



PUBLIC PRIVATE PARTNERSHIP (PPP)

IN HARYANA

PPP POLICY

1. INTRODUCTION

1.1 Government of Haryana (GoH) recognizes that a partnership approach under Public Private Partnership (PPP) should be one of the tools to deliver public services to improve the quality of life of its people. The XI Plan document and stated policy of Haryana Government (official website: haryana.gov.in), implicitly and explicitly, recognize the role of private sector in development of physical and social infrastructure.

1.2 In order to facilitate and promote increasing role of Public Private Partnership in creation of new infrastructure assets as well as for the management of existing ones the Government of Haryana proposes to lay down an explicit and comprehensive policy. The Policy being detailed herein, will put in position a broad framework for implementation of PPP in the State in physical and social infrastructure while being sensitive to public needs.

2. POLICY OBJECTIVES AND SCOPE

The main objective of this policy, as given herein, is to create an enabling environment and to facilitate private sector participation in upgrading, developing and expanding the physical and social infrastructure in the State of Haryana.

2.1 To provide a broad framework and a conducive environment so that the strength of private sector in terms of their efficiencies, flexibility and innovativeness are utilised to provide better infrastructure and services at an optimal cost and for better 'Value for Money' to the users.

2.2 To put in position a transparent, consistent, efficient administrative mechanism, to create a level playing field for all stakeholders.

2.3 To prepare a shelf of projects to be offered for PPP and take them forward in coordination with owner Departments through a transparent selection process.

2.4 To provide project development funding and/or seek available assistance from Government of India for funding essential infrastructure projects.

2.5 To make assessment of the Value for Money (VfM) especially for major projects with exception for projects in backward areas or projects with social requirements, which prime facie, may not be financially viable on PPP.

2.6 To create a robust dispute redressal mechanism/regulatory framework for PPP projects.

2.7 To provide the required Viability Gap Funding (VGF) where the essential projects are intrinsically unviable.

2.8 To create “Haryana Infrastructure Fund (HIF)” to facilitate implementation of the objectives of the Policy.

2.9 The relevant provisions stipulated in documents such as Haryana PWD Code would also be kept into considerations for PPP projects.

2.10 Panchayat land, wherever involved for the PPP projects, will be governed by the policy of the department of Development & Panchayats, Haryana.

3. PUBLIC PRIVATE PARTNERSHIP

Public Private Partnership broadly refers to a long term contractual partnership between public and private sector agencies specifically targeted towards financing, designing, implementing and operating infrastructure facilities and services that are traditionally provided by the Government and/ or its entities. PPPs aim to take advantage of the strength of the public sector through stable governance, citizen’s support and those of private sector by their enhanced operational efficiency, innovative technology, managerial effectiveness so as to deliver higher standard of service to the people with better value for money. The other important features of PPP are allocation of risks to the partner best able to manage them thus minimising the cost while improving the performance. Public sector assumes social environmental and political risks whereas the private sector shares financing, construction and commercial risks.

4. INFRASTRUCTURE SECTORS FOR PPP

The infrastructure sectors / sub sectors and facilities in the ambit of this policy would, inter alia, include the following which could be expanded / modified as and when considered necessary.

- Healthcare Facilities
- Education
- Tourism & related projects - Hotels , adventure and theme parks, trade fairs , convention centers, exhibition / cultural centers

- Urban Infrastructure - Urban roads, water supply, solid waste management, sewerage, sanitation
- Power - Generation, transmission and distribution of power
- Highways - Construction of expressways, missing links, bypasses, ring roads, bridges, road over bridges and improvement of roads
- Agriculture related projects
- Road Transport System- Improvement of Public Transport Facilities including construction of bus terminals, truck terminals, inland dry ports
- Civil Aviation – Pilot training institutes, aircraft maintenance facilities, aviation hubs
- Industrial Infrastructure - Industrial parks, Special Economic Zones (SEZs), industrial estates and townships
- Sports – Stadia, facilities
- Rural - Public conveniences
- E-governance

5. EFFICIENT USE OF ASSETS AND RESOURCES

GoH would look at the option of better utilisation of existing assets before considering new investments. Focus would be on integrated infrastructure development. GoH recognises that 'social' projects may not always be viable on PPP. In such cases Government would use other mechanism of compensation such as provision of Viability Gap Funding (VGF) or annuity payments or 'shadow' (usage/availability based) payment. GoH may also consider implementing such projects upfront and then transfer management of services to a Private Sector Participant (PSP) where feasible.

