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# **Public-Private Partnerships Guidelines for Local Governments**

## **Main Document**

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## List of abbreviations

<b>AO</b>	Accounting Officer
<b>BOO</b>	Build, Own and Operate
<b>BOOT</b>	Build, Own, Operate and Transfer
<b>CA</b>	Contracting Authority
<b>CCD</b>	Climate Change Department in the Ministry of Water and Environment
<b>DBFO</b>	Design, Build, Finance and Operate
<b>GHG</b>	Greenhouse Gases
<b>LED</b>	Local Economic Development
<b>LG</b>	Local Government
<b>MFPED</b>	Ministry of Finance, Planning and Economic Development
<b>MOLG</b>	Ministry of Local Government
<b>PDM</b>	Parish Development Model
<b>PPDA</b>	Public Procurement and Disposal of Public Assets
<b>PPP</b>	Public Private Partnership
<b>RFB</b>	Request for Bids
<b>RFQ</b>	Request for Qualification
<b>SPC</b>	Special Purpose Company
<b>TA</b>	Transaction Advisor
<b>UGX</b>	Uganda Shilling
<b>VFM</b>	Value for Money

## Glossary

<b>Commercial Close</b>	Agreement is reached on all the commercial terms of the PPP agreement and the PPP agreement is signed by the Local Government and the Private Party.
<b>Concept Note</b>	The concept note in respect of the PPP project, to be completed by the Local Government and submitted to the PPP Unit. A template is set out in Annex B ( <i>Concept Note</i> ) of these Guidelines.
<b>Evaluation Committee</b>	The committee for the evaluation of applications for prequalification and bids, appointed by the Local Government accounting officer pursuant to section 19 of the PPP Act.
<b>Climate Change</b>	This means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability, observed over comparable time periods.
<b>Climate Change Adaptation</b>	This refers to actions that reduce the negative impact of Climate Change, while taking advantage of potential new opportunities. It involves adjusting policies and actions to observed or expected changes in climate. Adaptation can be reactive, in response to climate impacts, or anticipatory, occurring before impacts of climate change are observed. In most circumstances, anticipatory adaptations will result in lower long-term costs and be far more effective than reactive adaptations.
<b>Climate Resilient Infrastructure</b>	<p>means an Eligible Project that is planned, designed, built and operated in a way that anticipates, prepares for, and adapts to changing climate conditions. The Climate-Resilient Infrastructure may be in either or both of the following categories:</p> <p>Structural adaptation measures: for example, changing the composition of road surfaces so that they do not deform in high temperatures, building seawalls or using permeable paving surfaces to reduce run-off during heavy rainfalls. Ecosystem-based approaches using natural infrastructure to design adaptation measures are also key alternatives to be considered alongside structural adaptation measures; and/or</p> <p>Management (or non-structural) adaptation measures: for example, changing the timing of maintenance to account for changing patterns of energy demand and supply, investment in early warning systems or purchasing insurance to address financial consequences of climate variability. These measures can also include enhanced monitoring of existing assets to reduce the risk of failure as climate conditions change. Adaptive management approaches also include provisions to include flexibility from the outset to monitor and adjust to changing circumstances over the asset's lifetime.</p>
<b>Comprehensive Feasibility Study</b>	This means a study undertaken to explore inter alia the feasibility of undertaking an infrastructure or development facility as a Partnership from the technical, legal, social, environmental, economic, commercial, financial and climate (mitigation and resilience) perspective.
<b>Eligible climate change resilient infrastructure for the purpose of the qualification:</b>	means Climate-Resilient Infrastructure implemented by the Prospective Bidder or a Qualifying Shareholder or a Construction Contractor, in each case as the main or principal contractor, in which construction has been completed in the agreed years preceding the RFQ Submission Date and/or with an operation and maintenance period of not less than the agreed years (post-construction completion) ongoing or completed in the agreed years preceding the RFQ Submission Date, having a total project cost not less than [insert the amount].

<b>Feasibility Study</b>	The study conducted under Section 22 of the PPP Act to assess whether the project is feasible as a PPP. Guidelines for conducting the Feasibility Study are set out in Annex C ( <i>Feasibility Study</i> ) of these Guidelines.
<b>Feasibility Study Report</b>	The report documenting the findings of a Feasibility Study.
<b>Financial Close</b>	The date on which all conditions have been met to signing and drawdown under the financing agreements entered into by the Private Party.
<b>Greenhouse Gas</b>	This means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.
<b>National PPP Guidelines</b>	The National PPP Guidelines, consisting of a main document and Annexes A to L, published by the PPP Unit in 2019.
<b>PPDA Act</b>	Public Procurement and Disposal of Public Assets Act, 2003.
<b>PPP</b>	Public Private Partnership – a commercial transaction between a contracting authority and a private party as defined in Section 4 of the PPP Act.
<b>PPDA Act</b>	Public Private Partnership Act, 2015.
<b>PPP Committee</b>	The committee established pursuant to Section 5 of the PPP Act, whose composition and functions are described in Sections 5 to 9 of the PPP Act. The PPP Committee is the key supervisory and decision-making body in the PPP Project Cycle.
<b>PPP Project Cycle</b>	The consecutive stages of a PPP project as defined in Chapter 2 ( <i>PPP Project Cycle</i> ) of these Guidelines in line with the description of the PPP process in Part III of the PPP Act.
<b>PPP Regulations</b>	The PPP Regulations, 2019 ( <i>Statutory Instrument No 18 of 2019</i> ) and the PPP (Meetings of the Committee) Regulations, 2019 ( <i>Statutory Instrument No 19 of 2019</i> ). In these Guidelines, all references to the PPP Regulations shall mean only PPP Regulations, 2019 ( <i>Statutory Instrument No 18 of 2019</i> ) which relate to the procurement of the Private Party.
<b>PPP Unit</b>	The unit established pursuant to Section 10 of the PPP Act, whose composition and functions are described in Sections 10 and 11 of the PPP Act. The PPP Unit is within MFPED and has two functions in the PPP Project Cycle: (i) it serves as the secretariat and technical arm of the PPP Committee; and (ii) it provides technical assistance to Local Governments on PPP issues.
<b>Project Identification Tool</b>	The simple checklist, in question-and-answer format, set out in Annex A ( <i>Project Identification Tool</i> ) of these Guidelines.
<b>Preferred Bidder</b>	The bidder who is ranked highest among the bidders by the Evaluation Committee, as referred to in Chapter 5 ( <i>Procurement Stage</i> ) of these Guidelines.

<b>Private Party</b>	The Special Purpose Company incorporated by the Successful Bidder signing the PPP agreement with the Local Government, as referred to in Section 20 of the PPP Act and Chapter 6 ( <i>Contracting Stage</i> ) of these Guidelines.
<b>Process Auditor</b>	The person appointed pursuant to Section 17 of the PPP Act, whose functions are described in Section 17 of the PPP Act. The Process Auditor verifies whether the Local Government complies with the provisions of the PPP Act and the PPP Regulations in the preparation, procurement and implementation of a PPP.
<b>Transaction Advisor</b>	The person appointed in writing by the Local Government who has the appropriate skill and experience to assist and advise the contracting authority or the Unit on matters related to a public private partnership, including the preparation, accession and conclusion of a project agreement and the financial close.
<b>Successful Bidder</b>	The bidder to whom the PPP project is awarded, subsequent to the designation as Preferred Bidder and the successful conclusion of final contract negotiations.

# 1. Overview and Introduction

## 1.1. Provision of Public Infrastructure and Services

Provision of public infrastructure and services is the primary responsibility of the Government of Uganda. The government traditionally achieves this obligation through direct commitment of funds under the national budget for development of public infrastructure and services.

Uganda operates a decentralized system of governance where power and functions are devolved from the Central Government to Local Governments. This devolution of power includes the responsibility to provide public infrastructure and services at a local level.

## 1.2. Public Private Partnerships

While Government bears the ultimate responsibility of providing public infrastructure and services, it also recognizes the active role and potential of the private sector to deliver the same functions through the Public Private Partnership (PPP) approach. Uganda's Vision 2040 and accordingly the National Development Plan (NDP) envisage active private sector participation and mutual partnerships for socio-economic transformation.

A PPP is therefore defined as a commercial transaction between a public sector player (contracting authority) and a private sector party (private party) where the private party performs a function of the contracting authority for a specified period of time while assuming a substantial level of technical, operational and financial risks. The private party receives a remuneration for performance of the public function and the remuneration is linked to performance.

The contracting authority delegates its function to the private sector while maintaining an active monitoring and supervisory role. In most cases, PPP arrangements are long term but with a hand back clause where assets are meant to devolve back to the contracting authority.

PPPs increase the ability of Government to deliver the desired public infrastructure and services amidst budget constraints by according an investment opportunity to the private sector while ensuring provision of efficient and effective services to the public. However, the benefits of PPPs do not originate spontaneously. They must be actively pursued during the preparation and management of PPP Projects. This is achieved through a robust PPP framework.

## 1.3. Legal framework for Public Private Partnerships projects

Uganda's PPP framework consists of:

- i. **The PPP Policy 2010:** This is the foundational policy document that established Government's efforts to introduce and utilize the PPP approach in provision of public infrastructure and services.
- ii. **The PPP Act, 2015:** This is the governing law as enacted by Parliament. The law establishes key institutions and stakeholders responsible for PPP program oversight, PPP project cycle amongst other statutory requirements and obligations.
- iii. **The PPP Regulations, 2019:** These comprise of two sets of Regulations i.e. Statutory Instrument No. 18 of 2019 which provides for the conduct of PPP Committee Meetings and Statutory Instrument No. 19 of 2019 which provide for the rules governing PPP project procurement.
- iv. **The National PPP Guidelines, 2019:** These provide a detailed, step by step approach for projects ideally undertaken at central Government level. The National Guidelines were conceptualised for major infrastructure projects and services that involve heavy capital investment costs and therefore require robust project preparation at that level.
- v. **Sector Specific Laws:** Based on the nature of the project, specific laws may apply on a project basis. This caters, for instance, to projects in regulated sectors and as well as compliance to all necessary laws that may affect a project. The PPP framework only provides a general compliance mechanism for projects and does not negate the duty to comply with sector specific laws.



Notably, the need to promote green infrastructure solutions and sustainable projects calls for integration of climate assessment protocols on applicable projects. This is to encourage green initiatives and best climate mitigation and adaptation strategies. These guidelines incorporate and encourage climate impact assessment throughout the project cycle.

#### 1.4. Climate change obligations

The recent National Climate Change Act of 2021 gives the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement the force of law in Uganda. Therefore, those responsible for executing PPP projects must ensure that the project complies with Uganda's climate change obligations.

The key Government institution with the capability and mandate to aid Local Governments in their compliance with Uganda's climate change obligations is the Climate Change Department (CCD) in the Ministry of Water and Environment. Throughout the PPP lifecycle, the Local Government may turn to the CCD for assistance. These Guidelines detail ways in which the Local Government can collaborate with the CCD.

As the climate changes, climate induced hazards such as floods, strong winds, or high temperatures will have an increasing impact on PPP projects throughout every stage. Climate induced hazards can be divided into two categories, acute climate risks and chronic climate risks:

- Acute climate risks are of a short duration and have a high impact on natural man-made structures. They include, but are not limited to, landslides, flooding, high precipitation, etc.
- Chronic climate risks are slow changes in the climate that impact man-made structures persistently. They include, but are not limited to, sustained temperature rise, water stress, change in precipitation patterns, etc.

As a result of the potential impact of climate change on PPP projects, climate financing is critical in addressing climate change since large scale investments are required to mitigate effects of climate change on the PPP projects. Climate finance is local, national or transnational financing drawn from public, private and alternative sources of financing that seeks to support mitigation and adaptation actions that will address climate change.

Section 21 of the National Climate Change Act of 2021, provides that the Minister responsible for finance, in consultation with the Minister responsible for climate Change matters shall provide climate change financing. Therefore Local Governments should develop projects through climate financing which is cheaper and at the same time takes care of climate change adaptation aspects for the PPP projects.

#### 1.5. Local Content

As local Governments identify PPP projects, they must consider the inclusion of local content. Prospective bidders for these projects must demonstrate that they will include Ugandan Nationals in the implementation of the PPP project, knowledge, transfer, use of local materials and ensure that a local content plan is prepared to that effect.

#### 1.6. PPP Guidelines for Local Governments

Local Governments face the same infrastructure needs and challenges as the central government. However, the needs of Local Governments may not be as diverse and complex as those at the center. Whereas Local Governments are mandated to raise their own revenue to meet some of their obligations, they receive budget appropriation from the central government which may not cover all planned aspects.

In order to encourage productivity and a stronger local revenue base for Local Governments, Government initiated the Local Economic Development (LED) model under decentralization.

LED focuses on enhancement of overall welfare and productivity of localities through strategic partnerships and investments with the private sector. Coupled with the Parish Development Model (PDM) which considers the parish as the basic unit of development and service delivery, LED and PDM acknowledge the need to leverage private sector resources and efficiencies for socio economic transformation.

Due to the uniqueness of the needs of local governments and the potential nature of projects to be developed as PPPs, these guidelines have been specifically crafted to avail a more flexible but compliant guide for Local Governments to identify, prepare and undertake PPP projects at their level. The process for developing these Guidelines involved consulting with various stakeholders across the country including; the PPP Unit, MFPED and MOLG, representatives from Local Governments and other stakeholders. The process adopted an inclusive bottom-up approach to enable formulation of guidelines that are user-friendly and tailor-made for Local Governments.

The Local Government guidelines are therefore complimentary to processes and requirements listed under the PPP Act and the PPP Regulations. A review of these Guidelines may be made and published from time to time as necessary.

### 1.7. Institutional Framework for Public Private Partnerships

It is important to highlight key stakeholders in development and implementation of projects under the PPP modality. These serve different roles as will be consistently referred to in various chapters of these Guidelines.

#### The Public Private Partnerships Committee (PPPC)

The PPPC as established by Section 5 of the PPP Act is the overall policy and oversight body for implementation of the PPP program in Uganda. The Committee comprises of eleven (11) members including public and non-public officers. Representation to the PPPC is varied. Notably, Local Governments are represented on the Committee by the Permanent Secretary responsible for the Ministry of Local Government or a person nominated by the Permanent Secretary.

Among others, the PPPC:

- i. Approves project proposals for registration;
- ii. Approves project feasibility study reports and draft procurement documents; and
- iii. Monitors the implementation of PPP projects.

#### The Public Private Partnerships Unit (PPP Unit)

The PPP Unit is a technical arm and secretariat of the PPPC. The Unit is established under Section 10 of the PPP Act within the Ministry of Finance, Planning and Economic Development. The Unit comprises of various technical competencies to render support to both the PPPC and contracting authorities through various stages of the PPP Cycle.

Among others, the PPP Unit:

- i. Assists Contracting Authorities in identification and screening of potential PPP Projects;
- ii. Conducts capacity building sessions for Contracting Authorities regarding the PPP modality;
- iii. Receives and reviews project proposals or concepts and presents them to the PPP Committee for a decision;
- iv. Receives and reviews project feasibility study reports and project documents and presents them to the PPP Committee for a decision to proceed to procure the project; and
- v. Supports Contracting Authorities through all stages of the PPP Process.

#### Contracting Authority (CA)

A Contracting Authority (CA) as defined by Section 4 of the PPP Act refers to a Ministry, Department or Agency of Government established to carry out a public function. For purposes of these Guidelines, the CA is a Local Government as established by the Local Governments Act (as amended).

- i. The Local Governments in a district rural area shall be—(a)the district council;(b)the subcounty councils.
- ii. The Local Governments in a city shall be—(a)the city council;(b)the city division councils.
- iii. The Local Governments in a municipality shall be—(a)the municipal council;(b)the municipal division councils.
- iv. The Local Government in a town shall be the town council.

Among others, the CA:

- i. Identifies potential projects for delivery as PPPs;
- ii. Avails primary resources such as land or other assets necessary for the project;
- iii. Prepares relevant supporting documents to enable review and appraisal of the project;
- iv. Leads the procurement process for the project;
- v. Enters into contract with the private party;
- vi. Monitors implementation of the project and performance of the private party;
- vii. Remunerates the Private Party where applicable; and
- viii. Receives back the infrastructure and assets from the private party upon project completion.

Notably, the CA performs the above functions through its different officers and teams such as:

- a) The Accounting Officer (AO): For LGs, the AO is the Chief Administrative Officer or any other person designated by law as such.

The functions of the AO among others include:

- i. Champions the project;
- ii. Sets up Project Team and appoints Project Officer;
- iii. Seeks approval of project from LG Council and structures;
- iv. Budgets and commits resources for project preparation;
- v. Appoints evaluation committees;
- vi. Signs contract on behalf of the CA with the Private Party; and
- vii. Monitors implementation of the project.

- b) Project Team: This is a team set up by the AO to lead the project. Depending on the project, the team is comprised of various technical persons from the CA as may be necessary for the project. Members of the project team are mostly staff of the CA but where necessary, staff from other Government agencies may be appointed to serve on the project team to create efficiency.

The functions of the Project Team among others include:

- i. Identifies potential PPP projects within CA;
- ii. Collates relevant information for project development and appraisal;
- iii. Prepares project documents (with the help of a Transaction Advisor where necessary);
- iv. Monitor performance of the Private Party and make periodic reports and;
- v. Keep records of the project.

- c) Project Officer: Each project must have a project officer. A project officer is appointed by the Accounting officer. The project officer is responsible for the day to day running of the project and overall coordination of the project teams and its activities. A project officer should be a competent technical officer of the CA but where such a competent officer is not available, the CA may externally appoint a project officer based on the nature and requirements of the project.

## 1.8. Other Stakeholders

### The Ministry of Finance, Planning and Economic Development (MFPED)

The Ministry is directly responsible for implementation of the PPP Program. As the primary ministry responsible for national planning and allocation of resources for service delivery, the Ministry supervises implementation of the program. The Permanent Secretary/ Secretary to the Treasury is the Chairperson of the Public Private Partnerships Committee.

The Ministry among others:

- i. Reviews, assesses and monitors fiscal commitments and contingent liabilities on projects;
- ii. Where applicable, reviews projects to assess affordability for Government; and
- iii. Reviews any requests for Government financing towards the project.

### The Ministry of Local Government

The Ministry of Local Government is responsible for operational oversights of Local Governments. PPPs at Local Government must be implemented within the general operational framework and functionality of Local Governments. Local Governments must therefore adhere to the guidance and requirements from time to time of the parent Ministry.

Notably, Local Governments must periodically report on performance of PPPs to the Minister responsible for them. The Minister in turn presents such reports to the Parliament and this includes laying of PPP agreements before the floor of Parliament.

### The Ministry of Justice and Constitutional Affairs

The Ministry of Justice provides legal oversight to Ministries, Departments and Agencies of Government. This specifically includes advising on and clearing contractual undertakings with Government. Through the Office of the Solicitor General, the PPP project agreement will be forwarded to the Solicitor General's office for clearance.

### The Office of the Accountant General

The Accountant General is by law required to appoint a Process Auditor for each project. The role of the Process Auditor is to evaluate compliance of the project to the PPP framework and requirements prior to contracting. The Process Auditor makes a report of findings before signing of the contract and the report is submitted to the Accounting Officer.

In practice, the Accounting Officer of a Local Government may nominate a relevant officer for appointment as Process Auditor and forward such nomination to the Accountant General's Office for approval and appointment.

### The Office of the Auditor General

The Auditor General is mandated to audit the performance of all PPP projects as stipulated under Section 30 of the PPP Act 2015 and the National Audit Act.

### Cabinet

The Cabinet shall prescribe the value of an agreement for which approval of Cabinet is required before an agreement is signed by an Accounting Officer. Where an agreement is of a value for which the approval of Cabinet is required, the Accounting Officer shall not sign the agreement without the approval of Cabinet.

The project structure will determine other specific stakeholders as necessary for its implementation.

## 1.9. Structure of the Guidelines

These Guidelines are divided into seven chapters and supporting annexes. The chapters give an introduction, detail the various stages of the PPP cycle and address key project preparation and implementation aspects. The annexes on the other hand provide additional/ specific detail on information referred to in the chapters.

**Below is a brief breakdown of the Chapters:**

Chapter 1 – Overview and Introduction: Gives an overview of the PPP program in Uganda highlighting the legal and institutional framework.

Chapter 2 – PPP Project Cycle: Gives a highlight of the PPP Project Cycle from project identification to implementation.

Chapter 3 – Inception Stage: Guides on project identification, initial assessment and approvals.

Chapter 4 – Feasibility Stage: Guides on the various components of a project feasibility study including but not limited to social, economic, commercial, legal and technical assessment of the project.

Chapter 5 – Procurement Stage: Guides on project procurement including bidding processes, procurement documents and Bid evaluations.

Chapter 6 – Contracting Stage: Guides on pre-contractual processes, contract award, commercial and financial close.

Chapter 7 – Implementation Stage: Guides on project implementation including construction, operation and maintenance.

Chapter 8 – Handback: Guides on the handback process of the projects and project assets to the Local Government where applicable.

Chapter 9 – Unsolicited Proposals: Provides guidance on treatment of unsolicited proposals.

**The Supporting Annexes**

Annex A	Project Identification Tool
Annex B	Concept Note Template
Annex C	Feasibility Study Template
Annex D	Procurement Templates
Annex E	PPP Agreement Template
Annex F	Terms of Reference for Transaction Advisor
Annex G	Further Reading and Resources

## 2. PPP Project Cycle

### Stages of the PPP Project Cycle

A typical PPP project goes through four key stages or phases as seen from the PPP Act 2015. This chapter will give an overview of the four key stages as well as the key institutional players/stakeholders at each stage. A detailed discussion of each of the stages is presented in the next chapters of these Guidelines.

