UNSOLICITED PROPOSALS

A Guide for implementing unsolicited proposals for PPPs in Nigeria

A document prepared by the PPP Resource Centre of the Infrastructure Concession Regulatory Commission (ICRC)

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1. BACKGROUND

The Infrastructure Concession Regulatory Commission (ICRC) was established by the ICRC Act, 2005 as the central PPP unit charged with the responsibility for regulating both public and private efforts/resources for the development and implementation of a comprehensive PPP framework towards enhancing the development of world-class Greenfield and Brownfield infrastructure for the benefit of Nigerians.

The ICRC Act empowers the commission with the functions and powers to:

- Provide general PPP policy guidelines, rules and regulations
- Take custody of every concession agreement
- Ensure efficient execution of any concession agreement or contract entered into by the Federal Government, and the compliance of the Parties.

In accordance with this mandate, the ICRC developed a national framework for PPPs in Nigeria outlined in the National Policy on Public Private Partnership (N4P) and its associated operational guidelines. The N4P was developed to provide clear and consistent processes and procedure guidelines for all aspects of PPP project development and implementation. The N4P was approved by the Federal Executive Council in April 2009.The Policy sets out:

- The government's objectives and commitments
- The Key principles of PPPs in the Nigerian context
- The government's role in the creation of an enabling environment
- **The processes in the PPP project lifecycle**

The N4P defines the project lifecycle processes for implementing PPP projects including soliciting and evaluating proposals. However, Ministries, Departments and Agencies (MDAs) continue to receive unsolicited proposals from prospective proponents desirous of implementing PPP projects. The N4P does not include processes for evaluating and responding to unsolicited proposals as such, the following guidelines outline the process for assessing unsolicited proposals.

2. CONSIDERATIONS FOR UNSOLICITED PROPOSALS

2.1. Private Sector Involvement

For the purpose of this document, a PPP refers to a project with meaningful private sector involvement in at least four of the following five structural elements: design, build, operate, maintain or finance, three of which must include operate, maintain and finance.

For the purposes of the unsolicited bid review process, “meaningful private sector involvement” will be interpreted as follows for each of the five structural elements:

- Design: The private sector will be responsible for all or almost all design activities.
- Build: The private sector will be responsible for all or almost all construction related activities.
- Operate: The private sector will be responsible for all or almost all activities related to the operation of the infrastructure asset.
- Maintain: The private sector will be responsible for all or almost all maintenance of the infrastructure asset.
- Finance: The private sector will be responsible for arranging private financing that will be used to ensure performance during the construction and/or maintaining/operating period of the project.

For clarity, the preferred PPP model should be identified as the one that creates optimal Value for Money (VfM) taking into account qualitative and quantitative factors. Generally, these will be projects with the most private sector involvement (e.g. DBFOM).

2.2. Definition and Guidelines for Addressing Unsolicited Proposals

An unsolicited proposal refers to any proposal received by a government agency that was not requested by the government, which usually originates within the private sector. Typically, the private sector assumes responsibility for project preparation costs such as pre-feasibility and feasibility studies, design specifications and other such related assessments.

The major factors to be addressed in considering unsolicited proposals are[1]:

- Private proponents commonly argue they have intellectual property rights to project concepts or are the only developer interested in the project
- Alternately some unsolicited proposals suggest that the private sector can save the government time and money by sole-source negotiating project details

[1]Unsolicited Infrastructure Proposals How Some Countries Introduce Competition and Transparency by PPIAF

- In some cases, governments grant exclusive development rights to private proponents without a transparent tendering process, in response to an unsolicited proposal

- Consequently, unsolicited projects are typically associated with a lack of competition and transparency

These guidelines have been developed on the premise that some unsolicited proposals, when subject to competition and transparency, **may** contribute to the overall infrastructure goals of Nigeria by identifying and implementing critical projects in alignment with the strategic objectives of the MDAs.

The over-arching principle is that *"**ALL** unsolicited proposals are channelled into a **transparent, competitive proces**s where challengers have a fair chance of winning the tender."*

The *Swiss Challenge System* will be applied to allow submission of competing bids, to all qualifying unsolicited proposals, by other potential proponents, via a transparent process. This system however recognises the investments made by the Project Proponent (PP) in preparing the proposal to the requisite OBC standard, as such the original proponent is granted the right to counter-match the best offer and secure the contract.

