

European Union International Urban Cooperation, webinar titled,

‘Contract Development and Management for Urban and Climate PPP Projects’

Monday, September 21, 2020 | 2:30 pm IST onwards

The webinar will begin shortly....





Speakers



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International Urban Cooperation: Sustainable and Innovative Cities and Region

Agenda: Contract Development and Management for Urban and Climate PPP Projects

September 7, 2020



Background



IUC

- International Urban Cooperation (IUC) program aims to enable cities to link up and share solutions to common problems
- Includes city-to-city cooperation and sub-national action on sustainable urban development
- The program fosters inter-regional cooperation on innovation for local and regional development



Need for training

- Capacity building of ULBs towards the PPP procurement and management process
- Sharing best practices in the PPP lifecycle from around the country and the world
- Develop understanding of private sector needs for successful implementation of PPP projects



Outcome

- Understanding the complexities involved in procurement and management of urban and climate PPP projects
- Improvement of contract development and management
- Development and implementation of better projects



Speaker profile



General experience

- Mohit Ganeriwala is a Director in the Infra and Public Finance practice of CRISIL Infrastructure Advisory
- Work experience of more than 15 years (including 13 years in CRISIL)
- MBA from TAPMI, Manipal (Finance and Marketing) and graduation from St. Xaviers, Kolkata, India
- Experience of working in India, Africa, Middle East, and South East Asia
- Experience of working across value chain on projects in urban sector, PPPs and skill development
- Worked with more than 50 ULBs under flagship missions of Government of India such as Smart Cities, JnNURM and AMRUT
- Extensive knowledge across project lifecycle of PPPs including capacity building, feasibility and bid process management



Summary of select PPP projects

- Webinars on PPPs in healthcare sector, PPP contract clauses and PST for officials of government agencies of Nigeria (ICRC)
- Development of PPP E-learning modules to be hosted on website of World Bank and PPP Units in Africa (World Bank)
- Pre-feasibility studies for four SWM and four student hostel PPP projects in Tanzania (World Bank)
- Preparation of PPP model documents including RfQ, RfP and PPP agreement in Tanzania (World Bank)
- PPP viability study for eight municipal projects in Dar es Salaam, Tanzania (World Bank)
- Consultancy for transaction advisory to assist in implementing 5 university hostel projects through PPP for 35,000 students (Govt. of Kenya)
- Transaction advisory services for waterfront development in Mauritius (State Property Development Company)



Agenda



Module 1

Introduction to public-private partnerships (PPPs)

1.1	About PPP projects
1.2	PPP project lifecycle and benefits
1.3	PPPs in urban sector
1.4	PPP project preparation



Module 2

Contract development for PPP projects

2.1	Understanding PPP procurement
2.2	Bidding stages in PPPs
2.3	Concession agreement for PPP projects
2.4	Q&A



Module 3

Contract implementation and monitoring for PPP projects

3.1	Contract management for PPP projects
3.2	Service delivery monitoring
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Contract implementation and monitoring for PPP projects

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Why PPP ?



Availability of private sector finance

- Through PPPs governments can leverage private sector finances to meet the infrastructure needs
- Projects are implemented without delays, possibly freeing up public resources for other projects
- Governments may face serious budget restrictions/ public debt constraints; hence, PPP might be the way forward



Achieving greater value for money through efficiency gains

- Incentivising on-time and within-budget delivery
- Optimising the life cycle costs and providing an opportunity to innovate
- Optimizing the risk allocation

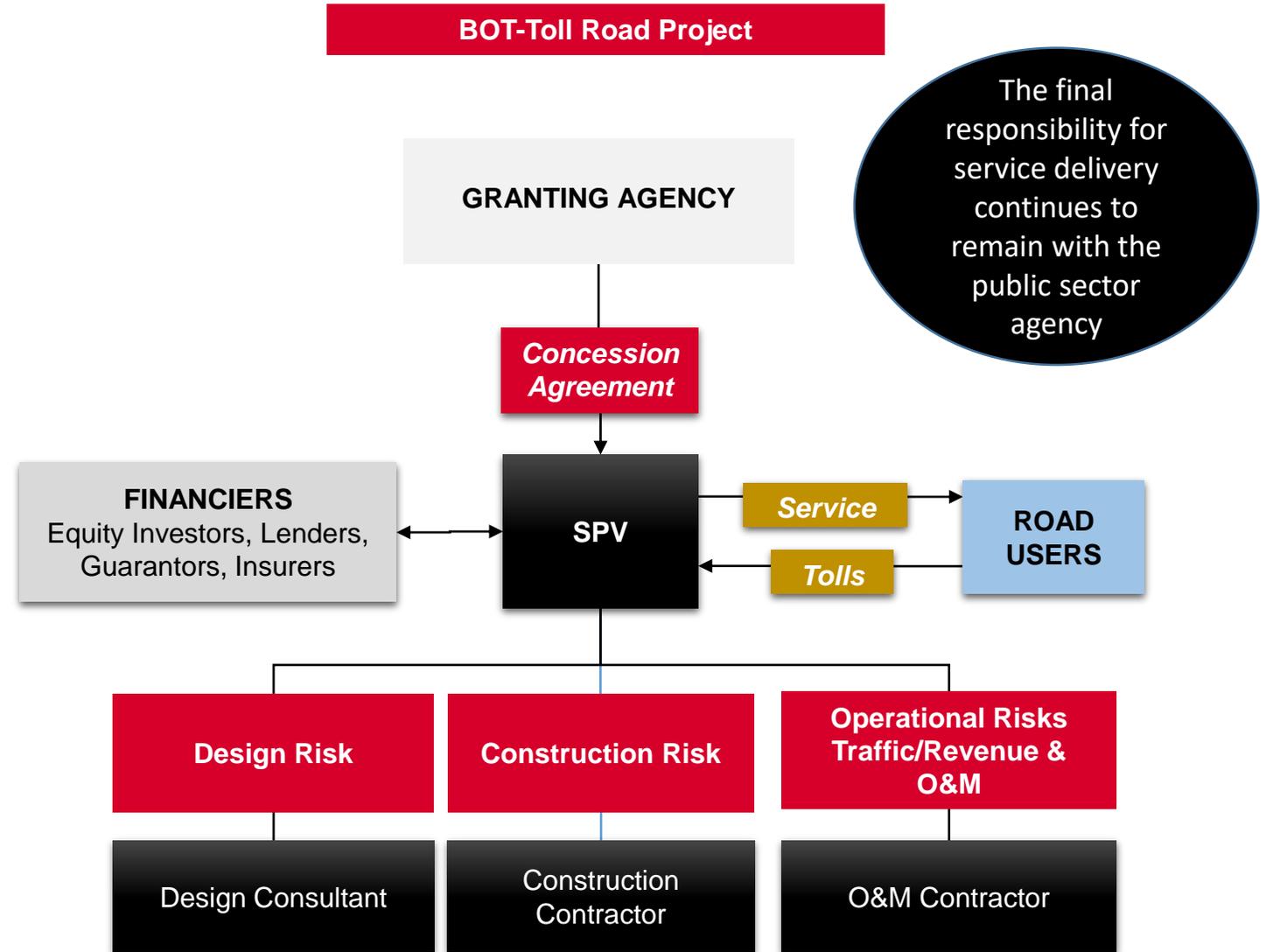


What is a PPP?



