measuring the output and performance specifications in the PPP agreement.

7.6 Routine contract management

- 7.6.1. Routine contract management refers to periodically recurring contract management tasks that are performed throughout the Implementation Stage. They comprise:
- performance monitoring and follow-up;
 - periodic reporting and auditing;
 - budgeting and fiscal risk management.

Performance monitoring and follow-up

- 7.6.2. Performance monitoring is regulated by subsection 27(1) of the *PPP Act*. The Contract Management Team:
- (a) receives and reviews periodical performance reports submitted by the Private Party;
 - (b) conducts scheduled and random inspections;
 - (c) checks whether the performance complies with the terms of the PPP agreement;
 - (d) checks whether user tariffs, if any, comply with relevant sector regulations and the terms of the PPP agreement;
 - (e) applies the contractually determined penalties if defaults are observed.
- 7.6.3. The PPP agreement defines scheduled performance reviews at key stages of the project implementation. These review points correspond to milestones in the project lifecycle, or to trigger points for major risks. Key review points are:
- at the start of construction;
 - construction milestones;
 - completion of construction;

- first full year of operations;
- major maintenance points.

7.6.4. An important contract management instrument to ensure service delivery and minimise disputes the holding of regular meetings between the contract management team and the management staff of the Private Party. The objective of these meetings is to discuss the operations of the project facilities and the plans in the short and medium term. An item on the agenda is for the parties to share any potential conflict issues and potential disagreements/ difference that may arise in the future. The contract management team must create an open culture that facilitates open dialogue between the two parties so that problems can be managed proactively.

Reporting and auditing

7.6.5. **Performance reporting** is regulated by subsection 27(2) of the *PPP Act*.

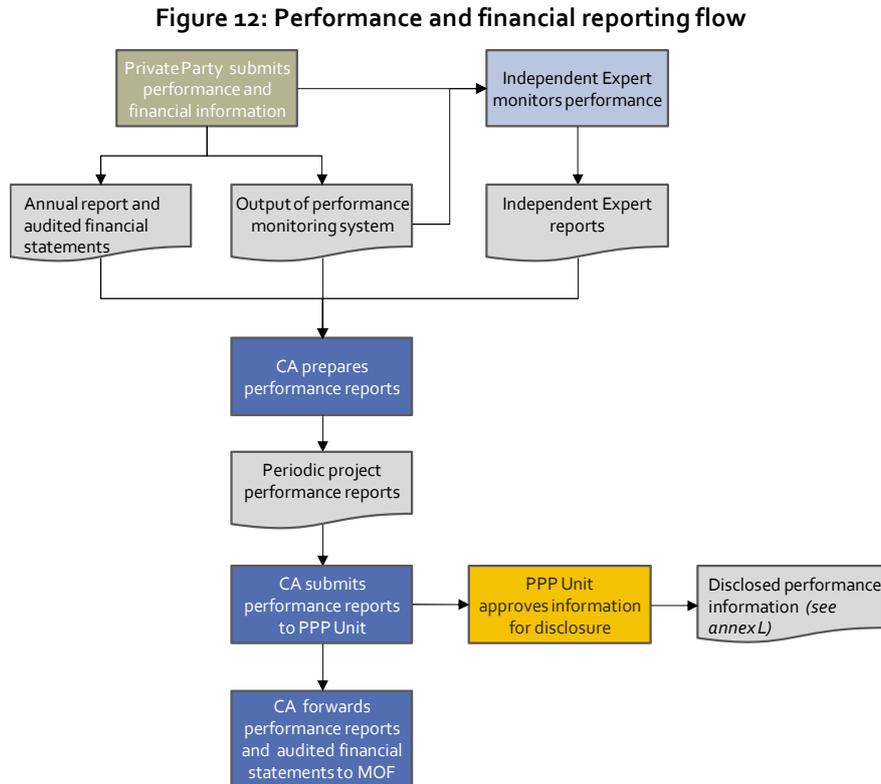
- The Contract Management Team prepares periodic project performance reports.
 - In the construction phase the performance report gives an overview of the construction process compared to the initial planning. The periodicity is weekly to monthly in function of the complexity and value of the project.
 - In the operational phase the performance report presents statistics of the performance indicators and any penalties that were applied. The periodicity is monthly to quarterly in function of the value and socioeconomic importance of the project
- The reports are based on the data provided by the performance monitoring system.
- The reports must be submitted to the MOF and the PPP Unit.

