

ASSESSMENT OF NOTABLE PUBLIC- PRIVATE PARTNERSHIP (P3) PROJECTS IN KANO STATE

By

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Abstract

Kano state was created on 27th May, 196 , as a component State of the Federal Republic of Nigeria. It is strategically located at the center of Northern Nigeria. Its economy is driven largely by commerce, manufacturing and agriculture that employed up to 70% of its population, directly and indirectly. Nonetheless, the economic development and growth of any nation or state (Kano state inclusive) has a strong co- relation with the quality and quantity of its infrastructure which by its nature, capital intensive with a long construction period. This mandated Kano state to device ways to fund the provision, revitalization and maintenance of its infrastructure. One of the financing model deployed is public -private partnership (P3). This article using doctrinal research method by way of content analysis, assesses twenty P3 projects and their method of procurement, business type, construction obligations, funding and status of implementation. The objective of the assessment is to understand the role P3 is playing in Kano's infrastructure market and to test the political will of the Kano state government for the engagement of private sector. One major finding of the article is, almost all the projects are directly negotiated and; many were halfway abandoned/terminated by government or disputed and are being litigated. This degree of uncertainty militates against the existence of an enabling environment needed for P3 to flourish. Hence, it is recommended for the Kano state to formulate a robust, structured P3 model.

Key words: Assessment, infrastructure, public, private, partnership

Introduction

Public-private partnerships (PPP), that is, private finance for public infrastructure, are now emerging as a viable source of infrastructure investment in Kano and elsewhere in Nigeria. A successful PPP arrangement capitalizes on the strengths of both the private and the public sector to provide a better and cost effective public goods and services; and speed up the rate of its implementation or coverage.¹ The growth and sustainability of PPPs has been attributed to several reasons, including increased efficiency in project delivery and operation; reinforcing competition, public sector institutional capacity, contract design, contract management and strong political support.² It is against this background this article provides detail assessment of notable public-private partnership projects in Kano State; not for the purpose of knowing their numbers , but with a view to understanding their method of Procurement, status of implementation and the political will for their continuities.

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¹ Yescombe, E. R., *Public-Private Partnerships in Sub-Saharan Africa: Case Studies for Public Policy Makers*, Dares Salam: UONG021 Institute, (Mkuki na Nyota Publishers, 2017) p. 3

² Ibid, p. 4

Notable Public–Private Partnerships Projects in Kano State

There are few known PPP projects with censored information in Kano State available publicly to permit open discussion without betraying confidentiality. In this regard, we have ten PPP projects at different level of implementation; and another ten PPP projects in the pipeline for assessment with a view to understanding their method of procurement, business type (greenfield or brownfield), construction obligation, source of revenue, service delivery and status of implementation.³

Public-Private Partnership Projects

This part of the article, is set out to assess ten PPP projects (both greenfield and brown field) and their status of implementation. The greenfield, is any project involving the construction of a completely new facility or building. Whereas, the brownfield, is a project involving refurbishment of an existing facility, or building on a site where there have previously been a major structure.

New Singer Market Project

The first PPP project was proposed in Kano State in 2006, when a Built-Own-Operate-and-Transfer (BOOT) agreement was signed on the 20th day of October, 2006 between Kano State Government (procuring entity) and Integrated Development and Investment Services Limited (the concessionaire), wherein, the concessionaire was given an exclusive mandate to, within seventy two (72) weeks commence and finish the construction of New Singer Market on BOOT basis on a piece of land covered by certificate allocated by the procuring entity and thereafter operate, manage and recoup its investment and return the market within a fixed term of twenty five (25) years with all improvements and appurtenances to procuring entity.

This contract was a product of unsolicited bid (proposal) from the investor (IDIS) limited and procured through direct negotiation with the procuring entity. A year after the signing of the agreement, there was a transition and for some administrative reasons the government decided to renegotiate the contract on the 22nd/Feb/2013, as a result of which the status of the contract changed from Build, Own, Operate and Transfer (BOOT) to Build, Own, Operate (BOO), wherein the concessionaire will not return the facilities after construction or at any time to the procuring entity, but will only pay the sum of ₦467 million to the Kano State Government, 50% of the said amount to be paid within 90 days from the date of the signing of renegotiated agreement, and the remaining to be paid within 24 months.

