



PUBLIC-PRIVATE PARTNERSHIP (PPP)

POLICY FRAMEWORK

COOPERATIVE REPUBLIC OF GUYANA

Balancing the needs of the public and private sectors to finance the nation's infrastructure

PUBLIC-PRIVATE PARTNERSHIP (PPP)

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COOPERATIVE REPUBLIC OF GUYANA

TYPES OF PPP's

- ◆ **BOT** - Build Operate Transfer
- ◆ **BOO** - Build Own Operate
- ◆ **BOOT** - Build Own Operate Transfer
- ◆ **DBF** - Design Build Finance
- ◆ **DBFO** - Design Build Finance Operate
- ◆ **DBO** - Design Build Operate
- ◆ **BLT** - Build Lease Transfer
- ◆ **BTO** - Build Transfer Operate
- ◆ **DBFOM** - Design Build Finance Operate Manage
- ◆ **Leasing**
- ◆ **Joint Ventures**
- ◆ **Operations of Management Contracts**
- ◆ **Cooperative Arrangements**
- ◆ **LROT** - Lease Renovate Operate Transfer
- ◆ **DCMF** - Design Construct Manage Finance
- ◆ **BOOR** - Build Own Operate Remove

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Preamble

Background

The Government of the Cooperative Republic of Guyana's (GCRG) strategic trajectory to 2020 and beyond, is pillared on the thematic of 'A Good Life in a Green Economy,' underpinned by robust economic growth that is equitably distributed, good governance and environmental sustainability.

Guyana's Vision 2020 articulates GCRG's developmental priorities, central to which are: bridging the coastal and hinterland divide; economic diversification; infrastructural improvement; and agricultural, social and human development.

The objective of this strategy is to enhance the employment-generation potential of the economy and raise the quality of life of all sections of the population.

To attain this objective, Government will invest heavily in catalytic physical infrastructure; renewable energy and the environment; agricultural diversification; agro-industrial development; education and training; and information technology. These prioritized interventions will focus on programmes geared towards critical economic diversification initiatives which are needed to ensure economic growth and stability and the development of non-traditional economic sectors, particularly through the raising of value-added in both traditional and non-traditional industries.

These interventions are intended to transform the Cooperative Republic of Guyana into a highly competitive, diversified, technologically advanced, high-income services and knowledge economy, fully integrated into the new global economic environment.

To finance this ambitious developmental programme, Government is creating the appropriate policy and institutional and legal frameworks for encouraging the private sector to participate more fully in procuring and financing infrastructural projects and services in the public sector, through well-designed Public Private Partnerships (PPPs).

PPPs are long-term relationships between public and private sector entities that will bring private sector resources, including financing, technological, technical and managerial expertise to create infrastructural projects for public good. Such relationships are intended to ensure that the investments are solid and sustainable, and that they contribute to the improvement of public finances and the expansion of fiscal space.

PPPs require strong legal, policy, appraisal, approval and monitoring arrangements to guide policy decisions and to enforce Public Private Partnerships agreements.. In this regard, the Ministry of Finance has solicited and secured the assistance of the Caribbean Development Bank (CDB) for the formulation of a PPP Policy and Legislative Framework for Guyana. This Policy and Legislative Framework will guide national efforts in establishing PPP's as a vehicle for financing and implementing key national development initiatives.

Scope for PPPs in Guyana

It is Government's intention to encourage innovation in as many areas as possible. Traditionally, PPPs have been applied to the infrastructure sector - in particular, in infrastructure, electricity, telecommunication, water, transport and solid waste sectors, and increasingly in the social (health and education) and Information and CoCT sectors. In the early stages of developing PPPs, Government will focus on the following key areas of development:

1. Demerara Harbour Bridge
2. Linden-Lethem road link
3. Deep Water Harbour and Container Port
4. Mini and Maxi Hydro Plants and Energy Farms
5. Plantation Agriculture
6. Modernisation and Dredging of Port Georgetown
7. Milk Plant for Guyana
8. Information Technology farm
9. 9. Agro-industrial and Small Manufacturing arks

Key Considerations of The PPP Policy Framework

The benefits and advantages of PPPs/ can be significant when they are designed well and implemented in a balanced regulatory framework. Positive outcomes, however, have to be earned through projects that can catalyse development, are financially viable, will minimize impact on the National Debt and favourably affect Gross Domestic Product growth. To achieve this, creative, competitive and transparent procurement processes as well as clearly articulated policies and procedures followed by thorough due diligence, must be applied.

There are, therefore, certain key pre-conditions that need to be present in the policy framework for PPPs, as they are critical to delivering successful outcomes. These preconditions have been identified as **affordability, the legislative environment, institutional arrangements and capacity building**.

Affordability – Affordability is a key requirement of all PPP projects. The options must be affordable both to Government, and the public, given competing priorities and commitments. The rationale for PPPs is improved management of scarce resources, better risk allocation and more efficient and cost-effective delivery of services. However, it should be noted that while the private sector may be willing to finance and deliver infrastructure and services through PPPs, only users or taxpayers can pay for these goods and services. Affordability, therefore, acts as a real constraint, and public bodies will need to give considerable thought to the selection of potential PPP projects, ensuring always that their choices are in line with Government's policy priorities and objectives.

The Legislative Environment – Guyana already has many of the ingredients required for a successful PPP programme: a stable government; an independent judiciary; a robust Procurement Act and mechanism; and reasonably well-performing public institutions. However, political and regulatory risks can be potential barriers to effective PPP implementation. A new PPP regulatory framework will be approved to provide further and concrete evidence of Government's commitment to a PPP policy and to establish the principles and rules with which all public bodies will be required to comply.

Institutional arrangements – International experience suggests that identifying and establishing clear and unambiguous institutional functions at the onset of a county's PPP programme, greatly assists in successful PPP implementation. While institutional roles and responsibilities may change over time, as Government's experience with PPP's grow, the following public institutions will have integral roles in the programme:

- **Ministry of Finance**
- **Ministry of Public Infrastructure**
- **Ministry of Business**

Strategic direction of the GCRG's PPP programme will be the responsibility of a **Steering Committee**. A **PPP Core Team**, within the Ministry of Finance will act as the Secretariat to the Steering Committee and as a focal point for the day-to-day management of the programme.

Each PPP initiative will be the responsibility of the relevant Ministry or Government agency, and will be implemented by a multi-agency **PPP Project Team** with support from the Core Team.

Proposed PPPs will be reviewed and approved by Cabinet at key stages in the development process.

The roles of the Steering Committee, Core Project Teams, as well as the responsibilities for the review and approval of projects are described in the policy framework.

Capacity Building – As PPP represent a substantially new paradigm for Government therefore, capacity building will be necessary for all stakeholders in this process. The general level of awareness and understanding of PPP will be improved among all stakeholders to facilitate sound policy development and constructive discussion and debate. There is need to ensure a sufficient level of resources to deliver good PPP projects. The success of this programme will depend on the development and retention of appropriate skills and expertise within the public sector. Technical consultants will be brought on board as needed.

PPP Policy Framework for Guyana

This PPP Policy sets out the following:

- I. **PPP/P3 definition**, and the essential features of PPP contracts;
- II. **Objectives and scope** of the PPP programme, in the context of Guyana's development objectives;
- III. **Institutional responsibilities** for the PPP programme, and for developing, implementing and approving PPP projects;
- IV. **Processes** by which PPP projects will be identified, developed, procured, and managed, including how unsolicited proposals will be treated by Government;
- V. **Key commercial principles** by which PPP contracts will be structured;
- VI. **Approach to managing the fiscal implications** of PPP projects; and
- VII. **Mechanisms for ensuring transparency and accountability** in the PPP programme.

The Policy framework will be supported by detailed guidance material and tools which are intended to clarify and help government officials meet the requirements set out in this Policy.

