

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

বৃহস্পতিবার, মে ৫, ২০১৬

প্রধানমন্ত্রীর কার্যালয়
পাবলিক প্রাইভেট পার্টনারশিপ কর্তৃপক্ষ
প্রজ্ঞাপন

ঢাকা, ২০ বৈশাখ, ১৪২৩/৩ মে, ২০১৬

নং পিপিপি/বোর্ড অব গভর্নরস-২৯৮/২০১৫-৪২৮—দেশের বিভিন্ন খাতের অবকাঠামোর অনুকূলে দেশী-বিদেশী বিনিয়োগকারীদের বিনিয়োগে আকৃষ্ট করার জন্য বাংলাদেশ সরকারি-বেসরকারি অংশীদারিত্ব আইন, ২০১৫ এর অধীনে বেসরকারি অংশীদার নির্বাচন প্রক্রিয়া নির্ধারণে Procurement Guideline for PPP Projects, 2016 এবং অযাচিত প্রস্তাব (Unsolicited Proposal) মূল্যায়নে Guidelines for Unsolicited Proposals, 2016 জারি করা হলো।

২। ইহা জনস্বার্থে জারি করা হলো এবং অবিলম্বে কার্যকর হবে।

পিপিপি কর্তৃপক্ষের বোর্ড অব গভর্নরস এর অনুমোদনক্রমে

এস আফসর এইচ উদ্দিন
প্রধান নির্বাহী কর্মকর্তা।

(৬৭২১)

মূল্য : টাকা ৫২.০০

Procurement Guidelines for PPP Projects, 2016

CHAPTER I: GENERAL PROVISIONS

1 Short Title and Commencement

- 1.1 These Guidelines may be called the Procurement Guidelines for PPP Projects, 2016, and referred herein as the “Guidelines” or “PGP 2016”. These Guidelines shall be effective immediately upon being published in the official Gazette.

2 Objectives

- 2.1 The selection of a Private Partner for the delivery of PPP Projects is based on 4 (four) phases. These include:
- Identification Phase
 - Development Phase
 - Bidding Phase
 - Approval and Award Phase
- 2.2 These Guidelines set out the process, timescales and institutional roles and responsibilities for delivering each of the phases required for the selection of a Private Partner.
- 2.3 The objectives of these Guidelines are to:
- ensure that PPP Projects are thoroughly developed in order to maximise their potential for successful delivery and implementation;
 - enable efficient processing of PPP Projects in order to minimise the time taken for development and delivery;
 - establish a range of alternative Private Partner selection mechanisms that provide flexible options for the delivery of different types of PPP Projects;
 - promote transparency and fairness while maximising the potential for successful selection.

3 Scope and Applicability of these Guidelines

- 3.1 Unless stated otherwise, these Guidelines shall apply where the Contracting Authority is selecting a Private Partner for the delivery of its PPP Project under the framework of the PPP Act.
- 3.2 In case of any incomplete work which was initiated under the repealed Policy and Strategy for Public-Private Partnership (PPP), 2010 (“PPP Policy”), that work shall be completed in accordance with the provisions of the repealed PPP Policy as if it has not been repealed and these Guidelines shall not be applicable only to such extent.
- 3.3 Subject to the foregoing, these Guidelines shall immediately be applicable for the rest of the procurement process to be undertaken after completion of the above mentioned work initiated under the repealed PPP Policy.

- 3.4 In case of Unsolicited Proposals, these Guidelines shall apply subject to incorporation of the requirements of the Guidelines for Implementation of Unsolicited Proposals, 2016, as issued under Section 20 of the PPP Act.
- 3.5 These Guidelines shall not be applicable for national priority projects developed under Section 15 of the PPP Act.
- 3.6 Notwithstanding anything contained in any other provision of these Guidelines, for PPP Projects to be delivered through government to government (“G2G”) partnerships, the Memorandum of Understanding (“MoU”) and/or any other agreement entered into by the Government with any other sovereign government shall be applicable.
- 3.7 In cases where at least 50% of the financing (loan, equity, credit or grant) for the delivery of the PPP Project is being sourced from a multilateral or bilateral development partner, a multilateral or bilateral development bank, a foreign sovereign government or by one of its state owned entities, on the basis of an agreement reached between that entity or its parent organization and the Government or any of its line ministry, division or authority, then the bidding process to be carried out will be based on that agreement subject to any policies, rules, regulations, guidance, guidelines or notifications issued in this regard under the PPP Act. The details of the bidding process as set out in Chapter IV of these Guidelines shall not apply, unless stated otherwise in the agreement.

4 Definitions

- 4.1 In these Guidelines, unless there is anything repugnant in the subject or context:
 - (i) **“Addenda”** or **“Addendum”** means a document which will form an integral part of the RFQ, RFP or IFB (as applicable) issued by the Contracting Authority prior to the Due Date and which will supplement the documents and schedules in the RFQ, RFP or IFB (as applicable).
 - (ii) **“Applicable Line Ministry”** means the ministry of the People's Republic of Bangladesh which is mandated under the Rules of Business for the delivery of goods and services on a PPP basis.
 - (iii) **“Applicant”** means the entity or a Consortium who submitted an Application in response to the Request for Qualification (“RFQ”) document. The term Applicant used herein shall apply to both a single entity and a Consortium.
 - (iv) **“Application”** means the application that contains the requirements of the RFQ document which is submitted by the Applicants in order to be pre-qualified and thereafter shortlisted for the PPP Project.

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- (v) **“Approval and Award Phase”** means the fourth phase in the process for the selection of a Private Partner for the delivery of a PPP Project and which has been described in more detail in Chapter V of these Guidelines.
- (vi) **“BAFO”** means Best And Final Offer.
- (vii) **“BDT”** means Bangladeshi Taka.
- (viii) **“Bid”** means the Bidder’s written offer based on the covenants, terms and conditions as contained in the IFB for the PPP Project. This includes the Technical Bid and the Financial Bid.
- (ix) **“Bidder”** means the entity or Consortium of more than one entity who submits a Bid in response to the IFB. The term Bidder used herein shall apply to both a single entity and a Consortium.
- (x) **“Bidding Phase”** means the third phase in the process for the selection of a Private Partner for the delivery of a PPP Project and which has been described in more detail in Chapter IV of these Guidelines.
- (xi) **“Bid Security”** means the bid security of the amount specified in the RFP or IFB document (as applicable).
- (xii) **“Board of Governors”** means the board of governors of the PPP Authority as detailed in Section 7 of the PPP Act.
- (xiii) **“CCEA”** means Cabinet Committee on Economic Affairs as defined in the PPP Act.
- (xiv) **“Consortium”** means a group of entities coming together to submit an Application, Proposal or Bid (as applicable) and shall include a Lead Member and up to 4 (four) Non-Lead Members.
- (xv) **“Consortium Member”** means a member of a Consortium (including both Lead Member and Non-Lead Members).
- (xvi) **“Contracting Authority”** means a line ministry or division; or any office or directorate or corporation or statutory organization or local government or any similar organization under the line ministry or its division; or the PPP Authority, in the event that the PPP Authority is given the duty to carry out the functions from the time of taking up/initiating a PPP Project up until the execution of the PPP Contract and which proposes to enter into a PPP Contract or other contractual agreement with the Preferred Bidder and/or the Project Company.
- (xvii) **“Corrigenda”** or **“Corrigendum”** means a document issued prior to the Due Date by the Contracting Authority to correct any errors and which will form an integral part of the RFQ, RFP or IFB (as applicable).
- (xviii) **“Data Room”** means an online virtual data room providing certain information and documents relevant to the PPP Project.

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- (xix) **“Day”** means calendar day. For the purpose of this definition, if something becomes due or needs to be done on a day that is a non-working day, it shall be deemed to have become due or be required to be done on the immediately following working-day.
- (xx) **“Development Phase”** means the second phase in the process for the selection of a Private Partner for the delivery of a PPP Project and which has been described in more detail in Chapter III of these Guidelines.
- (xxi) **“Due Date”** means the date specified in the RFQ, RFP or IFB (as applicable) for the submission of the Applications, Proposals or Bids, as the case may be, including any extensions thereof.
- (xxii) **“Evaluation Committee”** means a committee constituted under Guideline 37 herein below to evaluate the Applications, Proposals or Bids (as applicable).
- (xxiii) **“External Member”** means any member of the Evaluation Committee who is not from the Applicable Line Ministry or the Contracting Authority.
- (xxiv) **“Final Approval”** means the approval provided by the CCEA for the Contracting Authority to enter into a contract with the Preferred Bidder and/or the Project Company, as the case may be.
- (xxv) **“Financial Bid”** means the financial bid submitted by a Bidder in order to meet the financial criteria stipulated in the IFB.
- (xxvi) **“Financial Proposal”** means the financial proposal submitted by a Shortlisted Bidder in order to meet the financial criteria stipulated in the RFP.
- (xxvii) **“Government”** means the government of the People’s Republic of Bangladesh.
- (xxviii) **“Guidelines”** means these Procurement Guidelines for PPP Projects, 2016.
- (xxix) **“Head of the Contracting Authority”** or **“HOCA”** means the chairman, the head or the chief executive officer, by whatever designation called, of the Contracting Authority.
- (xxx) **“Identification Phase”** means the first phase in the process for the selection of a Private Partner for the delivery of a PPP Project and which has been described in more detail in Chapter II of these Guidelines.
- (xxxi) **“IFB”** means the Invitation for Bid issued by the Contracting Authority to request information from prospective Bidders participating in the bidding process for a PPP Project, and it refers to the document which contains the detailed information and instructions required to submit a Bid. This is applicable only in case of a single-stage bidding process.

- (xxxii) **“In-Principle Approval”** means the initial approval provided by the CCEA to select a Project for development on a PPP basis.
- (xxxiii) **“Interested Investors”** means those individuals or entities who have previously registered their interest with the PPP Authority for being informed about upcoming PPP Projects.
- (xxxiv) **“Lead Member”** with respect to a Consortium means the Consortium Member:
- who has entered into an agreement with the remaining Consortium Members to have at least 26% equity shareholding in the Project Company;
 - who is or will be the largest shareholder in the Project Company; and
 - who is authorized by all other Consortium Members to be responsible for the bidding process on behalf of the Consortium.
- (xxxv) **“LoA”** means letter of award.
- (xxxvi) **“Non-Lead Member”** means a Consortium Member who has entered into an agreement with the remaining Consortium Members to subscribe to at least 10% of the equity in the Project Company.
- (xxxvii) **“Opening Committee”** means a committee constituted under Guideline 35 herein below to open the Applications, Proposals or Bids (as applicable).
- (xxxviii) **“PPP”** means Public Private Partnership.
- (xxxix) **“PPP Act”** means the Bangladesh Public-Private Partnership Act, 2015.
- (xl) **“PPP Authority”** means the Public Private Partnership Authority established under the PPP Act.
- (xli) **“PPP Contract”** means the contract signed between the Contracting Authority and the Preferred Bidder and/or the Project Company, as the case may be, for implementation of the PPP Project.
- (xlii) **“PPP Project”** means any public sector Project which will be implemented through a PPP basis.
- (xliii) **“PPP Project Proposal”** means the proposal for a Project to be delivered on a PPP basis.
- (xliv) **“Pre-Application Meeting”** means the meeting held with the Registered Entities in relation to the RFQ.
- (xlv) **“Pre-Bid Meeting”** means the meeting held with the Registered Entities in relation to the IFB.

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- (xlvi) **“Preferred Bidder”** means the Shortlisted Bidder or Bidder (as applicable) chosen by the Contracting Authority following evaluation of the Proposals submitted in response to the RFP or Bids submitted in response to the IFB (as applicable) based on the pre-established evaluation criteria.
- (xlvii) **“Pre-Proposal Meeting”** means the meeting held with the Shortlisted Bidders in relation to the RFP.
- (xlviii) **“Pre-Qualified Bidder”** means an Applicant who has submitted an Application and has been pre-qualified by the Contracting Authority in order to be considered for shortlisting for the RFP Stage of the bidding process.
- (xlix) **“Private Partner”** means the Preferred Bidder who has entered into the PPP Contract with the Contracting Authority and who has formed or will form the Project Company for implementation of the PPP Project.
- (l) **“Project”** means any such actions or program or a combination of both by means of which the following plan or work is taken up for implementation:
- a) construction and/or operation of any new infrastructure or a plan to construct and/or operate any new infrastructure;
 - b) plan to reconstruct¹ any existing infrastructure;
 - c) plan to carry out the work specified in Sub-guideline (a) and (b) both; or
 - d) deliver any such goods or services which are not related to any infrastructure facility.
- (li) **“Project Company”** means the special purpose company duly incorporated under the applicable laws of Bangladesh, either by the Preferred Bidder prior to execution of the PPP Contract or the Private Partner after execution of the PPP Contract (as applicable) for delivery of the PPP Project.
- (lii) **“Project Delivery Team”** means a team of one or more members who together are responsible for the development and delivery of the PPP Project and is led by the Project Director.
- (liii) **“Project Director”** means the nominated individual who is the head of the Project Development Team and is responsible for the development and delivery of the PPP Project.

¹ The term “reconstruct” also includes re-creation, rehabilitation, modernization, reformation, expansion, enhancement, alteration or management of any existing infrastructure.

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- (liv) **“Proposal”** means the Shortlisted Bidder’s written offer based on the covenants, terms and conditions as contained in the RFP for the PPP Project. This includes the Technical Proposal and the Financial Proposal.
- (lv) **“Quorum”** means at least 3 (three) members in a 5 (five) member Evaluation Committee or at least 4 (four) members in a 7 (seven) member Evaluation Committee.
- (lvi) **“Registered Entities”** means interested parties registered as stipulated in Guideline 18 herein below.
- (lvii) **“Review Panel”** means a panel of specialists constituted under Guideline 51 herein below.
- (lviii) **“RFP”** or **“Request for Proposal”** means the Request for Proposal document issued by the Contracting Authority to request information from Shortlisted Bidders participating in the bidding process for a PPP Project, and it refers to the document which contains the detailed information and instructions required to submit a Proposal.
- (lix) **“RFP Stage”** means the stage of the bidding process where the Shortlisted Bidders submit their Proposals in response to the RFP in order to be selected as the Preferred Bidder to execute the PPP Project. This shall be applicable only in case of a two-stage bidding process.
- (lx) **“RFQ”** or **“Request for Qualification”** means the Request for Qualification document issued by the Contracting Authority to request prescribed information from prospective Applicants participating in the pre-qualification proceedings for a PPP Project, and it refers to the document which contains the detailed information and instructions required to submit an Application.
- (lxi) **“RFQ Stage”** means the stage of the bidding process where the Applicants submit their Applications in response to the RFQ in order to be pre-qualified and shortlisted for the RFP Stage of the bidding process. This shall be applicable only in case of a two-stage bidding process.
- (lxii) **“Rules of Business”** means the Rules of Business, 1996 issued by the Government.
- (lxiii) **“Scheduled Bank”** means a bank for the time being included in the list of banks maintained under Sub-clause (a) of Clause (2) of Article 37 of the Bangladesh Bank Order, 1972.
- (lxiv) **“Shortlisted Bidder”** means an Applicant who has submitted an Application and has been pre-qualified and shortlisted by the Contracting Authority at the end of the RFQ Stage of the bidding process.