7.6.6. The focus of reporting must be on exceptions and deviations (“exception reporting”), such as deviations from the PPP agreement, projected service levels and volumes, projected expenses and revenues, expected social and environment impacts, ... etc. These may lead to problems or disputes in the future, or to financial distress for the contract parties.

7.6.7. **Financial reporting** is regulated by section 28 of the *PPP Act*.

- The Private Party must keep separate accounts for the project, that must be made available to the Contracting Authority for inspection.
- The SPC must prepare an annual report and audited financial statements every year, within two months of the end of the financial year, in accordance with Uganda accounting standards and any other rules issued by the Accountant General pursuant to subsection 28(3) of the *PPP Act*.
- The SPC submits the annual report and audited financial statements to the Contracting Authority in at least three copies. One copy is forwarded to the Minister responsible for finance within six months of the end of the financial year, and one copy is forwarded the PPP Unit.

7.6.8. The next figure presents an overview of the performance and financial reporting flow.



7.6.9. The **audit** of PPP projects is regulated by section 30 of the *PPP Act*.

- (a) The Auditor General or an auditor appointed by him conducts an annual audit of all PPP projects according to the National Audit Act.
- (b) The Auditor reports to Parliament within 9 months of the end of the audit.

Budgeting and fiscal risk management

7.6.10. The procedures and analytical tools for budgeting and fiscal risk and contingent liabilities management are described in detail in Annex J1 of the *Guidelines*. Below the key steps are highlighted.

7.6.11. The Contracting Authority must include in its annual **budget** request:

- the direct fiscal commitments related to the PPP project; as well as a
- a reserve for the contingent liabilities that are likely to occur in the next fiscal year.

7.6.12. For the purpose of the **monitoring** of fiscal commitments and liabilities the Contracting Authority must collect and submit to the MOF information on fiscal commitments and risk in accordance with Table 4 in Annex J1.

7.6.13. MFPEd combines the information obtained from Contracting Authorities in a centralised register of fiscal commitments of PPP transactions at national or local government level.

- 7.6.14. The Directorate of Debt & Cash Policy of MFPED **reports** information on all fiscal commitments and contingent liabilities. The reporting formats are described in Table 5 of Annex J1.

7.7 Non-routine contract management

- 7.7.1. Non-routine contract management refers to the handling of special events in the Implementation Stage of the project. Such special events are:
- requests for compensations for risks (partially) borne by the Contracting Authority (change of law, force majeure, ...), or for failure of the Contracting Authority to full its obligations under the PPP agreement (for instance obtaining the right-of-way for the project);
 - requests by Contracting Authority or by the Private Party to change the scope of the project; and
 - early termination of the PPP agreement;
 - dispute resolution.

Compensation requests

- 7.7.2. The procedure for handling compensation requests is specified in the PPP agreement. In general, the procedure is as follows.
- (a) If an event occurs that entitles the Private Party to receive a compensation, the latter submits a compensation request to the contract management team/unit. The request must contain all information that is needed for its assessment by the contract management team/unit, i.e.
 - description of the event;
 - reference to the relevant section of the PPP agreement;
 - evidence that the conditions for compensation are met;
 - calculation of the compensation amount, backed up by documentary evidence.
 - (b) The request is assessed by the Independent Expert, within the time defined in the PPP agreement.
 - (c) The Independent Expert presents its conclusions to the parties.
 - (d) If the parties agree with the conclusions of the Independent Expert, then the Accounting Officer undertakes the required steps to settle the compensation claim in accordance with budget rules.
 - (e) If, on the other hand, one of the parties does not agree with the conclusions of the Independent Expert, it initiates a dispute settlement procedure.

Requests to change the scope of the project

- 7.7.3. Either party can request to change the scope and output specifications of the project (or to amend other parts of the PPP agreement). The procedure for such requests is specified in the PPP agreement. In general, the procedure is as follows.

