



REPUBLIC OF THE GAMBIA

NATIONAL PUBLIC PRIVATE PARTNERSHIP POLICY

2015-2020

PROGRESS

PEACE

PROSPERITY

MINISTRY OF FINANCE AND ECONOMIC AFFAIRS

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1. PREAMBLE

The Government of The Gambia (GoG) is committed to reducing poverty and improving the well-being of its population. This commitment is driven by the GoG's long term strategy, Vision 2020, which is being executed through a series of medium term development plans since 1994. The Program for Accelerated Growth and Employment (PAGE) is the Gambia's development strategy and investment program for 2012 to 2015. PAGE is based on Vision 2020 and the various sector strategies. The thrust of PAGE is mainly to improve- inter alia- employment levels, per capita income, social services, gender equity and the Gambia's economic competitiveness.

Inadequate infrastructure is a constraint on growth worldwide, including The Gambia. Infrastructure services are inadequate to meet demand, resulting in congestion or service rationing. Infrastructure services are also often of low quality or reliability, while many areas are simply unserved. The poor infrastructure performance reflects pervasive challenges facing the government. A narrow tax base, growing populations and aging infrastructure are straining the GoG's capacity. The GoG recognize that the financing requirements of current and prospective infrastructure needs far outstrip resources available. The adoption of a Public Private Partnership (PPP) framework therefore reflects the governments desire to improve the quality, cost-effectiveness, and timely provision of public infrastructure and services in the Gambia. However, PPPs should only be considered where they provide greater value for money than other fully private or fully public service delivery.

In order to facilitate and promote PPPs in creation of new infrastructure assets as well as for the management of existing ones, the GoG hereby lay down an explicit and comprehensive policy that spells out the broad framework for implementation of PPP in infrastructure and services while being sensitive to needs of the Gambian public and national priorities. The GoG is committed to establishing a clear financial, legal and transparent framework for eliminating obstacles to PPP arrangements.

2. THE POLICY OBJECTIVES

The main objectives of this national PPP policy are to:

1. Encourage and promote private sector participation in the delivery of public infrastructure and service;
2. Protect the interest of all stakeholders and the environment;
3. Leverage public resources with private sector resources to accelerate investments in Infrastructure and service provision;
4. Facilitate and encourage PPP investments by creating an enabling environment;
5. Ensure the attainment of national and international social and environmental safeguards;
6. Improve the number, quality, cost-effectiveness & timely provision of public infrastructure & services;
7. Set up efficient and transparent institutional arrangements for the identification, structuring and competitive tendering of PPP projects; and
8. Provide a framework for developing efficient risk sharing mechanisms.

3. DEFINITION OF PPP

A public-private partnership is defined as:

A public-private partnership (PPP) is an agreement between a government and a private firm under which the firm delivers an asset, a service, or both in return for payments contingent to some extent on the long-term quality or other characteristics of outputs delivered.

Agreements may include service contract, management contracts, leasing, Concession, Build Operate Transfer (BOT), Build Operate Own (BOO), Design, Build, Operate (DBO), Design Build, Operate, Finance, privatization and cover widely varying activities, not just those in infrastructure sectors.

4. BENEFITS OF PPP

When implemented well, PPP benefits include:

- Improved quality and quantity of basic infrastructure such as the provision of water and its treatment, energy supply and transportation;
- improved Planning and Project: construction is usually completed to plan and to budget;
- repairs and maintenance are planned at the outset and in consequence assets and services are maintained at a pre-determined standard over the full length of the concession;
- PPPs help the public sector develop a more disciplined and commercial approach to infrastructure development whilst allowing them to retain strategic control of the overall project and service;
- The risk of performance is transferred to the private sector. The private sector only realizes its investment if the asset performs according to the contractual obligations. As the private sector will not receive payment until the facility is available for use, the PPP structure encourages efficient completion, on budget without defects;
- better quality in design and construction than under traditional procurement. PPP focuses on the whole life cost of the project not simply on its initial construction cost. It identifies the long term cost and assesses the sustainability of the project;
- The use of private finance enables the public to have access to improve services now, not years away when governments spending programme permits;
- The expertise and experience of the private sector encourages innovation, resulting in shorter delivery times and improvements in the construction and facility management processes. Developing these processes leads to best practice and adds value;

- The process helps to reduce government debt and to free up public capital to spend on other government services;
- The tax payer benefits by avoiding paying higher taxes to finance infrastructure investment development;
- PPP projects can deliver better value for money compared with that of an equivalent asset procured conventionally;
- The PPP process requires a full analysis of projects risks at the outset. This fuller examination of risks by both the government and lenders means that cost estimates are robust and investment decisions are based on better information; and
- PPPs create efficient and productive working relationships between the public and private sector.

