

অসম



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THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

PLANNING & DEVELOPMENT DEPARTMENT

NOTIFICATION

The 16th February, 2008

No. PDP.115/2002/pt-II/268.—The Governor of Assam is pleased to formulate the policy on Public Private Partnership in Infrastructure Development in the State of Assam and hereby published for general information :-

Policy on Public Private Partnership

1 INTRODUCTION

Assam has achieved economic growth of 5.9% during the year 2005-06 as against the growth rate of 9.2% of the National Economy. Considering the huge backlog suffered by Assam in the economic development, it has to catch up with rest of the country by accelerating economic growth. Situated in one corner of the country, the State has to improve physical infrastructure to trigger rapid industrialization. The development of infrastructure requires large investments and gestation period. Mobilising Government resources to fully meet the requirement of fund for development of infrastructure will put huge tax burden on the people of the State. Further, due to locational disadvantage many of the infrastructure projects may not be financially viable at least in the short run. Financial viability of such projects can be improved by availing viability gap funding from Government of India. The Government of Assam proposes to bring in private sector investment with Public Private Partnership mode as one of the preferred routes. The PPP approach is best suited for the infrastructure sector as it supplements scarce public resources, creates a more competitive environment and brings in the efficiencies of private sector management. However, implementation of projects through PPP mode calls for involvement of large number of agencies such as project sponsors, lenders, government and its agencies, regulatory authorities etc. This also entails complex procedures of tendering and project agreements requiring very detailed financial and legal scrutiny. Effectively structured, PPP mode can substantially reduce costs of setting up and then in operation and maintenance of the projects. To achieve this goal, Government of Assam lays down for itself following Public Private Partnership Policy.

2. Definition of PPP Projects

By definition a Public Private Partnership (PPP) Project means a project based on a contract or concession agreement, between a Govt. or statutory entity on one side and private sector Company on the other side for delivering an infrastructure service on payment of user charges.

Unlike private projects where prices are generally determined competitively and Governmental resources are not involved, PPP infrastructure projects typically involve transfer of public assets, delegation of governmental authority for recovery of user charges, private control of monopolistic services and sharing of risks and contingent liabilities by the Government.

3. THE POLICY OBJECTIVES

1. The key objective of this policy is to leverage the resources of State Government to invite private sector investment in infrastructure at best possible terms for the people of the State.
2. Protection of the interest of users and securing value for public money.
3. Setting up of an efficient administrative mechanism to ensure selection of private sector developer through transparent bidding criteria.
4. To bring in uniformity in approach cutting across various sectors and Departments of the Government.
5. To prepare a shelf of projects to be offered for PPP under various Departments and take them forward for implementation.
6. Putting in place an effective and efficient institutional mechanism for obtaining various clearances for the projects speedily.
7. Provide a framework that clearly set forth the risks, rewards and obligations of different participants.
8. Create dispute redressal mechanism to handle disputes between the parties.

4. INFRASTRUCTURE SECTORS

The indicative list of the infrastructure sectors covered by the policy is as follows. New projects and sectors can be included in the list with the approval of the Empowered Committee on PPP.

1. Roads, bridges and bypasses
2. Inland water transport, riverports, container depots.
3. Agriculture Production, Horticulture, agro processing, floriculture.
4. Wasteland management.
5. Industrial parks, Theme Parks like IT/BT Parks, Knowledge Parks, and Townships
6. Water supply, treatment and distribution
7. Power generation, transmission and distribution.
8. Solid waste management
9. Sewerage & drainage.
10. Tourism
11. Healthcare facilities
12. Education
13. Real Estate development
14. Urban infrastructure including entertainment and recreational facilities
15. Urban transportation systems.
16. Mining and mineral based industries and Infrastructure Development in Mining areas.
17. Land Resources Management
18. Disaster Management
19. Any other sector / facility as may be included by the Government

5. INSTITUTIONAL ARRANGEMENT

The Government of Assam recognizes the requirement for an effective and efficient institutional mechanism to ensure timely clearance of projects and therefore lays down following structure to meet the policy goals:

5.1 Apex Authority

Constitution

1. Chief Minister, Assam - Chairman
2. Minister of Planning & Development - Member
3. Minister, Finance - Member
4. Minister of Industries, Power - Member
5. Minister Revenue - Member
6. Minister Health, Urban development - Member
7. Minister Guwahati Development Department - Member
8. Chief Secretary - Member
9. Commissioner & Secretary P&D (PPP) - Member Convenor

Minister of the line Department to which the project belongs will be co-opted as Member of the apex authority. Besides, Chief Executive Member of the Karbi Anglong Autonomous Council, NC Hills Autonomous Council, Bodoland Territorial Council, as the case may be, will be co-opted as member of the Apex Authority for the projects requiring the involvement of these Councils.

