



**PUBLIC PRIVATE PARTNERSHIP  
RULES AND REGULATIONS, 2017**

**ROYAL GOVERNMENT OF BHUTAN**



# **Public Private Partnership Rules and Regulations, 2017**

**Ministry of Finance  
Royal Government of Bhutan**





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## **FOREWORD**

The Royal Government of Bhutan recognizing the importance of investment in infrastructure to accelerate socio-economic development has embarked on promoting Public Private Partnership (PPP) as a key strategy for achieving sustainable economic growth. In view of the substantive role played by PPP in harnessing private sector investments, the Government has approved the PPP Policy in 2016.

Accordingly, the PPP Rules and Regulations 2017 have been formulated in close consultation with key stakeholders with the objective to establish an enabling environment for private investors to participate in PPP projects with transparent and streamlined process.

In order to facilitate the implementation of PPP projects, the MoF issues the PPP Rules and Regulations 2017, which shall come into force from 1<sup>st</sup> September, 2017.

The PPP Rules and Regulation is expected to strengthen alternative and innovative financing mechanism for the Government, besides promoting effective and efficient allocation and utilization of public and private resources.

**(Namgay Dorji)**  
**Finance Minister**



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In order to govern the overall management of Public Private Partnership projects by Implementing Institutions and other competent designated authorities as set out in the Policy, the Ministry of Finance hereby frames these Public Private Partnership Rules and Regulations as follows:

**Chapter I**  
**Preliminary Provisions**  
**Title**

1. These Rules and Regulations are the Public Private Partnership Rules and Regulations of, 2017.

**Commencement**

2. These Rules and Regulations come into force on the 10<sup>th</sup> Day of 7<sup>th</sup> Month of the Fire Female Bird Year of the Bhutanese calendar corresponding to 1<sup>st</sup> Day of the 9<sup>th</sup> Month of the year 2017.

**Application**

3. These Rules and Regulations shall apply to all the Public Private Partnership projects initiated after these Rules and Regulations shall have come into effect.

**Saving Clause**

4. The projects which have advanced through certain stages of a Public Private Partnership project cycle prior to the commencement of these Rules and Regulations shall be valid and these rules shall apply prospectively to such projects.

## **Transitional provision**

5. The Public Private Partnership Unit established under the Ministry of Finance shall continue to function as the Public Private Partnership Unit until the establishment of Public Private Partnership Unit as an Autonomous Agency under the Ministry of Finance.

## **Chapter II Transparency and Accountability**

6. The Implementing Institution shall:
  - (1) Carry out all its responsibilities related to Public Private Partnership Projects with complete probity and ensure a fair and transparent project procurement;
  - (2) Not include in the Project Tender Documents any condition or specification which favours any individual entity or a group of entities; and
  - (3) Maintain documents, notes and other records of the entire procurement process.
7. The Committee members and Government official associated with the Project shall:
  - (1) Declare any private interests relating to his or her official duties and take steps to resolve any Conflict of Interest; and
  - (2) Ensure that they do not have Conflict of Interest and in this regard shall submit declaration as per the template

provided in Schedule 1 for Committee member and official, and shall further ensure that in case of any occurrence or subsistence of Conflict of Interest, the same shall be forthwith intimated to the relevant implementing institution.

8. If the Implementing Institution determines at any stage that a committee member or official has a Conflict of Interest, he or she shall be immediately discharged of its role in respect of the related project.
9. An Applicant or Bidder shall not have a Conflict of Interest that affects the bidding process. The Applicant or Bidder shall provide the related declaration as per the template provided in Schedule 1 in respect of Applicant or Bidder.
10. If the Applicant or Bidder is found at any stage of procurement process to have Conflict of Interest, its Application or Bid shall be disqualified or if there is a Public Private Partnership agreement or contract between the Applicant or Bidder and the implementing institution, the same shall become liable for termination.

### **Chapter III**

## **Public Private Partnership Project Identification and Selection**

### **Public Private Partnership Project Identification**

11. A Public Private Partnership Project is identified, planned and developed either by Lhengye Zhuntshog, according to its strategic needs, or by the Implementing Institution.

12. For identification of a Public Private Partnership Project, the Implementing Institution shall collate information including the project concept, the scope of the project, roles and responsibilities of parties, the estimated project cost to be enumerated in the Project Concept Note according to Schedule 2.
13. The Implementing Institution shall initiate the Project by preparing a Project Concept Note according to Schedule 2 and submit it to the Public Private Partnership Unit for its approval.
14. Public Private Partnership Unit shall, upon submission of Project Concept Note by Implementing Institution, review the Project Concept Note with a view to determine the preliminary feasibility of the Project.
15. Public Private Partnership Unit may in its sole discretion either reject the Project Concept Note, or seek clarification, or suggest amendment or approve the Project Concept Note.
16. After approval of Project Concept Note by Public Private Partnership Unit, the Implementing Institution shall form a Project Committee as specified in Rule 20 of these Rules and Regulations below.
17. The Project Committee shall conduct a Project needs and options analysis according to Rule 22 and 23.
18. The Project Committee shall submit the Project needs and options analysis with Public Private Partnership Unit for comments.

19. After Project needs and options analysis, the Project Committee shall prepare a Project Information Note according to Schedule 3 for seeking registration of the Project in the Public Private Partnership Program and further sequential assessment of project feasibility and development of the Project.

### **Project Committee- Formation and Functions**

20. The Implementing Institution shall:
  - (1) Form a Project Committee for conducting project feasibility and procurement, comprising of maximum seven members, including:
    - (a) Chairperson, the Head of Implementing Institution;
    - (b) A Project Officer, a Staff from Implementing Institution to be nominated by the head of implementing Institution. The Project Officer shall be required to have either financial or technical background;
    - (c) A member of Public Private Partnership Unit nominated by head of Public Private Partnership Unit;
    - (d) A member of National Land Commission Secretariat; and
    - (e) Other such members or industry experts, with sufficient experience in infrastructure projects, as deemed necessary by Implementing Institution

from time to time to contribute to project specific technical, financial or managerial requirements.

- (2) Notify Public Private Partnership Unit upon formation of a Project Committee and provide brief about the proposed project to be undertaken, list of Project Committee's members and proposed timeline for preparation of Project Information Note.

21. The Functions of the Project Committee shall be to:

- (1) Maintain all documentation relating to the Public Private Partnership Project;
- (2) Define the objective of the Public Private Partnership Project;
- (3) Undertake consultations with stakeholders for the identification of the Public Private Partnership Project and documenting the same;
- (4) Conduct project needs and option analysis;
- (5) Prepare a Budget for the development and Procurement process of a Public Private Partnership Project;
- (6) Prepare a work plan for Public Private Partnership Procurement;
- (7) Prepare the Project Information Note;

- (8) Establish the suitability of a project for Public Private Partnership and determining the value for money of such project in accordance with these Rules and Regulations;
- (9) Assess payment or revenue mechanism for the Public Private Partnership Project and establishing its affordability for the Implementing Institution and potential users;
- (10) Develop the structure of Public Private Partnership Project with the help of Transaction Advisor;
- (11) Undertake the processes for appointment of advisors or consultants, if required, and documenting the same;
- (12) Prepare or cause the preparation of feasibility analysis report;
- (13) Plan, budget and Implement the feasibility analysis and procurement process and documenting the same;
- (14) Obtain necessary approvals from relevant authorities for developing the Public Private Partnership Project; and
- (15) Efficiently manage all key activities related to the development and procurement of the Public Private Partnership Project, on behalf of the Implementing Institution.



## **Project Needs and Options Analysis**

### **Project Need Analysis**

22. The Project Committee shall determine the needs for the Project as follows :

- (1) Demonstrating that the project aligns with the Institution's strategic objectives, policies and priorities:
  - (a) What capacity and ability the Implementing Institution and the Private Sector have in order to deliver the project; and
  - (b) Whether the proposed project addresses the broad needs and development priorities or plan of the Implementing Institution and Government over time horizon.
- (2) Identifying and analyzing the budget required and potential savings, keeping in view that affordability is a cornerstone of any project, estimate the future budgetary commitments required from the Government and potential savings from the project over the project life;
- (3) Evaluating the Government's readiness, by ascertaining its capabilities to manage, process, evaluate, negotiate and implement the project including the following:
  - (a) Information on the Implementing Institution's project team and an assessment of its technical and financial capacity; and

- (b) Information on key stakeholders, their relationship with each other and the project's impact on each stakeholder. There should also be a clear plan to incorporate the views and contributions of the key stakeholders.
- (4) Specifying the outputs in measurable terms:
- (a) Once the project objectives and budget have been identified and the Implementing Institution's commitment and capacity demonstrated, the outputs of the proposed project needs to be specified; and
  - (b) While specifying outputs, care should be taken to ensure that inefficiencies are not being subsidized. Public Private Partnership procurement specifies the output as opposed to conventional procurement where inputs are specified. The Implementing Institution shall define the service that needs to be delivered.
- (5) Defining the scope of the project:
- a) In light of the Implementing Institutions needs, strategic objectives and the project's output specifications for delivering the required service, the scope of the project shall be defined and prepared in brief ; and
  - b) This brief should be a concise outline of the Institution's requirements to allow for the selection of a reasonable service delivery option.

## **Project Option Analysis**

23. The Project Committee shall conduct options analysis as follows :
- (1) Listing all reasonable options considered, both Public Private Partnership and Traditional;
  - (2) Evaluating and assessing each option in terms of advantages and disadvantages based on a consideration of:
    - (a) Technical aspects;
    - (b) Legal aspects;
    - (c) Examining its risks, benefits and potential impacts;
    - (d) Land acquisition and resettlement impacts and costs;
    - (e) Financial and economic returns; and
    - (f) Environmental impacts and costs.
  - (3) Discussing which options are likely to attract private sector investment;
  - (4) Analyzing all the viable procurement options available for meeting the institution's specific identified needs;
  - (5) Recommendation of the preferred option:

- (a) All reasonable options considered need to be evaluated objectively and with appropriate weightage assigned to evaluation criteria;
- (b) Evaluation of the options would provide the Implementing Institution insight on whether to proceed with the procurement on Public Private Partnership basis or to take it up through traditional route; and
- (c) If the Implementing Institution is satisfied with the Public Private Partnership option, it shall decide to form a Project Committee to undertake the project procurement and development process.

### **Functions of Public Private Partnership Unit**

24. The Public Private Partnership Unit established under Ministry of Finance shall have the mandate to manage the Public Private Partnership program of the Government and the functions are as follows:

- (1) Review the Project Concept Note with a view to determine the preliminary feasibility of the Project and may in its sole discretion either reject the Project Concept Note, or seek clarification, or suggest amendment thereto, or approve the Project Concept Note;
- (2) Provide technical assistance to Implementing Institutions and Project Committee throughout the Public Private Partnership project lifecycle;

- (3) Provide assistance to Project Committee in preparation of Project Information Note, feasibility analysis, conducting bidding process, selection of preferred bidder, contract negotiation, contract monitoring, contract renegotiation, if required and handling contract termination including discharge of applicable liability of termination payments;
- (4) Provide assistance to Project Committee in evaluation of Request for Qualification and Request for Proposal submitted by the applicants or bidder;
- (5) Undertake review of the report on Request for Proposal evaluation and submit its observations to the Public Private Partnership Steering Committee for approval of appointment of Preferred Bidder;
- (6) Act as a knowledge repository of guidelines and best practices for Public Private Partnership projects;
- (7) Provide training and support to different Ministries for implementing Public Private Partnership Projects;
- (8) Develop common standards, practices and benchmarks, promoting consistency in how Public Private Partnerships are developed and delivering confidence to stakeholders;
- (9) Prepare rules and regulations, guidelines and standard bidding documents including Public Private Partnership Agreements;

- (10) Assess the Public Private Partnership Agreement for fiscal and contingent liabilities and tabulate the contingent risks in clear monetary terms for Government to take decisions;
- (11) Coordinate among Institutions for educated and efficient decision making;
- (12) Act as an institutional champion for promoting the Public Private Partnership program, proactively engage in public outreach programs to disseminate information on Public Private Partnership projects;
- (13) Provide quality assurance and oversight to the review of feasibility studies and bidding documents;
- (14) Develop necessary procedures, guidelines and institutional capacity to establish and operationalize the Project Development Fund, with the active involvement and support of the multilaterals and donors;
- (15) Grant no objection certificates to projects for availing Project Development Fund and Viability Gap Funding based on such conditions set out under these rules and regulation and as may be further notified by Public Private Partnership Unit from time to time;
- (16) Negotiate contracts on behalf of Implementing Institution; and
- (17) Approve the feasibility study and select the Preferred Bidder for projects with project cost (excluding cost of land) below Nu 150 million.

25. The Public Private Partnership Unit, upon becoming operational, reasonably staffed and functional, may raise revenues through levy of advisory and training fee charged from the implementing Institutions in lieu of the technical support rendered by Public Private Partnership Unit.

### **Public Private Partnership Steering Committee**

26. The Government shall establish a Public Private Partnership Steering Committee to guide and supervise the activities of the Public Private Partnership Unit and the Project Committee of the implementing Institution. The Public Private Partnership Steering Committee shall comprise of following members:
- (1) Secretary of Finance;
  - (2) Secretary of GNHC;
  - (3) Secretary of National Land Commission; and
  - (4) Secretary or Head of the concerned Ministry or agency identified and appointed by the Government.
27. The Public Private Partnership Steering Committee shall provide inter-institutional and inter-sectoral coordination for Public Private Partnership projects.
28. On recommendation and advice of the Public Private Partnership Unit or Project Committee, the Public Private Partnership Steering Committee shall recommend to the Lhengye Zhuntshog for its approval:

- (1) Suitable projects for inclusion in the list of approved Public Private Partnership projects upon the approval of Gross National Happiness Commission;
  - (2) Public Private Partnership rules and regulations, guidelines and standard agreements developed by the Public Private Partnership Unit upon the approval of Gross National Happiness Commission;
  - (3) In-principle approval for Financial Assistance to qualifying projects prior to bidding process;
  - (4) Final approval of Financial Assistance on selection of Preferred Bidder; and
  - (5) Approval for any material amendments to a Public Private Partnership Agreement post award.
29. The role of Public Private Partnership Steering Committee in contract management shall be to:
- (1) Approve standard contractual stipulation with regard to fiscal commitments;
  - (2) Grant approval to the Implementing Institution for getting into the Public Private Partnership Agreement with the Preferred Bidder;
  - (3) Approve the amendment, if any to Public Private Partnership Agreement resulting from contract renegotiation and recommend the same for approval of Lhengye Zhuntshog or its delegated agency; and



- (4) Assess the impact of all Public Private Partnership projects on the overall Government fiscal position and undertake an assessment of systemic risk of Public Private Partnership Projects.

### **Project Information Note**

30. The Project Committee shall:
  - (1) Prepare a Project Information Note according to Schedule 3; and
  - (2) Document any deviations from the format provided in Schedule 3 in a separate section of the Project Information Note and provide reasons for such deviations.
31. The Project committee may seek assistance from Public Private Partnership Unit or advisors for preparation of the Project Information Note.

### **Project Information Note Approval**

32. The Project Committee shall prepare and submit the Project Information Note to the Public Private Partnership Steering Committee for its approval.
33. The Public Private Partnership Steering Committee and Gross National Happiness Commission may upon review of the Project Information Note, either reject the Project Information Note, or ask for amendments thereto or clarification or approve it with or without modification.

34. Once approved by the Public Private Partnership Steering Committee, the Implementing Institution shall submit the Project Information Note to Gross National Happiness Commission for its approval. Upon Gross National Happiness Commission's approval, Public Private Partnership Steering Committee will recommend to the Lhengye Zhuntshog or its delegated agency for its approval and inclusion of the Project in the list of approved Public Private Partnership projects registry or database maintained by Gross National Happiness Commission.
35. Public Private Partnership Steering Committee shall consider following issues while reviewing the Project Information Note :
- (1) The alignment of the project objectives with strategic objective of the Government;
  - (2) The issues that the project aims to solve, including social, economic and environmental issues;
  - (3) Relative benefits of the project vis-a-vis a base case scenario, involving no capital investment;
  - (4) The merit of doing the project through the proposed project structure;
  - (5) Availability of funds with the Implementing Institution, Ministry of Finance and donor agencies willingness to disburse funds; and
  - (6) The skill availability within the Implementing Institution or skill augmentation plan to undertake the Project and reach successful completion.

