

## Appendix 1 (Revised)

GORTT PPP Policy (Draft)

March 12, 2012

# Government of the Republic of Trinidad and Tobago PPP Policy (Draft)

12 March, 2012

## 1 Introduction

Strong infrastructure is a critical component of a platform for a growing economy. The Government of the Republic of Trinidad and Tobago is committed to improving the quality of economic and social infrastructure across the country. The Government also recognizes that the public and private sectors both have roles to play in delivering the high-quality, responsive infrastructure services that Trinidad and Tobago needs.

To that end, the Government will engage in “Public-Private Partnerships”—relationships with private sector entities, which will introduce resources and expertise into infrastructure projects. Public-Private Partnerships (PPPs) will be used to support many of the Government’s key policy objectives. PPPs can help meet the basic needs of the people, through better health and education facilities. PPPs also provide opportunities to improve physical infrastructure—such as highways, transportation systems, water, waste management, energy, and communications infrastructure. PPPs have potential to support urban development, and to build the infrastructure needed for sustainable development of the country’s tourism sector.

PPPs will provide much-needed resources for improving infrastructure. Crucially, PPPs will also improve the value achieved from government resources committed to these sectors. The Government’s decision to enter into a PPP will be based on careful consideration of whether and how involving the private sector in delivering a project will provide the best value for money.

This PPP Policy sets out the following:

- PPP definition—the essential features of a PPP contract, and how this differs from other forms of public procurement
- PPP value drivers—how PPP can help the Government achieve its objective of improved infrastructure services that offer greater value for money
- Aim and scope of the PPP Policy
- Criteria that all PPP projects must meet
- The process by which all PPP projects will be developed and implemented
- Institutional responsibilities for the PPP programme, and for developing and implementing PPP projects.

This PPP Policy provides a high level framework. The policy will be underpinned by detailed guidance material that government officials must follow. This guidance material is to be developed in consultation with relevant Government agencies and private parties, and will be subject to continuing assessment and review.

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## 2 PPP Definition

A “Public-Private Partnership” (PPP) is a long-term contract between a private party and a government agency, for providing a public asset or service, in which the private party bears significant risk and management responsibility. In the context of this definition:

- The **private party** to a PPP contract may be any majority privately-owned company or consortium
- The **Government agency** may be a Ministry, a State Enterprise, a Statutory Body, or any other Government contracting authority
- The **public asset or service** may be a new infrastructure project, or may involve existing infrastructure assets and services<sup>1</sup>. PPP may be used in wide range of sectors, and for a wide range of services—provided the public sector has an interest in having the service provided.
- The **nature of a PPP contract** may vary; but involves the private sector bearing significant risk and management responsibility. PPP contracts:
  - Transfer management responsibility for an infrastructure asset and associated service to the private party over the lifetime of a long-term contract. This may involve financing, designing, building, operating, and maintaining the infrastructure asset and associated service, or some subset of these functions
  - Specify that remuneration of the private party depends on outputs delivered—such as the availability of the asset and the provision of services to clearly-defined performance standards. Payment to the private party for assets and services provided may be made by users, by government, or by a combination of the two. Penalties may also be imposed for failure to meet contractually-specified standards
  - Allocate risk to the public and private parties clearly, comprehensively, and in a way that achieves value for money, by ensuring each party bears those risks they are best suited to manage.

The responsible Government agency retains overall responsibility for ensuring the service is provided to the quality required, by carefully managing the PPP contract.

The combination of these contractual features makes PPPs different from the other ways in which the Government engages with the private sector to provide public services. For example, under Design-Build contracts the responsibility of the private party ends on completion of construction, and the Government often retains the risk of construction cost and time over-runs. Service outsourcing contracts are typically shorter-term, and typically do not transfer significant commercial risk and management responsibility to the private sector.

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<sup>1</sup> This PPP policy complements the government’s policy of privatization and public offerings. The assets and operations of some existing State Enterprises may be transferred to private management under a PPP

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### 3 PPP Value Drivers

The objectives of the PPP program are to increase the availability and quality of infrastructure and public services in Trinidad and Tobago, while reducing the fiscal commitment and risk involved in providing them. The combination of features of a well-designed PPP contract described above mean PPPs can help achieve these objectives in several ways.