Coincidentally, a new government was inaugurated on the 29th May, 2015 and like its predecessor set up a facts finding committee under the Chairmanship of the then Deputy Governor, to among others, review the process of the award of the contract and its status. The committee presented its progress report to the Kano State executive council on Wednesday 26th August, 2015 and recommended among others, the initiation by the Attorney General of Kano State of a process of divesting all interest of the concessionaire; revocation of the land covered by certificate of occupancy of the 121.2ha allocated for the project by the Kano State Government; and articulate a new design of the project (market) with new investors.⁴

³ These Contracts can be found online at www.kanostategov.ng, which is the official website for Kano State Government

⁴ KNSG – *Report of the Second Kano Economic and Investment Summit*, (Yaliam Press Ltd, Kano, Nigeria, 2017) p. 77

Approving the recommendations the State Executive Council through the Honourable Commissioner of Land and Physical Planning revoked the certificate of occupancy earlier granted to the concessionaire, in 2006; and approved a new BOOT contract with Brain and Hammers on different terms and conditions. That action of the Government of Kano State necessitated the concessionaire (IDIS) to file a suit before Kano State High Court, for a declaration among others, that the revocation of the land is illegal; and that the Kano State Government has no right to enter into contract with any person on the subject matter.⁵

New Kano First Market Project

The second PPP project is a tripartite Built-Own-Operate (BOO) agreement between Kano State Government (The Promoter), Messrs. Kano Bricks and Clay product limited (The Developer) and Fish Sellers Association of Kano State (The Beneficiary), signed on 5th day of January, 2010.

Under the agreement the promoter following direct negotiation with the developer after the review of its unsolicited proposal to finance and construct the New Kano fish market at Unguwa Uku, Tarauni Local Government Area of Kano State; facilitated the issuance of a letter of grant dated 30th December, 2009 to the developer to finance the construction of the Kano fish market not later than 28th January, 2013 and offer shops and facilities to members of the beneficiary for sale, on terms to be mutually agreed by all the parties. However, for some squabbles between the developer and members of the beneficiary the performance of the contract was delayed, which led to the making of yet to be signed supplemental agreement on the 15th March, 2014.⁶

From the available public record, the developer did its best to see the realization of the market, seeing it as highly successful PPP when completed. But the promoter did not show enough political will to encourage the beneficiary to perform its side of the agreement. Due to the skepticism and the failure of the promoter and the beneficiary to prosecute the agreement with all diligence, the developer demobilized from the construction site and the project is abandon.⁷

Tiga and Challawa Hydro-Power Projects

The third on the list is the Engineering, Procurement and Construction Contract of 20 megawatt and 10 megawatt (5X2mw) Tiga and Challawa Hydro power projects entered between Kano State Government (procuring entity) and Skipper Nigeria Limited (the contractor). The contracts were initially signed in 2013 by the Kano State Government, with a view to having an Independent Power Projects (IPPs) that can produced a combination of 30 megawatts of electricity from the two dams of Tiga and Challawa in Kano State. The contract was awarded to the contractor via restrictive bidding followed by an advance payment of an unamortized amount in the sum of ₦700,257,774.8 for onshore contract value and \$30,000,000 for offshore contract value.⁸

⁵ Suit No. K/02/2016

⁶ Ruqayyah , Y. A, Kano Gets ₦1bn Fish Market, Daily Trust Newspaper, Monday, 1st Feb, 2010, Abuja, Nigeria p. 23

⁷ Report of the Second Kano Economic Summit, (2017) op cit, p. 80

⁸ Muhammad, Y. Tiga 7.2MW Project in Kano, at 95% Completion Stage-Official. Solace Base Online Newspaper, Kano, Wednesday, 7 Oct, 2020.

The two projects for Tiga and Challawa were later renegotiated by the new administration in the State, and a renegotiated contract was executed on the 13th November, 2017 that reduced the scope of the two projects, from 20mw and 10mw to 7.2 mw and 6mw respectively. As at October, 2020 the 7.2megawatt Tiga IPP project in Kano, is at 95% completion stage; while the Challawa IPP Project (6mw) was at the excavation stage and expected to be completed by 2021.⁹

These projects when completed will put the contractor under an obligation to generate Power to be transmitted to the national grid for a period of 24 months, and subsequently hand-over the project to Kano Hydro and Energy Company (KHEDCO) established in 2016 by the procuring entity with the view to encouraging the development of alternative sources of energy and; to enhance electricity generation through effective utilization of water resources in the state.¹⁰

Kano Light Rail Project

The fourth project for assessment is the contract for the Detailed Survey, Design and Construction of light rail in Kano metropolis signed on the 30th November, 2016 between Kano State Government and China Railway 18th Bureau (Group) Co. Ltd & China Railway Construction Electrification Bureau Group Co. Ltd Joint Venture (CR18G – CRCEG JV). The scope of the work is the detailed design and construction of road bed, structures and track, of approximately 74.3km of a light rail transit system within Kano metropolis, including 34 Nos. of Rail stations along the way, one rolling stock depot and two parking lots. The project is divided into three phases: phase I; Lot 1 (Red Line), Lot 1-1 (Green Line) and Rolling Stock Depot, Phase II; Lot 2 (Pink Line), Phase III; Lot 3 (Blue Line), Lot 4 (Orange line). The time for the commencement and completion of phase I shall be 730 calendar days and the commencement date and time of completion for phase II and III are to be determined by both parties before the completion of phase I.

