

(An unofficial translation)

Public-Private Partnership Policy, 2072



Government of Nepal
Ministry of Finance
Singhadarbar, Kathmandu
Nepal

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1. Background

- 1.1 Development of essential public infrastructure and services (including roads, bridges, airports, modern means of communication, drinking water, irrigation, electricity, railways, cable car, ropeways) is imperative for achieving sustainable economic growth of the country. The means and resources allocated from national treasury fall short of what is required for the construction and operation of infrastructure services. It is desirable to make assets of public utility and operation of public services less costly, effective and reliable. For this the means, resources, skills and technology available with the private sector must be attracted towards development works of the nation based on the concept of Public Private Partnership (PPP).
- 1.2 It is believed that the contribution of infrastructure services built on this model is crucial and effective for providing momentum to economic development and strengthening national economy and making public services effective by ensuring optimal use of managerial skills, innovative technology, appropriate human resources and capital available with the private sector for producing/creating goods and services of public utility and construction and operation of infrastructure and services.
- 1.3 It is necessary to create acceptable conducive policy environment addressing the involvement of private sector appropriately in the construction and operation of services by executing government's role more effectively and using appropriate methods for risk minimization associated with the construction and operation of public infrastructure and proper management and operation thereof.

2. Past initiatives

- 2.1 The development and smooth operation of infrastructure is an immensely capital intensive and a highly technical matter and as such it becomes essential to attract both domestic and foreign investors towards development and expansion of such sector and create conducive environment. Construction, operation and handover of Public Infrastructure Policy, 2000" was formulated and implemented considering the necessity to construct infrastructure under infrastructure development related system through the

involvement of private investors, so as to meet the ever increasing demand of the construction and expansion of infrastructure.

2.2 On the basis of point 2.1, “Private Sector Investment in the Construction and Operation of Infrastructure Act, 2006” was issued in 2006 and it is still in force.

2.3 On the basis of aforementioned policy and legal arrangements, some projects based on public private partnership (PPP) model at various levels of local entities are in operation and successful implementation of PPP projects at local levels proves its rationale.

2.4 Despite several efforts made towards the improvement of this sector since long back, additional policy reform efforts have been made because success as targeted could not be achieved in infrastructure development sector at national level.

3. Current status

3.1 Nepal desires to graduate from the least developed country to a developing country status by 2022 AD. For this, standards and thresholds set are: gross national income per capita at US Dollar 1,242; Human Asset Index at 66 and economic vulnerability index at 32. Based on the United Nations’ evaluation of 2015, Nepal’s current status shows US Dollar 659, human asset index as 68.7 and economic vulnerability index as 26.8, and physical infrastructure services not adequate and reliable.

3.2 Presently in Nepal, “Policy related to Construction, Operation and Handover of Public Infrastructure 2000” and “Private Sector Investment in the Construction and Operation of Infrastructure Act 2006” and regulations 2007 under the act are in force. However, at central level no major achievement has been made so far, though some minor works related to urban infrastructure have been carried out at local levels through public private partnership model.

3.3 Despite proposals invited several times for the construction of Kathmandu-Terai fast track, successful bidders have not been selected so far. Achievements as expected could not be made despite unsolicited proposal for the construction of Kathmandu-Hetauda Tunnel Highway was endorsed and agreement was signed long ago. Likewise, successful bidders from among those who have submitted their proposals for cable car operation projects to be implemented at various locations are yet to be selected. It is understood that inability to clearly adopt national and international

concepts, norms and practices in current policies, Acts and rules and also these not being in tune with time has caused such situation.

4. Challenges and Problems

- 4.1 It has been a major challenge to enhance investment and management of public-private partnership in the development of infrastructure sector for Nepal to achieve its target to graduate from LDC to developing country by 2022 AD.
- 4.2 Investment and responsibilities to be borne by private sector in the operation of public-private partnership projects need to be accomplished within the specific time from the risk point of view. To discharge the responsibilities, such as structuring of projects, land acquisition, coordination and approval, payments to private sectors and approval for environment impact, within the time limit as specified in the agreement, by public sector in cooperation with private sector has been perceived as a challenge.
- 4.3 Procedural challenges in identification, construction, operation, and handing over of a project in PPP form are there, and challenges in retaining expertise in legal and regulatory matters and preparing human resources in maintaining public good governance also remain.
- 4.4 There are problems like limited resources and weak professional competence in the implementation of PPP models for the development and expansion of infrastructure services in Nepal.
- 4.5 Lack of policy arrangement on proper sharing of risks while executing large infrastructure and development projects of national importance developed jointly on PPP concept, lack of proper arrangement to address Viability Gap Funding (VGF), inability to make the projects selection process transparent, failure to conduct feasibility study in appropriate manner, dearth of practices in carrying out independent appraisal of appropriateness of the conducted studies, lack of investment friendly environment and persistent security and land acquisition problems are still visible

5. Need for a new policy

- 5.1 To deliver quality services by attracting economic means and resources, professional expertise, entrepreneurship, ability, competence and innovative technology available

with the private sector towards economic development in the construction, up gradation, modernization and operation of country's public infrastructure and services.

5.2 To attract and utilize private sector's investment for public benefits as only national treasury and government's sole investment are not enough to achieve extensive growth to provide adequate and quality services with just the current investments of 3 to 4 percent of GDP being made towards infrastructure sector,

5.3 To achieve an annual economic growth of 6 to 7 percent since the current status as mentioned in point 3.1 above, indicates that Nepal requires an investment of approximately Rs. 10,000 billion by 2022 AD in order to attain extensive growth in the current infrastructure development sector.

In the given backdrop, the government of Nepal has formulated "PPP Policy 2015" citing the necessity of significant changes in current policy, Acts and rules subsequent to the study, analysis and consultation carried out on national and international practices for infrastructure development in Public Private Partnership.

6. Vision

To ensure public access to infrastructure and services through their qualitative and sustainable development.

7. Goal

To enhance public-private sector investment on development and operation of public infrastructure services through the adoption of the PPP model for comprehensive socio-economic development.

8. Objectives

Objectives of this policy shall be as follows:

8.1 To create an environment that attracts private investment to meet requirement of capital, means and resources for development, reconstruction and operation of public infrastructure and services, from private sector.

- 8.2 To utilize professionalism, work efficiency, entrepreneurship and technical skills available with the private sector to render qualitative public infrastructure services needed for the country.

