PUBLIC PRIVATE PARTNERSHIP GUIDELINE

PPP Centre

FOREWORD

The Government of Papua New Guinea is committed to the modernisation and expansion of public infrastructure and related services for the benefit of all Papua New Guineans. For most of our history we have relied primarily on the public sector to finance, operate and maintain our public infrastructure, stretching our available resources. In 2009, the National Executive Council endorsed the Public Private Partnership (PPP) Policy as the first element in a future PPP framework, which now also includes the PPP Act 2014, PPP Amendment Acts 2022 and 2023 and PPP Regulations. Together, this policy and regulatory framework is designed to facilitate the conception, development, competitive tendering and implementation of PPP projects.

While PPPs are not a means of pursuing every potential infrastructure 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, and the PPP framework is specifically designed to mitigate them.

The framework fits within the Government's medium and longer term strategies, as articulated in 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 prioritise future investments in infrastructure and services.

We recognise the support of our development partners, in particular the Asian Development Bank, in assisting the Government with the development of the PPP framework and this Guideline, which is an essential resource for all PPP practitioners in PNG.

MINISTER FOR FINANCE

INTRODUCTION

In 2023, PNG completed the establishment of a tailored policy, legislative and regulatory framework for the preparation and implementation of PPP projects. This framework, supported by this Guideline, provides structure, transparency and rigour to the PPP process, allowing both government and private partners to deliver value for money outcomes for PNG communities.

This Guideline is designed to assist public sector practitioners and their PPP advisers develop, procure and manage PPP projects under the framework. It also serves to inform interested private sector parties of these processes and of the government's proposed approach to major issues.

The Guideline does this by providing practical guidance on:

- the roles of key parties in performing their obligations set out in the PPP Act 2014 and PPP (Amendment) Act 2023 (ie consolidated Act);
- establishing appropriate project governance and resourcing arrangements that will enhance the likelihood of a successful outcome;
- how to proceed through each of the five stages in the process for undertaking a PPP project, as set out in the PPP Regulations
- how to prepare necessary documents; and
- addressing the major issues commonly encountered in undertaking PPP projects.

The Guideline covers the full PPP project life-cycle, from a project's initial assessment for PPP suitability through to management of executed PPP contracts.

The Guideline also provides detailed guidance on treating unsolicited proposals (**"USPs"**), explaining how to navigate the process outlined in the PPP Regulations, Schedule 4. It is the Government's intention to, where possible, procure projects initiated as USPs through the competitive process applicable to PPPs generally as set out in Schedule 1 of the PPP Regulations. However, the initial assessment and treatment of USPs will follow a separate path to that for solicited PPPs. A separate path will be pursued also for those USPs that the Government believes are best developed and procured under a structured negotiation process.

It is intended that this Guideline be a 'living' document, updated over time to incorporate learnings and experience. However, it is impractical for a Guideline to cover all the issues that are encountered in undertaking PPP projects. There is a wealth of guidance internationally, of varying quality and relevance to the undertaking of PPPs in PNG, which provides coverage of processes and issues in greater detail[1]. Also, very importantly, government practitioners should seek the input of advisers experienced in the development, procurement, and operation of PPP projects.

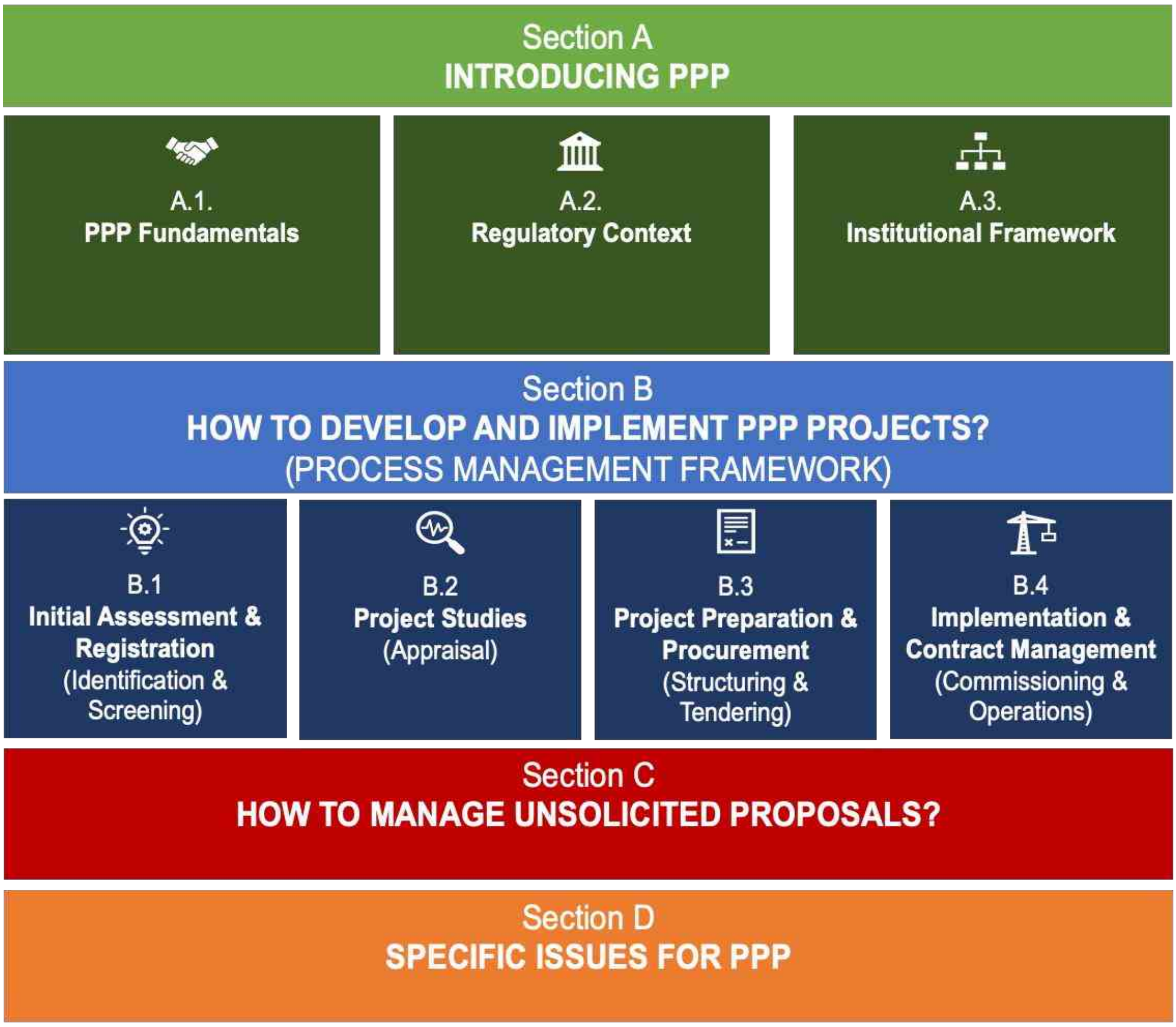
The Guideline is consequently structured around 4 areas:

(A) introducing the fundamentals, legal and institutional environment for PPP in PNG,

[1] A good source of more detailed guidance is the eight-part suite of documentation prepared jointly by a number of the multinational development banks and issued in 2016 https://ppp-certification.com/pppguide/download

(B) how to develop and implement PPP projects from concept to contract,
(C) how to manage unsolicited proposals when the situation arises and
(D) specific issues arising in the undertaking of PPP projects

Figure 1: Structure of the Guideline



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GLOSSARY

Term	Meaning
Appropriate Minister	The Minister responsible, in the opinion of the Responsible Minister, for the Relevant Public Body
Availability PPP	A PPP where the Private Sector Partner designs, builds and maintains a facility and receives regular payments from Government for keeping the facility available, as specified in the Project Agreement, for operation by a Government agency
Base Case Financial Model	The financial model constructed by the successful bidder, updated to reflect any agreed changes in the period to Financial Close. It is an important tool during the contract management stage as it provides the basis for reflecting the impacts of changes to the project agreement and, in turn, forms the updated project Base Case Financial Model.
Clarification	Further information provided by a bidder post-RfP submission, at the request of Government, explaining or providing further details on an aspect of their bid
Certificate of Compliance	A certificate issued by the PPP Steering Group, and executed by the PPP Centre CEO, to an applicant to confirm that a PPP project has been approved in accordance with the PPP Act and Regulations
Commercial Principles	The Government's position on key commercial issues relating to the project, which sets the basis for the drafting of the PPP Project Agreement
Commercial Acceptance	Occurs when the facility is deemed to be substantially complete (except for minor defects) and ready for operation. It is the point in the project where the Private Sector Partner can begin to provide the contracted services and the service payments can begin
Commissioning	Process of assuring that all systems and components of a facility are designed, installed, and operate according to the project's specified requirements
Concession	A Concession agreement is a grant to a Private Sector Partner by the Government of the rights to operate a business that is usually operated by Government or regulated by Government. In return, the concessionaire agrees to fund investments and/or provide a fee to Government
Conflict of Interest (COI)	Arises where a member of a project team, or an advisor to a project team, has an affiliation or interest which might be seen to prejudice their impartiality or where a member of a bidding consortium has an affiliation or interest which may compromise the competitiveness of the bid process
Consortium	The members of a tender team who together bid to deliver a PPP

Term	Meaning
Contract Execution	Occurs when the Government and the Private Sector Partner sign the Project Agreement and any other related documents
Contract Management Unit (CMU)	The team responsible for management of the project during the Construction and Operations stage of the contract
Data Room	Where data relating to the project held by Government and made available to short-listed tenderers is stored. Most commonly these days, the data room is an electronic storage facility accessible by tenderers
DNPM	Department of National Planning and Monitoring
Discount Rate	The rate used to calculate the present value of future cash flows
Equity Participants	Those consortium members who have, or intend to, inject equity into the project
Evaluation Panel	A panel established by the PPP Steering Group to evaluate responses from interested parties at RfQ/EoI stage, or RfP responses from short-listed tenderers. Panel composition may be different at each stage
Feasibility Study	The document that articulates the rationale for Government investing in a project and assesses the best procurement option. It details the services that the project will deliver, estimates the expected costs and benefits and assesses project feasibility (eg economically, financially, technically, legally)
Financial Close	Occurs when all conditions precedent listed at Contract Execution have been satisfied and the Private Sector Partner's financier(s) make their finance available for the project
Force Majeure	Specified risks that are beyond the control of either contractual party and whose occurrence prevents one or both parties undertaking some or all of their contractual obligations
Handback	Process for transfer of control of facilities to government at contract end
ICCC	Independent Consumer and Competition Commission is the body established to set prices in specified sectors where SOEs provide services (includes electricity, ports and postal services).
Independent Reviewer	An expert party endorsed by, and independent from, both parties who reviews progress made by the Private Sector Partner (particularly during construction) and determines whether contractual requirements have been met satisfactorily
KCH	Kumul Consolidated Holdings is the holding company for nine SOE operating in agriculture, aviation, banking and financial services, insurance, maritime infrastructure, power, post and logistics, telecommunications, and water and sanitation.

Term	Meaning
Market Sounding	An informal exercise undertaken by Government before the launch of a tender process where it approaches firms known to be active in that market to discuss issues relevant to structuring a project to make it attractive to potential tenderers
National Development Plans	Vision 2050; Development Strategic Plan (DSP) 2010-2030; National Strategy for Responsible Sustainable Development (STaRS); and the Medium-Term Development Plans
National Executive Council (NEC)	The PNG Government's Cabinet; the executive decision-making group, comprised of all ministers and chaired by the Prime Minister
National Procurement Act (NPA)	.As per section 11(2)(a) and 27 of the PPP Act, the NPA does not apply to the procurement of infrastructure by way of a PPP arrangement nor to the procurement of goods, works and services by the PPP Centre for its operations
Negotiations	A period where Government interacts one-on-one with the Preferred Bidder to seek material changes to the bid to achieve a better value for money outcome for Government
Operations Phase	That stage of the project where the Private Sector Partner provides contracted services to Government, or directly to users on behalf of the Relevant Public Body. Also called Service Delivery phase
Output Specification	The range of outcomes set out in the RfP documents that the Government is seeking to achieve, including the contracted services that the Government is seeking to procure.
Pre-Feasibility Study	A preliminary study undertaken to determine if it would be worthwhile for the project to proceed to the feasibility study stage.
Public Private Partnership (PPP)	A PPP, as defined in the PPP Act, Schedule 3
PPP Centre	The statutory body established under the PPP Act to facilitate the undertaking of PPP projects in PNG
PPP Centre Appointments Committee	A committee established for the sole purpose of appointment of the PPP Centre CEO each time that a vacancy occurs. It is chaired by the Responsible Minister.
PPP Centre CEO	Under the PPP Act, the PPP Centre must have a Chief Executive Officer, who is appointed by the Head of State acting on advice from the PPP Centre Appointments Committee
PPP Forum	A public forum to be convened at least annually (from the 2nd calendar year after appointment of the PPP Centre CEO) by the PPP Centre CEO with the objective of providing all interested persons an opportunity to discuss and exchange views on PPP matters

Term	Meaning
PPP Project Team	The team established by the PPP Project Steering Group to support it in its management of a particular PPP project
PPP Steering Group	The select group of departmental secretaries and organisational heads established under the PPP Act to oversee the Government's PPP program
Practical Completion	Occurs when all of the technical completion criteria have been met to the satisfaction of the Government, or Independent Reviewer as relevant. Generally (for social infrastructure projects in particular) the Government needs time after this to work with the Private Sector Partner to prepare the facility for Commercial Acceptance (i.e. the start of the Operations phase)
Preferred Bidder/Tenderer	A short-listed bidder who has been selected following the RfP Evaluation phase as preferred and to proceed to Contract Execution or to the negotiation phase
Private Sector Partner / Partner	The party that contracts with Government in a PPP project. Generally, it is through a Special Purpose Vehicle established specifically by consortium members for the purpose of contracting with Government on this project. The term "Private Sector Partner" is term is used synonymously with the term "Partner" which the PPP Act refers to as a person other than a Relevant Public Body and includes a nominee of the Partner agreed to by the Relevant Public Body
Project Agreement	The main project contract setting out the project responsibilities of both parties, including the terms by which the Private Sector Partner carries out the project and delivers the services for Government
Referral Threshold	The figure, expressed in Kina, for which proposed infrastructure projects of equal or higher value must be assessed as to their suitability for procurement as a PPP. This figure is set by Regulation.
Register	Pursuant to s12 of the PPP Act and to item 4 in the PPP Regulations, the PPP Centre shall maintain a register of projects that have been deemed as being suitable for procurement as a PPP
Relevant Public Body	The Government agency with portfolio responsibility for the sector relevant to the PPP project
Request for proposal (RFP)	The suite of tender documents issued by Government to short-listed tenderers
Request for qualification (RfQ)	When Government advertises publicly its intention to undertake a PPP project and seeks a response from interested parties outlining their capability to undertake the project. It is often used as the first step toward a tender process and is also referred to as a request for Expressions of Interest (EoI)

Term	Meaning
Responsible Minister	The Minister designated by the Prime Minister as having responsibility for administration of the PPP Act.
RfP Response	A proposal from a short-listed bidder in response to the RFP issued by Government for a project
Risk Allocation	The allocation of responsibility for dealing with the consequences of each risk to one of the parties to the contract; or alternatively, agreeing to deal with a particular risk through a specified mechanism which may involve the sharing of that risk
Service Delivery Phase	That stage of the project where the Private Sector Partner provides contracted services to Government, or directly to users on behalf of the Relevant Public Body. It is also called Operations phase.
Short-listed Bidder	One of those parties who are invited to submit a proposal in response to an RFP issued by Government for a project
Solicited Proposal	A proposal made by a Partner to undertake a public private partnership arrangement that is submitted in response to a request solicited by a Relevant Public Body or PPP Centre or some other manner determined by the PPP Centre
Special Purpose Vehicle (SPV)	The Private Sector Partner, typically, is comprised of a consortium of firms who establish a SPV to contract with Government. The SPV is a legal entity created to act solely for the purpose of this project
Traditional Procurement	Procurement methods historically used by the Government prior to consideration of the use of PPP procurement models.
Transaction Adviser	An adviser appointed by the Government to support it during the preparation and transaction of a PPP project. The Transaction Adviser typically reports to the PPP Project Team Leader, and may also co-ordinate the input and advice of other specialist advisers engaged to assist with a project
Unsolicited Proposal (USP)	A proposal made by a private party to undertake a PPP project that is submitted at the initiative of the private party rather than in response to a request solicited by a Relevant Public Body
Whole-of-life	An up-front integrated consideration of design and construction project elements together with proposed ongoing operational elements (including maintenance and refurbishment) over the life of the asset under the duration of a PPP arrangement.

SECTION 1

INTRODUCING PPP

Public private partnerships are used throughout the world to accelerate infrastructure investments and improve the efficiency and effectiveness of delivering infrastructure projects and related services.

Drawing from its experience with PPPs and international best practices, the Government of PNG has established a policy, legal and institutional framework for improving the preparation and delivery of PPP projects. This framework will be applicable to infrastructure projects with certain defined characteristics, as defined in the PPP Act and regulations, and provides an alternative to traditional procurement schemes.

This section introduces the concept of PPP, its main features and different modalities, how it differs from traditional public procurement and highlights its benefits and drawbacks. It is intended to provide context for PPP practitioners in PNG.

A.1. PPP FUNDAMENTALS

A.1.1. What are PPPs?

PPPs are defined in Schedule 3 of the PPP Amendment Act as a contractual arrangement between a Relevant Public Body and a single Private Sector Partner for the provision public infrastructure and/or related services over time. The focus of the PPP contract, and the related revenue mechanism, is the ongoing service outputs to be provided by the Private Sector Partner to the Relevant Public Body or directly to the public on behalf of the Relevant Public Body.

PPPs can take a variety of forms, and their scope can differ between countries, but generally they possess the following common characteristics:

(1) a bundling of public infrastructure procurement elements (i.e. some or all of design, construction, finance, operations, maintenance) into one contract

- with one Private Sector Partner fully accountable for the delivery of the specified services;

(2) clearly specified and measurable service outputs which are directly linked to the remuneration scheme

- the Private Sector Partner receives full remuneration only if it fully delivers its contractual services to the specified requirements;

(3) the Private Sector Partner bears significant risk and management responsibility through the life of the contract;

(4) clear and enforceable allocation of project risks between the Government and Private Sector Partner

- whilst PPPs are 'hard' contracts with a clear and enforceable risk allocation, the partnership concept relates to the need to build mechanisms into the contract to meet the changes that will inevitably occur during a long-term contract (e.g. changes in demand levels, technology changes etc) and for both parties to negotiate the details of these change events in a co-operative manner when they occur; and.

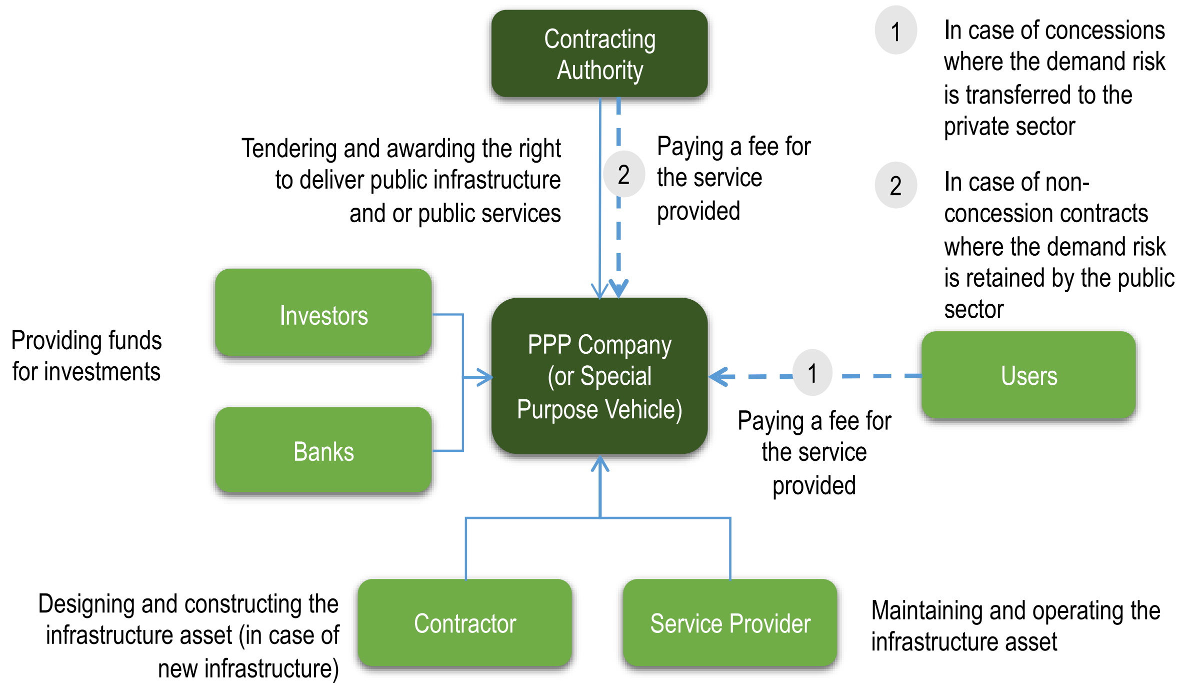
(5) Are a long-term contract between a public party and a private party;
for the development and/or management of a public infrastructure asset and/or service;

Where finance is needed to construct the infrastructure and/or the equipment necessary to provide the services relating to the infrastructure, this may be provided by either the Relevant Public Body or Private Sector Partner, depending upon the PPP model used.

The Private Sector Partner in a PPP can be a single firm but, more commonly, is a consortium of investors i.e. equity partners who collectively create a Special Purpose Vehicle (**"SPV"**) for this project that will be the contracting party with Government. The consortium may include specialist equity investors, constructors and/or operators, among others. All Government contractual dealings with the Private Sector Partner generally will occur through the SPV, which will need to be appropriately resourced by the equity partners.

The typical structure for a PPP is depicted below which assumes private financing from investors and lenders and remuneration from either users or government payments, though variants to this structure – even excluding private finance - are also possible that meet the main features as indicated, which will be further described in section A.1.2.

Figure 2: Typical PPP Structure



In practice a PPP structure will be more refined and encompasses a set of contractual provisions that define the allocations of risks and the manner and extent of government support.

Most PPP arrangements are likely to have some form of government support to enable a project's bankability. For example, lenders may require that the government provides a Minimum Revenue Guarantee to ensure that the project generates sufficient revenues to meet the debt service or at least a substantial part of the debt service. On the other hand, with excessive government support, the value for money generated from a PPP project may be minimal. For example, if the government guarantees that the project will always be able to meet its debt service through a debt payment guarantee, banks are likely to be less incentivised to undertake the necessary due diligence to assess the reliability of the assumptions underlying the business case and to diligently monitor the project progress. This due diligence and monitoring by banks are critical drivers for delivering value for money in terms of ensuring that the project is delivered on time, within budget and meets the agreed performance levels.

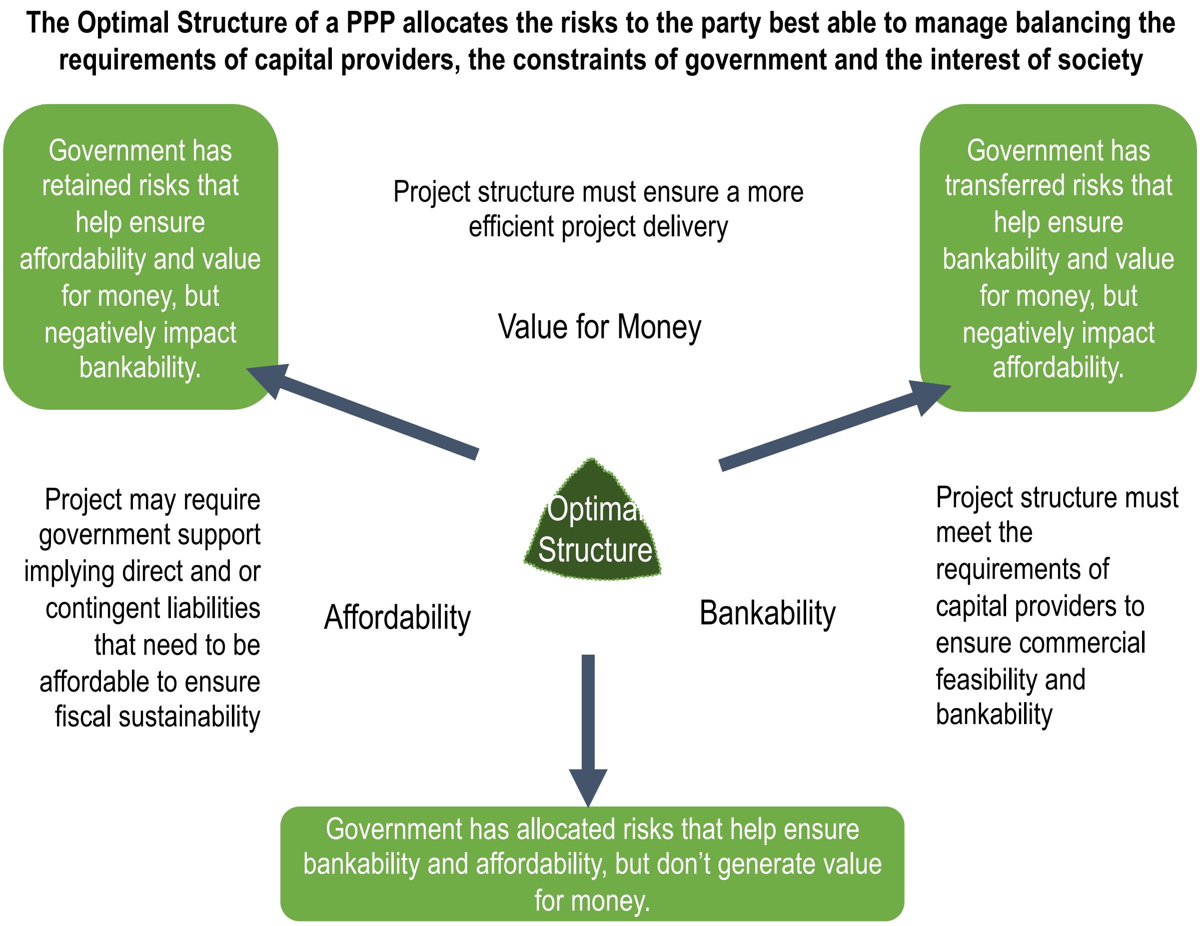
In short, government support may be necessary to ensure bankability, but at the same time, it is important to ensure that such support does not take away the incentive to ensure value for money and is evaluated in terms of affordability.

Consequently, the nature and extent of government support needs to be carefully structured in terms of allocating risks to balance (i) requirements from investors and lenders to ensure the commercial feasibility and bankability of the arrangement, (ii) potential for efficiency gains from the arrangement known as value for money, and (iii) affordability of the government support mechanisms required to implement the transactions.

If the risk balance is skewed too much in favour of the private sector, i.e. the government retains risks it cannot afford, or that do not contribute to a more efficient project delivery, the project structure may be bankable while at the same time not meeting the interests and capacity of the government. On the other hand, if the government is too aggressive in its risk transfer, the retained risks may be affordable but the project itself may not be bankable due to the likelihood that the project will end up in financial distress.

Therefore, any required government support must be appropriately evaluated not only in terms of affordability but also in terms of the impact on value for money[2]. Not only do PPPs need to be carefully structured based on thorough preparation, but the fiscal implications arising from the government support schemes must be carefully managed, in terms of their identification, evaluation, budgeting and reporting.

Figure 3: Analytical framework for structuring a PPP



[2] Value for money is further detailed in Annexe 9 of this Guideline

Any government support provided to a PPP project implies liabilities i.e. a financial obligation that has to be met by the government.

