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ENABLING MUNICIPAL ENERGY PROCUREMENT FROM IPPs BOOKLET

Project Preparation, Procurement and Power Purchase Agreements

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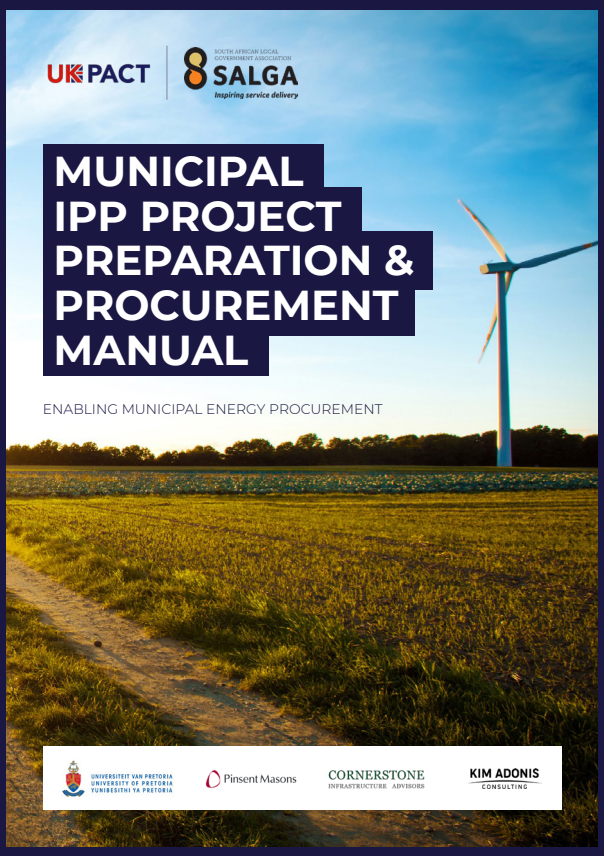
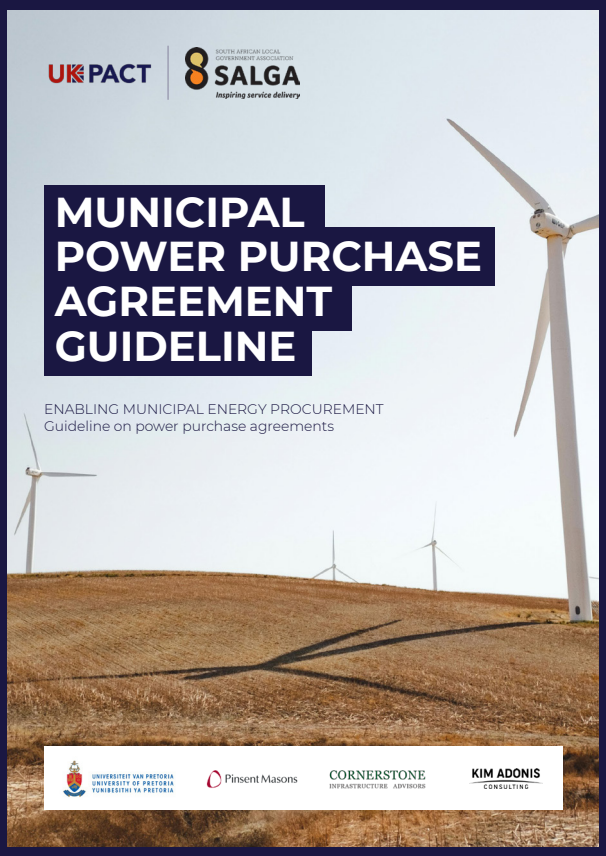
OVERVIEW OF THE BOOKLET

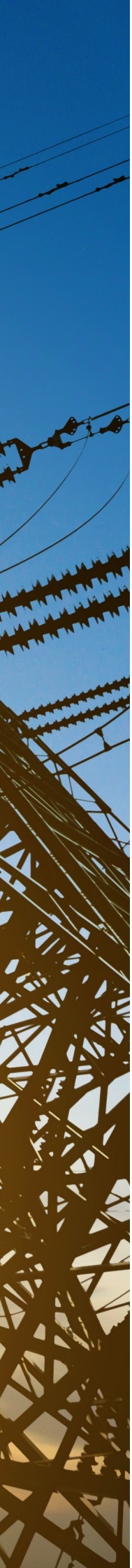
This booklet provides a concise guide to Municipal Independent Power Producer (IPP) Project Preparation and Procurement, equipping municipalities with the necessary technical, legal, and regulatory insights to procure energy independently. It is based on the **Municipal IPP Project Preparation and Procurement Manual** and serves as a resource for navigating the IPP procurement process, conducting feasibility studies, ensuring regulatory compliance, and managing contracts.

Additionally, the booklet introduces the **Power Purchase Agreement (PPA) Guideline**, which was developed to assist municipalities in contracting for the purchase of electricity generated from IPPs. This guideline offers a clear framework for understanding, negotiating, and managing PPAs. It outlines the essential components, processes, and best practices, ensuring municipalities can effectively engage in PPAs to meet their energy and sustainability goals. Key areas include the contractual framework, financing considerations, tariff structures, purchase obligations, credit support, risk allocation, and provisions related to default and termination.





MUNICIPAL IPP PROJECT PREPARATION & PROCUREMENT MANUAL



THE MUNICIPAL IPP PROJECT CYCLE

Module 1: Municipal IPP Project Preparation Phase sets out a framework of initial processes or preparatory steps that a municipality should engage in before it determines to procure electricity through a municipal IPP.

Module 2: Municipal IPP Project Procurement Phase provides guidance on the Municipal IPP Project Procurement Phase.

Module 3: Municipal IPP Implementation Phase details the various activities that the IPP and the municipality need to undertake jointly upon reaching Commercial Close to ensure the smooth and efficient implementation of the PPA.

1 MODULE 1
Municipal IPP Project Preparation Phase

STAGE 1
Planning and Municipal Readiness Assessment

STAGE 2
Feasibility Study

STAGE 3
Feasibility Study Approvals

2 MODULE 2
Municipal IPP Project Procurement Phase

STAGE 1
Procurement Preparation Activities

STAGE 2
Procurement Design Concepts

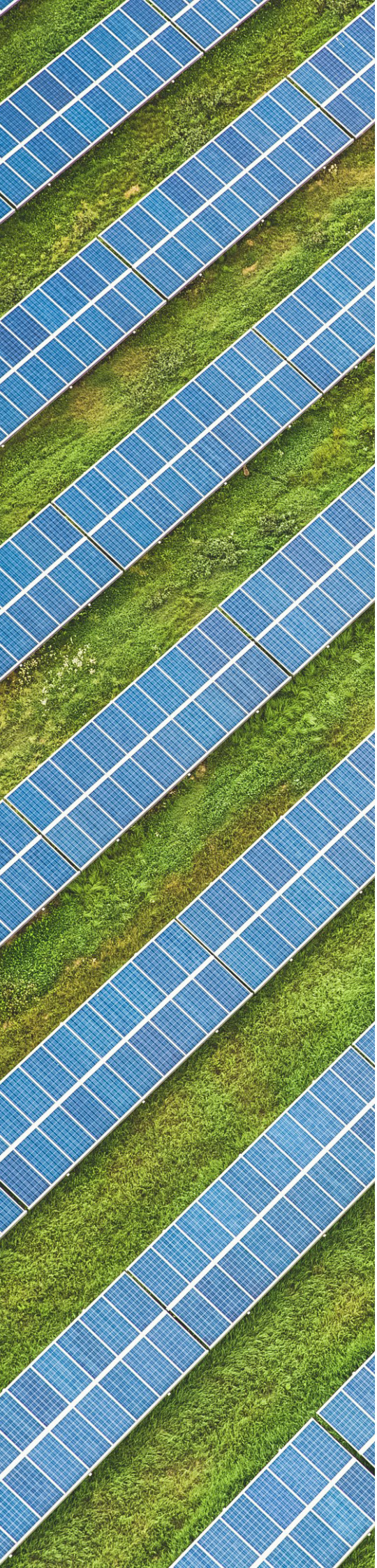
STAGE 3
Preparation of Bid Documentation

STAGE 4
Procurement Process

3 MODULE 3
Municipal IPP Implementation Phase

STAGE 1
PPA Contract Management Plan

STAGE 2
Periodic Review and Amendment of PPA



MODULE 1.