- (a) The Contracting Authority or the Private Party submit a request to change the project or amend the PPP agreement.
- (b) If the request is submitted by the Private Party it must be joined by a proposal specifying the time and costs to implement the change, and the impact on the remuneration of the Private Party. If the request is submitted by the Contracting Authority, it is joined by a demand to the Private Party to submit a proposal specifying the time and costs to implement the change, and the impact on the remuneration of the Private Party.
- (c) The Independent Expert reviews the change proposal.
- (d) If the parties agree with the conclusions of the Independent Expert, then the Accounting Officer undertakes the required steps to obtain approval for the change from the Cabinet (see below) and secure the budget (if there is a budget impact).
- (e) If, on the other hand, one of the parties does not agree with the conclusions of the Independent Expert, the change proposal is dropped, or the disagreeing party initiates a dispute resolution procedure.

7.7.4. Changes or amendments to the PPP agreement and its annexes require approval from the Cabinet, pursuant to subsection 26(8) of the *PPP Act*.

- (a) For this purpose, the Accounting Officer submits the change proposal to the Cabinet. The proposal must be joined by a report and any supporting data demonstrating that the criteria in subsection 26(g) of the *PPP Act* are met, i.e. that project continues to:
 - provide value-for-money;
 - be affordable (in case the change has financial implications);
 - accomplish an appropriate risk transfer to the private sector;
 - provide efficient and effective services
 - ensure the protection and preservation of the environment
- (b) The Cabinet assesses the change proposal. It can request the assistance of the PPP Unit to verify whether the above conditions are satisfied.
- (c) The Cabinet decides whether or not to approve the proposed change of the PPP project and PPP agreement. The Cabinet can only issue an approval if the changes of the project and PPP agreement satisfy the five conditions in paragraph (a).

Early termination of the PPP agreement

7.7.5. There are four grounds for early termination of the PPP agreement:

- contractor default (upon the demand of the Contracting Authority);
- voluntary termination by the Contracting Authority;
- Contracting Authority default (upon the demand of the Private Party);
- prolonged force majeure (upon the demand of either party).

- 7.7.6. The conditions under which these grounds can be invoked, and the procedure to be followed are defined in the PPP agreement. In general, the procedure is as follows.¹³
- (a) The Contracting Authority or the Private Party announce their intention to end the PPP agreement prematurely and state the reasons thereof.
 - (b) The Independent Expert verifies the grounds for early termination.
 - (c) A remediation period starts, during which the party at fault can submit a remediation plan. In the case of a contractor default, the lenders often have step-in rights under which they can replace the defaulting contractor by an acceptable substitute, so that the early termination can be avoided.
 - (d) If no solution is found during the remedial period, the PPP agreement is terminated within a period defined in the PPP agreement. The Contracting Authority and the Private Party prepare the handback of the assets (see section 7.8 below about the handback procedure).
 - (e) The Independent Expert determines the termination payment that is due under the PPP agreement.
 - (f) The Accounting Officer undertakes the required steps to secure the budget for any termination payment owed by the Contracting Authority to the Private Party.

Dispute resolution

- 7.7.7. Disputes originate from any disagreement between the parties on the application and interpretation of the PPP agreement. The procedure for resolving disputes between the parties is defined in the PPP agreement. In general, the procedure is as follows.
- (a) Disputes are submitted in first instance to the Independent Expert.
 - (b) If the Independent Expert cannot resolve the dispute, or if the dispute arises from disagreement in the findings of the Independent Expert, the matter is escalated to the Accounting Officer and the head of the SPC.
 - (c) If no solution can be found at this level, the dispute is submitted for resolution to an arbitration panel defined in the PPP agreement or to litigation through the courts.

7.8 Termination of PPP agreement and handback of assets

- 7.8.1. A defined period before the end date of the PPP agreement (generally three to five years) the Independent Expert conducts an inspection of the state of the project assets. The Independent Expert determines the maintenance and repair works that must be undertaken in order to restore the assets to good condition (as defined by the PPP agreement) before the end date of the PPP agreement.
- 7.8.2. If the expected cost of the maintenance and repair works exceeds the normal maintenance expenses, the Private Party is asked to post a handback performance security. The amount of the security is

¹³ Depending on the ground of early termination, some of the steps may not be applicable.

equal to the difference between the normal maintenance costs and the expected costs of restoring the project assets in good condition.

