

Government of Balochistan
PUBLIC PRIVATE PARTNERSHIP UNIT

September 27, 2022

NOTIFICATION

NOTIFICATION NO. 02/2022:- In exercise of powers conferred by Section 30 read with Section 19 and Section 7 of the PPP Act 2021, the Board of Balochistan Public Private Partnership is pleased to notify the following guidelines, namely:-

VIABILITY GAP FUND GUIDELINES, 2022

GLOSSARY

“**Concessionaire**” has the meaning given to it in Section 2(1)(e) of the PPP Act;

“**Government**” means the Government of Balochistan;

“**Government Agency**” has the meaning given to it in Section 2(1)(h) of the PPP Act;

“**Implementing Agency**” has the meaning given to it in Section 2(1)(i) of the PPP Act;;

“**KPI**” means key performance indicator;

“**PPP Board**” has the meaning given to it in Section 2(1)(p) of the PPP Act;

“**PPP Project**” means a project implemented on a PPP basis;

“**PPP Unit**” has the meaning given to it in Section 2(1)(q) of the PPP Act;

“**Project Proposal**” means the project proposal prepared by an Implementing Agency for a PPP Project;

“**Public Private Partnership**” or “**PPP**” has the meaning given to it in Section 2(1)(t) of the PPP Act;

“**PPP Act**” means the Balochistan Public Private Partnership Act, 2021;

“**PPP Agreement**” has the meaning given to it in Section 2(1)(u) of the PPP Act;

“**User Charges**” means the charges the Concessionaire is permitted to charge the end-users or consumers in connection with the performance of its obligations in respect of services provided under a PPP Agreement;

“**VGF**” or **Viability Gap Fund**” means the viability gap fund to be established by the Finance Department of the Government under Section 19 of the PPP Act to provide Viability Gap Funding to PPP Projects and which fund shall be administered by the PPP Unit;

“**VGF Disbursement Conditions**” means the conditions to be met by the Concessionaire for release of Viability Gap Funding for a PPP Project including as specified under the PPP Agreement;

“**VGF Disbursement Request**” or “**VDR**” means the request initiated by the Concessionaire for the disbursement of the Viability Gap Funding; and



“Viability Gap Funding” means the funding from the Viability Gap Fund to the Concessionaire, intermittently or in lump sum, as the case may be, upon fulfilment of the VGF Disbursement Conditions in respect of a PPP Project.

A handwritten signature in blue ink, appearing to read 'S. M. Patel', located in the bottom right corner of the page.

1. INTRODUCTION

- 1.1. The Government is striving towards achieving sustainable socio-economic development, with a primary focus on social development projects to uplift the standard of living of the people of Balochistan.
- 1.2. The Government intends to actively engage the private sector and promote investments across potential sectors through PPP mode as a means of delivering physical and social infrastructure in Balochistan.
- 1.3. The Government recognizes that many potential projects having social and economic viability may lack financial viability. For instance, a PPP Project may not charge User Charges, or the Implementing Agency may elect to maintain the User Charges at levels below those that would ensure financial viability of the PPP Project and compensate the Concessionaire for the difference through Viability Gap Funding. Thus, unless Viability Gap Funding is available to ensure commercial viability of a PPP Project, including a return on investment, private investors would be deterred from investing in such projects.
- 1.4. To address the issue of financial / commercial viability / feasibility of otherwise economically and socially attractive PPP Projects, the Finance Department of the Government, pursuant to the PPP Act, intends to establish the Viability Gap Fund, which shall be administered by the PPP Unit, to support PPP Projects in Balochistan. The VGF shall not be available for PPP Projects that are purely commercial in nature and have limited socio-economic benefits.
- 1.5. The availability of Viability Gap Funding will bridge the financial viability gap, ensure commercial viability and attractiveness of PPP Projects, and thereby facilitate private investors in undertaking such PPP Projects. With efficient mechanisms for bidding and selection of a Concessionaire in place, and timely release and monitoring of Viability Gap Funding, the VGF can be efficiently utilized for the successful closure of PPP Projects in Balochistan. Viability Gap Funding shall be disbursed to the Concessionaire that has been contracted to carry out a PPP Project.
- 1.6. Viability Gap Funding, in addition to any amounts payable by the Government or recovered from the end users through User Charges (if any) under the PPP Agreement, shall be instrumental in enabling the Concessionaire to recover its costs and meet the required / agreed return on investment on a PPP Project. This will improve the interest and overall confidence of the private sector towards much needed public infrastructure projects, thus enabling sustainable growth for the masses and positively impacting the standard of living by providing necessary infrastructure.
- 1.7. Due to the Government's resource constraints, only the highest priority PPP Projects will receive the Viability Gap Funding, and the PPP Unit will set such priority under directions from the PPP Board.
- 1.8. In pursuance thereof, the PPP Board approves and promulgates these Viability Gap Fund Guidelines (these "Guidelines"), which set out the mechanism and procedure for the administration of the VGF and approval and utilization of Viability Gap Funding in the province of Balochistan.

