Public Private Partnerships in India

March 11, 2013

India front-runner in PPP RACE

- World Bank
  - 1st semester of 2011, PPP activity was concentrated in one country: India
  - Since 2006, India top recipient of PPP activity
  - In 2011, implemented 43 new projects of USD 20.7 billion
- **ADB**
  - **2nd in Asia only behind Korea; China & Japan follow; 4th in Asia- Pacific; UK & Australia ahead**
  - ***PPP development in India has been driven by strong political will & advances in public capacity & processes***

BACKGROUND

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Spending on infrastructure about 5% of GDP as compared to 10-12% of East Asian countries, now increased to about 8%

Infrastructure constraint; investment envisaged – Rs. 20 lakh crore during 2007-2012; private sector contributed 38%

Limited budgetary resources

Infrastructure Deficit

Power

- 11.1% peaking deficit and 8.5% energy shortage; 27% T&D losses; absence of competition; and inadequate private investment

Highways

- 71,772 Km of NH (2% of network, 40% of traffic): only 25% Four-lane; 54% Two-lane; and 21% Single-lane; State highways also suffer from prolonged neglect

Ports

- Inadequate berths, rail / road connectivity and draft are constraints

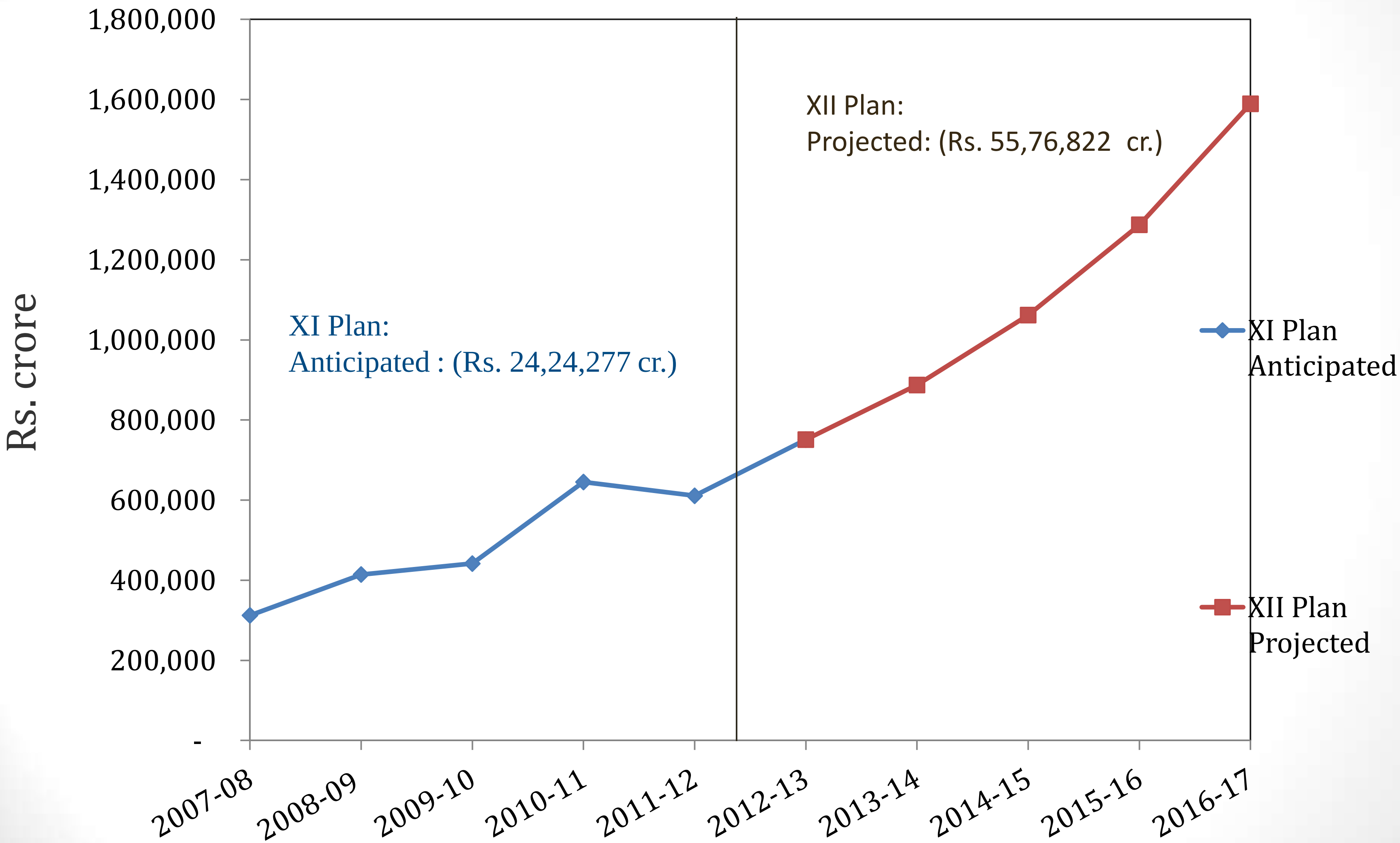
Airports

- Inadequate capacity: Runways, aircraft handling capacity, parking space & terminal buildings

Railways

- Old technology; saturated routes: slow average speeds (freight: 22 kmph; passengers: 50 kmph); low payload to Tare ratio (2.5)

Projected Investment in Infrastructure
(12th Five Year Plan)



(Rs. crore at nominal prices)

Financing Infrastructure: the challenge

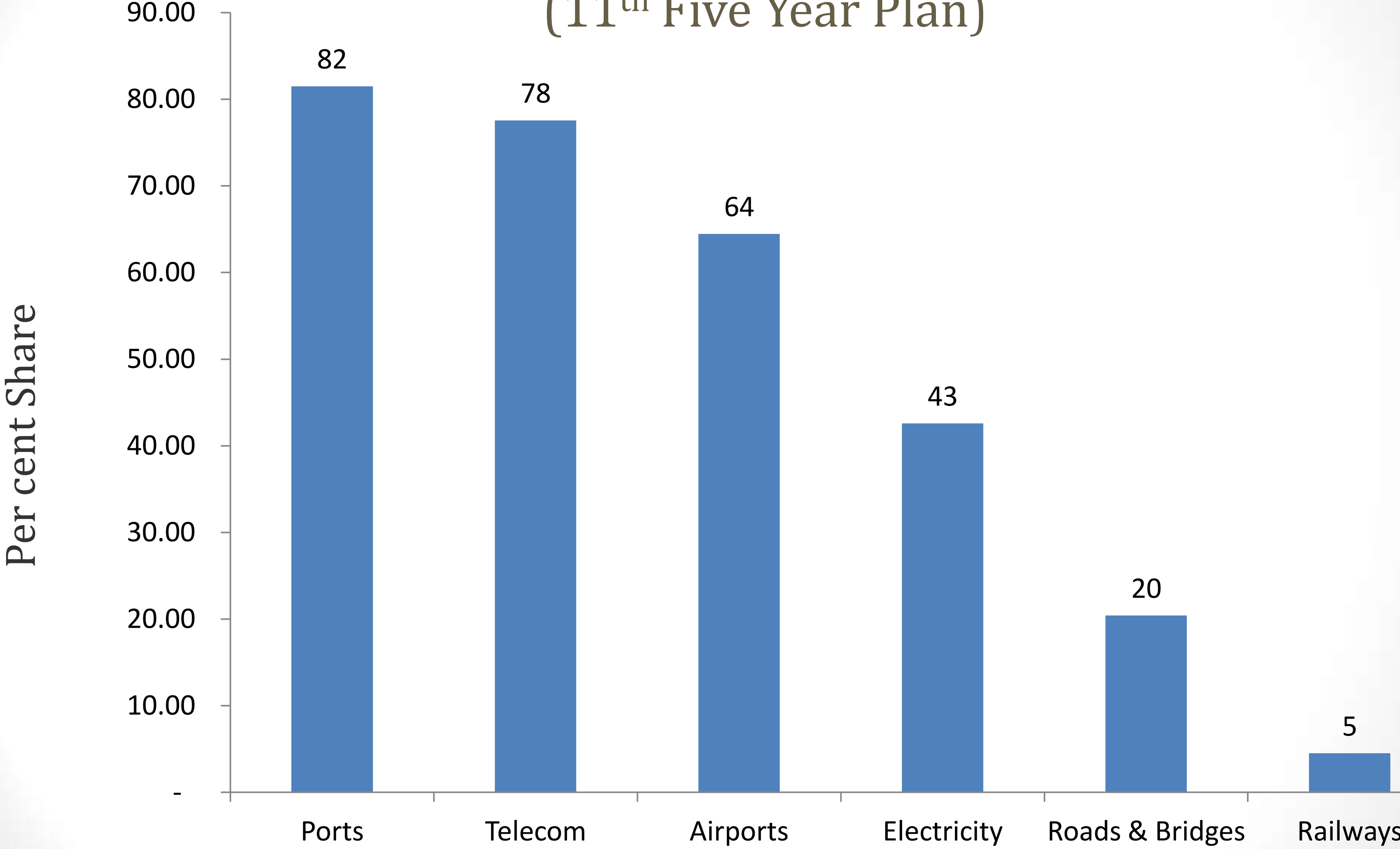
- Investment in infrastructure is lumpy
- Projects have a long gestation period, i.e. the returns come in many years so the private sector is not willing to invest
- Traditionally, all over the world, infrastructure investment has been through the budget
- Generates externalities, i.e. even those who do not use the service benefit, e.g. with the advent of metro, there is less congestion on roads, less accidents, saving in time, less pollution, etc. therefore, those who do not use but benefit should also pay some charge