- 7.8.3. The Independent Expert conducts several follow-up inspections to verify that the required maintenance and report works to restore the assets in good condition are effectively carried out.
- 7.8.4. If the Private Party fails to carry out the required maintenance and repair works, the handback security is partially or wholly forfeited. The Contracting Authority can use the proceeds from the security to hire another contractor to undertake the required maintenance and repair works.
- 7.8.5. Also, well before the end date of the PPP agreement, the Contracting Authority decides on how the project services will be provided after the termination of the PPP agreement. Possible options are:
 - the Contracting Authority maintains and operates the project assets itself;
 - the Contracting Authority concludes a new long-term PPP agreement to renovate or expand the project assets and maintain and operate them thereafter; or
 - the Contracting Authority concludes short-term service agreements for the maintenance and/or operation of the project assets.

This decision must be taken sufficiently before the end date of the PPP agreement so that there is enough time to prepare and conduct the procurement procedures for the appointment of new contractors.

- 7.8.6. Several months before the end date of the PPP agreement the Private Party provides training to the staff of the Contracting Authority or the replacement contractors, so that they can take over the maintenance and operation of the project assets.
- 7.8.7. On the end date of the PPP agreement, all rights and responsibilities with respect to the project assets are handed back to the Contracting Authority. This includes any technical documentation, drawings and software packages or licenses.

7.9 Disclosure

- 7.9.1. For the purpose of disclosure, the Contracting Authority provides summary information on the project according to the template in Annex L – Disclosure framework. The information is made available with a link on the website of the PPP Unit.

8. Unsolicited Proposals

8.1 Introduction to unsolicited proposals

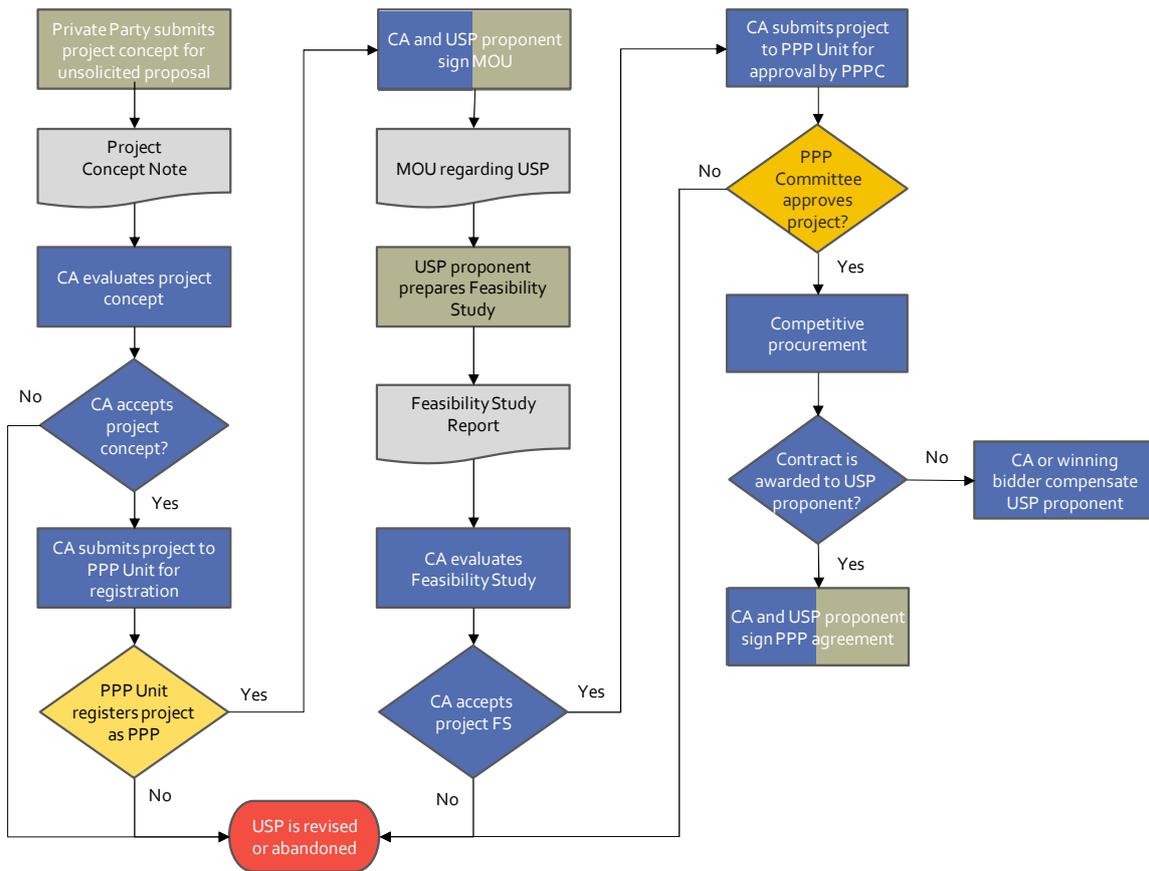
Purpose of guidelines for unsolicited proposals