There are two main types of financial liabilities:

1. **Direct Liabilities**: These are contractually committed payments from the government that must be made if the PPP proceeds (although there may be some uncertainty regarding their value).
2. **Contingent Liabilities**: These are payment commitments whose occurrence, timing and magnitude depend on some uncertain future event

Examples of **direct liabilities** arising from PPP contracts include:

- **Viability gap payments**: A subsidy (grant or other financial support from the government) to make a project that is economically justified financially viable. Most often the payment is phased over the construction period based on the achievement of certain milestones or made at regular intervals over the lifetime of the project contract
- **Availability payments**: Regular payments in return for the Private Sector partner making the infrastructure service available at a contractually specified quality. These payments may be adjusted with bonuses or penalties in line with key performance indicators that are typically set out in the contract to help measure the performance of the project. Availability payments are a common form of payment in government-pays PPPs.
- **Output payments**: in PPPs where the facility is operated by the Private Sector Partner, a payment by government to the Private Sector Partner, for receipt of a service output (eg ML of treated water that meets the specified contractual KPI levels)
- **Shadow tolls or output-based payments**: A payment or subsidy paid by the government in lieu of the user paying tolls. Volume based shadow payments are one of the two main types of payment mechanisms, meaning the payments are per unit or user of a service, for example, per kilometre driven on a toll road (this is also contingent on the Private Sector Partner's performance). The term shadow toll is used for the particular type of tariff used for roads projects.

Direct liabilities are estimated on a nominal cash flow basis based on (i) cost estimation prepared during the project preparation and structuring phase and (ii) the Base Case Financial Model prepared upon project implementation.

Examples of **contingent liabilities** in PPP contracts include:

- **Guarantees on particular risk variables**: Guarantees against a future event or circumstance which is possible but cannot be predicted with certainty and which might affect project revenue or costs. These guarantees compensate the Private Sector Partner for their revenue losses or additional costs should a particular risk variable deviate from a contractually specified level. The associated risk is thereby shared between the government and the Private Sector Partner. For example, this could include guarantees on demand remaining above a specified level (e.g. a minimum traffic guarantee or maximum number of patients treated in a hospital), exchange rates remaining within a certain range or interest rates remaining below a specified level.

- **Compensation clauses**: A commitment to compensate the Private Sector Partner for damage or loss due to certain events or conditions to the extent that the Private Sector Partner is impacted financially. Compensation may only be partial; in which case the event may be referred to as a shared risk.
- **Termination payment commitments**: A commitment to pay an agreed amount should the contract be terminated early by the public party or the Private Sector partner. The amount may depend on the circumstances of default.
- **Debt guarantees or other credit enhancements**: Instruments which are structured mainly to provide a higher protection to lenders. They are commitments to repay part, or all of the debt used to finance a project. The guarantee could cover a specific risk or event. When provided by the public sector, credit enhancements are a form of public finance (in revolving mode) that can help decrease the average cost of capital of the project by enabling lenders to charge lower rates of interest due to the increased credit rating resulting from the guarantee.

Contingent liabilities are estimated based on the probability of occurrence and the fiscal impact of the fiscal support materialising. They are primarily related to the various types of government guarantees that are necessary to provide comfort to private sector investors/lenders by reducing their exposure to those risks that are beyond their control.

A.1.2. Range of PPP Models

There is a wide variety of PPP models and they can be categorised many ways. In this Guideline, they are categorised according to whether there is a build component, and whether this build is publicly or privately financed. This produces the following three categories:

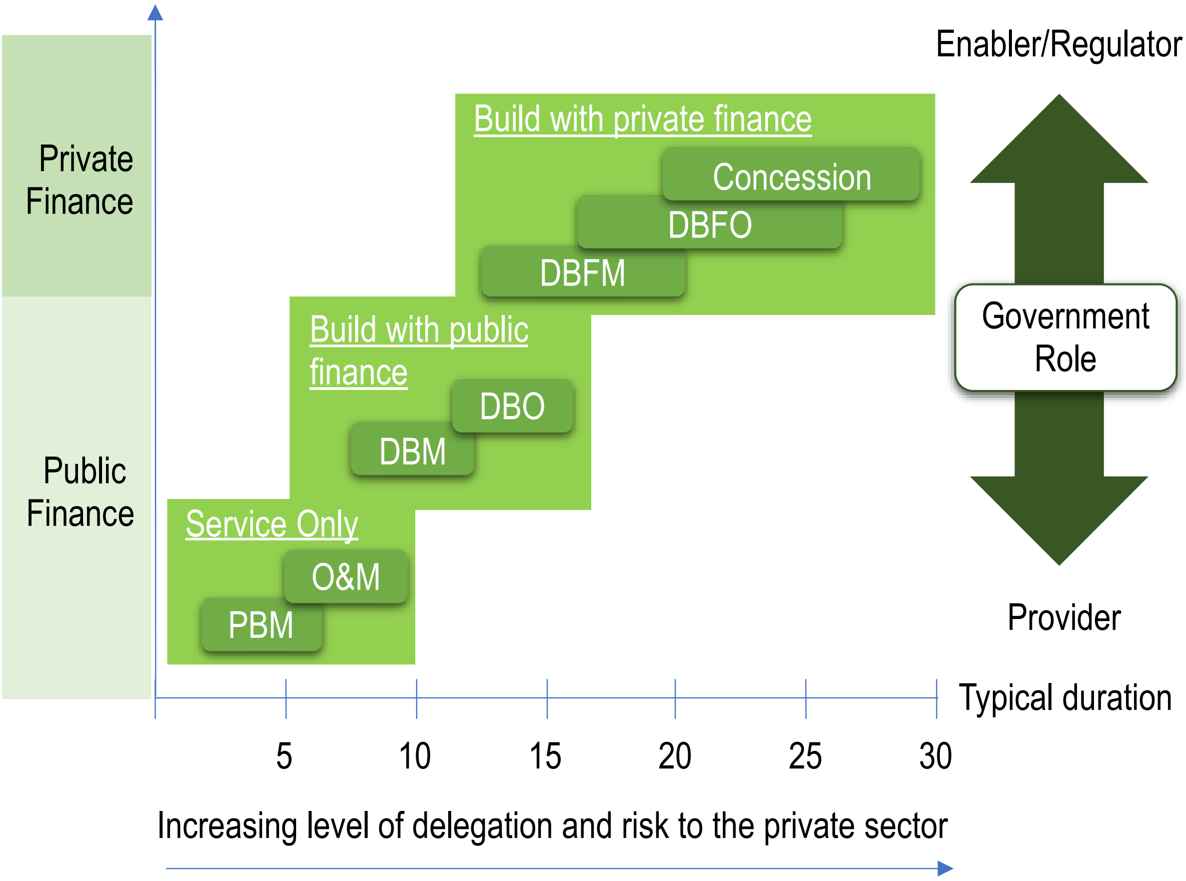
1. Services Only; or
2. A Build Component with Public Finance; or
3. A Build Component with Private Finance

Typically, as you move down these categories (from 1 to 3) there is more complexity, risk transfer to the Private Sector Partner and longer contract periods. A further distinction can be made with regard to the responsibility for operations which can either be retained by government or transferred to the Private Sector Partner. The figure below provides an illustration of these various PPP models by funding source, contract length and the role played by Government.

1. Services Only PPPs

These PPPs relate to services being provided using already completed public infrastructure. There are two main types of PPP in this category:

Figure 4: Range of PPP Models



- **Performance-based maintenance**: the Private Sector Partner maintains existing public infrastructure to specified performance levels;
  - E.g. a Private Sector Partner is contracted by a Relevant Public Body to maintain a section of the arterial road network to specified standards, such as with respect to smoothness and rutting etc., for a period of at least five years[3] and is paid a regular service fee (e.g. quarterly). The Private Sector Partner provides all equipment necessary to perform this task. The Private Sector Partner receives a regular service fee from the Relevant Public Body which is abated if performance standards are not met fully;

- **Operations & maintenance (O&M)**: a Private Sector Partner maintains and operates existing public infrastructure to provide services to specified performance

[3] Under Schedule 3 of the PPP Act, such contracts need to be for not less than 5 years.

requirements, and is being remunerated by either government payments or user charges or a combination;

  - E.g. a Private Sector Partner is contracted by a Relevant Public Body to operate and maintain an existing hydro-electric plant to produce electricity for a period of at least five years in accordance with protocols set out in the contract. The Private Sector Partner is paid a regular service fee (e.g. quarterly) by the Relevant Public Body. These payments are abated to the extent that contractual performance standards are not met fully.
  - E.g. a Private Sector Partner is contracted to assume responsibility for a town's water supply and distribution to customers and to oversee upgrades to the system. Its revenue source is tariffs from users and, in some cases, may be supplemented by a contracted public subsidy. The Private Sector Partner will face penalties if water supply service standards, as specified in the contract, are not fully met[4].

Service Only models generally have a relatively short contract period, of five to seven years. This provides sufficient time for the Private Sector Partner to provide their services in a way that sustainably operates and/or maintains the asset but also allows the Relevant Public Body to harness competitive tension by testing the market via competitive tender at regular levels.

2. PPPs with a Publicly Financed Build Component

There are two main PPP models within this category:

- **Design, Build, and Maintain (DBM)**: the Private Sector Partner designs, builds, and maintains public infrastructure to specified performance levels; the facility is publicly financed at Practical Completion[5]
  - E.g. a Private Sector Partner is contracted by a Relevant Public Body to deploy and maintain a fleet of busses where the Relevant Public Body retains the responsibility for operating these busses. The deployment of the fleet is publicly financed at Practical Completion and the Private Sector Partner is paid a regular service fee linked to the extent of availability of the busses.

- **Design, Build, and Operate (DBO)**: the Private Sector Partner designs, builds, operates and maintains public infrastructure to specified performance levels; the facility is publicly financed at Practical Completion
  - E.g. a Private Sector Partner is contracted by a public water utility to design, build, operate and maintain a waste-water treatment facility to produce waste that is suitable for discharge and/or reuse. The Private Sector Partner is paid a regular service fee (e.g. quarterly) to cover operating costs. The

[4] Such an arrangement can also be qualified as a lease arrangement if the private partner pays a lease fee to the government for the right to operate and maintain the public asset

[5] Practical Completion is when the facility has been accepted by the Relevant Public Body as being finished and ready for operation.

payments are abated to the extent that contractual performance standards are not met fully. Any design deficiencies, or damage caused by faulty operation, must be rectified by the Private Sector Partner at its cost.

The contract period for DBM and DBOs is typically five to fifteen years, depending on the length of the build period. It is advisable to have a minimum three-year operational period beyond infrastructure completion so that Government can gain comfort that the facility has been designed and built appropriately and is capable of sustainably meeting service requirements.

3. PPPs with a Privately Financed Build Component

There are three main types of PPP models in this category:

- **Availability – Design/Build/Finance/Maintain (DBFM):** the Private Sector Partner designs, constructs, finances and maintains a specialist piece of public infrastructure and ensures its ongoing availability – as measured by 'availability' specifications – to the Relevant Public Body who uses it to provide public services
    - E.g. a Private Sector Partner designs, constructs, finances and maintains a package of new schools and ensures their ongoing availability for use by the PNG Department of Education to provide teaching services. The Private Sector Partner is paid a regular availability service fee (e.g. monthly/quarterly) by the PNG Department of Education, or other Relevant Public Body, which is abatable to the extent that all school buildings are not available for use or performance standards are not met fully;

- **User pays – Design/Build/Finance/Operate (DBFO):** the Private Sector Partner designs, constructs, finances, *operates* and maintains a specialist piece of public infrastructure to provide final public services, often directly to the public and receives a regular payment from the government for providing these services
    - E.g. a Private Sector Partner designs, constructs, finances, operates and maintains a new public hospital to serve the community. It receives its revenue directly from the PNG National Department of Health, or other Relevant Public Body, for supplying contracted services. These payments are paid at regular intervals (for instance, monthly or quarterly) and may be abatable by Government where contractual performance conditions are not met fully;
    - E.g. a Private Sector Partner designs, constructs, finances, operates and maintains a solar power generation plant, and sells the power to PNG Power. A power purchase agreement would be signed detailing the required output, minimum offtake (if any) and price to be paid per kWh. At the end of the contractual term, the plant would typically be transferred to the public partner (e.g. PNG Power) for nil consideration.

- **User pays – Concession**: a Private Sector Partner assumes responsibility for an existing public facility or infrastructure system which it operates and maintains and is entitled to charge the users for the use of the asset. Depending upon the forecast profitability of the concession, the concessionaire may receive financial support from government to recoup its costs or - if the expected proceeds exceed the costs - may pay an upfront concession fee to the Government and/or a share of revenues over the life of the concession. Any upgrades or extensions are generally financed by the Private Sector Partner.
    - E.g. a Private Sector Partner assumes responsibility for an existing airport and for its operation, maintenance and necessary upgrades. The concessionaire funds its activities through charges on users, such as airplane companies and travellers, and leasing out airport space (such as for retailing). The contract will include an obligation on the Private Sector Partner to enhance or upgrade the airport at either fixed dates or when trigger points are met (e.g. demand level threshold). The contract will provide for the Private Sector Partner to pay penalty payments to Government where contractual performance conditions are not met fully.

The contract period for privately financed PPPs whose remuneration comes from government payments is generally between twenty and thirty years; a sufficient period for the Private Sector Partner to recoup its capital investment without monthly/quarterly user payments being unduly high. The contract period for a concession can be longer, recognizing the benefits of encouraging the concessionaire to grow the business and the need to undertake major capital investment during the concession period.

Under the concession model, ownership[6] and control of the public infrastructure assets always returns to Government at contract expiry (for nil or nominal consideration, though subject to contractually agreed handback-requirements). In the DBFM and DBFO models, this is also most commonly the case.

A.1.3. What are not PPPs?

Traditional Procurement

PPPs relate only to public infrastructure and/or related services. Schedule 3 of the PPP Act also requires that projects to be procured as PPPs be of a value equal to or greater than the Referral Threshold. PPPs differ fundamentally from procurement methods traditionally used by governments (**"Traditional Procurement"**) which, contractually, are less bundled and shorter-term.

Traditional Procurement involves a contract for the building of an asset without any ongoing related contractual service requirement from that private sector party after completion of construction of the asset. That is, the contract covers the period up to asset completion only[7]. Any requirements by the Government for ongoing operation or maintenance of that

[6] The term "ownership" can have different meanings such as (i) legal (ii) economic and (iii) accounting. Whilst legal ownership of public infrastructure assets in a PPP invariably lies/remains with Government during the contract term, ownership in an economic or accounting sense may lay with the Private Sector Partner during that period.

[7] Apart from reference to ongoing warranties etc

asset would occur under a separate contract(s). Also, commonly, design services are contracted separately, with a different provider, to the construction contract.

Similarly, Traditional Procurement by Government of infrastructure services typically involves short-term contracts for the provision of services such as maintenance or repairs, without any related infrastructure build requirement, and with relatively simple payment arrangements (i.e. using limited key service performance indicators and little or no scope for payment abatements if service requirements are not met fully).

Privatisation

PPPs are also different to privatisation. Privatisation is the transfer of an existing Government entity or assets to the private sector in perpetuity, through means such as a share or asset sale or management buy-out. The Government's ongoing role with fully privatised entities is limited, at most to a regulatory role under applicable legislative frameworks such as for competition policy, environmental protection, occupational health and safety etc. that apply typically to privately-owned entities. Similarly, partial privatizations and/or joint ventures are also different to PPPs, as they involve joint equity ownership of an entity, rather than a contractual relationship where risks and responsibilities are allocated separately to each party.

In contrast, in a PPP, the Government remains ultimately accountable for the delivery of the relevant public services and uses its powers under the PPP contract to ensure that the Private Sector Partner meets the contractual service requirements throughout the duration of the contract term. Additionally, in a PPP, if the Private Sector Partner had ownership or control of the assets during the contract term, these generally revert to the Government at contract expiry[8].

Excluded sectors and projects

Schedule 3 of the PPP Amendment Act expressly excludes the following projects from being considered as PPPs in PNG:

- Arrangement to procure a project with a size or value less than the referral threshold;
- mining projects under the **Mining Act 1992** and associated development agreements; or
- gas projects and petroleum projects under the **Oil and Gas Act 1998** and associated development agreements;
- unconventional hydrocarbon projects under the ***Unconventional Hydrocarbons Act 2015*** and associated development agreements; or
- an infrastructure project in relation to which the expenditure is predominantly comprised of expenditure deemed under Section 219C of the **Income Tax Act 1959** to be income tax in any income tax year.

[8] In some PPP models, ownership of the infrastructure remains with the private sector party after contract expiry. An example is the Build, Own, Operate PPP model. Governments' use of such models is rare as generally they wish to use that infrastructure to continue to provide public services well beyond the PPP contract period.

A.1.4. Benefits of PPPs

Well-structured PPPs, where the private partner can determine how a service can best be provided, where risks are well allocated, and where the project is awarded through competitive procurement, can offer better value-for-money than traditional delivery by government. Some of the main benefits private partners can bring are:

- Construction of projects on time and on budget
- Efficient and effective management of the entire project
- Development of innovative ways of delivering services
- Better use of appropriate technologies
- Lifecycle optimization (better relationship between design and construction, and operation and maintenance over time)
- Better exploitation of direct and secondary project assets
- Private financing and the associated due diligence
- Better delivery capacity

PPPs are commonly pursued to accelerate infrastructure development by tapping private financing resources and to increase value for money in the delivery of public services.

By involving a private company the project can often be delivered in a more efficient and cost effective manner than by the government or a State-Owned Enterprise on their own. This is because if the PPP is well-structured, the private company may find more innovative ways of delivering it, and have strong financial incentives to do the maintenance and operations better and more efficiently. Involving a private partner can also make financing available where public funds are lacking.

Although the government can almost always borrow money at better rates (more cheaply) than private companies, appropriate contractual incentives can drive private companies to design, operate and maintain infrastructure and services better than the government[9]. In well-structured PPPs the additional benefits that private companies bring usually outweigh the cheaper costs of public financing.

A.1.5. Drawbacks of PPPs

The use of PPP also brings some risks and disadvantages, most notably:

- **Perceived high funding costs**; the use of private finance is often perceived as more costly than public borrowings. This comparison is not quite fair as normally the benchmark cost of public borrowings does not include a risk premium based on the project's risk profile.
- **Reduced public sector flexibility**; the long-term nature of contracts and related securities for capital providers implies that contracts are relatively rigid. Changes need to be carefully managed in view of their financial consequences. In traditional procurement the public sector has more flexibility to respond to future developments (e.g. changes in policy, legislation, technology, demographics, economics)

[9] Governments can often borrow more cheaply because their ability to repay is enhanced by their ability to raise taxation revenues from businesses and citizens

- **High transaction costs**; preparing and tendering PPP transactions normally takes more time and requires more resources than traditional procurement, primarily due to the need:
    - to engage a range of expert advisers for the period of project preparation and procurement (circa two to three years) and ongoing expert advice to assist in the government's management of the contract over its operational life (up to 25 years or more);
    - for transaction documents to
        - commonly, consider both the upfront design and construction of an infrastructure facility, together with the ongoing operation of the facility to provide services, and maintenance and refurbishment of the facility over time;
        - consider the mechanics of dealing with potential change events (e.g. a growth in demand for services, escalation of costs) that are likely over the duration of a long-term contract; and
        - in relevant PPPs, also incorporate private finance and the security and risk mitigation measures required by the Private Sector Partner's debt financiers to make the project ''bankable"; and
    - to establish and resource a CMU over the life of the contract.

To ensure that the benefits of PPP outweigh its drawbacks it is of the utmost importance that only suitable projects are procured as PPPs and that these are appropriately prepared, competitively tendered and effectively managed. These requirements for success are the core of PNG's framework for PPP as reflected in the PPP Act and its implementing regulations and further explained in this Guideline.

A.2. REGULATORY CONTEXT

The PNG PPP framework comprises a PPP policy, a PPP Act (2014), a PPP (Amendment) Act (2022 and 2023), a set of PPP Regulations published in the National Gazette in 2023 and this PPP Guideline.

A.2.1. Policy Framework

The National Public Private Partnership Policy[10] was released in 2008 and its key principles remain valid. The Policy document was the first part of the PPP Framework and formed the basis for the development of the remaining components of the PPP Framework.

The PPP policy emphasizes that the PPPs 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 public infrastructure and service delivery options.

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 PNG.

The Policy is firmly grounded in three main principles:

1. **Value for Money** on a whole-of-life cost basis;
2. **Competitive Tension** in selection of private partners and the pricing of goods and services; and
3. **Transparency** in procurement and service delivery.

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 and the Fiscal Responsibility Act, as amended. The National Budget will also continue as the central process for the ultimate prioritization of expenditure (including debt financing) by the Government.

A.2.2. Legal Framework

The Government's Public Private Partnership Act 2014 and Public Private Partnerships (Amendment) Act 2023 (together referred to as the **"PPP Act"** or **"the Act"**) and its regulations (**"PPP Regulations"**) provide a robust legislative framework for the undertaking of PPP projects in PNG.

The PPP Act provides for the establishment of a range of parties with important defined roles and these are listed below, along with some important key terms defined in the Act and Regulations.

The PPP Act provides for:

a) the procurement and delivery of infrastructure facilities and services through PPP arrangements to give power to certain public bodies to enter into PPP arrangements;

[10] Public Private Partnerships Task Force, National Public Private Partnership Policy, December 2008

b) the establishment of the PPP Centre of PNG (**"PPP Centre"**) and its functions, which include the promotion, coordination and analysis of PPPs; and

c) the establishment of the (**"PPP Steering Group"**) and the (**"PPP Forum"**) and the specification of their respective powers and functions.

PPPs can be carried out only in accordance with the PPP Act and the PPP Regulations. Key elements of this legal framework include the:

- establishment of powers for the undertaking of PPP projects;
- definition of a PPP arrangement (PPP Act Schedule 3);
- range of public agencies covered by the PPP legislation (PPP Act Schedule 1);
- process for registration of PPP projects (Regulations section 4);
- functions and responsibilities of key entities[11] (PPP Act part III, V, VI); and
- ability to make regulations for achieving the purposes of the Act (PPP Act section 60).

The PPP Act 2014 was gazetted in 2018. Subsequent amendments in 2022 and 2023 included a number of revisions to improve the practical implementation of the PPP Act 2014. Among these was the recognition that ministerial responsibility for the PPP Act is determined by the Prime Minister (and may change from time-to-time), and the responsible minister's department needed to be represented administratively in the Act. Under the allocation of ministerial responsibilities as of September 1, 2022, the Minister of Finance is the (**"Responsible Minister"**).

Included in the 2023 regulations are:

a) a five-stage process for the undertaking of PPP projects;

b) requirements of the PPP Centre in registering PPP projects; and

c) arrangements for the recruitment and appointment of the PPP Centre Chief Executive Officer (**"PPP Centre CEO"**);

d) format for Certificate of Compliance;

e) a process for the undertaking of unsolicited proposals **("USPs"); and**

f) definition of the Referral Threshold.

All of these regulations came into force on the date of their gazettal, except for the referral threshold value (**"Referral Threshold"**)[12]. The Referral Threshold value is the value at or above which all proposed infrastructure projects must be assessed by the PPP Centre for their suitability to be delivered as PPPs. As such, the date for the Referral Threshold to come into force has been empowered to the PPP Steering Group, who will trigger this when they believe that the PPP Centre is ready to assess, develop and procure these projects.

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[11] PPP Centre, PPP Steering Group, PPP Forum

[12] The Referral Threshold level may be updated over time through regulatory change.

Key Defined Terms

In addition to those key defined terms already listed above, such as Referral Threshold, the Act and/or Regulations define a number of key terms with respect to the undertaking of PPP projects in PNG. Those important to this Guideline are:

- **certificate of compliance**: a certificate issued by the PPP Steering Group, and executed by the PPP Centre CEO, to an applicant to confirm that a PPP project has been approved in accordance with the PPP Act (section 6) and Regulations (**"Certificate of Compliance"**);

- **infrastructure**: those assets, facilities and services listed in Schedule 2 of the PPP Act. The scope is broad but can be extended, as necessary, through a notification by the Responsible Minister in the National Gazette (**"National Gazette")**;

- **initial assessment report**: a report undertaken in accordance with section 12 of the PPP Act and Schedule 1 of the Regulations by a Relevant Public Body assessing whether a project potentially is suitable for procurement as a PPP (**"Initial Assessment Report"**);

- **public private partnership arrangement**: Schedule 3 of the PPP Act defines a PPP as an arrangement between a government agency (**"Relevant Public Body")** and a party other than a Relevant Public Body (**"Private Sector Partner"**) for the performance of functions specified in the arrangement in relation to:

  (a) the design and construction of infrastructure, together with the operation of services relating to it and provision of finance, if required, for design, construction and operation; or

  (b) the construction of infrastructure, together with the provision of finance, for design and construction and operation; or

  (c) the provision of services, including maintenance, relating to infrastructure for not less than 5 years and the provision of finance, if required, for services;

- **register:** pursuant to section 12 of the PPP Act and to item 4 in the PPP Regulations, the PPP Centre shall maintain a register of projects that have been deemed as being suitable for procurement as a PPP (**"Register"**);

- **solicited proposal:** a proposal submitted by a Partner to undertake a PPP that is submitted in response to a request solicited by a Relevant Public Body (PPP Act section 1); and

- **unsolicited proposal**: a proposal submitted by a Partner to undertake a PPP that is submitted at the initiative of the Partner rather than in response to a request solicited by a Relevant Public Body (PPP Act section 1).

A.3. INSTITUTIONAL FRAMEWORK

A.3.1. Roles of Defined Parties

The Act provides for the establishment of a small number of parties and entities with important powers and roles in the undertaking of PPPs in PNG:

- **Appropriate Minister**: is the Minister responsible, in the opinion of the Responsible Minister, for the Relevant Public Body;

- **Relevant Public Body**: is the Government entity with portfolio responsibility for the project. Under section 12 of the PPP Act, it
  - must, for all proposed infrastructure procurements of a level equal to or greater than the Threshold Value, undertake an initial assessment (**"Initial Assessment"**) of its suitability for procurement as a PPP and submit this to the PPP Centre; and
  - where initial assessment of an NEC-approved project indicates potential suitability for PPP procurements, register the project with the PPP Centre **("Registration")** and seek the advice of the PPP Centre on that project;

  Schedule 1 to the PPP Act defines a Relevant Public Body as:

  1. The Independent State of PNG (i.e. national government agencies); and
  2. Provincial or Local-Level Governments; and
  3. State Owned Entities.

  In effect, the term Relevant Public Body covers all government entities undertaking public infrastructure projects.

- **PPP Centre**: has a range of functions under section 15 of the Act, including
  - advocacy, support and training to Relevant Public Bodies;
  - assessment of proposals for suitability of PPP procurement and provision of related advice to the PPP Steering Group;
  - provision of advice and assistance to the PPP Steering Group on
    - the PPP policy and program;
    - policy, pricing and regulatory issues that may impact PPP projects, and after consultation with the appropriate regulatory authorities;
    - options and reforms, including regulatory reforms to make PPP arrangements more efficient; and
    - mechanisms for financing investments in PPPs;
  - acting as secretariat to the PPP Steering Group;
  - coordination of PPP policy, program and projects by the National Government, Provincial Government and Local-Level Governments;
  - provision of a central repository of documentation and records;

- exercise of powers under sections 16 and 26 of the Act, including
  - to require a Relevant Public Body or Private Sector Partner to provide information, documents and other materials;
  - with prior approval of the Responsible Minister, give directions to a Relevant Public Body;
  - engage consultants and advisers;
  - with the approval of the Responsible Minister and PPP Steering Group, issue procedures, guidelines and instructions; and
  - charge fees; and
- is led by the PPP Centre CEO.