5. KEY GUIDING PRINCIPLES

All PPP arrangements in the Gambia shall be guided by the following principles:

- a) PPP projects offer “value for money”;
- b) PPP projects serve a public interest;
- c) The risks are properly allocated between the public and private sector;
- d) The projects are procured on the basis of clearly specified output requirements;
- e) The users contribute to project costs according to their ability/willingness to pay;
- f) Projects are procured in a competitive process;
- g) Environmental and social standards are respected; and
- h) Accountability and transparency (including stakeholder consultation) are built into the project development and implementation process.

6. SCOPE AND APPLICATION OF PPP PROJECTS

This National PPP Policy applies to all sectors and levels of government. Any project can be pursued as a PPP provided the following conditions are satisfied:

- a) The project is defined as a priority project (i.e. it is included in the National Development Plan);
- b) it is affordable to the government and consumers;
- c) it offers “value for money”;
- d) it involves an appropriate transfer of risks to the private sector. Sector specific policies may be developed to accommodate the needs of specific sectors consistent with the overall government PPP policy.

7. THE PARTIES

A) Public sector:

- o Plan and identify infrastructure and public service needs
- o Develop national and sector specific policies and guidelines
- o Supervise and enforce the PPP agenda

B) Private Sector:

Provision of Jobs, Investment, Innovation, Public Revenue

C) Civil Society

- o Provide social service,
- o Empower people to claim their rights,
- o Shape and monitor development policies and Partnerships; and
- o Pursue accountability

The PPP Unit will provide guidance on the applicability of this policy to a proposed project.

8. GOVERNMENT SUPPORT

A) Administrative Support:

GoG shall offer necessary administrative support to all infrastructure and

service projects developed in the Gambia under the PPP mode in:

- a. Acquisition of land necessary for the project. The land will be acquired strictly in accordance with the policy of the GoG prevalent at the time of acquisition of land for the project.
- b. rehabilitation & resettlement of affected families / persons, in case so required as per existing policy of the Government,
- c. shifting of utilities, wherever required,
- d. the process of availing benefits under various GoG and local Government schemes (as may be applicable) to facilitate private sector participation in infrastructure and or service projects.
- e. obtaining the clearances from the PPP Approval Committee or Cabinet as may be required for the project,
- f. provision of supply of power and water at projects site;
- g. In case land belonging to the GoG is being made available for the project, the same shall be on leasehold basis for the duration of the project concession period. Annual lease charges shall be as specified by government from time to time.

B) Financing PPP Projects

Considering that infrastructure projects require special considerations in view of long gestation period and risks on return and other factors, GoG shall provide incentives and support in terms of tax holidays, tax exemptions, Viability Gap Funding (VGF). These may be available to all PPP projects of the MDAs.

The government shall create the following instruments to support PPP projects:

i) Project development facility (PDF):

- GoTG to establish PDF
- to be operate according to standard operating procedures and guidelines
- use to finance investment appraisal, value for money assessment, other feasibility and safeguard studies, Transaction Advisors for undertaking projects and transaction structuring and implementation up to the signing of contract with private

investor (s).

ii) Viability Gap scheme (VGS)

- GOTG shall establish a VGS in line with the emerging PPP program
- To support projects that fall within the national development agenda that are economically justified but not financially viable
- Standard procedures and guidelines will be issued for the operation of VSG

Detailed guidelines for establishment and operation of such Fund shall be issued by MOFEA.

9. INSTITUTIONAL FRAMEWORK

The Government of Gambia recognizes the importance of an efficient institutional mechanism and therefore constitutes the requisite PPP centre of excellence, committees and empowered groups for furthering the objectives of the Policy. These institutions shall support the following broad functions:

- a) PPP Policy development, dissemination, monitoring and evaluation;
- b) Individual project sponsorship, design, preparation and execution;
- c) Financial management of funded and contingent liabilities;
- d) Gate keeping and approval functions;
- e) PPP project advice, support and promotion; and

The following key institutions shall play key role these arrangements:

9.1 Cabinet

The projects under PPP mode having concession period of more than 5 years and / or involving investment of more than the Dalasi equivalent of USD 3.0 million shall be considered by the Cabinet and approved on the basis of recommendations of the PPP Approval Committee.

9.2 PPP Approval Committee

A PPP Approval Committee shall be established for the purpose of considering request by contracting entities to undertake PPPs and shall be

the approving authority for preparation and procurement of PPP projects subject to regulation and the provisions of the Approval Schedule. The members of the Approval Committee shall comprised of:

- Minister of Finance and Economic Affairs (Chair);
- Minister of Justice;
- Minister of Trade;
- CEO of Gambia Investment and Export Promotion Agency (GIEPA);
- CEO of Gambia Public Procurement Authority (GPPA);
- Minister, managing director or CEO of concerned procuring authorities;
- PPP Unit (Secretariat).