7 essential conditions that define PPPs

- 1 **Arrangement**
Between public & private
- 2 **Provision**
Of services for public benefit by private partner
- 3 **Investments**
In and/or management of public assets by private partner
- 4 **Time Period**
For a specified time
- 5 **Risk Sharing**
Optimally between contracting parties
- 6 **Standards**
Focus on quality of service / performance
- 7 **Payments**
Linked to performance



Expectations of government and private sector



Government

- Harness private sector efficiencies (on-time, on-budget delivery; access to latest technology etc.)
- Augment government resources
- Provide better value for money
- Facilitate improved access and service delivery



Private sector

- Viable business opportunity
- Fair distribution of risk & responsibility
- Transparency in procurement
- Consistency in legal and regulatory framework



PPPs: common myths/concerns



 <p>Myth/Concern</p>	 <p>Clarification</p>
<p>Profit motive of private sector is incompatible with the service motive of public sector</p>	<p>No. The key is to harness private sector's profit motive, by incentivizing them to provide better quality service and earn reasonable return.</p>
<p>PPPs increase user tariffs</p>	<p>Not Necessarily. When appropriate safeguards like effective regulation and/or adequate competition are in place.</p>
<p>Money for PPPs is from private sector "pockets"</p>	<p>Initially, Yes. Private sector make those investments provided they can recover those investments either from users or the government with reasonable return.</p>
<p>Once a private sector partner is brought in, there is little or no role for the public sector</p>	<p>No. Public sector's role changes from direct involvement in construction & service provision, to ensuring the PPP delivers value for money for government and users.</p>



PPPs for different infrastructure projects



Power

- Generation
- Transmission
- Distribution



Transport

- Roads
- Airports
- Ports
- Railways
- Terminals



Urban

- Water/ sewerage
- Solid waste
- Transport
- Parking lots



Education

- Facilities mgmt.
- Service delivery



Health

- Facilities mgmt.
- Clinical services
- Diagnostics



PPPs come in many shapes and sizes



	 Key parameter	Different Types of PPPs				
		 Contracts		 Concessions		
		Management	Lease	Area	BOT /DBFOT (User Fee)	BOT (Annuity)
Responsibility	Asset Ownership	Public	Public	Public	Public & Private	Public & Private
	Incremental Capex	Public	Private	Private	Private	Private
	O&M	Private	Private	Private	Private	Private
Risk	Construction	NA	Private	Private	Private	Private
	Finance	NA	Private	Private	Private	Private
	Demand	Public	Private	Private	Private	Public

BOT: Build-Operate-Transfer; DBFOT: Design-Build-Finance-Operate-Transfer



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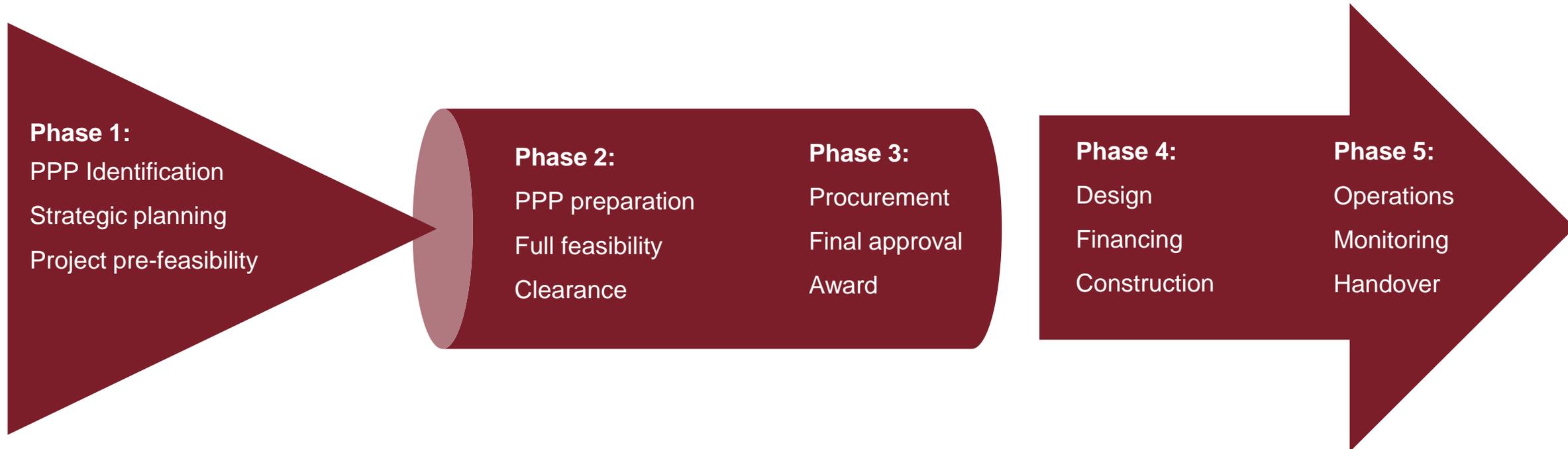
Contract implementation and monitoring for PPP projects

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PPP life cycle process



PPP identification → PPP development pipeline → PPP operation



PPP life cycle process

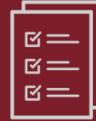


Documents prepared under different stages of PPP project lifecycle



Phase 1: Identification of project

- Needs and options analysis
- Preparation of pre-feasibility report



Phase 2: Preparation & appraisal

- Preparation of feasibility report
- Project procurement plan



Phase 3: Procurement & award

- Preparation of RFQ and RFP
- Preparation of PPP contract document



Benefits to ULBs from PPP projects



01



Technical and managerial expertise

Private sector brings efficiency in terms of optimization of lifecycle costs, risk management and innovation

03



Promotion of environmental sustainability

Private sector focuses on efficient use of resources and materials over the project lifecycle

05



Better responsiveness to consumer needs

Extensive project preparation with consumer demands given high priority while devising overall project plan

07



Extracting long-term value for money

Through appropriate risk transfer to the private sector over the life of the project from design to operations

02



Large scale injection of capital

Private sector specializes in infusing large scale capital in small time frame in bankable projects

04



Greater efficiency in using capital

Due to private sector expertise in the entire project lifecycle, capital is utilized effectively and efficiently

06



Cost based tariff for services

Tariffs are set based on extensive financial modelling exercises keeping project cost as an underlying factor

08



Encourage public sector reform

PPPs can serve as catalyst for reforms in procurement skills, accountability, management, contestability, etc.



