Institutional Arrangement and Administrative Framework for Effective Delivery of Public Private Partnership (PPP) Projects

Tobechi B. Ejekwu[i], Obioma A. Anyanwu[ii] and Guy N. Igbokwe[ii]

[i]Department of Quantity Surveying, Imo State University
[ii]Department of Project Management, Federal University of technology
Owerri, Nigeria

Abstract

In the time past, public infrastructural projects were solely carried out by the government, but in the last three decades, the relevance of collaboration with the government and the private sector has become undeniable. Currently in Nigeria, public private partnership has aided in completion of some social benefiting infrastructural projects, thereby helping the government carry out many of its mandate for the populace. But with some of the improvement, there lies great challenges in the proper integration of the process. This research work is a literature based study which assessed the various literatures in the line of research. As a content based study, the findings of the research revealed the relevant institutional frameworks in Nigeria starting from the establishment of the ICRC act in 2005. The study also showed that major challenge affecting the PPP implementation on Nigeria is majorly the administrative framework which even though well structured, has the poor implementation process. Some of the PPP projects were marred by corruption and thus the structures and framework require restructuring in the area of implementation.

Keywords*—Public-Private Partnership, Infrastructural Development, Construction Projects Nigeria*

1.0 Introduction

Public-private partnership (PPP) in infrastructure is a relatively new experience in most developing countries of the African and Asia Pacific region. Although many governments have considered various steps to promote PPPs in their countries, lack of capacity in the public sector remains to be one of the major problems in implementing PPP projects. So far, only few countries have established institutional arrangements and developed manuals and resource materials in support of PPP development and for the capacity-building of their public officials. In the absence of such established institutional arrangements and resource materials, public officials face difficulties in project development and implementation, and general public can have many misunderstandings about PPPs.

Governments in most developing countries face the challenge to meet the growing demand for new and better infrastructure services. As available funding from the traditional sources and capacity in the public sector to implement many projects at one time remain limited, governments have found that partnership with the private sector is an attractive alternative to increase and improve the supply of infrastructure services.

The partners in a PPP, usually through a legally binding contract or some other mechanism, agree to share responsibilities related to implementation and/or operation and management of an infrastructure project. This collaboration or partnership is built on the expertise of each partner that meets clearly defined public needs through the appropriate allocation of:

- Resources
- Risks
- Responsibilities, and
- Rewards

It is important to emphasize here that a PPP is not a solution option to an infrastructure service problem but is a viable project implementation mechanism for a preferred solution option.

2.0 Literature Review

Concept of PPP

The term public–private partnership (PPP) project means a project to build and operate infrastructure such as roads, ports, railways, schools, and environmental facilities—which have traditionally been constructed and run by the government—with private capital, thus tapping the creativity and efficiency of the private sector. According to OECD (2012), they are long term contractual arrangements between the government and a private partner whereby the latter delivers and funds public services using a capital asset, sharing the associated risks. PPP came out of the commercialization and privatization processes initiated in the 1980s in countries, such as the United Kingdom, where increased private sector participation was seen as beneficial because it

(i) Removes conflicts of interest between the government's role of defining policies, regulating industries, and providing outputs;

(ii) Allows the private sector to provide outputs in competitive markets because it has strong incentives to perform work based on the profit motive; and

(iii) Reduces the government's expenditure commitments, which helps support macroeconomic stability, and allows public expenditure to be reallocated toward high priority outputs in sectors such as health and education (ADB, 2008). In a PPP

> agreement the service delivery objectives of the government are intended to be aligned with the profit objectives of the private partner. The effectiveness of the alignment depends on a sufficient and appropriate transfer of risk to the private partners. In a PPP contract, the government specifies the quality and quantity of the service it requires from the private partner. The private partner may be tasked with the design, construction, financing, operation and management of a capital asset required for service delivery as well as the delivery of a service to the government, or to the public, using that asset.

A key element is the bundling of the construction and operation and maintenance of the underlying asset over the life of the contract. The private partner will receive either a stream of payments from the government for services provided or at least made available, user charges levied directly on the end users, or a combination of both.

This definition excludes a wider array of arrangements where non-governmental organisations such as non-profit civil society groups, trusts, church groups etc. are involved in the development and delivery of public or semi-public services. It includes concession type arrangements where the concession is designed to deliver a public service but excludes concessions such as licenses to use government assets such as mining which are another way for government to raise revenue. It also excludes traditional public works contracts.

If the government is responsible for a stream of payments to the private partner for services delivered, their actual payment will likely depend on the private partner's delivery of service and compliance with the contractually set quality and quantity specifications. The government may also establish service standards as a representative of the public interest when PPPs are financed from tolls or user charges. Public-private partnerships are often undertaken by a special purpose vehicle acting as the government's private sector counterparty. A special-purpose vehicle is often (but not always) a consortium of companies responsible for the main activities of the public-private partnership.

PPPs are sometimes recorded on-budget and sometimes off-budget. When PPPs are undertaken by a special purpose vehicle acting as the government's private sector counterparty, the impact on the government's accounts will depend on whether the Special Purpose Vehicle (SPV) itself is classified as a public or a private entity. In many countries, most of these SPVs are created and organised in a way that allows them to be classified outside the central, general, or even the public sector as a whole, jeopardising fiscal monitoring and control.

Through harnessing the private sector's expertise in combining the design and operation of an asset a PPP can provide the service in a more efficient manner compared to traditional forms of procurement. There are a number of conditions that should be in place for a PPP to be successful.

2.1 International Institutional Frameworks and Rules

Legal Rules

Relevant PPPs Rules

2.1.1. UNCITRAL PFIP Guide & Model Provisions

In July 2003, the UNCITRAL adopted the Model Legislative Provisions on Privately Financed Infrastructure Projects as an addition to the Legislative Guide on Privately Financed Infrastructure Projects, which has been adopted two years earlier. The Model Provisions translate the advice given in the recommendations contained in the Legislative Guide into legislative language (51 provisions). The Legislative Guide contains 71 recommended legislative principles whose purpose is to assist in the establishment of a legislative framework. They are followed by explanatory notes that offer an analytical explanation of the financial, regulatory, legal, policy and other issues raised in the subject area. The reader is advised to read the legislative recommendations and the model provisions together with the notes.

The purpose of the Guide is to provide information for drafting national PPP laws, rather than contracts. The PFIP Guide and Model have primarily affected to consequent principles and guidelines drafted by other international communities, including the European Bank for Reconstruction and Development (EBRD)'s Core Principles (2006) and the OECD Basic Elements for a Law on Concession Agreements.4

2.1.2. WTO GPA

There is no specific legal definition of PPP under WTO. However, the significance of legal instruments in regard to encouraging PPP has been acknowledged by WTO Member States. The WTO's General Agreement on Government Procurement (GPA) is legally binding agreement in related to the subject of government procurement. As the EU public procurement Directive, procurement of a PPP or other types of public contracts can be fulfilled under GPA rules and principles such as transparency and non-discrimination.

2.1.3. OECD Basic Elements of a Law on Concession Agreements

The Organization for Economic Co-operation and Development (OECD) published the set of Basic Elements for Concession Agreements for corporate law and foreign direct investment legislation, which is a result of a joint project between the Istanbul Stock Exchange, the OECD and a group of experts from NIS, Black Sea and South-East European Countries. This study is a

contribution to facilitating private sector investment in the infrastructure and natural resource of transition countries. The study was implemented with the following three practical objectives, (a) to provide information to Eurasian legislators on the guiding legal principles and best international practices with respect to concession agreements; (b) to contribute to the harmonization of the relevant legislation in the Eurasian region; and (c) to elaborate on these principles and practices with a view to providing assistance to Eurasian Governments in the negotiation of actual concession agreements.

The Basic Elements provides a text that sets out in legislative language the 18 guiding principles of a modern law on concession agreements and comments on these principles in light of best international practices. The UNCITRAL Guide provided a point of departure for the preparation of the Basic Elements together with actual laws on concession agreements and pertinent EC legislation. It does not purport to qualify as a model law as if the UNCITRAL Guide. While UNCITRAL's Legislative Guide furthermore focuses on infrastructure projects alone, the Basic Elements apply to both infrastructure and natural resource projects.

2.1.4. EPEC Guide to Guidance

The European PPP Expertise Centre ("EPEC") is a joint initiative of the European Invest Bank ("EIB"), the European Commission, EU Member States and Candidate Countries. Its primary mission is to strengthen the capacity of its public sector members to engage in PPP transactions, by allowing PPP taskforces in EU Member and Candidate countries to share experience and expertise, analysis and best practice relating to PPP transactions. It has recently published version 2 of its "Guide to Guidance", which seeks to identify best of breed guidance currently available from PPP guidelines worldwide, and assists public officials in implementing PPP projects and facilitate their understanding of the key issues and procedures involved in the procurement of PPP arrangements. Its main purpose is not the legal frameworks for PPP, although it does include a short Annex on this subject.

