NATIONAL
PUBLIC PRIVATE PARTNERSHIP POLICY

Prepared by:

PUBLIC PRIVATE PARTNERSHIP TASK FORCE

PREAMBLE

The provision of public infrastructure and government services to its citizens is one of the prime mandates of governments all over the world. Infrastructure -- roads, electric power, telecommunications, water and sanitation, sea and airports -- is a fundamental prerequisite for economic growth and development. In addition, social and community infrastructure including education and health facilities, public housing and buildings, cultural facilities and environmental infrastructure are essential in modern societies. All across the world in advanced economies and developing countries studies have consistently shown the close relationship between infrastructure and economic output. Despite Papua New Guinea's relatively strong economic growth in recent years, its infrastructure -- in qualitative and quantitative terms – is quite poor and services are lacking. Investment has not been adequate to provide a sound basis for Papua New Guinea's development. Therefore infrastructure investment needs to rise to create the growth and opportunities required to lift the incomes and lifestyles of the majority of the people.

There are different ways in which the Government can ensure that necessary public infrastructure and government services can be provided:

- **Direct provision of infrastructure and services** – Under this approach, governments assume the financing and delivery risk entirely on the balance sheet of their Treasuries and generally use the capacity of their public service to manage the delivery of such projects.

- **Privatisation and outsourcing** –Under this approach governments transfer the financing and delivery risk solely to the private sector under "privatization" programs whereby capital-intensive infrastructure projects such as highways, power generation etc are awarded to the private sector on a long term concession basis.

- **Competition** – Under this approach, infrastructure services which may have been delivered exclusively by a public service provider become available for private provision. This is often found for example in telecommunications and power sectors, where licenses are issued to private companies which can then compete against each other as well as against public service providers. As appropriate it may also apply to new infrastructure across all sectors.

- **Public Private Partnerships (PPPs)** –Under this approach, governments ensure value for money and share the risks with the private sector in a partnership approach. Risk is transferred to the partner that is best able to manage that risk – generally the private sector bears the financing, delivery and completion risks while the governments bear risks associated with service delivery, land acquisition and meeting minimum revenues to ensure the projects remain financially viable.

In Papua New Guinea, the first two of these options have been the major approaches used by the Government. Tax credits schemes are also used in isolated locations and some PPP elements have been featured in contracts awarded by the Government. All public investment in infrastructure and services are required to comply with the

Government's medium and longer term strategies – the Medium Term Development Strategy (MTDS), Medium Term Debt Strategy (MTdS) and the Medium Term Fiscal Strategy (MTFS). These strategies provide a stable, responsible and prudent basis for the Government to manage its fiscal resources and make future investments in infrastructure and services.

Papua New Guinea has undertaken some significant reforms since the early 1990s. These include privatization of PNG Banking Corporation, Superannuation reform and the introduction of competition to the mobile telecommunications market. In the mobile telecommunications market, the entry of new private sector service providers has been on the basis of 10 year licenses and this competition has led to increased service coverage and lower prices.

In August 2002, the National Executive Council (NEC) endorsed a comprehensive review of the existing Privatization Policy. In 2003, it was envisioned that Public Private Partnerships (PPP) would become an important part of the Government's strategy for structural reform and improving service delivery.

In late 2007, the Government commenced work on this PPP Policy. A PPP Taskforce, led by the Department of National Planning & Monitoring and consisting of Department of Treasury, Department of Prime Minister & National Executive Council and Independent Public Business Corporation was formed in June 2008. The Taskforce was supported by the Asian Development Bank. The current policy was prepared by the Taskforce, a process which included extensive consultation with both the public sector and private sector, including civil society.

While PPPs are not a means of pursuing every potential program or project, they can hold some distinct advantages in the Government's provision of public infrastructure and services:

- PPPs can enable the Government to use the private sector's delivery and project completion expertise and capability for the benefit of the people;
- PPPs can help the Government better understand the whole of life cost of investments and enable a more rigorous project assessment;
- PPPs can enable the Government to share risk with the private sector and make payments conditional on the actual delivery of infrastructure and services.

However, the risks of entering into PPPs must be noted. These risks can be mitigated through the establishment of a formal PPP Framework and a specialist PPP Centre with appropriate skills and expertise.

The Government is mindful that PPPs are not a panacea for all public infrastructure investment needs. Indeed, PPPs should not be a substitute for full private or full public provision where these modalities provide better value for money. However, the Government recognizes that PPPs have been successfully applied in both developing and developed countries to deliver much-needed public infrastructure and government services. The Government is also acutely aware that it is incumbent on the Government to carefully design PPP delivery models that consistently deliver value for money for Papua New Guinea. Towards this aim, the PPP Policy proposes the development of PPP Laws for Papua New Guinea that govern the Government's partnerships with the private sector to help deliver both infrastructure and government services via PPP modalities.