2. SOURCES OF VGF FUNDING

- 2.1. The sources of the VGF may comprise of the following:
 - (a) grants from the Government;
 - (b) grants from the Federal Government;



- (c) grants and donations from international donor agencies;
- (d) grants from multilateral institutions;
- (e) income from investments; and
- (f) any other lawful sources approved by the Government.

- 2.2. The VGF shall be a ring-fenced, revolving fund replenished by the Government from time to time. The Government shall ensure that adequate resources are annually allocated to the VGF so that annual obligations can be effectively met with regards to the PPP Projects approved for such Viability Gap Funding by the PPP Board.
- 2.3. The requests for allocation by the Government for Viability Gap Funding for PPP Projects shall be initiated by the PPP Authority and submitted to the PPP Unit. The PPP Unit shall review, recommend, and seek approval of the PPP Board for inclusion of Viability Gap Funding for PPP projects in the budget of the Province.
- 2.4. Any profit or Government share of revenues (under the relevant PPP Agreement) shall be deposited in the PPP Authority Fund. Each year, such funds shall be released to the VGF account(s) from the budgetary allocation made for the VGF. Additionally, such funds shall be available through a supplementary grant if the budgetary allocation for the relevant year has already been utilized. While making budgetary allocation for the relevant financial year, the estimated profit / revenue share from PPP Projects estimated to be accrued shall also be taken into account.

3. ELIGIBILITY FOR VIABILITY GAP FUNDING

- 3.1. In line with the PPP Act, the PPP Board may approve, reject, or send back for reconsideration requests for Viability Gap Funding for a PPP Project that is economically and socially viable, but may not be financially viable for private sector investment.
- 3.2. Requests for Viability Gap Funding shall be supported by the following:
- (a) market & industry analysis and project viability analysis, including assessment of financial viability to be bridged through Viability Gap Funding;
 - (b) assessment of User Charges chargeable;
 - (c) financial model providing parameters such as net present value (NPV), internal rate of return (IRR), return on investment (RoI), breakeven point and other relevant investment metrics with detailed assumptions and sensitivity analysis which will be reviewed and benchmarked with similar/comparable projects;
 - (d) recommendations for the optimal concession period under the PPP Agreement;
 - (e) benefit cost ratio and value for money analysis;
 - (f) estimated maximum as well as expected Viability Gap Funding that the PPP Project may require;



- (g) nature and form of Viability Gap Funding, for example, upfront subsidy or annual revenue support or any other mechanism of addressing the financial viability gap; and
- (h) an assessment of opportunity cost of capital and required return on investment, *inter alia*, based on other projects with similar structures, risk profile, and industry.

3.3. Viability Gap Funding shall only be granted when there is no other practical alternative available to enhance the financial viability of the PPP Project.

