



THE KWARA STATE

THE KWARA STATE REGULATION FOR THE ESTABLISHMENT AND OPERATION OF THE STATE PROJECT FACILITATION FUND

JULY 2025



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Abbreviations

APP – Annual Procurement Plan
BOT – Build-Operate-and-Transfer
BPP – Bureau of Public Procurement
CA – Concession Agreement
CA – Contracting Authority
CCS – Contract for Consulting Services
EO – Executive Order
FS – Feasibility Study
GAA – General Appropriations Act
IC – Independent Consultant
IFI – International Financing Institution
IO – International Organization
IRR – Implementing Rules and Regulations
JV – Joint Venture
MDA – Ministry, Department and Agency
MOFBEP – Ministry of Finance, Budget and Economic Planning
ODA – Official Development Assistance
OP – Original Proponent
PA – Probity Advisory
PC – Project Committee
PDF – Project Development Fund
PFF – Project Facilitation Fund
PP – Project Preparation
PPMP – Project Procurement Management Plan
PPP – Public-Private Partnership
PPPGB – PPP Governing Board
PPTA – Project Preparation and Transaction Advisory
RA – Republic Act
SBAC – Special Bids and Awards Committee
SO – Special Order
TA – Transaction Advisory
TAA – Technical Assistance Agreement
TOR – Terms of Reference
TWG – Technical Working Group
UN – United Nations
VDR – Virtual Data Room

1. Short Title and Commencement/Introduction

- 1.1 This Regulation may be cited as the Kwara State Project Facilitation Fund (PFF) Regulation, 2025. It shall come into effect on 25/07/2025 upon approval by the Kwara State Executive Council.
- 1.2 These Guidelines (the “Guidelines”) for the Project Facilitation Fund (“PFF”) are issued pursuant to are issued in accordance with Executive Order No. 6 of 2024 Sections and 6(viii) and 17 of Kwara State Public Private Partnership Law 2023, prescribing source of funding for the agency and application of the funds, subject to the approval of the Kwara State Public Private Partnership Governing Board.
- 1.3 The Guidelines shall cover the application process for PFF support, the recruitment of consultants, and the management of contracts for consulting services funded under the PFF, as well as the management of the Fund in Kwara State
- 1.4 The Guidelines shall adhere to existing Kwara State Government budgeting, procurement, auditing, and accounting regulations, including all eligible preparatory, development, and implementation activities undertaken to enhance the quality, bankability, and successful delivery of projects.
- 1.5 The Kwara State PFF shall be used to support potential Public-Private Partnership (PPP) projects of Contracting Authorities (CAs)/Ministries, Departments, and Agencies (Agencies) from all priority sectors in developing inclusive and sustainable infrastructure.

2. Definition of Terms

The following terms, whenever used in the Guidelines, shall be understood as follows:

- 2.1 **Agency** – any department, bureau, office, commission, authority, agency of the Kwara State Government,

including Government-Owned and/or Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), authorized by law or their respective charters to contract for or undertake Infrastructure and Development Projects.

- 2.2. **“Contracting Authority”** means any Ministry, Department, Agency, State-Owned Enterprise (SOE), Special Purpose Vehicle (SPV), or other legally authorized entity of the State Government responsible for the identification, preparation, procurement, implementation, or management of a public infrastructure or public-private partnership project. It is the institution that enters into the PPP agreement with the private partner and is responsible for ensuring project preparation, compliance with PPP procedures, performance monitoring, and delivery of services throughout the project lifecycle.
- 2.3. **Contract for Consulting Services (CCS)** – a written agreement executed between the Kwara State Public Private Partnership Board and the Consultant, with the concurrence of the Agency/CA as the beneficiary and, for Independent Consultant services, the private sector partner, defining the terms of engagement and the respective obligations of each party for a specific consulting assignment.
- 2.2 **Cost Recovery Fee** – ten percent (10%) of the total cost of PFF Support or actual cost drawn from the PFF. It shall be paid in accordance with Section 9.4 of the PFF Guidelines.
- 2.3 **Independent Consultant** – a non-aligned or neutral third party/parties, either individuals, partnerships or corporations procured to provide independent advice to the Agency/CA and project proponent or its contractor for the design and construction of the PPP project, monitoring of the performance and deliverables of the contracting parties, and other purposes as detailed in Section 4 of these Guidelines.
- 2.4 **Joint Venture (JV)** – refers to a PPP contractual

arrangement where both the Agency/CA, performing its proprietary function. The Private Partner contributes to a pool of resources, comprising capital, services, or assets (including equipment, land, or intellectual property), to jointly undertake a specific and time-bound investment activity that delivers an infrastructure or development project typically provided by the public sector.

- 2.5 **Ministry, Department, and Agencies (Agencies) – any state-level** or local government entities.
- 2.6 **Original Proponent (OP)** – the private sector proponent of an unsolicited proposal which has been granted/issued with an original proponent status (OPS) by the Agency/CA.
- 2.7 **Project Facilitation Fund (PFF)** – all income sourced from the Kwara State Government, development partners, Cost Recovery Fee, and reimbursement of expenses incurred for the preparation and conduct of business case, pre-feasibility and feasibility studies (FS), preparation of tender documents and other activities in the preparation and tender of PPP projects, and provision of support during PPP project implementation.
- 2.8 **PFF Support** – scope of the services extended to the Agency/CA through the PFF-funded Consultant/s.
- 2.9 **Public Private Partnership (PPP)** – a contractual arrangement between an Agency/CA and a Private Partner to finance, design, construct, operate, and maintain, or any combination or variation thereof, infrastructure or development projects which are typically provided by the public sector, where each party shares in the associated risks.
- 2.10 **Probity Advisor** – a consultant who provides independent oversight during the bidding process with duties and responsibilities as defined in Kwara State Public Private Partnership Law 2023, Kwara State PPP Manual 2024, Guidelines, and related laws and regulations.

- 2.11 **Project Preparation and Transaction Advisory (PPTA) Consultant** – a Consultant who provides advisory services in the preparation/due diligence of a business case, pre-FS, and/or FS, and project structuring, evaluation and/or negotiation of unsolicited proposals, and the management of the bidding process and assistance in evaluating financial close documents.
- 2.12 **Recoverable Amount** – the sum of the actual amount disbursed from the PFF under the CCS or Service Agreement, and the Cost Recovery Fee. For PPTA services with a winning bidder, this represents the sum of the CCS price and the Cost Recovery Fee.
- 2.13 **Reimbursement** – repayment by the Agency/ CA or the winning bidder of the Recoverable Amount to the PFF.
- 2.14 **Service Agreement** – a written agreement entered into by and between the Agency/CA and the UN agency/IO/IFI/private sector entity, defining the terms of engagement and the respective obligations of each party for a specific consulting assignment for a PPP project.
- 2.1 **Technical Assistance Agreement (TAA)** – – agreement entered into by and between the OPPP and the Kwara State Public Private Partnership Board which covers the undertakings in the provision and receipt, respectively, of PFF support. The TAA is executed upon approval of the PFF Committee to provide PFF Support to a project (sample format of which is provided in **Appendix E**, which may be amended by the parties from time to time without need of PFF Committee approval).

3. The Purpose of PFF

- 3.1 The Fund shall be used exclusively to finance eligible activities required to advance priority infrastructure and public-private partnership projects from conceptualization to bankability and investment readiness.
- 3.2 The PFF is a funding mechanism available to Agencies/CA for the preparation and conduct of business case, pre-feasibility and feasibility studies, preparation of tender documents, and other activities in the preparation and implementation of PPP projects.
- 3.3 The PFF is a revolving fund to be set up, managed, and administered by the Kwara State Public Private Partnership Board, pursuant to Executive Order No. 06, of 2024.

3.1.1 Fund Duration and Continuity

The Fund shall be established as a permanent facility subject to periodic review every 5 (five) years

The Fund shall continue in operation until dissolved or restructured by an amendment to this Regulation or by repeal of its enabling authority.

All commitments, disbursements, and agreements made prior to any such repeal or restructuring shall remain binding in accordance with their terms.

4 Use of the PFF

The PFF shall be used to engage Consultants for any or a combination of the following services:

- a. Project preparation and assistance in securing the necessary government approvals for solicited projects,

- including the conduct of third-party valuation of government assets.
- b. Assistance in the evaluation and/or negotiation of unsolicited proposals, and evaluation/validation by the approving body of unsolicited proposals;
 - c. Assistance in the preparation of the tender documents and management of the bidding process;
 - d. Assistance in evaluating financial close documents;
 - e. Probity advisory;
 - f. Constitution and utilization of dispute resolution boards, as may be required under PPP contracts;
 - g. Monitoring of project implementation;
 - h. Independent appraisal of the amount of termination payments;
 - i. Third-party assessment of the residual value of the facility upon transfer or turnover of the facility to the Agency/CA; and, such other services as may be required or contemplated under applicable laws, rules and regulations, and other issuances, subject to the approval of the Kwara State Public Private Partnership Governing Board.

5 Mode of Assistance

- 5.1 With the PFF lodged with the Kwara State Public Private Partnership Board, the Kwara State Public Private Partnership Board procures and engages the Consultants in coordination with a beneficiary Agency/CA.
- 5.2 Where an Agency/CA has established discussions with a specialized agency of International Organizations (IO) or International Financing Institutions (IFI) for the provision of services under Section 4,¹ the PFF assistance may be in the form of funding support to cover the Agency/CA counterpart in the cost of the services.

6 Eligibility

A potential project shall be considered eligible for PFF Support if it is:

- 6.1 A PPP project as defined under the Kwara State Public

Private Partnership Law 2023, the PPP Manual 2024, Guidelines, and other related laws and regulations.

- 6.2 A PPP project structured under a Joint Venture arrangement under any of the following:
- a) PPP Manual 2024, Guidelines and Procedures for Entering into Joint Venture (JV) Agreements between Government and Private Entities issued by the Ministry of Finance, as may be amended.
 - b) PPP Ordinance enacted by the relevant legislative body of an Agency/CA, or consistent with its corporate powers, under the relevant laws, authorizing the Agency/CA to enter into JV Arrangements/Agreements within the limitations imposed by applicable laws; and
 - c) Any appropriate law, administrative issuance, rules or guidelines, as may be applicable.
- 6.3 A solicited project under items 6.1 or 6.2 above, which has been included in the list of priority government projects³ or has been endorsed by the Agency/CA as a priority project to the appropriate oversight agency/body.
- 6.4 An unsolicited proposal for a project under 6.1 or 6.2 above, which is included in the list of priority government projects and has a whole of life cost amounting to at least N1 billion.

7 Oversight and Management

The administration of the PFF involves the following institutions or bodies:

- 7.1 The Kwara State Public Private Partnership Governing Board, created under Section 2 of Kwara State Public Private Partnership Law 2023 and Section 1 (1) of Executive Order 06, 2024, is the overall policy-making body for all PPP-related matters, including the PFF. The composition is as follows:
- The Executive Governor- Chairperson

- The Commissioner for Finance – Vice *Chairperson*
- The Commissioner for Planning & Economic Development– *Member*
- The Commissioner for Justice – *Member*
- The Commissioner for Business, Innovation, and Technology – *Member*
- The Director General, State Investment Promotion Agency – *Member*
- The Director General, Public Private Partnership Office – *Member*
- The State Accountant General – *Member*
- The State Auditor General – *Member*
- One representative from the Organized Private Sector – *Member*
- One representative from Civil Society – *Member*

Secretariat: Kwara State Public Private Partnership Board

³ Refers to the list of Private Sector Infrastructure or Development Projects in accordance with relevant Sections of the PPP Manual 2024, PPP Pipeline, Kwara State Public Private Partnership Law 2023 and their successor priority lists, as may be necessary, as the lists of State's Priority Projects, and State Development Investment Programs (SDIPs)/ Local Development Investment Programs (LDIPs), as the lists of Local Priority Projects.

⁴ This does not apply to PFF applications for the management of the bidding process only.

7.2 The PFF Steering Committee (PFF Committee), created under Executive Order No. 6, 2024, is the approving body for applications for PFF Support and the oversight body for the proper administration and management of the PFF. Under Executive Order No. 6, 2024, the PFF Committee is also tasked to formulate, prescribe, and recommend policies, procedures, and guidelines on the use of the PFF and recovery of costs charged to the PFF, subject to the approval of the Kwara State Public Private Partnership Governing Board. The Committee is composed of authorized representatives from the following agencies:

- The Executive Governor- Chairperson
- The Commissioner for Finance – Vice *Chairperson*
- The Commissioner for Planning & Economic Development – *Member*
- The Commissioner for Justice – *Member*
- The Commissioner for Business, Innovation, and Technology – *Member*
- The Director General, State Investment Promotion Agency – *Member*
- The Director General, Public Private Partnership Office – *Member*
- The State Accountant General – *Member*
- The State Auditor General – *Member*
- One representative from the Organized Private Sector – *Member*

Secretariat: Kwara State Public Private Partnership Board - PFF Service

8 PFF Process

8.1 Application

The Agency/CA shall submit a letter endorsing the PFF application for the project, signed by the head of the Agency/CA,⁵ accompanied by the appropriate supporting documents based on the type of PFF Support requested. The list of minimum documentary

requirements is provided in **Appendix A**.

8.2 Screening

The PFF Committee Secretariat shall: (i) undertake the screening and evaluation of an application, and (ii) prepare a staff appraisal report within ten (10) working days from receipt of a complete application. The Evaluation Criteria for applications for various PFF services are provided in **Appendix B**.