36. The Gross National Happiness Commission shall consider following issues or aspects while reviewing the Project:
- (1) The importance of the Project with respect to the five year planning process and specific sector objectives;
  - (2) Potential impact on project implementation across other sectors; and
  - (3) The fiscal and contingent liabilities that could arise from the Project.
37. The Gross National Happiness Commission shall in accordance with these Rules and Regulations register the project and provide a written confirmation of the registration along with registration number of the Public Private Partnership project to the Implementing Institution within two weeks of receipt of application for registration.
38. The details of the Public Private Partnership Project shall be maintained by Gross National Happiness Commission on the official database of Public Private Partnership projects. The progress of the Public Private Partnership project shall be tracked and updated on this database throughout the project cycle.
39. The Gross National Happiness Commission shall, as and when required, apprise Government of all the Public Private Partnership projects registered with it.

## **Transaction Advisory Services**

40. The Implementing Institution may, subject to approval of Public Private Partnership Steering Committee, engage Public Private Partnership Unit or any advisor or consultant for providing transaction advisory services for registered Public Private Partnership Projects.
41. The Implementing Institution shall start with procurement of advisory services after notification by Gross National Happiness Commission of registration of the project in the Public Private Partnership Program.
42. The terms of reference for transaction advisory services shall be module based, which shall provide Implementing Institution the flexibility in availing the services of the Transaction Advisors on need basis.
43. Prior to undertaking the process of engagement of advisors, the Project Committee shall prepare a procurement plan for advisory services which shall contain:
  - (1) Duration of the advisory services;
  - (2) Terms of reference of the advisory services;
  - (3) Milestones and schedule of the advisory services;
  - (4) Skills, expertise and knowledge including eligibility and qualification required from each identified advisor ;
  - (5) Estimated budget for the advisory services; and

- (6) Procurement schedule for advisory services.
44. If the Implementing Institution intends to seek funds for procuring transaction advisory services, it shall also submit the related budgetary plan for the advisory services to the Public Private Partnership Steering Committee for approval.
45. The Project Committee shall proceed with the engagement of advisors upon final approval being granted by Public Private Partnership Steering Committee.
46. The key advisors in a Public Private Partnership project may include:
  - (1) Financial advisor who shall:
    - (a) Be able to carry out risk analysis and prepare the financial structure for the type of Public Private Partnership project being implemented;
    - (b) Have good understanding of the underlying commercial nuances and market feasibility of the project;
    - (c) Have skills and experience to ensure that the final transaction represents value for money; and
    - (d) Ideally be engaged throughout the lifecycle of the project from the technical feasibility stage till the agreement signing.
  - (2) Legal advisor who shall:

- (a) Be involved throughout the development of a Public Private Partnership project;
  - (b) Identify legal or regulatory constraints and its remedial measures for implementing the policy objectives;
  - (c) Provide advice on legal issues relating to project structuring;
  - (d) Provide advice during the pre-qualification processes, evaluation of bids, appointment of successful Bidders; and
  - (e) Assist in drafting of legal documents, negotiating, and advising on any variations to the contracts, or disputes arising during the term of the contract.
- (3) Technical advisors having project related specializations and who understand the physical aspects of the infrastructure sector and shall:
- (a) Advise on operational and investment needs;
  - (b) Advise on the technical aspects of project scope, specification, design, regulation, legislation and evaluation;
  - (c) Prepare Project Information Note and technical feasibility analysis; and
  - (d) Assist in structuring a Project.

## **Project Development Fund**

47. The Implementing Institution shall be responsible for the costs towards transaction advisory services and shall endeavor to allocate funds for the same from its own budget or, wherever possible, link the recovery of transaction advisory services cost from the successful bidder.
48. The Project Development Fund shall be available to the Implementing Institution to meet the Public Private Partnership project development cost. The cost may include the expenses in respect of Project Information Note, feasibility analysis, environment impact studies, financial structuring, legal reviews and development of project documentation, including Public Private Partnership Agreement, commercial assessment studies (including traffic studies, demand assessment, capacity to pay assessment), grading of projects etc. required for achieving Technical Close, but would not include expenses incurred by the Implementing Institution on its own staff.
49. The Implementing Institution may seek funds from the Ministry of Finance for critical projects when it is not in a position to allocate funds from its own sources for the transaction advisory services.
50. The Ministry of Finance shall establish a Project Development Fund under administrative control of Public Private Partnership Unit as a central fund for financing the transaction advisory services for the Project.
51. The Project Development Fund shall operate according to standard operating procedures and guidelines issued

by Public Private Partnership Unit in consultation with Ministry of Finance.

52. The Ministry of Finance may decide to approve grant of funds on a case to case basis till the time the Project Development Fund is set up and operationalized.
53. The Project Development Fund shall be available to finance an appropriate portion of the cost of consultants and transaction advisors on a Public Private Partnership project where such consultants and transaction advisors are appointed by the Implementing Institution through a transparent system of procurement under a contract for services.
54. To seek financial assistance from the Project Development Fund the Implementing Institution shall forward its request to Ministry of Finance through Public Private Partnership Steering Committee for screening and in-principle approval along with the Project Information Note. The application for Project Development Fund may also be made after submission of Project Information Note to Public Private Partnership Steering Committee.
55. The Implementing Institution may be liable to refund the amount of financial assistance received, in case it does not conclude the bidding process or does not award the project after the bid process has been completed, except for reason of loss to public exchequer or lack of competition.
56. As commitment by the Implementing Institution in the procurement and ownership of the project and for a project's success, assistance under Project Development Fund shall



require co-funding by the Implementing Institution, towards meeting the cost of Transaction advisors' fee and other project development cost, which would include the cost of surveys, feasibility analysis etc.

57. The Public Private Partnership Steering Committee may either reject the application detailing the reasons thereof or give its in-principle approval for grant of fund and forward the application to Ministry of Finance.
58. The Project Development Fund shall be administered by the Public Private Partnership Unit and shall disburse the funds after approval from Ministry of Finance.

### **Project Development Fund Funding Sources**

The corpus of the Project Development Fund shall comprise of initial budgetary outlay by the Ministry of Finance, Royal Government of Bhutan. This would be replenished through budgetary support by the Ministry of Finance from time to time.

59. The Interested agencies, as approved by Ministry of Finance, including the multilateral and bilateral agencies, shall be permitted to join and contribute directly to the Project Development Fund subject to existing Government norms and regulations in relation to the subject.
60. The Contributions from entities that may have a conflict of interest in the decision making of the Project Development Fund shall not be approved.
61. The financial management system shall be set up to allow specific funding and reporting requirements of potential

donors. Thus, donor agencies shall also be able to fund projects in specific sector with financial management and reporting that complies with the requirements of these Rules and Regulations, with the prior approval of the Ministry of Finance.

### **Terms and Conditions of the Project Development Fund**

62. To seek funding from the Project Development Fund, the Implementing Institution shall apply to Ministry of Finance through the Public Private Partnership Steering Committee with a request for fund approval along with Project Information Note. Funding from the Project Development Fund shall be considered only if the following requirements are fulfilled:
- (1) The funding is used for the project forming part of Public Private Partnership program approved in accordance with these Rules and Regulations.
  - (2) Proposals for funding would cover the entire gamut of Public Private Partnership projects. The decision of the Ministry of Finance about the eligibility of a project shall be final.
  - (3) Other terms and conditions provided by Public Private Partnership Unit.
63. The Project Development Fund shall provide financial assistance only after the Project is registered as Public Private Partnership Project with the Gross National Happiness Commission and other conditions precedent to funding have been fulfilled, subject to the final approval of request for fund application by Ministry of Finance.

## Evaluation Procedures and Timeframe

64. The Application for grant of Project Development Fund shall be considered and decided by Public Private Partnership Steering Committee and Ministry of Finance respectively, within forty five days of receiving them.
65. The possible decisions of Public Private Partnership Steering Committee or Ministry of Finance may be:
  - (1) Unconditional funding approval;
  - (2) Approval subject to certain conditions (the conditions may also include confirmation of project details before a commitment of funding, and an assessment of the affordability and value-for-money implications of recovering procurement costs as a success fee from the project); or
  - (3) No funding.
66. An agreement including all funding conditions shall be signed by the authorized signatories from Public Private Partnership Unit (the administrator of Project Development Fund) and the Implementing Institution.
67. The assistance from the Project Development Fund shall be released to the Implementing Institution in accordance with the signed funding agreement.
68. The evaluation of the application by Public Private Partnership Steering Committee shall be based on the following:

- (1) Whether the scope of transaction advisors has been fully defined;
- (2) Whether the milestones for transaction advisor payment is such that the project is at the risk of not reaching technical closure;
- (3) Whether the Implementing Institution explored internal sources of funding for hiring transaction advisors;
- (4) Whether there is a sufficient fund with the Implementing Institution to fund other project development costs;
- (5) Whether the Public Private Partnership Unit has developed a reasonable plan to recover the Project Development Fund from the private sector; and
- (6) Whether the Implementing Institution has made a counterpart funding commitment to transaction advisor costs and other project procurement costs.

### **Monitoring**

69. The Implementing Institution shall be responsible for regular monitoring of the project development and compliance with the conditions of grant of Project Development Fund.

### **Recovery of Project Development Funding with Returns**

70. Project development funding shall, ordinarily be an interest free financial assistance to meet the project development expenses. This is expected to be recovered from the successful private sector partner on award of the project.

71. The Implementing Institution shall submit a plan for recovery of the funds along with its request for Project development fund.

**Acquiring lands for Public Private Partnership Project by  
the Implementing Institution**

72. The responsibility for making unencumbered land available for the Public Private Partnership Project shall lie with the Implementing Institution.
73. The Implementing Institution shall obtain requisite clearances regarding Project related land from relevant Government agencies so that the land is available to be used for the purpose of Project.
74. The Implementing Institution shall ensure that the interests of land owners, if any affected during course of procurement of land are fully protected in accordance with the laws in force in Bhutan.
75. The Implementing Institution shall reasonably assure availability of land for the Project before commencement of bidding process.
76. Wherever land is provided for a specific use, all other means of usage or exploitation of the land by the private entity shall be specifically prohibited in the Public Private Partnership Agreement.
77. Any rights given to the concessionaire in respect of project land shall be granted in compliance with and in accordance with the laws in force in Bhutan.

## **Chapter IV Feasibility Analysis**

### **Feasibility Analysis Process**

78. The Project Committee shall:
- (1) Undertake a feasibility analysis of the registered Public Private Partnership project in accordance with the Project Information Note; and
  - (2) Document any deviations in the feasibility analysis from the Project Information Note in a separate section of the feasibility analysis and provide reasons for such deviations.
79. The Implementing Institution may appoint advisors in accordance with the provision of these Rules and Regulations to provide inputs and assistance to the Project Committee in preparing the feasibility analysis.
80. The feasibility analysis shall, subject to exemptions provided in these Rules and Regulations, be carried out in two parts, namely, technical feasibility and financial & commercial feasibility.
81. The Public Private Partnership Unit may, in respect of projects for which technical solution exists with Implementing Institution, recommend the technical and financial & commercial feasibility analysis to be undertaken simultaneously.

82. The Public Private Partnership Unit shall make aforesaid recommendation on the basis of the prior experience of the Implementing Institution of successfully undertaking similar projects and technological risks associated with the project.
83. The Project Committee shall submit the feasibility analysis to Public Private Partnership Steering Committee for its approval.
84. If the project seeks Viability Gap Funding or other substantial fiscal incentive, as determined by Public Private Partnership Steering Committee not ordinarily available to such projects, the feasibility analysis shall be submitted to Lhengye Zhuntshog for its approval.

### **Technical Feasibility Analysis**

85. The Project Committee shall first undertake technical feasibility analysis of the project and get it approved by Public Private Partnership Steering Committee before starting the financial & commercial feasibility analysis.
86. The technical feasibility analysis shall include the following components:
  - (1) Project background including need for the Project;
  - (2) Market assessment for the project services and outputs to be achieved from the project;
  - (3) Field surveys of the project site, which may include depending on the Public Private Partnership Project mapping, topographical and geotechnical surveys;

- (4) Preliminary technical design of facilities required to provide the project outputs. The foregoing shall take into account alternative design options, uncertainty in the demand projections and other site-related uncertainties;
  - (5) Alternatives involving usage of existing assets for the Public Private Partnership Project, rather than creating new ones or achieving the desired outputs by some means other than the proposed solution and their assessment in relation to the possibility of achieving the targets of the Public Private Partnership Project; and
  - (6) Capital expenditure cost assessment and operating and maintenance cost assessment based on the components of the preliminary technical design.
87. The Public Private Partnership Steering Committee shall review the recommendations provided in the technical feasibility and ascertain whether the technical solutions proposed are practicable and as per good industry practices.
88. The Public Private Partnership Steering Committee shall satisfy itself on the following parameters:
- (1) Site conditions including geotechnical surveys and land area required;
  - (2) Analysis of environmental conditions that impact on the technical design;
  - (3) The design of facilities required to provide the project outputs, evaluating them against the standard technical solutions and alternatives available; and



- (4) Whether the solutions proposed and assumptions made are reasonably practicable.

### **Financial and Commercial Feasibility**

89. The Implementing Institution shall undertake financial & commercial feasibility after approval of technical feasibility by Public Private Partnership Steering Committee.
90. The essential components of the financial and commercial feasibility shall include:
  - (1) Assessment of project affordability;
  - (2) Risk identification, mitigation and management for optimizing the total cost of project. Generally, risks are allocated according to the following principles:
    - (a) Public sector: The Government bears the risk for matters within control of the government or which may not be economically and efficiently managed by the investor, such as through its own resources or the purchase of insurance products;
    - (b) Private Sector: Risk arising from the construction, operation and management of the project shall generally be borne by the private sector;
    - (c) Lenders: Lenders are willing to take credit risk after being satisfied with the results of due diligence on the borrower's ability to repay the loan;

- (d) Risk management process comprises a sequence of steps including risk identification, risk assessment, allocation of risks, and risk management along with mitigation measures according to schedule 4 ; and
  - (e) The Implementing Institution shall prepare risk management plan for each project addressing the risks identified throughout the project life cycle.
- (3) Value for Money assessment as provided under Schedule 5; and
- (4) Firming up Project structure which shall comprise of optimum risk allocation to party best suited to bear the same, ensuring financial viability, efficient contract management for ensuring delivery of affordable services to users at prescribed and sustainable standards during the contract period. The models of Public Private Partnership Project structuring may include:
- (a) Management Contract, where the management and operation of the public service are contracted out to a private entity. Although ultimate obligation for service provision remains with the public entity, daily management control and supervision is assigned to the private entity. Generally, the private partner provides working capital but no financing for meeting the capital investment. The private entity generally receives a fixed fee for its services;
  - (b) Lease contract, where the responsibility for service provision is transferred from the public sector to the

private sector and the financial risk for operation and maintenance is borne entirely by the private sector operator. The private entity is responsible for the service in its entirety and undertakes obligations relating to quality and service standards. Except for new and replacement investments, which remain the responsibility of the public authority, the operator provides the service at his expense and risk;

- (c) Design-Build-Operate (DBO) Project, where the public sector owns and finances the construction of new assets. The ownership of assets is always vested with the public sector. The private sector designs, builds and operates the assets to meet certain agreed outputs; and
- (d) Build Operate Transfer (BOT) Project, where the private entity finances and develops a new infrastructure project or a major component according to development and performance standards set by the Implementing Institution or Government. The private entity generally owns the asset for the period set by the Public Private Partnership agreement. The Implementing Institution grants to a private entity the right to develop and operate a facility or system for a certain period. The private entity finances, owns and constructs the facility or system and operates it commercially for the project period, after which the facility is transferred to the Implementing Institution.

