

PPP Country Paper

Zimbabwe

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Working Group

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Zimbabwe

A map of the African continent is shown in white outline against a dark green background with diagonal hatching. The country of Zimbabwe is highlighted in solid black. A horizontal line extends from the left side of the map to the black highlight, with the word 'Zimbabwe' written in italics above it.

Table of Contents

List of Figures	IV
List of Abbreviations	IV
1. Engagement Overview	6
2. Introduction	6
3. Methodology	8
4. Examination of the Term PPP	8
5. Application of SADC PPP Framework Road Map	10
5.1 PPP Policy in Zimbabwe.....	11
5.2 PPP Institutional Responsibilities in Zimbabwe	14
5.2.1 Role of PPP Unit in Zimbabwe	14
5.2.2 PPP Regulation, Approval and Implementation Roles in Zimbabwe	15
5.3 Zimbabwe Legal Framework.....	16
6. Recommendations	19



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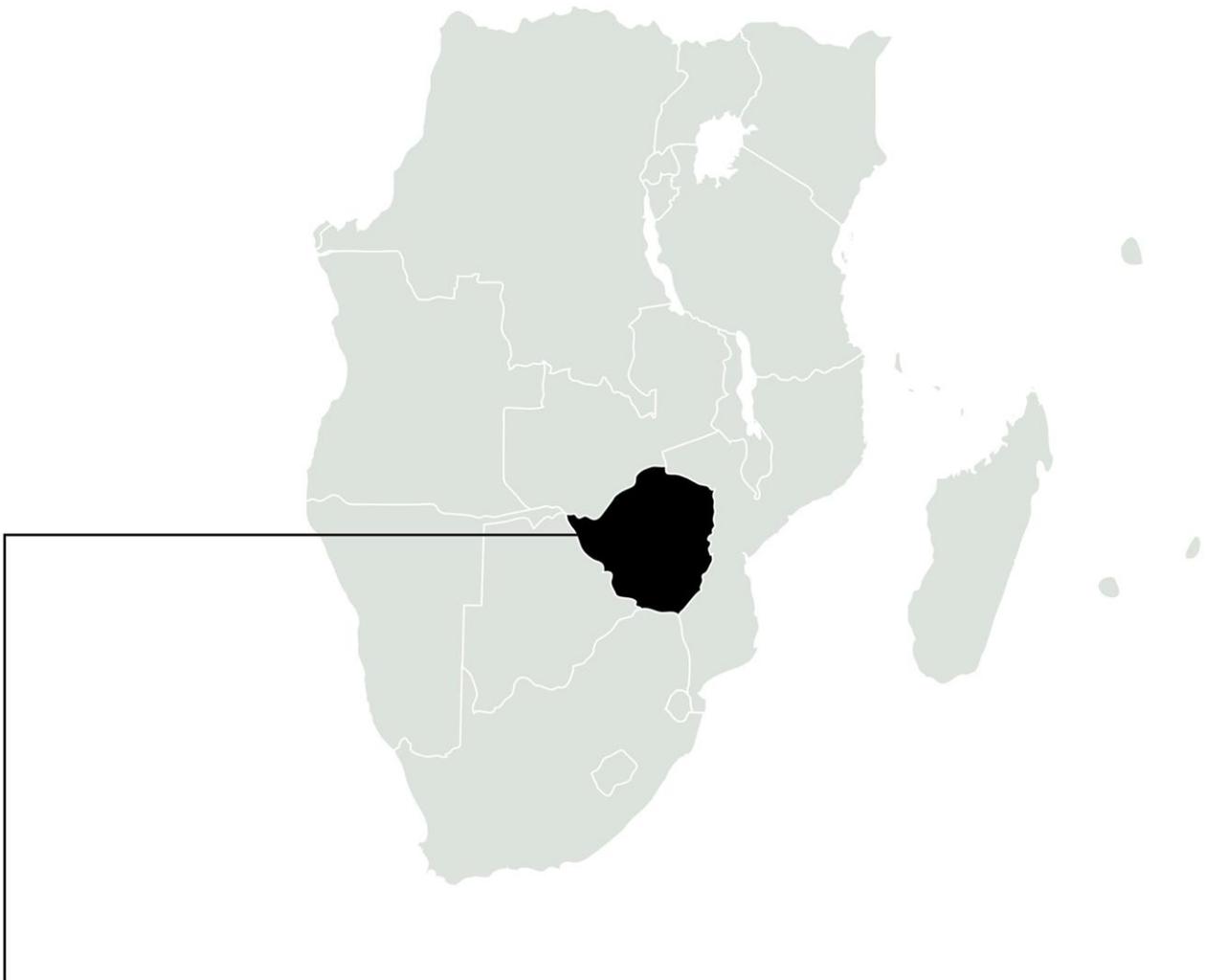
List of Figures

- Chart 1: Overview of the term PPP in Zimbabwe
- Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012
- Chart 3: Overview of expected benefits from PPPs in Zimbabwe
- Chart 4: Considered Types of PPPs in Zimbabwe
- Chart 5: Overview of planned Institutional Structure
- Chart 6: Overview of the Approval Process as currently being discussed within Government

List of Abbreviations

AfDB	African Development Bank
BBR	Bulawayo-Beitbridge Railway
BOT	Build, Own and Transfer
BOOT	Build, Own, Operate and Transfer
BOO	Build, Operate, Own
CAs	Contracting Authorities
DFROT	Design, Finance, Refurbish, Operate, Transfer
DFBOT	Design, Finance, Build, Operate, Transfer
IDA	International Development Assistance
IPP	Independent Power Producer
GDP	Gross Domestic Product
MDGs	Millennium Development Goals
MEPD	Ministry responsible for Economic Planning and Development
MoF	Ministry of Finance
PPP/s	Public Private Partnership/s
SADC	Southern African Development Community
SADC3P	Southern African Development Community- Development Finance Resource Centre PPP Network
SPB	State Procurement Board
STERP	Short Term Economic Recovery Programme
VfM	Value for Money





KEY INDICATORS - 2012

Zimbabwe

Population (Mio.)	12.8
GDP per capita (US\$)	756
PPP Level of Maturity	Low

(Regional Strategy Paper, 2012)

1. Engagement Overview

XS-Axis Consulting, Wehrheim (The Cross Sector Advisory) has been engaged by the Client, Southern African Development Community-Development Finance Resource Center PPP Network (SADC3P) to prepare 14 country papers taking a look at current practice of PPPs with a specific focus on PPP Policy, Institutional Arrangements, and Legal Frameworks as a follow-up of the Draft Regional Strategy paper submitted to SADC3P in November, 2012. This paper focuses on Zimbabwe's PPP Policy, Institutional Arrangements and Legal Frameworks as a Member State in SADC providing specific recommendations for the implementation or enhancement of private sector participation in the development of public infrastructure in the country. The main objective is to serve as a strategic paper for the Government of Zimbabwe, and its Ministries in order to refine, develop and ultimately develop further its PPP Policy, Legal Framework, and Institutional Arrangements aimed at closing the 'infrastructure gap', and its negative impact on economic growth, job creation and social cohesion in Zimbabwe. Moreover, the country paper shall serve the SADC 3P Network to identify areas of support to be offered by the SADC 3P Network towards identified Member States.

