PUBLIC PRIVATE PARTNERSHIP GUIDELINES 2019

MINISTRY OF FINANCE
ROYAL GOVERNMENT OF BHUTAN

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དཔལ་ལྡན་འབྲུག་གཞུང་། དངུལ་རྩིས་ལྷན་ཁག།
ROYAL GOVERNMENT OF BHUTAN
MINISTRY OF FINANCE
TASHICHHO DZONG
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དངུལ་རྩིས་བློན་པོ།
FINANCE MINISTER

FOREWORD

The Royal Government of Bhutan has initiated an innovative financing for developmental activities through Public Private Partnership (PPP). Accordingly, the PPP Policy 2016 and PPP Rules and Regulation 2017 was issued, which will help build a sustainable PPP Projects in Bhutan by providing fair and equal excess to all PPP Projects , and also facilitate and promote a structured, institutionalized and predictable approach to PPPs.

The PPP Guideline was developed in line with the PPP Policy and PPP Rules and Regulations to provide a clear procedural framework and analytical tools for assessing the net benefits of PPP in each stage of project cycle. Further, the Guidelines will provide a transparent mechanism to pursue innovative solutions to deliver improved public infrastructure, services, and value for money.

The Ministry of Finance, with a view to facilitate the implementation of PPP projects effectively and efficiently and provide transparent and detailed implementation procedure for PPP projects, issues the PPP Guideline 2019.

This Guidelines shall come into force from 1st June, 2019.

(Namgay Tshering)

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FREQUENTLY USED ABBREVIATIONS

ADB	Asian Development Bank
BOT	Build-Operate-Transfer
CMC	Contract Management Committee
DBO	Design-Build-Operate
DBFMO	Design, Build, Finance, Maintain, Operate
GNHC	Gross National Happiness Commission
FCCL	Fiscal commitments and contingent liability
MoF	Ministry of Finance
O&M	Operations and Maintenance
PCN	Project Concept Note
PDF	Project Development Fund
PIN	Project Information Note
PPP	Public-Private Partnership
PPP RR	PPP Rules and Regulations
PSC	Public-Private Partnership Steering Committee
RGoB	Royal Government of Bhutan
SPV	Special Purpose Vehicle
TA	Transaction Advisor
VGF	Viability Gap Funding
VfM	Value for Money

DEFINITION OF TERMS

The same definition apply as in the PPP Policy 2016 and PPP Rules and Regulations of 2017.

"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.

"Application" means the submission made by the Applicant in response to Request for Qualification.

"Bid" means the offer or proposal submitted by the Bidder in response to Request for Proposal.

"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.

"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.

"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.

"Institutional Function" means a service, task, assignment or other function that an Institution is obliged or entitled to perform under the law or in the public interest, and includes any incidental or ancillary service, task, assignment or other function required to perform the primary service, task, assignment or function.

"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.

"Public Private Partnership" means a contract between an institution and a private party whereby the private party renovates, constructs, operates, maintains, and/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 renumeration according to agreed terms. PPPs 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.

"PPP Policy" means the policy approved by the RGoB in March 2016 which outlines the policy framework for PPPs.

"PPP Rules and Regulations" means the governing rules and regulations of the PPP policy.

"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.

"Project" means the Public Private Partnership project implemented or being implemented by the Implementing Institution.

"Private Entity" means the private sector entity not owned and controlled by Government.

"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.

"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.

"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.

"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.

"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 Zhungtshog, according to Policy and these Rules and Regulations.

1 INTRODUCTION

1.1 Context

The Royal Government of Bhutan (RGoB) has included the utilization of Public-Private Partnerships (PPP) in its 10th Five-Year Plan (2008-2013) in acknowledgement of the role that the private sector can undertake in the delivery of public infrastructure projects and public services. The RGoB approved a PPP policy during the 98th session of the Lhengye Zhungtshog held in March 2016. Accordingly, PPP Rules and Regulations was drafted in line with PPP Policy and published in 2017 to provide a legal and regulatory framework for PPPs in Bhutan. RGoB remains interested in the utilization of PPPs and continues to be a priority in the 11th (2013-2018) and 12th (2018-2023) Five-Year Plans.

1.2 Purpose of the Guidelines

The PPP Guidelines provide Implementing Institutions and the PPP Unit with a procedural framework and analytical tools enabling them to assess whether the use of PPP can deliver net benefits in a specific project, and how these benefits can be effectively achieved.

The *Guidelines* are consistent with the National PPP Policy and PPP Rules and Regulations of the Royal Government of Bhutan.

1.3 Scope of the Guidelines

The *Guidelines* apply to all projects undertaken in PPP by government entities established in RGoB.

In order to reduce the administrative burden of the PPP framework, the application of the *PPP Guidelines* may be restricted to projects with an investment cost or a contract value exceeding Nu 150 million in line with Section 35 of the PPP Policy.

In order to determine the scope of this Guidelines, the definition of a PPP must be defined. For the purpose of the present *PPP Guidelines*, we will utilize the definition provided by the PPP Policy of 2016:

A PPP is a commercial transaction, that is of benefit to the Government in terms of its plan and policies, between an Institution and a Private Partner in terms of which the Private Partner:

i. *Performs an Institutional Function on behalf of an Institution by designing, constructing, financing, operating and/or maintaining Infrastructure Facilities; and/or*
ii. *Assumes the use of Public Property for its own commercial purposes; and*
iii. *Assumes optimal financial, technical, operational and/or environmental risks in connection with the performance of the Institutional Function and/or use of the Public Property, in terms of the PPP Agreement; and*
iv. *Receives compensation for performing the Institutional Function or from utilising the Public Property provided it meets the prescribed quality and quantity standards in terms of the PPP Agreement, either by way of:*
    a) *Consideration to be paid by an Institution from its budget or revenue; or*
    b) *Charges, fees or tariffs to be collected by the Private Partner from end-users/buyers; or*
    c) *A combination of such consideration and such charges, fees or tariffs.*

Almost every action of the government involves some interaction with the private sector. However, the mere existence of interaction does not imply that there is a PPP, as is now generally understood by that term. The following frequently occurring relationships between public and private entities each lack several characteristics listed above and therefore cannot be regarded as PPP:

- Simple purchase of goods from private suppliers: the private party assumes no financial, technical and operational risks;
- Purchase of specific and short-term services (construction including turnkey construction contracts, maintenance, consultancy, among others); and
- Privatization of public assets.

In the first two cases the relation between the public and private sector is of a short-term nature and implies no or only a limited transfer of project risk to the private party. They are examples of conventional public procurement. In the third case, there is a substantial transfer of risk to the private sector, but no significant long-term relationship between public and private sector. Once the property rights of the public assets have been handed over to the private sector, the public sector is no longer directly involved in the project and its role is restricted to regulatory oversight.

1.4 Structure of the Guidelines

The *PPP Guidelines* consist of the following parts:

- **PPP Models**
  Chapter 2 describes the main types of PPP arrangements.

- **PPP Institutional Framework**
  Chapter 3 highlights key institutional roles in the PPP Project Cycle.

- **PPP Project Cycle**
  Chapter 4 presents a brief overview of the PPP Project Cycle. The main stages and decision moments are indicated.

- **Guidance for each stage of the PPP Project Cycle**
  Chapter 4.1 – 4.3 addresses each stage of the PPP Project Cycle. These chapters comprise sections on (1) the *procedural steps* that must be followed, (2) *operational guidance* for the PPP aspects in these steps, (3) *PPP assessment tools* that can be used by the implementing institution, the PPP Unit and their consultants.

- **Annexes**
  The annexes contain detailed information referred to in the preceding chapters:
  - **Annex A – Project Development Fund Guidelines**
  - **Annex B – Project Concept Note Template**
  - **Annex C – Project Information Note Template**
  - **Annex D – Feasibility Study Guidelines**
  - **Annex E – Fiscal Risk Management Guidelines**
  - **Annex F – Viability Gap Funding Guidelines**

2 PPP MODELS

The PPP Rules and Regulations of 2017 outline the possible PPP modalities that may be applied to Bhutanese PPP Projects:

- Management Contract;
- Lease Contract;
- Design-Build-Operate (DBO) Project; and
- Build-Operate-Transfer (BOT) Project.

Other PPP modalities may also be applied to Bhutanese PPP Projects in accordance to the PPP RR. Thus, the Implementing Institution is given the option to use other PPP modalities that are not mentioned in this section in structuring their projects. The PPP modality chosen will follow the efficient risk allocation principle.

The PPP modalities mentioned in the PPP RR are further described below:

2.1 Management Contract

In this model the management and operation of the public service are contracted out to a private entity. Although the 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.

2.2 Lease Contract

Under this model, the responsibility for the 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. However, the obligation for new and replacement investments remains the responsibility of the public authority. The private partner is compensated through unitary payments.

2.3 Design-Build-Operate Project

Instead of outsourcing the engineering, construction and maintenance/operations of an asset with separate contracts, these services, as well as the financing of the assets are procured with a single integrated contract: a Design-Build-Operate (DBO) contract.

Hence, the private contractor (usually a consortium of specialised firms covering the required areas of expertise) designs, constructs, maintains and often also operates the infrastructure, all according to the specifications of the Implementing Institution. The contractor does not sell its services directly to the end-user, but to the Implementing Institution. It is paid by the Implementing Institution in the form of performance fees (payment in function of the service level), availability fees (payment in function of the availability of the infrastructure) or shadow tolls (fee per user, but paid by the public sector instead of the user) for the duration of the contract. The revenues from these fees are used to cover costs and earn a return on investment.

The contract period must be sufficiently long to amortize the investments in the fixed assets. Typical contract periods are 20-30 years.

2.4 Build-Operate-Transfer Project

The BOT resembles the DBO model described above but differs from the latter in one essential respect: the private concession holder sells its services directly to the end-user of the services and assumes the commercial risk. It is not paid by the Implementing Institution. In contrast, it usually pays a concession fee to the Implementing Institution for the right to operate the facility on a commercial basis.

BOT concessions also differ from lease contracts in the fact that the latter do not involve private finance and construction of infrastructure, but only operations (including some investments in superstructure and equipment). As in the case of operating concessions, the Implementing Institution may impose operational requirements on the concessionaire in the concession agreement. In this way the public sector can ensure that public interests are safeguarded.

The contract period of a BOT concession must be sufficiently long to amortize the investments in the fixed assets. Typical contract periods are similar to those of integrated outsourcing with finance, i.e. 20-30 years and sometimes even longer.

3 PPP INSTITUTIONAL FRAMEWORK

The key institutions involved in the PPP project cycle are:

- Implementing Institution;
- PPP Unit;
- Project Committee;
- PPP Steering Committee;
- GNHC Secretariat;
- Ministry of Finance;
- Lhengye Zhungtshog;
- The Royal Government of Bhutan;
- Transaction Advisor; and
- Private party.

The respective roles of these institutions in the preparation, procurement and implementation of PPP projects are defined in the *PPP Policy* and *PPP Rules and Regulations.* An overview of the institutional roles is presented in the paragraphs below. The roles are further elaborated in the following chapters devoted to particular stages of the project cycle.

3.1 Implementing Institution

The *PPP Policy* designates the Implementing Institution as the prime actor in the development and implementation of PPP projects. The Implementing Institution takes the lead in all stages of the project cycle. For carrying out its duties over the whole project cycle, the Implementing Institution establishes and chairs a special working level Project Committee, consisting of representatives from the Implementing Institution and other representatives from different institutions (PPP Unit, National Land Commission).

In particular, it is responsible for:

- Identifying projects to be developed as PPPs;
- Carrying out project needs and options analysis and a feasibility study to assess the feasibility and desirability of the project and its implementation in a PPP;
- Procuring a transaction advisor to assist with the feasibility study and the procurement process;
- Conducting a procurement process to select the private party;
- Signing the PPP agreement with the selected private party; and
- Managing the PPP relationship in the implementation phase until the end date of the PPP agreement (including performance monitoring and contract management).

The Implementing Institution is responsible for the acquisition and ensuring of the availability of the land for the PPP project (with the assistance of the National Land Commission Secretariat), and ensures all the necessary approvals are obtained in order.

Moreover, Implementing Institution is responsible for its fiscal commitment management, including the management of contingent liabilities.

For management of the PPP relationship during the implementation phase, the *PPP Rules and Regulations* allow the Implementing Institution to establish a Contract Management Committee or appoint the Project Committee to perform contract management functions.

3.2 Project Committee

The Project Committee is formed by the Implementing Institution to conduct project feasibility assessment and lead the procurement proceedings. Its main functions are as follows:

- Maintain all documentation relating to the Public Private Partnership Project;
- Define the objective of the Public Private Partnership Project;
- Undertake consultations with stakeholders for the identification of the Public Private Partnership Project and documenting the same;
- Conduct project needs and option analysis;
- Prepare a Budget for the development and Procurement process of a Public Private Partnership Project;
- Prepare a work plan for Public Private Partnership Procurement;
- Prepare the Project Information Note;
- 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;
- Assess payment or revenue mechanism for the Public Private Partnership Project and establishing its affordability for the Implementing Institution and potential users;
- Develop the structure of Public Private Partnership Project with the help of Transaction Advisor;
- Undertake the processes for appointment of advisors or consultants, if required, and documenting the same;
- Prepare or cause the preparation of feasibility analysis report;
- Plan, budget and Implement the feasibility analysis and procurement process and documenting the same;
- Obtain necessary approvals from relevant authorities for developing the Public Private Partnership Project; and
- Efficiently manage all key activities related to the development and procurement of the Public Private Partnership Project, on behalf of the Implementing Institution.

The composition of the Project Committee is as follows:

- Chairperson, the Head of the Implementing Institution;
- 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;

- A member of PPP Unit nominated by the Head of the PPP Unit;
- A member of National Land Commission Secretariat; and
- 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.

3.3 PPP Unit

The PPP Unit is an agency set up under the Ministry of Finance as the focal point implementing agency for Bhutan's PPP program. Its main functions are as follows:

- Review the Project Concept Note with a view to determine the preliminary feasibility of the Project;
- Provide technical assistance to Implementing Institutions and Project Committee throughout the Public Private Partnership project lifecycle;
- 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;
- Provide assistance to Project Committee in evaluation of Qualification and Request for Proposal submitted by the applicants or bidder;
- 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;
- Act as knowledge repository of guidelines and best practices for Public Private Partnership projects;
- Provide training and support to different Ministries for implementing Public Private Partnership projects;
- Develop common standards, practices, benchmarks, promoting consistency in how Public Private Partnerships are developed and delivering confidence to stakeholders;
- Prepare rules and regulations, guidelines and standard bidding documents including Public Private Partnership Agreements;
- 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;
- Coordinate among Institutions for educated and efficient decision making;
- 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;
- Provide quality assurance and oversight to the review of feasibility studies and bidding documents;

- 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;
- Grant no objection certificate 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;
- Negotiate contracts on behalf of Implementing Institution; and
- Approve the feasibility study and select the Preferred Bidder for projects with project cost (excluding cost of land) below Nu 150 Million.

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

3.4 PPP Steering Committee

3.4.1 PPP Steering Committee Members

The PPP Steering Committee (PSC) oversees the activities of the PPP Unit and the Project Committees, created under the Implementing Institutions. The Steering Committee comprises of:

- Secretary of Finance;
- Secretary of GNHC;
- Secretary of National Land Commission; and
- Secretary or Head of the concerned Ministry or agency identified and appointed by the Government.

3.4.2 Functions of PSC

- Cross-institutional and cross-sectoral coordination for PPP projects;
- Provide approval for engagement of transaction advisors;
- Approval of the recommendations of the PPP Unit and Project Committee on certain issues during the project cycle and subsequent recommendation to the Lhengye Zhungtshog for its approval:
  - » Suitable projects for inclusion in the list of approved Public Private Partnership projects upon the approval of Gross National Happiness Commission;
  - » 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;
  - » In-principle approval for Financial Assistance to qualifying projects prior to bidding process;
  - » Recommend the approval of Financial Assistance to the LZ
  - » Approval for any material amendments to a Public Private Partnership Agreement post award.

- **Contract management:**
    - » Approve standard contractual stipulation with regard to fiscal commitments;
    - » Grant approval to the Implementing Institution for getting into the PPP Agreement with the Preferred Bidder;
    - » Approve the amendment, if any to PPP Agreement resulting from contract renegotiation and recommend the same for approval of Lhengye Zhungtshog or its delegated agency; and
    - » Assess the impact of all PPP projects on overall Government fiscal position and undertake an assessment of systemic risk of Public Private Partnership projects.

3.5 Gross National Happiness Commission Secretariat

The Gross National Happiness Commission Secretariat has the following functions in the PPP project cycle:

- Review and approval of Project Information Note;
- Approval of suitable projects for inclusion in the list of approved PPP projects (except for projects with project cost below Nu 150 Million);
- Register the project and provide a written confirmation of the registration along with registration number of the PPP project to the Implementing Institution;
- Approval of PPP rules and regulations, guidelines and standard agreements;
- Maintain details of PPP projects on the official database of PPP projects;
- Track the progress of PPP projects and update the database throughout the project cycle;
- When required, apprise Government of all PPP projects registered with it; and
- Approval of Project Tender Documents prior to issuance, if Standard Tender Documents are not available for a specific project or sector.

3.6 Ministry of Finance

The Ministry of Finance has the following functions in the PPP project cycle:

- Review of the project documents (as a member of PPP Steering Committee) as regards the project's fiscal requirements, such as subsidy, budgetary and contingent support requirements;
- Establishment of a Project Development Fund;
- Review of Project Information Notes submitted by Implementing Institution for applications for financial assistance from the PDF;
- Approval of funding for Transaction Advisors on a case to case basis until the PDF is set up and operationalized;
- Approve disbursements of funds from the PDF;
- Advising on financial assistance (VGF or other fiscal or non-fiscal incentives) requirements and approval of the project;
- Disbursement of VGF to the Lead Financial Institution;
- Issuance of corrective action to the Implementing Institution in case of receipt of non-compliance report in relation to a VGF grant;

- Develop and implement adequate fiscal and risk management framework that is capable of estimating the fiscal implications of project risk and contingencies;
- Assess affordability of proposed PPP fiscal commitments in light of budget constraints and priorities;
- Monitor Impact of PPP fiscal commitment on fiscal risks;
- Incorporate updated fiscal commitments into budgetary provisions and reports; and
- Allocate and release budget for direct payments and realized contingent liabilities.

3.7 Lhengye Zhungtshog

The functions of Lhengye Zhungtshog within the PPP project cycle include:

- Identification, planning and development of a potential PPP project;
- Approval of suitable projects for inclusion in the list of approved PPP projects upon approval of GNHC (except for projects with project cost below Nu 150 Million);
- Approval of PPP rules and regulations, guidelines and standard agreements upon approval of GNHC;
- In-principle approval of Financial Assistance (VGF or other fiscal or non-fiscal incentives) to qualifying projects prior to bidding process;
- Approval of Project Tender Documents prior to issuance if Standard Tender Documents are not available for a specific project or sector;
- Approval of Request for Proposal (RfP) documents prior to issuance if there are material deviations from standard RfP documents;
- Approval of PPP agreement prior to issuance if there are material deviations from standard PPP agreement;
- Final approval of Financial Assistance (VGF or other fiscal or non-fiscal incentives) on selection of Preferred Bidder;
- Determine an overall cap in funding support through limits on VGF;
- Approval for any material amendments to a PPP Agreement post award;
- Approval of amendment to the PPP Agreement resulting from contract renegotiation;
- Approval for project to be taken on traditional procurement or permit direct negotiation for the project award by the Implementing Institution in case of failure of the tender process;
- Approval of the decision to undertake procurement through the competitive Dialogue; and
- Establishment of a special committee for fast track approvals for Special Projects, if required;

3.8 The Royal Government of Bhutan

The Royal Government of Bhutan provides technical assistance to the Implementing Institutions in two ways:

- By delegating its responsibilities to the PPP Unit; and
- By providing direct financial assistance to the projects (with the approval of Lhengye Zhungtshog)

3.9 Transaction Advisor

The transaction advisor is appointed by the Implementing Institution, subject to approval of PPP Steering Committee, and assists the Implementing Institution with the preparation and procurement of the PPP project. In particular, the transaction advisor is tasked with:

- Carrying out of a comprehensive feasibility study of the PPP project, covering all aspects of the project: technical, economic, financial, social, environmental, legal, institutional, PPP rationale (value for money) and PPP structuring;
- Preparing of bid documents (request for qualification, request for proposals, PPP agreement, output specifications) in the absence of standard bid documents or in the case where the standard bid documents will not apply to the specific project;
- Assist the Implementing Institution with procurement and contracting process (answering questions from bidders, organization of pre-bid conferences, negotiation with bidders, evaluation of applications and bids, among others);
- Preparation of contract management framework.

Either the PPP Unit or a consultant can be engaged in providing these services. Due to the multidisciplinary nature of the transaction advisory services, in the latter case the Transaction Advisor usually consists of a consortium of specialized consulting firms and advisors (technical, legal, financial).

3.10 Private Party

The private party is responsible for the implementation of the project under the terms of the PPP agreement. Depending on the scope of the PPP agreement this may include:

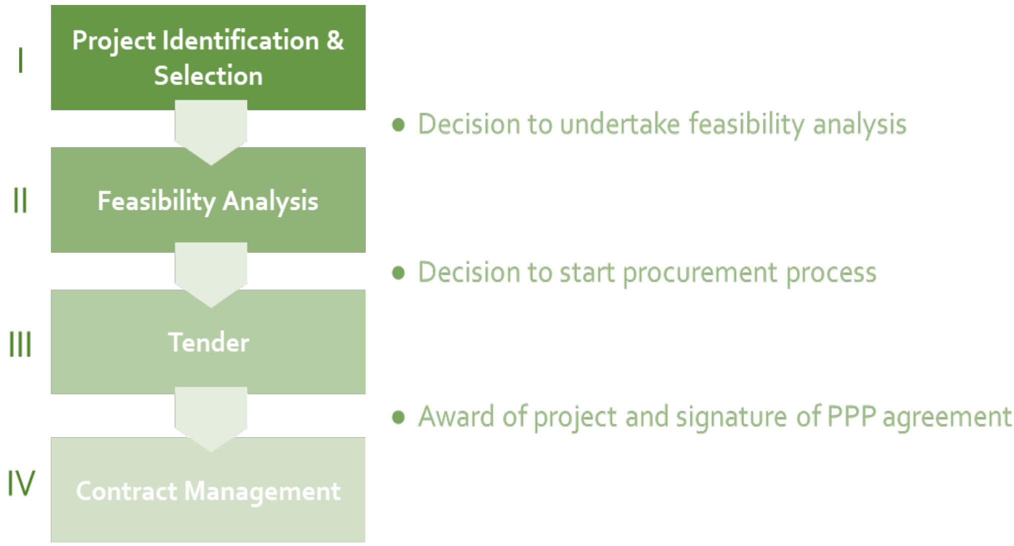
- Construction of new public infrastructure or rehabilitation of existing public infrastructure;
- Maintenance and operation of said infrastructure, in order to provide services to users.
- Financing of capital expenditures on infrastructure and equipment.

In return for these services the private party is remunerated by user tariffs (in user fee based PPPs), by unitary or annuity government payments (in availability-based PPPs) or a combination of both (hybrid PPPs).

4 OVERVIEW OF THE PPP PROJECT CYCLE

The figure below shows the main stages and decision points of the PPP Project Cycle.

Figure 1: Main stages of the PPP Project Cycle



Four main project stages can be distinguished based on the PPP RR:

- Project Identification & Selection: selection of a project for development as a PPP;
- Feasibility Analysis: project design and feasibility assessment;
- Tender: selection of the preferred bidder;
- Contract Management: implementation of the project.

After each stage, an Implementing Institution must decide whether to proceed to the next stage, subject to the approval of the PPP Steering Committee:

- After the Project Identification & Selection stage: decision to undertake feasibility analysis;
- After the Feasibility Analysis stage: decision to start the procurement process;
- After the Tender stage: awarding of the project and signing of PPP agreement with selected private partner.

Prior to the next stage of the PPP project cycle, an approval is required from a specific Government body as described below:

Approvals of decision to initiate the project:

- Implementing Institution approval;
- PPP Unit approval.

Approvals of decision to undertake the feasibility study:

- Implementing Institution internal approval;
- PPP Steering Committee approval;
- Lhengye Zhungtshog approval (only if the project requires VGF and other substantial fiscal incentives).

Approvals of decision to undertake procurement:

- Implementing Institution internal approval;
- PPP Steering Committee approval;
- Lhengye Zhungtshog approval (use of competitive dialogue).

Approvals of decision to award and sign contract:

- Implementing Institution internal approval;
- PPP Steering Committee approval;
- Lhengye Zhungtshog approval (direct negotiation).

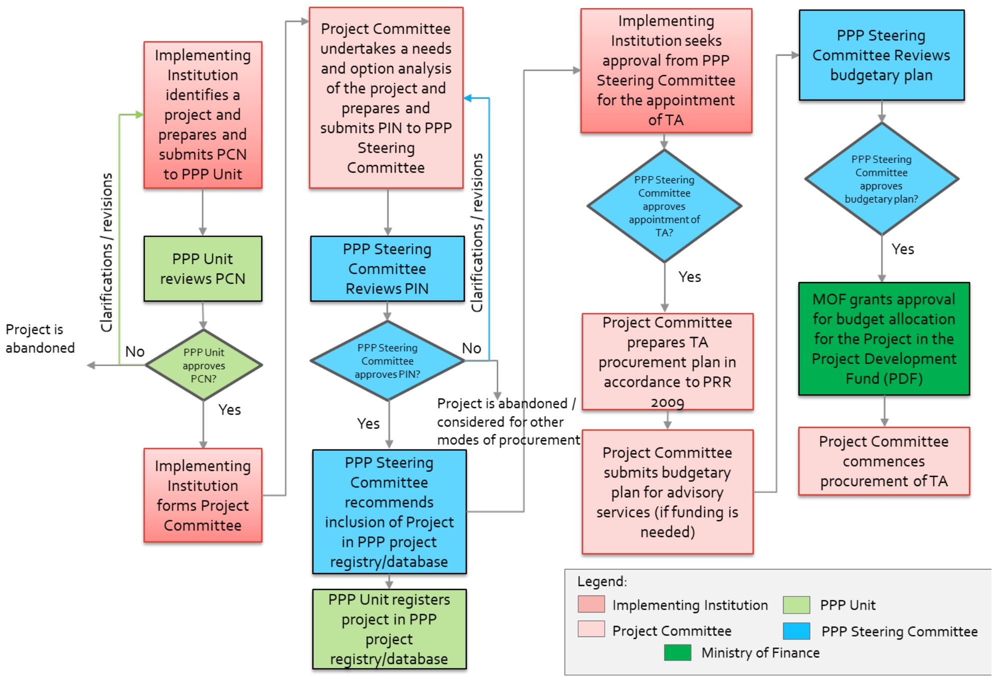
4.1 Stage I: Project Identification & Selection

4.1.1 Overview of the Project Identification & Selection Stage

The objective of this stage is the selection of a project for further development as a PPP.

The steps in the Project Identification & Selection Stage are described by the process map below:

Figure 2: Project Identification & Selection Stage process map



4.1.2 Steps in Project Identification & Selection stage

1. The Implementing Institution shall initiate a potential PPP project by the preparation of a Project Concept Note (PCN)

The PCN shall include information about:

- Project name and definition;
- Expected size of the Project in terms of Project cost, approximate demand forecast, land area required etc.;
- Potential time period of contract;
- Existing status of the Project deliverables;
- Whether the Project is green field or brown field? (record of asset life and quality of the asset for brown field Project);
- The expected role of Private entity and the Implementing Institution; and
- Demonstration of inter-linkages with other Government projects or priorities.

The Implementing Institution then submits the completed PCN to the PPP Unit for its review and approval.

> The template for the Project Concept Note can be found in ***Annex B.***

2. The PPP Unit will review the PCN to determine the preliminary feasibility of the Project

The PPP Unit may in its sole discretion either:

- Reject the PCN; or
- Seek clarification or suggest amendment; or
- Approve the PCN.

If the PPP Unit seeks a clarification or has a suggested amendment to the PCN, the Implementing Institution shall either submit its answers to the PPP Unit's clarifications or review the suggested amendment by the PPP Unit and if it is found reasonable by the Implementing Institution, revise the PCN and resubmit it to the PPP Unit.

If the PPP Unit rejects the PCN, the project is abandoned.
The PPP Unit will use the screening criteria below:

	PPP Project Identification Criteria	Evaluation	
		Yes	No
1	***Is the project within the Implementing Institution's mandate?*** **Description:** The project must fall within the scope or mandate of the implementing institution under applicable laws.		

2	***The envisaged roles of the public and private sector fits in any of the four (4) modalities allowed under the PPP Policy.*** **Description:** This criteria concerns the suitability of the Project as a PPP. If the envisaged roles of the public and private sectors falls within any of the four (4) identified		
	modalities, then the project can be included as part of the list of PPP projects.		
3	***The duration of the project (and hence involvement of the private sector partner) is estimated to be at least 5 years or more.*** **Description:** The project involves the delivery of a public infrastructure and continuous service for a period of at least 5 years or more to achieve value-for-money.		

3. Establishment of the Project Committee

Upon approval of PCN by the PPP Unit, the Implementing Institution establishes a Project Committee.

4. Project Committee performs project needs and options analysis

The Project Committee, upon its formation, will undertake a project needs and options analysis for the project. The Project Committee may seek the assistance of the PPP Unit for the project needs and options analysis.

The project needs and options analysis aims to assess the rationale for undertaking the project as a PPP and support the preparation of the Project Information Note (PIN).

If the project fulfills the PPP screening criteria through the approval of the PCN, the Implementing Institution in partnership with the PPP Unit prepares a Project Information Note (PIN). The PIN details the following information:

- Project scope;
- Alignment of the project objectives with the Government's policies and vision;
- Assessment of Public and Private sectors' readiness to develop and implement the project;
- Preliminary recommendation of the technical solution;
- Preliminary assessment of financial and economic viability of the PPP;
- Possible arrangements for the participation of private entities;
- Recommendations on undertaking the project as PPP;
- Defined time period necessary for project preparation;
- Requirement of Project Development Fund for transaction advisory services; and
- Any additional relevant information about the project.

The PIN is subsequently submitted to the PPP Steering Committee for approval seeking registration of the project in the PPP Program and further development of the project.

The template for the Project Information Note can be found in ***Annex C.***

5. Application for financial assistance from the Project Development Fund (PDF)

To seek financial support for the development of the project, such as transaction advisory, etc. the Implementing Institution may send its request for Project Development Fund. This can be done along with the submission of the Project Information Note. The more detailed description of this procedure is presented in ***Annex A – Project Development Fund Guidelines***.

6. Registration of the PPP project

The Project Information Note is subject to the review and approval of the following institutions (in a consecutive order):

PPP Steering Committee

Project-related issues that the PSC needs to review from the PIN:

- The alignment of the project objectives with strategic objectives of the Government;
- The issues that the project aims to solve, including social, economic and environmental issues;
- Relative benefits of the project vis-à-vis a base case scenario, involving no capital investment;
- The merit of doing the project through the proposed project structure;
- Availability of funds with the Implementing Institution, Ministry of Finance and donor agencies willing to disburse funds; and
- The skill availability within the Implementing Institution or skill augmentation plan to undertake the Project and reach successful completion.

Gross National Happiness Commission Secretariat

Project-related issues that the GNHC needs to review from the PIN:

- The importance of the Project with respect to the five year plan process and specific sector objectives;
- Potential impact on project implementation across other sectors; and
- The fiscal and contingent liabilities that could arise from the Project.

