

Policy and Institutional Reform for
Strengthening PPP Framework and
enabling environment for the
Government of Assam

Draft Report on PPP Reforms

July, 2017



Ernst & Young LLP
3rd & 6th Floor, Worldmark-1;
IGI Airport Hospitality District
Aerocity, New Delhi, 110037
India

Tel: +91 11 6671 8000
Fax: +91 11 6671 9999



25th July 2017

To,

Shri K V Eapen, IAS
Additional Chief Secretary,
P&D Department
Government of Assam
Assam Secretariat
Dispur, Guwahati

Subject: Submission of Milestone 3: Draft Report on Policy Reforms

Dear Sir,

We now attach the “**Draft Report on Policy Reforms**” for the Project '**Policy and Institutional Reform for Strengthening PPP Framework and enabling environment for the Government of Assam**'. This report represents our draft recommendations on institutional mechanism; policy and procedures; and PPP development process along with suggested capacity building strategy and training modules and Communication Strategy.

The methodology for the report has been developed in line with the project objective and scope of work defined in the Request for Proposal (RFP) document. As next steps, EY team would conduct the first round of training for the target audience and thereafter submit the Final Report incorporating suggestions/ Feedback from the stakeholders.

We assure our best services and look forward for your continuous guidance and support to our team for the assignment.

Thanking you.

Yours sincerely,

Abhaya Krishna Agarwal
Partner, EY
Address of Lead Entity – EY India
6th floor, Wing A & B,
Worldmark 1, Aerocity (Indira Gandhi International Airport), New Delhi 110037,
Tel: + 91 11 6623 3060
Fax: + 91 11 6671 9999
abhaya.agarwal@in.ey.com

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Disclaimer

This document has been prepared by Ernst & Young Solutions LLP (hereinafter referred to as “EY”) in accordance with our terms of engagement with the Assam Society for Comprehensive Financial Management System, **AS-CFMS** (the “Client” or “You”) to deliver a ‘**Draft Report on PPP Reforms**’ on the Policy and Institutional Reform for Strengthening PPP Framework and enabling environment for the Government of Assam (“**the Project**”)

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Abbreviations

AS-CFMS	Assam Society for Comprehensive Financial Management System
ASWC	Assam State Warehousing Corporation
BOOT	Build-Own-Operate-Transfer
BOT	Build Operate Transfer
BOQ	Bill of Quantities
Client	Assam Society for Comprehensive Financial Management System
COD	Commercial Operations Date
CP	Conditions Precedent
DBFOT	Design-Build-Finance-Operate-Transfer
DEA	Department of Economic Affairs
DPR	Detailed Project Report
ECoP	Empowered Committee on PPP
EOI	Expression of Interest
GMC	Guwahati Municipal Corporation
GMDA	Guwahati Metropolitan Development Authority
GoA	Government of Assam
GoI	Government of India
GWMCL	Guwahati Waste Management Company Private Limited
IIPDF	India Infrastructure Project Development Fund
KPI	Key Performance Indicators
MCA	Model Concession Agreement
MoF	Ministry of Finance
MoU	Memorandum of Understanding
O&M	Operation & Maintenance
P&D	Planning and Development
PDF	Project Development Fund
PFR	Preliminary Feasibility Report
PIDP	Perspective Infrastructure Development Plan
PIN	Project Information Note
PPP	Public Private Partnership
RFP	Request For Proposal
RFQ	Request For Qualification
ROFR	Right of First Refusal
SOR	Schedule of Rate
SPV	Special Purpose Vehicle
SWM	Solid Waste Management
TA	Transaction Advisor
VfM	Value for Money
VGf	Viability Gap Funding

Executive Summary

PPPs in Assam require intervention to overcome challenges and accelerate their implementation. These interventions will need to range from PPP policy, regulatory changes, appropriate project structuring, adoption of Model Bidding documents prepared by DEA / Planning Commission, procurement process and contract management. These interventions will create a conducive environment for attracting investments in Assam.

Proposed Institutional Framework

It is important to overcome the key bottlenecks/issues present in the PPP institutional framework of Assam such as delays in meeting schedules, numerous approvals required from high powered committees and inadequate capacity within PPP Cell / Line Department.

EY recommends to establish a sound governance structure for proper monitoring and review of the progress of work to be undertaken for the successful and speedy implementation of PPPs in Assam.

The proposed institutional framework in a summarized manner as follows:

Authority & Its Members	Key Functions
<p>Cabinet Chairman: Chief Minister, Assam All Members of Cabinet</p>	<p>Grant Approval for Projects with capital cost > 500 Crore: § Detailed Project Report (DPR) § Selection of Bidder</p>
<p>Empowered Committee on PPP (ECoP) Chairman: Chief Secretary Principal Secretary, Finance Principal Secretary, P&D Principal Secretary, Line Dept. Special Invitee: Secretary, Law Special Invitee: Secretary, Revenue Special Invitee: Secretary, Forest</p> <p><i>Besides, Principle Secretary of the Karbi Anglong Autonomous Council, NC Hills Autonomous Council, Bodoland Territorial Council, as the case may be will be co-opted as member for the projects requiring the involvement of these Councils. ECoP will be free to co-opt members from other Departments as and when considered necessary.</i></p>	<p>Projects with capital cost > 500 Crore: a) Deliberate and sanction approval for : · Pre-Feasibility Report (PFR) · Bidding Documents/Bidding Criteria & CA b) Review and recommend to Cabinet for their approval on DPR and Selection of Bidder c) Review the quarterly progress report. d) Deliberate and recommend to Cabinet any special grants and concessions for ensuring financial viability of project e) Review and Recommend projects for VGF to GoI Grant Approval for Projects with capital cost < 500 Crore: § Detailed Project Report (DPR) § Selection of Bidder Settle Dispute between Parties Website Management (Provide approval for the publication or removal of material on the PPP website and monitor the maintenance report on half-yearly basis)</p> <p>ECoP will meet at least once a quarter to review the progress.</p>
<p>Steering Committee Chairman: Principal Secretary, Finance Secretary, Line Department Secretary, P&D (Head, PPP Cell) Special Invitee: Secretary, Law Special Invitee: Secretary, Revenue Special Invitee: Secretary, Forest</p> <p><i>Steering Committee on PPP may co-opt members from other Depts as and when considered necessary.</i></p>	<p>Projects with capital cost < 500 Crore: a) Deliberate and sanction approval for : § Pre-Feasibility Report (PFR) § Bidding Documents/Bidding Criteria and CA b) Review and recommend to ECoP for their approval on DPR and Selection of Bidder c) Review the quarterly progress report d) Deliberate and recommend to ECoP any special grants and concessions for ensuring financial viability of project. e) Review and Recommend projects for VGF to GoI Provide approval for selection of TA for all PPP Projects.</p> <p>The Steering Committee shall meet at least once in 60 days.</p>

Authority & Its Members	Key Functions
<p>PPP Cell Head: Secretary, P&D Financial Expert Legal Expert External Advisors (Financial, Legal & Technical Advisors)</p> <p><i>Special Invitee: Principal Secretary, Finance (Chairman of SC) would act as the special invitee to the PPP Cell if required for the Projects with capital costs exceeding INR 500 Crores.</i></p>	<p>a) Develop a strategic blueprint for unlocking Assam PPPs bottlenecks and give a planned direction</p> <p>b) Review the proposal and sanction Approval on: i. Inclusion in the shelf of projects (Concept Note) ii. Project Development Fund (PDF)</p> <p>c) Review and monitor PPP Projects during implementation, execution, operation and management.</p> <p>d) Adopt, develop Model CA for various sectors.</p> <p>e) Develop Dashboard (Monitored by Head, PPP Cell) tool providing stage wise status summary of Assam PPPs.</p> <p>f) Review / revise the PPP policy and program to act as the nodal agency for capacity building</p> <p>g) Promotion of public awareness of PPPs</p>

PPP Procurement Process

EY team has observed weaknesses in various stages of Assam PPPs from procurement to implementation. The positive outcomes may be achieved through well-designed project structure, thorough due diligence and competitive / transparent procurement. There are thus certain improvements that need to be made as they are critical in delivering successful outcomes.

Stage 1: Project Identification

Key Issue - Absence of defined basis for pursuing projects on PPP mode

Recommendations

- ▶ Conduct a PPP suitability check
- ▶ Make a robust concept note (In-compliance with Checklist)
- ▶ Explore all financing options to increase viability of projects

Stage 2: Detailed Project Report (DPR) and Project Appraisal

Key Issues:

- § **Same Advisors are appointed for preparation of PFR, DPR and Tender Process**
- § **DPRs are not technically robust**
- § **Limited focus is laid on commercial considerations**
- § **Land availability is not validated**

Recommendations

- ▶ **Appointment of Advisors**
 - § Engage legal advisors independent of the Transactional Advisor (TA)
 - § Separate Technical, Financial and Legal advisors to be appointed for complex / large projects
- ▶ **Appoint reputable technical advisor** to ensure robust BOQs, designs, drawings, etc.
- ▶ **Enhance Scope of work of TA** till financial closure of project
- ▶ **Involve diverse group of stakeholders:** Focus on local communities
- ▶ **Develop database of projects:** Capturing the cost and time overruns in the completed projects.
- ▶ **Focus on attention to detail and quality:** Conduct field investigation and topographical survey
- ▶ **Evaluate availability of land** on technical, social and environmental parameters
- ▶ **Focus on project outputs** (performance / capacity) rather than inputs (project cost)
- ▶ **Conduct detailed market analysis,** needs analysis and identification of target users, definition of project outputs and demand forecast
- ▶ **Identify potential barriers and mitigation costs:** Land availability and acquisition, Environment Impact Assessment and Social Impact Assessment, Impacts on labour and employment and Charges and Revenues

Stage 3: Tender Process

Key Issues -

- § **Limited guidance on tender process is provided in Assam PPP Policy**
- § **Status of clearances are not reflected in Bidding Documents**
- § **Bid evaluation criteria does not meet project specific requirements**
- § **No checks on ownership and availability of Land prior to issue of RFP**

Recommendations -

- ▶ **Tender Process to be made interactive**
- ▶ **Bid evaluation criteria shall be specific to the project** (Technical criteria need to lay emphasis on specific sector and core sector experience)
- ▶ **Tender Process to be transparent** (Bidding process shall be conducted through E-Procurement)
- ▶ **Land shall be available** (At least 80% land shall be available before issuing RFP)
- ▶ **Best Practices shall be followed** (Status of CPs on issue of RFP shall be shared, Reimbursement of costs to bidder)
- ▶ **Bid Evaluation Committee shall be established.** (Members - Secretary, Line Department (Chairman), Secretary, Finance and Secretary, P&D. Optional members: Industry experts with at least 10 years of experience in project field)

Stage 4: Concession Agreement

Key Issues -

- § **KPIs are not appropriately structured and the associated liquidated damages are not well defined**
- § **Dispute resolution process – Appointment of Arbitrator is not appropriately set out**
- § **Change of scope of work mechanism is not clearly defined**
- § **Method of calculation of Termination payments is not clearly defined**
- § **Change in Law provisions are not defined**
- § **Insurance is obtained in the name of the Concessionaire**

Recommendations -

- ▶ Define KPIs in contract and set out the formulae for determining the Liquidated damages
- ▶ Arbitration provisions should provide for Arbitration by a tribunal comprising of odd numbers of Arbitrators [for example one or three]. Having regard to economical and efficient resolution process, arbitration by mutually appointed Sole Arbitrator may be preferred
- ▶ If Change in Law creates substantial adverse effect on the Project economic position, then Government should guarantee putting the Private party in same economic position as if change in law had not taken place
- ▶ In order to retain flexibility in provision of services, the contract should provide for change in scope upto a specified limit [say upto 20% of the Contract Value/Project Cost].
- ▶ The formulae to calculate the termination payments should be clearly specified
- ▶ Project facilities require Insurance to cover for varied risks and therefore in Insurances both private party and Government should be co-insured, as this helps Authority in ensuring deployment of insurance proceeds for reconstruction/re-building of the Assets.

Stage 5: Contract Management

Key Issues -

- § ***Contract Management not being practiced***
- § ***Lack of understanding on what is required to manage the Contract***
- § ***Limited availability of time with the government officials for contract monitoring***

Recommendations -

- ▶ **Establish Contract management team** (Nodal Officer and Two Project Engineers)
- ▶ **Develop Performance monitoring framework** (Monthly Reporting of Projects)
- ▶ **Treat Private party as a Partner**

Capacity building

During the as-is-analysis stage, it was observed that the capacity of the individuals within the Line departments / PPP Cell is not adequate enough to manage/execute the project development process on PPP effectively.

It is recommended that the capacity-building efforts shall be led by the PPP Cell, P&D. Capacity building plan as envisaged is progressing in a phase wise manner as stated below:

► Phase I: Training Needs Assessment (TNA)

Based upon our interactions held with more than 35 stakeholders, the list of target group from all the departments for the training sessions as follows:

- § Project Engineers
- § Identified Nodal Officers
- § Directors
- § Joint Secretaries
- § Secretaries
- § Principal Secretaries
- § Additional Chief Secretaries

Training Workshop/ Course	Target Audience		
	Senior Leadership (Additional Chief Secretary, Joint Secretary, Secretary and Principal Secretary)	Staff of Line departments (Engineers, PPP Officers, Directors)	Staff of PPP Cell
PPP Orientation Workshop	√	√	√
Procurement Acts, Policies and Guidelines	√		
PPP project identification	√	√	√
Prefeasibility / DPR	√	√	
PPP bidding process		√	√
PPP contracts, Commercial-legal terms etc.)	√	√	√
Contract Management		√	√
Financial Management		√	√

► Phase II: Designing the Training Program

EY recommends capacity building plan that includes measures for continuous training of the resources to roll out of Assam PPPs successfully. Few of the actions that need to be initiated to strengthen the capacity of the officials are as follows:

Measures for Capacity Building	
One day Training workshop	EY would conduct first round of induction training to create awareness among all the stakeholders on how to identify, contract and manage Assam PPPs in a way that address most of the key challenges faced in past.
Long Term Development Plan	Training on policy and procedures on continuous basis that would accelerate the knowledge and learning-by-doing. <ul style="list-style-type: none"> ► On-Job Training through External Advisors ► Partnering with International Institutions (PPP Cell, Foreign Countries) ► 2 Year Training Program (Stakeholders would meet on regular basis i.e every 2 months to coordinate over the project pipeline and attain consistent knowledge / updates related to policy and procedures)
External Advisors	Appointed in PPP Cell for a period of 3 years to strengthen it through induction of technical, financial and legal manpower to facilitate the line department in undertaking PPP projects.
Nodal Officers	Dedicated ' PPP Nodal Officer ' to serve as ' Training Champions ' who can later conduct trainings on an ongoing basis

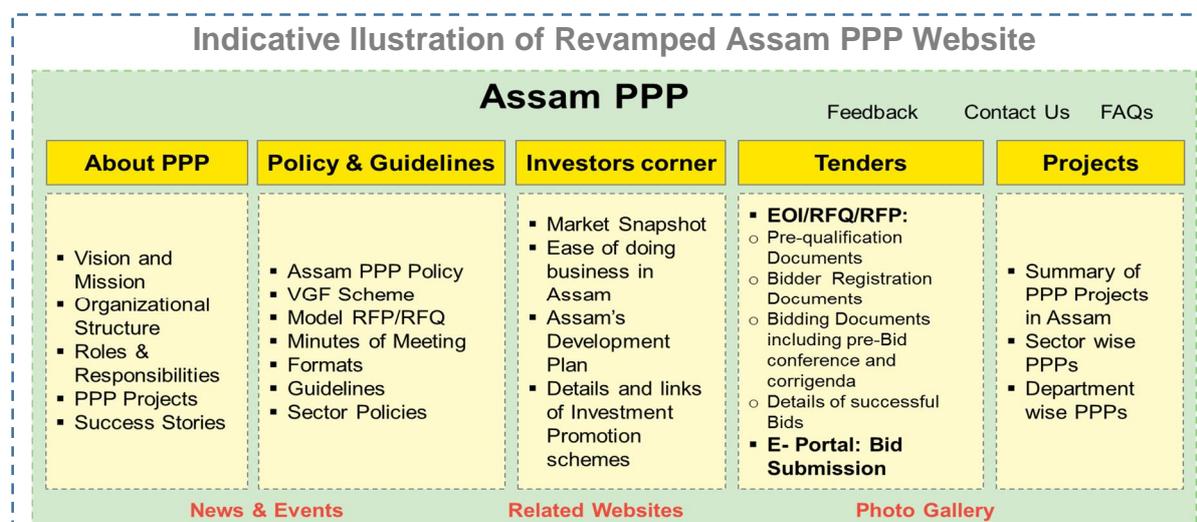
Communication Strategy

During our primary interactions, it was highlighted that there has been a delay in the PPP procurement process due to ineffective communications with investors, no internal project monitoring on continuous basis and poor web presence.

Some of the communication channels that can be adopted to address these bottlenecks and to ensure effective communications for Assam PPPs are listed out below:

Purpose	Channel	Key Benefits	Stage
Project specific	Stakeholder Consultations	<ul style="list-style-type: none"> § Forum - PPP Policy & Project structures § Identify critical bottlenecks of project § Mitigation Strategies § Pacify private sector concerns § Correct information to stakeholders 	PFR/DPR
	Market Sounding / Roadshows	<ul style="list-style-type: none"> § Validates Project Suitability § Understanding on Project marketability, Potential market constraints § Prepares market for procurement 	Tender Stage
Investor Outreach	Investor Summit / Conference	<ul style="list-style-type: none"> § Create high impact & visibility to show pro-activeness of Assam PPPs § Reinforce Assam's strengths § Awareness of recent PPP policy reforms § Clarify investor myths about Assam § Improved perception of Assam PPP Cell 	All such Events
	Revamped Assam PPP Website	<ul style="list-style-type: none"> § Open access to procurement information § Educate Line Dept on Assam PPP Policy § Secured Bid submission Facility 	On Immediate Basis
Internal control	Internal Tracker / Dashboard Tool	<ul style="list-style-type: none"> § Monitor the stage wise progress § Avoidance of human interference § Easy availability of complete audit trail and evidential data etc. § Strict check on activities of Line Depts 	On Immediate Basis

A dedicated website for Assam PPPs 'www.assamppp.gov.in' shall provide comprehensive information on the PPP initiatives taken up in Assam and GoA guidelines along with a web enabled database to provide information on PPP projects.



1. Introduction

1.1 Background

The overall objective of this assignment is to support the Government of Assam (GoA) in developing an enabling environment for PPPs through a review of the PPP investment climate framework, the PPP policy, legal and regulatory framework and the institutional arrangements; support to build capacity of key stakeholders in departments on how to identify, contract and manage PPPs (including risk sharing arrangements) and build communication strategy to develop appropriate content for revamped PPP website.

In order to achieve the above mentioned purpose, the delivery of this assignment is categorised into five deliverables. EY has already submitted two of these deliverables in line with the structure outlined in the RFP document.

- Deliverable 1 – Inception Report: April 19, 2017**
EY team carried out an 'Inception mission' and conducted primary interactions with the key stakeholders/top level officials from the AP-FMS within 2 weeks of getting the contract signed.
- Deliverable 2 – As is Analysis Report: May 24, 2017**
EY team had conducted detailed discussions with various stakeholders - government officials, regulators and project developers and also carried out in-depth analysis to understand various aspects pertaining to existing policies, procedures, legal, regulatory, institutional, financial and commercial framework and development of PPP projects both in the past and upcoming and identified the gaps.

Deliverable 3 – Draft Report on PPP Reforms

This report captures the third deliverable of this assignment which comprises of policy reforms that includes institutional, regulatory and procedural reforms based upon best practices across various states along with suggested capacity building strategy, training modules and communication strategy. This report also sets out the content for the Assam PPP website.

Deliverable 4 - Training and Communication

First round of training to target audience Stakeholder workshops and Content for revamped PPP website

1.2 Approach and Methodology

Based on a detailed study of Assam's key strengths and weaknesses, best practices in other regions and interactions with select investors and key government departments, suitable modifications and recommendations have been proposed. These shall be incorporated in the procurement guidelines to overcome the hurdles and strengthen the Assam PPPs. The recommendations in this report are proposed on the basis of approach as discussed below:

► **Issues / Gaps Identified during As-Is-Analysis**

EY team has highlighted the key issues, most challenging areas and drawn key learnings from it. This include review of schemes, policies, key authorities and approval processes.

► **Benchmarking Nationally & Internationally**

For the select regions as mentioned below, EY team has studied their many of the parameters of procurement on PPP such as operations, institutional framework, policies, funding support, decision making and communication technique of ongoing and upcoming projects across sectors:

- **Nationally** – Gujarat, Karnataka, Tamil Nadu, Haryana, Rajasthan, Madhya Pradesh, Andhra Pradesh, Uttar Pradesh, Uttarakhand, Orissa, West Bengal
- **Internationally** – Philippines, Canada, UK, Australia

Taking into account the merits and suitability for the state of Assam, EY team have mapped the recommendations to the existing PPP Policy Framework of Assam.

1.3 Structure of Report

This document set out PPP Reforms including institutional mechanism; revisions to policy and procedures; and PPP development process along with suggested capacity building strategy and training modules and Communication Strategy.

To effectively prepare the implementation plan, this report has been divided in 3 sections and each section is structured under various chapters as illustrated below –

Table 1: Layout of Draft Report on PPP Reforms

Chapter	Chapter name	Description
Background		
Chapter 1	Introduction	Provides a brief background for the Project and Approach & Methodology of this Report
Section 1 – Reforms: Institutional Framework & PPP Policy		
Chapter 2	Proposed Institutional framework	Modifications to existing PPP organisational structure through reviewing best PPP practice as across Indian states.
Chapter 3	PPP Policy Reforms	Provides a framework in which the guidelines of the procurement documents shall be drafted.
Section 2 – Reforms: PPP Management Procedures		
Chapter 4	Identification, Selection and Prioritization	Guidance for suitability check, Preparation of Concept Note and Checklist
Chapter 5	Detailed Project Report and Project Appraisal	Modifications to Appointment of Advisors, Preparation of Robust DPRs & Checklist
Chapter 6	Tender Procurement Process	Modifications to selection criteria & bidding documents (EOI/RFQ/RFP)
Chapter 7	Concession Agreement	Recommendation on PPP contract templates
Chapter 8	Contract Management	Recommendation on Performance Monitoring of Projects on PPP
Section 3 – Capacity Building		
Chapter 9.1	Stakeholder Training Workshop	Training Need Assessment and Implementation Plan for One day Induction Workshop
Chapter 9.2	Long term capacity building plan	Based upon assessment of output and feedback from target group, development of a long term capacity building plan
Section 4 – Communication Strategy		
Chapter 10	Communication Channels	List of Communication channels for building communication strategy for PPPs in Assam Develop the content for PPP website which is relevant to enhance investor confidence and also provide clarity to government stakeholders.
Chapter 7	Next steps	Next steps after Draft Report on PPP Reforms

A close-up photograph of a person's hands holding an open book. The person's skin is dark, and their fingernails are short and clean. The book's pages are white and slightly aged. The background is blurred, showing what appears to be a library or study area with bookshelves. A large, bright yellow circle is overlaid on the right side of the image, containing the title text.

Reforms: Institution & PPP Policy

2. Recommendations on Institutional Structure

Working closely with the Government departments and analysing their existing institutional framework, EY team has identified the key bottlenecks in the institutional structure such as limited approval power, number of approvals sought at various stages and irregular meetings of approving bodies.

Further, based on benchmarking the institutional structure of the states which have successfully implemented PPPs in India, EY team recommends reforms that are needed to strengthen the institutional structure and better support PPPs in Assam. These include:

- ▶ **New organizational structures and reform;**
- ▶ **Terms of Reference for proposed authority and their exact responsibilities**

EY team proposes to establish a sound governance structure for proper monitoring and review of the progress of work to be undertaken for the successful implementation of PPPs in Assam. The proposed governance structure is as follows:

- ▶ **Cabinet**
- ▶ **Empowered Committee on PPP (ECoP)**
- ▶ **Steering Committee**
- ▶ **PPP Cell**

While formulating the governance structure, EY team has ensured that the roles and responsibilities of proposed authority are clearly defined and synchronized to avoid the duplication of authorities / processes and form an effective monitoring mechanism that would help in timely escalation and action to be taken at every stage of the project.



Key Interventions:

- ▶ Apex Authority is replaced by the Cabinet in order to ensure that less number of approvals are taken from high powered authority and meetings are scheduled on periodic basis.
- ▶ The composition of ECoP is strengthened and approval is required for high value projects.
- ▶ To fast-track the approval process **for low value projects (upto 500 Cr), a low powered committee viz Steering Committee is formed up.**
- ▶ Head, PPP Cell is introduced as **PPP Champion.**
- ▶ To strengthen the role and capacity of PPP Cell, there is a need to:
 - **Appoint a team of external advisors** to develop knowledge, capacities, processes and train Nodal Officers.
 - Hire Financial & Legal Expert on **fixed deputation of 4 years** from other departments.

2.1 Cabinet

It is important to have a fixed meeting schedule to grant approvals on time to avoid delays in implementation process. **Cabinet meets on periodic basis unlike the Apex Authority. Therefore, there is a need to dissolve the Apex Authority and replace it with the Cabinet in the PPP Framework of Assam.**

Few of the states exhibiting successful PPPs including uppermost authority as 'Cabinet' in their governance structure are listed out below:

- **Uttar Pradesh** - Competent Authority(Hon'ble Cabinet of Ministers) of GoUP
- **West Bengal** - Standing Committee of the Cabinet on Industry, Infrastructure & Employment
- **Haryana** - Cabinet Committee on Infrastructure (CCI)
- **Uttarakhand** - Empowered Group of Ministers (EGM)

Cabinet would provide approvals for only high value projects exceeding INR 500 Cr. However, the no. of approvals need to be sought from Cabinet would be only at the stage of DPR and Selection of Bidder for such high value projects.

I. Constitution (Comprises of Ministers):

- ▶ Chairman: Chief Minister, Assam
- ▶ All Members of Cabinet

II. Recommended Role & Responsibilities:

- ▶ **Provide approval for the projects with capital cost more than INR 500 Crores at the following stages:**
 - Detailed Project Report (DPR)
 - Selection of Bidder

2.2 Empowered Committee on PPP (ECoP)

It is necessary to strengthen the constitution of ECoP in a manner that **speed up the approval process, ensure accurate review process and ease the meeting schedule**, thus directing towards on-time successful implementation of Assam PPPs.

Therefore, EY team recommends such constitution that comprises of adequate number of members (less members as compared to its existing structure) who can **apportion sufficient time to carry out review of submitted reports / project performance in a precise manner and provide timely approvals** throughout various stages of implementation process.

I. Proposed Constitution:

- ▶ **Chairman:** Chief Secretary
- ▶ **Members:**
 - Principal Secretary, Finance
 - Principal Secretary, P&D
 - Principal Secretary, Line Department
 - Special Invitee: Secretary, Law
 - Special Invitee: Secretary, Revenue
 - Special Invitee: Secretary, Forest

Besides, Principle Secretary of the Karbi Anglong Autonomous Council, NC Hills Autonomous Council, Bodoland Territorial Council, as the case may be will be co-opted as member for the projects requiring the involvement of these Councils. Empowered Committee on PPP will be free to co-opt members from other Departments as and when considered necessary.

II. Meetings

ECoP will meet at least once a quarter to review the progress and resolve any issues that may arise in the implementation of a PPP project during various defined stages.

III. Recommended Powers & Functions:

It is recommended that ECoP shall provide approvals for higher value projects viz projects **exceeding cost of INR 500 Crores at various stages of their implementation**. However, for low value projects viz less than 500 Crores, ECoP shall provide approval at only two stages – DPR and Selection of Bidder.

§ **ECoP has sufficient experience of approving projects with different cost values at various levels of their implementation.** However, the current pipeline of PPP projects in Assam includes number of smaller value projects. So, there is a need to form a new committee which can carry out the procurement process for smaller value projects and **let ECoP utilize their experience for high value projects.**

§ Approvals for high value projects at ECoP level have also been observed in some of the other states which have recently updated their PPP Policy.

(Example: PPP Policy of **Uttar Pradesh** was revised in 2016 including a modification in the approval limit on project value from **Rs 100 Crore to Rs.1000 Crore**)

The Powers and Functions of the Empowered Committee on PPP shall include:

▶ **Projects with capital cost > INR 500 Crores:**

- Deliberate and sanction approval for :
 - § Pre-Feasibility Report (PFR)
 - § Bidding Documents/Bidding Criteria and Concession Agreement
- Review and recommend to Cabinet for their approval on DPR and Selection of Bidder
- Review the quarterly progress report.
- Deliberate and recommend to the Cabinet any special grants and concessions for ensuring financial viability of the project
- Review and Recommend projects for VGF to GoI

▶ **Projects with capital cost < INR 500 Crores:**

- Deliberate and sanction approval on:
 - § Detailed Project Report (DPR)
 - § Selection of Bidder

▶ **Settle disputes between the parties.**

▶ **Website Management** (Provide approval for the publication or removal of material on the PPP website and monitor the maintenance report on half-yearly basis)

2.3 Steering Committee

To speed up the process and reduce the number of approvals required from the high powered committee (ECoP) for low value projects, there is a need to introduce lower powered committee viz Steering Committee in the PPP Institutional Framework of Assam.

The proposed constitution of Steering Committee intends to comprise appropriate members so that procurement process for low value projects is carried out in the most effective manner. It is recommended that **Principal Secretary of the Finance Department shall be assigned as the head of Steering Committee providing a direct link to capital investment expertise and decision-making processes** resulting onto successful / timely completion of low value projects.

In states like Rajasthan, Public-Private Partnership Appraisal Committee (PPPAC) under the chairmanship of the Principal Secretary (Finance), deliberates and recommends PPP Projects to Empowered Committee.

I. Constitution

▶ Chairman: Principal Secretary, Finance

▶ Members

- Secretary, Line Department
- Secretary, P&D (Head, PPP Cell)
- Special Invitee: Secretary, Law
- Special Invitee: Secretary, Revenue
- Special Invitee: Secretary, Forest

Steering Committee on PPP may co-opt members from other Departments as and when considered necessary.

II. Meeting Schedule

The Steering Committee shall meet at least once in 60 days.

III. Recommended Powers & Functions:

The Steering Committee shall be the facilitating authority to extend support to Empowered Committee on PPP (ECoP) with due delegation of powers to speed up the process. Further, it is recommended that the **Steering Committee shall provide approval for projects with cost upto INR 500 Crores at various stages of implementation.**

§ **Most of the projects in the PPP Pipeline of Assam are below Rs 500 crore.. Thus, to speed up the approval process for low value projects, approval limit on project value for the Steering Committee shall be set upto 500 Crores.**

§ **Steering Committee is headed by Principal Secretary of Finance Department and comprises members such as Head of PPP Cell who would *closely monitor / review the procurement process of the projects with capital cost upto 500 Crores* thus leading to effective implementation of small value PPPs in Assam.**

The Powers and Functions of the Steering Committee shall include:

▶ **Projects with capital cost < INR 500 Crores:**

- Deliberate and sanction approval for :
 - § Pre-Feasibility Report (PFR)
 - § Selection of bidder
 - § Bidding Documents/Bidding Criteria and Concession Agreement
- Review and recommend to ECoP for their approval on DPR and Selection of Bidder
- Review the quarterly progress report
- Deliberate and recommend to ECoP any special grants and concessions for ensuring financial viability of the project.
- Review and Recommend projects for VGF to GoI

▶ **Projects with capital costs more than INR 500 Crores:** Chairman of SC would act as the special invitee to the PPP Cell incase assistance is required by the ECoP.

▶ **Provide approval for selection of TA for all PPP Projects.**

2.4 PPP Cell

To enhance the image of PPP Cell and build confidence within all the line departments of Government of Assam, there is a need to strengthen the PPP Cell in a way that successfully manage the risks associated with a growing number and value of public-private partnerships. Given the substantial sums involved and the long duration of public-private partnerships, the importance of risk allocation, and the contractual complexity of the relationship, the management of public-private partnership agreements

requires a high level of capacity. PPP Cell should also be robust enough to assist departments during project conceptualization, preparation of PFRs/DPRs, developing Model Concession Agreements and conducting the bidding process.