PPPs can **mobilize additional funding and financing sources** for infrastructure. PPPs provide alternative sources of financing for infrastructure investments. Charging users for services can also bring in more revenue to fund infrastructure, and can sometimes be done better or more easily with private operation than by the public sector. Moreover, PPPs can improve the predictability and transparency of infrastructure costs and funding. The cost of a PPP includes the cost of providing an infrastructure asset and services over a significant period, including any upgrade requirements. This provides budget predictability over the life of the asset, and reduces the risk of inadequate maintenance funding over time.

As well as increasing the resources available for infrastructure, PPPs can **achieve better value for money** from those resources, by allocating project risks to the party best suited to manage them. Careful risk allocation can improve value for money through:

- **Risk transfer**—risk retained by the Government in owning and operating infrastructure typically carries substantial, and often unvalued, cost. Allocating some of the risk to a private party which can better manage it can reduce overall project cost
- **Whole of life costing**—PPP typically integrate up-front design and construction with ongoing operations and maintenance under the responsibility of one company, creating an incentive to carry out each function in a way that minimizes total project cost
- **Innovation**—specifying outputs in a contract, rather than prescribing inputs, provides wider opportunity for innovation. Competitive procurement incentivizes bidders to develop innovative solutions for meeting these specifications
- **Asset utilization**—private parties are motivated to use a single facility to provide multiple revenue streams, reducing the cost of any particular service from the facility.

PPPs can also **improve the quality of infrastructure services**, by engaging experienced private companies with expertise in the relevant sector, and by ensuring:

- **Focus on service delivery**—under a PPP, responsible agencies enter into a long-term contract for services delivered. Management in the PPP firm is focused on service delivery, free from competing objectives or constraints typical in the public sector
- **Accountability**—government payments are conditional on the private party providing specified outputs at the agreed quality, quantity, and timeframe. If performance requirements are not met, service payments to the private sector party may be abated or financial penalties applied.

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### 4 Aim and Scope of the PPP Policy

PPPs can help the Government provide more and higher-quality infrastructure services, and achieve better value for money from those services. However, they need to be carefully managed to ensure these benefits are achieved in practice. The **aim of this PPP Policy** is to ensure PPP projects are implemented in a way that:

- **Achieves value for money**, by capitalizing on the value drivers described above
- **Is fiscally responsible**—that is, the fiscal impact of PPP projects is well-understood, affordable, and that the level of fiscal risk is acceptable
- **Ensures transparency and probity** in how PPPs are identified, developed, procured, and managed
- **Is environmentally and socially sustainable**—that is, environmental and social impacts of PPP projects are carefully assessed, and are managed appropriately.

To this end, the following sections set out clear criteria with which all PPPs must comply, the process by which PPP projects will be developed, and institutional responsibilities for developing and implementing PPPs.

The criteria, processes and institutional responsibilities in this policy apply to all PPP projects implemented by Government agencies which are mainly capital-intensive in nature. Smaller projects may be implemented under the PPP program where there is a strong rationale that PPP will provide value for money.

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### 5 PPP Criteria

To ensure the objectives of the PPP programme and the potential benefits of using PPPs are achieved in practice, the Government will ensure all PPP projects implemented in Trinidad and Tobago meet the following four criteria:

- **Feasibility and economic viability of the project**—the underlying project makes sense, in that it is central to policy priorities and sector and infrastructure plans; technically, legally, environmentally and socially feasible; and economically cost-benefit justified
- **Commercial viability**—there are qualified private parties available to do the project, and the project is expected to provide a commercial rate of return sufficient to attract such parties and create competitive tension
- **Value for money**—the proposed PPP is expected to achieve value for money, compared to the alternative of public procurement (where that would be an option); and compared to other PPP structures (that is, the PPP is structured well)
- **Fiscal responsibility**—the project's cost to Government is in line with fiscal priorities, and risks retained by Government would not be fiscally destabilizing.

These criteria will form the basis of review and approval of PPP projects at each stage of developing a PPP project, as described below.

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### 6 PPP Process

The Government will develop and implement all PPP projects following a consistent, transparent process, consisting of the following four stages:

- **Project Identification**—the aim of the project identification stage is to select those assets and services—existing or planned—whose quality and value for money could possibly be increased through a PPP. Candidate projects will be screened, by carrying out a quick and approximate check that a PPP for the project is likely to meet the PPP criteria set out above
- **Business Case**—the “Business Case” for a PPP consists of a thorough appraisal of the proposed PPP project, according to the PPP criteria set out above, which will be submitted to Cabinet for approval to proceed with the PPP transaction. The purpose is to ensure that only good PPPs are implemented. The Business Case will be carefully reviewed and scrutinized by relevant agencies—including the Ministry of Finance—before being submitted to Cabinet
- **Transaction**—the PPP contractor will be selected through a transparent, competitive procurement process, consistent with Government procurement law and regulations, and designed to achieve value for money. The final PPP contract will be checked, to ensure it remains in line with the PPP criteria, before being submitted to Cabinet for approval to sign the contract and implement the PPP
- **Contract management**—the PPP contract will be monitored and managed to ensure all parties’ obligations are met, and services are delivered as expected. Project risks will be monitored, and changing circumstances responded to in a way that achieves value for money over the project lifetime.