9. Policies

Following policies shall be adopted in order to achieve objectives as stated in clause (8):

- 9.1 To promote PPP related current principles and norms of international standards in all feasible areas, apparatus, organs and entities of the state.
- 9.2 To create conducive atmosphere for investment of additional capital, means and resources required for the development, reconstruction, management and operation of infrastructure services from private (domestic and foreign) sector
- 9.3 To make optimal utilization of professionalism, entrepreneurship, ability, competency and latest technologies of private (domestic and foreign) sector in the development, reconstruction, up-gradation, operation and management of infrastructure services for country's overall development.

10. Strategies

(a) Strategies relating to policy 9.1 shall be as follows:

- 10.1 Prevailing norms and approaches related to PPP shall be accepted/ adopted in all possible public sectors and entities on the basis of necessities and relevance.
- 10.2 The Infrastructure and services that can be implemented as per the PPP concept shall be identified and prioritized.
- 10.3. All state organs and entities shall be made vibrant as needed, to implement projects that can be accomplished as per the prevailing PPP norms for economic and infrastructure development.

(b) Strategies relating to policy 9.2 shall be as follows:

10.4 Procurement and approval processes of projects to be implemented under PPP model shall be made simple and transparent.

10.5 Risks and benefits shall be shared between public and private sectors in a justifiable manner.

10.6 Investments, cooperation and commitments to be made available by the Government of Nepal shall be ensured so as to implement PPP model and to boost private sector's morale.

(c) Strategies relating to policy 9.3 shall be as follows:

10.7 Competence, **efficiency** and **innovative** technology available with private sector shall be utilized as required in identification, prioritization, feasibility study and preparation of frameworks of projects implementable under PPP model at national and local levels.

10.8 Professionalism, entrepreneurship and **effectiveness** available with private sector shall be well utilized in construction and management of PPP projects.

10.9 The accountability of private sector shall be ensured for sustainable operation and repair and maintenance of PPP projects.

11. Work Policy

11.1 Underlying Principles of PPP at Public Entities

(1) The following prevailing norms related to PPP shall be adopted in the development of country's public infrastructure and services:

(a) Considering PPP as a contract between public and private entities for a fixed period, private entities shall make arrangements to own the potential risks that may arise partially or fully from all or some portion of financing, building, operation, repair and maintenance of projects under the PPP model. Such entity shall have to provide public services directly or indirectly through **construction** and/or operation and/or repair and maintenance

and/or use of public or private assets and shall be entitled to earn reasonable profit.

- (b) Public entities shall create environment that facilitates the private sector's investments through policies, legal, institutional and economic arrangements.
- (c) For the construction of public infrastructure and delivery of services, the basis for receiving return on its investment by private entity shall be ensured by taking a portion of fees collected from providing the services for a fixed period.
- d) Certain parameters and bases should be ensured at the time of signing the agreement to bear potential risks either from accidental colossal loss or other uncommon circumstances or if it becomes impossible to execute the agreement, at the time of construction and operation of infrastructure services under PPP model.
- (e) Arrangement shall be made in a way that assets, infrastructure and services constructed and delivered by private entities shall come under the ownership and operation of public entities subsequent to the completion of the period as prescribed in the contract of infrastructure services related projects

(2) Public entities may adopt PPP modality in their respective policies, plans, and programs

(3) Of the tasks to be performed by public entities, arrangements shall be ensured to involve private sector in those tasks that can be carried out under PPP model after their identification.

(4) PPP policy shall generally be executed in all national as well as local level PPP projects which possess norms as mentioned above in point 11 (1).

However, a PPP project may be kept outside the ambit of PPP policy provided that Council of Minister, Government of Nepal approves to do so.

(5) A PPP project shall have a mix of majority of the following salient features:

- (a) Project contract period should have been clearly set.
- (b) There should be full or partial capital investment of private entities for the purpose of construction, rehabilitation/ modernization of infrastructure services.
- (c) Private entity should be provided with responsibilities to operate, maintain and deliver infrastructure services or project management contract should have been entered with the responsibilities of operation and maintenance thereof.
- (d) Payment arrangement linked with work performance should be made as per earlier set benchmark for private entities.
- (e) Acceptance by private entity to bear income related risk partly and/or fully.
- (f) Abovementioned mandatory provisions should be mentioned in the duly signed project contract by public and private entities.

(6) Of the various forms of PPP, a condition could be whereby a private entity will be given responsibility of operation and management of public property without any investment and bearing or not bearing costs of royalty, and/or rent, and/or the cost of leasing on the one hand while responsibilities such as design, construction, ownership, operation and ownership transfer of projects that calls for maximum **private** investments shall be on the other. All possible forms that may fall in between shall be the form of a PPP project. Following points shall form the basis while deciding suitability and form of such projects.

- (a) A suitable structure to meet project objectives
- (b) Private sector's means and resources are available/ attracted for the projects.
- (c) Private sector should be able to bear project design, investment, construction, operation and repair and maintenance costs.
- (d) Condition acceptable to potential investors exists.
- (e) Service fee acceptable to consumers and community.

- (f) Condition acceptable to financial institutions and investors exists.
 - (g) Structure for sharing of benefits and risks is set.
 - (h) Public sector that has financial and managerial competency.
 - (i) Project agreement period is well defined
 - (j) Availability of human resources to implement PPP contracts of complex nature
- 7) Management contract and partnership contracts may fall under service contract in other forms of PPP.
- (8) In typical PPP projects, private entities shall meet all of the following conditions:
- (a) Collect fees/ tariff from the infrastructure service users as provisioned in the contract entered with public entities.
 - (b) Seek prior approval from Board of Directors if land that is leased or used by the government or by any other authorized entity needs to be used for commercial purpose other than construction and operation purposes.
 - (c) Handover public assets to Project Implementing Agency subsequent to the completion of the term of project contract.
 - (d) Private sector shall bear **associated** financial, technical and operational risks.
 - (e) Receive performance linked payments.

11.2 Projects to be implemented under PPP

- (i) Government of Nepal, public enterprises, or local bodies while shaping a PPP project shall decide to implement projects that strictly possess the following characteristics:
 - (a) There is a clear provision on policy and rate with regard to the user fees.
If there is no provision for direct user fees, mechanism for performance payments to the private sectors should be made clear.
 - (b) Clear allocation of responsibilities between public and private entities specified.

