



Government of India
Ministry of Finance
Department of Economic Affairs



Guidelines for Formulation, Appraisal and Approval of

Central Sector Public Private Partnership Projects



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Government of India
Ministry of Finance
Department of Economic Affairs

Guidelines for Formulation, Appraisal and Approval of

Central Sector Public Private Partnership Projects

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Contents

Preface	iii
Abbreviations	v
I. Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects Projects of all sectors costing Rs. 250 crore or more or under NHDP costing Rs. 500 crore or more	I
1. Introduction	1
2. Institutional Structure	1
3. Applicability	1
4. Project Identification	1
5. Inter-ministerial Consultations	2
6. 'In Principle' Approval of PPPAC	2
7. Expression of Interest	2
8. Formulation of Project Documents	2
9. Appraisal/Approval of PPPAC	2
10. Invitation of Bids	3
11. Time Frame	3
12. Exemption from the above Procedure	3
Annex-I Institutional Structure	4
Annex-II Memorandum for PPP Appraisal Committee (For 'In Principle' Approval)	5
Appendix-A Term Sheet of the Proposed Concession Agreement	7
Annex-III Memorandum for PPP Appraisal Committee (For Final Approval)	9
Appendix-A Brief Particulars of the Concession Agreement	10
Annex-IV Time required for various steps under the appraisal procedure for PPP projects	12

2. Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects	13
(i) Costing greater than Rs. 100 crore but less than Rs. 250 crore for all sectors	
(ii) Costing Rs. 250 crore or more but less than Rs. 500 crore under NHDP	
1. Introduction	13
2. Institutional Structure	13
3. Applicability	14
4. Project Identification	14
5. Formulation of Project Documents	15
6. Appraisal/Approval of SFC	15
7. Approval by Committee consisting of Secretary, DEA and Secretary of Administrative Ministry	15
8. Invitation of Bids	16
9. Time Frame	16
10. Exemption from the above Procedure	16
Annex-I Memorandum for SFC	17
Appendix-A Brief Particulars of the Concession Agreement	19
Annex-II Time required for various steps under the Appraisal Procedure	22
3. Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects	23
Costing less than Rs. 100 crore	
1. Introduction	23
2. Institutional Structure	23
3. Applicability	23
4. Project Identification	24
5. Inter-ministerial Consultations	24
6. Formulation of Project Documents	24
7. Appraisal/Approval of SFC/EFC	24
8. Invitation of Bids	25
9. Time Frame	25
10. Exemption from the above Procedure	25
Annex-I Memorandum for SFC/EFC	26
Appendix-A Brief Particulars of the Concession Agreement	28
Annex-II Time required for various steps under the appraisal procedure for PPP projects	30
4. Procedure for Approval of Public Private Partnership Projects	31
Setting up of Public Private Partnership Appraisal Committee	
Annex-I Approval Procedures for Public Private Partnership Projects	32

Preface

Provision of quality infrastructure is critical for the economy to attain a higher growth trajectory on a sustained basis. While stepping up public investments in infrastructure, the Government has been actively engaged in finding the appropriate policy framework, which gives the private sector adequate confidence to invest in infrastructure projects and simultaneously preserves adequate checks and balances through transparency, competition and regulation. Consequently, Public Private Partnerships (PPPs) are being encouraged for execution and operation of infrastructure projects. In addition to leveraging public capital to attract private capital and undertaking a larger shelf of infrastructure projects, PPPs bring in the advantages of private sector expertise and cost reducing technologies as well as efficiencies in operation and maintenance.

The transactions involved in implementing PPP projects are complex and critical. The high initial investments, transfer of public assets to the private sector partner for the concession period, the need to balance the divergent needs of the commercial private interests with the objectives of inclusive growth underline the criticality of project structuring. In order to make the projects commercially viable, often, Government support in the form of capital grant may also be required. To achieve economically optimum gains from private participation in infrastructure projects, fair allocation of risks amongst the private and Government partners and balancing of gains to both the parties is crucial. Due diligence is also essential given the substantial contingent liability that could devolve on the State in such projects.

Recognising these requirements, Government of India has notified guidelines for formulation, appraisal and approval of central sector PPP projects to ensure speedy appraisal of projects, adopt international best practices and have uniformity in appraisal mechanism and guidelines.

The Public Private Partnership Appraisal Committee (PPPAC), with Secretary (Economic Affairs) as the Chairman and Secretary (Planning Commission), Secretary (Expenditure), Secretary (Legal Affairs) and Secretary of the Department sponsoring the project as members has been set-up with the

While stepping up public investments in infrastructure, the Government has been actively engaged in finding the appropriate policy framework, which gives the private sector adequate confidence to invest in infrastructure projects and simultaneously preserves adequate checks and balances through transparency, competition and regulation

Government of India has notified guidelines for formulation, appraisal and approval of central sector PPP projects to ensure speedy appraisal of projects, adopt international best practices and have uniformity in appraisal mechanism and guidelines

objective to fast track the appraisal and approval of PPP projects of all sectors, where the capital costs or underlying value of the assets is Rs. 250 crore or more or under NHDP where the capital costs or underlying value of the assets is Rs. 500 crore or more.

Guidelines have also been notified for central sector PPP projects with project cost of less than Rs. 100 crore; as well as for PPP projects of all sectors costing between Rs. 100 crore and 250 crore and under NHDP costing Rs. 250 crore or more but less than Rs. 500 crore.

This compendium brings together the guidelines notified by Government of India for the formulation, appraisal and approval of central sector PPP projects. It is hoped that the compilation will be an important reference to the Sponsoring Authorities while structuring their PPP projects.

Abbreviations

BOLT	Build Operate Lease Transfer
BOOT	Build Operate Own Transfer
BOT	Build Operate Transfer
CCEA	Cabinet Committee on Economic Affairs
CPSEs	Central Public Sector Enterprises
DEA	Department of Economic Affairs
EFC	Expenditure Finance Committee
GoI	Government of India
IRR	Internal Rate of Return
MCA	Model Concession Agreement
NHAI	National Highways Authority of India
NHDP	National Highways Development Project
PAMD	Project Appraisal and Monitoring Division
PIB	Public Investment Board
PPP	Public Private Partnership
PPPAU	PPP Appraisal Unit
RFP	Request for Proposals
RFQ	Request for Qualification
SFC	Standing Finance Committee

Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects

Projects of all sectors costing Rs. 250 crore or more or under NHDP costing Rs. 500 crore or more*

1. Introduction

1.1 The Central Government has notified a system for appraisal/approval of projects to be undertaken through Public Private Partnership (PPP). Detailed procedure to be followed for this purpose is specified below.