We render this report to the best of our knowledge and belief. Our results are based on the most recent verifiable information available at time of the report. Public sources were used where appropriate and fact based observations were made.

2. Introduction

Zimbabwe, officially the Republic of Zimbabwe has a population of 12.8 Million (Mio.) with neighbouring countries including South Africa to the South, Botswana to the Southwest, Zambia to the Northwest and Mozambique to the East. The country has been ruled since 1987 by Robert Mugabe who was re-elected as President by Zimbabweans in a new Government during the 31st July, 2013 general elections in which the Zimbabwe African National Union – Patriotic Front (ZANU-PF) party won the presidency by 61% and garnered a two thirds parliamentary majority. Since the overall fairness and transparency of the electoral process has been questioned by observers, there seems to be some uncertainty concerning donors' role and engagement with the new Government on the country's development process (African Development Bank, (AfDB), Zimbabwe Country Brief 2013-2015, Southern African Resource Centre, 2013, p.1).

Since 2009, Zimbabwe's economy has been on the verge of recovery from a decade-long crisis (World Bank, 2013, web page). The country is highly dependent on its natural resources and is vulnerable to environmental conditions. According to the World Bank, the economy has shown a medium performance with Gross Domestic Product (GDP) growth rate of 5.0% in 2012, down from 9.8% in the previous year (World Bank, 2013, web page). The decelerating growth reflects Zimbabwe's long road ahead to tackle issues related to inherent political and economic uncertainties, high debt overhang and a deteriorating infrastructure. AfDB considers key challenges to doing business in the country to include policy instability, lack of funding, corruption, excessive or poorly functioning Government bureaucracy and inadequate infrastructure (African Development Bank, (AfDB), Zimbabwe Country Brief 2013-2015, Southern African Resource Centre, 2013, p.1).

Zimbabwe's global competitiveness ranks 132 of an overall 144 countries, remaining disappointing (third weakest performing country) compared to other SADC Member States (World Economic Forum, The Global Competitiveness Report 2013–2014, 2013, p.394). Rankings for Zimbabwe as far as the infrastructure quality is concerned compared to other SADC countries --this relates to the quality of the overall infrastructure and quality of roads, railroad infrastructure, port infrastructure, air transport infrastructure, and available airline seat kilometres-- is also quite poor (ranking 122, the third weakest performing country). It reflects



Government's lack of efforts to improve the level of service provision as far as infrastructure is concerned. Overall, the low level of competitiveness of Zimbabwe signals its Government's and policy makers' poor commitment, and the political will as an essential driver to achieving sustainable growth in the country and prosperity for its people. In terms of the most problematic factors affecting doing business in the country, the Global Competitiveness Report 2012-2013 provides an insight focusing on lack of accessibility to financing and policy instability as the main limiting aspects hindering progress in Zimbabwe (World Economic Forum, The Global Competitiveness Report 2013–2014, 2013, p.394). Also the quality of infrastructure remains a bottleneck to proper economic performance.

The Government of Zimbabwe faces huge challenges while implementing its economic restructuring program. Critical to the economic recovery program is the provision and expansion of basic services, and development of a sustainable infrastructure. New infrastructure needs to be provided and existing infrastructure upgraded or rehabilitated to deliver public services more effectively and extend access to services to a greater number of the population than currently existing. The introduction of transparent guidelines and regulations, jointly with appropriate regulatory safeguards will guarantee security and a competitive environment for private investment in PPP programs. The Government introduced early on in December 2004 with the adoption of a comprehensive PPP Policy and Guidelines measures to promote PPPs in the country. Thus, PPPs are not a new form of procurement in Zimbabwe, there have been a few implemented to date. Nevertheless, the record of PPP uptake has been low for several reasons including the existing unfavourable investment climate characterized by the threat of price controls, no respect for private property, absence of incentives to “sweeten” potential PPPs in the form of duty or tax incentive, and lack of proper Legal Framework (Government of Zimbabwe, PPP Policy, 2013, Foreword, p.1.)

Local private sector lacks capacity and is in need of resources to resuscitate their production capacity. Zimbabwe is currently undergoing a process of review concerning its PPP Policy Framework. The Government aims at developing further guidelines attempted at expediting and supporting the economic reform process. The President has announced the necessity to pass a PPP bill in the current Parliamentary session, thus the PPP Legal Framework is currently being overhauled, and further developed.

As for specific PPP experience, there is already some track record in Zimbabwe since PPPs have already been implemented in the 90s in sectors such as rail and road. Quite specifically, the list of PPPs include the Plumtree-Mutare road, Bulawayo-Beitbridge Railway (BBR), Newlands Development Project, New Limpopo Bridge transport project as the first African PPP in the rail sector which was a concession based on user fees to be derived from the market. Also the BBR rail line was rendered as a concession based on user fees as well as a road PPP project, the so-called Plumtree-Mutare with a recourse based structure. In addition, the Government has some little experience with contracting out services in the laundry sector for the Parirenyatwa hospital aimed at improving service quality in that hospital. There are a number of PPPs planned in the near future. These include the Chitungwiza Central Hospital which is at the planning stage, the Kunzvi Water project, and Beitbridge Redevelopment located at Beitbridge border with South Africa. Based on information from the Ministry of Finance, this project reached in 2012 the negotiation stage, but failed to result in financial close, and may be revived again. Last, the Chirundu – Harare – Beitbridge Road covering the Chirundu border post with Zambia to Beitbridge border post with South Africa through Harare. Feasibility studies have been conducted for this measure in 2010.

