

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা

কর্তৃপক্ষ কর্তৃক প্রকাশিত

বৃহস্পতিবার, নভেম্বর ১, ২০১৮

Government of the People's Republic of Bangladesh

Ministry of Finance

Finance Division

PPP Unit

Notification

Dated : 30 October, 2018

S.R.O No. 318-Law/2018.—In exercise of the powers conferred by section 44, read with section 16, of the Bangladesh Public-Private Partnership Act, 2015 (Act No. XVIII of 2015), the Government is pleased to make the following rules, namely:—

1. Short Title and Commencement.—(1) These rules may be called the Rules for Public-Private Partnership Technical Assistance Financing, 2018.

(2) These rules shall come into force at once.

2. Definitions.—(1) In these rules, unless there is anything repugnant in the subject or context,—

(a) **“Bidder”** means the Bidder as defined in the Procurement Guidelines for PPP Projects, 2018;

(b) **“Fund”** means the Public-Private Partnership Technical Assistance Financing (PPPTAF) Fund as established under rule 3(1); and

(c) **“PPP Act”** means the Bangladesh Public-Private Partnership Act, 2015 (Act No. XVIII of 2015);

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(2) Any word or expression not otherwise defined in these rules shall have the same meaning which it has under the PPP Act.

3. Establishment and Management of the Fund.—(1) There shall be a revolving Fund to be called the Public-Private Partnership Technical Assistance Financing (PPPTAF) Fund to carry out the purposes of these rules.

(2) The Fund shall be managed and administered by the PPP Authority.

4. Reporting of the Fund.—(1) The PPP Authority shall spend the money from the Fund according to the provisions of these rules and send utilization report to the PPP Unit, Finance Division semi-annually.

(2) The PPP Unit, Finance Division may, as and when it requires, ask for any information or report relating to utilization of the funds from the PPP Authority.

5. Sources of the Fund.—(1) The Fund shall be formed with an initial contribution of BDT 200 (two hundred) crore as grant from the Government of Bangladesh and the amount may be increased, as and when necessary.

(2) The Fund shall be replenished by the funds recovered from the successful Bidder as mentioned in rule 11.

(3) In case the rate of recovery is slow and the funds are depleted, it may be supplemented through the budgetary support from the Finance Division, Ministry of Finance from time to time.

(4) Subject to the prior approval of the Government, any development partner or/and any national and international financial institutions may contribute to the Fund, but the contribution must be in the form of grant and there shall not be any conflict of interests.

6. Applicability of the Fund.—The money from the Fund shall be granted to support the PPP Authority in the delivery of its remit to cover the expenditure for carrying out all or any of the following activities, namely:—

- (a) development of individual PPP Project which includes (i) detailed feasibility studies, (ii) procurement procedures, (iii) documentation and evaluation, (iv) technical, financial, commercial and legal support, (v) contractual and negotiations and other subsequent activities in relation to the Project till signing the contract and achieving Project Financial Close with the Project Company;

- (b) **enhancement of the capacity and capability of the PPP Authority, applicable line ministries or divisions, Contracting Authorities and the PPP Unit of Finance Division to implement the PPP programs or PPP Projects or both that includes capacity building activities through developing and offering training, organizing workshops and conferences, conducting seminars, study tours and other similar activities;**
- (c) **promotion of the PPP programs and PPP Projects to national and international investors that includes activities related to developing media campaigns, communication strategies and web portals; conducting national and international investment seminars, conferences and road shows and other similar promotional activities;**
- (d) **development of the PPP regulatory framework that includes the development of policies, rules, regulations, directions, guidelines, orders and model documents;**
- (e) **supporting the indentification and establishment of PPP related institutional set-up in Contracting Authorities or applicable line ministries or divisions; and**
- (f) **development of sector base PPP programs that includes program activities to prioritize sector based PPP Projects subject to necessary approvals.**

Explanation.—For the purpose of clause (a) of this rule, the expression “Financial Close” means the point at which commercial and financial contracts have been signed and condition precedents to the first debt drawdown have been fulfilled.

7. Eligibility Criteria for the Fund.—In order to be eligible to receive the funds under clause (a) of rule 6, each PPP Project shall have to meet the following criteria, namely:—

- (a) **the PPP Project shall be approved in-principle by the Cabinet Committee under the provisions of the PPP Act;**
- (b) **the PPP Project shall be implemented by the Contracting Authority and developed, financed, constructed, maintained and/or operated**

- by a Private Partner selected by the Contracting Authority in line with requirements set out in the relevant provisions of the PPP Act;
- (c) the PPP Project shall meet the criteria as mentioned in the PPP Act and shall be consistent with the Government's visions, plans, policies and strategies;
 - (d) the PPP Project shall primarily be reflected in the Contracting Authority's remit or support the delivery of its strategic objective; and
 - (e) there shall be some indication of the capacity and appetite to attract the private sector to participate in the PPP Project.

8. Approval Process.—(1) For the funds to be used for carrying out the activities as referred to in clause (a) of rule 6, the following procedures shall be followed, namely:—

- (a) The Contracting Authority shall be responsible for the development costs of a Project and shall endeavour to allocate funds for the same from its own budget or, wherever possible, link the recovery of transaction advisory services cost from the successful Bidder;
- (b) If the Contracting Authority, due to budgetary constraints, is not in a position to meet the costs for the development of a Project, it may seek financial assistance from the Fund; and
- (c) In order to seek supports from the Fund for carrying out Project development activities, the Contracting Authority shall forward its application for funds to the PPP Authority through the applicable line ministry or division in a format prescribed by the PPP Authority.

