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TECHNICAL ASSISTANCE REPORT

ARAB REPUBLIC OF EGYPT

Improving Surveillance of Public-Private
Partnerships

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METAC

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Summary of Mission Outcomes and Recommendations

This report summarizes key findings and recommendations of two off-site visits made by Mr. Benoit Wiest, Public Financial Management Advisor at METAC, and Ms. Katja Funke, Expert, between December 2020 and April 2021. The mission worked with the Public-Private Partnerships (PPPs) unit to develop capacities and transparency of fiscal risk management, and support the update of the regulatory framework, as well as the analysis of fiscal risks from PPPs.

The tasks of the mission were the following:

- Propose update of regulations taking into account amendments to the PPP law, which are awaiting parliamentary approval.
- Draft a presentation that the PPP unit will deliver to government officials on fiscal risks from PPPs and mitigating measures, including the role of the Ministry of Finance (MoF) in approving projects for affordability.
- Define the key characteristics and the design for a database that will include firm and contingent liabilities incurred by the government for PPP projects, to facilitate transparent reporting on PPPs in budget documentation, including the Fiscal Risk Statement.

Since the last METAC mission, the authorities took further steps to strengthen surveillance and approval of PPPs. A joint committee including the Ministry of Planning (MoP) and the PPP unit has been established to review the line ministries' project proposals, with a view to identify projects that could be suitable for implementation as PPPs. This is a first step towards providing a level playing field for all public investment projects, irrespective of the method of implementation and ensuring that only projects that are of high priority and suitable for procurement through a PPP will be considered for this method of implementation.

The mission has delivered the following outcomes:

- The template for a database to keep a record of PPP projects has been provided (a follow-up from the March 2020 visit). The design of the database has been explained and discussed with the PPP unit. The template contains a tab that would be used to store detailed information on each PPP contract individually (project status, sector, dates of signature, value, financing, total investment, maintenance, Government payments, guarantees) and a consolidation table for reporting. The objective would be to use this table as an input for the PPP Fiscal Risk Assessment Model (P-FRAM). The authorities are using the template for building up their PPP database.
- A presentation of fiscal risks stemming from PPP projects has been drafted, presented, and shared with the PPP unit. The aim is to present Management of the MoF and other key ministries involved in the PPP process key conceptual matters regarding PPPs (main characteristics of PPP contracts, differences between funding and financing), the fiscal risks that Egypt may face, some immediate actions to foster transparency, and the medium-term reforms needed.

- Detailed suggestions on how to update PPP regulations were drafted with details on how to: (i) link the PPP process to the Public Investment Management (PIM) process, (ii) define the role of the PPP unit in the PPP process avoiding conflict of interest from supporting the process and reviewing the projects for fiscal implications, and (iii) safeguard public finances in the context of unsolicited proposals and direct contracting in the PPP regulations (see annex I). The mission discussed with the PPP unit the key revisions to the PPP law as well as gaps with good practices and clarifications to be drafted in the regulations. A table summarizing main changes to be made to the regulations was also shared with authorities ahead of drafting the input for the regulations.

The amended PPP law brings important revisions to the PPP process but approval from Parliament is still pending. It limits the term of PPP projects to a maximum of 30 years and introduce limited bidding or auction, direct contracting, and unsolicited proposals. The amended law also includes a stronger link between the PIM and the PPP process where: (i) administrative authorities now submit annual PPP plans to the MoP and (ii) a new joint Committee formed by the Prime Minister that includes staff from MoF (including the PPP unit); and the PPP Supreme Committee that takes the responsibility for approving PPP projects. The new law has been submitted to Parliament and, after it has been adopted, authorities can work with the detailed outline provided in Annex 1 to complete and issue the related regulations.

The immediate measures recommended in the previous report to promote transparency by improved reporting on PPPs remain valid. The template for a database to keep a record of PPP projects with critical fiscal information has been made available and the next steps are to: (i) finalize entering the relevant information on all ongoing PPP projects in the database, (ii) disclose information on PPPs in the budget documentation, and (iii) report on fiscal risks from PPPs in the fiscal risk statement. Increasing the transparency on the fiscal implications of PPPs and demonstrating how these are managed will help to attract more high quality-bidders and potentially lower the risk premium and cost of financing for the Government.