This paper is to be considered as a follow-up strategic document to the Regional Strategy paper submitted to SADC3P in November, 2012 recognizing that PPP Frameworks do not develop in isolation, but evolve over time along a PPP maturity curve that often responds to various



challenges faced while actually implementing PPPs in specific cultural, legal and procedural and institutional settings. The Regional Strategy document examined the current status of PPP Frameworks across all Member States to classify SADC countries into four categories as far as their level of maturity of PPP Frameworks is concerned. It distilled Zimbabwe to belong to those increasing number of countries in SADC that have established a PPP Policy and/or a PPP Law aimed at the promotion of their PPP schemes. The next chapter will elaborate on Zimbabwe's specific PPP experience, its PPP Policy, Legal and Institutional Framework as a continuation of the above mentioned cross-country Regional Strategy aimed at providing an in-depth insight into the specific country strategy for Zimbabwe.

3. Methodology

Our approach in this country specific paper is to provide an overview of Zimbabwe's PPP Policy, Institutional Arrangements, and Legal Framework by taking into account the country-specific strategies, and drivers for resorting to PPPs considering the individual level of PPP development in the country. The ultimate idea is to draw lessons for Zimbabwe, and to come up with specific recommendations concerning potential areas of assistance needed. The Regional Strategy document distilled Zimbabwe in 2012 to be prone towards promoting PPPs, and establishing institutions to promote the existing PPP Framework. This paper will touch upon this evaluation and move further to analyze the current progress made in Zimbabwe aimed at depicting those developments made since 2012 as far as the PPP Framework conditions are concerned.

Methodologically, we will first take a look at the definition of the term PPP in Zimbabwe since experience across countries shows that lack of a proper term and definition of what a PPP typically encompasses does indeed result in poor implementation of PPP schemes. Next, we will evaluate Zimbabwe's approach towards developing a PPP Framework based on the recommendations provided to the Minister's of Finance and the road map developed for SADC countries aimed at establishing a typical good practice PPP Framework. This includes the evaluation of Zimbabwe's PPP Framework in terms of its PPP Policy –examining whether its Policy contains its Government's formulation of its objective to use PPPs, the scope of the PPP program and the implementing principles. Then, we will consider whether Zimbabwe's operational Framework related to the implementation of PPP processes and the institutional responsibilities underpins its national PPP scheme. In addition, we will take a look at the legislature and entities participating in the PPP program as an integral part of any good framework approach. Ultimately, we will evaluate as to whether Zimbabwe's PPP programs are backed up by prudent laws and regulations enabling public sector to enforce and implement PPPs and set the boundaries within the contractual context. The overall idea is to distil proper recommendations from our work for SADC3P, and the Government of Zimbabwe as far as next steps is concerned.

4. Examination of the Term PPP

The Government of Zimbabwe has initiated an active process of overhaul and review of the existing PPP Framework as of 2013. XS-Axis Consulting received a copy of the draft Review PPP Policy, dated 2013 and the PPP Guidelines both of which serve as the fundament to conduct an analysis of PPPs in this paper. Since these draft documents have officially not been passed by the Government yet, it is important to bear in mind potential modifications and amendments to the issues raised in this document.

A PPP in Zimbabwe shall involve”a contractual arrangement between a governmental institution and a private party whereby the private sector party provides public infrastructure and/or infrastructure related services and where the provision of such infrastructure and/or



infrastructure related services is:

- (a) based on measurable output (end result) specifications;
- (b) governed by a payment mechanism that provides payment only on delivery of services at required standards;
- (c) accompanied by a transfer of financial and operational risks with consequential financial effects; and
- (d) demonstrates Value for Money (VfM) to Government" (Government of Zimbabwe, PPP Policy, 2013, p.8).

Thus, the term addresses four key elements of an optimal PPP definition. Although the term itself does not encompass the length of the contractual structure, the section on main characteristics of PPPs addresses this issue by noting that “..contracts tend to be long in duration.” Taking a closer look at the term, in Zimbabwe, there is no explicit reference to bundling of processes as a requirement for qualifying as a PPP. However, the Government has established more concrete explanation of the need to consider “outputs” in a PPP arrangement in the PPP Guidelines to be published soon and currently under review (Government of Zimbabwe, PPP Guidelines, 2013, p.19).

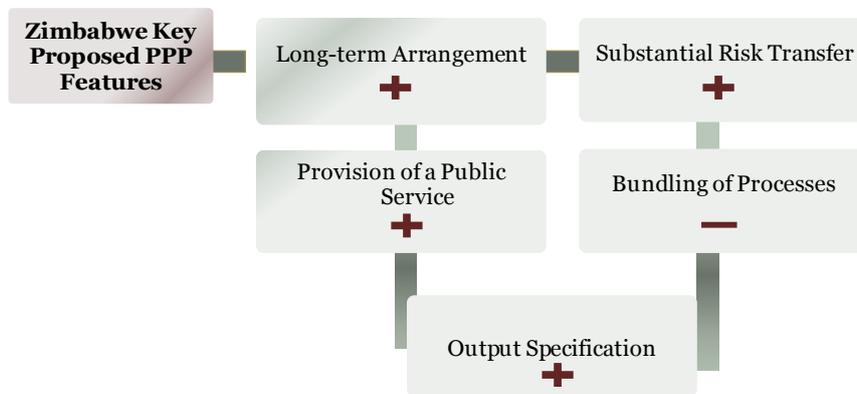


Chart 1: Overview of the term PPP in Zimbabwe

The Zimbabwe PPP Guidelines determine the following: “..With a conventional procurement, the Institution prepares detailed specifications that describe the infrastructure required to deliver a service. That detailed specification is an “input” specification. PPP procurement specifies the output – the institutional function that is desired to be provided by the infrastructure – and leaves the design of that infrastructure to the private party. The services that need to be provided constitute the “output specification” (Government of Zimbabwe, PPP Guidelines, 2013, p.19).” Although the Government recognizes that for strategic and policy reasons, it may be that the Institution involved needs to provide some input specifications. To the greatest extent possible, output specification shall be applied to facilitate transfer of risks to private sector. Quite interestingly the PPP Guidelines highlight the need for the Institution to apply its mind to what needs to be achieved, as opposed to how it will be achieved. The PPP Guidelines provide even an example of an output specification for an Institution desiring to provide new office accommodation for 147 employees, of differing ranks, who are currently accommodated in three different leased facilities. They illustrate using this example how output specification may be best applied.

