# Balochistan Public Private Partnership Policy 2020

Planning and Development Department,
Government of Balochistan

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## Message from the Chief Minister Balochistan

The province of Balochistan is endowed with enormous wealth and resources. The province is rich in natural resources, has an approximately 750-KM long coastline, and sits at the intersection of the some of the world's most important trade routes and strategic regions. These locational and resource advantages offer great potential for growth. The multi-billion dollar China Pakistan Economic Corridor (CPEC) is opening up new opportunities for trade, investment and socio-economic development in the province.

The Government of Balochistan (GoB) is committed to harness these opportunities to set the province on a path towards inclusive growth and sustainable development. In this regard, our top-most priority is the provision of basic public services and infrastructure facilities to citizens of the province. In pursuit of this goal, the GoB has already embarked on a path of policy reforms and development initiatives to modernize public infrastructure and service delivery.

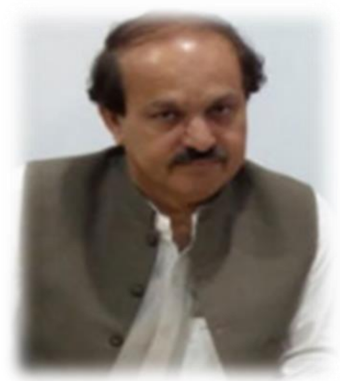
I believe that the private sector has a critical role to play in implementation of the GoB's development vision and agenda. In order to facilitate and attract the private sector as a key partner in pursuit of the foregoing development vision, we have reviewed and improved the existing PPP framework and come up with a comprehensive policy and legal framework for guiding the implementation of PPP projects. The Balochistan PPP Policy 2020 underlines the Government's commitment to providing legal, institutional and financial support for attracting and facilitating private investment.

I sincerely hope that the adoption of the new, and business-friendly, PPP framework will mark the beginning of a new phase of private investments in infrastructure and service delivery. The Government is keen to address the bottlenecks that have traditionally discouraged the private sector from participating in provision of public goods and services in Balochistan.

**Jam Kamal Khan**

**Chief Minister, Balochistan**

## Message from the Additional Chief Secretary (Dev.)



Balochistan, the country's largest and most resource-rich province, is also the least developed region of Pakistan. Despite being a naturally rich province, people of Balochistan have limited access to quality public services. Lack of financial resources and terrorism delayed infrastructure projects in Balochistan, which were desperately required for sustainable economic growth of the province.

Recognizing the significance of delivery of basic and effective public services to the people of Balochistan on one hand, and the scarcity of financial resources in successfully achieving this objective on the other hand, the Government of Balochistan has decided to adopt a Public Private Partnership (PPP) approach in the context of infrastructure projects, which is being widely adopted as a procurement method by governments all over the world. The purpose of adopting PPP approach is to encourage private sector's investment in the effective and efficient delivery of public services in the province.

To achieve this goal, the Balochistan PPP policy is the first step in this Journey, which reinforces the Government's commitment in providing an enabling environment to the potential private sector partners to share its financial and human resources with the Government in the development of infrastructure schemes of Balochistan. I am confident that this policy will play a pivotal role in making PPPs successful in Balochistan, which, in turn, will contribute substantially to the much needed social and economic development of the province.

**Saboor Kakar**

**ACS (Development),**

# 1. *INTRODUCTION*

## a. Context

Balochistan accounts for nearly 45% of the total land area of Pakistan but is home to only 6% of the total population. The province is rich in natural resources, has a vast rangeland and possesses nearly 750 KM long coastal belt—accounting for nearly two thirds of Pakistan's total coastline. It has large deposits of coal, copper, lead, gold, chromite and other minerals. Moreover, the province has tremendous potential for generating large amounts of energy from wind and solar sources. Lastly, Balochistan's important strategic location makes it an ideal place for becoming a hub for regional trade. It connects South Asia with the strategically and economically important regions of Central Asia and Middle East.

Balochistan's enormous locational and natural resource potential, however, remains untapped. The province has experienced weakest growth over the past few decades compared to other provinces of Pakistan. The province has the worst infrastructure and poorest connectivity in the country. Road density (road length per square kilometer) is only about half of the national average. Key structural barriers to growth and development include poor security situation, low population density, weak fiscal base, uncertain and limited supply of water, low investment, weak private sector and inadequate institutional and human resource base. Difficult terrain and a low population density of 36 per square kilometre against the national average of 216 have meant that unit cost of public service delivery in the province is significantly high compared to other provinces of Pakistan.