The PPP Policy also proposes the establishment of a PPP Centre under the authority of the Minister for Treasury and empowered with capacity and knowledge to determine whether a PPP is the most appropriate procurement option available to the Government and, if this is determined to be the case, to assist Line Agencies to transact the project. The term Line Agencies referred to in this Policy covers all National, Provincial and District Government departments and entities that are charged with the mandate to deliver government services that can benefit from partnership with the private sector. The PPP Centre will report to the Government on the performance of parties against this PPP policy.

The Government is confident that using the PPP modality, the private sector in Papua New Guinea can offer a dynamic and efficient way to deliver and manage infrastructure, ensuring high standards of construction and maintenance. Through PPPs the Government intends to harness this dynamism to support Papua New Guinea's development objectives so that future generations can gain the benefits of modern services, improved living standards and reduced poverty.

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	DEFINITION OF PUBLIC PRIVATE PARTNERSHIPS	2
3.	SCOPE FOR APPLICATION OF THE POLICY	3
4.	OBJECTIVES OF THE PPP POLICY	4
5.	KEY PRINCIPLES OF THE PPP POLICY	4
6.	INSTITUTIONAL FRAMEWORK FOR GOVERNANCE AND ACCOUNTABILITY IN DELIVERY OF PPPs	5
7.	PPP PROJECT PROCESS	9
8.	STAGE 1 - DEVELOPMENT	9
9.	STAGE 2 - PROCUREMENT	12
10.	STAGE 3 - CONSTRUCTION AND OPERATION	15
11.	STAGE 4 - CONTRACT TERMINATION	15
12.	REVIEWING THE PPP PROCESS	15
13.	UNSOLICITED PROPOSALS	16
14.	ADDITIONAL WORKS	16

1. INTRODUCTION

1.1 The adoption of a PPP Framework reflects the Government's desire to improve the quality, cost-effectiveness and timely provision of infrastructure and services in Papua New Guinea.

1.2 This Policy is the first part of the PPP Framework and will form the basis for the development of the remaining components of the PPP Framework, which includes PPP law, institutional arrangements, legal/regulatory framework and implementing guidelines.

1.3 The PPP Framework should be viewed as a complement to and not a substitute for the Government's continued commitment to open up key service markets to competition. PPPs should only be considered where they can provide greater value for money than other fully-private or fully-public service delivery options.

1.4 This PPP Framework guides the PPP development process and is aimed at providing certainty to investors that the Government is committed to partnering with the private sector for the delivery of economic, social and environmental infrastructure projects.

1.5 The Policy applies international best practices within Papua New Guinea's operating environment.

1.6 The Policy is flexible enough to be applied to a broad range of sectors.

1.7 The Policy is designed by an inter-departmental PPP Taskforce and developed in close consultation with both public and private sector stakeholders. The Taskforce was headed by the Department of National Planning & Monitoring and consisted of senior officers from the Department of Treasury, the Department of Prime Minister & National Executive Council and the Independent Public Business Corporation (IPBC).

1.8 The Policy is firmly grounded in three main principles:

1.8.1 **Value for Money** on a whole-of-life cost basis;

1.8.2 **Competitive Tension** in selection of private partners and the pricing of goods and services;

1.8.3 **Transparency** in procurement and service delivery.

1.9 In all cases, the commitment of the Government to enter into PPP contracts with the private sector is required to comply with the Government's medium and longer term strategies – the Medium Term Development Strategy (MTDS), Medium Term Debt Strategy (MTdS) and the Medium Term Fiscal Strategy (MTFS), including consistency with the fiscal rules guiding public investment projects. It will include international best practice in probity of project awarding and delivery process.

1.10 The PPP Framework is also required to be fully consistent with the responsibilities for financial management and accountability as outlined in the Public Finances (Management) Act 1995 and the Fiscal Responsibility Act 2006. The National Budget will also continue as the central process for the ultimate prioritization of expenditure (including debt financing) by the Government.

1.11 The Policy shall provide guidelines to Line Agencies and State Owned Enterprises (SOE) in developing potential PPP projects.

1.12 It is also envisaged that the Department of National Planning & Monitoring will lead the development of a "National PPP Infrastructure Pipeline"[1], taking into consideration the economic and social development goals of Papua New Guinea.

1.13 Consistent with the Government's desire to gain strong buy-in from the private sector, the private sector directly and via its representative bodies, have been consulted during the development of this Policy and will be consulted during the development of the PPP Laws and Implementing Guidelines.

2 DEFINITION OF PUBLIC-PRIVATE PARTNERSHIPS

2.1 PPPs are a method to procure and deliver infrastructure and services through cooperation between a public institution and one or more private enterprises. PPPs are most frequently used for major infrastructure projects. The objective of PPP is mainly to enhance infrastructure and services delivery by utilizing private sector capital, management, innovation, technology and other resources.

2.2 PPPs involve the use of private sector capital to fund an asset which is used to deliver outcomes for the public sector. Under a PPP, the asset may not be ultimately owned by the public sector, however, PPPs involve a long term financial commitment by the public sector through payments to the private sector, to allow the private sector to recoup the cost of their investment.