Thus, not only the PPP Policy explains the term PPP in detail, but also there is an enrichment of the definition of PPPs embarked upon in the PPP Guidelines which will serve the Government of Zimbabwe as a forceful tool to assist public sector in getting a better understanding of various



details related to developing, managing, structuring complex PPPs.

5. Application of SADC PPP Framework Road Map

The experience to date across comparators and SADC countries indicates that there is no unique formula for developing a sound PPP Framework. More specifically, the development of a common framework for SADC needs to take into account the economic and political context of countries, their historically grown institutional and legal structures as well as the actual experiences with PPPs so far, with some countries having made considerable strides and others having made very little progress, and some none at all. Nevertheless, if PPPs are to work and render the expected results, we suggested in the Regional Strategy document a number of requirements for a proper PPP Framework with key features related to Policy, Institutional Structures and Legal setting (see next chart).

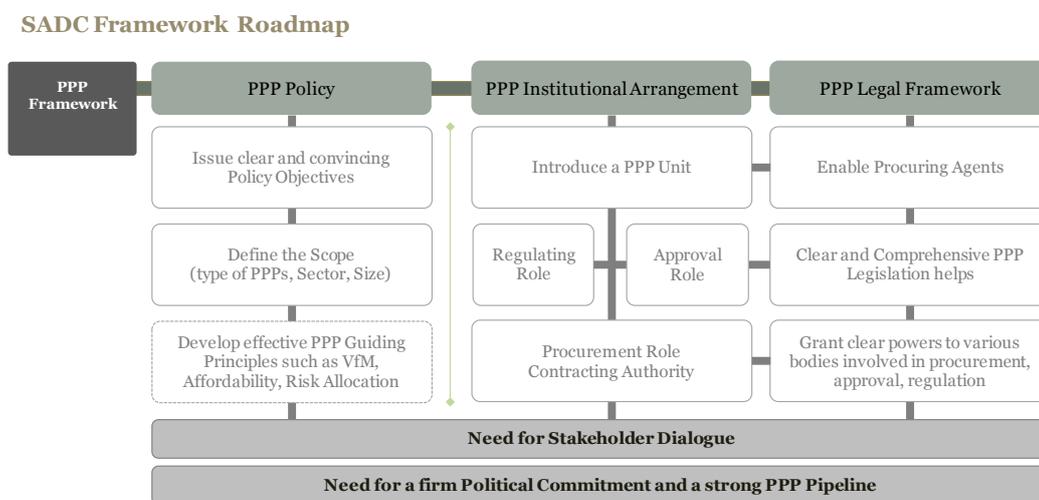


Chart 2: Overview SADC Road Map, Regional Strategy Paper, 2012

Thus, successful PPP schemes are characterized by clear policy statements, competent and enabled institutions that can appropriately identify, procure and manage PPPs, and efficient oversight procedures as well as proper Legal Frameworks. Nevertheless, it must be borne in mind that firm political commitment, stakeholder dialogue and a number of other factors such as a sound and strong PPP pipeline are important contributing factors for the promotion of PPPs in a larger context. It is also important to be aware of the contribution of sector reforms and their role in developing and supporting PPP schemes. In a number of countries, sector institutions, for instance, power sector regulators have had an important role as far as the promotion of IPPs and investment in the power sector are concerned. It is in this context that Member States with a low level of PPP maturity should acknowledge the relevance of sector institutions in terms of their contribution towards developing PPPs over time and across various sectors --which are however best supported by setting up efficient and proper frameworks at the national level. In this section, we examine these various elements of a PPP Framework to see how far Zimbabwe has proceeded in terms of its PPP Policy implementation and practice as well as looking into its Institutional structures and Legal Framework more in-depth as well as the political commitment of the Government and its approach towards stakeholder integration into the PPP process.



5.1 PPP Policy in Zimbabwe

The Government of Zimbabwe’s commitment to improve the efficiency of public service delivery by strengthening the role of private sector in the economy as well as reducing the role of public sector in provision of marketable goods and services was reinforced early on in December 2004 with the adoption of the PPP Policy. Nevertheless, the overall experience with PPPs in Zimbabwe has been limited --partly attributable to the unstable political and economic climate in Zimbabwe over the past decade, lack of a proper Legal Framework, lack of institutionalization of PPPs to give them the necessary legal force. On top, PPPs are understood to be a fairly new concept in Zimbabwe; therefore, there are not sufficient local experts in the field with extensive experience in implementing PPPs or writing the legislation that pertains to them (Government of Zimbabwe, PPP Guidelines, 2013, p.5).

Since the establishment of the new inclusive Government in September 2008, and the introduction of the Short Term Economic Recovery Programme (STERP), the country has been working on further stepping ahead. The STERP document clearly adopts PPPs as a procurement method to deliver public infrastructure and services (section 434-440), and reinforces the 2004 PPP Policy (Government of Zimbabwe, PPP Policy, 2013, Foreword, p.1). Reaffirming its position, the Government of Zimbabwe recognizes the need to introduce PPPs in the context of the Zimbabwe economy in terms of the strategic and operational choices they offer to the public.

Based on information from the Ministry of Finance, and the current process of review of the PPP Policy document, the Government distinguishes between strategic and operational objectives. Strategically, PPPs shall assist to foster economic growth by developing new commercial and investment opportunities for foreign direct investment and local empowerment investors and increasing competition in the provision of public services (Government of Zimbabwe, PPP Policy, 2013, p.6). Operationally, PPPs provide opportunities for efficiency gains to improve quality and provide for more cost effective delivery of services by private sector participants. Thus, the Government realizes that PPPs enhance service delivery by accessing private sector’s financial, managerial, professional and technical expertise. The necessary maintenance and operation of this infrastructure may also be improved by involving private sector resources. The following chart illustrates the benefits to be derived from PPPs as being discussed in the current PPP Policy review process (Government of Zimbabwe, PPP Policy, 2013, p.6).

