REPUBLIC OF PALAU
OFFICE OF THE PRESIDENT

SURANGEL WHIPPS, JR.
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Executive Order No. 460

"To establish the National Policy for Public Private Partnership Governance and Transparency Procedure."

WHEREAS, it is essential for the Republic of Palau to provide necessary public infrastructure to maintain and improve the living standards of all Palauans; and

WHEREAS, in light of our financial capacity, the Republic is open to innovative partnerships and financing opportunities in order to upgrade and expand its public infrastructure; and

WHEREAS, the construction, operation, management, and maintenance of public infrastructure requires the harnessing of specialist technical skills and financial resources; and

WHEREAS, the Republic of Palau seeks alternative but proven ways of providing, financing and operating public infrastructure; and

WHEREAS, Public Private Partnerships (PPPs) have been used extensively across the globe, including in small island states, and warrant consideration; and

WHEREAS, the National Government in Palau has decided to undertake Public Private Partnerships to expand its options for delivering public infrastructure and related services; and

WHEREAS, PPPs can also provide other benefits, including: (i) mobilizing domestic savings for investments in PPP projects; (ii) attracting foreign investment and expertise; (iii) building government capacity for project development; and (iv) reducing the likelihood and risk of dealing with unsolicited proposals ("USPs"); and

WHEREAS, the Republic of Palau is committed to transparency and fairness in its procurement processes and over the lifetime of PPP projects. As such, each PPP project will be subject to appropriate transparency procedures and public disclosure during procurement and implementation; and

WHEREAS, the Republic of Palau is committed to transparency of government decision-making, as shown by the Open Government Act and Administrative Procedures Act, and accordingly with the PPP Policy Statement;

NOW THEREFORE, I, Surangel S. Whipps, Jr., President of the Republic of Palau, by virtue of the authority vested in me by the Constitution and laws of the Republic of Palau, hereby order that a National Policy for Public Private Partnership Governance and Transparency Procedure be implemented by all appropriate government agencies, entities, and SOEs as set forth herein, as follows:

Section 1. Public Private Partnerships (PPPs) Policy Statement. The PPP Policy Statement shall apply to all future solicited PPP projects undertaken by the Republic and its agencies, entities, and State-Owned Enterprises. It will apply to State Governments and to unsolicited proposals submitted to government agencies. For existing PPP projects or those in current procurement, elements of the Policy will be applied on a case-by-case basis. The PPP Policy Statement shall be the guiding principle in:

1. Defining PPP itself and its Contractual Structure, classifying PPP inherent traits, and identifying PPP project attributes, and;

2. Assessing projects suitable for PPP procurement and selecting the best PPP model that is likely to achieve the best value for money outcome for the Government. and;

3. Governing PPP arrangements by: (i) setting forth responsibilities for the Ministry of Finance; (ii) establishing Special Units such as a PPP Unit and Debt Management Unit; (iii) developing PPP Framework under Presidential Directive No. 21-47; (iv) developing and procuring PPP projects; and (v) managing and formally executing PPP contracts; and

4. Providing tenets and PPP Project Teams for undertaking PPP projects and developing the maximum benefits of PPPs; and

5. Illustrating the life cycle of a PPP Project; and

6. Committing to transparency and fairness in its procurement processes and over the lifetime of PPP Projects.

Section 2. PPP Transparency Procedure. The PPP Transparency Procedure for the Republic of Palau builds upon existing legislative provisions and requirements in Palau that promote transparency of government decision-making and related processes.

The PPP Transparency Procedure shall apply to all future solicited PPP projects undertaken by the Republic and its agencies, entities, and State-Owned Enterprises. It will apply to State Governments and to unsolicited proposals submitted to government agencies. For existing PPP projects or those in current procurement, elements of the Policy will be applied on a case-by-case basis.

The PPP Transparency Procedure should lead to better value for money outcomes for both government and taxpayers through: (i) stronger and more competitive bidding fields, arising from increased bidder confidence in the fairness of the process and of lower perceived political risk by investors; (ii) greater focus on the quality of the tender documents and processes, given that the outcomes will be made public; and (iii) execution of more sustainable contracts, because of the resultant robustness of the process and increased community acceptance of PPPs.

The Palau PPP Transparency framework is based on the following principles:

1. A commitment at the highest levels of the Republic to transparency in PPP procurement consistent with that expressed in the PPP Policy Statement.

2. A focus on procuring infrastructure projects solicited by the Republic, rather than through unsolicited proposals (USPs). With the National Infrastructure Investment Plan (1st draft December 2020 and as updated over time) being the primary basis for infrastructure projects to be solicited by the Government.

3. Preparation and publication of the details of the proposed process for use in PPP procurement (e.g. project selection, project governance, tendering, contract management, etc). The process is to be outlined in the forthcoming PPP Guideline, to be prepared following issue of the PPP Policy Statement.

4. Use of competitive tendering, including as the default approach for USPs. Using the procurement process that will be set out in the PPP Guideline.

5. Additional disclosure for USPs than for solicited PPPs during the pre-procurement and, if procured non-competitively, procurement stages. In recognition that USPs do not arise through a competitive process; the form of the additional disclosure to be set out in the PPP Guideline.

6. Ease of public access to disclosed material including the use of a single consolidated communication site – Ministry of Finance website. Additionally, portfolio agencies and/or State-Owned Enterprises may also display relevant material on their websites.

7. Establishment of relevant Government entities such as: (i) PPP Unit responsibilities will include establishment of appropriate portal on Ministry of Finance website and posting of materials, and (ii) Debt Management Unit will assess and monitor the total direct and contingent fiscal obligations made by the Republic, including from PPP transactions.

Core to the PPP Transparency Procedure are the following specific commitments:

1. Publication of the Republic's PPP project pipeline (updated semi-annually). Using the Template set out in Attachment A of the PPP Transparency Procedure.

2. Request for Proposal (RfP) documents to outline the project agreement contents that are proposed for disclosure, post contract execution.

3. Disclosure of identity of short-listed bidders for each project to be made at time of RFP issue.

4. Disclosure of material on contracted projects, within 90 days of contract execution, or financial close as applicable using the Template set out in Attachment B.

5. An annual statement by the Republic of its total direct and contingent liabilities to include those arising from PPP projects and to be provided in annual Budget papers.

6. Projects will be open to review by the Public Auditor post-contract execution/financial close under Title 40 of the Palau National Code. The Office of the Public Auditor may undertake financial audits, performance audits, and program audits of any government agency (National, State, or local) that it deems appropriate and, in doing so, may access any contract to which that agency is a party (except personal employment contracts).

Section 3. Effective Date and Duration. This Order shall take effect immediately and shall continue until it is rescinded or suspended.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 3rd day of September 2021, at the Satellite Office in Koror, Republic of Palau.

Surangel S. Whipps, Jr.
President of the Republic of Palau