2.3 The general features of PPPs include:

- The public sector and the private enterprise enter into a concession agreement or contract that is usually time-bound and sets out the principles for the partnership and the responsibilities and obligations of both parties;

- Provision of infrastructure services continues to be regulated by the public sector;

[1] It is envisaged that the Department of National Planning & Monitoring will develop a "National PPP Infrastructure Pipeline" in consultation with the key Line Agencies including the Departments of Works, Transport, Health, Education, the National Roads Authority, and the IPBC in tandem with the development of PPP laws and institutional arrangements.

- Often the core government services continue to be provided by the public sector;

- The Government is not obligated to make any payment either for capital works or services unless and until such works or services are completed to the pre-agreed standards and/or service targets stipulated in the concession agreement;

- There is substantial risk sharing or risk transfer from the public sector to the private sector;

- Generally the private sector assumes the completion and delivery risks while the public sector will assume approval and regulatory risks. The detailed risk allocation will be determined on a case by case basis through negotiation between the Government and private sector service providers.

3 SCOPE FOR APPLICATION OF THE POLICY

3.1 The PPP Policy shall apply to the provision of public infrastructure or services involving private participation in the form of investment or financing subject to such involvement of the private sector as premised on the above 3 PPP principles, namely Value for Money, Competitive Tension and Transparency.

3.2 The policy covers various PPP transactions models and contractual structures.

3.3 The form of private sector participation shall be determined on a case by case basis by the Line Agencies or the SOEs guided by the PPP Centre.

3.4 The PPP Policy shall only apply to projects with a total cost of PGK 50 million or more. The National Executive Council (NEC) may alter this minimum benchmark for PPP projects.

3.5 All projects of PGK 50 million or more must be submitted to the PPP Centre to test whether a PPP would be the most suitable modality. Exemptions from delivery of the project as a PPP must be approved by NEC on the recommendation of the Minister of Treasury.

3.6 The Government is cognizant that some State Owned Enterprises are currently exempted from the Public Finances (Management) Act 1995, which governs this PPP Policy and as such the applicability or otherwise of the PPP Policy on projects of over PGK 50 million transacted by these SOEs will be resolved during the development of the PPP Laws.

3.7 The PPP projects envisaged by this policy are those that will be regulated by contract. However, in sectors which are already regulated by independent or universal regulators such as the Independent Consumer and Competition Commission (ICCC), including telecommunications, water and power, the PPP agreements must also be in compliance with the ICCC regulations. All PPP transactions within sectors that are currently regulated by ICCC will need to comply with the terms of the individual concession agreements related to the project as well as any umbrella regulations set by ICCC related to the industry.

4 OBJECTIVES OF THE PPP POLICY

4.1 The Government seeks to partner with private sector entities under this Policy in order to achieve the following objectives:

4.1.1 To achieve the Government's current and future development plans and strategies, and to expand access to infrastructure and services to the people of Papua New Guinea.

4.1.2 To improve the efficiency and quality in the delivery of infrastructure and services by encouraging private sector competition that in turn fosters innovation (including technical and management expertise and technology).

4.1.3 To mobilize private sector investments in infrastructure projects and services and to gain from the private sector's higher capacity for project completion, on-time delivery and maintenance throughout the life of the project.

4.1.4 To achieve value for money for the Government on a whole-of-life cost basis through optimal risk transfer and risk management, subject to such costs being within the Government's fiscal and debt management strategies.

4.1.5 To create value added opportunities through synergies between the public and private sector.

4.1.6 To benefit from capacity development and skills transfer in the delivery of the project for the Line Agencies as well as the PPP Centre in transacting more complex transactions.

5 KEY PRINCIPLES OF THE PPP POLICY

In achieving the above objectives, the partnership with the private sector shall be governed by the following key principles:

5.1 Value for Money

5.1.1 The allocation of risk and the fiscal implications to the Government will be geared towards delivering the greatest net economic benefit to the country.

5.1.2 The benefits of private sector expertise, risk management, capital, flexibility and innovation will be maximized.

5.1.3 The partnership provides greater value for money for the Government on a whole-of-life cost basis than conventional public procurements or other procurement modalities (such as the preferred outcome of purely private sector provision).

5.1.4 In all cases, PPPs will be underpinned by the rigorous evaluation of a business case and be consistent with the Government's existing and future fiscal and debt management policies and guidelines.

5.2 Competitive Tension

5.2.1 Competitive tension will be created during selection and procurement of private partners through a competitive tendering process, using OBS - Output Based Specification[2] that will allow for performance measures to be linked to quality of services.

5.2.2 The tendering process for PPPs will adhere to the Government's applicable procurement policies and guidelines.

5.3 Transparency

5.3.1 Principles of transparency and accountability in the process and outcomes of PPP will be followed.

5.3.2 Private sector intellectual property and commercial confidentiality will be protected where appropriate.

5.3.3 Projects will go through formal approvals as part of the government process.

5.3.4 Public interests shall be protected through proper disclosure policies and public consultation.

5.3.5 Performance measures should be clearly established to ensure quality of services and project outcomes are transparent.

