



H.C.M. Rajasthan State Institute of Public Administration

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Date: 23.10.2020

Subject: Public Consultations on draft PPP Policy 2020

Department of Planning, Government of Rajasthan has entrusted to HCM RIPA the task of preparing a **draft Public Private Partnership Policy** for the State of Rajasthan **with particular emphasis on the Procurement Process of a PPP Partner.**

Accordingly, a draft **PPP Policy 2020** has been prepared after intensive discussions; and is hereby published on the website of HCM RIPA (hcmripa.gov.in) for the purpose of public consultations and obtaining comments/suggestions, if any, from all interested stakeholders. Comments/suggestions on the draft can be emailed to hcmripa@rajasthan.gov.in by 11.00 am on 27 October 2020, so that the final draft of the **PPP Policy 2020** may be forwarded to Department of Planning, Government of Rajasthan expeditiously.

(Sandeep Verma, IAS)

Director General, HCM RIPA
Government of Rajasthan
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**GOVERNMENT OF RAJASTHAN
PLANNING (PPP CELL) DEPARTMENT**

No. F.50(87)Plan/PPP/FoF/2020

Jaipur, dated 24.09.2020

ORDER

Shri Sandeep Verma, Director General, HCM RIPA & Pr. Secretary, Training is hereby assigned the task of preparing a comprehensive PPP policy for the State with particular emphasis on the procurement process of a PPP partner.

He may engage the services of other experts in the field at his level through HCM RIPA. The draft PPP policy will be submitted in six weeks from date of issue of this order.

This bears approval of competent authority.

(Siddharth Mahajan)
Secretary, Planning

Copy forwarded to the following for information and necessary action:-

1. Sr. DS to Chief Secretary
2. Pr. Secretary to Hon'ble Chief Minister
3. Addl. Chief Secretary, Finance
4. Director General, HCM RIPA & Pr. Secretary, Training
5. Guard File

(Dr. Bharti Dixit)
Joint Secretary, Planning

(draft) **Public Private Partnership Policy, 2020** **Government of Rajasthan**

A Draft for Public Consultations
prior to Final Draft Preparation and its Submission
to the **Planning Department, Government of Rajasthan**

HCM Rajasthan State Institute of Public Administration
Government of Rajasthan

Version # 1; Dated October 23, 2020

Preamble

- I. Government of Rajasthan is committed to adding value and ensuring efficiency in public services delivery to its residents, and to continuously create and upgrade quality public infrastructure across the State. To this end, the Government has been harnessing private sector efficiency, initiative and finance through Public Private Partnerships (PPPs) in a meaningful, responsible and impactful manner for over a decade.
- II. Rajasthan has been a leader in embedding transparency, efficiency and accountability in public policy and programmes in India; and it was the first state to enact a Right to Information Act in 2005 as well as enacting modern public procurement legislation in the form of the Rajasthan Transparency in Public Procurement Act in 2012. The State Government stands firm in its commitment to continue to incorporate these important principles in all areas of public policy and in its functioning.
- III. The State has witnessed considerable growth in PPPs over the years, with particularly successful PPP implementation in the road and energy sectors arising out of a number of policy and institutional initiatives taken by the State Government with the active support of the Government of India and its various agencies.
- IV. Rajasthan had drafted a State PPP Policy as early as in 2005; supported subsequently by a number of guidelines for implementation of PPPs in the State. With the need for expanding the range and quality of public services to its residents, as well as in order to provide for quality public infrastructure both through greenfield and brownfield projects, the time is now right for outlining a clear, consistent, reliable, efficient, transparent and accountable policy framework, setting out certain fundamental principles and institutional mechanisms for implementing PPP projects in the State.
- V. The State Government has accordingly entrusted the task of drafting an upgraded and modern State PPP Policy to its lead training institute—the Harish Chandra Mathur Rajasthan State Institute of Public Administration (HCM RIPA)—with a clear mandate to focus on procurement-related aspects so that the PPP processes are transparent, accountable and efficient during the entire life cycle of PPP projects.
- VI. In the preparation of this draft, HCM RIPA has drawn inspiration from various PPP experiences in the State so far and from international and domestic best practices; as well as useful discussions with senior executive leadership in the Government of India, including guidance from Shri Amitabh Kant, Chief Executive Officer, NITI Aayog and Dr. Krishnamurthy Subramanian, Chief Economic Advisor to the Government of India; as well as other senior officials from the NITI Aayog and the Department of Economic Affairs. For framing of this draft, HCM RIPA has also conducted a number of stakeholder consultations for almost four weeks with senior government officials in the State Government and with industry participants; prior to the present opportunity for public comments that are all being relied upon to infuse important elements of transparency and accountability in the final draft to be submitted to the Planning Department in the State Government shortly.