(2) Upon receipt of an application for funds under sub-rule (1) (c), the PPP Authority shall—

- (a) assess the eligibility of the PPP Project as mentioned in these rules;
- (b) assess the strategy in relation to the appointment of technical firms, transaction advisory firms, legal firms and/or individual consultants and determine the best value for money approach; and
- (c) assess the proportion of funds to be recoverable on a Project from the successful Bidder.

(3) Based on the assessment made under sub-rule (2), the PPP Authority shall prepare a proposal for funds with a cost estimate and shall place it before the following inter-ministerial committee for approval, namely:—

- (a) Chief Executive Officer of the PPP Authority - Chairperson
- (b) Director General (or equivalent) of the PPP Authority - Member
- (c) Deputy Secretary/Joint Secretary of the PPP Unit, Finance Division - Member
- (d) Representative not below the rank of Deputy Secretary or equivalent of the Line Ministry or Division - Member
- (e) Representative from the Contracting Authority - Member
- (f) Representative not below Deputy Chief of the concerned sector of Planning Commission - Member
- (g) Director (or equivalent) of the PPP Authority - Member-Secretary

(4) After getting approval from the inter-ministerial committee as referred to in sub-rule (3), the PPP Authority shall utilize the money from the Fund for any PPP Project.

9. Power to Utilize the Fund.—(1) The PPP authority shall utilize the money from the Fund for any of the activities that meet the requirements mentioned in rules 6 and 7.

(2) In order for the funds to be used for carrying out the activities as referred to in clause (a) of rule 6, the approval process set out in rule 8 shall apply.

10. Appointment of Consultants.—(1) In order to receive services for any of the area mentioned in rule 6, the PPP Authority may appoint local and/or foreign individual consultants or experts, and/or technical or transaction or legal advisory firms, subject to the PPP Act and any policies, rules, regulations, directions, guidelines or orders issued thereunder.

(2) For the appointment of local and/or foreign individual consultants or experts, and/or technical or transaction or legal advisory firms, the PPP Authority shall apply the competitive tendering process according to the Public Procurement Act, 2006 (Act No. XXIV of 2006) and the rules made thereunder.

(3) The consultants or experts, and/or technical or transaction or legal advisory firms may be appointed on Project basis or individual case basis or be appointed from the PPP Authority's empanelled list as per requirement.

11. Recovery of the Money Used from the Fund.—(1) In relation to PPP Projects where the procurement process has been successfully completed, the money used from the Fund for the development of such Project shall be fully or partially-recovered from the successful Bidder of such Project as agreed.

(2) The amount of money to be recovered shall be initially determined on the basis of the feasibility study, and subject to the feedback received as part of the procurement process, the PPP Authority may reduce the amount of money to be recovered.

(3) The proportion of the money recovered from the successful Bidder shall be deposited to the Fund.

12. Monitoring.—(1) The PPP Authority shall prepare a monitoring work plan to facilitate the monitoring of different individual Projects and thereby ensure that the pace of work is consistent with the targeted work plan.

(2) The applicable line ministry or division, and/or the Contracting Authority shall among other things report to the PPP Authority and the PPP Unit of Finance Division—

- (a) on the progress in accordance with plan to identify the development of the PPP Project; and
- (b) on the deviation from the Project development schedule and possible repercussion for the Project.

(3) The PPP Authority shall submit copies of the feasibility study report, bid documents, relevant laws, rules, regulations, directions, guidelines, orders, model documents and any other relevant documents or information as it deems necessary to the PPP Unit, Finance Division and if needed, the PPP Unit of Finance Division may request the PPP Authority to submit such other reports or documents.

13. Accounts and Audit.—(1) The PPP Authority shall properly maintain a separate account for the Fund.

(2) The account shall be audited every year by the Comptroller and Auditor-General of Bangladesh, hereinafter referred to as “the Comptroller and Auditor-General” and the PPP Authority shall send the audit report to the PPP Unit, Finance Division, Ministry of Finance.

(3) For the purposes of audit under sub-rule (2), the Comptroller and Auditor-General or any person authorized by him in this behalf shall have access to all records, documents, cash or deposit, securities and similar other records of the PPP Authority and may examine any member, the Chief Executive Officer and other officers or employees of the PPP Authority.

14. Repeal and Savings.—(1) The Guideline for Public-Private Partnership (PPP) Technical Assistance Financing (PPPTAF), 2012, hereinafter referred to as the “Repealed Guidelines”, shall stand repealed.

(2) Notwithstanding such repeal,—

- (a) anything done or any measures taken under the Repealed Guidelines shall be deemed to have been done or taken under these rules;
- (b) any activity undertaken but not finished under the Repealed Guidelines shall continue to be undertaken as if the Repealed Guidelines had not been repealed; and
- (c) the balance of the Fund established under the Repealed Guidelines shall stand transferred to the Fund established hereunder.

By the order of the President

Abdur Rouf Talukder
Secretary in Charge.