

Government of West Bengal
Finance Department
Audit Branch

No.: 5267-F(H), Kolkata, the 21st June, 2012.

NOTIFICATION

The State Government is now taking up several infrastructure projects including physical and social infrastructure with the objective of enhancing the quality of life of the people of the State by providing better and efficient public services. In addition to traditional public sources of funding for infrastructure projects, alternative sources of financing have gained importance in the recent times. Accordingly, the State Government has introduced a State Policy on Public Private Partnership (PPP) for implementation of physical and social infrastructure projects in the state.

2. Pursuant to the provisions envisaged in the Resolution No. 5266-F(H) dated 21.06.2012 the Governor is pleased to designate the Finance Department, Govt. of West Bengal as the Nodal Department of the State Government for co-ordinating with the different State Govt. Departments, Authorities and Agencies, other State Govt.s, Govt. of India and other different Financial/Technical Organisations involved in PPP with regard to the development of infrastructure sectors involving private sector participation.

3. This cancels the Development Planning Department's Notification No. 2094/ DP, dated 06.09.2006.

By order of the Governor,
Sd/- Samar Ghosh
Chief Secretary to the Government of West Bengal

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Finance Department
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No.: 5266-F(H), Kolkata, the 21st June, 2012.

RESOLUTION

The State Government has, for sometime past, under consideration for taking up several infrastructure projects including physical and social infrastructure with the objective of enhancing the quality of life of the people of the State by providing better and efficient public services. In addition to traditional public sources of funding for infrastructure projects, alternative sources of financing have gained importance in the recent times. The State Government, therefore, recognizes that one of the important tools for attaining the above objective is the Public Private Partnership (PPP) model, which represents an arrangement between a Government/Statutory bodies on one side and a private sector entity on the other, for providing public services through new investments or management of the existing services or both.

2. To achieve the objectives stated above, the Governor is pleased to introduce a State Policy on PPP for implementation of physical and social infrastructure projects in the State as

follows

- (i) The Finance Department, Government of West Bengal will be designated as the Nodal Department;
- (ii) A dedicated PPP Cell will be created in the Finance Department, for providing necessary direction and hand holding support to the Departments for planning and implementation of PPP Projects, and
- (iii) A dedicated Fund called West Bengal Infrastructure Development Fund (WBIDF) will be created to assist selected project preparation activities, capacity building, training, enhancement of project viability etc.

3. The objectives of the PPP Policy

The broad objectives of the PPP Policy of the Government are outlined below:

- a. To set out the principles for pursuing projects on PPP basis,
- b. To support Private Sector Investments and create a conducive environment so as to enable the State to utilize Private Sector efficiencies, innovativeness, capacity, flexibility and resources with the objective of developing both physical and social infrastructure at optimal cost.
- c. To Provide a consistent and transparent framework for identifying, structuring, awarding and managing PPP ;
- d. To facilitate identification and creation of appropriate PPP Projects and assist the line Departments in effective project structuring, implementation and monitoring of the same ;
- e. To provide an efficient institutional framework for speedy clearances of PPP projects,
- f. To create a robust dispute redressal mechanism and regulatory framework for PPP Projects;

4. Infrastructure Sectors to be covered

The areas that will be covered under the PPP are:

- * Health (specific areas)
- * Education (specific areas)
- * Tourism related projects
- * Roads, bridges and bypasses
- * Airports, Airstrips and Heliports
- * Inland container depots and logistics hubs
- * Industrial parks, Theme Parks, Knowledge Parks, Special Economic Zones and Townships, Industrial Training Centres
- * Water Supply, Treatment and Distribution
- * Power generation, transmission and distribution systems
- * Solid waste management
- * Drainage and Sewerage
- * Inland water transport
- * Urban transportation systems
- * Housing and related facilities
- * Any other sector / facility as may be included by the Government from time to time

5. The PPP Process:

The healthy and efficient growth of PPP projects will call for a robust, transparent and clearly laid out PPP process.