I. Constitution

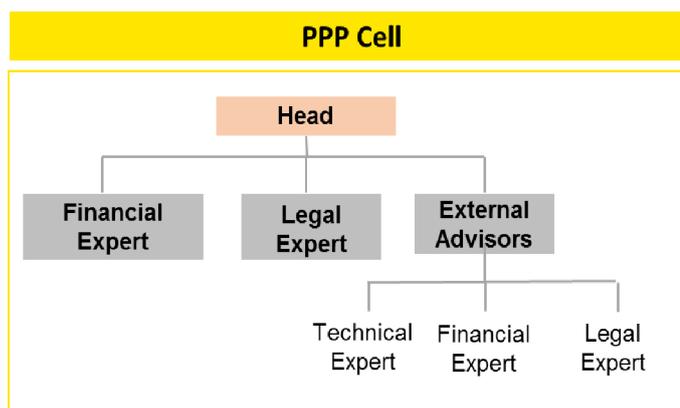
To fulfill its role in ensuring PPP projects are well-structured, the PPP unit needs the right balance and level of skills and experience. These include sector specific technical skills as well as experts in economics and finance, regulation, procurement, communications and training. Therefore, PPP Cell shall comprise members with the following areas of expertise:

- ▶ **Project finance:** Financial Analysis and Due Diligence
- ▶ Economic Analysis
- ▶ **Legal:** Contracting, legislation, and regulation
- ▶ **Technical:** Broad understanding across infrastructure sectors
- ▶ **Public relations and Communications**
- ▶ **Contract monitoring** and Evaluation

Hence, the purpose of restructuring a PPP cell is to build a center of experience and expertise in PPP — requiring appropriate technical, financial and legal resources as discussed below. PPP Cell could then serve multiple functions.

- ▶ **Head:** Secretary, P&D
- ▶ Financial Expert
- ▶ Legal Expert
- ▶ External Advisors (Private Sector - Technical, Financial & Legal Consultants)

Special Invitee: *Principal Secretary, Finance (Chairman of SC) would act as the special invitee to the PPP Cell if required for the Projects with capital costs more than INR 500 Crores.*



It is recommended that **Secretary of P&D Department could be considered to Head the PPP Cell in order to serve as the PPP champion**. Further, PPP cell shall comprises of small core staff of permanent employees, long-term experts (**Financial and Legal Expert shall be hired on fixed deputation basis from other departments for a period of 4 years**) and external private consultants.

§ **Head, PPP Cell:** *To enhance the image of PPP Cell within all departments and to support a dynamic PPP framework in Assam, there is a need to appoint the Head of PPP Cell. The Head shall serve as the PPP champion.*

§ **Core staff** *will provide in-house technical capacity for developing the PPP framework, promoting PPPs, helping to identify deals, assessing proposed PPPs, and participating in the PPP transaction process.*

§ **Financial / Legal Expert** *to carry out financial due diligence, economic analysis and to undertake contracting, legislation, and regulation*

§ **External Advisors (Independent Consultants)** *needed to help with capacity-building and play a key part in developing and implementing PPP transactions over time.*

II. Recommended Powers & Functions:

PPP Cell established in the P&D Department, Government of Assam shall assist the Steering Committee/Empowered Committee. PPP cell shall be able to perform on the four main areas as follows:

- a. Policy Formulation and Coordination
- b. Developing and Implementing PPPs
- c. Capacity building
- d. Promotion of PPPs

PPP Cell would review the concept note and if finds suitable to push the project forward towards the development phase, then forward the same to ECoP / Steering Committee depending upon the project value for review and obtaining requisite approvals.

The recommended functions of PPP Cell shall include the following:

- ▶ Collate, analyze and disseminate information including data on the contingent liabilities of the government in relation to a project
- ▶ To identify, conceptualize and create a shelf of projects in consultation with the line departments.
- ▶ To review the proposal submitted by the line department along with the concept note and subsequently sanction Approval for all the projects on:
 - § Inclusion in the shelf of projects (Concept Note)
 - § Project Development Fund (PDF)
- ▶ To seek approval from time to time from Steering Committee, ECoP and the Cabinet.
- ▶ To assist different line depts in preparing or reviewing PFR / DPR through external advisors.
- ▶ To help respective departments to conduct the bidding process for selection of developers.
- ▶ To interact with the Department of Economic Affairs, Ministry of Finance, GOI for obtaining approval under the scheme of Viability gap funding (VGF) / IIPDF / PPI etc.
- ▶ To act as the nodal agency for capacity building for PPP in the state and ensure timely implementation of PPP capacity development program
- ▶ Promotion of public awareness of PPPs through the PPP Quarterly publication, website, roadshows and conferences; and management of the Project Development Facility (PDF) that provides funding for the government's transaction costs.
- ▶ To review / recommend the PPP policy and program so as to effectuate suitable policy changes based on the previous experience of managing PPP projects.
- ▶ Ensure that quality PPP projects are developed in a timely and efficient manner
- ▶ To review the project reports on monthly basis and monitors the dashboard tool summarising details of Assam PPPs
- ▶ Review / recommend and monitor the Assam PPP Website .

2.5 External Advisors

Initially, a team of **External Advisors (Independent Consultants)** would be appointed within the **PPP Cell, P&D Department to strengthen its capacity and facilitate the line department in undertaking PPP projects.**

To function well a dedicated PPP unit requires staff expertise: **sector specific technical skills, economics and finance, contracting, legislation and regulation, procurement, communications and training.** Therefore, there is a need to appoint external advisors under PPP Cell, P&D so as to bring efficiencies into the PPP framework of Assam. To attract people with the necessary experience, PPP Cell have to be able to offer competitive pay and other benefits.

Constitution

- ▶ Financial Expert
- ▶ Legal Expert
- ▶ Technical Expert
- ▶ Other supporting resources would be hired on the need basis.

It should be noted that external advisors would not be responsible for integrated development planning, but that they will liaise closely with line departments and PPP Cell.

I. Appointment of External Advisors

Initially, PPP Cell would engage these consultants **on contract basis for a period of 3 years**. Further, their contract can be either continued for a longer period or any other consultants could be hired according to the needs of PPP Cell.

II. Funding

The cost of these external advisors appointed under PPP Cell, shall be funded from Assam PDF.

III. Powers & Functions

External Advisors would also facilitate coordination between departments and render assistance during project monitoring and awareness outreach programs.

The role of external advisors shall include:

- ▶ To assist PPP Cell in reviewing the Concept Note/PFR/DPR/Bidding documents submitted by the line department.
- ▶ To assist line departments in preparing the PFR, DPR and conducting the bidding process for selection of developers.
- ▶ Evaluate PPP projects from Technical, Financial & Legal aspect.
- ▶ Build capacity of PPP Cell and the line departments by close interaction with them.
- ▶ To assist PPP Cell in arranging awareness outreach programme such as road-shows.
- ▶ Develop a Dashboard (Monitored by Head, PPP Cell) that would provide stage wise status summary of Assam PPPs at one place.
- ▶ Adopt, develop Model Concession Agreements for various sectors.
- ▶ To provide training to Nodal Officers in a manner '**Training Champions**' who can conduct trainings on an ongoing basis to ensure consistent understanding across various stakeholders.

3. PPP Policy Reforms

EY team has observed **weaknesses in various stages of Assam PPPs from procurement to implementation that are mainly due to lack of appropriate policy guidelines and corresponding legal and institutional framework, hence there is a critical need for revising a PPP policy by the Government of Assam.** Suggestions for the policy reforms are based upon their implementation potential and after consulting several stakeholders¹.

The positive outcomes have to be achieved through well-designed project structure, thorough due diligence and competitive / transparent procurement. **There are thus certain key pre-conditions which need to be clearly stated in the policy framework for PPP, as they are critical in delivering successful outcomes. These have been identified as the legislative environment, institutional arrangements and procurement process.** To effectuate suitable policy changes, EY team ensured that recommendations are benchmarked to best practices across various regions and address key challenges faced in Assam till date. The recommended framework for the Assam PPP Policy includes the following:

- ▶ **Introduction**
- ▶ **Definition of PPP**
- ▶ **Policy Objectives**
- ▶ **Infrastructure sectors**
- ▶ **Institutional Arrangement**
- ▶ **Project Development and Selection of Developers**
- ▶ **Dispute Resolution Mechanism**
- ▶ **State Support**
- ▶ **Protection of Stakeholder Rights**
- ▶ **Duration and Review of PPP Policy**

Among the above mentioned framework, EY team recommends to revise / update some of the sections in a more detailed manner as stated below:

3.1 Introduction

Assam is one of the prime states of North Eastern India having largest economy in the North-East and is endowed with vast mineral and natural resources. Assam has one of the largest networks of higher education in the entire North East. The state has adopted numerous investor-friendly policies to attract investments and accelerate industrial development. North East Industrial Investment Promotion Policy (NEIPP) and Industrial Policy of Assam facilitate business through fiscal incentives and multi-year concessions to investors. IT Policy, Small Hydropower Policy and Tourism Policy of Assam have given special attention towards specific sector development.

Assam is India's gateway of North East Region acts as a vital link for trade with Southeast Asian countries – Bangladesh and Bhutan. It is well connected by rail, road, ports and airports. Therefore taking advantage of it, Assam in specific and the North-East as a whole may explore the possibility of tapping the potential of the existing market in the neighboring countries and economies of the South-East Asia for development of Trade & Commerce in the region. But due to lack of proper infrastructural Facilities, it is crippled with developmental process over the years. To make use of the existing natural resources and development opportunities, Govt. of Assam recognizes the massive need to develop Infrastructure in manner that growth objectives are achieved.

Investment requirements to develop infrastructure and attain high growth are enormous and cannot be met from the public sector alone in a timely manner. Mobilizing Government resources to fully meet the

¹ The list of stakeholders consulted was set out in As Is Analysis report and is attached in Annexure [I]

requirement of fund for development of infrastructure will put huge tax burden on the people of the State. Therefore, needs to address the constraint of a narrow domestic tax base so as to bridge the resource gap for implementing critical development needs. Hence, the participation of private capital is key to resolving the prevailing budgetary resource constraints.

The Government of Assam proposes to support and stimulate various factors involved in economic growth, by encouraging the private sector to undertake investments in infrastructure and services development through PPPs frameworks. Indeed, PPPs have proven to provide effective alternate source of financing, management and maintenance of public sector projects. Additionally, PPPs enable the Government to streamline its responsibilities in providing socio-economic goods and services, and this enhances efficiency, accountability, quality of service and wide outreach. Effectively structured, PPP mode can substantially reduce costs of setting up and then in operation and maintenance of the projects. To achieve this goal, Government of Assam laid down its Public Private Partnership Policy in 2008.

3.2 Concept of PPP

The concept of Public Private Partnership (PPP) is a contractual agreement between a public entity (a government / statutory entity / government owned entity) and a private entity, whereby the private entity usually makes the investment, manages and performs part of a government organization's service delivery functions, and assumes the associated risks for a stipulated period of time. In return, the private entity receives a benefit / financial remuneration according to specified and pre-determined performance criteria, which may be derived:

- entirely from service tariffs or user charges
- entirely from Government budgets
- a combination of the above

The public sector retains a significant role in the partnership project, either as the main purchaser of the services provided or as the main enabler of the project. It purchases services and specifies the service outputs/outcomes required as well as the performance criteria for payments. The private party commonly provides the design, construction, operation and possibly financing for the partnership project, and is paid according to performance. Risks are identified and placed with the party best able to bear and manage them at lowest cost.

A wide spectrum of PPP arrangements exists, differing in purpose, service scope, legal structure and risk sharing. One end of the spectrum would be an outsourcing of some routine operation, while the other could involve the private sector conceiving, designing, building, operating, maintaining and financing a project, thereby taking a considerable proportion of risk. The choice of the PPP arrangement for a particular project will depend on Government's policy in the related sector and on potential value for money to be generated under such an arrangement.

PPPs for Operation of Existing Public Assets: Service, Management, Leasing Contracts and Concessions

In a service contract, the government contracts with a private entity to provide services the government previously performed. A management contract defers from service contract, the contractual arrangement for existing infrastructure projects would typically include management of the assets by private operators through:

PPPs for Development and Operations of Existing Facilities (Brownfield projects)

Operations and Maintenance (O&M) contracts for defined periods

In Operations & Maintenance (O&M) contract, private entity is responsible for all aspects of operation and maintenance of the facility under contract.

Lease of assets

A Lease Contract provides an alternative arrangement whereby the government grants a private entity a lease hold interest in an asset and the private partner operates and maintains the assets in accordance with the terms of the lease.

Rehabilitate, Operate, Maintain and Transfer (ROMT) contracts

A third variant is a concession arrangement whereby the government grants private entity exclusive rights to provide, operate and maintain an asset over a long period of time in accordance with performance requirements set forth by government. The public sector retains ownership of original asset while the private operator retains ownership over any improvements made during contract period.

PPPs for Development and Operations of New Facilities (Greenfield projects)

The core issue in this category is the development of new facility and its ownership over time. Focus is on design and construction of required new facilities, and hence emphasis is on the terms: construction, operations and ownership. The contractual arrangement, depending on nature of the project, for new infrastructure projects would typically include, besides others, the following:

Design-Build-Operate (DBO): Under this model, the government contracts with the private partner to design and build a facility in accordance with the requirements set by the government. After completing the facility, the ownership of the facility remains with the public sector while the private partner operates the facility according to public performance requirements. The operator is also responsible for replacing the assets whose life has expired.

Design-Build-Finance-Operate/Maintain (DBFO or DBFM): Under this model, the private sector designs, builds, finances, operates/or maintains a new facility under a long term lease. At the end of the lease term, the facility is transferred to the public sector.

Build-Lease-Transfer (BLT): After building the asset, the concessionaire rents or leases it from Government and eventually transfers it back to the Government at the end of the lease term. .

Build-Operate-Transfer (BOT): This combines the responsibilities of design-build procurements with the operations and maintenance of a facility for a specified period by private sector partner. At the end of that period, the facility is transferred back to the public sector.

Build Own Operate (BOO): In this model, the government grants the right to finance, design, build, operate and maintain a project to a private entity, which retains ownership of the project. The private entity is not required to transfer the facility back to the government.

Build-Own-Operate-Transfer (BOOT): In this model, the government grants a franchise to a private partner to finance, design, build and operate a facility for a specified period of time. Ownership of the facility is transferred back to the public sector at the end of that period.

3.3 Policy Objectives

The main objective of this policy is to introduce fair, equitable, transparent, competitive and cost-effective PPP framework; and facilitate private sector participation in upgradation, development and expansion of the physical infrastructure in the State of Assam.

- a) To put in place an effective and efficient institutional framework for speedy clearance of the projects;
- b) To implement effective strategy showing specific obligations and rights for various stakeholders;
- c) To set up a consistent and efficient administrative mechanism that creates an enabling environment for all the stakeholders;
- d) To put in place operational guidelines and procedures to ensure that PPPs are technically, financially, economically and socially viable;
- e) To Ensure that the PPPs are procured through open competitive bidding process;
- f) To leverage State and Central Government funds, support private investment and to create a conducive environment so as to utilize the efficiencies, innovativeness, and flexibility of the private sector to provide better infrastructure and service at an optimal cost, in public interest;
- g) To provide necessary risk sharing framework in the project structure so as to assign risks to the entity most suited to manage them; and that the risk allocation is cost-efficient and optimal;
- h) To create a robust dispute redressal mechanism / regulatory framework for PPP projects;
- i) To develop institutional capacities for technical analysis and negotiation of PPPs and associated contracts; and
- j) To establish efficient and quality socio-economic PPPs.

3.4 Infrastructure sectors

The infrastructure sectors and facilities governed by this Policy will include the following, as may be modified from time to time:

S. No.	Infrastructure Sectors	Indicative List of Sub-Sectors
1	Agriculture	<ol style="list-style-type: none"> a. Agriculture and horticulture markets b. Floriculture parks and markets c. Agro-food processing and allied infrastructure (including common-user cold storage facilities) d. Agri-Cold chains/Wholesale fruit/vegetable markets e. Post-Harvest Facilities
2	Education	Infrastructure and facilities for educational institutions including Technical Education (Skill development etc.)
3	Energy	<ol style="list-style-type: none"> a. Power generation, transmission, distribution and power trading services. b. Oil and Gas (origination, terminals, transmission, and gas works) c. Renewable and non-conventional energy sources (Hydro, Solar, biomass, and MSW)
4	Healthcare	Infrastructure and facilities for healthcare
5	Industrial Infrastructure	<ol style="list-style-type: none"> a. Industrial Parks (including Biotechnology, Information Technology Parks, Knowledge Parks) b. Special Economic/Free Trade and Export Promotion Zones c. Industrial Estates and Industrial Townships d. Dry ports/ Multi-purpose container terminals/Hi-Tech Parks

6	Tourism	<ul style="list-style-type: none"> a. Amusement, Entertainment, Theme Parks, Sports Centre b. Hotels/ Resorts c. Convention & Exhibition Centres d. Trade fairs e. Cultural Centres
7	Transportation & Logistics	<ul style="list-style-type: none"> a. Roads (including bridges, interchanges, and flyovers) b. Railway & related projects c. Urban transportation systems d. Airports, Airstrips and Helipads e. Bus/ Truck/ Urban Transport Terminals and associated public facilities such as Public Amenities Centres f. Minor ports and harbours g. Warehousing infrastructure (including container freight stations, container depots, logistic hubs) h. Mechanised and Multi-storey Parking facilities i. Inland water Transport
8	Urban and Municipal Infrastructure	<ul style="list-style-type: none"> a. Township development, Slum Development b. Water Supply, Treatment, and Distribution c. Commercial development with common-user facilities d. Sewerage e. Desalination f. Wastewater recycling and reuse g. Underground drainage h. Solid waste/ Bio-medical waste/ Hazardous waste: Collection, transportation, treatment and disposal facilities
9	Internet and Communication Technology	<ul style="list-style-type: none"> a. Development of IT environment in Schools, Colleges, Universities b. Dedicated infrastructure for Wireless networks <ul style="list-style-type: none"> - Optical Fibre Cable (OFC)/Networks - State Wide Area Network (SWAN) - State Data Centers (SDCs)
10	Irrigation	<ul style="list-style-type: none"> a. Canals, dams and weirs b. Minor Irrigation Works for special agri-zones c. Wasteland Development Projects
11	Public Markets	Infrastructure and facilities for Public Buildings, Markets, gardens, parks and parking facility, not on a purely commercial basis, but which satisfy a Public Need
12	Sports	Sports and Recreation infrastructure
13	Others	<ul style="list-style-type: none"> a. Rural - Public conveniences b. E-governance c. Housing and Environment d. Land Reclamation e. Mining and mineral based industries and Infrastructure Development in Mining areas

Any other project as mentioned below may be included by the Government of Assam:

- a. Any other projects which is a combination of above mentioned sectors
- b. Any other projects or sectors as approved by Empowered Committee on PPP (ECoP)

3.5 Institutional Arrangement

The Government of Assam recognizes the importance of an effective and efficient institutional mechanism to ensure timely clearance of projects and therefore lays down following structure to meet the policy goals:

- **Cabinet**
- **Empowered Committee on PPP (ECoP)**
- **Steering Committee**
- **PPP Cell**

3.5.1 Cabinet

Constitution

1. Chairman: Chief Minister, Assam
2. All Members of Cabinet

Powers & Functions

Cabinet will grant approval for the projects towards Detailed Project Report (DPR) and Selection of Bidder for projects with capital cost exceeding INR 500 Crores.

3.5.2 Empowered Committee on PPP (ECoP)

Constitution

1. Chairman: Chief Secretary
2. Principal Secretary, Finance
3. Principal Secretary, P&D
4. Principal Secretary, Line Department
 - Special Invitee: Secretary, Law
 - Special Invitee: Secretary, Revenue
 - Special Invitee: Secretary, Forest

Besides, Principle Secretary of the Karbi Anglong Autonomous Council, NC Hills Autonomous Council, Bodoland Territorial Council, as the case may be will be co-opted as member for the projects requiring the involvement of these Councils. Empowered Committee on PPP will be free to co-opt members from other Departments as and when considered necessary.

Powers & Functions

ECoP shall be the nodal agency to achieve the policy goals and co-ordinate with various authorities of the State and Central Government to facilitate private sector investment in developing infrastructure through PPP mode.

The Powers and Functions of the ECoP would include:

- I. Grant Approval for the Projects with capital cost > INR 500 Crores during various stages.
 - a) Deliberate and sanction approval for :
 - o Pre-Feasibility Report (PFR)
 - o Bidding Documents/Bidding Criteria and Concession Agreement
 - b) Review and recommend to Cabinet for their approval on DPR and Selection of Bidder
 - c) Review the quarterly progress report.
 - d) Deliberate and recommend to the Cabinet any special grants and concessions for ensuring financial viability of the project
 - e) Review and Recommend projects for VGF to GoI
- II. ECoP will grant approval for the projects towards Detailed Project Report (DPR) and selection of bidder for projects with capital cost less than INR 500 Crores.

- III. Settle disputes between the parties.
- IV. Website Management (Provide approval for the publication or removal of material on the PPP website and monitor the maintenance report on half-yearly basis)

ECoP will meet at least once every quarter to review the progress and resolve any issues that may arise in the implementation of a PPP project during various defined stages.

3.5.3 Steering Committee

Constitution

1. Chairman: Principal Secretary, Finance
 2. Secretary, Line Department
 3. Secretary, P&D (Head, PPP Cell)
 - Special Invitee: Secretary, Law
 - Special Invitee: Secretary, Revenue
 - Special Invitee: Secretary, Forest
- Steering Committee on PPP may co-opt members from other Departments as and when considered necessary.

Powers & Functions

The Steering Committee shall be the facilitating authority to extend hand hold support to Empowered Committee on PPP with due delegation of approval powers to speed up the process.

The Powers and Functions of the Steering Committee shall include:

- I. Grant Approval for the Projects with capital cost less than INR 500 Crores:
 - a) Deliberate and sanction approval for :
 - § Pre-Feasibility Report (PFR)
 - § Bidding Documents/Bidding Criteria and Concession Agreement
 - b) Review and recommend to ECoP for their approval on DPR and Selection of Bidder
 - c) Review the quarterly progress report
 - d) Deliberate and recommend to ECoP any special grants and concessions for ensuring financial viability of the project.
 - e) Review and Recommend projects for VGF to Gol
- II. Chairman of SC would act as the special invitee to the PPP Cell incase assistance is required by the ECoP for projects exceeding capital costs more than INR 500 Crores:
- III. Provide approval for selection of TA for all PPP Projects.

The Steering Committee shall meet at least once in 60 days.

3.5.4 PPP Cell

Constitution

1. Head: Secretary, P&D
 2. Financial Expert
 3. Legal Expert
 4. External Advisors
- Special Invitee: Principal Secretary, Finance (Chairman of SC) would act as the special invitee to the PPP Cell if required for the Projects with capital costs exceeding INR 500 Crores.

Powers & Functions

PPP Cell established in the P&D Department, Government of Assam shall assist the Steering Committee/Empowered Committee.

- a) Collate, analyze and disseminate information including data on the contingent liabilities of the government in relation to a project
- b) To identify, conceptualize and create a shelf of projects in consultation with the line departments.
- c) To review the proposal submitted by the line department along with the concept note and subsequently sanction Approval for all the projects on:
 - i. Inclusion in the shelf of projects (Concept Note)
 - ii. Project Development Fund (PDF)
- d) To seek approval from time to time from Steering Committee, ECoP and the Cabinet.
- e) To assist different line depts in preparing or reviewing PFR / DPR through external advisors.
- f) To help respective departments to conduct the bidding process for selection of developers.
- g) To interact with the Department of Economic Affairs, Ministry of Finance, GOI for obtaining approval under the scheme of Viability gap funding (VGF) / IIPDF / PPI etc.
- h) To act as the nodal agency for capacity building for PPP in the state and ensure timely implementation of PPP capacity development program
- i) Promotion of public awareness of PPPs through the PPP Quarterly publication, website, road-shows and conferences; and management of the Project Development Facility (PDF) that provides funding for the government's transaction costs.
- j) To review the PPP policy and program so as to effectuate suitable policy changes based on the previous experience of managing PPP projects.
- k) Ensure that quality PPP projects are developed in a timely and efficient manner
- l) Develop a Dashboard (Monitored by Head, PPP Cell) tool that would provide stage wise status summary of Assam PPPs at one place.
- m) Review the project reports on monthly basis and monitors the dashboard tool summarising details of Assam PPPs
- n) Adopt Model Concession Agreements for various sectors.
- o) Through external advisors, provide training to Nodal Officers in a manner '**Training Champions**' who can conduct trainings on an ongoing basis to ensure consistent understanding across various stakeholders.

3.6 Project Development and Selection of Developers

Recommended procedures over the entire project life cycle are detailed out below:

3.6.1 Project Identification/Conceptualization

Line Departments in consultation with PPP Cell shall identify/conceptualise infrastructure projects to be developed in the State through PPP mode and prepare a shelf of projects. On-receipt of Concept Note, PPP Cell shall carry out the evaluation and check its compliance based on the checklist available with them. The PPP Cell will then forward the checklist along with Concept Note and PDF requisition form to Steering Committee / ECoP (based on the project value) for its approval.

3.6.2 Preparation of Preliminary Feasibility Report (PFR)

Line Departments with the assistance of TA / External Advisors, as the case may be, shall get prepared the Preliminary Feasibility Reports for the identified projects and then forward the report to PPP cell for their recommendations. PPP cell shall then evaluate the report based on its merit (As per checklist) and subsequently, forward the checklist along with the report to Steering Committee / ECoP (based on the project value) for its approval of project for development under PPP mode or suggest modifications / changes to the proposal. The Preliminary Feasibility Report should establish the need for the project, broad level project cost estimation and indicative commercial viability of the proposed project including preliminary engineering studies, if any

PPP Suitability Check

All the infrastructure projects mentioned in para 2.4 should be subjected to a PPP test. This will ensure only projects that have the potential to be implemented as PPPs will go forward for further development. Such a method will ensure that a better value for money can be achieved for the Government exchequer.

Risk Sharing Framework

Risk management process comprises a sequence of steps including risk identification, risk assessment, allocation of risks, and risk management along with mitigation measures. A risk management plan shall be prepared by the Transaction Advisor for the project, addressing the risks identified throughout the project life cycle.

3.6.3 Preparation of Detailed Project Report (DPR)

On obtaining approval of ECoP / Steering Committee, the respective line department shall prepare the Detailed Project Report (DPR) with the assistance of TA / External Advisors, as the case may be and then forward the report to PPP cell for their recommendations. PPP cell shall then evaluate the report based on its merit (As per checklist) and subsequently, forward the checklist along with the report to ECoP / Cabinet (based on the project value) for its approval.

The purpose of the Detailed Project Report (DPR) is to investigate in detail whether the project is a desirable, viable and achievable investment. The DPR will assess and describe the technical, social, environmental, legal, financial, economic and risk characteristics of the project and produce a project implementation schedule. The actual contents of the DPR will depend on the type of potential PPP project under analysis. A more comprehensive analysis is required for capex projects, in which design, planning and construction are major components. The DPRs should be robust and focus on attention to detail and quality.

Appointment of Consultants / Transaction Advisor (TA)

PPP Cell shall prequalify Consultants for a period of 3 years. Consultants will comprise financial, technical and legal advisors. Legal advisors shall be engaged independent of financial and technical advisors. Consultants shall be shortlisted based on their past experience of handling similar type of projects, and financial strength of the firm. The empanelment document should clearly indicate the value, experience in related sectors and nature of past assignments that would be considered eligible for the purpose of evaluating the applicants. Pre-qualification of Consultants shall be carried out by advertising the requirement on E procurement website of Assam, department website, PPP website and in at least one national newspaper of repute.

3.6.4 Selection of Developers (Tender Process)

The Consultant shall be entrusted with the task of preparing tender documents only once the commercial viability of a project has been established or means of enhancing commercial viability have been agreed. The Consultant shall prepare the draft Tender Document for the PPP project including the Expression of Interest (EOI) or Request for Qualification (RFQ), Request for Proposal (RFP), Draft Concession Agreement (DCA) and any other document required and conducting the bid process management for selection of Developer for PPP Project. The selection of the developer shall be based on the assessment of the financial, technical, managerial capabilities of the potential developer and developer's response to the bidding parameter.

For projects greater than Rs 500 crore, the final selection of the developer will be approved by the Cabinet and for projects less than Rs 500 crore, the final selection will be approved by the ECoP. For projects which have been tendered based on VGF will be approved as per Gol guidelines.

Formation of Joint Venture (JV) / Special Purpose Vehicle (SPV)

Joint Venture (JVs) / Special Purpose Vehicles (SPVs) shall be formed as and when required to carry forward and realize the objectives of this Policy and get various clearances and permissions in the JVs / SPVs to speed-up the project.

If the JV/SPV Company so formed takes the Project of developing Infrastructure in PPP towards offering public services, then the same will be governed in accordance with the PPP policy. The JV/SPV private partner will not act in any manner with any of the other Project stake holders so as to avoid conflict of interest. Where necessary, the GoA may participate in the equity structure of JV / SPV for the development of such projects. The equity structure of such JV / SPV would be decided on a case-to-case basis

3.6.5 Contract Management

To ensure coordination among various divisions and stakeholders throughout the project lifecycle, it is imperative for the Line Departments to set up a Contract Management Team. The contract management team shall provide an unbiased point of view on all issues in the project and how they should be managed. The contract management team shall be formed during the procurement process. Early involvement in the procurement process shall enable the contract management team to gain a thorough understanding of the line department's requirements. The continued involvement throughout the whole process will help in maintaining a position of strength throughout all levels of negotiation. The team will better assist the development of pragmatic and 'user friendly' performance measurement systems, allow input into the evaluation of the solutions and bids received, and will mean that they have good understanding of the service methodologies at service commencement. The contract management team shall consist of a Nodal Officer and two Project Engineers of the concerned Line Department

Periodic Performance Reporting

Contract Management team to submit the periodical performance report as per the template developed/issued by the PPP Cell, P&D Department. PPP Cell shall review the monthly monitoring report and check its compliance based on the checklist. The report along shall be placed by PPP Cell before Steering Committee / ECoP (based on the project value) on quarterly basis for further monitoring and issuance of necessary direction.

3.7 Dispute Resolution Mechanism

Government to Private (G2P) meetings: Representatives of each party shall first meet and attempt to resolve the dispute, in good faith. Following members shall be a part of the closed door meetings:-

1. Members of line department
2. Representatives from the private party
3. Members of other relevant departments (depending on nature of dispute)
 - o Forest department
 - o Environment department
 - o Revenue and agriculture department

Resolution Committee: If the dispute is not solved amicably, representatives of the parties should appear before a Resolution Committee and attempt to resolve the dispute. The members of the Resolution Committee for projects exceeding 500 Crores shall comprise of one technical expert, one financial expert and one legal expert. For projects less than 500 Crores, the members shall include two technical experts, two financial experts and one legal expert. If the dispute is not resolved by the Resolution Committee, then arbitration can be sought by affected party.

Arbitration: The dispute must be referred to and determined by a Board of arbitrators to whom the parties make submissions. The Board's determination shall be binding. The process of arbitration must

be supported by and should be carried out in accordance with the Indian Arbitration & Conciliation Act, 1996. The Board should ideally consist of three members. Two arbitrators will be appointed by each of the respective parties and then the arbitrators will jointly elect the third arbitrator. In the event of a disagreement between the two arbitrators, the appointment will be made as per the rules specified in the Act.

3.8 State Support

The State Government may formulate sector-specific policies, from time to time, for providing specific viability gap funding, incentives and also establish mechanism for tariff setting, pricing, arbitration, guarantees, safety and operational standards etc. It also envisages coordination across infrastructure sectors. Necessary legislative support would be provided, as and when required. Administrative support and financial support shall include:

Administrative Support

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

- a) in obtaining State & Central Government clearances as may be required for the project.
- b) in rehabilitation & resettlement activities in case so required as per existing policy of the Government, including shifting of utilities, wherever required.
- c) acquisition of land necessary for the project. The land will be acquired strictly in accordance with the policy of the State Government prevalent at the time of acquisition of land for the project.
- d) In the process of availing benefits under various Central Government and State Government schemes (as may be applicable) to facilitate private sector participation in physical and social infrastructure projects.
- e) provision of supply of power and water at project site.

Financial Support

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

Assam Project Development Fund (APDF)

Some PPP projects may require the project development costs including the costs for feasibility studies, environmental impact studies, legal review, development of project documents, transaction advice etc. Funds would also be required to meet the costs for acquiring land and for other pre- construction / implementation activities.

The State Government proposes to establish **Assam Project Development Fund (APDF)**. Detailed guidelines for establishment and operation of the Fund shall be issued by the State Government. It is envisaged that the support contemplated under this Fund shall be applicable only for infrastructure projects on a PPP basis.

On successful bidding process, the project development expenditure would be recovered with profit from the successful bidder. In the case of failure of bids, the project development expenditure would not be recovered from the concerned Government Department / Agency. If the Department abandons

the project for the reasons other than technical non-viability or lack of investor interest at the bidding stage, the amount spent on project development, out of APDF, will be reimbursed to the Fund from the plan funds of the department. Either or both the conditions can be relaxed by the ECoP in special cases.

3.9 Duration and Review of PPP Policy

This policy would come into force with effect from the date of issue of the Government Order and would be effective till the formulation of a new PPP policy.

The PPP Cell shall periodically review and update the Policy if necessary. To perform this review, the PPP Cell shall monitor and evaluate the performance of implemented PPP projects and draw lessons from this experience, based on information provided by the relevant line departments. The specific legislative constraints for PPPs would also be reviewed and addressed during the review.

The PPP Cell shall recommend changes or updates to the PPP policy—based on its periodic reviews—to Empowered Committee on PPP (EcoP) for consideration. The Cabinet shall approve any changes, advised by the ECoP and PPP Cell.