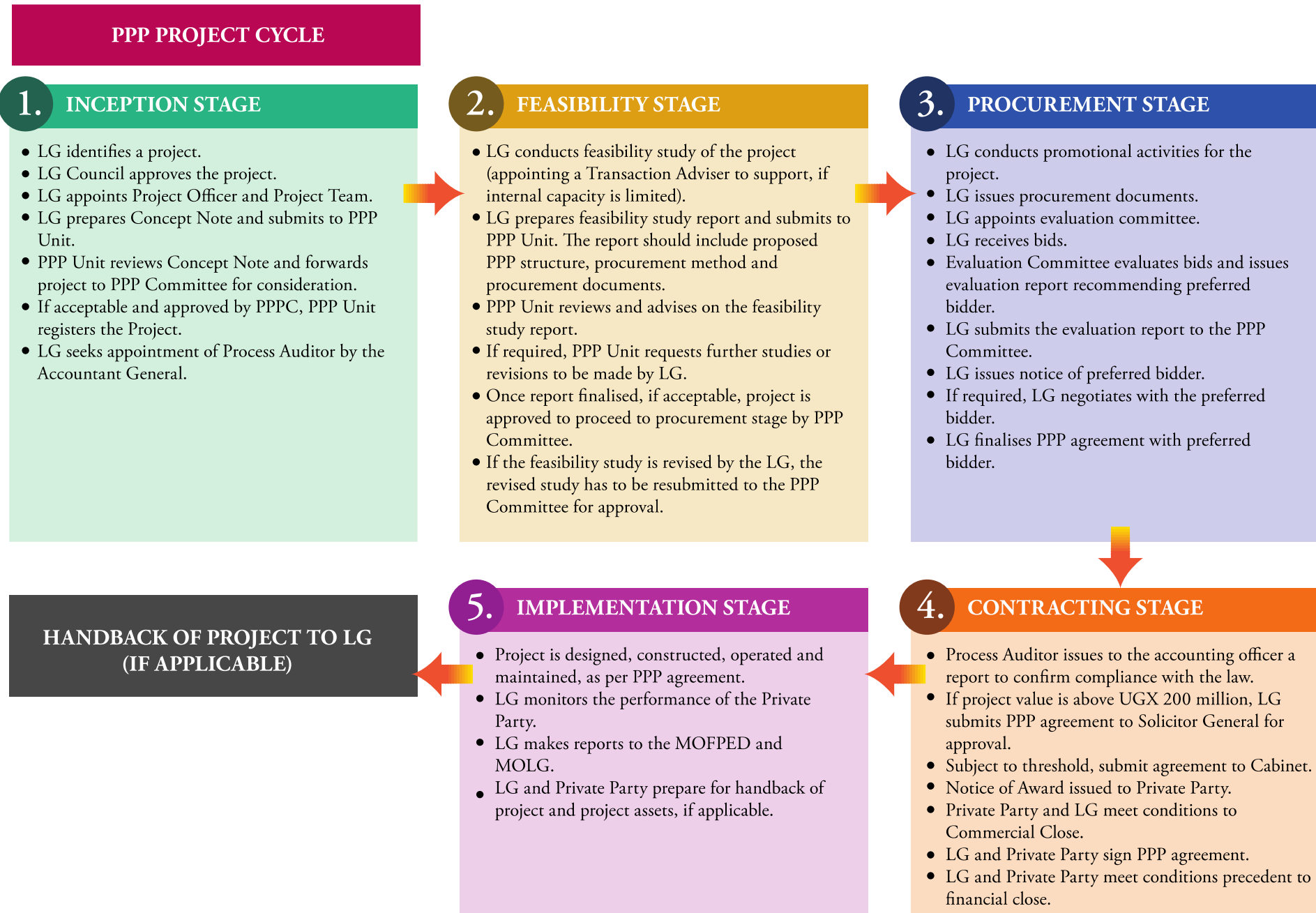
The four stages are:

- i. **Inception Stage:** Local Government identifies a project and assesses its initial suitability as a PPP. In addition, the Local Government carries out a preliminary economic cost-benefit analysis, initial assessment of potential climate change risks and climate change adaptation and resilience aspects including site vulnerability, and the PPP project is presented to the PPP Unit for transmission to the PPP Committee for a decision on registration. This stage includes all necessary internal approvals by the Local Government before the project is forwarded to the PPP Unit.
- ii. **Feasibility Stage:** Following registration by the PPP Unit, the Local Government carries out a Feasibility Study and submits the feasibility study report and draft procurement documents to the PPP Unit. The PPP Unit reviews the feasibility study report and draft procurement documents for propriety and completeness, including incorporation of climate change risk vulnerability assessments and recommendations on specific mitigation and adaptation actions. The report and accompanying documents are then forwarded to the PPP Committee with its recommendations, including those related to climate mitigation and adaptation for approval.

The PPP Committee may approve the project as presented, grant a conditional approval or make an appropriate recommendation concerning the project. An approval decision from the Committee permits the Local Government to move to the procurement phase of the Project. A conditional approval obligates the Local Government to fulfil the set conditions, including those related to climate mitigation and adaptation and provide proof of fulfilment to the PPP Unit before any other steps can be taken. A decision not to approve the feasibility study report as presented implies a further review of the report to address highlighted concerns and presentation of the revised report to the PPP Committee for a fresh decision.

- iii. **Procurement Stage:** The Local Government procures a Private Party for the implementation of the PPP project. The Procurement is in accordance with the PPP Act 2015 and PPP Regulations, 2019 and not the PPDA Act. The PPP model is a standalone procurement option which should not be confused with traditional public procurement.
- iv. **Contracting and Implementation Stage:** The Local Government and the Preferred Bidder represented as a Special Purpose Company (SPC) finalise and sign the PPP agreement (commercial close or contracting). The Preferred bidder through the SPC mobilises the required financing through financing agreements with lenders and equity financiers (financial close) and the project is designed, constructed, operated and maintained until the end date of the PPP agreement transitioning into handback where necessary.

**Figure 1: PPP Project cycle**

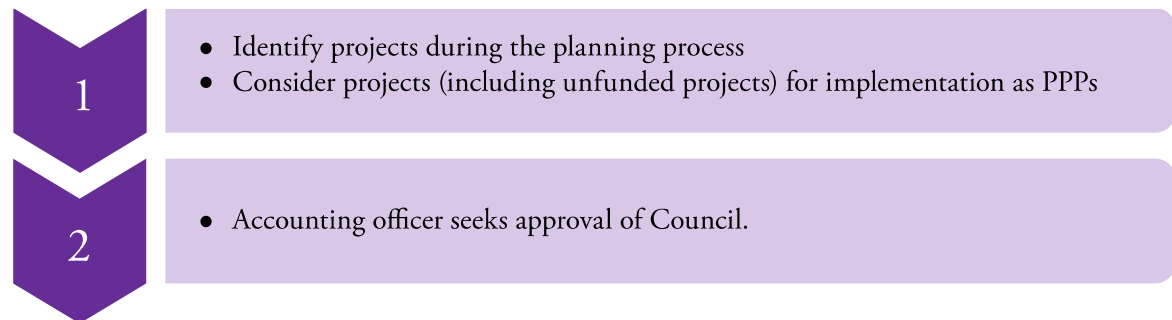


### 3. Inception Stage

#### 3.1 [Project identification](#)

This is the first phase of the inception stage and involves planning, where Local Governments are expected to identify community needs and design projects and interventions that respond to the needs of the community.

**Figure 2: Project Identification Process Flow**



The Local Government planning processes are guided by the Local Government Planning Guidelines 2020 which provide a simple but integrated framework for:

- Developing Local Government development plans;
- Incorporating these plans in the National Development Plan;
- Ensuring Local Government plans support the achievement of aspirations of the Uganda Vision 2040.

Local Governments are required to consider whether any projects and interventions included in the development plan are suitable for implementation as a PPP.

Funding for approved projects in Local Government development plans is typically by way of budget allocations or donor support. However, given the limited funding available, some projects in Local Government development plans are unfunded though some are funded. Therefore, Local Governments should consider both funded and unfunded projects and whether they are suitable for implementation as PPPs.

Any projects or interventions proposed by the Local Government, which are not included in the development plan or are initiated by way of unsolicited proposals, should be first approved by the Council and thereafter, considered for implementation as PPPs.

In considering whether a project or intervention is suitable for implementation as a PPP, the Local Government shall use the Project Identification Tool provided for in 0 (*Project Identification Tool*) of these Guidelines.

At this part of the Inception stage, the Local Government should assess the potential impact of project on the climate and vice-versa in accordance with the National Climate Change Act, 2021.

#### 3.2 [Council to approve project in principle](#)

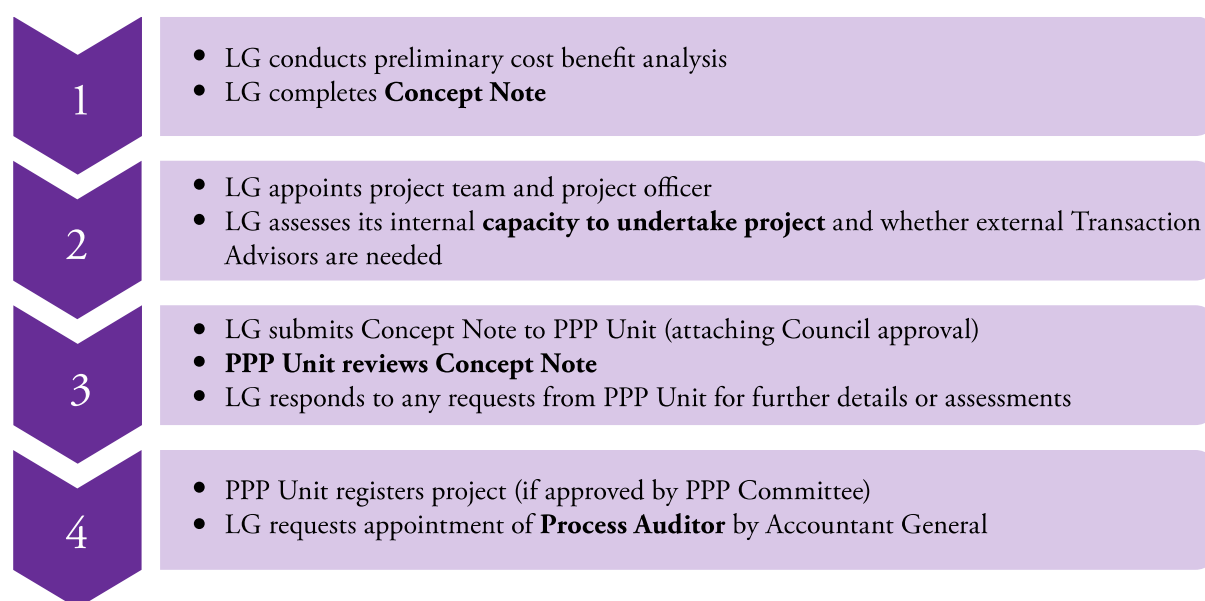
Council of the Local Government must approve the proposed PPP project before commencing the PPP Project Cycle in accordance with its internal approval processes. The Local Government, through the Accounting Officer, must submit to the PPP Unit evidence of approval of the project by the Council.

#### 3.3 [Project inception](#)

Once the Council has approved the project for implementation, the Local Government is required to conduct a preliminary economic cost benefit analysis of the project and to submit the project to the PPP Unit for registration as required by Section 21 of the PPP Act.



**Figure 3: Inception Stage Process Flow**



### 3.4 Preliminary cost benefit analysis

The Local Government shall conduct a preliminary cost benefit analysis outlining among others, the following:

- Projected policy outcome of the project
- Reasons, rationale and strategic objectives of implementing the project as a PPP;
- Estimated cost of the project;
- The role of the Local Government and the private sector and associated risks;
- Capacity and expertise within the Local Government to implement and monitor the project as a PPP;
- Impact of climate change on the project and climate impacts due to the project such as GHG emissions.

If the preliminary cost benefit analysis confirms the suitability of the project, the Local Government shall submit the same in the form of a Concept Note to the PPP unit for registration.

### 3.5 Concept Note

The Local Government prepares the Concept Note in reasonable detail. The Local Government may consult the PPP Unit during the preparation of the Concept Note. Refer to 0 for a *Concept Note template*.

The basic contents of a concept note shall include: a clear definition of the problem(s) and how they relate to the local government development plan, a clear justification of the proposed intervention and estimated cost of the project. The preliminary risk analysis, the capacity of the Local Government to implement the project, the climate change vulnerability assessment, initial environmental and social assessment including climate adaptation or mitigation and resilience aspects and climate impacts of the project should also be provided.

The Concept Note, together with the Council approval referred to above, is submitted by the Accounting Officer to the PPP Unit.

### 3.6 Review by PPP Unit

Based on the information in the Concept Note, the PPP Unit conducts a review of the PPP suitability of the project and submits its findings to the PPP Committee. In determining the suitability of the project as a PPP, the PPP Unit among others considers: the project size, likely financial implications for government, benefits to the public, project's capacity to generate revenue and attractiveness to the private sector.

If the information provided is not sufficient to enable a proper assessment of the Concept Note, the PPP Unit may request for additional information from the Local Government.

Upon approval by the PPP Committee of the project as a PPP, the PPP Unit registers the project and the Local Government will be formally notified.

If the PPP Committee does not approve the Concept Note, the PPP Unit will not register the project. The Local Government will be formally notified of the non-approval and the reasons for the decision. However, a Local Government can bring back the same project with improvements.

Once the PPP project is registered by the PPP Unit, the Local Government should proceed with the next stage of these Guidelines, the Feasibility Stage, detailed in Chapter 4 (*Feasibility Stage*).

### 3.7 Process Auditor

Upon registration of the project by the PPP Unit, the Accounting Officer of the Local Government shall seek appointment of a Process Auditor by the Accountant General, as required by Section 17 of the PPP Act, to ensure that the Local Government complies with the requirements for implementing PPPs as provided in the PPP Act, the Climate Change Act, any regulations enacted under the Act and any other relevant laws.

The Process Auditor is required to submit a report to the Accounting Officer at the end of the procurement stage. It is therefore important that the Process Auditor carefully monitors all activities leading up to that date.

## 4. Feasibility Stage

### 4.1 Overview

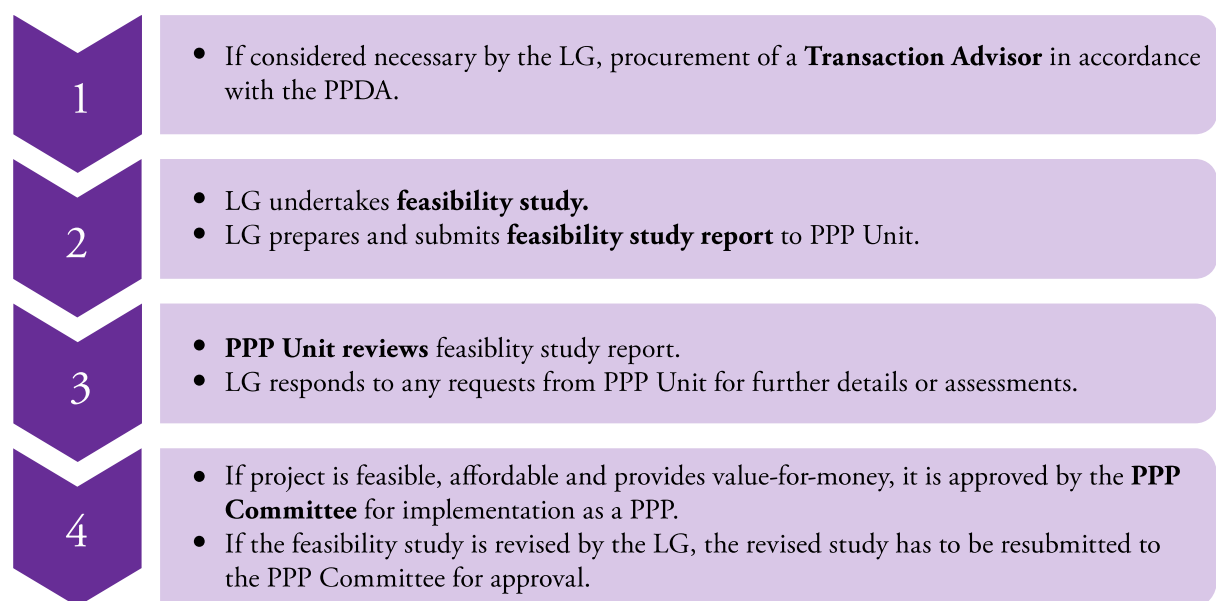
The Local Government is required to undertake a feasibility study for each project that is approved by the PPP Committee and registered by the PPP Unit. When undertaking the feasibility study the Local Government shall follow the feasibility study template provided in Annex C.

Before commencing the feasibility study, the Local Government should confirm that it has the capacity to undertake the study. Where the Local Government does not have the capacity, it shall appoint a Transaction Advisor to assist in undertaking the feasibility study. The Transaction Advisor is appointed in accordance with the PPDA framework.

The objective of the feasibility stage is to assess whether the project is feasible for implementation as a PPP, including an assessment of technical, economic, financial, fiscal, environmental, social, legal, climate mitigation and resilience and any other appropriate aspects to determine affordability, value for money and ensure appropriate risk allocation between public and private sectors.

A climate change vulnerability risk assessment (CRVA) will be carried out as part of the feasibility study. Technical options will be evaluated based on the needs of the project, including climate adaptation/mitigation and resilience needs. All climate related costs will be included in the assessment of the costs of the project. The feasibility study also informs the project information to be incorporated in the bidding documents.

**Figure 4: Feasibility Stage Process Flow**



### 4.2 Procurement of Transaction Advisor

Refer to the draft terms of reference for the procurement of the Transaction Advisor in Annex F (*Terms of Reference for Transaction Advisor*). The Transaction Advisor shall be appointed using the traditional procurement processes under the PPDA Act (in relation to consultancy services).

### 4.3 Feasibility Study Report

The Feasibility Study Report must be sufficiently detailed to meet legal and regulatory requirements (in particular with respect to environmental and social impacts, which are often subject to specific laws and regulations), and to enable an informed decision by the Local Government and the PPP Committee about the feasibility and desirability of the project and its implementation as a PPP.

The report should capture the following key components:

- Needs analysis to identify the main infrastructure or service gaps that the project intends to address;
- Technical options analysis i) evaluating the various technical and engineering solutions for delivering the infrastructure and services and determining most efficient technical solution ii) describing output specifications and iii) giving an estimate of the project life cycle cost iv) giving an estimate of climate mitigation and resilience related costs;
- Project due diligence covering legal, environmental, site, climate and disaster risks economic and social concerns;
- Financial analysis and modelling covering financing needs, sources, revenue generation and affordability analysis. The financial analysis should establish the level of fiscal commitments and contingent liabilities including FCCL's emanating from climate.
- A risk assessment to identify and allocate project risks between the Local Government and the Private Party;
- The proposed PPP structure examining the various options for procuring and structuring the project as a PPP including an assessment of whether the project can be procured under the PPDA;
- Draft tender documents including the PPP agreement. The draft tender documents must include climate mitigation and resilience requirements;
- The project implementation schedule detailing the key roles and responsibilities of the Local Government and the Private Party and the timelines.

During the feasibility study, the Local Government must fully appraise the project. This should take a reasonable time to ensure a thorough assessment, but without unnecessary delay.

Refer to 0 (*Feasibility Study Template*) for detailed guidance on undertaking the feasibility study.

The Feasibility Study Report should be undertaken in accordance with Section 22 of the PPP Act, in order to satisfy Section 22(4) to (6) of the PPP Act.

The Local Government will submit the Feasibility Study Report along with the procurement documents, the draft agreement and evaluation criteria to the PPP Unit for approval by the PPP Committee.

#### 4.4 Climate change adaptation in the Feasibility Study

While simultaneously conducting the feasibility study, the Local Government should identify climate related risks and propose adaptation and resilience strategies that will be incorporated into the project. Further, the Local Government should conduct a detailed assessment of the sustainability practices that it wants the Private Party to incorporate during the construction of the project.

Climate change adaptability in the feasibility studies at both initial/prefeasibility and comprehensive/full feasibility studies shall consider the following:

- **Initial feasibility/ prefeasibility:** The Initial-Feasibility Study shall cover initial environmental and social assessment including climate mitigation and resilience aspects.
- **Technical options analysis:** There is need to formulate options of alternative engineering, and design and technical solutions that can solve the problem at hand including climate mitigation, adaptation and resilience aspects.
- **Legal feasibility analysis:** Assess legal aspects related to the project including climate transition as mentioned in climate acts, other legislation, regulations, and policies that might have a bearing on the project.
- **Project lifecycle costs:** Include costs related to climate resilience and mitigation. In also mention how it compares to an option with no climate costs over the lifecycle of the project.
- **Identifying environmental, climate and disaster risk concerns:** The feasibility study shall identify all site related environmental and disaster risk aspects and will include an environmental impact assessment (EIA), social risk assessment, and climate and disaster risk

vulnerability assessment. Assessment of climate change risks will also include an assessment of transitional risks due to potential or ongoing regulatory reform.”

### **Responsibility for recommending climate action**

Based on the feasibility assessment, the Project Team will make recommendations on issues concerning land acquisition, utility relocation, environmental clearances, climate adaptation, mitigation and resilience, resettlement and rehabilitation, social safeguards, fiscal affordability, government support and other related matters pertaining to the proposed project.

#### 4.5 Review by PPP Unit

After preparation of the Feasibility Study Report, the Accounting Officer submits the report to the PPP Unit for review and consideration. The PPP Unit shall consider the following:

- Project scope and structure;
- Risk identification, allocation and mitigation;
- Affordability and value for money
- procurement plan;
- Draft tender documents including the draft agreement.
- Climate mitigation and resilience;
- Climate vulnerability risk assessment.

The PPP Unit may require the Local Government to revise the Feasibility Study Report before submission to the PPP Committee.

#### 4.6 Review by PPP Committee

The PPP Committee examines the Feasibility Study Report and the conclusions of the review by the PPP Unit. If the PPP Committee approves the Feasibility Study Report, the project proceeds to procurement.

Upon approval by the PPP Committee of the Feasibility Study Report, the PPP Unit notifies the Local Government that the project may proceed to procurement stage. The Local Government must not procure a private party (under a PPP project) unless the feasibility study has been approved in writing by the PPP Committee (pursuant to Section 22(5) of the PPP Act).

If the PPP Committee does not approve the Feasibility Study Report, the Local Government will be formally notified of the non-approval and the reasons for the decision. If the feasibility study is revised by the Local Government, the revised study has to be resubmitted to the PPP Committee for approval.

**Figure 5: Additional requirements.**

**Additional requirements, if applicable, during the feasibility stage**

If the LG intends to procure the private party by the “**restrictive bidding**”, the LG must provide a justification for the same.

If the LG intends to use an “**unsolicited proposal**” (where the project is developed by the private sector, without any request by the LG), the Feasibility Study Report will be prepared by the private party and submitted to the Local Government. The LG will then submit it to the PPP Unit for review and approval (refer to Section 10.7 (*Unsolicited Proposals*) of these Guidelines).

Where the Feasibility Study is prepared by the private party, all requirements on the various assessments as applicable to the Feasibility Study conducted by a government authority will apply.

If the LG intends to use competitive dialogue method, it shall provide a justification for the same to the PPP Committee.

