REPUBLIC OF GHANA

NATIONAL POLICY ON PUBLIC PRIVATE PARTNERSHIPS (PPP)

Private Participation in Infrastructure and Services for Better Public Services Delivery

GOVERNMENT OF GHANA
MINISTRY OF FINANCE AND ECONOMIC PLANNING

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Foreword

The Government of Ghana (GoG) is currently facing monumental challenges in infrastructure development and public service delivery which constrain the growth of the Ghanaian economy. The provision of public infrastructure and services has typically been viewed as the responsibility of Government. Given limited budget resources, the country's huge deficit in infrastructure cannot be met by the public sector alone through budget allocations. Currently, addressing Ghana's infrastructure deficit could require sustained spending of at least US$1.5 billion per annum over the next decade. It is Government policy, therefore, to encourage the use of Public-Private Partnership (PPP) as a means of leveraging public resources with private sector resources and expertise in order to close the infrastructure gap and deliver efficient public infrastructure and services.

A PPP has several advantages in the provision of infrastructure and services. Principally, it enables the Government to provide better infrastructure and services through the use of private sector financial, human and technical resources, thereby, freeing Government resources for other equally important uses.

In furtherance of this objective, the Ministry of Finance and Economic Planning has developed the National Policy on PPPs to provide a clear and consistent process for all aspects of PPP project development and implementation from project identification, appraisal, selection, to procurement, operation and maintenance and performance monitoring and evaluation.

In the development of the policy framework, extensive consultations were held with identified stakeholders such as the financial institutions, industry and professional associations, Ministries, Departments and Agencies and Metropolitan, Municipal and District Assemblies. The views and comments received during the stakeholder consultations are reflected in the document.

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Acronyms and Abbreviations

BOT	Build, Own, Transfer
DMD	Debt Management Division
GoG	Government of Ghana
IFF	Infrastructure Finance Facility
MDAs	Ministries, Departments and Agencies
MMDAs	Metropolitan, Municipal and District Assemblies
MOFEP	Ministry of Finance and Economic Planning
NDPC	National Development Planning Commission
NIP	National Infrastructure Plan
PAU	PPP Advisory Unit
PDF	Project Development Facility
PFA	Project and Financial Analysis Unit
PID	Public Investment Division
PMU	Project Management Unit
PPP	Public-Private Partnership
SME	Small and Medium Enterprises
SPV	Special Purpose Vehicle
VGS	Viability Gap Scheme

NATIONAL POLICY ON PUBLIC PRIVATE PARTNERSHIPS

Private Participation in Infrastructure and Services for Better Public Services Delivery

A. INTRODUCTION

1. The provision of public infrastructure and services is one of the prime mandates of Governments all over the world. Infrastructure (roads, power, rail, water and sanitation, sea and airports, among others) is a fundamental prerequisite for economic growth and development. In addition, social and community infrastructure including education and health facilities, public housing and buildings, cultural facilities and environmental infrastructure are essential in modern societies. All across the world studies have consistently shown the close relationship between infrastructure and economic output.

2. However, fiscal constraints experienced by countries have resulted in the development of new and innovative approaches to the provision and financing of public infrastructure and services. The traditional role of the Government as the primary infrastructure and public service provider is gradually being supplemented with private sector expertise and financing. Accordingly, the Government is implementing a combination of policy and legal reforms, financing mechanisms, incentives and institutional support to bolster private sector participation in provision of public infrastructure and services.

3. The adoption of a Public Private Partnership (PPP) framework therefore reflects the Government's desire to improve the quality, cost-effectiveness and timely provision of public infrastructure and services in Ghana. The Government is mindful that PPPs are not a panacea for all public infrastructure investment needs and therefore the PPP Framework should be viewed as a complement to and not a substitute for the Government's continued commitment to open up key service markets to competition. PPPs should only be considered where they can provide greater value for money than other fully-private or fully-public service delivery options.

4. The private provision of public infrastructure and services has the potential to offer enhanced value for money and enables the Government to use the private sector's delivery and project completion expertise and capability for the benefit of the people. In addition, it helps the Government better understand the whole of life cycle cost of investments and enables a more rigorous project assessment and sharing of risk with the private sector.

5. Experience worldwide suggests that a comprehensive policy, supported by the requisite legal and regulatory framework, financial and other incentives, guidelines and commitment by government contributes to promoting PPPs. The Government of Ghana (GoG) is committed to establishing a clear financial, legal and transparent administrative framework and eliminating obstacles to PPP arrangements. In 2004, Ghana developed PPP policy guidelines. However these were not operationalised. This current policy framework is enhanced and harmonised with the 2004 Policy Guidelines.