- **PPP Centre CEO / Acting CEO**: the PPP Centre must have a CEO, who is appointed by the Head of State acting on advice from the PPP Centre Appointments Committee. Its functions include
  - administrative management of the PPP Centre, reporting in this respect to the Responsible Minister (section 21);
  - appointment of staff to the PPP Centre (section 25); and
  - management of the PPP Centre in the exercise of its powers and in the performance of its functions;

- **PPP Centre Appointments Committee**: is established for the sole purpose of appointment of the PPP Centre CEO each time that a vacancy occurs (section 24 of the Act). The Committee is composed of:
  - the Responsible Minister, as chair;
  - the Minister of National Planning and Monitoring;
  - the Minister for Treasury; and
  - the Minister for Justice and Attorney General.

- **Responsible Minister**: is the Minister designated by the Prime Minister as having responsibility for administration of the PPP Act. The Responsible Minister has various specific powers under the Act, including:
  - determining the "Appropriate Minister" for a Relevant Public Body – section 2(1);
  - adding or excluding an entity to the list of Relevant Public Bodies – section 4(3);
  - giving directions to companies established by a Relevant Public Body under section 8 of the Act, and the Relevant Public Body in relation to that company – section 10; and
  - on a discretionary basis and after consultation with, and acting on the advice of NEC, giving directions to the PPP Centre CEO and PPP Centre as to policy – but not with respect to a particular PPP project, private sector party or person (sections 21 and 31); and

- **PPP Steering Group**: is established as a supervisory committee for the procurement and development of PPPs (section 41). It has wide powers and its functions (section 44) include:
  - coordination, and monitoring of the national PPP policy and program as set by NEC";
  - execution of matters referred to it by NEC;
  - ensuring that PPP projects are implemented in a fair, transparent and accountable manner and with the highest amount of probity;
  - the building of confidence and understanding with the private sector on PPPs;
  - appointment of project teams to manage PPP projects; and
  - the making of recommendations to NEC on
    - matters for improvement of the PPP policy and program; and
    - individual PPP projects.

  It is composed of:
  - the Departmental Head, or delegate, from the Department under the portfolio of the responsible Minister (as Chair);
  - the Departmental Head, or delegate, of the Department responsible for treasury matters;
  - the Departmental Head, or delegate, of the Department responsible for national planning matters;
  - the Departmental Head, or delegate, of the Department responsible for finance matters; and
  - the State Solicitor or delegate.

  The PPP Steering Group has primary responsibility for the oversight of PPP projects, reporting to NEC (section 44 PPP Act)[13]. In this task, it is supported by the PPP Centre, which acts as a technical secretariat to the PPP Steering Group. The governance arrangements for PPP project development vary from those for PPP policy matters in that (i) a project team, chaired by a PPP Centre member, is established by the PPP Steering Group, (ii) there is a direct role for the Relevant Public Body, and (iii) there is no provision for intervention by the Responsible Minister in a project.

  The PPP Steering Group can co-opt as a member the head, or delegate, of the Relevant Public Body whose project is being considered by the PPP Steering Group (section 41 PPP Act). The duration of membership and the terms and conditions of membership will be determined by the PPP Steering Group but, generally, will relate to the period of the project's preparation and procurement and only to consideration of matters to do with that project.

[13] All submissions to NEC must be made by one or more Ministers, so PPP Steering Group submissions will be made through the Responsible Minister and/or jointly with other Ministers

It is expected that, at least for projects where the Relevant Public Body is a State-Owned Enterprise (**"SOE"**) or a Provincial or Local Government, the PPP Steering Group will use its powers under section 46 of the PPP Act to establish a committee for each PPP project; that committee would be the primary decision-making forum for the project. The PPP Steering Group can appoint such persons, including members of the PPP Steering Group, as it considers necessary to a committee[14]. This approach is likely to be necessary as, where the Relevant Public Body is an SOE or a Provincial or Local Government, that entity will have power to execute (or not) the Project Agreement and needs to have a direct role in the project governance[15]. Committees established by the PPP Steering Group will report through the PPP Steering Group.

- Project Team: Team appointed by PPP Steering Committee to undertake the day-to-day tasks with respect to a PPP project. Typically, the Project Team will not be established until after a project is registered with the PPP Centre.

  The Project Team is to include a person nominated by the Relevant Public Body and a person nominated by the PPP Centre, who will lead the Project Team.

  In practice, there may be multiple representatives from these agencies but the Project Team should be kept relatively small and limited to representatives from government agencies with a direct interest in the project and the specialist PPP advisors, as this team will be the government's engine room for the project. For an SOE project, for instance, the Project Team will include a representative(s) from the SOE as well as, potentially, a representative from the sectoral portfolio ministry.

  Given the complexities associated with the development and procurement of a PPP project, key members of the Project Team should be freed from other responsibilities and be dedicated to the PPP project.

- Partner: the private sector party to a PPP agreement with a Relevant Public Body ("Private Sector Partner")

- PPP Forum: a public forum to be convened at least annually by the PPP Centre CEO with the objective of providing all interested persons an opportunity to discuss and exchange views on PPP matters (section 48). The inaugural PPP Forum must be held by the second calendar year following the establishment of the PPP Centre and appointment of the inaugural CEO.

[14] See Figure 5 for an illustration of the PPP project governance arrangements
[15] An alternative is for the PPP Steering Group, using its powers under section 41(4)(b), to invite anyone to participate in meetings to provide information or advice. This would provide a means of direct participation by the relevant SOE, without the need to form a sub-committee, but would not give voting status or other membership rights to the SOE.

A.3.2. Fiscal risk management

The PPP legal framework does not explicitly nominate the Department of Treasury to manage the fiscal commitments and contingent liabilities associated with PPPs, however this responsibility is implicit given Treasury's public financial management function. This responsibility includes the following functions:

- Providing guidance in relation to fiscal aspects of pre-feasibility and feasibility assessments; and
- Developing PPP market-related, long-term financing and innovative tools and de-risking policies; and
- Managing direct and contingent liabilities through appropriate review and approval proceedings; and
- Developing accounting procedures for PPP projects and establishing accounting principles; and
- Providing guidance to the sub-national (local government, provincial, and state-owned enterprise [SOE]) level, and collecting and monitoring direct and contingent liability data; and
- Setting national-level project reporting requirements in relation to PPP projects.

At several points during the PPP project development process, Treasury will be enlisted to conduct a fiscal risk and impact assessment of proposed PPP projects. This will be done at the request of PPP project teams and be incorporated into the submissions made to the PPP Steering Group, in which Treasury is a permanent member.

A.3.3. Project Resourcing

PPPs can be relatively resource-intensive for Government, both fiscally and with respect to staffing, to develop, procure and to manage during the life of the contract. Projects with good governance arrangements can be delayed significantly or even fail if inadequately resourced. It is important that the feasibility study consider the likely realistic resource requirements, both at a staffing level and budgetary, and set these out clearly to make a compelling case for approval of these resources.

The project should not proceed beyond the project registration stage before there are sufficient funds committed to undertake a pre-feasibility and/or feasibility study and should not proceed to tender before there is sufficient funding allocated to prepare the transaction and undertake the project.

The level of required project resourcing will ramp up for the undertaking of project studies, either pre-feasibility or feasibility, and will increase step-wise again for the project preparation and procurement stage. A large portion of this increased resourcing will be through the engagement of specialist advisers. After Contract Execution, the Government's level of project resourcing will lessen notably but still remain significant. For the Service Delivery phase, the nature of the Government's project personnel will change to reflect its focus on ensuring ongoing service delivery, contract management and reporting.

PPP Project Team

The PPP Project Team will comprise officers from the PPP Centre and the Relevant Public Body – and potentially from other agencies (e.g. where the Relevant Public Body is an SOE or a subnational government) and be supported by specialist advisers.

For many of these officers, their involvement in the PPP Project Team will consume much or all of their time, particularly as the project enters the procurement stage. This needs to be recognised by the Relevant Public Body and any other agencies represented, and the other pre-existing requirements placed on those officers curtailed appropriately. Additionally, the PPP Project Team may require input from other agencies (e.g. Department of Lands and Physical Planning, regulatory bodies) but generally these officers will not form part of the PPP Project Team.

It is important that one or more junior officers from the PPP Centre and Relevant Public Body serve on the PPP Project Team, to support more senior officers and to gain exposure to the PPP procurement process; learning by participation is the best way to gain experience. This also should ensure the PPP Project Team includes an officer(s) from the Relevant Public Body who is likely to be involved in the project during its construction and operations stages; their involvement not only provides them with a history and deep understanding of the project but they also may be able to provide a contract manager's input into the project during the procurement stage.

Consultants and Transaction Advisors

The PPP Project Team's initial task will be to engage and manage consultants to undertake the pre-feasibility or feasibility study. For initial projects, at least, it is likely that the PPP Project Team will benefit significantly from having in-house PPP Centre expert consultancy resources to provide input and guidance in management of this process.

Should the feasibility study indicate the feasibility of the project and its procurement as a PPP, and this be approved by the PPP Steering Group and NEC, the PPP Project Team will need to gear up to prepare the project for the tender and to undertake the procurement process.

A key decision at this point is the appointment of the PPP Project Team Leader. This person must have sufficient time and skills to dedicate themselves sufficiently to the project. If the PPP Project Team Leader is sufficiently capable and experienced, specialist expert advisers (eg transaction, legal, commercial, technical) can be appointed separately and each report to the PPP Project Team Leader. In this scenario, the PPP Project Team Leader manages the project on a day-to-day basis. If the PPP Project Team Leader does not possess the necessary skills and/or time, a specialist lead Transaction Adviser generally will be engaged to co-ordinate inputs from the specialist expert advisers, reporting to the PPP Project Team leader. The quality of the PPP Project Team Leader and/or Lead Transaction Adviser will be a major determining factor in the success of the project.

The range of specialist advisers will vary from project to project but commonly will include a transaction adviser, a legal adviser, a commercial adviser and a sectoral technical expert – all of whom must be suitably experienced in PPP transactions in countries with similarities to PNG.

There can be procurement time savings in retaining the same firm(s) that helped with preparation of the feasibility study to provide services during the procurement stage but that/those firm(s) will need to be able to provide suitable personnel to undertake a PPP transaction, providing a skill set which is markedly different from those used to prepare a feasibility study.

Project Budgeting

Budget will be required for payment by the Relevant Public Body of:

- outputs over the period of the contract and, in some PPP models, the capital cost of the project; and
- the costs of project studies, for project transaction costs and for ongoing costs of managing the contract.

The project and outputs

For some PPP projects, particularly where the PNG Government tenders a concession opportunity, the PPP project may be able to be undertaken at little direct budget cost to the Government. If the concession (e.g. to operate a port terminal or airport) has value, the Government may even receive a concession fee and/or ongoing revenue share from the successful tenderer. In such projects, the concessionaire will receive its revenues from users of the facility.

However, such concession opportunities are likely to be rare in PNG.

In almost all PPP projects in PNG, including for concessions, there is likely to be a need for government payments to the Private Sector Partner. Concessions are unlikely to be fully financially viable given the need for capital investments and, for most other PPPs, the Government will be purchasing the services produced by the Private Sector Partner; these service payments may include a component that covers the Private Sector Partner's cost of building the infrastructure. In some PPP models, the infrastructure is financed directly by the Government.

Therefore, for most PPP projects, the Government will need to budget for an upfront contribution and/or for regular (e.g. monthly or quarterly) service payments to the Private Sector Partner over the full operational period of the contract. Depending upon the PPP model used, the Government may also have to budget for payments for the capital cost of the new or rehabilitated infrastructure.

The Government should also consider the merits of allocating budget annually to cover the potential for triggering of contingent fiscal obligations that it holds under the PPP contract.

Project development, transaction and contract management costs

In addition to in-house staffing costs, PPP projects will require funds to cover the cost of:

- a firm(s) to undertake a pre-feasibility and/or full feasibility study;
- advisers to assist in the transaction process;
- other transaction costs; and
- advisers to assist with contract management.

A robust full feasibility study for a PPP project is likely to take between 6 and 12 months and have a sizeable budgetary cost.

A major PPP transaction -one with a major build component and with private financing - is likely to have a procurement period of around two years and most advisers will need to be engaged prior to the transaction and some will need to be held into the contract management stage. Advisory costs for a privately financed PPP with a major build component are likely to exceed PGK 1 million.

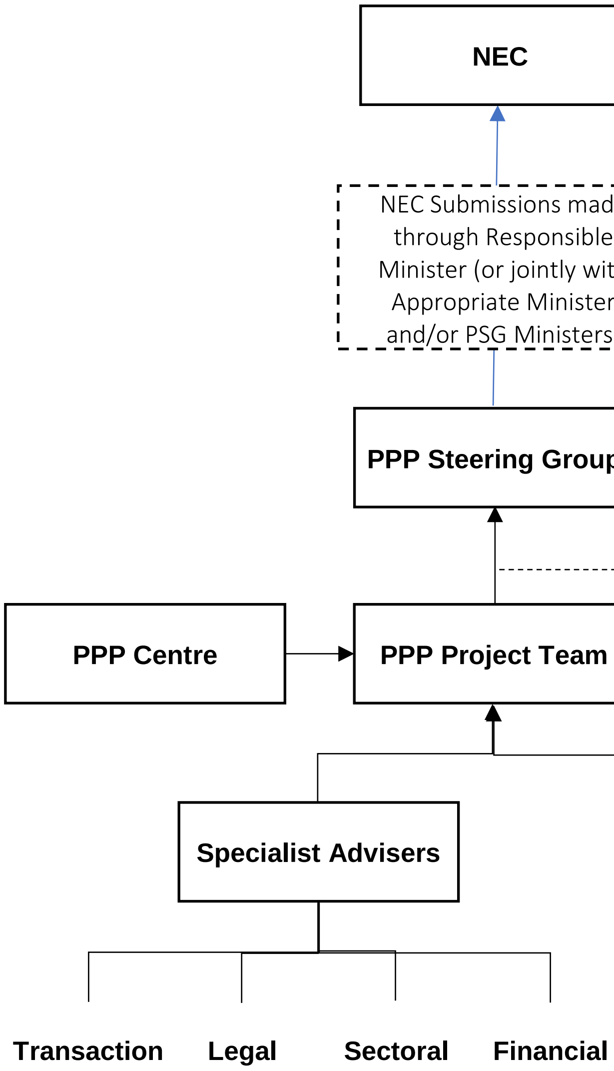
In addition, costs may be incurred for activities such leasing of suitable secure premises for the evaluation of bids – if the PPP Centre's premises are not suitable, site visits if the project is not in Port Moresby, and for advertising, communications, and printing.

Budget will also be required annually over the life of the operational stage of the contract to fund the staffing of the Contract Management Unit (CMU) and related expenses, including the services of expert consultant advisers.

A.3.4 Project Governance

The PPP legislative and regulatory framework establishes the project governance arrangements to be used for PPP projects. These arrangements transition during the different phases of the PPP project development process, but the reporting lines remain consistent as illustrated in Figure 5 below.

Figure 5: PPP Project Governance



SECTION 2

HOW TO DEVELOP AND IMPLEMENT PPP PROJECTS?

The development and implementation of PPP projects requires time, careful consideration and the cooperation of many parties across multiple branches of government, as outlined in the PPP Act and regulations. Attempts to short-cut the development process invariably will lead to suboptimal outcomes. These are manifest through total project costs higher than anticipated, increased need for government support, longer negotiation periods (that often result in material deviations from the originally proposed contract terms), delays in completion, contractor cost overruns, or a lack of an appropriately diverse field of bidders.

The objective of the project development and implementation process is to ensure that a PPP project:

- is duly appraised to assess if it is feasible (both the cost, scope and design of the technical solution and the delivery of the project as a PPP), that the PPP is the best procurement solution, and that it is duly prepared before tendering;
- Has an appropriately structured PPP contract that optimises value for money
- Is effectively procured or tendered in accordance with the legal and regulatory requirements; and
- Is managed during its contract life.

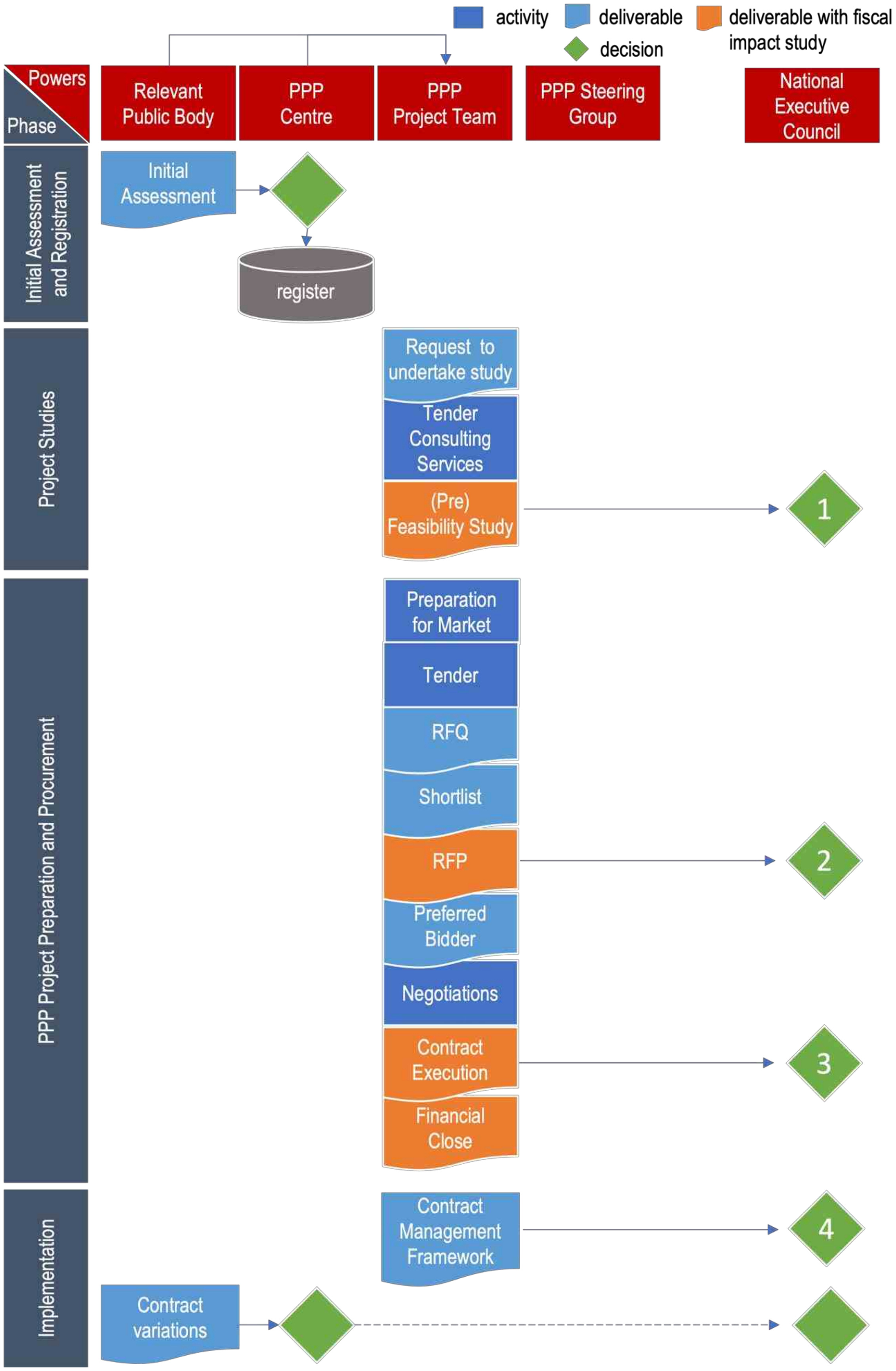
To meet these requirements, the PNG Regulatory context provides for five stages:

1. Initial Assessment;
2. Registration;
3. Project Studies;
4. PPP Project Preparation and Procurement; and
5. Implementation and Contract Management.

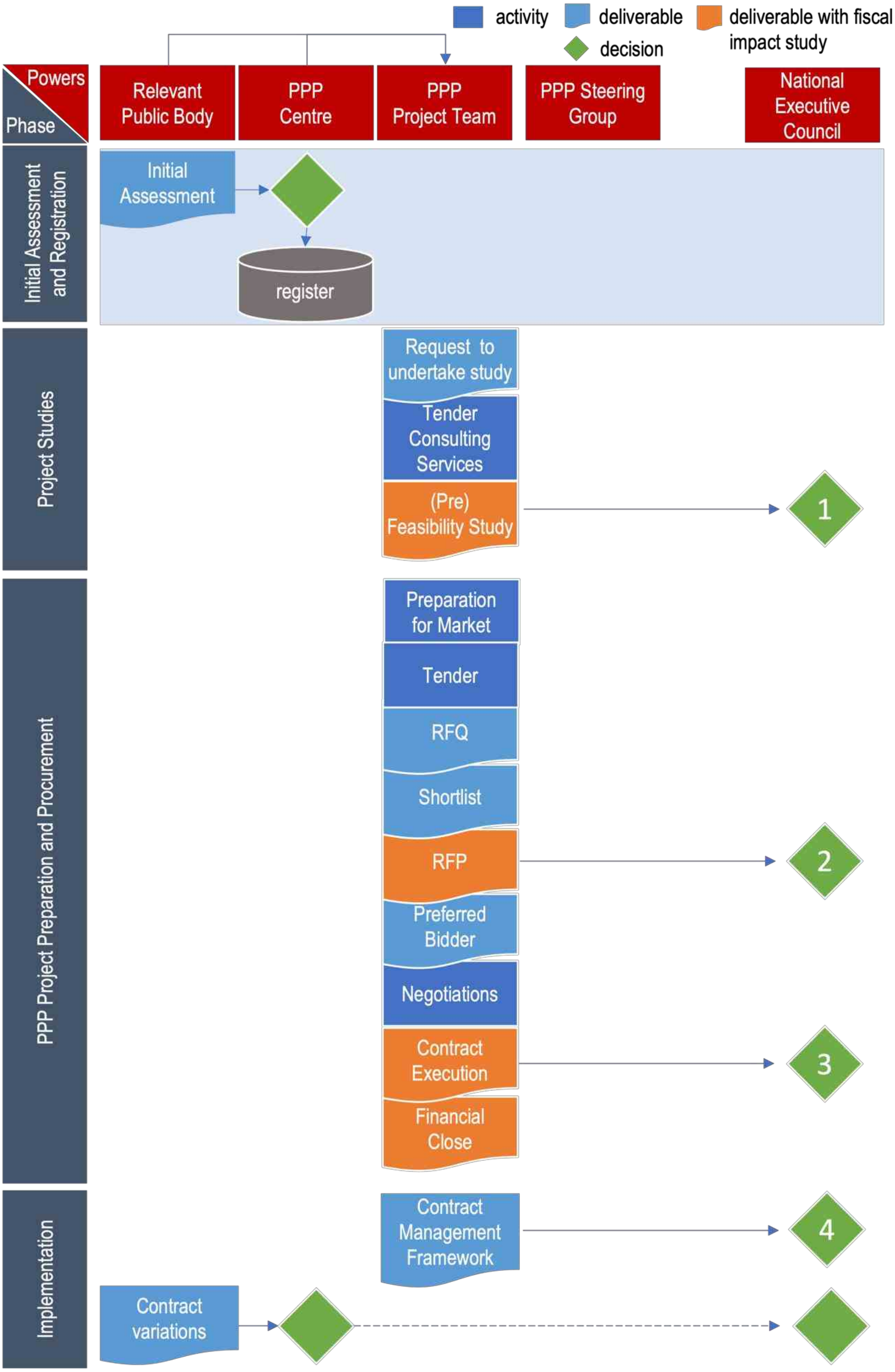
and four gateways requiring NEC approval, as outlined in Schedule 1 to the Regulations.

This section will further explain these stages (treatment of stages 1 and 2 has been joined in view of their shared purpose) in terms of their objectives, activities, involved agencies, approvals and deliverables.

Figure 6: Overview of PPP Process



B.1. INITIAL ASSESSMENT AND REGISTRATION



Objective	To identify NEC-approved projects at or above the referral threshold that are likely to be suitable for successful delivery as PPPs and register those projects for further development.
Governance	During this stage of the project life-cycle, primary responsibilities lie with the Relevant Public Body, through the Department Secretary or CEO, initially and then also with the PPP Centre, through the PPP Centre CEO. Each Relevant Public Body has the primary responsibility for determining infrastructure investment plans and identifying and prioritising projects within its portfolio. It also has responsibility for submitting projects for NEC approval. For NEC-approved infrastructure projects of a value equal to or greater than the Referral Threshold, the Relevant Public Body must undertake an initial assessment of whether the project potentially is suitable for PPP procurement and submit this assessment to the PPP Centre.
Activities	**1. Identify Projects for Assessment** Only those projects which are of high priority to the Government should be assessed for PPP delivery. The use of the PPP mechanism should not be seen as an opportunity by a Relevant Public Body to "jump the queue" and bring forward a project. Even those rare PPPs which are largely self-funding will consume large amounts of senior officers' time in preparation, procurement and ongoing management, and incur significant transaction and contract management costs, particularly on payments for specialist advisers. Furthermore, most PPPs, including those which are self-funding, create contingent liabilities for Government. Accordingly, only those projects in a Relevant Public Body's investment pipeline which have been approved by NEC, should be considered for assessment for PPP suitability. NEC approval essentially means that the project is either already included in the national budget, SOE corporate plan or has received a separate NEC endorsement, which may or may not include a budget allocation. NEC endorsement is essentially a way of designating a project as a priority, and mitigates the risk that a Relevant Public Body will develop a PPP completely outside of what NEC may consider as in the national interest. However, the need for some projects can arise relatively urgently, such as following cyclone damage of public infrastructure and disruption to related services and due allowance must be made for fast-tracking such projects. Only those projects with a value equal to or greater than the Referral Threshold should be assessed by the Relevant Public Body for PPP suitability. For projects below this value, it is less common that PPP

	procurement will provide a better value for money outcome for Government than procurement through traditional means.
	
	The Referral Threshold figure can be calculated by estimated capital cost or by estimated contract value, as some PPPs may not have a construction component. Guidance on how to estimate contract value is provided in Annexe 1 (Initial Assessment Report) of this Guideline. If a Relevant Public Body believes that a project with a value below the Referral Threshold has potential PPP suitability, it shouldconsider the practicality and merits of its bundling with other like projects to reach the Referral Threshold value as projects with a value below the Referral Threshold figure cannot be undertaken as a PPP under the Government's PPP framework (Schedule 3 PPP Act). . Bundling of smaller projects can improve transaction efficiencies if they contain attributes such as (i) similar type of project (multiple schools or multiple solar power IPPPs etc) (ii) related projects in same sector (WTP and related transmission pipes and reservoirs etc) or (iii) geographic proximity.
	
	It is important at the outset that the Relevant Public Body sets out its specific objectives for the project. For some projects, there may be specific objectives which are extremely compatible with PPP procurement. Such objectives include a need to:
	
	• ensure a high level of skill transfer to the Relevant Public Body;
	• ensure a high level of technology transfer to the Relevant Public Body; and
	• defer the incurrence of large funding outlays, for cash flow or balance sheet reasons[16]
	  o only PPP models can achieve this objective.
	
	Conversely, for some projects, there may be specific objectives that may not be compatible with PPP procurement or which may be harder to meet under PPP procurement. If such objectives are set, it is essential that the Relevant Public Body makes a strong justification for them. Such objectives include a need:
	
	• for the Relevant Public Body to maintain a high level of control over direct service delivery;
	• for a high degree of flexibility with the setting of service levels over time; or
	• to achieve a tight deadline for the beginning of operations (e.g. start of a school year, or date of a major event):
	  o this does not necessarily exclude the suitability of PPP procurement. PPP procurement can be expected to

[16] Except for those PPPs which are fully funded by user charges, and privately financed, all PPPs will have significant cash flow and balance sheet implications for Government. However, for PPPs with a build component, balance sheet impacts do occur until the facility reaches Practical Completion.

take longer to reach contract execution and, if relevant, financial close but typically takes less time to build and is much less prone to construction delays.