## 5. Procurement Stage

### 5.1 Overview

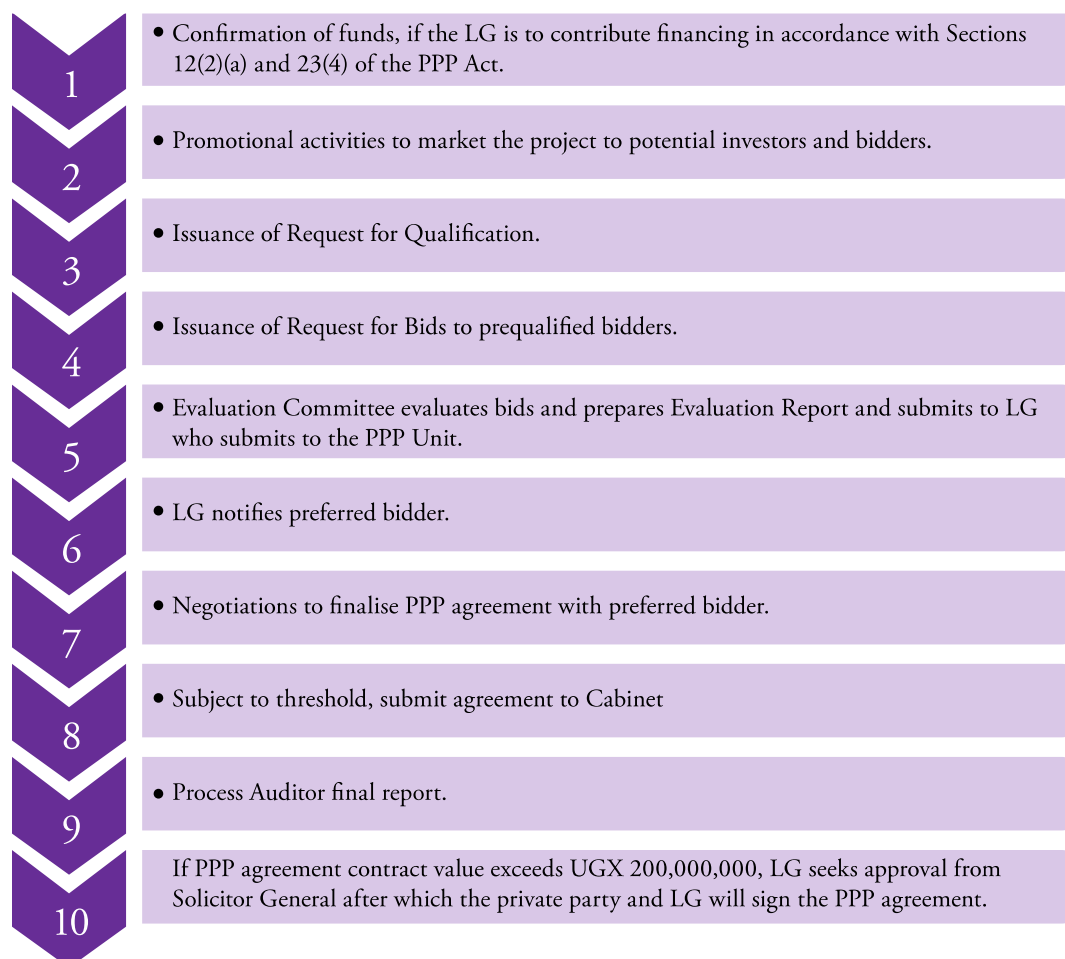
The Local Government must conduct a procurement process to select a Private Party for the project. The procurement process is governed by the PPP Act and the PPP Regulations. Procurement of a Private Party for a PPP project can be conducted by way of:

- i. Open bidding: shall be direct invitation to participation by all interested bidders. It shall be the preferred method to ensure competition, transparency and value for money;
- ii. Restrictive bidding: shall be used to obtain bids by direct invitation without open advertisement, and only with the prior approval of the PPP Committee (PPP Regulation 25) and if certain circumstances apply, summarized in Section 5.3 (*Overview of Restrictive Bidding Procurement*) of these Guidelines; or
- iii. Direct procurement: is a sole source procurement method used where the circumstances do not allow the use of competition and only with the prior approval of the Cabinet (Section 33(3), PPP Act) and if: (a) the need for the project is urgent and the Local Government wishes to accelerate the procurement by avoiding a competitive procedure; (b) the project is for national defence, national security or health emergencies; or (c) only one firm is considered to be capable of undertaking the project (PPP Regulation 26(2)).

The objective of the Procurement Stage is to select the most suitable Private Party, among the available candidates. The selected Private Party must be technically and financially capable of undertaking the project and offer the most advantageous price/quality combination.

Sections 23-25 of the PPP Act outline the procedure for procuring a Private Party. Bidding methods are set out under Sections 31-36 of the PPP Act and reinforced by the PPP Regulations.

**Figure 6: Open Bidding Procurement Process Flow**



## 5.2 Overview of Open Bidding Procurement

- i. Confirmation of funds: If the Local Government intends to provide financing to the project in accordance with Section 12(2)(a), then this must be mentioned in the bidding documents and, prior to issuing the bidding documents, the Local Government must obtain written confirmation from the Minister responsible for finance that the funds for financing the project will be available (Section 23(4) of the PPP Act). The Private Party can choose to access climate change financing through the Minister Responsible for Climate Change in consultation with the Minister responsible for Finance as per Section 21 of the National Climate Change Act.
- ii. Promotional activities: Before the formal announcement of the procurement process, the Local Government is advised to conduct promotional activities, such as advertising to the public (website, newspapers, notice boards and other media), investor conferences/roadshows and other marketing activities. Promotional activities must not limit competition (Section 23(5) of the PPP Act). The objective of promotional activities is to increase the number of potential investors and bidders for the project, which should achieve better value-for-money for the Local Government.
- iii. Prequalification: The Local Government must prepare: (i) the Notice of the Request for Qualification (RFQ), which announces the procurement; and (ii) the RFQ, which is used to invite prospective bidders to apply for prequalification (PPP Regulation 4)

The requirements for the Notice of the RFQ as set out in Part 1 of 0 (*Procurement Templates*) and a template RFQ is in Part 2 of Annex D(*Procurement Templates*).The Local Government invites prequalification submissions from interested parties.

The Accounting Officer selects the prequalified applicants from the evaluation report, communicates the results to the applicants in writing and publishes the list of all prequalified bidders in at least two newspapers with wide national circulation, the Local Government website as per PPP Regulation 7(6), the MOLG website and on the website of the PPP Unit.

The bidder must also submit demonstrate their experience in Climate-Resilient Infrastructure.

The Local Government may choose to conduct a group site visit for all bidders to the site of the project.

- iv. Bidding: The Local Government must prepare: (i) the Request for Bids (RFB) which must include requirements for climate adaptation and resilience and how it will be evaluated; (ii) the draft PPP agreement; and (iii) the output and performance specifications for the project. A template RFB is in Part 3 of 0 (*Procurement Templates*). A template PPP agreement is in 0 (*PPP Agreement Template*). The Local Government invites bids from the prequalified bidders.

The Climate Change Mitigation and Adaptation Plan for the Project comprising must be separate from the RFB. The Climate Change Mitigation and Adaptation Plan should be capable of meeting the Performance Standards as set out in Annex E of the draft PPP Agreement.

All bids should be submitted in the manner prescribed in the RFB, together with bid security, as specified in the RFB and its components described in Appendix 19 (*Climate Change Mitigation and Adaptation Plan Template*). Each bidder prepares a bid comprised of separate financial and technical bids each sealed in a separate envelope.

The Local Governments must ensure that the intellectual property rights of bidders are protected and not disclosed.

- v. Evaluation: The Evaluation Committee checks that all bids have been correctly submitted (on time and in the form prescribed by the RFB – separate technical and financial bids, sealed in



separate envelopes), verifies that the bidder is prequalified and that bid security has been submitted in accordance with the RFB.

The LG is advised to conduct due diligence on the bidder taking into account technical, financial and legal aspects to ascertain the bidder's capacity to deliver the project.

The Evaluation Committee evaluates the technical and financial bids in accordance with the evaluation criteria defined in the RFB and the processes and procedures set out in the PPP Regulations . The Evaluation committee shall also incorporate the criteria related to climate mitigation and resilience in the RFQ as well as the RFP evaluation criteria. In the RFQ, it will be more to do with the firm qualifications in the area of climate change mitigation and resilience and proof of their having worked on such projects. The Evaluation Committee prepares a bid evaluation report which it submits to the Local Government within ten working days of the completed evaluation (Section 25(2), PPP Act and PPP Regulation 21).

As part of its technical evaluation, the evaluation committee shall evaluate whether the Climate change mitigation and adaption Plan submitted by the Pre-Qualified Bidder is capable of meeting the Performance Standard as set out in Appendix 19.

As part of the evaluation of the financial proposal or bid, the climate change and adaptation plan must be considered. Whether there are any material inconsistencies between any 2(two) or more of the following: Outline Design; BOQ submitted as the part of Technical Proposal; Construction Plan; Operations and Maintenance Plan; Climate change mitigation and adaptation Plan; Financial Bid; Audited Financial Model; Project Financing Plan; Letters of Commitment from Proposed Investors and Letter of Commitment /Interest Proposed Lenders including terms and conditions or reservations attached to their financing duly priced in the Financial Proposal; and the marked up PPP Agreement showing Reservations.

Pursuant to Section 25 (2) of the PPP Act, the Local Government submits the bid evaluation report to the PPP Committee. The bid evaluation report should highlight the climate related criteria and their fulfillment clearly in the overall evaluation.

- vi. Notice of Preferred Bidder: If the Local Government decides to proceed to the contracting phase with a Preferred Bidder, then the Accounting Officer notifies the private party whose bid has been determined as the preferred bid. The requirements for the Notice of Preferred Bidder are set out in Part 3 of 0, Section 5 (*Procurement Templates*). The Local Government must also notify the other bidders of the decision and request the second and third-ranked bidders to extend the validity of their respective bids pending the completion of negotiations with the Preferred Bidder.
- vii. Negotiations: The Local Government and the Preferred Bidder finalise the PPP agreement. This only involves minor points and formalities, (e.g., inserting the names of the representatives, updating the dates of milestone events, and clarifying wording). No substantive changes should be made to the PPP agreement. The Local Government must confirm that the agreed terms include climate adaptation and resilience strategies.

Where the negotiations with the Preferred Bidder are not successful, the Local Government must enter into negotiations with the second ranked bidder and where the negotiations with the second ranked bidder are not successful, with the third ranked bidder. (PPP Regulation 23(5))
- viii. Process Auditor Final Report: The Process Auditor prepares and submits a report to the Accounting Officer regarding the compliance of the Local Government with the provisions of the PPP Act from registration of the PPP project with the PPP Unit up to the contract negotiations with the Preferred Bidder (Section 17(3) of the PPP Act). If the Process Auditor's report shows non-compliances that have not yet been addressed, these must be addressed before signing the PPP agreement.
- ix. Solicitor General: If the contract value is higher than UGX 200,000,000 (or such other threshold as may be provided by Article 119(5) of the Constitution, as amended) it must be

reviewed and approved by the Solicitor General. The Solicitor General may approve the PPP agreement with or without amendments, reject the PPP agreement or seek further clarification. The Local Government takes appropriate actions to address the comments or questions of the Solicitor General on the PPP agreement.

### 5.3 Overview of Restrictive Bidding Procurement

For the restrictive bidding method, the Local Government must obtain the prior approval of the PPP Committee (Section 32, PPP Act). The restrictive bidding method may only be used if (i) the need for the project is urgent and the Local Government wishes to accelerate the procurement process; or (ii) there are only a limited number of private parties able to implement the project (PPP Regulation 25(2)).

The Local Government must submit the following additional information to the PPP Committee, together with the Feasibility Study Report (PPP Regulation 25(3)):

- the justification for using the restricted bidding method;
- a format of the invitation to tender;
- the bidding documents to be used by the Local Government; and
- a list of at least two and not more than five prospective bidders.

If the restrictive bidding method is approved, the Local Government prepares bidding documents (without the prequalification stage) and proceeds to the bidding stage.

### 5.4 Overview of Direct Procurement Method

For the direct procurement method, the Local Government must obtain prior approval of Cabinet (Section 33, PPP Act). Direct procurement may be used if (i) the need for the project is urgent and the Local Government wishes to accelerate the procurement by avoiding competitive procedures; (ii) the project is for national defence, national security or health emergencies; (iii) only one firm is considered to be capable of undertaking the project (PPP Regulation 26 (2)). Where Cabinet rejects the request to use direct procurement method, the Local Government shall procure the private party using either restricted bidding or open bidding method.

After finalisation of the PPP agreement, the Process Auditor report and approval by the Solicitor General, the Local Government proceeds to the Contracting Stage.

## **Figure 7: Key points to note in the Procurement Stage**

### **Common mistakes during the Procurement Stage**

- Failure to prepare for the procurement or follow procedures can expose the Local Government to reputational damage, hinder potential interest in the project and could result in third party claims, in the event that the LG is not fully prepared.
- Undertaking the procurement process without conducting adequate promotional activities may result into very few or no responses.
- Before issuing, the LG must verify that the bidding documents do not contain material discrepancies with the information in the Feasibility Study Report.
- The LG must respond to any questions simultaneously. All responses shall remove any information which identifies the bidder that requested the clarification.
- A reasonable timeline should be set for submissions and any late or non-compliant bids must be rejected.
- During evaluation of bids, the LG must adhere to the stated criterion in the RFQ or RFB to avoid disputes.
- Selection of preferred bidder without proper due diligence.
- Failure to adequately prepare for negotiations including commencing negotiations without the necessary technical capacity.

## 6. Contracting Stage

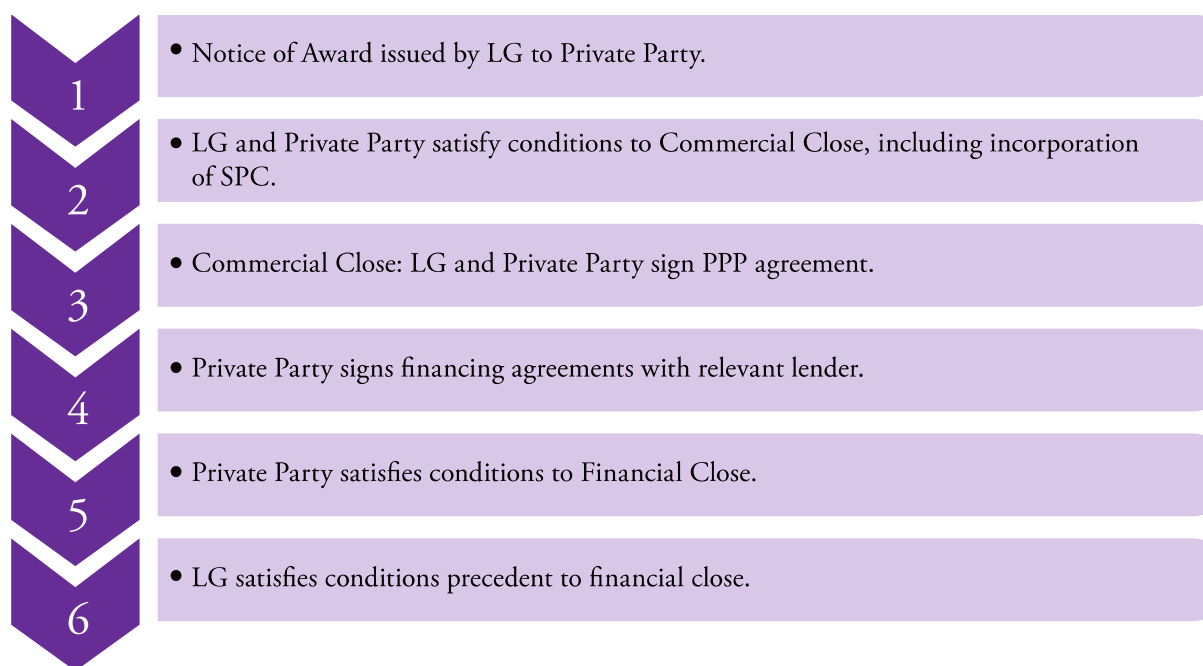
### 6.1 Overview

Before negotiations and prior to the decision on award, the Local Government shall re-assess the FCCL of the project based on the bid submitted by the preferred bidder and the draft agreement. The Local Government will also consider the climate change adaptation, mitigation and resilience related matters pertaining to the project.

Right before the PPP agreement is signed, the Local Government issues a Notice of Award to the Private Party selected during the procurement stage. The successful bidder is required to incorporate a SPC with which the Local Government will sign the PPP agreement.

Both the Local Government and the Private Party commence the process for satisfying certain conditions to the signing of the PPP agreement, referred to as “Commercial Close”. Once the PPP agreement is signed, the Private Party signs its financing agreements with financiers. After signing the PPP agreement, the Local Government must fulfil the conditions precedent to financial close as set out in the PPP agreement.

**Figure 8: Contracting Process Flow**



### 6.2 Notice of Award

The Local Government issues a Notice of Award to the Private Party selected during the Procurement Stage.

The Notice of Award must only be issued after finalisation of the PPP agreement, the Process Auditor report and approval by the Solicitor General. It confirms the award of the project to the Preferred Bidder and must expressly state that it does not constitute a legally binding offer on the part of the Local Government.

The Notice of Award sets out the conditions (and related timeline) to be fulfilled before the PPP agreement is signed by the Local Government and the Private Party. Fulfilment of these conditions and signing of the PPP agreement is referred to as “Commercial Close”.

### 6.3 Commercial Close

The Local Government must satisfy its own conditions, if any, as well as carefully monitoring the Private Party’s progress in satisfying its conditions to Commercial Close. Examples of conditions to

Commercial Close to be satisfied by the Local Government will depend on the project and the Local Government's role, but may include delivery of documents and information in relation to the project, the land, land rights, permits and approvals or any Local Government financing or other support.

Examples of conditions to Commercial Close to be satisfied by the Private Party are:

- the establishment by the Private Party of an SPC under Ugandan law, as required by subsection 20(1) of the PPP Act;
- certified copies of the certificate of incorporation, articles and memorandum of association, tax clearance certificate and all material permits and licences of the SPC;
- legal opinion on the suitability of the incorporation documents of the SPC to undertake the project;
- board resolution of SPC, registered with URSB, approving the terms of the PPP agreement and authorising entry into, and performance of all transactions;
- any other documents, required by the Local Government, with respect to due diligence of the SPC;
- any elements of the Private Party's successful bid have been fulfilled as promised (e.g., shareholder funding commitments, letters from reputable financial institutions expressing willingness to provide sufficient credit facilities);
- any other condition specified in the RFB or the PPP agreement (e.g., payment of a success fee or any other evidence the Local Government considers necessary to ensure that the Private Party demonstrates its commitment to the project).

Upon satisfaction of all conditions to Commercial Close, the Local Government and the Private Party (through its SPC) will enter into the PPP agreement. The bid securities of all remaining bidders are released (by the Local Government issuing a release notice). The PPP Unit is notified of the achievement of Commercial Close.

#### 6.4 Financial Close

The PPP agreement will specify the deadline by which the Private Party must achieve Financial Close. In the event that the Private Party is not able to achieve Financial Close by the deadline, the PPP agreement will specify the consequences.

During the Financial Close process, the Local Government must monitor the Private Party's progress in order to verify that sufficient funds have been secured to finance the project (and there will be no shortfalls). If applicable, the Local Government must also monitor and approve any calculations to be made pursuant to the PPP agreement which rely upon the final financing terms (e.g., the remuneration or compensation payable to the Private Party under the PPP agreement may be dependent on the final interest rate agreed under its financing documents).

Examples of conditions to Financial Close are:

- Delivery of the environmental and construction permits;
- Completion of land acquisition and settlement; and
- Any specific conditionality required in the PPP agreement (e.g., commencement of specific legislation).

The PPP Unit is notified of the achievement of Financial Close and the project proceeds to the implementation stage.

**Figure 9: Key Points to note in the Contracting Stage**

**Additional requirements, if applicable, during the Contracting Stage**

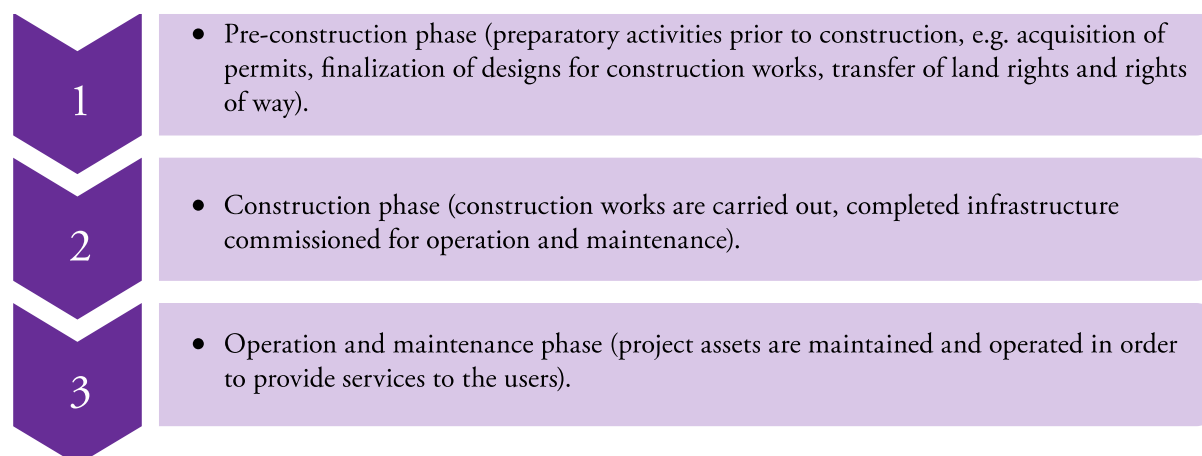
- Although expressed to be non-legally binding, the Notice of Award can nonetheless expose the Local Government to legal claims, e.g. in the event that it changes its decision or decides not to proceed with the project.
- Cabinet may determine the contract value threshold for which Cabinet approval is required for PPP agreements. If determined, such value will be published by the MFPED by way of statutory instrument and LGs will have to obtain Cabinet approval, if applicable (Section 26 of the PPP Act).
- Subject to threshold, submit agreement to cabinet.
- The PPP agreement should be signed in substantially the same form as attached in the bidding documents. Notably however, minor changes may be proposed and made to the agreement during the bidding and negotiation process. Subsequently, no material changes should be made to the PPP agreement during the contracting stage.

## 7. Implementation Stage

### 7.1 Overview

In the Implementation Stage, the project is carried out by the Private Party in accordance with the PPP agreement.

**Figure 10: Implementation Process Flow**



### 7.2 Role of Local Government

The LG must ensure that it complies with its obligations under the PPP agreement (e.g., delivery of land rights and rights of way, if applicable). Failure to comply could expose the Local Government to penalties, legal claims and other liabilities. Other roles include:

- Together with the Private Party, appoint an Independent Engineer;
- Monitor and audit the performance of the Private Party in accordance with the performance indicators specified in the PPP agreement;
- Determine whether the Private Party is complying with its obligations under the PPP agreement;
- Prepare and submit periodic performance reports to MOLG, MFPED and the PPP Unit; and
- Receive and review financial statements and annual report from the Private Party and forward to the PPP Unit for review.

### 7.3 Contract Management

During implementation, the Local Government must have a contract management team that is responsible for:

- monitoring performance and ensuring the parties comply with the terms and conditions of the PPP agreement;
- reporting on the performance of the project to the Local Government and stakeholders;
- budgeting and settlement of any payments due under the PPP agreement; and
- handling of events as per the PPP agreement, for example amendments to the PPP agreement, non-compliance of the Private Party with performance requirements and disputes;
- Measure, monitor and report GHG emissions with respect to the baseline emissions as well as monitor adherence to climate change adaptation/mitigation performance standards or key performance indicators (KPIs) .