- (lxv) **“Technical Bid”** means the technical bid submitted by a Bidder in order to meet the technical criteria stipulated in the IFB.
- (lxvi) **“Technical Proposal”** means the technical proposal submitted by a Shortlisted Bidder in order to meet the technical criteria stipulated in the RFP.
- (lxvii) **“Tied Bids”** means a situation where more than one Bidder has achieved the same highest score upon completion of the evaluation of their Bids.
- (lxviii) **“Tied Proposals”** means a situation where more than one Shortlisted Bidder has achieved the same highest score upon completion of the evaluation of their Proposals.
- (lxix) **“Unsolicited Proposal”** means unsolicited proposal as defined in the Guidelines for Implementation of Unsolicited Proposals, 2016.

5 Details, Clarifications & Revisions

- 5.1 Any Government entity may directly contact the PPP Authority for clarifications and/or to feedback on the PPP program, the PPP Act and/or any policies, rules, regulations, guidance, guidelines or notifications issued thereunder. Further, the PPP Authority may also contact the Contracting Authority, the Applicable Line Ministry and/or any agencies thereunder at any time on any PPP related matter, seeking clarifications and/or to ensure that the process and timelines are being met.
- 5.2 The PPP Authority may issue guidance or office orders to provide further details and clarifications from time to time in relation to these Guidelines, as well as developing, modifying and issuing templates and model documentation for the procurement process for the selection of Private Partners. The PPP Authority may amend these Guidelines as and when deemed necessary, including incorporation of corrections, omissions, clarifications, additions or deletions.
- 5.3 In case of any ambiguity, uncertainty or lack of clarity in relation to any wording contained in these Guidelines, the interpretation provided by the PPP Authority in this regard shall be final and binding.

CHAPTER II: PROCEDURES FOR IDENTIFICATION PHASE

6 Introduction to the Identification Phase

- 6.1 The Identification Phase is the first phase in the process for the selection of a Private Partner for the delivery of a PPP Project. During this phase the Contracting Authority and/or the PPP Authority may identify the Project to be delivered on a PPP basis, apply the opinion of the PPP Authority in relation to the Project and seek the In-Principle Approval of the CCEA on the selection of the proposed Project to be delivered on a PPP basis.

7 Project Identification

- 7.1 The Contracting Authority and/or the PPP Authority may identify a Project to be delivered on a PPP basis from the list of Projects set out in the Annual Development Program (“ADP”) or may identify a Project that is not listed in the ADP. Under the Rules of Business, the delivery of the identified Project should fall within the scope of the Contracting Authority.
- 7.2 The Board of Governors, either on the basis of recommendations submitted by the PPP Authority or on their own volition, may direct the Contracting Authority or the PPP Authority to implement a Project on a PPP basis.
- 7.3 To assist with Project identification, the Contracting Authority may contact the PPP Authority to clarify the potential scope for delivering the Project on a PPP basis and to understand the procedures in relation to the PPP Act, and/or policies, rules, regulations, guidance, guidelines or notifications issued thereunder.

8 Applicable Line Ministry Endorsement of PPP Project Proposal

- 8.1 Where the Contracting Authority is not an Applicable Line Ministry, it will submit the proposal for the identified Project (“PPP Project Proposal”) for endorsement by their Applicable Line Ministry.
- 8.2 The Applicable Line Ministry may contact the PPP Authority to clarify the potential scope for delivering the Project on a PPP basis and adopt their feedback into the PPP Project Proposal.
- 8.3 After completion of their assessment of the PPP Project Proposal, the Applicable Line Ministry will either endorse the PPP Project Proposal, reject the PPP Project Proposal or seek a resubmission of the PPP Project Proposal by the Contracting Authority incorporating the Applicable Line Ministry’s feedback.

9 PPP Authority Screening of PPP Project Proposal

- 9.1 The Applicable Line Ministry shall submit the endorsed PPP Project Proposal to the PPP Authority for screening of the PPP Project Proposal prior to their submission to the CCEA for In-Principle Approval.
- 9.2 In conducting the screening process, the PPP Authority may directly contact the Contracting Authority, the Applicable Line Ministry, other relevant Government agencies or carry out site visits for further information or clarification in relation to the Project or related issues.
- 9.3 After completion of the screening process, the PPP Authority may provide an opinion:
 - (i) endorsing the PPP Project Proposal, subject to the incorporation of any changes to the Project scope or any conditions, for submission by the Applicable Line Ministry to the CCEA for In-Principle Approval (“PPP Authority IPA Concurrence”);
 - (ii) rejecting the PPP Project Proposal; or
 - (iii) seeking a resubmission of the PPP Project Proposal incorporating the PPP Authority’s feedback.
- 9.4 A pre-feasibility study may also be carried out by the Contracting Authority or the PPP Authority during the Identification Phase prior to submission of the PPP Project Proposal to the CCEA for In-Principle Approval.

10 In-Principle Approval by CCEA

- 10.1 After receipt of the PPP Authority IPA Concurrence, the Applicable Line Ministry shall submit the PPP Project Proposal, attaching the PPP Authority IPA Concurrence and other relevant Project documents to the CCEA for In-Principle Approval and shall provide a copy of the submission to the PPP Authority.
- 10.2 The CCEA may either provide In-Principle Approval to the PPP Project Proposal, reject the PPP Project Proposal or seek a resubmission of the PPP Project Proposal incorporating the CCEA’s feedback.
- 10.3 On receipt of the written confirmation of the In-Principle Approval from the CCEA, the Applicable Line Ministry shall forward a copy of the In-Principle Approval directly to the PPP Authority.
- 10.4 If the Applicable Line Ministry does not submit the PPP Project Proposal to the CCEA for In-Principle Approval within 3 (three) months of the date of the PPP Authority IPA Concurrence, the PPP Authority may cancel the PPP Authority IPA Concurrence and request the PPP Project Proposal to be resubmitted for screening under Guideline 9 herein above.

CHAPTER III: PROCEDURES FOR DEVELOPMENT PHASE

11 Introduction to the Development Phase

- 11.1 The Development Phase is the second phase in the process for the selection of a Private Partner for the delivery of a PPP Project. During this phase the Contracting Authority with the support of the PPP Authority and relevant experts shall determine the feasibility of implementing the Project on a PPP basis.

12 Appointment of Project Delivery Team

- 12.1 On receipt of the In-Principle Approval from the CCEA, the PPP Authority shall communicate with the Contracting Authority to form a Project Delivery Team led by a Project Director to ensure smooth development and delivery of the PPP Project.
- 12.2 The Project Director should be appointed by the Contracting Authority subject to the PPP Authority's concurrence or any guidance issued in this regard.
- 12.3 The Contracting Authority shall ensure that there is a succession plan in place to appoint a new Project Delivery Team member so that no interruption is caused to the procurement process in the event that there is any change in the Project Delivery Team.
- 12.4 The PPP Authority shall nominate a representative from the PPP Authority who will coordinate activities with the Project Delivery Team and liaise with the transaction adviser(s), consultant(s), Contracting Authority and/or other stakeholders.
- 12.5 The responsibilities of the Project Director shall include Project development, administration, management, coordination, execution, monitoring and reporting on the progress. Further, the Project Director shall ensure that the feasibility study is completed within the timescales as set out in the agreement with the transaction adviser(s) and/or consultant(s) or as may be agreed with the PPP Authority.
- 12.6 The Project Delivery Team shall oversee progress and development of the feasibility study and shall ensure that the agreed timelines are met. The Project Delivery Team shall work closely with the transaction adviser(s) and/or consultant(s) and shall implement any recommendation received from the PPP Authority.
- 12.7 The Project Delivery Team shall brief the PPP Authority on a fortnightly basis or on any time scale as may be instructed by the PPP Authority regarding the progress and/or any new findings in relation to the PPP Project.

- 12.8 The PPP Authority, the Applicable Line Ministry or other Government stakeholders may, at any time, convene a meeting with the Project Delivery Team or the Contracting Authority to expedite the delivery of the PPP Project.

13 Feasibility Study of the PPP Project

- 13.1 To test the overall viability and in order to finalize the scope and commercial structure of the PPP Project, a feasibility study of the PPP Project must be carried out by or on behalf of the Contracting Authority. The scope of the feasibility study may include, but shall not be limited to, the following:
- a) Technical issues;
 - b) Commercial and financial considerations;
 - c) Environmental factors;
 - d) Social issues;
 - e) Linked projects; and
 - f) Any other issues which may be deemed relevant by the PPP Authority or the Contracting Authority.
- 13.2 Upon completion of the feasibility study, the draft feasibility report shall be prepared and finalized after incorporating the comments and feedback received from the PPP Authority (if any).
- 13.3 The Contracting Authority shall approve the feasibility report after taking into account any comments received from the Applicable Line Ministry.

14 Appointment of Transaction Adviser(s) and/or Consultant(s)

- 14.1 The Contracting Authority or the PPP Authority may appoint external transaction adviser(s) and/or consultant(s), use any internal and/or in-house experts and/or any other resources retained by the PPP Authority or the Contracting Authority for purposes which may include carrying out the feasibility study, marketing, supporting the procurement process, negotiations, contract signature, Condition Precedent (“CP”), construction and/or operations, etc.
- 14.2 The Contracting Authority may carry out the procurement process for appointing the transaction adviser(s) and/or consultant(s) using their own funds or they may request the PPP Authority to appoint them using the PPP Authority funds.
- 14.3 The PPP Authority or the Contracting Authority may also appoint transaction adviser(s) and/or consultant(s) from a shortlisted and/or pre-selected panel of transaction advisors, consultants and/or experts established by the PPP Authority.

- 14.4 The Contracting Authority or the PPP Authority shall follow the process stipulated in the Public Procurement Act, 2006 (“PPA”) and Public Procurement Rules, 2008 (“PPR”), including any amendments made thereto, in order to appoint the transaction adviser(s) and/or consultant(s) until the applicable policies, rules, regulations, guidance, guidelines or notifications for appointment of transaction adviser(s) and/or consultants under the PPP Act are promulgated.
- 14.5 The terms of reference of the transaction adviser(s) and/or consultant(s) shall be finalized by the Contracting Authority after incorporating the comments and feedback received from the PPP Authority, (if any).

15 Registration of Interest (“ROI”)

- 15.1 The Contracting Authority may instruct for an ROI process to be carried out in order to obtain formalized feedback from the market in relation to the PPP Project, subject to the concurrence of the PPP Authority.

CHAPTER IV: PROCEDURES FOR BIDDING PHASE

16 Introduction to the Bidding Phase

- 16.1 The Bidding Phase is the third phase in the process for the selection of a Private Partner for the delivery of a PPP Project. During this phase the Contracting Authority shall process and approve the Applications, Proposals or Bids (as applicable) submitted in response to the bid documents (RFQ, RFP or IFB) issued by the Contracting Authority in order to select the Private Partner who shall implement the Project on a PPP basis.

17 Advertisement

- 17.1 The Contracting Authority shall advertise all RFQ or IFB, as applicable based on any guidance or standard templates issued by the PPP Authority or as may be specifically approved by the PPP Authority. The PPP Authority may also issue advertisements in relation to the RFQ or IFB, as applicable.
- 17.2 Invitations for interested parties to participate in the RFQ or IFB process shall be advertised in at least 1 (one) Bangla language national newspaper and 1 (one) English language national newspaper, both of which shall have a wide daily circulation within Bangladesh.
- 17.3 All invitations shall also be advertised on the Contracting Authority's, Applicable Line Ministry's and the PPP Authority's website.
- 17.4 The Contracting Authority shall publish the invitation on the Development Gateway Market (dgMarket) and may also consider any other similar publications or sites, as appropriate.
- 17.5 The PPP Authority may directly contact any foreign trade missions in Bangladesh, Bangladeshi trade missions abroad and/or Interested Investors in the PPP Authority's database to inform them about the launch/issue of the RFQ or IFB.
- 17.6 In order to generate further interest in the PPP Project, the PPP Authority or their transaction adviser(s) or consultant(s) may carry out Project promotion activities at any time up until submission of the Applications or Bids.

18 Online Registration

- 18.1 The Contracting Authority may require all interested parties to register online in order to access the bid documents and other relevant information and to participate in the bidding process.
- 18.2 The Contracting Authority may, subject to the concurrence of the PPP Authority, fix a charge to be paid by all interested parties in order to download the documentation from the Data Room.

- 18.3 Notice of any subsequent change or amendment to the invitation for the RFQ or IFB may be made available to only the Registered Entities through an online medium and/or also in writing, as appropriate.
- 18.4 Online registration shall be in accordance with the instructions set out on the website, the details of which shall be specified in the invitation.

19 Data Room

- 19.1 The Contracting Authority may use an online Data Room in order to share documents and communicate with Applicants or Bidders (as applicable). During the RFQ Stage and IFB stage, only Registered Entities shall be given access to the Data Room which shall contain the RFQ or IFB (as applicable), any Addenda and/or Corrigenda to the RFQ or IFB issued by the Contracting Authority, notice of invitation to the Pre-Application Meeting or Pre-Bid Meeting and/or any other relevant information for the bidding process. Further, any updates or additional information relating to the PPP Project may be uploaded to the Data Room.
- 19.2 Only Registered Entities shall be allowed to submit an Application or Bid (as applicable).
- 19.3 In case of a two-stage bidding process, the access to the Data Room shall be terminated at the end of the RFQ Stage of the bidding process, i.e. after notification of the Shortlisted Bidders. These Shortlisted Bidders shall thereafter be notified of relevant details in order to access the Data Room for the RFP Stage of the bidding process.
- 19.4 During the RFP Stage, only Shortlisted Bidders shall be given access to the Data Room which shall contain the RFP document, any Addenda and/or Corrigenda to the RFP issued by the Contracting Authority, notice of invitation to the Pre-Proposal Meeting and/or any other relevant information for the bidding process. Further, any updates or additional information relating to the PPP Project may be uploaded to the Data Room.

