



PPIAF
Enabling Infrastructure Investment

TEBER

Support to The Gambia's Public-Private Partnership Program Phase II

**Assessment of the Policy, Institutional, and Legal
Framework for PPP**

20.01.2015

Disclaimer:

The findings, interpretations, and conclusions expressed in this report are entirely those of the authors and should not be attributed in any manner to the Public-Private Infrastructure Advisory Facility (PPIAF) or to the World Bank, its affiliated organizations, or members of its Board of Executive Directors or the countries they represent. Neither PPIAF nor the World Bank guarantees the accuracy of the data included in this publication or accepts responsibility for any consequence of their use. The boundaries, colors, denominations, and other information shown on any map in this report do not imply on the part of PPIAF or the World Bank Group any judgment on the legal status of any territory or the endorsement or acceptance of such boundaries.

Colophon:

Project Name	Support to The Gambia's PPP Program: Phase II
Report Title	Assessment of the Policy, Institutional, and Legal Framework for PPP
Client	Public-Private Infrastructure Advisory Facility

Document history (bottom row shows current version):

Version Nr.	Date	Document Status
1	27.10.2014	Draft
2	05.01.2015	Draft Final
3	20.01.2015	Final

Table of Contents

1	Introduction	5
2	Review of findings and recommendations of phase I	5
2.1	Findings	5
2.2	Recommendations	8
2.3	Implementation to date	10
3	Proposed PPP framework	11
3.1	Contents of Draft National PPP Policy	11
3.2	Evaluation of proposed PPP framework	17
4	Recommendations for implementation of PPP framework	21
5	Conclusion	24

Frequently used abbreviations

CEO	Chief Executive Officer
GPPA	Gambia Public Procurement Authority
MoFEA	Ministry of Finance and Economic Affairs
PPA	Public Procurement Act of 2001
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public-Private Partnership
PPR	Public Procurement Regulations of 2003

1 Introduction

The assessment of the PPP framework in The Gambia is part of the second mission of the Public-Private Infrastructure Advisory Facility (PPIAF) to develop PPP in The Gambia.

The structure of the report is as follows.

- It starts with a review of the findings and the recommendations the first exploratory mission which took place at the end of 2012 and in the beginning of 2013 (chapter 2).
- Thereafter chapter 3 describes the proposed PPP framework as set out in the draft National PPP Policy. The chapter is concluded with an assessment of the proposed PPP framework.
- The conclusion of that assessment is that the proposed PPP framework is mostly very sound. What remains to be done is its effective implementation. The final chapter (chapter 4) therefore focusses on recommendations for the implementation of the proposed PPP framework. A few suggestions for selected improvements of the framework are also provided.

2 Review of findings and recommendations of phase I

2.1 Findings

The final report of the phase I support activity concludes that the legal and institutional framework of The Gambia already allows PPP projects in principle. However, this framework needs to be enhanced in order to implement PPP projects effectively and efficiently.

More specifically, five conclusions were formulated.

(1) The procurement framework is formally in place, but enforcement remains challenging

The legal framework for public procurement is defined by the 2001 Public Procurement Act (PPA) and its subsidiary 2003 Public Procurement Regulations (PPR).¹ The legal framework covers all public procuring organisations (i.e. national and local government departments and agencies, and public enterprise).

¹ These documents can be downloaded from the website of the Gambia Public Procurement Authority (www.gppa.gm).

The Gambia Public Procurement Authority (GPPA), established under the PPA, oversees the observance of public procurement rules. For instance, the GPPA must approve any contract award with a value exceeding GMD 1,000,000 (approximately USD 25,000 at current exchange rates).²

The procurement rules established by the PPA and PPPR are very sound and, if applied, ensure a transparent and competitive procurement process. However, it is unclear to what extent these rules are consistently applied by procuring authorities. The website of the GPPA does not contain any reports on the state of the implementation of the procurement rules, which must be drawn up annually according to the PPR. The GPPA occasionally reports to parliamentary oversight committees on the non-compliance with public procurement regulations by public enterprises, but it is unclear whether remedial actions are taken.