Lhengye Zhungtshog or its delegated agency

The Lhengye Zhungtshog will review the project based on the assessment of the PSC and the GNHC.

After receiving the authorization from the Lhengye Zhungtshog, the project may be registered in the list of approved PPP projects or the database of GNHC.

7. Appointment of transaction advisor (TA)

In the event where the Implementing Institution does not possess sufficient capabilities to undertake the feasibility study and carry out all the activities that are part of the procurement and contracting process, these tasks are outsourced to a transaction advisor, subject to approval from the PPP Steering Committee.

The Implementing Institution prepares a procurement plan for advisory services and starts with procurement of transaction advisor as soon as the project is registered in the PPP program.

The procurement procedures for the appointment of a transaction advisor will be based on the Procurement Rules and Regulations of 2009 which outlines the procurement procedures for consultants' services unless a specific procurement procedure for PPP transaction advisor is developed under the Project Development Fund (PDF).

A PPP Project may be identified by Lhengye Zhungtshog and follows ***Step 4 – Step 7*** as described above.

4.2 Stage II: Feasibility study

4.2.1 Overview of feasibility analysis stage

The main objectives of the feasibility analysis are:

- Investigate and assess the feasibility and desirability of undertaking the project as a PPP;
- Elaborate the project definition (output specifications);
- Determine the optimal PPP structuring (incorporated in a draft PPP agreement);
- Prepare an implementation plan, describing all steps and activities that must be undertaken to realize the project.

On the basis of the feasibility analysis the decision is taken whether or not to approve the project and continue to the tender stage.

In case the project is approved, the feasibility analysis report will provide the project information (technical, legal, financial, environmental, social) that is needed in the tender stage and subsequent implementation stage.

The process map below shows the procedures applicable for the Feasibility Study Stage:

The Project Committee undertakes the feasibility study with the assistance of the transaction advisor (if applicable). ***Annex D*** contains the detailed guideline on the preparation of the feasibility study including the key components of a feasibility study and the process to which each sub-components can be undertaken.

The preparation of the Feasibility Study will be carried out in two parts:

- Technical Feasibility; and
- Financial and Commercial Feasibility.

The PPP Unit may, in respect of projects for which technical solutions exists with Implementing Institution, recommend the technical and financial and commercial feasibility analysis to be undertaken simultaneously. The PPP 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.

4.2.2 Steps for a Project that does not require Viability Gap Funding (VGF)

1. Preparation of the Technical Feasibility Analysis

Components of the Technical Feasibility Analysis:

- Project background including need for the Project;
- Market assessment for the project services and outputs to be achieved from the project;
- Field surveys of the project site, which may include depending on the Public Private Partnership Project mapping, topographical and geotechnical surveys;
- Preliminary technical design of facilities required to provide the project outputs. The preliminary technical design shall take into account alternative design options, uncertainty in the demand projections and other site-related uncertainties;
- Alternatives involving usage of existing assets for the PPP 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 PPP project; and
- Capital expenditure cost assessment and operating and maintenance cost assessment based on the components of the preliminary technical design.

The detailed guidelines on the Technical Feasibility Assessment can be found in ***Chapters 1, 2 and 3 of Annex D.***

2. Approval of the Technical Feasibility Analysis by the PPP Steering Committee

Upon the submission of the Technical Feasibility Study by the Project Committee, the PSC will review the recommendations provided in the technical feasibility and ascertain whether the technical solutions proposed are practicable and as per good industry standards.

The PSC shall satisfy itself on the following parameters:

- Site conditions including geotechnical surveys and land area required;
- Analysis of environmental conditions that impact on the technical design;
- The design of facilities required to provide the project outputs, evaluating them against the standard technical solutions and alternatives available; and

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

Based on the review undertaken, the PSC may:
- Approve the Technical Feasibility Study and allow the Implementing Institution to proceed with the Financial Feasibility Study; or
- Request clarifications from the Implementing Institution on certain aspects of the Technical Feasibility Study; or
- Reject the Technical Feasibility Study.

If the PSC requests for clarifications or rejects the Technical Feasibility Study, the Implementing Institution may:
- Abandon the project;
- Implement the project by other means than PPP; or
- Revise the project and resubmit it to the PPP Steering Committee.

3. Preparation of the Financial and Commercial Feasibility Analysis

Components of Financial and Commercial Feasibility Analysis:
- Assessment of project affordability;
- Risk identification, mitigation and management for optimizing the total cost of project;
- Value for money assessment and
- Project structuring.

The detailed guidelines on the Financial and Commercial Feasibility Assessment can be found in ***Chapters 4, 5 and 6 of Annex D.***

4. Submission of the Implementing Institution of the Financial and Commercial Feasibility Study to the PSC

The Implementing Institution submits the Financial and Commercial Feasibility Study to the PSC.

5. PSC approval of the Financial and Commercial Feasibility Study

Upon the submission by the Implementing Institution of the Financial and Commercial Feasibility Study, the PSC shall review 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.

The PSC will review the financial and commercial feasibility study and will give consideration on the following:
- Whether all the available options have been comparatively evaluated to increase efficiency in project scoping;

- The level of service delivery needs cannot be met with a reduced scope and scale of the PPP Project;
- Areas to optimize capital and operating costs and a strong case built for their reasonableness;
- 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;
- Assumptions regarding user charges, if any, from the PPP Project, are affordable to users and would be socially and economically acceptable to the public at large;
- The tariffs setting and revision framework is predictable and transparent;
- 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
- The sources of contingent liabilities, if any, have been assessed and are acceptable to the Implementing Institution and Royal Government.

A Project is considered financially and commercially viable when the Equity IRR achieved in the project is higher than the Required Rate of Return.

4.2.3 Procedures for a Project that requires Viability Gap Funding (VGF)

1. Submission of the Implementing Institution of the proposal for VGF to the PSC

The PSC will evaluate whether the Project is eligible for VGF according to the criteria below:

- The project is evaluated to be non-viable in the absence of such financial support;
- 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 viability gap;
- The most efficient risk transfer can only be achieved by providing such financial support to the private entity or project Special Purpose Vehicle;
- The tariff or user charge cannot be increased to enhance project viability;
- The project term cannot be increased to enhance project viability;
- The financial support does not jeopardize the incentives of private sector to increase technical and managerial efficiency to reduce cost;
- All other measures of enhancing project viability have been evaluated to minimize the use of Viability Gap Funding;
- 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
- 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.

2. PSC evaluates the VGF proposal

- The PSC will evaluate the request by reviewing the financial model, project structure and assumptions used to calculate the VGF.
- The PSC will assess the VGF proposal on the basis of benefits from the project vis-à-vis fund requirement;
- The PSC will ensure that the VGF requested does not exceed 50% of the project cost (excluding land cost).
- The PSC may, based on its assessment of the VGF proposal:
  » Accept the VGF proposal and confirm availability of funds; or
  » Seek clarifications or suggest amendments to the VGF proposal; or
  » Reject the VGF proposal.

If the PSC accepts the VGF proposal and confirm availability of funds, it shall recommend the project to Lhengye Zhungtshog for grant of VGF.

3. Approval of VGF by Lhengye Zhungtshog

- Upon receipt of PSC's recommendation, the Lhengye Zhungtshog will seek the advice of the Ministry of Finance for the grant or denial of the VGF to the Project.
- The Ministry of Finance will review the VGF proposal and may either:
  » Recommend the grant of the VGF proposal and confirm availability of funds; or
  » Request for clarifications or suggest amendments on the VGF proposal; or
  » Recommend the rejection of the VGF proposal.

- The Lhengye Zhungtshog, upon the receipt of the MoF's advice and at its sole discretion:
  » Grant of the VGF proposal; or
  » Request for clarifications or suggest amendments on the VGF proposal; or
  » Rejection of the VGF proposal.

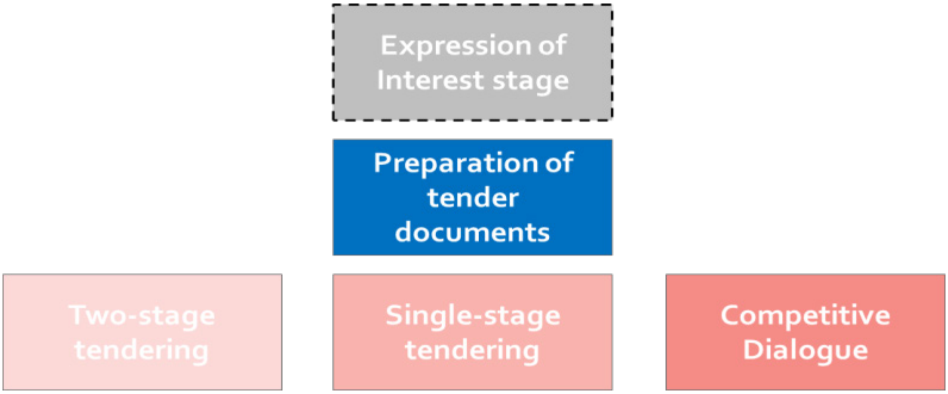
The complete process of the VGF application including disbursement is shown in ***Annex F.***

4.3 Stage III: Tender Stage

The PPP Rules and Regulations of 2017 define three main tender procedures. These are: (1) Two-stage tendering; (2) Single-stage tendering; and (3) Competitive dialogue.

Apart from the tender procedures, there are other procedures that needs to be discussed in the tender stage and this include the (1) Expression of Interest stage, an optional procedure undertaken prior to the initiation of the formal tender procedures and the (2) Preparation of tender documents. In order to structure the process during the Tender

Stage, this Chapter will tackle the procedures based on the illustration below:

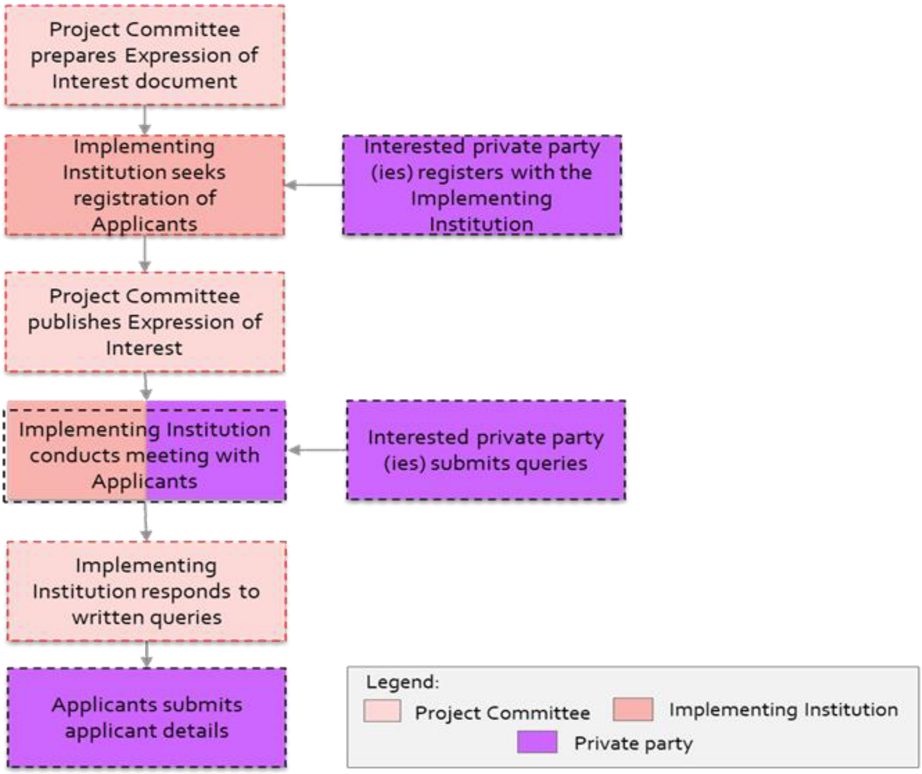


Apart from the main tender procedures, this Chapter will also discuss the Direct Negotiation Procedure and the Grievance Redressal Procedures.

These three main tender procedures will be further elaborated below.

4.3.1 Expression of Interest

The expression of interest procedure is depicted by the process map below:



The Expression of interest stage is an optional step in the tender process. This is undertaken prior to the initiation of the formal proceedings of the Tender Stage.

The expression of interest stage is used by the Implementing Institution to:

- Gauge the interest of private entities on the project; and
- Seek suggestions from private entities on how best to design the project scope or other parameters of the PPP project.

The expression of interest stage in not used to either shortlist or disqualify applicants. Any entity which has not submitted Expression of Interests will be allowed to participate in the RfQ stage according to the terms and conditions that may be specified thereof.

4.3.1.1 Steps for Expression of Interest (EOI) Stage

1. Preparation of the Expression of Interest document

The Project Officer of the Project Committee will prepare the Expression of Interest document containing the following information:

- The description of the PPP project;
- The request for Expression of Interest; and
- A closing date for seeking clarifications.

The Applicants shall be given a minimum timeframe of thirty five (35) days from the publication 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.

The PPP Unit may waive the minimum time requirement depending on project specific requirements.

2. Registration of Applicants

Prior to the issuance / publication of the Expression of Interest to the Applicants, the Implementing Institution will seek registration of Applicants. In this registration process, the Applicant will provide the following information:

- Name of the organization;
- Contact person with designation;
- Address;
- Telephone and fax numbers;
- Email-address of the authorized representative; and
- Any other relevant information.

3. Issuance of Expression of Interest

The Project Committee will issue the Expression of Interest.

4. Meeting with Applicants

The Implementing Institution will convene meetings with Applicants to discuss the Project.

The Applicants will be allowed to ask questions during the market sounding meeting to allow a better understanding of the Project and to boost interest of Applicants towards the Project. The Applicants will be required to submit its queries formally through a written letter submitted to the Implementing Agency.

The Implementing Institution shall ensure that the goals of the Expression of Interest stage are met during the market sounding meeting which is to:

- Disseminate information about the Project;
- Gather information about all interested firms; and
- Record concerns of the interested firms.

5. Written question and answers

Prior to the submission deadline of the Expression of Interest, the Implementing Institution will respond to written queries submitted by the Applicants.

The name of the Applicant shall not be mentioned by the Implementing Institution in its answers to queries.

The Implementing Institution shall be given the prerogative to refrain providing answers to questions that may affect the integrity of the tender procedures.

6. Submission of Applicant Details

The Applicants will submit the information required by the Implementing Institution on or before the submission deadline of the Expression of Interest.

4.3.2 Preparation of Tender Documents

Prior to the start of the tender proceedings, the tender documents are prepared by the Project Committee. The Tender Documents will include the following documents:

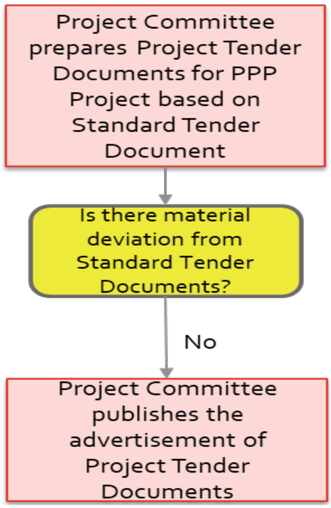
- Instructions to Prospective Bidders (ITPB);
- Instructions to Bidders (ITB); and
- PPP Agreement including its attachments.

The use of the single-stage tender will no longer require the issuance of the ITPB. The qualification requirements will be spelled out in the ITB.

4.3.2.1 Steps in the Preparation of Tender Documents when Standard Tender Documents are available

The process map below illustrates the procedures in the preparation of Tender Documents when:

a) Standard Tender Documents are available and adopted <u>without</u> material deviation:



1. Implementing Institution prepares Tender Documents

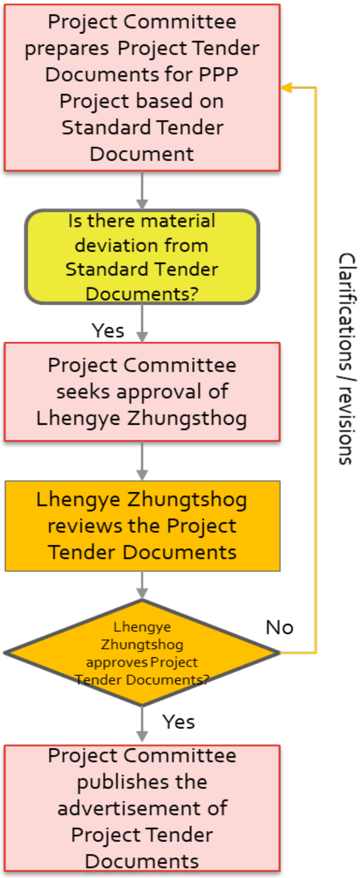
After the approval of the PSC of the Financial and Commercial Feasibility Study, the Implementing Institution may commence in the preparation of the Tender Documents.

In the preparation of the Tender Documents, the Implementing Institution has the option to adopt Standard Tender Documents developed by the PPP Unit keeping in mind the unique characteristics of the Project and the sector to which it belongs to.

2. Proceed to Tender process

The Project Committee will commence with the chosen tender procedure.

*b) **Standard Tender Documents are available and adopted but with material deviation:***



1. Implementing Institution prepares Tender Documents

After the approval of the PSC of the Financial and Commercial Feasibility Study, the Implementing Institution may commence in the preparation of the Tender Documents.

In the preparation of the Tender Documents, the Implementing Institution has the option to adopt Standard Tender Documents developed by the PPP Unit keeping in mind the unique characteristics of the Project and the sector to which it belongs to.

In the event that a Project requires material deviation from the Standard Tender Documents, the tender documents will be approved by key institutions prior to its issuance.

A material deviation in the Standard Tender Documents will be determined by the PPP Unit and is determined through an examination of the risk allocation matrix as against the generic risk allocation matrix in ***Table 13: Generic risk allocation***.

2. Approval of Tender Documents

In the event that the tender documents prepared by the Implementing Institution for a PPP project includes material deviations from the Standard Tender Documents, the Project Committee shall seek approval from the PSC by submitting the tender documents, highlighting the provisions which contains the material deviations to the Standard Tender Documents and its effects on the risk absorbed by the RGoB to the PSC, GNHC and Lhengye Zhungtshog.

The GNHC and the Lhenye Zhungtshog will simultaneously review the submitted RfP documents by the Implementing Institution.

After the review of the submitted RfP documents, the GNHC and Lhengye Zhungtshog may:

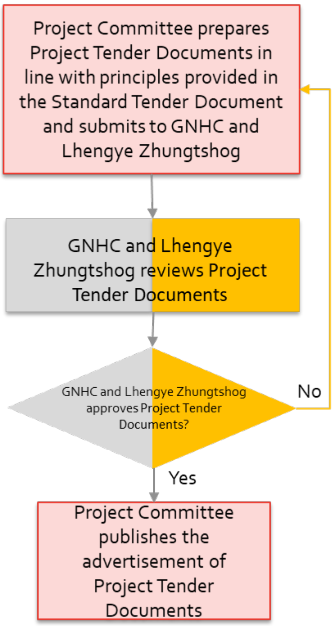
- Approved the RfP documents; or
- Request for clarifications from the Implementing Institution; or
- Reject the RfP documents.

3. Proceed to Tender process

The Project Committee will commence with the chosen tender procedure.

4.3.2.2 Steps in the Preparation of Tender Documents when Standard Tender Documents are not available

The process map below illustrates the procedures in the preparation of Tender Documents when standard Tender Documents are not available:



1. Preparation of Tender Documents

Project Committee prepares tender documents in line with the principles provided in the Standard Tender Document.

The tender documents developed by the Project Committee shall:

- Establish simple procedure and minimize the cost of submitting Applications or Bids;
- Provide appropriate guidelines for evaluation of Application or Bids; and
- Promote the purpose of the Implementing Institution to maximize value for money.

After the development of the tender documents, the Project Committee will submit the documents to the GNHC and the Lhengye Zhungtshog.

2. Approval of Tender Documents

The GNHC and the Lhengye Zhungtshog will simultaneously review the submitted Tender Documents by the Implementing Institution.

After the review of the submitted Tender Documents, the GNHC and Lhengye Zhungtshog may:

- Approve the tender documents; or
- Request for clarifications from the Implementing Institution; or
- Reject the tender documents.

3. Proceed to Tender process

The Project Committee will commence with the chosen tender procedure.

4.3.3 Single-stage Tendering

The single-stage tendering process is applied to:

- Smaller PPP projects of less than Nu one hundred and fifty million (Nu 150,000,000); or
- Repetitive standard Projects.

This tendering procedure can only be used after prior approval from the PPP Steering Committee.

The single-stage tendering process requires the submission of (1) qualification documents; (2) technical proposal and (3) financial proposal in one stage (the RfP stage).

The process map below outlines the overall processes for the Single-stage Tendering:

Figure 3: Single-stage tender – RfP stage

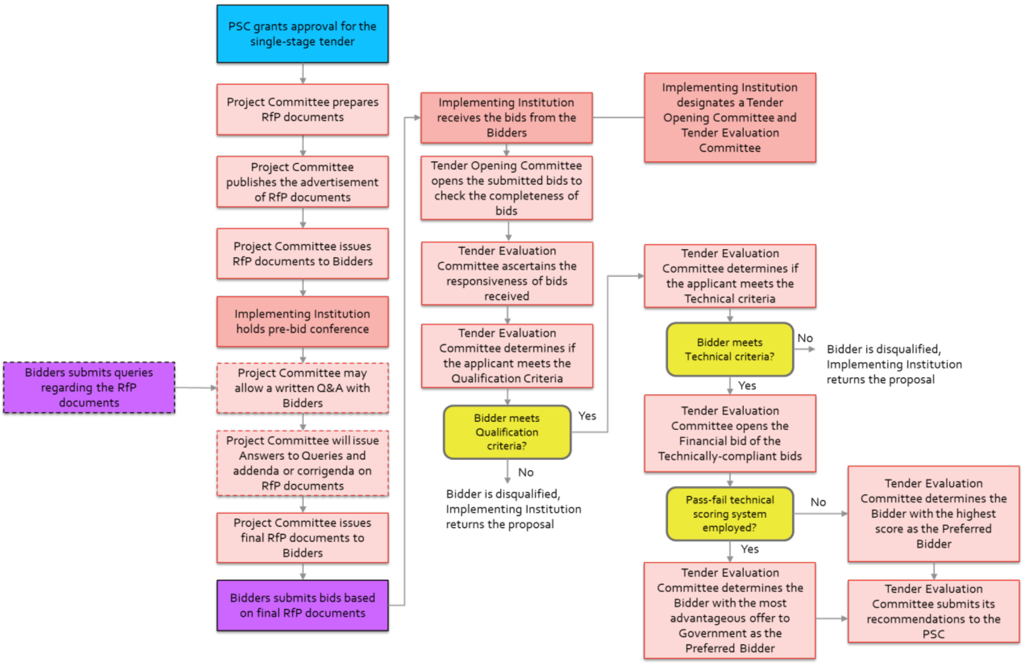
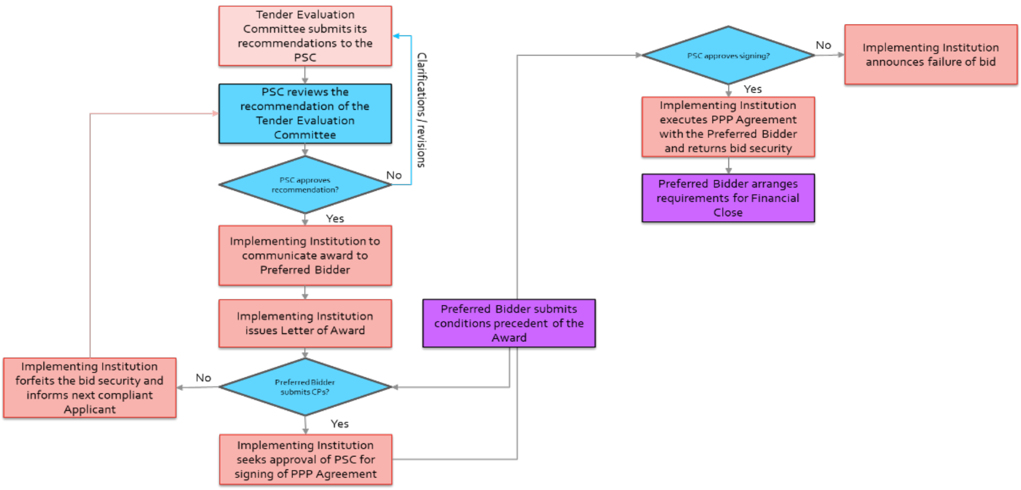


Figure 4: Single-stage tender - Award



1. PSC approval for single-stage tender procedure

The single-stage tender process may be used to speed up the tender procedures but can only be utilized upon the approval of the PSC.

At this stage, the Implementing Institution has decided to conduct a single stage tender process and seeks PSC approval.

Upon receipt of the request of the Implementing Institution to undertake a PPP project using the single-stage tender process, the PSC would review the ***PPP Project Assessment Report*** to determine if the project fits the following criteria:

- Project cost of less than 150 million Nu; or
- Repetitive and standard project.

A repetitive standard project is defined as a project that involves the development of a structure/facility where at least four (4) local construction companies possesses the experience to deliver similar structure/(s) or facility/(ies).

The PSC may decide to:

- Allow the Implementing Institution to use the single-stage tender procedure; or
- Reject the Implementing Institution's request and require it to use the two-stage tender process.

2. Advertisement of RfP documents

The Implementing Institution shall publish the advertisement or notification of the Project Tender Documents in:

- At least one newspaper published in Bhutan; and
- Implementing Institution's website or centralized PPP e-procurement website of the RGoB.

At its discretion, depending on the nature of procurement and the potential applicants, the Implementing Institution may also issue the advertisement or notification of the Project Tender Documents in:

- Newspapers of foreign country;
- Trade journals;
- Business publications;
- Other periodicals.

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.

The advertise should run for a period of one (1) month and must contain the RfP document purchase fee (if any) in the advertisement notice. The date of the pre-bid conference including the venue of such conference shall be included in the advertisement notice.

3. Issuance of RfP documents

The Project Committee will issue the RfP documents to Bidders in the manner, form, place, date and time and such other conditions as may be specified in the advertisement or notification.

4. Pre-bid conference

After one (1) month from the advertisement of the RfP documents, the Implementing Institution will hold a pre-bid conference for Bidders for the Project. The pre-bid conference shall be open to all interested parties whether or not such entity has registered with the Implementing Institution during the expression of interest stage (if applicable).

The Implementing Institution shall prepare a presentation which contains:

- Details of the Project; and
- Indicative timeline of the procurement proceedings.

The Implementing Institution shall also welcome questions and clarifications of Bidders. The Implementing Institution may select the questions and clarifications that they wish to answer keeping in mind any possible effects of providing such information in the bids.

5. [OPTIONAL] Written question and answer notice

The Project Committee may allow a written question and answer with Bidders during the tender process. The Project Committee must however provide a deadline for the submission of written questions in order to allow the Project Committee to provide its answers in a timely manner. The Project Committee may set multiple deadlines to allow multiple rounds of query submissions.

The Project Committee shall issue a notice indicating its decision to allow a written question and answer with the Bidders and provide the following information in the notice:

- Manner at which the questions may be submitted (physical / electronic);
- Name of the Project Officer;
- Address to which the questions may be submitted to (if physical submission is allowed); and
- E-mail address to which the questions may be submitted to (if electronic submission is allowed).

The written question and answer procedures shall be issued by the Project Committee through a bid bulletin.

The Bidders may send its queries regarding the RfP documents in the manner prescribed by the Project Committee in its notice on or before the Q&A submission deadline as provided in the bid bulletin.

The Project Committee may also opt to undertake one-on-one meetings with the Bidders.

6. [OPTIONAL] Issuance of Answers to Queries and addenda or corrigenda to RfP documents

The Project Committee will issue its responses to the queries without divulging the Bidder who forwarded the query. The Project Committee shall issue its responses to the queries within ten (10) working days from the set deadline and publish the same in the procurement website of the Government, if available or in other forms as prescribed in the written question and answers procedures.

If such results to any addenda or corrigenda to the RfP documents, these should be advertised in the same newspaper, trade journals, business publications or other periodicals in which the tender notice was first advertised.

7. Issuance of final RfP documents

After the Q&A round (if applicable) and after incorporating any addenda and corrigenda issued into the RfP documents, the Project Committee will issue the final RfP documents that will be the basis for the submission of bids. The Project Committee shall give the Prospective Applications at least forty five (45) days after the issuance of the final RfP documents to finalize their bids.

8. Submission of Bids

Bidders will submit its bid to the Implementing Institution in the form specified and on or before the time and date specified in the Instructions to Bidders (ITB) as part of the RfP documents.

9. Tender receipt and creation of the Tender Committees

a) Tender receipt

The Implementing Institution shall receive the bids according to conditions laid down in the ITB.

The representative of the Implementing Institution appointed to receive bids shall ensure that the submitted bids are safely and confidentially stored.

The person made responsible for receiving the bids shall issue a receipt to the bidder submitting the bid and mark the bid received with serial numbers and enter the receipt of bid in a bid register. The following details shall be entered in the bid register on each occasion of receipt:

- Serial number of the bid received; and
- The time and date the bid was received.

The receipt of the bid will also be recorded in a bid receipt sheet which would require the input of the following information:

- Name of bidder; and
- Serial number of the bid received; and
- Date and time of submission.

As soon as the deadline for submission of the bid has expired, the implementing institution shall refuse the deposit of bids. The bids shall be opened in the presence of the tender opening committee.

b) Creation of the Tender Committees

The Implementing Institution shall also designate a Tender Opening Committee and a Tender Evaluation Committee to supervise the next steps in the tender process.

Tender Opening Committee

The Tender Opening Committee is in charge of the tender opening proceedings.

Composition of the Tender Opening Committee:

- Head of the Tender Opening Committee, a member of the Project Committee appointed by the Head of the Implementing Institution; and
- Other members as deemed fit depending on the expected number of bids.

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 RfP documents.

Tender Evaluation Committee

The Tender Evaluation Committee shall conduct the evaluation of the bids submitted by the Bidders and issue its recommendation to the PSC.

Composition of the Tender Evaluation Committee:

- Chairperson of the Tender Evaluation Committee, Head of the Implementing Institution or nominated representative;
- Representative of Ministry of Finance;
- Representative of Public Private Partnership Unit;
- Head of Project Committee or nominated representative; and
- Other members as considered necessary by the chairperson.

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 of the PPP Rules and Regulations.**

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.

10. Bid opening and completeness check

The Tender Opening Committee will open the bid immediately after the deadline for submission of bids has expired. Any bid received after the deadline shall be rejected.

The Implementing Institution shall invite all the bidders who choose to attend the opening of bids.

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 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.

The 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 RfP documents. Envelopes marked "Withdrawal" shall be opened and read out first. bids for which an acceptable notice of withdrawal has been submitted shall not be opened. Any bid received in incorrect form shall be rejected.

The bidders' representative, if present in the meeting will be required to sign a record of tender opening prepared by the tender opening committee.

The 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 RfP documents.

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.

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:

- The names of the bidding entity or Consortium;
- The name and signature of the Bidder's representative attending the tender opening;
- Checklist for determining responsiveness or otherwise of the submitted application or bid against conditions set out in the Project Tender Document; and
- Any other relevant information.

All original copies of the documents, which are recorded in the tender opening, shall be kept by the Implementing Institution in a secure place.
The copies of the original 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.

11. Qualification of Bidders

The Tender Evaluation Committee will review the Qualification Documents submitted by the bidders to check whether the Bidder fulfils the legal, technical and financial qualification requirements as stated in the ITB.