1. establishing a clear financial, legal and transparent administrative framework and eliminating obstacles to PPP arrangements. In 2004, Ghana developed PPP policy guidelines[1]. However these were not operationalised. This current policy framework is enhanced and harmonised with the 2004 Policy Guidelines.

2. This PPP framework therefore guides the PPP development process and is aimed at providing certainty to all stakeholders that the GoG is committed to partnering with the private sector for the delivery of public infrastructure and services. The Government is confident that using the PPP modality, the private sector can offer a dynamic and efficient way to deliver and manage infrastructure, ensuring high standards of construction and maintenance. Through PPPs the Government intends to harness this dynamism to support Ghana's development objectives so that future generations can gain the benefits of modern services, improved living standards and reduced poverty.

B. THE CONCEPT

I. Definition of PPP

3. A PPP is a contractual arrangement between a public entity and a private sector party, with clear agreement on shared objectives for the provision of public infrastructure and services traditionally provided by the public sector. Usually, in a PPP arrangement, the private sector party performs part or all of a government's service delivery functions, and assumes the associated risks for a significant period of time. In return, the private sector party receives a benefit/financial remuneration (according to predefined performance criteria), which may be derived:

- entirely from service tariffs or user charges;
- entirely from Government budgets, which may be fixed or partially fixed, periodic payments (annuities) and contingent; or
- a combination of the above

4. The benefits of PPPs include the following:
   a) Accelerated delivery of needed infrastructure and public services on time and within budget.
   b) Encouraging the private sector to provide innovative design, technology and financing structures.
   c) Increased international and domestic investment.
   d) Risk sharing by government with private sector partners.
   e) Ensuring good quality public services and their wider availability.
   f) Real financial benefits reflected in reduction in the initial public capital outlay, and a better utilization and allocation of public funds.
   g) Economic growth and increased and wider employment possibilities.

[1] Government of Ghana, Ministry for Private Sector Development and Presidential Special Initiatives, Policy Guidelines for the Implementation of Public-Private Partnerships in Ghana, (approved by Cabinet) 2004

a) Technology transfer and capacity building

b) Improved operation and maintenance of public infrastructure

1. There are several well-defined models of PPPs, differing in purpose, service scope, legal structure and risk sharing, and increasingly, permutations and combinations of them. Specific forms of PPP are often referred to by special names. However, a single PPP can have the characteristics of several different forms and new types may emerge from time to time. One end of the spectrum could be an outsourcing of some routine operation, while the other could involve the private sector conceiving, designing, building, operating, maintaining and financing a project, thereby assuming a considerable proportion of risks. For the sake of clarity privatization is not a PPP. Also outsourcing without a significant transfer of risk to the private sector over a period of time is not a PPP.

I. Objectives of the PPP Policy

2. The key objectives of this policy are to:
   a) Leverage public assets and funds with private sector resources from local and international markets to accelerate needed investments in infrastructure and services;

   b) Encourage and facilitate investment by the private sector by creating an enabling environment for PPPs where value for money for government can be clearly demonstrated;

   c) Increase the availability of public infrastructure and services and improve service quality and efficiency of projects;

   d) Ensure attainment of required and acceptable local and international social and environmental standards

   e) Protect the interests of all stakeholders including end users, affected people, government and the private sector;

   f) Set up efficient and transparent institutional arrangements for the identification, structuring and competitive tendering of PPP projects;

   g) Provide a framework for developing efficient risk sharing mechanisms;

   h) Encourage and promote indigenous Ghanaian private sector participation in the delivery of public infrastructure and services

3. This Policy is therefore structured to encourage the provision of a wide variety of quality and timely public infrastructure and services. This will be achieved through faster project implementation, maximum leveraging of public funds, enhanced accountability and a shift to whole-life cycle costing and infrastructure management by the private sector.

I. Guiding Principles for PPPs

1. All PPP arrangements in Ghana shall be guided by the following principles:

- **Value for money**: Value for money is paramount and PPPs should give greater value for money than the best realistic public sector project designed to achieve similar service outputs. Achieving value for money is a key requirement of government at all stages of a project's development and procurement and is a combination of the service outcome to be delivered by the private sector, together with the degree of risk transfer and financial implications for government. Value for money is the driver for adopting the PPP approach, rather than capital scarcity or the balance sheet treatment.

- **Risk allocation**: An efficient risk allocation is vital in determining whether value for money can be achieved in PPP projects. GoG's principle with regards to risk allocation shall be used to optimise, rather than maximise, the transfer of project risks to the private party. Risks will therefore be allocated to the party best able to control and manage them in such a manner that value for money is maximised. The allocation of risk will therefore determine the chosen method of private sector involvement and allocation of responsibilities, which shall take into account the protection of the public interest.