The team should be headed by a contract manager who reports to the Accounting Officer. The contract manager is also the Local Government's focal contact person with the Private Party.

The Local Government must also develop a contract management plan to guide the contract management team and ensure key issues are addressed on time. The contract management plan will include:

- the composition and responsibilities of the contract management team;
- the performance criteria and monitoring system;
- procedures for reporting and disclosure of PPP performance to the LG and stakeholders; and
- procedures for dealing with contractual events in the various stages of implementation of the PPP project.

#### 7.4 Preparations for Handback

Where applicable, the Local Government must also decide who will continue to manage and operate the project upon expiry of the PPP agreement. Possible options are:

- the Local Government maintains and operates the project assets itself;
- the Local Government concludes a new long-term PPP agreement to renovate or expand the project assets and maintain and operate them thereafter; or
- the Local Government concludes short-term service agreements for the maintenance and/or operation of the project assets.

This decision must be made within a reasonable time before the end date of the PPP agreement so that there is enough time to prepare and conduct the procurement procedures for the appointment of new contractors or to train Local Government staff on the project operations and maintenance.

## 8. Handback

### 8.1 Introduction

This stage only applies with respect to PPP projects where the parties agree that the project and project assets are handed back to the Local Government upon expiry of the project. In the case of “build, own and operate” PPP agreements, the Private Party owns and operates the project in perpetuity<sup>1</sup>.

Preparations for handback commence within a reasonable time prior to the expiry of the PPP agreement.

Upon the expiry of the PPP agreement, the Private Party hands over the project (including any land and assets) to the Local Government. The approach to this transition is clearly defined in the PPP agreement. Accordingly, the PPP agreement will identify which assets the Private Party will transfer to the Local Government, the conditions those assets must be in at transfer, whether a payment will be made on asset handover, and how the amount of any payment will be determined. Handback constitutes the end of the PPP Project Cycle.

### 8.2 Role of Local Government

The Local Government may appoint an expert to assist with any of the above activities, e.g. conduct the handover tests and issue of a handover certificate. This may have been specifically agreed in the PPP agreement or it may become necessary in the event of a dispute with the Private Party. The conditions to handover will be set out in the PPP agreement, for example:

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

The Local Government must therefore ensure that there is:

- an inspection of the state of the project land and assets;
- a determination of the maintenance and repair works that must be undertaken in order to restore the project land and assets to good condition; and
- there is a plan for how the project services will be provided after the termination of the PPP agreement.

The Local Government will also monitor the obligations of the Private Party, including:

- review of the condition of the project assets before handback;
- monitoring of repair and maintenance activities that are required to bring the assets up to the required standards;
- monitoring of handback obligation of the Private Party (e.g., transfer of project documentation and rights, technical documentation, drawings and software packages or licenses); and
- training to the staff of the Local Government or the replacement contractors, so that they can take over the project, including maintenance and operation of the project assets.

If the Private Party fails to carry out the required maintenance and repair works, the handback security is partially or wholly forfeited.

The handback security is assessed and sold based on the current market value of the security.

The Local Government can use the proceeds from the handback security to hire another contractor to undertake the required maintenance and repair works. The amount of the security should be equal to the difference between the normal maintenance costs and the expected costs of restoring the project assets in good condition.

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<sup>1</sup> Section 44 of the PPP Act.



**Figure 11: Key Points to note during Handback**

**Common risks during Handback**

- Project assets do not meet the prescribed conditions upon the expiry of the PPP agreement,
- Costs required to bring the project assets up to the required standards are much higher than expected by the Private Party.
- Service to the users is disrupted during the handover.
- Delays in the appointment of the new operator.
- Lack of skills and capacity to enable the LG take over operation and maintenance of the project and project assets.

## 9. Unsolicited Proposals

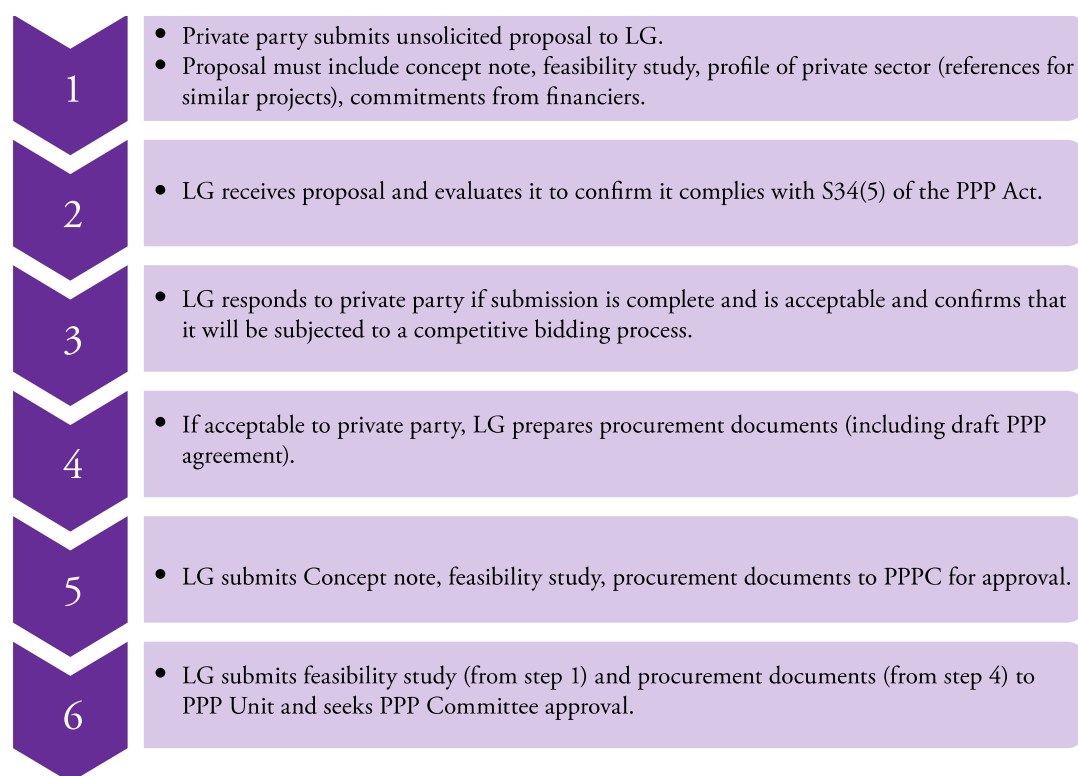
### 9.1 Overview

An unsolicited proposal is a proposal for a public infrastructure or service developed by a Private Party and submitted to the Local Government without explicit request from the Local Government. This means the private sector is making a direct proposal to the Local Government (whether or not such proposal aligns with public needs or not).

Unsolicited proposals should be the exception, not the rule.

Unsolicited proposals are subject to specific conditions in the PPP Act. Section 34 of the PPP Act defines the procedure and the conditions for the development, submission and acceptance of unsolicited proposals.

**Figure 12: Unsolicited Proposals Process Flow**



### 9.2 Proposal:

A proposal is prepared by the Private Party for consideration by the Local Government. The proposal must satisfy the requirements of Section 34 of the PPP Act.

These requirements are:

- an explanation on how the proposed project may assist the Local Government to achieve its objectives and why the unsolicited proposal merits special treatment outside the competitive bidding process (Section 34(3) of the PPP Act);
- the project concept has been independently developed, without the support or supervision of the Local Government (Section 34(2) of the PPP Act);
- the project satisfies the objectives of the National Development Plan (Section 34(4)(a)(i) of the PPP Act);

- the project involves an innovative design, an innovative approach to project development and management, or a new and cost-effective method of service delivery (Sections 34(4)(b) to (c) of the PPP Act); and
- the Private Party has convincingly demonstrated that it has the financial and technical capability to implement the project;
- The proposal shall include a compliant Feasibility Study Report as provided under Section 34(4)(a)(ii).

The Local Government must assess the following, as required by Section 34(5) of the PPP Act:

- the unique, innovative, researched or meritorious methods, approaches or concepts demonstrated in the unsolicited proposal;
- the overall scientific, technical, or socio-economic merit of the unsolicited proposal;
- the potential contribution of the unsolicited proposal to the strategic objectives of the Local Government, as specified in its development plan;
- an assessment of whether the proposed cost of the project is realistic, affordable and justified;
- any other fact which, in the opinion of the contracting authority is relevant to the unsolicited proposal; and
- an FCCL or affordability assessment.

Where the Local Government accepts the proposal, then it must be submitted to the PPPC Committee together with the feasibility study for approval.

Upon approval of the unsolicited proposal as a PPP, the Local Government informs the project proponent about the acceptance of the project and that the project will be subjected to a competitive bidding process.

### 9.3 Procurement Stage:

The Local Government will prepare procurement documents for approval by the PPP Committee. Pursuant to Section 34(6) of the PPP Act, the unsolicited proposal must be procured by the competitive bidding method (open or restrictive). The bidding documents will indicate the method of compensation for proprietary interests that the project proponent is entitled to if, as an outcome of a competitive procurement procedure, the project is awarded to another bidder.

### **Figure 13 : Key Points to note under Unsolicited Proposals**

#### **Risks of Unsolicited Proposals**

- An unsolicited proposal deviates from the regular planning and procurement process where LGs define their public infrastructure and service needs, and subsequently launches a procurement procedure to invite interested private bidders to submit a proposal for the realisation of project.
- Through unsolicited proposals, the private sector influences the infrastructure priorities of the government and may skew these priorities to particular private interests.
- Because an unsolicited proposal originates from a single private party and the project idea is owned by that party, there is a risk of monopolistic pricing.

## Annex A: Project Identification Tool

*If all or the majority of questions are answered “yes” then the project likely constitutes a PPP project.*

Does the project constitute a PPP project?		
Question	Yes/No	Remarks, if any
1. Is the project a commercial transaction?		
2. Is there private sector interest in the project?		
3. Is the Private Party performing a function of Local Government? Answer yes if any of the below apply.		
(a) Would the Local Government perform the function if it had sufficient funds?		
(b) Is the project substantially for public benefit and use?		
(c) Will the project be used by the general public?		
4. Is the project long term? Indicate duration in the remarks.		
5. Does any of the following criteria apply?		
(a) Will the Local Government contribute any land, property, equipment or financing or other resource for use by the project?		
(b) Will the Private Party assume substantial financial, technical and operational risk in connection with performing the project?		
(c) Will the Private Party be remunerated for performing the public function? <i>(if no, then the project should not be implemented as a PPP).</i>		

## Annex B: Concept Note Template

Requirement	<i>To be completed by the Accounting Officer in reasonable detail</i>
1. Project name	
2. Estimated project cost	
3. Project type ( <i>[Construction, Operations and Maintenance]</i> / <i>[Operations and Maintenance]</i> / <i>[Construction only]</i> )	
4. Overview	<p><i>Provide a definition of the service gaps and challenges to be addressed by the project including reasons for implementing it as a PPP.</i></p> <p><i>Provide a high level description of the technical or engineering solution of the project highlighting the proposed duration of the project (construction and operational phase)</i></p>
5. Policy outcomes	<p><i>Provide objectives of the project and how they relate to the National Development Plan, District Development Plan specifying the policy outcomes and impact on the economy.</i></p> <p><i>Who are the key stakeholders and how are they impacted by the project?</i></p>
6. Roles and responsibilities	<p><i>Describe the role of the Local Government, including any funding or other support.</i></p> <p><i>What risks does the Local Government assume?</i></p> <p><i>Describe the role of the Private Party, including any financing arrangements. .</i></p> <p><i>What risks does the Private Party assume?</i></p>
7. Estimated costs	<p><i>Provide estimates for preparatory works, construction costs, operations and maintenance costs and any Local Government costs</i></p>

Requirement	<i>To be completed by the Accounting Officer in reasonable detail</i>
8. Is the project commercially attractive?	<p><i>Indicate whether similar projects been undertaken in Uganda and if there is private sector interest in the project.</i></p> <p><i>Describe the potential for the project to generate revenue and how the private party will be paid (either from user fees, payments by Local Government or both)</i></p> <p><i>Describe initial assessment of the economic costs and benefits of the project.</i></p>
<b>Information required by PPP Unit</b>	
9. Capacity and expertise; project benchmarking	<p><i>Specify capacity and expertise within Local Government</i></p> <p><i>Specify any recruitment or external consultancy appointments that will be required</i></p> <p><i>Are there any examples of similar projects in Uganda? Have any of these involved the private sector?</i></p>
10. Climate change considerations	<p><i>Assess the climate change risks associated with the project;</i></p> <p><i>List the potential adaptation and resilience strategies that can be used to later on during the project's life cycle. Whether the project will contribute to GHG emissions and to what extent; and</i></p> <p><i>Assess measures to ensure that implementation of the project is sustainable.</i></p>
11. Any other supporting information including studies that have been undertaken.	

**Attachments**

Copy of the Council decision in respect of the project and other supporting documents.

***Submitted by\_\_***

***Title: Accounting Officer***

***Date:***

## Annex C : Feasibility Study Template

Requirement	<i>To be completed by the Accounting Officer in reasonable detail</i>
1. General	[Table of contents, list of abbreviations, executive summary]
2. Introduction	[Institutional background, Project definition, General background and information about the project, Need for the project, Objectives of the Project. Describe how the project aligns with the National Development Plan and the District Development Plan.
3. Needs analysis	<p>Describe the main infrastructure or service gaps that the project intends to address and scope of the project.</p> <p>The needs analysis shall include demand analysis and user projections.</p>
4. Technical options analysis.	<p>Describe the location of the project and whether the land is available.</p> <p>Evaluate the various technical and engineering solutions for delivering the infrastructure and services and determine the most efficient technical solution.</p> <p>Describe the output specifications and give an estimate of the project life cycle cost and timeframe for implementation.</p> <p>Indicate whether there is need for additional technical studies.</p>
5. Project Due Diligence.	<p>Legal due diligence covering legal, regulatory and institutional framework, sector specific laws, any legal impediments and possible solutions and required approvals or licences.</p> <p>Environmental covering environmental assessments, potential impacts on the environment and suggested mitigation measures, studies and approvals required in accordance with the environmental laws.</p> <p>Social impact assessments covering project affected persons, resettlement action plan (if any) and estimated costs, gender, cultural and heritage considerations.</p> <p>Site due diligence covering site suitability, land availability, any disputes and encumbrances on the land, whether any additional studies are required.</p> <p>Climate change risk assessment covering any identified climate risks, likelihood of occurrence, mitigation,</p>

Requirement	<i>To be completed by the Accounting Officer in reasonable detail</i>
	<p>adaptation and climate change resilience measures including disaster management plans.</p> <p>Economic evaluation to evaluate the economic benefits of the project to the economy, how the project will benefit the community and economic cost benefits analysis.</p>
6. Financial analysis.	<p>Financial analysis and modelling of the project covering costing of the technical options, revenue generation and forecasting, cash flow analysis, financing needs, sources and repayments. The financial analysis should include VFM assessment, confirmation that the project is affordable, viable and bankable, an indication of user willingness to pay as well as cover the costs of climate mitigation and adaptation.</p> <p>The financial analysis should also establish the level of fiscal commitments and contingent liabilities.</p> <p>NB. The financial model should be presented in an excel sheet format and include the sensitivity analysis.</p>
7. Risk assessment	<p>Identify and allocate project risks between the LG and the Private Party. [<i>Type of risk, its impact and possible mitigation mechanism. Examples of risks include; Financial &amp; commercial risks, Legal &amp; regulatory risks, Risks pertaining to technical aspects, Risks pertaining to Environmental &amp; Social sensitivities, climate change risks and political related risks.</i>]</p> <p>NB. Include a risk matrix.</p>
8. PPP Structure	<p>Assess whether the project can be implemented under traditional procurement (PPDA) or as a PPP.</p> <p>If it is suitable for implementation as a PPP, evaluate the various PPP options and recommend the most suitable option for the project. The options that may be considered include; DBFOM, BOO, BOT, BOOT etc.</p>
9. Procurement	<p>[<i>Describe choice of procurement method – open, restrictive or direct. If restrictive bidding, provide justification and a list of the prospective bidders.</i>] and procurement Schedule</p> <p>Provide draft tender documents including evaluation criteria and the draft PPP agreement. Include a communication and stakeholder engagement plan.</p>
10. Conclusion	[ <i>Summary of feasibility study and recommendations</i> ]



## Annex D: Procurement Templates

### Part 1 : Notice of the RFQ

**THE REPUBLIC OF UGANDA**  
**(Insert name of Local Government)**

#### **NOTICE OF RFQ**

**(Under the PPP Act 2015 and PPP Regulations 2019)**

**(Insert name of Local Government) invites requests for qualification for the project described in item 1 below.**

1. Description of the proposed project	
2. Address and contact person where RFQ may be obtained	
3. Deadline and cost (if any) for obtaining the RFQ	
4. Deadline and address for submission of RFQ	
5. Obligations of the private party regarding the proposed project.	

The Notice of the RFQ must contain the following in order to satisfy PPP Regulation 4:

- a brief description of the intention of the Local Government to undertake the project;
- the address where interested private parties may obtain a copy of the request for prequalification, the dates and times during which the request for prequalification is available and the cost, if any, of obtaining a copy;
- the date, time and place for submissions of the request for prequalification to the Local Government, and
- the obligations of the private party in the implementation of the project.

## Part 2: The RFQ

### Template

**Request for Prequalification (“RFQ”)  
Issued by [insert name] (“Local Government”)  
in respect of [describe] (the “Project”)**

#### Introduction

This RFQ relates to the procurement by the Local Government of a private party for the Project, which is a public private partnership. The procurement must be fair, equitable, transparent, competitive and cost-effective pursuant to Section 23(3) of the Public Private Partnerships Act, 2015.

Pursuant to this RFQ, the Local Government invites prospective bidders to apply for qualification to implement the Project. The prequalification process is governed by Regulations 4 to 8 of the Public Private Partnerships Regulations, 2019.

Only prequalified bidders will be invited by the Local Government to bid for the Project.

#### Disclaimer

The information provided in the RFQ documents and during the RFQ process (the “Information”) does not result in any obligations or liability on the part of the Local Government and does not entail any right to bidding or contract award on the part of the bidder. This RFQ does not purport to contain all of the information that a prospective participant may consider material or desirable in making its decision to participate.

No representation or warranty, expressed or implied, is made, and no responsibility of any kind is or will be accepted by the Local Government or any person, with respect to the accuracy and completeness of the Information. The Local Government may amend or replace any of the Information without giving any prior notice or providing any reason.

In furnishing this RFQ, the Local Government undertakes no obligation to provide recipients with access to any additional information, or to update, or to correct any inaccuracies which may become apparent in this RFQ or any other information made available in connection with the Project prior to the actual procurement. Additional information shall be provided at appropriate time during the formal procurement process.

No person has been authorized to give any information or make any representation except the Information and, if given or made, any such information or representation may not be relied upon as having been authorized by the Local Government or any other person.

All prospective bidders are responsible for acquainting themselves with the full suite of prequalification documents made available, all applicable laws and regulations and all matters relating to their ability to prequalify. All costs incurred by prospective bidders and bidders in relation to participation in the bidding proceedings will be for the account of those prospective bidders and bidders.

*[Local Government (with assistance from the Transaction Advisor, if appointed) to insert information and details, which must be consistent with the Concept Note and Feasibility Study Report submitted to and approved by the PPP Committee. The Local Government should ensure this RFQ is clear and informative in order to attract as many requests for prequalification as possible, to enhance competition among potential bidders and value for money for the Local Government.]*

#### Summary

Project Name:

Local Government:

Location:

Sector:

Contact Name:

Contact Position:

Email:

Phone:

Overview of the Project

*[Describe the problem or critical issue which the Project seeks to resolve, clearly outlining the service gap the Project will address. Describe the desired outcomes of the Project.]*

*Describe the services to be provided and who the primary beneficiaries of these services will be.*

*Describe the quantity of output/service to be provided or produced by the Project.*

*Describe the technical characteristics of the Project, including inputs and how the Project will generate the desired outputs.*

Proposed PPP model

*[Describe the proposed PPP arrangement [e.g., design, build, operate, maintain, transfer].]*

*Describe the services that the private party will provide.*

*Describe the remuneration mechanism [user-pays or Local Government pays or a combination].]*

*If any, describe Local Government support that has been committed to the project.]*

Outline of bidding process

*[The Local Government should indicate a reasonable timeline for the RFQ and RFB submissions.]*

<b>Milestone</b>	<b>Indicative date</b>
<u>RFQ</u>	
Issuance of the RFQ by the Local Government.	
[Pre-Qualification Meeting] <i>[optional]</i>	
Deadline for bidders to request clarifications on RFQ.	
Deadline for bidders to submit applications for prequalification.	
Evaluation of applications by Local Government.	
Notice of prequalified bidders issued by the Local Government.	
<u>RFB</u>	
Issuance of the Request for Bids and draft PPP agreement (including output specifications and performance requirements).	
[Pre-Bid Conference] <i>[optional]</i>	
Deadline for bidders to request clarifications on RFB.	
Deadline for the Local Government to respond to requests for clarification.	
Issuance by Local Government of final draft PPP agreement and output specifications where applicable.	
Deadline for bidders to submit bids.	
Evaluation of bids by Local Government.	
Notice of preferred bidder issued by the Local Government to all bidders.	

Milestone	Indicative date
Completion of negotiations between Local Government and preferred bidder.	
Notice of award issued by Local Government to preferred bidder.	
Preferred bidder and Local Government to satisfy conditions to commercial close.	
Private Party and Local Government sign the PPP agreement.	

### RFQ Procedures

Potential bidders shall be registered when they pick RFQ and accompanying documents. Applicants can ask clarification questions about the RFQ. All requests for clarifications by bidders must be submitted in writing to the contact person listed above. The Local Government will respond in writing simultaneously and on an anonymous basis.

The Local Government may organise a prequalification meeting to clarify any part of the RFQ invitation and documents. If so, the time, date and venue of such meeting will be communicated by the Local Government in writing to all applicants.

All documents submitted by parties in the course of the tender process become the property of the Local Government. The Local Government reserves the right to accept or reject all or any application to pre-qualify to bid, and/or to waive any minor defects in the bids, and accept the offer it deems most advantageous to the Local Government.

Notwithstanding any information express or implied in this RFPQ, any additional communications issued by [Government Body], including any Addendum / Clarification, it is the sole responsibility of any Prospective Bidder to determine and satisfy itself, at its own cost, expense and risk, and by such means as it considers necessary or desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; the terrain, geological, meteorological, and hydrological conditions; existing works and plans for future works in the area; existing and planned above ground and sub-level utilities; easements; existing or threatened legal disputes or issues; environmental and social concerns and issues; climate change issues, the requirement and availability of labour, materials, equipment, aggregate sources, water, power, roads, communications and other relevant factors; resource requirements; traffic projections; the financial viability of the Project; risks and contingencies that may affect the cost, duration, execution and completion of the Project.