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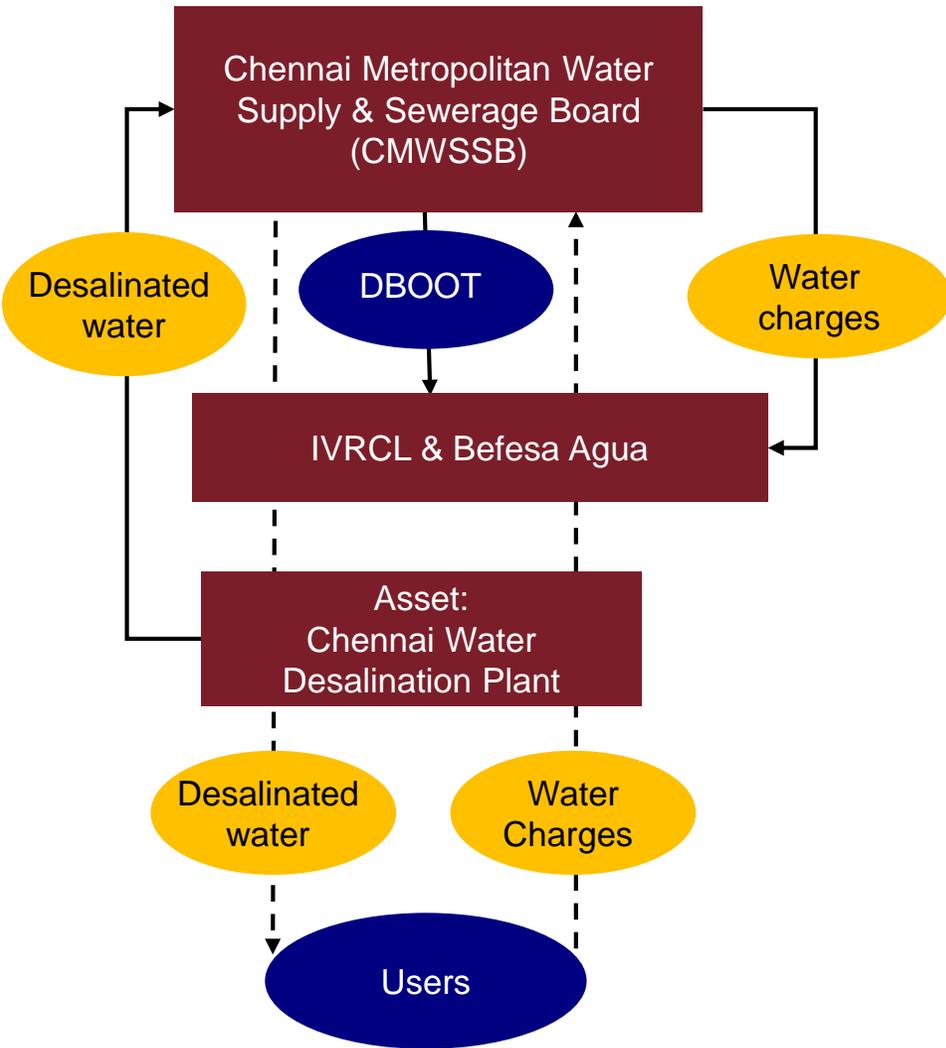


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DBOOT, Minjur Desalinization Plant, Chennai



Objective: To augment the scarce water supply in Chennai

Establish a 100 million liters per day seawater desalination plant

Project Structure	CMWSSB entered into a DBOOT concession agreement Duration of the concession is 25 years
Project specifications	Project cost of Rs 5.15 billion Desalination plant is spread across a site of 60 acres
Project details	Project operational since 25 July 2010 IVRCL sold its entire equity stake of 75% - Rs 110 Cr Utico FZC (Dubai firm) now has major stake in SPV
Responsibility of concessionaire	Design, finance, build, O&M by concessionaire All related risks borne by concessionaire
Commercial arrangement	Long term water purchase agreement from CMWSSB Chennai Metrowater pays Rs 48.7 per kiloliter to SPV Uninterrupted power supply to concessionaire
Current status	Project is operational with Utico FZC operating plant



BOOT, Kanpur Waste to energy plant



Kanpur Nagar Nigam (KNN)