As next steps, the PIM process and its legal framework should be reviewed by the MoF and the MoP to ensure a sound integration of PPPs:

- Review the PIM process to ensure a common approach to project assessment and a unified process for project prioritization and selection. The objective is to have a common methodology for assessing projects and a unified process for project selection to put all projects on a level playing field, irrespective of the method of procurement.
- Expand the role of the PPP Supreme Committee, which is responsible for approving PPP projects suggested by administrative authorities for implementation as PPP, to review all significant public investment projects irrespective of the method of the final procurement in a unified process. Only projects that have been approved by the Supreme Committee should be allowed to move to the project pipeline.
- Allow only projects that have been approved for a project pipeline under the public investment process to be proposed for consideration under the PPP process.
- For those projects that could be suitable for implementation as a PPP, an assessment of the efficiency of the procurement method (sometimes referred to as value for money assessment) should be added to the project assessment already undertaken under the PIM process.

- Include the affordability assessment in the project assessment process, including PPPs, and include approvals by the Supreme Committee at all key stages.
- Provide for the gatekeeper role of the MoF and define a mechanism for assessing the affordability of public investment projects, including PPPs.

The mission would like to thank the PPP Unit for their excellent cooperation and the useful discussions.

Annex I. Suggestions for Additions and Amendments to the Public-Private Partnership Executive Regulation

Suggestions for additions and amendments to the executive regulation of the law regulating partnerships with the private sector in infrastructure projects, services and public utilities (Law no. 67).

The explanatory recommendations provided in this annex (in *italics*) are not meant to appear in the regulations. Some specific drafting suggestions for the regulations are provided and marked as such.

Part One: General Provisions

Chapter I: Definitions

Recommendation

Only include definitions that are additional to those already included in Law 67.

Chapter II: General Provisions

Recommendation

Make here the link to the unified public investment management (PIM) process. Refer to the preparation, assessment and prioritization undertaken under the general PIM process.

The PIM process should be designed to ensure that only projects that have been assessed as relevant, financially viable and affordable are approved for inclusion in the Administrative Authorities' plans. This should be done under the PIM framework and the relevant PIM legislation. For as long as this is not done under the PIM process, for PPPs, this can be covered by the regulation. However, as soon as a PIM framework is being put in place, this should be covered by the PIM related legislation.

Give the Minister of Finance the responsibility and the authority to stop projects that are not affordable. The PPP approval process should also ensure that only projects that are most efficiently procured through a PPP, are also approved for implementation as PPP.

Draft for Possible Formulation in Regulation

The Ministry of Planning shall assess, in coordination with the Ministry of Finance, all projects proposed by the Administrative Authorities in their plans for the projects' policy relevance, and their financial viability and affordability. Only projects that are considered relevant under the government's policy priorities, viable regarding their costs and benefits, and affordable regarding their implications for public finances, shall be included in the plans submitted to the Joint Committee [*to be moved to PIM legislation*].

The project shall be submitted in the format prescribed by the Unit¹. The format shall ensure that Administrative Authorities only submit projects that have been assessed positively under the PIM process and that are part of the Administrative Authorities annual plans. The following documents and data shall be part of the submission:

- Project proposal.
- Full feasibility study, including all supplementing sub-studies, e.g., technical study, environmental impact assessment, social impact assessment, etc.
- Positive assessment by the Ministry of Planning and the Ministry of Finance.

The Joint Committee shall review the projects included in the plan to pre-identify those projects that could potentially be implemented as Partnerships under the Law. The Committee shall ask the Administrative Authority to undertake, in collaboration with the Unit, a study to determine the most efficient procurement method. The study shall determine whether the project is more efficiently implemented through traditional procurement or through a Partnership.

The Minister of Finance, upon proposal of the Unit, shall issue instructions regarding the methodology to be applied for the assessment and the minimum content of the report on the study.

The Administrative Authority requests the assistance of the Unit and builds a working group to undertake the study. For this purpose, it may seek external assistance.

