महाराष्ट्र शासन
नियोजन विभाग
शासन निर्णय क्रमांकः पीपीपी-३३२६/प्र.क्र.२१/का.१४१७

हुतात्मा राजगुरू चौक, मादाम कामा मार्ग,
मंत्रालय, मुंबई- ४०० ०३२.
दिनांक: ०५ मार्च, २०२६

प्रस्तावना:

अर्थव्यवस्थेची शाश्वत व सातत्यपूर्ण वाढ साध्य करण्यासाठी दर्जेदार पायाभूत सुविधा उपलब्ध करुन देणे अत्यावश्यक आहे. अशा प्रकारच्या विकासासाठी संसाधन व कामकाजाच्या कार्यक्षम व्यवस्थापनासह मोठ्या प्रमाणात गुंतवणूकीची आवश्यकता असते. तथापि, या गरजा केवळ सार्वजनिक क्षेत्राद्वारे पूर्ण होणे शक्य नाही. या पार्श्वभूमीवर सार्वजनिक खाजगी भागीदारी ही संकल्पना भांडवल उभारणीबरोबरच संसाधनात वाढ करण्यासाठी आणि सेवा वितरणाच्या कार्यक्षमतेत वाढ करण्यासाठीदेखील अत्यावश्यक ठरते. खाजगी क्षेत्रातील भांडवल, व्यवस्थापकीय कौशल्ये, कार्यकारी क्षमता, नाविन्यपूर्ण दृष्टिकोन आणि तांत्रिक कौशल्य याचा वापर करून, सार्वजनिक-खाजगी भागीदारीद्वारे, वापरकर्ते व अर्थव्यवस्था या दोन्हींसाठी प्रभावीपणे जोखीम विभागणी, दीर्घकालीन मूल्य सुनिश्चितीसह, उच्च दर्जाच्या पायाभूत सुविधा आणि सार्वजनिक सेवांची निर्मिती व देखभाल करणे शक्य होते. शासनाची पायाभूत प्रकल्प हाती घेण्याची क्षमता वाढविण्याच्या दृष्टीने सार्वजनिक-खाजगी भागीदारी मदत करते. सार्वजनिक-खाजगी भागीदारी प्रकल्पांची जलद आणि दर्जेदार पूर्तता करण्याकरिता राज्याचे सर्वसमावेशक सार्वजनिक-खाजगी भागीदारी धोरण तयार करण्याची आवश्यकता होती.

महाराष्ट्र सार्वजनिक-खाजगी भागीदारी धोरण २०२६, धोरणाच्या अंमलबजावणीसाठी विविध स्तरावरील समित्या, संस्थात्मक व वित्तीय चौकट सुनिश्चित करण्यास दिनांक १० फेब्रुवारी, २०२६ रोजी मंत्रीमंडळ बैठकीमध्ये मान्यता देण्यात आली आहे. त्यानुसार महाराष्ट्र सार्वजनिक-खाजगी भागीदारी धोरणाबाबतचा शासन निर्णय निर्गमित करण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :

या शासन निर्णयान्वये **"महाराष्ट्र सार्वजनिक-खाजगी भागीदारी धोरण २०२६"** निश्चित करण्यात येत आहे. सदर धोरणाची इंग्रजी भाषेतील प्रत शासन निर्णयासोबतच्या परिशिष्ट 'अ' मध्ये देण्यात आली आहे.

२. सार्वजनिक-खाजगी भागीदारी धोरणाच्या अंमलबजावणीसाठी समित्या व त्यांची अधिकारक्षेत्रे खालीलप्रमाणे असतील :

२.१ मंत्रिमंडळ पायाभूत सुविधा समिती (Cabinet Committee on Infrastructure - CCI)

शासनाच्या सर्व मार्गांनी मिळणारे सहाय्य ज्याचे एकूण वित्तीय मुल्य रु. २५ कोटी किंवा त्यापेक्षा जास्त असेल अशा सार्वजनिक-खाजगी भागीदारी (PPP) प्रकल्पांना मंजूरी देण्याचे अधिकार मुख्यमंत्री महोदयांच्या अध्यक्षतेखालील नियोजन विभाग, शासन निर्णय क्र. संकिर्ण -२०२५/ प्र.क्र. १/ का-१४६१, दिनांक १० मार्च, २०२५ अन्वये पुर्नरचित मंत्रीमंडळ पायाभूत सुविधा समितीस (समितीच्या संरचनेत वेळोवेळी होणाऱ्या बदलांसह) असतील.

२.२ सार्वजनिक-खाजगी भागीदारी प्रकल्पांकरीता शक्ती प्रदत्त समिती (Empowered Committee for PPP Project – ECI)

मुख्य सचिव यांच्या अध्यक्षतेखाली खालीलप्रमाणे शक्ती प्रदत्त समिती स्थापन करण्यात येत आहे :

अ.क्र.	पदनाम	समितीतील पदनाम
१	मुख्य सचिव, महाराष्ट्र शासन	अध्यक्ष
२	मुख्य कार्यकारी अधिकारी, महाराष्ट्र इन्स्टिट्यूशन फॉर ट्रान्सफॉर्मेशन (मित्र)	सदस्य
३	अपर मुख्य सचिव /प्रधान सचिव, वित्त विभाग	सदस्य
४	संबंधित विभागाचे अपर मुख्य सचिव /प्रधान सचिव /सचिव	सदस्य
५	प्रधान सचिव /सचिव, विधि व न्याय विभाग	सदस्य
६	स्थानिक क्षेत्रिय संस्था /स्थानिक स्वराज्य संस्था प्रमुख	सदस्य
७	सार्वजनिक खाजगी भागीदारी क्षेत्रातील तज्ञ (PPP Expert)	सदस्य
८	अपर मुख्य सचिव /प्रधान सचिव /सचिव, नियोजन विभाग	निमंत्रक

शासनाच्या सर्व मार्गांनी मिळणारे सहाय्य ज्याचे एकूण वित्तीय मूल्य रु. २५ कोटी पेक्षा कमी असेल अशा सार्वजनिक-खाजगी भागीदारी (PPP) प्रकल्पांना मंजूरी देण्याचे अधिकार उपरोक्त शक्ती प्रदत्त समितीस असतील.

३. सदर धोरणाच्या अंमलबजावणीसाठी नियोजन विभागामध्ये सार्वजनिक - खाजगी भागीदारी कार्यासन (PPP Desk) स्थापन करण्यात येत आहे.

४. सार्वजनिक खाजगी भागीदारी संबंधित प्रशासकीय विभागांच्या आवश्यकतेनुसार त्या विभागामध्ये सार्वजनिक-खाजगी भागीदारी कार्यासन (PPP Desk) स्थापन करण्यात यावा.

५. सार्वजनिक - खाजगी भागीदारी (PPP) धोरण राबविण्यासाठी ‘मित्र’ संस्थेमध्ये सार्वजनिक - खाजगी भागीदारी कक्ष (PPP Cell) स्थापन करण्यात यावा.

६. सार्वजनिक - खाजगी भागीदारी (PPP) प्रकल्पांसाठी व्यवहार्यता तफावत निधी (Viability Gap Fund - VGF) म्हणून रूपये २०० कोटीचा निधी एकछत्र योजनेंतर्गत (Umbrella Fund) स्थापन करण्यात येत आहे. त्यामधून निधी यथास्थिती मंत्रिमंडळ पायाभूत सुविधा समिती किंवा शक्ती प्रदत्त समिती यांच्या मान्यतेने सार्वजनिक खाजगी भागीदारी प्रकल्पासाठी उपलब्ध करुन देण्यात येईल. तसेच त्यासाठी नियोजन विभागात स्वतंत्र लेखाशिर्ष उघडण्यात येईल.

७. सार्वजनिक - खाजगी भागीदारी (PPP) प्रकल्प राबविण्याचे दृष्टीने पूर्वतयारीसाठी संबंधित प्रशासकीय विभागात प्रकल्प विकास निधी (Project Development Fund-PDF) म्हणून रुपये ५ कोटी इतक्या निधीची तरतूद करण्यात यावी व त्यासाठी सदर विभागांतर्गत स्वतंत्र लेखाशिर्ष उघडण्यात यावे.

८. ज्या सार्वजनिक-खाजगी भागीदारी (PPP) प्रकल्प सद्यस्थितीत सवलत करारनामा होऊन (Concession Agreement) कार्यान्वित आहेत, अशा प्रकल्पांच्या बाबतीत त्यांच्या निविदा दस्तऐवज (Tender Documents) व सवलत करारनाम्यानुसार कार्यवाही करण्यात यावी. तसेच इतर सार्वजनिक-खाजगी भागीदारी (PPP)

प्रकल्पांच्या बाबतीत, महाराष्ट्र सार्वजनिक-खाजगी भागीदारी (PPP) धोरण, २०२६ नुसार कार्यवाही करण्यात यावी.

९. सदर धोरणातील तरतुदींचे अर्थ विवरण करण्याचा अधिकार शासनास असेल व तो अंतिम समजण्यात येईल.

१०. सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०२६०३०५१८५१०७६४१६ असा आहे. हा आदेश डिजीटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

MILIND RAGHUNATH KULKARNI

Digitally signed by MILIND RAGHUNATH KULKARNI
DN: c=IN, o=GOVERNMENT OF MAHARASHTRA, ou=PLANNING DEPARTMENT,
2.5.4.20=438FA70BB728385B5C81BDE24450C11D5CE0D99ED18A61FB5B1685722E2C2C03, postalCode=400032,
st=Maharashtra,
serialNumber=DB6FB8A1DB6A8793024B0C8728EB79AB35DD0CAE14DDA9621D73EA4347C7856A, cn=MILIND RAGHUNATH KULKARNI
Date: 2026.03.05 18:52:27 +05'30'

(मिलिंद कुळकर्णी)
शासनाचे उप सचिव

प्रति,

१. मा. राज्यपाल, महाराष्ट्र राज्य यांचे प्रधान सचिव, राजभवन, मुंबई,
२. मा. सभापती, महाराष्ट्र विधानपरिषद, महाराष्ट्र विधानमंडळ सचिवालय, मुंबई,
३. मा. अध्यक्ष, महाराष्ट्र विधानसभा, महाराष्ट्र विधानमंडळ सचिवालय, मुंबई,
४. मा. विरोधी पक्षनेता, विधानपरिषद/विधानसभा, महाराष्ट्र विधानमंडळ सचिवालय, मुंबई,
५. मा. उप सभापती, महाराष्ट्र विधानपरिषद, महाराष्ट्र विधानमंडळ सचिवालय, मुंबई,
६. मा. उपाध्यक्ष, महाराष्ट्र विधानसभा, महाराष्ट्र विधानमंडळ सचिवालय, मुंबई,
७. सर्व सन्माननीय सदस्य, विधानपरिषद/विधानसभा, महाराष्ट्र विधानमंडळ सचिवालय, मुंबई,
८. मा. मुख्यमंत्री, महाराष्ट्र राज्य यांचे अपर मुख्य सचिव/प्रधान सचिव/सचिव, मंत्रालय, मुंबई,
९. मा. उप मुख्यमंत्री (नगरविकास, गृहनिर्माण, सार्वजनिक बांधकाम (उपक्रम) यांचे सचिव, मंत्रालय, मुंबई,
१०. मा. उप मुख्यमंत्री (राज्य उत्पादन शुल्क, क्रीडा, व युवक कल्याण, अल्पसंख्याक आणि औफाक) यांचे सचिव, मंत्रालय, मुंबई,
११. सर्व मा. मंत्री महोदय यांचे खाजगी सचिव,
१२. सर्व मा. राज्य मंत्री यांचे खाजगी सचिव,
१३. मा. महालेखापाल (लेखा व अनुज्ञेयता), महाराष्ट्र, मुंबई/नागपूर,
१४. मा. महालेखापाल (लेखा परीक्षा), महाराष्ट्र, मुंबई/नागपूर,
१५. मुख्य कार्यकारी अधिकारी, महाराष्ट्र इन्स्टिट्यूशन फॉर ट्रान्सफॉर्मेशन (मित्र), मुंबई,
१६. सर्व मंत्रालयीन विभागाचे अपर मुख्य सचिव/प्रधान सचिव/सचिव,
१७. प्रधान सचिव, महाराष्ट्र विधानमंडळ सचिवालय (विधानपरिषद), विधानभवन, मुंबई,
१८. प्रधान सचिव, महाराष्ट्र विधानमंडळ सचिवालय (विधानसभा), विधानभवन, मुंबई,
१९. सर्व शासकीय व निम-शासकीय महामंडळे, सर्व सार्वजनिक प्राधिकरणे, सर्व सार्वजनिक उपक्रम,
२०. मा. मुख्य सचिव यांचे सह सचिव, मुख्य सचिवांचे कार्यालय, मंत्रालय, मुंबई,
२१. महासंचालक, माहिती जनसंपर्क संचालनालय, मंत्रालय, मुंबई,
२२. सर्व विभागीय आयुक्त,

२३.सर्व जिल्हाधिकारी,
२४.सर्व महानगरपालिका आयुक्त,
२५.सर्व मुख्य कार्यकारी अधिकारी, जिल्हा परिषदा,
२६.सह सचिव/उप सचिव/अवर सचिव, नियोजन विभाग, मंत्रालय, मुंबई,
२७.निवडनस्ती, कार्यासन १४१७, नियोजन विभाग, मंत्रालय, मुंबई.