20 Overview of the Bidding Process

- 20.1 The Contracting Authority shall apply the type of bidding process for the PPP Project based on the instruction of the PPP Authority or any policies, rules, regulations, guidance, guidelines or notifications issued by the PPP Authority pursuant to the PPP Act.
- 20.2 The bidding process for PPP Projects can either be a single-stage bidding process or a two-stage bidding process.
 - Single-stage bidding process - shall comprise of only an IFB.
 - Two-stage bidding process - shall comprise of an RFQ as well as an RFP.

21 Types of Bidding Process

21.1 Single-Stage Bidding Process

- a) The single-stage bidding process shall comprise of only an IFB. As part of the IFB process, interested parties shall complete their registration in order to become Registered Entities. An IFB document shall be issued to Registered Entities inviting them to participate in the bidding process. The Bidders shall submit their Technical Bids and their Financial Bids in two separate, sealed envelopes enclosed together in an outer single envelope. Initially only the Technical Bids shall be opened and evaluated in accordance with the IFB.
- b) Thereafter, the Financial Bids of only those Bidders who are compliant and who conformed to the specified requirements under the technical evaluation shall be opened and evaluated in accordance with the criteria stipulated in the IFB. Upon completion of the evaluation of the Financial Bids, the Preferred Bidder shall be selected for award of the PPP Contract.

21.2 Two-Stage Bidding Process

- a) The two-stage bidding process shall comprise of an RFQ Stage as well as an RFP Stage. As part of the RFQ Stage, interested parties shall complete their registration in order to become Registered Entities. An RFQ document shall be issued to Registered Entities inviting them to participate in the bidding process. The Applicants shall thereafter submit their Applications in response to the RFQ.
- b) The RFQ Stage of the bidding process shall include pre-qualification and shortlisting. The Applications shall be evaluated on the basis of pre-determined qualifying criteria stipulated in the RFQ. The Pre-Qualified Bidders shall thereafter be shortlisted in accordance with the process stipulated in the RFQ. The maximum number of Shortlisted Bidders shall be 5 (five).
- c) Only those Applicants who pre-qualify and are shortlisted in line with the criteria set out in the RFQ under this RFQ Stage, shall be eligible to submit their Proposals during the RFP Stage of the bidding process.
- d) During the RFP Stage, subject to the qualification criteria, the Shortlisted Bidders may be invited to submit their Technical Proposals and Financial Proposals in two separate, sealed envelopes enclosed together in an outer single envelope. Initially only the Technical Proposals shall be opened and evaluated in accordance with the RFP on the basis of the pre-determined selection criteria stipulated in the RFP. Thereafter, the Financial Proposals of only those Shortlisted Bidders who are compliant and who conformed to the specified requirements under the technical evaluation shall be opened and evaluated in accordance with the criteria stipulated in the RFP in order to select the Preferred Bidder.

- e) Alternatively, during the RFP Stage, subject to the qualification criteria, the Shortlisted Bidders may be invited to submit only their Financial Proposals in sealed envelopes. Financial Proposals of the Shortlisted Bidders shall be opened and evaluated in accordance with the criteria stipulated in the RFP in order to select the Preferred Bidder.

22 Evaluation Criteria and Method for RFQ

- 22.1 Prequalification may be carried out on the basis of technical and financial capacity of the Applicants. Technical capacity may include examples of past experience of having undertaken Projects of a similar nature as defined in the RFQ document. Financial capacity may include examples of experience of having provided and/or raised funds for Projects as defined in the RFQ document.
- 22.2 The shortlisting process may include a single test or multiple tests. The shortlisting process will be carried out based on the criteria as stipulated in the RFQ document.
- 22.3 Further, the RFQ may specify mandatory requirements and/or compliance requirements. Where these requirements have been specified in the RFQ document and it is found that an Applicant has not complied with the said requirements, that Applicant shall be deemed to be non-compliant. Applications submitted by any such Applicant shall not be eligible for consideration and shall be rejected.
- 22.4 Applications shall not be evaluated on any basis other than on the basis of the criteria stipulated in the RFQ document.

23 Evaluation Criteria and Method for RFP or IFB

- 23.1 The evaluation method may either include the Quality and Cost Based Selection (“QCBS”) method or the Cost Based Selection (“CBS”) method. The Contracting Authority shall determine and thereafter seek concurrence of the PPP Authority on the appropriate evaluation method, on the criteria and the weighting (where relevant), and this shall be clearly stipulated in the RFP or IFB document.

- 23.2 Quality and Cost Based Selection (“QCBS”) Method: Under this method the technical criteria (including commercial criteria, where applicable) and the financial criteria of the Proposal or Bid (as applicable) shall be taken into account in selection of the Preferred Bidder. The technical criteria (including commercial criteria, where applicable) and financial criteria shall be outlined in the RFP or IFB document.

The Proposal or Bid (as applicable) shall be evaluated and scored. There shall be a technical score and a financial score, which shall be weighted in order to derive the total score. The Shortlisted Bidder or Bidder (as applicable) with the highest total score shall be awarded the PPP Project.

The evaluation criteria may also include additional criteria in order to ensure that there are no Tied Proposals or Tied Bids. Such additional criteria may include the use of Best And Final Offer (“BAFO”) as set out in Guideline 24 herein below.

- 23.3 Cost Based Selection (“CBS”) Method: Under this method, the technical criteria (including commercial criteria, where applicable) may be evaluated on a pass/fail and/or scoring basis. The Shortlisted Bidders or Bidders who have either passed the technical evaluation or the requisite number of Shortlisted Bidders or Bidders as stipulated in the RFP or IFB who have ranked/scored the highest from among the Shortlisted Bidders or Bidders in the technical evaluation may be identified and only their Financial Proposals or Financial Bids may be opened, evaluated and scored. The Shortlisted Bidder or Bidder (as applicable) who receives the highest financial score may be awarded the PPP Project.

Alternatively, in case of a two-stage bidding process, subject to the qualification criteria, where the Shortlisted Bidders have been invited to submit only their Financial Proposals under the RFP Stage, the Financial Proposals of the Shortlisted Bidders may be opened, evaluated and scored under this method. The Shortlisted Bidder who receives the highest financial score may be awarded the PPP Project.

The Contracting Authority may, subject to the concurrence of the PPP Authority, if it so desires, indicate a maximum ceiling below or minimum floor above which the Shortlisted Bidders or Bidders (as applicable) should bid as part of their Financial Proposal or Financial Bid (as applicable).

The evaluation criteria may also include additional criteria in order to ensure that there are no Tied Proposals or Tied Bids. Such additional criteria may include the use of Best And Final Offer (“BAFO”) as set out in Guideline 24 herein below.

- 23.4 Further, the RFP or IFB may specify mandatory requirements and/or compliance requirements. Where these requirements have been specified in the RFP or IFB document and it is found that a Shortlisted Bidder or Bidder has not complied with the said requirements, that Shortlisted Bidder or Bidder shall be deemed to be non-compliant. Proposals or Bids submitted by any such Shortlisted Bidder or Bidder shall not be eligible for consideration and shall be rejected.
- 23.5 Proposals or Bids shall not be evaluated on any basis other than on the basis of the criteria stipulated in the RFP or IFB document (as applicable).

24 Tied Proposals or Tied Bids

- 24.1 Where a BAFO has been applied, Shortlisted Bidders or Bidders may be asked to resubmit either a revised Technical Proposal and Financial Proposal or Technical Bid and Financial Bid (as applicable) or only a revised Financial Proposal or Financial Bid (in case of a QCBS method). The Shortlisted Bidders or Bidders may be asked to resubmit only a revised Financial Proposal or Financial Bid (in case of a CBS method). Thereafter, the Shortlisted Bidder or Bidder that obtains the highest total score or the highest financial score, as the case may be, shall be chosen as the Preferred Bidder.

25 Bidding Documents

25.1 Invitation for Bid (“IFB”)

- a) The IFB document shall contain detailed information and instructions required to submit a Bid (Technical Bid and Financial Bid). Further, it may stipulate the pre-qualification criteria as well as the technical and financial criteria. The draft PPP Contract shall also be annexed to the IFB document.
- b) The Contracting Authority shall develop the IFB document and the draft PPP Contract based on the outcome of the feasibility study, market feedback and on the model documentation issued by the PPP Authority (where available), and as amended from time to time.
- c) The Contracting Authority shall send the IFB document (copied to the Applicable Line Ministry) to the PPP Authority for its concurrence prior to issuing the IFB document. The Applicable Line Ministry may forward any comments and/or observations that they have to the PPP Authority for its consideration. The PPP Authority may also request any feedback from the Applicable Line Ministry.
- d) Upon obtaining the concurrence of the PPP Authority, the Contracting Authority shall issue the IFB document.
- e) Once issued, the process to be followed shall be as set out in the IFB document up until selection of a Preferred Bidder and completion of negotiation (where applicable).

25.2 Request for Qualification (“RFQ”)

- a) The Contracting Authority shall ensure that the RFQ contains sufficient information to allow potential Applicants to form a view on whether they have sufficient capabilities and identify potential partners for the PPP Project and it shall contain the detailed information and instructions required to submit an Application.
- b) The Contracting Authority shall develop the RFQ document based on the outcome of the feasibility study, market feedback and/or on any model documentation issued by the PPP Authority (where available), and as amended from time to time.
- c) The Contracting Authority shall seek concurrence of the PPP Authority prior to issuing the RFQ document.
- d) Upon obtaining the concurrence of the PPP Authority, the Contracting Authority shall issue the RFQ document. Once issued, the process to be followed shall be as set out in the RFQ document up until selection and approval of the Shortlisted Bidders.

25.3 Request for Proposal (“RFP”)

- a) The Contracting Authority shall ensure that the RFP document contains detailed information and instructions required to submit a Proposal (Technical Proposal and Financial Proposal). It shall stipulate the technical and financial criteria. The draft PPP Contract shall also be annexed to the RFP document.
- b) The Contracting Authority shall develop the RFP document and the draft PPP Contract based on the outcome of the feasibility study, feedback from the market and/or Shortlisted Bidders and on the model documentation issued by the PPP Authority (where available), and as amended from time to time.
- c) The Contracting Authority shall send the RFP document (copied to the Applicable Line Ministry) to the PPP Authority for its concurrence prior to issuing the RFP document. The Applicable Line Ministry may forward any comments and/or observations that they have to the PPP Authority for its consideration. The PPP Authority may also request any feedback from the Applicable Line Ministry.
- d) Upon obtaining the concurrence of the PPP Authority, the Contracting Authority shall issue the RFP document.
- e) Once issued, the process to be followed shall be as set out in the RFP document up until selection of a Preferred Bidder and completion of negotiation (where applicable).

26 **Timeline**

26.1 The following minimum timelines shall apply in relation to the bidding process. The overall timelines may be extended on a case by case basis and the timelines for detailed actions within the RFQ Stage, RFP Stage or the IFB stage shall be as set out in the respective bid documents or as stipulated in any guidance or standard templates issued by the PPP Authority or specifically approved by the PPP Authority.

IFB: The Bids submitted in response to the IFB shall be received within a minimum of 56 (fifty-six) Days from issue of the IFB document.

RFQ: The Applications submitted in response to the RFQ shall be received within a minimum of 28 (twenty-eight) Days from the issue of the RFQ document.

RFP: The Proposals submitted in response to the RFP shall be received within a minimum of 56 (fifty-six) Days from the issue of the RFP document.

- 26.2 The Contracting Authority may, at its discretion, upon informing the PPP Authority extend the Due Date, for any reason whatsoever.

27 Treatment of a Single Application, Proposal or Bid

- 27.1 IFB: In the event that only one Bid is received in response to the IFB, the bidding process shall continue.
- 27.2 RFQ: In the event that only one Application is received in response to the RFQ or if there is only one Applicant who has been pre-qualified at the end of the RFQ Stage, the bidding process shall be cancelled. The Contracting Authority may re-launch the RFQ process, modifying the RFQ as required, after taking into account any feedback received from the interested private parties, transaction advisers, consultants and/or any directions from the PPP Authority on the cancelled RFQ process. Alternatively, the Contracting Authority may opt for a single-stage bidding process and issue an IFB.
- 27.3 RFP: If only one Proposal is received in response to the RFP, the bidding process shall continue, provided that the Shortlisted Bidder is compliant and technically responsive and the amount quoted in its Financial Proposal is close to the estimated figures set out in the approved feasibility study subject to any subsequent amendments thereof or in any other studies carried out in this regard with the concurrence of the PPP Authority.

28 Proposal or Bid Validity Period and Bid Security

- 28.1 The Proposal or Bid validity period shall be determined based on the nature and complexity of the PPP Project and shall be specified in the RFP or IFB document.
- 28.2 The Shortlisted Bidder or Bidder (as applicable) shall be required to submit a Bid Security along with its Technical Proposal or Technical Bid (as applicable). The Bid Security shall remain valid for at least 60 (sixty) Days beyond the expiry date of the Proposal or Bid validity period. The validity period of the Bid Security shall be specified in the RFP or IFB document.
- 28.3 The Contracting Authority may, subject to notification to the PPP Authority, request in writing a Shortlisted Bidder or Bidder to extend the Proposal or Bid validity period at any time prior to the expiration date. Shortlisted Bidders or Bidders consenting to extend the Proposal or Bid validity period shall also correspondingly be required to extend the validity period of their Bid Security.
- 28.4 In the event that any Shortlisted Bidder or Bidder refuses to extend the Proposal or Bid validity period, its Proposal or Bid (as applicable) shall not be evaluated and the Bid Security shall be returned to the Shortlisted Bidder or Bidder as soon as possible.
- 28.5 The validity period of the Bid Security shall be extended by at least 60 (sixty) Days beyond the new expiry date of the Proposal or Bid validity period, if the Proposal or Bid validity period is extended.

- 28.6 The Bid Security may be in the form of a bank draft or bank guarantee issued by a Scheduled Bank in Bangladesh or any other internationally reputed bank. If the bank guarantee has been issued by an internationally reputed bank it shall have to be endorsed by its correspondent bank located in Bangladesh in order to make it enforceable.
- 28.7 If a Shortlisted Bidder or Bidder (as applicable) is selected as the Preferred Bidder, its Bid Security shall be extended until such time as the Preferred Bidder submits an appropriate security in accordance with the PPP Contract. The Bid Security of the Shortlisted Bidders or Bidders (as applicable) who are not selected as the Preferred Bidder shall be returned as soon as possible upon execution of the PPP Contract with the Project Company and/or Preferred Bidder, as the case may be.
- 28.8 Any Proposal or Bid (as applicable) submitted without a Bid Security shall be automatically rejected by the Contracting Authority.