- **Ability to pay**: End user ability to pay shall be a key consideration for all PPP projects. The PPP option must demonstrate long-term affordability to the public and overall Government budgetary sustainability, forward commitments in relation to public expenditure and the potential for returns on private sector investment, given other priorities and commitments.

- **Local content & technology transfer**: PPP projects shall be structured to encourage the maximum use of local content and technology transfer. As much as possible, the PPP arrangement shall facilitate the promotion of local industries and the private sector in Ghana.

- **Safeguarding Public Interest and Consumer Rights**: GoG is committed to ensuring that each PPP project shall have positive impact upon the public interest. The following principles shall be addressed in PPP transactions:

    - Safeguards to users particularly vulnerable groups;
    - Setting affordable user charges and tariff structures

- **Environmental, Climate and Social Safeguards:** The Government shall ensure that PPP activities conform to the environmental laws of Ghana and the highest standards of environmental, climate and social safeguards.

2. Furthermore, all PPP projects shall be governed in accordance with the following:

- **Clear objectives and output requirements:** PPP projects shall take into account the expected outputs of each project, allowing for optimal risk transfer to the private party and thereby ensure greater value for money for the public sector.

- **Accountability:** As a means of good governance PPP projects must ensure accountability:

Every stage of the PPP arrangement shall follow laid-down procedures and regulations

- Decisions must be objective and in consonance with law and government policies.
- Public sector entities undertaking PPPs must follow prescribed processes for decision-making within their organizations.

- **Transparency**: Principles of transparency shall guide all PPP projects:
  - There must be a well-defined procurement process for the PPP. Instructions to bidders must be clear and unambiguous to prevent manipulation or abuse of the process. The bid conditions and evaluation criteria must lead to the attainment of value for money, economy, and efficiency and must be made available to all interested private sector parties.
  - Where a decision is taken to consider an unsolicited bid, there must be clear and objective reasons supporting the decision which shall be in conformity with this policy.
  - The process shall be accessible to the public to the extent allowed by law except where national security would be prejudiced.
  - Equal opportunity and access to information must be given to all interested bidders.
- **Competition**: As much as feasible all PPP projects should be subjected to a competitive process so as to obtain value for money and efficiency.
- **Contracting Authority, ownership and commitment**: Contracting Authorities shall have the primary responsibility for managing the process and implementing the project.
- **Stakeholder Consultation Process:** Contracting authorities shall ensure adequate stakeholder consultation, understanding and support in advance of entering into a PPP arrangement and shall endeavour to identify relevant stakeholders and undertake comprehensive consultation and awareness of PPP projects under consideration.

I. Scope of PPP Projects

1. This Policy shall apply to all sectors and levels of government and shall be pursued where they represent priority projects, are affordable to the government and consumers, represent value for money and allow for appropriate risk transfer.

2. Sector specific PPP policies may be developed to accommodate the needs of specific sectors consistent with the overall GoG PPP Policy.

C. ROLES AND RESPONSIBILITIES

I. The Parties

PPPs allow each partner to concentrate on activities that best suit their skills. For the public sector this not only means planning and identifying infrastructure and public service needs and

1. focusing on developing national and local sector-specific policies, but also overseeing these and enforcing the PPP agenda.

2. For the private sector, the key is to deliver effectively the infrastructure and facilities required by the public sector and consumers at the project level. Usually, in a PPP arrangement, the private sector party provides the design, construction, operation, management, maintenance and financing for the partnership project, and is paid according to performance. Risks are identified and placed with the party best able to bear and manage them at lowest cost.

I. Government Support

3. Government shall deploy a range of instruments to support project preparation and financial viability of projects, including the following:

a. Project Development Facility (PDF)

The GoG shall establish a PDF in line with the emerging PPP programs. The PDF shall operate according to standard operating procedures and guidelines issued for PDF managers and users/beneficiaries. The PDF shall finance upstream investment appraisal, value for money assessments and other feasibility and safeguard studies. In addition it shall support the financing of transaction advisors for undertaking project and transaction structuring and implementation up to the signing of the contractual arrangements with the private investor(s). This may be a revolving fund with the third party costs being reclaimable from winning bidders in some instances, particularly where projects reach financial close.

b. Viability Gap Scheme (VGS)

GoG shall support projects that fall within its national development agenda and are economically justified but not financially viable. The GoG shall establish a VGS in line with the emerging PPP programme which shall operate according to standard operating procedures and guidelines issued for VGS managers and users/beneficiaries. The VGS aims at providing rule-based incentives for PPP projects that are economically justified but financially not feasible without reasonable support of their investments or operation.

c. Infrastructure Finance Facility (IFF)

To be successful, PPPs require fixed rate long-term financing preferably in local currency. GoG shall establish an IFF which may be a fund or a company, to raise the requisite long-term financing with government support for on-lending at commercial rates to the private sector partner for PPP projects.

