



REPUBLIC OF NAMIBIA

Ministry of Trade and Industry

Namibia Public Private Partnership (PPP) Policy

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PREAMBLE

The provision of infrastructure and government services to its citizens is a prime mandate of the Government of Namibia. A strong economic and industrial infrastructure, such as roads, power, telecommunications, ports, airports, water, sanitation, sewerage, health, education, industrial research and testing facilities, and industrial parks constitute a fundamental prerequisite for economic growth and development. Studies have consistently demonstrated the close relationship between infrastructure development and economic output. Despite Namibia's relative economic growth in the face of world recession, its infrastructure and industrial growth and also the quality of public services demand greater augmentation. In addition, Namibia is committed to the agenda of achieving economic equality for its people through the 'Transformation Economic and Social Empowerment Framework' (TESEF) policy framework. Towards this end, investment in infrastructure and services needs to be increased manifold to create the growth and opportunities required to lift the income and quality of life for its citizens.

The potential of PPP to have a positive impact on the social and economic fabric of Namibia, through employment creation, revenue generation and skills transfer, is considered a crucial factor. PPPs may be leveraged as an important instrument for achieving the social objectives such as black empowerment, increased employment for the historically disadvantaged, encouraging managerial and entrepreneurial capability in the local population, stimulating small and medium enterprises to play a larger role in the economy.

It is envisioned that infrastructure delivery options that make the best use of the resources of both the public and private sector would provide the best solutions. The government views private sector participation, including through Public Private Partnerships (PPPs), as critical to addressing existing infrastructure and services needs. PPP has been perceived as a proven infrastructure procurement method that was increasingly being leveraged across the developed world alongside traditional methods to deliver infrastructure and economic development to the community. The aim of PPP *is to deliver improved services and better value for money primarily through appropriate risk transfer, encouraging greater innovation, asset utilisation and an integrated project-life management, underpinned by private financing.*

In 2009 Government of Namibia commenced work on the PPP policy. One important step was the appointment of the International Monetary Fund (IMF) to study and report on a framework for implementing PPPs and managing associated fiscal risks. IMF recommendations focused on steps to strengthen overall investment project selection and procurement, and the design of institutional, fiscal accounting and reporting, and legal frameworks conducive to the sound implementation of PPPs in Namibia.

In 2010, the Ministry of Trade and Industry appointed CRISIL Risk and Infrastructure Solutions Limited to undertake a comprehensive review of the legal and institutional framework in Namibia, and, based on the study results, to evolve a policy and institutional framework for PPPs in Namibia.

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

- a. PPPs can enable the Government to use the private sector's delivery, project completion and project management expertise and capability for the benefit of the people;
- b. PPPs can help the Government better understand the whole of the life cost of investment and enable a more rigorous project assessment;
- c. PPPs can enable the Government to share risk with the private sector and make payments conditional on the actual delivery of infrastructure and services;
- d. PPPs can enable the Government to achieve its socio-economic objectives by weaving the socio-economic objectives into the design and evaluation of PPP projects.

However, the contingent risks arising out of entering into PPPs need to be noted and addressed through the establishment of a formal PPP Framework and a specialist PPP Unit with appropriate skills and expertise.

The Government is mindful that PPPs are not a panacea for all investment needs and indeed cannot be a substitute for full private or full public provision where these approaches deliver better value for money. However, Government recognizes that PPPs have been effectively applied in both developing and developed countries to achieve much needed infrastructure, service delivery and attendant economic and social development.

Government is fully aware that it is acutely incumbent on Government to carefully design PPP delivery models that consistently deliver value for money for Namibia. The PPP Policy also proposes the development of PPP Regulations for Namibia that will govern Government's partnership with the private sector to help deliver not only infrastructure and services but a range of projects through PPP.

The PPP Policy also proposes the establishment of a PPP Committee and PPP Unit under the Ministry of Finance empowered with the capacity and knowledge to determine whether PPP is the most appropriate procurement option available to government and, if this is determined to be the case, to assist the Line Agencies to transact the project.

The term Line Agencies referred to in the Policy would cover all National, Regional and Local authorities, departments and entities charged with the mandate to deliver government's services that can benefit from partnership with the private sector. The PPP Committee and Unit will report to the Government on the performance of parties against the PPP Policy.

Government will retain responsibility of delivering core services (though this will be determined on a jurisdictional basis) and PPP proposals will offer fair treatment of public employees and best support of the government's economic agenda. Determination of core and non-core services will occur on a project-to-project basis. Innovation in PPP models will be encouraged, transparency and fairness will be held paramount and it will be underlined that the processes for delivering PPP project should be able to reflect experience and the changing environment in which the project is financed, constructed, and delivered. Government is committed to monitoring, reviewing and refining, from time to time, the PPP Policy and Regulation. Government of Namibia is confident that using PPP as an approach to project development In Namibia can offer a dynamic and efficient way to deliver and manage infrastructure and project development offering significant benefits in design, quality of services and the cost of infrastructure. Through PPP Government will harness the power of the private sector to support the country's economic and social development towards ensuring modern services, economic equality, improved standards of living and reduced poverty.

Thus the National PPP Policy (Policy) will provide a consistent framework that will enable public and private sectors to work together to develop projects and improve

public service delivery through private sector provision of public infrastructure, other projects and related services. The Policy is the first part of the PPP Framework and will form the basis for the development of the remaining components of the PPP Framework which includes the PPP Regulation, institutional arrangements, legal/regulatory framework and implementing guidelines.

EXECUTIVE SUMMARY

The Government of Namibia proposes to evolve a strong PPP Policy for Namibia so as to deliver to its citizens the required levels of infrastructure and services. Recognizing the importance of leveraging PPP as an instrument for achieving its social objectives (such as black empowerment, increased employment for the historically disadvantaged, encouraging managerial and entrepreneurial capability in the local population, stimulating small and medium enterprises, achieving economic equality through the 'Transformation Economic and Social Empowerment Framework'). The Government wants to focus on PPP as a means *to deliver improved services and better value for money through appropriate risk transfer, innovation, asset utilisation and integrated project-life management, underpinned by private financing*. Following the initial study by IMF and recommendations thereon CRISIL Risk and Infrastructure Solutions Limited were appointed in 2010 by the Ministry of Trade and Industry to undertake a comprehensive review of the legal and institutional framework in Namibia, and, thereafter, evolve a conducive policy and institutional framework for PPPs.

PPPs offer many advantages by enabling Governments to leverage on private sector project delivery capacity and risk taking ability by making payment contingent on infrastructure/service delivery and also enable Government to build its socio-economic objectives into the design and evaluation of PPP projects. However, the contingent risks arising out of entering into PPPs need to be noted and addressed through the establishment of a formal PPP Framework and a specialist PPP Unit with appropriate skills and expertise. The PPP Policy also proposes to develop PPP Regulations for Namibia to govern Government's partnership with the private sector.

The PPP Policy proposes the establishment of a PPP Committee and PPP Unit under the Ministry of Finance empowered with the capacity and knowledge to determine whether PPP is the most appropriate procurement option available to government and, if this is determined to be the case, to assist the Line Agencies to transact the project. Line Agencies would cover all National, Regional and Local authorities, departments and entities charged with the mandate to deliver departmental and government's services that can benefit from partnership with the private sector. The PPP Committee and Unit will report to the Government on the performance of parties against the PPP Policy.

Government will retain responsibility of delivering core services (though this will be determined on a jurisdictional basis) and PPP proposals will offer fair treatment of public employees and best support of the government's economic agenda. Determination of core and non-core services will occur on a project-to-project basis. Innovation in PPP models will be encouraged, transparency and fairness will be held paramount and it will be underlined that the processes for delivering PPP project should be able to reflect experience and the changing environment in which the project is financed, constructed, and delivered. Government is committed to monitoring, reviewing and refining, from time to time, the PPP Policy and Regulation. Thus the National PPP Policy (Policy) will provide a consistent framework that will enable public and private sectors to work together to develop projects and improve public service delivery through private sector provision of public infrastructure, other projects and related services. The Policy is the first part of the PPP Framework and will form the basis for the development of the remaining components of the PPP Framework which includes the PPP Regulation, institutional arrangements, legal/regulatory framework and implementing guidelines.

The **OBJECTIVES** of the PPP Policy will be to encourage private sector investment, encourage innovation, ensure rigorous oversight and governance, provide the principles, framework and guiding procedures to assist agencies in applying PPPs, identify responsibility centres and enunciate accountability, achieve capacity development and skills transfer, encourage service delivery, poverty reduction, employment creation and inequality reduction focus to be woven into the PPP project design and evaluation.

The **KEY PRINCIPLES** on which the partnership with the private sector will be grounded will be value for money, public interest considerations, competitive pressure focusing on quality and price considerations, transparency and accountability, appropriate and balanced risk allocation, affordability, and output orientation.

With regard to **SCOPE AND COVERAGE**, the policy will apply to PPP arrangements that will be primarily related to projects involving a transfer of a ministerial function to the private party or creation of an asset that will help a ministry perform better or offer enhanced services and which will involve private investment. Such PPP projects will include economic assets and related services (roads, rail, ports, airports, power, communication, tourism infrastructure and amenities); social assets and related services (health care, education, accommodation, public housing, court and correctional facilities); municipal assets and related services (water supply, sanitation, garbage collection, sewage disposal, water treatment plants, municipal markets, rural roads, bus stations); and industrial infrastructure and related services (R&D centres, common laboratory and testing facilities for industries, and industrial parks). Related services may be ministerial support services or core services, the determination of which will occur on a project to project basis at the early planning stages of each infrastructure project. As per the Policy, PPP will primarily apply to projects above the threshold level of N\$ 10 million though projects below N\$ 10 million may also be considered provided they can be sufficiently justified through the value for money drivers. The Policy will apply to the central government as well as to the regional and local authorities; however, application of the Policy to State Owned Enterprises (SOEs) will be determined by individual jurisdictions.

The **DEFINITION OF PUBLIC-PRIVATE-PARTNERSHIP** will be based on its three essential elements – a contractual arrangement, substantial risk transfer, and outcome-based financial rewards to the private sector. It is defined as a medium to long term contractual relationship between the public sector and other private partners in the sharing and transferring of risks and rewards and in the provision of infrastructure and/or services in the performance of a Government function.