Annual payment

BOOT

A2Z Infrastructure Ltd

Fuel Fees

Construction, O&M of incinerator plant

Manure charges

RDF

Compost

Government enterprises and merchants

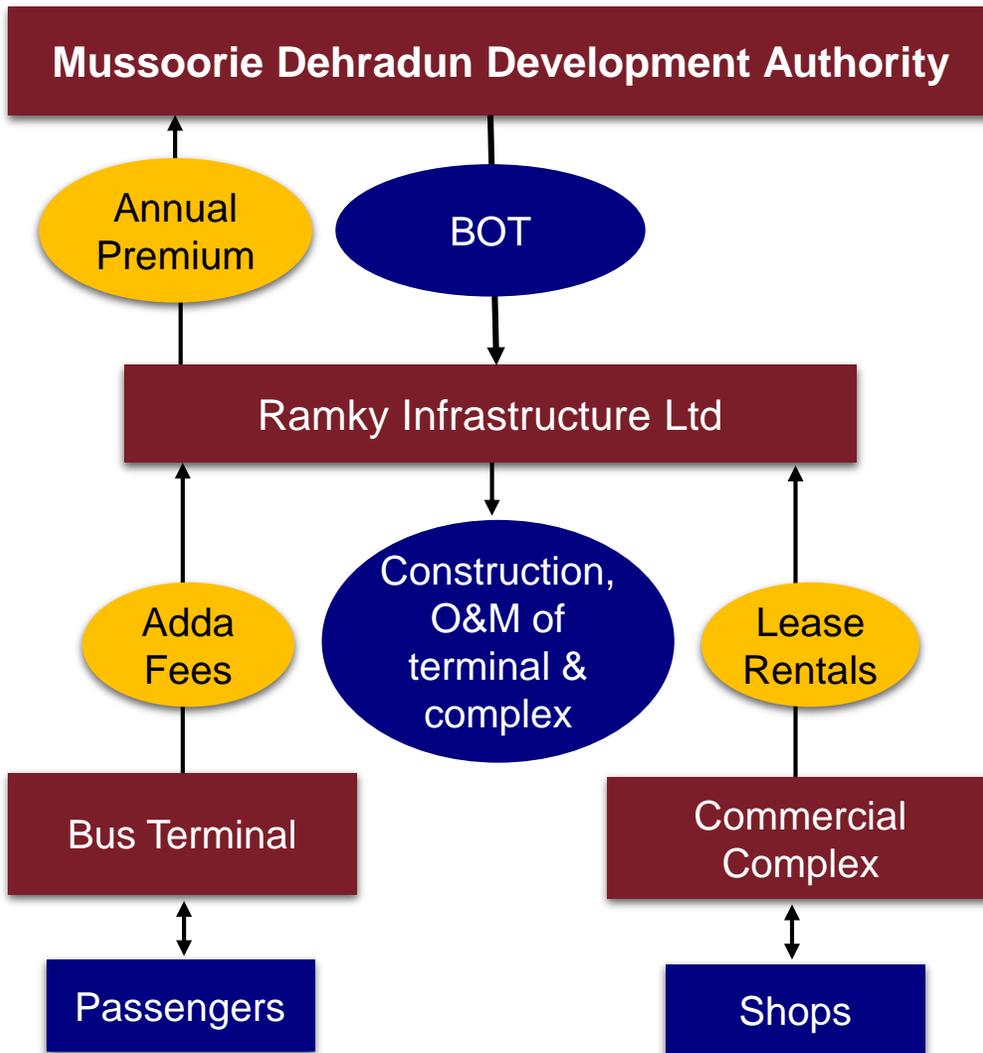
Government enterprises

**Objective: To process 1,500 tonnes of solid waste per day
To produce refuse-derived fuel (RDF) for commercial use**

Project Structure	BOOT concession entered with A2Z Infrastructure
Project specifications	Capital Cost ~Rs 560 million 15MW plant spread across 46 acres Annual payout of around Rs 10 Crore from ULB
Project details	Concession signed on August 2008 Operational from March 2011 (Duration: 30 years)
Responsibility of concessionaire	Design, finance, build, O&M by concessionaire All related risks borne by concessionaire.
Commercial arrangement	C&T, processing and disposal by A2Z KNN to pay Rs 96 per tonne for processing waste
Current status	Plant is defunct since December 2014 Due to non-supply of requisite waste Non-payment of dues by KNN to tune of Rs 6 crore



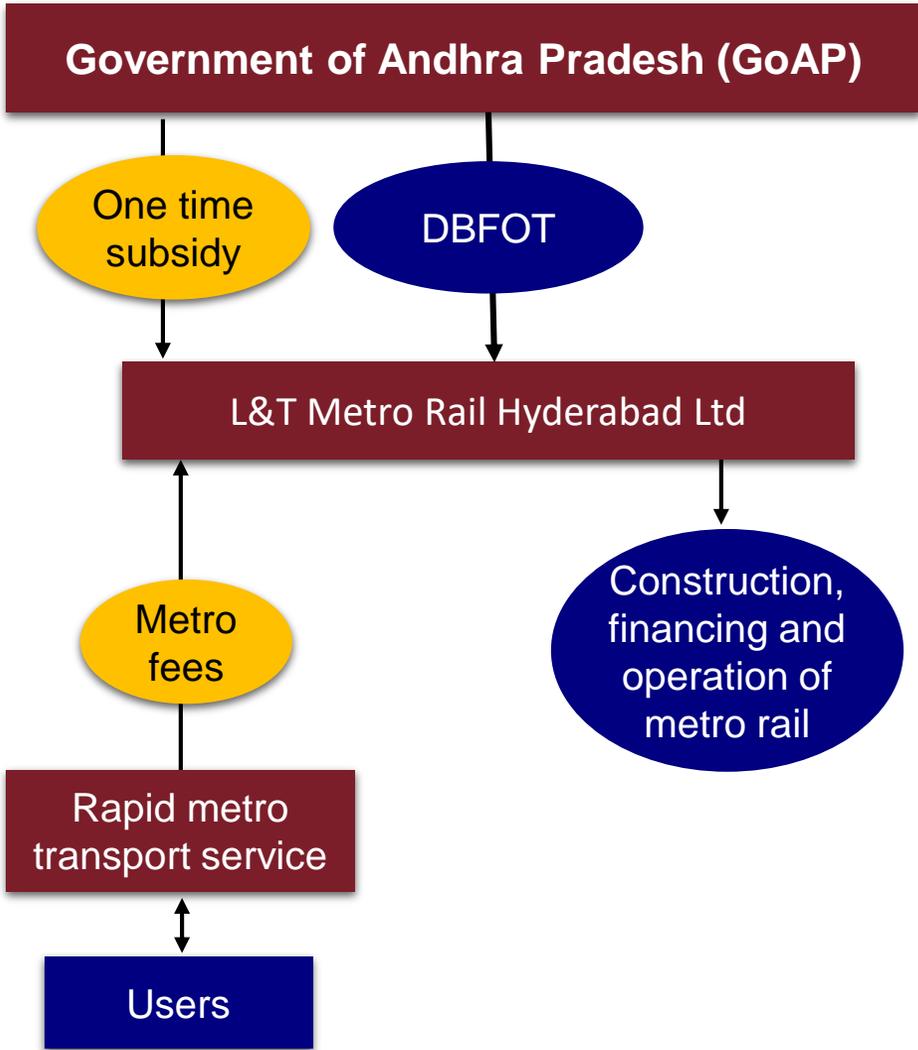
BOT, Interstate Bus Terminal, Dehradun



Objective: To develop a modern Inter State Bus Terminal (ISBT)	
Project Structure	First BOT ISBT in India, Phase 1- ISBT Complex Phase 2- entertainment & comm. complex
Project specifications	Cost of project ~ Rs 200 million Phase 2 complexes covering 69,771 sq ft area
Project details	Agreement signed on July 26, 2003 Construction started by August 15, 2003 Operational since June 3, 2004 (Duration: 20 years)
Responsibility of concessionaire	Design, finance, build, O&M by concessionaire All related risks borne by concessionaire
Commercial arrangement	All construction cost by concessionaire Annual revenue premium escalated annually @5%
Revenue sources	Terminal fees from scheduled 750 buses/day Lease rental from commercial complex Guaranteed annual revenue of Rs 8.1 million to ULB
Current status	ISBT is currently operational & Phase 2 completed