Political and economic developments over the past decade have opened up new economic opportunities for the people of Balochistan. The adoption of the 18$^{th}$ Amendment to the Constitution of Pakistan in 2010 gave the province full administrative autonomy over key social sector subjects and empowered it to design a development strategy appropriate to its unique circumstances and special needs. Similarly, the 7$^{th}$ NFC Award nearly doubled the financial resources that the province received from federal government. More recently, the multi-billion dollar China Pakistan Economic Corridor (CPEC) has opened new avenues of growth and development in the province. CPEC has the potential to create jobs, bridge major infrastructural gaps, address energy needs and foster industrial development in Balochistan.

The Government of Balochistan is committed to make the most of these opportunities to improve basic economic and social infrastructure in the province. The Balochistan Comprehensive Development and Growth Strategy, which lays out an overarching framework and roadmap for development in the province, focuses on bridging infrastructural gaps in key sectors such as roads, energy, water, education and health. In pursuance of this goal, the Government envisages an important role for Public Private Partnership (PPPs) as a means of harnessing resources, expertise and operational efficiency of the private sector.

In this regard, the Government is reviewing and strengthening the existing PPP framework in the province. The PPP Act 2018, which provides legal cover for projects under PPP mode, is being reviewed with the objective to ease processes and reduce approval time and procedures. Moreover, efforts are underway to set up a full-fledged PPP Unit, which will be based in the Planning and Development Department.

These developments justify the need for a broad and comprehensive policy framework to guide the implementation of projects on PPP basis. This policy documents seeks to achieve this goal by laying out the broad principles, rules, processes, institutional architecture and governance mechanisms for pursuing projects in PPP mode.

### *b.* Definition of Public Private Partnership (PPP)

There is no one internationally agreed upon definition of public-private partnerships. Most governments and development organizations have adopted the definition developed by the PPP Knowledge Lab—a joint initiative of major multilateral banks. According to this definition:

> "PPP is a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance".[1]

PPP contracts typically involve the sharing of risk and management responsibilities, provision of assets and services that are traditionally provided by the Government or creation of a contingent liability on the Government. The essential characteristics of a PPP arrangement are as under:

- A long-term contract between a private party and a Government Entity
- Provision of a new public asset and/or service or upgradation of existing public asset and/or service or providing in-kind assistance in form of VGF or creation of contingent liability on the Government due to project undertaken with the involvement of the private party
- Sharing of risk, management responsibilities and rewards between the project partners
- Payment to private sector is linked to performance and based on the extent of project risk shared
- Conformance by the private party to pre-defined realistic and measurable performance standards

In addition to the characteristics noted above, PPPs vary in a number of other aspects as well. Notable aspects include but are not limited to the degree of involvement of the private party, payment mechanism and level of ownership of the asset involved. To begin with, the **degree of involvement of the private party** varies, ranging from full responsibility of the private sector for the provision and management of a public asset or service to minimal responsibility. It also

[1] PPP Knowledge Lab

depends on the type of asset or service involved. Typical functions of a private party are: design, build or rehabilitate, finance, maintain, operate or manage.

Secondly, PPPs also vary depending on the **payment mechanism**. The private party can be remunerated for its investment or services through the following three mechanisms: a) the private party may charge fees to the users of the service they are providing b) the government pays the private party c) a combination of user-fees and government payments. Whatever the payment mechanism, it must be always linked to performance. Lastly, PPPs also vary in terms of the level of ownership of the asset involved.

**INSIGHT BOX 1: DIFFERENCE BETWEEN PPPS AND TRADITIONAL PROCUREMENT**

Governments enter into a wide range of contracts with private parties. All of these contracts don't qualify the definition of PPPs. For instance: PPPs typically don't include design-build contracts, which are usually characterized as normal public procurement projects. PPP contracts typically involve the sharing of risk and management responsibilities and provision of assets and services that are traditionally provided by the Government.

• PPP projects typically have a minimum level of commercial viability.

• Private sector generally mobilizes finances for PPP projects, especially in case of infrastructure projects.

• Risk allocation is more complex in PPP projects. Private party often bears major risk.

• PPP projects typically have longer tenures than normal procurement projects.

• PPP is not full privatization either. The latter involves the transfer of ownership permanently to the private party and involves minimal regulatory role for government.

*Source: United Nations, Economic and Social Commission for Asia and the Pacific*

### *c.* Vision

The Balochistan Public-Private Partnership Policy 2020 envisions to promote inclusive growth and development in the province through improvement in the coverage, quality and affordability of key public services.