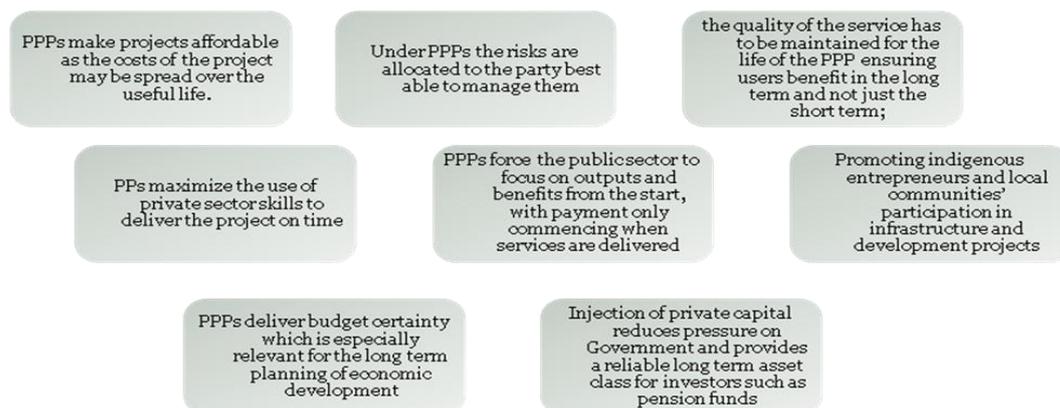


Chart 3: Overview of expected benefits from PPPs in Zimbabwe

It is quite important to highlight that the Government of Zimbabwe acknowledges the complex contractual structure of PPPs, thus openly conveying the idea that the PPP procurement processes are lengthy and costly. It realizes that public and private sectors require capacity and skills to undertake PPP procurement and to implement and manage these kinds of projects.



Hence, the Government not only recognizes the need for capacity building in both the private and public sectors, but the revised version of the PPP Policy highlights the necessity to address the perception of an implied loss of control by public sector in its service provision and concerns of the higher cost of private finance in public infrastructure investments (Government of Zimbabwe, PPP Policy, 2013, p.7). Other challenges recognized by Government to promote and establish PPPs include:

- Country and Political Risk (both perceived and real);
- Lack of expertise and capacity within Government;
- Lack of financial resources within Government;
- Lack of political commitment;
- Lack of established and clear legal framework (ambits, stability, applicability);
- Financial services sectors are usually not mature enough to finance PPP projects;
- Private sector in Zimbabwe is not conversant enough to undertake PPP projects;
- Lack of conducive environment for PPPs i.e. regulatory or legislation;
- Lack of or limited monitoring of outputs (benchmarking/market assessment);
- Conflicting interests/limited consultation between public and private sector;
- Process risk (ambiguous procurement transaction approvals);
- Complex enforcement of contractual obligations (finance and dispute resolution).

The revised Policy further elaborates on characteristics of PPPs to typically require significant investments by the private partner in assets that have little third party transfer value. PPP contracts in Zimbabwe shall be long in duration, and payments shall usually be structured such that the public sector and/or users pay for services only if they are rendered satisfactorily. Thus, services are 'output' rather than 'input' or process based. This is understood to make up a characteristic of an effective procurement process. On top, the private partner shall arrange project financing. PPPs involve risk identification and allocation across all parties. Risk factors change during the course of the project lifespan. The changing nature of risk throughout the project cycle must be identified as part of the initial contractual arrangement to the greatest degree possible. Contingencies for unanticipated risks or events must also be agreed. Government realizes that successful PPPs need a high level of trust between all parties which is based on acknowledged competence of all parties as well as professional integrity (Government of Zimbabwe, PPP Policy, 2013, p. 9).

The PPP Policy provides also insight into various types of PPPs, and their scope. Types of PPPs are illustrated in the next chart. In case of BOOT, BOT and DBFO schemes, assets may be rented back to Government or transferred to Government at the end of the contractual period which is usually a period of 15-35 years. In case of BOO and DBFO schemes, the private party continues to operate the asset, although in some cases ownership is transferred to another private party or sold to Government at a later stage. The PPP term in Zimbabwe excludes contractual arrangements between public, and private sector for provision of services only, with no significant private sector capital investment, and no risk transfer. These contractual arrangements may be either service or management contracts or leases (Government of Zimbabwe, PPP Policy, 2013, p.8). However, the final decision on the definition of PPP types will be decided upon during the current stakeholder consultation process.

In terms of scope, the focus is on the infrastructure sector, especially the early stages of application of PPPs in Zimbabwe in the 1980's- 1990 has indeed led to the perception that these contractual structures may only be applied to infrastructure. The revised Policy makes clear that although the infrastructure sector continues to be the dominant source of PPPs, there is no reason why PPPs should in fact be limited to the infrastructure sector. Thus, the Government



makes clear that it is the size of the project, risk profile and complexity, market capacity, governments’ public service delivery policies and end user requirements as factors driving the choice for a PPP.

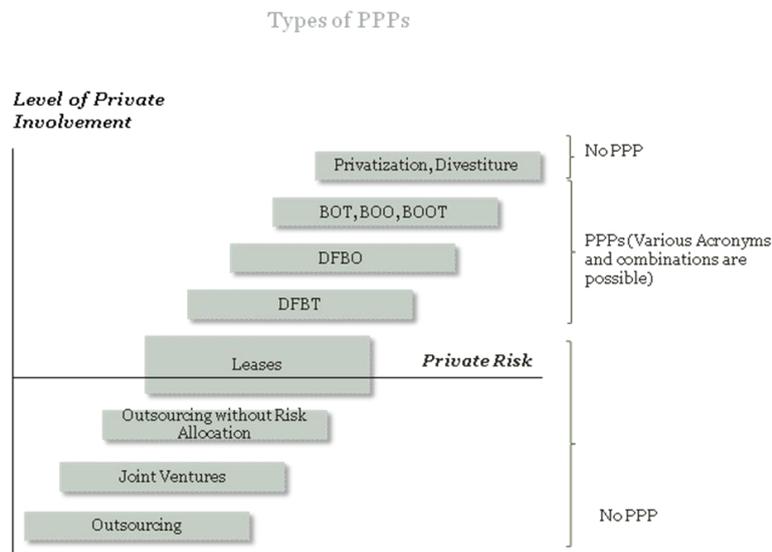


Chart 4: Considered Types of PPPs in Zimbabwe

Based on the above, the Government’s idea is to focus in the initial years on PPP projects that are

- ..of the appropriate size, recognizing transaction costs;
- not overly complex and that have a fair risk profile;
- feasible to implement in terms of private sector capacity; and
- visible in meeting immediate end user needs and / or non-controversial in terms of where the public sector has traditionally provided the services” (Government of Zimbabwe, PPP Policy, 2013, p.11).

In sum, it is envisaged that projects in sectors such as transportation, education, and health facilities as well as the energy and power infrastructures are ideal areas to invest in the early stages of PPPs (Government of Zimbabwe, PPP Policy, 2013, p.10).