2.1.5. EU Legislation

There is no specific EU legislation covering the formulation and operation of PPPs only, but EU public procurement rules including the Treaty on the Functioning of the EU, EU public procurement directives and relevant case law have currently been applied to PPPs. PPPs represent on method of public procurement, and as a typical example, the main procurement procedure so-called "competitive dialogue" covers some futures of PPPs. The EU has two procurement directives – the Public Sector Directive (2004/18/EC) and the Utilities Directive (2004/17/EC).

Even though PPPs share a number of common characteristics with EU procurement rules, PPPs take many different features. A PPP arrangement is generally involved in a long-term contract between a public contracting authority and a private sector firm, the transfer of certain project

risks to the private sector, project financing, institutionalized co-operative structure, and payments to the private sector by users, by public authority or by a combination of both.9 PPP arrangements are more complex than conventional public procurement. As such, the complexity of the coverage of PPPs by EU procurement directives has hindered legal certainty and the further promotion of PPPs. Meanwhile, EU decided that the creation of a separate legal regime for PPPs from the public procurement directives was premature, but several member states considered that there was a need for a common set of EU rules on PPPs.

2.1.6. National Legislations

Common law and civil law jurisdiction have different approaches to many issues relevant to PPPs. In many civil law countries, a separate administrative law governs PPP arrangements because the service in question is deemed to be a public service. Administrative law sets out fundamental principles which cannot be derogated from agreement of the parties. The law stipulates a number of rights regarding PPPs, including the right of a contracting authority unilaterally to cancel a contract early, the right of an operator to compensation following an unexpected increase in the cost of operations, or the right of an authority to make unilateral changes to the contract due to public interest.

By contrast, in common law jurisdictions such as UK, US, and Ireland, common law forms the fundamental basis of all commercial transactions and form which the principles underpinning the allocation of risk have developed. In general, civil law jurisdictions have a more prescriptive approach to the structuring of PPPs than common law jurisdictions. The different features are also found at security, insolvency and transfer of concessions.

Specific PPP laws have been introduced in Belgium, Italy, Poland, Portugal, Republic of Korea, Brazil, and Spain, etc. These laws may focus on a specific sector (*e.g.*, rail, toll road, water) or may apply to PPP arrangements across sectors.

PUBLIC PRIVATE PARTNERSHIP IN NIGERIA

PPP in Nigeria started with the establishment of Infrastructure Concession Regulatory Commission (ICRC) by the Federal Government of Nigeria under Act 2005 and the Public Procurement Act of 2007 to drive the implementation of Public-Private Partnerships (PPPs) in infrastructure development which supposedly serve as institutional, legal and regulatory framework for attracting private sector investment in infrastructure development in Nigeria with the aim of tackling the challenges of poor infrastructure development and to improve economic growth in the implementation of PPP strategies (Adamu, 2016). This also ensured that the transfer of responsibility to the private sector in infrastructure development follows the best international practice which is best achieved through transparency, accountability and competitiveness.

Looking at the Nigerian situation, the huge infrastructural needs and inadequate funding for such needs, made PPP a non-negotiable instrument that can mutually meet the infrastructural needs and similarly generate the needed funds for the provision and management of these infrastructure, thus lessen the financial burden of the government (Olatunji et.al, 2016). Unlike privatization exercise, PPP give room for the government to regulate prices, inhibit market abuse and set up the user charges as the case may be.

Nigeria National Policy on Public-Private Partnerships

The Federal Government of Nigeria in the bid to curb the challenge of low infrastructural development due to inadequate funding, therefore formulated a National Policy on Public-Private Partnership. The objectives of the said policy is classified into four groups to include; Economic, Social, Environmental and Value for Money. In the economic group as contained in the PPP National Policy, the economic objectives of the policy include;

- acceleration of investment in new infrastructure and upgrading of the existing infrastructures;
- to ensure efficiency in infrastructure investment;
- to enhance the availability and effectiveness of all infrastructure facilities in order to increase economic growth and access to international markets;
- to encourage private sectors by providing opportunities and an enabling environment in the provision of public infrastructure;
- to ensure best practice in infrastructure development;
- effective management of the risks created under PPP contracts

In the same vein, under social and environmental groups, the National PPP Policy objectives include;

- to maintain a balanced regional development in all the geo-political zones in
- Nigeria;
- to allow full access to quality public services for all members of Nigerian society;
- to ensure affordability of user charges for new or improved public service and provide value for money;
- to protect the employment rights and opportunities of employees and also resolving other social safety net issues before final proposed project approval;
- to improve the health, safety, and wellbeing of the public;
- to enhance the participation of small and medium sized investment in PPP projects
- to achieve a sustainable and conducive natural environment;
- to reduce greenhouse gas emissions and other pollutants

Furthermore according to the National Policy on PPPs (2003), the Federal Government of Nigeria is making no presumption about the relative efficiency or effectiveness of the public and private sectors in the development of infrastructure in Nigeria. Rather, the government will adopt PPP where there is likelihood of better value—and more affordable—services (Value for Money). The National PPP Policy further stated that all procurement decisions will be made on merit and all proposals subjected to thorough economic and financial cost benefit analysis.

PPP Legal Regulatory Structure in Nigeria

The existence of an appropriate legal and regulatory framework according to United Nations Commission on International Trade Law (2001) is a prerequisite to creating an enabling and sustainable environment that will foster private investment in infrastructure provision and maintenance; UNCITRA (2001) further stated that it is important to ensure that PPP legal and regulatory structure is sufficiently flexible and responsive to keeping pace with infrastructure developments rather than its provision and maintenance only. In a related development, Soyeju (2013) noted that PPP legislative framework provides the platform under which the public sector regulates and ensure the provision of infrastructure facility and offers protection of rights for both the public and private investors in infrastructure development. Soyeju (2013) further stressed that a fair PPP legislative and regulatory framework incorporates the wide and varied interests of all the investors in infrastructure development because the legal framework breathes the breath of life into the entire PPP policy for private participation in the infrastructure development while the regulatory system serves as the sub-set of the legislative framework this according to Shonekan (2011) promotes competition and also enables the investors to earn fair returns for the various risks taken in the infrastructure development transaction.

In order to make the NNPPP policy effective, Soyeju (2013) noted that the signing into law of the Infrastructure Concession Regulatory Commission Act (ICRCA) by the Federal Government of Nigeria on the 10th of November 2005 and the inauguration of Infrastructure Concession Regulatory Commission (ICRC) in 2008 and the subsequent approval of the National Policy on Public-Private Partnership by the Federal Executive Council (FEC) was a step towards establishing a proper legal regulatory environment in attracting private sector investors in infrastructure development especially road infrastructure development in Nigeria. This also allows for the involvement of private sectors in financing the development, operation and maintenance of infrastructure in Nigeria through PPP concession whilst the ICRC regulate, monitor and supervises the contract and the entire infrastructure development processes throughout the contract period. Basically the ICRCA allows for the granting of all PPP contracts by the Federal or State Government of Nigeria or any of their agencies, ministries, corporations or bodies.

Soyeju (2013) listed seven key principles driven by the ICRC to include: value for money; public interest; output requirements; transparency; risk allocation; competition; and capacity to deliver. In pursuant of the Nigerian Government agenda in the provision of infrastructure, the Federal and State Government of Nigeria therefore came up with an investor-friendly legal and regulatory environment for PPP transactions aimed at leveraging private investment in tackling the menace of ineffective and inefficient infrastructure development in every part of Nigeria.

The legal issues inherent in PPP transaction in road infrastructure development according to Gatti (2008) revolve around two basic concepts which includes;

(i) the special purpose vehicle or the project company and its economic and legal obligations,
(ii) the network of the procurement agreement which regulate the relationship between the different stakeholders in the PPP concession for the road development.

In a related development, BPD (2009) noted that PPP legal regulatory framework is aimed at designing, implementing and monitoring PPP transactions in infrastructure development by providing legal support and addressing the principles which governs the selection of concessionaires in any PPP concession for road infrastructure development, the PPP legislative and regulatory framework also provides recommendations and code of conduct for handling unsolicited proposals from private investors in road infrastructure development under PPP transactions. UNCITRA (2001) therefore noted that for PPP legal and regulatory process to be credible, it must be transparent and objective, the rules and procedures must be lucid and objective for the purpose of fairness, impartiality and prompt action from the regulatory body concerned. This according to UNCITRA (2001) creates a level playing ground for all the stakeholders in the road infrastructure to this end, BPD (2009) listed the main features of a suitable PPP legal regulatory framework to include;

i. A clearly defined policy which sets out the underlying PPPs principles and criteria;
ii. Clear definition of the contractual arrangements and PPP agreement;
iii. Established institutional settings that permits sound administrative coordination;
iv. Identification of PPP authorities and respective roles and responsibilities;
v. Establishment of a PPP units which will assist in the promotion of PPP transactions;
vi. Clear definition of provisions for providing modalities of financial support to PPP transactions;
vii. Sound transparent and competitive procurement procedure;
viii. Appropriate terms and conditions governing the PPP transactions;
ix. Clear definition of roles for tariff setting and revisions;
x. Regulated technical, environmental and safety standards;
xi. Clear dispute resolution processes.