6 INSTITUTIONAL FRAMEWORK FOR GOVERNANCE AND ACCOUNTABILITY IN DELIVERY OF PPPs

A clear and unambiguous institutional arrangement is the key to successful Public Private Partnerships. Thorough project preparation is essential in making informed decisions that will in turn increase the likelihood of successful partnerships. Access to specialized technical skills is needed for developing and structuring successful PPP transactions. The Government will establish a "PPP Centre" that will have the capacity

[2] Output Based Specification (OBS) is a term frequently used in PPP projects. It refers to the public sector specifying what output it expects from the delivery of the agreed service. For example, in a hospital project the health department will specify the model of care for the hospital (i.e. what type of service and patients it will focus on such as intensive care, general hospital, paediatrics etc., the number of beds required initially and future projections). The private sector is then expected to develop its own design for the hospital to deliver the defined OBS to meet the model of care.

to support Line Agencies or State Owned Enterprises (SOEs) in developing robust PPP proposals.

The role of the PPP Centre is as follows:

6.1 The key role of the PPP Centre is to determine whether a PPP is the most appropriate procurement option available to the Government and, if this is determined to be the case, to assist Line Agencies to transact the project.

6.2 The PPP Centre will be the sole conduit to the Line Agencies and SOEs that seek the Government's fiscal support to bear direct and or contingent liabilities for their projects, where procured as PPPs.

6.3 In all cases, the Minister for Treasury will seek National Executive Council (NEC) approval when it is required for confirming Government's commitment to bear both direct and contingent fiscal obligations.

6.4 The PPP Centre will ensure consistency in the project preparation and the evaluation processes, and it should therefore be given sufficient mandate to act as gatekeeper in ensuring that every progression in the PPP process meets the 3 Principles of the PPP policy.

6.5 The PPP Centre will be staffed by a small but highly trained team of professionals who possess PPP project preparation and implementation skills and have resources to procure specialist services and access to the market.

6.6 The Department of National Planning & Monitoring, Department of Treasury, and Department of Prime Minister & National Executive Council and the Independent Public Business Corporation (IPBC) shall support the operation of the PPP Centre through a working interaction with the Centre as a sole interface for these Government agencies to conduct the PPP approvals within their existing purview.

6.7 Given the Minister for Treasury's responsibility for the PPP Framework and the wider financial framework, the PPP Centre is expected to be created as an entity under the portfolio of the Minister for Treasury. The appropriate institutional arrangements for setting up such a centre, including staffing, are to be determined during the next phase, based on careful assessment to empower the PPP Centre with sufficient resources including human capital to manage PPP Transactions. Towards this end, the PPP Policy supports the allocation of sufficient operating funds to enable the PPP Centre to recruit and retain high caliber staff. The PPP Policy also supports the engagement of private sector consultants to partner with the PPP Centre Staff during the setup and operating phase of the PPP Centre.

6.8 The PPP Centre will report to a Supervisory Committee, which will consist of current agencies involved in the PPP Taskforce, as well as representatives from the lead industry bodies, multilateral agencies, eminent persons with specialist skills in the PPP arena and probity advisors from the private sector.

6.9 The Supervisory Committee is a decision making body akin to a Board of Directors ensuring that the PPP Centre only enter into contracts that are considered in the best interest of the country and that the PPP Centre and the Project Committee has adhered to the principles of the PPP Policy, namely value for money in the deal, competitive tension in the selection of the winning proponent and a transparent procurement process.

6.10 The private sector members of the Supervisory Committee will be the heads of the lead representative bodies ex officio or their representatives. The Government will name the selected lead private sector bodies during the next phase.

The attached flowchart shows how the PPP process could flow to optimize the interaction between the PPP Centre and the Government agencies.

