

DRAFT PUBLIC PRIVATE PARTNERSHIP BILL (February 2011)

EXPLANATORY NOTES

1. What is the purpose of the PPP Bill?

The purpose of the Public Private Partnership Bill (**PPP Bill**) is to provide for the procurement and delivery of infrastructure facilities and services through public private partnership (**PPP**) arrangements. It seeks to promote objective grounds for PPP decision-making, and fairness, competition and efficiency in the PPP procurement tender process. The PPP Bill has several functions, which include (but are not limited to):

- Confirmation that State Authorities have the statutory powers to enter into new procurement arrangements. These powers supplement the existing powers of State Authorities under relevant existing legislation. The PPP procurement process will cover all public infrastructure projects with a value of over K50 million. ;
- Provision for State Authorities to form companies and to enter into joint ventures for the purpose of a PPP, including giving State Authorities the legal capacity necessary to contract direct agreements with the private financiers of PPPs;
- Provision that the functions of a State Authority may be conferred under the PPP arrangement to the private sector, subject to the general control of the State Authority;
- Provision for reporting, accountability and transparency in implementing the PPP program and managing the PPP Centre; and
- Provision for the role of National Executive Council (**NEC**) as the sole decision-making body for approval of procurement of a project by way of a PPP arrangement.

2. What entities are created by the PPP Bill?

There are three entities to be established through the enactment of the draft PPP Bill (a) PPP Centre, (b) PPP Steering Group and (c) PPP Forum. The purpose of the **PPP Centre** is to manage and coordinate the implementation of PPP policy, programme and projects. The PPP Centre advises and assists State Authorities in analysing and assessing infrastructure projects with a view to identifying projects that are to be procured by way of a PPP arrangement rather than by traditional means of public procurement. The **PPP Steering Group** is a four person committee established to oversee the implementation of the PPP policy. The **PPP Forum** provides an opportunity for stakeholders from outside the public sector to respond and provide recommendations on PPP matters.

2.1 PPP Centre

The PPP Centre is proposed to be a statutory agency with a CEO that reports to the Minister for Treasury on matters relating to management and accountability for financial resources provided from a separate appropriation. The PPP Centre reports on the PPP project cycle and process to the PPP Steering Group and through it to NEC. The PPP Centre is directly accessible by line agencies.

The PPP Centre is a specialist PPP adviser to NEC, PPP Steering Group and line agencies. It helps to guard and develop policy matters on which the PPP Steering Group makes recommendations and the NEC decides. It is not a decision-making body. It coordinates and implements decisions taken by NEC or the PPP Steering Group within limits set by PPP legislation, procedures etc. It acts as a gate-keeper to ensure there is a consistent approach taken to the analysis of projects and to the conduct of the PPP process, including the tendering process. It helps to evaluate risks and provides advice to the relevant part of the

Department of Treasury that will decide on fiscal risks and affordability. It acts as a centre of best practice and an institutional knowledge base on PPP matters.

The main PPP Centre functions include:

- in cooperation with State Authorities and private sector interests, and in particular through the PPP Forum, help promote PPP initiatives and understanding throughout the PNG public sector and stimulate interest among private sector investors and lenders in PNG and elsewhere;
- support communications regarding PPP policy and programme generally and individual projects with stakeholders and the general public;
- coordinate PPP policy, programme and project matters throughout Government, including coordination with sector regulators;
- help build PPP capacity in State Authorities and help promote good practice and knowledge sharing between State Authorities, and with the private sector;
- develop and issue best practice guidance on PPP;
- in consultation with relevant authorities, prepare and disseminate PPP procedures, guidelines, model documents to be applied or adapted for use in the PPP project cycle and a compendium of definitions and clauses to be considered for use and adaptation in PPP agreements in the interests of efficiency and understanding and to ensure consistency of approach in similar circumstances;
- have overall responsibility for the management and implementation of the PPP project cycle in coordination with State Authorities and the PPP Steering Group;
- advise and assist State Authorities in investigating PPP potential and in validating and developing PPP project proposals; where projects satisfy objective criteria and have been approved by the relevant authorities, advise and assist State Authorities to procure projects through PPP arrangements;
- throughout the PPP project cycle, advise the PPP Steering Group and Department of Treasury of its opinion regarding whether a PPP arrangement adequately satisfies requirements of affordability, value for money and sufficient risk transfer;
- act as secretariat to the PPP Steering Group, the PPP Forum, PPP Project Teams and evaluation teams for identifying consultants and advisers and evaluation teams for projects being procured by PPP;
- advise the PPP Steering Group, the Department of Treasury and State Authorities of the optimal means of financing the cost of PPP arrangements to achieve value for money, including matters such as Government financial or other support likely to be required, contingent liabilities of Government associated with projects and user fees, including how user fees might be set or adjusted; and
- advise the Minister, the PPP Steering Group and any State Authority on all aspects of financing, advances of moneys (including repayable loans and equity) and other financial arrangements, refinancing and insurance of PPP arrangements.

