



PUBLIC-PRIVATE PARTNERSHIP POLICY

PPP POLICY

**DECEMBER, 2017
GOVERNMENT OF LESOTHO**

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FOREWORD

“Let Lesotho pride itself with a healthy and a well-developed human resource base, a strong economy, a well-managed environment and a technology that is well established.

My people, let Lesotho, our beloved Kingdom in the Sky, seize this opportunity and reach for the pinnacle of its development in the coming two decades.”

King Letsie III,

A Clarion Call on Lesotho’s Vision 2020

“It is equally important to note at this juncture that high and sustainable economic growth requires the existence and/or development of a vibrant and competitive private sector with adequate skills and technological know-how, and most critically, access to credit for investment.”

Budget Speech to Parliament for the 2013/14 Fiscal Year

Honourable Dr. Leketekete Victor Ketso M.P.

Minister of Finance

PREAMBLE

By the year 2020, the Government of Lesotho envisions the establishment of a stable democracy, a united and prosperous nation at peace with itself and its neighbors. The Government aims at introducing a healthy and well-developed human resource base with a strong economy, a well-managed environment and the adoption of advanced technology for the benefit of its citizens, institutions, and businesses. The National Vision goals embedded in the National Strategic Development Plan (NSDP), Sustainable Development Goals and AU Agenda 2063, call for reduction of poverty and the promotion of sustainable development in Lesotho. Overarching NSDP objectives are to pursue high levels of employment creating broad-based economic growth; develop key infrastructure; enhance human capital and the skills base, adopt technology and build the foundation for an innovative economy, improve health, combat HIV and AIDS and reduce vulnerability; revert environmental degradation and adapt to climate change; and to promote peace, democratic governance and build effective institutions.

The Southern African Development Community (SADC) has developed a Short-Term Action Plan (STAP) which sets out the details for the short-term programme of SADC's Regional Infrastructure Development Master Plan (RIDMP). This RIDMP constitutes infrastructure projects, some of which have committed financing while others are in the feasibility, pre-feasibility and inception stages. The RIDMP is aligned to the Government of Lesotho's National Strategic Development Plan (NSDP) that is geared towards reducing poverty and creating sustainable development in Lesotho.

The projects that are contained in the STAP are all earmarked for implementation between 2012 and 2017. The total project cost of implementing the 98 projects contained in the STAP database is estimated at \$62 billion and include projects in six sectors namely energy, tourism, transport, ICT, meteorology and water. The STAP is the first implementation phase of the SADC Vision 2027, under which expenditure for the medium-term phase is estimated at \$39 billion (2017- 2022) and \$72 billion of the final long-term phase (2022-2027), with a project total of \$173 billion.

Public-Private Partnerships (PPP) in Lesotho: Establishing a PPP Framework and Clear Policy Statement

While PPPs have been identified as a central procurement mechanism for implementing the RIDMP, in order to be effectively executed they will require dedicated support and capability to coordinate and govern current and future PPP initiatives. To date, several PPP Units have been successfully implemented across the SADC region, most notably in South Africa and Botswana and PPP initiatives are underway in other SADC members ranging from national level PPP frameworks to sectoral and sub-national PPP transactions. PPP as a service delivery tool is being mainstreamed in the SADC Community and member governments, supported by the public and the private sectors, and International Financial Institutions are building their capacity to use the policy instrument effectively.

PPPs in Lesotho: Status and Policy Initiatives

In 2005, Lesotho launched its flagship PPP program to replace the 100-year old Queen Elizabeth II hospital, build a new clinic and upgrade three other primary-care clinics. The new Queen Mamohato Memorial Hospital (QMMH) and the four clinics have now been operational and successfully delivering improved health care outcomes to a large percentage of the country's population. However, despite the improvements the program has now become a substantial financial burden on the Government. It is imperative that recognizing challenges in the existing system and identifying strategies for overcoming deficiencies in the current PPP scheme that have led to this situation are mitigated.

Recognising the importance of the PPPs throughout SADC as well as the need to better utilize this development mechanism internally, the Government of Lesotho has approved this policy on PPPs. As part of this process the Government will design and establish a PPP Unit in the Ministry of Finance, to allow for rapid implementation. The PPP Unit will be the focal point for PPP policy implementation and will oversee the overall PPP and Public Financial Management process of utilising private sector investment to assist government deliver public services and infrastructure.

In pursuance of these goals, the Government acknowledges that higher levels of investment will enhance productive capacity, economic diversification and export opportunities. This will require a sound investment climate that will attract private investment and will also require clear and understandable rules to govern the process of establishing and implementing partnerships with the private sector and civil society. Moreover, the Government is committed to a vision of using strategies to convert savings into viable private domestic investment, while employing innovative and cost-effective strategies for attracting and retaining foreign investment from diversified sources. In short, both domestic and foreign capital, technology, and management will be mobilized in Lesotho to contribute to economic growth, improved service delivery, and poverty alleviation. Public-Private Partnerships will be one of the tools that the Government will utilize to achieve these overall policy objectives.

