# Infrastructural Development in Nigerian Tertiary Institutions through Public Private Partnership: An Appraisal

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***Abstract***

*Successive Nigerian governments have indicated the desire to address infrastructure deficit and to improve the quality of public services in the country. One of the ways of achieving this is through Public Private Partnership (PPP). This paper looks at the viability of public private partnership in overhauling the decadence in infrastructural provision in tertiary institutions across Nigeria. It posits that although public private partnership agreements have been concluded for the provisions of infrastructure development in several tertiary institutions in the country, owing to legal as well as economic constraints, the process have achieved little, if at all. It therefore recommends that the law that provided for PPP be amended in such a manner that the private sector will find it attractive to collaborate with government.*

## 1. Introduction

"Global demand for basic infrastructure services has grown over the years, quickly outstripping the supply capacity of existing assets. Many years of underinvestment and poor maintenance have left Nigeria with a significant infrastructure deficit, which is holding back the country's development and economic growth. Nigeria needs to make massive investments beyond the means available to government in order to

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> close its yawning infrastructure gap. The Federal Government ("the Government") believes that the private sector can play an important role in providing some of this new investment through Public Private Partnerships (PPPs)."[1]

Addressing the infrastructure deficit and improving the quality of public services has been an important component of the present government and late President Yar'Adua's 7-Point Agenda, as a pre-condition for meeting the government's vision of being one of the top 20 global economies by 2020.[2] The federal government's interest in the development of infrastructure is its realisation that a country cannot be rich and attain greatness without good infrastructure. It is a known fact that many developed nations in the world for instance; the United States of America, the United Kingdom (which is one of the leading economies in PPP and largest PPP market) and India among others jumpstarted their economies by accelerating their infrastructure development and building on it.[3]

In this discourse, the writer will look at: the definition of PPP; history of PPP, scope of PPP policy in the country, distinction between PPP and other procurement options, characteristics of PPP, different models of PPP, advantages of PPP, legal, institutional and financial frameworks for the implementation of PPP policy in Nigeria, infrastructural development in Nigerian tertiary institutions through PPP and

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1 The Federal Government of Nigeria National Policy on Public Private Partnership and its Supplementary Notes, p. 1, available at: http://www.icrc.gov.ng/National-PPP-Policy.pdf, visited 23/11/2013.

2 *Ibid*.

3 Available at: USAID/*Nigeria Public Private Partnership* Strategy andWorkplan,*nigeria.usaid.gov/sites/default/files/USAID-NigeriaPP PStrategy. pdf.* accessed on 30 June, 2013.

make recommendations on how it could be successfully implemented in tertiary institutions and Nigeria at large.

## 2. Definition of Public Private Partnership

Public Private Partnership (PPP, P3 or P)[3] is one of the forms of procurement options that are available for public infrastructure development. It is one of the newest methods of infrastructure delivery available to government that is generating a lot of interest worldwide.[4] Other procurement options available to government include but is not limited to concession and privatisation.

PPP can be defined as a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies in which the private party provides a public service or project.[5] PPP is also defined as a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project.[6] In other words, Public Private Partnership was designed to provide an organised collaboration between government/government bodies and the private sector under a legal framework to provide basic infrastructure and services that will facilitate the rapid development of the country. Other acronyms used in some countries as synonymous with PPP but which do not mean the

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4 C Campbell, *Public Private Partnership* Quotes (PPP), *pppartnership.blogspot.com/.* accessed on 30 June, 2013.

5 Available at: USAID/Nigeria Public Private Partnership Strategy and Work Plan, 2010-2013, (Version for Public Dissemination). See also, D. E. Obozuwa, *"*PPP *as a tool for Development in* Nigeria*"*, *www.fpppn.org/index.php/articles-a.../231-national-development*, 15 March 2013, accessed on 30 June, 2013.

6 *Ibid*.

same thing as PPP include Private Finance Initiative (PFI)[7] and Performance Based Infrastructure.[8]

## 3. History of Public Private Partnership

There has been a fundamental shift, over the past twenty years, in the sources of funding for economic development around the world. Pressure to change the usual model of public procurement arose initially from concerns about the level of public debt, which grew rapidly during the macroeconomic dislocation of the 1970s and 1980s.

Also, governments sought to encourage private investment in infrastructure, initially on the basis of accounting fallacies arising from the fact that public accounts did not distinguish between recurrent and capital expenditure.[9] These led to the introduction and development of different procurement options like Privatisation, Concession and PPP which is the newest option among others, in order to involve the private sector in the provision of infrastructure. Presently, provision of infrastructure which used to be the responsibility of the government is now open to the private sector to invest in through different procurement options including PPP.