A close-up photograph of a person's hands holding an open book. The person's skin is dark, and their fingernails are short and clean. The book's pages are white and slightly aged. The background is blurred, showing what appears to be a library or study area with bookshelves. A large, bright yellow circle is overlaid on the right side of the image, containing the title text.

Reforms: Management Procedures

4. Identification, Selection and Prioritization of PPP Projects

Keys issues: Project Identification, Selection and Prioritization of PPP Projects

§ It is unclear how line departments segregate projects to be undertaken on PPP and non PPP. It has been observed that projects are taken up on PPP mainly due to funding constraints.

§ Project procurement option (EPC/PPP) not analysed at project initiation stage.

In case of tissue culture lab project, it was mandated to be functional for 24 hours a day and consequently it was realized to involve a private player for Operation and Maintenance at a later stage. Also, the project could never commence as one of the crucial project components, hardening unit, was not constructed.

§ Limited attention is paid to the following factors while shortlisting a project to be undertaken on PPP :-

- a project's innovation potential
- optimal risk allocation
- whole of life efficiencies
- whether a project has measureable outputs, project tenure
- availability of private sector players- there have been cases where projects have received single/no bids

§ No uniformity in the concept notes which delays the approval process. Also the concept notes does not analyse following parameters at the project development stage:-

- Justification for PPP project
- Availability of land and land ownership
- Readiness of private sector
- Capacity of department to execute a PPP project

Project Identification is the first phase in the project development process which ensures a quality pipeline of PPPs. Line Departments in consultation with PPP Cell shall identify/conceptualise infrastructure projects to be developed in the State through PPP mode and prepare a shelf of projects. As a good practice, following steps should be followed while identifying a project to be undertaken under PPP.

Identify the PPP Nodal Officer

As the first step, each line department should appoint a 'PPP Nodal Officer'. The nodal officer will be a dedicated resource from project inception to contract signing stage. The officer will work closely with PPP Cell and will be one point of contact for the PPP Cell and Advisors. The responsibilities of PPP Nodal officer will include:-

Responsibilities of Nodal Officer	
Project Identification	
<ul style="list-style-type: none"> ▶ Identify and conceptualize projects that can be undertaken on PPP mode ▶ Obtain necessary approvals from relevant PPP authorities for developing the PPP Project ▶ Establish the suitability of a project for PPP and prepare Concept Note ▶ Maintain all documentation related to the PPP Project 	
Project Development	
<ul style="list-style-type: none"> ▶ Participate in Stakeholder Consultations ▶ Undertake the processes for appointment of advisors and/or consultants, if required, and document the same ▶ Facilitate all approvals required to be taken by the Line Department ▶ Act as a point of contact for TA ▶ Monitor performance of TA and assist TA in data collection and obtaining approvals, if any. ▶ Provide quality assurance and oversight to the review of feasibility studies and bidding documents ▶ Seek assistance from PPP Cell throughout the project lifecycle ▶ Efficiently manage all key activities related to the development and procurement of the PPP Project, on behalf of the line department ▶ Provide assistance to Bid evaluation committee in evaluation of RFQ and RFP submitted by the applicant 	
Project Monitoring	
<ul style="list-style-type: none"> ▶ Monitor the progress of the project as a part of contract management team ▶ Prepare quarterly monitoring reports 	
Other Responsibilities	
<ul style="list-style-type: none"> ▶ Regularly attend capacity building trainings and workshops and sensitize other members of the department ▶ Attend roadshows and Investment summits organized by Government of Assam 	

Step 1: Conduct PPP Eligibility Test

The initial eligibility test should be conducted to test whether the projects exhibit enough characteristics to qualify for a PPP project. Line Departments will conduct the first test, 'PPP eligibility' to determine whether the projects should be further tested for implementation via PPP. The line departments will evaluate the projects on the following parameters:-

Step 1: PPP Suitability Test

Value driver	Test
Absolute Essentials	
Need of the Project	Does the project attain sectoral objectives and/or addresses gaps, based on sector master plan, if any, and the identified linkages with other projects and/or programs?

Value driver	Test
Absolute Essentials	
Market Interest	<p>Does a competitive market for the project exist? The use of a competitive process helps to encourage the private party to develop innovative means of service delivery while meeting government cost objectives</p> <p>This can be identified by checking whether similar projects have been implemented in the country? A similar project having been implemented in other parts of the country validates that there will be sufficient private sector players to bid for the project.</p>

It must be noted that whilst the tests can act as a guidance tool, it must not be considered a strict rule to be followed for procuring strategic projects under the PPP mode. Such projects may not have sufficient scale and innovation potential but may be pursued for strategic reasons such as creating a demonstration effect in the market.

In the next stage (pre-feasibility stage), the projects identified for being developed through a PPP model are further screened to check for their feasibility as viable projects.

Best Practices: Project Identification

Develop a **database of projects** capturing the cost and time overruns in the completed projects, including the underlying reasons thereof. Such database shall facilitate in conducting VfM analysis for projects in upcoming years.

Government must be very clear about whether or not it intends to initiate new projects that may compete with the current project at some time in future.

Bundle small projects of the same sector with similar technical and risk characteristics is one of the ways to achieve economies of size. Bundling can optimize the transaction cost for projects which otherwise are too small to justify the high transaction cost involved in PPP projects

Step 2: Preparation of Concept Note

Based on the results of the PPP suitability test, nodal officer will prepare a concept note which will list out broad parameters of the project and provide information regarding PPP value drivers. The projects which do not qualify through this stage will be funnelled out to seek alternative funding or to be procured via traditional procurement.

The concept Note will contain the following project details:-

A. Project Details

- ▶ Project Background
- ▶ Greenfield/brownfield Scope of work
- ▶ Expected role of private entity and line department

B. Justification for the project

- ▶ Why a PPP is proposed?(Funding constraints, Project Need, Market Potential, Term of the project)

C. Availability of land

- ▶ Percentage of project land available with Government
- ▶ Plan of the department to acquire remaining land
- ▶ Details of land bank of the department which can be made available for the project

D. Project Financing and Technical Support

- ▶ Is project proposed to be governed and implemented under any specific Policy/Guideline
- ▶ Financing options- multilaterals/ schemes/VGF
- ▶ Eligibility of project for VGF
- ▶ Need of engaging Consultant and utilizing funds from PDF

E. Market appetite and acceptability for the project

- ▶ Potential private sector players to implement the proposed PPPs
- ▶

F. Experience and Capacity of the Department

- ▶ Capacity of line department to procure, manage and monitor PPPs
- ▶ List of successful similar projects in India

G. Project characteristics and potential barriers

- ▶ Any known environmental, social concerns about the proposed project or site

Detailed format of Concept Note is attached in Annexure III.

Step 3: Preparation of Project Development Fund (PDF) requisition form

About PDF: The procurement costs of PPPs, and particularly the costs of Transaction Advisors, are significant and often pose a burden on the budget of the Administrative Department concerned. PDF is a mechanism through which Administrative Department will be able to source funding to cover a portion of the PPP transaction costs, thereby reducing the impact of costs related to procurement on their budgets. PDF increases the quality and quantity of 'bankable projects' that are processed through the State's project pipeline.

Assam PDF will be available to finance an appropriate portion of the cost of Consultants and Transaction Advisors on a PPP project where such Consultants and Transaction Advisors are appointed by the Administrative Department either from amongst the transaction advisers empanelled by Government or through a transparent system of procurement under a contract for services and or the arrangements made by the GoA in this regard time to time

PDF Allocation

To provide financial support for quality project development activities, the Government of Assam vide its PPP Policy has earmarked an initial fund of Rs. 20.00 Crore to be provided by Planning & Development Department from untied fund. A Department of Government seeking to develop a project in PPP mode will be entitled to seek sanction from this fund for project development activities.

PDF fund will be budgeted in the P&D budget head. P&D Department with concurrence from Finance Department will sanction and release the fund. The PDF will be available to the line departments for the purpose of meeting the project development costs.

PDF Approval Mechanism: It is recommended that the Assam PDF shall be administered by the PPP Cell already set up under Planning & Development Department. The nodal officer from the concerned line department shall forward the request (PDF form) to PPP Cell for initial screening along with the Concept Note. Funds shall be provided once PDF requisition Form by the Line Department has been approved and conditions as precedent to funding have been fulfilled.

PDF Requisition Form: Funding is required for the payment of Transaction Advisors appointed by the Administrative Department, usually in a two-phase appointment: the first phase is the preparation of the pre-feasibility study and its subsequent approval by ECoP / Steering Committee (According to the project cost) and the second phase is where the Transaction Advisors are paid according to fixed milestone deliverables. For both the phases, request has to be made in a PDF Requisition Form. The PDF form shall necessarily cover the following aspects:

- ▶ duration of the advisory services;
- ▶ terms of reference of the advisory services;
- ▶ milestones and schedule of the advisory services;
- ▶ skills, expertise and knowledge needed from technical, financial and legal advisors - eligibility and qualification;
- ▶ estimated budget for the advisory services; and
- ▶ Procurement schedule for advisory services.

PDF Monitoring: The PPP Cell shall be responsible for regular monitoring of the project development and compliance with the milestones.

PDF Disbursement: Disbursements of the Assam PDF will be made in installments based on milestones achieved. These milestones will be those set out in the PDF Requisition Form given as Annex-III

PDF Funded Activities: The budget for project development should include an estimate of:

- i. Surveys and investigation expenses.
- ii. Consultant fees covering technical, environmental & social, legal, financial studies and project documentation, as may be needed.
- iii. Fee for grading of projects, if any.
- iv. Transaction Advisor fees.
- v. Consultant fees covering risk assessment/identification.
- vi. Out of pocket expenses for procurement process documentation,
- vii. Advertising, marketing road shows/investor meetings, etc.
- ii. Capacity Building

It would not include expenses incurred by the Administrative Department on its own staff, etc.

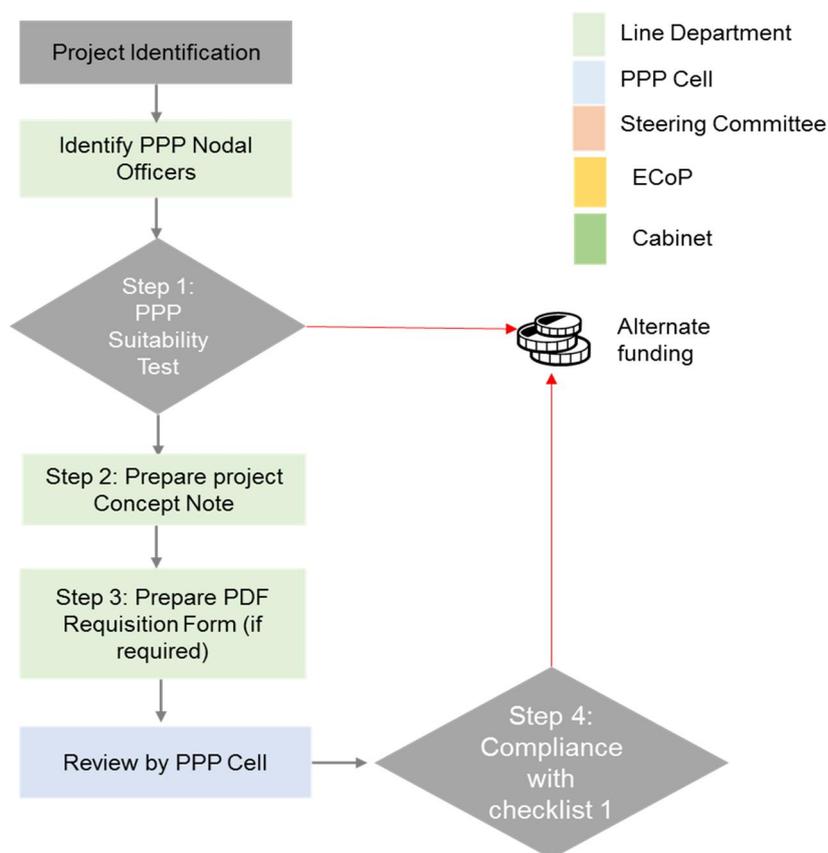
Step 4: Evaluation of Concept Note and compliance with checklist 1

Once the PPP Cell receives the Concept Note and PDF requisition form, it will evaluate the note and form. PPP Cell will check its compliance based on the checklist given below. The approval procedure for stage 1 is set out in Exhibit 1.

Checklist for Stage 1: Project Identification

Parameters	Compliance
	Yes/No
Does the project offer opportunities for risk transfer (technical, commercial, financial etc.) to private sector?	
Is the project size large enough to achieve expected efficiency savings from a PPP.	
Have similar projects been implemented in past?	
There are potential players to implement the proposed project	
The project is complex or private sector will be able to provide an innovative solution	
50% of land is available with government, if applicable	
Land acquisition plan is clearly defined	
Alternate land options have been explored	

Exhibit 1: Approval process- Stage 1



5. Detailed Project Report and Project Appraisal

Keys issues faced by PPP's in Assam in Stage 2

- § There is no centralized sector wise database of consultants.
- § Since the same consultant is appointed for preparing DPRs and tender documents, it becomes important to evaluate consultants on their technical, commercial and legal capacity. During stakeholder meetings, it was investigated that appointed consultants fall short in one of the three (technical, commercial and legal) areas.
- § Project scope is not being clearly identified at PFR stage. As a result of which appropriate commercial consideration is not given to a project.

4.2.1 Appointment of Advisors - Technical, Financial and Legal

The project development process might require the inputs of Advisors if the Line Department/ PPP Cell feels that capacity within the organisation is not adequate to manage the project development process, especially if the project is complex. Line departments should appoint Transaction Advisors to facilitate smooth implementation of PPP projects. The transaction advisors shall be appointed from a panel of prequalified Transaction Advisors.

Transaction Advisors will be appointed by the Administrative Department either from the transaction advisors empaneled by Government or through a transparent system of procurement under a contract for services. The TA can also be appointed through the arrangements made by the GoA in this regard time to time. The empanelment document should clearly indicate the value, experience in related sectors and nature of past assignments that would be considered eligible for the purpose of evaluating the applicants. Prequalified Transaction Advisors shall be shortlisted by PPP Cell for a period of 3 years.

A transaction process requires advisors with technical, financial and legal competence. Separate technical, financial and legal advisors shall be engaged based on project complexity and cost. For projects less than 500 crores, legal advisors shall be engaged independent of Transaction Advisors. For projects greater than 500 crores, separate technical, financial and legal advisors shall be engaged during project development process. Selection of advisors shall be carried out by advertising the requirement on E procurement website of Assam, department website, PPP website and in at least one national newspaper of repute.

Key advisors in a PPP project include technical advisors, financial advisors and legal advisors. The following are brief descriptions of key advisors' roles:-

Financial advisors

Financial advisors shall be able to carry out risk analysis and prepare the financial structure for the type of PPP project being implemented. The Financial advisors shall have:

- ▶ Skills to optimize financial structure
- ▶ Good understanding of the commercial logic and market feasibility of the project,
- ▶ Skills and experience to ensure that the final transaction represents value for money

Technical advisors

Technical advisors are those with engineering and related specializations who understand the physical aspects of the infrastructure sector under consideration. Technical Advisors shall:

- ▶ Advise on operational and investment needs,
- ▶ Advise on the technical aspects of regulation, legislation and evaluation.
- ▶ Prepare pre-feasibility and project feasibility study, and
- ▶ Prepare desired service specifications

Legal advisors

Legal advisors should also be involved throughout the development of a PPP project. Legal advisor shall:

- ▶ Develop policy objectives by outlining the possibilities for the project within the existing legal framework,
- ▶ Identify legal or regulatory restraints to implement the policy objectives,
- ▶ Provide advice on project structuring.
- ▶ Provide advice during the pre-qualification processes, evaluation of bids, appointment of successful bidders, and
- ▶ Assist in drafting, negotiating, and advising on any variations to the contracts, or disputes arising during the term of the contract.

Getting maximum benefit from advisors requires good management and effective leadership and oversight by the department – from defining the advisor’s tasks, to choosing the advisor, and throughout their engagement with the department. Without this, the advisor’s work can be misdirected, misunderstood, and may even amount to fruitless expenditure by the department. The Department should play the central role in managing the advisors. PPP nodal officer should act as a single point of contact for Advisors.

Best practices: Appointment of Advisors	
Evaluation Criteria	<ul style="list-style-type: none"> ▶ The advisors should have technical, financial and legal competence. ▶ It is suggested to engage technical advisors independent of financial and legal advisors for complex projects and projects greater than 500 crores ▶ Empanel Advisors for a period of 3 years ▶ The empanelment document should clearly indicate the value, experience in related sectors and nature of past assignments that would be considered eligible for the purpose of evaluating the applicants

4.2.2 Preparation of Pre-Feasibility Report

A pre-feasibility study aims to objectively and rationally uncover the strengths and weaknesses of the PPP project identified by the line department. It is one of the most critical components of project preparation and also the basis on which the private sector would make an investment decision on the project. The study should assess feasibility of the project on technical, financial and commercial aspects. Following should be the components of a pre-feasibility study:

Key Components of Pre-Feasibility Report		
A	Financial, Commercial and Economic Viability of the project Feasibility	<ul style="list-style-type: none"> ▶ Needs and Demand Assessment ▶ Option Analysis ▶ Value for Money Assessment ▶ Risk Identification and Allocation ▶ The cost recovery/income generation assumptions of the project ▶ The overall project cost (capital + operations + maintenance) ▶ Expectations of required Government financial support ▶ Identification of likely economic benefits generated by the project
B	Technical and Operational Practicality of the Project	Preliminary analysis of: <ul style="list-style-type: none"> ▶ The engineering and technical aspects of the project ▶ The manageability of the operational aspects of the project ▶ Preliminary assessment of all likely technical and operational risks

C	Environmental and Social safeguard activities	<ul style="list-style-type: none"> ▶ Preliminary Environment Impact Assessment ▶ Preliminary Social Impact Assessment
D	Private sector Interest	<ul style="list-style-type: none"> ▶ Likely private sector interest in the project

The essential components of the Pre-Feasibility of the project shall include:-

I. Needs and Demand Assessment

The needs and demand analysis will expand on the analysis made during the strategic planning process. It must have a focus on the services required by end-users. Areas that should be assessed in the analysis include:-

- ▶ The existing level of service – does current service fall short on requirements, and if so where are the shortfalls?
- ▶ Desired level of service- What is the level of demand that needs to be met?
- ▶ Benefits that would be provided to the users – the level of expected benefits should be one of the key justifications for the targeted level of service
- ▶ Government of Assam's objectives - How would a project to provide the desired level of service meet the GoA's objectives, such as policy priorities?

II. Option Analysis

Step 1: List all reasonable options

The objective of option analysis is to determine the best way to address the identified public need. Options analysis sets out a range of technical, legal and financial options available to the line department for meeting its needs from the Project. Line department shall conduct options analysis by undertaking the following steps:

Step 2: List all reasonable options (both PPP and traditional) considering the context of the project, the project objectives and characteristics in order to identify which of the procurement models will likely meet the requirements.

- ▶ **Technical aspects –**
 - The engineering and technical aspects of the project
 - The manageability of the operational aspects of the project
 - Preliminary assessment of all likely technical and operational risks
- ▶ **Land acquisition and resettlement impacts and costs**
 - Ownership of land
 - Land acquisition plan and costs
 - Clearances required and expected timelines
- ▶ **Financial and economic returns**
 - Main revenue source for the project- Tariffs/revenue from sale of services/ Annuity payments?
 - If main revenue source is fares or tariffs, how much demand or payment risk is there?
 - What is the likelihood that the PPP operator will be paid?

▶ **Environmental and Social impacts and costs**

As per the Environmental Impact Assessment Notification 2006, the advisor shall identify the category in which the project falls and list the activities which require Environmental Clearance. The advisor shall analyze the environmental impacts and identify mitigation measures and costs. Environmental mitigation measures which would exceed [10] % of project costs can be considered to represent major impacts. For such projects, the environment management plan shall be well planned in advance to prevent delay at later stages of the project.

After the pre-feasibility study, the nodal officer on behalf of the line department shall submit an application seeking prior environmental clearance.

During the pre-feasibility study, the advisor should conduct a preliminary social impact assessment and identify mitigation measures and costs. Social impact mitigation may include rehabilitation and resettlement for people affected by the project. Interventions to protect social impacts should be: (i) informed and take into account the key relevant social issues; and (ii) incorporate a participation strategy for involving a wide range of stakeholders

Best Practice: Environment and Social Impact Assessment

The Vadodara Holol Toll Road project provides a good example of environmental and social impact planning and mitigation.

The concessionaire carried out the assessment and planning and implemented mitigation strategies. Mitigation included relocation of people and buildings, and incorporating design features into the project to limit its impact, such as subways, wetlands etc. The environmental risk mitigation and social rehabilitation elements of the project were judged '**best practice**' by the World Bank.

Step 3: Discuss which options are likely to attract private sector investment

Step 4: Recommendation of the preferred option

To facilitate the assessment and to allow ready comparison between options, a rating system can be adopted as follows:

Table 2: Rating System for procurement models

Score	Particulars
üüü	Model has excellent potential to meet the criteria
üü	Model has good potential to meet the criteria
ü	Model has some potential to meet the criteria
x	Model has no potential to meet the criteria

The results of the evaluation can be presented in a tabular form as shown below to enable easy comparison. A generic PPP mode decision tree is depicted in Annexure

Table 3: Evaluation Results

Assessment Criteria	Importance	Option 1	Option 2	Option 3
Criteria 1	High	üüü	üü	üüü
Criteria 2	High	x	üüü	üü
Criteria 3	Medium	üü	ü	üüü
Criteria 4	Medium	ü	x	üü
Criteria 5	Low	üü	x	üüü

From this assessment, a preferred model can be determined.

III. Risk Identification and Allocation

a. Risk Identification

At this stage, all risks relevant to the project should be identified. Given that the project is being structured for private sector investment, it is critical that all those issues that can be influenced by the line department are identified. These may include delay in implementation, termination risk, change in laws, new impositions or taxes, alternative facilities, other contingencies requiring government support and covenants and infrastructure risks, such as government assurances for land and right of access.

From an investor and/or lender perspective, key risks in a PPP project include direct project risk, regulatory and institutional risk, macroeconomic risk, nationalization and appropriation (political risk), completion delays, cost overruns, demand forecast risks, e.g., volumes and toll rates and/or fees, performance risks, e.g., technology and processes, operation and maintenance risk, force majeure, e.g., earthquakes, floods, and natural disasters, political and social risk and foreign exchange risk.

b. Risk Allocation

Responsibility for dealing with the consequences of each risk shall be allocated to one of the participants in the contract, or agreeing to deal with the risk through a specified mechanism that may involve sharing of risk. Risk should be allocated to the party who is best to manage that risk, and enforces that risk allocation with appropriate financial incentives.

The total cost of a project can be reduced through correct allocation of risks. Risks should be allocated according to the following principles:

- ▶ **Public sector:** The government bears the risk for matters within control of the government or which cannot be economically and efficiently managed by the investor (such as through its own resources or the purchase of insurance products).
- ▶ **Private Sector:** Risks arising from the construction, operation and management of the project will generally be borne by the project company.
- ▶ **Lenders:** Are Lenders are convinced with the credit quality of the project (i.e., the business evaluation they have made that their loan will be repaid in a timely manner) after being satisfied with the results of due diligence on the borrower's ability to repay the loan.

c. Risk Mitigation

Attempt should be made to reduce the chances of the risk and the degree of its consequences for party assuming the risk. Sometimes, "de-risking" certain aspects of the project enables optimal risk transfer (a point beyond which the efficiency gains of an optimal risk transfer are lost).

Efficient risk allocation and mitigation are central to bringing infrastructure projects to financial closure and to providing appropriate incentives during construction and operation. Projects may still be financeable if some risks are not allocated according to this principle, but costs and, ultimately, the unitary payments or tariffs will be higher. Sponsors and lenders expect higher rewards for assuming higher risks.

Table 4 provides the structure of a typical risk management matrix (covering some of the risks and likely allocation)

Table 4: Matrix for risk allocation

RISK	DESCRIPTION	PUBLIC SECTOR	PRIVATE SECTOR	SHARED
Site risk	Land acquisition and resettlement delay, and cost overrun	✓		
	Unable to acquire entire project land site	✓		
Design risk	Design faults		✓	
	Design fault in tender specification	✓		
Construction risk	Construction cost increase		✓	
	Poor performance of subcontractors		✓	
	Delay in completing construction works		✓	
	Failure to meet performance criteria at		✓	
Financial risk	Financial structure risk		✓	
	Interest rate risk (fluctuation of loan interest)		✓	
	Inflation rate risk (increase of inflation rate used for estimating lifecycle costs)		✓	
	Foreign exchange rate risk			✓
Operating risk	Availability of facility		✓	
	Non-performance of services		✓	
	Increase in inputs price		✓	
	Misestimating operating and maintenance costs		✓	
Revenue risk	Variation of demand from forecast levels, for reasons beyond control of the government		✓	
	Changes in market prices		✓	
	Incorrect estimation of revenue from income generation model		✓	
	Failure to implement contractual changes in	✓		
Unexpected event risk	Natural disasters			✓
	Events of war, riots, civil disturbance			✓
	Government acts/omissions causing project cessation	✓		
Political risk	Currency convertibility	✓		
	General change in laws		✓	
	Change in law specific to the project	✓		
	Delay in achieving planning approval	✓		

The line department can manage its risks associated with the PPP Projects through following methods:

- ▶ Use of a well-defined and standard contractual framework
- ▶ Adequate insurance against risks
- ▶ Diversification of the investor–lender–stakeholder base

IV. Explore financing options to increase viability of projects

The Advisor shall assess various financing options (VGF/Central Govt/Annuity/Project bundling/ external financing from multilateral agencies) at the pre-feasibility stage to increase viability of projects.

Why is it important to determine funding options at an initial stage?

To make projects viable

▶ The Salt Lake Water Supply and Sewerage Network project received **35% of its capital expenditure funding from the JnNURM scheme.**

To prevent redesigning of projects at later stages

▶ Under the rules of the scheme, this required the preparation of a Detailed Project Report (DPR). This DPR had to be approved by the Ministry of Urban Development (MoUD)

To be averse with the requirements of the schemes

▶ In the case of the **Mumbai Metro project**, there was a substantial requirement (over 20% of the project cost) for grant funding and hence funding under the JnNURM scheme was explored.

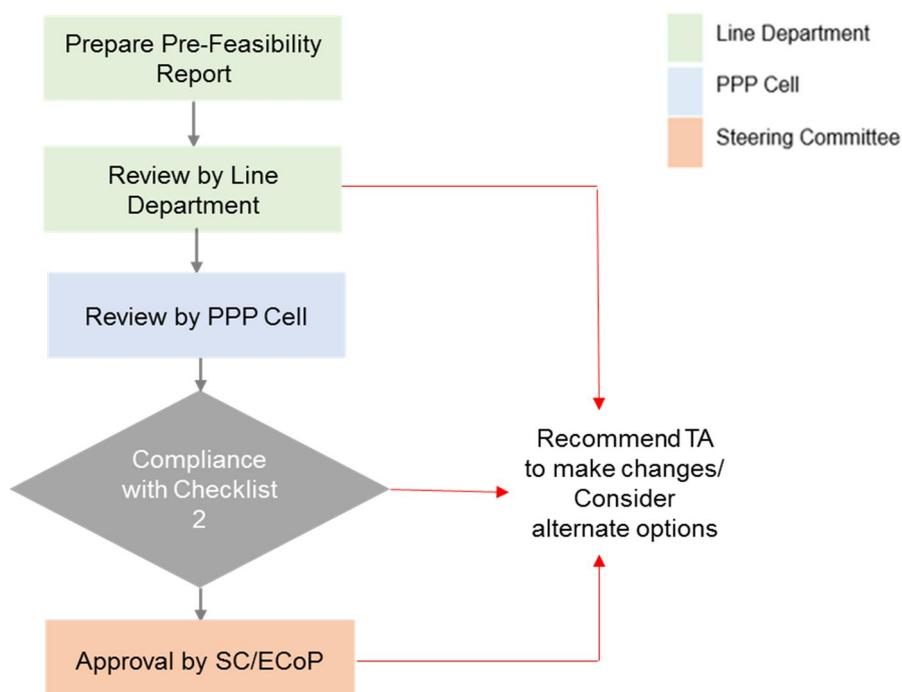
▶ However, under the JnNURM scheme, the grant was capped at 10% of the project cost. The project thus had to depend on the VGF scheme with funding from the Central and State governments.

The pre-feasibility report shall be forwarded to PPP cell for their recommendations by line departments. PPP cell will then evaluate the report based on checklist given below. The PPP Cell will then forward the checklist along with the report to Steering Committee/ECOP (based on the project value) for its approval. The approval procedure for pre-feasibility study is set out in Exhibit 2.

Check 2: Pre-Feasibility Study

Tasks	Completed Yes/No
Does the proposed project meet a demonstrated need to meet objectives of the department?	
Have alternatives to new asset development been considered (ie, use of existing assets and non-asset solutions)?	
Is the project site or at least one of the project site options suitable from technical and operational practicality of the Project Concept?	
Has the technical scope of the project been defined?	
Has an impact and management strategy been prepared to deal with the major technical and operational risks to the project?	
Has a scoping preliminary social impact assessment been done?	
Has a preliminary environmental assessment been done?	
Has a preliminary market demand analysis been done? (Tariffs, Volume)	
For a project that is to be developed with private sector participation, has an estimate of required financial support from the public sector been made?	
Does the preliminary financial analysis demonstrate that the line department will recover its investments along with a reasonable return under reasonable scenarios?	
Has the role of the private sector (direct or indirect investment, indicative PPP mode, etc) been identified?	

Exhibit 2: Approval Process: Preparation of Pre-Feasibility Report



4.2.3 Detailed Project Report/Project Feasibility Report

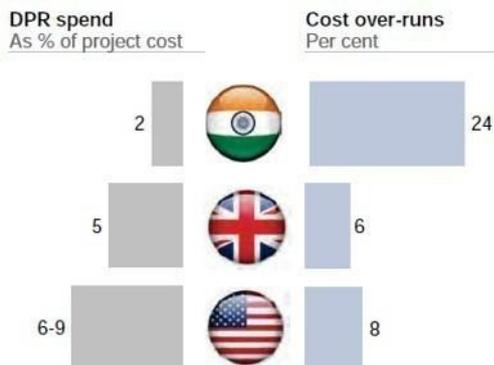
The purpose of the feasibility study is to investigate in detail whether the project is a desirable, viable and achievable investment. The 'full' feasibility study will expand on the preliminary scoping in the Pre-Feasibility Report to enable a more thorough assessment of project costs, benefits and risks, and further refine its development as a PPP.

The feasibility study will assess and describe the technical, social, environmental, legal, financial, economic and risk characteristics of the project and produce a project implementation schedule. The actual contents of the feasibility study will depend on the type of potential PPP project under analysis. A more comprehensive analysis is required for capex projects, in which design, planning and construction are major components.

It is important to point out that the various activities identified at this stage of project preparation should be pursued simultaneously to expedite project preparation. The DPRs should be robust and focus on attention to detail and quality.

Low investment in planning and engine engineering leads to high costs of implementation

Relationship between spend incurred on Detailed Project Report (DPR) & cost over-runs – roads sector



Low DPR spend in India is driven by a pure L-1 based bid process, as against a QCBA¹ process

Adopt value engineering mind-set to project design by building strong in-house value engineering teams, putting in place the right performance tracking and incentive mechanisms, and enforcing value engineering in all steps of the design process.

Focus on **attention to detail and quality**- field investigation and topographical surveys should be conducted to prevent surprises during construction (subsequent changes in the scope of projects, re-

Scope of consultant should include ways and means of **minimizing the land requirement**. The design for the project should be thoroughly reviewed to minimize land acquisition to the extent possible.

Involve private sector investors to vet both business and technical specifications of the project

Karnataka Infrastructure Policy, 2007

Project design that minimizes land requirement is one of the evaluation parameters for selection of developer

A DPR should have the following components:-

A. Technical Feasibility

A technical feasibility study should develop engineering and non-engineering aspects of the project. This would be based on the service definition and sizing in the project scope. At this stage the technical design would not be final and would not be completed to the level of detail required for the final specifications. The focus here is on the project's technical feasibility, determining minimum technical requirements to be specified in the RFP, and on providing a design benchmark for estimating project costing to be used in the economic and financial analysis.