The strengthening of government institutions in order to improve transparency and accountability at the public level is one of the objectives set out in the Programme for Accelerated Growth and Employment (PAGE 2012-2015). The GPPA is one of the key institutions identified in this respect.

(2) The procurement framework already enables PPP projects

Article 47 of the PPA allows the procurement of privately financed infrastructure and services. The regulations for the procurement of privately financed infrastructure and services are set out in Articles 108-117 of the PPR, which are applicable to '*various forms of contracting for the delivery of infrastructure projects and public services by way of private investment and private service providers, including "Build-Operate-Transfer" and other variants*' (PPR, Article 108). This definition can be said to cover the common PPP arrangements.

Articles 109-113 provide instructions for the tender procedure and the evaluation of the proposals. The rules are very sensible but not more restrictive than needed. For instance:

- they allow a two-stage bidding process (initial proposals and Best and Final Offers), which permits the procuring authority to fine-tune the project specifications and the contractual conditions;
- they provide very useful (but not overly restrictive) instructions for the contents of the proposals and the definition of the evaluation criteria;
- they rightly limit the scope of the final negotiations with the preferred bidder.

Articles 114-117 treat the handling of unsolicited proposals. This is a difficult but very relevant issue, as government entities in The Gambia frequently receive unsolicited proposals from private parties. Again, the rules are very sensible and in line with international best practice:

- unsolicited proposals can be considered if there is a public interest in the project;

² The regulations do not specify, however, the criteria for the approval of a project.

- unless proprietary technology is involved, the project must be procured competitively (with the initial proponent receiving a premium in the evaluation for submitting the proposal);
- if the project cannot be implemented without the proprietary technology a contract can be negotiated with the author of the unsolicited proposal, but only after conducting a comparison with related technologies and subject to approval by a higher authority.

(3) No provisions for the assessment of the value and fiscal affordability of PPP projects

PPP contracts have a longer duration than conventional procurement contracts. As a result they typically create long term fiscal liabilities for the public counterpart in the contract. These liabilities include direct payments to the private partners (for instance an availability fee or a viability gap fee) as well as less visible contingent liabilities that only result in a fiscal impact if certain events occur (for instance loan guarantees, or compensations that are contractually owed to the private partner in the case of the occurrence of risk events).

Because of the long term and less visible character of the fiscal liabilities, PPP projects require a more careful assessment of their value and affordability to the government and to users. There is a need for a gatekeeper institution that screens the proposed PPP projects in order to halt projects that are not affordable or that involve an undue transfer of risks to the public sector.

Presently, any PPP project will be covered by the requirement of GPPA approval for projects with a value exceeding GMD 1,000,000. In principle, this approval could be made conditional on the affordability of the project and on an appropriate risk allocation between the private and the public sector. However, the GPPA does not have the expertise to verify whether the conditions are satisfied.

(4) Weak enforcement of procurement rules may impede successful PPP development

Weak compliance with procurement rules may not pose a problem for early or incidental PPP projects. These projects will probably be very visible and involve many domestic and international stakeholders, so that transparent and competitive procurement practices will be automatically enforced.

Once the application of PPP becomes more commonplace and spreads to less visible projects, the strength of the procurement framework becomes all-important. Because of their long-term nature and greater complexity, PPP projects are even more vulnerable to flawed procurement practices than conventionally procured projects.

(5) There is no PPP Law, and it seems that none is necessarily needed

As mentioned above, the legal framework for public procurement is very sensible and already allows the implementation of PPP projects.

The two main weaknesses of the existing procurement framework with respect to PPP projects are:

- lack of enforcement of compliance with procurement rules (this is a problem for all procurements, but affects PPP projects even stronger);
- lack of screening of PPP projects on long-term fiscal affordability and fiscal liabilities.

To address these issues no new PPP Law is necessarily needed. Instead the existing framework can be strengthened and expanded

The fiscal gatekeeper function would ideally be performed by MoFEA, as it is directly related to the ministry's mandate to oversee the public budget. This can be implemented through an amendment of the PPR.