## 4. Scope of PPP Policy in Nigeria

The scope of the PPP policy in Nigeria includes creation of new infrastructure and the expansion and refurbishment of existing assets. Some of the infrastructures that can be provided under the

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7 *Ibid*. In Private Finance Initiative, capital investment is made by the private sector on the strength of a contract with government to provide agreed services and the cost of providing the service is borne wholly or in part by the government.

8 Performance Based Infrastructure was invented by Arnold Schwarzenegger, then Governor of California as his own PPP acronym. Public Private Partnership Quotes (PPP).

9 Obozuwa, above note 5.

PPP policy in Nigeria include but are not limited to: the provision of power generation plants and transmission/distribution networks; roads and bridges; ports; airports; railways, inland container depots and logistics hubs; gas and petroleum infrastructure, such as storage depots and distribution pipelines etc, water supply, treatment and distribution systems; solid waste management; educational facilities (e.g. schools, universities); urban transport systems; housing; health facilities, communication, technology and tourism.[10] In other parts of the world, the following infrastructure apart from those mentioned above can also be delivered through PPP; Clean Technology as well as asset-based projects in defence[11] among others.

In a typical PPP contract, the private investor which is usually a consortium made up of a building contractor, a maintenance company and bank lender(s) form a special company called a "special purpose vehicle" (SPV) to enter into contract with the government and sub-contractors where necessary, to develop, build, maintain and operate an asset for the contracted period. In cases where the government has invested in the project, (which is usually rare), the government is allotted an equity share in the SPV.

## 5. Distinction between PPP and Other Procurement Options

It must be pointed out that Public Private Partnership model of financing projects is not the same as privatisation or concession as some people are thinking or describing it. There is a fundamental difference between PPP and privatisation. For instance, PPP had been defined as "a variation of privatisation in which elements of a service previously run solely by the public sector are provided

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10 The Federal Government of Nigeria National Policy on Public Private Partnership and its Supplementary Notes, pp. 7-8, above note 1.

11 Public-Private Partnership in Infrastructure Resource Center for Contracts, Laws and Regulations (PPPIRC), *pppartnership.Blogs pot.com/.*, visited 23/03/2014.

for through a partnership between the government and one or more private sector companies."[12] This definition and others that present PPP as privatisation are wrong because privatisation had been described aptly as, the incidence or process of transferring ownership of a business, enterprise, agency or public service from the public sector (government) to the private sector (business).

In other words, privatisation refers to transfer of any government function to the private sector including governmental functions like revenue collection and law enforcement.[13] In PPP, the government retains ultimate responsibility for the public service but will delegate many of the operational tasks to private sector service providers under contract.[14] Privatisation transfers

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12 Kieran Lynch, in his case study on London Underground cited in Filip Drapak, *Let's not go out and throw the word privatization around, pppartnership.blogspot.com/.*, visited 23/03/2014.

13 Wikipedia. See, the Federal Government of Nigeria National Policy on Public Private Partnership and its Supplementary Notes, above note at p. 7. In a privatisation, existing assets are transferred to the private sector. Legislation determines how services are provided to the public, often with independent regulator set up to monitor – and in some cases control – prices and prevent market abuse. The regulator may issue licences that specify service standards and the framework for relations between the concessionaire or private provider. The regulator's functions will sometimes extend to overseeing competition and to ensuring that social welfare objectives are met.

14 The Federal Government of Nigeria National Policy on Public Private Partnership and its Supplementary Notes, above note 1 at p. 16. The contract will determine the service obligations, although a regulator may impose sector-wide requirements, for example in relation to safety or environmental standards. The contract will also determine how public policy aspects are to be dealt with, particularly if there are to be user charges. In some cases, the contractor will itself set user charges and be remunerated through user payments. In others, government or the regulator may set user charges and pay the contractor only for providing the service. This may be the case even if the contractor, rather than government, collects user payments.

ownership to an investor while PPP is a contract with an end that transfers risks to an investor. Finally, in privatisation public sector delivers assets and gets paid, whereas in PPP private sector delivers assets and gets paid.[15]

PPP is equally distinct from concessions. The difference between concession and PPP is that concessions transfer some or all of the demand and revenue risks of the public service to the concessionaire, whereas these risks are usually retained by the public sector in PPP.[16]

It is worthy to mention that in Nigeria, in determining whether PPP is an appropriate procurement option for public infrastructure and services, the government applies the following key principles: value for money, public interest, risk allocation, output requirements, transparency, competition, capacity to deliver and engaging with the market. The government's key policy objectives for its infrastructure investment programme and

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Government may also provide subsidies to capture wider economic benefits or to make the service financially viable.