91. The financial and commercial feasibility shall be submitted to Public Private Partnership Steering Committee for approval.
92. The Public Private Partnership Steering Committee shall consider the legal structure, sources of funding, rate of return and the commercial viability for granting approval for the financial and commercial feasibility of the Project.
93. If the project is not viable commercially but provide significant social and economic benefits, the Implementing Institution may seek Viability Gap Funding or other fiscal or non- fiscal incentives from the Lhengye Zhuntshog to make the project viable.
94. If the Implementing Institution is seeking such incentives from Lhengye Zhuntshog, the Implementing Institution shall submit the technical and financial and commercial feasibility analysis to Lhengye Zhuntshog for its approval, such submission shall be made through Public Private Partnership Steering Committee, and post approval from Public Private Partnership Steering Committee thereon.

### **Assessment of Feasibility Analysis by Public Private Partnership Steering Committee**

95. The Public Private Partnership Steering Committee shall examine the feasibility analysis and in undertaking the same shall give due consideration to:
  - (1) Whether all the available options have been comparatively evaluated to increase efficiency in project scoping;

- (2) The level of service delivery needs cannot be met with a reduced scope and scale of the Public Private Partnership Project;
- (3) Areas to optimize capital and operating costs and a strong case built for their reasonableness;
- (4) Independent assessment of market demand, including a comprehensive justification of major assumptions and key findings, and the project revenues are realistic and viable for the potential private entity;
- (5) Assumptions regarding user charges, if any, from the Public Private Partnership Project, are affordable to users and would be socially and economically acceptable to the public at large;
- (6) The tariffs setting and revision framework is predictable and transparent;
- (7) The direct financial commitments of the Implementing Institution have been quantified and reasonably estimated for the entire contract duration and are within the budgetary limits of the Implementing Institution; and
- (8) The sources of contingent liabilities, if any, have been assessed and are acceptable to the Implementing Institution and Royal Government.

## **Viability Gap Funding**

96. The Viability Gap Funding is the direct financial support to financially unviable but socially and economically beneficial projects. The Viability Gap Funding shall be a direct subsidy by way of capital grant targeted towards making socio-economically beneficial projects financially viable.

### **Eligibility for Viability Gap Funding**

97. For a project to be eligible for Viability Gap Funding, the Project shall fulfill following criterion:
- (1) The project is evaluated to be non-viable in the absence of such financial support;
  - (2) The capital and operations costs are reasonable and based on the standards and specifications normally applicable to such projects and that the capital costs and operations cannot be further restricted for reducing the viability gap;
  - (3) The most efficient risk transfer can only be achieved by providing such financial support to the private entity or project Special Purpose Vehicle;
  - (4) The tariff or user charge cannot be increased to enhance project viability;
  - (5) The project term cannot be increased to enhance project viability;

- (6) The financial support does not jeopardize the incentives of private sector to increase technical and managerial efficiency to reduce cost;
- (7) All other measures of enhancing project viability have been evaluated to minimize the use of Viability Gap Funding;
- (8) The feasibility analysis report prepared by the Implementing Institution recommends requirement of Viability Gap Funding for the project detailing out the rationale for the same; and
- (9) Viability Gap Funding shall be applicable only if the contract is awarded in favor of a private sector company selected through competitive bidding process, and in which at least fifty one percent of the subscribed and paid up equity is owned and controlled by a private entity.

### **Approval process for Viability Gap Funding**

98. The Proposal for Viability Gap Funding shall be made to Public Private Partnership Steering Committee by Implementing Institution based on the recommendation for the same in the feasibility analysis report. The proposal shall include the requisite information necessary for satisfying the eligibility criteria as set out in these Rules and Regulations.
99. The Public Private Partnership Steering Committee shall evaluate the request by reviewing the financial model, project structure and assumptions that have been used to calculate Viability Gap Funding.

100. The Public Private Partnership Steering Committee shall assess the Viability Gap Funding proposal on the basis of benefits from the project vis-à-vis fund requirement.
101. The Public Private Partnership Steering Committee may reject the proposal or seek clarification or suggest amendments or accept the proposal and confirm the sanction of fund.
102. In case Public Private Partnership Steering Committee accepts the proposal and confirms the availability of funds it shall recommend the project to Lhengye Zhuntshog for grant of Viability Gap Funding.
103. The Lhengye Zhuntshog shall, upon receiving such Viability Gap Funding proposal, solicit advice from Ministry of Finance in this regard and after taking into account advice of Ministry of Finance, either grant Viability Gap Funding or deny Viability Gap Funding or seek further clarification from the Implementing Institution before taking any decision.
104. The Public Private Partnership Steering Committee shall, while evaluating and deciding in respect of approval of Viability Gap Funding, take into account the following condition, namely, that the total Viability Gap Funding, including funding by Donor agencies, shall not exceed fifty percent of the total project cost excluding land cost. However, Lhengye Zhuntshog may decide in its sole and absolute discretion, to provide Viability Gap Funding greater than fifty percent for social sector projects.



## **Disbursement of the Viability Gap Funding**

105. The Viability Gap Funding shall be disbursed in the form of:
- (1) Capital grant at the stage of project construction, subject to such conditions as may be decided by Public Private Partnership Steering Committee, including but not limited to following, namely; Grant under this scheme shall be disbursed only after the concessionaire has subscribed and expended the equity contribution required for the project and will be released in proportion to debt disbursements remaining to be disbursed thereafter;
  - (2) Annuity payments across the whole or part of project lifecycle, to be disbursed subject to deductions against shortfall in the key performance indicators as specified in the Public Private Partnership Agreement; or
  - (3) Hybrid scheme, which will be a combination of capital grant and annuity payments.
106. The Viability Gap Funding shall be disbursed through the Lead Financial Institution. The Ministry of Finance shall release the grant to the Lead Financial Institution as and when due.
107. The Ministry of Finance, the Lead Financial Institution, the Implementing Institution and the Concessionaire shall enter into an agreement for the purposes of disbursement and application of the Viability Gap Funding for project development.

## **Administration of Viability Gap Funding**

108. The Lead Financial Institution shall submit quarterly progress report to the Public Private Partnership Steering Committee under the terms of the said four party agreements.
109. The Implementing Institution shall be responsible for regular monitoring and periodic evaluation of project compliance with agreed milestones and performance levels to verify proper use of Viability Gap Funding for project development.
110. The Implementing Institution shall prepare periodic reports to track non-compliance with Viability Gap Funding requirements for projects for which the debt has been completely paid off.
111. The Implementing Institution shall submit the periodic reports with Public Private Partnership Unit, Public Private Partnership Steering Committee and Ministry of Finance highlighting the non-compliance if any of the Viability Gap Funding requirements.
112. The Public Private Partnership Unit, Public Private Partnership Steering Committee or Ministry of Finance, on receiving any non-compliance report from Implementing Institution, may issue directions to the Implementing Institution for corrective action. The Ministry of Finance may, in event of said non-compliance or failure to achieve timely remedy of the same, suspend or revoke the disbursement of Viability Gap Funding.

113. The Lhengye Zhuntshog shall place overall cap in funding support through limits on Viability Gap Fund.
114. The yearly fiscal commitments and projections shall form part of the Budget of the Government.

## **Chapter V**

### **Tender Stage: Documents Preparation**

#### **Project Tender Documents Preparation**

115. The Project Tender Documents shall include Request for Qualification, Request for Proposal, Public Private Partnership Agreement and other documents as deemed necessary by the Implementing Institution.
116. The Public Private Partnership Unit shall be responsible for the preparation of Standard Tender Documents according to these Rules and Regulations. The Standard Tender Documents shall be approved sequentially by Public Private Partnership Steering Committee, Gross National Happiness Commission, and upon Public Private Partnership Steering Committee's recommendation, by Lhengye Zhuntshog or its delegated agency.
117. The Project Committee of the respective Implementing Institution shall prepare the Project Tender Documents for the Public Private Partnership Project, based on the Standard Tender Document and the Public Private Partnership procurement process selected.
118. If the Standard Tender Documents are not devised for a specific project or sector, the Project Committee shall

prepare the Project Tender Documents for such project based on the principles provided in the Standard Tender Documents and get it approved by the Public Private Partnership Steering Committee, Gross National Happiness Commission and Lhengye Zhuntshog before issuing the same.

119. The Public Private Partnership Unit shall keep a repository of all the Project Tender Documents issued by various Implementing Institutions.
120. The Standard Tender Documents as well as the Project Tender Document shall set out elaborate terms with a view to:
  - (1) Establish simple procedure and minimize the cost of submitting Application or Bids;
  - (2) Provide appropriate guidelines for evaluation of Application or Bids; and
  - (3) Promote the purpose of the Implementing Institution to maximize value for money.

### **Expression of Interest (EOI)**

121. The Implementing Institution may adopt an Expression of Interest process, before the initiation of tendering stage, listing out under such process the project basis and inviting potential bidders to express their interest in respect of Public Private Partnership Projects if the:

- (1) Likely interest from private entities is not ascertainable;  
or
- (2) Implementing Institution desires to seek suggestions from private entities on how best to design the project scope or other parameters of the Public Private Partnership Project.

122. The Expression of Interest shall not be used to either shortlist or disqualify applicants. Any entity which has not submitted Expression of Interests shall also be allowed to participate in the Request for Qualification stage according to terms and conditions that may be specified thereof.

123. The Project Officer of the Project Committee shall prepare the Expression of Interest and it shall contain:

- (1) The description of the Public Private Partnership Project;
- (2) The request for expressions of interest; and
- (3) A closing date for seeking clarifications.

124. The Expression of Interest shall specify sufficient time to the interested parties to consider the Expression of Interest, form a team if they decide to express interest as a consortium, respond with any questions or requests for clarification, and to prepare and submit their Expression of Interests.

125. The advertisement or notification of the Expression of Interest shall be published in accordance with the provisions of these Rules and Regulations.

126. The Implementing Institution shall seek registration of Applicants prior to the issue of the Expression of Interest. In the case of electronic issuance of the Expression of Interest, an online form shall be provided whereas in the case of issue of a hardcopy, an application letter seeking specific details will be sought.

127. The Applicant shall provide:

- (1) Name of the organization;
- (2) Contact person with designation;
- (3) Address;
- (4) Telephone and fax numbers;
- (5) E-mail address; and
- (6) Any other relevant information.

128. The Implementing Institution shall convene meetings to interact with Applicants, so as to facilitate greater interest and understanding of the proposed Public Private Partnership Project among potential private entity.

129. The objective of the Expression of Interest stage is to:

- (1) Disseminate information about the Project;
- (2) Gather information about all interested firms; and
- (3) Record concerns of the interested firms.

130. The minimum timeframe for submission of Expression of Interest shall be thirty five days from the publication of Expression of Interest notice by Implementing Institution, provided that Public Private Partnership Unit may, having regard to the Project specific requirement, waive the aforesaid minimum time requirement. An indicative timeline for Expression of Interest process is provided in Schedule 6.

### **Request for Qualification (RFQ)**

131. The Project Committee may start with preparation of Request for Qualification after approval of technical feasibility analysis report from Public Private Partnership Steering Committee and shall adopt the standard Request for Qualification for Public Private Partnership Projects issued by Public Private Partnership Unit, if any.
132. The advertisement or notification of the Request for Qualification shall be published in accordance with the provisions of these Rules and Regulations.
133. The Request for Qualification shall set out the procurement process including the stages, timelines, and format of submissions, a brief description of the project, and provisions in respect of entities eligible to submit Application for the Project.
134. The Request for Qualification shall contain instructions to applicants regarding format of submissions, including compulsory forms of response as an aid to evaluation, late submissions, status and composition of respondents and grounds for disqualification.

135. The Request for Qualification shall seek information from applicant regarding current experience of consortium members, applicant's capability and strength, proposed consortium composition and structure with roles of the members, the skill and experience of relevant organizations and subcontractors in projects of a similar nature, financial and market standing, equity, demonstration of understanding key project demands or complexities.
136. The Request for Qualification shall have details regarding the evaluation process, methodology and criteria for evaluation.
137. The Request for Qualification shall require the Applicant to submit relevant technical and financial information to assess both their qualifications and capacity to deliver the required service and function.
138. The Request for Qualification shall have provisions prohibiting the Applicant from having Conflict of Interest and disqualifying Applicants who have such Conflict of Interest in respect of the Project.
139. The submission requested from the Applicant shall be in predefined objective format to enable efficient comparison between the Applications. The relevant formats shall be a part of the Request for Qualification.
140. The Request for Qualification shall clearly lay out conditions for qualifying and short listing of Applicants eligible for participation in the Bid stage. Further, the Request for Qualification shall provide the procedure for preparation and submission of application, the method



of clarification or amendment of the application before submission, the procedure for opening and evaluation of the application and the documents required to be submitted along with the application.

141. Once the Applicants receive the Request for Qualification, Applicants may start to consider forming consortiums with other eligible entities for coming together to submit bids.
142. The number of Applicants shortlisted at Request for Qualification stage shall be more than three but not less than two in any case and the evaluation criteria shall be based on technical expertise, financial capacity and proposed methodology for implementing the project.
143. The Implementing Institution shall not deviate from the Standard Tender Documents, provided that the deviation is for the purpose of making the Standard Tender Documents suitable for a particular Public Private Partnership Project. All such deviations from the Standard Tender Documents shall be with the approval of Public Private Partnership Steering Committee.
144. For the purpose of securing such approval, the Project Committee shall submit a written application to the Public Private Partnership Unit, detailing the deviations from the standard Request for Qualification document and the reasons thereof along with the draft Request for Qualification documents.
145. The implementing agency shall publish the Request for Qualification document after it has been approved by the Public Private Partnership Unit.

146. The Implementing Institution during the bid submission period shall:

- (1) Arrange for clarification meetings, if required, and document its proceedings;
- (2) Have interim open meeting with the prospective bidders to provide any information related to the process and response to the questions and facilitate the provisions;
- (3) Document the queries raised and suggestion made by the prospective bidders according to the Request for Qualification document and respond to them;
- (4) Without disclosing the name of the applicant seeking the clarification, communicate the clarification to all applicants including by way of publishing the response or clarification on official website; and
- (5) Receive and open the applications according to the provisions mentioned in the Request for Qualification.

147. The Request for Qualification shall have criteria to objectively evaluate the applications received and arrange them in order of merit.

148. The Implementing Institution shall evaluate the Request for Qualification responses according to the criteria required to be fulfilled for short listing and produce a short-list of qualified applicants.

149. The Applicants shall be provided a minimum of fifty one days for submission of Request for Qualification responses

from the date of issue of Request for Qualification by Implementing Institution, provided that Public Private Partnership Unit may, having regard to the Project specific requirement, waive the aforesaid minimum time requirement. An indicative timeline for activities under Request for Qualification process is set out at Schedule 6.

150. The documents to verify the technical capacity of the applicants may be a list of all works successfully carried out over the last three to five years, together with certificates from client or auditor regarding time period, project cost, payment received or made and such others.
151. The documents for verifying the financial capacity of the applicants may be:
  - (1) The audited balance sheets for the last three years by a recognized firm or Chartered Accountant, Certified Accountant or Certified Public Accountant or extracts there from;
  - (2) A certified statement of the previous five years overall turnover and the turnover in respect of works, supplies or services;
  - (3) The net worth for immediately preceding financial year as certified by auditor; and
  - (4) A tax clearance certificate from the concerned Government authority

## **Request for Proposal (RFP)**

152. The Project Committee shall:

- (1) Prepare the Request for Proposal and the draft Public Private Partnership Agreement; and
- (2) Adopt the standard Request for Proposal for Public Private Partnership Projects issued by Public Private Partnership Unit.

