



ISLAMIC REPUBLIC OF AFGHANISTAN
MINISTRY OF FINANCE

**NATIONAL POLICY ON PUBLIC
PRIVATE PARTNERSHIPS
(PPPs)**

Central Partnership Authority
Ministry of Finance
Islamic Republic of Afghanistan

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INTRODUCTION

It is the policy of the Government of Afghanistan (GoA) to use PPPs as an alternative funding method in addition to the national budget to expand efficient service delivery and physical infrastructure at the national level for:

- Attracting and utilizing private sector business expertise;
- Effective use of public properties and assets;
- Reducing reliance on foreign aid, and
- Effective use of existing capital in the private sector and banks.

Currently the GoIRA faces issues of lack of infrastructure, congestion and delays in implementing development projects, overreliance on foreign aid, and poor service delivery.

The GoIRA, with the coordination of all stakeholders, will effectively and comprehensively implement PPPs through the establishment of a policy, legal and regulatory framework, and establishing a fully professional Central Partnership Authority (CPA). To attract investment and establish an enabling environment for domestic and foreign investment in PPPs, the GoIRA will provide guarantees, viability gap funding and other incentives to the private sector.

Government agencies, the private sector, banks, national and international organizations, donor organizations, and civil society and unions shall contribute to realize the principles of PPPs. These principles include transparency, accountability, value for money, affordability, competency, rule of law, equality, risk sharing, securing public interests, ensuring consumer's rights, social and environmental protection and consultations and coordination.

To achieve the objectives and effective implementation of the principles of PPPs, the GoIRA will undertake comprehensive capacity building, awareness, consultation, and coordination programs by itself or through cooperation with donor organizations.

PPPs shall be designed and implemented to provide social benefits and return to private partners while complying with public policies and plans. Therefore, the GoIRA cannot accept projects which benefit only the private partner. The GoIRA will manage PPP policies to ensure a balance between social benefits and private partner interests.

In order to select projects for PPP procurement, and to identify the preferred bidder for each project, the GoIRA shall undertake comprehensive reviews and specific evaluation criteria.

The GoIRA looks forward to a new era of cooperation between the public and private sectors through PPPs that can help overcome Afghanistan's manifold challenges in public service provision.

OBJECTIVES

SECTION 1:

PPP is a key element of the economic reform strategy and agenda of the GoIRA for increasing the role of the private sector in expanding public infrastructure provision and service delivery. This is to be achieved by attracting private financing to supplement public financing, via PPPs, with the following objectives:

1. Mobilize private sector investment to expand access to infrastructure services and support sustained and inclusive economic growth;
2. Reduce the investment burden of the government through transition of financing responsibilities from donor support to private investors;
3. Promote more efficient operation of public assets and properties, and higher quality service delivery;
4. Utilize the investment and business skills of the private sector to expand public infrastructure provision and service delivery;
5. Ensure citizens are provided with high quality services at a reasonable price;
6. Support the development of Afghanistan's capital markets as a means of financing infrastructure and services;
7. Provide financial support and incentives (such as, political risk insurance, tariff exemptions, and tax holidays) to private partners in PPP contracts.
8. Capacity building and increasing public awareness of PPPs.

DEFINITION OF PUBLIC PRIVATE PARTNERSHIPS

SECTION 2:

PPPs are contractual arrangements between the public and private sectors for the private delivery of public infrastructure services or other basic services. The private sector undertakes to deliver a desired service and assumes the associated risks to earn a fair return.

A PPP is a contract for service and outputs, rather than merely a physical asset. This PPP Policy does not cover government assets listed for divestiture or privatization and the outsourcing of public services where no significant private investment and risk transfer is involved.

PPPs may be undertaken for:

- a) The design, construction, development, maintenance and/or operation of new infrastructure, assets and/or facilities;
- b) The rehabilitation, modernization, expansion, operation, maintenance and/or management of existing infrastructure, assets and/or facilities.
- c) The provision of services previously undertaken by a public sector or government entity, where these services are financed wholly or partly by a private partner.

The private partner is remunerated through tariffs, transits, rents, charges or fees to be collected by the private party from users or customers of the assets or service, or a payment made by the public sector partner or some combination of these.

Smaller projects shall be considered on case-by-case base by considering the nature and importance of the project.