Based on its evaluation, it may decide to:

- Confirm that a bidder is qualified; or
- Issue clarifications to the bidder; or
- Disqualify the bidder based on non-compliance with the qualification requirements.

The Tender Evaluation Committee must record its observations on the legal, technical and financial qualifications submitted by all bidders. This shall form part of the Evaluation report that will be submitted to the PSC.

12. Evaluation of technical compliance

The Tender Evaluation Committee will review the technical proposal of the applicant. The determination whether the applicant is technically-compliant will be dependent on the technical requirements provided in the ITB.

The observations of the Tender Evaluation Committee during its review of the technical proposals shall be recorded and included in the Evaluation report that will be submitted to the PSC.

13. Evaluation of financial bids

Once the determination of the technical compliance of applicants is finished, the Tender Evaluation Committee will open the financial bid of the technically compliant proposals.

The name of the Bidder and the total amount offered at the Request for Proposal stage, shall be read aloud and recorded when opened. The financial offers of the technically compliant bidders shall be recorded and included in the Evaluation report that will be submitted to the PSC.

14. Determination of the Preferred Bidder

The Tender Evaluation Committee shall determine the Preferred Bidder based on the procurement rules laid out in the ITB. The Tender Evaluation Committee shall complete its Evaluation report which outlines the observations of the members during the tender evaluation.

a) Treatment of sole Bid

In the event that the competitive bidding process results into a sole bid, the Tender Evaluation Committee shall recommend the Implementing Institution to:

- 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
- Reject the sole bid.

b) Acceptance of sole Bid

If the sole Bid is accepted, negotiation with approval of PSC is required. Similar to the direct negotiation procedures, it is recommended that the Implementing Institution define the terms of negotiations and seek approval thereof from the PSC. The terms of negotiations will be used in negotiating with the sole bidder.

15. PSC approval of Preferred Bidder

The Tender Evaluation Committee submits the Evaluation report which contains its recommendations for the Preferred Bidder to the PSC.
The recommendation on the Preferred Bidder is concluded based on the procurement rules stipulated in the ITB.
Upon its review of the Evaluation report, the PSC may decide to:

- Approve the determination of the Preferred Bidder as recommended by the Tender Evaluation Committee; or
- Seek clarifications to the Tender Evaluation Committee; or
- Reject the recommendation of the Tender Evaluation Committee.

In the event that the PSC rejects the recommendation of the Tender Evaluation Committee, the Implementing Institution may announce the failure of the bidding proceedings. The bid security of all the bidders will be returned.

a) Rejection of all bids

The PSC may reject all bids on the following grounds:

- Lack of effective competition; or
- Not substantially responsive bids.

If all bids are rejected, the Implementing Institution shall review the causes resulting in such rejection and consider procuring in accordance with the PPP 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.

If the rejection of all bids is due to lack of competition, wider advertising shall be considered by the Implementing Institution. 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 the PSC.

16. Communication of Award

Once the PSC approves the Preferred Bidder, the Implementing Institution shall communicate the award to the Preferred Bidder through a written channel.

17. Issuance of Letter of Award

The Implementing Institution shall issue the Letter of Award to the Preferred Bidder within five (5) days from the communication of the award to the Preferred Bidder.

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

18. Submission of Conditions Precedent to the Award

The Preferred Bidder is required to submit the Conditions Precedent (CPs) to the Award within thirty (30) days from the issuance of the Letter of Award. The CPs is indicated in the RfP documents.

In the event that the Preferred Bidder fails to submit the CPs within the time specified, and the Preferred Bidder is able to provide valid reason for the delay, the Implementing Institution may allow the extension of the submission deadline. In the case where the Preferred Bidder fails to provide a valid reason for the delay, the Implementing Institution will draw on the bid security submitted by the Preferred Bidder.

19. PSC approval for signing the PPP Agreement

Upon the fulfilment of the Preferred Bidder of the CPs to Award, the Implementing Institution will seek the approval of PSC for the execution of the PPP agreement with the Preferred Bidder.

The PSC may decide to:

- Approve the execution of the PPP Agreement between the Implementing Institution and the Preferred Bidder; or
- Reject the execution of the PPP Agreement between the Implementing Institution and the Preferred Bidder.

In the event that the PSC decides to reject the execution of the PPP Agreement, it shall inform the Implementing Institution of its reasons. The Implementing Institution would then announce the failure of bids, return the bid security of the Preferred Bidder and pay damages (if any).

20. Execution of the PPP Agreement

Within five (5) days after the approval of the PSC, the Implementing Institution as represented by the Secretary/Head of the Agency of the Implementing Institution shall execute the PPP Agreement with the authorized representative of the Preferred Bidder.

4.3.4 Two-stage Tendering

The Two-stage tendering is the usual tender process utilized for PPP projects especially for projects that meets the threshold requirement of Nu 150,000,000. The two-stage tendering process as the name suggests, is characterized by two stages, namely: (1) Request-for-Qualification Stage (RfQ) and (2) Request-for-Proposal Stage (RfP).

The process maps below outlines the steps for the Two-stage Tendering:

Figure 5: Two-stage tender – RfQ stage

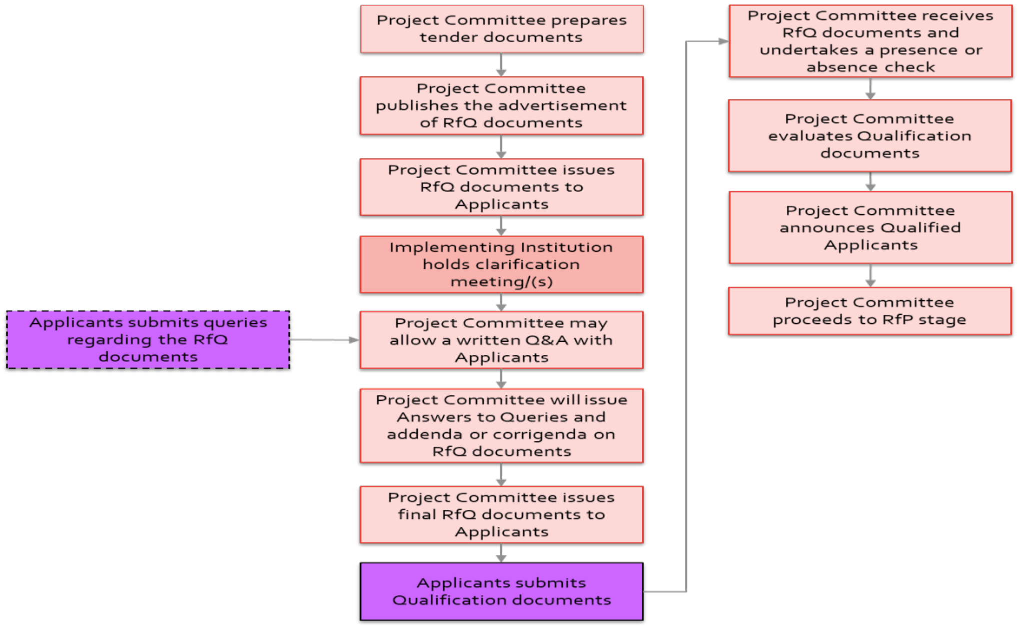


Figure 6: Two-stage tender – RfP stage

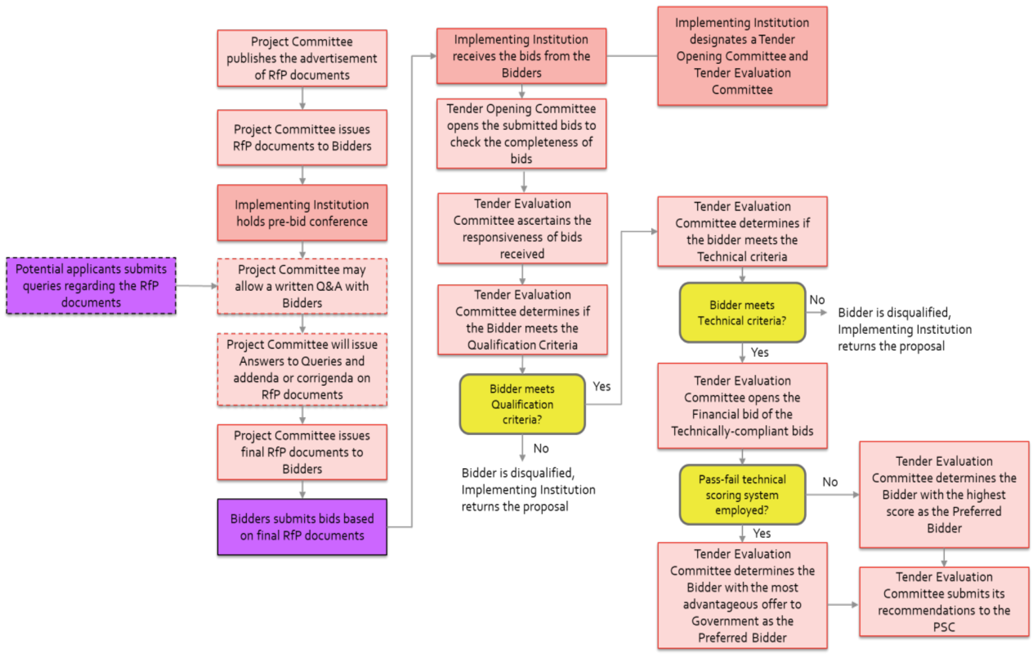
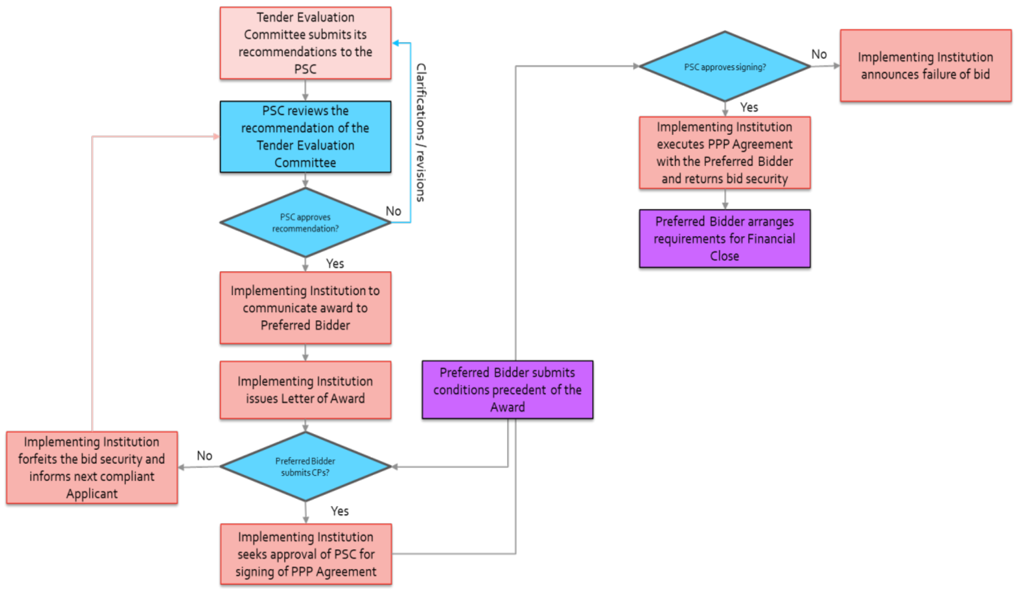


Figure 7: Two-stage tender - Award



1. Preparation of Tender Documents

The Implementing Institution will prepare the Project Tender Documents based on the process described in Preparation of Tender Documents.

2. Advertisement of RfQ documents

The Implementing Institution shall publish the advertisement or notification of the RfQ documents in:

- At least one newspaper published in Bhutan; and
- Implementing Institution's website or centralized PPP e-procurement website of the RGoB.

At its discretion, depending on the nature of procurement and the potential applicants, the Implementing Institution may also issue the advertisement or notification of the RfQ documents in:

- Newspapers of foreign country;
- Trade journals;
- Business publications;
- Other periodicals.

The Implementing Institution shall ensure that the advertisements or notification of the RfQ documents mentions the website of the Implementing Institution from where the tender documents can be downloaded.

The advertise should run for a period of one (1) month and must contain the Tender Documents purchase fee (if any) in the advertisement notice. The date of the clarification meeting including the venue of such conference shall be included in the advertisement notice.

3. Issuance of RfQ documents

The Project Committee will issue the RfQ documents to Potential Applicants in the manner, form, place, date and time and such other conditions as may be specified in the advertisement or notification.

4. RfQ clarification meeting

After one (1) month from the advertisement of the RfQ documents, the Implementing Institution will hold a clarification meeting for Potential Applicants for the Project. The pre-bid conference shall be open to all interested parties whether or not such entity has registered with the Implementing Institution during the expression of interest stage (if applicable).

The Implementing Institution shall prepare a presentation which contains:

- Details of the Project; and
- Indicative timeline of the procurement proceedings.

The Implementing Institution shall also welcome questions and clarifications of Potential Applicants. The Implementing Institution may select the questions and clarifications that they wish to answer keeping in mind any possible effects of providing such information in the bids.

5. Issuance of written question and answer notice

The Project Committee may allow a written question and answer with Potential Applicants during the RfQ stage. The Project Committee must however provide a deadline for the submission of written questions in order to allow the Project Committee to provide its answers in a timely manner. The Project Committee may set multiple deadlines to allow multiple rounds of query submissions.

The Project Committee shall issue a bid bulletin indicating its decision to allow a written question and answer with the Potential Applicants and provide the following information:

- Manner at which the questions may be submitted (Physical / electronic);
- Name of the Project Officer;
- Address to which the questions may be submitted to (if Physical submission is allowed); and
- E-mail address to which the questions may be submitted to (if electronic submission is allowed).

The Potential Applicants may send its queries regarding the RfQ documents in the manner prescribed by the Project Committee in the bid bulletin on or before the Q&A submission deadline as provided in the bid bulletin.

6. Issuance of Answers to Queries and addenda or corrigenda on RfQ documents

The Project Committee will issue its responses to the queries without divulging the Applicant who forwarded the query. The Project Committee shall issue its responses to the queries within ten (10) working days from the set deadline and publish the same in the procurement website of the Government if available.

If such results to any addenda or corrigenda to the RfQ documents, these should be advertised in the same newspaper, trade journals, business publications or other periodicals in which the tender notice was first advertised.

7. Issuance of final RfQ documents

After the Q&A round (if applicable) and after incorporating any addenda and corrigenda issued into the RfQ documents, the Project Committee will issue the final RfQ documents that will be the basis for the submission of bids. The Project Committee shall give the Prospective Applications at least twenty (20) days after the issuance of the final RfQ documents to finalize their bids.

The Project Committee will also develop a checklist of the documentary requirements for the RfQ stage which will be used in the RfQ submission for the presence or absence check.

8. Qualification documents submission

Potential Applicants will submit its bid to the Implementing Institution in the form specified and on or before the time and date specified in the Instructions to Prospective Bidders (ITPB) as part of the RfQ documents.

9. RfQ documents receipt and presence or absence check

The Project Committee will receive Qualification documents submitted on or before the time and date specified in the ITPB. The authorized representative of the Applicant will be required to sign the RfQ documents receipt document.

Shortly after the deadline has elapsed, the Project Committee will proceed with the opening of the qualification documents of the Applicants. The authorized representative of the Applicant will be requested to remain at the venue for the presence or absence check.

The qualification documents submitted by the Applicants will be subjected to a presence or absence check. The observations of the Project Committee on the presence or absence of the documents shall be recorded by the Project Committee. This presence or absence document will be accomplished for every Applicant and will be countersigned by the authorized representative of the Applicant.

After the presence and absence check, the Applicants will be allowed to leave the venue. The Project Committee will commence the more detailed evaluation of the qualification documents without the presence of the Applicants.

10. Evaluation of Qualification Documents

The Project Committee will evaluate the qualification documents submitted by the Applicants. The Project Committee will check whether the applicant fulfils the legal, technical and financial qualification requirements as stated in the ITPB.

Based on its evaluation, it may decide to:

- Confirm that an applicant / bidder is qualified; or
- Issue clarifications to the applicant / bidder; or
- Disqualify the applicant / bidder based on non-compliance with the qualification requirements.

The Project Committee must record its observations on the legal, technical and financial qualifications submitted by all applicants. This shall form part of an internal Qualification report.

11. Announcement of Qualified Applicants

The Project Committee will announce the Qualified Applicants through written communication with the Applicants and through the procurement website of the Government (if applicable).

12. Issuance of RfP documents

The Project Committee will issue the RfP documents to Bidders in the manner, form, place, date and time and such other conditions as may be specified in the advertisement or notification.

13. Pre-bid conference

After ten (10) days from the advertisement of the Project Tender Documents, the Implementing Institution will hold a pre-bid conference for Bidders for the Project. The pre-bid conference shall be open to all interested parties whether or not such entity has registered with the Implementing Institution during the expression of interest stage (if applicable).

The Implementing Institution shall prepare a presentation which contains:

- Details of the Project; and
- Indicative timeline of the procurement proceedings.

The Implementing Institution shall also welcome questions and clarifications of Bidders. The Implementing Institution may select the questions and clarifications that they wish to answer keeping in mind any possible effects of providing such information in the bids.

14. [OPTIONAL] Written question and answer

The Project Committee may allow a written question and answer with Bidders during the tender process. The Project Committee must however provide a deadline for the submission of written questions in order to allow the Project Committee to provide its answers in a timely manner. The Project Committee may set multiple deadlines to allow multiple rounds of query submissions.

The Project Committee shall issue a notice indicating its decision to allow a written question and answer with the Bidders and provide the following information in the notice:

- Manner at which the questions may be submitted (Physical / electronic);
- Name of the Project Officer;
- Address to which the questions may be submitted to (if Physical submission is allowed); and
- E-mail address to which the questions may be submitted to (if electronic submission is allowed).

The Bidders may send its queries regarding the RfP documents in the manner prescribed by the Project Committee in its notice on or before the Q&A submission deadline as provided in the notice.

The Project Committee may also opt to undertake one-on-one meetings with the Bidders.

15. [OPTIONAL] Issuance of Answers to Queries and addenda or corrigenda to RfP documents

The Project Committee will issue its responses to the queries without divulging the Applicant who forwarded the query. The Project Committee shall issue its responses to the queries within ten (10) working days from the set deadline and publish the same in the procurement website of the Government if available.

If such results to any addenda or corrigenda to the RfP documents, these should be advertised in the same newspaper, trade journals, business publications or other periodicals in which the tender notice was first advertised.

16. Issuance of final RfP documents

After the Q&A round (if applicable) and after incorporating any addenda and corrigenda issued into the RfP documents, the Project Committee will issue the final RfP documents that will be the basis for the submission of bids. The Project Committee shall give the Prospective Bidders at least forty five (45) days after the issuance of the final RfP documents to finalize their bids.

17. Bid submission

Bidders will submit its bid to the Implementing Institution in the form specified on or before the time and date specified in the Instructions to Bidders (ITB) as part of the RfP documents.

18. Tender receipt and creation of the Tender Committees

a) Tender receipt

The Implementing Institution shall receive the bids according to conditions laid down in the ITB.

The representative of the Implementing Institution appointed to receive bids shall ensure that the submitted bids are safely and confidentially stored.

The person made responsible for receiving the bids shall issue a receipt to the bidder submitting the bid and mark the bid received with serial numbers and enter the receipt of bid in a bid register. The following details shall be entered in the bid register on each occasion of receipt:

- Serial number of the bid received; and
- The time and date the bid was received.

The receipt of the bid will also be recorded in a bid receipt sheet which would require the input of the following information:

- Name of bidder; and
- Serial number of the bid received; and
- Date and time of submission.

As soon as the deadline for submission of the bid has expired, the implementing institution shall refuse the deposit of bids. The bids shall be opened in the presence of the tender opening committee.

b) Creation of the Tender Committees

The Implementing Institution shall also designate a Tender Opening Committee and a Tender Evaluation Committee to supervise the next steps in the tender process.

Tender Opening Committee

The Tender Opening Committee is in charge of the tender opening proceedings.

Composition of the Tender Opening Committee:

- Head of the Tender Opening Committee, a member of the Project Committee appointed by the Head of the Implementing Institution; and
- Other members as deemed fit depending on the expected number of bids.

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 RfP documents.

Tender Evaluation Committee

The Tender Evaluation Committee shall conduct the evaluation of the bids submitted by the Bidders and issue its recommendation to the PSC.

Composition of the Tender Evaluation Committee:

- Chairperson of the Tender Evaluation Committee, Head of the Implementing Institution or nominated representative;
- Representative of Ministry of Finance;
- Representative of Public Private Partnership Unit;
- Head of Project Committee or nominated representative; and
- Other members as considered necessary by the chairperson.

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 of the PPP Rules and Regulations.**

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.

19. Bid opening and completeness check

The Tender Opening Committee will open the bid immediately after the deadline for submission of bids has expired. Any bid received after the deadline shall be rejected.

The Implementing Institution shall invite all the bidders who choose to attend the opening of bids.

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 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.

The 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 RfP documents. Envelopes marked “Withdrawal” shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted shall not be opened. Any bid received in incorrect form shall be rejected.

The bidders' representative, if present in the meeting will be required to sign a record of tender opening prepared by the tender opening committee.

The 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 RfP documents.

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.

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:

- The names of the bidding entity or Consortium;
- The name and signature of the Bidder's representative attending the tender opening;
- Checklist for determining responsiveness or otherwise of the submitted application or bid against conditions set out in the Project Tender Document; and
- Any other relevant information.

All original copies of the documents, which are recorded in the tender opening, shall be kept by the Implementing Institution in a secure place.
The copies of the original 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.

20. Evaluation of technical compliance of bids

The Tender Evaluation Committee will review the technical proposal of the qualified applicants. The determination whether the qualified applicant is technically-compliant will be dependent on the technical requirements provided in the ITB.

The observations of the Tender Evaluation Committee during its review of the technical proposals shall be recorded and included in the Evaluation report that will be submitted to the PSC.

21. Evaluation of financial bids

Once the determination of the technical compliance of qualified applicants is finished, the Tender Evaluation Committee will open the financial bid of the technically compliant proposals.

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.

The financial offers of the technically compliant applicants shall be recorded and included in the Evaluation report that will be submitted to the PSC.

22. Determination of the Preferred Bidder

The Tender Evaluation Committee shall determine the Preferred Bidder based on the procurement rules laid out in the ITB. The Tender Evaluation Committee shall complete its Evaluation report which outlines the observations of the members during the tender evaluation.

a) Treatment of sole Bid

In the event that the competitive bidding process results into a sole bid, the Tender Evaluation Committee shall recommend the Implementing Institution to:

- 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
- Reject the sole bid.

b) Acceptance of sole Bid

If the sole Bid is accepted, negotiation with approval of PSC is required. Similar to the direct negotiation procedures, it is recommended that the Implementing Institution define the terms of negotiations and seek approval thereof from the PSC. The terms of negotiations will be used in negotiating with the sole bidder.

23. PSC approval of Preferred Bidder

The Tender Evaluation Committee submits the Evaluation report which contains its recommendations for the Preferred Bidder to the PSC.

The recommendation on the Preferred Bidder is concluded based on the procurement rules stipulated in the ITB.

PSC reviews the recommendation of the Tender Evaluation Committee
Upon its review of the Evaluation report, the PSC may decide to:

- Approve the determination of the Preferred Bidder as recommended by the Tender Evaluation Committee; or
- Seek clarifications to the Tender Evaluation Committee; or
- Reject the recommendation of the Tender Evaluation Committee.

In the event that the PSC rejects the recommendation of the Tender Evaluation Committee, the Implementing Institution may announce the failure of the bidding proceedings. The bid security of all the bidders will be returned.

a) Rejection of all bids

The PSC may reject all bids on the following grounds:

- Lack of effective competition; or
- Not substantially responsive bids.

If all bids are rejected, the Implementing Institution shall review the causes resulting in such rejection and consider procuring in accordance with the PPP 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.

If the rejection of all bids is due to lack of competition, wider advertising shall be considered by the Implementing Institution. 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 the PSC.

24. Communication of Award

Once the PSC approves the Preferred Bidder, the Implementing Institution shall communicate the award to the Preferred Bidder through a written channel.

25. Issuance of the Letter of Award

The Implementing Institution shall issue the Letter of Award to the Preferred Bidder within five (5) days from the communication of the award to the Preferred Bidder.

The Preferred Bidder shall, within seven (7) days of the receipt of the Letter of Award, sign and return a duplicate copy of Letter of Award in acknowledgement thereof.

26. Submission of Conditions Precedent to the Award

The Preferred Bidder is required to submit the Conditions Precedent (CPs) to the Award within thirty (30) days from the issuance of the Letter of Award. The CPs is indicated in the RfP documents.

In the event that the Preferred Bidder fails to submit the CPs within the time specified, and the Preferred Bidder is able to provide valid reason for the delay, the Implementing Institution may allow the extension of the submission deadline. In the case where the Preferred Bidder fails to provide a valid reason for the delay, the Implementing Institution will draw on the bid security submitted by the Preferred Bidder.

27. PSC approval for execution of PPP Agreement

Upon the fulfilment of the Preferred Bidder of the CPs to Award, the Implementing Institution will seek the approval of PSC for the execution of the PPP agreement with the Preferred Bidder.
The PSC may decide to:

- Approve the execution of the PPP Agreement between the Implementing Institution and the Preferred Bidder; or
- Reject the execution of the PPP Agreement between the Implementing Institution and the Preferred Bidder.

In the event that the PSC decides to reject the execution of the PPP Agreement, it shall inform the Implementing Institution of its reasons. The Implementing Institution would then announce the failure of bids, return the bid security of the Preferred Bidder and pay damages (if any).

28. Execution of the PPP Agreement

Within five (5) days after the approval of the PSC, the Implementing Institution as represented by the Secretary of the Implementing Institution shall execute the PPP Agreement with the authorized representative of the Preferred Bidder.

4.3.5 Competitive Dialogue Tendering

The Competitive Dialogue procedure can only be used with prior approval from Lhengye Zhungtshog after the feasibility analysis.

The Competitive Dialogue is to be initiated after the RfQ Stage and shall end when the Implementing Institution can identify a solution, which meets its Project related requirements.

The Competitive Dialogue procedure is used by the Implementing Institution when:

- It is unable to objectively establish the exact parameters needed to achieve project objectives; and/or
- There are a number of technological, legal or financial options for developing the project where it is beneficial to solicit views from the private sector in identifying a solution and in achieving clarity on the optimal project scope.

Competitive dialogue procedure typically take between 6 and 18 months depending on the scale and complexity of the PPP project.

The process map below outlines the procedures for Competitive Dialogue tendering:

Figure 8: Competitive Dialogue – RfQ stage

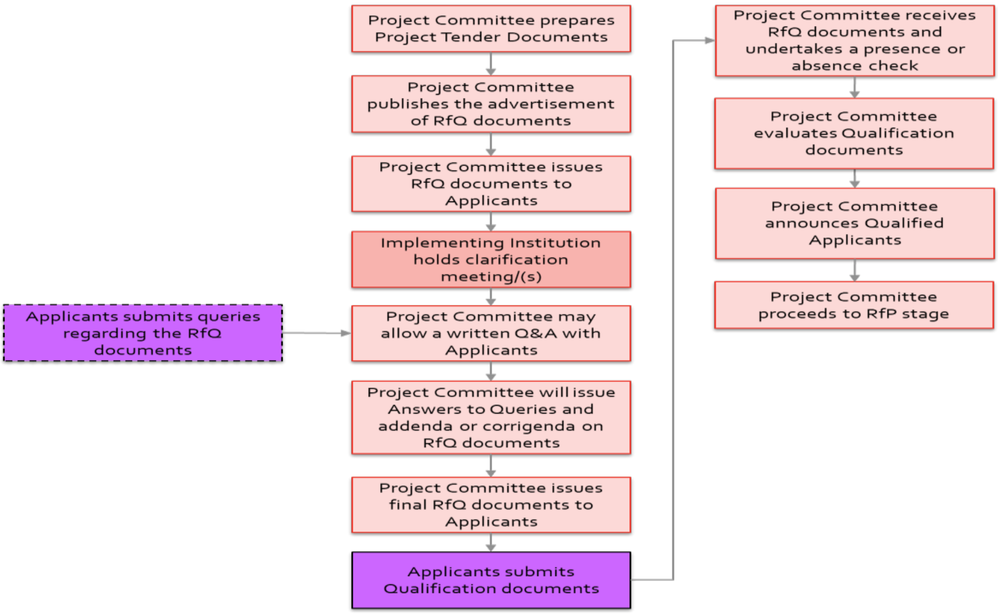


Figure 9: Competitive Dialogue – RfP stage

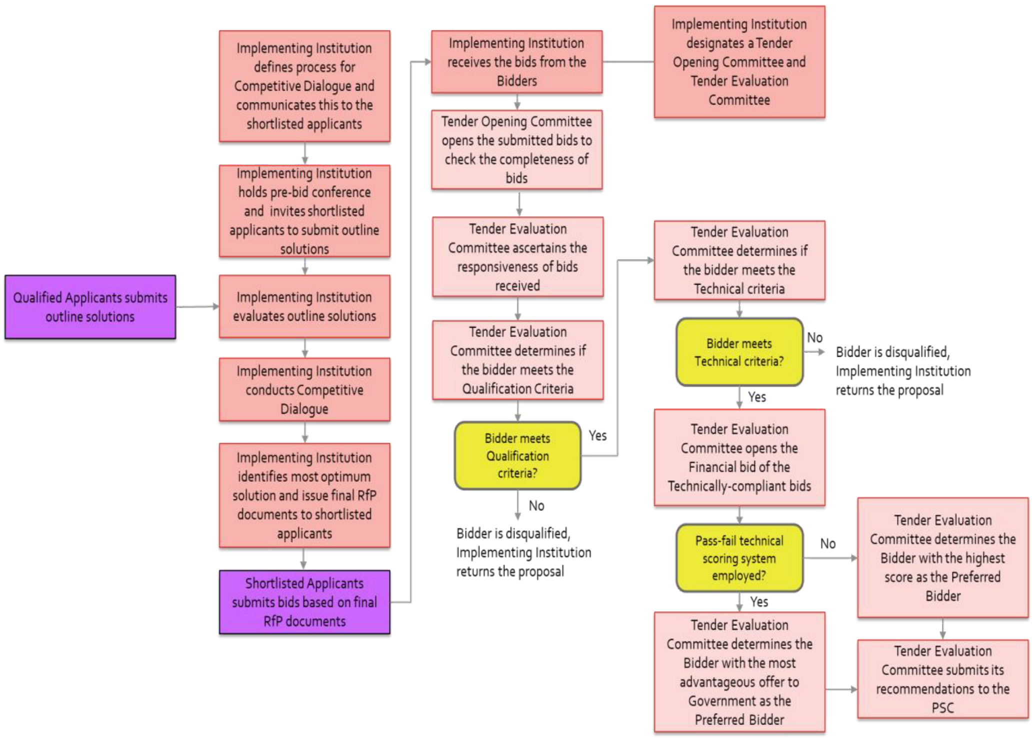
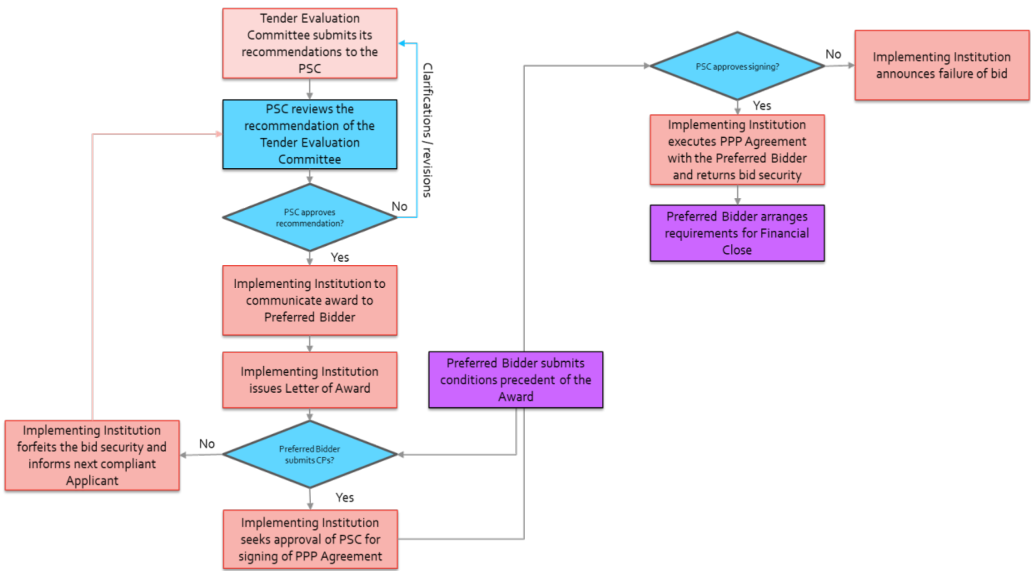


Figure 10: Competitive Dialogue – Award



4.3.5.1 Treatment of information

In conducting the dialogue procedure, Implementing Institutions need to ensure that all bidders are provided the same information in order to ensure a level playing field between bidders. During the one-on-one dialogue sessions this means Implementing Institutions should focus on (1) obtaining a better understanding of the solutions and submissions provided by the Bidders, and (2) clarifying issues related to documentation provided in the RfP, draft PPP Agreement, etc. Between dialogue rounds, updated RfP documentation and updated Q&A compilation documents should be shared to all participating bidders, at the same time.