परिशिष्ट – अ

Maharashtra Public Private Partnership Policy, 2026

Maharashtra Public Private Partnership Policy, 2026

1 Contents

Maharashtra Public Private Partnership Policy, 2026

1. Introduction

Provision of quality infrastructure is a pre-requisite for the economy to achieve a higher growth trajectory on a sustained basis. This requires enormous investments with efficient management of resources and operations. However, these requirements cannot be met by the public sector alone. In this context, Public–Private Partnership (PPP) becomes essential not only for mobilizing capital but also for augmenting resources and enhancing the efficiency of service delivery. By leveraging the private sector's capital, managerial skills, operational capabilities, innovative approaches, and technical expertise, PPPs enable the creation and maintenance of high-quality infrastructure and public services while ensuring effective risk sharing and long-term value for both users and the economy. PPPs offer a number of advantages in terms of enhancing the ability of the Government to take a larger shelf of infrastructure projects.

1.1 Constraints in Propagating PPPs:

While encouraging PPPs, following constraints have been identified:

- Lack of a unified institutional framework, model guidelines, and uniform policies for PPP project development, appraisal, approval, and support (including Viability Gap Funding – VGF and Project Development Fund – PDF).
- Limited pipeline of credible, bankable projects across sectors, leads to disinterest of private sector despite availability of financing instruments.
- Insufficient clarity in bidding parameters, base value assessment, and sector-specific policy guidance beyond roads.
- Capacity gaps in public institutions, smaller agencies, and local bodies to design, manage, and oversee PPP processes effectively.
- Private sector also faces capacity constraints to take on a large volume of projects, further hampering PPP scale-up

2. Definitions

In this PPP Policy, unless the context otherwise requires:

a. **"PPP Policy"** means the Maharashtra Public Private Partnership Policy , 2026.
b. **"Accountability"** The ultimate accountability of service delivery remains with the Public Entity.
c. "**Best Effort**" means best efforts made in the circumstances.
d. **"Bidder"** means any entity, including any Bidding Consortium, which has submitted a proposal to undertake an Infrastructure Project under Public Private Partnership.
e. **"Bidding Consortium"** means a group of entities that jointly makes a bid for a project
f. **"Cabinet Committee on Infrastructure Development"** means a Committee of the Cabinet setup for dealing with infrastructure subjects and proposals as per GR dated 10.03.2025 and as amended time to time.
g. **"Categories of Projects"** means categories defined in Chapter II of the PPP Policy and such other categories as may be notified by the Government from time to time.
h. **"Central Government or Union Government"** means Government of India.
i. **"Charges For Abuse Or Abuser Charges"** means the levy of charges by the Competent Authority on any Developer, if any Developer abuses any right accorded under the Concession Agreement, in the course of development, implementation, operation, maintenance, management and transfer of any Physical /Social Infrastructure Project, to the extent as may be specified in the Concession Agreement or such other agreement as may be prescribed by the Government.

j. **“Competent Authority”** Unless specifically mentioned, the competent authority would be the Minister in-charge of the Government Department or the Governing Board in case of Local Authority or Government Agencies, as the case may be.

k. **“Company”** means any entity incorporated by memorandum of association under the Companies Act, 1956 / 2013 or incorporated under any other statute or deemed to be incorporated under the laws of India or the relevant laws of any other country of the world.

l. **“Concessionaire”** means the Special Purpose Vehicle (SPV) created by the Successful Bidder / Consortium from Private Sector for Development with or without operation and management of the Project.

m. **“Concession Agreement”** means a contract of the nature between the Developer and the Public Authority such as State Government or the Government Agency or the Local Authority relating to any Infrastructure Project or such other contract as may be prescribed from time to time by the Government.

n. **“Concessioning Authority”** means the State Government or the Government Agency or the Local Authority entering into the concession agreement with the Developer

o. **“Construction”** means any construction, reconstruction, rehabilitation, improvement, expansion, addition, alteration and related works and activities including supply of any equipment, materials, labor and services related to build or rehabilitate any Infrastructure Project comprising physical structures or systems or commodities or for utilization of resources or provision of services.

p. **“Customer”** means end user.

q. **“DSCR”** Debt Service Coverage Ratio

r. **“Developer”** means any Private Sector Participant who has entered into a contract for the implementation or management of a Physical/ Social Infrastructure Project or for delivering services with the Government or any Government Agency or Local Authority under the PPP Policy.

s. **“Fixed term of concession”** The arrangement cannot be in perpetuity. After a pre-determined time period, the arrangement with the Private Sector Entity comes to a closure.

t. **“Fund”** means the **PPP Fund** constituted for Project Development and Viability Gap Funding as defined in Chapter V of this Policy.

u. **“Generic Risks”** means circumstances that have the potential to adversely affect the development of a Project or the interests of the participants to the Project or the interests of the Government or Government Agency or Local Authority and are in the nature of construction period risk, operation period risk, market and revenue risk, finance risk, legal risk and miscellaneous risks as enumerated in Schedule III of the PPP Policy.

v. **“Government”** means the State Government of Maharashtra.

w. **“Government Agency”** means any department of the Government or any corporation or body owned or controlled by the Government where the Government holding is more than 50% of paid-up share capital in such corporation or body.

x. **“Government Company”** means any company in which more fifty per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as defined.

y. “**Infrastructure**” means public works relating to physical and social infrastructure for utilizing the natural resources and providing services by either public works of physical structure or systems for facilities or commodities or utilization of resources or provision of services.

z. **“Infrastructure Project or Project”** means a project in the Sectors, as notified under the PPP Policy by the Government.

aa. **“IDEA”** Infrastructure Development Enabling Authority, as constituted under Maharashtra Infrastructure Development Enabling Authority Act, 2018.

bb. **"IRR"** Internal Rate of Return i.e. percentage return on investment at which Net Present Value (NPV) is zero

cc. "**Lender"** means any financial institution or bank or any entity providing financial assistance with or without security or giving any advances to any Developer for completing or implementing any Project under the PPP Policy.

dd. **"Local Authority"** means any Municipal Corporation or Municipal Council or any Zilla Parisad, Panchayats and or Village Panchayat or local body or any other statutory body formed, elected or appointed for local self-Government.

ee. **"Local Laws"** means laws applicable to the State other than Central laws.

ff. **"MITRA"** Maharashtra Institution for Transformation, Department of Planning, Government of Maharashtra. **"Non-Profit Organization"** means any organization formed for promoting commerce, art, science, religion, charity or any oth**er useful object which ap**plies its income in promoting its objects and prohibits the payment of any dividend to its members and does not allow its corpus or income to be lent or advanced or diverted or utilized or exploited by its members or office bearers or any other company in which they or any of them may be interested or connected.

gg. **"Notification"** means a notification published in the Official Gazette of the Government of Maharashtra and the word "notified" shall be construed accordingly.

hh. **"NPV"** refers to the Net Present Value, which is the difference between the present value of future cash inflows and the present value of future cash outflows over the concession period, discounted at the Weighted Average cost of capital (WACC).

ii. **"Polluter Charges"** means levy of charges prescribed on any Developer as prescribed under the relevant law or concession agreement, if the Developer pollutes the environment or does not adhere to the specifications and measures for environmental preservation & conservation, agreed under the contract with the Government or the Government Agency or the Local Authority or fails to stop polluting the environment within 30 days of receipt of notice in writing from the concerned Government Agency or the Local Authority.

jj. **"PGRA"** means the PPP Grievance Redressal Authority of Maharashtra

kk. **"Prioritized Project"** means any Project, which is notified by the Cabinet Committee on Infrastructure as a prioritized project under the PPP Policy.

ll. **"Private Sector Participant"** means any company which is not controlled by the Government i.e. any person other than the Central Government or the State Government or any Government Agency or Local Authority or any joint venture between the Central Government or the State Government Departments or any Statutory Body or Authority or Local Authority or any Ccorporation or Company in which the Central Government or the State Government or any Government Agency, Statutory Body or Authority or local body is holding more than 50% Authorized and paid-up share capital. For avoidance of doubt, an entity that has a majority non-governmental ownership, i.e., 51 percent or more, is construed as a Private Sector Entity

mm. **"Project Authority"** The Government Department / Agency / Authority / Local Body which is developing the Project.

nn. **"Prescribed"** means prescribed by rules or Regulations made under any law enacted in furtherance of this PPP Policy.

oo. **"Prospective Lenders"** means financial institutions, banks or any other entities of such project financing track record as may be prescribed, who in principle is agreeable to provide guarantees or finance to the Bidder under any of the financing documents.

pp. **"Public Need"** means a substantial or obvious community need for the proposed project based on all attendant circumstances as compared to a mere convenience. The determination of "Public Need" shall be done by the relevant administrative department after considering (a) Common use and needs of the community; (b) Appropriateness of the project in relation to the development plans already drafted or under implementation or under discussion by/ in the department concerned; and (c) Possibility of the project otherwise not being taken up.

qq. ***"Public Services"*** are those services that the government (central, state, local) is traditionally obligated to provide to its citizens.

rr. ***"Public Asset"*** is an asset which is inextricably linked to the delivery of a Public Service. A 'Public Asset' would typically reflect a market failure and possibility of rent seeking which would require regulation, ownership or contractual controls by government in order to protect the public interest.

ss. **"Regulations"** means regulations made under any law enacted in furtherance of the PPP Policy.

tt. **"Responsive Bid"** means a bid from an eligible Bidder which complies with all the requirements prescribed by the tender documents or other documents as the case may be.

uu. **"Sectors"** means sectors as notified under Chapter I of the PPP Policy and as may be notified from time to time by the Government.

vv. **"Sector Regulator"** means the Regulatory Authority for a Sector or Sectors as may be notified by the Government from time to time.

ww. **"Social Sector"** means water supply, solid waste management, wastewater treatment, health, education, agriculture and allied sectors and irrigation

xx. "**Sole Bid"** means the only Responsive Bid received by the Government Agency or the Local Authority, in a competitive bidding process.