- (c) Arrangements, that the entity that is substantially more capable of bearing a particular risk should bear that risk, are in place.
- d) Detailed and adequate arrangements for the implementation of contract are mentioned wherein specifications, service level details and payments, incentives and penalties for providing or **not** providing such services and suitable arrangements for grievance and complaints hearing are in place.
- (e) Clarity on ownership of existing assets and newly created /managed assets during contract period.
- (f) Effective monitoring system at every level of complete project cycle.
- (g) Provisions on result based payment, motivational incentives and penalties.

(ii) The following **projects** shall not be considered as PPP

- (a) Operated by private sector with the objective of receiving any work and/or service without transferring project concerned financial, technical or operational risks to such sector.
- (b) Privatization of public assets or liabilities.
- (c) Commercialization of public works by creating government owned enterprises through government decision.
- (d) Receipt of grants/donations or gifts offered by private entities for public works.
- (e) The State's security provisions are outlined.

11.3 Priority Identification of Infrastructures

- (1) Public entities, in the process of identification of PPP projects, shall include such investments/projects/services that are necessary towards fulfilling their individual responsibilities while ensuring public interests. All the proposed PPP projects shall be identified and tested in accordance with the directives as is laid out in the Manual while preparing the list of PPP projects.
- (2) From a PPP perspective, priority sector of national and local level shall be as follows:

- (a) Physical infrastructures and transportation (Road, Bridge, Airports, Railways, Cable Cars, Ropeway and all ports)
 - (b) Electricity Sector (production, transmission and distribution (together or separately) and other types of energy).
 - (c) Information and communication sector
 - (d) Urban and rural environment sector (e.g., solid waste management, drinking water, sewerage and sanitation).
 - (e) Education, health related infrastructure and services, **all other sectors of** tourism infrastructure except hotels and accommodation.
 - (f) Urban amenities
- (3) PPP projects at local levels shall not require their specific prioritization. Techno-economic and market feasibility shall be deciding parameters for local level PPP projects.
- 4) Projects with good prospect of yielding the following results shall be selected as PPP projects and implemented **considering the** parameters like project cost, implementation period, service charge, quantity and quality of the built infrastructure and risk/benefit sharing:
- (a) Quality and access to services is enhanced
 - (b) Following results while investing on economic infrastructure sector are ensured
 - (i) Current status of public service is enhanced
 - (ii) Economic benefit to the Nepalese economy is ensured
 - (iii) Funds of the Government and local entities are effectively mobilized
 - (iv) **The innovative** and high level technology is made use of

- (5) Suitability and form of PPP shall be determined on the basis of results obtained from detailed feasibility study of the project.
- 6) Appraisal of Project's suitability shall be conducted.
- (7) Based on the provisions as specified in sub-clause (3), (4) and (5) of point 11.3, feasibility study for identifying suitability of PPP projects shall be conducted as follows:
 - (a) Project Implementing Agencies (PIAs) shall conduct project study related tasks.
 - (b) Stakeholders shall be consulted before carrying out feasibility studies on new types of complex and debut projects, and will be ascertained accordingly.

(Complex projects mean important projects from the strategic perspective for the Government of Nepal or debut projects wherein challenges lie in the PPP structure, financial viability for their implementation.)
 - (c) Analyses as mentioned in the above section (b) should be completed during the preparation and project structuring, prior to initiation of procurement process
 - (d) Decision on whether to implement project shall be made subsequent to the study and having appraisal of project's suitability. Project cost, implementation period, service charge, quantity and quality of infrastructure services including benefit and risk sharing should be considered prior to making such decision. For this, alternative analysis and feasibility study procedures shall be adopted while making decision on suitable project **structuring.**

11.4 Implementation of Partnership Model

- (1) All public entities shall identify and determine their respective priority areas for PPP and for this, consultation meetings may be held with private sector.
- (2) All public entities, based on their identified areas, shall select, design and set suitability of PPP projects.

- (3) Project Implementing Agency (PIA) shall set priorities of PPP projects from time to time considering following issues:
 - (a) Economic, social and financial benefits from the projects.
 - (b) Expected results that may be accrued in other sectors of economy while implementing projects.
 - (c) Difference between demand and supply of assets or public service developed by the project.
 - (d) Capacity to enhance service delivery quality by involving private sectors in those projects.
- (4) Private sector that is interested to develop project may be invited to do so.
- (5) Concerned agency of Government of Nepal may also develop projects to be operated under PPP model on their own.
- (6) PIAs shall furnish details of the identified projects to National Planning Commission (NPC) in order to provide them PPP structure. PIA shall initiate project preparation only when NPC carries out necessary analysis and recognizes such projects as PPP projects.
- (7) This policy shall be applicable to all PIAs. PIA, in order to implement PPP projects shall prepare, conduct feasibility studies, select private sector, carryout monitoring and supervision of the projects.
- (8) In case of projects having project outlay less than Rs. 50,000,000.00 (Rs. Fifty Million), the chief executives of concerned public entities may formulate and implement necessary policies and procedures for implementation, operation and handover of such projects.

*Explanation: Of the amount given under, whichever is higher shall be considered as **estimated** project outlay.*

- (a) *Amount required for project development as mentioned by PIA in feasibility study ,and/or*

- (b) *Net Present Value of estimated amount to be transferred to the private entity from the specified public entity in the process of conducting feasibility study (the sum derived with addition of 2 percent on the latest rate of government bond).*

11.5 Use of private sector during project structuring

- (1) Public entities may carry process ahead if they deem necessary to involve private sector's institution or individual in the process of preparing priority gained specific projects under PPP model.
- (2) Detailed feasibility study and project procurement process related documents for all prioritized projects shall be prepared as per the provisions laid out in this policy and submitted. Letter of intent/application for qualification/proposal related documents together with project agreement draft prepared for PPP projects should also be accompanied in project procurement process.
- (3) In case, private entity asks for additional details in connection with some specific project, PIA shall provide such details that are permissible as per the prevailing laws.
- (4) All feasible proposed PPP projects should be identified and tested while listing them.
- (5) In case proposed projects come into implementation as per this policy for the first time or innovative technology or method is to be used or detailed studies or tests are to be carried out or the possibilities of private sector's involvement is increased, preparation of such projects shall be given special priority.
- (6) PIAs shall undertake responsibility to provide facilitation for seeking environmental approval and approval in principle from other concerned sectors necessary during project preparation process. However, private entity responsible for the implementation of the project shall have to receive the final approval for the same.