2. Institutional Structure

2.1 The institutional structure for the appraisal/approval mechanism is specified at Annex-I.

3. Applicability

3.1 These guidelines will apply to all PPP projects sponsored by Central Government Ministries or Central Public Sector Undertakings (CPSUs), statutory authorities or other entities under their administrative control.

3.2 The procedure specified herein will apply to all PPP projects with capital costs exceeding Rs. 100 crore or where the underlying assets are valued at a sum greater than Rs. 100 crore. For appraisal/approval of PPP projects involving a lower capital cost/value, detailed instructions will be issued by the Department of Expenditure.

4. Project Identification

4.1 The sponsoring Ministry will identify the projects to be taken up through PPPs and undertake preparation of feasibility studies, project agreements etc. with the assistance of legal, financial and technical experts as necessary.

The guidelines and procedures will apply to all PPP projects sponsored by central government, CPSUs, statutory authorities or entities under their administrative control

Note: The Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects were notified by Ministry of Finance, Department of Economic Affairs, vide OM No. 1/5/2005 - PPP, dated January 12, 2006.

* In accordance with procedure approved by CCEA in the meetings of October 27, 2005 and March 22, 2007.

In cases where the PPP project is based on a duly approved Model Concession Agreement, 'in principle' clearance by the PPPAC would not be necessary. In such cases, approval of the PPPAC may be obtained before inviting the financial bids

5. Inter-ministerial Consultations

5.1 The Administrative Ministry may, if deemed necessary, discuss the details of the project and the terms of concession agreement in an inter-ministerial consultative committee and comments, if any, may be incorporated or annexed to the proposal for consideration of PPPAC.

5.2 There could be projects, which involve more than one Ministry/ Department. While considering such projects, PPPAC may seek participation of such Ministries/Departments.

6. 'In Principle' Approval of PPPAC

6.1 While seeking 'in principle' clearance of PPPAC, the Administrative Ministry shall submit its proposal (in six copies, both in hard and soft form) to the PPPAC Secretariat in the format specified at Annex-II and accompanied by the pre-feasibility/feasibility report and a term-sheet containing the salient features of the proposed project agreements.

6.2 PPPAC Secretariat will circulate the copies of PPPAC memo and associated documents to all concerned. A meeting of the PPPAC will be convened within three weeks to consider the proposal for 'in principle' approval.

6.3 In cases where the PPP project is based on a duly approved Model Concession Agreement (MCA), 'in principle' clearance by the PPPAC would not be necessary. In such cases, approval of the PPPAC may be obtained before inviting the financial bids as detailed below.

7. Expression of Interest

7.1 Following the 'in principle' clearance of PPPAC, the Administrative Ministry may invite expressions of interest in the form of Request for Qualification (RFQ) to be followed by shortlisting of pre-qualified bidders.

8. Formulation of Project Documents

8.1 The documents that would need to be prepared would, *inter alia*, include the various agreements to be entered into with the concessionaire detailing the terms of the concession and the rights and obligations of the various parties. These project documents would vary depending on the sector and type of project. Typically, a PPP will involve the concession agreement that will specify the terms of the concession granted to the private party and will include the rights and obligations of all parties. There could be associated agreements based on specific requirements.

9. Appraisal/Approval of PPPAC

9.1 RFP (Request for Proposals), i.e. invitation to submit financial bids, should normally include a copy of all the agreements that are proposed to be

entered into with the successful bidder. After formulating the draft RFP, the Administrative Ministry would seek clearance of the PPPAC before inviting the financial bids.

9.2 The proposal for seeking clearance of PPPAC shall be sent (in six copies) to the PPPAC Secretariat in the format specified at Annex-III along with copies of all draft project agreements and the Project Report. The proposal will be circulated by PPPAC Secretariat to all members of the PPPAC.

9.3 Planning Commission will appraise the project proposal and forward its Appraisal Note to the PPPAC Secretariat. Ministry of Law and any other Ministry/Department involved will also forward written comments to the PPPAC Secretariat within the stipulated time period. The PPPAC Secretariat will forward all the comments to the Administrative Ministry for submitting a written response to each of the comments.

9.4 The concession agreement and any supporting agreements/documents thereof, alongwith the PPPAC Memo, will be submitted for consideration of PPPAC. The PPPAC will take a view on the Appraisal Note and on the comments of different Ministries, alongwith the response from the Administrative Ministry.

9.5 PPPAC will either recommend the proposal for approval of the competent authority (with or without modifications) or request the Administrative Ministry to make necessary changes for further consideration of PPPAC.

9.6 Once cleared by the PPPAC, the project would be put up to the competent authority for final approval. The competent authority for each project will be the same as applicable for projects approval by PIB.

10. Invitation of Bids

10.1 Financial bids may be invited after final approval of the competent authority has been obtained. However, pending approval of the competent authority, financial bids could be invited after clearance of PPPAC has been conveyed.

11. Time Frame

11.1 The time frame for the appraisal of projects under the above procedure is at Annex-IV.

12. Exemption from the above Procedure

12.1 Ministry of Defence, Department of Atomic Energy and Department of Space will not be covered under the purview of these guidelines.

PPPAC will either recommend the proposal for approval of the competent authority (with or without modifications) or request the Administrative Ministry to make necessary changes for further consideration of PPPAC

Annex-I

Institutional Structure

The PPPAC has been set up pursuant to the decision of the CCEA in the meeting of October 27, 2005

Public Private Partnership Appraisal Committee

Pursuant to the decision of the Cabinet Committee on Economic Affairs (CCEA) in its meeting of October 27, 2005 a Public Private Partnership Appraisal Committee (PPPAC) has been set up comprising of the following:

- (a) Secretary, Department of Economic Affairs (in the Chair)
- (b) Secretary, Planning Commission
- (c) Secretary, Department of Expenditure
- (d) Secretary, Department of Legal Affairs and
- (e) Secretary of the Department sponsoring a project

The Committee may co-opt experts as necessary.

