MINISTRY OF ECONOMY

PUBLIC PRIVATE PARTNERSHIP POLICY

2019

1. INTRODUCTION

The Government of the Republic of Fiji (Government) is committed to improving the quality of economic and social infrastructure across the country.

Over the years, governments around the globe have been exploring new and innovative ways of funding infrastructure projects and related services. The funding of infrastructure projects has always been predominantly perceived to be the responsibility of the Government. However, the Government also recognises that the public and private sectors both have roles to play in delivering the high-quality, responsive, resilient and sustainable infrastructure services that Fiji needs.

A Public Private Partnership (PPP) is a proven infrastructure procurement method that in the appropriate circumstances can make the best use of the resources of both the public and private sectors. PPPs using private finance are one way to meet the challenge of procuring productive infrastructure. However, PPP in infrastructure is a relatively new experience in most developing countries in the Asia Pacific region.

PPPs will provide much-needed resources for improving infrastructure. Crucially, PPPs will also improve the value achieved from Government resources committed to these sectors. The Government's decision to implement a project as a PPP will be based on careful consideration of whether doing so will provide the best value for money.

Achieving value for money is a key requirement of the Government and is a combination of the service outcome to be delivered by the private sector, together with the degree of risk transfer and financial implications for the Government.

However, PPP contracts are more complex to prepare, procure, and manage than traditional public procurement contracts and hence present new challenges and risks. This PPP Policy aims to provide a framework for managing PPPs in Fiji in a way that capitalises on these value drivers and manages the associated risks.

2. PURPOSE

2.1. The aim of the PPP Policy is to ensure delivery of improved services and better value for money, primarily through appropriate risk transfer, encouraging innovation, greater asset utilisation and integrated whole-of-life management, underpinned by private financing. In addition, the PPP Policy will ensure a transparent and consistent PPP process to achieve value for money.

2.2. The Public Private Partnerships Act 2006 (PPP Act) was repealed in 2016 as the PPP Act contained certain restrictions which discouraged investment. It was thereafter agreed that the PPP Act be substituted with a policy framework.

2.3. This PPP Policy sets out the following:

- PPP definition, and the essential features of PPP contracts;
- objectives and scope of the PPP programme, in the context of Fiji's development plans;
- processes by which PPP projects will be identified, developed, procured and managed and how the Government will treat unsolicited proposals;
- institutional responsibilities for the PPP programme, and for developing, implementing and approving PPP projects;
- key commercial principles by which PPP contracts will be structured; and
- approach to managing the fiscal implications of PPP projects.

2.4. This PPP Policy provides a high level framework and will be supported by detailed guidance material and tools intended to clarify and help Government officials meet the requirements set out in this policy.

3. APPLICATION

3.1. This PPP Policy shall be applied to new PPP projects undertaken by the Government and shall not apply to any PPP projects that are contemplated or being undertaken at the time of publication of this PPP Policy.

4. RELATED LEGISLATION AND DOCUMENTS

4.1. The following laws were taken into consideration while developing this PPP Policy:

- Financial Management Act 2004
- Procurement Regulations 2010
- Companies Act 2015

5. LIST OF ABBREVIATIONS

BOO	Build Own Operate
BOLT	Build Own Lease Transfer
BOT	Build Operate Transfer
DBFO	Design Build Finance Operate

PPP	Public Private Partnership
SPV	Special Purpose Vehicle
Vfm	Value for money

6. PPP DEFINITION

6.1. What is a PPP?

6.1.1. A PPP is a contractual arrangement between a Government agency and a single private sector party for the provision of public services and, in particular, the provision of public infrastructure and related services, over time.

6.1.2. PPPs differ to traditional Government procurement in that various elements of a PPP such as design, construction, finance, maintenance and often operations are bundled into a single contract. The focus of this contract is the service outputs to be provided over time by the private sector party. In contrast, traditional Government procurement involves contracts for the building of an asset without any ongoing related contractual service requirement or one-off contracts for the provision of services (e.g. consultancy, catering, maintenance and repairs).

6.1.3. PPPs are also different to privatisations. Privatisation means the transfer of an existing Government entity or assets to the private sector in perpetuity, through means such as a share or asset sale or management buy-out. The Government's ongoing role with fully privatised entities is limited, at most, to a regulatory role. In contrast, in a PPP, the Government remains ultimately accountable for the delivery of the public services and uses its powers under the PPP contract to ensure that the private sector partner meets the contractual service requirements throughout the duration of the contract term. Additionally, in a PPP, assets generally revert to the Government at contract expiry.

