



KINGDOM OF CAMBODIA

Nation Religion King

Royal Government of Cambodia

STANDARD OPERATING PROCEDURES
FOR
PUBLIC-PRIVATE PARTNERSHIPS PROJECTS

VOLUME I
POLICIES AND PROCEDURES



August 2022



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

រាជរដ្ឋាភិបាលកម្ពុជា

លេខ : ១៧៧៤.រ.អនក្រ.ជក



អនុក្រឹត្យ
ស្តីពី

ការដាក់ឱ្យប្រើនីតិវិធីគ្រប់គ្រងប្រតិបត្តិការរួម
សម្រាប់គម្រោងភាពជាដៃគូវិនិយោគ និងឯកជន

រាជរដ្ឋាភិបាល

- បានឃើញរដ្ឋធម្មនុញ្ញ នៃព្រះរាជាណាចក្រកម្ពុជា
- បានឃើញព្រះរាជក្រឹត្យលេខ នស/រកត/០៩១៨/៩២៥ ចុះថ្ងៃទី០៦ ខែកញ្ញា ឆ្នាំ២០១៨ ស្តីពីការតែងតាំងរាជរដ្ឋាភិបាល នៃព្រះរាជាណាចក្រកម្ពុជា
- បានឃើញព្រះរាជក្រឹត្យលេខ នស/រកត/០៣២០/៤២១ ចុះថ្ងៃទី៣០ ខែមីនា ឆ្នាំ២០២០ ស្តីពីការតែងតាំងនិងកែសម្រួលសមាសភាពរាជរដ្ឋាភិបាល
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០៦១៨/០១២ ចុះថ្ងៃទី២៨ ខែមិថុនា ឆ្នាំ២០១៨ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការរៀបចំនិងការប្រព្រឹត្តទៅនៃគណៈរដ្ឋមន្ត្រី
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០១៩៦/១៨ ចុះថ្ងៃទី២៤ ខែមករា ឆ្នាំ១៩៩៦ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការបង្កើតក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០៥០៨/០១៦ ចុះថ្ងៃទី១៣ ខែឧសភា ឆ្នាំ២០០៨ ដែលត្រូវបានប្រកាសឱ្យប្រើដោយច្បាប់ស្តីពីប្រព័ន្ធហិរញ្ញវត្ថុសាធារណៈ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/០១១២/០០៤ ចុះថ្ងៃទី១៤ ខែមករា ឆ្នាំ២០១២ ដែលត្រូវបានប្រកាសឱ្យប្រើដោយច្បាប់ស្តីពីលទ្ធកម្មសាធារណៈ
- បានឃើញព្រះរាជក្រមលេខ នស/រកម/១១២១/០១៨ ចុះថ្ងៃទី១៨ ខែវិច្ឆិកា ឆ្នាំ២០២១ ដែលត្រូវបានប្រកាសឱ្យប្រើដោយច្បាប់ស្តីពីភាពជាដៃគូវិនិយោគនិងឯកជន
- បានឃើញអនុក្រឹត្យលេខ ៤៣ អនក្រ.បក ចុះថ្ងៃទី២៨ ខែកុម្ភៈ ឆ្នាំ២០២២ ស្តីពីការរៀបចំនិងការប្រព្រឹត្តទៅនៃក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ
- បានឃើញអនុក្រឹត្យលេខ ៤១ អនក្រ.បក ចុះថ្ងៃទី២៥ ខែមីនា ឆ្នាំ២០២០ ស្តីពីការគ្រប់គ្រងការវិនិយោគសាធារណៈ
- យោងតាមសំណើរបស់រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ

សម្រេច

មាត្រា ១ .-

ដាក់ឱ្យប្រើនីតិវិធីគ្រប់គ្រងប្រតិបត្តិការរួមសម្រាប់គម្រោងភាពជាដៃគូវិនិយោគ និងឯកជន (ភ.វ.ជ.) ដូចមានខ្លឹមសារភ្ជាប់មកជាមួយអនុក្រឹត្យនេះ។

មាត្រា ២ .-

នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការរួមសម្រាប់គម្រោង ភ.រ.ជ. ដែលត្រូវបានដាក់ឱ្យប្រើ ក្រោមអនុក្រឹត្យនេះ រួមមាន៖

- ១- នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការគម្រោង ភ.រ.ជ. ភាគ១ ស្តីពីគោលនយោបាយ និងនីតិវិធី
- ២- នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការគម្រោង ភ.រ.ជ. ភាគ២ ស្តីពីគោលការណ៍ណែនាំ រួមមាន៖
 - គោលការណ៍ណែនាំស្តីពីការធ្វើអត្តសញ្ញាណកម្ម និងការជ្រើសរើសគម្រោង ភ.រ.ជ.
 - គោលការណ៍ណែនាំស្តីពីមូលនិធិអភិវឌ្ឍន៍គម្រោង ភ.រ.ជ.
 - គោលការណ៍ណែនាំស្តីពីការគាំទ្រពីរដ្ឋសម្រាប់គម្រោង ភ.រ.ជ.
 - គោលការណ៍ណែនាំស្តីពីការគ្រប់គ្រងកិច្ចសន្យា ភ.រ.ជ.

៣- នីតិវិធីគ្រប់គ្រងប្រតិបត្តិការគម្រោង ភ.រ.ជ. ភាគ៣ ស្តីពីនីតិវិធីគ្រប់គ្រងលទ្ធកម្មគម្រោង។

មាត្រា ៣ .-

នីតិវិធី និងគោលការណ៍ណែនាំផ្សេងទៀតពាក់ព័ន្ធនឹងគម្រោង ភ.រ.ជ. ត្រូវកំណត់ដោយប្រកាសរដ្ឋមន្ត្រី ក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ។

មាត្រា ៤ .-

រដ្ឋមន្ត្រីទទួលបន្ទុកទីស្តីការគណៈរដ្ឋមន្ត្រី រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ រដ្ឋមន្ត្រីនៃគ្រប់ក្រសួង និងប្រធានគ្រប់ស្ថាប័នដែលពាក់ព័ន្ធ ត្រូវទទួលបន្ទុកអនុវត្តអនុក្រឹត្យនេះឱ្យមានប្រសិទ្ធភាពខ្ពស់ ចាប់ពីថ្ងៃចុះហត្ថលេខានេះតទៅ។

ថ្ងៃ ពុធ ៥ កើត ខែ ឆ្នាំ ២០២២ ឆ្នាំខាល ចត្វាស័ក ព.ស. ២៥៦៦
ធ្វើនៅរាជធានីភ្នំពេញ ថ្ងៃទី ៣១ ខែ វិច្ឆិកា ឆ្នាំ២០២២



សម្តេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន

បានយកសេចក្តីគោរពជម្រាបជូន
សម្តេចអគ្គមហាសេនាបតីតេជោ នាយករដ្ឋមន្ត្រី សូមហត្ថលេខា

**ឧបនាយករដ្ឋមន្ត្រី
រដ្ឋមន្ត្រីក្រសួងសេដ្ឋកិច្ចនិងហិរញ្ញវត្ថុ**

អគ្គបណ្ឌិតសភាចារ្យ អូន ព័ន្ធមុនីរ័ត្ន

- កន្លែងទទួល៖**
- ក្រសួងព្រះបរមរាជវាំង
 - អគ្គលេខាធិការដ្ឋានក្រុមប្រឹក្សាធម្មនុញ្ញ
 - អគ្គលេខាធិការដ្ឋានព្រឹទ្ធសភា
 - អគ្គលេខាធិការដ្ឋានរដ្ឋសភា
 - ខុទ្ទកាល័យសម្តេចអគ្គមហាសេនាបតីតេជោ នាយករដ្ឋមន្ត្រី
 - ខុទ្ទកាល័យ សម្តេច ឯកឧត្តម លោកជំទាវឧបនាយករដ្ឋមន្ត្រី
 - ដូចមាត្រា៤
 - រាជកិច្ច
 - ឯកសារ-កាលប្បវត្តិ

**KINGDOM OF CAMBODIA
NATION RELIGION KING**

**Government of the Kingdom of Cambodia
No: 174 ANK.BK**

**Sub-Decree
On
Promulgating the Standard Operating Procedures
for the Public-Private Partnerships Projects**

The Government of the Kingdom of Cambodia

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Royal Decree No. NS/RKT/0918/925, dated September 6, 2018, on the Formation of the Government of the Kingdom of Cambodia;
- Having seen the Royal Decree No. NS/RKT/0320/421, dated March 30, 2020, on the Formation and the Amendment of the Members of the Government of the Kingdom of Cambodia;
- Having seen the Royal Kram No. NS/RKM/0618/012, dated June 28, 2018, on Promulgating the Law on the Organization and Functioning of the Council of Ministers;
- Having seen the Royal Kram No. NS/RKM/0196/18, dated January 24, 1996, on Promulgating the Law on the Establishment of the Ministry of Economy and Finance;
- Having seen the Royal Kram No. NS/RKM/0508/016, dated May 13, 2008, on Promulgating the Law on the Public Finance System;
- Having seen the Royal Kram No. NS/RKM/0112/004, dated January 14, 2012, on Promulgating the Law on the Public Procurement;
- Having seen the Royal Kram No. NS/RKM/1121/018, dated November 18, 2021, on Promulgating the Law on the Public-Private Partnerships;
- Having seen the Sub-Decree No. 43/ANK/BK, dated February 28, 2022, on the Organization and Functioning of the Ministry of Economy and Finance;
- Having seen the Sub-Decree No. 41/ANK/BK, dated March 25, 2020, on the Management of Public Investments;
- Pursuant to the Request of the Minister of Economy and Finance;

Hereby Decides

Article 1 .-

Promulgate the Standard Operating Procedures for the Public-Private Partnerships (PPP) Projects as attached to this Sub-Decree.

Article 2 .-

The Standard Operating Procedures for PPP Projects promulgated under this Sub-Decree consists of:

- 1- Standard Operating Procedures for PPP Projects, Volume I: Policies and Procedures;
- 2- Standard Operating Procedures for PPP Projects, Volume II: Guidelines including:
 - Guidelines on Project Identification and Selection of PPP Projects;
 - Guidelines on Project Development Facility for PPPs;
 - Guidelines on Government Support Measures;
 - Guidelines on Contract Management; and
- 3- Standard Operating Procedures for PPP Projects, Volume III: Procurement Manual.

Article 3 .-

Other PPP-related procedures and guidelines shall be determined by Prakas of the Minister of Economy and Finance.

Article 4 .-

Minister in charge of the Council of Ministers, Minister of Economy and Finance, Ministers of all Ministries and Heads of relevant Institutions shall effectively implement this Sub-Decree from the date of signature.

Phnom Penh, 31 August 2022

Prime Minister

Signature and Seal

SAMDECH AKKA MOHA SENA PADEI TECHO HUN SEN

Have submitted to SAMDECH AKKA MOHA SENA PADEI TECHO HUN SEN for signature

Deputy Prime Minister

Minister of Economy and Finance

Signature

AKKA PUNDIT SAPHEACHA AUN PORNMONIROTH

Receiving Places:

- Ministry of the Royal Palace
- General Secretariat of the Constitutional Council of Cambodia
- General Secretariat of the Senate
- General Secretariat of the National Assembly
- Cabinet of Samdech Akka Moha Sena Padei Techo HUN SEN, Prime Minister
- Cabinet of Deputy Prime Ministers
- As Article 4
- Royal Gazette
- Archives-Chronicle

ABBREVIATIONS

BEC	Bid Evaluation Committee
BOT	Build-Operate-Transfer
CDC	Council for the Development of Cambodia
CEC	Consultant Evaluation Committee
CL	Contingent Liabilities
CMC	Contract Management Committee
COD	Commercial Operations Date
DP	Development Partner
EIRR	Economic Internal Rate of Return
ENPV	Economic Net Present Value
FA	Framework Agreement
FS	Feasibility Study
GDICDM	General Department of International Cooperation and Debt Management
GDPPP	General Department of Public-Private Partnerships
GDR	General Department of Resettlement
GKC	The Government of the Kingdom of Cambodia
GSM	Government Support Measures
IA	Implementing Agency
IC	Independent Consultant
ITB	Instructions to Bidders
ITP	Invitation to Prequalify
ITPB	Instructions to Prospective Bidders
JV	Joint Venture
KHR	Cambodian Riel
LAR	Land Acquisition and Resettlement
MCA	Multi-Criteria Analysis
MEF	Ministry of Economy and Finance
MOP	Ministry of Planning
MPSS	Minimum Performance Standards and Specifications
NSDP	National Strategic Development Plan
OE	Owner's Engineer
PDF	Project Development Facility
PIC	Public Investment Committee
PIM	Project Information Memorandum
PIP	Public Investment Program

PMU	Project Management Unit
PPP	Public-Private Partnerships
PRC	Procurement Review Committee
QIP	Qualified Investment Project
REOI	Request for Expressions of Interest (for consultants)
RFB	Request for Bids
RFP	Requests for Proposals (for consultants)
SCBA	Social Cost-Benefit Analysis
SEZ	Special Economic Zone
SOP	Standard Operating Procedures
SOP-LAR	Standard Operating Procedures for Land Acquisition and Involuntary Resettlement
SPC	Special Purpose Company
TA	Transaction Adviser
TAS	Transaction Advisory Services
TOR	Terms of Reference
USP	Unsolicited Proposals
VfM	Value for Money
VGf	Viability Gap Financing
WG	Working Group

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DEFINITIONS

Availability Payment	Periodic payments made by the Implementing Agency or the Government to the Private Partner based on the availability of the infrastructure asset and meeting of performance parameters for service provision as specified in the PPP Contract. Such payments cover the investment cost and/or service operating costs plus reasonable profit for the restoration, construction, repair, operations, and/or maintenance of public infrastructure and/or public services delivered by the Private Partner.
Bid Evaluation Committee	The Committee established by the Implementing Agency for the evaluation of bids and other relevant documents submitted by prospective Private Partners for each PPP project procured by that agency. The establishment of BEC shall be made under a Prakas/Decision.
Bidding Documents	The set of documents issued to prospective bidders for the preparation of their bids for the selection of the Private Partner.
Consultant Evaluation Committee	The Committee established for carrying out the evaluation of Proposals submitted by consultants for the selection of the IDC Panel, the Transaction Advisor for each PPP project under the concerned IA, the Independent Consultant, the Owner's Engineer, or individual experts. The establishment of CEC shall be made under a Prakas/Decision.
Contingent Liabilities	Payment commitments whose occurrence, timing and magnitude is uncertain and depend on future events or circumstances that are beyond the control of the Government and unknown at the time of the signing of the PPP Contract.
Direct Commitments	Payment commitments where the occurrence, value and timing of payment is known at the time of the signing of the PPP Contract.
Fiscal Commitments	Government's obligations to make payments to the Private Partner, which could take the form of Direct Liabilities or Contingent Liabilities.
Government	Government of the Kingdom of Cambodia
Implementing Agency	Any public entities with the rights to enter the PPP Contract, acting as the Implementing Agency, includes line ministries, equivalent public entities, public administration establishments, public enterprises and sub-national administrations. These public entities are authorized to enter into PPP Contracts that fall within their respective areas of competences in accordance with applicable laws and regulations.
Independent Consultant	Known as the "Independent Engineer" refers to the consulting firm that will be engaged by the Implementing Agency and normally financed by the Private Partner to provide independent review, monitoring, approval and reporting of project implementation, operations, and maintenance of the infrastructure facilities in accordance with the PPP Contract.
Investor	Any entity which will or has invested equity capital in the Private Partner for the implementation of the PPP Contract in accordance with the applicable laws and regulations of Cambodia.

Law on Public-Private Partnerships	Law of Kingdom of Cambodia promulgated under Royal Kram NS/RKM/1121/018 on 18 November 2021.
Owner's Engineer	Known as the "Contract Engineer" refers to the consulting firm engaged by the Implementing Agency to provide technical support in the management and supervision of the PPP project.
PDF Guidelines	The set of policies and implementation guidelines adopted by the Government for the management and operations of the PDF for PPPs.
Private Partner	The entity which has signed the PPP Contract with the Implementing Agency. In case of a Special Purpose Company is established in accordance with Article 22 of the Law on PPPs, the Private Partner is referred to as that Special Purpose Company.
Procurement Review Committee	The Committee established to review and approve the selection of the Transaction Adviser, Independent Consultant, Owner's Engineer or individual expert, and Private Partner for each PPP project. The establishment of PRC shall be made under a Prakas/Decision.
Project Development Facility	The revolving fund established by the Government to finance the preparation of pre-investment studies, project documentations, and assistance in the bidding process of PPP projects until financial close of the PPP contract.
Project Management Unit	The Unit established under each Implementing Agency for the implementation of PPP projects. This could be a Unit established for the sole purpose of implementing a specific PPP project or a Unit to implement all PPP projects in the Implementing Agency.
Public-Private Partnership Contract	Agreement between an Implementing Agency and the Private Partner for the provision of a public asset and/or services by the Private Partner based on agreed commercial arrangements and performance parameters.
Public-Private Partnership Project	Project delivered on a Public Private Partnership Contract.
Qualified Investment Project	Investment project which has received a Registration Certificate from the Council for the Development of Cambodia or Provincial-Municipal Investment Sub-Committee.
Special Purpose Company	Any enterprise established by investors in Cambodia in accordance with the terms and conditions of the PPP Contract and in line with Article 22 of the Law on PPPs to be the Private Partner that shall implement a PPP Project.
Transaction Adviser	The consultant engaged to carry out pre-investment activities of potential PPP projects, including project structuring and support during the bidding process until financial close of the PPP Contract.
Value for Money	The potential benefits to the Government on the proposed PPP project if a PPP procurement compares favorably to a traditional public sector provision in terms of quality of service and related costs over the lifetime of the project assets. These benefits are evaluated through qualitative and quantitative analysis of benefits

and costs over the project's lifespan to determine whether there are positive benefits during the PPP project cycle.

VGF Ceiling

Maximum limit of the Viability Gap Financing determined for a PPP project

Viability Gap Financing

Funding support provided by the Government to eligible PPP projects to make them financially viable and bankable.

I. INTRODUCTION

1. Introduction

1.1. Introduction to the SOP

1.1.1. The Standard Operating Procedures (SOP) for PPP Projects contains the policies, guidelines and procedures for the identification, preparation, procurement, implementation, and management of public investment projects delivered as Public-Private Partnership (PPP) Projects. It covers the requirements as set out in the Law on Public-Private Partnerships (Law on PPPs), PPP Policy Paper and Sub-decree on Public Investment Management and specifically outlines the procedures and requirements for the development and implementation of all PPP projects undertaken in Cambodia as defined in the Law on PPPs. The SOP sets out the main procedures, phases, and requirements to be followed for PPP projects. In some instances, projects must also comply with requirements set out in other policies and regulations. The SOP does not replicate or replace such policies, regulations, or requirements, but where necessary, indicate that these must also be complied with.