15 Filip Drapak, *Let's not go out and throw the word privatization around, pppartnership.blogspot.com/.*, visited 23/03/2014.

16 The Federal Government of Nigeria National Policy on Public Private Partnership and its Supplementary Notes, p. 15, above note 1.

for PPP are; economic,[17] social,[18]environmental[19] and value for money[20] while project development, procurement, implementation and maturity are PPP process in the country.

## 6. Characteristics of Public Private Partnership

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17 The Federal Government of Nigeria National Policy on Public Private Partnership and its Supplementary Notes, above note 1. Some of the government's economic key policy objectives are; to accelerate investment in new infrastructure and ensure that existing infrastructure are upgraded to a satisfactory standard that meets the needs and aspirations of the public; to ensure that all investment projects provide value for money and that the cost to government are affordable after allowing for economic growth and to improve the availability, quality, and efficiency of power, water, transport and other public services in order to increase economic growth, productivity, competitiveness, and access to markets among others.

18 *Ibid*. The social key policy objectives include to ensure balanced regional development; to increase access to quality public services for all members of society; to ensure that user charges for new or improved public services are affordable and provide value for money, etc.

19 *Ibid*. The environmental key policy objectives are to protect and enhance the natural environment and to minimise greenhouse gas emissions and other pollutants.

20 *Ibid*. While adopting the value for money policy for PPP, the government is making no presumption about the relative efficiency or effectiveness of the public and private sectors in the delivery of projects and services. Rather, it will use PPP where this is likely to result in better value and more affordable services. All procurement decisions will be made on merit and all proposals subjected to thorough economic and financial cost benefit analysis. Value for money is a combination of the service outcome to be delivered by the private sector, together with the value of risks transferred to the private contractor and direct costs to government and users. Achieving the best value for money outcome in public services is the key consideration at all stages of a project's development and procurement. The project appraisal will take account not only of cost but also risks and service quality.

PPP includes a wide range of contractual arrangements between the public and private sectors and has the following characteristics:

a) PPP combines the design, construction (or rehabilitation) of public infrastructure with its maintenance - and sometimes with the delivery of the service directly to the user.[21]
b) The contract requirements are defined as outputs and service standards to be met, rather than inputs (such as exactly how the infrastructure should be designed and built).[22]
c) Payments to the contractor (or revenues from user charges in the case of a concession) are linked to meeting the specified standards of performance. If the quality of service falls below the required level, payment will be reduced accordingly.[23]

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21 The Federal Government of Nigeria National Policy on Public Private Partnership and its Supplementary Notes, above note 1 at p. 14. The transfer of responsibility for design, construction, and maintenance to the private contractor provides an incentive to minimise the whole life costs of the infrastructure services.

22 *Ibid*. This means that the private contractor can be innovative in its approach. But the contractor will also need to take into account the need to provide maintenance to ensure that the infrastructure continues to perform as required over the entire period of the contract.

23 *Ibid*. This gives the public authority the ability to enforce the contract effectively and the private contractor a strong incentive to perform. It also means that payments do not commence until the service is provided, and that design and construction is financed by the contractor. The cost of this financing is recovered from service charges (and/or user charges) over the remainder of the contract period. This method of payment provides a strong incentive to the contractor to complete the construction phase and provide the service as quickly as possible so that payments can commence. It also means that the contractor needs to continue to provide the service throughout the contract term in order to recover all of the financing costs. In effect, the public authority leases the asset (or grants the right to exploit it in

## 7. Public Private Partnership Models

The following are different models of PPP agreements developed and recognised globally and acceptable in the country;

a) **Design-Build (DB) or "Turnkey" contract:** The private sector designs and builds infrastructure to meet public sector performance specifications, often for a fixed price, so the risk of cost overruns is transferred to the private sector. (Many do not consider DB's to be within the spectrum of PPPs).

b) **Service Provision (e.g., Specific customer services or operation & maintenance) contract:** A private operator, under contract, operates a publicly-owned asset for a specified term. Ownership of the asset remains with the public entity.

c) **Management contract:** A private entity contracts to manage a Government owned entity and manages the marketing and provision of a service.

d) **Lease and operate contract:** A private operator contracts to lease and assume all management and operation of a government owned facility and associated services, and may invest further in developing the service and provide the service for a fixed term.