3. EVALUATION OF UNSOLICITED PROPOSALS IN NIGERIA

Based on the guiding principle outlined above, the following guidelines are provided to support MDAs and private proponents successfully embark on competitive unsolicited proposal processes.

3.1. Proposal Submission

- **Where to present their proposals:** All unsolicited proposals should be submitted to the relevant MDA that bears direct ownership of the infrastructure asset or responsibility for the delivery of the service being proposed.

- **What information is required:** All unsolicited proposals should include: a detailed project description that demonstrates the project serves a public interest. The proposal should be presented in the form of an Outline Business Case (OBC) that thoroughly evaluates the legal and regulatory, technical, economic, financial, environmental and social parameters of the project as stipulated by the N4P (Please refer to the Supplementary Notes Part 1, Section 3.1: PPP Project Procurement Process of the N4P). The submission should also specify:

    - Technical feasibility studies conducted

    - Financial Analysis including; estimates of total project cost including lifecycle costs and financing plan, Income and Expenditure plan for operation such as user fee revenues

    - Justification of the project need

    - Environmental and social impact studies

- For further details of the contents of an Outline Business Case, please refer to the Appendix.

3.2. Proposal Evaluation

The guidelines for implementing this system are as outlined below:

1. The unsolicited proposal is submitted to and reviewed by the supervising MDA with oversight for the respective sector to ensure that the project meets the criteria below **and** that the proposal is up to the OBC standard[2]. In addition the submission should include all the requirements highlighted in Section 3.1 above.

2. The MDA will be required to perform a review of the proposal to determine if the proposal meets with the following criteria:

    - Does the project serve a credible public interest?
    - Is the project in line with the national development goals of the relevant MDA?
    - Does the project fall under the category of critical infrastructure?
    - Is the project viable i.e. without need for Viability Gap Funding (VGF)?
    - Does the project proponent possess the requisite competence and profile to implement the project?

3. Following the review of the proposal by the MDA, the unsolicited proposal is then forwarded to ICRC for its review and issuance of "No Objection" if the proposal is satisfactory. All proposals submitted to ICRC for review will attract a Service Fee (SF) in accordance with the scale below:

S/n	Project Value	Service Fee (%)
1	Below N500m	1% of Project Value
2	N500m – N10bn	0.5%
3	N10bn – N50bn	0.05%
4	N50bn – N200bn	0.025%
5	Above N200bn	0.01%

    There may be need to revise the proposal in line with OBC standard, as specified by the N4P and other related documents. The cost of such revision will be borne by the Project Proponent.

4. Technical and financial due diligence will then be carried out to ascertain the capability of the Project Proponent in implementing the project, if selected.

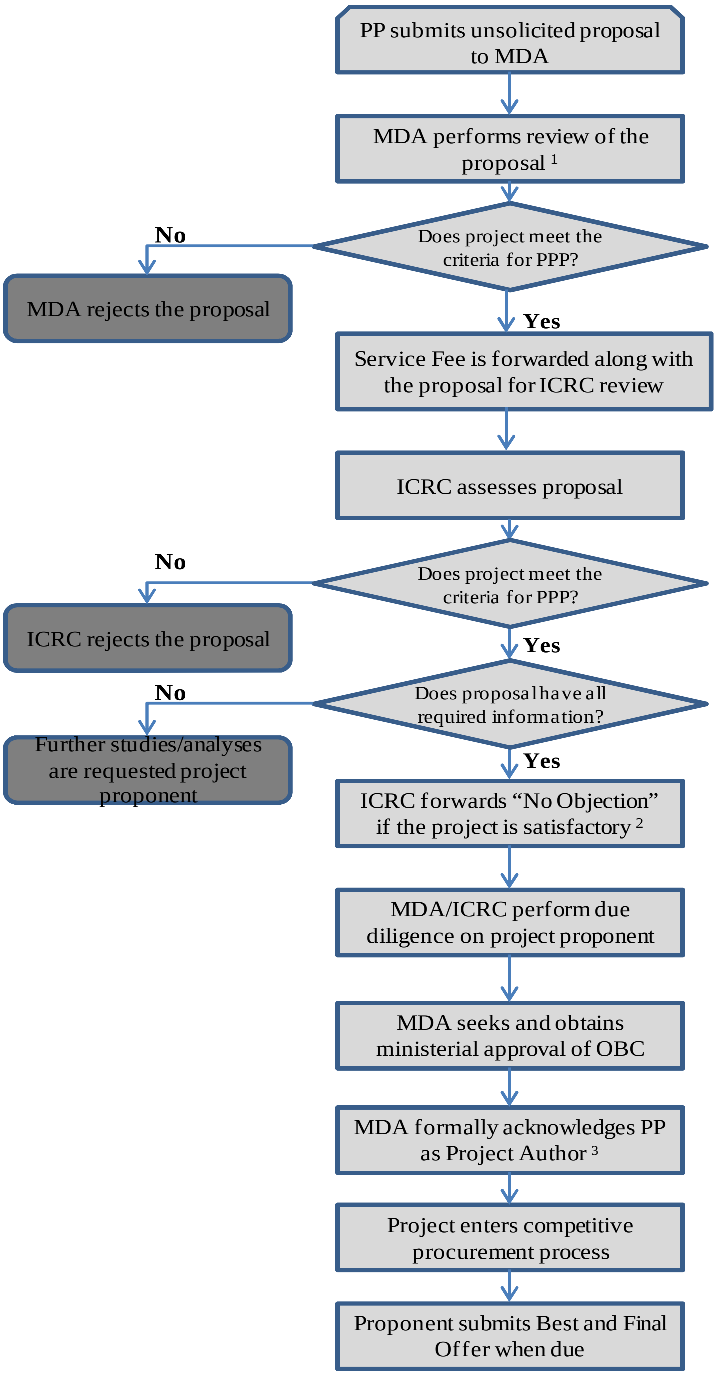
5. Following issuance of No Objection" from ICRC **and** success of the Project Proponent from the due diligence exercise; the proposal may then be approved at ministerial level.