2.2 Recommendations

(1) Strengthen the implementation of the overall procurement framework

PPP is an instrument for the delivery of public services. PPP projects must go through a public procurement process, just like conventionally procured projects.

The procurement framework of The Gambia is formally in place and overall very sensible. However, its practical implementation by procuring authorities seems to need a further strengthening. This is especially relevant for more complex procurement contracts like PPPs.

In this respect it would be useful to augment the capacity of GPPA to support procuring agencies in the compliance with procurement rules and in the adoption of good procurement practices.

(2) Adjust the procurement regulations to include fiscal oversight of PPP contracts

The assessment of the long run fiscal liabilities and risks of PPP projects is a blind spot in current procurement procedures. An amendment of the procurement legislation must introduce a gatekeeper function that can stop PPP projects that are fiscally unsustainable or do not offer good value for money. MoFEA, already being the guardian of the government budget, is obvious place for this gatekeeper function.

(3) Develop selective guidance for PPP projects

Procuring authorities need guidance on the development and implementation of PPP projects. Guidance must be brief and practical tailored to the Gambian procurement framework. Where necessary, references can be made to more PPP models and instruments for 'value-for-money' assessment in existing literature.

(4) Establish a policy on PPP funding mechanisms and structures

The analysis of the economic and financial context in of The Gambia in course of the phase I mission showed that:

- the availability of government resources for the funding of large public investment projects is very limited;
- relatively few revenue-generating projects can be identified (with the bankability of these projects remaining to be demonstrated)
- development partners will continue to constitute the largest source of funding for investment projects, and therefore will have a crucial role in the development of PPP in The Gambia.

The government is recommended to articulate an explicit policy about the use of own government funds (Gambia local fund) and foreign funds for the support of PPP projects (and ways to blend domestic and foreign funding), as well as to develop specific instruments for the mobilization of these funds.

These instruments could, for example, include:

- Viability-Gap-Funding (VGF) for revenue-based PPP projects that are not sufficiently profitable and therefore need additional contributions from government or other sources;
- PPP Finance Fund to cover part of the investments required so as to push down the total amount of private finance needed for PPP projects (and hence the long term financing costs of such projects to either governments or users);
- a Project Development Fund to support the implementation of feasibility studies and the hiring of transaction advisors for specific PPP projects;
- use of the Road Fund to direct resources to the funding of performance-based road maintenance contracts;

(5) Begin partnering on the mobilization of specific financial resources for the support of PPP

Expanding on the preceding recommendation, the government of The Gambia (for instance through the PPP Directorate) must conduct a stakeholder scan of development partners about

their potential role and involvement in PPP projects. Depending on the capabilities and objectives of the development partners different types of support may be requested, such as:

- Technical Assistance for (1) feasibility studies, (2) transaction advisors, (3) integrated feasibility and transaction support, and (4) discrete initiatives to enhance certain elements of project-specific financial, policy, institutional and legal/regulatory frameworks;
- Capital Grants / Viability Gap Funding (e.g. provided on a lifecycle/output or performance basis);
- concessional lending from development partners to the government and/or directly to the project proponents .

Such a stakeholder scan will automatically facilitate the PPP Directorate in the development of relations with international partners and sources of funding.

The findings of the stakeholder scan will provide a basis for the concrete development of one or several PPP support instruments co-funded by development partners.

2.3 Implementation to date

A PPP Directorate has been established within MoFEA.

The PPP Directorate has, in first instance, been assigned the following tasks:

- drawing up a National PPP Policy;
- drawing up a PPP manual;
- developing a project template;
- capacity building of procuring authorities.

A draft of the National PPP Policy has been completed and presented to a forum of potential procuring authorities on August 14, 2014. The National PPP Policy defines the outline of the proposed PPP framework in The Gambia. The proposed PPP policy and framework are discussed in the next chapter (in which references will be made to the recommendations cited above, where relevant).

The other tasks are still ongoing. In the meantime the PPP Directorate has been invited by several procuring authorities to provide assistance with the development of their PPP projects.³

³ More details can be found in the parallel mission report on the priority PPP projects.