This would include:

- ▶ Field surveys of the project site, which may include (depending on the project) mapping, topographical and geotechnical surveys. The geotechnical study should assess the ground conditions, such as soil type, can have a major impact on the construction cost.
- ▶ Analysis of environmental conditions that impact on the technical design. There may be some overlap between the information collected for this task and for the environmental impact assessment.
- ▶ Site due diligence should include detailed analysis of the following:
 - ▶ Determining whether the site can be clearly demarcated;
 - ▶ Land use rights;
 - ▶ Environmental issues;
 - ▶ Identifying whether the site comes under provincial or national heritage legislation;
 - ▶ Ownership of the site;
 - ▶ Overall plan for compensation, land clearance and resettlement;
 - ▶ Disputes, if any.
- ▶ All civil works and structures should be identified in a feasibility report and the capital cost captures the cost estimates for all such civil works and structures. Technical feasibility study should also

provide a "basic design" for the entire project and for each structure separately. The basic design includes explanatory statements and drawings describing the following:

- a. Construction location;
- b. Selected technical and technology option, and equipment (if any);
- c. Architectural a high level design, ground, section, facade of the construction facility, main dimensions and structures of the construction facility (the ultimate design will be developed by the investor);
- d. Construction solution, main materials to be used, estimate of construction costs of each facility;
- e. Plan for connecting the technical infrastructure inside and outside the facility, solutions to prevent and fight fire and explosion;
- f. Applicable technical standards and requirements, and the result of construction survey for formulation of the basic design.

The basic design must also be in compliance with the master plans and development plans.

B. Market analysis and project scope

A preliminary market analysis will have been carried out as part of the pre-feasibility study. At the full feasibility stage this should be taken further to include a more detailed analysis of:

- ▶ **Needs analysis and identification of target users** – Investigating the level and quality of existing services, and identifying shortcomings or deficiencies. Users might be defined by a geographical location or a socioeconomic segment etc.
- ▶ **Definition of project outputs** – Output definition would include project timing: when will investment need to be made, when will the project become operational, and what will be the economic life of the project? This is an important input to the demand analysis.
- ▶ **Demand forecast** – The demand analysis is an important input to the technical sizing of the project and the assessment of financial viability and economic feasibility. It involves a forecast of the potential demand for the defined outputs among target users, and of expected growth in demand over the life of the project. This would usually require an estimate of the level of demand that isn't currently being met (that is, the level of need) due to insufficient coverage or quality.
 - ▶ Estimate ability or willingness of the target users to pay for the service.
 - ▶ Reputable independent forecasters should be used as it adds value in feasibility study and bidding stages

Best Practices: Demand Forecast

Willingness to pay is a measure of consumer welfare or benefit from the project that is an important input to the assessment of economic feasibility.

Forecasts should present several scenarios that allow for different possible outcomes. This should include a **most likely scenario** and a range of **alternative scenarios**, including a worst-case scenario. The scenarios should also take into account social and political factors, such as resistance to user charges.

Optimism bias and the associated project risk can be reduced by paying careful attention to the critical factors underlying the forecast. Good practice includes:

- § Reviewing the modelling methodology
- § Reviewing inputs and outputs, comparing with trends over time and with the results of similar projects.
- § Wherever possible use historical data to test the reasonable of the results.
- § Performing sensitivity testing (what if analysis) on key parameters where there is uncertainty, such as future population growth and location, and competition from other modes.

The market analysis may lead to a refinement of the definition and scope of the project, for example if the project size estimated in the pre-feasibility stage turns out to be poorly matched to the size of the market estimated at this stage.

C. Environmental and Social impact assessment

Environmental impact assessment study is undertaken to understand the environmental consequences (positive and negative) of an infrastructure project at different implementation stages — pre-construction, construction and operation. The advisor shall determine comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns required for preparation of an Environment Impact Assessment (EIA) Report. As per the Environment Impact Assessment (EIA) Notification 2006, Public Consultation shall also be carried out as part of the process.

Best Practices: EIA

A typical environmental impact assessment should include the following:

Source of environmental impact;

▶ **Impact of the project in the pre-construction stage:**

- ▶ Resulting from acquisition of residential land, involuntary relocation and resettlement;
- ▶ On agricultural economy;
- ▶ On public infrastructure;
- ▶ On cultural and spiritual values;
- ▶ On change of land price;
- ▶ On biodiversity and bio-resources.

Impact of the project in the construction stage:

- ▶ On air quality;
- ▶ Causing noise and vibration;
- ▶ On surface water environment;
- ▶ On underground water environment;

Impact of project in the operation stage:

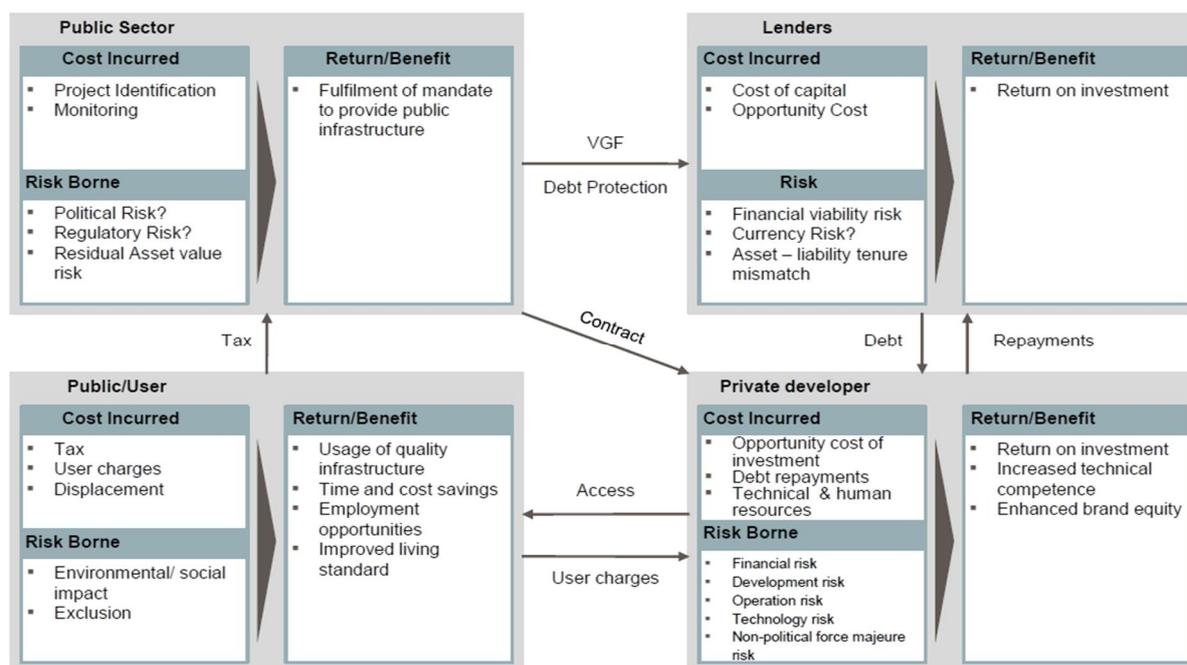
- ▶ On air quality;
- ▶ Causing noise;
- ▶ On surface water quality;
- ▶ On groundwater quality;
- ▶ On economy and society;
- ▶ On historic relics and cultural structures;
- ▶ On biodiversity and bio-resources;

After the DPR is prepared, the nodal officer shall prepare EIA report and submit it to the concerned regulatory authority for appraisal.

D. Stakeholder Consultation

It is important to ensure the stakeholders in the project are consulted and informed from early on. A lack of information can quickly create misunderstanding which can snowball and may even derail the project. The stakeholders who should be consulted are listed in figure

Exhibit 3: Stakeholder Consultation



Involving stakeholders at feasibility stage

Consult with user groups through workshops. User groups provide significant value in PPP project development due to their understanding of how design influences service delivery.

Maintain focus on local communities: Maintain the overall focus of the global development effort on local community. Throughout the conversation, local actors must have a voice and should be placed at the center of the decision-making process

Infrastructure PPP's are vulnerable to public backlash. While there is no simple measure of support for PPP in affected communities, it should be possible to form a judgement of the level of support based on consultations etc. An absence of consultations implies that public support is likely to be limited. The stakeholders who should be consulted include potential users as well as those living in the area affected by the project.

How to ensure public support?

- ▶ Build trust by engaging community dialogue about the project at an early stage
- ▶ Two way communication with public through community information sessions , Internet communications and public display of project details
- ▶ Celebrating key milestones with community can strengthen public support
- ▶ In some cases, companies may need to exceed the quality levels called for by the contract to convince the public that negative effects from projects are being minimized
 - Local communities can also be given a share in the project benefits. For example, the project company might invest in community facilities. Opportunities for employment for local communities could be maximised.

Best Practices

Alandur Sewerage Project

An aggressive public outreach campaign was conducted by the municipality and Government of Tamil Nadu to convince stakeholders about the benefits of the project

Political will which ensured that the project proceeded smoothly. The chairman and the council of the local municipality played an important role in convincing the citizens to pay a share of the project cost and accept the entry of the private concessionaire.

Timarpur Okhla Integrated Municipal Solid Waste Management

Project faced concern and protest from residential communities near the project sites. A series of Public Hearings were organized to provide information to residents and stakeholders.

E. Identification of potential barriers

The feasibility report should identify potential barriers and suggest mitigation measures to overcome the same.

Parameters	Red Flags	Mitigation Measures
Land availability and acquisition		
Will the PPP require land acquisition?	Delays in land acquisition due to :- <ul style="list-style-type: none"> ▶ Settlement with multiple land owners ▶ Relocation of informal settlements required ▶ Delay in clearances 	<ul style="list-style-type: none"> ▶ The design for the project should be thoroughly reviewed to minimize land acquisition to the extent possible ▶ Time bound land acquisition plan to be included in concession agreement ▶ Change land availability norms and tighten contractual penalties for delays
Would the physical infrastructure pass through multiple jurisdictions	Physical infrastructure passes through multiple jurisdictions	<ul style="list-style-type: none"> ▶ Spend additional time in planning, and involve all the affected parties from an early stage.
Environment and Social Impact Assessment		
Will the PPP have significant environmental impacts?	Mitigation costs exceed 10%	An Environmental Impact Plan may be developed to prepare for and deal with negative environmental impacts. Further environment safeguard measures should be a part of the contractual obligations of the concessionaire.
Will the PPP have significant social impacts?	Risk to project viability by losing public support or creating active public (and political) opposition.	(i)inform and take into account the key relevant social issues; and (ii) incorporate a participation strategy for involving a wide range of stakeholders
Impacts on labour and employment		
Will a significant transfer of employees take place under the PPP?	Transfer of large number of employees is to be done	<ul style="list-style-type: none"> ▶ Consider and incorporate views and options proposed by affected staff. ▶ Transfer schemes can be prepared entitling existing employees to the continuation of their terms and conditions of service under the new owner.

		<ul style="list-style-type: none"> ▶ Employees can be offered the option of transfer to other positions within the public sector as an alternative to transfer to the new owner
Is the project likely to result in job losses?	Significant job loss	<ul style="list-style-type: none"> ▶ Voluntary redundancy schemes can be used to achieve required job losses without the need for compulsory redundancies, which are more likely to be opposed. ▶ An effective rehabilitation plan needs to be structured and discussed with each affected staff member.
Charges and Revenues		
<ul style="list-style-type: none"> ▶ What is the main revenue source for the project? ▶ If main revenue source is fares or tariffs, how much demand or payment risk is there? 	High demand risk	<ul style="list-style-type: none"> ▶ In the cases of projects where demand forecast is uncertain it may be possible to limit the risk to the concessionaire by giving the public Sponsor the responsibility for collecting fares. The concessionaire can be paid on a performance fee basis, or on the basis of distance travelled. ▶ If the initial analysis considered a tariff lower than full recovery of costs, the project viability should be assessed at different tariff levels, including a gradual increase in tariff to reach the full cost recovery level within a short period of time. ▶ Extending concession period can sometimes improve financial viability of project.
<ul style="list-style-type: none"> ▶ What is the likelihood that the PPP operator will be paid? 	Government department is perceived by the private sector as being an unreliable payer	Establish guarantee of government commitments. Letter of Credit from the Sponsor Agency to the Concessionaire may be incorporated in the concession agreement to provide comfort to the investors

Best Practices: Mitigating potential barriers

High Demand Risk		Setting of fares
Alandur Sewerage	Gangavaram Port PPP	Latur water supply
The public Sponsor agreed to a take-or-pay agreement that provided a guaranteed minimum income to the private operator of the sewerage treatment plant.	<p>The government allowed a contractual waiver of the concession fee during years when the concessionaire's profit was low. This was balanced by a guarantee from the concessionaire to pay the concession fee promptly when profit was sufficient.</p> <p>This recognized that minimum guaranteed payments in the early years while port traffic was still being built up had created financial stress for previous ports projects. The concessionaire also had firm minimum cargo or long-term cargo commitments with port users</p>	The tariff was set in advance, prior to bidding. By defining it in the contract the bidders were better able to make financial assessments of the project.

Best Practices: Land Acquisition

- § Not issuing RFP until at least 80% of land is available
- § Line department's commitment to acquire the balance land should be secured by including an unambiguous penalty provision in the contract.
- § Clear and time-bound land acquisition plan should be included in the concession agreement
- § The definition of "unencumbered land" could also be modified so that it is based on the absence of any physical encumbrance such as dwelling

In the case of the Timarpur Okhla Integrated MSWM project, the public Sponsor promised to provide the land in time and agreed to reimburse the developer for its development costs if it failed to provide the land on schedule.

In the Hyderabad Metro project, the concession agreement required the government to handover land to the concessionaire by the financial closure date. Further, 90% of the land had to be handed-over within 120 days from signing of the agreement. There were penalties built in to the contract in case the government delayed the delivery of the land.

F. Risk Allocation

Many of the PPP project risks should have been identified at the pre-feasibility stage. The feasibility study should expand on this with an assessment of all foreseeable risks associated with the project. The goal should be to reduce total risk in the project as much as possible. This is not necessarily the same as transferring as much risk as possible to the private partner. There will usually be some risks that the public Sponsor can manage best and these should be retained. For example, the government is often best able to control certain delays associated with land acquisitions and with gaining permissions and approvals.

G. Legal assessment

Legal assessment should focus on the legal and regulatory issues associated with a project. It should provide the views of the legal authority under which the project may be implemented and address the issues concerning the appropriate legal and regulatory framework. The objective of undertaking a legal assessment should be to determine the following:

- ▶ Compliance of the project with the latest circulars and decisions issued since the identification and selection stage;
- ▶ The legal issues that were not known during the identification and selection stage;
- ▶ The legal authorities or departments associated with the project;
- ▶ The mandatory legal approval required at the implementation stage.

H. Cost Assessment

A detailed estimate of the capital and operating and maintenance costs (either both or one of these depending on the type of project) needs to be carried out. The capital (Capex) cost assessment will be based on the components of the preliminary technical design. The consultant should base the estimate on prevailing market costs, recent costs for similar work and materials, and their own estimates. Detailed operating and maintenance (Opex) cost estimates would be based on a schedule of activities over the lifetime of the project assets.

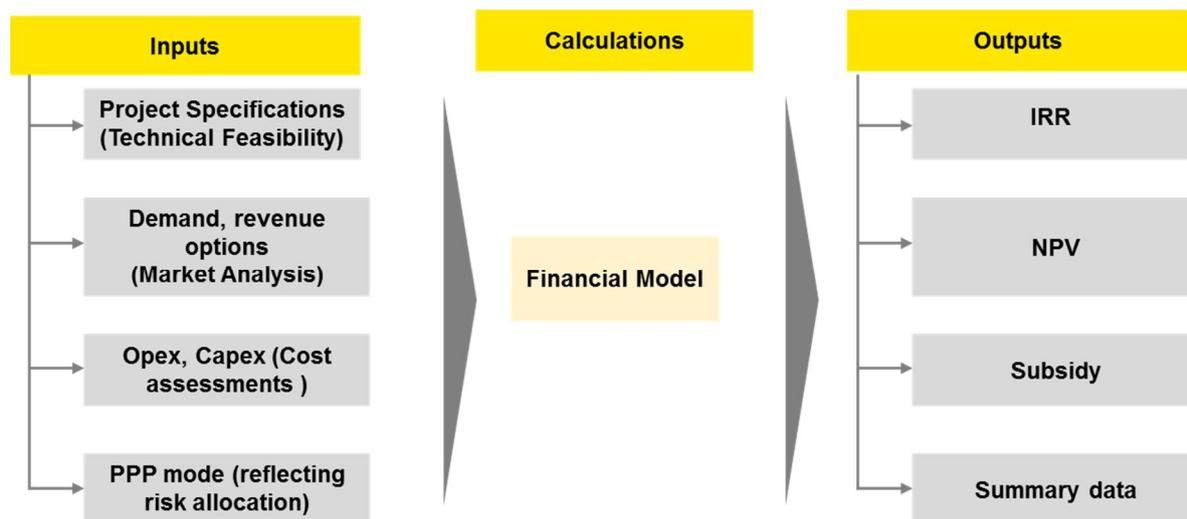
I. Financial Viability and PPP due diligence

The financial analysis is an important part of the “due diligence” that should be carried out on the PPP project. Although the entire PPP process should be conducted with due diligence it is worth emphasising it at this critical stage. The model will allow for analysis of financial soundness including fiscal sustainability of the proposed project based on the costs allowed for maintaining and operating the project adequately. The model will represent the cost of delivering the preferred solutions option through a PPP arrangement. In developing the financial model, the following steps should be performed:

- Step 1: Technical definition of the project
- Step 2: Identify direct costs- direct capital costs, direct maintenance costs and direct operating costs
- Step 3: Identify indirect costs
- Step 4: Identify project revenue

Analyze appropriateness of fees in relation to user affordability and long-term marginal costs, operation & maintenance costs, and the effect of pricing & cost recovery policies on the financial viability of the project. Scenario analyses should be carried out to check what happens to the project in worst case scenarios.

- Step 5: Model assumptions
- Step 6: The Base Case model
- Step 7: The risk adjusted financial model
- Step 8: Carry-out various sensitivity analysis of the Financial Internal Rate of Return



Best Practices: Detailed Project Report

Focus on project outputs (performance and capacity of completed asset) rather than inputs (project cost). This will increase scope of innovation and potentially more cost effective solutions.

Develop benchmark databases that collect cost information on both public and PPP infrastructure projects. This information, which should include not only the capital expenditures for developing a project but also the cost of operating the project over its life cycle. This will drive projected cost analysis of similar projects.

J. Project timeline and management plan

A project implementation schedule should be developed from the technical specification. This would reflect the timing and interrelationships of all of the major components of the project.

The box below indicates the stages that should be included in a typical implementation schedule. The stages included for individual projects would vary depending on whether it has a Capex or Opex focus and according to the sector.

Clearance timeline	
§	Pre-qualification and final document preparation timeline
§	Procurement and award timeline
§	Technical and financial closure timelines
§	Construction activities and timeline (for projects that involve a capital expenditure component)
§	Post-construction activities
§	Expected date for commencement of operations
§	Major milestones in the operating lifecycle of the project

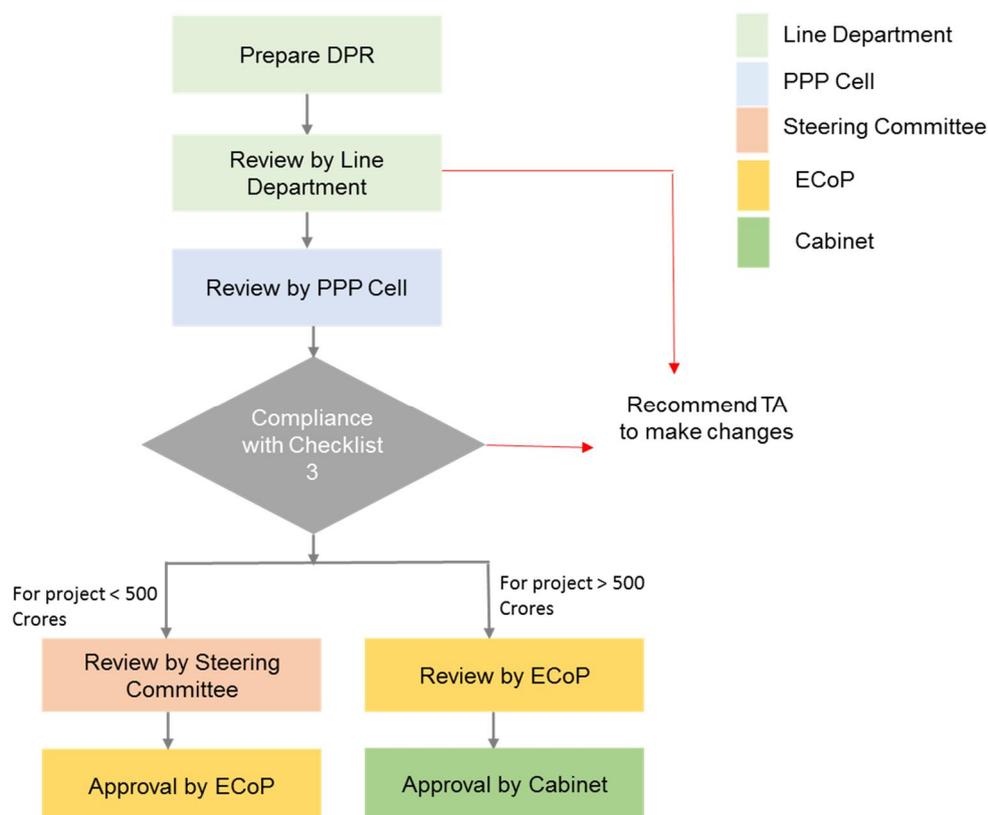
The management plan on the other hand, is an outline of how the line department will supervise the investor during the implementation period of the project. This management will be finalized during the tender and negotiation stage. Some points that can be included in the management plan are:

- ▶ **Project delivery** – How will the departments work with the investor and project enterprise to deliver the services under the project agreements?
- ▶ **Supervision** – How will the departments supervise and communicate with the investor?
- ▶ **Fee/ Tariff structure** – How will the investor collect revenue and the basis of the fee and tariff?
- ▶ **Review of the organization of the project team** – does the department has sufficient resources to manage the implementation of the project?

Evaluation of Detailed Project Report

The line department must verify that all the information in used in the feasibility study is accurate. Once this information verification has been completed, the approval process must be completed as per process set out in Exhibit 4. Line Department must also forward Project Implementation Note (PIN) along with DPR to seek approval from ECoP/Cabinet. The format for PIN form is attached in Annexure 6.

Exhibit 4: Approval Process-Detailed Project Report



Checklist 4: Detailed Project Report

Tasks	Completed Yes/No
Is the project site suitable- commercial, environmental and social viability of the site has been assessed	
Field surveys of the project site, which may include (depending on the project) mapping, topographical and geotechnical surveys have been performed	
Realistic land acquisition plan has been developed	
Environmental and Social Impact assessment has been carried out	
Preliminary level of stakeholder consultation has been undertaken	
Potential barriers have been identified and mitigation plan and costs have been prepared	
Efficient risk allocation and mitigation measures have been considered	
Options to increase viability of project have been explored	
Assumptions used in constructing the financial model are realistic and appropriate. Past practice, performance, current practice and anticipated future developments have been taken into account.	
Has private sector been consulted?	

6. Tender Procurement process

Keys issues: Tender Process

- ▶ The Assam PPP Policy does not lay enough emphasis on preparation of tender documents. Also, the policy does not state the difference on which projects should go through a single stage and two stage process
- ▶ The PPP policy of Assam does not catalog procedure for treatment of sole bids, limited bids and speculative bids
- ▶ Bid evaluation criteria is often misplaced without attaching due importance to core sector and specific sector experience
- ▶ Bids are often evaluated on Highest Premium / Least cost without benchmarking so as to set a Ceiling or a Floor price
- ▶ Tender documents have not fully reflected the status of clearances available
- ▶ There is no checklist with red flags (must haves) to institutionalize the tender process.- Prior to launch of tender, it is imperative to address a series of key questions related to clearances and land acquisition, approval status of DPR, risk allocation etc.

Competitive bidding will be adopted in projects initiated by Government of Assam. The stages in the competitive procurement process could be single-stage or multi-stage, depending on the size or level of complexity of the projects. The stages in the procurement would include:

Step 1: Finalize the tendering options

The Advisors in consent with line departments shall decide on the method of procurement to be adopted, based on the feasibility study, market interest, scale and complexity of the project.

Single stage tendering

A single stage process comprises a Request for Proposal (RFP) only. An RFP document is issued to interested bidders inviting them to participate in the bid process. The RFP is the formal bid document issued by the line department and includes the project details and draft PPP agreement.

A single-stage process is appropriate:

- u for smaller PPP when there is a well-known and relatively small group of private entities that are likely to bid; or
- u for less complex projects when the project scope and service delivery options can be clearly specified in advance

The single stage tender should first qualify the applicants based on technical and financial parameters, rank them according to their relative technical scores and then select the Preferred Bidder from the qualified applicants. The single stage tendering is being allowed only to reduce the complexity of tendering process and it should not be used to bypass the transparency.

Two stage tendering

A two-stage tendering process includes the following stages:

- ▶ Pre-qualification phase: In this phase, the bidders are requested to submit only their qualification documents. The bidders are evaluated based on their technical and financial capabilities. The output of the first phase is a list of shortlisted bidders.

Only the Applicants who have been pre-qualified are invited to participate in submission of Bids at the RFP Stage.

Objectives of RFQ

The prequalification or RFQ stage is intended to screen out those bidders that do not meet a threshold of technical and financial capacity to deliver the project. This will help to discourage bidders that clearly are unlikely to deliver the project. Sifting of non-serious/non-qualified bidders at this stage will enable the Line Departments to focus on bidders that are more likely to deliver the required project.

It is important to ensure that the prequalification criteria and the nature of the projects do not exclude good entrants into the process—this can be a risk with overly mechanical experienced-based qualifying criteria, especially when there is a succession of similar projects. Further during this stage, the Line Departments must provide bidders with feedback regarding the bid compliance, which will reduce the risk of having to disqualify them for not meeting such requirements at a later stage.

- ▶ RFP Stage: It involves selection of the Preferred Bidder who quotes the most advantageous final offer. In case of exceptionally complex PPP Projects, where the line department is desirous of assuring itself that the qualified Applicants completely understand its requirements, the line department may determine that the qualified Applicants must submit technical proposals as a part of RFP, detailing out its project implementation plans.

Procurement Options	Factor to be considered
	<ul style="list-style-type: none"> ▶ How well defined are the bidders? ▶ How much work will proposals require?
Single Stage	<ul style="list-style-type: none"> ▶ Potential bidders are limited and identified ▶ In this case it is not necessary to identify interested bidders or to reduce their number
Two Stage	<ul style="list-style-type: none"> ▶ Potential bidders are known and identified, but ▶ Number of interested bidders is large ▶ Considerable effort required by bidders to submit proposals ▶ In this case RFQ is useful to reduce number of bidders ▶ Project technical competencies are not uniform among the bidders

The various steps involved in both the options are illustrated in the diagram below:

Table 5: Steps involved in tender process

Issue of advertisement	→	Pre-bid conference
Issue of RFQ document*		Response to pre-bid queries
Pre-application conference*		Submission and receipt of bids
Pre-application queries*		Bid evaluation
RFQ receiving and evaluation*		Contract negotiation and Award of contract
Shortlisting applicants*		Finalize PPP contract
Issue of RFP		Financial close

*applicable for procurement with pre-qualification only

Step 2: Form a Bid Evaluation Committee

The PPP Bid Evaluation Committee (PPPBEC) shall consist of following members:-

Members
Chairman – Secretary, Line department
Secretary, Finance
Head of PPP Cell
Other members as considered necessary
Optional Members
Members of the society who have gained distinction in a specific field <ul style="list-style-type: none">▶ Must be conversant with relevant contents of the projects;▶ Should have at least ten years of experience in the field related to the project.

Role of PPPBEC

The PPPBEC shall have following responsibilities:-

- ▶ Oversee the process and to ensure the transparency of the project tendering
- ▶ Review Terms of Reference for selection of Developer especially determination of Bid Parameter
- ▶ Review Bid Documents especially 'Instruction-to-Bidders' and 'Draft Concession Agreement (DCA)
- ▶ Critically and objectively evaluate the process and comment on inadequacies and potential conflicts of interest as they arise
- ▶ Monitor and record the conduct of the participants and the proceedings particularly during the tendering and procurement and contract finalisation stages.
- ▶ Accord approval on the shortlisting of applicants qualifying for next stage of bidding i.e. issuance of RFP
- ▶ Evaluate technical and financial proposals
- ▶ Shortlist developers and accord approval on final selection of the Developer
- ▶ Verify credentials of the highest bidder
- ▶ Submit an independent report to the Approving Authority to verify that activities were conducted as per acceptable practices

Step 3: Planning for the tender process

1. It is important to plan in advance for the procurement stage and anticipate all the elements that will be involved in the procurement process. The following information should be prepared and determined before starting the procurement process Project timetable highlighting the key milestones and all approvals which will be required to take the project to implementation.
2. List of any potential challenges to the project and a discussion of how these can be addressed.
3. Identification of all the stakeholders and the extent of their involvement in the project.
4. Categories of information to be made available to bidders and how such information will be developed.
5. List of required approvals from all departments and agencies and a list of action items necessary for obtaining these approvals (for example, land acquisitions and environmental studies).
6. Contingency plans for dealing with deviations from the timetable and budgets.
7. Proposed bid evaluation parameters and the process.
8. Appropriate quality assurance process for bid documentation.
9. Means of establishing and maintaining an appropriate audit trail for the bid process.

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Once the procurement plan is finalized, the members shall prepare the finalized versions of the bidding documents.

Step 4: Preparation of Tender Documents

The Consultant selected by the Line Department shall be entrusted with the task of preparing draft Tender Document for the PPP project including the Expression of Interest (EOI) or Request for Qualification (RFQ), Request for Proposal (RFP), Draft Concession Agreement (DCA) and any other document required and conducting the bid process management for selection of Developer for PPP Project. It is very important that the RFQ and RFP qualification criteria and documents are well-drafted. The departments shall adopt the model Tender Documents issued by Planning Commission, Govt. of India / Department of Economic Affairs, Govt. of India along with revisions / amendments thereof if any. Any deviations from the model documents for the purpose of making the model document suitable for a particular sector or a PPP project shall be done with the approval of PPPBEC. The department shall put up the details of deviations from the Model Tender document and the reasons thereof along with the draft Tender documents for approval of PPPBEC.

For sectors not covered by model documents, the department shall prepare draft Tender Documents based on the principles followed in the Model Documents.

A. Preparation of RFQ

RFQ is used to narrow down the list of potential bidders to only those who are technically and financially qualified and those possessing requisite skill sets for implementation of the project. These shortlisted firms are then invited to submit bids for the project at the RFP stage.

The **objective** of Request for qualification stage shall be to:-

- ▶ Make public the information on PPP project and the services/ infrastructure.
- ▶ Communicate the proposed time frames and qualification criteria.
- ▶ Ascertain the level of interest in the PPP project and provide an avenue through which respondents can comment on the proposed PPP project.
- ▶ Allow the department to qualify applicants for the RFP stage who are most capable of meeting project objectives over the project term.

By reducing the number of bidders the overall cost of the bid process is lowered. This cost is faced by both the bidders, who have to prepare the bids, and by the department who has to evaluate them.

Reducing the group of qualified bidders can also encourage stronger bids. The selected bidders will be better able to assess their chances of winning amongst a small group. They are then likely to invest greater effort in the bid process.

The RFQ process will be carried out in the steps listed below:-

01 Selection of qualifying criteria	04 Pre Bid meeting and clarifications
02 Drafting RFQ document	05 Evaluation and Shortlisting
03 Release of RFQ	06 Notification to all responding firms

- I. **Contents of RFQ:** The RFQ documentation sets out rules for the procurement process (including the stages, timelines, and format of submissions), a brief description of the project, and guidance on the expected kind of participants. The level of project detail should be just enough to allow firms to judge whether they have the skills, experience and resources needed for the project. The level of effort needed to respond to the EOI should be kept to a minimum in order to minimise the cost to the department of conducting the process and to private firms of responding.

When setting the timeframe, the department should take account of the size and complexity of the project (large and complex projects are more likely to require consortia to be formed while responses to simpler projects may be made much quicker). The due date shall not be less than 21 days from the date of advertisement/notification of RFQ.

II. Qualifying Criteria: The qualification criteria shouldn't be too restrictive and should ensure sufficient participation in the bidding process.