Moreover, Implementing Institutions should take care not to reveal – in any way – solutions proposed by a Bidder, or any other commercially sensitive information provided to the Implementing Institution by a specific Bidder, to Bidder without obtaining its prior approval.

4.3.5.2 Steps for competitive dialogue

1. Project Committee prepares Project Tender Documents

The Project Committee prepares Project Tender Document in accordance to the steps described in **Preparation of Tender Documents**.

2. Advertisement of RfQ documents

The Implementing Institution shall publish the advertisement or notification of the Project Tender Documents in:

- At least one newspaper published in Bhutan; and
- Implementing Institution's website or centralized PPP e-procurement website of the RGoB.

At its discretion, depending on the nature of procurement and the potential applicants, the Implementing Institution may also issue the advertisement or notification of the Project Tender Documents in:

- Newspapers of foreign country;
- Trade journals;
- Business publications;
- Other periodicals.

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.

The advertisement should run for a period of one (1) month and must contain the RfQ document purchase fee (if any) in the advertisement notice. The date of the pre-bid conference including the venue of such conference shall be included in the advertisement notice.

3. Issuance of RfQ documents

The Project Committee will issue the RfQ documents to Applicants in the manner, form, place, date and time and such other conditions as may be specified in the advertisement or notification.

4. Clarification meeting

After one (1) month from the advertisement of the RfQ documents, the Implementing Institution will hold a clarification meeting for Applicants for the Project. The pre-bid conference shall be open to all interested parties whether or not such entity has registered with the Implementing Institution during the expression of interest stage (if applicable).

The Implementing Institution shall prepare a presentation which contains:

- Details of the Project; and
- Indicative timeline of the procurement proceedings.

The Implementing Institution shall also welcome questions and clarifications of Applicants. The Implementing Institution may select the questions and clarifications that they wish to answer keeping in mind any possible effects of providing such information in the bids.

5. Written Question and Answer

The Project Committee may allow a written question and answer with Applicants during the RfQ stage. The Project Committee must however provide a deadline for the submission of written questions in order to allow the Project Committee to provide its answers in a timely manner. The Project Committee may set multiple deadlines to allow multiple rounds of query submissions.

The Project Committee shall issue a notice indicating its decision to allow a written question and answer with the Applicants and provide the following information in the notice:

- Manner at which the questions may be submitted (Physical / electronic);
- Name of the Project Officer;
- Address to which the questions may be submitted to (if Physical submission is allowed); and
- E-mail address to which the questions may be submitted to (if electronic submission is allowed).

The Potential Applicants may send its queries regarding the RfQ documents in the manner prescribed by the Project Committee in its notice on or before the Q&A submission deadline as provided in the notice.

6. Issuance of Answers to Queries and addenda or corrigenda on RfQ documents

The Project Committee will issue its responses to the queries without divulging the Applicant who forwarded the query. The Project Committee shall issue its responses to the queries within ten (10) working days from the set deadline and publish the same in the procurement website of the Government if available.

If such results to any addenda or corrigenda to the RfQ documents, these should be advertised in the same newspaper, trade journals, business publications or other periodicals in which the tender notice was first advertised.

7. Project Committee issues final RfQ documents to Applicants

After the Q&A round (if applicable) and after incorporating any addenda and corrigenda issued into the RfQ documents, the Project Committee will issue the final RfQ documents that will be the basis for the submission of bids. The Project Committee shall give the Prospective Applications at least twenty (20) days after the issuance of the final RfQ documents to finalize their bids.

The Project Committee will also develop a checklist of the documentary requirements for the RfQ stage which will be used in the RfQ submission for the presence or absence check.

8. Submission of Qualification documents

Potential Applicants will submit its bid to the Implementing Institution in the form specified on or before the time and date specified in the Instructions to Prospective Bidders (ITPB) as part of the RfP documents.

9. Receipt of RfQ documents and presence or absence check

The Project Committee will receive Qualification documents submitted on or before the time and date specified in the ITPB. The authorized representative of the Applicant will be required to sign the RfQ documents receipt document.

Shortly after the deadline has elapsed, the Project Committee will proceed with the opening of the qualification documents of the Applicants. The authorized representative of the Applicant will be requested to remain at the venue for the presence or absence check.

The qualification documents submitted by the Applicants will be subjected to a presence or absence check. The observations of the Project Committee on the presence or absence of the documents shall be recorded by the Project Committee. This presence or absence document will be accomplished for every Applicant and will be countersigned by the authorized representative of the Applicant.

After the presence and absence check, the Applicants will be allowed to leave the venue. The Project Committee will commence the more detailed evaluation of the qualification documents without the presence of the Applicants.

10. Evaluation of Qualification Documents

The Project Committee will evaluate the qualification documents submitted by the Applicants. The Project Committee will check whether the applicant fulfils the legal, technical and financial qualification requirements as stated in the ITPB.

Based on its evaluation, it may decide to:

- Confirm that an applicant / bidder is qualified; or
- Issue clarifications to the applicant / bidder; or
- Disqualify the applicant / bidder based on non-compliance with the qualification requirements.

The Project Committee must record its observations on the legal, technical and financial qualifications submitted by all applicants. This shall form part of an internal Qualification report.

11. Announcement of Qualified Applicants

The Project Committee will announce the Qualified Applicants through written communication with the Applicants and through the procurement website of the Government (if applicable).

12. Issuance of Competitive Dialogue Procedures

The Implementing Institution will define the process for the competitive dialogue procedure through the issuance of RfP documents.

The RfP documents shall include instructions for the competitive dialogue procedure including:

- The number of stages; and
- Submission/(s) to be made by the participants and its timeline/(s).

The RfP documents will include as attachments the following:

- May include a first draft version of the full PPP Agreement or for sections of it;
- In the absence of a draft of the full PPP Agreement should *at least* include a high-level Heads of Terms which provide an outline of the envisaged PPP arrangement;
- And includes the schedule for the dialogue rounds and the theme for each dialogue round.

13. Pre-bid conference

After ten (10) days from the advertisement of the Project Tender Documents, the Implementing Institution will hold a pre-bid conference for Qualified Applicants for the Project.

The Implementing Institution shall prepare a presentation which contains:

- Details of the Project; and
- Indicative timeline of the procurement proceedings (including specific timelines for the competitive dialogue rounds).

The Implementing Institution shall also welcome questions and clarifications of Bidders. The Implementing Institution may select the questions and clarifications that they wish to answer keeping in mind any possible effects of providing such information in the bids.

14. Submission and evaluation of outline solutions

Prior to each dialogue round, the Implementing Institution requests all Bidders to submit outline solution document highlighting how they propose to address the subject of the dialogue round. The Implementing Institution may use these submissions to ask for interim (parts of) technical proposals.

15. Competitive dialogue rounds

During each dialogue round the Implementing Institution holds one-on-one sessions with the Bidders to gain a better understanding of the solutions and concepts proposed by the bidders. Bidders may during these sessions ask questions to the Implementing Institution to gain a better understanding of the objectives and constraints of the Implementing Institution with respect to realization of the project.

Following each round, the Implementing Institution may update and/or expand the RfP and its related documents and distribute these to the Bidders – such that during the various rounds of the competitive dialogue procedure a final PPP project scope, requirements, bid evaluation criteria and PPP Agreement and related documentation gradually take shape.

The Implementing Institution will allow the Bidders to submit questions in writing throughout the dialogue process. The Implementing Institution undertakes to compile and answer questions, and return compiled an updated Q&A document to all bidders at least once between every dialogue round.

16. Issuance of final RfP documents

When the Implementing Institution determines that it is able to finalize the project scope, technical requirements, among others, it will finalize the RfP documents and issue the same to the Bidders.

17. Submission of bids

Bidders will submit its bid to the Implementing Institution in the form specified on or before the time and date specified in the Instructions to Bidders (ITB) as part of the RfP documents.

18. Tender receipt and creation of the Tender Committees

a) Tender receipt

The Implementing Institution shall receive the bids according to conditions laid down in the ITB.

The representative of the Implementing Institution appointed to receive bids shall ensure that the submitted bids are safely and confidentially stored.

The person made responsible for receiving the bids shall issue a receipt to the bidder submitting the bid and mark the bid received with serial numbers and enter the receipt of bid in a bid register. The following details shall be entered in the bid register on each occasion of receipt:

- Serial number of the bid received; and
- The time and date the bid was received.

The receipt of the bid will also be recorded in a bid receipt sheet which would require the input of the following information:

- Name of bidder; and
- Serial number of the bid received; and
- Date and time of submission.

As soon as the deadline for submission of the bid has expired, the implementing institution shall refuse the deposit of bids. The bids shall be opened in the presence of the tender opening committee.

b) Creation of the Tender Committees

The Implementing Institution shall also designate a Tender Opening Committee and a Tender Evaluation Committee to supervise the next steps in the tender process.

Tender Opening Committee

The Tender Opening Committee is in charge of the tender opening proceedings.

Composition of the Tender Opening Committee:

- Head of the Tender Opening Committee, a member of the Project Committee appointed by the Head of the Implementing Institution; and
- Other members as deemed fit depending on the expected number of bids.

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 RfP documents.

Tender Evaluation Committee

The Tender Evaluation Committee shall conduct the evaluation of the bids submitted by the Bidders and issue its recommendation to the PSC.

Composition of the Tender Evaluation Committee:

- Chairperson of the Tender Evaluation Committee, Head of the Implementing Institution or nominated representative;
- Representative of Ministry of Finance;
- Representative of Public Private Partnership Unit;
- Head of Project Committee or nominated representative; and
- Other members as considered necessary by the chairperson.

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 of the PPP Rules and Regulations.**

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.

19. Bid opening and completeness check

The Tender Opening Committee will open the bid immediately after the deadline for submission of bids has expired. Any bid received after the deadline shall be rejected.

The Implementing Institution shall invite all the bidders who choose to attend the opening of bids.

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 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.

The 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 RfP documents. Envelopes marked “Withdrawal” shall be opened and read out first. bids for which an acceptable notice of withdrawal has been submitted shall not be opened. Any bid received in incorrect form shall be rejected.

The bidders’ representative, if present in the meeting will be required to sign a record of tender opening prepared by the tender opening committee.

The 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 RfP documents.

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.

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:

- The names of the bidding entity or Consortium;
- The name and signature of the Bidder's representative attending the tender opening;
- Checklist for determining responsiveness or otherwise of the submitted application or bid against conditions set out in the Project Tender Document; and
- Any other relevant information.

All original copies of the documents, which are recorded in the tender opening, shall be kept by the Implementing Institution in a secure place.
The copies of the original 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.

20. Evaluation of technical compliance

The Tender Evaluation Committee will review the technical proposal of the qualified bidders. The determination whether the qualified bidder is technically-compliant will be dependent on the technical requirements provided in the ITB.

The observations of the Tender Evaluation Committee during its review of the technical proposals shall be recorded and included in the Evaluation report that will be submitted to the PSC.

21. Evaluation of financial bids

Once the determination of the technical compliance of qualified applicants is finished, the Tender Evaluation Committee will open the financial bid of the technically compliant proposals.

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.

The financial offers of the technically compliant bidders shall be recorded and included in the Evaluation report that will be submitted to the PSC.

22. Determination of the Preferred Bidder

The Tender Evaluation Committee shall determine the Preferred Bidder based on the procurement rules laid out in the ITB. The Tender Evaluation Committee shall complete its Evaluation report which outlines the observations of the members during the tender evaluation.

a) Treatment of sole Bid

In the event that the competitive bidding process results into a sole bid, the Tender Evaluation Committee shall recommend the Implementing Institution to:

- 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
- Reject the sole bid.

b) Acceptance of sole Bid

If the sole Bid is accepted, negotiation with approval of PSC is required. Similar to the direct negotiation procedures, it is recommended that the Implementing Institution define the terms of negotiations and seek approval thereof from the PSC. The terms of negotiations will be used in negotiating with the sole bidder.

23. PSC approval of Preferred Bidder

The Tender Evaluation Committee submits the Evaluation report which contains its recommendations for the Preferred Bidder to the PSC.
The recommendation on the Preferred Bidder is concluded based on the procurement rules stipulated in the ITB.

Upon its review of the Evaluation report, the PSC may decide to:

- Approve the determination of the Preferred Bidder as recommended by the Tender Evaluation Committee; or
- Seek clarifications to the Tender Evaluation Committee; or
- Reject the recommendation of the Tender Evaluation Committee.

In the event that the PSC rejects the recommendation of the Tender Evaluation Committee, the Implementing Institution may announce the failure of the bidding proceedings. The bid security of all the applicants / bidders will be returned.

a) Rejection of all bids

The PSC may reject all bids on the following grounds:

- Lack of effective competition; or
- Not substantially responsive bids.

If all bids are rejected, the Implementing Institution shall review the causes resulting in such rejection and consider procuring in accordance with the PPP 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.

If the rejection of all bids is due to lack of competition, wider advertising shall be considered by the Implementing Institution. 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 the PSC.

24. Communication of Award to the Preferred Bidder

Once the PSC approves the Preferred Bidder, the Implementing Institution shall communicate the award to the Preferred Bidder through a written channel.

25. Issuance of Letter of Award

The Implementing Institution shall issue the Letter of Award to the Preferred Bidder within five (5) days from the communication of the award to the Preferred Bidder.

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

26. Submission of Conditions Precedent to the Award

The Preferred Bidder is required to submit the Conditions Precedent (CPs) to the Award within thirty (30) days from the issuance of the Letter of Award. The CPs is indicated in the RfP documents.

In the event that the Preferred Bidder fails to submit the CPs within the time specified, and the Preferred Bidder is able to provide valid reason for the delay, the Implementing Institution may allow the extension of the submission deadline. In the case where the Preferred Bidder fails to provide a valid reason for the delay, the Implementing Institution will draw on the bid security submitted by the Preferred Bidder.

27. PSC approval of the execution of the PPP Agreement

Upon the fulfilment of the Preferred Bidder of the CPs to Award, the Implementing Institution will seek the approval of PSC for the execution of the PPP agreement with the Preferred Bidder.

The PSC may decide to:

- Approve the execution of the PPP Agreement between the Implementing Institution and the Preferred Bidder; or
- Reject the execution of the PPP Agreement between the Implementing Institution and the Preferred Bidder.

In the event that the PSC decides to reject the execution of the PPP Agreement, it shall inform the Implementing Institution of its reasons. The Implementing Institution would then announce the failure of bids, return the bid security of the Preferred Bidder and pay damages (if any).

28. Execution of the PPP Agreement

Within five (5) days after the approval of the PSC, the Implementing Institution as represented by the Secretary/Head of the Implementing Institution shall execute the PPP Agreement with the authorized representative of the Preferred Bidder.

4.3.6 Direct Negotiation

In accordance to the PPP Rules and Regulations of 2017, the Implementing Institution is allowed to directly negotiate with a Bidder, under the following circumstances:

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

As a pre-condition for the utilization of the Direct Negotiation procedure, prior approval from the PSC and Lhengye Zhungtshog or its delegated agency is required.

4.3.6.1 Steps for Direct Negotiation

1. Establishment of a negotiating team

As a first step to the Direct Negotiation process, the Implementing Institution shall establish a team tasked to handle the process. The negotiation team must include the following members:

- Head of Implementing Institution or his representative as the head of negotiating team;
- Project officer of the Project Committee;
- Head of the PPP Unit or his representative; and
- Other members as deemed fit by the PSC.

As a practical consideration, legal and financial experts may be included as part of the negotiation team.

2. Setting the negotiation framework

The negotiating team is required to develop a negotiation framework which sets the guide for the negotiation process. The negotiation framework will include:

- Definition of negotiating issues;
- Control of drafting;
- Recording of agreed matters;
- Closure of agreed issues and non-admittance of new issues;
- Timetable for the negotiation;
- Definition of the dispute resolution process; and
- Appointment of authority to make commitments.

The PSC will approve the negotiation framework including the terms of negotiation prior to the initiation of the direct negotiation process.

3. Report to government

a) Submission of negotiation report to PSC

At the end of negotiations, the negotiation team will submit a report to the PSC indicating the results of the negotiations. The report shall include any material changes to the proposal, a confirmation that the proposal provides value for money outcomes, confirmation of availability of adequate budget as well as the Implementing Institution's recommendation to enter into contract. The report will be the basis of the PSC for endorsement of to the Lhengye Zhungtshog.

The PSC will review the negotiation report and may decide to:

- Reject the proposal by providing a detailed and reasoned basis for its decision; or
- Request for clarifications; or
- Endorse the proposal to Lhengye Zhungtshog.

b) Lhengye Zhungtshog approval

Upon the endorsement of the PSC of the Project, Lhengye Zhungtshog will review the negotiation report and may decide to:

- Reject the proposal by providing a detailed and reasoned basis for its decision; or
- Request for clarifications; or
- Approve the proposal.

4. Execution of Contract

Upon the approval of Lhengye Zhungtshog, the contract is awarded to the successful bidder. The PPP Agreement will be executed by the authorized representative of the Implementing Institution and Private Partner through a pre-advertised contract signing ceremony. The contract signing ceremony will be held at a pre-determined date and venue. A public announcement of the PPP Agreement and the successful bidder shall be made during the contract execution.

4.3.7 Grievance Redressal Process

Grievance Redressal is addressed by the Grievance Redressal Committee (GRC).

The Grievance Redressal Committee set up by the Head of the PPP Unit and is comprised of:

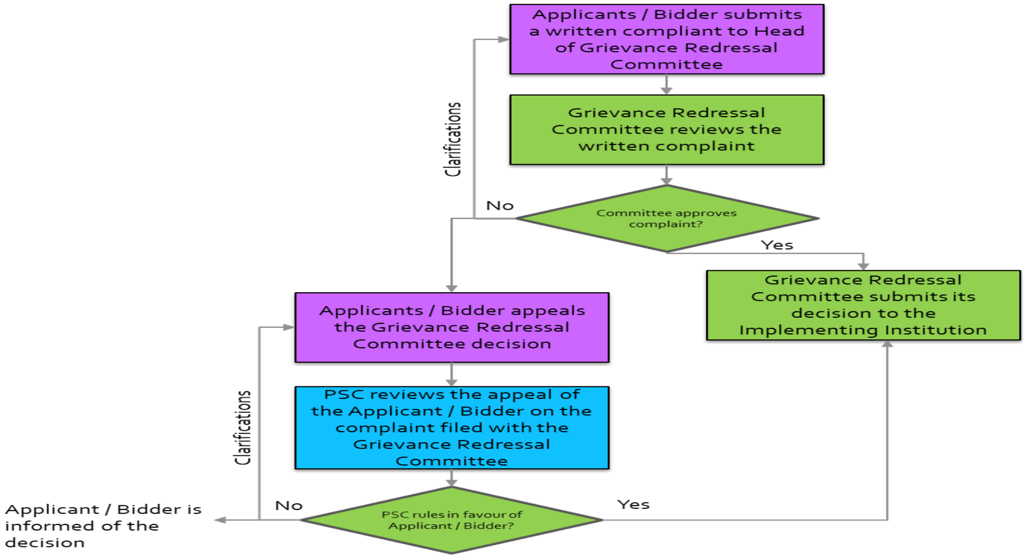
- Technical Expert;
- Financial Expert; and
- Legal Expert

The Head of the GRC will be selected by the PPP Unit among the members of the GRC.

The grievance redressal process allows any Applicant or Bidder aggrieved by any decision related to and arising out of the tender process, may take recourse to the Grievance Redressal Committee.

The overview of the Grievance Redressal Process is illustrated below:

Figure 11: Grievance Redressal Process



4.3.7.1 Steps in Grievance Redressal

1. Submission of written complaint

The aggrieved Applicant or Bidder submits a written complaint addressed to the Head of the GRC. The written complaint must set forth detailed grounds underlying the complaint supported by relevant evidence or related documents.

2. GRC's review of written complaint

The GRC, upon the receipt of the written complaint from the Applicant or Bidder must review and convey its written decision within thirty (30) days.

The GRC may require further evidence or clarifications or require the presence of the complainant to present its grievance for the purpose of arriving at a decision.
The GRC decide to:

- Reject the complaint and issue a reasoned order; or
- Issue corrective measures and set out a time bound implementation plan to address the grievance.

3. Appeal of GRC decision

Upon the GRC's inability to issue a decision within 30 days from receipt of the complaint, or the complainant's dissatisfaction with the GRC's decision, the complainant may initiate a review procedure before the PSC. To initiate the process, the complainant must submit a review appeal to the PSC addressed to the Head of the PSC.

The review appeal must be submitted within ten (10) days from receipt of the decision of the GRC or forty five (45) days after the submission of the complaint to the GRC.

4. PSC review of appeal

The PSC, upon the receipt of the review appeal from the complainant must review and convey its written decision within thirty (30) days.

The PSC may require further evidence or clarifications or require the presence of the complainant to present its grievance for the purpose of arriving at a decision.
The GRC decide to:

- Reject the appeal and issue a reasoned order; or
- Issue corrective measures and set out a time bound implementation plan to address the grievance.

4.4 Stage IV: Contract Management

4.4.1 Overview of the Contract Management Stage

4.4.1.1 Management of the PPP Agreement

Once the Private Party has been procured for the PPP Project, the Implementing Institution needs to ensure that expected facilities are constructed and the expected services are delivered to the intended users. In short, the Implementing Institution needs to ensure that the objectives of the PPP Project are met. Management of the PPP Agreement is the act and process of managing the delivery of the PPP Project by the Implementing Institution, using the rights given under the PPP Agreement (and the legislative framework) and by meeting the commitments/ responsibilities defined in the PPP Agreement to deliver the intended public service.

Management of the PPP Agreement starts from the award of the contract to the Private Party and ends at the expiry of the PPP Agreement (including extensions, if any).

4.4.1.2 Objectives of Managing the PPP Agreement

The core aim of managing the PPP Agreement is to monitor and ensure: (1) service delivery as indicated in the minimum output specifications, and (2) the affordability of the project, value-for-money, efficient risk transfer, and constant stakeholder management. This entails managing proactively to anticipate future needs and avoid delays and default events, as well as promptly and appropriately reacting to unforeseen situations that would arise during the implementation of the project. This can only be done if a good working relationship is built and maintained between the two parties (the Private Party and the Implementing Institution) throughout the life of the PPP Agreement.

The objectives of managing the PPP Agreement can further be listed as follows:

- Ensuring implementation and operations of the project as envisaged under the Agreement;
- Monitoring, supervision and corrective action (if required) to ensure proper performance of the contract by the Private Party;
- Ensuring that the Implementing Institution fulfils its commitments and responsibilities under the PPP Agreement;
- Ensuring that fiscal risks and impacts of the PPP Project on the Implementing Institution and the overall Government is monitored and managed;
- Ensuring exceptions are reported and need for corrective action is identified in advance;
- Managing conflicts arising from the Agreement and its implementation;
- Managing/monitoring relationships of the Private Party with external stakeholders, including but not limited to:
  - » Lenders;
  - » Other government departments and sector regulators;
  - » Audit offices; and
  - » Public/ user groups/ interest groups;
- Managing amendments to the Agreement;
- Managing risk events, including unforeseen events;
- Independent performance monitoring and reporting; and
- Protecting the rights of users and the general public.

4.4.1.3 Overview of the steps in PPP Contract Management

The following are key steps in the management of the PPP Agreement:

- Establishing the Contract Management Committee (CMC);
- Preparation/Review of the Contract Management Plan (CMP);
- Appointment of an Independent Engineer; and
- Contract Management Proper.

4.4.1.4 Steps in the PPP Contract Management Stage

1. Establishment of the Contract Management Committee (CMC)

As the initial preparatory step to contract management, the Implementing Institution is expected to establish a **Contract Management Committee** (CMC) for the PPP Project, on or prior to the date of issue of the Letter of Award to the Preferred Bidder.

The CMC shall be composed of at least three members, including its Head, two of which may come from the Project Committee (this may include the Project Officer). Members of the CMC would ideally include: (1) a technical expert specialized in the services to be provided by the PPP project; (2) an administrative and legal expert with expertise in public administration and public procurement contracts; and (3) a financial and budgeting expert. Each member of the CMC shall provide a conflict of interest declaration as per the template provided in Schedule 1 of the PPP Rules & Regulations.

The CMC shall perform the following responsibilities:

- Prepare/review, implement, and continually update (where necessary) the Contract Management Plan (CMP);
- Ensure that the PPP project continues to be affordable, provides quality service, value-for-money, and appropriate risk transfer;
- Ensure that both parties (the Implementing Institution and the Private Party) meet their obligations under the PPP Agreement;
- Ensure that Minimum Output Specifications requirements are achieved;
- Monitor the performance of the Private Party and take corrective action where necessary;
- Regularly coordinate with and provide updates to the PPP Steering Committee and the MoF on matters related to the disbursement of government funds (i.e. fiscal commitments, payment for contingent liabilities) to the project;
- Regularly coordinate with the PPP Unit to provide updates as well as seek guidance on contract management concerns, especially in cases of contractual events;
- Coordinate with other concerned agencies of Government when required to resolve project issues; and
- Regularly report to the Head of the Implementing Institution on the progress of the PPP project.

A contract manager may be appointed among the members of the CMC, who shall be the primary point-of-contact with the Private Party in communicating project-related concerns or issues and when submitting the required reports and updates.

The PPP Unit should also assist the Implementing Institution and the CMC in institutionalizing contract management expertise and knowledge to ensure its continuity from commencement until termination of the PPP Agreement. To this end, knowledge management systems, such as a virtual data room, may be developed and succession plans prepared for the Implementing Institution.

2. Preparation of the Contract Management Plan (CMP)

Once the CMC is constituted, it is immediately expected to prepare a Contract Management Plan (CMP). Alternatively, an initial draft of the CMP may be prepared by the Transaction Advisor even before the award and signing of the PPP Agreement, after which The CMC may then proceed to review and update the CMP after the signing of the PPP agreement.

In case the Transaction Advisor has earlier been tasked to prepare a draft CMP, the CMC may proceed to review and update the same, otherwise, the CMC will be tasked to prepare the same.

The CMP ensures that:

- Services are delivered continuously and against a high standard, in accordance With the PPP Agreement, and payments or penalties are made accordingly;
- Contractual responsibilities and risks are managed efficiently; and
- Changes in the external environment – both risks and opportunities alike – are addressed immediately and effectively.

Operationally, this means optimizing the efficiency, effectiveness, and economy of the service indicated in the PPP Agreement, balancing costs against risks, and actively managing the partnership between the Implementing Institution and the Private Partner.

Insofar as the Implementing Institution is concerned, managing PPP Agreements would require a different approach to that of public procurement (which tends to keep the service provider at arms-length, focuses only on inputs, and is often adversarial), as it focuses more on the importance of building constructive partnerships with the Private Party. This would require the Implementing Institution to strike a delicate balance on the extent of intervention it would exercise during various stages of implementation of the PPP project: too much intervention could sour relations with the Private Party and potentially stifle innovation, while too little intervention might lead to end-user dissatisfaction or expose the Implementing Institution itself to risks that it cannot manage or control.
The table below presents an outline of the contents of a CMP:

Table 1: CMP Content Outline

Section	Indicative content
Introduction	• Purpose of the CMP; • Overall approach; • Summary of objectives, output specifications and key deliverables of the PPP project
Partnership Management Framework in the PPP Agreement	• Avenue to updates and issues on the project between Implementing Institution and Private Partner (Implementing Institution officials / Private Partner senior representatives); • Monitoring, supervision and evaluation procedures of the Implementing Institution; reportorial requirements to be fulfilled by the Private Partner; • Contract amendment / variation procedures; • Dispute-resolution procedures; • Partnership termination/pre-termination procedures

Pre-construction stage	• Establish partnership management structure; • Establish performance management system; • Appointment of Independent Engineer; • Provision of Access to Project Site; • Review and approval of the Detailed Engineering Design (and other related plans); • Issuance of Notice to Proceed; • Others
Construction stage	• Conduct scheduled inspections and commissioning tests (with Independent Engineer); • Trial runs; • Certification of construction completion; • Fulfilling financial commitments during the construction stage (construction grant for instance)
Operations stage	• Conduct quality assurance reviews; • Review performance reports; • Conduct regular review meetings with Private Partner; • Monitoring of users grievances; • Monitor project financials; • Monitor service levels; • Monitor risks and exceptions; • Fulfilling financial commitments during the operation stage
Hand-back stage	• Conduct hand-back inspections and tests; • Turnover of asset register and all relevant operational protocols for all project assets; • Enforcement of strategy for continuing the service after contract termination; • Settlement of all financial commitments for the project; • Issuance of hand-back certificate

As part of the CMP, the Implementing Institution will need to formulate the budget for each of the identified activities and ensure that there are adequate financial resources with the Implementing Institution to fund the activities. As part of the budgeting exercise, the Implementing Institution may require to undertake a financial projection (of its revenues and costs) to estimate if it needs to depend on external sources to fund a part of the cost.

3. Appointment of an Independent Engineer

Depending on the size and complexity of the PPP Project, an Independent Engineer may be engaged to assist both the Implementing Institution and the Private Party with contract management and project monitoring tasks. The Independent Engineer is jointly appointed by both parties after signing the PPP Agreement, and may intervene at various stages during project implementation:

a) During construction stage:
- Review the detailed engineering design to verify its conformity with the output specifications in the PPP Agreement;
- Inspect and monitor construction works;
- Review modification requests and claims for compensation for special circumstances (such as force majeure);
- Conduct commissioning tests; and
- Issue the construction completion certificate to the PSP.

b) During operations stage (after successful commissioning of newly-constructed project facilities):
- Monitor the PSP's compliance with maintenance and performance standards; and
- Review modification requests and claims for compensation for special circumstances.

c) During hand-back:
- Conduct hand-back tests; and
- Issue the hand-back certificate to the PSP.