The powers and functions of PPP Approval Committee would be:-

- approval of large PPP projects and associated documents (bid documents, draft contracts,...) in the different phases of the procurement process (however, final approval of very large projects is referred to the Cabinet);
- approval of sector PPP policies and model contracts;
- approval of user levies, and settlement of disputes related to user levies;
- recommendation of legislative and regulatory changes to facilitate PPP;
- general oversight of the procurement, implementation and management of PPP projects in The Gambia.

9.3 Ministry of Finance and Economic Affairs (MoFEA)

Several units within MoFEA shall be involved in the procurement and management of PPP projects, each with distinct responsibilities.

A) Directorate of Development Planning (DPP)

- preparation of National Infrastructure Plan;
- approval of projects initiated by procuring authorities that are not covered by the Priority Action Plan (PAP) and/or the National Infrastructure Plan.

B) Directorate of Debt and Loans Management

- assessment of the long term fiscal liabilities and risks of PPP contracts (direct and contingent, explicit and implicit);
- advice on the appropriateness of the project for financial government support (e.g. sovereign guarantee).

C) Directorate of Budget

- budgeting of the expenditures on PPP projects;
- funding of claims resulting from contingent liabilities;
- ensuring that payments by contracting authorities are consistent with the national budget.

D) Directorate of Public Private Partnership (PPP Unit)

- centre of excellence for PPP in The Gambia;
- secretariat of PPP Committee;
- development of guidelines for the procurement and management of PPP projects;
- technical assistance to procuring authorities in the identification, development and procurement of PPP projects;
- maintaining of a PPP project database;
- communication with private sector on PPP policies, regulations, guidelines and programmes,
- capacity building of public and private sector.

A national PPP champion shall be designated and a PPP focal person shall be appointed in each MDA to interact / coordinate with MoFEA/PPP Unit and to take forward the PPP initiative.

9.4 Gambia Public Procurement Authority (GPPA)

GPPA ensures due process in the procurement of public assets and services, including PPP projects. The MoFEA/PPP Unit will work with GPPA to develop appropriate procurement processes for PPP projects.

9.5 Contracting Authorities

The contracting authorities are responsible for the development, implementation and management of PPP projects with support from the

MoFEA/PPP Unit.

9.6 Ministry of Justice

The Ministry of Justice (in collaboration with MoFEA/PPP Unit) ensures the conformity of PPP contracts and ancillary agreements with Gambian law.

9.7 Regulatory authorities

The concerned regulatory authorities ensure that the PPP project and the PPP contract is consistent with the regulatory framework (in particular where user tariffs are involved).

9.8 Risk Sharing and Management Framework

The risks in PPP projects are allocated to the party (private or public) which is best [placed to manage it. A risk management framework shall be instituted to cover generic risk and the principles of dealing with them. The feasibility study of each study shall clearly propose allocation of all specific risk, major project risks and generic risks. The contractual arrangement for each PPP project shall be based on the risk allocation profile. A framework for managing the fiscal risk associated with guarantees issued to infrastructure PPP projects shall be developed. Government support may be available if the risk profile so requires.

9.8 Legal framework

MoFEA shall take the lead in the development of a legal and regulatory framework for PPP projects. Until a PPP Law is adopted PPP projects shall be developed and implemented according to the principles set out by this National PPP Policy and in compliance with the relevant laws and regulations in the Gambia including procurement framework (Public Procurement Act and Public Procurement Regulations).

10. THE PPP PROJECT CYCLE

A) The PPP Project Process for Government Originated Projects

The PPP project cycle shall comprise of the following stages.

(i) Project Inception:

- The procuring authority submits a project brief to the

MoFEA/PPP Unit

- The MoFEA/PPP Unit assess the viability of the PPP project
- If the project is found to be viable and suitable for implementation as a PPP, the PPP Unit advises the procuring authority to constitute a project development team and launch the procurement process to hire a Transaction Advisor.

(ii) Feasibility Study

- The Transaction Advisor carries out a pre-feasibility study of the proposed PPP project, focussing on the rationale of the business case and on the clear specification of the project and the PPP.
- The Project Study Committee supervises the pre-feasibility study, and approves the pre-feasibility study report on behalf of the procuring authority.
- The PPP Approval Committee must approve the decision to proceed to the full feasibility study stage.
- The procuring authority undertakes (or has undertaken by the Transaction Advisor) a full feasibility study and submits the report to the MoFEA/PPP Unit. The feasibility study must among other cover: “value for money” assessment, assessment of affordability, proposed allocation of risks between the public and private sector, estimation of the required viability gap support, demonstration of the capacity of the procuring authority to procure and manage the PPP project.
- The Cabinet must approve the decision to proceed to the procurement stage.