### *d.* Policy Objectives

- To promote cost-effective, sustainable and efficient ways of bridging infrastructure gaps in key social and economic sectors
- To harness private sector strengths in asset creation, maintenance and service delivery

- To improve the efficiency, management and affordability of public services in a responsible manner
- To encourage innovation and technological improvements in the provision of public infrastructure and services
- To encourage and incentivize the private sector to play a more active role in the socio-economic development of the province

### *e.* Policy Scope

This policy covers the entire province of Balochistan and extends to all the line departments, attached department, autonomous body of the Government, authority, or any organization or corporation owned or controlled by the Government. It exhaustively covers all social and economic sectors within the province. Some examples of PPP projects in various sectors may include:

- Mass transit projects, construction of roads and bridges, rail, airports etc. in Transport and Communications sector
- Construction, operation and management of infrastructure, management of institutions, etc. in Health and Education sectors
- IT Parks in Information and Computer Science sector
- Desalination plants, water distribution systems, collection of user charges, sanitation, irrigation, drainage, sewerage and solid waste management, etc. in Water and Sanitation sector
- Power generation and distribution of energy, renewable energy projects etc. in Energy sector
- Low cost housing, Housing schemes, development of housing projects, Housing and facilities management contract(s) in Housing and Construction Sector
- Warehousing, wholesale markets, silos, slaughter houses, etc. in Logistics sector
- Corporate Farming, Seed improvement programs, etc. in Agriculture Sector
- Aquaculture, boat manufacturing projects, etc. in Fisheries sector
- Model farms, breeding farms, dairy projects, poultry projects, etc. in Livestock sectors
- Development and management of industrial parks and special economic zones, etc. in Industries sector
- Cultural centers, entertainment facilities, sports facilities and recreational facilities and coastal tourism, for e.g. in Tourism sector
- Intra-city public transport system, town planning and development, etc. in Urban Planning and Development sector

### *f.* Principles governing implementation of PPPs

- Provide a fair and transparent framework for facilitating projects under PPP mode
- Devise an efficient, consistent and competitive process for selecting the private party
- Protect the interests of public, government entities, end users especially those from poor and socially marginalized backgrounds
- Create an investment-friendly climate and enabling environment for attracting greater private sector participation
- Encourage innovative practices in the delivery and maintenance of public services
- Encourage strict transparency and devise procedures to identify, monitor and manage conflicts of interest

## *2. PPP FRAMEWORK: AN OVERVIEW*

Given the complex nature of PPP projects, the Government of Balochistan is putting in place a comprehensive framework for facilitating smooth and efficient management of PPP projects. The aim is to create an enabling environment and a transparent framework for private sector participation in public infrastructure and service delivery projects. This framework comprises policy, legal, institutional, financial, and regulatory components. Key elements of the framework are as follows:

- **PPP Policy** to provide broad vision and strategic direction
- **PPP Act and Rules** to provide legal certainty and detailed guidelines
- **PPP institutional structures** to ensure effective implementation and management of projects
- **Supplementary financing mechanisms** to facilitate project preparation and development as well as support projects with low commercial viability
- **Adequate regulatory arrangements** to protect public interest
- **Risk sharing mechanisms** to ensure appropriate allocation of risks between the public and private sector
- Policy for **dealing with unsolicited proposal**

**INSIGHT BOX 2: GOOD GOVERNANCE FOR PPP FRAMEWORK**

The success of PPP projects depends on a number of variables including the quality of legal and institutional frameworks and capability of actors involved in the management of PPP projects. In addition to these variables, governance framework also plays a critical role in the success of PPP projects. Governance failures may open doors to discretional, opportunistic and inefficient practices, which may ultimately jeopardize the credibility and business value of PPP projects. A good governance framework is essential to ensure that PPP projects result in the provision of public good and creation of market value.

Key elements of such framework are:

- Participation—inclusive approach to ensure that all concerned stakeholders including citizens, policy-makers and the private sector, are involved in the management of PPP projects and public interest is protected

- Efficiency—ensuring the use of resources without waste, delay, corruption, or undue burden on future generations

- Accountability—the extent to which processes are fair, performance is monitored, and all actors involved in management of PPP projects are held accountable for their actions

- Transparency—the extent to which all stakeholders, especially end-users and the private sector, have access to information and decision-making processes related to PPP

*Source: World Bank. 2009. Good Governance in Public-Private Partnerships: A Resource Guide for Practitioners. Washington, DC.*

## 3. *POLICY AND LEGAL FRAMEWORK*

The Government of Balochistan is committed to create a clear and sound legal framework for facilitating the implementation of PPP projects in the province. The key elements of this framework include a PPP policy, PPP law and rules and procedures.

### *a.* PPP Policy

PPP Policy 2020 provides the broad vision and strategic framework governing PPP projects in the province. This policy articulates the rationale, scope, guiding principles, processes, institutional architecture and governance mechanisms for pursuing projects in PPP mode. The main purpose of the policy is to ensure that PPP projects are aligned with the Government's development strategy and generate the greatest economic returns for the society as a whole.

### *b.* PPP Act

In order to enable the Government to enter into PPPs and ensure that the rules and mechanisms governing these projects are aligned with existing laws, a dedicated PPP law titled "Balochistan Public Private Partnerships Act 2018" has been enacted. This law establishes the rules, guiding principles, institutional and governance mechanisms and processes for selecting and executing PPP projects.