1.2. Objective of the SOP

1.2.1. The objective of the SOP is to set out the procedures and requirements for the identification, preparation, procurement, implementation, and management of PPP projects in a transparent, clear, systematic, efficient and accountable manner. It includes the roles and responsibilities of specific institutions, including decision-making processes and approvals mechanism. These are intended to ensure that, PPP projects are developed in compliance with the Law on PPPs and other associated regulations, all specified requirements are fulfilled, the required approvals are provided in an informed manner by the decision-making authorities at each phase of the PPP project cycle, and competitively awarded contracts are effectively implemented and monitored.

1.3. Application of the SOP

1.3.1. The SOP applies to investments that are determined to be PPPs as defined in Paragraph 2.1.1 of this section and undertaken by public entities that are authorized to enter into a PPP Contract as defined in Article 7 of the Law on PPPs. These include government ministries, institutions, equivalent public entities, public administration establishments, public enterprises, and sub-national administrations, which are referred to as the Implementing Agencies.

1.3.2. The SOP does not apply to investments by the private sector where there is no contractual obligation of any government entity in the creation of any asset. The asset created by the private sector may provide or sell services to a government entity. Such arrangements are classified as a purely commercial deal and do not fall under the classification of PPPs. For example, a private sector entity may invest and construct a power generating plant without any agreement in its construction with a government entity but may thereafter enter into a power purchase agreement to sell power to the government entity. Such an arrangement does not fall under the definition of PPP and the SOP does not apply to such arrangements.

1.3.3. However, if any of the commercial transactions under Paragraph 1.3.2 above involves the State providing any sort of guarantees or assurance including liabilities in respect of Contingent Liabilities, the approval for such guarantees and assurances will require the prior approval of the Ministry of Economy and Finance and/or the Head of the Government, as prescribed in the relevant regulations governing the approval of such

commitments. In such instances, these projects shall fall within the ambit of PPP projects and the SOP shall be applicable.

1.4. Users of the SOP

- 1.4.1. The SOP provides guidance to all stakeholders engaged in activities in the PPP project cycle - from Project Identification and Selection to Project Preparation and Appraisal; Project Approval; Project Procurement and Contracting; and Implementation and Management of PPP Contracts.
- 1.4.2. The main users are Government decision-makers and officials, who will be required to follow the established procedures and meet specified requirements. Specific roles and responsibilities are therefore clearly specified. The SOP is also relevant for the advisors and consultants who are involved in supporting the Government to prepare and implement PPP projects.
- 1.4.3. More broadly, private companies, investors and individuals who are interested to take part in bidding for PPP projects in Cambodia can also gain a better understanding of the process that is followed and the requirements for PPP projects. Similarly, the SOP is useful for civil society and the general public to better understand PPP projects and how they are being undertaken.

1.5. Composition of the SOP

- 1.5.1. The SOP for PPP Projects consists of three Volumes:
 - Volume I: Policies and Procedures;
 - Volume II: Guidelines:
 - Guidelines on Project Identification and Selection of PPP Projects
 - Guidelines on Project Development Facility for PPP Projects
 - Guidelines on Government Support Measures
 - Guidelines on Contract Management; and
 - Volume III: Procurement Manual.
- 1.5.2. The three volumes of SOP are put into implementation by the Sub-decree No. 174 ANK.BK, promulgated on 31 August 2022. Each volume of the SOP prescribes specified requirements and guidance to be followed to support the preparation, implementation and management of PPP projects.
- 1.5.3. Other supporting guidelines to the SOP will be determined by the *Prakas* of the Minister of MEF. Those include:
 - Guidelines on Feasibility Study,
 - Guidelines on Financial Analysis,
 - Guidelines on Value for Money Analysis,
 - Guidelines on Fiscal Management.

1.6. Periodic Updating of the PPP SOP

- 1.6.1. The SOP has been prepared by the Ministry of Economy and Finance (MEF) based on the Law on PPPs, the PPP Policy Paper, the Sub-decree on Public Investment Management and other associated regulations in Cambodia, and consistent with international best practices, suitably modified in the context of Cambodia. The General

Department of Public-Private Partnerships (GDPPP) in the MEF is responsible for providing guidance and clarifications to users of the SOP.

- 1.6.2. The SOP will be periodically updated by the MEF, normally after 3 to 5 years, to reflect lessons learnt and incorporate any changes to the relevant policies, procedures and regulation of the Government as well as best practices in PPPs in the regional and global PPP markets.

2. PPP Definition, PPP Objectives and PPP Models

2.1. Definition of PPPs

- 2.1.1. The definition of PPPs as they are applied in Cambodia is set out in the PPP Policy Paper and Law on PPPs. A PPP refers to a contractual agreement of a commercial nature between the State and the Private Partner to restore, repair, expand, construct, operate and/or maintain public infrastructure or physical facilities or systems, or to provide services for the duration of the period specified in the PPP Contract. The Private Partner shall invest, bear risks and receive benefits based on performance indicators in accordance with the terms and conditions stipulated in the PPP Contract, as the case may be.
- 2.1.2. PPPs differ from privatization in that under privatization, the public entity divests all or a majority of ownership and interests in an asset to the private sector, with the responsibility of owning, managing and operating the asset transferred to the private sector entity. In PPPs on the other hand, the public entity's responsibility to provide public infrastructure and deliver associated services remain with the public entity, and only certain developmental and operating rights are transferred to the private sector for the duration of the PPP Contract, after which the public infrastructure and associated services stand transferred back to the public entity. This SOP is not applicable to any privatization of a public entity by the Government.

2.2. Objectives

- 2.2.1. The main objective for the implementation of PPPs is to achieve greater efficiency in terms of quality as well as timeliness in delivering public infrastructure and services. The private sector often has stronger capacity and greater knowhow for the efficient construction, delivery and operations of infrastructure. Increased efficiency in construction and operations, in comparison to the public entity, enables the private sector to enter into PPP project investments and PPP contracting opportunities, while ensuring sufficient profitability in such projects.
- 2.2.2. At the same time, PPPs also allow Government to tap much needed capital from the private sector to address investment requirements in public infrastructure. Structured correctly, a PPP project can generate interest from private investors and developers, allowing Government to tap or mobilize private capital to finance its infrastructure requirements.

2.3. PPP Models

- 2.3.1. The Law on PPPs describes a number of common PPP models. The selection of the appropriate model will be determined by the special features and specific requirements of each PPP project. The models will be analyzed, and the most appropriate model will be recommended in the Feasibility Study report. The final selection will be decided by the Implementing Agency and the MEF. The common PPP models include:
 - i. **Build-Operate-Transfer (BOT):** The Implementing Agency grants the Private Partner a right to design, finance, construct, operate and maintain Project

Asset(s) and collect fees, tolls, rentals and user charges from users of the Project's facilities or services for an agreed PPP Contract Period specified in the PPP Contract. After the expiry of the PPP Contract Period, the Private Partner shall transfer to the Implementing Agency all rights and interests in the Project and the Project Asset(s), in accordance with the terms of the PPP Contract. Variants of the BOT model include the **Build-Lease-Transfer (BLT)**, wherein the Private Partner designs, finances and constructs the Project Asset(s) and after which leases the Project Asset(s) back to the Implementing Agency for a lease fee as stipulated in the PPP Contract. All other aspects remains the same under these variants; and **Build-Transfer-Operate (BTO)**, wherein the Private Partner transfers the title to the Project Asset(s) to the Implementing Agency, on completion of construction. All other aspects of the BOT model remain the same under this variant.

- ii. **Build-Own-Operate-Transfer (BOOT):** Similar to the BOT model, the Implementing Agency grants the Private Partner a right to design, finance, construct, operate and maintain Project Asset(s) and collect fees, tolls, rentals and user charges from users of the Project's facilities or services for an agreed Contract Period specified in the PPP Contract. As distinct from the BOT model, during the PPP Contract Period the Private Partner owns the Project Asset(s). After the expiry of the PPP Contract Period, the Private Partner shall transfer to the Implementing Agency all rights and interests in the Project and the Project Asset(s), in accordance with the terms of the PPP Contract.
- iii. **Build-Own-Operate (BOO):** The Implementing Agency grants the Private Partner a right to design, finance, construct, own and operate Project Asset(s) in perpetuity or for an indefinite period, on the terms of the PPP Contract. The Private Partner shall be entitled to make commercial use of the Project Asset(s), including collecting fees and income from users of the Project's facilities or services. Variants of the BOO contract include: **Rehabilitate-Own-Operate (ROO)** and **Modernize-Own-Operate (MOO)**, which involve granting of rights for takeover of existing Project Asset(s).
- iv. **Management Agreement/Operations and Maintenance Agreement:** The Implementing Agency contracts with the Private Partner to provide specified services relating to daily operations and maintenance of existing Project Asset(s) or other public assets owned by the Implementing Agency. Such agreements could include variations such as the operations and maintenance agreement (O&M), in respect of existing Project Asset(s) or other public assets in return for fees payable by the Implementing Agency or another designated party in accordance with the terms and conditions of the PPP Contract. The Private Partner does not invest its own capital or hold any title to the Project Asset(s) or other public assets under this agreement. A variant of the Management Agreement could include the Private Partner investing its own capital in the Project Asset(s) and recovering such investment through periodic payments from the Implementing Agency or other party, in accordance with the terms of the PPP Contract.
- v. **Design-Build-Finance-Operate-Maintain (DBFOM):** The Implementing Agency grants the Private Partner a right to design, build, finance and provide operations and maintenance services for the Project Asset(s), in accordance with the terms of the PPP Contract. The Private Party earns revenue through periodic payments from the Implementing Agency or other party for the PPP

Contract Period, in accordance with the terms of the PPP Contract. At the end of the PPP Contract Period, the Private Partner transfers the Project Asset(s) back to the Implementing Agency.

- vi. **Design-Build-Lease (DBL):** The Implementing Agency grants the Private Partner a right to design, construct and lease the Project Asset(s) from the IA, operate, and provide maintenance in accordance with the terms and conditions of the PPP Contract.

2.3.2. The PPP Models described in 2.3.1 above represent the most common models and do not form the exhaustive list. There are other types of models which may be used, and these will be described in the Feasibility Study report and their uses are subject to the approval of the Implementing Agency and the MEF.

2.3.3. The selection of the PPP model may also be determined based on forms of payment to the Private Partner. There are three main forms of payment namely:

- (i) **Revenue-based Payment:** is a form of payment that allows the Private Partner to collect revenue from users of the public infrastructure and/or public services. This form of payment is used for public investment projects with high economic productivity where it is possible to collect revenue from users of the public infrastructure and/or public services.
- (ii) **Availability-based Payment:** is a form of payment where the State shall pay the investment cost and/or relevant service fees to the Private Partner who has invested in the restoration, construction, repair, operation, and/or maintenance of public infrastructure or provided public services. This form of payment is used in the following cases: (1) the state is the direct user or purchaser of the services, or (2) public investment projects of social nature which do not offer the possibilities of collecting revenue from the users of the public infrastructure and/or public services.
- (iii) **Hybrid Payment:** is a combination between Revenue-based Payment and Availability-based Payment.

3. PPP Project Cycle

3.1. The Law on PPPs stipulates nine phases in the project cycle of solicited PPP projects:

Phase 1: Project Identification

Phase 2: Project Selection

Phase 3: Project Preparation

Phase 4: Project Approval

Phase 5: Procurement

Phase 6: PPP Contract Negotiation

Phase 7: Approval of the Final Draft of the PPP Contract

Phase 8: Signing of the PPP Contract

Phase 9: Implementation and Management of the PPP Contract.

3.2. The SOP rationalizes these nine phases and consolidates them into five main phases as summarized follows:

Phase I: Project Identification and Selection. The Implementing Agency (IA) will identify the potential public investment projects from sector studies and

Sector Master Plan that are prioritized for the Public Investment Program (PIP) of the Government. The IA, with the intention to develop and implement projects through the PPP, shall evaluate the potential of the project prior to requesting the MEF for review and approval and selection by the Public Investment Committee (PIC) as an Eligible Project to be included in the Priority PPP Project List. The IA will seek funding from the PDF or other sources for the transaction advisory services for the projects in the Priority PPP Project List and once approval of the funding is provided by the PIC, the Priority PPP Project will be subjected to Phase II.

Phase II: Project Preparation and Appraisal. Once the funding from the PDF or other sources is approved, the IA will undertake the Feasibility Study with the assistance of a Transaction Adviser (TA) and appraise the same to determine if it presents Value for Money (VfM) and is technically, economically, financially, and commercially viable for structuring as a PPP.

Phase III: Project Approval. If the IA agrees with the result of the FS of the project, as undertaken by the TA, the IA shall request the MEF and other relevant Government ministries, agencies and departments to review the result of the FS. The FS is subjected to a very detailed due diligence process by the MEF and on completion of this process, is submitted to the PIC for endorsement and approval from the Minister of MEF, where required, and from the Head of the Government to proceed to Phase IV. This phase may involve the approval of any government support measured by the Head of the Government, if requested by the IA and recommended by the Minister of MEF.

Phase IV: PPP Procurement and Contracting. Following the Project Approval, the IA shall undertake the procurement for the selection of the Private Partner to implement the PPP project. After the selection of the Private Partner, the IA shall lead the Government's Working Group to negotiate the terms and conditions of the draft PPP Contract. After the completion of negotiation on draft PPP Contract, the IA shall request for approval from the Government on the final draft of the PPP Contract, once the Head of the Government has provided an in-principle approval in relation to any fiscal support. The IA having the delegated power, in accordance with applicable laws and regulations, and acting as the representative of the Government, shall sign the PPP Contract with the selected Private Partner, with the MEF countersigning the PPP Contract.

Phase V: Implementation and Management of PPP Contract. The Private Partner shall be primarily responsible for the detailed engineering design, financial close, procurement of contractor, construction, operations and/or maintenance of the PPP project, in accordance with the terms and conditions of the PPP Contract. The IA shall administer, monitor and report the performance of the signed PPP Contracts.

- 3.3. The detailed five phases of the PPP project Cycle comprise a number of underlying sequential procedural steps. The Project Cycle and their detailed steps are illustrated in **Appendix 1** of this SOP.

4. Legal and Institutional Framework

4.1. PPP Framework

- 4.1.1. The Government has established the PPP framework through the Law on PPPs and this SOP sets out the institutional framework, procedures, rules and regulations for the

development and implementation of PPP projects. They aim to achieve the following governance objectives:

- i. establishing clear and predictable institutional roles and responsibilities for PPPs with well capacitated institutions;
- ii. setting out transparent, predictable, clear and fair procedures for the preparation, procurement and implementation of PPP projects;
- iii. providing a clear basis and ground-rules for decision-making on PPP projects, where VfM is a central consideration;
- iv. making transparent and coordinated decisions on possible government support to PPP projects;
- v. creating transparent budgetary processes to minimize fiscal risks and ensure integrity of the procurement process;
- vi. building a firm system for public financial management and risk management of PPP projects;
- vii. setting out clear requirements and procedures for consistent contract management and monitoring of PPP projects.

4.2. Legal Context

4.2.1. PPPs in Cambodia are governed by the Law on PPPs No. NS/RKM/1121/018 enacted on 18 November 2021, the Sub-decree No 41/ANK/BK on Public Investment Management promulgated on 25 March 2020, and other applicable laws and regulations.

4.2.2. **The Law on PPPs:** The Law on PPPs shall promote the management of the PPP mechanism for the preparation and implementation of public infrastructure and/or public services delivered in an efficient, effective, sustainable, transparent, accountable and fair manner for the greater benefit of Cambodia's socio-economic development.

4.2.3. **Scope of the Law on PPPs:** The Law shall govern the management of the development and implementation of the PPP projects in the eligible sectors, as stipulated in Article 5 of the Law, to develop public infrastructure and/or public services. For all issues not regulated by this Law, the special laws and other regulations of the Kingdom of Cambodia shall prevail and will be duly applied.

4.2.4. **Sub-decree on Public Investment Management:** The Sub-decree sets out the common framework and guiding principles for the identification, preparation, selection, implementation, monitoring, and evaluation of public investments in Cambodia. Under the Sub-decree, all public investments will be vetted to assess their suitability for procurement under the PPP arrangements. The Sub-decree will be supported by separate SOPs for public investments financed by external support from Development Partners; financed under the national budget; and financed through PPP arrangements. This SOP is applicable for projects financed through the PPP arrangements.

4.2.5. **Other Enabling Laws supporting PPPs:** In addition to the Law on PPPs, there are other Laws which address specific elements of the PPP Contract which must be complied with. These requirements will be included at the time of the preparation of the draft PPP Contract. Some of the more relevant Laws include the following:

- i. Law on Public Finance System;

- ii. Law on Taxation;
- iii. Law on Investment of the Kingdom of Cambodia;
- iv. Land Law and the Law on Expropriation;
- v. Law on Secured Transactions;
- vi. Law on Government Securities;
- vii. Law on the Issuance and Trading of Non-Government Securities;
- viii. Law on the Control, Use and Management of State Properties;
- ix. Law on Accounting and Auditing.

II. INSTITUTIONAL ROLES AND RESPONSIBILITIES

1. Introduction

1.1. The identification, preparation, procurement, implementation and monitoring of PPP projects in Cambodia involve several Government ministries and agencies which play various roles and responsibilities at different phases of the PPP Project Cycle. This Chapter clarifies the main roles and responsibilities of only the key ministries and agencies involved in PPP projects. More details on the specific roles and responsibilities of each of them are explained in the relevant sections of this SOP dealing with each phase of the PPP Project Cycle.

2. Key Players in PPP Projects

2.1. The key ministries and agencies that play the crucial roles and responsibilities in the PPP Project Cycle are the (i) Ministry of Economy and Finance and (ii) Implementing Agencies (IA). The Council for the Development of Cambodia (CDC) also plays an important role in the Project Cycle.

2.2. The investment incentives provided under Qualified Investment Project (QIP) in accordance with the Law on Investment of the Kingdom of Cambodia, in most cases of PPPs, play a critical role in making the private investment financially viable. The Private Partner is responsible for seeking the approval for QIP from the CDC.

2.3. The key Government ministries and agencies involved are:

2.3.1. Ministry of Economy and Finance

2.3.1.1. The MEF acts as the lead institution for managing PPPs in the Kingdom of Cambodia. It exercises the key due diligence and approval role across the PPP Project Cycle from the selection of the PPP project until the PPP Contract is approved by the Government. In addition, it is specifically responsible for the review and approval of any fiscal commitments under the Government Support Measures (GSM).

2.3.1.2. The Public Investment Committee (PIC) of MEF is a pre-budgeting committee that fulfills the gatekeeping role for managing public investment projects financed through all sources of financing, including PPP projects.

2.3.1.3. The General Department of PPP (GDPPP) in the MEF is the central agency responsible for coordination and management of PPP projects and plays the key due diligence and facilitation role in the PPP Project Cycle, from project identification to the implementation and monitoring of the PPP Contract and until hand back of the PPP project to the IA.