- VII. HCM RIPA is especially thankful to Dr. Arvind Mayaram, Economic Advisor to Chief Minister Rajasthan and Vice Chairperson of the Chief Minister's Economic Transformation Advisory Council; Shri D. B. Gupta, Economic Advisor to Chief Minister Rajasthan and Advisor-Member of the Chief Minister's Economic Transformation Advisory Council; Shri Rajeeva Swarup, Chief Secretary, Government of Rajasthan; and Shri C. S. Rajan, Managing Director, IL&FS for providing their valuable and useful insights and inputs during the preparation of this draft.
- VIII. In the preparation of this draft, HCM RIPA has primarily relied upon three important policy documents and report, namely, (draft) *PPP Policy 2008* of the Government of Rajasthan; (draft) *National PPP Policy 2011* of the Government of India; and the *2015 Report of the Committee on Revisiting and Revitalising PPP Model of Infrastructure*, Government of India.
- IX. The State PPP Policy aims to emphasise important principles to be adopted by the State Government in undertaking PPP projects, as well as outline institutional mechanisms for ensuring reliable, efficient, transparent and accountable decision-making for implementing PPP Projects in all sectors. In particular, this PPP Policy aims to:
- a. Ensure streamlined and efficient decision making for undertaking PPP projects in a manner that is transparent and accountable to all stakeholders;
 - b. Ensure that value-for-money principles are adopted with optimal risk allocation and that PPP projects are closely and constantly monitored throughout their life cycle;
 - c. Develop strong institutional and governance structures in the State so as to facilitate competitiveness, fairness, efficiency and transparency in procurement and post-award management of PPP projects;
 - d. Create mechanisms for providing real-time guidance and monitoring for PPP projects;
 - e. Ensure an arms-length, fair and efficient handling of both pre-award and post-award disputes with PPP projects; and
 - f. Attain appropriate and adequate public oversight of PPP projects in the State.

Chapter 1: Public Private Partnership (PPP) Preliminaries

- 1.1 Government of Rajasthan recognises the need for promoting “Public Private Partnerships” (PPPs) as an important strategy for the overall objective of spurring innovations and efficiency in the provisioning of public assets and delivery of public services. Accordingly, all administrative departments shall be competent to identify and initiate PPP proposals in consultation with a nodal Department especially setup for the purpose of handling PPP and other major projects in the State—the “Infrastructure Development and Finance Department” (IDF Department) to be set up under this Policy—in all subject areas of their jurisdiction as laid down in the *Rajasthan Rules of Business* issued by the Government of Rajasthan.
- 1.2 In case any clarification is required regarding the jurisdiction of any administrative department on its authority to undertake a PPP project in a specific area under these Rules, the same shall be provided by the Cabinet Secretariat Department of the State Government. Where a PPP project as conceptualised involves asset creation or public services delivery across multiple departments, the Cabinet Secretariat Department shall designate a lead administrative department for that particular project with approval of the Chief Secretary.
- 1.3 “Public Private Partnership” (PPP) implies a contractual arrangement between a public entity (government department or statutory authority controlled or managed by the Government of Rajasthan) on the one side and a private entity on the other; for the provision of public assets and/ or public services’ delivery; through investments being made by the private sector entity; for a specified period of time where there is well-defined allocation of risk between the private and the public entity; and the private entity receives payments that conform (or are benchmarked) to specified and pre-determined stages, milestones and/ or performance standards monitored/ measured by the public entity.
- 1.4 Essential conditions in the definition of PPPs are as under:
 - 1.4.1 Arrangement with Private Entity: The underlying asset of the PPP contractual arrangement will be provided by the private entity to a public entity; whereas a public service under the PPP contractual arrangement will be provided by the private entity on behalf of a public entity/ statutory authority to private users/ residents in the State. The term “private entity” excludes government companies and “deemed” government companies of the State/ Central Government, but includes societies and trusts registered under applicable Acts so long as they are neither managed nor controlled by officers of the Government/ Statutory Authority in their ex-officio capacities. A private entity shall be necessarily incorporated or registered under the Laws of India.
 - 1.4.2 Investments being made by the Private Entity: The PPP arrangement must provide for investment (through financial and/ or physical resources at the bare minimum) by the private entity resulting in the creation/ upgradation of public assets; and the intent of the contractual arrangement is either the creation

of such new/ upgraded assets in the public domain or to harness the efficiency in the delivery of public services to end-users/ residents through the use of such new/ upgraded public assets.