5.1 The Government's Role in PPP

The role of the government will be one of a facilitator and enabler. Some supports from the State Government which will be of critical importance are outlined below :-

- (i) Legislative support as and when required.
 - (ii) Administrative support which shall include facilitating receipt of all Central and State Government clearance assisting in all rehabilitation and resettlement activities in case so required as per existing Rehabilitation and Resettlement Policy of the State Government, facilitating provision of supply of power and water at the project side etc.
- Some of the proposed activities the State Government is expected to perform are mentioned below:-

5.1.1 Identification of Projects

The State Government Departments / bodies shall identify, conceptualize the projects to be developed in the State and place before ECOS through PPP Cell. The ECOS shall prioritise projects based on demand and supply gaps, inter-linkages and any other relevant parameters and create a project shelf. In order to assess the same, Pre-feasibility Report shall be prepared by the respective Department. The Pre-feasibility Report, would establish, inter alia, the need for the project, project cost, estimation and indicative financial viability of the proposed project including preliminary engineering studies, if any. Approval of the project, would then be obtained from ECOS.

5.1.2 Project Development Process

The project development process would cover project preparation (including technical feasibility and financial viability analysis), project structuring, preparation of contractual documents and obtaining of project clearances and approval. During this stage, activities would be undertaken with the following objectives,

- a. Articulate the scope of the project, implementing agency's requirements and set forth roles/responsibilities of the parties;
- b. Establish that the revenue model is robust and sustainable over the project life ;
- c. Ensure that the underlying risks are defined and appropriately allocated between the contracting parties;
- d. Ensure that the contractual arrangements and documentation accurately reflect the scope of the project, roles and obligations of parties, performance standards, monitoring arrangements, penal provisions, reporting requirements, dispute resolution mechanism and termination arrangements.
- e. Ascertain that contractual arrangements are permissible under the policy, legal and regulatory regime.

As part of the project development activities, implementing agencies would undertake studies and investigations relating to technical, market analysis, financial and legal aspects, with the assistance from advisors/consultants wherever required. The output of the project development activities, to the extent feasible, would be made available to the potential bidders during bid process.

5.1.3 Procurement Process

Procurement stage would cover procurement and project award. Transparent, accountable, non — discriminatory, competitive and timely procurement processes would be followed so as to encourage maximum participation by private sector and to imbibe public confidence in the procedure. The procurement process would be completely transparent and shall be in line with the procurement policies of the State.

The bid documents used for procurement of private sector entities may comprise one or more of expressions of interest, request for qualifications, and request for proposals. Technical proposals would be invited, depending on the complexity of a project, to assess the ability of the private entity of their appreciation of the desired outcomes. Financial proposals would

ideally be in the form of a single objective parameter.

The procurement process of a PPP may include the following distinct stages:

Expression of Interest (EoI) / Request for Qualification (RfQ)

Request for Proposals (RfP)

Evaluation, and selection of Bidder

Award of Contract / Signing of concession Agreement

Financial closure

Draft contract agreement, containing provisions on the roles and obligations of the parties, performance standards and monitoring arrangements, reporting requirements, penalty conditions, force majeure conditions, dispute resolution mechanism and termination arrangements, shall be provided to the prospective bidders as part of the bid documents.

Timelines to be followed during the procurement process would be indicated by the procurement entity in the bidding documents. In order to minimize delays, the procurement entity would endeavour to obtain all necessary approvals for a project from the agencies concerned in a timely manner.

In case the competitive bidding process does not generate sufficient response and if even a sole bid is not received, then the Department shall, with the approval of ECOS, either modify the pre-qualification criteria and / or the risk sharing provisions and restart the bid process; or may cancel the competitive bid process.

The State Government, may formulate sector specific policies wherever required for providing specific incentives and also establish mechanism for tariff setting, pricing, arbitration, safety and operational standards etc. It also envisages coordination across infrastructure sectors and dovetailing of sectoral plans.

For effective implementation of projects, certain support of the State would be required including Legislative Support, Administrative Support and Financial Support.

5.1.4 Project Implementation

The process of project implementation would be appropriately backed by contractual arrangements. The line Department would develop contractual frameworks to allow for equitable allocation of risks between the contracting parties, taking into account the legitimate concerns of private investors.

5.1.5 Model adoption

While considering PPP Projects, it will be necessary to consider and choose the appropriate PPP Model from among the different models generally used in this regard. While selecting the project, attention must also be paid to the critical aspects of the project with a view to separate outsourcing and other types of jobs from the core PPP project.