2.2 PPP Steering Group

The PPP Bill provides for the formation of the PPP Steering Group which will be comprised of four ex officio members: the Departmental Heads of Treasury, National Planning & Monitoring and Public Enterprise, and the State Solicitor, with the Departmental Head of Treasury as Chairman. The PPP Steering Group may co-opt a member or members or invite non-members to attend and participate in discussion at a meeting of the PPP Steering Group for the purposes of considering an individual public investment project for procurement by way of PPP. This could provide for the co-option or invitation to attend of the Head of a Department that is a Project Sponsor, the Chief Accountable Officer of a State

authority, the CEO of the PPP Centre or other persons. The PPP Steering Group may form a sub-group of members.

The PPP Steering Group functions are to:

- co-ordinate and monitor the PPP policy and programme of the NEC;
- ensure that the PPP policy and programme of the NEC is implemented with all its conditions;
- recommend to and advise the NEC on measures that may be taken to further PPP policy and programme generally;
- receive and consider matters relating to PPPs that are referred to it by the Minister or the NEC or that are brought to its attention by the CEO of the PPP Centre and make recommendations to and advise the NEC on these matters;
- make decisions as provided for in the PPP project cycle;
- make recommendations to NEC in relation to an individual PPP project or group of projects;
- appoint a PPP Project Team for an individual project, or for different PPP project cycle phases of an individual project, and provide terms of reference for the work of the PPP Project Team with the advice of the CEO of the PPP Centre who shall have consulted with the State Authority concerned with the project;
- appoint an evaluation team for evaluating submissions of expressions of interest and proposals during the PPP project procurement phase and provide terms of reference for the work of the evaluation team;
- ensure that the PPP policy and programme and implementation of projects are conducted in a fair, transparent and accountable manner; and
- ensure that public communications and interaction with the private sector on PPP is successful in building understanding and confidence among the general public, potential investors and lenders;

The PPP Centre will act as secretariat to the PPP Steering Group.

The structure and relationships between the PPP Centre and PPP Steering Group in managing the PPP process provide an essential link between decision-making on PPP procurement, traditional public procurement, public expenditure affordability, and fiscal risk. Decisions by NEC on PPP procurement of a particular project are made at the end of the PPP project cycle and not at the beginning.

2.3 PPP Forum

The draft PPP Bill imposes a duty on the CEO of the PPP Centre to convene a PPP Forum on a regular basis. Among the duties of the CEO and the functions of the PPP Forum as proposed in the draft PPP Bill are:

- The CEO of the PPP Centre shall be responsible for the convening of a PPP Forum for discussion and exchange of views among persons in society, business and government that are involved with, may be affected by or have an interest in PPP policy and projects;
- The CEO shall invite the significant private sector interest groups in PNG that represent consumers and users of infrastructure facilities and services, the business and financial sectors, and other persons from within PNG and internationally, that have a particular interest in infrastructure development and PPPs, to attend the PPP Forum;
- The CEO shall invite members of the PPP Steering Group and senior representatives of State Authorities involved in infrastructure development and PPP to attend the PPP Forum and those invited have a duty to attend and actively participate in the PPP Forum's deliberations;

- The CEO shall ensure that the PPP Forum convenes at least once in a calendar year and more frequently where circumstances require or in response to reasonable requests;
- Prior to convening the PPP Forum, the CEO shall invite the private sector interest groups to submit topics for the agenda at the PPP Forum and shall prepare an agenda that reflects the expressed views and concerns;
- The CEO and other PPP Centre personnel shall attend the PPP Forum and present an account of PPP activity and outcomes, including the tasks undertaken by the PPP Centre, PPP Steering Group and State Authorities, the problems and opportunities being encountered, steps to overcome problems and realise opportunities and future plans;
- The PPP Forum may make proposals and suggestions for improving PPP policy and implementation which the PPP Centre shall be obliged to examine and report to the groups that attend the PPP Forum and the CEO may form a task force of public sector and private sector members to carry out that examination and report; and
- The PPP Forum can be convened to discuss specific issues, including changes in infrastructure and PPP legislation, policy or procedures or individual projects that are not in the procurement phase of the PPP project cycle.