The Administrative Authority submits the report on the study to the Joint Committee for review and approval. The members of the Unit involved in the preparation of the study shall not be part of the group reviewing the study and proposing the decision on the approval or rejection of the project.

The representative of the Minister of Finance on the Joint Committee shall only consent to the approval of the study, after the Minister of Finance has given his approval for the proposed decision. *[This would better be regulated in the decree on the Joint Committee, where the representative of the Minister of Finance should be given the authority to prevent a project from going ahead as a PPP and that the representative can only give his consent if the Minister of Finance has approved the suggested decision. Alternatively, it could be required that at least the representatives from the Ministry of Planning and the Minister of Finance agree to the Joint Committee decision or the decision has to be pushed up the Ministers themselves. This would have to come with an MoF internal order that the representative of the Minister can only act with the consent of the Minister.]*

The Joint Committee shall approve a project in principle for implementation through a Partnership only: (i) if the project complies with the requirements of the Law and preceding provisions of the regulation, (ii) if

¹ Before the full development and integration of the PIM process and unified procedures for project assessment, only projects that have been approved under the project review process undertaken by the Ministry of Planning and included in the annual plan can be suggested as PPPs. The PPP Unit would prescribe the format and content of the feasibility study, etc.

After the full development and integration of the PIM process, only projects that came through the PIM process and have been approved for inclusion in the project pipeline can be suggested for implementation as PPPs. The PPP Unit would determine the format for assessing the efficiency of the procurement method (sometimes referred to as value for money assessment) that has to be done on top of the general project assessment.

the project is viable and affordable when implemented as a Partnership, and (iii) if the project is more efficiently implemented through a Partnership than through traditional procurement.

Approval in principle shall mean that the Administrative Authority may include the project for approval in its budget proposal.

If the Administrative authority intends to launch the procurement process in the following budget year, the project must be included and approved in the budget, in line with the laws and regulations governing the budget preparation and approval.

The Administrative Authority shall only commence the procurement process for a project if it has been approved as part of the budget process.

The Unit shall include all projects that have been approved in the budget for procurement as Partnerships in the “PPP tender project plan” and the Ministry of Finance should present the “PPP tender project plan” to the PPP Supreme Committee for approval.

Part Two: PPP Central Unit and Selection of the Transaction Advisor

Chapter I: PPP Central Unit

Recommendation

Before the tender is issued, the Minister of Finance should review the tender documents and the draft contract to ensure that the fiscal implications, costs and risks, of the project, based on the provisions of the documents, would be affordable. The Administrative Authority shall submit the draft tender documents and the draft contract, which will be part of the tender package to the Minister of Finance for approval and the tender process should only be launched after Minister of Finance has been obtained.

[In case it is not possible to add this approval step directly to the PPP law or the PPP regulation, the below alternative can be chosen to anchor the Minister of Finance approval in the approval process prescribed in the PPP law].

For the PPP Central Unit to make a recommendation and the PPP Supreme Committee for approving the contracting methods and the commencement of the contracting procedure, the Administrative Authority shall submit the draft tender documents and the draft contract, which will be part of the tender package to the PPP Supreme Committee.

The PPP Supreme Committee shall request the Unit to assess the documents and to suggest a decision after receiving Minister of Finance consent on the proposed decision.

To avoid any conflict of interest, in case the Unit supports the preparation of the assessment of the procurement method, or any takes any other role in preparing the project, the staff from the Unit involved in these tasks shall not be involved in the assessment of a project proposal.

Chapter II: Selection of Transaction advisors

[not reviewed in detail]

Part Three: Tendering, Awarding, and Contracting Procedures

Recommendation

Ensure a transparent and competitive procurement process.

Draft for Possible Formulation in Regulation

All projects, whether they follow the regular tender process or whether they are procured under the exceptional procedure of a limited bidding or auction or a direct contract, shall have passed through the approval process as per the preceding provisions in the regulations and shall have been included in the “PPP tender project plan” before they may enter the process for contracting.