The preparation of the draft terms of reference of the independent engineer may be done by the Transaction Advisor. The Implementing Institution then finalizes the terms of reference in consultation with the PPP Unit, and procures the Independent Engineer in accordance with applicable public procurement rules and procedures. However, the costs related to the engagement of the Independent Engineer are shared equally between the Implementing Institution and the Private Party. This cost sharing arrangement is defined in the PPP Agreement.

4.4.1.5 Contract Management Proper

This section provides discussions of various aspects and events to be monitored and managed by the CMC during the implementation of the PPP project, such as: (1) routine activities and project risks; (2) performance; (3) fiscal commitments; and (4) disputes and contingencies.

The following steps describes the monitoring process across different stages of implementation of the PPP Project:

4. Monitoring of Routine Activities and Project Risks

a) Pre-Construction Stage

Contract Management at this stage mainly involves ensuring that both the Implementing Institution and the Private Party comply with their contractual commitments. The following lists the activities of each party in the PPP Agreement during pre-construction that need to be monitored:

Table 2: Responsibilities of the CMC (Pre-Construction)

Responsibilities	**Activities *(may vary from project-to-project)***
Ensuring compliance of Implementing Institution's responsibilities	• Handover of the project site and access to the project site within the committed schedule; • Approvals that are explicitly the responsibility of the Implementing Institution under the PPP Agreement; • Issuance of authorization and permits under Implementing Institution's control; • Review of technical designs and blueprints; and • Arrangements of the connecting/ feeder infrastructure facilities.
Monitoring compliance by the Private Party	• Preparation and submission of the technical designs and blueprints; • All approvals and permits (other than those which are explicitly the responsibility of the Implementing Institution); • Arrangement of the financial resources needed for the project and finalization of the financing contracts (financial close). • Project Insurance; • Arrangement of the inputs (electricity connection, construction water supply); • Submission of the performance/ security bonds and guarantees as required under the PPP Agreement; and • Opening of the project bank accounts and escrow arrangements.

The following are risks to be monitored by the CMC during pre-construction stage:

Table 3: Pre-Construction Stage Risks

Risk	**Description**
Land risk	• Risk that the entire land required for the project may not be available, or • Implementing Institution will need to expend additional cost to acquire the land required for the project, or • Land acquisition is likely to get delayed- delaying the handover of land to the Private Party (making the Implementing Institution liable for damages) and subsequent delay in project construction.
Approval risk	• Risk that all the approvals and permits required for the project may not be available, or • Risk that the approvals and permits will necessitate an increase in the project cost • Risk that the approvals and permits will take more time than envisaged, leading to delay in project construction (and cost escalation).

Financial risk	• Risk that the necessary debt, equity and other financial resources for the project may not be available, or • Risk that the financial resources are available but the cost of financing the project is higher than envisaged.
Input risk	• Risk that the necessary input facilities may not be available for the project, or • Risk that facilities that feed into the Project may be available with a delay.
Design risk	• Risk that the design developed by the Private Sector Partner does not meet the requirement of the CA, leading to redesign of the project (and consequent delays in the Project Construction). • Risk that the approved designs of the PSP turn out to be inadequate/ improper for the requirements of the CA.

b) Construction Stage

At this stage, the key objective is to ensure that construction timelines/deadlines are met, based on the approved design and within the approved budget. The Implementing Institution's commitments will be comparatively less at this stage. The activities to be monitored for this stage are described in the table below:

Table 4: Responsibilities of the CMC (Construction Stage)

Responsibilities	Activities *(may vary from project-to-project)*
Ensuring compliance of Implementing Institution's responsibilities	• Payment of capital grants based on the contractual milestones
Monitoring compliance by the Contractor	• Review of the construction progress; • Review of the Independent Engineer reports; • Review of trial run results; • Review of the adherence to the budget; and • Review of adherence to the approved designs.

The following are risks to be monitored by the CMC during construction stage:

Table 5: Construction Stage Risks

Risk	Description
Design Risk	• Risk that the approved design of the project is incorrect, during construction of the project
Cost Escalation Risk	• Risk that the actual cost of construction would be higher than envisaged during project development
Interest rate risk	• Risk that the interest rate applicable during construction is higher than expected
Completion risk	• Risk that the completion would be delayed beyond the targeted schedule

Risk	Description
Social / Environmental risk	• Risk that the social or environmental impacts of the project construction are more than expected- higher cost of managing the impact; and • Risk that there is widespread public opposition to the construction of the project

c) Operations Stage

This stage covers the commissioning of the PPP Project until end of contract or its early termination, as the case maybe. In this stage, the PSP actually delivers the services to the users through the constructed project facilities. The focus during this stage is to ensure that the performance of the Private Party meets the expected standards, and the users' rights and interests are protected. The activities of the contracting parties during Operations Stage that need to be monitored are described in the table below:

Table 6: Responsibilities of the CMC (Operations Stage)

Responsibilities	Activities *(may vary from project-to-project)*
Ensuring compliance of Implementing Institution's responsibilities	• Payment of operational period grants, if any • Monitor compliance with non-monetary commitments of the Implementing Institution, such as (if applicable): – No competing facility during the project tenure; and – Coordination with other government departments for connecting infrastructure facilities and services • Ensuring continuity of services
Monitoring compliance by the Contractor	• Review of Private Partner performance against defined outputs standards/ service levels; • Review of project financials; • Monitoring of the user experience/ grievances; • Review of the maintenance activities; • Monitoring planned maintenance and replacement activities; and • Verification of the usage data and revenues reported by the Private Partner.

The following are risks to be monitored by the CMC during operations stage:

Table 7: Operations Stage Risks

Risk	Description
Demand risk	• The risk that the actual demand of the project facilities/ services are higher or lower than expected
Revenue risk	• The risk that the actual revenues of the project are lower/ higher than expected; and • The risk that the revenue leakage is higher than expected
Operating risk	• The risk that the operating cost for the project is higher or lower than expected
Performance risk	• The risk that the project may not be able to deliver the expected performance; and • The risk that the operating cost to deliver the expected performance would be higher than expected
Interest rate risk	• The risk that the interest rate applicable during the operations period is higher than expected
Financial risk	• The risk that the financials of the project will not be able service the project debt; and • The risk that the financial returns of the project are lower than expected

d) Hand-back Stage

PPP Project facilities are required to be handed back to the Implementing Institution at the earlier between the end of the contract tenure (expiry of the contract) or at the time of termination of the contract (in conformity with the terms of the PPP Agreement). The Hand-back Stage is the phase where the process of handing over of project facilities and service responsibilities from the Private Party to the Implementing Institution is undertaken. The key focus of the CMC at this stage is to ensure that the project facilities are handed over in a pre-decided condition and in a manner that is consistent with what is specified in the PPP Agreement. The following table presents the key responsibilities of the CMC during this stage:

Table 8: Responsibilities of the CMC (Hand-back Stage)

Responsibilities	**Activities *(may vary from project-to-project)***
Ensuring compliance of Implementing Institution's responsibilities	• Terminal payments, if required under the PPP Agreement; • Taking over the possession of the Project Facilities; • Ensuring that there is no disruption in service provision and the user's rights are protected while the Hand-back is under process; and • Initiate bid process to appoint a new Private Partner for the next tenure
Monitoring compliance by the Contractor	• Review of the condition of the project facilities before the Implementing Institution takes the possession; • In case the condition of the project facilities does not conform to the specified standards then ensuring that the Private Partner brings the facilities up to the required standards. • Ensuring that the liabilities and obligations related to the operations period when the project facilities where in possession and control of the Private Partner are met/ fulfilled by the Private Partner before handing over the possession and control to the Implementing Institution; and • Ensuring that the Private Partner does not disrupt the service to users while the Hand-back is in progress.

The following are risks to be monitored by the CMC during hand-back stage:

Table 9: Hand-back Stage Risks

Risk	**Description**
Terminal risk	• The risk that the project facilities at the end of the contract period do not meet the prescribed condition; and • The risk that the Implementing Institution will need to spend a higher than expected amount to bring the project facilities up to the required operating standards.
Service disruption risk	• The risk that the service to the users is disrupted while the hand-back is in progress
Re-tendering risk	• The risk that the cost of retendering the project facilities is higher than expected; and • The risk that the value for money for the succeeding contract is much lower than expected by the Implementing Institution

5. Performance Monitoring and Reporting

One of the primary responsibilities of the CMC would be to monitor the performance of the Private Party against the output standards and service levels defined in the PPP Agreement. The monitoring of performance is essential to:

- Identify defaults by the Private Partner in complying with the requirements of the PPP Agreement;
- Protecting the interests of the user;
- Ensuring service continuity;
- Predict potential risk and conflict events;
- Predict potential financial stress on the project;
- Compare key performance and financial indicators against the expected performance and financials;
- Review of the revenues of the project- especially if the IA has a share in it.

The elements of performance monitoring in PPP projects are presented in the next subsections.

4.4.1.6 Output standards and key performance indicators

The PPP Agreement should define the output standards and key performance indicators that the Private Partner needs to comply with during the operations of the PPP Project. The standards and key performance indicators depend on the sector to which the project belongs.

The Implementing Institution should ensure that the output standards and key performance indicators are compliant with applicable standards and are consistent across all projects in the sector. This will ensure comparison of different projects in the sector. The key performance indicators will be different during the construction period and during the operations period. The performance indicators during the construction period would cover the Private Party's performance in the following aspects:

- Physical progress of project construction;
- Financial progress;
- Safety requirements;
- Disruptions to existing users; and
- Instances of regulatory non-compliance.

The key performance indicators (KPIs) during operations will cover the following aspects:

- Project performance:
  - » Volume of use of the facility (e.g. traffic in passenger car units for a highway project);
  - » Revenue of the project (e.g. tolls collected, across categories of uses for a highway project).
- Quality of services;
- Availability of facilities (e.g. number of available lane-days during a year for highway projects);

- Number of service disruptions (e.g. number of disruption lane-days during a year for highway projects);
- Number of user complaints;
- Percentage of consumer complaints resolved.

4.4.1.7 Management of defaults

PPP Agreements will define the circumstances under which the Implementing Institution and the Private Partner respectively would be considered to be in default of the terms of the contract. Events of default are described in detail in the PPP Agreement to disincentive poor performance of obligations by the Private Partner and the Implementing Institution. Inability of a party to rectify a default may lead to the termination of the contract. As such, the CMC would need to detail the process for addressing the defined events of default. The key elements of the process for managing defaults are as follows:

- Detection of defaults:
  - » Review points;
  - » Review responsibility;
  - » Reporting of defaults and communication to the counterparty.
- Formal recognition of defaults within the framework of the PPP Agreement:
  - » Authority for attribution of the default to the responsible party;
  - » Decision making authority for formalizing events of default.
- Consequences of default:
  - » Approval of penalties/ damages;
  - » Decision making authority on waiving/ modifying consequences of default.

4.4.1.8 Monitoring of Fiscal Commitments

The steps for monitoring fiscal commitments can be found in Annex E.

4.4.1.9 Management of Disputes

PPP Agreements typically define the process to be followed in case of disputes between the two parties to the contract- Implementing Institution and the Private Party. The CMC should focus on minimizing disputes between the two parties. Disputes cannot be completely eliminated, as PPP Agreements are substantially long tenured commercial arrangements.

4.4.1.10 Periodic review meetings

One of the ways that disputes can be minimized is by regular periodic meetings between the CMC and the management staff of the Private Party. These meetings become an avenue to discuss not only updates on the implementation of the PPP Project, but as well as current and foreseen issues or concerns. The regular conduct of such meetings would greatly prevent the escalation of such issues. In view of this, the CMC should focus on creating an open culture that facilitates open dialogue between the two parties so that potential disputes can be managed proactively.

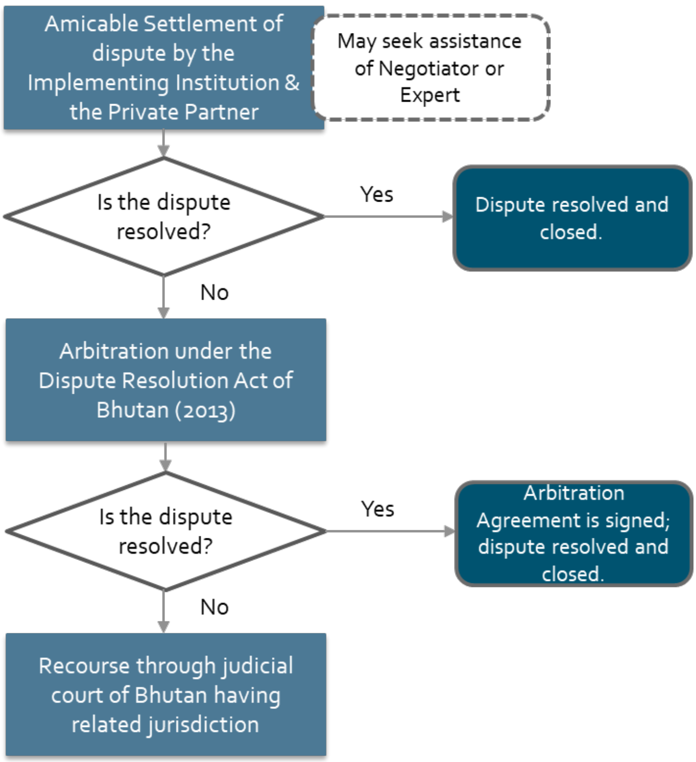
4.4.1.11 Exception Reporting

Another important and effective tool that the CMC would have is an established process for recording and reporting exceptions. As part of the regular monitoring process, the CMC reports exceptions and deviations from the PPP Agreement, projected service levels and volumes, projected financial flows, expected social/ environment impacts, changes in the workforce, changes in the user composition etc. The reporting arrangements should record and report any event that is a deviation from the defined/ expected event and may lead to either (a) potential conflict in the future or (b) financial implication for either of the parties.

4.4.1.12 Dispute Resolution Mechanism

Ideally the PPP Agreement should define the sequential steps to be undertaken by the Implementing Institution and the Private Party, in case there is dispute between the two parties to the contract. If the PPP Agreement does not specify the dispute management process, the CMC should define the dispute management process as part of the PPP Contract Management Plan and share the same with the Private Partner. The PPP Rules & Regulations of Bhutan provides a sequential approach to dispute resolution. Below is a graphical summary:

Figure 12: Dispute Resolution Mechanism under Bhutan PPP Rules and Regulations



4.4.1.13 Management of Contract Variations

During the implementation of the PPP Agreement, there will be instances where a change in circumstances will occur which was not anticipated or properly quantified when the PPP Agreement was signed. In response, a variation or amendment of the contract may have to be contemplated as an option. As guide, the CMC should consider if the amendment to the PPP Agreement will continue to provide: (1) value-for-money; (2) affordability; and (3) appropriate risk-sharing between the parties.

Contract variations may be categorized as follows: (a) variations that involve no additional costs; (b) small works variations; (c) Implementing Institution-initiated variations; and (d) Private Party-initiated variations. Below are some indicative procedures that can serve as guide in proceeding with these variations:

- **Variations involving no additional costs** – The Implementing Institution and the Private Party need to discuss the most optimal way of implementing the proposed variation. If the variation will result in a reduction in costs, both parties need to reach an agreement on how to distribute the savings. If the variation is proposed by the Implementing Institution, savings should accrue either to government and/or the end users; while savings derived from a variation proposed by the Private Party should be divided between the Implementing Institution, the Private Party, and the end users. It is expected that for implementing these types of variations, both parties should reach an agreement without having to resort to dispute resolution procedures.
- **Small works variations** – Where the threshold for such works is sufficiently low for the Private Party to manage, the expectation is that a clause in the PPP Agreement was included requiring the Private Party to provide a schedule of rates for small works at the beginning of each year. Otherwise, such schedule of rates will have to be decided soonest. Any dispute between the parties relating to these types of variations often have to be determined in accordance with the dispute resolution procedures adopted in the PPP Agreement.
- **Implementing Institution-initiated variations** – These variations should only be limited to changes in the service requirements, specified constraints on inputs, and the limits or scope of project warranties. The Implementing Institution must first submit a variation proposal to the Private Party. The proposal must describe the nature of the variation, and require the Private Party to provide an assessment of the technical, financial, contractual and timetable implications of the proposed variation within a specified time period. After discussing with the Private Party to consider its response, the Implementing Institution must decide who between the two contracting parties should put the funding in place to implement the variation. Depending on who provides the funding, payment for the variation should be made by any necessary adjustments to availability payments, government support payments, or other payments contemplated in the PPP Agreement.

- **Private Party-initiated variations** – The Private Party must submit a variation proposal to the Implementing Institution, setting out the details of the variation and its likely impact to the PPP Agreement, particularly in relation to payments. After the Implementing Institution meets with the Private Party and providing the latter with an opportunity to modify its variation proposal if necessary, the Implementing Institution must decide, after approval from the PPP Unit, PPP Steering Committee and Lhengye Zhungtshog, whether to accept the proposal or not. If the Implementing Institution decides to accept the proposal, it will need to make the necessary arrangements for payment depending on the payment mechanism agreed upon.

4.4.1.14 Management of Contingencies

a) Change in Law

Change in law event is defined as a material change in the legal or regulatory framework that governs the construction, operations and services of the PPP Project and has a material impact on the financials of any of the parties to the contract. The management of change in law involves the following:

- **Definition of change in law:** typically, the PPP Agreement defines events that are eligible to be covered under change in law provisions.
- **Notice of change in law:** The party that is impacted by the change in law is expected to issue a written notice to the other party communicating that a change in law has occurred and also estimating the financial impact that the change in law event may cause.
- **Approval of change in law:** The CMC must, on receipt of change in law notice from the Private Party, review the change in law event from the following perspective:
  - » Does the event meet the defined criteria of change in law?
  - » What is then impact of the change in law event?
  - » What is the provision in the PPP Agreement regarding compensation to the Private Party for the change in law event?

Based on the review, the CMC must prepare a note for approval by the Implementing Institution. Prior approval of the MoF is required in case the change in law event would entail payment of any compensation to the Private Party.

b) Force Majeure Events

Force Majeure Events are unforeseen circumstances that materially impact the ability of the contracting parties (Implementing Institution and the Private Partner) to perform their contractual responsibilities, and in consequence may have financial impact on the project or the contracting parties. A standard PPP Agreement will define a Force Majeure Event and the process to be followed by the contracting parties in case a Force Majeure Event materializes.

The management of consequences of Force Majeure Events will involve the following activities, from the perspective of the Implementing Institution:

- **Notice of Force Majeure Event**- In case the Implementing Institution is aware of the Force Majeure Event, then it will need to prepare a written notice describing the event and the likely impact on the project and send it formally to the Private Party. The notice would be prepared by the CMC and it would be issued under the authority of the authorized signatory of the Implementing Institution.
- In case the notice is received by the Implementing Institution from the Private Party, the CMC will review the notice to ensure that the event in question meets the criteria of a Force Majeure Event. The notice, with the remarks from the CMC would be presented to the Implementing Institution management for approval and counter signature, as described above.
- **Information to MoF** - A Force Majeure Event can have substantial impact on the finances of the government- as it can potentially lead to termination of the contract, making the Implementing Institution liable to pay termination payments to the Implementing Institution. Hence, immediately on receiving notice of the Force Majeure Event/ suo-moto recognition of the Force Majeure Event, the CMC should inform the MoF. The information notice should describe the Force Majeure Event, the potential impact of the event, and the likelihood that the event would trigger termination of the contract.
- **End of Force Majeure Event** - When the party affected by the Force Majeure Event is aware that the event has concluded, it should send a notice to the other party. The process followed for issue of the notice would be similar to the one described for the notice of Force Majeure Event, in the previous paragraphs. The notice should necessarily describe the impact of the event, and the financial implications of the impact. The CMC shall prepare/ review the financial implications of the Force Majeure Event and submit its findings and recommendations to the Implementing Institution management for approval. The Implementing Institution may engage the services of external experts/ valuation professionals to estimate the financial value of the impact of the Force Majeure Event.

The potential liabilities of the Implementing Institution in terms of compensation payable to the counterparty (if applicable) would be governed by the terms of the PPP Agreement.

The Force Majeure Event can trigger termination under circumstances governed by the PPP Agreement. The process followed by the CMC and the Implementing Institution are similar to the process followed by Termination of the Contract, described in the following section.

c) Termination of Contract

Termination of contract in the context of PPP Agreements means the severing of the contractual relationship before the tenure of the PPP Agreement expires. There are several situations where termination can be initiated by either party- Implementing

Institution or the Private Party. The following sections provide an overview of the activities to be performed by the Implementing Institution in case (1) termination is initiated by the Implementing Institution and (2) termination is initiated by the Private Partner:

- If the termination is initiated by the Implementing Institution, then the CMC must prepare a written note explaining the reasons for initiating termination, including supporting evidence. A termination notice (based on the note prepared by the CMC) will be issued to the Private Party, after approval from the relevant authority of Implementing Institution.
- If the termination is initiated by the Private Partner, then the Project Management Unit must review the termination notice issued by the Contractor to assess: (1) if the reasons for termination are valid and eligible under the terms of the PPP Agreement; and (2) if there are any alternatives to termination. Based on the review, the CMC may recommend the termination notice to the Implementing Institution for approval.

Irrespective of the entity that initiates the termination process, the CMC must inform the MoF regarding the termination notice and the likely value of the termination compensation that may have to be paid to the Private Party. In case the Implementing Institution is likely to face a shortfall of funds in payment of the likely compensation on termination, the same should be highlighted to MoF.

4.4.1.15 Termination of the PPP Agreement and Hand-back of Assets

At a defined period prior to the end date of the PPP agreement (generally three years), the CMC should start preparing for the hand-back of the assets from the Private Party to the Implementing Institution. This includes among others:

- Inspection of the state of the project assets at several intervals before hand-back;
- Identification of maintenance and repair works that need to be undertaken by Private Party prior to hand-back;
- Requiring the Private Party to post a hand-back performance security as guarantee that the assets will be handed over in good condition; and
- Verification that the Private Party carries out the required pre-hand-back works.

At a similar time period, the Implementing Institution (facilitated by the CMC) must decide on how project services will be continued after the termination of the PPP agreement. Possible options are:

- The Implementing Institution maintains and operates the project assets itself;
- The Implementing Institution concludes short-term service agreements for the maintenance and/or operation of the project assets.
- The Implementing Institution concludes a new long-term PPP Agreement to renovate or expand the project assets and maintain and operate them thereafter.

The decision must be taken sufficiently well before the termination date of the PPP Agreement to provide enough time to prepare and conduct the procurement for the appointment of new contractors.

5 ANNEX A PROJECT DEVELOPMENT FUND GUIDELINES

5.1 The PDF

The Project Development Fund (PDF) is a pool of funds sourced from the government budget and/or donor funding for purposes of financing the preparation and tender of PPP Projects to the market. PDF funds may be applied for by Implementing Institutions, for their projects that will be implemented and funded through PPP schemes (user fee or availability payments scheme).

Specifically, the PDF can fund the following key activities/items:

- Development of the Feasibility Study; and
- Provision of Transaction Support during project tender until financial close.

Through the PDF, Implementing Institutions can apply for the use of dedicated funds to avail of transaction support under the guidance and supervision of the PPP Unit. The PPP Unit, as the administrator of the PDF will assist the Implementing Institution in the procurement of the TA, as a contract manager managing the TA services contract, and as project support to the Implementing Institutions in managing the project preparation and transaction implementation process. The Implementing Institutions remains to be the primary entity accountable for the progress of the development and tender of the project and shoulders the responsibility of giving the final approval for all of the outputs produced by the Transaction Advisor.

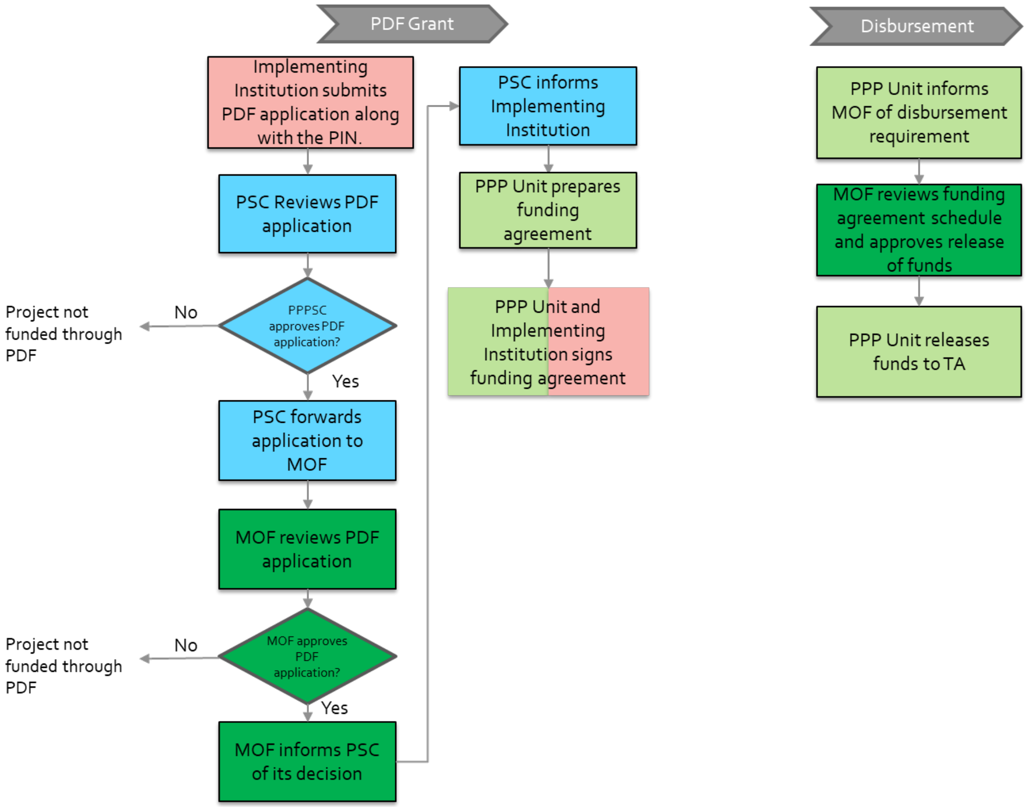
5.2 Objective of the PDF

The core objective of the PDF is to provide funding for transaction advisory services to facilitate and sustain the development of a robust pipeline of viable and well-structured PPP projects in accordance with international and national best practices.

At the same time, the PDF seeks to institutionalize a process for the efficient and effective use of the funds, which aims to:

- Ensure the allocation of sufficient budget to hire reputable international and national Transaction Advisors for the preparation and tender of PPP projects;
- Apply an open, transparent and professional Transaction Advisor selection process which minimizes the chances of mal-procurement of the TAs;
- Facilitate the preparation of project analysis and documents to ensure value-for-money, adequate management of contingent fiscal liabilities, and project bankability; and
- Provide Implementing Institutions with hands-on transaction support during the preparatory and procurement stage until financial close of the project in accordance with the expected quality and stipulated timeframe

5.3 Overview of the PDF application and disbursement processes



5.3.1 Key Roles under the PDF

5.3.1.1 Implementing Institution

The Implementing Institution is the project owner and responsible for its proper delivery. The PDF only supports those Implementing Institutions that seeks to realize their projects through a PPP procurement / funding scheme. The Implementing Institution will receive dedicated and specialized project preparation, transaction and management support. However it is required that the Implementing Institution remains fully responsible for the procurement and realisation of its project(s) and allocates adequate resources to manage the project development properly likewise it would do for its other priority infrastructure developments. . In order to keep the Implementing Institution fully responsible for its project, it is required to co-finance the PDF.

The other key role players have a supportive and advisory role towards the Implementing Institution.

5.3.1.2 PPP Unit

The PPP Unit takes responsibility for funding the PDF and to put in place the agreements and operational arrangements that will provide the Implementing Institution with effective support. It undertakes operational control over the administrative requirements of the PDF.

The PPP Unit acts as a strategic advisor to Implementing Institution regarding the key aspects of PPP project structuring including the government support arrangements, procurement strategy and on key decisions during the transaction process.

5.3.1.3 Public Private Partnership Steering Committee (PSC)

The PSC approves applications for PDF support and endorses its approval to the Ministry of Finance.

5.3.1.4 Ministry of Finance

The Ministry of Finance is the gatekeeper of the disbursements under the PDF and is responsible for the replenishment of the Fund through budgetary injections from time to time.

The Ministry of Finance is also tasked to decide on the grant of PDF support for Implementing Institution applications upon the recommendation of the PSC.

5.3.1.5 Transaction Advisors (TA)

The Transaction Advisors are the external experts procured using PDF funds to provide direct and hands-on support to the Implementing Institution from the development of the Feasibility Study, until tender and award of the PPP project, including financial close. The TAs are tasked to prepare the project documents (among which include the Feasibility Study, RfQ Documents, RfP Documents – including the draft PPP agreement), which will be subject to review by the Implementing Institution.

While the Implementing Institution remains to be the primary entity responsible for the success or failure of the PPP project, the TA is expected to provide prompt and quality outputs and guidance to the Implementing Institution during the entire process. By virtue of the TA services contract, the work and output of these advisors are under the direct control and supervision of the Facility Implementer; at the same time, the TA is also ultimately answerable to its client, the Implementing Institution, who has the initiative to retain or terminate the TA's services at any time during the process if it is shown that the TA has been severely underperforming or is no longer able to competently fulfil its obligations under the TA services contract.

5.4 PDF Funding

The PDF will be sourced from the government budget and/or donor funding upon appropriate application by the Ministry of Finance of the funds as part of its budget line. Other agencies may, as approved by the MoF be permitted to join and contribute directly to the PDF.

The funding allocated to the PDF is determined based on the number of identified potential PPP projects that may be funded by the PDF.

5.4.1 Eligibility for PDF grant

- The Project is intended to be pursued under the PPP scheme;
- The Project seeking PDF grant is part of the GNHC's list / database of PPP Projects;
- The Implementing Institution cannot from its own resources, fund the required transaction advisory services to bring the Project to a successful commercial close; and
- The Implementing Institution agrees to co-fund the transaction advisor's fee and other project development cost.
- The decision of the MoF for eligibility shall be final

5.4.2 PDF grant application

5.4.2.1 Steps in PDF grant application:

1. Submission of request for financial assistance

The Implementing Institution submits its request for financial assistance to the Ministry of Finance through the PSC for screening and in-principle approval.

The request for financial assistance must include:

- Commitment of the Implementing Institution that it will give its best efforts to deliver bring the project to commercial close as a PPP;
- Indicate its inability to fund the TA services using its own funds and its efforts in finding alternative sources of funding;
- PDF budget requirement; and
- That the Implementing Institution will comply with all the requirements and will perform all the necessary obligations that accompany the provision of PDF support to the project as will be stipulated in the funding agreement to be signed with the PPP Unit;

The attachments to the request for financial assistance include:

- Project Information Note;
- Draft TOR of the TA; and
- Plan of recovery of funds.

2. Screening of request for financial assistance

The PSC screens the request for financial assistance.

Upon the submission of the request for assistance, the PSC evaluates the contents of the request and its attachments.
The PSC evaluates the request for financial assistance based on:

- Whether the scope of transaction advisors has been fully defined;
- Whether the milestones for transaction advisor payment is such that the project is at risk of not reaching technical closure;
- Whether the Implementing Institution explored internal sources of funding for hiring transaction advisors;
- Whether there is a sufficient fund with the Implementing Institution to fund other project development costs;
- Whether the PPP Unit has developed a reasonable plan to recover the PDF grant from the private sector; and
- Whether the Implementing Institution has made a counterpart funding commitment to transaction advisor costs and other project procurement costs.