The project attracted the attention of public and has been the subject of public debate and opposition since its inception, partly because of (i) the contract price which stand as One Billion, Eight Hundred and Fifty Million, Eight Hundred and Thirty-Nine Thousand, Ninety-Eight US Dollars Only (US\$1,850,839,098.00) (ii) the funding of the project of which 85 per cent of the total sum shall be secured from a loan to be obtain by the Kano State from Chinese banks, and the remaining fifteen per cent (15%) to be paid by the Kano State from other sources like budgetary allocation, (iii) the currencies of payment and exchange rate of which 80% of advance payment, interim payment and final payment, shall be payable in US Dollars to the contractor to avoid currency exchange rate risk and 20% of those advance, interim and final payments shall be payable in Naira under the contract. Applicable exchange rate of those paid in Naira shall be the selling rate published by Central Bank of Nigeria in any day within seven (7) days prior to the date of each payment requested by the contractor; and (d) the method of procurement, which is direct negotiation as a result of unsolicited proposal submitted by the contractor that disallowed other contractors with better financial and technical expertise to submit their bids for the project.¹¹

⁹ Ibid

¹⁰ Ibid

¹¹ Ruqaiyya, Y. A. Kano Elders Petitioned FG Over External Borrowing for Kano Light Rail Project, Daily Trust Newspapers, Abuja, Wednesday, 19, Aug, 2020 p. 13

Although the project is expected to come into full force and effect on the 30/Nov/2016 the date the contract was executed by both parties, but up-till now the contract did not reach financial close, as no agreement for the financing is signed between Kano State Government and China Development Bank Corporation (external creditor), for skepticism from the side of the creditors as a result of stiff opposition from many section of Kano State and a pending litigation filed by Kwankwasiyya movement a non-governmental organization (NGO).¹²

Integrated Solid Waste Management Project

The fifth project is, Build, Operate, Own and Transfer (BOOT) contract for an integrated solid waste management facility. The contract was executed on the 17th January, 2008 between Federal Government of Nigeria (Guarantor), Kano State Government (procuring entity) and Goodness International Resources Limited (investor), the thrust of the BOOT contract is the establishment of an integrated municipal solid waste management facility in Kano metropolis through the supply, installation and operation of a waste recycling plant in some Kano Local Governments; which comprises: Kano Municipal, Dala, Gwale, Fagge, Nassarawa, Tarauni, Ungogo and Kumbotso Local Government Areas, of Kano State.

Under the contract, it is the obligation of the Federal Government of Nigeria to guarantee the project through an Advanced Payment Guaranty (APG) of the sum of ₦250,000.000.00 as project concept fee upon signing the contract; facilitate the investor's financing and the implementation of the contract; assist the investor to off-set the cost of routine operations with zero percent % custom duties for relevant imported equipment and materials including assistance to obtain permits, registrations and approval to manage the project and set up project monitoring unit comprising representatives of the Federal and Kano State Governments.¹³

The obligations of Kano state under the agreement comprises of payment to the investor of a monthly solid waste collection and disposal fees to be determine after the completion of the project and allocation of 100 hectares of land within Kano as project site together with four other sites as transfer stations of the collected waste for the period of the contract which is 30 years. The Kano State must also ensure the investor obtains with ease and within possible time all State's permits, registrations and approvals to manage the project.¹⁴

On the part of the investor, it shall be responsible for the design, construction and financing of the project, after carrying out statutory environmental impact assessment, and solid waste and medical waste demographic survey and baseline study/survey of Kano city. The investor shall also install recycling facilities for the solid waste sorting, recycling, composting and production of organic fertilizer at least 30 months after operation started.¹⁵

The contract is worth the sum of seven billion three hundred million and three hundred thousand Naira and was procured through direct negotiation between the parties. However, after the financial close and the commencement of work at the project site provided by Kano State Government at Gabasawa Local Government Area of Kano State, and after the investor incurred huge expenses on daily basis toward the actualization of the project and the

¹² Suit No FHC/KN/CS/169/2020

¹³ Article 8, of the BOOT 2008

¹⁴ Article 9, of the BOOT 2008

¹⁵ Article 10, of the BOOT 2008

importation of machineries. The Kano State Government refused to provide transfer stations in accordance with the agreement.