- 1.4.3 Operations and Management for a Specified Period only: A PPP contractual arrangement (including sub-contractual arrangements such as residential or commercial leases, if such arrangements are permitted under the prime contract) shall not normally exceed thirty years as may be specified in the Model Concession Agreement (MCA); and after this pre-determined time period, the PPP arrangement with the private entity, including sub-contractors, if any, shall come to a closure.
- 1.4.4 Risk sharing with the Private Entity: Contracts for mere provisioning of services, outsourcing contracts, Engineering-Procurement-Construction (EPC) contracts, asset divestiture contracts, leasing contracts, or privatisation contracts are not envisaged under this PPP Policy.
- 1.5 If any clarification is required as to which contractual arrangements (including proposed arrangements) should be categorised as PPPs (and shall therefore need to be governed by PPP rules under the RTPP Act and Model Concession Agreements—MCAs—notified under the RTPP Act or notified/ published by any department or agency of the Government of India; and which arrangements should be categorised as “non-PPP” contracts (to be governed by other notified rules and Standard Bidding Documents—SBDs); the decision of the IDF Department in this regard taken with approval of the Chief Secretary shall be final.
- 1.6 Both “Model Concession Agreements” (MCAs) and “Specific Concession Agreements” (SCAs) used for PPPs shall ensure allocation of risks in an optimal manner to the party best suited to manage and mitigate the risks.
- 1.7 The private entity being part of a PPP project may receive cash flows for their investments either through a one time/ phased or recurring payment/ gap funding mechanisms from the public entity; and/or through user charges from the end-consumers of the service provided; or a combination of both as may be appropriate to a particular PPP.
- 1.8 The preferred form of PPPs in the State is one where ownership of the underlying asset(s) being created/ upgraded remains with the public entity at all times, and where the operation/ management/ possession of the project assets is also transferred back to the public entity after PPP contract closure.
- 1.9 The overarching objectives of such “Public Private Partnerships” are as follows:
 - 1.9.1 Harnessing private sector efficiencies in public asset creation and public service delivery;
 - 1.9.2 Harnessing private initiative and finance as a powerful instrument for stimulating investment and growth in the State, especially in the view of the

- COVID-19 pandemic and its potential aftereffects on state revenues and borrowing;
 - 1.9.3 Creating opportunities to bring in innovation and technological improvements; and
 - 1.9.4 Enabling affordable and improved services to end-users in a socially responsible and sustainable manner.
- 1.10 Such PPPs would be developed keeping in mind the following broad principles:
- 1.10.1 Provide a fair and transparent framework to facilitate PPP implementation for provision of public assets and/or related public services;
 - 1.10.2 Adopt an efficient, transparent and competitive process for selection of private entities, and ensure adequate efficient oversight and monitoring over the project life cycle;
 - 1.10.3 Protect the interests of end users, affected persons, private and public sector entities and other stakeholders;
 - 1.10.4 Achieve increased efficiency in the deployment of investments by setting out enabling frameworks for greater private participation in creating and upgrading public assets; and
 - 1.10.5 Provide requisite financial provisions and mechanisms for proper handling of situations arising out of any potential project termination, exit, default or failure.

Implementation Plan

- 1.11 The definition of PPPs as provided in the Rajasthan Transparency in Public Procurement (RTPP) Act, 2012 shall be updated accordingly.
- 1.12 Comprehensive rules on transparent and competitive award and for professional management of PPPs shall be suitably developed and incorporated under the aegis of the RTPP Rules 2013.
- 1.13 Model Concession Agreements (MCAs) shall be professionally developed and published in public domain in a manner similar to that provided for preparation of standard bidding documents under the RTPP Act. Where MCAs have been notified/ published by the Government of India or any of its departments/ agencies for specific purposes; the same shall be enabled under the RTPP Act for use by administrative departments for the purposes of drafting SCAs as may be necessary, or for using such MCAs *mutatis mutandis*.

Chapter 2: PPP Governance and Institutions

- 2.1 PPPs in Rajasthan shall be promoted, assisted, supported and monitored throughout their life cycle by a newly created “Infrastructure Development and Finance Department” (IDF Department) in the State Government; to be headed by a senior administrative official as the Secretary-in-Charge. The Chief Minister of the State shall be the Minister-in-Charge for this Department.
- 2.2 The Secretary-in-Charge of the IDF Department shall also function ex-officio as the chairperson of the *State Procurement Facilitation Cell* created under the RTPP Act, and shall also be nominated as Chairperson of the Board of Directors of PDCOR. The IDF Department shall be configured so as to include necessary and relevant carveouts from other departments such as the PPP Cell, PMU and other project-monitoring divisions from the Planning Department(s), as well as SPFC Cell and divisions responsible for PWF&AR and GF&AR from the Finance Department, so as to be able to provide streamlined, comprehensive and consistent procurement-related contractual advise on public procurement of PPP projects, goods, works and services in the State.
- 2.3 The Government of Rajasthan shall ensure that all appeals and disputes regarding PPPs at all stages prior to and after contract award are handled in a fair manner by a competent and professional authority constituted at an arms-length distance from contract awarding authorities, while at the same time ensuring consistency and predictability for bidders and contactors in the handling of pre-award appeals and post-award disputes. Towards this end, the Government shall set up an “Infrastructure and Major Projects Dispute Resolution Tribunal” (IMPDRT) drawing from international and domestic best practices for handling of 1st and 2nd (pre-award) appeals under the RTPP Act 2012, and for handling of post-award disputes under the Arbitration and Reconciliation Act 1996. The Tribunal shall be vested with the powers of an “arbitral tribunal” under this Act.
- 2.4 The IDF Department shall work constructively with concerned administrative departments to assist them with PPP project conceptualisation and for conducting pre-feasibility studies. It shall ensure that these preliminaries are undertaken in a professional manner covering all relevant and important aspects, including but not limited to applicable legal/ regulatory frameworks; political and legal risks and mitigation thereof; mandatory activities to be undertaken and minimum requirements to be met by various administrative departments, public utilities and other statutory authorities prior to initiation of the procurement process and prior to/ after contract award; reasonableness of the expected rate of return for the private entity; fair risk allocation amongst private and public parties in the proposed PPP project; handling of unforeseen and unforeseeable events through appropriately-designed clauses such as force majeure and change of law; scope of “non-compete” clauses and liability for their breaches by the public entity; and the extent, manner and processes for taking over of project liabilities by the public entity in the event of project default, exit, failure or termination.