The **PRINCIPAL FEATURES OF PPP** will include provision of a service that will involve the creation or use of an asset involving private sector participation, a contribution by government through for instance land, capital works, risk sharing,

revenue diversion, purchase of the agreed services or other supporting mechanism; and the private sector receiving payments from government and/or through user charges or third party revenues that will be contingent on the private sector's performance in supplying the related services or facilities.

The **PPP BENEFITS** arise from design and the quality of services and the construction of infrastructure as PPPs draw upon the best available skills, knowledge and resources, bring down infrastructure expenditure, generate efficiencies and cost-effectiveness in the delivery of infrastructure and related services through innovative and specialist expertise, and thereby deliver value for money.

IDENTIFICATION OF PROJECTS FOR PPP will occur at two levels:

(a) At the initial stage when the Project Officer conceptualises a project, PPP will be considered as a procurement option where threshold values are met and where value for money drivers exists in the form of sufficient scale and long term nature, complex risk profile and opportunity for risk transfer, full integration, under the responsibility of one party ensuring 'whole-of-life costing', innovation in meeting service specifications, measurable outputs, asset utilization reducing costs to government, better integration of design, construction and operational requirements, competitive process arising out of a competitive market; and

(b) At the feasibility stage, PPP will be considered as a procurement option where the Value for Money can be established by the transaction advisor.

The **PPP PROJECT CYCLE** and its associated primary stages will comprise of the Project Inception, Project Feasibility, Project Procurement, Project Development, and Project Operation: Exit and Transfer

The **FORMS OF PPP** arrangements recommended by the Policy will include Service Contract; Management Contract; Management Contract (with rehabilitation/expansion); Lease, Build Lease Transfer (BLT) or Build-Own-Lease-Transfer (BOLT); Build-Transfer-Lease (BTL); Area Concessions; Design-build-operate (DBO); Build-operate-transfer (BOT)/ Design-Build-Finance-Operate-Transfer (DBFOT); Build-operate-transfer (BOT) Annuity; Build-own-operate-transfer (BOOT) or DBOOT; Build-own-operate (BOO). However, further variations on each form and blends of forms are possible and will be considered.

PPP Projects will serve as an engine for **ACHIEVING THE SOCIAL AND ECONOMIC OBJECTIVES OF THE GOVERNMENT OF NAMIBIA**, such as employment creation, pro-poor development, inequality reduction, development of Small and Medium Enterprises and in particular Transformation Economic and Social Empowerment Framework (TESEF). These considerations will be included during project conceptualization and design, feasibility study, value assessment, bid document preparation and tender stage followed by close monitoring of outcomes during contract management phase. The evaluation criteria for all PPP projects will set a 10% preferential score for TESEF SME and other National Objectives in the Request for proposal as part of the Quality cum cost Based Selection scoring. Each PPP Project will identify and set a TESEF score card with targets for the private party towards ensuring equity-ownership, management and employment, and subcontracting. Where the required project skills are not available among the designated groups, the conditions may be relaxed with provision of sufficient training to enable stronger participation over the life of the PPP Project.

A PRO-POOR APPROACH IN THE DESIGN OF PPP PROJECTS will focus on the needs of the lower income and historically disadvantaged groups with the PPP planning and service delivery process approached from a pro-poor perspective. In addition to employment creation, capacity building and economic participation, the pro-poor approach will also relate to infrastructure and service provisioning and removing of service constraints and will be achieved in one or combination of the following ways: Output Based Aid (OBA) contracts where financing from international and donor agencies is structured so as to benefit the target group; Designing low cost mechanisms for providing service, pricing structures that encourage customer payment, low-cost financing for system extension and other contract mechanism relevant to the specific characteristic of the target population; Designing the service level, technology and construction standards appropriately but low cost and in line with the financial capability of the target group with potential to upgrade; Alternate mechanisms, such as potential for the target group to contribute in kind through labour or any other appropriate means; Allowing partnerships or co-existence with small scale providers or communities where appropriate to reach a particular target group; and any other approach as may be appropriately designed by the Ministry, Line Agency and/or recommended by the PPP Committee. Community based PPPs

will form an important aspect of the pro-poor approach, especially while designing PPP projects at the local government level.

The **LINE AGENCY** would include ministries, ministerial equivalent bodies, regional authorities, local governments or any of their subsidiary bodies thereof which are authorized to enter into project contracts and the Agency will have the overall responsibility to prepare projects, enter into project contracts and manage the contractual relationship with the private investor, for infrastructure facilities within their jurisdiction. The role of the Line Agency will include appointment of Transaction Advisor, invitation of tenders and selection of the PPP developer; obtaining the Transaction Approval; negotiating the PPP contract; monitoring the progress; and obtaining relevant applicable in-principle approvals.

The **LINE MINISTRY** will provide the Agency with necessary guidance, receive and validate the Transaction Approval 1 and forward it to the Ministry of Finance; receive and validate the Transaction Approval 3 and 4 along with the results of tender evaluation and the identification of the selected developer to the Ministry of Finance. Where the Line Ministry is acting as the Line Agency, the Line Ministry will perform all duties of the Line Agency and the Transaction Approvals will be provided by the Ministry of Finance.

The **PPP COMMITTEE** will be established under the Ministry of Finance and will consist of the Permanent Secretary, Ministry of Finance as the Chairperson; representatives of the Ministries of Trade and Industry, Works and Transport, line ministry, representative from the National Planning Commission, Attorney-General's Office; and at least two representatives from the lead industry bodies, and/or multilateral agencies, and/or eminent persons with specialist skills in the PPP arena. The PPP Committee will be the decision-making body in respect of PPPs and will provide all Transaction Approvals; develop best practice guidelines; formulate policy; monitor planning and progress of PPPs; oversee functioning of the PPP Unit; and develop public-private partnership awareness.

The **CENTRAL PPP UNIT** will be established under the PPP Committee with adequate capacity and resources to support Line Agencies in developing robust PPP proposals, staffed by highly trained team of professionals who may also engage private sector consultants as partners during the setup and operation phase. The PPP Unit will determine whether PPP is the most appropriate procurement option;

ensure consistency in the project preparation and evaluation; act as a technical secretariat to the Ministry of Finance and PPP Committee; assist the PPP Committee/Ministry of Finance in issuing regulations, circulars and guidance notes, pertaining to PPPs; and ensure other aspects of the PPP policy are adhered to in the preparation and procurement of PPP projects.

The **MINISTRY OF FINANCE** will regulate the implementation of the Policy; provide overarching guidance and regulatory oversight; guide and regulate the functioning of the PPP Committee and the PPP Unit; provide approvals where the Line Ministry acts as the Line Agency; and provide approvals for all PPPs that have a contract value in excess of N\$ 150 million.

PPPs in Namibia will be woven into the Vision 2030 and the National Development Plans. **SECTOR PLANS** and policies will develop sector specific PPP Models and the concerned Ministry/Line Agency will prepare a shelf of potential PPP projects for each plan period. The National PPP Plan will be integrated into the Planning process and dovetailed into the medium term expenditure frameworks of the Government with the review of the progress of PPP project implementation forming a critical part of the NDPs and the medium term expenditure framework.

The **PPP PROJECT INITIATION** will be commenced by the accounting officer/ authority of the relevant Line Agency/SOE and will include project identification; initial assessment of service need; appraisal of options; appraisal of the socio-economic objectives; registration of the Project with the PPP Unit; appointment of Project Officer and Project Team; and appointment of Transaction Advisor, to undertake all the detailed financial, technical and legal work required to prepare the Agency for a PPP project and agreement.

The **FEASIBILITY ASSESSMENT** will cover the strategic need assessment; assessment of service delivery options; undertaking of project due diligence, including technical, legal and environmental; project value assessment, including affordability and value for money through a Public Sector Comparator and a PPP Reference Model; and preparation of a Procurement Plan. In evolving the PPP design, the Agency will take into consideration the respective needs of all parties. The Line Agency/SOE will approve the PPP feasibility report, taking the above into consideration, and thereafter submit it to the PPP Committee for obtaining Transaction Approval 1.

The following **PROCUREMENT APPROVALS** will be required at each stage from the PPP Committee:

Investment decision and decision to go ahead with the procurement by PPP (Transaction Approval 1);

Approval of the pre-qualification criteria and RFQ (Transaction Approval 2 A);

Approval of the RFP and draft PPP Agreement (Transaction Approval 2 B);

Approval of the evaluation and selection (Transaction Approval 3);

Approval after negotiation and of the Project Award (Transaction Approval 4).

Additional approvals as required will be coordinated by the PPP Committee. Key documentation would include preparation of the bid documents along with the project agreements. The PPP Process may be a one or two stage process depending on the complexity and size of the project. A one stage PPP process will comprise of a single stage three cover RFP process, where the Cover 1 will contain the qualification criteria, while a two stage process will comprise of the issue of a RFQ documents for pre-qualification followed by a two cover RFP document. In all cases, a two stage process will be undertaken for projects above the value of N\$ 200 million.

The **REQUEST FOR QUALIFICATION** stage will be adopted for all projects above the value of N\$ 200 million unless otherwise expressly approved by the PPP Committee for a single stage RFP process. The RFQ will be advertised in at least one newspaper of wide and general circulation in the Republic of Namibia; if required, in any international newspaper, as may be directed by the PPP Committee; and additionally advertised in well known technical magazines or trade publications, if considered necessary. If required a pre-bid conference may be organized wherein the issues raised by the bidders could be collated and addressed and pre-bid clarifications provided in writing to all the bidders. The applications received will be analysed by the Agency and an evaluation report prepared recommending a list of firms pre-qualified. The RFQ will be evaluated as per the process indicated in the document, the evaluation report will be submitted to the PPP Committee for approval and a record of the procurement proceedings will be maintained.

