Guidelines for Selection of Consultants & Developers for PPP Projects in Uttar Pradesh-2016

(Amended)

Department of Infrastructure Development
Government of Uttar Pradesh

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PART – I -DEVELOPMENT OF INFRASTRUCTURE PROJECTS THROUGH PUBLIC PRIVATE PARTNERSHIP IN UTTAR PRADESH

CHAPTER 1 - INTRODUCTION

1.1 What is Public Private Partnership

Public Private Partnerships (PPPs) is an arrangement in the form of a concession agreement between a government or statutory entity or government owned entity on one side and a private sector entity on the other for the provision of public assets and/or related services for public benefit, through investments being made by and/or management undertaken by the private sector entity for a specified period of time, where there is substantial risk sharing with the private sector and the private sector receives performance linked payments that conform (or are benchmarked) to specified, pre-determined and measurable performance standards. PPP may include such services and assets which may be provided to the public at large by leveraging managerial efficiencies and investment capabilities of the private sector.

The basic intent of PPP is to encourage the private sector to dedicate its capacity to raise capital and the ability to complete projects on time and to budget for the welfare of the community, without having to compromise the profit motive. At the same time, the public sector would retain its responsibility to provide goods and services to the public at large at affordable rates.

The key to the success of PPP projects is a balanced and fair sharing of risks and benefits between the partners, and transparency and accountability in all transactions relating to the award and management of the contract. An indicative list of projects which may be considered on PPP is given in Schedule-I. The indicative list is updated according to RBI circular no. DNBS.PD.CC.No.362/ 03.10.001/2013-14 dated 29.11.2013. A few examples are Development of Integrated Healthcare Townships, Expressways, Bus Stations, Airports, O&M of Street Lights, O&M of Multi-Level Parking etc.

1.2 Necessity of Public Private Partnership

a. Inflow of private investment
   Budgetary support for such huge requirement is limited. There is acute need of private investment to undertake such essential projects.
b. Increase in efficiency
   Involvement of Private Sector will bring efficiency in implementation of projects and cut down time and cost.
c. Use of innovative design & construction practices
   The objective of cutting down cost and time will bring in innovative design and construction practices in the Infrastructure Sector.
d. Assured maintenance
   During the Concession Period, the PPP Concessionaire will be required to maintain the Projects in a predetermined manner.

1.3 Objectives of Public Private Partnership

a. The key objective of this policy is to leverage the resources of State Government to invite private sector investment in infrastructure at best possible terms for the State.
b. Protection of the interest of users and securing value for public money.
c. Setting up of an efficient administrative mechanism to ensure selection of private sector developer through transparent bidding criteria.
d. To bring in uniformity in approach cutting across various sectors and Departments of the Government.
e. To prepare a shelf of projects to be offered for PPP under various Departments and take them forward for implementation.
f. Putting in place an effective and efficient institutional mechanism for development of the projects speedily.
g. Provide a framework that clearly set forth the risks, rewards and obligations of different participants.

h. Create dispute redressal mechanism to handle disputes between the parties.
i. Encourage innovation in the provision of infrastructure and related service delivery.
j. Clearly articulate accountability for outcomes

1.4 Requisites for the Success of Public Private Partnership Projects

1.4.1 Entering into a PPP contract does not reduce the responsibilities and the accountability of the public sector agencies and the public servants concerned. On the other hand, it places substantial responsibility on them to see that the arrangement succeeds in safeguarding public interest by managing the PPP economically, efficiently and effectively. It is therefore essential to plan and implement PPPs meticulously and without pitfalls. In this context, it would be useful to recount the features and requirements for the successful conclusion of a PPP. PPPs should take into account the following objectives:

a. Fair and transparent selection process.
b. Assurance of Value for Money.
c. Improvement of essential public services, especially for the socially disadvantaged and adequate training for those to be involved in the partnerships.
d. Fair incentives to all parties and fair returns to risk takers, combined with commercial success.
e. Sensible negotiation of disputes that assures continuation of services and prevents collapse of projects and consequent public wastes.
f. Enhanced security in the face of new threats and a general improvement in the safety of services provided under the PPP arrangement.

1.4.2 There could be different types of PPPs but they all shall have the following ingredients, which may be kept in view:

a. government departments or agencies and bodies and entities under them on the one part and selected private sector partner(s) on the other will enter into valid and legal contracts;
b. partnership between the two will be to provide long term public services (and/or goods) of required quality;
c. the public sector will, while transferring the responsibility to design, construct and/or operate the project to the private sector, retain the overall responsibility to provide the public service;
d. the private sector will bring in the required finance either fully or substantially to complete the project and to operate it, with the public sector providing right to revenue, likely guarantees to financiers or viability gap funding / annuity in appropriate cases;
e. the public sector will assign the right to collect revenues arising from the project to the private sector for a defined period based on demand projections or pay grants or annuity and/ or agree to share any surplus, subject to a balanced sharing of the risks and gains;
f. value for money will be the basic criterion for the public sector to enter into the arrangement.

1.5 Role of Private Sector Partners in PPP Projects

The role of the private sector partners in PPP projects is fiduciary and needs careful appreciation. It must be accepted that the private entrepreneurs come into the PPP arrangements primarily with profit motive, and with a view to pursuing their business prospects, which alone impels them to assume the risks associated with the PPP projects. However, these arrangements involve substantial public interest which both the parties to the arrangements are bound to safeguard, with the public sector partner retaining the accountability to ensure it. This does not mean that they are competing between themselves, but are to work together as partners and colleagues in the process of national development.

The private sector partners have to bring in not only the required finances and suitable technology for the project, but also have to be innovative in approach. There should be no tendency to "over engineer" the projects and to pad the total capital expenditures. They must also have excellent project management and O&M capability, and must be able to demonstrate their commitment to the partnerships.

CHAPTER 2 - DEFINITIONS & ABBREVIATIONS

2.1 Definitions

1.	"Administrative Department"	The concerned controlling Department of the Employer in the State Government.
2.	"Applicant"	A private entity which has submitted or is likely to submit a response to the EOI or RFQ, as the case may be;
3.	"Application"	The submission made in response to the RFQ;
4.	"Appointed Date"	The date on which the Concession Agreement comes into full force and effect in accordance with the terms outlined therein;
5.	"Associate"	In relation to a Respondent, an entity who controls, is controlled by, or is under the common control with such Respondent;
6.	"Bid"	The submission made in response to the RFP;
7.	"Bidder"	A private entity which has submitted or intends to submit a Bid in response to the RFP;
8.	"Bid Security"	A security furnished by the Bidder to the Employer to secure the performance of any obligation under the RFP and includes such arrangements as bank guarantees, surety bonds, stand-by letters of credit, cheques on which a bank is primarily liable, cash deposits, promissory notes and bills of exchange;
9.	"Committee of Secretaries"	Committee as defined in Chapter 2 of Part III.
10.	"Competent Authority"	Committees and other authorities defined in Clause 1.6 & 1.7 of Chapter 1 Part II & Chapter 2 of Part III.
11.	"Concession"	The right including the exclusive right, license and authority granted to the private partner or a consortium or Joint Venture Corporation (JVC) formed by the parties to the Agreement, by the Government or a public sector partner under the relevant Agreement to construct, operate, and maintain the project for a mutually agreed period (concession period) commencing from an appointed date and to receive grant, annuity at pre-determined levels and or to collect user charges, tariff or toll as may be for providing services from the project.
12.	"Concessionaire" or "Private Partner" or "Developer"	The private entity to which a PPP Project is awarded in accordance with the Guidelines.
13.	"Concession Agreement"	The contract entered into between the Employer and Preferred Bidder for implementing a PPP Project;
14.	"Conditions Precedent"	The obligations which the Employer or the Concessionaire may be required to fulfill prior to financial close of the PPP Project, unless waived off in writing by the relevant party in accordance with the terms of the Concession Agreement;
15.	"Consortium"	Two or more entities coming together for the purpose of submitting Response to the Tender Documents;
16.	"Contingent Liability"	means:
a)		Guarantees provided to banks or financial institutions for repayment of principal and/or interest of loans related to a PPP Project;
b)		Explicit contingent liabilities which include a wide range of formal commitments provided by the Employer to private entities involved with PPP Projects, involving a legal obligation on the part of the Employer. These are usually through contracts or letters of guarantees; and
c)		Implicit contingent liabilities which arise where the PPP Project

		relates to facilities and/or services that are strategically important and where the Employer has a moral or a political obligation to incur costs to continue to provide a public service;
17.	"Control"	The right to appoint the majority of the directors or to control the management or policy decisions exercisable by an entity or entities acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
18.	"Developer"	As defined in Sl. No. 12 above.
19.	"Difficulty Removal Committee"	Committee as defined in Clause 1.6.4 of Chapter 1 of Part II & Clause 2.6 of Chapter 2 of Part III.
20.	"Due Date"	The last date for the submission of Responses to the Tender Documents;
21.	"Employer"	The State Government or an agency of the State Government or a statutory authority or an entity under control of the State Government or a State public sector undertaking which engages a Consultant for a Consultancy assignment or is a signatory to the Concession Agreement and owns the Project.
22.	"Escrow Account"	The bank account to be opened by the Concessionaire in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures relating to the PPP project shall be credited or debited, as may be, in accordance with the provisions of the Concession Agreement and includes all subaccounts of such Escrow Account.
23.	"Entity"	means:
(a)		A company or body corporate,
(b)		An association or body of individuals, whether incorporated or not,
(c)		A natural person, or
(d)		An artificial juridical person.
24.	"Expression of Interest" or "EOI" or "Request for Qualification" or "RFQ"	The Tender Document prepared and issued in accordance with Chapter 2 of Part II or Clause 4.4 of Part III;
25.	"Final Offer"	The commercial offer made by a Bidder on the basis of the criterion specified in the RFP;
26.	"first round of bidding"	The first round of bidding conducted in accordance with Para 4.5(k) of Chapter 4 of Part III;
27.	"GoUP"	Government of Uttar Pradesh or State Government
28.	"Letter of Award" or "LOA"	The letter of award issued by the Employer to the Preferred Bidder in accordance with Para 4.5(k) of Chapter 4 of Part III;
29.	"material"	In respect of a Response, all monetary, important, essential and relevant information in the context of preparation, and management of the PPP Project;
30.	~~"Nodal Agency"~~	~~An organization may be other than the Employer, of the State Government nominated for the purposes of undertaking the selection process of consultant and/or developer in accordance with the procedure laid down in the guidelines.~~
31.	~~"Nodal Department"~~	~~The Administrative Department of the Employer in State Government.~~
32.	"Organization"	An agency of the State Government or a statutory authority or an entity under control of the State Government or a State public sector undertaking.
33.	"Performance Security"	The bank guarantee furnished by the Concessionaire to the Employer for the performance of its obligations under the

		Concession Agreement;
34.	"Preferred Bidder"	The Bidder who has been ranked number one as per the process laid out in the RFP and criteria outlined therein after evaluation of all Bids;
35.	"Private Partner"	As defined in Sl.No.12 above.
36.	"Project"	A project proposed or being implemented on Public Private Partnership based on a concession agreement for delivering an infrastructure service.
37.	"Proposal"	A brief note on the project prepared by the Employer for seeking in-principle approval.
38.	"Public Private Partnership" or "PPP	Defined in Para 1.1 of Part I.
39.	"Qualified Applicant"	An Applicant that has been qualified in the RFQ Stage;
40.	"Request for Proposal" or "RFP"	The Tender Document prepared and issued in accordance with Clause 3.4 of Chapter 3 of Part II and Clause 4.5 of Chapter 4 of Part III;
41.	"Request for Qualification" or "RFQ" or "EOI"	The Tender Document prepared and issued in accordance with Chapter 2 of Part II or Clause 4.4 of Chapter 4 of Part III;
42.	"Reasons"	Any submission required to be made to the Employer as per the Tender Documents;
43.	"Respondent"	Any private entity that has submitted or is likely to submit a Response to the Tender Documents. It is clarified that any reference to a Respondent shall include both individuals and consortia;
44.	"RFP Stage"	Part of the Tender Proceedings following the issue of the RFP by the Employer;
45.	"RFQ Stage"	Part of the Tender Proceedings following the issue of the RFQ by the Employer;
46.	"second round of bidding"	The second round of bidding conducted in accordance with Para 4.5(k) of Chapter 4 of Part III.
47.	"Sole Bid"	If, consequent to invitation of tenders/bids for any project, only one bid/tender is received or consequent to technical evaluation if only one bid/tender is found eligible, such bids/tenders shall be termed as sole bid.
48.	"Special Purpose Vehicle"	A legal entity, usually a limited liability company, incorporated to undertake the implementation of the PPP project.
49.	"Tender Document(s)"	As applicable, the EOI, RFQ, RFP, draft Concession Agreement, Contract and any addenda or corrigenda issued by the Employer in respect thereof as part of the Tender Proceedings;
50.	"Tender Proceedings"	The process adopted by the Employer for the award of the PPP Project;
51.	"Total Project Cost"	Total Project Cost means the lowest of the capital cost of the project (less equity support) as set forth in the Financial Package **or** the actual capital cost of the PPP project upon completion of the project including financing charges, interest during construction and provision for contingencies, minus grants given, if any.
52.	"Value for Money"	Represents economy, efficiency and effectiveness. In PPP projects, VFM means that the provision of the institutional function or the use of the public sector property by a private party or JVC, in terms of the Concession Agreement, results in the benefit to the institutions defined in terms of cost, price, quality, quantity, risk sharing and a combination thereof.
53.	"Viability Gap Funding"	A grant, one time or deferred, provided and given by the Government of India under the Scheme for Financial Support to

		Public Private Partnership Projects in Infrastructure, with the objective of making such projects commercially viable.

2.2 Abbreviation

Sl.No.	Abbreviation	Description
1.	BOT	Build Operate Transfer
2.	BOLT	Build Operate Lease Transfer
3.	BOOT	Build Own Operate Transfer
4.	CBS	Cost Based Selection
5.	CDR	Corporate Debt Restructuring
6.	CEC	Consultancy Evaluation Committee
7.	CMC	Consultancy Monitoring Committee
8.	CoS	Committee of Secretaries
9.	CQCCBS	Combined Quality cum Cost Based System
10.	CVC	Central Vigilance Commission
11.	DBFO	Design Build Finance Operate
12.	DCA	Draft Concession Agreement
13.	DOE	Department of Economic Affairs, Ministry of Finance, GoI
14.	DRC	Difficulty Removal Committee
15.	EOI	Expression of Interest
16.	EIA	Environment Impact Assessment
17.	GOI	Government of India
18.	GoUP	Government of Uttar Pradesh
19.	IIDC	Infrastructure & Industrial Development Commissioner
20.	ITB	Instruction to Bidders
21.	LOA	Letter of Award
22.	MCA	Model Concession Agreement
23.	NPV	Net Present Value
24.	~~PICUP~~	~~The Pradeshiya Industrial & Investment Corporation of U.P. Ltd.~~
25.	PPP	Public Private Partnership
26.	PPPBEC	PPP Bid Evaluation Committee
27.	PPPMC	PPP Monitoring Committee
28.	QBS	Quality Based Selection
29.	QCBS	Quality cum Cost Based Selection
30.	RBI	Reserve Bank of India
31.	RFP	Request for Proposal
32.	RFQ	Request for Qualification
33.	SIA	Social Impact Assessment
34.	SPV	Special Purpose Vehicle
35.	TEFR	Techno Economic Feasibility Report
36.	TOR	Terms of Reference
37.	TPC	Total Project Cost
38.	VGF	Viability Gap Funding

CHAPTER 3 - PROCESS FLOW CHART FOR DEVELOPMENT OF PROJECTS ON PPP

The flow Chart for the steps for selection of Consultant & Developer has been outlined below. Many of the activities listed can be carried out simultaneously and in parallel. An indicative Bar Chart showing possible timelines for such activities is also below.

3.1 Project Identification & Preparation

1.	Identification of potential Project that can be implemented on PPP mode
2.	Preparation of Proposal by Employer
3.	Circulation of the Proposal to the Departments of Infrastructure Development, Finance and Law and any other department deemed necessary for their views.
4.	Submission of Proposal by **Employer for in-principle approval to Competent Authority.** ~~Submission of Proposal by Administrative Department to Department of Infrastructure Development for in-principle approval.~~
5.	In-principle approval/Rejection by ***Competent Authority***.~~In-principle approval / Rejection by Department of Infrastructure Development or Hon'ble Cabinet.~~

3.2 Selection of Consultant

1.	Preparation & Publication of Expression of Interest Document (EOI)
2.	Shortlisting of applicants for issuance of RFP
3.	Preparation & approval of Terms of Reference (TOR) and preparation of RFP
4.	Approval of RFP by CEC & Issuance of RFP to shortlisted applicants
5.	Pre Bid Meeting
6.	Amendment of RFP based on feedback from prospective bidders & approval of modified RFP by CEC
7.	Issuance of modified RFP
8.	Receipt of Proposals and opening & evaluation of technical proposals by Sub Committee of CEC
9.	Short listing of technically qualified consultants by CEC on recommendation of Sub Committee
10.	Opening of financial proposals of technically qualified Consultants by CEC
11.	Evaluation of financial proposals & recommendation of selected consultant & negotiations with the selected consultant, if required by CEC
12.	Approval of the selected Consultant by appropriate Committee
13.	Award of the contract to the selected consultant
14.	Signing of agreement with the consultant by the department

3.3 Selection of Developer

1.	Preparation of Feasibility Report by the consultant & Preparation of report on Environmental Impact Assessment/ Social Impact Assessment by the consultant depending on requirement of the project
2.	Examination of Feasibility Report and preparation of structure of PPP project.
3.	Approval of Feasibility Report by PPPBEC
4.	Preparation of RFQ by Consultant
5.	Approval by PPPBEC on RFQ
6.	Publication of RFQ

7.	Pre-bid Meeting
8.	Approval on the amendments in RFQ by PPPBEC, if any on the basis of inputs in Pre-bid Meeting
9.	Issuance of modified RFQ by department
10.	Receipt of RFQ proposals by the department
11.	Opening of bids and evaluation of RFQ by Sub-Committee of PPPBEC
12.	Short listing of bidders by PPPBEC for issuance of RFP
13.	Preparation of RFP by Consultant
14.	Approval of draft RFP/DCA by PPPBEC
15.	Issuance of draft RFP/DCA to short listed bidders
16.	Pre-bid meeting on draft RFP/DCA
17.	Amendment of draft RFP/DCA based on feedback received from prospective bidders by PPPBEC.
18.	Approval of Hon'ble Cabinet on draft RFP/DCA finalized by PPPBEC as above.
19.	Issuance of final RFP/DCA to shortlisted bidders by department
20.	Receipt & opening of RFP proposals by PPPBEC
21.	Opening & evaluation of financial bid by PPPBEC & recommendation on preferred bidder to Competent Authority.
22.	Approval for selection of preferred bidder/developer by the Competent authority
23.	Award of contract to the selected developer by the concerned department
24.	Signing of Concession Agreement between the Developer & Employer.

3.4 Implementation of Project

1.	Constitution of Project Team by the Employer
2.	Constitution of PPP Monitoring Committee (PPPMC)

Note: Flow Chart is only an indicative sequence of events for selection of Consultant/Developer for PPP project. Chapters of Guidelines may be referred for detail provisions. In event of dispute or confusion, provisions of main chapter shall prevail.