e) **Design-Build-Finance-Operate (DBFO):** The private sector designs, finances and constructs a new facility under a long-term lease, and operates the facility during the term

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the case of a concession), and transfers the responsibilities and risks of ownership to the private contractor.

of the lease. The private partner transfers the new facility to the public sector at the end of the lease term.

f) **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. This has been used in telecommunications service contracts.

g) **Buy-Build-Operate (BBO):** Transfer of a public asset to a 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.

h) **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.

i) **Build-Own-Operate & Transfer (BOOT):** The Private Sector builds, owns, operates a facility for a specified period as agreed in the contract and then transfers to the Public.

j) **Operating License:** A private operator receives a license or rights to build and operate a public service, usually for a specified term. This is similar to BBO arrangement. This is often used in telecommunications and ICT projects.

k) **Finance Only:** A private entity, usually a financial services company, funds a project directly or uses various mechanisms such as a long-term lease or bond issue.[24]

## 8. Advantages of Public Private Partnership

The following are some of the benefits of PPP models to government, taxpayers and the private sector:

a) It provides opportunity to improve service delivery by allowing the government and the private sector to do what they do best. Government's core business is to set policy and serve the public. It is better positioned to do that when the private sector takes responsibility for non-core functions such as operating and maintaining infrastructure.

b) By taking advantage of private sector innovation, experience and flexibility, PPP delivers services more cost-effectively than traditional approaches.

c) It helps in increasing investment in public infrastructures like hospitals, schools, roads, etc which have been traditionally funded by the government thereby reducing government's capital costs and overall debt. It also helps to bridge the gap between the need for infrastructure and government's financial capacity.

d) It reduces public sector risk by transferring to the private sector those risks that are better managed by the private sector.

e) PPP delivers projects faster by making use of the private sector's increased flexibility and access to resources.

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24 Obozuwa, above note 5.

f) It improves budget certainty as services are provided at a predictable cost, as set out in PPP contract agreements. Transferring risk to the private sector can reduce the potential for government cost overruns from unforeseen circumstances during project development or service delivery.

g) PPP makes better use of assets as investors are motivated to use facilities fully, and to make the most of commercial opportunities to maximise returns on their investments. This can result in higher levels of service, greater accessibility, and reduced occupancy costs for the public sector.

h) PPP also encourages a "life cycle" approach to planning and budgeting, through the use of long-term contracts. For instance, a company that agrees to operate and maintain an infrastructural facility will have to ensure that the asset remains in good condition throughout the life of the agreement by including maintenance costs in its budget. Unlike, public sector maintenance costs which can be deferred in response to budget pressures, thereby resulting in reduced value of assets over time.

i) PPP provides investors access to secure, long-term investment opportunities with relative certainty and security of a government contract even in a time of global crisis.

**j)** It also helps investors to achieve efficiencies, based on their managerial, technical, financial and innovative capabilities.[25]

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25 Obozuwa, above note 5.

## 9. Legal Frameworks Regulating Public Private Partnership

The legal frameworks that the federal government of Nigeria has put in place for the introduction and successful implementation of the PPP policy are the Infrastructure Concession Regulatory Commission (Establishment, Etc) Act[26] (The ICRC Act) and the Public Procurement Act,[27] 2007. Other laws that may affect PPP policy and its implementation are: the Public Enterprises (Privatisation and Commercialisation) Act,[28] and the Fiscal Responsibility Act.[29]

## 10. Institutional Framework Governing Public Private Partnership in Nigeria

The legal frameworks governing PPP in Nigeria allocate specific roles and responsibilities to various entities of government in order to make sure that there are checks and balances in the system, as well as oversight of the decision making process, from beginning to end. The government also developed the regulatory and monitoring institutions so that the private sector can play a greater role in the provision of infrastructure, whilst ministries and other public authorities will focus on planning and structuring projects.[30] These specific roles and responsibilities of government entities for PPP development and how the various organs work together in the PPP process are referred to as the institutional framework for PPP development.[31]

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26 Cap IA25, Laws of the Federation of Nigeria (LFN), 2010.
27 Cap P38, LFN, 2010.
28 Cap P44, LFN, 2010.
29 Cap F40, LFN, 2010.
30 Obozuwa, above note 5.
31 Infrastructure Concession Regulatory Commission Nigeria Public-Private Partnerships Manual, September, 2012.