DBFOT, Hyderabad Metro Rail Project



Objective: Establish rapid transit system supporting 2 lakh people/day

Project Structure	Phase 1: 3 lines covering a distance of ~72 kilometres Phase 2: airport metro express ~62 kilometres (undertaken by govt.)
Project specifications	Project cost of Rs 18.8 billion Land network acquired by GoAP; leased to SPV 1.2 million sq feet of area is utilized so far
Project details	Concession signed in September 2010 Operational since 24 September 2018 (Duration: 35 years) Largest metro rail network under PPP mode
Responsibility of concessionaire	Design, finance, build and operate by concessionaire All related risks borne by concessionaire
Commercial arrangement	SPV has the right to collect the metro tariffs One time Rs 1,458 cr grant provided by central govt.
Current status	Phase 1 is completed and operational



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Objective of feasibility study



Coverage of feasibility study



Strategic suitability

- Alignment with government priorities
- Identification of service need
- Assessment of service delivery options
- Scoping of the project



Due diligence

- Technical due diligence
- Environmental sustainability
- Social sustainability
- Economic due diligence
- Financial due diligence
- Legal due diligence



PPP suitability

- Value for Money
- Market appetite



Institutional capability

- Institutional capacity
- Preparedness of contracting agency
- Project execution capability of contracting agency



Fiscal affordability

- Extent and nature of government fiscal support
- Quantification of fiscal support



Risk assessment

- Risk of delay in land acquisition
- Financing risk
- Design and construction risk
- Operations and maintenance risk
- Market risk and demand risk
- Foreign exchange risk
- Environmental and social risk



Discussion – Development of Project on PPP – Yes or No?



Brief about the proposed SWM PPP project

- Project to be carried out as an integrated SWM project for a duration of 15 years under DBFOMT mode
- Private player would be responsible for collection, transportation, landfill and disposal of solid waste
- The project would cover all the wards and waste generators. Population is 10 lakhs and city generates 500 tons of waste daily
- Current user charges of Rs 100/month to be increased to Rs 200/month from households; escalated @ 10% every three years



Issues faced by the proposed SWM PPP project

- Project site is owned by ULB but is currently encroached by slum dwellers who will need to be resettled to an alternative site
- Households are unwilling to pay higher charges from Rs 100 per month to Rs 200 per month
- The contractual employees of ULB involved in solid waste management will need to be integrated with the private player
- Project is financially unviable and requires one time viability gap funding support to tune of 15% of capital cost



Q&A



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Pre-requisites of PPP Procurement

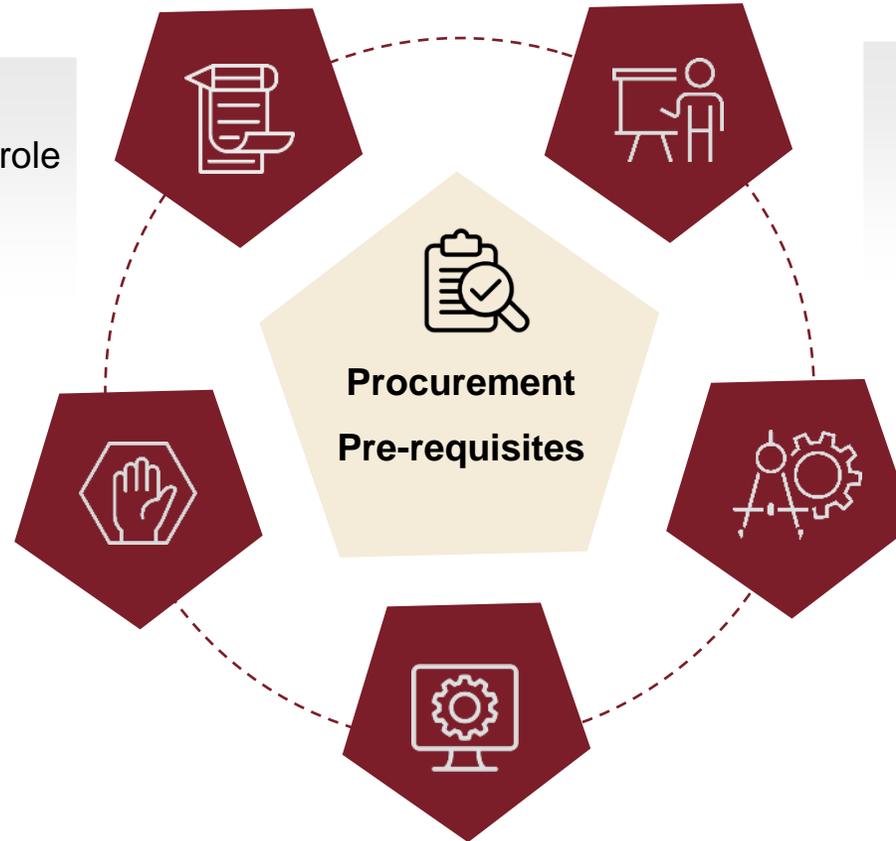


Feasibility is complete and project ready

- Clear identification of public and private role
- Appointment of transaction advisor
- Feasibility study is complete

Ensure enabling environment

- Legal and regulatory framework
- Inline with government policies
- Buy in of political leadership



Open and competitive bidding process

- Bidding process to be free and fair
- Allows transparency and competition
- Simple and cost effective

Ensure market sounding for the project

- Target bidders and their credentials
- Advertise in newspapers/magazines
- Establish contact with target bidders

Clarity on roles / obligations of public sector

- Government has authority to award project
- Encumbrance free land title or project assets
- Availability of funds for VGF etc.



Principles of procurement



Key considerations governing the award of public contract



Fairness

Equality of opportunity



Transparency

Availability of information in public domain



Integrity

Unbiased bid evaluation



Accountability

Maintenance of documentation trail for audit



Efficiency

Cost effective and time efficient procurement



Compliance

Compliance with statutory rules



Standard bidding process for PPP



Bidding stages

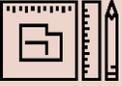


Activities involved

Market sounding with potential bidders	Prepare and issue RFQ documents	Prepare RFP & issue to shortlisted bidders	Public announcement of award	Meet financial precedents established in contract
Incorporating feedback	Evaluate bids & shortlist bidders	Evaluate, rank & select preferred bidder	Negotiation & PPP contract signing	Achieve financial close to implement project



Two stage competitive bidding



RfQ stage



RfP stage



Phase 1:
Release of
RfQ



Phase 2:
Pre-qualification
conference



Phase 3:
AFQ evaluation
& submission



Phase 4:
Shortlist of
applicants

Phase 1:
Release of
RfP

Phase 2:
Pre-bid
conference

Phase 3:
Bid submission
& evaluation

Phase 4:
Selection of
bidder



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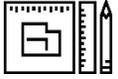


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Request for qualification



What is an RfQ?