3.5 Indicative Bar Chart/ Activity Chart of Developer Selection Timelines

Sl. No	Activity (days)	Days											
		20	40	60	80	100	120	140	160	180	200	220	240
IDENTIFICATION & IN-PRINCIPLE APPROVAL OF PROJECT(15 Days)													
1.	Identification & In-principle approval of Project (15 days)												
SELECTION OF CONSULTANT(75 Days)													
1.	Preparation, approval & publication of EOI for Consultant (10 days)												
2.	Preparation of RFP, approval of TOR & RFP (20days)												
3.	Receiving of EOIs (15 days)												
4.	Shortlisting of Consultant and issuance of RFP (5 days)												
5.	Pre-Bid meeting (15days)												
6.	Issuance of clarifications/addendum (5days)												
7.	Receiving of proposals (15 days)												
8.	Technical evaluation, financial bid opening & approval (5 days)												
9.	**Appointment of Consultant (5)**												
SELECTION OF DEVELOPER(150 Days)													
1.	Preparation of Pre-Feasibility/Feasibility Report by Consultant (30 days)												
2.	Examination & Approval of Pre-Feasibility/Feasibility Report (10days)												
3.	Preparation, approval & publication of RFQ (10 days)												
4.	Preparation & Approval of draft RFP & draft DCA (30 days)												
5.	Pre-Application meeting (15days)												
6.	Issuance of clarifications/addendum (5days)												
7.	Receiving of RFQs(15 days)												
8.	Technical evaluation, shortlisting of Developer & Issuance of draft RFP & draft DCA (5 days)												
9.	Pre-Bid meeting (15 days)												
10.	Approval of amendments to Draft RFP/DCA on pre-bid feedback by PPPBEC/CoS(5days)												
11.	Approval of Hon'ble Cabinet on finalized Draft RFP/DCA(10 days)												
12.	Issuance of Final RFP/DCA to shortlisted Developers (5 days)												
13.	Receiving of proposals, Public opening & evaluation of financial proposals & Recommendation on Preferred Bidder by PPPBEC/CoS (15 days)												
14.	**Approval of Competent authority for selected Developer (10 days)**												

Note: These are indicative timelines and will vary depending on the size and complexity of the project. Some of these activities can be undertaken simultaneously.

CHAPTER 4 - PROJECT IDENTIFICATION & PREPARATION

4.1 The State Government, Government Agency, Department of Infrastructure Development or Specified Government Agency (Employer) may identify potential project(s) that can be implemented on PPP.

4.2 The Employer shall prepare a brief note, hereinafter referred to as proposal, on the proposed project(s) indicating the following:

a. Brief particulars of the project;
b. Preliminary assessment of financial and economic viability of Project outlining financial risks, economic benefits, cost recovery/income generation assumptions, Concessions/ Grants/Sweeteners etc.;
c. Preliminary Environmental & Socio Economic Assessment;
d. Identification of possible arrangement for the participation of private entities;
e. Legal feasibility analysis and contractual frame work for PPP arrangement;
f. Roles and responsibilities of various involved parties;
g. Time frame required for completing the project preparation;
h. Initial source of funding for project;

4.3 The Employer ***shall submit the proposal to the Administrative Department in the format prescribed at Appendix-1 for in-principle approval of the proposed project.***

4.4 The Administrative Department shall circulate the proposal to Departments of Infrastructure Development, Finance and Law and any other department that the Employer/Administrative Department may deem necessary for their views prior to according in principle approved to the proposed project.

~~4.3 The Employer through its Administrative Department (Nodal Department) shall circulate the proposal to the Departments of Infrastructure Development, Finance and Law and any other Department that the Employer/Administrative Department may deem necessary for their views.~~

~~4.4. The Administrative Department shall thereafter put up the proposal to the Department of Infrastructure Development in the format prescribed at Appendix-1 for in-principle approval of the proposed project.~~

4.5 ***The approval of Administrative Department shall be sufficient except in case where the proposed project is likely to have statewide impact or where disinvestment process is proposed in which cases approval of Hon'ble Cabinet shall be obtained.***

~~The approval of Department of Infrastructure Development shall be sufficient except in the following cases wherein approval of the Hon'ble Cabinet shall be obtained:~~

~~a. where Department of Infrastructure Development disagrees with proposal of Administrative Department~~

~~**or**~~

~~b. where the proposed project is likely to have statewide impact~~

~~**or**~~

~~c. where disinvestment process is proposed.~~

4.6 The Employer through its Administrative Department shall initiate the process of Selection of Consultant(s) for project preparation for selection of Developer in accordance with the in-principle approval obtained by it from the competent authority.

4.7 With regard to point 4.5~~(a) & 4.5(b)~~ above, if any revision is required after Cabinet approval, then the matter shall be put up for approval of Committee of Secretaries as defined in Chapter- 2, Part III.

4.8 The Employer through its Administrative Department shall continue the process for the selection of Developer from its level in accordance with the in-principle approval and in the next phase, the matter shall be put up before the Hon'ble Cabinet for ex-post facto approval by the concerned Department on the revision approved by the Committee of the Secretaries.

4.9 ***The Administrative Department, if required, may appoint any public or private entity to provide fee based consultancy services for preparation of TOR, EOI, RFP etc. for selection of consultant.***~~The Department of Infrastructure Development may appoint one or more organizations as the specified Agency/Nodal Agency for these purposes with the approval of Infrastructure & Industrial Development Commissioner.~~

4.10 Selection of the Consultant shall be done in accordance with the Policy for Engagement of Consultants as enumerated in Part II.

~~4.11 Alternatively, after obtaining the initial in-principle approval of the Competent Authority, the concerned Administrative Department may send the proposal for selection of PPP Consultant along with broad outlines of Terms of Reference (TOR) as approved by the Board of Governors/Directors of the concerned Corporate Body or the Committee constituted for approval of TOR, as the case may be to the Department of Infrastructure Development to select the Consultant on its behalf.~~

~~4.12 On receiving such request, the Department of Infrastructure Development shall use the specified Govt. Agency/ Nodal Agency to engage consultant/advisor in accordance with the Policy for Engagement of Consultants as enumerated in Part II.~~

~~4.13 The concerned Administrative Department or the Infrastructure Development Department may use the services of PICUP which has been nominated Nodal Agency by Infrastructure Development Department to provide fee based Consultancy Services to various Departments for preparation of TOR, EOI, RFP etc. for selection of consultant in accordance with the Policy for Engagement of Consultants as enumerated in Part II.~~

4.14 Consequent upon in-principle approval by~~ Department of Infrastructure Development or Hon'ble Cabinet~~ ***Competent Authority***,, as the case may be, if the project is found Non-Feasible after Feasibility Study or the project is found Feasible after Feasibility Study but Developer could not be selected then the ***Employer through*** concerned Administrative Department shall seek approval of Hon'ble Chief Minister ~~through Infrastructure Development Department~~ after obtaining approval of Chief Secretary for making provisions in their budget for making payments accordingly on the expenditure incurred in following the due processes indicated in the Guidelines viz feasibility study or developer selection or works such as land acquisition, forest clearance, utility shifting etc. to the extent recommended and verified by MD/CEO of the Employer organization.

PART – II POLICY FRAMEWORK FOR SELECTION OF CONSULTANTS FOR DEVELOPMENT OF INFRASTRUCTURE PROJECTS THROUGH PUBLIC PRIVATE PARTNERSHIP IN UTTAR PRADESH

CHAPTER 1 – INTRODUCTION

1.1 Purpose

1.1.1 The purpose of these Guidelines is to primarily define the broad policies and procedures of Government of Uttar Pradesh for selection, contracting and monitoring of consultants and other professional service providers for projects/assignments funded partially or wholly through PPP.

1.1.2 For the purpose of these guidelines, the term consultant(s) includes a wide variety of private and public entities, including transaction advisors, financial consultants, consulting firms, engineering firms, construction management firms, management firms, procurement agents, inspection agents, auditors, investment and merchant bankers, universities, research institutions, government agencies, non-governmental organizations (NGOs) and individual/experts. These organizations as consultants could be used for help in a wide range of activities such as policy advice; institutional reforms; management; engineering services; construction supervisor; project management; feasibility studies, financial services; procurement services; social and environmental studies; identification and preparation of projects; bid process management; development of computer hardware/software services etc. to complement the capabilities of the Govt. Department or other Govt. authorities (referred as "employer" hereafter).

1.2 When and how to engage Consultant

1.2.1 The specific purpose and the specific Guidelines and procedures to be followed for employing consultants depend on the circumstances of the particular case. However, following main considerations would guide the need and the selection process:-

(a) Absence of in-house expertise;
(b) The need for high quality services;
(c) The need for economy and efficiency;
(d) The need to have qualified Consultant for providing the specific services;
(e) The importance of transparency in the selection process;
(f) The identification of scope of work and time frame for which services are to be availed of.;

1.2.2 The Employer would normally need expert financial, legal and technical advice for formulating project documents necessary for award and implementation of PPP projects in an efficient, transparent and fair manner. The Employer may engage technical, legal and financial consultants separately as the firm rendering such services are independent of each other and shall provide their advice independently. However, a single consultant firm may be engaged for handling all aspects of project preparation and award in exceptional circumstances and for low value projects only.

1.2.3 The role of financial consultants is critical since the success of a PPP project depends on a well-structured project which is financially viable. This includes appraising the project, developing a revenue model, reviewing the cost estimates based on the Feasibility Report and assisting the Employer in the bidding process. The financial consultants would collect, compile and analyze the financial data relating to all costs and revenues, and help in the identification and allocation of project risks in an efficient and economic manner. The financial consultants shall explain to the Employer the financial impact of the project on government's resources – direct as well as contingent – and the optimal structure for financing and operation of the project. The Employer may alternatively engage the services of Transaction Advisor who could help in ensuring that the whole process leading to the selection of the concessionaire is transparent and in accordance with the laid down guidelines and parameters. The financial consultants would also normally be capable of performing the role of transaction advisers and the two roles could therefore be combined for optimizing on time and costs. A transaction adviser could also be asked to assist the Employer in selection of the technical and legal consultants at the initial stage of project formulation.

1.2.4 Engagement of Consultants/Professionals service providers in any office of the Govt. of Uttar Pradesh will follow the guidelines for administrative and financial sanctions as laid down by the Govt. of Uttar Pradesh from time to time.

1.3 Applicability of Guidelines

1.3.1 These guidelines are applicable for selection of consultants by any Department/Organizations of GoUP for projects proposed to be developed on PPP mode where the cost of the consultancy is more than Rs.25.00 lakhs. The concerned department/ organization shall adopt procurement process prevalent in their department/ organization for Consultancies whose cost does not exceed Rs.25.00 lakhs.

1.3.2 The consulting services to which these Guidelines apply are of an intellectual and advisory nature. These guidelines do not apply to other types of services in which the physical aspects of the activity predominate (for example, construction of works, manufacture of goods, operation and maintenance of facilities or plant).

1.3.3 The Guidelines for selection of consultants/advisors shall not be mandatory for cases where the above selections are required to be done under the procedures decided by the Govt. of India or where GoUP has agreed to follow guidelines as per loan / credit / grant agreement with donor agencies.

1.3.4 In case where the procedures for selections of consultants are already laid down by an Act of the State Govt., the provisions of the Act shall take precedence over these guidelines. Subject to not being inconsistent with the Act, the concerned department shall have the option to adopt these guidelines.

1.3.5 If in the event of any issue not being covered by these Guidelines or if the matter under consideration requires further clarification then the Employer shall refer to the CVC Guidelines or Govt. of India Guidelines for necessary directions.

1.3.6 The Guidelines for selection of consultants / advisors shall supersede any other guidelines or Govt. Orders which may have been issued earlier from time to time for selection of consultant for development of infrastructure projects through Public Private Partnership in Uttar Pradesh, before 14th March 2016.

1.3.7 The guidelines shall apply with prospective effect from 14th March 2016. In cases where certain selection procedures have been initiated before 14th March 2016, the remaining steps after 14th March 2016 shall be taken in conformity with the guidelines to the best possible extent.

1.4. Consortium of Consultants

Consultants may associate with each other to form a consortium to complement their respective areas of expertise, or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The consortium may take the form of a joint venture or of a sub consultancy. In case of joint venture, all members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Even after the short list is finalized and Request for Proposal (RFPs) are issued, any association in the form of joint venture or sub consultancy among short-listed firms shall be permissible. Under such circumstances, one of the short-listed consultants must become the lead member of the consortium and the Employer shall only deal with the lead member for all the purposes.

1.5 Selection of Consultant

1.5.1 For selection of the consultants, normally, the employer shall adopt two stage procedures.

In the first stage, the employer shall identify the likely sources on basis of formal or informal enquiries and by inviting Expression of Interest (EOI) through advertisement. On the basis of responses received, consultant meeting the requirement will be short listed for further consideration. In the second stage, the short - listed consultant will be invited to submit their Technical and Financial

Proposals (Request for Proposal or RFP). The consultant shall be selected based on evaluation of their Technical and Financial bids, the details of which are provided in Chapter III. Alternatively, CEC may decide upon procuring Consultancy services through a 'single stage two-envelope' system comprising of technical bid and a financial bid in which case EOI – cum - RFP shall be issued.

1.5.2 The selection of consultant shall follow any of the following methods; as considered appropriate:-

1. Quality and Cost Based Selection (QCBS): Under normal circumstances, this method of evaluation shall be used. Evaluation of quality under QCBS method is explained in para-3.8 & 3.9 and Evaluation of cost is explained in Para-3.10 of Chapter-3, Part-II. To ensure high technical skill in selection of consultant, a minimum technical score may be fixed, say 70% as qualifying technical score which shall clearly be stated in the RFP document. By fixing such 70% as minimum technical score, only highly technically qualified bidder/ consultant shall be selected. Thereafter all the bidders/consultants with technical score of 70% or more shall be treated at par and the bidder/ consultant who bids minimum financial value, shall be selected.

2. Combined Quality-Cum-Cost-Based System (CQCCBS): The appointment of financial consultants and/or transaction advisors should not be treated in the same manner as procurement of goods and other services where the bid is awarded to the lowest financial bidder based on pre-determined specifications. This is so because what sets these consultancy services apart from other procurements is the advisory and intellectual nature of services which are not amenable to precise quantification. Hence, this method of selection shall be used for selection of Financial Consultants and/or transaction advisor for PPP projects or highly technical projects where weightage needs to be given to higher technical standards, while finalizing the prices, as per Para 3.12 of Chapter 3 Part II.

3. Quality Based Selection (QBS): This method of selection may be used under the following circumstances:

(i) The outcome of the assignment will have high impact and hence it is essential to engage most qualified consultant. Examples are national policy formulation; capacity building program etc.

(ii) the assignment is very complex or highly specialized where it is difficult to define scope of work with accuracy. Examples are country specific study; reforms related studies, high precision scientific work etc.

4. Cost Based Selection (CBS): This method of selection may be used for the assignments of following nature: (i) assignment where any experienced consultant can deliver the services without requirement of specific expertise. Examples are traffic surveys, market surveys etc. and (ii) cost of which shall not exceed Rs. twenty five lakhs.

1.5.3 Selection by direct negotiations: The selection by direct negotiations/nomination is permissible under exceptional circumstances such as (a) for tasks that represent a natural continuation of previous work carried out by the firm, (b) in case of emergency situation, situation arising after natural disasters, situations where timely completion of the assignment is of utmost importance, (c) situation where the execution of assignment may involve use of proprietary techniques or only one consultant has requisite expertise. Such selection may normally be restricted to a financial ceiling of Rs. twenty five Lakhs.

1.5.4 The Administrative Department ~~/ Department of Infrastructure Development~~ will have the option to invite RFPs (Request for Proposals) including Technical and Financial Bids from the empanelled Consultants / Advisors of the relevant Department of Govt. of India or of GoUP. The list of empanelled Consultants by the concerned Department of GoI / GoUP shall be treated as equivalent to shortlist of Consultants prepared subsequent to EOI/ RFQ for these purposes and accordingly only the second stage i.e. RFP submission would be needed. Evaluation in such cases would be as per limited QCBS / QBS method as given in Para-3.8 of Chapter-3 of Part-II. However, Departments shall verify validity of empanelment before proceeding.

1.5.5 The Employer shall adopt the model Tender Documents issued by Planning Commission, Govt. of India / Department of Expenditure, Ministry of Finance, Govt. of India along with revisions /

amendments thereof if any to procure the services of financial consultants and/or transaction advisers for PPP projects with suitable modifications as may be required for the project. The Employer may use this document for selection of a single firm to act as financial consultants-cum-transaction advisers or for selection of separate firms to act as financial consultants and transaction advisers respectively.

1.6 The Approval Levels

1.6.1 Consultancy Evaluation Committee (CEC)

A. The Consultancy Evaluation Committee shall consist of following members:-

Principal Secretary/Secretary of the Administrative Department	-	Chairman
Principal Secretary/Secretary, Finance Department	-	Member
Principal Secretary/Secretary, Law Department,	-	Member
Principal Secretary/Secretary, Planning Department,	-	Member
Principal Secretary/Secretary, Infrastructure and Industrial Development Department	-	Member
MD/CEO of Employer organization	-	Member - Convener
The CEC may co-opt representatives of one or more relevant Departments as may be deemed necessary.		

B. The CEC shall be responsible for all aspects and stages of the Consultant selection i.e. issuance of EOI, evaluation of EOI, short-listing of Consultants, approval of final RFP, issuance of RFP, evaluation of technical and financial proposals, negotiations and final recommendation for selection of the Consultant..

C. For the assignments which are very complex and/or are of highly technical nature, the employer may decide to appoint another qualified consultant as Escort Consultant to assist the CEC in carrying out its functions. However, the cost of such additional consultant shall not exceed five percent [5 %] of the total cost of the consultancy assignment being monitored.

D. There shall be a Sub-Committee under the chairmanship of Principal Secretary of concerned ***Administrative Department*** ~~nodal department~~ and comprising of Principal Secretary/Secretary or their representatives from Finance, Law and other related Departments~~ and Managing Director, The Pradeshiya Industrial & Investment Corporation of Uttar Pradesh Limited, Uttar Pradesh (PICUP)~~. This sub-committee is authorized for bid opening, technical evaluation , short listing of bidders etc. at preliminary stage.

E. For projects having project cost up to ~~Rs.500.00~~ Rs. 1000.00 crores and where more than one bidder is shortlisted in response to RFP, the CEC under the chairmanship of the Principal Secretary of the concerned Department shall approve the preferred bidder after evaluation of Bids.

F. For projects having project cost more than ~~Rs.500.00~~ Rs. 1000.00 crores and where more than one bidder is shortlisted in response to RFP, the CEC under the chairmanship of the Principal Secretary of the concerned Department shall recommend the preferred bidder after evaluation of Bids to the Empowered Committee for approval.

G. The CEC shall recommend to the High Powered Committee for approval of the preferred bidder after evaluation of Bid, if only single bid is received in response to RFP.