MODULE 1

PPP Definition

A public-private partnership (PPP) is a long-term procurement contract between public and private entities, in which the proficiency of each party is focused /on the designing, financing, building and operationalising of an infrastructure project or, providing a service through the appropriate sharing of resources, risks and rewards. In this context:

- i. The **private party** to a PPP contract may be any majority privately-owned company or consortium.
- ii. The **government entity** may be a Ministry, a State Enterprise, a Statutory Body, or any other Government contracting authority. In a PPP, the contracting government agency retains overall responsibility for ensuring that the service is provided to the standard required, by prudently managing the PPP contract.
- iii. The **public asset or service** may be a new infrastructure or other investment, or may involve transfer of existing infrastructure or other public assets and services to the private partner. PPPs may be used in a wide range of sectors; and for a wide range of assets and services, providing the public sector has an interest in maintaining or improving the service(s) provided.

This definition encompasses two different PPP models:the first in which the private party is paid entirely by service users; and the second, where a government agency makes some or all of payments to the private operator.

- i. **Revenue-Based Payment PPPs:** In a revenue-based payment mechanism, the demand risk is transferred to the private sector entity. The private operator expects to recoup its development, financing, construction, operating and maintenance costs from the user fees charged to the public for use of the asset. By collecting revenues directly from the users, the concessionaire repays its lenders, operates and maintains the asset according to the quality and performance standards contractually defined, and delivers a profit to its investors.
- ii. **Government-Pays PPPs:** In an availability payment mechanism, the government entity provides monthly or quarterly payments to a private sector party in exchange for the latter making the infrastructure asset available for use. To receive payment, the private sector party must ensure that the asset meets certain performance standards, is fit for purpose and is 'available' for use by the public.. With an availability payment mechanism, the government entity retains the demand risk for the project.

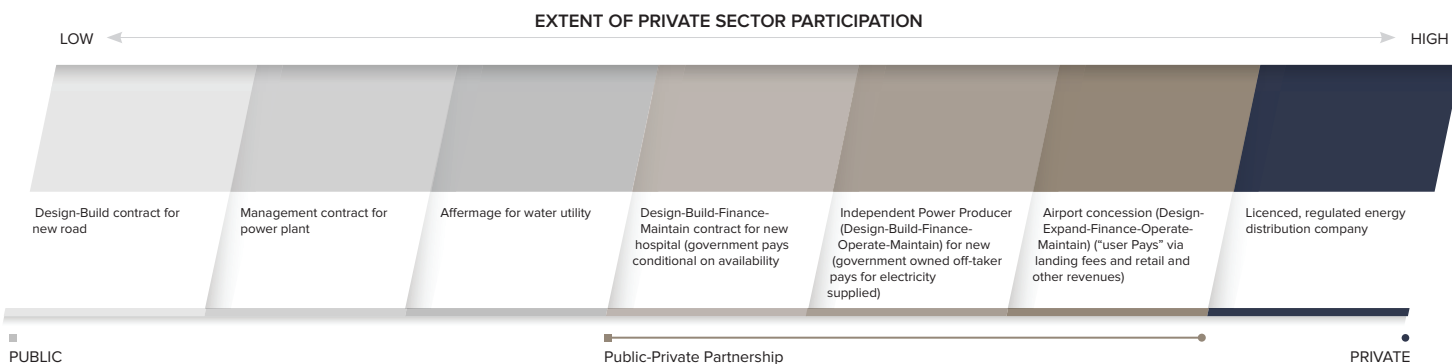
For the purposes of this PPP Policy, projects will only be considered as PPPs if they include the following contractual provisions:

- i. Involve an arrangement with a private sector entity by delegating several project functions to them (that is, delegating to a private party the responsibility to design, build (or expand/develop), operate, maintain, rehabilitate and finance an asset or service).
- ii. Require a private party to take significant risk in the performance of the functions delegated, i.e. the private party's revenue is dependent on its performance (the availability of an asset, or the quantity and quality of outputs supplied). For example, if a PPP involves the private party building an asset, the private party would take all or a significant portion of the construction risk. This means the private party would not receive payment until construction milestones are met and would also have to pay for any construction cost overruns or time delays.

- iii. Remunerate the private party based on outputs delivered—such as the availability of the asset or the provision of services to clearly-defined performance standards. Payments to the private party may be made by users, by government, or by a combination of the two; penalties may also be imposed by the government party or by regulatory agencies, for failure to meet contractually-specified standards.
- iv. Involve public infrastructure assets or services provided for public benefit, where the output includes facilities/services typically provided by the Government as a public service to the population. These two key concepts are articulated below:
 - a) **'Public Services'** are those services that the State is obligated to provide to its citizens (towards meeting the socio-economic objectives) or where the State has traditionally provided the services to its citizens.
 - b) **'Public Asset'** is that asset which is inextricably linked to the delivery of a public service. For example, a public road which is linked to public transportation. Or, those assets to utilise or integrate sovereign assets to deliver the Public services.
- v. Operations and management of the asset or service is transferred to the private operator for a specified period. The agreement with the private sector entity specifies the time period after which the arrangement comes to a closure. In other words, the PPP arrangement does not continue in perpetuity.

Figure 1 below shows different forms of partnership between public and private sectors:

Figure 1:
Examples of PPP Contracts Types



Source: Public-Private Infrastructure Advisory Facility, PPP Reference Guide 3.0, 2017

PPPs can help achieve greater Value for Money in infrastructure projects, by tapping into the resources and expertise of the private sector and creating incentives for good performance—as described further in Box 1 on “PPP Value Drivers”. However, PPP contracts are more complex and expensive to prepare, procure and manage than traditional public procurement contracts—and hence present new challenges and risks. It is intended in this PPP Policy to provide a framework for managing PPPs in Guyana in a way that capitalizes on these value drivers and manages the associated risks.

Box 1:

PPP Value Drivers

PPP value drivers are the mechanisms that can be used to improve value for money in infrastructure provision. They include the following:

1. **Whole-of-life costing** — full integration, under the responsibility of one single party, of up-front design and construction with ongoing service delivery, operation, maintenance and refurbishment, can reduce project costs. Full integration incentivises the responsible party to complete each project phase (design, build, operate, maintain) in a way that minimizes total costs and maximizes efficiency.
2. **Risk transfer** — risk retained by the government in owning and operating infrastructure typically carries substantial, and often, unvalued, hidden cost. Allocating some of the risk to a private party which can better manage it, can reduce the project's overall cost to government and minimise risk to the taxpayer.
3. **Upfront commitment to maintenance, and predictability and transparency of whole-of-life costs** — a PPP requires an upfront commitment by the private operator to the whole-of-life cost of providing adequate maintenance for the asset over its lifetime. This commitment strengthens budgetary predictability over the life of the infrastructure, and reduces the risks of funds not being available for maintenance after the project is constructed.
4. **Focus on service delivery** — allows a contracting agency to enter into a long-term contract for services to be delivered when and as required. The PPP firm can then focus on service delivery without having to consider other objectives or constraints typical in the public sector.
5. **Innovation** — specifying outputs in a contract, rather than prescribing inputs, provides wider opportunity for innovation by the private partner. Competitive procurement of these contracts incentivizes bidders to develop innovative solutions for meeting these specifications.
6. **Asset utilization** — optimizing the utilization of assets for delivery of additional services leading to multiple revenue streams for the project. For example, the utilization of space in bus terminals for private vendors or unused space for advertisements.
7. **Mobilization of additional funding** — charging users for services can bring in more funding, and can sometimes be done better or more easily by private operators than the public sector. Additionally, PPPs can provide alternative sources of financing for infrastructure, where governments face financing constraints.
8. **Accountability** — government payments are conditional on the private party providing the specified outputs at the agreed quality, quantity, and timeframe. If performance requirements are not met, service payments to the private sector party may be abated.

Source: Public-Private Infrastructure Advisory Facility, PPP Reference Guide 3.0, 2017

MODULE 2

Objectives and Scope

The Government of the Co-operative Republic of Guyana will use PPPs as an instrument to implement priority infrastructure projects that are aligned with the Government's development objectives, where doing so is expected to provide the best value for scarce resources. This Section sets out the objectives of the PPP programme, in the context of Guyana's development objectives, and the specific objectives of this Policy.

High-quality and efficient public infrastructure assets and associated services are a crucial building block for economic growth, resilience, and fiscal stability. The Government of Guyana recognises the need for strategic investment in infrastructure projects to enable economic development, employment generation, and private sector investment—and the need to make the best use of both public and private financial and technical resources to that end, including through PPPs.