However in Nigeria, according to ICRC (2012), Obozuwa (2013) and Adamu *et al*. (2015), the development of infrastructure through PPP is governed by the Federal Government law and legislations which include;

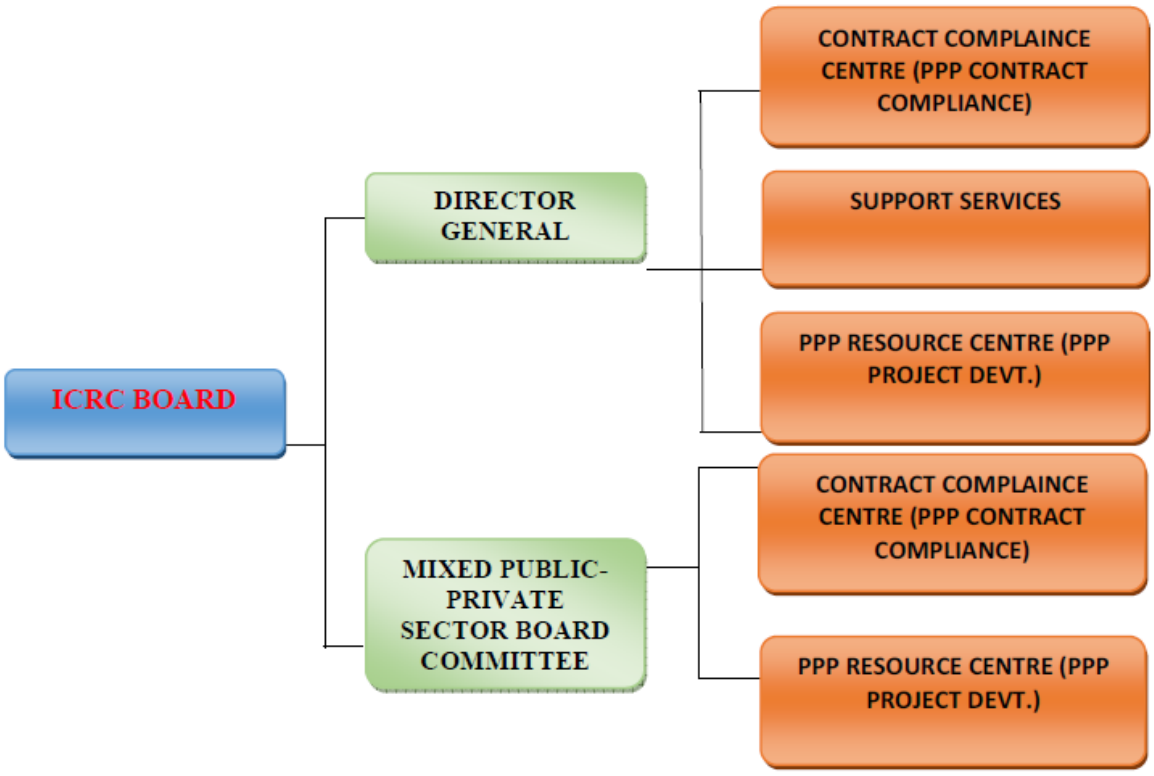
(i) the Infrastructure Concession Regulatory Commission Act (ICRCA, 2005);
(ii) the Public Procurement Act (PPA, 2007); and
(iii) Regulations Issued by ICRC governing the PPP development process for the entire project life-cycle.

The objectives of the government law and legislation according to ICRC (2012) include;

i. Empowering the public sector into entering a contractual agreement on investment with public sector,
ii. To ensure effectiveness and efficiency in the regulation and licensing of public service operators,
iii. To provide remedies for the protection of public infrastructure,
iv. To ensure adequate and appropriate application of the laws,
v. To encourage transparency, efficiency and competitive bidding procedures,
vi. Effective dispute resolution processes,
vii. To ensure consistency in the proposed PPP institutional and financial structure.

Furthermore, Obozuwa (2013) noted the government law and legislation governing PPP implementation covers; (i) Contract Agreement, (ii) Contract Management; and (iii) Dispute Resolution whilst the contract management process under PPP transaction in the government law and legislation does not only fix responsibilities but also allows timely response to any deviation in project development from the provisions in the contract agreements and thus help in avoiding disputes in the road infrastructure development.

The enactment of ICRC Act, 2005 is to govern the participation of private investors in the financing of infrastructure development, operation and its maintenance through PPPs (ICRC, 2012; Adamu *et al*., 2015). Furthermore, Adamu*et al*. (2015) noted that the Act permits the granting of PPP contracts or concession by any state of the federation, Federal Government ministry, agencies, corporations (MDAs). Similarly, the enactment of the Public Procurement Act, 2007 brought to life the establishment of the National Council of Public Procurement in Nigeria, this according to ICRC (2012) serves as the regulatory authority responsible for monitoring any Public Procurement in Nigeria. The PP Act, 2007 also harmonizes all the government policies and practices by regulating, setting standards and developing legal regulatory framework for any PPP transaction both at Federal and State levels in Nigeria. The Figure below outlined the ICRC structure for PPP transaction in Nigeria. development under PPPs.

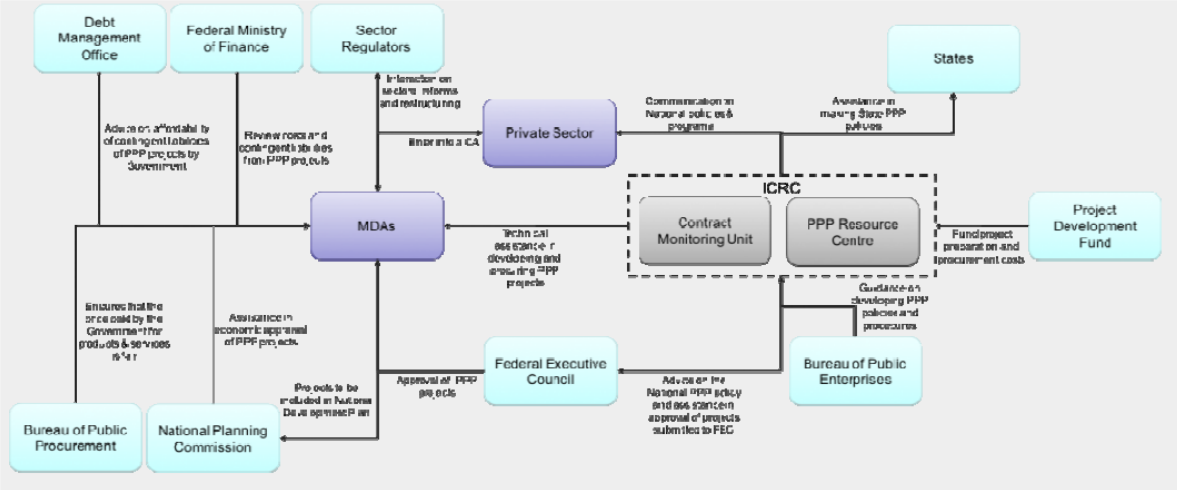


The Key Principles and values being driven by ICRC for any PPP arrangement are depicted by the diagram below;

PPP Institutional Structures in Nigeria

The law and legislation governing the implementation of PPP in Nigeria allocates roles and responsibilities to various organs of both the Federal and States Government as the public investors within the PPP institutional structure for infrastructure development in order to ensure checks and balances in the system, as well as oversight of decision making process throughout the

life-cycle of the road infrastructure development (ICRC, 2012; Adamu*et al*., 2015). The figure below depicts the various government organs/establishment and their respective roles and responsibilities in the implementation of PPP in Nigeria.



The development and issuing of guidelines on the implementation of PPP policies, processes and procedures in infrastructure development are the major responsibilities of ICRC. Ndubisi (2013) and Soyeju (2013) further stated that the commission also acts as the national centre of expertise on PPP in Nigeria. ICRC (2012) also noted that the commission works closely with the relevant government ministries, department and agencies in the identification of potential PPP projects and also acts as the interface with the private investors in promoting communication on PPP policies both at Federal and State levels in Nigeria.

In a related development, ICRC (2012) stated that the major responsibility of the commission is to monitor the effectiveness of both the Federal and State government's PPP policies and processes and also provides independent advice to respective Federal and State executive councils on public infrastructure development.

The motive behind this according to ICRC (2012) and Ndubisi (2013) is to ensure consistency, best practice and co-ordinated approach to the private investor.

The development and issuing of guidelines on the implementation of PPP policies, processes and procedures in infrastructure development are the major responsibilities of ICRC. Ndubisi (2013) and Soyeju (2013) further stated that the commission also acts as the national centre of expertise on PPP in Nigeria. ICRC (2012) also noted that the commission works closely with the relevant government ministries, department and agencies in the identification of potential PPP projects and also acts as the interface with the private investors in promoting communication on PPP policies both at Federal and State levels in Nigeria.

In a related development, ICRC (2012) stated that the major responsibility of the commission is to monitor the effectiveness of both the Federal and State government's PPP policies and processes and also provides independent advice to respective Federal and State executive councils on public infrastructure development.