153. The Request for Proposal shall be used to formally solicit final binding offer from bidders.

154. The Contents of Request for Proposal shall have the following components:

- (1) General information to bidders including explanation of project objectives and rationale, site details, Role of appropriate Government agency and stakeholders, Project scope and output specifications project procurement framework and timelines, instructions to bidders, due diligence requirements and related definitions;
- (2) Set out the technical, financial and legal information's that are required to be submitted by the bidders in relation to their bids and the manner of its submission;
- (3) Instruction to bidders which shall include all procedure, terms and conditions which should be followed by Bidders for submission of bids and which would be followed by the Implementing Institution in accepting and evaluating the Bids;

- (4) Service specifications based on the feasibility analysis. These service specifications will form the basis of the technical schedules to the Public Private Partnership agreement and specify the standards and specification of services to be performed by the Concessionaire;
- (5) Declaration of Payment mechanism;
- (6) Request for Proposal shall require commitments from bidders on all aspects of their bid, including legal, technical and financial aspects;
- (7) Provisions in respect of the time, place and manner of Bid submission, procedure for Bid opening, Bid security, period required for Bid validity, formal requirements for filling out Bid forms and formal processes for communication with bidders;
- (8) Format for Bid security or earnest money and manner of its furnishing; and
- (9) Stipulations with respect to amount of performance security and manner of its furnishing
- (10) The information provided to Bidders during this phase shall be much more detailed. It may include the full Public Private Partnership pro-forma, contract documents containing the output specifications, payment mechanisms, risk allocation, model designs, and plans, together with detailed background information that may be required for Bidders and lenders to carry out their detailed due diligence of the project.

- (11) The Implementing Institution may also set out financial structure for the project, but generally will allow the Bidders to determine the structure. Details of the process, evaluation criteria, and timetable shall also be provided.
- (12) The Implementing Institution shall instruct Bidders to furnish a bid security or earnest money having validity at least till the selection of Preferred Bidder along with the bids. The amount of bid security shall be prescribed in a range between one percent and two percent of the bid price. The applicants shall also furnish a performance security valid for a period during which the obligation of the developer exists under the Public Private Partnership Agreement. The Bid security and the performance security shall be in the following forms:
- (i) Unconditional guarantee issued by a reputed financial institution acceptable to the Implementing Institution in the form provided in the bidding documents or any other form satisfactory to the Implementing Institution;
  - (ii) Banker's cheque or Cash warrant; or
  - (iii) Demand draft.
- (13) The bid security of the unsuccessful Bidders shall be discharged or returned to them as promptly as possible upon award of Contract, but in any event not later than thirty days after the expiration of the period of bid validity prescribed by the Implementing Institution.

- (14) The bid security may be forfeited:
- (1) If a Bidder withdraws its bid during the period of bid validity specified by the Bidder;
  - (2) If a Bidder does not accept the arithmetical corrections of its bid price; or
  - (3) In the case of a successful Bidder, if the Bidder fails:
    - i. To sign the Contract within the prescribed time; or
    - ii. To furnish the performance security within the prescribed time.
- (15) Public Private Partnership Agreement shall include the contractual relations between the Concessionaire and the Implementing Institution. It shall contain rights and obligations of both parties, definition of the subject matter of the agreement, payment terms, performance obligations, defaults and consequences, events of termination and other ancillary clauses.

155. The Implementing Institution shall not deviate from the Standard Tender Documents, provided the deviation is for the purpose of making the Standard Tender Documents suitable for a particular sector or Public Private Partnership Project.

156. All such deviations from the Standard Tender Documents shall be with the approval of Public Private Partnership

Unit, provided however that in case of material deviation from standard Public Private Partnership agreement, approval of Public Private Partnership Steering Committee and Lhengye Zhuntshog or its delegated agency shall also be required.

157. For the purpose of securing such approval, the Project Committee shall submit a written application to the Public Private Partnership Unit, detailing the deviations from the standard Request for Proposal document and the reasons thereof along with the draft Request for Proposal document. In case of deviation from standard Public Private Partnership Agreement, Public Private Partnership Unit shall forward the deviation application to Public Private Partnership Steering Committee and Lhengye Zhuntshog or its delegated agency for approval.
158. Subject to foregoing terms, the Request for Proposal and draft Public Private Partnership Agreement shall be submitted to Public Private Partnership Steering Committee for approval.
159. The Public Private Partnership Steering Committee shall review the said documents particularly with respect to the criteria for selection of Preferred Bidder, obligations and responsibilities of the Government, Government guarantees, Government fiscal and contingent liabilities, the benefits and relaxations offered to the bidder, risk distribution, the legal standing and consistency of the document and its conformation to these Rules and Regulations and good industry practices.



160. The Implementing Institution may, in accordance with these Rules and Regulations, issue the Request for Proposal and Draft Public Private Partnership Agreement once it is approved by Public Private Partnership Steering Committee.
161. The bidders shall be provided a minimum of fifty one days for submission of Request for Proposal responses from the date of issue of Request for Proposal. The indicative timeline for conducting the Request for Proposal process is provided at Schedule 6.
162. During the bid submission period, the implementation institute may have interim open meeting with the prospective bidders to provide any information related to the process and response to the questions and facilitate the provisions. The implementing institute shall keep all the records of meeting and negotiation ;

### **Request for Proposal Evaluation Criteria**

163. The final selection of the Preferred Bidder is based on the evaluation of the proposals, This may be subject to other combinations, be on the basis of:
  - (1) Technical threshold – lowest price case: Bids that are over 60% or as may be modified by Public Private Partnership Steering Committee from time to time, of the technical threshold shall be considered for lowest price selection. The minimum threshold can be increased by the Implementing Institution for technically challenging projects.

- (2) Combination of technical and financial evaluations: The evaluation shall be a weighted average of technical and financial score. The weights given to technical and financial parameters shall be decided by the Implementing Institution according to the existing guidelines provided by Public Private Partnership Unit. The best weighted average score gets selected. The rating for technical and financial criteria may be varied by the Implementing Institution according to the project requirements.
- (3) Highest royalty or premium for the Implementing Institution: In projects where Bidder offers to pay money or share royalty with the Government, the highest offer gets selected.
- (4) Lowest Tariff charged: The Bidder proposing lowest tariff to be charged from the users or Implementing Institution over the contract term shall be selected.

164. The Implementing Institution shall prescribe only one selection criteria for final selection of the Preferred Bidder in the Request for Proposal stage.

165. In case of project packages involving tendering of multiple projects in one tender and the intention is to select multiple Bidders for individual projects then the Implementing Institution shall provide clear instructions for marking and sequence of opening of bids. The Implementing Institution may also rank the projects tendered in the order of their priority of implementation to facilitate the applicants in bidding.

## **Process for Modification of Project Tender Documents**

166. The Implementing Institution may, for any reason, whether on its own initiative or as a result of a clarification, suggestion or query from an Applicant or Bidder, modify the Project Tender Documents in accordance with these Rules and Regulations by issuing an addendum or corrigendum before the tender due date. However, in case of any major or material modifications, the Implementing Institution shall provide a minimum of fifteen days to the Applicants or Bidder for submitting the tenders.
167. Any such addendum or corrigendum shall be published on public platform for communication to all the participants of the tender process and the same will be binding on all Applicants or Bidders, as the case may be.
168. Unless otherwise stipulated in Project Tender Documents, an applicant may modify or withdraw its application prior to specified due date of submission. The modification or notice of withdrawal shall be effective if it is received by the Implementing Institution prior to the due date. Such withdrawal or modification shall not result in forfeiture of the Bid security submitted by the Applicant or Bidder.

## **Developing the Procurement Plan**

169. The Implementing Institution shall, before the issue of the Project Tender Documents, ensure that the Project has sufficient demand in the market and the prospective applicants have been sounded with the Project components.

170. The Public Private Partnership projects require specific consultation with the private sector including project developers, contractors, users and sources of finance for a competitive tender process. These consultations will allow the Implementing Institution to check whether any aspect of the technical, financial or legal requirements of the project are unacceptable to Bidders and allows the Implementing Institution to develop strategies that are acceptable to Bidders or that provide better value for money.
171. The Implementing Institution shall prepare a procurement plan before the start of procurement process.
172. The procurement plan shall contain:
- (1) Approvals required in respect of project and project timelines in respect of key milestones;
  - (2) Potential challenges to the project and an analysis as to how these can be addressed;
  - (3) Identification of all the stakeholders and the extent of their involvement in the project;
  - (4) Categories of information to be made available to bidders and how such information will be developed;
  - (5) List of required approvals from all departments and agencies and a list of action items necessary for obtaining these approvals;
  - (6) Contingency plans for dealing with deviations from the timetable and budgets;

- (7) Proposed Bid evaluation parameters and the process;
- (8) Appropriate quality assurance process and time management plan; and
- (9) Means of establishing and maintaining an appropriate audit trail for the application or bidding process.

## **Chapter VI**

### **Tender Stage: Process**

#### **Tendering options**

173. The Implementing Institution shall decide on the method of procurement to be adopted, based on the feasibility analysis and in accordance with the provision of these Rules and Regulations.
174. The following methods of procurement may be adopted subject to the conditions laid down under these Rules and Regulations and other applicable laws:
  - (1) Single stage tendering;
  - (2) Two Stage tendering; or
  - (3) Competitive Dialogue.
175. In all aforesaid methods of procurement of a Public Private Partnership Project, the final evaluation criteria shall be in the form of a single objective parameter which shall be specified the Request for Proposal.

176. The Implementing Institution shall take suitable measures to maintain transparency and probity in the procurement process including maintenance of data storage facility, maintaining records of tender proceedings etc.

### **Single Stage Tendering**

177. If the Implementing Institution does not intend to undertake two stage tender processes and for speeding up the project procurement process, the Implementing Institution may conduct a single stage tender process with the prior approval of Public Private Partnership Steering Committee.

178. The single stage tender process shall comprise of open and competitive bidding process in which technical proposal and financial proposal shall respectively, be submitted in two separate envelope or cover. In such two envelope process the technical proposal shall comprise of Bid security along with other mandatory submissions as set forth in the Project Tender Document. Alternatively, the Implementing Institution may adopt a three envelope process wherein the Bid security shall be put in a separate envelope. All the envelope or cover shall be put in a single outer envelope or cover.

179. Under the single stage tender, firstly the qualification of the applicant based on their technical and financial parameter shall be determined, and thereafter the financial offer of the qualified and shortlisted applicant shall be evaluated to determine the best offer.

180. The Single stage process may either comprise of pass or fail mode for qualification of technical proposal, or

threshold passing marks may be assigned for qualification of technical proposal. In pass or fail mode, the minimum benchmark technical and financial criteria shall be set out in the Project Tender Document and applicant or bidder fulfilling the same shall be eligible for consideration of their financial offer. Further in other qualification method, the technical and financial criterion shall be respectively allocated marks, and bidders scoring stipulated threshold marks based on the said marking system shall be eligible for consideration of their financial offer.

181. The single stage process shall be termed as Request for Proposal and is appropriate for:
- (1) Smaller Public Private Partnership projects of less than Nu one hundred and fifty million; or
  - (2) Repetitive and standard Projects.

### **Two Stage Tendering**

182. The two-stage open competitive tendering shall include the following stages:
- (1) Request for Qualification Stage that shall involve short listing of qualified Applicants; and
  - (2) Request for Proposal Stage that shall involve a selection of the Preferred Bidder who quotes the most advantageous final offer.
183. If the Implementing Institution elects, the two stage tendering may also have an Expression of Interest stage

prior to Request for Qualification stage, according to these Rules and Regulations.

184. In case of technically complex Public Private Partnership Projects, where the Implementing Institution is desirous of assuring itself that the qualified Applicant completely understand its requirement, the Implementing Institution may determine that the qualified Applicant must submit technical proposal as a part of Request for Proposal, the requirement whereof shall be specified in detail under the Request for Proposal. Such technical proposal may comprise of responses on the technical solution, business solution and financial plan for implementing the Project.

### **Competitive Dialogue**

185. In complex contracts where the Implementing Institution is unable to objectively establish the exact project parameters needed to achieve project objectives, due to a number of possible technological, legal or financial options for developing a project, the Implementing Institution may opt for a competitive dialogue with interested entities to identify a solution and achieve clarity on the optimal project scope.
186. The Competitive Dialogue may be used only with prior approval of Lhengye Zhuntshog or its delegated agency after feasibility analysis.
187. The Competitive Dialogue is to be initiated after short listing applicants in a Request for Qualification process initiated for this purpose.



188. The Competitive Dialogue shall end when the Implementing Institution can identify a solution, which meets its Project related requirements.
189. The foregoing exercise may be followed by the development of appropriate base financial and project model by the Implementing Institution and conduct of a competitive, fair and transparent tendering process without any discrimination or bias towards any single party.
190. The Shortlisted applicant then may be invited to submit tenders based on the solution and project structure resulting from the dialogue.
191. The Implementing Institution shall define the process for the Competitive Dialogue and shall communicate the same to all shortlisted applicants in advance. The communication shall include:
- (1) Schedule of the process in terms of the dates of the key milestones which shall include the due date for submission of outline solutions, the pre-submission meeting, if any, issuance of clarifications on the queries of shortlisted applicants and issuance of corrigenda or notifications of amendments in process for the dialogue;
  - (2) The number of stages; and
  - (3) Submissions to be made by the participants.
192. The Implementing Institution shall invite the aforesaid shortlisted applicants to submit outline solutions for the Public Private Partnership Project.

193. The Implementing Institution shall evaluate the submissions of the aforesaid shortlisted applicants on receipt thereof and thereafter initiate further Competitive Dialogue with the shortlisted applicants on the solutions proposed.
194. The Implementing Institution may conduct the Competitive Dialogue in one or more successive stages in order to reduce the number of solutions to be discussed.
195. The Implementing Institution shall, treat all proprietary or commercially confidential information communicated by shortlisted Applicants in the Competitive Dialogue, confidentially and not reveal the same without the consent of respective shortlisted applicant.
196. At the end of the Competitive Dialogue, the Implementing Institution shall identify the most optimum solution capable of meeting its needs. Based on the solution so identified, the Implementing Institution shall:
  - (1) Define the project scope based on the solution identified in the Competitive Dialogue;
  - (2) Finalise the Request for Proposal; and
  - (3) Define the evaluation criteria suitable to the solution identified in the Competitive Dialogue.

### **Publication of Advertisement or Notification of Project Tender Documents**

197. The Implementing Institution shall publish the advertisement or notification of the Project Tender Documents in at least one newspaper published in Bhutan.

198. The Implementing Institution may at its discretion, based on the nature of the procurement and the potential applicants, issue the advertisement or notification of the Project Tender Documents in newspapers of foreign country.
199. The Implementing Institutions shall publish the advertisement or notification of the Project Tender Documents on its own website, if any, and on the centralized Public Private Partnership e-procurement website of the Government, if available.
200. The Implementing Institution may, depending on the nature of procurement, issue the advertisement or notification of the Project Tender Documents in trade journals, business publications or other periodicals.
201. The Implementing Institution shall ensure that the advertisements or notification of the Project Tender Documents mentions the website of the Implementing Institution from where the tender documents can be downloaded.
202. The Implementing Institution shall publish any addenda or corrigenda, following an advertisement or notification of the Project Tender Documents in the same newspaper, trade journals, business publications or other periodical in which the said advertisement or notification was issued and on its own website and on any other procurement website of the Government if available.
203. The Implementing Institution shall, once the advertisement or notification of the Project Tender Documents is made, make available the corresponding Project Tender

Documents in the manner, form, place, date and time and such other conditions as may be specified in the advertisement or notification.

## **Chapter VII**

### **Tender Receipt, Opening, Evaluation and Bidder Selection**

#### **Tender Receipt**

204. The Implementing Institution shall:

- (1) Receive the application or bids according to condition laid down in the Project Tender Document and make arrangement to receive the application or bids which may include assigning responsible person to receive the Application or Bid; and
- (2) Designate a tender opening committee of not less than three members to open the tenders as specified in the Project Tender Documents.

205. The Head of the Implementing Institution shall appoint one member of Project Committee as the head of the tender opening committee, who in turn will appoint, according to scale of the Project or number of Application or Bids expected, in consultation with and approval of Head of Implementing Institution, one or two members of Implementing Institution to assist him.

206. The Application or Bids shall be accepted up to the time limit specified in the Project Tender Document or any extensions thereto.