6.1.4. PPPs can take a variety of forms but generally possess the following common characteristics:

- clearly specified measurable service outputs;
- transfer of management responsibility for a public asset to the private party over the duration of a long-term contract. This may involve financing, designing, building or rehabilitating, maintaining and operating the public asset and associated services; or some subset of these functions;
- remuneration of 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 the Government, or by a combination of the two; compensation or penalties may also be payable to the

Government by the private party for failure to meet contractually-specified or regulatory standards;

- allocation of risk to the public and private parties clearly, comprehensively and in a way that achieves value for money by ensuring each party bears those risks they are best suited to manage;
- for performance-based maintenance contracts or operation and maintenance contracts, the contract term is typically from 3 to 10 years; and
- in PPPs, where the private sector party provides new infrastructure and/or rehabilitates existing infrastructure:
  - the contracts are generally relatively longer, up to 20 years or more; and
  - the assets are returned to the Government at contract expiry for nil or minimal financial consideration.

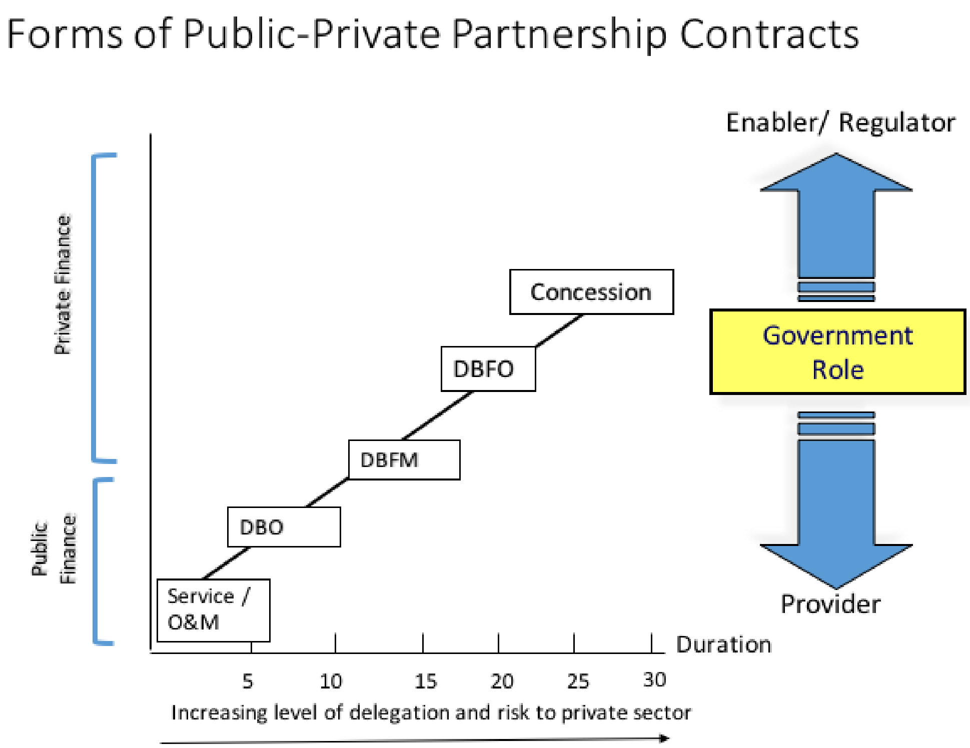
6.2. Types of PPPs

6.2.1. While there can be a broad range of PPPs, the table below provides the typical categorisation of the PPP models together with their main characteristics:

Broad Category	Main variants	Ownership of capital assets	Responsibility of investment	Assumption of risk	Duration of contract (years)
Supply and management contract	Outsourcing	Public	Public	Public	1-3
	Maintenance management	Public	Public/Private	Private/Public	3-5
	Operational management	Public	Public	Public	3-5
Affermage/Lease	Affermage	Public	Public	Private/Public	5-20
	Lease	Public	Public	Private/Public	5-20
Concessions	Franchise	Public/Private	Private/Public	Private/Public	3-10
	Build-Operate-Transfer (BOT)	Public/Private	Private/Public	Private/Public	15-30
Private ownership of assets and Private Finance Initiative type	Build-Own-Operate (BOO)/Design-Build-Finance-Operate (DBFO)	Private	Private	Private	Indefinite
	Private Finance Initiative	Private/Public	Private	Private/Public	10-20

6.2.2. The roles of the public and private sector vary depending on the form of the PPP, as does the allocation of risk. This is illustrated in Figure 1. Successful PPPs allocate risk to the party best suited to manage it.