Most commonly, PPP projects will be initiated by Government. However, they could originate also from an unsolicited proposal (USP) submitted by a private sector party. A framework for treating with USPs is set out in the PPP Regulations (Schedule 4) and guidance on assessment and, as approved, development and procurement of USPs under that framework will be provided in Section C of this Guideline.

2. Screening Identified Projects for PPP Suitability

The objective of the Initial Assessment stage of the project lifecycle, which is undertaken by the Relevant Public Body, is to review those priority projects to identify those that may provide better value for money to Government if implemented as PPPs. The choice of procurement model is an important step in any project. It will be a critical determinant of how well the Government's project objectives ultimately are met.

It is the project features and Government project objectives that determine the potential suitability for PPP procurement, not the sector in which the project is being undertaken. PPPs can be used across the full range of sectors of Government service provision. For instance, internationally, there are PPPs in:

- social infrastructure and related services, for example, hospitals, prisons, schools, public housing, etc;
- economic infrastructure and related services, for example, roads, ports, airports, water, power, etc;
- defence and detention services, for example, patrol boat services, housing for defence personnel, immigration detention centres, etc; and
- municipal services, for example, solid waste management, convention and exhibition centres, etc.

3. Registration

In undertaking its review of the Initial Assessment report submitted by the Relevant Public Body, the PPP Centre will review the assessment and conclusions made by the Relevant Public Body as to the project's potential suitability for PPP procurement and then take one of the following courses of action:

1. Agree with an Initial Assessment that the project is not suitable for PPP procurement;

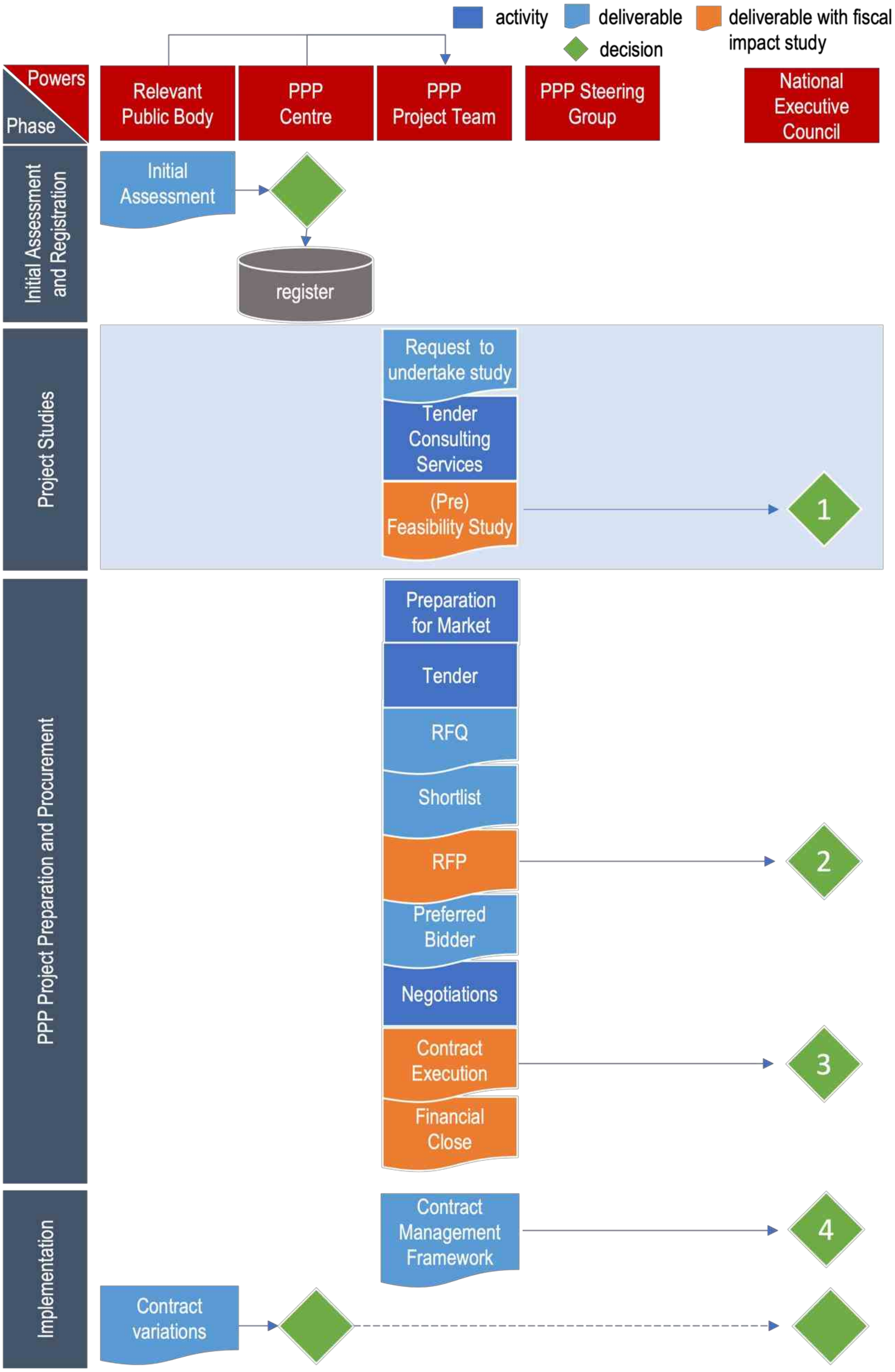
	2. Agree with an Initial Assessment that the project may be suitable for PPP procurement; 3. Disagree with an Initial Assessment that the project is not suitable for PPP procurement; 4. Disagree with an Initial Assessment that the project may be suitable for PPP procurement; or 5. Seek further specific information from the Relevant Public Body to help the PPP Centre make a decision. Under courses of action 1 & 4, the PPP Centre will advise the Relevant Public Body of its decision and the PPP Centre will not proceed further with the project. The Relevant Public Body can continue with the project under Traditional Procurement or, under course of action 4, it may wish to restructure the project and resubmit an Initial Assessment report. Under course of action 2, the PPP Centre will advise the Relevant Public Body that the project has been accepted for registration under the PPP Act. Under course of action 5, the PPP Centre will advise the Relevant Public Body of the additional information that it seeks to enable it to make a decision on PPP suitability. The Relevant Public Body should provide this information within 30 days. Under course of action 3, the PPP Centre will advise the Relevant Public Body of its decision and reasoning and ask that the Relevant Public Body amend the Initial Assessment report and resubmit it within 30 days. If the Initial Assessment report is amended in line with the PPP Centre's advice, the PPP Centre will agree to registration of the project upon submission of the amended Initial Assessment report. If the Relevant Public Body is not persuaded by the PPP Centre's advice that the project may be suitable for PPP procurement and fails to amend and submit the Initial Assessment report accordingly, the project will be referred to the PPP Steering Group for a decision. The PPP Centre will maintain a register of projects that have been deemed suitable for procurement as a PPP (section 12 of the PPP Act) and record information for each project as per Item 4 of Regulations, which will include: a) evidence of the project's approval by NEC; b) the title of the project; c) a description of the project with an explanation as to why the project should be procured as a PPP, including any preliminary market feedback on the study; d) the estimated value of the project;

	e) the Relevant Public Body and identity of key contact persons; and f) the date of registration. The register will be available on the PPP Centre web-site and accessible by members of the public.
Deliverables	**Initial Assessment Report** The Initial Assessment report is drafted by the Relevant Public Body and submitted to the PPP Centre for review. The report needs to contain enough relevant detail to allow the PPP Centre to undertake an informed judgement as to whether it believes the project may be suitable for PPP procurement. As such, it should provide the following material: 1. Project particulars, such as a. evidence of the project's priority, including NEC approval; b. the Relevant Public Body's objectives for the project; c. the service need that would be met by the project; d. the scope and nature of the infrastructure and/or services that would be delivered under the project; e. project location; f. summary of any analysis undertaken to assess (1) economic cost/benefit and (2) fiscal affordability; g. key stakeholders impacted by the project and their position on the project; h. estimated total project cost and proposed funding arrangements; and i. contact details of a senior contact officer in the Relevant Public Body. 2. An outline of the project's features against those listed below (under "Decision Criteria") above as being necessary for PPP suitability; 3. A description of the Relevant Public Body's objectives for the project to identify whether their achievement may be enhanced or potentially constrained by the use of PPP procurement; and 4. An initial assessment as to the potential suitability of the project for PPP procurement. A template for use in preparation of an Initial Assessment report is provided in Annex 1.
Approvals	**1. Concurrence of PPP Centre for Registration**

<table>
<tr><td></td><td>Should the Relevant Public Body and PPP Centre both agree that the project potentially has PPP suitability, the Relevant Public Body will register that project with the PPP Centre. Endorsement of the PPP Steering Group is not required for Registration.</td></tr>
<tr><td>Decision Criteria</td><td>For a public infrastructure/services project to be considered suitable for PPP procurement, it should have a value equal to or greater than the Referral Threshold and possess the following features:
Service focus: the project can be structured so that it produces a flow of services over time to the Relevant Public Body, or to the community on behalf of the Relevant Public Body;
i.e, it cannot simply be a construction project without any ongoing involvement by the construction firm beyond completion of construction;
Output requirements that can be clearly specified and monitored: the service outputs to be produced by the Private Sector Partner must be able to be clearly specified and easily measured. They also must be distinguishable clearly from other related services that are produced (e.g. by Government or other private parties):
If not, it is difficult to determine whether the Private Sector Partner has fully met their contractual commitments each period and therefore should be fully paid; the focus of a PPP is on the services to be delivered from the infrastructure facility;
Service needs are relatively stable over the contract lifetime: the assets to be built by the Private Sector Partner are expected to have a long useful life and the related services are not expected to change quickly over time
the long-term nature of PPP contracts reduces to some extent the flexibility of the Government to adjust its specifications over time;
where agencies remain interested in using the PPP model for services where the nature of demand and/or technology is subject to rapid change (e.g. projects with a significant IT component), shorter-term contracts should be used (e.g. five to seven years, with scope for further short-term extensions);
Sizeable scope for innovation or improved infrastructure/service performance: the project has sufficient complexity and/or there is significant scope for improving the efficiency or service quality of current arrangements
it is those sectors and services that are currently under-performing, or where there is significant untapped scope for improved service performance, where PNG could</td></tr>
</table>

	benefit most from introducing private sector and international experience and expertise; PPPs' use of output requirements rather than prescriptive input requirements provides greater scope for innovation in design and operation; • **Opportunities for significant risk transfer:** are there major project risks which traditionally the Government has not managed well and could be transferred to a private party who is better incentivised to, or more capable of, bearing them? o for instance, in a PPP, if services are not delivered fully to contractual requirements or they are delivered late, payments to the Private Sector Partner are delayed or reduced. This is something that debt financiers, in particular, in PPPs with a privately-financed build component, will seek to avoid occurring; they will closely monitor the Private Sector Partner's cash flows and will directly intervene to seek its improved performance as necessary; and • **Sufficient bidder appetite:** there is demonstrated strong bidder interest in the project o generally, PPP procurement will provide a value for money outcome for Government only when a strongly competitive bidding field exists; this requires at least two competent bidders. Particularly for the initial PPPs undertaken in PNG, it is advisable that a market sounding process be conducted by the PPP Centre or PPP Project Team to ascertain likely market interest and to receive feedback on commercial structuring of the PPP offer to be put to market. *Generally, these six project features are essential to structuring a PPP that can deliver a value for money outcome for Government*.

B.2. PROJECT STUDIES



Objective	To define the scope and structure of the project and the envisaged PPP and confirm the investment and procurement decisions.
Governance	The PPP Steering Group may invite the Appropriate Minister's department secretary to join the PPP Steering Group. The duration of the period of the membership of the department secretary, and the terms and conditions of membership, will be determined by the PPP Steering Group but duration can be expected to align with the period of project preparation, procurement and construction and their involvement is likely to be limited to matters related to that project. For projects where the Relevant Public Body is an SOE or a subnational government, it is expected that the PPP Steering Group will establish a committee to oversight the project and make decisions on matters as appropriate. It is expected that the committee will contain one or more senior members from the SOE or Kumul Consolidated Holdings (KCH) or subnational government and potentially could be chaired by one of these members. It is essential that the Relevant Public Body is part of the project governance arrangements as the Relevant Public Body is the project sponsor, having undertaken the initial assessment and registered the project with the PPP Centre. Furthermore, it will have the detailed sectoral understanding of the project and will want to shape the output specifications and service delivery requirements, as it will be reliant on these to meet departmental service responsibilities over the full life of the contract. The PPP Steering Group, or PPP Steering Group committee as relevant, will establish a project team (**"PPP Project Team"**) to undertake the day-to-day work in preparing the project for market. The PPP Project Team will be led by a person nominated by the PPP Centre and will include a person nominated by the Relevant Public Body. If the Relevant Public Body is an SOE, the SOE and/or KCH will nominate their representative(s) and similarly for a subnational government project. The PPP Project Team will also be served by specialist PPP advisors engaged to assist with the project. Generally, membership of the PPP Project Team will be limited to personnel from these agencies, although the PPP Steering Group may also invite broader nomination if it believes that these other skills are sufficiently important to the PPP Project Team. The leader of the PPP Project Team should be a person sufficiently senior and skilled and with the time to dedicate themselves fully to the project, as necessary.
Activities	**1. Pre-feasibility Study** In some cases, the PPP Project Team may recommend to the PPP Steering Group that the project be subject to a pre-feasibility study to determine whether a full feasibility study is warranted, or to narrow down the range of project options or the PPP models to be assessed in a full feasibility study. This will be a prudent step if the PPP Project

	Team has significant doubts over which project options and/or PPP models should be subject to detailed assessment. Whilst the undertaking of a pre-feasibility study will consume time and money, it will be time and money well-spent if it results in (i) not proceeding with a full feasibility study for a project that is ultimately judged as being either not feasible in its current form or is unlikely to lead to a bankable PPP project; or (ii) a more efficient and targeted set of terms of reference for a full feasibility study; this may regain most the time and money spent on the pre-feasibility study. If the PPP Project Team is of the view that the project would benefit from the undertaking of a pre-feasibility study, it will make a recommendation to the PPP Steering Group and provide draft terms of reference, a robust estimate of both budget and time and proposed arrangements for the engagement of consultants to undertake the study. The terms of reference for a pre-feasibility study will vary according to the specific matters that warrant its undertaking. Annex 2 provides some specific guidance on when undertaking a pre-feasibility study may be warranted and on how a such a study differs to a full feasibility study. If endorsed by the PPP Steering Group, and there are funds made available[17], the PPP Project Team will undertake the procurement process but seek approval from the PPP Steering Group before the appointment of the consultants. The consultants will be engaged by the PPP Project Team, Relevant Public Body or 3rd party (e.g. donor), perhaps depending on the source of funds for the study. The PPP Project Team will manage the consultants as they undertake the study, and, at its conclusion, submit the report – along with a covering submission – to the PPP Steering Group for a decision as to whether: (i) the project should proceed to a feasibility study and, if so, the type of PPP models to be assessed; (ii) the project should not proceed as a PPP; or (iii) other course of action, as appropriate. If the PPP Steering Group determines that the project should not proceed as a PPP, the PPP Centre will delete the project from its Register of projects, and inform in writing to the RPB why the project has been deleted from the Register.

[17] Funding for PPP project studies may come from the PPP Centre, relevant public bodies, development partners or other funding sources established by the Government of PNG

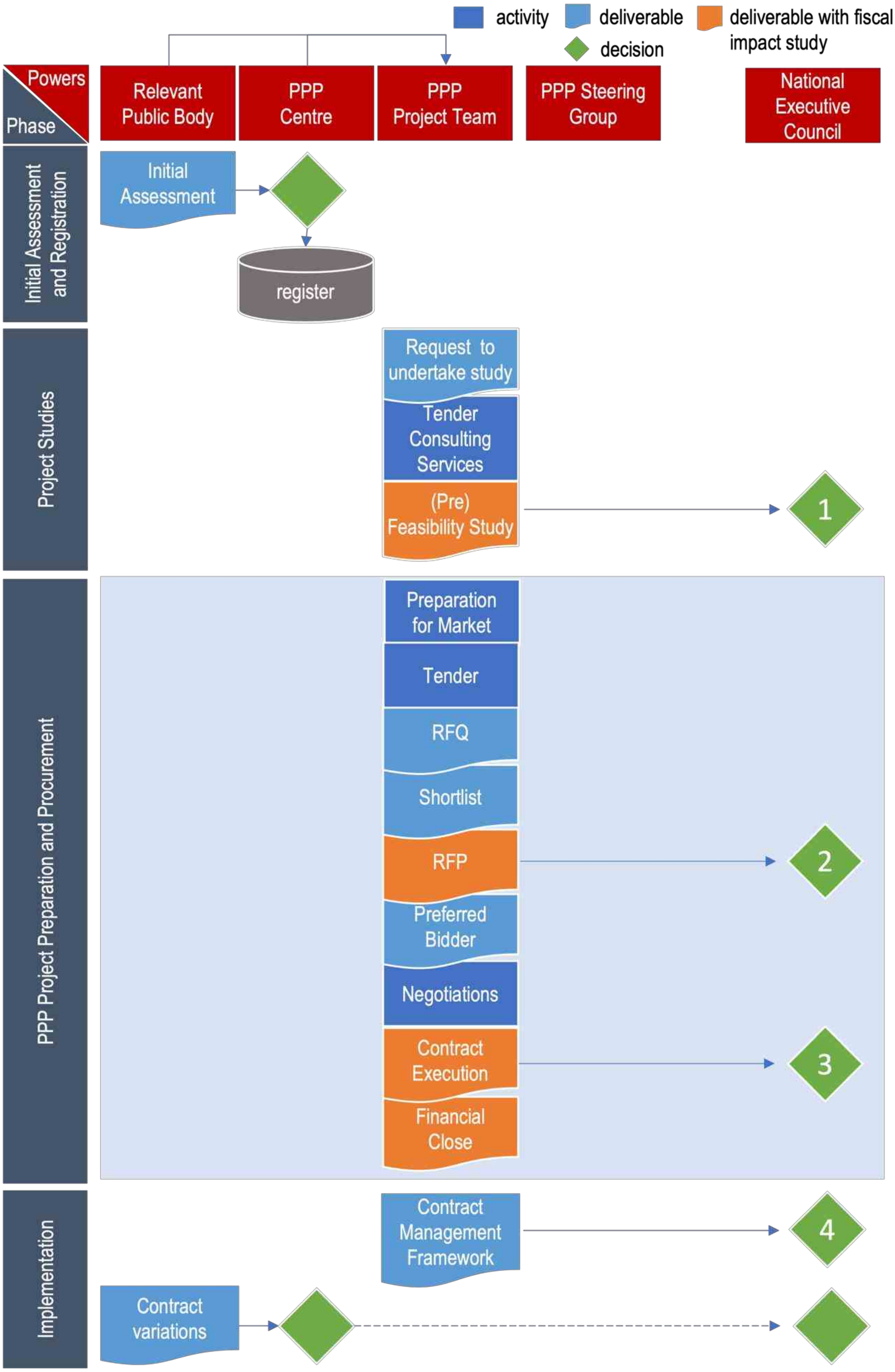
	2. Feasibility Study In the context of the PNG PPP framework, the purpose of a full feasibility study is threefold: (i) to assess the project's viability, by estimating its financial revenues and costs, its economic costs and benefits, and exploring its technical feasibility and identifying whether there are material impediments (e.g. land, legal, stakeholders) to the successful undertaking of the project; (ii) to identify the preferred project option for meeting the project's objectives and to identify its key features, such as (i) proposed infrastructure and service outputs (ii) size and capacity (iii) location (iv) budgetary costs and funding arrangements (v) project risks (vi) environmental and social impacts and (vi) project implementation arrangements; and (iii) to assess the merits of different PPP models in delivering the preferred project option and to confirm, or otherwise, the suitability of PPP procurement. Preparation of a feasibility study is a significant exercise, particularly for the larger and more complex projects that are more likely to be considered for PPP procurement. It can take many months to prepare, and require the support of external advisers with specialist skills. Tasks involved in its preparation can include: • assessment of the condition of current infrastructure; • collection and analysis of data (e.g. usage and demand, current service standards, and ground conditions); • customer and stakeholder surveys; • development of appropriate service standard levels – that meet project needs and are practicable and affordable; • development of designs and costings; • development of policies and legislation essential to the project's feasibility; • environmental and social assessments; • procurement option assessment, including of PPP vs Traditional, and of various PPP models; • economic and financial modelling; • fiscal risk impacts[18];

[18] This fiscal risk impact should be prepared in consultation with the Department of Treasury. It is expected that also the Treasury Secretary will advise the PPP Steering Group of the fiscal risk assessment of the project, considering the incremental impact of this project on the government's aggregate existing liabilities.

	Additional guidance on undertaking a feasibility study is provided in Annex 3 to this Guideline. The PPP Project Team will manage the consultants as they undertake the study and provide regular progress reports to the PPP Steering Group, request advice as necessary and act on any directions given by the PPP Steering Group.
Deliverables	There is no common template for structuring of a pre-feasibility study as, typically, its terms of reference will focus on those areas that warrant its undertaking. For a feasibility study, whilst there is there is strong similarity across sectors and across countries in the underlying core content of material to be included, there is no universal template for the terms of reference to be used. For instance, the relevant issues for consideration and the nature of budget processes differ between countries and can impact the choice of feasibility study structure. However, despite these presentational differences between jurisdictions At the conclusion of the study, the PPP Project Team will submit the feasibility study – along with a covering submission and updated project management plan – to the PPP Steering Group for a decision as to whether the project should proceed to PPP procurement and, if so, the details of costings and their estimated fiscal impact, and the PPP model to be used. The feasibility study will include details of actions that would need to be undertaken before the project could be taken to market, such as land acquisition, compensation agreements with resource owners and other stakeholders, environmental impact mitigation, resettlement and any legal reforms.
Approvals and Gateway 1	**2. Request to undertake Study** The PPP Project Team will make a submission to the PPP Steering Group seeking approval for the undertaking of a feasibility study and the proposed terms of reference, provide a robust estimate of budget and time for the study, and proposed arrangements for the engagement of consultants to undertake the study. **3. Tender Consulting Services** If endorsed by the PPP Steering Group, and there are funds made available, the PPP Project Team will undertake the procurement process to engage a consulting firm(s) to prepare the Feasibility Study Approval will be sought from the PPP Steering Group before the

	appointment of the consultant. The consultant will be engaged by the PPP Project Team, Relevant Public Body or 3rd party (e.g. donor), depending on the source of funds for the study. **4. Feasibility Study** The PPP Steering Group will consider the PPP Project Team's submission and determine its own recommendations to be put to NEC, via a submission signed by the relevant Ministers (inclusive of the Responsible Minister and Appropriate Minister). The PPP Steering Group may recommend that: (i) the project should proceed to PPP procurement and, if so, the type of PPP model proposed; (ii) the project should not proceed as a PPP, and should de-registered by the PPP Centre; or (iii) other course of action, as appropriate. The PPP Project Team's submission to the PPP Steering Group will include the results of a fiscal risk impact analysis undertaken in collaboration with Treasury. **Gateway 1**: NEC's endorsement is needed to proceed to the next stage of project development, i.e. PPP procurement
Decision Criteria	**Investment Decision**: The decision as to whether a proposed project represents sufficient economic and/or social benefit to proceed regardless of the procurement method **Procurement Decision**: The decision as to whether to procure the project through a PPP to be confirmed by a positive outcome from the value for money analysis for the PPP option in comparison with Traditional Procurement and complemented through a reasoned analysis. **Affordability**: The indication that (i) the inter-temporal budget capacity of the Relevant Public Body is sufficient to meet the estimated annual flow of direct and contingent liabilities of the prospective PPP and (ii) the country's overall Fiscal Space is sufficient to absorb the present value of the estimated direct and contingent liabilities from the prospective PPP.

B.3. PROJECT PREPARATION AND PROCUREMENT



Objective	To complete the commercial structuring and risk allocation of the project, prepare and issue tender documents, evaluate proposals and negotiate a PPP agreement with a preferred bidder. As pledged in the National PPP Policy, in seeking to achieve a value for money outcome, the Government will make every effort to ensure "competitive tension in the selection of private partners" and "transparency in procurement and service delivery". Consistent with this Policy, the guidance provided below outlines a two-stage competitive tender process, involving: 1. a public advertisement calling for a Request for Qualification (RfQ); and 2. issue of an RfP to selected parties shortlisted from the RfQ process. This two-stage process is commonly used for PPP transactions internationally where it is expected that there may be relatively strong bidder interest in the project. Where the depth of bidder interest is known to be thin or fickle, the RfQ stage may be bypassed and a two-envelope RfP stage used.
Governance	This stage of the project is resource-intensive and additional resources will need to be harnessed; it can take many months to secure and contract these resources. The PPP Steering Group will review the PPP Project Team leadership and membership and will facilitate the engagement of expert PPP advisers to assist with the procurement process. Leadership of the PPP Project Team requires the services of a suitably experienced and capable officer who can devoted the necessary attention to the project. This may be the PPP Centre CEO. However, if there are multiple PPP projects occurring simultaneously and/or the PPP Centre CEO cannot give sufficient focus to lead both/all projects whilst performing their other tasks, another senior PPP Centre officer may be appointed PPP Project Team leader. In this case, the PPP Project Team Leader would report directly to the PPP Steering Group, but would consult closely with the PPP Centre CEO to avoid conflicts arising. Additional officers from the Relevant Public Body, PPP Centre and any other agencies represented on the PPP Steering Group may be added to the PPP Project Team and/or the time dedication of existing team members increased. There are two main governance options for engagement and management of specialist PPP advisers. A firm or consortium of firms capable of providing the full range of services is engaged; in this case, these advisers will be co-ordinated by a lead Transaction Advisor who reports to the PPP Project Team Leader. Alternatively,

	the specialist advisers may be engaged individually with each reporting directly to the PPP Project Team Leader.
Activities	The guidance below covers, in turn: 1. Preparation for Market; 2. RfQs and Short-listing; 3. RfPs and Bid Evaluation; and 4. Negotiations with Preferred Tenderer and Contract Execution. **Step 1: Preparation for Market** Generally, further work is required to clarify the scope of the project (including allocation of services, activities and obligations between the Government and the Private Sector Partner) and to determine in more detail the specifications of the services that are being sought. Using this additional information, a better cost estimate can be derived also. This will be important, firstly, to confirm the project's affordability, and to modify the project scope if necessary to maintain affordability and, secondly, for use in assessing cost estimates submitted by tenderers later in the transaction. Also, during this preparation stage, the commercial structure of the project is developed in more detail. This includes further work on PPP model features such as : • extent of private financing sought; • length of contract term; • payment mechanism; and • risk allocation: o determination of positions on key policy matters and Commercial Principles unique to this project and initiation of drafting of the Project Agreement. Key activities undertaken to prepare a project for market include: • Procurement Plan: updating the project procurement plan developed in the feasibility study • Resourcing: expanding the Project Team and engaging transaction advisers • Governance: adding a representative from the Relevant Public Body to the PPP Steering Group or establish a project-specific PPP Steering Group committee • Issues resolution: addressing the issues raised in the feasibility study, and others arising subsequently, that require resolution before the procurement process. These may include land availability, resettlement, tariff path with

	ICCC, cultural or heritage issues, government policy issues (eg arrangements for staff to be transferred to the Private Sector Partner) etc • Scope: further clarification of the scope of the project, having regard to affordability, and the proposed split of services to be undertaken by each of the Relevant Public Body and the Private Sector Partner • Output requirements: providing more specificity around the type and level of outputs/services sought under the project, and proposed target service levels and their measurement • Site: for projects with a new/rehabilitated construction component, undertake additional site surveys as necessary and clarify arrangements for access to utility services • Building design: for PPPs with a new/rehabilitated construction component, prepare a reference design. For projects where the facility will be operated by the Relevant Public Body (eg a Design Build Finance Maintain -DBFM- hospital project), particular attention needs to be paid to the functional design element • Risk Allocation: further develop the risk register prepared in the feasibility study and determine a proposed allocation of these risks between the Relevant Public Body and the Private Sector Partner, and which risks are to be shared • Financial modelling: with the scope, outputs and risk allocation more fully specified, prepare updated project costings – capital and whole-of-life. For applicable projects, undertake updated revenue forecasts. If costings or net revenues exceed affordability, modify scope or seek additional funding. • Fiscal risk assessment & Accounting issues: Treasury to (i) undertake an initial fiscal risk assessment, estimating the likely direct and contingent obligations arising for government from the project and (ii) estimate the likely accounting impacts of the project for government • Commercial structuring: further development of the proposed PPP model to be used, contract term and proposed revenue arrangements for the Private Sector Partner. This activity may be informed by undertaking market soundings additional to those undertaken in the feasibility study • Preparation for RfQ issue: drafting of the RfQ document, determination of arrangements for its public issue (e.g. advertising outlets) and development of an RfQ evaluation plan

	Particularly for initial PPPs undertaken in PNG, it is recommended that a formal market sounding exercise be undertaken with a range of private sector parties known to be active in the market- place. The objective of the market sounding exercise is to obtain feedback on the likely attractiveness of the proposed project and on any issues that would cause them concern commercially. It is important that this exercise be led by a Transaction Adviser or PPP Project Team Leader suitably experienced in market soundings, as the quality of the information received will be directly dependent on the way that the soundings are conducted and on the quality of the questions asked. Feedback from market soundings can be used to modify commercial aspects of the PPP structure to make it more attractive to tenderers, whilst maintaining key attributes important to Government. A further key activity in this phase is getting ready for issue of the RfQ, or a two-envelope RfP as appropriate. Such activity includes tasks such as: • informing the market of the impending RfQ release, so that interested parties can be ready to respond; • collection and assembly of information required by the Government in preparing RfQ and RfP documentation and/or by tenderers in preparing their RfP responses; • drafting of the RfQ document (or RfP document if the RfQ stage is bypassed); • preparation of RfQ evaluation arrangements (or RfP evaluation if RfQ stage is bypassed); and • preparation of any proposed information session to be held before or after release of RfQ (or RfP as applicable). For material likely to be required by tenderers in preparation of their RfP responses and in undertaking their necessary due diligence that will give them comfort in the design and pricing of their bids, a Data Room will be established by PPP Project Team. An electronic Data Room will be established for material that can be stored electronically – and this can be accessed by bidders remotely, whilst for any material that cannot be suitably stored in the electronic data room (e.g. large maps and drawings) a physical Data Room may also be established. **Step 2: Request for Qualification (RfQ)** The release of the RfQ signals the Government's commitment to the project. An RfQ should be released only when the Government is serious about undertaking a project as a PPP, and the necessary approvals have been received by the PPP Project Team.