⁵ For bureaus, government corporations, and attached agencies whose budgets require the approval of a mother agency as required by law or their respective charters, an endorsement from the head of the mother agency shall be required.

8.3 Approval of Applications for PFF Support

a. Action of the PFF Committee

- i. The PFF Committee shall approve, conditionally approve, or disapprove an application for PFF Support on the basis of the staff appraisal report and the deliberations during the PFF Committee Meeting.
- ii. For approved or conditionally approved projects, the PFF Committee can withdraw such approval or conditional approval pursuant to Sections 8.3(b)(i) and 8.3(c)(iii) of the Guidelines.
- iii. Any decision of the PFF Committee is final and immediately executory.

b. Process for Approved Applications

- i. The Kwara State Public Private Partnership Board shall release the TAA within three (3) working days from the approval by the PFF Committee. The Agency/CA shall then sign the TAA within ten (10) working days from receipt thereof.

If the TAA has not been executed after ten (10) working days from receipt by the Agency/CA, the project may be delisted from the PFF pipeline. The Secretariat shall report to the PFF Committee and inform the Agency/CA in writing of the delisting. In case of delisting, the Agency/CA may resubmit the application for PFF support.

- ii. The Kwara State Public Private Partnership Board, in coordination with the Agency/CA, shall prepare the bidding documents for the consultant recruitment for the review and approval of the Kwara State Public Procurement Agency (KWPPA) for approved PFF applications under Section

5.2 of these Guidelines, the Agency/CA shall comply with all documentary requirements stipulated under the TAA before the Kwara State Public Private Partnership Board releases the funds to the Agency/CA, subject to relevant laws, rules, and regulations.

c. **Process for Conditionally Approved Applications**

- i. The Agency/CA shall comply with the conditions for approval by the PFF Committee within the set deadline.
- ii. Upon receipt of the Agency/CA's proof of compliance, the Secretariat shall assess within five (5) working days whether the Agency/CA has fulfilled the requirements/conditions set by the PFF Committee. Once the Secretariat finds the requirements to have been fulfilled, the Secretariat shall confirm this in writing and facilitate the execution of the TAA in accordance with Section 8.3 (b)(i).
- iii. If the Agency/CA failed to comply with the conditions of the PFF Committee within the set deadline, the application may be delisted from the PFF pipeline. The Secretariat shall accordingly report the delisting to the PFF Committee and inform the Agency/CA in writing. In case of delisting, the Agency/CA may re-submit the application for PFF support.

8.4 Procurement of Consulting Services

- 8.4.1 The procurement of consulting services shall be undertaken by the Kwara State Public Private Partnership Board per the Kwara State Public Procurement Law of 2023 and the Kwara State Public Private Partnership Law 2023.

The procurement of consulting services under the PFF shall be done through competitive bidding. The Kwara State Public Private

Partnership Board , as the relevant government authority for the procurement of consulting and transaction advisory services for PPP projects, may maintain a pre-selected list of consultants with known experience and proven capability.

- 8.4.2 A **Special Bids and Awards Committee (SBAC)** shall be created through a Special Order (SO) to be issued by the Kwara State Public Private Partnership Chief Executive Officer or his/her duly authorized official. The SBAC shall be responsible for all aspects of the bidding process for the PFF Consultant. The composition and functions of the SBAC shall be in accordance with the Kwara State Public Private Partnership Board in accordance with the Kwara State Public Procurement Law of 2023 and the Kwara State Public Private Partnership Law 2023 or any other applicable procurement guidelines.
- 8.4.3 A **Technical Working Group (TWG)** may be created by the SBAC from a pool of technical, financial and/or legal experts to assist them in the conduct of the procurement process. The composition and functions of the TWG shall be in accordance with Kwara State Public Procurement Law of 2023 and the Kwara State Public Private Partnership Law 2023 or other applicable procurement guidelines.
- 8.4.4 To support the SBAC and TWG, a Secretariat for the SBAC shall be created or assigned in accordance with Kwara State Public Procurement Law of 2023 and the Kwara State Public Private Partnership Law 2023 or other applicable procurement guidelines.
- 8.4.5 Subject to the application of a different set of procurement procedures and guidelines under an applicable Treaty or International or Executive Agreement, the SBAC, TWG, and SBAC Secretariat may be entitled to honoraria in accordance with Kwara State Public Procurement Law of 2023 and the Kwara State Public Private Partnership Law 2023 and existing budgeting, accounting, and auditing rules and regulations.
- 8.4.6 Unless otherwise specified in another or different procurement framework under an applicable Treaty or International or Executive Agreement, observers shall be invited by the SBAC

in consultant recruitment activities in accordance with Kwara State Public Procurement Law of 2023 and the Kwara State Public Private Partnership Law 2023

- 8.4.7 For the procurement of consulting services from a multilateral agency(ies), the procedures to be undertaken by the Kwara State Public Private Partnership Board are provided in **Appendix D**.

8.5 Management of Contract for Consulting Services

- 8.5.1 The terms of the provision of services by the Consultant, including experts performing the services; experts' remuneration and staffing schedule; expected outputs and deliverables; timing of submission; terms of payment; and other terms of engagement shall be stipulated in the CCS.
- 8.5.2 Modification or variation of the terms and conditions of the CCS shall be governed by the applicable procurement rules and guidelines and by this Section.

The PFF Committee's approval shall be required for changes in the scope of services and deliverables that have been previously approved by the PFF Committee.

- 8.5.3 The performance of all Consultants shall be monitored and evaluated in accordance with Kwara State Public Procurement Law of 2023 and the Kwara State Public Private Partnership Law 2023, as may be applicable.
- 8.5.4 Contract termination or suspension may be allowed in accordance with the conditions and procedural requirements stipulated in the CCS, the TAA, and the applicable procurement guidelines.
- 8.5.5 A **Project Committee (PC)** shall be constituted to oversee the services to be delivered by the Consultant for the PPP project. Specifically, the PC will be responsible for: (i) reviewing the deliverables and completion of milestones by the Consultant, pursuant to the Output Evaluation Process (Annex B of the TAA [**Appendix E**]), (ii) reviewing contract variation

proposals with cost implication, if allowed under the applicable procurement guidelines; and, (iii) recommending the appropriate action to the Kwara State Public Private Partnership Board Chief Executive Officer or his/her duly authorized representative. The PC shall be composed of the following representatives:

- 8.5.5.1 Two (2) representatives from the Kwara State Public Private Partnership Board, with one (1) designated as the Chairperson and the other as member;
- 8.5.5.2 One (1) representative from the Agency/CA, designated as the Co- chairperson; and
- 8.5.5.3 One (1) representative from the Concessionaire, in the case of IC services, where the Concessionaire has a share in the cost of the procured service.

Representatives to the PC must be at least Director-level.

For PFF assistance under Section 5.2, the Agency/CA must establish a PC or an equivalent committee, with two (2) representatives from the Kwara State Public Private Partnership Board. Such Committee shall also submit to the Kwara State Public Private Partnership Board regular progress report as stipulated in the TAA.

- 8.5.6 If the PC fails to finalize its evaluation of the deliverables/outputs, completion of milestones, and contract variation proposals, within ten (10) working days from receipt of the PC Resolution, as provided under Output Evaluation Process (Annex B of the TAA), the Kwara State Public Private Partnership Board's Chief Executive Officer or his/her duly authorized representative may decide on the acceptance of the deliverables/outputs and payment of

claims, and any other actions or remedies that can be exercised under the CCS.⁶

The decision of the Chief Executive Officer shall be final, non-appealable, and executory, and shall be considered in proceeding with the next milestones or closure of the CCS, and in computing the Recoverable Amount from the Agency/CA.

9 Fund Management

9.1 Funding

The PFF may be funded through the General Appropriations Act or other sources, consistent with existing laws, rules, and regulations. Notwithstanding the provisions of this section of the guidelines, Kwara State shall make provision of a minimum funding of 3% of estimated capital investment in the 2025 , 2026,2027 budget for eligible projects in financial year 2025 and 2026 respectively.

9.2 Earmarking and Obligation of Funds

- 9.2.1 The amount approved by the PDMF Committee shall be earmarked for a project's consulting services when the TAA has been duly executed by the Kwara State Public Private Partnership Board and the Agency/CA.
- 9.2.2 Upon the due execution of the CCS, earmarked funds shall be obligated. The obligated amount shall be equivalent to the contract price stipulated in the CCS, which may not necessarily be equal to the earmarked amount.

On the other hand, for PFF assistance under Section 5.2, the earmarked funds shall be obligated upon the Agency/CA's compliance with the requirements on fund transfer, as stipulated in the TAA.

⁶ This provision is not applicable for PFF assistance under Section 5.2.

9.3 Disbursement

- 9.3.1 Disbursement from the PFF shall follow existing government budgeting, accounting and auditing laws, rules and regulations; and agreed arrangements with development partners, as applicable.
- 9.3.2 For PFF assistance under Section 5.2, disbursement to the Agency/CA shall be in tranches, as stipulated in the TAA.

9.4 Recovery of Cost of PDMF Support

- 9.4.1 To sustain the revolving nature of the PFF, the Kwara State Public Private Partnership Board will recover costs charged to the PFF and collect fees (collectively referred to as the Recoverable Amount as defined in Section 2.15) in Nigerian Naira.

For foreign currency-denominated contracts, the Recoverable Amount shall be paid in its Nigerian Naira equivalent using the prevailing Central Bank of Nigeria Reference Exchange Rate at the time of payment.

- 9.4.2 In paying the Recoverable Amount, the following shall apply:⁷

9.4.2.1 For Project Preparation, Transaction Advisory, and Probity Advisory

- 9.4.2.1.1 The Agency/CA shall require the winning bidder/winning comparative proponent to pay the Recoverable Amount in case of successful bidding, as a condition precedent for signing the PPP agreement.

⁷ Section 9.4.2(a)(iii) will not apply for mode of assistance under Section 5.2

Any increase in the Recoverable Amount, which the Agency/CA was unable to require the winning bidder/winning comparative proponent to pay, shall be reimbursed by the Agency/CA.

9.4.2.1.2 The Agency/CA shall reimburse the Recoverable Amount upon termination of the CCS or Service Agreement under, but not limited to, the following instances:

9.4.2.1.2.1 The Agency/CA discontinues the project, or does not pursue the project as a PPP due to change in policy direction (i.e., shift of PPP modality or framework, change in funding sources).

9.4.2.1.2.2 The Agency/CA fails to: act on and obtain the approval of the appropriate approving authority for the project, within three (3) years from the date of acceptance of the FS by the Kwara State Public Private Partnership Board Chief Executive Officer, or the head of the Agency/CA in case of PFF assistance under Section 5.2; bid out the project; conclude the PPP bidding process; issue the Notice of Award, or sign the PPP agreement with the winning bidder/private sector participant or comparative private sector participant.

9.4.2.1.2.3 For solicited projects -

9.4.2.1.2.3.1 The PFF Support covers only the development of a pre-FS and/or FS and project structuring.

9.4.2.1.2.3.2 The project is found to be not viable for PPP implementation based on the pre-FS or FS.

9.4.2.1.2.4 For unsolicited projects –

9.4.2.1.2.4.1 The unsolicited proposal was rejected by the Agency/CA or the OPS was not awarded to a private sector proponent.

9.4.2.1.2.4.2 There was a failure of negotiation with the private sector proponent.

9.4.2.1.2.4.3 The proposal was not submitted to or was not approved by the appropriate approving authority.

9.4.2.1.3 In cases where the CCS is terminated and the Agency/CA and the Kwara State Public Private Partnership Board mutually agree in writing to continue the remaining deliverables of the approved PFF support under a new CCS, the Recoverable Amount may be repaid by the winning bidder upon successful award of the project, or by the Agency/CA upon termination of the new CCS due to reasons/instances under Section 9.4.2 (a)(ii).

9.4.2.1.4 Upon request by the Agency/CA, the Agency/CA may reimburse an amount less than the Recoverable Amount in the following instances:

| Instance | Reimbursement Obligation |
|--|---|
| 1. An official act by the Governor orders the discontinuation of the project. | 10% of the actual cost drawn from the PDMF Fund |
| 2. The project of an rural area or municipality ⁸ approved for PFF Funding is found to be not viable for PPP implementation based on the pre-FS or FS. | |
| 1. The project of an urban metropolitan city or Municipality ⁹ approved for PFF Funding is found to be not viable for PPP implementation based on the pre-FS or FS. | 50% of the actual cost drawn from the PDMF Fund |
| 2. Subject to validation and approval of the | |

⁸ Based on classification upon PFF support application and as stipulated in the TAA, including the applicable reimbursement policy.

⁹ Ibid.

| Instance | Reimbursement Obligation |
|--|---------------------------------|
| Kwara State Public Private Partnership Board, any other instance where there is no or there can be no winning bidder/proponent due to causes beyond the control of the Agency/CA (e.g., Coordination Committee decision to discontinue the project or change the procurement method to a non-PPP arrangement). | |

For this reimbursement arrangement, the Agency/CA shall submit its request and justification to the Kwara State Public Private Partnership Board in writing, along with documents to support such justification.

- 9.4.2.1.5 In the case of Agencies/CAs, all TAAs to be executed shall include a provision that authorizes the DBM to allocate for the Recoverable Amount as a priority item, within the Agency's budget ceiling for the fiscal year following the termination of the CCS or Service Agreement. The TAA and other supporting documents from the Kwara State Public Private Partnership Board shall be used by the DBM as bases during budget preparation.