- ▶ The qualifying criteria to evaluate the responses to the RFQ shall be objective, equitable and unambiguous and shall be clearly stated in the RFQ.
- ▶ The qualifying criteria shall cover the following aspects of the applicant:-
 - ▶ The applicant's experience and track record in delivering projects of similar nature.
 - ▶ Applicant's ability to deliver against the physical aspects of PPP projects i.e. his ability and track record in delivering services under long term contractual arrangements.
- ▶ Criteria for evaluation shall be defined in terms of any or all of the following, based on the nature of PPP project:-
 - ▶ Minimum number of projects of more than a specified capacity developed/constructed/operated
 - ▶ Minimum number of projects of more than a specified project value developed/constructed/operated.
 - ▶ Minimum number of contracts for operation and maintenance of similar facility.
 - ▶ Any other criteria suitable for the need of the PPP project.
- ▶ The RFQ may also request brief comments on the project scope and structure in order to evaluate the firm or consortium's understanding of the requirements.
- ▶ The capability of the applicant to invest the capital that would be needed for the PPP project.
- ▶ The ability of the applicant to secure adequate funds since PPP projects normally requires the concessionaire to finance a substantial part of the project value. A private entity with marginal profits and weak balance sheet will be unlikely to secure the required finance on competitive terms.
- ▶ The ability of the applicant to support the contractual arrangements over the contact term.
- ▶ Criteria for evaluation of financial capability shall be defined in terms of any or all of the following:-
 - ▶ Average annual turnover defined as simple average of sales figures of the applicant for the immediately preceding three years derived from audited financial statements.
 - ▶ Average net cash accruals defined as the sum of profit after tax and depreciation for the immediately preceding three years derived from audited financial statements.
 - ▶ The Applicant has not been sanctioned CDR package during last 3 years including current year for which he will give an affidavit.
 - ▶ Any other criteria suitable for the need of the PPP Project.
- ▶ Based on the nature of PPP Project, the Employer may, in addition to the above, specify qualifying criteria in relation to the following areas:-
 - ▶ Proposed team of experts, if the PPP Project requires specialized technical expertise.
 - ▶ Experience of applicant or the proposed team for working in local conditions, if the local conditions have material impact on the technical solution or operation of the proposed facility

A scoring system would be developed to allow the firms to be ranked. The PPP Authorities will review the criteria and the scoring system. Different approaches can be taken to deciding the scoring system. Scores may be set for each qualifying criterion, with the scores chosen to reflect the relative importance of each criterion. In other cases, a minimum cut-off may be attached to some criteria (such as firm size or minimum equity stake) and scores attached to remaining criteria for comparison of firms that meet the cut-off.

Both the criteria and the scoring system should be explicitly stated in the RFQ. This will allow potential

bidders to judge whether they are sufficiently qualified for the project and to focus their responses on what the department wants.

III. Release of RFQ Document

The EOI notice should be advertised on the Assam E procurement website as well as the Department and PPP website. Advertisements should also be placed in major newspapers as appropriate to the size of the procurement (for example, whether it is a local, national or international procurement). The notice itself can be made available via an appropriate website or in hardcopy from the line department at the expense of the party making the request. Bidders are often asked to pay a purchase price for the RFQ which is non-refundable. The price can be set to cover the cost of producing the RFQ but should not discourage genuinely interested parties from investigating the tender.

IV. Pre Application Meeting

A public conference or meeting should be held to explain the project and allow a forum for questions from interested parties. Separately, one member (Advisor) may be assigned as a contact point for communications from interested parties.

- ▶ The pre-application meeting shall be held not less than two weeks before the due date.
- ▶ The clarifications on the queries of the applicants shall be issued not less than two weeks before the due date.
- ▶ Corrigenda/amendments/addenda in the RFQ shall be issued not less than two weeks before the due date.

Firms or consortia should not communicate with the procurement team after the closure of submission while RFQs are being evaluated.

V. Evaluation of response to RFQ

Submitted RFQs should be evaluated using the pre-determined qualifying criteria and scoring system. The length of the shortlist should be decided in advance according to the nature of the project. It should try to find a balance between ensuring good competition among bidders and giving sufficient incentive to invest in the bid. A shortlist of three to six bidders is common for most competitive bidding processes. However two bidders may be acceptable for very large or complex procurements while more than five may be evaluated for relatively simple contracts. In some cases the shortlist may be increased by an additional bidder if the evaluation committee feels there isn't a clear choice for the final place. Only the Applicants who have been pre-qualified would be invited to participate in submission of Bids at the RFP Stage.

It is good practice to notify all responding parties of whether they were successful in being shortlisted and to thank them for their participation. This provides closure and assists planning for interested parties, shows that the department recognises and appreciates their efforts, and gives the department an opportunity to maintain contact with the private sector. Private players who were unsuccessful with the current shortlist are potential bidders next time – it is in the department's interest to maintain a good relationship with potential future partners.

Successful parties should be contacted and advised of the schedule for receiving the RFP.

Tasks to be undertaken before RFP stage

- § Status of land acquisition should be shared with bidders before RFP is issued.
- § Bidders should be updated with status of the progress of approvals from various civic agencies

B. Preparation of RFP

I. Contents of RFP

The RFP is the comprehensive request for proposals from shortlisted firms or consortia. It is the most important communication to bidders of the department's requirements. The RFP should aim to provide enough such information to qualified bidders to evaluate the PPP Project and develop a bid response. The RFP would typically include several sections detailing the essential aspects of the project and the bid, for example:

- ▶ General instructions to bidders, including:
- ▶ Introduction and overview of the RFP itself, detailing its contents and purpose
- ▶ Instructions to bidders, including details of the minimum submission requirements, required format for financial bids, and submission procedures
- ▶ Details of pre-bid meetings, site visits and data room
- ▶ Requirements for Bid Security or contract performance security

Detailed description of the project scope and required service outputs based on the specifications developed in the feasibility study, including:

- ▶ Output-focused specification
- ▶ Site-specific details
- ▶ Financing requirements
- ▶ Environmental and social safeguard requirements

Detailed description of the commercial framework for the project, including:

- ▶ Payment mechanisms
- ▶ Risk allocation
- ▶ Performance standards covering all stages in the life of the PPP
- ▶ Penalties for under-performance

Draft Concession Agreement specifying the commercial framework in legal terms, including:

- ▶ The intended risk allocation
- ▶ Roles, rights, responsibilities and restrictions of all parties
- ▶ Key schedules to the Agreement, including
 - Site description
 - Specifications and standards
 - Required tests and inspections, and procedures for testing, independent inspections, and reporting
 - Schedule of user fees/ tariff rates
 - Financial arrangements, such as performance security, escrow accounts
 - Substitution agreement (in case of financial default by the concessionaire)
- ▶ Criteria for bid evaluation

II. Evaluation Criteria

RFP shall be evaluated one of the following:

- ▶ **Technical threshold** – lowest price: For example, bids that are over 70% of the technical threshold are considered for the lowest price selection
- ▶ Combination of technical and financial evaluations: For example the evaluation is the sum of 80% of the technical evaluation and 20% of the financial evaluation.
- ▶ Highest premium for the public sector: Similar to the lowest price but applied to the payment to the public sector. The bidder offering the highest premium for the right to use the asset receives highest score.
- ▶ For a set payment per unit/term, what can the private deliver: How many transactions can the private sector deliver for a determined payment from the public sector

Best Practices: Tender Process

Evaluation Criteria	<ul style="list-style-type: none"> § Technical evaluation criteria should emphasize on specified sector and core sector experience. § Financial evaluation criteria to be finalized based on project cos § Project design that minimizes land requirement should be one of the evaluation criteria for selection of developer § Financial evaluation criteria to be finalized based on benchmarking of similar projects
Must Haves	<ul style="list-style-type: none"> § Status of clearances should be fully reflected in tender documents § Clear project timelines should be indicated in the tender documents
Best Practices	<ul style="list-style-type: none"> § Conduct an interactive tender process- Interactive sessions with shortlisted bidders to discuss development of their concepts and designs and seek clarification and feedback in the context of government's output requirements § Reimbursement (or partial reimbursement) of costs to bidder where project complexity and other considerations (such as promoting competition) makes it appropriate § Share status of its CPs on the date of issue of RFP. The updated status CPs may be communicated to the successful bidder at the time of issue of LOA and signing of the agreement. § Hold technical consultant accountable for all the errors/ omissions in the DPR (including BOQs, designs, drawings, etc.) up to the scheduled completion of construction.

III. Release of RFP documents

When the entire investor selection process and document package has been approved, the tender is put to market. The RFP, including all bidding documents, should be distributed to the shortlisted bidders. In case of single stage process, The RFP notice should be advertised on the Assam E procurement website as well as the Department and PPP website. Advertisements should also be placed in major newspapers as appropriate to the size of the procurement (for example, whether it is a local, national or international procurement).

The bidders may be required to provide a Bid Security to discourage them from dropping out of the bid process. A Bid Security is a sum of money or equivalent that the bidder provides to the Department as security. It would be forfeit if the bidder exited the bidding process. The size of the security should reflect the cost to the Department of selecting new bidders.

IV. Pre-Bid Conference

As part of the bid process, it is advisable to hold bidder clarification meetings during their preparation of proposals. These will allow bidders to get clarity on issues in the RFP, and the institution to gauge bidder participation and commitment. These meetings should be scheduled well in advance, should allow for one-on-one meetings with bidders, and there must be a formal process for recording all such meetings and confirming points made during the meetings. Minutes and a signed register for the pre-bid meeting should be maintained and circulated to participants.

Bidders should also be given until a certain date to submit questions and comments in writing. The department should consider comments and suggestions and where appropriate revise the RFP and incorporate changes into the final version of the Concession Agreement.

Once the final date for questions and clarifications has passed it will be assumed that the RFP and Concession Agreement are understood and bidding will proceed on that basis. During the entire tender process, it should be ensured that all bidders must have the same amount of information.

V. Evaluation of response to RFP

After the bids are received, the team should coordinate the tasks in a systematic way. The bids should be first opened on a public and transparent platform. Given below are the considerations that the department can put in place to make sure that each bid is evaluated carefully:

Table 6: Considerations for evaluation of bids

Consideration	Brief description of the steps to achieve the consideration
Check for completeness	For each bid, the department must check whether the bid proposal envelopes are complete according to the item checklist. They should be signed by the designated representative. If any of the envelopes are amended or replaced, they should be marked clearly, following the process described in the “Instruction to investor”. If a bid security is required, it must be checked that it is bankable and according to the terms in the “Instruction to investor”.
Check for compliance	For each bid, it should be checked whether the bid is according to the bidding criteria. For each procured item or service output specification, it should be confirmed that the bid has satisfied it. Otherwise, it should be flagged as a clarification item.
Check for special items highlighted by the bidder	Special items include the legal structure of the project company, and the mark-up on the draft concession agreement by the bidder. All such changes or unclear items should be flagged for clarification.
Check blacklist for bidders	The department must be aware of any bidder legally not allowed to participate in the investor selection process
Compare the commercial envelope with the feasibility study	For the commercial envelope, the construction cost and the financing structure must be carefully checked. The cost items must be sensible and the financing must have proper commitment letters. All unclear items must be flagged for clarification. The financial model can be used here to analyze the bids submitted.

The considerations above help eliminate bids that are noncompliant and/or incomplete. After the checks are complete, bids are **ranked according to the scoring criteria**. Guidelines to be considered by the Line Department during RFP evaluation are described in Annexure 5. An evaluation report is prepared where bidders are ranked on the basis of the score obtained by them.

Treatment of Sole Bid
In case of the competitive bidding process resulting into a Sole Bid, the Line Department shall in consultation with the PPP Authorities, either: <ol style="list-style-type: none"> i. Accept the sole bid; or ii. Re-negotiate the financial offer; or iii. Reject the sole bid.
Treatment of Limited Response
In case the competitive bidding process does not generate sufficient response and if even a Sole Bid is not received, the Line Department shall in consultation with the PPP Authorities, either: <ol style="list-style-type: none"> i. Modify either the pre-qualification criteria and/or the risk sharing provisions and restart the bid process; or ii. May cancel the competitive bid process; or iii. In case of (ii) above, may have direct negotiation with any Private Sector Participant.

Treatment of two equal bids

- i. In the event that two or more Bidders have quoted the same Final Offer, Line Department shall identify the Preferred Bidder by asking the two Bidders to provide their best and final offer. The bidder offering the most advantageous Final offer shall be adjudged the winner.
- ii. If the above approach is not successful, the Line Department shall identify the Preferred Bidder by taking in account the aggregate experience score of each such bidder from the RFQ Stage, wherein the bidder with higher score shall be adjudged the Preferred Bidder.
- iii. If the tie persists, the Employer shall initiate fresh Tender Proceedings.

Treatment of Bid Submitted by a Consortium

- i. All proposals submitted by a Bidding Consortium shall enclose a memorandum of understanding, executed by all 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 a Project.
- ii. The Lead Consortium Member of a pre-qualified consortium cannot be replaced except with the prior permission of the Line Department and which permission will be considered only in case of acquisition or merger of the Lead Consortium Member Company. Further, after a Bidding Consortium is selected to implement any Project, the Lead Consortium Member shall maintain a minimum equity stake of 26% for a period of time, as specified in the Sector Policy or the Concession Agreement.
- iii. Replacement of other consortium members may be permitted, provided the same is not prejudicial to the original strength of consortium as determined in course of the evaluation of original bid or proposal. Any change in the shareholding or composition of a consortium shall be with the approval of the Line Department.

Speculative Bids

The Line Department with the approval of the PPP Authorities shall be entitled to treat the speculative or unrealistic bids as non-responsive and reject the same. By reason of any speculation or unrealistic bid or rejection of such bid, shall not necessarily lead to termination of the bid process.

How to check if the bid is a speculative bid?

In a speculative bid the bidder offers a price that is below what they are actually willing to honour. The purpose is to get selected and then attempt to enter direct negotiations and revise the price upward.

The best guide for evaluating if a bid is speculative is to vet it with the financial model and the benchmark cost that was developed in the feasibility study. This should provide an indication of a reasonable range of realistic cost savings.

If the PPP bid evaluation committee suspects that a bid is speculative but is unsure, it should request detailed project costings and request written clarifications from the bidder on selected financial aspects of the bid.

The Line Department should also reserve the right to award the project to a reserve bidder if the preferred bidder attempts to revise the financial conditions of its bid without due justification.

A law recently enacted in Columbia, for example, requires that a project be put out for bid again if, under the first deal, the government would need to increase its funding contribution by more than 20% above the original plan.

Preparation of Evaluation Report

A final evaluation report, summarizing the findings of the separate evaluation teams should be prepared by the Advisor. This report should include a discussion on how each tender rank within each area of evaluation and an overall ranking of each tender. It should identify a preferred tenderer and a reserve tenderer as agreed by all members of the evaluation team and the basis on which such decisions are made. The advantage of appointing a reserve bidder is that the public sector client can revert to the reserve tenderer if contract

negotiations with the preferred tenderer break down. Key issues to be addressed in the evaluation report are:-

- ▶ The financial propositions of each tender, the costs to government in net present cost, the expected annual cash flow and the key differences between the tenders;
- ▶ The service delivery propositions of each tender, the extent to which they meet government requirements and the presence of any enhanced outputs that are considered attractive;
- ▶ The robustness of the design and construction proposal;
- ▶ The potential risks to government entering into contract with each tenderer;
- ▶ The capability of each bidder to work well throughout the life of the project; and
- ▶ The flexibility of each proposal to accommodate changes in future requirements

The evaluation report also captures the items flagged for clarification. At the end of the evaluation step, it is expected that a preferred bidder emerges. The negotiation phase is then planned.

Best Practices: Evaluating response to RFP

Before issuing the LOA, Committee must verify the credentials of the 'Highest Bidder'. Also financial capacity of the winning bidder may need to be revisited to ensure that the contractor does not face cash crunch during the construction phase.

At the time of Financial Close, Line Department may consider scrutinizing, with the help of TA, the assumptions and outcomes of financial model submitted by the concessionaire. In addition, the Line Department may require the model submitted by the concessionaire to be workable, formulae linked and interactive so that it can be updated over the concession period.

7. Concession Agreement

PPP Contract governs the relationship between the Government and the private party selected to provide the public services and/or execute the public function, for and on behalf of the Government, throughout the contract term. PPP Contract may sometimes refer to more than one contract. This is usually seen in power projects where the private party signs a Power Purchase Agreement with the government owned Transmission Company and a PPP Agreement with the Government Company implementing the project.

A. Suggested Insertions in respect of Standard Provisions Generally Absent under Documents Reviewed:- The contracts set out at the table given at S.No B below were reviewed, and pursuant thereof, following provisions were generally found absent from the reviewed documents :-

- ▶ **Key Performance Indicators :-** In a PPP Agreement, it is paramount to specify key performance indicators for the performance requirements and specify penalties for failure to achieve the requisite levels of performance, both in respect of any development standards as well as in relation to service levels to be provided to the user.

Contracts (with or without obligation of private party to invest and carry upgradation of facilities) should primarily be based on measurable/quantifiable pre specified Performance levels enforced by supervision/monitoring framework applied by an independent expert appointed through participative consultation between the Authority and private developer. The non-adherence should require the Concessionaire to pay proportionate liquidated damages.

- ▶ **Third Party liability / Indemnity:-** Indemnity Obligation put on the private party, operates to protect Authority (which normally is owner of facilities/assets) from claims, actions, proceedings initiated by third parties/users on account of any reason including financial loss or injury/death and/or deficiency of services and/or claims arising by reasons of alleged description of Government being principal employer.

- ▶ **Change of Scope**

- In a PPP contract which is generally for 20-30 years, the service requirements of the Authority may undergo unanticipated changes. To deal with such unanticipated circumstances the contract should provide flexibility by way of robust change of scope mechanism with clearly defined process to deal with such changed scenarios.
- The rights of the party may vary depending on the origin of change. For instance Authority may exercise unrestricted power to request change during operation but not during construction. The contractor can have the right to refuse only when proposed change would adversely and substantially affect the economics of project or his capacity to perform his obligations.
- None of the contracts which were reviewed had a clause for 'Change in Scope'.

- ▶ **Escrow Mechanism:-** The contract(s) do not envisage transparent handling of Project Cash flows by an Independent uninterested Party [namely, the Escrow Bank] as per the instructions given by the stakeholders of the Project through an Escrow Agreement, which sets out the application order of the monies received in the Escrow Account. This not only provides stable O&M , but also provides the visibility to the Government in respect of Project revenues collected, and the application thereof, the Debt disbursed by the Project Lenders and its application to serve the Project objective or otherwise, and regular debt servicing. This assumes importance in view of the fact that Authority normally protects the Debt disbursed by the Lenders by taking upon itself the obligation to Buy Out the Project by paying compensation, in event of termination.

- ▶ **Change in Law :-** The contracts do not cover for the adverse economic risk arising out of Change in Law during the term of the contract. The Developer/operator while assessing its bid price take into account and rely on the existing Regulatory framework, and any change in the Laws thereafter can have adverse financial impact on the Project cash flows. Further, any risk of change in law can best be allocated to Government entity [both in terms of not causing it or granting waiver for the project] as private party and Lenders are not positioned in the same way as Government entity to handle/assume such risk.

Therefore, if Change in Law creates substantial adverse effect on the Project economic position, then Government should guarantee putting the Private party in same economic position as if change in law had not taken place. Further, if effect of Change in Law cannot be dealt with so as to make the private party whole and therefore makes any further performance of obligations under contract impossible, then Government should allow termination and guarantee consequent compensation with same coverage [in terms of outstanding Debt and equity] as if it were Government event of default.

- ▶ **Force Majeure Events:** Force Majeure provisions specify the contractual consequences of certain circumstances that are beyond the control of the parties, and result in the impossibility for the affected party to perform its contractual obligations. In respect of the Natural Force Majeure events, the risk of occurrence is beyond the control of the Parties and should not be allocated to a single Party. Accordingly, the financial consequences resulting from the occurrence of a Force Majeure Event should be shared. Further, in respect of the Political Force Majeure Events, the "political" risk is best allocated to public entity. Accordingly, the Private Partner will be entitled to claim for losses incurred as a result of the occurrence of such event. Secondly, the amounts payable to the Private Partner in case of termination pursuant to Political Force Majeure should, arguably, be similar to those payable upon default by the Contracting Authority. The Lenders and private entity would want it thus else may have bankability issues.

B. Besides, the aforesaid Heads that have been highlighted as being normally absent from the documents, the review further led to identification of the following broad issues in relation to the contract provisions, which have further been set out document wise, in more granular detail, at Table at Serial No C below:-

- ▶ **Renewal of the Contract :-** Renewal of the agreement, if any, proposed to be granted should be pre-specified without leaving discretion in hands of contracting authority. Extension for mutually agreed period and mutually agreed terms and conditions is anti-public procurement policy, and therefore may be subject to challenge by a third party before any judicial forum. Further, a blanket Right of First Refusal (ROFOR) in favour of existing operator discourages participation by other interested third parties and may lead to a situation where no-entity bids when the project is put for inviting counter proposal.
- ▶ **Creating mortgage rights on Project Assets in favour of Lenders :-** The Project Assets under the PPP framework is by nature not generally charged in favour of Lenders. However in case , mortgage of Leasehold rights is to provided, the related enforcement by the Lenders should be in favour of the entity which is equally competent as defaulting developer, and is acceptable to Authority. Further, if the mortgage rights are not clearly delineated, the Concessionaire may be required to borrow funds on its corporate balance sheet.
- ▶ **Insurance provisions:** The procurement of insurance only in the name of Concessionaire may create risks for other party (Government) and have adverse impact for project. This assumes greater significance in absence of Escrow Mechanism which requires all Project related inflows to be credited in escrow and be applied therefrom. Project facilities require Insurance to cover for varied risks [including physical damages, third party/user liabilities and business interruptions] and therefore in Insurances both private party and Government should be co-insured, so as to secure the application of Insurance proceeds for project assets reconstruction, rebuilding needs.

► **Termination Provisions:** There are several reasons for termination of a PPP Project; some of the projects are terminated on account of the poor or non - performance of the developer and some on account of disputes arising out of deadlock/impossibility of performance caused by political and non-political reasons. The list of events under which the PPP Contract can be terminated varies from one PPP Contract to another. Termination Payment provides security to Lenders and promotes bankability. It has been noticed that the concession agreements/ bid documents in most of the cases in Assam are not clear about how the termination payments would be made or computed. This creates bankability issues.

C. As a part of the 'As is Analysis' following project contracts were reviewed, and pursuant to the review undertaken, the identified issues in relation to said contracts have been enumerated, respectively, in the section following this table :-

S.No.	Project Name	Government Authority	Concessionaire
1.	O&M of Organic Agriculture Produces Market Complex	The Assam State Agricultural marketing Board	Anjaybee Green
2.	Municipal Solid Waste Management	Guwahati Municipal Corporation	Guwahati Waste management Company Private Limited
3.	Mahabaahu river cruise	Assam Tourism Development Corporation	Far Horizon Tourism Projects Pvt. Ltd.
4.	O&M North East Tribal Museum and Cultural Centre	Department of Cultural Affairs	GAM Delicacy
5.	O&M of 50 Skill Development Centres	Directorate for Welfare of Tea & Ex-Tea Garden Tribes (WTT)	H.P. Institute of Insurance
6.	Implementation Agreement for Desang Hydro Power project	Assam Power Project Development Corporation Limited	Private sector developer (The version available in public sources was reviewed)
7.	Tezpur University	Directorate of Technical Education	Shrimanta Shankar Academy
8.	Games Village – Phase II	Guwahati Municipal Development Authority	Simplex Infrastructures Limited
9.	MOUs of Assam Tourism Development Corporation (Unsigned versions)	Assam Tourism Development Corporation	Rajiv Hazarika Shri Bishal Jain, Amal Kumar Borpujari Shri Dipankar Bora

D. Contract Wise Issues and respective Remedial Provisions

I. O&M of Organic Agriculture Produces Market Complex

- a) **Clause 1.1.6(vi):** Change in rate of Indirect Taxes after Proposal Acceptance Date is normally considered as Change in Law, however, stipulation to the contrary is enumerated in the Change in Law definition stated in document. Further, for the purposes of Change in Law, direct taxes are not considered.

REMEDIAL SUGGESTION: - Change in Law to include: - any change in rate of Taxes [excluding Direct taxes] having adverse effect on Project.

- b) **Clause 5.4:** Presently Authority has reserved to itself the right to establish, regulate and revise the User Charges. This may create bankability issues.

REMEDIAL SUGGESTION:- To make it more ascertainable and attractive for bidders, the User Charges should be disclosed upfront and escalated/regulated as per Pre-specified mechanism, VIZ formulation linked with change in Price Index [which may be defined as weighted combination of 70% of WPI variations and 30% CPI (IW) variations].

- c) **Clause 4.26:** Lessee prohibited from sub-letting/licensing whole project or portion thereof to third party without prior permission of Authority. This reduces the saleability and revenue liquidity of Developer.

REMEDIAL SUGGESTION: - Subject to setting terms and conditions for sub lease by way of pre-approved template, the Developer should be allowed to sub lease, with only requirement of informing Authority by way of furnishing copy of such sub lease and maintaining updated register of lessees]

- d) **Clause 4.4 and 13 :-** No termination payment in respect of capital expenditure [if any] made by Lessee pursuant to approval of Lessor as per terms of clause 4.4. In the event such investment is substantial, Lessee would lose financially, and rather be discouraged to improve the facilities.

REMEDIAL SUGGESTION- Lessor should cover for such investment made by the Lessee, by way of paying the depreciated value of capital expenditure made by Lessee to be determined by a registered valuer as per written down value method under Companies Act. The valuer can be appointed by mechanism whereby Lessor suggests five names, out of which Lessee can object to maximum two, and Lessor selects valuer out of three un- objected valuer. Such expenditure to be approved by the Grantor/Authority.

II. Municipal Solid Waste Management:-

- a) **[Array of Parties]** The Selected Bidder, who acquires under the terms of LOA, one hundred percent (100%) of the equity shareholding of IDCAL in GWMCL, to control and supervise the Project SPV, should be party to the agreement as well, as the selected bidder by virtue of project being awarded based on its credentials, bears the primary and overall responsibility and obligations for development and execution of the Project.

REMEDIAL SUGGESTION: - Make Selected Bidder party to the contract more so as the equity Lock In Period covers the entire operations period. This will further help in enforcing the shareholding obligations of Selected Bidder, besides securing its Project development obligations.

- b) **Clause 2.3(d), 3.2 (b), 5.22 and 10.1:** Contrary stipulations in relation to entitlement to create mortgage or charge over Project Facilities or part thereof. This may create interpretation issues/disputes as to related entitlements.

REMEDIAL SUGGESTIONS: - Developer to create charge over clearly pre -specified assets should be spelt out in order to pre-empt any dispute and reduce commercial risk.

- c) **Clause 2.8** stipulates that GMC may agree to renew or extend the Concession after the expiry of the initial Term, for another period of twenty to twenty five- years or such other period as may be mutually agreed to and on such terms and conditions as mutually agreed upon. However any such extension

shall be co-terminus with Land Lease Agreement” - Extension for mutually agreed period and mutually agreed terms and conditions is anti-public procurement policy of objective terms and award of state largesse only by competitive bidding process and not otherwise. Extension, if any, proposed to be granted should be pre-specified without leaving discretion in hands of either party

REMEDIAL SUGGESTION: - GMC may agree to extend the Concession after the expiry of the initial Term, for another Term, provided the Developer’s Event of Default has not occurred during the last five years of the initial Term

- d) **[Clause 2.12]** In the event that condition precedent of GMC are not satisfied within specified time, then GWMCL shall, at its discretion, also have the right to waive the requirement of satisfaction of any of the unsatisfied conditions precedent *and undertake to satisfy such conditions precedent itself, but at the cost and expense of GMC.* [One of GMC’s CP is to vest with GWMCL the complete and lawful right, title and Vacant Possession of the Site, in accordance with the provisions of the Land Lease Agreement. It is difficult to envisage how GWMCL will acquire the required land parcel itself].

REMEDIAL SUGGESTION: - *CP obligations of GMC should be fulfilled by GMC itself, as GWMCL is a company under control of Private Party; and in case of non-fulfilment by GMC of its CP Obligations, GWMCL may be entitled to terminate the agreement in which case GMC should have the obligation to buy the Shares of Selected Bidder in GWMCL at the face value, and refund the Security instrument. The compensation of only development cost is not good enough, as the same is financially onerous*

- e) **[Clause 5.3]** The formulae used for disbursement of Grant may seem difficult to understand and therefore unattractive for developers.

REMEDIAL SUGGESTION: - *To simplify things, the Escrow Mechanism may be created wherein Developer will infuse Equity and Lenders to disburse Debt as per agreed disbursement schedule, and the Grant to be disbursed as Equity Support in proportion to the Debt that remains to be disbursed after full infusion and utilization of the Equity component used to finance project cost]*

- f) **[Clause 5.6] The Provisions stipulate as follows** - Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by GWMCL towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The GWMCL shall designate GMC as the beneficiary for the assets under ownership of GMC as per clause 10.1 and may designate the Lenders as the beneficiaries for the assets under the GWMCL ownership as per clause 10.1 or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project.

Normally under PPP framework, under all insurances related to Project Assets, the Authority is co insured to ensure that the proceeds are secured to be applied only for Project reconstruction and rebuilding. And only in policies unrelated to physical damage and death/injury, the Lenders are Loss payees or beneficiaries.

- g) **[Clause 7.2]:-** Mechanism of direct payment to GWMCL subject to approval of Project Engineer.

[REMEDIAL SUGGESTIONS]:- In order to promote transparency and ensure that payment is applied in overall interest of Project, the Project cash flows to be handled by independent third party to be applied as per pre-agreed priority to ensure stable operations and servicing of Debt.

- h) **[Clause 8.8 and 9.2]:-** Termination payments by reason of Force Majeure and Even of Defaults are defined in terms of the Debt Due and Adjusted Equity. The term “Equity” is also used in this relation. However, the terms are not defined to imply specific amount, which creates potential dispute scenario.

[REMEDIAL SUGGESTION] :- The “Debt Due” would be defined to mean quantum of outstanding principal (and interest, fees , levies , charges thereon) payable to Lenders as of termination date, in respect of financial assistance provided by Lenders for financing the capital expenditure for development of the Project; and shall not include any working capital facilities relating to the Project. Further, the term “Adjusted Equity” can be defined to mean and include Equity component infused by the Selected Bidder towards financing the total project cost [excluding Grant (if any)] less dividends and other distributions to shareholders until date of termination; adjusted to the extent of variation in inflation from COD until date of termination.

- i) **[Clause 9.2]** The provision allows Lenders to step into GWMCL roles as developer under the Agreement--- “Without prejudice to any other right or remedy which GMC may have in respect thereof under this Agreement, upon the occurrence of a GWMCL of Default, GMC shall, subject to the provisions of the Substitution Agreement (if any with the Lenders, pursuant to which, in case of Default by GWMCL, Lenders shall be allowed to take charge of GWMCL’s roles and responsibilities under this Agreement), be entitled to terminate this Agreement Provided however that upon the occurrence of a GWMCL Event of Default as specified under Clause 9.1(a)(iii), GMC may terminate this Agreement by issue of Termination Notice in the manner set out under Clause 9.2(c)”.

[REMEDIAL SUGGESTION] Lenders, normally in PPP project are not allowed to substitute Concessionaire, but can only select in consultation of the Authority a nominated entity who takes over all residual rights and obligations of the Concessionaire, through Novation Agreement.

- j) **[Schedule –II]:-** Operational Standards are although provided they are not linked with relevant liquidated damages to provide for efficient enforcement of the O&M Obligations.

[REMEDIAL SUGGESTION] :- The stipulated O&M obligations should be linked to relevant liquidated damages, also providing a threshold for a quarter or semi-annual period, breach whereof would amount to Event of Default.

- k) **[Clause 5.33]** – provides that - The aggregate equity shareholding of the Successful Bidder in the issued and paid up capital of the GWMCL shall not be less than 74% (Seventy four percent) during the Construction Period and for 10 years following Commercial Operations Date (‘COD’) and 51% (fifty one percent) during the balance remaining Operation Period.

[REMEDIAL SUGGESTION]:- The shareholding threshold of upto 74% until 10 years of COD limits the ability of the Developer to divest in favour of Investors and raise finances. It may be limited to upto 2 to 3 years from COD in order to provide flexibility, and after two years from COD it may be allowed to be reduced to 51% for upto 10 years from COD; and 26% thereafter during the remaining period.

III. Mahabaahu River Cruise

- a) **[Clause 7(iii)]** The Concessionaire is allowed to mortgage assets created out of Concessionaire’s investment only. For this purposes Broad carve outs in respect of permitted mortgage is set out, namely, only concessionaire’s assets which are not attached with Authority owned assets are allowed to be mortgaged; this practically nullifies the material portion of mortgage rights in present case, as there would hardly be anything substantial on a standalone basis [fulfilling the “not attached” requirements to be used to create security in favor of lenders. Further, Lenders found it difficult to

assess which portions of the asset can be mortgaged, as a result the Concessionaire had to borrow funds on its corporate balance sheet.

[REMEDIAL SUGGESTION]: *In the event Mortgage of Assets are allowed, subject matter (i.e. assets list) for creation of charge should be clearly identifiable and be delineated. Further, in projects where the leasehold rights in respect of assets are provided, mortgage of leasehold rights may be allowed, provided that if enforcement event occurs, the alienation of lease undertaken by lenders should be only in favor of party (who has equal or better capabilities) and is approved/acceptable to Authority.*

- b) **[Clause 16]:-** The Concessionaire is being provided an extension after the expiry of the Concession term (40 years) without firm clauses on what will be the conditions for renewal. Extension for mutually agreed period and mutually agreed terms & conditions is anti-public procurement policy, and therefore may be subject to challenge by a third party before any judicial forum. Further, a blanket Right of First Refusal (ROFOR) in favor of existing operator discourages participation by other interested third parties and may lead to a situation where no-entity bids when the project is put for retender.

