



# GUIDELINES FOR LOAN/GRANT NEGOTIATIONS IN GOVERNMENT



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## GLOSSARY

|                |   |
|----------------|---|
| <b>DPs</b>     | Development Partners                                  |
| <b>DC</b>      | Development Committee                                 |
| <b>D/DCP</b>   | Directorate of Debt and Cash Policy                   |
| <b>EA</b>      | Executing Agency                                      |
| <b>ESIA</b>    | Environmental Social Impact Assessment                |
| <b>EMP</b>     | Environmental Management Plan                         |
| <b>FA</b>      | Financing Agreement                                   |
| <b>GoU</b>     | Government of Uganda                                  |
| <b>ICB</b>     | International Competitive Bidding                     |
| <b>IDA</b>     | International Development Association                 |
| <b>MoFPED</b>  | Ministry of Finance Planning and Economic Development |
| <b>M&amp;E</b> | Monitoring and Evaluation                             |
| <b>NDP</b>     | National Development Plan                             |
| <b>PAD</b>     | Project Appraisal Document                            |
| <b>PAR</b>     | Project Appraisal Report                              |
| <b>PAM</b>     | Project Administration Manual                         |
| <b>PIP</b>     | Public Investment Plan                                |
| <b>PIMS</b>    | Public Investment Management System                   |
| <b>PIU</b>     | Project Implementing Unit                             |
| <b>PMU</b>     | Project Monitoring Unit                               |
| <b>PS/ST</b>   | Permanent Secretary / Secretary to the Treasury       |
| <b>RfP</b>     | Request for Proposal                                  |
| <b>SWG</b>     | Sector Working Group                                  |
| <b>TOR</b>     | Terms of Reference                                    |

# 1. INTRODUCTION

The Negotiation Guidelines are coming at a critical time, when Government is devising means of ensuring that projects are implemented in a timely manner to meet the expectations of the beneficiaries. Implementation of Government Projects/Programmes has been hampered by many factors ranging from poor project preparation to lack of capacity within government to negotiate, implement, monitor, and manage contracts.

The Negotiation Guidelines build on the Public Investment Management Systems (PIMS) Framework which provide the guidelines for the approval and review of the Public Investment Plan (PIP) projects. The PIMS procedures should be consulted to establish whether a project is ready for negotiations.

## 1.1 General Overview of Negotiation

### 1.1.1 What is negotiation?

- a) A process of involving two or more people of either equal or unequal power meeting to discuss shared and /or opposed interests in relation to a particular area of mutual concern.
- b) The process has three (3) dimensions
  - i. Negotiation is an educational process. It enlightens the other side about your concerns, perceptions and aspirations.
  - ii. Its problem solving as the parties involved have different perceptions which are to be reconciled if progress has to be attained.
  - iii. Negotiations are an interdependent process. Workable and sustainable progress depends on building a cooperating relationship with the other side.

### 1.1.2 What does effective negotiation include?

- a) To accommodate the challenges posed by Development Partners (DP)/creditors and those posed by partner Governments, the strategy for negotiations is to pursue **interest based negotiations**. It emphasizes creating a cooperative and problem solving environment which addresses as many problems as possible while simultaneously laying the ground work for future cooperation by accenting the importance of building trust based relationship.
- b) In contrast to interest based strategy is the **positional bargaining** where individuals have the negotiation process as a struggle between two opposing positions, the objective of which is to bring the other side to a position more imputable with your own at minimal cost. Minimal Concessions are usually pursued. The need to define and commit to a position means that it is difficult to incorporate change with the end result of splitting differences as opposed to resolving interests. So in financial negotiations **Interest based strategy** is the preferred option because;
  - i. It separates the people and emotions from the problem
  - ii. Focus is made on merits of the problem and the interest of the parties
  - iii. A variety of possible solutions are generated to solve the problem
  - iv. It incorporates the use of objective and scientific criteria
  - v. It focuses on creating a cooperative problem solving environment
  - vi. Attempts to build trust based relations for future cooperation.

### 1.1.3 Problems faced by Borrowers in Negotiations

The primary problem in negotiations is overcoming the perception that grants represents free money requiring little negotiation. In relation to Bilateral and Multilateral Financing Agreements, the problems focus on overcoming the perception of being in a relatively weaker position and being able to effectively negotiate the conditionalities. The problems

can generally be divided into three (3) main groups;

- a) **The use of similar standard form financing Agreements by Lenders.** As the lenders give the money and in return they take the paper (Agreement), it has become practice that, since they shoulder the risk for the coming 12 – 30 years, they initiate loan documentation which ensures that all their risks are taken care of in the financing agreements. The lenders have therefore developed standard Form Agreements.