2.3.2. Implementing Agencies

2.3.2.1. The IA including any line ministries, equivalent public entities, public administration establishments, state-owned enterprises and sub-national administration, is the project owner, and bears the main responsibilities for the identification, preparation, procurement, implementation and monitoring of PPP projects. The IA is empowered to sign the PPP Contract with the Private Partner, as the representative of the Government of the Kingdom of Cambodia (GKC).

2.3.3. Council for the Development of Cambodia

2.3.3.1. The CDC is the “Etat-Major” and “One-Stop Service” agency responsible for making decisions on private and public investments in Cambodia. In the context of PPPs, the Private Partner normally seeks the approval of their investments in PPP projects

as QIPs from the CDC, to avail the investment incentives under the QIP and secure protection prescribed under the Law on Investment of Kingdom of Cambodia.

- 2.4. The main roles and responsibilities of the key Government ministries and agencies are listed in **Appendix 2**. The detailed roles and responsibilities in relation to the approval process at each phase of the Project Cycle are given in **Appendix 3**.

III. PROJECT IDENTIFICATION AND SELECTION

1. Introduction

1.1. All public investments are identified and prioritized for inclusion in the three-year Public Investment Program (PIP) based on their alignment to the Government's Rectangular Strategy and the National Strategic Development Plan (NSDP). They are normally identified from sector strategies and sector master investment plans. In some cases, public investments are identified from the sector master investment plan and do not appear on the PIP. The PIP is developed and prepared by the Ministry of Planning (MOP) in collaboration with the line ministries and agencies of the Government and approved in tandem with the budget cycle of the Government.

2. Eligible Sectors

2.1. Under the Law on PPPs, eligible sectors relating to construction, and/or services primarily include the following:

- Public infrastructure and public services for the transport and logistics sector such as roads, bridges, rails, airports, ports, public parking and canals;
- Public infrastructure related to telecom, posts, information and communication technology (ICT), and digital technology;
- Production, transmission and distribution of electricity, oil and gas pipelines, and other public services in mines and energy sector;
- Clean water supply and sanitation infrastructure, sewage system, drainage system, restoration system, wastewater treatment, waste management and other public services for the environmental protection;
- Public infrastructure and public services related to the health sector, education sector, labor and vocational training sector, tourism sector, culture and arts sector, sport sector and social housing;
- Public infrastructure related to the industry, science, technology and innovation sector such as special economic zones (SEZs), small- and medium-sized enterprises (SMEs) clusters, and technology and innovation parks;
- Public infrastructure related laboratories, processing, product storage, and trade promotion;
- Public infrastructure and public services related to the agriculture sector and irrigation system; and
- Other public infrastructure and public services as permitted by separate laws.

2.2. All projects identified in the PIP and/or in the sector master investment plans undergo initial analysis to determine if they should be funded through the national budget, external financing or through the PPP mode of procurement. These projects are therefore subjected to a screening process to identify the list of *potential PPP projects*. The potential PPP projects undergo further prioritization to determine whether the project can be selected as a candidate for project preparation support from the Project Development Facility (PDF) or other sources of financing, and if it should proceed to the next phase of project development.

2.3. The Law on PPPs prescribes that the following criteria shall be taken into consideration for the identification and selection of **Eligible PPP Projects**:

- The development and implementation of the project falls within the responsibility and purview of the Implementing Agency;
- The objective of the project is for the development of public infrastructure and/or the provision of public services within the Eligible Sector;
- The project is capable of risk allocation between the State and Private Partner to ensure the benefits based on the principal of Value for Money;
- The project has the potential to attract resources from the private sector as the basis for the rationalization of the public expenditure for the development of the project; and
- The project shall have an operational period of at least 5 (five) years and is capable of providing stable and sustainable services to users for the entirety of its lifespan under the framework of the PPP Contract.

2.4. The Project Identification and Selection of the Project Cycle for PPP comprises the following procedural steps:

Step 1: Project Identification,

Step 2: Project Selection and Prioritization,

Step 3: Obtaining PDF Support.

3. Step 1: Project Identification

- 3.1. Step 1 pertains to the IA's internal process of identifying potential PPP projects through screening of the projects in the PIP and/or sector master investment plans using a *two-stage Multi-Criteria Analysis (MCA)* tool. The IA will need to carry out a preliminary pre-Feasibility Study and prepare a project concept paper containing sufficient information to allow for the analysis and evaluation of the project for identification as a potential PPP project. Once the project concept paper is prepared, the project is subjected to MCA. The IA is responsible for carrying out the two-stage MCA of the projects. The GDPPP will provide technical support and guidance to the IA in this process, where requested.
- 3.2. Under Stage 1 of the MCA, the project is assessed against certain threshold criteria on a pass/fail basis and if it passes all the criteria, it is identified as a potential PPP project. The threshold criteria comprise of seven (7) separate criteria which test the basic requirements that are considered as absolutely necessary for a project to be identified as a potential PPP project. The 7 criteria relate to: (i) alignment with Government's strategic priorities on investment; (ii) size of capital cost; (iii) stakeholder support; (iv) commitment of IA; (v) safeguard impacts; (vi) delivery of outputs; and (vii) success of similar projects. The Stage 1 analysis will avoid subjecting projects that do not meet the basic requirements from further detailed study and assessment which will save time, effort and costs.
- 3.3. A project that passes the Stage 1 assessment will undergo a more detailed assessment under Stage 2 of the MCA to determine if it should be **selected** as a potential PPP project. The Stage 2 assessment is carried out against six (6) criteria using a scoring system. The six criteria measure the project's response to: (i) market acceptability; (ii) predictable/stable revenue collection/payment mechanisms and financial attractiveness; (iii) economic and social desirability; (iv) appropriate risk sharing; (v) manageable life cycle costs; and (vi) compliance with legal and regulatory framework. The assessment is carried out using a scoring system where the project is scored against each of the criterion and must meet a *minimum overall score* to be selected as a potential PPP project.

- 3.4. The detailed guidelines for Stage 1 and Stage 2 and the scoring system are provided in the **Guidelines on Project Identification and Selection of the SOP for PPP Projects, Volume II: Guidelines**. The GDPPP will provide support to the IA during this process, including the provision of technical assistance towards building/institutionalizing PPP screening criteria to be utilized by the PPP Units/Cells within the concerned IA.
- 3.5. The MCA will be carried out by a team from the IA comprising of at least three members of the PPP Unit/Cell/Project Management Team and chaired by its Head. The assessment and scoring must be agreed by all three members. Once the MCA is completed for the list of the projects in the PIP and/or sector master investment plan and the projects have met all the requirements for selection as a potential PPP project, the assessments are submitted to the Head of the IA for approval before submission to MEF for further consideration under Step 2 described in paragraph 4.2 below. The IA will need to ensure that project concept papers are updated and contain the pertinent information that can respond to the criteria and sub-criteria which will be used for the prioritization exercise by the GDPPP under Step 2. The IA will submit the updated project concept papers together with the completed MCA analysis for the complying projects to the MEF.
- 3.6. The main objective of Step 1 is for the IA to develop a robust pipeline of potential PPP projects by screening all the projects identified in the PIP and/or sector master investments plans. At the end of Step 1, the IA is expected to submit the list of all the projects that passed the MCA to MEF for further processing. In some cases, the IA may submit only one project at a time for consideration by the MEF.

4. Step 2: Project Selection and Prioritization

- 4.1. The IA will submit a letter to the MEF seeking approval of the project(s) to be included in the Potential PPP Projects List which will be maintained by the GDPPP on a national basis. The project concept paper(s) and the completed MCA Sheet(s) under Step 1 must accompany the official cover letter.
- 4.2. The GDPPP will carry out a technical review of the submission(s) by all IA to validate the assessment and the scoring in the MCA Sheet(s). In the event that there are substantial issues or gaps in the assessment and the scoring carried out by the IA(s), the GDPPP will seek the necessary clarifications or justifications from the IA(s) and may require the IA(s) to revise the MCA Sheet(s). The GDPPP will prepare a report highlighting its findings and recommendations and submit to Minister of the MEF for consideration. If the project(s) are approved, the GDPPP will include them in the Potential PPP Projects List. The GDPPP may inform the relevant IA the decision of the Minister of MEF or wait for the completion of the prioritization exercise under Step 2, in which case the decision on the priority list will be conveyed to the relevant IA.
- 4.3. Under Step 2, all projects in the Potential PPP Projects List undergo a prioritization exercise to determine which projects can be selected to proceed to next phase of the PPP Project Cycle and secure funding for the preparation of the full Feasibility Study from the PDF, or from other sources of financing. The prioritization is carried out under a procedure in which different weights are assigned to each of the six criteria used in Stage 2 of the MCA depending on the degree of their criticality and level of importance which largely depends on the nature of the project.
- 4.4. The weighted scores will be used to determine the priority of the project. The higher the weighted score, the higher is the probability of the project being selected for priority funding from the PDF or other sources for preparation of the project. The weighted scores resulting from the assessment of the six criteria may be subjected to a further assessment to take into account sector importance/priorities of the Government. The Government may decide

to accord higher priority to some sectors which will be incorporated in the weighed scoring system. The MEF will determine the weights for sector importance. The GDPPP will rank the priority of the projects based on the overall weighted score with the highest score ranked 1st and the rest in the order of their score.

- 4.5. The detailed guidelines on the assignment of the weights, the evaluation criteria, and the methodology for carrying out the prioritization exercise are provided in the **Guidelines on Project Identification and Selection of the SOP for PPP Projects, Volume II: Guidelines**. The Guidelines also provide the methodology for incorporating the weightage for the sector importance/priority. The weights assigned in the Guidelines can be varied with the prior approval of the GDPPP, except for weights for sector importance that will be determined by MEF on an annual basis. GDPPP is responsible for carrying out this prioritization exercise. If the project proposal papers submitted by the IA(s) do not provide sufficient information to complete the prioritization exercise, the GDPPP will seek clarifications from the IA(s) before completing the assessment. The GDPPP and IA will cooperate to ensure that all the relevant information is available to carry out a meaningful assessment of the potential PPP projects using the prescribed Guidelines.
- 4.6. The assessment of the prioritization exercise will be submitted to the IA(s) by the GDPPP and the IA(s) will be provided with ten (10) working days for their review and for sending comments, if any. If the IA(s) have any reservations about the evaluation and assessment, these will be first discussed between the GDPPP and the concerned IA(s) prior to the IA(s) sending written comments. The GDPPP may consider the comments but will not be obliged to change the assessment where it does not find sufficient justification for the change.
- 4.7. The GDPPP will prepare a report on the results of the prioritization exercise and submit the list of the Priority PPP Projects with the ranking to the PIC to determine which projects will be included in the PPP project pipeline for implementation in the short and medium term. The IA(s) may have a different priority as decided by the MEF in which case the IA(s) may make additional representations to the MEF for consideration. The final list of PPP projects with the priority for short term and medium-term implementation as determined by the PIC will be submitted to the Minister of MEF for approval. The GDPPP will inform the respective IA(s) of the approval of the Priority PPP Projects for initiating Phase IV: Project Preparation and Appraisal of the PPP Project Cycle.
- 4.8. Steps 1 and 2 are not required for those PPP projects which have been prioritized by the IA and notified after obtaining the necessary approvals of the Government before the Law on PPPs came into effect. For such PPP projects, the prevailing rules and regulations before the effectiveness of the Law on PPP will apply.
- 4.9. For specific sectors after the Law on PPPs came into effect, some of the criteria under the MCA in Step 1 and the prioritization exercise in Step 2 may be waived in case the PPP project has been approved by the Head of the Government or the Minister of MEF. The IA must however demonstrate that the prioritized PPP project satisfies the key requirement of the Value for Money (VfM) principle. The Head of the IA shall submit a request for the waiver of the specific criteria for each PPP project to the Minister of MEF for consideration and approval prior to proceeding to Step 3 or Step 4, as deemed necessary.

5. Step 3: Obtaining PDF Support

- 5.1. The Government has established the PDF as a dedicated fund to finance project development for public investments. It will comprise of three main windows for financing of project development, one each for externally financed projects, national budget financed projects and PPP projects. The PDF for PPPs will be used for financing of

transaction services activities to assist the IA in the preparation and implementation of quality PPP projects. The preparation and procurement of a PPP project are complex undertakings and need the services of experts with a wide range of expertise. The preparation and procurement activities are referred as Transaction Advisory Services (TAS) and are normally carried out by a single or a consortium of consulting firms who are called the Transaction Advisers (TA).

- 5.2. The TAS includes the activities undertaken during the preparation of the detailed feasibility studies under Phase II: Project Preparation and Appraisal; the preparation of the Project Proposals for approval under Phase III: Project Approval; and the selection of the private partner under Phase IV: Procurement and Contracting.
- 5.3. The PDF is normally used for solicited PPP projects since the cost of the preparation of unsolicited projects is the responsibility of the private proponent of the unsolicited proposal. However, in exceptional cases, the PDF may be used by the IA, with the approval of the MEF, to recruit TA or Advisors to assist them in undertaking the evaluation and negotiation of unsolicited proposals where the Framework Agreement for the unsolicited proposal does not have any provision for financing of TA or Advisors by the Private Proponent. The MEF may also use funds from the PDF for recruiting TA or Advisors to undertake due diligence and evaluation of the financial and commercial aspects of an unsolicited proposal. These expenditures are recouped from the Private Proponent and will be specified in the terms and conditions of the PPP Contract.
- 5.4. The first step in the preparation of the project by the IA, under the approved final list of PPP projects, is to seek financial support, where required, from the PDF or other sources to finance the TA to assist them in carrying out the TAS. At the stage when the list of the Priority PPP Projects is submitted to the PIC to review and approve the PPP Pipeline for implementation in the short and medium term under Paragraph 4.7 above, the PIC will provide an in-principle approval of the Priority PPP Projects that can seek funding from the PDF. The IA will need to submit an application in a prescribed format (Project Information and Service Requirements) provided in **Appendix 1 of Guidelines on Project Development Facility of the SOP for PPP Projects, Volume II: Guidelines** to seek the final approval of the funding. The IA will also need to submit the proposed Terms of Reference (TOR) of the TA. Sample TOR of TA is provided in the **SOP for PPP Projects, Volume III: Procurement Manual**.
- 5.5. The GDPPP will evaluate the application and determine the scope of the TAS, the proposed TOR and the estimated costs. The results of the evaluation with the recommendation by the GDPPP will be submitted to the PIC for consideration and approval of the budget. Once the application is approved, the GDPPP will inform the relevant IA of the approval and to undertake the recruitment for the selection of the TA.
- 5.6. The GDPPP with the assistance of the sector specific IA carries out a pre-qualification of consulting firms to select a *Panel of firms/consortium* under an Indefinite Delivery Contract (IDC) arrangement for a period of three years. The panel is updated periodically by the GDPPP. This not only speeds up the selection process for TA but also ensures that only highly technically qualified firms with extensive experience in TAS for PPP projects are selected. The IA is primarily responsible for the selection of the TA from the Panel. However, the approval of the selection of the TA is undertaken by a procurement review committee comprising of members from the IA and the GDPPP.
- 5.7. The detailed step by step procedures for the recruitment and selection of the firms for TAS are provided in the **SOP for PPP Projects, Volume III: Procurement Manual**. The IA must comply with the procedures stipulated in the Procurement Manual.

- 5.8. The IA is responsible for the supervision and management of the TA and for ensuring the delivery and quality of the outputs. The IA will be deeply involved in the preparation of the project which will require close supervision and monitoring of the work of the TA. All payments for the TA will be processed and paid from the PDF for PPPs by the GDPPP, after receipt of certification of satisfactory services from the IA.
- 5.9. The MEF through the PIC is responsible for the management, operations and sustainability of the PDF for PPPs and the operational functions are delegated to the GDPPP. The detailed procedures and arrangements for the operation of the PDF for PPPs are provided in **the Guidelines on Project Development Facility of the SOP for PPP Projects, Volume II: Guidelines**. These Guidelines are consistent with the guiding principles elaborated in the Guidelines issued for the central PDF under the Public Investment Management System Reform Strategy (PIMSRS) 2019-2025. The GDPPP and IA must ensure compliance with the procedures stipulated in the **Guidelines on the Project Development Facility** for all PPP Projects.
- 5.10. In cases where a DP is funding the TAS, the procurement arrangements for the recruitment of TA will be agreed between MEF and the funding DP. As far as possible, the recruitment of TA will follow the procedures stipulated in the **SOP for PPP Projects, Volume III: Procurement Manual** subject to the agreement of the funding DP.
- 5.11. In cases where the MEF agrees with a DP or one of its agencies to act as the TA for the IA, no funding from the PDF for PPPs will be required. The DP will finance the costs of the TAS which will be recouped from the winning Private Partner. The MEF and the DP will enter into written agreement which will specify the arrangements, terms and conditions governing the provisions of the TAS. The DP or its agency will not act independently but work under the supervision of the IA and MEF and follow the provisions stipulated in this SOP in respect of TA for undertaking the TAS. The GDPPP will be the MEF counterpart for the DP for such assistance.

IV. PROJECT PREPARATION AND APPRAISAL

1. Introduction

1.1. Once the PPP project has passed the Project Identification and Selection Phase and has been approved by the MEF, it undergoes the Project Preparation and Appraisal Phase which involves the preparation of a full Feasibility Study and the appraisal of the same to determine if it presents value for money and is technically, economically, financially and commercially viable, if structured as a PPP. This comprises of the following procedural step:

- Step 4: Preparation

2. Step 4: Preparation

2.1. Under Step 4: Preparation, the competent IA needs to undertake a Feasibility Study of the proposed project, to determine the proposed project's technical, economic, financial and commercial viability, including its ability to provide value for money outcomes to the State. The various aspects of the Feasibility Study that need determination is outlined in the next section.

3. Objectives of the Feasibility Study

3.1. The full Feasibility Study is carried out to determine if there is sufficient basis for the development of the Project as a viable and bankable PPP project. The Feasibility Study will carry out a detailed study and analysis to determine if the following key criteria are met:

- Technical solution for the implementation of the Project is practically feasible and cost-efficient.
- Environmental and social impacts are acceptable and can be mitigated.
- Legal and regulatory framework of the Kingdom of Cambodia has been complied with.
- There is value addition, i.e. the economic benefits of the Project outweigh the economic costs.
- Proposed PPP arrangements are more efficient than non-PPP options.
- Proposed PPP arrangements are bankable i.e. the Project is able to attract investors and lenders to finance the investment costs of the Project.
- Project is commercially and financially viable i.e. the Project is able to generate sufficient revenues to cover costs and to provide an adequate return to investors.
- There is balanced sharing of risks between the State/the Government and the Private Partner.
- Services provided are affordable to users (also to low-income users, if relevant).
- The Project is financially sustainable for the Government, both in the short and in the long term.
- Institutional capacity is adequate for implementing the PPP arrangement.

