

Govt. of NCT of Delhi  
Planning Department

**Guidelines on Public Private Partnership**

**Introduction**

1. Public private partnership [PPP] aims at optimizing developmental efforts specially by involving the private sector in infrastructure development. PPPs are in a nascent stage in India. Government of Delhi, in the true spirit of Bhagidari, intends to involve the non-governmental sector in the development process including infrastructure development. In order to have a transparent policy for promotion of PPPs and to familiarize government departments and the public, the following guidelines have been issued.
  - 1.2 In PPP projects there is need for due diligence by the government because the projects may involve :
    - a. Transfer of public assets, including land (e.g. an existing road or airport facility);
    - b. Delegation of governmental authority to collect and appropriate user charges that are levied by force of law and must therefore be 'reasonable';
    - c. Provision of services to users in an monopoly or semi-monopoly situation, which imposes a special obligation on the government to ensure adequate service quality; and
    - d. Sharing of risks and contingent liabilities by the government.
- 2 **Aims & Objects:** These guidelines intend to provide for the partnership of private sector and public sector/Government, participation of private sector in the development, operation and maintenance of infrastructure facilities and development and maintenance of infrastructure facilities through financial sources other than those provided by the State budget by following modern project management systems and for matters connected therewith or incidental thereto.

### 3. **Definitions:**

- i) "Concession" includes any right or interest granted to a concessionaire in relation to any aspect of an infrastructure project, as well as any subsidy, subvention, grant or other similar financial incentive granted by the Government to secure the viability and commercial efficacy of an infrastructure project;
- ii) "Concession agreement" means any of the contracts executed for the purposes of private participation in an infrastructure project between a concessionaire and Government/a public infrastructure agency as per the model specified in Schedule I,
- iii) "Concession fee" means the sum of money required to be paid by the concessionaire to a public infrastructure agency in consideration of grant of a concession for undertaking an infrastructure project;
- iv) "Concessionaire" means a person, who is selected and awarded a concession for financing, development, maintenance or operation of an infrastructure project.
- v) "development" includes creation of new facilities, rehabilitation, improvement, expansion, alteration and replacement of existing facilities;
- vi) "fee" means a charge levied and collected for facilitating the development, maintenance and providing of infrastructure facilities;
- vii) "infrastructure project" means a project in any of the infrastructure sectors, which may involve development, maintenance or operation of infrastructure facilities through private participation or financial sources other than those provided by the State budget;
- viii) "infrastructure sector" means an infrastructure sector specified in Schedule II and shall include such other sectors as may be added by the Government from time to time;
- ix) "investment" means preliminary and pre-operative expenses, capital expenditure, lease on land and equipment, interest during construction, administrative expenses , all operating and maintenance expenses including expenses incurred on recovery of User Levies/fees.

- x "lead consortium member" means in case of a Bidding consortium, that consortium member vested with the prime responsibility of developing a Project, holding no less than 26% equity stake in the Bidding Consortium and also holding the highest equity stake amongst all other consortium members.(In the event of two or more consortium members holding the highest equal equity stake, the Bidding Consortium shall clearly indicate in the Bid which consortium member is to be considered the Lead Consortium Member and the consortium member so indicated or named shall be the Lead Consortium Member);
- xi "milestone bonding" means a schedule or chart indicating the specified time within which a work is to be completed.
- xii. "Swiss Challenge approach" means when a Private Sector Participant ( Original Project Proponent) submits an unsolicited or suo-moto proposal and draft contract principles for undertaking a project, not already initiated by the Government Agency or the Local Authority and the Government Agency or the Local Authority then invites competitive counter proposals in such manner as may be prescribed by the Government. The proposal and contract principles of the original project proponent would be made available to any interested applicants, however, proprietary information contained in the original proposal shall remain confidential and will not be disclosed. The applicants then will have an opportunity to better the original project proponent's proposal. If the Government finds one of the competing counter proposals more attractive, then the original project proponent will be given the opportunity to match the competing counter proposal and win the project. In case the original project proponent is not able to match the more attractive and competing counter proposal, the project is awarded to the private sector participant, submitting the more attractive competing counter proposal, the Project is awarded to the Private sector participant, submitting the more attractive competing counter proposal;
- xiii "User Levies" means the right or authority granted to the Developer by the Government Agency or the Local Authority to recover investment and fair return on investment and includes toll, fee, charge or benefit by any name.

**4. Feasibility Report:**

It shall be the responsibility of the Administrative Department to identify, process and administer the PPP pertaining to the subjects allocated to the concerned department under the Allocation of Business of the Government. Upon identification of the project to be developed, the department shall carry out itself or through external service providers or consultants a feasibility study / report and submit the feasibility report.