While the state of affairs continue the investor received a shocker, when it heard in the news sometimes in September 2016 (eight years after the execution of the contract) that Kano State Government had unilaterally abandoned the tripartite BOOT contract under reference and executed a new agreement with another investor on the same project and, had already re-launched the project in total disregard of Article 16 of the 2008 contract. And worst still the new contract was awarded at whopping \$100,000,000.00 (one hundred million US Dollars), higher than the price of the earlier contract.¹⁶

This development spurred the investor to write a letter through their solicitors, dated 7th November, 2016 and duly received by the Executive Governor of Kano State Nigeria, intimating the State Government to carry out its obligations and continue with the subsisting contract of 2008; or to pay the investor full contract sum as well as any cost the investor had incurred so far and for the loss of profit.¹⁷ After a year has elapsed without the response from the Kano State Government, the investor filed a suite at the Federal High Court Abuja division on the 18th day of September, 2017 through the chambers of Ahmed Raji, SAN, against the Kano State Government and the Federal Government of Nigeria.¹⁸

In the suit, the investor who is the plaintiff claims against the defendants, a declaration that the tripartite contract executed between the plaintiff and the defendants on the 17th day of January, 2008 for the establishment of Build, Operate, Own and Transfer integrated solid waste management facility in Kano State remains valid and subsisting.

Kano Ultra-Modern Hospitals PPP Project

The sixth contract under assessment is the management contract of Kano State Ultra-Modern Hospital (KUSH), it is one of the varieties of public-private partnership contract which was awarded to Northfield Health Services Ltd (manager) on the 3rd May 2018, by the Kano State Government (owner) as a result of an unsolicited bid submitted by the manager which was directly negotiated. Immediately after the negotiation an agreement was signed on the 8th July, 2018 by Kano State Ultra-Modern Specialists Hospital (KUSH) Board, a legal entity created under the Kano State Ultra-Modern Specialists Hospital (KUSH) Law, 2018;¹⁹ and Northfield Health Services Limited, a private company incorporated in Nigeria with registered office at No. 38, Beirut Road, Kano.

The Manager was appointed by the contract to manage the two hospitals, named: Muhammadu Buhari and Khalifa Ishaq Rabi'u Specialists Hospitals, Kano for a period of six (6) years, renewable for another term. The manager is responsible for the provision of healthcare services to the public for a tariff and; to make capital expenditure for the purchase of equipment, machines, and facilities where necessary.²⁰ If at the end of the year a profit is made, the net of the profit shall be shared between the owner and the Manager, in the ratio of

¹⁶ Paki, S. I. Private Contractor Queries Kano State Government Over Contract Dispute, Daily Trust Newspaper, Abuja, Wed. 8 September, 2016, p. 13

¹⁷ Ibid, p. 14

¹⁸ Suit No. FHC/ABJ/CS/875/2017

¹⁹ Law No. 2 of 2018, Kano State of Nigeria Gazette No. 4 – Kano – 14th September, 2018, Vol. 34, p. 31 - 38

²⁰ Article 7 of the Management Contract, 2018

30:30 and the remaining ratio of 40 shall be deposited in a special account for re-investment and social responsibility.²¹

While the contract is ongoing and at the eve of its third anniversary, Kano State Government filed a civil suit through private solicitors against the Northfield Health Services Limited (the Managers) for breach of contractual terms and a liquidated damages of One Hundred Million Naira Only, among other reliefs.²² The contention of the Kano State Government described herein as (the owner) is that, for three (3) consecutive years the manager fails, refuses and neglects to declare profit and/or submit an audited account to the Kano State Ultra-Modern Hospitals Board (KUSH), that can enable the parties to the contract to share whatever profit declared at 30:30 per cent ratio and to invest the remaining 40 per cent for corporate social responsibility as per the provision of article 6.0.4 and 6.0.7 as the PPP contract respectively.

From a careful review of the contract and the court process filed, the suit can be said to have been filed in contradiction with the agreed dispute settlement mechanism embedded into the PPP agreement governing the parties' rights and obligations. The contract contemplated mediation and arbitration in accordance with the provisions of Arbitration and Conciliation Act,²³ as dispute settlement mechanism before any litigation, and there must be a cooling-off period before arbitration, after the mediation failed.²⁴

Also a review of the PPP contract revealed that, the parties to the contract failed to appreciate that health sector is one of the few sectors that are not suitable for profit making; it is like the water and sanitation sector. The level at which tariffs is set for health and water services can be an extremely political issue. Historically, such tariffs may have to be subsidize, charge at a low rate or not collected. Hence, Kano State Government needs to understand this and any private involvement may necessitate formal arrangements with the project company like, Northfield Ltd. (herein the manager) for government subsidies or financing.²⁵

Kano Education Management and Information System Project

This is a concession contract for the provision of Education Management and Information System (EMIS) in Kano State. The concession agreement is made between Kano State Government and NUDENIA Project Management INC, a company incorporated and existing under the relevant laws of Canada, with its registered address at 2, Robert Speak Parkway, Mississauga, Ontario, Canada, duly represented by Nigerian based Technology Bureau Ltd, Block AAZ-16, Suite 35 & 36, Sura Shopping Complex, Simpson Street, Lagos, Nigeria.