Institutional responsibilities at each of these stages are described in the following section.

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# 7 Institutional Responsibilities for the PPP Program

Developing and implementing PPP projects will require close coordination between several Government entities. A PPP Ministerial Committee has been formed to guide the PPP program. The Ministry of Finance has established a PPP Unit as Secretariat to that Committee. Each PPP initiative will be the responsibility of the relevant Ministry or Government agency, and will be implemented by a multi-agency project team. Proposed PPPs will be reviewed, and approved by Cabinet, at key stages in the development process.

The roles of the PPP Ministerial Committee, PPP Unit, PPP Project Teams, and responsibilities for review and approval of PPP projects are described in turn below.

## 7.1 PPP Ministerial Committee

A PPP Ministerial Committee has been established to provide direction to the PPP program, and oversee the development and implementation of PPP projects. The responsibilities of the PPP Ministerial Committee are as follows:

- Guide the development of PPP policy
- Review candidate projects and select those to be developed as a PPP
- Hold PPP execution teams accountable for developing and implementing PPP projects, following an agreed project timeline
- Guide Contract Management Teams as needed to manage change during the lifetime of the PPP Contract.

The PPP Ministerial Committee consists of the Ministers with the following portfolios: Finance, Planning and the Economy, Education, Health, Housing and the Environment, Public Utilities, Transport, Works and Infrastructure. Other Ministers may join the Committee when projects under their portfolios are being considered or implemented as PPPs.

## 7.2 PPP Unit

The Ministry of Finance has established a PPP Unit to act as Secretariat to the PPP Ministerial Committee in managing the PPP Program. The responsibilities of the PPP Unit are as follows:

- **Develop and disseminate PPP policy**—advise on development of PPP policy and regulation; develop guidance material and templates, and build understanding in public and private sectors of the government’s PPP program
- **Regulate the PPP program**—ensure that all PPP projects are developed in accordance with PPP policy, principles, and processes. This includes ensuring projects are properly reviewed against required criteria at each stage; that review processes are completed; that Cabinet submissions include all the information required for a well-informed decision; and that PPP projects are managed well
- **Contribute to development of PPP projects**—screen potential PPP project ideas submitted by Government agencies, for consistency with the PPP criteria at the project identification stage, to inform the PPP Ministerial Committee decision.

If approved, form part of the PPP Execution Team responsible for developing the business case for each PPP project and implementing the PPP transaction

- **Be a repository of skills and knowledge**—continually build knowledge about managing PPPs, drawing from domestic and international experience. This includes compiling and archive information on PPP projects in Trinidad and Tobago, and systematically analyzing the success of those projects—what has worked and what has not—to inform the development of the PPP program.

### 7.3 PPP Project Teams

A **PPP Execution Team** will be established for each project selected for development as a PPP project, reporting to the PPP Ministerial Committee. The PPP Execution Team will be responsible for developing a Business Case for the project, and for implementing the PPP Transaction, with the support of experienced advisors. Each PPP Execution Team will be led by the responsible Ministry or Government agency, and will include representatives of the Ministry of Finance PPP Unit, and other relevant Government entities.

When the PPP transaction reaches financial close, a **Contract Management Team** will be appointed by the responsible Ministry or Government agency, to manage the PPP contract for its duration. The Contract Management Team may refer to the PPP Ministerial Committee to provide guidance as needed to manage change over the contract lifetime.

### 7.4 Review and Approval Responsibilities

A PPP must be approved by Cabinet at two key stages: **Business Case** (approval to implement the PPP transaction), and **Transaction** (approval to sign the PPP contract).

The Business Case contains the detailed appraisal that informs Cabinet’s decision to implement a PPP. Before being submitted to Cabinet, the Business Case of each proposed PPP must be reviewed in detail by the Ministry of Finance, and other relevant Government entities as needed. The results of these reviews will be included in the Cabinet submission. The PPP Unit will be responsible for coordinating the review process.