3 Proposed PPP framework

3.1 Contents of Draft National PPP Policy

The draft National PPP Policy defines the outlines of the PPP framework in The Gambia. In particular the following topics are covered:

- definition of PPP;
- scope and application of PPP;
- key principles of PPP;
- instruments for government support to PPP projects;
- institutional framework;
- legal framework;
- PPP project cycle;
- unsolicited proposals.

In the next paragraphs the highlights of the PPP framework set out by the National PPP Policy are presented. An evaluation of the PPP framework follows in section 3.2.

3.1.1 Definition of PPP

In the National PPP Policy a public-private partnership is defined as “*an agreement between a government and a private firm under which the firm delivers an asset, a service, or both in return for payments contingent to some extent on the long term quality or other characteristics of outputs delivered.*”

Agreements may range from service or management contracts to concession agreements and privatization. The following basic contract types are mentioned:

- Service Contracts and Management Contracts;
- Lease Contracts;
- Concessions;
- Build– Operate– Transfer (BOT) and similar arrangements;
- Joint Ventures

3.1.2 Scope and application of PPP and PPP policy

The PPP Policy applies to all sectors and levels of government. Any project can be pursued as a PPP provided the following conditions are satisfied:

- the project is defined as a priority project (i.e. it is included in the National Development Plan);
- it is affordable to the government and consumers;
- it offers “value for money”;
- it involves an appropriate transfer of risks to the private sector.

3.1.3 Key principles of PPP

The National PPP Policy defines eight key principles of PPP and PPP projects:

1. PPP projects offer “value for money”.
2. PPP projects serve a public interest.
3. The risks are properly allocated between the public and private sector.
4. The projects are procured on the basis of clearly specified output requirements.
5. The users contribute to project costs according to their ability/willingness to pay.
6. Projects are procured in a competitive process.
7. Environmental and social standards are respected.
8. Accountability and transparency (including stakeholder consultation) are built into the project development and implementation process.

3.1.4 Instruments for government support to PPP projects

The National PPP Policy provides for the creation of two instruments for government support to PPP projects:

- a Project Development Facility for the funding of studies and consultants during the preparation and the procurement of the project (feasibility studies, “value for money” assessment, transaction advisory services,...);
- a Viability Gap Scheme for financial support in the implementation (i.e. construction and/or operational) phase of projects that are belong to the national development priorities, have a positive economic cost-benefit ratio, but are financially not viable.

3.1.5 Institutional framework

Below an overview is presented of the key institutions involved in PPP projects and their respective roles defined in the National PPP policy.

National PPP Committee

- Comprised of:
 - Minister of Finance and Economic Affairs (chair);
 - Minister of Justice;
 - Minister of Trade;
 - CEO of Gambia Investment and Export Promotion Agency (GIEPA);
 - CEO of Gambia Public Procurement Authority (GPPA);
 - Minister, managing director or CEO of concerned procuring authorities;
 - PPP Directorate (secretariat).
- Main decision-making body in the preparation and procurement of PPP projects, responsible for
 - approval of large PPP projects and associated documents (bid documents, draft contracts,...) in the different phases of the procurement process (however, final approval of very large projects is referred to the Cabinet);
 - approval of sector PPP policies and model contracts;
 - approval of user levies, and settlement of disputes related to user levies;
 - recommendation of legislative and regulatory changes to facilitate PPP;
 - general oversight of the procurement, implementation and management of PPP projects in The Gambia.

Ministry of Finance and Economic Affairs (MoFEA)

Several units within MoFEA are involved in the procurement and management of PPP projects, each with distinct responsibilities.

- Directorate of Development Planning (DPP)
 - preparation of National Infrastructure Plan;
 - approval of projects initiated by procuring authorities that are not covered by the Plan for Acceleration and Growth of Employment (PAGE) or the National Infrastructure Plan.
- Debt Management Unit
 - assessment of the long term fiscal liabilities and risks of PPP contracts (direct and contingent, explicit and implicit);

- advice on the appropriateness of the project for financial government support (e.g. sovereign guarantee).
- Budget Directorate
 - budgeting of the expenditures on PPP projects;
 - funding of claims resulting from contingent liabilities;
 - ensuring that payments by contracting authorities are consistent with the national budget.
- PPP Directorate
 - centre of excellence for PPP in The Gambia;
 - secretariat of PPP Committee;
 - development of guidelines for the procurement and management of PPP projects;
 - technical assistance to procuring authorities in the identification, development and procurement of PPP projects;
 - maintaining of a PPP project database;
 - communication with private sector on PPP policies, regulations, guidelines and programmes,
 - capacity building of public and private sector.