The institutional frameworks or regulatory and monitoring institutions are as follows:

## 10.1 The Infrastructure Concession Regulatory Commission (ICRC)

The Infrastructure Concession Regulatory Commission (ICRC) is the major body in the development and implementation of the PPP in the country. It is responsible for developing and issuing guidelines on PPP policies, processes and procedures (including those for concessions), and acts as a national centre of expertise in PPP. It works closely with relevant Ministries, Departments and Agencies (MDAs) to identify potential PPP projects and monitors the effectiveness of the government's policies and processes. It provides independent advice to the Federal Executive Council (FEC) on the development of projects through PPP as well as provides its views to FEC on whether projects submitted for FEC approval meet the requirements of the regulations. It also works closely with States that are developing their own PPP policies to ensure consistency, best practice, and a co-ordinated approach to the private sector supplier market. It maintains PPP project database and also keeps custody of all PPP agreements as required by law.[32]

## 10.2 The PPP Resource Centre

The PPP Resource Centre operates within the ICRC and acts as a central PPP knowledge unit. It consists of personnel with legal, financial, and public administration knowledge in order to provide the expertise for the implementation of PPP projects across different sectors in Nigeria. Its major role is to act as an effective interface between the public and private sectors in relation to the PPP policies and practices in the country. It also plays an important role in managing government equity in projects and ensuring that

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32 *Ibid*.

the investment decisions of the government are made primarily on commercial grounds.[33]

### 10.3 National Planning Commission (NPC)

The National Planning Commission is responsible for the preparation of the federal government's National Development Plan[34], based on the sector plans of the MDAs. It also acts as a centre of expertise providing the tools and methodologies for the economic appraisal of the projects to be included in the National Development Plan. It develops guidance on procedures and economic assumptions for cost-benefit analysis of the projects. It also monitors economic benefits that result from government investment and uses the data to prioritise projects that offer the highest economic or social return.[35]

### 10.4 Ministries, Departments and Agencies (MDA)

Ministries, Departments and Agencies (MDAs) are responsible for managing public infrastructure and services and also for the management of their own resources. They prepare long-term plans for infrastructure investment and maintenance which are incorporated into the government's rolling 15-year National Development Plan prepared by the National Planning Commission. The MDAs in consultation with the ICRC identify where PPP is likely to offer better value for money over other

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33 *Ibid*.

34 The National Development Plan sets out the FGN's 15-year investment strategy covering all forms of procurement that will be financed in whole or in part from the federal budget. The investment strategy matches infrastructure needs against projected financial resources for all sectors, based on the Medium Term Sector Strategies prepared by each ministry. The investment strategy also identifies those infrastructure projects that will be financed by borrowing, as well as those projects that will be financed by current revenues.

35 Above note 31.

forms of public procurement and the same is factored into the Investment Strategy of the relevant MDA. They are guided by the National Planning Commission in consultation with ICRC for the criteria to be adopted for measurement of the value for money, and assessment and pricing of the associated risks.[36]

**10.5 Federal Ministry of Finance (MoF)**

The Ministry of Finance (MoF) plays an important role in public financial management of PPP projects and in evaluating and managing fiscal risks that may result from PPP agreements. The MoF ensures that the forecasted costs for the federal government including any financial support that may be required to make a project viable are affordable over the full life of the contract. It also reviews the costs and contingent liabilities together with the relevant MDA, as the project design and risk valuations are refined during the project preparation and procurement phases.[37]

**10.6 Debt Management Office (DMO)**

The operation of the Debt Management Office (DMO) is regulated by the Debt Management Office Act, 2003. It plays an important role in monitoring liabilities created by federal government's PPP projects and those State projects that require Federal guarantees. It also ensures that the contingent liabilities created by PPP projects are manageable within the federal government's economic and fiscal forecasts. It equally advises the FEC on the approval of individual projects and is also consulted in advance before an MDA requests any approvals for the involvement of any multilateral or regional agencies to provide guarantees or other financial instruments for funding a PPP project. It also plays an important role in supervising the financial and capital markets.[38]

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36 *Ibid*.

37 *Ibid*.

38 *Ibid*.