The Agency shall reimburse the PDMF within three (3) months from the approval

of the budget of the Agency containing said amount.

9.4.2.2 For Independent Consultant services

Upon the execution of the CCS, the Agency/CA shall include said cost in its annual budget proposal as a priority item. The actual cost drawn from the PFF plus the Cost Recovery Fee shall be paid by the Agency/CA within three (3) months from approval of its budget. In any event notwithstanding, the Agency/CA and the Kwara State Public Private Partnership Board may agree on an earlier reimbursement date.

9.4.2.2.1 For implementation monitoring services –

The Agency/CA and Private Sector Partner/Concessionaire shall share the total cost of the services on a 50:50 ratio. The Agency/CA shall reimburse 50% of the total cost of the services or the actual cost drawn from the PFF, as applicable, plus the Cost Recovery Fee.

9.4.2.2.2 For the appraisal of the amount of termination payments services –

The Agency/CA shall share the total cost of the services on a 50:50 ratio with the Private Sector Partner/Concessionaire, or wholly by the Agency/CA, as may be determined in the course of project implementation in accordance with the PPP agreement. The Agency/CA shall reimburse the actual cost drawn from the PFF Fund, plus the Cost Recovery Fee.

9.4.2.2.3 For the (a) assessment of the residual value of the facility upon transfer or turnover of facility to

the Agency/CA and

(b) constitution and utilization of dispute resolution boards –

The Agency/CA and Private Sector Partner/Concessionaire shall share the total cost of the services in accordance with the PPP agreement. The Agency/CA shall reimburse the actual cost drawn from the PFF plus the Cost Recovery Fee.

9.4.3 The reimbursement of the cost of PFF Support by the Agency/CA, pursuant to Section 9.4.2 may be sourced, subject to existing government budgeting, accounting and auditing laws, rules and regulations, as follows:

9.4.3.1 from its annual budget as authorized in the GAA, through the budgetary process; or

9.4.3.2 from its corporate funds, as may be applicable.

10 Reporting Requirements

The Kwara State Public Private Partnership Board shall regularly submit to the MOF, the Speaker of the House of Assembly, either in printed form or by electronic document, reports on income and expenditure. Said reports shall be posted also in the Kwara State Public Private Partnership Board website.

11 Transitory Provision

11.1 Upon effectivity of the Guidelines, all applications for approval by the PFF Committee shall be evaluated and approved in accordance with the amended Guidelines.

11.2 PFF-funded consulting assignments under implementation, including the disbursement and reimbursement mechanisms, shall be governed by the contract provisions as stated in their respective CCS and by this Guidelines.

- 11.3 The rules and procedures under these Guidelines shall apply to matters of PFF-funded consulting assignments implemented prior to the effectivity of these Guidelines that remain unresolved at the time of the effectivity of these Guidelines.
- 11.4 Reimbursement obligations from terminated contracts which have been outstanding for over three (3) years shall be immediately due and demandable from the Agency/CA concerned.

12 Separability Clause

If any provision of the Guidelines is held invalid, the other provisions not affected thereby shall continue in operation.

13 Effectivity Clause

The Guidelines and any further amendments or modifications hereof, shall take effect immediately upon publication in the Official Gazette or any newspaper of general circulation.

Appendix A

List of Minimum Documentary Requirements for PFF Support Application

Legend:

PP – Project Preparation

TA – Transaction Advisory

*PPTA – Project Preparation and
Transaction Advisory*

USP – Unsolicited Proposal

PA – Probity Advisory

IC – Independent Consultancy

IM – Implementation Monitoring

IM – Independent Appraisal

ARV – Assessment of the Residual Value

DRB – Dispute Resolution Board

| Minimum Documentary Requirements | Type of PDMF Service | | | | | | |
|---|---------------------------|-------------|-------------|-------------|----|-----|-----|
| | PP/PPTA/TA (Solicited) | TA (USP) | PA | IC Services | | | |
| | | | | IM | IA | ARV | DRB |
| 1. Letter endorsement from the head of the Agency/CA and, if applicable, letter endorsement from the mother agency | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 2. Duly accomplished PFF Forms 1-5 Duly accomplished PFF Form 6 Duly accomplished PFF Form 7 (Please refer to Appendix B for the PFF Forms) | ✓ ✓ | ✓ ✓ | ✓ ✓ ✓ | ✓ | ✓ | ✓ | ✓ |
| 3. Nomination of representatives to the Special Bids and Awards Committee, TWG, and other Committees established for the PFF; ¹⁰ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

¹⁰ This requirement shall not apply for PFF assistance under Section 5.2 of this Guidelines.

| Minimum Documentary Requirements | Type of PDMF Service | | | | | | |
|---|---------------------------|-------------|----|-------------|----|-----|-----|
| | PP/PPTA/TA (Solicited) | TA (USP) | PA | IC Services | | | |
| | | | | IM | IA | ARV | DRB |
| 4. Resolution from the CA's legislative body ¹¹ or the government corporation's Board of Trustees/Directors approving the availment of PFF support and authorizing the local chief executive or the head of the government corporation to enter into a TAA with the Kwara State Public Private Partnership Board ; | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| 5. Certification from the Agency/CA confirming that the project is included in the list of priority government projects or has been endorsed as a priority to the appropriate oversight agency/body; ¹² | ✓ | | | | | | |
| 6. Copy of PPP Ordinance enacted by the State House of Assembly or legislative body, authorizing the CA to enter into JV Arrangements/Agreements, as applicable, consistent with its corporate powers under KSPPL, otherwise known as the Local Government Code | ✓ | ✓ | | | | | |
| 7. Letter of the Agency to the ICC submitting the project for approval (<i>if applicable</i>) and the Agency Project Evaluation Report or its equivalent | | ✓ | | | | | |

¹¹ This may be submitted prior to the signing of the TAA.

¹² This requirement shall not apply to applications for PFF services under Section 4 (b), (f), (g), (h), and (i) of this Guidelines.

| Minimum Documentary Requirements | Type of PFF Service | | | | | | |
|---|---------------------------|-------------|----|-------------|----|-----|-----|
| | PP/PPTA/TA (Solicited) | TA (USP) | PA | IC Services | | | |
| | | | | IM | IA | ARV | DRB |
| 8. Copy of bid documents or signed PPP agreement indicating the requirement for the service/s | | | | ✓ | ✓ | ✓ | ✓ |
| 9. Updated Risk Mitigation Plan (RMP) ¹³ | | | | | ✓ | | ✓ |
| 10. Registry of assets to be valuated | | | | | | ✓ | |
| 11. Explanation of termination event as certified by head of Agency/CA | | | | | ✓ | | |
| 12. General Appropriations Act provision indicating budget allocation for the services, or Agency/CA's proof of commitment to include PFF cost in its budget proposal for the succeeding budget cycle | | | | ✓ | ✓ | ✓ | ✓ |

Additional requirements for Agencies/CAs requesting PFF support under Section 5.2 of the Guidelines:

- (i) Copy of the Service Agreement (or its equivalent) containing the indicative terms of reference and cost estimate
- (ii) Certification from the Agency/CA that the requested services involve advanced technologies, techniques and innovations not locally available, and it is most advantageous to the government

PFF FORMS

May 2025 Version

The Agency/CA is advised to read the PFF Guidelines first before accomplishing the Forms.

PDMF Support

Requested PFF Support (please check [✓] the appropriate box/boxes):

- Project Preparation (PP) ☐
- Transaction Advisory (TA) ☐
- Probity Advisory (PA) ☐
- Independent Consultant Services
 - 1. For Implementation Monitoring ☐
 - 2. For Independent Appraisal ☐
 - 3. For Assessment of the Residual Value ☐
 - 4. For Dispute Resolution Board ☐

PFF FORM 1
General Information on the Project

1. Project Title

| |
|--|
| |
|--|

2. Brief Description

- | |
|--|
| <ul style="list-style-type: none">• Present the major component/s of the project and the expected output/s to be delivered after the investment/construction phase• Indicate target beneficiaries, and perceived benefits from the project• Describe how the private sector may be involved – role/s of the private sector, in what areas of project implementation, operation and/or maintenance, perceived arrangement/s |
|--|

3. Project Background

- | |
|--|
| <ul style="list-style-type: none">• Provide milestones and status in the development and processing of the project (e.g., approval of the masterplan, Kwara State Public Private Partnership Board approval, issuance of Instructions to Prospective Bidders, receipt of unsolicited proposal, etc.)• Indicate previous and/or ongoing studies (and related studies) undertaken, their recommendations, and highlights of decisions and actions taken, if any, on said recommendations• Indicate difficulties encountered and/or issues raised in the development of the project |
|--|

- Discuss whether the proposed project to be funded under the PFF is part/component of a larger project financed through other schemes such as through Official Development Assistance (ODA) or Budget/ General Appropriations Law (GAL)
- Discuss possible land acquisition/site or right-of-way and social safeguard issues on the project
- Discuss the envisioned institutional arrangement for the project

4. Estimated Project Cost

- Identify major cost components and estimated cost based on similar projects of the agency in the past. Include relevant assumptions used for the estimates.
- For highly-technical consulting assignments, provide cost estimates for similar assignments commissioned by the agency funded either through GAL or ODA.

5. Initial Viability Indicators

- Provide the viability indicators of the project based on available data such as initial demand data and revenue projections; or previous pre-investment studies/analysis or other assessment such as the project's Economic Internal Rate of Return (EIRR), Financial Internal Rate of Return (FIRR), Net Present Value (NPV), Cost-Benefit Ratio, results of Value-for-Money (VfM) analysis, among others.
- Provide a brief narrative should there be any relevant developments after the conduct of the previous study/studies cited that may have affected the project's viability indicators.

Date Prepared: _____

PFF FORM 2

Rationale of the Project

1. Sectoral Program Context

- Discuss the project's alignment/consistency with the Agency's/CA's Strategic Plans, State Development Plan, and Infrastructure Plans, Comprehensive Development Plans (CDP), and such other plans or programs as may be mandated by the Governor and how it helps attain state's objectives and/or addresses gaps as may be presented in sector master plans, if any
- Indicate the project's inclusion in the list of priority government programs/projects (e.g., Public Investment Program, Infrastructure Program, Development Investment Program/Local Development Investment Program, and Local Investment and Incentive Codes)
- Indicate linkages with other projects and/or programs in the sector and other related programs/projects in other sectors

2. Regional and Spatial Context

- Present the project site and site selection process; and discuss the geographical coverage of the project and its linkage with other projects within the region and across the country

Date Prepared: _____

PFF FORM 3 Indicative Timeline

Project Development

Note: Not applicable for PFF Support request for TA, PA, and IC Services

| MILESTONE* | TARGET DATE |
|---|--------------------|
| Submission of the Feasibility Study | |
| Submission to Approving Body for Approval | |

Approval and Bidding Phase

Note: Not applicable for PFF Support request for PP and IC Services

| MILESTONE* | TARGET DATE |
|---|--------------------|
| Approval by Approving Body | |
| Issuance of the Instructions to Prospective Bidders | |
| Issuance of the Instructions to Bidders | |
| Contract Signing with the Private Proponent | |

Project Implementation

Note: Not applicable for PFF Support request for PP, TA, PA Services

| MILESTONE* | TARGET DATE |
|---|--------------------|
| Contract Signing with the Private Proponent | |
| Start of Construction | |
| Construction Completion | |
| Operations and Maintenance Period | |

*May also indicate other important milestones and/or activities the Agency/CA has or is committed to accomplish.

Date Prepared: _____

PFF FORM 4 Support Requirements

Note: For Agencies/CAs directly procuring the services of an International Organization, or International Financing Institution, pursuant to Section 5.2 of the Guidelines, a draft TOR may be submitted in lieu of Form 4.

1. Major Outputs

- Indicate major outputs required (e.g., demand-supply study, geotechnical survey, draft contract, bid documents) under the requested PFF support and provide a brief description of each major output.

2. Experts Required, Qualification, and Tasks

- Enumerate specialists required with their corresponding field of expertise (and/or required related field) to deliver the major outputs. Special emphasis is given into enumerating sector-specific experts (e.g., Railway Engineer, Highway Engineer, Civil Aviation/Airport Operations Specialist, IT/MIS Specialist, Civil Engineer) including tasks to be performed by each. To the extent possible, minimum requirement for experience, involvement in projects, and number of projects completed, among others, should be included.

Suggested format:

| <i>With International Expertise¹⁴</i> | |
|--|---|
| Expert 1: | Qualification and Justification why international expertise is preferred for this expert: |

¹⁴ Foreign consultants may be hired subject to compliance with the requirements of Kwara State Public Procurement Law of 2018 and the Kwara State Public Private Partnership Law 202, and all other pertinent laws and regulations of Kwara State in the hiring of foreign consultants.

| | |
|--|----------------|
| | |
| Duration of Engagement (in person-months): | |
| Tasks 1. 2. 3. | |
| <i>With National Expertise</i> | |
| Expert 2: | Qualification: |
| Duration of Engagement (in person-months): | |
| Tasks 1. 2. 3. | |
| Expert 3: | Qualification: |
| Duration of Engagement (in person-months): | |
| Tasks 1. 2. 3. | |

Date Prepared: _____

PFF FORM 5

Available Documents on the Project

- List current studies/documents¹⁵ prepared for the project and submitted to the Kwara State Public Procurement Board as part of the Agency PFF application [e.g., masterplans, pre-feasibility study, business case, feasibility study, technical study, Information Memorandum, Risk Allocation Matrix, bid documents, Terms of Reference (TOR) of IC, Detailed Engineering Design]
- For applications for IC services, please submit copies of the signed PPP contract and copies of documents relating to the project's approval.