The PPP Centre will act as secretariat to the PPP Forum.

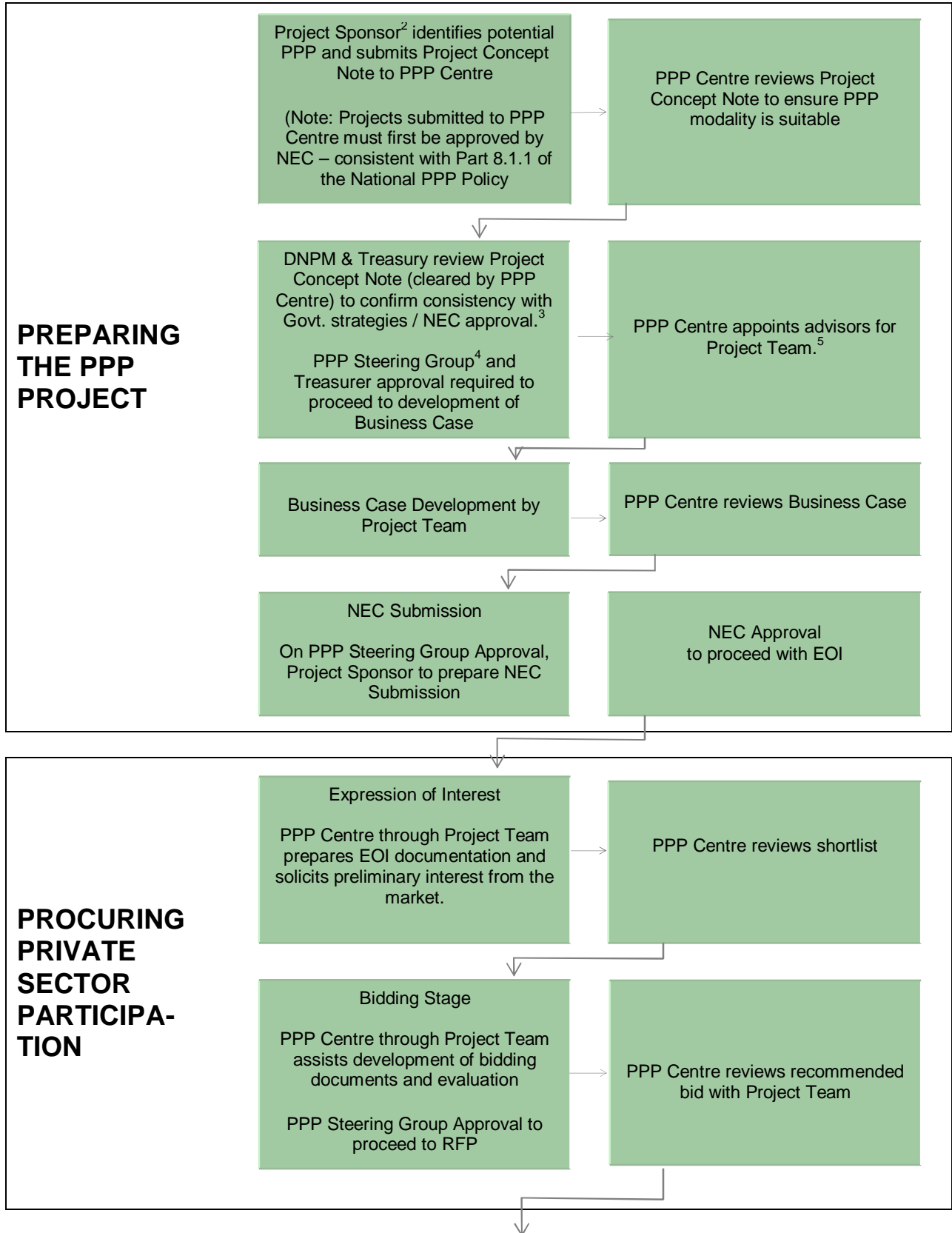
3. What is the PPP Process supported by the PPP Bill?

