

# Terms of Reference

## 1. Background:

In September 2015, the Government of Bangladesh issued the *Public Private Partnership Act (PPP Act 2015)* to facilitate the development of core sector public infrastructure and services vital for the people of Bangladesh. The PPP program is part of the Government's Vision 2021 goal to ensure a more rapid, inclusive growth trajectory, and to better meet the need for enhanced, high quality public services in a fiscally sustainable manner.

Under the PPP Act 2015, the PPP Authority was established (from former PPP Office) to act as a core regulator on all PPP issues for developing and launching the Bangladesh PPP Program.

The PPP Authority supports line ministries to facilitate identification, development and tendering of PPP projects to international standards. For interested investors and lenders, the PPP Authority provides a professional, transparent, centralized portal to high quality PPP Projects. The PPP Authority helps augment government sector line ministry project development efforts with world-class external PPP resources, with the goal of increasing the quality, attractiveness, and sustainability of PPP projects while realizing them in an efficient, cost-effective manner.

To support this initiative the PPP Authority intends to hire a Law Firm (The Legal Consultant") to provide the legal advisory support to the PPP Authority in delivering its PPP roles and responsibilities under the PPP program.

## 2. IPFF II Project :

To support the awareness creation and capacity building in relation to the PPP Programme the World Bank has provided funding under the project "**Investor Promotion and Financing Facility II (IPFF II)**" that is administered by the Bangladesh Bank.

As part of this initiative the **IPFF II Project** has been supporting the development of capacity and capability of the PPP Authority in delivering its remit. The **IPFF II** funding has been used to deliver a wide range of support to the PPP Authority, including the provision of the necessary infrastructure and facilities for operation activities.

The **IPFF II** funding will now be made available to support the PPP Authority in its appointment of a Legal Consultant to provide legal advisory support to the PPP Authority in delivering its PPP roles and responsibilities under the PPP program.

### **3. Objectives:**

The purpose of this tender is to appoint a Legal Consultant who can provide legal advisory support the PPP Authority in delivering its role and remit.

### **4. Scope of Services:**

The Legal Consultant will provide the PPP Authority with internal legal advice on PPP program and projects on an on-going basis for a period of [18 months).

The Legal Consultant will need to undertake or provide advice on the areas set out (but not limited to) below:

#### **A. Conduct Legal Diagnosis**

A review of all relevant laws, policies, statutes, regulations, and licenses related to the respective roles and responsibilities of the various government agencies involved in PPP sector. This will include:

- I. Conduct a comprehensive legal due diligence of the PPP projects undertaken by PPP Authority, including review of all GOB law, policy and procedures related to PPP activities, identification and analysis of relevant cross sectoral local and international laws, regulatory requirements and contractual or other obligations that may impact on private participation in the relevant sector.
- II. Taking into account the various incentives (sectoral or project specific) provided in PPP projects in different countries (especially in Asian region), suggest potential cross sector incentives for PPP projects in Bangladesh.
- III. Other relevant support as required by PPP Authority.

#### **Deliverables:**

1. Cross Sectoral Legal and Regulatory Due Diligence Report (to be submitted within the time table as negotiated )
2. Report on potential cross sector incentives for PPP projects in Bangladesh (to be submitted within the timetable as negotiated)

#### **B. Provide PPP Legal and Policy Development Support:**

- I. Supporting the process for enactment of the PPP Law and providing legal support for the development of relevant rules, policies, guidelines and other documents as required taking into account the potential constraints for private investment and capital flows and any legal/regulatory constraints for developing PPP projects in specific sectors. This includes but not limited to the following:

- i. providing support for the development of standardised and transparent procurement process
- ii. bid evaluation criteria, evaluation methodology for various bidding scenario
- iii. standardised heads of terms for PPP contracts and
- II. prepare a detailed guidelines to process unsolicited proposal
- III. Develop principles for creating special purpose vehicle to hold development rights to PPP projects
- IV. Other relevant support as required by PPP Authority which may include development of sectoral PPP policies etc.