11.6 Project Suitability Appraisal and Approval

- (1) Project procurement process can be commenced only after having project selection and related feasibility studies, project's suitability appraisal, documents related to Request for Proposal

and receiving approval for the model project. Suitability appraisal and approval process of the project proposed for implementation under this shall be as follows:

- (a) Feasibility study of all central and local level projects shall be carried out. PIA shall carry out tasks related to project procurement documents, draft of project agreement and perform/get performed suitability appraisal of its feasibility study, prior to commencement of project procurement process.
 - (b) PIAs shall prepare feasibility study, project agreement and project procurement related documents for projects having project outlay equal to or more than Rs. 100,000,000.00 (Rs. One Hundred Million) and/or projects requiring Viable Gap Funding (VGF) and/or any financial support from the government and submit to PPP Centre for their suitability appraisal.
 - (c) In case of projects having less than Rs. 100,000,000.00 (Rs. One Hundred Million) outlay, PIAs at its discretion may decide whether to have project suitability appraisal through PPP Center and may design projects, conduct suitability appraisal on their own and approve concerned documents
 - (d) In case wherein local bodies serve as PIA, they shall be responsible to have project suitability appraisal of those projects that require VGF or any financial support from the Government of Nepal through PPP Center.
 - (e) In case the projects that do not require VGF or other central level's grants, local bodies may decide on their own, whether to have appraisal of concerned documents through PPP Center.
 - (f) PPP Center shall prepare project suitability appraisal related documents of the projects requested by PIAs and forward them to the concerned PIA with its opinions and suggestions on project's feasibility study.
 - (g) For PPP Centre appraised all the projects, PPP Centre shall maintain records of contingent liability that the government of Nepal may have to bear while implementing the projects. PPP Centre shall furnish details of such liabilities to the government of Nepal through Ministry of Finance.
- (2) With regard to suitability appraisal to be carried out by PPP Center, PIA may carry out/get feasibility study and appraisal of suitability of project procurement documents carried out in two phases with justification if deemed necessary.

- (3) Approval for study, suitability appraisal, procurement documents and details on project agreement of PPP projects shall be as follows:
- (a) In case PIA is of national level (except Investment Board) and/or project outlay is less than Rs. 500,000,000.00 (Rs. Five Hundred Million) and/or projects not requiring VGF or any financial support from the government, the chief executive of concerned PIA may grant approval for taking projects to their procurement process along with feasibility study report and project procurement documents prior to the commencement of procurement process after having feasibility study and appraisal of other documents by PPP Center.
 - (b) If such projects are of local level and do not require VGF and other Central Level's grants, concerned local body may carryout suitability appraisal on its own, in accordance with guidelines issued by PPP Center, or decide itself on matters of seeking comments and suggestions from the PPP Center.
 - (c) If the estimated project outlay is as mentioned in sub-clause (3)(a) of 11.6 or higher and/or requires VGF and/or any financial support from the government, the concerned PIA, with the comments and suggestion of PPP Center, should submit to PPP Board of Directors for securing project approval prior to the commencement of project procurement process
 - (d) Board of Directors may grant approval to commence project procurement process, if it considers it appropriate based on the study of project procurement documents, and feasibility study suitability appraisal details.
- (4) In case where PIA is a local body and/or requires VGF and/or any financial support from the government, approval from PPP Board of Directors is required. However, PPP projects irrespective of estimated project outlay that do not require VGF and/or any central government financial support can be approved and implemented by all local bodies themselves.
- (5) In case where Investment Board is the PIA, irrespective of the size of project outlay, approval from PPP Board of Directors is required only when the project requires VGF or central grant.

However, for projects which do not require VGF or central grant, approval provisions as specified in the Investment Board Act shall prevail.

- (6) In any of the circumstances mentioned above, approving agency or authority may ask concerned PIA to revise project's features/structure, feasibility study and the sample of *project procurement documents* if deemed necessary. Approving agency or authority may grant approval with mandatory conditions to be incorporated in such documents. Procurement process can be commenced after such approval.
- (7) Concerned authority or entity shall secure approval again from competent authority or entity in case any changes have to be made in project procurement documents or estimated project outlay or project's relevant aspects or project's procurement process (except changes of administrative nature) had those were already approved before receiving the project proposal.
- (8) Prior to reaching project agreement with the private entity, Project Implementing Agency of PPP shall submit detailed feasibility study of the project along with project's project procurement documents, details of bidders and that of preferred competitors to approving authority or entity for the review.
- (9) Project approving authority or entity, after having opinions of PPP center if it deems necessary, shall forward the project to PIA after approving it.

11.7 Project Procurement Process

- (1) Procurement process of PPP projects shall be as follows:
 - (a) Request for Expression of Interest (REOI).
 - (b) Request for Qualification (RFQ).

Make Short-listing of pre-qualified bidders public on the basis of criteria mentioned in the documents while requesting for qualification.
 - (c) Request for proposal (RFP).
 - (d) Evaluation and selection of preferred bidders.
 - (e) Bid approval.

(f) Signing of the project agreement

2) RFQ and RFP can be made either in one or two stages depending on the PPP procurement process. Such provisions shall be as follows:

(a) In case of projects having project outlay less than Rs. 100 million, one single stage process can be adopted where RFQ and RFP can be invited in two separate envelopes.

(b) Financial proposal contained in second stage shall not be opened unless technical proposal contained in first stage is **selected**.

(c) Financial proposal of only those bidders, whose technical proposal is qualified on the basis of predetermined criteria, shall be opened.

(d) International bids shall be invited for projects with outlay exceeding Rs. one billion.

*For the purpose of this clause, process shall be carried out only for **substantially** effective proposals.*

11.7 (A) Request for Expression of Interest (REOI)

(1) This shall be only an optional stage except for obtaining additional details on market position, prospective projects, benefit / risk involved and interested bidders. PIA, while issuing REOI, shall request interested bidders to furnish details as required.

(2) PIA shall decide whether to prepare short-listing or invite proposals in two envelopes in a single stage or in two stages from all bidders after the evaluation of EOI.