Detailed guidelines shall be issued on the intended Government Support for PPP projects following their establishment.

I. Key Institutions

1. The GoG shall establish institutional arrangements for the successful implementation of PPP programmes. These institutional arrangements shall support the following broad functions:
   - PPP policy development, dissemination, monitoring and enforcement.
   - Individual project sponsorship, design, preparation and execution.
   - Financial management of funded and contingent obligations
   - Gate-keeping and approval functions, and
   - PPP project advice, support and promotion

2. The following institutions shall play key roles in these arrangements:
   - The Ministry of Finance and Economic Planning through relevant divisions/units, including:
     - Public Investment Division
       - The Project and Financial Analysis (PFA) Unit
       - The PPP Advisory Unit (PAU)
     - Debt Management Division (DMD)
     - The Budget Division
     - The Legal Division
   - **The National Development Planning Commission (NDPC)**
   - **Government Contracting Authorities (Ministries, Departments and Agencies and Metropolitans, Municipalities and District Assemblies)**
   - **General Assembly of Metropolitans, Municipalities and District Assemblies**
   - **Public Procurement Authority**
   - **Ministry of Trade and Industry**
   - **Cabinet**
   - **Parliament**
   - **PPP Approval Committee**
   - **Attorney General's Department**
   - **Regulatory Authorities (e.g. Public Utilities Regulatory Commission, Water Resources Commission, Ghana Railway Development Authority etc.)**

A. Ministry of Finance and Economic Planning

3. The Ministry of Finance and Economic Planning (MOFEP) through its Public Investment Division (PID) is spearheading the development of PPP and is responsible for developing the legal, institutional, and regulatory framework for the PPP programme. MOFEP is also responsible for the issuing of Standardised PPP provisions and PPP Manual/Guidelines for effective management of PPP Projects.

4. The PID of MOFEP through its PFA Unit and PAU shall act as gatekeeper and provide advisory services and support to MDAs and Contracting Authorities in the public sector respectively.

I. Project and Financial Analysis Unit

1. There shall be a unit in MOFEP responsible for project and financial analysis of projects. The PFA Unit shall serve as the secretariat to the PPP Approval Committee and be responsible for the systematic coordination of all the different activities which would be required within and outside of MOFEP as part of the gate keeping review and approval process.

2. The specific functions of the PFA Unit under the PPP process shall be to:

   - Screen PPP projects to ensure consistency with the National Infrastructure Plan (NIP) and government policy;
   - Verify that the use of the PPP option is preferable and beneficial relative to direct public investment;
   - Ensure financial viability and economic soundness (Value for Money) of PPP projects;
   - Examine the robustness of PPP contracts over the long term before they are signed; and
   - Ensure compliance with good PPP procurement processes;
   - Oversee the management and compliance of PPP Agreements/Concessions

II. PPP Advisory Unit

3. The PAU shall be a unit within MOFEP. PAU shall promote the flow of bankable, viable and sustainable PPP projects that further the National PPP Policy.

4. The PAU shall have the following responsibilities:

   - Provide value added advice and support to the MDAs and other Contracting Authorities in the public sector to enhance the identification, preparation of feasibility analysis, structuring, negotiations and procurement of PPP projects;
   - Build capacity among public sector stakeholders, and MDAs, to enable them to lead the implementation of a PPP project from start to finish in a professional and technically competent manner;
   - Promoting awareness and understanding of Ghana's PPP programme in order to encourage the use of PPP for selected appropriate projects;
   - Act as a centre of excellence for PPPs in Ghana.
   - Provide assistance to MDAs and other Contracting Authorities that want to promote PPPs in their respective sectors and developing in collaboration with the PFA Unit, Model Agreements for that sector;

- Assist MDAs and other Contracting Authorities in understanding approval requirements for PPPs, and developing necessary documents for review.

III. Debt Management Division

1. The DMD within MOFEP shall ensure fiscal sustainability for PPP projects, considering both direct and contingent liabilities on government's finances including guarantees, arising from each PPP project. Specifically, the DMD will be responsible for:
   - *Fiscal impact*: assessing and managing the long-term fiscal risks and impact of the PPP project (direct or contingent, explicit or implicit) and determining whether it is acceptable, given other priority national needs;

   - *Government support*: confirming the appropriateness of the project for sovereign guarantees (debt or specific-event) or other kinds of government support.

IV. Budget Division

2. The Budget Division shall establish processes to incorporate PPP project development into the annual budgeting exercise, and fund direct as well as contingent (unanticipated) calls on the budget. The Division shall therefore ensure that any payments to be made by MDAs under the PPP contract are consistent with the national budget.

