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A. POLICY OBJECTIVES AND STRATEGY

1. Introduction

The Government of the Islamic Republic of Pakistan (GoP) through its National Highway Authority intends to accelerate National highway, motorway, tunnel and bridge development through increased private sector participation thereby promoting economic growth and reducing poverty. This Policy and Regulatory Framework (hereinafter referred to as the “Policy”) sets forth the reasons for, and the manner in which, private sector participation shall be encouraged and the public sector interest protected.

With sound macroeconomic fundamentals achieved and key sectors strengthened by reforms implemented over the past few years, Pakistan’s economy is continuing to expand and the economy is well positioned to sustain six percent or more annual growth in the medium term.

Transportation is an important sector of Pakistan’s economy, making up 10% of the GDP and over 17% of Gross Capital Formation. The sector consumes 35% of the total energy annually and is the recipient of substantial portion of the annual federal public sector development program.

An efficient transport system is a pre-requisite for Pakistan to become globally competitive, and the growth in capacity must be achieved while increasing service levels and decreasing costs.

The transport sector covers roads, road transport, railways, ports and shipping, and aviation. The sector has direct and indirect linkages with all important sectors of the economy which influence economic and social development.

The National Highway Authority (NHA), under the National Highway Act 1991, and amendment 2001, is responsible for managing the design, development and operation of national highways, motorways, tunnels and bridge infrastructure in Pakistan. The NHA has the task of ensuring that the standards of design, construction and maintenance of the network in the country, including the supporting infrastructure, is continually improved to standards internationally recognized as compliant with the objectives of ensuring public safety and convenience.

Currently, Pakistan’s road network is approximately 258,000 kilometers. NHA maintains the national highways, those defined by Article 2 (g) of the NHA Act of 1991, as amended in 2001; motorways; limited access, minimum of four lanes, and such other roads as may be entrusted to it, while the provincial Communications and Works (C & W) Departments are responsible for the provincial road network.

NHA considers that the technical, managerial and financial resources of the private sector can make a useful addition to its own efforts. After carefully evaluating a wide range of alternatives, NHA has decided to encourage the private sector to participate in a significant number of national highways and motorways, as well as a limited number of tunnel and bridge, projects needed to facilitate public safety and convenience, as well as to support and sustain Pakistan's rapid rate of economic growth.

2. Private Sector Participation Through Public Private Partnership (PPP)

2.1 Introduction

The concept of Public Private Partnership (PPP) covers a wide range of situations and is subject to various interpretations. A now well-known definition is: “a PPP is a risk-sharing relationship between the public and private sectors based upon a shared aspiration to bring about a desired public policy outcome,” typically, the provision of new or improved infrastructure to provide a new public service.

2.2 Existing Federal Framework for PPP in Infrastructure

In order to ensure the private sector is attracted to assisting with the country's infrastructure needs, the Government at all levels has to put in place a combination of policy reforms, institutional support, incentives and financing modalities. These are essential to ensure private sector participation in financing, constructing and managing future infrastructure development projects.

In the early 1990's, Pakistan established a policy and regulatory framework for PPP in the telecom and energy sectors, sectors which have seen great advances. The framework for PPP infrastructure service procurement in other sectors such as transport and logistics, water supply, sanitation, solid waste management, social sectors, and real estate was developed in the early 2000's and the policy framework was passed by the Ministry of Finance and subsequently by ECC in November 2007. Its features are described below.

The Ministry of Finance is spearheading the development of PPP, particularly at the federal level and considerable progress has been achieved in developing a conducive PPP environment in Pakistan.

The Government has set up the Infrastructure Project Development Facility (IPDF) under the auspices of the Ministry of Finance (MOF), to promote, help generate and generally assist PPP projects in cooperation with public sector Institutions (line ministries, provincial Government, local bodies, state owned enterprises etc.) that are or want to undertake PPP.

The NHA policy contained herein fills the need for PPP in Highways and related facilities under NHA responsibility and is consistent with the ECC approved PPP policy.

2.3 PPP in National Highways

Basically PPP is an extension of public procurement rules, putting the emphasis on output service rather than on input specifications. The Policy shall refer to the PPP acronym for any contractual arrangement, which differs from the traditional contracts awarded under public procurement rules (design & build, outsourcing), including concessions.

For NHA national highways and motorways, PPP generally refer to concessions or Build-Operate-Transfer (BOT) contracts, or any variant of them, i.e. contracts where risks and responsibilities transferred to the private sector are much wider than in traditional public works or service contracts. They usually entail a mix of construction, operation, commercial and financial issues, with a variable degree of risk sharing between public and private partners.

For NHA, and the government, the main attraction is that the private sector can bear part of the financial burden of investing in national highways and Motorways. Since the private sector is expected to be more efficient than the state in running certain concerns and is also likely to charge actual costs of services from customers, the burden of subsidies can be diminished if not eliminated.

The other attraction for the NHA is that resources can be freed to provide funds in areas and sectors needed for the socioeconomic uplift and stabilization of the less advantaged citizens. The state can thus return to its core business of providing good governance, enhancing knowledge and skills, providing their basic health needs, economy, and increasing opportunities and security for its citizens.