	The timing of the RfQ release is important. Bidders like an efficient tender process because for them “time is money”. Ideally, the RfQ should be released no more than four months before the scheduled time for release of the RfP documents. Bidders are typically given three to four weeks to respond to an RfQ and the assessment and short-listing process can take between four to eight weeks. For most RfQs, there will be an international advertisement as the domestic PPP market is thin in PNG and it is the Government’s policy to attract a competitive bidding field. Commonly, an information session will be held for interested parties soon after release of the RfQ document where the PPP Project Team provides a presentation on the project and conducts a question and answer session. In some cases, an international “roadshow” is held prior to RfQ release to assess potential interest in the project. At the RfQ stage, Government is seeking to assess the capability of bidders to undertake the project over its lifecycle and the evaluation criteria are shaped accordingly. Consequently, the evaluation criteria at RfQ stage will focus on criteria that assess capability, such as experience in the sector, with that type of project, in the Pacific region, with that form of PPP model. The criteria will also include an assessment of the tenderer’s financial capability. The objective of the RfQ phase is two-fold: • first, to market the project in a way that optimises the range of suitable respondents; and • second, to short-list or pre-qualify those respondents deemed most capable of delivering the project in a way that would meet the Government’s project objectives. The RfQ phase can be used to either short-list or to pre-qualify bidders. • Shortlisting is a balance between choosing the most capable bidders and maintaining a sufficiently large field to drive competition. Common international best practice is to short-list two to four tenderers. If more than this number are deemed to be capable, only those RfQ respondents considered to be most capable are short-listed. A maximum of four is common because, beyond this number, the average probability of success for any one bidder becomes 20% or less and some tenderers may consider that their preparation of an RfP response does not warrant the expenditure of the necessary cost and resources. Conversely, in situations where there are only a limited number of private sector parties capable of submitting high quality bids, taking more than two or three tenderers to RfP phase may not increase the competitiveness of the bid field.

- Under pre-qualification, all RfQ respondents that pass a pre-set capability threshold automatically proceed to RfP phase. A pre-qualification approach is more suited to simpler procurements where bidding costs at RfP stage are relatively small.

It is common practice for interested parties to register to receive an RfQ. This allows the PPP Project Team to monitor the potential interest in the project and also to provide any additional material to registered parties as necessary (e.g. after the conducting of an information session).

Step 3: Request for Proposal (RfP)

The release of the RfP indicates the Government's firm commitment to structuring and funding the project as a PPP. That is, should a bid be received that meets the Government's requirements, the Government intends to contract with that party. NEC's approval is required for the release of RfP documents to tenderers.

The objective of the RfP phase is to identify the tenderer that best meets the Government's requirements, as outlined in the RfP documents. Accordingly, in contrast to the RfQ phase, the evaluation criteria are focused on assessing the quality of the solution proposed by bidders. The RfP evaluation criteria will vary from project to project but will always cover the following matters:

- *service delivery*: how it will sustainably meet service KPIs;
- *technical*: suitability of proposed facility technical/design solution (for PPP projects with an infrastructure component);
- *commercial*: extent of acceptance of risk allocation in the draft Project Agreement including the payment mechanism;
- *methodology*: process for organisation of their team to deliver the project and ongoing services; and
- *financial*: quantum and certainty of the financial offer.

The RFP phase involves a substantial and detailed tender request to bidders and a binding offer by bidders to Government.

The release of a draft Project Agreement rather than a Term Sheet is recommended, as a Project Agreement is much more detailed and will reduce significantly the potential scope for clarification by bidders, and scope for negotiation by the Preferred Tenderer.

In cases where a two-envelope RfP process is used in the absence of an RfQ stage (see discussion above), tenderers are required to submit their response in two separate envelopes; the first containing their technical response and the second envelope containing their financial response. The second envelope is opened only for those tenderers whose technical solution is deemed to be satisfactory.

	Depending upon the complexity of the project and PPP model used, a period of up to 20 weeks or more may be scheduled for tenderers to prepare and submit their RfP responses. Invariably, tenderers will seek to clarify elements of the Government's intent embodied in the RfP documentation as they prepare their RfP responses. Commonly there is a process whereby they can submit questions to a designated Government contact, commonly the PPP Project Team Leader or externally engaged Transaction Adviser. After consideration by the appropriate Government officers and advisors, that Government contact officer will respond to the tenderer in writing. As appropriate, the response may also be provided to other RfP tenderers. Evaluation of RfP Responses An RfP Evaluation Plan, setting out the process for evaluating RfP responses, should be completed and approved by the PPP Project Steering Group before RfP responses are opened. The RfP Evaluation Plan is a document prepared by the PPP Project Team which sets out the key arrangements that guide the evaluation process, including • brief explanation of each evaluation criterion and the matters to be considered in their assessment; • steps in the evaluation process and indicative timeline; • parties to undertake the evaluation, including composition of the RfP Evaluation Panel and any evaluation sub-committees; • evaluation methodology i.e for bringing together an assessment of all evaluation criteria; and • format of evaluation report to be submitted to PPP Steering Group. Key elements of the process set out in the RfP Evaluation Plan will include: • Arrangements for storage and distribution of tender responses • Arrangements for checking of conformity of tender responses • Process if only one conforming response is received • Arrangements for Evaluation Panel members and, as relevant, sub-committee members, to access tender responses and to store their working materials during assessments. This is likely to include restriction of access to financial components of the tender responses

	• Meeting arrangements for the Evaluation Panel and, as appropriate, sub-committees. • Identification of any tender response matters requiring clarification from bidders and process for seeking such clarification; • Guidance on how to assess and score each evaluation criterion • Relative importance of each evaluation criterion; for instance, they may be ranked or categorised into bands of relative importance or given a percentage weighting • Process for determination of overall Evaluation Panel evaluation scores/ranking; • Reporting arrangements to the PPP Steering Group, including on recommendations arising from the RFP assessment process" Typically, the RfP Evaluation Panel will comprise some or all PPP Project Team members plus some additional technical experts. Sometimes, for the more complex projects, sub-committees are established (e.g. technical, financial and commercial) to assess tenders against relevant respective evaluation criteria and to report their assessment to the Evaluation Panel for consideration. The establishment of sub-committees is a common way also of limiting access to sensitive financial information submitted by tenderers. When RfP responses are received, their evaluation should follow the process set out in the Evaluation Plan, including the maintenance of appropriate confidentiality. As indicated above, the RfP Evaluation Plan should address the potential event of only one conforming bid being received.[19] . There are a number of potential options if that situation arises, ranging from abandonment of the current tender process to continuation of the process with that one bidder. The recommended approach is to concurrently (i) have the RfP Evaluation Panel assess fully the tender response and to reach a decision on how well it meets the tender requirements and (ii) have the PPP Project Team and its advisers review and update the pre-RfP financial model, to ensure that a like-with-like comparison can be made with the tender. Based on these findings, the Evaluation Panel should report to the PPP Steering Group advising the next course of action, which could be

[19] This guidance addresses the situation where more than party was invited to submit an RfP response but only one ultimately submitted a conforming response. The issue of whether only one party was deemed suitable for short-listing after assessment of RfQ/EoI responses is a separate matter and will have been addressed before the decision to issue the RfP

(i) Abandon the current tender: because the response is well below the government's tender requirements

(ii) Negotiate further with the remaining bidder: reflecting that there may be scope for negotiations to achieve a value for money outcome for government, taking into account the costs and time of undertaking a new tender process

(iii) Accept the tender: on the basis that the tender response fully, or substantially, meets the tender requirements and provides a value for money outcome to the government.

It may be necessary to seek clarifications from bidders on specific matters with respect to their submitted RfP response to enable completion of this assessment. **"Clarifications"** are explanatory material supplied by a bidder post lodgement of its RFP response at the request of the PPP Project Team to help the RfP Evaluation Panel understand the details of the tender. This contrasts with **"Negotiations"**, which may occur with the Preferred Bidder and can result in material changes from that contained in the bidder's RfP response.

Step 4: Negotiations and Contract Execution

Depending on the outcome of the evaluation, it might be necessary to undertake a structured negotiation process with the Preferred Bidder to resolve any material outstanding issues that are material and are preventing Contract Execution. It is important that the proposed negotiation strategy and associated framework is submitted by the PPP Project Team to the PPP Steering Group for approval prior to the beginning of negotiations.

The negotiation framework will include matters such as the list of matters for negotiation, a process for negotiation and a timeline for resolution. This negotiation framework puts a boundary around the negotiations and prevents the Preferred Bidder from adding other issues to the list during discussions. Acceptance of this negotiation framework should be a pre-condition to being named as Preferred Bidder.

For projects involving private sector finance, Contract Execution may list some actions to be undertaken before Financial Close can be completed.

One such condition precedent to Financial Close for privately-financed PPPs is expected to be the acquisition of committed debt finance by the Preferred Bidder. It is expected that in the undertaking of PNG PPP projects, at least until the PPP market becomes mature, the requirement for tenderers' RfP responses to contain fully committed debt finance will be relaxed.

	It is currently acknowledged that obtaining fully committed debt finance is a large and time-consuming exercise for bidders and is particularly difficult in thin financial markets like in PNG; having some domestic finance is likely to be considered by the Government and/or bidders to be advantageous. Accordingly, the Preferred Bidder needs to be provided sufficient time post Contract Execution to obtain suitable and competitive debt finance. This may take between 6 and 12 months, depending upon the project's size and complexity. Where financing is sought from multilateral financial institutions, this may take up to 18 months.
	
	Other conditions precedent to Financial Close required by one or both of the parties may include[20]:
	
	• receipt and review of contracts executed by the Private Sector Partner with key sub-contractors;
	• receipt and review of insurance arrangements taken out by the Private Sector Partner;
	• receipt of permits and planning approvals; or
	• receipt of a final approval from PNG Government regulatory agencies such as the:
	    • Conservation and Environment Protection Authority;
	    • Independent Consumer and Competition Commission (**"ICCC"**), where the project is in a sector subject to regulation by the ICCC;
	    • Internal Revenue Commission, which is responsible for PNG's tax collections
	    • Investment Promotion Authority, which is the regulatory authority for foreign investment;
	    • National Energy Authority, which issues power generation licenses; or
	    • Land Titles Commission, which has jurisdiction over customary land disputes.
	
	The PPP Project Team will work diligently during this period to ensure that obligations of the government during this period are met efficiently and effectively. It will also closely monitor progress by the Private Sector Partner, particularly with respect to the likelihood of delays.
	
	Following Financial Close, the PPP Private Sector Partner can begin to undertake its obligations under the contract.
	
	It is also good practice in the period following Contract Execution for the PPP Centre to debrief unsuccessful short-listed bidders. These bidders generally are very interested in receiving feedback on where

[20] This is an indicative list

	they fell short. It is in the Government's interest also to do this as it may help to maintain interest from these bidders and to enable them to improve their bid quality in future PNG PPP tender processes. It is important that these debriefs are done in a way that will not lead to a legal challenge. Accordingly, they should be led by a Transaction Adviser experienced in this task and focus on how the private party could improve their proposals in the future rather than on the specific details of their proposal.
Deliverables[21]	**Procurement Plan** A Procurement Plan should be prepared by the PPP Project Team, for endorsement by the PPP Steering Group, that sets out the procedural matters for the undertaking of the procurement process in a manner that is faithful to these principles espoused in the Policy and Regulations. A list of matters to be addressed in the Procurement Plan is outlined in Annex 9. **Request for Qualification** The RfQ document combines promotion of the project to prospective tenderers with an outline of the submission requirements from respondents. The size and contents of an RfQ document varies greatly internationally, ranging from a one-page public advertisement to a document of almost 100 pages. For most PPP projects in PNG, a document of less than 20 pages should be appropriate. In all cases, the content of the invitation for RfQ should not be limited to the advertisement text but constitute a document that interested parties need to register with the PPP Project Team to receive. The necessary contents of an RfQ document include: • a description of the project and the proposed PPP model; • a description of the service delivery requirements that Government is seeking to procure and the proposed means of payment to the Private Sector Partner; • project governance arrangements, proposed project process and timeframes; and • evaluation criteria and RfQ response requirements. If the RfQ process is to be used for short-listing rather than for pre-qualification, it will indicate also the maximum number of parties to be short-listed.

[21] For reasons of simplification, not all deliverables listed here are illustrated in Figure 6

	Request for Proposal
	
	The RFP documentation provided to short-listed tenderers is much more substantive than the RfQ document. The RfP needs to provide sufficient information to allow bidders to understand the Government's requirements, to prepare a detailed proposal that meets the Government's requirements and to provide a firm cost estimate.
	
	The suite of RfP documentation released to short-listed tenderers typically includes:
	
	1. *Offer document*
	    a. setting out a summary of the project, key commercial elements, Government's service & other requirements, evaluation criteria, timeline for responses, process for site visits and or seeking of clarifications to RfP material, and format of responses.
	2. *Service and specification and other performance requirements;*
	3. *Draft Project Agreement;*
	4. *Returnable schedules*
	    a. to ensure that information in submitted RfP responses is structured for ease of evaluation; and
	5. *Background* information documents and/or access to an electronic data room.
	
	RfP Evaluation Plan
	
	The RfP Evaluation Plan sets out the process for evaluating RfP responses and is prepared by the PPP Project Team and endorsed by the PPP Steering Group before RfP responses are opened.
	
	RfP Evaluation Report
	
	The RfP Evaluation Report is prepared by the Evaluation Panel and summarizes the results of the evaluation of each RfP response against the agreed criteria in the Evaluation Plan, provides an overall ranking of the RfP responses and makes a recommendation to the PPP Steering Group.
	
	PPP Agreement
	
	The PPP Agreement is the contractual document setting out all of the commercial terms and obligations and legal requirements of each of the respective parties.

	Progress Reports The PPP Project Team will provide a brief written progress report to the PPP Steering Group at regular intervals (e.g. fortnightly) and identify significant issues on which it seeks consideration or guidance. It is the responsibility of members of the PPP Project Team to keep their senior departmental management sufficiently informed of project progress (within the bounds of agreed confidentiality provisions) and, in particular, of issues that require consideration by that agency. PPP Steering Group members have a similar responsibility with respect to their Ministers.
Approvals and Gateways 2 and 3	During this stage of the project, the PPP Steering Group approves all deliverables and NEC approval is required at two points: 1. Prior to issue of RfPs (Gateway 2); and 2. Prior to Contract Execution (Gateway 3). <u>Gateway 2</u>: Release of RfP When all the relevant material has been assembled and the material issues resolved, the Project Team will submit the RfP suite of documents to the PPP Steering Group for endorsement. The submission will outline the key elements of the RfP and the fiscal impact assessment endorsed by Treasury. Upon endorsement by the PPP Steering Group, the Minister responsible for the PPP Act (perhaps jointly with Ministers of other agencies represented on the PPP Steering Group) will submit the key terms of the RfP to NEC for endorsement. NEC endorsement clears the way for the release of the RfP to the shortlisted bidders. <u>Bid Evaluation:</u> When the Evaluation Panel has completed its task, it will make a recommendation to the PPP Steering Group. Accompanying the Evaluation Report should be an updated fiscal risk assessment by the Department of Treasury of the impact of the preferred bidder's proposal. After considering these recommendations, the PPP Steering Group will most likely take one of the following courses of action: 1. Selection of a Preferred Bidder with whom Government should execute a contract; 2. Selection of a Preferred Bidder with whom to undertake a series of one-on-one negotiations on an identified list of matters; 3. Provision of additional information to tenderers and time for them to make a revised offer to Government; or

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4. Cessation of the tender process without a contract being awarded.

If the 2nd or 3rd of these courses of action are taken, additional activities will occur before Gateway 3 is reached. If the 1st or 4th course of action is taken, the project moves directly to Gateway 3.

<u>Gateway 3:</u>

At this stage of the project, the PPP Steering Group's options to progress the project include:

1. recommend to NEC that a contract be executed based on the outcomes of the negotiations; or
2. seek to extend the negotiation period with the Preferred Bidder; or
3. invite the 2nd placed tenderer to be the Preferred Bidder; or
4. recommend to NEC conclusion of the tender process, without awarding a contract.

If negotiations have been successful, the first of these choices is likely to be selected, and NEC approval will be sought to execute a contract with the Preferred Bidder.

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<tr><td>Decision Criteria</td><td>

Short-listing

The purpose of the RfQ process is to select and short-list the parties who are most capable of successfully delivering the project to the government requirements. A consideration of assessment of capability considers factors such as:

- Demonstrated relevant experience and capability
- Proposed methodology
- Demonstrated understanding of the project and its key issues
- Financial capacity of the private sector party
- Any conflict of interest or probity concerns

The decision as to the number of parties to short-list will consider:

- The number of parties who have demonstrated capability
- The desire to have a competitive bidding process
- The desire to limit the short-list number so that all short-listed parties remain keenly interested

Release of RfP

The purpose of the RfP process is to provide sufficient guidance and material to short-listed bidders to enable them to prepare a response that meets the government's requirements. As such, a consideration as to whether to release an RfP will consider:

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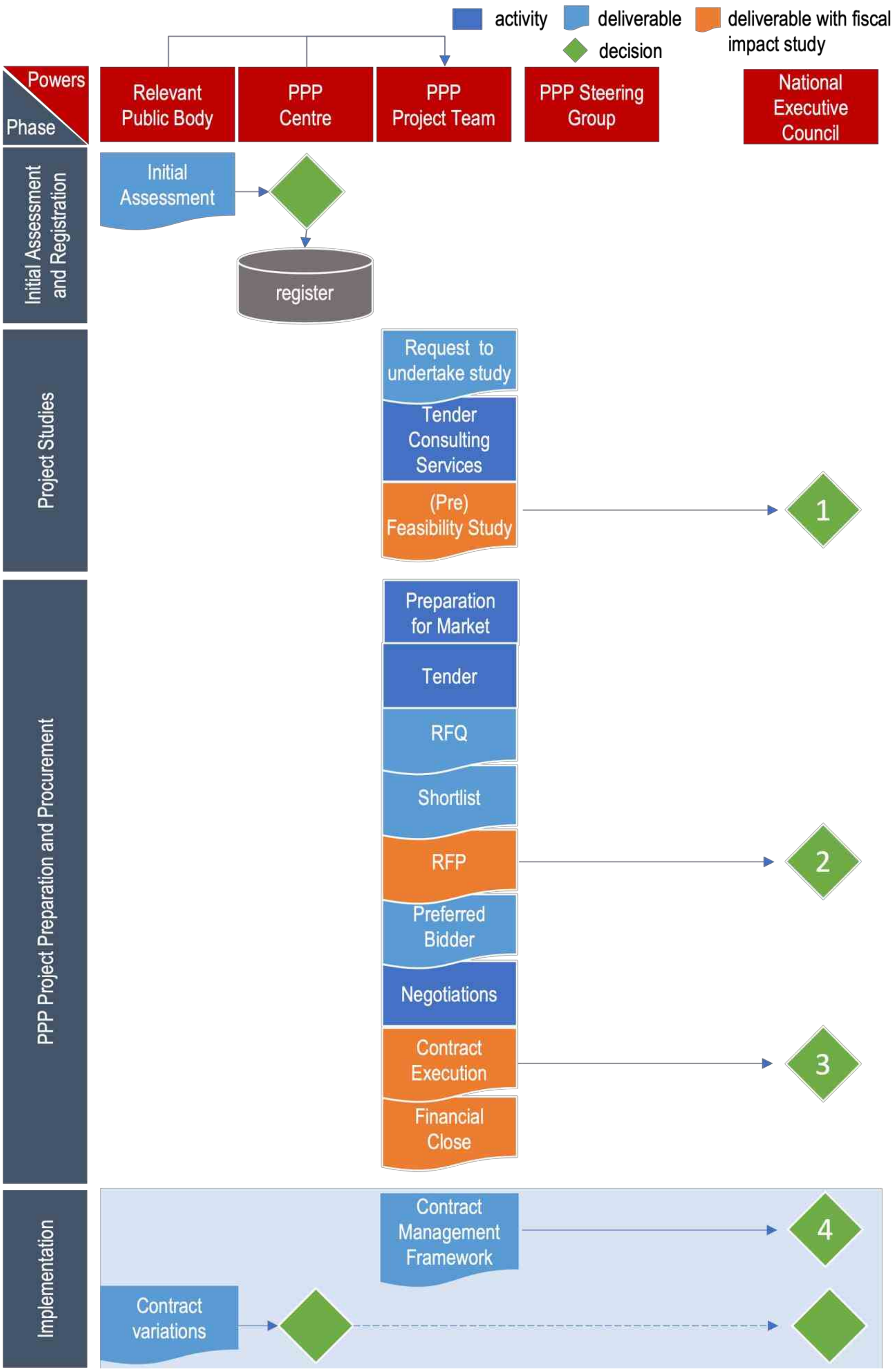
	• Whether Government is fully committed to the project and the associated fiscal obligations • Whether all the key issues have been resolved and bid material assembled, and the Government sufficiently prepared, to allow an efficient and effective bid process • Whether the bid field is likely to provide a sufficiently strong competitive process Contract Execution The purpose of this step is to ''partner'' with a party that will deliver the contracted services over the full term of the contract, and construct any infrastructure necessary. As such a consideration of whether the Government should execute the contract will consider: • Whether the Government is confident that the offer from the private sector party is likely to be able to sustainably provide the contractual service requirements • Whether the Government is confident that the private sector party can raise the necessary finance on the agreed terms.

B.4. IMPLEMENTATION



Objective	To ensure successful construction of the facility, as relevant, and ongoing and sustainable delivery of the contracted services to the specified levels over the life of the contract
Governance	It is important that the Relevant Public Body plays a central role in the contract management arrangements as, they require the delivery of suitable facilities and ongoing receipt of the Private Sector Partner's contracted services to achieve their portfolio objectives. For projects with a Construction Delivery phase, there are two main governance options for management of the contract until the start of Service Delivery: (i) The PPP Project Team led by the PPP Centre continues to be responsible for the project and becomes the Contract Management Unit (CMU), with a suitable adjustment of the Team's composition; or (ii) the Relevant Public Body assumes responsibility and establishes a CMU, which generally will include some members of the previous PPP Project Team. Under either scenario, the PPP Steering Group remains a key decision-making body during the Construction Delivery phase. During the Service Delivery phase, the PPP Steering Group no longer has a direct role in project governance. The CMU will report to senior management in the Relevant Public Body. The CMU will also provide regular reports to the PPP Centre as to performance of the Private Sector Party and flag any emerging issues that may require their support.
Activities	Following Contract Execution (or Financial Close as relevant) of a PPP project, project-related public sector resources turn their focus to effective contract management, which is critical to sustained project success. Many PPPs internationally have failed because of the public sector's poor contract management, with resultant cost and/or service disruption impacts. Where appropriate, the Government should solicit advice from external advisors to provide the necessary capabilities to develop and utilise a robust contract management framework. This guidance builds on the process set out in Schedule 1 of the PPP Regulations. For PPPs with a build stage, contract management will have three phases: • Project Implementation (also known as Construction Delivery); • Project Operation (also known as Service Delivery); and

	• Preparation for Contract Expiry (also known as Transition and Handback). For Services Only PPPs (i.e. PPPs without a build stage), there will not be a Construction Delivery phase. However, there may be a mobilisation period beyond Contract Execution before service responsibilities are assumed by the Private Sector Partner. This period may be needed to allow the Private Sector Partner to finalise preparations, including recruitment and training of its workforce, and for Government to finalise its arrangements, including for transitioning out of direct service delivery where the relevant Public Sector or another party has been doing this directly. There are some fundamentals of contract management that are common to all three phases. These include: • **Maintenance of relationships** – The long-term nature of PPP projects makes the establishment and maintenance of a good working relationship with the Private Sector Party critical to sustained project success. During the life of contract, a range of events are likely to arise that will require a good working relationship to navigate them successfully (e.g. change events leading to contract variations; service performance issues; requests for refinancing etc.); • **Contract management planning –** Arrangements for contract management need to be in place before the beginning of each phase of contract management. Key elements requiring planning include governance and resourcing, preparation of a contract administration manual, establishment of arrangements for knowledge management, and the form of reporting arrangements to senior management and Ministers. There should be ongoing planning throughout the contract period, based on reviews of performance to-date and looking ahead to the nature of likely emerging issues; • **Contract administration** – There will be many contractual obligations on both the Private Sector Partner and the Government. The CMU team needs to understand these obligations. Contract administration involves both parties working to achieve these obligations and meet the Government's objectives for the project. The PPP contract administration manual should provide the basis for such activities and needs to be a live document, updated continually during the contract. In addition to being familiar with the technical, commercial, financial and legal aspects of the contract, the contract management team needs to have a close understanding of project objectives and

	requirements, and the commercial intent of the parties involved; the operational, industrial and community issues associated with the project; and the regulatory context in which the project operates. Guidance on the structure and contents of a contract administration manual is provided in Annex 6 to this Guideline; and • **Knowledge management** – This includes client and stakeholder feedback, performance monitoring and reporting, ongoing risk management, and variations to the contract. Having an effective information management strategy customised to the individual project's needs is essential in ensuring Government's ability to successfully manage a PPP contract. Information collected and analysed will help refine planning and management strategies over time as Government gains a better understanding to enable it to manage project risks more effectively. Specialized contract management software knowledge management tools are available to help with the efficient data management. **Step 1: Establish Contract Management Framework** PPPs require active ongoing management by Government throughout the life of the project. As set out in the PPP Regulations (Schedule 1 section 5), prior to contract execution, or financial close as applicable, the PPP Project Team will prepare a proposed framework for ongoing management of the contract for submission to the PPP Steering Group. The PPP Project Team should develop a framework for establishment and operation of the contract management arrangements and submit this to the PPP Steering Group for consideration and approval, and subsequent endorsement by NEC (Gateway 4). This framework should include an outline of: • proposed governance arrangements; • tasks to be undertaken to meet contractual requirements, including regular matters and change events; • broader contract management responsibilities, such as taking a forward-looking approach to identifying potential issues, monitoring of the Private Sector Partner's performance and watching for warning signals of potential difficulties, and reporting arrangements; and • a staffing and budgetary profile for the Unit; budget will be required for accessing specialist advisers as necessary during the Service Delivery and Transition/Handback phases.