Date Prepared: _____

¹⁵ The Kwara State PPP Manual 2024 and guidelines provides that requirements to be submitted to the approving body shall be in traceable format and contain information that are up-to-date and are not older than three (3) years from the date of submission to the approving body.

PFF FORM 6
Legal Authority to Undertake PPP

- Discuss the legality of the Agency entering into a PPP arrangement with the private sector. The section describes the Agency mandate including relevant laws and policies that support the same.

Date Prepared: _____

PFF FORM 7
Probity Issues

- Present circumstances exhibited by the project to be determined as “complex”.
- Discuss risks allocated to the Government as identified in the Risk Allocation Matrix of the Project (if available) that can be properly mitigated and managed by availing Probity Advisory services

Date Prepared: _____

Appendix C

Evaluation Criteria for PFF Applications

Guide Notes: Requirements for PFF Support include the following:

- 1) **Submission of complete documentary requirements (PFF application forms and supporting documents)** – Note: Applicable to all types of support (PP, TA, PA, IC)
- 2) **Compliance with Eligibility Criteria** – Note: These are requirements that must be complied first before the Secretariat's full review and endorsement for PDMF Committee presentation
- 3) **Compliance with Evaluation Criteria¹⁷** – Note: These are requirements that must be addressed to be endorsed for approval of PDMF support.

Please see table below for the detailed evaluation criteria based on the PDMF support being requested.

¹⁷ The evaluation criteria are consistent with the Kwara State Public Private Partnership Board policy on the "Guidelines on the Identification, Selection, and Prioritization of PPP Projects".

PP/PPTA/TA Services (Solicited/Unsolicited)

| Drivers | Evaluation Criteria (Variables) |
|--|---|
| 1. Institutional Readiness of Agency/CA and Project Readiness | <ul style="list-style-type: none"> ▪ Existence of PPP Unit and Project Management Office (PMO); if none, the Agency/CA commits to establish an organic technical working group (TWG) to undertake PPP; ▪ Agency/ CA has tendered and/or implemented PPP project/s in the past; ▪ Agency/CA has the capacity to do PPP or has successfully passed competency assessments administered by the Kwara State Public Private Partnership Board; and, ▪ Agency/CA is willing to abide by the PPP best practices. |
| 2. Market Acceptability | <ul style="list-style-type: none"> ▪ Existence of likely strong market interest and private sector interest for the project; and, ▪ Availability of reliable revenue/payment mechanism, i.e., project is likely to have a toll/user-based revenue model or an availability model or a variant thereof. |
| 3. Manageable Life Cycle Costs¹⁸ | <ul style="list-style-type: none"> ▪ Manageable land acquisition/site or right-of-way issues; and ▪ Manageable social safeguard concerns (i.e., environment, health, and safety, gender, resettlement or other vulnerable person issues). |
| 4. Project Complexity/Scale | <ul style="list-style-type: none"> ▪ For PFF support applications to be directly sourced from a UN agency/ IO/IFI, the requirement that consulting services for the project involves advanced technologies, techniques and innovations not locally available, and that the consulting services being procured is most advantageous to the government, are demonstrated. |

¹⁸ This requirement shall not apply for PFF request for transaction advisory services or bid process management only

Probity Advisory Services

| Drivers | Evaluation Criteria (Variables) |
|--|--|
| 1. Institutional Readiness of Agency/CA and Project Readiness | <ul style="list-style-type: none"> ▪ Existence of PPP Unit and Project Management Office (PMO); if none, the Agency/CA commits to establish an organic technical working group (TWG) to undertake PPP; ▪ Agency/ CA has tendered and/or implemented PPP project/s in the past; ▪ Agency/CA has the capacity to do PPP or has successfully passed competency assessments administered by the Kwara State Public Private Partnership Board ; and, ▪ Agency/CA is willing to abide by the PPP best practices. |
| 2. Project Complexity/Scale | <ul style="list-style-type: none"> ▪ Large-scale project with an estimated cost amounting PhP 20 billion or more as may be determined by the PPP Governing Board (PPPGb); or ▪ Complex projects, regardless of amount, as determined and justified by the Agency/ CA. |

Independent Consultancy Services

| Drivers | Evaluation Criteria (Variables) | | | |
|--|--|-----------------------|--|---|
| | Implementation Monitoring | Independent Appraiser | Assessment of the Residual Value of the Facility | Constitution and Utilization of Dispute Resolution Boards |
| 1. Institutional Readiness of Agency/CA and Project Readiness | <ul style="list-style-type: none"> ▪ Existence of PPP Unit and Project Management Office; if none, the Agency/CA commits to establish an organic technical working group to undertake PPP; ▪ Agency/CA has tendered and/or implemented PPP project/s in the past; ▪ Agency/CA has the capacity to do PPP or has successfully passed competency assessments administered by the Kwara State Public Private Partnership Board; ▪ Agency/CA is willing to abide by the PPP best practices; and ▪ The project is at least at the pre-qualification stage. | | | <ul style="list-style-type: none"> ▪ Existence of PPP Unit and PMO; if none, the Agency/ CA commits to establish an organic TWG to undertake PPP; and, ▪ Agency/ CA is willing to abide by the PPP best practices |

| Drivers | Evaluation Criteria (Variables) | | | |
|--|--|--|---|---|
| | Implementation Monitoring | Independent Appraiser | Assessment of the Residual Value of the Facility | Constitution and Utilization of Dispute Resolution Boards |
| 2. Requirement under the PPP Agreement | <ul style="list-style-type: none">▪ The engagement of an IC is explicitly stated in the bid documents, or in the signed PPP agreement for the project and the cost of PFF engagement shall be shared by the Agency/ CA and the private concessionaire/winning bidder/proponent; if not, the Agency/CA confirms said requirement supported by a certification from the private concessionaire/ winning bidder/ proponent. | The independent appraisal of the amount of termination payments are explicitly provided in the signed PPP agreement for the project. | The needed PFF support ¹⁹ is explicitly stated in the bid documents, or in the signed PPP agreement for the project. The cost of PFF engagement shall be in accordance with the agreement between the Agency/CA and the private concessionaire/winning bidder/proponent. | |
| 3. Available Funding Source | The Agency/CA has allocated budget for reimbursement of PFF cost for engagement of an IC ²⁰ ; if none, the Agency/ CA commits to include PFF cost in its budget proposal for the succeeding budget cycle. | | | |

¹⁹ This may be for the: (a) Third-party assessment of the residual value of the facility upon transfer or turnover of facility to the Agency/CA or (b) Constitution and utilization of DRBs

²⁰ This refers to the budget for (a) implementation monitoring; (b) independent appraisal of the amount for termination payments (in case of termination with the Agency/CA at fault, or in cases where the cost is divided equally); (c) third-party assessment of the residual value of the facility upon transfer or turnover of facility to the Agency/CA; and, (d) constitution and utilization for DRBs.

Appendix D

Procedures on Procurement of Consulting Services from the Specialized Agencies of the United Nations, International Organizations, or International Financing Institutions

1. **Background:** The Kwara State Public Procurement Law of 2018 and the Kwara State Public Private Partnership Law 2023 , PPP Manual 2024 provides for the procurement from specialized agencies of the United Nations (UN), International Organizations (IO) or International Financing Institutions (IFI) for, among others, consulting services, involving advanced technologies, techniques and innovations not locally available as certified by the HoPE, when it is most advantageous to the government.

This Appendix therefore provides the procedures for negotiated procurement pursuant to Kwara State Public Procurement Law of 2018 and the Kwara State Public Private Partnership Law 2023 which shall be undertaken by the Public Private Partnership Board as the Procuring Entity for PFF- funded consulting services.

2. **Scope:** Procurement of consulting services from specialized agencies of the UN, IOs, or IFIs pursuant to RA 9184 and its Updated Revised IRR.

The procurement process starts from the receipt of duly approved procurement documents (i.e., Invitation to Negotiate/Terms of Reference, Draft Contract), until the posting of the Notice of Award (NOA), Contract, and Notice to Proceed (NTP).

3. **Conditions:** When the consulting services to be procured is highly-specialized and not locally available as certified by the HoPE, the Kwara State Public Private Partnership Board may resort to negotiated procurement of consulting services from specialized agencies of the UN, IOs, or IFIs, when it is most advantageous to the government.
4. **Process Flow and Work Instructions:**

- a. **Submission of Approved Procurement Activity**

The PFFs-Project Management Division (PMD) forwards to

the PFFs-Consultant Recruitment Division (CRD) the duly signed and approved Purchase Request (PR) and Terms of Reference (TOR). These documents shall be supported by the Minutes of PFF Committee meeting or PFF Committee Resolution approving the Agency/CA's application for PFF support, cost estimate, proof of Funding Source, duly signed Annual Procurement Plan (APP)/Supplemental APP.

b. Verification of the Procurement Activity

Upon CRD's verification that the items indicated in the procurement documents are included in the approved APP for the year or a duly approved/signed PPMP and Supplemental APP, CRD shall proceed with the procurement process.

c. Determination of Mode of Procurement

The method of procurement to be used shall be as indicated in the approved APP. If the original mode of procurement recommended in the APP is through Public/Competitive Bidding but cannot be ultimately pursued, or if the appropriate mode of procurement is different from that indicated in the APP, the Special Bids and Awards Committee (SBAC) for PFF-funded consulting services through a resolution, shall justify and recommend the change in the mode of procurement to be approved by the Head of the

Procuring Entity (HoPE). The change in mode of procurement shall be further supported with a market study/scoping, or any supporting document as may be acceptable to the HoPE, to serve as legal basis for the certification of the HoPE that there are no local consultants or local consulting firms that could undertake the consulting services requirements for the specific consulting services.²²

d. Identification of specialized agencies of the UN, IOs, or IFIs

To justify the need to procure consulting services from specialized agencies of the UN, IOs, or IFIs, PMD shall determine/establish the technical, legal, and financial capability of the identified UN agency/IO/IFI to provide/meet the consulting requirements for project to be funded through

the PFF.

For Items c and d, an SBAC Resolution shall be issued to justify resorting to procurement of consulting services under the Kwara State Public Procurement Law of 2018 and the Kwara State Public Private Partnership Law 2023, including directly negotiating with a pre-identified UN agency/IO/IFI.

e. Registration and Other Eligibility Requirements

The eligibility requirements shall be set by the Kwara State Public Private Partnership Board as the Procuring Entity. Registration requirement for the UN agency/IO/IFI may be dispensed with per discussion with GPPB-TSO.

f. Preparation of the Invitation to Negotiate/Negotiated Procurement Documents

The Negotiated Procurement Documents, at the minimum, should include the draft Contract, indicating the TOR, Approved Budget for the Contract (ABC), and other terms and conditions of the contract.

The SBAC, through the SBAC Secretariat, prepares the Invitation to Negotiate/Negotiated Procurement Documents. The same shall be reviewed by the SBAC-Technical Working Group (TWG) and endorsed to the SBAC.

²² As a condition for the grant of PFF support, the Agency/CA shall be required to submit a certification that there are no local consultants or local consulting firms that could undertake the consulting services requirements for its Project.

g. Conduct of Pre-Procurement Conference

The conduct of Pre-Procurement Conference for the procurement of consulting services from specialized agencies of the UN, IOs, or IFIs is optional. Nevertheless, the SBAC should determine the readiness of the Kwara State Public Private Partnership Board to proceed with the procurement of consulting services from a UN agency/IO/IFI, including the pre-requisite documentary requirements thereof.

h. Issuance of Invitation to Negotiate/Negotiated Procurement Documents

The SBAC, through its Secretariat, shall issue the Invitation to Negotiate/Negotiated Procurement Documents directly to the identified UN agency/IO/IFI.

The posting of the Invitation to Negotiate/Negotiated Procurement Documents at the KSBPP is not required. Nevertheless, in compliance with the Transparency Seal requirement, the SBAC, through its Secretariat, shall post the Invitation to Negotiate in the following for a period of at least one (1) calendar day prior to the conduct of negotiation with the UN agency/IO/IFI:

- The Kwara State Public Private Partnership Board 's website; and
- Conspicuous place reserved for this purpose in the premises of the Kwara State Public Private Partnership Board .

i. Conduct of Negotiations

Negotiations on the terms and conditions of the contract is conducted to ensure that the UN agency/IO/IFI is technically, legally, and financially capable to deliver the consulting services requirements of the Kwara State Public Private Partnership Board and the Agency/CA at the most advantageous price and contract for the Government. Negotiation shall be led by the SBAC and the authorized representative(s) from the Agency/CA. The negotiations shall be conducted at least one (1) working day after the issuance of the Invitation to Negotiate/Negotiated Procurement Documents.

Observers shall be invited at least five (5) calendar day before the date of the negotiation. The absence of observers shall not nullify the SBAC proceedings provided that the observers have been duly invited in writing. They should ensure that the invitation is received by the observers at least five (5) calendar days before the negotiation. If a procurement activity has to be postponed, the observers shall be notified immediately of the schedule change.

j. Recommendation for Award/Award of Contract

Upon successful negotiations, the SBAC shall recommend to the HoPE the award of a contract in favor of the UN agency/IO/IFI.