The **REQUEST FOR PROPOSAL** will aim select a preferred bidder based on an objective, comprehensive and transparent selection process. The RFP document will be comprehensive and provide all details. The evaluation of bids will be based on a Quality cum Cost Based Selection (QCBS) approach where Technical Proposals will

be allotted a weight between 50%-70%, TESEF a preference of 5%, SME or other national policy priority consideration a preference of 5% and the Financial/Price Proposal between 20%-40%. 20% weight for Financial Proposal will be given for large projects of N\$700 m and above, where price becomes less of a concern and more significant is sustainability and quality. 40% weight for financial proposal will be preferred for simple projects and for those of value lower than N\$200 m. Projects of value between N\$200 million and N\$700 million will be given a weight of 30% for the financial proposal. The RFP will not provide detailed scoring methodologies and point allocations to prevent proposals being tailored to the evaluation and number of points allocated to each category or sub-category. The process and evaluation methodology should be set out so that bidders take comfort from an auditable process with checks and balances.

The **SELECTION/FINANCIAL CRITERIA** for a PPP project may be one or a combination of the following: lowest contract value; lowest bid in terms of the present value of user fees; highest revenue share to the Government; highest up-front fee; shortest concession period; lowest present value of the subsidy or grant; lowest capital cost and operation & management cost; highest equity premium; lowest quantum of State Support solicited in present value; lowest net present value of payments required from the Government; or such other suitable selection criteria as the PPP Committee may approve, allow or prescribe.

The evaluation will be conducted by an **EVALUATION COMMITTEE** appointed and chaired by the concerned Line Agency and which will include the Transaction Advisor; selected member from the Line Agency; representative from the MOF/PPP Committee/PPP Unit; and any other member as may be considered necessary for the project. The evaluation report of the Evaluation Committee along will be submitted to the PPP Committee for review. If no single bidder emerges as the preferred bidder, the PPP Committee could recommend a BAFO process only in exceptional circumstances. The highest ranking bid based on the QCBS criteria will be declared the preferred Bidder and the Agency will award the contract to the Bidder who submitted the highest ranking bid.

The **NEGOTIATION COMMITTEE** will be appointed by the Line Agency and will be different from the Evaluation Committee, though one or two members may be the same. The key steps in the negotiation stage will be identification of a negotiation

committee and lead negotiator; preparation of a timeline for negotiations, falling within the bid validity period; development of objectives, negotiation strategy, negotiation plan, predefined positions of the institution and minimum negotiating parameters; documentation of all discussions and interaction during the meetings; work towards resolving issues and situations of stalemate in discussion; reach a formal settlement and establish a preliminary schedule for signing the PPP agreement.

The **PPP AGREEMENT** will capture all elements of risk and risk transfer and will exhaustively detail the right, responsibilities and obligations of the contracting Agency and the PPP Party.

CONTRACT MANAGEMENT will ensure that government obtains the services set forth in the output specifications of the contract and also ensure ongoing affordability, value for money and that risks that have been transferred to the private sector stay transferred to the private sector and will include Service Delivery Management; Contract Administration; Relationship Management which will be achieved by the Contract Management Team through a Contract Management Plan.

In case of disputes amongst the parties to the contract, the **DISPUTE RESOLUTION PROCESS** will be as follows: In the first instance disputes should be resolved amicably between counter parties at the Contract Manager level; if not resolved within specified time frames, the same should be referred to the Contract Director and his/her counterpart in the private part; if no resolution is achieved then the matter should be referred to an independent third party mediator; if no resolution is achieved then the matter will be referred for arbitration as per Namibia's Arbitration Act, 1965

The PPP project will, at the end of the contractual period, be transferred to the Agency, as per the terms of the Agreement. The Agreement Management Team will ensure that the **PROJECT TRANSFER** is smooth and the transition happen with minimum negative impact on the project itself.

An **UNSOLICITED PROPOSAL** will be a 'suo-moto' proposal received by the Line Agency or any government authority with project details, details of technical, commercial, managerial and financial capability, principles of the PPP Agreement; and estimated cost of the feasibility study of the project not exceeding 1 per cent of the project value. Such a private sector person will be referred to as an 'original

project proponent' or OPP. On receipt of an unsolicited proposal, the following course will be adopted:

The concerned Agency will, within 30 working days, refer the project to the PPP Committee, with its recommendations. The PPP Committee will ascertain whether the proposed scale and scope of the Project is in line with the Government's requirements, before approving the proposal.

If the PPP Committee recommends the retention of the project, the OPP will submit a proposal in containing details of his technical, commercial, managerial and financial capabilities; a feasibility study containing the technical and commercial details of the project; and the nature of information which is proprietary.

The Government Agency will evaluate the OPP's technical proposal and will forward the suo-moto Proposal to the PPP Committee along with its evaluation within 30 days of its receipt for approval to the PPP Committee.

If the PPP Committee finds merit in such a Suo-Moto Proposal, it will instruct the Agency to invite competing counter proposals through the standard bidding procedure as recommended in the Policy.

In the evaluation of the RFP, the Margin of Preference approach will be used wherein a 10% preference will be given to the OPP.

If the Project is not awarded to the OPP, the Agency will compensate the OPP the costs of the feasibility study and claim such costs from the successful bidder. The Suo-Moto Proposal and the Concession Agreement prepared by the OPP will then become the property of the Agency as the case may be.

If the Project is awarded to the OPP, the costs of the feasibility study will be borne by the OPP.

If the competitive bidding process results in a SOLE BID, the Agency may, in consultation with the PPP Committee, accept the Sole Bid; or re-negotiate the financial offer; or reject the Sole Bid. In case the competitive bidding process does not generate sufficient response and if even a sole bid is not received, then the Agency will, in consultation with the PPP Committee, modify either the pre-qualification criteria and/or the risk sharing provisions and restart the bid process; or cancel the competitive bid process; and decide to have direct negotiation with any private sector developer. In case one or more of the bids received in response to the bid process is deemed speculative or unrealistic, the Agency, with the approval of

the PPP Committee, will be entitled to treat the speculative or unrealistic bids as non-responsive and reject the same.

Every member of the Bid Evaluation Committee or the Negotiations Committee appointed by the Agency to evaluate bids will be required to sign a **CODE OF CONDUCT** before receiving bids along with a declaration of interest. A member found guilty of breaching the code of conduct will be liable for disciplinary action in terms of relevant public service regulations and may also be liable for criminal prosecution.

Namibia will emphasize the need for **LONG TERM COMMITMENT** and shared responsibilities in making PPPs successful in the country in the long run. Towards this end stakeholders' consensus, capacity building and continued skill training will form important focus towards ensuring long term sustainability.

Forms of **GOVERNMENT SUPPORT** will be defined on a project to project basis, and will include financial support and subventions, including capital grants/subsidies during construction, operational subsidies, viability gap funding, unitary/annuity payments and hybrids that may include user charges plus other subvention mechanisms; asset based support in the form of providing land based resources to PPP projects for a tenure as may be determined at the feasibility stage; and non-asset based support will include administrative support, guarantees, and foregoing revenue streams in terms of waiver of sales tax on construction material and stamp duty and registration charges.

SECTION 1 - OBJECTIVES

The objectives of the Policy are to:

- i) Encourage private sector investment in infrastructure and other projects/services where value for money can be effectively demonstrated;
- ii) Encourage innovation in the provision of infrastructure and other projects/services;
- iii) Ensure rigorous oversight and governance on the projects to be selected for PPP, thus ensuring competition for the awarding of contracts;
- iv) Provide the principles, framework and guiding procedures that will assist agencies in applying PPPs across Namibia;
- v) Identify responsibility centres and enunciate accountability for outcomes;

- vi) Achieve capacity development and focused skill transfer in the delivery of projects;
- vii) Encourage that pro-poor development and focus on service delivery, poverty reduction, employment creation and inequality reduction are woven into the design of PPP projects thereby forming an important consideration in their evaluation;

SECTION 2 - KEY PRINCIPLES IN THE APPLICATION OF PPP

In achieving the above objectives, the partnership with the private sector will be grounded on the following key principles:

- i) **Value for money**, which will be a combination of the service outcome to be delivered by the private sector, together with the degree of risk transfer and financial implications for government. In considering the value for money the following principles will apply:
 - a. The allocation of risk and related financial implication to the government will be geared towards delivering the greatest net economic benefit to the country.
 - b. The benefits of private sector expertise, risk management, project management, capital, flexibility, and innovation will be maximized.
 - c. The partnership provides greater value for money for the government on a whole-of-life cost basis than conventional procurement or other procurement approaches.
 - d. PPPs will be underpinned by rigorous evaluation of a business case consistent with the government's existing and future fiscal policies and guidelines.
- ii) **Public Interest**, consideration of which will require:
 - a. Ensuring that procuring the project as a PPP is not contrary to the Public interest; and
 - b. After a decision has been made to procure a project as a PPP, ensuring that the procurement process is structured to ensure that the project continues to be in the public interest.
- iii) **Competitive pressure**, which will form the basis of the selection.
 - a. The competitive procedure and process of selection of private partners will be through a competitive tendering process using a variety of selection criteria

focused on both quality of delivery (technical) and price (financial) considerations.

- b. The policy will also address the treatment of unsolicited proposals.
- c. The tendering process for PPPs will adhere to the Government's applicable procedures, policies and guidelines as set out in this Policy and subsequent Regulations.
- iv) **Transparency**, which will mean that,
 - a. Transparency and accountability will be ensured in the procurement of partners and subsequent delivery of services.
 - b. Private sector intellectual property and commercial confidentiality will be protected as appropriate.
 - c. Formal approvals of projects will form part of the government process.
 - d. Disclosure policies and public consultation will protect public interests in PPP projects.
 - e. Performance measures will be clearly established to ensure transparency in the quality of services and project outcomes.
 - f. Government's interest in land and other government assets will be protected.
- v) **Risk Allocation**, which will recognize that,
 - a. The principle governing risk transfer is one of optimal risk allocation.
 - b. Risk will be allocated to whoever is best able to manage it, taking into account public interest considerations, so that the resulting efficiency gains are optimal.
- vi) **Affordability**, which will gauge the demand of the project on the budget and technical capacity of the relevant institution over the whole PPP project life and determine impact on government's resources. User fees will also be subjected to the test of affordability by the end users.
- vii) **Output Oriented**, which will mean that
 - a. Focus will be on specification of what services are to be delivered rather than how they should be delivered in order to maximize the opportunity for innovation.
 - b. Performance measures will be established to ensure that the required services are delivered in accordance with the output specification.
- viii) **Accountability**, which will mean that

- a. Agencies are responsible for the delivery of their outputs including where PPP's are used to deliver those outputs.
- b. Agencies cannot transfer this accountability to the private sector.
- c. The conduct of the public sector should always be such that confidence in the probity of the partnership model and the way in which it is implemented can be maintained at all times.