**5. Bidding process:**

5.1 Upon finalization of the scope and structure of the infrastructure project and the approval of the government, the administrative department will publish the notice inviting all interested parties to participate in a competitive public bidding for the infrastructure project so approved. The administrative department will be responsible for all aspects of pre-bidding and bidding processes including:

- (i) Fixing pre-qualification criteria on the basis of the clearly identifiable parameters known to the Concessionaires, Contractors and the General Public;
- (ii) Arranging pre-bid conferences and bid evaluation conferences with the prospective Concessionaires or Contractors;
- (iii) Issuing clear, comprehensive and fair instructions to bidders, which establish the rules of bidding and shall include all relevant information;
- (iv) Preparing the bid or tender documents, which shall include the following namely:
  - (a) Instructions to bidders
  - (b) Pre-qualification or qualification parameters, both technical (indicating experience, specific norms, design and performance standards) and financial;
  - (c) Draft concession agreement or any other appropriate agreement, clearly defining the basic relationship between the parties with their inter-se rights and responsibilities;
  - (d) Bid form; and
  - (e) Any other documents deemed necessary.

5.2 The instructions to the bidders relating to the bidding shall be clear , comprehensive and fair and shall, as far as necessary and practicable, include the following information, namely:-

- (i) General description and objectives of the infrastructure projects
- (ii) Basic contractual arrangement under which the implementation of the infrastructure project shall be undertaken
- (iii) Bid submission, procedures and requirements
- (iv) Bid and bid security validity period
- (v) Milestone bonding
- (vi) Method and criteria ( including the minimum amount of equity) for the valuation of the technical and financial components of the bids
- (vii) Tariff policy, formula and factors to be used for the charge, recovery and appropriation of tolls or fees or rentals by the concessionaire
- (viii) Requirements of concerned regulatory bodies, if any
- (ix) Monetary rules and regulations governing foreign exchange remittances, if relevant
- (x) Minimum design and performance standards or specifications including appropriate Revenue sharing arrangements, if any; and
- (xi) Expected commissioning date

5.3 Environmental standards shall be clearly defined and non-conformity with any of these minimum requirements shall render the bids as non-responsive

5.4 Financial parameters shall also be described, which amongst others, shall include:

- (a) Maximum period of project construction
- (b) Fixed term for project operation and collection of tolls or fees or rentals or charges
- (c) The draft concession agreement shall clearly define the basic and legal relationship between the parties as well as the rights and responsibilities of the parties involved. Where applicable, the following matters, among others, shall be included:
  - (i) Bonds, guarantees, insurance, damages
  - (ii) Warranties, indemnities, limitation of liability
  - (iii) Schedule and amount of milestone bonding
  - (iv) Relevant price index to be used
  - (v) Force majeure and its consequences

- (vi) Effect of changes in circumstances, which may be brought about by, among others the enactment of new laws or regulations or the change in existing government policies which will materially affect the financial viability of the project;
- (vii) Contract termination
- (viii) The governing laws, manner and procedure for the resolution of disputes including partnering, conciliation, arbitration
- (ix) Project monitoring mechanisms including provisions for independent quality control consultants and dispute review experts on a standing basis and
- (x) Taxes and duties

## **6. Pre-bid or pre-qualification stage**

- 6.1 Any person, who fulfills the qualification criteria, may respond to the notice inviting tenders or proposals, subject to the prevalent laws and policies laid down by the department. The expression person shall include natural and juristic persons, as permissible by policies of the department, whether of Indian or foreign origin
- 6.2 The prospective bidders will be required to prepare and submit their respective pre-qualification documents within the specified period. Amongst others, the following may be specified by the department as the pre-qualification requirements, namely:-
  - (i) Legal requirements
  - (ii) Technical qualification i.e. the concessionaire applicant must possess adequate relevant experience in terms of specified requirements for the infrastructure project or sector in question. The applicant should not have committed a material breach in any previous concession agreement and
  - (iii) Financial qualification i.e. the concessionaire must show the capability to sustain the financing requirements of the infrastructure project, which may be measures in terms of proof of the ability of the concessionaire or to provide a minimum amount of equity to the project and letter of good standing from the bank
- 6.3 On the basis of the pre-qualification proposal received, the department shall mark the pre-qualification documents of each prospective proposer as either pre-qualified or pre-disqualified, as the case may be.