- 2.5 Once a PPP proposal so conceptualised is adjudged to be fit-for-purpose in the pre-feasibility study, the same shall be placed by the concerned administrative department for appraisal and approval by an “Empowered Committee for Major Infrastructure and PPP Projects” (ECMIPP) chaired by the Chief Secretary, consisting of Secretaries-in-Charge of Law, Finance and concerned administrative departments, with Secretary-in-Charge of the IDF Department as Member-Secretary. The ECMIPP shall be competent to invite the Secretary-in-Charge and any other officer(s) of any administrative department who are adjudged to have significant interest and/ role in successful PPP implementation.
- 2.6 The ECMIPP shall be vested with suitable and final powers with regard to appraisal and approval of PPP projects. It shall also be the final appraisal/ approval/ monitoring authority for other (non-PPP) major infrastructure projects where the Chief Secretary is currently the chairperson, as well the final approval authority for swiss challenge projects setup under the RTPP Rules.
- 2.7 Once the ECMIPP approval has been obtained as above for progressing a PPP project, the IDF Department shall assist and support the concerned administrative department for formulation of a “Specific Concession Agreement” (SCA) based on “Model Concession Agreements” (MCAs) published by the State/ Central Government, if any, or where no such MCA is available, for drafting a MCA and a SCA for the purpose. The SCA so drafted shall be placed for approval of the ECMIPP.
- 2.8 Before a PPP project is bid out by an administrative department based on SCAs approved by the ECMIPP, the underlying SCA shall be placed for high-level approval of an “Infrastructure and Major Projects Approval Board” (IMPAB) chaired by the Chief Minister, and comprising of Ministers-in-Charge of Law, Finance, Industry and the concerned administrative departments; Chief Secretary, and the Secretaries-in-Charge of Law, Finance, IDF and the concerned administrative departments. The IMPAB shall have the powers of the State Cabinet for granting final approval to SCAs; and the Secretary-in-Charge of the IDF Department shall be the Member-Secretary of the IMPAB.
- 2.9 A SCA so developed by the IDF and concerned administrative departments and duly approved by the ECMIPP and IMPAB shall be used for initiating a procurement process based on applicable methods outlined in the RTPP Act, similar to “Standard Bidding Documents” (SBDs) for non-PPP procurement. The IDF Department shall remain actively involved with administrative departments during other subsequent stages such as stakeholder consultations on draft RFPs/ RFQs as required, initiation of the procurement process, pre-bid discussions, evaluation of competing offers and finalisation of concession contracts.
- 2.10 Once the evaluation process has been completed by an administrative department, the same shall be placed for approval of the ECMIPP before it enters into a contractual agreement with the successful bidder for the PPP project. IDF and the concerned administrative departments shall regularly monitor to resolve post-award issues, hindrances, disputes etc., including resolving such issues through

clarifications, holding inter-departmental meetings and obtaining directions by the ECMIPP or decisions by various administrative departments as may be required and appropriate.

- 2.11 In case of events for which risk allocation is neither specifically provided for, nor prohibited or limited in the SCA, the PPP documents shall provide for appropriately designed contractual clauses for changes to contract terms and conditions. However, changes in agreed key criterion such as bidding criteria shall be strongly discouraged in the SCAs, while PPP concessions may allow for mitigating any adverse financial impacts of such events through appropriate contractual amendments relating to other-than bidding criteria in the concession agreement. Similarly, the SCA shall also contain clauses limiting any windfall returns on private investments resulting from regulatory changes and other unforeseeable events, through appropriate adjustment of contract terms and conditions such as the concession period of the PPP project. Any such changes to agreed PPP concessions/ agreements would require prior approval of the ECMIPP and the IMPAB.
- 2.12 If any post-award disputes cannot be resolved or mitigated by an administrative department/ ECMIPP within a period of 60 days from raising of the dispute by the private entity, the PPP concessionaire shall be free to approach the *Infrastructure and Major Projects Dispute Resolution Tribunal (IMPDRT)* for issue of directions as appropriate under the Arbitration and Reconciliation Act. The directions of the IMPDRT shall not be routinely challenged by the concerned administrative department before higher courts and shall be appealed against by the Government only on the specific grounds and circumstances permitted under this Act.
- 2.13 Given the complex nature of tasks and professional responsibilities entrusted to the IDF Department for monitoring PPPs and other major projects, the Government shall ensure that an appropriate mix of human resources consisting of experienced government officials, public sector consultancy service providers such as PDCOR and private sector consultancy service providers, with adequate legal, technical and investment/ finance specialisations as appropriate, are available to the administrative department, the IDF Department and to the ECMIPP for project conceptualisation, appraisal, approval and post-award monitoring. The Government shall, in particular, endeavor to position and strengthen PDCOR as a lead provider of project formulation, management and consultancy services to the State Government and other clients.
- 2.14 The IDF Department shall ensure the availability of an IT-enabled platform for life cycle monitoring of PPP projects and any other major infrastructure/ works/ service contracts entrusted to it, for use by the concerned administrative department and other stakeholder departments and for use by various other offices of the State Government.