PROJECT PREPARATION PHASE

STAGE 1:

Planning and Municipal Readiness Assessment

- Initial Preparatory Activities
- Municipal Readiness Assessment
- Municipal Readiness Report and Decision to Proceed to Feasibility Study
- Feasibility Study Planning

STAGE 2:

Feasibility Study

- Project Inception and Needs Assessment
- Stakeholder Engagement Plan
- Technical Solution Options Analysis
- Economic Viability and Development Considerations
- Legal and Regulatory Assessment
- Procurement Plan
- Feasibility Study Report

STAGE 3:

Feasibility Study Approvals

- Municipal Council Consent to Proceed to Procurement Phase
- Preliminary Stakeholder Engagement

OUTLINE OF THE MUNICIPAL PROJECT CYCLE

Indicative Timeline for Municipal IPP Project Phases

Module 1

MUNICIPAL IPP PROJECT PREPARATION PHASE

Planning and Municipal Readiness Assessment	Feasibility Study	Feasibility Study Approvals
6 - 10 months		

Module 2

MUNICIPAL IPP PROJECT PROCUREMENT PHASE UP TO BID SUBMISSION

Period from Procurement Preparation to Bid Submission

Procurement Preparation Activities and Procurement Design Concepts	Preparation of Bid Documentation and Issue of RFP	Time for Bidder to Prepare and Submit Bid
1 - 2 months	3 - 6 months	4 - 6 months

PERIOD FROM BID SUBMISSION TO COMMERCIAL AND FINANCIAL CLOSE

Bid Evaluation and Appointment of Preferred Bidder(s)	Pre-Commercial Close Activities	Commercial and Financial Close
2 - 3 months	3 - 6 months	

Module 3

CONSTRUCTION PERIOD UP TO COMMERCIAL OPERATIONS DATE

IPP Construction Period	Commercial Operations Date (COD)
12 - 24 months	

OPERATING PERIOD

PPA Term - Operating Period
15 - 25 years

Total period from first identifying strategy to first electrons flowing
31 - 57 months

1 MODULE 1: STAGE 1
Planning and Municipal Readiness Assessment

INITIAL PREPARATORY ACTIVITIES

A preliminary question is how a municipal IPP project gets identified. This inquiry usually originates from a more general strategic inquiry by the municipality into its energy resilience, whether in terms of improving security of supply or cost of supply or both.

Once a municipality determines the strategic need to improve or better its energy resilience as part of its deliberations, it should undertake the following activities to reflect that determination:

Alignment with municipality's Integrated Development Plan (IDP)
Where a municipality has identified strategic objectives to improve its electricity security and resilience it should ensure its IDP is reflective of this (Amending a Municipality's IDP)

Budgeting for specialist studies
Inclusion in annual budget for external specialists

Role of the Municipal Manager as Accounting Officer
Municipal Manager or delegate to oversee the municipal IPP project cycle

MUNICIPAL READINESS ASSESSMENT

Where a municipality has satisfied itself that the above initial preparatory activities have been satisfied, the municipality's supply chain management unit or technical planning department (whichever is authorised as delegated by the municipal manager) must prepare or procure the preparation of a Municipal Readiness Assessment. There may be a need to appoint specialists, particularly a technical expert to adequately address the issues forming part of the readiness assessment.

The areas that need to be looked at in this stage are:

- Electricity Demand Status Quo Assessment
- Grid Assessment
- Energy Resource Availability Assessment
- Financial Impact Assessment
- Municipal Financial Standing Assessment
- Staff Resource Capacity Review
- Socio-Economic Context Assessment

MUNICIPAL READINESS REPORT AND DECISION TO PROCEED TO FEASIBILITY STUDY

The outcome of the Municipal Readiness Assessment is to provide a municipality with a preliminary overview of its ability to procure electricity from an IPP and a basis on which to engage in a detailed Feasibility Study.

The assessment is a simple test of comply / partially comply / doesn't comply with the measured assessment criterion – there is no category scoring or weighting applied. Rather the assessment is designed to highlight areas that need to be improved prior to going out on procurement if the municipality is to successfully onboard an IPP.

Refer to the Municipal Readiness Assessment Dashboard in the Manual or below.

Category of Assessment	Measured Assessment Criterion	Meets / Partially Meets / Doesn't Meet
Technical Demand Assessment	• The electricity demand status-quo assessment of the municipality demonstrates sufficient electricity demand to justify the appointment of a utility scale IPP.	
Technical Grid Assessment	• The municipality's grid schematics, history of maintenance data, electrical infrastructure upgrades, historical power quality, and estimated life of electrical assets would support the connection of an IPP. • The municipality's load profiles and historic NMD across nodes where the municipal network connects to Eskom grid would support an IPP connection. • An individual node demand or aggregated demand exceeds 5MVA-10MVA.	
Preliminary Energy Resource Availability Assessment	• Based on a high-level energy resource assessment, there are energy technology options for an IPP to export new generation capacity into the grid.	
Cost of Supply of Technology Options	• Based on financial benchmarks, the municipality is able to assess the estimated cost of supply of the specific technical options and the potential impact this may have on the municipality's blended cost of supply to users.	
Municipality's Creditworthiness	• Does the municipality have a clean audit opinion issued by the Auditor General? • Does the municipality have a good history of collecting their outstanding debt on municipal accounts and a good payment record in respect of their Eskom accounts? • Does the municipality meet the key ratios outlined in National Treasury MFMA Circular No. 71 (Financial Ratios and Norms)?	
Financial Resources	• The municipality has sufficient financial resources and budget allocated for paying transaction advisers appointed for the Feasibility Study and the Procurement Phase.	
Staffing Resources	• The municipality can identify a suitable project manager to lead the municipality through the Municipal IPP Project process. • The municipality has the necessary internal resources (suitable secondees) to support the full Municipal IPP Project process.	
Economic Development Goals and Alignment with IDP Outcomes	• The IPP project broadly meets the municipality's economic development goals as articulated in its IDP.	

FEASIBILITY STUDY PLANNING

To manage delays in completing the Feasibility Study for an IPP project as well as ensure an accurate outcome that provides the required benchmark against which the municipality will select and appoint an IPP, a municipality needs to undertake a number of preliminary activities as outlined below.

Appointment of IPP Project Manager

The project manager of an IPP project will be responsible for:

- Planning, coordinating and actively managing the different phases of the Project;
- Regularly reporting to the senior management in the municipality;
- Working closely with the supply chain management unit;
- Presenting reports and other outcomes of the progress of the project through the various stages;
- Liaising with key government stakeholders;
- Directing the work of the transaction advisors and managing their contract; and
- Application for Project Preparation Funding.

Application for Project Preparation Funding

- If no or limited municipal budget for a Transaction Advisor, municipality to apply for funding from available project preparation facilities.
- Examples of Project Preparation Facilities:
  - National Treasury Project Development Facility (PDF); and
  - Development Funding Institution Project Preparation funding facilities

Appointment of Transaction Advisors

- Multi-disciplinary team of experts to assist municipality through the various phases of the Municipal IPP Project Cycle.
- Transaction advisor's key tasks include:
  - Undertaking a feasibility study;
  - Support with internal and external stakeholders;
  - Developing procurement documentation including the RFP and the PPA;
  - Developing evaluation frameworks and templates;
  - Leading negotiations with key parties; and
  - Ensuring that commercial and financial close is reached.