PPP involves the investment of private capital to design, finance, construct, operate, and maintain a project for public use for specific term during which a private investment consortium is able to collect revenue from the users of the facility. When the consortium's limited term of ownership expires, title to the project reverts to the NHA at a cost of one rupee, or, as provided in the tender documents, the NHA may decide to extend the concession or re-tender. By then, the consortium should have collected enough revenue to recover its investment and earn a profit; i.e., made a reasonable return on the investment.

To protect the public interest, the NHA has decided the primary mechanism for the award of concessions to the private sector will involve competitive tendering, where technical and financial bidding conditions shall be made public in advance. However in cases where multilateral financing agencies or bilateral financiers or other external agencies/or governments are involved, requiring a different procurement process, then the NHA may agree to their proposal or otherwise, as deemed appropriate. The process of procurement shall still remain transparent, open, and fair in all cases.

- **Transparency** means that (a) the "rules of the game" are made available to all participants and (b) the "game" will be followed in accordance with those rules. Transparency means that clear and acceptable guidelines for bidding are made available to all participants and that those guidelines are consistently followed.

- **Openness**

means free and open competition. The first step to maximize free and open competition is through widely-circulated public advertising, which opens-up and instils greater confidence in the process, encourages more bidders to compete for PPP projects, and results in overall lower prices for the benefit of the public.

- **Fairness**

means all participants are treated fairly and consistently over time and as between each other, which will further encourage capable, responsible potential bidders to compete for PPP projects.

B. FUNDAMENTALS OF PPP PROJECTS

1. Introduction

PPP Projects in the highway sector will involve a number of key steps and procedures to be implemented by the NHA.

These steps include preparing an overall Program of projects suitable for PPP and which for specific projects includes preparatory studies such as Pre-feasibility studies and initial environmental impact studies. It also includes providing design standards and generating sufficient information to enable NHA to assess a PPP proposal.

2. Developing a PPP Highway Program

The NHA shall identify and continue to update a programme of national highway, motorway, tunnel and bridge projects that may be suitable for private sector participation.

Motorways will normally be limited access highways of minimum dual 2-lane carriageway standard, with grade separated interchanges and closed toll systems.

The NHA shall carry out all PPP projects, whether solicited or unsolicited¹, using standard bidding procedures described in Section below. The PPP program shall be developed within the national transport policy and sector program for Pakistan within which pre feasibility studies will have determined the characteristics and viability of each PPP project. These pre feasibility studies will be updated on a regular basis as necessary. This is amplified in Section 3, below.

¹ A basic principle is that most, if not all projects, will be solicited, that is based on a list of projects developed by NHA. Unsolicited projects are projects proposed by the private sector and will not generally be supported by NHA unless there are clear and overriding advantages such as new technology, opening up disadvantaged areas or other very strong reasons. Unsolicited projects should not come from the NHA's medium term PPP program already under implementation.

3. Need for, and Content of the Pre-Feasibility Study

The first step in the PPP process starts with NHA identifying a road transport need that may be fulfilled as a PPP project. To be processed as a PPP project, the NHA shall satisfy itself (through preparing a detailed pre-feasibility study²) that the project is technically, environmentally, economically and financially viable (with or without government support) and in conformity with the principles of this Policy.

The purpose of a pre-feasibility study is to carefully analyze the size, location, technical options, socio economic impact, socio-environmental impacts and the broad potential financial viability of the project. In particular, the NHA shall ensure that each pre-feasibility study shall provide all the key information needed for the proposed implementation of a PPP project including among others the following:

- (i) a defined rationale, scope and description of the PPP project
- (ii) preliminary project cost estimates based on preliminary engineering designs
- (iii) robust traffic forecasts; and revenues analysis from traffic and other sources
- (iv) economic cost benefit analysis
- (v) full social and environmental analyses including the mitigation costs
- (vi) financial and sensitivity analysis
- (vii) an assessment of the issues and risks to be included under a risk management plan.
- (viii) Market sounding, willingness to pay and other consultation
- (ix) Viability gap and need for subsidy analysis

4. Institutional Arrangements

By putting the private sector in charge of the provision of a service the NHA does not waive its responsibility for the public service, it only changes the type of responsibility, which can even bring an increase in its technical and political complexity. Granting the service to the private sector means that the NHA has to adopt legal and institutional mechanisms to ensure that the service is provided efficiently and the responsibilities assumed by the private sector are fulfilled. The responsibility is heightened because the inefficiencies that the public used to accept from the government will not be tolerated from the private sector. The higher the rates the consumer pays for the service, the higher the expectations of improved service.

² The proponent of an unsolicited tender must itself prepare a full pre feasibility study.

Attracting Private sector finance is a complex task and such a task dictates a dedicated PPP organization in NHA with skills necessary for management of all the phases in PPP project development. The personnel of this cell should be capable of project development and negotiating with the private sector on equal footing. This requires a level of professionalism and compensation comparable to that of market.

The Public Private Partnership unit of NHA (hereinafter referred to as the “PPP Cell”) shall be established comprising of highly professional and committed staff and shall be responsible for developing and processing all PPP Projects.

For administrative purposes, the PPP Cell shall maintain a list of PPP projects approved by the NHA, include these on an Approved Projects List and advertise same and shall:

- (i) verify that all projects before tendering are supported by an adequate pre-feasibility study. In the event the pre-feasibility study is inadequate, the PPP Cell shall liaise with relevant departments of NHA to strengthen and improve the pre-feasibility study; and
- (ii) if necessary, the PPP Cell may review or arrange for an independent, professional review and strengthening of pre-feasibility studies, and other documentation accompanying the submission.