Implementation Plan

- 2.15 Appropriate orders under *The Rajasthan Rules of Business*, and amendments to the

RTPP Act if required, shall be issued for constitution of the *Infrastructure Development and Finance* Department (IDF Department) as outlined above. In order to avoid increasing the number of government departments and to ensure harmonised functioning of non-PPP divisions of Planning Department, the present General Administration Department (GAD), Administrative Reforms Department (ARD) and (non-PPP, non-major projects) divisions of the Planning Department(s) can be considered for merger into two departments while creating the new IDF Department.

- 2.16 All committees presently chaired by the Chief Secretary for monitoring of PPPs and major infrastructure projects, such “Swiss Challenge” projects, shall be amalgamated into one single Empowered Committee (ECMIPP). Suitable amendments of the RTPP Rules shall be carried out and appropriate orders shall be issued by ARD as may be necessary.
- 2.17 Suitable orders shall be issued for establishment of the IMPAB chaired by the chief Minister and for conferring it with the powers of the State Cabinet for approval to SCAs before initiating bidding procedures for PPP projects, and for approving any post-award charges to a SCA, if required.
- 2.18 Suitable amendments of the RTPP Act and incorporation of new RTPP rules shall be undertaken to provide for the hearing of 1st and 2nd appeals by the *Infrastructure and Major Projects Dispute Resolution Tribunal* (IMPDRT). New legislation shall be enacted by the State Government for handling of past-award disputes also by this proposed tribunal, along the lines of such tribunals already functioning for over a decade in other states such as Madhya Pradesh, Maharashtra, Bihar and Gujrat; while also incorporating useful elements from the *Public Contracts (Resolution of Disputes) Bill 2015* (prepared by the Government of India) and from the *Arbitration and Reconciliation Act 1996*.
- 2.19 An initial corpus of INR 20 Crores shall be made available to the IDF Department by end of December 2020 for PPP project development, IT-enablement and strengthening of its human resources against current financial year expenditure requirements. Sufficient budgetary provisions for FY 2021-22 onwards shall be made well in time for IDF departmental activities as part of the budget preparation exercise beginning shortly in the State Government. To begin with, the Government of Rajasthan shall create a pool from FY 2021-22 onwards with the IDF Department not exceeding 1% of departmental budgets every financial year for, inter alia, conceptualisation and development of PPP projects through professional agencies.
- 2.20 All PPP projects will be required to undergo the appraisal and approval processes before the ECMIPP as outlined above. However, the situation regarding sector/ department-specific MCAs and departmental capabilities shall be constantly reviewed so as to progressively delegate such appraisal and approval authority to the concerned administrative department to the extent desirable and feasible based on satisfaction of the ECMIPP.

Chapter 3: Transparency and Oversight Mechanisms for PPPs

- 3.1 Government of Rajasthan expressly recognises public interest needs for ensuring utmost transparency in decision-making processes for PPP projects to attract and retain trust of all stakeholders, and for the purposes of ensuring adequate competition in the award of PPP concessions/ contracts. The Government shall accordingly notify specific rules and guidelines under the RTPPP Act for procurement of a PPP project with a view to, inter alia, ensure that a level playing platform is provided to all bidders interested in a PPP project.
- 3.2 To further instill trust in the PPP procurement process, the State Government shall:
 - 3.2.1 Set up a dedicated appeals and dispute resolution mechanism to address issues related to bidding and award of PPP projects and post-award dispute handling;
 - 3.2.2 Use IT tools as best as possible for monitoring of PPP projects for their entire life cycle; and
 - 3.2.3 Explore possibilities for the setting up of a web-based PPP marketplace, showcasing upcoming opportunities for proposed PPP projects.
- 3.3 The State Government shall continue to strengthen its governance processes and institutions that are accountable to the stakeholders, in order to maintain transparency, fairness and trust in the PPP procurement process and to achieve sustainable implementation of PPP projects.
- 3.4 PPP project oversight would extend to, inter alia, all important areas such as the manner of selection of a private entity as PPP partner; procedures observed in releasing payments or levy of user-charges; review / monitoring of quality of service and compliance with Rapid Value-for-Money (RVfM) analysis; compliance with conditions precedent to contract formation; imposition of penalties for non-performance; computation and application of termination payments; extent of takeover of project liabilities of the private entity etc. Any post award negotiation and/ or contract modification, if permitted under the SCA, shall remain a critical focus area during the oversight process.
- 3.5 Provision of some public assets and/ or related public services that have natural monopolistic or oligopolistic characteristics may require some form of institutional or contractual regulation so as to ensure that the interests of users and other stakeholders are optimally protected during the PPP project life cycle taking into consideration, inter alia, the affordability and reasonableness of annuity payments and user charges, if any, and the need for ensuring certainty in pricing and revenue streams of the private entity. Such regulation could be through independent regulators or through contractual/ concession arrangements where there is no sector specific regulator. In case a regulatory mechanism becomes operational subsequent to PPP contract award, the State Government commits to design and to take cognizance of contract provisions so as to minimize regulatory risk for the private entity while avoiding any windfall gains to it at the same time.