Figure 1 – Different Forms of PPPs



6.2.3. The private sector party in a PPP is usually a consortium of equity partners who collectively create a special purpose vehicle (SPV) that will be the contracting party with Government. The consortium may include specialist equity investors, constructors and/or operators among others. All Government dealings with the private sector party generally will occur through the SPV, which will need to be appropriately resourced by the equity partners.

7. OBJECTIVES AND SCOPE

7.1. The Government will use PPPs as an instrument to implement priority investment and infrastructure projects that are aligned with the Government's development objectives, where doing so is expected to provide the best value for scarce resources.

7.2. The objective of the PPP programme is to make the best use of the financial and technical resources of the public and private sectors to provide high-quality, responsive, resilient and sustainable public assets and services in a way that achieves value for money for the Government and service users.

7.3. PPPs will be used to deliver high-priority projects that are central to achieving Fiji's overall development objectives, where the use of PPPs is expected to deliver greater value for money than other procurement and implementation alternatives. PPPs will be utilised to:

- achieve the Government's current and future development plans and strategies and to expand access to infrastructure and services to the people of Fiji;
- improve the efficiency and quality in the delivery of infrastructure and services by encouraging private sector competition that in turn fosters innovation (including technical and management expertise and technology);
- ensure that the projects being undertaken by the ministries or agencies comply with the regulatory standards (National Building Code, etc.);
- mobilise private sector investments in infrastructure projects and services and to gain from the private sector's capacity and incentives for project completion, on-time delivery and maintenance throughout the life of the project;
- achieve value for money for the Government on a whole-of-life cost basis through optimal risk transfer and risk management, subject to such costs being within the Government's fiscal and debt management strategies;
- create value added opportunities through synergies between the public and private sectors; and
- promote capacity development and skills transfer in the portfolio agencies as well as the PPP Unit in the undertaking of complex commercial transactions.

7.4. The Government will therefore consider a PPP for proposed investment projects that have the following characteristics:

- **Assets with significant investment value**. Since the cost of preparing and managing a PPP contract is significant for both public and private parties, a PPP will typically only be considered for projects with a minimum investment value of $20m. However, smaller projects could be considered on a case by case basis;
- **Output requirements that can be clearly specified and monitored**. PPPs will therefore be used only for delivering assets and services where outputs can be clearly and comprehensively contractually specified, and monitored in practice;
- **Outputs address stable needs over the contract lifetime**. The long-term nature of PPP contracts reduces the flexibility of the Government 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;
- **Scope for innovation or improved infrastructure performance**. The use of PPPs will be focussed on those sectors and services that are currently under-performing, or where Fiji could benefit most from introducing private sector and international experience and expertise;

- **Ability to generate revenues beyond Government payments.** To maximise benefits in alleviating fiscal constraints, the use of PPPs will be focused on projects that are expected to generate revenues, whether from charging service users or ancillary sources;
- **Opportunities for significant risk transfer and innovation**; and
- **Sufficient bidder appetite**.

7.5. All projects proposed by Fijian Government ministries, local government, departments or agencies are subject to this policy. Application of the policy to public enterprises will be considered on a project-by-project basis.

7.6. This policy does not apply to the procurement of one-off services, such as consultancy or catering, or the supply of turnkey infrastructure, by Government agencies. These forms of procurement are not PPPs.

7.7. This PPP Policy will be fully consistent with the responsibilities for financial management and accountability as outlined in the Financial Management Act 2004. The annual National Budget will also continue as the central process for the ultimate prioritisation of expenditure (including debt financing) by the Government.

8. PPP PROCESSES AND APPROVALS

8.1. Most commonly, PPP projects will be initiated by the Government or could originate from an unsolicited bid by a private party. This can occur in a variety of ways, particularly:

- a Government agency contacts the PPP Unit directly when they have a proposal that they believe may be suitable for PPP delivery;
- the Ministry of Economy refers proposals it identifies as potential PPP projects, including those submitted as part of a Government agency's Budget Submission, to the PPP Unit; or
- the PPP Unit identifies projects that may be suitable for PPP delivery.