A brief description of some of the more popular PPP Models is given below – the appropriate model is to be adopted on a case to case basis.

a. Buy — Build — Operate (BBO): Transfer of public asset to a private or quasi-public entity usually under contract. The assets will be upgraded and operated for a specified period of time. Public control to be exercised through the contract at the time of transfer.

b. Build — Own — Operate (BOO) : The private sector finances, builds, owns and operates a facility or service in perpetuity. The public constraints are stated in the original agreement and through ongoing regulatory authority. The concessionaire retains ownership of the facility. The concessionaire bears the commercial risk of operating the facility.

c. Build — Own — Operate — Transfer (BOOT): A private entity receives a franchise to finance, design, build and operate a facility (and to charge user fees) for a specified period, after which ownership is transferred back to the public sector.

d. Build — Operate — Transfer (BOT): The private sector designs, finances and constructs a

new facility under a long-term concession contract, and operates the facility during the term of the concession after which ownership is transferred back to the public sector if not already transferred upon completion of the facility. In fact, such a form covers Build — Own — Operate — Transfer and Build — Lease — Operate — Transfer with the sole difference being the ownership of the facility.

e. Build — Lease — Operate — Transfer (BLOT) : A private entity receives a franchise to finance, design, build and operate a leased facility (and to charge user fees) for the lease period, against payment of a rent. Another model is BOLT where one of the processes come before the other.

f. Design — Build — Finance — Operate (DBFO): The private sector designs, finances and constructs a new facility under a long-term lease, and operates the facility during the term of the lease. The private partner transfers the new facility to the public sector at the end of the lease term.

g. Finance Only: A private entity, usually a financial services company, funds a project, directly or uses various mechanisms such as a long — terms lease or bond issue.

h. Operation & Maintenance Contract (O & M): A private operator, under contract, operates a publicly owned asset for a specified term. Ownership of the asset remain with the public entity.

i. Design-Build (DB) : The private sector designs and builds infrastructure to meet public sector performance specifications, often for a fixed price on turnkey basis. The risk of cost overrun is therefore transferred to the private sector.

j. Operation License: A private operator receives a license or right to operate a public service, usually for a specified term

6. Institutional Framework

A strong, well defined and robust institutional structure is critical for development of a sustainable PPP programme. In addition to creating and facilitating conducive environment for private sector investments, a framework is needed to ensure that the projects are commercially robust, the provisions in the contract, document safeguard user and public interests and the contingent liabilities of the Government are kept limited within accepted parameters.

Keeping this in view, an institutional structure comprising of existing Standing Committee of the Cabinet on Industry, Infrastructure and Employment and Empowered Committee of Secretaries (ECOS) is conceived to take forward the implementation of the PPP. The framework has been suggested keeping in view the need to keep the process simple, smooth and aligned to the risks associated with the projects.

6.1 Standing Committee of the on Industry, Infrastructure and Employment

The Standing Committee, of the Cabinet on Industry, Infrastructure and Employment of the Government constituted vide Notification No. 1 Cab.Sub.Com dated June 29, 2011 of Government of West Bengal shall consider for approval all large value Projects under PPP which are above Rupees Fifty Crore on the recommendation of the Empowered Committee of Secretaries.

6.2 Empowered Committee of Secretaries (ECOS)

A Committee under the Chairmanship of the Chief Secretary, Government of West Bengal will be constituted to consider for facilitation of infrastructure project under PPP. The Committee is to be Known as empowered Committee of Secretaries (ECOS). ECOS will lake up for approval all the PPP Projects with project cost upto Rs. 50 crore. It will also consider the PPP projects above Rs. 50 crore and recommend for approved to the Standing Committee

of the Cabinet on Industry, Infrastructure and Employment. The other Committee members shall be Secretaries of the Departments of Planning Urban Development, Tourism, Commerce and Industries. Power, Municipal Affairs, Public Works Department and Finance. The ECOS may co-opt a member from any other Department. The Finance Secretary shall be the Convener of the Committee.

Terms of Reference of the ECOS

- The Empowered Committee of Secretaries will _____
- a. Consider and formulate policy guidelines under PPP model _____
 - b. Consider and approve projects being taken up under PPP for Project Cost upto Rs. 50 crores
 - c. Recommend to the Standing Committee of the Cabinet on Industry, Infrastructure and Employment for consideration all eligible projects above Rs. 50 crores
 - d. Standardization of Bid documents and processes in the TOR
 - e. Propose optimal procurement method for PPP Projects within the stated objectives.
 - f. Resolve issues relating to projects being proposed under PPP framework
 - g. Resolve inter-departmental issues to ensure smooth implementation of PPP Projects
 - h. Review and monitor implementation of PPP Projects
 - i. Recommend enactment of legislation for ensuring appropriate regulatory mechanism/robust dispute and grievance resolution.