The Pre-Feasibility study shall be included in the tender documents provided to all short listed bidders. The NHA, will include alignment, pre-feasibility and preliminary design studies of all of the projects on the Approved Projects List, and these will be made available to prospective bidders only as guidelines for establishing the viability of the projects offered. However, it is the ultimate responsibility of the bidder to prepare its own complete feasibility study, and not rely on the NHA Pre-Feasibility study.

C. TOLL POLICY

It is the NHA's policy to mobilize the maximum resources possible from the users of new or improved facilities.

Consistent with the Concession Agreement, Concessionaires will be given the right to collect tolls at locations they consider appropriate and are approved by NHA, within their specified Concession Area, using either an “open” or “closed” toll system as contained in the bidding documents. The tolling arrangements at the interface between two Concession Areas shall be agreed between the Concessionaires concerned and NHA in consultation with any other provincial and/or local governments, if involved.

1. Toll Levels

- a. For Financially viable Projects;

The tolls charged for use of the national highway, motorway, tunnel or bridge will be one of the key evaluation factors used to decide which bidder is awarded the Concession.

It should be noted that toll levels estimated by NHA in its pre feasibility study will take into account a number of factors including cost recovery, levels of tolls on other toll roads, affordability, types of traffic and other factors relevant to the specific project.

- b. For Projects needing Government Financial Support;

In a few cases, if a project is economically viable but needs financial support to attract the private sector. In this case, tolls will be set by NHA through its pre feasibility study, and the criteria for tender award will be least subsidy/support from NHA and/or GOP. It should be noted that this follows current ECC approved PPP policy which specifies that support may be provided in a number of ways including through the MOF Viability Gap Fund or PSDP.

2. Toll Structure

The PPP Cell will monitor the Concessionaires' implementation of the contracted toll structure contained in the Concession Agreement and will exercise its powers to penalize or take necessary action against default under the provisions of the Concession Agreements.

3. Toll Escalation

Escalation of toll rates and toll charges will be permitted, using the formula contained in the Concession Agreement. The Concessionaire shall propose to the PPP Cell proposed toll escalation consistent with the formula in the Concession Agreement. The PPP Cell will confirm the mathematical accuracy of the Concessionaire's proposed toll, consistent with the Concession Agreement, as summarized in Appendix I.

When applying the above rules, Concessionaires will be allowed to apply a lower level of toll escalation at any time, if they consider that this would improve the overall amount of toll revenue.

4. Toll Exemptions

Concessionaires will not be required to exempt any specific vehicle types or group of road users from the payment of tolls except the following:

- a) Provincial and National Highways only
- b) Fire Brigades
- c) Ambulances
- d) Armed Forces of Pakistan vehicles bearing broad arrow number plates
- e) Vehicles having Supreme Court/High Court Flags/Insignia Plates
National Highways & Motorways
- f) National Highways & motorway police

However, Concessionaires can make arrangements with regular users of the facility (either individuals, companies or others), only to reduce the toll charged in individual cases.

5. Toll Competition

The introduction of new roads and bridges that depend on user charges (toll revenues) for their financial viability will need to take account of existing non-tolled or partially tolled competing routes, as well as any new routes that are planned. The NHA will endeavour to ensure that competing routes, especially roads of a similar standard, are tolled appropriately.

D. OPERATIONAL AND ROAD MANAGEMENT POLICY

1. Vehicle Type Prohibition

Concessionaires shall prohibit the use of motorways by pedestrians, non-motorized vehicles and other slow-moving vehicles such as motorcycles and tractors, to promote safety and smooth traffic flow.

2. Vehicle Weight Limits

The vehicle weight limits to be applied to any given project will be included in the functional specification and minimum design criteria issued with the bidding documents, and the NHA will undertake to ensure that appropriate legislation, rules and regulations are provided through appropriate agencies of the government to ensure that such vehicle weight limits can be enforced.

Under normal circumstances, Concessionaires shall exercise the power to weigh heavy vehicles if found violating the law of the land, prohibit them from passing through their Concession Area.

3. Speed Limits

Design speeds on individual PPP Projects sections will be part of the functional specification that is provided to Concessionaires at the time of bidding.

4. Provision of Emergency Services

Concessionaires will be required to arrange for the provision of emergency breakdown facilities as well as a means of liaising effectively with the emergency services. Provisions will be included in the Concession Agreement to accomplish this objective, and the PPP Cell shall monitor the Concessionaires compliance thereto.

5. Tax Collection

The collection of local taxes by the government agencies will not be allowed within a Concession Area. Entry and exit slip roads shall not be tolled by any entity other than the Concessionaire within 5 km of concession road entry and exit point and even then (ie beyond 5 km) it shall be ensured that wherever tolled, it will carry proper justification.

