

Saturday, March 23, 2024

**Distinguished Senator Godswill Akpabio**  
**President of the Senate**  
Senate Chambers,  
National Assembly Complex  
Three Arms Zone,  
Abuja

**Rt. Honorable Tajudeen Abbas**  
**Speaker of the House of Representatives**  
House Chambers,  
National Assembly Complex  
Three Arms Zone,  
Abuja

Dear Mr. President and Mr. Speaker,

**OPEN LETTER – RE: MEMORANDUM OF UNDERSTANDING BETWEEN FGN AND MPH RAIL DEVELOPMENT (UK) LIMITED ON THE PORT-HARCOURT-CALABAR-ENUGU-ABUJA STANDARD GAUGE RAIL PROJECT**

**Background**

Last week, on the 13th of March, the Federal Ministry of Transport announced that it had signed an MOU with a UK registered private company, MPH Rail Development Limited, “to enable the company carry out the design, construction, commissioning, operation and transfer of the Port-Harcourt-Calabar-Enugu-Abuja rail line on a public private partnership basis.” According to the statement, the MOU “was executed following the approval of Outline Business Case and issuance of a compliance certificate by the Infrastructure Concession and Regulatory Commission (ICRC)”. It heralded the signing of this MOU as “a landmark achievement for the Tinubu administration”.

In a striking reversal just four days later, following widespread criticism mainly relating to MPH Rail’s suitability as a counter party in such a significant project, the FGN in a second statement described the same MOU as a non-binding, preliminary document merely intended “to provide a platform for further discussions between parties to ascertain the possibility of executing the project or otherwise.”

**Questions Arising**

These announcements and the related sequence of events call for further and immediate scrutiny, despite the Ministry’s attempt to downplay their significance. In particular:

**1. Status of the Project**

Given the facts, the Ministry’s latest, reactionary portrayal of the status of this project as only “the beginning of a long process” is, in my opinion, duplicitous and misleading. Submission of an Outline Business Case (OBC), approval by the ICRC and issuance of OBC Compliance Certificate all of which, according to the Ministry, have been done in this case, are definitive and significant milestones in both the National Policy on PPP’s as well as the ICRC’s PPP guidelines (see attached).

The guidelines require that preliminary due diligence work should have already been done on both the project and the private sector proponent (MPH Rail) to justify OBC certification including, among others, assessments of:

- Capacity to finance, deliver, construct and operate the project.
- A technical feasibility study
- Estimated total project cost and financial model
- Environmental and other Social Impacts

OBC certification by ICRC signals the successful completion of the Project Development and Preparation Phase and enables commencement of the Procurement Phase of PPPs.

## **2. The Project Proponent – MPH Rail**

There is nothing in the short corporate history of MPH Rail Development to suggest that it has the capacity to undertake such a project. Its shareholding is nominal at GBP1,000 (One thousand Pounds Sterling). It is not clear what is the basis of the Ministry's assertion, contained in its second press statement, that MPH Rail is an SPV incorporated by an entity called the British African Business Alliance (BABA), as BABA is not a shareholder of MPH. In any case, association with BABA does not confer credibility on MPH for this purpose as BABA is itself a micro-entity in the UK, that primarily aims to facilitate networking and information sharing by business entities rather than functioning itself as a principal.

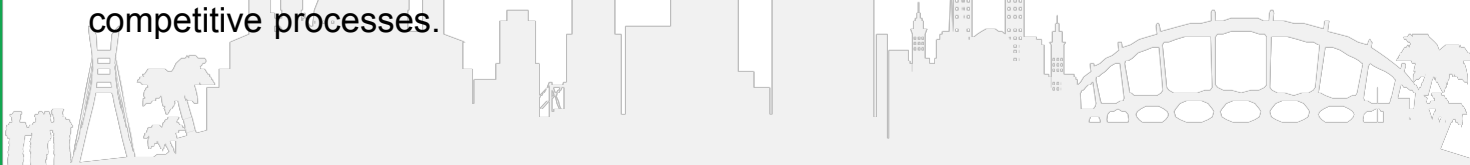
Notably, MPH's proposal was originally submitted to the Ministry as far back as August 2019. It is concerning to observe that the immediate past Speaker of the Lagos State House of Assembly, Adeyemi Ikuforiji was appointed a director of MPH and allotted a 20% interest in the Company in August, 2023. Shortly thereafter, in December 2023, MPH's Outline Business Case was forwarded by the Ministry to the ICRC and approved that same month.

Subsequent to the announcement of the MOU and widespread awareness and criticism of his involvement with the Company the former Speaker has resigned from the Board of the Company and transferred his shares to another director effective March 15, 2024.

