

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা

কর্তৃপক্ষ কর্তৃক প্রকাশিত

বৃহস্পতিবার, জুন ৮, ২০১৭

**Government of the People's Republic of Bangladesh
Public Private Partnership Authority
Prime Minister's Office.**

Notification

Date: 07 June, 2017

S.R.O No 178-Law/2017.—In exercise of the powers conferred under Section 9 (1) (a) of the Bangladesh Public-Private Partnership Act 2015, (Act No XVIII of 2015), the Public Private Partnership Authority, with the approval of the Board of Governors, is pleased to make the following Policy, namely-

1 Short Title and Commencement

- 1.1 This Policy may be called the “Policy for Implementing PPP Projects through Government to Government (G2G) Partnership, 2017”.
- 1.2 It shall come into effect immediately.

2 Background

- 2.1 The GoB got the PPP Act passed by Parliament as part of the Vision 2021 goal to ensure a more rapid, inclusive growth trajectory, and to better meet the need for enhanced, high quality public infrastructure services in a fiscally sustainable manner. The PPP Act was enacted with the objective of providing a robust legal framework to attract the interest of national and international private sector investors to join in partnership with the Government in building and upgrading public infrastructure assets, supporting the growing economy in a sustainable manner and developing public services that are vital for the people of Bangladesh.

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- 2.2 The 7th Five Year Plan (FY 2016 – FY 2020) of GoB includes targets such as GDP growth acceleration, employment generation and rapid poverty reduction. The Government has identified PPP as a mechanism which will play a significant role in achieving the targets of 7th Five Year Plan and the Vision 2021 goal of Bangladesh becoming a middle-income country by 2021 and a developed country by 2041.

3 Objective

- 3.1 The GoB is looking to build on strong bi-lateral relationships with other Governments to develop and upgrade large public infrastructure assets in partnership with other countries, to support the growing economy in a sustainable manner and deliver essential public services.
- 3.2 The Policy provides the framework for engagement and modality for delivery of the PPP Projects to be undertaken through a G2G Partnership whereby the implementation will be carried out with the support of other Government and executed through their state owned or private sector entities.

4 Definitions

4.1 In this Policy, unless there is anything repugnant in the subject or context:

- (i) **“BDT”** means Bangladeshi Taka.
- (ii) **“Board of Governors”** means the board of governors of the PPP Authority as detailed in section 7 of the PPP Act.
- (iii) **“CCEA”** means Cabinet Committee on Economic Affairs as defined in the PPP Act.
- (iv) **“Contracting Authority”** –
 - (a) any ministry or division, or any department or directorate, or corporation or statutory body, local government, or any similar organization under the ministry or division; or
 - (b) the PPP Authority, in the case where the PPP Authority is given the responsibility for signing of the PPP Contract.
- (v) **“G2G Partnership”** means the arrangement as set out under this Policy for GoB to enter into a partnership with other Government to develop and implement PPP Projects.
- (vi) **“G2G Framework Agreement/Memorandum of Understanding”** means an agreement entered into by the GoB with other Government on a bilateral basis which provides the procedural framework for engagement and the modality for delivery of PPP Projects to be undertaken on the basis of this Policy.

- (vii) **“Investor”** means any public or private legal entity which is selected by the other Government to enter into a PPP Contract with the Contracting Authority on the basis of the terms and conditions set out in the G2G Framework Agreement/Memorandum of Understanding.
- (viii) **“GoB”** means the government of the People’s Republic of Bangladesh.
- (ix) **“PGP 2016”** means the Procurement Guidelines for PPP Projects, 2016.
- (x) **“Policy”** means this “Policy for Implementing PPP Projects through Government to Government (G2G) Partnership, 2016”.
- (xi) **“PPP”** means Public Private Partnership.
- (xii) **“PPP Act”** means the Bangladesh Public-Private Partnership Act, 2015.
- (xiii) **“PPP Authority”** means the Public Private Partnership Authority established under the PPP Act.
- (xiv) **“PPP Contract”** means the contract signed between the Contracting Authority and the Investor and/or the Project Company, as the case may be, for implementation of the PPP Project.
- (xv) **“PPP Project”** means any public-sector Project which is undertaken for implementation through PPP.
- (xvi) **“Project”** means any such action or program or a combination of both by means of which the following plan or work is undertaken, such as:
 - a) construction or operation of any new infrastructure or a plan to do both;
 - b) plan to reconstruct¹ any existing infrastructure;
 - c) plan to carry out the work specified in sub-regulation (a) and (b) both; or
 - d) delivery of goods or services which are not related to any Infrastructure facility.
- (xvii) **“Project Company”** means the special purpose company duly incorporated under the applicable laws of Bangladesh, by the Investor, either prior to or after signing the PPP Contract (as applicable) for delivery of the PPP Project.
- (xviii) **“other Government”** means any government other than GoB.

