The Performance and Challenges of Public-Private Partnership (PPP) Projects in Bangladesh

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Md. Abu Rashed, Md. Mahmudul Alam, Fahim Faisal

ABSTRACT*

Like many other countries, Public-Private Partnership (PPP) has been appreciated as an important way out for infrastructure development in Bangladesh. Though there have been recent successes in institutional and regulatory framework, other critical issues like transaction expertise, PPP financing facilities are yet to be boosted in the country. There also needs to have a strong incentive for the executing agencies that will bring more bankable PPP projects for the private sector. So far, around 40 private sector infrastructure projects have been completed in Bangladesh with total investment value of US\$ 2.9339 billion, and around 40 projects are in the national pipeline. Many PPP projects that were awarded earlier are not performing well due to weaknesses in transaction process. Under this circumstance, to successfully implement PPP projects it is essential to evaluate the effectiveness of the existing PPP project framework in Bangladesh. This paper analyze the selected PPP projects in Bangladesh to draw lesson in the perspectives of the institutional, regulatory, project financing, and other policy relevant issues. The paper specially focuses on up-front project development constrains and corresponding solutions for creating a greater PPP enable environment in the country.

JEL Classification Codes: H54, L52, R42

Keywords: Public Private Partnership, Project Development, Infrastructure Development, Bangladesh

INTRODUCTION

Infrastructure is the key for sustained economic growth. The high transaction costs arising from inadequate infrastructure can limit the growth potential of an economy regardless of the progress in other areas. However, with significant initial investment requirement infrastructural development is a challenging task for government alone. For emerging economics constrained with low tax GDP ratio, it's even more difficult to ensure long term project financing and implement capital intensive infrastructure project. As government may not be able to invest a large amount at a time only for the infrastructure sector, countries are increasingly feeling the necessity turning towards private sector for infrastructure development (Alam, 2011a). Therefore private participation in infrastructure is increasingly receiving importance for the provision of infrastructure and utility services around the world (Alexander, 2002). However, government still needs to play key role in terms of PPP project development and transaction, so it cannot be left completely to the private sector (Alam, 2011b).

Worldwide, Public Private Partnership (PPP) projects are becoming popular as an innovative approach for the development of infrastructure with the involvement of private sector (Rashed, 2011). PPP have gained utmost attention from the public sector and donor groups particularly in terms of service quality, procurement efficiency, risk minimization and

* The views expressed in the research paper are authors' own, and do not reflect the organization in which they work

the ability to combine adequate managerial and technical capabilities. The concept of PPP though not relatively new but has not yet developed and defined straight forward (World Bank, 2007a). According to Asian Development Bank, PPP is a range of possible relationships among public and private entities in the context of infrastructure and other services that present a framework for engaging private sector and also structure the role for government in ensuring that social obligations are met (ADB, 2008).

Generally, a public infrastructure project is financed, owned and operated by Government authorities or utilities. However, in a private infrastructure project or a PPP project, development, financing, procurement, construction and operation are carried out through a private investor through schemes such as build-operate-transfer (BOT), build-own-operate (BOO) etc. In reality, a PPP project is not only a project, but a business for a long period of time to be carried out by a private investor through partnerships between government and a private firm to provide services formerly supplied by the government alone (UNESCAP, 2005). Similar types of experiences also observed by researchers. Engel et al. (2007) describes the circumstances under which PPPs may provide better value than traditional public procurement, as well as examining some common but weak arguments for PPPs. Also describes institutional requirements for a successful PPP program. Fischer (2011) uses the experience of Chile and other developing countries to examine the benefits and pitfalls of PPPs, also offering recommendations to address common problems.