2. The Committee would be serviced by the Department of Economic Affairs, who will set up a special cell, called the PPPAC Secretariat for servicing such proposals.

3. The Ministry of Finance will be the nodal Ministry responsible for examining concession agreements from the financial angle, deciding on guarantees to be extended, and generally assesses risk allocation from the investment and banking perspectives. It would also ensure that projects are scrutinised from the perspective of government expenditure.

4. The Planning Commission will set up a PPP Appraisal Unit (PPPAU), similar to the existing PAMD which appraises public sector projects. This unit will prepare an appraisal note for the PPPAC providing specific suggestions for improving the concession terms, where this is possible.

5. Ministry of Law and Justice, Department of Legal Affairs, would also be represented on the PPP Appraisal Committee, as the concession agreements would require careful legal scrutiny.

Annex-II

Memorandum for PPP Appraisal Committee

For 'In Principle' Approval

S. No.	Item	Description
1	General	
1.1	Name of the Project	
1.2	Type of PPP (BOT, BOOT, BOLT, OMT etc.)	
1.3	Location (State/District/Town)	
1.4	Administrative Ministry/Department	
1.5	Name of Sponsoring Authority	
1.6	Name of the Implementing Agency	
2	Project Description	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Possible alternatives, if any	
2.4	Estimated capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimated.	
2.5	Phasing of investment	
2.6	Project Implementation Schedule (PIS)	
3	Financing Arrangements	
3.1	Sources of financing (equity, debt, mezzanine capital etc.)	
3.2	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions.	
3.3	Indicate the Net Present Value (NPV) of revenue streams with 12 percent discounting	
3.4	Who will fix the tariff/user charges? Please specify in detail.	
3.5	Have any FIs been approached? If yes, their response may be indicated.	

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Projects of all sectors costing Rs. 250 crore or more or under NHDP costing Rs. 500 crore or more

S. No.	Item	Description
4	IRR	
4.1	Economic IRR (if computed)	
4.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	
5	Clearances	
5.1	Status of environmental clearances	
5.2	Clearance required from the State Government and other local bodies	
5.3	Other support required from the State Government	
6	Gol Support	
6.1	Viability Gap Funding, if required	
6.2	Gol guarantees being sought, if any	
7	Concession Agreement	
7.1	Term sheet of the proposed Concession Agreement (Attached at Appendix-A)	
8	Criteria for shortlisting	
8.1	Is shortlisting to be in one stage or two stages?	
8.2	Indicate the criteria for shortlisting (attach separate sheet if necessary)	
9	Others	
9.1	Remarks, if any	

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Appendix-A

Term Sheet of the Proposed Concession Agreement

- A. Sponsoring Ministry: C. Legal Consultant:
B. Name and location of the Project: D. Financial Consultant:

S. No.	Item	Description
1	General	
1.1	Scope of the Project (Please state in about 200 words)	
1.2	Nature of Concession to be granted	
1.3	Period of Concession and justification for fixing the period	
1.4	Estimated capital cost	
1.5	Likely construction period	
1.6	Conditions precedent, if any, for the concession to be effective	
1.7	Status of land acquisition	
2	Construction and O&M	
2.1	Monitoring of construction; whether an independent agency/engineer is contemplated	
2.2	Minimum standards of Operation and Maintenance	
2.3	Penalties for violation of prescribed O&M standards	
2.4	Safety related provisions	
2.5	Environment related provisions	
3	Financial	
3.1	Maximum period for achieving financial close	
3.2	Nature and extent of capital grant/subsidy contemplated	
3.3	Bidding parameter (capital subsidy or other parameter)	
3.4	Provisions for change of scope and the financial burden thereof	
3.5	Concession fee, if any, payable by the Concessionaire	
3.6	User charges/fee to be collected by the Concessionaire	
3.7	Indicate how the user fee is to be determined; the legal provisions in support of user fee (attach the relevant rules/notification); and the extent and nature of indexation for inflation	

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Projects of all sectors costing Rs. 250 crore or more or under NHDP costing Rs. 500 crore or more

S. No.	Item	Description
3.8	Provisions, if any, for mitigating the risk of lower revenue collection	
3.9	Provisions relating to escrow account, if any	
3.10	Provisions relating to insurance	
3.11	Provisions relating to audit and certification of claims	
3.12	Provisions relating to assignment/substitution rights relating to lenders	
3.13	Provisions relating to change in law	
3.14	Provisions, if any for compulsory buy-back of assets upon termination/expiry	
3.15	Contingent liabilities of the government	
	a. Maximum Termination Payment for Government/ Authority Default	
	b. Maximum Termination Payment for Concessionaire Default	
	c. Specify any other penalty, compensation or payment contemplated under the agreement	
4	Others	
4.1	Provisions relating to competing facilities, if any	
4.2	Specify the proposed Dispute Resolution Mechanism	
4.3	Specify the proposed governing law and jurisdiction	
4.4	Other remarks, if any	

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Annex-III

Memorandum for PPP Appraisal Committee

For Final Approval

S. No.	Item	Description
1	General	
1.1	Name of the Project	
1.2	Type of PPP (BOT, BOOT, BOLT, OMT etc.)	
1.3	Location (State/District/Town)	
1.4	Administrative Ministry/Department	
1.5	Name of Sponsoring Authority	
1.6	Name of the Implementing Agency	
2	Project Description	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Possible alternatives, if any	
2.4	Estimated Capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimation	
2.5	Phasing of investment	
2.6	Project Implementation Schedule (PIS)	
3	Financing Arrangements	
3.1	Sources of financing (equity, debt, mezzanine capital etc.)	
3.2	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions	
3.3	Indicate the NPV of revenue streams with 12 percent discounting	
3.4	Who will fix the tariff/user charges? Please specify in detail	
3.5	Have any FIs been approached? If yes, their response may be indicated	
4	IRR	
4.1	Economic IRR (if computed)	
4.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	
5	Clearances	
5.1	Status of environmental clearances	
5.2	Clearance required from the State Government and other local bodies	
5.3	Other support required from the State Government	
6	Gol Support	
6.1	Viability Gap Funding, if required	
6.2	Gol guarantees being sought, if any	
7	Concession Agreement	
7.1	Is the Concession Agreement based on MCA? If yes, indicate the variations, if any, in a detailed note (to be attached)	
7.2	Details of Concession Agreement (Attached at Appendix-A)	
8	Criteria for shortlisting	
8.1	Is shortlisting to be in one stage or two stages?	
8.2	Indicate the criteria for shortlisting (attach separate sheet if necessary)	
9	Others	
9.1	Remarks, if any	