yy. **"Sponsoring Agency"** means the State Government or Government Agency or Local Authority or Government companies which enter into the concession agreement with the Private Developer for implementing or managing Infrastructure Project or delivering services.

zz. **"State"** means the State of Maharashtra.

aaa. **"State Government"** means the Government of Maharashtra.

bbb. **"State Support"** means grant by the State of any administrative support, asset-based support, foregoing revenue benefits support, undertaking contingent liabilities by providing guarantees or financial support to the Developer as enumerated in Schedule VI of the PPP Policy;

ccc. **"User Charges/Levies"** means the right or authority granted to the Developer by the Government Agency or the Local Authority to recover Investment and fair return on Investment and includes toll, fee, charge or benefit by any name.

ddd. **"Use of Natural Resources"** In instances where PPP projects provide an implicit usage/ownership or exclusivity right over underlying natural resources, such as the use of land for a transportation project, any alternative exploitation of the land beyond that specified in the Concession Agreement/Contract will be prohibited and this would be a non-negotiable position. However, additional amenities which are complementary to the core public assets can be included in the Concession/Contract to enhance project viability. To the extent allowed in relevant Acts, additional land for commercial development may also be included in the Concession/Contract to address the twin objectives of ensuring inclusive use of assets and achieving viability.

eee. **"WACC"** - Weighted Average Cost of Capital is the weighted average rate of interest rate of debt and required return of equity

3. Need for Public-Private Partnership (PPP) policy

The State of Maharashtra has adopted Public-Private Partnership (PPP) as a preferred model for infrastructure development, introducing sector-specific guidelines in areas such as roads, tourism, irrigation, power, and water supply. However, in the absence of a unified state-level PPP policy, these initiatives remain fragmented and inconsistent across departments, leading to hesitation among many departments in pursuing PPP projects due to lack of clear guidance. Additionally, issues such as defining concession periods based on developers' returns instead of asset life have adversely impacted service quality, caused public dissatisfaction, and generated resistance to user charges. A comprehensive PPP policy is essential not only to ensure uniformity and clarity but also to facilitate faster project completion and optimized costs, thereby enhancing efficiency and maximizing public benefit.

4. Vision

"To develop high-quality physical and social infrastructure and enhance service delivery in Maharashtra over the next decade by leveraging private sector financial, managerial, and technical expertise through PPPs, promoting efficiency, adopting project-based financing, and driving innovation and cost-effectiveness in the development and management of infrastructure projects. The focus shall be on achievable outcomes defined by clear performance standards and benchmarks, ensuring sustainable growth and measurable improvements in infrastructure quality and accessibility".

5. Objective

Key Objectives of the Policy:

- Create mechanisms for project identification, speedy approvals, and efficient execution to ensure value for money and maximising public benefit
- Establish transparent legal, institutional, and financial frameworks for PPPs, including Project Development Funds and Viability Gap Funding.
- Adopt best practices in tendering, procurement, and bid process management to bring transparency, consistency, and objectivity.
- Promote sustainable development and inclusive growth through effective private sector participation in infrastructure development and service delivery.

6. Public Private Partnership

6.1 Definition

Public Private Partnership means arrangement between a government / statutory entity / Public Authority on one side and Private Sector Entity on the other side, for the provision of public assets and/or public services, through investments being made and/or management being undertaken by the Private Sector Entity, for a specified period of time, where there is well defined allocation of risks between the private sector and the public authority, and the Private Sector Entity who is chosen on the basis of open competitive bidding, receives performance linked payments that confirm (or are benchmarked) to specified and pre-determined performance standards, measurable by the public Authority or its representative.

Roles and Responsibilities of the Public and Private Parties

The two parties involved in PPP projects are the public and the private entity. For the success of PPPs, roles, and responsibilities of the both parties are defined as follows:

- Principal roles for the public sector in PPP projects are:
    - To identify the need of the project;
    - To effectively structure the project keeping in mind the interest of the parties involved;
    - To facilitate implementation of the envisaged project such as land acquisition, utility shifting etc.;
    - To monitor the project based KPIs during the construction as well as operating stage;
    - To take over the asset at the end of the concession period.

- Principal roles for the private sector in PPP projects are:
    - To mobilize additional capital;
    - To provide alternative management and implementation skills;
    - To provide value added services to the consumers and the public at large;
    - To provide better identification of needs and optimal use of resources;
    - To transfer the asset at the end of the concession period in accordance with the terms of the concession agreement.

However, the roles and responsibilities of the parties may be designed as per contours and requirements of the project.

6.2 PPP Projects:

All the projects which have any of the following**:**

a. The Government, Government Agency, or Local Authority provides asset support, such as nominal land rates or Floor Space Index (FSI) incentives.
b. Financial incentives, including direct support like Viability Gap Funding, are provided.
c. The projects which have revenue share or premium

6.3 Applicability of Policy

6.3.1 It extends to the whole of the State of Maharashtra.

6.3.2 The policy shall be applicable to all the State Government Departments and Entities created by the State Government by or under Statute i.e. Statutory Boards, Authorities, Companies, Local Bodies etc.

6.3.3 It shall apply to all physical and social Infrastructure as well as Service Delivery Projects implemented through Public Private Partnership in the Sectors enumerated in Schedule II and to such other sectors as may be notified by the Government under the PPP Policy from time to time.

6.3.4 It shall come into force with effect from the date of publication of this Policy by the Government.

6.3.5 Projects awarded before the date of publication of this Policy shall continue to be implemented in accordance with their respective tender documents and concession agreements.

6.4 Projects / Arrangements, where this policy is not applicable

6.4.1 The PPP aims to mobilise private capital, hence the PPP Policy will not apply to any Project which is undertaken as a joint venture between the State and the Central Government Departments or between the State or Central Government and any statutory body or between any statutory bodies or between the State and Central Government or statutory body and any Government Company or any Project which may be taken over by any private party or private sector undertaking upon privatization or disinvestment by the State or Central Government or Government Agency or by any statutory corporation or any Government Company

6.4.2 Any Project which does not involve fresh, new, additional Investment being made by a Private Sector Participant or is not constituted under Management or Service contracts as defined under PPP structures, or any Project which is expressly notified to be excluded from the provisions of the PPP Policy by the Government.

6.4.3 Government does not recognize outsourcing of service contracts, Engineering-Procurement-Construction (EPC) contracts and divestiture of assets as forms of PPP.

6.5 Essential conditions of PPP arrangements:

6.5.1 Arrangement with the Private Sector: The asset and/or service under the contractual arrangement will be provided by the Private Sector Entity. An entity that has a majority non-governmental ownership, i.e., 51 percent or more, is construed as a Private Sector Entity

6.5.2 Public Asset or Service for public benefit: The facilities/ services being provided are traditionally provided by the Government for the benefit of people at large. These two concepts have been defined under Definitions at Para - 2.

6.5.3 There would be fixed term of concession period (generally maximum of 30 years until specifically permitted by the Competent Authority) primarily based on life of the asset being created or managed as well as on the amount of investment, returns thereof and overall viability of the project.

6.5.4 Optimum allocation of risks must be there. While designing transaction structure, allocation of risk should be clearly mentioned.

6.5.5 Substantial investment must come from the Private Sector where construction is included as well as for projects which are economically desirable but commercially unviable such as social infrastructure sector of health, education etc.

6.5.6 Ownership of project/underlying assets like land is not transferred.

6.5.7 Output / outcomes are pre-defined rather than technical specifications, though minimum specifications should be well defined.

6.5.8 Accountability: The ultimate accountability of service delivery remains with the Public Entity i.e. the Public Entity remains ultimately accountable to the users of the services and therefore, need to manage and monitor the private developer effectively

7. PPP Project Delivery Process

The Government recognizes the need to engage with the private sector in diverse sectors through PPP frameworks. To achieve this, the PPP process has been defined and structured as discussed below. The Project Development and procurement process can be broadly divided into four phases, viz., identification stage, development stage, project sanction and procurement stage.

7.1 Project Identification

- All the concerned departments will identify the Projects that can be taken up on PPP basis to develop a shelf of potential PPP Projects. Concurrently, all the PPP desks in concerned departments will prepare a 15-year Perspective Plan for infrastructure development which would be converted into three 5 Year Plans and Annual Plans within the framework of the five-year plans.

This can be achieved by

- *Assessing all the physical infrastructure of the department where value addition can be enhanced by infusing private capital* ***OR***
- *Assessing ongoing services of the department whose customer satisfaction can be increased by infusing private management* ***OR***
- Assessing demand for/gaps in infrastructure or services.

- *The Department may categorize the projects in* three *categories*
  - *Greenfield and those brownfield projects which have revenue stream and where significant investment and operation efficiencies are required*
  - *Projects which may not require significant investment but have the positive revenue streams, further in situations where the assets are either underutilized or better management in cost optimization or revenue enhancement or both are needed*
  - Projects that have negative revenue stream, but PPP could be leveraged to optimize cost of public assets and services.
- The departments would thereafter identify the projects that can be prepared on PPP basis in one year. The *Suitability Assessment* for PPP mode of development would be first carried out by the department concerned by carrying out preliminary financial feasibility. The assessment will include examination of key public interest aspects of the project including identification of (a) how the public interest is protected and (b) how stakeholder needs are met if a PPP model is used. (c) minimize losses to public exchequer
- The departments, wherever possible, would conduct Public Sector Comparator analysis to demonstrate *best Value for Money* (**V*f*M**). "Value for Money" proposition is required for the Government Authority, Government Agency or Local Bodies to structure the project as PPP must be built as tangible / verifiable stage-wise outcomes and deliverables in the agreements.

  (A small note on VfM is attached at Schedule – VII)

Guidelines regarding the responsibility of PPP Cell/ PPP desk in arranging structured support for PPP project identification, project definition and initial feasibility assessments will be issued separately.

The Public Sector Comparator / Value for Money Analysis would be considered while appraising/ approving the PPP project and the guidelines for the same will be issued separately.

7.2 In-principle Approval

Before submitting the project for in principle approval to CCI and EC for PPP, as the case may be, the said project will be scrutinized by the Network Planning Group Committee constituted under the chairmanship of ACS/PS/Secretary, Planning Department vide GR of Planning Department Dated 19.11.2025 (as amended from time to time). The Projects so prepared will be sent to Empowered Committee or CCI as the case may be for in-principle approval, after which the Project Department will carry on the Project Development and tender documents. Approval to be taken of EC for RFP, Transaction Structure, Tender and Bid.

7.3 *Project Development*

- Once the in-principle approval is obtained, the Concerned Departments/ Government Agencies / Local Authorities will undertake the techno-economic feasibility study of the project.
- The Departments concerned will have to ensure that VGF, if required, is provided within the regular budget outlay.
- Detailed technical and financial feasibility report will be prepared by appointing a qualified technical consultant on the basis of which an Estimated Cost of the Project shall be identified which needs to be approved by the technical approval authority as per the existing Rules of Business. This may be improved by the appointed Concessionaire later without adversely impacting the Estimated cost and the basics of project like alignment/ routes / tariffs etc. which need to be defined by the Project Authority only. The Technical consultant can be appointed along with Transaction Advisor also.
- The Concessioning Authority would determine the range within which the bidding parameter may represent *value for money* at the Project Development Stage itself which should be used at the time of evaluation of bids.
- The project shall be structured on the basis of life of the proposed asset's life and not on the basis of recovery of Developer's investment alone. In case the gap exists then the project should either be restructured or be proposed for Viability Gap Fund.