4. PROCESS FOR APPROVAL OF VIABILITY GAP FUNDING

4.1. The process for the initiation of request for Viability Gap Funding, its evaluation and approval shall be as follows:

- (a) In case of PPP Projects where Viability Gap Funding is required, the PPP Authority shall be the Implementing Agency and (unless Project Proposal is initiated by the PPP Authority in the first instance) the concerned Government Agency shall submit the Project Proposal to the PPP Authority for initiation, development, negotiation, and implementation.
- (b) The PPP Authority shall include request for Viability Gap Funding in the Project Proposal submitted to the PPP Unit for review and appraisal.
- (c) The PPP Unit shall:
 - i. examine and assess whether the request for Viability Gap Funding and the proposed risk sharing arrangements are fiscally sustainable and consistent with the PPP Act, rules and regulations made thereunder;
 - ii. critically evaluate the project documents, assess project risks, and analyze the fiscal impact as well as the related direct and potential contingent liabilities;
 - iii. assess the type and amount of Viability Gap Funding that may be made available for a PPP Project and make its recommendation on whether to accept or reject the request for Viability Gap Funding (with or without modification) to the PPP Board;
 - iv. if deemed necessary, may make recommendations to the PPP Authority with regards to the Project Proposal and require the PPP Authority to re-submit the Project Proposal with revisions, before submitting it onwards to the PPP Board for approval; and
 - v. within forty-five (45) days of receipt of the Project Proposal from the PPP Authority, make appropriate recommendations to the PPP Board for approval, rejection, or reconsideration of the request for Viability Gap Funding (submitted as part of the Project Proposal):
- (d) The PPP Board shall:
 - i. except where Provincial Cabinet approval is required (see below), review the request for Viability Gap Funding submitted as part of the Project Proposal, on the basis of the recommendations of the PPP Unit, and may, within thirty (30) days from the receipt of such Project Proposal, approve the request for Viability Gap Funding with or without modification, or reject it, or return the Project Proposal to the PPP Authority for amendment



and resubmission. In case a Project Proposal is returned by the PPP Board for amendment, the PPP Authority shall take suitable action to amend the Project Proposal and resubmit to the PPP Board for approval via the PPP Unit; and

- ii. recommend a PPP Project to the Provincial Cabinet for final approval where, *inter alia*, the Viability Gap Funding equals or exceeds PKR 500/- million; or the contingent liabilities exceed PKR 500/- million.

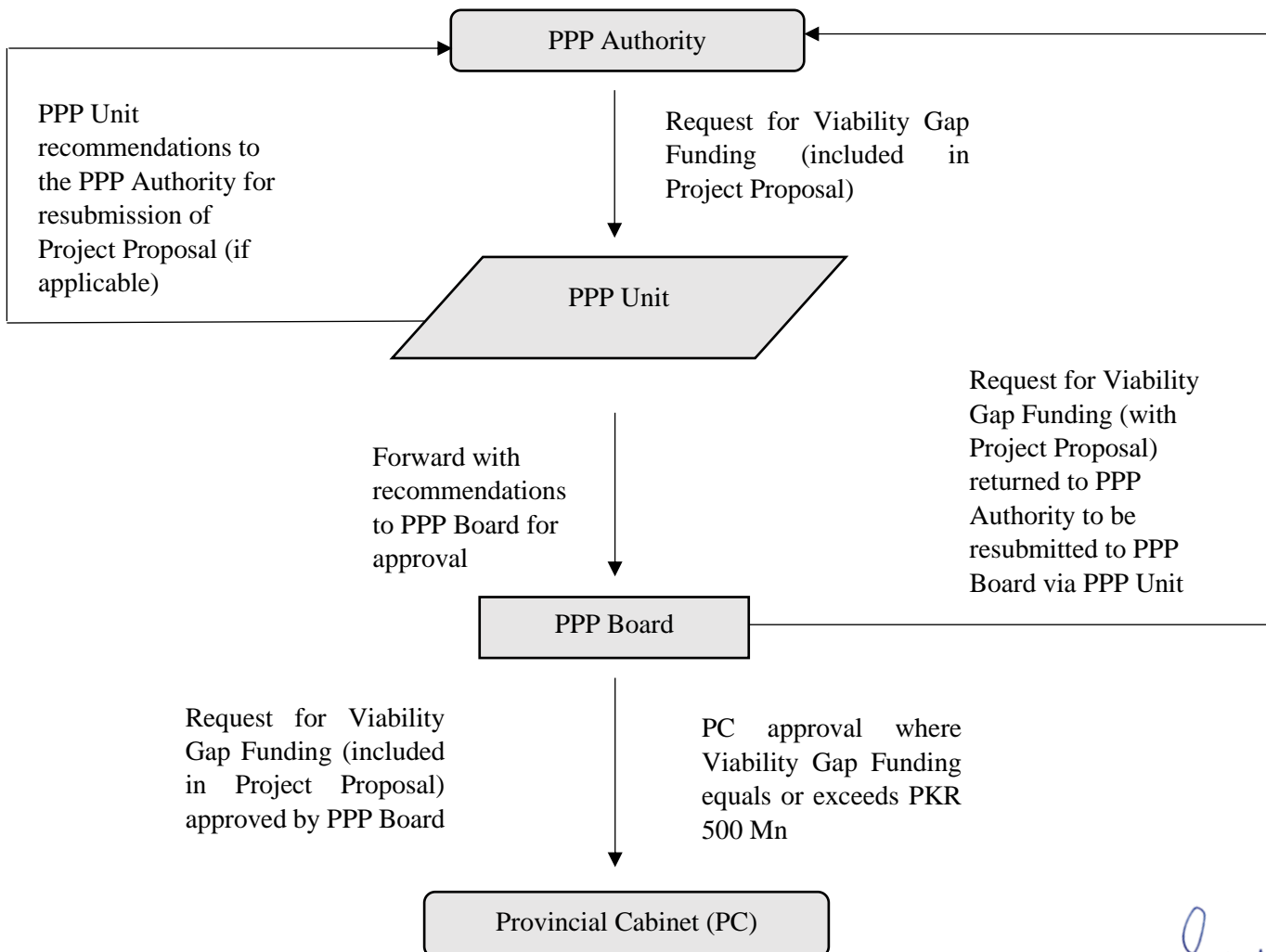
4.2. The PPP Board (and where applicable the Provincial Cabinet) may impose any VGF Disbursement Conditions for disbursement or release of Viability Gap Funding in according its approval.