E. FINANCIAL AND CONTRACTUAL ARRANGEMENTS

1. PPP projects will involve limited recourse financing, which means that the funds for a project will be raised without any sovereign guarantee of repayment. The investors in, and lenders to, Concessionaires must therefore look to the revenues earned from toll collection, and other ancillary activities, for the returns on their equity and the servicing of their loans. Pre-financial close costs are non-recoverable, and Concessionaires shall bear all the costs associated with:

- (i) studies carried out by them to establish the financial and environmental viability of the project;
- (ii) legal and other expenses incurred by them in preparing Concession Agreements and arranging finance;
- (iii) construction and maintenance costs of the project (preferably including costs associated with relocation of utilities and construction supervision, where appropriate); and
- (iv) toll collection and operating costs (including the cost of providing breakdown services, and routine maintenance costs).

2. If so provided in the Concession Agreement, Concessionaires will be required to make annual contributions into a Maintenance/Rehabilitation Escrow Account to make provision for periodic maintenance and asset replacement costs.

3. The NHA will support applications of project sponsors in accessing facilities provided by multi-lateral and bi-lateral funding agencies to underwrite country risk for international loans but, without assuming any liability;

4. Where a public sector grant or other support; including but not limited to traffic guarantees, revenue guarantee, equity stake, annuity, a contribution to project cost, and other similar support, is available for selected projects, the extent will be indicated in the relevant bidding documents. However, it may vary depending upon the project viability and payback.

5. Concession Periods will generally be of 25 years. The Concession Period applicable to each individual project will be decided in advance by the NHA, and announced in the relevant bidding documents depending upon the project viability and payback.

6. At the end of the agreed Concession Period, the facility will be transferred to the NHA in a properly maintained and operational condition, at a cost of one Pakistan rupee to NHA.

F. INCENTIVES FOR INVESTMENT

To facilitate the implementation of NHA PPP projects incentives are available according to the regulations of Board of Investment (BOI) the tax regulations of the Federal Board of Revenue (FBR) and the administrative requirements of the Securities and Exchange Commission.

G. SECURITY PACKAGE

1. Model Concession Agreements have been prepared as a basis for privately financed and operated highway, tunnel and bridge projects to facilitate the tendering process. Each Request for Proposal will contain a project specific concession agreement which tenderers are expected to abide by, thus leading to a more efficient process of contract award.

2. The National Highway Authority Act 1991 amended in 2001, ensures that all the powers required by the NHA to initiate, operate and award projects to be undertaken through private sector financing. Further, BOT highway concessions are in place, and that those powers can be transferred to the Concessionaires, as necessary. In addition, details of all national highways and strategic roads, including the main elements of the national toll motorway and expressway system, have been Notified in the Official Gazette under the provisions of the NHA Act.

3. Detailed Rules and Regulations for the management and operation of the National Highway System have also been developed by the NHA. In addition, the location of all existing and proposed toll collection points on national highways and major Provincial roads has been documented by the NHA, and shall be stated in the bid documents.

4. For all PPP projects, the NHA will provide in the Concession Agreement:

- (i) procedures such as time extensions or termination to deal with specific 'force majeure' risks; and
- (ii) procedures for dealing with changes in costs and losses caused by changes in laws which are not reflected in the General Consumer Price Index. Such changes will be adjusted through suitable adjustment in the Concession Period.

5. The NHA will also undertake that:
- (i) appropriate assistance will be given to Concessionaires in obtaining the necessary Government Approvals for a project;
 - (ii) land for projects will be made available to Concession Companies in a timely manner, clear and free from encumbrances (unless otherwise provided in the bid documents);
 - (iii) agreements regarding the methods, costs and time-scales associated with any necessary removal or relocation of public utility services will be obtained from the utility companies, on the Concessionaire's behalf;
 - (iv) appropriate steps will be taken to prevent encroachments onto the right of way, and to control roadside facilities and advertising material, and to limit access to expressways and motorways to specific entry and exit points; and
 - (v) the undertakings given in Section D of this document regarding operational and road management matters will also apply.

H. ONE WINDOW OPERATION

Under the new Policy, the NHA, under the direction of the National Highway Council, is being given the responsibility for coordinating and managing all PPP for designated national highway and bridge projects in Pakistan. At the working level, the PPP Cell has been formed within the NHA to interface with the private sector interested in PPP and all Concessionaires. The PPP Cell, on behalf of the NHA, will be responsible for:

1. Promotion of PPP including providing information
2. coordinating with all the agencies and Ministries concerned (including Provincial governments);
3. preparing and negotiating Concession Agreements;
4. monitoring the Concessionaires performance in accordance with the respective Concession Agreements; and
5. generally safeguarding the public interest.

I. PPP TENDERING PROCEDURES

1. PPP Projects to be Tendered

The NHA shall carryout all PPP projects using standard bidding procedures described in this Policy. Standard bidding involves a transparent, open and fair process summarized in this Section I, and to be detailed in a PPP Procedures Manual.

The PPP Cell shall maintain a list of PPP projects to be tendered on an Approved Projects List. To encourage prospective, capable bidders to compete for PPP projects, the PPP Cell shall ensure that the Approved Projects List is widely disseminated through: advertising in the print media [widely circulated newspapers, trade publications and periodicals]; the PPP Cell internet website and a printed copy of the same Approved Projects List shall provided free of charge to any party requesting such a copy.

The PPP Cell may commence to tender PPP projects only after it has been published on the Approved Projects List for a minimum period of thirty (30) days.