THE BENEFITS OF PPPS:

SECTION 3:

1. Enabling the GoIRA to use the private sector's delivery and project completion expertise and capabilities in which risks are transferred to the private partner;
2. Enabling the GoIRA to make payments conditional on the actual delivery of infrastructure and services and thereby ensuring ongoing performance;

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3. Enabling the GoIRA to better understand the whole of life cost of investments and enable a more rigorous project assessment;
4. Encouraging the private sector to provide innovative concepts, technology and new financing structures to the GoIRA;
5. Increasing the opportunities for international and domestic investment which leads to technology transfer and capacity development;
6. Creating new employment opportunities, constructing required infrastructure, and improving and expanding service delivery;
7. Enabling the GoIRA to attract private financing, and reducing reliance on public financing and donors;
8. Expanding infrastructure provision and enhancing the level and quality of public services;
9. Accelerating the economic and social development of the country.

POLICY IMPLEMENTING PROCEDURES

SECTION 4:

1. Creating a legal framework for PPPs in accordance with internationally accepted practices;
2. Establishing a PPP institutional framework including the CPA within the Ministry of Finance (MoF), as a policy making entity and to coordinate with PPP units in other agencies;
3. Providing financial support to eligible PPPs through the establishment of a viability gap fund to ensure the financial viability of PPPs;
4. Providing incentives to the private sector such as tax holidays, tariff exemptions, and streamlining of the license issuing process;
5. Performing sectoral surveys to identify projects and implement appropriate approaches in the sectors;
6. Preparing and issuing guidelines and standardized PPP documents by the CPA to ensure effective management of PPPs and to avoid misuse or duplication;
7. Planning and implementing capacity building programs to public and private sector partners by the CPA, in the phases of identification, procurement, and implementation of PPPs;

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8. Planning and implementing awareness, consulting, and coordinating programs by the CPA;
9. Accepting open bidding as the primary procurement method to ensure transparency in PPPs;
10. Using donor programs as required and/or available for creating technical expertise and capacity building of PPP units, and special teams in relevant ministries;
11. Combined and comprehensive review of issues concerning joint investment, to find solutions for emerging issues and increase confidence of the private sector;
12. The Ministry of Finance (MoF), Da Afghanistan Bank (DAB) and Afghanistan Chamber of Commerce (ACCI) will jointly review the financial viability of PPPs, and in consultation with stakeholders, may provide special financing packages to the private sector for the development of PPPs;
13. Ensuring that risks and rewards are equally divided between the public and private sectors in consideration of preserving incentives for the private sector;
14. The MoF and Ministry of Labour and Social Affairs, in coordination with Laborers' Union and other stakeholders, shall prepare a document for protecting the rights of laborers and staff, which shall be effective upon the implementation of a PPP;
15. Develop and implement communication strategies for achieving the objectives of this policy.

KEY PRINCIPLES FOR PPP

SECTION 5:

All PPPs in Afghanistan shall be guided by the following principles:

1. Good Governance

PPPs shall be managed such that standards of good governance, anti-corruption, integrity of officials and clear authority and responsibility are observed by all parties involved. Professional capacities, managerial abilities and financial soundness shall be the benchmarks of their performance assessment.

2. Value for Money

The value for money concept means comparing the net benefit of project implementation through the public sector or PPPs, by considering the quantity and quality of benefit, and selecting the one which is more beneficial to the GoIRA for the given costs, whether delivered by the private sector, the public sector, or a partnership between the two.

The GoIRA will ensure that a PPP provides the best value for money means of delivering the desired outcome, achieving development, and funding and implementing the project. PPPs should not be seen simply as an opportunity to undertake projects that would ordinarily not obtain approval through normal public budgetary approval processes.

3. Allocation of Risks

Risk allocation is a basic principle in PPPs. Risks will be allocated to the party best able to control and manage them, in order that value for money is maximized. The risks of designing, construction, maintenance, operations and services delivery are transferred to the party which is best equipped to manage these.

4. Affordability and protection of users

PPPs shall be implemented so that the users, in the long term, shall have the ability to use the infrastructure and services supplied. PPPs shall provide public infrastructure services at lowest cost. Furthermore, PPPs shall provide safeguards to users, particularly for vulnerable groups. This does not rule out GoIRA subsidizing users of a PPP, but any such subsidies paid must be no more than would be required by GoIRA to deliver the same service under public procurement.

5. Transparency

Transparency is a basic element in PPPs. Agencies shall clearly and properly define the PPP procurement process and provide the required information and instructions to bidders. Information and instructions shall be delivered to prevent manipulation or abuse of the process.