## **7 Bidding Stage**

- 7.1 The department shall make available the related bid documents to all pre-qualified bidders within the specified period to prepare and submit their respective bids.
- 7.2 The bids will be submitted in two envelopes i.e. the one containing the technical proposal and the other containing the financial proposal.
- 7.3 The required bid security, if any, shall be valid for the specified period, but in no case it will exceed one hundred and twenty days following the opening of the bids, unless specifically decided by the department for a particular infrastructure project
- 7.4 The evaluation of bids shall be undertaken in two stages in terms of the specified procedure and period
- 7.5 The first stage of evaluation shall involve the assessment of the technical proposal regarding technical, operational and environment, viability of the proposal as contained in the bidders first envelopes vis-à-vis the specified requirements and criteria or minimum standards and the basic parameters specified in the bidding documents
- 7.6 Only those bidders, who have not been disqualified at the first stage of evaluation, shall be eligible to participate in the second stage of evaluation. The second stage of evaluation shall involve the assessment in comparison of the financial proposals of the qualified bidders based on the criteria and parameters specified by the department in this behalf. Such criteria and parameters, in the case of infrastructure projects without private participation, may provide for clubbing of technical and financial scores for the purposes of determining the bidder eligible for award of work
- 7.7 In the case of infrastructure projects based on private participation schemes, the department shall award the contract to the bidder whose proposed tolls or fees or rentals or charges or period of concession are determined to have the lowest present value.

## **8 Grant of concession**

- 8.1 The department shall grant the concession to a bidder who
  - i. Satisfies the stipulated financial, technical, organizational and legal standards and
  - ii. Whose bid is the lowest and is in most favourable terms for the project, based on the present value of its proposed tolls, fees, rentals, charges and period of concession over a fixed term for the

infrastructure project to be constructed, rehabilitated, operated and maintained as per the stipulated minimum design and performance standards, plans and specifications.

- 8.2 The purpose of the financial package governing any sector or the concessions to be granted for any infrastructure project will be to ensure that the same is financially viable and bankable to attract maximum private investment. The department/ public infrastructure agencies may have to make substantial investments or grant substantial concessions to make a infrastructure sector or an infrastructure project viable.
- 8.3 The winning bidder shall be granted the concession for the development, operation and maintenance of the infrastructure project, including the right to collect the specified tolls, fees, rentals and charges.
- 8.4 Withdrawal of any member of a joint venture bidder prior to the actual award or implementation of the infrastructure project can be a ground for cancellation of the contract and forfeiture of that person's bid security. The department may, however, proceed with the award of the contract for the implementation of the infrastructure project, if it is of the opinion that the other members of the joint venture or consortium are still capable of carrying out the project or that they have provided a suitable and acceptable substitute with equal or better qualifications.
- 8.5 The bid and the bid securities shall be kept valid till the process of selection of bidders and the grant of concession is completed. Once the concession is granted, the bid securities shall be returned to the unsuccessful bidders.
- 8.6 In the event of refusal, inability or failure of the bidder with the lowest complying evaluated bid to make good his bid by entering into concession agreement with the Government within the specified period, the Government shall forfeit the bid security of such bidder. In such an event, the department shall consider the next complying and qualified lowest evaluated bid for the award. If the same too fails to execute the concession agreement with the Government, its bid security shall likewise be forfeited, and the department shall consider the next complying and qualified lowest evaluated bid, and so on until a contract has been entered into. In case, the Government is unable to execute the contract with any of the complying and qualified bidders due to the refusal of the latter, the project shall be subjected to re-bidding.
- 8.7 When no bids are received, the bidding shall be declared a failure.

## **9 Unsolicited proposals**

- 9.1 When any person makes representation to the department with respect to any project which has not yet been approved or notified, the same may be accepted by the department on a provisional basis if such a project involves a new concept or technology. On acceptance of the proposal by the department the department shall follow the procedure of public bidding, in which the proposer may also participate.
- 9.2 When the proposal of the proposer, referred to above, is not preferable to the proposal of the selected person, the former shall be given an opportunity to make his proposal competitive with that of the selected person, within a period of thirty days from the date on which he has been given the opportunity and if the proposer fails to do so, the department may execute the concession agreement with the selected person.

## **10. Execution of concession agreement**

- 10.1 After approval of the project by the competent authority in government, in accordance with the prevalent procedure for financial concurrence and expenditure sanction and administrative approval, the department shall execute a concession agreement with the successful bidder
- 10.2 In case the government wishes to terminate any concession, it shall take such decision after giving an opportunity to show cause by the concessionaire
- 10.3 No suit, prosecution or other legal proceedings shall lie against any officer of the State Government for anything which is done or intended to be done in good faith under the scope of this policy resolution
- 10.4 Disputes if any, shall be dealt with under the provisions of the Arbitration Act of 1996