In a bid to make the contract, NUDENIA herein refer to as "Concessionaire" submitted an unsolicited proposal to the Kano State Government after understanding the desire of the State, of improving the quality of its education service delivery cross all schools from primary to tertiary institutions, through computerization of school management, provision of e-learning centers and computer based examination for all schools. The concessionaire made presentation of information memorandum to the Kano State Executive Council on the 7th

²¹ Ibid, Article, 7.0.7

²² Suit No. K/232/2021 filed and dated the 15th day of June, 2021 at High Court of Justice, Kano.

²³ Cap A18 LFN, 2004

²⁴ Articles 15.0 and 16.1 of the PPP Agreement

²⁵ Delmon, J., *Public-Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers*, (Cambridge University Press, 2015) New York, USA, p. 188

October, 2015 and expressed its desire to engage in public private partnership (PPP) with Kano State Government towards actualizing the desired project. Following the presentation and direct negotiation, the contract was signed on 23rd December, 2016 for the implementation of the project.

Under the contract, it is the obligation of the concessionaire to: (a) solely finance the setting up, configuration, installation and maintenance of information and communication technology infrastructure, to enable seamless data interchange between public and private primary, secondary and tertiary schools in Kano; (b) establish 44 nos. of workstation E-Learning Centers per annum at each of the 44 Local Governments Areas of Kano State; (c) computerized operation and administration of school through an advanced school management software (ishcool); (d) implement Education Management and Information System (EMIS) for Kano State Ministry of Education; (e) implement a simple transition account portal for Kano State Ministry of Education for online transaction; and (f) grant rights of appurtenant to the above rights.²⁶

The concession period for the contract is five (5) years excluding period of pilot project installation; and may be renewed for another term. During the concession period, the concessionaire shall have right to create security interest for the benefit of its lenders, and set up tariff on the users of services to recoup its capital investment, operation and maintenance costs.²⁷

The user tariff to be paid in accordance with the agreement shall be USD3 or equivalent in Naira per student and per term, for private primary and secondary schools; USD0.3 or equivalent in Naira per student and per term for public primary and secondary schools; and USD8 or equivalent in Naira per student per semester for tertiary institutions. These tariffs are for accessing the portal either for registration, payment of school fees, and printing of result or material.²⁸

On the part of Kano State Government, the State shall be responsible for: (a) allocating and delivering project site which is returnable with all facilities to the State, after the expiration of the term of the concession; (b) granting permission and approval free of charges to the concessionaire; (c) enforcing and ensuring the collection of payments from schools and students and; (d) ensuring the security and safety of equipment and project centers and facilities.²⁹

Unfortunately this project is abandoned before taking up by the State Government, the fact that it had failed to allocated the project site to the concessioner. Another thing to note with the project is, even if it will take up it may encounter hostility from the public as there is no law in the State, that allow for the collection of tariffs from students of public and private institutions at the time of making the contract and thereafter.³⁰

²⁶ Article 1.1 and 9.1 of the Concession Contract 2016

²⁷ Ibid, Article 1.4.1

²⁸ Ibid, Article 5

²⁹ Ibid, Article 5.2

³⁰ KNSG - Report of the Second Kano Economic and Investment Summit Theme: “*Transforming the Economy of Kano: Turning Challenges into Opportunities*” Tuesday 23rd – Wednesday 24th May 2017, Yaliam Press Ltd. Kano, p. 81

China Town Project

This is a contract for the Design, Finance and Construction of China Town in Kano State, this is a public-private partnership contract entered between Kano State Government through Ministry of commerce and Industry and Minsource Investment Limited (the investor) on the 27th day of Nov, 2014, as a result of an unsolicited proposal (bid) from the investor which was directly negotiated with Kano State Government. The contract is the product of the understanding of the parties to undertake a project for building an ultra-modern commercial complex to be known as 'China Town' with a view to boosting economic activities in Kano State, at a projected cost of \$USD Four hundred million.³¹

The subject matter of the contract is the designing, financing and construction of a China town to be located at Gurjiya village along Zaria road in Dawakin Kudu Local Government Area of Kano State. The town when completed shall comprise of (i) 286 Nos. of Chinese residence, (ii) wholesale market; (iii) five star hotel; (iv) five star hospital; (v) warehouses and industrial park, with supporting facilities that includes banks, cold rooms and stores, firefighting equipment, sewage management and recycling solution, security outpost, public address system, and magnificent street lights.