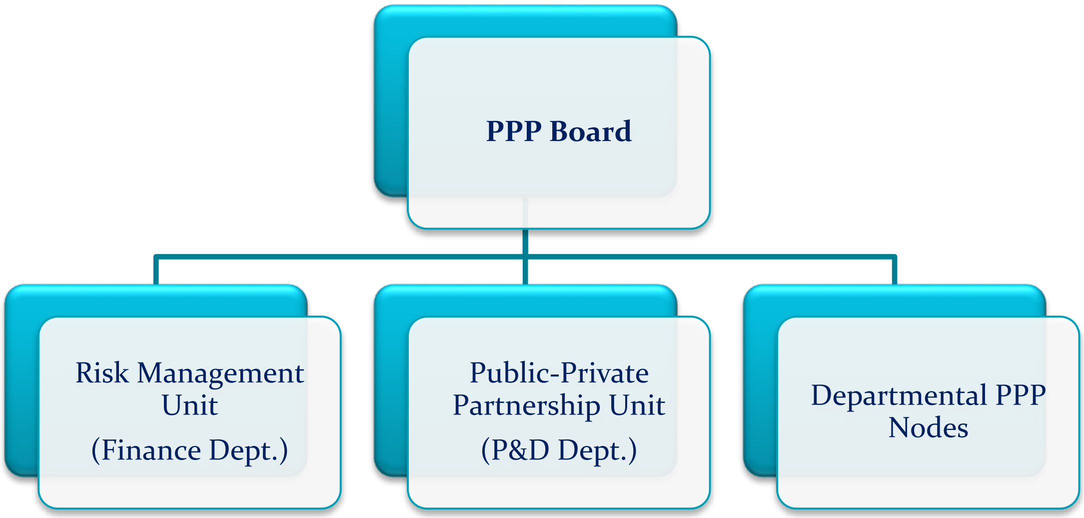
The Government is reforming the existing PPP Act to make the regulatory and business environment more business/investor friendly for the private investors. Similarly, the Government will provide financial support to make PPPs workable and sustainable for both the Government entity and the private partner.

### *c.* PPP Rules

While the PPP Law will set out the broad principles and institutional arrangements, a more detailed set of rules and regulations have been developed to guide officers involved in the implementation of PPP projects. These rules provide further details about identification, selection, procurement and implementation processes and dispute resolution mechanisms. The rules will be revised in the light of the amended PPP Act 2020.

## 4. INSTITUTIONAL ARRANGEMENTS

The institutional setup for PPPs comprises four forums. **PPP Board** is the highest-ranked decision-making forum that will supervise the overall process of identifying, appraising, bidding and drafting agreements related to PPP projects. The PPP Board will be headed by the Chief Minister of the province. It will oversee the preparation, design and implementation of PPP projects in the province.




The **PPP Unit** will serve as the Secretariat as well technical arm of the PPP setup in the province. It will be based in the Planning and Development Department. It shall work in coordination with departmental nodes to identify, appraise and evaluate potential PPP projects. The Unit shall also provide technical inputs in evaluation of bids and drafting of PPP agreements. It shall be responsible for developing guidelines and technical notes regarding different aspects of PPP projects. The head of PPP Unit shall share progress with the PPP Board.

The **Risk Management Unit** will perform the important functions of risk identification, assessment and management. It will be based in Finance Department. RMU will review and evaluate proposed PPP projects from the perspective of risk-sharing by the Government and shall make recommendations to ensure that more risks are allocated to the private party. The RMU's role in the project approval process will primarily focus on review and vetting of project documents from a risk management perspective, especially the draft contract and any request for government support. Competent and qualified Human Resource will be hired from the private market for the RMU and PPP Units.

The **Departmental Nodes** shall perform the vital functions of project identification, carrying out of feasibility studies, procurement and implementation of PPP projects. They shall carry out these responsibilities with the support of the PPP Unit.

## *5. PPP PROCESSES*

The Government of Balochistan aims to ensure that approval processes and procedures are efficient and friendly for private sector. A brief overview of the approval process is as follows:

- **Project Identification and Prioritization**: Departmental PPP Nodes will identify potential projects that may be implemented under PPP mode. These projects will be identified from sectoral plans, annual development plans and provincial and national development frameworks and policies. PPP nodes will conduct pre-feasibility studies for identified projects and share with PPP Unit, which will review and screen the proposals received from departments and identify the most-viable projects on the basis of Value for Money analysis as well as impact on improving public access to infrastructure and services. The list of most-viable PPP projects will be shared with RMU for review and feedback. Based on feedback from RMU, PPP Unit will approve the prioritized PPP projects. PPP Unit will have the authority to approve access to PDF to projects with project preparation cost upto Rs. 8 Million. Projects where feasibility cost exceed Rs. 8 Million shall be referred to PPP Board for final approval.