1.6.2 Empowered Committee

The Empowered Committee shall consist of following members:-

Infrastructure and Industrial Development Commissioner (IIDC)	-	Chairman
Principal Secretary/Secretary, Finance Department	-	Member
Principal Secretary/Secretary, Law Department,	-	Member

Principal Secretary/Secretary, Planning Department,	-	Member
Principal Secretary/Secretary, Infrastructure and Industrial Development Department	-	Member
Principal Secretary/Secretary of the Administrative Department	-	Member - Convener
The Empowered Committee may co-opt representatives of one or more relevant Departments as may be deemed necessary.		

The proposal as recommended by CEC shall be placed before the Empowered Committee by the Employer for approval of the preferred bidder. In case CEC is being headed by IIDC, there is no need to put up the matter again before Empowered Committee.

1.6.3. High Powered Committee

The High Powered Committee shall consist of following members:-

Chief Secretary, Govt. of U.P.	-	Chairman
Infrastructure and Industrial Development Commissioner	-	Member
Principal Secretary/Secretary, Finance Department	-	Member
Principal Secretary/Secretary, Law Department	-	Member
Principal Secretary/Secretary, Planning Department	-	Member
Principal Secretary/Secretary, Infrastructure and Industrial Development Department	-	Member
Principal Secretary/Secretary of the Administrative Department	-	Member – Convener

The proposal as recommended by CEC shall be placed before the High Powered Committee by the Employer for approval in case of single short listed consultant.

1.6.4 Difficulty Removal Committee (DRC):

There shall be a Difficulty Removal Committee under the Chairmanship of Infrastructure & Industrial Development Commissioner to decide on matters necessary for removal of difficulties which may arise out of the provisions of these guidelines. The Committee shall also be empowered to examine and decide on cases where deviations in the guidelines are being sought. The Committee shall also include Principal Secretary / Secretary Finance, Law and may co-opt any other officer(s) as its member, as deemed fit.

1.7 Consultancy Monitoring Committee (CMC)

1.7.1 There shall be a Consultancy Monitoring Committee comprising of atleast three members consisting of all or any of the Members of the CEC under the Chairmanship of Principal Secretary of the concerned Department for monitoring the progress of the assignment. The CMC shall be responsible to monitor the progress of the assignment, to oversee that the assignment is carried out as per agreed TOR and contractual Conditions, to assess the Quality of the deliverables, to accept/reject any part of assignment, to levy appropriate liquidated damages or penalty if the assignment is not carried out as per the contract and if the quality of services is found inferior and for any such deficiency related to the completion of the assignment.

1.7.2 For the assignments which are very complex and/ or are of highly technical nature, the employer may decide to appoint another qualified consultant as escort consultant to assist the CMC in carrying out its functions. However, the cost of such additional consultant shall not exceed five percent [5%] of the total cost of the assignment monitored.

1.7.3 The employer may also include in CMC individual experts from Govt./private sector/ educational/ research institute or individual consultants. Cost of such members, if any, shall be borne by the employer.

1.7.4 The employer may also appoint a nodal officer to interact with the consultant and to ensure that the period of consultancy is utilized to the optimum.

CHAPTER 2 - EXPRESSION OF INTEREST

2.1 Invitation of Expression of Interest

For all consultancy contracts except in cases of nomination or where direct negotiation is carried out, an advertisement called "invitation for Expression of Interest" (EOI) shall be released in at least one National Newspaper and the Department's website for preparing the short list. Attention of known reputed consultants may also be separately drawn wherever possible. Advertisement in newspapers may be brief and shall give reference to departmental website. The advertisement must include, among other things, the last date of submission of EOI, how to get copy of EOI document, contact information of the employer with name of contact person etc.

2.2 EOI Document

2.2.1 The Employer shall prepare an EOI document. The EOI document shall contain following information:

(i) Invitation to EOI: It shall include a copy of the advertisement whereby consultants are invited to submit their EOI.

(ii) Brief about objectives and scope of work: This may include brief description about objective of carrying out the assignment, broad scope of work and expected deliverables of the assignment. This may also include the place of execution of the assignment.

(iii) Instructions to the Consultants: It may include instructions regarding nature of job; eligibility of applicants; submission requirement; requirement of bid processing fees; if any; last date of submission; place of submission; and any related instruction;

(iv) Pre-qualification Criteria; this may clearly lay down the pre-qualification criteria which shall be applied by the employer for short listing the consultants.

(v) Formats for submission. This section shall specify the format in which the consultants are expected to submit their EOI.

2.2.2 The employer shall make available the copies of the EOI document to the interested consultants in hard copies as well as on its website.

2.3 Short List of Consultants

2.3.1 The Employer shall evaluate the consultants for short listing, inter-alia, based on their past experience of handling similar types of projects, strength of their manpower and financial strength of the firm. Consultants should normally be selected on the basis of their track record and relevant experience. The EOI should clearly indicate the value and nature of past assignments that would be considered eligible for the purpose of evaluating the applicants. Besides a minimum eligibility criteria, the EOI should specify the manner in which past experience would be evaluated.

2.3.2 The employer may assign scores to the response of each consultant based on weightages assigned to each of the criteria in EOI. The quality of advice would largely depend on the experience and expertise of the key personnel engaged for the assignment. The Employer must therefore, determine the nature and discipline of the advice required and identify a limited number of key personnel, including the team leader, who would play a critical role in the consulting assignment. Normally, the following weightages may be used for such evaluation:

S No.	Criteria	Weightage
1.	Past Experience of the firm • Number of years' experience • Past experience of studies/consultancy services of similar nature. • Past experience in carrying out studies/consultancy services in related Sectors. • Studies carried out in India.	**60%** 20% 50% 20% 10%
2	Experience of Key Personnel.	**25%**

	• Qualifications • Relevant experience	30% 70%
3	Financial Strength of the Consultant. • Turnover of last three Years. • Net Profit/networth for last three years.	**15%** 50% 50%

2.3.3 The Employer shall short list all the consultants who secure the minimum required marks [normally 50%]. The minimum qualifying requirement shall be specified in the EOI document.

2.3.4 Alternatively, the employer may specify in the EOI document minimum qualifying requirement for each of the criteria i.e. minimum years of experience, minimum number of assignments executed, minimum turnover, networth etc. Under such circumstances, the employer shall apply pass-fail test and short list all the consultants who meet the minimum requirement as specified.

2.3.5 The short list may comprise only national consultants (firms registered or incorporated in the country), if the EOI document specifically states so.

2.4 Cost Based Selection

2.4.1 For small assignments, where the employer decides to select the consultant based on CBS method, the consultant shall be selected following single stage bidding procedure. Under single stage bidding procedure, the employer shall invite financial proposals along with the EOI in two separate envelopes.

2.4.2 The financial proposals of all the consultants who have been short listed, as per clause 2.3 above, shall be opened in the presence of the short listed consultants who choose to remain present. The consultant, who has submitted the lowest financial bid, shall be selected as the L1 and shall be called for further negotiations.

2.5 Two Envelope System

2.5.1. Alternatively, CEC may decide upon procuring Consultancy services through a 'single stage two-envelope' system comprising a technical bid and a financial bid in which case EOI – cum - RFP shall be issued depending on the complexity of the PPP project and time frame available for consultant selection. This method of selection places due emphasis on the quality of consultants by assigning weightage to higher technical experience and expertise. The technical and financial bids are submitted in two separate sealed cover duly super scribed and kept inside a bigger cover which should also be duly sealed and super scribed.

2.5.2. The technical evaluation should be carried out by CEC as defined in para 1.6.1 and a list of bidders qualifying the technical criteria should be prepared of this stage, based on pre-determined criteria. The bidders should be ranked according to their respective technical scores. Only the bidders scoring the minimum prescribed marks should be pre-qualified.

2.5.3 In the second stage, a financial evaluation is to be carried out. The financial bids of only the short listed bidders should be opened for the purpose of further evaluation. Proposals should be finally ranked based on their combined technical and financial scores.

CHAPTER 3 - SELECTION OF CONSULTANTS

3.1 Selection Process

Once the short listing of consultants is completed, the employer shall start the process of final selection of the consultant.

The selection process generally includes the following steps:

(a) preparation of Terms of Reference (TOR);
(b) preparation of cost estimate and the budget;
(c) preparation and issuance of the Request for Proposals(RFP);
(d) pre-bid meeting;
(e) receipt of proposals;
(f) evaluation of technical proposals: consideration of quality;
(g) public opening of financial proposals;
(h) evaluation of financial proposal;
(i) selection of the winning proposal;
(j) negotiations with the selected consultant, if required
(k) award of the contract to the selected firm.

3.2 Terms of Reference - TOR

3.2.1 The Employer shall be responsible for preparing the TOR for the assignment. TOR shall be prepared by those who have sufficient knowledge and experience in the area of the assignment. If the required experience is not available in-house, the task of preparation of the TOR can also be assigned to experienced consultants. The Terms of Reference (ToR) of the consultant shall provide a brief description of the services the consultant is required to perform. The TOR shall include:

i) Purpose/objective of the assignment;
ii) Detailed & precise scope of work including list of tasks & description of services;
iii) Expected input of key professionals (number of experts, kind of expertise required);
iv) Proposed schedule for completing the assignment and indicative work plan; The time frame for the deliverables should be clearly defined and must be adequate for the consultant to prepare an output that is desired by the Employer.
v) Reports/deliverables required from the Consultant.
vi) Background material, records of previous surveys etc. available and to be provided to the Consultant.
vii) Facilities such as local conveyance, office space, secretarial assistance etc., which can be provided to the Consultant.
viii) Procedure for review of the work of consultant after award of contract

The scope of the services described in the TOR shall be compatible with the available budget. TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants in preparation of their proposals. If transfer of knowledge or training is also an objective, it should be specifically outlined along with details of number of staff to be trained and so forth, to enable consultants to estimate the required resources. TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). However, TOR should not be too detailed and inflexible, so that competing consultants may propose their own methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The Employer's and consultants' respective responsibilities should be clearly defined in the TOR. The payment of the consultant is linked to the man hours spent on a specific deliverable and the payment schedule should be stated upfront in the RFP

3.2.2 Approval of TOR

3.2.2.1 The Board of Governors/Directors of the concerned corporate body shall be the approving authority for TOR for the proposed consultancy assignment.
3.2.2.2 Where such corporate body does not exist, the TOR for consultancy work shall be got approved from the Committee consisting of the following members:-

Infrastructure and Industrial Development Commissioner (IIDC)	-	Chairman
Principal Secretary/Secretary, Finance Department	-	Member
Principal Secretary/Secretary, Planning Department,	-	Member
Principal Secretary/Secretary, Infrastructure and Industrial Development Department	-	Member
Principal Secretary/Secretary of the Administrative Department	-	Member – Convener

3.3 Cost Estimate (Budget)

Preparation of a well-thought-thorough cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the employer's assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided in two broad categories (a) fee or remuneration (according to the type of contract used) and (b) reimbursable, and further divided into foreign (if applicable) and local currency payments. The cost of staff time shall be estimated on a realistic basis for the personnel, as applicable, by ascertaining the prevalent market conditions and consulting other organizations engaged in similar activities.

3.4 Preparation and issuance of the Request for Proposals (RFP)

3.4.1 Request for Proposal (RFP) is the bidding document in which the technical and financial proposals from the consultants are obtained. It contains the following:

(i) A letter of Invitation (LOI)
(ii) Instructions to Consultants (ITC)
(iii) Terms of Reference (TOR)
(iv) List of key positions/professionals required for the assignment
(v) Requirement of qualification and experience of the firm and of the key professional staff
(vi) Criteria of bid evaluation and selection procedure
(vii) Standard formats for technical proposal
(viii) Standard formats for financial proposal
(ix) Proposed form of contract

The employer shall use the applicable standard RFP with minimal changes as necessary to address project-specific issues. The employer may use an electronic system to distribute the RFP. If the RFP is distributed electronically, the electronic system shall be secured to avoid modifications to the RFP and shall not restrict the access of short listed consultants to the RFP.

The RFP will be sent only to the short listed consultants.

3.4.2 Letter of Invitation (LOI)

The LOI shall state the intention of the employer to enter into a contract for the provision of consulting services, the details of the employer and the date, time, and address for submission of proposals.

3.4.3 Instructions to Consultants (ITC)

3.4.3.1 The ITC shall consist of two parts, (1) Standard information, and (2) Assignment specific information. The assignment specific information is added through "data sheet". The ITC therefore, contains all necessary information that would help the consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score. The standard information include clauses relating to the procedure of bid submission, the procedure relating to pre-bid meeting, procedure for seeking clarifications etc. The assignment/job specific information will be prepared separately and it will include the date and time of bid submission, contact address, the qualification criteria, the method of selection, the evaluation process, the factors of evaluation and their respective weights etc.

3.4.3.2 The ITC shall not indicate the budget (since cost is a selection criterion), but shall indicate the expected input of key professionals (staff time). Consultants, however, shall be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC shall specify the proposal validity period (normally 90-120 days).

3.4.4 Standard formats for technical and financial proposals

3.4.4.1 The standard formats for technical proposal include:

(i) Format for letter of Proposal submission
(ii) Format for Consultant's organization and experience
(iii) Format for Comments and suggestions on TOR
(iv) Format for Approach and methodology
(v) Format for Team Composition
(vi) Format for Curriculum Vitae of key professionals
(vii) Format for Staffing Schedule
(viii) Format for Work Schedule
(ix) Format for Comments/modifications suggested on draft contract.
(x) Format for information regarding any conflicting activities and declaration thereof.

3.4.4.2 The standard formats for financial proposal include:

(i) A summary sheet of the cost estimate to be quoted by the consultant.
(ii) Remuneration payable.
(iii) Reimbursables..

3.4.5 Proposed form of contract

3.4.5.1 The contract includes accepted TOR methodology, general and specific conditions of contract, etc. wherever possible, the employer shall use the Standard Form of Contract.

3.4.5.2 The general conditions of contract shall include all such conditions which are common in nature and not project specific. Such conditions include clauses pertaining to commencement and completion, obligations of consultants, obligations of client sub-contracting, methods of payment, termination and extension of contract, arbitration, variation in quantities, indemnity and insurance, force majeure, conflict of interest, compliance to local laws and taxes and duties etc.

3.4.5.3 The project specific conditions include clauses relating to the assignment in hand. These clauses should be carefully developed to protect the interest of the employer.

3.5 Pre-bid meeting

In all cases of large value or complex assignments, a pre-bid meeting may be prescribed in the RFP. The date and time for such a meeting should normally be after 15 days of issue of RFP and should be specified in the RFP itself. During this meeting, the scope of assignment, responsibilities of either parties or other details should be clearly explained to the prospective bidders so that there is no ambiguity later on at the time of submission of technical/financial bids. Where some significant changes are made in the terms/scope of RFP as a result of pre bid meeting or otherwise considered necessary by the employer, a formal Corrigendum to RFP may be issued, to all short listed

consultants. In such cases, it should be ensured that after issue of Corrigendum, reasonable time (not less than 15 days) is available to the bidders to prepare/submit their bid. If required, the time for preparation and submission of bids may be extended, suitably.

3.6 Receipt of Proposal

3.6.1 The employer should allow enough time to the short listed consultants to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks and more than three months. In cases, where participation of international consultants is contemplated, a period of not less than eight weeks should normally be allowed**.** If necessary, the Government Department shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. The technical bids will be opened immediately after closing of receipt of technical bids by the Consultancy Evaluation Committee (CEC) or its Sub Committee. The financial proposals shall remain sealed and shall be opened publicly only of those firms who have qualified technically. Any proposal received after the closing time for submission of proposals shall be returned unopened.

3.6.2 Government Departments may use electronic systems permitting consultants to submit proposals by electronic means, provided the Department is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and authenticity of the proposals submitted, uses an electronic signature system or equivalent to keep consultants bound to their proposals and only allows proposals to be opened with due simultaneous electronic authorization of the consultant and the Government Department.

3.6.3 **Late Bids**: Late bids i.e. bids received after the specified date and time of receipt shall not be considered and shall be returned unopened.

3.7 Evaluation of Proposals: Consideration of responsiveness

The evaluation of the proposals shall be carried out in two stages: At the first stage evaluation of technical proposals is taken up. Proposals without earnest money (bid security), bid processing fees, if specified, unsigned and incomplete (i.e. when the required bid formats have not been submitted), not responding to the TOR fully and properly and those with lesser validity than that prescribed in the RFP will be summarily rejected as being non-responsive, before taking up the appraisal of the technical proposal for evaluation of quality. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded. The envelope containing the financial proposal is not opened till the technical evaluation is complete. The financial proposal of only such bidders will be opened which obtain minimum qualifying marks/ standards prescribed for the technical proposal. The evaluation shall be carried out in full conformity with the provisions of the RFP.

3.8 Evaluation of the Quality

3.8.1 The Employer shall evaluate each technical proposal (using the evaluation committee), taking into account criteria as prescribed in the RFP: (a) the consultant's relevant experience for the assignment, (b) the quality of the methodology proposed, (c) the qualifications of the key staff proposed and (d) capability for transfer of knowledge. Each of the **responsive** technical proposal will be evaluated for the criteria prescribed in the RFP by awarding marks so as to make total maximum technical score as 100. The criteria and weightage to each criteria or sub-criteria would depend on the requirements of each case and may be fixed objectively. A model scheme of maximum marks is, however, proposed as under:

Details	Max. Marks
1. Experience of the firm	20
2. Methodology, work plan and understanding of TOR	25
3. Suitability of the key personnel for the assignment	45
4. Capability for Transfer of knowledge/ training*	10
Total	100

* If this criteria is not required, the marks can be adjusted against some other criteria.

The weight given to the firm's experience can be relatively modest, since this criterion has already been taken into account when short-listing the consultant. More weight shall be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).

Alternatively a simplified procedure for evaluation of quality can be followed which has been described in para 3.9 below.

3.8.2 For evaluation of the technical bids with the simplified and detailed methods of evaluation, suggested formats have been given at Appendix I & II respectively of Part II of these Guidelines. They can be referred to for guidance. Suitable modifications can be made based on the requirements of the evaluation criteria.

3.8.3 The CEC shall normally divide the above criteria mentioned in para 3.8.1 into sub criteria. For example, sub criteria under methodology, work plan and understanding of TOR can be divided into (i) understanding of TOR, (ii) acceptability and detailing of methodology and work plan (iii) innovation, if it is important. However, the number of sub criteria should be kept to the minimum that is considered essential. The sub criteria for suitability of the key professionals for the assignment can also be divided into: (i) Educational qualifications (20%weight), (ii) professional experience in the required area of assignment (80% weight).

3.8.4 Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. The CEC shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the consultant and the individual proposed. When the assignment depends critically on the performance of key staff, such as a Project Manager in a large team of specified individuals, it may be desirable to conduct interviews.

3.8.5 At the end of the technical evaluation process, the CEC shall prepare a technical evaluation report of the "quality" of the proposals and take competent authority's approval. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

3.8.6 Minimum qualifying marks or relative qualifying method for quality of the technical proposal will be prescribed and indicated in the RFP. The consultants who are qualifying as per the technical evaluation criteria will only be considered as eligible for the consultancy assignment.

3.9 Simplified procedure for evaluation of quality

Alternatively, the following simplified procedure for technical evaluation can also be followed.

3.9.1 **Purpose**: Most of the Govt. departments need consultants who should only fulfill a minimum qualifying standard. For such assignment a higher technical score of 60% and above may not be necessary. Engagement of accountants, auditors, consultant engineers etc. can be carried out by following this simplified procedure for evaluation of technical quality.

