

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ



গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

শুক্রবার, অক্টোবর ১৯, ২০১৮

Government of the People's Republic of Bangladesh
Ministry of Finance
Finance Division
PPP Unit

Notification

Dated : 17 October, 2018

S.R.O No. 306-Law/2018.—In exercise of the powers conferred by section 44, read with section 16, of the Bangladesh Public-Private Partnership Act, 2015 (Act No. XVIII of 2015), the Government is pleased to make the following rules, namely:—

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

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

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

- (1) “**Bid**” means the bid as defined in the PGP, 2018;
- (2) “**Bidder**” means the bidder as defined in the PGP, 2018;
- (3) “**Equity Contribution**” means the share of capital contributed by the shareholders of the Project Company or other forms of funding provided by the shareholders to the Project Company including shareholder loans;

(১৩০৫৯)

মূল্য : টাকা ১৬.০০

- (4) **“Evaluation Committee”** means a committee constituted under the PGP, 2018;
- (5) **“Financial Close”** means the point at which commercial and financial contracts have been signed and condition precedents to the first debt drawdown have been fulfilled;
- (6) **“Form”** means form annexed with these rules;
- (7) **“Government”** means the Government of the People’s Republic of Bangladesh;
- (8) **“IFB”** means the Invitation for Bid as defined in the PGP, 2018;
- (9) **“Lead Financial Institution”** means the financial institution (FI) that is funding the PPP Project, and in case there is a consortium of FIs, the FI designated as such by the consortium;
- (10) **“PGP 2018”** means the Procurement Guidelines for PPP Projects, 2018 as may be amended time to time;
- (11) **“PPP Act”** means the Bangladesh Public-Private Partnership Act, 2015 (Act No. XVIII of 2015);
- (12) **“Preferred Bidder”** means the preferred bidder as defined in the PGP, 2018;
- (13) **“Project Term”** means the duration of the PPP Contract for the PPP Project;
- (14) **“Proposal”** means the Proposal as defined in the PGP, 2018;
- (15) **“Request for Proposal” or “RFP”** means the Request for Proposal as defined in the PGP, 2018;
- (16) **“Shortlisted Bidder”** means the Bidder as defined in the PGP, 2018;
- (17) **“Tariff”** means an amount charged for per unit of service provided to the service users or consumers;
- (18) **“Total Estimated Capital Cost”** means the total cost of designing, constructing and commissioning a Project including capital expenditures, consultancies, capitalized interests, contingencies,

margins, overheads, applicable government charges and taxes as determined through a Detailed Feasibility Study;

- (19) **“Total Estimated Project Cost”** means the aggregate of the Total Estimated Capital Cost and the costs of operation including maintenance, management, consultancies, interest, contingencies, margins, overheads, applicable government charges and taxes;
- (20) **“VGF Agreement”** means the agreement as referred under rule 8(17);
- (21) **“Viability Gap Financing”** or **“VGF”** means a direct subsidy by way of capital grant and/or annuity payment provided under these rules.

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

3. **Rationale.**—(1) The VGF shall be used to provide financial support to financially not viable but socially and economically beneficial PPP Projects or to maximize the Value for Money (VFM), hereinafter referred to as VFM, for the Government.

(2) The VGF in the form of—

- (a) capital grant shall be disbursed during the construction phase of the PPP Project on a pro rata basis with the Equity Contribution subscribed and expended by the private sector company for each agreed Project construction milestone of the PPP Project; and/or
- (b) annuity shall be disbursed on a periodic basis (for example, monthly, quarterly, half yearly or yearly) during the period when the Project Company provides service under the PPP Project after the commencement of operations.

4. **Applicability.**—In order to meet the Government’s important policy objectives and strategies, the VGF shall apply to all kinds of PPP Projects including the national priority PPP Projects taken under section 15 of the PPP Act and the PPP Projects taken under the Policy for Implementing PPP Projects through Government to Government (G2G) Partnership, 2017.