The PSC may decide to:

- Provide an unconditional in-principle approval of the PDF grant and forward application to the MoF; or
- In-principle approval subject to certain conditions; or
- Reject the PDF grant.

In case the PSC rejects the PDF grant, it shall provide the Implementing Institution reasons for its rejection of the PDF grant.

3. Review of request for financial assistance

The Ministry of Finance review the request for financial assistance and the endorsement of the PSC and may decide to:

- Approve the PDF grant; or
- Reject the PDF grant.

In case the MoF rejects the PDF grant, it shall provide the Implementing Institution reasons for its rejection of the PDF grant.

Steps 2 and 3 shall be undertaken within 45 days from receipt of the request for financial assistance.

The Ministry of Finance will inform the PSC of its decision which will in turn inform the Implementing Institution.

4. Preparation of Funding Agreement

The PPP unit will prepare the funding agreement including all the conditions approved by the PSC (if any).

The funding agreement shall include:

- The terms of engagement of the TA (including the experts engaged, their work schedule and the outputs to be produced);
- The terms and conditions for release/disbursement of PDF funds to the TA (such as the fulfilment of milestones and invoicing procedures);
- The Implementing Institution's reporting requirements to the PPP Unit;
- Project development timeline;
- The conditions approved by the PSC;
- The terms and procedure for contract variation and contract termination; and
- Dispute mechanism.

5. Execution of the Funding Agreement

The Head of the PPP Unit and the Head of the Implementing Institution, in their capacity as authorized signatories, will then execute the funding agreement.

5.4.3 PDF Disbursement

5.4.3.1 Steps in PDF Disbursement

1. Disbursement request

Upon the approval of the PDF application and the signing of the Funding Agreement between the authorized signatories of the PPP Unit and Implementing Institution, a portion of the Fund is already deemed allocated to the specific Project.

The Implementing Institution hires, through a competitive selection process for Procurement of Consultants' services as outlined in the Procurement Rules and Regulations 2009, a Transaction Advisor who will undertake the PDF-covered activities.

A TA Contract will be executed by and between the selected TA and the PPP Unit.

The schedule of payment in the TA Contract shall reflect the schedule of payment reflected in the signed funding agreement between the PPP Unit and the Implementing Institution.

As the Transaction Advisor meets specific milestones (output delivery) in the Project, it submits invoices to the PPP Unit for the drawdown of funds from the Fund corresponding to each Project milestone achieved as reflected on its schedule of payments under its TA Contract. The PPP Unit and the Implementing Institution shall arrange internal arrangements as regards verification of payments to be made by the PPP Unit to the Implementing Institution. Such arrangements will be detailed in the Funding Agreement.

The PPP Unit reviews the claim of the Transaction Advisor and forward a request for disbursement in the PDF from the MoF.

2. MoF review of disbursement request

The MoF reviews the disbursement request and the Funding Agreement payment schedule and approves disbursement as applicable.

3. Release of payment

The PPP Unit, through the PDF releases the payment to the TA.

5.4.4 Recovery of PDF grant

The PDF grant for TA services may be recovered from the successful private sector partner on the award of the project.

The amount recovered from the TA may include a margin.

In case the Implementing Institution does not conclude the bidding process or does not award the Project after the bid process has been concluded (except for reason of loss to public exchequer or lack of competition), the Implementing Institution shall reimburse the PDF with the amount of financial assistance disbursed plus 10% margin.

5.4.5 PDF Monitoring

5.4.5.1 Steps in PDF Monitoring

1. Submission of reports

As part of the funding agreement, the Implementing Institution will be required to submit quarterly progress reports to the PPP Unit.

2. Review of reports

The PPP Unit shall review these reports and assess any deviation from the timelines provided for in the funding agreement.

The review of the progress of PDF supported projects is required of the PPP Unit in order to allow it to have a view on the timing of the recovery of funds for funding to other projects.

6 ANNEX B PROJECT CONCEPT NOTE TEMPLATE

Implementing Institution:	
Project Name:	
Sector:	
Project Definition:	
Expected size of project (Nu):	
Indicative Contract Period:	
Greenfield / Brownfield?	
Applicable Government projects and priorities:	
Role of the Implementing Institution in the Project:	
Role of the private partner in the Project:	
Status of Project Deliverables:	

7 ANNEX C PROJECT INFORMATION NOTE TEMPLATE

Implementing Institution:	
Project Name:	
Approval Date of PCN:	

PROJECT SUMMARY	**Project Description:** **Project Description:** *(Indicate brief description of the project scope and location, public infrastructure and service to be delivered by the project, etc)* **Project Rationale:** *(Indicate purpose and necessity of the project, including which development plan the project originated from)* **Project Cost Estimate:** **Indicative Contract Period:** **Identified Sources of Revenue / Financing:**
IMPLEMENTING INSTITUTION READINESS	**Does the Implementing Institution have the capacity (i.e. experience and expertise) and resources (i.e. manpower and funding) to implement the Project?** *(If yes, elaborate on the existing institutional/organizational capacity of the Implementing Institution to implement the proposed PPP project, including access to resources and external experts – i.e. PPP units, knowledge centers, transaction advisors/consultants, if any. If no, indicate the specific challenges / weaknesses besetting the Implementing Institution in implementing the proposed PPP project)*
PRIVATE SECTOR READINESS	**Does the (local) private sector show interest to invest in the sector / project?** *(Include as attachment minutes of meeting of market consultations with equity investors, construction companies, among others)* **Has a similar project (of similar size) been undertaken in the region?** *(Identify the projects that were undertaken in the region of similar size and characteristics)* **Has the local financial institutions shown interest in financing similar projects?** *(Include as attachment minutes of meeting of market consultations with financial institutions)*

<table>
<tr><td>TECHNICAL FEASIBILITY</td><td>Engineering and technical aspects of the Project:

Envisaged management of the operational aspects of the Project:

Preliminary assessment of technical and operational risks:</td></tr>
<tr><td>FINANCIAL AND ECONOMIC FEASIBILITY</td><td>Potential revenue options for the Project:
Indicative Project Cost: (Capital expenditures + operating and maintenance expenditures)
Indicative risk allocation matrix:
<table>
<tr><th>Risk</th><th>Description</th><th>Responsible entity (Public / Private / Shared)</th></tr>
<tr><td></td><td></td><td></td></tr>
<tr><td></td><td></td><td></td></tr>
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</table></td></tr>
<tr><td>LEGAL FEASIBILITY</td><td>Legal Framework Analysis:
Project structure: (Is it bundled with another project?)

Legal documentation required to allow participation of private partners: (mention applicable laws, among others)</td></tr>
<tr><td>OTHER INFORMATION</td><td>Recommendations on undertaking the project as a PPP: (Provide an explanation how the project will address a public need but at the same time remain interesting for the private sector)

Indicative timeline for project preparation:</td></tr>
<tr><td>PDF SUPPORT REQUIREMENTS</td><td>Revenues obtained from RGoB in the last three years:

Grants obtained in the last three years:

Expenses in the last three years:

(Attachments: Statement of Financial Position of the Implementing Institution; No Objection Certificate from the PPP Unit, Statement of skills present in the Implementing Institution with regard to transaction services and proposed plan of knowledge and skill transfer from the transaction advisors)</td></tr>
</table>

8 ANNEX D FEASIBILITY STUDY GUIDELINES

8.1 Introduction

This Module provides more detailed guidance on the contents and quality requirements of the Feasibility Study.

The feasibility study report constitutes the basis for the decision by the Implementing Institution for the Project to proceed to procurement and implementation. The purpose of the feasibility study is to provide the Implementing Institution with the information that is needed to assess these criteria.

In order to achieve its purpose, the Feasibility Study must meet stringent contents and quality requirements. If these requirements are not met, the Implementing Institution will not have the necessary reliable information for appraising the Project, and there will be no sufficient basis for the development of the Project as a viable PPP. These requirements are described in the present Module.

The undertaking of a Feasibility Study requires substantial efforts and a broad range of expertise. Therefore feasibility studies are in general conducted by an external consultant (TA) hired by the Implementing Institution. However, for projects for which the Implementing Institution has the ample capacity to undertake the study by itself, it may develop the feasibility study on its own. This Module is of use to the Implementing Institution in three ways:

- The Feasibility Study requirements described in this Module can be used as input for establishing the terms of references of a Transaction Advisor for the feasibility assessment;
- They also serve as a checklist for the verification by the Implementing Institution of the quality of the Feasibility Study report submitted by the Transaction Advisor. If the Feasibility Study has been made in accordance with the requirements set out in this Module, then the Implementing Institution can, to a certain extent and even without in-depth PPP expertise, assess the degree of reliability of the study[1]; and
- Lastly, they serve as a guide for the Implementing Institution (in case it has the capacity to undertake the feasibility assessment on its own) for the key components required for a full feasibility assessment of a project intended to be procured as a PPP.

1 However, it must be pointed out that the accuracy of assumptions and research methods can never be fully verified by an evaluator that is not a sector or discipline (financial, economic, PPP) expert. When there are serious doubts about the quality of all or parts of the Feasibility Study, a second opinion by relevant sector or discipline experts must be sought.

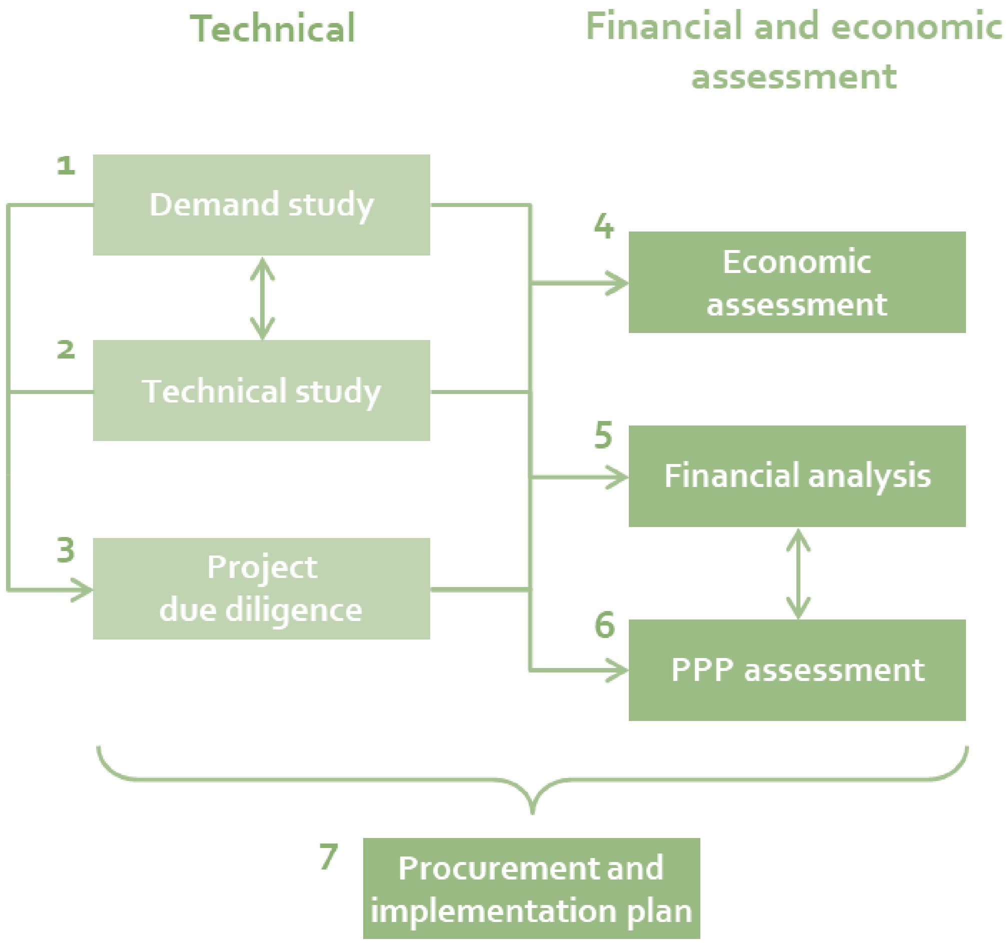
8.2 Components of a Feasibility Study

The Feasibility Study must provide a comprehensive assessment of the feasibility and desirability of the Project. In order to do so the Feasibility must contain the following parts:

- Demand study;
- Technical study;
- Project due diligence;
- Economic analysis;
- Financial analysis;
- PPP assessment; and
- Procurement and implementation plan.

The logical sequence and the main-input output relations between the components of the feasibility study are shown in the figure below:

Figure 13: Logical sequence of the components of the feasibility study



The Feasibility Study is comprised of two sets of studies and a procurement and implementation plan.

The technical solution is developed and its feasibility is assessed. The technical study include the technical analysis, the demand study and the project due diligence (considering environmental and social impacts and compliance with laws and regulations).

The results and findings of the technical study are used as input for the **economic and financial assessment**, comprised of the economic assessment, the financial analysis and the PPP assessment.

Finally, the **implementation and procurement plan** sets out the main actions (with indicative timing) that need to be undertaken by the Implementing Institution and by other relevant government agencies in order to procure and implement the project.

It must be noted that the arrows in the figure show a simplified picture of the input-output relations between the components of the Feasibility Study. In practice there is frequent feedback between the different parts of the Feasibility Study in an iterative Project development process.

The requirements for each of the components of the Feasibility Study are described in the next chapter.

8.3 Determination of scope of the Feasibility Study

The requirements described in this Module are generic, in the sense that they apply to all types and sizes of projects that may be implemented by a Implementing Institution. For each individual Project the Implementing Institution must adapt the requirements to the specific characteristics and context of the project being studied. In specific projects some of the requirements described in the next chapter may therefore not be relevant.

The required scope and depth of the feasibility study depends on the size and complexity of the project. For instance, the realization and subsequent operation of an urban tramway requires a much more extensive feasibility study than a project consisting of the construction and maintenance of a few standard school buildings. The general principle is that the scope and depth of the Feasibility Study must be determined so as:

- To meet relevant legal and regulatory requirements (especially with respect to environmental and social impacts there are often laws and regulations prescribing the impacts that must be assessed);
- When the development of the Project is supported by international financing institutions, to comply with the requirements in the relevant guidelines of these institutions.

A balance must be found between the cost of the project and the cost of the feasibility study. A more detailed feasibility study generally results in a better structured project, so that costs are saved and/or benefits are increased. However, the maximum potential value of cost savings and benefit gains is limited by the cost and the size of the Project.

Hence, it is not efficient to spend large resources on the Feasibility Study of a small project.

At the beginning of the project cycle the Implementing Institution must fine-tune the requirements of the Feasibility Study, taking into account the considerations mentioned above. The fine-tuned requirements are incorporated in the technical terms of reference of the Feasibility Study by Consultant.

8.4 Technical Feasibility Study Requirements

8.4.1 Demand Study

The demand study consists of:

- Determination of user needs;
- Preparation of demand forecasts;
- Determination of willingness to pay of users.

8.4.1.1 Steps in Demand Study

1. Determination of user needs

The user needs are described in terms of:

- Type of services;
- Type of assets that are needed to produce the services;
- Service area that must be covered;
- Required quality of services (for instance: frequency and speed of bus service, quality of potable water supply, reliability of service).

2. Demand forecasts (volume and price)

Demand forecasts for the service are established. The demand forecasts refer to the demand volume (initial volume and growth rate) and the price that users are willing to pay. Depending on the available information, the demand forecasts may be based on:

- Extrapolation of existing demand volume and growth: if the objective of the Project is to provide additional capacity to serve existing demand, then the demand forecast can be based on an extrapolation of the observed growth of the existing demand.
- Population size and growth rate: if the service is targeted at a specific group or geographical area, then the demand forecast can be deduced from the size and growth rate of the population within that group or geographical area.
- Reference projects: if similar projects have recently been carried out or if similar services are offered in the country then these may be used as a reference for the estimate of the demand volume and the price for the Project. In that case, the demand study must explain how the demand data on the reference projects and services have been adjusted to account for the differences between the specific conditions and characteristics of the Project and the reference projects or services.

- User surveys: if the project concerns a new service and no suitable reference projects can be found, then a representative survey of potential users must be conducted to estimate the demand volume and the price users are willing to pay.
- Quantitative demand models: for large projects quantitative demand models can be used (for instance traffic models, or water demand models). The development of demand models requires substantial time and resources, and is therefore only sensible for projects of sufficiently high value (in order to preserve a balance between Project value and Feasibility Study costs).

Whatever the chosen approach of the demand forecasts, the assumptions and methodology must be clearly documented so that validation is possible.

8.4.2 Technical Study

The technical study consists of:

- Analysis of technical options to meet user needs;
- Definition of project specifications and service levels;
- Assessment of suitability of project site; and
- Estimation of the capital, maintenance and operating costs during the lifetime of the project.

8.4.2.1 Steps in Technical Study

1. Analysis of technical options

Technical options are developed for meeting the identified user needs. A technical option is defined by a description of:

- The project assets that will be built or purchased (type, capacity, site/alignment, technology);
- The time schedule of realization of the assets; and
- The project services that will be supplied (type, volume, quality, duration).

The set of considered technical options spans the range of possible choices with respect to project site, capacity, quality, technology and implementation schedule. Where relevant the following types of options must be explored:

- Do nothing option: consequences of a continuation of business as usual;
- Non asset option: option to improve the service delivery that does not require investments in assets;
- Improvement option: option to improve the service delivery by improving existing assets;
- New asset option: option that involve investments in new assets to meet the identified service needs.

Common pitfall in project definition
A common pitfall in project definition is a too early focus on a single solution. This is reflected in a project-oriented instead of a user-oriented problem definition. In other words the project need is defined in terms of the project itself (for instance, there is a need for a new two-lane bypass) instead of in terms of the deficiencies of the existing infrastructure to meet current and expected user demand (for instance the existing road experiences substantial congestion, and the traffic volume is expected to increase further). Only after defining the project need the possible options to address this need can be explored

On the basis of the retained technical option, a preliminary technical design of the Project is developed.
In this regard it should be noted that one of the important value-for-money drivers in PPP projects is the design freedom left to the bidders and the selected Private Partner. This gives to the Private Partner the opportunity to design creative and innovative technical solutions, provided that the output specifications are met. Consequently, the objective of the technical analysis in the Feasibility Study is not to prepare detailed designs and blueprints. In PPP projects most of the design activities are performed by the bidders when making their proposals, and by the selected Private Partner after the award of the project.

In general the technical design and analysis in the feasibility study must be as detailed (but not more) as is necessary for:

- Demonstrating the technical feasibility of the Project,
- Estimating the Project costs; and
- Providing the required information for the Project due diligence (see below).

As a result the required level of detail of the technical analysis depends on the complexity of the Project. For instance a large-scale transport infrastructure project will require a more extensive technical study than a straightforward building project. The technical feasibility of the Project is demonstrated.

If similar projects have been carried out recently in the country or elsewhere in similar circumstances as the Project, then these reference projects may be used as evidence of the technical feasibility of the present project. In that case the technical analysis must demonstrate the relevance of the chosen reference projects for the Project, and must explicitly account for the (limited) differences between the reference projects and the present project (i.e. must demonstrate that these differences do not have an impact on the technical feasibility). Projects may be considered similar if they involve similar technologies, have a similar capacity and are implemented in similar physical circumstances.

If no suitable reference projects exist, then the technical feasibility must be demonstrated by project-specific analysis

2. Definition of project specifications and service levels

Output specifications are developed for the retained technical option. The output specifications are comprised of:

- Minimum specifications of the project assets; and
- Minimum performance standards of the project services.

Minimum specifications of the project assets are developed.

For each element of the project assets the required capacity, minimum dimensions, functional specifications and quality standards are specified.

The specifications are expressed in measurable terms, so that their compliance can be verified.

The timetable for the construction work and the provision of equipment is established.

The minimum performance standards of the project services are developed. For each service a service level agreement (SLA) is established, specifying:

- Availability and quality requirements;
- Performance indicators to measure compliance with availability and quality requirements;
- Monitoring system for measuring the performance indicators.

a) Site Assessment

- The project site/alignment is defined and is shown on maps.
- Compliance with relevant national, provincial and local spatial plans is assessed.
- Geotechnical surveys are undertaken to determine the suitability of the underground for the proposed project.
- The need for land preparation and improvement (levelling, demolition of existing structures, move of utility lines, among others) is determined.
- The connections to transport (road, rail, airport, seaport, among others) and utility networks (electricity, water, gas etc.) are assessed and improvement needs are determined.
- The need for coordination with other government entities for approvals and the execution of complementary works is determined.
- The requirements for the use of existing municipal assets (land, infrastructure, among others) are identified as well as any legal limitations on their use.

b) Cost estimates

Cost estimates of all relevant technical options are prepared. The estimates include all relevant costs caused by the project:

- Costs of the design and construction of the project assets;
- Costs of land acquisition and improvement;
- Costs of measures to prevent or mitigate social and environmental impacts;

- Costs of operation, maintenance and replacement during the lifetime of the project;
- Indirect taxes;
- Overhead costs;
- Markups for overhead costs, contractor profits and contingencies; and
- Markup for inflation during the construction period.

The costs are based on market prices for inputs (materials, labor, services, among others). They are estimated in the price level in force at the time of the preparation of the feasibility study.

The cost estimates are well documented and prepared according to good industry practice.

If suitable reference projects exist (see above), then the costs of the reference projects may be used to estimate the costs of the present project.

If no suitable reference projects exist, a project-specific cost estimate must be prepared on the basis of a preliminary design.

The cost estimates take into account specific characteristics of the project, such as remote location, difficult site conditions and local availability of inputs (human resources, raw materials, support services, among others).
The assumptions of the cost estimates are documented (with reference to sources) and motivated. The calculations are clearly explained.

Common pitfalls in cost estimation
Costing methods are unclear, resulting in unreliable cost estimates.

Unit prices are undocumented, so that their relevance and correctness for the project being appraised cannot be ascertained.

Cost margins for contingencies are forgotten, or their basis is unclear.

Assessment and quantification of construction cost risks are not provided, or not sufficiently specific to the project, possibly resulting in a large underestimation of costs.

8.4.3 Project due diligence

The Project due diligence comprises:

- Check of compliance of the Project with laws and regulations;
- Identification of regulatory approvals and permits that must be obtained to implement the Project (either by the Implementing Institution, or by the prospective Private Partner);
- Environmental impact assessment and establishment of environmental management plan to address the environmental impacts (prevention, mitigation, compensation);

- Social impact assessment and establishment of plan to address social impacts (resettlement, compensation for loss of livelihood, among others).
- Check of compliance of the Project with laws and regulations

The legal due diligence must establish that the implementing institution has the legal authority to conclude a PPP agreement for the project, and that the proposed Project complies with all relevant laws and regulations (general laws and applicable sector laws). The legal analysis identifies potential legal and regulatory obstacles to the project, and proposes measures to address these obstacles.

The Project complies with relevant legislation, such as:

- Administrative law (in particular the legal authority of the Private Partner in the PPP to perform the required public services, and the legal basis for the transfer of the usage rights of public assets to the Private Partner);
- Corporate law;
- Investment law;
- Competition law;
- Environmental law;
- Spatial plans and zoning regulations;
- Land acquisition and resettlement regulations;
- Safety regulations;
- Sector regulations (such as operating licenses and tariff policies).

The legal obstacles and risks are identified.

8.4.3.1 Steps in Project due diligence

1. Environmental impact assessment

The potentially significant environmental effects of the project are identified and described.

The requirements for obtaining the required environmental permits are determined. Any consequences for the technical design of the project are taken into account in the technical study.

A plan and time schedule for obtaining the permits is prepared.

An outline environmental impact mitigation and compensation plan is prepared. The costs of this plan are estimated.

Environmental Impact Assessment and Environmental Management and Monitoring Plan

Depending on the applicable environmental laws and regulations, the Feasibility Study may have to include a full Environmental Impact Assessment (EIA) and an Environmental Management and Monitoring Plan (EMMP), both prepared in compliance with relevant legal requirements.

If a screening of environmental impacts and an outline environmental management plan are sufficient in the Feasibility Study stage, then the full EIA and EMMP must be prepared by the Private Partner after the award of the PPP contract (unless, of course, for types of projects that do not have significant environmental impacts and are exempt from EIA-requirements).

2. Social impact assessment

The social impacts of the project are identified and assessed. The social impact analysis includes:

- Identification of the affected communities and parties;
- Identification of the parties that will be eligible for compensation;
- Extent of the land acquisition and population resettlement required by the project;
- Assessment of affordability of user fees.

An outline plan for the compensation and mitigation of the negative social effects is prepared. The costs for the implementation of this plan are estimated.

An outline land acquisition and resettlement plan is prepared. The land acquisition costs (preparation of land acquisition plan and price paid to current owners) and the resettlement costs (cost of compensations and resettlement measures) are estimated.

Land Acquisition and Resettlement Plan (LARP)

In the Feasibility Study phase an outline land acquisition and resettlement plan is usually sufficient (and also necessary for assessing the feasibility of the Project). However, in most cases the Implementing Institution will have to prepare and implement a full LARP complying with relevant regulations prior to the award of the contract, or at the latest prior to the commencement of works. PPP projects in which the implementing institution has not resolved land acquisition and resettlement issues prior to the commencement of the Project often run into problems (delays, resulting in compensation claims by the private contractor)..

8.4.4 Financial and Commercial Feasibility Study

8.4.4.1 Economic Assessment

The economic assessment comprises:

- Estimation of the costs and benefits of the project to society as a whole;
- Calculation of the economic internal rate of return (EIRR) or the economic net present value (ENPV) of the project.

The economic assessment is carried out by means of a Social Cost Benefit Analysis (SCBA). SCBA is a methodology developed for evaluating the costs and benefits of investment projects from the point of view of the society as a whole. This section sets out the contents and quality requirements of a sound SCBA. A SCBA meeting these requirements provides a solid basis for the assessment of the net economic benefits of a project to society, which is an important input for the Implementing Institution's decision whether to proceed with the implementation of the project and for the granting of financial support.

8.4.4.2 Steps in Economic Assessment

1. Economic cost estimation

The economic costs of the technical options are estimated. They include:

- The costs of the construction or acquisition of the assets;
- The costs of mitigating and compensating measures;
- The loss of the present function of the land that will be occupied by the project (the land acquisition costs may be used as a proxy);
- The maintenance and operating costs; and
- Any other costs that are caused by the project.

The basis for the estimate of the economic costs is the estimate of the financial cost in the technical study. Where needed the financial costs are adjusted in order to account for the differences between financial and economic costs.

The economic costs are determined compared to the 'do nothing' option. Only costs that occur in the technical options but not in the 'do nothing" option are included in the SCBA.

The costs are expressed in constant price level. Future inflation is not taken into account.

The costs are measured by their economic value or opportunity cost. Where necessary financial prices are converted into economic prices or shadow prices. This may for instance be the case for unskilled labor (shadow wage factor), imported goods that are valued at border prices (shadow exchange rate factor) and indirect taxes (financial cost, but not an economic cost).

Important costs for which no reliable quantitative estimates can be made (for lack of data or calculation models) are described in qualitative terms, so that they can be taken into account by the decision-maker.

2. Economic benefits estimation

The benefits of the technical options are estimated. The value of the benefits are derived from:

the willingness to pay for the services delivered by the project; or

the cost savings realized by the users of the project compared to the 'do nothing' alternative.

The benefits are expressed in constant price level.

The estimates of the benefits are clearly documented and explained. The sources of data are indicated, assumptions are motivated and calculations are explained. With respect to the assumptions on the demand volume (an important factor of the value of the benefits) the explanation in the cost-benefit analysis may refer to the analysis of user demand.

Important benefits for which no reliable quantitative estimates can be made (for lack of data or calculation models) are described in qualitative terms, so that they can be taken into account by the decision-maker.

3. Assessment of economic feasibility

The net present value of the stream of costs and benefits during the lifetime of the project is calculated (economic net present value or ENPV). Future costs and benefits are converted into their present value using the social discount rate.

Unless other guidelines apply, a social discount rate of 6% per annum is used.[2]

The economically preferred project option is determined.

The preferred project alternative is the alternative with the highest ENPV, provided that this ENPV is greater than zero (otherwise the 'do nothing' alternative is the preferred alternative).

If there are important costs and benefits that have not been quantified (because the required data and calculation methods are not available), then these should be taken into account in addition to the ENPV in the judgement on the preferred alternative.

For purposes of presentation the internal rate of return of the stream of net benefits (benefits less costs) can be calculated (economic internal rate of return or EIRR). The EIRR of the preferred alternative should exceed the social discount rate (otherwise the

2 This rate is in line with recent recommendations of the World Bank (Marianne Fay, Stephane Hallegate, Aart Kraay and Adrien Vogt-Schilb, *Discounting Costs and Benefits in Economic Analysis of World Bank* Projects, February 18, 2016). The determination of the social discount rate is grounded in welfare theory. Future benefits and costs should be valued at their marginal contribution to welfare, which will be lower the higher is growth and the richer are future project beneficiaries. The authors of the World Bank note suggest using 3% as an estimate for expected long-term growth rate in developing countries. Given reasonable parameters for the other variables in the standard Ramsey formula linking discount rates to growth rates, this yields a discount rate of 6% per annum.

‘do nothing’ alternative is the preferred alternative). However, the EIRR should not be used for the ranking of alternatives. It is possible that the alternative with the highest ENPV differs from the alternative with the highest EIRR. In that case the ENPV criterion yields the correct ranking.

4. Sensitivity analysis

A sensitivity analysis is carried out in order to assess the effect of (i) uncertainty about important assumptions in the calculation of costs and benefits and (ii) project risks on the economic feasibility of the project.

The usual sensitivity tests include:

- Increase of costs by the uncertainty margin of the costs estimate (usually around 20%);
- Low demand scenario;
- Any important project risks that have been identified in the other parts of the Feasibility Study (for instance delay of the project implementation due to permit problems).

Economic assessment for small projects

The preparation of a SCBA is a very technical, data and time intensive exercise. For small projects the cost of undertaking a SCBA would often be disproportional to the value of the project. In those cases a more simple economic assessment is recommended. Such a simple assessment takes the form of:

- qualitative and quantitative description of the benefits of the project;
- demonstration that the Project contributes to policy goals of the Implementing Institution or central government;
- partial estimate of monetized benefits by multiplying the output volume of the Project (e.g. m^3 of potable water) by publicly available valuation parameters.

8.4.4.3 Financial Analysis

The financial analysis comprises:

- Assessment of the financial viability of the project from the point of the view of the prospective private partner;
- Estimation of the break-even user tariffs;
- If relevant, estimation of Implementing Institution financial support that are required for financial viability; and
- assessment of the financial affordability of the project for the Implementing Institution.

8.4.4.4 Steps in Financial Analysis

1. Financial viability assessment

The financial analysis assesses the financial return of the project from the point of view of the investor and operator. Financial viability is an essential condition for the implementation of the project. The main purpose of the financial analysis is therefore to identify the conditions that need to be satisfied in order for the project to be financially viable (such as tariff level, required level of financial support by the Implementing Institution or other levels of government, risk allocation, among others).

The stream of project cash flows of the private partner over the proposed duration of the PPP agreement is determined. The project cash flows include:

- The investment expenses;
- The revenues;
- The maintenance and operating expenses;
- Corporate taxes (estimated with a simple income statement);
- The hand-back value at the end of the PPP agreement (if any).