- Request for qualification pertains to the prequalification stage for the bidding process
- Aim is to screen out those bidders that do not meet a threshold of technical and financial capacity
- With preliminary details, bidders wishing to participate may then apply for, complete, and return an RfQ document



Eligibility of applicants

- Authority wishes to receive Applications for Qualification (AFQ) to shortlist experienced & capable applicants for bidding stage
- The applicant may be a single entity or a group of entities (the “Consortium”), coming together to implement the project
- Any entity (the applicant or any member of the consortium) shall not be eligible to submit an application if it is blacklisted



Eligibility conditions for short listing



 Purpose	Evaluates capacity in designing, construction and O&M of project	Evaluates the capacity of the applicant to raise funds to undertake the project	Legal conditions such as country of constitution, incorporation year etc.
 Criteria	Possess technical capacity greater than threshold technical capacity	Net worth > 25% of the estimated project cost in the preceding financial years	Consortium meets all legal precedents and can uphold applicable framework



Discussion – Firming-up of RFQ evaluation criteria



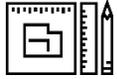
Brief about the proposed PPP project for water supply

- The Urban Local Body is planning to develop a water supply project on PPP basis (DBFOMT mode for 15 years)
- Private player responsible for transmission from source to plant, treatment of water & supply of treated water to city limits
- As a member of the procurement committee, you need to firm up the technical evaluation criteria of prospective bidders
- As the committee member, you need to assign weights to the parameters of technical evaluation criteria

# Number	 Indicator	% Weightage (Participant 1)	% Weightage (Participant 2)
1	Experience in design and construction of major infrastructure projects	30%	30%
2	Experience in the delivery of PPP projects	20%	20%
3	Operations and maintenance experience	30%	20%
4	Experience in raising finance	10%	10%
5	Local participation	10%	20%



Request for proposal



What is an RfP?

- Request for proposal follows the RfQ stage wherein selected bidders provide their bids for the project
- Aim is to select the preferred bidder for the project based on the selection criteria
- Bids are evaluated by assigning technical and financial scores; then ranked in order of scoring



RfP evaluation methodology

- Bidders are provided with bid documents such as feasibility report and draft concession agreement
- Most RfPs involve a least cost selection (LCS) or quality cum cost-based selection (QCBS) criteria for the pre-qualified bidders
- Bidder with highest premium or lowest grant requirement, is declared the selected bidder and issued Letter of Award (“LOA”)

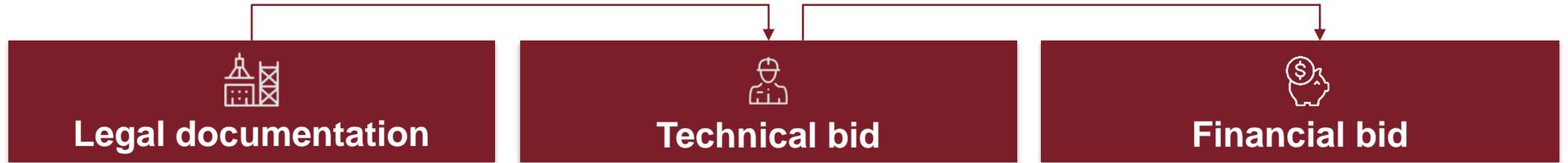


Eligibility conditions for an RfP



If responsive technical bid is opened

If compliant financial bid is opened



	Legal documentation	Technical bid	Financial bid
Purpose	Bid meets the legal requirement	Evaluate technical proficiency of bids	Evaluate financial proficiency of bids
Criteria	<ul style="list-style-type: none"> • Bid security by Consortium • Power(s) of attorney • Meets submission deadline • Complies with applicable laws • Submitted in required format 	<ul style="list-style-type: none"> • Quality of management and staffing • Approach to cost estimates • Design, construction, O&M approach • Innovation and safety measures • Local participation 	<ul style="list-style-type: none"> • Best value for money for agency • Proposed capital structure for project • Proposed financing & letter of support • Highest premium paid to agency • Least grant received by private player



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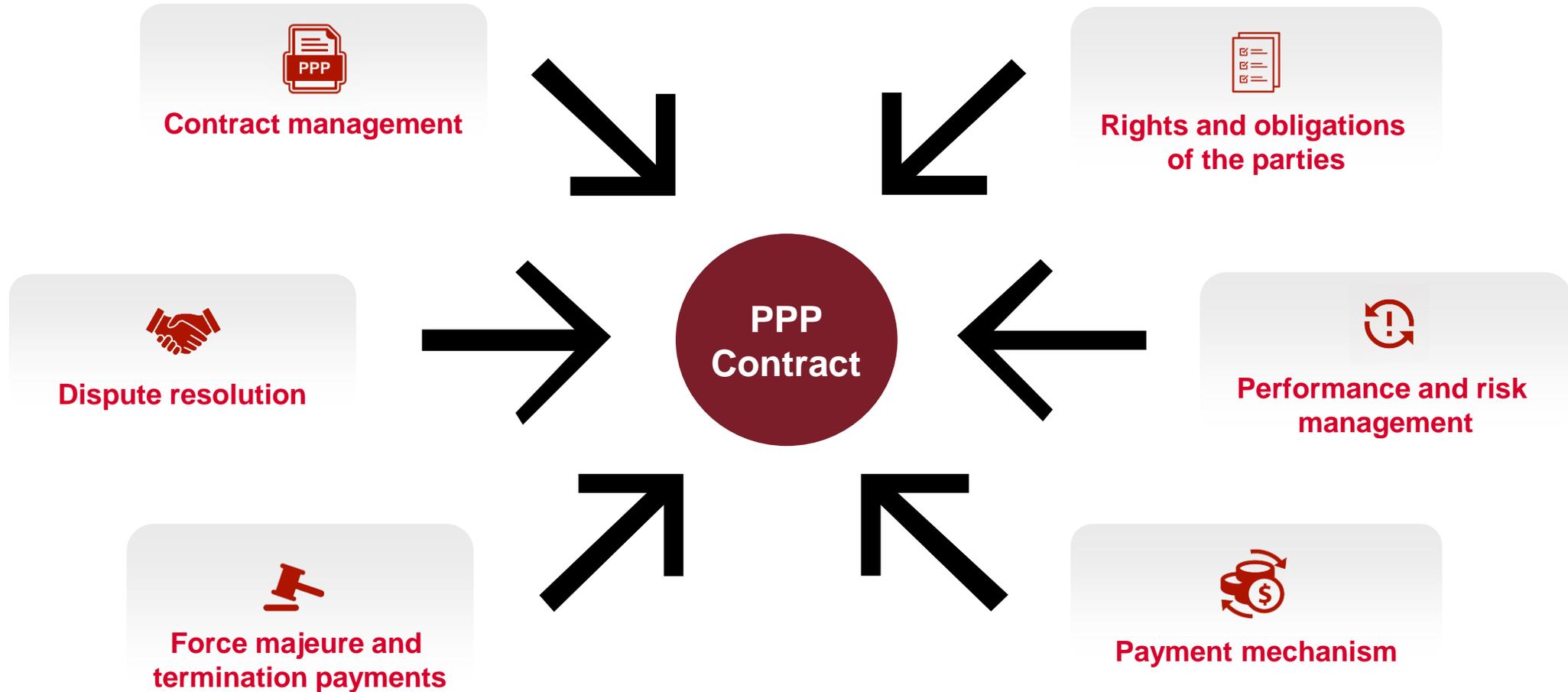