¹The term “reconstruct” also includes re-creation, rehabilitation, modernization, reformation, expansion, enhancement, alteration or management of any existing infrastructure.

5 Concept of G2G Partnership

- 5.1 Through this Policy GoB may directly engage with other Governments and seek their support to implement Projects on a PPP basis. Under the arrangement, GoB may request other Governments to provide financing support and select appropriate state owned or private entities to act as an investor for the delivery of a Project on a PPP basis.
- 5.2 The procedural mechanism for delivering Projects under the G2G Partnership Policy shall be governed by bilateral G2G Framework Agreement/Memorandum of Understanding executed between GoB and other Government. GOB will invite potential other Governments to develop and execute a G2G Framework Agreements/Memorandum of Understandings for processing PPP projects under this Policy.
- 5.3 Under a G2G Framework Agreement/Memorandum of Understanding signed and agreed by GoB with other Government to support the delivery of a Project on a PPP basis, other Government may arrange financing for the project from one or more public sector entity, state owned entity, and/or private sector entity or a combination of these entities.
- 5.4 The financing arranged by other Government may be provided to:
 - (a) GoB to be injected as equity or debt to the Project Company, either directly, through one or more public sector authorities, state owned entities and/or special purpose entities;
 - (b) One or more public sector authorities, state owned entities or financial institutions to invest as equity or debt in the Project Company;
 - (c) One or more Investors to invest as equity in the Project Company; or
 - (d) Provided to the Project Company by a combination of two or more of the mechanisms set out above.
- 5.5 GoB may take equity stakes or provide debt financing to the Project Company directly, through a public-sector authority, state owned entity and/or special purpose entity.

6 G2G Framework Agreement/Memorandum of Understanding

- 6.1 Under this Policy, the GoB will execute G2G Framework Agreements/Memorandum of Understandings with other Governments on a bilateral basis in order to provide the procedural framework for engagement and modality for delivery of the PPP Projects to be undertaken through G2G partnership with the respective other Government.

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- 6.2 The PPP Authority shall initiate and drive the process for developing and executing G2G Framework Agreement/Memorandum of Understanding with other Governments. The PPP Authority may share with other Governments details about the G2G Policy and the PPP program in Bangladesh and seek expressions of interest of their intent to enter into a G2G Framework Agreement/Memorandum of Understanding.
- 6.3 Subject to concurrence from the Board of Governors, the PPP Authority may, through the Economic Relations Division, submit an official request to other Governments to enter into a G2G Framework Agreement/Memorandum of Understanding.
- 6.4 The G2G Framework Agreement/Memorandum of Understanding may include, but not limited to, the following:
- a. Mechanism for GoB to invite other Governments;
 - b. Mechanism for other Governments to express their interest;
 - c. Communication protocol between the GoB and other Government;
 - d. Selection process of the Investors, including the option for direct selection, limited tendering, open tendering and/or any other suitable selection process;
 - e. Governance arrangement and approval process for delivering projects;
 - f. Timing and responsibility for conducting feasibility study;
 - g. Process for developing, negotiating and agreeing the terms and conditions of the PPP Contract and the project documents;
 - h. The modality that may be used to deliver PPP Projects. The G2G Framework Agreement/Memorandum of Understanding may specify one or more modality that has been used nationally or internationally to deliver PPP projects;
 - i. Formation of project delivery team; and
 - j. Dispute resolution process.
- 6.5 The parties to G2G Framework Agreement/Memorandum of Understanding may add additional clauses and requirements in the G2G Framework Agreement/Memorandum of Understanding.
- 6.6 PPP Authority may also take up a proposal from any other Government interested in entering into a G2G Framework Agreement/Memorandum of Understanding and, subject to concurrence from the Board of Governors, enter into a G2G Framework Agreement/Memorandum of Understanding through the Economic Relations Division.

