KEBBI STATE GOVERNMENT

PUBLIC PRIVATE PARTNERSHIP POLICY

Kebbi State Investment Promotion Agency (KIPA)

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1. Introduction

*The Imperative for Private Sect*or Investment

The foundation of economic and social advancement in any region lies in robust physical infrastructure. In Kebbi State, as in many parts of Nigeria, infrastructure development is a capital-intensive endeavor that places considerable demands on public finances. With finite resources available to the state, it is imperative to explore alternative financing mechanisms. One such avenue is the mobilization of private sector investment through Public-Private Partnerships (PPPs). Kebbi State Government (KBSG) is committed to fostering a policy environment that encourages the delivery of public infrastructure and services via PPPs. This policy document outlines the strategic framework for employing PPPs within Kebbi State, aligning with the state's development objectives as articulated in the Kebbi State Development Plan.

The sectors targeted for PPP initiatives include, but are not limited to, agriculture, transportation, power, water supply, environmental management, healthcare, education, housing, and tourism. These sectors are integral to the Kebbi State Development Plan. Recognizing the intense competition for Foreign Direct Investment (FDI) within Nigeria, KBSG is poised to adopt a proactive stance to attract and secure investors for both large-scale infrastructure projects and other vital sectors of the state's economy. The overarching goal is to create a conducive environment that positions Kebbi as a premier destination for investment.

Securing investment is merely the initial step; the KBSG acknowledges the necessity of ensuring that these investments are sustainable. This requires enhancing the efficiency and responsiveness of the public sector to capitalize on these opportunities fully. To this end, establishing a conducive environment bolstered by a robust legal and regulatory framework is a primary focus of this policy.

Reasons for Embracing Public Private Partnerships (PPP)

The Kebbi State Government (KBSG) recognizes that PPPs are instrumental in catalyzing economic growth by opening up new commercial avenues and fostering a competitive landscape for the provision of public services. This, in turn, stimulates private sector investment and contributes to the maturation of local financial markets, both equity and debt. It is for this reason that the State continues to develop necessary frameworks for PPP in line with Section 7 Part II of the Schedule to the Kebbi Investment Promotion Agency (Amendment) Law, 2024.

PPPs enable the government to delineate policy and strategy, and, where necessary, regulate economic activities, while entrusting the delivery of services to the private sector's expertise. Such collaborations are pivotal in cultivating a competitive and diverse market of suppliers, enhancing the efficiency of public services, and consequently, reducing the costs associated with public service delivery. By leveraging the strengths of both the public and private sectors, PPPs aim to secure optimal outcomes and superior value for money. Operationally, PPPs offer avenues for efficiency improvements, better utilization of assets, enhanced quality, a more defined focus on customer needs, and expedited project delivery timelines.

The KBSG is intent on concentrating on its fundamental role in public service governance while affording the private sector an expanded operational role. PPPs are a conduit for harnessing the finest skills, knowledge, and resources available across both sectors. They empower Ministries, Departments, and Agencies (MDAs) to concentrate on delivering core services, utilizing the savings generated to enhance or broaden the scope of other services. Furthermore, PPPs hold the potential to expedite infrastructure spending, circumventing the need to stagger capital development across several years due to budgetary limitations. The KBSG encourages innovation within PPP projects and acknowledges the importance of evolving project delivery processes to reflect accumulated experience and the dynamic nature of infrastructure construction, financing, and service provision. To ensure that PPPs align with broader policy goals, the KBSG will maintain vigilant oversight, periodically reviewing and refining its PPP Policy to adapt to the evolving economic and infrastructural landscape.

2. Definition of Public Private Partnerships (PPP)

A Public Private Partnership (PPP) is defined as a strategic contractual relationship between a public sector authority and a private sector entity. Under this partnership, the private entity undertakes to perform a portion of a government organization's service delivery functions and accepts the associated risks over a substantial period of time. The role of the government is to meticulously plan and structure PPP projects. In exchange, the private sector is tasked with the implementation of these projects, receiving financial compensation based on pre-established performance metrics.

These metrics may be derived from:

- Service tariffs or user charges.
- Government budgets, through availability payments or service charges.
- A combination of the aforementioned methods.