4.3. The PPP Board shall assess and determine in consultation with the PPP Unit that sufficient uncommitted funds are available in the VGF to honour the disbursements for relevant PPP Project on the required dates under the PPP Agreement. Where sufficient uncommitted funds are not available in the VGF, the PPP Unit shall make arrangements for inclusion of approved Viability Gap Funding for PPP projects.

4.4. Where Viability Gap Funding is approved for a PPP Project, it shall be reflected in the bidding documents with or without disclosing the extent of financing available (as appropriate on a case-to-case basis) and the same may form a part of the bidding criteria.

4.5. Where the PPP Board has prescribed any VGF Disbursement Conditions, the PPP Authority shall incorporate such conditions in the bidding documents and thereafter in the PPP Agreement.

4.6. The flowchart below illustrates the approval process for Viability Gap Funding.



Signature

5. MANAGEMENT AND REPORTING OF THE VGF

- 5.1. In accordance with Section 19(1) of the PPP Act, the general management, control, and administration of the VGF shall vest with the PPP Unit. However, actual disbursement of Viability Gap Funding to the Concessionaire shall be by the PPP Authority under the terms and conditions of the PPP Agreement.
- 5.2. The PPP Unit shall separately open and maintain VGF account(s) in any scheduled bank in Pakistan subject to approval of the Finance Department of the Government. The sums in such VGF account(s) shall be utilized for the provision of Viability Gap Funding to approved PPP Projects.
- 5.3. From time to time, in accordance with applicable laws of Pakistan, the PPP Unit shall prepare an investment policy for investment of surplus sums in the VGF to be approved by the PPP Board. Thereafter, the PPP Unit may invest surplus sums of the Viability Gap Fund in accordance with the approved investment policy and directions of the PPP Board.
- 5.4. Within three (3) months of the beginning of each financial year, the PPP Unit shall prepare an 'Annual VGF Monitoring and Review Report' which shall:
- (a) detail and analyze the trends regarding the estimated versus paid contingent Government support in the form of Viability Gap Funding on account of PPP Projects in the previous years, with a particular focus on the most recent financial year;
 - (b) the Viability Gap Funding payments made to various PPP Projects; and
 - (c) the cushion available for new PPP Projects requiring Viability Gap Funding.
- 5.5. Keeping in view of the project pipeline, which may require Viability Gap Funding, the PPP Unit shall prepare estimated annual budget forecasts for the approval of the PPP Board.
- 5.6. The PPP Unit shall maintain quarterly, semi-annual, and annual accounts of the VGF. Quarterly accounts of the VGF shall be presented to the PPP Board for approval by the PPP Unit.
- 5.7. The PPP Unit and the PPP Authority shall respectively maintain all accounts, records, data, and documents of the VGF, separately for each PPP Project, in hard copies, in accordance with the relevant Government rules. The data shall also be maintained in soft form on a permanent basis.