Brief Particulars of the Concession Agreement

A. Sponsoring Ministry:

C. Legal Consultant:

B. Name and location of the Project:

D. Financial Consultant:

S.No.	Item	Clause No.	Description
1	General		
1.1	Scope of the Project (Please state in about 200 words)		
1.2	Nature of Concession to be granted		
1.3	Period of Concession and justification for fixing the period		
1.4	Estimated capital cost		
1.5	Likely construction period		
1.6	Conditions precedent, if any, for the concession to be effective		
1.7	Status of land acquisition		
2	Construction and O&M		
2.1	Monitoring of construction; whether an independent agency/engineer is stipulated		
2.2	Minimum standards of Operation and Maintenance		
2.3	Penalties for violation of prescribed O&M standards		
2.4	Safety related provisions		
2.5	Environment related provisions		
3	Financial		
3.1	Maximum period for achieving financial close		
3.2	Nature and extent of capital grant/subsidy stipulated		
3.3	Bidding parameter (capital subsidy or other parameter)		
3.4	Provisions for change of scope and the financial burden thereof		
3.5	Concession fee, if any, payable by the Concessionaire		
3.6	User charges/fee to be collected by the Concessionaire		

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S.No.	Item	Clause No.	Description
3.7	Indicate how the user fee has been determined; the legal provisions in support of user fee (attach the relevant rules/notification); and the extent and nature of indexation for inflation		
3.8	Provisions, if any, for mitigating the risk of lower revenue collection		
3.9	Provisions relating to escrow account, if any		
3.10	Provisions relating to insurance		
3.11	Provisions relating to audit and certification of claims		
3.12	Provisions relating to assignment/substitution rights relating to lenders		
3.13	Provisions relating to change in law		
3.14	Provisions, if any for compulsory buy-back of assets upon termination/ expiry		
3.15	Contingent liabilities of the government		
	a. Maximum Termination Payment for Government/Authority Default		
	b. Maximum Termination Payment for Concessionaire Default		
	c. Specify any other penalty, compensation or payment contemplated under the agreement		
4	Others		
4.1	Provisions relating to competing facilities, if any		
4.2	Specify the Dispute Resolution Mechanism		
4.3	Specify the governing law and jurisdiction		
4.4	Other remarks, if any		

Annex-IV

Time required for various steps under the appraisal procedure for PPP projects

S.No.	Action	Time taken
1.	'In principle' approval by PPPAC	Three weeks from the time of submission of the proposal by the Administrative Ministry
2.	Comments of Planning Commission, DEA or any other Ministry/Deptt. on the final documents forwarded by the Administrative Ministry	Four weeks from the time of submission of the final documents by the Administrative Ministry
3.	Final approval by PPPAC	Three weeks from the submission of the PPPAC Memo along with final documents by the Administrative Ministry

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Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects

- (i) Costing greater than Rs. 100 crore but less than Rs. 250 crore for all sectors
- (ii) Costing Rs. 250 crore or more but less than Rs. 500 crore under NHDP

1. Introduction

1.1 The procedure approved for appraisal of Public Private Partnership (PPP) projects by decision of CCEA in its meeting of October 27, 2005, as notified vide DEA notification No. 2/10/2004-INF dated November 29, 2005, has been modified by decision of CCEA in its meeting of March 22, 2007, as notified vide DEA notification No. 10/32/2006-INF dated April 2, 2007.

1.2 Detailed procedure to be followed for appraisal/approval of PPP projects (i) of all sectors of cost greater than Rs. 100 crore but less than Rs. 250 crore and (ii) under NHDP of cost Rs. 250 crore or more but less than Rs. 500 crore and fulfilling certain conditions as stated in para 3.1 (ii) (a) to (c) is specified below.

2. Institutional Structure

2.1 Pursuant to the decision of the CCEA notified vide notification of DEA dated April 2, 2007,

- i. For appraisal of PPP projects of all sectors of cost greater than Rs. 100 crore but less than Rs. 250 crore, a Committee has been set up comprising of the following:
 - a. Secretary, Department of Economic Affairs
 - b. Secretary of the Ministry/Department sponsoring the project
- ii. For appraisal of projects under NHDP and major ports¹ of cost Rs. 250 crore or more but less than Rs. 500 crore and which fulfill conditions as specified in para 3.1 (ii) (a) to (c) below, the Committee shall be as follows:
 - a. Secretary, Department of Economic Affairs
 - b. Secretary, Road Transport and Highways or Secretary, Shipping

Note : These guidelines have been notified by Ministry of Finance, Department of Economic Affairs vide OM No 10/3/2006-Infra dated July 24, 2007

¹Added pursuant to the decision of the CCEA in its meeting held on October 31, 2012

For appraisal of PPP projects, a Committee comprising the Secretary, DEA and Secretary of the Ministry/Department sponsoring the project has been set up

2.2 Initially the projects will be appraised by the Standing Finance Committee (SFC). The composition of SFC will be as follows:

Secretary of the Administrative Ministry	Chairman
Financial Adviser	Member
Joint Secretary of the concerned Division	Member
Representative of the Department of Legal Affairs	Member

Representative of Planning Commission and any other Ministry/Department may also be invited, if required. SFC will either recommend the proposal for approval to the Committee in para 2.1 above or request the Administrative Ministry to make necessary changes for further consideration of SFC.

2.3 The competent authority for each project will be the same as applicable for normal investment proposals costing more than Rs. 100 crore but less than Rs. 500 crore.