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Concession agreement



Rights and obligations of parties



 Parties	 Rights	 Obligations
 Government agency	<ul style="list-style-type: none"> • Be paid rent by private player for the lease of facilities • Review reports submitted by the private player • Access during normal working hours to facilities & sites 	<ul style="list-style-type: none"> • Support private player to procure applicable permits • Give private player access to information, plans, policies • Undertake routine maintenance during development
 Private player	<ul style="list-style-type: none"> • Lease the facilities and land to develop the facilities • Earn revenue via user charges / govt. payments • Receive termination payments, if applicable 	<ul style="list-style-type: none"> • Comply with all applicable laws / permits • Deliver services in accordance with service standards • Repair and maintain the facilities in good working order



Performance management



Need for performance monitoring



- Ensures that the private player is providing services at the agreed service levels and performance standards
- A mediocre performance of facilities would result in users not willing to pay for their services
- Ensures that value-for-money is achieved through the delivery of services by private player

Mechanism of performance monitoring



- Government agency is accountable for managing, monitoring and evaluating the project
- Project monitoring and management could be done by the government agency's staff itself
- Government agency can also appoint external consultant (like independent engineer) to monitor performance



Payment mechanism



Payment mechanism

- Defines how the private party to the PPP is remunerated for providing services in the service area
- It links payments to the achievement of performance standards as set out in the contract



Salient features of payment mechanism

- It should fully reflect actual service delivery
- It should incorporate deductions based on severity of service failure
- Penalty points awarded for non compliance leading to contractual remedies taking affect in event of repeated offence



Types of payment mechanism

- User charges – payment collected by private party directly from users of the service
- Government payment - payment by govt. agency to private player for services or assets provided



Force Majeure



Force majeure meaning



- Incidents which are beyond the reasonable control of a party; they are not foreseeable, and are unavoidable
- Makes a party's performance of its obligations under the PPP agreement impossible
- Timelines for financial close, completion of project and others get delayed and costs increase for all parties

Types of force majeure



- Direct force majeure – act of god or natural disasters such as earthquakes, floods, pandemic etc.
- Indirect political force majeure events – unforeseeable man-made events such as terrorism, riots, strikes, etc.
- MAGA – an act of a govt. agency which causes material adverse impact on the revenues and costs of private player

Force majeure effect



- No breach of contract in case any contractual party fails to perform obligations during force majeure
- Party affected under the force majeure event shall continue to perform its obligations as far as is reasonably practical
- Affected party to notify other party as soon as possible within reasonable time

Note: MAGA: Material Adverse Government Action, govt. entity is the contracting government agency or any other relevant public authority



Events of termination of contract



Default by private agency

- Private player fails to maintain agreed service level of showers & water closets in hostels even after notices from the institute
- The private player has failed to comply with health safety and waste treatment norms for the landfill, creating health hazards



Default by government agency

- Government agency fails to obtain the land title of a market project site even after several written notices from private player
- It does not provide the contractually agreed viability gap funding for a fish market project on grounds of new public policy



Prolonged direct force majeure

- The prolonged effects of a cyclone and floods on the long term operations of a fish market project
- Restrictions imposed due to the COVID19 pandemic outbreak disrupting revenue sources and costs incurred



Prolonged indirect force majeure

- The government declares war and consequently a state of emergency leading to hindered business activity of the project
- Riots against a newly passed government policy which disrupts operations of the project



Impact of COVID19 on PPP projects



PPP origination and preparation

- Public sector budgets redirected towards COVID19 relief and response would decrease outlay for project preparation
- Delayed appointment of transaction advisors and preparation of feasibility reports/ bidding documents
- Delayed public sector consultations and government agencies approvals



PPP procurement

- PPP procurement processes such as tender documents issue and evaluation of proposals will be stalled
- Procurement activities such as market sounding, pre-bid meetings and stakeholder interactions will be stalled
- Projects in procurement stage will find it difficult to reach commercial closure due to these delays



Construction and operations

- Disruption in construction & operations of infrastructure-ready projects due to labor shortage & supply chain breakdowns
- Impacted maintenance activities, attracting penalties for not adhering to performance based output parameters in contract
- Negative impact on project cash flows, despite moratorium on principal & interest, as interest continues to accrue



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Contract management



Service Delivery involves:

- Government fulfilling its obligations
- Performance management
- Risk management of public sector

Contract Administration involves:

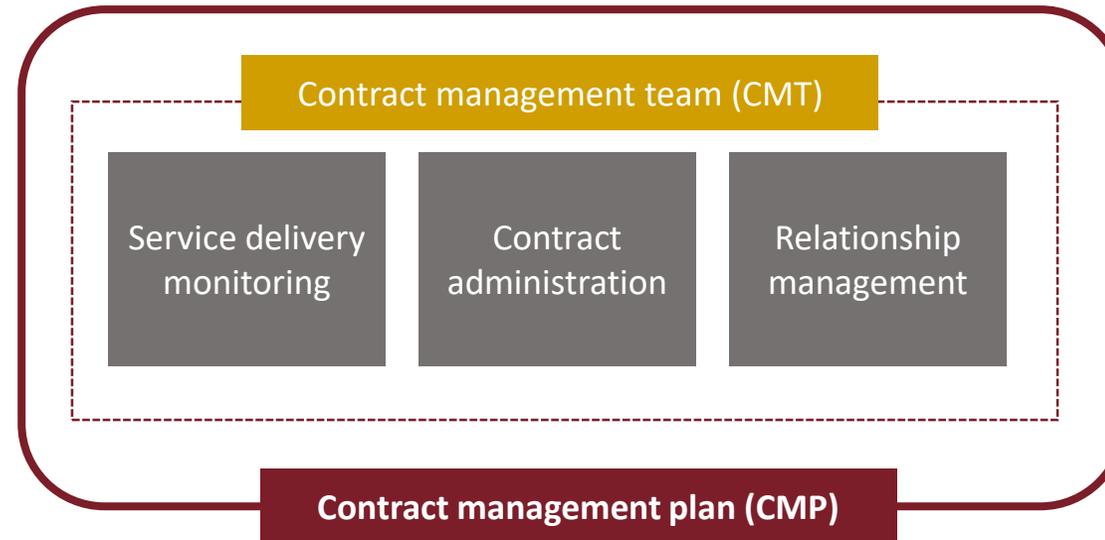
- Variation management
- Financial administration
- Knowledge management