[REMEDIAL SUGGESTION]:- *Renewal terms to be objective without leaving any discretion in hands of Authority. Therefore, Renewal clause to be linked with non –occurrence of Default Event and be exercised after specified time (but within defined time period). Further, post exercise of Option by way of written notice, in event of occurrence of default within remaining initial term period, the right to another term shall lapse. The ROFR should be a reasonable right encouraging counter proposals for selection of best offer in respect of which developer would have the right to match [in case developer is not the best offeror]. To ensure this, the ROFR can be provided as being exercised only by way of participation in bid, and being within a specified percentage [say 10% or 15%] of the best offer.*

- c) **[Clause 49]** Dispute resolution is to be conducted by **two Arbitrators**. Such a clause in the first Instance, may be not enforceable in view of statutory Bar under Section 10 of Indian Arbitration Act, which provides for arbitrators being only Odd number, and not even number. Further, in case two arbitrators disagree [which has a substantial likelihood], the appointment of third umpire would entail further time and cost delays. What is sought to be achieved indirectly [resulting in contravention of laws) may be achieved directly by appointing in the first instance itself, odd number of arbitrators [either one or three].

[REMEDIAL SUGGESTION]:- Arbitration provisions should provide for Arbitration by a tribunal comprising of Odd numbers of Arbitrators [for example one or three]. Having regard to economical and efficient resolution process, Arbitration by mutually appointed Sole Arbitrator may be preferred

- d) **[Clause 35]** No termination payment envisaged in case operator withdraws within first 5 years of the commissioning or if first party terminates by reason of payment breach by operator. This affects the viability and bankability of the Project, as the investment made by operator is not secured, and therefore Lenders would not deem the project as viable for lending.

[REMEDIAL SUGGESTION] Termination payment to secure the Debt outstanding as determined by the Independent Valuer appointed from pre-agreed list of five valuer in consultation with operator.

IV. O&M North East Tribal Museum and Cultural Centre

- a) **[Array of Parties]** The contract is not expressed as being executed in the name of the Governor. This is required as per Mandate of Article 299 of the Constitution of India in order to legally/contractually bind the Government.

[REMEDIAL SUGGESTION] The Contract executed pursuant to exercise of executive power of State Government to be expressed as being executed in the name of the Governor of the state represented by the Government official specifically authorized in this regard.

- b) **[Article 7- Performance Security]** Performance Security sought as FDR from Nationalized Banks, would result in blocking of cash flow, which may be avoided.

[REMEDIAL SUGGESTION] Performance Security to be furnished by way of a bank guarantee which can be renewed and rolled over to every year so as to keep it valid in full force and effect through the contract term.

- c) **[Article 4.2 & 5.7:- User Charges]** User charges may be considered to be deregulated and operator allowed to charge as per market rates, especially when the lease rentals escalation is linked to specified percentage of annual profit, which can be optimized if operator is allowed the flexibility to levy and charge rates as per demand.

[REMEDIAL SUGGESTION] Authority to not regulate the user charges, as operator incentivized to charge as per paying capacity of users, therefore, stipulation to the effect that Authority will not regulate the user charges in any form or manner, and the operator shall be entitled to fix, and firm up the rates that it intends to levy, collect and appropriate as per market dynamics.

V. O&M of 50 Skill Development Centres

- a) **[Clause 5.2]** The Lease in first instance is granted through competitive bidding without any clear stipulation / mechanism of extension of Lease for another term, the stipulation for renewal of Lease through fresh agreement would require another bidding process. Further, if the present lessee is envisaged to be vested with the Right of First Refusal; such right [if opted for] may be provided to be exercised only by way of participation in the fresh bidding process and being within certain reasonable range of the best offer, in case it does not quote the best offer itself.

[REMEDIAL SUGGESTION]:- *Renewal terms to be objective without leaving any discretion in hands of Authority. Therefore, Renewal clause to be linked with non –occurrence of Default Event and be exercised after specified time (but within defined time period). Further, post exercise of Option by way of written notice, in event of occurrence of default within remaining initial term period, the right to another term shall lapse. The ROFR should be a reasonable right encouraging counter proposals for selection of best offer in respect of which developer would have the right to match [in case developer is not the best offeror]. To ensure this, the ROFR can be provided as being exercised only by way of participation in bid, and being within a specified percentage [say 10% or 15%] of the best offer.*

- b) **[Clause 8.3]** Assignment of concession [here Lease Rights] is not allowed generally in Government procurement contracts, as it would entail exercise of the concession by an entity other than the entity selected through competitive bidding process and awarded the project on its evaluated credentials, thereby diluting the objective of bidding process. Sub- contracting parts of the works [construction and/or O&M works] is allowed, subject to the developer assuming overall responsibility in respect of such sub-contracting. Further, assignment of concession/lease rights is allowed only in favour of Lenders solely for the purposes of Substitution of the operator in event of default, to avert termination.

[REMEDIAL SUGGESTION]:- The assignment of Concession/Lease should not be permitted save and except assignment in favour of lenders solely for exercise of Substitution rights [if any granted to secure the repayment of Debt].

- c) [Clause 10] No performance Standards for fulfilment of O&M obligations listed, neither the pre-determined damages to be levied on the operator in respect of non-performance envisaged. Further, the O&M obligations is also not sought to be secured through a Performance Guarantee furnished for the operation period.

[REMEDIAL SUGGESTION] *O&M obligations are enforced through specified relevant damages for each instance and/or number of delay(s) unit, in completing remedial actions. Therefore, elaborate schedule of Performance Standards along with relevant liquidated damages covering each performance level parameter to be enumerated in Contract, for efficient enforcement of O&M levels.*

- d) [Clause 13] As the developer is required to refurbish the facility, and incur costs therefor, no compensation is envisaged in case of termination. Compensation provision for securing at least the Debt component should be stipulated.

[REMEDIAL SUGGESTION] In event of Lessors default leading to termination, the compensation should cover the outstanding Debt and Equity component [i.e the investment made by the Lessor]. In case of termination on account of Lessee's default, compensation may cover the Debt component.

- e) [Clause 14] Disputes is stipulated to be settled through Arbitration of the sole arbitrator appointed by Government. May not be acceptable to operator and lenders.

[REMEDIAL SUGGESTION] Mutually acceptable sole arbitrator to be appointed for undertaking arbitration under the Indian Arbitration Act.

VI. Implementation Agreement for Desang Hydro Power

- a) [Clause 1.2.17] Debt is defined as - "Debt" means the amount of any loan, non-convertible debentures, lease or other similar obligation including raised and received by the Company under the Financing Agreements and actually expended (or to be expended) for the Project and which shall not be greater than the Principal amount of debt specified in the applicable currency in the estimate of Capital Cost of the Project. The definition may be said to be defective and therefore incomplete.

[REMEDIAL SUGGESTION] *The definition should also include Convertible Debentures [to the extent not converted into equity] and guarantees [to the extent invoked]. Further, the amount actually expended for development of the Project should only be considered for determination of Debt.*

- b) [Clause 2.2.2] stipulates that the Company may request the Government for extension of the Agreement Period, at least one (1) year prior to the expiry of the Agreement Period and the Agreement may be extended further at the sole discretion of the GoA on mutually agreed terms. Any extension clause/mechanism in Public Procurement documents has to be objectively/clearly set out without leaving any discretion hands of bidding authority, as state largesse has to be awarded through competitive bidding process only, and cannot be ever greened on mutually agreed terms and conditions. Exercise of administrative discretion has to be pervaded by reasonableness and non – discrimination.

[REMEDIAL SUGGESTION]:- Agreement to be extended for another term on same terms and conditions, provided operator has not committed Event of Default. The Company shall be entitled for extension for another term, which right the company can exercise by way of written notice, provided no default event has occurred prior to such exercise nor it occurs during remaining period of initial term after such exercise

- c) **[Clause 3.3.1 & Clause 3.14]:-** Contrary stipulations in respect of company's entitlement to mortgage Land or leasehold rights in relation thereto. This would be particularly important in relation to Government Land.

[REMEDIAL SUGGESTION] The mortgage of land may be prohibited, and only mortgage of leasehold rights should be permitted, subject to the condition that lenders exercise the mortgage enforcement only in favor of the entity *approved by government, and who is of same industry and at least bears equal credentials as the company, and who unconditionally takes and accepts the residual project related rights/obligations of the Company for the remaining lease period.*

- d) **[Clause 4.5.1]** No definitive if Construction obligations commence from Financial Closure date or date of receipt of all statutory approvals.

[REMEDIAL SUGGESTION] The construction period should be stated to commence from Financial Closure, by when all other conditions should have been fulfilled.

- e) **[Clause 10.4]** Since Debt actually deployed in Project is being protected in both cases [i.e prior to COD and post COD], therefore the principle underlying the differentiation between Buy out amounts in case of termination prior to COD and termination after COD, is not understood. Rather, the debt utilised may exceed the lower of [Realisable Value of Assets, or the Historical Depreciated Cost of the Project]. As termination payments provides security to lenders, it should be objectively defined. Further, Undefined terms used – namely, Realisable Value of Assets, or the Historical Depreciated Cost of the Project. These create Potential dispute areas which may materially affect security of termination payment for project lenders.

Further a stipulation provide that - "The Buyout Price shall be determined by an independent registered valuation firm/valuer appointed by the Government" – This may impact the independence of the valuer and therefore may not be acceptable either to private party of the Lenders, therefore having Bankability issue.

[REMEDIAL SUGGESTION] The capitalized term should be given objective definition to give visibility to Company/Lenders. Further, if outstanding Debt actually expended in the Project is sought to be protected then, the Termination Payment is terms of outstanding Debt Due, and Adjusted Equity [equity expended LESS distributions made; resulting amount adjusted to extent of variation in inflation during time from infusion to date of termination] may be defined. Further, independent valuer should be appointed through more democratic mechanism, VIZ, Authority suggesting names of five reputed valuer, and Company being entitled to object to maximum two, and Authority appointing one from the balance three, to whom company has not objected to.

- f) **[Clause 13.5]** Bars the right of Company to challenge the determination by taking recourse to arbitration or courts—[Notwithstanding the generality of the provisions of Clause 13.1, 13.2, and 13.3 any determination of the Buyout Price as described in Article 10 shall be made exclusively by the independent valuer in accordance with clause 10.4, and neither Party shall have the right to cause any such determination to be resolved by arbitration or otherwise]".

[REMEDIAL SUGGESTION] Such terms should be deleted as in view of statutory bar under Indian Contract Act, whereby restriction on a person from agitating its claim by means of legal proceedings is not enforceable.

VII. Tezpur University /Engineering College

- a) **[Clause 5]** Whereas clause 5.1 envisages grant of leasehold rights in perpetuity, the subsequent clause 5.2 stipulates land to be provided The for the period of the lease agreement will be thirty (30) years with a provision of an extension of another thirty (30) years. Both cannot be operative and developer may construe as seeking greater right of the two.

[REMEDIAL SUGGESTION] Grant of Lease should be specific without any room for two interpretation, Viz, either lease for specified limited period or in perpetuity.

- b) **[Clause 6]** Lessee is given 180 days for financial closure from handover of land, however lessee is required to start the project immediately, and not later than 90 days from the date of handover of the land.

[REMEDIAL SUGGESTION] The development of the project and corresponding obligation of the developer will commence only after financial closure is achieved and land is made available, and cannot reasonably start prior to that.

- c) **[Clause 8]** Lessee is allowed to assign its rights and obligations vested in him under the contract to third party, thus is entitled to exit the contract. This may result in creation of contract with an entity not selected through procurement process. Normally, assignment of concession/lease rights are not permitted save and except in favour of the Lenders limited for the purposes of exercise of substitution rights [as security to lenders].

[REMEDIAL SUGGESTION] To prohibit assignment rights in favour of the company, save and except for purposes of substitution.

- d) **[Clause 11]** Termination payments is by way of Market Value of the Assets to be appointed mutually or in event of disagreement [as appointed by Government].

[REMEDIAL SUGGESTION] The selection of the valuer should be by a more acceptable mechanism. For instance, Authority proposes five names, out of which the developer is entitled to object to maximum two, and Authority selects on out of the remaining three. Further, a methodology [either as per companies act or income tax act] should be stipulated for factoring the depreciation and computing the value.

- e) **[Clause 12]** Arbitration is envisaged through sole arbitrator to be appointed by Lessor.

[REMEDIAL SUGGESTION] Appointment of Arbitrator should be more democratic, and be a consultative process, viz, to be done mutually, in order to reasonably avoid allegation of bias and partiality.

VIII. Games Village – Phase II

- a) **[Clause 4.07, 5.05 & 7.05]** Developer is allowed to sell the units related to Developer's Allocation and create mortgage of land by deposit of title deeds. For this purpose, Developer would need duly executed and registered Power of Attorney vesting such authorizations and executing documents [and for presenting it for registration] on behalf of GMDA. Contrary stipulations p-resent in respect of issue of PoA.

[REMEDIAL SUGGESTION] A duly registered Power of Attorney should be executed authorizing the Developer to execute, for and on behalf of GMDA, Agreement of Sale/Transfer Deed in favour of end users, and for creating mortgage [by deposit of Title Deeds] on the Land parcels for raising funds.

- b) Pursuant to the Agreement and the relevant registered POA (when issued), the Developer will, vide allotment instruments, allot units to third parties and collect booking amounts from the third parties. In order to ensure that Authority has visibility to and control of the application of money thus collected from the prospective allottees, an Escrow Mechanism should be incorporated.

[REMEDIAL SUGGESTION] Developer should operate and maintain an Escrow Account with a designated Escrow Bank, who through and under an Escrow Agreement be instructed to hold, handle and utilize the project cash flows for serving interest of the Project and the parties. The transparency shall be created by the mechanism whereby all the inflows from Project would be deposited by way of cheque mandatorily drawn by allottees in favour of the Escrow Account only. Further, in view of the fact that the Developer is allowed to create charge on the Land in favour of the Project Lenders, the Authority should ensure application of proceeds for the purposes of the periodic debt servicing as well.

IX. MOUs of Assam Tourism Development Corporation [Common Observations]

- a) Presently in MOUs either performance standards are absent or stated very broadly/subjectively and is therefore not measurable/enforceable.

[REMEDIAL SUGGESTION] Management contracts (with or without obligation of private party to invest and carry upgradation of facilities) should enumerate measurable/quantifiable pre specified Performance Levels enforced by supervision/monitoring framework, with non-adherence entailing liquidated damages, and breach of the related threshold would result in Event of Default, making the agreement liable for termination

- b) MOUs lack Indemnity Obligation on private party to make the Government whole in respect of the loss/damage suffered on account of any act or omission of the developer and/or third party/users.

[REMEDIAL SUGGESTION] Indemnity Clause should be incorporated offering protection to Authority, against and from any claims, actions preferred by third parties/users on account of alleged/actual financial loss or injury/death and/or deficiency of services and/or alleged principal employer.

- c) Project Assets to have adequate protection by way of Insurances. Authority not co-insured along with operator

[REMEDIAL SUGGESTION] Project facilities requires Insurance to cover for various risks [including physical damages, third party/user liabilities and business interruptions] and therefore in Insurances both private party and Government should be co-insured, so as to secure the application of Insurance proceeds for project rebuilding/reconstruction needs. Insurance in name of one party as insured may create risks for other party and have adverse impact for project.

- d) **Termination Payments:-** MOUs also envisage substantial capital investment by Private party, however in termination by Government on account of private party default, no compensation to cover for their investment is envisaged. This creates risk for private party and lenders as well.

[REMEDIAL SUGGESTION]:- In order to create required security for the Lenders, the compensation on account of termination should cover for the outstanding Debt expended on Project development/upgradation, and Equity [adjusted to the extent of Distributions and variation in inflation during the period from infusion date to date of termination]

8. Contract Management

Contract management and monitoring throughout the life of the PPP is a crucial responsibility for the public sector Sponsor. It is vital that the terms of the Concession Agreement are monitored to ensure the private partner delivers the services to the quality agreed. The aim of the contract management activity shall be to ensure that:

- ▶ the agreed contractual position of both the parties is protected
- ▶ the agreed allocation of risk is maintained
- ▶ monitoring of the Concession Agreement during the construction, operation and handback stages of the project
- ▶ services are delivered in accordance with the contract
- ▶ developing and maintaining post contract plans

A contract management framework should serve following key objectives:-

Objective	Key Aspects
Planning and Project Management	<ul style="list-style-type: none"> ▶ Identification of constraints and addressing same ▶ Advance planning / Risk Management through early signals
Regular Management / Monitoring	<ul style="list-style-type: none"> ▶ Management of Government's rights, obligations and contingent liabilities ▶ Ensuring performance of obligations by Private Party ▶ Management of Incentives & Penalties ▶ Monitoring of critical tasks / timelines ▶ Tariff / Payment Adjustment ▶ Handover Management ▶ Dispute Resolution
Compliance	<ul style="list-style-type: none"> ▶ Ensuring adherence to laws, policy & regulation ▶ Ensuring adherence to required Governance principles
Managing Eventualities	<ul style="list-style-type: none"> ▶ Management of eventualities / contingencies like Force Majeure, Termination etc. ▶ Renegotiation Management ▶ Change Management
User Perspective	<ul style="list-style-type: none"> ▶ Protection of user rights ▶ User grievance / feedback management

The contract management shall be undertaken in following steps:-

Step 1: Form a Contract Management Team

To ensure coordination among various divisions and stakeholders throughout the project lifecycle it is imperative for the Line Departments to set up a Contract Management Team. The contract management team will provide an unbiased point of view on all issues in the project and how they should be managed. The contract management team shall be formed during the procurement process. Early involvement in the procurement process shall enable the contract management team to gain a thorough understanding of the line department's requirements. The continued involvement throughout the whole process will help in maintaining a position of strength throughout all levels of negotiation. The team will better assist the development of pragmatic and 'user friendly' performance measurement systems, allow input into the evaluation of the solutions and bids received, and will mean that they have good understanding of the service methodologies at service commencement.

The contract management team shall have following members of the concerned Line Department:-

- ▶ Nodal Officer
- ▶ Project Engineers (2 in number)

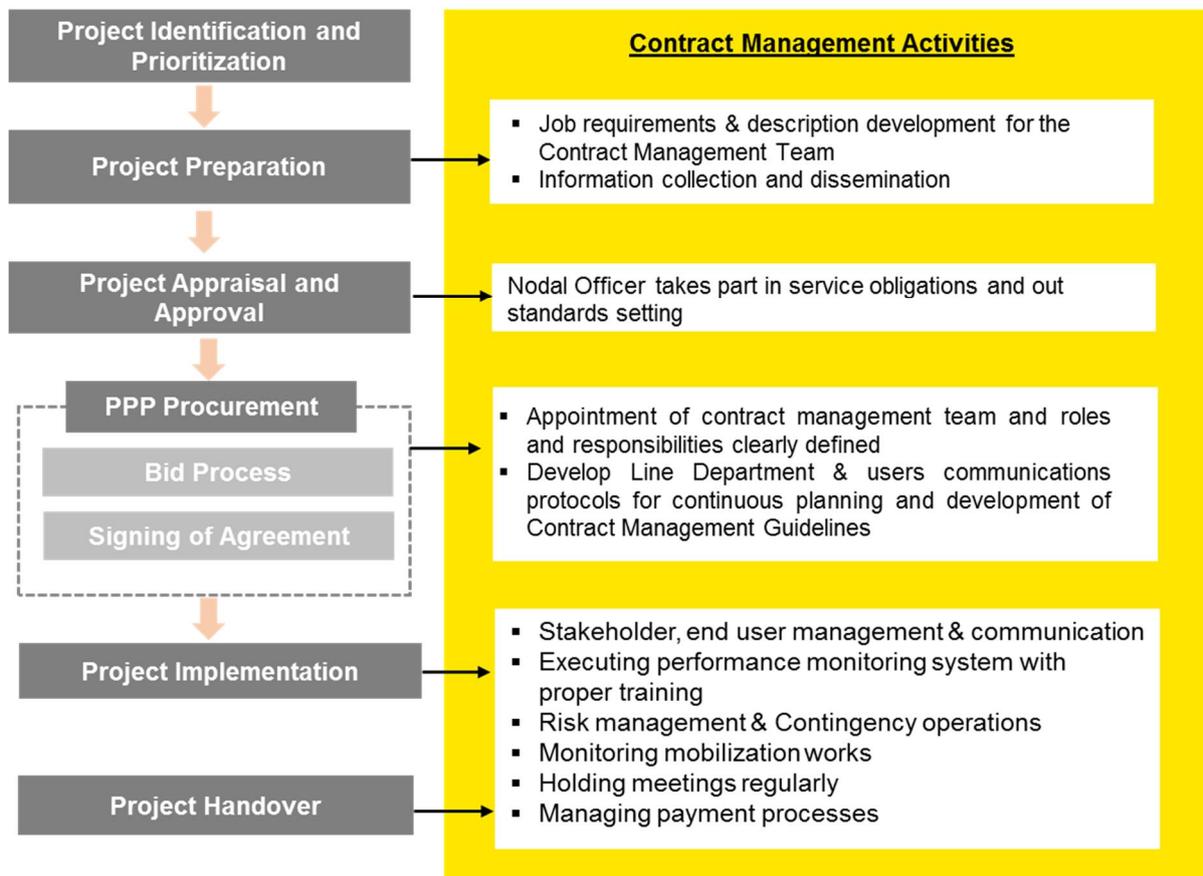
Why to involve contract management team at an early stage?

“I was told at an early stage in the procurement phase that I would be the contract manager for the project. I therefore had a vested interest in the output specification and project documentation and would not allow them to be signed off until I was completely satisfied with their content.”

Local authority contract manager

The contract management activities to be undertaken during the project lifecycle are mapped in the figure below:

Exhibit 5: Contract Management activities during project lifecycle



Step 2: Providing training on contract management to contract management team

Basis level training on contract management shall be provided to the contract management team.

General training on contract management	Training specific to PPP projects
<ul style="list-style-type: none">▶ Fundamentals of contract management▶ project management▶ negotiating skills▶ general commercial skills▶ communication	<ul style="list-style-type: none">▶ mobilisation and handover▶ change management▶ the payment mechanism and its application▶ helpdesk function and performance monitoring▶ issue management and dispute resolution▶ the application of the contract▶ contractual change and variation management

Details on these trainings have been set out in the Capacity Building section of this report.

Step 3: Performance monitoring and reporting

The contract management team must ensure that monitoring processes and procedures are in place at the commencement of service, with roles and responsibilities clearly outlined and contractual requirements met, so that performance can be managed from the very beginning.

Performance Monitoring and Reporting deals with keeping a check on the project progress and its sub-activities throughout the lifecycle so that an appraisal can be done for the same from time to time and necessary corrective actions can be employed to get it back on track.

Ongoing review of contract performance helped UK hospital PPP achieve several efficiencies

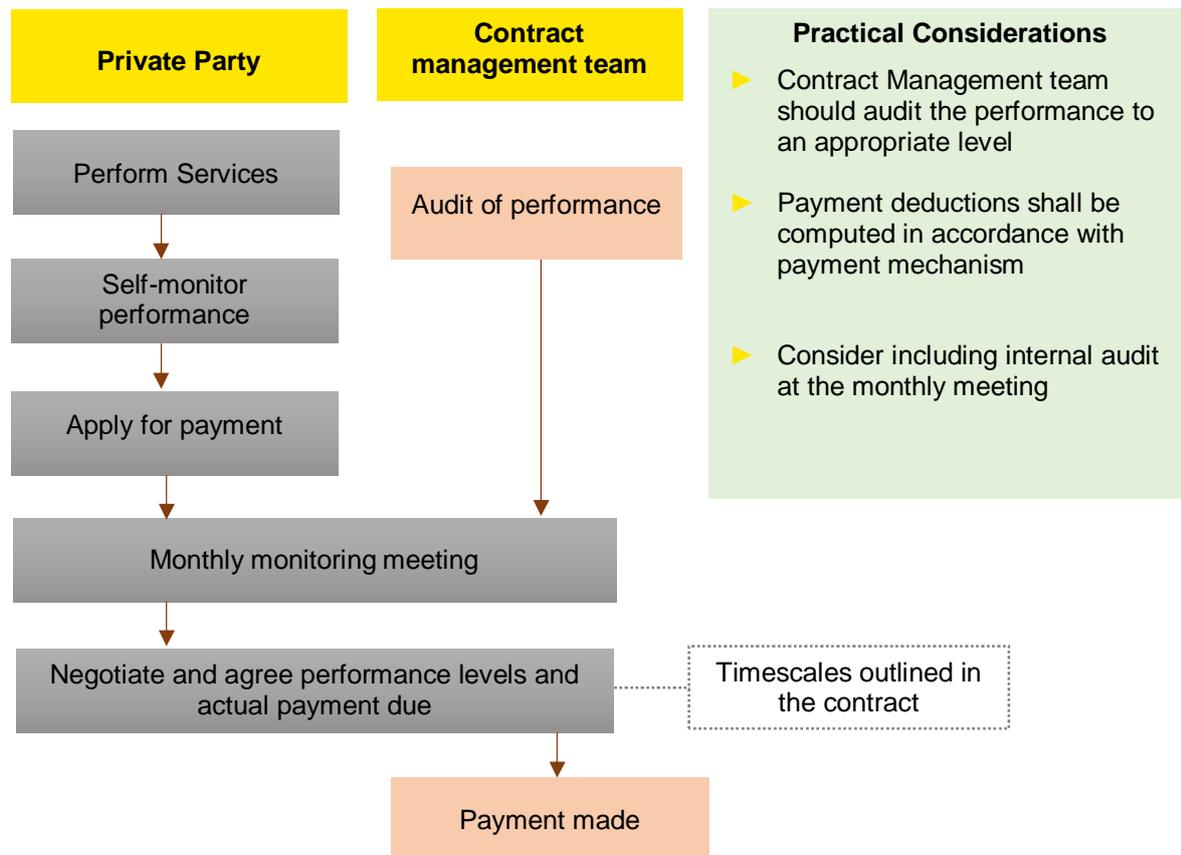
Benefits included –

- ▶ Effective management of existing cost/gain share provisions in relation to insurance;
- ▶ Reduced energy consumption through increasing energy use awareness and agency energy purchasing discounts
- ▶ Subletting a surplus ward to a private healthcare provider
- ▶ Standardizing the ward housekeeping specification
- ▶ Adjusting response times and shift patterns for portering and security services
- ▶ Changing the specification of replacement equipment under the medical equipment contract, to reflect the longer lifecycle of some medical equipment, in order to optimize the use of the contract budget.

Managing service performance is fundamental to the contract, as it is through this process that payments to the service provider are calculated and any deductions are negotiated and agreed. It is therefore vital that there is a good understanding of the relationship between the requirements in the **output specification, the performance measurement system, and the method for making deductions for poor performance.**

Monthly performance monitoring processes and payment should involve self-monitoring and reporting the compliance achieved for that month by the private partner. The nodal officer should ensure that the timescales outlined for payment are achieved, and that private party's reports are provided to the level of detail agreed with the line department and within the agreed timescale. Exhibit 6 illustrates the sequence of activities that shall be performed within the reporting period.

Exhibit 6: Monthly performance monitoring and management by private party



Monthly reporting shall be performed by Contract Management team. PPP Cell shall review the monthly monitoring report and check its compliance based on the checklist given below. The PPP Cell shall quarterly forward the checklist along with monitoring report to Steering Committee/ECOP (based on the project value) for its approval.

Best Practices: Contract Management

To determine that the physical progress is commensurate with the expenditure incurred, the concessionaire shall be required to convey to the contract management team the nature and extent of physical progress which comprises the project expenditure pertaining to the respective project milestone.

Concessionaires shall establish and maintain a easy-to-use complaint redressal system. All these complaints and their due redressal should be reported to the department on a monthly basis. The reporting of such slipups is to enhance the users through a proper and easy-to-use complaint redressal system.

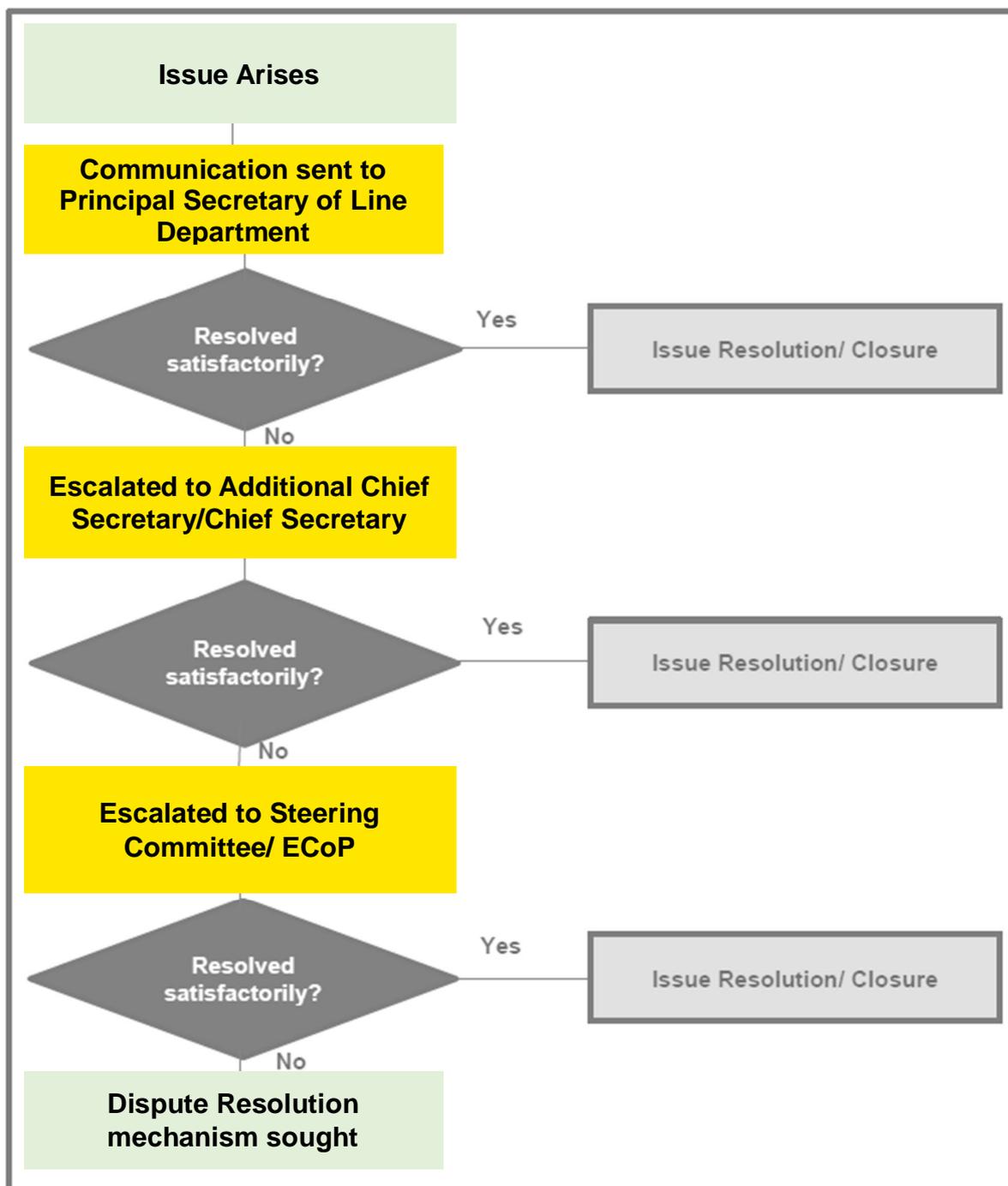
Parameters	Completed Yes/No
The contract management team is in place, has sufficient resources and the team has had suitable training	
The Line Department has a robust performance monitoring regime that was developed during the procurement phase of the project	
The private party's quality management and management information systems are in place and understood by the contract management team	
The private party has clear procedures for the management of its subcontractors	
The payment mechanism is understood and implemented by?	
The private party and Line Department have clear reporting procedures in place that have been agreed between the parties	
Monthly reports are prepared and circulated by the private party	
Monitoring meetings are held in accordance with the contract to discuss performance	
The allocation of risk and responsibility between the private party and Line Department is in place and understood	
The users of the services have been trained on the service levels that they should expect and how to carry out their role in monitoring the service, including helpdesks and processes and structures for communication	
Customer surveys are conducted to assess perception	

Step 4: Management of Issues and Disputes

Issues involve an interruption or disturbance to service delivery. Clear procedures for raising these issues and handling problems should be established to ensure that issues are dealt with at the earliest possible stage and at the appropriate level. The primary objective is to ensure that problems are recognized and then resolved quickly and effectively. As a rule, issue management procedures should be in the Concession Agreement (and hence should be incorporated in the Contract Management Plan). If they are not contained in the contract, or are inadequate, the Nodal Officer and the Private Party should work together to establish and agree on issue management procedures acceptable to both, shortly after contract execution.

To ensure that responsibility is directed to the appropriate level of management, a clear escalation path for resolution of problems should be planned. An ideal issue escalation procedure should function as below:

Exhibit 7: Issue Escalation Procedure



When things start to go wrong in the operation of PPP projects, it is often difficult to identify the underlying causes. Annexure 6 shows some typical indicators of an issue to be resolved, and some potential first actions.