5. Eligibility and Proportionality.—(1) The following eligibility criteria are required to be complied with to receive the VGF, namely:—

- (a) The PPP Project shall be implemented (i.e. developed, financed, constructed, maintained and/or operated) during the Project Term by a Project Company under the PPP Act;
- (b) The Economic Rate of Return (ERR), hereinafter referred to as ERR, of the PPP Project shall meet the threshold level as specified by the PPP Unit, Finance Division from time to time or the provision of VGF shall maximize the VFM;
- (c) The detailed feasibility study is the pre-requisite for availing VGF for the PPP Projects;
- (d) The ERR of the PPP Project shall be calculated through the detailed feasibility study;
- (e) The PPP Project shall provide a public service against payment of a predetermined tariff or user charge;
- (f) The VGF in the form of capital grant only shall not exceed forty percent (40%) of the Total Estimated Capital Cost;
- (g) The VGF in the form of annuity only shall not exceed forty percent (40%) of the Total Estimated Project Cost;
- (h) The Total VGF both in the form of capital grant and annuity shall not exceed forty percent (40%) of the Total Estimated Project Cost;
- (i) The VGF amount shall be set by the Government or the Preferred Bidder's offer and in both cases the bid parameter shall be in accordance with the PPP Act and the PGP, 2018;
- (j) Where the VGF is based on the Preferred Bidder's offer, the VGF shall form a key component of the financial evaluation criteria alongside other technical evaluation criteria.

6. Entitlement Priorities.—(1) The VGF Proposals submitted under these rules shall be prioritized on the basis of the ERR of VFM created from implementing the project on PPP basis using the VGF.

(2) If the accumulated VGF needed in a year exceeds the VGF budget, the proposed PPP Projects may apply for the VGF in the following year.

(3) The VGF disbursement is mainly based on the first come first serve basis.

7. **Management.**—The VGF shall be managed and administered by the Finance Division, Ministry of Finance through its designated PPP Unit.

8. **Approval Process.**—(1) After obtaining in-principle approval of any PPP Project from the Cabinet Committee on Economic Affairs, the Contracting Authority or the PPP Authority shall proceed to conduct detailed feasibility study to develop structure for a feasible, bankable and affordable PPP Project and estimate VGF requirements.

(2) If requirement of VGF is identified through detailed feasibility study as mentioned in sub-rule (1), the Contracting Authority shall submit the VGF proposal to the PPP Authority in the format prescribed by the PPP Authority, and at the time of submitting such proposal, the Contracting Authority shall certify with reasons that the:

- (a) Traffic or user charge (where applicable) cannot be reasonably increased to eliminate or reduce the viability gap or enhance Project viability (as per 'Form-A' annexed with these rules);
- (b) Project Term cannot be reasonably increased for reducing the viability gap or enhancing Project viability (as per 'Form-B' annexed with these rules); and
- (c) Total Estimated Capital Cost and the Total Estimated Project Cost are reasonable and are based on the standards and specifications normally applicable to similar PPP Projects and they shall not be further restricted for reducing the viability gap (as per 'Form-C' annexed with these rules).

(3) The PPP Authority shall review the VGF proposal to assess the accuracy and necessity of VGF through undertaking the following actions, namely:

- (a) By evaluating the financial model, project structure and underlying assumptions that have been used to identify the VGF in order to ensure completeness, accuracy and adequacy of calculations;
- (b) By analyzing the PPP structure to assess VFM and the necessity of VGF;
- (c) By requesting the Contracting Authority for further information, if needed to conduct such review.

(4) The PPP Authority shall complete the review within 30 (thirty) working days upon receipt of the VGF proposal along with necessary information from the Contracting Authority and, if necessary, PPP Authority may take the assistance of experts in reviewing the VGF proposal.

(5) The PPP Authority may endorse the VGF proposal, reject it or seek a re-submission of it incorporating its feedback, and if endorsed, it shall send the VGF proposal with its reasoning along with all project documents (such as, project summary, detailed feasibility study, economic and financial analysis, Economic and financial model, draft VGF agreement etc.) to the PPP Unit, Finance Division, on behalf of the Contracting Authority.