The government recognizes the diverse array of PPP models that vary in their objectives, scope of services, legal constructs, and distribution of risks. The primary PPP frameworks include:

- Output and Performance-Based Contracts: Here, the public sector plays a pivotal role in the partnership, either as the principal buyer of services or as the key facilitator of the project. It procures services based on specified outputs/outcomes and performance standards, with any deviation from these standards resulting in reduced service payments to the private provider. The private party is typically responsible for the design, construction, operation, maintenance, and financing of the project, with remuneration tied to their performance. Risks are meticulously assessed, quantified, and allocated to the party best equipped to manage them cost-effectively.

- Concessions: Commonly utilized in developing regions, concessions assign the private sector the responsibility for the design, build, operation, maintenance, and financing of a project, thereby assuming a significant share of the risk.

The selection of a PPP model for a particular project hinges on the government's policy objectives within the relevant sector and the anticipated value for money that the arrangement is expected to yield.

3. Characteristics of Public Private Partnerships

The Kebbi State Government (KBSG) acknowledges the necessity of establishing key pre-conditions within the PPP policy framework that are vital for achieving successful outcomes. These pre-conditions include:

- Institutional Arrangements: The KBSG will set up clear and definitive institutional roles to facilitate the effective implementation of PPPs. This framework will ensure better coordination and planning of infrastructure, enhance accountability for public investments, and increase transparency in regulatory and procurement processes. Recognizing that institutional roles may evolve as experience with PPPs grows, the KBSG will maintain a degree of institutional flexibility to foster innovation and ensure that entities with capacity are not hindered by the development of capacity elsewhere.

- Legislative Environment: To mitigate political and regulatory risks that could impede PPP effectiveness, the KBSG plans to periodically review and update regulations and legislation. This will involve creating a comprehensive set of legal tools, principles, and rules for PPP procurement that all Ministries, Departments, and Agencies (MDAs) will adhere to, promoting consistency across various sectors.

- Affordability: PPPs must be economically feasible for both the government and the public. The KBSG is committed to managing resources efficiently, allocating risks appropriately, and delivering services in a cost-effective manner. The selection of PPP projects will be carefully considered to align with the state's policy priorities and objectives, ensuring that they are affordable and do not overburden taxpayers or users.

- Value for Money: The success of KBSG's PPP infrastructure program hinges on the principle of "value for money," where services provided by the private sector are more economical than those delivered by the public sector, factoring in the value of risks transferred from the public to the private sector. The KBSG will utilize PPPs where they are expected to offer better value and more affordable services, with all procurement decisions based on merit and subjected to rigorous economic and financial analysis.

- Capacity Building: As PPPs represent a significant shift in governance, capacity building is essential for all stakeholders involved in the PPP process. The KBSG will enhance the general understanding of PPPs among stakeholders to support sound policy development and informed discourse. Ensuring that MDAs have the necessary resources to execute quality PPP projects is crucial for the program's success. The KBSG will focus on developing and retaining the requisite skills and expertise within the public sector to manage the procurement process effectively, grant approvals, regulate, and adapt PPPs as needed.

4. Scope of the Policy

This policy is applicable to a comprehensive range of projects aimed at the provision of infrastructure and services by the State or Local Governments. These projects are integral to the realization of the broad policy objectives outlined in the Kebbi State Development Plan that is currently being developed. These will be selected from within each Ministry, Department, and Agency's (MDA) Medium and Long-Term Action Plans for infrastructure development.

The policy extends to all relevant sectors, including but not limited to transportation, power, water supply, environmental management, healthcare, education, agriculture, housing, and tourism. It is designed to facilitate the strategic involvement of the private sector in infrastructure development, thereby leveraging private sector efficiencies, innovation, and capital for the public good.

5. The Goal and Objectives of the Policy

The overarching goal of this policy is to leverage Public-Private Partnerships (PPPs) to augment the provision of infrastructure services with greater efficiency than traditional public sector procurement methods. In pursuit of this goal, the Kebbi State Government (KBSG) has set forth the following objectives:

Economic Objectives

- Maximize Economic Returns: Ensure infrastructure projects are strategically planned, prioritized, and managed to maximize economic benefits and delivered in a timely, efficient, and cost-effective manner.
- Catalyze Development Plans: Utilize PPPs as a catalyst for the implementation of the State Development Plan (SDP) and subsequent development strategies, taking into account urban and local development plans.
- Accelerate Infrastructure Investment: Expedite investment in new infrastructure and upgrade existing facilities to standards that fulfill public needs and aspirations.
- Value for Money: Guarantee that all investment projects are economically viable, providing value for money and remaining within the fiscal capacity of the government.
- Reliable Public Services: Develop more dependable public services by leveraging private sector expertise in financing, risk management, and innovative technologies.