- 8.1.1. An unsolicited proposal (USP) is a proposal for a public infrastructure or service developed by a Private Party and submitted to the government without explicit request from the latter. A USP deviates from the regular planning and procurement process where the government defines its public infrastructure and service needs, and subsequently launches a procurement procedure to invite interested private bidders to submit a proposal for the realisation of project.
- 8.1.2. USPs have several advantages for the government.
- They create opportunities for the private sector develop innovative ways to meet the needs for public infrastructure and services, which the government would not have identified by itself.
 - Because the proponents of USPs carry out the Feasibility Study, the project preparation and development resources of the government are saved.
 - The interest of the proponent in the project is a signal of its feasibility, so that the probability of a successful implementation is increased.
- 8.1.3. However, USPs also have potential drawbacks. Through USPs the private sector influences the infrastructure priorities of the government and may skew these priorities to particular private interests. Furthermore, because a USP originates from a single Private Party and the project idea is owned by that party, there is a risk of monopolistic pricing.
- 8.1.4. In order to foster the advantages and limit the drawbacks of USPs they are subject to stringent conditions in the *PPP Act*. Section 34 of the *PPP Act* defines the procedure and the conditions of the submission, acceptance and development of USPs. The provisions of the *PPP Act* are implemented in the procedure described in this chapter of the *Guidelines*.

Overview of the USP process

- 8.1.5. The next flow chart presents an overview of the steps in the acceptance and development of USPs. The steps are described in detail in the remainder of this chapter.
- 8.1.6. This chapter focuses on the distinctive aspects of USPs compared to solicited proposals. In fact, a large part of the process for the development and procurement of USPs is identical to that for regular PPP projects (i.e. based on solicited proposals). Where this is the case, references will be made to the earlier chapters and sections of these *Guidelines*.

Figure 13: Unsolicited Proposal process



8.2 Inception Stage

8.2.1. While in the solicited proposal procedure the PPP project is identified by the Contracting Authority, in the case of USPs this is done by the private proponent of the USP. The proponent does so by submitting a Project Concept Note to the Contracting Authority.¹⁴

- (a) The Project Concept Note submitted by the USP proponent has the same contents requirements as the concept note of regular PPP projects. These contents requirements are defined in Annex B of the *Guidelines*.
- (b) In addition, the Project Concept Note must comprise the following items that are specifically for USPs.
 - justification why the USP merits a special treatment outside the regular, competitive bidding process;
 - demonstration that the USP involves an innovative design, an innovative approach to project development and management, or a new and cost-effective method of service delivery; and

¹⁴ The contents requirements of the Project Concept Note defined below ensure that the provisions of *PPP Act*, subsection 34(3) are complied with, and that the Contracting Authority has enough information to assess the USP acceptance conditions in *PPP Act*, subsection 34(4).