6. PAYMENT OF SERVICES

6.1 GoH recognises that “provider-charges” and the “user-pays” principles are crucial to the success of PPPs in physical infrastructure. The Government would, where necessary and appropriate, consider levying user charges (fees, tariffs, cess etc.) to cover costs of infrastructure provisioning and create a stable and dedicated financial

source for construction / redevelopment / rehabilitation / replacement of project assets and their ongoing operations and maintenance. The focus would be to provide efficient, sustainable and high quality services at affordable prices to users.

6.2 The levy of user charges would be based on following main considerations

- saving to the users of improved / created facilities
- recovery of the investments
- uniformity between various projects
- willingness to pay

7. INSTITUTIONAL FRAMEWORK

7.1 The Government of Haryana recognizes the importance of an efficient institutional mechanism and therefore constitutes the requisite committees and empowered groups for furthering the objectives of the Policy. There would be two levels of implementation of the covenants of this Policy.

7.2 Cabinet Committee on Infrastructure (CCI): The projects under PPP mode having concession period of more than 10 years and / or involving investment of more than Rs. 25 crore, shall be considered by the Cabinet Committee on Infrastructure and approved on the basis of recommendations of the Committee of Secretaries on Infrastructure (CoSI).

7.3 A Committee of Secretaries on Infrastructure (CoSI), consisting of a group of Secretaries under the Chairmanship of the Chief Secretary, Government of Haryana for facilitating infrastructure development in the State under PPP would be set up. The other members of CoSI would be Principal Secretary to CM, Administrative Secretaries of Finance & Planning, Revenue, Law & Justice, Town & Country Planning, Industries, Building & Roads, Forest and the concerned Department. Principal Secretary, Finance would be the convener of this Committee.

The Chairman of CoSI may co-opt / invite any other officer / expert to be a member of CoSI and/ or to participate in its meeting.

The powers and functions of CoSI would be:-

- to consider and formulate policy directives for facilitation and acceleration of PPP mode of delivery of public services in the State.
- to consider and provide in principle approval for project to be taken up on PPP.

- to determine most preferred and optimal method, based on the detailed analysis presented on alternatives for procuring the public services / utilities. Wherever, Govt. of India has prescribed specific procedures for sector / scheme or projects, the same would be followed and in case of any gap, the provisions of this Policy would be adopted. The key issue would be as to which method of procurement would provide the best Value for Money (VfM), while determining the most appropriate method of delivery,
- to consider and approve projects under PPP mode having concession period up to 10 years and/or involving investment up to Rs. 25 crore.
- to consider and recommend PPP projects (including those requiring VGF), to the Cabinet Committee on Infrastructure.
- to approve bid documents, risk sharing principles, dispute resolution mechanism and bid processes.
- to resolve issues relating to project approval process.
- to approve sectoral policies and model contract principles.
- to prepare road map for project development.
- to provide enablers for projects.
- to identify inter-sectoral linkages.
- to exercise authority for accepting or rejecting sole bid if received and/ or limited bids, for any project
- to prescribe time limits for clearances for any project.
- to decide issues pertaining to user levies including but not limiting to prescribing mechanism and procedure for setting, revising, collecting and/or regulating user levies and to decide and settle disputes relating to user levies.
- to recommend en-actment of special legislation for formation of appropriate regulatory mechanism / robust grievance redressal mechanism as may be required.
- to inspect, review and monitor implementation, execution, operation and management of PPP Projects.

7.4 The Finance Department, Haryana would deal with all policy matters relating to PPP policy. It would nominate a State Nodal Officer for PPP and constitute a PPP Cell.

7.5 The PPP Cell would provide the requisite assistance to CoSI and would have the following functions:-

- Serve as the repository of knowledge and information relating to PPP including best practices, guidelines, schemes etc.
- Identify and prioritize sectors and sub sectors for PPP projects and seek in principle approvals if required.
- Assist various Government Departments in preparation of feasibility / project report by themselves or through consultant.
- Standardise procedures and bid documents.
- Advise, if required, Departments in their recommendations of final bids of the projects for approval of the CoSI, keeping in view the considerations of Public Sector Comparator (PSC) and Value for Money (VfM).
- Coordinate with GoI and line Departments of the State on all issues related to private investment in the infrastructure sectors, including PPP. Relevant Departments/Ministries in the State will coordinate with PPP Cell at all stages of project and the PPP Cell would keep itself informed of the status of the PPP proposals.
- Assess fund requirements for the development of projects, Viability Gap Funding (VGF) and any other related purpose for furthering the objectives of this policy.
- Organize trainings, workshops, seminar and conduct / recommend exposure visits for capacity building.

7.6 A PPP Nodal Officer shall be designated in each infrastructure-centric Ministries/departments/agencies of the State, to interact / coordinate with PPP Cell and to take forward the PPP initiative.