Relationship management involves:

- Developing communication channels
- Managing communication channels
- Periodic relationship assessment
- Efficient dispute resolution

CMP comprises of:

- Service delivery monitoring plan
- Contract administration plan
- Relationship management plan



The CMT includes:

- Contract director
- Contract manager
- Contract team



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Variables for performance management



Key performance indicators (KPIs)

- KPIs are core indicators, or quantifiable metrics of private player performance against standards/service levels
- KPIs should follow SMART criteria – Specific, Measurable, Achievable, Relevant and Timed



Frequency of monitoring

- Frequency of monitoring represents duration within which performance is monitored from time to time
- It depends on the nature and criticality of the KPI and can be daily, monthly, quarterly etc.



Cure periods

- If private player's performance is below standard service level (not acceptable), it would be given a cure period
- Cure period depends on the criticality of the service standard and can be 1 day, 30 days, 180 days or even more



Liquidated damages

- If the performance issue is not rectified within stipulated cure period, private player is liable to pay liquidated damages
- The liquidated damages are generally quoted as a certain % of capital cost for a specified delay after the cure period



KPI – User satisfaction



Particulars	Details
 <p>KPI</p>	<p>More than or equal to 75% satisfactory responses in user survey, for the survey conducted by technical agent 4 meetings held each quarter with users along with officials (meetings conducted by government agency)</p>
 <p>Frequency of monitoring</p>	<p>Semi annual monitoring of user surveys outcomes provided by technical agent Quarterly evaluation for stakeholder meetings conducted by government agency</p>
 <p>Data Source</p>	<p>Semi annual management information system report submitted by technical agent Quarterly management information system report submitted by government agency</p>
 <p>Cure period</p>	<p>If less than 75% users are satisfied, a corrective action plan will be prepared and communicated; cure period to be specified in this plan</p>
 <p>Penalty</p>	<p>Liquidated damages payment to the extent of 0.05% of capital cost for a seven day delay after the cure period</p>

Note: KPIs mentioned above are indicative in nature



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Types of payment mechanism



1) User charges



- Since payment is collected directly from users by private player such projects are known as user pay PPPs
- For each tariff review cycle, user charges shall be established as per the govt. agency's bye-laws
- The user charges shall be amended/revised as per the government agency's bye-laws, each tariff review cycle

2) Government payment



- Availability payment - private player receives a periodic payment from govt. based on performance of services (availability)
- Usage based such as shadow tolls which are per-vehicle fees (volume based) paid by govt. agency to private player
- Viability Gap Funding - a certain percentage of capital cost is paid by the govt. to make the project economically viable



Payment mechanism on user charges – Illustration



Illustration of user charges opted as payment mechanism for a bus terminal project.

Stakeholder	Services	User Charges (Rs) in Year 1	Unit	User Charge indexation (%)	Frequency of indexation	Year 2	Year 3	Year 4	Year 5	Year 6
Bus operator	Bus entry fee	200	Per entry	20%	3 years	200	200	240	240	240
	Night parking	200	Per night	20%	3 years	200	200	240	240	240
Private operators	Shops/food stall	400	Per sq m per month	20%	3 years	400	400	480	480	480
Passengers	Parking fee	40	Per hour	15%	2 years	40	46	46	53	53
	Washroom fee	10	Per hour	15%	2 years	10	12	12	14	14

Sq m = Square meters

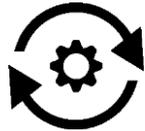


Dispute resolution



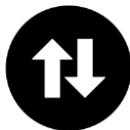
Dispute resolution - Meaning

- Resolution of any dispute arising out of or in connection with the PPP agreement
- Involves process of deliberation between contracting parties which affects significant changes in the original contract
- Such changes are not provided in the original contract



Dispute resolution - Process

- In case of dispute, disputed party to provide written notice to all other parties
- Parties shall meet promptly in good faith attempt to reach an amicable settlement through mutual consultation
- If dispute is not resolved within a certain number of days of notice, either party may refer it to an agreed mediator



Dispute resolution - Other aspects

- Proceedings shall take place on an agreed upon place and an agreed upon language
- The agreement shall be governed by and construed pursuant to the applicable law of the region
- Parties obligation to perform PPP agreement shall continue, notwithstanding any dispute process has commenced



Dispute resolution



Process for dispute resolution

Amicable resolution



Mediation



Arbitration

Mediation process



- Costs payable to the mediator shall be jointly shared between the parties on an equal basis
- Decision of mediator shall not be binding unless parties enter into a written agreement
- If dispute is not resolved before mediator, parties may issue notice of arbitration under applicable law

Arbitration process



- On receipt of notice of arbitration, each party shall appoint one arbitrator each
- The costs/fees of the arbitrators shall be borne equally between the Parties
- For avoidance of doubt, legal costs relating to arbitration (including legal representation) shall be borne individually



Discussion – Termination by private player – ULB Response?



 <p>Project background</p>	<ul style="list-style-type: none">• ULB has entered into concession with private player to establish a state-of-the-art bus terminal under PPP mode• The duration of contract is 20 years and the private player will collect and retain the tariffs from end users• As per the agreement, the end user tariffs would be revised after three years and to be escalated at a rate of 15%
 <p>Current situation</p>	<ul style="list-style-type: none">• The ULB is unwilling to revise the end user tariff charges levied by the private player at the bus terminal• Four years have passed since the operations commenced and the private player has sent numerous notices seeking revision• ULB has mentioned that users would look down upon higher tariffs & it would be in best interests if tariff remains the same
 <p>Way forward</p>	<ul style="list-style-type: none">• The private player has decided to go ahead with the termination of the project and has sent notice for termination• What course of action do you suggest the ULB should take?



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