The bid conditions and evaluation criteria must lead to attainment of value for money and efficiency and must be made available to all interested private sector parties. The process shall be accessible to the public to the extent allowed by law and access to information must be given to all interested bidders.

6. Competition

As much as possible all PPPs will be subjected to a competitive process in order to obtain value for money and efficiency. The benefits of private sector participation are increased by effective competition and by ensuring that business activities are subject to appropriate commercial pressures, removal of unnecessary barriers to entry, and implementing and enforcing adequate competition laws.

7. Local capacity development and technology transfer

PPPs shall be structured to encourage the maximum use of local capacity development and technology transfer. As much as possible the PPP arrangement shall facilitate the promotion of local industries and the private sector in Afghanistan.

8. Environmental and social responsibility

The GoIRA shall ensure that PPPs are planned and implemented in accordance with environmental laws and highest standards of environmental and social safeguards.

The GoIRA shall ensure that PPPs are designed in accordance with the Afghanistan Historical and Culture Heritage Preservation Law, in order to prevent damage and destruction of historical and traditional areas.

9. Stakeholders Consultation Process

The CPA and contracting entity shall ensure secure, adequate, and broad stakeholder consultation, understanding, and support in advance of entering into a PPP arrangement.

The CPA shall endeavor to identify relevant stakeholders and undertake comprehensive consultation and awareness of PPPs under consideration.

THE LEGAL FRAMEWORK

SECTION 6:

The GoIRA shall regulate a PPP legal framework based on the principles of good governance, rule of law, competition, local capacity and benefits, consumer safeguards, transparency, accountability, and consultation and coordination.

The GoIRA develop a PPP Law harmonized with existing laws and regulations and forward it to the National Assembly for enactment.

A PPP regulation will be enacted based on the PPP Law to define the process for the identification, procurement, and implementation of PPPs and other related issues (bidder's condition, project selection criteria, etc.).

PPPs are significantly different and more complex than traditional public procurement. Operational guidelines, standards, and procedures for the CPA will be prepared in accordance with the PPP regulation to guide stakeholders. Standard contracts will be formulated and issued for each of the sectors in which PPPs will be undertaken.

THE INSTITUTIONAL FRAMEWORK

SECTION 7

The PPP institutional framework includes the following responsibilities:

- a) Development, dissemination, implementation and monitoring of PPP policies;
- d) Support the design, preparation and execution of projects;
- e) Management of funds, loans and insurance;
- f) Project approval processes and responsibilities;
- g) Providing advice, support, and promotion of PPP.

For smaller PPPs, with an investment value below a threshold to be prescribed, simplified procedures for project development, approval and procurement, will be developed in accordance with the legal framework by the MoF and approved by the High Economic Council (HEC).

The following entities will play key roles in these arrangements for most PPPs.

1. High Economic Council and Cabinet

The HEC verifies PPP concept notes and feasibility studies for each project. Following approval by the HEC, the feasibility studies require approval by the Cabinet of the Islamic Republic of Afghanistan. The Cabinet and the HEC will verify, approve, reject or refer the feasibility studies for review to ensure that

the contracting entities only enter into contracts that are considered in the best interest of the country.

2. National Procurement Commission

The National Procurement Commission (NPC), established via the Public Procurement Law, will have responsibility to approve, reject or advise modification of PPP contract awards after review by the CPA.

3. Ministry of Finance

The MoF will have the responsibility to develop and implement the PPP Policy, its legal, institutional and regulatory frameworks and its amendments if required. In particular, the MoF will be responsible for:

- a) Developing the PPP Policy and supporting its implementation;
- b) Developing standard PPP documents, manuals and guidelines;
- c) Assessing and managing the financial commitments of the GoIRA to PPPs to ensure fiscal sustainability.

4. Central Partnership Authority

The CPA is established within the MoF to manage PPP policies, provide advice, undertake analysis, provide technical support to contracting entities, streamline the process, and promote PPPs and other relevant tasks. The specific functions of the CPA include:

- A. Providing technical and administrative support and advice to contracting entities, the Minister of Finance, the NPC, the HEC, and the Cabinet on the implementation of this PPP Policy;
- B. Registering PPPs and ensuring that all PPPs are consistent with policies and regulations;
- C. Reviewing and assessing PPP projects from the aspects of feasibility, value for money, affordability and social, economic and environmental impacts, and making recommendations to the Minister of Finance and the HEC on the amendment, rejection and approval of PPPs;
- D. Providing technical assistance to contracting entities where appropriate to identify, develop, procure, and implement PPPs;
- E. Monitoring and reporting on the performance and implementation of PPP agreements;

- F. Building capacity among public sector stakeholders and contracting entities in all aspects related to PPPs.