The investment, maintenance and operating expenses are taken from the estimate of project costs in the technical study. The revenue estimate is based on the demand study.

- The expenses and revenues are expressed in nominal terms.
- The estimates and forecasts of the expenses and revenues are clearly documented and explained.
- The sources of data are indicated, assumptions are motivated and calculations are explained.
- Where appropriate the documentation may refer to the cost estimates in the technical studies and to the demand forecasts in the analysis of user demand.
- Assumptions on macro-economic variables (exchange rates, inflation) are based on data and forecasts of authoritative institutions.
- The financial internal rate of return (FIRR) is determined. The FIRR is the internal rate of return of the stream of net project cash flows of the Private Partner (revenues less expenses).
- The weighted average cost of capital (WACC) is determined on the basis of assumptions with respect the gearing ratio, interest rates of loans and required return on equity. The assumptions are clearly documented and based on published market data (return of listed firms in the appropriate sector) or findings from market consultations.
- The financial feasibility is assessed. The project is financially feasible if the FIRR exceeds the WACC.
- The equilibrium user fee is determined, at which the FIRR is equal to the WACC. In the determination of the equilibrium fee the price elasticity of demand is taken into account.

If the project is not financially feasible or if the equilibrium user fee exceeds the maximum acceptable level (determined by the implementing institution on the basis of considerations of affordability to users), then options to increase the financial return are examined. These may for instance consist of financial support by the Implementing Institution or from other government sources (if available), the removal of some costs from the scope of the private partner (i.e. the costs are borne by the Implementing Institution instead), or the selection of a less expensive project alternative (with smaller capacity, or less expensive technology).

A sensitivity analysis is carried out in order to assess the effect of (i) uncertainty about important assumptions in the calculation of expenses and revenues and (ii) project risks on the financial feasibility of the project. The usual sensitivity tests include:

- Increase of costs by the uncertainty margin of the costs estimate (usually around 20%);
- Low demand scenario;

any important project risks that have been identified in the other parts of the Feasibility Study (for instance delay of the project implementation due to permit problems).

Detailed financial analysis

The approach for the financial analysis described above focuses on the real project cash flows (i.e. capital expenditures, operating/maintenance expenditures and revenues) and determines the overall project return. The objective of the analysis is to assess whether the project can generate a sufficiently high overall return to cover the costs of capital (equity and debt). Hence only one aspect of financial viability is considered: return. Such a simple financial analysis is sufficient to assess the financial viability in the case of most municipal projects.

For projects with a larger value and more complex financing structure (i.e. several types of debt in addition to equity and subordinated shareholder loans) a more detailed financial analysis allows a more precise assessment of the financial viability. In a detailed financial analysis not only the real project cash flows are modelled but also the financing cash flows (i.e. the drawdown, redemption and remuneration of equity and various types of debt, reserve accounts, working capital movements), as well as a detailed modelling of tax implications.

Furthermore in a detailed financial analysis all aspects of the financial viability are examined: i.e. not only return but also the financial ratios of interest to lenders and specified in loan covenants of project financing (such as debt service coverage ratio). The detailed financial analysis produces a more comprehensive assessment of the financial viability of the project, and can be used to optimize the financial structure of the project. In particular the impact of government guarantees and government support on the financing terms can be investigated.

For purpose of the detailed financial analysis a project financing model is developed. This model includes at least:

- projection of project investment and operating cash flow over the duration of the PPP agreement);
- modelling of the financing structure, including at least equity, subordinated debt and senior debt;
- projection of financing cash flow on the basis of the financing structure;
- modelling of cash waterfall;
- projection of income statement and balance sheet;
- working capital requirements and movements;

2. Affordability assessment for the end-user

The demand analysis automatically takes into account the affordability of the project services for the paying users. Users (households, drivers, passengers,…) that make use of the service and pay the user charge by definition regard the service as affordable. However, the Implementing Institution may be in addition concerned with:

the share of income spent by users on the project services (reducing purchasing power in the case of households, or decreasing competitiveness in the case of firms);

the non-affordability of the services for potential users (for instance low-income households).

For the assessment of end-user affordability the breakeven level of user fees determined in the financial analysis is compared to the level that is regarded as affordable by the Implementing Institution.

3. Affordability for the government/Implementing Institution

In the assessment of government affordability the financial feasibility of the project is assessed from the perspective of the Implementing Institution and any other government entities that provide financial support to the project.

The assessment of government affordability contains three parts:

- The determination of the need for government/Implementing Institution support;
- The projection of the fiscal impact of the project over its lifetime; and
- The assessment of the fiscal affordability of the project.

4. Determination of the need for government support

The determination of the need for government support is in particular relevant in the case of user-pays PPP projects. In government-pays PPP projects the Private Partner is anyways fully remunerated by the government, in this case the Implementing Institution.

In user-pays PPP project government support may be needed in the following cases:

- The demand is too low so that the expected user revenues are insufficient to recover the costs of the Private Partner.
- The user fees that would allow full cost recovery render the service unaffordable for many users. The Implementing Institution therefore imposes a ceiling on the user fees. At these fees the Private Partner is unable to fully recover its costs.

Due to the presence of large project risks the Private Partner is unable to obtain financing only on unacceptable terms.

With the help of the financial model of the PPP project the amount of government/ Implementing Institution support is determined that is required for the Project to be financially viable for the Private Partner.

Alternative instruments to provide Implementing Institution support are examined, such as (insofar as relevant):

- Removing part of the investment spending from the scope of the PPP agreement (this means that the Implementing Institution, or other governments as the case may be, will fund these investments itself);
- Contribution of land or assets on favorable conditions (i.e. below cost);
- Milestone payments;
- Volume-based subsidies
- Debt guarantees;
- Minimum income guarantees;
- Tax incentives.

Before approving government support, however, also other alternatives to achieve financial viability should be considered and compared, such as:

- Increasing the length of the PPP agreement;
- Increasing the user charges;
- Reducing the scope of the project;
- Utilizing opportunities for indirect revenues (for example the commercial utilization of a part of the project site).

5. Projection of the fiscal impact of the project over its lifetime

With the help of the financial model a projection is made of the fiscal impact of the PPP project over its lifetime.

The direct fiscal impact (availability or service fees paid by the Implementing Institution and direct forms of government financial support such as milestone payments and subsidies) can be read directly from the financial statements generated by the financial model.

The potential value of the contingent liabilities (compensation for risk events, guarantees, termination payments) can be simulated with the financial model.

6. Assessment of the fiscal affordability of the project

The fiscal impact is compared with the Implementing Institution's current and future budget constraints.

8.4.4.5 PPP Assessment

The PPP assessment comprises:

- Assessment of the appropriateness of undertaking the project as a PPP;
- Determination of the outline of the PPP contract and the risk allocation between Implementing Institution and prospective Private Partner; and
- Market sounding to determine the interest of potential Private Partners to undertake the project on a PPP basis.

8.4.4.6 Steps in PPP Assessment

1. Qualitative Value-for-Money assessment

The objective of the qualitative VfM assessment is to determine whether the proposed PPP model offers a better price/performance than implementation of the project with conventional public procurement.

The VfM is conducted by assessing the driving factors behind the benefits and the practical feasibility of PPP compared to conventional public procurement. The assessment is performed with a structured list of questions. At the end of the table an overall conclusion is drawn with respect to the appropriateness of the proposed PPP model (and, the case being, suggestions for the optimization of the PPP model).

Table 10: Qualitative Value for Money assessment

	Driver	Questions	Low	Medium	High
A	**Benefits of PPP**	**The next six lists of questions assess the presence and strength of driving factors behind benefits of PPP. On the basis of your answers to the questions, please indicate in the right columns of the table to which extent the driver is present in the project being studied.**			
A1	Output-based contracting	Does some degree of flexibility remain in the nature of the technical solution/service and/or the scope of the projects? Is the solution adequately free from the constraints of imposed by the implementing institution, legal requirements and/or technical standards? Is there scope for innovation in either the design of the solution or in the provision of the services?	**O**	**O**	**O**
A2	Efficient risk allocation	Is there scope for significant risk transfer to the Private Partner (in accordance with the principle of efficient risk allocation)?	**O**	**O**	**O**

	Driver	Questions	Low	Medium	High
		Can the payment mechanism and contract terms incentivize good risk management by the private contractor?			
A3	Private outsourcing	Does the private sector have significant cost advantages in comparison with the Implementing Institution in the delivery of the project services (owing to greater efficiency, economies of scale, greater experience/expertise). Could the private sector achieve a better commercial utilization of the assets underpinning the project, resulting in higher revenues.	**O**	**O**	**O**
A4	Life-cycle optimization	Does the project offer the potential to achieve efficiency gains from life-cycle optimization? Is it possible to integrate the design, build and operation elements of the project? Are there significant ongoing operating costs and maintenance requirement? Are these likely to be sensitive to the type of construction?	**O**	**O**	**O**
A5	Performance based payments	Can the outcomes or outputs of the investment program be described in contractual terms, which would be objective and measurable? Would incentives for service delivery be enhanced through a performance payment mechanism as proposed in the PPP?	**O**	**O**	**O**
A6	Private financing	Is financing by the private sector necessary to undertake the project? Is it the case that no or insufficient public funds are available, so that the project cannot be undertaken (or only with large delays) unless private financing steps in.	**O**	**O**	**O**
D	**Feasibility of PPP**	**The next six lists of questions assess the presence and strength of factors determining the practical feasibility of PPP. On the basis of your answers to the questions, please indicate in the right columns of the table to which extent the driver is present in the project being studied.**			

	Driver	Questions	Low	Medium	High
D1	Output specifications	Is it possible to describe the services in clear, objective output- and result-based terms (and not in terms of activities), which can be included in a long term contract? Can the contractual outputs be defined so that they can be objectively measured? Can the quality of the service be objectively measured and assessed? Is it possible to establish objectively on the verifiable link between the output specifications, the monitoring of the actual performance and the payment mechanism?	**O**	**O**	**O**
D2	Operational flexibility of implementing institution	Is it possible to reconcile the degree of operational flexibility desired by the implementing institution and the long-term nature of a PPP arrangement? Will the PPP arrangement leave the implementing institution with sufficient operational flexibility to respond to future needs? What is the likelihood of large changes in service needs during the life of the PPP contract that would require a change of the contract?	**O**	**O**	**O**
		If the services performed under the PPP arrangement interfere with other services or other projects not covered by the PPP contract, are these interfaces manageable? If the PPP arrangement necessitates the transfer of public sector staff to the Private Partner, will it be possible to accomplish this transfer without major problems or resistance?			
D3	Implementing institution capacity	Does the implementing institution have sufficient human and financial resources to prepare and tender the PPP project?	**O**	**O**	**O**
D4	Absence of policy and regulatory barriers	Is it the case that there are no legal or regulatory obstacles to delegating the provision of the services to a private party? Is the provision of the services under a PPP arrangement compatible with the safeguarding of public interests (for instance with respect to environmental sustainability, workers' safety, fair competition)? Is the provision of the services under a PPP arrangement compatible with other policy goals (for instance with respect to land use, income distribution, economic development)?	**O**	**O**	**O**

	Driver	Questions	Low	Medium	High
D5	Absence of large and uncontrollable risks	Is it the case that there are no large risks that are largely outside the control of the Private Partner and that may make private finance unfeasible or very expensive? Examples are traffic risk (especially for greenfield projects and if macroeconomic conditions are highly uncertain), large uncertainties about the costs of meeting requirements imposed by environmental regulations, the use of unproven technology, difficult terrain conditions.	**O**	**O**	**O**
D6	Private sector capacity and interest	Is there evidence that the private sector is technically and financially capable of implementing the project? Is there likely to be a sufficiently large number of bidders interested in the project to ensure effective competition? Is there evidence that financiers are willing to provide funds for investing in this type of projects?	**O**	**O**	**O**
VfM	**Overall assessment**	Given the answers to the questions above, are there enough indications that the proposed PPP arrangement yields Value for Money. Are there opportunities for the optimization of the proposed PPP arrangement (in order to strengthen drivers of advantages and reduce drivers of disadvantages).			

2. Risk analysis

A risk matrix is established, containing the following columns:

- Name of risk;
- Description of risk;
- Consequence in case the risk occurs (qualitative description);
- Indication of the probability of occurrence (low/moderate/high);
- Indication of the consequences on costs or revenues (low/moderate/high);
- Grade of risk: product of probability and consequence.
- Proposed allocation: public, private or shared;
- Proposed management and mitigation measures (at least for the high grade risks);
- Additional remarks (if any).

The information for the risk matrix is collected from the other parts of the Feasibility Study (in particular the technical analysis, the analysis of user demand, the project due diligence). To complete the information a risk workshop may be held with key experts of the implementing institution and the consultants preparing the Feasibility Study.

Data permitting the high grade risks have been quantified. A minimal quantification includes:

- Probability of occurrence of risk;
- Damage, costs or revenue loss in case a risk occurs.

This allows to calculate the expected loss and the maximum loss due to the risk.

For the quantified risks, the impact on the economic and financial viability is assessed.

Common pitfall in risk assessment

A project specific risk assessment, in which project specific sources of risk are identified and impacts are quantified, is often lacking.

Often only cost and revenue scenario is considered, ignoring the uncertainty that characterizes cost and revenue assumptions. No sensitivity analysis is carried out to acquire a more complete picture of the plausible range of cost and revenue developments.

Risks are often allocated according to a generic, standardized allocation matrix not taking into account the project specific characteristics of the risk factors (such as likelihood, impact on cash flow, degree of control over the risk, among others). Insufficient attention is given to risk experiences in real projects, and to the perception of investors and lenders about risks and guarantees and their impact on the bankability of the project.

8.4.4.7 Defining key commercial terms of PPP agreement

On the basis of the findings of the financial analysis, the VfM assessment and the risk analysis the key commercial principles of the PPP agreement are defined. In this way the envisaged PPP model is elaborated in more detail, as a preparation for the procurement and contracting stage. The key commercial terms will constitute the basis for the drafting of the PPP agreement between the Implementing Institution and the Private Partner.

Table 11: Key commercial terms

Section of PPP agreement[3]	Description of terms
Parties to the agreement	Identifying the parties to the contract, including Implementing Institution and the Private Party, and any other relevant party (for instance, if the central government is providing guarantees or fiscal support, it may also be party to the contract). The Implementing Institution may want the Private Party to establish a Special Purpose Vehicle for the project, in which case the SPV will sign the PPP agreement

3 The section numbers refer to the Model Municipal PPP Agreement (Module 8)

Section of PPP agreement[3]	Description of terms
Duration of the contract	The period for which the contract would be in force.
Responsibilities of the parties	The responsibilities of both the parties must be defined in detail, and preferably divided into the following phases of the contract: • after contract is signed, but before the contract construction has started (conditions precedent); • during construction; • during operations; • at expiry/ termination.
Rights of the contractor	The rights of the contractor in terms of access to the site, use of existing assets, making structural changes in existing assets etc. depending on the nature and content of the Project.
Project assets and ownerships	Who owns the existing assets? Who owns the new assets being created? When will the ownership of the project assets transfer?
Payment terms	Who will pay to whom? How much shall be paid? When will the payments be made? Which account(s) should be the payments routed from?
Performance management framework	Output standards Framework for measuring actual performance against output standards Consequence of actual performance falling short of output standards
Dispute management framework	What happens when there is a dispute? How will the dispute get resolved?
Force majeure events and consequences	What are force majeure events for the Project? Compensation/relief in case of force majeure?
Material Government Action	What are Material Adverse Government Actions for the Project? Compensation/relief in case of MAGA?
Change in Law	What are Changes in Law for the Project? Compensation/relief in case of Change in Law?
Other implementing institution risks	Which other risks are assumed by the Implementing Institution? What is the compensation in case of a implementing institution risk occurring?

Section of PPP agreement[3]	Description of terms
Termination and consequences	Who can terminate the contract and why? What happens when one of the parties terminates the contract?
Jurisdictional issues	Courts that will have jurisdiction on matters related to the contract.
Liabilities	Liabilities of each party, including liabilities to third parties.

8.4.4.8 Market Sounding

In the market sounding the degree of interest in the project from potential contractors, investors and lenders is assessed by means of interviews and surveys. A market sounding is essential to ensure a successful competitive tendering of the project.

The likely market interest from potential bidders and lenders for the proposed PPP project is assessed.
If similar projects have recently been carried out in a PPP in the country or elsewhere, then these may be used as evidence of the market interest. It may be assumed that the proposed project will attract the same types of and similar number of bidders. The market analysis must demonstrate that any (limited) differences in circumstances between the reference projects and the proposed PPP project will not have a major impact on market interest.

If no suitable reference projects exist, then the market interest must be ascertained by conducting project-specific market consultations of prospective bidders and of financial institutions (national and also international where relevant, i.e. in the case of large projects with sufficiently high funding requirements to be attractive for foreign lenders, or projects in sectors that are known to be of interest to foreign bidders and contractors).

In the market consultations the views of prospective investors on the feasibility and the risks of the project and the need for government support or guarantees are collected and assessed, as well as the views of financial institutions on their willingness to finance the project and on the potential amount of loans that may be granted to the project.

The feedback of the market sounding is used in several parts of the feasibility study, especially in the financial analysis (market conditions for the financing, such as required rates of return and other financial ratios) and in the value-for-money analysis (optimal structuring of PPP arrangement, without deal breakers that would discourage bidders or result in high bid prices).

The evidence collected in the above assessments must show a sufficient degree of market interest to ensure a competitive bidding process. If not, then strategies must be developed to ensure market interest for the project.

Common pitfall in market sounding

The market consultation is too superficial and often goes not much beyond the observation of a few indications that the market is interested to invest in the project.

Common shortcomings in market consultation exercises are:

- lack of preparation (collection of background information) and lack of detail in the formulation of questions, so that the data collection has a low payoff;
- lack of assessment of the market's view on the revenue potential of the project and on the proposed business model;
- lack of assessment of the market's confidence in the capability and reliability of the implementing institution, and of the market's willingness to conclude contracts with the implementing institution;
- lack of an assessment of the market's risk perception and preferred risk allocation.

8.4.4.9 Procurement and Implementation Plan

The implementation and procurement plan sets out the main actions (with indicative timing) that need to be undertaken by the implementing institution and by other relevant government agencies in order to procure and implement the project. The implementation and procurement plan must demonstrate that the implementing institution has the required human and budgetary resources to procure the project and to fulfill its obligations under the PPP agreement (or has a plan to secure these resources). The coordination with other government agencies, the cooperation of which is required to implement the project, is also an essential component of the implementation and procurement plan.

The procurement and implementation plan must at least have the following contents:

Indicative time schedule of all actions that the implementing institution must carry out until commissioning date, such as (illustrative and not-limitative):

- Setting up the organization of the procurement, in accordance with applicable procurement laws and regulations.
- Advertising of the project to potential bidders (such as the organization of an investor's conference);
- Various phases of the procurement procedure (pre-qualification, submission and evaluation of bids, negotiation with preferred bidder, contract close, financial close);
- Acquisition of the required right of way;
- audit of existing assets of which the user rights will be transferred to the Private Partner;
- Preparation of applications for financial support from higher levels of government or development partners (if available);
- Obtaining of required permits and approvals.

Identification of actions that need to be taken by other government entities in order to enable the implementation and exploitation of the project, including a plan of actions to obtain the required cooperation from these government entities.

Outline of procurement strategy:

- Selection of procurement method (single-stage, two-stage, competitive dialogue, among others);
- Preferred profile of prospective bidder;
- Initial view on selection and award criteria.

8.4.4.10 Feasibility Study Report

The Feasibility Study report must contain a comprehensive account of the methodological approach, input data and findings of the various parts of the feasibility study.

An indicative table of contents of the Feasibility Study report is presented below.

0. Executive summary
    - 0.1. Project needs and rationale
    - 0.2. Project specifications
    - 0.3. PPP arrangement and rationale
    - 0.4. Project feasibility and readiness
1. Demand study
    - 1.1. Needs assessment
    - 1.2. Demand forecasts
2. Technical study
    - 2.1. Analysis of technical options
    - 2.2. Definition of project specifications and service levels
    - 2.3. Site assessment
    - 2.4. Cost estimates
3. Project due diligence
    - 3.1. Legal due diligence
    - 3.2. Environmental impact screening
    - 3.3. Social impact screening
4. Economic assessment
    - 4.1. Costs
    - 4.2. Benefits
    - 4.3. Economic return
    - 4.4. Sensitivity analysis
5. Financial analysis
    - 5.1. Financial viability for private partner
        - 5.1.1. Assumptions
        - 5.1.2. Financial projections
        - 5.1.3. Sensitivity analysis

    5.2. Financial affordability for end-user
    5.3. Financial affordability for government
        5.3.1. Need for government/municipal support
        5.3.2. Projection of fiscal impact
        5.3.3. Sensitivity analysis
        5.3.4. Assessment of fiscal affordability

6. PPP assessment
    6.1. Value-for-money assessment
    6.2. Risk analysis and allocation
    6.3. Key commercial terms of PPP agreement
    6.4. Market sounding findings

7. Procurement and implementation plan
    7.1. Procurement plan
    7.2. Implementation plan

8. Conclusions
    8.1. Technical feasibility
    8.2. Due diligence
    8.3. Economic return
    8.4. Financial viability and affordability
    8.5. PPP viability and desirability
    8.6. Project readiness for procurement and implementation

For smaller projects, the Feasibility Study report consists of a single volume a few hundred pages long. For larger projects the Feasibility Study report consists of a main report summarizing the approach and findings of the feasibility study(with table of contents as shown above), while more detailed data, plans, calculations and results are enclosed in annexes.

9 ANNEX E FISCAL RISK MANAGEMENT GUIDELINES

9.1 Introduction

PPPs allow the utilization of private capital in the provision of public infrastructure and services, however, this does not come free of charge from a budgetary perspective as there are fiscal implications for such projects. Such fiscal implications are included in the commitments that the government extends to the private partner in a PPP. This is also reflected in the risk allocation, particularly on the risks that the Government has decided to retain. These fiscal implications can be in the form of a direct liability or a contingent liability:

- A **direct liability** are fiscal liabilities whose outcome are predictable and affects the government's budget directly. Direct liabilities can either be explicit or implicit in nature. Examples of direct liabilities include: availability payments, upfront viability gap funding, among others.
- A **contingent liability**, on the other hand, are potential liabilities that may arise depending on the outcome of a future event. Contingent liabilities can either be explicit or implicit in nature. Examples of contingent liabilities include: demand guarantees, foreign exchange guarantees, termination payments, among others.

In the table below, we provide further examples of direct and contingent liabilities as well as explicit and implicit liabilities per type of liability:

Liabilities	**Direct** *(obligation in any event)*	**Contingent** *(obligation if a particular event occurs)*
Explicit *(Government liability created by law or contract)*	• Foreign and domestic sovereign borrowings • Budgetary expenditures	• State guarantees for sovereign and non-sovereign borrowings • Trade and exchange rate guarantees on private investments
Implicit *(Government liability created by political decisions)*	• Future recurrent costs of public investments	• Defaults of public/private entities on non-guaranteed debt and other obligations • Bailouts following a reversal in private capital flows

In PPP projects, it is usually the case that Governments fail to take into account explicit and implicit contingent liabilities that are inherent to PPP projects that they approve. Such practice may lead to excessive risk taking on the part of the Government as only direct liabilities are accounted for and/or monitored. It is therefore important to recognize the existence of contingent liabilities.

For PPP projects, the main sources of contingent liabilities are as follows:

- Guarantees defined under the PPP Agreement (i.e. interest rate, foreign exchange rate, demand guarantee, among others); and
- Penalties (i.e. delay payments, MAGA, change in law, among others).

Apart from understanding the types of liabilities that arises from risks that are present in a PPP project (depending on the structure), it is also important to understand the effect of risk allocation as efficient risk allocation is one of the main drivers for the utilization of PPPs as a procurement option. This will be discussed in the next section.

9.2 Risk allocation

The basic principle is that risks should be held by those parties best able to manage them. For example, the building contractor takes on construction risk and has the strongest influence on the management of construction activities ensuring a delivery on time and within budget. Therefore, the contractor should assume the construction risk and accordingly receive a financial penalty in case delivery is late or over budget. On the other hand, the risk of delays due to delays in approval or changes in the output specifications should be allocated to the public sector. Intelligent risk allocation that is based on the principle that the party best able to manage a risk should accordingly bear it, thus, reducing the costs of delivering the service. The public delivery model puts most of the risks in the hands of the public sector. Intelligent risk allocation requires that many risks are transferred to the private sector. To some degree this can be achieved through PPP.

9.2.1 Project characteristics conducive to efficiency gains from optimal risk allocation

In projects where significant risks that can be transferred to the private party are present, optimal risk allocation yields the largest efficiency gains. An overview of the main risk categories of large infrastructure projects is presented in the table below based on the PPP Rules and Regulations of 2017. The table describes how these risks should be distributed between public and private parties keeping optimal risk allocation in mind. However, it is important to note that, depending on the specific characteristics of the project, deviation from the generic risk allocation matrix may be justified especially for those projects that are not financially nor commercially viable without government support. Thus, the generic risk allocation matrix should only be treated as a guide but not as an absolute rule.

Table 12 Matrix for risk allocation (2017 PPP RR)

Risk	Description	Public Sector	Private Sector	Shared
Site risk	Land acquisition and resettlement delay, and cost overrun	X		
	Unable to acquire entire project land site	X		
Design risk	Design faults		X	
	Design fault in tender specification	X		
Construction risk	Construction cost increase		X	

Risk	Description	Public Sector	Private Sector	Shared
	Poor performance of subcontractors		X	
	Delay in completing construction works		X	
	Failure to meet performance criteria		X	
Financial risk	Financial structure risk		X	
	Interest rate risk (fluctuation of loan interest)		X	
	Inflation rate risk (increase of inflation rate used for estimating lifecycle costs)		X	
	Foreign exchange rate risk			X
Operating risk	Availability of facility		X	
	Non-performance of services		X	
	Increase in inputs price		X	
	Misestimating operating and maintenance expense		X	
Revenue risk	Variation of demand from forecast levels, for reasons beyond control of the government		X	
	Changes in market prices		X	
	Incorrect estimation of revenue from income generation model		X	
	Failure to implement contractual changes	X		
Unexpected event risk	Natural disasters			X
	Events of war, riots and civil unrest			X
	Government acts/omissions causing project cessation	X		
Political risk	Currency convertibility	X		
	General change in laws		X	
	Change in law specific to the project	X		
	Delay in achieving planning approval	X		

To provide a further explanation on the principles of risk allocation as well as the fiscal impacts of certain risks, we provide the table below:

Table 13: Generic risk allocation

Risk	Description	Optimal allocation	Mitigation	Fiscal impact
Planning approval	Risk that necessary approvals may not be obtained or may be obtained only subject to unanticipated conditions which have adverse cost consequences or cause prolonged delay.	Preferably planning approval is obtained before beginning the tender process. If that is not feasible, then the public sector should assume the risk in complex or sensitive projects. If the risk is small, it can be well managed by the private contractor.	Proper project management and proper due diligence (e.g. site investigations; geological studies)	N/A
Land Acquisition and Resettlement risk	The risk that the project site is unavailable at the time of need due to difficulties in acquiring the project site and/or due to resettlement problems which may lead to cost overruns and delays.	Public, the government has the power of eminent domain and is therefore better able to manage the risk of acquiring land. It is also of the government's interest to ensure that resettlement is handled properly for which is also more knowledgeable on compared to the private sector.	The government may secure the project site prior to procurement of the project.	Contingent
Environmental risk	Risk that the project has detrimental effects to the environment that may lead to the stoppage of the project.	Private, The private proponent has control over its environmental strategy for the project therefore, the risk should also be assigned to it.	Preparation of an environmental impact assessment and environmental strategy in line with government requirement.	N/A
Construction risk	Risk that events occur during construction which prevent the facility being delivered on time and on cost.	Private contractor, unless the adverse event is caused by public intervention (public responsibility preferred) or force majeure (risk sharing if the risk is too large to be borne by the private party alone).		N/A
Regulatory risk	Risk that necessary permits may not be obtained or may be obtained at a longer than anticipated time which could lead to adverse cost and time consequences.	Public, Government is in a better position to hasten the speed of securing permits.	Prior to bid, the Government may facilitate the start of the permitting process (if allowable) and/or assist the Proponent in obtaining required permits.	N/A

Risk	Description	Optimal allocation	Mitigation	Fiscal impact
Maintenance and operating risk	Risk that maintenance and operating costs are higher than anticipated (for instance because design and/or construction quality is inadequate, the costs of inputs are higher than expected).	Private contractor, because the private contractor designs the facility and therefore has a better view on maintenance and operating risks.	The private partner incorporates maintenance and operating requirements in the design.	N/A
Demand/ revenue/ volume risk (user fee-based)	The risk that the actual demand is lower than the forecasted demand. This risk has an effect on the financial viability of the project and can ultimately affect investor's appetite.	A user fee-based PPP has established in a financial feasibility assessment the financial viability of the project from the perspective of the private proponent. In line with this, the demand risk of the project shall be borne by the private proponent.	Realistic financial viability assessment of the project.	N/A
Demand/ revenue/ volume risk (Availability-based)	The risk that the actual demand is lower than the forecasted demand. This risk has an effect on the financial viability of the project and can ultimately affect investor's appetite.	For an availability-based PPP project or a hybrid PPP project, the government may absorb demand and volume risk for the project in order to ensure financial viability and bankability of the project.	Contractual clause on demand and/or volume risk guarantee.	Contingent
(Re) Financing isk	Refers to the availability of capital to finance investment obligations of the private proponent.	Private, the private proponent is responsible for arranging financing for the project.	Contract provision that classifies inability to arrange required financing at an event of default.	N/A
Foreign currency exchange rate and interest rate risk	The risk brought about by the uncertainty of foreign currency exchange rate and interest rates fluctations over the project life.	Private, since the price is locked from the bid submission date, the exchange rate and interest rate risk is allocated to the private proponent.	Use of hedging instruments. Contract provision on foreign currency exchange rate and/or interest rate guarantee where relevant.	N/A

Risk	Description	Optimal allocation	Mitigation	Fiscal impact
Force Majeure risk	An event or occurence that cannot be foreseen or is beyond the reasonable control of a party.	Shared, force majeure events cannot be foreseen nor controlled by either party hence, risk should be shared by the government and the private proponent.	Partly addressed by insurance products. A contract mechanism for renegotiation after the occurence of the event must be in place to allow continuation of the project if deemed economical.	Contingent

9.2.2 PPP models conducive to efficiency gains from optimal risk allocation

Each model for the procurement and delivery of infrastructure is characterized by a different allocation of risks. The table below presents the distribution of the main risk categories. The second column in the table shows the preferred risk allocation on the basis of the information in the preceding table. This permits a (rough) comparison of the risk allocation scheme of the various delivery models to the preferred allocation.

Table 14: Indicative risk allocation in different PPP models

Risk	Optimal allocation*	Coventional public procurement	Management contract	DBFMO and variants	Operating concession	BOT concession	Privatisation
Planning approval risk	Public/ private	Public	Public	Public/ private	Private	Public/ private	Private
Construction risk	Private	Public	Public	Private	Public	Private	Private
Maintenance and operating risk	Private	Public	Private	Private	Public/ private**	Private	Private
Demand/revenue risk	Private or public	Public	Public	Public	Private	Private	Private
Financial risk	Private	Public	Public	Private	Public/ private**	Private	Private
Regulatory risk	Public/ private	Public	Public	Public	Private	Public/ private	Private

It must be noted that the allocation schemes shown in the table are only indicative. The preferred risk allocation may defer from the one shown in the table depending on the characteristics of the specific project. Generally, there are many contract variants within a delivery model, some of which may result in a different allocation scheme than the one shown in the table. Therefore, in the analysis of a specific project the risks are usually mapped at a more detailed level, with several separate risks under each category listed in the table.