Gambia Public Procurement Authority (GPPA)

GPPA ensures due process in the procurement of public assets and services, including PPP projects. The PPP Directorate will work with GPPA to develop appropriate procurement processes for PPP projects.

Contracting authorities

The contracting authorities are responsible for the development, implementation and management of PPP projects with support from the PPP Directorate.

Ministry of Justice

The Ministry of Justice (in collaboration with MoFEA) ensures the conformity of PPP contracts and ancillary agreements with Gambian law.

Regulatory authorities

The concerned regulatory authorities ensure that the PPP project and the PPP contract is consistent with the regulatory framework (in particular where user tariffs are involved).

3.1.6 Legal framework

MoFEA shall take the lead in the development of a legal and regulatory framework for PPP projects. Until a PPP Law is adopted PPP projects shall be developed and implemented according to the principles set out by the National PPP Policy and in compliance with the existing procurement framework (Public Procurement Act and Public Procurement Regulations).

3.1.7 PPP project cycle

The PPP project cycle defined in the National PPP Policy comprises the following stages.

Project Inception:

- The procuring authority submits a project brief to the PPP Directorate
- The PPP Directorate assess the viability of the PPP project
- If the project is found to be viable and suitable for implementation as a PPP, the PPP Directorate advises the procuring authority to constitute a project development team and launch the procurement process to hire a Transaction Advisor.

Pre-Feasibility Study

- The Transaction Advisor carries out a pre-feasibility study of the proposed PPP project, focussing on the rationale of the business case and on the clear specification of the project and the PPP.
- The Project Study Committee supervises the pre-feasibility study, and approves the pre-feasibility study report on behalf of the procuring authority.
- The PPP Committee must approve the decision to proceed to the feasibility study stage.

Feasibility Study

- The procuring authority undertakes (or has undertaken by the Transaction Advisor) a full feasibility study and submits the report to the PPP Directorate. The feasibility study must among other cover: "value for money" assessment, assessment of affordability, proposed allocation of risks between the public and private sector, estimation of the required viability

gap support, demonstration of the capacity of the procuring authority to procure and manage the PPP project.

- The Cabinet must approve the decision to proceed to the procurement stage.

Procurement

- MoFEA and GPPA must approve the bidding documents (including a draft PPP agreement) before they are issued to the prospective bidders.
- The procuring authority submits the report of the evaluation of the bids to MoFEA and GPPA for review by the authorities responsible for final approval.

Contracting

- The decision to conclude a PPP agreement with the preferred bidder must receive three approvals:
 1. review by MoFEA;
 2. approval by PPP Committee;
 3. Cabinet approval.
- PPP contracts are only binding only if they are signed by the competent Minister, CEO or Board Chairman of the procuring entity, and if all required approvals have been obtained.
- The draft National PPP Policy proposes a tiered approval process in function of the value of the project:
 - USD 3 million and more: Cabinet;
 - between USD 1 and 3 million: PPP Committee;
 - less than USD 1 million: board or senior management of the procuring entity.

3.1.8 Unsolicited proposals

- The National PPP Policy accepts unsolicited proposals is a number of conditions is satisfied:
 - the project must be consistent with national development priorities (as reflected in national development plans such as PAGE, Vision 2016 and Vision 2020);
 - the project must demonstrate genuine and substantial innovative aspects;
 - the project must be subjected to a “value for money”, technical, financial and economic assessment, according to guidelines that will be developed;
 - the project must be procured competitively.