**Standard Form Agreements** have clauses which lenders deem non-negotiable. Convincing lenders to tailor make agreements covering specific needs of the situation is extremely difficult.

Furthermore **borrowing countries are in relatively weaker positions** given that there are more countries seeking to borrow money than there are countries seeking to lend money, making them feel that they have no choice but to accept the terms presented by lenders without negotiation. This is especially detrimental if the Borrower fails to negotiate the conditionalities and hidden costs in the Agreement which significantly increase the costs borne by the Borrower. Added to this is the general feeling of distrust towards lender countries arising from a combination of negotiating from a relatively weaker position, and a feeling that lenders may be using agreements as a means of expanding their own markets and sphere of influence.

- b) **The second problem** is caused by interference by national Governments in the strategy of the design and negotiating teams. In a country seeking external support, the urgent need for money combined with a failure to harmonize the efforts of the immediate situation with long term development objectives of lack of alternatives, and the feeling of being in a relatively weaker position, often means that Governments precludes extended negotiations. At times those responsible for making the final decision often ignore recommendations to negotiate as their survival depends on the deal being signed expediently. In general, a feeling of apathy and lack of concern by Government

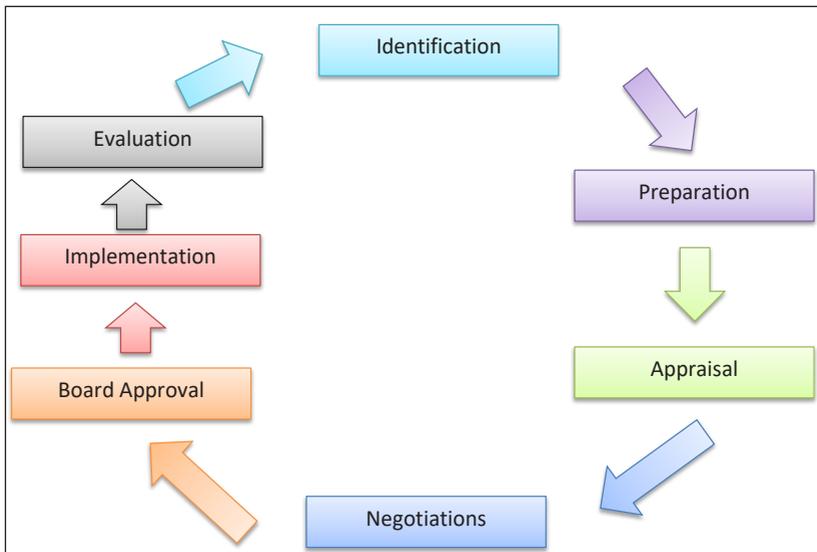
officials exacerbated by domestic economic and monetary policy precludes effective negotiations.

- c) **The third problem** is caused by inadequate preparation. The points to highlight are: **Inadequate information**; Poor training in negotiation skills; lack of technical expertise and poor coordination not only within the team but, but also with other Government agencies. The root of most of these problems appears to be that negotiating teams are generally thrown together at the last minute.

## 2. PART I – IMPORTANT STAGES OF PROCESSING A PROJECT

In the context of the project, negotiation is a technique for resolving conflicts between project stakeholders and demonstrates a way of crafting mutually satisfactory solutions. Projects are structured upon controversial stakeholders' interests, requirements, goals and expectations. So, conflict is a common event in the project life cycle. There are four generic processes that can describe the life cycle of a project: (a) Defining the project mission; (b) Mobilizing the resource base; (c) Project implementation; (d) Leading the project coalition. In each of these processes will be issues that lead to conflict and further trigger negotiations.

**Project Cycle - Negotiation runs through the entire cycle.** These Negotiation Guidelines concentrate on the Negotiation part. However it is important to understand the full project cycle. Therefore below is a short outline of the different stages of the project cycle.



## **2.1 Identification & Preparation**

The project's definition is the most critical procedure that preludes project's initiation. This particular process contains two separate activities: (i) understanding sector's needs and (ii) stakeholders' management. These activities determine project's scope and organization, they emphasize on information flow, dialogue and negotiation. Under this process arise conflicts that primarily concerns project's deliverables and scope definition. Efficient communication and negotiation assist to arrive on precise definition of project deliverables in order to avoid continuously changing project scope.