PPP Development and Procurement Process

Activity Steps	PPP Centre Reviewer and Enabler	Basis of Decision to Proceed (Output of Review)
CONCEPT STAGE *Line Agency/SOE* prepares Project Concept Note (PCN) for Inclusion of Project in PPP Pipeline (project prep budget approval).	PPP Centre briefly reviews PCN *2 weeks* → If suitable for PPP	- Technical Solution for Fulfilling Service Needs - Option(s) for PPP Modalities "Whole-of-life" costs Public Sector Comparator (PSC) Preliminary identification and notional allocation of risks Economic analysis (net economic benefit to Papua New Guinea) Financial analysis of commercial viability Permits and licenses required - Project Timetable (Preparation and Implementation)
Departments of National Planning & Monitoring and Treasury Review of PCN's consistency with Government strategies– including the MTDS, MTFS, MTdS and future development and fiscal strategies. *2 weeks*	If in line with Government strategies → PPP Centre reviews PCN in more detail *1 month* → If suitable for PPP	
OUTLINE BUSINESS CASE DEVT ***Project Committee*** (***comprising line agency, PPP centre, Department of Treasury & external advisors***) develops comprehensive PPP Business Case. *3 months*	PPP Centre reviews Business Case *1 month* → If suitable for PPP	- Well developed and articulated output specification to ensure optimal procurement outcomes, - Net cost of PPP project to Papua New Guinea, including net cost to government of risks retained by government, (need to check whether based on PSC, PPP provides better value for money) - Strong private sector appetite based on market sounding, - Positive public interests based on public consultation, - Project readiness
NEC APPROVAL ***PPP Centre*** assists ***Line Agencies*** through ***Project Committee*** in presenting to NEC for Approval to Proceed with EOI (in some cases, partial outline business case completion can allow entrance to EOI). At this stage, treasury must agree w/ preliminary risk assessment. *1 month*	NEC Approval → If suitable for PPP	- The project is a priority - The project is affordable to Papua New Guinea, and the proposed modality reflects the best value for money - The project is ready to advance to bidding stage
EXPRESSION OF INTEREST ***PPP Centre*** through the ***Project Committee*** prepares EOI documentation & solicits preliminary interests from the market. Helps evaluation of submitted EOI and compose shortlist of potential bidders. *3 Months*	PPP Centre reviews shortlist *1 month* → If adequate to proceed	- EOI submission - Private sector appetite - Technical and financial qualifications of interested bidders - Shortlist comprising of credible investors likely to submit binding bids (ideally not more than 4) - Bidding documents readiness
BIDDING STAGE Requires completion of Outline Business Case & prior to releasing to market, bidding documents must be ready. ***PPP Centre*** through ***Project Committee*** assists development of bidding docs & evaluation. *6 - 9 Months*	PPP Centre reviews *2 months* → If suitable for PPP	- "Whole-of-life" costs, including risk allocation - Conformance to output specification - Departure from revised draft Project Agreements - Within Government's fiscal and debt management guidelines
PRE-AWARDING (Selection of the Winning Bid) ***PPP Centre, subject to approval of the Supervisory Committee,*** submits the recommended award to NEC, in order to obtain approval of fiscal commitment & agreements to key terms of the deal. At this stage, Department of Treasury must agree w/ final risk assessment. Outline business case is approved into Final Business Case.	NEC Approval → If proponent bid is approved	

PROJECT PREPARATION STAGE (PRE-BIDDING)

BIDDING STAGE

AWARDING
A tri partite partnership or concession agreement is signed involving the relevant line agency or SOE, the Minister for Treasury and the winning private sector proponent, proceeding to financial close & delivery.

DELIVERY

Treasury
Manage fiscal commitment from Govt

Private sector proponent / Contractor
Deliver services as per agreement

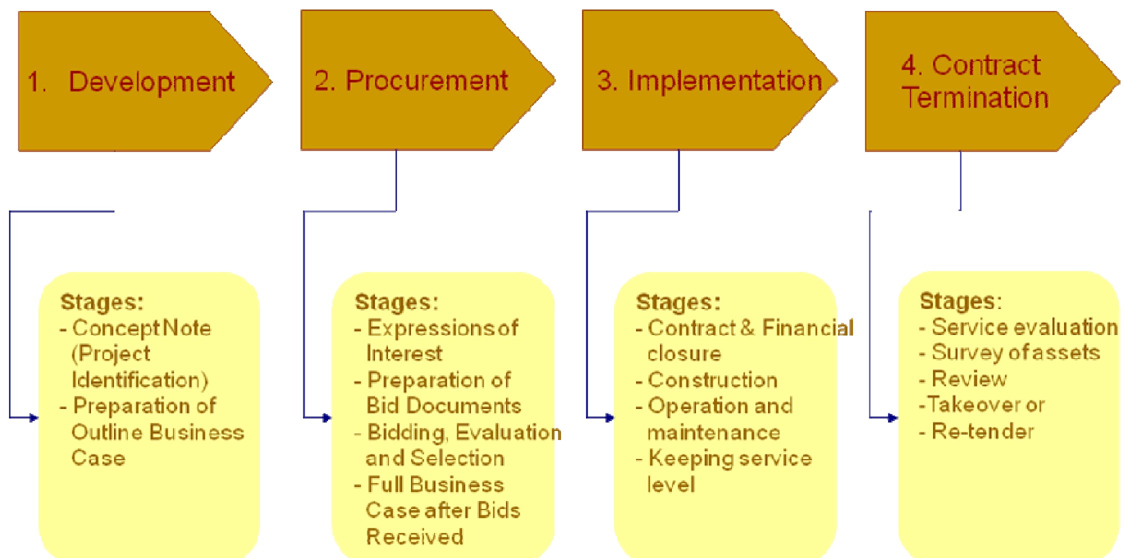
Line agency / project Owner
Supervise project delivery & govt participations

CONTRACT TERMINATION
This stage involves the line agency surveying status of project including assets, review and conclude the PPP. PPP Centre helps assess options after contract termination.