  For example: if a project is of road development, then the concession period shall not be more than the time when the traffic on road has reached to full capacity of road. Likewise, if the project is for water sector and life of WTP is of X years then the Concession period shall not be given more than the X years until the redevelopment of WTP is taken into the cost in proposed cash flow. This shall be adhered to irrespective of the fact that the investment made by the Private Partner does not seem to have been recovered to the expected levels. In such cases where the gap in recovery exists the project should either be restructured with reduced cost / additional revenue streams.
- The Concessioning Authority would always prepare a Project Information Memorandum (PIM) including technical and financial feasibility report having all the necessary technical and financial information which a prospective bidder may require to submit an informed bid.
- The Public Entity may refer to the relevant schedules attached as part of this policy for general principles during project development and elements of Concession Agreement.
- The Public Entity shall appoint a Transaction Advisor (TA) for the all the projects costing above Rs 2 (Two) Crores.
- The TA shall be appointed either from the Panel created by the Government of Maharashtra or through a competitive bidding from among those who have vast and relevant experience of PPP projects development and bid process management for the respective sector.
- If the Public Entity has the in-house experience and they think that hiring an expert would help them, then they can hire such expert who has dealt with such projects under PPP.
- In all the PPP Projects, a qualified Lawyer / Law Firm which has vast PPP experience shall be appointed to guide on the legal structure and drafting of concession agreement based on the Project Structure as decided with the help of Transaction Advisor and Technical Consultant. The Government will also create panel of qualified transaction advisors and law firms which may be used for selection of firm. PPP Cell of MITRA or PPP Desk of Planning Department may be approached for any need-based assistance to the concern departments in this process.

- In order to facilitate development of PPP based projects, a Project Development Fund will be established in the annual budget of Departments on their request which can be used with the approval of Empowered Committee at the time of in-principle approval. The PDF would be used to cover the expenses incurred on developing PPP based Projects.
- It is advised that the PPP project should be developed in consultation with the prospective bidders with full transparency either as part of Expression of Interest (EOI) exercise as detailed later or pre-bid meetings with the interested bidders. If the need arises, the Project Authorities can do more than one pre-bid also.
- The Authority may also discuss the project with the major lenders to check the bankability of the project before it is launched for bidding.
- All the projects, where investment is needed, should be financed through Debt and Equity wherein the Equity of the Concessionaire shall not be less than 20-40% of the Total Project Cost depending upon PPP Sector.
- Prior approval from Empowered Committee shall be taken for RFP and Transaction Structure.
- Department should decide enabling provisions while designing Transaction structure by Competent Authority.

7.4 *Project Sanction*

- All the PPP Projects, would be processed and presented before the Empowered Committee or CCI as the case may be for approval.
- After that the Project Authority will send the project for sanction, as required as per the existing rules of business, subject to the guidelines contained in this Policy as regards project identification and project development and also subject to the statutory powers conferred upon the concerned Government Agency or the Local Authority.
- All PPP projects seeking Viability Gap Funding (VGF) shall first be evaluated for eligibility under the Government of India's VGF Scheme, which provides support up to 30% of the Total Project Cost for social sector projects (water supply, waste management including wastewater treatment, health, and education etc.) and up to 20% for projects in other infrastructure sectors. Government Department / Agency shall initially submit their proposals for VGF assistance to the Department of Economic Affairs, Government of India, under intimation to the State PPP Cell. In cases where the approved central support is insufficient for making the project viable, the State Government may provide additional VGF support up to a maximum cumulative limit of 60% for social sector projects and 40% for other infrastructure sectors (inclusive of GoI support). Where projects are not eligible or are declined under the GoI VGF Scheme, such proposals may be considered by the State Government for full VGF support within the above-stated limits. In all cases, the sanction of VGF support, whether supplementary or full, shall be subject to review and approval by the Empowered Committee or CCI as the case may be constituted for this purpose. A Capital Grant under this Scheme shall be disbursed only after the Private Sector Company has subscribed and expended all the equity contribution required for the project and will be released in proportion to debt disbursements by Lead Financial Institution.

7.5 *Developer Selection:*

7.5.1 Participation in Infrastructure Projects:

Any Private Sector Participant conforming to the eligibility criteria prescribed by the Government or the concerned Government Department, Agency or Local Authority may participate in bidding process pertaining to financing and/or construction and/or maintenance and/or operation and/or management and/or Service of Infrastructure Projects covered under the PPP Policy.

After the Project is sanctioned by the Competent Authority as described above, the concerned Government Department or the Government Agency or Local Authority will adopt any one of the following selection processes for selection of a suitable Developer for executing the PPP Project:

7.5.2 Competitive Bidding:

Competitive bidding shall be default method for selection in all the projects which are to be awarded on PPP basis unless other methods of Developer selection are found preferable for the reasons to be recorded in writing by the Authority competent to sanction such projects.

Details like documentation and scale of publicity, EMD, qualification criteria, bid security, timelines, detailed proceeds of sale/receipts of Tender forms, selection criteria, bid evaluation etc. shall be decided by the concerned Sponsoring Agency as per the prevailing guidelines / rules regarding Tender process or would be decided on case-to-case basis with the approval of the Competent Authority. The Public Entity may refer to the Model Bidding Documents of State Government or Government of India (in case the State Government does not have model documents on that sector). Any modifications to the model documents should be adopted suitably as per the specific needs of that project.

Scope of Work and Deliverables would be spelt out very clearly in Quantitative and Qualitative terms as far as possible. Whenever PPP developer is also supposed to operate, then the performance standards should be clearly spelt out. Monitoring and verification protocols and Service Level Agreements with well-defined Key Performance Indicators (KPIs) on objective basis, along with Draft Concession Agreement should be part of Bid documents.

Four types of Procurement process strategies can be applied under Competitive Bidding. These are:

Option 1. Three Step Process (EOI, RFQ and RFP)
Option 2. Two Step Process (RFQ and RFP)
Option 3. Two Step Process (EOI and RFP)
Option 4. One Step Process (RFP)

The Sponsoring Agency may decide upon one of the above mentioned process on the basis of the following matrix:

Options to be Exercised	Project Characteristics	Bidders' Characteristics
Option 1 (EOI + RFQ + RFP)	Project scope is unambiguous *(e.g. Roads)* Execution options well defined *(e.g. Roads)*	Bidder universe is well defined and limited
Option 2	Project scope is ambiguous and	Bidder universe is well defined

(RFQ + RFP)	requires extensive discussions *(e.g. hospital or floating solar etc)*	No. of bidders is large and needs to be limited
		Considerable effort required for bidders to submit proposals
Option 3 (EOI + RFP)	Project scope is ambiguous and requires extensive discussions *(e.g. battery storage, data centers etc)*	Bidder universe is limited
		Bidder Profile needs sharpening
		Considerable effort required for bidders to submit proposals
Option 4 (Pre Project Development Stakeholders consultation) + RFQ + RFP)	Project scope is ambiguous and requires extensive discussions	No. of bidders is large and needs to be limited
		Bidder Profile needs sharpening
		Considerable effort required for bidders to submit proposals

NOTE: The EOI will be used where the Project Authority is unsure of the likely interest from private entities in the PPP Project, or where it is keen to seek suggestions from private entities on how best to design the project scope or other parameters of the PPP Project.

Request for Technical Proposal (RTP)

In case the project is technology driven or has high dependence on technology and where the Project Authority does not have the full knowledge of all the technologies available to do the project and there are chances the bidders may bid for different technologies which need to be evaluated for its suitability to the intended project, the Project Authority may also include Request for Technical Proposal (RTP) which can be a stage just prior to financial bid opening and based on the qualified technology the financial bid would be opened for technically qualified bidders. However, this step can only be taken after taking approval from Competent Authority and Empowered Committee, justifying in writing about the necessity of this stage and listing out objective criteria on how the technology selection shall be done.

i. It will be open for the Government Department or Government Agency or the Local Authority to adopt one or two or three stage process depending upon the complexity of the Project, in the light of aforesaid matrix.
ii. The notice inviting participation will be adequately publicized by the Government Department or Government Agency or the Local Authority.
iii. The bid process will be designed to assist and ascertain, technical, financial, managerial and commercial, capabilities of the Developer.
iv. The technical capacity / capability of the bidder should be checked as per the standard practices in PPP based on model documents of the State Government or Government of India (in case the State Government does not have model documents on that sector) and the selection shall be based on financial bid only which shall be a single parameter.

7.5.2.1 Principles for Approval of Contract for PPP Projects:

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 Cabinet Committee on Infrastructure Development with the recommendations from Empowered Committee will formulate or approve the contract principles as the case may be.

7.5.2.2 *Selection Criteria:*

The Government Agency or the Local Authority will first satisfy itself about the technical ability of the Developer to undertake and execute the Project and will follow one of the following criteria for Developer selection through competitive bidding in PPP Projects :

A. For Revenue Generating projects:

i. Highest Premium to the Concessioning Authority where the user charges, concession fee and Concession period are fixed;
ii. Highest revenue share to the Concessioning Authority where the user charges, concession fee and Concession period is fixed;
iii. Highest upfront fee, where the user charges, concession fee and Concession period are fixed;
iv. Highest equity premium, where the user charges, concession fee and Concession period are fixed

B. For Grant seeking projects:

i. Lowest Viability Gap Funding required from the Concessioning Authority where the user charges, concession fee and Concession period are fixed;
ii. Lowest present value of the subsidy, where the user charges and Concession period are fixed
iii. Lowest capital cost and NPV of Operation & Management cost for Projects having a definite scope; where the user charges, concession fee and Concession period are fixed
iv. Lowest bid in terms of the Net present value of operational grants, where the User Charges, concession fee period of concession is fixed;
v. Quantum of State Support solicited in net present value, where the user charges and Concession period are fixed

C. For Annuity / HAM projects:

i. Lowest Annuity payment sought. where the concession fee and Concession period are fixed for Annuity projects
ii. Lowest Annuity payment sought. where the concession fee, Grant and Concession period are fixed for HAM projects

D. For projects on Shortest Concession Period:

Shortest concession period, where the user charges are fixed and the concession period is not more than the life of Asset being put under the bid. However this should only be adopted under some vary specific circumstances if at all.

E. For Lease Management Contracts:

In relation to the lease management agreement, highest present value of the lease payment to the Government Department or Government Agency or the Local Authority shall be taken into consideration

In cases where a lease is granted for a specified purpose and the complete scope of the project cannot be clearly defined, the lease rent, determined as a function of the Ready Reckoner rate, shall be fixed as the concession fee or lease rent. The bidding shall be conducted on the basis of the percentage of revenue share, with a minimum guaranteed investment stipulated.

F. For Management and Service contracts:

In relation to the management and service agreement, the lowest present value of the management fees to be paid by the Government Department or Government Agency or the Local Authority shall be taken into consideration

G. Other:

Such other suitable selection criteria as may be determined with the approval of the Competent Authority and the Empowered Committee for PPP Projects may also be applied.

The Public Entity shall determine the range within which the bidding parameter may represent *value for money* at the Project Development Stage itself and will be used at the time of evaluation of bids. In extreme circumstances, where it is not possible, the Public Entity shall justify the same to the Competent Authority and take approval.

7.5.2.3 Treatment of Limited Response:

In case of the competitive bidding process resulting in a Sole Bid, the Government Department or Government Agency or the Local Authority shall do the extensions as per the prevailing law. In the event second attempt again results in a Sole bid then the Government Department or Government Agency or the Local Authority may

either:

- Accept the Sole Bid, with the approval of Empowered Committee and competent Authority, if the bid falls within the permissible range of the bidding parameter, as approved by the competent authority and Empowered Committee, before bidding during the Project Development and Sanction stage.

OR

In cases where during pre-market stakeholders' consultation and assessment it is recorded that the type of project does not have large number of potential agencies which meet the criteria, the sole bid – following the due process – may be accepted. The illustrative list of such projects is:

- where technology is unique
- lumpiness of scale of investment is more than Rs 10,000 Crs, OR

- project is very complex and risky because of regulatory and legal issues and does not have any precedence

OR

- reject the Sole Bid;

in consultation with the competent authority as per the existing Rules of Business.