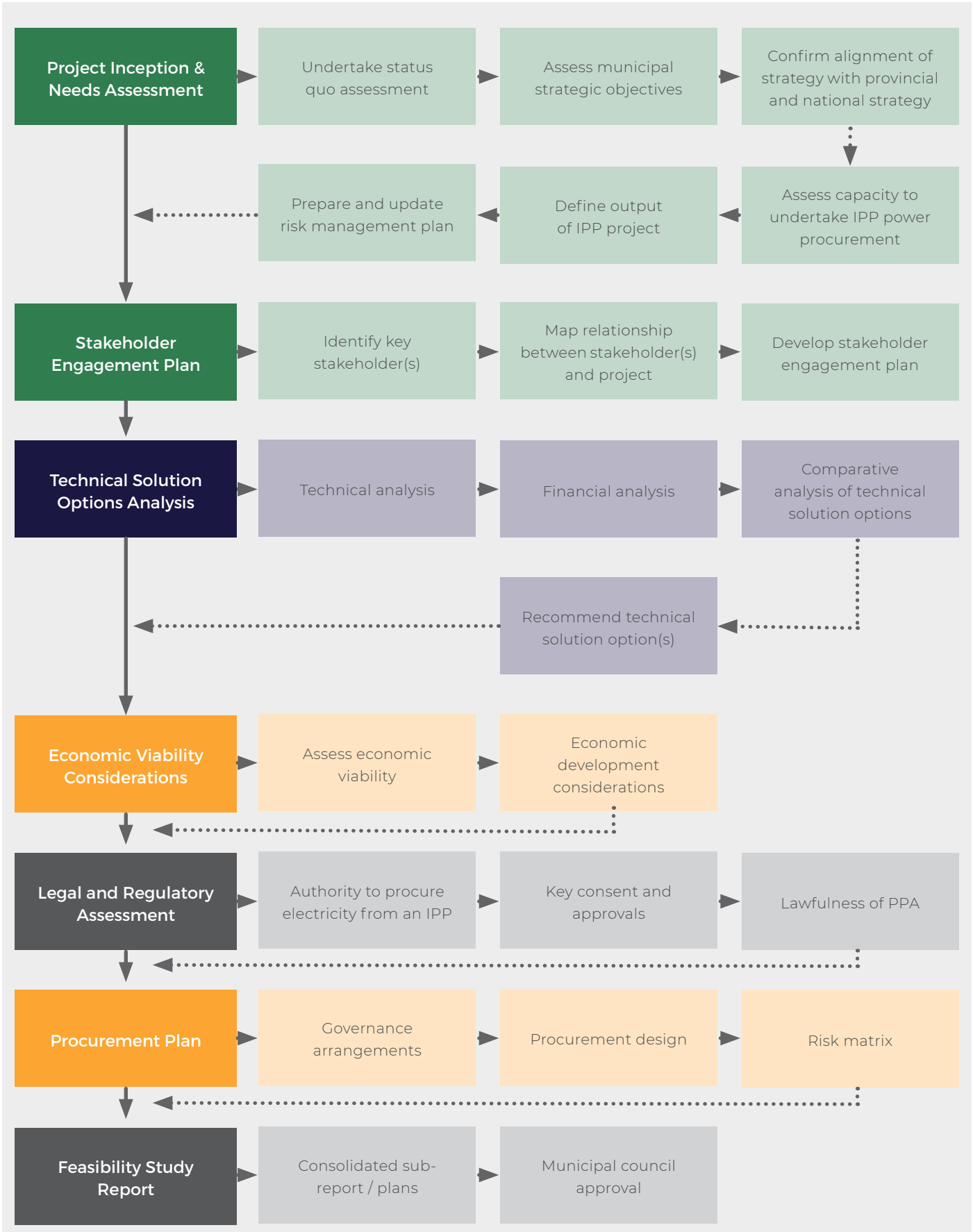
Preparation of Data Room

Typical information to include in the data room during the Feasibility Study:

- Municipal Readiness Assessment Report;
- Any relevant technical studies undertaken independently by the municipality or as part of the Municipal Readiness Assessment;
- Relevant parts / excerpts of the Municipality's IDP and Municipality's SCM Policy;
- Historical hourly load or supply data for each supplier at each supply point;
- A spatial map of the municipality's electricity distribution network;
- Invoices indicating the current cost of supply for each supplier for last twelve months;
- Tariff structure applicable to the municipality;
- Latest municipal annual financial statements;
- Municipality organogram; and
- Electricity Supply Agreements in place with all suppliers.

1 MODULE 1: STAGE 2
Feasibility Study

Stages in an IPP Feasibility Study



PROJECT INCEPTION AND NEEDS ASSESSMENT

The introductory section of the Feasibility Study requires a clear statement of the strategic intent of the municipality and how the proposed IPP project gives effect to the municipality's strategy in its IDP, particularly in respect of energy resilience.

Steps in Project Inception and Needs Assessment

Step 1

Undertake a status quo assessment

This stage should begin with undertaking a status quo assessment which will lay the groundwork for a successful Feasibility Study by providing essential context and allow the municipality to identify potential gaps, issues, and opportunities.

Step 2

Confirmation that proposed IPP Project aligns with the municipality's strategic objectives in its IDP

A municipality will have developed strategic objectives and intent in respect of meeting such objectives through an IPP model at the outset of the Municipal IPP Project Cycle through its IDP.

Step 3

Confirm alignment of municipal objectives with provincial strategies and government policies

Provincial and national government are key stakeholders and the proposed municipal IPP project's success will be enhanced by gaining their support.

Step 4

Assess the socio-economic characteristics and challenges within the municipality

This assessment will provide context regarding the existing socio-economic challenges.

Step 5

Assess municipal capacity and commitment to undertake the procurement from IPPs

The municipality should, if it has not already done so as part of the Feasibility Study Planning stage, assign responsibility to the appropriate directorate or department within the municipality to take ownership and drive the proposed IPP project together with a project manager.

Step 6

Define and specify the outputs of the proposed IPP project

This is one of the most important steps of the Project Inception and Needs Assessment as the information gathered and decisions made to inform the output specifications in the Feasibility Study will impact every subsequent step of the project.

Step 7

Prepare a Risk Management Plan for the Preparation and Procurement Phases of the IPP project

Undertake a preliminary identification of key project risks which are to be incorporated into a risk management plan or project risk register.

STAKEHOLDER ENGAGEMENT PLAN

As part of the Feasibility Study, a municipality must develop a comprehensive stakeholder engagement plan, the purpose of which is to identify key stakeholders and set out an engagement strategy on how to consult with identified stakeholders at different Phases of the Municipal IPP Project Cycle.

Certain engagements are mandatory in that they are statutorily prescribed, whereas other engagements are optional, but recommended to ensure that the views of all affected parties are considered.

Step 1 Identification of Key Stakeholders.

Step 2 Describe the nature of each relationship and the project's impact on each stakeholder and also the stakeholders impact and influence over the project

Step 3 Develop a consultation or communication plan.

TECHNICAL SOLUTION OPTIONS ANALYSIS - TECHNICAL ANALYSIS

The technical analysis helps in revisiting the demand patterns, load bearing points on the grid, technology resource availability, and sizing the capacity of total (and individual) electrical capacity of projects.

Steps in the Technical Analysis

Step 1

Assess current supply demand patterns

This step is informed by the assessment conducted during the municipal readiness assessment, and should be revisited if:

- IDP energy strategy has changed;
- New industrial or commercial consumer with high load demands has been connected; and
- A new load supply in the form of IPP, DG, or via wheeling has been connected.

Step 2

Load and grid profile analysis

Load and grid profile analysis at granular level is needed to assess new load bearing capability of the municipal distribution grid.

Step 3

Identification of technologies

The assessment of technical options should be guided by the municipal IDP based on which the Municipal Readiness Assessment has already been conducted.

Step 4

Determine total capacity to be procured via IPP model

Based on information from previous steps, the total capacity to be procured can be determined. Important factors that need to be considered during this step include capacity factor and apparent power.

Step 5

Determine individual cap on single project

A cap on a single project is based on the municipality's need to diversify and distribute IPP plants across the geography of the municipal area.

Step 6

Conduct load flow analysis based on single project caps

The purpose of the load flow analysis of each project is to simulate the behaviour of the grid under varying demand conditions.

- Analyse hourly load profiles across full year with and without load shedding; and
- Analyse load profiles with new plant (technology & size) in Step 5, both when connected to the grid in conjunction with Eskom supply and during load-shedding.

TECHNICAL SOLUTION OPTIONS ANALYSIS - FINANCIAL ANALYSIS

The financial analysis is an important part of the feasibility study as it enables the municipality to determine the potential financial impact of the proposed IPP project. The financial analysis should enable the municipality to assess whether the proposed IPP project will be affordable, both from the municipality's perspective as well as end user perspectives and offer value for money.

Steps in the Financial Analysis

Step 1

Analyse the municipality's electricity revenue and cost recovery

This analysis will assist in highlighting any risks that may have influence over the proposed IPP project gaps, issues, and opportunities.

Step 2

Analyse the municipality's cost of supply

This forms the comparative basis against which any value for money and affordability assessment will be undertaken.

Step 3

Determine the expected cost of supply for each of the potential technical solution options identified

Provincial and national government are key stakeholders and the proposed municipal IPP project's success will be enhanced by gaining their support.

Step 4

Determine the blended cost of supply

Once Steps 2 and 3 have been completed, the blended cost of supply should be determined. This will be determined on the assumption that the proposed IPP project will either displace or add to the electricity being purchased by the municipality.

Step 5

Determine the nominal and NPV cashflow impacts for each of the potential technical solution options identified

It is recommended that a further analysis be undertaken to evaluate the projected cashflow impact of the proposed municipal IPP project over the projected term of the PPA.

Step 6

Assess the affordability of the technical solution options

Affordability should consider whether the Project will increase tariffs to end users and the affordability thereof.

Step 7

Assess the municipality's financial capacity to enter into a long term PPA

The municipality's credit worthiness forms the cornerstone of the PPA and will determine whether alternative credit enhancements need to be considered.