Implementation Plan

- 3.6 The aforementioned procedures and principles shall be incorporated while formulating and issuing special RTPP Rules on procurement of PPP projects; and while developing both model and specific concession agreements for notification and publication under the RTPP Act. Where MCAs have been notified/ published by the Government of India or any of its departments/ agencies for specific purposes; the same shall be enabled under the RTPP Act for use by administrative departments for the purposes of drafting SCAs as may be necessary, or for using such MCAs *mutatis mutandis*.
- 3.7 Other steps similar to those outlined in paragraphs 2.15 to 2.17 above.

Chapter 4: The PPP Procurement Process

- 4.1 The PPP decision-making process in terms of its procurement life cycle can be broadly divided into four phases, viz., identification stage, development stage, procurement stage and contract management & monitoring stage.

Phase I: PPP Identification Stage

- 4.2 Prior to the beginning of each financial year, different administrative departments and their agencies would set out their annual PPP plans identifying a shelf of projects relating to public assets and services proposed for delivery through private investment and PPPs. These shall be analysed by the IDF Department in consultation with concerned stakeholders and a report shall be prepared for preliminary discussions on their appropriateness and approval for: (i) inclusion by Finance Department of tentative estimates into the budgetary requirements for that financial year; and (ii) obtaining approval of ECMIPP for undertaking pre-feasibility analysis.
- 4.3 Subsequent to the EC approval, pre-feasibility analysis would be sponsored jointly by administrative departments and the IDF Department to assess broad viability of every project proposed on a PPP mode. Such pre-feasibility analysis shall include identification of the key risk factors for the project to assess likely costs and potential revenue streams of such projects.
- 4.4 Particularly in cases of annuity-based payment schemes where a framework is needed to assess whether or not the PPP method the appropriate procurement route given the alternative of more traditional procurement approaches, the Government of Rajasthan shall adopt a “Rapid Value-for-Money” (RVfM) approach to ascertain the suitability of a PPP approach in comparison to such alternatives. The RVfM approach shall also be used to ascertain the possibility of any windfall gains to the private entity, including measures to mitigate such gains, during the course of the proposed PPP project. A RVfM analysis shall be conducted even if no fiscal support is required from either the State or the Central Government, especially in cases of proposed cost recovery through user charges to ascertain the fairness and reasonableness of such charges.
- 4.5 Before proceeding with formulation of a SCA, a “legal compliance” assessment shall also be prepared as part of the pre-feasibility analysis for consideration of the ECMIPP whether such a proposal is permissible and legal under existing and applicable legislation(s) or if any minor or major modifications/ amendments thereof are required.

Phase II: Project Development Stage

- 4.6 The PPP project development stage covers preparation of contractual documents and obtaining of project clearances, and approval and signing of a PPP concession/ contract. The concerned administrative department(s)/ agencies shall undertake studies and investigations relating to various aspects such as technical, financial, legal

and regulatory aspects with the assistance from transaction advisors/ project management consultants wherever required.

- 4.7 The Government, through stakeholder departments and agencies, shall identify different risks during the PPP project life cycle, including potential measures to minimise, contain and mitigate such risks. The primary objective during such an exercise shall be optimal allocation of project risks, rather than maximising their transfer to the private entity; and fair risk allocation shall necessarily take into account legitimate concerns of all stakeholders, and allocation of risks, fully or significantly as may be appropriate, to the entity that is better suited to manage and mitigate the same. Particular care shall be taken for proper allocation of project risks such as ensuring the availability of unencumbered land for a PPP project or obtaining mandatory and timely clearances from regulatory authorities and/ or public utilities.
- 4.8 Such allocation of risk shall be clearly outlined in the contract documents (in SCAs in particular) and shall not ordinarily be subject to modification after the award of a PPP project. Contractual documentation shall also provide adequate protection to PPP private entities and project lenders against both “force majeure” events (acts of God and such like) and against “change of law” events (regulatory changes, changes to domestic legislation etc.). All SCAs shall require prior approval of the IMPAB chaired by the Chief Minister.
- 4.9 Government of Rajasthan recognises the criticality of robust legal contracts for ensuring adequate competition in PPP procurement and award as well as for successful implementation of a PPP project. Towards this end, the Government shall ensure, inter alia, the following:
 - 4.9.1 That a transparent and objective procurement process is used for selection of private entities for participation in PPP projects;
 - 4.9.2 That a clearly defined approval and compliance mechanisms is put in place in relation to the rights of local and other statutory authorities such as city, regional and industrial development authorities, urban local bodies and panchayati raj institutions.
 - 4.9.3 That a clear definition of the role, responsibility and rights of various parties is provided in the SCA clearly indicating the scope of public assets/ service, service standards, pricing, and scope of governmental intervention or assistance; and
 - 4.9.4 That the power to collect, retain and appropriate revenue/ user-charges to meet projected expenses to be incurred in implementation of the PPP project (including an appropriate rate of return on funds deployed) has been suitably delegated.