6. The Project Proponent is then issued formal acknowledgement as the Project Author and the project commences to a competitive bidding stage.

[2]OBC Standard is as specified in Supplementary Notes of the National Policy on PPP (Part 1, Section 3.1)

7. Following the competitive procurement process (EOI, RFP, etc) the Project Proponent is then requested to submit a Best and Final Offer, along with the preferred bidder. The successful bidder is thus determined by the most economically and financially viable submission.

PROCESS FLOW CHART FOR UNSOLICITED PROPOSALS



Notes to the Flowchart (Stage I)

1. MDA review focuses on whether the proposal is aligned to the criteria outlined in Section 3.2 **and** whether the submission contains satisfactory information as required in Section 3.1.
2. ICRC forwards “No Objection” for projects that are found to meet the selection criteria and demonstrate that Value for Money (VfM) is accomplished by PPP, following detailed economic analysis and procurement option analysis.
3. Documented acknowledgement of the PP as the Project Author is mandatory at this stage. This acts as a check-point and the document would also notify the PP that the proposal would be used in preparation of tender documents for a competitive process.

Annex – Outline Business Case Development Guide

1. **Section 1.0 - Executive Summary**
2. **Section 2.0: Project description and investment decision**
   a. **Section 2.1 - Strategic alignment and priority - Articulating the rationale for the project objective**
   b. **Section 2.2 - Summary of needs assessment**
   c. **Section 2.3: Description of the project sponsor**
   d. **Section 2.4: Project description and scope**
   e. **Section 2.6: Summary of feasibility study**
3. **Section 3.0: Public-private Partnership Option Analysis**
4. **Section 4.0: Market sounding methodology**
5. **Section 5.0: Value for Money Analysis**
6. **Section 6.0: Project funding and affordability**
7. **Section 7.0: Risk Analysis and Quantification**

Section 1.0 - Executive Summary

An executive summary of the business case should be included. The executive summary should summarize the entirety of the business case and describe the recommended procurement option with supporting information regarding its qualitative and quantitative alignment with the project's objectives.

The purpose of the executive summary of the PPP business case is to:

1. Introduce the reader to the key components of the project by providing a summary of the entirety of the business case; and
2. Describe the recommended procurement option with supporting information regarding its qualitative and quantitative alignment with the project's objectives.

This section of the PPP business case is important because it:

- Frames the project in total for the reader;
- Demonstrates sponsor has completed the necessary analysis that underlies the planning of a PPP procurement knowledge and understanding of the project and the application of the PPP procurement option; and
- Demonstrates experience with, and commitment to, the project that will be undertaken as a PPP.