29 Pre-Application Meeting, Pre-Proposal Meeting or Pre-Bid Meeting

- 29.1 A Pre-Application Meeting, Pre-Proposal Meeting or a Pre-Bid Meeting (as applicable) shall be held for Registered Entities or Shortlisted Bidders (as the case may be) at the designated date, time and place as mentioned in the RFQ, RFP or IFB document. Only the Registered Entities or Shortlisted Bidders (as the case may be) shall be allowed to participate in the Pre-Application Meeting, Pre-Proposal Meeting or Pre-Bid Meeting.
- 29.2 During these meetings the Contracting Authority shall provide further information about the PPP Project and the bidding process. During the course of these meetings, Registered Entities or Shortlisted Bidders (as the case may be) may seek clarifications and make suggestions for consideration of the Contracting Authority. The Contracting Authority may provide responses and clarifications at the meeting as it deems appropriate. However the official responses shall only be provided in writing.
- 29.3 The Contracting Authority may also issue, if it deems appropriate, minutes of the Pre-Application Meeting, Pre-Proposal Meeting or Pre-Bid Meeting. These minutes may include the text of the questions raised and the responses given, together with any responses prepared after the meetings and shall be uploaded to the Data Room for information purposes only. Such minutes, questions, and responses shall not constitute an addition or revision to the RFQ, RFP or IFB. Any addition or revision to the RFQ, RFP or IFB that may become necessary as a result of the Pre-Application Meeting, Pre-Proposal Meeting or Pre-Bid Meeting will be made by the Contracting Authority exclusively through the issue of an Addendum or a Corrigendum and not through the minutes of the meeting.

- 29.4 The Contracting Authority may at any time prior to the Due Date, subject to the concurrence of the PPP Authority, amend and/or modify the RFQ, RFP or IFB documents whether on its own volition or in response to a clarification requested by any Registered Entity or Shortlisted Bidder (as applicable) or for any reason whatsoever by issuing Addenda and/or Corrigenda. The amended documents shall be deemed to be the applicable documentation for purposes of the bidding process. The Contracting Authority may revise the date, time, venue and/or the number of delegates permitted to attend the meeting. The Contracting Authority may hold a single or multiple meetings and it further reserves the right to set up a follow up meeting after the initial Pre-Application Meeting, Pre-Proposal Meeting or Pre-Bid Meeting, if it deems necessary.
- 29.5 In addition to these meetings, the Contracting Authority may also organize additional open sessions whereby the Registered Entities or Shortlisted Bidders shall be invited to discuss in more detail the relevant aspects of the PPP Project.

30 Addenda and/or Corrigenda

- 30.1 In case of any Addenda and/or Corrigenda, the Contracting Authority shall ensure that the Due Date is fixed in such a way that there is a period of at least 14 (fourteen) Days or more between the issue of the Addenda and/or Corrigenda and the Due Date for submissions.
- 30.2 Any Addenda and/or Corrigenda shall be approved by the Contracting Authority and/or the PPP Authority prior to being issued.

31 Contacting and/or Communicating with the Applicants, Shortlisted Bidders or Bidders

- 31.1 The PPP Authority and/or the Contracting Authority may, for the purpose of understanding the market interest, to market the PPP Project, to take feedback on potential options for structuring the PPP Project, discuss with interested parties prior to the issue of the RFQ or IFB (as applicable) or may discuss with the Shortlisted Bidders post completion of the RFQ Stage and prior to the issue of the RFP document. After issue of the RFQ, RFP or IFB (as applicable) any contact or communication by the Contracting Authority with the Applicants, Shortlisted Bidders or Bidders shall be based on the mechanism as set out in the bid documents.
- 31.2 The medium of communication shall be as set out in the bid documents and may include email, letter or fax or a combination of any.

32 Rejection or Disqualification

- 32.1 The Contracting Authority reserves the right to reject any Application, Proposal or Bid and/or disqualify any Applicant, Shortlisted Bidder or Bidder (as applicable) as set out in the bid documents.

- 32.2 In the event that a Shortlisted Bidder or Bidder is disqualified after having already been selected as the Preferred Bidder but prior to entering into the PPP Contract, then the highest ranked Shortlisted Bidder or Bidder (excluding the disqualified Shortlisted Bidder or Bidder) from the remaining Shortlisted Bidders or Bidders who have been through the Proposal or Bid evaluation process may be selected as the Preferred Bidder.
- 32.3 Further, in the event that negotiations between the Contracting Authority and the Preferred Bidder break down or the Preferred Bidder delays the signing of the PPP Contract beyond a stipulated date, the Contracting Authority may appoint the highest ranked Shortlisted Bidder or Bidder (excluding the Preferred Bidder) from the remaining Shortlisted Bidders or Bidders who have been through the Proposal or Bid evaluation process in place of the Preferred Bidder.

33 Professional Misconduct, Offences, Etc.

- 33.1 The Contracting Authority, Applicants, Shortlisted Bidders, Bidders and any concerned entities shall, at all-time including the procurement process and during execution of PPP Contracts, ensure –
- strict compliance with the provisions of Section 24 and 25 of the PPP Act;
 - that neither it nor any other member of its staff or any other agents or intermediaries working on its behalf engages in any practice detailed in Guideline 33.2 below.
- 33.2 For the purpose of Guideline 33.1 the terms -
- corrupt practice** means offering, giving or promising to give, receiving, or soliciting, either directly or indirectly, to any officer or employee of a Contracting Authority or other public or private authority or individual, a gratuity in any form; employment or any other thing or service of value as an inducement with respect to an act or decision or method followed by a Contracting Authority in connection with any procurement process;
 - fraudulent practice** means the misrepresentation or omission of facts in order to influence a decision to be taken in connection with any procurement process;
 - collusive practice** means a scheme or arrangement between two (2) or more persons, with or without the knowledge of the Contracting Authority, that is designed to arbitrarily reduce the number of Applications, Proposals or Bids to be submitted or fix Financial Proposals or Financial Bid at artificial, non-competitive levels, thereby denying a Contracting Authority the benefits of competitive price arising from genuine and open competition; or

- (d) **coercive practice** means harming or threatening to harm, directly or indirectly, persons or their property to influence a decision to be taken in connection with any PPP bidding process, and this will include creating obstructions in the normal submission process used for Applications, Proposals or Bids;
- 33.3 If corrupt, fraudulent, collusive or coercive practices of any kind come to the knowledge of the Contracting Authority, the Contracting Authority shall call for a written explanation, to be provided within a period of 14 days, from Applicant, Shortlisted Bidder, Bidder or the entity alleged to have carried out such practices.
- 33.4 Unless a satisfactory explanation is given by the concerned Applicant, Shortlisted Bidder, Bidder or the entity that is acceptable to the Head of the Contracting Authority, the Contracting Authority shall, subject to the approval of the Applicable Line Ministry, debar the Applicant, Shortlisted Bidder, Bidder or the entity from participating in further procurement process of any PPP Project executed under the PPP Act.
- 33.5 Any Applicant, Shortlisted Bidder, Bidder or the entity that has been debarred by the Contracting Authority or by any other Government entity shall not be eligible to participate in further procurement process of any PPP Project executed under the PPP Act for a minimum period of 3 (three) years or for any other extended period that may be specified in the bid documents from the date of being debarred.
- 33.6 The PPP Authority may create, maintain and publish a list of debarred entities. The PPP Authority shall specify in the list of debarred entities the reasons for and the period for which that Applicant, Shortlisted Bidder, Bidder or the entity has been debarred and other appropriate information.
- 33.7 An entity, or an officer or staff member of the Contracting Authority to whom the PPP Act and these Guidelines apply, committing an offence related to professional misconduct, shall be dealt with as described in the PPP Act in Section 24 and 25 and Anti-corruption Commission Act 2004.

34 Conditions for Eligibility

- 34.1 An Applicant, Shortlisted Bidder or Bidder (as applicable) shall not be eligible to participate in the bidding process if the Applicant, Shortlisted Bidder or Bidder:
- a) is from a country which does not have diplomatic relations with the Government;
 - b) does not have legal capacity to enter into a contract with the Contracting Authority;
 - c) is insolvent, in receivership, bankrupt or being wound up or its business activities are to be suspended or it is to be the subject of legal proceedings for any of the foregoing, or it intends to submit an application for insolvency or liquidation;

- d) is the one with whom the Contracting Authority has previously entered into a contract for some other purpose and later terminated the contract (within the last 3 (three) years) prior to the expiry of the contract due to an event of default on the part of the Applicant, Shortlisted Bidder or Bidder (as applicable);
- e) has, including any directors thereof, been convicted of a criminal offence in Bangladesh within the last 5 (five) years; or
- f) has 100% ownership in any entity which is prohibited by the Government from participating in any Project and if that prohibition subsists as on the Due Date.

35 Opening Committee and Opening Procedure

- 35.1 The Head of the Contracting Authority shall constitute the Opening Committee. The Opening Committee must be comprised of at least 2 (two) members from the Evaluation Committee.
- 35.2 All Applicants, Shortlisted Bidders or Bidders who have successfully completed the evaluation process shall be invited to attend the opening of their Applications, Proposals or Bids (as applicable). The Opening Committee shall open the Applications, Proposals or Bids (as applicable) in the presence of their representatives, if any, who choose to attend the opening and at the time, date and place as specified in the bid documents.
- 35.3 The Applicants', Shortlisted Bidders' or Bidders' representatives who attend the opening of the Applications, Proposals or Bids (as applicable) shall sign a register to record their attendance.
- 35.4 After opening the Applications, Proposals or Bids, each member of the Opening Committee shall sign individually a declaration of impartiality in the following manner -

“I (name of the Opening Committee member & designation) do hereby declare and confirm that I have no conflict of interest as provided in Section 25 of the PPP Act with any of the competing Applicants, Shortlisted Bidders or Bidders (as applicable).”

36 Financial Proposal Opening

- 36.1 All Shortlisted Bidders or Bidders (as applicable) who have successfully completed the evaluation process of their Technical Proposals or Technical Bids (where applicable) shall be invited to attend the opening of their Financial Proposals or Financial Bids (as applicable). The Evaluation Committee shall open the Financial Proposals or Financial Bids in the presence of the Shortlisted Bidders' or Bidders' representatives, if any, who choose to attend and at the time, date and place as specified in the bid documents.
- 36.2 Shortlisted Bidders' or Bidders' representatives who attend the opening of the Financial Proposals or Financial Bids shall sign a register to record their attendance.

37 Constitution of the Evaluation Committee

- 37.1 For evaluation of the Applications, Proposals or Bids (as applicable), an Evaluation Committee shall be formed immediately after the issue of the RFQ or IFB (as applicable) and in any case no later than the Due Date.
- 37.2 The Applicable Line Ministry shall, on the basis of the recommendation of the PPP Authority and the Contracting Authority, approve the formation of the Evaluation Committee.
- 37.3 The Applicable Line Ministry, based on the recommendation of the PPP Authority, may approve formation of an Evaluation Committee to evaluate Applications, Proposals or Bids of more than one PPP Project.

38 Responsibility of the Evaluation Committee

- 38.1 The Evaluation Committee members shall on their own responsibility, following the provisions of the PPP Act and/or any policies, rules, regulations, guidance, guidelines or notifications made there under and the terms and conditions of the RFQ, RFP or IFB (as applicable) shall -
- examine and evaluate the Applications, Proposals or Bids (as applicable);
 - prepare the RFQ evaluation report containing the names of the Shortlisted Bidders based on the technical and financial capacity requirements as provided in the RFQ document (applicable in case of the RFQ Stage of a bidding process);
 - prepare the RFP evaluation report with a scoring and ranking of the Shortlisted Bidders based on the technical (including commercial if applicable) and/or financial evaluation criteria specified in the RFP document (applicable in case of the RFP Stage of a bidding process);
 - prepare the IFB evaluation report with a scoring and ranking of the Bidders based on the technical (including commercial if applicable) and/or financial evaluation criteria specified in the IFB document (applicable in case of a single-stage bidding process);
 - submit the evaluation report directly to the Head of the Contracting Authority.

39 Composition of the Evaluation Committee

- 39.1 The Evaluation Committee shall be comprised of either 5 (five) members or 7 (seven) members. Where the value of the PPP Project is BDT 800 (Eight Hundred) crore or more, then the Evaluation Committee shall comprise of 7 (seven) members. A 5(five) member Evaluation Committee shall be constituted in the following manner:
- 1 (one) member from the Applicable Line Ministry to be nominated by the Applicable Line Ministry;
 - 2 (two) members from the Contracting Authority to be nominated by the Contracting Authority;

- c) 2 (two) External Members nominated by the PPP Authority form within or outside the PPP Authority.
- 39.2 A 7 (seven) member Evaluation Committee shall be constituted in the following manner:
- a) 1 (one) member from the Applicable Line Ministry to be nominated by the Applicable Line Ministry;
- b) 2 (two) members from the Contracting Authority to be nominated by the Contracting Authority;
- c) 1 (one) member nominated by the Contracting Authority from outside the Applicable Line Ministry, Contracting Authority or PPP Authority;
- d) 3 (three) External Members nominated by the PPP Authority form within or outside the PPP Authority.
- 39.3 The members from the Contracting Authority shall be designated to act as the chairman and the member secretary of the Evaluation Committee.
- 39.4 The chairman of the Evaluation Committee shall be an officer of at least Grade-4 or equivalent category. In the event that there is no officer of such ranking in the requisite Government entity, then that Government entity shall contact the PPP Authority for advice to constitute the Evaluation Committee.

40 Members of the Evaluation Committee

- 40.1 The Evaluation Committee members may be selected from -
- a) officers of the concerned units of the Applicable Line Ministry or Contracting Authority, namely finance, commercial, technical units or PPP cell, if any;
- b) officers having experience in technical, commercial, financial or legal matters from other ministries, divisions, departments, authorities or agencies, or any other Government entities or experts from universities or reputable professional bodies or specialists from the relevant fields (applicable in case of the External Members).
- 40.2 In nominating the members of the Evaluation Committee, the Applicable Line Ministry, the Contracting Authority and/or the PPP Authority shall, in order to accelerate the review and approval process of the evaluation report, ensure that the members of the Evaluation Committee are qualified officials or professionals with experience in technical, commercial, financial, legal matters and/or PPPs and are persons of high integrity.
- 40.3 The members of the Evaluation Committee shall include officers of at least Grade-6 or equivalent category. In the event that there is no officer of such ranking in the requisite Government entity, then that Government entity shall contact the PPP Authority for advice to constitute the Evaluation Committee.