3.2. The Feasibility Study will provide the necessary analysis and the basis on which the Government can make three key informed decisions:

- The decision to proceed with the procurement and implementation of the Project as a PPP;
 - The choice of the optimal PPP model; and
 - The decision to provide government support measures.
- 3.3. The Feasibility Study will also constitute the basis for the structuring of the PPP project and the preparation of the bidding documents (technical terms and draft PPP Contract). The studies and analysis that are required to be undertaken during the Feasibility Study will depend on the size, nature, scope, and complexity of the proposed project.
- 3.4. In some exceptional cases where the Project is of complex technical nature or very large, there may be a need for the IA to conduct a Pre-Feasibility Study before undertaking the full Feasibility Study. This study is separate from the studies that are carried out during the project identification, selection and prioritization of the PPP projects.
- 3.5. The Pre-Feasibility Study, where required, will carry out an initial assessment to determine whether the Project has sufficient potential as a PPP project to justify carrying out a full Feasibility Study. The Pre-Feasibility Study may be financed from the PDF on an exceptional basis to recruit Advisors and must be approved by the MEF. The indicative scope of the studies carried out under the Pre-Feasibility Study and the necessary guidance are provided in the **Guidelines on Feasibility Study of the SOP for PPP Projects**.

4. Project Preparation Team

- 4.1. The IA is responsible for undertaking the preparation of the project for solicited projects and must establish a dedicated Project Management Unit (PMU) or have similar institutional arrangements for the management and coordination of project preparation.
- 4.2. The PMU should be headed by a Project Director or a Head and include a Project Manager, a Procurement Officer and other technical experts representing the different expertise that will be required depending on the nature of the project. In cases where the project is expected to have significant environment and social safeguard issues, the PMU team must include an Environment Officer and a Social Safeguards Officer.
- 4.3. The Feasibility Study and other transaction advisory services will be undertaken by the TA. The PMU will therefore be assisted by the TA at the project preparations phase.

5. Transaction Advisory Services (TAS) and Transaction Adviser

- 5.1. The preparation of the detailed Feasibility Study is a complex undertaking requiring a wide range of expertise, which is normally not available in the IA, and will require highly qualified and experienced consultants. The consulting services for the preparation of the detailed Feasibility Study is bundled with other TAS and a TA is recruited for these purposes following the selection procedures prescribed in the **Selection of Consultants in the SOP for PPP Projects, Volume III: Procurement Manual**.
- 5.2. The TA is generally a consortium of firms with different fields of expertise in technical, financial and legal aspects and selected from a Panel of Firms which have been pre-qualified. The procedures for the selection of the firms for inclusion in the Panel are prescribed in the **Selection of Consultants in the SOP for PPP Projects, Volume III: Procurement Manual**. The list of firms on the Panel is maintained and available from the GDPPP. In exceptional cases, a DP may be directly appointed as a TA under an arrangement agreed between the MEF and the DP. The first task of the TA will be to carry out all the necessary studies and analysis and prepare the detailed Feasibility Study Report.

- 5.3. The IA will seek the funding for a Transaction Adviser for carrying out the detailed feasibility studies and other Transaction Advisory Services from funds available in the PDF for PPPs following the procedures described in Step 3: Obtaining PDF Support in Chapter III of this Volume of the SOP and in accordance with the **Guidelines on Project Development Facility of the SOP for PPP Projects, Volume II: Guidelines**. Funding may also be sought from DPs in which case the GDPPP will facilitate the process with the funding DP. No funding from the PDF for PPPs is required when a DP is appointed as the TA and the funding is provided by the DP.
- 5.4. The IA will supervise and closely monitor the work of the TA, including the DP acting as a TA, and will be responsible for the review of the full Feasibility Study or due diligence study, as the case may be, carried out by the TA. The TA will need to work with different line ministries and agencies of the Government in carrying out the various studies, e.g. the Ministry of Environment for preparation and approval of the environment safeguard requirements. TA will work closely with the General Department of Resettlement (GDR) of the MEF on matters relating to land acquisition and resettlement (LAR). The IA will be responsible for coordinating and facilitating the work of the TA with such line ministries and agencies.
- 5.5. The GDPPP will also be closely involved in the preparation of the feasibility studies, primarily in relation to issues related to financial, government support measures, legal and regulatory analysis. It will directly oversee the services of the TA in these areas of the studies and analysis. The TA will specifically consult with the GDPPP when the financial and commercial analysis shows that government support measures will be necessary before finalizing the draft Feasibility Study Report.
- 5.6. The services of the TA are provided in two stages. In the first stage, it will carry out the Feasibility Study. If the Feasibility Study results show that the project is not viable, the Contract with the TA will end at that point which will be clearly spelled out in the Contract. The second stage will only be carried out if the project is found viable and approved to proceed to the procurement stage. The services in the second stage will comprise of assisting the IA and GDPPP in the preparation of the bidding documents, conducting the procurement, the evaluation and contract negotiations.

6. Components of the Feasibility Study

- 6.1. A wide range of tasks are required to be carried out by the TA which will be specified in the TOR of the TA. The services of the TA are provided in two stages. In the first stage, it will carry out the Feasibility Study. The scope of the studies and analysis undertaken during the Feasibility Study are indicative and will normally comprise of the following:
 - Legal and institutional analysis;
 - Technical studies:
 - Needs and options analysis;
 - Project objective, scope and description;
 - Technical feasibility;
 - Estimation of project cost;
 - Output specifications;
 - Demand study;
 - Market interest assessment;
 - Financial analysis;

- Economic analysis;
- Risk assessment;
- Assessment of Government Support Measures;
- Environmental and social impact assessments;
- Quantitative Value for Money (VfM) analysis; and
- Commercial principles of PPP Contract.

6.2. The list of studies and analysis in Paragraph 6.1 is indicative and will depend on the size, nature, scope and complexity of the proposed project. The list will be agreed between the IA and the GDPPP at the time of the preparation of the TOR of the consulting assignment of the TA. The detailed scope and guidelines for carrying out these studies outlined are provided in the **Guidelines on Feasibility Study of the SOP for PPP Projects**. In addition to these Guidelines, there are separate supporting guidelines for a number of the tasks such as financial analysis, value for money analysis, government support measures, risk assessment, which are referenced in the relevant paragraphs below.

6.3. Legal and Institutional Analysis

6.3.1. The legal analysis reviews the legislations and regulations that the project will need to comply with and whether these will permit the Private Partner to undertake all the activities for the implementation and operations of the project assets. For example, whether there are any restrictions on acquiring the project land or if the Private Partner can levy and collect user charges. The review will examine the whole range of the legislations and regulations, identify if there are any impediments that will restrict the Private Partner in any way and options to overcome these.

6.3.2. The institutional analysis will identify the institutional arrangements for the project and define the role and responsibilities of each of the stakeholders involved in the project. It will specifically discuss the establishment of the PMU, the review and reporting requirements and the project monitoring system.

6.4. Technical Studies

6.4.1. A need and options analysis is carried out to demonstrate the need for the project and the required level of services. This looks at the relevance of the project, the baseline level of services, the expected level of services and the benefits that the project can deliver.

6.4.2. Based on the assessment of the needs, various options that can respond to the needs are analyzed to determine the most advantageous option that can deliver the required services. The options are assessed on the basis of their costs and benefits and most importantly, the effectiveness in meeting the desired service level.

6.4.3. The scope of the project and other project details are then developed based on the option selected. These will include defining the objective, the description, outputs, the technical designs, land requirements, estimated costs and other technical aspects.

6.5. Demand Study

6.5.1. The demand for the services by the users is one of the key assessments that is carried out during the Feasibility Study. This typically estimates the demand forecast in terms of volume and growth projections, for example, traffic volume and growth projections for the duration of the operational PPP Contract Period. This is accompanied by users 'willingness to pay' study to determine the price the users are willing to pay for the

improved quality of services. The study will also look at alternative scenarios for revenue generation apart from user fees.

6.6. Market Interest Assessment

- 6.6.1. This is carried out to test the likely interest of potential private partners and lenders for the proposed PPP project. If there is no or very little interest in the participation of the private sector, the procurement of the project through PPP will be a failure. The consultation must be project specific and sufficient details of the project must be disclosed to the private investors and lenders to enable them to make an informed decision.
- 6.6.2. The engagement with the private sector will also provide an opportunity to seek their feedback on the right balance in risk allocation, the need for any government support and other aspects that are critical for the private sector. The consultation with the financial institutions is also critical to ascertain their interest in providing the private sector with long term debt financing for the project.

6.7. Financial Analysis

- 6.7.1. The project should be capable of generating revenues for the Private Partner to provide a reasonable rate of return as one of the key criteria for a project to be an eligible PPP project. Unless the project is able to deliver a reasonable rate of return to the Private Partner, it cannot be procured through the PPP procurement mechanism.
- 6.7.2. The purpose of the financial analysis is to demonstrate whether there are adequate financial returns to attract private sector investments. The analysis will identify the total estimated revenues from direct and indirect sources and the total estimated costs which are incorporated in a financial model. The financial model will be used to calculate the expected financial return on the project. The analysis will also show whether the minimum rate of return that a private party expects are achievable. The detailed guidelines for carrying out the financial analysis are provided in **Guidelines on Financial Analysis of the SOP for PPP Projects**.

6.8. Economic Analysis

- 6.8.1. The economic analysis will determine the economic viability and sustainability of the project. Essentially, an economic cost-benefit analysis (Social Cost- Benefit Analysis - SCBA) is carried out in line “with” and “without” project scenario. The net present value (NPV) of the stream of costs and benefits during the lifecycle of the project is calculated (Economic Net Present Value or ENPV). Each alternative of the project is subjected to this analysis and the project that comes out with highest ENPV is selected provided that the ENPV is greater than zero.
- 6.8.2. A second method of carrying out this analysis is to use the stream of incremental economic costs and benefits during the lifecycle of the project to calculate the Economic Internal Rate of Return (EIRR). The project is determined to be economically viable if the EIRR is more than the social discount rate. The method is widely used and is preferred for carrying out the economic analysis.

6.9. Risk Assessment

- 6.9.1. The purpose of the risk assessment is to determine the allocation of the project risks between the government and private party in accordance with the principle of optimum risk allocation. The principle involves allocating specific risks to the party that is more capable of managing that risk. All the project risks are identified and allocated between the government and the private party using this principle. This methodology is explained

in the **Guidelines on Feasibility Study of the SOP for PPP Projects** and a generic risk matrix which can be used for the identification and allocation of risks are provided as an Annex to these Guidelines.

6.10. Government Support Measures

6.10.1. The financial analysis from the project's financial model may result in the expected financial rate of return that does not meet the minimum rate of return expected by a private party and prevailing market for similar PPP projects. In case the expected minimum rate of return is not met, fiscal support from the government may be required to bridge the shortfall in order to make the project financially viable to the private party. The Feasibility Study will review the extent and nature of government support measures that may be required. The guidelines for the assessment and determination of the government support measures are provided in **Guidelines on Government Support Measures of the SOP for PPP Projects, Volume II: Guidelines**. The approval of any form of government fiscal support will require endorsement of the MEF and the approval of the Head of the Government.

6.11. Environment and Social Impact Assessments

6.11.1. The environment and social assessments will involve the identification of any adverse social and environmental impacts of the project to determine if these are significant. The studies will also identify the options for mitigating the identified adverse impacts. The assessments must comply with the requirements stipulated in the laws and regulations in Cambodia on the environment and social impacts of infrastructure projects. The key principle is to avoid any adverse impacts on the environment and the people affected by the project where possible and minimize, mitigate, and/or compensate for adverse impacts, where avoidance is not possible.

6.11.2. The Feasibility Study must identify the prevailing law and regulations on environment and ensure that the specified requirements are met. All infrastructure projects require the preparation of an Environment Impact Assessment (EIA) and Environment Management Plan (EMP) and submission of these to the Ministry of Environment during the project preparation stage for its review and approval.

6.11.3. The Feasibility Study must also analyze the social impacts, specifically the adverse impacts of displacement/resettlement of people when land acquisition is involved. The acquisition of land for infrastructure in the public interest is governed by the Law on Expropriation. The Feasibility Study will assess the potential land acquisition and resettlement impacts and provide estimated data and costs on these. The GDR plays an important role in the selection of the alignment and will be involved at an early stage of the preparation of the FS when the various options for the alignment are assessed. GDR will review the options and provide its recommendation based on the most suitable option that minimizes LAR and does not pose any severe constraints like affecting forest reserves or causing very large displacement of people. The analysis will also cover other social dimensions like impact on indigenous peoples, if any.

6.11.4. In the event that the PPP project is financed by assistance from a Multilateral Development Bank (like the Asian Development Bank, the World Bank Group, and Asian Infrastructure Investment Bank) or other DPs, the LAR will be carried out under the principles specified in the Standard Operating Procedures for Land Acquisition and Involuntary Resettlement (SOP-LAR) consistent with the Safeguard Policy of the funding agency.

6.12. Value for Money Analysis

6.12.1. Value for money (VfM) analysis is conducted to ascertain whether the project, if developed through PPP, will offer good value to the government and the public. This is a key analysis to determine if the project is suitable for implementing as a PPP and involves both a qualitative and a quantitative analysis. The guidelines and the detailed approach for carrying out the qualitative and quantitative VfM analysis is provided in **Guidelines on Value for Money Analysis of the SOP for PPP Projects**.

6.13. Commercial Principles of PPP Contract

6.13.1. There are standard templates of PPP Contracts for different PPP models which are used as the basis for preparation of a PPP Contract. The standard conditions are modified, where necessary, to suit a particular contract requirement. The draft PPP Contract is prepared at Step 9: Preparation and Approval of Bidding Documents of the Project Procurement and Contracting Phase.

6.13.2. At the Feasibility Study stage only the key commercial terms are defined, largely based on the risk allocation and the results of the financial analysis. These key commercial terms will form the basis for developing the draft PPP Contract during the procurement stage.

6.14. Other Studies

6.14.1. The Feasibility Study tasks above represent the key studies that are generally undertaken but this list is not exhaustive as other studies may be required depending on the nature of the project. While the TOR for the TAS will attempt to provide the comprehensive list of tasks, the TA, based on its experience and expert knowledge, will ensure additional studies and analysis are carried out in order to have a complete Feasibility Study Report.

7. Due Diligence of Feasibility Study

7.1. The review/due diligence process does not begin after the preparation of the draft FS Report but at each stage of completion of the key studies listed in paragraph 6.1. above. Once the TA finishes any study, it will submit this to the IA and/or the GDPPP in its areas of responsibilities and call for a discussion to seek review comments/feedback. This progressive review will ease the burden of spending too much time discussing a multitude of issues all at one time when the complete draft FS Report is ready.

7.2. On the completion of the studies and analysis, the TA will prepare a draft Feasibility Study Report (FS Report). Normally, the FS Report is split into two, one for Technical Report and one for Commercial/Financial Report for ease of review. The preparation of the final FS Report is the responsibility of the IA hence it will need to ensure that the TA has incorporated all the agreements reached during the review process. The PMU of the IA will undertake the review but may need some of the studies to be reviewed by other technical departments of the IA. It will also coordinate with the GDPPP for the review of areas of the studies and analysis under GDPPP responsibility.

7.3. The GDPPP will be involved in overseeing the services of the TA related to financial and commercial analysis and on matters regarding the legal and regulatory framework for PPP during the Feasibility Study. The studies and analysis carried out by the TA in these areas will be reviewed by the GDPPP and its feedback will need to be considered at the time of preparation of the final FS Report. The TA will need to closely work with GDPPP in these areas and in particular, seek its comments when the financial and commercial analyses show that government support measures will be necessary.

- 7.4. Once the due diligence process is completed, the IA will prepare a Project Proposal summarizing the key findings of the final FS Report justifying that there is sufficient basis to proceed with the procurement of the Project as a PPP; recommending the optimal choice of the PPP model; and specifying the need for any government support measures for the Project.
- 7.5. The Project Proposal together with the FS Report and the recommendations will be submitted to the Head of the IA for consideration and endorsement before submission to the MEF for review and approval of the Project for proceeding to procurement.
- 7.6. The GDPPP will review the Project Proposal and the FS Report and validate, as appropriate, the findings and recommendations of the IA. The detailed due diligence by the GDPPP is explained in more detail in the Chapter V: Project Approval of this SOP.

V. PROJECT APPROVAL

1. Introduction

1.1. This Phase of the PPP Project Cycle involves the review of the Project Proposal to determine the overall affordability of the Project and the approval of the Government for any Government Support Measures (GSM), if sought by the IA. The approval of the Project to proceed to the procurement and contracting stage is undertaken in the following procedural steps:

- Step 5: Review of Project Proposal and Assessment of GSM
- Step 6: Project Approval

2. Step 5: Review of Project Proposal and Assessment of GSM

2.1. The GDPPP will review the Project Proposal and the FS Report and validate, as appropriate, the findings and recommendations of the IA. In this regard, it will require the TA and the IA to make a detailed presentation of the key findings of the FS Report summarized in the Project Proposal and the justifications for the proposed recommendations, specifically on the PPP structure and the need for any government support measures.

2.2. The GDPPP will not review the findings of the technical feasibility studies and will focus its review and due diligence on the financial, commercial, legal, and other non-technical analysis. The review and validation of the financial analysis and any proposed government support measures will be the key area of responsibility of the GDPPP.

2.3. Value for Money Analysis

2.3.1. The FS Report will provide the assessment of the qualitative (if Pre-Feasibility Study is conducted, then this will be done at that stage) and the quantitative analysis of VfM based on the **Guidelines on Value for Money Analysis of the SOP for PPP Projects** to determine if the procurement of the Project through the PPP modality offers good value for money to the Government and the public. The quantitative VfM analysis will compare the risk adjusted cost of delivering the Project through PPP with the risk adjusted cost of traditional public procurement. PPP is recommended when this cost is lower than that under the traditional public procurement. The GDPPP will carefully review the assessment guided by the **Guidelines on Value for Money Analysis of the SOP for PPP Projects** and determine whether it clearly demonstrates that the Project will be best implemented through PPP.

2.4. Financial Analysis

2.4.1. The financial analysis is the heart of the FS Report as it determines if the Project is financially viable and if not, the extent of government support measures that may be necessary to make it viable and whether the Project can be approved to proceed to the procurement stage.

2.4.2. The GDPPP will need to carry out a very thorough review of a wide range of project analysis with the aim to validate and confirm all the modelling and projections and the other key characteristics of the financial model. The financial model is the most important instrument for the financial analysis which aims to provide a realistic representation of the cash flow that the Project will generate. It contains all the financially relevant data and assumptions which are obtained from several sources which will require very careful review. The GDPPP will be guided in its review and validation by the **Guidelines on**

Financial Analysis of the SOP for PPP Projects, which provides the scope and methodology of the various analysis that needs to be undertaken.