Section 2.0: Project Description and Investment Decision

Section 2.1 - Strategic alignment and priority - Articulating the rationale for the project objective

This part of the PPP business case should:

- Articulate the forces that are driving the need for the project; and
- Identify the strategic policy and business, social and economic issues/drivers; and highlight the project's impact on these issues/drivers through completion and operations

Table 1: examples of project drivers project drivers

Project driver	Examples
Economic	(e.g., requirements to sustain or attract economic activity and investment)
Fiscal	(e.g., raising revenues, managing risk, mitigating cost)
Technological	(e.g., to address user safety, increase efficiency)
Social	(e.g., change in consumer demands/tastes, change in professional practices)
Environmental	(e.g., reduce environmental impact of government or public activity)
Legislative	(e.g., adhering to a change in law)
Programmatic	(e.g., new or existing public program requires enabling infrastructure)

Project sponsors, promoters and consultants involved in the project are required to review this section asking themselves if the business case answer these questions:

- What is the public interest being served by the project?
- Are the drivers behind the project presented and justified?
- Is a clear rationale for why the project is being proposed articulated and supported?
- Does the project deliver critical public infrastructure, leverage private sector expertise and capital, and help manage public sector exposure to risk?
- Are substantiating sources clearly disclosed and enumerated?

Section 2.2 - Summary of needs assessment

This part of the PPP business case should:

- Assess and explain the community's need for the project in clear and specific terms and provide any supporting documentation that demonstrates that a methodical needs assessment was conducted;
- Describe the need in quantitative and qualitative terms; and
- Include key constraints on the project's development and describe their impact on the decision making with respect to the project.

Project sponsors, promoters and consultants involved in the project are required to review this section asking themselves if the business case answer these questions:

- Is the need/issue that is being resolved by this project clearly presented and substantiated?
- Is a clear link made between the drivers and needs assessment and the project itself?

Section 2.3: Description of the project sponsor

This part of the PPP business case should:

- Provide a detailed description of the project sponsor, including its mandate, governance structures, budget and fiscal capacity; leadership; and experience delivering major capital projects and generally used procurement approaches;
- Describe the sponsor's anticipated involvement in the project and any other affiliated public sector entities which it believes will brought in to the project development process; and
- Clearly state that it has sufficient authority to undertake and make decisions with respect to the project.

Project sponsors, promoters and consultants involved in the project are required to review this section asking themselves if the business case answer these questions:

- Is it clear that the sponsor has sufficient authority to undertake the project and associated procurement process?
- Are there other government agencies that would be directly involved in the project? Who are they and what is their degree of involvement?
- Are any variations or conflicts that may impede the ability of the project sponsor to embark on this project and how have these been explained?

Section 2.4: Project description and scope

This part of the PPP business case should:

- Describe and explain the project's key parameters. Specifically, the sponsor should answer the What, Where and When of the project; and
- Clearly relate the project scope to the needs identified in Step 2 above.

Table 2: describing the project and its scope

Parameter	Definition
What	Definition of the project's mandate; scope; scale; functionality; capabilities; indicative cost; studies and planning completed to date; feasibility; economic impact; costing; design; engineering and other technical elements; and physical characteristics.
Where	The location of the project; physical context and any sensitivities; status of environmental approvals; planning or other municipal requirements; land assembly and Duty to Consult requirements.
When	Information on planning horizons; design and construction horizons; operating horizons; and risks to timing (e.g., expiring leases, legislative changes.

Project sponsors, promoters and consultants involved in the project are required to review this section asking themselves if the business case answer these questions:

- Is an appropriate amount of planning and due diligence demonstrated through this section of the business case?
- Does the description of the project demonstrate credibility and clearly satisfy the project's eligibility for implementation under the national PPP pipeline?

Section 2.6: Summary of feasibility study

This part of the PPP business case should:

- Summarize the results of all analysis on the fiscal, financial, economic, legal, technical and environmental feasibility of the project.
  - Feasibility studies should assess the degree to which various features of the project are either sustainable or achieve the objectives desired by the project sponsor. In doing so, they should incorporate, wherever appropriate, consideration of project costs, project revenues, alternative revenue sources, alternative technical solutions, the legal environment in which the project is being implemented, emissions from the project, and other relevant information;
  - Where reference is made to the contents of the feasibility study, appropriate page and section numbers should be included;
- Clearly articulate the financial feasibility of the project, including demonstrating that serious consideration has been given to the project's costs and the sources of revenue to fund and finance the project;
- Summarize the findings of all work done to assess alternative solutions to the project and describe key assumptions, methodologies and findings;
- Disclose the Who, What and When of the feasibility study, The author of the feasibility study, the time period over which it was developed and, where external resources are used, a description of the subject matter expertise of the external resource should be provided. If feasibility studies for the project are significantly dated, a justification for their continued appropriateness and use should be provided;
- Include jurisdictional scans that provide relevant precedents for the proposed project; and
- Disclose and substantiate the public and political support confirmed to date.