3.9.2 Under this procedure minimum qualifying standards/ criteria will be fixed for each parameter. As mentioned earlier, the following parameters can used;

i. Minimum experience including number of assignments handled by the firm similar to the area of assignment.
ii. Turnover and other financial parameters of the firm, if required.
iii. Minimum educational qualifications of each of the key professionals.
iv. Minimum requirement of experience of the key professionals in an area similar to the proposed assignment.

3.9.3 All the firms which meet the minimum, qualifying standards/criteria so prescribed will stand technically qualified for consideration of their financial bids. No ranking of firms among the qualifying firms will be required.

3.10 Evaluation of Cost.

3.10.1 After evaluation of quality has been completed, the employer shall notify those consultants whose proposals did not meet the minimum qualifying standard or were considered non-responsive to the RFP and/or TOR, indicating that their financial proposals will be returned unopened after completing the selection process. In case of QCBS, the employer shall simultaneously notify the consultants that have successfully satisfied the qualifying standard or where marks have been awarded, the minimum qualifying marks and indicate the date and time set for opening the financial proposals. In such a case, the opening date shall not be later than three weeks after the notification date. The financial proposals shall be opened publicly in presence of the representatives of the technically qualified consultants who choose to attend. The name of the consultant, the quality scores and the proposed prices shall be read aloud and recorded when the financial proposals are opened. The employer shall prepare the minutes of the public opening.

3.10.2 The CEC will then examine if there are any arithmetical errors to be corrected. For the purpose of comparing proposals, the costs shall be converted to Indian Rupees as stated in the RFP. The CEC shall make this conversion by using the selling exchange rates for those currencies as per exchange rate quoted by an official source e.g. State Bank of India. The RFP shall specify the source of the exchange rate to be used and the date of exchange rate to be taken for comparison of the costs. This date shall be the date of opening of financial bids.

3.10.3 For the purpose of evaluation, the total cost shall include all taxes and duties for which the employer makes payments to the consultant and other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses.

3.10.4 If there are conditions attached to any financial proposal, which shall have bearing on the total costs as indicated in the proposal, the CEC shall reject any such proposals as non-responsive financial proposal. However, if the CEC feels it necessary to seek clarification on any financial proposals regarding taxes, duties or any such matter, the CEC may do so by inviting responses in writing.

3.11 Selection of the winning consultant

3.11.1 Proposals for selection of Financial Consultants and/or transaction advisor for PPP projects should finally be ranked according to their combined technical and financial scores as per CQCCBS procedure, based on the respective weightage assigned to them as per para 3.12. For the purpose of arriving at combined scores, appropriate weightages should be determined for the technical and financial bids. The ratio of weightages for technical and financial bids should be established well in advance and incorporated in the RFP document. Generally the successful applicant shall be the applicant having the highest combined score. In the event two or more proposals have the same scores in the final ranking; the proposal with the highest technical score should be ranked first.

3.11.2 Under the QCBS procedure as mentioned in paras 3.8 and 3.9, the financial proposals will be ranked in terms of their total evaluated cost. The least cost proposal will be ranked as L-1 and the next higher and so on will be ranked as L-2, L-3 etc. The least cost proposal (L-1) will be considered for award of contract. The CEC will put a report on financial evaluation of the technically qualified consultants to the competent final authority along with the recommendation that the least cost proposal (L-1) can be approved/ invited for negotiation and for final award of contract. Negotiations will be carried out as per the guidelines in para 3.13.

3.12 Cost Evaluation under Combined Quality cum Cost Based System (CQCCBS)

3.12.1 Under CQCCBS, the technical proposals will be allotted weightage of 70% while the financial proposals will be allotted weightages of 30%

3.12.2 Proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices.

3.12.3 The total score, both technical and financial, shall be obtained by weighing the quality and cost scores and adding them up. The proposed weightages for quality and cost shall be specified in the RFP.

3.12.4 **Highest points basis**: On the basis of the combined weighted score for quality and cost, the consultant shall be ranked in terms of the total score obtained. The proposal obtaining the highest total combined score in evaluation of quality and cost will be ranked as H-1 followed by the proposals securing lesser marks as H-2,H-3 etc. The proposal securing the highest combined marks and ranked H-1 will be invited for negotiations, if required and shall be recommended for award of contract.

As an example, the following procedure can be followed. In a particular case of selection of consultant, it was decided to have minimum qualifying marks for technical qualifications as 75 and the weightage of the technical bids and financial bids was kept as 70:30. In response to the RFP, 3 proposals, A,B &C were received. The technical evaluation committee awarded them 75, 80 and 90 marks respectively. The minimum qualifying marks were 75. All the 3 proposals were, therefore, found technically suitable and their financial proposals were opened after notifying the date and time of bid opening to the successful participants. The price evaluation committee examined the financial proposals and evaluated the quoted prices as under:

Proposal	Evaluated cost
A	Rs. 120.
B	Rs. 100.
C	Rs. 110.

Using the formula LECx100/EC, where LEC stands for lowest evaluated cost and EC stands for evaluated cost, the committee gave them the following points for financial proposals:

A: 100x100/ 120. = 83 points
B: 100x100/ 100. =100 points
C: 100x100/ 110. = 91 points

In the combined evaluation, thereafter, the evaluation committee calculated the combined technical and financial score as under:

Proposal A : 75x0.70 + 83x0.30=77.4 points
Proposal B : 80x0.70 + 100x0.30=86 points
Proposal C: 90x0.70 + 91x0.30=90.3 points

The three proposals in the combined technical and financial evaluation were ranked as under:

Proposal A:	77.4 points	H3
Proposal B:	86 points	H2
Proposal C:	90.3 points	H1

Proposal C at the evaluated cost of Rs. 110 was, therefore, declared as winner and recommended for negotiations/approval, to the competent authority.

3.12.5 Under QBS method, the consultant who has secured first rank in technical evaluation shall be called for further negotiation after opening and evaluation of its financial proposals.

3.12.6 The name of the successful bidder along with details of cost etc. shall be posted on the departmental website after the award to the successful bidder has been made and communicated to him in writing.

3.13 Negotiations and Award of Contract

3.13.1 Negotiations are not an essential part of the selection process In many cases, however, it is felt necessary to conduct negotiations with the selected consultant. Negotiations shall include discussions of the TOR, the methodology, staffing, Government Department's inputs and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost and the relevance of the initial evaluation be affected. The final TOR and the agreed methodology shall be incorporated in "Description of Services," which shall form part of the contract.

3.13.2 Financial negotiations shall only be carried out if due to negotiations as mentioned in para 3.13.1 above, there is any change in scope of work which has any financial bearing on the final prices or of the costs/cost elements quoted are not found to be reasonable. In such negotiations, the selected firm may also be asked to justify and demonstrate that the prices proposed in the contract are not out of line with the rates being charged by the consultant for other similar assignments. However, in no case such financial negotiation should result into increase in the financial cost as originally quoted by the consultant and on which basis the consultant has been called for the negotiations.

3.13.3 Negotiations are restricted/ prohibited as per CVC Guidelines from time to time. The concerned Department/Employer shall ensure that the prevalent CVC/GoI/GoUP guidelines are followed.

3.13.4 If the negotiations with the selected consultant fail, the employer shall cancel the bidding procedure and re-invite the bids.

3.14 Rejection of all Proposals and re-invitation

The Government Department will have the right to reject all proposals. However, such rejections should be well considered and normally be in cases where all the bids are either substantially in deviation to the TOR or considered unreasonably high in cost and in latter case, the lowest qualified bidder during negotiations fails to reduce the costs to a reasonable level. If it is decided to **re-invite** the bids, the terms of reference should be critically reviewed / modified so as to address the reasons of not getting any acceptable bid in the earlier invitation for Bids.

3.15 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the award of contract is notified to the successful firm.

CHAPTER 4 - SELECTION THROUGH DIRECT NEGOTIATIONS

4.1 Selection of consultants through direct negotiations does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection shall be used only in exceptional cases.

4.2 This method of selection may be adopted only if it presents a clear advantage over competition and under circumstances as mentioned in Para 1.5.3.

4.3 When continuity for downstream work is essential, the initial RFP shall outline this prospect and if practical, the factors used for the selection of the consultant should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the Department shall ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished by the Department, which shall then be negotiated.

4.4 If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or reserved procurement or if the downstream assignment is substantially larger in value, a competitive process shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest.

4.5 While selecting the consultant under this method, the employer shall ensure that the consultant has the requisite qualification and experience to undertake the assignment. Normally the employer shall adopt the same short listing criteria as applied to similar assignments while evaluating the EOI.

CHAPTER 5 - TYPES OF CONTRACTS FOR CONSULTANT SELECTION

5.1 Lump Sum (Firm Fixed Price) Contract:

Lump sum consultancy contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents and software programs. While lump sum consultancy contracts are easy to administer because payments are due on clearly specified outputs, it is essential that the terms of payments for these consultancy contracts are linked with the output and the time frame within which each of the defined activities are to be completed.

This type of contract shall normally be used by all Government Departments for hiring services of the consultants under these guidelines.

5.2 Time-Based Contract:

This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, supervision of construction, advisor services, etc. Payments are based on agreed hourly, daily, weekly or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overhead, fee (or profit) and, where appropriate, special allowances. This type of contract shall include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the employer to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate.

CHAPTER 6 - IMPORTANT PROVISIONS IN RFP/CONTRACT

The draft contract agreement covers the terms and conditions of employment of the winning bidder. A standard contract should be used for this purpose. Key elements that the contract ought to include inter alia are the term or duration of the contract; description of the scope of work; provision for modifications to the scope of work; definition of specific tasks and responsibilities; elimination of conflict of interest; change of personnel and use of sub-consultants; ownership of property used by the consultants during the course of the project; insurance requirements with specified level of coverage; dispute resolution, including the use of specified rules for arbitration; treatment of Force Majeure; conditions for termination; contract price; and payment schedule. Other important provisions to be included in the contract agreement are as follows:

6.1 Currency.

Under normal circumstances, all the contracts should be based on Indian Rupees only. However, for exceptional case, contracts in foreign currency may be permitted with prior approval of competent authority. RFPs shall clearly state that firms may express the price for their services, in the currency specified in RFP. If RFP allows proposals in any other currency, the date and the exchange rate for converting all the bid prices to Indian Rupees shall be indicated in RFP. The Guidelines issued by RBI/GoI from time to time shall be followed in this regard.

6.2 Payment provisions.

Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during negotiations vis-à-vis RFP and also indicated in the draft contract. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Payments for advances if any should normally be backed by Bank Guarantee. Normally, it should not exceed 10% of the cost of the contract. . A clause in the RFP and the contract of cases providing for interest free advances may also be stipulated that if the contract is terminated or delayed due to default of the consultant, the advance would be deemed as interest bearing advance at an interest rate to be stipulated depending on the prevailing rate at the time of issue of RFP to be compounded quarterly.

6.3 Bid Securities and bid processing fees.

The consultants submitting the proposals shall provide bid security along with their proposal. The amount, form and mode of submission of bid security and the method of refund of the bid security shall be specified in the RFP document. The employer may also charge an appropriate bid processing fees, which is not refundable.

6.4 Conflict of Interest.

The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consulting activities that conflict with the interest of the client under the contract and shall be excluded from downstream supply of goods or construction of works or purchase of any asset or provision of any other service related to the assignment other than a continuation of the "Services" under the ongoing contract. It should be the requirement of the consultancy contract that the consultants should provide professional, objective and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Employer. Without limitation on the generality of the foregoing, consultants shall not be hired, under the circumstances set forth below:

a) **Conflict between consulting activities and procurement of goods, works or services:** A firm that has been engaged to provide goods, works or services for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or

services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services for such preparation or implementation.

b) **Conflict among consulting assignments:** Neither consultants (including their personnel and sub-consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatization on public assets shall neither purchase nor advise purchasers of, such assets. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.

c) **Relationship with Government Department's staff:** Consultants (including their personnel and sub-consultants) that have a business or family relationship with such member(s) of the Department's staff or with the staff of the project implementing agency, who are directly or indirectly involved in any part of ;(i) the preparation of the TOR of the contract, (ii) the selection process for such contract, or (iii) supervision of such contract; may not be awarded a contract unless it is established to the complete satisfaction of the employing authority, for the reason to be recorded in writing, that such relationship would not affect the aspects of fairness and transparency in the selection process and monitoring of consultant's work.

6.5 Unfair Competitive Advantage

Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the request for proposals and all information would be made available to all short listed consultants together.

6.6 Professional Liability.

The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the employer will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that (a) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (b) the consultant's liability to the employer may in no case be limited to less than the total payments expected to be made under the consultant's contract, or the proceeds the consultant is entitled to receive under its insurance, whichever is higher; and (c) any such limitation may deal only with the consultant's liability toward the employer and not with the consultant's liability toward third parties.

6.7 Staff Substitution.

During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proved to be unsuitable, or the member is no longer working with the consultant), the consultant shall propose other staff of at least the same level of qualifications for approval by the Employer. The contract must specifically make provision for terms and conditions under which the staff can be replaced, about the remuneration to be paid etc.

6.8 Applicable Law and Settlement of Disputes.

The contract shall include provisions dealing with the applicable law, which should be the law applicable in India and the forum for the settlement of disputes.

6.9 Training or Transfer of Knowledge

If the assignment includes an important component of training or transfer of knowledge to Government/Project staff, the Terms of Reference (TOR) shall indicate the objectives, nature, scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall be included in the consultant's contract and in the budget for the assignment.

6.10 Standards of ethics

Government Department as well as consultants should observe the highest standard of ethics during the selection and execution of such contracts.

(a) In pursuance of the above objective, this policy defines, the terms set forth below as follows:

"corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution; and "Fraudulent practice" means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract,

"collusive practice" means a scheme or arrangement between two or more consultants, with or without the knowledge of the employer, designed to establish prices at artificial noncompetitive levels.

"Coercive practice' means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a selection process, or affect the execution of a contract.

(b) It is further provided that:-

(i) Employer will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent activities in competing for the contract in question;

(ii) The Government will declare a consultant ineligible, either indefinitely or for a stated period of time, to be awarded a Government contract if it at any time determines that the consultant has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract; and

The employer has the right to require that, in contracts, a provision be included requiring consultants to permit the employer to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the employer.

6.11 Monitoring of the Contract:

The Department awarding the consultancy contract should be involved throughout in monitoring the progress of the assignment. Suitable provision for this should be made in the contracts which should also take care of the need to terminate/ penalize the contractor or to suspend payments till satisfactory progress has not been achieved. As mentioned in Para 1.7 Chapter 1 Part II, CMC shall be formed by the employer to monitor the progress.

CHAPTER 7 - SELECTION OF INDIVIDUAL CONSULTANTS

7.1 Individual consultants are normally employed on assignments for which (a) teams of personnel is not required, (b) no additional outside professional support is required, and (c) the experience and qualifications of the individual are the paramount requirement.

7.2 Selection of Individual consultants shall be carried out by advertising the requirement in at least one national newspaper of repute. Selection shall be based on their qualifications for the assignment. They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Employer. Individuals employed by Employer shall meet all relevant qualifications and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organization.

7.3 Selection will be carried out by the CEC as mentioned in para 1.6 which will award marks for the educational qualifications and experience and select the most suitable candidate for the assignment. The CEC may also interview the candidates and award marks for their performance in the interview and recommend the remuneration to be paid.

7.4 From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Guidelines shall apply to the parent firm.

7.5 Individual consultants may be selected on a direct negotiation basis with due justification in exceptional cases such as : (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively; (b) assignments lasting less than six months; (c) emergency situations resulting from natural disasters; and (d) when the individual is the only consultant qualified for the assignment.

Appendix I Format for Simplified evaluation of quality.

Name of the consultancy firm:

1. Responsiveness

Sr. No.	Item	Required response
1	Has the consultant paid the RFP document fees.	Yes
2	Has the consultant submitted the requisite bid processing fee and bid security	Yes
3	Have all the pages required to be signed by the authorized representative of the consultant been signed.	Yes
4	Has the power of attorney been submitted in the name of authorized representative	Yes
5	In the case of JV/consortium, whether the MOU has been submitted.	Yes
6	Has the consultant submitted all the required forms of the technical proposal.	Yes
7	Does the technical proposal contain any financial information	Yes
8	Is financial proposal submitted separately in a sealed cover.	Yes

2. Evaluation of proposal.

Sr. No.	Item	Required response
1	Does the consultancy firm have the required experience.	Yes
2	Does the proposed methodology of work fulfill the objectives of the assignment/ job till the last detail of the TOR	Yes
3	Does the methodology, work plan and staffing schedule provide coverage of the entire scope of work as described in TOR	Yes
4	Does the team leader fulfill the minimum educational qualification and experience criteria.	Yes
5	Has the consultant provided for all the professionals for requisite expertise	Yes
6	Does the key professional (indicate the position) fulfill the minimum educational qualification and experience criteria [Evaluate for all the proposed key personnel]	Yes
7	Does the staffing schedule including the key professionals proposed, the responsibility assigned to them and the support staff together is adequate for performing the entire scope of work indicated in the TOR.	Yes

Note: If the answer is yes, in all the cases, the consultancy firm is considered technically qualified for the assignment.

Appendix II Format for Detailed evaluation of quality.

Summary Sheet

(Compiled from II-A, II-B,II-C, II-D)

(Only for proposals considered as responsive)

Sr.No.	Name of the Consultant	Firm's experience (Max. Marks)	Methodology & Work schedule (Max. Marks)	Qualifications of key Professionals (Max. Marks)	Total Marks. (Max. Marks 100)

II-A

Responsiveness

Name of the Consultancy Firm

Sr. No.	Item	Required response
1	Has the consultant paid the RFP document fees	Yes
2	Has the consultant submitted the requisite bid processing fees and bid security.	Yes
3	Have all the pages required to be signed by the authorized representative of the consultant been signed.	Yes
4	Has the power of attorney been submitted in the name of authorized representative	Yes
5	In the case of JV/Consortium whether the MOU/ Contract Agreement has been submitted	Yes
6	Has the consultant submitted all the required forms of the technical proposal.	Yes
7	Has the consultant provided all the professionals for the requisite expertise.	Yes
8	Does the technical proposal contains any financial information.	Yes
9	Is the financial proposal submitted separately in a sealed cover.	Yes

II-B

Evaluation of Consultancy Firm's Experience

Sr. No	Name of the Consultancy Firm	Number of Projects of similar nature	Marks Awarded (Max. Marks)

II-C

Evaluation of Methodology & Work Schedule

Sr. No.	Name of the Consultancy Firm	Understanding of TOR (Max. Marks)	Work Plan & Methodology(Max. Marks)	Organization & Staffing for the proposed assignment (Max. Marks)	Total

II-D

Evaluation of the Consultants Key Professionals

Name of the consultancy Firm:

Sr No.	Name of the Key Professionals	Educational Qualification	Max. Marks	No. of Projects of similar nature	Max. Marks	Experience of the region (No. of Projects in the region)	Max. Marks	Total Marks (4+6+8)
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**

PART – III POLICY FRAMEWORK FOR SELECTION OF DEVELOPERS FOR DEVELOPMENT OF INFRASTRUCTURE PROJECTS THROUGH PUBLIC PRIVATE PARTNERSHIP IN UTTAR PRADESH

CHAPTER 1 - INTRODUCTION

1.1 Purpose

The purpose of these Guidelines is to provide for rapid development of physical & social infrastructure in the State and to define the broad Policies and Procedures of Govt. of Uttar Pradesh for selection, contracting and monitoring of private developers for PPP Projects in the State for the designing, financing, construction, operation and maintenance of infrastructure projects in the State. They aim to provide broad policies for reducing administrative and procedural delays, identifying generic project risks, detailing various incentives, detailing the project delivery process and procedures for reconciliation of disputes with a view to presenting bankable projects to the private sector and improving level of infrastructure in the State.