- The process for the development and procurement of unsolicited proposals is as follows:
 - The project is initiated by the private sector, which submits a proposal to the relevant implementing and procuring agency.
 - The procuring authority reviews the proposal and submits it to the PPP Directorate for review by MoFEA.
 - MoFEA assess the viability of the project as a PPP.
 - If the project is found to be viable for implementation as a PPP, the private proponent and the procuring authority are asked to conduct an independent full feasibility study.
 - Upon approval the project is tendered through a competitive procedure.
 - If the original proponent does not win the contract, he receives a financial compensation for his development and study activities.

3.2 Evaluation of proposed PPP framework

3.2.1 The right basic choices

The National PPP Policy makes the right basic choices with respect to the proposed PPP framework.

No duplication of institutions and procedures

The proposed institutional framework and PPP project cycle are as much as possible integrated into the existing public procurement framework. The existing framework will be enhanced and strengthened to handle the specific issues of PPP projects.

In general the integration of PPP in the existing project planning and procurement framework is preferable to the creation of a fully separate procedure and separate institutions for PPP projects.

- It avoids wasteful duplication of institutions.
- It avoids discrimination between PPP projects and non-PPP projects, which might promote one way of procurement for procedural reasons (instead of on the basis of “value for money” considerations). For instance, contracting authorities will be discouraged from using PPP if this entails a longer and more complex planning and procurement process, and a loss of decision-making powers to the benefit of other government entities.
- It promotes a better dissemination of good procurement practices to non-PPP projects.

- It avoids governance conflicts that may arise if, within a particular sector, projects are accountable to different institutions depending on whether they are implemented as a PPP.

The only case in which the creation of new institutions and procedures is the preferred options is when existing institutions and procedures are totally inadequate. However, the assessment in phase I revealed that a procurement framework is in place, and is moreover quite sensible (if not applied consistently). The same assessment concluded that nodes of competence are present in various implementing agencies and regulatory authorities. These findings suggest that the preferred course of action is to enhance existing institutions (among other the development of capacity to handle PPP aspects) and to increase the degree of compliance with existing procedures, rather than to create a new set of institutions and procedures.

Sensible proposed project cycle

The proposed PPP project cycle is sensible. It provides for reviews and approvals of the project at the key decision points:

- prior to the undertaking of feasibility studies;
- prior to the launching of a procurement procedures;
- prior to the signing of the PPP agreement.

Balanced allocation of PPP functions

The PPP-specific functions in the development and procurement of PPP projects can be divided into three groups.

- **cross-project support:** capacity building, development of guidelines and standards, general communication about the PPP programme,...;
- **project-specific support:** technical assistance to implementing agencies in the preparation and structuring of PPP projects in order to maximize the 'value-for-money' of these projects;
- **regulatory or gatekeeper function:** ensure that only projects are carried out that are well structured and constitute a rational and justified use of public resources and funds.

The manner in which these functions are organized varies between countries. However, it is important that (i) all functions receive attention, and (ii) the project-specific support function and the gatekeeper function are organisationally separated (in order to avoid conflicts of interest).

The proposed institutional framework for PPP in The Gambia satisfies these conditions. The cross-project support and project-specific support functions are assigned to the PPP Directorate, while the gatekeeper function is entrusted to the PPP Committee, as well as various units within MoFEA for specific aspects (budgeting, debt management). The PPP Directorate also serves as a

secretariat for the PPP Committee, but if properly managed that does not need to cause conflicts of interest.

Treatment of unsolicited proposals in accordance with international good practice

The proposed procedure for the handling of unsolicited proposals is consistent with internationally recognised good practice. Two basic principles of good practice are adopted. Unsolicited proposals are only accepted if they are:

- consistent with existing development plans and policy objectives;
- competitively procured (with some form of reward for the initiator of the unsolicited proposal to compensate for the development work).

There are other, more complex ways to handle unsolicited proposals in accordance with good practice. However, for countries with little or no PPP experience the approach chosen in the National PPP Policy is generally considered to be the best, because it is the most straightforward.⁴

3.2.2 Points of improvement

A number of points or suggestions for improvement can be identified.