5. Line Ministries and Contracting Entities

Each line ministry has responsibility for the design and formulation of policies, strategies and establishing an enabling environment for PPPs in its areas of responsibility.

Line ministries and other public entities will be the contracting entities for PPPs on behalf of the GoIRA. Entities in this context include independent departments, state-owned enterprises, budgetary units, municipalities and mixed-ownership companies in which the share of State ownership exceeds twenty-five percent.

Line ministries and other public entities are responsible for the identification, preparation, procurement, and monitoring of PPPs in their sectors. Where appropriate, they will appoint technical advisors to assist in this process. The CPA will collaborate closely with line ministries and other public entities in the assessment of affordability, value for money, and feasibility associated with PPPs.

The contracting entities have the responsibility for monitoring and evaluation of their PPPs and to provide such data as will be needed for the overall PPP program monitoring role of the CPA.

Line ministries may establish their own PPP Units. This unit will be the lead body within the relevant sector or ministry to support the development of PPPs, while the CPA remains responsible for overall PPP program management, oversight, approval and procurement process for PPPs.

In order to advance PPPs, contracting entities will establish advisory committees and project evaluation boards in accordance with the provisions of the PPP Law and PPP regulation.

6. PPP Advisory Board

The CPA will establish a professional PPP Advisory Board to advise in designing, compiling and finalizing policies, procedures and guidelines, other plans and incentives for the development of PPPs. This board will be chaired by the CPA with professional, expert, and skilled members in the areas of responsibilities of the following ministries: Ministry of Economy; Ministry of Commerce and Industry;

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Ministry of Justice; Ministry of Foreign Affairs; Ministry of Women Affairs; Supreme Court; Independent Land Authority (Arazi); National Procurement Authority; Da Afghanistan Bank; Afghanistan Chamber of Commerce and Industry (ACCI); and Industrialists Union.

The CPA, in coordination with the members of the Board, will prepare the performance procedure and ToR of this Board.

The CPA shall be able to call the representatives of other entities and domestic and international organizations to meetings when required.

BUILDING RELATIONSHIPS WITH INVESTORS

SECTION 8:

As in other developing countries implementing projects through PPPs, Afghanistan is facing challenges in the areas of finance, economy, banking system, insurance, and technical capabilities for identification and selection of private partners, implementation and monitoring.

The GoIRA, by understanding the issues, will comply fully with international practices and will conduct studies and consultation about the market prior to approving a PPP project.

Private companies are responsible to their shareholders for costs and other affairs dedicated to pursuing PPPs.

The GoIRA is committed to manage the process in a way to prevent delays in the processing of PPPs. Appropriate communication methods will be adopted in accordance with internationally accepted practices and awareness programs will be provided to the private sector in this regards.

The GoIRA pledges to manage this process in a manner where the investors shall not be given the opportunity to drive their capital to other areas. The GoIRA will also develop strategies to share experience between domestic and foreign private investors.

The GoIRA will prepare PPP standard documents in accordance with internationally accepted criteria and will ensure these documents are available to

investors. Required coordination and specific programs will be undertaken by the GoIRA with regard to the processing of the documents.

To avoid future conflicts and issues, and to implement PPPs in the most effective way, the CPA will ensure that the transaction advisor demonstrates familiarity with all aspects of project development including limited recourse debt and equity financing in order to gain the confidence of investors.

DONORS, DOMESTIC AND INTERNATIONAL FINANCE INSTITUTIONS

SECTION 9:

Donors, domestic and international finance institutions, as key partners, may assist the GoIRA through providing consultations, funds and technical assistance.

Donors, domestic and international finance institutions will coordinate their PPP-related activities with the CPA and will submit quarterly performance reports.

GOVERNMENT SUPPORT

SECTION 10:

The MoF will, based on the proposal of the CPA and affordability to the GoIRA, establish a special fund as a Project Development Fund (PDF) with a determined opening balance. The PDF will only be used for providing financial support in undertaking research, recruitment of professionals and advisors, feasibility studies, capacity building and other related purposes. The CPA will have the responsibility to manage and regulate the affairs of the PDF.

The MoF, if required, will establish a Viability Gap Fund (VGF) in coordination with the PPP program. The VGF will provide a subsidy to those PPPs which are economically beneficial, but are not financially viable without GoIRA financial support.