The HoPE or his duly authorized representative shall approve or disapprove the SBAC recommendation within a period not exceeding five (5) calendar days from the receipt of the SBAC recommendation. In case of approval, the HoPE shall immediately issue the NOA to the UN agency/IO/IFI.

k. Contract Signing

The UN agency/IO/IFI shall immediately enter into a contract with the Kwara State Public Private Partnership Board , through the HoPE, at least one (1) working day upon determination of the UN Agency/IO/IFI compliance with the NOA requirements. Upon transmission

of the signed contract, the HoPE or his duly authorized representative shall immediately sign the contract provided that all the relevant documentary requirements are submitted.

l. Issuance of Notice to Proceed (NTP)

The HoPE or his duly authorized representative shall issue the NTP together with a copy or copies of the approved contract to the successful UN agency/IO/IFI within three (3) calendar days from the date of approval of the contract by the HoPE.

m. Posting of NOA, NTP, Contract, and Other Related Documents

The SBAC, through the Secretariat, shall post the NOA, NTP, signed Contract, and other pertinent documents relative to the award and execution of the said contract in the KSBPP, the Kwara State Investment Promotion and Public-Private Partnership Board's website, and any conspicuous place in the premises of Kwara State Investment Promotion and Public-Private Partnership Board, within ten (10) calendar days from its issuance.

A copy of the signed Contract shall be submitted to the COA Resident Auditor within five (5) working days from due execution.

5. Contract Implementation

Implementation of Contract procured under Kwara State Public Procurement Law of 2018 and the Kwara State Public Private Partnership Law 2023 shall be governed by the requirements under Annex F (Contract Implementation Guidelines for the Procurement of Consulting Services) of the KSBPPL 2020, including but not limited to the following:

a. Advance Payment for Mobilization

The Government, as it considers fair and reasonable, may allow advance payment to the Consultant in the amount which shall not exceed fifteen percent (15%) of the contract amount to cover the cost of mobilization. The advance payment shall

be repaid by the Consultant by deducting from his progress payments such sum as agreed upon during the contract negotiations until fully liquidated within the duration of the contract.

b. Cost of Consulting Services

All Consultancy contracts shall be fixed price contracts. Any extension of contract time shall not involve any additional cost.

c. Other Rules and Guidelines

The rules and regulations for the other aspects of contract implementation shall be included in the manuals to be issued by the GPPB.

Appendix E

[Date]

HEAD OF AGENCY/CA

Designation

[Agency/CA] Address

Line 1

Address Line 2

Subject: **Technical Assistance Agreement for the Provision of
[approved PFF Support] for the [Project Title]**²³

Dear **[Head of Agency/CA]**:

1. Following the approval of the Project Facilitation Fund (“PFF”) support for the **[Project Title]** (“*Project*”) by the PFF Committee in its [date] meeting, we wish to issue this Technical Assistance Agreement (“TAA”) for your signature.
2. The indicative budget for the [PFF Support] is at **[amount in figures]**, exclusive of taxes (or **[amount in figures]**, inclusive of taxes). Said amount will be earmarked by the Kwara State Public Private Partnership Board from the PFF for the Project upon the execution of this TAA by and between the Kwara State Public Private Partnership Board and the Agency/CA. The stated budget for the [approved PFF Support] shall adjust accordingly if an amendment in the Contract for Consulting Services (“CCS”) with cost implication is duly approved.

²³ Terms not otherwise defined herein shall have the meanings assigned to them under the PFF Guidelines.

3. The [Agency/CA] acknowledges that the PFF Support will be provided pursuant to the PFF Guidelines, as may be amended, and published in the website of the Kwara State Public Private Partnership Board . As such, the [Agency/CA] agrees to strictly abide by the PFF Guidelines and the terms and conditions of this TAA and its annexes.

Scope

4. The Kwara State State Public Private Partnership Board and the [Agency/CA] agree to engage consultants ("*Consultant*") for the project preparation and transaction advisory services for the Project which is proposed to be implemented as a PPP project under [Procurement Framework e.g., Kwara State Public Procurement Law of 2018 and the Kwara State Public Private Partnership Law 2023 . The scope of services to be rendered by the Consultant shall be in accordance with the Terms of Reference ("*TOR*") which shall be jointly drafted and agreed upon by the Kwara State Public Procurement Law of 2018 and the Kwara State Public Private Partnership Law 2023 and the [Agency/CA]. The TOR, which will be annexed to the CCS, shall include, among others, the scope of work, team composition, the required deliverables, and the project milestones that will correspond to the payments.
5. The services to be provided by the Consultant through the PDMF shall be exclusively for the [approved PFF Support] and shall not be used, assigned or redirected to support any other project.
6. Any change or variation in the scope of work of the Consultant shall be subject to the terms of the CCS, the endorsement of the Project Committee ("*PC*"), and the approval of the Private Partnership Board 's Chief Executive Officer and/or the PFF Committee, as may be applicable, pursuant to the PFF Guidelines, as may be amended. The [Agency/CA] understands that any change or variation, or any extension in the period for the provision of services by the Consultant shall be subject to negotiation with the Consultant in accordance with the Kwara State Public Procurement Law of 2018 and the Kwara State Public Private Partnership Law 2023 .

Procurement of Consulting Services

7. Attached as **Annex A** is the TOR and cost estimate for the [approved PFF Support].
8. The procurement of the Consultant for this assignment shall be conducted in accordance with the [RA. 9184 and its Revised Implementing Rules and Regulations or, as applicable, other procurement framework]. A Special Bids and Awards Committee (“SBAC”), and a Technical Working Group (“TWG”), composed of representatives from the Kwara State Public Private Partnership Board and the [Agency/CA], shall be created to undertake the procurement of consulting services.
9. The terms of the provision of services by the Consultant shall be governed by the CCS which shall be entered into by the Kwara State Private Partnership Board with the selected Consultant. Upon indicating its conformity with the CCS, the [Agency/CA] shall be bound to observe the terms and conditions of the CCS, specifically on the review and acceptance of the Consultant’s output, claims for Consultant’s services rendered, evaluation and approval of contract variation proposal, and such other similar provisions.

Obligations of the [Agency/CA]

10. The [Agency/CA] shall designate its SBAC and Project Committee (PC) and Dispute Resolution representatives, occupying permanent positions and at least Director level (one [1] principal and one [1] alternate) (**Annex B**) duly authorized to coordinate with the Kwara State Public Private Partnership Board and perform the following duties:²⁴
 - a. represent the [Agency/CA] in the SBAC for the procurement of consulting services under the [procurement framework]; and,

²⁴ Agency/CA may designate the same principal and alternate representatives to perform the tasks of both the SBAC and PC.

- b. represent the [Agency/CA] in the PC for the evaluation and approval of contract variation proposals and accept or reject outputs of the consultants according to the Output Evaluation Process (**Annex C**).
11. The [Agency/CA] shall nominate a separate representative to the TWG (one [1] principal representative holding a plantilla position and at least Division Chief level, and one [1] alternate representative), to assist the SBAC in the procurement of consulting services.
 12. The [Agency/CA] warrants that each of the nominated representatives has full power and authority to sign, execute, and deliver any and all relevant documents.
 13. The [Agency/CA] shall, upon indicating its conformity to the CCS, and pursuant to International Public Sector Accounting Standard (IPSAS) 19²⁵, disclose the Recoverable Amount as a contingent liability in its notes to financial statement. Disclosure of contingent liability shall include any additional costs made in the period and/or adjustments to the existing amount.
 14. The obligations of the [Agency/CA] shall include, but not be limited to, those enumerated in **Annex D**. In addition, the [Agency/CA] commits to observe recognized best practices for PPP projects (a summary of which is provided in **Annex E**) and all other Policy Circulars issued by the PPP Governing Board, regardless of the date of issuance.
 15. The [Agency/CA] shall, to the extent possible, follow the project timeline. If, at the determination of the , there is an unreasonable delay at any stage or phase of the Project, due to the fault of the [Agency/CA], the Kwara State Public Private Partnership Board, at its sole discretion, may suspend or terminate this TAA. The termination of the TAA due to unreasonable delay on the part of [Agency/CA] shall take effect after a written notice is sent to the [Agency/CA], giving the latter reasonable time to respond on the

²⁵ IPSAS 19, Provisions, Contingent Liabilities and Contingent Assets.

cause of delay, or resume activities on the project. Any associated costs or penalties for the delay that may be attributed to the [Agency/CA] shall be for the account of the [Agency/CA].

16. Should the [Agency/CA] decide to pre-terminate this TAA or the CCS, the [Agency/CA] shall be solely liable for all attendant costs and fees necessary to effect the pre-termination of the said TAA or the CCS, including any of the Consultant's fees that may be due and demandable for services already performed.

Payment of Consultant's Claims

17. The payment of Consultant's claim shall be pursuant to the PFF Guidelines, the Output Evaluation Process provided in **Annex C**, and the terms of the CCS.

Payment of Consultant's Final Claim

18. In case of termination or expiration of the CCS, the Kwara State Public Private Partnership Board shall advise the Consultant to submit its final claim, if any. Within sixty (60) calendar days from submission by the Consultant of the final claim, the [Agency/CA] shall review the same for completeness and acceptability in accordance with the CCS. The [Agency/CA] shall review the acceptability based on the methodology for the evaluation of claims and pursuant to the procedure as presented in **Annex F**.
19. Any disagreement on the assessment between the Kwara State the Kwara State Public Private Partnership Board and the [Agency/CA] shall be resolved under the Dispute Resolution clause in this TAA.

Reimbursement

20. The [Agency/CA] shall require the winning bidder of the Project to pay the and the Kwara State Public Private Partnership Board with the Recoverable Amount as defined in the PFF Guidelines, as a condition precedent for signing the

PPP agreement. The obligation of the winning bidder to reimburse the cost of PFF Support shall be included in the Instructions to Bidders/Private Sector Participant and other related bid documents for the Project.

21. In case the Project is not found to be viable for PPP implementation based on the pre-FS or FS, or the [Agency/CA] fails to successfully award the Project and sign a PPP agreement with a winning bidder due to circumstances contemplated in the PFF Guidelines, the CCS shall be terminated and the [Agency/CA] shall pay the Kwara State Public Private Partnership Board /PFF with the Recoverable Amount, in accordance with the provisions of the PFF Guidelines, as may be amended.
22. The [Agency] authorizes the DBM to allocate for the Recoverable Amount as a priority item, based on payments authorized by the Agency through the PC, within the Agency's budget ceiling for the fiscal year following the termination of the CCS.
23. Upon receipt of a collection notice from the Kwara State Public Private Partnership Law Board , the [Agency/CA] shall pay the Recoverable Amount from its available funds from the current year upon termination of the CCS, otherwise, the [Agency/CA] shall reimburse the PFF within three (3) months from the approval of the budget of the Agency/CA containing said amount.

Dispute Resolution

24. In case of any dispute arising from this TAA, the Kwara State Public Private Partnership Board and the [Agency/CA] agree to meet and immediately resolve such dispute through their authorized representatives. If the designated authorized representatives fail to resolve the dispute, the Head of [Agency/CA] and the Chief Executive Officer of the Kwara State Public Private Partnership Board shall meet to resolve the dispute, and any written joint resolution signed thereof shall be final and binding upon the Kwara State Public Private Partnership Board and the [Agency/CA]. For any dispute that remains unresolved after thirty (30) days from the date of their last meeting, the existing laws, implementing rules and regulations, and subsequent amendments thereto, on the administrative

settlement or adjudication of disputes between or among government offices, agencies/CAs, and instrumentalities, shall apply.

Effectivity

25. This TAA shall become effective on the date of the Kwara State Public Private Partnership Board 's receipt of the same, duly signed by the Head of [Agency/CA] and shall subsist until the CCS is completed or terminated and the Recoverable Amount has been fully repaid or reimbursed, in accordance with the PFF Guidelines.
26. Failure of the [Agency/CA] to abide by the terms of and comply with its obligations under this TAA and its Annexes shall entitle the Kwara State Public Private Partnership Board to terminate or suspend the CCS. The said termination shall take effect after a written notice is sent to the [Agency/CA], giving the latter reasonable time to make the necessary correction/remedy. Any attendant costs for such termination or suspension shall be for the account of the [Agency/CA].
27. This TAA may be amended by the parties from time to time. The amendments shall be in writing and duly signed by the parties in order to be effective.
28. In case any provision of this TAA shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected.
29. Should you agree to the terms and conditions of this TAA, including its Annexes, and provided you are authorized to enter into this TAA, kindly indicate your acceptance and conformity by affixing your signature in the space provided below and returning this document to the Kwara State Public Private Partnership Board .

Very truly yours,

NAME OF HEAD OF KWARA STATE PUBLIC PRIVATE BOARD
Chief Executive Officer

Conforme:

The [Agency/CA] accepts and agrees with all the terms of this TAA and its Annexes.

NAME OF HEAD OF AGENCY/CA
Designation
[Agency/CA]

Annex A

INDICATIVE TERMS OF REFERENCE

Sample Draft: For Project Preparation and Transaction Advisory Services

I. SERVICES TO BE PERFORMED BY THE CONSULTANT

1. Specific tasks and activities at each phase are as follows:

PHASE I: PROJECT INCEPTION

Task 1: Prepare Inception Report

- (a) Review all background documentation including related studies conducted to date
- (b) Prepare an Inception Report that includes the following information:
 - i. General Project Information and Objectives
 - ii. Mobilization, Team and Organization Information
 - iii. Inception Mission Findings
 - iv. Reporting Requirements
 - v. Detailed plan of approach, methodology and workplan

PHASE II: FEASIBILITY STUDY AND PROJECT STRUCTURING

Task 1: Develop the Feasibility Study

Propose an initial implementation plan for the Project.