3. Applicability

3.1 The procedure specified below will apply to the following PPP projects sponsored by Central Government Ministries, statutory authorities or other entities under their administrative control:

- i. Projects of all sectors costing more than Rs. 100 crore and less than Rs. 250 crore
- ii. NHDP projects of cost Rs. 250 crore or more but less than Rs. 500 crore which fulfill the following conditions:
 - a. The bidding is according to the procedure endorsed by PPPAC. This includes the process of two-stage bidding, pre-bid qualification norms etc. This implies that in the first stage, NHAI could short list and pre-qualify bidders on the basis of pre-bid qualification norms for inviting financial bids in the second stage.
 - b. The Model Concession Agreement (MCA) approved by the Competent Authority is being followed.
 - c. The project has been designed in accordance with the manual of standards and specifications as approved by the competent authority in the Administrative Ministry and stipulated in the approved MCA.

3.2 Projects of cost Rs. 250 crore or more and less than Rs. 500 crore which do not fulfill the conditions as stated in para 3.1(ii) (a) to (c) above would be submitted by the Administrative Ministry to the PPPAC for approval.

4. Project Identification

4.1 The sponsoring Ministry/entity will identify the projects to be taken up through PPPs and undertake preparation of feasibility studies, project

The bidding is according to the procedure endorsed by Public Private Partnership Appraisal Committee

agreements etc. with the assistance of legal, financial and technical experts as necessary.

5. Formulation of Project Documents

5.1 The documents that would need to be prepared would, *inter alia*, include the various agreements to be entered into with the Concessionaire detailing the terms of the concession and the rights and obligations of the various parties. These project documents would vary depending on the sector and type of project. Typically, a PPP will involve the concession agreement that will specify the terms of the concession granted to the private party and will include the rights and obligations of all parties. There could be associated agreements based on specific requirements.

6. Appraisal/Approval of SFC

6.1 RFP (Request for Proposals), i.e. invitation to submit financial bids should include a copy of all the agreements that are proposed to be entered into with the successful bidder. After formulating the draft RFP, the Administrative Ministry would seek clearance of the SFC.

6.2 The proposal for seeking clearance of SFC shall be circulated to all members of SFC in the format specified at Annex-I along with copies of all draft project agreements and the Project Report within one week of receipt.

6.3 Planning Commission will appraise the project proposal and forward its Appraisal Note to the Administrative Ministry. Ministry of Law and any other Ministry/Department involved will also forward written comments to the Administrative Ministry. The SFC will take a view on the Appraisal Note and on the comments of different ministries, along with the response from the Administrative Ministry.

6.4 SFC will either recommend the proposal for approval of the Committee in para 2.1 (i) or 2.1 (ii) above whichever is applicable (with or without modifications) or request the Administrative Ministry to make necessary changes for further consideration of SFC.

7. Approval by Committee in Para 2.1

7.1 Once cleared by the SFC, the project would be put up for approval of the Committee in para 2.1 on file. The Committee may either recommend the proposal for approval of the competent authority or request the Administrative Ministry to make necessary changes for further consideration of the Committee.

7.2 Once cleared by the Committee, the project would be put up to the competent authority for approval.

Once cleared by the SFC, the project would be put up for approval of the Committee on file

The competent authority for each project will be the same as applicable for normal investment proposals costing more than Rs. 100 crore

8. Invitation of Bids

8.1 Financial bids may be invited after approval of the competent Authority has been obtained. The competent authority for each project will be the same as applicable for normal investment proposals costing more than Rs. 100 crore. However, pending approval of the Competent Authority, financial bids could be invited after the approval/clearance by the Committee.

9. Time Frame

9.1 The time frame for the appraisal of projects under the above procedure is at Annex-II.

10. Exemption from the above Procedure

10.1 Ministry of Defence, Department of Atomic Energy and Department of Space will not be covered under the purview of these guidelines.

Annex-I

Memorandum for SFC

S. No.	Item	Description
1.	General	
1.1	Name of the Project	
1.2	Type of PPP (BOT, BOOT, BOLT, OMT etc.)	
1.3	Location (State/District/Town)	
1.4	Administrative Ministry/Department	
1.5	Name of the Sponsoring Authority	
1.6	Name of the Implementing Agency	
2	Project Description	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Possible alternatives, if any	
2.4	Estimated capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimation	
2.5	Phasing of investment	
2.6	Project Implementation Schedule (PIS)	
3	Financing Arrangements	
3.1	Sources of financing (equity, debt, mezzanine capital etc.)	
3.2	Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions	
3.3	Indicate the NPV of revenue streams with 12 percent discounting	

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S. No.	Item	Description
3.4	Who will fix the tariff/user charges? Please specify in detail	
3.5	Have any FIs been approached? If yes, their response may be indicated	
4	IRR	
4.1	Economic IRR (if computed)	
4.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	
5	Clearances	
5.1	Status of environmental clearances	
5.2	Clearance required from the State Government and other local bodies	
5.3	Other support required from the State Government	
6	Gol Support	
6.1	Viability Gap Funding, if required	
6.2	Gol guarantees being sought, if required	
7	Concession Agreement	
7.1	Is the Concession Agreement based on MCA? If yes, indicate the variations, if any, in a detailed note (to be attached)	
7.2	Details of Concession Agreement (Attached at Appendix-A)	
8	Criteria for shortlisting	
8.1	Is shortlisting to be in one stage or two stages?	
8.2	Indicate the criteria for shortlisting (attach separate sheet if necessary)	
9	Others	
9.1	Remarks, if any	

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Appendix-A

Brief Particulars of the Concession Agreement

A. Sponsoring Ministry:

C. Legal Consultant:

B. Name and location of the Project:

D. Financial Consultant:

S. No.	Item	Clause No.	Description
1	General		
1.1	Scope of the project (please state in about 200 words)		
1.2	Nature of Concession to be granted		
1.3	Period of Concession and justification for fixing the period		
1.4	Estimated capital cost		
1.5	Likely construction period		
1.6	Conditions precedent, if any, for the concession to be effective		
1.7	Status of land acquisition		
2	Construction and O&M		
2.1	Monitoring of construction; whether an independent agency/ engineer is stipulated		
2.2	Minimum standard of Operation and Maintenance		
2.3	Penalties for violation of prescribed O&M standard		
2.4	Safety related provisions		
2.5	Environment related provisions		
3	Financial		
3.1	Maximum period for achieving financial close		
3.2	Nature and extent of capital grant/subsidy stipulated		
3.3	Bidding parameter (capital subsidy or other parameter)		