Social Objectives

- Optimize Public Finance: Redirect public financial resources towards essential social services.
- Enhance Public Service Access: Broaden access to high-quality public services for all societal segments.
- Economic Diversification: Bolster the state's economic diversity and employment opportunities.
- Affordable User Charges: Ensure that charges for new or improved public services are reasonable and offer value for money.

- Employee Welfare: Uphold the rights and opportunities of existing employees and address social safety net issues prior to project approval.
- Health and Safety: Improve the health, safety, and wellbeing of the populace.
- Inclusivity: Support vulnerable groups, promote gender equality, and facilitate the participation of small and medium-sized enterprises in PPP projects.

Environmental Objectives

- Environmental Stewardship: Safeguard and improve the natural environment.
- Emission Reduction: Minimize greenhouse gas emissions and other environmental pollutants.
- Sustainable Growth: Foster opportunities for clean and resilient economic growth.

6. The Implementing Principles

The Kebbi State Government (KBSG) is dedicated to upholding the following principles in the execution of PPP projects within the state:

Competition

- The PPP procurement process will be conducted through a competitive bidding process to ensure transparency and the selection of the most advantageous proposal.

- The process will align with international best practices to garner support from both local and international financial institutions and funding organizations.

Transparency

- The KBSG recognizes the importance of transparency in the bidding process to instill confidence among potential bidders.
- Details regarding the selection criteria for the successful bidder will be made public at the outset of the bidding process.
- This approach allows potential bidders to make informed decisions about their participation and to optimize their proposals for success.

Fairness

- Fairness is integral to the procurement process, ensuring all bidders have equal access to information about the project requirements and the procurement procedure.
- The selection criteria will be applied uniformly to create a level playing field, ensuring no bidder is unduly favored.
- The KBSG encourages participation from both international and Nigerian companies, ensuring that project information is accessible to a global audience without domestic preference clauses.

7. Institutional Framework for Public Private Partnerships

The Kebbi State Government (KBSG) recognizes the critical role of government agencies in ensuring the successful implementation of PPPs, with the acceptance of all stakeholders and to the satisfaction of all beneficiaries. The KBSG is committed to creating a conducive environment for PPPs, which includes establishing transparent and effective legislative and institutional frameworks. The legislative framework for PPPs in Kebbi State assigns specific roles and responsibilities to various entities, ensuring checks and balances, as well as oversight of the decision-making process.

The key entities involved in the PPP process are:

- ***Kebbi State Executive Council***: This body is the competent authority for approving decisions related to the development and final approval of the PPP Projects Pipeline.

- ***Kebbi State Investment Promotion Agency (KIPA)***: Established under the Kebbi State Investment Promotion (Amendment) Law 2024, KIPA is responsible for the development and refinement of the state's PPP policy over time. It acts as the government's advisory and coordinating body for the implementation of PPPs, not as the contracting entity. KIPA coordinates with the Ministry responsible for Budget and Planning and relevant MDAs to conduct economic appraisals, plan, and prioritize infrastructure projects to create a pipeline of PPP projects. It also ensures that PPP projects are carefully appraised and planned before procurement begins and develops guidelines to assist MDAs in rolling out their PPP projects.

- ***Ministries, Departments, and Agencies (MDAs)***: MDAs manage public infrastructure and services and are responsible for preparing long-term plans for infrastructure investment and maintenance. They support KIPA in identifying a pipeline of projects for inclusion in the Sector Implementation Plans (SIPs) and selecting investors. MDAs act as the contracting authority for PPPs and supervise and monitor the delivery of PPP projects within their sectors.