Step 8

Assessment of the impact of the proposed municipal IPP project on the municipality's financial statements

Step 9

Consideration of NERSA approval of changes in cost of supply

TECHNICAL SOLUTION OPTIONS ANALYSIS - ECONOMIC DEVELOPMENT

The introductory section of the Feasibility Study requires a clear statement of the strategic intent of the municipality and how the proposed IPP project gives effect to the municipality's strategy in its IDP, particularly in respect of energy resilience.

During the assessment of the technical solution options, the primary economic development considerations that should be considered include:

- Cost –competitiveness of different technical solution options as this will have an impact on affordability for electricity consumers (households and businesses);
- Ability to procure goods and services locally, therefore optimising local content;
- Ability to create jobs in the local economy; and
- Ability to procure from B-BBEE entities and small and medium-sized entities.

TECHNICAL SOLUTION OPTIONS ANALYSIS - COMPARATIVE ANALYSIS OF TECHNICAL SOLUTION OPTIONS

- It is likely that more than one technology solution option may need to be assessed based on each option's advantages.
- Alternatively, it is also likely that a combination of technology solution options (with varying capacities) may need to be considered to balance the strategic objectives.
- Multi-criteria Decision Making (MCDM) is a preferred tool and can be: qualitative; semi-qualitative; or quantitative.
- The detail and rigour of the MCDM is based on the preference of the municipality.

Example of a Qualitative MCDM

Strategic Objective	Technology A	Technology B	Technology C
Technical Criteria			
A. Resource Availablity **B. Power Reliability** **C. Reduction in GHG**	Assessment per technology to be undertaken		
Financial Criteria			
A. Cost of Supply **B. Cashflow Impact** **C. Other**	Assessment per technology to be undertaken		
Economic Criteria			
A. Job Creation **B. Energy Security**	Assessment per technology to be undertaken		

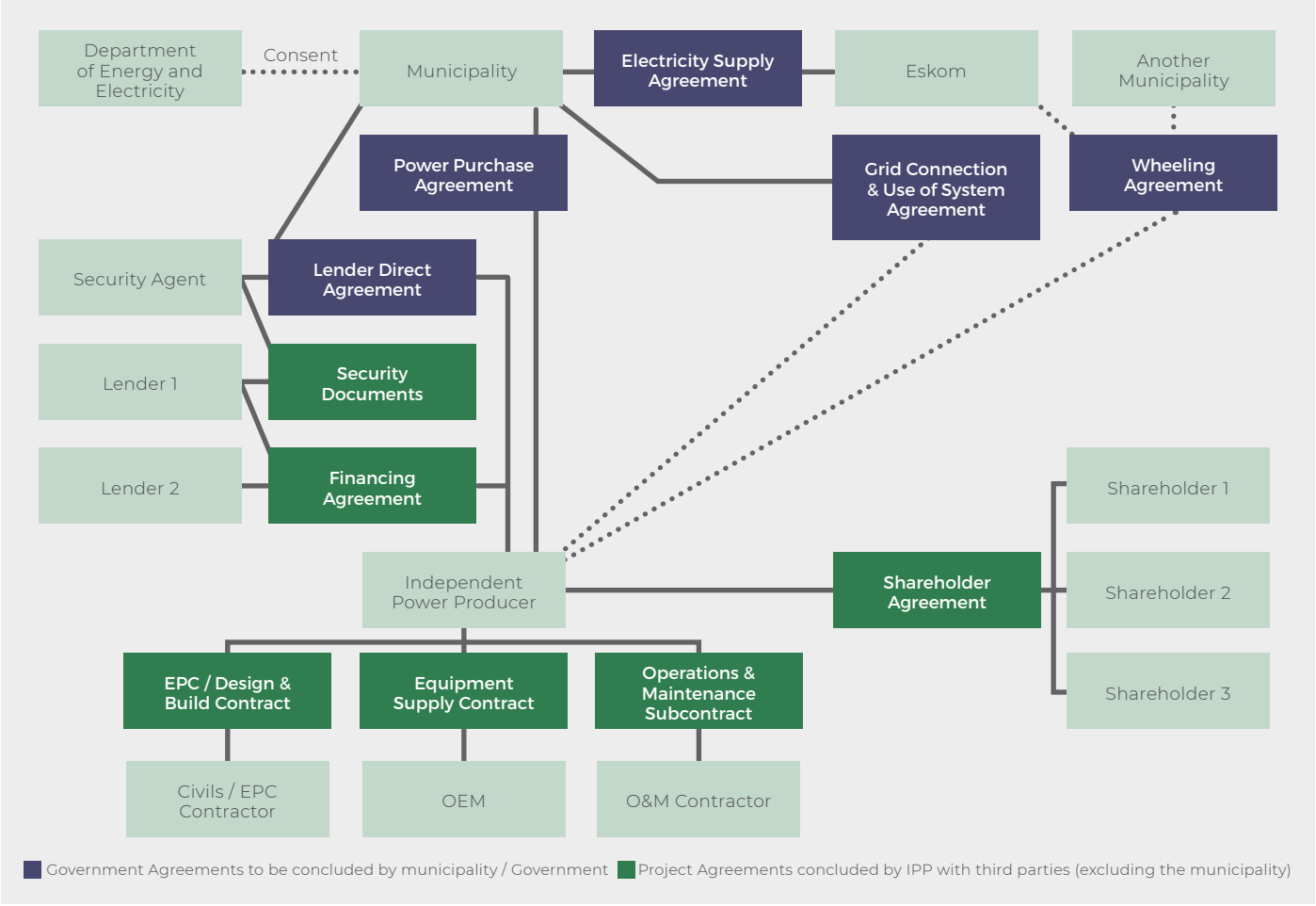
LEGAL AND REGULATORY ASSESSMENT

Scope of Legal and Regulatory Issues

The issues to be considered as part of the legal and regulatory assessment for an IPP project broadly speaking address risks related to the lawfulness of the IPP procurement process, compliance with statutory approvals and consents and the enforceability and validity of the PPA.

Typical IPP Contracting Structure

To understand how regulatory compliance and contractual enforceability are to be reviewed for purposes of the Legal and Regulatory Assessment, it is necessary to appreciate the matrix of contractual arrangements in a municipal IPP structure. Below is a diagram of a typical municipal IPP contractual structure depicting the key project agreements and the parties to such agreements.



PROCUREMENT PLAN

The procurement plan for a municipal IPP serves as the central organising document for the Procurement Phase. The procurement plan guides the municipality on an optimal procurement structure and should be directly linked to the preferred technical solutions options identified in the preliminary stage of the Feasibility Study and also take cognisance of the legal and regulatory framework set out in the Legal and Regulatory Assessment. Importantly the procurement plan allows the municipality to plan the timing of the envisaged procurement and when key activities and other milestones are envisaged to have been achieved, as well as the budget needed by the municipality to fund the procurement activities.

The Procurement Plan should contain the following elements:

- The procurement design
- The procurement process
- Procurement timeline
- A risk matrix
- Key municipal officials
- Procurement governance structures
- Key approvals and consents
- A quality assurance and audit procedure

FEASIBILITY STUDY REPORT

The various reports and assessments set out above should culminate in a single consolidated Feasibility Study Report. The Feasibility Study Report must identify the preferred IPP technical solution option and confirm the municipality's ability to satisfy the legal, financial, and technical requirements of such procurement.

1 MODULE 1: STAGE 3
Feasibility Study Approvals

MUNICIPAL COUNCIL CONSENT TO PROCEED

Once the Feasibility Study Report has been completed, the municipality should table the report for submission to the municipal council for an in principle decision on whether the Feasibility Study supports the procurement of an IPP.

Is Municipal Council approval required?

- The Municipal Structures Act, the Municipal Systems Act, and the MFMA provide clear guidance on the administrative roles and responsibilities of municipal managers and the oversight role of a municipal council.
- Municipal council is the highest authority in the municipality and is vested with significant powers of approval and oversight.
- A decision to undertake a feasibility study for a Municipal IPP is both an administrative decision (from a budgeting and resourcing perspective) as well as a matter of policy (aligning with the Municipality's IDP relating to the procurement of power from IPPs).
- Thus, municipal council should approve by way of a resolution any recommendation made by the municipality and signed off by the municipal manager to commence a Feasibility Study for an IPP.

PRELIMINARY STAKEHOLDER ENGAGEMENT

Make feasibility study report and proposed IPP **available for comments** from the public and key government stakeholders.

The municipality needs to consider where to **incorporate comments** and create a register of all comments.

Determine if the **consent** of the Minister of Energy and Electricity is required.

After considering key recommendations, views and inputs: pass a resolution to **commence in the Procurement Phase**.

MODULE 2.