41 Replacement of the Members of the Evaluation Committee

- 41.1 The Applicable Line Ministry may replace any member of the Evaluation Committee by a new member for any of the following reasons, namely:
- a) if any member does not disclose his or her connection with an Applicant, Shortlisted Bidder or Bidder (as applicable);
 - b) if any member remains absent in 2 (two) consecutive Evaluation Committee meetings;
 - c) if any member is in direct breach of Section 24 or 25 of the PPP Act; and
 - d) in the case of transfer, death or absence of any member from the country.

42 Operation of the Evaluation Committee

- 42.1 Notice of the Evaluation Committee meetings shall be sent to all members of the Evaluation Committee and the meeting shall be held valid only where the required Quorum is present.
- 42.2 The Evaluation Committee shall, to the extent practical and possible, work continuously once they have begun an evaluation in order to complete evaluation within the time limit prescribed.
- 42.3 The Evaluation Committee, in administering the evaluation process, may seek support of the transaction adviser(s) and/or consultant(s) appointed for the PPP Project, the PPP Authority and/or any other person, if needed.
- 42.4 The Contracting Authority may also constitute technical sub-committee(s), if needed. The member(s) of a technical sub-committee shall not be more than 3 (three). If the Contracting Authority decides to constitute technical sub-committees, it shall do so prior to the Due Date.
- 42.5 The Evaluation Committee shall in strict compliance with the pre-determined criteria set out in the RFQ, RFP or IFB (as applicable), evaluate and examine the Applications, Proposals or Bids (as applicable) and shall follow the procedures set out in the bid documents and/or in any other applicable policies, rules, regulations, guidance, guidelines or notifications.

43 Honorarium and Other Support for Members of the Evaluation Committee

- 43.1 In order to ensure smooth operation of the Evaluation Committee, a provision for honorarium, incentive or fee as determined by the PPP Authority from time to time, for each Evaluation Committee member shall be made. The necessary budgetary provisions for payment of such fees or honoraria may be made in the PPP Authority's budget or the Contracting Authority's budget.

- 43.2 The PPP Authority and/or the Contracting Authority may also make provisions for providing the necessary resource and facilities for the Evaluation Committee to enable them to carry out the evaluation in an expeditious manner.

44 Clarification of Applications, Proposals and Bids

- 44.1 During evaluation, the Evaluation Committee, through the Contracting Authority, may at its sole discretion seek written clarifications and/or supplementary information from any Applicant, Shortlisted Bidder or Bidder regarding their Applications, Proposals or Bids (as applicable) through letter and/or email. The Contracting Authority in communicating with the Applicants, Shortlisted Bidders or Bidders may take support of transaction advisers and/or consultants and shall keep the PPP Authority copied in all communications.
- 44.2 The Applicants, Shortlisted Bidders or Bidders shall respond to the request of the Contracting Authority within the prescribed time and in the manner prescribed in the RFQ, RFP or IFB documents. Any extension to the clarification date shall be at the sole discretion of the Evaluation Committee.
- 44.3 The Evaluation Committee, with concurrence of the PPP Authority, may waive any minor informality, non-conformity or irregularity in any Application, Proposal or Bid if it does not -
- constitute any material deviation from the provisions of the RFQ, RFP or IFB (as applicable), and/or any violation under the PPP Act, any policies, rules, regulations, guidance, guidelines or notifications issued thereunder and/or any other applicable laws and regulations; and
 - prejudice or affect the qualification or relative ranking of any other Applicant, Shortlisted Bidder or Bidder, in any way, in the technical and/or financial evaluation.

Where, material deviation means anything that affects in any substantial way the scope, quality, and/or performance of the works and/or which limits in any substantial way the Contracting Authority's rights and/or the Applicant's, Shortlisted Bidders or Bidders obligations. It further refers to anything whose rectification would affect unfairly the competitive position of other Applicants, Shortlisted Bidders or Bidders participating in the bidding process.

Minor informality, non-conformity or irregularity refers to minor and/or insignificant deviations, which do not meaningfully alter or depart from the technical specifications, characteristics and/or commercial terms and conditions and/or other requirements set out in the bid documents. It further refers to errors or oversights, which if corrected, would not alter the key aspects of the bid documents.

- 44.4 The Evaluation Committee may allow rectification of any bona fide arithmetical errors in the Applications, Proposals or Bids as prescribed in the RFQ, RFP or IFB documents.

45 Recommendation of the Evaluation Committee, its Approval, etc.

- 45.1 The Evaluation Committee shall prepare the evaluation report with recommendations and shall submit it to the Head of the Contracting Authority.
- 45.2 Each member of the Evaluation Committee shall collectively sign in the evaluation report, by certifying as follows –
- “The Evaluation Committee certifies that the examination and evaluation has followed the requirements of the PPP Act and the applicable policies, rules, regulations, guidance, guidelines and/or notifications made there under and the terms and conditions of RFQ, RFP or IFB (as applicable) and that all facts and information have been correctly reflected in the evaluation report and that no substantial or important information has been omitted”.*
- 45.3 If the signatures of all the members of the Evaluation Committee are not available, then the evaluation report shall at a minimum be required to be signed by the required Quorum, provided that at least one member is from the Contracting Authority and one is an External Member.
- 45.4 A summary of the key milestones starting from the invitation of the Applications, Proposals or Bids shall be attached to the evaluation report by the Evaluation Committee.
- 45.5 The Evaluation Committee shall submit its evaluation report on Shortlisted Bidders along with all necessary documents to the Head of the Contracting Authority.
- 45.6 The Head of the Contracting Authority upon reviewing the evaluation report on the Shortlisted Bidders may either -
- a) approve the recommendation of the evaluation report; or
 - b) seek any clarification from the Evaluation Committee on any specific issues in connection with such evaluation report and recommendation; or
 - c) explaining the reasons -
 - i. reject the evaluation report with recommendation and request the Evaluation Committee for a re-evaluation;
 - ii. reject the recommendations and issue instructions to reprocess the selection of the Shortlisted Bidders.
- 45.7 Prior to issuing the list of Shortlisted Bidders, the Contracting Authority shall submit a copy of the evaluation report on the Shortlisted Bidders to the PPP Authority.
- 45.8 The Evaluation Committee shall submit its evaluation report on the Preferred Bidder along with all necessary documents to the Head of the Contracting Authority. The Head of the Contracting Authority shall thereafter forward the evaluation report on the Preferred Bidder to the Applicable Line Ministry along with a copy to the PPP Authority.

- 45.9 The Applicable Line Ministry upon reviewing the evaluation report on the Preferred Bidder may either -
- a) approve the recommendation of the evaluation report; or
 - b) seek any clarification from the Evaluation Committee on any specific issues in connection with such evaluation report and recommendation; or
 - c) explaining the reasons -
 - i. reject the evaluation report with recommendation and request the Evaluation Committee for a re-evaluation;
 - ii. reject the recommendations and issue instructions to reprocess the selection of the Preferred Bidder.
- 45.10 If the PPP Authority has any questions in relation to the evaluation report, then the PPP Authority may seek clarifications from the Contracting Authority and/or the Evaluation Committee.
- 45.11 Prior to selecting the Preferred Bidder, the Applicable Line Ministry and/or the Head of the Contracting Authority may contact the PPP Authority for any comments and/or feedback that the PPP Authority may have.

46 Conflict of Interest

- 46.1 Applicants, Shortlisted Bidders or Bidders (as applicable) shall not have a conflict of interest. An Applicant, Shortlisted Bidder or Bidder bidding individually or as a Consortium Member shall not be entitled to submit another Application, Proposal or Bid (as applicable) either individually or as a Consortium Member of any other Consortium and shall not be entitled to participate in any other Consortium bidding for the PPP Project prior to issuance of the LoA. Furthermore, an Applicant, Shortlisted Bidder or Bidder can submit only one Application, Proposal or Bid in response to the RFQ, RFP or IFB, as the case may be. In the event that an entity applying individually or as a Consortium Member participates in more than one Application, Proposal or Bid, all the Applications, Proposals or Bids with that entity's participation shall be deemed invalid.
- 46.2 Any Applicant, Shortlisted Bidder or Bidder found to have a conflict of interest, as described in the bid documents shall be disqualified, subject to the Guidelines herein below or provisions on change of Consortium in the bid documents.
- 46.3 In case of an Applicant which is a Consortium, if during the evaluation of the Applications submitted in response to the RFQ, any conflict of interest is discovered, then the concerned Applicant may be allowed an opportunity to remove the Consortium Member with the conflict of interest. The Applicant shall have to ensure that the Consortium Member is duly removed within 10 (ten) Days after the Due Date.
- 46.4 However, removal shall not be permitted in cases where the Consortium Member with the conflict of interest is a Lead Member of the Consortium.

47 Confidentiality

- 47.1 All communications between the Applicants, Shortlisted Bidders or Bidders (as applicable) and the Contracting Authority and all information obtained in connection with or arising out of the RFQ, RFP or IFB shall be treated as confidential during as well as after preparation and submission of the Applications, Proposals or Bids (as applicable). In the event of any such breach of confidentiality by the Applicant, Shortlisted Bidder or Bidder, the Contracting Authority, at its sole and absolute discretion, may at any time reject their Application, Proposal or Bid without any further consideration and terminate their right to continue in the bidding process.
- 47.2 Notwithstanding the foregoing, the obligation of confidentiality shall not pertain to information which was at the time of disclosure, or which thereafter became, part of the public domain or is required to be disclosed by law or a court order, where, in such cases, all reasonable attempts shall be made to notify the Contracting Authority in advance of doing so.
- 47.3 Except as otherwise stated, the Contracting Authority shall endeavour to maintain the confidentiality of any information and/or documents relating to the pre-qualification, examination, clarification, evaluation, negotiation, approval or any other function related to the bidding process.
- 47.4 Notwithstanding the foregoing, the Contracting Authority shall not in any way be liable for disclosure of any confidential information if the disclosure is required under the Right to Information Act, 2009 or if the Contracting Authority has been directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the Contracting Authority or as may be required by law or in connection with any legal process.

48 Complaint, Review and Objection Method

- 48.1 Formal complaints may be lodged against the Contracting Authority or any of its concerned officers by Applicants, Shortlisted Bidders or Bidders who have been aggrieved as a result of any order or decision taken by the Contracting Authority or any of its concerned officers in relation to the procurement process as stipulated in Guideline 49 herein below.

49 Determination of situations when complaints may be filed

- 49.1 Formal complaints may be lodged by Applicants, Shortlisted Bidders or Bidders under the following circumstances:
- a) In case of Invitation for Bid (IFB):
- i. failure to adhere to the advertisement requirements set out in Guideline 17; or
 - ii. failure of the Contracting Authority to respond to a relevant request for clarification from a Registered Entity 10 (ten) Days prior to the Due Date; or

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- iii. allegation (on the basis of reasonable grounds) of possible corrupt, fraudulent, collusive, or coercive practices as provided in Guideline 33.2; or
 - iv. failure to hold a stipulated Pre-Bid Meeting; or
 - v. failure to open all the Bids which were received prior to the Due Date; or
 - vi. opening of the Financial Bids at the same time as the opening of the Technical Bids; or
 - vii. failure by the Evaluation Committee to evaluate the Bids in compliance with the evaluation criteria stated in the IFB document; or
 - viii. allegation (on the basis of reasonable grounds) of unfair and erroneous award of the PPP Contract.
- b) In case of Request for Qualification (RFQ):
- i. failure to adhere to the advertisement requirements set out in Guideline 17; or
 - ii. failure of the Contacting Authority to respond to a relevant request for clarification from a Registered Entity 10 (ten) Days prior to the Due Date; or
 - iii. failure of the Evaluation Committee to evaluate the qualifications in the light of criteria stated in the RFQ or where there has been perceived unfair denial of pre-qualification; or
 - iv. allegation (on the basis of reasonable grounds) of possible corrupt, fraudulent, collusive, or coercive practices as provided in Guideline 33.2; or
 - v. failure to hold a stipulated Pre-Application Meeting; or
 - vi. failure to open all the Applications which were received prior to the Due Date.
- c) In case of Request for Proposal (RFP):
- i. failure of the Contacting Authority to respond to a relevant request for clarification from a Shortlisted Bidder 10 (ten) Days prior to the Due Date; or
 - ii. allegation (on the basis of reasonable grounds) of possible corrupt, fraudulent, collusive, or coercive practices as provided in Guideline 33.2; or
 - iii. failure to hold a stipulated Pre-Proposal Meeting; or
 - iv. failure to open all the Proposals which were received prior to the Due Date; or
 - v. opening of the Financial Proposals at the same time as the opening of the Technical Proposals; or
 - vi. failure by the Evaluation Committee to evaluate the Proposals in compliance with the evaluation criteria stated in the RFP document; or
 - vii. allegation (on the basis of reasonable grounds) of unfair and erroneous award of the PPP Contract.

50 Process for the submission of complaints

- 50.1 An aggrieved Applicant, Shortlisted Bidder or Bidder shall submit his/her complaint in writing within 5 (five) Days from the date of becoming aware or from a date he/she should have become aware of the circumstances giving rise to the complaint.
- 50.2 In the first instance, the aggrieved Applicant, Shortlisted Bidder or Bidder shall submit his/her complaint in writing to the Head of the Contracting Authority who shall -
- a) If he/she is a member or chairman of the Evaluation Committee, forward the complaint to the secretary of the Applicable Line Ministry within 7 (seven) Days of receiving the complaint, advising the Applicant, Shortlisted Bidder or Bidder that the complaint has been so forwarded.
 - b) If he/she is in a position to accept the complaint, then he/she shall consider the subject matter of the complaint and decide whether to reject the complaint or to take any corrective action. In the event that any clarification is required, the Head of the Contracting Authority shall seek clarifications from the aggrieved Applicant, Shortlisted Bidder or Bidder within 10 (ten) Days of receiving the complaint. The Head of the Contracting Authority shall, within 30 (thirty) working days of receiving the complaint, issue a final written decision to the aggrieved Applicant, Shortlisted Bidder or Bidder, stating either the reasons for the rejection of the complaint or advising what corrective actions have been or will be taken.
- 50.3 If the aggrieved Applicant, Shortlisted Bidder or Bidder is not satisfied with the written decision, taken under Guideline 50.2, and wishes to pursue its complaint, or if the Head of the Contracting Authority fails to provide the written decision with a period of 30 (thirty) working days of receiving the complaint, the aggrieved Applicant, Shortlisted Bidder or Bidder may submit the complaint to the PPP Authority (“Appeals Authority”) within 10 (ten) Days of receiving the decision of the Head of the Contracting Authority. The aggrieved Applicant, Shortlisted Bidder or Bidder shall be required to pay a non-refundable registration fee of BDT 50,000 (Bangladesh Taka Fifty Thousand) to the PPP Authority for the appeals procedure at the time of submitting the complaint to the PPP Authority.
- 50.4 Upon receipt of a complaint, the PPP Authority shall select within a period of 7 (seven) Days, a Review Panel on a rotational basis and shall pass the complaint to that Review Panel which shall decide whether to reject the complaint or to implement any corrective actions. The Review Panel may seek clarifications from the aggrieved Applicant, Shortlisted Bidder or Bidder and shall issue a written decision to the Applicant, Shortlisted Bidder or Bidder stating either the reasons for the rejection of the complaint or informing of the corrective action that has been taken, along with a copy to the Applicable Line Ministry, the Contracting Authority and the PPP Authority. Any decision taken by the Review Panel shall be final and binding on all parties concerned.