PPP Objectives in Lesotho

The Government of Lesotho is committed to increase capacity to mobilize Public Private Partnerships (PPPs) aimed at developing new and rehabilitating existing infrastructure to increase access to services and markets and strengthening linkages between rural and urban markets. PPP is an effective financing and management instrument to integrate traditional sectors of the national economy such as agriculture into the domestic market and leverage the productivity of the tourism, mining, manufacturing, and service economy.

In order to achieve these objectives, the GOL will develop a proper PPP scheme based on a solid Policy Framework and in line with the Southern African Development Community (SADC) Regional Strategy Framework of May,2013. This framework aims to attract private sector participation in the delivery of infrastructure where public sector resources are either not available or competitive in terms of efficiency and accessibility.

However, the Government recognizes that provision of adequate infrastructure including access to reasonable quality and affordable services, remains a substantial challenge for Lesotho. The Government further acknowledges that capacity constraints exist in the domestic private as well as public sectors to deliver on these ambitions, in particular noting that the Government has limited resources to allocate funding for investments in realization of new or improved infrastructure or enhanced quality and coverage. Nevertheless, it is long-term improvements in service delivery through determined efforts to work in partnership with the private sector and the community at large that will make Lesotho's economy more competitive and give the citizens the services they deserve in a socially, financially, and environmentally sustainable manner.

The Government of Lesotho believes that a sound PPP policy framework that encourages private sector investment in public infrastructure and governs the process to ensure quality, efficiency, and value-for-money is of the highest national priority.

1. Custodians of PPP Policy and Implementation

This PPP Policy shall apply to all Government entities including Ministries, Government Departments, Local Municipalities, District Councils, State-owned legal entities that have recourse to the State for debt, and; any other bodies covered by public Law or any project implementing authority authorized to carry out public infrastructure procurement. The overall responsibility for the implementation of this PPP Policy rests with the Ministry of Finance (MoF). The Policy also provides rules and regulations on the eligibility and process of PPP projects in a number of sectors.

This Policy should be read jointly with the public procurement law, public financial management and accountability law, public debt law, and any other laws relevant to PPPs in Lesotho.

2. PPP Policy Vision and Rationale

The purpose of this Policy Framework is to set out the Government of Lesotho's rationale for the adoption of PPPs, its objectives associated with the application of PPPs, the envisioned PPP strategies, options, techniques, and the key considerations concerning the institutional establishment, implementation, and management of PPPs in Lesotho.

This PPP Policy sets out the Framework for the identification, analysis, design, and implementation of PPPs in Lesotho. This Policy is based on the Government of Lesotho's assessment of the domestic environment for PPPs, and on its previous experience with procurement and implementation of PPP projects.

The Government's vision is to accelerate the provision of infrastructure assets and services by utilizing the know-how and resources of the private sector and providing an environment for viable and mutually attractive investment opportunities. The rationale for the adoption of PPPs is based on the following:

Efficiency and Effectiveness — Experience demonstrates that the private sector is consistently more efficient in terms of delivering projects on time and on budget with high quality than the

public sector, especially if appropriate incentives and penalties are utilized.

Promotion of Innovation — not only through a competitive procurement process, but the inherent characteristic of a PPP allows for innovation in the accomplishment of outputs rather than prescribing inputs. This allows the private sector to use its business creativity and ingenuity to solve problems and deliver services to customers. Private sector firms are more likely to be innovative in terms of design, construction, operations and other functions to deliver assets or services with more efficient uses of capital and/or life-cycle costs.

Improved Services to Users —The private sector is more capable than the public sector in providing a better customer experience. Citizen satisfaction with service delivery and options of standards of service is a priority for the Government of Lesotho’s PPP policy.

Predictability of Capital Costs, Funding, and Management of Sovereign Management Financial Risks —Effective PPP Governance and Procurement enables Government to more easily budget for its capital costs over an extended period of time through planned unitary payments, rather than attempting to manage large capital budgets over multiple periods. Moreover, by governing and regulating the process of government financial commitments, both direct and indirect, the Government is able to manage public financial risk while sharing or transferring appropriate risk to the private investor.

Life-Cycle Approach —PPPs consider a holistic approach towards integration of costs and revenue associated with design, construction, operation, and maintenance and transfer of assets and services in a single PPP contract thus leading to optimizing overall project costs.

Managing maintenance costs and risks more effectively —PPPs provide for maintenance services and prevent under-provision for maintenance due to low profile of maintenance operations and budgetary constraints. There also can be incentives for the private sector to provide higher quality and more regular maintenance of infrastructure assets at lower operating costs than with the public sector.

Promotion of Private Sector —PPPs will contribute to private sector development and the creation of higher quality private employment in Lesotho.