The PPP Guidelines provide some rules of thumb for considering the procurement of a project as a PPP. There shall be private sector capacity in Zimbabwe for the financing, design, construction, operation and maintenance of the desired infrastructure. There shall be a significant capital expenditure for infrastructure – over a certain amount which still needs to be figured out by the Government, and the useful life of the infrastructure is greater than 15 years. The Government’s reasoning behind the above matters includes the fact that transaction costs (Transaction Advisor fees, Institution staff costs and private sector bid preparation costs) for a PPP are relatively high compared to a conventional procurement. Transaction Advisor fees, for instance, for a feasibility study and PPP procurement may amount to several millions of Dollars. Thus, there must be a sizable difference between the anticipated transaction costs and the total project costs in order to justify the time and money expended to procure the PPP. Furthermore, the project must be strategic to Central Government in order to justify any expenditure of public monies. On top, Greenfield projects are, by and large, less controversial and/or disruptive to service provision than projects involving the taking over of existing infrastructure for rehabilitation, operation and maintenance. The latter often involves taking over Institutional staff, which may generate opposition from organised labour, and further may involve disruption of service for a period of



time, generating unnecessary controversy.

Next, another rationale is that private sector usually only begins receiving the unitary fee upon completion of the infrastructure and acceptance by Government. It is often easier and more efficient for an Institution to budget for an annual unitary fee payment, rather than a significant upfront capital budget with large, ongoing operations expenditures as well. Finally, among the objectives for procuring infrastructure and related services via a PPP are to encourage the economic development of Zimbabwe and its indigenous businesses and to entice foreign direct investment in Zimbabwe tied to significant citizen participation in the commercial activities resulting from that investment

5.2 PPP Institutional Responsibilities in Zimbabwe

The successful roll out of PPPs in Zimbabwe requires an institutional and regulatory regime that is enabling and allows projects to be completed and the benefits of increased private sector involvement and improved service delivery to be realised. In this context, the Government plans to involve various Ministries in the actual process of procurement and approval and regulation as well as budgeting of PPP projects. A summary of the various roles of Institutions, the Ministry of Finance, the PPP Unit and the State Procurement Board (SPB) is shown in the chart below.



Chart 5: Overview of planned Institutional Structure

The plan of the Government is to establish a specialist team of legal, financial and technical experts, approximately [3 to 5] in number as an independent agency (PPP Unit) to report to the Ministry of Finance ultimately. The Institutions shall be in charge of launching projects, identifying them and implementing these. They are considered as “owners” of the project. The PPP Policy imposes upon Government Institutions the primary responsibility for identifying potential PPP projects as part of the annual budgetary process. Projects are to be identified and prioritised using a cost benefit analysis in terms of how well they address the country’s development requirements (Government of Zimbabwe, PPP Guidelines, 2013, p.8).

The SPB continues with its statutory role of providing regulatory oversight for all forms of procurement. The PPP Unit shall play an advisory role and provide technical, legal and financial advice to the institutions so that they may properly implement PPPs. The Ministry of Finance (MoF) is the approval body and in charge of budgeting the projects proposed.

5.2.1 Role of PPP Unit in Zimbabwe

The future PPP Unit to be still established shall be an independent agency reporting to MOF to



make sure the most appropriate use of the limited financial resources in treasury are used. On top, the Unit shall be involved as advisor for PPPs providing financial, legal and technical assistance to sponsoring Institutions and Line Ministry's, and be involved in selection of suitable PPP projects, approval of feasibility and bid evaluation reports and responsibility for capacity building (Government of Zimbabwe, PPP Policy, 2013, p.13). The PPP Unit shall also adopt processes and procedures aimed at providing technical and financial advice to the Government Institutions.

The PPP Unit's role envisaged by the Policy will be "one of advocacy for PPPs and technical support for the Institution throughout all the stages of a PPP project from conceptualisation through to contract management. The PPP Unit will also promote PPPs in the wider community including indigenised companies, potential funders, transaction advisers and the wider public. The role and functions will include:

- "...coordinating and harmonising the implementation and review of the PPP programme;
- ensuring there is an enabling legislative environment for PPPs;
- ensuring the guidelines and procedures for PPPs are followed;
- ensuring the advancement of social and economic goals of Zimbabwe;
- recommending approval of PPP projects to the Cabinet;
- advising Government and assist on technical issues related to PPPs;
- acting as the repository of information on PPPs in Zimbabwe, and
- promoting PPPs among domestic and international investors and the general public" (Government of Zimbabwe, PPP Policy, 2013, p.15).

5.2.2 PPP Regulation, Approval and Implementation Roles in Zimbabwe

The ongoing review process, foresees the Institutions and Line Ministries to bear the prime responsibility for:

- "...Identifying and submitting the proposals for PPPs to the PPP Unit;
- Engaging Transaction Advisors to assist with Feasibility studies;
- Procuring such PPP and liaison with the State Procurement Board;
- Evaluating and selecting the preferred bidders in liaison with the SPB;
- Negotiating and awarding the contract; and
- Implementing and managing PPP projects" (Government of Zimbabwe, PPP Policy, 2013, p.13).

The Institutions are the owners of the project throughout its lifetime assuring that the goals of the project to address particular needs are achieved. The sponsoring Institutions have primary accountability for service delivery; they are ultimately responsible for driving forward and implementing PPPs albeit with substantial assistance from the PPP Unit. The SPB continues with its statutory role of providing regulatory oversight for all forms of procurement. Similarly, the MoF adopts such rules as needed for confirming to a Government Institution and SPB that the funds for the particular PPP will be available and a contract can be entered into. The next chart presents the overall Government's planning for the institutional and approval process related to implementation of PPPs. The approval process for PPPs has been designed to provide for transparency and it is being currently discussed within Government. In this process, the roles of



various agents are once again graphically illustrated.

The PPP Unit is involved at various and multiple stages of the approval next to the SPB and the Cabinet. In line with its current statutory powers, the SPB will be responsible for ensuring that the PPP procurement process is fair and equitable. To avoid duplication of activities and the associated implications for time and cost the SPB will not advise on the merits of the project itself but rather be primarily concerned with the integrity of the process and that the evaluation process is transparent (Government of Zimbabwe, PPP Policy, 2013, p.15). As per its statutory powers the SPB will have the power to evaluate bids and adjudicate bid recommendations should this be necessary.