207. When the Application or Bids is to be received in hard copy, arrangement shall be made to receive the Application or Bids in a wooden or metal sealed box.
208. When the Application or Bids are to be received through online submission clear instruction for submission of Application or Bid including maximum allowed size of the document, requirement of digital signature, prior registration on the online portal and format for submission of fee related to tender shall be provided by the Implementing Institution. Public Private Partnership Unit may notify detailed instructions in regard of online submission of tenders from time to time.
209. Where a person is made responsible for receiving the Application or Bids, the Implementing Institution shall ensure that the submitted Application or Bids are safely and confidentially stored.
210. The person made responsible for receiving the Application or Bids shall issue a receipt to the Applicant or Bidder dropping the Application or Bid and mark the Application or Bid received with serial numbers and enter the receipt of Application or Bid in a bid register. The following details shall be entered in the bid register on each occasion of receipt:
- (1) Serial number of the Application or Bid received; and
  - (2) The time and date the Application or Bid was received.
211. Where a bid or tender box is used, the box shall be fitted with a sealed lock and one officer shall be made responsible

as guardian of the bid or tender box and the keys. As soon as the deadline for submission of the Application or Bid is expired, the guardian of the box shall seal the opening of the bid or tender box so that no more Application or Bid can be deposited. The sealed bid or tender box shall be opened in the presence of the tender opening committee.

### **Confidentiality of Project Tender Document and Proceeding**

212. The Project Tender Document shall be treated with confidentiality at all times and kept under secured conditions until the opening of the Application or Bid by the tender opening committee.
213. After the Application or Bid opening, the opened document or the content of the document shall not be released to any unauthorized person or party.
214. The evaluation proceeding after the opening of Application or Bid shall be kept confidential until the award of contract is announced.

### **Tender Opening**

215. The tender opening committee shall open the Application or Bid on the date and time specified in the Project Tender Documents.
216. The Application or Bid opening shall take place on the same day immediately after the time stated as the deadline for the submission of Application or Bids.

217. The Implementing Institution shall invite all the Applicants or Bidders who choose to attend the opening of Application or Bids.
218. All members of the tender opening committee shall examine the condition of the envelopes and shall sign on the envelopes. In the event that an envelope of the original Application or Bid is found to have been tampered with or opened, the tender opening committee shall decide whether the tender process is to be cancelled or to proceed with the tender opening.
219. The Application or Bids shall be opened in full view of all participating parties and the contents shall be checked by the tender opening committee against the requirement of the Project Tender Documents. Envelopes marked “Withdrawal” shall be opened and read out first. Application or Bids for which an acceptable notice of withdrawal has been submitted shall not be opened.
220. The tender opening committee shall in consultation with Implementing Institution prepare a checklist for determining responsiveness of the basic tender submission conditions such as submission of Bid security, performance security, power of attorney, joint venture agreement and such others as particularly specified in the Project Tender Documents.
221. The name of the Applicant or Bidder and the total amount offered at the Request for Proposal stage, shall be read aloud and recorded when opened.

222. The tender opening committee shall make a record of tender opening and submit it to the head of the Implementing Institution. The record shall include the following information:
- (1) The names of the bidding entity or Consortium;
  - (2) The name and signature of the Applicant or Bidder's representative attending the tender opening;
  - (3) Checklist for determining responsiveness or otherwise of the submitted application or bid against conditions set out in the Project Tender Document; and
  - (4) Any other relevant information.
223. The Applicant or Bidders' representative, if present in the meeting will be required to sign a record of tender opening prepared by the tender opening committee.
224. The Application or Bid form, Bid securities, and any other important documents shall be initialed by all members of the tender opening committee. All members of the tender opening committee shall also initial all corrections and irregularities in Project Tender Documents.
225. A record of tender opening shall be prepared before closing of tender opening session. All members of the tender opening committee shall sign the same.
226. Any Application or Bid received after the deadline or in incorrect form shall be rejected.



227. All original copies of the Application or Bid documents, which are recorded in the tender opening, shall be kept in a secure place.
228. The copies of the original Application or Bid document shall also be kept securely by the Implementing Institution for future reference in case of any disputes with regard to the bid document.

### **Tender Evaluation Committee**

229. The Implementing Institution shall form a tender evaluation committee for evaluation of responses received as part of the tender proceedings for each stage of evaluation. The tender evaluation committee shall consist of:
- (1) The head of the Implementing Institution or nominated representative, who shall act as the chairperson of the committee;
  - (2) Representative of Ministry of Finance;
  - (3) Representative of Public Private Partnership Unit;
  - (4) Head of Project Committee or nominated representative; and
  - (5) Other members as considered necessary by the chairperson.
230. The members of tender evaluation committee shall ensure that they do not have any Conflict of Interest in relation to the relevant Project and furnish a declaration before every

meeting of the tender evaluation committee as per the template provided in Schedule 1.

231. If any member of the tender evaluation committee has any conflict such member shall forthwith, without any delay disclose details of such conflict. Upon such disclosure the chairperson of the committee or head of the implementing Institution shall take appropriate action and replace the member having conflict of interest with another equally or more competent member.
232. The Public Private Partnership Unit shall nominate a representative to oversee and ensure compliance with these Rules and Regulations and transparency issues in the tender proceedings.
233. The Public Private Partnership Unit may come out with practical guide or evaluation manual for the project to ensure consistency among different evaluators.

### **Responsive Proposal**

234. The “Responsive proposal” under these Rules and Regulations shall mean “Substantially responsive Application or Bid”. Proposals are substantially responsive where:
  - (1) The Applicant or Bidder fulfills the condition of eligibility and qualification, if any laid down in the Project Tender Documents;
  - (2) The Application or Bids comply with the terms and conditions set out in the Project Tender Documents, and

are complete with the required information and duly filled in forms prescribed in the bidding documents; and

- (3) The Application or Bids respond to the terms, conditions and technical specifications detailed in the Project Tender Documents without “material deviation or reservation”.

235. The material deviation or reservation is one:

- (1) Which affects in any substantial way the scope, quality or performance of the assignment under Application or Bid;
- (2) Which limits in any substantial way and is inconsistent with the bidding documents, the Implementing Institution’s rights or the Applicant’s or Bidder’s obligations under the contract; or
- (3) Whose rectification would affect unfairly the competitive position of other bidders presenting responsive Application or Bid.

### **Request for Qualification Evaluation**

236. The tender evaluation committee shall shortlist qualified applicants through Request for Qualification evaluation based on the criteria laid out in the Request for Qualification document.

237. The purpose of Request for Qualification evaluation process shall be to determine which of the Applications

received are responsive and thereafter compare the responsive Applications against each other to select a shortlist of Applicants to be called for participation in Request for Proposal stage. If any documents specified in the Request for Qualification Document are found to be not submitted, the Applicant shall be liable for rejection of his Application.

238. The tender evaluation committee shall prepare a Request for Qualification evaluation report and submit the same to Public Private Partnership Steering Committee.
239. The Public Private Partnership Steering Committee shall review the Request for Qualification evaluation report with respect to its adherence to the Request for Qualification document requirements and transparency of the process and provide its comments to the Implementing Institution.
240. The tender evaluation committee shall adhere to following rules for evaluation of the Request for Qualification:
  - (1) Applications shall be checked for their responsiveness of the Request for Qualification conditions;
  - (2) Checks shall be made as to whether applicants have any Conflict of Interest;
  - (3) All Bids adjudged responsive shall be evaluated against the qualification criteria in accordance with the terms of the Request for Qualification and the Implementing Institution shall shortlist the applicants who qualify to progress to the Request for Proposal stage; and

- (4) The evaluation process shall be completed within thirty days from the date of receiving the applications and the results shall be published within fifteen days of completing the evaluation. The Tender evaluation committee shall be required to obtain written approval from the head of the Public Private Partnership Unit for relaxation in time period of evaluation.

241. After the evaluation is completed all the Applicants must be informed about the results of the evaluation by the Implementing Institution.

### **Request for Proposal Evaluation**

242. The purpose of Request for Proposal evaluation process shall be to determine which of the Applications received are responsive and thereafter compare the responsive Applications against each other to select the Preferred Bidder. If any documents specified in the Request for Proposal Document are found to be missing, the Bid shall become liable for rejection.

243. The Bid shall be checked for responsiveness and their adherence to the prescribed criteria for submission as stated in Request for Proposal.

244. The tender evaluation committee shall evaluate the responses to the Request for Proposal according to the evaluation criteria set out in the Request for Proposal.

245. The tender evaluation committee shall prepare a Request for Proposal evaluation report and submit the same to the Public Private Partnership Steering Committee.

246. The Public Private Partnership Steering Committee shall examine the Request for Proposal evaluation report and approve the selection or otherwise of the Preferred Bidder.
247. All Bids adjudged responsive shall be ranked in accordance with the offered bid parameter criteria specified in Request for Proposal.

### **Selection of the Preferred Bidder**

248. Generally, the first ranked Bidder shall, subject to terms of Request for Proposal, be the Preferred Bidder.
249. In the event that the first ranked Bidder withdraws or is not selected for any reason, Public Private Partnership Steering Committee shall decide and recommend whether to undertake negotiation with the second ranked Bidder or to retender. While deciding so the Public Private Partnership Steering Committee shall consider the reserve price, if any, estimated at the feasibility stage.
250. Where all bid prices substantially exceed the cost estimates, the Implementing Institution may, instead of calling for new bids, after consultation with Public Private Partnership Steering Committee, call for best and final offer from the eligible Bidders, and negotiate with such bidder for a reduction of the bid price.
251. The bid price quoted by the Bidder shall be analyzed with respect to internal benchmark, and if found abnormally high or low, as the case may be, recommendation from Public Private Partnership Steering Committee shall be sought for accepting or rejecting the bid from the first ranked Bidder

or if first ranked bidder is rejected, then for negotiating with the second ranked Bidder or for retendering.

252. Where the prices in a particular bid appear abnormally low the Implementing Institution may reject it only after seeking written explanations from the Bidder submitting the low bid. In the case of a bid which appears abnormally low, the Implementing Institution shall request from the Bidder an analysis of rates of the relevant items.

### **Treatment of Sole Bid**

253. In case of the competitive bidding process resulting into a sole Bid at the Request for Proposal stage, the tender evaluation committee shall recommend to the Implementing Institution to:

- (1) Accept the sole bid, if retendering will not yield more Bids and there is a clear value for money in accepting the sole Bid; or
- (2) Reject the sole bid.

254. If the sole bid is accepted, negotiation with the Bidder with approval of Public Private Partnership Steering Committee, to ascertain better terms for the Implementing Institution may be undertaken provided these negotiations result in better terms for Implementing Institution than outlined in Request for Proposal document.

## **Rejection of All Bids**

255. The Public Private Partnership Steering Committee may, on the advice of the Project Committee, cancel any or all bids prior to signing of the Public Private Partnership Agreement with the Preferred Bidder.
256. The Public Private Partnership Steering Committee may reject all bids on the following grounds:
- (1) Lack of effective competition; or
  - (2) Not being Substantially Responsive.
257. If all bids are rejected, the Implementing Institution shall review the causes resulting in such rejection and consider procuring in accordance with these Rules and regulations, revisions to the conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids.
258. If the rejection of all bids is due to lack of competition, wider advertising shall be considered. If the rejection is due to all of the bids being nonresponsive, new bids may be invited from the initially prequalified firms with the approval of Public Private Partnership Steering Committee.

## **Failure of the Tender Process**

259. The Failure of the tender process shall include the following events:



- (1) Annulment of tender process by Public Private Partnership Steering Committee; or
- (2) No interest from private entities after three successive invitations for tender submission.

260. In case of failure of tender process, Lhengye Zhuntshog may grant approval for the Project to be taken on traditional procurement route or permit direct negotiation for the Project award by the Implementing Institution.

### **Project Award**

261. After obtaining approval from Public Private Partnership Steering Committee for the selection of Preferred Bidder and award of Project to Preferred Bidder, the Implementing Institution shall communicate the award of the Project to the Preferred Bidder, and proceed to execute the Public Private Partnership Agreement with the Preferred Bidder.

262. After selection, a Letter of Award shall be issued, in duplicate, by the Implementing Institution to the Preferred Bidder with the conditions which the Preferred Bidder must satisfy within thirty days of the Letter of Award or within the timeframe which the Implementing Institution deems appropriate.

263. The Preferred Bidder shall, within seven days of the receipt of the Letter of Award, sign and return a duplicate copy of the Letter of Award in acknowledgement thereof.

264. If the Preferred Bidder is unable to satisfy the conditions set out in the Letter of Award within thirty days or the

number of days indicated in the Letter of Award and fails to notify the Implementing Institution the reason of delay, the Implementing Institution may have the right to confiscate the bid security.

265. The Implementing Institution shall, within seven days upon receipt of requirements or conditions for award, determine and notify the Preferred Bidder of its compliance of all conditions stated in the Letter of Award.

### **Contract Award and Close**

266. The Implementing Institution shall seek approval of Public Private Partnership Steering Committee for signing of the Public Private Partnership Agreement.

267. The Public Private Partnership Steering Committee shall, before providing its approval, confirm the following:

- (1) The tender process has been carried out in accordance with procedures, Policy and these Rules and Regulations; and
- (2) Decisions have been recorded correctly with the appropriate audit trail.

268. Upon approval, the Implementing Institution shall notify the Preferred Bidder in writing to proceed with signing of the Public Private Partnership Agreement.

269. The Implementing Institution shall, Subject to Preferred Bidder fulfilling the requirements specified in the Request for Proposal and Letter of Award, sign the Public Private Partnership Agreement with the Preferred Bidder.

## **Direct Negotiation**

270. The Implementing Institution may directly negotiate with a Bidder under the following circumstances:

- (1) Projects involving proprietary technology, or franchise which is exclusively available with the Bidder globally;
- (2) Projects where competitive bid process has earlier failed to identify a suitable developer; or
- (3) Projects in prescribed social infrastructure sectors where a non-profit organization seeks to develop a project with the concerned developer of mega infrastructure project.

271. The procedure to be followed for direct negotiation are:

- (1) It should be conducted with the prior approval of Public Private Partnership Steering Committee and Lhengye Zhuntshog or its delegated agency;
- (2) A set of rules including the terms of negotiation and their range shall be established and approved by Public Private Partnership Steering Committee before initiating direct negotiation; and
- (3) Direct negotiations shall be carried out according to Schedule 7.

## **Chapter VIII**

### **Contract Management**

#### **Contract Management**

272. The Implementing Institution shall:

- (1) Be responsible to oversee the implementation and compliance with the contractual obligations and performance criteria set out in the contract;
- (2) Ensure that the selected private partner achieves the project financial closure and fulfills the conditions that are required for the project construction or operation to validly and legally commence in compliance with applicable laws;
- (3) At the operations stage, focus on measuring whether the project outputs meet the output specifications specified under the Public Private Partnership agreement;
- (4) Develop the following reporting and monitoring mechanism:
  - (a) Timelines of performance indicators;
  - (b) The project's base case financial model; and
  - (c) Performance incentive mechanisms and payment of performance based incentive.
- (5) At the contract closure stage, focus on ensuring the condition of the assets is up to the agreed standard and

the necessary records, documents and legal titles are provided and correctly transferred.

273. The Implementing Institution may as required, appoint Contract Management Committee for performing functions related to contract management or instruct the Project Committee to perform such functions.

### **Contract Management Functions**

274. The Implementing Institution may constitute a Contract Management Committee for post award management of the Public Private Partnership project or instruct the Project Committee to perform its functions.
275. The Contract Management Committee shall be constituted on or prior to the date of issue of the Letter of Award to the Preferred Bidder.
276. The Head of the Contract Management Committee shall be nominated by the head of Implementing Institution and assisted by the Contract Management Committee.
277. The Project officer of the Project Committee shall provide all documents and communications including the procurement report, and all other documents as deemed appropriate by the Contract Management Committee in relation to the Public Private Partnership Project to the Contract Management Committee.
278. The Project Officer shall be a member of the Contract Management Committee at least until the execution of the Public Private Partnership Agreement.

279. The maximum of two members of the Project Committee can be a part of the Contract Management Committee.
280. All members of the Contract Management Committee shall provide conflict of interest declaration as per the template provided in Schedule 1.
281. The Contract Management Committee shall develop a Contract Management plan, which shall set out the procedure for:
- (1) Monitoring of the Public Private Partnership agreement during construction, operation and hand-back phases of the Project;
  - (2) Regular visits to project site and interaction with the facility users;
  - (3) Audit of the contract management processes;
  - (4) Ensuring that both Implementing Institution and the Concessionaire adhere to Contract obligations;
  - (5) Managing Public Private Partnership agreement variations;
  - (6) Developing and implementing post contract operating and management plans;
  - (7) Ensuring that the dispute resolution procedure as set out under the Public Private Partnership agreement is adhered to; and

(8) Planning and executing Project hand-back at the end of contract.