The Government of Lesotho clearly recognizes that the delivery of public services and assets via PPP types of procurement is a viable option that may, in combination with traditional procurement contribute to economic growth, accelerate Government’s NSDP, promote the social development of Lesotho’s population, and enhance the efficiency of public spending.

In this vein, the Government of Lesotho will ensure successful implementation of this PPP Policy by:

- Assuring its political commitment to promotion of PPP schemes and appointing champions for suitable identified eligible PPP projects;
- Adopting an enabling institutional, regulatory and legal framework to guide PPP

- development and process implementation;
- Developing a shared understanding of the concept and objectives of PPPs and the guiding principles to implement PPPs;
- Developing institutional capacity through strengthening the knowledge base and “hands-on” experience of managing PPP’s;
- Introducing fair, equitable, transparent, competitive and cost-effective procurement processes for PPPs;
- Considering stakeholder dialogue throughout PPP procurement processes;
- Undertaking PPP projects through streamlined processes and principles;
- Ensuring application of guiding principles embarked upon in this PPP Policy such as Value-for-Money (VfM) analysis, , proper risk allocation, and affordability; and
- Attaining appropriate public oversight and long term monitoring of PPP projects and managing of PPP contract to enforce compliance and achieve the desired results.
- Managing and tracking the budgets of PPP projects and ensuring that the Government and associated projects are financially sound and that Government financial risk is minimized.

3. Definition of Public-Private Partnerships (PPP)

A PPP is defined as a contractual arrangement between a Procurement Unit and Private Partner whereby the private investor and/or operator designs, finances, constructs, operates, maintains and/or rehabilitates a public asset or service in whole or in part and in accordance with pre- defined output specifications on behalf of the Procuring Unit. The arrangement involves risk sharing between both parties. The Private Partner receives benefits/financial remuneration for the provision of assets or services according to pre-agreed terms by way of tariffs, user charges or government based payments or a combination thereof. PPP arrangements can take the form of short term (1-3 year) management or service contracts or can be longer term (7-35 years) agreements such as leases or concessions.

4. Scope of PPP Policy

The application of PPPs must be closely aligned to the development goals, and strategies of the Government of Lesotho. The Procurement Unit may enter into various types of PPP arrangements with a Private Partner. The Government acknowledges as PPP both contracts for the operation of existing services/assets (e.g. Performance-based Management Contracts, and Lease Contracts or Rehabilitate, Operate, Transfer (ROT)) and/or contracts for the establishment of new services and/or assets (e.g. Design, Build, Finance, Operate/Maintain Transfer (DBFO/MT), Build, Operate, Transfer (BOT), Build, Own, Operate (BOO)), and any other PPP scheme as may be prescribed by supplementary guidelines or policies.

This Policy shall govern PPPs in the following infrastructure and services sectors:

- Energy Generation, Transmission, Distribution and Services (conventional and renewable);
- Infrastructure including municipal infrastructure, water, wastewater solid waste, industrial parks, sanitation, urban development, and irrigation systems;
- Transportation including: roads, bridges, railroads, airports, tunnels, and all public transport infrastructure;
- Wireless, fixed-line and broadband telecommunication;

- Social infrastructure including education, culture, health, tourism, sports and leisure related infrastructure;
- Other infrastructure opportunities including IT, corrections/prison, forestry, public housing, and public land management; and
- Any other type of infrastructure and services as the Government of Lesotho may designate is in the public interest.

5. Guiding Principles to the Lesotho PPP Program

Lesotho is at early stages of developing and evolving its PPP program. It is essential that the planning and implementation of PPPs adheres to international and good governance practices including the following key principles:

- **Adherence to Development Objectives of Government of Lesotho**—all PPP projects must be consistent with the Government’s priorities regarding infrastructure development, sector growth, and pro-poor delivery of public services, set out in its Vision 2020 document, the NSDP, and other key economic policies;
- **Determining and Approving the Viability of PPP Projects including:**
 - **Value for Money (VfM) to the GOL and Basotho Tax Payers** — provision of an infrastructure asset or service by the Private Partner to be embodied in a PPP Agreement must result in a net benefit to the Government, and the Lesotho economy defined in terms of cost, price, quality, quantity, or risk transfer, or a combination thereof. To enhance the potential for obtaining VfM, the Government will foster competitive bidding; optimal risk allocation between both public and private parties and define output-based procurement. Quantitative parameters and analyses will be established for all evaluated proposals that will compare the outputs and costs of the specific PPP against a benchmark, often referred to as the Public Sector Comparator (PSC). If quantification of VfM is not sufficient, the Procurement Unit may consider qualitative criteria when applying the VfM test to take into account the non-financial benefits of a given project such as the accelerated provision of the service, the access and quality of the service, or any other socially and economically important indicators.
 - **Affordability** — financial commitments to be incurred by the Ministry of Finance or Procurement Unit in terms of the PPP Agreement must be met by funds designated within the existing budget. Any PPP involving fiscal support (whether through planned payments, guarantees or other forms) will be analyzed to ensure that the project demonstrates *fiscal affordability* to the Ministry of Finance and the users throughout the project lifecycle.
- **Fair and Responsible Risk Allocation**— an efficient risk allocation between all of the parties to a PPP is an essential determinant of whether VfM can be achieved in a given PPP project. Risks are to be allocated to the party best able to manage them, taking into account the public interest and the ability of the parties to bear and manage risks. The allocation of risks shall determine the selected method of private sector involvement and allocation of responsibilities. The GOL will analyze both financial risks and performance risks in this determination and structuring exercise.