### Qualification Requirements

*[Local Government (with assistance from the Transaction Advisor, if appointed) to adapt the qualification requirements to ensure they require potential bidders to demonstrate their technical and financial capacity to undertake the project. By applying prequalification criteria the Local Government ensures that only serious applicants possessing the required technical and financial capability are invited to submit a bid.]*

#### **1. Legal**

Prospective bidder to be an individual, partnership, corporation duly registered or a consortium duly evidenced.

#### **2. Technical**

Prospective bidder to demonstrate technical experience, capabilities for the project (experience in designing, constructing and operating at least [two] similar projects in the last ten years) and relevant climate related experience. In relation to climate change, the prospective bidder should also demonstrate:

- a) that in the ..... years preceding the RFQ Submission Date, it has experience of undertaking implementation of Climate-Resilient Infrastructures projects such that the aggregate of total project cost of such Climate-Resilient Infrastructure projects is no less than [insert the amount].
- b) experience in Climate-Resilient Infrastructure by any of the following Entities, strictly acting as main or principal contractor:
  - i. The Prospective Bidder itself ;
  - iiA Qualifying Shareholder, if the Prospective Bidder is a Consortium;
  - iii. The Construction Contractor;

### **3. Financial**

Prospective bidder to demonstrate financial capability (e.g. expressed as net worth) as proven by recent audited financial statements.

### **4. Local Content**

The prospective bidder to demonstrate how they will include Ugandan nationals in the implementation of the project, knowledge transfer, use of local materials and other local content requirements.

### **5. Management capacity**

Prospective bidder to demonstrate that they have qualified and experienced management and staff required to implement the project.

### **6. Other**

*[Local Government (with assistance from the Transaction Advisor) to insert other specific requirements tailored to the project specific requirements.*

### **7. Documents to be submitted.**

- Business structure of the prospective bidder (single bidder or consortium, members of consortium, interest in consortium, etc.);
- Basic information sheet;
- Incorporation documents for all entities;
- Certification that they have not been disqualified or blacklisted by the Local Government and/or the Government of Uganda;
- Project specific experience exemplifying technical capabilities required;
- Sub-contractor's (if any) notarised statement of willingness to participate in, and capacity to undertake the requirements of, the project;
- List of qualified personnel who fulfil requirements as stated in the staff-specific technical qualification requirements;
- Statement of financial capability/financial statements;
- Letter for application to pre-qualification and
- Authority to apply for pre-qualification and designation of authorised representative (board resolution and power of attorney nominating an authorized representative).

### **8. Climate Resilient Infrastructure**

The following must be provided by the prospective bidder proposed to meet the Experience in Climate-Resilient Infrastructure requirements, as identified in the Business Structure:

- Confirmation from the Climate-Resilient Infrastructure owner that the Climate-Resilient Infrastructure project has been implemented by that Entity in the ..... preceding the RFQ Submission Date.

- Project data sheets specifying the name and location of the Climate-Resilient Infrastructure project including, total project cost, climate-resilient component, client name and contact details.

The prospective bidder shall also provide names of shareholders or consortium partners or contractors who will fulfil the climate change experience requirement as part of their business structure related documentation in the RFQ.

## **9. Submission**

*[Local Government to insert its submission requirements, e.g. number of copies, coding/ stamping, signing, marking of originals and copies, etc., hard copies/ electronic submissions]*

*[Submission date/ time and address location]*

*[Opening procedures]*

Late applications will not be opened or considered

Only submissions from bidders who registered with the Local Government will be accepted.

Bids will not be considered valid unless the following rules are complied with:

- Each prospective bidder may submit only one application for prequalification;
- Prospective bidder may not be a member of another consortium, nor have an affiliate which is a member of another consortium; and

### Grounds for Disqualification

- Material or willful misrepresentation in the pre-qualification process;
- Corrupt practice, fraud, collusion, coercion, undesirable or restrictive practice in the pre-qualification process;
- Any form of political or other lobbying with respect to the pre-qualification process; illegal conduct or attempt to influence evaluation of the qualification documents or the pre-qualification process;
- Any ground of disqualification under the PPP Act 2015 and PPP Regulations;
- Conflict of interest.

## Part 3: The RFB<sup>2</sup>

**Template**  
**Request for Bids (“RFB”)**  
**Issued by [insert name] (“Local Government”)**  
**in respect of [describe] (the “Project”)**

### Introduction

This RFB provides the procedures and requirements for the submission of Bids by Bidders and the selection by the Local Government of a Successful Bidder to the Project. Only pre-qualified bidders shall be allowed to submit Bids at this second stage of the Bidding Process.

The Climate Change Mitigation and Adaptation Plan for the Project comprising components described in Appendix 19 shall be part of the RFB. The Climate Change Mitigation and Adaptation Plan should be capable of meeting the Performance Standards as set out in Schedule [insert relevant schedule number] of the PPP Agreement.

In addition, the Audited Financial Model should be consistent and synchronous with the Technical Proposal including but not limited to the Construction Plan, Operations and Maintenance Plan, Climate Change Mitigation and Adaptation Plan as specified therein and the Project Financing Plan (see below), failing which the Bid may be rejected.

Whether there are any material inconsistencies between any 2(two) or more of the following: Outline Design; Technical Proposal; Construction Plan; Operations and Maintenance Plan; Climate change mitigation and adaptation Plan; Financial Bid; Audited Financial Model; Project Financing Plan; Letters of Commitment from Proposed Investors and Letter of Commitment /Interest Proposed Lenders including terms and conditions or reservations attached to their financing duly priced in the Financial Proposal; and the marked up PPP Agreement showing Reservations.

Whether the major components of the Bid being the Outline Design, Construction Plan, Operation and Maintenance Plan and Climate change mitigation and adaptation Plan together with the Financial Model and the Project Financing Plan are capable of meeting the Performance Standards as set out in the Schedule [insert relevant schedule number] of the PPP Agreement and achieving the Final Scheduled Completion Date as defined in the Clause [insert relevant clause number] of the PPP Partnership Agreement.

The selection of a Successful Bidder shall be done in accordance with the Uganda PPP Act of 2015 and the PPP Regulations of 2019.

### Disclaimer

The information contained in this RFB and the other Background Information Documents subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the Local Government or any of its employees or advisors, is provided to the Bidder(s) on the terms and conditions set out in this RFB, the Bidding Documents and such other terms and conditions subject to which such information is provided.

Nothing in this RFB (including the issuance of the Background Information Documents) implies that the Local Government is bound to select a Bidder or to appoint a selected Bidder, as the case may be, for the Project.

At any time prior to the execution of the PPP Agreement by the Successful Bidder, the Local Government reserves the right not to proceed with the Bidding Process and the execution of the PPP Agreement, without prior notice or incurring liability, and without any obligation to give any reason not to proceed.

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<sup>2</sup> This RFB template starts from page 43 to 81.

The Local Government reserves the right to accept any or reject any or all of the Bids without giving any reason whatsoever. The Local Government are not obliged to accept any Bid or to give any reasons for their decision.

The Local Government reserves the right to amend the scope of the Project and/or the terms of the RFB at any point, without incurring liability.

Without prejudice to any other term of the RFQ or this RFB, the Local Government (and any other associated party) makes no representation or warranty and shall have no liability under any law, statute, rule or regulation, principle of restitution or unjust enrichment or otherwise to any person, including any Bidder, the Successful Bidder (or the special purpose company that it shall form) or any other person:

- for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in the Background Information Documents or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Background Information Documents and any assessment, assumption, statement or information contained therein or deemed to form part of the Background Information Documents or arising in any way for participation in the Bidding Process;
- in respect of any failure, whether before, on, or after the signing of the PPP Agreement, to (i) disclose or make available any information, documents or data; (ii) review or update the RFQ, this RFB, the Bidding Documents, or any Background Information Document; (iii) provide any information regarding any inaccuracy, error, omission, defects, or inadequacy in any of such documents,

in each case, even if attended by gross negligence, nor shall any of the foregoing be a ground for the refusal to enter into or rescission of the PPP Agreement by the special purpose corporation to be formed by the Successful Bidder.

Note: *Local Government (with assistance from the Transaction Advisor, if appointed) to insert information and details, which must be consistent with the Feasibility Study Report submitted to and approved by the PPP Committee. The Local Government should ensure this RFB is clear and informative in order to attract as many bids as possible, to enhance competition among potential bidders and value for money for the Local Government.*

#### Project summary

Project Name:

Local Government:

Location:

Sector:

Contact Name:

Contact Position:

Email:

Phone:

#### Definitions

Unless otherwise provided herein, the following terms used in this RFB shall have the following meanings:

“**Affiliate**” means, a corporation or entity effectively Controlled by or Controlling the Bidder or associated with the Bidder under common ownership and Control. For the purpose of this definition “Control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

“**Background Information Documents**” means certain documents will be provided to the Bidders solely to provide background information on the Project, which documents shall be made available by the Local Government. All references herein to Background Information Documents include the assumptions, assessments, statements, interpretations and other information and associated documents.



“**Bid**” means a valid offer to undertake the Project to be submitted by a Bidder, consisting of a technical bid and a financial bid.

“**Bids Submission Date**” means the latest date and time that the Bidder is allowed to submit Bids in accordance with this RFB.

“**Bidder**” means any individual, partnership, corporation, or Consortium that is a Pre-Qualified Bidder and participates in this second stage of the Bidding Process.

“**Bidding Documents**” means the following documents, which are issued to Bidders:

- (a) this Request for Bids and documents incorporated herein by reference;
- (b) any addendums and clarifications issued by the Local Government during the Bidding Process; and
- (c) the PPP Agreement and its annexes.

“**Bidding Process**” means the process beginning from the publication of the Invitation to Pre-Qualify and Bid until the signing of the PPP Agreement.

“**Consortium**” means an unincorporated association of natural or juridical persons bound by contract or law, solidarily undertaking by mutual written agreement, a common enterprise which is to participate in the Bidding Process; and “**Consortium Member**” means any member of a Consortium.

“**Lead Member**” means, for a Bidder which bids as a Consortium, the Consortium Member having the largest equity interest in the Consortium, which should not be less than (*[insert]* %), and which should be designated in writing as such by the other Consortium Members.

“**Outstanding Dispute**” means, in respect of a Bidder, any Consortium Member, any proposed contractor or Affiliate of the Bidder, the Successful Bidder (or the special purpose corporation it shall form), or any of the officers, employees, agents, or advisers of any of these entities:

- (a) any litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency that have been started or threatened against it or any of its Subsidiaries;
- (b) any judgment or order of a court, arbitral body or agency made against it or any of its Subsidiaries which has not been satisfied in full.

in each case, involving a dispute with the Local Government, the national Government, or any other local government or public body in Uganda.

“**PPP Agreement**” means the agreement to be signed by the Local Government and the special purpose corporation formed by the Successful Bidder.

“**Preferred Bidder**” means Bidder determined by the Local Government has having the highest post-qualified Bid.

“**Project**” means the project to *[finance]* *[design]* *[construct]* *[operate]* *[maintain]* the *[Name of the Project]* in accordance with this Request for Bids.

*[Local Government (with assistance from the Transaction Advisor, if appointed) to complete.]*

“**RFQ**” means the Request for Qualification, the first stage of the Bidding Process involving the submission, opening and evaluation of the documents submitted by the prospective Bidders (which was completed prior to the issuance of this RFB).

“**Successful Bidder**” means the Bidder issued with a Notice of Award by the Local Government.

## SECTION 1 – GENERAL PROVISIONS

### Bidding Documents

The Bidding Documents shall govern the preparation, submission, and evaluation of Bids and the selection of and award of the Project to the Successful Bidder.

The PPP Agreement and its annexes, once duly signed and entered into full force and effect, shall govern the contractual relationship between the Successful Bidder and the Local Government in the implementation of the Project.

### Background Information Documents

The purpose of the Background Information Documents is to provide interested parties with information that may be useful to them, in making their financial offers or otherwise. The Background Information Documents are not agreements or offers by the Local Government to the Bidder(s) or any other person. The Local Government, or any other associated party, is not bound by any of the Background Information Documents.

The Background Information Documents include information which reflect various assumptions and assessments in relation to the Project and which may depend upon interpretation of law.

Each Bidder should conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in the Background Information Documents and obtain independent advice from appropriate sources.

### Indicative Milestone Dates

*[The Local Government should indicate a reasonable timeline for the RFB submissions.]*

Below is an indicative schedule for the Bidding Process, as follows:

<b><u>Milestone</u></b>	<b><u>Date</u></b>
<b><u>RFB</u></b>	
Issuance of the Request for Bids and draft PPP agreement (including output specifications and performance requirements).	
[Pre-Bid Conference] <i>[optional]</i>	
Deadline for bidders to request clarifications on RFB.	
Deadline for the Local Government to respond to requests for clarification.	
Issuance by Local Government of final draft PPP agreement and output specifications where applicable.	
Deadline for bidders to submit bids.	
Evaluation of bids by Local Government.	
Notice of preferred bidder issued by the Local Government to all bidders. /	
Completion of negotiations between Local Government and preferred bidder.	

Notice of award issued by Local Government to preferred bidder.	
Preferred bidder and Local Government to satisfy conditions to commercial close.	
Private Party and Local Government sign the PPP agreement.	

The actual schedule may be changed by the Local Government at any time, without incurring any liability to the Bidders. Bidders shall be notified by the Local Government of any changes in the indicative milestone dates through bid addenda.

#### Responsibility of Bidders

Notwithstanding any information given in the Bidding Documents, Background Information Documents, and any additional information or documents provided by the Local Government, including supplementary notices and bid addenda, it is the sole responsibility of each Bidder to:

- a. be fully acquainted with the requirements, terms, and conditions of the Bidding;
- b. examine all of the Bidding Documents and Background Information Documents and verify the correctness, completeness, accuracy, and reliability of the information contained in these documents;
- c. familiarize itself with all the applicable laws and regulations of Uganda, whether national or local, which may affect the Bidding and the Project; and
- d. determine and satisfy itself, at its own cost and risk, and by such means as it considers necessary and desirable, as to all matters pertaining to the execution of the Project, including but not limited to the location and nature of the Project; existing works and plans for future works in the area; existing or threatened legal disputes or issues; climate, environmental and social concerns and issues; the requirement and availability of labour, materials, equipment, aggregate sources, water, power, communications and other relevant factors; resource requirements; the financial viability of the Project; and risks and contingencies that may affect the cost, duration, execution and completion of the Project.
- e. undertake climate due diligence as part of their due diligence prior to submission of proposal. Language used can be as follows: The Pre-Qualified Bidders shall during such visits ascertain by themselves the Project Site and including but not limited to soil conditions, existing facilities and structures, surroundings, climate change risks, availability of material, power, water and other utilities for construction, access to the Project Site, applicable laws and regulations, clearances obtained by [insert name of the Government Body] for the Project, and such other matters as the Pre-Qualified Bidders consider relevant to the Project or that might affect the Pre-Qualified Bidder's ability to execute the Project, if awarded. [insert name of the Government Body] shall facilitate the Project Site visits and due diligence by the Pre-Qualified Bidders by providing such assistance as is reasonably requested by them.

The Bidders (including any Consortium Members, Subcontractors, or Affiliates) and the Successful Bidder (and the special purpose company that it shall form) shall not be entitled to and shall not make any claim against the Local Government, or any other associated party, whether on the basis of contract or tort, for damages, extensions of time, or payments on the grounds:

- a. of any misunderstanding or misapprehension in respect of the Bidding Documents, and/or Background Information Documents; or
- b. that incorrect or insufficient information relating to the Bidding Documents, and/or Background Information Documents was given to them by the Local Government, or any other associated party.

By submitting its Bid, a Bidder shall be deemed to have fully examined and accepted all of the terms and conditions in the RFQ, this RFB and the Bidding Documents.

#### Costs and Expenses of Participation

Bidders shall bear all costs, losses and damages associated with or resulting from their participation in the Bidding Process. The Local Government shall not be held responsible or liable in any way for any such costs or damages incurred by any Bidder (whether incurred by it directly or by its advisers, contractors, Affiliates or other persons), regardless of the results of the Bidding Process.

#### Clarifications on Bidding Documents

A Bidder may submit queries and/or comments on the Bidding Documents or the Background Information Documents. Bidders must submit their queries and/or comments on or before the deadline. Queries must be concrete or clarifying and not purely hypothetical in nature. All queries and comments should be sent in writing, by personal delivery, email or fax, to the following:

*[The Local Government to complete.]*

Attention:

Address:

E-mail:

Telephone:

In case of a discrepancy between copies personally delivered, emailed, and/or faxed, the copy personally delivered shall prevail.

The Local Government shall decide which queries received on the dates specified above it shall respond to, and is under no obligation to respond to all queries received. Responses to queries and any modifications to the Bidding Documents will be made on a non-attributable basis and shall be in writing and provided to Bidders through supplementary notices or addenda issued by the Local Government and sent to all qualified Bidders. All supplementary notices and addenda issued by the Local Government shall be deemed to be incorporated in and made an integral part of this Request for Bids and/or the relevant Bidding Documents.

#### Ownership of Documents

All documents submitted by a Bidder to the Local Government pursuant to this Request for Bids shall become the property of the Local Government and any information obtained by the Local Government from such documents may be reasonably used by it subject to the confidentiality clause in this RFB.

#### Language and Foreign Documents

The Bid, and all correspondence and documents relating to the Bid, shall be prepared and written in the English language. Any printed literature or document furnished by Bidders written in any other language shall be accompanied by an English translation. In case of conflict, the English translation shall prevail.

#### Governing law

The bidding process shall be governed by the laws of Uganda.

## SECTION 2 – BID PROPOSALS

On or prior to the Bids Submission Date, a Bidder must submit its Bid consisting of the following documents:

### Envelope 1

Envelope 1 should contain the following documents:

- a. Bid Letter, using the form in Appendix 1;
- b. Authority to Submit Bid and Designation of Authorized Representative, using either the form in Appendix 2 or Appendix 3, as applicable;
- c. Only if a Bidder is a Consortium, a Business Structure using the form in Appendix 4;
- d. Compliance Letter using the form in Appendix 5;
- e. The Bid Security using the form in Appendix 6;
- f. Certified True Copy of a valid Tax Clearance Certificate, issued by the Uganda Revenue Authority or a similar document issued by a competent tax authority in a country other than Uganda;
- g. Technical Bid, consisting of:  
[*Local Government (with assistance from the Transaction Advisor) to confirm requirements for technical bid, tailored to the project specific requirements*]
  - (i) Project Implementation Plan, detailing the matters outlined in Appendix 8;
  - (ii) Risk Management Plan, detailing the matters outlined in Appendix 9;
  - (iii) Conceptual Engineering Design, detailing the matters outlined in Appendix 10;
  - (iv) The Business Plan, detailing the bankability and financial feasibility of the Bidder's offer and further detailing the matters outlined in Appendix 11;
  - (v) Local Content Plan detailing the matters outlined in Appendix 12.
  - (vi) [others, e.g., Operation and Maintenance Plan, Safety Plan, Environment Management Plan, climate change and disaster management plan etc. ]

The documents that the Bidders will submit as part of Envelope 1 must use A4 paper size, font type Times New Roman, font size 12 pt and single line spacing.

### Envelope 2

Envelope 2 should contain the following documents:

- a. Bid Price, using the form in Appendix 13; and
- b. Financial model, following the requirements set out in Appendix 14.

### Validity of bids

A Bid shall be valid for a period of not less than [*insert*] days from the Bids Submission Date.

[*Local Government to confirm this section is consistent with its submission requirements and evaluation criteria.*]

### **SECTION 3 – BID SECURITY**

*[Local Government (with assistance from the Transaction Advisor) to insert appropriate amounts and timelines]*

#### Form of Bid Security

The Bid Security submitted as part of the Bid must be an irrevocable standby letter of credit in the amount of UGX *[insert]* and in the form of Appendix 6, without modification.

#### Validity and purpose

The Bid Security shall be valid for *[insert]* days from the Bids Submission Date. The Bid Security shall guarantee that a Bidder shall comply with all of the terms of this Request for Bids and, if declared the Successful Bidder, that it shall comply with all of the requirements to achieve Commercial Close and execute the PPP Agreement.

#### Forfeiture of Bid Security

The Bid Security shall be subject to forfeiture in its entirety in favour of the Local Government upon the occurrence of any of the following events:

- a. the Bidder withdraws its Bid at any time on or before *[insert]* days from Bids Submission Date;
- b. the Bidder, any Consortium Member, any proposed contractor or Affiliate of the Bidder, the Successful Bidder (or the special purpose corporation it shall form), or any of the officers, employees, agents, or advisers of any of these entities
  - (i) commits any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, or Restrictive Practice (each as defined in Section 6);
  - (ii) has a Conflict of Interest (as defined in Section 6);
  - (iii) violates the Lock-Up Rules (as defined in Section 6); or
  - (iv) has any Outstanding Dispute,regardless of the stage of the Bidding Process when the violation existed, was committed, or discovered;
- c. the Bidder is disqualified or fails to post-qualify due to a material misrepresentation in any statement made or document submitted;
- d. the Successful Bidder (or the special purpose corporation it shall form for the Project) fails to comply with the requirements to achieve Commercial Close within *[insert]* days from official receipt by the Successful Bidder of the Notice of Award;
- e. the Successful Bidder fails to sign the PPP Agreement within *[insert]* days from receipt by the Successful Bidder of notice from the Local Government that all of the requirements to achieve Commercial Close have been complied with;
- f. the Successful Bidder (or the special purpose corporation it shall form for the Project) fails to post the performance security on the signing date; or
- g. other events as described in this Request for Bids as grounds for forfeiture of the Bid Security.

#### Return of Bid Security

Bidders who: (a) are disqualified or (b) fail to post-qualify (for reasons other than a-g above), will have their Bid Security returned to them without interest within *[insert]* days from receipt of written notice of their disqualification or failure to post-qualify (other than Bid Securities that have already been forfeited).

Within *[insert]* days after the signing of the PPP Agreement by the Successful Bidder (or legal entity formed by the Successful Bidder), or *[insert]* days after the Bids Submission Date, whichever comes earlier, the remaining Bid Securities of all Bidders, except for that of the Successful Bidder, whose Bid Securities have not been forfeited or previously returned will be returned without any interest. Any Bidder who has not been disqualified may extend the validity of its Bid Security.