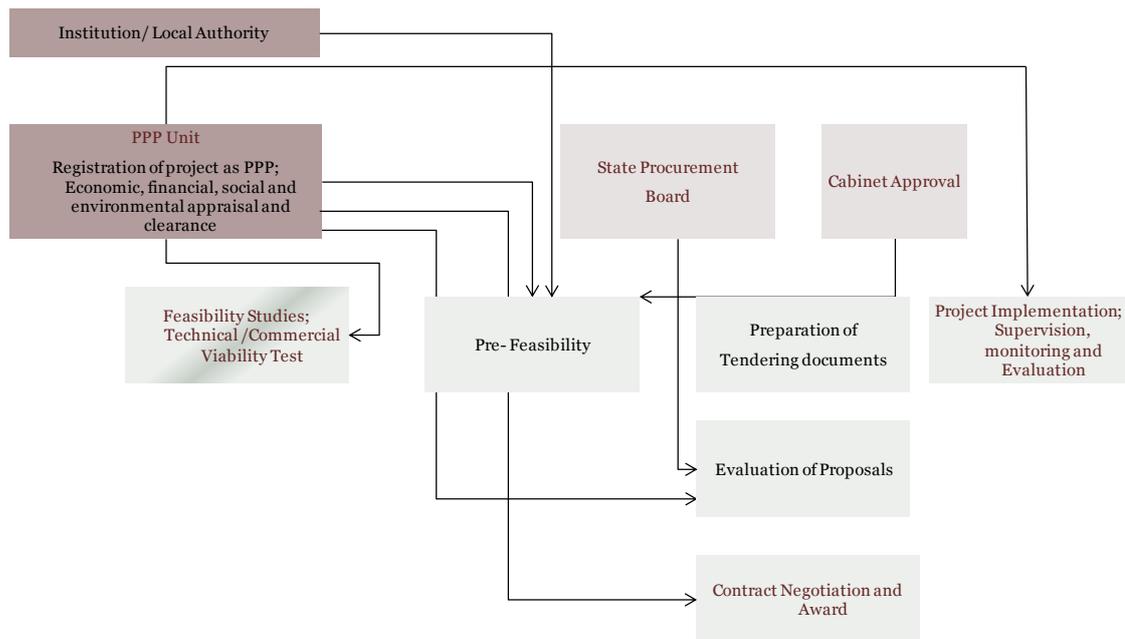


Chart 6: Overview of the Approval Process as currently being discussed within Government,
Source: Government of Zimbabwe, PPP Policy, 2013, p.19

The MoF, with the ultimate responsibility for funding the project over its lifetime, will be responsible for committing the funds and hence approving the affordability of the project at the start of procurement. The PPP Policy document recognizes that throughout the PPP process, many other stakeholders including users, the contracting parties, funders, planners, environmentalists, the attorney general, the auditor general and the wider public will be involved. The nature of their involvement will hinge upon the nature of the project and may be limited to a specific stage such as obtaining planning approval for a project. The guidelines supporting the Policy entail recommendations for involving the different elements of the wider stakeholder community.

5.3 Zimbabwe Legal Framework

The judiciary is headed by the Chief Justice of the Supreme Court of Zimbabwe who is appointed by the President on the advice of the Judicial Service Commission. The Constitution has a Bill of Rights containing extensive protection of human rights. The Supreme Court is the highest court of order and the final court of appeal. A five member Supreme Court, headed by the Chief-Justice has original jurisdiction over alleged violations of fundamental rights guaranteed in the constitution and appellate jurisdiction over other matters. There is a High Court consisting of



general and appellate divisions.

Below the High Court are regional magistrate's courts with civil jurisdiction and magistrate's courts with both civil and criminal jurisdiction over cases involving traditional law and custom. The legal system is based on Roman-Dutch law with South African influences. The legal system consists of English common law, Roman-Dutch civil law, and customary law (KPMG, Draft Report 2013).

The existing regulatory and legislative framework governing procurement is embodied in the State Procurement Regulations and the role of the State Procurement Board (SPB). A PPP is essentially a specialised form of procurement albeit that involves a detailed procurement process and substantial financial commitments by government over a longer time frame. To support the roll-out of PPPs this Policy envisages the establishment and adoption of specific PPP Regulations to govern the procurement of PPPs within the current overall legislative framework (Government of Zimbabwe, PPP Policy, 2013, p.13).

