

## Government Procedures for Developing and Implementing PPPs

*This note is the fifth in a series of notes on developing a comprehensive policy, legal, and institution framework for public-private partnership (PPP) programs. This series is extracted from a PPIAF-funded analysis of Uganda’s enabling environment for PPPs, which was prepared by Castalia Limited in December 2008.*

Clearly-defined procedures and responsibilities for developing and implementing PPPs are necessary to enable the government to lead the PPP development process, and ensure good quality PPP projects.

Table 5.1 outlines proposed procedures for each stage of developing and implementing a PPP project. The table offers comments on the suggested procedures, and highlights where further guidelines or other supporting documents should be developed by the PPP Unit. These procedures are based on the general principle that PPPs should have the same approval requirements as other forms of government investment in infrastructure, while taking into account the particular demands of the PPP structure. This consistency is important to ensure that incentives are not created to use PPPs for the wrong reasons. For example, PPPs should be subject to the same project approval process as other forms of infrastructure investment. If not, line agencies may choose to implement projects through PPP that are either not in line with budget priorities, or would be better developed through traditional government procurement.

**Table 5.1: Proposed Procedures for Developing and Implementing PPPs**

Project Stage	Proposed Procedures	Comments and Points for Further Discussion
<b>Identifying the Project</b>	<ul style="list-style-type: none"> <li>• <b>Line ministries or responsible procuring entities</b> identify and prioritize potential projects from among the sector’s objectives</li> <li>• <b>PPP Unit</b> may support this process on request</li> </ul>	<ul style="list-style-type: none"> <li>• PPP Unit should prepare guidelines for identifying projects that may be suitable to be structured as PPPs</li> </ul>
<b>Developing the Business Case</b>	<ul style="list-style-type: none"> <li>• <b>Line ministries</b> work with <b>external advisors</b> to conduct pre-feasibility studies and develop an initial business case for a proposed PPP project</li> <li>• <b>PPP Unit</b> may support the line ministry in contracting suitable external advisors and provide general guidance on developing a PPP, but is not directly involved in preparing the business case</li> </ul>	<ul style="list-style-type: none"> <li>• The PPP Unit should define the form of the initial business case, to include:               <ul style="list-style-type: none"> <li>• The nature of the proposed investment—technical pre-feasibility study and description (or quantification) of expected economic benefits and contribution to meeting policy needs</li> <li>• The reason for pursuing through PPP—this could include developing a quantitative “counter-factual” such as an estimate of the costs of the alternative of traditional public sector procurement. This practice is used in the UK and Australia to assess the value for money of the proposed PPP, but is resource-intensive and can be difficult to adequately define for useful comparison. An alternative is to assess the suitability of a project against a checklist of characteristics of a “good” PPP project</li> <li>• Proposed PPP structure, including assessment and allocation of risks</li> <li>• Initial financial model, including expected cost to the government of any proposed project commitments such as payment for services, contributing land, debt or equity finance, or providing guarantees</li> </ul> </li> </ul>