Many developing countries have already emphasized on private sector participation, where more than \$680 billion of investment going to private infrastructure projects in developing countries between 1990 and 2000 (Brook and Smith, 2001). Between 1990 and 2000, 130 developing countries had infrastructure projects with private participation, where the governments of developing country transferred the operating or construction risk, or both, to the private sector for more than 2,300 infrastructure projects and attracted investment commitments of almost US\$690 billion (World Bank, 2002). Gassner et al. (2009) carried out a comprehensive econometric analysis of more than 1,200 utilities in 71 developing and transition countries. The study found that private sector participation improved efficiency and service levels. Marin (2009) also carried out similar study by reviewing the experience of 65 PPPs in the water sector in developing countries, finding consistent improvements in efficiency and service quality.

At the same time, researchers also identified several crucial issues for the success of a PPP project. Rashed (2011) mentioned that in a PPP project, though the investment comes from the private sector, Government has the prime role of upfront project development particularly project identification and feasibility study in order to determine the financial and economic viability of a business venture with broad functional specification on technical matters and commercial aspects. The feasibility study identifies the risks and regulatory and monitoring framework. It is the most important tool to identify any possible problems that might occur during project implementation in order to make the project transparent to the potential private investors in terms of risk involvement, goods/ service demand and future growth of the business.

In this regard, Guasch (2004) describes in detail how poor PPP design and weak implementation can lead to renegotiations and increased costs. Farquharson et al. (2011) describes how to develop and implement a PPP successfully, by developing a marketable project and attracting the right private partners. United Nations Economic Commission for Europe (2008) provides a detailed direction on how to improve governance for PPP programs. The study also gives insight into what are the key challenges and possible frameworks for solutions. Along with policy support successful implementation of PPP projects also requires institutional development and financial market development. Regan (2012) provides a comprehensive assessment of the effectiveness of PPP units in developed

and developing countries and offers lessons of the context in which PPP units have been most effective. Farrugia et al. (2008) highlights the example of PPP units with a focus of experience of developed countries.

To solve the infrastructure problems, like many other developing countries Bangladesh successfully implemented projects under PPP model. So far, total 41 PPP projects have been completed in Bangladesh with total investment value of US\$ 2.9339 billion, and currently another 40 projects are in the national PPP pipeline. In Bangladesh, PPP have been most successful in power generation in terms of legal and regulatory framework, transparent procurement process, efficient off-take guarantee and creation of specific units likes PPP office, Power Cell etc. However, PPP Success in power sector also needs to be replicated in other sectors like road and social infrastructure sector. It is a paradox that the PPP project development and especially successful implementation for these sectors has not been able to keep pace with the growing demand. Under this circumstance, it is essential to evaluate the effectiveness and problems of PPP in the country. At the same time, findings the challenges are also very essential for the policy makers to deal the issue in a best possible way. This paper identifies the existing gaps in roles and procedures of various parties involved in PPP project development and aims to propose long, short and medium term strategies.

OVERVIEW OF PPP PROJECTS IN BANGLADESH

PPP development in Bangladesh can be divided in three phases. First generation PPP started with independent power producers (IPPs) after government approved the 1996 private sector power generation policy of Bangladesh. The second generation PPPs was carried out in multiple sectors and it was done after government approved the Bangladesh private sector infrastructure guidelines (PSIG) in 2004. The third generation PPPs have been enriched further more as government approved the PPP budget in 2009. The third generation PPP policy framework and guidelines have recently been approved by government in June 2010.

The government of Bangladesh (GoB) has showed its strong commitment to PPP, by allocating a PPP budget that is separated from the traditional development and revenue budget. In the 2009-2010 fiscal year, US\$ 357 million has been allocated under this PPP budget. The budget has been segregated under three heads - \$300m for loan or equity, \$45m for viability gap funding (VGF) and \$15m as a centralized technical assistance fund. In addition, the government has issued a position paper titled, *“Invigorating Investment Initiative through Public-Private Partnerships”*, in June 2010.