(3) All successful bidders selected through REOI shall be involved in RFP. However, if PIA intends to prepare shortlist in REOI stage too, that shall be clearly stated in the REOI notice.

11.7 (B) Stage-I of PPP Procurement Process: Request for Qualification (RFQ) Stage

- (1) Interested applicants may request for qualification as provisioned in this stage. Such documents shall display overall technical and financial competencies of the applicants and qualifications of such requests shall be determined after evaluating criteria mentioned in the documents in which overall technical and financial competencies are spelled out.
- (2) If interested applicants intend to give additional clarification or acquire information may do so. Depending on the project's nature, concerned parties may be consulted prior to the bid submission date.
- (3) PIA shall form a committee and shall evaluate all applications in a transparent manner through this committee on the basis of predetermined criteria and assistance of external experts may be obtained in doing so.
- (4) Applicants selected at this stage shall be named as applicants qualified and only such applicants shall be included in RFP phase.

11.7 (C) Stage-II of PPP Project Procurement: Request for Proposal (RFP) Stage

- (1) The objectives of RFP shall be as follows:
 - (a) To specify all provisions of project agreement.
 - (b) To clearly state evaluation process.
 - (c) To clearly state conditions.
 - (d) To clearly state date and processes with regard to preparation and submission of project proposal.
 - (e) To invite all details of technical and financial proposals in order to select preferred bidders.
- (2) Proposals shall be invited as per provisions specified in bid documents only from among those applicants qualified and selected as per clause 11.7 (B).

- (3) Proposal shall be divided into two sections. The first section shall incorporate project implementation *modality*, the most modern technology that can be used and other technical details while the second section shall include financial proposals wherein bid/ rate/ price and other details asked for are attached. Generally, only the bid/rate/price or quantity of a single parameter that can be appraised shall be asked for in financial proposal, and based on which bidders could be selected.
- (4) Qualitative parameters can also be set at the recommendation of PPP Center for some special projects depending on their nature. However, basis and method of computing the evaluation of thus set parameters should be mentioned.
- (5) While structuring the project, such parameters may include necessity of government grant, annual payment, users' payment fees, sharing of royalties, upfront royalty, annual royalty, project period among other things.
- (6) Bid security should be deposited along with the bid proposal and performance guarantee should be deposited prior to the agreement. Guarantee amount shall be determined according to the project outlay as specified in the feasibility study.
- (7) Financial proposals of only those bidders selected from the evaluation of technical proposals shall be opened.
- (8) Project agreement draft should also be included while inviting the proposals. In such project agreement draft, rights and liabilities of both PIA and private entities should be clearly stated along with the following details.
 - (a) Project period.
 - (b) Specification/or quality
 - (c) Monitoring Process.
 - (d) Compensations provisions applicable to both the entities related to *recovering damage/loss, and* provisions related to rewards and other liabilities

- (e) Methods and processes of resolving conflicts arising due to matters such as, force majeure, termination of contract, changes in legal provisions and scope of work and methods of compensation.
 - (f) Provisions relating to exchange of information.
 - (g) Infrastructure handover process as provisioned in the PPP project.
 - (h) Details of service charges.
 - (i) Provisions related to VGF and/or Equity
 - (j) Risk sharing and risk management methods to be applied during project period.
 - (k) Royalty and/or rent and/ or lease charge payable by the private entity against the use of public property.
 - (l) Other necessary matters.
- (9) Consultation may be carried out prior to the submission of proposal by providing a one-time opportunity to all qualified bidders involved in this stage to make their individual queries and clarifications. However, consultations may be carried out more than once in case of complex projects.

11.7 (D) Proposal Evaluations

- (1) Proposal evaluation and selection of preferred bidders shall be carried out as per proposal evaluation criteria. This process shall be transparent wherein evaluation shall be done on the basis of predetermined criteria set by the committee formed by PIA including the representatives of PPP Center or National Planning Commission and Ministry of Finance.
- (2) **Substantially** effective proposals shall only be involved in evaluation process.
- (3) Technical and financial proposals shall be opened at different times and bidders shall be invited while doing so.

11. 7(E) Use of Model Documents

- (1) PPP Center may issue model documents in the form of RFP, RFQ or project agreements from time to time that can be useful to any particular PPP project or sector or both.
- (2) PIA shall apply model documents for all PPP projects having project outlay of Rs. 100 million or above.
- (3) For Projects that have outlay less than Rs. 100 million, separate project agreements may be used by adopting useful provisions in this policy and work procedures to be made under this policy. If such model documents require some modifications, PIA shall inform the PPP Centre with proper justification.

11.7 (F) Proposal Approval and Agreement Signing

- (1) After the completion of appraisal of all bids as per predetermined parameters and having the appropriate proposals of preferred bidder approved by competent authority, PIA shall issue the letter to the successful bidders notifying that the proposal has been approved.
- (2) Such letter shall specify the formalities to be completed and other documents to be submitted while signing the project agreement.
- (3) The project awardees shall issue a letter of acceptance indicating that they are ready to sign the contract within the given time and submit it to the PIA.
- (4) Project agreement with the private entity shall be concluded only after securing the approval from the competent authority or entity. Authority to approve RFP shall be as provided by law.
- 5) Project agreement shall be signed between authorized person of PIA and successful bidders or private company incorporated by them; giving a final shape to the Project agreement draft included at the time of inviting proposals .
- (6) No change shall be made in the draft agreement submitted at the RFP stage, while signing the project agreement. *In case, any change is required for some reason, it shall have been communicated to all bidders prior to bid submission date.* Amendments or changes in minor matters of administrative nature, essential for

giving final shape to the agreements, can only be made. It should in no way affect evaluation of proposal and selection of preferred bidders.

Clarification: Here project agreement means various agreements reached between public and the private sector or contract agreement or concession agreement/contract.