2. Prequalification Applications

Upon request by any interested party, the PPP Cell shall provide, for a non refundable fee of Rs 3,000, a prequalification application for any PPP project on the Approved Projects List. The PPP Cell will register all parties requesting prequalification applications after their due evaluation.

Any requirement established by the PPP Cell shall be set forth in the prequalification application and, subsequently in the bid/Request For Proposal documents or other documents for solicitation of proposals and shall apply equally to all bidders. The PPP Cell shall impose no criterion, requirement or procedure with respect to the qualifications of prospective bidders other than those provided for in this Policy.

The prequalification application shall include the manner and place for the submission of applications to prequalify and the deadline for the submission, expressed as a specific date and time and allowing sufficient time for bidders to prepare and submit their applications, taking into account requirements set out by NHA.

3. Content of Prequalification Applications

In order to compete for a PPP project, any interested party must timely submit to the PPP Cell a completed Prequalification Application showing that it qualifies by meeting such of the following criteria as the PPP Cell considers appropriate in the particular project:

- (a) That they possess the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, and reputation, and the personnel, to perform the project.

These criteria include, but are not limited to, the bidder's;

- (i) general experience in the sector;
- (ii) past performance on similar projects, including references from past clients for such projects;

- (iii) experience in similar geographical/topographical/climatic areas;
 - (iv) capabilities with respect to personnel and equipment; and
 - (v) financial capability to carry out the project as reflected in its audited accounts, tax returns and bank's certificate
 - (vi) Legal status of the bidder.
- (b) That they have legal capacity to enter into the PPP contract;
 - (c) That they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing;
 - (d) That they have the required legal status, and the proper tax status i.e. they will show that they have legally fulfilled their obligations to pay taxes to the State and that they are duly registered with the competent registration authority/body;
 - (e) That they have not, and their directors or officers have not, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of five (5) years preceding the commencement of the procurement proceedings, or have not been otherwise disqualified pursuant to administrative suspension or disbarment proceedings.

4. Review of Prequalification Applications

The PPP Cell shall evaluate the qualifications of prospective bidders in accordance with the qualification criteria and procedures set forth in the prequalification application.

The PPP Cell shall disqualify a prospective bidder if it finds at any time that the information submitted concerning its qualifications was false, materially inaccurate or materially incomplete.

5. Shortlist of Prequalified Bidders

The PPP Cell shall make a decision with respect to the qualifications of each prospective bidder submitting an application to prequalify.

6. Issuance of the Request for Proposal to all Prequalified Bidders

Upon payment of a non-refundable fee of Rs 10,000, the PPP Cell shall simultaneously issue to all prequalified prospective bidders a comprehensive bid document/Request for Proposal which, among other objectives, establishes the rules of bidding and shall include, among others, the prefeasibility study. Grading criteria will be included in each Request for Proposal/Bidding Document.

At the time of bidding, each bidder will be required to provide a Bid Security, which will be returnable once the successful bidder, as the Concessionaire, has achieved Financial Closure. This Bid Security will be in the form of an irrevocable bank guarantee from a scheduled local bank or from a reputable foreign bank acceptable to the PPP Cell, encashable without recourse to the applicant. Insurance or Corporate Bonds will not be acceptable as Bid Security. The amount of the Bid Security will be specified in the bid documents/Request for Proposal.

After receipt of bids, the proposals will be ranked according to pre-determined criteria, including the extent to which the Outline Design has been met, the proposed level of equity and the proposed toll rates. In cases where GoP and/or NHA financial support is available for a project, a premium evaluation factor, stated in the bid documents, will also be given to the bidder that minimizes the extent of the support required. At this stage, the NHA may also wish to re-confirm that the successful bidder has all the skills and experience required to execute the project. Accordingly, at the commencement of the PPP tender process, bidders may find it necessary to form a consortium of organizations to enhance their overall capabilities.

The first ranked bidder will be given 60 (sixty) days to negotiate an acceptable Concession Agreement and a specific timeframe to achieve Financial Closure, usually six months. The definition of financial close will be included in the Concession Agreement. In the event of failure to achieve Financial Close, the first ranked bidder will forfeit his Bid Security and the second ranked bidder will be invited to achieve Financial Closure, and if necessary extend the validity of his Bid Security. Once Financial Closure is achieved, the Bid Security of all remaining bidders will be returned.

7. Projects in the Pipeline

- (i) The new Policy will not be applied to privately funded highway and bridge projects that are being negotiated by the NHA at the time the Policy comes into force.
- (ii) However, it will be applied to all other such projects in the pipeline at that time. The Sponsors of these projects will be issued an Invitation Letter, along with a copy of the new Policy document and Model Concession Agreement, by the PPP Cell.
- (iii) The project's Sponsors will be expected to finalise/initial the Concession Agreement within six weeks of their acceptance of the Invitation, and to achieve Financial Close within specified timeframe from initialling the Concession Agreement. In case Financial Close is not achieved within this time, the Security will be encashed. Under normal circumstances, no extensions will be granted. However, if on the Sponsors' request for extension, the PPP Cell is satisfied that delays are due to factors beyond the Sponsors' control, and Financial Close is expected to be achieved very shortly, an extension may be given against an extension of the validity period of the Security.

If the Sponsors decline to proceed further under the new Policy, the NHA will be entitled to allocate the project to any other investor.