The limited bidding and auction shall only be applied after:

- a. The project has been fully assessed by the Administrative Authority to determine the technical feasibility, the economic viability based on a comprehensive and detailed cost estimate, which should be derived from benchmarking, and the environmental and social impact of the project.
- b. The project studies have been reviewed and their reliability and quality certified by external experts.
- c. The project has been approved within the process prescribed by Article (X) of these regulations.
- d. A study undertaken by the Administrative Authority, with the support of the Unit, shows that, despite defining the project along the most general terms possible, only a very limited number of possible contractors would have the technical competence and financial solvency to deliver the project.
- e. The study mentioned under the previous point has been submitted to the PPP Supreme Committee for its approval.
- f. The PPP Supreme Committee has approved the acquisition of the project through limited bidding or auction upon the proposal of the Joint Committee, after receiving consent of the Minister of Planning and the Minister of Finance.

The Administrative Authority shall invite potential contractors that have been shortlisted for their qualification and financial solvency to participate in the limited bidding or auction process.

The process shall follow the principles of transparency, equity, and fairness.

In the process bidders shall provide their best offer on a single parameter defined in the bidding documents and the draft contract.

The bidder offering the most economically advantageous tender (MEAT) proposal shall be selected for contracting, unless the bid is more than 25 percent below the estimated cost, in which case the realism of the bid needs to be confirmed with the bidder before awarding the contract.

A contract shall not be granted through a limited bidding or auction if the best offer cost exceeds the cost estimated under the assessment referred to in (a) of this article by more than [xx percent].

A direct contract may only be awarded after:

- The project has been fully assessed by the Administrative Authority to determine the technical feasibility, the economic viability based on a comprehensive and detailed cost estimate, which should be derived from benchmarking, and the environmental and social impact of the project.
- The project studies have been reviewed and their reliability and quality certified by external experts.
- The project has been approved within the process prescribed by Article (X) of these regulations.
- A study undertaken by the Administrative Authority, with the support of the Unit, justifying the direct contract and demonstrating that, the direct contract is warranted under the limitations stated in the provisions of Article 20 (2) of the PPP Law.
- The study mentioned under the previous point has been submitted to the PPP Supreme Committee for its approval.
- The PPP Supreme Committee has approved the direct awarding of the project upon the proposal of the Joint Committee, after receiving consent of the Minister of Planning and the Minister of Finance.
- The Administrative Authority shall contact the potential contractor requesting him to provide his business model, including his financial model for the project, including the price he offers for the project. If the bid is more than 25 percent below the estimated cost, the realism of the bid needs to be confirmed with the potential contractor.

A contract may not be granted through a limited bidding or auction if the best offer cost exceeds the cost estimated under the assessment referred to in (a) of this article by more than [xx percent].

If the private sector proposes a project, the Administrative Authority responsible for the sector to which the project relates may consider the project and assess the project through the public sector project assessment process.

The private proponent shall be informed about the process and about the intention to include the proposed project in the process.

No project shall be further examined without the written consent of the private sector proponent, which confirms with the consent that he has understood the process and agrees with the project to be assessed through the process. He also agrees to accept should the project be rejected and eliminated from the process at any stage or time.

The private proponent may request compensation for the cost of preparing the project from the Administrative Authority. The Administrative Authority may negotiate the compensation with the private proponent and grant the compensation after receiving approval from the Unit, which shall confirm that the compensation is reasonable for the efforts undertaken by the proponent in preparing the project. If the Administrative Authority and the private sector proponent do not agree on the compensation, the project proposal shall be considered as withdrawn by the private sector proponent.

Only projects that passed every step of the process and that are included by the Administrative Authority in their budget proposal, are approved as part of the budget and consequently included in the “PPP project tender plan” may move to tendering.

The private sector proponent should be regularly informed about the project status.

Projects originating from a private sector proposal shall be procured through the competitive tender process as provided for by Articles (23) to (33).

The private sector proponent shall have the right to participate in the tender process. He shall be treated the same way as all other bidders in the process.

[The remaining aspects of part three were not reviewed]

Part Four: Examination and Settlement Procedures of Appeals submitted to Petition Committee

[not reviewed in detail]