When involving **independent regulator,** dispute settlement & supervision is separated from line agency

7 PPP PROJECT PROCESS

The PPP Project Process consists of four stages, beginning with development followed by procurement, implementation (construction and operation), and termination on a consecutive basis. The PPP Centre shall play the central role throughout the PPP process, in particular during the development and procurement stages. The PPP Centre shall help ensure that sound analysis is used as the basis of determining whether the project should be offered to the market as PPP and under what PPP transactions model, and to ensure that the awarded private sector counterpart shall provide the best value for money.



8 STAGE 1 - DEVELOPMENT

8.1 Submission of Project Concept Note from Line Agency or SOE to the PPP Centre:

8.1.1 The Line Agency or SOE is responsible for identifying public infrastructure or service needs that can be fulfilled through a PPP project and prepares a Project Concept Note. Projects submitted to the PPP Centre must have been approved by NEC i) through inclusion in the National PPP Infrastructure Pipeline, ii) through an allocation in the national budget or iii) through an NEC Decision. This process will be further refined during the next phase.

8.1.2 The Project Concept Note is submitted to the PPP Centre. The PPP Centre forwards the Project Concept Note to the Departments of Treasury and National Planning & Monitoring, for initial appraisal against the MTFS, MTDS, MTdS and future development strategies and fiscal guidelines.

8.1.3 The PPP Centre will assist the Line Agency or SOE by reviewing the Project Concept Note. Since development of the Outline Business Case can involve significant cost, only projects that accord with the Government's development priorities, are public goods, and have strong potential as a PPP project will proceed beyond this stage. A Project Appraisal Manual will be prepared to provide guidance on this issue.

8.1.4 The analytical framework which should accompany the Concept Note and which will form the basis for the review by the PPP Centre is as follows:

- Project accords with current and future national development and fiscal strategies and/or identified within the "National PPP Infrastructure Pipeline". This will be done primarily by the Department of National Planning & Monitoring and the Department of Treasury, in consultation with relevant stakeholders;
- Technical solution for fulfilling service needs;
- Options for PPP Modalities, versus other modalities such as purely private provision;
- "Whole-of-life" costs;
- A Public Sector Comparator or other equivalent benchmarking analysis to ensure that the project is value for money;
- Preliminary identification and notional allocation of risks;
- Economic analysis (net economic benefit to the country);
- Social cost benefit analysis;
- Preliminary project financial appraisal;
- Required land for project secured;
- Permits and licenses required;
- Project Timetable (Preparation and Implementation).

8.1.5 Based on the above information, the PPP Centre will advise the Line Agency whether or not the project qualifies as a priority project (priority is also determined in reference to other potential PPP projects which the PPP Centre may have under consideration. In addition the Line Agencies strategic plan plays a strong role in this determination) and whether or not the project is affordable and of optimal value to the country. If the project is deemed to be a priority, the PPP Centre will then include the project in the pipeline and the project can then proceed to the Outline Business Case development stage.

8.2 Development of the Outline PPP Business Case

8.2.1 The PPP Centre plays a more active role in this process and shall assist the Line Agency in accessing resources to support the Outline Business Case including as appropriate, engagement of specialist external advisors. A Project Committee comprising representatives from the PPP Centre, Line Agency/SOE, and Department of Treasury supported by the external specialists shall be formed to manage the development of the Outline Business Case.

8.2.2 The Outline Business Case phase develops the PPP project proposal to a level where it is ready to enter bidding stage, and is presentable for NEC to make a decision on approving fiscal commitments and the releasing of the project to the market.

8.2.3 The Outline Business Case will be built upon the initial work already done by the Line Agencies, and the latter will play an important role in providing input to the Outline Business Case development.

8.2.4 An Outline Business Case prepared for NEC approval will include the following analyses:

- A well developed and articulated output specification.
- A Public Sector Comparator analysis – an assessment of the net cost of the PPP project to the country, including net cost to the Government of retained risks to determine whether PPP represents better value for money than public sector implementation. A risk management manual will be developed to guide this process during outline business case preparation and the final business case development at the later stage of procurement.
- Strong private sector appetite based on market sounding.
- Positive public interest based on public consultation.
- Project readiness, including assessment of land acquisition, environmental approval and other statutory approval issues

8.2.5 The PPP Centre will use its expertise to ensure that submissions of the Outline Business Case to NEC are well prepared and qualified for consideration as a PPP project. The PPP Centre needs to ensure that information used and the analyses are reliable.

8.2.6 If the project is affordable, and both the Department of Treasury and the Department of National Planning & Monitoring concur with the project proceeding to the next stage, then the PPP Centre will present the Outline Business Case to the NEC.

8.3 NEC Approval

8.3.1 The PPP Outline Business Case will be submitted by the PPP Centre as a joint submission by the Line Agency or SOE and parties involved in the Project Committee. The NEC shall confirm the following:

- That the project is a priority public infrastructure or service that conforms to the development priorities as well as meets the fiscal and debt management guidelines, upon advice from the Department of Treasury and the Department of National Planning & Monitoring.
- That the project is affordable to Papua New Guinea, and the proposed modality reflects the best value for money.
- That the project is ready to advance to bidding stage.