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S. No.	Item	Clause No.	Description
3.4	Provisions for change of scope and the financial burden thereof		
3.5	Concession fee, if any, payable by the Concessionaire		
3.6	User charges/fee to be collected by the Concessionaire		
3.7	Indicate how the user fee has been determined; the legal provisions in support of user fee (attach the relevant rules/ notification); and the extent and nature of indexation for inflation		
3.8	Provisions, if any, for mitigating the risk of lower revenue collection		
3.9	Provisions relating to escrow account, if any		
3.10	Provisions relating to insurance		
3.11	Provisions relating to audit and certification of claims		
3.12	Provisions relating to assignment/substitution rights relating to lenders		
3.13	Provisions relating to change in law		
3.14	Provisions, if any for compulsory buy-back of assets upon termination/expiry		
3.15	Contingent liabilities of the government		
	a. Maximum Termination Payment for Government/Authority Default		
	b. Maximum Termination Payment for Concessionaire Default		
	c. Specify any other penalty, compensation or payment contemplated under the agreement		

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S. No.	Item	Clause No.	Description
4	Others		
4.1	Provisions relating to competing facilities, if any		
4.2	Specify the Dispute Resolution Mechanism		
4.3	Specify the governing law and jurisdiction		
4.4	Other remarks, if any		

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Annex-II

Time required for various steps under the appraisal procedure

S.No.	Action	Time taken
1.	Comments of Planning Commission, or any other Ministry/Department on the documents circulated by the Administrative Ministry	Three weeks from the time of circulation of the SFC memo by the Administrative Ministry
2.	Appraisal of proposal by SFC	Five weeks from the time of circulation of the SFC memo by the Administrative Ministry
3.	Clearance by Committee consisting of Secretary, DEA and Secretary of Administrative Ministry/ Secretary, DORTH on file	Seven weeks from the time of circulation of the SFC memo by the Administrative Ministry
4.	Approval by competent authority	Nine weeks from the time of circulation of the SFC Memo by the Administrative Ministry

Guidelines for Formulation, Appraisal and Approval of Public Private Partnership Projects

Costing less than Rs. 100 crore

1. Introduction

1.1 The Central Government has notified a system for appraisal/approval of projects to be undertaken through Public Private Partnership (PPP). Department of Economic Affairs has issued Guidelines for formulation, appraisal and approval of PPP projects with capital costs of Rs. 100 crore or where the underlying assets are valued at an amount greater than Rs. 100 crore. Detailed procedure to be followed for appraisal/approval of PPP projects involving less than Rs. 100 crore is specified below.

2. Institutional structure

2.1 Projects costing upto Rs. 5 crore will be appraised by the Administrative Ministry. Projects costing above Rs. 5 crore but less than Rs. 25 crore will be appraised by the Standing Finance Committee (SFC). The forum for appraisal of projects costing Rs. 25 crore and above but less than Rs. 100 crore will be the Expenditure Finance Committee (EFC) chaired by the Secretary of the Administrative Ministry. The composition of SFC and EFC will be the same as laid down for appraisal of normal investment proposals costing less than Rs. 100 crore, except that Department of Legal Affairs would also be represented on these Committees, as the concession agreements would require careful legal scrutiny. The competent authority for each project will be the same as applicable for normal investment proposals costing less than Rs. 100 crore.

The composition of SFC and EFC will be the same as laid down for appraisal of normal investment proposals except that Department of Legal Affairs would also be represented on these Committees

3. Applicability

3.1 These guidelines will apply to all PPP projects sponsored by Central Government Ministries, statutory authorities or other entities under their administrative control. In respect of CPSEs, these guidelines will apply only in respect of proposals which are beyond the existing delegated powers of CPSEs for normal investment decisions.

4. Project Identification

4.1 The sponsoring Ministry/entity will identify the projects to be taken up through PPPs and undertake preparation of feasibility studies, project agreements etc. with the assistance of legal, financial and technical experts as necessary.

5. Inter-ministerial Consultations

5.1 The Administrative Ministry will circulate the details of the project and the terms of concession agreement to the appraising agencies and comments received will be incorporated or annexed to the proposal for consideration of SFC/EFC.

5.2 There could be projects, which involve more than one Ministry/Department. While considering such projects, participation of such Ministries/Departments will be sought.

6. Formulation of Project Documents

6.1 The documents that would need to be prepared would, *inter alia*, include the various agreements to be entered into with the concessionaire detailing the terms of the concession and the rights and obligations of the various parties. These project documents would vary depending on the sector and type of project. Typically, a PPP will involve the concession agreement that will specify the terms of the concession granted to the private party and will include the rights and obligations of all parties. There could be associated agreements based on specific requirements.

7. Appraisal/Approval of SFC/EFC

7.1 RFP (Request for Proposals), i.e. invitation to submit financial bids, should normally include a copy of all the agreements that are proposed to be entered into with the successful bidder. After formulating the draft RFP, the Administrative Ministry would seek clearance of the SFC/EFC before inviting the financial bids.

7.2 The proposal for seeking clearance of SFC/EFC shall be circulated to all members of SFC/EFC in the format specified at Annex-I along with copies of all draft project agreements and the Project Report.

7.3 Planning Commission will appraise the project proposal and forward its Appraisal Note to the Administrative Ministry. Ministry of Law and any other Ministry/Department involved will also forward written comments to the Administrative Ministry within the stipulated time period. The SFC/EFC will take a view on the Appraisal Note and on the comments of different Ministries, alongwith the response from the Administrative Ministry.

While considering projects which involve more than one Ministry/Department, participation of such Ministries/Departments will be sought

7.4 SFC/EFC will either recommend the proposal for approval of the competent authority (with or without modifications) or request the Administrative Ministry to make necessary changes for further consideration of SFC/EFC.