7.5.2.4 Treatment of Lack of Response:

In case the competitive bidding process does not generate any response even after two rounds of invitation of bids, then the Government Agency or the Local Authority should cancel the competitive bid process, closely examine the reasons for lack of response, revisit all the aspects of the project including its structure, scope, apportionment of risk, other terms and conditions and modify the identified deterrents viz. pre-qualification criteria and/or the risk sharing provisions etc. and restart the bid process in consultation with the competent authority as per the existing Rules of Business and Empowered Committee.

7.5.3 Swiss Challenge Approach:

Unsolicited bids/Swiss Challenge proposals are generally not preferred by the Government. The discomfort with the use of unsolicited proposals in the public sector is on grounds of lack of transparency, and lack of fair and equal treatment of potential bidders. There are elements of “informational asymmetry” and “bidding asymmetry” between an Original Proponent (OP) and its competitors. The bidding asymmetry is due to time and price asymmetries. Since only the OP essentially gets an opportunity to make the BAFO (Best and Final Offer) after one or more rounds of negotiation—an opportunity that is denied to its competitors who are not authorized to submit an equal number of negotiated responses.

In exceptional circumstances, in sectors not traditionally associated with PPP structures or where procurement of proprietary technology is involved, variants of the approach could be considered for development, with prior approval of the competent authority, provided the VfM analysis establishes such a decision and public need has been established by the Project Authority.

The Government of Maharashtra has issued a Swiss Challenge Policy vide GR no. SCM2017/174/RM 2 dated 16th February, 2018. All such proposals shall be dealt with according to this policy and any amendment(s) done from time to time.

7.6 Development through Special Purpose Vehicles (SPVs)

SPVs may 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. However the selection of Private Partner in the SPV would follow the procurement process as laid down above in this policy. However, the administrative department may not be necessarily part of that SPVs. To clear this more elaborately, SPV for implementation of PPP projects is incorporated by Selected Bidder (single entity/consortium) as promoters with no shareholding by public entity.

7.7 *Hand back*

For projects wherein the legal ownership of the Public asset created will rest with the Public Authority and its control will revert to the Public Authority at the end of the PPP contract, there will be specific hand back maintenance standards before the end of the contract. There will be provisions for payment and/or revenue deductions if the same is not adhered to by the concessionaire/contractor. In other words the title/ownership of the land and the project thereon always vest with the public entity, with only the rights of concession granted to private partner for the concession period. And upon termination or expiry of which, such land and the project revert back to the public entity (thereby differentiating PPP from privatization).

8 Approval Committees

8.1 *Cabinet Committee for Infrastructure (CCI)*

The Cabinet Committee for Infrastructure (CCI), reconstructed vide G.R. No. 2025/C.R.1/Ka-1461, dated 10th March, 2025, (as amended from time to time) will also function as the Cabinet Committee for PPP Projects.

8.2 *Empowered Committee for PPP Projects*

An Empowered Committee under the Chief Secretary would be constituted as given below for PPP Projects :

Sr. No.	Designation	Designation in Committee
1	Chief Secretary	Chairperson
2	Chief Executive Officer, Maharashtra Institution for Transformation	Member
3	ACS (Finance Department)	Member
4	ACS/PS/Secretary of the Department concerned	Member
5	Principal Secretary/ Secretary (L&JD)	Member
6	Head of the field organization/Local Body concerned	Member
7	PPP Policy Expert	Member
8	ACS/PS/Secretary (Planning Department)	Convener

This committee will monitor the implementation of PPP projects. Projects will be approved by EC as per provisions laid down in this Policy.

8.3 *Approval Authority*

Once the bidding process is over and the bidder is identified, the Project Authority shall send the proposal for final approval as given below:

1. Any kind of assistance from the Government (including land, in case cost of land is part of project) or premium, the total monetary value of which is less than Rs.25 Cr shall be brought before the Empowered Committee for approval.
2. Any kind of assistance from the Government (including land, in case cost of land is part of project) or premium, the total monetary value of which is Rs.25 Cr or more shall be brought before the CCI for final approval, with the recommendations from the Empowered Committee.

9 State Facilitation of PPP Projects

The State Government would facilitate the PPP Projects by the following measures:

- A PPP Desk in Planning Department, all concerned departments and Local Bodies.
- A PPP Cell in MITRA
- Project Development Fund
- Viability Gap Fund (State Assistance)
- Project specific Annuity funds for Annuity – based PPP Projects
- Certificate of Partnership
- Empanelment of Transaction Advisors and Law Firms

9.1 PPP Desk in Planning Department and PPP cell in MITRA.

PPP Desk in Planning Department -

A PPP Desk will be constituted at Planning Department. It will act as secretariat to Empowered Committee. It will coordinate with departments, during meetings of Cabinet Committee for Infrastructure (CCI) conducted as per PPP policy. PPP Desk under the Planning Department, while acting as Secretariat to EC will perform administrative tasks such as processing of proposals for the EC, scheduling meeting, circulating meeting agenda, taking approval to minutes of meetings, will strengthen inter departmental consultation regarding monitoring compliance and approval procedure.

PPP Cell in MITRA-

A PPP cell will be constituted under MITRA. It will be strengthened by hiring experts on the PPP, Legal and MIS. The Planning Department will provide inputs / advise as and when required. The main objectives of this Cell would be:

- Need-based facilitation in project development and development of sectoral Model bid documents and Model Concession Agreements
- To facilitate Project Sponsoring Agency i.e. Government Department / Agency or local body or any other Government body to analyze *Value for Money* or the bid evaluation whenever required by any of these agencies.

9.1.1 Functions of the PPP Cell in MITRA

- **Policy Support and Advisory** – To advise the State Government on PPP policy matters, assist in formulating and vetting sector-specific PPP guidelines, and recommend appropriate regulatory mechanisms.
- **Capacity Building and Assistance** – Provide need-based support to departmental PPP Desks, help create a shelf of infrastructure projects, and assist in bidding processes for developer selection.
- **Expert Panels and Appraisal** – To assist in empaneling of Transaction Advisors and Law Firms and support departments/local bodies in assessing the work of consultants.
- **Information and Knowledge Hub** – Serve as the state repository for PPP-related information, including best practices, guidelines, schemes, PPP pipeline, and

evaluation methodologies; disseminate international best practices; and develop/manage the official PPP website.

- **Monitoring and MIS** – To assist to develop, operate, and maintain the MIS for PPP projects, and facilitate effective monitoring of project progress.
- **Grievance Redressal** – To assist in establishing and facilitating suitable grievance redressal mechanisms, including forming a common forum where required.
- **Promotion and Outreach** – Organize PPP conferences and investor engagement activities to promote PPP opportunities in Maharashtra.

9.1.2 Creation of PPP Desks in Line Departments and Local *Bodies*

- PPP Desk would be established in each Department and Local Bodies, as per requirement.
- A competent officer shall be appointed as the Nodal Officer for the PPP Desk.
- The capacity building of PPP Desk in each department would be the responsibility of the PPP Cell in MITRA.
- PPP Desk in each department / local body will perform functions related to proposed and ongoing PPP projects in departments as per PPP policy.
- PPP desk in each department or local bodies will be responsible for ensuring contract management and its execution in the concerned PPP project.
- PPP Desk in Line Departments will also take exhaustive review of earlier PPP Projects of that departments and also recommend suggestions for their onward continence.
- PPP Desk in Line Departments will also monitor court matters/Arbitration matters if any, arised out of earlier PPP Projects of that departments.

9.2 PPP Funds

Three types of Budgetary Provisions would be done as under for channelizing the financial assistance from the State Government for facilitating PPP based Projects:

i) Project Development Fund
ii) Viability Gap Fund (State Assistance)
iii) Project Specific Annuity for Annuity-based PPP Projects

9.2.1 Project Development Fund (PDF)

A PDF of Rs. 5 Cr would be provided in the budget of the Departments concerned to provide project development finance or assistance to respective departments and local bodies which for any reason are not able to fund the Project Development activities such as preparing project estimates, technical reports, feasibility studies etc. and hiring of Transaction Advisors / Consultants / Law Firms.

The project development costs would include costs incurred on feasibility studies, legal reviews, environmental impact studies, financial structuring, development of project documentation, bid process etc. On successful completion of bidding process, the project development expenditure may be recovered with suitable "service charge" which would not be more than 1.5 times of the total expenditure, from the successful bidder/concessioner (as the case may be) through an appropriate contract mechanism. In the case of failure of bids, the project development expenditure would not be recovered from the Government Department / Agency concerned.

9.2.2 Viability Gap Fund (State Assistance)

Planning Department of State Government will create a VGF of RS. 200 Cr. as Umbrella Fund. Based on the approval for VGF component by competent authority Planning Department will disburse VGF to concerned department in its budget head created for this purpose. The VGF shall be provided to only a subset of projects that have user charges.

The fund will be utilized for:

a. providing additional grants up to 20% (30% in case of Social sector projects) of the Total Project Cost to the infrastructure projects to make them commercially viable under the "Scheme for Financial Support to Public Private Partnerships in Infrastructure" of Government of India (GoI).
b. providing viability gap funding support upto the extent of 40% (60% in case of Social sector projects) for the State Government's projects which are not eligible for the GoI VGF support.
c. any other purposes in pursuance of this policy and building of infrastructure in the State.
d. VGF shall be provided for projects on user charge basis.
e. Finance and Planning Department will take initiative for mobilizing the mutilateral funding for VGF.

9.3 Project Specific Annuity / Hybrid Annuity Assistance

Whenever any authority goes for Annuity Contracts with the approval of EC, the project authority must make budgetary provisions for annuity assistance which should have defined revenue streams or additional sources and yield as much revenue as would be sufficient to meet the periodic outgo to the concessionaire. The sponsoring agency shall mention the same to the competent authority at the time of project approval. Similar provisions will be done for projects being bidded on Hybrid Annuity Model (HAM).

9.4 Certificate of Partnership

Once a project is undertaken by a private investor on PPP format, the concerned department/agency shall issue a certificate of partnership for that project. Thereafter all agencies of the Government will treat the private entity as a partner in State's infrastructure development and provide all necessary support towards speedy completion of the project. In the event that any agency is not in a position to provide such support, the reasons will have to be immediately conveyed to the department concerned and Departmental PPP Cell. It will be the responsibility of PPP Cell to take up the issues at the appropriate levels and speed up the decision-making process.

Agencies who have received such Certificate of Partnership and have successfully operated / implemented PPP project for 3 years or more without having any penalty for the breach of contract can be directly invited for other similar projects in same sector with same technical requirements of similar or lesser scale and volume. Such agencies will not have to go through technical qualification for the project and may be called to submit the Price Bid in case they have the required Net Worth as sought in the Project. However sectors specific technical requirement shall be part of transactions structure.

9.5 Empanelment of Transaction Advisors and Law Firms for Project Development and Bid Process Management:

A panel of Transaction Advisors and Law Firms may be constituted to facilitate project development and bid process management. The Government Department or Agency or the Local Authority may use these panels inviting financial bids after checking the eligibility to carry out the project development and transaction advisory services. The guidelines on how to use this panel for the benefit of the Government Department or Agency or the local authority should be issued in the separate GR with which these Panels will be notified. The Government Department or Agency or the local authority may also take the services of PPP cell in selection process. The Competent Authority of the sponsoring Department/ agency may also select multilateral institutions as transaction advisors on nomination basis in accordance with applicable financial/ procurement rules and after recording the reasons for single sourcing and obtaining no-objection of Government of Maharashtra as per established process.