8.2. For projects that the PPP Unit assesses as being potentially suitable PPP candidate projects, the sponsoring Government agency will be asked to indicate in its Budget Submission through the Public Sector Investment Program, stating that the project is being submitted as a proposed PPP project.

8.3. To achieve the objectives stated above, all PPP projects in Fiji will be developed and implemented following a consistent and transparent process. The PPP process consists of four stages as shown in Figure 2 and as detailed below:

1. **Identifying and screening potential PPP projects** - The aim of this stage is to select from among these priority projects those that are expected to provide better value for money, if implemented as PPPs.
2. **Developing a business case** - A project business case sets out the scope and proposed structure of the project, and a detailed assessment of its viability and suitability for implementation as a PPP. The business case will be carefully reviewed and scrutinised by the PPP Project Working Group before being submitted to Cabinet through the Minister for Economy.
3. **Preparing for and implementing a PPP transaction** - Once Cabinet approval is given to proceed based on the business case, the PPP Project Working Group will prepare and implement the PPP transaction. The objective at this stage is two-fold: first, to select a competent firm or consortium to act as the private developer/operator; and second, to identify the most effective and efficient solutions to the proposed project's objectives—both from technical, and value for money perspectives. The specific transaction process may vary depending on project needs, it will typically include the following steps:
    a. invite Expressions of Interest (EoIs) and identify qualified bidders;
    b. prepare transaction documents;
    c. issue Request for Proposals (RFP) and manage interactions with bidders;
    d. evaluate and select preferred bidder;
    e. finalise contract;
    f. final approval to sign contract from Cabinet; and
    g. contract execution and financial close.
4. **Managing PPP contracts** - The PPP contract will be monitored and managed over its lifetime to ensure all parties' obligations are met, and services are delivered as expected.

Figure 2 – PPP Process and Approvals

PROJECT STAGES		RESPONSIBILITY	APPROVAL
Identify Priority Project		**Relevant Agency or Public Enterprises or PPP Unit or Ministry of Economy**	**Relevant Agency or Public Enterprises or PPP Unit or Ministry of Economy**
Identification and Screening	•Initial screening of priority projects that are expected to provide better VfM	**PPP Unit and PPP Project Working Group**	**Minister for Economy**
Business Case	•Conduct project feasibility analysis •Prepare PPP structure •Appraise PPP Project (project approval, delivery method and funding approval).	**PPP Unit and PPP Project Working Group**	**Cabinet approves the Business Case**
Transaction	•Invite Expressions of Interest (EoIs) and identify qualified bidders •Prepare transaction documents •Issue Request for Proposals (RFP) and manage interactions with bidders •Evaluate and select preferred bidder •Finalise contract	**PPP Unit and PPP Project Working Group**	**Minister for Economy**
Contract Execution	•Final approval and signing of contract	**PPP Project Working Group**	**Cabinet provides final approval**
Contract Management	•Establish contract management structures • Monitor and manage PPP delivery and risk •Deal with change	**PPP Project Working Group or PPP Unit**	**Minister for Economy**

9. PPP Project Appraisal Criteria

9.1. 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 four criteria:

- ***Feasibility and economic viability of the project -*** the underlying project makes sense, in that it is central to policy priorities and sector and infrastructure plans; technically, legally, environmentally and socially feasible, economically cost-benefit justified and the least cost solution to the identified service need;
- ***Fiscal responsibility -*** the project's cost to the Government is in line with fiscal priorities, and risks retained by the Government would not be fiscally destabilising;
- ***Commercial viability*** - there are qualified private parties available to do the project, and the project is expected to provide a commercial rate of return sufficient to attract such parties and create competitive tension; and
- ***Value for money*** - the proposed PPP is expected to achieve value for money compared to alternative implementation options; and compared to other PPP structures (that is, the PPP is structured well).

9.2. Detailed guidance and tools will be prepared and adopted to support responsible Government decisions at each stage.

10. INSTITUTIONAL RESPONSIBILITIES FOR PPPS

10.1. Roles of Institutions

10.1.1. Developing and implementing PPP projects will require close coordination between several Government agencies. Given that Fiji is in the initial phases of the PPP programme, the Government will utilise the existing resources and unit structures to undertake PPP projects and develop further based on the experience.