Table 1: Sector wise PPP Projects implemented in Bangladesh

Sector	Project Name	Capacity	Investment (USD\$ million)
Power	CDC Meghnaghat Ltd.	450 MW	300
	CDC Haripur Ltd.	360 MW	183
	Khulna Power Company Limited	110 MW	110
	Haripur El Paso Barge Mounted Power Plant	115 MW	115
	Westmont Baghabari Power Barge	130 MW	16.2
	BEPZA Power Plant at CEPZ	40 MW	28
	BEPZA Power Plant at DEPZ	35 MW	23
	Power Plant at Savar	44 MW	30
	Power Plant at Narsingdi	35 MW	23
	Power Plant at Comilla	25 MW	17

	Small Power Plants (10 to 33 MW) -- 12 stations	230 MW	115
	Captive Power Generation (many plants)	1200 MW	500
Telecom	Banglalink	34	123
	GrameenPhone	448	500
	Pacific Bangladesh Telecom Limited	65	118
	TM International (Bangladesh) Ltd.	25	366
	Warid Telecom	N/A	N/A
	Bangladesh Rural Telephone Network	123	150.4
	Public Switched Telephone Network (PSTN) Fixed Line Providers (Many)	N/A	172.5
	PGCB's Optic Fiber Cable (Phase-I) (Dhk-Ctg)	STM 64	1.2
	PGCB's Optic Fiber Cable (Phase-II) (Ctg-Cox'bzr)	N/A	11
	License for International Gateway Services	N/A	N/A
	License for Interconnection Exchange (ICX) Services	N/A	N/A
	License for International Internet Gateway Services	N/A	N/A
Port	Land Port at Sonamasjid	N/A	2.2
	Land Port at Banglabandha	N/A	1
	Land Port at Hili	N/A	2.2
	Land Port at Birol	N/A	0.71
	Land Port at Bibirbazar	N/A	0.71
	Land Port at Teknaf	N/A	4
Roads	Gulistan-Jatrabari Flyover	Toll road of 7 km from Gulistan to Jatrabari	108
	Dhaka Elevated Expressway	N/A	N/A
	Jamuna Bridge toll management contract	5	N/A
	Shah Amanat International Airport	1	N/A

This list covers mostly the projects under the previous PPP institutional and regulatory structure as adopted in 2004

In the power sector, after the approval of the 1996 Private Sector Power Generation Policy, a large number of IPP projects have been taken up and completed in Bangladesh. Notable amongst them are the 360MW Haripur and 450MW Meghnaghat combined cycle power plants. At the moment, about 25 IPPs have been completed or in varying stages of completion, representing an investment of almost \$1 billion. IPPs currently supply about 1/3 of the electricity used in Bangladesh.

In the telecom sector, private investments approach the \$1.5 billion mark, with world-class mobile companies such as Grameenphone, Banglalink, Aktel, Citycell, and Warid. Fixed line phones have also been opened up and many operators such as RanksTel, Dhaka Phone, OneTel etc are giving commercial service. The Power Grid Co. has leased out its Dhaka-Cox's Bazaar optic fiber cable constructed on its high-voltage transmission lines. The Bangladesh Railway has done the same for the optic fiber along its railway lines, leasing it with a PPP.

In the ports sector, six land ports have been constructed through PPP, located in Sonamasjid, Banglabandha, Hili, Birol, Bibirbazar and Teknaf. These are the first BOT land ports in the world. The tendering process for private operators is currently underway for the New Mooring Container Terminal, at the Port of Chittagong.

PPP PROJECT DEVELOPMENT PHASES AND REGULATORY FRAMEWORK IN BANGLADESH

In 1996, Government of Bangladesh issued the private sector power generation policy to facilitate public private partnership (PPP). Later, Bangladesh private sector infrastructure guidelines (PSIG) 2004 and private sector power generation policy (PSPGP) 1996 (revised 2004) has been the major guiding instruments especially to facilitate private investors for PPP projects. Later the public procurement act (PPA) 2006 was enacted by the national parliament. Public procurement act 2006 through section 66, which incorporated concessions agreement related provision, extended the government's legal jurisdiction to formulate independent PPP guidelines. Very recently, policy and strategy for public-private partnership (PPP), 2010 (PPP policy) has been adopted.