- ***Kebbi State Ministry of Finance (MoF)***: The MoF plays a crucial role in the public financial management of PPP projects, evaluating and managing fiscal risks associated with PPP agreements. It ensures that forecasted costs for the government, including any required subsidies, are viable and affordable over the full life of the contract. The MoF works closely with KIPA and relevant MDAs to assess the affordability, value-for-money, feasibility, and any contingent liabilities of PPP projects.

- ***Kebbi State Ministry of Budget and Economic Planning***: As the primary agency for resource mobilization and allocation, the Commission ensures better coordination and planning of infrastructure investment. It provides tools and methodologies for the economic appraisal of investment projects to be funded by the budget and included in the SIPs.

- ***Kebbi State Ministry of Justice***: Responsible for the approval of all PPP contracts, the Ministry of Justice provides legal support to KIPA during the PPP procurement process.

8. The Legislative Framework for Kebbi State

The PPP procurement in Kebbi State is governed by the established ***KIPA (Amendment) Law 2024.*** This law provides for the participation of the private sector in financing, constructing, developing, operating, managing, or maintaining infrastructure or development projects of the government through various contractual arrangements.

The Enabling Environment

- The Kebbi State Government (KBSG) will review and possibly amend existing laws and regulations to set out the requirements for competition and private sector participation in all public procurement.
- The KBSG assures investors that contracts completed in compliance with the laws are legal, enforceable, and provide a fair return on investment.
- The KIPA, with the support of the State Executive Council, will have full responsibility and control over the PPP procurement process to ensure efficiency and avoid delays.
- The KBSG is committed to creating an enabling environment for PPPs and will provide the majority of investment funding for infrastructure while harnessing PPPs to supplement public resources.

Government Commitments

- Policy and Regulatory Framework: Establish a clear policy and regulatory framework for PPPs, ensuring transparency and fairness in contract awards and dispute resolution.

- International Collaboration: Collaborate with international development institutions to reduce financing costs and attract private capital for infrastructure funding.
- Procurement Integrity: Ensure that procurement processes are fair, transparent, well-managed, and compliant with all relevant legislation.
- Capacity Building: Enhance the capacity and skills in the public sector to manage projects more effectively.
- Effective Communication: Communicate plans and policies to the public and investors clearly and work with the Federal Government for a consistent approach to PPPs.

9. New Framework for Public Private Partnerships

The Kebbi State Government (KBSG) is committed to establishing a comprehensive legal, financial, and institutional framework that will enhance the implementation of privately financed infrastructure projects. This framework will be built on the principles of transparency, fairness, and long-term sustainability. The KBSG will integrate lessons learned into the ongoing refinement of its policies and frameworks, sharing this knowledge across the public sector to bolster the capacity of Ministries, Departments, and Agencies (MDAs) in the planning, procurement, and management of PPP projects.

Legal Framework

- Empowerment of Public Authorities: Ensure that public authorities have the legal capacity to enter into agreements for privately financed infrastructure projects and delegate functions to private entities.

- Regulation and Licensing: Guarantee transparent, timely, and effective regulation and licensing of public service operators.
- Protection of Infrastructure: Provide legal remedies to safeguard public infrastructure against vandalism and criminal activities.
- Non-Distortion of Investment Decisions: Ensure that existing laws do not create biases that affect the investment decisions related to PPPs.
- Procurement Procedures: Establish transparent and competitive procurement procedures that foster innovation and optimize risk allocation.
- Dispute Resolution: Implement an independent and efficient dispute resolution process, including arbitration and expert determination.
- Consistency with Legal Frameworks: Ensure that the proposed institutional and financial framework for PPP and the issuance of guarantees, partial risk insurance or other financial instruments by, or through, the Federal Government is consistent with the Federal Fiscal Responsibility Act 2007.

Financial Framework

- Medium-Term Expenditure Framework (MTEF): Strengthen the MTEF and Sector Implementation Plans (SIPs) to guide MDAs on infrastructure prioritization, including a 5-year PPP Projects Pipeline.

- Guidance on Financial Practices: Provide guidance on discount rates, indexation, inflation, cost-benefit measurement, and risk valuation.
- Monitoring Contingent Liabilities: Assign responsibility for monitoring liabilities and risks from PPP contracts, including financial instruments like guarantees and insurance.
- Sustainable User Charges: Ensure that policies on user charges and subsidies are sustainable and meet the needs of both investors and users.