MUNICIPAL IPP PROJECT PROCUREMENT PHASE

STAGE 1:

Procurement Preparation Activities

- Confirming Delegation of Internal Authority and Committees
- Appointment of a Transaction Advisor
- Engage Government Stakeholders
- Grid Connection and Grid Capacity

STAGE 2:

Procurement Design Concepts

- One- or Two-stage Procurement Process
- Bid Price Disclosure
- Single versus Multiple Award RFP
- Technology Specific or Neutral

STAGE 3:

Preparation of Bid Documentation

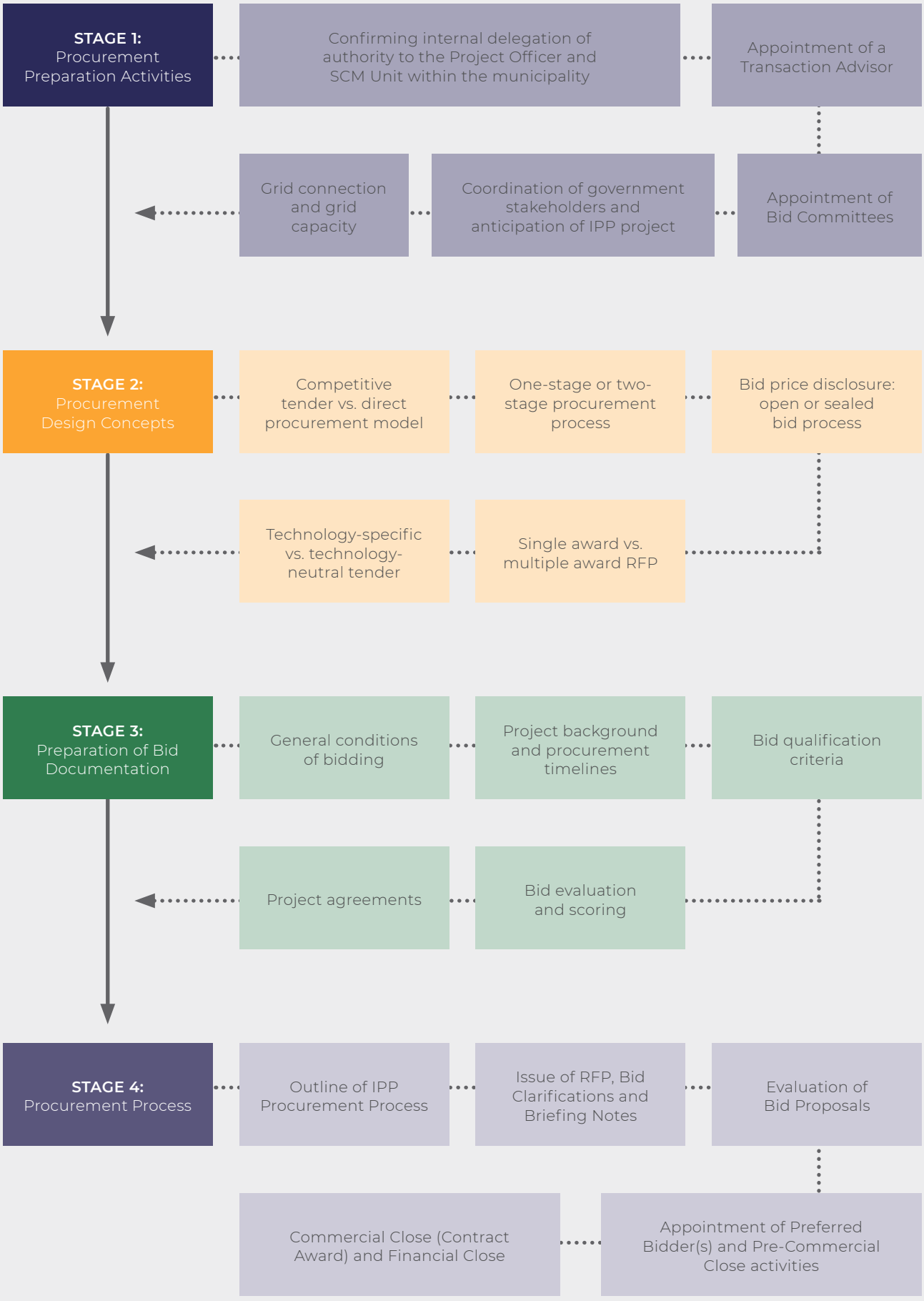
- General Conditions of Bidding
- Project Background and Procurement Timelines
- Bid Qualification Criteria
- Bid Evaluation and Scoring

STAGE 4:

Procurement Process

- Issue RFP, Bid Clarification, and Briefing Notes
- Evaluation of Bids and Appointment of Preferred Bidders
- Pre-commercial Close Activities
- Financial Close Activities

ROADMAP OF MUNICIPAL IPP PROCUREMENT PHASE



2 MODULE 2: STAGE 1
Procurement Preparation Activities

Confirming Internal Delegation of Authority

- Continuity from the Feasibility Study of Project Office appointment
- Project Officer experience and competence
- Internal or external appointment?
- Municipal IPP Programme – establishment of internal unit within SCM unit

Appointment of Transaction Advisor

- Appointment through municipality's SCM policy
- Expertise across various disciplines
- Continuity from Feasibility Study phase
- Sufficient budget for specialist IPP expertise
- Consideration of a procurement document registration fee or development fee in PPA

Appointment of Bid Committees Identified in Procurement Plan

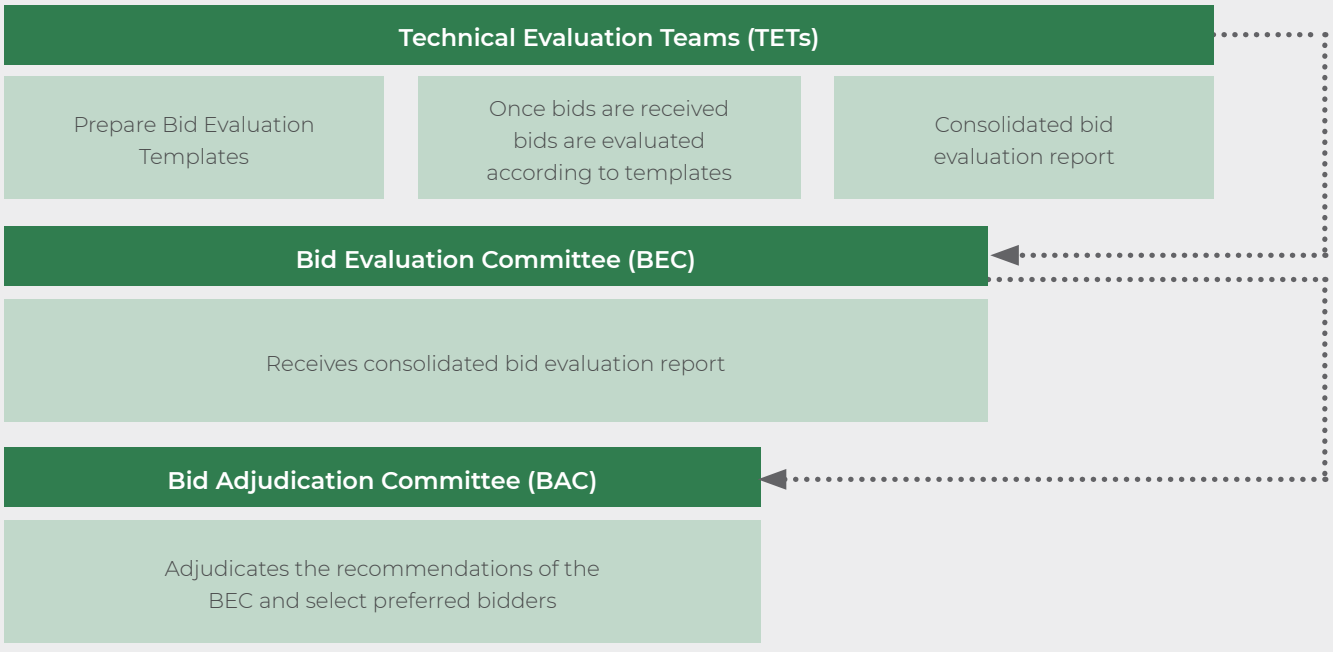
- Reference Committee structure to Procurement Plan prepared
- The specialist skill sets of the parties selected to sit on the committees (financial, technical, SED, and legal)
- Combination of both internal municipal resources as well as external expert advisors (usually part of the transaction advisory team)
- Committee has a formal mandate from the municipality and clear functions

Engagement of Government Stakeholders

- Municipality to implement stakeholder engagement plan developed in the Feasibility Study.
- The municipality has a vested interest in the IPP obtaining all necessary consents and approvals and municipality to escalate government support and create awareness.
- Municipality to engage directly with Eskom regarding transmission and distribution network and electricity supply agreement.