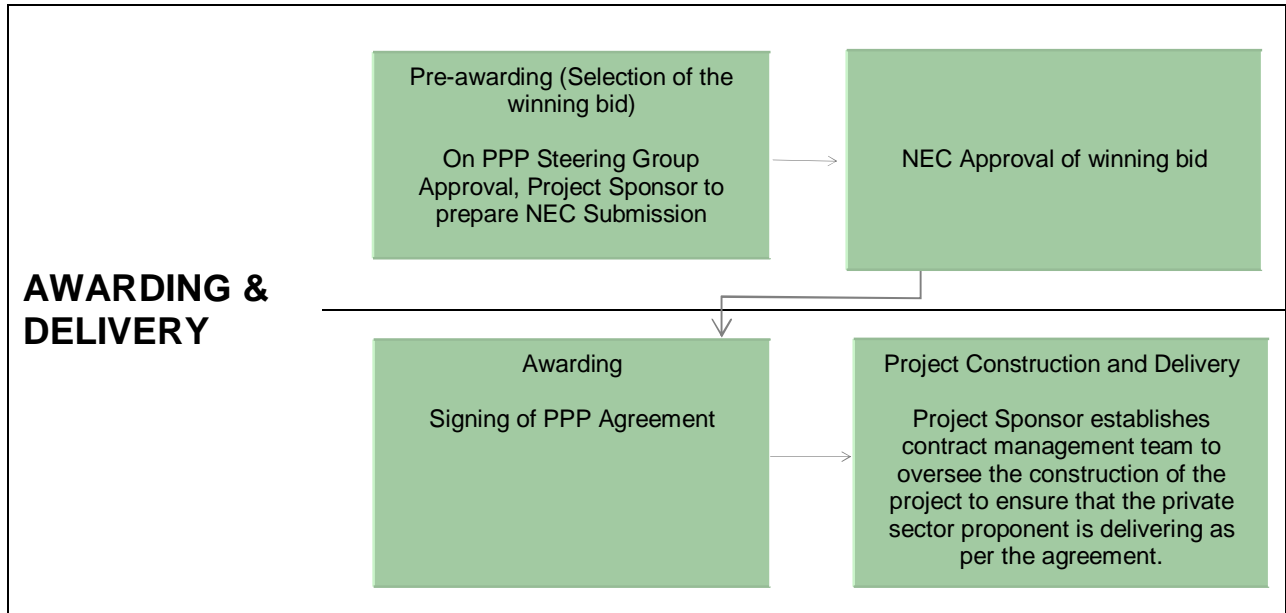
The PPP process is the project cycle through which a PPP project concept is assessed and developed through to procurement and implementation. (Note that a flow chart summarizing the recommended process is set out in the Appendix to this document.) It is composed of several phases, and begins with NEC approval, as per Sec 8.1.1 of the PPP Policy. If this is achieved, an assessment by the sponsoring State Authority that a proposed project of a value equal to or above a Referral Threshold (set in the PPP Regulations at K50 million) is suitable for procurement as a PPP is made. This is a self-assessment, the results of which are to be communicated to the PPP Centre. If the self-assessment concludes that a project is suitable for procurement as a PPP, the sponsoring State Authority may then submit the project into the PPP project cycle for further processing. Subsequent phases include assessment of PPP feasibility, implementation of various stages of PPP procurement in a fair and transparent manner, assessment of the proposed project against affordability and value for money criteria, effective contract making and delivery of the project facility and services, management of the PPP project relationships and outcomes, as well as eventual exit and project transfer issues.

The PPP Centre will prepare procedures, guidelines, instructions and model documents to assist State Authorities through all phases of the PPP project cycle.

APPENDIX FLOW CHART OF RECOMMENDED PPP PROCESS¹

(Note: this is a draft process, which is consistent with the National PPP Policy and which will be finalized in due course by the PPP Centre.)





KEY

DNPM	Department of National Planning and Monitoring
EOI	Expression of Interest
NEC	National Executive Council
PPP	Public-Private Partnership
RFP	Request for Proposal documents
Treasury	Department of Treasury

Footnotes

¹ Note that project guidance material will be prepared to guide the PPP Centre and individual Departments and agencies as they identify, initiate and undertake PPP projects. The guidance material will contain specific detail regarding the implementation of the process and will be publicly available.

² The Project Sponsor is either the Line Agency or State Owned Enterprise.

³ As per Section 4(3) of the draft PPP Regulations, NEC approval may be in the form of (a) an allocation in the national budget; or (b) a decision of the National Executive Council.

⁴ The PPP Steering Group is composed of the Secretary of the Department of National Planning & Monitoring, Secretary of the Department of Treasury, the State Solicitor and the Secretary of the Department of Public Enterprises.

⁵ The Project Team is comprised of representatives from the Project Sponsor and Treasury supported by external specialists appointed by PPP Centre and the Project Sponsor.