1.2 Applicability

a. These Guidelines are applicable for selection of private Developers for Public Private Partnership projects by any department/organization of the State where the cost of the projects are funded through Public Private Partnership and/or partially by Govt.

b. These Guidelines specifically apply to those types of services in which the physical aspect of the activity predominates (e.g. construction of works, manufacture of goods, operation and maintenance of facilities or plant).

c. The Guidelines shall not be mandatory for cases where the selections are required to be done under the procedures decided by the Govt. of India or where Govt. of UP has agreed to follow guidelines as per loan / credit / grant agreement with donor agencies.

d. In case where the procedures for selection of developers are already laid down by an Act of the State Govt., the provisions of the Act shall take precedence over these guidelines. Subject to not being inconsistent with the Act, the concerned department shall have the option to adopt these Guidelines.

e. If in the event of any issue not being covered by these Guidelines or if the matter under consideration requires further clarification then the Employer shall refer to the CVC Guidelines or Govt. of India Guidelines for necessary directions.

f. The Guidelines for selection of Developers for development of infrastructure projects through Public Private Partnership in Uttar Pradesh shall supersede any other guidelines or Govt. Orders which may have been issued from time to time, before 14th March 2016.

g. The Guidelines shall apply with prospective effect from 14th March 2016. In cases where certain selection procedures have been initiated before 14th March 2016, the remaining steps after 14th March 2016 shall be taken in conformity with the Guidelines to the best possible extent.

CHAPTER – 2 THE APPROVAL FRAMEWORK

2.1 Committee of Secretaries

The Committee of Secretaries shall consist of following members:-

Chief Secretary, Govt. of U.P.	-	Chairman
Infrastructure and Industrial Development Commissioner	-	Member
Principal Secretary/Secretary to Chief Minister	-	Member
Principal Secretary/Secretary, Finance Department	-	Member
Principal Secretary/Secretary, Law Department	-	Member
Principal Secretary/Secretary, Planning Department	-	Member
Principal Secretary/Secretary, Infrastructure and Industrial Development Department	-	Member
Principal Secretary/Secretary of the Administrative Department	-	Member – Convener

2.2 Role of Committee of Secretaries

a. If any revision is required after Cabinet approval with regard to point (a) & (b) of Para 4.5, Chapter 4, Part I then the matter shall be put up for approval of Committee of Secretaries.

b. For projects having project cost ***more than*** Rs. 1000.00 crores ~~or more~~, the employer will present the finalized RFP documents along with DCA with the recommendations of PPPBEC before Committee of Secretaries who shall submit its recommendations before Hon'ble Cabinet for its approval.

c. The Committee of Secretaries shall submit its recommendation on selection of Preferred Bidder for approval to Hon'ble Cabinet if the project cost is greater than Rs. 1000.00 crores or if it is a sole bid on the recommendation of PPPBEC.

d. The Committee of Secretaries shall approve the Preferred Bidder for projects having project cost upto ~~**Rs. 50.00**~~**Rs. 1000.00** crores

e. The viability gap funding shall be considered by the Committee of Secretaries on the proposal of PPPBEC.

2.3 PPP Bid Evaluation Committee (PPPBEC)

a. ***For Projects having Project cost upto Rs. 1000.00 crores.*** ~~For Projects having Project cost upto Rs. 50.00 crores.~~

~~The PPP Bid Evaluation Committee (PPPBEC) for projects having project cost upto Rs. 50.00 crores shall consist of following members:-~~

The PPP Bid Evaluation Committee (PPPBEC) for projects having project cost upto Rs. 1000.00 crores shall consist of following members:-

Principal Secretary/Secretary of the Administrative Department	-	Chairman
Principal Secretary/Secretary, Finance Department	-	Member
Principal Secretary/Secretary, Law Department,	-	Member

Principal Secretary/Secretary, Planning Department	-	Member
Principal Secretary/Secretary, Infrastructure and Industrial Development Department	-	Member
MD/CEO of Employer organization	-	Member- Convener
The PPPBEC may co-opt representatives of one or more relevant Departments as may be deemed necessary.		

~~b. For Projects having Project cost more than Rs 50.00 Crores but less than or equal to Rs. 250.00 Crores~~

~~The PPP Bid Evaluation Committee (PPPBEC) for projects having project cost more than Rs. 50.00 crores but less than or equal to Rs. 250.00 crores shall consist of following members:-~~

~~Principal Secretary, Infrastructure and Industrial Development Department~~		~~Chairman~~
~~Principal Secretary/Secretary, Finance Department~~	~~-~~	~~Member~~
~~Principal Secretary/Secretary, Law Department,~~	~~-~~	~~Member~~
~~Principal Secretary/Secretary, Planning Department~~	~~-~~	~~Member~~
~~Principal Secretary/Secretary of the Administrative Department~~	~~-~~	~~Member- Convener~~
~~The PPPBEC may co-opt representatives of one or more relevant Departments as may be deemed necessary.~~		

~~c. For Projects having project cost more than Rs. 250.00 Crores but less than or equal to Rs. 1000.00 crs.~~

~~The PPP Bid Evaluation Committee (PPPBEC) for projects having project cost more than Rs. 250.00 crores but less than or equal to Rs. 1000.00 crores shall consist of following members:-~~

~~Infrastructure and Industrial Development Commissioner~~	~~-~~	~~Chairman~~
~~Principal Secretary/Secretary, Finance Department~~	~~-~~	~~Member~~
~~Principal Secretary/Secretary, Law Department,~~	~~-~~	~~Member~~
~~Principal Secretary/Secretary, Planning Department~~	~~-~~	~~Member~~
~~Principal Secretary/Secretary, Infrastructure and Industrial Development Department~~	~~-~~	~~Member~~
~~Principal Secretary/Secretary of the Administrative Department~~	~~-~~	~~Member- Convener~~
~~The PPPBEC may co-opt representatives of one or more relevant Departments as may be deemed necessary.~~		

~~d.~~b. For Projects having project cost more than Rs.1000.00 crs.

The PPP Bid Evaluation Committee (PPPBEC) for projects having project cost more than Rs. 1000.00 crores shall consist of following members:-

Infrastructure and Industrial Development Commissioner	-	Chairman
Principal Secretary/Secretary, Finance Department	-	Member
Principal Secretary/Secretary, Law Department,	-	Member
Principal Secretary/Secretary, Planning Department	-	Member
Principal Secretary/Secretary, Infrastructure and Industrial Development Department	-	Member
Principal Secretary/Secretary of the Administrative Department	-	Member- Convener
The PPPBEC may co-opt representatives of one or more relevant Departments as may be deemed necessary.		

ii. For projects having project cost Rs. 1000.00 crores or more, the employer will present the finalized RFP documents alongwith DCA with the recommendations of PPPBEC before Committee of Secretaries who shall submit its recommendations before Hon'ble Cabinet for its approval.

iii. For projects having project cost Rs. 1000.00 crores or more or those projects which result in Sole Bid, the employer will present the recommendations of PPPBEC with regard to Preferred Bidder before Committee of Secretaries who shall submit its recommendations before Hon'ble Cabinet for its approval.

~~e.~~c. All the members of the PPPBEC will have to give an undertaking/declaration that none of them has any personal interest, directly or indirectly, in the individual Developer/Developer concern interested in the PPP Agreement in question as per draft placed at Appendix 6.

2.4 Role of PPPBEC

a. The respective PPPBEC shall examine all the aspects and stages of the Developer selection, illustratively, they shall include:

   i. Sufficiency of Feasibility Studies;
   ii. Terms of Reference for selection of Developer especially determination of Bid Parameter;
   iii. Preparation of Bid Documents especially 'Instruction-to-Bidders' and 'Draft Concession Agreement (DCA) ;
   iv. Eligibility/Necessity of VGF as per norms;
   v. Issuance of EOI/RFQ/RFP;
   vi. Pre-bid /pre-proposal/pre-application meets ;
   vii. Finalization of bid documents after pre-bid meets;
   viii. Evaluation of technical and financial proposals;
   ix. Short-listing of developers;
   x. Final selection of the Developer;

b. The respective PPPBEC shall accord approval on Feasibility Studies, TOR and EOI/RFQ.

c. The respective PPPBEC shall accord approval on the modifications/amendments to the EOI/RFQ documents post pre-bid meets.

d. The respective PPPBEC shall accord approval on the shortlisting of applicants qualifying for next stage of bidding i.e. issuance of RFP.

e. The respective PPPBEC shall accord approval on first draft of RFP & DCA to be issued to shortlisted applicants, which shall be required to be approved by Hon’ble Cabinet after pre-bid/proposal meets in accordance with Clause 2.4 (f).

f. After final discussions with bidders in the Pre-Bid or Pre-Proposal meet(s) and before issuance of final RFP to short listed bidders for receiving financial proposal, respective PPPBECs shall finalize RFP documents including DCA for projects having project cost upto Rs.1000.00 crores and the Employer shall place the finalized documents alongwith the recommendations of PPPBEC before Hon'ble Cabinet for approval. For projects having project cost greater than Rs 1000.00 crores, the respective PPPBEC shall submit its recommendation to Committee of Secretaries which shall then submit its recommendations to Hon’ble Cabinet for approval.

g. The respective PPPBECs shall recommend the Preferred Bidder after evaluation of Bids received in response to RFP.

h. For projects having project cost upto ~~Rs. 50.00~~ **Rs. 1000.00** crores: The Employer shall place the recommendations of PPPBEC before the Committee of Secretaries for approval of Preferred Bidder.

~~i. For project having project cost above Rs 50.00 crores & upto Rs. 1000.00 crores: The Employer shall place the recommendations of PPPBEC before the Hon'ble Cabinet for approval of Preferred Bidder.~~

~~j.~~i. For project having project cost above Rs. 1000.00 crores or resulting in Sole Bid: The Employer shall place the recommendations of PPPBEC before the Committee of Secretaries which shall then submit its recommendations to Hon'ble Cabinet for approval of Preferred Bidder.

2.5 Sub-Committee of PPPBEC

There shall be a Sub-Committee of PPPBEC under the chairmanship of Principal Secretary of Administrative Department with officers from Law, Finance and Infrastructure Development ~~and Managing Director, PICUP or his~~ or their representatives as members for receiving and opening technical proposals in response to EOI or RFQ and making recommendations after evaluation of technical proposals to the PPPBEC. The Sub-Committee may co-opt representatives of one or more relevant Departments as may be deemed necessary.

2.6 Difficulty Removal Committee (DRC)

There shall be a Difficulty Removal Committee under the Chairmanship of Infrastructure & Industrial Development Commissioner to decide on matters necessary for removal of difficulties which may arise out of the provisions of these Guidelines. The Committee shall also be empowered to examine and decide on cases where deviations in the guidelines are being sought. The Committee shall include Principal Secretary / Secretary Finance and Law. The DRC may co-opt representatives of one or more relevant Departments as may be deemed necessary.

2.7 PPP Monitoring Committee (PPPMC)

~~There shall be a PPP Monitoring Committee consisting of atleast three of the Members of the PPPBEC. The Department of Infrastructure Development, Administrative Department of PPP Project and Finance shall necessarily be Members of PPPMC~~ There shall be a PPP Monitoring Committee ***chaired by Principal Secretary of the Administrative Department with members from Departments of Infrastructure Development, Law, Finance and any other department as may be required***. The PPPMC shall be responsible to monitor the physical and financial progress of the project. The PPPMC may co-opt representatives of one or more relevant Departments as may be deemed necessary.

2.8 Approval of the Hon'ble Cabinet

Approval of Hon'ble Cabinet shall be required to be obtained:-

~~a. For in- principle Approval of the project :~~

i. ~~where Department of Infrastructure Development disagrees with proposal for in-principle approval of Project put up by Administrative Department~~

or

ii. ~~where the proposed project is likely to have statewide impact~~

or

iii. ~~where disinvestment process is proposed.~~

~~b.~~a. On finalized RFP documents along with Draft Concession Agreement (DCA) in all cases irrespective of project cost before issuance to shortlisted applicants for submission of their financial proposals.

~~c.~~b. On selection of Preferred Bidder for projects having project cost above ~~Rs. 50.00~~ **Rs. 1000.00** crores.

2.9 The concerned Employer/ Administrative Department shall be responsible to obtain approval of Hon'ble Cabinet as envisaged in these Guidelines. They shall undertake the preparation of cabinet note. Opinion of Law, Finance and Infrastructure Development Department shall necessarily be obtained on the Cabinet note by the concerned Employer/ Administrative Department. The concerned Employer/ Administrative Department may also obtain the opinion of other departments as deemed necessary on the Cabinet Note.

2.10. Beyond the provisions contained in these Guidelines, if approval is required for the development of project on PPP under provisions of any Rules/Regulations/Act, then the same shall be obtained from the competent level as may be provided therein under.

CHAPTER 3 - PROCEDURE FOR SELECTION OF DEVELOPER FOR PPP PROJECTS

3.1 Project Preparation, Feasibility Report & Approval

a. The Consultant selected shall undertake a Feasibility Study in accordance with Appendix-2 (Feasibility Study).

b The same or different consultant may be entrusted with the studies relating to Environment Impact Assessment (EIA) and Social Impact Assessment (SIA) depending upon the complexity of the project and the importance of these studies for project execution.

c Upon completion of the Feasibility Study, the Employer shall examine the Feasibility Study and shall prepare a structure of PPP Project including scope of services of the Concessionaire, a risk sharing frame work and a work plan for PPP Project and while doing so give due consideration to the following:-

i. It has considered all options to increase efficiency in project scoping and it has ascertained that the same level of service delivery needs cannot be met with a reduced scope and scale of the PPP Project;

ii. Areas to optimize capital and operating costs and establish a strong case for their reasonableness;

iii. Independent assessment of market demand, including a comprehensive justification of major assumptions and key findings, and the project revenues are considered realistic and viable for the potential private partner;

iv. Assumptions regarding user charges, if any, from the PPP Project are affordable to users and would be socially and economically acceptable to the Government.

v. The tariffs setting and revision framework is predictable and transparent;

vi. The direct financial commitments of the Employer and/or the Government have been quantified and reasonably estimated for the entire contract duration and are within the budgetary limits of the Government or the Employer, as the case may be. Such financial commitments shall include but not be limited to, grants to the PPP Projects, annuity payments, management fees, operational period payments, cost associated with acquisitions of land and other obligations under the Conditions Precedent for the Employer. The lifecycle costs and revenues from the PPP Project establish the sustainability of the PPP Project throughout the concession period;

vii. The sources of Contingent Liabilities, if any, have been assessed and are acceptable to the Employer.

viii. The Employer shall examine whether or not value for money is achieved through PPP.

ix. The Employer shall decide whether to provide for revenue sharing and/or revenue support mechanism or a combination thereof within the Concession Agreement for the PPP Project.

d. The Employer through its Administrative Department shall put up the Feasibility Study Report along with salient features of the proposed project in the format specified at Appendix-3 to PPPBEC for approval of the Report and approval for undertaking the selection of Developer.

3.2 Participation in projects

Any person may participate in financing, construction, maintenance and operation of projects.

3.3 Competitive Bidding:

a. Selection of the Developer for all projects proposed to be developed on PPP shall be done only through Competitive Bidding Process.
b. The notice inviting participation will be adequately publicized by the Employer.
c. The bid process will be designed to assist and ascertain, technical, financial, managerial and commercial capabilities of the Developer.
d. The prequalification criteria, performance criteria and evaluation criteria shall be incorporated in the documents in clear and unambiguous terms to evaluate bids in transparent manner.
e. All proposals shall be opened and evaluated at a common platform in a free and fair manner.
f. Normally there would be a Single Bid parameter, but where more than one Bid parameters are considered necessary the relative weightages to be assigned to such parameters shall be clearly specified and disclosed upfront in the Bid document.
g. The Employer shall adopt a two stage process for selection of Developer :
    i. Ist Stage: Shortlisting of Developers through EOIs in the form of Request for Qualification (RFQs). The prospective Developers are invited through RFQ to submit detail Technical Bid and are short listed as per evaluation criteria or pre-qualification criteria disclosed upfront.
    ii. IInd Stage: Selection of Developer from shortlisted Developers on the basis of Request for Proposal (RFPs) submitted by them containing the Financial Bids. The short listed Developers are invited through RFPs to submit their Financial proposal,
h. Alternatively, PPPBEC may decide upon undertaking Developer Selection through a 'single stage two-envelope' system comprising a technical bid and a financial bid in which case RFQ - cum - RFP shall be issued depending on the complexity of the PPP project and time frame available. In such case, the RFQ & RFP are submitted in two separate sealed covers duly super scribed and kept inside a bigger cover which should also be duly sealed and super scribed. The technical bids so received shall be evaluated on pre disclosed criteria and accordingly the Financial Bids of only the developers who have been found qualified on the basis of their Technical Bids shall be opened publically and such publically opened Financial Bids shall be evaluated as per pre disclosed bid parameter.
    In all such cases, approval of the Hon'ble Cabinet shall be obtained on the draft of RFQ - cum - RFP finalized after incorporating the inputs/feedback received in the pre-bid meet before issuance of documents for submission of bids.
i. Developer selection through QCBS method: The QCBS method for selection of consultants given in Part-II of these guidelines shall apply mutatis mutandis for selection of Developers for PPP Projects. This method may be used for highly technical projects where weightage needs to be given to highly technical standards while finalizing the prices.

3.4 Assistance by State Govt./Govt. Agency/Specified Govt. Agency/Employer

The State Govt./Govt. Agency/Specified Govt. Agency/Employer may provide to Developer assistance in the form of various concessions, illustratively the list is as follows :-

a) Participation in the equity of the project not exceeding forty-nine per cent of the total equity.

b) financial assistance, either one time or in installments, not exceeding twenty percent of the cost of the project ;

c) Senior or subordinate loans (wherein, "senior loan" means a loan in respect of which a claim on assets is prior to the claim on the assets in respect of other loan and which is specified as such in an agreement providing finance, and "subordinate loan" means a loan in respect of which a claim on assets is subsequent to the claim on the assets in respect of another loan and which is specified as such in an agreement providing finance),

d) Guarantee by the State Government, a Government agency or a specified Government agency in respect of liability of a Government agency arising out of a concession agreement.

e) Opening and operation of escrow account

f) Conferment of a right to develop any land.

g) Incentives by the State Government in the form of exemption from the payment of, or deferred payment of, any tax or fees levied by the State Government under any law, or

h) In such other manner as deemed fit.