2.4.3. There are a number of key financial ratios and conditions, which are stipulated in the **Guidelines on Financial Analysis**, which need to be satisfied to deem the Project as financially viable. These are:

- Level of return to shareholders (equity and debt)
- Minimum level of Debt Service Coverage Ratio
- Maximum level of Gearing Ratio
- Repayment of loans
- Positive cash balance

2.4.4. The GDPPP will validate all the key financial ratios and other conditions and confirm the financial viability of the Project or whether the Project will need some form of government support measures to make it financially viable. These are the key determinants for Project Approval under Step 6.

2.5. **Government Support Measures**

2.5.1. The financial model will determine the extent of any government support measures (also called State Support) that will be required to make the Project financially viable. The financial analysis will calculate the shortfall in revenues to achieve financial viability and the government support measures will need to make up for the shortfall. The government support measures are broadly classified into three categories:

- Incentives
- Direct Fiscal Commitments
- Guarantees

2.5.2. The financial model will be used to simulate the impact of the government support measures that are proposed in the FS Report, in order to determine their effectiveness in achieving the financial feasibility of the Project. The GDPPP will review and validate the analysis that shows any revenue shortfall and the results from the simulation.

2.5.3. The different types of government support measures, their descriptions and the eligibility criteria are provided in detail in the **Guidelines on Government Support Measures of the SOP for PPP Projects, Volume II: Guidelines**. The FS Report will recommend the type of government support measures which may be one or a combination of the various types described in the **Guidelines on Government Support Measures**. The GDPPP will review and validate the assessment(s) leading to the proposed government support measures and determine if the Project is eligible for obtaining them in accordance with the eligibility criteria prescribed in the **Guidelines on Government Support Measures**.

2.5.4. Some of the government support measures will require review and consideration by other general departments of the MEF and other line ministries or agencies of the Government. Any investment incentives related to tax will be referred to the General Department of Taxation of the MEF and on granting of Qualified Investment Project (QIP) to the Council for the Development of Cambodia (CDC). Where Guarantees and other forms of Contingent Liabilities are proposed, these must be referred to the General Department of International Cooperation and Debt Management (GDICDM). The GDPPP will coordinate with the relevant general departments and ministries/agencies to seek their review and endorsement, where required.

- 2.5.5. Fiscal support through direct commitment and guarantees is considered as the last resort for the Government when there are no other alternatives. This is the most critical area of review for the GDPPP as it will be responsible for validating the required fiscal support for the Project and making the recommendation to the Minister of MEF for consideration.
- 2.5.6. GDPPP will review if FS Report has examined all other alternatives to achieve financial viability before recommending government support measures. These will include, among others, reduction in the scope of the project, increasing the PPP Contract duration, increasing user charges and other indirect sources of revenue like rights to commercial development of part of the Project land.

2.6. Risk Management and Fiscal Commitments

- 2.6.1. The MEF will be responsible for the review and recommendation of the fiscal commitments and State Support for PPP projects for approval by the Head of the Government. At the stage of Project Approval, these will be approved on in-principle basis.
- 2.6.2. The assessment of the fiscal implications and risks to the Government in relation to the proposed fiscal commitments is the most critical analysis that needs to be undertaken by the MEF which is tasked to the GDPPP.
- 2.6.3. The guidelines and the mechanisms for the management of the Government's fiscal risks arising from the PPP projects are described in detail in the **Guidelines on Fiscal Management of the SOP for PPP Projects**.
- 2.6.4. The Guidelines describes the types of fiscal commitments, the conditions that the PPP project must satisfy to be eligible for fiscal commitments, and the specific conditions that need to be met for each type of fiscal commitments (Direct, Payment Guarantee, and Other Contingent Liabilities).
- 2.6.5. GDPPP will first review and validate that the Project meets with the eligibility condition for receiving fiscal commitments stipulated in the **Guidelines on Fiscal Management of the SOP for PPP Projects**. The next step will involve subjecting the types of fiscal support recommended in the FS Report to a review to determine if the specific conditions for them (direct commitment, payment guarantee and other Contingent Liabilities, whichever are applicable) as stipulated in the **Guidelines on Fiscal Management** are satisfied.

2.7. Fiscal Management

- 2.7.1. The MEF is responsible for development and issuance of policy, rules, regulations, guidance and clarifications for the implementation of the fiscal management framework for PPPs. The fiscal management framework is described in **the Guidelines on Fiscal Management**.
- 2.7.2. The MEF will set and approve the budgetary ceilings for managing the exposure to fiscal commitments for PPPs. In line with this, the MEF will approve the annual budgetary allocation for fiscal commitments and all new fiscal commitments must fall within the ceiling established and notified by the MEF.
- 2.7.3. The GDICDM is responsible for the preparation and monitoring the implementation of the Public Debt Management Strategy which includes the management of the contingent liabilities. A ceiling on the amount of contingent liabilities will be specified by the MEF under the Public Debt Management Strategy. The GDICDM will ensure that the approval

of any new fiscal commitments for PPPs that result in contingent liabilities being assumed by the Government do not breach the ceiling.

- 2.7.4. While the GDPPP will be responsible for assessing the fiscal implications and risks to the Government, the GDICDM will review and validate any fiscal support instrument that result in the Government assuming contingent liabilities and make the necessary recommendation for the endorsement of the Minister of MEF. The Minister of MEF will seek the subsequent approval of the Head of the Government.

2.8. Selection of PPP Model and Commercial Terms

- 2.8.1. The Project Proposal and the FS Report will provide an assessment of the risk allocation between the IA and the Private Partner which will determine the choice of the appropriate PPP Model. The different models of PPPs are provided in the **SOP for PPP Projects, Volume III: Procurement Manual**. The GDPPP will review the risk allocation and validate if the PPP model selected best address the unique features and specific requirements of the proposed Project. The selection of the PPP Model is important as it will form the basis of the PPP Contract for the Project.

- 2.8.2. The FS Report will provide the key commercial principles for the PPP Contract based on the recommended PPP model. At the feasibility stage only the key commercial terms of the PPP Contract will be developed as the detailed terms and conditions will be developed during the procurement stage of the PPP Project Cycle. The GDPPP will ensure that the key terms and conditions do not unfairly bind the IA. The GDPPP will be guided by the template for PPP Contracts provided in the **SOP for PPP Projects, Volume III: Procurement Manual**.

2.9. Coordination with Line Ministries/Agencies and Other General Departments

- 2.9.1. The FS Report will provide a list of the proposed government support measures and areas which will require necessary approval by other general departments of the MEF or other central ministries/agencies of the Government. Some of the key areas where the review and approval will be required from them include:

- QIP by CDC
- Initial Environmental Impact Assessment by the Ministry of Environment (MOE)
- Land Acquisition and Resettlement by the General Department of Resettlement (GDR)
- Tax incentives by the General Department of Taxation (GDT)
- Licenses or permits by relevant sector ministries and agencies.

- 2.9.2. The GDPPP will ensure that all the relevant general departments of the MEF and other relevant central ministries and agencies of the Government are invited to participate in the presentation of the findings and recommendations of the FS Report when any significant matter or decision falls in their mandate of responsibilities. The GDR will need to review the proposed alignment and provide its agreement. There may be a need for more than one presentation meetings depending on the complexity of the recommendations and government support measures. The GDPPP will be responsible for coordinating with them to obtain the necessary approvals.

3. Step 6: Project Approval

- 3.1. In the case of solicited proposals, the GDPPP will make one of the following conclusions based on the presentation, review and due diligence of the Project Proposal and the FS Report:

- a. The FS Report does not address all the studies and analyses required as described in this Section or the quality is below standard.
 - b. It is acceptable but cannot be considered for approval by the Minister of MEF as the FS Report shows that the Project does not satisfy minimum conditions for proceeding to procurement of the Project as prescribed in the **Guidelines on Feasibility Study**, the **Guidelines on Financial Analysis**, the **Guidelines on Value for Money Analysis**, and the **Guidelines on Fiscal Management, of the SOP for PPP Projects**.
 - c. It meets with all the prescribed minimum requirements and does not require any government support measures; the FS Report together with the GDPPP report on findings and recommendations will be submitted to the PIC of the MEF for endorsement prior to submission to the Minister of MEF for approval to proceed with the procurement of the Project under the recommended PPP model. In the case of an unsolicited proposal, the recommendation from the PIC to the Minister will be for approval to proceed with the preparation and negotiations of the PPP Contract.
 - d. It meets with all the prescribed minimum requirements but also requires government support measures. The GDPPP will review if the fiscal support meets with the requirements prescribed in the **Guidelines on Fiscal Management of the SOP for PPP Projects** and submit its report on the findings and recommendation to the PIC of the MEF for endorsement, prior to submission to the Minister of MEF for consideration and to seek approval of the fiscal support from the Head of the Government.
- 3.2. In the case of (a) above, the GDPPP will notify and request the Head of the IA to address the shortcomings and resubmit a revised report after the shortcomings have been addressed. If the revised report is found acceptable and meets all the prescribed requirements for procuring the Project under a PPP arrangement, the GDPPP will submit it to the PIC of the MEF for endorsement, prior to submission to the Minister of MEF for a decision.
 - 3.3. In the case of (b) above, the GDPPP will submit a report detailing where the minimum requirements have not been met by the Project and recommendation to reject the Project to the PIC of the MEF for endorsement prior to submission to the Minister of MEF for approval. If the recommendation is approved, the GDPPP will prepare a letter of notification of the rejection for signature of the Minister of MEF and sending it to the Head of the IA.
 - 3.4. In case of (c) above, once the approval has been granted by the Minister of MEF, the IA can proceed to the Project Procurement and Contracting Phase. In case of unsolicited proposal, the GDPPP will prepare a letter of notification of approval for the signature of the Minister of MEF and for sending it to the Head of the IA to proceed with the procurement and negotiations of the PPP Contract.
 - 3.5. In the case of (d), the Minister of MEF will seek the approval of fiscal support from the Head of the Government prior to approving the Project for proceeding to procurement under the recommended PPP model. Once the decision is made by the Head of the Government, the Minister of MEF will notify the Head of the IA accordingly.
 - 3.6. The Minister of MEF will confirm the final package of government support measures and project risks allocation for the Project. This package will be incorporated into the bidding documents in the case of solicited proposals, in particular the draft PPP Contract, in order to inform bidders regarding the support available and risks to be carried by the Government.

VI. PROJECT PROCUREMENT AND CONTRACTING

1. Introduction

- 1.1. The Project Procurement and Contracting chapter addresses the Procurement, PPP Contract Negotiation, Approval of the Final Draft of the PPP Contract and the Signing of the PPP Contract Steps of the PPP Project Cycle. This chapter sets out the preparation for and conducting of an open competitive procurement, bidding process, leading to the award and signing of the PPP Contract with the Private Partner and comprises the following procedural steps:
 - Step 7: Preparation and Approval of Pre-Qualification Documents;
 - Step 8: Pre-Qualification of Prospective Bidders;
 - Step 9: Preparation and Approval of Bidding Documents;
 - Step 10: Selection and Approval of the Private Partner;
 - Step 11: Approval and Signing of the Final PPP Contract.
- 1.2. The different selection methods of procurement and the detailed procedures for undertaking the steps described above are provided in the **SOP for PPP Projects, Volume III: Procurement Manual**. This includes both the selection of consultants and the Private Partner. The IA and the GDPPP must ensure that the selection of the Private Partner and the Consultants is carried out in compliance with the provisions of the PPP Procurement Manual. The GDPPP of the MEF is responsible for the interpretation of the provisions and requirements stipulated in the PPP Procurement Manual.

2. Institutional Arrangements

- 2.1. The IA has the overall responsibility for carrying out the procurement process for the selection of the Private Partner and assigns this task to the dedicated PMU or the PPP Unit/Cell. The PMU or the PPP Unit/Cell will supervise the TA who will prepare the draft pre-qualification and the bidding documents, including the draft PPP Contract.
- 2.2. The IA will establish a Bid Evaluation Committee (BEC) which will be tasked with the responsibility of carrying out the evaluation of the bids and a Procurement Review Committee (PRC) for the approval of the draft pre-qualification documents; the draft bidding documents; the approval of the pre-qualification evaluation report and list of pre-qualified bidders; and the approval of the bid evaluation report and recommendation for the selection of the Private Partner. The TA will assist the BEC in carrying out the evaluation of the bids and providing clarifications to the PRC, as and when requested. The Minister of MEF and the Head of IA will be responsible for the final approval of the selection of the Private Partner.
- 2.3. The composition of the BEC and the PRC and their roles and responsibilities are provided in the **SOP for PPP Projects, Volume III: Procurement Manual** in the Section on the Selection of Private Partner.
- 2.4. Once the project has passed the Project Approval Phase, the IA will issue the notice to proceed to the TA to commence the second stage of their services for assisting the IA in the procurement process up to the signing of the PPP Contracts.

3. Step 7: Preparation and Approval of Pre-Qualification Documents

- 3.1. The first stage in the procurement for the selection of the private partner is undertaking the pre-qualification of bidders. The purpose of the pre-qualification is to ensure that only qualified bidders participate in the bidding process which saves time, effort and costs for

both the bidders and the IA. In exceptional cases particularly in small-sized PPP projects, the pre-qualification stage may be skipped with the prior approval of the Minister of MEF.

- 3.2. The pre-qualification typically evaluates if the bidders have the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, project management capacity, reliability, experience and reputation to finance, develop and operate the Project.
- 3.3. Once the project is approved for procurement, the TA is immediately tasked with the drafting of the pre-qualification invitation documents, consisting of the following: (1) Invitation to Pre-Qualify (ITP), (2) the Instructions to Prospective Bidders (ITPB); (3) the Project Information Memorandum (PIM).
- 3.4. The standard forms for the ITP, PIM and the ITPB are provided in the **SOP for PPP Projects, Volume III: Procurement Manual** in the Section on the Selection of Private Partner.
- 3.5. The review of the draft pre-qualification documents will be carried out by both the IA and the GDPPP. Once the review is completed, both the parties will hold a consultation meeting to consolidate and reconcile comments. The TA will play a key role in providing clarifications and ensuring the quality and the completeness of the documents are not compromised.
- 3.6. The draft prequalification documents will be submitted by the PMU to the PRC for review and approval. The TA will make a presentation to the PRC on the key contents of the documents and provide clarifications, where requested by the PRC. Where issues remain unresolved between the IA and the GDPPP, the TA will highlight these for a final decision by the PRC.

4. Step 8: Pre-Qualification of Prospective Bidders

- 4.1. Step 8 covers the actual conduct of the pre-qualification process, starting from the publication of the ITP documents, until the issuance of notice to qualified bidders.
- 4.2. The following are the key activities to be undertaken under this Step:
 - a) Publication of the ITP documents;
 - b) Conduct of the pre-qualification conference;
 - c) Submission of qualification documents by prospective bidders;
 - d) Evaluation of qualification documents and preparation of the pre-qualification evaluation report by the BEC; and
 - e) Selection of pre-qualified bidders by the PRC and issuance of notice to qualified bidders by the IA.
- 4.3. The ITP will be advertised in widely circulated Khmer and English language newspapers at least for three days and in the internal websites of the IA and GDPPP. The ITP will also be advertised once in international trade publications such as the Economist or the Financial Times. The GDPPP will also explore advertisement in web sites that have a global reach.
- 4.4. Upon publication of the ITP documents, the IA, with the support of the TA will schedule a Pre-Qualification Conference about 30 days from date of publication of the ITP documents, in order to accommodate queries from prospective bidders regarding the pre-qualification process, as well as providing any clarification on the content of the ITP documents. The IA should inform the market of any changes/amendments to these documents, through the publication (by print and/or online) of notices to such effect.

- 4.5. After the submission of the pre-qualification applications by the prospective bidders by the deadline for submission, the applications will be evaluated by the BEC with the assistance of the TA. The evaluation of the applications must be carried out in accordance with the evaluation criteria set out in the pre-qualification documents. If there is a difference or disagreement on any issue between the BEC and the TA, this must be highlighted in the Evaluation Report. The BEC will prepare an Evaluation Report and submit it to the PRC for review and approval of the list of pre-qualified applicants/bidders.
- 4.6. The IA will inform all the applicants/bidders on the result of the evaluation of the prequalification applications, after the approval of the PRC.

5. Step 9: Preparation and Approval of Bidding Documents

- 5.1. The preparation of the draft bidding documents will be carried out in parallel with the pre-qualification exercise. The TA will prepare the draft bidding documents in close consultation with the IA and the GDPPP.
- 5.2. The bidding documents will comprise of five parts, namely (i) the Request for Bids (RFB) (ii) Instruction to Prospective Bidders (ITPB) including technical and financial qualification requirements, (iii) Minimum Performance Specifications and Standards (MPSS) which contains the output specifications for the project; (iv) the draft PPP Contract; and (v) other data and information on the project.
- 5.3. The PPP Procurement Manual provides further details on the structure and contents of the bidding documents. The provisions relating to the terms and conditions of the government support package, if any, as well as the financing structure and risk allocation of the project, must be clearly spelled out in the draft PPP Contract and the ITB. The standard form for the bidding documents is also provided in the **SOP for PPP Projects, Volume III: Procurement Manual** which will guide the TA in the preparation of the draft bidding documents.
- 5.4. Once the first draft of the bidding documents is completed, the TA will make a detailed presentation to the IA and GDPPP in one or more meetings to explain the relevant parts of the documents. Special attention must be paid to the draft PPP Contract which must be thoroughly reviewed. The GDPPP will ensure that the provisions relating to any government support measures are fully in compliance and reflect the package approved by the Head of the Government at the Project Approval Phase.
- 5.5. The form of the draft PPP Contract will depend on the type of the PPP model selected for the Project. The draft PPP Contract must comply with the key principles outlined in the Law on PPPs and elaborated in the **SOP for PPP Projects, Volume III: Procurement Manual** and, among others, it must allocate project related risks between the IA and the Private Partner in a way that the IA benefits based on Value for Money principles while offering the Private Partner a reasonable rate of return.
- 5.6. The draft PPP Contract must include provisions relating to (i) charges and fees that will be collected and any adjustment formula; (ii) laws and regulations of Kingdom of Cambodia as the Governing Law; (iii) assignment of rights and obligations; (iv) Step-in Rights; and (v) conditions and procedures for amendment to the Contract. A more comprehensive set of provisions are provided in the template for PPP Contract shown in the **SOP for PPP Projects, Volume III: Procurement Manual**. The TA will be guided by this template in the preparation of the draft PPP Contract.
- 5.7. The GDPPP will seek the confirmation of the provisions relating to fiscal commitments and fiscal risks from the Department of Debt Management of GDICDM. It will be the

responsibility of the GDPPP to seek the confirmation of all the relevant agencies on all other provisions in the documents relating to government support measures. All legal issues must be reviewed and cleared by the Legal Council of the MEF. In this regard, the GDPPP will provide the relevant agencies with a copy of the documents and seek their confirmation or call a meeting to discuss and agree on the provisions. The TA will facilitate this process and incorporate all the relevant comments into the final draft bidding documents.