Prepare the Design and Monitoring Framework (DMF) for the Project, which will include, among others, the monitoring requirements for Agency/CA in terms of contract implementation and management

Task 1.1: Technical Requirements and Design

Based on the result of the market research, the Consultant shall:

- (a) Determine the necessary facilities of the Project.
- (b) Estimate the appropriate size for the Project and its components.
- (c) Develop the following preliminary designs.
- (d) Conduct a more detailed technical analysis of the recommended preliminary design, and technology upon determination of the most optimal option.
- (e) Prepare a preliminary design of an asset management system.
- (f) Prepare preliminary timeline from utility diversion, land acquisition, site clearance, resettlement, construction works, testing, commissioning until full operations of the Project.
- (g) Prepare itemized cost estimates for the different work packages, including but not limited to the advanced works, site clearance, and civil works based on the results of the preliminary engineering design.
- (h) Prepare the detailed cost estimates, with all background/breakup calculation.
- (i) Prepare design of the Project and its facilities.
- (j) Carry out consultations with local stakeholders prior to finalizing the design.
- (k) Provide perspective renders on these designs.
- (l) Conduct a technical assessment of project requirements throughout the concession period and recommend optimal sizing and capacity, services, and required facilities/equipment and staffing requirement. Identify performance standards, appropriate land use and environmental impact mitigation measures, among others, in accordance with the standards set by the national government, during the concession period.
- (m) Carry out an assessment of the current state of operations, practices and requirements of similar or related projects/business/services, including regulatory requirements and local government permits for the

construction, operations and maintenance of the Project and its associated facilities, if any.

- (n) Prepare financial model showing the impact of the cost of the Project to future fees and charges to be charged to the users.
- (o) Conduct initial environmental and social/resettlement/gender assessment, and associated risk factors, if any, including collection of sex-disaggregated data about current and prospective clientele using primary and secondary sources and other gender-related information (e.g., consequences of lack of GEDSI-friendly facilities).
- (p) Develop the conceptual design and layout of structures of the Project to ensure it is cost-efficient; GEDSI; climate change-resilient; consistent with land use and environmental impact mitigation measures, local building codes, and space allocation standards; and proposed management structure and staffing, among others, and to assess the project cost based on the conceptual design. The Consultant must prepare the conceptual engineering design and layout based on the recommended/scheme from the FS
- (q) Determine optimum timing and phasing of construction and roll-out of facilities, taking into account relevant technical, economic, and financial factors.
- (r) Conduct options analysis (e.g., value engineering/analysis (VE/VA) or its equivalent) to determine the most appropriate engineering technology and design for the phased development of the project, i.e., to determine the most appropriate configuration that will accommodate initial projected requirement while taking into consideration possible future expansion, with recommendations on the expansion schedule and corresponding scope of works, on the basis of projected requirement.
- (s) Conduct all required reports/studies, analyses and assessment which may be necessary to produce the

appropriate Key Performance Indicators (KPI), targets, and procedures for the Project.²⁶

- (t) Prepare the project implementation schedule which will define and set timelines of the major phases of project work to fulfill the desired objectives and achieve the expected deliverables from time of award to completion. The project implementation schedule should include the deliverables being set, major activities for each deliverable, and key milestones, among others.
- (u) Conduct and attend multiple stakeholder consultation meetings with relevant, Ministries Departments and Agencies, civil society groups, businesses, residents, and other project affected persons, among others.

Task 1.2: Legal and Institutional Analysis

- (a) Assess the existing institutional set-up taking into consideration the rules and policies, including ordinances, of government agencies and CAs involved.
- (b) Carry out a detailed assessment of the regulatory and local government permit requirements for the Project.
- (c) Identify all legal requirements (including a review of the regulatory framework, relevant jurisprudence and previous rulings and recommend appropriate legal approaches to be undertaken in the implementation of the Project.
- (d) Assess issues, and recommend and draft appropriate legal instruments associated with the management of the social, economic, and environmental impacts of the project in a manner consistent with national and local policies, taking into consideration international best practices.
- (e) Develop and provide details to the legal architecture and design of the transaction, e.g. (i) identifying the type of PPP contract to be used (e.g., BT, BOT, BTO, BOO etc.); (ii) preparing the investment plan, i.e., how, where and

²⁶ The KPIs, targets and procedures for the Project should integrate gender and development and climate and disaster risk resiliency of the facilities/infrastructures.

when investments will be made; and (iii) determining the type of public sector support required, including terms and conditions.

- (f) Identify and recommend the approaches to make the Project attractive to investors and their lenders/financing institutions, such as fee payment mechanisms, performance guarantees, pre-conditions for a private operator to fulfill in meeting service obligations, default and risk clauses, and step-in rights of government.
- (g) Prepare the legal due diligence, including policy and regulatory framework of the market/s affected by the Project, and institutional analysis (including the institutional arrangement with parties involved and their responsibilities) to be submitted to the approving body.
- (h) Recommend the optimal institutional arrangement for the Project based on the legal and institutional analyses, taking into consideration the roles and responsibilities of all stakeholders (i.e., government agencies and CAs involved) in all project stages (e.g., tender of bids, project implementation).

Task 1.3: Environment, Gender and Social Safeguard Requirements

- (a) Conduct multiple stakeholder consultation meetings, particularly with local government officials, business, residents, and other project affected persons.
- (b) Prepare a Land Acquisition and Resettlement Action Plan (LARAP) which must adhere to the Framework for Responsible Investment in Land-Intensive Agriculture (FRILIA) or equivalent. The RAP must be supported by the relevant surveys, such as, but not limited to, parcel survey, socio-economic survey, census, and tagging, business survey. The information collected must be incorporated into the project geographic information system platform.
- (c) Conduct the Strategic Environmental Assessment and Management Planning (SEAMP) for the development options as the carrying capacity assessment is deemed important.

- (d) Coordinate and consolidate all safeguard studies for integration into project planning and conceptual design.
- (e) Following the results of the SEAMP, carry out an environmental impact assessment (EIA) study consistent with the requirements of the Kwara State and Federal Environmental Impact Assessment Process. Among others, the Consultant, shall:
 - (i) Carry out screening and Public Scoping to identify stakeholders, impact areas, and significant issues/impacts of the Project and submit the scope of work for the applicable Environmental Impact Assessment (EIA) Study;
 - (ii) Carry out stakeholder engagements with Project Affected Persons (PAPs);
 - (iii) Prepare the applicable EIA Study and the full EIA Report which involves, among others, describing the proposed project and its alternatives, characterization of the project environment, impact identification and prediction, evaluation of impact significance, impact mitigation, and formulation of the Environmental Management and Monitoring Plan (with corresponding cost estimates and institutional support commitment); and,
 - (iv) Identify key management strategies and approaches to ensure the integrity, sustainability and protection of historic and culturally significant areas, ground and surface water resources and aquifers that would be engaged, utilized and affected by the Project.
- (f) Conduct strategic social risk and impact assessment and resettlement assessment and analysis, as well as management planning, including relocation and/or compensation for displacement impacts.
- (g) Prepare required reports/forms including, but not limited to, a Social Development Plan (SDP) (which includes measures to address gender and resettlement concerns), and an Information, Education and Communication (IEC) Plan.
- (h) Ensure that the environmental impact study and social risk and resettlement study to be prepared must be consistent with the requirements under the relevant laws

safeguard policies (i.e., Involuntary Resettlement Policy, Policy on Indigenous Peoples, and the Environment Policy), as may be applicable and not contrary to existing Kwara State's Laws, Rules, and Regulations (e.g., Right-of-Way Law, environmental guidelines, etc.).

- (i) Develop appropriate climate change adaptation and mitigation measures and disaster risk management plan in the form of considerations in project design and operations and maintenance through site-specific historical data and projections for natural hazards (e.g., climate change, geologic).

Task 1.4: Risk Assessment

- (a) Conduct a project risk analysis to determine, assess, allocate and manage risks (such as, but not limited to project, commercial [market risk], environmental, financial, political, economic, force majeure, and legal risks) during the whole project life cycle. The risk analysis should cover valuation, allocation and mitigation measures. In doing so, assessment and applicability of various risk mitigation mechanisms should be carried out, including review of the extent to which the risks of the project can be underwritten by commercial insurance cover and the likely cost of such cover.
- (b) Recommend acceptable levels of risks for both the government and the private sector and prescribe technical solutions to achieve these target levels of risks. Further, recommend how to handle and allocate risks beyond the target levels. The target levels of risks shall be considered in the options analysis to arrive at an optimum combination of solutions.
- (c) Based on the risk analysis, prepare a contingent liability model for Agency/CA that quantifies the contingent liabilities, how the same shall be managed, and the funding requirements.

The model shall include an analysis on, but not limited to, higher than expected cost for the right-of-way (ROW), government variation orders, compensation for lower-than-agreed tariff levels, material adverse government action (MAGA) compensation, compensation caused by government delays and buyouts.

The Project's risk allocation/analysis and contingent liabilities model shall be incorporated in the financial model/s (as section on contingent liabilities) to be calculated/updated from time to time. These shall be presented to representatives of the Kwara State Public Private Partnership Board , Agency/CA and Ministry of Finance, Kwara State Ministry of Budget and Economic Planning .

Task 1.5: Economic and Financial Analysis

- (a) Conduct an economic analysis – identification and estimation of the economic costs and benefits of the project; and calculation of the economic internal rate of return (EIRR), including sensitivity analysis as required for obtaining government approval.
- (b) Conduct a financial analysis –
 - 1. Preparation of a spreadsheet-based financial model²⁷. Financial models must:
 - (a) be fully flexible and traceable to accommodate sensitivity analysis
 - (b) include clear and concise model integrity checks
 - (c) clearly describe proposed financing structures
 - (d) simulate distribution of cash to relevant structures including, but not limited to:
 - (i) cash traps and/or allocated cash reserves;
 - (ii) debt repayments; and
 - (iii) dividends and equity redemption.

²⁷The financial model should include demand forecasts and a tariff model, among others.

- (e) show the impact of the cost of the Project on future fees and charges to be charged to the users.
 - (f) clearly describe the Project's financial position upon conclusion of project/concession period
 - (g) include scenarios reflecting recommended PPP structure or other financing options
2. Research on relevant benchmark rates of return, namely comparable unlevered asset returns and risk premiums and/or discounts
 3. Computation of relevant asset/firm valuation metrics including project internal rate of return, equity internal rate of return, project net present value and equity net present value
 4. Research on relevant financing data including bank debt interest rates, gearing ratios, project finance debt service coverage ratio (DSCR) benchmarks, financing fees (commitment fees, arrangement fees, agency fees, etc.)
 5. Research on relevant insurance costs and other market available risk mitigation products
 6. Research on relevant taxes and tax implications
 7. Recommend optimal, yet most feasible financing plan for the project that would produce optimal equity returns.

Task 2: Project Delivery Option Development

The Consultant shall evaluate various PPP options for the Project where funding sources and mix, cost recovery mechanisms, core and/or non-core services to be transferred to the private sector (either fully or partially), among others, should be considered. Options taking into account the public service level requirements will be ranked based on pre-determined criteria with the end in view of recommending the optimal PPP modality to be followed. The Consultant will provide clear details of the proposed PPP structure/s along with a risk assessment matrix and likely impacts to the Agency/CA, the private investor and other stakeholders.

The Consultant shall identify licensing, permitting and other legal risks that need to be addressed and allocated for each PPP option. The Consultant shall perform the following:

- (a) Carry out value for money (VfM) analysis or its equivalent.
- (b) Identify best implementation option for the Project, as well as the process of transferring the development, management, O&M to the private sector and the functions to be retained by the government.
- (c) The Consultant shall evaluate all the possible combinations of financing/implementation arrangements. This should consider, among others, funding sources and mix, and cost recovery mechanisms.

Task 2.1: Structuring

If based on the results of the activities performed in the preparation of the FS, including the project delivery options development, the Project is determined to be viable for PPP implementation, the Consultant shall proceed to evaluate various PPP structures. This includes, among others, the following:

- (a) Evaluate various PPP structures/options and recommend the optimal PPP modality to be pursued taking into account international best practices, funding requirements, cost recovery mechanism, among others. In doing so, the Consultant should provide details of the options, identifying among others, (i) investment commitments to be required, their nature and management; (ii) the investment plan – how, where and when the investments will be made; (iii) type of public sector or government support required, including terms and conditions. Based on the project structure, propose options for regulation and provision of the services to be provided. All rules, procedures and formulas with respect to setting, adjusting, monitoring and enforcing service standards should be included in the concession or PPP agreement.

- (b) Provide advice and justification on the best-value bidding parameter.
- (c) Prepare the risk allocation matrix and likely impacts to Agency/CA, the private investors and other stakeholders.
- (d) Identify and recommend the approaches to make the Project attractive to investors and their lenders/financing institutions such as fee payment mechanisms, performance guarantees, pre-conditions for a private operator to fulfill in meeting service obligations, default and risk clauses, and step-in rights of government.

