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நிதி அமைச்சு
MINISTRY OF FINANCE

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Public Finance Circular No. 02/2019

Secretaries to Ministries
Chief Secretaries of Provincial Councils
Heads of Departments
Chairmen of Public Corporations, Statutory Bodies and Government Owned Companies
Heads of Local Authorities

Amendment to Part II of Government Tender Procedure on Private Sector Infrastructure Projects Related to Public Private Partnership (PPP) basis

Your kind reference is drawn to the “Government Tender Procedure – Part II of 1998 on Private Sector Infrastructure Projects (BOO/BOT/BOOT Projects)”.

02. The Government of Sri Lanka (GOSL) has recognized PPPs as a practical mechanism to procure and implement public infrastructure projects and/or services, using the resources and expertise of the private sector while providing them the opportunity to participate in the development initiatives of the country, ensuring appropriate risk sharing. In many sectors PPPs can be considered as a better alternative to bridge the infrastructure gap through proper planning with the objective of mobilizing private sector investment, management and technology.

03. In order to ensure such PPP transactions are carried out through open and transparent procedure, the General Treasury, in consultation with the National Procurement Commission (NPC), is in the process of preparing new PPP guidelines addressing the present day requirements, based on the international best practices.

04. Until the new PPP Guidelines, which are currently under review by the NPC, are finalized and published, existing guidelines on Tender Procedure Part-II of 1998 on Private Sector Infrastructure Projects are the applicable set of guidelines for such PPP transactions and hence, it is mandatory to follow the Government Tender Procedure - Part II of 1998 by all GOSL Institutions with respect to procurement of private sector infrastructure projects and/or services.

It has been recognized that some of the PPP projects are being carried out within the provisions of the Government Procurement Guidelines – 2006 (Goods and Works), where the procurements are handled by a Cabinet Appointed Procurement Committee (CAPC) assisted by a Technical Evaluation Committee (TEC). In future, GOSL institutions should refrain from utilizing such provisions and the PPP procurement process should be carried out by a Cabinet Appointed Negotiating Committee (CANC) and a Project Committee (PC), in terms of the Government Tender Procedure – Part II of 1998 as amended by this circular.

05. The recent significant institutional change in this regard is the creation of the National Agency for Public Private Partnership (NAPPP) under the Ministry of Finance, which functions as the single facilitation point for all stakeholders with following functions.

- a) Act as a facilitator in implementing PPP projects by government institutions.
- b) Identify and structure suitable PPP projects for government institutions.
- c) Assist Line Ministries and Government Agencies to invite bids, evaluate, negotiate and select investors.
- d) Assist Line Ministries to procure required local and international experts to carry out pre-feasibility studies and procurement of transaction advisors for PPPs through funding from the World Bank made available to the NAPPP.

06. The objective of this circular is to make GOSL Institutions aware of the issues identified by the General Treasury requiring further clarifications and amendments to the Government Tender Procedure-Part II of 1998, applicable to Private Sector Infrastructure Projects to facilitate GOSL Institutions in implementing PPP projects.

07. **Amendment to Government Tender Procedure - Part II on Private Sector Infrastructure Projects**

➤ **General**

- a) Guidelines on Government Tender Procedure – Part II on Private Sector Infrastructure Projects, shall be deleted and substituted with “**Private Sector infrastructure Projects on Public Private Partnership basis**”.
- b) All places in Government Tender Procedure - Part II on Private Sector Infrastructure Projects where references are made to BOI/BII would be deleted and substituted with *National Agency for Public Private Partnership (NAPPP)*.
- c) All the places where BOO/BOT/BOOT projects are referred to in the said guidelines are deleted and replaced with *Public Private Partnership Projects (PPP Projects)*.

- Guideline 225, on “**Introduction**” shall be repealed and substituted with the following title and paragraph.

“ 225. Introduction and Definition of a PPP Project:

- 225.1 *A PPP is a special contractual arrangement between a GOSL Entity and a private investor, for providing a public infrastructure asset or service, in which there is an appropriate transfer of risk to the private investor and where the private investor bears investment and management responsibility on a long-term basis.*
- 225.2 *In a PPP, the private investor is typically tasked with the design, construction, financing, operation and management of a capital asset to deliver a service to the GOSL Entity or directly to private end users. The private investor will receive either a stream of payments from the GOSL Entity or through charges levied directly on the private end users, or both, for its efforts in undertaking the investment and management.*
- 225.3 *Unlike in the case of a typical procurement of goods or services, in a PPP, there is a continuing role for the public and private sector entities. In a PPP, the private investor is expected to be a long-term project participant in the development, construction, management and operation of the project. As a result, the “partnership” between the public and private can last for 10-35 years, which is considered as the concession period (the “Concession Period”), depending on the envisaged investment and the projected revenue streams. In many cases, after the Concession Period, the asset created by private investment is transferred back to the GOSL.*
- 225.4 *In the same way, the following projects should not be considered under PPPs:*
- a) *Any project where the GOSL Provides a direct sovereign guarantee to the lending institution of the private investor’s debt;*
 - b) *Projects where the GOSL Entity is managing or operating the infrastructure facility;*
 - c) *Projects where the GOSL procures and infrastructure asset under traditional procurement methods using public funds, loans, grants, gifts, donations, contributions or similar receipts. (In a PPP, the GOSL procures the infrastructure services and not the asset, which typically will be transferred after the expiry of the long-term concession period);*
 - d) *Sale or long-term lease of any GOSL asset unless such sale or lease is governed by a long-term concession agreement with specific performance criteria by the parties to such agreement. A land lease agreement is therefore not a concessionary agreement.*
 - e) *Short-term design and construction contracts (Typically two to four years), paid for by the GOSL or via financing arrangement guaranteed by the State;*
 - f) *Projects where the GOSL is liable for construction time and cost overruns. (In a PPP, it is the private investor that is responsible for construction time and cost overruns);*

- g) *Projects where there are no on-going performance standards to be met by the private investor;*
- h) *Projects where the GOSL has to pay the private investor for the capital costs of the project up-front and low on-going maintenance payments via a management contract with the private investor once the project is commissioned. (In PPPs, the payment profile is relatively even, reflecting the level of service provision over the longer term of the contract)."*

➤ Guideline 226 on "**Co-ordination**" shall be repealed and substituted with following paragraph.

" 226. Co-ordination

226.1 *National Agency for Public Private Partnership (NAPPP) shall function as the promoting, formulating, facilitating, and coordinating agency for serving the Line Ministries/Line agencies in Public Private Partnership Project implementation under the overall supervision of the Ministry of Finance. However, the final responsibility and authority of selection and approval will lie with the relevant line ministry and the Cabinet of Ministers respectively.*

226.2 *Functions of NAPPP shall be;*

- a) *Act as a facilitator in implementing PPP projects by government institutions*
- b) *Identify and structure suitable PPP projects for government institutions*
- c) *Prepare required guidelines for PPP projects with the concurrence of NPC*
- d) *Assist Line Ministries, and Government Agencies to invite bids, evaluate, negotiate and select investors*
- e) *Assist Line Ministries to procure required local and international experts to carry out pre-feasibility studies and procurement of transaction advisors for PPPs through funding from the World Bank made available to the NAPPP".*

➤ Guideline 232, paragraph on "**Cabinet Appointed Negotiating Committee**" content shall be repealed and substituted with following content.

" 232. Cabinet Appointed Negotiating Committee (CANC)

The Cabinet of Ministers will appoint a Negotiating Committee to handle all matters pertaining to Public Private Partnership projects and make recommendation/s on selection of a proponent. However, Chairman to CANC necessarily may not be the Secretary to the Treasury or Deputy Secretary to the Treasury and a Secretary to any other Line Ministry can be appointed as Chairperson of CANC. When the Secretary to the Treasury is not the Chairperson, a nominee of the Secretary to the Treasury and Secretary to the Line Ministry may be other members. Chairperson of NAPPP or his nominee may be an observer to the CANC."

- Guideline 233 on “**Project Committee**” shall be repealed and substituted with following paragraph.

“ 233. Project Committee (PC)

233.1 *The Project Committee will be constituted once the project is approved by the Cabinet of Ministers in principle. The Project Committee will be appointed by the Secretary to the Treasury at the request of the Secretary of the line ministry. Its membership will include representatives of the following Ministries/Departments/Agencies.*

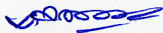
- i. *Line Ministry*
- ii. *Ministry of Finance*
- iii. *NAPPP*
- iv. *Relevant State Agency/ies*
- v. *Attorney General’s Department: In lieu of AG’s department representative, a legal officer of NAPPP shall coordinate with AG and the line ministry*
- vi. *Any other Ministry/Department/Agency as appropriate*
- vii. *Central Environmental Authority (CEA)*

233.2 *The representative from the NAPPP shall function as the Convener/Secretary of the Project Committee.”*

08. Any clarification in this regard may be sought from the Director General of the Department of Public Finance (011-2484614) or Chairman/Acting CEO of the NAPPP (Tel. No.011-2151454).

09. Apart from these amendments other guidelines of the Government Tender Procedure Part II of 1998 will remain unchanged.

10. This Circular is issued with the concurrence of the National Procurement Commission.



R.H.S. Samaratunga
Secretary to the Treasury

Copies: Secretary to the President
Secretary to the Prime Minister
Secretary to the Cabinet of Ministers
Auditor General