Along with regulatory certainty, PPP projects need several consents and approval including environmental clearance. Department of Environment (DOE) under Ministry of Environment and Forest is the approving authority for environmental clearance in Bangladesh. The environmental conservation act 1995 (and amendment 2000) and the environmental conservation rules 1997 are the guiding instruments for the project to get environmental approval from DOE. The World Bank guidelines are generally followed for environment impact assessment (EIA), social impact assessment (SIA), rehabilitation action plan (RAP), social action plan (SAP), environment management plan (EMP) etc. for maintaining "Equator Principles" which facilitate the PPP project in getting finance from banks. Other relevant policies and laws in conducting PPP business in Bangladesh are:

- The Foreign Exchange Regulation Act, 1947
- Foreign Private Investment (promotion and protection) Act 1980
- The Income Tax Ordinance, 1984
- Acquisition and Requisition of Immovable Property Ordinance, 1982
- Investment Board Act, 1989
- The Companies Act, 1994
- Industrial Policy 1999
- Arbitration Act, 2001

The life cycle of PPP projects in general may be segregated into seven phases in terms of role played by the agencies involved in the PPP projects. In different phases the sector agencies have different roles. The PPP project phases are given in table 2.

Table 2: Major steps of PPP Project Development in Bangladesh

Stage I	Stage II	Stage III	Stage IV	Stage V	Stage VI	Stage VII
Pre-Development	Feasibility	Commercial Framework and Procurement	Evaluation	Negotiation & Agreement)	Financing	Construction
<ul style="list-style-type: none"> •Project idea and conceptualization •Identification and assessment meetings and discussions within the agencies 	<ul style="list-style-type: none"> •Agency engages consultants •Elicit project ideas •Define the need •Identify and agree major technical and transaction parameters •Complete feasibility study 	<ul style="list-style-type: none"> •Develop action plan •Prepare commercial framework •Obtain Ministry agreement for Pre-qualification •Obtain Expressions of Interest and shortlist •Prepare draft Agreements •Prepare bid documents 	<ul style="list-style-type: none"> •Hold bidders conference •Shortlisted bidders prepare bids •Agency receives bids and prepares evaluation report •approval of successful bidder •Issue LOI to successful bidder 	<ul style="list-style-type: none"> •Prepare for negotiations •Carry out negotiations with Sponsor •Signing of agreement between 	<ul style="list-style-type: none"> •Sponsor makes Loan Applications to commercial lenders •Commercial Lenders perform due diligence •Renegotiations for Lenders Requirements •Loan documents prepared •Financial closure 	<ul style="list-style-type: none"> •Carry out Contract Administration functions •Oversee construction by Lenders' Engineer •Conduct satisfactory completion tests •Commercial Operations Date

SELECTED CASE STUDIES OF PPP PROJECTS IN BANGLADESH (Before adoption of existing institutional and regulatory structure)

Case Study on “AES Meghnaghat 450MW Power Plant”

The AES Meghnaghat 450MW Power Plant project was handled directly by Bangladesh power development board (BPDB). Six parties were pre-qualified to compete and five of them submitted tenders. The quoted levelled tariff of different bidders ranged from 2.79 to 3.98 US cents/kWh. A project agreement was signed in mid-1999 with AES (applied energy services) Meghnaghat, the bidder quoting the lowest tariff. The concession was a wholesale concession with BPDB being the only customer. GoB has given a payment guarantee on behalf of BPDB and a performance guarantee on the gas supply through Titas. Financial closure was reached in April 2001. The commercial operation date was planned as 30 months after the financial closure date. During bidding AES also committed to supply BPDB about 1.4 billion kWh of free electricity worth US\$34.75 million, equivalent to five months full-load production.