Policy Challenges

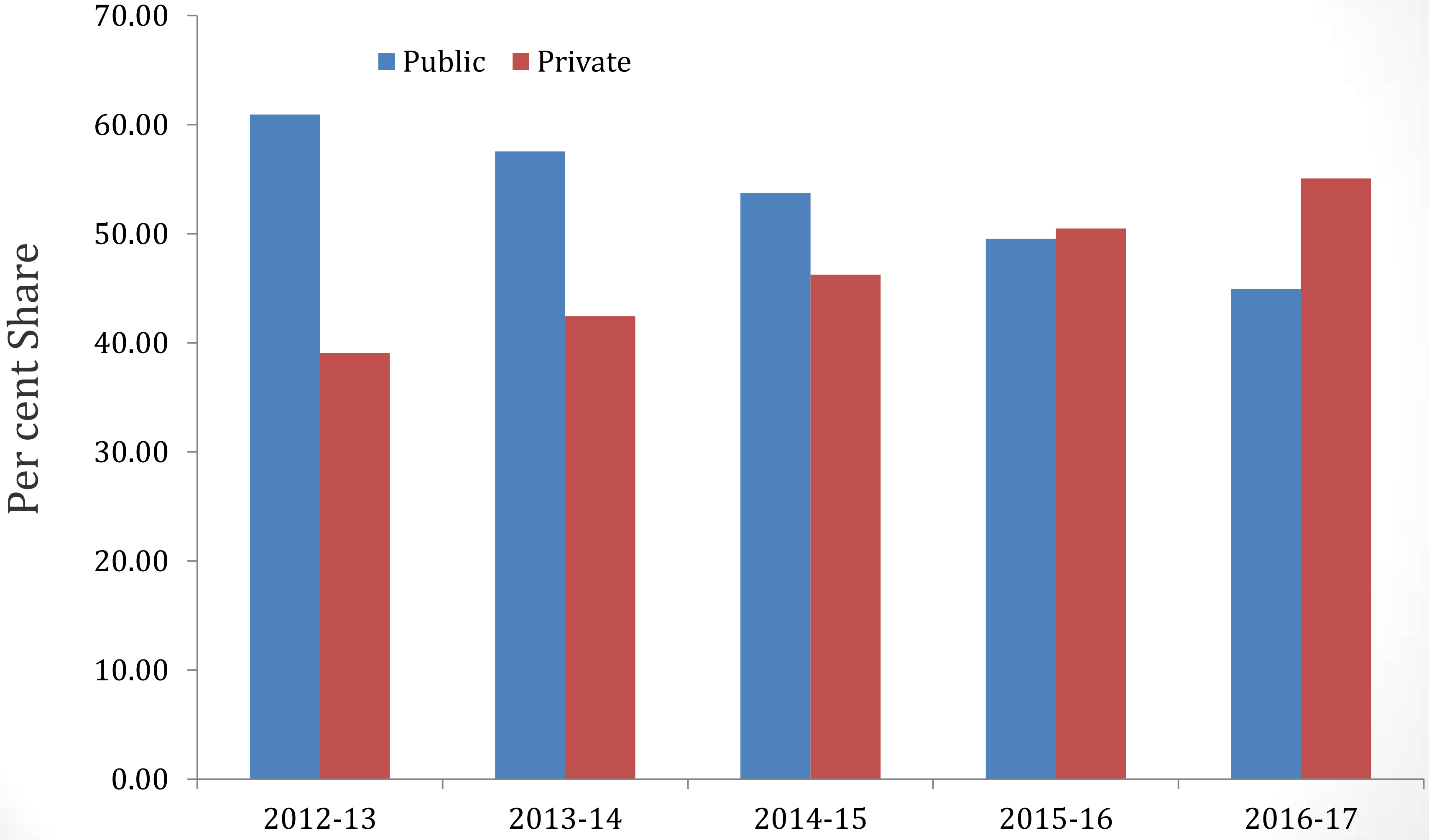
- **Challenges for large capacity addition**
  - Time-bound delivery under **budgetary constraints**
  - World class yet **cost effective**
  - Commercially sustainable yet **affordable**
- **Policy responses for attracting private investment**
  - Policy and regulatory **framework** for PPPs is in place
  - **Institutional restructuring** and reorientation underway
  - **Financial support** to bridge viability gap of PPP projects
  - IIFCL, Infrastructure Debt Funds etc. for **long term debt**