In line with the Public Investment Management System (PIMS) Framework, the Project needs to be first conceptualized by the Executing Agency (EA) and the concerned Line Ministry through their Sector Working Group (SWG). The Executing Agency and the Line Ministry should propose the project to the MoFPED with clarity on project title, objectives, project components, implementation mechanism and project financials. They should clearly explain and justify why the project cannot be done with government resources.

At this stage one needs to prepare and look out for:

- i. The linkage with National Development Plan and Sector Strategy
- ii. Strong and technically stable personnel able to review designs of the technical proposals
- iii. Project intervention goals and purpose
- iv. Possible compensation and the right of way issues
- v. Environmental concerns likely to arise
- vi. Sources of funding – GoU or DP/Creditor or both
- vii. Implementation arrangements

## **2.2 Appraisal**

Under this process, there is need to determine the procurement system, selection of contractors' and the payment methods' selection for integration in project management and procurement management

knowledge areas. Conflicts that may occur concern issues over resources, cost, delivery and specifications.

The Aide-memoire or the Minutes of the Appraisal Mission will inform the Project Appraisal Document (PAD) or Project Appraisal Report (PAR) depending on the DP/Creditor. These would form the basis for legal documents to be negotiated. Therefore, they need to be scrutinized carefully and one needs to look out for the following;

- i. Concretization of project components, Log frame, M&E arrangements, audit arrangements, and likely terms and conditions of the operation.
- ii. Concretize implementation arrangements and the team
- iii. Agree on procurement and disbursement arrangements
- iv. If possible, Program funds in budget to undertake preparatory works, compensation, ESIA and PMU.
- v. Agree on financing arrangements.

### **2.3 Negotiations**

This is the part where formal face to face, video conferencing or email discussions with the DP/creditor on the project documents and draft Financing Agreements (FA) take place. Before the negotiations, the following needs to be done;

- Assemble interdisciplinary team
- Ensure that the PAD/PAR, Draft FA and other relevant documents are received in advance – 2 weeks for internal review by team
- Hold pre - negotiation meeting
- Develop Negotiation Brief – cleared by management
- Do not accept to be pushed into negotiations- DPs/Creditor's financial deadline for Board Approval. Negotiation dates should not be imposed by the Development Partner (DP). Negotiate when you are prepared & ready.
- The team is expected to be well prepared for the event and keep time

## **2.4 Board Approval**

Upon completion of the negotiation, the creditor presents the project documents to respective Board for Approval. This is an internal process of the creditor to approval projects. However, outcome of the negotiations build into the documents to be submitted to the Board, it is important therefore that the negotiation agreed minutes are detailed enough highlighting major positions agreed during the negotiation to inform the discussion at the Board. Ensure that what is not included in the negotiated PAR/PAD but is important to the government is clearly captured in the negotiated minutes. It should be noted that after Board Approval it may not be possible to make changes to the negotiated documents. Any disagreements on legal aspects should be recorded.

After loan negotiation a report should be put up informing the competent authority in MoFPED about the main points of the negotiation and seek his/her formal concurrency for the loan.

## **2.5 Implementation/Execution**

This stage is used to affirm the project's implementation in terms of budget, time, quality and risk control. At this stage, the seven knowledge areas include; project integration, scope, time, cost, quality, communication and risk management. Conflicts, at this stage, relates to delays in schedule, scope changes, budget variation, specific measures that ensure quality, undertaken risks by the parties. Besides, these conflicts may be worsened by misunderstanding and non-involvement of key stakeholders.

Implementation of the project is guided to a large extent by the implementing agency or PIU and the team that handles the project implementation. It's therefore important for the implementing agency to participate in the entire process of project development including negotiation. This does not only confirm ownership but also enables the implementing agency to ensure that only implementable clauses are negotiated and engraved in the project design. Issues that were raised and captured in the negotiated minutes can be brought up during implementation.

## **2.6 Monitoring and Evaluation**

Monitoring and evaluation is a periodically recurring task from the identification planning stage of a project or programme and as implementation takes place.

The evaluation phase of the project cycle is intended to answer three important questions:

- 1) What went well during the project?
- 2) What didn't go so well?
- 3) What would project leaders and team members do differently during future projects?