The motive behind this according to ICRC (2012) and Ndubisi (2013) is to ensure consistency, best practice and co-ordinated approach to the private investor.

The PPP Resource Centre consist of professional personnel with legal, financial, and public administration backgrounds that provides the required expertise for the implementation of PPP in infrastructure development across different sectors both at Federal and State levels in Nigeria. The PPP Resource Centre according to ICRC (2012) operates within the ICRC acting as a central PPP knowledge section. The PPP Resource Centre according to Obozuwa (2013) and Adamu*et al*. (2015) was established to act as an interface between the public and private investors in the implementation of PPP policies and practices for infrastructure development and also to ensure that the public investment decisions are made primarily on commercial grounds at both the Federal and State Government levels in Nigeria.

Adequate investment strategy is a major prerequisite of the public sector involvement in infrastructure development, to this end according to ICRC (2012), the National Planning Commission prepares the Federal Government of Nigeria's National Development Plan based on the MDAs sector plan. The Plan according to ICRC (2012) sets out the public investor's 15 year investment strategy for all forms of infrastructure development to be financed in whole or in part from either the Federal or State budgets, project finance through borrowing or through current revenues of the Federal or State Government. ICRC (2012) further opined that NPC also acts as a centre of expertise providing tools and methodologies for economic appraisal of all the proposed government projects to be included in the National Development Plan and also developing the required guidelines and economic assumptions for cost-benefit analysis of the entire public infrastructure. Hence the management of public infrastructure development according to ICRC (2012) is the sole responsibility of the MDAs. Obozuwa (2013) noted that the MDAs prepares a long-term infrastructure development plans for road infrastructure investment and maintenance which are incorporated into the public 15-year National Development Plan. Further to this according to ICRC (2012) and Obozuwa (2013), the MDAs in consultation with ICRC are to identify the aspect of infrastructure development where PPP will likely offer better value-for-money over the traditional development strategy.

According to ICRC (2012) and Adamu *et al*. (2015), the Ministry of Finance is responsible for the financial management of all the infrastructure development under PPP in Nigeria the ministries also evaluate and manage fiscal risks associated with PPP transaction. ICRC (2012) opined that

the ministry is to ensure that the forecasted costs and any financial support for the infrastructure development are affordable to both the Federal and State governments in the infrastructure development over the whole life-cycle of the infrastructure. As part of the ministry's responsibilities, it also review the costs and contingent liabilities to the investors while the project design and risk valuations are being refined at the project preparation and procurement phases of the road infrastructure development. Similarly, the establishment of the Debt Management Office (DMO) was done under the Debt Management Office Act 2003 (ICRC, 2012); its operations were being governed by the same act. The DMO was established to monitor any liability that may be created by Federal or State Government in any PPP infrastructure development in Nigeria and to also provide guarantees for State's infrastructure development. This is to ensure that the contingent liabilities created by any PPP transaction are properly managed within either the Federal or State Government economic and fiscal forecasts.

In a related development, the Bureau of Public Procurement (BPP) was set up the MDAs to ensure that due process is maintained in a procurement process of all public infrastructures under PPP. ICRC (2012) stated that the Bureaus use various techniques in its operations such as benchmarking to ensure that the money paid by the Federal or State Government for infrastructure developments are fair and reasonable. Similarly, the Bureau of Public Enterprises (BPE) was established by the Federal Government of Nigeria for the purpose of the privatization of Federal and State Government owned public utilities and assets.

Other responsibility of BPE is to commercialize government owned enterprises through concession; the skill and capacity developed in the BPE operations are available for implementing PPP transactions in infrastructure development both at Federal and State levels in Nigeria.

GENERAL MODELS OF PPP

A wide spectrum of PPP models has emerged. These models vary in countries mainly by:

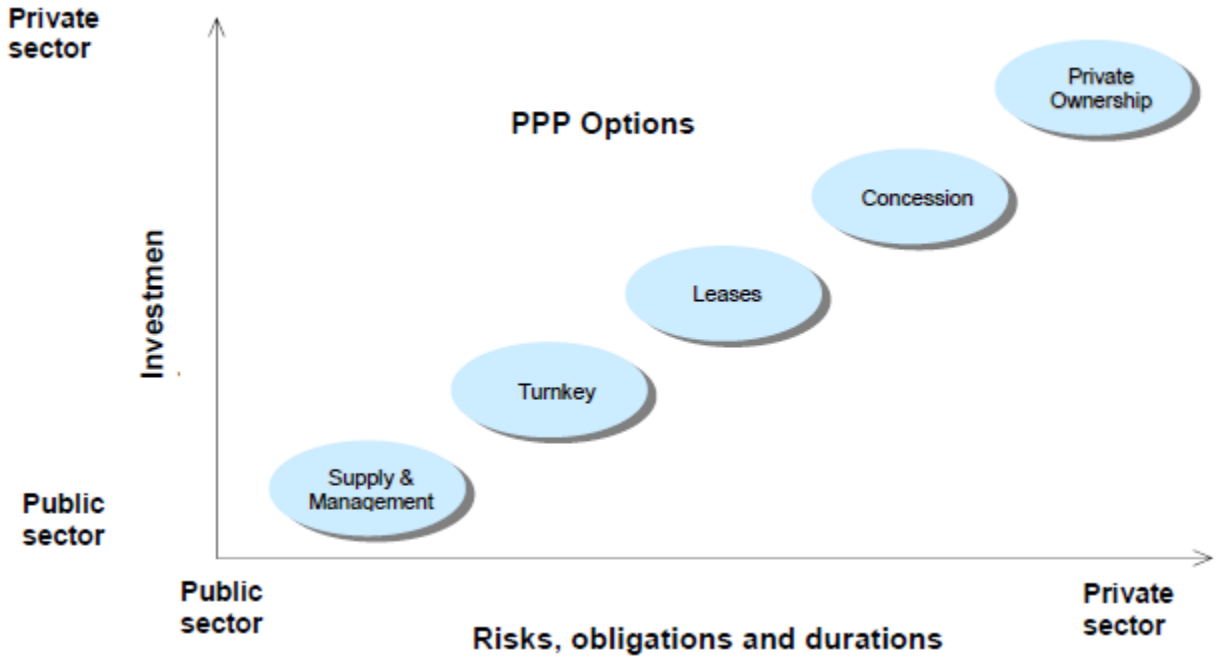
- Ownership of capital assets;
- Responsibility for investment;
- Assumption of risks; and
- Duration of contract.

The PPP models can be classified into five broad categories in order of generally (but not always) increased involvement and assumption of risks by the private sector. The five broad categories are:

- Supply and management contracts
- Turnkey contracts
- Affermage/Lease

- Concessions
- Private Finance Initiative (PFI) and Private ownership.

The basic features of these five categories of PPP models are shown in figure below



Each of these five categories has many variants. A categorization of the PPP/PSP models together with their main characteristics is shown in table 13. While the spectrum of models shown in the table are possible as individual options, combinations are also possible such as, a lease or (partial) privatization contract for existing facilities which incorporates provisions for expansion through Build-Operate-Transfer. In fact, many PPP projects of recent times are of combination type.

Broad category	Main variants	Ownership of capital assets	Responsibility of investment	Assumption of risk	Duration of contract (years)
Supply and management contract	Outsourcing	Public	Public	Public	1-3
	Maintenance management	Public	Public/Private	Private/Public	3-5
	Operational management	Public	Public	Public	3-5
Turnkey		Public	Public	Private/Public	1-3
Affermage/Lease	Affermage	Public	Public	Private/Public	5-20
	Lease*	Public	Public	Private/Public	5-20
Concessions	Franchise	Public/Private	Private/Public	Private/Public	3-10
	BOT**	Public/Public	Private/Public	Private/Public	15-30
Private ownership of assets and PFI type	BOO/DBFO	Private	Private	Private	Indefinite
	PFI***	Private/Public	Private	Private/Public	10-20
	Divestiture	Private	Private	Private	Indefinite

* Build-Lease-Transfer (BLT) is a variant.

The main features of each of the broad categories of the PPP models are discussed next.

Supply and management contracts

A management contract is a contractual arrangement for the management of a part or whole of a public enterprise (for example, a specialized port terminal for container handling at a port or a utility) by the private sector. Management contracts allow private sector skills to be brought into service design and delivery, operational control, labour management and equipment procurement. However, the public sector retains the ownership of facility and equipment. The private sector is assigned specified responsibilities concerning a service and is generally not asked to assume commercial risk.

The private contractor is paid a fee to manage and operate services. Normally, the payment of such fees is performance-based. Usually, the contract period is short, typically three to five years4. But the period may be longer for large and complex operational facilities such as a port or an airport.

The main pros and cons of this model include the following:

Pros:

• Can be implemented in a short time.
• Least complex of all PPP models.

• In some countries, politically and socially more acceptable for certain projects (such as water projects and strategic projects like ports and airports).

Cons:

• Efficiency gains may be limited and little incentive for the private sector to invest.
• Almost all risks are borne by the public sector.
• Applicable mainly to existing infrastructure assets.