Bid Specification	Bid Evaluation	Bid Adjudication

Mandate of the Different Bid Committees



2 MODULE 2: STAGE 2
Procurement Design Concepts

In designing a suitable procurement process for a municipal IPP, consideration should be given to the following concepts:

Competitive Tender versus Direct Procurement Model

Competitive Tender

More likely to yield appropriate market-related prices from bidders and will produce a better pricing outcome for the municipality given that pricing competition remains a driver up until contract award.

Direct Procurement

Despite its SCM Policy allowing this regime; unsolicited bidders seldom advance because procuring authorities lack the capacity to assess whether an unsolicited offer is competitively priced. In the context of IPPs where the most compelling criterion is the tariff offered; unsolicited bids make little sense.

One-Stage or Two-Stage Tender Process

There is no statutory requirement for a municipality to conduct a two-stage procurement process when procuring goods and services.

One-Stage

This is a speedier procurement process for government

It needs to be balanced against the financial impact on bidders who are required to absorb higher bid costs to prepare fully developed bids without the benefit of knowing that they are prequalified to do so.

Two-Stage

Bidders are first invited to pre-qualify in terms of their relevant capability (expertise and experience) and financial strength

Recommended for large infrastructure procurements to ensure that only bidders capable on paper of delivering the infrastructure and related service prepare a proposal.

Single versus Multiple Bids

Single Bid

Projects are structured so as to solicit offers from bidders for a single project and evaluate all bidders against each other to award to one Preferred Bidder.

Multiple Bids

The RFP is designed to procure a number of qualifying projects up to a maximum threshold of megawatt (MW) for bidders who pass the threshold criteria and are ranked first according to price and Economic Development, as required in terms of the Preferential Procurement Policy Framework Act (PPPFA).

2 MODULE 2: STAGE 3
Preparation of Bid Documentation

Once the procurement structure or design is decided, it will be necessary to prepare high quality, bankable Bid Documentation. This includes preparing a combined Request for Qualification and Proposal. The structure of the RFP will in large part be dependent on the decisions above related to the design of the procurement. There are certain standard features of an RFP for new generation capacity that would need to be included as part of the RFP, which are premised on the two distinct stages in the bid evaluation process.

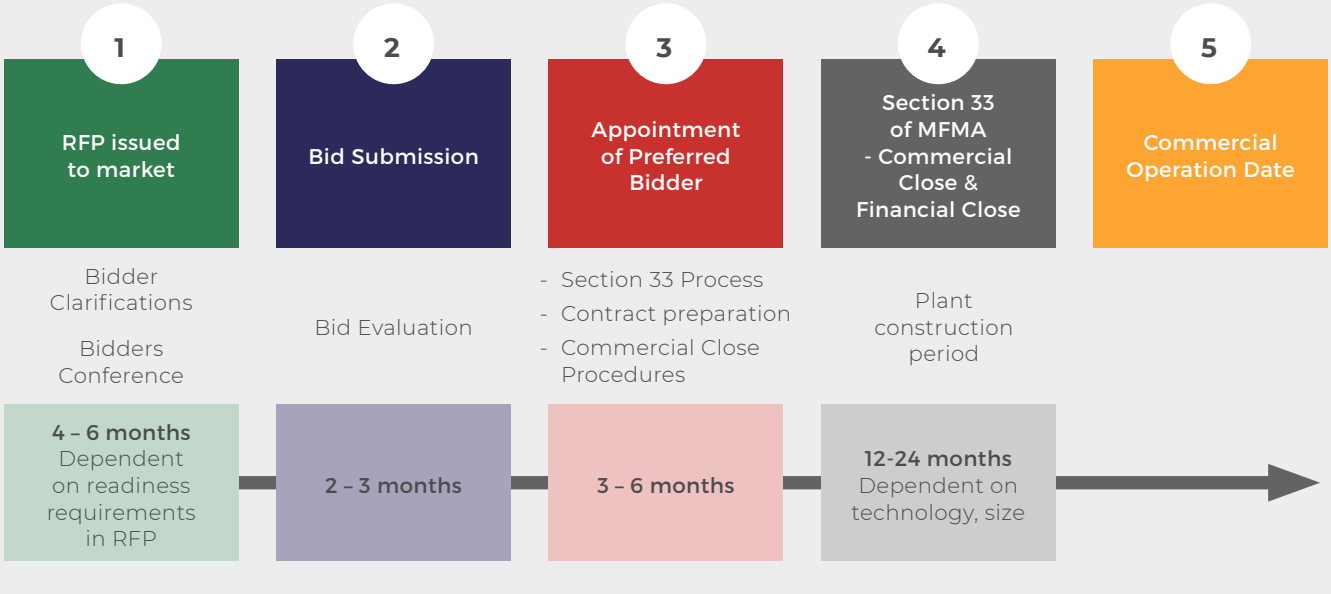
Stage 1	Stage 2
Compliance requirements, outlined in the General Conditions (including Project Terms of Reference) and Bid Qualification Criteria	Comparative Bid Evaluation Criteria

With the above stages in mind, generally speaking the RFP should be structured into the following sections:

- General conditions of bidding including response schedules and standard bidding documents;
- Project Background (Terms of Reference) and Timelines;
- Bid Qualification Criteria (Covering Legal, Environmental, Land Rights, Financial and Technical functional criteria);
- Bid Evaluation and Scoring (Covering Price and Economic Development);
- Project Agreements including a non-negotiable PPA, a direct agreement and a government underwriting or implementation agreement or alternative credit enhancement agreement, independent engineer agreement and grid connection agreements.

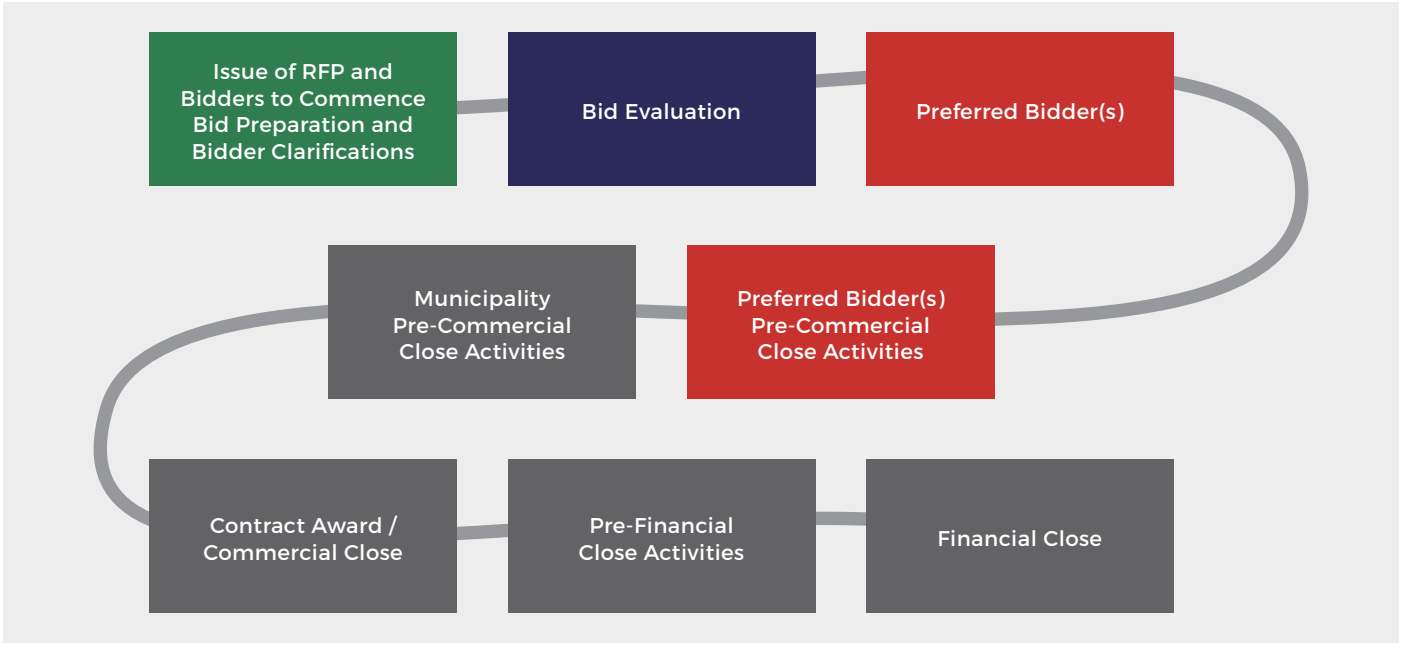
2 MODULE 2: STAGE 3
Preparation of Bid Document

PROJECT BACKGROUND AND PROCUREMENT TIMELINES



2 MODULE 2: STAGE 4
Procurement Process

OUTLINE OF THE PROCUREMENT PROCESS



Pre-Commercial Close Activities for the Municipality

- Undertake a Cost of Supply Study based on final agreed tariff for submission and approval by NERSA.
- Compliance with Section 14 of the MFMA and MATR.
- Obtaining Minister of Energy and Electricity approval in terms of Reg 5(3) of the New Generation Capacity Regulations, where determined to be required.
- Conducting a section 33 public participation process at least 2 months prior to tabling the PPA and related project agreements with the municipal council.
- Finalise the PPA and any other legal agreements for commercial close.
- Completion of grid connection agreements setting out timelines for connection of the plant to the grid, etc.