Section 3: Public-Private Partnership Option Analysis

This part of the PPP business case should:

- Articulate why the decision has been taken to explore a PPP and how the project was determined to be a suitable PPP candidate. Such decision should, whenever possible, be linked to project specific objectives and findings from any and all project related studies and relevant PPP screening
- Present and describe a range of viable and "marketable" PPP delivery models. It is important to note that while there is a wide spectrum of PPP delivery models that could be used for any project, a sponsor should work with their transaction and financial advisors, and use information from precedent projects identified through any inter-jurisdictional studies, to narrow the options of a commercially acceptable and viable range of PPP delivery models (e.g. 3 or 4 projects).
- Identify any sponsor constraints that would preclude the use of a commercially acceptable and viable project delivery model should be disclosed and discussed in the business case

Step 4: Market sounding methodology

This part of the PPP business case should:

- Outline the sponsor's overall strategy for engaging with market sounding participants;
- Describe the process used to identify market sounding participants and to ensure that selected participants are appropriate, well positioned to have a 'line of sight' on the project's key parameters, and sufficiently varied. A list of market sounding participants should be included;
- Describe the process used to conduct high-quality market soundings, including details about the project related information provided to participants in advance of the meeting, the role of the sponsor during meetings; questions asked; and
- Provide information on the sponsor's plan for follow-up consultations and refreshes

Section 5: Value for Money Analysis

This part of the PPP business case should:

- Present base project costs on a whole of life basis, which include the expected hard construction costs, soft construction costs, facilities management costs, maintenance and/or operating costs ("O&M Costs") and lifecycle costs.
- Outline and justify any efficiency gains and risk premiums. Any major differences in efficiency gains and risk premium assumptions should be justified. Any assumptions to this effect should be clearly disclosed and justified by the sponsor);
- Identify and explain the timing of these costs.
- Clearly articulate all key modelling assumptions that have been incorporated in to the models. Such assumptions include, but are not limited to: inflation, construction escalation, discount rates and timing of cash inflows and outflows.
- Outline the assumptions made with respect to the financing of the project
- Clearly outline any assumptions with respect to the level and timing of public and private sector financing, including assumptions on public sector capital injections during the construction of the project.

Section 6: Project funding and affordability

This part of the PPP business case should:

- Clearly describe the sources of funds committed and/or available to the project, including a description of the specific nature, structure, and timing of the funds to be provided. All sources and amounts of federal funding should be clearly disclosed;
- Outline any terms and conditions precedent associated with any funding source or funding commitments; and
- Ensure that any and all funding sources identified in this section of the business case should be reflected in the cash-flow models presented
- Outline how each of the sources of funds listed above is used including a description of the timelines over which these funds are utilized. The funding should be provided in nominal terms.
- Demonstrate that the uses of these funds do not violate any terms associated with their provision
- Describe how the timing of the uses of funds impacts the Value for Money generated by the project, including O&M over the concession period and lifecycle costs; and
- State where in the financial model these funding sources/commitments appear.

Section 7: Risk Analysis and Quantification

This part of the PPP business case should:

- Systematically identify and quantitatively assess project risks and allocate these risks between the sponsor and the private sector partner for the delivery models under consideration;
- Outline the process and methodology used to identify, assess and allocate project risks;
- Provide a robust description of the risk profile of the project and the allocation of key risks between the public sector and the private sector, the rationale underlying the allocation, and summary tables showing the value of the risks retained and transferred.
- The description of the project's risk profile should discuss the underlying structure of the risks (e.g., are there a few big risks or a series of smaller risks that sum to a significant risk exposure) and relate back to the sponsor's risk management objectives;
- Describe the type of statistical analysis used to arrive at the distribution of impacts for each risk. The sponsor should disclose any adjustments made for optimism biases, competitive neutrality and other factors that may be relevant to the accuracy of the VFM; and
- Where qualitative risk workshops were used to further define the risks, list the participants in the workshop, describe the workshop methodology, and highlight the main points of discussion.