7 Procedure for Implementation of G2G Partnership

- 7.1 The Procedures for Identification Phase as set out in Chapter 2 of the PGP 2016, which provides the process for the identification of projects to be delivered on a PPP basis, the opinion of the PPP Authority and the in-principle approval of the CCEA shall apply under this Policy. The PPP Authority or the Contracting Authority may identify a Project that has received in principle approval to be developed on the basis of this Policy or they may identify a project that has not received or been processed for in principle approval.
- 7.2 A feasibility study of the PPP Project shall be carried on the basis of the arrangements set out under the G2G Framework Agreement/Memorandum of Understanding and/or as set out in the Chapter 3 of the PGP 2016, the Procedures for Development Phase.
- 7.3 The decision to implement a PPP Project on a G2G Partnership basis may be taken at any time before the bidding phase has commenced with the issuing of an invitation for bid or request for qualification by the Contracting Authority. Once the bidding phase has started the PPP Project may not be considered for implementation on the basis of this Policy unless the bidding phase has been completed unsuccessfully.
- 7.4 The process for selecting the investor and developing, negotiating and agreeing the terms and conditions of the PPP Contract and project documents for implementation and delivery of the PPP Project shall be as set out in the G2G Framework Agreement/Memorandum of Understanding.
- 7.5 The delivery of the PPP Project shall be carried out by the Project Company as per the terms of the PPP Contract.
- 7.6 Upon completion of the negotiation with the investor the Procedures for Approval and Award Phase, as set out in Chapter 5 of the PGP 2016, which provides for the process of Final Approval by the CCEA and the issuance of a Letter of Award to the Preferred Bidder, shall apply under this Policy.
- 7.7 On issuance of the Letter of Award and the signature of the PPP Contract, the terms and conditions provided under the PPP Contract shall govern the development and implementation of the PPP Project.
- 7.8 For this Article, “Preferred Bidder” means the Investor with whom the Contracting Authority has agreed the terms and conditions of the PPP Contract for a PPP Project under the G2G Framework Agreement/Memorandum of Understanding.

8 Applicability

- 8.1 The Policy shall be applicable in the following cases:
- a. The proposed PPP Project to be undertaken through G2G partnership must fall within the definition of Project under the PPP Act; and
 - b. Any of the following conditions must be met:
 - i. The total cost of the Project must be more than or equal to BDT 2,000 crore; or
 - ii. In case of projects costing less than BDT 2,000 crore, the project must be used for launching a subsequent PPP Project or a programme of PPP projects costing more than or equal to BDT 2,000 crore.

9 Government Incentives and Benefits

- 9.1 Any fiscal or non-fiscal incentive applicable for PPP Projects shall also be applicable for PPP Projects undertaken under this Policy.

10 Linked Components of PPP Projects

- 10.1 Where a PPP Project requires the implementation of linked activities such as acquisition of land, rehabilitation and re-settlement, provision of utility services, construction of approach roads to the main highways and activities of similar nature, these will be implemented by Government through their relevant agency, using GoB financing.
- 10.2 Alternatively, where the financing arranged by other Government under the G2G Partnership, includes provision for financing of linked activities than these may be implemented by the Investor or the Government agency or entity that is mutually agreed under the framework of the G2G Framework Agreement/Memorandum of Understanding.

11 Monitoring and Reporting

- 11.1 The PPP Authority shall provide the necessary support to all the GoB agencies regarding any proposal or project undertaken under this Policy and the G2G Framework Agreement/Memorandum of Understanding.
- 11.2 PPP Authority shall monitor the progress of any G2G Framework Agreement/Memorandum of Understanding proposal and the progress of any PPP Project undertaken on a G2G partnership basis.
- 11.3 PPP Authority shall submit an annual report describing the activities conducted under this Policy, the number of G2G Framework Agreement/Memorandum of Understanding executed and the status of all the G2G PPP Projects undertaken under the G2G Framework Agreements/Memorandum of Understandings to the Board of Governors.

12 Opinion of PPP Authority

- 12.1 The Contracting Authority or any other entities of GoB shall obtain the opinion and assistance of the PPP Authority on any matter or proposal regarding this Policy, the G2G Framework Agreements/Memorandum of Understandings executed under this Policy and the PPP Projects undertaken thereunder.

13 Details, Clarifications & Revisions

- 13.1 Any Government entity may directly contact the PPP Authority for clarifications and/or guidance in relation to this Policy. Further, the PPP Authority may also contact the Contracting Authority, the Administrative Ministry and/or any agencies thereunder at any time in relation to activities carried out under this Policy.
- 13.2 The PPP Authority may issue office orders or directions to provide further details and clarifications from time to time in relation to this Policy, as well as developing, the documentation for the G2G Framework Agreement/Memorandum of Understanding.
- 13.3 The PPP Authority may amend this Policy as and when deemed necessary, including incorporation of corrections, omissions, clarifications, additions or deletions. In case of any ambiguity, uncertainty or lack of clarity in relation to any wording contained in this Policy, the interpretation provided by the PPP Authority in this regard shall be final and binding.

By the order of the Board of Governors,

Syed Afsor H. Uddin

Chief Executive Officer