A successful evaluation phase requires effective planning during the preparation phase. If project members succumb to office politics or fail to document the shifting scope of a project, the evaluation phase of a project cycle can easily shift to "blaming and shaming." However, when measurable goals are set and stakeholders agree on desired outcomes, all parties can make honest and insightful evaluations.

To sum up, conflicts may arise at every stage of project cycle, integration, scope, quality, cost, time, risk, human resources, procurement and implementation. Since conflicts are inevitable during the life-cycle of a project, there is a need for adequate negotiations at all stages of the project cycle to provide acceptable terms and conditions for all the parties.

## **3. PART II - NEGOTIATION GUIDELINES AND POLICIES**

### **3.1 Guiding Principles**

The goal of the negotiation process is to secure financing on affordable terms, avoid unnecessary risk to Government and to resolve foreseen implementation related issues. The target is to ensure that loans are negotiated and closed with affordable rates and better terms than ever before. It is important therefore that government should Negotiate for low and manageable interest rates; lower loan fees, longer amortization periods and loan terms, for no prepayment penalties, for no “confession of judgment” default remedy, for no “unlimited guarantees”, for “notice and right to cure” defaults, and reduced loan covenants, etc.

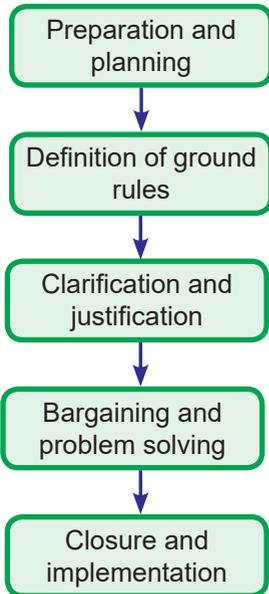
### **3.2 When to negotiate**

One of the most challenging decisions parties often face in a loan/grant process is knowing when to negotiate. It depends on a party's preparedness/readiness, understanding the other side's motivations, and a lot of experience. The decision to negotiate might be influenced by;

- 1) Approval by the relevant Authorities
- 2) Readiness and preparedness;
- 3) Clear understanding of the project loans/grant documents to be negotiated;
- 4) Readiness of the project Implementation;
- 5) Government own processes have been complied with;
- 6) Negotiation team have been assembled and is ready;
- 7) Never accept to be pushed into negotiations- DPs/Creditors financial deadline for Board Approval. Negotiate when you are prepared & ready

### 3.3 Negotiation Cycle

There are six collaborative stages of the negotiation process: Prepare, set ground rules, identify benefits of negotiation, negotiate, conclude and execute.



- 1) There is no shortcut to negotiation preparation
- 2) Building trust in negotiations is key
- 3) Communication skills are critical during negotiation

### 3.4 Preparing to negotiate

a) **The preparatory phase in a negotiation is the most important phase in the entire process.** The scale, quantity and level of preparation will determine the overall negotiation process. The objectives are;

- i. To develop a thorough understanding of the subject under negotiation
- ii. To develop a thorough understanding of Government interests and their relation to the negotiation
- iii. To undertake adequate preparation to realize those interests.

## **b) How do you prepare?**

- i. Draw on the resources available and brainstorm to develop a brief which is thorough as possible given the condition- Read the Project Appraisal Document and Feasibility Study Report and any other resource material on the subject.
- ii. Consult and Coordinate with all relevant parties.
- iii. Develop a fallback position by developing a list of possible negotiated outcomes from which the most plausible is to be developed in greater detail. This will guide the teams negotiating strategy.
- iv. Establish a similar outline for the other side so that outline for the other side so that you are able to understand their interests.

**c) The borrowing strategy** should be consistent with the Governments development strategy (NDP), the debt strategy and should be linked to the particular negotiating environment. In this way, the negotiating team will avoid the changes of reporting to events without strategy and be in a better position to direct the outcome of the process.

**d) Financial Negotiation** should be seen as multidisciplinary consisting of various skills and expertise and thus cutting across many agencies on the Government side including the project people – technical, Ministry Staff; the financial analysts; Accountants; procurement staff; Lawyers and Economists plus any other skills that may be required.

**e) Negotiations must** also be seen as running through the entire Project Cycle, if it's to gain its intended outcomes allowing negotiating teams to lead rather than merely react to events.