6. DISBURSEMENT FROM THE VGF

- 6.1. Upon fulfilment of the VGF Disbursement Conditions, the Concessionaire shall submit a VGF Disbursement Request to the PPP Authority.
- 6.2. Upon receipt of the VDR, the PPP Authority shall verify whether the VGF Disbursement Conditions have been met, and for such purpose, may rely on written certification, issued by duly appointed independent third-party adviser(s) or independent engineer and auditor engaged for the PPP Project.
- 6.3. Where the PPP Authority is satisfied that all specified VGF Disbursement Conditions have been met, the PPP Authority shall disburse Viability Gap Funding payments to the Concessionaire in accordance with the PPP Agreement and/or any ancillary agreement executed in respect thereto.



- 6.4. The disbursement by the PPP Authority of the Viability Gap Funding for a PPP Project, as approved by the PPP Board, may take the following forms:
- (a) lump sum payment towards the project cost; or
 - (b) periodical or intermittent payment in instalments.
- 6.5. Where the Viability Gap Funding is injected as:
- (a) equity of the PPP Authority in a PPP Project then the terms and conditions for disbursement and utilization shall be further detailed in an equity funding and utilization agreement; and
 - (b) subordinated loan (subordinated to the debt from financiers) then the terms and conditions for disbursement and utilization shall be further detailed in a VGF loan agreement.

7. AUDIT

- 7.1. The Finance Department of the Government shall conduct regular audit of the VGF in accordance with the requirements of the applicable laws for the time being in force.
- 7.2. The VGF account(s) shall be bi-annually audited by a reputable firm of chartered accountants appointed by the PPP Unit on such terms and conditions as may be specified from time to time by the PPP Unit. The audited accounts shall be placed before the PPP Board for approval.

8. INDEMNITY

- 8.1. The PPP Board members, PPP Unit, and representatives of the PPP Authority shall enjoy immunity in all investigations, proceedings, whether judicial or quasi-judicial, in performance of their respective duties and discharge of their official functions involving grant of Viability Gap Funding under these Guidelines.



ANNEXURE-A

VDR Form

PPP Authority, P&D Department, Government of Balochistan, Quetta

Application No.:

Date:

(To be filled by Concessionaire)

1. Type of Viability Gap Funding:

Loan

Equity

Guarantee

Other, Please specify

2. Amount of Viability Gap Funding Requested (Rs. in Million)

Amount (in digits)

Amount (in words)

3. Title of Account(s) for Receipt of Viability Gap Funding

4. PPP Project Details:

(i) Name of PPP Project

(iii) Project Cost (Rs. Million)

(iv) Approved Viability Gap Funding Amount
(Rs. in Million)

5. Payment Mode

Full Payment

Partial Payment

6. Nature of Viability Gap Funding (e.g., upfront, annual revenue shortfall, etc.)

7. This Application is Supported by:

Copies of signed PPP Agreement, bidding documents, etc.

Proof of financial close, if debt is to be raised



Any other document(s) (Please specify)

8. The VGF Disbursement Request ensures:

YES

NO

(i) Bidding process followed as per Balochistan PPP Act, 2021

(ii) KPIs achieved as per the PPP Agreement

(iii) Concessionaire's sponsors have injected their equity as per the PPP Agreement/equity funding and utilization agreement

9. The Undersigned Certify (ies) and Agree (s) as follows:

This VGF Disbursement Request is submitted in accordance with the signed PPP Agreement, and all documents related to the expenditures covered by this application are available for examination by auditors upon request.

Name of Independent Auditor: _____

Date & Signature of Independent Auditor: _____

Name of Independent Engineer: _____

Date & Signature of Independent Engineer: _____

Name & Signature of Authorized Person(as) as per the PPP Agreement

Date