Share of Private Investment in different Sectors

(11th Five Year Plan)



Relative Share of Private Investment
(12th Five Year Plan)



Some illustrative PPP projects

- Delhi, Mumbai, Hyderabad & Bangalore Airports
- Two metro-rail projects in Mumbai and one in Hyderabad
- Four Ultra mega Power Projects: Sasan(MP), Mundra (Gujarat), Krishnapatnam (AP) and Tilaiya (Jharkhand)
- Container terminals at JNPT, Chennai & Tuticorin
- Operation of container trains
- Jhajjar Power Transmission Project, Haryana
- 161 National Highway projects (12,005 km) for Rs.1,07,596 cr
- 137 State Highway projects (8,862 km) for Rs. 64,787 cr
- 22 central sector port terminals for Rs. 18,489 cr and 57 state sector port terminals for Rs. 71,253 cr

The Transactions

Options for the Government

- Implement the project
  - Through conventional procurement
    - Funded through the budget, or
    - Loans against government guarantees
- As a Public Private Partnership (PPP)

What is a PPP?

- Contract by Public Authority for provision of asset and/or services
  - With private entity
  - Private finance used to fund asset/service
  - Long-term in nature
  - Allocates risk between the Authority and the private sector
  - Annuity or User Charge based
  - Performance-linked payments
  - Output based

Standard Modes of Private Sector Participation

DBFOT	Design Build Finance Operate Transfer
BOT	Build Operate Transfer
BOLT	Build Own Lease Transfer
OMT	Operate Manage Transfer
BOO	Build Own Operate

When to use PPPs

- ***User Charge Based***
  - Project is revenue bearing
- ***Annuity Based***
  - Shortage of funds
  - No sustainable revenue
- ***Other factors***
  - Possibility for long-term contracts involving asset-based procurement
  - Opportunity to design & implement a performance-based contract
  - Possibility of utilising additional capacity of the assets through generation of third party revenues

When to use PPPs (contd.)