- 5.8. The full set of the final draft bidding documents is submitted by the IA to the PRC for review and endorsement. The IA, GDPPP and TA will participate in the PRC meeting for the purposes of disseminating the key provisions of the documents and for providing clarifications and explanations. The GDPPP will be required to inform the PRC on the confirmation of the relevant agencies on the government support measures. The endorsement of the final draft bidding documents by the PRC must be unanimous. In the event this cannot be achieved, the matter will be referred to the Minister of MEF for a final decision.
- 5.9. The GDPPP will prepare a memorandum for the Minister of the MEF seeking the re-confirmation of all the government support measures, after the endorsement of the final draft bidding documents by the PRC. The GDPPP will inform the IA of the final approval of the Bidding Documents, after the re-confirmation by the Minister of MEF.

6. Step 10: Selection and Approval of Private Partner

- 6.1. Step 10 covers the conduct of the bidding process, including the submission and evaluation of Technical and Financial Proposals and the selection of the Private Partner. The step-by-step procedure in the bidding process from the submission of bids up to the evaluation and selection of the Private Partner is provided in detail in the Procurement Manual. The IA must comply with these steps and the GDPPP must ensure the IA follows all the requirements set out in the **SOP for PPP Projects, Volume III: Procurement Manual**.
- 6.2. The Bidding Documents are sent to the list of pre-qualified bidders with an invitation for them to submit bids.
- 6.3. The IA, with the support of the TA and the GDPPP, will conduct a Pre-Bid Conference to provide the qualified bidders a platform to raise issues, concerns, or clarifications on the bidding documents. A virtual data room (VDR) may be setup to facilitate the swift flow of information and dissemination of documents and/or amendments, for the benefit of the qualified bidders.
- 6.4. The bids must be submitted before the deadline for submission and opened soon after in the presence of the bidders who wish to attend the bid opening meeting at the venue and time stipulated in the Bidding Documents.
- 6.5. The evaluation of the bids must be carried out in accordance with the evaluation criteria specified in the Bidding Documents and follows a two-step procedure. In the first step, the technical proposals are evaluated by the TA under the directions of the BEC on a pass/fail basis. The technical evaluation report will be submitted to the PRC for review and approval.
- 6.6. In the second step, only the Financial Proposals of the bidders whose technical proposals were passed, shall be opened and evaluated. The Financial Proposal of the failing bidders will be returned unopened once the PRC has completed the selection of the Private Partner.
- 6.7. The evaluation of the Financial Proposals is conducted based on the use of an analytical methodology to evaluate the financial characteristics of each proposal, including the financial model. Normally the Financial Proposals will be assessed on a “best bid” basis benchmarked against a single criterion which will be specified in the ITB.

- 6.8. The IA and GDPPP will agree on a list of evaluation factors for the assessment of the Financial Proposals which are regarded as being of critical importance for the selection of the best Financial Proposal. These factors must be quantifiable. Some of the suggested criteria are total capital cost, total operating cost, maintenance cost per user, and rate of return on equity. The TA will develop the criteria at the time of the preparation and finalization of the Bidding Documents, which need to be agreed and approved by the PRC. The Bidding Documents will clearly set out the evaluation criteria and the basis for the selection of the winning Private Partner.
- 6.9. The TA will assist the BEC in carrying out the financial evaluation and prepare the Final Bid Evaluation Report. All the qualifying bids will be ranked according to the evaluation criteria and the highest ranked bidder will be recommended for selection as the Private Partner.
- 6.10. The Final Bid Evaluation Report will be submitted by the BEC to the PRC for consideration and endorsement. The TA and the BEC will provide a detailed presentation on the evaluation of the bids to assist the PRC in making an informed decision. The GDPPP will review the aspects related to government support measures and confirm to the PRC that there are no deviations from the package that was already approved at the stage of clearance of the draft final Bidding Documents.
- 6.11. If there are any deviations on the government support package or any other significant change in the terms or conditions under the draft PPP Contract, the GDPPP will refer the deviation(s) and changes to the relevant agencies to seek their view on their acceptability. The GDPPP will call an inter-ministerial or an MEF inter-departmental meeting to consider the deviations and changes and the recommendations reached will be recorded in the Minutes of Discussions.
- 6.12. The GDPPP will seek the specific endorsement or approval of Minister of MEF, as required, on the terms and conditions related to fiscal commitments prior to the PRC Meeting, that will include:
- Risk Structure and Risk Allocation;
 - State Support comprising of Viability Gap Financing, Availability Payment, Government Contingent Liabilities (types of guarantee); Asset Contribution; and Investment Incentives as outlined in Article 13 of the Law on PPPs; and
 - Government Obligations/Undertakings as stipulated in Article 34 of the Law on PPPs.
- 6.13. The GDPPP will inform the PRC on the decision of the Minister of MEF on fiscal commitment which the PRC will need to consider as mandatory requirements. The PRC will consider them and other matters before endorsing the Final Bid Evaluation Report to ensure all of the matters have been addressed satisfactorily. The PRC may require the BEC to revise the recommendations to include areas where negotiations must be conducted with the winning Private Partner. The decision of the PRC will be submitted to the Head of the IA for endorsement before it is submitted to the Minister of MEF for approval.
- 6.14. The GDPPP will review the submitted Final Bid Evaluation Report and the Minutes of the PRC Meeting to ensure that the decision of the Minister of MEF on fiscal commitments has been incorporated. If the decision has been incorporated, it will submit the Final Bid Evaluation Report and the Minutes of the PRC Meeting with a confirmation memorandum for the approval of the Minister of MEF.
- 6.15. All draft PPP Contracts are subject to negotiations before their approval by the Government. In addition to the areas of negotiations pointed out by the PRC, the Minister

of MEF may also have direct negotiations on specific deviations or changes that are deemed to be unacceptable or desirable to the Government.

7. Step 11: Approval and Signing of the Final PPP Contract

- 7.1. Once the approval of the Final Bid Evaluation Report has been granted, the Negotiating Team will conduct the negotiations on the draft PPP Contract with the first ranked bidder. The Negotiating Team will be appointed by the Head of the IA in agreement with the Minister of MEF and may comprise of the members of the PRC, representatives of the IA and the GDPPP and other relevant general departments of the MEF. The Negotiating Team must include a member from the Legal Council of the MEF. The Negotiating Team will be led by the representative of the IA who is the Chair of the PRC. The TA will assist the Negotiating Team in negotiating with the recommended bidder.
- 7.2. Prior to the start of the negotiations, the TA will prepare a Negotiation Strategy to guide the Negotiating Team in conducting a structured negotiation with the recommended Private Partner. The draft Strategy must be comprehensive and address all the key terms of the draft PPP Contract. This will be reviewed and agreed with the IA and the GDPPP. The negotiations will require multi-disciplinary skills to negotiate the technical, financial, commercial, legal, risks and safeguards terms and conditions. The TA will normally assist by providing the required expert advice. The IA or GDPPP may use their in-house experts to address some of these areas. Where land acquisition and resettlement is involved, the General Department of Resettlement (GDR) will be responsible for negotiating the provisions relating to them.
- 7.3. If the negotiations are not completed with the first ranked bidder within six months from the date of invitation for the commencement of the negotiations, the Negotiating Team will prepare a memorandum detailing the failure to reach agreement with the first ranked bidder and submit it to the Head of IA and the Minister of MEF with the recommendation to terminate the negotiations. Once this is approved by the Head of the IA and the Minister of MEF, the IA will inform the first ranked bidder of the termination of the negotiations and proceed to invite the next ranked bidder for negotiations which must also be completed within six (6) months from the date of invitation. This process is continued until negotiations are concluded successfully with the Private Partner.
- 7.4. The GDPPP, with the assistance of the TA, will carry out a final review of the negotiated PPP Contract which will mainly focus on the following provisions:
 - a) Risk structure and allocation;
 - b) Government Support Measures;
 - c) Schedule and amount of government's milestone payments and/or the allowable revenues for the winning bidder;
 - d) Warranties and undertakings of the Private Partner;
 - e) Performance securities;
 - f) Government's Contingent Liabilities;
 - g) Liquidated damages;
 - h) Termination payments;
 - i) Consistency of conceptual design with the Minimum Performance Standards and Specifications (MPSS);
 - j) Hand-back requirements; and
 - k) Other rights and obligations of both the Parties.

- 7.5. After the due diligence on the negotiated PPP Contract is complete and it is found to be acceptable, the GDPPP will submit the draft negotiated PPP Contract to the PIC of the MEF for endorsement before approval of the Minister of MEF is sought. After the approval of the Minister of MEF, the draft negotiated PPP Contract will be signed by the Head of IA and the Minister of MEF. The negotiated PPP Contract will generally specify a number of Conditions Precedent for Effectiveness of the PPP Contract which need to be fulfilled before the PPP Contract can be declared effective (Effective Date). These are referred to as conditions for Commercial Close and Financial Close. Both the IA and Private Partner are assigned conditions for Commercial Close while conditions for Financial Close are assigned only to the Private Partner. Since these conditions are complex and substantive, a period between 12 to 18 months is stipulated to accomplish them.
- 7.6. However, there may be some exceptional cases where the negotiated PPP Contract may require the selected Private Partner to fulfill some Conditions Precedent for the Signing of the PPP Contract. These conditions are commercial in nature and takes relatively less time to accomplish and generally a period of 30 to 45 days is prescribed. The IA and the GDPPP, with the assistance of the TA, will monitor the compliance with the specified Conditions Precedent. If the Private Partner is unable to comply with all the requirements within the stipulated period, a one-time extension may be granted with the approval of the Head of the IA.
- 7.7. The IA and GDPPP will inform the respective Head of IA and Minister of MEF when all the Conditions Precedent are met and arrange for a signing ceremony where the PPP Contract can be signed by the IA and the Private Partner and countersigned by the Minister of MEF.
- 7.8. One of the key requirements after signing of the PPP Contract is the formation of a SPC to act as the Private Partner under the PPP Contract. This must meet the following requirements as stipulated in the Article 22 of the Law on PPPs.
- 7.9. The SPC must be established as a commercial enterprise and legally registered in the Kingdom of Cambodia, in accordance with applicable Cambodia laws and regulations.
- 7.10. The establishment and registration of the SPC must be completed within a maximum of sixty (60) working days from date of signing of the PPP Contract.
- 7.11. Within 14 working days of the establishment and registration of the SPC, both the Parties of the PPP Contract and the SPC must sign a Novation Agreement to transfer the contractual rights and obligations (with same terms and conditions agreed under the PPP Contract) of the Private Partner to the SPC.
- 7.12. In the event the PPP Project is financed by a DP, the selection of the Private Partner will need to follow the procurement guidelines and regulations of the funding DP. The legal financing agreement between the Kingdom of Cambodia and the funding DP will specify, among other terms and conditions, the requirement to follow its procurement guidelines and regulations. The IA and MEF will ensure that these are complied with for the selection of the Private Partner.

VII. IMPLEMENTATION AND MANAGEMENT OF PPP CONTRACT

1. Introduction

- 1.1. The Private Partner is responsible for the implementation of the Project which include financing, detailed engineering design, construction, and after construction, its operation and maintenance for the duration of the PPP Contract. The Private Partner is responsible for selecting the construction contractor. The IA on the other hand is responsible for management, monitoring and reporting on the performance of the PPP Contract until the handover of the Project to the Government or on termination of the PPP Contract, if this occurs, prior to the handover.
- 1.2. The guidelines for the management, monitoring and reporting on the performance of the PPP Contract are provided in the **Guidelines on Contract Management of the SOP for PPP Projects, Volume II: Guidelines**. The IA and other agencies of the Government involved in contract management are required to follow these Guidelines.
- 1.3. The Contract Management Plan (CMP) is the key guide for the management, monitoring and reporting of the PPP Contract. The objective, scope, and the basis for the preparation of the CMP are detailed and explained in the **Guidelines on Contract Management of the SOP for PPP Projects, Volume II: Guidelines**. The TA will prepare the draft CMP prior to the PPP Contract negotiations and will finalize this in consultation with the IA and the GDPPP soon after the negotiations are completed but prior to the signing of the PPP Contract.
- 1.4. The CMP will describe the actions or activities both at the pre-signing (Conditions Precedent to Signing) and post-signing of the PPP Contract that will need to be undertaken or monitored. The post-signing actions will include the Conditions Precedent for Effectiveness and all contract management activities and actions until handover, depending on the PPP model.
- 1.5. The IA has the overall responsibility of ensuring that the management, monitoring and reporting of the PPP Contract are carried out and guided by the CMP. The PMU of the IA will carry out these functions on a day-to-day basis and provide regular reports to the MEF through the GDPPP. The MEF, through GDPPP, will also be involved in the monitoring and reporting of financial and key aspects, including fiscal commitments and risks, and other key contractual terms and conditions and will be guided by the CMP. The GDPPP will consolidate all the reports into one main report on the implementation of all the key obligations of the Government and the Private Party stipulated in the PPP Contract.
- 1.6. A higher-level Contract Management Committee (CMC) comprising of representatives of the IA and the MEF, will be established to oversee the performance of the Project and serve as the decision-making body on all contractual matters. Where decisions require approval of the Head of the IA or the Minister of the MEF or the Head of the Government, the CMC will seek the necessary approval. In case where there are more than one PPP Project under the management, monitoring and reporting by the IA, a more permanent institutional arrangement may be established by the Head of the IA in which the relevant departments/offices of the IA are represented. The MEF must also be represented in this arrangement. The composition, the roles and responsibilities of the PMU and the CMC are outlined in the **Guidelines on Contract Management of the SOP for PPP Projects, Volume II: Guidelines**. In case a public enterprise is the IA, a CMC will not be required but it will need to clearly set out the institutional arrangement for the management and monitoring of the PPP Contract.
- 1.7. The main activities for the contract management comprise of the following:

- a) Implementation of the CMP and risk management framework;
- b) Monitoring of fiscal risks, payment mechanisms, and the provision of the government support measures;
- c) Regular reporting; and
- d) Operationalization of mechanisms to address contractual events (i.e., delay or default, force majeure events, adverse government actions, third-party liabilities, and similar risk management issues).

2. Phase V comprises the following procedural steps:

- Step 12: Management of the PPP Contract
- Step 13: Handover

3. Step 12: Management of the PPP Contract

3.1. Effectiveness of PPP Contract

- 3.1.1. The first set of actions is related to the Conditions Precedent to Effectiveness of the PPP Contract that is required to be accomplished by both the Government and the Private Partner. The IA and GDPPP will be jointly responsible for ensuring that all the actions by the Government are completed within the time frame specified in the PPP Contract. The progress on these actions will be closely monitored by the GDPPP and where there is insufficient progress, the GDPPP will inform the CMC, the Minister of MEF and the Head of the IA.
- 3.1.2. The progress in the accomplishment of the actions by the Private Partner will be closely monitored by both the IA and the GDPPP. The GDPPP will monitor the progress particularly on non-technical conditions, and the IA on all technical matters in accordance with the PPP Contract. When the conditions are not fulfilled within the specified timeframe by either Party and needs extension or a Party is seeking a revision to any of the conditions, the IA in consultation with the GDPPP will prepare a memorandum and submit to the CMC for consideration and decision on the matter. Where the matter will require the approval of the Head of the IA or the Minister of MEF, the CMC will prepare and submit its recommendation for their final decision.

3.2. Pre-Construction Stage

- 3.2.1. The pre-construction stage mainly involves the preparation of the detailed engineering designs by the Private Partner and review and approval by the IA. The PPP projects are designed to international standards and incorporate innovation and complex technology which requires a highly skilled and experienced engineering firm to carry out the detailed engineering designs. The designs also need to address sustainability issues like incorporation of climate mitigation and adaptation measures and state of the art environmental solutions. The Private Partner will recruit the engineering firm to carry out the detailed engineering designs.
- 3.2.2. The IA is required to review and approve the detailed engineering designs and generally does not have in-house expertise to undertake complex designs. The IA will recruit an international engineering firm to undertake the review of the detailed engineering designs and associated technical studies on its behalf. This firm is called the Owner's Engineer (also known as the Contract Engineer), and the cost of its services is paid by the Private Partner through MEF, in accordance with the payment terms after the validation by the IA and treated as part of the Project Cost. The TOR and the recruitment of the Owner's Engineer are provided in the **Selection of**

Consultants of the SOP for PPP Projects, Volume III: Procurement Manual. In addition to the TOR, the PPP Contract will define the specific roles and the responsibilities of the Owner's Engineer. The IA must ensure the Owner's Engineer carries out these defined tasks.

- 3.2.3. One of the key requirements during the pre-construction stage is land acquisition for the Project. The responsibility for the funding of the land acquisition and associated resettlement (LAR) will be stipulated in the PPP Contract. Irrespective of which Party is providing the funding, the General Department of Resettlement (GDR) of MEF is responsible for undertaking LAR in accordance with the Expropriation Law, and other applicable laws and regulations of the Kingdom of Cambodia. The IA will play a vital role in providing the demarcation of the required land to enable the GDR to undertake timely acquisition and resettlement of affected people.
- 3.2.4. There will be a need for close collaboration between the GDR, IA and the Owner's Engineer. The Expropriation Law requires minimizing land acquisition and resettlement which mandates the GDR to review all the proposed alignments or locations of the land requirement and propose alternative solutions, where possible. In this regard, the Owner's Engineer and the IA will work closely with GDR prior to recommending approval of any detailed engineering designs.
- 3.2.5. The Key Contractors for the implementation of the PPP Contract will be proposed by the Private Partner in its Bid Submission and approved by the IA and the MEF through the PRC. The Private Partner will be responsible for the engagement of these Contractors. Any change in the Key Contractor will require the prior approval of the IA and the MEF which will be obtained through the CMC. In the case of Non-Key Contractors, the Private Partner has the right to select and engage them without any need for prior approval of the IA or the MEF. The IA and GDPPP will monitor the progress in the selection of the Key Contractor by the Private Partner and ensure that they are the same as the approved Key Contractor.
- 3.2.6. The PPP Contract will require an Independent Consultant (also known as the Independent Engineer) to provide independent review, monitoring, evaluation, approval, and reporting of activities related to design, construction, and/or operation and maintenance of the PPP project. The services of the Independent Consultant are related to the management of the PPP Contract and do not include the construction supervision.
- 3.2.7. The Independent Consultant will be authorized to render its approval or rejection of any claims on breach of the provisions under the PPP Contract made by either of the Parties. The scope of the powers will be clearly stipulated in the PPP Contract. The TOR and the recruitment of the Independent Consultant are provided in the **Selection of Consultants of the SOP for PPP Projects, Volume III: the Procurement Manual**. The cost of the services of the Independent Consultant is financed by the Private Partner as part of the overall Project Cost. The contract of the Independent Consultant is administered by the IA and the Private Partner.
- 3.2.8. The CMP will provide more details on the activities that the PMU will need to carry out during the pre-construction stage.

3.3. Construction Stage

- 3.3.1. The Private Partner is responsible for the construction and supervision of the Project. The role of the IA is to monitor the progress against the agreed construction schedule and ensure that the works are constructed according to the detailed engineering designs and standards. The PMU will carry out these functions with the assistance of the Owner's Engineer. The Independent Consultant will, also, inspect the works to ensure that they

follow the detailed engineering designs and standards as it will be responsible for issuance of the Completion Certificate after the completion of the construction works.