	The PPP Steering Group will seek NEC approval of the proposed contract management arrangements. This should occur well before these contract management arrangements are due to take effect so that the team can be established, fully staffed and resourced before it begins its task. Ideally, the CMU leader during the Construction Delivery phase should have been involved in the project during the tender process (as a member of the PPP Project Team) so that they have a good understanding of the project, the contract details and their intent, issues that have arisen during the project to date, the design and construction requirements and the Private Sector Partner's reporting requirements. It also would be beneficial if some other members of the CMU had earlier involvement in the project, such as through a role in the PPP Project Team. This early involvement will also facilitate a seamless transition from day-to-day project management by the PPP Project Team. For PPP projects with regular payments by the Relevant Public Body to the Private Sector Partner, the CMU leader will need to seek approval from the Appropriate Minister, or senior Departmental officer with appropriate powers, for the making of payments to the Private Sector Partner each contractual payment period (usually monthly or quarterly) during the Service Delivery phase. This request should be accompanied by an appropriate report outlining the Private Sector Partner's service and broader performance during that period, indicating whether any abatements are proposed and addressing any other significant issues that have arisen or have appeared on the horizon. It will be important also for the CMU to continue to liaise with the PPP Centre during the Service Delivery stage because issues will arise that will warrant advice from the PPP Centre, particularly around change events - such as contract variations, change of ownership or control requests from the Private Sector Partner or refinancing. It would be good practice for the CMU to provide regular reports to the PPP Centre on contract performance and flagging upcoming issues where PPP Centre advice or support may be required. Any requests by either party – Government or Private Sector Partner - for a variation to the contract or the invocation of a change event mechanism will necessitate significant work, and expense, by the CMU. Additionally, the period prior to contract expiry will be particularly busy for the Unit as it undertakes an assessment of asset conditions for Handback to the Relevant Public Body (as relevant) and prepares for a contract extension, a new

	tender process or assumption by the Relevant Public Body of direct responsibility for service provision.
	
	Step 2: Construction Delivery
	
	This phase commences immediately after Financial Close and continues through to the commissioning and Commercial Acceptance of a project, where delivery of the services specified in the contract begins. This phase is relevant only for those PPP projects with a build component and, depending on the nature and size of the infrastructure asset, can last from one to five years.
	
	Key elements of this phase typically are design development, construction and commissioning of the project. Contract management for this phase involves ensuring that the final detailed design is consistent with the initial design accepted by Government at Contract Execution, that construction is in accordance with the detailed design, that the constructed facility satisfies the commissioning tests set out in the contract, and that contractual timelines are met:
	
	• Detailed design
	  o During this period, the design in the winning tender is more fully developed by the Private Sector Partner to provide a basis for construction. Designs will be submitted to the CMU for review. A failure by the CMU to adequately review designs could lead to a design that does not adequately achieve the Government's requirements as set out in the Project Agreement;
	• Construction
	  o During this period, the CMU will have the opportunity to review progress at key milestones and to provide comment as appropriate. In some contracts there may be a stipulated role for a neutral expert ("**Independent Reviewer")** to advice on whether the actual construction conforms to the design. When the construction satisfies all required conditions, it is considered to have been accepted by the CMU (**"Practical Completion"**);
	• Commissioning
	  o During this period, the facility is tested for its ability to deliver the contracted services, the Private Sector Partner completes and submits its asset maintenance plan and any outstanding commercial issues are resolved. When these matters have been resolved satisfactorily, the facility is now ready for the Service Delivery phase (**"Commercial Acceptance"**).
	
	Step 3: Service Delivery

	This is the key part of the PPP project lifecycle and, for most PPP projects, by far the longest. It is the reason why the PPP contract was executed. The primary responsibility of the CMU during this phase is to ensure that services continue to be delivered as set out in the contract. In addition to those 'fundamentals'' listed above under 'Activities', key contract management activities during this phase include: • **Performance monitoring and reporting** – The contract will set out the Private Sector Partner's performance monitoring and reporting protocols. These protocols will cover service delivery and other obligations, such as reporting on any significant proposed changes to SPV. It is important that the CMU monitor assiduously the Private Sector Partner's performance, through both review of self-reporting and its direct monitoring as appropriate. If contracted service standards are not fully met in any period, and there are grounds for payment abatement, there needs to be good reason for payments not being abated. Good practices must be established early in the contract management stage; • **Change management** – For long term PPP projects, changes to service or other arrangements over the term of the contract are inevitable. Change mechanisms should be set out in the contract and some may be specific for foreseen events (e.g. to increase service supply when demand reaches a threshold level). It is important that the CMU follows the change management processes set out in the contract. Some may lead to a contract variation. Potential change events include Government's wish to change service levels, or the Private Sector Partner's desire to refinance its debt arrangements or seek approval for a change in SPV ownership or to an SPV member. Change management events can be resource-intensive for the CMU and expose Government to risks if not managed well. Advice and assistance should be sought from the PPP Centre and expert advisers; and • **Contingency planning** – This is important across all contract management phases but particularly to Service Delivery. Whilst the Private Sector Partner bears financial risks of a failure to perform, the Relevant Public Body remains ultimately accountable to the community for delivery of the contracted services.

	The CMU needs to be vigilant in its monitoring of the Private Sector Partner's performance and continually scan for signs of emerging risks to service delivery. Contingency plans are needed for activation should the Private Sector Partner run into ongoing problems that significantly disrupt service delivery. These include activation of the Government's step-in rights under the contract, acknowledging that lenders will typically and appropriately have preferential advance step-in rights to remedy performance shortfalls. **Step 4: Transition and Handback** For PPP projects involving Handback to Government of significant assets, this phase may commence up to two years prior to the scheduled date for contract expiry. Generally, an independent assessment is undertaken of the assets for Handback to provide advice on their condition and whether any remedial action is required from the Private Sector Partner. Continuation of service delivery after contract expiry is generally an imperative for the Relevant Public Body, and the Government more generally. Government needs to consider whether it will seek to extend the contract, retender the services or take direct responsibility for provision of the services. The undertaking of a tender process, including preparation for tender, to select a private sector party to provide the services can take up to two years or perhaps longer. Transition and Handback can occur prior to scheduled contract expiry should one of four events occur: (i) Government may terminate a PPP contract should the Private Sector Partner consistently default on its obligations; or (ii) the Private Sector Partner may terminate the contract should Government persistently default on its obligations (e.g. continued failure to make contracted payments); or (iii) either party may seek to terminate the contract following a major or sustained Force Majeure event; or (iv) Government may terminate the contract for its own convenience. Should such an event occur, Government may be liable for compensating the Private Sector Partner, with the quantum depending on the cause of the termination event. Contingency arrangements will need to be in place for (i) timely payment of such contingent liabilities by the Government and (ii) ensuring continued service delivery.

Deliverables	Contract Management Plan for Construction Delivery • Establishment of CMU Contract Management Plan for Service Delivery • Revised CMU and governance arrangements Regular reports to Relevant Public Body senior management, PPP Steering Group (as relevant) and PPP Centre
Approvals	Approval authority for contract variations will be set out in the contract management plan and vary depending on the materiality and timing of the proposed variations. NEC endorsement would only be required for changes that have a material impact on the project’s scope, cost and risk allocation, and government budget. 1. Contract management arrangements to apply for Construction Delivery 2. Contract management arrangements to apply for Service Delivery 3. Any contract variations arising

SECTION 3

HOW TO MANAGE UNSOLICITED PROPOSALS?

Unsolicited proposals (USP) refer to proposals made by a private party to undertake a PPP project that is submitted at the initiative of the private party rather than in response to a request solicited by a Relevant Public Body.

In practice, many public authorities across the world resort to USPs motivated by the perspective of solving the challenges brought by their lack of capacity to identify and develop projects, which applies also to PNG. However, many projects that originate as USPs experience challenges, including diverting public resources away from the strategic plans of the government, providing poor value for money, and leading to patronage and lack of transparency, particularly in developing countries. To ensure PNG can mobilize the strengths of the private sector while protecting the public interest, USPs, should be permissible though be managed and used with caution.

Clear and effective guiding principles is a critical condition for ensuring that USPs result in projects that provide societal benefits at an affordable cost. Generally accepted principles that are also applicable for PNG include:

- Public Interest: A USP project must align with national infrastructure priorities and meet a real societal and economic need.
- Value for Money: Government should only structure USP projects as PPPs if they are expected to generate greater value for money under PPP delivery than under conventional delivery.
- Affordability: Government must understand a USP's impact on public finances, including whether fiscal liabilities are acceptable and risks are sufficiently manageable.
- Fair Market Pricing: Government must ensure that PPP contracts resulting from USPs reflect market prices, avoid excessive private returns, and include a risk allocation appropriate for the government.
- Transparency and Accountability: Governments should disclose all relevant project information to allay stakeholder concerns regarding transparency and accountability.
- Alignment of PPP and USP Procedures: Government should align PPP and USP policies to increase stakeholder support, enhance market interest, and ensure consistency in public decision-making.

This section will provide a framework for managing USPs in terms of the necessary proceedings and corresponding gateways to ensure value for money and fiscal affordability.

Findings from Experience Review of Global Practices[22]

1. Experience shows that lack of technical and financial capacity to identify, develop and implement projects is a strong motivation to consider USPs.
2. Experience shows that USPs are not necessarily easier or more convenient to implement than publicly initiated projects. Bypassing regular procurement regulations to implement USP projects risks causing public controversies that can delay the project and/or result in renegotiations several years later.
3. Experience shows that some governments believe USPs provide them with access to finance. There are, however, no indications that USPs provide access to finance that would not have been available under a well-structured publicly initiated project.
4. Experience shows that most USPs do not represent real innovations, but are simply projects that were not in the government's pipeline.
5. There are indications that some public officials misuse the USP instrument to engage in corrupt and nepotistic practices, especially through avoiding competition. Many USPs are subject to corruption allegations that, although often unproven, show that USPs are highly sensitive to public-perception issues and vulnerable to being challenged in the future.
6. Centralizing the USP submission process in a single agency helps to: (1) simplify coordination processes; (2) promote consistency, transparency and accountability; and (3) prevent the need to build capacity in multiple locations.
7. Introducing a predictable time window for USP submissions allows the public sector to dedicate resources and creates certainty for USP proponents.
8. Introducing minimum submission requirements—as well as USP review fees—may reduce the number of low-quality and non-serious USPs.
9. Clear evaluation procedures, with specific timelines and allocations of evaluation responsibilities, allow public officials to efficiently approve USPs, and are highly appreciated by the private sector.
10. Evaluation criteria play an important role in ensuring that USPs promote the public interest and meet governmental objectives. Additionally, they prevent the private sector from expending resources on developing USPs that do not align with the government's objectives.
11. Limiting the role of the USP proponent in project development allows the public agency to: (1) create equal bidding conditions during procurement; (2) ensure that the project

[22] POLICY GUIDELINES FOR MANAGING UNSOLICITED PROPOSALS IN INFRASTRUCTURE PROJECTS (World Bank/PPIAF, 2018)

meets public objectives, thereby strengthening its negotiating position; and (3) develop long-term project-development capacity.

12. Allowing the USP proponent to contribute to or lead project development, and reimbursing the USP proponent for the associated costs, can be seen as an intermediate solution while the public agency develops the long-term capacity to develop projects.

13. Failing to introduce competition in the USP procurement process—in other words, directly negotiating a deal—can lead to implementation delays, poorly structured PPP transactions, and low value for money.

14. Organizing a competitive process is challenging if the USP proponent is provided with the right to match. A bonus mechanism may not necessarily distort competition, if bonuses constitute small percentages of bid-evaluation criteria.

15. Providing a short period for competing bidders to submit bids (usually less than six months) limits competition. USPs that provide a significant strategic advantage for the USP proponent typically fail to create competition.

Regulatory Context for USPs in PNG

The concept of USPs is defined in the PPP Act as "a proposal made by a partner to undertake a public private partnership arrangement that is submitted at the initiative of the partner rather than in response to a request solicited by a Relevant Public Body: and regulated in Schedule 4 of the PPP Regulations in the following manner:

1. General Provisions

(1) For the purpose of Section 11(1) of the Act, this Schedule prescribes the overall process for the project analysis and procurement of PPPs which originate as unsolicited proposals only. The process for the project analysis and procurement of PPPs that originate as solicited proposals is as prescribed in Schedule 1 of this Regulation.

(2) A Project procured as a PPP shall originate from a request solicited by a Relevant Public Body; except for instances where a project is procured as a PPP through an unsolicited proposal.

(3) It is not the intention of the Government to encourage unsolicited proposals as a means of avoiding, or substituting for, public expenditure on project development or as a means simply of expediting time frames for infrastructure development;

(4) A partner may request a meeting with the PPP Centre before submitting an unsolicited proposal, to gain an understanding of whether the proposal is likely to be compliant or of interest to the Government. The PPP Centre shall invite the Relevant Public Body to this meeting.

(5) Unsolicited proposals will be of interest to the Government only if they;-

(a) are consistent with the Government and Relevant Public Body priorities;

(b) satisfy the requirements of a PPP as specified under Schedule 3 of the Act;

(c) possess a means of delivering significant new public infrastructure and or related services without new infrastructure that is unlikely to have been considered by, or been feasible to, the Relevant Public Body;

(d) are likely to provide a better value for money outcome for the Government in delivering significant new public infrastructure and related services or related services without new infrastructure than a project proposed in a Relevant Public Body's pipeline or, for projects not in a Relevant Public Body's pipeline, than delivery means likely to be used by the Relevant Public Body;

(e) are considered to be capable of being delivered efficiently by the partner;

(f) relate to infrastructure or services for which the Government has not already begun a solicited procurement process or announced publicly its intentions to begin such a process; and

(g) are affordable, including after consideration of likely contingent liabilities.

(6) Unsolicited proposals may be submitted by a partner to a Relevant Public Body or directly to the PPP Centre. Unsolicited proposals received by a Relevant Public Body are to be provided to the PPP Centre for initial assessment to be conducted in consultation with the Relevant Public Body.

(7) It is not expected that an unsolicited proposal will be developed by the partner to encompass the feasibility study before submission to the Government. However, the unsolicited proposal needs to contain sufficient information such as to enable the Government to undertake a compliancy assessment.

(8) Should an unsolicited proposal proceed to the procurement stage, this shall occur through a competitive tendering process as set out in section 4 of Schedule 1 of this Regulation. Only where the proposal has a significant strategic or unique attribute, that is unlikely to allow a competitive tendering process to provide a value for money outcome, a negotiated procurement process may be considered.

(9) No compensation shall be paid for the efforts of a partner in its preparation of an unsolicited proposal for compliancy assessment by the Government as per section 2 of this Schedule, or for assessment as to the appropriate project development and procurement path under section 3 of this Schedule. The potential for compensation for subsequent project development costs and for any valuable intellectual property purchased by the Government will be considered during the phase mentioned in section 3 of this Schedule, should the project proceed to that stage.

(10) The PPP Centre shall prepare and issue Guidelines on the treatment of unsolicited proposals. (This Section of the PPP Guideline provides this guidance.)

2. Compliance and Registration

(1) The PPP Centre shall undertake a compliancy assessment, in consultation with the Relevant Public Body, on each unsolicited proposal, on the basis of whether; -

(a) the proposal satisfies the requirements of an unsolicited proposal set out in section 1(5) of this Schedule; and

(b) the submission contains sufficient information to address the matters specified in section 1(5) of this Schedule.

(2) Where further information is required to determine compliancy, this information can be sought from the partner by the PPP Centre.

(3) Within 60 days of its receipt of the unsolicited proposal, or from the date of receipt of additional information provided by the partner in support of its proposal, the PPP Centre shall advise the partner of whether its unsolicited proposal is compliant, subject to the PPP Centre's consultation with the Relevant Public Body.

(4) For unsolicited proposals deemed by the PPP Centre to satisfy compliancy requirements, the Relevant Public Body shall register that project with the PPP Centre in accordance with section 12 of the Act.

(5) Only unsolicited proposals registered in this manner shall proceed to the next stage.

(6) Upon registration of an unsolicited proposal, the PPP Centre shall disclose this on its website.

3. Determination of Project Development and Procurement path

(1) Following registration of the project, the PPP Steering Group shall establish a Project Team to manage the project.

(2) The Project Team shall consist of persons with the skills, knowledge and experience relevant to the project and shall include the following members:

1. a person nominated by the PPP Centre, who shall lead the Project Team; and
2. a person nominated by the Relevant Public Body whom the unsolicited proposal is of interest to; and
3. such other persons whom, in the opinion of the PPP Steering Group, have the necessary technical skills required.

(3) The PPP Steering Group may co-opt advisers to assist the Project Team in the discharge of its functions.

(4) Where necessary, the PPP Centre shall issue such procedures, guidelines and instructions with respect to the Project Team.

(5) The PPP Centre may engage specialist advisers to assist in the consideration, further development and procurement of the unsolicited proposal.

(6) The Project Team shall assess whether the unsolicited proposal has unique elements or intellectual property that warrant a different project development and procurement path to that outlined in sections 3 and 4 of Schedule 1 of this Regulation (i.e. the procurement proceedings for PPP projects).

(7) A new or additional proposal is not required from the partner at this stage, however, the Project Team may seek clarification or supporting information from the partner as it undertakes this assessment.

(8) The Project Team may also undertake wider investigations, including a public consultation process if necessary, in examining the “uniqueness” of an unsolicited proposal.

(9) The Guidelines to be issued by the PPP Centre, as per section 1(9) of this Schedule, shall outline the steps and criteria which shall be used to determine the “uniqueness” of an unsolicited proposal.

(10) Should the Project Team determine that there is no material unique elements or intellectual property inherent in the unsolicited proposal, or that any such features can be handled adequately within a normal competitive procurement process, the PPP Centre shall recommend to the PPP Steering Group that the project be developed and procured as per sections 3 and 4 of Schedule 1 of this Regulation, and shall also outline how it proposes that any material unique features be handled.

(11) Should the Project Team determine that there are material unique elements or intellectual property inherent in the unsolicited proposal that warrant a departure from the process set out in sections 3 and 4 of Schedule 1 of this Regulation, it shall advise the PPP Steering Group of this.

(12) The PPP Centre shall advise the partner, in writing, of the PPP Steering Group’s decision.

(13) An unsolicited proposal, for which the PPP Steering Group has determined should follow the standard project development and procurement process for PPP projects, and shall proceed as per sections 3 and 4 of Schedule 1 of this Regulation, subject to any modifications agreed by the PPP Steering Group in recognition of material unique features inherent in the unsolicited proposal. Other unsolicited proposals shall proceed to section 4 of this Schedule.

(14) The PPP Centre shall provide regular updates on the status of the unsolicited proposal on its website.

4. Negotiated Project Development

(1) The intent during this stage is to develop an understanding of the unsolicited project proposal similar to that provided by a feasibility study.

(2) Prior to embarking on a process to further develop the unsolicited proposal submitted by the partner, the Project Team, as approved by the PPP Steering Group, and the partner shall negotiate a project development deed that sets out how this process is to occur.

(3) The project development deed shall address matters such as:

   (a) The criteria set by each party that the project must meet to proceed to the procurement stage; and

   (b) The types and level of information and analysis which needs to be assembled to allow an assessment against these criteria; and

(c) The roles of each of the Government and partner, and the resources to be committed, in gathering this information and in undertaking the necessary analysis; and
(d) The relative cost-bearing to be borne by the parties in undertaking this further project development, and any arrangements for re-imbursement of costs; and
(e) An open-book approach to costs; and
(f) Timeline for project development period; and
(g) Extent of commitment by the Government to proceed to a negotiated procurement, should the project satisfy the stated criteria; and
(h) Governance framework for this negotiated project development stage; and
(i) Treatment of any agreed intellectual property or other unique strategic element inherent in the unsolicited proposal; and
(j) The Government's ability to use material developed during this stage in a competitive tender process, subject to appropriate protection of any intellectual property held by the partner, should that be the outcome of this stage; and
(k) Extent of, and process for, public disclosure of project progress and outcomes.

(4) The Project Team shall submit the project development deed to the PPP Steering Group and its approval is necessary before embarking on the negotiated project development process.

(5) The Guideline to be issued by the PPP Centre, as per section 1(10) of this Schedule, shall entail a more detailed outline of how project development should occur for projects subject to a one-on-one negotiated process.

(6) The Project Team shall provide regular progress reports to the PPP Steering Group during this process and seek guidance as necessary on issues arising.

(7) After the completion of the further project development phase, the Project Team shall submit its recommended next steps to the PPP Steering Group, which may include that the project;-

(a) Can proceed through the competitive process set out in section 4 of Schedule 1 of this Regulation, and outline how the identified unique elements in the unsolicited proposal can be handled in that process;
(b) Proceed through to a one-on-one negotiated procurement stage, and provide an outline of any key matters that may impact that process; or
(c) Is not feasible, or not value for money or not in the public interest and should be de-registered.

(8) Where the PPP Steering Group approves both the project being procured under a negotiated procurement process and the proposed outline of this process, and where these decisions have been endorsed by the National Executive Council, the project can proceed to section 5 of this Schedule.

(9) The PPP Centre shall provide regular updates on the status of the project including the proposed approach to procurement, and a description of the project on its website.

5. Negotiated Project Procurement and Contract Execution

(1) Only those unsolicited proposals which have been developed and approved in accordance with sections 1 to 4 of this Schedule are eligible to be procured under the one-on-one negotiated procurement process outlined in this section.

(2) Prior to embarking on a negotiated one-on-one procurement process, the Project Team, as approved by the PPP Steering Group, and the partner shall negotiate a procurement deed that sets out how the process is to occur.

(3) The procurement deed shall address matters such as; -

(a) The time period for negotiations, the scope of matters for negotiation, and the format for negotiations; and

(b) The criteria that the project must meet for it to proceed to contract execution; and

(c) The types and level of information and analysis that needs to be assembled to allow an assessment against these criteria; and

(d) Individual obligations on each party, for instance:

a. On the Government to secure right-of-way and facilitate land purchase; and

b. On the partner to secure:

i. relevant sub-contracts (eg construction, operation) with a suitable firm with capable nominated key personnel; and

ii. committed finance; and

(e) Roles of each party in preparing the set of contractual documents, and any cost re-imbursement arrangements; and

(f) Process for the Government assessment of the project's value for money, which may include one or both of a benchmarking exercise undertaken unilaterally by the Government and an independent verification of the project costs submitted by the partner; and

(g) The internal approval process for each party once negotiations have been completed;

(h) The conditions precedent for each party, if any, at contract execution; and

(i) Extent of, and process for, public disclosure of project progress and outcomes.

(4) The Project Team shall submit the procurement deed to the PPP Steering Group for its approval, and upon receipt of the PPP Steering Group's decision, the PPP Steering Group shall then on behalf of the Project Team, submit its decision and procurement deed to the National Executive Council for further endorsement, prior to the Project Team embarking on the negotiated procurement process.

(5) Upon receiving the endorsements under section 5(3) of this Schedule, the Project Agreement shall be drafted by the Project Team and the risk allocation outlined in the Project Agreement shall be similar to that if the project had been subject to a competitive tender.

(6) The Project Team shall report regularly to the PPP Steering Group during this negotiation period, which includes receiving guidance as necessary.

(7) Upon the conclusion of the negotiation period, the partner shall provide a final and firm offer, which includes committed finance.

(8) The Project Team shall provide a submission to the PPP Steering Group which includes;

(a) an outline of the services and infrastructure to be provided by the partner; and
(b) an outline of the Government's commitments under the Project Agreement, including any key actions, payments or guarantees; and
(c) a fiscal risk assessment undertaken by the Department of Treasury; and
(d) an outline of the key commercial elements of the deal, including the risk allocation in the Project Agreement, noting any key differences to international best practice; and
(e) an outline of key risks to project success and how they will be mitigated or managed; and
(f) an outline of key milestone dates; and
(g) a recommendation as to whether the partner's offer should be accepted or rejected.

(9) The PPP Steering Group may seek further clarification or information from the Project Team in undertaking its assessment.

(10) Where the PPP Steering Group endorses the partner's offer, it shall seek the National Executive Council's approval.

(11) Where the National Executive Council approves, the documents shall be executed with the partner. These shall include financial close documents as this should occur at or soon after contract execution.

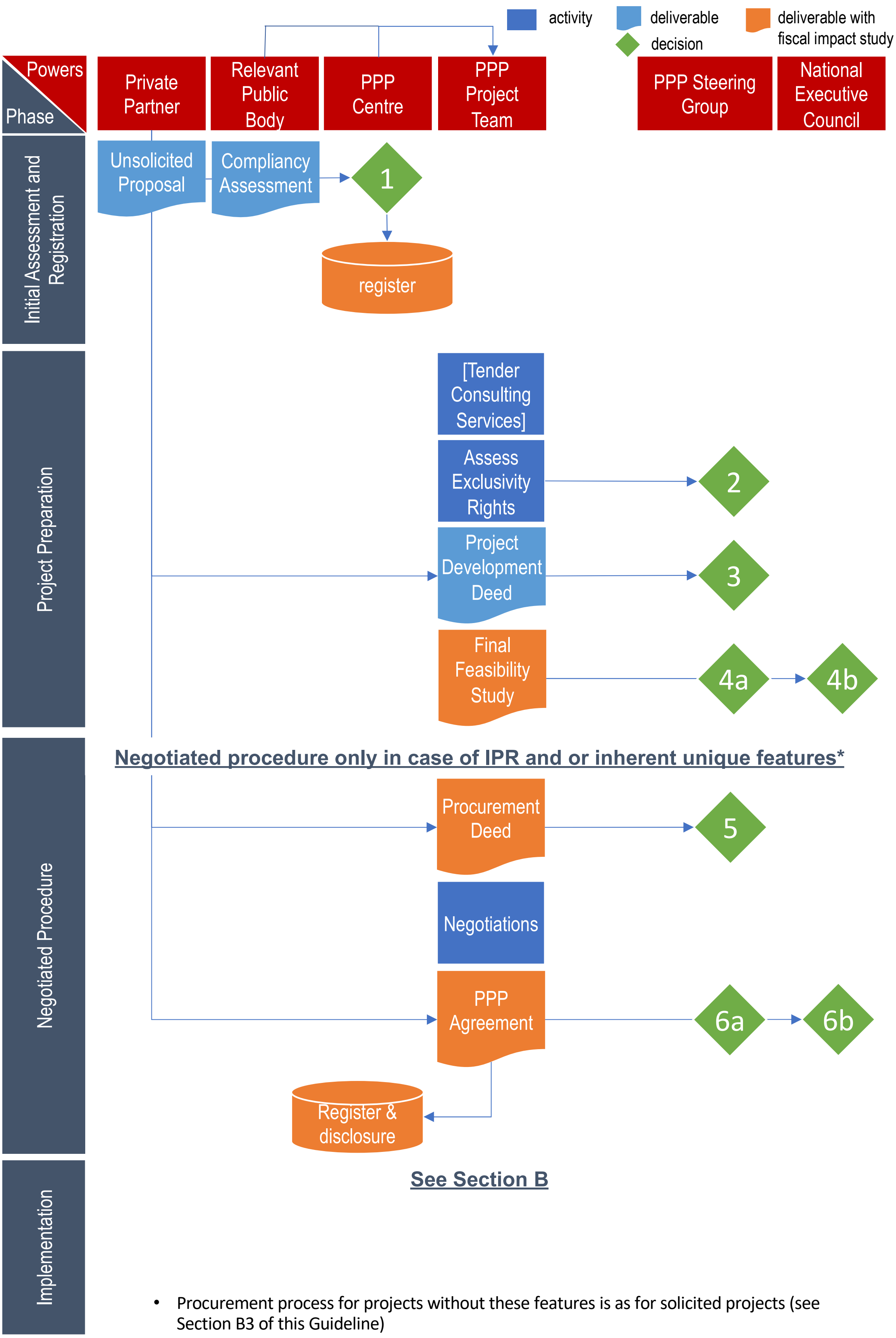
(12) Within 90 days of contract execution and financial close, a summary of the project and its key commercial features shall be displayed on the PPP Centre's website.