282. The Contract Management Committee may appoint an independent engineer for inspecting the construction obligations, operations and maintenance arrangements, and monitoring compliance with the performance and maintenance standards, during the operations period.

283. The independent engineer shall prepare and submit a monthly progress report to the Contract Management Committee.

284. The Public Private Partnership Unit shall study the reports of the Contract Management Committee for the assigned Public Private Partnership project and issue direction to Implementing Institution for rectifying any defaults or lapses or taking any necessary action and oversee the same.

### **Audit of the Public Private Partnership Project**

285. The entity subject to the audit of the Public Private Partnership Project shall be the Implementing Institution and not the Private entity or Concessionaire unless otherwise provided by the existing laws in Bhutan.

The Royal Audit Authority may conduct audits of Public Private Partnership projects.

### **Contract Renegotiation**

286. Public Private Partnership Agreement post award may be amended to deal with contingent situations, subject to

the approvals from Public Private Partnership Unit, Public Private Partnership Steering Committee, and Lhengye Zhuntshog.

287. The Amendments to the Public Private Partnership Agreement will be exception and not the norm.
288. The Contract renegotiation can be initiated either by the Implementing Institution or by the Concessionaire.
289. The Public Private Partnership Steering Committee shall recommend an amendment to Lhengye Zhuntshog or its delegated agency, an event which has adverse effect on the Contract, and could not have been anticipated and was outside the control of either party, has occurred and the amendment to the Public Private Partnership Agreement is necessary:
- (1) To reconcile the unforeseen event or circumstances occurring during contract period which can adversely affect the financial or technical viability of Project;
  - (2) To ensure technical, operational, financial and environmental risk transfer between the Concessionaire and the Implementing Institution do not materially change from originally envisaged positions;
  - (3) To ensure that the Concessionaire earns the same rate of return as envisaged under the original contract;
  - (4) To ensure that the Implementing Institution continues to receive royalty fee, as defined in the Public Private Partnership Agreement; or



- (5) To prevent a default under financing agreements undertaken by the Concessionaire.

290. The party desiring the renegotiation shall, submit to the Public Private Partnership Steering Committee, through Public Private Partnership Unit, a report detailing the impact of the Change in Circumstances and setting out the proposed amendments sought to the Public Private Partnership Agreement.

291. The Key action points during the contract renegotiation shall include:

- (1) During the contract renegotiation phase the Concessionaire and the Implementing Institution shall continue to perform their obligations under the Public Private Partnership Agreement;
- (2) The affected party shall prepare a report on the Change in Circumstances and the amendment required in the Public Private Partnership agreement and shall submit the report for approval to Public Private Partnership Steering Committee and Lhengye Zhuntshog or its delegated agency;
- (3) Upon receipt of the notification of Change in Circumstances, the Public Private Partnership Steering Committee with the help of Public Private Partnership Agency shall conduct a technical, financial and legal due diligence to determine whether such event constitutes a Change in Circumstances;

- (4) The Implementing Institution shall proceed with treatment of the Change in Circumstances only on written approval by Public Private Partnership Steering Committee and Lhengye Zhuntshog or its delegated agency, and in such manner as may be directed by Public Private Partnership Unit; and
- (5) Any other relevant key action points.

### **Grievance Redressal by Public Private Partnership Unit**

292. Any Applicant or Bidder aggrieved by any decision related to and arising out of the tender process, may take recourse to Grievance Redressal Committee set up by the head of the Public Private Partnership Unit. The Grievance Redressal Committee shall comprise of three members, namely, the technical expert, financial expert and the legal expert.
293. The aggrieved Applicant or Bidder may, submit a written complaint duly addressed to the head of the Grievance Redressal Committee setting forth therein detailed grounds underlying such complaint supported by relevant evidence or related documents.
294. The Grievance Redressal Committee shall, within thirty days after the receipt of the complaint, issue and convey its written decision which may comprise:
  - (1) A reasoned order for the decision rejecting the complaint; or
  - (2) Corrective measures setting out a time bound implementation plan to redress the grievance.

295. The Grievance Redressal Committee may, for the purpose of arriving at a decision, require further evidence or clarification or ask the complainant to appear in person to present its grievance.
296. If the Grievance Redressal Committee fails to deliver or convey its decision within thirty days, or the complainant is not satisfied with the decision, the complainant may initiate a review procedure before the Public Private Partnership Steering Committee, by way of submitting a review appeal addressed to Head of the Public Private Partnership Steering Committee.
297. The review procedure shall be brought by the complainant within ten days of the decision of the Grievance Redressal Committee, or, where no such decision has been taken, within forty five days of the complaint.
298. The Public Private Partnership Steering Committee shall promptly but in any case within thirty days of filing of the review petition by complainant, dispose off the appeal by giving a reasoned order. For the purposes of disposal of the appeal preferred by the complainant, the Public Private Partnership Steering Committee may seek clarification from or require the complainant to appear in person before it on specified date and time.
299. The Public Private Partnership Unit and Public Private Partnership Steering Committee shall issue relevant guidelines in respect of detailed procedure for putting into effect the Grievance Redressal process and its review, as the case may be.

## **Dispute Resolution Mechanism**

300. To resolve dispute arising in the Public Private Partnership Project the parties involved shall follow a sequential approach of dispute resolution according to these Rules and Regulations.

### **Amicable Settlement**

301. Any dispute or question of interpretation or construction that arises between parties related to or connected with or in connection with or under the Public Private Partnership Agreement, shall in the first instance be endeavored by parties to be settled amicably.
302. The Parties shall meet promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim through discussion between them.

### **Assistance of Expert**

303. The parties may mutually decide to request Negotiator or Expert to assist the parties to settle dispute arising out of or relating to Public Private Partnership Agreement. In such case the parties shall participate in the negotiated settlement proceeding in good faith with the intention to settle the dispute.

### **Arbitration**

304. If amicable settlement is not reached within Sixty days from receipt of notice of such dispute by non-issuing party, then either party may refer the matter in contention to be settled through arbitration in accordance with Alternative Dispute Resolution Act of Bhutan 2013.

305. To facilitate the settlement of dispute under the Alternative Dispute Resolution Act of Bhutan 2013, the Public Private Partnership agreement would incorporate therein a provision on Arbitration between the parties.
306. The Arbitration Agreement shall also enumerate that the parties have agreed to seek assistance of Bhutan Alternative Dispute Resolution Centre, an independent body empowered under the Act to Carry out administrative and secretarial functions as may be appropriate for the dispute resolution proceeding.
307. Until the decision on a dispute, until the arbitral award or Court order is publicly disclosed, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.
308. If either party is not satisfied with the arbitral award it can subject to applicable laws, take recourse to the competent court of Bhutan having related jurisdiction.

### **Contingent Liability Management**

309. The Implementing Institution shall:
- (1) Examine various scenarios in the financial model underlying the feasibility analysis and assess the maximum financial impact that could arise for the Implementing Institution and the Government; and
  - (2) Assure that such possible financial impact is not financially debilitating for itself or the Government

and that it shall be able to manage such outcomes should they materialize.

310. The Implementing Institution must verify as to what guarantee, if any, is required for a Public Private Partnership project and then seek appropriate prior approval from Ministry of Finance as may be required before proceeding with procurement.
311. The Ministry of Finance may, towards effective contingent liabilities management, perform the following functions:
  - (1) Develop and implement an adequate fiscal and risk management framework that is capable of estimating the fiscal implications of project risk and contingencies. The framework shall ensure that the fiscal commitments are not over or under assessed;
  - (2) Assess the affordability of proposed Public Private Partnership fiscal commitments in light of budget constraints and priorities;
  - (3) Monitor the impact of Public Private Partnership fiscal commitment on fiscal risks;
  - (4) Incorporate updated fiscal commitments into budgetary provisions and reports; and
  - (5) Allocate and release budget for direct payments and realized contingent liabilities.

312. The Implementing Institution shall record in its annual statement, under the “Notes to Financial Statements” the estimate of all guarantees and explicit contingent liabilities of the Implementing Institution.
313. The MOF may direct the Implementing Institution to create a sinking fund or make such other suitable provisions as it may deem fit to ensure settlement of the contingent liabilities, if the same are required to be paid by the Implementing Institution.
314. In addition, the Implementing Institution shall closely track the events that could lead to such contingent liabilities, especially during contract management.

### **Managing Fiscal Commitments Including Contingent Liabilities**

315. The Public Private Partnership agreements have financial implications for Governments spanning across a long term horizon. The Government is committed to share risk and provide contingent support wherever deemed fit with a mechanism for refund of contingent support if the project achieves high returns. The Government commitment can be in the form of direct fiscal commitments and contingent liabilities. Fiscal commitments to Public Private Partnerships can be regular payments constituting all or part of the remuneration of the private party, a means to share risk, or a combination of the two. Common types of government fiscal commitments to Public Private Partnerships including the following.

(1) Direct Commitment:

(a) The Government provides an up-front capital subsidy to the Concessionaire. Capital contributions by the government may be aligned to the construction schedule or equity contributions. These types of commitments are more straightforward to manage as the funding spans across two to three years.

(b) Ongoing Payments:

i. The government provides a fixed, ongoing subsidy, paid (typically annually) over the lifetime of the project, and often not starting until the construction phase is complete. This payment may be conditional on the availability of the service or asset at a contractually specified quality. The value of the payments is usually a key financial bid criterion in the tender process to select the private contractor.

ii. The government provides a subsidy per unit or user of a service. Again, the unit value of such a subsidy would typically be the financial bid criterion.

(2) Contingent liabilities

(a) The government commits to compensate the private party for loss in revenue should a particular risk variable deviate from a contractually specified level. The associated risk is thereby shared between the government and the private party. For example, this could include guarantees on the following:



- i. Demand remaining above a specified level, or within a specified range;
  - ii. Currency exchange rates remaining within a specified range;
  - iii. Tariffs being allowed to follow a specified formula (where tariffs are set or approved by a government entity); and
  - iv. Ensuring competing facility is not constructed for specified period.
- (b) In accordance with the terms of the Concession Agreement the government may commit to compensate the private party for damage or loss due to certain specified force majeure events. These are typically limited to political and natural events.
- (c) In accordance with the terms of the Public Private Partnership Agreement the government shall pay an agreed amount, should the contract be terminated due to default of the government in respect of their obligations under the agreement.
- (d) Subject to the applicable laws in force in Bhutan at any time, the government may consider furnishing guarantees repayment of some or all of the debt taken on by the concessionaire if the concessionaire itself defaults on the debt.

## **Roles and Responsibilities of Implementing Institution in Contract Management**

316. The Implementing Institution shall:

- (1) Identify and estimate the cost of fiscal commitments over the whole life of project at the project development stage;
- (2) Seek approval for accepting fiscal commitments associated with the project. The request for approval is to be supported with justification to the effect that no alternative risk allocation method can help avoid or reduce the fiscal commitments;
- (3) Review the information about project performance gathered by Contract Management Committee, if any;
- (4) Monitor and respond to fiscal commitment related project risks;
- (5) Decide whether Project commitments are affordable and fiscally responsible;
- (6) Create provision for fiscal commitment payments in budget requests to the Government; and
- (7) Publish Public Private Partnership Agreements and disclosing information on Public Private Partnership fiscal commitment.

## **Roles and Responsibilities of Public Private Partnership Unit in Contract Management**

317. The Public Private Partnership Unit shall:

- (1) Support the Implementing Institution in identifying and estimating the fiscal commitments;
- (2) Advise the Implementing Institution on health and exposure to Public Private Partnership commitments;
- (3) Develop standard contractual clauses and other guiding principles for managing fiscal commitment; and
- (4) Continuously monitor Public Private Partnership projects for fiscal imbalance and improvement of standard clauses and guidelines.

### **Role and Responsibility of Private Sector**

318. The Private sector shall:

- (1) Upon award of the project, undertake development of the project according to the terms and conditions of the Public Private Partnership contract and such development would generally envisage delivery of a public service at a predetermined performance levels against charges to be collected from users at notified rates or period payments to be made by the concerned government agency;
- (2) For undertaking development, operation, maintenance of the project, make financing arrangement by way

of debt and equity contribution, which it recovers with reasonable rate of return through collection and appropriation of user charges or periodic payments to be made by the Implementing Institution; and

- (3) Upon expiry or earlier termination of the Public Private Partnership agreement, handover the Project assets to the Implementing Institution in good working condition subject to normal wear and tear.

## **Chapter IX**

### **Exceptions**

319. The Project with capital cost under Ngultrums one hundred and fifty million excluding the cost of land shall have the following exception:

- (1) For project registration with Gross National Happiness Commission, the approval of Project Information Note by Public Private Partnership Steering Committee, Gross National Happiness Commission and Lhengye Zhuntshog shall not be mandatory, if Public Private Partnership Unit has approved the same;
- (2) Technical, financial & commercial feasibility analysis may be undertaken simultaneously;
- (3) Approval of feasibility analysis by Public Private Partnership Steering Committee is not mandatory if Public Private Partnership Unit has approved the same;

- (4) Single stage tendering may be conducted without Public Private Partnership Steering Committee's approval;
- (5) The tender evaluation team constituted for such projects may not have following members:
  - (a) Representative of MoF; and
  - (b) Secretary of the line ministry of Implementing Institution or nominated representative;
- (6) Selection of Preferred Bidder shall be done by Public Private Partnership Unit approval;
- (7) Lhengye Zhuntshog's Approval for amendment of Public Private Partnership Agreement, resulting from contract renegotiation shall not be mandatory if Public Private Partnership Steering Committee has approved the same.

320. The Public Private Partnership Unit shall issue detailed procedures for Public Private Partnership projects under Ngultums one hundred and fifty million excluding the cost of land.

### **Fast Track Approvals for Special Projects**

321. The Lhengye Zhuntshog or its delegated agency, may appoint, nominate and constitute an appropriate Committee as required, for fast track approvals required for Special Projects.

## **Project entitlements**

322. The Public Private Partnership project and its stakeholders shall be eligible to avail such incentives and concession as would be available under the laws in force in Bhutan, according to the related enumeration provided under the relevant provisions of the Public Private Partnership Policy.

## **Chapter X Miscellaneous**

### **Amendment**

323. The Lhengye Zhuntshog or its duly delegated authority in its sole discretion or upon recommendation of Public Private Partnership Steering Committee or Gross National Happiness Commission shall have the powers to amend these Rules and Regulations when deemed necessary.

### **Interpretation**

324. The Power to interpret these Rules and Regulations shall vest with the Lhengye Zhuntshog or its duly delegated authority who may issue such instructions of notifications as may be necessary to give effect to and implement the provisions of these Rules and Regulations and its interpretation shall be final and binding.

### **Rules of Construction**

325. In these Rules and Regulations, unless the context otherwise indicates, the masculine gender shall include the feminine gender and the singular shall include the plural and vice versa.

## Definitions

326. In these Rules and regulations, unless the context otherwise requires:

- (1) **“Applicant or Bidder”** means the private sector entity participating or intending to participate in the Public Private Partnership procurement process, namely, Request for Qualification or Request for Proposal, as the case may be, shall respectively be referred as Applicant or Bidder.
- (2) **“Application”** means the submission made by the Applicant in response to Request for Qualification.
- (3) **“Arbitration agreement”** means an agreement in writing between the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a Public Private Partnership agreement
- (4) **“Bid”** means the offer or proposal submitted by the Bidder in response to Request for Proposal.
- (5) **“Competitive Dialogue** means competitive dialogue conducted in accordance with these Rules and Regulations
- (6) **“Conflict of Interest”** when used in these Rules and Regulations in respect of a civil servant or Government official or a committee member, as the case may be, shall refer to a conflict between the official duties and the private interests of a civil servant or Government

official or a committee member, including not only his vested interest but also those of his family;

AND

Conflict of Interest when used in these Rules and Regulations in respect of an Applicant or Bidder shall refer to:

- (i) An Applicant or Bidder or its associate and another Applicant or Bidder or associate thereof, having common controlling shareholders or ownership interest or has a relationship with another Applicant or Bidder, or any associate thereof, directly or through common third party, that puts either or both of them in a position to have access to each other's information about, or to influence the Application or Bid of either or each other; or
  - (ii) Such Applicant or Bidder, or any associate thereof has participated as a consultant in the preparation of any documents, design or technical specifications of the Project; or
  - (iii) A spouse or dependent of an Applicant or Bidder is a Government servant having authority over or is an employee of the particular implementing Institution or member of project or evaluation related committees.
- (7) **“Consortium”** shall refer to the group of Applicants or Bidders coming together to participate in a tender process as an association of Applicants or Bidders.