## **3. Process Undertaken**

Apart from the suitability of the Sponsor, there are a number of critical deficiencies in the processes so far adopted or indicated for pursuing this initiative:

- a) It is not clear why this is being characterized and pursued as an unsolicited PPP project. Rail infrastructure development using PPPs is neither a newly identified nor a trivial undertaking by the FGN and is presumably being undertaken in segments/phases based on integrated plans. Indeed, the FGN has repeatedly talked about its rail infrastructure master plans for over a decade. Consistent with the ICRC Act, National PPP Policy and Guidelines, these projects should generally be publicly advertised and pursued via pre-qualification and competitive processes.



- b) Even for unsolicited PPPs, once an OBC is approved, the next phase should be an advertised, competitive procurement process. This is a requirement of the law as well as the guidelines. The process implied by the Ministry where MPH is to now proceed, based on OBC certification to produce documents including a Full Business Case for approval to execute the project is wrong. The guidelines require that the bidder that emerges successfully in the competitive procurement bidding phase that follows OBC certification, (which may or may not be MPH), will proceed to put forward a Full Business Case for approval and execution.
- c) By the Ministry's own statements, the basic requirements to demonstrate a bankable Outline Business Case such as satisfactory assessments of proponent's capacity to deliver, technical feasibility, estimates of financial costs and models as well as environmental impact assessments are not yet in place, and these are what MPH is now expected to produce. In view of these fundamental deficiencies, the OBC should not have made it to ICRC for approval in the first place and, more importantly, there is no basis for ICRC issuing a compliance certificate.

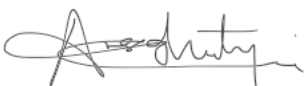
### **Conclusion and Imperatives**

All over the world, Public-Private-Partnerships are accepted as useful potential means of bridging public sector infrastructure funding and capacity gaps. At the same time, evidence also abounds the world over that if not implemented and governed diligently, the short and long-term potential of PPPs for destructive and extractive transfer of societal resources from the general public to a privileged few is almost unparalleled.

This project demonstrates a number of red flags, some of which are highlighted above. While the Ministry bears primary responsibility in this and similar projects, the role of the ICRC, as the entity empowered by law as regulator and custodian of the public interest in these matters, is very critical, and in this case, is of particular concern.

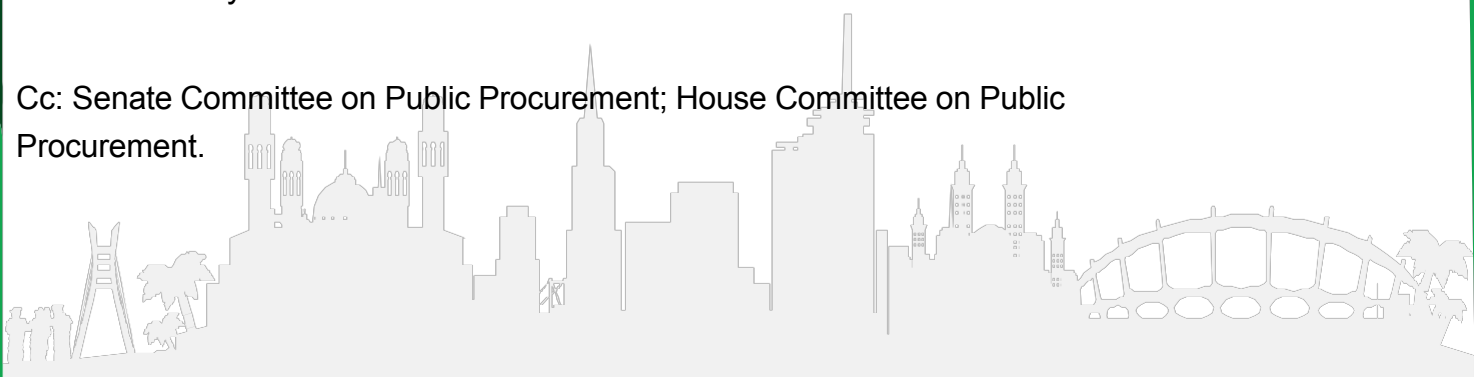
As a first step, this PPP project should be halted from proceeding further. I hereby call on the National Assembly, in exercise of its oversight powers, to speedily undertake a review and investigation of this and other such PPP projects to provide assurance of diligent and effective application of the Approval, Regulatory, Governance and Disclosure processes that are intended to secure value for money and protect the public interest in PPPs implemented pursuant to the ICRC Act.

Thank You.



Funso Doherty.

Cc: Senate Committee on Public Procurement; House Committee on Public Procurement.