6. Implementation and Contract Management

(1) The framework for development and implementation of contract management arrangements shall be the same as for solicited proposals, as set out in section 5 of Schedule 1 of this Regulation.

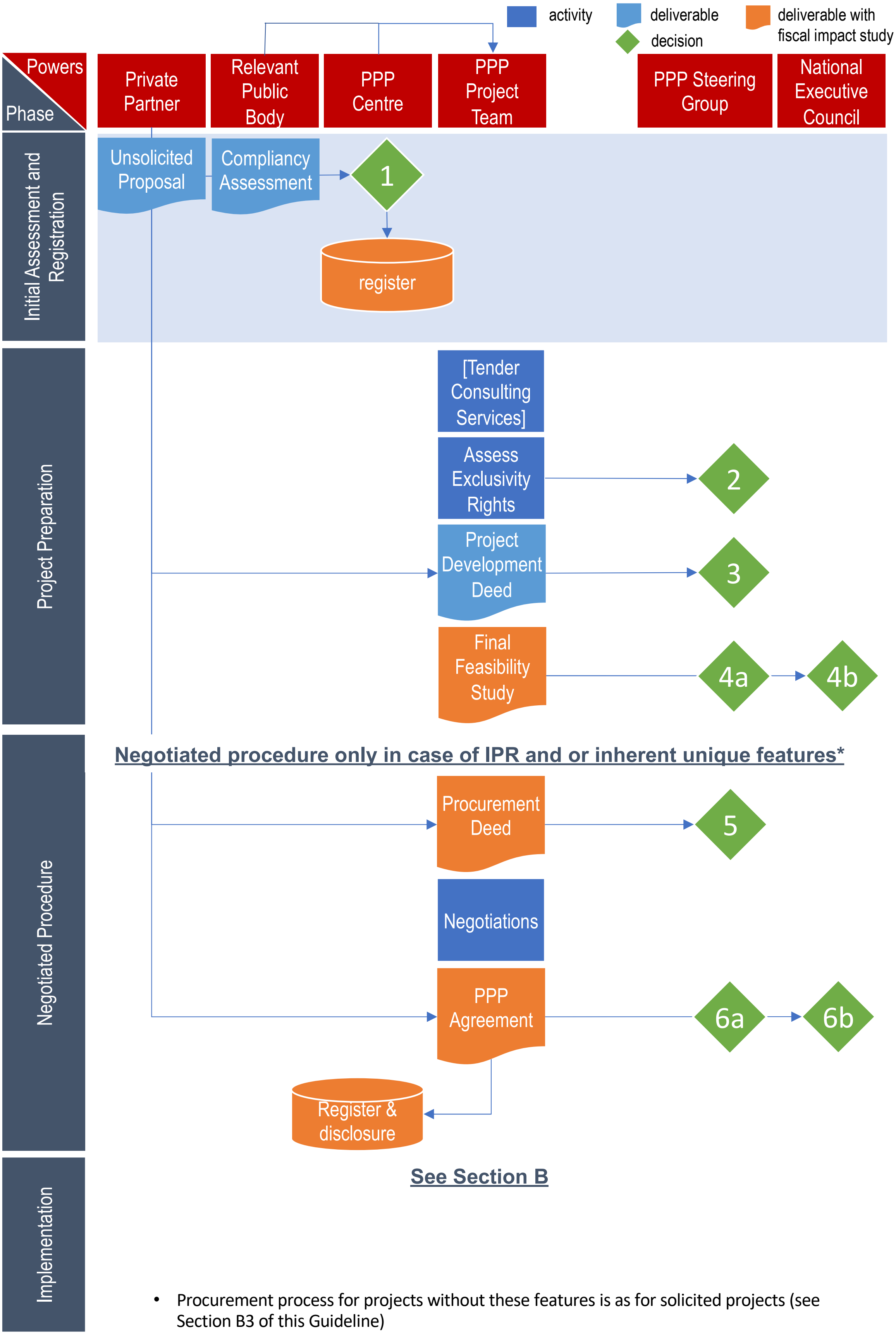
PROCESS FLOW

A summary of the regulated proceedings is depicted in a process flow on the following page.



- Procurement process for projects without these features is as for solicited projects (see Section B3 of this Guideline)

C.1. INITIAL ASSESSMENT AND REGISTRATION



- Procurement process for projects without these features is as for solicited projects (see Section B3 of this Guideline)

Objective	To confirm relevance and PPP suitability of received unsolicited proposals.
Activities	1. Draft USP (by private project proponent) 2. Review USP (by PPP Centre) 3. Register PPP (by PPP Centre) **1. Preparation of USP** All unsolicited proposals should include a sufficiently detailed project description that allows a compliancy assessment to be undertaken.. The proposal should outline the legal and regulatory, technical, economic, financial, environmental and social parameters of the project. The submission should also specify: o Proposed infrastructure and/or services to be provided by the private partner o The project's unique features that warrant its procurement by government as a USP o Technical studies conducted o Financial analysis including; estimates of total project cost including lifecycle costs and financing plan, Income and Expenditure plan for operation such as user fee revenues o Justification of the project need, including how it is consistent with government priorities o Environmental and social impact studies See Annex 11 for a recommended outline for the submitted USP. **2. Review USP** The PPP Centre will assess compliance with the regulatory requirements i.e. (i) adequacy of information provided and (ii) based on the information provided, the adequacy of compliance with the following criteria: 1. **consistency with the Government and Relevant Public Body priorities** confirming the project's strategic relevance to be demonstrated by the endorsement of the Relevant Public Body and reference to relevant national and or sectoral development plans if any, illustrating its alignment and contribution to the strategic priorities; 2. **satisfy the requirements of a PPP** confirming the USP qualifies as a PPP as specified under Schedule 3 of the Act 3. **possess a means of delivering significant new public infrastructure and/or related services** that is unlikely to have been considered by, or been feasible to, the Relevant Public Body confirming the economic soundness of the USP in terms of its economic merits from addressing a

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public need outweighing its costs. Ideally to be substantiated through an outline Cost-Benefit Analysis with a reasoned and verifiable analysis;

4. are likely to provide a better value for money outcome for the Government in delivering significant new public infrastructure and/or related services than a project proposed in a Relevant Public Body’s pipeline or, for projects not in a Relevant Public Body’s pipeline, than delivery means likely to be used by the Relevant Public Body;

5. are considered to be capable of being delivered efficiently by the partner as confirmed by the relevant expertise and experience of the partner as to be reflected in the USP and not pertaining any right upfront in delivering the USP;

6. relate to infrastructure or services for which the Government has not already begun a solicited procurement process or announced publicly its intentions to begin such a process, as such a process would demonstrate that government has already identified the public need and outlines a technical solution for which it is seeking a partner to deliver this solution; and

7. are affordable, including after consideration of likely contingent liabilities, which at this stage is most likely tentative and should be refined and confirmed after further development including the necessary structuring as to be reflected through corresponding contractual provisions.

3. Register PPP Project

For USPs deemed by the PPP Centre to be compliant, they will be added to the register of PPP projects that have been deemed suitable for procurement as a PPP (section 12 of the PPP Act) and record information for each project as per Item 4 of Regulations, which will include:

g) evidence of the project’s approval by NEC;
h) the title of the project;
i) a description of the project with an explanation as to why the project should be procured as a PPP, including any preliminary market feedback on the study;
j) the estimated value of the project;
k) the Relevant Public Body and identity of key contact persons; and
l) the date of registration.

The register will be available on the PPP Centre web-site and accessible by members of the public.
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<tr><td>Deliverables</td><td>USP</td></tr>
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The USP is drafted by the private project proponent in accordance with the recommended outline and submitted to the PPP Centre, either directly or through the Relevant Public Body, for compliance assessment.
Compliance Assessment
In consultation with the Relevant Public Body, the PPP Centre shall prepare a conclusion of the Compliance Assessment indicating for each criteria that (i) information provided in the USP is sufficient and adequately substantiated and (ii) based on the information provided the respective criteria is adequately satisfied. This conclusion shall be presented as a check list.
<table>
<tr><th>Criteria</th><th>Information adequate?</th><th>Meets Criteria?</th></tr>
<tr><td>1. consistent with the Government and Relevant Public Body priorities;</td><td></td><td></td></tr>
<tr><td>2. satisfy the requirements of a PPP as specified under Schedule 3 of the Act;</td><td></td><td></td></tr>
<tr><td>3. possess a means of delivering significant new public infrastructure and/or related services that is unlikely to have been considered by, or been feasible to, the Relevant Public Body;</td><td></td><td></td></tr>
<tr><td>4. are likely to provide a better value for money outcome for the Government in delivering significant new public infrastructure and/or related services than a project proposed in a Relevant Public Body’s pipeline or, for projects not in a Relevant Public Body’s pipeline, than delivery means likely to be used by the Relevant Public Body;</td><td></td><td></td></tr>
<tr><td>5. are considered to be capable of being delivered efficiently by the partner;</td><td></td><td></td></tr>
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<tr><td>7. affordable, including after consideration of likely contingent liabilities</td><td></td><td></td></tr>
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<tr>
<td>Gateway</td>
<td>The objective of the gateway is to confirm that the project is sensible and potentially suitable for PPP. Upon concluding its review of the USP, and in</td>
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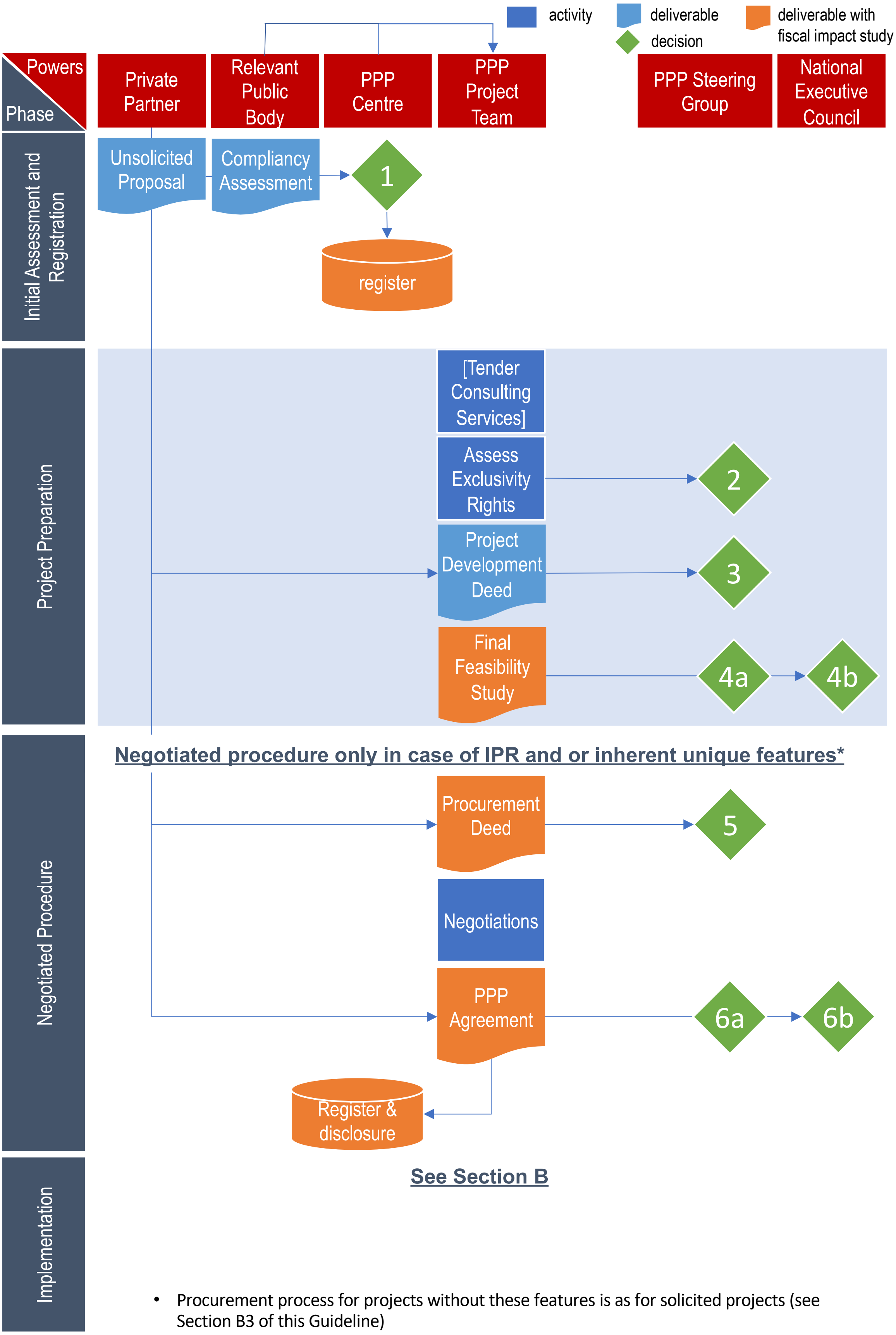
	consultation with the Relevant Public Body, the PPP Centre will take one of the following courses of action: (i) Conclude that the project is not suitable for PPP procurement; (ii) Conclude that the project may be suitable for PPP procurement; (iii) Seek further specific information from the private partner to help the PPP Centre make a decision. Under course of action (i), the PPP Centre will advise the private partner and the PPP Centre will not proceed further with the project. The Relevant Public Body can continue with the project under Traditional Procurement or, it may wish to restructure the project, possibly in consultation with the private partner and resubmit an USP. Under course of action (ii), the PPP Centre will advise the private partner that the project has been accepted for registration under the PPP Act and the Relevant Public Body will register the project with the PPP Centre. Under course of action (iii), the PPP Centre will advise the private partner of the additional information that it seeks to enable it to make a decision on PPP suitability. The private partner should provide this information within 30 days. Upon receipt of the additional information, and in consultation with the Relevant Public Body, the PPP Centre shall determine whether or not the project is compliant. If sufficient additional information is not provided, the private partner will be advised that the project is not compliant.

Decision Criteria	In its compliance assessment the PPP Centre will take into consideration that for a public infrastructure project to be considered suitable for PPP procurement, it should have a value equal to or greater than the Referral Threshold and possess the following features:
	• **Service focus**: the project can be structured so that it produces a flow of services over time to the Relevant Public Body, or to the community on behalf of the Relevant Public Body;
	    o i.e, it cannot simply be a construction project without any ongoing involvement by the construction firm beyond completion of construction;
	• **Output requirements that can be clearly specified and monitored:** the service outputs to be produced by the private partner must be able to be clearly specified and easily measured. They also must be distinguishable clearly from other related services that are produced (e.g. by Government or other private parties):
	    o If not, it is difficult to determine whether the private partner has fully met their contractual commitments each period and therefore should be fully paid; the focus of a PPP is on the services to be delivered from the infrastructure facility;

	• **Service needs are relatively stable over the contract lifetime:** the assets to be built by the private partner are expected to have a long useful life and the related services are not expected to change quickly over time o the long-term nature of PPP contracts reduces to some extent the flexibility of the Government to adjust its specifications over time; o where agencies remain interested in using the PPP model for services where the nature of demand and/or technology is subject to rapid change (eg projects with a significant IT component), shorter-term contracts should be used (e.g. five to seven years, with scope for further short-term extensions); • **Sizeable scope for innovation or improved infrastructure/service performance**: the project has sufficient complexity and/or there is significant scope for improving the efficiency or service quality of current arrangements o it is those sectors and services that are currently under-performing, or where there is significant untapped scope for improved service performance, where PNG could benefit most from introducing private sector and international experience and expertise; PPPs' use of output requirements rather than prescriptive input requirements provides greater scope for innovation in design and operation; • **Opportunities for significant risk transfer:** are there major project risks which traditionally the Government has not managed well and could be transferred to a private party who is better incentivized to, or more capable of, bearing them? o for instance, in a PPP, if services are not delivered fully to contractual requirements or they are delivered late, payments to the private partner are delayed or reduced. This is something that debt financiers, in particular, in PPPs with a privately-financed build component, will seek to avoid occurring; they will closely monitor the private partner's cash flows and will directly intervene to seek its improved performance as necessary; and • **Sufficient bidder appetite:** there is demonstrated strong bidder interest in the project o generally, PPP procurement will provide a value for money outcome for Government only when a strongly competitive bidding field exists; this requires at least two competent bidders. Particularly for the initial PPPs undertaken in PNG, it is advisable that a market sounding process be conducted by the PPP Centre or PPP Project Team to ascertain likely market interest and to receive feedback on commercial structuring of the PPP offer to be put to market.

	These six project features are essential to structuring a PPP that can deliver a value for money outcome for Government. Only those projects with these features should be considered for PPP delivery. However, another project feature that can assist in achieving a value for money outcome in some circumstances is • **Ability to generate revenues beyond Government payments:** there is the opportunity for the private partner to generate additional revenues from the sale of services to third parties o where such opportunities are likely, Government will note this in the tender documents or a tenderer may propose this as an innovation in their bid response. The prospect of this additional revenue stream can generate efficiencies and allow tenderers to reduce their bid price for supplying Government's service output requirements, thereby providing value for money to Government as long as the meeting of the PPP contractual service requirements is not impacted adversely.

C.2. PROJECT PREPARATION



- Procurement process for projects without these features is as for solicited projects (see Section B3 of this Guideline)

Objective	To finalize the appraisal and structuring of the project to the extent necessary including the drafting of the tender documents ensuring that the project is ready for procurement, be it competitive or be it through direct negotiations. Most critical in this phase is to assess whether the project can be competitively procured or whether a contract should be concluded through direct negotiations with the project proponent.
Activities	1. Establish Project Team 2. Engage advisors, if necessary 3. Assess Exclusivity Rights 4. Negotiate and Conclude Project Development Deed 5. Finalize project preparation **1. Establish Project Team** For each and every USP that has been considered sensible and suitable for PPP as per the analysis in the preceding phase, the PPP Steering Group will establish a Project Team that will be led by a nominee from the PPP Centre. The Project Team is to manage the further preparation and procurement of the project and will need to harness the following competencies: o **Project management** in order to manage efficiently and effectively all the necessary proceedings and deliverables for the development and procurement of the project; o **Financial expertise** in order to confirm the financial feasibility of the project and optimize its financial structuring from a public perspective; o **Legal expertise** in order to address any legal issues related to the project and coordinate and conclude the drafting of the tender documents; o **Economic expertise** in order to confirm the economic soundness of the project o **Technical expertise** in order to confirm the technical feasibility of the project and identify, value and mitigate where possible the technical risks of the project o **Communication expertise** in order to effectively identify and manage stakeholders o **Environmental and social management expertise** in order to confirm compliance with respective environmental and social safeguards. It is tempting to rely on the private project proponent for providing such expertise though it is to be recognised that the interest of the private project proponent may be different from the government interests and it is therefore essential that the government is well equipped to act effectively

	as the counterpart of the private project proponent with an eye for the government interests. **2. Engage advisors, if necessary** To the extent the required expertise is not available within the PPP Centre and/or the Relevant Public Body, the expertise can be sourced from external advisors. To enable this, appropriate budget should be made available, terms of reference need to be drafted and the respective advisory services need to be competitively procured to optimise the economic value of the services required. See Annex 10 for further details and considerations on the necessary proceedings. **3. Assess Exclusivity Rights** An essential part in the finalisation of the project preparation is the assessment of the exclusivity rights of the private project proponent. The PPP Project Team will exclusively develop the project jointly with the private project proponent if and only if the following conditions are being met: (i) material unique elements and/or (ii) intellectual property inherent in the USP. In practice, the material unique elements could refer to situations where: (i) **there is an urgent need** for continuity in the construction, development, maintenance or operation of a facility or provision of a service and engaging in the competitive procurement process would be impractical; or (ii) **there exists only one private entity capable** of undertaking the project, maintaining the facility or providing the service, as to be confirmed through a thorough analysis of available service providers; or (iii) **an existing contract** with government that would make it impractical for other bidders to compete; or a site owned by the proponent that was critical to the project's success. As for intellectual property (IP), this refers not only to legally protectable intellectual property (such as copyright, patents etc) but also to ideas and information protected as confidential information under common law. Examples could include: • infrastructure designs and drawings; • technology associated with construction of infrastructure or its operation. While the Project Team should be alert to the existence of IP in a USP, the private partner is responsible for identifying the specific IP for which it seeks protection.

The conceptual identification of a new infrastructure project rarely will be considered to be IP. However, given the inherent legal issues, it is recommended to seek advice from the Intellectual Property Office in Papua New Guinea (www.ipopng.gov.png) to confirm that intellectual property rights apply.

Recommendations as to the existence of exclusivity rights will need to be submitted to the PPP Steering Group for approval.

4. Negotiate and conclude Project Development Deed

The project development deed shall address matters such as:

Contents	Recommended approach

(i) The criteria set by each party that the project must meet to proceed to the procurement stage (these criteria may vary from project to project); and	• **Economic soundness** to be confirmed with an economic rate of return more than 9% based on the Cost-Benefit Analysis[23].
	• **Positive Value for Money** (for Government) from the PPP approach to be confirmed with a Value for Money analysis
	• **Fiscal affordability** (for Government) to be confirmed with a due quantification of direct and contingent liabilities arising from the PPP arrangement and their affordability within the budget capacity of the government
	• **Bankability** (for private partner) in terms of compliance with the requirements of the private capital providers i.e target Return on Equity and Debt Service Coverage Ratio as confirmed by the results of the financial analysis
	• **Other criteria may include**
	  o Technical feasibility
	  o Financial feasibility
	  o Environmental and social impacts
	  o Tariffs (where services are sold to users)

[23] The minimum required rate of economic return of 9% as suggested is based on the required economic returns by the main development partners for considering financial support; Government of PNG may develop other targets or hurdle rates

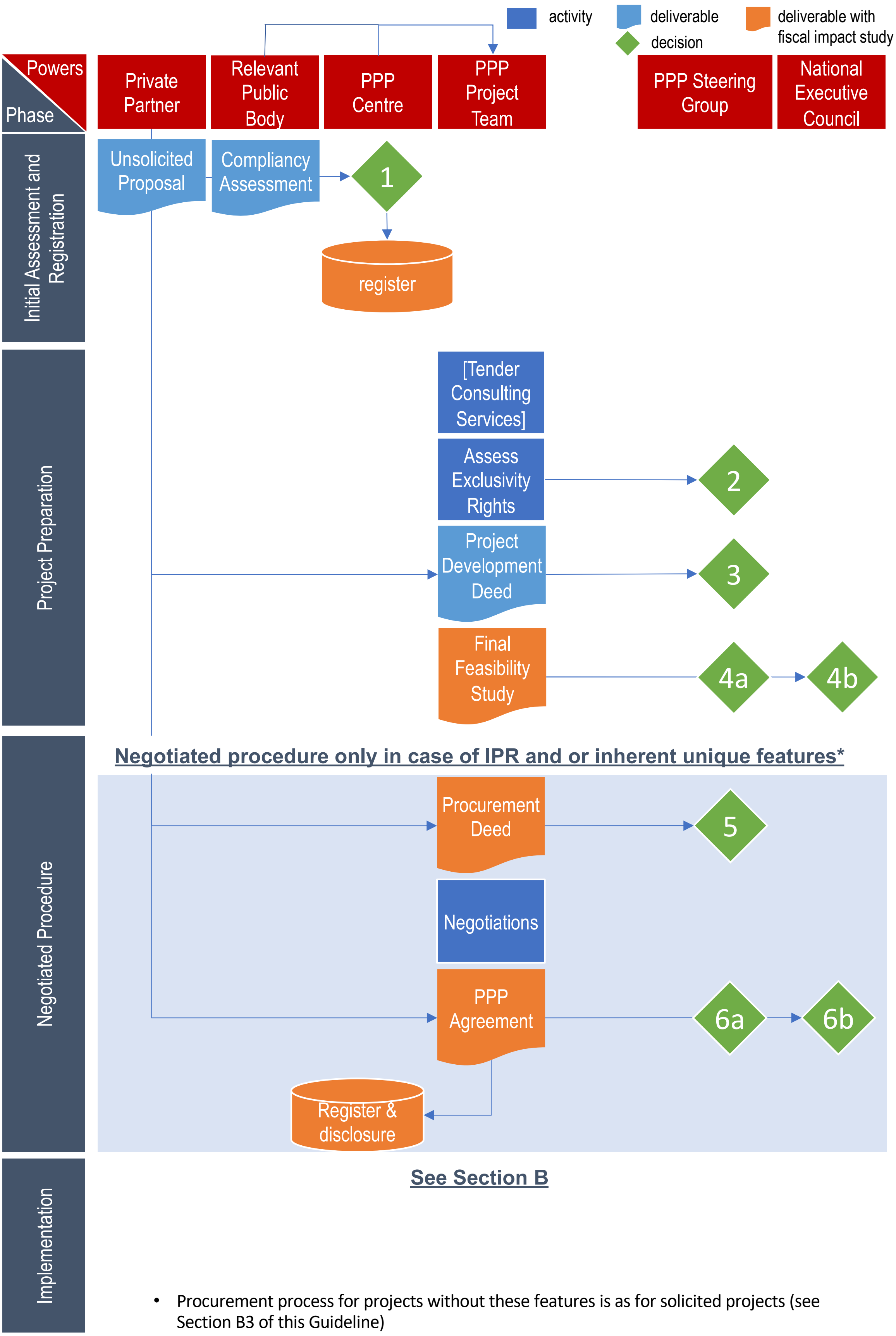
	(ii) The types and level of information and analysis which needs to be assembled to allow an assessment against these criteria; and	• A comprehensive and cohesive feasibility study as further explained in Annex 10
	(iii) The roles of each of the Government and partner, and the resources to be committed, in gathering this information and in undertaking the necessary analysis; and	• Clear allocation of responsibilities to each of the Project Team and private partner in collection of necessary information and in its analysis. As indicated, the Project Team is to ensure that each and every required discipline is represented to enable adequate review and support for the analytical work
	(iv) The relative cost-bearing to be borne by the parties in undertaking this further project development, and any arrangements for re-imbursement of costs; and	• Appropriate budget should be made available by government for ensuring the availability of the necessary expertise to enable adequate review and support for the analytical work and to reimburse the private partner for agreed costs incurred
	(v) An open-book approach to costs; and	• Eligible costs incurred by the private partner in development of the feasibility study for the project will need to be subject to review by the PPP Project Team for reimbursement to occur[24]
	(vi) Timeline for project development period; and	• Timelines should be realistic and consider appropriate periods for review and consultations. They should relate to individual tasks as well as to the development of the overall feasibility study. It is not uncommon to have aggregate timelines amounting up to 6 – 12 months
	(vii) Extent of commitment by the Government to proceed to a negotiated procurement, should the project satisfy the stated criteria; and	• The stated criteria will substantiate the government's investment and procurement decision and the assessment of exclusivity rights and corresponding review and approval will confirm the government's

[24] Commonly, costs incurred by the private partner during this stage are re-imbursed only if a contract is not ultimately executed with that party

		commitment to a possible negotiated procedure
	(viii) Governance framework for this negotiated project development stage; and	• The governance structure will focus on the delivery of the analytical work by the Project Team jointly with the private project proponent and review and approval on behalf of the public side by the PPP Steering Group and on behalf of the private side by the duly authorised representatives of the private project proponent. It may be considered to have a Joint Steering Committee for review to act as gateway for the respective decision boards
	(ix) Treatment of any agreed intellectual property or other unique strategic element inherent in the unsolicited proposal; and	• Based on the findings and conclusions for the assessment of exclusivity rights
	(x) The Government's ability to use material developed during this stage in a competitive tender process, subject to appropriate protection of any intellectual property held by the partner, should that be the outcome of this stage; and	• Refers to the options for the government to either acquire the exclusivity rights and the corresponding costs allowing the government to subject to the project to a competitive process or to government being able to structure a tender process in a way that does not disclose this intellectual property. This decision requires a careful consideration of the costs for acquiring the exclusivity rights and the benefits of competitive tension
	(xi) Extent of, and process for, public disclosure of project progress and outcomes.	• The PPP Centre shall provide regular updates on the status of the unsolicited proposal on its website; this level of disclosure will be at least as much as for competitively procured PPPs.
	The Project Development Deed is to be reviewed and approved by the PPP Steering Group before the project can proceed to the next stage.	