## **3.5 Areas of Negotiation**

Areas of negotiation will vary depending on the specific requirement by Government and the prospective Development Partner/creditor(s). These include;

- i. The terms (cost) of the financing
- ii. The terms and conditions of any potential financing
- iii. Any technical requirements or conditions made by Development Partners/Creditors and Government;
- iv. The service delivery

### **3.6 Negotiation Team**

The members of the negotiation team need to be selected carefully to combine the right blend of negotiation experience and contractual, financial, legal and/or technical skills. It is not enough for members of the negotiation to rely solely upon written guidance. As the value and complexity of the financing agreement increases so will the need for skilled negotiations. There is need to assemble a technically qualified multidisciplinary team consisting of Technical project staff, financial analysts, Economists and Lawyers and other relevant disciplines.

Once the team is selected, the role of each team member should be carefully defined. One person in the team should be designated as the team leader. For high value and technically complex financing agreements or contracts, it may be appropriate for a representative of the end-user to manage overall coordination of the negotiations.

All negotiations require a degree of planning to ensure that the appropriate information is captured on which the team is negotiating against and/or for, what is your plan, what is your position, who's on your team, what do you have and what you don't have.

A worksheet should be designed that allows one to establish their position, creditor or supplier positions, roles and key messages to express or not to express, questions and information sought from the other party. The worksheet allows logical movement through the issues during the negotiation.

#### **3.6.1 Selecting Negotiating Team**

Selecting individuals for a negotiating team is perhaps the single most important step in preparing for negotiations; Therefore, decisions on

who should comprise the negotiating team should not be taken lightly. Several factors should be considered in selecting the team members; specifically, the selection should encompass an assessment of the individual's relevant experience, technical abilities and personality. It is extremely important to determine the best fit for team members so that they are in the roles which are most suited to their particular talents.

The first step in selecting a negotiating team members is to clearly define the role in regard to the specific responsibilities and required deliverables. Second, it is essential to determine the competencies, talents and experience needed for each role on the negotiating team. Third, members of the team should be selected based on their particular experience, skills, and abilities. Individuals have specific strengths and weaknesses that should be considered and assessed so that they are properly placed on the negotiating team for the benefit of the whole. It is clearly to the benefit of the team for individuals to be in placed in roles that match their strengths. For example, an individual may be qualified to fill more than one role on the team, but there should be one role that fits them best. Likewise, there will be roles with such specific requirements that only one person best fits that role. Finally, each team member should have a clear understanding of their role and the expectations and responsibilities of their role.

The team should at minimum comprise of the following representatives;

- i. Ministry of Finance, Planning and Economic Development,
- ii. Solicitor General,
- iii. Accountant General,
- iv. Sector Ministry,
- v. Procurement specialist among others.

The nominations of negotiation team from sectors should be communicated to the Ministry of Finance, Planning and Economic Development by the sector Political Head. This is to ensure political ownership of the process.

### **3.6.2 Chief Negotiator**

The Chief Negotiator is the spokesperson for the Government Negotiation Team and is the decision-maker at the negotiations table. During the course of negotiations numerous issues of various magnitudes will need to be resolved. It will be the role of the Chief Negotiator to reach resolution on these issues in consultation with other members of the Negotiation Team and Management. Due to the pivotal nature of this role, the Chief Negotiator must have clear parameters of authority and instructions regarding the government's priorities.

The responsibilities of the Chief Negotiator are summarized as follows:

- i. Spokesperson for the Government Negotiation Team
- ii. Decision-maker for the Government Negotiation Team at the negotiations table
- iii. Agenda director for the negotiation sessions
- iv. Act as liaison between Negotiation Team and the Executive Management Team
- v. Resolve all issues within his/her scope of authority
- vi. Briefs the Executive Management Team at the pre-negotiations executive sessions

The negotiating team is led by the Permanent Secretary/ Secretary to the Treasury (PS/ST) or his Deputy or any other appointee of MoFPED and comprises of the authorized representative of the Executing Agency and the line Ministry (as the case may be). Approved by competent authority in MoFPED must be taken for negotiating the loan.

**Annex III** highlights an example of the roles of members of the negotiation team.

### **3.7 Pre-negotiation**

This should ideally be held by the project promoters after receipt of the negotiation package which is circulated by the MoFPED from the creditor inviting Government for negotiations. This should preferably be

done at least two weeks in advance of the proposed negotiation dates in order to get some time for resolving any issues which may come up during pre-loan negotiation meeting. It is highly recommended that the project promoters are requested to go through each paragraph in the legal agreement and associated agreements. If any changes are proposed by then, they should be prepared in a tabular form (worksheet), the original text and the proposed text clearly depicted in separate columns. This speeds up the entire process of negotiation.