The relevant project implementation problem areas are as follows:

- Only one third of the total land was handed over to AES and the site hand-over, which was taken place on 15th of November 1999, was delayed by eight months.
- In mid 2000 (during the construction phase) EPC contractor Hyundai faced significant liquidity problems. Lenders became doubtful if Hyundai could do the project as stipulated. The lenders compounded Hyundai's problems by insisting on a performance guarantee from Hyundai six months before its due date.

- Due to inappropriate design of foundations, in January 2002 the cooling water intake structure settled. There were serious vibration problems. Remedial actions must await settlement to finish. An issue like this affects the sponsor (because of delay in generation of power and consequent delay in revenues) and the overall power supply.

The Project was successfully established and currently running very well and is being considered as one of the most successful IPPs in Bangladesh.

Case Study on “Construction of Dhaka Chittagong National Highway”

The Dhaka Chittagong highway (DCH) is the country’s main transport corridor; it connects Chittagong, the port city in southeast, to Dhaka, and further up to the Jamuna Bridge linking the eastern and western parts of the country. The DCH was built with two lanes for most of its stretches and currently is unable to handle the high level of traffic. The Government decided to expand the DCH to a dual two-lane carriageway to accommodate the current level and expected high growth of traffic on the DCH. The upgrading works constitute the building of an additional two lanes alongside the existing highway of 300 km long.

The relevant project implementation problem is that the project has been stalled due to the unavailability of the required Technical Assistance fund for the up-front project development activities. The Asian Development Bank has recently taken up this project and planning to progress it forward.

Case Study on “Development of Sonamasjid Land port”

The GoB decided to operate the existing Benapole land port directly in public sector and the remaining twelve land ports would be developed and operated through private sector on a build-operate-transfer (BOT) basis for a period of 25 years from the commercial operations date. For the first time government termed thirteen land customs (LC) stations as “Land Ports”. Twelve land ports were declared by gazette notification on 12 January 2002 and Bibirbazar was notified on 18 November 2002.

The relevant project implementation problem is that in the bid, the investor quoted a very high amount of royalty, which was 49% of the gross revenue, earned from the port. The difference between the quoted royalties with the other contenders was significantly high and unrealistic. IDCOL as the lead financier did not properly model the cash flows with a 49% offer. It also disbursed a significant portion of loan in the project without proper monitoring of the construction progress. In spite of having received a large amount of money from IDCOL and other banks, the expected project work was not completed up to the required level and the whole project turned into a bad example.

Case Study on “Khanpur Inland Container Terminal Project”

The concept of inland container terminal project was very new among the other PPP infrastructure projects. Considering the containerized traffic volume inside the country this project was a unique one for the nation. Transportation by barge is cheaper than road and rail and accordingly an inland container terminal at Khanpur on the river Sitalakhya in Narayanganj, about 34 km downstream from Dhaka, was proposed as a suitable location for setting up an inland container terminal. The project would provide a river alternative for the transport of containers. Such a terminal might also be useful in connection with Mongla and

other major river ports. The proposed project was considered to develop in BOT basis with a 30 years concession period.

The relevant project implementation problems are as follows:

- The public sector officials did not have clear understanding about the procurement process of such private sector infrastructure projects.
- Delay in decision-making of the Procuring Agency, leading to investors losing interest in the project.

PROBLEMS OF PPP PROJECT IMPLEMENTATION IN BANGLADESH

By its very nature, a PPP project is very different from a conventional public sector project as it can only be realized through a complex contract. It is essentially a business for a lengthy period of time and not a short-term construction project. This contract is extremely vital for the business relationship between the public sector and the private sector. Clauses in the contract might entice private investors or potentially drive them away.

In terms of developing PPP projects, PPP projects require consultancy skills from local and foreign consultants. However, often consultants fail to understand the local context while developing PPP projects. Lack of consultants' skills can be related to the two primitive causes including inappropriateness consultants regarding public sector projects and for overseas consultants, their inability to think smaller than developed countries (the overdesign risk). For a sustainable growth to be achieved, infrastructure development as we know, is the basis for achieving such goal, these kinds of major obstacles have to be eradicated by introducing hassle-free mechanism with proper consulting guidance from experienced consultants in the related field.