- **Public Interest and Consumer Rights**— consideration of the public interest requires ensuring that procuring the project as a PPP is not contrary to the public interest. Equally, after a decision has been taken to procure infrastructure and services via a PPP, it is critical to ensure that the procurement process is structured such that it continues to be in the public interest. PPP projects should seek to safeguard the end user’s interest, particularly vulnerable groups;
- **Accountability and Governance** — The Procurement Unit is ultimately responsible for delivery of the service and asset outputs, including where PPPs are procured to deliver the outputs. At every stage of the PPP process, the procedures, laws, regulations and relevant policies must be followed. The Government will also establish mechanisms for post-award contract management and monitoring to ensure quality, customer satisfaction, and accountability on all sides.
- **Empowerment of the Lesotho private sector** — Where possible, all Lesotho PPP Projects shall include tangible Basotho enterprise empowerment and participation through a variety of mechanisms such as, but not limited to, local equity participation, a requirement for a minimum share of Basotho sub-contracting, skills transfer, and other mutually beneficial innovation to promote empowerment and growth of the local private sector.
- **Maintaining probity and transparency** — A key principle of the Lesotho PPP program will be to operate transparently and to ensure that the public is informed at all times about project opportunities, processes, and key issues. In order to guarantee public and investor confidence in the long term Lesotho PPP Program, the Government of Lesotho will endeavor to demonstrate that the PPP Program in Lesotho operates with a “Level Playing Field” and that no person or group is advantaged or disadvantaged by a given project

6. The PPP Institutional Framework in Lesotho

In recognition of the need to introduce a clear and efficient institutional structure encompassing roles and functions related to project identification and implementation, oversight, review, clearance as well as approval, the Government defines the basic roles and functions to be fulfilled and institutionalized to guide the development of PPP projects in Lesotho. The institutional framework set out in this PPP Policy shall not only serve to underpin the commitment of the Government of Lesotho towards sound Policy development and high-level reflection on the PPP Policy instruments, scheme, but will also ensure adequate project implementation processes. While institutional roles and responsibilities may change over time as Government’s experience with PPPs evolves, the following institutions will be established and clearly mandated to assume key roles in the promotion and proper implementation of PPPs in Lesotho:

Cabinet – Cabinet will be provided with updates when determined appropriate by the Ministry of Finance of project progress, although Cabinet may request further information on any given proposal or active PPP project from the Ministry of Finance and the Procurement Unit. No power of review or approval shall rest with this body, and the authority to reject or approve and potential project rests with the Ministry of Finance acting within the bounds of its authority as defined in

this Policy and the relevant law.

The Ministry of Finance and its role in the PPP Framework – The MoF will oversee and guide the PPP Unit to make sure it fulfills its responsibilities regarding PPP project development and coordination. It is the sole authority in charge of coordination, evaluation, and management of fiscal implications of PPPs. It evaluates the fiscal impact of PPP projects and acts to provide that they are consistent with Lesotho’s fiscal constraints and provides oversight so those fiscal risks are identified and managed appropriately. It ensures that economic, financial, and VfM assessments are conducted rigorously.

The responsibilities of the MoF with regard to fiscal management are to ensure that:

1. A representative from MoF participates during all stages of the PPP process.
2. Positive fiscal impact is given appropriate weight in prioritizing candidate PPP projects, and negative fiscal impacts are scrutinized.
3. The ‘expected’ and ‘worst case’ values of any fiscal commitments are identified, properly calculated, and highlighted in studies and other decision-documents on PPPs submitted to the MoF.
4. Economic and financial analysis is rendered properly and given appropriate prominence in decisions relating to PPPs;
5. Ensure that fiscal commitments related to PPPs are appropriately budgeted for, appropriated, and reported;
6. All fiscal commitments required by candidate PPP Projects are identified early in the process.
7. Liaise with relevant groups within MoF—such as the departments responsible for budget and debt management—providing a single point of contact between MoF and Public Sector/Procuring Unit.
8. Monitor fiscal risk across Government’s portfolio of PPP Projects including receipt and assessment of risk reports from Procuring Unit.

The Ministry of Finance also holds ultimate authority for the approval of PPP project tenders from across each of the final four approval stages – MFA(I), MFA(II)A, MFA(II)B, and MFA(III).