- **Project Preparation**: Once the prioritized list of PPP projects is approved, the concerned PPP Node, supported by the PPP Unit, will hire an external transaction advisor to prepare project documents including detailed feasibility study, environmental impact assessment where required, analysis of need for Government support, determination of the appropriate PPP modality, bidding documents and a draft PPP Agreement for the project. The feasibility study should study the technical as well as financial aspects of the project with particular focus on the financing needs and, if needed, estimates of support from Viability Gap Fund. The departmental node will review the project documents and share it with PPP Unit for review and appraisal. The PPP Unit will seek the input of the Risk Management Unit on the project documents, especially on the components where in-kind or budgetary support is required from the government. The Risk Management Unit may make recommendations on approval, rejection or modification of the requested government support. The PPP Unit will present the project documents to the PPP Board for approval and further processing.

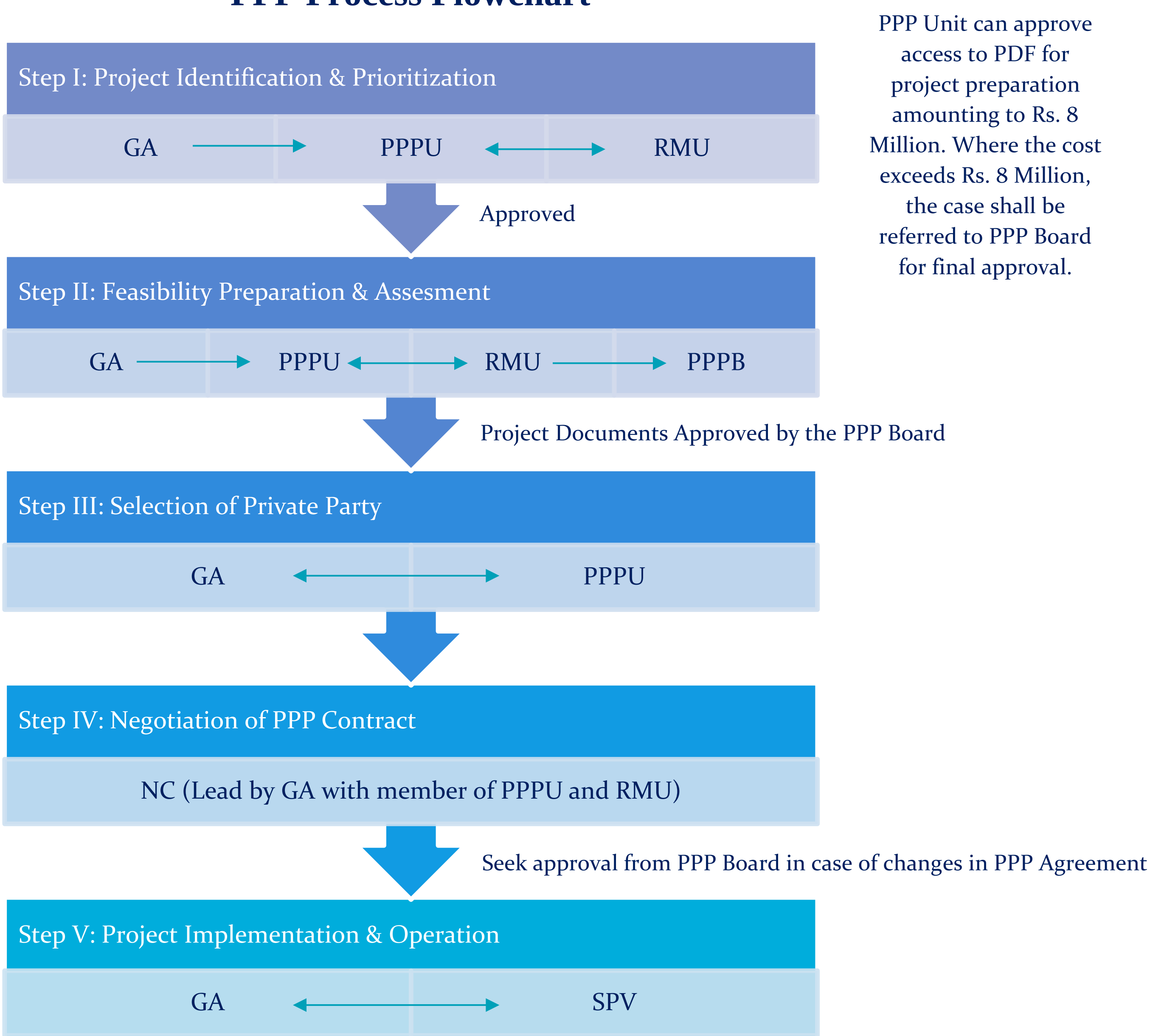
- **Selection of the Private Party:** Once project documents are approved by the Board, the PPP Node will move towards project procurement, ensuring all related rules are met. The guidelines for procurement and criteria for evaluation of bids will be explained in detail in PPP rules. Upon conclusion of the bidding process, the concerned department will share results with the PPP Unit for onward submission to the PPP Board. Subject to approval by the PPP Board, the PPP Node will announce results of the bidding and enter into formal negotiations with the selected private party.