8. PROJECT IDENTIFICATION AND APPROVAL PROCESS

8.1 Project identification/ Conceptualization: All the Administrative Secretaries will identify a shelf of projects within a specific time frame for execution under PPP mode. These projects would be in addition to the projects under consideration already. The PPP Cell shall prioritize projects based on demand and supply situation, inter-linkages and other relevant factors.

8.2 Preparation of Feasibility/ Project Report for PPP: State Government Departments / Agencies, with the assistance of empanelled / non empanelled Transaction Advisor(s) (engaged through prescribed process), as the case may be, will get the Feasibility Reports and PPP project (s) prepared for the identified projects. The State Government may also engage consultant / Transaction Advisor on retainer basis in the interest of speedy delivery mechanism. The Project Report would establish the need for the project, project cost estimation and indicative financial viability (including VfM exercise with consideration of Public Sector Comparator, if required) of the proposed project including preliminary engineering studies, if any. Approval of the project would then be obtained from CoSI after review by PPP Cell.

8.3 Preparation of Detailed Project Report (DPR) and Selection of Developers

8.3.1 The concerned Department / Agency shall prepare / get prepared the Detailed Project Report (DPR) if required, or if the DPR is to be prepared by the Developer, initiate the procurement process for selection of suitable Developer. The DPR should specifically indicate cost benefits of the project considering social and environmental factors. In all cases, the award criteria would be spelt out upfront. The Department(s) may use the services of suitably qualified independent consultant(s) with the requisite domain knowledge for Transaction Advice. It would however be ensured that the Transaction Advisor selected for the project would not be consultant / facilitator to any of the prospective bidders to avoid conflict of interest. Consultation with stakeholders would be part of project development. The stages in the procurement process could be single – stage or multi-stage, depending on the size or level of complexity of the project.

Generally main stages in the procurement process would include:-

- Engagement of Transaction Advisor for assistance in procurement process,
- Request for Qualification (RfQ) / Inviting Expression of Interest (EOI), from prospective bidders.
- Receiving proposals from prospective bidders and their evaluation for Qualification.
- Preparation / review (if available) of Request for Proposals (RfP) including conditions of contract, evaluation criteria and concession agreement and issuing them to pre-qualified applicants (bidders).

- Pre – bid meeting for any clarifications and modification of bid documents, if considered necessary.
- Receipts of bids – technical and financial proposals, their evaluation and selection of most preferred developer in accordance with the prescribed criteria
- Signing of Agreement.

Competitive bidding process shall be adopted in all PPP Projects initiated by the concerned Department. The notice for inviting participation will be adequately publicized. The bid process will be designed to assist and ascertain, technical, financial, managerial and commercial, capabilities of the Developer. All proposals shall be opened and evaluated at a common platform in a free and fair manner. The Sponsoring Department(s) will periodically inform the CoSI of the progress of all Projects under process.

8.3.2 Treatment of Sole Bid: In case of the competitive bidding process resulting into a Sole Bid, the Department shall decide the matter only with the approval of CoSI.

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

8.4 Monitoring of the Projects: CoSI will monitor the progress of PPP projects. All the Departments/Agencies carrying out PPP projects will keep the PPP Cell informed regarding the latest development.

9. CONTRACTUAL ARRANGEMENTS

9.1 A transparent process would be followed in the award of all PPP contracts. The process of project implementation would be appropriately backed by contractual arrangements. The GoH would develop contractual frameworks to allow for equitable allocation of risks between the contracting parties, taking into account the legitimate concerns of private investors. The attempt would be to allocate risks to the party best suited to bear the risks.

9.2 Approval of Contract Principles: In case a model contract for a Sector has not been adopted or in case there are deviations proposed vis-à-vis the approved model

contract for a Sector, then, the CoSI will formulate or approve the contract principles as the case may be.

9.3 The contractual arrangement for existing infrastructure projects would typically include:

- Management of the assets by private operators through
 - Operations and Maintenance (O&M) contracts for defined periods.
 - Lease of assets.
 - Rehabilitate, Operate, Maintain and Transfer (ROMT) contracts.
- Partial divestiture of the Undertaking.

9.4 Contractual arrangement depending on nature of project, for new infrastructure projects would typically include besides others, the options available under various common modes of PPP. The basic PPP contract types are:-

- Service Contracts;
- Management Contracts;
- Lease Contracts;
- Concessions;
- Build– Operate– Transfer (BOT) and similar arrangements; and
- Joint Ventures.

9.5 Development through Special Purpose Vehicles (SPVs): Special Purpose Vehicles (SPVs) shall be formed, as and when required, to carry forward and realize the objectives of this Policy and get various clearances and permissions in the SPVs to speed-up the project. .Where necessary the Government may also participate in the equity of any SPV for the development and implementation of infrastructure projects. The equity structure of the SPV would be decided on a case-to-case basis.