1. Regarding these approval stages, the MoF is tasked with providing: MFA(I) –An Approval Letter for the Feasibility Study signed by the responsible officer;
2. MFA(II)A – An Approval Letter for Project Request for Proposals signed by the responsible officer;
3. MFA(II)B – An Approval Letter for Appointment of the Preferred Bidder signed by the responsible officer, and;
4. MFA(III) – An Approval Letter for the Chief Accounting Officer of the relevant Procurement Unit to sign a negotiated contract.

The National PPP Unit — is the preliminary review and clearance body and an advisory agency for PPPs providing technical support to Public Sector/Procuring Units on matters related to PPP project identification, development, evaluation and implementation. It is also a strategic body driving the development of guidelines and best practices. It serves as the custodian of the PPP’s

and the driver of a constantly growing and evolving portfolio of viable PPP project opportunities. It shall function as an expert level unit charged with developing and improving the quality of PPP projects as well as an expert in the process of PPP rules, regulations, and guidelines. The PPP Unit will be established under the MoF.

The roles and responsibilities of the PPP Unit are to:

1. Coordinate the implementation of the PPP Frameworks, monitor and report to the Ministry of Finance on its progress.
2. Regulate the PPP scheme ensuring that the PPP pipeline and the projects are developed in accordance with the principles and procedures set out in this Policy.
3. Support with identification of projects appropriate for PPPs by providing technical assistance to various Procuring Units in structuring and evaluating PPPs throughout the first three stages of the PPP process. The Unit will assume an advisory role to Procurement Unit to guide and provide technical input through the entire procurement and tender process, including the appointment of suitable and skilled transaction advisors. It reviews the procedures and documentation submitted by bidders throughout the tender process including bid management, legal compliance management, and technical evaluation as well as compliance management. It acts as a first or preliminary clearance body prior to submission of documents and reports to the MoF.
4. Develop a PPP pipeline under the guidance of the MoF and Procurement Unit to make sure that the necessary approvals from PSIC are taken account of. It prepares an annual plan for identification and clearance of candidate PPP projects; and recommends their prioritization to the MoF. Through its understanding of PPP viability, risk, and “business cases, the PPP Unit will work with standardized approaches to ensure that the PPP pipeline features potential projects that meet the test of viability and advance accordingly. It will also serve as a gatekeeper to ensure that projects that do not qualify as PPP’s for any number of valid reasons do not advance or waste precious public sector time and resources.
5. Promote PPPs in Lesotho and internationally and ensure public awareness among all stakeholders as well as facilitate capacity building across various Public Agencies/Ministries. The Unit will integrate best practices from around the world and in the SADC region to ensure that the development of PPP in Lesotho is informed.
6. Be a repository of knowledge and skills and continually build knowledge about identifying, developing, evaluating, implementing, and managing PPPs; including compiling and archiving information on PPP projects, and providing best practice and lessons learned.
7. Liaise with funding agencies and international development partners as well as private sector to obtain financial and technical support for PPPs.
8. Amend the PPP Policy as required upon receipt of approval from the Ministry of Finance.

The Principal Secretary of the Ministry of Finance will be responsible for general oversight of the PPP Unit in terms of Mandate, Role, Resources and PPP management.

Procurement Unit —as the “owner” of a PPP holds the lead role and interest in a candidate PPP Project. The Procurement Unit will apply the guiding principles in this Policy including, but not limited to VfM, affordability, and proper risk allocation. It will submit candidate Projects to the PPP Unit (referred to below) including all information required for proper review and clearance.

The overall responsibility of the Procurement Unit is to:

1. Identify and develop candidate PPPs within the investment program of Procuring Unit, which is then to be assessed by the Public Sector Investment Committee (PSIC) for approval or deferral. Procurement Unit shall follow the actions and steps defined in the PSIC Project Appraisal Guidelines issued by the Ministry of Development Planning of Government . All candidate projects will be developed using a standardized approach which demonstrates their viability, economic and financial benefits, and environmental compliance.
2. Prepare a Concept Note and Project Proposal in two stages in compliance with PSIC Project Appraisal Guidelines where it considers that a Project may be implemented as a PPP and seek assistance from the PPP Unit if needed.
3. Carry out a Feasibility Study and PPP Structuring with technical assistance from the PPP Unit and the Transaction Advisor to be appointed by the Procurement Unit in consultation with the PPP Unit. The PPP Unit will then conduct a preliminary review before submitting the study and recommendations to the MoF.
4. Procure a PPP to be implemented - including receipt of bids, evaluation and selection, negotiation, and monitoring.
5. Enter into a written PPP Agreement with the successful Private Partner jointly with Ministry of Finance (MoF) in accordance with existing legislation for provision of a PPP.
6. Prepare a contract management plan and arrange or provide for payments to Private Partner throughout the life cycle of the Project. Procurement Unit establishes a contract management team to manage the PPP Agreement upon financial close. The main responsibilities include:
 - Establishment of contract management and contract monitoring processes, including communication and reporting protocols within Government and with the Private Partner (This may include the creation of a contract monitoring team or unit);
 - Monitoring delivery of facilities and services specified in the contract;
 - Monitoring and managing risk under the contract, and reporting fiscal risk developments to MoF;
 - Managing changes in the contract, where these become necessary because of changing circumstances (with advice from the PPP Unit);
 - Enforcing the contract as necessary (with advice from the PPP Unit and legal counsel); and
 - Closing the contract at its termination.