TOLL ESCALATION RULES

The maximum toll escalation factor that will be allowed in any year will be calculated as $(1+(r/100))$

where: r is the annual rate of growth (%) in the Consumer Price Index, over the most recent 12-month period for which statistics are available.

The Consumer Price Index is maintained by the Federal Bureau of Statistics, and is published regularly.

After revision, all toll charges are expected to be rounded to the nearest Rs. 5 (toll rates per Km for each vehicle type will be calculated to the nearest 1000th of a Rupee). Any residual amounts (positive or negative) will be carried over to the next toll revision.

**NHC'S APPROVAL BY CIRCULATION
NHA PPP POLICY AND REGULATORY
FRAMEWORK**

MAY 2009

NATIONAL HIGHWAY AUTHORITY
PLANNING WING – PRIVATE SECTOR CELL

Working Paper for the National Highway Council

Sub: **PUBLIC PRIVATE PARTNERSHIP (PPP) POLICY OF NHA**

1. **Introduction:**

- a. The Government of Pakistan (GoP) aims to sustain a high economic growth a major constraint to which is lack of viable and facilitating infrastructure. To overcome this shortcoming, development of an efficient/well integrated transport system, is a key essential. Moreover, for consolidating our growth trend, private sector investment is vital to facilitate a competitive economy and for poverty reduction.
- b. In pursuit of the above aims, GoP is trying to put the road infrastructure commensurate with requirement of the country/region. It is undoubtedly a critical activity, as the country / region. It is undoubtedly a critical activity, as the country needs to get equipped with upgraded road infrastructure in the shortest possible timeframe.

2. NHA Act. The National Highway Authority, under NHA Act 1991, as amended in 2001, is responsible for managing design, development and operation of national highways, motorways, tunnels and bridge infrastructure in Pakistan, Further, Chapter-III, Section-10 (2)(xi) of the Act authorizes private sector financing:-

*10. **The powers of the Authority:**

- 1). The Authority may take such measures and exercise such powers, as it considers necessary or expedient for carrying out the purposes of this Act.
- 2). Without prejudice to the generality of the powers conferred by sub-section (I), the Authority may for the purpose of carrying out the purpose of this Act.....
 - (xi) Exercise power to award negotiated contracts for projects to be undertaken through private sector financing program:

3. **Financing of Projects:** NHA is dependent on conventional project financing for its projects. However, the national Highways are facing development / maintenance backlog due to under investment in the past. The future committed development portfolio of NH Avis-a-vis Medium Term Development Framework (2005-10) allocations also suffered from a capital gap/deficit. Since the GoP set an ambitious development portfolio under MTDF, fiscal budget allocations alone can meet only around 50% of the set target demands, the rest will have to come from off-budget-financing through Public-Private-Partnerships (PPP).

4. **PPP Concept:** The PPP concept covers a wide range of situations and is subject to various interpretations. It could be termed as a risk-sharing relationship between public-private sectors based upon a shared aspiration to bring about a desired public policy outcome, typically, provision of new or improved public service infrastructure.

5. **Objectives:** Main objectives of undertaking infrastructure projects under the PPP mode are to:-

- a. Bring additional resources to infrastructures projects and complete them in a shorter time, freeing scarce governmental resources for other investments.
- b. Increase efficiency in construction and project operation, through market discipline, ensuring completion of projects on schedule and within budget.
- c. Maximize benefit to the users.
- d. Transfer appropriate level of risk to private sector.
- e. Promote innovation, not only in technical and operational matters, but also in financial/commercial arrangements.
- f. Foster development of the private sector road-operating industry.
- g. Minimize financial contribution from the public sector and help relieve pressure on tight fiscal space.
- h. Promote use of “off-budget” or ”off-balance sheet” method of financing.
- i. Generate economic activity and ensure poverty alleviation.

6. **NHA's PPP Efforts:**

- a. PPP is becoming an essential component of NHA's development strategy to arrange off-budget financing. However, NHA has not formal policy for PPP projects and this is a big constraint in attracting private sector participation.
- b. NHA identified a number of projects to attract private participation in developing the road sector but met limited success, as there are impediments in the existing policy, incentives, legal framework and market conditions.

7. **Impediments/Need:**

- a. NHA needs to improve its institutional structure and capabilities related to finance to encourage/successfully handle large-scale partnership projects.
- b. NHA has no formal policy for PPP Projects and this is a big constraint in attracting private sector participation.
- c. A formally approved/adopted PPP Policy is an important covenant for release of tranche-2 of ADB Loan-2270 of US\$ 400 million, agreement for which was signed on November 23, 2006.
- d. The first tranche of this loan (US\$ 200 million) was released on December 22, 2006 but release of second tranche (US\$ 200 million) is still pending and one of the most important conditions to be fulfilled is adoption of a formally approved PPP Policy by NHA.

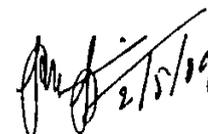
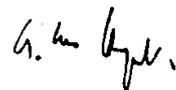
8. **Draft PPP Policy:** To address the shortcomings and attract private sector participation in development of road infrastructure and meet growing challenges, NHA has prepared a draft PPP Policy incorporating all necessary steps. It incorporates a number of key steps and procedures to be implemented in accordance in accordance with PPRA Rules and the ECC approved IPDF (Infrastructure Project Development Facility) Policy. The draft policy precisely covers:-

- a. Institutional arrangements.
- b. Toll policy, escalations and exemptions.
- c. Incentives for investment & security package.
- d. Tendering and implementation procedures.
- e. One window operation.