Dispute resolution

A crucial role for the Contract Manager/PPP Nodal officer is to try to ensure through prompt efforts that formal protracted disputes are avoided. If a dispute cannot be speedily resolved informally, it is important that it is promptly dealt with through a formal dispute resolution process set out in the contract management plan for the project. Following steps should be followed for dispute resolution:-

a) Government to Private (G2P) meetings

Representatives of each party should first meet and attempt to resolve the dispute, in good faith.

Following members should be part of the closed door meetings:-

- ▶ Members of line department
- ▶ Representatives from the private party
- ▶ Members of other relevant departments (depending on nature of dispute)
 - Forest department
 - Environment department
 - Revenue and agriculture department

b) Resolution Team

b) Mediation or Conciliation

If the dispute is not solved amicably, representatives of the parties should appear before a Resolution Team (mediator or conciliator) and attempt to resolve the dispute. The mediator or conciliator shall be mutually agreed by the parties. The mediation or conciliation will be undertaken by following members:-

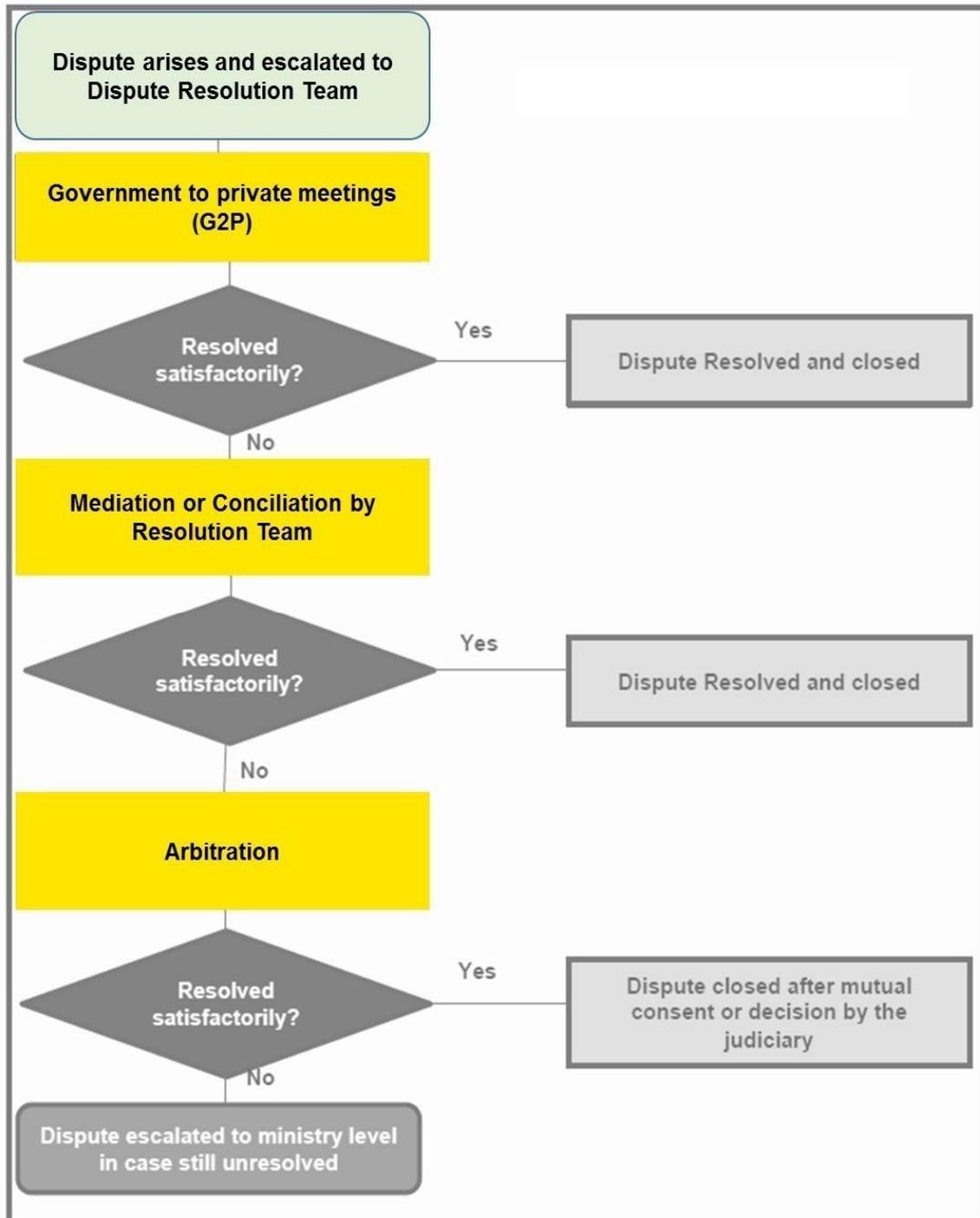
For projects < 500 Crores	Number of members: 3 ▶ Technical Expert (1) ▶ Financial Expert (1) ▶ Legal Expert (1)
For projects > 500 Crores	Number of members: 5 ▶ Technical Experts (2) ▶ Financial Experts (2) ▶ Legal Expert (1)

If the dispute is not resolved by the Resolution Team, then arbitration can be sought by affected party.

c) Arbitration

The dispute must be referred to and determined by a Board of arbitrators to whom the parties make submissions. The Board's determination shall be binding. The process of arbitration must be supported by and should be carried out in accordance with the Indian Arbitration & Conciliation Act, 1996. The Board should ideally consist of three members. Two arbitrators will be appointed by each of the respective parties and then the arbitrators will jointly elect the third arbitrator. In the event of a disagreement between the two arbitrators, the appointment will be made as per the rules specified in the Act. The dispute resolution mechanism is set out in figure:

Exhibit 8: Dispute Resolution Mechanism





Capacity Building Strategy

9. Capacity Building

Institutional capacity building is a key factor that defines a state's success in developing and implementing a PPP program. During the as-is-analysis stage, it was observed that the capacity within the Line departments, ECoP, Steering Committee and PPP Cell is not adequate enough to manage/execute the project development process on PPP effectively.

Many of the critical issues impacting successful implementation of PPPs in Assam are - Inappropriate selection of Assam PPPs, No awareness on Institutional tools – Concept Note, PDF; Limited capacity to review PFRs / DPRs and monitor the performance of TA, (Projects - SWM, Desang Hydropower, Cold Storage), Limited understanding on how to undergo clearances / approval process and develop accurate concession agreements.

It is necessary to enhance the capacity within the Line Department, PPP Cell and concerned authority for successful implementation of Assam PPPs. EY recommends a capacity building strategy that includes measures / mechanism for continuous and longer term thus training the resources to undertake the roll out of PPP Projects in Assam successfully. Few of the actions that need to be initiated to strengthen the capacity of the officials are as discussed below:

Measures for Capacity Building	
One day Training workshop	EY would conduct first round of induction training to create awareness among all the stakeholders on how to identify, contract and manage Assam PPPs in a way that address most of the key challenges faced in past.
Long Term Development Plan	Training on policy and procedures on continuous basis that would accelerate the knowledge and learning-by-doing. <ul style="list-style-type: none"> ▶ On-Job Training through External Advisors ▶ Partnering with International Institutions (PPP Cell, Foreign Countries) ▶ Long Term Development Plan (Stakeholders would meet on regular basis i.e every 2 months to coordinate over the project pipeline and attain consistent knowledge / updates related to policy and procedures)
External Advisors	Appointed in PPP Cell for a period of 3 years to strengthen it through induction of technical, financial and legal manpower to facilitate the line department in undertaking PPP projects.
Nodal Officers	Dedicated ' PPP Nodal Officer ' to serve as ' Training Champions ' who can later conduct trainings on an ongoing basis

It is recommended that the capacity-building efforts shall be led by the PPP Cell, P&D. Capacity building plan as envisaged is progressing in a phase wise manner as stated below:

- ▶ **Phase I: Training Needs Assessment (TNA)**
- ▶ **Phase II: Designing the Training Program (Includes 1 day workshop)**

9.1 Training Needs Assessment (TNA)

During our discussions with the functionaries at PPP Authorities and line departments, we have also examined their roles and responsibilities along with their team size and education background. Further, these discussions aided us in identifying a pool of suitable resources who need training on PPP concepts and assessed the level of understanding which the resources already.

The main target group would be the project teams in the contracting authorities (Line Department, ECoP, Steering Committee and PPP Cell), but training could also be targeted at more senior government officials, as well as those in other departments such as Forest, Revenue that interact with the contracting authorities and have an oversight role. Based upon the assessment, EY has finalized the target group for the training sessions as follows:

Target Group

Based upon our interactions held with more than 35 stakeholders, the list of target group from all the departments for the training sessions as follows:

- ▶ Project Engineers
- ▶ Nodal Officers (Identified PPP Officers)
- ▶ Directors
- ▶ Joint Secretaries
- ▶ Secretaries
- ▶ Principal Secretaries
- ▶ Additional Chief Secretaries

The individual capacities need to be strengthened to provide the gamut of skills required for an effective PPP program, not just **transactions skills**, but also those involved in **selecting which projects to be pursued as PPPs, estimating the fiscal costs of PPPs, oversight and contract management, and ex-post evaluation and auditing of the performance of PPPs.**

Henceforth, EY Team has evaluated the training needs of the target group by conducting an assessment across following key areas:-

- **PPP Concepts** – Conceptual knowledge of the participants/ target groups about PPP
- **PPP Procedure** – Understanding of PPP Procedures and Approval Processes
- **Contract Management** – Post-award Project Monitoring
- **Implementation Awareness (Sector focused)** – Awareness about Assam PPPs (Key Issues)

The findings of these areas facilitated in assessing training needs of the target group, training content development and mapping of participants for workshops and training sessions are listed out below:

Training Workshop/ Course	Target Audience		
	Senior Leadership (Additional Chief Secretary, Joint Secretary, Secretary and Principal Secretary)	Staff of Line departments (Engineers, PPP Officers, Directors)	Staff of PPP Cell
PPP Orientation Workshop	√	√	√
Procurement Acts, Policies and Guidelines	√		
PPP project identification	√	√	√
Prefeasibility / DPR	√	√	
PPP bidding process		√	√
PPP contracts, Commercial-legal terms etc.)	√	√	√
Contract Management		√	√
Financial Management		√	√

9.2 Designing the Training Program

To make the execution of procurement process smoother / faster and in a more accurate manner, there is a need to adopt a strategic approach to enhance capacities within the Line departments, ECoP, Steering Committee and PPP Cell. Few of the prospective approaches that could be adopted for building capacity on conceptualizing and procuring Assam PPPs as follows:

- ▶ One-day Workshop
- ▶ Long Term Development Plan
 - On-Job Training through External Advisors
 - Partnering with International Institutions (PPP Cell of Foreign Countries)
 - 2 Year Training Program

9.2.1 One-Day Workshop

EY would conduct first round of induction training that would help to create awareness among all the stakeholders on how to identify, contract and manage Assam PPPs in a way that address most of the key challenges faced in past so that Assam PPPs can be developed in the most effective manner.

Objective:

- ▶ Present the key findings and conclusions to the larger audience
- ▶ Make dialogues with stakeholders for further validation and finalization of PPP reforms.
- ▶ Provide a platform for participants to apprise the basics of various PPP concepts and procedures.

While the workshops are conducted, comprehensive notes on the discussions would be prepared and to end with draft minutes. This will help in collating common issues and key takeaways extracted from the workshops.

Training Module: Modules would set out the detailed information on development of PPP projects from inception to closure. This would also include a common understanding of the technical, operational and financial risks that are typically encountered in Assam PPPs. Analysis of successes and failures of few projects would also be discussed to help both in designing new PPPs and managing existing ones.

One- Day Stakeholder Workshop	
Module	Key Areas
PPP Concepts	<ul style="list-style-type: none"> ▶ EY will apprise audience with key findings of As-Is-Analysis ▶ Topics to be included: <ul style="list-style-type: none"> - Introduction to PPPs - How to select PPP options - Utilization of Institutional Tools
PPP Procedure	<ul style="list-style-type: none"> ▶ Overview of the Project Development Process ▶ EY will apprise audience with the checklist required at below mentioned stages: <ul style="list-style-type: none"> - DPR / PFR - Tender Process - Contract Management
Case Studies: Assam PPPs	<ul style="list-style-type: none"> ▶ Highlight key challenges / Learnings for PPPs in Assam ▶ How GoA should approach the issues posed by Assam PPPs
PPP Policy Reforms	<ul style="list-style-type: none"> ▶ Recommendations to existing Assam PPP Policy ▶ Communication Channels ▶ Long Term Capacity Building Plan
Feedback / Suggestions	<ul style="list-style-type: none"> ▶ Post event assessment and Incorporation of recommendations from all the stakeholders in the Final Report.

At the close of the training workshop, EY Team will assess output and feedback from the Target Group through one-time closing focus group discussions tests and questionnaires. Team will also assess whether there has been a significant improvement in ability of target groups to comprehend PPP structures and frameworks better. The assessment will help in building futuristic training programs.

9.2.2 On-Job Training

Timing plays a critical factor in a capacity building program as it may be appropriate to provide doorstep assistance to a line department at the start of its program, when the line department does not yet have sufficient experience. On-Job Training would allow the external consultant to work closely with PPP Cell / line departments in order to provide adequate and timely assistance in development of PPP projects successfully. This training would also help to develop '**Training Champions**' who can conduct trainings on an ongoing basis to ensure consistent understanding across various stakeholders.

External Advisors

Initially, a team of **External Advisors (Independent Consultants) would be appointed within the PPP Cell, P&D Department to strengthen its capacity and facilitate the line department in undertaking PPP projects.** External Advisors aims to bring in adequate expertise in form of **Financial Expert, Legal Expert, Technical Expert** and other supporting resources that would be hired on the need basis. These consultants would be hired **on contract basis for a period of 3 years.** However, their contract can be either continued for a longer period or any other consultants could be hired according to the requirements.

Team of External Advisors (Financial, Legal and Technical Advisors) would help in **improving capacities to identify potential PPPs, to bring them to the market properly structured, have them efficiently and competitively procured, and to monitor their performance and cost.**

The role of External Advisors shall as follows:

- ▶ Work closely with Nodal Officers of the line departments
- ▶ Assist line departments in development of PPP projects from inception to closure:
 - Educate the line departments on how to identify projects, how to prepare a Concept Note and what is the likelihood of a project getting investors.
 - Build understanding on how to appoint a Transaction Advisor (TA), how to define scope of work for TA, what is the process for utilizing PDF and how to evaluate the performance of TA.
 - Knowledge on how to undertake preliminary analysis to establish the approximate capital costs and the technical specifications or operating standards needed to achieve the government's objectives; how to prepare a Pre-Feasibility Report (PFR) / Detailed Project Report (DPR).
 - Educate the line departments on how to analyse the commercial logic and market feasibility of the project, how to carry out risk analysis and prepare the financial structure for the type of PPP project to be implemented.
 - Guidance on how to conduct the market sounding, pre-qualification processes, evaluation of bids and selection of bidders.
 - Assist in drafting, negotiating, and advising on any variations to the contracts, or disputes arising during the term of the contract.
- ▶ Build up full capacity of existing resources of PPP Cell in terms of financial skills, legal skills and transaction skills and assistance to PPP Cell in arranging awareness outreach programme such as road-shows

To end with, External Advisors intend to develop Nodal officers as 'Training Champions' who can later conduct trainings on an ongoing basis to ensure consistent understanding across various stakeholders.

PPP Nodal Officer

Line departments will usually retain the primary responsibility for PPPs within their mandate. Henceforth, there is a need to build up full capacity and create awareness about the PPP program across all line departments on consistent basis. This can be achieved through a dedicated '**PPP Nodal Officer**' appointed within each line department. We understand that the Nodal Officers appointed within the line departments by PPP Cell, P&D for this engagement could also be sustained as dedicated PPP Nodal Officers for capacity building programme on PPP.

The PPP Nodal Officer shall take the responsibility of creating awareness about the latest PPP program and successfully executing the procurement process across departments. Wherever required, the services of the technical and financial consultant should also be provided.

It is important that the Nodal Officer within the line department shall get trained in a manner that facilitate him to impart training to the departments for development of Assam PPPs. Thus, the Nodal officer shall attain adequate understanding on the following areas:

- ▶ PPP policies and legislation
- ▶ Standard contracts, manuals and processes for identifying and developing PPPs;
- ▶ Clearance and approval functions during the PPP process;
- ▶ Development of training programs
- ▶ Dissemination of information on PPPs

9.2.3 Partnering with International Institutions

Implementing a PPP program requires a range of skills and expertise. However, government officers in the line departments implementing PPPs often lack the necessary expertise – in particular, they might lack skills that may be non-essential in traditional public procurement but that are crucial to PPPs (such as financial, legal, and transaction skills).

International Synergies provides a turnkey solution to the Government of Assam for implementation of Assam PPPs effectively. International workshops / trainings engages diverse organisations in a network to foster eco-innovation and long-term culture change. Therefore, creating and sharing knowledge on PPP through international network delivers improved concepts as well as procurement processes. Bringing together extensive experience of developing and managing PPP programmes across different countries, International Synergies can support the high standard implementation of PPP programme appropriate to Assam's demographic profile.

Countries: Initially, GoA may consider partnering with **PPP Units of countries like Philippines, Australia and United Kingdom** to understand their PPP Framework. They will learn / understand their approach towards project structuring, project innovations and procurement procedures.

Responsibility: PPP Cell shall identify the government officials across various line departments to attend such workshops / training in other countries. The cost incurred in these trainings shall be funded through Assam PDF.

9.2.4 2 Year Training Program

Subsequent to initial level of training through a team of external advisors, **it is important to create / update the level of awareness and understanding of PPP within all stakeholders on consistent basis to facilitate sound PPP framework in Assam.** The success of Assam PPPs essentially depends on the development and retention of appropriate skills and expertise within the line departments, ECoP, Steering Committee and PPP Cell.

There is need to ensure a sufficient level of skilled resources to deliver successful PPP projects in Assam. Currently, various stakeholders who would be a part of PPP landscape in Assam lack the capacity for project identification and procurement. Therefore, there is a clear need to develop a comprehensive capacity building plan for a longer period.

Key Challenges in building capacity for Assam PPPs

- ▶ *Developing the capacities to design and execute transactions may be the most difficult, since the legal and financial skills may not be present and given **public sector pay scales it may be difficult to attract skilled individuals in from the private sector.***
- ▶ *Sustaining capacities is made more difficult by the **rotation of staff** out of positions once they have built up knowledge by closing transactions.*

Strategic and Well-planned training / workshops are a vital element of the long term capacity building program. They provide a PPP forum for the Line Department and a PPP working group **to meet more regularly with a mandate to coordinate over the project pipeline and attain consistent knowledge / updates related to policy and procedures.** These workshops would result in better execution of Assam PPPs and assist in better capacity building.

Objectives of the trainings / workshops will be:

- ▶ enhancing capabilities in the design and execution of Assam PPPs;
- ▶ building consensus on understanding of Assam PPPs and creating a unified approach to PPP procurements in Assam;
- ▶ enhancing the understanding private investors' perspective on PPP projects, so as to enhance the bankability of the projects;
- ▶ understanding the project structuring, payment mechanism, risk allocation and tariff setting principles;
- ▶ providing information on key issues (if any) raised up in existing projects so that upcoming Assam PPPs can be developed in the most effective manner;

Implementation Plan: 2 Year Training Program

EY recommends that efforts shall be initiated / made by PPP Cell, P&D to reach out to all the stakeholders through workshops that comprises comprehensive training modules, so that they are better informed about the nature and structure of PPPs on regular basis. PPP Cell will have to appoint external consultants to conduct such training programs on regular basis. Many of the government officials – both at the senior levels and middle levels would take part in these programs. **Henceforth, it is recommended to arrange this workshop on one of the module every 2 months spread over a span of next 2 years.** The concerned line department must ensure the stability / regularity of the staff deployed for the training to sustain and optimize the capacity so developed for successful execution of Assam PPPs.

Fund Allocation: P&D Department shall earmark sufficient fund through PDF to impart training for development of Assam PPPs.

Training Material: One of the major component would be the development of training materials to supplement or reinforce the guidelines and contractual or procedural approaches that have been established for development and implementation of Assam PPPs. Training material could cover topics related to contract design, procedures for identifying, procuring and managing PPPs, and even PPP legislation. It could also cover short guidance notes on focused topics of interest and best practices in PPP. Such notes could be a helpful complement to case studies on Assam PPPs, allowing for the discussion of recommendations for differing contexts.

**Implementation Plan:
Long Term Development Plan (2 Year Training Program)**

- I. Training Module:** To impart training for the target participants, EY recommends a list of training modules that could be followed in a phased manner for a longer period of time. The list of modules as follows:
 - ▶ **Module 1** – Introduction to PPPs
 - ▶ **Module 2** – Identification of a Project
 - ▶ **Module 3** – Requisite Approvals and Clearances
 - ▶ **Module 4** – Appointment of TA
 - ▶ **Module 5** – Pre-Feasibility Report (PFR)
 - ▶ **Module 6** – Knowledge Sharing ‘Sector Specific’
 - ▶ **Module 7** – Detailed Project Report (DPR)
 - ▶ **Module 8** – Funding Sources
 - ▶ **Module 9** – Communication Channels
 - ▶ **Module 10** – Tender Process
 - ▶ **Module 11.**– Developing Concession Agreements
 - ▶ **Module 12** – Contract Management
- II. Training Period:** Workshop on one module every 2 months spread over a span of next 2 years.
- III. Information Resources:** Development of information resources including a portal and guides and “self-help” tools.

Checklist for PPP Cell:

- ☐ Line department is sending the same people for training / workshops.
- ☐ Training / Workshop is conducted on periodic basis (in every two months) for all the stakeholders.
- ☐ Training Modules are comprehensive enough to create full understanding on policy and procedures.
- ☐ Ensure P&D Department has allocated sufficient fund through external advisors (Independent Consultants) to impart training for development of Assam PPPs.

Training Modules: 2 Year Training Program

Module 1 Introduction to PPPs

- ▶ Definition, characteristics and benefits of PPP
- ▶ Assam PPP Policy & Institutional Framework
- ▶ Roles & Responsibilities of Identified Nodal Officer
- ▶ Appointment of External Advisors
- ▶ Stages of a procurement under a PPP model

Module 2 Identification of a Project

- ▶ Need Assessment
- ▶ Market analysis and project scope
- ▶ Preparation of Concept Note
- ▶ Evaluation of Concept Note (In-compliance with Checklist)
- ▶ Best Practices: Project Identification
- ▶ PPP Suitability Test (Market Potential, Project Size, Lifecycle cost & Innovation Potential)

Module 3 Requisite Approvals and Clearances

- ▶ Environmental Clearance Process
- ▶ Land Clearance Process
- ▶ Forest Clearance Process
- ▶ Timelines for obtaining Clearances
- ▶ Any other clearance specific to the project

Module 4 Appointment of TA

- ▶ Selection Criteria for TA
- ▶ Design of Bidding Documents (EOI/RFQ/RFP)
- ▶ Approval Process for selection of TA
- ▶ Scope of Work for TA
- ▶ Funding of TA (Utilization of PDF)

Module 5 Pre-Feasibility Report (PFR)

- ▶ Needs and Options Analysis
- ▶ Contract Structure's
- ▶ Social and Environmental Feasibility
- ▶ Risk Assessment Framework
- ▶ Preliminary cost assessment
- ▶ Evaluation & Approval Process for PFR
- ▶ Checklist for PFR PPP

Module 6 Knowledge Sharing ‘Sector Specific’

- ▶ Solid Waste Management
- ▶ Water Supply and Sanitation
- ▶ Urban Infrastructure
- ▶ Transport
- ▶ Power
- ▶ Social Infrastructure

Module 7 Detailed Project Report (DPR)

- ▶ Technical feasibility
- ▶ Demand Forecast
- ▶ Financial analysis and Due Diligence
- ▶ Economic feasibility
- ▶ Evaluation & Approval Process for DPR
- ▶ Checklist for DPR

Module 8 Funding Sources

- ▶ User Charges
- ▶ Service Tariffs
- ▶ Viability Gap Funding (VGF)
- ▶ Other Concessions from Govt.

Module 9 Communication Channels

- ▶ Market sounding / Roadshows
- ▶ Stakeholder Consultations
- ▶ Investor Summit / Conferences
- ▶ Internal Tracker System / Dashboard Tool
- ▶ Revamped Assam PPP Website

Module 10 Tender Process

- ▶ Selection Criteria
- ▶ Bidding Documents (EOI/RFQ/RFP)
- ▶ Bidding Process
- ▶ Bid Evaluation Committee (Formation, Roles & Responsibilities)
- ▶ Evaluation of Bids

Module 11 Developing Concession Agreement

- ▶ Key Performance Indicators
- ▶ Condition Precedents
- ▶ Termination Provisions
- ▶ Escrow Mechanism
- ▶ Insurance Provisions

Module 12 Contract Management

- ▶ Contract Management Framework
- ▶ Contract Management Team – Formation, Role & Responsibility
- ▶ Key Activities
- ▶ Monthly Performance Reporting
- ▶ Dispute Resolution Mechanism

A close-up photograph of a person's hands holding an open book. The person is wearing a grey sweater. The book is open, and the pages are white. In the foreground, there are several stacks of books on a desk. A large, bright yellow circle is overlaid on the right side of the image, partially covering the book and the desk. The text 'Communication Strategy' is written in a bold, black, sans-serif font inside the yellow circle.

Communication Strategy

10. Communication Strategy

Effective management of PPPs involves interactions, negotiations and resolution of probable conflicts in stakeholder objectives. Thus, an effective communication strategy is integral to successful PPP project development and execution. A communication strategy shall be devised in a manner that reflects government’s commitment to collaborate with the private sector to achieve Assam’s development goals and clearly communicates the objectives, scope and principles of the Assam PPP Framework.

During our primary interactions, it was highlighted that there has been a delay in the PPP procurement process due to ineffective communications with investors, no internal project monitoring on continuous basis and poor web presence.

Some of the communication channels that can be adopted to address these bottlenecks and to ensure effective communications for Assam PPPs are listed out below:

- ▶ Market Sounding / Roadshows
- ▶ Stakeholder Consultations
- ▶ Investor Summit / Conferences
- ▶ Internal Tracker System / Dashboard Tool
- ▶ Revamped Assam PPP Website

To develop a communication strategy, EY Team has drafted a ways and means of holding public consultations, market sounding / roadshows and developing appropriate content for Assam’s PPP website based on the gaps identified during the As-Is-Analysis and studying the PPP websites of other benchmark Indian states.

Communication Channels			
Purpose	Channel	Key Benefits	Stage
Project Specific	Stakeholder Consultations	<ul style="list-style-type: none"> ▶ Provides a forum to discuss PPP policy & consequent project structures ▶ Identify critical bottlenecks before taking the project forward ▶ Developing suitable mitigation strategies for addressing risks well in time. ▶ Effectively pacify concerns pertaining to private sector operations and provide correct information to all the stakeholders 	All Stages
	Market Sounding / Roadshows	<ul style="list-style-type: none"> ▶ Validates the suitability of the business case ▶ Builds an understanding on project’s marketability, potential market constraints, risk allocation. ▶ Prepares the market for procurement & Improves competitive tension ▶ Road shows build an exclusive networking platform with the investor community 	Tender Stage
Investor Outreach	Investor Summit / Conference	<ul style="list-style-type: none"> ▶ Create high impact & visibility to demonstrate pro-activeness & seriousness of Assam PPPs ▶ Reinforce Assam’s strengths to appeal to investors’ rationale ▶ Make investors aware of recent PPP policy reforms ▶ Clarify investor myths & misperceptions about Assam and Improve the perception of PPP Cell 	All such Events
	Revamped Assam PPP Website	<ul style="list-style-type: none"> ▶ Providing free/open access to general public for all procurement related information ▶ Educate & encourage the Line Depts and PPP Authorities on guidelines & procurement process ▶ Enable access to widest reach of Bids and unhindered secured Bid submission facility to achieve efficient and cost-effective procurement and shortened procurement cycles. 	On Immediate Basis
Internal Control	Internal Tracker / Dashboard Tool	<ul style="list-style-type: none"> ▶ Monitor the stage wise progress along with the proposed timelines ▶ Avoidance of human discretion / interference to the extent possible ▶ Easy availability of complete audit trail and evidential data etc. ▶ A strict check on the activities of the Line Departments and Assam PPP Authority 	On Immediate Basis

The implementation plan for above mentioned communication channels for Assam PPPs is discussed in detail subsequently.

10.1 Market Sounding / Roadshows

It is recommended to validate the suitability of the business case and the requirements that will be imposed on the private party. Market Sounding is a process by which information about the interest, opportunities and challenges associated with a proposed project are gathered from the relevant private players.

Cold Storage: For the O&M of cold storage at Raha and Silapthar, no market sounding was conducted prior to issuing EOI and also, Assam State Warehousing Corporation (ASWC) conducted a roadshow on their own without the support of TA.

Henceforth, it is important to conduct market sounding to build an understanding of the project's marketability, potential market constraints, risk allocation. Also, it prepares the market for the procurement and improve competitive tension during the process of the transaction. Well planned and targeted road shows will be a significant marketing tool to build an exclusive networking platform with the investor community for Assam PPPs.

Target Audience: Private - Builders, Operators, Facility Management Providers and Project Sponsors.

Responsibility: TA / External Advisors appointed by the PPP Cell shall conduct the market sounding exercise / roadshows and PPP Cell shall be the co-ordinating point for conducting such programmes.

Stage: The market sounding exercise / roadshows shall be conducted during the stage of Tender Process to understand the actual commercial requirements and accordingly carry out the procurement process. This will help in conducting the tender process in a precise way.

Questions: The questions in the market sounding should involve areas such as market interest in the project, the potential for innovation and the ability to transfer risk where appropriate. The number of market sounding questions varies based on project-specific criteria, but generally there should be questions geared towards builders, operators and financiers.

Table 7: Sample Market Sounding Questions

Questions	Target Audience
Is the project considered an attractive opportunity from your perspective?	Builders, Operators, Financiers
Are there any factors that would influence your decision to participate in the proposed project?	Builders, Operators, Financiers
What is a realistic time frame for the proposed project?	Builders
Describe your company's role in similar projects.	Builders
What types of challenges and risks do you foresee during the construction period of this project?	Financiers
What is your preference in terms of O&M period?	Financiers
What is the minimum equity contribution that would make this project attractive?	Financiers
What equity structure would work best for this type of project in your experience?	Financiers
What is the likely financing approach for this project?	Financiers
What is the best method to reduce the costs of financing and their impact on overall project costs?	Financiers
What are some of the perceived risks associated with the procurement process?	Financiers
Are there lender or ratings agency concerns associated with the viability of the project?	Financiers

**Operationalization Plan:
Market Sounding / Roadshows**

- I. Advertisement:** The details should be advertised on the website of the Sponsoring Authority as well as the Department PPP Cell. Advertisements should also be placed in major newspapers as appropriate to the size of the procurement.
- II. Participants:** Market sounding participants shall be properly identified to ensure that selected participants are appropriate. Details about the date and project related information shall be provided to participants in advance of the meeting to ensure quality attendance.
- III. Road show calendar finalization (date/venue):** The date and venue of the road shows shall be set to garner maximum participation in the road shows which would then culminate into huge attraction of investment.
- IV. Programme Outline:** The outline of Market Sounding exercise shall be performed in a below manner:
 - ▶ Market sounding shall be conducted without prejudice and in a manner that allows participants to speak freely about project concerns
 - ▶ Questions in the market sounding shall involve areas such as market interest in the project, the potential for innovation and the ability to transfer risk where appropriate
 - ▶ List of participants shall cover the range of market participants, i.e. builders, financiers and operators
 - ▶ If market participants highlight any particular constraints or opportunities related to the transaction, then the key themes/messages from the market soundings shall be reflected in the project structure.

10.2 Stakeholder Consultation

A lack of information can quickly create misunderstanding which can snowball and may even derail the PPP project. Henceforth, for successful implementation of PPPs in Assam, it is important to ensure the stakeholders in the project are consulted and informed from early on and a forum is provided to discuss the PPP policy and consequent project structures.

EY team has diagnosed that substantial improvement is required in interactions with other departments and external stakeholders. To ensure the same, EY recommends the key stakeholder departments to regularly meet, interact and coordinate.

Solid Waste Management (SWM): In SWM project, People were not willing to pay the user fees due to which Operator was not able to collect the user charges. The Contract with the PPP Concessionaire was later terminated

Target Audience: Project Sponsors, Potential Users, Potential Communities to be Impacted, Other Key Line Departments such as Land/Revenue, Forest, Electricity, Water Resources etc.

Responsibility: PPP Cell can be the co-ordinating point for conducting such programmes. TA / External Advisors shall assist the PPP Cell / Line Department.

Stage: It is recommended that more public involvement (wider stakeholder's consultation) should be conducted at the stage of PFR/DPR, which will lead to incorporation of key issues, concerns and ground level implementation holdbacks.