## SECTION 4 – SUBMISSION AND EVALUATION OF BIDS

*[Local Government to confirm this section is consistent with its submission requirements and insert appropriate details and timelines.]*

### Form of Submissions

The Bidder shall prepare and submit its Bid in the following manner:

- a. For the documents comprising Envelope 1, the Bidder shall prepare and submit one set of the original documents and two sets of clear photocopies of the documents comprising the original set;
- b. The original set should be placed in a sealed envelope marked with the Bidder's name, the name of the Project, and marked "Envelope 1 - Original";
- c. Each page of the original set should be initialled on the right margin of every page by the Bidder's authorized representative and numbered continuously;
- d. Each set of photocopies should be placed in a sealed envelope marked with the Bidder's name, the name of the Project, and marked "Envelope 1 – Copy". Each set shall be fastened or bound;
- e. The documents comprising Envelope 2 shall be prepared in the same way as the documents comprising Envelope 1;
- f. The Bidder shall submit one readable compact discs ("CD-R"), flash disks or flash drives containing electronic files of all the contents of Envelope 1, in Portable Document Format (.pdf), with the pages arranged in exactly the same sequence as the sequence in the original set of the documents in Envelope 1. In the event of any conflict between the printed (paper) copies and the electronic copies, the original printed (paper) copies shall prevail;
- g. The electronic files of Envelope 2 shall be prepared in the same way as that of Envelope 1.
- h. The CD-Rs, flash disks or flash drives shall be placed inside the respective envelopes for original documents;
- i. The Bidder shall place the original sets of Envelopes 1 and 2 in one outer sealed envelope or box marked with the Local Government's name, the name of the Project, the name and address of the Bidder and marked "Original - do not open before [date and time]";
- j. The Bidder shall place the copies of Envelopes 1 and 2 in one outer sealed envelope or box marked with the Local Government's name, the name of the Project, the name and address of the Bidder and marked "Copy - do not open before [date and time]";
- k. Unsealed and unmarked Bids shall not be a ground for disqualification. However, the Local Government shall assume no responsibility for the misplacement or premature opening of the Bids.

### Deadline and Place of Submission of Bids

Bidders shall submit their Bids to:

*[Name of ]Local Government]*

*[Name of the Project]*

*[Full address]*

The Bids must be submitted between *[Time]* and *[Time]* on the Bids Submission Date, outside of which time the Bids shall not be accepted by the Local Government. Bidders who fail to submit their Bid within the prescribed time on the Bids Submission Date shall be disqualified.

Each set of Bid submitted shall be numbered in the order received and stamped with the time of receipt. The Local Government shall register all received bids and issue proof of receipt to each bidder whose bid has been received.

### Submission, Opening, and Evaluation of Bids

The submission, opening and evaluation of Bids will be undertaken by the Local Government in accordance with the PPP Regulations 2019 and the criteria set out in this RFB.

During the evaluation, the Local Government may, at its discretion, (i) request Bidders to make clarifications of their Bids; (ii) invite Bidders to a meeting(s) to provide clarifications and/or confirmations; or (iii) request Bidders to verify the submitted documents. Clarifications shall be limited to providing explanations and/or supporting documentation for information and/or plans included as part of the Bid, but shall not include the submission of additional documents in the Bid nor its modification.

The evaluation committee will evaluate whether the Climate change mitigation and adaption Plan submitted by the Pre-Qualified Bidder is capable of meeting the Performance Standards as described in Schedule of the PPP Agreement.”

#### Confidentiality

Information relating to the examination, evaluation, clarification, and comparison of Bids and recommendations concerning the award of the Project shall not be disclosed to any of the Bidders or other persons not concerned with the Bidding Process; provided, that the Local Government shall not have the obligation to keep any information submitted by a Bidder confidential after the signing of the PPP Agreement or the lapse of [insert] days after the Bids Submission Date, whichever comes earlier.

The Local Government will not return either the original or the copies of any Bid submitted by a Bidder, other than as specified in this RFB.



## **SECTION 5 – NOTICE OF AWARD, COMMERCIAL CLOSE, AND EXECUTION OF PPP AGREEMENT**

*[Local Government (with assistance from the Transaction Advisor) to insert appropriate amounts and timelines]*

### Notice of Award and Commercial Close

Following issuance of the Notice of Award, the Successful Bidder must submit the following documents to the Local Government as conditions for the execution and signing of the PPP Agreement:

- a. Notice of Award signed by the authorized representative of the Successful Bidder;
- b. Performance Security;
- c. Letters from reputable financial institutions expressing their willingness to provide sufficient credit facilities as required in the Successful Bidder's Financial Bids, and also indicating the terms and conditions for such facilities, using the form in Appendix 7;
- d. Certificate of Incorporation, Memorandum and Articles of Association of the Ugandan special purpose company;
- e. Proof of commitments of the equity contribution equivalent to at least *[insert]* percent (*[\*]*%) of the Bid Price multiplied by *[insert]* percent (*[\*]*%) - e.g. a certified copy of the most recent return of allotment showing the actual paid-up capital and the share holders agreement between the shareholders of the Special Purpose Company; and
- f. Any other requirements that the Local Government may specify.

Failure to comply with the above requirements within *[insert]* days of the Notice of Award period shall result in the forfeiture of the Successful Bidder's Bid Security and the withdrawal of the Notice of Award. Following the Local Government's receipt of the documents referred to above, the Local Government shall determine and notify the Successful Bidder of its compliance with all such requirements.

If at any time after the issuance of the Notice of Award and prior to the signing of the PPP Agreement, the Successful Bidder (and/or the special purpose company that it shall form) is found to have (i) engaged in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice, (ii) a Conflict of Interest, (iii) violated the Lock-Up Rules, or (iv) an Outstanding Dispute, it shall be disqualified, its Notice of Award will be withdrawn, and its Bid Security shall be forfeited.

### Performance Security

- a. The Performance Security for construction works (the "Construction Security") shall secure the faithful performance by the Bidder of its construction obligations under the PPP agreement.
- b. The Construction Security must be in the form of cash, irrevocable letter of credit, bank draft or bank guarantee using the form in Appendix 18, without modification and be issued by a reputable financial institution licensed by the Central Bank of Uganda.
- c. The Construction Security shall be in an amount equivalent to *[[insert]* percent (*[insert]* %) of the Bid Price].
- d. The Bidder shall ensure that the Construction Security is at all times in full force and effect during the period specified in the PPP Agreement.
- e. The Performance Security for operation and maintenance (the "O&M Security") shall secure the faithful performance by the Bidder of its O&M obligations under the PPP Agreement.
- f. The O&M Security must be in the form of cash, irrevocable letter of credit, bank draft or bank guarantee issued by a reputable financial institution licensed by the Central Bank of Uganda.
- g. The O&M Security shall be in an amount equivalent to *[[insert]* percent (*[insert]* %) of the Bid Price].
- h. The Bidder shall ensure that the O&M Security is at all times in full force and effect during the period specified in the PPP Agreement.

### Execution of PPP Agreement

Failure by the SPC to sign the PPP Agreement within the specified time frame will result in forfeiture of the Bid Security and the withdrawal of the Notice of Award.

## SECTION 6 – GENERAL CONDITIONS AND PROHIBITIONS

### General

By submitting its Bid, the Bidder acknowledges and agrees that:

1. it, including all Consortium Members, proposed contractors, and Affiliates, and their respective officers, employees, agents, and advisers shall observe the highest standard of ethics during the Bidding Process;
2. it, including all Consortium Members, proposed contractors, and Affiliates, and their respective officers, employees, agents, and advisers shall not commit any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, or Restrictive Practice;
3. it, including all Consortium Members, proposed contractors, and Affiliates, and their respective officers, employees, agents, and advisers, shall not engage in any form of political or other lobbying with respect to the Project or attempt to influence the outcome of the Bidding Process; and
4. it accepts all the terms and conditions of the Bidding Documents.

### Corrupt Practice, Fraudulent, Collusive, Coercive, Undesirable Practice, and Restrictive Practices

If a Bidder, any Consortium Member, any proposed contractor, or Affiliate, the Successful Bidder or the special purpose corporation, as the case may be, is found to have, directly or indirectly or through an agent, engaged in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, or Restrictive Practice during the Bidding Process, or after the issuance of the Notice of Award or the execution of the PPP Agreement, the Local Government shall:

1. reject or disqualify the Bid of or withdraw the Notice of Award to such Bidder, without being liable in any manner whatsoever to the Bidder;
2. forfeit and appropriate the Bid Security of such Bidder, without prejudice to any other right or remedy that may be available to the Local Government;
3. seek to impose the maximum penalties for civil and criminal liability available under the applicable law on individuals and/or entities involved in such practices; and
4. prohibit or disqualify individuals and/or entities involved in such practices from participating in any bidding of the Local Government from the date that they are found to have directly or indirectly engaged in any such practices.

The following terms shall have the meaning hereinafter respectively assigned to them:

**“Corrupt Practice”** means any of the prohibited acts under Anti-Corruption Act 2009 and any other corrupt practices, including the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process or the implementation of the Project.

**“Fraudulent Practice”** means any hoax, delusion, falsification, scheme, artifice, dishonesty, trickery, deceit, cheating and the like, especially when involving misrepresentation, omission, concealment, suppression, non-disclosure or disclosure of incomplete facts, whether in fact or equity, in order to influence the Bidding Process or implementation of the PPP Agreement.

**“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, or exercising undue influence upon any person or property to influence any person’s participation or action in the Bidding Process or the implementation of the PPP Agreement.

**“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by the Local Government with the objective of canvassing, lobbying or (ii) in any manner influencing or attempting to influence the Bidding Process, the evaluation of Bids, or the implementation of the PPP Agreement.

**“Restrictive Practice”** means any act, scheme, plan or agreement such as forming a group, clique, cartel, trust, syndicate, combine, pool and the like or arriving at any understanding or arrangement among Prospective Bidders, Consortium Members, contractors, or Bidders with the objective of restricting, subverting or manipulating a full and fair competition in the Bidding Process.

### Conflict of Interest

The Bidders and Consortium Members, including their Affiliates, must not have any Conflicts of Interest. If at any time prior to the signing of the PPP Agreement, any Bidder or Bidders, Consortium Member, or proposed construction contractor, or any Affiliate of any of these, is found to have a Conflict of Interest as defined in this Section, it shall be disqualified from further participating in the Bidding Process. If the Conflict of Interest involves another Bidder or Bidders, then both Bidders shall be disqualified.

Without limiting the generality of Conflict of Interest, any of the following will be considered a Conflict of Interest:

- a. A Bidder or any of the Consortium Members or any of their Affiliates (of either a Bidder or any of its Consortium Members) is a member of another Consortium, or an Affiliate of a member of another Consortium;
- b. A Bidder, any of its Consortium Members, or any of their Affiliates (of either a Bidder or any of its Consortium Members) and any other Bidder, any of its Consortium Members, or any of their Affiliates (of either a Bidder or any of its Consortium Members) have common controlling shareholders;
- c. A Bidder or any of the Consortium Members, or any of their Affiliates (of either a Bidder or any of its Consortium Members) is proposed as a construction contractor of another Bidder;
- d. A Bidder or any of the Consortium Members, or any of their Affiliates (of either a Bidder or any of its Consortium Members) has ownership interest of at least [insert]% in any other Bidder or any Consortium Member of any other Bidder, or any of their Affiliates (of either the other Bidder or any of its Consortium Members);
- e. Another Bidder or any Consortium Member of another Bidder, or any of their Affiliates (of either the other Bidder or any of its Consortium Members) has ownership interest of at least [insert]% in a Bidder or any of its Consortium Members, or any of their Affiliates (of either the Bidder or any of its Consortium Members);
- f. A member of the board of directors, partner, officer, employee, professional advisor or agent of a Bidder or any Consortium Member, or any of their Affiliates (of either the Bidder or any of its Consortium Members), is also directly involved in any capacity related to the Bidding Process for the Project for another Bidder or any Consortium Member of any other Bidder, or any of their Affiliates (of either the Bidder or any of its Consortium Members);
- g. A Bidder, any of its Consortium Members, any of its proposed construction contractors, or any Affiliate of any of these, has participated as a consultant to the Local Government in the preparation of any documents, design, or technical specifications of the Project or in connection with the Bidding Process;
- h. A Bidder, any of its Consortium Members, any of its proposed construction contractors, or any Affiliate of any of these, engages any legal, financial, or technical adviser of Local Government in relation to the Project, or anyone who is or was an employee of Local Government less than one year before his or her engagement by the Bidder, any of its Consortium Member, or any of its proposed construction contractors, or any Affiliate of any of these;
- i. A member of the board of directors, partner, officer, professional advisor, or agent of a Bidder or any Consortium Member, or any of their Affiliates (of either the Bidder or any of its Consortium Members) is related by consanguinity or affinity up to the third civil degree to the Local Government who have direct access to information that may substantially affect the result of the Bidding.

## **SECTION 7 – LOCK-UP RULES**

Different Lock-Up Rules apply depending on the stage of the bidding process. Any violation of the Lock-Up Rules shall be a ground for disqualification from the Bidding.

### During Bidding Period

From the Bids Submission Date until the execution of the PPP Agreement (“**Bidding Period**”), the following rules shall apply:

#### Corporation and Partnership

For a Bidder who is a corporation or a partnership, no changes shall be made in the equity or ownership structure of such Bidder without prior written approval by the Local Government unless the bidder is a listed company.

#### Consortium

For a Bidder who is a Consortium, no changes shall be made in the composition of the Consortium and in the committed percentage equity interest of each Consortium Member in the special purpose company which it shall be required to incorporate if it wins the Bid without prior written approval of the Local Government.

## APPENDIX 1 – FORM OF BID LETTER

[*Letterhead*]

I, [name], [citizenship], of legal age, with office address at [address], as the authorized representative of [name of Bidder], a [corporation/partnership/Consortium], [organized and existing under and by virtue of the laws of [place of incorporation/registration] or organized by agreement among its Consortium Members], after having been duly sworn according to law, hereby declare for and on behalf of [name of Bidder] that:

1. In accordance with the Bidding Documents for the [Name of the project], [name of Bidder], a [partnership/corporation/Consortium] with business address at [business address], hereinafter referred to as the Bidder, submits its to [insert relevant PPP model e.g DBFOM, BOO, BOOT etc] the [Name of the Project] [the “Project”] in accordance with the Request for Bids.
2. Bidder’s Bid consists of the following components: (i) Envelope No. 1 - this Bid Letter, Authorization and Designation of Representatives, Bid Security, and Additional Requirements for Consortiums, and Technical Bid; and (ii) Envelope No. 2 - Financial Bid.
3. [Name of Bidder] declares that all statements made, and the information and documents submitted in its Bid are true and correct as of the date of this statement, and any misrepresentation or false statement made therein shall be a ground for its disqualification.
4. [Name of Bidder] authorizes the Local Government to conduct any inquiries or investigations to verify the statements, documents, and information submitted in its Bid, and to seek clarification from any person regarding any aspect of its Bid. [Name of Bidder] also permits third parties to supply information required to verify statements and information submitted in its Bid.
5. [Name of Bidder]’s Bid is unconditional and unqualified. [Name of Bidder] understands and accepts all of the terms, conditions and other provisions of the Bidding Documents, including the final version of the PPP Agreement and its annexes.
6. [Name of Bidder] acknowledges the right of the Local Government to reject its Bid without assigning any reason and to cancel the Bidding process at any time, without incurring any liability to the [name of Bidder].
7. [Name of Bidder], including all of its Consortium Members, and all of the entities it has proposed to comply with the qualification requirements, have not at any time (i) engaged in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, or Restrictive Practice, (ii) have a Conflict of Interest, (iii) violated the Lock-Up Rules or (iv) have any Outstanding Dispute (each as defined in the Request for Bids).
8. [Name of Bidder] acknowledges that the Local Government are undertaking this Bidding in the performance of their functions to ensure the provision of a critical basic necessity and that, therefore, the Project is of paramount public interest and importance and that the Local Government will suffer serious and irreparable damage on account of any breach by [name of Bidder] of these undertakings, and agree that the breach of these undertakings shall result in [name of Bidder]’s automatic disqualification to bid for the Project.
9. [Name of Bidder] agrees to keep its Bid valid for [insert] days from the Bids Submission Date.
10. In the event that [name of Bidder] is declared as the Successful Bidder, [name of Bidder] agrees to comply with the requirements of the Request for Bids and the special purpose company which it shall form shall execute the final PPP Agreement with the Local Government within the deadlines set in the Request for Bids.

[Date and Place of Execution.]

**For and on behalf of [Name of Bidder/Name of Consortium and List of Consortium Members]**

---

By: [Name, Designation and Signature of Authorized Representative]

**APPENDIX 2 – AUTHORITY TO SUBMIT BID AND DESIGNATION OF AUTHORIZED REPRESENTATIVE \***

*(To be used only by Bidders which are partnerships or corporations)*

[Letterhead]

I, [name], after having been duly sworn according to law, hereby depose and state that:

1. I am a [Uganda] citizen, of legal age and a resident of [address];
2. I am the duly elected [corporate secretary or equivalent officer] of [name of Bidder] (the “Bidder”), a [corporation/partnership] organized and existing under and by virtue of the laws of [Uganda];
3. At a regular/special meeting of the [board of directors / other authorized body] of the Bidder, held on [date] at [place], in which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that [name of Bidder] (the “Bidder”) be, and is, authorized to submit its Bid for the [Name of the project] (hereinafter called the “Project”);

RESOLVED FURTHER, that in the event the Bidder is declared as the Successful Bidder, it (and the special purpose corporation it shall form) commits to fulfil all of the requirements in the Request for Bids, including the submission and completion of the conditions to Commercial Close within [number] calendar days from its official receipt of the Notice of Award, and the signing of the PPP Agreement with the Local Government within [Number] calendar days after being notified by the Local Government that it has complied with the conditions to Commercial Close;

RESOLVED FURTHER, that [name of Bidder’s representative(s)] be and is hereby appointed as the authorized representative of the Bidder for the duration of the Bidding Process, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Bidder.

RESOLVED, FINALLY, that any and all acts done and/or performed by [name of Bidder’s representative] under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Bidder;
5. That the above resolutions are in accordance with the records of the Bidder.

[Name of signatory, Place, Date of Execution].

---

**[Corporate Secretary or Equivalent Officer]**

*\* This document should be accompanied by a duly registered (notarised if originally registered outside Uganda) power of attorney indicating the person authorised to act on behalf of the bidder.*

**APPENDIX 3 – CONSORTIUM MEMBER’S AUTHORITY TO PARTICIPATE IN THE CONSORTIUM AND SUBMIT A BID AND DESIGNATION OF LEAD MEMBER AND AUTHORIZED REPRESENTATIVE OF CONSORTIUM \***

*(To be used only by consortium members, for Bidders which are consortia)*

[Letterhead]

I, [name], after having been duly sworn according to law, hereby depose and state that:

1. I am a [Uganda] citizen, of legal age and a resident of [address];
2. I am the duly elected [corporate secretary or equivalent officer] of [Consortium Member] (the “Firm”), a [corporation/partnership] organized and existing under and by virtue of the laws of [Uganda];
3. At a regular/special meeting of the authorized body of the Firm, held on [date] at [place], in which meeting a quorum was present and acting throughout, the following resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that the Firm be, and is, authorized to participate, through a Consortium consisting of the following Members and their respective nationalities and percentage interests in the Consortium, in the Bidding Process for the financing, design, construction, operation and maintenance of the [Name of the project] (hereinafter called the “Project”):

Name of Consortium Member	Nationality	% Interest

RESOLVED FURTHER, that the Firm authorizes the Consortium described above to submit a Bid for the Project;

RESOLVED FURTHER, that the Firm shall maintain its percentage interest in the Consortium until the signing of the PPP Agreement, in accordance with the Lock-Up Rules, and thereafter shall comply with the requirements and restrictions on changes in ownership of the Private Party as stated in the PPP Agreement;

RESOLVED FURTHER, that in the event that the Consortium is declared as the Successful Bidder, the Firm will cooperate with the other Members to register a domestic corporation in accordance with Ugandan law and comply with all of the other requirements specified in the Request for Bids, the Notice of Award and the PPP Agreement;

RESOLVED FURTHER, that the Firm jointly and severally binds itself with the Consortium Members listed above in undertaking the obligations of the Consortium in the Bid for the Project until, if the Consortium is selected as the Successful Bidder, the special purpose corporation formed by the Consortium signs the PPP Agreement, or if the Consortium is not declared as the Successful Bidder within [number] days after the Bids Submission Date, until [number] days after the Bids Submission Date;

RESOLVED FURTHER, that [name of Firm’s representative] be and is hereby appointed as the authorized representative of the Firm for the duration of the Bidding Process, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Firm;



RESOLVED FURTHER, that the Firm in the exercise of its interest in the Consortium hereby:

- (a) designates [name of Lead Member of Consortium] as Lead Member of the Consortium with the authority to represent the Consortium during the Bidding Process for the Project;
- (b) authorizes [name of authorized representative of the Consortium] as representative of the Consortium in relation to the Bidding Process for the Project, and for such purpose shall have the authority to execute, sign and receive documents for, and otherwise act in the name of the Consortium.

RESOLVED, FINALLY, that any and all acts done and/or performed by [name of Lead Member of Consortium] and [name of authorized representative of the Consortium] under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

- 4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Firm; and
- 5. That the above resolutions are in accordance with the records of the Firm.

[Place, Date of Execution].

---

**[Corporate Secretary or Equivalent Officer]**

\* Each member of the consortium must independently complete and sign this document. All members of the consortium must execute a joint power of attorney authorising the lead consortium member to act for and on behalf the consortium.

**Joint power of attorney.**

We [ names all consortium members and their respective addresses] the members of [name of consortium and its address] hereinafter referred to as the consortium, bidding for [name the project] do hereby nominate and appoint [name and address of the authorized representative] to be our lawful and true attorney and to execute all or any of the following acts on behalf of the consortium:

- (a) To act as the Lead Member of the Consortium with the authority to represent the Consortium during the Bidding Process for the Project;
- (b) To be the representative of the Consortium in relation to the Bidding Process for the Project, and for such purpose shall have the authority to execute, sign and receive documents for, and otherwise act in the name of the Consortium.

AND THAT that any and all acts done and/or performed by [name of authorised representative] under and by virtue of this joint power of attorney be, as they are hereby, confirmed and ratified

This power of attorney shall remain valid until signing of the PPP agreement or otherwise revoked by the consortium members.

Dated at .....this .....day of .....20.....

Name of Consortium Member	Name and designation of representative	Signature

Name of authorised lead	Signature

All in the presence and witness of:

Name:

Signature:

**APPENDIX 4 – BUSINESS STRUCTURE**

*[Required if the Bidder is a Consortium. Note that for all items of this Appendix 4, the Consortium should include: (i) Consortium Members and Affiliates proposed and submitted by the Consortium in its response to the RFQ; (ii) Subcontractors proposed and submitted by the Consortium in its response to the RFQ which the Consortium engages for the Project; and (iii) all new Consortium Member, Affiliate or Subcontractor replacing a Consortium Member, Affiliate or Subcontractor that was proposed to meet any of the Technical Qualification Requirements, if any. Note that pre-qualified Subcontractors which will not be engaged for the Project need not be included in this Appendix 4.]*

This Business Structure shall supersede any information previously provided in its response to the RFQ, provided that any change in the Consortium Members was duly approved by the Local Government in accordance with the RFB. This Business Structure shall be submitted even if there are no changes in the Consortium or the equity structure of each Consortium Member since the RFQ documents were submitted.