“Project Manager” means a person identified and appointed preferably in terms of the Public Service Act tasked with the management of the proposed PPP, with background and understanding of the project as well as the technical know-how of the subject of the project;

Following the signing of a PPP Agreement, the Project Officer shall serve as the contract manager of the PPP Agreement, and shall undertake such tasks as are required by the PPP Unit to ensure that the PPP Agreement in question is adequately managed.

Public Sector Investment Committee (PSIC) — provides initial oversight and review of the Concept Note and Project Proposal prepared by the Procuring Unit.

The PSIC is specifically required to:

1. Liaise with the Procurement Unit throughout the development of the Concept Note and Project Proposal.
2. Consider the Concept Note and Project Proposal against the standardized approach provided by the actions and steps defined in the PSIC Project Appraisal Guidelines with particular focus on viability, economic and financial benefits, and environmental compliance.
3. If deemed appropriate, grant final approval – referred to as PSIC (0) - prior to registration of the Project with the MoF, after which time the project will need to clear the remaining four stages of project approval.

An illustrative graphic outlining the roles and responsibilities of the key public sector agencies in the PPP Scheme is provided in **Annex I: Responsibilities of Key Public Sector Bodies**.

7. The PPP Development and Implementation Process

In recognition that PPPs are complex and take a long time to procure, the Government of Lesotho intends to introduce streamlined processes concerning procurement, management and implementation of such projects. The objective is to establish a coherent and clear PPP process aimed at improving credibility and transparency throughout the various stages of PPP Project development. Detailed guidelines will be issued following this PPP Policy by the PPP Unit to serve as a best practice guide for PPP Practitioners –both public and private sector-- addressing the requirements and driving forces throughout various stages of the PPP Project cycle. The relevant Procurement Unit is required to adhere to guiding principles set forth in this PPP Policy, and comply with existing legislation, regulations and procurement procedures as defined in Lesotho.

Four Key Stages of PPP: From Inception to Award

A typical PPP Project cycle encompasses four stages including Concept Note and Project Proposal, Detailed Feasibility study and PPP Structuring, Procurement and Transaction, as well as Contract Management. At each stage, project inputs will be reviewed by the PPP Unit before approval to proceed to the next stage is granted by the MoF. The PPP Unit shall be involved actively and consulted throughout all stages of the PPP cycle.

Figure 1: PPP Process Stages

No.	Stage	Content and Objective
0	Concept Note and Project Proposal	Concept Note and Project Proposals to be approved by PSIC include a needs analysis and identification of proper assets and services to meet the appraisal criteria defined in the PSIC Guidelines issued by the Ministry of Development Planning.

I	Detailed Feasibility Study and PPP Structuring	Design and develop viable PPP options and conduct the necessary detailed pre-feasibility or feasibility study with the objective of determining whether a proposed project is both financially viable and in harmony with the development objectives of the Government of Lesotho. The MoF will review, approve and decide on the project’s capacity to fulfill the guiding principles set forth in this PPP Policy including, but not being limited to VfM, optimal risk transfer, and affordability.
II	Procurement and Transaction	Prepare the PPP Agreement. Prepare, manage the competitive bidding process and pass through various approval stages.
III	Contract Management	Establish a functioning contract management procedure (including contract monitoring unit or team) which assures a smart path including flexibility and reliability concerning the contractual terms specified in the PPP Agreement

7.1 Four Stages of PPP Process

The Government of Lesotho provides for identification, structuring of PPPs, and undertaking of feasibility studies as well as procurement and management thereof based on five approval stages.

PSIC(0) — Concept Note and Project Proposal

Concept Note

Any PPP process starts with the review of existing service or infrastructure in the geographic location under consideration. The Procurement Unit must conduct a proper and thorough study of the distribution of assets and facilities. Procurement Unit must conduct an assessment of current and future demand for infrastructure and/or services by comparing standards and norms and thus deducing the existing infrastructure gaps. A Concept Note shall be prepared spelling out clearly the requirements concerning the infrastructure or service. The Concept Note indicates the revised plan for infrastructure and service delivery, which is to include the actions to be taken including:

- Reorganization of existing facilities aimed at optimizing service delivery;
- New facilities to be constructed or existing facilities to be refurbished to meet the demand (current and future) for services;
- Improvement in service delivery of existing facilities;
- Improvement in provision of specific services in a region.

The purpose of this stage is to identify those assets, and services—existing or new—that render best VfM, allow for optimal risk allocation, are affordable, and in public interest. The Projects identified shall abide by the guiding principles set forth in this PPP Policy.