Task 2.2: Market Sounding

- (a) Provide a list of likely private sector investors to bid for the Project.
- (b) Conduct a formal market sounding exercise to determine key areas that will need consideration in finalizing the PPP structure. The Consultant shall prepare and issue a market sounding document to relevant stakeholders prior to the conduct of the actual session.
- (c) Conduct a one-day investors' conference in Manila or depending on the preference of the Agency/CA. The participant shall include representatives of concerned government agencies, financial institutions, prospective private sector entrepreneurs and consulting firms.

Task 3: Final Analysis

Depending on the optimal PPP modality, the Consultant shall assess and recommend the most suitable structure for the Project.

The Consultant shall finalize, among others, the following:

- (a) Cost estimates with Detailed Unit Price Analysis;
- (b) Financial and economic model and sensitivity analysis;
- (c) Legal and institutional arrangements and processes, contract structure and monitoring and management systems;

- (d) Financing plan, risk allocation and mitigation measures;
- (e) Default mechanisms and arbitration procedures;
- (f) Social/gender impact mitigation measures;
- (g) Environmental impact mitigation measures;
- (h) Sustainability Life-Cycle Costing and Cost-Benefit Analyses;
- (i) Land Acquisition and Resettlement Action Plan (LARAP);
- (j) Project implementation schedule;
- (k) Stakeholders consultations, particularly with potential private sector investors and involved local communities;
- (l) KPIs based on international experience to ensure that the private sector partner achieves the level of service required;
- (m) Development of the final PPP structure;
- (n) Detailed timelines for the bid process until contract award; and,
- (o) Post-bid and contract management frameworks.

Submit the final FS and all associated special reports in the required format and number of copies.

PHASE III: ASSISTANCE IN SECURING ALL REQUIRED GOVERNMENT APPROVAL

- (a) Prepare all documents required to be submitted, as necessary, to the Kwara State Public Private Partnership Board , Kwara State Public Procurement Agency (KWPPA) and other government agencies or bodies, in the required file format and quantities. The documents shall have a minimum of six (6) sets of both electronic and hard copies, additional copies will be requested as the need arises, and shall include the following but not limited to:
 - i. Project FS, in MS Word format;
 - ii. Agency Project Report for PPP or similar documents;

- iii. Demand, economic and financial analyses in traceable formula format, in MS Excel format and contain data not older than three (3) years; and
 - iv. Parameters, Terms, and Conditions (PTC) Template or its equivalent, whichever is required by the Kwara State Public Private Partnership Board during the time of submission.
- (b) Update and finalize the documentary requirements as necessary over the course of securing the Kwara State Public Private Partnership Board approval.
- (c) Assist the Agency/CA to address all issues and concerns until the PFF Committee accords the approval, Kwara State Public Private Partnership Board , Kwara State Public Procurement Agency, including a pre-presentation briefing/meeting with the Agency/CA,Kwara State Public Private Partnership Board , and other concerned parties.
 - i. Attend the pre-BPP/ Board/PFF Committee presentation briefings/meetings with the Agency/CA,Kwara State Public Private Partnership Board , and other concerned parties.
 - ii. In coordination with the Agency/CA and the Kwara State Public Private Partnership Board , prepare reports and responses to queries that the approving bodies may have on the Project's FS (i.e., technical, financial, economic, legal, PPP structure, among others). This may include preparation of reports which are normally being requested by external agencies (such as DOF, DBM, etc.) as part of the approval process.
- (d) Prepare and submit a post-project approval (or post-project activity) report documenting the approval process, including all instructions and issues/concerns in relation to the project.
- (e) Submit an updated FS which already addressed the instructions of the approving authority and incorporated the revisions required at the approval stage.

PHASE IV: ASSISTANCE IN THE PPP BIDDING PROCESS

Task 1: Bid Implementation Plan

The Consultant shall prepare a detailed bid implementation plan, which provides the timetable, task schedule, and required outputs during the bidding phase. Said plan shall include sub-activity timetable, task schedule and outputs for the pre-tender meetings; investment promotion and investors' conference; one-on-one sessions with prospective bidders (and other stakeholders); and establishment and management of the data room. The said plan shall also identify parties involved and their roles/participation in the whole process.

Task 2: Bid Documents

- (a) Prepare term sheet outlining the transaction structure, service level parameters, key terms and conditions, among others, to guide the development of a more detailed PPP agreement.
- (b) Prepare all necessary bid/tender documents including, but not limited to, the Invitation to Prequalify and Bid, Instructions to Prospective Bidders (ITPB), Instructions to Bidders (ITB), PPP agreement, Project Information Memorandum, KPIs, Bid Bulletins, and Bid Forms. The consultant shall ensure that the result of the environmental, social and gender study are taken into account in finalizing the appropriate KPIs.
- (c) Finalize execution copies of the PPP agreement and submit the same to the Agency/CA and/or Kwara State Public Private Partnership Board through a formal communication, with a written and signed endorsement from the Legal Specialist/s.
- (d) Prepare the TOR for the engagement of the Independent Consultant/Engineer (IC/IE).

Task 3: One-on-One Sessions

Conduct one-on-one session/s with stakeholders to discuss key terms and conditions of the PPP Agreement and conclusions drawn from these meetings shall be presented by the Consultant, discussed and agreed with the Kwara State Public Private Partnership Board and Agency/CA. The Consultant shall conduct follow up market sounding activities, as may be required.

The Consultant shall take into account the results of the one-on-one sessions/consultations with stakeholders, as confirmed by the Kwara State Public Private Partnership Board and Agency/CA, in finalizing the PPP agreement.

Task 4: Bid Execution

Provide all required assistance and advisory support to Agency/CA during the bid process. The required assistance shall include, but not be limited to:

- (a) conduct of pre-qualification and pre-bid conference/s;
- (b) preparation of draft responses to bidders' queries;
- (c) preparation of all bid-related notices/requests and supplemental notices;
- (d) prequalification of bidders;
- (e) revision and finalization of the tender documents;
- (f) evaluation of technical and financial bids;
- (g) preparation of bid evaluation (including prequalification) reports;
- (h) contract revision and finalization;
- (i) preparation of resolutions for approval by the Prequalification, Bids and Awards Committee (PBAC);
- (j) making all the necessary presentations to the PBAC and/or its Technical Working Group and other meetings/briefings;
- (k) management of contract signing and review of post-award requirements; and,
- (l) managing the Virtual Data Room of the Project.

Task 5: Selection Process Report

Prepare the Selection Process Report documenting the entire bidding process.

PHASE V: POST-PPP CONTRACT SIGNING ASSISTANCE AND ADVISORY

Provide all required assistance and advisory support to the Agency/CA on the following:

- (a) preparation of documents to address conditions precedent in the financing agreements;
- (b) evaluation of financial documents submitted by the private sector proponent; and,
- (c) interpretations on any issue that may be raised by the private sector proponent or its lenders, signing any other agreement or document with the private sector proponent.

II. TEAM COMPOSITION AND QUALIFICATION REQUIREMENTS FOR KEY EXPERTS

| No. | Position | Required Qualifications |
|---|---|--|
| Consultants with International Expertise | | |
| 1. | Project Finance Specialist/ Team Leader (<i>Technical Expert 1</i>) | At least a Bachelor's degree in related fields. ___ years of demonstrated experience in providing PPP transaction advisory services/development of large infrastructure PPP projects including extensive experience in financial modeling; project structuring; risk analysis, allocation and management; project agreements; and bid process management. Ongoing assignments will not be considered. Prepared ___ PPP and/or Joint Venture (JV) projects. |
| Consultants with National Expertise | | |
| 2. | Legal Specialist | At least a Bachelor's degree in related fields. |

| No. | Position | Required Qualifications |
|-----|--|--|
| | <i>(Technical Expert 2)</i> | <p>___ years of demonstrated experience in resolving legal issues during project development until contract award, PPP policy and institutional assessment; project structuring; drafting contractual agreements and other related documents/agreements; procurement; and bid process management. Ongoing assignments will not be considered. Prepared ___ PPP and/or JV projects. Ongoing assignments will not be considered.</p> <p>Must have the necessary or relevant license/qualification/registration for the assigned responsibilities for this consulting assignment.</p> |
| 3. | Transport Planner <i>(Technical Expert 3)</i> | <p>At least a Bachelor's degree in related fields.</p> <p>___ years of demonstrated experience in the technical design, successful operations and management of transportation systems, extensive knowledge of requirements, cost recovery mechanisms, and transport economics. Ongoing assignments will not be considered. Must have worked on at least PPP and/or JV projects.</p> |
| 4. | Civil Engineer <i>(Technical Expert 4)</i> | <p>At least a Bachelor's degree in Civil Engineering.</p> <p>___ years of demonstrated experience in detailed engineering design and construction of projects. Ongoing assignments will not be considered. Must have worked on at least PPP and/or JV projects. Should be a licensed Civil Engineer.</p> |
| 5. | Economic Specialist <i>(Generalist 2)</i> | <p>At least a Bachelor's degree in related fields.</p> <p>___ years of demonstrated experience in economic sector assessment, opportunity cost implications, etc.. Engaged as an economic</p> |

| No. | Position | Required Qualifications |
|-----|--|---|
| | | specialist for ___generic infrastructure projects (public- and private-funded). |
| 6. | Environmental Safeguard Specialist (<i>Generalist</i> 3) | At least a Bachelor's degree in related fields. ___years of demonstrated experience in the preparation of environmental impact statements (EIS) and environmental management plans/programs for at least projects (public- and private-funded) in accordance with the specific requirements in the Philippines/Donor's country. Ongoing assignments will not be considered. |
| 7. | Social Development and Gender Specialist (<i>Generalist</i> 4) | At least a Bachelor's degree in related fields. ___ years of demonstrated experience in assessment of social impacts across different genders, (dis)abilities, and income groups and preparation of mitigation measures for projects (public- and private-funded) in accordance with the specific requirements in the Philippines/Donor's country. Ongoing assignments will not be considered. |

Annex B

OUTPUT EVALUATION PROCESS

1. The Agency/CA (and the Concessionaire, in case of independent consultant services) shall inform the Kwara State Public Private Partnership Board of its authorized representative/s for the purposes of this Output Evaluation Process.
2. The authorized representatives from the Agency/CA (and the Concessionaire, in case of independent consultant services) and Kwara State Public Private Partnership Board shall implement the agreed upon workplan as provided in the CCS. Such workplan shall include the timeline for submission, review, and approval of outputs. The CCS shall provide that the Consultant's outputs shall be submitted to the PC for its review following the process set forth in the workplan.
3. The PC shall complete its review of the output and inform the Kwara State Public Private Partnership Board -PFF Contract Manager of its recommendation whether to accept or require revision of the output or portions of it.
 - (a) In case the PC finds the output acceptable, the PC shall endorse, through a Resolution, to the Executive Director the approval of output and payment. Further, the PC may impose conditions and other instructions on the acceptance of the outputs which may be performed or complied with in the next milestones. The Kwara State Public Private Partnership Board will then notify the Consultant of the output's acceptance (and any conditions/instructions) and advise the Consultant to submit a payment claim for processing.
 - (b) In case the PC finds the need to revise the output, the PC shall agree on a revised timeline to submit, review, and approve the revised output.
4. If the Consultant is able to revise the outputs within the period agreed in the workplan, but the PC still finds the output unacceptable, the steps/activities in the revised timeline shall be repeated at a maximum of three (3) rounds until the PC accepts

the output. On the third round, the PC or Kwara State Public Private Partnership Board representatives to the PC in cases wherein there is no consensus between members of the PC, shall then recommend, through a Resolution, to the Kwara State Public Private Partnership Board's Chief Executive Officer the appropriate action or remedy. The Kwara State Public Private Partnership Board's Chief Executive Officer or his/her duly authorized representative shall have the final decision on the evaluation of the output and payment of claims and any other actions or remedies that can be exercised under the CCS.

5. In relation to item 3(b), in case the PC fails to finalize its evaluation of the output within ten (10) working days from receipt of the draft PC Resolution for approval, the Kwara State Public Private Partnership Board's Chief Executive Officer or his/her duly authorized representative may decide on the acceptance of the deliverables/outputs and payment of claims and any other actions or remedies that can be exercised under the CCS.

The decision of the Chief Executive Officer shall be final, non-appealable, and executory, and shall be considered in proceeding with the next milestones or closure of the CCS, and in computing the Recoverable Amount from the Agency/CA.

Annex C

AGENCY/CA OBLIGATIONS

The [Agency/CA] shall have, among others, the following obligations:

A. Procurement of Consultant

1. Nominate qualified representatives to the SBAC, TWG, and the PC, as well as designate a focal person or Project Manager.
2. Ensure compliance with the required (from receipt of documents) turn-around time for the review/evaluation and approval of the documents for the procurement of consulting services.