PPPs will be used to support many of the Government's key economic policy objectives including:

- i. **Meeting Guyana's infrastructure needs**—increased and more efficient and resilient infrastructure is needed to support private sector growth and create an enabling environment to enhance competitiveness.
- ii. **Improving efficiency**—seeking private sector expertise to improve the operations and management of its infrastructure and other public assets and services.
- iii. **Balancing fiscal prudence with fiscal stimulus**—the Government faces the challenge of maintaining fiscal prudence to ensure debt sustainability, while expanding public investment to reduce poverty and relieve infrastructure bottlenecks.
- iv. **Achieving diversification**—promoting new areas of economic growth, particularly export-oriented sectors, expand employment opportunities, reduce vulnerability to shocks, and build resilience.

GCRG is aware that to achieve these objectives is beyond the capacity of the Government alone, therefore it intends to engage with the private sector, in seeking to provide and manage public assets and services through PPPs.

2.1 Objectives of Guyana's National PPP Policy

This National PPP Policy (Policy) sets out clearly how the Government of Guyana will identify, develop, implement and manage PPPs. It aims to ensure that PPPs are developed effectively and efficiently, and in a way that achieves Value for Money (VfM) for the Government and infrastructure service users. It also aims to guide the private sector on what they can expect in their partnership with the public sector.

Specifically, the objectives of this Policy are to ensure PPP projects are selected, developed, and implemented per the following guiding principles:

- i. **VfM**—PPPs serve a well identified public need, provide a set of benefits to society that exceed the project cost and the costs (including externalities) to all other entities in the country, and are selected and structured to achieve the optimal combination of benefits (that is, quality, responsive, resilient and sustainable infrastructure and public services) and costs to government and users, by capitalizing on the value drivers described above.
- ii. **Fiscal responsibility**—the fiscal impact of PPP projects is well-understood, expected costs are affordable, and the level of fiscal risk is acceptable.
- iii. **Transparency and probity** in how PPPs are identified, developed, procured, and managed.
- iv. **Environmental and social sustainability**—environmental and social impacts of PPP projects are carefully assessed, and are managed appropriately.
- v. **Partnership and inclusiveness**—PPPs meet and balance the objectives of all interested parties—the government agency and private party, as well as service users and other stakeholders—and are managed through a spirit of partnership and cooperation to achieve common goals of improved infrastructure services.

This Policy is intended to provide a framework for Government of Guyana officials to identify, develop, and implement PPPs.

2.2 Scope of Guyana’s National PPP Policy

This Policy is intended to be applicable to all PPP transactions which meet the criteria for a PPP as outlined in this Policy, and shall apply to all Ministries, State Enterprises, Statutory Bodies and any other Government contracting authority. The intended PPP transactions must be of sufficient value and scope to create a significant positive impact on the economy and society.

PPPs will be used to deliver high-priority projects that are central to achieving Guyana’s overall development objectives, where the use of PPP is expected to deliver greater VfM than other procurement alternatives. The Government will therefore consider PPPs for proposed investment projects that have the following characteristics:

- i. **Assets with significant investment value.** Since the cost of preparing and managing a PPP contract is significant for both public and private parties, PPP will only be considered for projects with a minimum investment value of USD 10 million. However, smaller projects could be considered on a case by case basis, or could be bundled to achieve this threshold.
- ii. **Assets with long-term economic lives.** Given the high capital costs involved in most PPP projects, private investors typically would need a long term contract, in which to recoup their investments and make a reasonable rate of return. For this reason, PPPs should generally be for a contract term of no less than ten (10) years, from the date of contract finalization. However, terms shorter than 10 years can be considered on a case by case basis.
- iii. **Output requirements that can be clearly specified and monitored.** Specifying outputs rather than inputs and linking payment to delivery of those outputs are defining features of PPP contracts. PPPs will therefore be used only for delivering assets and services whose outputs can be contractually quantified and monitored in practice.
- iv. **Outputs address stable needs over the contract lifetime.** The long-term nature of PPP contracts reduces the flexibility of both parties to adjust specifications over time. PPPs will therefore be considered for assets and services for which needs are expected to be relatively predictable—while also building in mechanisms for dealing with change.
- v. **Scope for innovation or improved infrastructure performance.** The use of PPPs will be focused on those sectors and services that are currently under-performing, or where Guyana could benefit from the introduction of private sector and/or international experience and expertise. This would include sectors where there is a need for improvement, expansion, innovation and/or the adoption of new technology.
- vi. **Ability to generate revenues.** To maximize benefits in alleviating fiscal constraints, the use of PPPs will be focused on projects that are expected to generate revenues from users, whether from charging service users or ancillary sources. These “user-pay” PPPs will have higher priority than “government pay” PPPs, in which the asset or service would be built and operated by the private sector, but paid for by the Government.
- vii. **Priority sectors.** PPPs will be used to deliver new assets and services in priority infrastructure sectors, including transportation (ports, roads, bridges and airports), electricity (conventional and renewable energy), telecommunications, water and sanitation.

PPPs in the social sectors (health, education, social welfare) are considered more technically challenging to design and implement, and require extensive consultation with stakeholders and civil society. For these reasons, Government will be more cautious in planning PPPs in the social sectors, although not refraining from considering them when deemed adequate.

MODULE 3

Institutional Responsibilities for PPPs

Developing and implementing PPP projects requires close coordination between several Government entities. Without a central body which has sufficient authority to provide overall guidance to the PPP programme, there will be inconsistencies in the PPP process. These inconsistencies will confuse the market and increase the chances of inappropriate project selection, misallocation of risks and poorly defined performance measurements. Establishing an institutional and regulatory framework is therefore a critical prerequisite to commencing a PPP programme.

The guidance and administration of the government of Guyana's PPP programme will be shared among two broad institutional structures:

- I. **Strategic responsibilities:** Includes the approval of policies and strategies for the PPP programme, and takes into consideration alignment of the Policy with other strategies and structures of GCRG. Recommends project selection, business case results and transaction implementation, subject to final approvals.
- II. **Operational responsibilities:** Day-to-day administration of the PPP programme, including project assessment and preparation, management of transactions, and contract management.

The institutional structures underpinning a PPP Policy should be linked to the stage or maturity of the country's PPP programme. In a market without an extensive project pipeline, it may not be effective to devote the same level of administrative and financial resources to the governance of the PPP programme as what would apply in more mature PPP markets.

This current PPP Policy is meant to guide the design and implementation of the early phases of Guyana's PPP programme. It is expected therefore, that the Policy will evolve and be modified over time, in response to changing circumstances.

Strategic direction of the GCRG's PPP programme, will be the responsibility of a **PPP Steering Committee**, as outlined in Section 4.1 below. The **PPP Core Team** within Ministry of Finance, will act as the Secretariat to the Steering Committee, and as a focal point for the day-to-day management of the programme. Each PPP initiative will be the responsibility of the relevant Ministry or Government agency, and will be implemented by a multi-agency **PPP Project Team** – with support from the PPP Core Team. Proposed PPPs will be reviewed and approved by Cabinet at key stages in the development process.

The roles of the PPP Steering Committee, PPP Core Team, and PPP Project Teams, and responsibilities for review and approval of PPP projects are described in turn below

3.1 PPP Steering Committee

A PPP Steering Committee will be established to provide direction to the Government of Guyana's PPP programme, and oversee the development and implementation of individual PPP projects. Members or nominees of members of the Committee shall be:

- I. Minister of Finance, (Chairperson);
- II. Minister of Business (Vice-Chairman);
- III. Minister of Public Infrastructure;
- IV. Attorney General;
- V. Commissioner General of the Guyana Revenue Authority; and
- VI. Chief Executive Officer, Go Invest.

Ministers of other Ministries and/or Heads of Agencies may be invited to attend Steering Committee meetings, when projects under their portfolios are being considered or implemented as PPPs. PPP Steering Committee may include a temporary member (Independent Consultant) with expertise on the particular project under consideration.

The PPP Steering Committee may invite relevant stakeholders to participate in some of its meetings.