Phase III: Procurement Stage

- 4.10 Transparent, non-discriminatory, competitive and efficient procurement processes would be followed so as to encourage maximum participation by private entities and to imbibe public trust and confidence in procurement procedures. Towards this

objective, special PPP rules shall be notified by the Government defining the norms, principles, standards and procedures for procurement of PPP projects.

- 4.11 An “Empowered Committee for Major Infrastructure and PPP Projects” (ECMIPP) shall be constituted by the Government for appraisal and approval of all PPP projects with the following membership:
- a. Chief Secretary, Government of Rajasthan (Chairperson);
 - b. Secretary-in-Charge, Finance Department;
 - c. Secretary-in-Charge, Law Department;
 - d. Secretary-in-Charge of the Administrative Department sponsoring a project; and
 - e. Secretary-in-Charge, Infrastructure Development and Finance Department (Member Secretary).
- 4.12 An “Infrastructure and Major Projects Approval Board” (IMPAB) shall be constituted for approval to SCAs prior to bidding process initiation for PPP projects; and for approving post-award changes to contract/ concession terms and conditions in exceptional circumstances, if any. The IMPAB shall consist of the following:
- a. Chief Minister (Chairperson);
 - b. Minister-in-Charge, Law Department;
 - c. Minister-in-Charge, Finance Department;
 - d. Minister-in-Charge, concerned Administrative Department;
 - e. Chief Secretary, Rajasthan;
 - f. Secretary-in-Charge, Law Department;
 - g. Secretary-in-Charge, Finance Department;
 - h. Secretary-in-Charge, concerned Administrative Department; and
 - i. Secretary-in-Charge, IDF Department (Member-Secretary).
- 4.13 Every PPP project, irrespective of capital subsidy requirements, shall be required to obtain prior approval of the ECMIPP. All SCAs shall require prior approval of the ECMIPP and of the IMPAB.
- 4.14 The ECMIPP and IDF Department shall emphasise use of standardised contractual documents, clearly laying down the standard terms relating to allocation of risks, contingent liabilities and guarantees as well as service level agreements and performance standards. The IDF Department shall ensure that model “Expression of Interest”, model “Request for Qualifications”, model “Request for Proposals” and MCAs are continuously developed, publicly notified and suitably upgraded; and that the deviations of an SCA from an MCA, if any, are properly deliberated by the ECMIPP and IMPAB while approving an SCA. Bid documents used for procurement of PPP projects may comprise one or more of: (i) an expression of interest; (ii) a request for qualifications; and (iii) a request for proposals.
- 4.15 The procurement process shall follow a “single part” or a “two part” procurement mode already permitted under the RTPP Act, as may be appropriate to a particular

PPP project. Technical proposals may be invited in order to assess the ability of bidding private entities of their appreciation of project complexities and prior experience; while financial proposals from bidders shall ideally and invariably be in the form of a single, objective, and (subsequent to signing of a PPP concession/contract) non-negotiable parameter.

- 4.16 The State Public Procurement Portal and e-Procurement Portal shall be mandatorily used to promote wider participation and transparency in the procurement process. Draft contract agreements such as SCAs containing provisions on the roles and obligations of the parties, performance standards and monitoring arrangements, reporting requirements, penalty conditions, force majeure conditions, dispute resolution mechanisms and termination/ exit arrangements, etc. shall necessarily be provided to prospective bidders as part of the bid documents.
- 4.17 Timelines to be followed during the procurement process would be indicated by the procuring entity in the bidding documents. In order to minimise implementation delays, the procuring entity shall endeavor, on a “best efforts” basis, to obtain all necessary approvals and clearances for a PPP project from the agencies concerned in a timely manner.