## **Schedule I: Models of contracts**

- (a) **Build Operate and Transfer (BOT)** shall mean a contractual arrangement whereby the concessionaire undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The concessionaire operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the concessionaire to recover its investment, and operating and maintenance expenses in the project. The concessionaire transfers the facility to the Government Agency or Local Government unit concerned at the end of the fixed term which shall not exceed thirty years
- (b) **Build-Own-Operate-and-Transfer (BOOT)** shall mean a project based on the granting of a concession by a Principal (the Union or Government or a local authority) to the concessionaire, who is responsible for the construction, financing, operation and maintenance of a facility over the period of the concession before finally transferring the facility, at no cost to the Principal, a fully operational facility. During the concession period the promoter owns and operates the facility and collects revenue in order to repay the financing and investment costs, maintain and operate the facility and make a margin of profit.
- (c) **Build-and-Transfer (BT)** shall mean a contractual arrangement whereby the concessionaire undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the Government Agency or Local Government unit concerned, which shall pay the proponent on an agreed Schedule its total investments expended on the project, plus a reasonable rate of return thereon. This arrangement may be employed in the construction of any infrastructure or development project, including critical facilities which, for security or strategic reasons, must be operated directly by the Government.
- (d) **Build-Own-and-Operate (BOO)** shall mean a contractual arrangement whereby a concessionaire is authorized to finance, construct, own operate and maintain an infrastructure or development facility from which the proponent is allowed to recover its total investment , operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges from facility users.

- (e) **Build-Lease-and-Transfer (BLT)** shall mean a contractual arrangement whereby a concessionaire is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the government agency or local government unit concerned on a lease arrangement for fixed period after which ownership of the facility is automatically transferred to the government agency or local government unit concerned.
- (f) **Build-Transfer-and-Operate (BTO)** shall mean a contractual arrangement whereby the public sector contracts out the building of an infrastructure facility to a private entity such that the concessionaire builds the facility on turn-key basis, assuming cost overrun, delay and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the implementing agency. The private entity however, operates the facility on behalf of the implementing agency under an agreement
- (g) **Design Built Finance Operate (DBFO)** shall mean a contractual arrangement whereby the concessionaire is authorized to detailed design work, which will reduce time and money required for project preparation. The states could then bid the project based on the Feasibility Report instead of the Detailed Project Report. For this, appropriately drafted TOR for Feasibility Report consultants and also a Manual of Specification and Standard for BOT Projects needed to be adopted by the States.
- (h) **Contract-Add-and-Operate(CAO)** shall mean a contractual arrangement whereby the concessionaire adds to an existing infrastructure facility which it is renting from the government. It operates the expended project over an agreed franchise period. There may, or may not be, a transfer arrangement in regard to the facility.
- (i) **Develop-Operate-and-Transfer(DOT)** shall mean a contractual arrangement whereby favourable conditions external to anew infrastructure project which is to be built by a private project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values.
- (j) **Lease Management Agreement** an agreement whereby the State Government, the government agency or the specified agency leases a project owned by the state government, the government agency, or, as the case may be, the specified government agency to the person who is permitted to operate and maintain the project for the period specified in the agreement.

- (k) **Management Agreement** an agreement whereby the State Government, the government agency or the specified government agency entrusts the operation and management of the project to a person for the period specified in the agreement on payment of specified consideration. In such agreement, the State Government, the Government Agency or, as the case may be, the specified government agency may charge the user fee and collect the same either itself or entrust the collection for consideration to any person who shall after collecting the user fees pay the same to the State Government, the Government agency or the as the case may be, the specified government agency.
- (l) **Rehabilitate-Operate-and-Transfer (ROT)** shall mean contractual arrangement whereby an existing facility is turned over to the private sector to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.
- (j) **Rehabilitate-Own-And-Operate(ROO)** shall mean a contractual arrangement whereby an existing facility is turned over to the private sector to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.
- (k) **Service-Contract Agreement** shall mean an agreement whereby a person undertakes to perform the service for the state government for the specified period. The state government shall pay him an amount according to the agreed Schedule.
- (l) **Supply, Operate-and –Transfer Agreement** shall mean an agreement whereby a person supply to the state government equipment and machinery for a project and undertakes to operate the project for a period and consideration specified in the agreement. During the operation of the project, he shall undertake to train the employees of the state government to operate the project.

## **Schedule II: Infrastructure Sectors**

- i. Information technology related projects
- ii. Transportation-roads, bridges, road transport and related areas,
- iii. Urban infrastructure including:
  - (a) Water supply
  - (b) Sewerage disposal and treatment
  - (c) Urban roads and street lighting
  - (d) Solid waste management
  - (e) Parks
  - (f) Urban mass transit system
  - (g) Parking facilities, Park and Ride facilities
  - (h) Effluent treatment and related activities
  - (i) Disposal of Bio-Medical Wastes
- iv. Industrial estates, industrial parks, modern industrial townships and special economic zones.
- v. Water conservation and management
- vi. Food processing and post harvest facilities like warehousing facilities and cold chains, and marketing infrastructure for agricultural produce.
- vii. Super-specialty health care facilities and medical research and treatment facilities
- viii. Tourism related facilities and infrastructure
- ix. Power sector including power generation and transmission infrastructure
- x. Infrastructure for giving boost to technical education

**[Guidelines on PPP issued by Dept. of Economic Affairs \[GoI\]](#)**