B. Contract Implementation

1. The Agency/CA shall disclose the Recoverable Amount as a contingent liability in its notes to financial statement and make necessary adjustments as the case may be pursuant to IPSAS 19.
2. The Agency authorizes the DBM to allocate for the Recoverable Amount as a priority item, within the Agency's budget ceiling for the fiscal year following the termination of the CCS or Service Agreement.
3. Provide dedicated personnel with relevant skills as counterpart staff to the Consultant including a designated Project Manager to, among others—
 - a. Work closely and coordinate with the assigned Project Officer of the Kwara State Public Private Partnership Board and the Team Leader;
 - b. Ensure the relevant principal/s of the [Agency/CA] is well-informed of the developments of the project;
 - c. Ensure that prerequisite activities/requirements to move the project forward are undertaken;
 - d. Provide reasonable assistance/cooperation for information or document requests, interviews, or other data gathering requirements needed to accomplish outputs/deliverables of the Consultant (e.g., Feasibility Study);

- e. Provide the Kwara State Public Private Partnership Board and Consultant with all existing studies related to the Project commissioned by or with the Agency/CA; and
 - f. Provide other administrative assistance such as, but not limited to, arranging/coordinating meetings, and reproduction of project documents for internal government use/requirement.
- 4. Create a Prequalification, Bids and Awards Committee ("PBAC") pursuant to the relevant procurement framework.
- 5. Ensure compliance with the relevant procurement framework, and other relevant laws, rules, regulations, circulars or other issuances by any government authority, at all stages or phases of the project.
- 6. Ensure compliance with the required turn-around time for the review/evaluation and approval of the deliverables/outputs of the Consultant, including review/evaluation and acceptance of the associated tasks and/or special reports linked to said deliverables/outputs.
- 7. Issue prompt endorsement or approval of the Consultant's claims for payments (whether milestone payments, final claims, or reimbursable expenditures), when required by the Kwara State Public Private Partnership Board, pursuant to the PFF Guidelines and the Output Evaluation Process (Annex B).
- 8. Keep track of the deployment of the Consultant's personnel and ensure that their field work is aligned with the approved budget and work plan.
- 9. Provide office space/work station for the Consultant.
- 10. Liaise with other government agencies, CAs, and private organizations, as need arises, to ensure that the Consultant has access to all data/information required, as may be allowed under Kwara State laws.
- 11. Prepare and make presentations, as may be necessary, to PBAC, stakeholders, and other relevant government approving bodies.
- 12. Prepare (i) minutes/highlights of all meetings, including TWG, and Board Meetings (except for meetings involving other stakeholders, PQ conferences, market sounding, one-on-ones, etc.), (ii) all presentation materials, and (iii) responses to queries (other than queries from bidders/proponents during the bidding process) from stakeholders.

13. Ensure that instructions or requests to the Consultant are in compliance with the scope of works outlined in the TOR.
14. Coordinate with relevant approving bodies regarding meeting schedules, submissions and other requirements.
15. Coordinate and consult with the Kwara State Public Private Partnership Board and the Consultant regarding any documents to be made publicly available.
16. Ensure availability of internal resources for bid stage activities and events (e.g., advertisement/s, pre-bid conferences)
17. Ensure inclusion in the bid documents the requirement on the winning bidder to pay the Recoverable Amount to the PFF as a condition for contract signing and the release of the bid security.
18. Submit to the Kwara State Public Private Partnership Board an executed copy of the project agreement, and any amendments thereto, signed with the winning bidder within thirty (30) days from execution thereof.
19. Submit to the Kwara State Public Private Partnership Board periodic reports on the implementation of the Project, as requested by the Kwara State Public Private Partnership Board
20. Within thirty (30) days upon receipt of the collection letter from the Kwara State Public Private Partnership Board , the CA shall recognize its reimbursement obligation to the PFF through a written response indicating its action whether to source the payment from its available cash or include the Recoverable Amount in its budget proposal for the upcoming fiscal year, including the fund source.
21. Upon appropriation of requested budget, the Agency/CA shall release the Recoverable Amount to the Kwara State Public Private Partnership Board within three (3) months in accordance with this TAA and the PFF Guidelines, as may be amended.

Obligations of Kwara State Public Private Partnership Board

The Kwara State Public Private Partnership Board shall have, among others, the following obligations:

A. Procurement of Consultants

1. Create/designate an SBAC, TWG and SBAC Secretariat for the procurement of consulting services. Nominate qualified representatives to the SBAC, TWG, PC and SBAC Secretariat.

2. Assist the Agency/CA in its compliance with the required review/evaluation and approval of the documents for consultant selection/procurement.
3. Monitor Agency/CA's compliance with the required review/evaluation and approval of the documents for consultant selection/procurement.
4. Handle the procurement of consulting services.

B. Contract Implementation

1. Manage the Consulting Firms and Contracts for Consulting Services.
2. Monitor the availability and efficient utilization of the fund.
3. Assist the Agency/CA in its compliance with the required review/evaluation and approval of the deliverables/outputs of the Consultant, including review/evaluation and acceptance of the associated tasks and/or special reports linked to said deliverables/outputs.
4. Monitor Agency/CA's compliance with the review/evaluation and approval of the deliverables/outputs of the Consultant, including review/evaluation and acceptance of the associated tasks and/or special reports linked to said deliverables/outputs.
5. Monitor Agency/CA's endorsement or approval of the Consultant's claims for payments (whether milestone payments, final claims, or reimbursable expenditures as required), pursuant to the PFF Guidelines and the Output Evaluation Process (Annex B).
6. Assist the Agency/CA in tracking the deployment of the Consultant's personnel and ensuring that their field work is aligned with the approved budget and work plan.
7. Assist in monitoring as to whether the instructions or requests to the Consultant complies with the scope of works outlined in the TOR.
8. Monitor Agency/CA's submission of relevant documents (i.e., an executed copy of the project agreement, and any amendments thereto, signed with the winning bidder within thirty (30) days from execution thereof; and periodic reports on the implementation of the Project, as needed).
9. Collect payments of the Recoverable Amount to the PFF in accordance with the TAA and the PFF Guidelines.

Annex D

PPP BEST PRACTICES

1. Conduct of market sounding

Market sounding is the process by which the private sector's ability to assume risks through the PPP contract is assessed. The activity focuses on the appropriateness and attractiveness of the PPP scheme, and soliciting inputs and requirements from prospective bidders. Market sounding could either occur during the preparation of the project, before the issuance of the request for proposals or request for submission of qualification documents. In particular, it occurs before the bidding proper or before sending out invitations to prospective bidders.

2. Conduct of one-on-one meetings

This is held for prequalified bidders. One-on-one meetings are conducted to clarify any of the bidders' questions, comments, and concerns; and discuss key terms and conditions of the draft PPP agreement.

3. Use of Control Test

The Control Test provides a practical and efficient approach in determining compliance to the nationality requirement for projects to be implemented under a contractual arrangement which requires public utility franchise for its operation.

4. Use of Virtual Data Room (VDR)

This is designed as a secure and controlled online facility for storing, accessing, and distributing bid documents and project-related data. The VDR provides a platform for prequalified bidders to undertake their due diligence review on a PPP project.

5. Appointment of Probity Advisor²⁸

Probity Advisors provide an independent opinion on probity issues that may arise during the project tender process, and confirm that the concluded bid process meets probity requirements.

6. Independent Consultant/Engineer

Independent Consultants/Engineers provide technical expertise on, unbiased monitoring of, and assurance that the facility complies with the detailed engineering design and key performance indicators identified in the PPP contract.

7. Conflict Management Plan

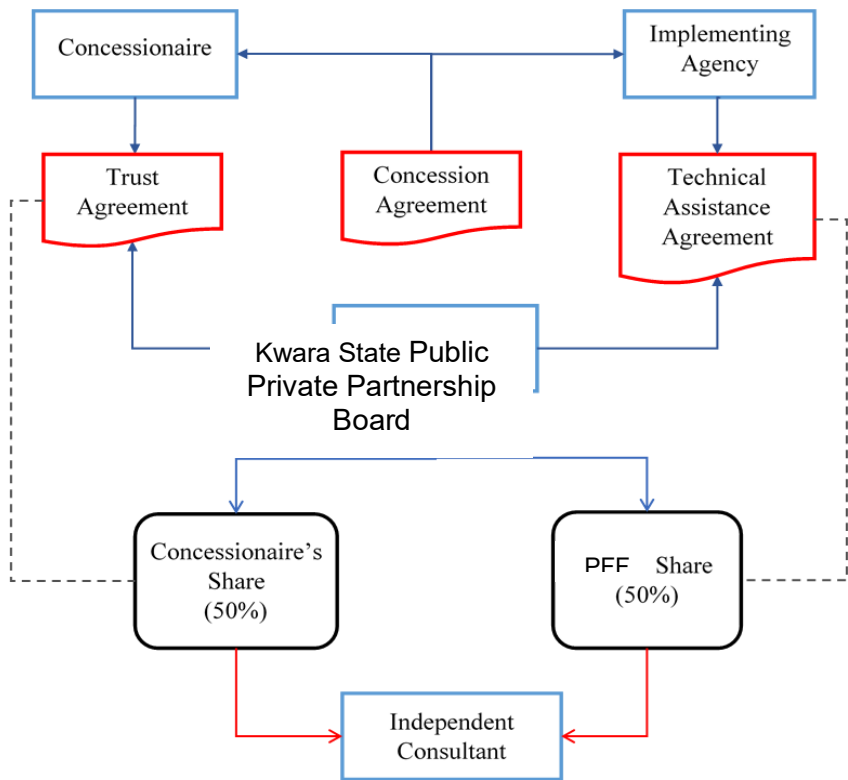
The submission of a conflict management plan shall be required from the consulting firms who act as professional advisors of two or more bidders in the same project, in order to ensure that no conflict of interest exists between and among the teams within the said firm. The plan shall contain, among others, an integrity pledge and a disclosure of all the firm's clients that are participating in a particular PPP project.

Note: Nothing in this Summary shall supersede or amend the guidelines and resolutions/issuances issued by the Kwara State Public Private Partnership Board 's Governing Board. In case of any inconsistency between this summary and the language of the Kwara State Public Private Partnership Board 's Governing Board's guidelines and resolutions/issuances, the latter shall prevail.

²⁸ Applicable to: (a) large PPP projects with cost amounting to N 20 billion or more, or as maybe determined by the PPP Governing Board, and (b) complex projects, regardless of amount, as determined and justified by the [Agency/CA].

Annex E

FINANCIAL MANAGEMENT FRAMEWORK FOR THE ENGAGEMENT OF INDEPENDENT CONSULTANTS²⁹



Note: The above framework applies in cases where the cost of independent consultants is equally shared by the Agency/CA and the Private Proponent/Concessionaire

²⁹ Not applicable for mode of assistance under Section 5.2 of the PFF Guidelines

I. BACKGROUND

- A. In accordance with the issuance of the EO No. 6 2024, the PFF may be used to engage not only consultants for project preparation and transaction support but also for independent consultants (IC) for PPP projects, among others.

Dispute advisers may be needed to assist the Agencies/CAs to advise on various and complex economic, financial, legal, and technical issues to facilitate the early resolution of disputes.

Independent appraisers, on the other hand, may come in at various stages of a PPP contract implementation. They are particularly important during the following stages: pre-termination, which pertains to an abrupt end of project implementation, and turnover, which occurs when infrastructure is given/handed back to the government upon the conclusion of project implementation or the abrupt end thereof.

The aforesaid services are meant to not only assist the Agencies/CAs but to also allow them to oversee the implementation of a PPP project during key periods thereof. Such services are aimed at protecting the Agencies/CAs from any acts of the concessionaire that may undermine the Agencies/CAs, go against the provisions of the PPP contract, are disadvantageous to the Government, or may otherwise become costly to it.

- B. A Concession Agreement (CA) of the PPP project executed by the Agency/CA and the Concessionaire stipulates, among others, the following obligations:
1. The Agency/CA, through the PFF, shall initiate the procurement process for the independent consultant.
 2. In accordance with the PPP agreement, all fees and expenses of the IC shall be either:

- (a) equally shared by the Concessionaire and the Agency/CA; or
- (b) borne by the Agency/CA, as may be determined in the course of project implementation in accordance with the PPP agreement.

II. GENERAL GUIDELINES

- A. A Technical Assistance Agreement (TAA) will be executed between the Kwara State Public Private Partnership Board and the Agency/CA on the provision of PFF support for the engagement of IC and the Agency/CA's reimbursement obligation, among others.
- B. The Kwara State Public Private Partnership Board , through the PFF, shall procure the ICs in accordance with the existing procurement guidelines. Consequently, a Contract for Consulting Services (CCS) will be executed by and between the Kwara State Public Private Partnership Board and the Consultant, with the consent of the Agency/CA as the beneficiary and, for IC services, the private sector partner.
- C. Payment for the Cost of Independent Consultancy Services Equally Shared between the Agency/CA and the Concessionaire
 - 1. The payment for services rendered by the IC will be shared on a 50:50 basis between the Agency/CA and the Concessionaire.
 - 2. The share of the Agency/CA shall be advanced through the PFF.
 - 3. The share of the Concessionaire shall be deposited in full to the designated bank account administered by the Kwara State Public Private Partnership Board.
 - 4. The Concessionaire and Kwara State Public Private Partnership Board shall execute a Trust Agreement that will govern the utilization of the fund and disposition of any balance thereof after completion of the obligations for which the fund was established.
 - 5. Reimbursement of the PFF Support by the Agency/CA shall be in accordance with Section 8.4 of this Guidelines.

6. In case the contract with the IC is pre-terminated, the Kwara State Public Private Partnership Board shall refund the undisbursed amount of the Concessionaire's share back to the Concessionaire.
 7. The shall withhold equal amount of taxes from the payment to be made from both the Concessionaire's share and the PFF. The Kwara State Public Private Partnership Board will prepare a certificate of tax withheld.
 8. The Kwara State Public Private Partnership Board shall prepare the Statement of Receipts, Expenditures and Fund Balance for the Concessionaire's share.
- D. Payment for the Cost of Independent Consultancy Services Borne by the Agency/CA
1. The payment to Consultant shall be advanced through the PFF.
 2. Reimbursement of the PFF Support by the Agency/CA shall be in accordance with Section 9.4 of this Guidelines.

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