The Procurement Unit submits the Concept Note to PSIC for an approval of the overall Project idea. The Concept Note is a summary of the suggested project which may follow the Project

Appraisal Guidelines issued in November, 2013 by the Ministry of Development Planning of Government of Lesotho. Core elements of a Concept Note may include:

1. A concise description of Procuring Unit's need and Project objectives (overall objective/goal, purpose and results/outputs) and the work program (activities);
2. A detailed description of the various components of the Project;
3. A preliminary Feasibility to indicate that the project is well designed and will deliver tangible and sustainable benefits to target groups and an estimation of funding available both for the Project and the procurement process;
4. An outline of the key benefits of the Project and primary beneficiaries;
5. A "market analysis and business case" to demonstrate that the project has ample demand sufficient to attract private investment and the preliminary estimate of the investment and financing plan to determine viability, bankability, and affordability
6. A list of stakeholders and target groups that have been identified, equity and institutional capacity issues that are analyzed, and ownership demonstrated

PSIC's overriding concern in assessing the Concept Note will be whether the Project aligns with Government of Lesotho's investment priorities and strategic objectives and whether it should form part of the PPP Unit's Pipeline.

Project Proposal

In addition to the criteria mentioned in the PSIC Guidelines, the Project Proposal involves a confirmation of potential PPP opportunities through an initial assessment of: institutional needs, solution options, project costs and revenue, and a preliminary qualitative risk analysis. The Project proposal should give an early confirmation of the Project's suitability for implementation as PPP. A detailed feasibility study, based on the pre-feasibility study, will be completed only upon approval by PSIC. The approval of the Concept Note and Project Proposal must be provided by the PSIC, which is referred to as PSIC (0).

MFA(I) — Detailed Feasibility Study including PPP Structuring

Once approved, each need matter identified in the Project Proposal is structured and evaluated further to establish whether a PPP is the preferred option to develop the Project and/or deliver assets or services to the public. To determine whether the proposed PPP is in the best interest of a Procuring Unit, it must undertake a detailed feasibility study that:

1. Explains the strategic and operational benefits of the proposed PPP for the Procurement Unit in terms of its strategic objectives and government policy;
2. Describes in specific terms the nature of the Agency's functions concerned and the extent to which this Agency's function, both legally and by nature, may be performed by a Private Partner;
3. Demonstrates the affordability of the PPP for the Procurement Unit (in relation to a PPP pursuant to which a Procurement Unit will incur any financial commitments);
4. Sets out the proposed allocation of financial, technical and operational risks between the Procurement Unit and the Private Partner;
5. Demonstrates the anticipated VfM to be achieved by the PPP;
6. Explains the capacity of Procurement Unit to procure, implement, manage, enforce, monitor and report on the PPP.

A Procurement Unit may not proceed with the procurement phase of a PPP without prior written approval of the responsible officer at the MoF regarding the acceptability of the Feasibility Study.

Overall activities needed to structure the Project include carrying out a preliminary scoping, financial modeling, including making a choice between government funding and PPP. The preliminary scoping outlines the rationale and potential options for the PPP project to be pursued by the Procurement Unit for provision of assets or improvement in services and meeting demand. The scoping shall entail the following steps:

1. List a selected and reasonable list of PPP options to be considered.
2. Assess the advantages and disadvantages of each option based, for example, on:
 - Technical aspects including environmental and social assessments;
 - Funding and financial impacts;
 - Thorough Risk analysis (qualitative and quantitative);
 - Market capability and demand.
3. Reject all options that are not legally sustainable, too expensive or too risky.
4. Select the preferred option with justifications.

The choice of appropriate PPP arrangement is based on two major factors:

- Identification of risk and allocation of risks between Private Partner, and Procuring Unit;
- Analyzing the PPP option, understanding the context of each Project –technically, environmentally, legally, etc. -- and the resources available to both the Government and Private Partner and abiding by the guiding principles set out in section 5 of this document.

Once the PPP structure has been thoroughly developed and a financial and viability assessment has been rendered, a detailed report is prepared and submitted for a preliminary review to the PPP Unit. Upon preliminary clearance of PPP Unit, the report is submitted to the MoF for its final review, clearance and approval. This approval stage is referred to as MFA (I), which involves the delivery of an Approval Letter for the Feasibility Study signed by the responsible officer at the MoF.

MFA (I), MFA (II) A, MFA(II)B and MFA (III) — Procurement and Transaction Stage

Following the determination of PPP structure, the next step in the PPP process is procurement. Based on the requirements of the PPP Project, the scope of work defined, and availability of bidders and private providers or developers in a specific sector, the most suitable procurement process should be followed as recommended by the PPP Unit.