Powers & Functions

Apex Authority will grant in principle approval for all projects proposed to be developed in PPP mode. Further, all PPP Projects having investment or where value of underlying assets exceeds Rs. 100 Crore will require investment approval and approval for developer from the Apex authority.

5.2 Empowered Committee for PPP

5.2.1 Constitution

- Chief Secretary - Chairman
- Additional Chief Secretary P&D - Member
- Senior most officer of the Finance Department by whatever designation called - Member
- Principal Secretary, Revenue Department - Member
- Commissioner and Secretary Forest Department - Member
- Secretary Legislative Department - Member
- Commissioner & Secretary of the line Department to which the project belongs - Member
- Commissioner & Secretary P&D i/c PPP Cell - Member Convenor

Besides, Principal Secretary of the Karbi Anglong Autonomous Council, NC Hills Autonomous Council, Bodoland Territorial Council, as the case may be, will be co-opted as member for the projects requiring the involvement of these Councils. Empowered Committee on PPP will be free to co-opt members from other Departments as and when considered necessary.

5.2.2 Responsibilities, Powers & Functions of Empowered Committee for PPP

The Empowered Committee on PPP shall be the nodal agency to achieve the policy goals and co-ordinate with various authorities of the State and Central Government to facilitate private sector investment in developing infrastructure through PPP mode.

The Powers and Functions of the Empowered Committee on PPP would include:

- a) Prepare and seek the approval for the shelf of projects to be developed through PPP mode.
- b) Sanction, authorize expenditure by Departments for PPP projects
- c) Adopt, develop Model Concession Agreements for various sectors
- d) Recommend projects for Viability Gap Funding to Government of India.
- e) Deliberate and recommend to Apex Authority the final bids for approval of the projects involving investment above Rs. 100 Crores.
- f) Deliberate and recommend to Apex Authority any special grants and concessions for ensuring financial viability of the project.
- g) Review and monitor PPP Projects during implementation, execution, operation and management.
- h) Sanction PPP Projects, approval of developer selected through competitive bidding and approval of concession agreements for PPP projects involving investment or where value of underlying assets is upto Rs.100 Crores.
- i) Settle disputes between the parties.
- j) Sanction fund out of Project Development fund for undertaking project development activities.

5.3 PPP Cell

The Empowered Committee on PPP shall be assisted by the PPP Cell, already established in the P&D Department of the Government of Assam.

The PPP Cell is to be assisted by the financial, legal consultants appointed under ADB assisted technical assistance programme.

5.3.1 Functions of the PPP Cell

The Functions of the PPP Cell and its Technical Secretariat would include:

- a) To identify, conceptualize and create a shelf of projects in consultation with the line departments and seek approval of such projects for PPP from time to time from the Empowered Committee on PPP/Apex Authority.
- b) To assist different government departments in preparing pre-feasibility reports by itself or through consultants.
- c) Evaluate PPP projects from financial, Legal angles.
- d) Provide technical support in terms of finance, law to the Apex Authority and Empowered Committee on PPP.
- e) To assist the respective departments in preparing Detailed Project Reports
- f) To help respective departments to conduct the bidding process for selection of developers.
- g) To interact with the Department of Economic Affairs, Ministry of Finance, GOI for obtaining approval under the scheme of Viability gap funding (VGF).
- h) To act as the nodal agency for capacity building for PPP in the state.

6. PROCEDURE FOR SELECTION AND APPROVAL OF PPP PROJECTS

6.1 Project Identification/Conceptualization

State Government Departments/ Agencies in consultation with PPP Cell shall identify/ conceptualize infrastructure projects to be developed in the State through PPP mode and prepare a shelf of projects. Concerned Department will move the proposal with a concept note for inclusion in the shelf of projects. Approval for shelf of projects will be obtained from Empowered Committee on PPP.

6.2 Preparation of Preliminary Feasibility Report

State Government departments with assistance of the PPP Cell will prepare the preliminary feasibility report for the identified projects. The preliminary feasibility report should establish the need for the project to be undertaken in PPP mode, contours of the project, rough project cost estimation, cost benefit analysis and indicative commercial viability of the proposed project.