Phase IV: Contract Management and Monitoring Stage

- 4.18 The Government and the implementing departments/ agencies shall endeavor to ensure timely and smooth implementation of the project. IDF Department and implementing administrative departments shall both put in place a suitable contract administration framework for monitoring project performance milestones over the PPP contract period, by establishing suitable mechanisms for project monitoring such as “Project Monitoring Units” (PMUs), inter-department committees chaired by IDF Department to oversee project implementation, facilitate inter-departmental coordination, timely removal of third party hindrances and rendering assistance during events of dispute resolution or arbitration. The Government recognizes that appropriate capacity is critical to effectively undertake project monitoring and, therefore, appropriate human resources and IT-enabled management systems would be established for this purpose.
- 4.19 Long-term contracts such as PPP contracts can sometimes be inherently “incomplete contracts” that may require mid-course corrections. To the extent possible, the contract must cover all possible aspects that would require subsequent adjustments; and suitable contract clauses shall form part of an SCA to the extent that post-award events can be foreseen and may be foreseeable. Any modifications in contractual terms shall be undertaken only in exceptional circumstances and with prior approval of the IMPAB; and shall remain subject to the following transparency principles:
- 4.19.1 The concerned administrative department shall be required to justify that risk sharing at contract award stage has significantly changed thereafter due to exceptional circumstances beyond the control of both parties;

- 4.19.2 The concerned administrative department shall make necessary disclosures to, and obtain requisite approval of, the sector regulator, if any; and prior approval of the ECMIPP and IMPAB being the appraisal and approval authority shall necessarily be obtained before effecting any change in the contract; and
- 4.19.3 All such negotiations shall be undertaken in a transparent manner aimed at generating awareness amongst all stakeholders about original bid and contractual conditions, as well as proposed changes and justifications; including making such documentation public and easily accessible on the State Public Procurement Portal.

Implementation Plan

- 4.20 Steps similar to those outlined in paragraph 3.6 above.

Chapter 5: Enabling Frameworks for PPPs

- 5.1 Government of Rajasthan stands committed to create an enabling environment for PPPs in the State through suitable initiatives including enabling funds and schemes, guidelines, guarantees and institutional structures as may be appropriate.

Financial Support and Liquidity Mechanisms

- 5.2 The State Government shall explore and provide financial interventions to facilitate PPP projects as may be relevant from time to time; and shall provide appropriate legislative and policy support for developing equity, debt, hybrid structures and credit enhancement targeted towards various domestic and international financial investors such as equity providers, debt and capital markets, insurance sector etc.
- 5.3 The State Government shall encourage dovetailing financial resources and leveraging from both state and central sector schemes, as well as financing through alternate sources such as municipal bonds, pension funds etc. for PPPs.
- 5.4 The Government, where necessary, reasonable and appropriate, may consider levy of user fees to generate financial resources for construction or upgradation of project assets and for provisioning of related public services. Determination of such user charges, where there is no regulator, would be based on the principles including, but not limited to, partial or full recovery of project investments, savings to users, efficiency gains, willingness to pay, need for explicit subsidies, and affordability.
- 5.5 Government of Rajasthan shall ensure regular interface with banks, financial institutions and the private financial markets in order to facilitate quick mobilisation of financial resources and to develop new and innovative financial instruments for PPP projects. The State Government shall constantly monitor liquidity and revenue streams in such projects, including financial instruments to enable wider participation of bidders. The IDF Department shall constantly upgrade its bidding documents, including MCAs and SCAs, to provide for useful, evolving and modern alternatives such as floating bank guarantees and (insurance) surety bonds as and when such financial instruments have matured and obtain approval of sector regulators for the purpose.

Land Availability

- 5.6 Expeditious legal and physical possession of unencumbered land and rights of way in a timely manner is critical for provisioning of public assets and/ or delivery of public services. Adequate and suitable provisions shall accordingly be made in concession/ contract documents to address liability and responsibility in cases where required land and right of way are not provided in time to the private entity.
- 5.7 Government departments and agencies sponsoring PPP projects shall ensure that interested persons in land matters are protected as best as possible under extant laws.

Capacity Building Measures

- 5.8 The State Government recognises that successful management and implementation of PPP projects on a sustainable basis requires the development of adequate capacities amongst public institutions, government officials, sector regulators, private entities, users and other stakeholders. To this end, the creation of a dedicated IDF Department for monitoring and assisting PPP and major projects is expected to be useful in developing strong organisational capacities for identification, procurement and post-award management of PPP projects. The IDF Department shall also assist in organising training on PPPs in a phased manner all key stakeholders.
- 5.9 The IDF Department shall position itself as a center of expertise and technical support to interested government departments and various statutory authorities for all procurement-related matters, particularly for PPPs and major projects. It shall have specialists from different areas such as investment/ finance, law, management and technical backgrounds in particular.

Implementation Plan

- 5.10 The Government of Rajasthan explicitly recognises the need for unambiguous and binding frameworks for levy and collection of user charges for user-fee based financing of PPP projects, if required; and for the setting up of efficient and fair payment guarantee mechanisms including escrow accounts, multi-year budgetary support, dedicated funds for *Viability Gap Funding (VGF)* etc. The State Government shall accordingly consider enacting suitable legislation in the form of a *Rajasthan Infrastructure Development Act* covering both procurement and financing aspects of PPPs and major projects in the State.
- 5.11 PDCOR shall be strengthened and enabled to provide project management and consultancy services in a professional manner as a lead service provider to various government departments and statutory authorities for undertaking PPP and infrastructure projects, including addressing and assisting the State Government in dealing with evolving policy matters in relevant areas of interest.