3.5 Viability Gap Funding

The PPP Project may be forwarded by the Govt. of U.P. to the Govt. of India for upfront Financial Assistance upto 20% of the Project Cost as laid down by the GOI if the PPP Project after final evaluation of Bids and finalization of Concession Agreement is eligible for VGF as per GOI norms.

The viability gap funding, if any required, shall be considered by the Committee of Secretaries on the proposal of PPPBEC in accordance with the rules and limits as may be framed by State Government and Government of India in this regard and the proposal thereafter would be placed for approval of competent authority. As per GOI Guidelines for VGF, Financial Assistance upto 20% of designated project cost would be admissible to the Private Developer through the State Government.

3.6 The concerned Administrative Department shall also be free to approach GoI or its agency to fund its project development expenses from the fund set up by GoI or its agency in accordance with guidelines made by them in this regard.

CHAPTER 4 - PREPARATION OF DRAFT TENDER DOCUMENTS

4.1 Preparation of Tender Documents

The Consultant selected by the Employer 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.

4.2 Adoption of Model Documents

The Employer 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 Employer shall put up the details of deviations from the Model Tender document referred to in this sub-Para and the reasons thereof along with the draft Tender documents for approval of PPPBEC.

4.3 For sectors not covered by model documents referred in sub-Para above, the Employer shall prepare draft Tender Documents based on the principles followed in the Model Documents and laid down in clause 4.6 of this chapter.

4.4 Request for Qualification (RFQ)

Following the Final 'in principle' clearance of Competent Authority, the Employer may invite expressions of interest in the form of Request for Qualification (RFQ) for short-listing of pre-qualified bidders.

a. Request for qualification stage shall be undertaken to :-

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

b. <u>Contents of RFQ</u>

i. Description of PPP project, estimated project cost[1] and the project structure.
ii. Description and schedule of Tender proceedings.
iii. Conditions of eligibility of applicants, the information sought from the applicants for qualification and the form and procedure of the application.
iv. Description of the parameters and method of evaluating qualification of applicant. The objective of evaluation should be to identify qualified applicants that have the requisite capability to take up the PPP project.
v. The criteria or conditions, if any, for disqualification of the applicants such as conflict of interest, national security and other relevant considerations.
vi. Number of applications an applicant can submit whether applying individually or consortium.
vii. The time, place, procedure and the manner of opening of RFQ.

[1] The estimated project cost shall form the basis for qualifying the financial criteria's in RFQ document.

c. Qualifying Criteria

i. The qualifying criteria used by Employer to evaluate the responses to the RFQ shall be objective, equitable and unambiguous and shall be clearly stated in the RFQ.

ii. The qualifying criteria shall cover the following aspects of the applicant:-

A. The applicant's experience and track record in delivering projects of similar nature.

B. 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.

iii. Criteria for evaluation shall be defined in terms of any or all of the following, based on the nature of PPP project:-

A. Minimum number of projects of more than a specified capacity developed/constructed/operated

B. Minimum number of projects of more than a specified project value developed/constructed/operated.

C. Minimum number of contracts for operation and maintenance of similar facility.

D. Any other criteria suitable for the need of the PPP project.

iv. The capability of the applicant to invest the capital that would be needed for the PPP project.

v. 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.

vi. The ability of the applicant to support the contractual arrangements over the contact term.

d. Criteria for evaluation of financial capability shall be defined in terms of any or all of the following:-

i. Net worth of the applicant as defined under Companies Act 2013 as may be amended from time to time.

ii. Average annual turnover defined as simple average of sales figures of the applicant for the immediately preceding three years derived from audited financial statements.

iii. 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.

iv. The Applicant has not been sanctioned CDR package during last 3 years including current year for which he will give an affidavit.

v. Any other criteria suitable for the need of the PPP Project.

e. Based on the nature of PPP Project, the Employer may, in addition to the above, specify qualifying criteria in relation to the following areas:-

i. Proposed team of experts, if the PPP Project requires specialized technical expertise.

ii. 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

f. Pre Application Meeting

i. The pre-application meeting shall be held not less than two weeks before the due date.

ii. The clarifications on the queries of the applicants shall be issued not less than two weeks before the due date.

iii. Corrigenda/amendments/addenda in the RFQ shall be issued not less than two weeks before the due date.

g. Schedule of RFQ

The due date shall not be less than 21 days from the date of advertisement/notification of RFQ.

h. Opening of Applications

i. The application received in response to RFQ shall be opened in the presence of the applicants who choose to attend in the manner and procedure specified in RFQ in the presence of the Sub Committee.

ii. The PPPBEC on the recommendation of Sub Committee, may in exceptional circumstances defer the date for opening of the applications and record in writing the reasons therefor.

i. Evaluation of Application

i. Submitted RFQ applications shall be evaluated by the Sub Committee in accordance with the qualifying criteria specified in the RFQ. The sub Committee on the basis of evaluation shall make a recommendation on the bidders qualifying for next stage of bidding i.e. issuance of RFP.

ii. The recommendation of the sub Committee on the evaluation of RFQ as above shall be put up to PPPBEC for its approval.

j. The Employer shall promptly notify each applicant in writing whether or not it has been qualified.

k. Only applicants who have qualified shall be invited for submission of proposals by issuance of RFP.

4.5 Request for Proposal(RFP)

a. Components of RFP –

i. Feasibility Report/Project Information Memorandum: This component of RFP shall provide such information to bidder that is adequate for them to evaluate the PPP Project and estimate their Final offer. This may include (A) Project objectives and rationale; (B) Site details; (C) Role of Government, Key Agencies and stake holders; (D) Project scope giving description of PPP Project; (E) Output specifications i.e. technical, quality & performance characteristics expected in objective, functional and generic terms.

ii. Instruction to Bidders: This component of RFP shall define the bid parameter, process of bid submission and evaluation and shall include procedures, terms and conditions which should be followed by bidders for submission of their bids.

iii. Draft Concession Agreement: The draft concession agreement shall govern the contractual relations between the concessionaire and Employer and shall contain rights and obligations of the parties, payment terms, the concessions, performance obligations, defaults and their consequences, event of termination and other ancillary clauses.

iv. The RFP shall clearly and specifically define the form and content of the Final Offer and state that Bidder shall be selected on the basis of the most advantageous Final Offer.

v. In case of the bid process being adopted for a Mega Infrastructure Project, the Employer may require all Bidders to obtain from their Prospective Lenders, financial terms, expectations regarding State Support, comments on the Concession Agreement and other project documents (hereinafter called “Deviations”).

vi. Any Deviations proposed shall be enclosed in a separate envelope and shall not be part of the envelope containing the financial or the commercial offer with regard to a Project. The procedure for determining the common set of Deviations and the effect to be given to such common set of Deviations shall be as may be prescribed.

vii. The Bid Parameter may be:

A. Grant sought,
B. Expected Revenue/ Annuity,
C. Tariff/shadow toll,
D. Present value of lifecycle cost,
E. Concession Period,
F. Upfront Premium,
G. Equity stake,
H. Extent/share of subsidized facilities to the Employer;
I. Revenue share
J. Any other deemed fit;

b. Evaluation Criteria

The employer shall select a bidder solely on the basis of highest or the lowest final offer, as specified in the RFP.

c. Pre-Proposal or Pre Bid Meet

i. The pre-Bid meeting shall be held not less than 3 (three) weeks before the Due Date:
ii. The clarifications on the queries of Bidders shall be issued not less than 2 (two) weeks before the Due Date: and
iii. Corrigenda or notifications of amendments in RFP or Draft Concession Agreement shall be issued not less than 2 (two) weeks before the Due Date after obtaining approval of Competent authority.

d. Schedule of Bid Process

The Due Date for submissions of RFPs issued to short listed applicants shall normally be within 6 weeks from the date of issue but in no case shall be less than 4 weeks from the date of first notice for RFP. The time allowed shall depend on the assignment, but normally shall not be less than four weeks and more than three months.

In cases, where participation of international Developers is contemplated, a period of not less than eight weeks should be allowed. The model time frame for according such approval to completion of the entire process of award of contract should not normally exceed one month from the date of submission of recommendations by PPPBEC for final selection of Developer. Under any circumstances, the overall time frame should be within the validity period of the contract.

e. Data Room

i. The Employer shall maintain a data room where project- specific information shall be kept.
ii. All Bidders shall be allowed to access the data room during reasonable working hours. The data room will be maintained by the Employer until the completion of the RFP Stage.
iii. The data room shall be maintained in a single location, for a limited period of time and the employer shall designate an officer to be present in the data room.
iv. The location and rules for accessing the data room should be stated in the RFP.

f. Site visit

i. If the PPP Project involves important site-related issues, a site visit shall be organized early in the RFP Stage.
ii. The details for site visit shall be stated in the RFP.

g. Effectiveness of Bids

i. Bids shall be in effect during the period of time specified in the RFP.

ii. Prior to the expiry of the period of effectiveness of Bids, the Employer may request Bidders to extend the period for an additional specified period of time. A Bidder may refuse the request without forfeiting its Bid Security.

iii. If a Bidder agrees to extend the period of effectiveness of its Bid, the Employer shall procure an extension of the period of effectiveness of Bid security as provided by such Bidder or call for new Bid security for the additional specified period of time.

iv. If a Bidder has not extended the Bid Security, or has not provided a fresh Bid Security, if shall be considered as refusal of the request to extend the period of effectiveness of its Bid and Bid may be summarily rejected.

h. Opening of Bids

i. The PPBEC shall open the Bids on the Due Date, and at the time and place and in the manner and procedure specified in the RFP in the presence of Applicants who choose to attend.

ii. The employer on the recommendation of PPBEC may in exceptional circumstances defer the date for opening of the bids and record in writing the reasons therefor.

iii. Until the opening of the Bids, the Employer shall ensure that the Bids and Final Offer remain unopened and are stored in secure location.

iv. All Bidders who have submitted Bids, or their representatives, shall be permitted by the employer to participate in the opening of Bids.

i. Evaluation of Bids

Evaluation of submitted bids shall be carried out by the PPPBEC. The Bid evaluation shall follow the pre-determined criteria as specified in the RFP.

j. Prohibition of negotiations

Save as otherwise provided in the Guidelines, there shall be no negotiation with the Bidder on the financial or commercial aspect of the proposal submitted by the Bidder.

k. Selection of Preferred Bidder

i. All bids adjudged responsive shall be ranked in accordance with evaluation criteria specified in RFP and the first ranked bidder shall be preferred bidder.

ii. In event the first ranked bidder withdraws or is not selected for any reason, in the first instance (the first round of bidding), the PPPBEC may invite all the remaining bidders to match the bid of the aforesaid first ranked bidder (the 'second round of bidding'). In that case, the Employer shall request all the remaining bidders to revalidate or extend the validity period of their respective bid security.

iii. If in the second round of bidding, only one Bidder matches the aforesaid first ranked Bidder, it shall be selected the Preferred Bidder. If two or more Bidders match the said first ranked Bidder in the second round of bidding, then the Bidder whose Bid was ranked higher as compared to other Bidder(s) in the first round of bidding shall be selected the Preferred Bidder. For example, if the third and fifth ranked Bidders in the first round of bidding offer to match the said first ranked Bidder in the second round of bidding, the said third rank Bidder shall be the Selected Bidder.

iv. In the event that no Bidder offers to match the said first ranked Bidder in the second round of bidding as specified under this Para, the Employer may in its discretion, either initiate a new Tender Proceeding or abandon the PPP Project.

v. The results of evaluation of Bids shall be submitted by PPPBEC for approval to the competent authorities as defined in Chapter 2, Part III in the format specified in Appendix 4.

vi. The Preferred Bidder shall be notified by the Employer after obtaining approval of the competent authorities as defined in Chapter 2, Part III.

vii. Simultaneous with the receipt of approval from the competent authority, the Employer shall communicate to other Bidders about the selection of the preferred Bidder, and its intention to execute the Concession Agreement with the Preferred Bidder.

viii. After selection, a letter of award (the "Letter of Award") shall be issued, in duplicate, by the Employer to the Preferred Bidder with the condition that the Preferred Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return a duplicate copy of the LOA in acknowledgement thereof.

l. Treatment of sole bid :

1. In case of the competitive bidding process resulting into a Sole Bid as defined in Chapter 2, Part 1, the PPPBEC shall either:

(a) Recommend the sole Bid for acceptance to CoS, if the PPPBEC is satisfied that the competitive bidding process as envisaged in the Guidelines has been followed;

or

(b) Reject the sole Bid.

2. In case the sole Bid is accepted, negotiation with the Bidder to ascertain better terms for the Employer may be undertaken provided these negotiations result in better terms for Employer than outlined in RFP document before recommending to CoS.

m. Treatment of limited response:

In case the competitive bidding process does not generate sufficient response and if even a Sole Bid is not received, then the Employer shall in consultation with the PPPBEC either;

(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;

n. Speculative bids :

i. A bid may deem to be speculative if it is abnormally high or low with reference to

A. Other bids received
B. Such other consideration as PPPBEC may deem fit.

ii. The PPPBEC will prescribe the norms for determining the speculative or unrealistic bid or may seek an opinion on the same from an independent expert or a body of repute.

iii The PPPBEC may permit bidder concerned to make a representation in support of its bid with any such information as the bidder may deem necessary or relevant.

iv. The bids so adjudged as speculative or unrealistic shall be treated as non-responsive and shall be liable for rejection. By reason of any speculation or unrealistic bid or rejection of such bid, shall not necessarily lead to termination of the bid process.

v. The decision to reject the speculative bid and the reasons therefor shall be communicated to the bidder concerned.

o. Treatment of two equal Bids

i. In the event that two or more Bidders have quoted the same Final Offer, Employer 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 Employer 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.

p. 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 Infrastructure Authority 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.
iv. Any change in the shareholding or composition of a consortium shall be with the approval of the PPPBEC/PPPMC.

4.6 Draft Concession Agreement

a. Concession agreement: The key to the success of the PPP Project is designing of an appropriate and effective Concession Agreement. “Concession” means grant of financial assistance or conferment of right on Government property and public assets to a person other than the State Government, Government agency or specified Government agency, as per the terms specified in the concession agreement. The various types of Concession agreement are enumerated in Schedule-II.

b. A person may enter into a concession agreement of the nature specified in Schedule II with the State Government, a Government agency or a specified Government agency.

c. Where the Competent Authority having regard to the nature of a project is satisfied that, it is necessary to do so, it may permit combination of two or more agreements of the nature specified in Schedule II into one agreement.

d. No concession agreement shall normally provide for transfer of a project by a developer to the State Government, a Government agency or a specified Government agency later than thirty five years from the date of agreement.

If the State Government, Government agency or, as the case may be, specified Government agency, is satisfied with the performance of the developer during the concession period, it may by order, extend the concession period on such terms and conditions to be laid down in the Concession Agreement.

e. The State Government through the Department of Infrastructure Development may add to, amend or omit there from any PPP Project in Schedule - I or at similarly in relation to any other nature of agreement in Schedule II and on issue of such notification, the Schedule shall be deemed to have been amended accordingly.

f. Procedure for concession agreement.

No concession agreement for undertaking a project shall be entered into with any person unless the procedure specified for selection of Developer under these guidelines has been followed.

g. Approval of contract principles:

The Department of Law would also be represented in the PPPBEC and PPPMC, as the concession agreements would require careful legal scrutiny. The Employer shall examine concession agreements from the financial angle, the guarantees to be extended, and generally assess risk allocation from the investment and banking perspectives. It would also ensure that projects are scrutinized from the perspective of government expenditure. Where the prospective shortlisted Developers propose deviations from the Draft Concession Agreement previously approved by the designated authority so authorized by the Government, the PPPBEC shall scrutinize such deviations and put up its recommendations to the Competent Authority for its approval.

h. Risk Allocation

As an underlined principle, risk shall be allocated to the parties that are best suited to manage them. The Commercial and Technical risks relating to construction, operation and maintenance shall be allocated to the Private Sector / Concessionaire; similarly other commercial risks such as the rate of growth of traffic etc. in the case of Road PPP Projects shall also be allocated to the concessionaire. On the other hand, all direct and indirect political risks shall be assigned to the Government/ Administrative Department.

i. Essential Ingredients of Concession Agreement :

The essential ingredients of a Concession Agreement, applicable to any of these are outlined in Appendix 5. Briefly, they are described below:

1. Amount to be charged for providing goods and services (User Charges)

i. Where, in pursuance of a concession agreement with the State Government, the Government agency or as the case may be the specified Government agency:-

(A) the developer has constructed a project for providing goods or services, and

(B) the project vests in the developer for a period specified in the concession agreement and

(C) on expiry of such period , the project is to vest in the State Government, the Government agency or the specified Government agency. The developer may charge such amount as specified in the agreement, for providing goods or services by the project so long as the project continues to vest in him, or

(D) An existing project is vested to a person to renovate, operate and maintain the developer may charge such amount as specified in the agreement for providing goods or services by the project so long as the project continues to vest in him.

ii. A concession agreement may provide that a developer may having regard to the rate of inflation, variation in the rate of foreign exchange and such other factors, as may be prescribed revise the amount of charges referred to in sub paras above in such manner as may be prescribed.

2. Financial security for maintenance of project

Where a provision is made in a concession agreement requiring the developer to maintain the project constructed by him for a period specified in such agreement,-

i. there shall be opened an escrow account by the developer, the money out of which shall be expended for the maintenance of the project in accordance with the provision made in the concession agreement or in any other agreement with the State Government, the Government agency or, as the case may be, the specified Government agency,

or

ii. the developer shall execute a bond in favour of the State Government, the Government agency or, as the case may be, the specified Government agency binding himself to make payment of such amount of money as specified in the bond to the State Government, the Government agency or, as the case may be, the specified Government agency in case he fails to maintain the project in accordance with the provisions made in the concession agreement or any other agreement with the State Government, the Government agency or, as the case may be, the specified Government agency .

or

iii. the concessionaire shall open an escrow account with a bank and execute an escrow agreement to be entered into amongst the concessionaire, the State Government or the Government agency or, as the case may be, the specified Government agency, the escrow bank and the senior lenders through the lenders representative(s) on terms and conditions thereof to be specified in the Concession Agreement.

3. Training to employees

A developer shall provide at his expense, training to the employees of the State Government, the Government agency or, as the case may be, the specified Government agency in respect of maintenance or operation of the project in accordance with the provisions made in the concession agreement or in any other agreement with the State Government, the Government agency or, as the case may be, the specified Government agency.

4. Transfer of certain rights

Where the project is transferred to the State Government, the Government or the specific Government agency according to the provisions of the concession agreement, all the rights of the developer in respect of the project shall stand transferred to the State Government, the Government agency or, as the case may be, the specified Government agency.

5. Termination of concession agreement-

(i) Where a concession agreement is terminated by the State Government, the Government agency or, as the case may be, the specified Government agency with the consent of the developer or in absence of any default of the developer, the developer shall be entitled to such amount of compensation for such termination as specified in the concession agreement.

(ii) A concession agreement may provide that if a default specified therein is committed by the developer, the State Government, the Government agency or, as the case may be, the specified Government agency shall, after giving to the developer an

opportunity of being heard in such manner as may be prescribed, be entitled to terminate the concession agreement and-

(a) take over the project without repaying the amount invested by the developer in the equity and shall assume the liability of the developer towards loans taken by him in respect of the project, or

(b) enter into a concession agreement with another person whose name is recommended by the lenders of the developer and approved by the State Government, the Government agency or, as the case may be, the specified Government agency, on the same terms and conditions as are specified in the concession agreement so terminated.