The whole negotiation team should attend the pre-negotiation so that all critical issues are thrashed up upfront and no new surprises are sprung by the project promoters' new representative during the negotiations. The idea is for MoFPED to be on the same page with the project promoter's as one team. Minutes of the pre-negotiation should be signed by all representatives of the different stakeholders on the negotiation team.

### **3.7.1 Pre-negotiation meeting with EA(s)**

PS/ST calls for a pre-negotiation meeting and this is done after receipt of the negotiation package which is sent to the PS/ST with a letter from the DP/Creditor inviting Government negotiations. This should preferably be done **at least two weeks** in advance of the proposed negotiation dates in order to get some time for resolving any issues which may come up during pre-negotiation meeting.

#### **Prepare with the following in mind;**

- Ensuring the PAD/PAR and the Draft Financing Agreement plus any other documents are received in advance (2 weeks) for internal review by the negotiation team.
- The draft financing agreements have been reviewed and the team has a good understanding of the documents

**When reviewing the financing agreements, the following should be given due attention;**

- Default Clauses
- Financial indebtedness- cross default
- Obligation to lend or extend external assistance
- Purpose of the loan/grant
- Repayment and pre-payment
- Interest periods- amount of fees; when to pay interest
- Representatives
- Boiler Plate Clauses
- Transferability of loans
- Conditions
- Notices
- Governing law & Jurisdiction

**Solicitor General, among others, is expected to give guidance in regards to the following;**

- Choice of law
- Choice of court
- Place of enforcement
- Other Jurisdiction -
- Location of assets
- Place of execution
- Chosen Jurisdiction
- Property Law
- Condition for effectiveness
- Legal Opinions

### **3.8 Negotiations**

The venue, time and date for the negotiations is communicated to both the Development Partner / Creditor and other relevant stakeholders. Negotiations must be undertaken on official working days and should not go beyond 5:00pm. Substantive issues for negotiation include;

### **3.8.1 Identification and Design of the Project**

Has the project been conceptualised in conformity with the government processes and procedures for initiation and approval of public investment projects as detailed in the Public Investment Management System Framework for Uganda.

### **3.8.2 Financial Mechanism**

- a) Flow of funds mechanism – different methods available for disbursements
- b) Arrangement for co-financing or other funding
- c) Foreign exchange and interest rate risk
- d) Accounting requirements
- e) External audit requirement
- f) Internal audit requirements
- g) Advance contracting and retroactive financing
- h) Interest during construction, taxes and duties on goods and equipment's, rate of interest, terms of the loan including the different amortization modes
- i) The importance of correctly estimating expenditure budget requirement (inclusive of counterpart funding)

### **3.8.3 Costing**

The project costing must be in line with Government priority. At least 70% of the project costing should towards hardware (infrastructure) with less than 30% of the total project cost earmarked for software. For loan financing, capacity building should be at bear minimum and must be justified. Project management cost need not to be more than 10% of the total project cost.

### **3.8.4 Procurement**

The team needs to clearly agree on procurement policies and modalities used i.e. whether government procurement policies or the Creditor procurement policies or both. This **MUST** be confirmed at negotiation. Local content should be emphasized at this stage.

### **3.8.5 Project Implementation mechanisms**

It is important to establish where the project will be implemented through Government mainstream system or project implementation units of parallel systems. It should be clear on how the reporting and monitoring will be undertaken. If there are multiple agencies, it must be clear on who the overall responsible agency will be.

### **3.8.6 Safeguards**

It is a very important that the safeguard issues are given consideration from the point of inception of the project. The social and environmental safeguards arising from the project should be clearly identified and remedial measures in place to mitigate and control such effects. It should also be clearly stated on who the responsible office is.

### **3.8.7 Project readiness risk Check List**

The checklist will show that most actions covering all the points noted above are to be completed before loan negotiations. Refer to Annex I for the project readiness checklist.