- **Negotiation of PPP Agreement:** After completion of the bid evaluation, a committee led by the concerned department with representation from PPP Unit and RMU will negotiate the contract and all the terms and conditions with the successful bidder. If there is any minor or major change in the terms of the agreement, the re-negotiated agreement will be shared with the PPP Board for final approval.

- **Project Implementation**: The PPP Agreement shall be executed by the Government Agency with a Special Purpose Vehicle (SPV) company established by the private party in Pakistan keeping in line with the principles of project finance. The private party sponsors shall not be allowed to change their respective shareholding interests in the special purpose vehicle during the debt service period. The private party shall give all performance bonds and guarantees in accordance with the terms and conditions of the bidding documents to secure its obligations under the PPP Agreement in respect of the PPP project and additionally shall procure at its own cost all types of insurances for works and project assets during the subsistence of PPP Agreement.

- **Project Monitoring & Evaluation:** The PPP Node will be responsible for monitoring and evaluating the PPP project during its construction and operation to ensure its conformity with the plans, specifications, performance standards and tariffs in the PPP agreement. The PPP Node will submit quarterly reports on the PPP project to the PPP Unit. The Government of Balochistan may appoint third party monitors in line with the international best practices to monitor and evaluate the projects. Further guidelines about contract management will be elaborated in PPP rules.

## PPP Process Flowchart




**Key:**

***GA:*** *Government Agency;* ***PPPU:*** *PPP Unit*

***RMU:*** *Risk Management Unit* ***PPPB:*** *PPP Board*

***NC:*** *Negotiation Committee* ***SPV:*** *Special Purpose Vehicle*

## 6. FINANCING SUPPORT

The Government of Balochistan has devised a range of mechanisms to provide financial support to PPP projects in the province. The form and extent of this support will vary according to the nature and scale of projects. Four main financial support mechanisms are as follows:

### a. Viability Gap Funding

Given Balochistan's unique geographic and demographic characteristics, infrastructure projects in the province often have socio-economic need and justification but lack financially viability. These are projects where expected economic benefits exceed economic costs when analysed for society as a whole but are not capable of generating profits or recovering capital costs in a reasonable time period. In other words, there is a gap between the finances needed to make a project commercially viable and the revenues likely to be generated by user fees. The successful completion of such projects, therefore, requires some form of financial support from the government.

The Government of Balochistan will establish a Viability Gap Fund to make economically-viable infrastructure projects commercially viable for private investors. Under the VGF scheme, the Government will provide funds to private investors during construction phase but only after the latter makes the equity contribution required for the project. This subsidy will be linked with performance (i.e. based on the private service provider delivering measurable outputs) and targeted towards projects that are likely to generate wider socio-economic benefits. VGF will help mobilize private sector investment for infrastructure projects while ensuring that it still shares the risks of infrastructure delivery and operation.

A project's eligibility for receiving funds under VGF will be determined in its feasibility study and announced in tender documents. The exact amount will be determined through competitive tendering to ensure the lowest liability for the Government. Besides, VGF funds will be available only for projects in the top priority sectors. Detailed mechanism for administering VGF will be elaborated in VGF Guidelines, which will be prepared along with PPP rules.

### b. Project Development Facility (PDF)

The development and procurement of PPP projects is a very technical process requiring expertise and advisory services of a number of specialists. Governments often end up spending large amount of money upfront to ensure a high-quality project design. Recognizing the importance of project development, the Government of Balochistan plans to create a "Project Development Facility (PDF)" to finance the hiring of advisors and specialists and support other elements of project development. It will be a revolving fund to cover and support costs incurred on preparation of the project documents. These costs will be recovered from the successful bidder of the PPP project under consideration. The PDF will be administered by the PPP Unit at the Planning and Development (P&D) Department.

### c. Infrastructure Project Financing Facility (IPFF)

Unlike traditional procurement projects, PPP projects entail greater risks for the private sector and require significantly larger investments and participation beyond the construction period. For implementation of PPP projects, long-term financing is required in the form of both equity and debt. The private partner typically arranges such financing from either their own resources and / or commercial lenders. Sometimes, the private party may find it difficult to mobilise private financing because of excessive exposure to foreign exchange risk and/or weak capacity of local financial markets. In such cases, the government may want to use its support to mobilise private financing, preferably from local financial markets, for the private party.