(iii) The Concession Agreement shall provide for treatment/termination due to default committed by the State Government, the Govt. agency or as the case may be and the procedure to be followed.

(iv) In the event, the Actual Rate of Return on investment exceeds by greater than 20% the targeted/projected Internal Rate of Return or if the actual revenue exceeds by greater than 20% the targeted/ projected revenue prior to the completion of the concession period, then the State Government or a specified Government agency or Employer may in the interest of public, after giving an opportunity of hearing to the Concessionaire, terminate the concession agreement earlier on such terms and conditions as may be mutually agreed.

6. Abuser charges:

i. The PPPMC shall be entitled to levy Abuser Charges for abuse, on the Developer, if any Developer abuses the rights granted to the Developer under the Concession Agreement provided the PPPMC shall give an opportunity of not less than fifteen days from the date of service of a notice to the Developer to show cause in writing, why such Abuser Charges should not be levied on him, before passing the order under this section.

ii. The Concession Agreement will provide what will constitute abuse of rights granted to the Developer. The Abuser Charges will be as prescribed by the PPPMC from time to time.

7. Polluter charges

(i) The PPPMC shall be entitled to levy Polluter Charges for pollution of the environment on the Developer, if the Developer pollutes the environment and/or does not adhere to the specified mitigation measures as provided in the Concession Agreement.

(ii) The PPPMC shall give an opportunity of not less than fifteen days from the date of service of a notice to the Developer to show cause, in writing, why such Polluter Charges should not be levied on the Developer, before passing the order under this Clause.

(iii) The Polluter Charges will be as Prescribed by the PPPMC

8. Monitoring of Expenses

The State Government or a specified Government agency or Employer, with a view to protect public interest, shall at regular intervals review the expenses being incurred by the Concessionaire vis a vis the projected expenses in order to ensure that no abnormal expenses are booked to the project by the Concessionaire.

9. Applicable Law and Settlement of Disputes

The contract shall include provisions dealing with the applicable law, which should be the law applicable in India and the forum for the settlement of disputes. The provision for appointment of arbitrator for adjudicating disputes, if any, may be preferred. The constitution of arbitrator shall comprise of one member nominated by Administrative Department of the Government of U.P. and one member nominated by the Developer. In case of difference of opinion between members, the matter shall be referred to the third member to be nominated jointly by both the parties.

4.7 General Provisions regarding Selection of Developers

a. Form of communication

Subject to provisions of the Guidelines, communication between Respondents and the Employer shall be in a form that provides a record of the content of the communication that is accessible so as to be usable for subsequent reference.

b. Language of communication

The Tender Documents shall be formulated in English.

c. Publication of advertisement/ notification of Tender Documents

i. A **public notice** inviting persons to participate in competitive public bidding for undertaking the project:

   A. Shall be published once in a week for two consecutive weeks in at least three newspapers, two newspapers of national level having mass circulation and one in circulation in the area in which the project is to be undertaken, and
   B. May be published by any other means of mass communication.
   C. The detailed invitation for Expression of Interest/RFQ along with complete EOI/RFQ document shall be made available on website of GoUP, Employer and Administrative Department. It shall be ensured by the Employer that the parties making use of the facility of website are not asked to again obtain some other related documents from the department manually for purpose of submitting EOI/RFQ i.e. all documents up to date should remain available and shall be equally legally valid for participation in the tender process as manual documents obtained from the Employer through manual process.

ii. The Employer may, depending on the nature of selection, issue the advertisements/notification of the Tender Documents in trade journals or business publications or other periodicals.

iii. The Employer shall publish any addenda or corrigenda, following an advertisement/ notification of the Tender Documents in the same dailies and trade journals or business publications or other periodical in which the said advertisement/notification was issued and on its own website and on the website of Government of UP.

iv. Once advertisement/notification of the Tender Documents is made, the Employer shall make available the corresponding Tender Documents in the manner, form, place, date and time and such other conditions as may be specified in the advertisement/notification.

d. Eligibility of Respondents.

The Respondent may be a single entity or consortium. However, no Respondent applying individually or as a member of a consortium, as the case may be, can be member of another Respondent;

e. Blacklisting of Respondents

i. The Employer shall create, maintain and publish a blacklist of Respondents.

ii. The Employer may blacklist a Respondent in the following circumstances:-

1. the Respondent has been disqualified by the Employer; or
2. the Respondent is guilty of fraud in respect of the Tender Proceeding; or
3. any action of another government entity that amounts to blacklisting of Respondent for any process and such blacklisting subsists at the time of commencement of Tender Proceedings; or
4. the Respondent has submitted a false certificate of no Conflict of Interest, in the event such certificate is required by the Employer.

iii. The Employer shall:

1. specify in the blacklist the reason for and the period of the blacklisting and other appropriate information.
2. provide a list of blacklisted Respondents to the centralized PPP e-procurement website of Government of India.
3. Respondents who have been blacklisted by the Employer shall be notified in writing along with the details of reasons of blacklisting at least 21(Twenty One) days in advance of such blacklisting.
4. If the Respondent disputes the blacklisting within a period of not more than 10 (Ten) days from the receipt of the notification of blacklisting, the Employer shall offer such Respondent a hearing. The Respondent shall have the right to be represented by legal counsel at such hearing as well as to present evidence and cross-examine witnesses.

~~f.~~d. Conflict of Interest

A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:

(i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25% (twenty five per cent) of the paid up and subscribed share capital; of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is not more than 25% (Twenty five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013. For the purposes of this Clause, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause(aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

(ii) a constituent of such Bidder is also a constituent of another Bidder; or

(iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or

(iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or

(v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or

(vi) such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation on any documents, design or technical specifications of the Project.

Explanation:

In case a Bidder is a JV, then the term Bidder as used in this Clause, shall include each member of such JV. For purpose of this RFP Associate means, in relation to the Bidder/JV Partner, a person who controls, is controlled by, or is under the common control with such Bidder/ JV (the "Associate"). As used in this definition, the expression "Control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly of more than 50% (Fifty percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, by operation of law.

g. Security

i. The Bidders may be required to provide a Bid Security, not less than {one percent} of the estimated Project Value, which shall be in the form of bank guarantee or an on-demand bank deposit or guaranty or a bond which conforms to applicable law may be provided to meet such requirements.

ii. The Tender Documents shall specify any requirements for securities to be provided.

iii. The Bid Security shall be forfeited if the Bidder:
   1. withdraws its Bid after the Due Date for submission of Bids, or
   2. following the opening of Bids, withdraws its Bid before expiration of the period of effectiveness of the Bid, or
   3. fails to furnish any required Performance Security at the time of award of the Concession Agreement; or
   4. Stands disqualified. However, if disqualification is due to applicability of 'Conflict of Interest' clause then the Employer shall forfeit and appropriate 5% of the value of the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, the time, cost and effort of the Employer, including consideration of such Bidder's proposal, without prejudice to any other right or remedy that may be available to the Employer hereunder or otherwise.

iv. The Bid Security shall remain valid for a period not less than ninety days beyond the period for effectiveness of the Bid in order to provide the Employer sufficient time to act if the security is to be called.

v. The Bid Securities of Bidders who have not been selected will be released not later than 30 (thirty) days after the expiration of the Bid validity period, including any extension thereof, or 30 (thirty) days after the award of Contract, whichever is earlier.

vi. The Bid security of the Preferred Bidder shall be discharged when the Preferred Bidder has furnished the required Performance Security.

vii. Concessionaire shall be required to provide Performance Security, Performance security should not be less than {5% (five percent)} of the Project Value subject to any increase or decrease in the Project Value that may occur during Contract performance.

h. Acceptance or rejection of Responses

i. The Employer may, at its discretion at any time and without assigning reasons, accept or reject any or all Responses or annul the Tender Proceedings, without incurring any liability or any obligation in respect of such acceptance, rejection or annulment. In the event that the Employer rejects or annuls all the Responses, it may, in its discretion, invite all Respondents to submit fresh Responses.

ii. The Employer may reject a Response if the Respondent does not provide, within the time specified by the Employer, the supplemental information sought by the Employer for evaluation of the Response.

iii. If the Bid of the Preferred Bidder is rejected after the Bids have been opened and evaluated, the Employer may:

1. invite the remaining Bidders to match the bid of the Preferred Bidder or resubmit their Bids in accordance with the RFP; or
2. take any such measure as may be deemed fit in the sole discretion of the Employer, including annulment of the Tender Proceedings.

i. Schedule of each stage of the Tender Proceedings

The Employer shall clearly mention in the applicable Tender Document the schedule of each stage of the Tender Proceedings, in terms of the dates of the key milestones of that stage which shall include the Due Date, the pre-submission meeting, issuance of clarifications on the queries of Respondents and issuance of corrigenda or notifications of amendments in the Tender Document.

j. Clarifications on Tender Documents

i. The Employer shall permit Respondents to seek clarifications on the Tender Documents and shall specify a last date for the submission of such clarifications in the Tender Documents provided that the clarifications may be sought from the Employer only in writing.

ii. The Employer shall specify in the Tender Documents the email address and/or postal address to which the clarifications may be sent.

iii. The Employer shall respond to any queries or requests for clarification received from a Respondent within a reasonable time prior to the Due Date, such that Respondent can make its Response in a timely fashion.

iv. Employer shall, without disclosing the name of the Respondent seeking the clarification, communicate the clarification to all Respondents to whom it has provided the Tender Documents.

k. Modification of Tender Documents and Responses

i. At any time prior to the Due Date, the Employer may, for any reason, whether on its own initiative or as a result of a clarification, suggestion or comment of a Respondent, modify the Tender Documents by issuing an addendum or corrigendum.

ii. Any such addendum or corrigendum shall be communicated in accordance with Para 4.7(c) and will be binding on all Applicants or Bidders, as the case may be.

iii. Unless otherwise stipulated in Tender Documents, a Respondent may modify or withdraw its Response prior to Due Date. The modification or notice of withdrawal will be effective if it is received by the Employer prior to the Due Date. In case of a Bid, such withdrawal or modification shall not result in forfeiture of the Bid Security.

l. Manner, place and Due Date for submission of Responses

i. The Employer
   1. shall specify in the Tender Documents, the manner place and Due Date for submission of Responses, including the name and postal address of the person concerned to whom the Responses are to be sent;
   2. may allow and accept electronic submission of Responses through a website if such a facility is available. Electronic submission may also be accepted through email to a dedicated and secured mailbox;
   3. may, prior to the Due Date, extend the Due Date in its discretion. In such instance, the Employer shall publish notice of such extension, in accordance with the provisions of Chapter 4:

ii. In the event the Responses are submitted
   1. in writing, they shall be signed and sealed in an envelope,
   2. in any other form, they shall conform to requirements specified by the Employer in the Tender Documents. The Employer shall stipulate such requirements as will ensure at least a similar degree of authenticity, security, integrity and confidentiality.

iii. A response received by the Employer after the Due Date shall not be opened and shall be returned unopened to the Respondent.

m. Clarifications on Responses

i. The Employer may, at any stage of the Tender Proceeding, ask any Respondent for clarification on its Response, in order to assist in the evaluation of such Response.

ii. Provided that the Employer shall:
   1. not seek, offer or permit any substantive change to the submission (including change aimed at qualifying/ passing a Respondent, as the case may be);
   2. not engage in negotiations with a Respondent with respect to the submission, pursuant to a clarification that is sought under this Para; and
   3. maintain in the record of Tender Proceeding, all communication generated under this Para.

n. Confidentially

The Employer shall treat all information, submitted as part of a Response, in confidence and will require all those who have access to such material to treat the same in confidence. The Employer shall not disclose such information unless:

i. directed to do so by any statutory entity that has power under law to require such disclosure, or

ii. such disclosure is to enforce or assert any right or privilege of the statutory entity and/or the Employer, or

iii. is required to do so by law or in connection with any legal process.

o. Record of Tender Proceeding

Amongst other elements considered necessary by the Employer, the record of Tender Proceedings should necessarily contain the following:

i. subject matter of the selection process;

ii. basic information (including names, addresses, contact number, email address, authorized representatives) of Respondents;

iii. statement of the reasons and circumstances relied upon by the Employer for decisions as part of the process;

iv. a summary of request for clarification and the responses thereof;

v. statement of reasons for rejection of Application or Bids;

vi. principal terms of the Concession Agreement; and

vii. the deviations from the model tender documents.

p. Currency.

Under normal circumstances, all the agreements / contracts should be based on Indian Rupees only. However, for exceptional case, contracts in foreign currency may be permitted with prior approval of competent authority. RFPs shall clearly state that firms may express the price for their services, in the currency specified in RFP. If RFP allows proposals in any other currency, the date and the exchange rate for converting all the bid prices to Indian Rupees shall be indicated in RFP. The Guidelines issued by RBI/GoI from time to time shall be followed in this regard.

q. Progress of PPP projects

The Employer will periodically inform the PPPBEC of the physical and financial progress of all Projects undertaken through a two stage bid process.

CHAPTER 5 - POST AWARD PROJECT MANAGEMENT

5.1 Signing of Agreement

Once a Developer has been selected by the Employer, the Concession Agreement shall be signed between the Developer and Employer. The Concerned Administrative Department shall be responsible for the implementation of the PPP Project by the Selected Developer.

5.2 Constitution of Project Team

The Employer shall constitute a Project Team who shall be responsible for formulation and monitoring of the implementation of the project and shall put up its report to PPPMC on quarterly basis.

5.3 Role of Project Team

a. Adherence to timelines and other obligations specified in the Concession Agreement;
b. Adherence to the performance standards specified in the Concession Agreement;
c. Adherence to reporting procedures between the Concessionaire and the Employer, including project MIS;
d. periodic measurement and testing as required under the Concession Agreement;
e. remedial measures and action plan for curing defaults;
f. imposition of penalties in the event of default;
g. levy and collection of user charges based on approved principles;
h. progress of on-going disputes and arbitration proceedings, if any; and
i. tracking the events that could lead up to invocation of Contingent Liabilities;

5.4 Role of PPPMC

a. The PPPMC shall be responsible for the following activities:-

i. to monitor the physical and financial progress of the project;
ii. to oversee that the project is carried out as per contractual conditions;
iii. to assess the quality of the deliverables;
iv. to accept / reject any part of assignment;
v. to levy appropriate liquidated damages or penalty if the project is not carried out as per the agreement and for any such deficiency related to the completion of the project;
vi. Any other activity to ensure timely completion of the project as per the term of the agreement;

b. The PPP Monitoring Committee may utilize the services of the Escort Consultant as per the provisions of Part - II of these Guidelines for monitoring the implementation of PPP Project; accordingly escort consultant shall be called Monitoring Consultant.

c. The PPPMC shall also have the option to engage a separate and specialized Monitoring Consultant for Monitoring of execution of various PPP Projects~~ being facilitated by the Department of Infrastructure Development~~. Such Monitoring Consultant shall be engaged as per the provisions of Consultant Selection of these Guidelines.

d. Alternatively, the PPPMC may permit the Original Consultant for the PPP Project to undertake monitoring of execution of PPP Project after award of contract and signing of Concession Agreement with the Developer. This would provide the benefit of experience of the same Consultant responsible for TEFRs, the Bidding Process and designing of Concession Agreement to the Govt. in monitoring of execution of the project. Hence, the Consultancies for PPP Projects could be designed to be implemented in three stages as above.

5.5 The Employer or the concerned Department or specified government agency shall have the option to follow the 'Policy Framework for Consultant Selection' as enumerated in Part II of these Guidelines for selection of Independent Engineer, if required under the provisions of Concession agreement executed with the Developer.

Schedule & Appendices

SCHEDULE I

Indicative list of Projects for which PPP Route may be considered

1. Power Generation, Transmission and Distribution Systems.
2. Expressways Roads, ROBs, Flyovers, Highway related Infrastructure, etc.
3. Urban Re-generation
4. Urban Transportation including Metro, Mono Rail etc.
5. Civil Aviation, Cargo Hub, Airport
6. Solid Waste Management, Water Storage , Treatment & Supply and Sewerage System.
7. Irrigation projects (Dams, Channels, Embankments etc.)
8. Construction relating to projects involving Agro-processing & supply of inputs into agriculture.
9. Industrial Estates including Industrial Parks, or special economic zones.
10. Tourism Projects.
11. Modern Technology based Infrastructure including IT/ ITES, Bio-Technology etc.
12. Education including World Class Medical, Technical & Higher Education facilities.
13. Health Facilities including multi-specialty Hospitals
14. Tourism & Hospitality related Infrastructure
15. Post-harvest Facilities including Public Markets, Processing facilities etc.
16. Development of Communication Infrastructure
17. Oil & Gas and Gas Works, Pipelines, Oil/Gas/LNG Storage.
18. Inland Waterways
19. Storm Water Drainage System
20. Fertilizer (Capital Investment)
21. Terminal Markets
22. Soil Testing Labs
23. Cold Chains
24. Convention Centre with project cost of more than Rs. 300 crores each.
25. Logistics Parks

Note: The above indicative list is updated according to RBI circular no. DNBS.PD.CC.No 362/03.10.001/2013-14 dated 29.11.2013

SCHEDULE II

Nature Of Concession Agreement

1. **Build Operate and Transfer Agreement (BOT):**

Under this category, the private partner is responsible to build, operate (during the contracted period) and the developer is required to transfer the project to the State Government, the Government agency or, as the case may be, the specified Government agency after the expiry of the period of operation. The private sector partner is expected to bring the finance for the project and take the responsibility to construct and maintain it. During the period of operation of the project, he may be permitted to charge user charges as specified in the agreement.

2. **Build Own Operate and Transfer Agreement (BOOT)**:

An agreement whereby the developer undertakes to finance, construct, maintain and operate a project and whereby such project is to vest in the developer for a specified period. During the period of operation of the project by the developer, he may be permitted to charge user charges as specified in an agreement. The developer is required to transfer the project to the State Government, the Government agency or, as the case may be, the specified Government agency after the expiry of the period of operation.

3. **Build Own Operate and Maintain Agreement (BOOM)**:

An agreement whereby a developer undertakes to finance, construct, operate and maintain a project and whereby such project is to vest in the developer for specified period. During the period of operation of the project, he may be permitted to charge user charges as specified in the agreement.

4. **Build and Transfer Agreement (BTA)** :

An agreement whereby developer undertakes to finance and construct a project. After the completion of the project, the developer is required to transfer the project to the State Government, the Government agency or, as the case may be, the specified Government agency. The developer shall be paid such amount as is fixed in amortization schedule specified in the agreement.

5. **Build Lease and Transfer Agreement (BLT)**:

An agreement whereby a developer undertakes to finance and construct the project. On completion of the project, the developer hands it over to the State Government, the Government agency or, as the case may be, the specified Government agency for operation under a lease agreement for period specified in the agreement after the expiry of which the project stands transferred to the State Government, the Government agency or, as the case may be, the specified Government agency.

6. **Build Transfer and Operate Agreement (BTO)**:

An agreement whereby the developer undertakes to finance and construct the project. On completion of the project, the developer transfers the project to the State Government, the Government agency or, as the case may be, a specified Government agency which permits the developer to operate the project on its behalf for a period specified in the agreement.