B. PPP Approval Committee

3. A PPP Approval Committee shall be established for the purpose of considering requests by contracting entities to undertake PPPs and shall be the approving authority for PPPs subject to the provisions of the Approval Schedule to this Policy and detailed regulations to be promulgated.

4. The members of the PPP Approval Committee shall comprise but not be limited to the following:

   - Minister responsible for Finance (in the Chair)
   - Chairman of the National Development Planning Commission (NDPC)
   - Minister of Justice and Attorney General,
   - Minister of Trade and Industry,
   - Chief Executive of Ghana Investment Promotion Centre
   - Chief Executive of Public Procurement Authority and
   - Minister of the Contracting entity or where there is no sector Minister, the Head of the contracting entity as co-opted member or their designated representatives.

5. The PPP Approval Committee shall be serviced by the PFA Unit of MOFEP which shall serve as the secretariat to the Committee. The PPP Approval Committee may co-opt experts as necessary.

C. Ministry of Trade and Industry

1. The Ministry will facilitate the participation of SMEs in the PPP Process through the promotion of indigenous Ghanaian enterprises through effective capacity building activities and creating awareness in the SMEs.

D. Cabinet

2. Cabinet shall be the approving authority for PPPs subject to the provisions of the Approval Schedule to this Policy and detailed regulations to be promulgated.

E. General Assembly of the MMDA

3. The General Assembly of the MMDA through a formal session shall be the approving authority for PPP projects carried out by MMDAs subject to the provisions of the Approval Schedule to this Policy and detailed regulations to be promulgated.

F. Parliament

4. Parliament shall be the final approving authority for PPP projects where PPP Projects require the approval of Parliament subject to the provisions of the Schedule to this Policy and detailed regulations to be promulgated. This is to ensure the protection of public interest.

G. National Development Planning Commission

5. The NDPC in collaboration with Contracting Authorities shall prepare the National Infrastructure Plan (NIP). Every PPP project initiated by Contracting Authorities shall emanate from this plan or the approved development plan of the Contracting Authority, if not; prior approval should be sought from NDPC.

H. Government Contracting Entities

6. The implementing entities shall be the implementing Contracting Authorities under GoG. MDAs, MMDAs and other contracting entities shall be required to develop capability in PPP development with support from PAU. Where appropriate, Contracting Authorities, especially sector Ministries shall be encouraged to set up Project Management Units (PMUs), particularly to assist in the project identification, needs and options analysis, initial definition of PPP concept and PPP Contract Management, Monitoring, Reporting and Evaluation.

I. Attorney-General's Department

7. The Attorney General's Department with the assistance and advice of MOFEP's Legal Division shall ensure the conformity of all project agreements with Ghanaian law.

J. Regulatory Authorities

8. Regulatory authorities shall ensure that the PPP contract, insofar as it will have an impact on customer tariffs, is consistent with and furthers good regulatory principles.

I. Legal Framework

1. Government shall provide a credible and conducive legal and regulatory framework to guide the PPP process in the Country. These shall be designed to ensure that relevant principles including competition, local content, environmental safeguards, predictability and transparency are reflected in the PPP legal and regulatory frameworks. Until the PPP law is enacted, PPP projects shall be guided by this policy and to the extent applicable existing public procurement regulations.

II. Risk Sharing and Management Framework

2. Unlike public procurement where government bears all or most of the risks, the risks in PPP projects are allocated to the party (private or public) which is best placed to manage it.

3. A risk management framework shall be instituted to cover generic risk and the principles of dealing with them. The feasibility study for each PPP project shall clearly identify and propose allocation of all specific and major project risks, as well as 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.

D. THE PPP PROCESS

I. The PPP Project Process for Government Originated Projects

4. PPPs involve a number of players from different sectors, representing a variety of interests, and thus the partnership needs to be formalized and processes need to be followed in a systematic and transparent way. Detailed documentation need to be prepared at all phases of the PPP project. It is important to note that PPPs can take a long time to procure if these processes are not carefully followed. PPP projects shall be selected from sectors which have been identified within the National Infrastructure Plan (NIP) and have the potential for development under PPP. To improve credibility and transparency at all phases of project development, the input of both government and the private party shall be assessed in terms of their compliance with the legislation, regulations and the PPP process and its components, including the bidding process, local content and the formation of Special Purpose Vehicles (SPVs).