(iV) Procurement

Competitive bidding process shall be adopted in PPP Projects initiated by the concerned MDA. The notice for inviting participation will be adequately publicized. The bid process will be designed to assist and ascertain, technical, financial, managerial and commercial, capabilities of the Developer. All proposals shall be opened and evaluated at a common platform in a free and fair manner. The Minister of Finance and Economic Affairs shall periodically inform Cabinet of the progress of all PPP Projects under process

Bidding documents (including a draft PPP agreement) must be approved by the PPP approval Committee before they are issued to the prospective bidders. The procuring authority submits the report of the evaluation of

the bids for review by the authorities responsible for final approval. The PPP Approval Committee will monitor the progress of PPP projects. All the MDAs carrying out PPP projects will keep the PPP Committee informed about latest developments through the MoFEA/PPP Unit.

(V) Contracting

A transparent process would be followed in the award of all PPP contracts. The process of project implementation would be appropriately backed by contractual arrangements. The GoG would develop contractual frameworks to allow for equitable allocation of risks between the contracting parties, taking into account the legitimate concerns of private investors. The attempt would be to allocate risks to the party best suited to bear the risks.

In case a model contract for a Sector has not been adopted or in case there are deviations proposed vis-à-vis the approved model contract for a Sector, then, the PPP Approval Committee will review and approve the contract principles as the case may be.

Development through Special Purpose Vehicles (SPVs): Special Purpose Vehicles (SPVs) shall be formed, as and when required, to carry forward and realize the objectives of this Policy and get various clearances and permissions in the SPVs to speed-up the project. Where necessary the GoG may also participate in the equity of any SPV for the development and implementation of infrastructure projects. The equity structure of the SPV would be decided on a case-to-case basis.

The decision to conclude a PPP agreement with the preferred bidder must receive three approvals:

- i. Registration and review by MoFEA/PPP Unit;
- ii. approval by PPP Approval Committee;
- iii. Cabinet approval.

PPP contracts are only binding only if they are signed by the competent Minister, CEO or Board Chairman of the procuring entity, and if all required approvals have been obtained.

The government shall establish a tiered approval process in function of the value of the project:

- o Above the Dalasi equivalent of USD 3 million – Cabinet approval;

- o between USD 1 and 3 million- PPP Approval Committee;
- o less than USD 1 million: board or senior management of the procuring entity.

B) Unsolicited proposals

Unsolicited proposals may be considered if the following conditions are satisfied:

- the project must be consistent with national development priorities (as reflected in national development plans such as PAGE, Vision 2016 and Vision 2020);
- the project must demonstrate genuine and substantial innovative aspects;
- the project must be subjected to a “value for money”, technical, financial and economic assessment, according to guidelines that will be developed;
- the project must be procured competitively.
- The process for the development and procurement of unsolicited proposals is as follows:
 - The project is initiated by the private sector, which submits a proposal to the relevant implementing and procuring agency.
 - The procuring authority reviews the proposal and submits it to the MoFEA/PPP Unit for review.
 - MoFEA/PPP Unit assess the viability of the project as a PPP.
 - If the project is found to be viable for implementation as a PPP, the private proponent and the procuring authority are asked to conduct an independent full feasibility study.
 - Upon approval the project is tendered through a competitive procedure.
 - If the original proponent does not win the contract, he receives a financial compensation for his development and study activities.

11. PPP CONTRACT MANAGEMENT

A) Management of PPP Agreements/Concession

A Contracting Authority that is party to a PPP Agreement/Concession is

responsible for ensuring that the PPP Agreement/Concession is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures as approved by the PPP Approval Committee.

A PPP Agreement/Concession involving the performance of a Contracting Authority's function does not divest the Contracting Authority of the responsibility for ensuring that such function is effectively and efficiently performed in the public interest or on behalf of the public service.

Government shall take steps to institute arrangements to ensure that its financial obligations under PPPs are settled in a timely manner.

B) Amendment and Variation of PPP Agreements/Concessions

A prior written approval of MoFEA/PPP Unit is required for any material amendments to the PPP Agreement/Concession, including material variation to the outputs or any waivers contemplated or provided in the PPP Agreement/Concession.

12. REVIEW

A comprehensive and regular review of the overall process shall be a core responsibility of the MoFEA. Reviews shall be prepared openly and transparently within an appropriate timeframe. This policy would come into force with effect from the date of issue of Government Order and would be effective till it is superseded by Government.

The implementation of, and adherence to, the policy will be monitored and reviewed by MoFEA in particular, on a consistency of conduct of the PPP process with the policy and the need for any revisions required to maintain consistency with ongoing developments and expansion of the Gambia PPP programme.

The government recognizes that expanding and institutionalizing the scope of PPP in provision of infrastructure and or public service may also necessitate appropriate changes in the existing legislative framework (e.g. the need for a PPP Act). The specific legislative constraints for PPPs would also be reviewed and addressed during implementation of this policy.



REPUBLIC OF THE GAMBIA