At a minimum, the attendance of four members of the Steering Committee will be required as a quorum for Committee decisions; the Chair may nominate another Committee member to chair in his or her absence as necessary. PPP Steering Committee members must recuse themselves from discussions and/or decisions on particular PPP projects in cases where there may be an actual or apparent conflict of interest, for example, family business interests or other connections with one or more project stakeholders.

The PPP Steering Committee will, inter alia:

- I. **Guide the development of Guyana's PPP Policy**, including adopting more detailed process guidelines, regulations and standard formats for key documents for mandatory use by all agencies that are implementing PPPs.
- II. **Select from among priority investment projects** to be developed as potential PPPs, based on an initial screening by the PPP Core Team.
- III. **Hold PPP Project Teams accountable** for developing and implementing PPP projects, ensuring wide stakeholder consultations, and following agreed timelines.
- IV. **Recommend preferred bidders** for PPP projects, based on evaluation reports prepared by PPP Project Teams against pre-established and pre-announced clear, objective and quantifiable criteria.
- V. **Periodically commission independent evaluations** of PPP projects and/or the PPP programme as a whole, to assess whether PPPs have delivered the anticipated Value for Money.

As a form of public procurement, detailed regulations for preparing and implementing PPP transactions will be issued under the appropriate public procurement legislation. As such, the PPP Steering Committee is expected to work closely with the institutions established under this legislation, to ensure continuity.

3.2 PPP Core Team

The Ministry of Finance will designate a PPP Core Team comprised of staff members of the Ministries of Finance and Business, to act as Secretariat to the PPP Steering Committee in managing the PPP programme.

The responsibilities of the PPP Core Team will be to:

- I. **Develop and disseminate PPP policy:** Advise on development of PPP Policy and regulation; develop guidance material and templates and build understanding in public and private sectors of the Government's PPP programme.
- II. **Regulate the PPP programme:** Ensure that all PPP projects are developed in accordance with the adopted PPP Policy, principles and processes. This includes ensuring projects are properly reviewed against required project selection criteria at each stage; review processes are completed; that Cabinet submissions include all the information required for a well-informed decision; and that PPP projects and contracts are managed effectively.
- III. **Contribute to the development of PPP projects:** Staff members of the PPP Core Team will contribute their technical expertise in PPPs by joining, and if necessary, leading PPP Project Teams responsible for each PPP project being

implemented. This is to ensure that the day-to-day work of the project will be managed in accordance with the principles and processes outlined in this Policy, and that the PPP Core Team Leader passes on knowledge to PPP Project Team members.

- IV. **Ensure adequate funding for project development, structuring, and procurement.** Assess the efficient internal and external costs of development, structuring, and transaction advisory, and ensure, from budgetary sources, project development funds, donors, or other sources, enough funds for swift delivery of infrastructure.
- V. **Be a repository of skills and knowledge:** Continually build knowledge about managing PPPs, drawing from domestic and international experience. This includes compiling information on PPP projects in Guyana and beyond, and systematically analysing the success of those projects to inform the development of the Guyana PPP Policy and programme.
- VI. **Conduct consultation programmes with stakeholders:** The PPP Core Team will be responsible for conducting sensitisation sessions with relevant stakeholders in Guyana, to spread awareness and understanding of PPPs.

3.3 PPP Project Teams

In order to take a PPP project through the Business Case and Transaction stages, the Government will need to devote considerable technical and financial resources.

For each project that is taken forward, the PPP Core Team will analyse the skills and time commitments required to develop, evaluate, and procure each project, and recommend the individuals who will comprise the individual PPP Project Teams.

Generally, Project Team members will include officials from the Subject Ministry/Agency, the Ministry of Finance, the Attorney General, and suitably qualified consultants.

The Project Team will collect and analyse information, write reports, plan and structure the PPP, perform the administrative and management functions involved in developing, evaluating, and procuring PPP projects, and make all recommendations to the PPP Steering Committee.

Each PPP Project Team will be supported by technical, legal and financial advisors, as appropriate for each project. In seeking approvals to take individual projects forward to the Business Case and Transaction stages, each PPP Project Team shall include a budget of the consulting and other costs involved in the subsequent project stages.

The Project Team will be responsible for developing the Business Case and managing the Transaction. These functions include, but are not limited to:

- I. Structuring the PPP;
- II. Supervising the consultants;
- III. Evaluating whether the project meets the PPP Criteria;
- IV. Drafting the Business Case documents and accompanying Cabinet submission;
- V. Drafting project agreements (with assistance from legal counsel);
- VI. Prequalifying bidders;
- VII. Drafting and issuing the Request for Proposal (RfP); and
- VIII. Conducting the tender, evaluating bids; and providing support to the contracting agency until contract award and financial close.

These functions are described in more detail in Section 5 of this Policy.

3.4 PPP Reviews and Approvals

All PPP projects will require review and approval at key stages in the development process. The objectives of these reviews and approvals are to ensure that PPP projects are aligned with Government priorities, and are developed according to this Policy and its guiding principles.

Table 1 below sets out PPP review and approval requirements. At each stage, approvals will be based on the relevant submission demonstrating that the PPP is (or is expected to be) compliant with the PPP appraisal criteria set out in Box 2 below. The PPP

Core Team will be responsible for coordinating this review and approval process.

Table 1:

PPP Reviews and Approvals

Stage	Review Required	Approving Authority	What is approved
Project Identification and Screening: Upon submission of Project Concept Note	PPP Core Team, Ministry of Finance	PPP Steering Committee	Composition of Project Team and authorization to develop Business Case; approval of budget allocation
Business Case: Upon submission of Business Case report	PPP Core Team, Ministry of Finance; MDA; Attorney General	Cabinet	Project structure, authorization to prepare and implement transaction
Tender documentation: Upon submission of draft contract and Invitation to Tender	PPP Core Team; Ministry of Finance; MDA; Attorney General	Finance Minister and involved Line Minister; Cabinet for large projects	Tender documentation; authorization to proceed with tender process
Prequalification: Upon submission of the recommended list of prequalified bidders	PPP Core Team, Ministry of Finance	PPP Steering Committee	List of prequalified bidders
Transaction: Upon submission of final PPP Contract prior to signing	PPP Core Team, Ministry of Finance; MDA; Attorney General	Cabinet	Sign PPP Contracts, upon receiving non-objection from the Minister of Finance
Contract Management: In case of renegotiation, prior to signing revised contract	PPP Core Team, Ministry of Finance; MDA; Attorney General	Cabinet	Sign revised PPP Contracts, upon receiving non-objection from the Minister of Finance

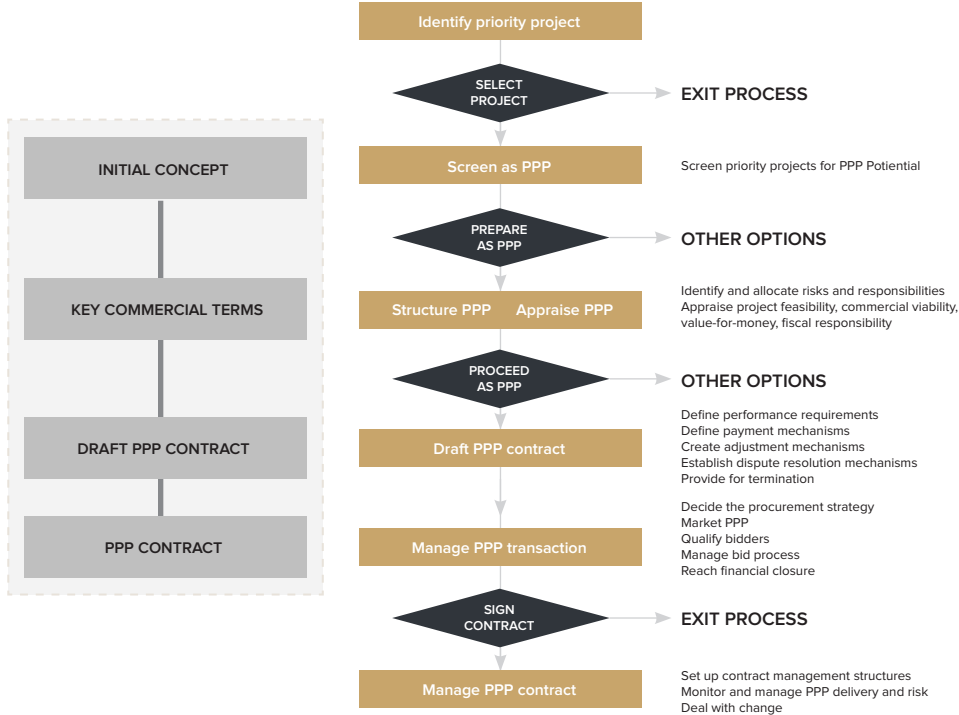
MODULE 4 PPP Processes

To achieve the objectives stated above, all PPP projects in Guyana will be developed and implemented following a consistent, competitive and transparent process.