9. **Board's Approval:** The Executive Board, in its 160th meeting held on September 24, 2008 considered and recommended NHA's PPP Draft Policy and Regulatory Framework for undertaking infrastructure development projects under PPP mode for approval by the National Highway Council.

10. **Vetting:** The Board had directed that before further action, NHA should get the draft policy vetted from legal/financial experts, needful has been done.

11. **Decision:** NHA's PPP Policy and Regulatory Framework are hereby approved by the National Highway Council (NHC).

<u>Name & Designation</u>	<u>Signatures</u>
1. Mr. Altaf Ahmed Ch, Secretary NHC Chairman NHA	
2. Mr. Akhtar Hanif Aziz, Member NHC (Finance & Accounts Professional)	
3. Professor Mumtaz Ahmed Kamal, Member NHC (Highway Construction & Management Professional)	 21.04.09
4. Mr. Ashraf M Hayat, Member NHC Secretary, Planning & Development Division	 2/5/09
5. Mr. Salman Siddique, Member NHC Secretary, Finance Division	
6. Mr. Sharif Ahmed, Member NHC Secretary, Ministry of Communications	
7. Dr. Arbab Alamgir Khan, President NHC Minister for Communications	 13/5

Ashraf M. Hayat
Secretary
Planning & Development Division
Government of Pakistan
Islamabad

NATIONAL HIGHWAY AUTHORITY

**CONFIRMED MINUTES
160TH EXECUTIVE BOARD MEETING**

SEPTEMBER 24, 2008, ISLAMABAD

27. **Agenda Item No. 22**
Public Private Partnership (PPP) Policy of NHA

27.1. **Presentation.** Mr. Muhammad Arshad Ch. GM(BOT) made a detailed presentation. Salient aspects are covered below.

27.2. **NHA Act.** Under the provisions of NHA Act 1991 as amended in 2001, NHA is empowered to initiate, operate and award projects to be undertaken through private sector financing.

27.3. **Business Plan.** NHA is dependent on conventional project financing methods for its projects. Because of resource constraint, the national highways are facing development / maintenance backlog. Future committed development portfolio of NHA is also suffering from a capital gap at a time when the GoP has set an ambitious development portfolio of Rs. 654 billion for the period 2008-20. This plan envisages an investment of Rs. 81 billion under the PPP mode.

27.4. **PPP Concept.** The Public Private Partnership (PPP) concept covers a wide range of situations and is subject to various interpretations. It could be termed as a risk-sharing relationship between public/private sectors based upon a shared aspiration to bring about a desired public policy outcome.

27.5. **Objectives.** Main objectives of undertaking infrastructure development projects under PPP mode are:-

- a. Bring additional resources and complete such projects in a shorter time, freeing scarce governmental resources for other investments.
- b. Increase efficiency in construction and project operation, through market discipline, assuring that the project is completed on schedule and within budget.
- c. Transfer appropriate risk level to the private sector.
- d. Promote innovation, not only in technical/operational matters, but also in financial/commercial arrangements to augment limited public resources in terms of technology and financing.
- e. Foster development of a private sector road-operating industry.
- f. Minimize financial contribution required from public sector and to help relieve the pressure on the tight fiscal space and promote the use of "off budget" or "off balance sheet" method of financing.
- g. Maximize direct benefit to road users and indirectly generate economic activity and accelerate poverty alleviation.

27.6. **NHA's PPP Efforts.**

- a. PPP is becoming an essential component of NHA's development strategy to arrange off-budget financing. However, NHA has no formal policy for PPP projects and this is a big constraint in attracting private sector participation.
- b. NHA identified a number of projects to attract private participation in developing the road sector but met limited success. There are impediments in the existing policy, incentives, legal framework and market conditions.
- c. NHA needs to improve its institutional structure and capabilities related to finance to encourage / successfully handle large-scale partnership projects.

27.7. **Draft PPP Policy.** To address the shortcomings and attract private sector participation in development of road infrastructure and meet growing challenges, NHA has prepared a draft PPP policy. It incorporates a number of key steps and procedures to be implemented in accordance with PPRA Rules and the ECC approved IPDF (Infrastructure Project Development Facility) policy. The draft policy precisely covers:-

- a. Institutional arrangements.
- b. Toll policy, escalations & exemptions.
- c. Incentives for investment & security package.
- d. Tendering and implementation procedures.
- e. One window operation.

BOARD'S DELIBERATIONS

27.8. The Board deliberated and cleared the proposal after seeking a confirmation that the draft policy prepared by NHA is in line with the guidelines given by IPDF (Infrastructure Project Development Facility) of the Finance Division. The said guidelines were of general nature, whereas, the policy drafted by NHA is national highways specific.

DECISION

27.9. The Executive Board considered & recommended NHA's draft Policy and Regulatory Framework for undertaking infrastructure development projects under the Public-Private-Partnership (PPP) mode for approval by the National Highway Council.

27.10. The Board directed that before further action, NHA should get the draft vetted from legal & financial experts.

Action By: **GM (BOT)**

ROBERT BROWN ASSOCIATES
Economic and Financial Consultants
VIGNESGRANDES 82150

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20th October, 2008

S.A.LATIF
Member (Planning)
NHA. Islamabad.
Pakistan.