5. MDAs and Contracting Authorities (assisted by PAU and/or qualified and experienced transaction advisors as appropriate) shall go through the following steps to ensure that PPPs are carried out rigorously:

a. Project Inception

6. As soon as an MDA or MMDA (Contracting Authority) identifies a project that may be concluded as a PPP, the institution must in writing accompanied by a Project Brief/Concept Note –

- Register the project with MOFEP-PID;
- Inform MOFEP-PID of the expertise within that institution to proceed with the project;
- Appoint a Project Officer from within or outside the institution; and
- Appoint a Transaction Advisor if MOFEP-PID so requests.

b. Pre-Feasibility Study – Approval I

1. To determine whether the proposed PPP is in the best interest of the government, the Contracting Authority must undertake a pre-feasibility study that–
   - Makes a business case in terms of:
     - Explaining the strategic and operational benefits of the proposed PPP for the Contracting Authority in line with its strategic objectives;
     - Demonstrating the alignment of the project with the NIP and government policy;
   - Describes in specific terms –
     - In the case of a PPP involving the performance of the Contracting Authority's function, the nature of the Contracting Authority's function concerned and the extent to which this institutional function, both legally and by nature, may be performed by a private party; and
     - In the case of a PPP involving the use of state property, a description of the state property concerned, the uses (if any) to which such state property has been subject prior to the registration of the proposed PPP, and a description of the types of use that a private party may legally subject such state property to;
   - Indicates the possible location(s) and provides estimates of broad project costs, and an initial indication of whether the project is likely to be viable and affordable.
2. All sector Ministries through their PMUs shall have the responsibility for the review and approval of pre-feasibility studies for Contracting Authorities under their respective sectors.
3. The approval referred to in paragraph 47 shall be regarded as Approval I.
4. No Contracting Authority may proceed with the full feasibility phase of a PPP without a prior written approval of their sector Ministry-PMU and a concurrent review by MOFEP-PID of the pre-feasibility study.

c. Feasibility Study – Approval II

5. Subsequent to paragraph 49 a Contracting Authority shall undertake and submit to MOFEP-PID a full feasibility study and appraisal of the proposed project. The full feasibility report should –

- In respect to a PPP project pursuant to which the Contracting Authority will incur any financial commitments, demonstrate the affordability of the PPP for the institution;

- Set out the proposed allocation of financial, technical and operational risks between the institution and the private party;

- Demonstrate the anticipated value for money to be achieved by the PPP;

- Provide detailed estimates of viability gap and the need for incentives; and

- Explain the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP.

1. The Contracting Authority may request funding from the PDF to carry out the feasibility study. Where appropriate, the Contracting Authority, in consultation with MOFEP-PID, may include the feasibility study in its procurement process and pass on the cost to the private sector.

2. A Contracting Authority shall not proceed with the procurement phase of a PPP project without a prior written approval of the PPP Approval Committee for the feasibility study, where the PPP involves projects with estimated project costs of up to Fifty Million Ghana Cedis (GH?50,000,000) but exceeds Two Million Ghana Cedis (GH?2,000,000). Where the PPP involves projects with estimated project costs of above Fifty Million Ghana Cedis (GH?50,000,000) Cabinet shall approve the feasibility study based on recommendation from the PPP Approval Committee. Where the PPP involves projects with estimated project costs of Two Million Ghana Cedis (GH?2,000,000) and below, MOFEP-PID shall approve the feasibility study. All approvals shall be communicated to Cabinet on a quarterly basis.

3. The approval referred to in paragraph 52 shall be regarded as Approval II.

d. Procurement – Approval IIIA and IIIB

4. Prior to the issuing of any procurement documentation for a PPP to any prospective bidders, the Contracting Authority must obtain approval from MOFEP-PID for the documentation, including the draft PPP Agreement/Concession.

5. A MOFEP-PID approval referred to in paragraph 54 shall be regarded as approval IIIA.

6. The procurement procedure –

   - Must be in accordance with a system that is fair, transparent, competitive and cost-effective;

   - Must ensure that PPP activities that are within the scope of public procurement shall be undertaken under the Public Procurement Act; and

   - Must encourage the maximum use of local content and transfer of technology.

1. After the evaluation of bids, but prior to appointing the winning bidder, the Contracting Authority must submit an evaluation report for review and recommendation by MOFEP-PID to the Approving Authority for PPPs subject to the provisions of the Approval Schedule to this Policy and detailed regulations to be promulgated to approve the Winning Bidder –

   - demonstrating how the criteria of affordability, value for money and substantial technical, operational and financial risk transfer were applied in the evaluation of the bids; and
   - demonstrating how the criteria of affordability, value for money, and risk allocation were satisfied in the winning bid, and including any other information as required by MOFEP.