Infrastructure projects, from funding view point, have got two components Technical Assistance (TA) fund and investment fund. TA fund basically used for compensating technical advisors or the consultants and investment fund is used for implementing the project in the real ground. For a public infrastructure project, these TA fund and investment fund are found compositely while for a private infrastructure project (PPP), these two funds are separated: public sector deals with TA fund for technical advisors, linked projects, VGF and annuity payments etc. and private sector brings up the investment fund for financing the project. Problems that can be found in the real scenario is that as these two components are separated for PPP projects, size of the fund become very little and fund dissemination process fall sometimes in an inert situation and it slows down the pace of implementation. In conducting the feasibility study of the project fund for consultancy services is needed. Moreover, investment promotion, draft agreements preparation, conducting the tendering process, evaluation of bids, negotiation with the winning bidder along with finalisation of the agreements needs technical, commercial and legal advisory/ consultancy services. Recently the government has adopted PPP budges provisioning fund for TA and VGF which significantly resolves the fund constraints in project development which earlier was one of the most critical problems for PPP implementation in Bangladesh.

Previously there was no prescribed manual for all to follow a particular way to conduct feasibility study and project transaction. Different projects were implemented using different factors and parameters. The agreements of all PPP projects need to be consistent in order to meet some common objective. However, recently the PPP Office has taken significant steps to develop a uniform process for PPP project development and transaction. The PPP office has already published model concession agreement and prepared manual for port, mass rapid transit, industrial park. Along with addressing the issue for feasibility study it is also important to ensure proper budgetary allocation for carrying out feasibility study and other associated activities. The government obligations in PPP projects are often limited to

the feasibility study, transaction support and implementing linked government or public sector projects which subsequently provide the question for the fund to be mobilized by the government for these services as up-front development.

In addition, while implementing the PPP project, timely completion of associated/linked projects as specified in the contract is primarily the public sector obligations. These are very much crucial to make the PPP project successful. PPP Policy and strategy 2010 under Section 9, there is provision for initiating linked components and arranging finance for such components. Depending on the nature of PPP project, the line Ministry/implementing agency may consider financing and implementing linked services, construction of approach roads, etc. The linked projects through Development Project Proforma (DPP) are to be included in the Annual Development Plan (ADP) using the existing procedures for initiating and formulating development projects. However, it should be considered that delay in getting DPP approval should not hamper/delay the main PPP initiative. Infrastructure projects in Bangladesh often suffer from delays and cost overruns. Delays and cost overruns have significant implications from economic as well as political point of view. Due to delays in project implementation, the people and the economy have to wait for the provisions of public goods and services longer than is necessary. Thus, delays limit the growth potential of the economy. Similarly, cost overruns reduce competitiveness of the economy. To address these issues PPP project implementation process can be coordinated by a central authority like PPP office. Recognizing this issue, Government of Bangladesh has established PPP office under Prime Ministries office to coordinate overall PPP project development and transaction process.

One of the key constraints is the domestic capacity for financing infrastructure PPP projects by the local commercial banks. Currently Bangladesh Bank imposes Single Borrower Exposure Limits capping exposure to the companies seeking finance, making a theoretical maximum syndication, if all the private commercial banks participated, of USD 600 million to a single sponsor. However, in reality, the total amount available to a single sponsor is likely to be much smaller. Bangladesh's local banks have limited capacity to finance large infrastructure projects. Local commercial banks are largely limited to making loans with a maximum term of 5-7 years and generally require equity of 25%- 35%.

In public sector projects (which are developed, financed and implemented by government itself) the government seeks support from the development partners (especially in the developing countries) for both technical assistance (for project development including feasibility studies, environmental and social due diligence etc.) and actual investment in terms of lending (sovereign loan). Such support from the development partners in public sector projects are arranged upfront at the early stage of project development. In public sector projects the borrowing government agency strictly follows the project development compliances of the development partners and receives their concurrences for each major development stage or milestones (each of the development partners has established set of project development compliance requirements in terms of environment, social, procurement etc. like ICB of the World Bank).