10 PPP Grievance Redressal Mechanism

The Government of Maharashtra plans to strengthen PPP Facilitation by moving beyond the current “regulation by contract” model, which faces issues of conflict of interest since the Government acts as both “player and referee.”

However, to resolve any dispute, difference or claim arising out of or in connection with the agreement amicably, there will be an internal grievance redressal mechanism is proposed.

For this, for the projects upto Rs. 5 crs the concerned departmental secretary will resolve the matters taking into confidence all the stakeholders within reasonable timeframe. Similarly for the projects beyond Rs. 5 crs the grievance will be referred to the Empowered Committee (EC) which will consult all the stakeholders and will try to find an amicable resolution to the grievance. However, the concerned department should take utmost care to addressed the grievances and disputes and its resolution by incorporating appropriate provisions in agreement with the successful bidder/concessionaire.

Dispute Resolution

Any dispute, difference or claim arising out of or in connection with the Agreement which is not resolved amicably within stipulated period of communication thereof shall be decided finally by reference to arbitration to a Board of three Arbitrators comprising of one nominee of the Party which is the Claimant in such dispute, one nominee of the Empowered Committee and the third to be appointed in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"). Such arbitration shall be held in accordance with the said Rules and shall be subject to the provisions of the Arbitration and Conciliation (Amendment) Act, 2019.

The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Mumbai/Maharashtra and the language of arbitration shall be English.

To boost investor confidence and reduce regulatory risks, a specialized PPP Grievance Redressal Authority will be created. This autonomous, multi-disciplinary expert body will handle contractual and regulatory issues across PPP sectors lacking independent regulators, covering matters from bid design to post-contract disputes. The Authority will ensure transparent, fair, and time-bound resolution of issues such as tariffs, performance obligations, and contract modifications. Its jurisdiction will shift to sector regulators once they are established, avoiding overlap. It will be constituted through new legislation to provide credibility and long-term certainty.

11 Monitoring Mechanism

A successful PPP depends, in large part, on the capacity of the government to keep the contract on track. This entails setting clear requirements of the partnership, monitoring the performance of all parties to the contract, reporting on results, and enforcing contract provisions that are not met.

To facilitate the speedy and qualitative out-put of contracts, the policy envisages having strong monitoring mechanisms built-in all the Agreements.

The concerned departments or agencies will form a department level Contract Monitoring Unit with a member each from Planning Dept., Finance Dept. and PPP Cell of their respective Department / Agency for monitoring the PPP projects by receiving and verifying reports on the progress against the contract terms.

The contract monitoring unit, formed within the sponsoring agency, would also have some representatives of the private partner, who is implementing the project to build a joint team for supervision of that project.

The PPP unit in the sponsoring agency shall ensure that the contract has explicit details on the targets, acceptable procedures of measuring performance results, and the reporting regime. Strict adherence shall be observed in identification of those parameters which are very critical in nature and detrimentally affect the output, quality and also the process of implementation. The unit, in addition, shall also develop a procedures manual for verifying performance against the contract and for responding to any contract deviations.

An important role of any of these entities shall be to report on performance. This shall be accomplished through websites, published reports, and information made available to customers.

11.1 Periodic Review

All the PPP projects shall have the provision of Periodic review in the concession agreement to ensure the timely and qualitative completion of projects. Any project which would have an implementation cycle of more than twelve months shall have monthly monitoring mechanisms and others shall have fortnightly monitoring mechanisms. Periodic review would be carried out by Concessioning Authority or any other agency or authority designated by Concessioning Authority which would include the contract monitoring Unit as above.

11.2 Likely Tools

A centralized database MIS shall be developed at the State level in the PPP Cell of the Government of Maharashtra in consonance with that of the Government of India level initiative in this regard which would facilitate tracking the progress of project right from the project development till the completion including implementation by private partner.

11.3 Management Information Systems

In order to continuously monitor the performance of the PPP projects over the project life cycle, the respective Government Department / Agency / Local Authority would establish the MIS for PPP projects. The evaluation of the PPP projects would also be tabulated and summarized so as to utilize the same for improving the quality-of-service delivery levels and sustainability of PPPs in the future. The database of the projects would not only contain information on the ongoing projects but also set out frameworks for monitoring them during various stages of the project cycle. PPP Cells of respective Government Department / Agency / Local Authority would be responsible to set up MIS systems and disseminate information to Government agencies from time to time so as to effectuate suitable policy changes based on the previous experience of managing PPP projects.

11.4 Appointment of Project Management Consultants

In all the projects where the close monitoring of the implementation process is crucial to the quality of output and timely completion, the sponsoring agency (department, ULB or corporation) shall appoint an independent external Project Management or Supervision Consultant or shall depute the dedicated staff from within the department or local body or corporation for the purpose. In case of dedicated staff being deputed within the agency, it will be mandatory to have at least 40 % (forty percent) team members from the private partner firm.

12. Guidelines

The Department of Planning, Government of Maharashtra will issue appropriate guidelines for implementation of the Scheme from time to time.

Schedule I – Applicable Sectors

This policy is applicable to all types of projects and asset management / service delivery contracts in all the sectors which are amenable to execution under Public Private Partnership. The illustrative list of sectors is as follows which may be modified by the Government from time to time:

- Roads (State Highways, Major District Roads, Other District Roads, & Village Roads), Bypasses, Road Over Bridges, Road Under Bridges and Flyovers
- Urban Infrastructure e.g.
    a. City Roads, Streetlights
    b. Urban Transport Systems, Bus Shelters, and parking solutions
    c. Water Supply, treatment & distribution,
    d. Waste water, Sewerage and Drainage
    e. Solid Waste Management
    f. Exhibition-cum-Convention Centers
    g. Urban social infrastructure pertains to Health care, Medical education, School & College Education, Sports, Recreation etc
- State Airports, Airstrips and Heliports
- Ports and Harbors being developed by the State Government, Water Transport,
- State Rail Transport including Metros, Mono Rail, High Speed trains, Railway track including electrical & signaling system, tunnels, viaducts
- Railway facility which is under state government / in partnership with Government of India or any other State (e.g. MRVC) rolling stock along with workshop and associated maintenance facilities, terminal infrastructure including stations and adjoining commercial infrastructure
- Ropeways.
- Energy (Generation, Transmission, Distribution) including renewable energy and Energy Storage,
- SEZs and Infrastructure projects in SEZs, Logistic Parks, Industrial Parks,
- Information Technology and allied services
- Data centers
- Tourism,
- Health and Medical Education
- Education
- Agriculture Production and Marketing
- Capital investment in the creation of modern storage capacity including cold chains and post- harvest storage
- Irrigation
- Telecommunication (Fixed Network) (includes optic fiber/ wire/ cable networks which provide broadband /internet);
- Telecommunication towers;
- Public Buildings and Complexes etc
- Soil testing laboratories and
- Any other subject / sector which the State Government wants to cover under this policy.

Schedule II – Types of PPPs

Some of the commonly adopted forms of PPPs include management contracts, build operate-transfer (BOT) and its variants, build-lease-transfer (BLT), design-build-finance -operate-transfer (DBFOT), operate-maintain-transfer (OMT), etc.

Build-own-operate (BOO) model is normally not the supported form of Public Private Partnership in view of the finite resources of the Government and complexities in imposing penalties in the event of non-performance and estimation of value of underlying assets in the event of early termination. The State Government does not recognise Engineering-Procurement-Construction (EPC) contracts and divestiture of assets as forms of PPP.

The Ownership of Asset shall not be transferred to the Private Entity. However the facility can be provided on License to use basis upto specified Concession Period which shall be decided primarily on life / capacity fulfillment of Asset and then return on Investment basis. The returns on equity will generally be 15%. In case the expected return is not possible

The following Concession Agreement or arrangements with their variations and combinations may be arrived at by the Government Department / Government Agency or the Local Authority for undertaking Infrastructure Projects. The arrangements enumerated hereinafter are indicative in nature and the Government Department / Government Agency or the Local Authority shall be entitled to evolve and arrive at such Concession Agreement or arrangement incorporating any of the arrangements enumerated hereinafter or any other arrangements as may be found necessary or expedient for any specific Project.

i. **Design Build Finance Operate and Transfer (DBFOT)** – A contractual arrangement where a private entity designs, finances and builds and/ or refurbishes and operates **a service usually delivered to consumers** for a specified period of time (Concession Period)**.** The private entity generally collects tariffs directly from consumers. The Design would mean the improvement on benchmark plan / design of the project as prepared by the Project Authority.
ii. **Build-and-Transfer (BT)** – A contractual arrangement whereby the Developer undertakes the financing and construction of a given infrastructure or development facility and after its completion hands it over to the Government, Government Agency or the Local Authority. The Government, Government Agency or the Local Authority would reimburse the total Project investment, on the basis of an agreed schedule. This arrangement may be employed in the construction of any infrastructure or development Projects, including critical facilities, which for security or strategic reasons, must be operated directly by the Government or Government Agency or the Local Authority.
iii. **Build-Lease-and-Transfer (BLT)** – A contractual arrangement whereby a Developer undertakes to finance and construct Infrastructure Project and upon its completion hands it over to the Government or Government Agency or the Local Authority concerned under a lease arrangement for a fixed period, after which ownership of the facility is automatically transferred to the Government or Government Agency or the Local Authority concerned.
iv. **Build-Operate-and-Transfer (BOT)** – A contractual arrangement whereby the Developer undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The Developer operates the facility over a fixed term during which he is allowed to a charge facility users appropriate tolls, fees, rentals and charges not exceeding those proposed in the bid or as negotiated and incorporated in the Contract to enable the recovery of investment in the Project. The Developer transfers the facility to the Government or Government Agency or the Local Authority concerned at the end of the fixed term that is specified in the Concession Agreement. This includes a supply-and-operate situation which is a Contractual

arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Government, Government Agency or the Local Authority so requires, operates the facility providing in the process technology transfer and training to Government, Government Agency or the Local Authority nominated individuals.

v. **BOT-Annuity** – A model where Project Authority pays annuity (fixed amount at regular interval) based on the performance instead of user charges collection. The Private party bears the risk of construction and maintenance of the Project.

vi. **BOT-HAM (Hybrid Annuity Model)** – A model where Project Authority pays Capital Grants and annuity (fixed amount at regular interval) based on the performance instead of user charges collection. The Private party bears the risk of construction and maintenance of the Project.

vii. **Build-Transfer-and-Operate (BTO)** – A contractual arrangement whereby the Government or Government Agency or the Local Authority contracts out an infrastructure facility to a Developer to finance and construct the facility on a turn-key basis, assuming cost overruns, delays and specified performance risks. Once the facility is commissioned satisfactorily, the Developer is given the right to operate the facility and collect user levies under a Concession Agreement. The title of the facilities always vests with the Government, Government Agency or the Local Authority in this arrangement.

viii. **Contract-Add-and-Operate (CAO)** – A contractual arrangement whereby the Developer adds to an existing infrastructure facility which it rents from the Government, Government Agency or the Local Authority and operates the expanded Project and collects user levies, to recover the investment over an agreed period.

ix. **Gross Cost Contract (GCC)** – Generally prevalent in City Bus contracts. In case of the GCC model, the operator or supplier enters into a contract with the transport corporation and is paid on a fixed cost-per-kilometre basis. The supplier is responsible for the procurement of buses and related O&M infrastructure.

x. **Lease Management –** A contractual agreement whereby the Government, the Government Agency or the Local Authority leases a project owned by the Government, the Government agency or the Local Authority, as the case may be, to the person who is permitted to operate and maintain the project for the period specified in the agreement and to charge user charges therefore.