2. The approval referred to in paragraph 57 shall be regarded as approval IIIB.

e. Contracting PPP Agreements/Concessions – Approval IV

3. After the procurement process has been concluded but before the Contracting Authority concludes a PPP Agreement/Concession, the Contracting Authority must obtain approval from the Approving Authority for PPPs subject to the provisions of the Approval Schedule to this Policy and detailed regulations to be promulgated–

   - that the PPP Agreement/Concession meets the requirements of affordability, value for money and substantial technical, operational and financial risk transfer as approved in terms of paragraph 55;
   - for a Management Plan that explains the capacity of the Contracting Authority and its proposed mechanisms and procedures to effectively implement, enforce, monitor and report on the PPP; and
   - that a satisfactory due diligence, including a legal due diligence, has been completed in respect of the Contracting Authority and the proposed private party in relation to matters of their respective competence and capacity to enter into the PPP Agreement/Concession.

4. The approval referred to in paragraph 59 shall be known as approval IV. This shall be considered as the final approval of the PPP Process.

5. PPP projects involving financial transactions that require Parliamentary approval must first receive MOFEP-PID reviews and approvals, General Assembly of the MMDAs, PPP Approval Committee and Cabinet final approvals before it is submitted to Parliament for such approval.

I. Process for Unsolicited Proposals

Government's policy on unsolicited proposals aims to balance its desire to stimulate innovation and to create new opportunities for the private sector, with the need to ensure that the Government and consumers get value for money in PPP transactions in a competitive

1. environment. Unsolicited proposals shall only be considered based on guidelines to be issued and the dictates of the NIP.

2. All unsolicited proposals shall be considered on a case-by-case basis and shall be limited to projects that are NOT in the project list of any Contracting Authority, has not already been considered by the Contracting Authority and that demonstrate genuine and substantial innovation and are supportive of public policy. In addition, the unsolicited proposal should be consistent with the national development agenda, serve the public interest, needs and priorities of the Contracting Authority as well as long-term strategic plan for investment in that sector.

3. The criteria for considering unsolicited proposals shall be provided in the PPP Manual/Guidelines and the Standardised Provisions. In all circumstances, unsolicited PPP projects shall be subject to a value for money, technical, financial and economic assessment. Criteria shall be developed to prescribe circumstances under which unsolicited proposals shall be subjected to competitive process.

4. In general, Government shall verify project performance including viability with the assistance of independent transaction advisors.

E. PPP CONTRACT MANAGEMENT

I. Management of PPP Agreements/Concessions

5. 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 in approval IV for –

- Measuring the outputs of the PPP Agreement/Concession;
- Monitoring the implementation of the PPP Agreement/Concession and performances under the PPP Agreement/Concession;
- Liaising with the private party;
- Resolving disputes and differences with the private party;
- Generally overseeing the day-to-day management of the PPP Agreement/Concession; and
- Reporting on the PPP Agreement in the Contracting Authority's Annual Report.

A PPP Agreement/Concession involving the performance of a Contracting Authority's function does not divest the Contracting Authority concerned of the responsibility for ensuring that such

1. institutional function is effectively and efficiently performed in the public interest or on behalf of the public service.

2. A PPP Agreement/Concession involving the use of state property by a private party does not divest the Contracting Authority concerned of the responsibility for ensuring that such state property is appropriately protected against forfeiture, theft, loss, wastage and misuse.

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

I. Amendment and Variation of PPP Agreements/Concessions

4. A prior written approval of MOFEP-PID is required for any material amendments to a PPP Agreement/Concession, including any material variation to the outputs or any waivers contemplated or provided for in the PPP Agreement/Concession.

5. MOFEP-PID will approve a material amendment only if it is satisfied that the PPP Agreement/Concession, if so amended, will continue to provide –

   - Value for money;
   - Affordability; and
   - Substantial technical, operational and financial risk transfer to the private party.

II. Agreements/Concessions Binding on the State

6. A PPP Agreement/Concession or an agreement amending a PPP Agreement/Concession binds the state only if the Agreement/Concession was entered into on behalf of the Contracting Authority –

   - By the Minister, Chief Executive or Chairman of the Board of that Contracting Authority; and
   - If all approvals required in terms of this Policy Framework have been granted by the relevant approving authorities in respect of the PPP.

F. REVIEW

7. A comprehensive and regular review of the overall process shall be a core responsibility of MOFEP. Reviews shall be prepared openly and transparently within an appropriate time-frame. The review shall specify implications for the procurement of infrastructure and the delivery of quality services helping to shape the future of the PPP programme.

8 The implementation of, and adherence to, the policy will be monitored and reviewed by MOFEP in particular, on the consistency of conduct of the PPP process with the policy and the need for any revisions required to maintain its consistency with ongoing developments and expansion of Ghana's PPP programme.