Activities up to Commercial Close

- The Section 33 report must be submitted to the municipal council by the municipal manager.
- Municipal council resolution must confirm that:
  - the PPA will derive a significant financial or economic benefit (or both) to the municipality;
  - the municipal council approves the entire PPA in its executed form; and
  - the municipal manager is authorised to sign the PPA.
- Signature of the PPA signals contract award and commercial close. The signature of the PPA is usually followed by signature of the other project agreement.

Activities up to Financial Close

- Obtaining all outstanding consents;
- Negotiating and concluding the Financing Agreements;
- Process to allow for allowable adjustments to the Price as allowed for in the RFP; and
- Grid strengthening

MODULE 3.

MUNICIPAL IPP IMPLEMENTATION PHASE

STAGE 1:

PPA Contract Management Plan

- Project Management Plan
- Project Management Committees

STAGE 2:

Periodic Review and Amendment of PPA

- Periodic Review of PPA
- Amendments to the PPA

3 MODULE 3: STAGE 1
PPA Contract Management Plan

PROJECT MANAGEMENT PLAN

A PPA contract management plan will deal with a range of monitoring and reporting issues, however at **a minimum this plan needs to comply with section 116(2) of the MFMA** which prescribes several requirements in respect of contract management which a municipality is statutorily obligated to meet.

National Treasury's Contract Management Guide (August 2010) identifies the following key functions or areas to be addressed in any contract management framework:

- Oversight of contract management;
- Resourcing contract management activities;
- Document and information management;
- Relationship management;
- Performance management;
- Risk management; and
- Policies and procedures.

Project Management Obligations

To meet the obligations of the MFMA the following project management mechanisms should be covered: Governance Structure; IPP Project Structure; delegations of authority; key personnel; decision-making procedure; IPP Project Plan / program; IPP Reporting obligations; municipality monitoring protocol; OEM warranties; risk mitigation; and insurances.

PROJECT MANAGEMENT COMMITTEES

The PPA may include a project management schedule setting out the manner in which project committees are established and composed and detailing the mandate and powers of the members of such committees to manage issues arising in the implementation of the PPA. This schedule needs to be integrated into the Project Management Plan so that the two documents are harmonised.

3 MODULE 3: STAGE 2
Periodic Review and Amendment of PPA

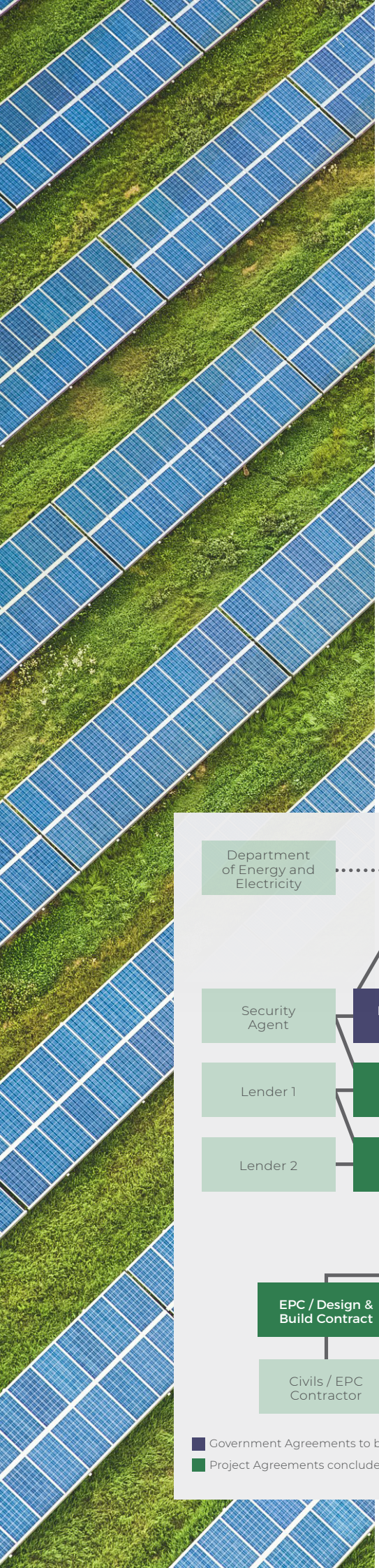
PERIODIC REVIEW OF PPA

Section 116(1)(b)(iii) of the MFMA stipulates that a contract or agreement procured through the supply chain management system of a municipality or municipal entity must specify the terms and conditions of the contract or agreement, which must include provisions providing for "*periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years.*"

AMENDMENTS TO THE PPA

If during the term of the PPA it is necessary to amend any of its provisions, the municipality must observe the requirements in **section 116(3) of the MFMA**

- Reasons tabled - Council of the Municipality
- Local Community

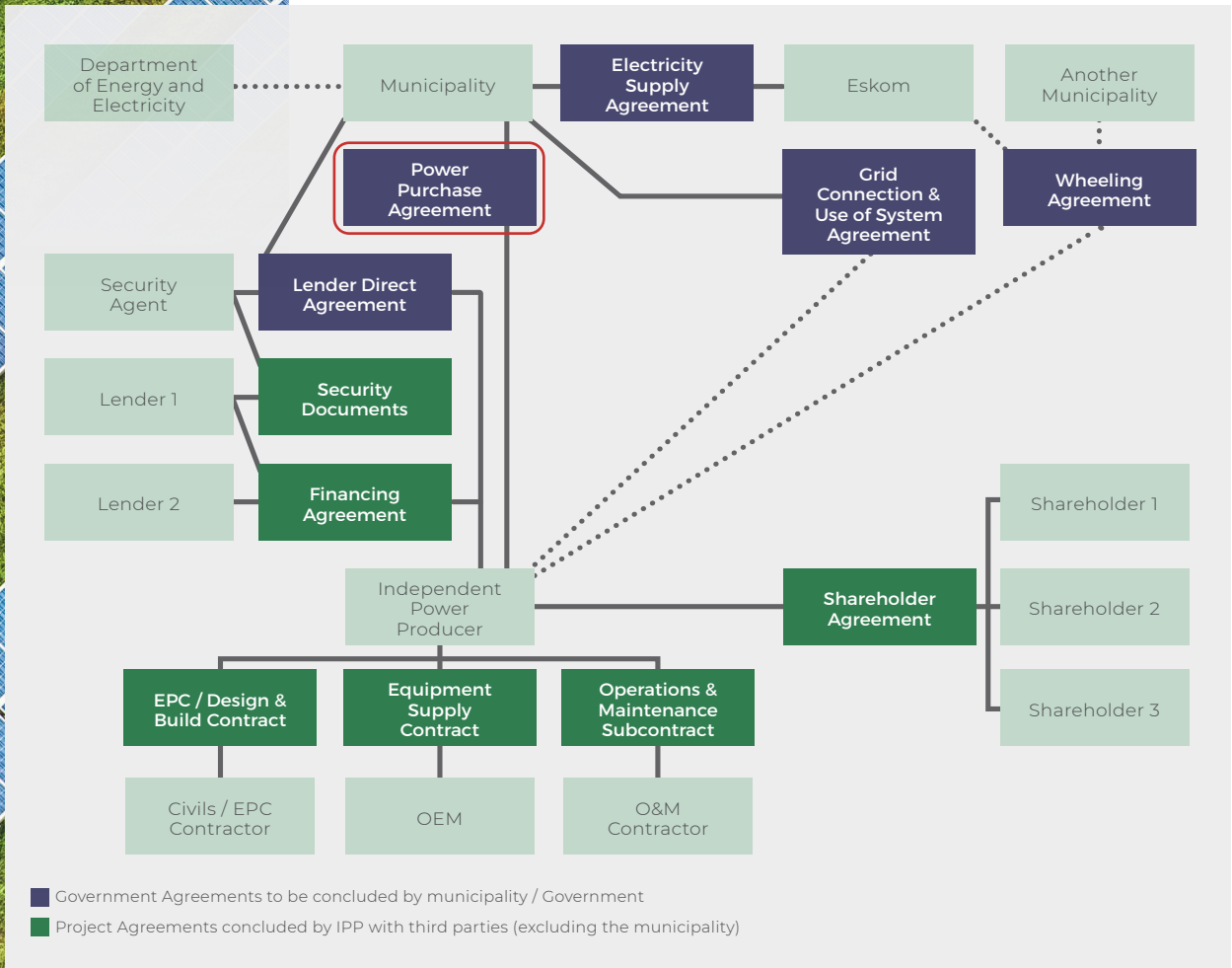


MUNICIPAL POWER PURCHASE AGREEMENTS

OVERVIEW OF A PPA

- **What is a PPA?** Long-term contract between an electricity producer (seller) and "off-taker" (buyer) that outlines the terms for the sale and purchase of electricity.
- **Types of PPAs:** On-site PPA and Offsite / Virtual PPA.
- **Benefits of PPAs for Buyers:** Assurance and predictability of electricity costs, possibly lower costs.
- **Benefits of PPAs for Sellers:** Ability to raise finance.