Parties have their respective obligations, as contained in Article 4 (a) and (b) of the contract. The main obligations of the investor are to: fully finance the project through either equity contribution or project finance from financial institutions; and to ensure the timely completion of the project. Whereas, the Kano State's obligations are: to make 44:23 hectare of land available and free from any encumbrances and exclusively for the project to the investor; and to provide necessary approvals, permits within shortest reasonable time. The duration for the completion of the project shall be 36 months, and the project is divided into three phases and 12 months is set aside for the completion of each phase.³²

According to the contract document, the project when completed shall be for the exclusive ownership of the investor and no further payment either by way of tariff or fees are to be made to the Kano state government, except by way of tax and land administration charges applicable in Kano State. However, as part of consideration for granting the 44.23 hectares of land to the investor for the project, the investor undertakes to make a bulk purchase of 286 houses to be built by Kano State at a quadrant selected which is adjacent to the proposed 44:23 hectare to be allocated for the China town, at a value of five billion, nine hundred and twenty million, three hundred and sixty eight thousand, seven hundred and fourty Naira, ninety four kobo only (₦5,920,368,740,94k) with the discount of 15% (fifteen percent) amounting to Eight hundred and eighty million, fifty five thousand, three hundred and eleven naira, fourteen kobo only (₦888,055,311.14k).

To discharge part of its obligation, the Kano State Government following an application for land approximately 44.23 hectares made on the 2nd Dec, 2014 by the investor, issued a letter of grant for a piece of land No. COM/2014/160 covering 44.23 hectares to the investor on the 4th Dec, 2014 , this is made with the expectation that the investor will kick start the project as planned, having claimed to have conducted a feasibility study, conceptual design of the site

³¹ Memorandum of Agreement for Building China Town in Kano State, dated 26th Nov, 2014 available online, at www.kanostate.gov.ng, accessed on 15-Sep-2020 at 20:00 hours

³² Article 5 of the MOA, dated 26th Nov 2014

plan, conceptual drawing of the project and promotion of the project in newspapers and other media outlet.

However, with the transition of power to new civilian government in 2015, the Kano State Government through the Commissioner of Land and Physical Planning issued revocation notice dated 18th March, 2016 to the investor; and in due course allocate the same land to the Kano State Investment and Properties Ltd (Kano state owned company) for the purpose of building a housing estate; the fact that the investor has not shown any financial commitment, and for its violation of certain provisions of the certificate of occupancy. That action provoked the investor to file a suit at the High Court of Justice Kano State, for a Declaration of title to the land No COM/2014/160 and for a liquidated damage in the sum of One Billion Naira Only (₦1,000,000,000.00k)³³

Nassarawa GRA Asset Development Project

This is an asset development PPP project, entered Between Kano State Investment and Properties Ltd (KSIP), a commercial arm of Kano state government (the owner) and NATA'ALA Properties and Investment Company Limited (The Developer) on the 16 April, 2015. The owner is vested with the right of occupancy over the land described in certificate of occupancy No: LKN/RES/RC/82/719 and is desirous of developing the land into 15 units of detached luxury duplexes, through private financing.

In pursuance of the contract and in consideration of the developer's covenants, to design, finance and construct 15 units duplexes within 24 months and, to surrender four (4) units of the developed duplexes after construction to the owner, as full satisfaction of the value of the land covered by the certificate of occupancy No: LKN/RES/RC/82/719, the owner surrendered the land to the land and the project has already been developed and it is a success story.³⁴

Industrialisation PPP Project

The last public-private partnership for assessment is the Contract for the Design, Finance and Rehabilitation of factories, known and called 'Industrialisation PPP Project', it was on the 12th day of September 2017, the Kano State Government, through Kano State Investment and Properties Limited (KSIP) executed a rehabilitation contract with Araya Development Resources Limited (the private developer) for the development and revival of several factories owned by KSIP following an unsolicited proposal submitted and directly negotiated between the parties.³⁵

Under the agreement the private developer will finance and utilize its technical expertise on its own or through the establishment of a Special Purpose Vehicle (SPV) to design, finance, rehabilitate, and operate closed down or dilapidated factories belonging to KSIP, with a view to acquiring 12% of the share capital of the revitalize factories for a term of ten years. On its part Kano State Government will provide land, facilities and necessary approvals and permits as may be requested by the developer to ensure successful completion of the project, with a view to taking 88% of the share capital of the revitalize factories.

³³ Suit No. K/453/2016

³⁴ Property Development Agreement between KSIP and NATA'ALA Properties and Investment Company Ltd, available on line at www.kanostate.gov.ng, accessed on 15-Sep-2020 at 15:00 hours.