xi. **TOT – Toll Operate and Transfer –** A contractual arrangement whereby the Developer undertakes the Operations and maintenance of a given infrastructure facility built by the Public Authority after paying the upfront Concession premium. The private player pays an upfront concession fee, operates and maintains the infrastructure facility for a fixed period (typically 20–30 years), bears O&M and revenue risks, and collects user charges as determined by the Authority. The Developer transfers the facility to the Government or Government Agency or the Local Authority concerned at the end of the fixed term that is specified in the Concession Agreement.

xii. **Management Agreement –** A contractual agreement whereby the State Government, the Government agency or the Local Authority entrusts the operation and management of a project to a person for the period specified in the agreement on payment of specified consideration. In such agreement the Government, the Government agency or the local Authority, may charge the user charges and collect the same either itself or entrust the collection for consideration to any person who shall after collecting the user charges pay the same to the Government, the Government agency or the Local Authority. The Project may also include expansion, modernization etc of the existing public asset.

xiii. **Rehabilitate-Operate-and-Transfer (ROT) –** A contractual arrangement whereby and existing facility is handed over to the private sector to refurbish, operate (collect user levies in operation period to recover the Investment) and maintain for a franchise period, at the expiry of which the facility is turned over to the Government or Government Agency or the Local Authority. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.

xiv. **Service Contract –** A contractual agreement whereby a person undertakes to provide services to the Government, the Government agency or the Local Authority for a specified period. The Government, the Government agency or, as the case may be, the Local Authority shall pay the service provider an amount according to the agreed schedule.

xv. **OMDA– Operation Management and Development Agreement –** A contractual agreement whereby a private party manages and commercially develops of person undertakes to provide

Schedule III – Generic Risks –

Broad Guidelines Regarding Generic Risks Disclosure Allocation and Treatment

A risk is defined as any factor, event or influence that could threaten the successful implementation of a project in terms of time, cost or quality

GENERIC RISKS DISCLOSURE AND ITS ALLOCATION AND TREATMENT:
The State Government or Government Agency or the Local Authority will as far as possible identity and disclose Generic Risks involved in a Project and a list of such Generic Risks along with allocation and treatment of such Generic Risks may be provided in the Concession Agreement or other contract to be entered into between the Government, Govt. Agency or the Local Authority and the Developer.

The Government or Government Agency or the Local Authority will try to make optimum disclosure of the Generic Risks, however if any risk is not disclosed due to inadvertence or due to circumstances beyond the control of the Government Agency or the Local Authority, then the same shall not be a ground for any claim, demand or dispute by the Developer.

In general, the following risks, as may be applicable to a Project would be disclosed/ allocated and treated in the concession agreement:

I. Pre Construction Period Risks:
(i) Land Acquisition
(ii) Environment clearances
(iii) Any other Government approvals which need to be in place in pre-construction period from the Authority side

II. Construction Period Risks:
(i) Land Expropriation
(ii) Cost Overruns
(iii) Increase in Financing Cost
(iv) Time & Quality Risk
(v) Contractor Default
(vi) Default by the Developer.
(vii) Time, Cost & Scope of identified but related Work, and Variations.
(viii) Environmental Damage - Subsisting/On going.

III. Operation Period Risks:
(i) Concessioning Authority or Government Agency Default.
(ii) Developer Default.
(iii) Termination of Concession Agreement by Cabinet Committee on Infrastructure or Government or Government Agency.
(iv) Environmental Damage - Ongoing.
(v) Labour Risk.
(vi) Technology Risk.

IV. Market & Revenue Risks:
(i) Insufficient Income from User Levies.
(ii) Insufficient Demand for Facility.

V. Finance Risks:
(i) Inflation.
(ii) Interest Rate.
(iii) Currency Risk.

VI. Legal Risk:
(i) Changes in Law.
(ii) Title/Lease rights.
(iii) Security Structure.
(iv) Insolvency of Developer.
(v) Breach of Financing Documents.

VII. Miscellaneous Risks:
(i) Direct Political Force Majeure
(ii) In-direct Political Force Majeure.
(iii) Natural Force Majeure.
(iv) Sequestration.
(v) Exclusivity.
(vi) Development Approvals.
(vii) Adverse Government Action/In Action.
(viii) Provision of Utilities.
(ix) Increase in Taxes.
(x) Termination of Concession by the Government.
(xi) Payment Failure by the Government.
(xii) Any other risks

Schedule IV – Broad Principles to be borne in mind during Project Development

While developing PPP projects, all care should be taken to structure the project in such a way that the ‘Welfare objectives’ of the State and ‘Economic objectives’ of private entrepreneurs can be successfully married to evolve and implement viable PPP projects.

An unviable public infrastructure project is NOT the problem of the private entrepreneur alone and can in fact emerge as a serious reputational risk and problem for the governmental authorities.

The Following concerns must therefore be addressed while developing a PPP project:

- Whether the project in targeting Welfare is keeping a balance between Viability and Welfare measures;
- Whether informed action in structuring, bidding, selection, negotiation and implementation of projects through PPP – Personnel with *“Capacity”* to do, has been done;
- Whether the Government or Government Agency or Local Authority has mentioned the single bid parameter along with it's estimated base value, which would be compared with the value of best bid received at the bidding stage. This base value would also be used for comparison in cases where single bid is received and the Government or Government Agency or Local Authority wishes to process that sole bid after complying with the conditions as specified in this policy elsewhere;
- Whether Stakeholder involvement has been ensured in critical stages of decision-making to secure effective design and implementation;
- Whether the project meets the threshold test of financial viability based on realistic assumptions;
- Whether optimal allocation of roles, responsibilities and risk in project contracts with suitable “V*f*M” (Value for Money) has been done; (If the project is perceived to be too risky, the project may fail to elicit interest from the private sector. Improper / unfair risk-allocation invariably enhances risk-profile of project, and will
  - Deter credible players who wish to deliver quality infrastructure facilities
  - Attract who's who work on “concession capture” and short term profiteering business model)
- Public procurement process for PPP must not be oriented to realize windfall gains and become unviable or burdensome for consumers;

Schedule V – General Elements of Bid Documents including Concession Agreements

The following are some general but important elements of BID Documents including Concession Agreements. These are suggestive in nature and the Authorities may appropriately add to them as per the need and take the approval on those from the Competent Authority.

Efforts should be made to draft the concession document on the basis of Standard documents as published by respective ministries or DEA Ministry of Finance, GoI.

The Bid documents should necessarily include the following items necessarily, besides whatever is already spelt out in this policy, elsewhere:

a) Project Information Memorandum (PIM) along with the bid documents having brief on essential information on technical and financial elements of the Project.
b) Well defined Scope of Work in the RFQ, RFP and Concession Agreement
c) Bid Security as per the norms in the RFQ and RFP;
d) Eligibility Criteria in the RFQ and RFP
e) Criteria for Technical Evaluation / qualification in the RFQ and RFP
f) Parameters to check Financial Strength in the RFQ and RFP
g) Single Bid Parameter in the RFQ and RFP
h) Obligations of Concessionaire in the Draft Concession Agreement
i) Obligations of Concessioning Authority in the Draft Concession Agreement
j) Risk allocations and mitigation measures in the Draft Concession Agreement
k) Performance Security in the RFP and Draft Concession Agreement
l) Objective Key Performance Indicators / Standards in the Draft Concession Agreement
m) Reporting Formats in the Draft Concession Agreement
n) Monitoring Mechanism in the Draft Concession Agreement
o) Exit Clause (natural termination of the agreement) in the Draft Concession Agreement
p) Events of Default in the Draft Concession Agreement
q) Force majeure Conditions in the Draft Concession Agreement
r) Termination clauses because of any event other than completion of agreement in the Draft Concession Agreement
s) Effect of termination and termination payments
t) Dispute Resolution Mechanism
u) Change of Scope of work should be well defined.

Some of these elements along with some other important elements are described in detail for the illustrative purposes.

Treatment of Bids:

The Bid document must indicate as to how the bids submitted by the bidder would be treated and whenever there are any specific requirements to be fulfilled by the consortiums, desirous of participating in the bid, the bid document should spell out the broad requirements of the:

(a) memorandum of understanding, executed by all the consortium members, setting out the role of each of the consortium members and the proposed equity stake of each of the consortium members with regard to the Project.

(b) the conditions, if any, regarding binding on Lead Consortium Member of a pre-qualified consortium and provisions regarding replacement of other consortium members and , change in the shareholding or composition of a consortium.

Bid Security:

The Authorities must ensure that Bid Security of appropriate amount in specified form has been asked for and may refer to the model Documents as published by the NITI Aayog or the DEA, Ministry of Finance, Government of India in this regard.

- ***Amount to be charged for providing goods and services under the concession agreement***

There should be specific mention in the Concession Agreement on the treatment of the amount to be charged for providing goods and services with the approval from the competent authority.

- ***Financial security for maintenance of Project***.- Where a provision is made in a concession agreement, requiring the developer to maintain the project constructed by him for a period specified in such agreement, there should be some mechanism either in the form of an escrow account or some other instruments the money out of which shall be expended for the maintenance of the project in accordance with the provision made in the concession agreement or in any other agreement with the State Government, the Government agency or, as the case may be, the specified Government agency.

- ***Training to employees of Concessioning Authority*****:**- The concession agreement should specify the training to the employees of the State Government, the Government agency or Local Authority, as the case may be, in respect of maintenance or operation of the project in accordance with the provisions made in the concession agreement or in any other agreement with the State Government, the Government agency or Local Authority.

- ***Transfer of Rights***:- When the project is transferred to the State Government, or the Government agency or the Local Authority according to the provisions of the concession agreement, all the rights of the developer in respect of the project shall stand transferred to the State Government, the Government agency or the Local Authority, as the case may be.

Escrow Account

The Concessionaire shall have to open an Escrow Account (the details of which have been provided in the Model Concession Agreements). All the transactions shall be done from this Escrow Account only.

Disbursement of Grant

Grant shall be due and payable to the Concessionaire only after it has expended the Concessionaire Equity and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements.

Suspension of Concessionaire's Rights

The Authorities must spell out the suspension clauses in the concession agreement with utmost clarity. The CA must spell out the treatment in all possible cases of suspension including the Suspension upon Concessionaire Default, Termination during Suspension Period etc.

Termination of concession agreement

Termination of concession agreement should be spelt out differently for different situations such as the Concessionaire Default, termination due to material breach or termination due to force majeure or due to default on the part of Concessioning Authority. The procedure to for termination should also be well laid down and clearly spelt out in the draft concession agreement along with the bid documents itself.

Effect of Termination

The Effect of termination on continuation of services, and termination payment should also be clearly spelt out in the Draft Concession Agreement which is an integral part of bid documents. The guidance on how to write these clauses can be taken from the model documents published by DEA, Ministry of Finance GoI or NITI Aayog of Government of India or any other model document as is notified by the State Government. The effect of termination should be dealt with separately for termination due to the default of the Concessionaire, the default on the part of Concessioning Authority or due to force majeure. The Concession Agreement should also spell out treatment to be met out in case of termination prior to the date of commercial operation, i.e. during the construction phase and after the commencements of commercial operations.

Force Majeure event:

The concession agreement should clearly specify the events that can be treated as events of force majeure to avoid any ambiguity at the later stage.

Levy of Abuser Charges:

The Concession agreement should clearly spell whether in case of any abuse of the right granted to the concessionaire, the Concessioning Authority would be entitled to levy Abuser Charges as provided for, in the concession agreement or in the absence thereof, as prescribed under the relevant law, if any.

Levy of Polluter Charges:

The concession agreement should also clearly spell out whether in case of Concessionaire polluting the environment and/or not adhering to the specified mitigation measures as provided in the Concession Agreement, the Concessioning Authority would be entitled to levy Polluter Charges for the pollution of the environment of the Concessionaire as provided for, in the concession agreement or in the absence thereof, as prescribed under the relevant law, if any.