- i. Identifying and screening the initial PPP project concept;
- ii. Developing the Business Case and defining key commercial terms;
- iii. Preparing for and implementing a PPP transaction; and
- iv. Signing and managing PPP contracts.

These four stages of the PPP process are shown in Figure 2 below:

Figure 2:
The PPP Process



Source: Public-Private Infrastructure Advisory Facility, PPP Reference Guide 3.0, 2017

The following Sections of this Policy provide an overview of each stage of the PPP process as shown in Figure 2. In support of this PPP Policy, detailed guidance and tools will be prepared and adopted to support the responsible Government officials at each stage of the process.

4.1 PPP Project Identification and Screening

The purpose of the Identification and Screening stage is to decide upon projects where it is deemed that the project's VfM would be increased through implementation under a PPP structure. All GCRG Ministries and Agencies will be asked on an annual basis to identify potential projects and submit them to the PPP Core Team for screening. The PPP Steering Committee may also proactively identify projects which, from a strategic perspective, may be desirable to structure as PPPs.

The projects identified by the Subject Ministries/Agencies and the PPP Steering Committee will be screened against the agreed criteria as shown in Box 2 below:

Box 2:

PPP Project Appraisal Criteria

To ensure that the objectives of the PPP programme and the potential benefits of using PPPs are achieved in practice, the Government will ensure that all PPP projects meet the following criteria:

1. **Feasibility and economic viability:** The underlying project must make sense, in that it is central to the Government's policy priorities and sector plans; is technically, legally and economically feasible, and is the least-cost solution to the identified service need.
2. **Commercial viability:** There are qualified private parties available to finance and implement the project, and the project is expected to provide a commercial rate of return sufficient to attract such parties and create competitive tension.
3. **Social and environmental sustainability:** The project meets the highest global standards and safeguards to those stakeholders impacted by the project.
4. **Climate resilience:** Due to its geographical features, Guyana is particularly susceptible to severe climate events; infrastructure projects must therefore be designed and built to high standards of climate resilience.
5. **Fiscal responsibility:** The project's cost to Government is in line with fiscal priorities, is fiscally affordable, and risks retained by Government would not be fiscally destabilizing.
6. **Value for Money (VfM):** The proposed PPP is expected to achieve VfM, compared to alternative implementation options; and compared to other PPP structures (that is, the PPP is structured well).

The PPP Steering Committee will submit the prioritised list of recommended PPP projects to Cabinet. New projects will be continually identified and added to the approved PPP pipeline, through a similar process.

PPPs are first and foremost public investment projects. Hence, as shown in Figure 2, the process of developing and implementing a PPP begins with the Government identifying a priority public investment or service need. The aim of this stage is to select from among priority projects, those that are expected to provide better VfM if implemented as PPPs.

Identifying priority public investments and service needs in a given sector is primarily the responsibility of the Ministry, Department, or Agency (MDA) responsible for that sector. From among these priority projects, those with the characteristics listed in Section 2.1: Objectives of Guyana's National PPP Policy may be considered for implementation as PPPs. In certain circumstances, potential PPP project ideas may also arise from unsolicited proposals from the private sector, as described in Section 5.5 below.

Identified potential PPP projects will be screened by carrying out a quick and approximate check that a PPP for the project is likely to meet the criteria described in Box 2 above—that is, whether the Project is likely to be viable, and commercially attractive, fiscally responsible and provide VfM as a PPP. Depending on the complexity of the project, this could require stakeholder consultations, and pre-feasibility analysis to identify technical solutions and major risks, and estimate project costs and revenues. This analysis will be presented by the relevant MDA in a Project Concept Note, along with an estimate of the work and resources required to develop a business case and prepare for a transaction.

The Project Concept Note will be prepared by the Ministry or Agency proposing the project, with support from the PPP Core Team, and will be submitted to the PPP Steering Committee, for review and approval to proceed to the Business Case stage.

4.2 Business Case

Once a priority public investment project has been identified and approved for development, the next step is to develop a Business Case for the project. A project's Business Case involves a detailed assessment of its viability and suitability for implementation as a PPP, and sets out the scope and proposed structure of the project. The PPP Project Team will assemble a team of specialist consultants and advisors, who will report to the Project Team and the Project Leader.

Developing a Business Case is an iterative process, in which the scope and structure of a proposed PPP is progressively developed and assessed against the criteria set out in Box 2.

Depending on the nature of the project, it is likely to involve:

- I. Further stakeholder consultations on project needs and options;
- II. Technical feasibility analysis, including identifying costs and risks;
- III. Preparation of concept design drawings;
- IV. Social and environmental impact assessments, including assessment of climate resiliency, and review of management and marketing plans;
- V. Financial and economic analysis of the project and of proposed PPP structures, including estimating revenues, operating and capital costs;
- VI. Review of legislative implications and potential legislative changes;
- VII. Developing key commercial terms for the proposed PPP, including the contract type, allocation of risks and payment mechanisms, following the commercial principles described in Section 5 of this Policy, and assessing the commercial attractiveness of the proposed project, including market sounding of potential operators and financiers;
- VIII. VfM analysis: assessing and articulating the rationale for implementing the project as a PPP under the proposed structure, in terms of VfM for Government and service users; and
- IX. Fiscal analysis: identifying and assessing the level of fiscal support required for the project—both direct and contingent through the risks to be accepted by Government—and the affordability of the support given fiscal priorities and constraints (with reference to the treatment of PPP liabilities described in Section 6 of this Policy).

The Business Case stage will conclude with a presentation of the project's proposed scope and structure, and a summary of the results of the various analyses undertaken, demonstrating compliance of the proposed project with the criteria described in Box 2, and including a budget of the time, human and financial resources required to take the project through to Transaction Implementation (suggesting funding sources, including the national budget and international agencies).

The Business Case report will be carefully reviewed and scrutinized by all relevant agencies and institutions before being submitted to Cabinet, as described further in Section 4.4 on PPP Approvals.

4.3 Transaction Implementation

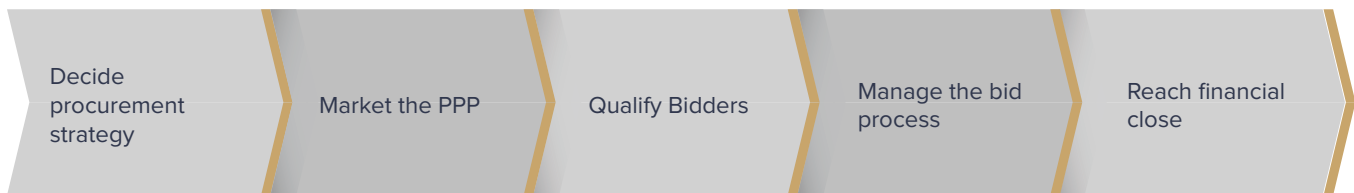
Once Cabinet approval is given to proceed based on results of the Business Case (including making budgetary provision), the PPP Project Team will prepare and implement the PPP transaction. The objectives at the Transaction Implementation stage are two fold:

- i. To identify the most effective and efficient solutions to the proposed project’s objectives—both from technical and VfM perspectives; and
- ii. To select a competent firm or consortium to act as the private developer/operator of the PPP project.