In PPP, as the investment comes from private sector, the TA required for developing the PPP project becomes infant and hence generally arranged by the concerned executing agency solely and in most cases without any support from the development agencies. Considering the fact that development partners are invisible in the PPP project development phase, many government agencies follow their own national PPP guidelines which in many cases do not correspond to the required development compliance criteria (especially that of the development partners). The situation is even more complicated where government does not have a central guideline and agencies develop their PPP project on ad-hoc arrangements.

As such, the development phase of PPP projects becomes very uncertain. Moreover, for PPP projects, even the development partners in many cases do not have standard framework for project development compliances (where the World Bank has only 3.13 (a,b) in WB's PG for PPP procurement, many other development partners do not have any. There is also much confusion among government agencies on applicability of the ICB of WB in PPP project development where ICB is traditionally used for public sector projects). All these create substantial uncertainty in terms of standard compliances for PPP project development including the procurement, environmental and social due diligence. For example, the government's compensation policy for re-settlement in a developing country like Bangladesh is found quite different than that of ICB of WB, or that of ADB.

In PPP projects, as the financing comes at a later stage after the project being developed and awarded to a private sector, the winning bidder due to the huge initial capital requirement often approaches the development partners for project financing. Moreover, with emerging banking sector, when the sponsors apply to commercial banks for PPP financing, as per the equator principle, the commercial banks also need to follow the compliances of the development partners. Finally, for political risk guarantee or partial credit guarantee, the PPP projects need to ensure compliances of the development partners. As such, although not being involved in the project development stage, the development partners emerge as the key PPP financing stakeholder especially for large PPPs. For PPP financing decision, development partners then "look back" to the development phase of the particular PPP projects to assess their compliances. The depth and coverage of the feasibility study, the level of due diligence in environmental and social studies, the transparency in procurement is critically examined by development partners. After examining the compliances requirement by the development partner, many PPP projects are found to be non-eligible for development partners support (*e.g.* IPFF's rejection to fund Summit power project or ADB's constraints to support Elevated Expressway in Bangladesh).

POLICY RECOMMENDATIONS AND CONCLUSIONS

Generally public sector projects are significantly different from private sector projects. The concerned stakeholders and interest of these two sectors vary due to the very inherent nature of objectives that these two sectors try to achieve. Therefore, when a public sector project is selected to be done by a private investor, there has to be some sort of incentive factors based on which these two sectors can come up in the same page. For this reason, government has to consider the concerns of private sector.

Since PPPs have to be awarded through tenders to ensure transparency the front end-development of PPPs, the activities prior to the award of a PPP may take a long time to occur. Recently with the establishment of PPP Office, the Government of Bangladesh have addressed some of the major obstacles associated with PPP projects including project identification process, lack of commercial focus and lack of experience in project development. In future, the establishment of PPP office will certainly assist in PPP project development, transaction and monitoring in Bangladesh.

In addition, public infrastructure projects are identified in the ADP and national five year plans which is not the case for PPP projects. From a national perspective, since private sector infrastructure is encouraged, there needs to be a commercially viable pipeline of PPP projects. In addition, formal mechanism to segregate between projects which will be carried out under the public sector and those which will be carried out under the private sector. Without this segregation, infrastructure projects implemented through the private sector will always be small in number as many influences prevent it from entering the private path.

For political convenience, governments may often change the rules of operation in the industry after investments are made. As most infrastructure assets cannot be easily transferred

to alternative activities (in other words, has a high degree of specificity), investors are compelled to adjust to such changed situation, which may affect their business case and results into lower returns to their investment. The establishment of an independent regulator can help to ensure continuity of rules and credibility of government. The establishment of independent regulators is a solution to these problems. By delegating powers to independent regulators, the government can assure private investors that it would not be able to arbitrarily change any rules or intervene in the market after investments are made.