	5. Finalize project preparation The extent of the work required to finalise the project development deed and undertake the feasibility study will depend on the quality of the unsolicited proposal received and the complexity of the project and its issues. Essentially, the feasibility study contents should be in line with the requirements of any PPP as highlighted in section B and further explained in the Annex on Feasibility Study. They will need to be able to facilitate a confirmation of the investment and procurement decision for the project.
Deliverables	1. Project Development Deed 2. Feasibility assessment of USP
Gateway	The formal gateway for proceeding to procurement is the signoff from the PPP Steering Committee and its concurrence by Treasury and verification by the NEC of the Final Feasibility Study (based on the USP) to confirm its feasibility and suitability for PPP. A particular element of interest during the project development stage will be the assessment of exclusivity rights and whether they warrant the undertaking of a negotiated procurement or whether project procurement can be undertaken under a competitive tender, subject to use of appropriate safeguards.
Decision Criteria	The PPP Steering Group and NEC will confirm that the analysis underlying the recommendation is adequate and duly substantiated with specific focus on the following decisions: **Investment Decision**: The decision as to whether a proposed project is a good project regardless of the procurement method, to be confirmed by the outcome of the technical, economic and financial analysis in the feasibility study **Procurement Decision**: The decision as to whether to procure the project through a PPP to be confirmed by a positive outcome from the value for money analysis for the PPP option in comparison with Traditional Procurement and complemented through a reasoned analysis. **Affordability**: Informed by Treasury's advice, whether (i) the inter-temporal budget capacity of the concerned agency is sufficient to meet the estimated annual flow of direct and contingent liabilities of the prospective PPP and (ii) the country's overall Fiscal Space for PPPs is sufficient to absorb the present value of the estimated direct and contingent liabilities from the prospective PPP. **Negotiations Decision**: The decision as to whether procure the project as a PPP competitively or whether to initiate a negotiated procedure with the private project proponent.

C.3. PROJECT PROCUREMENT



- Procurement process for projects without these features is as for solicited projects (see Section B3 of this Guideline)

<table>
<tr><td>Objective</td><td>To effectively negotiate and conclude a PPP Agreement that meets the interest of both parties and ensures a successful implementation of the project.</td></tr>
<tr><td>Activities</td><td>
The negotiated procedure is applied if and only if the project development warrants a positive investment and procurement decision and it is determined that the exclusivity rights cannot be adequately treated though a competitive bidding process.
It is recommended that the Project Team has a continuous staffing representing the necessary disciplines and with appropriate level of experience and seniority. Particularly, legal expertise should be adequately embedded within the Project Team during this stage to ensure an effective and unambiguous incorporation of the terms of the PPP Agreement.
The negotiated procedure encompasses the following activities

Negotiate and conclude Procurement Deed
Negotiate and execute terms of PPP Agreement
Finalise financing

1. Negotiate and conclude Procurement Deed
The Procurement Deed refers to the agreement between the Project Team and the private project proponent on the proceedings for the negotiations.
<table>
<tr><th>Contents</th><th>Recommended approach</th></tr>
<tr><td>(i) The time period for negotiations, the scope of matters for negotiation, and the format for negotiations; and</td><td>

Time period should be realistic and take into account due time for review and approval proceedings;
Matters for negotiations will most likely focus on project structuring including financial structuring from the public perspective and risk allocation and should continuously be assessed from a value for money and affordability perspective
As for the format of negotiations it is not uncommon to have detailed dialogue per discipline i.e technical, financial and legal and several rounds of integrated negotiations

</td></tr>
<tr><td>(ii) The criteria that the project must meet for it to proceed to contract execution; and</td><td>These criteria are essentially the same as for project development albeit now for the final terms as agreed and reflected in the PPP Agreement i.e.</td></tr>
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</td></tr>
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		• **Economic soundness** as to be confirmed with an economic rate of return more than 9% based on the updated Cost-Benefit Analysis of the agreed upon scope of work • **Positive Value for Money** from the PPP approach as to be confirmed with an updated Value for Money analysis of the agreed upon allocation of risks. • **Service Delivery**: confirmation that the proposed services can be sustainably delivered. • **Fiscal affordability** as to be confirmed with a updated quantification of direct and contingent liabilities arising from the PPP arrangement and its risk allocation and financial structuring from a public perspective and their affordability within the budget capacity of the government. • **Regulatory compliance** in terms of meeting the regulatory requirements and conditions
	(iii) The types and level of information and analysis that needs to be assembled to allow an assessment against this criteria; and	• Any deviation from the Feasibility Study is to be addressed and evaluated in a financial model that updates the economic analysis, the value for money analysis and the affordability analysis and where any update can be reconciled to minutes of the negotiations.
	(iv) Individual obligations on each party, for instance: • On the Government to secure right-of-way and facilitate land purchase; and • On the partner to secure: a. relevant sub-contracts (eg construction, operation) with a suitable firm with	• The Feasibility Study should indicate the amount and costs of land acquisition and possible resettlement, and which is typically a government responsibility unless the land is already owned by the private project proponent. • The USP should include a proposal how the private project proponent intends to deliver the proposed scope of work including where

	capable nominated key personnel; and b. committed finance; and	necessary the need for possible subcontractors. The Project Team is to assess whether the proposed organisation has the appropriate technical and financial qualifications to deliver the scope of work or whether there is a need to outsource specific activities and if so, how.
	(v) Roles of each party in preparing the set of contractual documents, and any cost re-imbursement arrangements; and	• The coordination of preparing the PPP Agreement can be assigned to either the legal advisor of the government (preferred approach) or the legal advisor of the private project proponent Typically, costs incurred during this stage take place at each party's risk.
	(vi) Process for the Government assessment of the project's value for money, which may include a benchmarking exercise undertaken unilaterally by the Government and/or independent verification of the project costs submitted by the partner; and	• See annex on Feasibility Study for a further description of the approach to value for money assessment.
	(vii) The internal approval process for each party once negotiations have been completed;	• See process flow for applicable approval process with the government
	(viii) The conditions precedent for each party, if any, at contract execution; and	• Typical conditions precedent include: o Establishment of a project company o Financial close o Government approval
	(ix) Extent of, and process for, public disclosure of project progress and outcomes.	• Based on the principles of transparency and confidentiality. At a minimum, at contract execution the main features of the contract should be disclosed on the PPP Centre's website, though it may be considered to also have a project specific website for information on milestones and other affairs of

	interest to the impacted community and or the society at large.

The Procurement Deed is to be submitted to the PPP Steering Group for approval and concurred with NEC given the fiscal implications of the targeted outcome of the negotiations.

2. Negotiate and execute terms of PPP Agreement

Preparation for Negotiations

The PPP Steering Group shall appoint a negotiation team comprised of representatives from the PPP Project Team, supplemented as necessary with specialist expertise in the anticipated topics of negotiation. Prior to the final negotiations, the following preparatory steps shall be undertaken by the negotiation team:

- The dates and venue for the final negotiation shall be agreed and communicated to the appropriate bidders
- Venue and related arrangements put in place
- Identification of the list of matters for negotiation
- Formulation and documentation of its negotiation strategy including (i) opening position and acceptable position for each negotiation point (ii) relative importance of negotiation point and (iii) order of addressing of each negotiation point, noting that some of the main areas of negotiation are likely to be with respect to the legal positions in relation to the project agreement
- A lead negotiator shall be appointed

Conducting Negotiations

The negotiation team shall conduct the final negotiation(s) as follows:

- Prior to commencement of negotiation, a record shall be taken of all attendees by a member of the negotiation team
- The negotiation Team Leader shall lead the negotiation meetings
- This process shall continue iteratively including seeking guidance from PPP Steering Group where a revised negotiation point is required from either party
- The negotiation shall be limited in scope and limited to improving the terms and conditions or providing further clarity of a bid for the government. Deviations from the USP/Feasibility Study is discouraged.

	• Private partner shall present its position in terms of suggestion and or clarification on each position, which will be subsequently reviewed and assessed by the Negotiating Team and its advisors. • The process shall conclude when a final agreed upon position has been reached on all negotiation points. The document identifying the final position on each negotiated point will be sent to the respective bidder to be signed off as acceptance of the final definitive document capturing the negotiated points and the PPP Agreement will be updated accordingly. The concluded PPP Agreement is to be reviewed and approved by the PPP Steering Group and final sign off by NEC. **3. Finalise Financing** Financing is primary the responsibility of the private partner. This includes the provision of equity and the conclusion of loan arrangements. For the contract to be effective, equity and debt has to be committed and transferred to the bank account of the project company. The private partner and its advisors are to prepare themselves appropriately to ensure an efficient and effective process of debt arranging by: • Reaching out to prospective lenders and providing them with the relevant information to convince them to consider providing finance; • Assume market based assumptions of the lender's conditions i.e. heads of term in their financial proposal; • Preparing a proposal that is assumed to meet the lender's conditions; • Inform, if applicable, the Project Team and negotiate where possible, the necessary refinements and or amendments to the draft PPP agreement to maximize compliance with lenders' conditions. • Conclude to the extent applicable downstream contracts for example: o Construction Contract o Service Contract (s) related to maintenance and operations o Insurance Contracts • Establish Project Company in accordance with PNG regulations to provide for a signing authority for the loan agreements • Open Bank Account for the disbursement of the loans • If necessary, there may also be a Direct Agreement between the lenders and the government addressing the lender's step-in rights in

	case of insolvency and possible lender's recourse to government guarantees
Deliverables	1. Procurement Deed 2. PPP Agreement 3. [Direct Agreement]
Gateway	The negotiated procedure encompasses two explicit gateways: 1. Review and approval of Procurement Deed by the PPP Steering Group to stipulate the negotiations mandate for the Project Team and specifically its Negotiation Team; 2. Review and approval of the PPP Agreement by the Steering Group and verification by NEC to confirm that that the agreed upon terms are in line with the Procurement Deed or any deviations from the Procurement Deed are duly warranted.
Decision Criteria	The main decision criteria to be applied concern: 1. **Value for Money** i.e. confirmation that the proposed arrangement including its risk allocation and government support scheme if any, is indeed more efficient from a government perspective in comparison with a conventionally funded and competitively procured project; and 2. **Affordability** i.e. confirmation that the fiscal implications from direct and contingent liabilities can be accommodated within the inter-temporal budget constraints and debt ceilings of the government; and 3. **Regulatory compliance** i.e. confirmation that all the applicable regulations have been met for the purpose of transparency and accountability .

SECTION 4

SPECIFIC ISSUES FOR PPP PROJECTS

Diligent pursuit of the procedural steps outlined in Sections 2 & 3 for solicited and unsolicited proposals, respectively, will significantly improve the likelihood of a successful outcome for a PPP project. These sections touched on a range of issues that commonly arise in PPP projects and provided guidance on how they can be handled.

The purpose of Section 4 is to address some important issues that typically need to be successfully navigated in a PPP project and which warrant further treatment than they have received in Sections 2 & 3. The key issues addressed in Section 4 will be relevant to most PPP projects undertaken in PNG. They are:

1. Land Availability
2. Risk Management
3. Disclosure and Transparency
4. Probity

The list of issues addressed in this Guideline is not meant to be exhaustive. PPP projects are relatively complex and invariably a range of other important issues will arise that that also need to be satisfactorily addressed for a successful project outcome to be achieved.

D.1. LAND AVAILABILITY

Over 97% of the total land area in PNG is owned under traditional or customary title (**"Customary Land"**). That is, less than 3% of land (around 1.2 million hectares) has been alienated from customary landowners.

Some projects may require alienation of Customary Land for the construction of project facilities. Some projects may require resettlement of current inhabitants for construction of project facilities, even from land which is not Customary Land. For some projects, easements may be required for infrastructure (e.g. water pipes) to pass through land owned by others, including Customary Land.

For privately financed PPPs, the Private Sector Partner's debt financiers are likely to seek suitable security over the project land; typically, this is a land lease or a similar form of title. Delays in ensuring the availability of land or in securing a form of title acceptable to the Private Sector Partner's debt financiers are one of the most common reasons for project delay in Pacific Island countries.

Early consultation should be held with the Department of Lands and Physical Planning to determine the nature of the title for land proposed for use in the project and, as necessary, arrangements for alienation of this land. Provisions to facilitate compulsory acquisition of land or other property, including for easements, for PPP projects are set out in the PPP Act [clause 1(2)].

An important element of ensuring land availability in many cases will be reaching agreement with customary landowners on appropriate compensation arrangements for usage of their land. Compensation could be provided in a variety of forms, including:

- Monetary payment;
- In-kind works or services (eg provision/upgrade of water; school etc)
- Royalties;
- Project equity; or
- Some combination of the above.

Government policy is to support the provision of appropriate compensation. However, in the absence of a national policy to guide the provision of compensation arrangements, agreements to date have been reached on a project-by-project basis.

Responsibility for ensuring that land is made available to the project in a timely fashion is a task better undertaken by government than the Private Sector Partner, as it understands the land tenure legislation and environment in PNG and has the power to issue, verify and modify land titles.

Project land availability should be confirmed before issue of the RfP as, from this time bidders commit significant resources. Project delays will add to bidders' costs and undermine confidence in the government's PPP program.

D.2. RISK MANAGEMENT

In the context of PPPs and other infrastructure projects, a risk is the chance of an event occurring that would cause actual project circumstances to differ from those assumed when forecasting project benefits and costs.

Risks and Risk Management in a PPP Project

All infrastructure projects contain a range of material risks that need to be managed for ongoing project success. For instance, the risk that project land is not secured in a manner that is timely and affordable and provides ongoing availability for use of the land for project purposes.

While many project risks are foreseeable, such as the potential for land availability to be delayed or its cost to be higher than budget, their likelihood and timing of occurrence and extent of consequences should they occur can only be estimated.

Other project risks may not be so obvious (for instance, the occurrence of a global recession), but a robust risk management process can increase the likelihood that they are identified in a timely manner, are understood and can be dealt with in the most effective manner should they arise.

Whilst the PPP Project Team will be responsible for general risk management during project preparation and procurement, the Contract Management Unit (CMU) will be responsible during the construction delivery (as relevant) and service delivery stages. In addition, the Department of Treasury will be responsible for advising on the management of the project's fiscal risks and for monitoring of these risks over the life of the project. Fiscal risks relate to events that cause project net budgetary costs to be higher than forecast and can relate to events that give rise to higher direct costs (e.g. a rise in the quarterly payment level) and/or the incurrence of contingent obligations (e.g. payments by government to offset the effect of a project risk allocated to the government that eventuated).

Risk Management Process

Risk management is an ongoing process which continues throughout the life of a project and is commonly categorised into five stages:

1. **Risk Identification**: the process of identifying all the risks relevant to the project.

   This process covers (i) those risks which will be covered in the Project Agreement (i.e. the primary PPP contract between the Relevant Public Body and the Private Sector Partner), and allocated to either Government or the Private Sector Partner, or shared and (ii) those procurement process risks (e.g. Government securing suitable land title and/or availability for the project) which warrant attention prior to execution of the Project Agreement or are outside of the Project Agreement

   For each project, it is important that all material risks that may be relevant to that project are identified. Unidentified risks cannot be managed. There some common sources for identification of relevant material risks, including:

- Feasibility study
- Lists of generic risks commonly applicable in PPP projects
- Risk registers and/or Project Agreements in previous PPP projects
- A brainstorm session involving a range of project personnel with a variety of backgrounds and skills and facilitated by an experienced practitioner.

In practice, multiple sources are likely to be used on each project.

Once identified, it is good practice to document these risks in a project risk register. An example is provided under 'Risk Monitoring and Review' below.

2. **Risk Assessment**: the process of determining the likelihood of identified risks materialising and the magnitude of their consequences if they do arise.

Risk assessment involves a consideration of the likelihood of a risk occurring and the size and nature of its consequences if it materialises.

Likelihood typically is depicted as ranking (e.g high, medium, low) or as a percentage and impact can be depicted in a variety of forms of specificity from ranking (e.g, high, medium, low) to cost of impact (i.e in Kina).

The relative importance of each risk is assessed by a combination of the likelihood and the impact.

3. **Risk Allocation**: the process of allocating responsibility for dealing with the mitigation and/or consequences of each risk.

For process risks, either risks that need to be resolved prior to contract execution or are ongoing but outside the scope of the Project Agreement, this involves their allocation to a member of the PPP Project Team or Contract Management Unit, depending upon the stage of the project. For risks that will need to be borne by one of the parties to the Project Agreement, it involves their allocation to either the Relevant Public Body or the Private Sector Partner or agreeing to deal with that risk through a specific mechanism which may involve sharing of that risk.

A simplified example of risk allocation is provided below in Figure X.

Figure X: Risk Allocation Matrix (for a Concession PPP)[25]

Type of Risk	Description	Govt	Private	Shared
Land Availability	That the project land will be available at the required time	√		

[25] The risk allocation may differ for other PPP models

Compensation to Landowners	That benefit-sharing arrangements are agreed with customary landholders	√		
Design	That the design is able to deliver the required outputs at the estimated cost		√	
Construction	That the facility is constructed to the required requirements to the contracted timeline within the estimated cost		√	
Operating	That the contracted service outputs are sustainably delivered at within the estimated cost		√	
Demand	That the level of demand for the services is sufficient to meet financial targets		√	
Network	(For relevant projects) That the interconnections to the broader network are available and ongoing access is maintained			√
Industrial Relations	That the workforce seeks better terms and conditions than estimated		√	
Change in Law: General	That there are broad legislative changes that materially impact the project viability			√
Change in Law: Specific	That the government enacts legislation specifically aimed at that sector or the project	√		
Force Majeure	That an event outside the control of either party occurs and materially impacts the project viability			√
Asset	That the asset requires greater maintenance than estimated		√	

4. **Risk Mitigation**: the process of attempting to reduce the likelihood of a risk occurring and/or the extent of its consequences should it materialise.

The best form of mitigation for a particular risk is for it to be allocated to the party

who is best able to manage that risk, whether through that party having some control over its occurrence or being able to best address its consequences if it does eventuate. For instance, the risk that contracted service outputs are sustainably delivered at within estimated cost (i.e. 'operating risk') is best allocated to the Private Sector Partner who, in turn, will contract with the specialist operator within the consortium.26

For some risks, the best form of mitigation is to pass the responsibility to a third party unrelated to either the Private Sector Partner or the Relevant Public Body. For example, for a range of asset and business risks there can be a range of insurance products that are suitable and value for money.

For some risks where a commercial insurance market does not exist (e.g. currency risks, and political risk), some multilateral development banks offer insurance products.

An important relevant concept to consider in framing a risk mitigation strategy for a PPP project is that even when government contracts with a Private Sector Partner to deliver public services it cannot transfer government's accountability and responsibility to the public for the delivery of these services. If the service delivery to the public in a PPP project is not satisfactory, the government can apply financial costs to the Private Sector Party, but the government will be held accountable ultimately by the community for this failure. Therefore, the Relevant Public Body needs to have contingency plans in place for a major sustained failure by the Private Sector Partner to deliver the contracted services.

5. **Risk Monitoring and Review:** the process of monitoring and reviewing identified risks and the addition of any new risks that arise as the project moves through its lifecycle.

Once risks have been identified and assessed, the PPP Project Team needs to establish a risk monitoring system that allows:

- Risks to be documented clearly
- Risks to be updated over time as their profile changes
- Clear identification of the party with allocated responsibility for that risk
- Ready review of mitigation arrangements for each risk, as relevant
- Ready identification of the most significant risks
- Ease of reporting to the PPP Steering Group and/or senior management in the Relevant Public Body
- New risks to be added.

The Contract Management Unit needs to continue close monitoring of project risks when it assumes responsibility for the contract.

Project risks need to be reviewed regularly by the PPP Project Team/CMU and should be a set item for comment in regular project/contract reports to the PPP Steering Group/Relevant Public Body senior management.

Risk Register

The development and maintenance of a risk register commonly is a core component of a robust risk monitoring and review system.

[26] However, a feature of PPPs is that under the Project Agreement the Private Sector Partner will remain fully responsible to the Relevant Public Body for management of that risk. If the specialist operator cannot fully manage that risk, it remains the responsibility of the Private Sector Partner to address the consequences.

Risk registers can range from the relatively simple to extremely complex. An example of a risk register is provided below, which includes two illustrative entries.

Figure Y: Risk Register

Risk Name	Description	Likelihood (L/M/H)	Impact (L/M/H)	Significance	Mitigation Strategy	Risk Owner	Date for Resolution
Tariff Path	Risk that contract tariff path will differ over time to approved ICCC path	High	Medium	Medium/ High	Close consultation with ICCC in setting of contractual tariff path	Government: Insert individual within Government PPP Project Team)	Insert required date
Poor design	Services cannot be delivered at contractual quality and quantity	Low	High	Medium	Ensure use of proven technology + Close scrutiny by PPP Project Team in RFP evaluation and reviewing detailed design and robust formulation of commissioning tests	Private Sector Partner + Individual with PPP Project Team responsible for mitigation	Insert relevant dates

D.3. DISCLOSURE AND TRANSPARENCY

The importance of appropriate disclosure and transparency in the functioning of the PNG PPP program has been embedded into the PPP policy and legislative framework. This is manifest primarily through the functions and requirements placed on the Responsible Minister, PPP Steering Group and the PPP Centre.

The Responsible Minister shall publish, on a quarterly basis, a statement of payments and receipts relating to each PPP project or group of PPP projects. This statement is to include contingent payments and receipts, financial support, guarantees and other support provided by or on behalf of the State (PPP Act section 13). This statement should be made available on the PPP Centre website.

The functions of the PPP Steering Group include ensuring that the PPP policy and program, and the implementation of projects under that policy and program, are conducted with integrity in a fair, transparent and accountable manner (section 44 of the Act). Additionally, the PPP Steering Group must cause the establishment of a notice in the National Gazette of any committee that it establishes, including the membership and functions of that committee.

Obligations on the PPP Centre include:

1. Establishment and maintenance of an electronic register which is available to the public and provides details on projects registered with the PPP Centre (PPP Regulations section 4). It is proposed that this register be provided on the PPP Centre website.

2. Preparation by the PPP Centre of a six-monthly report[27], which shall incorporate the following information for the relevant period:
    a. a list of all projects registered with the PPP Centre and actions taken with respect to those projects;
    b. a description of the operations of the PPP Centre including information or statistics about the performance of its functions, details of actions taken, advice given, achievements and problems encountered;
    c. a list of all meetings of the PPP Steering Group;
    d. a report of any meetings of the PPP Forum;
    e. a schedule of income and expenditure;
    f. a report by the CEO on the Centre's compliance with any general direction or guideline issued by the Responsible Minister under PPP Act clause 31(3); and
    g. any other matter directed by Responsible Minister or by the PPP Steering Group.

    This report is to be provided to the Responsible Minister within three months of the conclusion of each six-monthly period, who shall table it in the National

[27] Under the PPP Amendment Act, the PPP Centre is provided some leeway in the requirement to prepare six-monthly initial reports.

Parliament. The PPP Centre is to publish each report within one week of submitting it to the Minister[28].

3. Preparation by the PPP Centre of an annual report, which is to include:
    a. a report on the performance and management of the operations and activities of the Centre during the accounting period, including the activities of the PPP Steering Group and the PPP Forum;
    b. financial statements for the period;
    c. remuneration details of the CEO and the numbers of PPP Centre employees in brackets of PGK 10,000; and
    d. the total amount of any donations made or commissions paid by the Centre during the accounting period.

   The PPP Annual report is a public document, and available on request from the Centre for a small fee (PPP Act section 38).

4. Publication of the notice of the making, varying or revoking of a procedure, guideline or instruction issued by the PPP Centre (PPP Act section 26); and

5. Arrangement of a functional assessment of the PPP Centre by a registered company auditor firm every five years beginning in the 2nd year after the commencement of the inaugural PPP Centre CEO (PPP Act section 40). The report is to be provided to Responsible Minister for tabling in the National Parliament and publication in the National Gazette (PPP Act section 40).

Whilst not required under PPP legislation, it would be good practice for the PPP Centre to disclose the outcomes of contracted projects. Such information could include:

- Name of Private Sector Partner, and consortium members;
- A brief outline of key commercial elements, such as
    - Services to be provided;
    - Any infrastructure or facilities to be built;
    - PPP model used;
    - Payment arrangements;
    - Contract term; and
    - Key government responsibilities under the contract.

A suggested format for such disclosure is provide at Annexe 7.

[28] Under the PPP Amendment Act, section 12, the first six-monthly report is to be provided for the period from the commencement date of the inaugural PPP Centre CEO and ending on the 30 June or 31 December immediately following the six month anniversary of the appointment date.

D.4. PROBITY

The functions of the PPP Steering Group include ensuring that the highest standards of probity are maintained in the procurement of PPP projects (section 44).

In the context of procurement practices, probity relates to the fairness of the process. All tenderers are to be given equal opportunity and no person seeks to receive a personal advantage through improper involvement in the process. Probity is important because trust that a tender process will be run fairly is important to the attraction of competent tenderers and to community confidence in the PPP process.

From a whole-of-project perspective, the Government seeks to conduct its dealings with private industry and public sector counterparts with integrity in all matters that are related to a PPP project. The identification, evaluation and negotiation of PPP project tenders must be fair, open and demonstrate the highest levels of probity, consistent with the public interest.

The following probity principles will be applied throughout the transaction, construction and operation of a PPP project:

- achievement of sound commercial outcomes;
- adherence to professional integrity;
- maintenance of impartiality;
- maintenance of accountability and transparency;
- avoidance of conflicts of interest; and
- maintenance of confidentiality of relevant information.

ANNEXES