In summary, negotiating in the project environment include:

- Assure the project is properly designed, defined and sponsored.
- Establish clear sector priorities with buy-in and support from the sector and leadership team.
- Locate the project results within sector priorities.
- Tie project goals and results to supporting sector goals.
- Clearly define and vividly illustrate the tasks required to reach project goals.
- Clearly define and vividly illustrate project resource requirements.
- Build trust and credibility through accurate project planning, schedules, open and honest communications.
- Provide risk assessments for missing resources.
- Know the cost of delay.
- Quantify the cost of NOT having the resources required.

## **3.9 Confidentiality and Rules of Conduct**

### **3.9.1 Confidentiality**

Contract negotiations are not confidential in the traditional sense as numerous third parties are present or participating in some way or another. However, all individuals involved in the contract negotiations should exercise discretion regarding strategies, alternatives and priorities. The contract negotiations themselves are not protected by attorney-client communication privilege, but any communication between legal counsel, the Negotiation Team and the Executive Management Team would be privileged unless the privilege is waived.

### **3.9.2 Rules of Conduct**

An important strategy in effective negotiations is for members of the same team to “speak with one voice” when addressing the opposing side. While reasonable minds often differ and discussion is important, it is essential that Government’s representatives agree to follow the rules of conduct set forth below:

**Rule No. 1** - All differences of position shall be discussed and escalated outside the presence of the opponent.

**Rule No 2** - If members of the Negotiation Team identify a situation where a difference of opinion is arising, a short recess should be called and members of the Negotiation Team should caucus.

**Rule No. 3** - If the Negotiation Team is unable to resolve the issue during the caucus, the issue should be tabled and further discussion discontinued until the Negotiation Team can resolve or escalate the issue in private or with members of the Executive Management Team.

**Rule No. 4** – Members of the Government Negotiation Team who repeatedly violate the rules of conduct will be asked to excuse themselves and designate a substitute.

## ANNEX I – PROJECT READINESS CHECK LIST

| #        | Milestones   | Action points/ Points to check  | Agency responsible for Compliance |
|----------|--|---|-----------------------------------|
| <b>1</b> | <b>Before sending a project Proposal to MoFPED</b>       |   |                                   |
|          | <b>Checklist for conception stage</b>                    | i. The concept note identifies clearly defined components of the project, activities, cost estimates and implementing agency (ies), coordinating mechanism in case of multiple implementing agencies and the finance plus elements. | Project submitting agency         |
|          |  | ii. Lessons learnt from the previous projects implemented in the sector have been incorporated.   | Project submitting agency         |
|          |  | iii. The project preparation milestones, in months, taking the date of posing as the zero date, have been identified.   | Project submitting agency         |
| <b>2</b> | <b>Before Posing the project to Development Partners</b> |   |                                   |
|          |  | i. Project has been cleared by MoFPED   | MoFPED                            |
|          |  | ii. Liaison with National Planning Authority by issuance of certificate of compliance   | Project submitting Agency         |
| <b>3</b> | <b>Project Management</b>                                | i. Institutional structure for project implementation and funds flow arrangement defined and agreed with MoFPED   | Project implementing agency (PIA) |
|          | <b>Procurement Plan and Actions</b>                      | ii. Designation of PMU/ PIUs staff completed and core staff for the project assigned. Key project staff (project director, procurement, FM, safeguard) should be identified early in the project cycle.                             | Project implementing agency (PIA) |
|          |  | iii. Tenure of Key staff should be, to the extent possible, for three years or more   | Project implementing agency (PIA) |
|          |  | iv. Staff Evaluation  |                                   |

| #  | Milestones                          | Action points/ Points to check   | Agency responsible for Compliance |
|--|-------------------------------------|--|-----------------------------------|
|  | <b>Procurement Plan and Actions</b> | v. Procurement plan for the project detailing contract packages, modes of procurement, pre-requisites for awarding the contracts, approval flow chart, decision making structure and schedule for each contract be in place. | Project implementing agency (PIA) |
| vi. Terms of reference (TOR) for all consultancy contracts including Project management consultants, shortlist of consultants/ consulting firms and documents for prequalification of contractors are prepared and approved/ reviewed by MFI |                                     | Project implementing agency (PIA)  |                                   |
| vii. RFP for major/ critical consultancies issued.   |                                     | Project implementing agency (PIA)  |                                   |
| viii. Budgeting for at least 30% of land acquisition & resettlement requirements has been made. Land acquisition/ Pre construction activities, where relevant, have started.   |                                     | Project implementing agency (PIA)  |                                   |
| ix. Land acquisition and resettlement plans are ready, where relevant.   |                                     | Project implementing agency (PIA)  |                                   |
|  | <b>R&amp;R</b>                      | x. Relief & Resettlement Plan, where relevant, for the first two years of the project implementation should be finalized and confirmation that R&R activities are aligned with the Procurement plan, be conveyed.            | Project implementing agency (PIA) |
| xi. Environmental Management Plan (EMP) for the first two years of project implementation has been finalized. Complete ESIA and secure approval of DP/Creditor.  |                                     | Project implementing agency (PIA)  |                                   |