- 3.3.2. The PMU will monitor the financial progress, compliance with safety requirements, compliance with all the regulatory requirements and the handling of disruptions to existing users, if any.
- 3.3.3. The PMU will also ensure that the Private Partner complies with all its commitments and obligations set out in the PPP Contract. Where there is any significant non-compliance issue it will bring this to the attention of the CMC for a decision.
- 3.3.4. The handover of land during the construction period is a key risk that needs special attention. The GDR of the MEF will set up a dedicated team for carrying out all the land and resettlement activities required for the Project. The handover and transfer of the land to the Private Partner is carried out in a sequential manner consistent with the construction program.
- 3.3.5. The GDR will ensure LAR complies with all the provisions relating to land acquisition and resettlement stipulated in the PPP Contract. The IA and the Owner's Engineer play a vital role in the review and approval of the detailed engineering designs which is a pre-requisite for undertaking the demarcation of the land before land acquisition can commence. Land acquisition and handover and transfer will therefore require a very close collaboration between the IA, Owner's Engineer and the GDR.
- 3.3.6. The Independent Consultant is responsible for certifying and issuing of the Completion Certificate which is also described as the commissioning of the Project. The Independent Consultant will inspect the completed works and satisfy itself that these are completed in accordance the agreed designs and standards. The commercial operations of the Project can only start after the Completion Certificate is issued, called the Commercial Operations Date (COD).
- 3.3.7. The CMP will provide more details on the activities that the PMU will need to carry out during the construction stage.

3.4. Operations and Maintenance Stage

- 3.4.1. The operations and maintenance stage starts from COD and ends at the handover of the assets constructed under the PPP Contract and/or handover of the operations of the assets to the Government at the end of the operations and maintenance period stipulated in the PPP Contract or on termination, if the PPP Contract is ended earlier. The Private Partner is responsible for performing the operations and maintenance and delivery of the services to the users. The IA, through the PMU, is responsible for monitoring the performance and ensuring the Private Partner meets with the Minimum Standard Performance and Specifications of service levels and other operational requirements stipulated in the PPP Contract.
- 3.4.2. The PMU will carry out a wide range of tasks during this stage for the whole duration of the PPP Contract. Some of the key tasks will be the monitoring of the service level, project financials, user complaint and grievance handling, safety aspects, and maintenance of the facilities. The CMP will provide a comprehensive list of the key functions and tasks during this stage which will guide the PMU in discharging these functions and tasks.

3.5. Performance Monitoring and Reporting

- 3.5.1. The PMU has the primary responsibility for monitoring and reporting on the performance of the Private Partner against the outputs standards and key performance

indicators defined in the PPP Contract. The MEF, through GDPPP, will have shared responsibility on monitoring and reporting on financial and fiscal commitments aspects. The CMP will describe each of these indicators and their monitoring and reporting requirements in detail.

- 3.5.2. The use of the Project Assets measured by the volume of use like traffic volume in case of expressways and the revenue generation through tolls are key aspects for monitoring and reporting. These are very critical when there is revenue sharing under the PPP Contract. The PPP Contract will have specific provisions for recording of these aspects by the Private Partner and reporting to the IA or the CMC as defined in the PPP Contract which will also include provision for verification of the same by the IA and MEF where financial information is involved. The PMU will submit quarterly reports on these aspects and other financial indicators to the CMC and the GDPPP which will review performance against the projections made in the Commercial/Financial Report prepared at the feasibility stage or any updated projections prior to the signing of the PPP Contract.
- 3.5.3. The quality of services will be closely monitored by the PMU against the performance indicators defined in the PPP Contract. These are generally associated with the availability of the services all year around, the number of disruptions, the number of user complaints and resolution, maintenance turn around and other similar indicators. The PPP Contract will clearly spell out these indicators and the PMU will monitor the performance and ensure that, where the PPP Contract provides for levying of penalty on the Private Partner for any lack of performance, the issue is brought to the attention of the CMC for approval.

3.6. Management of Defaults

- 3.6.1. The PPP Contract will define the circumstances under which the IA and the Private Partner would be considered default or breach of any of their obligations and the consequences for them. It will also stipulate the method of handling and their resolution. The default or breach normally leads to a compensation event where the defaulting Party has to pay a monetary amount to compensate for the loss the other Party suffers.
- 3.6.2. The PMU will need to monitor this aspect very closely due to the financial implications of any default or breach. The PMU will identify the probability of the occurrence of a default or breach on the part of the IA and bring this to the attention of the GDPPP and the CMC so that mitigation measures can be taken to avert the situation. Where the Private Partner is in breach or default, the PMU will promptly issue the notification of this following the procedure defined in the PPP Contract, with the prior approval of the CMC. The PMU will have a legal expert in its team, or a legal consultant and such matters will need to be reviewed by expert/consultant before deciding on the line of action.
- 3.6.3. In all cases of default or breach by either Party, the matter will be referred to the CMC for making the decision on formalizing the event of default or breach. The CMC will review the penalties/damages/compensation resulting from the default or breach and provide recommendation to the Head of the IA and the Minister of MEF for consideration and approval.
- 3.6.4. The Independent Consultant is authorized to determine if a default or breach has occurred and the consequences of such default or breach. The decision is not binding and either Party can resolve to take the matter to the dispute resolution mechanism defined in the PPP Contract.
- 3.6.5. The management of disputes is explained further in the **Guidelines on Contract Management of the SOP for PPP Projects, Volume II: Guidelines**. The IA and the GDPPP must pay special attention to the management of contingencies which arise

from Change in Law, Force Majeure and Termination. For all these cases, legal advice must be sought, and the matter must be referred to the CMC for consideration and the formulation of recommendations. The CMC will submit the recommendations to the Head of the IA and the Minister of MEF for decision. The final decision will be taken by the Minister of MEF on all matters where there is any financial implication.

3.7. Monitoring of Fiscal Commitments and Revenues

- 3.7.1. A very important part of managing the PPP Contract is adhering to sound fiscal and budgetary management practices, including regular monitoring. During the contract implementation period, the requirements of the risk management framework must be adhered to.
- 3.7.2. The monitoring and reporting on matters related to fiscal commitments are the responsibility of the MEF and GDPPP will undertake these tasks on behalf of the MEF. The PMU is required to collect and report all information on the risks that may give rise to Contingent Liabilities in the reports on Disclosure of Major Contingent Liabilities under PPPs and Reporting on Exceptions and High Severity Risks. The template and guidance on their preparation is provided in the **Guidelines on Fiscal Management of the SOP for PPP Projects**. The PMU will submit the reports to GDPPP. The GDPPP will share the reports with the Department of Debt Management of the GDICDM for review and comments, if any.
- 3.7.3. In case where the PPP Contract provides for direct fiscal commitment/support by the IA during the construction stage prior to the commencement of the operations, for example in the case of viability gap payments, the payments by the IA will be made into a designated account specified in the PPP Contract. The designated account will be audited annually to verify that the payments have been made for the purposes for which the funding is provided by the IA.
- 3.7.4. The fiscal support is approved by the Head of the Government at the time of the approval of the PPP Contract and the MEF will ensure that the necessary budget is allocated to the IA. The GDPPP will coordinate with the IA to secure the budget as soon as the PPP Contract has been signed. When the payments become due to the Private Partner, the IA will seek the confirmation of GDPPP prior to requesting the MEF to make the payment to the Private Partner. The IA will report on the progress on the utilization of the fiscal support to the GDPPP. The GDPPP will be responsible for monitoring and reporting on the utilization of such direct fiscal commitments to the Minister of MEF.
- 3.7.5. In cases where the PPP Contract provides for direct fiscal commitment/support by the IA during the operational stage, for example in the case of availability payments, the IA will seek the necessary budget for such commitments in its annual budget request from the MEF. The IA will need to ensure that sufficient budget allocation is sought every year to meet the projected payments that will need to be made. In the event that the payments are due under the PPP Contract exceeding the budgeted allocation at any time, the IA will report this to the GDPPP and seek additional budget from the MEF. The matter will be reported by the GDPPP to the Minister of MEF for a decision on the allocation of additional budget to meet the shortfall.
- 3.7.6. In cases where the PPP Contract provides for payments to the IA by the Private Partner, for example PPP Contract fees and sharing of revenues, the Private Partner will deposit such payments into an account designated by the MEF which will be specified in the PPP Contract. All such payments are treated as revenues of the Government and deposited into the Treasury Single Account. The IA will compile the report on the payments on a quarterly basis and submit to GDPPP for incorporation in the reports of

fiscal commitments. The GDPPP will monitor the payments and, in conjunction with the IA, carry out the verification of the payments on a quarterly basis to ensure that these are made in full compliance with the provisions of the PPP Contract.

- 3.7.7. All payment obligations under fiscal commitments must be budgeted annually by the IA and the budget request submitted to the MEF following the annual budgetary process for approval. When the payments become due, the IA will submit a request to the MEF for payment to be made to the Private Partner. The request for payment to the Private Partner will be processed in accordance with the government's financial management procedures. In case of payments by the Private Partner to IA, the payments must be made into the Treasury Single Account, in accordance with the government's financial management procedures for payment of government revenues. The IA will maintain the accounting records and submit quarterly and annual financial reports of the PPP project to the GDPPP. The accounting records and reports will be prepared, in accordance with the prevailing government guidelines.

3.8. Contract Amendments

- 3.8.1. Amendments to the PPP Contract may be required during the operation and maintenance of the Project Assets as a result of change in circumstances which were not reasonably anticipated at the time of signing the PPP Contract. The IA or the Private Partner may seek an amendment or a variation.
- 3.8.2. Any variation or amendment must be reviewed by the IA and the GDPPP. If the amendment is for a technical matter and has no impact on financial provisions or risk sharing, the IA can submit this for approval of the CMC after this has been verified by the GDPPP. The GDPPP will analyze whether the PPP Contract, if the variation or amendment is considered, will continue to provide:
- Value for Money
 - Affordability
 - Appropriate Risk Sharing between the Parties.
- 3.8.3. In the case where an amendment or variation is for a non-technical matter, the GDPPP will report its assessment to the CMC for its endorsement before submitting to the Minister of MEF for a decision. The GDPPP may call upon its due diligence consultants to carry out the assessment of the impact of the proposed amendments or variations on the rights and obligations of the IA. The decision of the Minister of the MEF will be conveyed to the Head of the IA by the GDPPP.
- 3.8.4. Any amendment or variation that has an impact on Contingent Liabilities of the Government will be reviewed by the Department of Debt Management of the GDICDM, which will provide its recommendation to the Minister of MEF for consideration and necessary decision.

4. Step 13: Handover

- 4.1. The Project Assets/Facilities and /or operations of such Project Assets/Facilities are required to be handed over to the IA at the end of the operations and maintenance period stipulated in the PPP Contract or at the time of the termination of the PPP Contract, except in the case of PPP Contracts under the Build-Own-Operate modality. The manner in which the handover will take place will be defined in the PPP Contract. The IA assisted by the PMU will need to ensure that the Private Partner complies with all the conditions for the handover stipulated in the PPP Contract.

- 4.2. The IA will ensure that the condition of the Project Assets/Facilities conforms to the specified standards and there are no outstanding liabilities and obligations on the part of the Private Partner. The Independent Consultant will play an important role in assessing and certifying that the Project Assets/Facilities are in good working conditions and meet with the standards and specifications stipulated in the PPP Contract.
- 4.3. The handover should not disrupt the services to the users and hence, before the handover the IA will need to determine the arrangement for the continuation of the services in consultation with the MEF. It may decide to manage the operations and maintenance of the asset/facilities with or without user charges or select another Private Partner. This decision will need to be taken well in advance, as stipulated in the PPP Contract, to enable the implementation of the new arrangements from the date of handover.
- 4.4. In case of termination, sufficient time must be allowed to ensure proper handover and putting in place the arrangements for the continuation of the services. The Private Partner will be required to continue with the operations of the services until the IA has put in place the new arrangements. The PPP Contract will stipulate the provisions for this and the IA, with the assistance of the PMU, will ensure that both the Parties comply with these provisions.

VIII. UNSOLICITED PROPOSALS

1. Introduction

- 1.1 An Unsolicited Proposal (USP) is defined in the Law on PPPs as a written proposal from a private party to the IA for the development of a new project as a PPP project that offers new concept, technology or innovation for the Kingdom of Cambodia. This means that any proposal not sought by the IA from private party for the development of a new project as a PPP project is classified as an Unsolicited Proposal.
- 1.2 The key requirement of an Unsolicited Proposal is that it must introduce new concept, technology or innovation that must be beneficial to the Kingdom of Cambodia.

2. Project Cycle for USP

- 2.1 The project cycle for the identification, selection, preparation, approval, implementation and monitoring of USP is similar to the Solicited Proposals with the key difference that an USP is not subjected to the procurement stage except in very exceptional cases which are explained in Paragraph 6.11. to 6.16. below. The PPP Contract is directly negotiated with the USP Proponent. The level of review and due diligence for all phases of the project cycle is carried out for an USP with the same scope and depth as that for a Solicited Proposal.
- 2.2 The phases and the steps undertaken for an USP are as follows:

Phase I: Identification and Selection of USP

- Step 1: Unsolicited Proposal by Private Party
- Step 2: Review and In-principle Approval for Preparation of the Proposed Project

Phase II: Project Preparation

- Step 3: Preparation and Review of Framework Agreement (FA)
- Step 4: Negotiation and Approval of FA
- Step 5: Undertaking of Feasibility Studies (FS)

Phase III: Project Approval

- Step 6: Review of FS
- Step 7: Approval of FS

Phase IV: Contracting and Signing

- Step 8: Preparation of PPP Contract
- Step 9: Negotiations, Approval and Signing of PPP Contract

Phase V: Implementation and Management of PPP Contract

- Step 10: Management of the PPP Contract
- Step 11: Handover

3. Identification and Selection of USP

- 3.1. Step 1: Submission of Unsolicited Proposal by Private Party - the Private Party will submit a proposal to the IA for its consideration. Hence, the identification and selection of the proposed project is carried out by the Private Party. The Private Party will need to carry out a Pre-Feasibility Study to determine its viability as a PPP project before submission of

an USP to the IA. The submission of the USP to the IA must be accompanied with the Pre-Feasibility Study.

- 3.2. The USP may come from or outside of the Potential PPP Projects List. If the proposed project is not from the Potential PPP Projects List, it must be either included in the Public Investment Program (PIP) of the Government or in an approved sector Master Plan to ensure that proposed project has met all the criteria under the guidelines for the identification and selection of projects issued by the Ministry of Planning under the relevant Sub-decree. The IA will need to examine if the proposed project is included in the approved sector master plans before considering the USP.
- 3.3. Step 2: Review and in-principle approval for Preparation of the Proposed Project The IA and MEF will carry out the review of proposed project. If it is from the Potential PPP Projects List, it does not need to go through the MCA that is undertaken in case of project proposals submitted by the IA under the solicited route. The IA can submit the proposal and seek the endorsement of the MEF as required under the Law on PPPs.
- 3.4. In case it is outside of the Potential PPP Projects List, the proposed project will be subjected to the MCA by the IA and the GDPPP based on the results of the Pre-Feasibility Study in the same manner as projects under the solicited route. The GDPPP will subject the proposal to the MCA analysis as described in Step 1 and Step 2 of Chapter III: Project Identification and Selection of this SOP. If the proposed project passes the prioritization step of the MCA, then it can be considered for selection.
- 3.5. The GDPPP will also review the key terms and conditions of the USP offered by the Private Party. The proposal can only be considered if it does not seek any form of government guarantee that exposes the Government to fiscal risks; or any form of fiscal support; or financing for land acquisition where required. If the proposal meets with these requirements, the GDPPP will prepare a report and submit its recommendation for endorsement of the Minister of MEF.
- 3.6. In very exceptional cases where the project is of very strategic significance, the Minister of MEF may recommend some form of government support measures, including financing for land acquisition in part or full, for the consideration and approval of the Head of the Government.
- 3.7. After the endorsement of the Minister of MEF, the Head of the IA and the Minister of MEF will jointly submit the proposal to the Head of the Government for an in-principle approval of the proposed project to proceed to the preparation stage. In the approval letter, the Government will set out the key terms and conditions related to non-availability of government fiscal support and the obligation of the private party on the financing of land acquisition, where this is required, and other key obligations.

4. Project Preparation

- 4.1. Once an in-principle approval is granted by the Head of Government, a Framework Agreement (FA) or a similar agreement is drafted and agreed between the IA and the USP Proponent. The Government will establish a Working Group (WG) for the purpose of handling the preparation and negotiation of the FA with the Proponent. The WG will be led by the IA and comprise of GDPPP, GDR and other relevant General Departments from MEF, CDC and other relevant central ministries and agencies of the Government. The composition of the WG will be specified in the memorandum of the in-principle approval of the USP by the Head of the Government.
- 4.2. Step 3: Preparation and Review of Framework Agreement (FA) - a FA is drafted and reviewed. The draft FA will set out the agreements reached on the timeline for the

Proponent to complete the Feasibility Study, the review and approval process, the key terms and conditions of PPP Contract if the project is found to be feasible, the validity period and other rights and obligations of the two Parties, the State and the Proponent. The conditions, related to the non-availability of government fiscal support, the obligation of the proponent on the financing of land acquisition and others, stipulated in the in-principle approval must be fully reflected and specified in the FA.

- 4.3. The draft FA is prepared by the IA with the assistance of a legal expert, where required and reviewed by the WG before it is negotiated with the Proponent. In terms of review, the WG must ensure that the draft FA includes all the terms and conditions stipulated in the in-principle approval of the USP by the Head of the Government. In support of the WG, the GDPPP will review and ensure that the draft FA complies with the financial, commercial and fiscal risks conditions stipulated in the in-principle approval memorandum. The GDR will review the provisions related to LAR and provide its agreement.
- 4.4. The WG will seek the approval of draft FA from the Head of the IA and the Minister of the MEF prior to conducting the negotiations with the Proponent. In this regard, the GDPPP will consolidate all of the comments and recommendations from the relevant General Departments of the MEF represented in the WG and prepare a memorandum for the consideration and approval of the Minister of MEF for the draft FA. Once the approval of the Minister of MEF is granted, the GDPPP will prepare a letter of approval for the draft FA for the signing of the Minister of MEF and onward transmission to the Chair of the WG.
- 4.5. Step 4: Negotiation and Approval of FA - the draft FA is negotiated with the Proponent by the WG. Normally no changes are permitted in the main terms and conditions which were approved by the Head of the Government. If there are any major changes in the terms and conditions sought by the Proponent, the WG will refer these to the Minister of MEF for a decision. The GDPPP will seek the review of the proposed changes from the relevant General Departments of the MEF and other agencies of the government and compile a report on the fiscal, potential risks and other implications of the proposed changes and submit to the Minister of MEF for a decision. Where the changes are related to the terms and conditions approved by the Head of the Government, the Minister of MEF will seek the decision of the Head of the Government.
- 4.6. Once all the terms and conditions are agreed, the FA is signed between the IA and the Proponent, and counter-signed by the MEF.
- 4.7. Step 5: Undertaking Feasibility Studies (FS) – the Proponent carries out the detailed Feasibility Study based on which it will submit the Feasibility Study Report along with a Financial/Commercial Proposal. The Feasibility Study is carried out at the cost of the Proponent and must be in the same scope and details as required for solicited proposal and prescribed in Point 6 of Chapter IV: Project Preparation and Appraisal of this SOP. The IA, MEF and other relevant agencies of the Government will provide support and assistance to the Proponent in carrying out the Feasibility Study. The IA will be the focal point of contact during the Feasibility Study and facilitate the process. It will ensure that the Proponent is not hampered in any way in conducting the necessary studies. The Feasibility Study must be completed and submitted to the IA within the timeframe stipulated in the FA.