11.8 Unsolicited Proposals

- (1) Project proposals not invited by PIA but identified and requested for implementation by *any* interested private entity shall be considered as unsolicited proposals.
- (2) Such proposals may be considered for *further processing* under the following conditions:
 - (a) Proposals invited earlier for *this purpose* but successful bidder **could not be** selected.
 - (b) Such projects that use only proprietary goods and such goods are available only with that particular private entity or
 - (c) Council of Ministers, Government of Nepal decides such project as strategically important.
- (3) In case Project Implementation Agency upon review finds such unsolicited project proposals attractive and beneficial, may ask proposer of such projects/proposals, except for circumstance stated in 2(a) above, to submit feasibility study report. While doing so, PIA shall ensure that such projects are not in conflict with ongoing projects or projects that are going to be implemented in near future. If conditions are conflicting, PIA shall furnish explicit basis in writing for going ahead with such projects.
- (4) In case proposals were invited earlier but attempt to select successful bidder failed, the unsolicited proposals if found suitable shall be forwarded to PPP centre for suitability appraisal.
- (5) In case the project outlay exceeds Rs. 100 million, processes can be carried forward only after the approval in principle from Council of Ministers, Nepal Government, irrespective of the project or PIA. However, in case of projects that have less than Rs 100 million **project** outlay and/or do not require VGF or government grant, the ministry concerned with the PIA in case of

government entity and highest executive authority in case of other entities may grant approval to carry process ahead.

- 6) If the proposer makes any change in the original structural provision in the proposal submitted at the time of approval for processing, PIA shall inform so to the PPP Center with all details. In such case, Board of Directors is required to mention such details in the proposal to be submitted to Council of Ministers of the Government of Nepal.

Clarification: Proposer means an individual or entity submitting unsolicited proposal for the purpose of this clause.

- (7) If an unsolicited proposal is received as per sections 2 (b) and (c), PIA shall go through the feasibility study attached to the proposal. If the study finds it of public interest, following additional steps shall be undertaken by seeking approval in principle from Council of Ministers of the Government of Nepal in the case of a government entity and from the highest executive authority of the concerned entity in the case of other entities.

- (a) PIA shall invite proposal after developing structural framework and getting its suitability appraisal done from the PPP Center. Proposers also can participate in such proposals as well. Thereafter, proposals shall be evaluated and commitments made by the preferred bidder shall be compared with earlier commitments submitted by the proposer. If the proposer submitting earlier proposal agrees to work on the commitments made by preferred bidder, he may agree to accept the project within 30 days and undertake the work.
- b) In case, the proposer does not participate in the bidding process or does not agree to undertake works as per preferred bidder's commitments, project shall not be awarded to the proposer. If the proposer accepts the project, preferred bidder shall be compensated for with the amount required to prepare such bid proposal as specified in RFP.
- (c) In case the proposer participated in the proposal process but neither could qualify the bid nor accepted the proposal submitted by the preferred bidder, the proposer shall be compensated for with the amount by the preferred bidder as stated in RFP.

- d) In case the proposer happens to be the sole bidder, his proposal may be approved on the basis of conditions as mentioned in RFP. In case such proposal fails to get approval from PIA for whatsoever reason, PIA shall compensate the proposer the cost involved in preparing the specified bid document.

11.9 Land Acquisition for PPP Project

- (1) Government of Nepal shall make available the required land to PIA for PPP projects both at the national and local levels unless decided otherwise by the Council of Ministers, Nepal Government under special circumstances.
- (2) Government of Nepal shall follow prevailing land acquisition laws while acquiring land for PPP projects, and Land Acquisition, Rehabilitation and Resettlement Policy 2014 for infrastructure development.
- (3) Depending on the nature of the project, the compensated amount against land acquisition may be reimbursed through the private entity fully or partly as stated in procurement related document or royalty against the use of such government assets may also be raised from the private entity.
- (4) While acquiring the land for PPP projects, concerned prevailing laws, policies and orders issued by the Government of Nepal from time to time with regard to occupied land above the ceiling, land acquired by the government, rehabilitation of lands along with buildings, confiscation of illegally constructed building and crops and right to land acquisition shall be adopted.
- (5) Project agreement shall not be signed unless the government of Nepal acquires 80 percent of the land required for the PPP project.

11.10 Risks/Benefits Sharing Process

- (1) For the management and sharing of risks and benefits of PPP projects the “principle of public interest” shall be kept at the centre. Major portion of risk shall be assigned to the entity which is most competent to manage that risk.

- (2) The risks/benefit sharing framework shall be based on the details specified at the time of conducting feasibility study and opportunity analysis. Sharing of risk and benefits shall be duly *considered* as a special provision while preparing PPP project agreement
- (3) **Sharing and management of the risks and benefits of the PPP projects, confined within the limits of prevailing principles, shall be done as follows:**
- (a) Information concerning all foreseeable project related risks shall be compiled together and *managed* at the time of reaching the project agreement.
 - (b) Arrangement shall be made in accordance with the above mentioned principles for the treatment of project related risks that are beyond the control of both the public and private entities
 - (c) Extent of risk may be determined in project agreement.
 - (d) Arrangement shall be made for the review of the parameters that are difficult to forecast and prone to high fluctuations **in project agreement**. Such review provisions shall specify review period, basis of review, review benchmarks and implications among others as mentioned in manual issued by PPP center.
 - (e) Risks relating to design, construction, project management, compliance with environmental regulations, quality, technical standard and **efficiency** shall be assigned to the private entity.
 - ~~(f)~~ Cost of Service project and financial management expenses, fee recovery and profit related risks shall be assigned **solely** to the private entity.
 - (g) Permission and approval, land acquisition, coordination among inter-government entities and government grants related risks shall be the responsibility of PIA.
 - (h) In case the asset that is developed or reconstructed by private entity on its own cost is to be owned by PIA or required to be transferred to the PIA after the completion of project agreement or if contract has been void or cancelled, liabilities arising under these conditions shall be adjusted in line with the parameters set in the project agreement. However, burden of such risks shall be based on the reason of cancelling the agreement.
 - (i) All direct or indirect risks related to force majeure shall be settled through insurance and the matters not covered by insurance shall be

managed according to provisions as laid down in the project agreement.

- (j) Project benefit sharing shall be treated as special provision in the project agreement.

Explanation: All other details related to this shall be as specified in the project agreement.