Achieving these objectives require a well-prepared, transparent, competitive transaction process. The five overall steps in Transaction Implementation are shown in Figure 3 below:

Figure 3:

Key Steps in Transaction Implementation



Source: Public-Private Infrastructure Advisory Facility, PPP Reference Guide 3.0, 2017

A PPP transaction is a form of public procurement. As such, PPP transaction processes will be consistent with Guyana’s relevant procurement law or regulations. Principles of transparency to be adopted throughout the Transaction Implementation process are shown in Box 3 below:

Box 3:

Transparent Transaction Processes

To ensure that the objectives of the PPP programme are achieved in practice, the Government will ensure that all PPP projects meet the following standards of transparency:

1. Open market consultation in which information on the project is shared with the industry;
2. International publication of requests for proposals;
3. Selection of the winning bidder on the basis of:
 - Previously announced procedures and criteria
 - Proper justification and notification of decisions
4. Publication of the award of the contract and the justification;
5. Full disclosure of the PPP contract in government’s PPP Core Team website;
6. Registration of the decisions during the selection procedure (so that they can be referred to in disputes); and
7. Review procedures (enabling treated bidders who feel that they have been treated unfairly to file a complaint).

While the specific transaction process may vary depending on project needs, it will typically include the following steps:

1. **Decide on procurement strategy.** In deciding upon a procurement strategy for the transaction, good dialogue with the market early in the process helps ensure project feasibility, bankability and market interest. The proposed risk allocation should be thoroughly analysed early in the process, to achieve VfM, bankability and affordability. The PPP Project Team, with support from the PPP Core Team and technical consultants, will make recommendations on the procurement strategy, for approval by the Steering Committee.
2. **Invite Expressions of Interest (EoIs) and prequalify bidders.** To ascertain the level of market interest and determine whether private parties have the financial and technical capabilities to deliver the project, the

Government will notify the market of the investment opportunity, and invite expressions of interest, and on the basis of responses received select a shortlist of potential bidders. The objective of prequalification is to bring only the best bidders to the table, which will improve the quality of bids and the likelihood of reaching financial close. This process may be initiated in parallel with preparation of detailed transaction documents.

Requests for EoIs will be published in national, regional and global platforms relevant to the sector, and will provide an overview of the project scope, as well as clear guidelines for the submission requirements and criteria for assessing bidder qualifications. This stage will culminate with issuance of a list of prequalified bidders, approved by the PPP Steering Committee as outlined in Section 4.4 of this Policy. On the basis of the market feedback, the Project Team will finalise the PPP structuring and transaction documents.

In case the complexity or characteristics of the project imply a low number of potential bidders, the Prequalification phase may be omitted, in which case bidders will be required to demonstrate satisfaction of qualification criteria upon submission of proposals. Qualification will be assessed before the assessment of proposals, and only the proposals presented by qualified bidders will be considered.

3. **Prepare transaction documents.** To attract high quality bidders and achieve competition in the bidding process, the PPP transaction documents must be comprehensive and well-prepared. PPP documents to be issued to qualified bidders will include, but not be limited to
 - I. Full draft contract agreements, based on the key commercial terms defined in the Business Case, and following the commercial principles set out in Section 5 of this Policy. The nature of contract documentation will vary with the nature of the PPP, particularly whether it involves existing or new assets.
 - II. Request for Proposal (RFP) documents, which should include a detailed description of the bidding process, required bid contents, and bid evaluation criteria.
4. **Issue Request for Proposals (RfP) and manage interactions with bidders.** The Project Team will ensure that all bidders benefit from open and equal access to project information, and that the transaction adheres to the highest standards of transparency and probity. Protocols for bidder interactions during bid preparation will be established in the RfP documentation—these will include a structured, transparent and fair process for bidder feedback and finalisation of the draft PPP contracts. Bidders may request clarifications or changes in selected terms and conditions of the RfP and the draft PPP contracts. In such cases, the following principles should be followed:
 - I. In case certain aspects of the transaction structure are considered “non-negotiable” by the Government, these should be communicated to all bidders, clearly and in writing;
 - II. Bidders should submit requests within the approved dates;
 - III. Responses to bidder requests should also be made in writing;
 - IV. In some cases, bidders may be permitted to submit marked-up copies of the draft transaction documents; and
 - V. All written responses to individual bidder requests to be sent to all bidders.

Where bidders request clarification, the Project Team should seek guidance before responding. For example, if the request for clarification is about existing asset conditions, the Ministry/Agency will be consulted on the response. Similarly, if a request is about a legal clause, the legal advisor should be consulted.

Where bidders request changes to the PPP Contract or evaluation criteria, the PPP Project Team will evaluate the requested changes, and make recommendations to the PPP Steering Committee—which will authorize any changes. Generally speaking, changes made at this stage should be comparatively small, and not significantly change the risk profile of the project. Changes that clarify contractual provisions of the draft contracts, rather than alter their legal interpretation, will generally be acceptable if supported by the Project Team’s legal advisor.

5. **Evaluate and select preferred bidder.** Bidders will submit prescribed bidding packages, giving full details of their qualifications and experience in the relevant field, their technical and financial proposals, and their legal incorporation documents. The process typically would be a two-envelope bidding process: technical and financial bids. In case there was no Prequalification phase, there will be also a third envelope, containing proof that the bidder meets or surpasses the qualification criteria, which will be assessed before technical and financial bids are opened. The Project Team, or an Evaluation Panel appointed by the Project Team, will evaluate bids, following the evaluation criteria and process outlined in the RfP. This will typically involve the following steps:

- i. **Checking for conformity and completeness.** Instructions to bidders should stipulate that incomplete and non-conforming bids may be rejected without being evaluated further.
 - ii. **Technical Evaluation.** The Evaluation Panel will review the technical proposals and evaluate them against the technical criteria established in the RfP. This may involve assessment of the technology proposed, the methods and work plan, and the senior project team. Evaluation will also include assessment of the social and environmental impacts of the projects, and all relevant mitigating factors. Proposals that score below a pre-established minimum level may be rejected, in which case the accompanying financial bids will be returned to the bidder unopened.
 - iii. **Financial evaluation.** The Panel will review the financial proposals. This will start by checking that they are complete and consistent, both internally and with the accompanying technical proposal. The Panel will then score each bidder's financial proposal, based on the financial criteria established in the RfP.
 - iv. **Evaluation Report.** The Evaluation Panel will report to the PPP Project Team on the results of the bid evaluation. The report should specify:
 - a. Which bidders were dropped from consideration because they did not demonstrate qualifications or achieve the minimum technical score;
 - b. Which bidder is evaluated highest overall, including both technical and financial bids, and the ranking of the other bidders; and
 - c. Any risks, uncertainties, or qualifications to the bid documents which could affect the ranking, or the ability to conclude a contract with the highest evaluated bidder.
6. **Finalize contracts.** Once the preferred bidder has been selected, the Government will finalize the PPP contractual agreements with that bidder. Some minor modifications may be necessary to clarify elements of the proposal or contract, but the Government will not incorporate substantive changes to the PPP contract at this stage (that is, changes that could have resulted in a different result from the bidding process).
 7. **Final approval.** The final contract will be re-submitted to Cabinet for final approval before signing. This submission must document any changes from the terms approved at the Business Case stage, and provide a clear rationale for how those changes remain consistent with the PPP criteria set out in Box 2 above.
 8. **Contract execution and financial close.** Once the PPP contracts are signed, several more steps, or conditions precedent may be needed to achieve contract effectiveness and financial close. These may include legislative and/or regulatory changes, and the securing of the required project financing. The Project Team will remain responsible for timely completion of these actions..

After completion of financial close, the Project Team shall prepare a detailed briefing of the transaction process and summarize key aspects of the transaction. This briefing will add to the institutional knowledge of the PPP Core Team, and will be used as a guide by the incoming Contract Management Team.

4.4 Contract Management

The PPP contract will be monitored and managed over its lifetime, to ensure that all parties' obligations are met, and services are delivered as expected. The responsible Government Agency, in consultation with the PPP Core Team, will designate a Contract Management Team and develop the processes and tools for managing the contract. The Contract Management Team will:

1. **Monitor PPP delivery and risk:** Ensure that services are delivered continuously and to a high standard, in accordance with the contract; that risk allocations are maintained in accordance with the contracts, that risks are properly mitigated; and that payments or penalties are made in accordance with contract specifications. This may include use of independent consultants or engineers, and mechanisms for consumer feedback. Performance of the private operator will be measured against, performance indicators and reference levels contractually defined.
2. **Manage change:** Ensure that external risks and opportunities are spotted and changing circumstances acted upon effectively and in a way that achieves VfM; and putting into practice mechanisms defined in the contract to deal with contract adjustments, dispute resolution, and contract termination.
3. **Manage contract expiry and asset handover:** Manage the transition of assets and operations at the end of the contract term, including ensuring these meet contractually-required quality and operational standards.