### 10.7 Bureau of Public Procurement (BPP):-

The Bureau of Public Procurement (BPP) plays an important role in the procurement of public works and services. It uses various techniques such as benchmarking to ensure that the prices paid by the federal government for goods and services are fair and reasonable.[39]

### 10.8 Bureau of Public Enterprises (BPE)

The BPE[40] provides technical support to PPP Project Teams as result of the lessons learnt, skills and capacity developed while privatising government assets over the years, along with any transaction advisers that may be procured by ICRC.[41]

## 11. Financial Framework Guiding Private Public Partnership

The Government had continued to strengthen its Medium Term Expenditure Framework and the Medium Term Sector Strategies of its Ministries, Departments and Agencies to:

a. Develop the capacity of public authorities to carry out economic appraisal of projects. It issues guidance to all public authorities and provide support and advice on discount rates, indexation and inflation, techniques for measuring costs and benefits, and the evaluation of risks;

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39 *Ibid*. It must be pointed out that the federal government has set up a Procurement Department in each MDA to ensure due process is observed in all procurement and the procurement process takes place as per the schedule. A member of the MDA's Procurement Department is included on the Project Steering Committee set up within the MDA to manage each project to ensure effective implementation of the project and delivery of the services.

40 The Bureau of Public Enterprises (BPE) has played an important role in privatisation of many State owned assets since 1999 by using concessions as a means of commercialisation of existing government owned enterprises.

41 Infrastructure Concession Regulatory Commission Nigeria Public-Private Partnerships Manual, September, 2012.

b. Provide guidance to MDAs on the development of a national 15-year investment strategy which will provide a planning tool for the development of infrastructure, whether financed from public funds or through PPP contracts;

c. Allocate responsibility for monitoring any contingent liabilities and risks that arise from PPP contracts, and associated agreements such as Power Purchase Agreements, and any sub-sovereign or other guarantees, partial risk insurance, subsidies or exchange rate volatility;

d. Ensure that its policies on user charges and tariff subsidies are sustainable and meet the needs of both investors and users;

e. Ensure that the regulation of Nigeria's financial and capital markets provides transparency, stability and liquidity for investors in PPP projects and permits the development of new sources of finance, such as specialised funds, as well as secondary markets.

## 12. Infrastructural Development in Nigerian Tertiary Institutions through Public Private Partnership

There is no doubt that most government owned tertiary institutions are in dire need of infrastructural development especially accommodation for its students, as the existing facilities are grossly in adequate resulting in over-crowding and a large number of students seeking accommodation outside the Campus every session. Due to paucity of funds, the management of these institutions are unable to carry additional burden of building hostels for students and therefore may need other avenues of providing hostels for students. The Public Private Partnership policy presents a veritable option in solving the students hostels needs as building of hostels fall within the infrastructure that can be developed through PPP. Section 1 of the Infrastructure Concession Regulatory Commission Act, 2005 (ICRC Act) provides as follows –

> As from the commencement of this Act, any Federal Government Ministry, Agency, Corporation or body involved in the financing, construction, operation or maintenance of infrastructure, by whatever name called, may enter into a contract with or grant concession to any duly pre-qualified project proponent in the private sector for the financing, construction, operation or maintenance of any infrastructure that is financially viable or any development facility of the Federal Government in accordance with the provisions of this Act. This Act applies to investment and development projects relating to any infrastructure of any Federal Government ministry, agency, corporation or body.

By the above provisions, Nigerian tertiary institutions can, through its supervising Ministry or Commission enter into Public Private Partnership arrangement with credible and qualified private investors for the provision of students' hostels. Many institutions such as the Federal University of Technology, Owerri, Federal University of Technology, Akure, Federal University of Technology, Minna and so many other institutions have entered into Public Private Partnership arrangements with various investors. Unfortunately, the PPP arrangement on the provision of students' hostels/accommodation is not working in the tertiary institutions including the above-mentioned Universities. Enquiries carried out showed lack of interest by private investors in the Build, Operate and Transfer policy of some of the institutions while a few who won such concessions are unable to perform due to lack of funds.

The major reason why investors are not interested in investing in students' hostels through PPP is that the process provided in the ICRC Act and the Public Procurement Act are both laborious and discouraging. Sections 2-5 of the ICRC Act outlined the processes that must be followed for any such arrangement to be valid. The Sections are reproduced below. Section 2 provides that:

> Every Federal Government Ministry, Agency, Corporation or body shall prioritise its infrastructure projects and such priority projects may be qualified for concession under this Act. The projects mentioned in subsection (1) of this section shall be submitted to the Federal Executive Council for approval on the recommendation of the relevant sector, ministry or agency prior to entering into any contract under Section 1 of this Act. In entering into any contract or granting any concession under section 1 of this Act, the Federal Government Ministry, Agency, Corporation or body shall ensure that the project proponent possesses the financial capacity, relevant expertise and experience in undertaking such infrastructure development or maintenance. The Commission established under section 14 of this Act shall publish, in the Federal Gazette and at least three national newspapers having wide circulation in Nigeria, and such other means of circulation, the list of projects eligible for contract for the financing, construction, operation or maintenance of any infrastructure under this Act.