7.5 Once cleared by the SFC/EFC, the project would be put up to the competent authority for approval.

8. Invitation of Bids

8.1 Financial bids may be invited after approval of the competent authority has been obtained. The competent authority for each project will be the same as applicable for normal investment proposals costing less than Rs. 100 crore.

Financial bids may be invited after approval of the competent authority has been obtained

9. Time Frame

9.1 The time frame for the appraisal of projects under the above procedure is at Annex-II.

10. Exemption from the above Procedure

10.1 Ministry of Defence, Department of Atomic Energy and Department of Space will not be covered under the purview of these guidelines.

Annex-I

Memorandum for SFC/EFC

S. No.	Item	Description
1	General	
1.1	Name of the Project	
1.2	Type of PPP (BOT, BOOT, BOLT, OMT etc.)	
1.3	Location (State/District/Town)	
1.4	Administrative Ministry/Department	
1.5	Name of Sponsoring Authority	
1.6	Name of the Implementing Agency	
2	Project Description	
2.1	Brief description of the project	
2.2	Justification for the project	
2.3	Possible alternatives, if any	
2.4	Estimated capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimation	
2.5	Phasing of investment	
2.6	Project Implementation Schedule (PIS)	
3	Financing Arrangements	
3.1	Sources of financing (equity, debt, mezzanine capital etc.)	
3.2	Indicate the revenue streams of the project (annual flows over project life). Also indicate the underlying assumptions.	
3.3	Indicate the NPV of revenue streams with 12 percent discounting	
3.4	Who will fix the tariff/user charges? Please specify in detail	
3.5	Have any FIs been approached? If yes, their response may be indicated	

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S. No.	Item	Description
4	IRR	
4.1	Economic IRR (if computed)	
4.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	
5	Clearances	
5.1	Status of environmental clearances	
5.2	Clearance required from the State Government and other local bodies	
5.3	Other support required from the State Government	
6	Gol Support	
6.1	Viability Gap Funding, if required	
6.2	Gol guarantees being sought, if any	
7	Concession Agreement	
7.1	Is the Concession Agreement based on MCA? If yes, indicate the variations, if any, in a detailed note (to be attached)	
7.2	Details of Concession Agreement (Attached at Appendix-A)	
8	Criteria for shortlisting	
8.1	Is shortlisting to be in one stage or two stages?	
8.2	Indicate the criteria for shortlisting (attach separate sheet if necessary)	
9	Others	
9.1	Remarks, If any	

Brief Particulars of the Concession Agreement

A. Sponsoring Ministry:

C. Legal Consultant:

B. Name and location of the Project:

D. Financial Consultant:

S. No.	Item	Clause No.	Description
1	General		
1.1	Scope of the project (please state in about 200 words)		
1.2	Nature of Concession to be granted		
1.3	Period of Concession and justification for fixing the period		
1.4	Estimated capital cost		
1.5	Likely construction period		
1.6	Conditions precedent, if any, for the concession to be effective		
1.7	Status of land acquisition		
2	Construction and O&M		
2.1	Monitoring of construction; whether an independent agency/engineer is stipulated		
2.2	Minimum standard of Operation and Maintenance		
2.3	Penalties for violation of prescribed O&M standard		
2.4	Safety related provisions		
2.5	Environment related provisions		
3	Financial		
3.1	Maximum period for achieving financial close		
3.2	Nature and extent of capital grant/subsidy stipulated		
3.3	Bidding parameter (capital subsidy or other parameter)		
3.4	Provisions for change of scope and the financial burden thereof		
3.5	Concession fee, if any, payable by the Concessionaire		
3.6	User charges/fee to be collected by the Concessionaire		

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S. No.	Item	Clause No.	Description
3.7	Indicate how the user fee has been determined; the legal provisions in support of user fee (attach the relevant rules/notification); and the extent and nature of indexation for inflation		
3.8	Provisions, if any, for mitigating the risk of lower revenue collection		
3.9	Provisions relating to escrow account, if any		
3.10	Provisions relating to insurance		
3.11	Provisions relating to audit and certification of claims		
3.12	Provisions relating to assignment/substitution rights relating to lenders		
3.13	Provisions relating to change in law		
3.14	Provisions, if any for compulsory buy-back of assets upon termination/expiry		
3.15	Contingent liabilities of the government		
	a. Maximum Termination Payment for Government/Authority Default		
	b. Maximum Termination Payment for Concessionaire Default		
	c. Specify any other penalty, compensation or payment contemplated under the agreement		
4	Others		
4.1	Provisions relating to competing facilities, if any		
4.2	Specify the Dispute Resolution Mechanism		
4.3	Specify the governing law and jurisdiction		
4.4	Other remarks, if any		

Annex-II

Time required for various steps under the appraisal procedure for PPP projects

S. No.	Action	Time taken
1.	Comments of Planning Commission, Deptt. Of Expenditure or any other Ministry/ Deptt. On the documents circulated by the Administrative Ministry	Four weeks from the time of circulation of the SFC/EFC memo by the Administrative Ministry
2.	Appraisal of proposal by SFC/EFC	Six weeks from the time of circulation of the SFC/ EFC memo by the Administrative Ministry
3.	Approval by Competent authority	Eight weeks from the time of circulation of the SFC/EFC Memo by the Administrative Ministry

Procedure for Approval of Public Private Partnership Projects

Setting up of Public Private Partnership Appraisal Committee

The Cabinet Committee on Economic Affairs (CCEA) in its meeting of October 27, 2005 approved the procedure for approval of public private partnership (PPP) projects. Pursuant to this decision, a Public Private Partnership Appraisal Committee (PPPAC) is being set up comprising of the following:

- (a) Secretary, Department of Economic Affairs (in the Chair);
 - (b) Secretary, Planning Commission;
 - (c) Secretary, Department of Expenditure;
 - (d) Secretary, Department of Legal Affairs; and
 - (e) Secretary of the Department sponsoring a project.
2. The Committee would be serviced by the Department of Economic Affairs, who will set up a special cell for servicing such proposals. The Committee may co-opt experts as necessary.
 3. The procedure approved by the CCEA for the approval of the PPP projects is enclosed at Annex-I. Detailed guidelines for the appraisal/ approval procedure will be notified separately by this Department.