Government reporting requirements for PPP projects must be aligned as far as possible with broader public investment project monitoring and oversight regulations and legislation.

4.5 Unsolicited Proposals

An unsolicited proposal is a proposal initiated by a private party to undertake a PPP project which was not specifically requested by Government. Unsolicited proposals may allow the GCRG to benefit from private sector innovation and ideas meeting infrastructure needs. However, they also bring challenges. The Government will consider unsolicited proposals that are demonstrated to be of public interest, but only under a framework that preserves competitive pressure, transparency, and fiscal discipline. This PPP Policy considers how unsolicited proposals will be considered and treated.

The GCRG will accept unsolicited proposals, only if they fall into one of three categories:

- i. A solution to a publicly-identified challenge that is unique to the private entity proposing it. For example, the proponent may own assets or technology that make it uniquely able to provide a needed public service;
- ii. An innovative solution to a priority infrastructure or public service challenge—that is, a project that was not already under consideration or development by the Government; and
- iii. A way of taking advantage of new markets, technologies or unique project ideas.

The Unsolicited PPP proposal will be dealt with one of two ways:

Option A: Concept Proposal

If the proposal that is received from a proponent is in a basic concept format or idea, then the proposal will go through the following stages:

- i. An initial identification and screening process to assess the viability of the proposal;
- ii. Review and approval processes as described in Sections 5.1 to 5.3 of this Policy;
- iii. If the project is approved, procurement will follow an open, competitive tender process. The original proponent will not be awarded any special points or privileges in the award of the tender.

Option B: Detailed Proposal

If the project proponent submits a full Business Case, addressing all of the issues listed in Section 5.2 i to ix of this Policy, then the proposal will go through the following stages:

- i. Review and approval processes as described in Sections 5.1 to 5.3 of this Policy;
- ii. If the project is approved, procurement will follow an open, competitive tender process.

In Option B the proponent and the Government will reach agreement (Project Development Agreement) on the cost to the proponent of preparing the Business Case report. The proponent's Business Case report will be made available to all bidders for the project, except that all confidential information contained in the proposal will be identified and protected.

After receiving a concept proposal (Option A), the Government may allow the USP proponent to develop specified feasibility studies during the Business Case stage. If the Government decides such, it will enter into a Project Development Agreement with the USP proponent that outlines the terms under which the USP proponent will undertake these activities. This Project Development Agreement will cover, at the minimum, the compensation structure for the USP Proponent, dissemination of the studies to other Bidders, and areas of confidential information.

If, in the subsequent tender, the original proponent of the unsolicited PPP proposal is not selected as the winning bidder, the winning bidder may be required to compensate the proponent for the costs incurred in preparing the Business Case report, to an amount announced in advance to bidders.

MODULE 5

PPP Commercial Principles

PPP contracts will be designed to achieve the best VfM for the Government and service users. To that end, this Section outlines commercial principles that will guide the preparation of PPP contracts in Guyana. The Government may develop and adopt detailed guidance material and standard PPP contract clauses that encapsulate these principles.

5.1 Risk Allocation and Management

Appropriate allocation of risk between the Government and private parties is critical to successful PPP projects. Project risks will be allocated following the principle that each party bears the risk they are best-placed to manage. This means risks will be allocated to the party best able to:

1. Influence the risk, where possible;
2. Anticipate or respond to the risk factor if it cannot be influenced directly; and
3. Absorb the risk, where it cannot be influenced and its impact cannot be controlled.

Following this principle, the party to which a risk is allocated will also have control over decisions related to the risk factor. Examples of risks to be considered include land acquisition risks, design and construction risks, demand risk, macroeconomic risks such as inflation and foreign exchange rates, regulatory risks and force majeure risks.

Risk allocation will be achieved primarily through the PPP contractual agreements. Allocation mechanisms may include the performance-based payment and penalty mechanisms described in Section 5.2, and where appropriate, provision of Government guarantees or indemnities as a mechanism for accepting or sharing certain project risks. The Government will thereby accept or share only those risks it believes it is best positioned to manage and will not offer general guarantees on overall project returns.

To ensure the intended risk transfer to the private party is achieved in practice, a minimum level of equity finance may be required. Performance bonds may also be required in cases or project stages where the equity exposure of the private party is limited.

The Government may adopt detailed guidance and tools for risk allocation and management, including defining preferred risk allocations.

5.2 Payment Mechanisms and Performance Specifications

The PPP/P3 contract will clearly set out the performance standards required and the mechanism(s) by which the private party will be paid. A key feature of PPP contracts is that these are performance linked, such that remuneration depends on achieving contractually-defined performance standards.

1. **Performance standards** will be output-based—that is, they will define the standards of the asset or service required, rather than specifying how those standards should be achieved. They will also be SMART: Specific, Measurable, Achievable, Realistic, and Time-bound.
2. **Payment mechanisms** by which the private party will be remunerated may include user charges, Government payments or a combination of the two, as follows:
 - I. For PPPs that involve charging users for services, the PPP contract will establish the right of the private party to collect these charges and include as appropriate mechanisms and responsibilities for setting and/or adjusting the level of charges over time.
 - II. Government payments under PPP projects will be made only on delivery of the asset or service to the contractually-specified standards over time. Payments may be linked to availability of the asset or delivery of specific outputs. Government payments may in some cases include capital contributions during construction where this is considered to result in the best VfM—any such payments will be linked with achievement of contractually-defined construction milestones. The contract will define the timing and mechanism by which Government payments will be made.

In either case, the PPP contract may also define bonuses or penalties for achieving or failing to achieve clearly-defined performance targets. The PPP contract may also require the private operator to post performance bond(s), to ensure compliance with contractual minimum standards.

Given the long-term nature of PPP projects, unpredictable changes over the lifetime of the contract are inevitable. PPP contracts will therefore include appropriate mechanisms by which services or payments may be adjusted in response to changing circumstances. Such adjustment mechanisms will aim to create a clear process and boundaries for change.

5.3 Refinancing and Changes in Ownership

When a PPP is being implemented, changes to the project risk profile or in capital markets may mean the private party can replace or renegotiate its original debt on more favourable terms. Each PPP contract will set out how the gains from refinancing will be determined and treated. The preferred approach will be to split such gains 50:50 between the public and private parties to the contract. Regarding changes in the ownership structure of the private operator, the Government's prior authorization will be required for a shareholding change that results in a change of control of the private operator, however changes in shareholdings that do not affect the control of the project company are only subject to prior communication.

5.4 Dispute Resolution Mechanisms

Due to the long term and complex nature of PPP contracts, differences in interpretation can arise, leading to disputes. Each PPP contract will establish a resolution process to ensure disputes are resolved quickly and efficiently, without interruption of service.

5.5 Termination Provisions

Upon termination of the PPP contract, the project assets will revert to the Government. A termination date will be clearly set in the PPP contract, along with arrangements for contract close and asset handover. The PPP contract will also set out circumstances that would allow for early termination and any financial consequences. The PPP contract and a direct agreement between the Government and lenders will establish step-in rights allowing lenders to replace the concessionaire, under certain conditions, instead of early termination. While the latter may vary by project, the Government will generally not make termination payments that include compensation to equity holders due to private party default.

5.6 Renegotiation

PPP contracts will be carefully designed to minimize the need for renegotiation during the contractual term, by comprehensively allocating risks and building in appropriate mechanisms for dealing with change. Renegotiations will be approached with caution, given the absence of competitive pressure on the private party. The Government will accept an offer for renegotiation only if it believes that renegotiation is likely to improve VfM and if the same ends cannot be achieved within the contract.