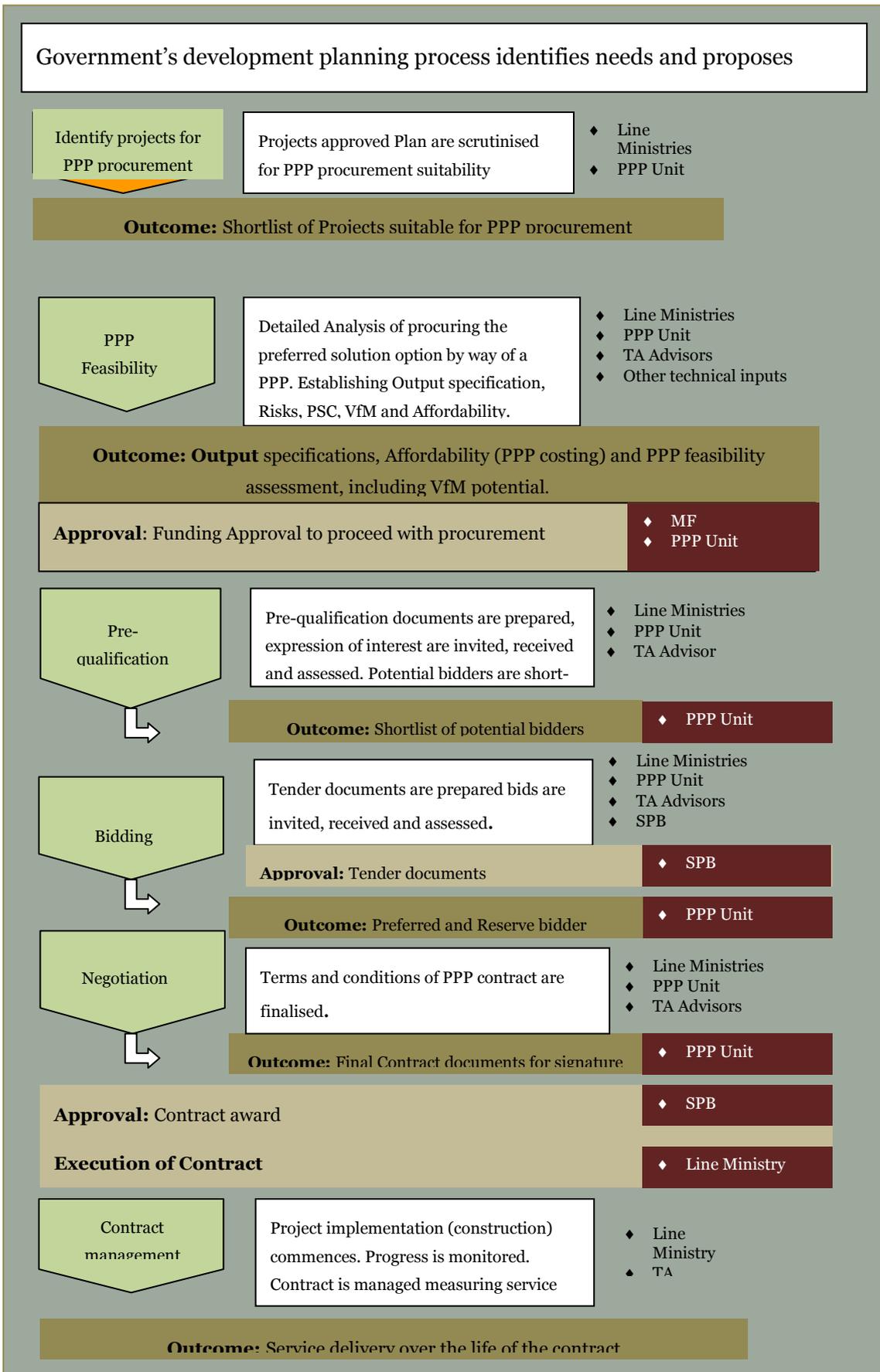
The process starting with identification of a potential PPP project through procurement and implementation will be highly structured requiring the involvement of different parties within an appropriate approval framework. However, the Government realizes that it is important to keep the process simple in order to actually implement PPPs. Prior to initiating the actual procurement process, the Institutions involved must render a feasibility study report to be approved by the Project Committee and then approved by both MoF to indicate that budgetary funds will be available and by a peer review process from the PPP Unit. The PPP Guidelines provide an overview of the contents and issues to be addressed in a typical feasibility study. The following stages, which are explained in greater detail in the Guidelines shall include needs analysis; options analysis; project due diligence; value assessment; and procurement plan.

The procurement process is to follow the following stages:

- (a) A Request for Pre-qualification (RfQ) or Expression of Interest (EOI) stage;
- (b) A short listing / pre-qualification evaluation by the project committee;
- (c) A Request for detailed and priced Proposals (RfP);
- (d) An evaluation of the bids and selection of preferred bidder;
- (e) Negotiations with the preferred bidder and final contract signature; and
- (f) Contract implementation.

The details of the procurement process including the basis of the necessary approvals along with the project and contract management are laid out as part of the PPP Guidelines and Manual supporting the PPP Policy. The next chart depicted from the PPP Guidelines provides an overview of the PPP process as envisaged by the Government in the PPP process.





The PPP Policy and Guidelines both regulate matters related to submission of unsolicited proposals. Accordingly, an Institution is neither obliged, nor encouraged, to consider unsolicited PPP bids, as they are considered to pose a serious risk to Government concerning entrance into obligations that fail to demonstrate affordability, transfer of significant risk to the private sector and VfM (Government of Zimbabwe, PPP Guidelines, 2013, p.63). Unsolicited PPP bids also are recognized as encouraging corrupt activity, and dissuading other private sector firms and financial institutions from participating in competitively-bid PPP procurements. Nevertheless, if an Institution decides to consider an unsolicited bid in terms of the above-listed criteria, the Institution must make its decision public in the [Zimbabwe Government Gazette] together with information on the reasoning behind the bid not to be open to other competitors; an explanation of the potential benefits to the Institution and the beneficiaries of the service were it to accept the unsolicited bid; and an invitation to the public or other potential suppliers of the infrastructure and related service to submit their comments within 30 days of the notice. Once the institution has received written comments pursuant to the above, it must submit such comments, including any responses from the unsolicited bidder, to the State Procurement Board and the PSIP for comment (Government of Zimbabwe, PPP Guidelines, 2013, p.63). Similar to competitive bids, the approval of both PPP Unit and SPB are needed in various stages, and also after feasibility study has been conducted prior to launching and moving on with the unsolicited bid.

6. Recommendations

PPPs are not a new form of procurement in Zimbabwe, there have been a few implemented to date. However, the Government notes a low uptake of PPPs for several reasons including an overall unfavourable investment climate characterized by the threat of price controls, no respect for private property, absence of incentives to “sweeten” potential PPPs in the form of duty or tax incentive (Government of Zimbabwe, PPP Guidelines, 2013, p.1). On top, local private sector lacks capacity and is in need of resources to resuscitate its production capacity. The country also suffers from a lack of a PPP Legal Framework to regulate the implementation and operation of PPPs in Zimbabwe. Feasibility studies are being conducted haphazardly with no clear operational guidelines for involved stakeholders. This scares foreign investors. In addition, the Government criticizes the existing gap in institutionalization of PPPs to give them the necessary legal force, and PPPs are a fairly new concept in Zimbabwe and so there are no local experts in the field with extensive experience in implementing PPPs or writing the legislation that pertains to them.

The country suffers from lack of transparency and political interference in all major projects as highlighted in the PPP Guidelines. Lack of clear guidelines and a transparent process will continue to hinder any investment in Zimbabwe and hamper the implementation of PPPs. The Short Term Economic Restructuring Programme (STERP) (issued in March 2009), recognizes the need to adopt PPP guidelines to provide step-by-step guidance to PPP practitioners, whether in the public or private sector. Next to the PPP Policy, PPP Guidelines are currently being reviewed by the Government serving as best practice guide for PPP practitioners. The scope of these guidelines encompasses all aspects of a competitive bidding process that may potentially become a PPP, including registration of projects with the PPP Unit by the Institutions, through to procurement of a service pursuant to SPB regulations and PPP Policy, the execution of a PPP agreement and its implementation.

Concrete SADC3P Recommendations:

- Provide assistance to establish a dedicated PPP Unit;
- Provide support to expedite the on-going review of PPP Policy and Regulatory Framework;
- Provide advisory assistance to establish a PPP Law;
- Training to capacitate public sector to procure PPPs.



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