SECTION 3 - SCOPE AND COVERAGE OF THE POLICY

The policy will apply to PPP arrangements that will be primarily related to projects that will involve a transfer of a departmental function to the private party or creation of an asset that will help a department perform better or offer enhanced services.

The PPP arrangements will relate to projects and/or services which will involve private investment and where government has direct interest in the building of asset and/or provision of services.

For the purposes of the Policy, departmental function refers to functions that involve creation of physical assets and provision of related services that cover (but are not limited to)

- a. Economic assets and related services such as roads, rail, ports, airports, power, communication, tourism infrastructure and amenities;
- b. Social assets and related services such as health care, education, accommodation, public housing, court and correctional facilities;
- c. Municipal assets and related services such as water supply, sanitation, garbage collection, sewage disposal, water treatment plants, municipal markets, rural roads, bus stations;
- d. Industrial infrastructure and related services such as R&D centres, common laboratory and testing facilities for industries, and industrial parks.

For the purposes of this Policy, related services may encompass

- a. Services that support the main departmental service function, including non-core services such as maintenance, security, cleaning, laundry, facilities up-keep, support services; and

- b. Any core service element for which government has particular responsibilities to the people using the service and the community but which individual jurisdictions may decide to include in PPP.
- c. The determination of core and non-core services will occur on a project to project basis at the early planning stages of each infrastructure project.

Projects having higher capital investment are likely to provide greater value for money when taken through the PPP route. Accordingly, projects above the threshold level of N\$ 10 million will trigger evaluation of PPP as a potential procurement method for the relevant project, with regard to value for money drivers described in SECTION 7 – IDENTIFICATION OF PROJECTS FOR PPP. Projects of capital cost less than N\$ 10 million may also be suitable for PPP delivery provided they can be sufficiently justified through the value for money drivers.

The Policy will apply to the central government as well as to the regional and local authorities in relation to the procurement of a departmental function or asset creation towards enhanced service delivery via PPP.

The Policy will apply to all PPP projects to be delivered to government departments and agencies within jurisdiction, unless a specific government direction in that jurisdiction advises of a departure from this Policy and a decision to follow other provisions.

Application of this Policy to the provision of infrastructure by the State Owned Enterprises (SOEs) will be determined by individual jurisdictions.

SECTION 4 - DEFINITION OF PUBLIC-PRIVATE-PARTNERSHIP

The definition of Public-Private-Partnership may be based on its three essential elements – a contractual arrangement, substantial risk transfer, and outcome-based financial rewards to the private sector.

Namibia will define PPP as a medium to long term contractual relationship between the public sector and other private partners in the sharing and transferring of risks and rewards in the performance of a departmental function and also in the provision of infrastructure and/or services.

SECTION 5 - FEATURES OF PPP

PPP projects cover economic, industrial, social, municipal infrastructure and include either or a combination of a capital component and an ongoing service delivery component. The principal features of PPP include:

- a. Provision of a service involving the creation or use of an asset involving private sector participation in a suitable combination of design, construction, financing, maintenance, and delivery of services for a specific period;
- b. A contribution by government through land, capital works, risk sharing, revenue diversion, purchase of the agreed services or other supporting mechanism; and
- c. The private sector receiving payments from government and/or through user charges or third party revenues, once operation of the infrastructure has commenced and contingent on the private sector's performance in supplying the related services or facilities.

Thus, in a PPP,

- a. The public sector and private enterprise enter into a PPP agreement or contract that is usually time bound and sets out the principles of the partnership and the rights and obligations of both parties;
- b. Provision of infrastructure service continues to be regulated by the public sector and forms its key responsibility;
- c. Often the core government services continue to be provided by the public sector;
- d. The agreement is governed by pre-agreed delivery standards and/or service targets and returns for the private sector commences only when the capital works or services are completed;
- e. There is substantial sharing or transfer of risks from the public to the private sector;
- f. Generally the private sector assumes the completion and delivery risks while the public sector assumes the approval and regulatory risks. The detailed risk allocation however, is based on a project specific basis through negotiations between the government and private sector.

SECTION 6 - BENEFITS OF PPP

For government departments and agencies, contracting the delivery of infrastructure and/or related services to the private sector creates opportunities to deliver improved public services more cost-effectively.

PPPs can potentially deliver significant benefits in design and the quality of services and the construction of infrastructure. PPPs can draw upon best available skills, knowledge and resources, whether they are in the public or private sector. PPPs can also bring down infrastructure expenditure, including through delivering projects as part of a single package instead of staging capital development over the long term.

PPPs also provide the construction, service and finance industries with opportunities to generate efficiencies and cost-effectiveness in the delivery of infrastructure and related services through innovative and specialist expertise, and to develop their businesses by doing so.

The PPP approach has demonstrated ability to deliver value for money results for the community. Value for money from private sector involvement can be determined by government through evaluating the projects costs and benefits.

SECTION 7 – IDENTIFICATION OF PROJECTS FOR PPP

There will be two levels at which identification of a project for PPP will occur:

- a. At the initial stage when the Project Officer conceptualises a project and tentatively slots it for PPP;
- b. At the stage of the feasibility when the Transaction Advisor undertakes the feasibility study and concludes that there is substantial Value for Money in going the PPP route.

At the initial stage (a), PPPs will be considered as a procurement option where threshold values are met and where value for money drivers exists. PPPs may be a suitable procurement option if the following value for money drivers is present:

Sufficient scale and long term nature. The project would represent a major investment or financial commitment with long-term requirements. In many cases the value could include bundling together a small number of similar projects. Also, projects that lie below the investment threshold can nevertheless have a significant service component and therefore a significant value in net present terms, and can

exhibit other value for money drivers. Such projects may be suitable for PPP procurement and may be considered in consultation with the relevant PPP authority. In determining whether the scale of a project is sufficient, the size of transaction costs to government of procuring the project as a PPP should be considered.

Complex risk profile and opportunity for risk transfer. More rigorous risk evaluation and transfer to the private sector of those risks it is best able to manage, including those associated with providing the specified services, asset ownership and whole-of-life asset management;

Whole-of-life costing. Full integration, under the responsibility of one party, of upfront design and construction costs with ongoing service delivery, operational, maintenance and refurbishment costs. This delivers improved efficiency through whole-of-life costing as design and construction become fully integrated up-front with operations and asset management.

Innovation. As the PPP approach focuses on output specifications, this provides a wider opportunity to use competition as an incentive for private parties to develop innovative solutions in meeting these service specifications

Measurable outputs. The nature of the services enables output specifications and a performance-based contract;

Asset utilization. Reducing costs to government through potential third-party utilization and through more efficient design to meet performance (e.g. service delivery) specifications;

Better integration of design, construction and operational requirements. Ongoing operations, maintenance and refurbishment requirements become a single private party's responsibility for the length of the contract period; and

Competitive process. A competitive market exists and the use of a competitive process helps to encourage the private party to develop innovative means of service delivery while meeting government cost objectives.

At the feasibility stage (b), PPP will be considered as a procurement option where the Value for Money can be established.

SECTION 8 - PPP LIFECYCLE

The PPP project cycle and its associated primary stages will comprise of the following:

- i) **Project Inception** : The project initiation stage of the PPP life cycle will be commenced by the accounting officer/ authority of the relevant institution and will comprise of the following steps:

Assessment of service need

Appraisal of service delivery options

Registration of the Project

Appointment of the project team

Selection and appointment of the Transaction Advisor

- ii) **Project Feasibility**: The PPP Feasibility phase is a critical input to the PPP procurement phase and should not be viewed by the institution as a purely theoretical exercise to obtain initial transaction approval. Each element of the PPP feasibility report closely ties in with the PPP procurement stages. The stronger the relationship between the PPP feasibility and PPP procurement stages, the greater the likelihood to achieve genuine value for money PPP. The Feasibility stage will comprise of the following steps:

Strategic need assessment

Detailed analysis of options

Legal and technical due diligence

Assessment of 'value for money'

Economic assessment

Preparation of procurement plan

Obtain transaction approval (1) for procurement through PPP

- iii) **Project Procurement**: The procurement process should aim at minimizing the complexity, duration and costs to both parties, while facilitating strong competition for the institution to obtain the best value for money for the PPP. The Procurement stage comprises of the following steps:

Preparation of bid documents – RFQ, RFP and Project Agreement/s

Obtain transaction approval (2) for procurement documents and process

Conduct of the bid process

Assessment of actual 'value for money'

Obtain transaction approval (3) for announcement of selected bidder/developer

Negotiations and finalization of terms of PPP Agreement

Obtain transaction approval (4) for award of the project and signing of Agreement

Preparation of contract management plan

Preparation of case study and close out report

- iv) **Project Development:** This stage will comprise the commencement and construction of the project and end at project commencement date. The project development stage comprises the following:

Achievement of financial closure

Mobilization of resources

Project Implementation

Monitoring of project construction

Project audit

- v) **Project Operation:** This stage will comprise the operation of the project and provisioning of services by the private party and will continue through the concession/project delivery period. The operational comprises the following:

Service delivery by the PPP Party

Fulfilment of obligations to government, including payment obligations, if any, by the PPP party

Project monitoring and financial audit by the government

- vi) **Exit and Transfer:** This stage will mark the completion of the contract period and natural termination of the agreement and will comprise:

Exit from the project by the PPP party

Transfer of land and assets, as specified by the Agreement

Decision by the Government on the next steps

SECTION 9 – FORMS OF PPP ARRANGEMENTS

This policy recommends the following forms of PPPs to be considered by the Line Agency/SOE when deciding on a PPP approach for a project while advising that further variations on each form and blends of forms are possible and common.