Dear Sir,

Subject: **NHA Private Provision of Infrastructure (PPI/PPP) Policy In Highways.**

In 2005 under an ADB small scale Technical Assistance a report was prepared on Facilitating Public Private Partnership in Highway. Motorway Bridge and Tunnel construction in Pakistan. The Technical Assistance team comprised the following interactional experts:

- i. **Dr. Hal Sullivan** PPP Expert/Team Leader
- ii. **Robert Brown** PPP Financial Expert
- iii. **ZahirRiaz** Legal Policy Expert

During the TA a "Draft Policy and Regulatory Framework" was prepared for Private Sector participation in National Highways. motorways. Tunnels and Bridges in Pakistan. The draft policy was prepared with NHA and discussed with stakeholders at several seminars & workshops.

The above consultants assisted NHA to produce this comprehensive revised policy & Regulatory Framework. During the course of consultancy work the draft policy was thoroughly vetted over all legal, financial and procedural aspects of PPP.

In addition, in 2008, I assisted under further ADB Technical Assistance the MOF, IPDF and the Ministry of Railways in Pakistan to develop further their policy frameworks in PPP.

I can most definitely say that the current PPP Policy document in highways is consistent with both best PPP practice and with the PPP policy document in highways is consistent with both best PPP practice and with the PPP policy of Ministries and other agencies in Pakistan and is therefore very appropriate for the task of planning and promoting PPPs in National Highways under the NHA. I would very strongly recommend its endorsement in its current form by the National Highway Council.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'R. Brown', written in a cursive style.

Robert Brown



NATIONAL HIGHWAY AUTHORITY

Administration Wing, Personnel Bureau

27 Mauve Area, G-9/1, Islamabad

No. 21(3)-Admn (P-I)/NHA/1202/178

17th February, 2012

OFFICER ORDER

Subject: **Implementation of Development Projects under Public-Private Partnership (PPP) and Posting / Transfer of Staff**

The Chairman, NHA has been pleased to accord approval for creation of Public Private Partnership (PPP) Cell at NHA Headquarter's under the administrative control of Member (Motorways/PPP) and assisted GM(PPP) with immediate effect to undertake implementation of development projects through Public Private Partnership in line with the Government of Pakistan's Public Private Partnership.

2. **Responsibility of Implementation:** At different levels NHA members, as mentioned against each, are, hereby, made responsible to ensure timely/successful implementation of the PPP Project.

Project Phase	Activities	Responsibility
Phase-I: Planning Procurement Phase, till the achievement of Financial Close	Policy, planning, identification of project, procurement, signing of concession agreement and coordination for achievement of Financial Close.	Member (Motorway/PPP) through GM(PPP)
Detailed Design	Approval of Detailed Design as per requirement of the Concession Agreement	Member (Planning) through GM(Design)
Financing Agreements / Financial Close	Approval of Financing Agreements/Financial Close	Member (Finance)
Phase-II: Construction Phase	Land matters, shifting of utilities and all construction activities.	Member (Construction) through GM(C)HQ/Project / Region & PDs
Phase-III: Operation Phase	Ensure smooth operations of the facilities.	Member (Operations) through concerned Regional GMs

3. Posting of Staff: Following officers are transferred and posted to PPP Cell, with immediate effect, to perform as a unit under General Manager (PPP) and Member (Motorway/PPP) for undertaking the procurement activities.

Sr. #	Name with Designation	Presenting Posting	New Posting
a.	Mr. Ijaz Ahmad Dy. Director (Engineer)	Dy. Director (P&CA) NHA HQs	Dy. Director (PPP)
b.	Mr. AsadRahat Dy. Director (Engineer)	Dy. Director (Weigh Station) Operation Wing, NHA HQs	Dy. Director (PPP)
c.	Mr. Mohsin Islam Assistant Director (Engineer)	AD (Construction) NHA HQs	Assistant Director (PPP)
d.	Mr. Muhammad Atif Sheikh Assistant Director	AD (Finance) NHA HQs	Assistant Director (PPP)

4. The Director (Finance) and Director (Legal), NHA HQs will support to Public Private Partnership (PPP) Cell in addition to their own duties on as and when need basis.

5. Office Space: the space for the officers will be made available by the Establishment Wing of NHA HQs.

6. Necessary relieving/joining reports of officers mentioned in Para-3 above may be forwarded to this office for record, please.



AbdualWaheed
General Manager (Admn)

Copy to:-

- All Members, NHA
- Secretary, NHA
- All General Managers NHA HQ/Regions/Projects
- Director (Establishment) NHA HQ
- Director (Personnel), NHA Islamabad
- Director (HRD, NHA HQ
- Officers Concerned
- Director (Accounts-Estab/AP/GoP) NHA HQ
- DD(Audit) NHA HQ
- DD(Recruitment) NHA HQ
- DD(Confidential) NHA HQ
- DD(Personnel-I&II) NHA HQ
- DD(Legal Admn, NHA HQ
- PS to Chairman, NHA
- SO to Member (Admn) NHA
- AD(Computer Cell) Admn Wing, NHA HQ
- Copy to File No. 7(3)Admn(P-I) NHA.