Turnkey

Turnkey is a traditional public sector procurement model for infrastructure facilities. Generally, a private contractor is selected through a bidding process. The private contractor designs and builds a facility for a fixed fee, rate or total cost, which is one of the key criteria in selecting the winning bid. The contractor assumes risks involved in the design and construction phases. The scale of investment by the private sector is generally low and for a short-term. Typically, in this type of arrangement, there is no strong incentive for early completion of the project. This type of private sector participation is also known as Design-Build.

The main pros and cons of this model include the following:

Pros:

• Well understood traditional model.
• Contract agreement is not complex.
• Generally, contract enforcement is not a major issue.

Cons:

• The private sector has no strong incentive for early completion.
• All risks except those in the construction and installation phases are borne by the public sector.
• Low private investment for a limited period.
• Only limited innovation may be possible.

Affermage/Lease

In this category of arrangement, the operator (the leaseholder) is responsible for operating and maintaining the infrastructure facility (that already exists) and services, but generally the operator is not required to make any large investment. However, often this model is applied in combination with other models such as build-rehabilitate-operate-transfer. In such a case, the contract period is generally much longer and the private sector is required to make significant investment.

The arrangements in an affermage and a lease are very similar. The difference between them is technical. Under a lease, the operator retains revenue collected from customers/users of the facility and makes a specified lease fee payment to the contracting authority. Under an affermage, the operator and the contracting authority share revenue from customers/users.

In the affermage/lease types of arrangements, the operator takes lease of both infrastructure and equipment from the government for an agreed period of time. Generally, the government undertakes the responsibility for investment and thus bears investment risks. The operational risks are transferred to the operator. However, as part of the lease, some assets also may be transferred on a permanent basis for a period which extends over the economic life of assets. Fixed facilities and land are leased out for a longer period than for mobile assets. Land to be developed by the leaseholder is usually transferred for a period of 15-30 years.

The main pros and cons of this model include the following:

Pros:
• Can be implemented in a short time.
• Significant private investment possible under longer term agreements.
• In some countries, legally and politically more acceptable for strategic projects like ports and airports.

Cons:
• Has little incentive for the private sector to invest, particularly if the lease period is short.
• Almost all risks are borne by the public sector.
• Generally used for existing infrastructure assets.
• Considerable regulatory oversight may be required.

Concessions

In this form of PPP, the government defines and grants specific rights to an entity (usually a private company) to build and operate a facility for a fixed period of time. The government may retain the ultimate ownership of the facility and/or right to supply the services. In concessions, payments can take place both ways: concessionaire pays to government for the concession rights and the government may pay the concessionaire, which it provides under the agreement to meet certain specific conditions. Usually, such payments by the government may be necessary to make projects commercially viable and/or reduce the level of commercial risk taken by the private sector, particularly in a developing or untested PPP market. Typical concession periods range between 5 to 50 years.

The main pros and cons of this model include the following:

Pros:
• Private sector bears a significant share of the risks.

• High level of private investment.
• Potential for efficiency gains in all phases of project development and implementation and technological innovation is high.

Cons:
• Highly complex to implement and administer.
• Difficult to implement in an untested PPP market.
• May have underlying fiscal costs to the government.
• Negotiation between parties and finally making a project deal may require long time.
• May require close regulatory oversight.
• Contingent liabilities on government in the medium and long term.

In a Build-Operate-Transfer or BOT type of concession (and its other variants namely, Build-Transfer-Operate (BTO), Build-Rehabilitate-Operate-Transfer (BROT), Build-Lease-Transfer (BLT) type of arrangement), the concessionaire makes investments and operates the facility for a fixed period of time after which the ownership reverts back to the public sector. In a BOT modal, operational and investment risks can be substantially transferred to the concessionaire.

In a BOT model, the government has, however, explicit and implicit contingent liabilities that may arise due to loan guarantees and sub-ordinate loans provided, and default of a sub-sovereign government and public or private entity on non-guaranteed loans.

By retaining ultimate ownership, the government controls the policy and can allocate risks to parties that are best suited to assume or remove them. BOT projects may also require direct government support to make them commercially viable.

The concessionaire's revenue in a BOT project comes from managing and marketing of the user facilities (for example, toll revenue in a toll road project) and renting of commercial space where possible. Concessions for BOT projects can be structured on either maximum revenue share for a fixed concession period or minimum concession period for a fixed revenue share, a combination of both, or only minimum concession period.

Private Finance Initiative (PFI)

In the private finance initiative model, the private sector remains responsible for the design, construction and operation of an infrastructure facility. In some cases, the public sector may relinquish the right of ownership of assets to the private sector.

In this model, the public sector purchases infrastructure services from the private sector through a long-term agreement. PFI projects, therefore, bear direct financial obligations to the government in any event. In addition, explicit and implicit contingent liabilities may also arise due to loan

guarantees provided to the lenders and default of a public or private entity on non-guaranteed loans.

A PFI project can be structured on minimum payment by the government over a fixed contract tenure, or minimum contract tenure for a fixed annual payment, or a combination of both payment and tenure.

In the PFI model, asset ownership at the end of the contract period is generally transferred to the public sector. Setting up of a Special Purpose Vehicle (SPV) may not be always necessary (see discussion on SPV in the following section). A PFI contract may be awarded to an existing company. For the purpose of financing, the lenders may, however, require the establishment of an SPV. The PFI model also has many variants.

In a PFI project, as the same entity builds and operates the services, and is paid for the successful supply of services at a pre-defined standard, the SPV / private company has no incentive to reduce the quality or quantity of services. This form of contractual agreement reduces the risks of cost overruns during the design and construction phases or of choosing an inefficient technology, since the operator's future earnings depend on controlling the costs. The public sector's main advantages lie in the relief from bearing the costs of design and construction, the transfer of certain risks to the private sector and the promise of better project design, construction and operation.

The main pros and cons of this model are summarized below:

Pros:

- Private sector may bear a significant share of the risks.
- High level of private investment.
- Potential for efficiency gains and innovation is high.
- Attractive to private investors in an untested or developing PPP market.
- Most suitable for social sector infrastructure projects (schools, dormitories, hospitals, community facilities, etc.).

Cons:

- Complex to implement and manage the contractual regimes.
- Government has direct financial liability.
- Negotiation between parties may require long time.
- Regulatory efficiency is very important.
- Contingent liabilities on the government in the medium and long term.

Which model to select?

The answer to this question needs careful assessment of many things.

Each model has its own pros and cons and can be suitable for achieving the major objectives of private-private partnership to a varying degree. Special characteristics of some sectors and their technological development, legal and regulatory regimes, and public and political perception about the services in a sector can also be important factors in deciding the suitability of a particular model of PPP.

There is no single PPP model that can satisfy all conditions concerning a project's locational setting and its technical and financial features. The most suitable model should be selected taking into account the country's political, legal and socio-cultural circumstances, maturity of the country's PPP market and the financial and technical features of the projects and sectors concerned.

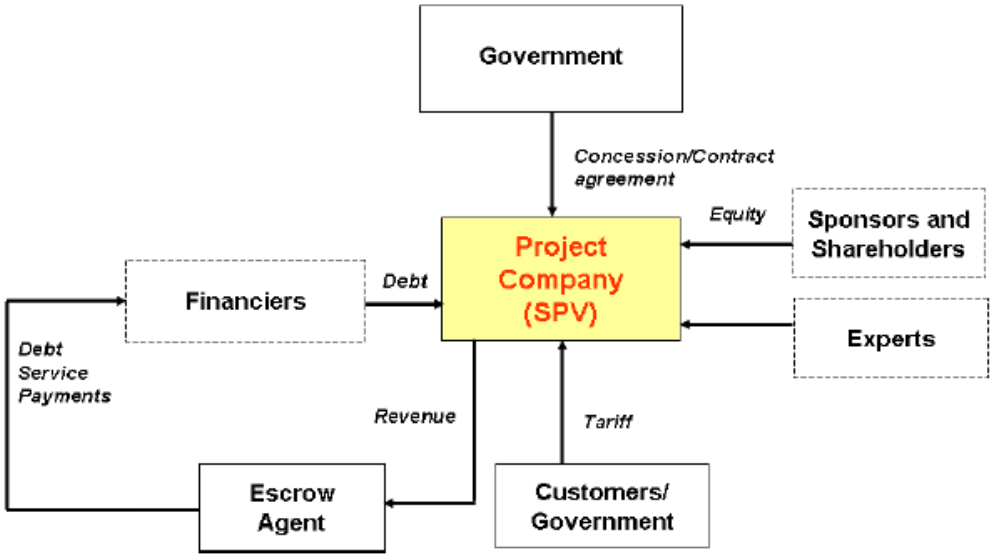
As an example, for a new project, a BOT type of model may be quite suitable in a matured PPP market while a PFI or BOO type of models may be more appropriate in a developing/untested market.