- 50.5 The Contracting Authority shall maintain a complaint register in which brief information of all complaints and the decisions taken regarding such complaints shall be recorded.
- 50.6 The LoA shall not be issued during the time that the complaint is being considered and until a final decision on the complaint is made, but the evaluation process shall continue. The Contracting Authority or any other concerned officer shall not entertain any complaint after the signature of the PPP Contract.
- 50.7 The aggrieved Applicant, Shortlisted Bidder or Bidder shall not be able to file a civil case in any court unless and until it has exhausted all options of complaint, review and/or objection available under these Guidelines.

51 Constitution of the Review Panel

- 51.1 The PPP Authority shall constitute the Review Panel(s) comprising of specialists for the purpose of reviewing the complaint and giving its decision.
- 51.2 For the purpose of forming Review Panel(s), the PPP Authority shall establish and maintain a list of well-known specialists as detailed below-
- a) the Review Panel(s) shall be constituted by taking 1 (one) member from each of the following 3 (three) groups -
 - i. well-reputed specialists in legal matters, experienced in PPP related legal issues which could also include retired senior officers from Government and semi-Government autonomous bodies or corporations;
 - ii. well-reputed specialists having relevant technical expertise and experience in PPP;
 - iii. well-reputed experts in PPP and contract management practices with experience in complaints and dispute settlement whose names can be provided by the Federation of Bangladesh Chamber of Commerce and Industry (FBCCI).
 - b) No active public servant shall be included in the Review Panel(s).
 - c) The PPP Authority shall maintain 2 (two) or more Review Panels and each Review Panel shall have minimum of 3 (three) members, one of whom shall be the chairperson who shall be nominated by the PPP Authority.
 - d) Depending on the nature of the complaint, the Review Panel may request the PPP Authority to co-opt 2 (two) members on a case-by-case basis, out of the lists of specialists maintained by the PPP Authority.
- 51.3 The PPP Authority shall maintain the list of specialists and the list of Review Panels and they shall be made available to any interested person and/or entity.

- 51.4 In order to ensure smooth operation of the Review Panel(s), a provision for an incentive or honorarium, as determined by the PPP Authority from time to time, for payment to each member of the Review Panel shall be made.

52 Negotiation and Debriefing

- 52.1 Upon completion of the evaluation of the Proposals or Bids (as applicable), the Evaluation Committee may, through the Contracting Authority, invite the Preferred Bidder for negotiations.
- 52.2 The Contracting Authority shall notify the Preferred Bidder in writing that its Proposal or Bid (as applicable) has been accepted and shall set a date for the commencement of PPP Contract negotiations.
- 52.3 The Evaluation Committee shall, in order to finalize the PPP Contract, negotiate with the Preferred Bidder in relation to only those terms and conditions which are identified as capable of being negotiated in the PPP Contract. The Contracting Authority may include other representatives to join the negotiation meetings alongside the Evaluation Committee.
- 52.4 Negotiations in relation to price and/or rates would only be permitted where it improves the position of the Contracting Authority.
- 52.5 The Contracting Authority may, upon request of any unsuccessful Applicant, Shortlisted Bidder or Bidder (as applicable) conduct a debriefing session with such unsuccessful Applicant, Shortlisted Bidder or Bidder. Any information given to the Applicant, Shortlisted Bidder or Bidder in a debriefing session must remain confidential and the Applicant, Shortlisted Bidder or Bidder must, if so requested by the Contracting Authority, enter into a confidentiality agreement to that effect. During such debriefing, the evaluation, ranking and content of any Application, Proposal or Bid (as applicable) shall not be disclosed. Only the strengths and weaknesses of the Application, Proposal or Bid (as applicable) relative to the evaluation criteria shall be disclosed and discussed.

CHAPTER V: PROCEDURES FOR APPROVAL AND AWARD PHASE

53 Introduction to the Approval and Award Phase

- 53.1 The Approval and Award Phase is the fourth phase in the process for the selection of a Private Partner for the delivery of a PPP Project. During this phase the PPP Contract shall be sent to the CCEA for Final Approval and the Contracting Authority with the support of the PPP Authority shall issue the LoA to the Preferred Bidder.

54 CCEA Final Approval and Letter of Award

- 54.1 Upon completion of the negotiation as set out in Chapter IV above, the Applicable Line Ministry shall submit the legally vetted PPP Contract to the CCEA for its Final Approval. The said legal vetting may have been carried out by the Legislative and Parliamentary Affairs Division of the Ministry of Law, Justice and Parliamentary Affairs in relation to the specific PPP Project or the PPP Project may have been based on previously legally vetted model documentation in which case no further legal vetting will be required.
- 54.2 Upon receipt of the Final Approval from the CCEA, the Contracting Authority shall issue the LoA to the Preferred Bidder, inviting that Preferred Bidder and/or the Project Company to sign the CCEA approved PPP Contract with the Contracting Authority for implementation of the PPP Project.
- 54.3 The LoA shall be issued within 4 (four) weeks following receipt of CCEA approval. However, this timeline may be extended upon concurrence of the PPP Authority.

55 Miscellaneous

- 55.1 The Contracting Authority shall, subject to the concurrence of the PPP Authority, be able to take necessary steps in order to complete the bidding process in an efficient manner on issues which have not already been covered in these Guidelines.
- 55.2 In addition to the requirements set out in these Guidelines, the Contracting Authority may incorporate additional requirements and/or instructions in the RFQ, RFP or IFB and these shall be applicable for the relevant PPP Project.
- 55.3 The Contracting Authority may seek references and/or conduct any investigations or enquiries in order to verify any and all statements, information, references and documents submitted by the Applicants, Shortlisted Bidders or Bidders (as applicable) in response to the RFQ, RFP or IFB.

- 55.4 The Contracting Authority and/or the Applicable Line Ministry may contact the PPP Authority at any time for clarifications and/or to feedback on progress. Further, the PPP Authority may also contact the Contracting Authority and/or the Applicable Line Ministry at any time seeking clarifications and/or to ensure that the process and timelines are being met.
- 55.5 The PPP Authority may at any point during the Identification Phase, Development Phase, Bidding Phase and Approval and Award Phase, discuss with local and/or international private sector institutions, bilateral, multilateral and/or development banks and/or PPP practicing entities in order to identify new PPP Projects and/or test potential private sector interest in the PPP Projects, assess market practice in delivering Projects on a PPP basis and/or seek financing or insurance opportunities and/or carry out any other market sounding activities.
- 55.6 The PPP Authority may at any time receive queries and/or discuss with interested private parties, Applicants, Shortlisted Bidders or Bidders (as applicable), in relation to the PPP Act and/or policies, rules, regulations, guidance, guidelines or notifications issued under the PPP Act as well as any other matters which may include but shall not be limited to general PPP program matters and PPP pipelines, irrespective of whether they intend to bid for the concerned PPP Project.

GUIDELINES FOR UNSOLICITED PROPOSALS, 2016

1. Short Title and Commencement

These guidelines may be called Guidelines for Unsolicited Proposals, 2016, and referred herein as the Guidelines. The Guidelines shall be effective immediately upon being published in the official Gazette.

2. Definitions

In these Guidelines, unless there is anything repugnant to the subject or context-

- (i) **“Applicable Line Ministry”** means the ministry of the People's Republic of Bangladesh which is mandated under the Rules of Business 1996 to deal with the subject proposed by the Original Proponent.
- (ii) **“Applicant”** means the entity or a Consortium who submitted an Application in response to the Request for Qualification (RFQ) document. The term Applicant used herein shall apply to both a single entity and a Consortium.
- (iii) **“Application”** means the application that contains the requirements of the Request for Qualification (RFQ) document which is submitted by the Applicants in order to be pre-qualified and thereafter shortlisted for the PPP Project.
- (iv) **“Approving Authority”** means the Cabinet Committee on Economic Affairs (CCEA) which is mandated to provide In-Principle Approval and Final Approval for PPP Projects.
- (v) **“Bid”** means the Bidder's written offer based on the covenants, terms and conditions as contained in the IFB for the PPP Project.
- (vi) **“Bidder”** means the entity or Consortium of more than one entity who submits a Bid in response to the Invitation for Bid (IFB). The term Bidder used herein shall apply to both a single entity and a Consortium.
- (vii) **“Bidding Process”** means any bidding process followed under the PPP Act.
- (viii) **“Concept Note”** means the document submitted by the Original Proponent as detailed in Article 4 of these Guidelines.
- (ix) **“Consortium”** is a group of entities coming together to submit an Application, Proposal or Bid (as applicable).
- (x) **“Consortium Member”** means a member of a Consortium (including both Lead Member and Non-Lead Member).

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- (xi) **“Contracting Authority”** means a line ministry or division; or any office or directorate or corporation or statutory organization or local government or any similar organization under the line ministry or its division; or the PPP Authority, in the event that the PPP Authority is given the duty to carry out the functions from the time of taking up/initiating a PPP Project up until the execution of the PPP Contract and which proposes to enter into a PPP contract or other contractual agreement with the Preferred Bidder and/or the Project Company.
- (xii) **“Evaluation Committee”** means a committee constituted under the Procurement Guidelines for PPP Projects, 2016 to evaluate the Applications, Proposals or Bids (as applicable).
- (xiii) **“Final Approval”** means the approval provided by the CCEA for the Contracting Authority to enter into a contract with the Preferred Bidder and/or the Project Company, as the case may be.
- (xiv) **“Formal Government Request”** means the publication by a Contracting Authority of a pre-qualification notice, registration of interest, an invitation for pre-qualification, Request for Qualification (RFQ), Request for Proposal (RFP) and/or Invitation for Bid (IFB).
- (xv) **“Government”** means the government of the People’s Republic of Bangladesh.
- (xvi) **“IFB”** means the Invitation for Bid issued by the Contracting Authority to request information from prospective Bidders participating in the bidding process for a PPP Project, and it refers to the document which contains the detailed information and instructions required to submit a Bid.
- (xvii) **“In-Principle Approval”** means the initial approval provided by the CCEA to select a Project for development on a PPP basis.
- (xviii) **“Lead Member”** with respect to a Consortium means the Consortium Member:
- who has provided a memorandum of understanding or letter of intent with the remaining Consortium Members and agreed to have at least 26% equity shareholding in the Project Company;
 - who will be the largest shareholder in the Project Company; and
 - who is authorized by all other Consortium Members to be responsible for the bidding process on behalf of the Consortium.
- (xix) **“Non-Lead Member”** means a Consortium Member who has provided a memorandum of understanding or letter of intent with the remaining Consortium Members to subscribe to at least 10% of the equity in the Project Company.

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- (xx) **“Original Proponent”** means the person or entity who has submitted the first Unsolicited Proposal for a particular proposed PPP Project.
- (xxi) **“PPP”** means Public Private Partnership.
- (xxii) **“PPP Act”** means the Bangladesh Public-Private Partnership Act, 2015.
- (xxiii) **“PPP Authority”** means the Public Private Partnership Authority established under the PPP Act.
- (xxiv) **“PPP Contract”** means the contract signed between the Contracting Authority and the Preferred Bidder and/or the Project Company, as the case may be, for implementation of the PPP Project.
- (xxv) **“PPP Project”** means any public sector Project which will be implemented through a PPP basis.
- (xxvi) **“PPP Project Proposal”** means the proposal for a Project submitted by the Contracting Authority.
- (xxvii) **“Preferred Bidder”** means the Shortlisted Bidder or Bidder (as applicable) chosen by the Contracting Authority following evaluation of the Proposals submitted in response to the RFP or Bids submitted in response to the IFB (as applicable) based on the pre-established evaluation criteria.
- (xxviii) **“Private Partner”** means the Preferred Bidder who has entered into the PPP Contract with the Contracting Authority and who has formed or will form the Project Company for implementation of the PPP Project.
- (xxix) **“Project”** means any such actions or program or a combination of both by means of which the following plan or work is taken up for implementation:
- a) construction and/or operation of any new infrastructure or a plan to construct and/or operate any new infrastructure;
 - b) plan to reconstruct¹ any existing infrastructure;
 - c) plan to carry out the work specified in Sub-article (a) and (b) both; or
 - d) deliver any such goods or services which are not related to any infrastructure facility.
- (xxx) **“Project Company”** means the special purpose company duly incorporated under the applicable laws of Bangladesh, either by the Preferred Bidder prior to execution of the PPP Contract or the Private Partner after execution of the PPP Contract (as applicable) for delivery of the PPP Project.

¹The term “reconstruct” also includes re-creation, rehabilitation, modernization, reformation, expansion, enhancement, alteration or management of any existing infrastructure.

- (xxxix) **“Proposal”** means the Shortlisted Bidder’s written offer based on the covenants, terms and conditions as contained in the RFP for the PPP Project.
- (xxxix) **“Request for Proposal”** or **“RFP”** means the request for proposal document issued by the Contracting Authority to request information from Shortlisted Bidders participating in the bidding process for a PPP Project, and it refers to the document which contains the detailed information and instructions required to submit a Proposal.
- (xxxix) **“Request for Qualification”** or **“RFQ”** means the request for qualification document issued by the Contracting Authority to request prescribed information from prospective Applicants participating in the pre-qualification proceedings for a PPP Project, and it refers to the document which contains the detailed information and instructions required to submit an Application.
- (xxxix) **“Shortlisted Bidder”** means an Applicant who has submitted an Application and has been pre-qualified and shortlisted by the Contracting Authority at the end of the RFQ stage of the bidding process.
- (xxxix) **“Unsolicited Bidder”** means an Original Proponent who has submitted an Unsolicited Proposal for a particular proposed PPP Project which has received In-Principle Approval.
- (xxxix) **“Unsolicited Proposal”** means a written proposal for the implementation of a PPP Project submitted unilaterally by an Original Proponent on its own initiative and not in response to any Formal Government Request.