**Operationalization Plan:
Stakeholder Consultation**

- I. Participants:** Details about the project related information shall be provided to participants in advance of the meeting. It is important to have a sufficient number of participants from each of the categories.
- II. Point of Contact:** PPP Cell shall be assigned as a contact point for communications from interested parties.
- III. Purpose:** PPP Cell shall use such interactions to serve the below purpose:
 - ▶ To clearly identify if there are any critical bottlenecks that need to be addressed before taking the project forward.
 - ▶ Address challenges to scale up PPPs by developing appropriate mitigation strategies for such risks well in time.
 - ▶ To effectively pacify some of the concerns pertaining to private sector operations in a PPP contract
 - ▶ Provide correct information to all the stakeholders.
 - ▶ To ensure the smooth implementation of projects, especially with regard to access, willingness to pay and dispute resolution.
 - ▶ To ease of the land acquisition issues
 - ▶ To measure the level of support for PPP in affected communities
- IV. Follow-up Action Plan:** There shall be follow-up consultations and refreshes at various stages of the procurement process.

10.3 Investor Summit / Conference

It is recommended to adopt a targeted approach to enable Assam to create a larger pipeline of interested investors. Assam PPPs shall be made a part of Investor Summit and similar type of conferences to create high impact and visibility to demonstrate pro-activeness & seriousness of Assam PPPs to investment attraction and communicate the success stories of Assam PPPs.

This would also provide a platform to approach leading players across varied focus sectors having strong investment potential.

Operationalization Plan: Investor Summit / Conferences

- I. **Creation / Distribution of the Material:** Printing of the Assam PPPs brochures / PPT for giving out to the interested and potential players.
- II. **Information of Participants:** Collecting the information of key potential investors with their contact details and emails for the follow up during procurement process.
- III. **Programme Design:** An agenda should be laid on explaining the investors and customers on Assam PPPs specific considerations such as:
 - ▶ **Kick-start dialogue with investors to put Assam on their list.**
 - ▶ **Assam's infrastructure needs and Government's plan** to induct private sector participation
 - ▶ **Reinforce Assam's advantage/ strengths/ value proposition** based on hard facts and data to appeal to investors' rationale
 - ▶ **Discuss investment proposals and Potential PPP projects in the pipeline** (along with tender dates) with the interested investors in target sectors and reassure them of Assam's support
 - ▶ **Make investors aware of recent PPP policy reforms / new initiatives** to improve the business climate
 - ▶ **Clarify investor myths and misperceptions** about Assam and improve the perception of the working of the P&D Department
 - ▶ **Considerations/benefits of doing business in Assam.**
 - ▶ Fiscal incentives available for PPP project procurements in Assam
 - ▶ **Successful PPPs of Assam**

10.4 Internal Tracker System / Dashboard

Internal Tracker System

There is no system in place to continuously track the stage wise progress across entire project lifecycle of Assam PPPs viz from conceptual stage to contract management.

EY team recommend to focus upon developing an online and real time 'Internal Tracking and Database System' that will track and monitor the entire pipeline of Assam PPPs and provide necessary information across several dimensions (Concept Note, TA, PDF, PFR, DPR, Bidding Documents, Selection of Bidder, VGF) in a more directed manner.

Objective:

- ▶ Continuously monitor the performance of the PPP Projects over the project life cycle
- ▶ Database would provide complete information on the ongoing projects
- ▶ Avoidance of human discretion / interference to the extent possible.
- ▶ Easy availability of complete audit trail and evidential data etc.,

Operationalization Plan: Internal Tracker System (ITS)

- I. Content:** Details about project status, approvals, funding status and proposed timelines across stages of Project Life Cycle.
- II. Responsibility:** PPP Cell would be responsible for developing such modern MIS facilities to manage Assam PPPs internally by keeping a track on the status, progress and monitoring required for PPP projects. An external agency may carry out the designing of the IT based system in consultation with PPP Cell.
- III. Tracker Design:** The design of tracker system shall be able to:
 - ▶ Monitor the stage wise progress along with the proposed timelines
 - ▶ Complete information on the ongoing projects
 - ▶ Collaborate on and retrieve latest project documentation and deliverables
 - ▶ Identify and manage issues

Dashboard

As a part of the “internal” review at the project level, the performance of the PPP program should be periodically evaluated. The evaluation of the PPP Projects should be tabulated and summarized so as to utilize the same for improving the quality of service delivery levels and sustainability of PPPs in future.

The internal evaluation would help to establish the “economy, efficiency and effectiveness” of the PPP program in Assam. EY team recommend internal evaluation of PPP procurement process through Dashboard tool to be monitored by the Head, PPP Cell. This internal evaluation is necessary for two reasons:

- ▶ Time bound check on the activities of the concerned authorities, whose integrity and performance is crucial to implementing successful PPPs in Assam.
- ▶ To evaluate whether the resources spent on the PPP program—such as in staffing the PPP Unit and in project development costs—are indeed achieving the aim of improving the effectiveness of investment in infrastructure assets and services.

Operationalization Plan: Dashboard

- I. Content:** Summarised Details of Projects under implementation and Potential PPPs
- II. Responsibility:** PMU set up in the PPP Cell will prepare the Dashboard tool and will be monitor by the Head, PPP Cell
- III. Dashboard Structure:** The structure of dashboard shall be done in a manner to be able to:
 - ▶ Track project status and task completion
 - ▶ Collaborate on and retrieve latest project documentation and deliverables
 - ▶ Identify and manage issues

10.5 Assam PPP Website

One of the important steps to promote Assam PPPs is through developing a website that provides a **single point access to Assam PPPs** with a view to achieve the objects of ensuring transparency, accountability fair and equitable treatment of bidders, promoting competition, maintaining integrity, probity and public confidence in the public procurement process.

Currently, the Assam PPP website has several information gaps with lack of investor friendly content and weak web presence. EY team recommends to revamp the website with updated content and better structure based on benchmarking of websites of regions which have successfully implemented PPPs nationally and internationally.

*Assam PPP website is not updated on **periodic basis** (EOI/Tender/ News and Events was last updated in 2012) and **not a very interactive website** (manual of upcoming events / Feedback Channel). Also, **does not cater needs of all the stakeholders** (Project List, Clearance Procedures / Guidelines) and there is no section for furnishing **information for investors**.*

A dedicated website for Assam PPPs 'www.assamppp.gov.in' shall provide comprehensive information on the **PPP initiatives taken up in Assam and various knowledge resources and GoA guidelines along with a web enabled database to provide information on PPP projects**. The recommended ways to facelift the Assam PPP website are through:

- ▶ Provide free and open access to general public to make them available all procurement related information to bring in transparency in bidding process.
- ▶ Educate, encourage and provide clear guidelines on PPP procurement process to the Line Departments and PPP Authorities thus ease the PPPs in Assam.
- ▶ Provide potential investors information and related guidelines to improve investment climate.
- ▶ Enable access to widest reach of Bids and unhindered secured Bid submission facility to achieve efficient and cost-effective procurement and shortened procurement cycles.

Website Maintenance

To ensure continued relevance, there is a need to have sufficient and capable resources for ongoing maintenance of the website database. The overall responsibility for developing the PPP website should be assigned to the Head of the PPP Cell. The recommended roles and responsibility for continuous updation mechanism shall be assigned in a following manner:

- ▶ **Head, PPP Cell:** Provides approval for the publication or removal of material on the PPP website and monitors the maintenance report on half-yearly basis.
- ▶ **PPP Cell:** Develop, publish, and periodically update guidelines and requirements for each stage of project development, standard documentation and procurement procedures.
An external agency would carry out the designing of the website in consultation with the PPP Cell.

Target audience

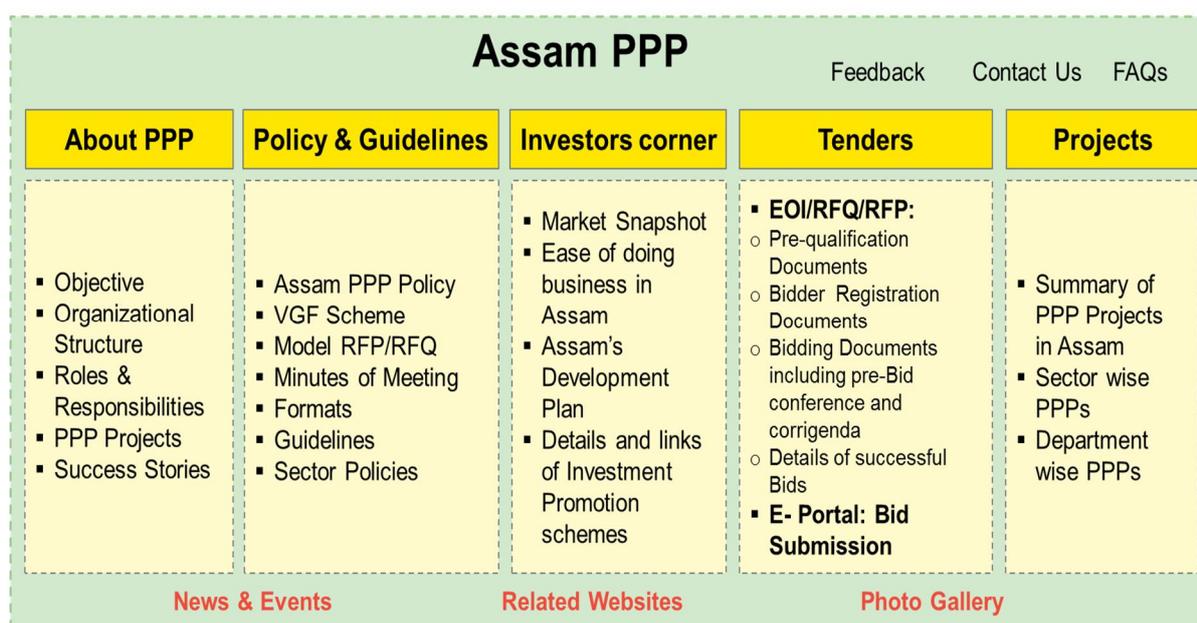
The website shall be developed to educate, encourage and thus facilitate line departments, public sector enterprise and private sector. The target audience shall include the following stakeholders for whom the information needs to be published on the website:

- ▶ Private Sector Developers
- ▶ Consultants
- ▶ Multilaterals, Banks and Financial Institutions
- ▶ Ministries and Line Departments- Local Govt and National Govt Departments
- ▶ Public

Website Content

Based upon the shortcomings of Assam PPP website and benchmarked against other PPP websites nationally such as Orissa, Gujarat, Rajasthan, Karnataka and Madhya Pradesh and internationally such as Philippines, there is a need to update the website with some new content.

The website content to be published and maintained must include (i) Overview of Assam's economy, (ii) Assam's PPP Policy, (iii) Procurement plans (quarterly bulletin), (iv) Tender notices, (v) Project trackers for – potential PPPs, development stage projects, under procurement project, (vi) Details and eligibility criteria of PDF and VGF, (vii) Details of project selection and procurement process and (viii) PPP Institutional Framework. The snapshot for Assam PPP website with updated content is shown in the below figure:



The recommended knowledge content for Assam PPP website is discussed below in detail:

I. About PPP

There shall be one portal providing detailed information about PPP in Assam in a following manner:

- ▶ Objective
- ▶ Organizational Structure / Chart
- ▶ Roles & Responsibilities
- ▶ Success Stories
- ▶ PPP Project List: List of PPP Projects under implementation and Projects in pipeline publicizing information on the PPP pipeline to engage private sector interest in PPP opportunities in Assam.

II. Policy & Guidelines

To ensure appropriate implementation strategy and conformance with agreed project standards and /or specification, there shall be a section on policy & guidelines including the following:

- ▶ Assam PPP Policy
- ▶ Updated Formats – Concept Note, PIN, PDF, Monthly Reporting
- ▶ PDF Guidelines.
- ▶ VGF Scheme
- ▶ Model RFQ / RFP / Concession Agreement Documents
- ▶ Minutes of Meeting

III. Investors corner

Designing a robust web based Investor Information System that will allow potential investors to be aware of investment promotion schemes and related regulations. The section furnishing information for investors shall include the following:

- ▶ Market Snapshot
- ▶ Ease of doing business in Assam
- ▶ Assam's Development Plan
- ▶ Details and links of Investment Promotion schemes
- ▶ Procedures for obtaining clearances / redirection the investors to the appropriate websites.

IV. Tenders

To enable access to widest reach of Bids and unhindered secured Bid submission facility for all, from any corner of the country or outside the country in case of International Competitive Bidding.

- ▶ **EO/RFQ/RFP:**
 - Pre-qualification Documents, Bidder Registration Documents, Bidding Documents.
 - Any amendments, clarifications including those pursuant to pre-Bid conference and corrigenda thereto.
 - List of bidders that presented Bids including during pre-qualification or bidder registration as the case may be.
 - Details of successful Bids, their prices and particulars of bidders.
 - Particulars of bidders who have been debarred by the State Government or a procuring entity together with the name of the procuring entity, cause for the debarment action and the period of debarment.
- ▶ **Portal – E Procurement Submission:** To bring in transparency in bidding process, GoA shall gradually move towards adoption of electronic Procurement solution(s) for their procurement needs on PPP.

V. Project Tracker / Database

One main component of an information dissemination program would be a web-based portal featuring a publicly-accessible database that would contain a project level basis information on its basic structure including sector, expected/actual contract award date, capital cost, executing government agency and private developer, and method of tender.

The database shall act as a repository of information on PPP projects along with their status of implementation across sectors and regions. The details shall be include:

- ▶ Summary of all PPP Projects in Assam
- ▶ Sector wise PPPs
- ▶ Department wise PPPs

VI. Other Information Channels

- ▶ **News & Events:** Upcoming events, conferences, trainings, high powered committee meetings, tender details
- ▶ **Feedback:** Channel to receive feedbacks, suggestions and complaint from public and other stakeholders.
- ▶ **Contact Details:** Contact information of the members of the PPP Cell, P&D
- ▶ **Related Websites:** Links to websites for agencies in India developing PPPs such as following: Assam PPP Cell, india.gov.in, www.pppindiadatabase.com, Planning Commission of India, pppinindia.com, Investment Commission of India, Ministry of Finance, Department of Industrial Policy & Promotion.
- ▶ **FAQ's**
- ▶ **Photo Gallery**

11. Next steps

Based on the gaps / issues highlighted in the 'Inception' and 'As-Is-Analysis' Report and benchmarking of best PPP practices across Indian states, EY team has prepared the draft PPP reforms. At the next stage, EY shall be carrying out the following activities in line with the timelines proposed and terms of reference:

Task Name	Description
Training and Communication	Conduct One day Stakeholder Workshop to provide training to the target audience on key areas of PPP as follows: <ul style="list-style-type: none">§ PPP Concepts§ PPP Procedures§ Case studies: Assam PPPs§ PPP Policy Reforms§ Capacity Building Plan
Final Report on PPP Reforms	Post event assessment and Incorporation of recommendations from all the stakeholders in the Final Report.

Annexure I: List of Consulted Stakeholders

S.No	Sector	Key Stakeholder
1.	PPP Cell, P&D	Mr. P.P. Saikia Additional Director, PPP Cell
2.	PPP Cell, P&D	Mr. Mohan Joshi External Consultant, PPP Cell
3.	P&D	Sh. Manivannan, IAS Secretary, P&D
4.	P&D	Sh. K.V. Eapen, IAS Additional Chief Secretary, P&D
5.	Agriculture	Sh. K.K.Mittal, IAS Additional Chief Secretary
6.	Agriculture	Sh. Manas Nath, IAS Joint Secretary (Nodal Officer)
7.	Agriculture	Mr. Prabin Hazarika Nodal Officer
8.	Agriculture	Mr. Tridip Kumar Deka
9.	Transport	Mr. Ratul Barua, IAS Secretary
10.	Tourism	Mr. Paul Barua, IAS Joint Secretary
11.	Tourism	Mr. Hilaly MD, ATDC
12.	Roads	Sh. Alok Kumar, IAS Additional Chief Secretary
13.	Urban Development	Sh. S.K. Gohai Barua, IAS Additional Chief Secretary Ex Commissioner, GMC
14.	Power	Mr. Pran Gopal Saha Director, APPPCL
15.	Cultural Department	Secretary
16.	Revenue Department	Sh. Rajesh Prasad, IAS
17.	Environment & Forest Deptt	Ali Askar Secretary
18.	Environment & Forest Deptt	Pawan Kumar Borthakur, IAS Principal Secretary
19.	Environment & Forest Deptt	Smt. Ruby Borah, IAS Secretary
20.	Forest Department	Shaifik Ahmed, CCF (Nodal Officer)
21.	Industries & Commerce	Sh. Ravi Capoor, IAS
22.	Industries & Commerce	Sh. Ashutosh Agnihotri, IAS

23.	Tea Tribes Welfare	Mr. Bhaskar Phukan, Director Directorate of Welfare of Tea & Ex-Tea Garden Tribes, Assam
24.	Tea Tribes Welfare	Sh. Ajay Tiwari, IAS Principal Secretary
25.	Finance	Sh. V.B. Pyarelal, IAS Additional Chief Secretary Finance & Cultural Department
26.	Education	Rita Chaudhary
27.	Health	Julie Sonowal, IAS
28.	Health	Mukul Gogai, IAS
29.	Guwahati Municipal Corporation (GMC)	Mr. Santosh Biswa
30.	Guwahati Metropolitan Development Authority (GMDA)	Smt. Varnali Deka CEO, GMDA
Private Sector Players		
31.	Lohia Group of Companies (Desang Hydro Power Project)	Mr. Saurabh Agarwala Group Head (Projects)
32.	Anjaybee Greens (O&M for Organic Market complex)	Nayanjyoti Bhattacharya Managing Director
33.	NACOF (Prospective bidder for Cold storage Project)	Zakir Hussain Co-ordinator (Paddy Procurement)
34.	Far Horizon India (Mahabaahu Project)	Mr. Sanjay Basu Chairman
35.	H.P. Institute (Skill Development Centre)	Mr. Pannalal Bhansali Chairman
36.	Gam Delicacy (O&M for Tribal Museum)	General Manager

Annexure II: Benchmarking

State	Institutional Structure
Haryana	<p>Cabinet Committee on Infrastructure(CCI) on the basis of recommendations of the Committee of Secretaries on Infrastructure (CoSI) , approves PPP projects with concession period more than 10 years and / or with investment of more than Rs. 25 crore(including those requiring VGF)</p> <p>CoSI under the chairmanship of Chief Secretary, GoH, considers and approves PPP projects having concession period up to 10 years and/or involving investment up to Rs. 25 crore</p> <p>PPP cell under Finance Department, Haryana would deal with all policy matters relating to PPP policy.</p>
Gujarat	<p>Gujarat Infrastructure Development Board (GIDB) under the chairmanship of Hon'ble CM is the Statutory Organisation established under The GID Act 1999. The Executive Committee of GIDB is chaired by the Minister of State (Industries). It is a Single window clearance which acts as :</p> <ol style="list-style-type: none"> 1) Nodal agency for development of infrastructure in the state 2) Advisory Body for PPP projects across state 3) Nodal Agency for VGF for Central and State Government PPP projects 4) Nodal Agency for DMIC projects 5) Apex Authority, regulatory body for all SIRs (Special Investment Region) of the state, under The Gujarat SIR Act, 2009 <p>GIDB: Organization where planning and projects for PPP are given final nodes.</p> <p>All policy matters relating to PPP Projects are coordinated by GIDB, PPP Cell</p>
Tamil Nadu	<p>Tamil Nadu Infrastructure Development Board (TNIDB), the nodal agency for infrastructure projects (Public and PPP) in the State. The Board is a multi-faceted organisation constituted to act as:</p> <ol style="list-style-type: none"> 1) Catalyst for project development 2) Project facilitator 3) Policy driver 4) Project monitoring agency 5) Management of state support to projects (Project Preparation Fund (PPF) , Tamil Nadu Infrastructure Development Fund (TNIDF)) <p>TNIDB under the chairmanship of chief Minister, GoT has been constituted for approving PPP projects of a value exceeding Rs. 10 crore</p>
Rajasthan	<p>Empowered committee on Infrastructure Development (ECID), headed by the Chief Secretary, approves all PPP projects</p> <p>Public-Private Partnership Appraisal Committee (PPPAC) under the chairmanship of the Principal Secretary (Finance), deliberates and recommends PPP Projects to the Approving Committee</p> <p>PPP cell under supervision of Principal Secretary, planning department, acts as a nodal agency to coordinate and manage PPP projects</p> <p>All policy matters relating to PPP Projects are coordinated by PPP cell</p>

<p style="text-align: center;">Uttarakhand</p>	<p>Empowered Group of Ministers (EGM): Government of Uttarakhand shall constitute Empowered Group of Ministers (EGM) consisting of following members under the chairmanship of Chief Minister for approval of all infrastructure projects being undertaken in PPP mode :</p> <p>Permanent Members:</p> <ol style="list-style-type: none"> a. Finance Minister, Government of Uttarakhand b. Planning Minister, Government of Uttarakhand c. Minister for Urban Development, Government of Uttarakhand d. Minister for PWD, Government of Uttarakhand e. One Minister to be nominated by Chief Minister <p>Non-Permanent Members:</p> <ol style="list-style-type: none"> f. Minister of the concerned Administrative Department <p>State Nodal Officer PPP, Principal Secretary Planning/ Secretary Planning, shall be the member-secretary of EGM.</p> <p>Empowered Committee on Infrastructure (ECI): Government of Uttarakhand shall constitute Empowered Committee on Infrastructure (ECI) consisting of a group of Secretaries under the Chairmanship of the Chief Secretary, Government of Uttarakhand for facilitating infrastructure development in the State under PPP. State Nodal Officer PPP, Principal Secretary Planning/ Secretary Planning, shall be the member- secretary of ECI. All PPP Projects will require approval of ECI.</p> <p>PPP Cell and the Technical Secretariat: The ECI shall be assisted by a PPP Cell in the Planning Department in undertaking the functions specified under this policy & shall be under the direct supervision of Chief Secretary.</p>
<p style="text-align: center;">Madhya Pradesh</p>	<p>Directorate of Institutional Finance (DIF) GoMP, the Nodal Agency for PPP Projects in the State</p> <p>A State Level Empowered Committee (SLEC) under the chairmanship of Chief Secretary, GoMP has been constituted for recommending PPP Projects eligible for Gol's VGF support or for approving PPP projects costing over Rs. 10 crores.</p> <p>Department Level Empowered Committees (DLEC) under the chairmanship of the concerned line department's HOD are convened for approving PPP Projects where Gol's VGF support is not required or where the cost is less than Rs. 10 crores</p> <p>The PPP cell is linked to a state level empowered committee (SLEC) for the Madhya Pradesh Project Development Fund (MPPDF). All policy matters relating to PPP Projects in the State are coordinated by the Directorate of Institutional Finance, PPP Cell</p>
<p style="text-align: center;">Andhra Pradesh</p>	<p>Public Private Partnership Approval Committee (PPPAC) ,under the chairmanship of Department of Economic Affairs Secretary is convened for approval of PPP projects</p> <p>PPP cell under Finance Department, the Nodal Agency for processing all PPP projects in the State. PPP Cell in the State Government will interact with PPP Cell in Department of Economic Affairs (DEA) in identifying bankable projects</p> <p>Proposal for seeking VGF clearance of the Empowered Institution shall be sent through the PPP Cell of DEA</p>

West Bengal

Standing Committee of the Cabinet on Industry, Infrastructure and Employment (SCCIIE): The Standing Committee, of the Cabinet on Industry, Infrastructure and Employment shall consider for approval of all large value Projects under PPP which are above Rupees 50 Crore on the recommendation of the Empowered Committee of Secretaries (ECOS).

Empowered Committee of Secretaries (ECOS): A Committee under the Chairmanship of the Chief Secretary, Government of West Bengal will be constituted to consider for facilitation of infrastructure project under PPP. ECOS will take up for approval all the PPP Projects with project cost up to Rs. 50 crore. It will also consider the PPP projects above Rs. 50 crore and recommend for approved to the SCCIIE. The other Committee members shall be Secretaries of the Departments of Planning Urban Development, Tourism, Commerce and Industries. Power, Municipal Affairs, Public Works Department and Finance. The ECOS may co-opt a member from any other Department. The Finance Secretary shall be the Convener of the Committee.

PPP Cell: Created in the Finance Department. Provide hand-holding support to the Departments sponsoring PPP projects. Finance Secretary is the nodal officer of the PPP cell and will be assisted by the Special Secretary. Also assisted by PPP Expert(s), MIS Expert, Financial Expert, Public Finance Expert, Legal and Regulatory and other supporting staff

Administrative Department of State Government / Department of Infrastructure Development in consultation with the Administrative Department, identifies PPP projects and seeks approval form competent Authority

PPP Bid Evaluation Committee (PPPBEC) chaired by Infrastructure and Industrial Development Commissioner(IIDC) evaluates all Bids for PPP Projects costing less than Rs. 1000 crores

Committee of Secretaries chaired by the Chief Secretary, GoUP evaluates all Bids for PPP Projects costing Rs. 1000 crores or more

Competent Authority(Hon'ble Cabinet of Ministers) of GoUP, grants final approval of the Developer for PPP Project

Special PPP cell for health sector

High Level Clearance Authority (HLCA): Chaired by Chief Minister. All PPP Projects having investment of *over Rs. 500 Crore* will require approval of HLCA. Special Secretary, PPP shall be the member-convener of HLCA.

Odisha

Empowered Committee on Infrastructure (ECI): Comprises of a group of Secretaries under the Chairmanship of the Chief Secretary, GoO for facilitating infrastructure development in the State under PPP. Special Secretary, PPP shall be the member-convener of ECI.

PPP Cell and the Technical Secretariat: The ECI shall be assisted by a PPP Cell in the P&C Department in undertaking the functions specified under this policy & shall be under the direct supervision of Chief Secretary. The PPP Cell is assisted by a Technical Secretariat.

Annexure III: Concept Note

General					
Name of the Project					
Sector-					
Implementing Agency/Government Department-					
Project Details					
Project background					
Greenfield / Brownfield					
Record of asset life and quality of asset					
Capex-based / Opex based					
Time Period					
Project Output					
Project Cost					
Breakup of project cost – component wise					
Justification for the project <ul style="list-style-type: none"> · Why a PPP is proposed? · Listing all reasonable options considered (both PPP and traditional). 					
The expected role of Private entity and the Implementing Institution. <table border="1" style="width: 100%; margin-top: 10px; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 5px;">Role of Private Entity</td> <td style="padding: 5px;"></td> </tr> <tr> <td style="padding: 5px;">Role of Department</td> <td style="padding: 5px;"></td> </tr> </table>		Role of Private Entity		Role of Department	
Role of Private Entity					
Role of Department					
Does the project has linkages with similar projects? Yes/ No					
Will the project have predetermined user charges/ tariffs?					
What could be the possible areas of public outrage?					
How will department ensure support from relevant stakeholders?					
Experience and Capacity of the department					
Does the government has any experience of implementing PPPs? Yes/No					
Whether similar project has been undertaken in the state previously? If yes, please list down project details					
Has a similar project been implemented in any other state? If yes, please list down project details.					

Availability of land		
Project land available with Government - Yes/ No		
Percentage of land available with Government?		
How will the department acquire remaining land?		
Please provide details of land available with the department.		
Location	Area	Suitability
Please provide expected land acquisition and resettlement costs.		
Project Financing and Technical Support		
Would the project require a transaction advisor?		
If yes, Is financing needed from Project Development Fund? Has an application been made?		
If No, Does the department need PPP Cell's support in pre-feasibility, DPR and transaction advisory services		
Is project proposed to be governed and implemented under any specific Policy/Guideline?		
Sources of public finance, if project envisage public finance.		
Is project eligible for VGF?		
Market Interest		
Potential private sector players to implement the proposed PPPs		
Likely interest of private entities in the Project		

Annexure IV: PDF Requisition Form I

Nature of Assistance	1. From State PDF Funding Amount of INR _____ 2. Is Viability Gap Fund (VGF) also sought separately? Yes/No
Project Name	
Concept Note Reference No.	
Sector	
Line Department	Name of the Department Name of the Nodal Officer Designation of the Nodal Officer Contact No. Address for Communication
Location of Project	
Need for the Project	
Brief Project Description	
Project Implementation Milestones	List key milestones
Terms of Reference of Transaction Advisor/ Consultant	a. Scope of work of Transaction Advisor/ Consultant b. Time Frame for completion of activities c. Deliverables d. Estimated Consultancy Fees with break up (<i>Based on Scope of work and estimated project cost</i>)
Estimated Project Development Expenses (In Lakhs)	Surveys and Investigations Consultation Fees Technical Environmental & Social Legal Financial Any other Total Consultation Fees Transaction Advisory Fees Marketing and Procurement related Expenses Any other Total Estimated Project Development Expenses

Authorized Signatory

Annexure V: PDF Requisition Form II

(To be submitted on completion of Bidding Process)

Nature of Assistance	<ol style="list-style-type: none"> 100% from State PDF 25% State Contribution towards IIPDF proposals from State PDF
Project Name	
Sector	
Line Department	Name of the Department Name of the Nodal Officer Designation of the Nodal Officer Contact No. Address for Communication
Reference Details of In-principle approval of PDF in Stage-1	
Brief Project Description	
PDF Sought for	<i>Bid amount of preferred selected bidder. (In case of IIPDF assistance, 25% of bid amount towards state contribution to be sought from State PDF)</i>
Terms of Reference of Transaction Advisor/ Consultant	<ol style="list-style-type: none"> Scope of work of Transaction Advisor/ Consultant Time Frame for completion of activities Deliverables Consultancy Fees with break up Other Key features including Payment terms, Concession Period, Performance Guarantee etc.
Bidding Details:	<ol style="list-style-type: none"> Date of Issue of Bid No. of Bids received and qualified Last date of Submission Minimum Quote Quote of preferred selected bidder
Eligibility Criteria	<ol style="list-style-type: none"> Minimum Eligibility Criteria, if any Technical Proposal Financial Proposal
Evaluation Method	<ol style="list-style-type: none"> QCBS (Quality Cost Base Selection) Lowest Price Bid Other (Pl. Specify)

Authorized Signatory

Annexure VI: PIN Form

1.	General	Response
1.1	Name of the Project	
1.2	Location (District/Town)	
1.3	Implementing Agency, Government Department	
1.4	Sector	
1.5	Mode of implementation	Public/PPP
1.6	Previous phases, if any	
2.	Project Description	
2.1	Brief description of the project including the various project components	
2.2	Justification for the project	
2.3	Information on similar projects undertaken previously?	
2.4	Does the project have linkages with similar projects?	
2.5	Potential private sector players to implement the proposed PPPs	
2.6	Project land available with Government	
2.7	Land acquisition required, if any.	
2.8	Land acquisition timelines	
2.9	Clearances required and expected timelines	
2.10	Estimated total project cost with break-up under major heads of expenditure. Also indicate the basis of cost estimation	
2.11	Will the project have future phases?	
2.12	Period of Concession and justification for fixing the period including nature of concession proposed	
2.13	Project implementation schedule	
3.	Market Assessment including demand and supply forecast	
3.1	Target population	
3.2	Key benefits that would be provided to the users	
3.3	Demand forecast and ability or willingness of target users to pay	
4.	Identification and sharing of Project Risks	

4.1	Pre-Operating Risks viz. Land acquisition, Finance Risk, External Linkages, Approvals etc	
4.2	Construction Phase Risks viz. Design, Approval etc.	
4.3	Operational Phase Risks	
4.4	Other Risks	
5.	Environmental and Social Impact Analysis	
5.1	Environmental Impact and envisaged clearances	
5.2	Mitigation measures for identified impacts	
5.3	Social Impact and schemes for Rehabilitation and Resettlement	
5.4	Mitigation measures for identified impacts	
6.	Potential Barriers	
6.1	High environment mitigation costs	
6.2	Risk to project viability by losing public support or creating active public (and political) opposition	
6.3	High Impact on labour and employment	
6.4	High Demand risk	
7.	Financing Arrangements as per the PFR	
7.1	Sources of financing (equity, debt, mezzanine capital etc.)	
7.2	Phasing of investment, if already prepared	
7.3	Indicate the revenue streams of the Project (annual flows over project life).	
7.4	Explain in reasonable detail the cost-benefit analysis	
7.5	The cost recovery/income generation assumptions of the Project	
7.6	Will the project have predetermined user charges/ tariffs? If not, who will fix the user charges/tariffs?	
8.	IRR	
8.1	Economic IRR	
8.2	Financial IRR, indicating various assumptions (attach separate sheet if necessary)	
9.	GoI/GoA Support	
9.1	Is the project applicable for VGF?	
9.2	Likely amount of VGF required for the project	

9.3	Will the VGF be used as a capital grant at the stage of project construction? If no, please furnish details of the alternative proposal	
9.4	Will the Government provide any assistance in addition to the VGF under this scheme? If yes, please furnish details	
9.5	Is there any other scheme of the Central/State Government under which this project is eligible for financial assistance? If yes, indicate the details thereof	
10.	Next steps	
10.1	Timeframe required for completing next steps	