- i) Service Contract, where the private sector is engaged to conduct a part of the service or a specific task in the facility. The public authority retains primary responsibility on overall delivery of service to users.
- ii) Management Contract, where most or all of the operations and maintenance of a public facility or service is contracted out to the private sector, with no requirement for capital investment by the private sector.
- iii) Management Contract (with rehabilitation/ expansion), where limited investments for rehabilitation or expansion of the facility is required from the private sector in addition to the operations and management of the facility.
- iv) Lease, where the management and maintenance of selected assets/services is given to the private sector.
- v) Build Lease Transfer (BLT) or Build-Own-Lease-Transfer (BOLT), which involves building a facility, leasing it to the Government and transferring the facility after recovery of investment.
- vi) Build-Transfer-Lease (BTL), which involves building an asset, transferring it to the Government and leasing it back. Here the private sector delivers the service and collects user charges.
- vii) Area Concessions, which involve the full delivery of services in a specified area, including operation, maintenance, collection, management, and construction and rehabilitation of the system by the private sector.
- viii) Design-build-operate (DBO), which involve design, construction, management, and maintenance with the financing obligation not retained by the private sector.
- ix) Build-operate-transfer (BOT)/ Design-Build-Finance-Operate-Transfer (DBFOT), which involve design, finance, construction, management, and maintenance by the private sector.
- x) Build-operate-transfer (BOT) Annuity, where the private sector undertakes design, finance, construction, management, and maintenance and the concerned authority pays annuity revenue / unitary charge.
- xi) Build-own-operate-transfer (BOOT) or DBOOT, which involve design, construction, management, maintenance, ownership, and transfer by the private sector.

- xii) Build-own-operate (BOO), where the asset ownership is with the private sector and the service / facility provision responsibility is also with the private sector.

SECTION 10 – ACHIEVING NAMIBIA’S NATIONAL, SOCIAL AND ECONOMIC OBJECTIVES THROUGH PPPS

PPP Projects will serve as an engine for achieving the social and economic objectives of the Government of Namibia, such as employment creation, pro-poor development, inequality reduction, development of Small and Medium Enterprises and in particular Transformation Economic and Social Empowerment Framework (TESEF) that forms a national policy objective.

Towards this end, the entire PPP process will encourage that socio-economic and TESEF targets are consistently set and met to facilitate broad based and sustainable socio-economic impact and TESEF outcome in every PPP Project.

The socio economic objectives, including TESEF, will form a critical aspect of the PPP process and will be included as a key consideration during project conceptualization and design, feasibility study, value assessment, bid document preparation and tender stage followed by close monitoring of outcomes during contract management phase

The evaluation criteria for all PPP projects will set a 10% preferential score for TESEF SME and other National Objectives in the RFP as part of the QCBS scoring. Each PPP Project will identify and set a TESEF score card with targets for the private party towards ensuring the following :

- i) Equity-ownership, to achieve meaningful and beneficial direct ownership of substantial equity interests by the designated groups;
- ii) Management and employment to achieve effective participation in the management control of the private party and its subcontractors by the designated groups;
- iii) Subcontracting, to ensure that the private party contracts a significant proportion of its sub-contracting and procurement to the designated groups.

However, where the required project skills are not available among the designated groups, the conditions may be relaxed with provision of sufficient training to enable stronger participation over the life of the PPP Project.

PPP projects will also identify and provide encouragement to Small and Medium Enterprises (SMEs) so as to strengthen their participation in the national economy.

SECTION 11 – PRO-POOR APPROACH IN THE DESIGN OF PPP PROJECTS

A pro-poor approach, with focus on the needs of the lower income and historically disadvantaged groups, shall be encouraged while designing PPP projects in Namibia. The PPP planning and service delivery process, will be approached from a pro-poor perspective.

In addition to employment creation, capacity building and economic participation, the pro-poor approach will also relate to infrastructure and service provisioning and removing of service constraints.

The pro-poor approach will be achieved in one or combination of the following ways:

- i) Output Based Aid (OBA) contracts where financing from international and donor agencies is structured so as to benefit the target group. It will involve the use of explicit performance based-subsidies funded by the donor to complement or replace user fees, that may be one time, transitional or ongoing, where the subsidies are linked to performance outcomes;
- ii) Designing low cost mechanisms for providing service, pricing structures that encourage customer payment, low-cost financing for system extension and other contract mechanism relevant to the specific characteristic of the target population;
- iii) Designing the service level, technology and construction standards appropriately but low cost and in line with the financial capability of the target group with potential to upgrade;
- iv) Considering alternate mechanisms, such as potential for the target group to contribute in kind through labour or any other appropriate means;
- v) Allowing partnerships or co-existence with small scale providers or communities where appropriate to reach a particular target group;

- vi) Any other approach as may be appropriately designed by the Ministry, Line Agency and/or recommended by the PPP Committee.

Community based PPPs will form an important aspect of the pro-poor approach, especially while designing PPP projects at the local government level. Such Community based PPPs will evolve on a beneficiary participatory approach, and will not only involve active participation of local communities and stakeholders to ensure community awareness, support and on-going cooperation but also bring in the involvement of local organizations and support groups.

SECTION 12 - ROLE OF THE LINE AGENCY

The Line Agency or Agency would mean ministries, ministerial equivalent bodies, SOEs, regional authorities, local governments or any of their subsidiary bodies thereof which are authorized to enter into project contracts.

The Agency will have the overall responsibility to prepare projects, enter into project contracts and manage the contractual relationship with the private Investor, for infrastructure facilities within their jurisdiction.

In addition to other duties that may be prescribed under Law, the Agency will specifically perform the following duties:

- i) Select and appoint an independent consultant as Transaction Advisor contractor to prepare a comprehensive feasibility study for the project and tender invitation documents for selection of investor(s) for project contract negotiations;
- ii) Invite tenders and select the PPP developer as per the process defined in the Policy;
- iii) Obtain the Transaction Approval as defined in the Policy;
- iv) Negotiate with the private party and enter into PPP Agreement;
- v) Monitor the progress and be responsible for the effective implementation of the Agreement Management Plan as defined in the Policy;
- vi) Obtain relevant and applicable in-principle approvals in relation to land, environment and social aspects of the project as applicable, preferably prior to the invitation of tenders.

SECTION 13 - ROLE OF THE LINE MINISTRY

The Line Ministry will act as the relevant sector ministry and provide necessary guidance to the Agency in preparing the PPP project, or prepare the project if they are acting as the Agency depending on the Project.

In addition to other duties that may be prescribed under Law, the Line Ministry will, where the Line Ministry is not acting as an Agency, perform the following duties:

- i) Provide the Agency with necessary guidance in preparing the feasibility study for the PPP project;
- ii) Receive and validate the Transaction Approval 1 and forward it to the MOF.
- iii) Receive and validate the Transaction Approval 3 and 4 along with the results of tender evaluation and the identification of the selected developer to the MOF.

Where the Line Ministry is acting as the Line Agency, the following will apply:

- i) The Line Ministry will perform all duties of the Line Agency as stated in the Policy.
- ii) The Transaction Approvals, in this case, will be provided by the MOF

SECTION 14 - ROLE OF THE PPP COMMITTEE

The Public Private Partnership Committee (PPP Committee) will be established under the Ministry of Finance and will deal with all matters relating to a public-private partnership project. The Central PPP Unit will be formed under the PPP Committee.

The Committee will consist of the following

- i) The Permanent Secretary, Ministry of Finance who will be the Chairperson;
- ii) A representative of the Ministry of Trade and Industry;
- iii) A representative of the Ministry of Public Works;
- iv) A representative of the Ministry responsible for the specific PPP Project;
- v) A representative from the National Planning Commission;
- vi) A representative of the Attorney-General's Office; and
- vii) At least two representatives from the lead industry bodies, and/or multilateral agencies, and/or eminent persons with specialist skills in the

PPP arena and/or probity advisors from the private sector as may be required on a case to case basis.

The Committee will meet as often as is necessary at such time and place as the Chairperson thinks fit. The Committee will regulate its meetings and proceedings in such manner as it thinks fit.

The PPP Committee will be the decision-making body in respect of PPPs and will perform the following functions:

- i) Provide all Transaction Approvals as required under this Policy;
- ii) Develop best practice guidelines in relation to all aspects of public-private partnership;
- iii) Formulate policy in relation to public-private partnership projects;
- iv) Monitor planning and progress of PPPs;
- v) Oversee the functioning of the PPP Unit under it; and
- vi) Develop public-private partnership awareness in the country.

The representatives from the private sector are expected to apply their specialist knowledge on commercial issues, financing and banking, and also enhance the probity measures in the dealings of the PPP Committee.

SECTION 15 - ROLE OF THE CENTRAL PPP UNIT

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

The Central PPP Unit will be established under the PPP Committee (Ministry of Finance) with adequate capacity to support Line Agencies or State Owned Enterprises (SOEs) in developing robust PPP proposals.

The PPP Unit will be empowered with sufficient resources including human capital to manage PPP Transactions. Towards this end, the Policy supports the allocation of sufficient operation funds to enable the PPP Unit to recruit and retain high calibre staff.

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

The Policy also supports the engagement of private sector consultants to partner with the PPP Unit during the setup and operation phase of the PPP Unit.

The functions of the PPP Unit will be as follows:

- i) Determine whether a PPP is the most appropriate procurement option available to the Government and, if this is determined to be the case, to assist Line Agencies to transact the project.
- ii) Ensure consistency in the project preparation and the evaluation processes, and to act as gatekeeper in ensuring that every progression in the PPP process meets the principles and requirements of the PPP policy.
- iii) Act as a technical secretariat to the MOF and PPP Committee in undertaking the analysis necessary to advise the PPP Committee/Minister of MOF in administering the PPP Policy.
- iv) Assist the PPP Committee/MOF in issuing regulations, circulars and guidance notes, pertaining to PPPs.
- v) At the time of receiving application request for preliminary approval for PPP, the PPP Unit will ascertain:
 - a. that the project falls within the socio-economic and public priorities of the Government, as articulated by the Government in its policies, plans and guidelines;
 - b. that the feasibility study has been conducted by an independent transaction advisor who recommends that the project requires PPP;
 - c. that there is efficiency in project scoping, i.e. to ascertain that the same level of service delivery needs cannot be met with a reduced scope and scale of the project;
 - d. that the project is technically, financially, environmentally and socially feasible;
- vi) At the time of receiving application request for final approval for PPP, the PPP Unit:
 - a. Will ascertain that a competitive tender process has been administered by the Line Agency;

- b. Make suitable recommendations to the PPP Committee on approval or rejection of application requests, based on detailed analysis and justification;
 - c. Assess the benefits and efficiency being achieved in implementing projects with PPP.
- vii) Guide Line Agencies and Line Ministries with reference to the following:
 - a. When and how to use PPP in projects;
 - b. Requirements and processes under the PPP approach;
 - c. Safeguards to be put in place while preparing feasibility studies, administering the tender process, negotiating contracts with Investor(s), and in managing the contract.
- viii) Perform any other functions that may be bestowed by the PPP Committee/Minister of Finance/Cabinet.