- a description of the technical and financial capabilities of the proponent that demonstrates that the proponent has the capacity to implement the project.
- 8.2.2. The Contracting Authority assesses the Project Concept Note and the financial and technical capabilities of the USP proponent. The Accounting Officer can accept the USP concept if it meets the following conditions:¹⁵
- (a) the Project Concept Note is complete;
 - (b) the project concept has been independently developed, without the support or supervision of the Contracting Authority (subsection 34(2) of the *PPP Act*);
 - (c) the project satisfied the objectives of the National Development Plan (subsection 34(4)(a)(i) of the *PPP Act*);
 - (d) the project involves an innovative design, an innovative approach to project development and management, or a new and cost-effective method of service delivery (subsections 34(4)(b) to (c) of the *PPP Act*); and
 - (e) the proponent has convincingly demonstrated that it has the financial and technical capability to implement the project.
- 8.2.3. If several private parties submit a USP for the same or very similar projects, these proposals are examined in the order of receipt of a complete concept note as defined above. If the Contracting Authority accepts the USP of a particular proponent, the other proposals for the same project are not examined.
- 8.2.4. Upon acceptance of a USP concept, the Contracting Authority submits the project to the PPP Unit for registration. The review and registration procedure described in paragraphs 3.2.11 to 3.2.17 is followed, like for regular PPP projects.
- 8.2.5. Upon the registration of the USP as a PPP, the Contracting Authority signs a MOU with the proponent of the USP. This MOU:
- (a) recognises the Private Party as the original proponent of the USP;
 - (b) instructs the private proponent to conduct the Feasibility Study in line with section 22 of the *PPP Act* and these Guidelines;
 - (c) commits the Contracting Authority to procure the project if it is approved by the PPP Committee;
 - (d) confirms the right of the Contracting Authority to determine the contents of the bidding documents; including the bid variables and the performance standards for the competitive bidding process in accordance with the *PPP Act*;
 - (e) grants the ownership rights of the Feasibility Study to the Contracting Authority;

¹⁵ In accordance with *PPP Act*, subsections 34(2) and 34(4) on the conditions for the acceptance of a USP.

- (f) determines the compensation that the proponent is entitled to if the Contracting Authority decides not to procure the project, although approved by the PPP Committee, or if, as an outcome of a competitive procurement procedure, the project has been awarded to another bidder.
- 8.2.6. The Contracting Authority and the private proponent must agree on the choice between the following compensation mechanisms.
- (a) The proponent of the USP has a right-to-match if the price handicap compared to the winning bidder is less than 10%.
 - (b) The proponent of the USP receives a bonus of 5% of the points in the evaluation of the bids.
 - (c) The proponent of the USP is automatically included in the bidding stage (automatic pre-qualification).
- 8.2.7. The Accounting Officer appoints a Project Officer and a Project Team to follow up on the development of the USP by the private proponent (in accordance with paragraphs 3.2.8 to 3.2.9 of these *Guidelines*).

8.3 Feasibility Study Stage

- 8.3.1. The private proponent of the USP carries out the Feasibility Study in accordance with the Feasibility Study requirements for regular PPP projects (in Annex F of the *Guidelines*) and submits the Feasibility Study Report (including draft or heads of terms of the PPP agreement and procurement plan) to the Contracting Authority.¹⁶
- 8.3.2. If the Contracting Authority does not have the required expertise to assess the USP, it appoints one or more external expert to assist with the evaluation. The PPP Unit may also assist the Contracting Authority in the assessment of the PPP aspects of the USP.
- 8.3.3. The PPP Unit, the PPP Committee and MFPED assess the Feasibility Study report of the USP in the same manner as with regular PPP projects (see paragraphs 4.2.18 to 4.2.33 of the *Guidelines*).¹⁷

8.4 Procurement and Contracting Stages

- 8.4.1. Pursuant to subsection 34(6) of the *PPP Act*, the USP must be procured by the open bidding method.
- 8.4.2. The Contracting Authority appoints a Transaction Advisor to assist it with the preparation of the bidding documents and the procurement process.
- 8.4.3. The bidding documents specify the compensation for proprietary interests that the proponent is entitled to if, as an outcome of a competitive procurement procedure, the project is awarded to another bidder. The compensation mechanism agreed in the MOU between Contracting Authority and USP proponent is incorporated in the RFB.

¹⁶ *PPP Act*, subsection 34(4)(a)(ii) prescribes that the Feasibility Study of USPs must meet the same requirements as for regular PPP projects.

¹⁷ This also ensures that all evaluation criteria in subsection 34(5) of the *PPP Act* are assessed.

- 8.4.4. The procurement and contracting process is conducted as for regular PPP projects (see chapters 5 and 6 of these *Guidelines*).

8.5 Implementation Stage

- 8.5.1. The Implementation Stage is identical is in the case of regular PPP projects (see chapter 7 of these *Guidelines*).

8.6 Disclosure

- 8.6.1. The disclosure requirements are the same as with regular PPP projects (see sections 3.3, 4.3, 5.8 and 7.9).