*[Required Attachments for each new Consortium Member, Affiliate or Subcontractor replacing a Consortium Member, Affiliate or Subcontractor that was proposed to meet any of the Technical Qualification Requirements:*

- a. Basic Information Sheet using the form in the RFQ, including the required attachments;*
- b. Certificate of incorporation for corporations or articles of partnership for partnerships in accordance with the RFQ; and*
- c. Evidence demonstrating technical experience, capabilities and vision on the scope of the Project, as may be relevant, if the new Consortium Member, Affiliate or Subcontractor is replacing a Consortium Member, Affiliate or Subcontractor which was proposed to meet any of the technical qualification requirements.]*

**Name of Consortium:** \_\_\_\_\_

**1. Consortium Members**

	Lead Member	Other Member	Other Member	Other Member
Name				
Percentage Interest in the Consortium				
Type of Legal Entity (corporation/partnership)				

**2. Contact Information of Consortium Members**

	Lead Member	Other Member	Other Member	Other Member
Address				
Website				
Contact person				
Telephone				
Email				

**3. Entity which fulfils the legal experience requirement**

Name of Entity	
----------------	--

Consortium Member to which this entity is related	
Relationship to Consortium Member	
Address	
Website	
Contact Person	
Telephone	
E-mail	

**4. Entity which fulfils the technical experience requirement**

Name of Entity	
Consortium Member to which this entity is related	
Relationship to Consortium Member	
Address	
Website	
Contact Person	
Telephone	
E-mail	

**5. Entity which fulfils the financial experience requirement**

Name of Entity	
Consortium Member to which this entity is related	
Relationship to Consortium Member	
Address	
Website	
Contact Person	
Telephone	
E-mail	

**6. Entity which fulfils the local content experience requirement**

Name of Entity	
Consortium Member to which this entity is related	
Relationship to Consortium Member	
Address	
Website	
Contact Person	
Telephone	
E-mail	

**7. Entity which fulfils the [other project] experience requirement**

Name of Entity	
Consortium Member to which this entity is related	
Relationship to Consortium Member	
Address	
Website	
Contact Person	
Telephone	
E-mail	

**For and on behalf of [Name of Consortium and Lead Member]**

\_\_\_\_\_

[Signature of Authorized Representative]

[Name, Title, and Date]

**APPENDIX 5 – COMPLIANCE LETTER**

*[Letterhead]*

[date]

[Name of Local Government]

[Full address]

Attention: [Title, Name]

**Compliance Letter**

[Bidder’s name] hereby declares, represents, and warrants that: (i) it has read and understood each and every section and page of the Bidding Documents, its provisions, terms and conditions, and any amendment, supplement, or modification thereto, including any addenda , as well as the (ii) it accepts and agrees to be bound and fully abide by and comply with the terms and conditions of the Bidding Documents and any amendment, supplement, or modification thereto, i, as well as the decisions of the Local Government; and (iii) the Technical Bid is in full compliance with the RFB, minimum performance requirements and the draft PPP Agreement.

Yours truly,

**For and on behalf of (Name of Bidder/ if Consortium, Name of Consortium)**

\_\_\_\_\_  
(Signature of Authorized Representative)

(Name, Title, and Date)

## APPENDIX 6 – FORM OF BID SECURITY

[*Letterhead of issuing bank*]

[Name of Local Government]

[Full address]

Attention: [Title, Name]

We, [*name of issuing bank*], a corporation organized and existing under the laws of the Government of Uganda (the “Issuer”), hereby establish our Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) in your favour and for the account of [insert name of Bidder or Consortium’s Lead Member] (the “Bidder”) relating to the obligations of the Bidder under the Request for Bids of the [Name of the project], which shall be valid and effective until [date].

Capitalized terms used in this Letter of Credit shall have the meanings given to them in the Request for Bids except as otherwise expressly defined herein.

1. The maximum aggregate amount available under this Letter of Credit is [Amount Ugandan Shilling (UGX [\*]/United States Dollars (USD)) (the “Stated Amount”).
2. Subject to the other provisions of this Letter of Credit, the Local Government is hereby irrevocably authorized to make one drawing for the entire Stated Amount under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment from the Local Government in substantially the form attached as Schedule A, duly completed, and that is in the form of a letter on the Local Government’s letterhead signed by any of its authorized signatories.
3. The Issuer shall be deemed to have honoured a drawing hereunder if the Issuer deposits the amount of such drawing in the account (the “Designated Account”) designated by the Local Government in accordance with Schedule A. Any such drawing made hereunder shall be free and clear of all interest and charges and any sums due to the Issuer.
4. We hereby agree to honour the drawing hereunder made in compliance with this Letter of Credit notwithstanding any objection that the Bidder might raise against the Local Government’s entitlement to payment, by transferring in immediately available funds to the Designated Account the amount specified in a demand for payment at the opening of business on the first or second Business Day succeeding the date of such demand. As used herein, the term “Business Day” means any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions in Uganda are authorized or obligated by law or executive order to remain closed.
5. If the demand for payment hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such demand) to the Local Government that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, the Local Government may attempt to correct the non-conforming demand and re-submit such demand in accordance with the terms and conditions hereof.
6. This Letter of Credit shall expire, unless otherwise extended in accordance with the provisions hereof, on the earliest of (i) [Time] in Kampala, Uganda on [insert date], (ii) the date on which we have honoured a drawing in an amount equal to the Stated Amount, or (iii) the date when we receive a written notice from the Local Government that a replacement letter of credit, which is in full force and effect, has been substituted for this letter of credit (the “Expiration Date”).
7. All documents presented to the Issuer in connection with a drawing hereunder, as well as all notices and other communications to the Issuer in respect of this Letter of Credit, shall be in writing and addressed and presented to the Issuer at its address set forth above. Such

documents, notices, and communications shall make specific reference to this Letter of Credit by number. Such documents, notices, and other communications may be delivered or sent by courier to the Issuer at its address set forth above, or at such other address as the Issuer shall have specified in writing to the Local Government, or sent to the Issuer by [fax or email] to the following number or address:

[Fax No. [•].

Email address: [•]]

8. This Letter of Credit may not be cancelled or amended without the prior written consent of the Issuer and the Local Government.
9. This Letter of Credit sets forth our undertaking and our agreement with the Local Government and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein.
10. The Issuer hereby agrees that it shall have no recourse to the Local Government if the Bidder fails at any time to pay any amounts, which may from time to time be due and payable by it to the Issuer in relation to this Letter of Credit.
11. References in this Letter of Credit to the Request for Bids or any other document or instrument, except to the Annexes hereto, are for identification purposes only. The Request for Bids and such other documents and instruments are not incorporated herein, nor are they made a part of this Letter of Credit.
12. This Letter of Credit is issued subject to the provisions of which are incorporated into this Letter of Credit, except to the extent superseded by the express terms and conditions of this Letter of Credit.
13. This Letter of Credit shall be governed by the laws of Uganda.

IN WITNESS WHEREOF, we have caused these presents to be executed in our name and our corporate seal to be affixed by our attorney-in-fact on this [•] day of [•] [Year].

[Issuer] By

---



**Schedule A – Demand for Payment**

To: [Name of Issuer]

[Address]

Attn: [•]

Re: Irrevocable Standby Letter of Credit No. [•]

The undersigned, a duly authorized officer of the Local Government, makes reference to the Request for Bids of the [Name of the project] (“Project”).

1. The Local Government hereby demands payment (the “Drawing”) under the Letter of Credit in the amount of [insert amount] in order to satisfy liabilities of the Bidder under the Request for Bids.
2. The amount of the Drawing does not exceed the Stated Amount.

Please wire transfer the amount of the Drawing to [account details to be inserted by the Local Government] (the “Designated Account”).

IN WITNESS WHEREOF, the Local Government has executed and delivered this certificate as of this [•] day of [•], 20[•].

[Name of Local Government]

---

Name:

Title:

**APPENDIX 7 – FORM OF WILLINGNESS TO LEND**

*[Letterhead of institution]*

[Name of Institution]

[Date]

In connection with the participation of [name of Bidder] (“Bidder”) in the Bidding Process for the [Name of the project], we wish to express our interest and willingness to provide or arrange the following credit facility/ies for the special purpose corporation that the Bidder will incorporate, if and when it is declared by the Local Government as the Successful Bidder, with the following indicative terms:

Type of Facility:

Amount:

Interest Rate:

Tenor and Grace Period (if any):

Repayment Schedule:

Subordination:

Other Relevant Information:

We acknowledge that all of the terms and conditions of the final draft of the PPP Agreement, including all of its annexes, as of the Bids Submission Date are no longer subject to any amendments or revisions.

Very truly yours,

[Signature of Authorized Representative]

---

[Name]

[Designation]

## APPENDIX 8 – PROJECT IMPLEMENTATION PLAN

### Requirements

1. To be submitted by the Bidder, and to be signed by all entities listed in all sections of the Business Structure (Annex 1 or Annex 4) or the authorized representative of the Bidder.
2. Within the period provided in the PPP Agreement, the Bidder will submit the Project Implementation Plan including the required attachments to the Local Government for acceptance. The accepted Project Implementation Plan will become part of the PPP Agreement as an Annex.
3. The Project Implementation Plan is included as a required document to signal the importance the Local Government gives to a well-organized implementation of the Project.
4. The Project Implementation Plan should demonstrate the approach and methodology that will ensure:  
  
*[Local Government (with assistance from the Transaction Advisor) to insert other specific requirements tailored to the project specific requirements]*
5. Furthermore, the Project Implementation Plan should describe the Bidder’s proposals on the following subjects:  
  
*[Local Government (with assistance from the Transaction Advisor) to insert other specific requirements tailored to the project specific requirements]*
6. Project Implementation Plan should not be longer than *[insert]* pages. The bidder should ensure that the updated Project Implementation Plan is in line with the draft PPP Agreement.
7. With regard to the professional and well-structured organization, the Bidder should:
  - a) Describe the project organization it intends to set up for this project in terms of number of staff, names of staff if possible, capability of staff, experience of staff and location of staff;
  - b) *[insert any project specific requirements]*

## APPENDIX 9 – RISK MANAGEMENT PLAN

### Requirements

1. To be submitted by the Bidder, and to be signed by all entities listed in all sections of the Business Structure (Appendix 4) or the authorized representative of the Bidder.
2. The Risk Management Plan is included as a required document to signal the importance the government gives to the management by the [Name of the project] of the risks that will remain with the government.
3. The Risk Management Plan should demonstrate its methodology and approach to mitigate and manage the residual risks that may affect the Local Government.
4. The Risk Management Plan should not be longer than [\*] pages.
5. The Risk Management Plan should not go into any risks that are associated with the tender procedure itself. The Risk Management Plan concerns only the mitigating measures that the [Name of the project and Successful Bidder] can take to mitigate the residual risk to the Local Government after signing of the contract. The Risk Management Plan should be in line with the draft PPP Agreement. Climate change risks must be mentioned.
6. Risks that need to be covered in the Risk Management Plan are:

*[Local Government (with assistance from the Transaction Advisor) to insert other specific requirements tailored to the project specific requirement*

## **APPENDIX 10 – CONCEPTUAL ENGINEERING DESIGN (if necessary)**

### Requirements

1. To be submitted by the Bidder, and to be signed by all entities listed in all sections of the Business Structure (Appendix 1 or Appendix 4) or the authorized representative of the Bidder.
2. Within the period provided in the PPP Agreement, the Bidder will submit the Detailed Engineering Design to the Local Government for acceptance. The Detailed Engineering Design builds on the Conceptual Engineering Design and is described in the minimum performance requirements. The accepted Detailed Engineering Design will become part of the PPP Agreement as an Annex.
3. The Conceptual Engineering Design is included as a required document to show 1) the Technical Soundness of the [Name of Project] and the compliance of the system with the minimum performance requirements, and 2) the Operational Feasibility of the [Name of Project] through proven systems and compliance with the minimum performance requirements 3) and climate change mitigation and adaptation measures and other climate related aspects.
4. *[include further specific requirements of conceptual engineering design - project specific]*

## **APPENDIX 11 - BUSINESS PLAN**

### Requirements

1. To be submitted by the Bidder, and to be signed by all entities listed in all sections of the Business Structure (Appendix 1 or Appendix 4) or the authorized representative of the Bidder.
2. The Business Plan details the Bidder's approach to the Project and outlines the investment plan, the maintenance costs, the operational costs, the revenue generation, etc. for the entire life of the concession.
3. The Business Plan shall also quantify the Bidders' Project Implementation Plan.
4. The Business Plan shall also contain:

*[Local Government (with assistance from the Transaction Advisor) to insert other specific requirements tailored to the project specific requirements]*

## **APPENDIX 12 – LOCAL CONTENT PLAN**

### Requirements

1. To be submitted by the Bidder, and to be signed by all entities listed in all sections of the Business Structure (Appendix 1 or Appendix 4) or the authorized representative of the Bidder.
2. The Local Content Plan is included as a required document to show:
  - a. the plan for transferring knowledge to Ugandan nationals, and
  - b. plan for including Ugandan nationals in the implementation of the [*Name of Project*].
  - c. plan for utilising local materials.

### **APPENDIX 13 - BID PRICE**

To be submitted by the Bidder, and to be signed by all entities listed in all sections of the Business Structure (Appendix 1 or Appendix 4) or the authorized representative of the Bidder.

*[Local Government (with assistance from the Transaction Advisor) to include project specific bid price evaluation methodology and calculations]*



## **APPENDIX 14 - FINANCIAL MODEL REQUIREMENTS [IF APPLICABLE]**

To be submitted by the Bidder, and to be signed by all entities listed in all sections of the Business Structure (Appendix 1 or Appendix 4) or the authorized representative of the Bidder.

1. The Financial Model is a Microsoft Excel workbook (English Version 2007 and newer) that contains all investment, operating and financing cash flows on a quarterly basis throughout the PPP Agreement.
2. All inputs are to be clearly marked.
3. The workbook must be free from passwords (both on workbook, sheet and cell level) and may not contain any hidden sheets or cells.
4. The workbook must be free of circle references and should not contain any links to external documents.
5. The Financial Model should be in line with the draft PPP Agreement.
6. The Financial Model should be fully consistent with the Technical Bid of the Bidder.
7. The Financial Model should be expressed in real [month / year] and nominal values, taking into account the indexation formulae of the draft PPP Agreement.
8. The Financial Model should provide for clear projections and/or results on:
  - a. The Project IRR (both pre-tax and post-tax) and NPV;
  - b. All costs of climate mitigation and adaptation aspects relevant to the project;
  - c. The Post-tax pure equity IRR;
  - d. Annual financial statements;
  - e. Applicable financial ratios; Government support, if any, that is required.
9. The Financial Model must be accompanied by clear user instructions on how to use and optimise the Model and a description of the assumptions and workings of the Financial Model. Without being exhaustive, these user instructions should allow for scenario runs with the Financial Model and assessment of the main results of the Financial Model under different assumptions.
10. *[Local Government (with assistance from the Transaction Advisor) to insert other specific requirements tailored to the project specific requirements]*



## APPENDIX 18 – FORM OF CONSTRUCTION PERFORMANCE SECURITY

### Construction Performance Security

To: [Name of Local Government] (the "**Beneficiary**")

[Date]

#### Irrevocable Standby Letter of Credit No. [•]

At the request of the [name of Private Party] (the "**Applicant**"), we, [name of the bank] with address at [address of bank], a corporation organized and existing under the laws of Uganda (the "**Issuing Bank**") issue this irrevocable, standby letter of credit ("**Letter of Credit**") in your favour for [insert value] ("**Face Value**") effective from [insert date] on the following terms and conditions:

#### 1. Definitions

Except as provided below, or to the extent that the context requires otherwise, words and expressions defined in the PPP Agreement shall have the same meaning in this Letter of Credit:

"**Agreement**" the PPP Agreement dated [•] entered into between the [name of Local Government] and the [Name of Private Party].

"**Business Day**" means a day (other than Saturday and Sunday) on which commercial banks are open for general commercial business in Kampala, Uganda.

"**Demand**" means a demand for a payment under this Letter of Credit in the form of the Schedule to this Letter of Credit under Clause 5.

"**Expiry Date**" means the date falling [insert] months from the date of issue of this Letter of Credit. [Note: this must cover at least the entire duration of the estimated construction period plus a period to account for any unforeseen delays.]

#### 2. Issuing Bank's Agreement

- (a) The Beneficiary may request drawings under this Letter of Credit by submitting to the Issuing Bank a duly completed Demand. All Demands must be received by the Issuing Bank, as stated in Clause 5, before close of banking hours on or before the Expiry Date.
- (b) Subject to the terms of this Letter of Credit, the Beneficiary may request partial and/or multiple drawings under this Letter of Credit by submitting a Demand in relation to each such drawing.
- (c) Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary (or such other payee or payees as the Beneficiary specifies in the Demand) that it will pay to the Beneficiary (or such other payee or payees) the amount demanded in that Demand upon the due presentation by the Beneficiary of the Demand to the Issuing Bank.
- (d) We hereby agree to honour each Demand hereunder made in compliance with this Letter of Credit notwithstanding any objection that the Applicant might raise against the Beneficiary's entitlement to payment at the opening of business on the first or second Business Day succeeding the date of the Demand.
- (e) The Face Value of this Letter of Credit shall be automatically reinstated upon the Issuing Bank's payment against any drawing made by the Beneficiary, by the amount so paid under this Letter of Credit.
- (f) The Letter of Credit shall not be discharged by any change in the Issuing Bank's constitution, the constitution of Beneficiary or that of the Applicant or change in applicable laws.
- (g) All charges, fees, commission and other costs associated with the opening, amendment and renewal or any other act related to this Letter of Credit shall be paid by the Applicant. Failure of the Applicant to make such payments shall not affect our obligation under this Letter of Credit and the Beneficiary shall be paid the money due to it under this Letter of Credit without any deduction.

#### 3. Renewal and Expiry

- (a) This Letter of Credit shall be renewable at the option of the Issuing Bank and the Issuing Bank shall exercise such option upon receipt of a written request from the Applicant seeking such renewal.
- (b) The Issuing Bank will be released from its obligations under this Letter of Credit on the Expiry Date.
- (c) On the Expiry Date, the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid. For the avoidance of doubt, in the event that a Demand has been made on the Issuing Bank prior to the Expiry Date, the Issuing Bank's obligation to pay hereunder shall be deemed accrued notwithstanding that the due date for payment may fall after the Expiry Date.
- (d) When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary must return the original of this Letter of Credit to the Issuing Bank forthwith.

#### 4. Payments

All payments under this Letter of Credit shall be made in [*Uganda Shillings/United States Dollars*] and for value on the due date to the account of the Beneficiary specified in the Demand.

#### 5. Delivery of Demand

- (a) All Demands under this Letter of Credit shall be presented in full compliance with the terms and conditions hereof by hand delivery at the [*place*] office of the Issuing Bank (or such other address as the Issuing Bank may from time to time notify the Beneficiary for this purpose). Any Demand presented after [*Time*] shall be deemed received on the next working day (other than a Saturday or Sunday).
- (b) If a Demand hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such demand) to the Beneficiary that the Demand was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that a Demand was not effected in conformity with this Letter of Credit, the Beneficiary may attempt to correct any such non-conforming Demand and re-submit such Demand in accordance with the terms and conditions hereof.

*[Alternate mechanism(s) for presentation of Demands to be agreed on a case by case basis with Issuing Bank and Beneficiary and this Clause will be amended accordingly.]*

#### 6. Amendment

- (a) Any amendment or cancellation of this Letter of Credit shall be operative only with the prior written consent of the Issuing Bank and the Beneficiary.
- (b) This Letter of Credit sets forth our undertaking and our agreement with the Beneficiary and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein or their amendments.

#### 7. Governing Law

This Letter of Credit is issued subject to the laws of Uganda.

#### 8. Transferable Credit

- (a) This Letter of Credit is a transferable credit, provided that (i) this Letter of Credit may only be transferred for the full amount of this Letter of Credit and not in part; and (ii) transfer may only be made to a person or entity who has been appointed as a successor of the Beneficiary.
- (b) Transfer of the Letter of Credit to the successor of the Beneficiary shall be effective only by the presentation to the Issuing Bank of this Letter of Credit accompanied by a transfer request.
- (c) Unless to do so would result in the Issuing Bank being in breach of a law or regulation applicable to it, upon receipt of a transfer request, the Issuing Bank shall forthwith effect the same to the designated successor of the Beneficiary by endorsing the transfer on the reverse of this Letter of Credit and the transfer shall be effective only on return of this Letter of Credit to the new Beneficiary.

- (d) Neither the Beneficiary nor the successor of the Beneficiary shall be liable to the Issuing Bank for any charges (including commissions, fees, costs and expenses) of the Issuing Bank payable in connection with the transfer. Such charges shall be for the account of the Applicant. The Issuing Bank shall be obliged to effect the transfer regardless of whether or not those charges have been paid by the Applicant.

Yours faithfully,

**[Issuing Bank]**

Name:

Title:

### Schedule A – Form of Demand

To: *[Issuing Bank]*

[Date]

Dear Sirs,

Standby Letter of Credit no. [•] (the "**Letter of Credit**") issued in favour of *[name of Local Government]* pursuant to the terms of the PPP Agreement dated [•] between the Applicant and the Beneficiary.

We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

1. We certify that a sum of [•] is due and payable to the Beneficiary by the Applicant in accordance with the terms of the Agreement. We therefore demand payment of the sum of [•]. We therefore demand payment of the sum of [amount of security].
2. Payment should be made to the following account:

Beneficiary:

Account Number:

Bank details:

*[Name and address of the Bank, SWIFT Number]*

3. This Demand is being made in accordance with the terms of the Letter of Credit and the Agreement.

Yours faithfully,

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(Authorised Signatory)

*[Name of Local Government]*

## APPENDIX 19 – CLIMATE CHANGE MITIGATION AND ADAPTATION PLAN

Name of Project: [insert title of the Project]

Name of Pre-Qualified Bidder: .....

### **Climate change mitigation and adaptation Plan**

The Pre-Qualified Bidder shall submit Climate change mitigation and adaptation Plan for the Project sufficient to demonstrate its ability to meet the Performance Standards. This shall include, inter alia, the following:

- (a) A note on Climate change risk vulnerability assessment for the proposed Project
- (b) A plan for mitigation and adaption measures to be adopted to make the Project more resilient to the extreme climate events applicable to the project. The adaption measures shall be both in the form of Structural Adaptation<sup>3</sup> as well as Non-Structural Adaptation<sup>4</sup> measures.

**Note 1:** *This is only a guide. Pre-Qualified Bidders may adopt their own format for the Climate change mitigation and adaptation Plan, provided it contains all the three components specified above and addresses all the relevant requirements of the Performance Standards for the Project and Project Facilities in terms of the Partnership Agreement.*

**Note 2:** *The Climate change mitigation and adaptation Plan to be submitted by the Pre-Qualified Bidder shall be duly signed by the Authorized Representative of the Pre-Qualified Bidder specifying the name and designation of the said Authorized Representative.*

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<sup>3</sup> Measures involving physical changes to a project's design or location to reduce the probability of a risk occurring (such as works for protecting against sea surges) and/or reduce its severity (such as using materials less susceptible to heat stress). Structural measures can also include design features to reduce disaster recovery times.

<sup>4</sup> Measures related to operational and maintenance practices to reduce the severity of a hazard should it occur. Such measures should be accompanied by appropriate monitoring during operations.