3. Non-Mandatory Nature of Concept Note and/or Unsolicited Proposal

- (a) The Government shall be under no obligation to receive, consider, review or accept the Concept Note and/or the Unsolicited Proposal.
- (b) The Government may decide not to process for approval a Concept Note and/or Unsolicited Proposal, but shall not be limited from using the asset that is the subject of the Concept Note and/or Unsolicited Proposal for the delivery of any PPP or conventional Government Project. Further, in the event that the Concept Note and/or Unsolicited Proposal is not accepted, the same Project concept may be applied by the Applicable Line Ministry and/or the Contracting Authority for the delivery of any PPP or conventional Government Project, where 24 (twenty four) months have elapsed from the date of rejection of the Concept Note and/or Unsolicited Proposal.

4. Process for Submission of a Concept Note and Sector Policy Review

- (a) The Original Proponent shall submit the Concept Note to the Contracting Authority for review and consideration with a copy to the Applicable Line Ministry and the PPP Authority. The Concept Note shall set out the broad proposed PPP Project scope and shall also provide a brief description of the Original Proponent and its past relevant experience.

- (b) The Applicable Line Ministry and/or Contracting Authority with the support of the PPP Authority may engage in discussions with the Original Proponent in order to clarify the scope of the Concept Note and to provide guidance on the criteria that need to be met.
- (c) The Contracting Authority shall review the Concept Note to determine whether the proposed PPP Project meets with their sector development plans and is likely to deliver a positive socio-economic benefit.
- (d) If the Contracting Authority concludes that further information is required to complete its determination, then it shall inform the Original Proponent accordingly and request the submission of further information within a specified time.
- (e) Where the Contracting Authority determines that the Concept Note does not meet the requirements of Article 4(c) above, then it shall inform the Original Proponent in writing of its conclusion with a copy to the Applicable Line Ministry and the PPP Authority.
- (f) Where the determination is positive, the Contracting Authority shall include this proposed PPP Project within the list of potential PPP Projects that are earmarked for procurement, and shall submit the Concept Note and the PPP Project Proposal (in the form as prescribed by the PPP Authority) along with its recommendation (if any) for endorsement by their Applicable Line Ministry, where applicable.
- (g) After completion of their assessment of the Concept Note and the PPP Project Proposal, the Applicable Line Ministry will either endorse it, reject it or seek a resubmission of the PPP Project Proposal and/or the Concept Note, incorporating the Applicable Line Ministry's feedback.

5. Assessment of Eligibility of the Concept Note and the PPP Project Proposal

- (a) The Applicable Line Ministry shall formally submit the endorsed Concept Note and the PPP Project Proposal to the PPP Authority for processing of the same.
- (b) On receipt of the formal submission from the Applicable Line Ministry, the PPP Authority shall at first subject the Concept Note and the PPP Project Proposal to a screening process to assess whether the proposed PPP Project is suitable to be submitted to the Approving Authority to provide the In-Principle Approval for delivery of this Project through a PPP arrangement.
- (c) The PPP Authority may make use of its own resources and/or seek professional support from qualified consultants and/or may seek support from appropriate sector line ministry resources, in conducting its assessment of the Concept Note and the PPP Project Proposal. The PPP Authority may directly contact the Contracting Authority, the Applicable Line Ministry, other relevant Government agencies or carry out site visits for further information or clarification in relation to the proposed Project or related issues.

- (d) The PPP Authority may also engage in discussions with the Original Proponent in order to clarify the scope of the Concept Note and the proposed Project and to provide guidance on the criteria that need to be met.
- (e) The PPP Authority shall thereafter inform the Contracting Authority in writing along with a copy to the Applicable Line Ministry of its determination along with its recommendations, if any-
- (i) endorsing the Concept Note and/or the PPP Project Proposal, subject to the incorporation of any changes to the Project scope or any conditions;
 - (ii) rejecting the Concept Note and/or the PPP Project Proposal; or
 - (iii) seeking a resubmission of the Concept Note and/or PPP Project Proposal incorporating the PPP Authority's feedback.
- (f) The Contracting Authority, upon obtaining the concurrence of the PPP Authority, shall inform the Original Proponent in writing along with a copy to the Applicable Line Ministry and the PPP Authority that the Concept Note has been accepted and shall request it to submit the detailed Unsolicited Proposal as provided in Article 6 of these Guidelines.
- (g) In the event that the Contracting Authority decides to reject the Concept Note or seek a resubmission, it shall inform the Original Proponent of the same in writing along with the copy to the Applicable Line Ministry and the PPP Authority.

6. Information Requirements for an Unsolicited Proposal

An Unsolicited Proposal must contain sufficient information to enable the Government to carry out a proper evaluation of the scope and viability of the Unsolicited Proposal and the qualifications of the Original Proponent. To meet this requirement the Unsolicited Proposal must include the following information:

(i) Letter of submission:

- A letter of submission confirming the submission of an Unsolicited Proposal.
- A power of attorney or a duly certified copy of a board resolution authorizing one or more persons on behalf of the Original Proponent to respond to queries and/or to provide information and/or otherwise to represent the Original Proponent in discussions with the Applicable Line Ministry and/or the Contracting Authority as the case may be.

(ii) Description of the PPP Project:

- An outline of the proposed PPP Project, its scope and how the implementation of this PPP Project will support the Contracting Authority in meeting its sector development plans.
- A description of the proposed goods or services that would be delivered under the PPP Contract.

(iii) A broad feasibility study covering the following:

- Technical Proposal - Outline description, conceptual design and layout to clarify the purpose and intention of the proposed PPP Project and how it will be developed and operated.
- Financial Proposal - (i) broad cost estimate and proposed revenue model; (ii) the estimated internal rate of return for the proposed PPP Project with key assumptions underpinning these calculations.
- Implementation Plan - An indicative implementation plan, broken out by major milestones, describing how the proposed PPP Project will be delivered.
- Environmental and Social Safeguards - A broad overview of the environmental and social issues that may need to be addressed.

(iv) Description of the Original Proponent, including but not limited to:

- An overview of the Original Proponent's organisation. The Original Proponent, if a Consortium, should describe the broad roles of the potential Consortium Members in implementing the PPP Project, and provide a memorandum of understanding or letter of intent between the potential Consortium Members.
- Details of any contractual non-performance and litigation of the Original Proponent within the last 5 (five) years should be provided.

(v) Technical and financial capability of the Original Proponent, including but not limited to:

- Demonstration of the technical capability of the Original Proponent by providing examples of experience in developing, implementing and operating a similar Project.
- Demonstration of the financial capability of the Original Proponent by providing examples of experience of providing and/or raising funds required for a similar Project.

7. Process for Submission of an Unsolicited Proposal

- (a) The Original Proponent shall submit the Unsolicited Proposal to the Contracting Authority for review and consideration with a copy to the Applicable Line Ministry and the PPP Authority.
- (b) The Contracting Authority may engage in discussions with the Original Proponent in order to clarify the scope of the Unsolicited Proposal and to provide guidance on the criteria that need to be met.
- (c) If the Contracting Authority concludes that further information is required to complete its determination, then it shall inform the Original Proponent accordingly and request the submission of further information within a specified time.
- (d) If after reviewing and assessing the Unsolicited Proposal, the determination is positive, the Contracting Authority shall put forward a formal submission along with its recommendations, if any, to the PPP Authority for processing of the Unsolicited Proposal, along with a copy to the Applicable Line Ministry.

- (e) Where the Contracting Authority determines that the Unsolicited Proposal is not acceptable, then it shall inform the Original Proponent in writing of its conclusion with a copy to the Applicable Line Ministry and the PPP Authority.
- (f) On receipt of the formal submission from the Contracting Authority, the PPP Authority shall assess whether or not the Unsolicited Proposal complies with the minimum information requirements set out in Article 6 above. If the PPP Authority assesses that the requirements of Article 6 have been met, then it shall inform its decision in writing to the Applicable Line Ministry and the Contracting Authority.
- (g) If the PPP Authority assesses that the requirements of Article 6 have not been met, then it may request the submission of further information, or reject the Unsolicited Proposal from further consideration and shall inform its decision in writing to the Applicable Line Ministry and the Contracting Authority. Based on the PPP Authority's response, the Contracting Authority may request the Original Proponent for further information or may inform the Original Proponent that the Unsolicited Proposal has been rejected from further consideration. The PPP Authority may also engage in discussions with the Original Proponent in order to clarify the scope of the Unsolicited Proposal and to provide guidance on the criteria that need to be met.

8. In-Principle Approval

- (a) Following receipt of the PPP Authority's concurrence, the Applicable Line Ministry shall submit the proposed Project to the Approving Authority for In-Principle Approval. In its submission for In-Principle Approval it should also seek approval confirming the status of the Original Proponent as the Unsolicited Bidder on the basis of the Unsolicited Proposal and seek confirmation on the mode of competitive bidding that shall be applied to test the competitiveness of the Unsolicited Proposal.
- (b) The mode of competitive bidding may include a bonus system or other appropriate methods that may be proposed by the PPP Authority and approved by the Approving Authority.

9. Submission of Unsolicited Proposal on PPP Projects with In-Principle Approval

- (a) Concept Notes on PPP Projects which have obtained In-Principle Approval may only be processed where the Contracting Authority and the PPP Authority agree that the Concept Note is likely to provide a better solution to meeting sector development plans by delivering a range of services significantly enhanced from that which has received the In-Principle Approval after taking into consideration the implications of any cost that may have been incurred or any contractual arrangement that may have been entered into by Government on the PPP Project.
- (b) Where the conditions set out under Article 9(a) are met, the Concept Note shall be subject to the procedure set out in Articles 4-9.

10. PPP Project Development Phase

- (a) Following In-Principle Approval, the PPP Authority together with the Contracting Authority shall carry out necessary actions to address any terms or conditions that may have been imposed on the PPP Project by the Approving Authority.
- (b) The PPP Authority shall support the Contracting Authority in delivering this PPP Project including providing assistance in the appointment of consultants where requested by the Contracting Authority.
- (c) The Contracting Authority shall seek PPP Authority's concurrence on the extent to which further preparatory works are required in relation to carrying out due diligence on the Unsolicited Proposal, the need to carry out further detailed feasibility studies, assessment of Viability Gap Financing (VGF) requirement (where applicable), the development of RFQ and RFP or IFB documentation, the PPP Contract and other related documents.
- (d) The Contracting Authority and/or the PPP Authority and/or the consultants may engage with the Unsolicited Bidder to seek further clarification or detail on the Unsolicited Proposal that has been submitted.
- (e) The Government reserves the right to use the information submitted in the Unsolicited Proposal, apart from confidential information relating to the proposed pricing and the specific technical solution provided by the Original Proponent, to develop the procurement documentation including the RFQ, RFP, IFB, the PPP Contract and/or other contractual agreements.
- (f) In the event that the outcome of the feasibility study changes the scope and/or the delivery structure of the PPP Project, the Contracting Authority shall seek clarifications from the PPP Authority in terms of next steps. Subject to the approval of the PPP Authority, the Contracting Authority may incorporate the changes in relation to the PPP Project and shall accordingly proceed with the procurement process. However, the Original Proponent shall retain the status of an Unsolicited Bidder.

11. Outcome of the PPP Project Development Phase

- (a) Based on the outcome of the further preparatory works carried out during the PPP Project development phase, the Contracting Authority may decide:
 - (i) to proceed with the Bidding Process on the basis of the Unsolicited Proposal; or
 - (ii) not to proceed with the Bidding Process for the Unsolicited Proposal.
- (b) Where the Contracting Authority decides not to proceed with the Bidding Process, it shall notify the PPP Authority and seek the approval of the Approving Authority on the decision taken. Once approval has been provided by the Approving Authority, the Contracting Authority shall inform the Unsolicited Bidder promptly in writing of the decision not to proceed with the PPP Project.

12. Resumption of Bidding Process for an Unsolicited Proposal

- (a) The Contracting Authority retains the right to resume the Bidding Process on the basis of an Unsolicited Proposal, after a decision has been taken not to proceed with the Bidding Process in line with Article 11, without any commitment or obligation, whether financial or otherwise, towards the Unsolicited Bidder, subject to the condition set out in Article 12(b) herein below.
- (b) Where the Bidding Process is re-launched within 24 (twenty-four) months of the date of approval by the Approving Authority of the decision not to proceed, the Contracting Authority shall invite the Original Proponent to resume their status as an Unsolicited Bidder of the Unsolicited Proposal.
- (c) If the Original Proponent does not respond to the invitation within the time specified in the invitation, it will lose its status and the associated benefits of an Unsolicited Bidder.

13. Bidding Process and Change in the Composition of a Consortium

- (a) Where the Bidding Process involves pre-qualification and shortlisting, the Unsolicited Bidder shall automatically be considered as a Shortlisted Bidder and its Application shall not be subject to evaluation for pre-qualification purposes. However, the Unsolicited Bidder shall still be required to submit its Application in response to the RFQ in order to update the information.
- (b) The Unsolicited Bidder shall be able to change the composition of the Consortium until submission of the Application (in response to the RFQ) or Bid (in response to the IFB), as applicable, provided that the substitute is at least equal, in terms of technical capacity and financial capacity to the Consortium Member who is sought to be substituted. Further, new member(s) may join the Consortium as Consortium Member(s), provided that the Lead Member remains the same. Post submission of the Application or Bid, any subsequent changes in the composition of the Consortium shall be on the basis of the bid documents that have been issued.

14. Validity Period for Unsolicited Proposals

An Unsolicited Proposal shall remain valid for a period of 18 (eighteen) months from the date of In-Principle Approval. A Formal Government Request must be issued within this period for the status of an Unsolicited Bidder to remain valid. Where a Formal Government Request has not been issued within the 18 (eighteen) month period and the Unsolicited Bidder has not been formally informed by the Contracting Authority that its Unsolicited Proposal has been rejected, then the Unsolicited Bidder must resubmit the Unsolicited Proposal within 1 (one) month of the expiry of the 18 (eighteen) month period, in order to secure the extension of a further 18 (eighteen) month period (starting from the date of expiry of the earlier 18 (eighteen) month period). The status of an Unsolicited Bidder shall remain valid if a Formal Government Request for the PPP Project is issued within that extended period.