Project Stage	Proposed Procedures	Comments and Points for Further Discussion
<b>Assessing and Approving the Business Case</b>	<ul style="list-style-type: none"> <li>• Business case developed by the <b>Line Ministry</b> must be certified by the <b>PPP Unit</b> as in line with the criteria outlined in the PPP policy</li> <li>• Business case then forwarded to the <b>Development Committee</b> for their approval to continue to the project development stage</li> </ul>	<ul style="list-style-type: none"> <li>• The PPP Unit will review and <b>certify</b> the business case according to defined criteria based on the PPP policy. These criteria should be defined and published by the PPP Unit and should include: <ul style="list-style-type: none"> <li>• Initial assessment of economic, technical, and financial viability</li> <li>• Consistency of PPP structure and risk allocation with defined guidelines based on PPP policy</li> <li>• Value for money of proposed PPP compared with other service delivery options, including an assessment of the country-factual analysis if necessary</li> </ul> </li> <li>• Certification by the PPP Unit therefore signified that a project is well-structured and represents the least-cost option for achieving the proposed outputs. Subsequent assessments by the Development Committee, Cabinet, and Parliament can focus on the consistency of the proposed PPP with policy and budget priorities</li> <li>• Development Committee approval promotes consistency between the process for developing PPPs and other forms of government investment. The committee is best-placed to assess the consistency of the proposed PPP with policy priorities and budget requirements before spending on project development. Approval should be based on same criteria as general Development Committee project approval</li> </ul>
<b>Developing the Project</b>	<ul style="list-style-type: none"> <li>• Once a PPP has been approved for development by the Development Committee, a <b>Project Team</b> is formed by the <b>Accounting Officer of the line ministry</b>, including representatives of the <b>line ministry, PPP Unit, other sector bodies where appropriate, and external advisors</b></li> <li>• A <b>Team Leader</b> is appointed. The team leader manages the project and acts as the main point of contact throughout the development and procurement process</li> <li>• The <b>PPP Unit</b> may support the line ministry and team leader in contracting suitable advisors</li> <li>• The <b>Project Team</b> is responsible for undertaking a</li> </ul>	<ul style="list-style-type: none"> <li>• The PPP Unit's role on the Project Team may vary depending on the capacity of the relevant line ministry in developing and implementing PPPs</li> <li>• The aim of the project development process is to specify as fully as possible the proposed structure of the project: <ul style="list-style-type: none"> <li>• Specify in detail the quality and quantity of expected outputs, and how these will be monitored and assessed. This may not include detailed specification of the project design or designation of a specific site, which may be left to the bidders' discretion</li> <li>• Specify in detail how project risks will be allocated and the mechanism by which the government will accept project risks, including draft guarantee documents where appropriate</li> <li>• Undertake market sounding to provide initial evidence of potential bidder interest in the project</li> </ul> </li> </ul>

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	<p>detailed feasibility study, for designing the project structure and creating a full set of draft contracts, including any proposed government guarantees, and tender documents (including criteria for bid evaluation and a clear description of the tender and evaluation process)</p>	
<b>Approving Procurement</b>	<ul style="list-style-type: none"> <li>Once draft contracts and tender documents are prepared, these are submitted to the <b>Contracts Committee of the line ministry</b> for approval</li> <li>Where the PPP project requires a financial commitment by the government—whether regular payments of guarantees—it should then be submitted for approval to <b>Cabinet</b> and to <b>Parliament</b> by the <b>Accounting Officer of the line ministry</b>, supported by the <b>Project Team</b></li> </ul>	<ul style="list-style-type: none"> <li>Contracts Committee approval required</li> <li>Cabinet and Parliament approval of any project with a financial commitment by the government (future budget allocations or guarantees) required to: <ul style="list-style-type: none"> <li>Contribute to consistency of processes for PPP with other means of government investment in infrastructure—ensures PPPs are subject to the same budget and policy priority checks, and that incentives are not created for policymakers to inappropriately favor PPPs</li> <li>Protect investors from the risk of parliament failing to approve contracted annual payments on PPPs</li> </ul> </li> <li>Deviation from this standard process may be allowed where approved by the PPP Unit and well-justified by the Project Team</li> </ul>
<b>Monitoring and Enforcing</b>	<ul style="list-style-type: none"> <li>The <b>line ministry</b> is responsible for monitoring the contractor's performance</li> <li>Responsibilities and processes in case of a breach of contract should be defined in the project contract</li> </ul>	<ul style="list-style-type: none"> <li>Contract monitoring is the responsibility of the line ministry or government entity, and could be supported by periodic review by an expert panel</li> <li>Responsibilities and processes in the case of a dispute should be agreed in the PPP contract, and follow standard dispute resolution processes developed by the PPP Unit. These could include: <ul style="list-style-type: none"> <li>Consultation with expert advisory</li> <li>Appointment of a mediator, funded by both parties through contribution to an escrow account, to facilitate structured efforts to settle disputes</li> <li>International arbitration as a last resort for intractable disputes</li> </ul> </li> </ul>
<b>Recording and Reporting</b>	<ul style="list-style-type: none"> <li>The <b>line ministry</b> is responsible for reporting on contract performance</li> <li>The <b>line ministry</b> should submit periodic project progress reports to the <b>PPP Unit</b>, in an agreed format, to provide information on the overall performance of the PPP program</li> </ul>	<ul style="list-style-type: none"> <li>PPP projects requiring a financial commitment by the government should be subject to the same on-going reporting requirements as other forms of government project expenditures</li> </ul>

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	<ul style="list-style-type: none"><li data-bbox="396 226 820 348">• Details of guarantees are submitted for recording and reporting as part of the contingent liability stock</li></ul>	