Realizing this scenario Government of Bangladesh has already established a PPP office under Prime Minister's office to supervise the overall PPP project management process. Investors, however, may have wary of any high levels of discretionary power granted to independent regulatory agencies. When regulatory risks are considered high, private investors are discouraged from investing in new infrastructure facilities. Investment decisions are made with high risk premiums in a situation of high risks. This in turn can results in high prices of the services for developing country like Bangladesh.

Excepting Power Cell in power sector, Bangladesh is currently lacking sector specific PPP units. The sector focused PPP unit is particularly needed to perform a wide range of services, including: development of PPP policies and legislation, in the development of guidance material including standard contracts, manuals and processes for identifying and developing PPPs, clearance and approval functions during the PPP, a source of expertise in one or more aspects of PPP procurement and management, development of training programs, dissemination of information on PPPs, and assessment of the fiscal costs (direct and contingent) of PPPs. The constitutional nature of a PPP unit varies. One option is to set it up within a ministry and supplement the capacities of the Ministry. It can be set up as an autonomous entity, attached to but not fully part of government bureaucracy as which with Philippines BOT center. Partnerships British Columbia of Canada is formed in this nature.

PPPs in Bangladesh may need a substantial time in protracted and extensive negotiations on risk sharing and project specifications with short listed bidders. In order to avoid this, it needs to move towards a system of competitive dialogue (through pre-bid conference) with short listed bidders prior to bid submission. This would facilitate competitive behavior by allowing discussion between potential bidders and the procuring agencies and submission of competitive bids based on a common understanding. There is a need to poll the investor community at the earlier stages of the bid, and factor in their concerns in the concession agreement, around the project viability, with an objective of ensuring greater participation in the bidding process. Increased participation by bidders allows for greater competitive play in the bidding process and would result in greater value for money for the public sector.

Both development partners and government agencies have common long-term objective for ensuring country benefit through providing proper infrastructure facility. Strategic fit for existing gaps in terms of roles and procedures for the development partners in the development phase of PPP projects needs to be ensured with a standard framework for PPP project development. This will also ensure standard project development compliance requirements and subsequent concurrences from the corresponding development partner saving their effort for "look back & fix", while a PPP project travels through its development stages.

At present, Bangladesh does not have any PPP Law. The PPP Office has prepared a draft PPP law which is expected to be finalized within 2013. A PPP law advocating the use of PPPs, as well as the rationale for their use, provides country commitment and support for the PPP projects. This is vital particularly in the early years of a PPP program. Using the experience of PSIG, a PPP law is essential for the procuring agencies to enter into PPP arrangements and to protect investor interest that would provide a legally sound framework.

From international review, various countries have gone about addressing the issue of PPP law in three different ways, such as no explicit legislation, umbrella PPP legislation and sector specific legislation.

A common PPP legislation for multiple sectors has been used more extensively in countries that operate under the civil code. Philippines adopted BOT law, which covers multiple sectors. India adopted both sectoral and cross-sectoral legislations. Where cross-sectoral legislation is used, it often covers aspects such as specifying which sectors PPPs can operate in, how tariffs for PPPs are set and adjusted, the role of different institutions in a PPP program, procurement of PPPs, and dispute resolution procedures. Legislation can also create new institutions, which will play a key role in the PPP process. Finally, a new law can help clarify the overall legal framework for PPPs by consolidating the provisions needed in connection with PPP.

Executing agencies and private investors are to be aware of the PPP business (especially on commercial and legal aspects of different types of PPPs). Despite the efforts in the past to disseminate knowledge on PPP through training and workshops there appears to quite some misconception on PPP and need comprehensive guidance. Misconception about range of PPP dealings like BOT Annuity, service delivery PPPs, or performance based management contracting need to be disseminated to the concerned stakeholders.

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