**Deliverables:**

- 1. Development of detailed process flow and guidelines for procurement process as per PPP Guidelines (to be submitted within the timetable as negotiated)
- 2. Paper on Bid evaluation process, criteria and methodology on various bidding parameter scenerio (to be submitted within the timetable as negotiated)
- 3. Standardised heads of terms for PPP contracts (to be submitted within the timetable as negotiated)

C. Provide Support for Project Specific Transaction Execution

- I. Support the PPP Authority and its advisors in the design of the overall bidding process, including award methodology and criteria, prepare the relevant legal sections of the project document and review the information prepared by PPP Authority and/or its advisors with regard to its legal aspects
- II. Based on the analysis of local procurement laws, assist in the pre-qualification of potential bidders
- III. Provide support for the preparation of draft bidding documents including Information Memorandum, RFQ, RFP, IFB, PPP Agreement etc.
- IV. Assist PPP Authority and/or its advisors in supporting the project specific Implementing Agency to set up a Data Room for the investors due diligence and prepare a Legal Due Diligence Report to be included in the Data Room
- V. Support in discussions with bidders, provision of legal clarifications to bidders during promotion of the transaction
- VI. Track amendments to any tender documents (including RFQ, RFP, IFB, PPP Contract etc.) and incorporate the amendments into legislative text;
- VII. Support during the evaluation process and in any negotiations that may be required in connection with the signing of the Project Agreement and financial documents where relevant

- VIII. For each awarded project, prepare a Final Report including all stages of the process. The report will include a summary of the work carried out, updates, lessons learned and recommendations.

**Deliverables:**

As and when required basis

D. Provide Support for PPP Model Documentations and Templates:

- I. Enhancing or developing legal aspects PPP model documents, standardised templates, guidance manuals and concession agreements (as may be required)
- II. providing legal support for the development of standardised Project information Memorandum, Request for Qualification, Request for Proposals and other documents
- III. Review Model tender documents (including RFQ, RFP, IFB CA etc.) and suggest changes as required

**Deliverables:**

Development Standard Project information Memorandum, Request for Qualification and Request for Proposals (to be submitted within the timetable as negotiated)

E. Project Review:

Reviewing the suitability of the proposals and recommendations put forward by project transaction and legal advisors in the context of the PPP policy, law, rules and model documents, procurement documents and concession agreements and other relevant legal/regulatory provisions, policies or rules (for e.g. environment, social resettlement); ensuring that the procurement process is in line with prescribed laws and rules.

**Deliverables:**

As and when required basis

**5. Other Deliverables**

Ref	Deliverables	Frequency / Time
1	Work Plan setting out scope of services to be delivered with monthly targets identified	Within the time table as negotiated.

2	Monthly Progress Report on assessment of overall performance over the month	Every Month
3	Other deliverables as assigned by PPP Authority	As Agreed
4	Final Report on assessment of overall performance over the period of the assignment	In the last Month of the Contract

## 6. Conditions

The Legal Consultant will be expected to work together in partnership with other consultants and advisors that are appointed by the PPP Authority and co-ordinate their activities in a positive manner to ensure successful delivery of the overall PPP Program.

The Legal Consultant must respond positively to the need for complementary analysis that the PPP Authority may request in order to deliver its PPP program objectives.

The Legal Consultant once appointed will be ineligible to bid for providing advice to any PPP projects, whether to the public sector or the private sector, that are enlisted with the PPP Authority.

The total services will need to be delivered over a contract period of 18 months, but may be extended on mutual agreement. The consultants will work under a "Indefinite delivery Contract" for the period of 18 months and therefore the actual input from individual expert may increase or decrease based on task assigned by PPP Authority. The input provided by individual expert in a particular month will be realised and monitored through monthly time sheet which will be used to calculate payment of the expert for that month considering his/her monthly rate as proposed in the proposal.

## 7. General Qualifications and Experience

The Consultants are desired to fulfill the following requirements:

- The Consultants will have both the skill and experience necessary to undertake the range of tasks set out in these Terms of Reference.
- The Consultant should demonstrate experience in advising and structuring PPP transactions, including experience of reviewing legal and policy frameworks, suggesting policy changes, drafting and negotiating relevant bid and contractual documentation. Having experience in Bangladesh will be an added benefit.
- Team Leader should have professional experience in advising on transactions in the private infrastructure sector and other specific experience requirement for each team member has been described in Annexure.

## ANNEXURE

### Details of Consultant's Team Composition and Requirements

#### Team Composition, Level of Effort, and Experience Requirement

Sl.	Position	No. of Expert	Total Man-Month (Indicative)
1	Team Leader	1	12
2	Legal Expert (Transaction)	1	24
3	Legal Expert (Commercial)	1	18
4	Legal Expert (Policy)	1	18
	<b>Total</b>	<b>4</b>	<b>72</b>

The man month provided above is indicative only. The consultant may propose man-month as suitable to their approach and methodology. The consultant may also propose additional staff if necessary. However such additional staff and change of man-month needs to be justified.