Where does a PPA fit in?



Components of a PPA

Parties	Pricing	Regulatory and Legal Compliance
Duration	Project Development	Performance Guarantees
Energy Volume	Risk Allocation	Termination Clauses

PROJECT DEVELOPMENT & CONSTRUCTION

The development and construction phases of an energy project are critical periods that involve significant risks. These risks can impact the timeline, cost, and overall success of the project. By understanding and addressing the risks associated with development and construction, stakeholders can enhance the likelihood of project success and ensure the timely and cost-effective delivery of IPP projects. Development risks arise during the initial stages of a project, from site selection to securing permits and financing.

KEY DEVELOPMENT RISKS

Site Selection and Assessment: Choosing an appropriate site is crucial. The risks include: environmental constraints, land acquisition issues, and inadequate resource assessment (e.g., wind speed or solar irradiance).

Permitting and Regulatory Approvals: Navigating the process of obtaining necessary permits and regulatory approvals can be both time-consuming and uncertain. Delays or denials can significantly affect project timelines and increase costs.

Financing: Securing financing is crucial for project development. Risks include fluctuation in market conditions, interest rates, and the availability of capital. Financial instability can delay or halt project progress.

Stakeholder Engagement: Engaging with local communities, governments, and other stakeholders is vital. Poor stakeholder management can result in opposition, legal challenges, and delays.

CONSTRUCTION CONSIDERATIONS

Failure to Achieve Contracted Capacity: To reach the COD, the facility must be tested and certified as having met a percentage of the contracted capacity. If there is no possibility for improving the performance of the generation facility by the construction longstop date, there are generally two options available to the buyer to (i) accept the resulting output of the generation facility, potentially coupled with financial penalties for not achieving the guaranteed contracted output in the form of a contracted capacity buydown or an adjustment to the tariff; or (ii) to reject the facility and terminate the PPA.

Project Site: The seller will typically bear general responsibility for procuring the land on which the generation facility will be developed and operated on and as such, will assume the risk of the land on which the generation facility will be developed and operated, as well as security of tenure.

Consents, Permits and Licences: The generation facility must be built and operated in accordance with the consents required by the applicable law. The term "consents" generally includes any registration, declaration, filing, consent, license, right, approval, authorisation, or permit. The seller is typically responsible for obtaining the necessary consents to build, own and operate the generation facility.

Construction, Milestones and Timelines: The Seller will generally be responsible to design, engineer, procure, construct, commission and test the generation facility. The PPA may impose certain timebound obligations on the seller such as: Failure to commence construction, Abandonment, Delays in achieving Commercial Operation and Construction Longstop Date.

Early Operating Period: A generation facility may be capable of delivering electricity to the delivery point before the COD is achieved. The PPA could make provision for the early energy to be sold at a discount or for only energy that is generated after a particular unit is completed to be taken into account.

Commissioning and Testing: Testing and commissioning are required for the seller to reach the COD. Commissioning and testing of the generation facility comprises (in broad terms) a range of tests and procedures aimed at energising the generation facility in a manner that complies with the relevant requirements of the regulatory framework (particularly the Grid Code and any government authorisations or consents), the distribution agreement or transmission agreement (as the case may be) and engineering market standards.

RISK ALLOCATION & MANAGEMENT

RISK ALLOCATION PRINCIPLES

A PPA should achieve an equitable balance and allocation of risks between the off-taker and the seller, according to the principle that risks should be allocated to the party best able to manage them. The risks inherent in a PPA can usefully be thought of as falling into one of three categories: construction risk; general risk (present throughout the project); and operational risk.

SPECIFIC RISKS

Change in Law

Unforeseen legislative or regulatory changes that can impact the financial and operational aspects of energy projects.

The seller is typically excused from liability for an inability to perform its obligations.

Force Majeure

Force Majeure events are unforeseen circumstances, not within the control of a party, that prevent a party from fulfilling their contractual obligations.

Reasonable measures could not have been implemented by a diligent party to avoid it or mitigate its impact.

Curtailment Events

Curtailment refers to the reduction in the output of a renewable energy project due to limitations in the transmission network or other grid constraints.

This can occur for several reasons including: transmission congestion; grid stability; and market conditions. Curtailment poses a significant challenge as it leads to the loss of potential revenue for the seller and can affect the overall economics of a renewable energy project.

Network Events

Network events encompass a range of incidents that can disrupt the normal operation of the electricity grid.

These events include: transmission failures; system overloads; and natural disasters.

EVENTS OF DEFAULT & TERMINATION

BUYER DEFAULT

In the event of a buyer default, the seller typically has the right to terminate the PPA and claim compensation. Compensation would need to be sufficient to cover both equity and debt repayments. The buyer may require an option in its favour in terms of which it has the right to take ownership of the generation facility or to require the seller to decommission the generation facility, termination payments would have to cover the full debt and equity.

Common occurrences of default include:

- **Non-payment:** Failure by a Party to make payment of undisputed amounts when due.
- **Credit support:** Failure to maintain required credit support or guarantees.
- **Operational failures**: Inability to accept the contracted power due to operational issues.
- **Material breaches:** Any other material breach by the buyer following notice and failure to cure within 30 days of notice.
- **Adverse government action:** Any adverse action by the Government that renders performance under the PPA by the seller impossible.
- **Insolvency:** Committing an act of insolvency, being placed in business rescue or winding up.

SELLER DEFAULT

Buyer may terminate the PPA and claim direct damages. The buyer may require a call option in its favour – i.e, the right to purchase and take ownership of the generation facility for a heavily discounted price, sufficient to cover seller's debt repayments but punitive on equity.

Common occurrences of default include:

- **Non-performance:** Failure to supply the agreed amount of electricity or failure to achieve minimum levels of availability.
- **Failure to commence construction:** Failure to issue the notice to proceed to the EPC contractor.
- **Failure to achieve the target COD:** Failure to achieve COD within [180] days of the target COD for reasons not attributable to force majeure.
- **Operational Failures:** Inability to maintain the power generation facility in good working order.
- **Regulatory non-compliance:** Failure to comply with relevant laws and regulations.
- **Insolvency:** Committing an act of insolvency, being placed in business rescue or winding up.
- **Change in control:** Change in control of the seller without consent.
- **Material breach:** Any other material breach by seller following notice and failure to cure.

Dispute Resolution

- **Informal Dispute Resolution**: An effective model for informal dispute resolution is a multi tier process including two tiers of senior officials of both parties to resolve the dispute amicably, commencing with engagements between the first tier and then moving on to a second tier if the dispute is not resolved at the first tier. A time limit should be placed on these engagements (which would be subject to extension by the parties by agreement).
- **Expert Determination:** Certain types of issues can be referred to an expert for determination to ensure that a decision is reached of a fast-tracked basis. The PPA should make express provision for pre-identified disputes that can be referred to this process.
- **Arbitration:** To resolve disputes that cannot be resolved through informal or fast-track resolution mechanisms. Unless the PPA includes provisions requiring the parties to use arbitration, the dispute would be submitted to the courts that have jurisdiction over the parties and issues. There are various options for established procedural rules for arbitration.

Lender Rights

Lenders financing the project often have specific rights under a "direct agreement" concluded between the seller, the buyer and the lenders (facility agent) to protect their investment:

- The right to step into the shoes of the seller in the event of default.
- The right to receive notice of defaults and an opportunity to cure them before termination.
- The ability to take control of the project to ensure continued operation and repayment of the loan.

Lender rights are crucial for securing project financing and ensuring the project's financial stability.

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