## Annex E: PPP Agreement Template

During the feasibility stage, the Local Government must prepare a draft PPP agreement. The draft agreement will be submitted to the PPP Unit at the same time as the Feasibility Study Report for review and approval. The output and performance specifications are developed during the feasibility study and are an important annex of the PPP agreement. They describe the outputs that the Private Party must deliver under the PPP agreement in the construction and operational phase of the project. Their form and contents depend on the type of project (sector, technology, scope).

The draft PPP agreement will be included in the RFB package sent to bidders. All bidders will take into account the terms and conditions of the PPP agreement when submitting their bids.

*Drafting Note: The template below is indicative only and must be adapted by the Local Government for the relevant PPP project. Each Local Government (working with a Transaction Advisor, if applicable) will be required to prepare a draft PPP agreement which governs the contractual relationship between the Private Party and the Local Government in respect of the project. The template below is a starting point for the Local Government to guide the drafting process.*

### Template Draft PPP Agreement

#### **1. Parties**

- 1.1. [Name of Local Government] acting by [name of authorised signatory] with registered address at [insert] (the “Contracting Authority”); and
- 1.2. [Name of SPC], a private limited company incorporated under the laws of Uganda with registered office at [insert] (the “Company”).

#### **2. Project**

This agreement relates to the project consisting of: [design,] [financing,] [construction,] [operation and maintenance] [delete as applicable] of [describe project] and all related equipment, plant, machinery, facilities and infrastructure, located at [insert details of site] in accordance with the Technical Output Specifications and other terms and conditions set out below (the “Project”).

#### **3. Definitions**

*Drafting Note: Local Government (working with a Transaction Advisor, if applicable) to define all key terms as used in the agreement. Suggested definitions are listed below as a guide only – additional terms to be added by Local Government, as appropriate.*

Approvals and Permits: [insert all required approvals and permits from feasibility study] [and all other approvals, permits, licences or consents which may be required from any government authority in connection with the Project and the due performance of this Agreement].

Climate Change: This means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability, observed over comparable time periods.

Climate resilience: The ability of a system and its component parts to absorb, accommodate, or recover from adverse effects of climate change in a timely and efficient manner through ensuring the preservation, restoration or improvement of the essential basic structures and functions of that system.

Design Criteria: [insert technical criteria for the design of the Project]

Detailed Design: the design of the main components of the Project, including [list any key structures, systems, other elements] and all necessary documents required to construct the Project including construction drawings, list of required equipment and specifications of quality control].

Effective Date: the date on which all conditions precedent have been satisfied or waived in accordance with this Agreement.

[Handback Assets: [describe all assets] on the Handback Date which are to be returned to the Local Government pursuant to this Agreement.]

[Handback Date: means the last day of the Project term.]

Mitigation: means efforts that seek to prevent or reduce the increase of atmospheric greenhouse gas concentrations by limiting current or future emissions and enhancing potential sinks for greenhouse gases.

Operations Commencement Date: means the date on which all preparatory, design and construction works are complete and the Project is fully operational, including [insert any technical parameters or tests for operations].

Project Site: [insert description of land on which Project will be located]

Output Specifications: [to be based on feasibility study]

#### **4. Company rights**

The Company shall have during the Project term [adapt depending on nature and content of the Project]:

- 4.1. [Exclusive] right and authority to carry out the Project.
- 4.2. Access to the Project Site.
- 4.3. Use of the following existing assets: [ ].
- 4.4. Right to make structural changes to the existing assets.
- 4.5. [Other]

#### **5. Company obligations**

[Delete as applicable]

- 5.1. [Design: To design the Project in accordance with good industry practice and the Design Criteria in order to prepare the Detailed Design pursuant to this Agreement.]
- 5.2. [Construct: To construct the Project pursuant to this Agreement, including installation of operational equipment and all related facilities and infrastructure works, on the Project Site in accordance with good industry practice and the Detailed Design, in each case for purposes of the Project.]
- 5.3. [Operate and Maintain: Upon completion of the Project, to operate and maintain the Project in accordance with good industry practice, applicable law and the Technical Output Specifications pursuant to this Agreement.]
- 5.4. Climate change and disaster management obligations.
- 5.5. environment and social impact management obligations.
- 5.6. [Revenue Collection: To levy, demand and collect permitted user fees from persons liable to pay such fees for using the Project in accordance with this Agreement.]
- 5.7. [Reporting: To provide the Contracting Authority with the following documents and information:
  - Audited financial statements and an annual report of the Company within two months after the end of each financial year;
  - [Quarterly] activity reports recording progress towards project milestones prior to completion, and once operational, recording [insert key operational indicators]. This will include information on the performance of the Company on key performance indicators against agreed target levels, as well as copies of performance assessments and reports;
  - Maintenance report recording any material details and periods of scheduled and unscheduled maintenance of the Project;
  - Record of serious incidents and accidents;



- [insert any other documents and information requests]; and
- Any other information that the Contracting Authority may reasonably require to monitor the Company's compliance with this Agreement.

5.8. **General:**

- To perform and fulfil all the Company's obligations under this Agreement and to comply with all applicable laws and regulations (in relation to the Project, the Project Site).
- To provide access to employees of the Contracting Authority and any other government agency in order to inspect the Project and the Project Site for the purpose of verifying the Company's compliance with this Agreement or as may otherwise be required by law or to exercise its rights under this Agreement;
- To cooperate with the Contracting Authority and any other government agency in the exercise of its statutory duties;
- To apply for all Approvals and Permits [at its own cost] and use reasonable endeavours to obtain them;
- To prepare a local content plan in consultation with the Contracting Authority and comply with such plan;
- Restrictions on any transfers of shares in the Company; and
- [insert any other general duties of the Company, e.g. with respect to environmental and social matters].

**6. Contracting Authority Obligations**

- 6.1. [Is the Local Government providing any project assets?]
- 6.2. [Is the Local Government required to undertake any works or services? Any preparatory works? Any ancillary services?]
- 6.3. [Can the Local Government agree to grant (or use reasonable endeavours to grant) any specific Approvals and Permits to the Company?]
- 6.4. [Can the Local Government agree to grant (or use reasonable endeavours to grant) any specific rights of way in respect of the Project Site?]
- 6.5. The Contracting Authority undertakes not to do anything which prevents or materially and adversely affects the Company's ability to perform its obligations under this Agreement or the operation of, or free access for users to the Project Site or the collection by the Company of user fees. [Revise as applicable]

**7. Project term**

Subject to the termination provisions of this Agreement, the term of this Agreement shall be for [ ] years as from the Effective Date.

**8. Fees (Payment Mechanism)**

8.1. User charges:

- Fee structure;
- Min/max allowable rate;
- Indexation/escalation arrangements ;
- Revenue sharing mechanisms.

8.2. In case of payments from Government:

- Fixed periodic payments Variable depending on asset usage;
- Indexation/escalation arrangements;
- Use of milestone payments;

- Applicable index formula;
  - Institution handling payment.
- 8.3. [Who will pay what to whom?]
- 8.4. [How much shall be paid?] [The Company shall afford to all uniform treatment under like conditions and shall not apply discriminatory charges on any person. Any preferential fees should be set in consultation with the Contracting Authority.]
- 8.5. [When will payments be made?]
- 8.6. [Which account(s) should the payments be routed from?]
- 8.7. [Bonus/Penalty regime (Performance Mechanism)]
- Output standards
  - Structure of penalties linked to performance below norms
  - Bonus structures linked to performance
  - Monitoring and performance evaluation framework for measuring performance
9. **Conditions Precedent** [steps to be completed before PPP agreement is legally binding and before Project Term commences (Commercial Close)]
- 9.1. Conditions precedent for Contracting Authority: [e.g., granting specific approvals and permits, granting lease over Project Site, granting any specific rights of way, all representations and warranties are true and correct]
- 9.2. Conditions precedent for Company: [board resolution approving this Agreement, any update to due diligence requirements, evidence of required funding/investment, insurance requirements]

## 10. Financing requirements

- 10.1. Company to proceed with all the necessary investments and financings to finance the investment in the Project and to carry out its obligations under this Agreement.
- 10.2. Financial close under the Company's financing arrangements to occur no later than [ ] months after the date of this Agreement.
- 10.3. [Any co-financing by Contracting Authority (if applicable)]
- 10.4. [Any direct agreement to be entered into by Contracting Authority with Company's lenders (if applicable)]
- 10.5. Climate finance from domestic or International sources such as climate funds.

## 11. Design and Construction

The design and construction of the Project shall be completed in accordance with the following requirements:

- Who is responsible for any deficiency in the design? [The failure of the Contracting Authority to object to any part of the design or changes or the giving of approvals shall not be construed as a waiver of any of the Contracting Authority's rights under this Agreement or in any way relieve the Company of its obligations.]
- Output Specifications
- [Approval of design by Contracting Authority, any licensing or regulatory requirements]
- Construction milestones [dates and actions to be completed]
- How to treat design changes? What is the procedure? [Contracting Authority consent to variations that materially change the Detailed Design after approval]
- Impact on the fees
- Delays and defects

- Testing and inspections

## 12. Output and performance specifications

12.1. In performing its obligations under this Agreement, the Company must deliver and adhere at all times to the following specifications:

- [insert outputs that the Company must deliver]
- [insert performance standards to be met]
- The design of the Project should have adequate features for mitigating climate change impacts , for monitoring these in real time during implementation and indicators for measuring GHG emissions.

12.2. In the event that the Company fails to satisfy any of the above specifications and such failure is not remedied within [30] days of either the Company becoming aware of such failure or the Contracting Authority notifying the Company of such failure, then the following shall apply: [insert details of penalties to incentivise remedy of substandard performance].

## 13. Operations and Maintenance

- What are the operational rights granted to the Company (further development of the asset, commercial exploitation, etc.)?
- Operations and maintenance milestones [dates and actions to be completed]
- Code of operations (including health and safety) to be developed and complied with?
- Manual for inspection and maintenance to be developed and complied with?
- [Framework for protection of the rights of the users and beneficiaries of the Project, including redressal of their grievances, framework to ensure that the services are not disrupted, complaints procedure, etc.]

## 14. Project assets and ownerships

- The Contracting Authority shall at all times own the following assets: [ ].
- The Company shall own the following assets: [ ].
- When will ownership of the project assets transfer?

## 15. Insurance and guarantee requirements

*Drafting Note: Local Government (working with a Transaction Advisor, if applicable) to assess insurance requirements of the project.*

- Which risks must be insured by the Company?
- Which risks must be insured by the Local Government?
- Requirement of construction performance security from the Company?
- Requirement of operational performance security from the Company?

## 16. Force Majeure and consequences

- Definition of force majeure
- Consequences of force majeure

## 17. Default and Termination

- Events of Default and termination (Local Government or Private Party)
- Consequences of Termination, including Payments Formulas
- Buy-out Price Formulas

## 18. Delays/supervening events and consequences

- How will delays be dealt with?
- How will compensation be dealt with?

#### 19. Handback [If applicable]

- Gradual build-up of hand back security
- Maintenance requirements preceding Handback
- Asset quality requirements at Handback
- Other requirements at transfer (knowledge transfer, transfer of books and accounting, training, etc.)

#### 20. Dispute Resolution Framework

*Drafting Note: Local Government (working with a Transaction Advisor, if applicable) to assess alternative dispute resolution options for the project, e.g. in accordance with the Arbitration and Conciliation Act.*

Procedure on a dispute [good faith discussions to resolve amicably, option for mediation, option for expert determination, at what point is a party permitted to refer dispute to be finally resolved by Courts?]

#### 21. Governing Law

This Agreement shall be governed by the laws of Uganda.

#### 22. Jurisdiction

The courts of Uganda have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**"). The parties agree that the courts of Uganda are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

#### 23. [Independent Expert [If applicable]

23.1. Procedure for the appointment of the Independent Expert

23.2. Role of Independent Expert [reviewing design, monitoring progress of construction, conducting/witnessing performance tests, preparing a report in respect of Handover, assessing the condition of Handback Assets, expert determination in the event of a dispute between the parties]]

23.3. Remuneration of independent expert (shared cost by Local Government and PP)

#### 24. Liabilities

[For example to third parties, environmental]

24.1. The Company shall be responsible for and shall indemnify and hold the Contracting Authority harmless against all liabilities, damages, losses and expenses incurred by it and claims against it caused by any of the following risks: [insert]

24.2. Limitation of Liability of the Company: [insert if applicable, e.g. maximum or termination right]

24.3. No liability for consequential losses.

#### 25. Representations and Warranties

25.1. Company: [legal status, good standing, power and authority to enter into PPP agreement, no breach of laws or constitutional documents, all information provided to Contracting Authority was true, correct and not misleading, no material litigation related to the project is pending or threatened against it, execution, delivery and performance of the PPP agreement constitutes legally binding obligations, other.]

25.2. Contracting Authority: [power and authority to enter into PPP agreement, no breach of laws, execution, delivery and performance of the PPP agreement constitutes legally binding obligations,

## **26. Standard Clauses**

- 26.1. No assignment or transfer: No party shall assign in whole or in part or otherwise transfer any of its rights and obligations (as applicable) under this Agreement without the prior written consent of the other party, save that the Company may grant security in favour of its lenders and may subcontract part of its rights and obligations under this Agreement to any third party, without prejudice to its rights and obligations under this Agreement.
- 26.2. Subcontractors: The appointment of any contractors or subcontractors or any other third party by the Company to undertake any obligations of the Company under this Agreement shall not relieve the Company from its obligations under this Agreement.
- 26.3. Amendments and waivers: All amendments and waivers to this Agreement shall be binding only if in writing, expressed to vary this Agreement and signed by both parties.
- 26.4. Entire agreement: This Agreement and [list other agreements, if any] represents the entire agreement between the parties in relation to the subject matter hereof and supersedes any or all previously agreements or arrangements, whether oral or written, between the parties in respect of the Project or other contents of this Agreement. The parties acknowledge that in agreeing to enter into this Agreement they have not relied on any representation, warranty or other assurance (except those in this Agreement and [list other agreements, if any]). Nothing in this clause limits or excludes liability for fraud.
- 26.5. Severability: If any term of this Agreement is found by any court or body or authority or competent jurisdiction to be illegal, unlawful, void or unenforceable such term shall be deemed to be severed from this Agreement and this shall not affect the remainder of this Agreement which shall continue in full force and effect.
- 26.6. Non-waiver: Any delay in exercising or failure to exercise a right or remedy under or in connection with this Agreement shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy or breach or default shall only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and shall not constitute a waiver of any other right, remedy, breach or default.
- 26.7. [Late payment interest]
- 26.8. [All payments to be made free of any set-off, counterclaim or withholding, save for any withholding required by law.]
- 26.9. Each party shall be responsible for meeting its own costs and expenses in relation to the preparation, negotiation and entering into of this Agreement [and list other agreements, if any].
- 26.10. [Notice – addresses and delivery procedures].
- 26.11. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

## **27. Freedom of Information**

- 27.1. The Company acknowledges that the Contracting Authority is subject to the requirements of the Access to Information Act 2005 and the PPP Act 2015 and may be entitled to disclose certain project-specific information without consulting or obtaining the consent of the Company.
- 27.2. The Company agrees to facilitate the Contracting Authority's compliance with its disclosure requirements under the Access to Information Act 2005 and the PPP Act 2015.

## **28. Publication of PPP Project Information**

- 28.1. The parties agree that the Contracting Authority, subject to Clause [ ] (Confidentiality) below, is entitled to disclose the following information, including on a web-based platform owned and administered by the PPP Unit, and any other media platforms as identified in the PPP Act 2015:
- (a) Procurement documents and information;
  - (b) Estimated dates of key milestones;
  - (c) All project documents, including this Agreement and other associated documents;
  - (d) Summary project information [such as project name, location, sector, name of contracting authority, estimated project value, project need, technical description of asset and services to be provided, estimated demand to be served annually, rationale for selecting project, for development as a PPP, projected policy outcomes of the project, name and contact of Project Officer in charge of the project]
  - (e) Performance information related to this Agreement.

## 29. Confidentiality

- 29.1. For the purpose of this Agreement, confidential information means:
- 29.2. Without prejudice to Clause [ .3], the parties shall keep confidential all confidential information received by one party from the other party relating to this Agreement and any other project agreements or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such confidential information.
- 29.3. Confidential information may be disclosed if:
- (a) Disclosure of such confidential information is reasonably required by any person engaged in the performance of its obligations under the PPP agreement for the performance of those obligations;
  - (b) A party can demonstrate that such confidential information is already, or becomes, generally available in the public domain legitimately otherwise than as a result of a breach of this clause;
  - (c) Such disclosure is necessary to enable a determination to be made under clause [insert reference to Dispute Resolution clause] or in connection with a dispute between the Company and any of its subcontractors;
  - (d) Such disclosure is required pursuant to (i) any statutory or legal obligation, (ii) any order of a court of competent jurisdiction, (iii) a parliamentary obligation placed upon the party making the disclosure, (iv) the rules of any regulated stock exchange, or (v) any order from a governmental or regulatory authority concerned;
  - (e) The confidential information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
  - (f) The confidential information is provided to: (i) each party's own professional advisers or insurance advisers; and/or (ii) financial institutions involved in the Project as lenders, political risk insurers, or guarantors;
  - (g) The disclosure of such confidential information by the Contracting Authority relates to the design, construction, operation, and maintenance of the PPP project and any disclosure of other confidential information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new private partner, its advisers, and lenders, should the Contracting Authority decide to retender this Agreement or undertake any market testing;
  - (h) Such disclosure is required for any registration, filing, or recording of the required permits and property registration in connection with the Project;
  - (i) The disclosure of confidential information by the Contracting Authority to any other relevant authority or their respective advisers or to any person engaged in providing services to the Contracting Authority is necessary for any purpose related to or ancillary to this Agreement;

- (j) Such disclosure is necessary for the purpose of: (i) the financial audit of the Contracting Authority's or the Company's accounts by statutory bodies such as the Office of the Auditor General; (ii) any examination pursuant to [insert reference to any auditing obligations for public contracts] of the performance audit with which the Contracting Authority has used its resources; (iii) complying with a proper request from either party's insurance adviser or insurer on placing or renewing any insurance policies or in relation to any insurance claim made; or (iv) (without prejudice to the generality of subclause (d), compliance with [insert reference to any laws requiring disclosure (for example, environmental laws)].
- 29.4. When disclosure is permitted under sub-clauses (a), (c), (f), (g), and (i) above, the party providing the information shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement. The Company shall expressly inform any person to whom it discloses any information under this clause of the confidentiality restrictions set out in this clause and shall procure its compliance with the terms of this clause as if it were party to this Agreement and the Company shall be responsible for any breach by any such person of the provisions of this clause.
- 29.5. The provisions of Clause [ .3] are not applicable to [insert relevant exceptions for specific project] (for example information related to defence, security and international relations as specified in Section 32 of the Access to Information Act 2005).
- 29.6. Where the Company, in carrying out its obligations under this Agreement, is provided with personal information relating to [end users (for example, road users, patients)], the Company shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Company has obtained the prior written consent of that [end user] and has obtained the prior written consent of the Contracting Authority.
- 29.7. No later than [ ] days following termination or expiry of this Agreement, the Company shall ensure that all documents and/or computer records in its possession, custody, or control, which contain personal information relating to [end users], including any documents in the possession, custody, or control of a subcontractor, are delivered to the Contracting Authority.

### **30. Schedules and Annexes**

*Drafting Note: Local Government (working with a Transaction Advisor, if applicable) to list all schedules and annexes to the agreement. E.g support agreements, direct agreements, construction plan, contractor/subcontractor agreement payment mechanism etc.*

## Annex F: Terms of Reference for Transaction Advisor

To enable Local Governments to procure a Transaction Advisor based on a fixed scope of work, depending on what aspects of the PPP Project Cycle the Local Government project team requires additional skill, experience and support.

The Transaction Advisor is expected to work closely with the Local Government and should ensure capacity building of staff and knowledge transfer in all assignments. The Transaction Advisor can be a commercial firm or an individual consultant, as appropriate. Different firms/persons can be appointed for different assignments, if appropriate.

Section 15(3) of the PPP Act permits the Local Government to procure a person with the appropriate skills and experience to act as Transaction Advisor if due to the technical requirements of PPPs, the Local Government does not have the appropriate officials to be appointed to this role. The Local Government must procure the Transaction Advisor in accordance with the traditional procurement process under the Public Procurement and Disposal of Public Assets Act.

### Suggested activities for scope of work

The activities suggested below must be adapted for the specific needs of the Local Government project team and the specific PPP project being undertaken. The Local Government may choose to procure a Transaction Advisor for all or some of the activities in the suggested scope of work below.

- 1. Feasibility study and report**
  - Conduct all studies, assessments and analysis in accordance with the guidelines for the feasibility study set out in Annex C.
  - Prepare feasibility study report.
- 2. Financial model**
  - Prepare financial model and compute all calculations in accordance with the guidelines for the feasibility study set out in Appendix 14.
  - Support with updates to financial model during procurement and contracting stages, as required.
- 3. Assessment of fiscal impact of the project.**
  - Identify, assess and and cost the fiscal commitments, fiscal risks and contingent liabilities for the recommended PPP structure of the project.
- 4. Support during feasibility stage**
  - Advise on recommended PPP structure of the project.
  - Prepare the feasibility study report in accordance with the PPP Act 2015 and Annex C.
  - Support and advise the Local Government project team on all matters in connection with the feasibility stage in accordance with applicable law, regulation and guidelines.
- 5. Procurement stage**
  - Advise on and support promotional activities to market the project to potential investors.
  - Prepare all bidding documents (notices, criteria, templates, draft PPP agreement)
  - Support and advise the Local Government project team with the pre-qualification process, the RFQ evaluation, the bidding process, meetings and clarifications, the bid evaluation, negotiations with bidders and finalising the PPP agreement.  
Support and advise the Local Government project team on all matters in connection with the procurement stage in accordance with applicable law, regulation and guidelines.
- 6. Contracting stage**
  - Support and advise the Local Government project team on all matters in connection with the contracting stage in accordance with applicable law, regulation and guidelines.
- 7. Consultants Fees**



- The fees of the Transaction Advisor are paid by the Local Government on a lumpsum and or success fee basis in accordance with PPDA.

#### **8. Expertise Required**

- The Transactional Advisor shall have demonstrated technical, legal, financial and sector specific skills and experience of at least 5-10 years and must have participated in at least two similar projects. Additional expertise if any may be required on a project by project basis.

## Annex G: Further Reading and Resources

1. The 1995 Constitution of the Republic of Uganda
2. Public Private Partnerships Policy 2010
3. Public Private Partnerships Act, 2015
4. Public Private Partnerships Regulations SI 18 of 2019
5. Public Finance Management Act of 2015
6. The National PPP Guidelines of 2020
7. The Public Private Partnerships ( Meetings of Committee) Regulations, 2019
8. The Local Government Act Cap 243
9. The National Climate Change Act of 2021
10. The Local Government Development Planning Guidelines of 2020
11. National Development Plan III (NDP III)
12. [www.pppunit.go.ug](http://www.pppunit.go.ug)