- (8) **“Concessionaire”** shall refer to the individual private entity or the consortium private entities, as the case may be, which participated in tender process and in terms of Project Tender Documents is awarded the project and accordingly enters into a Public Private Partnership Agreement with the Implementing Institution.
- (9) **“Days”** means the working days as per official calendar followed by the Implementing Institution.
- (10) **“Government”** means the Royal Government of Bhutan.
- (11) **“Implementing Institution”** means the government entity undertaking various functions across the Public Private Partnership project lifecycle including procurement and development of Public Private Partnership project.
- (12) **“Lead Financial Institution”** means the financial institution that finances the capital cost of Public Private Partnership project, and in case there is a consortium of financial institutions, the financial institution designated as such by the consortium of lenders.
- (13) **“Preferred Bidder”** means the bidder, single entity or consortium of entities, whose proposal is determined in accordance with terms of the Project Tender Documents as the most responsive and competitive proposal to advance to the negotiation stage of the Public Private Partnership project lifecycle.

- (14) **“Project”** means the Public Private Partnership project implemented or being implemented by the Implementing Institution.
- (15) **“Public Private Partnership Program or Public Private Partnership Program list”** shall refer to the list of projects identified and registered by Gross National Happiness Commission for being taken up for development on Public Private Partnership model. Any new projects for being included in the Public Private Partnership Program shall be included, upon approval by Government, pursuant to the Gross National Happiness Commission and Public Private Partnership Steering Committee’s recommendations.
- (16) **“Public Private Partnership Project Cycle”** shall refer to the entire project related development and implementation activities or stages commencing from identification of the project, and comprising of project selection, project registration with Gross National Happiness Commission, feasibility analysis, undertaking tender process for selection of the Preferred Bidder, appointment of the Preferred Bidder, project construction, project operation till expiry or earlier termination of the Public Private Partnership agreement.
- (17) **“Private Entity”** means the private sector entity not owned and controlled by Government.
- (18) **“Project Tender Document”** shall refer to Request for Qualification, Request for Proposal, and Public Private Partnership Agreement prepared in respect of

a Public Private Partnership project, by customizing the Standard Tender Document according to project specific requirements.

- (19) **“Public Private Partnership”** means a contract between an Institution and a private party whereby the private party renovates, constructs, operates, maintains, or manages an asset to provide a service in whole or in part, in accordance with specified output specifications. The private party assumes the associated risks for a significant period of time and in return, receives benefits and financial remuneration according to agreed terms. Public Private Partnerships constitute a cooperative venture built on the synergy of expertise of each partner that best meets clearly defined public needs through the most appropriate allocation of resources, risks and rewards.
- (20) **“Public Private Partnership Unit or Unit”** shall refer to the agency established or envisaged to be established under Executive Order of Lhengye Zhuntshog as the focal point implementation agency for Bhutan’s Public Private Partnership program.
- (21) **“Public Private Partnership Agreement”** shall refer to a written agreement, for a fixed duration of time, between an Institution and a private partner that sets forth the terms and conditions for the implementation of a Public Private Partnership.
- (22) **“Public Private Partnership Policy”** shall refer to the Public Private Partnership Policy as notified by Government.

- (23) **“Public Property”** means any asset and right owned by the Government and includes any movable or immovable property as well as any intellectual property vested in the Government.
- (24) **“Rules and Regulations”** shall refer to these Public Private Partnership Rules and Regulations 2016, as notified by Royal Government of Bhutan, at any time and as modified from time to time.
- (25) **“Request for Qualification”** means the tender document inviting applications for qualification of interested private entities for award of a Public Private Partnership Project.
- (26) **“Request for Proposal”** means the tender document inviting Bids for selection of interested private entities for award of a Public Private Partnership Project.
- (27) **“Special Projects”** means any Public Private Partnership Project that Government certifies as special project, having regard to degree of its utility, importance for users and fast track delivery requirement. It is clarified that in event a project having capital cost of Ngultrums one hundred and fifty Million is declared as Special Project, then irrespective of the specific approval norms enumerated herein for such project, it shall be deemed as Special Project and approval process as stipulated herein for Special Project will solely apply.
- (28) **“Special Purpose Vehicle”** is a subsidiary company with an asset/liability structure and legal status that makes its obligations secure even if the parent company goes bankrupt.

- (29) **“Standard Tender Documents”** shall refer to the Request for Qualification, Request for Proposal and Public Private Partnership Agreement prepared by Public Private Partnership Unit and approved by Public Private Partnership Steering Committee, Gross National Happiness Commission and Lhengye Zhuntshog, according to Policy and these Rules and Regulations.
- (30) **“Substantially Responsive Applications or Bids”** Shall, subject to additional requirement of Project Tender Documents, mean and refer to fulfillment of the following:
- (a) All items of information required from the Applicants or Bidders are submitted in the specified format and the same are not materially inaccurate or incomplete and are not conditional;
  - (b) Compliance with material conditions of Project Tender Documents for example: submission of duly certified work experience documents, financial capacity documents, duly executed authorization documents, duly executed contractual arrangement with consortium partner, if any;
  - (c) Submission of methodology, Implementation plan and Business Plan as per requirement, if any of the Project Tender Documents;
  - (d) Duly executed Bid security is furnished under Request for Proposal; and

- (e) Duly certified copy of internal corporate resolutions authorizing Applicant or Bidder to submit Application or Bids under Project Tender Documents is furnished.
- (31) **“Transaction Advisor or Advisor”** shall refer to any person or firm appointed by an Institution with approval of Public Private Partnership Steering Committee; and which has relevant skills and experience to assist and advise the Institution in connection with a Project, including the preparation, procurement and award of a Public Private Partnership Project and matters connected therewith and incidental thereto.
- (32) **“Value for Money”** means the provision of the Institutional function or the use of Public Property by a private party in terms of a Public Private Partnership Agreement results in the project being undertaken earlier than it would have been otherwise as well as it resulting in a net benefit to the Institution defined in terms of the optimum combination of whole life asset cost, delivery methods and time, quality and transfer and allocation of risk.

## **Schedule 1**

### **Conflict of Interest Declaration Form**

A civil servant or Government official or a committee member, as the case may be, as referred to in these Rules and Regulations shall give a duly signed declaration in the following form:-

“I, [Name of the Member/Official], disclose that none of my close relatives (father, mother, brother, sister, spouse and own children) have taken part in the competitive bidding and that I do not have any direct interest in any of the parties participating in the bidding process.

I, [insert name of Member/Official], {as a member for the \_\_\_ Committee for the [insert name of Implementing Institution and Title and Registration Number of the Public Private Partnership Project]}/ { as an official having power or authorization to deal with award of or bidding process of Project} declare that the above information is true and correct to the best of my knowledge. I declare further that in the event of any such interests arising during the course of bidding process, these shall be promptly and accurately declared in writing to [Name of Implementing Institution]

*Signed: [signature of official/member] Date: [insert date]*

S. No.	Name of Applicant or Bidder or Member of bidding consortium	Q's ---Prohibited relationship with other Applicants or Bidders	Response to Q's and Extent or details of Relationship
I.		Do you or any of your members or any of your associate or constituent have common controlling shareholders or other ownership interest with other Applicant or Bidder, its member of any associate thereof?	
II.		Is your constituent also a constituent of another Applicant or Bidder?	
III.		Do you or any of your associate receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Applicant/ Bidder, or any associate thereof, or have you provided any such subsidy, grant, concessional loan or subordinated debt to any other Applicant or Bidder, its member or any associate thereof?	
IV.		Do you , or your member or any associate has a relationship with another Respondent, or any associate thereof, directly or through common third party, that puts either or both of them in a position to have access to each other's information about, or to influence the Response of either or each other?	



V.		Do you, or any of your member or any associate thereof, has participated as a consultant to the Implementing Institution in the preparation of any documents, design or technical specifications of the Public Private Partnership Project?	
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**Form-Applicant or Bidder**

An Applicant or Bidder shall ensure that it does not have any Conflict of Interest affecting bidding process, and provide the information's in following form and shall sign the undertaking that follows:-

I, [insert name of Applicant/Bidder], declare that the above information is true and correct to the best of my knowledge. I declare further that in the event of any such interests arising during the course of bidding process, these shall be promptly and accurately declared in writing to [Name of Implementing Institution].

Signed: [signature of authorized signatory of Applicant/Bidder]

Date: [insert date]

## **Schedule 2**

### **Project Concept Note**

1. Project Concept Note is the first document to be prepared for the Project.
2. It lists out the broad parameters of the Project and conceptualizing the Project idea in concrete terms.
3. The Implementing Institution shall provide following information in the Project concept note:
  - (1) Project name and brief definition;
  - (2) Expected size of the Project in terms of Project cost, approximate demand forecast, land area required etc.;
  - (3) Potential time period of contract;
  - (4) Existing status of the Project deliverables;
  - (5) Whether the Project is green field or brown field? (record of asset life and quality of the asset for brown field Project);
  - (6) The expected role of Private entity and the Implementing Institution; and
  - (7) Demonstrate inter-linkages with other Government projects or priorities.

### **Schedule 3**

#### **Project Information Note Format**

The Project Information Note must cover the following topics in detail:

- (1) Define project scope.
- (2) Define how does project objective aligns with Government's vision.
- (3) Government's readiness to develop the project.
- (4) Private sector's readiness to implement the project.
- (5) Recommended technical solution along with options to implement the technical solution:
  - (a) The engineering and technical aspects of the Public Private Partnership Project.
  - (b) The manageability of the operational aspects of the Public Private Partnership Project.
  - (c) Preliminary assessment of all likely technical and operational risks.
- (6) Financial and economic viability of the Public Private Partnership Project concept - preliminary assessment:
  - (a) Potential revenue options for the project.
  - (b) The overall Public Private Partnership Project cost (capital + operations + maintenance).

- (c) Potential risk allocation.
  - (d) Identification of likely economic benefits generated by the Public Private Partnership Project.
- (7) Possible arrangements for the participation of private entities:
- (a) Legal framework analysis.
  - (b) Bundling of projects (Project A bundled with Project B or various components of the project tendered separately) Outline procedure for ensuring competition in the selection of the private partners.
  - (c) Legal documentation required to allow participation of the private partners.
- (8) Recommendations on whether the Public Private Partnership Project should be undertaken.
- (9) Time frame required for completing project preparation.
- (10) Requirement of Project Development Fund for transaction advisory services.
- (a) The request for Project Development Fund shall contain a no objection certificate issued by Public Private Partnership Agency for the same.
  - (b) The request should state the current financial status of the Implementing Institution (Revenues, costs and grants obtained from Government in last three years).

- (c) It should contain a statement of skills present with the Implementing Institution with regard to transaction services and proposed plan of skill improvement through transaction advisors.

Apart from above mentioned topics the Project Committee may provide additional relevant information about the project as Annexure to the Project Information Note. The Project Committee may be asked to provide additional information and clarifications on the Project by the approving authorities which shall be provided in a time bound manner by the Project Committee or the Implementing Institution.

## **Schedule 4**

### **Risk Management**

#### **Treatment of Risks in Public Private Partnership Projects**

Risks are associated with different stages of the project development cycle and it can be managed to an acceptable level as explained below:

#### **Risk identification**

- (1) At this stage, all risks relevant to the project are identified. Given that the project is being structured for private sector investment, it is critical that all those issues that can be influenced by the Implementing Institution are identified. These may include delay in implementation, termination risk, change in law, alternative facilities, other contingencies requiring government support and covenants and infrastructure risks, such as government assurances for land and right of access.
  
- (2) From an investor or lender perspective, key risks in a Public Private Partnership project include direct project risk, regulatory and institutional risk, macroeconomic risk, nationalization and appropriation (political risk), completion delays, cost overruns, demand forecast risks, e.g., volumes and toll rates and/or fees, performance risks, e.g., technology and processes, operation and maintenance risk, force majeure, e.g., earthquakes, floods, and natural disasters, political and social risk and foreign exchange risk.

## **Risk allocation**

Allocate responsibility for dealing with the consequences of each risk to one of the participants in the contract, or agreeing to deal with the risk through a specified mechanism that may involve sharing of risk.

## **Risk mitigation**

Attempt should be made to reduce the chances of the risk and the degree of its consequences for party assuming the risk. Sometimes, “de-risking” certain aspects of the project enables optimal risk transfer (a point beyond which the efficiency gains of an optimal risk transfer are lost).

- (2) Efficient risk allocation and mitigation are central to bringing infrastructure projects to financial closure and to providing appropriate incentives during construction and operation. Projects may still be financially viable if some risks are not allocated according to this principle, but costs and, ultimately, the unitary payments or tariffs will be higher. Sponsors and lenders expect higher rewards for assuming higher risks.

Table below provides the structure of a typical risk management matrix (covering some of the risks and likely allocation).

Table 1 : Matrix for risk allocation

RISK	DESCRIPTION	PUBLIC SECTOR	PRIVATE SECTOR	SHARED
Site risk	Land acquisition and resettlement delay, and cost overrun	✓		
	Unable to acquire entire project land site	✓		
Design risk	Design faults		✓	
	Design fault in tender specification	✓		
Construction risk	Construction cost increase		✓	
	Poor performance of subcontractors		✓	
	Delay in completing construction works		✓	
	Failure to meet performance criteria at		✓	
Financial risk	Financial structure risk		✓	
	Interest rate risk (fluctuation of loan		✓	
	Inflation rate risk (increase of inflation rate used for estimating lifecycle costs)		✓	
	Foreign exchange rate risk			✓
Operating risk	Availability of facility		✓	
	Non-performance of services		✓	
	Increase in inputs price		✓	
	Misestimating operating and maintenance		✓	
Revenue risk	Variation of demand from forecast levels, for reasons beyond control of the		✓	
	Changes in market prices		✓	
	Incorrect estimation of revenue from income generation model		✓	
	Failure to implement contractual changes	✓		
Unexpected event risk	Natural disasters			✓
	Events of war, riots, civil disturbance			✓
	Government acts/omissions causing project cessation	✓		
Political risk	Currency convertibility	✓		
	General change in laws		✓	
	Change in law specific to the project	✓		
	Delay in achieving planning approval	✓		

## Methods for Managing risks associated with the Public Private Partnership Projects

The Implementing Institution can manage its risks associated with the Public Private Partnership Projects through following methods:



**(1) Use of a well defined and standard contractual framework**

The Public Private Partnership Agency shall draft the standard Public Private Partnership Agreements making provisions for proper allocation and mitigation of risk. The Implementing Institution shall make modifications to the standard Public Private Partnership Agreement so as to balance the risk and reward framework.

**(2) Adequate insurance against risks**

The implementing Institution shall ensure that adequate insurance has been taken for all the Project assets and make provisions for the same in the Public Private Partnership Agreement.

**(3) Diversification of the investor–lender–stakeholder base**

It is a prudent practice to diversify the investor-lender-stakeholder base so as to provide cover in case of a default. The Public Private Partnership Agreement shall have measures for step-in by the lenders or the Government in case of a default.

## **Schedule 5**

### **Value for Money Assessment**

1. The objective is to compare the value for money achieved through a particular Public Private Partnership structure as compared to traditional procurement and other project options.
2. The Value for Money assessment is conducted through qualitative as well as quantitative methods. Qualitative assessment precedes the Quantitative assessment.
3. The Value for Money analysis compares the relative merits of Public Private Partnership procurement against public procurement model, usually through public sector comparator.