SECTION 16 - ROLE OF MOF

The MoF will perform the following duties:

- i) Regulate the implementation of this Policy;
- ii) Provide the overarching guidance and regulatory oversight to the Line Agencies/SOEs in the planning and implementation of PPP Projects;
- iii) Guide and regulate the functioning of the PPP Committee and the PPP Unit;
- iv) Provide approvals in all cases where the Line Ministry acts as the Line Agency;
- v) Provide approvals for PPPs that have a contract value in excess of N\$ 150 million.

SECTION 17 - SECTOR PLANS

To ensure continued focus and priority, PPPs in Namibia will be woven into the Vision 2030 and the National Development Plans.

Towards this end, sector level policies and plans will need to develop sector specific PPP Models and take into account the assessment of projects coming within their purview with reference to their suitability for PPPs.

Socio-economic considerations, national policy objectives and priorities will be suitably taken into account by the concerned Ministry/Line Agency while drawing up the project plans for PPP.

The concerned Ministry/Line Agency will prepare a shelf of potential PPP projects for each plan period and the same will be taken into the National Development Plans for the respective period.

The National PPP Plan will be integrated into the Planning process and dovetailed into the medium term expenditure frameworks of the Government.

Annual Plans and Budgets will cater for PPPs with the capital and recurrent impacts of PPP projects suitably internalised.

The review of the progress of PPP project implementation will form a critical part of the NDPs and the medium term expenditure framework.

SECTION 18 - PROJECT CONCEPTUALIZATION AND INCEPTION

The project initiation stage of the PPP life cycle will be commenced by the accounting officer/ authority of the relevant Line Agency/SOE and will include the following steps:

- i) Project identification, which will have to look at the suitability of the project by assessing the desired gains of the project, the obstacles and constraints, private sector interest in the project and costs and benefits involved
- ii) Initial assessment of service need
- iii) Appraisal of options for achieving the necessary outputs and identification of the preferred service delivery option/project
- iv) Appraisal of the socio-economic objectives that may be built into the PPP projects, including TESEF, pro-poor development, poverty reduction, employment creation and inequality reduction
- v) Registration of the Project with the PPP Unit
- vi) Appointment of Project Officer and Project Team
- vii) Appointment of Transaction Advisor, to undertake all the detailed financial, technical and legal work required to prepare the Agency for a PPP project and agreement.

SECTION 19 - PROJECT FEASIBILITY ASSESSMENT

The feasibility assessment stage constitutes a critical input to the PPP procurement process and is significant enough to determine the success or failure of a PPP project. The Line Agency/SOE should, therefore, undertake this with full commitment.

The feasibility assessment will cover the following:

- i) Strategic need assessment, including project's ability to meet institutional objectives, ability of the Agency to deliver project, detailing of service delivery requirements, and project scoping;
- ii) Assessment of service delivery options in terms of asset based, non-asset based and new asset based options and evaluation thereof to determine the preferred service delivery option;
- iii) Undertaking of project due diligence, including technical, legal and environmental review, to resolve any issues that may significantly impact the project.
- iv) Project value assessment, including affordability and value for money through a Public Sector Comparator and a PPP Reference Model
- v) Preparation of a Procurement Plan, including timeline and process;

In evolving the PPP design, the Agency will take into consideration the respective needs of all parties and in particular the following will be carefully considered

- i) The technical design will be such that the private sector is able to deliver project standards and introduce technical innovations and improvements on the project; that minimum technical standards are specified for bid evaluation and performance monitoring; and expectations regarding operation and maintenance arrangements are clear.
- ii) The financial design of projects will be such that both parties understand the scope and implications of financial risks between them. Such risks will have to be identified up-front so as to enable the project costs to be properly identified. The quantification of such potential risk will also enable cost effective risk allocation and identification of effective risk management strategy.

The Line Agency/SOE will approve the PPP feasibility report, taking the above into consideration, and thereafter submit it to the PPP Committee for obtaining Transaction Approval 1.

SECTION 20 – PROCUREMENT APPROVALS AND PROCESS

The decision making process during the PPP process will cover the following stages and approval will be required at each stage from the PPP Committee.

- i) Investment decision and decision to go ahead with the procurement by PPP (Transaction Approval 1)
- ii) Approval of the pre-qualification criteria and RFQ (Transaction Approval 2 A)
- iii) Approval of the RFP and draft PPP Agreement (Transaction Approval 2 B)
- iv) Approval of the evaluation and selection (Transaction Approval 3)
- v) Approval after negotiation and of the Project Award (Transaction Approval 4)

Where additional approvals may be required, the PPP Committee will coordinate for such approval.

The key documentation in a PPP process would consist of the preparation of the bid documents, namely the Request for Qualification (RFQ), Request for Proposal along with the project agreements, which would depend on the structure of the PPP arrangement.

The PPP Process may be a one or two stage process depending on the complexity of the project and the project size. A one stage PPP process will comprise of a single stage three cover RFP document (where the Cover 1 will contain the qualification criteria), while a two stage process will comprise of the issue of a RFQ documents for pre-qualification followed by a two cover RFP document.

In all cases, a two stage process will be undertaken for projects above the value of N\$ 200 million.

SECTION 21 – REQUEST FOR QUALIFICATION

The Request for Qualification stage will be adopted for all projects above the value of N\$ 200 million unless otherwise expressly approved by the PPP Committee for a single stage RFP process.

The minimum contents of the RFQ document will be as follows:

- i) Disclaimer, to legally protect the Agency;
- ii) Terms and conditions of issuance of RFQ;
- iii) Outline of the contents of the RFQ;
- iv) Purpose of issuing the RFQ;
- v) Project information, including a high level description of the project, background and overview
- vi) Defined performance parameters, legal requirements and statutory regulations, identified financing requirements and issues, revenue parameters as available, summary of envisaged risk transfer, requirements for consortium partnership;
- vii) Modalities of the procurement process, including stages and timelines, clarification processes, bid security, any costs for obtaining a RFQ copy, submission details, evaluation process and details thereof;
- viii) Formats for submission, including compulsory forms of response as an aid to evaluation;
- ix) Evaluation process, including exhaustive description of the methodology and evaluation criteria;

The Agency will advertise the RFQ in the form of the specific procurement notice in the following manner:

- i) In at least one newspaper of wide and general circulation in the Republic of Namibia;
- ii) If required, in any international newspaper, as may be directed by the PPP Committee; and
- iii) Additionally advertise in well known technical magazines or trade publications, if considered necessary.

The Agency will respond to any request for clarification by the bidders that is received by the procuring entity within two weeks prior to the deadline for the submission of applications to pre-qualify.

If required the institution could also consider organising a pre-bid conference wherein the issues raised by the bidders could be collated and addressed. However,

this activity should be in addition to the written communication to the bidders as mentioned above.

The responses received to the RFQ document should be evaluated based on the evaluation criteria specified in the RFQ document. The evaluation criteria would vary from project to project, but should consider the technical and financial capability of the private party, their understanding of the project and their skill sets to deliver the committed outputs within the required timeframes.

The applications received should be analysed by the Agency and an evaluation report should be prepared recommending a list of firms to be considered as pre-qualified.

The evaluation report will be submitted to the PPP Committee for approval and will indicate the criteria used as well as the justification for the choice made, in respect of the pre-qualified and the non-pre-qualified firms.

In a situation where all the firms fail to pre-qualify on the basis of set out requirements, the Agency may waive or relax some of the requirements and evaluate all firms on the basis of the relaxed requirements subject to ensuring that they satisfy those conditions during the subsequent tendering stages.

Firms meeting the pre-qualification criteria and approved by the appropriate tender board will be so notified by the Agency and invited to tender. The notification will indicate the terms and conditions under which tender documents will be obtained as well as the date, hour and place for latest delivery of tenders, and of the tender opening.

Applicants who are not successful in the pre-qualification will be accordingly informed, by the institution, within one week after receipt of all the required approvals to the pre-qualification. Only bidders that have been pre-qualified are entitled to participate further in the procurement proceedings.

The institution will make available to any member of the general public, upon request, the names of all bidders that have been pre-qualified. The names of the pre-qualified bidders may preferably be posted on the institutions website for easier access and public information.

Further the institution will, upon request, communicate to suppliers, contractors, service providers or buyers that have not been pre-qualified the grounds thereof, but

the institution is not required to specify the evidence or give the reasons for those grounds.

The institution is required to maintain a record of the procurement proceedings.

SECTION 22 - REQUEST FOR PROPOSAL

The objective at the RFP stage is to select a preferred bidder based on an objective, comprehensive and transparent selection process. This is a critical phase for obtaining the best value for money by the Agency.