APPROVAL SCHEDULE

The exercise of the authority to approve or reject a request by a contracting entity to undertake a PPP shall be subject to the criteria in this schedule:

Criteria	Approving Authority	Notes
PPPs which requires the Government of Ghana (GOG) to comply with Article 174 or 181 of the Constitution	Cabinet/Parliament	This shall be applicable irrespective of the financial threshold or capital outlay of the project
PPP's which at project inception or planning stage involves a total estimated project cost exceeding Fifty Million Ghana Cedis (GH?50m).	Cabinet/Parliament	The amount established at pre-feasibility or feasibility shall be used to determine threshold
PPP's whose estimated project cost do not exceed Fifty Million Ghana Cedis (GH¢50m) other than PPP's undertaken by MMDAs with total estimated project cost exceeding GH¢2m	PPP Approval Committee	The amount established at pre-feasibility or feasibility shall be used to determine threshold
PPP's undertaken by MMDA's where the total estimated cost does not exceed: • GH? 0.5m in the case of District Assemblies, • GH? 1m in the case of Municipal Assemblies • GH? 2 m in the case of Metropolitan Assemblies	General Assembly of the MMDA (for MMDA Project)	The amount established at pre-feasibility or feasibility shall be used to determine threshold

NB: The Ministry of Finance and Economic Planning shall communicate all approvals to Cabinet on a quarterly basis.

PROCEDURES, TASK, RESPONSIBILITIES AND TIMELINES FOR PPP PROJECTS

Stage	PROCESSES	TASKS	RESPONSIBLE INSTITUTION(S)	TIMELINE
Stage 1	1	Project Identification	MDAs/MMDAs supported by PAU shall identify PPP in line with NIP,PIP,GSGDA.	In line with PIP and NIP schedule
Stage 2	2	Preparation Of Pre-Feasibility study/Concept paper/Business Case	MDAs/MMDAs and/or supported by consultants or appropriate group.	Within 60 working days after Proj. Iden (1) or prior to (1)
Stage 3	3. (a) Approval 1	Approval for Pre-Feasibility /Concept paper - Approval 1	PMUs of MDAs or the appropriate authority	After completion of (2) or after (1) with already prepared (2) within 10 working days
	(b)	Submission of Pre-Feasiblity /Concept paper to MOFEP-PID	PMUs of MDAs or the appropriate authority	After (3a)
Stage 4	4 (a)	Registeration of Project and co-current Review of Pre-feasibility studies	MOFEP-PFA/DMD/Legal/Budget	After 3(b) within 35 days
	(b)	Screen of PPPs to ensure consistency with NIP,PIP,GSGDA.		
	(c)	Verify& justify the use of PPP option		
	(d)	Financing Scheme & PPP type		
	(e)	Ensure compliance of PPP process		
Stage 5	5	MOFEP approval of pre-Feasibility & Project viability	MOFEP-PFA/DMD/Legal/Budget/Approval Committee	
	(b)	Requesting for full feasibility after 5 above	Contracting Authority	Depends on submission by Contracting Authority
Stage 6	6(a) Approval II	MOFEP Review and Approval of full Feasibility Report	MOFEP- PFA	Within 30 working days
	b	Subject to thresholds of: Project Cost up to GH¢50,000	Approval Committee	
	c	Subject to thresholds of: Project Cost above GH¢50,000	Cabinet/Parliament Approval	Within 60 working days
	d	MMDAs approval ceiling:	General Assembly of the MMDA	Depending on MMDAs Schedules
		*District Assembly not exceeding - GH¢0.5m		
		*Municipal Assemblies not exceeding - GH¢1m		
		*Metropolitan Assemblies not exceeding - GH¢ 2m		
Stage 7	7(a) Approval III A	Procurement:		
	b	Procurement for any prospective bidders and Review of project documentation - draft PPP Agreement/Concession	MOFEP PFA	Within 25 working days
		Procurement Procedure -		
	c	*Design fair, transparent, competitive, cost-effective procurement process.	Contracting Authority	Depends on submission by Contracting Authorities
	d	*PPP procurement Activities shall be undertaken under the Public Procurement Act and the scop of the PPP Law		
	e	*Involve the use of local content and Transfer of Technology.		
	Approval III B	Procurement:		Depending on MDAs/MMDAs Schedules
	(i)	Contracting Authorities submit evaluation report	Contracting Authority	Depends on submission of the evaluation report by Contracting Authorities
	(ii)	Review & Recommendation of Evaluation Report	MOFEP/AG/MDAs	Minimum 10 days
Stage 8	8(a) Approval IV	PPP Agreements/ Concession - Final Approval	Approving Authority - Approval Committee/Cabinet/Parliament/MMDAs (as may be necessary)	Minimum 30 days