Pradeep K. Deb
Joint Secretary to Government of India

Note: The procedure has been notified vide F.No.2/10/2004-INF, Ministry of Finance, Department of Economic Affairs, dated November 29, 2005.

Annex-I

Approval Procedures for Public Private Partnership Projects

1. The Central Government has in place an elaborate system for investment approval relating to Public sector projects revolving around the Public Investment Board (PIB) chaired by Secretary, Department of Expenditure with the Planning Commission providing independent appraisal through the Project Appraisal Division, followed by approval of the Cabinet/CCEA. Expenditure on approved projects is governed by financial rules and delegation of powers.

2. As government shifts to development through Public Private Partnership (PPP), it would be necessary to establish suitable approval mechanisms that aim at securing value for money. PPP projects in sectors such as roads, ports, airports and urban infrastructure are not ordinary private sector projects, which are governed by competitive markets, where prices are determined competitively and government resources are not involved. In the PPP projects, there would be need for due diligence by the government because the projects typically involve:

- i. Transfer of public assets, including land (e.g. an existing road or airport facility);
- ii. Delegation of governmental authority to collect and appropriate user charges that are levied by force of law and must therefore be 'reasonable';
- iii. Provision of services to users in a monopoly or semi-monopoly situation, which imposes a special obligation on the government to ensure adequate service quality; and
- iv. Sharing of risks and contingent liabilities by the government, e.g. when claims are made under the respective agreements or when the Central Government has to provide a backup guarantee for non-performance by the entity granting the concession. Even where an explicit guarantee is not included there is a danger that

As government shifts to development through Public Private Partnership, it would be necessary to establish suitable approval mechanisms that aim at securing value for money

non-performance on part of the State Governments could attract claims under bilateral investment promotion agreements.

3. PPPs are still at a nascent stage in India, but as reliance on PPPs increase, the terms of the projects will invite close scrutiny. Disputes arising out of project terms could also lead to significant payouts by the government, underscoring the importance of careful design of concession terms.

4. These concerns are not addressed even if project sponsors are selected through competitive bidding. In fact competitive bidding only creates a level playing field for selection of bidders; it may not necessarily secure good value in terms of performance standards, user concerns, public revenues and contingent liabilities. Project terms are, therefore, crucial.

5. Recognising these problems, it has been decided to stipulate the following mechanism for approving the PPP projects henceforth:

PPP Appraisal Committee

6. A PPP Appraisal Committee (PPPAC) on the model of the PIB will be set up comprising of the following:

- (a) Secretary, Department of Economic Affairs (in the Chair);
- (b) Secretary, Planning Commission;
- (c) Secretary, Department of Expenditure;
- (d) Secretary, Department of Legal Affairs; and
- (e) Secretary of the Department sponsoring a project.

The Committee would be serviced by the Department of Economic Affairs, who will set up a special cell for servicing such proposals. The Committee may co-opt experts as necessary.

7. The Ministry of Finance will be the nodal Ministry responsible for examining concession agreements from the financial angle, deciding on guarantees to be extended, and generally assesses risk allocation from the investment and banking perspectives. It would also ensure that projects are scrutinised from the perspective of government expenditure.

8. The Planning Commission will set up a PPP Appraisal Unit (PPPAU), similar to the existing PAMD which appraises public sector projects. This unit will prepare an appraisal note for the PPPAC providing specific suggestions for improving the concession terms, where this is possible.

Disputes arising out of project terms could also lead to significant payouts by the government, underscoring the importance of careful design of concession terms

9. Ministry of Law and Justice, Department of Legal Affairs, would also be represented on the PPP Appraisal Committee, as the concession agreements would require careful legal scrutiny.

10. In view of the size and complexity of PPP projects, it may be necessary to secure the assistance of qualified legal, financial or technical experts to undertake the requisite due diligence. This may be necessary in order to protect government interest, particularly in the face of highly qualified expertise that the private sector participants may employ while negotiating these projects. Planning Commission and the Finance Ministry would engage the experts as necessary.

11. Projects where the capital cost or underlying value of the assets is more than Rs. 100 crore would be brought before the PPP Appraisal Committee. Once cleared by the Committee, the project would be put up to the Competent Authority for final approval.

Project Formulation and Appraisal

12. The Ministry concerned may develop individual proposals using legal, financial and technical consultants and also avail the benefit of an inter-ministerial consultative group, if necessary. The proposal as formulated by the Ministry would be considered by the PPP Appraisal Committee for 'in principle' clearance before inviting expressions of interest from prospective investors.

13. Following the 'in principle' clearance of the PPP Appraisal Committee, the concerned Ministry may invite expressions of interest and develop the documents further. Where necessary inter-ministerial consultations and pre-bid conferences with bidders may also be held. The concession agreements thus finalised for the purposes of inviting financial bids should be cleared by the PPP Appraisal Committee before technical and financial bids are invited.

14. In cases where the PPP project is based on a duly approved Model Concession Agreement (MCA), 'in principle' clearance by the PPP Appraisal Committee would not be necessary. In such cases, approval of the PPP Appraisal Committee may be obtained only before inviting the technical and financial bids.

Concession agreements thus finalised for the purposes of inviting financial bids should be cleared by the PPP Appraisal Committee before technical and financial bids are invited

15. In case there are departures from the MCA which are not material or substantive, such departures may be cleared by the PPP Appraisal Committee with the approval of Finance Minister. Where the departures are material or substantive, approval of the authority that approved the MCA would be necessary.

16. For projects where the capital costs or underlying value of the assets is less than Rs. 100 crore, the Department of Expenditure would issue detailed guidelines for appraisal of concession agreements. Such projects would not require appraisal/approval of the PPP Appraisal Committee and would be cleared by the EFC/SFC as applicable.

17. The above arrangement enshrines an independent approval process. The administrative Ministry can adopt a “pro-active” developmental approach while the Planning Commission can focus on due diligence, consistency with processes in other sectors and consideration of best practice. The Finance Ministry can consider the extent of direct and indirect Central Government exposure and also act as an arbiter.

In case there are departures from the MCA which are not material or substantive, such departures may be cleared by the PPP Appraisal Committee with the approval of Finance Minister

Notes



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