10. STATE SUPPORT

10.1 It will be the endeavor of the GoH to create a conducive environment for attracting investment to infrastructure sector through the PPP mode. Accordingly, the State Government may formulate sector-specific policies, from time to time, for providing specific viability gap funding, incentives and also for establishing mechanism for tariff setting, pricing, dispute resolution mechanism, arbitration, guarantees, safety and operational standards etc. It also envisages coordination across infrastructure sectors. Necessary legislative support, including Regulatory

Framework, would be provided, as and when required. Administrative support and financial support shall include:

10.2 Administrative Support: State Government shall offer necessary administrative support to all the infrastructure projects developed in the State under the PPP mode in:

- a) acquisition of land necessary for the project. The land will be acquired strictly in accordance with the policy of the State Government prevalent at the time of acquisition of land for the project.
- b) rehabilitation & resettlement of affected families / persons, in case so required as per existing policy of the Government,
- c) shifting of utilities, wherever required,
- d) the process of availing benefits under various Central Government and State Government schemes (as may be applicable) to facilitate private sector participation in physical and social infrastructure projects.
- e) obtaining the clearances from the State Government, as may be required for the project,
- f) provision of supply of power and water at projects site;
- g) In case land belonging to the State Government/Panchayat is being made available for the project, the same shall be on leasehold basis for the duration of the project concession period. Annual lease charges shall be as specified by the State Government from time to time.

10.3 Financial Support

10.3.1 Considering that infrastructure projects require special considerations in view of long gestation period and risks on return and other factors, GoI has provided incentives and support in terms of tax holidays, tax exemptions, Viability Gap Funding (VGF). These would be available for all PPP projects of the State.

10.3.2 The GoH may consider to provide Viability Gap Funding (VGF), in addition to the viability gap funding that may be available from the Government of India, for PPP projects in Infrastructure. The quantum of additional viability gap funding to be provided by GoH would not exceed 20% of the Total Project Cost and shall be determined for the project, after clearly and explicitly calculating all project costs (excluding cost of land and land related charges) and incentives/concessions, and provided that the quantum of total VGF does not exceed the limit prescribed by GoI for PPP projects.

10.3.3 GoH would make all the efforts to avail the facilities provided by Gol for PPP such as for project development and for enhancing the viability of projects.

10.3.4 PPP projects may require the project development costs including the costs for feasibility studies, environmental impact studies, legal reviews, development of project documents, transaction advice etc. Funds would also be required to meet the costs for acquiring land and for other pre- construction / implementation activities. GoH would make provision and create suitable funding mechanism to meet these costs. Detailed guidelines for establishment and operation of such Fund shall be issued by GoH.

10.3.5 GoH recognises that PPP model requires reasonable assurances that competing facilities would not be created which may materially adversely affect the technical and financial viability of infrastructure project.

11. HARYANA INFRASTRUCTURE FUND

11.1 The Government shall establish a fund to be called “Haryana Infrastructure Fund (HIF)” and may levy cess / tax separately to augment this fund. The fund will be utilized for building up the required infrastructure and the works to be undertaken would include the following:-

- a) Taking up of technical and financial pre-feasibility and feasibility studies, preparation of reports and bid documents and any other activities that need to be undertaken prior to offering proposed infrastructure projects for private sector participation including facilitation to select projects to assess viability gap funding and other such schemes from Government of India.
- b) Project development costs including the costs for feasibility studies, environmental impact studies, legal reviews, development of project documents, transaction advice etc., the costs for acquiring land if required, and for other pre-construction / implementation activities.
- c) Direct financial support to the projects for enhancing project viability as considered by the Government.
- d) Capacity building and training.
- e) Any other purpose in pursuance of this Policy and building of infrastructure in the State.

11.2 Operation of Fund: The requisite legislation shall be enacted and detailed guidelines for the same shall be issued separately.

12 . DURATION AND REVIEW OF POLICY

12.1 This policy would come into force with effect from the date of issue of Government Order and would be effective till it is superseded by Government.

12.2 There could be a mid-term review of this Policy based on a critical assessment of feedback from stakeholders, and changes that would be deemed necessary and desirable, would be incorporated at that stage.

12.3 The government recognizes that expanding and institutionalizing the scope of PPP in provision of infrastructure may also necessitate appropriate changes in the existing legislative framework. It is however felt that the present framework offers sufficient scope for PPPs in provision of infrastructure. The specific legislative constraints for PPPs would also be reviewed and addressed during implementation of this policy.

13. SECTORAL STRATEGIES

The broad principles set out in this document would govern the various strategies to be developed for each sector. The concerned administrative departments would finalize the sector strategies and action plans there under within six months from the date this Policy becomes operational.