- **Transport**
  - Metros, roads, ports, railways, airports
- **Social sector services – education, health, etc**
- **Water supply and solid waste management**
- **Power sector – generation, transmission, distribution**
- **Irrigation projects**
- **Modern storage/warehousing**

Features of PPP Projects

- **PPP infrastructure projects involve**
  - Transfer of public assets
  - Delegation of Governmental authority for recovery of user charges,
  - Private control of monopolistic services
  - Sharing of risks and contingent liabilities by the Government
  - Protection of user interests and securing value for public money over lifecycle of the project
  - Complex deals with high transaction costs

PPP Transaction

- Preparation of concept paper
- Feasibility study
- Preparation of documents
- In-Principle approval by Public Private Partnership Appraisal Committee (PPPAC) /Empowered Institution (EI)
- Request For Qualification
- Final Approval by PPPAC/EI
- Request For Proposal
- Award

Typical documents for PPP projects

Substantive Documents	**- Concession Agreements**	
	- Manual of Specifications & Standards	
	- Rules for user charges	
Process Documents	**- RFP for selection of consultants**	
	- RFQ for pre-qualification of bidders	
	- RFP for financial bids	

Request for Qualification (RFQ)

- Following ‘in-principle’ clearance expressions of interest to be invited in the form of RFQ
- Objective to identify credible bidders possessing requisite technical and financial capacity to undertake the project
- Prepare a short list for stage two of the bidding process referred to as the Request for Proposal (RFP) or invitation of financial bids
- Balanced & transparent evaluation criteria
- Approved model document at *www.infrastructure.gov.in*

Request for Qualification (RFQ)

- Number of bidders to be pre-qualified and short-listed
  - Adequate to ensure competition but not large enough to dampen competition
- Evaluation criteria
  - Technical capacity
    - Project/construction experience
    - O&M experience
  - Financial capacity
    - Net worth
- No technical proposals except where in case of exceptionally complex projects the project authority so determines

Request for Proposal (RFP)

- Invitation to submit financial bids
- Includes a copy of all agreements proposed to be entered into with successful bidder
- Administrative Ministry to seek clearance of PPPAC after formulating the draft RFP along with copies of the draft concession agreements

Concession Agreements

Sectors	
	National Highways
	State Highways
	Ports
	Operation & Maintenance of Highways
	Urban Rail Systems (Metro rail)
	Container Train Operation
	Redevelopment of Railway Stations
	Non-metro Airports
	Greenfield Airports
	Procurement-cum-Maintenance of Locomotives
	Transmission of electricity

Financial Support: Viability Gap Funding

- Upto 20% of total project cost
- Process of selection should be open competitive bidding; bidding parameter
- Private company should be responsible for financing, construction, maintenance and operation of the project during the concession period
- Project should provide a service against payment of a pre-determined tariff or user-charge
- Project should be from infrastructure sectors included in the guidelines of the scheme

Stages of PPPs

I. Public sector provision of Infrastructure: **Command & Control**

- PPP by exception

II. Introduction of PPPs: **The Transition** - still on in some sectors/states

- Largely negotiated, often opaque
- Often driven by private beneficiaries

III. PPPs gain acceptability: **Enhancing welfare & efficiency**

- Transparent, competitive and fair
- Driven by the government; good governance becomes the key
- Objective is to attract private capital in public projects

- **Indian PPP projects are mostly in Stage III**

Governance Structure for PPPs

- **Constitution of a Cabinet Committee on Investment (CCI)**
  - Prime Minister is the Chairperson
  - Ministers of Infrastructure Ministries, Finance Minister and Deputy Chairman, Planning Commission are members
  - Fast track approvals & monitor progress
- **PPP Appraisal Committee**
  - Appraises & recommends all PPP projects of the Central Government
  - Chaired by Finance; appraisal by Planning Commission
- **Empowered Committee**
  - Approves proposals for Viability Gap Funding (upto 20% of capital costs)
  - Chaired by Finance; appraisal by Planning Commission

Management & Monitoring

Management by contract

Guidelines for monitoring of PPP projects

Model Concession Agreements

Concession Agreement

- Enable the private sector to secure a reasonable return at manageable levels of risk
- Assure user of adequate service quality at affordable cost
- Facilitate the government in procuring value for public money
- Risk mitigation arrangements require detailed legal and contractual arrangements which specify:
  - Obligations of different participants
  - Clear penalties for non-performance
  - Protection to investors for events beyond their control
  - Risk allocation