Evaluation of Projects

There should be specific mention in the Concession Agreement of evaluation of projects during the operation period and whether renegotiation of the terms and conditions of the concession agreement are permitted and if yes, then under what conditions and at what level.

Modification in the Existing Contracts / Concession Agreements:

Including conditions in a PPP contract that allows a party to negotiate post award and execution is not advisable. Therefore, to the extent possible, the contract must cover all possible aspects that would require subsequent adjustments. Hence, modifications in the contractual terms will be rare events and subject to the following principles:

i. The Public Authority must justify that risk sharing at allocation stage has significantly changed due to rare circumstances beyond the control of the parties.

ii. Any such post award negotiations would be undertaken in the spirit of adhering to the VfM analysis established during the project development process.

iii. The Public Authority would obtain prior approval of the sector regulator (if any), the appraising entity and the authority granting approval to the investment decision in the project before effecting any change in the contract.

iv. All negotiations shall be undertaken in a transparent manner aimed at generating awareness among the stake holders about the original bid and contractual conditions, the proposed changes and justifications, thereof. The transparency herein would include mandatory disclosure by both parties.

v. All such negotiations and contractual modifications would be subject to audit, including stage audit, by the authorities.

Hand back

For projects wherein the legal ownership of the Public asset created will rest with the Public Authority and its control will revert to the Public Authority at the end of the PPP contract, there will be specific hand back maintenance standards before the end of the contract. There will be provisions for payment and/or revenue deductions if the same is not adhered to by the concessionaire/contractor.

Schedule VI – STATE Support

The Government will consider the grant of following forms of State Support, ranked in its order of preferences i.e.:

i. Administrative Support
ii. Asset Support
iii. Foregoing Revenue Streams
iv. Guarantees for contingent liabilities and
v. Financial Support

I. Administrative Support:

a) The State Government will offer the following administrative support to all the Projects covered under the Policy, namely:
b) Provide State level statutory clearances within specified time limits after the Project is sanctioned in favor of the Developer.
c) Automatically grant non-statutory State level clearances, if a Project meets specifications as may be prescribed.
d) Provide Best Effort support for obtaining all central level clearances.
e) Undertake all rehabilitation & resettlement activities and recover the cost from Developer.
f) Provide construction power and water at Project site.
g) Acquire land necessary for the Project, if the same does not already belong to the Government.

II. Asset Based Support:

(i) The State Government will offer asset based support to all Projects covered under the Policy. The Category I Projects will receive asset based support only if the sector policy specifically provides for the same. The asset based support comprises:

- Government owned land would be provided at concessional lease charges for Projects where ownership would revert to the Government, within a maximum period of 30 years from the date of grant of land.

III. Guarantees:

i. The Government may guarantee receivables only in the case of Category II Projects, provided they are not collected directly from users.
ii. The Government may also provide off take guarantees if it is the service distributor and is responsible for collection of user levies, subject to explicit approval by financial department based on recommendation on competent authority.

IV. Financial Support:

i. Direct financial support may be considered only in the case of Category II Projects.
ii. The Government will have the final authority to approve direct financial support.
iii. Departmental PPP Desk and Empowered Committee will ensure that appropriate Project structuring will eliminate, to the extent possible, the need for financial support.
iv. Extent of financial support will be used as one of the selection criteria whenever financial support is to be provided.

Schedule VII – Value for Money Analysis

Value for Money (VfM) framework is relevant in making the decision between the PPP procurement route or conventional procurement options.

The assessment of Value for Money usually involves both a quantitative and a qualitative assessment.

In quantitative terms, the analysis is done with the objective to determine whether the value of risks transferred to private capital under a PPP arrangement is justified by the cost that private capital will charge to assume those risks. The analysis compares the life cycle cost of the PPP alternative which will include the cost of private finance alongside other costs, with the life cycle cost of providing the service conventionally (sometimes to referred to as the Public Sector Comparator).

There are some qualitative VfM tests that should be used in the overall VfM analysis of the PPP option. The reason is that quantitative analysis may not capture all the factors relevant to VfM which may be based on assumptions for which data may not always be complete of reliable. These qualitative factors may include viability, desirability and achievability.

Viability - e.g. are there measurable and definable outputs, is there a clear projects scope, is the flexibility of requirements appropriate, are there clear efficiency reasons for private sector service provision?

Desirability - e.g. do the benefits of the PPP procurement option outweigh the costs?

Achievability - e.g. is there a high level of market interest, are the timescales realistic?

In practice, a rapid initial application of the qualitative tests can often quickly and effectively eliminate the PPP option that will clearly not deliver VfM and avoid time and cost wasted on any detailed quantitative analysis.

For more knowledge the Department of Economic Affairs, Government of India has prepared toolkits for Highways, Ports, Water Supply and Sanitation, solid waste management and urban transport) which are available on
https://www.pppinindia.gov.in/ppp_structuring_toolkit

Schedule VIII – PPP Grievance Redressal Authority of Maharashtra (PGRA) – Guiding Principles

Most of the PPP projects in sectors like urban infrastructure and services, highways, ports, tourism, health and education are currently regulated by the Government under the legal contracts (concession / franchisee agreements) granted by the Government to the private sector. Regulating by contract involves pre-specifying regulatory regimes (tariff setting mechanism, performance targets, service delivery obligations etc.) in detail in the legal instruments such as law, secondary legislations, licenses, concessions etc. An important feedback and investor's risk perception regarding regulation by contract is that the Government is both "player and referee" and there could be conflict of interest in the multiple roles of the government, including meeting its obligations under the contract, contract management, tracking performance of the private party, and dispute resolution. The regulatory effectiveness under "regulation by contract" framework could be enhanced by considering additional regulatory mechanisms to minimize regulatory risks and improve investment climate.

The Government of Maharashtra (GoM) will work to strengthen the regulatory framework to enhance investor's confidence, minimize the perceived regulatory risks and thereby facilitate scaling up of infrastructure development through PPP arrangements. The framework would provide a business environment for stakeholders to transact business, with suitable risk-allocation and safeguards.

Towards this, the GoM would create a specialized PPP Grievance Redressal Authority which would provide an autonomous authority to secure timely resolution of contractual issues in pre- and post-contract award phase. The Authority may be approached for issues coming prior to the bid also to bring transparency and equal opportunity in the whole process. This should be done on reference basis. The GoM can decide the specific role and nature of such events where this authority can be used. The regulatory issues may include those emerging from project structure, bid process management, contract management, post contract modifications/ negotiations under special circumstances that may emerge over the life of the contracts as a result of various generic risks as defined in Schedule IV and the consequent disputes.

PPP Grievance Redressal Authority ("**Authority**") would have jurisdiction in the sectors where there is currently a "regulatory vacuum", with no agency responsible for dispute resolution. The PPP Grievance Redressal Authority would relinquish its functions to newly established sector regulators whenever the same are setup so as to avoid overlapping of functions, given the different stage of regulatory development across sectors.

The PPP Grievance Redressal Authority would be appointed along the following lines:

The Authority would be a multi-disciplinary expert body, constituted to ensure time-bound and effective adjudication of disputes (including tariff and performance related issues) between the Grantor and the concessionaire. The Authority would address a complaint about service, unfair treatment, or violation of policies so as to avoid formal disputes. The "Authority" would be established by enacting a suitable legislation.

(a) The Authority would be given a well-defined role and function to adjudicate upon disputes related to or arising out of implementation and scope of a PPP contract related to the infrastructure sectors in the State List and the

Concurrent List[1] which do not have any quasi-judicial body responsible for resolution of disputes For the present, the said sectors are water, solid waste management, state highways and other modes of transport which are not within the ambit of the Central Government such as bus rapid transit system and mass rapid transit system and may also include minor ports. Apart from this, the Government may notify the other sectors also which will fall within the PFA from time to time.

(b) The details of the constitution of the Authority, eligibility criteria, selection process and service conditions will be issued separately.

(c) The selection of competent, qualified and eminent persons shall be made through a credible, open and impartial selection process.

(d) The Authority would be mandated to follow the principles of natural justice and issue reasoned orders but be vested with freedom to evolve its own procedure – rather than be bound by procedural provisions of the Code of Civil Procedure, 1908.

The Authority would be empowered to: –

(a) delegate any specific function to be discharged by any member, officer, forum or agency notified in this behalf based on the scope and basis of delegation.

(b) to determine its own procedures and practices.

(c) exercise powers of a civil court in relation to: –

   (i) summon and enforce attendance of any person and examine him on oath.

   (ii) seek discovery and production of any document or other material object producible as evidence.

   (iii) receive evidence on affidavits.

   (iv) requisition of any public record.

   (v) issue commission for the examination of witnesses.

   (vi) get the protection/immunity of a civil court for any bona fide action in discharge of their duties and exercise of the functions/powers.

   (vii) review of its own decisions.

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[1] The allocation of legislative competence between Centre Government and State Government is enshrined in Articles 246 to 254 read with VIIth Schedule to the Constitution of India, which lays down that –

(a) On subject matters listed in the Union List (List I), the Union Parliament has plenary power to legislate.

(b) On subject matters listed in the State List (List II), the State legislature alone has the power to legislate, subject to Lists I and III.

(c) On subject matters listed in the Concurrent List (List III), subject to List I, both the Union Parliament and the State legislature are concurrently empowered to legislate.

In the cases of a conflict between laws made by Union Parliament and State Legislature on a List III field, the Union law shall prevail and the State law shall, to the extent of any inconsistency, be void. This principle has one exception where the State law, after being passed by State Legislature is reserved for and receives the consent of President of India. Such State law will prevail over the Central law within the concerned State. However, the Union Parliament is empowered to later enact laws on concurrent list subjects, which shall repeal, amend or vary such prior State laws.

In addition to the above, the Authority would be empowered with the power to assist in post-contract modification that may arise under certain special circumstances in relation to the PPP projects in Maharashtra.

The decision of the Authority would be binding on the Grantor and the concessionaire and the Authority would resolve disputes with 180 (one hundred and eighty) days, failing which it would record in writing, the reasons for being unable to do the same.

The appeal against the order or direction of Authority would be preferred to a division bench of the Mumbai High Court.

The decisions of the Authority would be enforceable as a judgment of a court of law, along with power to enforce through: –

(i) interim and final orders.

(ii) imposition of punitive sanctions like imposing of fine/penalty, suspension of contract, etc.

Being sector specific, the Authority would be competent to employ necessary staff that is qualified and experienced to assist the Authority in discharging its functions. Further, the Authority should be empowered to hire the services of or consult with experts in the relevant field as and when required. It should have the necessary autonomy to establish a prudent and flexible organizational structure, which would provide diverse talent pool necessary for efficient and effective discharge of its responsibilities.

The Authority should be accountable in relation to its functioning. Therefore: –

(a) It would publish its annual reports and result-based annual work-plan with a 3 (three) year perspective.

(c) It would submit to the Legislature its: –

(i) annual financial report; and

(ii) annual performance report including the outcome assessment with respect to the annual report.

Budget Provision - Budgetary provisions shall be made by the Planning Department, Government of Maharashtra. Budget head will be created separately for The PPP Grievance Redressal Authority

Schedule IX – Miscellaneous

Indemnity by the Developer:

The Developer shall be bound to indemnify the Government Agency or the Local Authority against any defect in design, construction, maintenance and operation of the Project and shall undertake to reimburse all costs, charges, expenses, losses and damages in that behalf.

Offences by Companies:

(1) Where an offence under any law applicable to a PPP Policy has been committed by a company every person who at the time when the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in this part, wherein an offence under any law applicable to a PPP based Project has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

For the purposes of this section:

(a) “Company” means a body corporate and includes a firm or other association of individuals; and

(b) “Director” in relation to a firm, means a partner in the firm.

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