Section 3 of the ICRC Act provides that:

> No Federal Government Ministry, Agency, Corporation or body shall give any guarantee, letter of comfort or undertaking in respect of any concession agreement

> made pursuant to this Act, except with the approval of the Federal Executive Council.

While section 4 provides thus:

> Upon an approval for any project or contract for financing, construction, operation or maintenance of any infrastructure or development project under this Act, the Federal Government Ministry, Agency, Corporation or body concerned shall, by publication in at least three national newspapers having wide circulation in Nigeria, and such other means of circulation, invite open competitive public bid for such project or contract approved under this Act. With respect to projects under this Act, the concession contract shall be awarded to the bidder who, having satisfied the pre-qualification criteria, submits the most technically and economically comprehensive bid. Where a consortium participates in a bid under this section, there shall be proof by the consortium that all its members shall be bound jointly and severally under the contract and the withdrawal of any member of the consortium before or during the implementation of the project may be a ground for review or possible cancellation of the contract.

Finally, section 5 provides that:

> Notwithstanding Section 4 of this Act, and if after advertisement in accordance with section 4 of this Act –
> (a) only one contractor or project proponent applied or submits a bid or proposal, or
> (b) only one contractor or project proponent meet the pre-qualification requirements, the Ministry, Agency, Corporation, body may undertake direct negotiation without competitive bidding for any

contract to be entered into pursuant to section 1 of this Act.

The Public Procurement Act also stipulates strict procedures that must be followed in projects involving government Ministries, Corporation, Agencies and bodies. Any PPP contract or concession that did not follow the procedures laid down in the ICRC Act and the Public Procurement Act is void.

A careful study of the relevant provisions of the two Acts, shows lack of consideration for the private investor who is expected to source his funds from the money market at a cut-throat interest rate and use part of the money to pay for a very expensive and time wasting so-called due process leading to a contract or concession. He has to keep the money borrowed idle for the time it will take to obtain approval and contend with all the impediments in the process. The strict adherence to the provisions of these Acts needless to say, is a disservice to the purpose which the Public Private Partnership seeks to achieve.

It must be mentioned also that some of the basic documents like the priced Bills of Quantities/Bill of Engineering Measurements, provision of complete designs and verifiable evidence of funding/financial capacity including bank reference (Bank statement or letter from Bank confirming that they have such amount in their account) which are required during the bidding stage of PPP projects especially for provision of students' hostels are cumbersome and cost a lot of money.

Some other documents required to be submitted during the bidding stage are; **e**vidence of registration with the Corporate Affairs Commission, evidence of registration with the particular institution, comprehensive company profile including registered address, functional contact e-mail address, GSM phone number(s), and detailed resume of relevant staff, evidence of execution of similar projects, providing details including the names of clients, contract sums of the projects, copies of letters of award;

completion certificates, etc, current tax clearance certificate, Company's audited accounts, VAT registration Certificate and evidence of remittance.

The question here is: would the private investor who would always want to make the best use of his time and resources be able to painstakingly follow the processes laid down in the two operative Acts? What are the incentives that would attract investors to invest in student accommodation in tertiary institutions?

To answer these questions using a classical example, reference would be made to a particular PPP contract for building of a hostel in one of the Universities of Technology in Nigeria sighted by this writer. The PPP contract was irrevocable and was awarded in 2008. The institution used the "Lowest Bidder" policy contained in the Public Procurement Act to concession the hostel project and the period for Return of Investment (ROI) was fixed at twenty-one (21) years. When the bill of quantity was checked by other investors that the company that won the PPP contract wanted to partner with, it was not encouraging to the investors as the rates were very low and could not absorb the high cost of funding. The company was advised to go back to the University to re-negotiate and which was done but the increase was still inadequate to an average investor.

The second problem is that Banks generally are not prepared to fund such a project partly because of un-viability as the accommodation fees to be charged by the concessionaire as agreed with the authorities are usually so low that the Return on Investment is unattractive apart from the length of time it will take the investor to recover his investment fund which in this case was put at twenty-one (21) years. The company had so far brought two other investors to partner with, who at different times abandoned the project for lack of funding and the University cannot realise its aspiration of having a hostel built under a PPP arrangement.