Grant of Concession

- **Scope of Project**
  - Construction, Operation & Maintenance
  - Site; License
  - Term of Concession
  - Right to collect and appropriate User Fee
  - Financing
  - Charge over assets, land

Grant of Concession

- **Concessionaire's Obligation**
  - Finance, design, engineer, construct, operate and maintain Project
  - Sub Contracts should be consistent with Concession Agreement
  - Change in Ownership - restricted

Grant of Concession

- **Conditions Precedent (CP)**
  - Authority's CP
    - Land , Applicable Permits
    - Damages for Delay

- **Concessionaire' s CPs**
  - Financial Closure
  - Failure to fulfill CPs

- **Waiver**
- **Appointed Date – Financial Close**

Independent Engineer

- **IE's Role**
  - Appointed in a transparent manner through open competitive bidding
  - Government's Representative
  - No approvals – review and comments

Grant of Concession

- **Government's Obligations**
  - Support and Assistance in procuring permits
  - Maintenance prior to Appointed Date
  - Competing Projects

Bidding Parameter - Grant

- Grant or Negative Grant (Premium)
- Grant to be disbursed as follows:
  - Equity Support
  - O & M Support
- Negative Grant to be paid in addition to Concession fee

Financial Convenants

- **Financial Close**
  - Concessionaire to secure Financial Close within pre-determined time frame
  - Termination in event of failure to achieve Financial Close
  - Encashment of Bid Security in case of such termination

User Fee

- **Fee Notification**
- **Principles for revision of Fee**

Concession Fee

- Typically nominal fee
- Revenue sharing may start10th year onwards
- Link Concession Fee to Concessionaire’s Realisable Fee
- Monitoring of User Fee

Force Majeure and Termination

- **Force Majeure**
  - Non-political Event – Act of God, etc.
  - Indirect Political Event – War, Civil Commotion, etc.
  - Political Event – Change in law, etc.
  - Consequences - extension of Concession Period or termination
- **Termination Payment**
  - Non-political Event – 90% of Debt Due less Insurance
  - Indirect Political Event – Debt Due less insurance, plus 110% of Adjusted Equity
  - Political Event – Equivalent to Government default

Termination for Breach

- **Termination Payment**
  - **Construction Period**
  - **Operations Period**
    - Concessionaire Default – 90% of Debt Due less Insurance
    - Government Default – Debt Due less insurance, Plus 150% of Adjusted Equity

Residual Clauses

- **Financing – Substitution Agreement**
- **Change in Law – Increase in Costs**
- **Dispute Resolution**

Conflict of Interest

- ‘Conflict of Interest’ related problems are not fully appreciated
- Private investment in infrastructure projects requires level playing field
- Government cannot act as both regulator and implementer
- Badly structured PPP project can cause more potential harm than normal projects

Consultant Conflict of Interest

- Conflict between consulting activities and procurement of goods, work or services
- Consulting firm should not be involved in investing/development activity

Conflict Amongst Bidders

- Applicant/Associate have common shareholding
- Constituent of one applicant, also constituent of another
- Applicant receives subsidy from another applicant
- Same legal representative
- Applicant has relationship with other applicant through third party
- Applicant participated as Consultant for the project

Delhi Noida Toll Bridge

- Concession agreement provides guaranteed return of 20% on total project cost; no commercial risk on concessionaire
- Project cost specified ex-post; no cap on project cost; authority unaware of financial commitment when signing Concession Agreement
- Shortfalls in returns of previous years to be added to project cost in following year
- Provides for extension of concession period until concessionaire recovers 20% + TPC
- Development rights may be granted in lieu of extension of concession period

Solid Waste Management

- Concession awarded by a society which does not own underlying assets
- In case of termination, for authority default, concessionaire entitled to receive all revenues that would have accrued over the concession period.
- In case of termination on concessionaire default, authority to be paid 80% of debt due; debt due not defined, hence, open ended liability

Common Problems

- Open ended costs
- Output parameters not defined
- Performance standards no specified
- Tariffs not in user interests

Thank You

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