6.3 In Principle Approval of Projects for development under PPP Mode.

Preliminary feasibility report will then be submitted to the PPP Cell along with other details in the formats that will be prepared for the purpose by the PPP Cell. On receipt of the preliminary feasibility report and other information from the State Government Department PPP Cell will forward the same to Finance Department, Planning and Development Department and other concerned Deptts for their comments to be submitted within 30 days. The PPP Cell will then place proposal along with the comments of these Departments before the Empowered Committee on PPP. The Empowered Committee on PPP shall review the proposal based on its merit, and recommend the proposal to the Apex Authority for grant of in-principle approval.

7. PREPARATION OF DPR, Setting up of SPV AND SELECTION OF DEVELOPERS

7.1 Preparation of DPR

On obtaining in principle approval of the Apex Authority the respective government department/agency shall prepare a DPR. DPR should specifically indicate cost benefits of the project considering social and environmental factors. If there is need to engage a consultant for preparation of DPR, preparation of various contractual, concession and bid documents and assisting the Department in selection of investor, the same should be done through the transaction advisors short listed by the Ministry of Finance, Government of India. The list and the procedure to be followed has already been circulated to various Departments by PPP cell vide letter no. PDP:115/2002/pt-II/209 dated 11/9/2007. It should however be ensured that the transaction advisor selected for the project will not act as consultant/facilitator to any of the prospective bidders to avoid conflict of interest. The bid process shall be fully transparent and conforming to best practices in the Sector.

7.2 Setting up of Special Purpose Vehicle

There would be projects requiring substantial amount of land and other statutory clearances which is not only time consuming but requires constant follow up by competent professionals. Further these lands and clearances need to be transferred to the selected investor at a later date. It will be preferable to take up project development activities in respect of such projects by setting up a SPV, preferably in joint venture with the consultant selected for preparation of DPR and assisting the Department in selection of Investor. In such cases the expenditure incurred in obtaining land, other clearances and fees of consultants will be recovered from the selected investor.

7.3 Selection of Investor

Selection of investor will be made through open and transparent Competitive Bidding process. Before floating bids, the approval of Empowered Committee on PPP will be obtained for the bidding criteria and bid process.

7.4 Approval of Investor

The outcome of the bidding process along with required particulars in the formats to be devised by PPP Cell for the purpose will be submitted to the PPP Cell. On receipt of the proposal from the State Government Department PPP Cell will forward the same to Finance Department, Planning and Development Department and other concerned Deptts for their comments to be submitted within 30 days. The proposal along with the comments of the

Departments will be placed before Empowered Committee on PPP or Apex Authority through Empowered Committee on PPP depending upon the investment requirement for final approval before award of the project to the investor. On approval of the investor the SPV formed for the project will be transferred to the investor.

In cases where bidding criteria is based on the Viability Gap Funding (VGF) the procedure laid by Government of India, Ministry of Finance, in the VGF scheme will be followed in toto.

8 State Support Agreement

Concerned Department of the Government will sign a State Support Agreement with the investor to facilitate early financial closure and implementation.

State Support may, inter alia include:

a) Political Support

Commitment on behalf of the Government that the project and its assets will not be Nationalized during the Concession period.

b) Financial Support

In addition to the viability gap funding from GoI and other incentives available under NEIIP 2007, the State Government may also contribute for the remaining portion of Viability Gap as emerged from the open bid in cash or through other concessions if the State Government is of the opinion that providing such contribution is necessary in greater public interest.

c) Other Support

- i) Facilitate acquiring of land necessary for the project.
- ii) Assistance in rehabilitation & resettlement of affected families.
- iii) Facilitate obtaining all State & Central Government clearances as may be required for the project.
- iv) Facilitate the process of availing benefits under various NEIIP 2007, State Government Industrial Policy incentives wherever applicable.
- v) Facilitate provision of supply of power and water at projects site.

9. Project development fund

Planning & Development Department will provide initial fund Rs 20.00 Crores for project development activities from untied fund. A Department of Government seeking to develop a project to be undertaken in PPP mode will be entitled to seek sanction from this fund for project development.

10. Settlement of Disputes

In the event of a dispute, both parties (Government Department and selected investor) will make sincere attempt to resolve the dispute amicably. If both the parties fail to reach the settlement the matter will be referred to Empowered Committee in PPP who will resolve the dispute in terms of various agreements/concession failing which the matter will be dealt with under the provisions of Reconciliation & Arbitration Act.

A. K. SACHAN

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Planning & Development Department, Dispur.