9 STAGE 2 - PROCUREMENT

In order for PPP projects to qualify for multilateral financing, partial risk guarantee or partial credit guarantee, the procurement activities must be consistent with the Government's existing procurement guidelines. This shall apply from the stage of notification and advertising, prequalification, bidding documents preparation including the terms and conditions, bid opening and evaluation, and the award of contract. It is also expected that the bidding process will comply with the Government's existing and future procurement policies. However, given the size of the project costs involved in PPP projects and that the PPP Framework only applies to projects of more than PGK 50 million, PPP projects procurement will be governed by its own set of procurement guidelines (to be developed and specified in the PPP law) which will be consistent with Government's procurement guidelines.

9.1 Advertising for Expressions of Interest (EOI) and Prequalification

9.1.1 At this stage, the Government is not yet obliged to proceed with the project, and the cost to the private proponent to participate at this stage is not yet high. The absence of obligation to proceed allows the PPP Centre to test the markets propensity for the project. This is often the reason that projects that have only partially completed the Outline Business Case, subject to NEC's approval, proceed to EOI stage in parallel with the finalizing of the PPP Outline Business Case.

9.1.2 Expressions of interest solicited by the Government will serve to confirm the level of market interest for the potential PPP project, and at this stage the private proponent is not required to prepare detailed submissions.

9.1.3 In soliciting expressions of interest, the Government will develop an EOI document which provides clear guidance to potential private proponents on the information required for submission and how the Government will evaluate this information.

9.1.4 The Project Committee shall develop the documentation, and the PPP Centre will help guide this process. The documentation shall include brief service requirements to be met by the PPP project, including timeline proposed, and the information required in the EOI responses as well as the evaluation criteria.

9.1.5 The evaluation of prequalification documents submitted by the bidders is to be carried out by the Project Committee which can be assisted by advisors appointed by the PPP Centre. It is the responsibility of the PPP Centre to ensure that a technically skilled team is involved during the evaluation stage. In creating a shortlist of investors, the Project Committee will ensure that it selects an optimal number of potential bidders (a shortlist of more than four is likely to lead to a loss of interest amongst bidders, as the probability of award is reduced and the bidder may consider that it is not worth the resources required to prepare a bid). The quality of the shortlist is critical because it may be indicative of a successful tender.

9.1.6 The PPP Centre can recommend that the project does not proceed to bidding stage if the results of the prequalification round indicate a low level of interest.

9.2 Bidding Stage, Bid Opening and Evaluation, and Awarding

9.2.1 At this stage, the Outline Business Case should already be fully developed, with NEC approval granted for the complete Outline Business Case. The project structure agreed by the NEC as presented in the Outline Business Case will form the basis for preparing the bidding documents. Once the shortlist has been reviewed and the PPP Centre recommendation obtained to proceed to bidding stage, the Project Committee can then begin the process of soliciting binding bids from the short-listed private proponents.

9.2.2 The PPP Centre and the Project Committee will actively participate together with the Line Agency in developing the bidding documents. Once prepared, the bidding documents should provide comprehensive project information to allow the short-listed private proponents to fully understand the service requirements, develop a complete project proposal and commit to enter into a binding contract to implement and operate the project.

9.2.3 If the proposals received from short-listed bidders are non-complying, the PPP Centre can recommend to NEC that the project be withdrawn. Alternatively, the bidders may be requested to resubmit their bids. If the bids received in complying proposals suggest costs to the Government that are in excess of the costs assumed at the initial appraisal stage, the project will be reassessed to ensure that the principal of value for money is achieved and that it is affordable in the context of the Government's fiscal and debt strategies.

9.2.4 All bidding documents should contain an Information Memorandum, or its equivalent in the Request for Proposal (RFP), as well as full drafts of all of the Project Agreements. Aside from the evaluation criteria to be used in determining the First Ranked Bidder, the documents should allow the private proponent to understand the project background, output specifications, proposed risk allocation, any constraints or a requirement arising from the legal or regulatory environment, as well as the expected support that Government is willing to assume.

9.2.5 The draft Project Agreement is intended to be broadly non-negotiable, and this forms the basis for the private proponent to submit a binding bid committing them to enter a contract to implement and operate the project. The Project Committee may opt to allow short-listed proponents to propose amendments to the draft Project Agreements during bid conferences, and any proposed amendments accepted by the Government must not be substantially divergent from the currently approved Outline Business Case, otherwise NEC approval will have to be obtained anew. Once the suggested amendments are incorporated into a revised agreement, the document will be distributed to all the short-listed private proponents. The Government can comfortably commit to accept the responsive binding bids because the bidding documents have clearly set out the project fundamentals inline with the NEC-approved Outline Business Case.

9.2.6 If the private proponent still needs to request some change to the Project Agreement, the proponents should submit, with its Binding Bid, a revised set of Project Agreements with detailed explanation on the requested changes. These additional changes will be incorporated in the evaluation of the Binding Bid.