Understanding the basic structure of a PPP arrangement

A typical PPP structure can be quite complex involving contractual arrangements between a number of parties, including the government, project sponsor, project operator, financiers, suppliers, contractors, engineers, third parties (such as an escrow agent5), and customers.

The creation of a separate commercial venture called a Special Purpose/Project Vehicle (SPV) is a key feature of most PPPs. The SPV is a legal entity that undertakes a project and negotiates contract agreements with other parties including the government. An SPV is also the preferred mode of PPP project implementation in limited or non-recourse situations, where the lenders rely on the project's cash flow and security over its assets as the only means to repay debts.

Figure 2 shows a simplified PPP structure. The actual structure of a PPP, however, depends on the type of partnership model and can be quite complex involving contractual arrangements between a number of parties including the government, project sponsor, project operator, financiers, suppliers, contractors, engineers, third parties (for example, an escrow agent6), and customers ('Terms of contract').



An SPV is usually set up by the private concessionaire/sponsor(s), who in exchange for shares representing ownership in the SPV contribute the long-term equity capital, and agree to lead the project8. The SPV may not always be directly owned by the sponsors. They may use a holding company for this purpose.

An important characteristic of an SPV as a company is that it cannot undertake any business that is not part of the project. An SPV as a separate legal entity protects the interests of both the lenders and the investors. The formation of an SPV has also many other advantages. A project may be too large and complicated to be undertaken by one single investor considering its investment size, management and operational skills required and risks involved. In such a case, the SPV mechanism allows joining hands with other investors who could invest, bring in technical and management capacity and share risks, as necessary.

The government may also contribute to the long-term equity capital of the SPV in exchange of shares. In such a case, the SPV is established as a joint venture company between the public and private sectors and the government acquires equal rights and equivalent interests to the assets within the SPV as other private sector shareholders.

Sometimes, governments want to ensure a continued interest (with or without controlling authority) in the management and operations of infrastructure assets such as a port or an airport particularly those which have strategic importance, or in assets that require significant financial contribution from the government. In such a case, a joint venture may be established. A joint venture is an operating company owned by a government entity and a private company (or

multiple companies including foreign companies if permitted by law), or a consortium of private companies.

Often, an SPV is formed as a joint venture between an experienced construction company and a service operations company capable of operating and maintaining the project.

Other than its strategic, financial and economic interest, the government may also like to directly participate in a PPP project. The main reasons for such direct involvement may include:

- To hold interest in strategic assets;
- To address political sensitivity and fulfill social obligations;
- To ensure commercial viability of the project;
- To provide greater confidence to lenders; and
- To have better insight to protect public interest.

Direct government involvement in a PPP project is usually guided by the legal and regulatory regime of the country and the government policy on PPPs. For example, the government may hold certain defined percentage of the stake in a strategic project such as an airport or a port.

Models of Public-Private-Partnership in Nigeria

The following according to Okorie, 2006, are the most popular PPP arrangements in Nigeria:

Concession: Concession is a collaborative arrangement before a government and private developer(s) to design and develop facilities through combination of participants which include the financiers and the contractors and or consultants. The developers may not necessarily be the financiers of the project. For example, Bicourtney Limited was expected to coordinate the financial and technical contributions of its partners in the concession of Lagos-Ibadan Expressway. Bicourtney's job was in charge of management of the concession as it is not a contractor. Its job was to arrange for finance and look for reputable contractors to develop the road.

Build, Own and Transfer (BOT): Under Build, Own and Transfer, the contractors who maybe a developer (financier) and not necessarily the builder, build and own the property which will be used by the client with the arrangement that the client will possess the property in the future. This arrangement is usually used for specialized facilities like hospitals, schools, social housing and markets.

Build, Own, Operate and Transfer (BOOT): In Build, Own, Operate and Transfer, the client does not have intention of using it and allows the developer to own it for a period of time. Example is the construction of Murtala Muhammed Airport II by Bicourtney Aviation management.

Design, Build, Finance and Own (DBFO): This is a Public Finance Initiative (PEI) in which a private organization conceived a development idea, design, construct it and operate it in perpetuity. For example, the Millennium Park, Maitaima, designed and developed by Salami Construction Company Limited.

Private Finance Initiative (PFI): Here, private sector (financial services company) funds a new or rehabilitation of existing project using various finance options on a long-term basis.

Operation and Maintenance Contract (OMC): Private sector (under contract) operates a publicly owned asset for a specified term, while ownership of the asset remains with the public sector, etc.

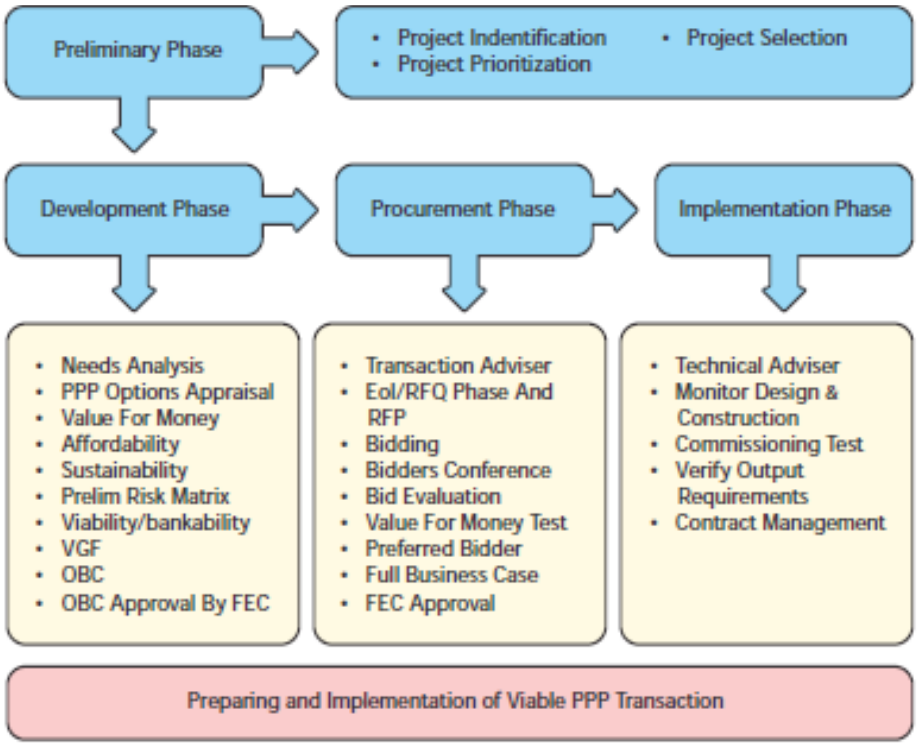
From the works of Obuzuwa (2011), the prevalent models of PPP in Nigeria is represented in the figure below

Models of Private-Public Partnership

The following are the models available for PPP transactions in Nigeria. These models have been developed using simple terms to provide clarity;

s/n	PPP Model	Description
1	Design-Build (DB) or Turnkey Contract	The private sector designs and builds infrastructure to meet public sector performance specifications, often for a fixed price. The cost of overruns is transferred to the private sector.
2	Service Provision Contract	A private operator, under contract, operates a publicly owned asset for a specified period. Ownership of the asset remains with the public entity.
3	Management Contract:	A private entity contracts to manage a Government owned entity and manages the marketing and provision of a service.
4	Lease and Operate Contract:	A private operator contracts to lease and assume all management and operation of Government owned facility and associated services, and may invest further in developing the service and provide the service for a fixed term.
5	Design-Build-Operate-Finance (DBFO):	The private sector designs finance and constructs a new facility under a long term lease and operates the facility during the term of the lease. The private partner transfers the new facility to the public sector at the end of the lease term.
6	Build-Operate-Transfer (BOT):	A private entity receives a franchise to finance, design, build and operate a facility (and to charge user fees) for a specified period, after which ownership is transferred back to the public sector.
7	Buy-Build-Operate (BBO):	The transfer of a public asset to private or quasi-public entity usually under contract that the assets are to be upgraded and operated for a specified period of time. Public control is exercised through the contract at the time of transfer.
8	Build-Own-Operate (BOO):	The private sector finances, builds, owns and operates a facility or service in perpetuity. The public constraints are stated in the original agreement and through on-going regulatory obligations.
9	Build-Own-Operate-Transfer (BOOT)	This is an extended version of the BOT model where the private sector builds, owns and operates a facility for a specified period as agreed in the contract and then transfers to the public.
10	Operating License	A private sector receives a license or rights to build and operate a public service, usually for a specified period. Similar to BBO arrangement.
11	Finance Only	A private entity, usually a financial services company, funds a project directly or uses a mechanism such as long-term lease or bond issue.