11.11 Policy Implementation Plan

- (1) This policy shall act as a base while formulating Acts, rules, guidelines and manuals.
- (2) For the implementation of this policy, Government of Nepal shall develop manuals for the operation of Project Preparation Facilitation Fund and Viability Gap Fund within a year while PPP center shall prepare and issue model documents related to project evaluation, approval and procurement within one year of approval of this policy.
- (3) PPP Center shall bring essential work plans into implementation by coordinating with the concerned entities for implementation of this policy
- (4) Local bodies on the basis of this policy shall amend the existing “Public Private Partnership (For Local Bodies) Policy, 2003

11.12 Dispute Settlement

- (1) Prevailing Nepal laws shall apply in project agreement.
- (2) Disputes in interpretation of the project agreement or implementation, shall be settled amicably through dialogues and discussion between the disputing parties.
- (3) Disputes not settled amicably shall be resolved through Arbitration Acts, 1999.
- (4) In case the party is foreign investor or company established *with* foreign investment, ICC RULES or UNCITRAL dispute resolution work procedure may be adopted **while mentioning** in arbitration related working procedure in project agreement. Such provision shall be clearly stated in project agreement.
- (5) If projects of special nature require separate provision it can be done as per the decision of Council of Ministers, Government of Nepal, as stated in the agreement.

12. Institutional Framework

Arrangements for the formation of PPP Board of Directors, establishment of PPP Center and other structural arrangements shall be made as follows for the identification, prioritization, structuring, preparation and approval and facilitation works in construction/operation of PPP projects.

12.1 Public-Private Partnership Board of Directors

(1) There shall be a PPP Board of Directors as follows, to grant approval to initiate procurement process as per feasibility study and to provide policy coordination and guidelines for project, having an outlay of Rs 500 million or more and/or requiring VGF and/or grants from the government and/or any revenue exemption, in the process of implementing this policy. The Committee may invite secretary/official of the concerned Ministry or entities and/ or consultant/expertise from concerned entities, if required.

- (a) Secretary, Ministry of Finance - Chairperson
- (b) Secretary, Office of Prime Minister and Council Ministers- Member
- (c) Secretary, National Planning Commission Secretariat- Member
- (d) Secretary, Ministry of Home Affairs - Member
- (e) Secretary, Ministry of Physical Infrastructure and Transport- Member
- (f) Secretary, Ministry of Land Reform and Management-Member
- (g) Secretary, Ministry of Forestry and Soil Conservation-Member
- (h) Secretary, Ministry of Science, Technology and Environment-Member
- (i) Secretary, Proposed project concerned Ministry-Member
- (j) Secretary, Ministry of Federal Affairs and Local Development-Member
- (k) Chief, Public-Private Partnership Center- Member Secretary

(2) Scope of work of Board of Directors shall be as follows:

- (a) Provide guidelines on all PPP related policy matters.
- (b) Identify areas for implementation of PPP projects.
- (c) Identify investment areas for PPP projects.

- (d) Grant approval for feasibility study, procurement related documents and draft project agreement of PPP project as stated in sub clause 12.1 (1) to take it to the procurement process.
- (e) Establish necessary coordination with the concerned entities for the implementation of PPP projects.

12.2 PPP Regulatory Committee

PPP Regulatory Committee shall be constituted under the chairmanship of the Secretary of National Planning Commission comprising joint secretaries of Ministry of Finance, Ministry of Home Affairs, Ministry of Physical Infrastructure and Transport, Ministry of Federal Affairs and Local Development, Ministry of Land Reform and Management, and expert appointed by the Committee as members and Chief of PPP Center as Member Secretary so as to manage PPP Center's tasks, provide necessary guidance to the Center and establish coordination among PIAs and to facilitate them.

Thus formed Committee shall submit annual report to National Planning Commission through the member overseeing infrastructure sector of the Commission. The Commission may carryout review and issue necessary directives.

12.3 Public-Private Partnership (PPP) Center

- (1) A PPP Center shall be established in order to carryout feasibility study and suitability appraisal of procurement related documents of projects to be operated under PPP model and facilitate public entities in construction, operation and other project relevant issues.
- (2) PPP Center shall remain under National Planning Commission
- (3) PPP Center shall have one chief executive and some experts from public and /or private entities as required.
- (4) The functions of PPP Center shall be as follows:
 - (a) Carryout feasibility study, independent suitability appraisal of model project agreements and procurement related documents.

- (b) Facilitate public and private entities in preparation, construction and operation of PPP projects.
- (c) **Conduct** PPP related capacity building programs in all possible organs, entities and apparatus of state.
- (d) Conduct and cause to conduct studies on PPP concerned domestic and foreign good practices and promote them in the country.
- (e) Institutionalize PPP related experiences and prepare model documents and guidelines.
- (f) Carryout and cause to carryout discussion with potential investors, banks and financial institutions on creating capital and credit investment friendly environment.
- (g) Issue necessary guidelines with regard to project identification, prioritization, selection, approval, preparation of procurement related documents, implementation and handover **of projects** among others.
- (h) Carryout other tasks as assigned by the Board of Directors.

12.4 Arrangement of Project Implementing Agency (PIA) and Project Implementation Unit (PIU)

- (1) Every public entity desirous to implement PPP projects shall be considered as Project Implementing Agency (PIA) and such entities shall form their respective Project Implementation Unit (PIU) in order to implement their individual projects.
- (2) Public entities shall form PIU for concerned projects in order to make PPP project preparatory works, studies and adoption of procurement processes well organized and to cooperate, coordinate and also to enter into agreements with private entities and implement projects through thus formed units.
- (3) Projects approved and entered into agreement by Investment Board Nepal established under prevailing laws, shall be handed over by the board to the concerned Ministry or entity subsequent to the completion of financial closure for its implementation. The Board shall

coordinate with the concerned Ministries or entities from the initial phase of preparation of projects thus to be implemented.

13 Financial Aspects

13.1 Budgetary Provisions

- (1) For the national level projects, PIA shall propose for the budget and forward so to the Ministry of Finance and National Planning Commission. The Ministry of Finance shall take the final decision for budget allocations for PPP Projects, in consultation with the National Planning Commission and concerned PIA. The details of such allocation shall be mentioned in Nepal Government's annual budget and allocated budget of concerned local bodies.
- (2) In case the local body is the project implementing agency, the local body council shall decide on the allocation of PPP project budget. The budget allocated for such project shall be mentioned in its budget book.
- (3) PPP Center's administrative and other expenses shall be allocated in every annual budget.

13.2 Capacity Building

Various workshops, seminars, meetings, conferences and training programs shall be conducted for the capacity building of human resource of PPP project implementing public and private entities. PPP Center, may appoint consultants if deemed necessary to organize such programs.

13.3 Appointment of Experts

PIA may appoint full time or part-time experts for carrying out PPP project's suitability appraisal, procurement process and other related works. PIA may seek support from PPP Center in the project preparation phase and evaluation of procurement related documents, as required.