9.2.7 The criteria for evaluation of submitted bids will broadly cover:

- "Whole-of-life" costs, including value for money and risk allocation
- Conformance to output specification
- Departure from revised draft Project Agreements, if permitted by the Request for Proposal documents (RFP)

9.2.8 The PPP Centre shall review the evaluation report and the recommended preferred private proponent. Should there be no bid deemed responsive to the bidding documents, the PPP Centre can recommend that the project does not continue to award stage.

9.2.9 At this stage the Supervisory Committee will consider the PPP Centre's recommended bid. In their decision, the Supervisory Committee will take into consideration the best interests of the country and the adherence to the principles of the PPP Policy, namely value for money in the deal, competitive tension in the selection of the winning proponent and a transparent procurement process.

9.2.10 Following approval of the Supervisory Committee, a full Business Case will be prepared, and a submission for final approval will be made to the NEC. Consideration by the NEC shall be based on analysis of how value for money is expected to be achieved by proceeding with the delivery of the PPP project by the preferred proponent. At this stage, the estimated net cost of the PPP can be confirmed with the submitted bid.

9.2.11 The Minister for Treasury will forward the Supervisory Committee's recommendation for the winning bidder to the NEC.

9.2.12 Subject to consistency with the Government's existing policies on investment projects, approval by NEC will form the basis for the fiscal authority to commit to the project. The PPP Centre can, through the Project Committee, finalize Project Agreements with the awarded proponent.

9.2.13 The concession or partnership agreement will then be signed on a tri partite basis involving the Line Agency, the Minister for Treasury and the successful private sector proponent.

9.2.14 In keeping with the anticipated role of the Head of State in the PPP law and in accordance with the Public Finances (Management) Act, the signed agreement will be sponsored by the Minister for Treasury and submitted for consent and ratification to the Head of State.

10 STAGE 3 - CONSTRUCTION AND OPERATION

10.1 Upon signing of the concession or partnership agreement, the private proponent will have been provided with a reasonable period in which to proceed to financial closure. The Government and contractor should then proceed to satisfy the conditions precedent as soon as possible.

10.2 When independent regulators are involved, the Government will focus on its role as project owner, and the regulator will act as a referee to monitor service delivery and act as an objective party to take decisions that ensure the best interests of all parties are safeguarded.

10.3 The Project Committee will then complete its work and the Contract Management Team within the relevant line agency, assisted by the PPP Centre, will begin its work in ensuring that the private proponent delivers the project on schedule and according to specifications. The PPP Centre is expected to provide assistance to the Contract Management Team, particularly given the PPP Centre understands the project contract. Advisers' services can be sought to assist the Contract Management Team.

11. STAGE 4 - CONTRACT TERMINATION

Contract termination can occur during the period of the partnership due to triggers as stipulated in the agreement or by the end of the partnership period. The Line Agency, and the independent regulatory body if any, shall be responsible for this process. This shall include surveying project status, including assets and future needs for the project. In reviewing the options for continuing the project, the PPP Centre shall provide advice and expertise in selecting the most economically favorable option, prior to concluding the PPP with the existing private counterpart.

12. REVIEWING THE PPP PROCESS

In continuously improving the quality in delivering PPP projects, the PPP process shall undergo regular and comprehensive review that is conducted in an open and transparent manner. The PPP Centre shall monitor the adherence to the PPP process and identify any need for revisions required to maintain the relevance of the PPP process with the ongoing developments of Papua New Guinea's PPP program.

13. UNSOLICITED PROPOSALS

13.1 The PPP Policy envisages that it will consider unsolicited proposals from the private sector for infrastructure projects that are NOT in the project list of any Line Agencies and/or SOEs – i.e. the unsolicited project has attributes that justify its inclusion in this category, and has not already been considered by the Government, Line Agencies and/or the SOEs.

13.2 The process for consideration of an unsolicited bid will be defined in due course. However, in principle, the proponents of an unsolicited project will be given an opportunity to develop a business case at their own costs on the understanding that the technical sections of their business case will be used for a competitive bidding process should the project be deemed a priority. The PPP Law, to be developed in due course will specify in detail the preferential treatment that may be afforded to unsolicited bidders for having spent their own resources to develop a feasibility study or business case for such projects.

14. ADDITIONAL WORKS

14.1 To support the operations of the PPP Centre the following concurrent work will be undertaken in due course. The funding for this additional work will be determined by the Taskforce. The additional works are:

- The conversion of the PPP Policy to PPP Law.
- The development of regulatory and institutional arrangements.
- The development of standard operating procedures and various manuals, such as project appraisal, guidelines etc.
- The appropriate institutional arrangements for setting up a PPP Centre are to be determined.

14.2 Concurrent to the above PPP related works, it is also envisaged that the Department of Planning & Monitoring will lead the development and publication of a National PPP Infrastructure Pipeline.

14.3 The National PPP Infrastructure Pipeline will consist of a number of economic and social infrastructure priority projects and from these priority projects a number of pilot projects will be selected for transactions as PPP projects.