The same fate will likely befall any investor who wishes to partner with tertiary institutions who is patient enough to go through the rigours of the so-called due process stipulated in the Infrastructure Concession Regulatory Act and the Public Procurement Act. This is so, unless steps are taken to treat student hostel projects as "special projects", excluded from competitive bidding with the attendant evil of "Lowest Bidder" and free from the processes stipulated in the two Acts. This will allow the contracting parties to freely negotiate project sum and agree on appropriate accommodation fees that would allow a fair return on Investment and other incentives that would encourage private participation. It is unfair to subject an investor who is investing his hard earned money to so much rigours and evil of the "Lowest Bidder!"

## 13. Challenges of Public Private Partnership Policy

Project financing is a critical area and major challenge in PPP implementation. As mentioned earlier, it is paucity of funds that prompted the Public Private Partnership initiative in the first place as an option for infrastructural development. In most cases, the funding of PPP projects is the responsibility of the private sector, whether the financing cost is relatively small or high.[42] Where a contract is capital intensive, project financing will often require the investor to involve third parties such as banks to provide most of the funding.[43] The government usually contributes in kind through transfer of existing assets or by providing revenue subsidies, including tax breaks or by providing guaranteed annual revenues for a fixed period and in few cases by providing a capital subsidy in form of a one-time grant, to make it more attractive to the private investors.[44]

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42 Obozuwa, above note 5 at p. 4.

43 The Federal Government of Nigeria National Policy on Public Private Partnership and its Supplementary Notes, above note 1 at p. 15.

44 Obozuwa, above note 5.

Many businesspersons rush into projects without first getting their finances right. They want to first win projects and then start looking for funds. When they are unable to secure funds the projects suffer. This is what is happening in most projects across the country presently. The banks have not been supportive of businesspersons, as they should thereby causing much hardship on businesspersons and hindering the success of PPP initiative.

Other challenges hampering the successful implementation of PPP in Nigerian tertiary institutions and the country at large include: the cumbersome process and requirements for bidding for PPP contracts which had been mentioned earlier. Another is the length of time it would take to recoup investment funds and break even. Also lack of skill and diligence on the part of private investors who had won some of these PPP contracts as alleged in the Bi-courtney Consortium concessionaires of the Lagos-Ibadan expressway case epitomises another impediment. Finally, the lackadaisical manner with which government officials approach PPP contracts is of very grave concern as it exposes investors to financial risk due to avoidable delay. All these are some of the challenges that are very discouraging to investors and hamper the successful implementation of PPP initiatives in the country.

## 14. Recommendations

The following recommendations are made to ensure the success of the PPP policy as a veritable option for infrastructural development in tertiary institutions in Nigeria.

There is need to amend some existing legislations like the ICRC Act, the Privatisation and Commercialisation Act and the Fiscal Responsibility Act, in order to make PPP option attractive to investors to invest in infrastructures in Nigerian tertiary institutions especially by removing the lowest bidder provision in some of the Acts.

The government should come out with a policy that will help to reduce the problems of securing funds by investors by either providing a dedicated financial institution with liberal lending policy or facilitating co-operation between investors and banks by providing a platform for them to meet and work out modalities on how best to assist in funding PPP projects especially in tertiary institutions. The issue of collaterals being demanded by banks especially on infrastructural development funding should be closely looked into by all the parties as this requirement has killed so many private initiatives thereby making it difficult, if not impossible to secure funding for PPP projects.

The government should provide for stiff punishment for banks that refuse to co-operate and assist investors in providing funding for infrastructural development in Nigerian tertiary institutions through PPP.

The government needs to reduce the regulatory and monitoring institutions as the number is unwieldy and will be counter-productive as there will be conflict and duplication of roles.

Government officials should change their laissez-faire attitude and become more serious minded for the success of the PPP initiatives.

Finally, the management of tertiary institutions and other institutions in Nigeria must ensure that only credible firms with verifiable evidence of funds are considered for partnership.

## 15. Conclusion

Public Private Partnership has succeeded in other climes and could succeed in Nigeria if government and other collaborating institutions are sincere and committed to the principles of partnership. No effort should be spared in dismantling all impediments in the way of PPP and banks should actively participate in infrastructural development by dedicating part of the scandalous profit they make annually to infrastructural development. That could generate additional goodwill for them. The Central Bank has a duty here towards ensuring that commercial banks not only reduce their interest rates on infrastructural investment and conditions for granting loans but also actively participate in the provision of infrastructure in the country. Some banks are already doing so, more need to be done and those who are yet to do so should immediately participate in the process of infrastructural development in Nigeria for the good of all.