The educational and experience requirement and role for the team members is provided below:

Serial	Key personnel	General Education (minimum * )	Relevant Education requirement	General professional experience( minimum)	Relevant experience requirement				Role in the assignment
					Minimum requirement weightage (70%)	Preference 1 requirement weightage (80%)	Preference 2 requirement weightage (90%)	Preference 3 requirement weightage (100%)	
1.	Legal Team Leader	<i>Bachelor</i>	LLB (Hons) or any honors degree with recognized legal conversion course (for e.g. CPE or equivalent)	15 years  Must have experience to practice as lawyer.  Experience in PPP projects in legal advising will be treated as relevant experience.	>2 PPP Transactions + >1 Policy Development	>3 PPP Transactions+ >2 Policy Development	>5 PPP Transactions+ >3 Policy Development	>5 PPP Transactions+ >3 Policy Development+ Bangladesh Experience in large private infrastructure projects	Lead the team, review the quality of deliverables, lead all legal diagnosis and provide PPP legal and policy development support including PPP rules, policies and other regulatory documents , oversee development of PPP model

Serial	Key personnel	General Education (minimum * )	Relevant Education requirement	General professional experience( minimum)	Relevant experience requirement				Role in the assignment
					Minimum requirement weightage (70%)	Preference 1 requirement weightage (80%)	Preference 2 requirement weightage (90%)	Preference 3 requirement weightage (100%)	
									documentation and oversee transaction documentation preparation and structuring support
2.	Legal Expert (Policy)	<i>Bachelor</i>	LLB (Hons) or any honors degree with recognized legal conversion course (for e.g. CPE or equivalent)	10 years  Must have experience to practice as lawyer.  Experience in PPP	>2 Policy Development	>3 Policy Development	>4 Policy Development	>4 Policy Development+ Bangladesh Experience in advising Bangladeshi administr	All legal due diligence of policies and regulations, provide PPP legal and policy development support, develop PPP model documentation



Serial	Key personnel	General Education (minimum * )	Relevant Education requirement	General professional experience( minimum)	Relevant experience requirement				Role in the assignment
					Minimum requirement weightage (70%)	Preference 1 requirement weightage (80%)	Preference 2 requirement weightage (90%)	Preference 3 requirement weightage (100%)	
			Masters in law /Bar-at-Law qualification will be provided preference.	projects in legal advising will be treated as relevant experience.				ative and government organizations	and templates, also support in transaction documentation preparation, review project and project proposals, develop Office Administration Rules and Policy for PPP Authority
3.	Legal Expert (Transactio	Bachelor	LLB (Hons) or any honors degree with	10 years	>2 PPP Transactions	>3 PPP Transactions	>5 PPP Transactio	>5 PPP Transacti ons+ +	Lead PPP transaction document

Serial	Key personnel	General Education (minimum * )	Relevant Education requirement	General professional experience( minimum)	Relevant experience requirement				Role in the assignment
					Minimum requirement weightage (70%)	Preference 1 requirement weightage (80%)	Preference 2 requirement weightage (90%)	Preference 3 requirement weightage (100%)	
	ns)		recognized legal conversion course (for e.g. CPE or equivalent)	Must have experience to practice as lawyer.  Experience in PPP projects in legal advising will be treated as relevant experience.			ns	Bangladesh Experience in large private infrastructure projects	preparation and support in transaction structuring. Prepare and review as required the PPP concession and other agreements. Support in finalizing procurement documents like RFP, RFQ etc.

Serial	Key personnel	General Education (minimum * )	Relevant Education requirement	General professional experience( minimum)	Relevant experience requirement				Role in the assignment
					Minimum requirement weightage (70%)	Preference 1 requirement weightage (80%)	Preference 2 requirement weightage (90%)	Preference 3 requirement weightage (100%)	
4.	Legal Specialist (Commercial)	<i>Bachelor</i>	LLB (Hons) or any honors degree with recognized legal conversion course (for e.g. CPE or	8 years  Must have experience to practice as lawyer.	Commercial and Procurement support for >2 PPP/Private Infrastructure projects	Commercial and Procurement support for >3 PPP projects/Private Infrastructure	Commercial and Procurement support for >4 PPP projects/large	Commercial and Procurement support for >5 PPP projects	Review commercial and procurement aspects and implication of various private infrastructure projects,

Serial	Key personnel	General Education (minimum * )	Relevant Education requirement	General professional experience( minimum)	Relevant experience requirement				Role in the assignment
					Minimum requirement weightage (70%)	Preference 1 requirement weightage (80%)	Preference 2 requirement weightage (90%)	Preference 3 requirement weightage (100%)	
			equivalent)	Experience in PPP projects in legal advising will be treated as relevant experience.		projects	Private Infrastructure projects	+ International experience	policies and guidelines. Review commercial implications of the draft agreements etc.