15. Return of Unsolicited Proposals

Whether the Government accepts, rejects, processes or declines to process an Unsolicited Proposal, it shall not be under any obligation to return to the Original Proponent, the Unsolicited Proposal that has been submitted.

16. Mode of Competitive Bidding for Unsolicited Proposals

The mode of competitive bidding may include a bonus system as set out in Article 17 or other appropriate methods that may be proposed by the PPP Authority and approved by the Approving Authority.

17. Application of the Bonus System

- (a) Subject to the provision set out below, under the bonus system, the Evaluation Committee shall evaluate all the Proposals or Bids (as applicable) received in line with the provisions set out under the PPP Act and the RFP or IFB document, as applicable.
- (b) When aggregating the evaluation score for the Proposal or Bid submitted by the Unsolicited Bidder, the Evaluation Committee shall include a bonus for the Unsolicited Bidder in order to enhance the evaluation score of the Unsolicited Bidder. The bonus for the Unsolicited Bidder shall be equivalent to 7% of the evaluation score assessed by the Evaluation Committee for the Proposal or Bid submitted by the Unsolicited Bidder.
- (c) After taking into account the benefit of the bonus attributed to the Unsolicited Bidder, the Shortlisted Bidder or Bidder (as applicable) with the highest evaluated score will be recommended by the Evaluation Committee for selection as the Preferred Bidder.

18. Further Details, Clarifications & Revisions

- (a) The Applicable Line Ministry or the Contracting Authority may contact the PPP Authority at any time for clarifications and/or to feedback on progress. Further, the PPP Authority may also contact the Applicable Line Ministry and/or the Contracting Authority at any time seeking clarifications and/or to ensure that the process and timelines are being met.
- (b) The PPP Authority may provide further details and clarifications from time to time in relation to these Guidelines, as well as developing, modifying and issuing templates and model documentation for the application and processing of Unsolicited Proposals. The PPP Authority may amend these Guidelines as and when deemed necessary, including incorporation of corrections, omissions, clarifications, additions or deletions.
- (c) The Contracting Authority may seek references and/or conduct any investigations or enquiries in order to verify any and all statements, information, references and documents submitted by the Original Proponent.

- (d) All costs and expenses associated with the preparation and submission of the Unsolicited Proposal or any other costs shall be fully borne by the Original Proponent. The Applicable Line Ministry and/or the Contracting Authority shall not be liable in any manner whatsoever for any such costs and/or expenses incurred by the Original Proponent nor shall they be liable for any losses suffered by the Original Proponent and/or for any actions by the Original Proponent and/or for any consequences thereof.
- (e) In case of any incomplete work which was initiated under the repealed Policy and Strategy for Public-Private Partnership (PPP), 2010 (“PPP Policy”) and the Procedures for Implementation of PPP Policy and Strategy for Unsolicited Proposals, 2014 (“Procedures for Unsolicited Proposals”), that work shall be completed in accordance with the provisions of the repealed PPP Policy and the Procedures for Unsolicited Proposals as if it has not been repealed and these Guidelines shall not be applicable only to such extent.
- (f) Subject to the foregoing, these Guidelines shall immediately be applicable for the rest of the procurement process to be undertaken after completion of the above mentioned work initiated under the repealed PPP Policy and the Procedures for Unsolicited Proposals.
- (g) Subject to the requirements stipulated in these Guidelines, the Procurement Guidelines for PPP Projects, 2016 (“PGP 2016”) shall apply in relation to the procurement process.
- (h) In case of any ambiguity, uncertainty or lack of clarity in relation to any wording contained in these Guidelines, the interpretation provided by the PPP Authority in this regard shall be final and binding.

DRAFT TEMP LATES FOR PROCESSING UNSOLICITED PROPOSALS

- 1. FORM I: LETTER OF SUBMISSION OF AN UNSOLICITED PROPOSAL**
- 2. FORM II: POWER OF ATTORNEY TO THE SIGNATORY**
- 3. FORM III: LETTER FOR SUBMISSION OF UNSOLICITED PROPOSAL
ON THE BASIS OF CONCEPT NOTE**
- 4. FORM IV: LETTER OF REJECTION FOR THE CONCEPT NOTE**

FORM I: LETTER OF SUBMISSION OF AN UNSOLICITED PROPOSAL²

Date: *[Please Insert Day, Month, Year]*

To:

[Please Insert Name and Address of the Contracting Authority]

Cc:

[Please Insert Name and Address of the Applicable Line Ministry]

[Please Insert Name and Address of PPP Authority]

Subject: Submission of Unsolicited Proposal for *[Please Insert Name of Project]* through Public Private Partnership (“PPP”)

Dear Sir,

Being duly authorized to represent and act on behalf of *[Please Insert the Name of the Original Proponent]*³ (hereinafter the “Original Proponent”), and having reviewed and examined the Bangladesh Public-Private Partnership Act, 2015 (“PPP Act”) and the Guidelines for Unsolicited Proposals, 2016 (“Guidelines”) and having fully understood all the provisions, the undersigned hereby submit an Unsolicited Proposal for the *[Please Insert Name of Project]* through Public Private Partnership (PPP) and declare that:

1. We acknowledge that the *[Please Insert Name of the Contracting Authority]* (“Authority”) will be relying on the information provided in the Unsolicited Proposal and the documents accompanying such Unsolicited Proposal for considering the eligibility of the Original Proponent as an Unsolicited Bidder.
2. This statement is made for the express purpose of being considered as an Unsolicited Bidder of an Unsolicited Proposal.
3. We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate this letter of submission and the Unsolicited Proposal. The Authority and its authorized representatives are hereby authorized to conduct any inquiries or investigations to verify the statements, documents, and information submitted in connection with this Unsolicited Proposal, and to seek clarification, from our bankers and clients regarding any financial and technical aspect.
4. This letter of submission will also serve as authorization to any individual or authorized representative of any institution referred to in the supporting information, to provide such information deemed necessary and requested by the Authority to verify statements and information provided in this submission, or with regard to the resources, experience, and competence of the Original Proponent.

²To be provided on letter head of the Original Proponent or the Lead Member (in case the Original Proponent is a Consortium), including full postal address, telephone no. and email address.

³Please fill in the blank spaces, as appropriate and delete the square brackets.

5. We acknowledge the right of the Authority to reject our letter of submission and the Unsolicited Proposal without assigning any reason whatsoever and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. We acknowledge the right of the Authority at any time to stop processing this Unsolicited Proposal without incurring any liability to the Original Proponent.
7. We undertake that during the period of consideration by the Authority of our Unsolicited Proposal, we will inform the Authority immediately if there are any changes in facts or circumstances relating to any aspect of our submission.
8. We agree and undertake to abide by all the terms and conditions of the PPP Act and the Guidelines.
9. We are not a Government owned entity/we are a Government entity.⁴
10. The Authority and its authorized representatives may contact the following persons for further information or clarification:

General Inquiries

Name: _____
 Designation: _____
 Address: _____
 Tel No.: _____
 Mobile: _____
 Email: _____
 (Please fill in details of the key contact person for general inquiries)

Name: _____
 Designation: _____
 Address: _____
 Tel No.: _____
 Mobile: _____
 Email: _____
 (Please fill in details of the alternate contact person for general inquiries)

Technical Inquiries

Name: _____
 Designation: _____
 Address: _____
 Tel No.: _____
 Mobile: _____
 Email: _____
 (Please fill in details of the key contact person for technical inquiries)

⁴Please specify the type of entity and cancel the other option accordingly.

Name: _____
Designation: _____
Address: _____
Tel No.: _____
Mobile: _____
Email: _____

(Please fill in details of the alternate contact person for technical inquiries)

Financial Inquiries

Name: _____
Designation: _____
Address: _____
Tel No.: _____
Mobile: _____
Email: _____

(Please fill in details of the key contact person for financial inquiries)

Name: _____
Designation: _____
Address: _____
Tel No.: _____
Mobile: _____
Email: _____

(Please fill in details of the alternate contact person for financial inquiries)

11. We hereby declare that we:
- a. have not applied for liquidation and/or have not been ordered to liquidate by any court or other authority;
 - b. are not legally restrained to execute a contract;
 - c. have not previously entered into a contract with the Authority and later terminated the contract (within the last 3 (three) years) prior to the expiry of the contract due to the event of default on our part;
 - d. have not been involved in more than two law suits in the previous 3 (three) years with any public sector authority in Bangladesh;
 - e. do not have a history of non-performance of work in the previous 5 (five) years;
 - f. have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive document, undesirable practice or restrictive practice in respect of any tender issued by or any agreement entered into with the Authority or any other public sector enterprise;
 - g. have never been declared or found guilty of violating the anti- monopoly and/or competition laws of any jurisdiction by any competent court at any time during the last 5 (five) years;
 - h. have taken steps to ensure that no persons acting for us on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, or collusive practice;
 - i. have not been convicted of a criminal offence in Bangladesh in the last 5 (five) years.

12. The undersigned declare that all information provided in this letter of submission, the Unsolicited Proposal, and/or any other submitted documents is true, complete and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such submission are true copies of their respective originals.

Signed: _____ Name: _____

(Signature of the authorized signatory of the Original Proponent)⁵ (Name of the authorized signatory)

For and on behalf of: _____

(Name of the Original Proponent or Consortium Members in case of a Consortium)

⁵In case of a Consortium, the authorized signatory of the Lead Member should sign.

FORM II: POWER OF ATTORNEY TO THE SIGNATORY⁶

This power of attorney is made on this the [*Please Insert Date*] day of [*Please Insert Month*], [*Please Insert Year*].

We, [*Please Insert Name of the Original Proponent*], residing at [*Please Insert Address of the Original Proponent*], do hereby appoint and authorize [*Please Insert Name of the Authorized Representative*] of [*Please Insert Address of the Authorized Representative*] to be the person on behalf of [*Please Insert Name of Original Proponent*] to provide information and respond to inquiries etc. as may be required by the [*Please Insert Name of the Applicable Line Ministry*] and/or [*Please Insert Name of the Contracting Authority*] or any other government authority in connection with the "[*Please Insert Name of Project*] through Public Private Partnership (PPP)" and is also hereby authorized to sign and file relevant documents, including the power of attorney (if necessary) in response to the above, including any and all matters related to the preparation and submission of the Unsolicited Proposal.

IN WITNESS WHEREOF, WE DO HEREBY PUT OUR SIGNATURE ON THE DAY, MONTH AND YEAR MENTIONED HEREIN ABOVE.

(Original Proponent's signature)

Name:

Witness: 1. _____ 2. _____

Name:

Name:

Address:

Address:

(Please fill in name and address of the witness) (Please fill in name and address of the witness)

⁶This power of attorney is to be provided by the Original Proponent duly authorizing its nominated representative. In case where the Original Proponent is a Consortium, this power of attorney will have to be provided by each Consortium Member, duly authorizing its respective nominated representative.

This power of attorney is to be provided on a non-judicial stamp of Bangladesh Taka 1000.00/ (BDT One Thousand) or any other legally equivalent document as permissible under the laws of the respective country, provided that the document is duly authenticated and/or notarized by the relevant authority.

FORM III: LETTER FOR SUBMISSION OF UNSOLICITED PROPOSAL ON THE BASIS OF CONCEPT NOTE⁷

Date: *[Please Insert Day, Month, Year]*

To:
[Please Insert Name and Address of the Original Proponent]

Cc:
[Please Insert Name and Address of the Applicable Line Ministry]
[Please Insert Name and Address of PPP Authority]

Subject: Unsolicited Proposal based on the Concept Note for *[Please Insert Name of Project]* through Public Private Partnership (“PPP”)

Dear Sir,

Thank you for your Concept Note dated *[Please Insert Date]* submitted to us in relation to the *[Please Insert Name of the Project]* (“Proposed Project”).

The Guidelines for Unsolicited Proposals, 2016 (“Guidelines”) set out the steps for submission of a detailed proposal (“Unsolicited Proposal”). You may submit the Unsolicited Proposal in accordance with the Guidelines. Any such Unsolicited Proposal should be submitted to and received by the Contracting Authority within 3 (three) months from the date of this letter.

We reserve the right to accept or reject your Unsolicited Proposal at any time in the future for any reason whatsoever without any liability and this letter shall not in any way constitute acceptance of the Unsolicited Proposal.

This letter is not legally binding and is not intended to be and shall not be deemed to give rise to any contractual or other legal relations between the *[Please Insert Name of the Applicable Line Ministry]* and/or *[Please Insert Name of the Contracting Authority]* and the *[Please Insert Name of the Original Proponent]* (“Original Proponent”). In the event that the Unsolicited Proposal is rejected, the *[Please Insert Name of the Applicable Line Ministry]* and/or *[Please Insert Name of the Contracting Authority]* shall not in any way be liable for any losses incurred by the Original Proponent and/or for any actions by the Original Proponent and/or for any consequences thereof.

All costs and expenses associated with the preparation and submission of the Unsolicited Proposal or any other costs shall be fully borne by the Original Proponent. The *[Please Insert Name of the Applicable Line Ministry]* and/or *[Please Insert Name of the Contracting Authority]* shall not be liable in any manner whatsoever for any such costs and/or expenses incurred by the Original Proponent.

Sincerely,

Signed: _____ Name: _____
(Signature and name of the authorized signatory of the Contracting Authority)

(Name of the Contracting Authority)

⁷This letter is to be provided by the Applicable Line Ministry. However, the Contracting Authority may also provide this letter with approval from the Applicable Line Ministry.

FORM IV: LETTER OF REJECTION FOR THE CONCEPT NOTE

Date: *[Please Insert Day, Month, Year]*

To:

[Please Insert Name and Address of the Original Proponent]

Cc:

[Please Insert Name and Address of the Applicable Line Ministry]

[Please Insert Name and Address of PPP Authority]

Subject: Rejection of the Concept Note for *[Please Insert Name of Project]* through Public Private Partnership (“PPP”)

Dear Sir,

Thank you for your Concept Note dated *[Please Insert Date]* submitted to us in relation to the *[Please Insert Name of the Project]* (“Proposed Project”).

We regret to inform you that your Proposed Project concept is not of sufficient interest to *[Please Insert Name of the Contracting Authority]* for development at this stage.

Sincerely,

Signed: _____ Name: _____

(Signature and name of the authorized signatory of the Contracting Authority)

(Name of the Contracting Authority)