Distinction between pre-feasibility and feasibility study stages

The distinction between the pre-feasibility and feasibility study stages in the proposed project cycle is not clear. In reality the length and depth of the feasibility studies depends on the size and complexity of the project. For instance, a large transport infrastructure project will require a much more extensive and detailed feasibility study than the a straightforward building project. A two-phase feasibility study (i.e. pre-feasibility study followed by a full or detailed feasibility study) is not necessary for smaller or less complex projects.

We therefore recommend to omit in the PPP project cycle the distinction between the pre-feasibility and feasibility study stages, and leave the set-up of the feasibility study process to the implementing agency. The procedures for the PPP project cycle would then only specify which information needs to be presented in the inception stage (i.e. assessment of the basic suitability of the project for PPP, so that a further consideration of PPP is warranted) and at the end of the feasibility study phase (i.e. complete assessment of “value for money”, affordability, fiscal liabilities and other aspects that are needed for the decision whether the project can proceed to procurement).

⁴ RebelGroup, *Unsolicited Proposals for Infrastructure PPPs - An Analysis of Global Policies and Lessons Learned*, report prepared for the Public-Private Infrastructure Advisory Facility, 11 June 2014.

Slight inconsistencies between project cycle and institutional framework

There are slight inconsistencies between the description of the project cycle and the description of the key institutions and their roles. The exact responsibilities of the key institutions (in particular the Cabinet, the PPP Committee, several units within MoFEA, the PPA and the procuring authority) in the various project stages, and possibly in function of project value, needs to be further clarified.

Local government

No specific provisions are made for PPP projects initiated by local government authorities. Especially for small local projects a simplified PPP project cycle could be considered. The Local Governments & Land Ministry could exercise oversight.

An alternative is not to make any special provisions of local government, but to only differentiate in function of project value (see previous point). Being smaller, most local government projects would automatically benefit from a lighter project planning regime.

Duplication of feasibility studies for unsolicited proposals

While the overall procedure for the handling of unsolicited proposals is sensible, the details can be improved upon. In particular the required duplication of feasibility studies (one carried out by the proponent of the unsolicited proposal and a second one by the procuring authority) is wasteful, and can be replaced by a more efficient procedure based on a review or benchmark (but not a full replication) of the feasibility study.

3.2.3 Conclusion

In the development of the proposed PPP legal and institutional framework the right basic choices have been made. In particular integration of the PPP framework in the existing procurement framework (enhanced where needed) is consistent with the findings and recommendations of phase I cited in Chapter 2.

Most of the points of improvement are relatively minor and can be easily incorporated in operational guidelines for the development and procurement of PPP projects. The development of such guidelines is therefore one of the key recommendations for the further development of the PPP framework in The Gambia, which are presented in the next chapter.

4 Recommendations for implementation of PPP framework

The proposed PPP framework is sound. The recommendations therefore focus on the elaboration and implementation of this framework. The following recommendations are put forward:

1. consideration and adoption of limited modification of National PPP Policy;
2. development of operational guidelines;
3. interaction with the GPPA to develop appropriate procurement processes for PPP projects, and to ensure consistency between PPP and procurement regulations;
4. incorporation of national PPP policy and operational guidelines in legal framework;
5. interaction with development partners to elaborate instruments for government support to PPP;
6. start-up of capacity building activities.

The recommendations are described below.

1. Consideration and adoption of limited modifications of National PPP Policy

Most of the suggestions for improvement put forward in section 3.2.2 can be implemented by the issuing of operational PPP guidelines. But, if adopted, they may also require a limited rewording of some parts of the National PPP Policy. For instance with respect to:

- clarification of the exact responsibilities of the key institutions (in particular the Cabinet, the PPP Committee, several units within MoFEA, the PPA and the procuring authority) in the various project stages, and possibly in function of project value;
- modification of PPP project cycle to combine the pre-feasibility and feasibility stages;
- insertion of specific provisions with respect to PPP projects initiated by local government units;
- removal of duplication of feasibility studies in the procedure for unsolicited proposals, unless needed (only when the initial feasibility study is proven to be of insufficient quality, a new feasibility study must be undertaken).