Public Private Partnership Life Cycle in Line with Nigeria National Policy on PPP



The Role of Institutional and Administrative Framework of PPP in Construction Project Delivery in Nigeria

According to Uwem and Abubakar (2013) various concessions have taken place within the past few years in Nigeria to show the practicality of PPP in the country. These attempts to ascertain the workability of PPP practice in Nigeria firmly gathered weight around construction projects. Various construction projects examples showed the perfect integration and benefits of the government and private investment partnership in Nigeria. The frameworks provided an apt smooth operational experience in this regard. Some of the clear examples are

Akute Power Project

An independent power plant built by the Lagos State Government along with Oando Plc (an integrated energy company in Nigeria). The objective of the project is to provide uninterrupted power supply at the Lagos State Waterworks in Adiyan/Iju so as to boost the volume of water generated. Since operation, this PPP initiative has helped government to save the sum of N49.2 million (over US $300,000) monthly by switching from diesel generating to gas powered plant.

Similarly, it has improved citizens' access to potable water by 42 per cent, bolstered service delivery to end users and ultimately enhanced revenue collection from service users (Dina, 2011). Based on the interaction of this learner with officials of both Oando and Lagos State Government, the major risks in the project were allocated somewhat as follows: demand risk for this captive power plant was completely taken up by Lagos State Government under a Power Purchase Agreement (PPA)82. Under this arrangement, the Lagos State Government obligated to pay for the 12 Mega Watts generated from the plant without prejudice to actual power consumed in the four water plants that are linked to the power plant, i.e. Adiyan intake, Adiyan head works, Iju intake and Iju head works. The Special Purpose Vehicle (SPV) in this project, Akute Power Limited (APL) on its part took risks such as: financing risk, design risk, operation and maintenance risk and technology risk. As typical of most PPPs, the allocation of some of these risks played out in the various subcontracts that defined the obligations of various parties in the project as follows83:

- Clarke Energy Nigeria limited – Generator vendor and the Operations and Maintenance (O&M) partner.
- Aklab Nigeria Limited – Mechanical works sub-contractor.
- Ejerry Electrical – Electrical works sub-contractor.
- Manifold Nigeria Limited – Civil works sub-contractor.

Lekki Epe Road Project

Lekki-Epe Road Project is the first toll road PPP in Nigeria- a US$450 million project between Lekki Concession Company84 and the Lagos State Government. The road is a 49km stretch and the deal achieved financial close in the depths of the global recession in 2008. Lekki Concession Company Ltd is the Special Purpose Vehicle (SPV) engaged in executing the 30-year Lekki Toll Road Concession, under a mandate from Lagos State Government85. The project is the first of its kind in Nigeria, and it is pioneering change in the way road infrastructure is financed and delivered in the country (LCC Website, 201186). With 70:30 Debt-Equity Ratio, the project drew financial resources from multiple sources using some creative financial instruments such as : a Mezzanine loan of N5 billion from the Lagos State Government, N46.8 billion long-term financing syndicated by some commercial banks in Nigeria (including, Standard Bank, First Bank Plc, Fidelity Bank Plc, Zenith International Bank Plc, Diamond Bank Plc and United Bank for Africa Plc) , an $85 million senior loan hedged in Naira from the African Development Bank (AfDB), and a sovereign guarantee as opposed to the prevalent practice of securing an Irrevocable Standing Payment Order (ISPO) against funds accruing to the State from the Federal Allocation Account (LCC Presentation, 201087).

The touted benefits of the project include: convenience, reduced journey times, safety and security. The State Government had the following responsibilities under the contract:

1. Provide land and remove obstructions from the Right of Way;
2. Resettlement and compensation of affected persons;
3. Relocation of services (e.g. electricity pylons and other infrastructure) from the Right of Way;
4. Construction of Access Roads, and Alternative Routes to bypass Toll Plazas; and
5. Traffic management and security.

The Concessionaire on the other hand had the following key responsibilities:

1. Raise the financing for the project;
2. Construction, project management and execution;
3. Operation and maintenance of the Toll Road infrastructure;
4. Revenue Collection; and
5. Transfer of assets to Lagos State at the end of the concession term.

To align the incentives and long-term interests of the Concessionaire with the key contractor to the project, a 'tied-in equity' arrangement was fashioned out where the Concessionaire exercised the option to pay part of contract value in equity.

Some of the lesson learnt from this project include the importance of stakeholder's consultation as the people living along Lekki-Epe route were the ones that resisted the toll and went to court. Good impact assessment of project done before commencement. There should be better ways of negotiation and management of people's perception during project implementation. Establishment of project performance standard that is supported by operational penalty regime, monitoring framework and a viable long term financing plan.

Domestic Terminal at Muritala Muhammed Airport, Lagos (MMA2)

This was a concession/BOT to build a new domestic terminal and additional facilities at the Murtala Muhammed Airport (MMA2) in Lagos. MMA2 was the first major BOT infrastructure project to be contracted by a Nigerian company.

In 2013, Bi-Courtney was awarded the contract with 12years tenor initially later extended to 36 years. The contracting parties were the aviation Minister, Federal Airports Authority of Nigeria (FAAN) and Bi-Courtney. About six banks were involved in this syndicated loan and project financing. The project bump into a number of problems, among which are inability to secure long

term financing agreement, and reluctance of FAAN to maintenance the project by enforcing use of MMA2 by airlines as required in the PPP agreement, couple with several claims of breach of contractual rights by both parties. A number of things are worthy of note from the appraisal of MMA2 PPP in Nigeria.

Firstly, lack of transparent and sustainable long term financing for PPPs. Secondly, lack of effective planning and failure toset dead line that would have help Bi-Courtney's in overcoming its shortcomings. Thirdly, weak framework to regularly observe and assesses PPP projects, thus making conformity to standard difficult. Fourthly, lack of provision to accommodate unanticipated variations in the project. Fifthly, the nonexistence of relevant dispute resolution mechanism for PPP projects leading to escalation of controversies easily and the failure of FAAN's to comply with several court orders, and inability of ICRC to shield PPP projects and private investors.

Ports Concession Projects

In order to improve the hitherto clogged, inefficient, and very expensive ports system in Nigeria, the Bureau of Public Enterprises in 2004 and 2005 engaged through (both competitive and direct negotiated processes) a number of concessions to private entities to manage, operate, and rehabilitate 26 ports. For example, months after the concession of the Apapa-Lagos container terminal (one of the concessioned terminals), delays for berthing space had dwindled, and shipping lines reduced congestion surcharge from $525 to $75, saving the Nigerian economy an estimated $200 million a year (ICRC, 2010).

Notwithstanding the significant improvement in efficiency and productivity at these ports (turning revenue gulping assets into revenue generating assets), these projects did face some challenges, such as : transaction activities targeted at the signing of the concession contracts to the detriment of due process (i.e. particularly with the terminals concessioned using direct negotiations); the risk allocation did not consider the Government's capacity to deliver; and the failure to balance the interests of both parties during negotiations.

Potential Benefits of Public-Private Partnership for Construction Projects

Dabak (2012) posited the following benefits that can be accrued from PPP initiatives:

1. Value for money: Projects are executed at lower cost with the utilization of private investors' expertise and technology in efficient service delivery, thus having superior product or service at reduce cost.

2. Quicker delivery of project: Since bureaucratic tendencies are reduce if not eliminated, with PPPs projects are completed swiftly and on schedule than those purely funded and executed by the public sector.

3. Risk transfer: Associated project risks like finance, timeframe, planning permits, community consultations among others are shifted to the party best equipped to deal with it, both in terms of expertise and costs, to the stability and benefit of the project.

4. Increased investment: With private sector involvement governments are able to execute more projects frequently and on a bigger scale without the need for extra budget or additional funds.

5. Increased budget/financing certainty: The shift of responsibility (and risk) to the private investor for some of the project elements guards governments from unexpected financial liabilities following cost overruns, delays, or operational difficulties that would otherwise impact upon the budget bottom line.

6. Improved service delivery: Since both the government and the private sector concentrate on their areas of expertise, PPP enhances delivery of improved service, thus government on policy and governance, while the private sector focused on the technical aspects of design, construction, operation, and management.

7. Political benefit: Positive public perception about the government as PPP aid swift projects delivery without impacting much on government budget yet superior quality infrastructure or services are provided.

8. Private sector growth and stability: PPPs provide the private sector with access to reduced risk, secure, long-term investment opportunities that are underwritten by government contracts. Such agreements ensure private capital flows, provide investment opportunities, and stimulate local industry and job markets.

9. Elimination of corruption: With PPP corruption in awarding of contract and project execution is reduced if not totally eliminated. White elephant projects become a thing of the past, as projects awarded are carried out and completed on time.

Challenges of Public-Private Partnership in Nigeria

PPP in Nigeria is face with various challenges ranging from financial limitations, dominance of public companies, corruption, inability of private companies to access local currency and affordable long-term loan [5]. Also PPP is faced with the problem of definition, as it is not properly

defined in the law permitting the use of the finance option. Afolabi (2011) posits that the lack of continuity in administrative policies by political office holders over the year has affected PPP negatively. Frequent changes in important office holders and the Chief Executives of Regulatory agencies impact adversely on PPP projects. For instance, the MMA II concessionaire over a period of 7 years has had to deal with 6 different Ministers and 5 different Chief Executives of the Federal Airports Authority of Nigeria (FAAN), each with diverse policies and opinions with respect to PPP.