The Government of Balochistan plans to establish in the medium term a non-banking private financial entity titled "Infrastructure Project Financing Facility (IPFF)". IPFF should follow commercially-oriented private sector governance model. Acting as an intermediary between local financial markets and the private borrowers, IPFF will aim to mobilise finances without creating undue risk for the local financial market. IPFF will either make equity contributions to PPP projects or provide long-term loans in local currency on commercial rates.

### d. In-kind Support

In addition to the above, the Government will also provide indirect and in-kind support to PPP projects in the province. This support may take the following forms:

- The Government may provide equity in the form of land or infrastructure facilities without transferring the ownership of these assets to the private party.
- The Government may exempt private partners from tax liabilities and wave fees that the private party would otherwise have to pay.
- The Government may top up tariffs to be paid by some or all consumers to improve the affordability of services and reduce the demand risk borne by the private party.

**INSIGHT BOX 3: FINANCE STRUCTURES FOR PPP**

The private party to most PPP contracts create a Special Purpose Vehicle (SPV) or the Project Company. This project company raises finance through a combination of equity—provided by the project company's shareholders—and debt provided by banks, or through bonds or other financial instruments. The finance structure is the combination of equity and debt, and contractual relationships between the equity holders and lenders.

Typical PPP Project Structure is reflected by a typical contract structure for a PPP project. The government's primary contractual relationship is with the project company. This may be complemented by a direct agreement between contracting authority and lenders; although often this relationship is limited to the provisions in favor of the lenders included in the PPP agreement, such as step-in rights or senior debt repayment guarantees.

The initial equity investors, who develop the PPP proposal, are typically called project shareholders. Typical equity investors may be project developers, engineering or construction companies, infrastructure management companies, and private equity funds. Lenders to PPP projects in developing countries may include commercial banks, multilateral and bilateral development banks and finance institutions and institutional investors.

The project company contracts with firms to manage design and construction (usually known as an Engineering, Procurement and Construction, or EPC contract), and operations and maintenance (O&M). These contractors may be affiliated with the equity investors.

Equity investment is ‘first in, last out’—that is, any project losses are borne first by the equity investors, and lenders suffer only if the equity investment is lost. This means that equity investors accept a higher risk than debt providers and therefore require a higher return on their investment.

The aim of the project shareholders and their advisors in developing the finance structure is typically to minimize the cost of finance for the project. Because equity is more expensive than debt project shareholders use a high proportion of debt to finance the project. This proportion may vary from project to project, depending on the risks assumed by the PPP operator.

The financial modeling for the PPP project will tailor debt service and expected dividends according to the expected flow of funds, including revenue from user fees and government payments, and construction and on-going expenditures, namely for maintenance and operations.

*Source: PPP Knowledge Lab*

## *7. RESOLUTION OF DISPUTES*

Public Private Partnership projects are generally long-term contract with complicated, tailor-made structuring to maximize the value for all the stakeholders. The contracts are complex and may not capture the entirety of the project at the time of awarding and execution of the projects, leading to variation in understanding or interpretation of the PPP contract. This may result in dispute between the private party and the Government Agency.

In order to ensure that such incidences are carefully addressed, the Balochistan PPP Rules defines a detailed mechanism, aiming to resolve such incidences with utmost efficiency and ensuring that the services are not disrupted. Further, the mechanism to resolve disputes will also be built into each PPP contract to have a refined process to deal with such issues.

## 8. RISK MANAGEMENT

Risk management is the process of identifying, analyzing and addressing significant risks on an ongoing basis. The principle governing risk transfer is one of *'optimal risk allocation'* i.e. risk should be allocated to whoever is best able to manage it, taking into account public interest considerations. Prime objective of the risk management is to ensure sustainability of PPP projects by identifying and devising mitigation mechanism ab initio.

Main objectives of risk identification and management are as follows, which will be used to develop risk sharing and management guidelines:

- Identify various forms of risks associated with a particular PPP project;
- Ensure sustainability of PPP projects;
- Ensure that the targets set are realistic;
- Help improve strategic management of PPP projects;
- Improve governance and operational management;
- Enhance financial management;
- Assess and manage any contingent liability arising through the PPP project; and
- Facilitate PPP Board in PPP projects' risk-related issues

Risks will be identified, using various effective tools and as per categories already identified by countries and organizations well experienced in PPP, during feasibility stage and shared with parties concerned. Risk identification will base on extensive consultation with all the stakeholders, including consumers. Bidders to the PPP projects may make their own assessment of the risks and reflect in their financial bids. Underlying principle of the risk allocation will be 'to allocate to the party that can best manage it'. Risk allocation matrices will be developed for each PPP project. Risk allocation will be followed by translating the same to the contract structure so that roles and responsibilities are crystal clear.

The Risk Management Unit will be responsible for identifying, allocating and managing risks related to PPP projects. The RMU will develop a detailed and comprehensive 'Risk Management Guideline', which will be used as a benchmark to assess project risks in their entirety.