³⁵ MOU for the Industrialization Project in Kano dated 12th day of September, 2017, available online at www.kanostate.gov.ng, accessed on the 15th September, 2020 at 16:30 hours.

However, looking at the contract documents one may not have an option than to accept that the contract is poorly drafted and is dead on arrival, for the reason that: there is no list of the factories to rehabilitate, no location of the factories, no duration for the execution of the rehabilitation. Of concern is the fact that, the contract covered not only factories belonging to KSIP but other factories belonging to private persons whose names are not mentioned by the contract. This project is not maintained and was abandoned by the project company.³⁶

Pipeline of Public-Private Partnership Projects

Hereunder are another ten PPP projects that are on the pipeline and upon which a memorandum of understanding is signed between Kano State and project proponents at the Kano Economic and Investment Summit, held in May, 2017 at Kano:³⁷

Kanawa Economic City Project

This is a contract for the Construction of new market at Dangwauro, Dawaki Kudu local government area of Kano State, tagged as ‘Kanawa Economic City’ projected at the cost of One Hundred and Fourty Six Billion Naira, where Kano State Government (KNSG) is providing 121 hectares of land at Dangwauro in Dawakin Kudu Local Government Area and Brain and Hammers (B&H) Ltd providing financing. The project will consist of eight thousand shops, World Trade Centre, Five Start Hotel and other facilities.

Tricycle Assembly Plant Project

This is a contract for the Design, Finance and Construction of Tricycle Assembly Plant, at a projected cost of six hundred and thirty million Naira only (₦630m) to be financed by Milestone International Company Ltd, with Kano State Government contributing piece of land for the construction work, which will entitle the State to provide 80 per cent of the would-be workforce in the assembly plant.

Kano 100 Megawatt Solar Power Project

This is a Build-Own-Operate (BOO) PPP project for the development and construction of 100 megawatt of solar power projected at the cost of USD\$ 150 million, to be financed by Arewa Solar PV Synergy Ltd; with Kano State Government providing land for the construction that will be equivalent 30% of its equity contribution to the project.

Gabasawa 100 Megawatt Solar Project

This is a Build-Own-Operate (BOO) PPP project for the generation of 100 megawatt of solar power at Gabasawa Local Government Area of Kano State, to be financed by Black Rhino and Dangote Consortium, at the projected cost of USD\$ 150 million, with Kano State Government providing land for the construction that will be equivalent to 20% of its equity contribution to the project.

Fibre Optic Network Project

This is Build-Own-Operate (BOO) PPP project for the provision of Fibre Optic Cable Communication Network in Kano metropolitan local governments, with Kano State Government contributing land and other facilities which will entitle the state to 40% of the project profit. The project is to be financed by Broad-Based Nig. Ltd. to provide an open

³⁶ KNSG, Kano State Investment & Properties Limited, *Manual for Project Development*, (Government Printing Press, Kano, Nigeria, 2020) p. 9

³⁷ Report of the Second Kano Economic & Investment Summit, Theme “Transforming the Economy of Kano: Turning Challenges into Opportunities” Opcit, p. 77

access of metro fiber optic platform that can provide an e-government and e-commerce data framework.

Management Contract for Vehicle License/Smart Cards

This is a management contract for the provision of vehicle license, smart cards and vehicle data maintenance at the projected cost of Two Billion Naira only (₦2 billion) to be fully financed by Multi-vision Nigeria Ltd, on behalf of the Kano State Internal Revenue Service (KIRS)

Kano Waste Management Recycling Plant

This is a contract for the Design, Finance and Construction of Waste Management Recycling Plant, at the projected cost of USD\$ 100 million to be fully financed by Shara Dukiya Nig. Ltd. (a private company) with Kano State Government contributing land for the construction work as 20% of its equity contribution. The project will not likely put a smile on the face of majority of the investors in Kano State, for the fact that, while there is subsisting PPP contract on the subject matter with Goodness International Resources Limited a new memorandum of understanding was negotiated by the Kano State Government with a new investor.

Rice Mill Project

This is a Build, Own, Operate (BOO) for the construction of Rice Mill by Dangote Group Limited at the projected cost of USD\$ 80 million to be fully financed by the Company, with Kano State Government providing land and other financial support with a view to having 20% of its equity contribution. This project is highly objectionable to be a PPP project because government cannot be seen as a commercial venture partner.

Metropolitan Light Rail Project

This is Build-Own-Operate and Transfer (BOOT) for the Construction of Light Rail in Kano Metropolis, entered between Eighteenth Engineering Company (EEC) a (foreign investor) and Kano State Government. The investor will contribute 85 per cent of the finance and Kano State Government 15 per cent projected cumulatively at USD\$ One Billion, Eight Hundred Million Dollars (\$1.8 billion). The investor at the completion of the project will operate for 30 years and return the project with all facilities to the Kano State Government.