7. **Design-Build-Finance-Operate-Transfer (DBFOT) Agreement:**

DBFOT is regarded as an amended form of the pre-existing Build-Operate Transfer process, but this DBFOT process allows more freedom to the private developer in the designing i.e. development of the project, which will make it possible to use latest techniques. Under this process, the department/agency sponsoring the PPP project does not provide a Detailed Project Report (DPR) but only Feasibility Report and clearly defined project specifications along with information regarding project is prepared and provided to the proposed bidder developers in the form of bid documents.

8. **Lease Management Agreement or Lease Operate and Transfer (LOT) Agreement**:

An agreement whereby the State Government, the Government agency or the specified Government agency leases a project owned by the State Government, the Government agency or, as the case may be, the specified Government agency to the person who is permitted to operate and maintain the project for the period specified in the agreement and to charge user charges therefor. The asset will be transferred back to the government at the end of the contract.

9. **Management Agreement**:

An agreement whereby the State Government, the Government agency or the specified Government agency entrusts the operation and management of a project to a person for the period specified in the agreement on payment of specified consideration. In such agreement the State Government, the Government agency or, as the case may be, the specified Government agency may charge the user charges and collect the same either itself or entrust the collection for consideration to any person who shall after collecting the user charges pay the same to the State Government, the Government agency or, as the case may be, the specified Government agency.

10. **Rehabilitate Operate and Transfer agreement**:

An agreement whereby an existing project is vested in a person to renovate, operate and maintain for the period specified in the agreement after the expiry of which the project is required to be transferred to the State Government, the Government agency or, as the case may be, the specified Government agency. During the period of operation of the project by the developer, he may be permitted to charge user charges as specified in the agreement.

11. **Rehabilitate own Operate and Maintain Agreement** :

An agreement whereby an existing project is vested in a person to renovate, operate and maintain. The developer shall be permitted to charge user charges as specified in the agreement.

12. **Service Contract Agreement** :

An agreement whereby a person undertakes to provide services to the State Government, the Government agency or the specified Government agency for a specified period. The State Government, the Government agency or, as the case may be, the specified Government agency shall pay him an amount according to the agreed schedule.

13. **Supply Operate and Transfer Agreement**:

An agreement whereby a person supplies to the State Government, the Government agency or the specified Government agency the equipment and machinery for a project and undertakes to operate the project for a period and consideration specified in the agreement. During the operation of the project, he shall undertake to train employees of the State Government, the Government agency or, as the case may be, the specified Government agency to operate the project.

14. **Joint Venture Agreement**:

An agreement whereby the State Government, the Government agency or the specified Government agency enters into an agreement with a developer to jointly finance, construct, operate and maintain a project for a period specified in the agreement after the expiry of which the project is required to be transferred to the State Government, the Government agency or, as the case may be, the specified Government agency.

15. Operate Maintain and Transfer (OMT):

An agreement whereby an existing project is vested in a person to operate and maintain and the developer is required to transfer the project to the State Government, the Government agency or, as the case may be, the specified Government agency after the expiry of the period of operation. The developer shall be permitted to charge user charges as specified in the agreement.

16. Annuity:

Annuity Concessions are a variant of the BOT model in which the Concessionaire is remunerated via a fixed, periodical payment (‘annuity’) from the Employer rather than user charges proceeds. Under these contracts, the Concessionaire is responsible both for construction of the project, as well as for operating and maintaining it for the Concession Period.

17. Design, Build, Operate and Transfer (DBOT Annuity or Hybrid Annuity)

DBOT (Annuity) is a variant of Annuity Concession model in which the Employer and the Concessionaire share the total project cost in predefined ratio. During the construction period, the project cost is financed by the Employer to the extent determined as per the ratio and remaining project cost is payable in fixed periodical installments (‘annuity’) to the Concessionaire. The O &M expenses are borne by the Concessionaire and in lieu thereof, financial support in periodical installments is payable by the Employer during the Concession Period. Under these contracts, the Concessionaire is responsible for design and construction of the project as well as for operating and maintaining it for the Concession Period.

Appendix 1:

Format for Application for In-Principle Approval of PPP Projects

1 **Date of Application:**

2 **PPP Project Name:**

3 **Project Description:**

A brief technical description of the scope of the PPP Project and location:

4 **Describe how the PPP Project shall meet the present or future needs of the public and likely benefits to users:**

5 **Describe how the PPP Project will meet the Employer's strategy or plans:**

6 **Describe how the PPP Project will complement other developments in the area through review of sector strategic plans:**

7 **Brief description of environmental and social assessment work plan:**

8 **Brief description of land acquisition and resettlement requirements, community consultation undertaken, if any, willingness and compensation/ assistance plan:**

Please add more details as an annexure to this form

9 **Briefly describe various options identified to deliver service/facility/product:**

Option A:

Option B:

Option C:

10 **Summary of options analysis:**

Please add more details as an annexure to this form

	Option A	**Option B**	**Option C**
Technical and operational features			
Land and resettlement issues			
Environmental and social aspects			
Likely interest from private entities			

11 **Affordability (user charges, annuity, potential grants and other forms of financial support)**

12 **Recommendation on the preferred option:**

13 **Proposed method and plan (with indicative timelines):**

14 **Commitment of responsible parties:**

Briefly describe the involved parties (line departments and other institutions), their roles and responsibilities, and confirmation of their agreement to perform the tasks required

15 **Designated Project Officer/Project Management Team with contact details including email address**

Appendix 2

Format for Feasibility Study Report

1. Part A: Executive Summary

This summary should provide of the following information:

(a) Current service provision, if applicable and future requirements;

(b) A summary of the full list of options;

(c) A summary of the options selection procedure and the options chosen for detailed examination;

(d) A summary of the comparative findings and justification for the preferred option; and

(e) Highlights of the implementation plan.

Part B: Feasibility Assessment

2. Project background: This section should provide a background on the project location, type of infrastructure, the Employer, previous studies undertaken, and previous approvals received etc.

3. Strategic needs assessment, demand assessment and project scoping: This section will analyse current and future needs. An analysis of the user's needs should be included. The following issues should be addressed:

(a) Existing or envisioned service gaps;

(b) Key stakeholders and their requirements; and

(c) Consultation plan with key stakeholders to ensure that the PPP Project remains relevant.

(d) Assessment of demand should also be included in this section. Project scoping Component should determine and define the scope of the PPP Project, outlining the services to be delivered.

4. Service standard – output and services: This section will translate the needs identified in the previous step into specific outputs. The following issues should be addressed:

(a) impact of the proposed PPP Project on the service gaps identified above and overall objectives the PPP Project aims to achieve;

(b) outputs expected from the PPP Project, stated, as far as possible, in measurable and quantifiable terms;

(c) support service outputs (the outputs that are not the key drivers of the PPP Projects, but have potential to enhance the PPP Project's value for money); and

(d) relevance of the PPP Project to the Employer's long-term strategic goals and overall national development plan.

5. Market assessment: Once the project outputs have been specified, assessment of the market potential can commence. The purpose of market assessment study is to assist the Employer in deciding how to design, and deliver the PPP Project. The study may address the following elements:

(a) description of the industry;

(b) current market analysis (current offerings, market players and their capability and appetite);

(c) competition (alternative service and product offerings);

(d) anticipated future market potential;

(e) potential market players and sources of revenues; and

(f) demand projections.

6. Technical feasibility: This section details how the PPP Project can be delivered (i.e. outline technical solution). The study should address the following elements:

(a) field surveys of the project site, which may include (depending on the PPP Project) mapping, topographical and geotechnical surveys;

(b) a preliminary technical design of facilities required to provide the project outputs. This should consider alternative design options, taking into account uncertainty in the demand projections and other site-related uncertainties;

(c) materials and other input requirements;

(d) alternatives (such as those involving usage of existing assets for the PPP Project, rather than creating new ones; or achieving the desired outputs by some means other than the proposed solution) and their assessment in relation to the possibility of achieving the targets of the PPP Project; and

(e) capital expenditure cost assessment and operating and maintenance cost assessment based on the components of the preliminary technical design.

7. Financial feasibility: This section provides an estimate of project costs based on recommended technical solution and identifies possible financing solutions. The study should address the following elements:

(a) project costs (initial and replacement capital expenditure, cost of upgrades, operational expenditure);

(b) start-up capital;

(c) sources of financing;

(d) potential revenues;

(e) estimated returns; and

(f) consulting costs.

8. Environment impact: This section should examine environmental considerations, including details of any environment impact study conducted.

9. Legal framework: This section examines the suitability of existing legislative environment for the execution and running of the PPP Project. The study should address the following elements:

(a) appraisal of current legislative environment in relation to requirements of the PPP Project;

(b) licences and/or requirements that the Concessionaire will need to obtain and/or comply with;

(c) assessment of required amendments to the current legislation;

(d) legal requirements for the proposed market and organisational structure; and

(e) other legal issues that may inhibit / prevent the development of the PPP Project.

10. Stakeholder consultation findings and public interest evaluation: This section should state the findings of the consultation process with the various stakeholders including but not limited to:

(a) users;

(b) developers;

(c) community participants;

(d) citizens likely to be affected;

(e) financers; and

(f) other relevant government authorities.

11. Public sector comparator, value for money and recommendations: This section should state the reference project and detail the computation of the public sector comparator and resultant value for money for the Employer ("**Value for Money Assessment**"). The Value for Money Assessment involves a qualitative assessment and a quantitative assessment, wherever possible:

(a) Quantitative Assessment involves estimation of the risk adjusted cost of delivering a project through PPP mode as compared to the risk adjusted cost of delivering the same project through the traditional public procurement mode. The same is determined by:

(i) Specifying clear outputs from the project and comparing the costs and benefits of a PPP Project with the costs and benefits of a publicly financed project, and

(ii) Estimating risk factors which should be applied to the estimates.

(b) Comparing the risk adjusted net costs/ benefits of both the PPP Project and a publicly financed project on the Employer, and ascertaining the value for money.

(c) Qualitative Assessment: PPP shall be considered as a procurement option if the following value for money drivers are present:

(i) Sufficient scale and long-term nature: The project represents a major capital investment with long-term requirements. In determining whether the scale of a project is sufficient, the Employer should consider the costs to be incurred in procuring the PPP project;

(ii) Complex risk profile and opportunity for risk transfer: The transfer to the Concessionaire of risks associated with provision of the specified services, asset ownership and asset management during the life cycle of the asset;

(iii) Measurable outputs: The nature of the services enables output specifications and a performance-based contract;

(iv) Asset utilisation: Reducing costs to the Employer through potential third-party utilisation or through more efficient design to meet performance specifications;

12. Competitive process: A competitive market exists and the use of a competitive process encourages the private entity to develop innovative means of service delivery while meeting the Employer's cost objectives.

13. Conclusion and recommendations on feasibility assessment: This component should detail the key conclusions and recommendations on the Feasibility Assessment.

Part C: Structuring

14. Risk assessment: This section should identify all material risks associated with the PPP Project, specifying the external and project development risks for the Employer, the project risks to be allocated to the private entity and those to be retained by the Employer.

15. Key commercial principles including payment mechanisms: This section should detail the key commercial principles for the PPP Project. These commercial principles would include, *inter alia*, the payment mechanisms, relief, compensation and force majeure events, default events, termination payments, the Employer's step-in and cure rights and insurance.

16. Evaluation criteria for selection of the private entity: This section should detail the evaluation criteria for selection of the Preferred Bidder.

17. Implementation plan: This section should detail the activities and timelines during the project development period. It should also state the person or entity responsible for each activity.

18. Project resource requirement: This section should detail the resources required during and after the project development period.

19. Conclusion and recommendations on structuring: This section should detail the key conclusions and recommendations on the project structuring.

Part D: Appendices

The Employer shall include in this section any supporting documents such as a detailed projected financial statement, environment impact assessment study, technical report or review of legal framework

Appendix 3

Memorandum for PPPBEC for approval of Feasibility Report

1. General
1.1 Name of the Project
1.2 Type of PPP (BOT, BOOT, BOLT, OMT etc.)
1.3 Location (State/District/Town)
1.4 Administrative Department
1.5 Name of Sponsoring Authority
1.6 Name of the Implementing Agency

2. Project Description
2.1 Brief description of the project
2.2 Justification for the project
2.3 Possible alternatives, if any
2.4 Estimated capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimation.
2.5 Phasing of investment
2.6 Project Implementation Schedule (PIS)

3. Financing Arrangements
3.1 Sources of financing (equity, debt, mezzanine capital etc.)
3.2 Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions.
3.3 Indicate the NPV of revenue streams with 12% discounting
3.4 Who will fix the tariff/ user charges? Please specify in detail.
3.5 Have any FIs been approached? If yes, their response may be indicated

4. IRR
4.1 Economic IRR (if computed)
4.2 Financial IRR, indicating various assumptions (attach separate sheet if necessary)

5. Clearances
5.1 Status of environmental clearances
5.2 Clearance required from the State Government and other local bodies
5.3 Other support required from the State Government

6. Govt. Support
6.1 Viability Gap Funding, if required
6.2 GoUP guarantees being sought, if any

7. Proposed Legal Framework & Structuring of Project

8. Criteria for short-listing
8.1 Indicate the criteria for short-listing (attach separate sheet if necessary)

9. Others
9.1 Remarks, if any
A. Sponsoring Department:
B. Name and location of the Project:
C. Legal Consultant:
D. Financial Consultant

Appendix 4

Memorandum for final approval of Preferred Developer

1. General

1.1 Name of the Project
1.2 Type of PPP (BOT, BOOT, BOLT, OMT etc.)
1.3 Location (State/District/Town)
1.4 Administrative Department
1.5 Name of Sponsoring Authority
1.6 Name of the Implementing Agency

2. Project Description

2.1 Brief description of the project
2.2 Justification for the project
2.3 Possible alternatives, if any
2.4 Estimated Capital costs with break-up under major heads of expenditure. Also indicate the basis of cost estimation.
2.5 Phasing of investment
2.6 Project Implementation Schedule (PIS)

3. Financing Arrangements

3.1 Sources of financing (equity, debt, mezzanine capital etc.)
3.2 Indicate the revenue streams of the Project (annual flows over project life). Also indicate the underlying assumptions.
3.3 Indicate the NPV of revenue streams with 12% discounting
3.4 Who will fix the tariff/ user charges? Please specify in detail.
3.5 Have any FIs been approached? If yes, their response may be indicated

4. IRR

4.1 Economic IRR (if computed)
4.2 Financial IRR, indicating various assumptions (attach separate sheet if necessary)

5. Clearances

5.1 Status of environmental clearances
5.2 Clearance required from the State Government and other local bodies
5.3 Other support required from the State Government

6. Govt. Support

6.1 Viability Gap Funding, if required
6.2 GoUP guarantees being sought, if any

7. Concession Agreement

7.1 Is the Concession Agreement based on MCA? If yes, indicate the variations, if any, in a detailed note (to be attached)
7.2 Details of Concession Agreement (Attached at Appendix-5)

8. Criteria for short-listing

8.1 Indicate the criteria for short-listing (attach separate sheet if necessary)

9. Others

9.1 Remarks, if any
A. Sponsoring Department:
B. Name and location of the Project:
C. Legal Consultant:
D. Financial Consultant:

Appendix 5

Term Sheet of the proposed Concession Agreement

1. General

1.1 Scope of the Project (in about 200 words)
1.2 Nature of Concession to be granted
1.3 Period of Concession and justification for fixing the period
1.4 Estimated capital cost
1.5 Likely construction period
1.6 Conditions precedent, if any, for the concession to be effective
1.7 Status of land acquisition
1.8 Obligations of the Concessionaire
1.9 Obligations of the Client
1.10 Status of land acquisition
1.11 Disclaimer

2. Construction and O&M

2.1 Monitoring of construction and O&M whether an independent agency/engineer is contemplated
2.2 Minimum standards of Operation and Maintenance
2.3 Penalties for violation of prescribed O&M standards
2.4 Safety related provisions
2.5 Environment related provisions
2.6 Performance Security
2.7 Completion Certificate
2.8 Change of Scope

3. Financial

3.1 Maximum period for achieving financial close
3.2 Nature and extent of capital grant/ subsidy contemplated
3.3 Bidding parameter (capital subsidy or other parameter)
3.4 Provisions for change of scope and the financial burden thereof
3.5 Concession fee, if any, payable by the Concessionaire
3.6 User charges/ fee to be collected by the Concessionaire
3.7 Indicate how the user fee is to be determined; the legal provisions in support of user fee (attach the relevant rules/ notification); and the extent and nature of indexation for inflation
3.8 Provisions, if any, for mitigating the risk of lower revenue collection
3.9 Provisions relating to escrow account, if any
3.10 Provisions relating to insurance
3.11 Provisions relating to audit and certification of claims
3.12 Provisions relating to assignment/ substitution rights relating to lenders
3.13 Provisions relating to change in law
3.14 Provisions, if any for compulsory buy-back of assets upon termination/ expiry
3.15 Contingent liabilities of the government
(a) Maximum Termination Payment for Government/ Authority Default
(b) Maximum Termination Payment for Concessionaire Default
(c) Specify any other penalty, compensation or payment contemplated under the agreement
3.16 Provisions relating to Termination of Concession Agreement

4. Others

4.1 Provisions relating to competing facilities, if any
4.2 Specify the proposed Dispute Resolution Mechanism
4.3 Specify the proposed governing law and jurisdiction
4.4 Liability and Indemnity
4.5 Rights and Title over the Site
4.6 Other remarks, if any

Appendix 6

Undertaking

I, _____(Name and Designation of Member), as a member for the PPP Bid Evaluation Committee for the _____(Name of the Project) of _____(insert name of Employer) hereby undertake that I have no personal interest directly or indirectly in the individual Developer/Developer concerned interested in the PPP Agreement.

(Signature of Member of PPPBEC)

Appendix 7

Suggested References

Sl. No	Publication / Title	Publishers
I. Model Concession Agreements (MCA) for PPP projects		
1	MCA for National Highways	Planning Commission
2	MCA for State Highways	Planning Commission
3	MCA for Operation & Maintenance of Highways	Planning Commission
II. Model Bidding Documents for PPP projects		
4	Model Request for Qualification Document (RFQ) for PPP projects	Planning Commission
5	Model Request for Proposal (RFP) for PPP projects	Planning Commission
6	Model Request for Proposal (RFP) for Selection of Technical Consultants	Planning Commission
7	Model Request for Proposal (RFP) for Selection of Legal Advisors	Planning Commission
8	Model Request for Proposal (RFP) for Selection of Financial Consultant & Transaction Advisor	Planning Commission
III. Guidelines for Appraisal, Approval and Assistance for PPP projects		
9	Guidelines for Financial Support to PPPs in Infrastructure (VGF Scheme)	Planning Commission
10	Guidelines on Formulation, Appraisal and Approval of PPP Projects (PPPAC)	Planning Commission
IV. Policy Documents and Reports		
11	Private Participation in Infrastructure	Planning Commission
12	Guidelines for Monitoring of PPP Projects	Planning Commission
13	Approach to Regulation of Infrastructure	Planning Commission
14	Guidelines for establishing Joint Venture Companies in Infrastructures Sectors	Ministry of Finance
15	Public Private Partnerships (PPP) in Infrastructure Projects – Public Auditing Guidelines	Comptroller and Auditor General of India