**INSIGHT BOX 4: HOW GOVERNMENTS MANAGE RISKS IN PPP PROJECTS?**

In typical public procurement contracts, it is the government, which normally bears all, or significant portion of the project associated risks. However, the case is different in PPP projects. In PPP arrangements, an appropriate portion of risks is shifted to the private sector partners.

Risk allocation will be based on the following two goals:

- Create incentives for the parties to manage risk well—and thereby improve project benefits or reduce costs; and

- Reduce the overall cost of project risk by “insuring” parties against risks they are not happy to bear.

The Government will ensure that the private sector takes appropriate and least-cost risk mitigation measures on its part in order to sustain the PPP project. Guidelines will be issued on risk mitigation principles, and the request for proposals from the private sector will include the Government’s suggestions for risks related to the specific project under tendering. For the risks allocated to the public sector, the Government will issue, if necessary, guarantees to backstop the obligation of its agencies, which have entered into a PPP agreement with private firms. The fiscal impact of these contingent liabilities will be quantified and monitored by the Risk Management Unit in FD.

The Government will contemplate over and decide whether a Guarantee Fund (GF) should be set up to cover all guarantees for PPP projects. The GF would be an entity separate from the Government and would have its own capital base. The GF would not issue guarantees creating an exposure or contingent liability greater than its capital. The GF would issue guarantees only for risks that the Government can influence, or which are uncontrollable and uninsurable. To be eligible to receive a guarantee, a project would have to be economically and financially viable, and the private partners would have to be competitively selected.

*Source: PPP Knowledge Lab*

## *9. POLICY FOR DEALING WITH UNSOLICITIED PROPOSALS (USPs)*

In addition to projects identified by the government departments, the Government of Balochistan will also consider unsolicited proposals—proposals that are submitted by the private party and are not in response to a specific request from the Government—for implementation under PPP mode. The Government wants to take benefit of the knowledge and ideas of the private sector related to generation of cost-effective and innovative solutions to public policy challenges. However, the GoB is also aware of the potential risks associated with USPs. Therefore, it proposes the following guidelines to ensure that the public interest is protected during the development, evaluation, and procurement of USPs. PPP Nodes and PPP Unit will follow the following principles:

i. Departmental PPP nodes will develop a vetting procedure to review and appraise USPs in order to ensure that they are aligned with the government's development priorities, address a real socio-economic need and offer the best value for money. Furthermore, the vetting procedure should also involve an analysis of the potential risks to be borne by the government.
ii. The unsolicited proposal will have to pass through all stages of project preparation, appraisal and approval and subsequently implementation as per rules and regulations. Competitive procurement procedure will be followed.
iii. Outputs will have to be clearly specified and performance measurement standards will be set.
iv. Direct negotiations will not be held with the project proponent prior to going into competitive procurement process.
v. If no valid comparative bids are received, the PPP Node will negotiate the PPP agreement with the project proponent.
vi. Intellectual property rights, if any, of the project proponent will be protected following best practices around the world in PPPs.

**INSIGHT BOX 5: MANAGING UNSOLICITIED PROPOSALS: EVIDENCE FROM THE WORLD**

According to PPP knowledge lab, "an unsolicited proposal (USPs) refers to proposals made by a private party to undertake a PPP project, submitted at the initiative of the private firm, rather than in response to a request from the government."

USPs offer potential benefits as well as risks. On the one hand, USPs allow governments to benefit from the knowledge and expertise of the private sector with regards to project identification, especially in generation of innovative solutions to public policy challenges. On the other hand, USPs may not necessarily align with government's plans and priorities as private parties are motivated more by self-interest and profit than a concern for public interest.

Countries have dealt differently with USPs. Some have restricted the sectors for which USPs can be considered whereas others have discouraged USPs altogether. Here are few examples:

Priority Areas: In the Philippines and Pakistan USP proponents are specifically not allowed to submit proposals for government priority projects whereas Cambodia allows and encourages USP proponents to come up with proposals for infrastructure investments in priority policy areas.

Dealing with USP: Some countries like Myanmar and Laos do not yet have a framework for dealing with USPs, while countries like the Philippines have had frameworks awhile, which they are now revising based on lessons learned. Countries like Bangladesh and Vietnam have only started regulating USPs since 2015. Cambodia has not enacted specific regulations concerning USPs for PPPs, but unsolicited proposals were outlined in the first draft of the country's PPP Procurement Manual and Guidelines.

Treatment of Competition: All countries encourage competition, but in some cases they mandate competitive selection for USPs, while others may allow direct negotiation under specific circumstances. For example, in Bangladesh, if the USP passes all the internal assessments and is given the in-principle approval by the approving authority, the competitive bidding procedure will take place with the original proponent given the status of unsolicited bidder.

*Source: PPP Knowledge Lab*