**INFRASTRUCTURE CONCESSION REGULATORY COMMISSION**  
Plot 1270 Ayangba Street Area 11 Garki Abuja, Nigeria; Tel: +234- 09-4604900.;  
email: [info@icrc.gov.ng](mailto:info@icrc.gov.ng)

A Privately Initiated Infrastructure Proposal (PIIP) OR an **UNSOLICITED** PPP Procurement over Federal Government Infrastructure would **typically** follow the steps below:

### 1. PPP PROJECT DEVELOPMENT AND PREPARATION PHASE

- Private Proponent submits a bankable **Outline Business Case**<sup>1</sup> (OBC) to MDA demonstrating inter'alia:
  - capacity to finance, deliver, construct and/or operate the project,
  - a technical feasibility study,
  - an estimated total project cost and financial model,
  - the justification of project need, and
  - Environmental or other social impact studies. During review for consideration the MDA may request for additional legal, financial, and environmental studies at the proponent cost.
- If the OBC is acceptable, the MDA would thereafter forward the OBC to the ICRC for **review**. Subject to assessment ICRC would approve or decline the issuance of the OBC Compliance Certificate to the MDA.
- ICRC OBC Compliance Certificate will convey the applicable unsolicited proposal fee<sup>2</sup> (USP-Fee) accordingly.
- ICRC would consult the Federal Ministry of Finance (FMoF) in order to identify and appropriately handle any risk and contingent liability issues that may arise from the project.

### 2. PPP PROCUREMENT PHASE

- Following OBC's certification by ICRC and the payment of the USP-Fee by the project proponent, the MDA will constitute a Project Steering Committee, Project Delivery Team and appoint a PPP Project Officer for the Project.
- A **Transaction Adviser** (TA) would then be engaged by the MDA through competitive bidding process as required under the Public Procurement Act of 2007, to prepare a reference OBC, assess the value for money and other baseline parameters to guide the procurement and negotiation process.
- The MDA's TA would commence a two staged RFQ/RFP<sup>3</sup> **procurement process** through the Swiss Challenge Method leading to a competitive bidding process from which a preferred bidder will emerge. The original private proponent will have the right of first refusal to submit and match or concede to a more responsive Offer other than his offer in his original proposal.
- **Negotiations** would thereafter ensue, leading to the conclusion and submission of a **Full Business Case** (FBC)<sup>4</sup> to ICRC for **review**. Following which, ICRC would issue FBC Compliance Certificate to the MDA or advise the MDA otherwise accordingly.
- The MDA would submit the FBC Compliance Certificate to **FEC** through the line Minister, for **Approval**.
- Following FBC's approval, the PPP Contract would be signed between the grantor MDA and the preferred **PPP Project Proponent (Investor)** after which ICRC will **take custody** of the PPP Contract as required under the Section 20 of the ICRC Act.

### 3. PPP IMPLEMENTATION PHASE

- Following commercial close<sup>5</sup>, the TA will follow through with the project and the preferred **PPP Project Proponent (Investor)** to achieve **Financial Close**<sup>6</sup> in line with the condition precedent in the PPP Contract.
- The MDA is required under Section 12 of the Act to supervise the project diligently. On the other hand, the ICRC and the MDA are required, under Section 10 of the Act, to conduct regular joint **Inspections** of the Project until the end of the contract.

<sup>1</sup> **Outline Business Case:** A document prepared to establish the need for the project outlining its parameters, scope, demonstrate its bankability and value for money.

<sup>2</sup> **USP-Fee:** An applicable fee in line with ICRC USP-Fee Structure (see [www.icrc.gov.ng](http://www.icrc.gov.ng)) paid by the unsolicited project proponent for the submission of the unsolicited proposal to the MDA.

<sup>3</sup> **Request for Qualification (RfQ)** The set of documents issued by the procuring authority that constitute the basis of the qualification and potentially the pre-selection of candidates (the short list). Qualified (or short-listed candidates) will then be invited to submit a proposal (or to enter into a new phase prior to bid submission, such as a dialogue phase or interactive phase) & **Request for Proposal (RfP)** The set of documents issued by the procuring authority that set out: The basis or requirements for submitting the proposal (which documents and in which format and contents the bidder has to submit); The basis of the evaluation criteria for selecting the preferred bidder or awardee; and The PPP contract that will be signed with the successful bidder and other annexed information such as forms, templates, complementary information for reference purposes, etc

<sup>4</sup> **Full Business Case:** A document prepared by the MDA's TA prior to financial closure and award of contract, which provides all the information needed to support a decision to award a contract and commit actual funding, as well as provide a basis for the necessary project management, monitoring evaluation and benefits realization.

<sup>5</sup> **Commercial Close:** The time when all network of commercial contracts and documentation have been executed between/among the public and private party.

<sup>6</sup> **Financial Close:** The time when the financial documentation and covenants have been executed with lenders to the project, and conditions precedent have been satisfied or waived. It is now permissible to draw money for project execution