| # | Milestones                              | Action points/ Points to check   | Agency responsible for Compliance |
|---|---|--|-----------------------------------|
| 4 | By appraisal of the Project             |  |                                   |
|   | <b>Institutional arrangement and HR</b> | i. Necessary budget/ Counterpart fund provision has been made  | Project implementing agency (PIA) |
|   |   | ii. Key policy and institutional reforms, if critical to the successful completion of the project, should be implemented prior to negotiations   |                                   |
|   |   | iii. Project Implementation Plan/ Administration Manual/ Memorandum covering scope, organisation and its TOR, procurement, budgeting, disbursement, reporting and auditing arrangement has been finalized. |                                   |
|   |   | iv. Project Management consultant, if critical to the successful implementation of the project, should be in place by negotiations.  |                                   |
|   |   | v. At least 30% of land acquisition (if required) to be completed.   |                                   |
|   | <b>Implementation Readiness</b>         | vi. All statutory clearances like environmental clearances, if applicable, to be in place  | Project implementing agency (PIA) |
|   |   | vii. Administrative clearances for temporary use of land i.e. right of way taken.  |                                   |
|   |   | viii. Administrative approval for shifting of utilities taken.   |                                   |
|   |   | ix. Entire PMU/PIU is in place.  |                                   |
|   |   | x. Establish (a) Financial Management system, (b) auditing arrangement and (c) system of oversight   |                                   |

| # | Milestones                       | Action points/ Points to check | Agency responsible for Compliance      |
|---|----------------------------------|--------------------------------|--|
| 6 | <b>Before Loan effectiveness</b> |                                |  |
|   |                                  | Legal opinions taken           | DDCP/Project implementing agency (PIA) |

## **ANNEX II – DOCUMENTS GENERALLY PRESENT IN THE NEGOTIATION PACKAGE**

All documents for negotiation **MUST** be received in advance (at least 2 weeks) for internal review by the negotiation team. Below are the main documents generally presented in the negotiation package by creditors/Development Partners;

- Project Appraisal Document/Project Appraisal Report
- Financing Agreement
- Project Agreement
- Disbursement Letter
- Any other document the creditor deems relevant and necessary

On the other hand the Government negotiation team need to familiarise themselves with the following documents;

- National Development Plan
- Relevant Sector investment Plan
- Debt strategy
- Country Strategy Papers
- Relevant Laws and Acts like the PPDA etc.

## ANNEX III – EXAMPLE OF ROLES AND RESPONSIBILITIES OF NEGOTIATION TEAM

| STAFF  | RESPONSIBILITY   |
|--|--|
| Chief Negotiator – PS/ ST, MoFPED or his designate | <p>Manages the agenda</p> <p>Speaks for the group</p> <p>Acts as liaison between Negotiation Team and executive management</p> <p>Resolves all issues within his/her scope of authority</p> <p>Briefs Executive Management Team as necessary</p> |
| Ministry or Department representatives             | <p>Provide program input to contract</p> <p>Back-up to chief negotiator</p> <p>Liaison to program agreement and/or contract negotiations</p> <p>Lead on Sector sub-team</p>  |
| Procurement Official                               | <p>Monitor negotiation process</p> <p>Guide procurement issue through review and approval process</p>  |
| Project Representative                             | <p>Provide project related input to the negotiation</p> <p>Back-up to chief negotiator</p> <p>Liaison to project document/agreement negotiations</p>   |
| Solicitor General Representative                   | <p>Keeps the Negotiation Team on schedule and on task</p> <p>Provide legal advice</p>  |
| Subject Matter Experts                             | <p>Provide support and guidance on subject matter specific issue</p>   |
| Legal Support Team if necessary                    | <p>Provide research, analytical, and clerical support for agreement/contract negotiation</p> <p>Gap analysis</p> <p>Assist in preparation of Contract Negotiation Briefing Binder</p> <p>Act as additional legal provider</p>                    |





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