Similarly, the inability of Nigeria banks due to its size to cope with long term loan for PPP project is an issue to contend with and when such loans are available the interest rates on them will be too high to cope with, coupled with lack of expertise of banks official in project financing.

Lack of sound legal and institutional framework backing Public Private Partnership in the country, in a situation where there is problem with the agreement(s) the private investors are left to bear the burden financially and otherwise.

Premature termination of concession right by government is another major challenge; a typical example is the termination of the concession right between Lagos State and the Lekki Concession Company (LCC) over the Lekki-Epe express road (Afolabi, 2011).

Conclusion

Only if the political level is aware of and accepts the costs and benefits of using PPPs can the issues around PPPs be tackled and balanced appropriately with stability and predictability. The Ministry of Finance, line Ministries and executive agencies should ensure that a coherent approach to PPP is rolled out in the public sector and is joined up with other initiatives in adjacent fields. Given their complexity and long-term scope engagement with civil society is a prerequisite for the successful use of PPPs. This is especially the case when PPPs provide key public services. PPPs should, ideally, form part of an integrated public-sector infrastructure investment and procurement framework.

Active consultation and engagement with stakeholders should be an integral element of the process. PPPs may be used to introduce a more private-sector approach to service delivery in sectors that have previously been a part of the government. This can have effect on both working conditions, the culture of the workplace and opportunities for advancement. Labour unions consequently represent a key stakeholder group that can be substantially affected by the usage of PPPs. For PPPs to work and to be legitimate, labour should be actively involved. The same can be said for NGOs and other civil society groups which often have concerns that PPPs may have social and environmental consequences and impact the rights of minority groups. Active

involvement of NGOs can create transparency about problematic issues that might otherwise be overlooked and become serious problems if not tackled at an early stage.

Defining outputs in the PPP contract is essential. It should involve end-users in defining the project and its output specification and subsequently in monitoring service quality once the project is operational. Defining outputs can be instrumental in achieving better alignment of service specification with user expectations and exert pressure on service providers to meet service standards. In addition, involving end-users in design and monitoring increases the likelihood of the effort being perceived as legitimate, fair and understandable. Independent public oversight of PPP implementation can also promote public sector innovation and better outcomes for the society as a whole through greater accountability and social control.

A number of institutional roles should be competently pursued to secure and maintain value for money: a sound procurement process; implementing the specific PPP; fiscal and budgeting issues; auditing of the PPP; rule monitoring and enforcement. These roles can be maintained in a number of institutional set-ups, but it is important that they are kept separate so as not to confuse the key tasks of each actor and to secure lines of accountability.

The authority that is procuring the PPP is the institution ultimately responsible for the project, subject to approval, monitoring and advice from the other actors at various stages. The authority is responsible for preparation, negotiation and administration of the contract and for monitoring and evaluating contract performance during the construction and operation phases of the project. This is crucial to ensure government retains value for money during the whole life of the contract. This authority is, therefore, ultimately responsible for the PPP contract and its operation. By value for money is meant the optimal combination of quality, features and price, calculated over the whole of the project's life.

Given the complexity of PPPs and their somewhat infrequent use, critical skills to ensure value for money may need to be concentrated in a PPP Unit that is made available to the relevant authorities. A PPP Unit's function can be pursued by a number of complementary units. The PPP Unit can fill gaps in terms of specific skills, a lack of coordination or high transaction costs. Institutional shortcomings should be addressed taking the country's needs and current institutional context into account. The PPP Unit should enable authorities (e.g. line ministries) to create, manage and evaluate a PPP efficiently and effectively.

This role requires that the PPP Unit has the requisite in-depth financial, legal, economic and project management skills. This capacity should be used to assess the specific PPP compared to the traditional public investment route. The PPP Unit should support the authority in its endeavor to secure value for money both in the procurement and in the implementation phases. This Unit should also make sure that procedural steps (gateways) are followed throughout. It is important

that the role of the PPP Unit is clear and without conflicts of interest. While responsible authorities should draw on expertise from the PPP unit where necessary, it should be emphasised that they remain ultimately responsible for the project. Importantly, although the PPP Unit should help the relevant authorities prepare and negotiate the PPP contract, it should not decide on whether the PPP should move forward. This green-lighting process should be anchored in the Central Budget Authority.

Sound regulatory policy promotes the efficient functioning of regulatory agencies by ensuring that they operate under an appropriate and clear mandate, with the necessary independence from political influence and regulated subjects, that they are appropriately resourced and equipped, and that their decision-making is fully transparent and accountable. Where PPPs are employed in the delivery of infrastructure facilities with natural monopoly characteristics, the role, design and organisation of regulators is important to secure value for money for the public sector and protect users and consumers. This role should be clear to all (staff, regulated entities and the community). The appropriate sector regulator should consequently be consulted in the project design and subsequently monitor compliance with regulated service standards. This role is important not only in shaping the markets, but also with concrete issues such as service quality, profitability, tariffs and prices. Of particular interest in monopoly-like situations is the degree of profitability compared to the sector average using various benchmarks.

The above roles should be institutionally maintained at sub-national level.

RECOMMENDATIONS

For public sector to be able to realize its objective of infrastructure development and the private sector to make her profit the following recommendation are worthy of note:

1. The establishment of the necessary regulatory framework for proper implementation of PPP projects, most importantly with respect to dispute resolution during the tenor of the contract.
2. The possession of political will by the agents and leadership of government to deal with corruption without any fear or respect for the position of the individual or body involved.
3. Nigeria banks through the CBN should be assisted to cope with PPP financing, as sustainable long term financing mechanism is key to the success of PPP projects.
4. Proper definition of PPP as a concept should be made as the ICRC Act failed in this regard.

REFERENCES

Adam, M., Lowe, J. and Manase, D. (2015). Public-Private Financed Road Infrastructure Development in North-Central Region of Nigeria" Journal of Management and Sustainability, 5(4), pp.58-67.

Adamu, M (2016). Effective Institutional and Legal Regulatory Framework: A Panacea to Efficient Road Infrastructure. Journal of Harmonized Research in Engineering, 4(2), 2016, 52-60

Afolabi, E (2011). Examining Public Private Partnership in Nigeria: Potentials and Challenges. resourcedat.com.

Gatti, S. (2008). Project Finance in Theory and Practice: Designing, Structuring, and Financing Private and Public Projects" Elsevier, London.

Obozuwa, D.E. (2013). PPP as a Tool for Development in Nigeria" FPPPN Admin.

Olatunji, F., Abimbola, A., Agwu., E and Ogbonna, I (2016). Assessment of Public-Private Partnership on Infrastructural Development in Nigeria: Challenges and Prospects. 3rd International Conference on African Development Issues (CU-ICADI)

Sotola, O. &Ayodele, T. (2011). Public-Private Partnership; Will It Fix Infrastructure in Nigeria?" Initiative for Public Policy Analysis, Policy Paper.

Soyeju, O. (2013). Legal Framework for Public-Private Partnership in Nigeria". De jure pp.814-832.

UNCITRAL (2001). Legislative Guide on Privately Financed Infrastructure Projects" United Nation, A/CN, 9/SER.B/4 23

Uwem, E and Abubakar, Y (2013). Public Private Partnership and Sustainable Development of Infrastructures in Nigeria. Advances in Management & Applied Economics, 3(6).

About the Authors

Tobechi B. Ejekwu

Owerri, Nigeria

Tobechi B. **Ejekwu** is a registered member of the Nigerian institute of Quantity Surveyors. He obtained his first degree in Quantity Surveying from the Imo State University Owerri, Imo State University, Nigeria with Second Class Upper Division. He bagged A Master's Degree in Quantity Surveying from the same University with Upper credit. He is currently studying for a PhD in Quantity Surveying with interest in Life Cycle Costing of residential Buildings. He is currently a Lecturer in the Department of Quantity Surveying, Imo State, Owerri, Nigeria. He is an experienced Quantity Surveyor with industry footprint in many high profiled projects. Tobechi can be contacted at tobejekwu@gmail.com

Obioma Anselam Anyanwu

Owerri, Nigeria

Obioma Anselam Anyanwu has a B. Sc. in Project management technology from Federal University of Technology Owerri, Imo state, also bagged a master's degree in Mechanical Engineering from Lagos State University Ojo, Lagos state. He is currently undertaking a Ph.D. program in the department of project management technology, Federal University of Technology Owerri, Imo state. Presently working with Advanced Unmanned Aerial Vehicles Laboratory UBURU EBONYI STATE, with National Space Research and Development Agency under Federal Ministry of Science and Technology. He can be reached at Obiomanpmt@yahoo.com

Guy N. Igbokwe

Owerri, Nigeria

Guy Nnamdi Igbokwe has a B.Tech. and MSc in Project management technology respectively from Federal university of technology Owerri, Imo state. He is currently undertaking a Ph.D. program in the department of project management technology, Federal university of technology Owerri, imo state. Presently the project manager of six story building of hotel De Copperfield construction going on now in Imo State. He is a seasoned project management technocrat and administrator, developer of property, procurement of building and lands. He can be reached at guyrocsy@yahoo.com.