2. Development of operational guidelines

The development of operational guidelines for PPP projects consists of the following steps:

- translation of the PPP cycle set out in the National PPP Policy in a step-by-step action plan for procuring authorities and the PPP Directorate (after the clarification of the roles of the key institutions);

- development of tools for the structuring and evaluation of PPP arrangements (project template, “value for money” assessment, risk analysis, assessment of fiscal liabilities);
- consultation with key institutions about the operational guidelines (other units of MoFEA, main procuring authorities, Gamworks, GPPA, PURA,...);
- drawing up of final version of guidelines.

A draft of the operational guidelines has been presented in a separate deliverable.

3. Interaction with the GPPA to develop appropriate procurement processes for PPP projects

The GPPA is currently working on an update of the procurement legislation (act and regulations). The PPP Directorate must interact with the GPPA to develop appropriate procurement processes for PPP projects. Following the directions set by the National PPP Policy the guiding principles are:

- PPP projects are procured under the national procurement framework and must adhere to the provisions of the procurement act and regulations.
- The GPPA develops procurement rules and monitors their compliance , also for PPP projects. The PPP Directorate focuses on the PPP aspects of the projects (value for money, proper risk allocation,...). Procurement and PPP aspects are integrated within the PPP Committee, where all relevant public actors (including GPPA) are represented.
- When developing procurement rules for PPP projects, the GPPA works together with MoFEA (and in particular the PPP Directorate) to ensure that the procurement processes are suitable for PPP projects and that there are no conflicts nor overlaps between PPP and procurement rules.

4. Incorporation of National PPP Policy and operational guidelines in the legal framework

The PPP framework (as defined in the National PPP Policy and the PPP operational guidelines) must be incorporated into the legal framework. We recommend:

- to restrict the legal framework to what is required for allowing procuring authorities to enter lawfully into PPP agreements (the other issues can be settled more flexibly in operational guidelines);
- to integrate the PPP legal framework as much as possible into the existing legal framework for public procurement (Public Procurement Act and Public Procurement Regulations).

5. Interaction with development partners to elaborate instruments for government support to PPP

The assessment of the economic and financial context for PPP in The Gambia in the phase I mission concluded that development partners will continue to constitute the largest source of funding for investment projects, and therefore will have a crucial role in the development of PPP in The Gambia. This conclusion is still valid today.

Consequently the government of The Gambia (for instance through MoFEA and the PPP Directorate) must enter into a dialogue with development partners (international financial institutions, national donor organizations, non-governmental organizations) about

- the promotion of the role of PPP in the implementation of the projects co-funded by these organizations;
- the creation and funding of instruments of financial support to PPP projects (in particular a project development facility and a viability gap fund).

A similar recommendation was formulated in the concluding report of the phase I mission (see section 2.2 above).

6. Start-up of capacity building activities

The PPP Directorate must develop a program of capacity-building activities for the key institutions involved in the planning, development and procurement of PPP projects. The initial target group includes the main contracting authorities, Gamworks and the GPPA. It is suggested that the PPP Directorate organizes a consultation with these institutions to assess the capacity building needs.

In addition the private sector must be made familiar with the PPP framework. This could be organized through the Gambia chamber of Commerce and Industry (GCCCI).

5 Conclusion

The current draft of the National PPP Policy provides a very good basis for the establishment of a lean and efficient PPP framework in The Gambia. The right basic choices have been made. There are some opportunities for optimization, but these are relatively minor and can be largely addressed in the operationalization of the framework.

The recommendations in Chapter 4 therefore focus on the next steps for implementation of the PPP framework.

1. consideration and adoption of limited modifications of National PPP;
2. development of operational guidelines (see in this respect also the annexes to the report);
3. interaction with the GPPA to develop appropriate procurement processes for PPP projects;
4. incorporation of National PPP Policy and operational guidelines in the legal framework;
5. interaction with development partners to elaborate instruments for government support to PPP;
6. start-up of capacity building activities.



RebelGroup International bv
Wijnhaven 3-0
3011 WG Rotterdam

T 010 275 59 95
F 010 275 59 99
rgi@rebelgroup.com

www.rebelgroup.com
KvK 24494847
Rabobank 10.23.53.433

International

REBEL