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

10.1.3. The key agencies or ministries to be involved in the oversight, review, analysis, implementation and monitoring of a PPP project are:

- ***Ministry of Economy –*** will have lead responsibility for PPP matters that is, review, analysis, implementation and monitoring. Additionally, the Ministry also plays a critical role given the potential for PPP projects to require budget funding for investment and/or operation and also through the potential for PPP contracts to expose the Government to both actual and contingent fiscal liabilities;

- ***Office of the Solicitor-General –*** will provide legal guidance, as PPP projects involve contractual dealings;
- ***Relevant agency –*** PPP projects would also be the responsibility of the relevant ministry or Government agency; and
- ***PPP advisor –*** the PPP advisor or transaction advisor would provide project specific expertise and skills in various fields such as, technical, finance, legal, market/demand, tax, accounting and insurance.

10.2. **PPP Project Working Group**

10.2.1. The composition of the PPP Project Working Group will be determined on a case by case basis as approved by the Minister for Economy. The PPP Project Working Group will report directly to the Minister for Economy through the Chair.

10.2.2. The PPP Project Working Group will provide direction and oversee the PPP programme and take on the following responsibilities:

- select projects to be developed as a PPP and endorse projects for development of a business case, based on an initial screening by the PPP Unit;
- hold PPP execution teams accountable for developing and implementing PPP projects, following an agreed project timeline; and
- guide contract managers as needed to manage change during the lifetime of the PPP contract.

10.3. **PPP Unit**

10.3.1. The PPP Unit as appointed by the Minister for Economy will act as Secretariat to the PPP Project Working Group, and as a focal point for the day-to-day management of the PPP programme. The responsibilities would include:

- ***Develop and disseminate PPP policy*** - advice 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;
- ***Regulate the PPP programme*** - ensure that all PPP projects are developed in accordance with PPP policy, principles and processes. This includes ensuring projects are properly reviewed against required criteria at each stage; that review processes are completed; that Cabinet submissions include all the information required for a well-informed decision; and that PPP projects are managed well;
- ***Assessment of suitability*** – assessing project proposals for PPP delivery, and development and maintenance of a PPP project pipeline;
- ***Contribute to development of PPP projects*** - responsible for developing the business case for each PPP project and implementing the PPP transaction; and

- ***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 Fiji, and systematically analysing the success of those projects - what has worked and what has not - to inform the development of the PPP programme.

11. PPP COMMERCIAL PRINCIPLES

11.1. PPP contracts will be designed to achieve the best value for money for the Government and service users. The following commercial principles will guide the preparation of PPP contracts in Fiji and the Government may develop and adopt detailed guidance material and standard PPP contract clauses that capture these principles:

- use of competitive procurement processes in line with the Procurement Regulations 2010;
- prioritise projects that meet urgent public infrastructure service needs and whose proposed outcomes are consistent with the Government's fiscal and debt management policies;
- use rigorous project governance arrangements that provide predictability, transparency and fairness of process for bidders; and
- use consistent processes and approaches to risk allocation to ensure value for money outcomes and reduce transaction cost and time.

12. FISCAL MANAGEMENT AND ACCOUNTING FOR PPPs

12.1. 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.

12.2. 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.

12.3. The Government 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.

12.4. Following international practice **(International Public Sector Accounting Standard (IPSAS) 32)**, the Government will determine when and how PPP projects and their associated liabilities should be recognised as contributing to public debt:

- ***For 'Government-pays' PPPs*** - where the revenue stream to the private party comprises payments from the responsible Government entity. The Government will recognise and include in measures of public debt a liability equal to the value of the PPP asset; and
- ***'User-pays' PPPs*** - will not generally be considered as creating liabilities that should be recognised and factored into public debt measures. 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 debt in the Contingent Liability Report as prepared by Ministry of Economy. These contingent liabilities will be recognised as public liabilities only if payment is considered probable.

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

13. UNSOLICITED BIDS

13.1. An unsolicited proposal is a proposal initiated by a private party to undertake a PPP project which was not specifically requested by the Government. Unsolicited proposals may allow the Government to benefit from private sector innovation and ideas meeting infrastructure needs. The Government will consider unsolicited proposals that are demonstrated to be of public interest on a case by case basis.