### **Qualitative assessment**

- (1) A Qualitative Value for Money assessment involves analysis of the project by assessing the extent to which the following value drivers are achieved:
  - (a) Optimal risk allocation
  - (b) Whole of project life cost efficiencies
  - (c) Innovation
  - (d) Measurable outputs
  - (e) Asset utilisation
  - (f) Competition

- (2) The key value drivers and tests to assess them are mentioned in the Table 4 below.

Table 2 Qualitative Value for Money assessment

Value driver	Test
Risk allocation	<p>Does the project offer enough opportunities for risk transfer to private sector?</p> <p>Allocation of risks to the private sector offers the potential to generate significant value for money outcomes vis-à-vis traditional procurement.</p> <p>Value for Money assessment involves a risk evaluation which includes risk transfer to the private sector that it is best able to manage, including those associated with providing the specified services, asset ownership and whole of life asset management.</p>
Whole of life costing	Does the project demonstrate enough attributes for integration of up front design and construction costs with ongoing service delivery, operational, maintenance and refurbishment costs?
Innovation	Does the project allow the private sector to determine the approach for the provision and delivery of services in the most cost-effective manner in order to meet the requirements of the output specification?
Measurable outputs	Does the nature of the services enable output specifications and a performance-based contract?
Asset utilization	Does the project offer enough opportunities for reducing costs to government through potential third-party utilization and through more efficient design to meet performance (e.g. service delivery) specifications?
Competitive process	Does a competitive market for the project exist? The use of a competitive process helps to encourage the private party to develop innovative means of service delivery while meeting government cost objectives

- (3) Evaluating a project against above parameters can be a time consuming process and Implementing Institution must include this in the scope of work for financial and commercial advisors at the feasibility stage to conduct a detailed assessment of a project against the above value drivers.

- (4) Once the Qualitative Value for Money yields positive results to pursue a project on a Public Private Partnership modality, a quantitative Value for Money analysis must be conducted.
- (5) The quantitative Value for Money relies on comparison of the cost of the Public Private Partnership against the cost of traditional delivery, which is represented by a Public Sector Comparator cost model. The analysis begins with the selection of the procurement routes to be compared.
- (6) The standard exercise involves comparing the Public Private Partnership project with the traditional procurement, in which the government designs, finances, builds the asset and operates the project either, directly or through singular contracts.

Implementing Institutions may, at present, focus on Qualitative Value for Money analysis and adopt Quantitative Value for Money analysis as the Public Private Partnership environment matures.

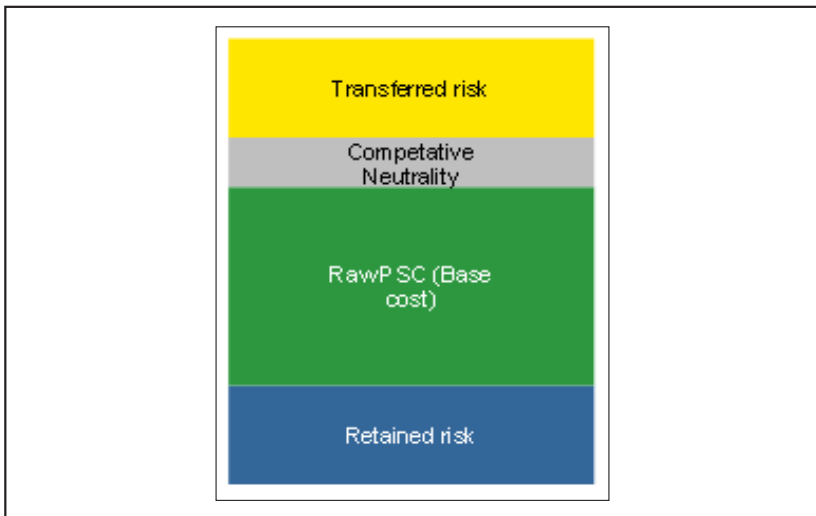
### **Quantitative Value for Money analysis**

- (1) Value for money is paramount and achieving the best value for money outcome should be the key consideration at all stages of a project.
- (2) Value for money 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.

- (3) Quantitative factors are tested by comparing the outputs and costs of Public Private Partnership proposals against a neutral benchmark, called the Public Sector Comparator, which is adjusted for risk (where these risks can be reliably quantified).
- (4) The Quantitative Value for Money is an advanced technique under the Value for Money analysis. It compares the differential cost of competitively tendering the project under a Public Private Partnership agreement versus procuring the project by traditional methods. Governments generally develop a financial model to understand the cost of a project if it was procured through conventional means.
- (5) This financial model is called Public Sector Comparator. The Public Sector Comparator estimates the risk adjusted, whole of life cost to the government of delivering the project under a traditional model. It is made up of raw or base costs, competitive neutrality and risk adjustments, which are explained below:
  - (a) **Base costs:** Base costs included in the Public Sector Comparator are assumed to represent the costs for the Government to provide the project,
  - (b) **Competitive neutrality:** Competitive neutrality removes the net competitive advantages that accrue to a government business by virtue of its public sector ownership. This allows a like-with-like value for money assessment between a Public Sector Comparator and private bids

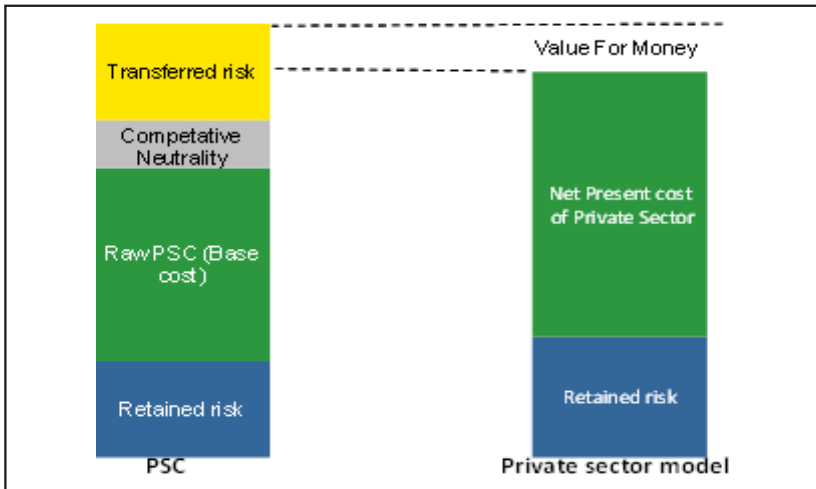
- (c) **Risk adjustments:** Each risk in the project should be identified as either a transferred or retained Risk.
- (d) **Transferred Risks** are those that are likely to be transferred to the private sector under the Public Private Partnership model. The value of transferred risk in a Public Sector Comparator measures the cost government would expect to pay for that risk over the term of the Project.
- (e) **Retained Risks** are those risks or parts of a risk that government proposes to bear under a Public Private Partnership arrangement. The value of retained risks in a Public Sector Comparator measures the cost government would expect to bear for that risk over the term of the Project.

Figure 1: Public Sector Comparator



- (6) The results or the net present cost of the Public Sector Comparator is compared with the net present cost of a shadow bid model or a private sector model.
- (7) If the private sector model has a lower net present cost as compared net present cost of a Public Sector Comparator, then the project is expected to demonstrate Quantitative Value for Money.

Figure 2: Value for Money



- (8) Usually the results of both the qualitative and quantitative Value for Money are considered together to establish whether a project demonstrates a Value for Money. Diligence must be applied while using the results of a Value for Money analysis due to following reasons:

- (a) Private sector bid at times provide a solution which deviates from Request for Proposal requirements but still meets the government objective. Any departures from the Request for Proposal in bid must be taken into account to ensure a like with like comparison with the Public Sector Comparator.
  - (b) The Implementing Institution needs to look through the apparent certainty of any figure, as it is an uncertain estimate, and that it only captures some of the important elements in choosing how to deliver a project. For some projects, a sophisticated risk valuation process is warranted.
  - (c) The private sector bid may incorporate additional innovations which will either increase or decrease costs for government to deliver services. This needs to be taken into account while comparing the private sector bids with the Public Sector Comparator.
- (9) In case of Bhutan, it is advisable that emphasis be laid on Qualitative Value for Money assessment rather than Quantitative assessment. The Quantitative Value for Money assessment generally requires a lot of in-house data to compare the government's cost of developing a project. Also given that at the time of developing these Rules there were very few Public Private Partnerships implemented in Bhutan, hence the data to develop private sector model may not be readily available. Sourcing the data for Quantitative Value for Money analysis may result in project delays and the costs associated with the exercise may outweigh the benefits.



## Schedule 6

### Indicative Timeframe for Procurement Process

The Public Private Partnership Process shall follow below mentioned minimum timeframe unless Public Private Partnership Agency approves deviation from the same on case to case basis on justifiable grounds to be put forth in writing by Implementing Institution before Public Private Partnership Agency:

<b>Event Description</b>	<b>Date</b>
Issue of EOI	Day 0
Last date for receiving queries	Minimum 15 days from the date of EOI
EOI meeting	Within 3 days from the last date of receiving EOI queries
Implementing Institution's response to queries	Within 7 days from the date of EOI meeting
EOI application Due Date	After minimum 10 days from the date of Implementing Institution's response to queries
Issue of Request for Qualification	Day 0
Last date for receiving queries	Minimum 25 days from the date of Request for Qualification
Pre-Application Conference	Within 5 days from the last date of receiving queries
Implementing Institution's response to queries	Within 7 days from the date of Pre-application conference
Application Due Date	Minimum 14 days from the Implementing Institution's response to queries
Opening of Bids	On Application Due Date
Announcement of short-list	Within 45 days of Application Due Date
Issue of Request for Proposal	Within 7 days of announcement of short-list from Request for Qualification stage
Last date for receiving queries	Minimum 25 days from the date of Request for Proposal
Pre-Bid Conference-1	Within 5 days from the last date of receiving queries
Implementing Institution's response to queries	Within 7 days from the date of Pre-Bid conference-1
Pre-Bid Conference-2*	At least 15 days from Pre-Bid Conference-1
Implementing Institution response to second pre-Bid queries latest by	Within 7 days from the date of Pre-Bid conference-2
Bid Due Date	Minimum 14 days from the Implementing Institution's response to queries
Opening of Bids	On Application Due Date
Letter of Award (LOA)	Within 30 days of Bid Due Date
Validity of Bids	Minimum 120 days from Bid Due Date
Signing of Concession Agreement	Within 45 days of issue of LOA

\*In case of complex projects, the number of Pre-Bid Conferences could be two or more than two. For repetitive projects, one Pre-Bid Conference would suffice.

## **Schedule 7**

### **Direct Negotiation Framework**

1. Direct negotiation, if required, shall be done according to the steps outlined herein.

**(1) Step 1. Establish the negotiating team**

Implementing Institution shall form a negotiation team for direct negotiation. The membership of the negotiation team shall be:

- a) Head of Implementing Institution or his representative as the head of negotiating team;
- b) Project officer of the Project Committee;
- c) Head of Public Private Partnership Agency or his representative; and
- d) Other members as deemed fit by Public Private Partnership Steering Committee.

As a general rule, smaller teams lead to more efficient negotiations. First negotiations shall be held around commercial issues and once these are settled detailed discussions on the points of law or contractual terminology can be done.

**(2) Step 2. Set the negotiation framework**

The negotiating team shall set a framework for contract negotiations and get it approved by the Public Private Partnership Steering Committee. The terms usually feature the following:

**(a) Definition of negotiating issues**

The issues to be negotiated should be clearly set out together with the Implementing Institution's position on each of them.

**(b) Control of drafting**

The drafting process should be managed by the legal advisors to the Implementing Institution, including management of version control and assessing which parties need to review changes. The negotiation team must ensure that amended documents are only circulated to parties with a direct interest, to avoid unnecessary discussions and delays.

**(c) Recording of agreed matters**

All matters agreed upon during the negotiations should be recorded in meeting notes and agreed at the end of each meeting.

**(d) Do not revisit agreed issues or introduce new ones**

The negotiation team shall not admit any new issues into negotiations (i.e. issues not raised previously in bids) and the parties should agree not to re-open issues already agreed.

**(e) Agree to a timetable for the negotiation**

This is important to prevent delaying tactics and ensure the overall timetable for project implementation is upheld.

**(f) Agree to a dispute resolution process**

An agreed process for overcoming any impasse in negotiations shall involve seeking resolution from

Public Private Partnership Steering Committee if required.

**(g) Authority to commit**

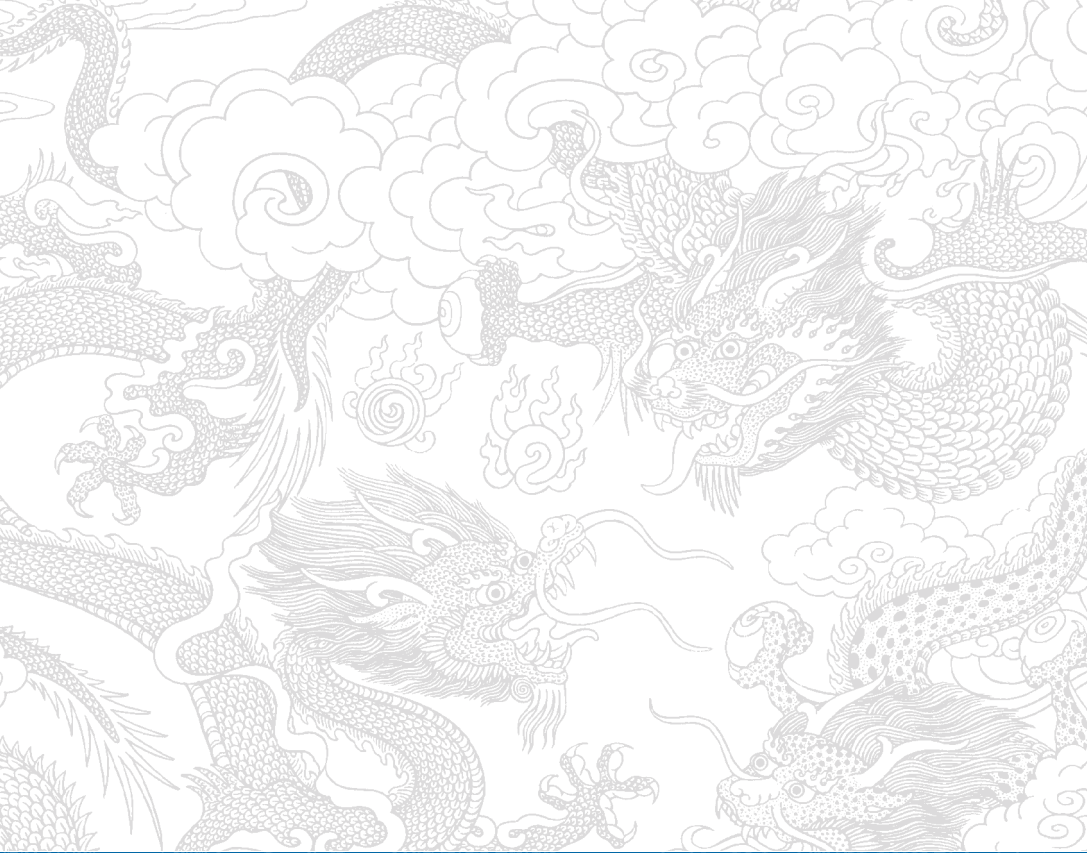
The negotiating parties need to appoint members with the authority to make decisions on behalf of their organisations (although in certain instances approval of government may be required before the Implementing Institution can agree on these issues).

**(3) Step 3. Report to government**

At the end of the negotiations, a report shall be prepared by the negotiation team to the Public Private Partnership Steering Committee and for approval or endorsement by Lhengye Zhuntshog. This should set out any material changes to the details of the proposal and confirms that the proposal provides a value for money outcome. It should also confirm that adequate funding is available and that the Implementing Institution recommends that a contract is entered into.

**(4) Step 4. Contract close or execution**

Once the approval process is complete, the contract is awarded to the successful Bidder. A suitable date and venue are nominated for contract execution, where the Implementing Institution's representative signs the Public Private Partnership Agreement after all other parties have signed. A public announcement of the Public Private Partnership Agreement and the successful Bidder shall be made when agreement is executed.



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