5. Project Approval

- 5.1. Step 6: Review of FS - a review and due diligence of the Feasibility Study Report is conducted with the same scope, level and depth as carried out for solicited proposals. The procedures prescribed in Step 6 of Chapter V: Project Approval of this SOP are applicable

for the review and due diligence of the Technical and Commercial/Financial Proposals under the USP.

- 5.2. The FA will include the provision of financing by the Proponent of the costs for the technical and due diligence advisors required for the MEF and IA in undertaking the necessary review and due diligence of the Feasibility Study and the Financial/Commercial Proposal. These consultants will be proposed by the GDPPP and selected by the IA either from the Panel of Firms established for the recruitment for the TAS under the PDF arrangement or other selection methods, as appropriate.
- 5.3. The FS Report is prepared by consulting firms and experts recruited by the Proponent of the Project at its own costs. In most cases, the FS is carried out without any substantial engagement with the GDPPP and other major stakeholders from the Government. The FS Report and the Commercial/Financial Proposal will therefore require a very thorough review by GDPPP and other relevant General Departments of MEF and central ministries/agencies of the Government.
- 5.4. The GDPPP and the IA will ensure that the FS Report complies with the terms and conditions stipulated in the approved FA. The scope of the due diligence and validation by GDPPP will be same as in the case of solicited proposals except for Government Support Measures which will normally not be provided except for the incentives under the QIP status. The GDPPP will ensure that the FS Report is reviewed by other relevant central ministries and agencies of the Government and approvals, where required, are obtained before preparing the report for the consideration of the Minister of MEF. The GDR will review the proposed alignment with the view to minimizing the LAR requirements. It will also examine if there could be severe constraints to LAR like the alignment affecting a forest reserve or causing very large displacement of people. The GDR in conjunction with the IA will conduct a field visit to undertake the necessary review. The GDR may seek and recommend change(s) in the alignment based on the findings of the field review.
- 5.5. GDPPP will be assisted by international consulting firms and experts in carrying out the review and due diligence of FS Report. They are recruited by the GDPPP using the selection methods for recruitment of consultants specified in the **Selection of Consultants of the SOP for PPP Projects, Volume III: Procurement Manual** and paid from advance funds provided by the Proponent which will be stipulated in the FA.
- 5.6. The preferred method of selection of such consultant is recruitment on a Framework Contract under which the services of the firm are provided as and when necessary. The contract is normally for a period of three years and can be extended if GDPPP is satisfied with its performance.
- 5.7. Step 7: Approval of FS - once the review and due diligence of the Feasibility Study is completed; the Head of the IA will endorse the FS Report and seek the review and approval of the Minister of MEF. The approval process follows the same procedures as in the case of solicited proposals as prescribed in Step 6 of Chapter V: Project Approval of this SOP.

6. Contracting and Signing

- 6.1. The USP does not undergo the procurement stage of the project cycle for solicited proposals and hence Steps 7 to 10 prescribed under Chapter VI: Project Procurement and Contracting of this SOP is not undertaken in the case of USPs.
- 6.2. Step 8: Preparation of the PPP Contract - the IA and the MEF will prepare a draft PPP Contract. Sometimes, the Proponent will prepare the draft PPP Contract. The draft PPP Contract is subject to the same procedures and level of review and due diligence as for

solicited proposals as prescribed in Step 9 of Chapter VI: Project Procurement and Contracting of this SOP.

- 6.3. The IA and the GDPPP, with the assistance of the consultants, will carry out the due diligence process and pay the services of the TA from the advance funds provided by the Proponent which will be stipulated in the FA.
- 6.4. The TA will review all the terms and conditions under the draft PPP Contract in details in consultation with the IA and GDPPP. The IA will ensure that all the provisions related to technical requirements are acceptable while the GDPPP will be responsible to determine if the provisions related to financial, commercial and risk allocation terms are acceptable.
- 6.5. The GDPPP will seek the confirmation of the provisions relating to fiscal risks from the Department of Debt Management of GDICDM and from the relevant agencies in respect of all other provisions relating to any government support measures like tax and investment incentives. It will also seek the confirmation of the provisions relating to LAR from the GDR. There is generally no fiscal support provided by the Government in case of USPs which will be clearly specified in the FA. If the Proponent proposes any fiscal support where the FA clearly specifies this will not be available, the request will generally be denied unless the analysis undertaken by the TA and confirmed by the GDPPP that the USP is not financially viable without some government support. In such cases, the GDPPP will review the fiscal implications of the request and examine the justification for granting of any fiscal support and submit a report to the Minister of MEF for consideration. The Minister of MEF will seek the approval of the Head of Government in such cases.
- 6.6. All legal issues must be reviewed and cleared by the legal experts/advisors in the MEF. The GDPPP will provide all the relevant agencies with a copy of the draft PPP Contract and seek their confirmation and will call for an inter-departmental meeting to discuss and agree on the provisions that fall within the mandate of the MEF. The GDPPP will seek the endorsement of the Minister of MEF on all the matters agreed during the inter-departmental meeting before confirming them with the IA.
- 6.7. The IA will call for an inter-ministerial meeting to discuss the results of the review carried out by the TA and the matters agreed by the MEF and agree on the position of the Government. The TA will prepare a Negotiating Strategy based on the outcome of the inter-ministerial meeting.
- 6.8. Step 9: Negotiations, Approval and Signing of PPP Contract - the IA will invite the Proponent for negotiations which will follow the same process as outlined under Step 11: Approval and Signing of the Final PPP Contract of Chapter VI: Project Procurement and Contracting until the PPP Contract is signed and the SPC has been established.
- 6.9. In case where agreement cannot be reached on the PPP Contract, the Negotiating Team, with the assistance of the TA, will prepare a detailed memorandum pointing out the reasons and areas where agreement could not be reached and submit to the Head of the IA and the Minister of the MEF for their consideration and decision on the next steps.
- 6.10. The Head of the IA and the Minister of MEF will submit a joint memorandum pointing out the outcome of the negotiations and proposed options for the final decision of the Head of the Government. The IA and MEF will be responsible for implementing the decision of the Head of the Government.
- 6.11. The USP may also be subject to open competitive bidding in exceptional cases before taking a decision on award of the PPP Contract to the Proponent when the terms and conditions are not fully acceptable to the Government or when a satisfactory agreement cannot be reached with the Proponent. The inter-departmental meeting of the MEF will

consider such matters and provide the recommendations for the consideration of the Minister of MEF.

- 6.12. In cases where a viability gap financing is being considered, the Government may decide to subject the USP to open competitive bidding to determine if it can obtain a lower subsidy rate.
- 6.13. The GDPPP will consolidate the discussions and the recommendations of the inter-departmental meeting in a report and submit to the Minister of MEF for consideration. The Minister of MEF will seek the decision of the Head of the Government on the matter.
- 6.14. In the case where the USP is subject to open competitive bidding, the Proponent of the USP will have the right to make a final and best offer to match the terms and conditions offered by the Bidders recommended for selection under the open competitive bidding process.
- 6.15. The procedures for open competitive bidding in such cases are specified in the **SOP for PPP Projects, Volume III: Procurement Manual**.
- 6.16. In the event that the PPP Contract is not awarded to the original Proponent, all the costs incurred by the original Proponent from the pre-Feasibility Study to the end of negotiations of the PPP Contract will be reimbursed by the winning bidder as a precondition for award of the PPP Contract. The original Proponent will produce a certification of the costs incurred by its auditor as the supporting document to substantiate the expenditures incurred.

7. Implementation and Management of PPP Contract

- 7.1. Step 10: Management of the PPP Contract - the implementation and management of the PPP Contract follow the same procedures as in the case of solicited proposal and prescribed under Step 12 of Chapter VII: Implementation and Management of PPP Contracts of this SOP.
- 7.2. Step 11: Handover - the handover of the project assets follows the same procedures as in the case of solicited proposals and prescribed under Step 13 of Chapter VII: Implementation and Management of PPP Contracts of this SOP.

APPENDIX 1

Phases and Steps of Project Cycle for the Solicited PPP Projects

Phase I: Project Identification and Selection

- Step 1: Project Identification
- Step 2: Project Selection
- Step 3: Obtaining PDF Support

Phase II: Project Preparation and Project Appraisal

- Step 4: Preparation

Phase III: Project Approval

- Step 5: Review of Project Proposal and Assessment of Government Support Measures (GSM)
- Step 6: Project Approval

Phase IV: Project Procurement and Contracting

- Step 7: Preparation and approval of Pre-Qualification Documents
- Step 8: Prequalification of Prospective Bidders
- Step 9: Preparation and Approval of Bidding Documents
- Step 10: Selection and Approval of the Private Partner
- Step 11: Approval and Signing of the Final PPP Contract

Phase V: Implementation and Management of PPP Contract

- Step 12: Management of the PPP Contract
- Step 13: Handover

APPENDIX 2

Main Roles and Responsibilities of the Key Government Ministries and Agencies

1. Implementing Agencies (IA)

1.1. The main responsibilities of the IA across the PPP Project Cycle are, but not limited to, the following:

- Identify and prioritize projects within its eligible sector or jurisdiction and request the Ministry of Economy and Finance for review, approval and selection as an Eligible Project, as prescribed in Article 9 of the Law on PPPs;
- Select and manage consultants to support the development and implementation of PPP projects;
- Implement or monitor the implementation of the Pre-Feasibility Study and full Feasibility Study, then review and approve the Feasibility Study Report;
- Submit proposals to the Ministry of Economy and Finance for review on the result of the Feasibility Study before proceeding further, in accordance with applicable processes;
- Lead the Royal Government’s working group in the selection of the Private Partner to implement the PPP Contract;
- Lead the Royal Government’s working group to negotiate and sign the PPP Contract as a representative of the Royal Government;
- Manage and implement obligations under the PPP Contract; and
- Monitor, supervise and evaluate the implementation and operations of PPP projects.

2. Ministry of Economy and Finance

2.1. The key roles and responsibilities of the MEF are as follows:

- Act as the secretariat and “One-Stop Service” of the Royal Government to manage PPP projects in all phases of the project cycle;
- Propose policy for the development of PPP mechanism and lead the preparation of regulations, Standard Operating Procedures (SOP) for PPP projects, legal documents relating to PPP project development and management with the Implementing Agency;
- Develop fiscal management guidelines for PPP projects consistent with the overall framework for managing the PPP mechanism;
- Review and approve eligible PPP project proposals based on relevant criteria;
- Review the risk allocations of the PPP projects between the State and the Private Partner to ensure its compliance with the applicable laws and regulations of Cambodia and to ensure fiscal sustainability;
- Review and provide recommendations on fiscal commitments and State Support for PPP projects;

- Review and provide recommendations on PPP Contracts and other relevant agreements/contracts;
- Cooperate with Implementing Agency and relevant institutions to review and monitor obligations and performance of project implementation as stipulated in the PPP contract
- Prepare annual budget of the Implementing Agency with the inclusion of fiscal commitments and approved State Support under the framework of PPP projects;
- Prepare an annual report on the update of fiscal commitments under the PPP contract, obligated to be fulfilled by the Royal Government;
- Prepare budget, manage and operate the PDF;
- Prepare budget, manage and operate the VGF.

2.2. The roles and responsibilities of the Public Investment Committee (PIC) of the MEF as stipulated in the Prakas No. 487 MEF.BrK, signed and dated 3 August 2021, on the Establishment of PIC are determined as follows:

- Act as a gatekeeper of managing public investment projects from all sources of financing;
- Lead, facilitate and strengthen the linkage between planning and budgeting for public investment;
- Review and endorse "the Overall Detailed Guidelines on the Project Cycle of Public Investment Projects" which will issue the framework and strategic directions for the preparation of project proposals to be line with the priority needs of sector strategic plans and national strategic development plans to request for approval from the Minister of the MEF for implementation;
- Manage and facilitate the financial support mechanism for feasibility study and project preparation;
- Review and appraise project proposals based on the relevant aspects including directions of priorities of national development policies, the project cost, financial return, and socio-economic returns. The PIC may issue necessary measures including re-costing of project cost, activities or compositions of the project, project management structure mechanism, procurement management, and other requirements to prevent and diverse risks, aiming to ensure efficiency and success of project implementation. In case of a project being technically complex and highly sensitive, the PIC may select an international consulting firm to review and conduct due diligence;
- Select the public investment projects based on the principles of efficiency, effectiveness, financial affordability in the framework of the medium-term fiscal framework to promote sustainable economic growth and maintain macroeconomic and public finance;
- Determine the sources of financing for qualified public investment projects;
- Report and propose the list of the priority public investment project based on sources of financing to the Minister of the MEF for review and decision;
- Monitor and conduct the overall appraisal on efficiency and effectiveness to direct the public investment;

- Review the request for variations on the public investment project proposals to ensure projects have made the variations comply with the criteria or have the eligibilities as well as double-check the project cost, affordability, and relevant risks. All project proposals shall obtain prior endorsement from the PIC before requesting to the Minister of the MEF for review and decisions;
- Review and endorse the criteria for the size and complexity of public investment projects; and
- Perform other related duties.

2.3. The MEF roles and responsibilities are largely carried out by the GDPPP. The main tasks and duties of the GDPPP are as follows:

- Act as the secretariate in leading and managing PPPs on behalf of the MEF;
- Lead the preparation of the Standard Operating Procedures (SOP) for PPP Projects containing policies and procedures for the rules and regulations, all the associated guidelines and other legal instruments on the development, management, implementation and monitoring of PPPs, consistent with the provisions of the Law on PPPs;
- Monitor, review and evaluate the implementation progress of the SOP for PPP Projects, the guidelines and other legal instruments and lead the preparation of any updates when required;
- Undertake the review and analysis of potential projects proposed by the IA in accordance with the criteria specified in the Guidelines on Project Identification and Selection of PPP Projects and prepare recommendations for approval by the MEF;
- Prepare budget for, and manage and operate the Project Development Facility (PDF) and the Viability Gap Facility (VGF) for PPP projects in accordance with their Guidelines and other applicable regulations;
- Participate in the recruitment of transactions advisors and monitor the transaction advisory services related to financial, commercial, risk allocations, and other non-technical aspects of the PPP project, as stipulated in the SOP for PPP Projects;
- Review the feasibility studies and prepare the recommendations on related risk allocations and assessment, including fiscal implications arising from them;
- Coordinate the review of proposed fiscal incentives and commitments, and other Government support with the relevant general departments of MEF and other agencies. Consolidate the findings and the recommendations in a report and submit to the Minister of MEF for the consideration and decision;
- Participate in and carry out the necessary review and due diligence tasks in the Procurement and Contracting of PPP Contracts as defined in the SOP for PPP Projects;
- Review the negotiated PPP Contract and provide recommendations to the MEF;
- Participate and cooperate with the IA and other relevant agencies in monitoring the obligations and performance parameters specified in the PPP Contract;
- Provide operational support to IA throughout the PPP Project Cycle, where requested;

- Consolidate the annual budget requirement for fiscal commitments and state support for all PPP Contracts signed by the IA and submit to the General Department of Budget for allocations to the annual budget to the relevant IA;
- Prepare the annual report on the progress of fiscal commitments made by the Government in signed PPP Contracts and submit to the relevant general departments and the Minister of the MEF;
- Develop, seek financing and manage capacity building programs to build the awareness and knowledge of the SOP and Guidelines to IA and other agencies;
- Provide IA and other users with clarifications and interpretation of the provisions under the SOP and the Guidelines; and
- Fulfil other PPP related tasks as instructed by the management of MEF.

APPENDIX 3

Approval Process at each Phase of the Project Cycle for Solicited PPP Projects

The responsibility for approvals at the different phases of the PPP project cycle is specified in the relevant chapters of this SOP and is summarized in the table below for guidance.

Phase/Step	Main Decision	Final Authority
Phase I: Project Identification and Selection		
Step 1: Project Identification	Approval of identified PPP project/s (Project Concept Note) to be conducted as a PPP and submission to the MEF	Head of IA
Step 2: Project Selection and Prioritization	Approval of proposed PPP project/s and inclusion in the Priority PPP Projects List	Minister of MEF
Step 3: Obtaining PDF Support	Approval to provide the PDF support for the preparation of a PPP project	Minister of MEF
Phase II: Project Preparation and Appraisal		
Step 4: Preparation	Approval of the project FS and Project Proposal for the Submission to the MEF	Head of IA
Phase III: Project Approval		
Step 5: Review of Project Proposal and Assessment of Government Support Measures	Approval of the Project Proposal	Minister of MEF with the Endorsement of the PIC
Step 6: Project Approval	Approval of the Government Support Package, if any	For Fiscal Commitment /Head of GKC
Phase IV: Project Procurement and Contracting		
Step 7: Preparation and Approval of Pre-Qualification Documents	Approval of pre-qualification documents to be released to the market	PRC
Step 8: Prequalification of Prospective Bidders	Approval of shortlisted bidders	PRC
Step 9: Preparation and Approval of Bidding Documents	Approval of bidding documents before release to shortlisted bidders	PRC
Step 10: Selection and Approval of the Private Partner	Approval of the Private Partner	Recommendation by PRC. Approval by Head of IA and Minister of MEF
Step 11: Approval and Signing of the Final PPP Contract	Approval of the final PPP Contract for signing by the Head of the IA	Negotiations by Negotiating Team led by Head of IA with representatives of MEF and assisted by PRC.

Phase/Step	Main Decision	Final Authority
		Approval of the final fiscal commitments/incentives by Head of GKC. Approval of the PPP Contract by Head of GKC. Signing of Contract by Head of IA and countersigned by the Minister of MEF
Phase V: Implementation and Management of PPP Contract		
Step 12: Management of the PPP Contract	Decisions (multiple, over time) related to implementation and management of the PPP Contract, and possible variation to the PPP Contract	Head of IA Minister of MEF if fiscal or substantive financial changes are involved or variation to the Contract
Step 13: Handover	Decisions on completion and Handover	Contract Management Committee comprising of representative of IA, MEF, other ministries, authorities, as relevant

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