The Procurement and Transaction Stage is constituted of three approvals required from the MoF:

1. MFA(II)A – An Approval Letter for Project Request for Proposals signed by the responsible officer;
2. MFA(II)B – An Approval Letter for Appointment of the Preferred Bidder signed by the responsible officer, and;
3. MFA(III) – An Approval Letter for the Chief Accounting Officer of the relevant Procurement Unit to sign a negotiated contract.

Procurement and all transaction documents have to be submitted to the PPP Unit for a preliminary review before delivery to the MoF for approval per MFA(II)A. The PPP Unit will be responsible for selecting the preferred bidder, and will require approval from the MoF of the selection per MFA(II)B. The final aspect of the Procurement and Transaction Stage continues past bid evaluation to include negotiation (if needed), contract signature, and financial close. Authority to provide approval to sign the negotiated PPP Agreement resides with the MoF, which is referred to as MFA(III).

Please refer to the graphic in **Annex II: PPP Approval Process** for the PPP approval and evaluation process as set out in the Draft PPP Regulations. The transaction structure is further legally formalized in the form of a draft PPP Agreement. Under the transaction structure, the following information is to be provided:

1. The parties involved in the contract
2. The contractual relationship between the parties
3. The nature of the Agreement
4. The key risks and their allocation
5. Tariff structure
6. Government commitment
7. Duration of contract
8. Performance indicators
9. Payment term
10. Award criteria
11. Contract management strategy

The purpose of this stage is to promote competitive bidding by well qualified bidders, so as to deliver value to the public. A transparent, accountable, non-discriminatory, competitive and timely procurement process is to be followed so as to encourage maximum participation by private sector and to generate public confidence in the procedure. This stage includes drafting the PPP Agreement, drafting Expression of Interest documents (EoI) to assess qualifying bidders, drafting the Request for Questions (RfQ) and Request for Proposals (RfP), developing criteria for selection of bidders at various stages of procurement, consulting with bidders, issuing the RfP, evaluating bids and recommending award.

Contract Management Stage

Upon closure of the transaction stage, the PPP Agreement implementation stage initiates. At this stage, the Procurement Unit needs to ensure that the terms of the contract are fulfilled and delivered properly, and that new events are responded to intelligently. This stage covers project implementation and monitoring over the life cycle of the PPP Project.

Contract management is not a passive reporting exercise. It is an active process that involves a wide range of skills. Projects are not static, conditions change and the capability of the public authority at the interface with the private sector party is therefore crucial. A contract management team is established to monitor PPP delivery and risk, manage change, and close the contract. The contract management and or monitoring team can work in or for governments and can be used to

monitor several PPP contracts. The cost of contract management can also be included in the bidding documents.

7.2 Principles governing PPP Processes

The principles set out in this Policy to guide review and approval of candidate projects are intended to ensure that:

- The PPP guiding principles are effectively and consistently applied;
- Government resources available to develop and implement PPP projects are used efficiently, by implementing first the highest priority projects that will deliver the most value;
- These projects are properly developed and evaluated, and meet the criteria set out in this Policy.

Throughout the final four approval stages in the procurement process (MFA(I)- MFA(III)), the PPP project undergoes a preliminary review and clearance by the PPP Unit prior to submission to the MoF for final review, clearance and approval. The project needs the final approval of the MoF prior to financial close.

8. Probity Management

The Government of Lesotho is committed to probity and transparency with regard to all aspects of the PPP program. Probity management is the set of responsibilities and practices designed to promote the development and implementation of PPPs through a fair process, in which no person achieves personal advantage or disadvantage through involvement in the process.

The PPP Unit will oversee and implement probity management. This will be done through, among other things, the appropriate use of:

- Probity Advisors;
- Probity Audits;
- Transparency Procedures

The Office of the Auditor General has the right to audit any PPP project at any stage.

9. Unsolicited Proposals

Unsolicited proposals may be accommodated where a Procurement Entity is approached directly by private sector entities who submit proposals for the development of projects in respect of which no selection procedures have been opened. Unsolicited proposals may result from the identification by the private sector of an infrastructure need that may be met by a privately financed project. They may also involve innovative proposals for infrastructure and services management and offer the potential for transfer of new technology to the country. The unsolicited proposals must meet the criteria set herein in this policy.

The Government shall not accept unsolicited proposals for conventional budget financed projects.

Cabinet

Cabinet shall be provided with updated when determined appropriate by the Ministry of Finance of project progress, and may request further information on any proposal or active project from the MoF.

Ministry of Finance

The MoF will oversee and guide the PPP Unit to make sure it fulfills its responsibilities regarding PPP project development and coordination

Procuring Unit

Holds the lead role in identifying and developing candidate PPP projects throughout the approval process from PSIC(0) to MFA(III) and is obligated to follow the procedure set out in this Act

Public Sector Investment Committee

Provides initial oversight and review of the Concept Note and Project Proposal prepared by the Procuring Unit

PPP Unit

Preliminary review and clearance body providing technical guidance to Procuring Units. As the custodian of PPP Policy, drives the development of guidelines and best practices and charged with improving the quality of PPP projects