13.4 Project Preparation Facility Fund

- (1) The Ministry of Finance shall establish Project Preparation Facility Fund to carryout feasibility study, consultancy service, analysis of challenges and opportunities of PPP projects,

- (2) The management and mobilization of Project Preparation Facility Fund shall be as mentioned in the manual.

13.5 Revolving Fund for Land Acquisition (RFLA)

- (1) The Ministry of Finance shall arrange revolving fund to acquire land for PPP projects.
- (2) Agreements may be entered into to recover expenses made by government of Nepal for land acquisition for any projects through royalty and/or rental charge and/or lease fee and/or compensation from private sector and amount thus collected shall be deposited in RFLA.

13.6 Viability Gap Fund

- (1) The Ministry of Finance shall establish Viability Gap Fund for the implementation of this policy.
- (2) Government of Nepal may provide financial support through VGF in the form of direct capital grant to the projects. Such grants can only be provided when financial income through proposed revenue sources is not sufficient to meet the expenses thus making projects financially not viable. Such grants shall be made available to PPP projects only to make them financially viable. With regard to the projects seeking such VGF grants, Board of Directors shall decide whether to make them viable by providing capital grants or through other sources of funding on the recommendation of PPP Center in project appraisal phase.
- 3) VGF Guidelines shall be followed while approving VGF grants and so shall be approved only when there are no adequate and appropriate options left for making those projects financially viable
- 4) Clause 13.6 (3) shall not be applicable to those projects that receive payments on annual installment basis from PIA. In such case, the private sector entities shall receive only annual installments to be provided by PIA.

13.7 Capital Participation

- (1) PIAs, in special cases, may invest equity on PPP projects. Decision in this direction shall be taken on the basis of clear and documented justification.
- (2) The matters considered necessary from the perspective of public capital investment: enhancing financial viability, encouraging strong presence of PIA, creating hassle-free environment for

investors and reasonable monitoring of projects, in addition to the basis as mentioned in point (1) above, shall be considered as other bases.

13.8 Tax Exemption and Waiver

Government of Nepal may exempt or waive taxes if deemed necessary to do so considering the nature and characteristics of PPP project by provisioning it in tax related Acts.

13.9 Arrangements for Long-term Financial Sources

- (1) Government of Nepal may support to develop credit flow mechanism for long-term financial sources required for private sector to make investments on physical infrastructure and services.
- (2) Government of Nepal shall conduct study on newly developed mechanism by foreign countries for making long-term investments in physical infrastructures and services.

13.10 Sources Bearing Financial Liabilities

- (1) Expenses with regard to administrative processes such as, making essential institutional arrangements, project selection, conducting detailed feasibility study, project supervision, and identifying competent private sector shall be borne by the government.
- (2) Cost involved in procuring land for the project, shall be borne by Government of Nepal if necessary, at the beginning. However, necessary arrangements shall be made for recovering such costs through reimbursement from private sector or through royalty/rents/lease fee depending on the nature of the project.
- (3) All financial obligations with regard to project implementation shall be borne by private sector. However, administrative costs of PIU shall be borne by the public entity.

13.11 Expense Management and Audit

- (1) Expense management and audit of both public and private sectors shall be done by the agencies as specified by law.
- (2) Private entity shall submit audit reports on income and expenditure of PPP projects at implementation and operation phases to the public entities on annual basis.

14. Legal Provisions

- (1) Government of Nepal shall make **necessary** legal arrangements to implement this policy. This policy shall be considered as basis while formulating acts, rules, manuals and guidelines with regard to the PPP projects.
- (2) Ministry of Finance shall coordinate with National Planning Commission and issue Project Preparation Facilitation Fund Mobilization Manual.
- (3) Ministry of Finance shall establish VGF and issue directives in consultation with PPP Center for its implementation.
- (4) PPP Center shall develop and issue manual on project preparation, feasibility study, suitability appraisal, procurement process, model documents and other essential issues.

15. Monitoring and Evaluation

- (1) Regulation, monitoring and evaluation processes of projects to be implemented, operated and handed over pursuant to PPP principle shall be made simple, clear and effective.
- (2) Ministry of Finance, in cooperation of PPP Center, may constitute working committees from time to time to carryout review and evaluation of financial climate of PPP projects.
- (3) **The responsibility of** Monitoring all PPP projects shall be **vested in the** concerned public entity **through PIU.**
- (4) PPP center shall be responsible for the submission of annual report to the Government of Nepal through Board of Directors. The report should mention the results achieved by the country from the implementation of PPP projects and an assessment of the ways to overcome problems observed in the way of achieving goals and objectives of this policy.

16. Regulatory Provision

- (1) Government of Nepal shall constitute separate sector-specific regulatory bodies.
- (2) Thus formed regulatory bodies may have diverse roles, rights and responsibilities depending on the requirements as specified by Government of Nepal.
- (3) Regulatory bodies shall regulate PPP projects.

- (4) In case of non-availability of regulatory bodies, the existing good governance and regulatory provisions shall prevail. Regulations shall be carried out on the basis of nondiscrimination, independence, transparency and accountability.

17. Risks

Public sector may, in general, face risks of following nature while implementing this policy.

- (1) Projects may have to face several controversies and may fail if implemented without adequate preparation.
- (2) Complexity may arise in land acquisition, and rehabilitation process for PPP projects that may cause delay in project implementation and as a consequence, compensation for the private sector may be required
- (3) The absence of adequate legal mechanism in project **agreements** for resolving disputes associated with projects' quality, cost, operation, handover and unforeseen risks in the process of project implementation may result in the incompleteness of the projects, **bearing** huge compensation and so much so that the projects might not be handed over.

18 Project Handover

- (1) Once the project term is over, the private entity shall handover physical infrastructure and assets in running condition to PIA.
- (2) The project shall be handed over subsequent to its necessary repair and maintenance under the supervision of PIA, as guided by project documents, one year prior to the handover date pursuant to sub-clause (1) above and for this, PIA shall depute its representatives.

19. Repeal and Saving

- (1) "Public Infrastructure Construction, Operation and Handover Policy, 2000" has been repealed.
- (2) Anything done or undertaken as per the Policy stated in sub-clause (1) above shall be deemed to have been done as per this Policy.