The RFP document should contain the following information:

- i) Disclaimer, as per applicable law
- ii) Outline of the contents of the RFP
- iii) Purpose of issuing the RFP, with relevant details of the project;
- iv) Terms and conditions of issuance of RFP and bid formalities;
- v) Availability of RFP, any costs, declaration of date, time and place for RFP submissions;
- vi) Evaluation and timeframe and notification of results of the evaluation
- vii) Stages and timelines
- viii) Clarification processes, interaction policy and briefing notes
- ix) Aspects related to changes to the composition of consortia and participation in more than one consortia
- x) Bid security and validity, late submissions, grounds for disqualification, institution contact details, data room
- xi) General Information to Bidders, including description of the project, external environment, project framework, project assets, procurement framework and timelines
- xii) Minimum Essential Requirements, relating to the minimum expected from bids in order to meet the pre-defined project objectives including financial, legal, technical, local participation and other mandatory requirements, which will establish a compliant bid.
- xiii) Service requirements, output specifications, standard specification
- xiv) Payment mechanism and penalties
- xv) Legal requirement and draft PPP agreement

- xvi) Commitments required from bidders and information required from bidders including legal, technical and financial aspects of the bid.
- xvii) Evaluation process, providing information on the evaluation methodology and criteria
- xviii) The draft Agreement as an annexure to the RFP

The evaluation of bids will be based on a Quality cum Cost Based Selection (QCBS) approach where Technical Proposals will be allotted a weight between 50%-70%, TESEF a preference of 5%, SME or other national policy priority consideration a preference of 5% and the Financial/Price Proposal between 20%-40%. 20% weight for Financial Proposal will be given for large projects of USD 100 mn and above, where price becomes less of a concern and more significant is sustainability and quality. 40% weight for financial proposal will be preferred for simple projects and for those of value lower than USD 25 mn. Projects of value between USD 25 million and USD 100 million will be given a weight of 30% for the financial proposal.

The RFP will not provide detailed scoring methodologies and point allocations, to prevent proposals being tailored to the evaluation and number of points allocated to each category or sub-category should not be disclosed in the RFP.

The process and evaluation methodology should be set out so that bidders take comfort from an auditable process with checks and balances. The RFP should specify that the technical and price criteria of the bid will each be scored out of 100 points. The scores achieved will be calculated into the bidder's overall score, using the following formula:

For the purposes of applying the abovementioned formula, 'technical' will refer to all project factors under evaluation other than the price and national preference elements.

The evaluation of the various elements of the technical and price proposal should be aimed at gauging whether the proposal provides an integrated solution to the service delivery requirement of the institution. The weights for technical and price proposals will vary from across projects. The evaluation of the bid would be as an integrated service delivery solution.

In cases where the affordability limits have been explicitly provided to bidders in the RFP the price weight may be specified at 20%. In cases where the project design and delivery issues are fairly standardised or the project is fairly simple in terms of

these issues, lower weight to the technical score may be given between 50% - 60%. The actual selection of weights should be made based on the specific requirements of the PPP project, and subject to the approval of the relevant tender board.

Where discount rates are used for assessment of Financial Proposals, such discount rate should be the rate at which the government borrows its long term capital for a period of 10 years and beyond.

The Selection/Financial criteria for a PPP project may be one or a combination of the following:

- i) Lowest contract value;
- ii) Lowest bid in terms of the present value of user fees;
- iii) Highest revenue share to the Government;
- iv) Highest up front fee;
- v) Shortest concession period;
- vi) Lowest present value of the subsidy or grant;
- vii) Lowest capital cost and Operation & Management cost for Projects having a definite scope;
- viii) Highest equity premium;
- ix) Lowest quantum of State Support solicited in present value;
- x) Lowest net present value of payments required from the Government;
- xi) Such other suitable selection criteria as the PPP Committee may approve, allow or prescribe.

All clarification sought and responses to the clarification should be documented and sent to all the pre-qualified bidders. The Agency should maintain a register of bidder notes and meetings and copies of the minutes to such meeting should be submitted along with the proposal.

The evaluation will be conducted by an Evaluation Committee appointed and chaired by the concerned Line Agency/SOE and which will include:

- i) The Transaction Advisor;
- ii) Selected member from the Line Agency/SOE;
- iii) Representative from the MOF/PPP Committee/PPP Unit;
- iv) Any other member as may be considered necessary for the project.

The Evaluation Committee, in turn, could be divided into functional teams to focus on evaluation of specific aspects of the bidders' proposals. For example, the Evaluation Committee could have separate teams for undertaking technical review, legal review, local preference review and financial review. Depending upon the complexities of project evaluation the number of teams could be determined.

Where applicable, alternate bids submitted by bidders that meet the minimum requirements of the RFP, should be evaluated subsequent to the evaluation of conforming bids. Each alternate bid should be evaluated as a stand-alone proposal.

The evaluation report of the Evaluation Committee along with all supporting scores sheets and noting will be submitted to the PPP Committee.

The PPP Committee will review the evaluation report prepared by the Evaluation Committee for completeness and comprehensiveness of analysis and be completely satisfied that the scoring of the various criteria is substantiated by hard facts before providing the approval.

In the event that no single bidder seems to emerge as the clear choice as preferred bidder, the PPP Committee could recommend a BAFO process.

The decision to undertake BAFO should be taken only in exceptional circumstances. The BAFO process would be applicable only to the top bids which are similar and make it difficult of the institution to decide on the preferred choice.

Following this evaluation, the highest ranking bid based on the QCBS criteria will be declared the preferred Bidder and the Agency should award the contract to the Bidder who submitted the highest ranking bid.

SECTION 23 - NEGOTIATIONS

The Negotiation Committee will be appointed by the Line Agency/SOE and will be different from the Evaluation Committee, though one or two members may be the same.

The keys steps in the negotiation stage will be:

- i) Identification of a negotiation committee and lead negotiator;
- ii) Preparation of a timeline for negotiations, falling within the bid validity period;

- iii) Development of objectives, negotiation strategy, negotiation plan, predefined positions of the institution and minimum negotiating parameters;
- iv) Documentation of all discussions and interaction during the meetings.
- v) Work towards resolving issues and situations of stalemate in discussion.
- vi) Reach a formal settlement and establish a preliminary schedule for signing the PPP agreement.

SECTION 24 – PPP AGREEMENT

The PPP Agreement will capture all elements of risk and risk transfer and will exhaustively detail the right, responsibilities and obligations of the contracting Agency and the PPP Party.

The contractual provisions in the PPP Agreement will cover the following:

- i) Definitions and Interpretation
- ii) Scope of the Project
- iii) Grant of Concession
- iv) Conditions Precedent
- v) Obligations of the Project Company and the Obligations of the Agency
- vi) Performance Security
- vii) Construction and Construction Monitoring of the Project
- viii) Project Acceptance and Entry into Commercial Service
- ix) User or Service Fees
- x) Change of Circumstances that have a Financial Impact on the Project Company
- xi) Financial Close
- xii) Force Majeure
- xiii) Termination and Termination Payment Obligations
- xiv) Insurance
- xv) Step-in –Rights
- xvi) Project transfer and related obligations

The Agreement will specifically address the following issues in detail:

- i) Monitoring, relating to the specific monitoring obligations of both parties, facilities for such exercises and the procedures for determining compliance;
- ii) Risk management, specifically detailing the risk retained by the contracting Agency or risks which will fall to it due to substandard performance by the private party;
- iii) Change management, to cover areas such as change in law, change in volume or in Agency requirements;
- iv) Under-performance, ensuring that the Agency raises the scale and nature of its management and monitoring capabilities should the private party persistently show under-performance;
- v) Organizational interfacing, where some project deliverables are dependent on prior delivery of certain enabling services, the information flows and meeting of such key milestones must be sufficiently addressed;
- vi) Output specifications, ensuring that the required levels of performance for judging service performance are outlined with clarity and pass the test of objective measurement;
- vii) Payment arrangement and procedures, detailing the enforcement and monitoring of the payment mechanism, how certifications may be done and the conditions needed for commencement of payments and/or levy of user charges;
- viii) Security and insurance, ensuring compliance monitoring with regards to insurance policies, indemnities, tax clearance certificates, safety procedures, etc.;
- ix) Management of interactions, between the operations of the Agency and the private party;
- x) Dispute resolution mechanisms for problem solving and dispute resolution as and when needed as an alternative to legal procedures;
- xi) Compliance arrangements to deal with non compliance by the private party which could include enhanced monitoring or payment deductions;
- xii) Contingency for default covering both default by the private party and/or its subcontractors;

- xiii) End of contract conditions, dealing with maintenance, asset condition and transfer of assets/land at expiry of the Agreement period.

All PPP Agreements in Namibia will be vetted and approved by the legal counsel of the contracting Agency or as recommended by the PPP Committee.

SECTION 25 - CONTRACT MANAGEMENT

Contract Management defines the processes which assist parties to contract in meeting their respective obligations with respect to service delivery and in turn meeting the project objectives. It involves building a good working relationship between government and the private party that will continue throughout the life of the contract and aims to manage proactively rather than merely reacting to situations as they arise.

The objective of contract management for PPP projects is for government to obtain the services set forth in the output specifications of the contract and to ensure ongoing affordability, value for money and that risks that have been transferred to the private sector stay transferred to the private sector.

Five aspects of Contract Management will be critical:

- i) Contract Management Team;
- ii) Service Delivery Management;
- iii) Contract Administration;
- iv) Relationship Management; and
- v) Contract Management Plan

The Contract Management Team will comprise the following with the roles and responsibilities as defined for effective management of PPP agreements.

- i) The Contract Director is expected to perform a strategic role by providing inputs to the contract management team and reviewing and approving their operations and the key responsibilities will include:
 - a. Mobilising support for the project amongst the key stakeholders
 - b. Appointing a Contract Manager
 - c. Obtaining necessary approvals for the contract management plan
 - d. Delegating sufficient powers to the contract manager to enable him to effectively implement the terms of contract.

- e. Stepping in to resolve any dispute which the contract manager is unable to settle
 - f. Providing executive commitment to relationship management
 - g. Providing financial oversight and ensure that the project continues to operate in public interest after the contract has been signed
 - h. Ensure that the contract is effectively enforced
- ii) The Contract Manager's role is to safe guard the interests of the Government entity in managing the contract. The primary responsibilities of the Contract Manager will include:
- a. Managing the project on behalf of the Government entity.
 - b. Ensuring that the project continues to be affordable, and provides quality, value for money and appropriate risk transfer
 - c. Ensuring that both parties meet their contractual obligations
 - d. Ensuring the requirements of the output specifications are achieved
 - e. Appointing a contract management team with the necessary technical skills
 - f. Administering institutional obligations and protect institutional rights in the contract
 - g. Building a strong partnership and good working relations with the private party
 - h. Preventing and/or resolving disputes
 - i. Manage risks
 - j. Monitoring private party performance and taking corrective action where necessary
 - k. Developing and implementing the contract management plan
 - l. Developing and managing the contract administration systems
 - m. Managing approved variations
 - n. Developing an effective communication framework
 - o. Organising contract management reviews
- iii) Other Team members will consist of a range of specialists and technical advisors will support the contract manager in the contract management function. The team works towards ensuring that the project runs smoothly through the contract term. The overall size and complexity of the project

would be the key variable in determining the size and skill sets required by the contract management team. The contract management function could be performed by a single individual or a complex multifunctional team. The size and composition of the team will evolve through the project lifecycle.