(6) In order to assess the eligibility for VGF and prioritize the received VGF proposal, the PPP Unit, Finance Division shall review the VGF proposal upon receipt of such proposal through the following actions, namely:

- (a) Assessment of VGF limit (the VGF does not exceed forty percent (40%) of the Total Estimated Capital Cost in case of capital grant or Total Estimated Project Cost in case of annuity or both excluding the costs that shall be met by the Government through linked Projects);
- (b) Prioritization or ranking of the received VGF proposals based on the ERR and/or other relevant criteria and recommendation for the amount of VGF accordingly;
- (c) Request for further information, if needed, for conducting such review to the PPP Authority and the Contracting Authority.

(7) Upon receipt of all necessary information from the PPP Authority, the PPP Unit, Finance Division shall complete the review within 30 (thirty) working days of the receipt of the VGF proposal.

(8) Based on the review made under sub-rule (6) and (7), the PPP Unit, Finance Division shall prepare a summary of the proposal for the VGF Appraisal Committee as constituted under sub-rule (9).

(9) The VGF Appraisal Committee shall be composed of the following members, namely:

- | | |
|---|------------------|
| (a) Additional Secretary/joint secretary (TDM),
Finance Division. | Chairperson |
| (b) Joint Secretary (Budget-1), Finance Division. | Member |
| (c) Joint Secretary or Joint Chief, Line Ministry/
Division | Member |
| (d) Joint Chief, Concerned Sector Division,
Planning Commission | Member |
| (e) Representative of PPP Authority | Member |
| (f) Representative of Contracting Authority | Member |
| (g) Joint Secretary or Deputy Secretary, PPP
Unit, Finance Division. | Member-Secretary |

Provided that the Committee may co-opt any technical expert or employ a group of experts from the relevant field, where necessary.

(10) The VGF Appraisal Committee shall appraise the VGF proposal within 15 (fifteen) working days after receiving the summary of the VGF proposal from the PPP Unit, Finance Division, and if the Committee accepts the proposal, it shall recommend the PPP Project to the Finance Minister for the grant of VGF.

(11) The PPP Unit, Finance Division shall prepare a summary of the VGF proposal of the PPP Project for the Finance Minister and the Finance Minister shall, upon receiving the summary, either grant it in-principle or deny it or seek further clarification.

(12) After receiving the decision from the Finance Minister, the PPP Unit, Finance Division Shall notify the decision to relevant authorities.

(13) The Contracting Authority is not authorized to publish RFP or IFB (as the case may be) unless it receives the in-principle approval of VGF from the PPP Unit, Finance Division.

(14) If the Contracting Authority wishes to proceed with the RFP/IFB process while a VGF proposal is under consideration, it may do so by issuing a

notice to the PPP Authority as well as the PPP Unit, Finance Division to withdraw its VGF Proposal and the RFP/IFB may be issued without VGF.

(15) The recommendation of the Evaluation Committee regarding the VGF, after reviewing the Proposals or Bids (as the case may be) by the Evaluation Committee in accordance with the criteria prescribed in the RFP or IFB, shall be submitted to the PPP Unit, Finance Division through the PPP Authority.

(16) The Applicable Line Ministry or Division shall submit the legally vetted and negotiated (where applicable) PPP Contract to the CCEA for final approval.

(17) The PPP Unit of the Finance Division, the Lead Financial Institution and the Project Company shall enter into a tripartite agreement (“VGF Agreement”) for the purposes of disbursement of the VGF, and the VGF Agreement shall be signed by the parties, which shall be the part of the PPP Contract.

(18) The Finance Division and the Project Company (or Preferred Bidder) shall enter into the VGF Agreement at the time or immediately after the signing of PPP Contract, and the Lead Financial Institution shall enter into the VGF Agreement on or prior to the Financial Close.

9. Disbursement.—(1) The Project Company shall submit, through the Contracting Authority, the VGF disbursement request with substantiating evidence to the PPP Unit, Finance Division.

(2) The PPP Unit, Finance Division shall review the disbursement request along with the evidence in accordance with the VGF Agreement, and based on that review the PPP Unit, Finance Division may approve the disbursement request or seek further information to verify that requested disbursement.

(3) In order to verify the VGF disbursement request and the substantiated evidence submitted, the PPP Unit, Finance Division may request the PPP Authority to support the review process and obtain or collect necessary information from the Contracting Authority.