To encourage investment, the GoIRA will provide incentives, such as tax exemptions, tax holidays, tariff exemptions, streamlining of the licensing process, privileges on the rights of movable and immovable assets, and concession rights to private partners in PPPs.

GOVERNMENT FUNDING, INSURANCE AND GUARANTEE STRUCTURE

SECTION 11:

To facilitate financing for those PPPs which conclude in reduction of costs, the GoIRA will support the private partner and lenders and will conduct studies in the areas of finance, loans, and capital markets to stakeholders.

The GoIRA considers the following criteria necessary in relation to this subject (i) unnecessary intervention of government and lender (ii) force majeure and (iii) events of termination

The GoIRA will support the private partner with regards to types of insurance coverage that are deemed necessary for PPPs.

The GoIRA will provide guarantees and commitments such as, monetary payment to the organization, payment for goods and services provided by the GoIRA, implications of nationalization, expropriation, property rights, exchange and transfer of foreign currency and compensation of the state's legal liabilities to a private partner.

Regarding political risks, the GoIRA in coordination with international institutions that are working in this area will provide the required support to assure the investors in this regard.

TRANSPARENCY AND ACCOUNTABILITY

SECTION 12:

The GoIRA is committed to a fully transparent process which ensures that information about PPPs and the performance of the PPP program is publicly available. This will enable independent auditing entities and the public to hold the GoIRA accountable for its management of the PPP program.

To that end, the GoIRA will disclose and make publicly available information through the media, the internet and the website of the CPA, including:

- a) The laws, regulations, guidelines, model documents, and short description and scope of negotiated PPPs;

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- b) Information on each potential PPP and invitation for expressions of interest published as part of the procurement process;
- c) PPP contracts as soon they become effective, along with a summary of the key project features and commercial terms. Certain contractual details may be excluded to protect commercially sensitive information;
- d) Performance data of each active PPP;
- e) Information on the fiscal implications of PPPs provided in Annexes to budget documents.

PARTNERSHIP CYCLE

SECTION 13:

To achieve the objectives stated in this PPP Policy, all PPPs in Afghanistan will be developed and implemented following a consistent, transparent process. The PPP process will consist of the following stages:

- a) Identifying and screening potential PPPs;
- b) Developing a business case;
- c) Preparing for procurement of a PPP;
- d) Preparing for implementation of a PPP;
- e) Managing PPP contracts.

The CPA will prepare a specific guideline to support responsible GoIRA officials at each stage.

UNSOLICITED PROPOSALS

SECTION 14:

Unsolicited proposals can provide valuable innovative concepts for meeting public sector needs. At the same time, it is important that the benefits of competitive procurement are retained.

The basic principles for unsolicited proposals:

- a) Encourage private investors to develop proposals for PPPs that address policy priorities in relevant sectors;

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- b) Ensure competitive principles are considered in unsolicited proposals;
- c) Ensure transparency in assessing projects and awarding contracts based on unsolicited proposals;
- d) Minimize incentives to submit poor-quality or frivolous project proposals, to avoid creating unnecessary workload in assessing unsolicited proposals.

The MoF and relevant agencies are responsible for assessing unsolicited proposals to determine their compliance with the principles set out for PPPs in this PPP Policy. If compliant, the proposed PPP will proceed through the procurement process in the same way as other PPPs.

The approval of an unsolicited proposal does not imply the sole or single sourcing of the project to the proposing company. The CPA will develop criteria to give weighting to the original proposing company in any bidding process or to provide compensation to the proposing company for its initial work through appropriate means.

The GoIRA is also concerned to ensure that incentives within PPP project companies are aligned with the needs of the public and private sectors and, in particular that private partners take an appropriate long-term view. To ensure this, when PPP project companies are owned in part or in full by construction contractors, then the project construction management function will be required to be independent and not subordinated to the interests of the construction contractor.

MONITORING AND MANAGEMENT OF POLICY IMPLEMENTATION

SECTION 15:

The Minister of Finance is responsible for leading and implementation of this PPP Policy. All stakeholders should support the Minister of Finance in implementing and monitoring the implementation of this Policy.

The Minister of Finance will provide quarterly and annual reports to the Cabinet of the Islamic Republic of Afghanistan about the status of PPPs.

AMENDMENT OF POLICY

SECTION 16:

Based on country conditions, the PPP Advisory Board can propose certain amendments to the Policy.

The amendments shall be applicable after the approval of the Minister of Finance and the Cabinet of the Islamic Republic of Afghanistan.