6.3 Creation of PPP Cell

With a view to providing necessary direction and hand-holding support to the Departments sponsoring PPP Projects, a PPP Cell would be created in the Finance Department. The PPP cell would co-ordinate the efforts of the different administrative department of the State Government with regard to the development of infrastructure sectors involving private sector participation.

The Finance Secretary will act as the Nodal Officer of the PPP Cell and will be assisted by the Special Secretary. He will also be assisted by a PPP Expert(s), MIS Expert, Financial Expert, Public Finance Expert, Legal and Regulatory and other supporting staff

6.4 Broad functions of PPP Cell

To provide support and technical services, the PPP Cell will have the following broad functions:

- 1) To give technical support to administrative department for identifying projects suitable for implementation on PPP route.
- 2) Develop processes for selection and evaluation of guidelines for selection and appointment of consultants and private sector partners.
- 3) Assist line Departments in preparing pre-feasibility and project reports through consultants.
- 4) Assist in development of transparent, and effective tendering process.
- 5) Develop various Model documents for different sectors.
- 6) Examine the PPP projects and place it before ECOS for approval.
- 7) Coordinate the efforts of other Departments for the furtherance of the objectives of this Policy.
- 8) Conduct workshops and use other media to disseminate information on PPP.
- 9) Act as the nodal agency for capacity building for PPP, through training and technical assistance, to increase the deal flow of eligible projects.

7. West Bengal Infrastructure Development Fund (WBIDF)

In order to ensure quality project preparation, a West Bengal Infrastructure Development Fund (WBIDF) will be set up under the Finance Department to assist elected projects. The

fund shall finance the project preparation activities such as conducting feasibility studies, social and environment impact studies, project structuring, development of project documents, etc.

The Fund shall also assist capacity building and training. In very selected cases, the fund may provide financial support directly to projects to enhance project viability and enable projects to be amenable to PPP.

The ECOS shall administer the fund and prescribe detailed guidelines for management of the Fund.

8. Regulatory Framework

The State Government will gradually develop a Regulatory Framework for the projects and services rendered through a PPP.

9. The State Government's role in PPP

The role of the Government under PPP may be described as one of a facilitator and enabler. The Government would play a regulatory role by setting out policies for economic regulation, safety standards and social rights, as a failure to do so may result in exploitation of economic and social vulnerabilities. These projects of social and economic relevance would therefore call for continuous monitoring and review. Some supports from the State Government may also be necessary in legislative and administrative matters.

The State Government will also be expected to perform in respect of:

- 1) PPP Identification
- 2) Adherence to Processes
- 3) Project Preparation
- 4) Procurement Stage
- 5) PPP Contract Management and Monitoring Stage
- 6) Post Project Award Negotiation

10. Documentations

A large number of documents may be required for project formulation under PPP. Names of certain documents are listed below:

- i) Strategic Plan
- ii) Feasibility Report
- iii) Detailed Project Report (DPR)
- iv) Shareholders' Agreement
- v) State Support Agreement
- vi) Operation, Maintenance and Development (OMD) Agreement
- vii) Concession Agreement
- viii) Technical Operation agreement
- ix) Lease Agreement
- x) Substitution agreement
- xi) Independent Engineer's / Auditor's agreement
- xii) Other subsidiary Agreement

11. Selection of Developer

After the DPR is prepared, the concerned Department may initiate the process of selection of a suitable developer. The DPR apart from specifically indicating the cost benefits, would spell out the award criteria, upfront. The concerned Department may use the services of a Transaction Advisor / Consultant. The selection process may be single or several, depending upon the size of the project.

12. Selection Process

The Selection process will include:

- a. Engagement of Transaction Advisor / Consultant from the existing Panel of TAs / Consultants for assistance
- b. Invitation of Expression of Interest from prospective bidders
- c. Receiving proposals from bidders and evaluation of qualifications
- d. Preparation / review of Request for Proposal
- e. Pre-bid meeting for clarification / modification of bid documents
- f. Receipt of bids
- g. Evaluation of Technical and Financial Bids-Selection of most preferred developer in accordance with prescribed criteria
- h. Signing of Agreement.

Competitive bidding will be adopted in all PPP projects.

ORDER

Ordered that the Resolution be communicated to all the administrative Departments, Directorates, State Govt. Undertakings and all offices sub-ordinate to them.

Ordered also that the Resolution be published in the Kolkata Gazette.

By order of the Governor,
Sd/- Samar Ghosh
Chief Secretary to the
Government of West Bengal.