

PUBLIC PRIVATE PARTNERSHIP (PPP)

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What is PPP?

An association funded and operated through a partnership of government and one or more private sector entities.

Why PPP?

- Financial resources;
- Cost effective;
- Better Technology;
- Escalation free;
- No maintenance expenses;
- Time bound completion;

Incentive

- Declaration of road sector as Industry under S.18 (1) (12) of Infrastructure Act;
- Govt. to bear cost of Project Feasibility Study;
- FDI upto 100% in Highways;
- Provision of subsidy to make project viable.

Incentive

- Tax exemptions;
- Duty draw back / duty free import of high capacity and modern equipment;
- Easier External Commercial Borrowing norms;
- Right to retain toll-toll rates are indexed to wholesale price index.

Mechanism

- Users Pay Principle;
- Special Purpose Vehicle (SPV);
- Strategic partnership , which includes:
 - Equity partnership
with
 - Technical know how

SPV

- A Company formed by Government and private entity;
- For specific purpose or Project;
- Signs the contract with the government and subcontractors;
- Develops, builds, maintains and operates the Project;
- Guarantee and secure the cash flows;
- Preferred in project Finances.

Form of PPP

Build-Operate-Transfer (BOT):

- Build-Operate-Transfer (Annuity)
- Build-Operate-Transfer (Toll)

BOT

- Private entity receives a concession from the private or public sector to finance, design, construct, and operate a facility for a specified period, often as long as 20 or 30 years. After the concession period ends, ownership is transferred back to the granting entity.
- **BOT – Annuity**
Fixed payment for contracted period.
- **BOT - Toll**
Revenue sharing (variable)

Procedure

- Appointment of transaction advisor/ consultant
- Transparent bidding process
 - Expression Of Interest
 - Request for Qualification
 - Request for Proposal
 - Selection of successful bidder
 - Transfer of SPV

Legal Issues

Issues emanating from Employer's Obligations-

- Land Acquisition;
- Encumbrances;
- Approvals;
- Certification;
- Scope of work;

Legal Issues

- Delay in appointment of Engineer;
- Delay in approval of drawings;
- Change in Designs;
- Payment.

Legal Issues

Issues emanating from Concessionaire's Obligations-

- Financial Closure;
- Designs & drawings;
- Delay in submission of performance Bank Guarantee;
- Insurance;
- Local Issues;
- Quality;
- Delayed Completion;
- O & M defaults;

Legal Issues

Other issues:

- Delay in commencement of work;
- Change in law;
- Force Majeure;
- Cost over run;
- Liability and Indemnity;
- Pre Bid and Post Bid Litigation.

Land Acquisition

- **Essentials:**

- Compliance of all statutory procedures under relevant laws such as Sections 3, 4, 5 and 6 of Land Acquisition Act and other orders;
- Rehabilitation issues;
- Ensuring that transfer of land to SPV is encumbrance free and of clear title.

Encumbrances

- Site not free from encumbrance/ hindrances;
- Delay in approvals for shifting of utilities;
- Standing crops or structures;
- Removal of Trees.

Independent Engineer

- Delay in appointment;
- Delay in approval of drawing or change of designs;
- Delay in certification of work and invoices;
- Suspension of work.

Scope of Work

- Which work is included in scope of work?
- Change in scope of work by additional work or deletion of item;
- Ambiguity and interpretation.

Approval

Clearances required from:

- Forest department;
- Electricity department;
- Telecom department;
- Department of Archeology;
- Municipal/ Local authorities;
- Environment Clearance.

Payment

- Non-payment for additional work;
- Payments for reduction in scope of work;
- Certification of invoices for Annuity payment.

Commencement of Work

- Delay in commencement due to:
 - land acquisition;
 - site hand over;
 - approvals;
 - removal of hindrances.

Change in Law

- Enactment of any new Indian law;
- Repeal, Modification and Re-enactment of any existing Indian Law;
- Change in Interpretation and application of Indian law by a Court of record;
- Any Change in the rates of any of the Taxes.

Force Majeure

- Non political event
- Indirect political event
- Political event
- Other events

Cost Over Run

- Delay in commencement of work;
- Delay in completion as per schedule;
- Breaches/defaults of either party;
- Imposition of new taxes, levies, duties etc.;
- Change in law.

Dispute Resolution Mechanism

- Amicable settlement;
- Mediation and Conciliation;
- Arbitration;
- Regulatory Commission (in the event of Constitution);
- Court.

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