Any proposed renegotiation will be approached following the same principles, criteria and analysis as a new PPP contract. Cabinet approval will be required for the revised contract. Where renegotiation requires adjustment to contractual payments, benchmarking or market testing will be employed where possible in lieu of a competitive process to help ensure VfM.

MODULE 6

Fiscal Management and Accounting for PPPs

Under PPP projects, the private party is typically responsible for raising the financing needed for construction and commissioning. Nonetheless, PPPs typically create fiscal obligations for the Government, which can in some cases be similar to those arising from traditionally-procured projects financed by Government debt. PPP fiscal obligations may be direct—that is, where the payment need is known—or contingent—where the occurrence, timing, and magnitude of a payment depends on some uncertain future event.

The Government of Guyana is committed to responsible management of its fiscal commitments arising from PPP projects. This includes identifying and appraising the fiscal implications of all proposed PPPs and ensuring these are in line with fiscal priorities, as described in Section 4 of this Policy.

It also includes recognizing and reporting fiscal commitments to PPPs in public financial plans, reports, and accounts.

Following international practice¹, the Government will determine as follows when and how PPP projects and their associated liabilities should be recognized as contributing to public debt:

1. For 'government-pays' PPPs—where the revenue stream to the private party comprises payments from the responsible government entity - the Government will recognize and include in measures of public financial liabilities an amount equal to the value of the PPP asset
2. 'User-pays' PPPs will not generally be considered as creating financial liabilities that should be recognized and factored. Nonetheless, where these projects involve fiscal risk through the provision of Government guarantees or other risk-sharing mechanisms, the associated contingent liabilities will be disclosed in notes to public financial statements and reported alongside information on public financial liabilities in relevant key financial reports. These contingent liabilities will be recognized as public liabilities only if payment is considered probable.

For PPP projects involving a combination of government and user payments, the treatment in accounts and public financial reporting will be split accordingly.

¹ This approach is based on the principles set out in the International Public Sector Accounting Standard (IPSAS) 32, which defines how governments should account for PPP liabilities, and IPSAS 19, which defines the treatment of contingent liabilities.

MODULE 7

Transparency and Accountability

The GCRG is committed to a fully transparent process that ensures that information about PPP projects and the performance of the PPP programme is publicly available. This will enable independent auditing entities and the public to hold the Government accountable for its management of the PPP programme. To this end, the Government will disclose PPP project and programme information as follows:

1. Information on each potential PPP project and invitation for Expressions of Interest will be published as part of the tender process;
2. PPP contracts will be published as soon as they become effective, along with a summary of the key project features and commercial terms. Certain contractual details may be excluded to protect commercially sensitive information—but, considering the output-based characteristics of such contracts, commercially sensitive information will not generally be included, creating an expectation of full contract disclosure;
3. Contract changes will also be published as soon as they become effective; and
4. Performance data of each active PPP will be publicly available.

PPP projects and the PPP programme as a whole may be periodically audited to assess whether the provisions of this policy have been followed, and whether the resultant projects are achieving the stated aims of the policy. External advisors may be contracted to provide appropriate expertise in assessing PPP project quality.

ANNEX 1

Common PPP Structures

PPP contracts can be structured in many ways, to address different circumstances and needs of individual infrastructure projects. Terms like “concessions”, “joint-ventures”, “management contracts” and “privatizations” are used with imprecise meanings; adding to the confusion that frequently exists as to what constitutes a Public-Private Partnership. Public and private sector parties commonly specify the structure of the PPP in the contract; the following are the principal contract types:

DBFOM: Design Build Finance Operate Maintain

This could be described as the “classic” PPP structure. Under the Design-Build-Finance-Operate-Maintain (“DBFOM”) approach, responsibility for designing, building, financing, operating and maintaining the asset are bundled together and transferred to the private operator. There are many variations in DBFOM arrangements, particularly in the degree to which the public sector transfers financial and technical responsibilities to the private sector. All DBFOM projects, however, are either partially or wholly financed by debt; secured by the private partner. There is a great deal of overlap in PPP nomenclature, and DBFOM could be said to include variants of the Build Operate Transfer (“BOT”) approach.

Under PPP structures, the concept of “ownership” of assets is different to the traditional concept of ownership. Under PPPs, the private partner is regarded as the “owner” of the asset only in economic terms; the private party can make economic use of the asset, under specified contractual terms. However, the asset often remains, in legal terms, owned by the government. Thus, in Jamaica’s Highway 2000 PPP project, the private sector operators may be said to own the assets, but they do not “own the road”.

DBFM: Design Build Finance Maintain

The Design Build Finance Maintain (“DBFM”) structure is similar to the DBFOM. However, under a DBFM approach, the private party is not responsible for “operations” of the asset (except for maintenance and some technical services) in the term of the agreement. Caribbean government agencies have structured several PPP projects using the DBFM structure in recent years. Under this structure, the private operator maintains the buildings and the technical aspects of the facility; leaving the government to provide the services.

BOT: Build Operate Transfer

Under the Build Operate Transfer (“BOT”) approach, the private party constructs the assets to the specifications agreed to by the contracting authority; operates the assets for the period specified in the contract; and then transfers the asset back to the agency at the end of the contractual period. At this time, the contracting authority could either (i) resume operating responsibility for the asset itself; (ii) re-contract the operations to the original contract holder; or (iii) re-tender the contract in a competitive transaction. Caribbean governments have employed the BOT approach to implement PPP projects across a variety of sectors and assets. BOT PPP projects have been particularly common in the transportation sector.

BOLT: Build Own Lease Transfer

Under a Build Own Lease Transfer (“BOLT”) structure, the private sector party constructs and owns the facility (design could be by either the public or private party), leases the facility to the public agency over a long-term period, then at the end of the lease period, transfers ownership of the facility to the public party. The chief advantage of the BOLT model is that it removes the burden of raising the finances for the project from the public agency, and places it on the private party. This way the BOLT developer assumes all the risk; the risk of raising the project financing and the risk during the construction period.

In the Caribbean region, BOLT arrangements have frequently been used by governments for the financing and construction of new office buildings and other facilities. One of the advantages of a BOLT contract is that it relieves the government of the burden of raising finance for the project, and transfers the risks of construction overruns and delays onto the private party. For example, the Barbados Water Authority (BWA) entered a BOLT arrangement with a private party for the financing and construction of its new headquarters building.

BOO: Build Own Operate

Under a Build Own Operate (“BOO”) structure, the private sector contractor constructs and operates a facility in perpetuity, without ever transferring ownership to a public agency. The legal title to the facility remains with the private sector, and there is no obligation for the public agency to purchase the facility or assume the title, at the end of the contract period. In the energy sector, Independent Power Producers (IPPs) are a common form of BOO arrangement. Government agencies in the Dominican Republic have commonly used the BOO structure for IPP projects. In 2000, the government of the Dominican Republic entered a BOO agreement with the private sector for the San Pedro de Macoris Power Plant project. The IDB provided a risk guarantee covering US \$144 million of funding, enabling the project to receive a favourable credit rating. Jamaica has also made extensive use of BOO structures in the energy sector.

OMM: Operations, Maintenance & Management

At the light end of the PPP spectrum; the Operations, Maintenance & Management (“OMM”) contract is an arrangement (also called a Management Contract), whereby a public agency contracts with a private partner to operate, maintain and manage a facility. Under this contract option the public agency retains ownership of the facility but the private partner is responsible for management, operation of the facility, under a long-term contract. The private operator may invest some of its own capital, for example in the provision of operating supplies and equipment, and will perform under the contract in order to recover the investment and earn a reasonable return. In the Caribbean, examples of this type of contract can be found in the tourism sector, where governments build hotels and give them out to private hotel companies to market and manage, such as the Hilton Hotels in Barbados and Trinidad and Tobago, both of which have operated successfully for several decades.

To obtain greater private sector efficiencies, a variant is to structure a Performance-Based Management Contract (PBMC), where a significant portion of the operator’s income is earned by improving performance, as defined through Key Performance Indicators (KPIs). This could also include requiring the operator to invest, for example, in machinery and equipment, to improve efficiency. Under these PBMC structures, the operator takes on more risk than under standard management contracts. However, unless the private operator takes on a significant degree of financial risk (“skin in the game”), OMM Contracts typically would not be classed as PPPs.



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