Broadly the nature of skills required includes:

- a. Knowledge of the subject matter
- b. Design and construction
- c. Business and product assurance
- d. Facilities and services management
- e. IT (especially, but not only for IT projects)
- f. Statutory safety and regulatory responsibilities
- g. Legal and regulatory
- h. Finance

Service Delivery Management will ensure service meets the standards specified in the contract and in turn the project objectives and that the costs associated with the project do not exceed that estimated at procurement stage. Service delivery management will cover the two basic areas of risk management and performance management and will ensure that all risks to the project are kept at a level acceptable to the Government entity.

Contract Administration will involve the establishment of administrative processes to ensure that all procedures and documentation relating to the contract are effectively managed. It will include variation management, contract administration, value testing and benchmarking, contract exit plan and probity, compliance and auditing of PPPs.

Relationship Management will involve identifying the processes required to establish strong and mutually beneficial working relationship between the contracting parties and realising that the success of a project hinges on not just being able to meet the contractual terms but also on the nature of relationship that exists between the Government entity and the private party. The fundamentals in relationship management in Namibia will be built on open communication channels, building mutual trust, and instituting a strong dispute resolution procedure.

It will be imperative to establish realistic financial and other resource budgets to cover costs related to contract management and performance management. In

order to avoid any possible conflict of interest each contracting Agency will bear its own costs related to this.

Towards this, the PPP Contract Management Plan will be developed at the end of the PPP procurement phase and put into action during the subsequent phases of project development, delivery and exit.

SECTION 26 – DISPUTE RESOLUTION

In case of disputes amongst the parties to the contract, the dispute resolution process will be as follows:

In the first instance disputes should be resolved amicably between counter parties at the Contract Manager level.

If it is not resolved within specified time frames, the same should be referred to the Contract Director and his counter part in the private party.

At this stage, if no resolution is achieved then the matter should be referred to an independent third party mediator. While third party mediation is not always binding on contracting parties, contractual terms could capture the specific instances in which third party mediation, such as expert determination, could be binding on contracting parties. Support to third party mediation from both counter parties is important to its success.

If no resolution is achieved then the matter will be referred for arbitration as per Namibia' Arbitration Act, 1965

SECTION 27 - PROJECT TRANSFER

The PPP project will, at the end of the contractual period, be transferred to the Agency, as per the terms of the Agreement.

The Agreement Management Team will ensure that the project transfer is smooth and the transition happen with minimum negative impact on the project itself.

SECTION 28 – UNSOLICITED PROPOSALS

Any person may identify a project to be implemented under a PPP agreement and submit to the Line Agency/SOE or any government authority a proposal with the following information to be considered as a valid 'suo-moto' proposal.

- i. Project details including project specifications and performance standards, scale and scope, and other technical, financial and commercial details
- ii. Details of his technical, commercial, managerial and financial capability;
- iii. Principles of the PPP Agreement;
- iv. Estimated cost of the feasibility study of the project, which shall not exceed 1 per cent of the project value, and approval of any such amount and feasibility report will be subject to the approval of the PPP Committee

Such a private sector person will be referred to as an 'original project proponent' or OPP.

On receipt of an unsolicited proposal, the concerned Agency will, within 30 working days, refer the project to the PPP Committee, together with its recommendations.

- v. The PPP Committee will ascertain whether the proposed scale and scope of the Project is in line with the Government's requirements, before approving the proposal.
- vi. The PPP Committee may appoint any Person to ascertain whether the proposed scale and scope of the Project is in line with the Government's requirements.

If the PPP Committee recommends the retention of the project, the Agency will, within 5 working days, request the OPP to submit, within a specified period not exceeding 60 days, a proposal in relation thereof, containing

- vii. Details of his technical, commercial, managerial and financial capabilities;
- viii. A feasibility study containing the technical and commercial details of the project; and
- ix. The nature of information which is proprietary.

The Government Agency will evaluate the OPP's technical proposal and ascertain if the Original Project Proponent's technical, commercial, managerial and financial capabilities are adequate to implement the said Project under PPP.

The Agency will forward the Suo-moto Proposal to the PPP Committee along with its evaluation within 30 days of its receipt for approval to the PPP Committee.

The PPP Committee may recommend modification in the technical, scale, scope and other aspects of the proposal or the Concession Agreement, and, in this case, the OPP will consider and incorporate the same and re-submit its proposal to the Agency. The PPP committee will also approve the cost of the Feasibility study as specified by the OPP.

If the PPP Committee finds merit in such a Suo-Moto Proposal, the PPP Committee will then instruct the Agency to invite competing counter proposals through the standard bidding procedure as recommended in this Policy.

The Agency will then proceed with the issue of a Request for Proposal in accordance with SECTION 22 - REQUEST FOR PROPOSAL. The OPP will be requested in SECTION 22 - REQUEST FOR PROPOSAL to submit only its financial proposal.

In the evaluation of the RFP, the Margin of Preference approach will be used wherein a 10% preference will be given to the OPP.

If the OPP's proposal after accounting for the margin of preference is superior to competing counter proposals then the Project shall be awarded to the OPP. In case even after accounting for the margin of preference one of the competing counter proposals is found to be superior, then the project is awarded to the Private Sector Partner, submitting the most attractive competing proposal.

If the Project is not awarded to the OPP, the Agency will compensate the OPP the costs of the feasibility study referred to in subsection (1.a.iv) and claim such costs from the successful bidder. The Suo-Moto Proposal and the Concession Agreement prepared by the OPP will then become the property of the Agency as the case may be.

If the Project is awarded to the OPP, the costs of the feasibility study referred to in subsections (1.a.iv) will be borne by the OPP.

SECTION 29 - SOLE BID, SPECULATIVE BID

Each RFQ or RFP will clearly set forth the treatment of the bids in case of the receipt of sole bids.

In case the competitive bidding process results in a sole bid, the Agency may, in consultation with the PPP Committee, adopt one of the following approach:

- i) Accept the Sole Bid; or
- ii) Re-negotiate the financial offer; or
- iii) Reject the Sole Bid;

In case the competitive bidding process does not generate sufficient response and if even a sole bid is not received, then the Agency will, in consultation with the PPP Committee, adopt one of the following approach:

- i) Modify either the pre-qualification criteria and/or the risk sharing provisions and restart the bid process; or
- ii) Cancel the competitive bid process; or
- iii) in case of (ii) above, have direct negotiation with any private sector developer.

In case one or more of the bids received in response to the bid process is deemed speculative or unrealistic, the Agency, with the approval of the PPP Committee, will be entitled to treat the speculative or unrealistic bids as non-responsive and reject the same. This will, however, not necessarily lead to termination of the bid process. The PPP Committee will prescribe the norms for determining the speculative and / or unrealistic bids.

SECTION 30 – CODE OF CONDUCT

Every member of the Bid Evaluation Committee or the Negotiations Committee appointed by the Agency to evaluate bids will be required to sign a code of conduct before receiving bids along with a declaration of interest.

This code of conduct is intended to confirm the member's commitment to all its prescripts, guide members who are faced with ethical dilemmas in a complex operational environment, provide a reference for disciplinary and/or prosecuting procedures if a member is found guilty of fraud or corruption, and serve as a public commitment by the Government of Namibia to the highest standards of ethical and professional conduct in the evaluation of bids.

A member will be found guilty of breaching the code of conduct will be liable for disciplinary action in terms of relevant public service regulations and may also be liable for criminal prosecution.

The relevant Agency, acting on his or her own or on a complaint by any person, will be free to investigate any alleged breach of this code by a member of an evaluation/negotiation panel and may withdraw the member from the panel during the investigation.

SECTION 31 – LONG TERM COMMITMENT

Namibia will emphasize the need for long term commitment and shared responsibilities in making PPPs successful in the country in the long run. Towards this end stakeholders' consensus, capacity building and continued skill training will form important focus towards ensuring long term sustainability.

In implementing PPP projects regard will be given to the impact on those to be affected by the PPP relationship.

The key stakeholders to be consulted would include employees (public and private) represented by their trade unions, the public at large, end users of assets and/or services, traditional authorities, where it involves communal land, and sector interest groups.

Appropriate structures of communication will be drawn up to disseminate PPP information. The concerned Agency/Ministry will hold the ultimate responsibility for ensuring that all stakeholders are adequately informed.

The challenge of building human resource capacity within the Namibia Public Sector will be addressed towards implementing effective PPPs.

This Policy will support the development and retention of skills with meaningful intervention in the form of skill training workshops, on-job training and specially conducted training programmes. Towards this, adequate financial resources will be allocated for capacity building as part of the annual budgetary allocations at the central, regional and local government levels.

SECTION 32 - GOVERNMENT SUPPORT

Forms of Government support will be defined on a project to project basis, closely linked to the socio-economic development of the country but based on the feasibility and value for money assessments and recommendations made by the PPP Committee.

The broad principles of such support will be as follows:

- i) Financial support and subventions, where applicable, will be based on the output based aid (OBA) approach and will link include financial assistance to delivery of specified services, outputs, and targets. Such assistance may include:
 - a. Capital grants/subsidies during construction;
 - b. Operational subsidies;
 - c. Viability gap funding;
 - d. Unitary/annuity payments;
 - e. Hybrids that may include user charges plus other subvention mechanisms.
- ii) Asset based support will be in the form of providing land based resources to PPP projects for a tenure as may be determined at the feasibility stage;
- iii) Non-asset based support will include the following:
 - a. Administrative support for obtaining clearances and statutory approvals on a best effort basis;
 - b. Guarantees, that will include guarantee of receivables where the revenue collection is not directly from users and off-take guarantee where the government is the service distributor and responsible for collecting revenues;
 - c. Foregoing revenue streams in terms of waiver of sales tax on construction material and stamp duty and registration charges;