(4) The PPP Unit, Finance Division shall disburse the VGF to the Project Company through the Lead Financial Institution or its agent as and when due or through any mutually agreed mechanisms.

10. **Monitoring.**—(1) In order to verify proper use of the VGF, the Contracting Authority shall be responsible for regular monitoring and periodic evaluation of the PPP Project compliance with agreed milestones and performance levels, and it shall report quarterly to the PPP Authority and the PPP Unit, Finance Division.

(2) If there is any non-compliance of VGF requirements as stipulated in the VGF Agreement, the PPP Authority shall report it to the PPP Unit, Finance Division with a brief description with the causes of such non-compliance and the Contracting Authority may deploy experts for compliance checking, if necessary.

(3) The Lead Financial Institution shall also be responsible for regular monitoring and periodic evaluation of the PPP Project compliance with agreed milestones and performance levels and it shall also send a quarterly progress report to the Contracting Authority, PPP Authority and PPP Unit of Finance Division.

(4) The PPP Unit, Finance Division shall review and evaluate the reports received from the Contracting Authority, the PPP Authority as well as the Lead Financial Institution and assess the compliance and performance levels set forth in the VGF Agreement and give necessary direction to all concerned.

11. **Repeal and Savings.**—(1) The Guidelines for Viability Gap Financing (VGF) for Public-Private Partnership (PPP) Projects, 2012, hereinafter referred to as the “Repealed Guidelines”, shall stand repealed.

(2) Notwithstanding such repeal,—

- (a) anything done or any measures taken under the Repealed Guidelines shall be deemed to have been done or taken under these rules;
- (b) any activity undertaken but not finished under the Repealed Guidelines shall continue to be undertaken as if the Repealed Guidelines had not been repealed.

By the order of the President

Abdur Rouf Talukder
Secretary-in-Charge.

Form-A**Certificate Relating to Tariff or User Charge**

[see rule 8 (2)(a)]

It is certified that:

- (a) The (name of Project) has been submitted by the undersigned as the duly authorized officer of (name of the Contracting Authority) for seeking Viability Gap Financing under the Rules for Viability Gap Financing for Public-Private Partnership Projects, 2018.
- (b) The undersigned hereby certifies that the proposal complies with the provisions and eligibility criteria specified in the aforesaid rules.
- (c) The Tariff or User Charge for the Project has been fixed under and in accordance with (country's law and rule/schedules along with relevant sections). A copy of the relevant Act and rules is attached.
- (d) The Tariff/User Charge as fixed for this Project is indicated below (attach separate sheet if necessary).
- (e) The aforesaid Tariff or User Charge cannot be fixed at a higher level for the reasons stated below.

Dated:

(Name and designation of
Officer along with official stamp)

Form-B

Certificate relating to the Project Term

[see rule 8 (2)(b)]

It is certified that:

- (a) The (name of Project) has been submitted by the undersigned as the duly authorized officer of (name of the Contracting Authority) for seeking Viability Gap Financing under the Rules for Viability Gap Financing for Public-Private Partnership Projects, 2018.
- (b) The Project Term has been fixed keeping in view the considerations noted below:
- (c) The aforesaid Project Term cannot be increased for the reasons stated below:

Dated:

(Name and designation of
Officer along with official stamp)

Form-C**Certificate relating to Total Estimated Capital Cost and/or
Total Estimated Project Cost**

[see rule 8 (2)(c)]

It is certified that:

- (a) The (name of Project) has been submitted by the undersigned as the duly authorized officer of (name of the Contracting Authority) for seeking Viability Gap Financing under the Rules for Viability Gap Financing for Public-Private Partnership Projects, 2018.
- (b) Total Estimated Capital Cost and/or Total Estimated Project Cost is reasonable and has been fixed in accordance with the standards and specifications normally followed for similar Projects (attach separate sheet if any details are to be furnished).
- (c) That the aforesaid Total Estimated Capital Cost and/or Total Estimated Project Cost cannot be reduced for reasons indicated below (attach separate sheet if necessary).

Dated:

(Name and designation of
Officer along with official stamp)