It is not possible to rank the delivery models according to the optimality of the risk allocation. The choice of the most efficient risk allocation for each model depends on the preferred risk allocation, which in turn depends on the characteristics of the particular project.

Nevertheless, it can be concluded that the DBFMO model and its variants allow for the most refined risk allocation. They can be tailor-made to achieve a very detailed and almost optimal risk allocation in function of the project. However, the drawback of such models is greater complexity and transaction costs.

An essential characteristic of concession agreements is that they transfer the demand risk to the private operator or investor. Whether this is efficient depends on the project characteristics. The concession framework does not permit as much flexibility with regard to risk allocation as the DBFMO model. More complex risk sharing mechanisms could be built in (for instance to share the demand risk), but in practice concession agreements are relatively standardised.

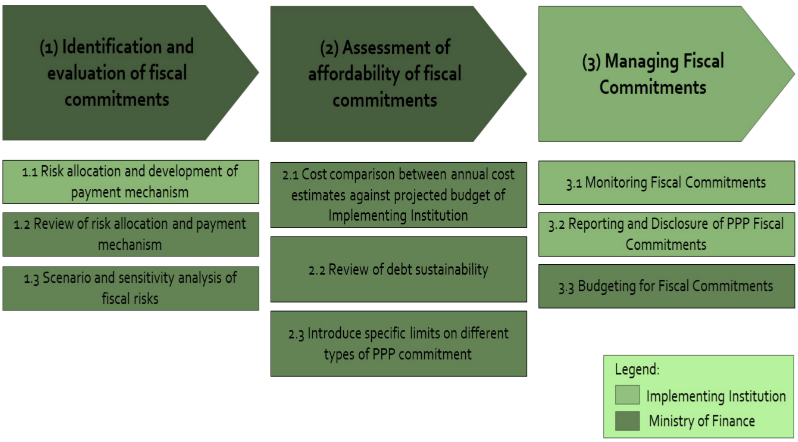
Notice that the risk allocation scheme is not only determined by the mix of public/private roles in the provision of infrastructure (finance, design, construction, operations) but also by the payment mechanism. Through the rewards and penalties in the payment mechanism risks are transferred to the private contractor (for instance penalty for late delivery). Again, the integrated contract models allow the greatest flexibility in this respect.

It is important to note that risk allocation determines the liabilities that are attached to a project. However, it must be reiterated that the basic principle of efficient risk allocation is that risk should be allocated to the party best able to manage such risk. And thus, ***it is not a solution for the Government to push all the risks to the private sector for the sole purpose of reducing risk exposure and the liabilities that comes with it.***

9.3 Fiscal liability management

Risk identification, mitigation and management of fiscal liabilities takes place throughout the PPP development, approval, and implementation stages. In accordance to the PPP Rules and Regulations of 2017, the identification, evaluation and management of fiscal liabilities is divided into the Feasibility Stage and the Contract Management Stage. The Fiscal Liability Management Process overview is below:

Figure 14: Fiscal Liability Management Process[4]



Oversight on fiscal liabilities for PPPs shall be with the Department of Macroeconomic Affairs of the Ministry of Finance. This includes the review of the risk allocation and the accompanying fiscal risks liabilities attached to a PPP project that is included in the Feasibility Study.

4 Shendy, R., et. al. (2014). Implementing a framework for Managing Fiscal Commitments from Public Private Partnerships. World Bank Group.

Table 15: Roles and responsibilities for fiscal liability management

Function	Objectives	Role/Responsibility
Identification and assessment of fiscal risks and fiscal commitments	To identify fiscal risks within the project in line with the project structure and financial analysis made for the project and to assess the fiscal commitments attached to the project.	Implementing Institution develops the Risk Allocation Matrix as part of the Feasibility Study. PPP unit supports the Implementing Institution in identifying fiscal risks. The Department of Macroeconomic Affairs of the Ministry of Finance develops the Risk Register and Fiscal Commitment Register.
Assessing Affordability	To ensure fiscal commitments are sustainable and align with fiscal and policy objectives of implementing institution and national government. To verify risks retained by government are within the tolerance levels from a budget perspective.	Implementing Institution assesses the affordability of the Project in the Feasibility Study. The Department of Macroeconomic Affairs of the Ministry of Finance reviews the affordability of the project from a Project and Portfolio-level perspective and recommends its findings to the PSC. PSC approves the Feasibility Study based on MoF recommendation.
Mitigating risks	To identify measures and actions to mitigate risks.	The Department of Macroeconomic Affairs of the Ministry of Finance identifies mitigation measures and actions through the Risk Register.
Monitoring	To monitor the development of fiscal commitments and the effectivity of risk mitigation measures. To detect in advance unanticipated increases in costs.	Implementing Institution submits a monthly fiscal monitoring report to the PPP Unit during the project's implementation period. The PPP Unit reviews the monthly reports submitted by the Implementing Institution and checks whether the project is on track with project milestones and performance indicators. If there are findings that affects the fiscal obligations of the Government, PPP Unit reports to Ministry of Finance. The Department of Macroeconomic Affairs of the Ministry of Finance identifies measures to mitigate evolving risks.
Reporting and Disclosing	To provide transparency on the risk exposure of the Government on a project and portfolio level to allow the proper budgeting of resources to address any fiscal commitments that may arise from those other than direct liabilities.	Implementing Institution will record in its annual statement, under the Notes to Financial Statements the estimate of all guarantees provided for each project (if any). The Ministry of Finance discloses fiscal commitments on Projects and other information.

Function	Objectives	Role/Responsibility
Accounting	To improve accountability for decision-makers and increase transparency of the government's commitments to third parties (such as credit agencies and lenders).	Ministry of Finance (Department of Public Accounts) Ministry of Finance ensures that accounting for PPP fiscal liabilities are in accordance to its practices.

An adequate identification and assessment of risks and accompanying fiscal commitments during the project development stage will allow the Government to take good decisions regarding the financial structure and affordability of the Project.

9.3.1 Identification and evaluation of risks and fiscal commitments

9.3.1.1 Steps in Identification and evaluation of risks and fiscal commitments

1. Risk allocation and development of payment mechansim

During the project development phase, the Implementing Institution structures the project in accordance to the scope, financial viability and commercial viability of the project. Based on this structure, ensuring that the project is financially and commercially viable in order to gather interest from prospective investors, risks are allocated between the Government and the Private Partner keeping in mind the principles of efficient risk allocation – the party better able to manage the risk shall bear such risk. The Implementing Institution develops a Risk Allocation Matrix during this stage similar to the Generic Risk Allocation matrix in Table 12.

Apart from the risk allocation, the Implementing Institution will also develop the payment mechanism for the project. The payment mechanism can take the following forms: availability payment, tariff/user fee with escalation mechanism, among others. The viability of the payment mechanism proposed shall be structured in recognition of the affordability requirements of the Government in general and the end-users. Likewise, the payment mechanism, especially if a project is availability-based, should be structured in such a way that certainty is provided to the private party in order to give lenders comfort in lending to the project.

2. Review risk allocation and development of payment mechanism

At the approval stage of the project's feasibility study, the Ministry of Finance will review the risk allocation matrix and the payment mechanism submitted by the Implementing Institution for the proposed project. This review of the risk allocation matrix and payment mechanism aims to allow the Ministry of Finance to gain an understanding of the explicit direct and indirect fiscal liabilities incurred by the Government from the proposed project. It also allows the Ministry of finance to assess the contingent liabilities attached to a Project.

In addition, through the development of the Project risk register, the Government is enabled to identify mitigation and monitoring measures for liabilities that have a high chance of incurrence and those that are large in terms of magnitude. ***Table 14*** provides some example of risk mitigating measures per type of risk including those for contingent liabilities.

The process of identification and assessment of fiscal risks and fiscal commitments by the Ministry of Finance is undertaken in the following three steps:

- Analysis of project's risk allocation matrix using a Risk Register;
- Identification of fiscal commitments using a Fiscal Commitments Register; and
- Assessment of fiscal commitments and fiscal risks.

3. Analysis of the project's risk matrix using a Risk Register

The risk allocation matrix submitted by the Implementing Institution focuses on identifying the key risks in the project, the allocation of such risks as well as the risk mitigating measures that can be undertaken. Such instrument does not necessarily provide a perspective on the impact of risks allocated to the Government and its effect on the Government's fiscal budget. As such, the Ministry of Finance shall analyze the risk allocation matrix submitted by the Implementing Institution through the creation of a Risk Register to gain an understanding of the fiscal impacts of the project. The Risk Register will be maintained by the Ministry of Finance as a guide during the Contract Management stage.

Table 16 shows the components of the Risk Register. The Risk Allocation Matrix is a source of the inputs for the Risk Register. It is however important to note that the Ministry of Finance must also evaluate whether the Risk Allocation Matrix submitted by the Implementing Institution takes into account all the major risks (in terms of magnitude and likelihood of occurrence) that are present in the Project.

The Risk Register contains description of the risk, allocation, cost, likelihood, and mitigating measures. As the objective we are pursuing is to assess fiscal impact, columns entitled "Cost", "Likelihood/Fiscal impact", and "Government mitigation actions" of the Risk Register must be populated only when the risk is allocated totally or partially to the government.

Table 16: Project Risk Register

Risk	Risk Category	Description	Allocation	Cost	Likelihood / Fiscal Impact	Government mitigation measures	Comments	Date Updated
Project X								(dd/mm/ yyyy)
Risk A	Financial / Operating / Political, etc.	-	Private / Government	Estimated cost	Low / Medium / High	Measures to be done by government to mitigate the risk		
Risk B	-	-	-	-	-	-		

The column, “Government mitigation measures” is directly related to the column “Monitoring Information: Fiscal Commitments and Fiscal Risks” of ***Table 20*** of the Monitoring Section of this FCCL Guideline. Hence, consistency between both columns needs to be ensured. These measures are important to formulate government responses and actions to reduce and control the identified risks. The benefits of managing risk appropriately are: to facilitate informed and systematic decision making, minimize consequences of risks, and provide an improved understanding of the project’s risks.

The following are some usual mitigation measures applied by Governments:

- Preventive: Aims to limit the possibility of an undesirable outcome. Some examples are: insurance, partial guarantees (such as those provided by financial institutions to mitigate the risk of the public entity failing to perform on its financial obligations), financial instruments (to mitigate financial risks, such as interest rate, exchange rate, commodity prices) and cap-provisions.
- Corrective: To correct undesirable outcomes. For instance, a contingency plan in case of natural disasters, or in case of termination of contract.
- Detective: To identify occasions of undesirable outcomes. The reportorial requirements during the project monitoring in the contract management stage is used in this example. For example, if government provides a termination payment in case of default of implementing institution, it shall monitor financial performance and compliance of obligations of implementing institution.

4. Identify and register direct and contingent commitments

In addition to understanding the fiscal impacts of risks to the Government’s fiscal position, another consideration is to classify commitments into direct and contingent liabilities in order to allow the proper budgeting for the different types of liabilities. As mentioned previously, a direct liability is a type of fiscal liability for which the obligations are predictable, as such, these types of liabilities are easier to take into account in the Government’s budget. Contingent liabilities on the other hand are those obligations for which the outcome is unpredictable and is dependent on trigger events.

To allow the proper budgeting for the fiscal liabilities, both direct and contingent liabilities shall be recorded in a Fiscal Commitments Register, shown in ***Table 17***. The Fiscal Commitments Register contains the type of liability, description of adjustment factors and trigger events, and the location (which will depend on the stage of the project). The Fiscal Commitments Register will be maintained by the Ministry of Finance.

The types of government liabilities that will be included in the Fiscal Commitments Register are:

- Payment of grants or fees:
  - » One-time (milestone payments);
  - » Periodic during the lifetime of the contract (availability payments, shadow tolls, among others);
- Project-specific waivers or reduction of tax liabilities;

- Risks assumed by the government;
- Guarantees issued by the government in favour of the project;
- Grant or allocation of public property or user rights for public property;
- Contribution of equity and debt financing to the project.

The liabilities must be as much as possible expressed in money terms. In the case of risks and guarantees information must be provided on the maximum exposure and the expected value of claims (to the extent that this information is available).

Table 17: Fiscal Commitments Register

Fiscal Commitment	Type of fiscal commitment/Definition	Adjustment factors/Trigger events	Location
Project Name:			
Payment 1	Direct Explain payment concept, periodicity, and form of calculation	Detail adjustment factors and trigger events if apply	Specific location where this information was taken (Feasibility Study, PPP Contract, Letter of Support, etc.) -
Payment 2	Contingent Explain payment concept, periodicity, and form of calculation		
Payment 3	-	-	-

5. Fiscal risk assessment

After the process of recording the risks and mitigation measures (Risk Register) and the fiscal commitments associated with risks absorbed by the Government (Fiscal Commitments Register), the Ministry of Finance needs to undertake a fiscal risk assessment.

Table 18 provides guidelines on what measures and methodologies to use for the assessment of fiscal commitments and fiscal risks.

Table 18: Methodologies for assessment and analysis of fiscal commitments and fiscal risks

<table>
<tr><th>Fiscal commitment</th><th>Estimate</th><th>In function of available information</th></tr>
<tr><td colspan="3">Direct Liabilities</td></tr>
<tr><td>Upfront payment</td><td rowspan="4">Annual cost over life of project
Present value of payment stream for the period of agreement</td><td>-</td></tr>
<tr><td>Availability payment</td><td>-</td></tr>
<tr><td>Availability payment a by adjusted permanently macroeconomic parameters</td><td>Scenario and sensitivity analysis
Stochastic analysis</td></tr>
<tr><td>Availability payment adjusted by contingent events</td><td>Scenario and sensitivity analysis
Qualitative analysis of likelihood of reaching trigger values
Stochastic analysis</td></tr>
<tr><td colspan="3">Contingent liabilities</td></tr>
<tr><td>Revenue guarantee</td><td>Estimated annual cost over life of project
Estimated present value of payment stream for the period of agreement</td><td rowspan="3">Scenario and sensitivity analysis
Qualitative analysis of likelihood of reaching trigger values
Stochastic analysis</td></tr>
<tr><td>Debt guarantee</td><td></td></tr>
<tr><td>Guarantee over annual payment by state-owned enterprise, local or subnational government</td><td>Estimated annual cost over life of project
Estimated present value of payment stream for the period of agreement</td></tr>
<tr><td>Termination payment</td><td>Maximum value</td><td>Qualitative analysis of likelihood of reaching trigger values</td></tr>
<tr><td colspan="3">Other fiscal risks</td></tr>
<tr><td>-</td><td>- Maximum value</td><td>- Qualitative analysis of likelihood
- Stochastic analysis</td></tr>
</table>

9.3.2 Assessment of Affordability of Fiscal Commitments

After the estimation of the fiscal costs, the Government also needs to assess if the Project is affordable from a budgetary perspective and aligned to certain fiscal policy/(ies) that may be applicable. The three instruments used to check affordability are:

- Comparing annual cost estimates against the projected budget;
- Assessing the impact on debt sustainability; and
- Introducing limits on PPP commitments.

9.3.2.1 Steps in assessment of affordability of fiscal commitments

1. Comparing annual cost estimates against projected budget

Under this step, the Department of National Budget of the Ministry of Finance will determine whether the project is aligned with budget constraints and priorities.

The Ministry of Finance shall consider the affordability of the Project on a project-level and portfolio level.

2. Assessing the impact on debt sustainability

Fiscal commitments from PPPs especially direct liabilities emanating from PPPs are considered debt-like obligations. Hence, the Ministry of Finance may consider the consistency of treatment of such obligations within the overall government liabilities and fiscal management. PPP commitments could be included in debt measures to determine a project's impact on overall debt sustainability.

3. Introducing limits on PPP commitments

Finally, some governments adopt specific limits or thresholds on direct fiscal commitments of PPPs. The objective is to avoid overexposure of the budget (within a specific sector or at accumulated level).
This next table shows the affordability indicators:

Table 19: Affordability indicators

Fiscal commitment	Cost	Indicator of fiscal affordability (Including projections over PPP contract length-beyond medium-term horizon)
Direct liabilities	• Estimated Annual payments • NPV	• Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget; • Cost as percentage of national public debt; • Cost as percentage of GDP

Fiscal commitment	Cost	Indicator of fiscal affordability (Including projections over PPP contract length- beyond medium-term horizon)
Guarantees	• Estimated annual payment, or expected average payment • NPV • (Base/Downside cases)	• Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget; • Cost as percentage of contingency line; • Cost as percentage of public debt; • Cost as percentage of GDP
Termination payment	• Estimated worst-case payment or expected average payment • NPV	• Cost as percentage of national budget; • Cost as percentage of contingency line; • Cost as percentage of GDP
Other fiscal risk	• Estimated worst-case payment or expected average payment • NPV • (Base/Downside cases)	• Cost as percentage of ministry or sector agency, and national annual revenue / deficit-surplus budget; • Cost as percentage of contingency line; • Cost as percentage of GDP

9.3.3 Managing Fiscal Commitments

9.3.3.1 Steps in managing fiscal commitments

1. Monitoring

Managing fiscal commitments requires monitoring, reporting and budgeting of PPP projects, both at individual project level and at portfolio program level. Adequate monitoring and disclosure of fiscal commitments and risks will allow the government to prevent undesirable events from occurring, mitigate their impact, and make informed decisions during the implementation phase.

This stage will require gathering project financial parameters, risks and performance, and country -level macroeconomic information, and any other input that may affect fiscal commitments and fiscal risks. The objective will be to ensure that updated information is reported at the right time to the relevant Ministries.

- The Implementing Institution submits fiscal monitoring reports on the project agreement implementation to the PPP Unit every month.
- The PPP Unit reviews the monthly fiscal monitoring reports submitted by the Implementing Institution and checks whether project milestones and Key Performance Indicators are achieved. If there are any findings in the progress reports that may have a fiscal implication, the PPP Unit informs the relevant division of the Department of Macroeconomic Affairs of the Ministry of Finance.

Each commitment or fiscal risks must have specific information, such as financial and accounting ratios and indicators, to monitor the evolution along the entire length of contract. This next Table highlights the minimum information that should be collected and registered by the Implementing Institution in each PPP project:

Table 20, Monitoring Information: Fiscal Commitments and Fiscal Risks, and ***Table 21***, Report Sample of Fiscal Commitments of this section are based on the framework.

Table 20: Monitoring Information: Fiscal Commitments and Fiscal Risks

Fiscal Commitment	**Required information / Periodicity**	**Responsible Entity for information**	**Reference document** (PPP Agreement, Letter of Support, etc.)	**Follow-up of mitigation activities of Risk Register**
Project X				
Direct Liabilities				
Payment 1	-	-	-	-
Payment 2	-	-	-	-
Contingent Liabilities				
Payment 1	-	-	-	-
Payment 2	-	-	-	-
Other fiscal risks				
Risk A	-	-	-	-

Upon the alert of the PPP Unit, the Ministry of Finance will review the fiscal monitoring reports submitted by the Implementing Institution and reviews and develops risk mitigating measures from the evolution of the risks based on the report. Additional risk mitigating measures identified will be discussed by the Ministry of Finance with the Implementing Institution.

2. Reportorial and Disclosure

The government of Bhutan needs to account for and report on their fiscal commitments of PPP agreements.

A. The Department of Macroeconomic Affairs of the Ministry of Finance shall keep a centralized register of fiscal commitments of PPP transactions at national and sub-national level.

Proper reporting incentivizes the government to scrutinize its own financial position. In addition, disclosure of such information to lenders, rating agencies, PPP stakeholders, and the public, enables them to make informed opinions on the government's PPP fiscal management and performance. This level of transparency may also increase the confidence of prospective investors to the country.

B. For internal and external transparency of the financial effects of PPPs on government's position, fiscal commitments needs to be reported. In addition, such fiscal commitments needs to be checked regularly in similar fashion as debt obligations[5].

Table 21 shows the information to be reported for direct and contingent liabilities incurred for PPP projects. Description shall include: description of the liability, estimate of the value of the liability, annual cost and present value (for direct liabilities), and maximum exposure (for contingent liabilities). This reporting shall be included in medium-term budget reports and debt strategy reports.

For public disclosure purposes, it is recommended to disclose the stream of availability payments and net present value of all payments of direct liabilities per project. It is also recommended to publish maximum exposure for those contingent liabilities which probability or occurrence is considered low (such as for instance termination payments). For the case of guarantees, it is recommended either (1) to disclose the stream of annual payments and net present value of all payments per project if the information used for its estimation is reliable, or (2) maximum exposure of aggregated payments.

The next Table shows a sample of reporting format to present direct and contingent liabilities by project.

Table 21: Reporting Sample of Fiscal Commitments by project

PPP project	Direct liabilities	Annual payments value for 3-year budget			Present value of all payments
		2018	2019	2020	2018
Project 1	Direct liabilities: - Annuity payment. Indexed quarterly by inflation.				
Project 2	Direct liabilities: - Annuity payment. Indexed quarterly by inflation.				
PPP project	**Contingent liabilities**	**Estimated annual payments value for 3-year budget**			**Present Value of Maximum exposure**
		2018	2019	2020	
Project 1	- Revenue Guarantee				
	- Termination payment In case of default of contracting authority				
Project 2	- Termination payment In case of default of contracting authority				

5 The Implementing Institution is required to include in its Notes to Financial Accounts any guarantees issued for a Project.

It must be noted that estimations of liabilities ***Table 17*** and follow-up activities must be updated in an ongoing basis. Estimates should be updated at least during the following project milestones:

- Approval by Budgetary department;
- After Feasibility Study;
- Before signing the PPP Agreement;
- After signing the PPP Agreement;
- After financial closure;
- During construction years (they are the riskiest years); and
- During operation (checking on financial performance of firm).

3. Accounting

RGoB needs to decide whether and when fiscal commitments should be recognized in financial accounts through creation of public assets, liabilities or expenses. This is important because fiscal responsibility is usually examined in relation to set thresholds over government's liabilities and expenditures. It must be taken into account that adequate accounting and reporting directly relates to the perception bias that PPPs attract immediate private financing without increasing government spending and debt. Determining how PPP commitments are to be recognized in the Government's balance sheet is important as it defines whether such liabilities count toward debt management limits[6] and allows the government an effective asset-liability management.

International public-sector accounting standards, such as IPSAS 32, and international government financial reporting and statistics guidelines, such as IMF's Government Finance Statistics Manuals (2014), and IMF's Guide on Public Sector Debt Statistics (2013) provide a framework for accounting and statistics of PPP transactions.

IPSAS 32 defines when PPP assets and liabilities should be recognized, assuming government is following accrual accounting standards. Assets and liabilities appear in government's balance sheet, if: (1) the government controls or regulates the services the operators must provide through a PPP agreement, and (2) the government control any residual interest in the asset at the end of the contract. Under this framework, the assets provided by the concessionaire are recognized, as well as its correspondent liabilities, either if the assets are funded by users fees or by government. Regarding contingent liabilities, IPSAS 19 states that the expected cost of a contingent obligation should be recognized only if: (1) it is more likely than not (50%) that the event will occur; and (2) the amount of the obligation can be measured with sufficient reliability.

6 It must be noted that availability payments are very similar to debt obligations and must therefore be treated as such.

10 ANNEX F VIABILITY GAP FUNDING GUIDELINES

10.1 Introduction

The RGoB through its PPP Policy has indicated its recognition of the need to utilize private resources to finance the provision for public infrastructure and public services through PPPs.

The RGoB recognizes that not all PPP projects can be financially and commercially viable solely through its revenue sources. As such, the PPP Policy of 2016 provides that the RGoB will provide subsidies or Viability Gap Funding (VGF) for PPP Projects that are economically and socially justified with focus on projects targeted towards socio-economically disadvantaged user or groups of users.

According to the PPP RR of 2017, VGF will take the form of a capital grant.
For this purpose, the RGoB has mandated the Ministry of Finance to issue Guidelines setting the criteria for eligibility to receive funding and the procedure for applying, approving, disbursing and monitoring the use of funding.

10.2 Eligibility

In order to be eligible under this scheme, the PPP project shall meet the following criteria:

- The project is economically and socially relevant to Bhutan;
- The project is evaluated during the Feasibility Assessment to be financially and commercially non-viable in the absence of financial support from the Government;
- 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;
- The most efficient risk transfer can only be achieved by providing such financial support to the private partner;
- The tariff or user charge cannot be increased to enhance project viability;
- The project term cannot be increased to enhance project viability;
- The financial support does not jeopardize the incentives of the private partner to increase technical and managerial efficiency to reduce cost;
- All other measures of enhancing project viability have been evaluated to minimize the use of VGF;
- The feasibility study prepared by the Implementing Institution recommends requirement of VGF for the project detailing out the rationale for the same;
- VGF is only applicable for projects where the contract is awarded to the private partner through a transparent and competitive bidding process.

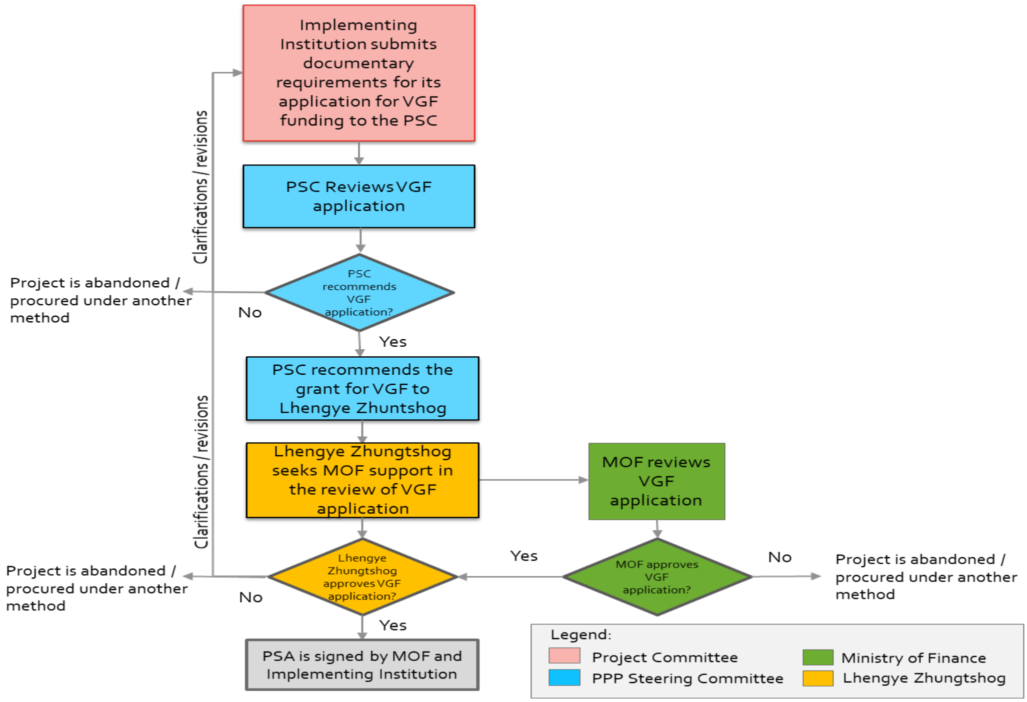
10.3 Government support

The total VGF shall not exceed fifty percent (50%) of the Total Project Cost excluding cost of land. However, the Lhengye Zhungtshog, in its sole and absolute discretion decide to provide VGF greater than fifty percent (50%) of Total Project Cost excluding cost of land for social sector projects.

VGF under this scheme may be disbursed in the following forms:

- Capital grant at the stage of project construction, subject to such conditions as may be decided by PPP Steering Committee. The capital grant can only be disbursed after the concessionaire has subscribed and expended the equity contribution required for the project and will be released in proportion to the debt disbursements remaining to be disbursed thereafter; or
- 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 PPP Agreement; or
- Hybrid scheme, which will be a combination of capital grant and annuity payments.

10.4 Approval of VGF Application



VGF applications may be submitted by Implementing Institutions to the Public Private Partnership Steering Committee. The application shall include the requisite information necessary for satisfying the eligibility criteria specified in ***10.2***.

10.4.1 Steps in VGF application

1. PSC review of VGF application

Public Private Partnership Steering Committee will review the VGF application submitted by the Implementing Institution and may decide to:

- Recommend the VGF to the Lhengye Zhungtshog; or
- Reject the VGF application based on its review of the submitted documents; or
- Seek clarifications from the Implementing Institution.

The Public Private Partnership Steering Committee shall within 30 days from receipt of the VGF application relay its decision to the Implementing Institution.

2. Lhengye Zhungtshog VGF application approval

If the Public Private Partnership Committee recommends the Project submitted by the Implementing Institution as suitable for VGF grant, the Lhengye Zhungtshog reviews the Public Private Partnership's recommendation and seeks the Ministry of Finance's support in the review of the VGF application.

The Ministry of Finance reviews the VGF application and ascertains the Project's eligibility based on the eligibility criteria defined. The Ministry of Finance may decide to:

- Approve the VGF application based on the Project's adherence to the eligibility requirements and confirm the availability of funding; or
- Reject the VGF application due to the Project's ineligibility for the VGF grant and/or unavailability of funding.

The Ministry of Finance shall within 30 days from the request of Lhengye Zhungtshog relay its decision to the Lhengye Zhungtshog.

The Lhengye Zhungtshog notifies the Public Private Partnership Steering Committee of its decision. The Public Private Partnership Steering Committee thereby notifies the Implementing Institution of Lhengye Zhungtshog's decision.

3. Execution of Public Support Agreement

The Ministry of Finance and the Implementing Institutions signs a Public Support Agreement with 30 days from the Implementing Institution's receipt of the Lhengye Zhungtshog decision.

10.5 Disbursement

10.5.1 Steps in VGF Disbursement:

1. Execution of Tri-partite Agreement

The Ministry of Finance, the Lead Financial Institution and the Concessionaire shall enter into a Tripartite Agreement for the purposes of the PSA. The Tripartite Agreement will contain the conditions for the disbursement of the VGF tranches and its schedule.

2. Monitoring the Project's progress

The Implementing Institution reports the progress of the project to the Lead Financial Institution and informs the Lead Financial Institution when payment is due.

The Lead Financial Institution will review whether the conditions indicated in the Tripartite Agreement has been complied with and whether (a portion of) the grant can be disbursed.

A grant under this scheme can only be disbursed only after the Private Sector Company / Special Purpose Vehicle 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;

The Lead Financial Institution will inform the Ministry of Finance that a disbursement is due.

3. Disbursement of grant

The Ministry of Finance will release the grant to the Lead Financial Institution as and when due based on the schedule indicated in the Tripartite Agreement.

10.6 Monitoring of VGF disbursements

10.6.1 Steps in Monitoring of VGF disbursements:

1. Submission of quarterly progress reports

The Lead Financial Institution shall submit quarterly progress report to the Public Private Partnership Steering Committee under the terms of the Tripartite agreement.

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.

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.

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.

2. Issuance of corrective measures

The Public Private Partnership Unit, Public Private Partnership Steering Committee, on receiving any non-compliance report from Implementing Institution, may issue directions to the Implementing Institution for corrective action. The Public Private Partnership Steering Committee may instruct the Ministry of Finance, in event of said non- compliance or failure to achieve timely remedy of the same, suspend or revoke the disbursement of Viability Gap Funding.

3. Budgeting

The Lhengye Zhungtshog shall place overall cap in funding support through limits on Viability Gap Fund;

The yearly fiscal commitments and projections shall form part of the Budget of the Government.

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