10. Public Private Partnerships and Planning

The KIPA will collaborate with ministries, departments and agencies to curate a list of potential PPP projects. YAPPPIP will develop criteria for the preparation and screening of projects, forming a prioritized 5-year PPP Project Pipeline. These assessments will evaluate the suitability of projects for PPP arrangements and recommend actions for detailed analysis, risk structuring, review, and potential tendering.

In establishing these priorities, KIPA will consider:
- State Investment Priorities: Aligning with the state's short- to long-term goals for sustainable infrastructure development.
- Value-for-Money: Identifying projects where PPPs are expected to provide better value-for-money compared to traditional public procurement methods.
- Private Sector Capacity: Assessing the current resources, project management capacity, and efficiency of the private sector.

The PPP Projects Pipeline Plan will be periodically updated by KIPA, and integrated into the relevant Sector Implementation Plans. Unsolicited proposals from the private sector will undergo the same review process and will be procured in accordance with the policy once they are included in the PPP Projects Pipeline.

11. Public Private Partnerships and Regulation

The Kebbi State Government (KBSG) will not establish independent regulatory bodies solely for the purpose of regulating pricing and competition within PPPs. Instead, an economic regulatory regime will be embedded within the PPP contracts, utilizing arbitration and tribunals to resolve disputes. Post-contract monitoring of safety and environmental compliance will fall under the purview of the relevant state environmental agency. KIPA will engage in ongoing dialogue with the private sector and interest groups to explore reforms that can streamline PPP arrangements and remove barriers to efficiency.

12. Working with the Federal Government

The KBSG recognizes the Federal Government's jurisdiction over the delivery of federal infrastructure, such as power, railways, major ports, airports, and interstate roads. The KBSG will collaborate with the corresponding Federal Ministries, Departments, and Agencies to ensure investments are channeled towards the development and enhancement of federal infrastructure assets within the state. In its PPP endeavors, the KBSG will strive for a consistent approach with Federal PPP policies.

Where beneficial for the state's long-term interests, the KBSG may co-invest with private investors and the Federal Government in infrastructure projects.

The KBSG also acknowledges that certain state projects may necessitate Federal Government guarantees to secure international financing. Such projects will adhere to the federal project approval process, requiring the sanction of the Federal Executive Council.

13. Stakeholder Consultation and Participation

The Kebbi State Government (KBSG) will actively engage with potential private sponsors, users, and other key stakeholders to address concerns regarding the bankability of PPP projects. Early consultations will help determine the sustainability and commercial viability of projects before finalizing their structure and design, aiming to resolve issues related to poorly structured PPP initiatives.

14. The Project Cycle

The KBSG will adopt a standard PPP process, with a detailed guidance provided through a PPP Manual for managing each phase of a PPP project.

15. Unsolicited Proposals

The KBSG encourages innovation and will consider unsolicited proposals from private developers for PPPs. Such proposals will be reviewed by the relevant MDA and submitted to KIPA for comprehensive evaluation and potential inclusion in the PPP Pipeline. The process will ensure transparency and competition, with certain procurement advantages for private proponents. Where an unsolicited proposal is received, an MDA will forward such proposal to KIPA for a holistic review for inclusion in the PPP Pipeline. Unsolicited PPP proposals will have to go through sufficient transparency and competition, but the Government will allow for inbuilt procurement advantages to benefit the Private proponents. The Government will seek to get the balance right between encouraging the private sector to submit project ideas, without losing the transparency and efficiency gains of a well-conceived competitive tender process. While all proposals will be treated on a case-by-case basis, consideration of unsolicited proposals will be the exception rather than the rule, and limited mainly to projects that demonstrate genuine innovation and/or use of proprietary technology

16. Conclusion

This policy framework outlines the KBSG's commitment to leveraging PPPs to enhance public infrastructure, stimulate economic growth, create jobs, and achieve development goals. The PPP policy will harness private sector support towards the State's public works programme, with the immediate focus on the rehabilitation and expansion of roads, expanding access to electricity to major farming and mining centers through rural electrification, and accelerated connection to the national grid andeasing urban and rural transportation. It is the intention of the Government to create an environment with a credible PPP legal framework that will harmonize both public and private sector interests that is mutually beneficial for both parties for the duration of the agreement.

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