Municipal 100 Megawatt Solar Power Project

This is Build-Own-Operate and Transfer (BOOT) PPP project for the provision of 100 megawatt of solar power at the projected cost of USD\$ 120 million, with 95% of the amount to be financed by Multi-Solar Investment Limited (the investor) and Kano State Government contributing 5% as its equity contribution. The investor after completion of the project will operate for the period of 20 years and return the facilities to the Kano State Government.

After the signing of these ten (10) MOUs, the Executive Governor of Kano State lamented in one of his tours to the project site of Kano Economic City that, his administration is a very serious government and expects serious approach from investors. And the government of Kano State would not tolerate long bureaucracy, obstacle, sabotage, go-slow or diversion from any public servant along the process of implementation.³⁸ But, unfortunately, with all

³⁸ Paki, S. I; Governor Ganduje of Kano State Tours New Kano Economic City, Daily Trust Newspapers, Abuja, Nigeria, Tuesday 22nd December, 2020, p.18

this political remarks of highest political order from the Chief Executive of Kano State, only two of these projects are on-going.³⁹

The pattern of public-private partnership projects in Kano State (abandoned, ongoing and those on the pipeline) is, almost all the projects are procured through an unsolicited proposals (bids) from investors and negotiated directly. The major issue is, many unsolicited projects are associated with lack of competition and transparency, which can lead to frequent renegotiation, abandonment by Project Company, authority voluntary termination (AVT) and litigation. Much of the controversies stems from public sector granting exclusive development rights to private investors without an open and transparent tendering process.⁴⁰

Private proponents sometimes need to convince governments with their unsolicited proposals and they commonly argued that, they have intellectual property rights to project concepts, they are the only developers interested in the project, and they can save government's time and money by sole-source negotiation of project details.

Governments particularly with weak public sector capacity and less developed infrastructure asset/market like, Kano State are often too easily convinced by these arguments, as a result they accept the unsolicited proposal and directly negotiate with the investors, at the expense of an open, transparent and competitive bidding.⁴¹

The implication is, when a PPP project is negotiated directly following an unsolicited proposal, there is no competition necessary to obtain "value for money" and to bring "innovation" into the equation, as investors under competitive pressure have the incentive to innovate and to proactively assess and manage the risks in the most efficient manner.⁴² Lack of competition may not only harm value for money, but may also seriously harm the interest of the stakeholders in the relevant PPP program and market.

Indeed, competition is of the essence in accessing stable and significant interest from reputable investors.⁴³ Therefore, direct negotiation may only be appropriate in a very few circumstances, that relate to situations when it is evident that only one company is interested and prepared to deliver the project; or when there have been a natural disaster or other emergencies that demand an expeditious process. In these circumstances, value for money becomes a secondary factor.⁴⁴

³⁹ Remarks of the Executive Governor of Kano State at Kano State House of Assembly Complex during 2021 presentation before the plenary, available online at <https://solacebase.com.ng>, accessed on 8th November, 2020 at 15:30 hours

⁴⁰ Hodges, J. T, Dellach, G., Unsolicited Infrastructure Proposals How Some Countries Introduce Competition and Transparency, *Working Paper (2007) No. 1* (2007), PPI Database, World Bank, available online at <http://ppi.worldbank.org/>. Accessed on the 18 – August 2020, p. 18 at 17:00 hours

⁴¹ Ibid, p. 20

⁴² Susan, R. and Bonnie, J. P., *Corruption and Government: Causes, Consequences and Reform* (2nd Edition) (Cambridge University Press, 2016) p. 9

⁴³ Ibid, p. 10

⁴⁴ World Bank, *Public-Private Partnership Reference Guide*, (World Bank Publication, 2014) Washington DC, available at: www.worldbank.org (accessed on 20 January, 2020) at 19:00 hours

Conclusion

From the assessment so far made herein, we can safely argue that, public-private partnership is not one-size-fits-all. Each sector needs specific consideration and possibly a bespoke PPP solution that adopt a structure relevant to the context. But the pattern and design of PPP contracts in Kano State as reflected from the assessment are not sector specific they are mostly uniform in design with little variations for the sake of name and dates of activities.

Also, most of the ongoing P3 projects were abandoned and or terminated, some were disputed and are being litigated at various courts across the state and outside of the state. This degree of uncertainty and lack of continuity in the execution of government projects by successive governments, militates against the existence of an enabling environment needed for a P3 to thrive. Therefore, the need of a structured and program approach for P3 in Kano state.