

MEMORANDUM OF UNDERSTANDING (MOU)
between Department of Economic Affairs (DEA) and the State Government of
Assam on participation in the ADB Technical Assistance Project (TA 4800-IND :
Mainstreaming Public-Private Partnerships at State Level)
(Cofinanced by the Japan Special Fund)

The TA PROJECT

1. India has achieved impressive growth rates in the last several years, but is now increasingly running into infrastructure constraints. While most infrastructure projects in India have high economic justification, they are not able to meet the financial return threshold that would readily attract private investment, particularly in the weaker states of India. Given this, and fully aware of the potential that a partnership with the private sector can bring to the infrastructure sector, recent efforts by the government of India (GOI) have focused on using budgetary resources to maximize efficiency and leverage the large pool of private capital as well as introduce private sector/based efficiencies and management enhancement.

2. The Asian Development Bank (ADB) has agreed to provide advisory technical assistance to the GOI for a project to support the work of public-private partnership (PPP) cells at the center and state levels. The proposed assistance from the ADB will support GOI in mainstreaming PPPs at the central and state levels through capacity enhancement development as required. It will also support effective institutionalization of the PPP cells to deliver their mandate. The project will leverage and mobilize the existing resource base in the Government for supporting PPPs in infrastructure, use public and potential private resources for infrastructure development and maintenance, and help ensure greater impact in infrastructure development at the state and national levels.

3. In particular, the support is designed to : (a) enhance capacity of PPP cells in participating entities to prepare, evaluate, and appraise PPPs in infrastructure ; (b) significantly improve monitoring of overall progress in PPPs in infrastructure through well-knit databases; and (c) increase awareness among potential private sector partners about the project cycle of PPP projects in infrastructure, and the expectations of Government with respect to value for money.

Expression of Interest

4. Further to the provision of advisory technical assistance by ADB to GOI for a project to support the work of public-private partnership (PPP) cells at the center and state levels (hereinafter referred to as the TA Project), and pursuant to the invitation by the Ministry of Finance, Department of Economic Affairs (DEA), for selected State Governments to express interest in participation in the TA Project, the Government of Assam hereby requests DEA to include the State of Assam to receive ADB assistance under the TA Project, and DEA agrees to this request, subject to the conditions stipulated in this MOU hereinafter.

Eligibility Conditions

5. With a view to deriving optimal impact of the assistance, DEA has stipulated certain eligibility conditions for a State to qualify for assistance under this TA Project.

The State of Assam hereby confirms that it will fulfill these eligibility conditions as described below.

(a) As per Government Order PDP/PPP/115/2002/PT.II dated 14/6/07 the State of Assam has set up a PPP Cell in the (Planning Department), and A.K. Sachan, IAS has been designated as the PPP Nodal Officer from the designated agency. The said Government Order defines the scope, powers and duties of the PPP Cell as follows :

1. Scope of work of the PPP Cell :

- The PPP Cell is the nodal agency for processing all PPP projects in the State :
- The PPP Cell will serve as the repository of all information relating to PPPs in the State, including on best practices, guidelines, schemes, PPP pipelines , etc. :
- The relevant Departments-Ministries of the State will coordinate with the PP Cell at all stages of project development, keeping the PPP Cell informed of the status of the PPP project proposals :
- The PPP Cell will play the role of Adviser to the relevant Departments-Ministries in project preparation based on the policy framework to be developed under the TA Project, and in coordination with the PPP Cell in DEA; and
- All proposals forwarded to GOI for any assistance from the TA Project as well as from other financing mechanisms will be routed through the PPP Cell.

II. Powers and duties of the PPP Cell :

The Government of Assam will effect all necessary orders to empower the PPP Cell to undertake the above work.

(b) Project Development : The Government of Assam committed to developing a robust shelf of projects amenable for PPPs. In carrying out this task, the State PPP Cell will interact with the PPP Cell in DEA on a regular basis to ensure a synchronized application of the policy framework. The State Government will also take into consideration all recommendations and guidance resulting from the TA Project in the development of the shelf of PPP projects.

(c) Targets for creating a shelf of projects for PPPs : The State Government will adhere to the following set of targets on the level of PPPs in the State :

- I. During 2007-08- bid out at least 3 projects with a total cost of Rs. 750 crores or more in at least 2 sectors.
- II. During 2008-09- bid out at least 5 projects with a total cost of Rs.1,250 crores or more in at least 3 sectors.
- III. During 2009-10- bid out at least 5 projects with a total cost of Rs.1,500 crores or more in at least 4 sectors.

The Government of Assam accepts that continuance of GOI assistance for PPPs in the State will depend upon joint reviews of the achievement of the targets at the end of each year.

- (d) The Government of Assam will review sector policies as required, from time to time, to align them with the requirement of PPP projections, and in conformity with the policy framework developed under the TA project ;wherever policies to enable a transparent and effective private sector participation do not currently exist, the Government of Assam undertakes to establish such policies and regulatory and governance frameworks in the identified infrastructure sectors by the end of the TA period ; the State Government further commits to take all necessary steps to introduce the required legislations for the purpose.
- (e) The State Government hereby agrees to prepare a "Plan of PPP projects" in conjunction with its annual plan.
- (f) The State Government would establish a 'single window' with a fully empowered approval framework for providing all State level approvals, including for the financing of PPP projects.
- (g) The State Government will provide counterpart staff support, office space, furniture, logistical, and all administrative support necessary to implement the TA Project in the State.

6. Further commitments : The State Government agrees that it will endeavor to put in place, with guidance from the DEA PPP Cell where necessary, the following to encourage PPPs in the State :

- (a) sound legal, policy, regulatory, and institutional environments for infrastructure development through PPPs:
- (b) transparent policies and processes in licensing, financing, risk sharing, etc.;
- (c) a system of PPPs on a performance-payment basis; and
- (d) a dedicated infrastructure project development company, if one has not already been established.
- (e) Based on the TA Project recommendations, and aligning with the policies and procedures of the DEA PPP Cell, the State Government commits to the following:- (i) adopt standard concession agreements for PPP projects in defined infrastructure sectors; (ii) adopt competitive bidding procedures for bidding and awarding of infrastructure projects under defined rules and procedures according to best international commercial practices and GOI guidelines ; (iii) designate a State-level dispute resolution mechanism for the speedy resolution of disputes relating to PPP projects ; and (iv) adopt formal State policies on environment, resettlement and social safeguards with respect to the implementation of infrastructure projects, according to best international commercial practices.
- (f) The State Government will ensure stability of staff deployed for the assignment in the PPP Cell to facilitate creation of a strong capacity for development and monitoring of PPP projects in infrastructure sector by the end of the TA Project. For sustainability of the impact of the TA Project, the State Government will commit to ensure institutionalization of capacities and procedures within the identified government departments and the PPPCell,

through appropriate implementation of the recommendations of the TA Project.

7. The State Government will participate in meetings to be convened to review and further strengthen PPP capacity and provide effective and timely feedback on the TA reports, its progress and substance, so as to enhance the beneficial impact of the TA Project.

8. The State Government hereby also agrees that at any time during the administration of the TA Project, GOI (through the PPP Cell at DEA) reserves the right to review the performance of the State Government in complying with the above set of commitments. The State Government further accepts that if it is found wanting in compliance of the same, assistance under the TA Project may be discontinued.

Signed :

Name and title of State Government official

Name and title of DEA official

Date :

Date :